

November 6, 2020

Board of Directors for the  
Missouri River Ranches and Eagle Canyon Ranches Landowners Corporation

Acting and Current Board of Directors as Listed Below:

Introduction

It has come to our attention a member of Board of Directors of the Missouri River Ranches and Eagle Canyon Ranches Landowners Corporation has failed to fulfill his duties and responsibilities and has entered into Self-Dealing.

Each Board member has Fiduciary Duties. These duties include but are not limited to Duty of Care (directors inform themselves prior to making a business decision, of all material information reasonably available to them). Duty of Loyalty (directors and officers of a corporation working in their capacities as corporate fiduciaries must act without personal economic conflict). Duty of Good Faith (directors must advance interests of the corporation and fulfill their duties without violating the law). Duty of Disclosure (this duty requires directors to act with complete candor). It would appear from an October 2020 post on the mr-ecrc.org website that the Board is at least some what aware of it's fiduciary duties (**"It is our sincere hope that the new board can move forward without animosity, in carrying out our fiduciary responsibilities to the LOC"**).

During the Annual Corporate meeting held on September 19th, 2020 at the Craig Fire Hall/School Mr. Dennis Greany violated his Fiduciary Duties and through his own statements admitted to Self-Dealing and a Conflict of Interest.

(1) Prior to the start of the September 2020 meeting I (Russ Greaves) approached Mr. Richard Kollars with a notice indicating I would be recording the meeting and also presented a copy of the MCA §35-2-535 to Mr. Kollars and requested a copy of the "List of Members" as specified in the code. After consultation with the Corporation Attorney (Mr. Colin Phelps) Mr. Kollars indicated he would forward my request to Mr. Greany.

During the meeting while Mr. Greany was answering questions regarding the voting, I again stated directly to Mr. Greany I needed to inspect the List of Members. Mr. Greany ignored my second request. Once the Voting had begun I again approached Mr. Kollars and demanded to inspect the List of Members. Mr. Kollars called Mr. Greany to the area where we were standing and informed Mr. Greany of my demand. Mr. Greany said "OK" to which Mr. Kollars responded "Do you have that". Mr. Greany responded "I don't have it on me, I'll send it to you". My response to Mr. Greany was "No, No, No, I have a right under the law that says at this meeting that you have the membership list and allows for me to inspect the list during the meeting". Mr Greany again said "OK". I again stated "so I need the membership list". Mr. Greany again stated "OK". I then stated "well don't tell me OK I want to see it". Mr. Greany then stated "I don't have it with me". I then stated to Mr. Greany "then you can't legally conduct this vote", to which Mr. Greany replied "that's your opinion". I then replied "well that's going to be the opinion of the judge if this gets into court". Mr. Greany walked off stating "Go For It".

Approximately 10 minutes later the membership list that Mr. Greany stated he did not have was handed to me by Mr. Greany.

We find it very difficult to believe that Mr Greany did not have the list when he stated “I don’t have it on me, I’ll send it to you”, “I don’t have it with me”.

Mr. Greany did not act with “Complete Candor” in this matter or in Good Faith (MCA§35-2-416) (Duty to Disclose).

Mr. Greany obviously knew he had the List of Members but for whatever reason intended to gain an advantage and chose to not be Candid but instead chose deception, even though he produced the list after his apparent consideration of the alternative.

(2) At the close of the meeting Mr. Greany had engaged in a discussion with numerous landowners.

During the discussion Mr. Greany stated “I want to take care of the roads and I want the places that are just filthy, need to be cleaned up because that affects my property value”.

The comment regarding Mr. Greany's “Property Value” indicates Mr. Greany is using his position on the Board of Directors for Self-Dealing (an office holder's official role allows him/her to affect one or more of her own personal interests). This is a “Conflict of Interest”.

Mr. Greany clearly states his motivation for his action(s) as a Board member is his Property Value.

This violates Mr. Greany's Duty of Loyalty to the Corporation which in part states, directors and officers of a corporation work in their capacities as corporate fiduciaries without personal economic conflict and “Corporate officers and directors are not permitted to use their position of trust and confidence to further their private interest.”

Mr. Greany is furthering his private interest by using his position on the Board of Directors to affect (increase) his property values. This is not in the best interest of the Corporation (MCA §35-2-416) and has damaged the corporation by violating the implied covenant of Good Faith between the Corporation and the Corporate Body.

Mr. Greany is also required under the Duty of Good Faith to advance interests of the corporation and fulfill his duties without violating the law.

(3) I confronted Mr. Greany as he was leaving the fire-hall/school after the meeting and informed him he needed to review a recorded audio conversation (1/17/2017) between myself, Linda Wenzel (a then Board member) and then retained corporate attorney Mr. Jack Connors . Mr. Greany walked off stating “they didn’t give us shit”.

This remark “they didn’t give us shit” indicates Mr. Greany and the Board as a whole have failed to review all the information from the previous Board.

This is a violation of Duty of Care. Duty of Care requires directors inform themselves prior to making a business decision, of all material information reasonably available to them.

Not to obtain information from the previous Board(s) is completely unacceptable. Even if the previous Board refused to supply the current Board with all pertinent information, the current Board has an obligation to obtain the information, this includes the use of legal action. This information is not unreasonably obtainable or not available.

For the current Board to assume that any previous Board or Board Member has no information that may have a bearing on the Boards' current decision(s) policies and procedures, and not to contact previous Board members to inquire about pertinent information they may have in their possession indicates a disregard for Duty of Care and MCA§35-2-416 as applicable.

(4) At one point during a discussion/argument with members/landowners Mr. Greany stated [1]"we're going exactly by the Bylaws". Being seated nearby I responded "no your not" to which Mr. Greany responded "yes we are", I began to make another statement at which time Mr. Greany turned to me and stated "Russ, your not an attorney and I am not going to argue legal with you" turning back to the group he had been previously arguing with and continued the argument.

Somehow the statement "no your not" in Mr. Greany's opinion is a legal argument.

It would also appear the only discussions Mr. Greany will respond to with myself (Russ Greaves) is if I am an attorney.

Mr. Greany demonstrated he will conduct discussions/arguments with other landowner/members who are clearly not attorneys, however when presented with a discussion from myself shows prejudice discrimination, and Self Interest refusing to hear any of my comments. It is no wonder Ms. Cherche Prezeau (Mr. Pieloch's personal attorney) discouraged me from attending the 2019 annual meeting. Apparently my comments are too controversial to be discussed and heard.

Mr. Greany has not acted in his fiduciary duty requiring him to act in Good Faith. He has acted outside the parameters of MCA §35-2-416 subparagraph(s) (1,2, 3).

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#### MCA §35-2-416 IN PARTS STATES:

(1) A director shall discharge the duties as a director, including the director's duties as a member of a committee:

- (a) in good faith;
  - (b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and
  - (c) in a manner the director reasonably believes to be in the best interests of the corporation.
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During the discussion/arguments as outlined above Mr. Greany made the statement “Do I want to tell (name omitted) how to live or to tell (name omitted) how to live, NO!” This statement by Mr. Greany is an effort to placate the landowners/corporate members he was arguing with. Mr. Greany seems to have forgotten his statements in his February 2020 letter regarding “Covenant Enforcement in which he states “We aren't going to clean people's lots up for them but we will take action to ensure they get cleaned up. In some cases this means we will have to take landowners to court in order to get the job done”, and with regards to “Collection of Past Due Assessments” Mr. Greany states “Landowners in arrears will be notified, then if we have no response we will turn the debt over to a collection agency. After a short time, if that doesn't work we will file a lien against the property owner. If that doesn't work in short order, we will then file for foreclosure on the land”.

It would appear Mr. Greany does not regard Foreclosing on someone's land or legal action against a landowner, telling them how to live. However in fact the threat of legal action does so through insinuation, innuendo, and implied cause of action.

However, when Mr. Greany purchased his property in 2015 (see attached) many of the properties Mr. Greany considers “just filthy” today, are in the same condition for the most part as they were when Mr. Greany purchased his property. The only difference is Mr. Greany now wants them “cleaned up” since they affect his property value. Once again Mr. Greany is using his position on the Board of Directors for Self-Dealing (“I want the places that are just filthy, need to be cleaned up because that affects my property value”) and now has the legal resources, not available in the past in the form of corporation budgeted funds [4] through the increase in landowner fees he and the Board approved to enforce his judgment and will upon others through threats of legal action(s). (“Corporate officers and directors are not permitted to use their position of trust and confidence to further their private interest.”) Mr. Greany has demonstrated his propensity for arbitrary actions (Proxy voting[3]) without Board Approval. Therefore, it must be assumed he would take legal actions, arbitrarily also, not to mention he is using the very landowner fees collected from the landowner(s) to commence legal actions and property foreclosure against the landowner(s) using the very funds he is collecting from the landowner(s) to do so.

(4) Approximately one week prior to the September 19<sup>th</sup>, 2020 annual meeting a **Annual Meeting Proxy Appointment Form** was posted on the Missouri River and Eagle Canyon Ranches Landowners Corporation website. This form indicated that the proxy vote form was required to be notarized.

During the September 19<sup>th</sup> meeting Mr. Greany arbitrarily[3] decided to change this policy/procedure and require proxy votes not to be notarized. Apparently Mr. Greany believes he can enact policies/procedures and change those policies/procedures as he desires without Board Approval. (Missouri River Ranches and Eagle Canyon Ranches Landowners Corporation Bylaws -Section 4.5 Function of Directors)

Mr. Greany's decision to require notarized proxy votes a week before the meeting/elections without any notification to the landowners/corporate members caused some landowners not to vote by proxy since they could not get the proxy vote form notarized and sent to someone to submit the form for them at the meeting in time.

Mr. Greany's action with regard to the proxy vote procedures compromised the results of the Board Member election, and has cast doubt on the election results.

It is stated in an October 2020 post on the Missouri River and Eagle Canyon Ranches Landowners Corporation website **“Contrary to some folk's opinion, ballot fraud was discovered in the election. In addition to this, there were cases of Landowners voting lots they were not entitled to vote. We will be posting the supporting documents on the website for all to read, so that you can make your own judgment [sic]. All certifications and other supporting documents will be scanned and posted on the website next week (week of 10/12)”**.

Apparently there was also [2] ballot fraud perpetrated by the Corporation on the electorate by Mr. Greany, through restrictive voting procedures which Mr. Greany intentionally created and then changed.

We know of at least one property owner that did not vote because of the procedures/policy created and utilized by Mr. Greany.

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**MCA §35-2-356 IN PARTS STATES:**

**“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.”**

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Mr. Greany has violated his Duty of Good Faith (§35-2-416 as applicable) since his actions clearly violate this statute (MCA §35-2-356) through his policies/procedures which did not entitle each member to vote since the member(s) could not respond in a timely matter to the policy/procedural changes.

**Mr. Greany's own actions invalidates the election results for the election of the Board members.**

It is also stated in the above website post **“All certifications and other supporting documents will be scanned and posted on the website next week (week of 10/12)”**. As of the mailing of this letter no “certifications and other supporting documents” have been posted.

Mr. Greany's statement [1]“we're (the Board of Directors) going exactly by the Bylaws” is misleading and lacks Candor. The Board of Directors are not going “exactly by the Bylaws” as they are related to “Section 2.4 Proxies” requiring notarized proxy forms, which are not required or specified in the section. Additionally we can not find any Board action supporting the use and requirement of a Notarized Proxy Form prior to the meeting. It would appear Mr. Greany through arbitrary use of the Corporation's Attorney developed the Proxy Form[3] independent of the Board of Directors approval[3] and implemented it's use.

(5) It would appear also Mr. Greany's comments in his February 13<sup>th</sup>, 2020 letter concerning “the property values of all of us” and the subjective statement “(not to mention the affront to Mother Nature)” are motivated by his own Self Interest's and not for the benefit of the Corporation. Mr. Greany's statement in his February 2020 letter “we are looking at the possibility of legal action against landowners who have a garbage dump for a lot” when compared to Mr. Greany's statement during the discussion with landowners/members at the meeting of “I want the places that are just filthy, need to be cleaned up because that affects my property value”, with the key phrase's “my property value” and “I want” again indicating Mr. Greany is promoting his own self interest to enforce covenants and enhance his property value.

It would be obvious to any prudent, reasonable person from the examples cited within this document Mr. Greany has Damaged Missouri River and Eagle Canyon Ranches Landowners Corporation and injured the Corporate Body through his actions and conduct. Further more there is no way to ascertain how Mr. Greany's promotion of his Self Interest has affected his decision's as a Board Member. It must be assumed that Mr. Greany's Self Interest, Self-Dealing, Prejudicial, Discriminatory action(s) and what Mr. Greany wants, are as a result of his interest concerning his Property Value, Ballot Manipulation, and lack of Candor.

Based on Mr. Greany's previous conduct and actions it must be assumed he will continue to place his Self Interest's ahead of the Corporation and the Corporate Body.

Mr. Greany has Compromised not only himself as a Board Member and Corporate Officer but also the Board of Directors. He has also Compromised the Corporate Body since Mr. Greany's leadership has created dissension within the body, and has now made it necessary that the membership be advised prior to the meeting to remove any firearms from the building, the requirement that law enforcement be present at the annual meeting and a Corporate attorney be present also, which presents the appearance of a Conflict of Interest with another Board Members attorney at the same law firm. None of which was required or necessary prior to Mr. Greany assuming a leadership role within the Corporation. Self Interest, Self-Dealing, a lack of Candor, Arbitrary actions contingent solely upon one's discretion, along with Prejudicial, and Discriminatory actions towards a member/landowner of the Corporation is unacceptable.

Therefore, we are demanding that Mr. Dennis Greany Tender his Resignation from his position on the Board of Directors for Missouri River and Eagle Canyon Ranches Landowner Corporation immediately and the Board through unanimous vote appoint a suitable replacement.

We also demand Mr. Greany tender his Resignation from any appointed Board position (Chairman) and any Officer position (President) within the Corporation and that Mr. Greany not be allowed to hold any position with in the Missouri River Ranches/Eagle Canyon Ranches Landowners Corporation.

Since Mr. Greany's actions and policies have created such consternation within the Corporate Body (group of persons legally incorporated ), we must also demand each Board Member sign a letter(s) strongly condemning and denouncing Mr. Greany's action's. This action by the Members of the Board of Directors, will in our opinion help repair some of the Damage and Injuries Mr. Greany has caused.

Additionally we recommend that the Board of Directors obtain ALL documents and audio recordings from the previous Board(s). Using ignorance (they didn't give us shit") is not much of a defense for not familiarizing ones self with the necessary and required information, unless the Board intends to have the information presented in a legal action which would be irresponsible on behalf of the Board of Directors as a whole and each individual Board Member.

With consideration to the Board of Directors meeting schedule we are requesting our demands, and recommendation be taken up for business at the next Board of Director meeting and Mr. Greany's resignation's be tenured prior to that time.

Please advise us of your decision and actions prior to November 30<sup>th</sup>, 2020.

Sincerely

Russ and Linda Greaves

Lot 23 MRR

This document has been forwarded to the following individuals:

Mr. Roy McFarlane

[REDACTED]

Mr. Mark Pieloch

[REDACTED]

Mr. Dennis Greany  
PO BOX 911  
Great Falls, MT. 59403-0911  
dennis@safetracsolutions.com

Previously sent to; 2701 Wells Fargo Drive  
Great Falls, MT. 59404

Mr. Richard Kollars

[REDACTED]

Mr. Mark Belew

[REDACTED]

**General Data**

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FALLS

**Address1**

101 RIVER DR. N.

**Address2**

**City**                      **State**    **Zip**  
GREAT FALLS    MT    59401

**Mailback Date****Names**

Grantor	Grantee
LENNEN SHELLY R	GREANY DENNIS W GREANY LORI S

This Document will also be forwarded to the above name recipients by USPS certificated Mail.

[1]“we're going exactly by the Bylaws”

[2] ballot fraud was discovered in the election

[3] Proxy Form Attached

[4] MRR/ECRLOC ~ Annual Budget Estimates and Actual Expenditures

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**MISSOURI RIVER AND EAGLE CANYON RANCHES LANDOWNERS  
CORPORATION ANNUAL MEETING PROXY APPOINTMENT FORM**

In accordance with the Bylaws of the Missouri River and Eagle Canyon Ranches Landowners Corporation (Corporation) and the Montana Nonprofit Corporation Act, a Member may appoint a proxy to vote or otherwise act for the Member by fully completing the following Proxy Appointment Form and submitting it to the Corporation's Secretary.

THIS IS TO CERTIFY that \_\_\_\_\_, the undersigned Member (Member) of the Missouri River and Eagle Canyon Ranches Landowners Corporation has designated

\_\_\_\_\_  
(Name of Proxy)

as their representative to cast all votes that the undersigned is entitled to cast at the Corporation's Annual Meeting on September 19, 2020. By this designation of proxy, the Proxy may attend and represent the Member with the full power to vote and act for the Member in the same manner, to the extent and with the same effect as if the Member were personally present.

The Member has an ownership interest in \_\_\_\_\_ lot(s) within the Missouri River and/or Eagle Canyon Ranches Subdivisions pursuant to a:

☐ Warranty Deed

☐ Contract for Deed

This designation revokes any prior designation of proxy that the Member may have given previously.

This designation of proxy shall be effective for the Annual Meeting of the Corporation to be held on September 19, 2020, and at all adjournments of such meeting. This designation of proxy shall terminate following the adjournment of the September 19, 2020 Annual Meeting. This designation of proxy shall be automatically revoked if the Member is present at the Annual Meeting.

The Proxy shall have the full power, as the Member's substitute, to represent the Member and vote on all issues and motions on which the Member is entitled to vote pursuant to the Corporation's Bylaws. The Proxy shall have the authority to vote entirely at the discretion of the Proxy.

\_\_\_\_\_

This Proxy Appointment Form is effective when received by the Corporation's Secretary.

Dated this \_\_\_\_ day of September, 2020.

By: \_\_\_\_\_  
(Member)

STATE OF \_\_\_\_\_ )  
: ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of September, 2020, before me, a Notary Public of the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, known to me to be the person named in the foregoing PROXY APPOINTMENT FORM, and acknowledged to me that they executed the same as their free act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

(SEAL)

\_\_\_\_\_  
Printed Name \_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_,  
My Commission expires \_\_\_\_\_.

The budget was unanimously agreed upon; and the assessment level was set based on the reality of the revenues needed to provide quality services to the community. The assessment level was set at \$400.00 per lot per year, payable \$200.00 in January and \$200.00 in June. The assessment level, was also unanimously agreed upon.

Below is our budget for everyone's information. We also established a proposed budget for 2021. We must budget at least a year ahead of time in order to properly manage the finances of the corporation, and prepare for projects that need to be accomplished:

# **MRR/ECRLOC ~ Annual Budget Estimates and Actual Expenditures**

<b>2020</b>			
<b>Line Item</b>		<b>Budget</b>	<b>Actual</b>
<b>Expenditures</b>			
Road Repair & Maintenance	\$	27,930.00	
Fire Department Donations	\$	500.00	
Accounting Services	\$	1,800.00	
Taxes	\$	550.00	
SOS Filing	\$	20.00	
Legal Fees	\$	9,000.00	
Web Page Development & Maintenance	\$	2,000.00	
Reserve Contribution	\$	3,000.00	
Office Expenses	\$	1,500.00	
Noxious Weed Control	\$	2,000.00	
<b>Total Expenditures</b>	\$	<b>48,300.00</b>	
<b>Expenditure per lot (276)</b>	\$	<b>175.00</b>	
<b>Revenues</b>			
1st Half 2020 - 276 Lots	\$ 50.00	\$	13,800.00
2nd half 2020 - 276 Lots	\$200.00	\$	55,200.00
<b>Delinquency Recovery</b>			
<b>Total Revenue</b>		\$	<b>69,000.00</b>
Less % Non payment	30%	\$	20,700.00
Number of Lots Paying	193		
Number of Lots Not Paying	83		
<b>Net Revenues</b>		\$	<b>48,300.00</b>
<b>Surplus/Deficit</b>		\$	<b>-</b>
<b>Annual Assessments (Per Paid Lot) Needed to Cover Costs</b>	\$		<b>357.14</b>
<b><i>Paid Landowner Share of Delinquent Payer</i></b>	\$		<b>107.14</b>

➡ This is the amount that the corporation would need to collect from all landowners who do pay their assessments, in order to cover the costs and the amounts owed by landowners not paying their fair share.

⬅ This is the amount that each paying landowner pays each year, to cover the landowners who aren't paying their fair share

As you can see by this 2020 budget, the revenue brought in doesn't come close to providing what is needed to begin permanent repairs to the roads, begin covenant enforcement and collect delinquent assessments.

December 16, 2020

RE: C&P 3068-3

Missouri River and Eagle Canyon Ranches Landowners Corporation

Russ and Linda Greaves  


Dear Mr. and Mrs. Greaves,

As you are aware, I represent the Missouri River and Eagle Canyon Ranches Landowners Corporation (Corporation). The Corporation's Board of Directors (Board) asked my office to respond to your correspondence dated November 6, 2020.

In your letter, you accuse Dennis Greany and other Board members of breaching their fiduciary duties to the Corporation. Although your letter includes a wide range of accusations, they generally fall within the following categories: Mr. Greany allegedly failed to immediately provide you the membership list at the 2020 Annual Meeting; Mr. Greany is allegedly furthering his private interests by enforcing the covenants; the Board has failed to review a conversation between yourself and prior Corporation representatives; the Board is allegedly illegally enforcing the covenants and collecting assessments; and the Board improperly instituted proxy procedures. Your accusations that the Board and/or certain of its members have breached their fiduciary duties to the Corporation are unsupported by Montana law and the Corporation's governing documents.

Under Montana law, the Corporation's corporate powers are exercised by or under the authority of the Board, and the business and affairs of the Corporation must be managed under the direction of the Board. Section 35-2-414, MCA. As you note in your letter, members of the Board occupy a fiduciary relationship to the corporation and, in turn, its members. This fiduciary relationship requires that a Director perform their duties in good faith, in a manner the Director reasonably believes to be in the best interests of the Corporation, and with the care that an ordinarily prudent person would exercise under similar circumstances. Section 35-2-416(1), MCA.



The Board meets its fiduciary duties, in part, by governing the Corporation pursuant to the Corporation's Articles of Incorporation and the Corporation's Bylaws. Under Montana law, these governing documents may contain any provision for regulating the affairs of the Corporation that is consistent with the Montana Nonprofit Corporation Act and other applicable laws. In analyzing whether a board has met its fiduciary duties and governed a corporation pursuant to Montana law, the corporation's articles, or its bylaws, courts look to whether Montana statute, the articles, or the bylaws grant the board the authority to take the proposed action. Generally speaking, Montana law and courts interpreting that law recognize that nonprofit corporation boards have a certain amount of discretion in reaching decisions on behalf of the corporation. As demonstrated below, the accusations you have made against the Board do not constitute a breach of fiduciary duty because the Board has acted within Montana law, the Articles, and the Bylaws.

As you note, Montana law requires the Board to have a member list available for inspection by any member at the Annual Meeting. Section 35-2-535(2) & (3), MCA. Nothing in the statute requires the Board to provide the member list immediately upon demand; instead, the statute simply requires that the list be available for inspection. As you acknowledge, the Board met this obligation and provided you with the member list for inspection during the Annual Meeting. The Board therefore complied with its statutory obligations.

In your letter, you state that the Board could not "legally conduct this vote" if it did not have a membership list or if the Board did not provide the membership list to you for inspection. Your assertion is contrary to Montana law. Even if the Board did not have the membership list available at the meeting – which it did – or even if the Board refused to allow you to inspect the membership list at the meeting – which it did not – the actions taken at the Annual Meeting would still be valid. Montana law explicitly provides that a corporation's refusal or failure to comply with a member's request to inspect the membership list "does not affect the validity of action taken at the meeting" unless the member submitted a written demand to inspect and copy the membership list pursuant to certain statutory requirements. Section 35-2-535(5), MCA. You did not submit a written demand to inspect the membership list in compliance with the statutory requirements. Accordingly, even if the Board had refused your request – which you acknowledge it did not – the actions taken at the Annual Meeting would still be valid.

Your assertion that Mr. Greany and/or other Board members are allegedly breaching their fiduciary duties by enforcing the Covenants and collecting assessments are similarly misplaced. It is worth noting that every member of the Corporation purchased their



property subject to the recorded Covenants. Under Montana law, the Covenants run with the land and are therefore binding upon every member of the Corporation. Sections 70-17-201, 76-3-306, MCA. The Corporation's Bylaws are similarly binding upon all members of the Corporation. In fact, the Bylaws constitute a contract between the Corporation and the member pursuant to which the member agrees to submit to the rules and regulations contained within the Bylaws. In short, by purchasing property in the subdivisions – which are subject to duly recorded and adopted Covenants and Bylaws – every member of the Corporation agreed to be bound by the Covenants and Bylaws.

The Corporation's Bylaws explicitly require the Board to enforce the Covenants. (Bylaws, Section 1.2(b); Article IX.) The Covenants, in turn, articulate the procedures by which the Corporation must enforce them. (Covenants, Article X.) These procedures include filing a lien against the property of someone who has been found to be in violation of the Covenants. (Covenants, Article X.) The Bylaws also provide that the Board must formulate and implement the Corporation's budget and determine and implement assessments to ensure the payment of budgeted expenditures. (Bylaws, Sections 8.1-8.3.) The Bylaws provide further that the Board may file a lien against a member's property who has failed to pay assessments. (Bylaws, Section 8.4.)

As discussed above, the Board's fiduciary duties to the Corporation require that the Board govern the Corporation pursuant to the Corporation's governing documents (e.g., the Covenants and the Bylaws). The Corporation's governing documents require that the Board enforce the Covenants and implement assessments necessary to cover budgeted expenses. The governing documents also provide certain mechanisms by which the Board can enforce the Covenants and the payment of assessments. Your assertion that the Board has breached its fiduciary duties by enforcing the Covenants and collecting assessments runs counter to well-established Montana law. In fact, if the Board were to not enforce the Covenants or charge assessments, as your letter seems to suggest it should, the Board would not be managing the affairs of the Corporation pursuant to its governing documents.

Your assertion that the Board has somehow breached its fiduciary duties by implementing a proxy voting procedure is likewise misplaced. Both the Nonprofit Corporation Act and the Bylaws provide that members may appoint a proxy to vote on their behalf. Section 35-2-539, MCA; (Bylaws, Section 2.4.) Neither the Act nor the Bylaws, however, specify the procedures by which a member may appoint a proxy. As discussed above, Montana law grants the Board discretion in governing the Corporation's affairs. The Bylaws similarly grant the Board discretion to "establish the policies and the

programs of the Corporation.” (Bylaws, Section 4.5.) Establishing a procedure by which a member may appoint a proxy falls within the Board’s discretionary powers.

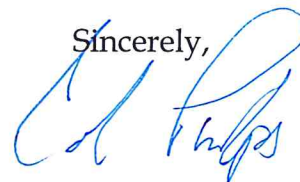
As you note, the Board ultimately did not enforce its proxy voting procedure and allowed members to vote by proxy at the Annual Meeting pursuant to historically-utilized procedures. The Board’s decision to do so did not violate the members’ voting rights. As you note, Montana law provides that “unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members.” Section 35-2-536(1), MCA. The Corporation’s Bylaws contain explicit provisions articulating which class of members is entitled to vote on certain issues. (Bylaws, Sections 2.2, 2.3, & 4.2.) The Board did not restrict members’ rights to vote pursuant to these provisions or Montana law.

Finally, your assertion that the Board has breached its fiduciary duty by failing to review a recorded audio conversation between Mr. Greaves and two prior Corporation representatives is unfounded. Under Montana law, in discharging their duties directors are “*entitled* to rely on information, opinions, reports, or statements” prepared or presented by certain specifically articulated persons or classes of persons. Section 35-2-416(2), MCA (emphasis added). Nothing in the Montana Nonprofit Corporation Act—or the Bylaws for that matter—requires the Board to consider each and every piece of information available to it. As discussed above, the Board has discretion in governing the Corporation. This discretion includes the ability to consider a wide range of information in discharging its duties.

The grounds upon which you rely to accuse the Board and/or certain of its members of breaching their fiduciary duties to the Corporation run counter to Montana law and the Corporation’s governing documents. Accordingly, it is my opinion that the Board has not breached their fiduciary duties to the Corporation.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Colin Phelps

cc: Board of Directors