

1 HON. BRENDA R. GILBERT
2 District Judge
3 Sixth Judicial District
4 414 East Callender Street
5 Livingston, Montana 59047
6 406-222-4130

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

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10 DENNIS RILEY, WENDY RILEY, JERRY)
11 LADEWIG, JEFFREY LADEWIG, MARK)
12 SEAVER, ANDREA SEDLAK, MARTHA)
13 McALISTER, JOHN McALISTER, together)
14 with and on behalf of other lot owners,)
15)
16 Petitioners,)
17 vs.)
18 GLASTONBURY LANDOWNERS)
19 ASSOCIATION, INC.,)
20)
21 Respondent.)

Cause No. DV 21-101

**ORDER APPOINTING MEDIATOR
AND SETTING MEDIATION**

22 IT IS HEREBY ORDERED that Tracy Axelberg is appointed as Mediator in the above-
23 entitled cause. A Mediation in this cause is to be held on **October 4, 2021**. Unless other
24 arrangements are made in advance with the mediator, the fee charged by the mediator will be
25 shared equally by the parties. The mandatory guidelines for Mediation preparation are as follows:

- 26 1. The purpose of the Mediation is to permit an informal discussion among the
27 attorneys, parties, non-party indemnitors or insurers of every aspect of the lawsuit with the
28 objective of entering a binding agreement which settles the case. All communications made in
connection with the Mediation are confidential and will not be disclosed to non-participating

1 individuals. Statements or communications of any kind occurring during the Mediation shall be
2 deemed inadmissible in court pursuant to Rule 408, Montana Rules of Evidence.

3 2. Counsel who will actually try the case shall attend the mediation. All named parties
4 shall attend in person with authority to settle. Counsel shall appear with their clients whether or
5 not counsel have been given ultimate settlement authority.

6 3. If a corporation is a named party, a representative thereof shall attend the mediation
7 in person. This representative must have ultimate authority, in the representative's discretion, to
8 commit the corporation to terms of settlement. If Board approval is required to authorize
9 settlement, the entire Board should attend. For such cases the attendance of at least one sitting
10 Board member (preferably the Chairman) is required.

11 4. Any insurance company or indemnitor that is a named party or is contractually
12 required to defend or liable to pay damages, if any, or is otherwise involved in the case shall have a
13 representative attend the mediation in person or by speaker phone unless otherwise ordered. This
14 representative must have full authority, in the representative's discretion, to commit the company to
15 terms of settlement within the applicable policy limits or at least up to the Plaintiff's last demand.

16 5. It is the responsibility of counsel to timely advise all named parties and involved
17 insurance carriers or indemnitors of this mediation and to ensure the personal attendance of the
18 required individuals or representative by telephone. Requests to excuse personal attendance will
19 not be entertained without exceptional justification.

20 6. Prior to the Mediation the attorneys are directed to discuss settlement with their
21 clients and insurance representatives and encouraged to discuss settlement with the opposing
22 counsel.

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1 7. A Statement of Facts and Issues from each party together with a Mediator fee
2 deposit as required by the Mediator from each participating party must be submitted directly to the
3 office of the Mediator no later than three business days prior to the conference. The statement may
4 not exceed five pages in length and should contain:

- 5 a) The background of the case;
- 6 b) Factual and legal issues to be decided, including damages;
- 7 c) Points and authorities of law;
- 8 d) A description of the strongest and weakest points in their case, both legal
9 and factual, and that of their opponents; and
- 10 e) The history of settlement negotiations, including a recitation of any specific
11 offers and demands.

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14 Discovery materials or evidence that will be offered at trial may be attached, in the discretion of
15 counsel. The Statement of Facts and Issues shall not be filed with the Court or exchanged with or
16 disclosed to opposing counsel. The Statement of Facts and Issues will be returned to the
17 submitting party or destroyed at the close of the conference.

18 8. The parties shall promptly pay the balance of the Mediator's fees following the
19 mediation, and the mediator shall notify the Court of any unpaid balance due to the mediator so
20 that the balance can be addressed prior to final disposition of the case. Cooperation and
21 compliance with these procedures is deemed essential to an effective Settlement Conference.
22 Failure to abide by these procedures will cause the conference to be cancelled and rescheduled.
23 The noncomplying attorney and/or party may be assessed the costs and expenses incurred by the
24 other individuals involved due to the cancellation, and other sanctions may be imposed in the
25 discretion of the District Judge.
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1 9. The Mediator will submit a "Mediation Report" within five days of completion of
2 the conference.
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4 **ELECTRONICALLY SIGNED AND DATED BELOW**

5 cc: Nicholas J. Lofing
6 Ryan K. Jackson
7 Tracy Axelberg
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