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

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.	)	**RULE 60 RELIEF FROM JUDGMENT & MOTION FOR JURY TRIAL**
Glastonbury Landowners Association, Inc. Board of Directors	)	
Defendant(s)	)	

Plaintiffs & GLA Members-Daniel & Valery O'Connell, (hereafter "Members") do hereby submit motions **per M.R.Civ.P., Rule 56, 59 & Rule 60,** for relief from ALL (June 19, 2013) Summary Judgement Orders and per rule 59, do hereby motion for a trial as requested in complaints. The motions are also warranted for Orders that in error deny all facts that are yet in dispute & other claims not adjudicated on the summary motions without discovery or trial, & warrant a trial jury nullification to reverse such Orders. Per Rule 56, questions of material fact still in dispute, can only be decided by trial. Members are entitled to Summary Judgment as a matter of law and regarding the following erroneous Orders of June 19th:

1. Per §27-2-202 MCA, the GLA was barred by laches from charging guest house assessments 8 years after Covenants enacted & barred by equitable estopple for not taking any action to charge for guest houses for 17 years.

2. Per §27-2-202, §27-2-301 MCA, Members' elections claims are within the eight year statutory limitations against laches and equitable estopple (GLA Members since 2005).

3. The Court did err when in the absence of ambiguity or any claim of ambiguity it did not use the clear and express language of the contracts (GLA governing documents) in determining the legality of GLA election practices.

4. The Court did err in granting GLA motion for Erickson Variance issue; a non-complaint claim NOT found within Members original DV-12-164 complaint that only includes 2 contract claims.

5. Per §76-3-103(17(b)(c) MCA & GLA Covenants and Master Plan the Erickson Contract, allowing the unlawful joinder of property and the creation of a contract that supersedes original GLA Covenants is unlawful.

6. The Court did err in determining that Minnick contract was allowed under statutory and GLA Bylaws. §35-2-414 MCA & GLA Articles of Incorporation prohibit the GLA from granting authority and powers to Minnick Management or any other entity, than Committees of Directors (Bylaw VI (I).

7. The Court did err in dismissing the entire complaint matters/claims not adjudicated on the summary motions, and decided material facts still in dispute. Summary motions factually prove, all parties materially disputed whether or not the GLA breached contracts (GLA governing documents) Courts Orders failed, per rule 56, to apply the law to the undisputed facts.

8. The Court did err in denying right to discovery requested at p.13 in Plaintiffs Motion for summary Judgment.

The many errors in the Orders of the Court surprised Members, when it denied ALL Members claims, inferences, motion for sanctions, and legal authorities. Such denials were NOT adjudicated on the summary motions and/or complaint claims e.g., granting GLA motion to include Erickson variance for summary judgment NOT found with in DV-12-164. Plaintiffs have pointed out this **non**-complaint claim if the GLA to the Court three times now. Moreover Granting GLAs entire cross-motion for summary judgement should make Members the non-moving party, hence all GLA-moving party inferences should have been excluded. For this and the Courts failure to join cases (DV-12-164 & DV-12- 220) when all parties agreed to join further shows the Courts lack of due diligence, all of which harms Members denying the justice.

The Courts Orders violate well established contract laws by deliberately adding language not written therein and extending by implication or enlarged by construction its meaning within those GLA governing documents. The Supreme Court has long held that Montana laws are to be understood in their strict construction. "B*ordas* pointed out Montana law requires strict construction of restrictive covenants." In **Town & Country Estates Association v. Slater** (1987), 227 Mont. 489, 492, 740 P.2d 668, 670-71. Orders contrary to §27-2-202 and §27-2-301 MCA, deny members their fundamental rights of due process and defense to the doctrine of laches and equitable estopple as applied to the guest house issue and misapply them to the election issue. The Court's exclusion of the many authorities as listed table of authorities & oral summary arguments (attached to brief); **attached hereby as if fully stated herein.** In drawing its conclusion, the Court used a standard that was arbitrary, capricious and a clear abuse of discretion and denial of existing law and well established precedent, all of which has fatally harmed Members cases and constitutional rights.

FACTAL ARGUMENTS AND BRIEF

The Orders many fatal flaws warrant relief pursuant to Rules 56, 59 & 60 & more as follows:

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...

(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...

M.R.Civ.P., Rule 59. New Trial; Altering or Amending a Judgment.

(a) In General. (1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues -- and to any party -- as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in Montana state court; or

(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in Montana state court.

(2) Further Action after a Nonjury Trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) Time to File a Motion for a New Trial. A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) Time to Serve Affidavits. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) New Trial on the Court's Initiative or for Reasons not in the Motion. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

(f) Motion Deemed Denied. If the court does not rule on a motion for a new trial properly filed according to Rule 59(b), or a motion to alter or amend a judgment properly filed according to Rule 59(e), within 60 days from its filing date, the motion must be deemed denied."

M.R.Civ.P., Rule 60. Relief from Judgment or Order.

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the supreme court and while it is pending, such a mistake may be corrected only with the supreme court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time -- and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding. Motions provided by Rule 60(b) must be determined within the times provided by Rule 59 in the case of motions for new trials and amendment of judgment and if the court shall fail to rule on the motion within the 60-day period, the motion must be deemed denied.

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

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."

I. COURTS ORDERS ERR IN DENIAL OF QUESTIONS OF FACT IN DISPUTE & DENIAL OF CLAIMS NOT ADJUDICATED ON THE SUMMARY MOTIONS

Orders on page 2, ¶3 "3. Any and all further claims, motions, and writs, filed in cause numbers DV-12-220 and DV-12-164 having been effectively resolved by the courts ruling regarding the summary judgement motions are hereby DENIED."

A. Such Orders are in error being contrary to rule 56 by arbitrarily & capriciously denying ALL material facts and all claims still in dispute & not adjudicated on the summary judgments motions, as follows:

1. **The doctrine of laches and equitable estopple granted in the Orders are questions of fact that were yet in dispute, and in violation of several contract laws. Thus without jurisdiction and authority, and contrary to rule 56, the matter should NOT have been decided in the summary judgement Order (argued below).**

2. **Courts Orders denied a different complaint claim** (DV-12-164) **by default without trial, and without discovery as requested.** The complaint claim involving 2 Erickson /GLA contracts that pertained to contracts called "Use And Development Agreement" and "Declaration of Building ... Easement"). For this contract claim, Plaintiffs' summary motion requested discovery therefore.

Orders err to grant Erickson variance without discovery not adjudicated on the motion; which Erickson variance review was not a complaint claim. As proof that GLA summary motion added claim #1 not in the complaint, GLA page 14 (@26) requested relief from two separate issues: 1. "Erickson variance and" 2. Erickson "variance agreement" contract. Orders err to deny claim #2, then grant #1 Erickson variance review not a complaint claim (argued below).

3. **Courts Orders denied by default without a hearing, without trial, and without discovery was a Minnick contract clause,** "Minnick has the exclusive right to operate, control and manage the certain property known as the Community of Glastonbury...." Before oral hearing, the GLA REMOVED this contract clause; thus showing June 19th **Orders are flawed to deny discovery, hearing or trial to dismiss this issue that GLA actions admit was valid.**

4. ONLY 4 main claims in both complaints had to do with 4 questions of law, Only 1-3 were included for summary judgement. Not part of summary judgement motions were many other questions of fact regarding GLAs breach of contracts such as the Minnick contract clause first paragraph removed by the GLA,

5. And other claims for GLA breach of duty per GLA ARTICLE VIII, due process claim,

6. Also other claims regarding a motion for GLA sanctions,

7. Also declaratory judgement claim in 164 complaint, and more,

8. Also Orders lack jurisdiction and authority, because w**ether a party materially breached GLA contracts as the Orders decided, are not questions of law, but questions of fact yet in dispute.** As the summary motions factually prove, all parties disputed wether or not the GLA violated its governing contracts. Such material facts effecting all issues were still in dispute (cited below). Orders err as contrary to Rule 56 and *Sjoberg v. Kravik* opinion as follows:

> **The determination of whether a party materially breached a contract is a question of fact.** *See* ***Sjoberg v. Kravik*** (1988), 233 Mont. 33, 38, 759 P.2d 966, 969. We review a district court's findings of fact to determine whether they are clearly erroneous. *See* ***Daines v. Knight*** (1995), 269 Mont. 320, 324, 888 P.2d 904, 906 (citing ***Columbia Grain Int'l v. Cereck*** (1993), 258 Mont. 414, 417, 852 P.2d 676, 678). A finding is clearly erroneous if substantial evidence does not support it, if the district court misapprehended the effect of the evidence, or, if after reviewing the record, this Court is left with a firm conviction that a mistake has been made. *See* ***Interstate Prod. Credit Ass'n v. DeSaye*** (1991), 250 Mont. 320, 323, 820 P.2d 1285, 1287. **The construction and interpretation of a written agreement are questions of law.** *See, e.g.*, ***In re Estate of Hill*** (1997), 281 Mont. 142, 145, 931 P.2d 1320, 1323 (citations omitted)

B. Only 3 issues- 3 QUESTIONS OF LAW below were ripe for judgment, as follows:

ORDERS ERR TO DENY QUESTIONS OF LAW RIPE for SUMMARY JUDGEMENT 1-3

1. GLA saying that a guest house is "designed for occupancy for a single family" as a "dwelling unit," wether or not the GLA added this language not written therein and extended by implication or enlarged by construction this meaning within governing documents.

2. GLA saying Board elections allow more than one vote or 3 votes per parcel based on so called "vacancies" which word "vacancies is not even in the documents, wether or not the GLA added this language not written therein and extended by implication or enlarged by construction this meaning within governing documents.

3. GLA saying its GLA duties, officer duties, authority & powers given over to agent-Minnick by the Minnick contract are authorized in state statute & in GLA governing documents (& Article VIII.), wether or not the GLA added language not written therein and extended by implication or enlarged by construction this meaning within state statue & GLA governing documents.

A 4th issue–Ericksons variance review, was NOT a complaint claim for relief but added by the GLA's motion* and Plaintiffs summary motion reply & response cited GLA-Bolen's letter affidavit saying this issue-Erickson's "variance requests have been withdrawn." This is definitive proof this issue, not even a complaint issue, is NOT allowed yet **mistakenly granted in the Orders as contrary to rules 56 and 60 cited below (see more below on this issue).** For the foregoing reasons the Members are entitled to Summary Judgment as a matter of law.

II. ORDERS ERR TO GRANT ERICKSON VARIANCE REVIEW CLAIM NOT IN COMPLAINT DV-12-164

A. The Erickson matter was not ripe for Summary Judgment. There are many questions of material fact that yet exist. The variance process was never a claim made in the complaint, hence GLA should not have been allowed cross motion in the matter. Only the legality of the Contracts should have been considered. **In fact, this issue-Ericksons variance review is already under consideration in DV-11-114, and therefore was not proper and not lawful to be brought before the court via a motion for the purposes of summary judgment, as the Orders allowed.** Orders err to grant Erickson variance without discovery not adjudicated on the motion,; which Erickson variance review was not a complaint claim. As proof that GLA summary motion added claim #1 not in the complaint, GLA page 14 (@26) requested relief from two separate issues: 1. "Erickson variance and" 2. Erickson "variance agreement" contract.

B. The Courts decision regarding the Erickson contracts entitled "Use and Development Agreement" and "Declaration of Building and Transfer Restrictions Easement" hereafter Contracts, allows the violations of State and GLA laws, property and use rights and covenants

that run with the land. The Court decision acknowledges GLA Covenants and Master Plan, generally only allow two homes per lot in ¶3 p.3 of Order. The Court then construes a division of property to be something that the GLA can join together at will, making two parcels one huge parcel, or "combined;" as stated in ¶3 p.3, Order. In granting GLA's motion the Court is also (in violation of State laws and GLA Covenants) giving the GLA the right to encumber the rights of future owners by requiring they both be sold together, and not allowing any dwellings to ever be built on lot 90 in the future. The Courts decision defy's logic and common sense. The Erickson Contracts are against Montana and GLA laws; is flatly illegal:

1. The Erickson Contracts and variance process are **a direct violation of the Montana Subdivision and Platting Act, 76-3-103(17) MCA,** which controls the joinder or merger of contiguous parcels of land, as follows:

"(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder; (i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or (ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel,
(c) An instrument of conveyance does not merge parcels of land under subsection (17) (b) (i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owners intent to effect a merger of parcels."

As the Platting Act law above shows, this state law was violated in Erickson project review (in err granted by Orders) to join or merge lots 90 & 91 together without filing the appropriate instruments and applications with Park County. The fact that the GLA never included this in their variance process makes the contract illegal on the face of it.The Court did not do its due diligence and failed to simply apply the law using the language of the contracts. For this reason alone Summary Judgment should now be Granted to Plaintiffs'.

2. <u>GLA Articles, Bylaws, Covenants and Master plan all prohibit the GLA from granting any variance against State or GLA laws.</u> Every project review passed by the GLA Board, must be in

accord with local, county and state laws. Every landowner signs a "Project Review" form agreement as part of the "Project Review" that states they are abiding by all governing laws. The Board violated GLA governing documents including The Erickson's violated this agreement.

3. No Unusual or Exceptional Circumstance exist beyond the Erickson's control **requiring** all of their dwellings to be placed on lot 91. Therefore the Erickson Project Review Contracts are not in accord with Master Plan 4.2 .

4. Contracts and Erickson Project Review violates GLA Covenant 12.01. In addition to the above, this covenants expressly forbids the GLA from granting any waiver or variance that is injurious to the Association. The Erickson contracts limitation/requirement that anyone in the future will not be allowed to build a home on lot 90 certainly means a loss of assessment income for the association.

5. GLA approved Erickson Project Review and created the Erickson contracts which discovery is still needed for. Such contracts supersedes the original GLA Covenants, because there are no provisions in the GLA Covenants which allow the GLA to make contracts with a landowner which limit the use of a landowners property into perpetuity and that such restrictions transfer to future owners. This alone makes the Erickson Contracts illegal according to state and GLA law denying the original GLA covenants run with the land.

III. ORDERS ERR TO MISUSE/MISAPPLY LACHES & ESTOPPLE DOCTRINES

"The doctrine of laches applies where there has been such delay as to render enforcement of the asserted right inequitable. *Marriage of Deist, 2003 MT 263, ¶ 17, 317 Mont. 427, ¶ 17, 77 P.3d 525, ¶ 17.* We have said that there is "no absolute rule as to what constitutes laches, and each case is determined according to its own particular circumstances." *Gue v. Olds (1990), 245 Mont. 117, 120, 799 P.2d 543, 545.* Although there is no absolute rule, we have asserted repeatedly that two requirements be met for laches to apply. The district court must find both a lack of diligence by the party against whom the defense is being asserted and prejudice to the party asserting the defense. *Gue, 245 Mont. at 120, 799 P.2d at 545; In the Matter of Johnson, 2004 MT 6, ¶ 20, 319 Mont. 188, ¶ 20, 84 P.3d 637, ¶ 20.* Laches is a concept of equity that can apply when persons are negligent in asserting a right, and where there has been an unexplained delay of such duration or character as to render the enforcement of the asserted right inequitable. *Edwards, ¶ 32; Kelleher v. Board of Social Work Examiners, 283 Mont. 188, 191, 939 P.2d 1003, 1005 (1997).* There is no certain time limit within which persons must assert their rights before the doctrine of laches applies. Nevertheless, when an action to enforce a right is filed within the applicable

period of limitations, the party asserting the defense of laches must show that extraordinary circumstances exist which require its application. *McGregor v. Mommer, 220 Mont. 98, 107, 717 P.2d 536, 542 (1986).*" We have said that there is "no absolute rule as to what constitutes laches, and each case is determined according to its own particular circumstances." *Gue v. Olds (1990), 245 Mont. 117, 120, 799 P.2d 543, 545.* ...The party asserting the defense of laches must show that extraordinary circumstances exist which require its application. *McGregor v. Mommer, 220 Mont. 98, 107, 717 P.2d 536, 542 (1986).* The Legislature essentially defined diligence in contract situations by setting the statute of limitations for contracts at eight years. Section 27-2-202(1), MCA; McGregor, 220 Mont. at 107, 714 P.2d at 542."

1. As the citations above show, Courts Orders (page 9-10) misapply & misused *Kelly v. Lovejoy, (*1977) citation to deny the election issue. The email exhibits attached to the 220 complaint shows the members did try to negotiate to stop election infractions after recently discovering such infractions were contrary to the governing documents (see table of authorities attached); which actions refute the facts in Kelly v. Lovejoy.

2. The authorities above at least shows laches and estopple doctrines should apply to the guest house issue, but not to the election issue. This is because the Orders arbitrarily and capriciously applied laches and equitable estopple to deny members election issue thereby denied members due process of the law to not apply it to the guest house issue. In fact GLA yearly violates the same election procedures showing delay to enforce past years no longer applies, thus no extraordinary circumstances exist for the election fraction. Yet the court failed to require and found neither lack of diligence by the members nor prejudice to the GLA asserting the election issue defense.

3. More importantly, Orders err to allow guest house assessments after 17 years in direct violation of law §27-2-202, MCA cited above. **Orders must be reversed, because the 8 year contract limitation effectively bars guest house assessments and contract law §27-2-301, MCA allows the election issue recently discovered & violated yearly** (GLA decided to inequitably enforce charging its members assessments for new and existing guest houses after 17 years, but yearly violates election procedures to allow 3 votes per parcel or membership interest. Plus Plaintiffs have only been members for 7 years-2005, they could not have had actual knowledge of the infraction sooner per §27-2-301, MCA).

4. Courts Orders thus misapplied and misused one citation, ignored all other citations above and contract law §27-2-301, MCA, to say members can NEVER challenge any Board elections per

laches and equitable estopple but can charge guest house assessments after 17 years. Orders err as also violates §27-2-202, MCA that bars guest house assessments after 8 years. The Orders also fail to equally apply laches and equitable estopple doctrines to members guest house issue (argued below). Therefore regarding the guest house assessments and Board election infraction , Orders findings, conclusions, and inferences err warranting rule 60 relief.

IV. ORDERS ERR IN DENIAL OF BOARD ELECTIONS ISSUE & MISUSES, MISAPPIES LACHES & ESTOPPLE DOCTRINES (above) & ADDED CONTRACT LANGUAGE

A, ORDERS ERR that ADDED LANGUAGE TO GLA GOVERNING DOCUMENT/ CONTRACTS & NOT DRAW CONCLUSIONS BASED ON CONTRACT LANGUAGE

The Court Orders at ¶4 p.8 begins with a presumptive inference to deny the election issue, "The GLA has six vacancies on its board each year, three positions from North Glastonbury and three positions from South Glastonbury."

1. This language "vacancies" and "positions," is no where to be found in the GLA governing documents with regards to election or voting procedures. These terms were added by the GLA to bolster their position and the Court added these terms in error. Having 3 Board election candidates in North and 3 from South is no indication of any requirement of the Contracts (GLA governing documents). Orders absent any authority deliberately added this language not written therein and extended by implication or enlarged by construction its meaning within those Contracts (GLA governing documents).

2. The Court at ¶4 p.9 concludes..."GLA Board has the authority to administer the elections as it has done historically and is currently doing." This ruling of the Court was offered without any benefit of inference (as law required to Members, excluding from its conclusions all of the Members arguments in pleadings, exhibits and oral hearing. Specifically at the at the oral hearing Members gave to the Court two documents entitled "Table of Authorities" and "Summary of Oral Arguments" That the Court chose not to include any of these arguments and authorities in it is ruling

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. (3) 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."

3. This same statute at (2) also grants fractional voting rights where property includes 2 or more owners of record. The Contracts (GLA governing documents) do not prevent this. So for instance if there are 3 candidates running for the Board in North, a property owned jointly by a husband and wife (both owners of record) would give a 1/3 of a vote to each of the candidates.

V. ORDERS ERR TO ALLOW GUEST HOUSE ASSESSMENTS AGAINST MEMBERS THAT MISUSED & MISAPPLIED LACHES & ESTOPPLE DOCTRINES (ABOVE)

A, GLA BARRED BY EQUITABLE ESTOPPLE AND LACHES FROM CHARGING GUEST HOUSE ASSESSMENT

27-2-202 MCA. "Actions based on contract or other obligation. (1) The period prescribed for the commencement of an action upon any contract, obligation, or liability founded upon an instrument in writing is within 8 years."

1. For 17 years, the GLAs failure to act to charge guest house assessments within the 8 year statutory time limit, bars the GLA by laches pursuant to this State statute 27-2-202(1) MCA governing written contracts (which is what the GLA Covenants are). This law states that an action involving a written contract must be commenced within 8 years, but the GLA failed to act for 17 years, that makes the claim for their breach of duty otherwise.

2. GLAs summary motion admission that they have known there were landowners living in guests houses full time, and not taking any action until recently shows they have acquiesced and constitutes a waiver. The GLA being barred by equitable estopple and laches they cannot charge an any assessment for guest houses. For this reason alone Summary Judgment should be Granted to Members.

B. ORDERS ERR TO ADD LANGUAGE TO THE GUEST HOUSE DEFINITION NOT WRITTEN IN THE GOVERNING CONTRACTS

1. ORDERS the conclude that the GLA after 17 years can now charge a full assessment for guests houses arises without jurisdiction and violates laws or authoity above. Orders in err copy pasted GLAs motion for cross-claim at ¶3 p.5 states guests houses..."had living areas, bathroom and cooking facilities, **and were designed for occupancy by a single family.**" Such Orders against contract laws (see table of authorities attached) added this language in bold not found anywhere in the definition of a guest house in Master Plan 6.0. nor in Covenant 3.12..

2. Master Plan 6.0 states that a guest house is **"intended for occasional guest use."** It does not say "designed for occupancy by a single family." The Members have repeatedly attempted to correct them first in the Board meetings and later in pleadings. In all this time the GLA has never claimed the language was ambiguous, thus no interpretation is allowed. The clear language must control (see table of authorities attached).

3. The GLA definitions comparison below with the Park County Regulations are almost identiacal, yet Park County **clearly differentiate between their similar definition for a guest house and a dwelling.** Definition of Dwelling Unit And Guest House as contained in the Park County Subdivision Regs. 2010, Serves to Reinforce GLA Covenants and Master Plan Definitions proving a dwelling unit is not a gust house as follows:

a. Park County Subdivision Regs., 21. DWELLING UNIT: Any building or portion thereof providing complete, independent and permanent living facilities for one family.

b. Park County Subdivision Regs. 32. GUEST HOUSE: An accessory structure that is used for temporary and periodic quarters for guests. The structure is not used for a permanent residence and may not be leased or rented to the general public.

4. The only inference that can be drawn from a comparison of definitions of a dwelling unit and a guest house as contained in the Park County Subdivision Regulations and the GLA Covenants and Master Plan, is that a guest house and a dwelling very clearly are not the same thing. Because it also would work an inequity to charge a full assessment for a structure that restricts rights of use, we can know the intention after 17 years was not ever to charge a guest house assessment. should there be any interpretation allowed the benefit of doubt must go to the non-moving party the Members and not the GLA as follows:

"Courts have no authority to insert or delete provisions of a contract where the contract's provisions are unambiguous. *See* ***Topco, Inc. v. State*** (1996), 275 Mont. 352, 358, 912 P.2d 805, 809 (citations omitted). Where the meaning of a contract is ambiguous, this Court has repeatedly followed the rule that a court should interpret a contract most strongly against the party who drafted the agreement. *See* ***Ophus v. Fritz,*** 2000 MT 251, ¶31, 301 Mont. 447, ¶31, 11 P.3d 1192, ¶31 (citations omitted)."

5. Even so, GLAs failure to act to charge guest house assessments within the 8 year statutory time limit bars the guest house assessments by laches pursuant to above statute 27-2-202(1) MCA., governing written contracts. For this and the above reasons, Summary Judgment must be granted in Members favor against guest house assessments.

VI. ORDERS ERR TO RULE MINNICK CONTRACT ALLOWED BY BYLAWS AND BY STATUTE; MATERIAL FACTS IN DISPUTE; IGNORES ILLEGAL CONTRACT LANGUAGE

In ¶3 p.7 of the Orders, the Court states..."With statutory authority and authority granted by the bylaws, the Board has hired Minnick to carry out administrative functions."

A. The Courts conclusion above err as patently false that granted the entire Minnick contract contrary to the actual application of laws both statutory and the local GLA governing documents.

1. For example, the Minnick contract pg.1 says "GLA grants Minnick ...authority and power" in direct violation of GLA Articles IV., E. that says:

a. It defies logic how one hundred eleven GLA duties given to agent MInnick could ever be "necessary" as required above.

b. The Orders ignored all other contract clauses below and only relied on **Bylaw VI.B, (6)**: ..."except as otherwise provided in these Bylaws, supervise and prescribe the duties... as necessary, of all officers, agents...," Notice however the limiting clause here that says "except as otherwise provided in these Bylaws" further limiting GLAs power under **Covenant 10.01** "The Association is the sole administrative authority in the Community..."

c. In fact the Minnick contract definitively proves Minnick was given administrative "authority and power" and NOT necessary duties total of 111. Orders erred to allow one hundred and eleven GLA duties listed in the contract to be given away to Minnick, obviously unnecessary since the complaint exhibit shows GLA recently performed all those duties. The GLA Board has unlawfully given Minnick Management no less than 111 different duties

d. All 111 duties the current Board had been faithfully doing them (and others since the inception of the Association 17 years ago). The court Orders mainly copy/pasted GLA's summary judgment motions and flawed inferences and assumptions contrary to rule 56. Here again the Court does not grant a single inference from the non-moving party or Members.

B. Orders at ¶2 p.7, in err cited 35-2-118(1) MCA to says it 'allows the Board to hire agents,' because this law has to do solely with the Corporation and its powers, not specific to Boards.

§35-2-414, MCA. "Requirement for and duties of board. (1) Each corporation must have a board of directors. (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. To the extent authorized, a person authorized under this subsection has the duties and responsibilities of the directors and the directors must be relieved from the duties and responsibilities to that extent."

1. The Orders err, because this law above does not confer any specific power to the GLA Board to "hire" any one. In fact the word "hire" is not contained therein. In fact, the GLA governing documents (Bylaw VI.I.) prohibit the hiring of Minnick or any other agent that confers any authority or powers to anyone other than the Board or Committees of Directors, as the contract violates.

2. GLA Articles are defined in 35-2-114 MCA as to meaning the Articles of Incorporation. As contained in the statute, this law term "person or persons" is only specific to an individual not agents, thus agent Minnick was illegally given or shares GLA powers & authority. Requirements and duties of the Board are set out by this above statutory law §35-2-414 MCA requiring the Board to manage the affairs of the corporation.

C. Only Committees of Directors may exercise the powers and authority of the Board. Statutory Requirements of Board to Manage Association & Governing Documents Prohibit Authorization of Authority and Powers To Another

GLA Articles IV., E., *"The Association is... to be limited in the exercise of its powers, as may be further provided from time to time in such Bylaws;" which says* ***BylawVI.,I.*** *Committees. ...Only Committees of Directors constituted pursuant to the Montana Nonprofit Corporation Act may exercise the authority or powers of the Board..."* ***Bylaw II., C.*** *"The Association shall also have such purposes, and shall be limited in the carrying out of its purposes, as may be provided in the said Covenants from time to time;" which says* ***Covenant 10.01*** *"The Association is the sole administrative authority in the Community, and shall exercise its rights, powers and*

responsibilities and manage its affairs in accordance with its articles of incorporation, bylaws and rules."

Again the Minnick contract pg.1 says "GLA grants Minnick ...authority and power" is in direct violation of GLA Articles IV., E. and others herein (and in the attached table of authorities).

1. This is because the GLA Articles of Incorporation IV.E. specifically DO NOT authorized a person(s) to exercise some or all of the powers otherwise be exercised by a board. Art. VI.E. showing the limits placed on the exercise of the Boards powers as contained in the Bylaw VI.I and Covenant 10.01 (above).
2. This governing documents were also ignored by the Order that clearly shows no one but the Board and its committees can EXERCISE such GLA "authority and power" GLA illegally grants its "authority and power" to Minnick as forbidden also by GLA Article IV. E. and BylawVI.,I. above. These facts alone makes the Minnick contract illegal.

3. The intent of the governing documents clearly shows that only officers, its Board & Committees of Directors are to carry out such administrative duties in the Minnick contract. Covenant 10.01 above that says "**The Association is the sole administrative authority in the Community;"** which further limits the Board and this alone makes the Minnick contract void.

4. The Orders flat out ignored this contract clause 10.01 that voids all the following administrative authorities to Minnick or anyone else, because the Board is the SOLE administrative authority; the ORDERS in error allows Minnick contracts says it gave Minnick the power and authority to once done by Board officers to: "Collection/Disbursement of Monies" "file liens" "process accounts payable and receivable" "assist in any audits" "file annual corporate tax" "handle payroll ... checks, pay stubs, and reporting" file ... tax forms" "track project review" "assist in agenda development" "produce meeting minutes" "oversee election process...crew and ballot collection; tally and reporting, including absentee & proxy" "serve as point of contact...provide answers to basic landowner inquiries" "correspond ... for covent violations" "handle emergency communications" "establish open communications with landowners" "provide all documentation and records... to manage and operate the property" of the GLA, and much more for a total of 111 duties, powers and authorities.

D. The Association is the Sole Administrative Authority & Collection Agency Not Allowed As Minnick Contract Violates GLA FIDUCIARY Duty of Loyalty and Standard of Care 11.01

GLA Covenant 11.01. "Assessments. "Each present or future Landowner in the Community covenants and agrees to pay to the Association...collected from time to time as hereinafter provided." and "Each such assessment, together with such interest thereon and costs of collection thereof as is hereinafter provided..." And Covenant 11.06. Effect of Nonpayment of Assessment. "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."

1. This Covenant 11.01 & 11.06 above implies that Collection Agencies are not allowed, since it requires the Association to collect assessments and collect "*delinquent assessments, penalties and interest*" even for liens. Yet as cited above, Minnick is collecting all assessments, and even pocketing some of these monies, at least "50% as the Minnick contract page 4, line 167 proves.
2. Court Orders err at ¶1 p.7 by way of justifying the correctness of the Minnick contract, stated that "Minnick only performs duties of an administrative nature" and then goes on to list a few or the 111 seemingly innocuousMinnick contract tasks. The Court dismissed all the above officer powers and authorities cond=fered upon Minnick, and ignored all the above Articles, Bylaws and Covenants out of hand. The Board yet has illegally conferred upon Minnick over 111 its GLA duties, powers, and authorities that are financial in nature, having far reaching ramifications:

Example: Minnick given direct access to GLA bank accounts, proven in Bolens Affidavit ¶4 p.7.

3. Bolen's affidavit and Minnick contract factually prove, the GLA Board has given Minnick Management Inc., its fiduciary authority and powers, giving Minnick direct access to GLA bank accounts (Landowners are told to give all assessment monies directly to Minnick's corporate address at P.O. Box 1862 Bozeman, Mt. (see Newsletter attached to complaint 164). Minnick was also given GLA power and authority to reconcile of GLA accounts, make payroll, bookkeeping/accounting, assist in audits (and more listed above); all of which fiduciary duties and officer duties given to Minnick are in direct VIOLATION of:

***Covenant 11.05**. "Accounting, Allocation and Use of Funds. The Association shall account for funds paid by Landowners pursuant to any assessment (the "assessment funds") in any manner consistent with its responsibilities and good business practice. Special funds or accounts of any*

sort may be established by the Association to maintain control and supervision over the assessment funds. Maintenance and repair of roads and snowplowing shall be the first priority for use of annual assessment funds. Allocation and use of the remainder of the annual assessment funds shall be in the discretion of the Association. Special assessments shall be used for the purpose for which they are established. 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. In addition, the Association may establish, maintain and carry over from year to year any reserve funds or special purpose funds for improvements, equipment purchases or for any other purpose pursuant to these covenants. Assessment funds shall be kept or deposited in a special account as provided in the bylaws of the Association."

4. This Covenant 11.05 requires "The Association shall account for funds paid by Landowners pursuant to any assessment (the "assessment funds") in any manner consistent with its responsibilities and good business practice," not agents. It cannot be considered good business to allow a agent-Minnick to collect, maintain, control, reconcile and assist in the audit; which is almost every treasurer duty, fiduciary duty and all GLA monies now in Minnick's hands.
5. This Covenant 11.05 requires, "Special funds or accounts of any sort may be established by the Association to maintain control and supervision over the assessment funds," not agents. The Minnick contract is factual proof that the GLA NO longer 'maintains and supervises assessment funds' which assessment funds go directly to Minnick Management Inc. at P.O. Box 1862. Treasurer -Stenberg does not deny that Minnick shares a bank account with the GLA.
6. This Covenant 11.05 requires "The Association is and shall be a fiduciary in the allocation, application and use of assessment funds." Yet the Minnick contract proves, Minnick was given fiduciary powers and authorities above and even maintains and reconciles GLA operating and reserve accounts, accounts payable and recievable. The only thing the GLA Secretary controls in those accounts is check signing and disbursement amounts.
7. This Covenant 11.05 requires "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." The Board has a clear mandate that they are to perform their officer duties like treasures with the competency required of a person placed in a fiduciary capacity. Minnick cannot be a collection agency and fiduciary as the Minnick contract illegally allows contrary to many covenant clauses. The Minnick contract thus unlawfully confers officer duties, fiduciary duties, authority and powers upon Minnick giving them the powers of a fiduciary.

8. 5. This Covenant 11.05 requires "Assessment funds shall be kept or deposited in a special account as provided in the bylaws of the Association." As already stated every payment that is made by a landowner goes directly to Minnick Management Inc. at P.O. Box 1862 in violation of this contract clause. See Plaintiffs Affidavit that says, Treasurer-Stenberg has given up all control of the GLA bank accounts.

Thus the GLA/Minnick contract in violation of many contract clauses has unlawfully granted its fiduciary and officer duties, authority, and powers over to Minnick without any checks and balances. This is similar to the robbery GLA President-Bolen invited in his own Tennessee company by his lack of a standard of care also denied members Association funds.

CONCLUSION

For the foregoing reasons the Members are entitled to Summary Judgment as a matter of law. The Orders lack pertinent, material "a. Corrections Based on Clerical Mistakes; Oversights and Omissions..." and those Orders contain numerous and material "a. mistake(s), inadvertence, surprise;" allow GLAs "(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party" (shown also in motion for sanctions), and "**(6)** any other reason that justifies relief" as outlined herein, AND warrant granting the motions for "3. ...for new trials and amendment of judgment" AND for "(d) Other Powers to Grant Relief to: "(b)(1) entertain an independent action to relieve a party from a judgment, order, or proceeding; (3) set aside a judgment for fraud on the court." Rule 56(c)(3) , and (d) rights were also denied members, because the parties affidavits and pleadings prove only 3 specific issues ripe for summary judgement, not all. The cases were **"NOT fully Adjudicated on the motions,"** therefore the ORDERS were without jurisdiction and authority to "render judgement on the whole action" or the entirety of both complaints. This is proved by the summary motions outlined below and by oral hearing (see attached Oral Hearing Summary) that interrogated parties pertaining to only 4 specific issues NOT involving all other issues or claims.

The Minnick contract is just one of many bad decision the current Board of Directors has made necessitating 4 lawsuits, one of which (DV-11-193) was settled in members favor. GLA Board has unlawfully given Minnick 111 unnecessarily duties, not just Authority and Powers in violation of dozens of articles/bylaw/covenant clauses and laws herein. Other Minnick contract clauses & claims not adjudicated on the summary motions (listed above) were also denied

without a hearing and trial in violation of rule 56, including inferences and all other inferences used against members (the non-moving party) in violation of rule 56. (Courts inference that only the Plaintiffs have objected to the Minnick contract is not true, yet many GLA Members are concerned that if they voice their concerns they will be attacked by the Board as the O'Connells were publicly attacked, reputations trashed and their livelihoods threatened. O'Connells have emails and letters showing other member objections as discovery & trial will prove.)

Orders in err interpreted or just ignored GLA governing contract clauses, contrary to established contract laws absent any ambiguity rhyme or reason (see attached table of authorities, pg 6), and worse the Orders obviously added language not written therein and extended by implication or enlarged by construction its meaning within those GLA governing documents.

Courts Orders are mainly a hodgepodge of passages copy/pasted from Defendants cross-motion for summary judgment, which motion was comprised of facts that were still in dispute and therefore should not have been granted. Yet Courts Orders dismiss all complaint claims not adjudicated on the motions without discovery, hearing or trial. Courts Orders are simply and fatally flawed, for which these rule 59, & 60 motions are warranted relief as stated on pg. 1. Such motions provided ample reasons to reverse all Courts Orders & set trial. To not do so now will further harm members property rights and constitutional due process rights and unnecessarily subject all parties to a costly appeal to the Supreme Court.

Respectfully submitted this DATED this 24th day of June, 2013.

Signed _____ Signed: _____

Daniel O'Connell Valery O'Connell

Certificate of Service

A true and correct copy of forgoing document(s) were sent to the following parties via first class mail or hand delivered on this same day to:

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

By _____
Daniel O'Connell

The GLA attorney of record:
Brown Law Firm, P.C.
315 N. 24th St. (PO Drawer 849)
Billings, MT. 59103-0849

By: _____
Valery O'Connell

Table of Authorities & Notes (DV-12-164)

The members complaint challenges its Board Defendants not for following or interpreting GLA governing documents as written, but because they deliberately added language not written therein and extended by implication or enlarged by construction its meaning within many GLA governing documents, as listed herein.

Covenant 2.02. "Additional Force and Effect. In addition, each provision in this Declaration shall also be interpreted in the light of its express language, context and intent, and shall be given additional legal force and effect as defined by state law as a condition, restriction, servitude ..."

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

"If a contract's terms are clear and unambiguous, the contract language will be enforced," ***Youngblood***, 262 Ylont. at 395, 866 P.2d at 205 (citing ***Keller v. Dooling*** (1991). 248 Mont. 535,539*813 P.2d 437.440).

Mt. Supreme Court, state law 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.**

* The determination of whether a party materially breached a contract is a question of fact. *See* ***Sjoberg v. Kravik*** (1988), 233 Mont. 33, 38, 759 P.2d 966, 969. We review a district court's findings of fact to determine whether they are clearly erroneous. *See* ***Daines v. Knight*** (1995), 269 Mont. 320, 324, 888 P.2d 904, 906 (citing ***Columbia Grain Int'l v. Cereck*** (1993), 258 Mont. 414, 417, 852 P.2d 676, 678). A finding is clearly erroneous if substantial evidence does not support it, if the district court misapprehended the effect of the evidence, or, if after reviewing the record, this Court is left with a firm conviction that a mistake has been made. *See* ***Interstate Prod. Credit Ass'n v. DeSaye*** (1991), 250 Mont. 320, 323, 820 P.2d 1285, 1287.

* The construction and interpretation of a written agreement are questions of law. *See, e.g.*, ***In re Estate of Hill*** (1997), 281 Mont. 142, 145, 931 P.2d 1320, 1323 (citations omitted). It is also a question of law whether ambiguity exists in a written agreement. *See Estate of Hill*, 281 Mont. at 146, 931 P.2d at 1323 (citations omitted). We review a district court's conclusions of law to determine whether the court's interpretation is correct. *See* ***Carbon County v. Union Reserve Coal Co.*** (1995), 271 Mont. 459, 469, 898 P.2d 680, 686 (citations omitted).

* Courts have no authority to insert or delete provisions of a contract where the contract's provisions are unambiguous. *See* ***Topco, Inc. v. State*** (1996), 275 Mont. 352, 358, 912 P.2d 805, 809 (citations omitted). Where the meaning of a contract is ambiguous, this Court has repeatedly followed the rule that a court should interpret a contract most strongly against the party who drafted the agreement. *See* ***Ophus v. Fritz***, 2000 MT 251, ¶31, 301 Mont. 447, ¶31, 11 P.3d 1192, ¶31 (citations omitted).

Table of Authorities & Notes (DV-12-164)

* MT. Supreme Court does not favor interpretation of contracts unless the contract language, taken as a whole, clearly has two or more distinct meanings, or so vague and ambiguous as to need interpretation. For all GLA contracts in question, there are NO claims that they're ambiguous or vague or contrary meanings; for which the ordinary, popular, and clear, explicit, or plain language as written should govern.

Mt.Law, Section 13-704, R.C.M. 1947, provides that the clear and explicit language of a contract must govern its interpretation. Section 13-707, R.C.M. 1947, states that every part of a contract is to be given effect, using each clause to help interpret the others. Section 13-710, R.C.M. 1947, provides: "The words of a contract are to be understood in their ordinary and popular sense,..

"We have previously stated that "a party acts at his peril if, 'insisting on what he mistakenly believes to be his rights, he refuses to perform his duty.'" ***Chamberlin v. Puckett Construction***, 277 Mont. at 203, 921 P.2d at 1240 (quoting *United California Bank v. Prudential Ins. Co.* (Ariz. App.1983), 681 P.2d 390, 430 (quoting Restatement (Second) of Contracts § 250 cmt. d (1981))).

Board Election/voting -Claim #1

Vacancies: The word "vacancy" is not found anywhere in the GLA Covenants and only found within GLA Bylaw VI.L.(6) applicable only when a Director is removed from office or quits, and Bylaw X.E. for Ombudsman, not applicable here.

Position: GLA Nov. 2012 newsletter and Defendant pleadings also admit it allows its members to cast "up to 3 votes" per membership/parcel or "one vote per position" not per matter.

*The GLA Association as a non-profit corp. subject to the Montana Nonprofit Corporation Act (MNCA) **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..."

GLA 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.) &contrary to Bylaws V(B) & Bylaw V(F) below.

GLA Bylaw VI(A) "... the Board shall have an even number of positions available to be filled at election. ...the actual number of Directors shall be those who have been nominated and elected from time to time as provided herein; however, the number of Directors shall **not be reduced to fewer than four (4), nor increased to more than twelve (12)..."** (emphasis added)

Bylaw V., B. ... At such [Annual] meeting there shall be elected, by the ballot of the Members, a Board of Directors in accordance with the requirements of Article V, paragraph F, and Article VI, paragraph D, of these Bylaws.

Bylaw V. F. ..."For purposes of tabulating the written vote and consent of the Members of the Association, it is hereby provided that: **1. Each Membership Interest is entitled to one vote; 2.** A Member may hold more than one Membership Interest and shall have a separate vote for each such interest;

Bylaw VI., C. ..."every Member in good standing who has a bona fide interest in serving as a Director may file as a candidate for any position to be filled by votes of the Membership Interests."

Bylaw VI, B. General Powers and Duties, **(part 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.

New Guest house assessments -Claim #2

There is no specific language in the GLA bylaws/covenants that allows guest house assessments. The new GLA guest house assessment is $191, a 100% increase in yearly dwelling assessments. Defendants construing Guest houses to be the same as "dwelling units;" thus "extended by implication or enlarged by construction" and "broadened the covenants" and bylaws below by adding that which was not contained therein;

GLA Masterplan 6.0 (pg. 15) defines a guest house as "intended for occasional guest use and not as a permanent residence, not to exceed 1,200 square feet;"
GLA Covenant 3.12 (Pg. 6) defines "dwelling unit" as "a structure or portion of a structure, normally consisting of living area, bathroom and cooking facilities, designed for occupancy by a single family" The term includes a boarding house, ..." (NOTE: This covenant definition 3.12 by itself would seem to apply to dozens of GLA bomb shelters, and even guest houses, but for the fact that covenants, taken as a whole refute this.

Covenant 11.03, (Pg.23) "...The amount of the annual assessment may be increased or decreased from year to year, at the option of the Association ... the annual assessment may be increased by the Association due to inflation or increased costs or services up to a maximum of 10% per year" or based on the "CPU whichever is greater."

GLA Masterplan 1.1 (pg. 4) "Maximum residential development for a subdivided parcel is limited to one (1) single- family residence and one (1) Guest House* or in-residence guest apartment per subdivided Tract or Lot. A guest house or guest apartment is only allowed on lots or tracts that are equal to or greater than the minimum lot size specified in the Residential Topographical Areas and Density Schedule (Section 3.5) and having a suitable dwelling site per the Project Review Committee. 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 separate and distinct treatment of a guest house from a singe family residence (dwelling unit).
Covenant 6.06. Fallout Shelters. "It is the policy of this development to recommend but not require the construction... of a fallout shelter underneath, behind, in the basement of or within reasonable proximity to every dwelling or habitation placed upon any parcel."

GLA/Minnick Contract -claim #3

Bylaw II. The purposes of the corporation are ... To provide for the management, administration, maintenance, preservation and control of the parcels, roads and common properties..." **Covenant (pg. 2)** states all parties intent or purpose: "the owners of the property in ... Glastonbury have agreed that it would be in the best interests of all parties to create and empower a new self-governing structure through a community landowners association.

Articles of Inc. IV., E. The Association 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."

Bylaw II., C. "In furtherance of its purposes and objects, but not otherwise, the Corporation shall have and exercise such powers as are enumerated in the Articles of Incorporation and any additional powers as may be set forth in these Bylaws... and shall be limited in the carrying out of its purposes, as may be provided in the said Covenants from time to time."

Covenant 10.01 "The Association is the sole administrative authority in the Community and shall exercise its rights, powers and responsibilities and manage its affairs in accordance with its articles of incorporation, bylaws and rules...These covenants shall be enforceable by specific performance."

Bylaw VI., I. Committees. ...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.

Bylaw XII. D. "Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control, and in the case of any conflict between the Covenants and these Bylaws, the Covenants shall control."

Covenant 11.05 "The Association shall account for funds paid by Landowners ...The Association has a duty to perform the responsibilities provided in these covenants..."

Bylaw VI.B, (6): ..."except as otherwise provided in these Bylaws, supervise and prescribe the duties... as necessary, of all officers, agents...." (Orders defy logic how 111 GLA duties given to agent Minnick could ever be "necessary" as required above since GLA admits to recently performing all those 111 duties.)

Bylaw XII, A. "Interpretation and Amendments. The Board shall have the power to interpret all the provisions of these Bylaws..." **28-3-101, MCA.** "All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code."

The Minnick contract (pg.1) states, "GLA hereby grants Minnick Management Inc. the authority and power to perform any and all lawful actions necessary for the accomplishment of services outlines below" (GLA answer Exhibit H, page 1 at ¶ 17-18).

(Note: This word "agent" is found nowhere in the covenants, and only mentioned a few times within the GLA Bylaws at page 6, & 10-13 (N/A). Covenant 10.01 below says GLA is the "sole authority" and GLA Bylaw VI., I. says, "ONLY Committees of Directors ... may exercise the authority or powers of the Board..." **This is the crux of this issue.**

35-2-118, MCA(part g) (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:... (g) to make contracts and guaranties;" The **GLA Articles** and **Bylaw VI.B.** (below) limits this statute;
GLA Bylaw VI.B,(1):'Conduct, manage and control the affairs and business of the Association."
GLA Bylaw VI.B, (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;" (emphasis added) (Note: Minnick duties not "necessary" per Bylaw VI.B., evidenced by GLA July 2012 newsletter that stated, "over the years, the [current] Board has been handling the many administrative tasks necessary for operation of the association...."
GLA Bylaw VI.B, (8): "Have the right to delegate such powers as may be necessary to carry out the function of the Board to committees..."
GLA Bylaw VI.B, (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."
Bylaw VI., I. "Committees. ...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."

Covenant 10.01 "The Association is the sole administrative authority in the Community and shall exercise its rights, powers and responsibilities and manage its affairs in accordance with its articles of incorporation, bylaws and rules...These covenants shall be enforceable by specific performance."
35-2-440. Duties and authority of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.
Covenant 8.01 g. "The Association's road maintenance responsibility may be assigned or delegated by conveyance or contract to another private party, a municipality, a county or other Landowners in the Community;"
Covenant/Masterplan 2.0 "The Association Board has delegated the responsibility for processing applications, making recommendations, and managing the approval process for any building projects ... in the Community to the Glastonbury Project Review Committee."

35-2-414.MCA Requirement for and duties of board. (1) Each corporation must have a board of directors. (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. To the extent authorized, a person authorized under this subsection has the duties and responsibilities of the directors and the directors must be relieved from the duties and responsibilities to that extent.

35-2-423. Removal of directors by judicial proceeding. ... director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion with respect to the corporation.
27-2-202. Actions based on contract or other obligation. (1) The period prescribed for the commencement of an action upon any contract, obligation, or liability founded upon an instrument in writing is within 8 years.
27-2-301. When demand necessary to perfect right to action. Where a right exists but a demand is necessary to entitle a person to maintain an action, the time within which the action must be commenced must be computed from the time when the demand is made, except where the right grows out of the receipt or detention of money or property by an agent, trustee, attorney, or other person acting in a fiduciary capacity, the time must be computed from the time when the person ... has actual knowledge of the facts upon which that right depends.

MT. Constitution, Art.VIII **(17) Due process of law.** No person shall be deprived of life, liberty, or property without due process of law.
MT. Constitution, Art.VIII(6),"No perpetuities shall be allowed except for charitable purposes."

28-3-101. Rules of interpretation to be uniform. All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.
28-3-201. Interpretation giving effect to contract favored. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect if it can be done without violating the intention of the parties.
***28-3-202. Effect to be given to every part of contract.** The whole of a contract is to be taken together so as to give effect to every part if reasonably practicable, each clause helping to interpret the other.
***28-3-203. When several contracts taken together.** Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction are to be taken together.
28-3-204. How repugnancies reconciled. Repugnancies in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.
28-3-301. Interpretation to give effect to mutual intention. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.
28-3-302. How intention ascertained. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.
28-3-303. Writing generally to determine intention. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone if possible, subject, however, to the other provisions of this chapter.
28-3-401. Extent to which language governs interpretation. The language of a contract is to govern its interpretation if the language is clear and explicit and does not involve an absurdity.
28-3-501. Words generally understood in their ordinary sense. The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning unless used by the parties in a technical sense or unless a special meaning is given to them by usage, in which case the latter must be followed.

Plaintiffs Oral Summary (DV-12-164)

Elections/votes-Issue #1 (Covenant 3.20, Bylaw V. F. and Bylaw VI.A.)

Defendants claim its members can not challenge past or future GLA elections simply because members allegedly "consented" to past elections by casting ballots or election to the Board. This flawed argument would make a mockery of justice and of the rule of law to allow more than one vote per parcel.

GLA Covenant 3.20 says, "a separate and distinct Membership Interest ... is entitled to one (1) vote." **Bylaw V. F.** ..."For purposes of tabulating the written vote and consent of the Members of the Association, it is hereby provided that: **1. Each Membership Interest is entitled to one vote; 2.** A Member may hold more than one Membership Interest and shall have a separate vote for each such interest;" It corrupts the Board elections to allow its members to cast 3 or 4 votes per parcel (shown in Exhibit J, 2007, 2004, 2003, 2002). Also each membership interest could potentially cast up to 3 votes for the same candidate. There are no safeguards in place to prevent a member to vote 3 times for the same candidate, or if they have 3 parcels, someone could cast 9 votes for the same candidate; which can further corrupt Board elections.

Defendants summary judgment response admits, "each membership interest cast up to 3 votes to fill three three separate vacancies" or "one vote per position." Nowhere does it say these words in the GLA covenants or bylaws. These words exists only in the minds of the Board, who extended by implication or enlarged by construction the meaning of Covenant 3.20 and Bylaw V. F. that allows only "**one** vote" "per parcel," not 3, and NO mention of vacancies. **The word "vacancy"** is not found anywhere in the covenants and only found within Bylaw VI., L. (part 6) not applicable except when a Director is removed from office or quits before his term expires, and in Bylaw X.E. for Ombudsman, also not applicable here.

* There is a voting entitlement that is applicable in state law within the Montana Nonprofit Corporation Act (MNCA) **35-2-536, MCA.** (1) "Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members..."

* The intent of voting entitlement is specifically expressed in GLA Bylaw VI.A., not based on vacancies, but on the will of its members. Bylaw VI., A. says the Board elections allow a maximum 12 positions and a minimum of 4 positions on the Board, which thus allows 8 positions on the Board to remain unfilled. This Bylaw VI.A. shows that since there is no requirement to fill every position on the Board, then each position on the Board can not be considered a separate matter or issue requiring a vote. Thus unfilled Board positions are not separate matters, are not separate votes, because unfilled Board positions are not required to be filled which is why up to 8 positions can remain vacant.

Plaintiff members thus seek summary judgment relief regarding this election issue for a preliminary and permanent injunction enjoining GLA Defendants actions which exceeded their authority limited by statute 35-2-536, & Covenant 3.20, Bylaw Vi.A, and Bylaw V. F. ..."For purposes of tabulating the written vote and consent of the Members of the Association" to not exceed one vote per parcel per election, excluding other matters such as a special assessment.

Claim #2- new Guest house assessments. (Covenant 11.03, & 3.12 Masterplan 1.1 & 6.0)
Until now, the GLA never charged guest house assessments in the 17 years they incorporated. GLA Board claim a guest house is the same as a dwelling unit then demanded its members pay assessments as of January for new and existing guest houses. This exceeds their authority limited by Covenants 11.03(b), 3.12, & Masterplan 1.1 & 6.0, due to the fact that a "guest house" is defined differently and treated different from a "dwelling unit." Defendants said they ignored the Masterplan. The following contract clauses taken together gives 2 different names, 2 different definitions and 4 different restrictions for a guest house as opposed to a "dwelling unit."
1. **GLA Covenant 3.12** (Pg. 6) defines "dwelling unit" as "a structure or portion of a structure, normally consisting of living area, bathroom and cooking facilities, designed for occupancy by a single family" The term includes a boarding house, ..." (NOTE: This covenant definition 3.12 by itself would seem to apply to dozens of GLA bomb shelters, and even guest houses, but for the fact that covenants, taken as a whole refute this.
2. **GLA Masterplan 6.0** (pg. 15) defines a guest house as "intended for occasional guest use and not as a permanent residence, not to exceed 1,200 square feet;"
3. **Masterplan 1.1** (pg. 4) says, "a subdivided parcel is limited to one (1) single- family residence and one (1) Guest House or in-residence guest apartment per subdivided Tract or Lot. A guest house or guest apartment is only allowed on lots or tracts that are equal to or greater than the minimum lot size specified in the Residential Topographical Areas and Density Schedule (Section 3.5)... an Original undivided Parcel is limited to one (1) single-family residence and one (1) additional single residence ..."
In this Masterplan 1.1, notice the term "single family" is found only within the the definition of dwelling unit (in Covenant 3.12) which defines dwelling unit, as "designed for occupancy by a single family." Hence a dwelling unit and single family residence are one and the same meaning or same intended use for a single family. Contrarily, a guest house is not a "family residence nor family dwelling unit, because it is limited by its size which can be no more than 1200 square feet, and a guest house is limited also for occasional guest use. Also Masterplan 1.1 says, a guest house is only allowed on a minimum lot size or bigger. Guest houses; 1. must be small 1,200 sq. ft. or less, 2. must be occasional guest use only, 3. must be restricted to min. size lots or tracts 4. nor allowed on undivided parcels; these 4 guest house restrictions don't apply to family "dwelling units." which are not restricted by lot size, not restricted by square feet, not restricted to occasional guest use, & allowed on undivided parcels.
Covenant 6.06. Fallout Shelters. "It is the policy of this development to recommend but not require the construction... of a fallout shelter underneath, behind, in the basement of or within reasonable proximity to every dwelling or habitation placed upon any parcel."
Guest houses; 1. must be small 1,200 sq. ft. or less, 2. must be occasional guest use only, 3. must be restricted to min. size lots or tracts 4. nor allowed on undivided parcels; 4 guest house restrictions don't apply to family "dwelling units." which are not restricted by lot size, not restricted by square feet, not restricted to occasional guest use, and IS allowed on undivided parcels. Thus a dwelling unit and guest house are not the same. Defendants contradicted a long-standing practice this year they charged members a new guest house assessment thereby ignoring the plain language of the masterplan or 4 contract clauses taken together, that gave 2 different names, 2 different definitions and 4 different restrictions for a "guest house" as opposed to a dwelling unit." or "single family residence." Plaintiff members therefore seek summary judgment regarding this issue enjoining Board **actions of charge assessments for new & existing guest houses which exceeded their authority limited by these 4 contract clauses taken together:** Covenant 11.03, Covenant 3.12 Masterplan 1.1 & Masterplan 6.0.

Claim #3-GLA/Minnick Contract (DV-12-164) (Art. IV E., Bylaw II. & VI.(I.) & VI.B.6) GLA response pg.3 "The contract hires Minnick to do the administrative functions for the assoc." Referring to **35-2-118, MCA, Bylaw XII.A & Bylaw VI.B.(14),** the Board's response (Pg 9) says, **"the GLA Bylaws .... grant the board [broad] general powers without limiting them."** This is refuted by §35-2-414, MCA. part 2-3, and **GLA Articles IV. E.** that clearly says the GLA is "to be limited in the exercise of its powers, as may be further provided from time to time in such Bylaws ..." and **Bylaw II.C.** the GLA "shall be limited in the carrying out of its purposes, as may be provided in the said Covenants..." Bylaws & covenants both limit the Board's powers.

The Plaintiff and members filed a separate complaint (DV-12-164) to oppose the GLA/Minnick contract because 1. the GLA Board exceeded their **limited** authority to give away most Board duties to so called agent Minnick 2. the GLA Board exceeded their **limited** authority to give away its Board powers AND authority to agent Minnick. Here's why:

* The board's powers are also limited by statute **35-2-414, MCA part (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... and the directors must be relieved from the duties and responsibilities to that extent." Notice this statute demands a board can not share it powers, only prescribe its powers only if its Articles allow. Accordingly the GLA can not share powers with anyone, nor give its powers to Minnick, because GLA Articles give authority and power only to the Board.
* Board Defendants admit they entered into a contract with Minnick Corporation which (pg.1) states, "The GLA hereby grants Minnick Management Inc. the authority and power to perform any and all lawful actions necessary for the accomplishment of services outlines below." This contract violates statue requirements in 35-2-414 since the Articles do not authorize the board to prescribe its powers and authority to anyone. Furthermore since Minnick is not a GLA committee, that Minnick contract is also contrary to GLA Bylaw VI (I) which says "**Only Committees of Directors** constituted pursuant to the Montana Nonprofit Corporation Act may exercise the authority or powers of the Board of Directors..."
* GLA's response pg.12 said, 'the board can not give its authority and powers to Board committees' (as allowed), because then, "the GLA board would have to personally handle every task related to the GLA" and "could not hire a secretary, accountant, and plow operator" "making all provisions for contracts, employees and agents void." This is another lie, because **Bylaw VI/B. part 6** clearly allows limited duties "as necessary" for employees and agents. Bylaw VI.B(6) says, "except as otherwise provided in these Bylaws.... [the GLA shall] supervise and prescribe the duties ... **as necessary**, of all officers, agents, employees, or committee ...of the Association." Notice this prescribes Boards duties to an agent only "as necessary." The Minnick contract unnecessarily prescribed no less than 111 board duties to Minnick Corporation; evidenced by the GLA Board's own newsletter July 2012 that admits, "over the years, the Board has been handling the many administrative tasks necessary for operation of the association...." plus only 23 new memberships were added to the GLA in the last 9-10 years which belies the other excuse that GLA growth is why 12 board members can no longer do what 3 Minnick employees now do.
* Of these 111 board duties unnecessarily prescribed to Minnick, almost two dozen were officer duties which is also contrary to statute **§35-2-440, MCA,** and Bylaws VII.E thru H. that says in part, officers shall "perform such other duties as are incident to his office."
* These statutes, bylaws, & covenants are prima facia evidence that Minnick contract to abrogate its board authority, powers & 111 duties over to agent–Minnick thus exceeded GLAs authority.

CONCLUSION: The ordinary, popular, and plain language as written in GLA contracts & taken as a whole supports Plaintiffs Summary Judgment motion. The GLA failed to so apply the language as written therein its own governing contracts. Even worse and at the heart of all GLA contract issues, the GLA obviously added language not written, extended by implication or enlarged by construction the meaning to its governing documents, as contrary to these and contract law. The court need only agree that the GLA Defendants governing documents 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 -Minnick Management Corp..

Erickson contract/agreements (DV-12-164): (Covenant 12.01 and Masterplan 4.0-4.2)

* This issue was **NOT** part of this complaint nor Plaintiffs summary judgment motion, as there are yet material facts still in dispute. The table of authorities pg.1 cites the Supreme Court that applies here; whether or not a party materially breached a contract is a material question of fact. For instance, the 2 Erickson contracts in dispute within Exhibit I. submitted by the GLA are not signed contracts. Without signed contracts there can be no breach of contract. Thus, wether or not signed contracts exist is a material fact in dispute. Also, the GLA (Bolen) letter (attached to Defendants Motion to Strike) which claimed the Ericksons had revoked all variance agreements with the GLA which brings into question other agreements. Now Defendants counter-motion for summary judgment pre-maturely included the agreements that were absent signatures.
* None the less, Defendants attack on O'Connells character or motive to claim this issue was "to vex the GLA and exercise power" is a ridiculous lie considering the fact that Plaintiffs are partial owners of the common land property adjacent to the Ericksons; for which Erickson variance includes eliminating setback requirements for **four** huge 10, 000 square feet department store size buildings, wood sided within forested area and clustered a few feet apart (obvious fire hazard and eye sore), as would negatively impact their unspoiled residential aspect of their adjacent property, injurious to the property and community, and unnecessarily include 6 variances total (since the Ericksons can subdivide their property as an alternative to the 6 variances, making them unnecessary); thus the Erickson variances are contrary to Covenant 12.01 and Masterplan 4.0-4.2.
* Also since the common owned property adjacent to the Ericksons was owned by all GLA members this would require under the rules that all GLA member landowners to be contacted regarding Erickson's 6 major variance requests. The GLA Board refused to contact all its members, but only contacted 5 adjacent landowners. Again, the Ericksons can subdivide their property as an alternative to the 6 variances, making them unnecessary. The Erickson variance documents appears to be an illegal attempt to evade the Montana Subdivision and Platting Act (MSPA), thereby evading the need to subdivide property in order to erecting 4 buildings on one un-subdivided parcel instead of a limit of 2 buildings on one un-subdivided parcel as required per GLA Masterplan 1.1.
* Contrary to Defendants pleadings, the Erickson road improvement agreements have nothing to do with this complaint claim what so ever, and have no barring on the 2 unsigned Erickson agreements in dispute.
* These and other issues of material facts are unsettled as to wether or not the Erickson variance agreements were signed and still exist, or amended, or resurrected. Plaintiffs thus request such discovery before the court considers this issue.
* Therefore it is premature for Defendants to demand summary judgment against this claim for these outstanding material facts in dispute, and even more absurd for Defendants (at pg.14) to demand this court enter an Order "finding that the [unsigned] variance agreement is valid."