COLORADO COURT OF APPEALS 2 East 14th Avenue, 3rd Floor Denver, CO 80203	
El Paso County District Court Honorable Larry E. Schwartz Case No. 2008CV2923, Division 5 Ctrm. 501	
Plaintiffs-Appellees: Charles Warne, Bridget Warne, Brandon Cuffe, Norman Villanueva, Nancy Villanueva, Howard Surber, Luana Surber, Travis Helton and Karen Helton v. **Defendants-Appellants:** Woodmen Hills Covenant Management Board and Woodmen Hills Metropolitan District	**COURT USE ONLY**
Attorneys for Appellants: SUSEMIHL, MCDERMOTT & COWAN, P.C. Jason W. Downie, Atty Reg. # 27256 Geoffrey L. Lindquist, Atty Reg. # 38290 660 Southpointe Court, Suite 210 Colorado Springs, CO 80906 Phone: 719-579-6500 Fax: 719-579-9339 Email: jdownie@smmclaw.com	Case Number: 2009CA1987

OPENING BRIEF

Certification of Word Count: 4360

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

STATEMENT OF ISSUES

1. Whether the Homeowners, who initiated this declaratory relief action regarding a Declaration covering 185 residential lots, should be required to join all property owners burdened by the Declaration.

2. Whether the Declarant of the Declaration had the right and power to assign covenant enforcement powers to the WHMD and WHCMB and whether the WHMD can charge fees to property owners regarding enforcement of the Declaration.

STATEMENT OF THE CASE

In late 2006, the residents within Woodmen Hills had become increasingly worried about the enforcement of covenants after the builders and declarants of the covenants were finishing their projects. The Woodmen Hills Metropolitan District (the "WHMD") also has an interest in higher property values that result from proper covenant enforcement – which at the time was extremely lacking.

The solution was to approach the several builders and declarants of covenants and ask them to contract and assign the right to enforce the covenants to WHMD pursuant to Colo. Rev. Stat. § 32-1-1004(8)(a)(1). WHMD would then contract and assign the right to enforce the covenants to a new nonprofit corporation, the Woodmen Hills Covenant Management Board (the "WHCMB"). The WHCMB would be controlled by the residents of the District – that way, the

people most affected by the covenants violations and property values, the residents, would be in control. The WHMD would fund covenant enforcement through the fees and charges it is allowed to charge under Colo. Rev. Stat. § 32-1-1001(1)(j)(I).

After much discussion and some time to get in touch with representatives of each of the declarants (one of which was Melody Homes, d/b/a/ D.R. Horton), the contract and assignments were executed and recorded, the WHCMB was set up, and the process of covenant enforcement via WHMD and WHCMB began as planned. The WHCMB hired a management company, Colorado Management and Associates in late 2007 and began enforcement in early 2008.

Several residents in Woodmen Hills Filings 8 & 9 who are subject to the Declaration at issue in this case obtained counsel and filed this current declaratory relief action on June 6, 2008 (R. at 1).

In July 2008, WHCMB brought a county court action against Travis and Karen Helton (R. at 121). The Heltons obtained counsel and counterclaimed against the WHCMB and the two cases were consolidated (R. at 556).

WHCMB and WHMD sought to require joinder of all other property owners covered by the subject Declaration (R. at 62) and the request was denied (R. at 140).

The parties filed cross-motions for summary judgment (R. at 191, 260) and the trial court ruled on the summary judgment motions on May 19, 2009 (R. at 406).

RELEVANT FACTS

A Declaration of Covenants, Conditions and Restrictions for Woodmen Hills Filing No. 8 and a Portion of Filing No. 9 was executed October 24, 2000 and recorded in the real property records of El Paso County, Colorado on November 9, 2000 at Reception Number 200136133 (the "Declaration")(R. at 201-222).

The declarant of the Declaration was Melody Homes, Inc., a Delaware Corporation (R. at 201). Melody Homes, Inc. d.b.a D.R. Horton – Melody Series is a successor to Melody Homes, Inc. For the purposes of this Opening Brief, both entities will be referred to as the "Declarant".

An Amendment to Declaration of Covenants, Conditions and Restrictions for Woodmen Hills Filing No. 8 and a Portion of Filing No. 9 was executed February 12, 2003 and recorded in the real property records of El Paso County, Colorado on February 18, 2003 at Reception Number 203034235 (the "Amendment to Declaration")(R. at 223-225).

A Contract and Assignment of Right to Enforce Covenants was executed August 14, 2007 and recorded in the real property records of El Paso County,

Colorado on November 13, 2007 at Reception Number 207145595 (the "D.R. Horton / Melody Contract")(R. at 226-230).

A Contract and Assignment of Right to Enforce Covenants was executed October 18, 2007 and recorded in the real property records of El Paso County, Colorado on November 14, 2007 at Reception Number 207146008 (the "Covenant Management Board Contract")(R. at 231-238).

The Declaration, Amendment to Declaration, D.R. Horton / Melody Contract and Covenant Management Board Contract burden the following real property:

> LOTS 298 THROUGH 303, AND LOTS 362-498 INCLUSIVE, WOODMEN HILLS FILING NO. 8, EL PASO COUNTY, COLORADO,
>
> and
>
> LOTS 503 THROUGH 544, INCLUSIVE, WOODMEN HILLS FILING NO. 9, EL PASO COUNTY, COLORADO.

(R. at 219; 223-225; 230; 237).

Plaintiffs-Appellees Charles and Bridget Warne, Brandon Cuffe, Norman and Nancy Villanueva, Howard and Luana Surber, and Travis and Karen Helton own and reside on lots in Woodmen Hills that are burdened by the Declaration and the other recorded documents relating to this litigation (R. at 20, 122). All Plaintiffs-Appellants will be referred to collectively as the "Homeowners" while

all other owners of lots covered by the Declaration will be referred to as the "property owners".

SUMMARY OF THE ARGUMENT

The trial court erred in not requiring the Homeowners to join all other property owners. The Homeowners' Complaint asks for declaratory relief regarding the enforceability and validity of documents burdening 185 residential lots in Woodmen Hills. Both C.R.C.P. 57(j) and Colo. Rev. Stat. § 13-51-115 require their joinder because of Homeowners' sweeping claims for declaratory relief. In the past, Colorado courts have required joinder of all property owners in similar cases.

Secondly, the trial court erred in granting summary judgment for the Homeowners while finding that the Declarant did not have any enforcement rights to assign to the WHMD and WHCMB. Only certain Declarants rights lapsed; other Declarant rights regarding the Declaration do not terminate until the Declaration expires or until the Declaration is terminated or amended. Further, the Declarant and WHMD had the right to contract pursuant to Title 32 of the Colorado Revised Statutes. Also, WHMD has the power to charge fees for providing covenant enforcement services pursuant to Title 32 of the Colorado Revised Statutes.

ARGUMENT

1. The trial court erred in not requiring the Homeowners to join all other property owners burdened by the Declaration in this declaratory relief action involving issues whether certain recorded documents are valid and enforceable by WHMD and WHCMB.

Standard of Review: Because the facts are undisputed and this issue involves matters of law, the standard of review is *de novo*. *In re Estate of Sheridan*, 117 P.3d 39, 41 (Colo. Ct. App. 2004). Additionally, the interpretation of a statute is a question of law. *Robles v. People*, 811 P.2d 804 (Colo. 1991).

The Declaration, Amendment to Declaration, D.R. Horton / Melody Contract and Covenant Management Board Contract burden 185 residential lots in Woodmen Hills (R. at 201-238). The Homeowners are owners of five (5) of the one hundred eighty-five (185) residential lots burdened by the Declaration (R. at 20, 122).

The Homeowners' Complaint seeks declaratory relief that certain documents recorded in the real property records of El Paso County, Colorado are either invalid or unenforceable by WHMD and WHCMB and that the WHMD cannot charge fees for this service (R. at 23-25).

Specifically, the Homeowners' sought the following declaratory relief:

(1) that certain documents recorded in the real property records of El Paso County, Colorado are unenforceable or invalid, and these documents concern the property mentioned above (R. at 24); and

(2) that the Woodmen Hills Covenant Management Board has no authority to enforce covenants and the Woodmen Hills Metropolitan District has no ability to assess fees associated with the same (R. at 24).

More importantly, the Homeowners also sought declaratory relief that the Covenants have no mechanism for enforcement and that the amended Covenants are the controlling documents for all 185 owners in Woodmen Hills Filing Number 8 and a Portion of Filing Number 9 (R. at 24). The Homeowners' Complaint defined "owners" as the "owners in Woodmen Hills Filing Number 8 and a Portion of Number 9" (R. at 21).

The joinder of all property owners burdened by these documents is required by C.R.C.P. 57(j) and Colo. Rev. Stat. § 13-51-115.

C.R.C.P. 57(j) and Colo. Rev. Stat. § 13-51-115 each state, in part, "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall

prejudice the rights of persons not parties to the proceeding." C.R.C.P. 57(j); Colo. Rev. Stat. § 13-51-115.

Given the Homeowners' sweeping claims for declaratory relief regarding the enforceability of the Declaration, all 185 property owners have an interest which would be affected by the declaratory relief sought in this action.

In *Good v. Bear Canyon Ranch Assn, Inc.*, 160 P.3d 251, 256-57 (Colo. Ct. App. 2007), this Court refused to overturn a trial court's ruling that all homeowners within a development be joined as indispensable parties. *Id.* at 256. In that case, a homeowner commenced an action against a homeowner's association claiming that an amendment to the declaration was invalid. *Id* at 253. The interests of all property owners in the development were affected. *Id.* at 257. The case at bar is no different; it concerns whether any valid enforcement mechanism exists in the governing documents and whether the amended Covenants are the controlling documents for all 185 owners in Woodmen Hills Filing Number 8 and a Portion of Filing Number 9. Property owners not parties to the litigation should not have their interests adversely affected without notice or the opportunity to be heard regarding this matter.

Likewise, in *Dunne v. Shenandoah Homeowner's Assn, Inc.*, 12 P.3d 340, 344-45 (Colo. Ct. App. 2000), this Court held joinder of all property owners within

the development was proper under C.R.C.P. 19, C.R.C.P. 57(j); and Colo. Rev. Stat. § 13-51-115. The issue in *Shenandoah* also involved the enforcement of restrictive covenants and a unilateral attempt by the developer to revoke those covenants after selling one or more lots. In *Shenandoah*, this Court held revocation of the covenants by the developer after selling lots was invalid since those who purchased previously did so upon the expectation and benefit of the covenants. *Id.*

Similarly, a resolution in favor of the Homeowners in this action will adversely affect other property owners. All property owners whose lots are burdened by the Declaration have an interest that may be adversely affected given the nature of the relief requested by the Homeowners.

Injury to an absent party is the most important factor in considering whether a party is indispensable, but the Court should also consider the danger of inconsistent decisions, avoidance of multiplicity of suits, and the reluctance of a court to render a decision which will not settle the controversy before it. *Shenandoah* at 344. Here, injury to the property owners is paramount, but WHMD and WHCMB foresee (i) a multiplicity of suits, (ii) inconsistent decisions, and (iii) a decision which will not settle the controversy, should the trial court's ruling in favor of the Homeowners stand.

As was done in *Shenandoah* and *Good*, the trial court should have required joinder of all the property owners by the Homeowners; the Homeowners' requested declaratory relief compels joinder. All absent lot owners above have an interest in this action and would be affected by this action and should be joined as indispensable parties.

It should be remembered that it was the Homeowners that sought such sweeping declaratory relief, specifically that the Covenants have no mechanism for enforcement and that the amended Covenants are the controlling documents for all 185 owners. Accordingly, the Homeowners' should be compelled to join the other property owners.

I. The trial court erred in granting summary judgment in favor of the Homeowners because the Declarant had the power and right to assign enforcement to the WHMD and WHCMB, the Declarant had a right to enforce the Declaration at the time it assigned that right to WHMD and WHCMB, and the WHMD has the power and authority to assess a covenant fee pursuant to Colo. Rev. Stat. § 32-1-1001(1)(j)(I).

a. The Declarant had the power and right to assign the right of Declaration enforcement to the WHMD and WHCMB.

Standard of Review: Because the facts are undisputed and this issue involves matters of law, the standard of review is *de novo*. *In re Estate of Sheridan*, 117

P.3d 39, 41 (Colo. Ct. App. 2004). Further, the interpretation of written contracts is a question of law. *Keith v. Kinney*, 140 P.3d 141, 146 (Colo. Ct. App. 2005). Additionally, the interpretation of a statute is a question of law. *Robles v. People*, 811 P.2d 804, 806 (Colo. 1991).

The mechanism for which these covenant enforcement rights were contracted and assigned from the Declarant to WHMD is provided in Title 32 of the Colorado Revised Statutes, which states:

> The board of a metropolitan district has the power to furnish covenant enforcement and design review services within the district if: (I) The governing body of the applicable master association or similar body and the metropolitan district have entered into a contract to define the duties and responsibilities of each of the contracting parties, including the covenants that may be enforced by the district, and the covenant enforcement services of the district do not exceed the enforcement powers granted by the declaration, rules and regulations, or any similar document containing the covenants to be enforced; or (II) The declaration, rules and regulations, or any similar document containing the covenants to be enforced for the area within the metropolitan district name the metropolitan district as the enforcement or design review entity.

Colo. Rev. Stat. § 32-1-1004(8)(a). Admittedly, the Declaration does not name the WHMD an enforcement entity, so WHMD's enforcement powers do not arise from from Subsection (8)(a)(II). Thus, the D.R. Horton / Melody Contract is based on Colo. Rev. Stat. § 32-1-1004(8)(a)(I).

WHMD and WHCMB argue that the Declarant, was a "master association or similar body" pursuant to Subsection 8(a)(I) with the power to assign its rights regarding the Declaration to third parties, including the WHMD. No case law exists to state what the legislature meant for the phrase "master association or similar body" in this section. Further, the phrase is not defined in Title 32.

The phrase "master association or similar body" only appears in Title 32. However, the term "master association" appears in the Colorado Common Interest Ownership Act, codified in Colo. Rev. Stat. § 38-33.3-101 *et seq* ("CCIOA").[1] In CCIOA, a "master association" is defined as "an organization that is authorized to exercise some or all of the powers of one or more associations on behalf of one or more common interest communities or for the benefit of the unit owners of one or more common interest communities." Colo. Rev. Stat. § 38-33.3-103(20).

In CCIOA, the creation of a master association is set forth in the declaration by the declarant. *See* Colo. Rev. Stat. § 38-33.3-220. WHCMB and WHMD argue that because, according to Colorado law, a declarant has the sole power to create a master association, then a declarant must also be considered to be a "master association or similar body" that has the power and authority to contract for covenant enforcement with a metropolitan district pursuant to Colo. Rev. Stat. §

[1] The declarant of the Declaration, Melody Homes, specifically opted out of CCIOA. See, Declaration, Article I, Section 4.

32-1-1004(8)(a)(I). Logically, it does not make sense to say that an inferior body would have the power to contract with a metropolitan district for covenant enforcement, but the declarant of the declaration would not.

Because of Declarant's extensive powers over all lots located within the property and the reasons set forth above, Declarant was a "similar body" contemplated by the legislature under Colo. Rev. Stat. § 32-1-1004(8)(a)(I) and had the power to contract and assign its right to enforce the Declaration.

Although there is no case law interpreting Colo. Rev. Stat. § 32-1-1004(8)(a)(I), the legislative history may help interpret the statute. Courts have looked at legislative history to help interpret a statute. *Bd. of County Comm'rs v. Costilla County Conservancy Dist.*, 88 P.3d 1188, 1193 (Colo. 2004).

Colo. Rev. Stat. § 32-1-1004(8)(a)(I) is the codification of SB04-221 sponsored by Colorado State Senator Taylor. In the Senate Committee on Local Government hearing held on April 13, 2004, the Committee heard the comments of Senator Taylor and testimony from Ken Marchetti. *Senate Committee on Local Government; Hearings on SB04-221*, Sixty-fourth General Assembly, State of Colorado (2004) (statements of Senator Taylor and Ken Marchetti). It was explained that the Metropolitan District is usually the most active and primary service provider in the subject area. *Id*. Moreover, Metropolitan Districts typically

provide multiple services, but there was no current authorization for covenant enforcement and design review services, hence the need for SB04-221. *Id.* It was explained that many property owners live in areas with "inactive covenants," either (i) because an association of property owners has fallen into disrepair; (ii) there is no property owners association in existence; or (iii) because of apathy with absentee owners in resort type communities who only use the property during a portion of the year. *Id*. Accordingly, SB04-221 was a mechanism to allow Metropolitan District's the authority to perform covenant enforcement and design review functions through contractual agreement. *Id*. There was even discussion that in many instances an "association" may not exist, so any language requiring an "existing" association should be stricken. *Id.*

In the House Committee on Local Government, it was discussed how this might create competition with management associations and other associations, but more particularly that it may involve covenant enforcement were they are not currently being enforced. *House Committee on Local Government; Hearings on SB04-221*, Sixty-fourth General Assembly, State of Colorado (2004) (statements of Senator Taylor and Evan Goulding). Evan Goulding, with the Special District Association explained again that the Metropolitan District is the most identifiable entity and the most logical to provide covenant enforcement and design review

services in order to keep up property values. *Id.* Mr. Goulding explained the need for a contract and that the Metropolitan District could not exceed the enforcement powers contained in the declaration. *Id.* It was discussed that this is not forced upon property owners; that the property owners have acquiesced through the election of Metropolitan District Board members who make decisions for them on a variety of issues as is the case in any representative government. *Id.* (statements of Rep. Weisman, Rep. White, and Evan Goulding).

The current situation in Woodmen Hills is exactly the reason SB 04-221 was passed - property owners bought into a covenant controlled community burdened with a non-existent home owners association. As mentioned above, Melody Homes, Inc. is a "similar body" contemplated by the legislature under Colo. Rev. Stat. § 32-1-1004(8)(a)(I) and had the power to contract and assign its right to enforce the Declaration.

b. The Declarant had a right to enforce the Declaration at the time it assigned that right to WHMD and WHCMB

Standard of Review: Because the facts are undisputed and this issue involves matters of law, the standard of review is *de novo*. *In re Estate of Sheridan*, 117 P.3d 39, 41 (Colo. Ct. App. 2004). Further, the interpretation of written contracts is a question of law. *Keith v. Kinney*, 140 P.3d 141 (Colo. Ct. App. 2005).

Some declarations and sets of covenants contain a section labeled "Enforcement" that outline who can enforce the Declaration. Although not titled "Enforcement", Article VII, Section 5 of the Declaration contains a provision stating:

> **Any violation** of any provision, covenant, condition restriction, and equitable servitude contained in this Declaration, whether by act or omission is hereby declared to be a nuisance and **may be enjoined or abated, whether or not the relief sought is for negative or affirmative action**, **by any Person entitled to enforce the provision of this Declaration.**

(emphasis added)(R. at 216). The term "Person" is broadly defined in the Declaration as a natural person, a corporation, a partnership, a limited liability company, or any other entity permitted to hold title to real property pursuant to Colorado law (Decl., Art. II, § 12)(R. at 203) The Declarant is a Person pursuant to the Declaration.

The Declaration states the Persons who are entitled to enforce the Declaration in Article I, § 3, which states in pertinent part as follows:

> "[t]he provisions of this Declaration are intended to and shall run with the land and, **until their expiration in accordance with the terms hereof**, shall bind, be a charge upon and inure to the benefit of: (a) the property (as hereinafter defined); (b) **Declarant and its successors and assigns**; (c) all Person's acquiring any right, title, or interest in the Property, or any improvement thereon, and their heirs, personal representatives, successors or assigns."

(emphasis added)(Decl., Art. I, § 3)(R. at 201). Pursuant to this section of the Declaration, the Declarant and the property owners may enforce portions of the Declaration.

The operative language in this phrase relating to the legal enforceability of the Declaration is "… shall bind, be a charge upon and inure to the mutual benefit of…" To determine the meaning of the phrase, we look to Black's Law Dictionary. The dictionary defines a 'bind' as a verb meaning to impose one or more legal duties on. BLACK'S LAW DICTIONARY 69 (2nd pocket ed. 2001). Secondly, the dictionary defines 'charge' as an encumbrance, lien or claim. BLACK'S LAW DICTIONARY 94 (2nd pocket ed. 2001). Third, it defines 'inure' as a verb meaning to take effect or to come into use. BLACK'S LAW DICTIONARY 370 (2nd pocket ed. 2001). Finally, it defines the word 'benefit' as an advantage or privilege. BLACK'S LAW DICTIONARY 65 (2nd pocket ed. 2001).

Taken together, the terms of the Declaration may be seen as covenants, conditions and restrictions that impose legal duties and are encumbrances, liens or claims. These legal duties / claims result and take effect as advantages or privileges for the (1) property, (2) the Declarant, and (3) the property owners. To state that these legal claims cannot be enforce by the named beneficiaries is inconsistent with the plain language of the provision. This language, a

combination of legal terms of art, gives the Declarant, among others, the legal power and authority to enforce the Declaration.

The Declaration does not expire until the earlier of (i) 2050 or (ii) the time when 75% of the owners vote by written ballot to terminate the declaration and enter into, and record, a "Termination Agreement" (Decl., Art. VII, § 1)(R. at 215). It is undisputed that no such vote has taken place and no such Termination Agreement has been entered into and recorded. Accordingly, the covenants inure to the benefit of the Declarant and its successors and assigns, including the WHMD and the WHCMB, and may be enforced by the same until the earlier of 2050 or the time when a valid Termination Agreement is recorded. Clearly, the Decalarant's rights to enforce the covenants are not tied to its ownership of property, as it is listed as a mutually exclusive party to which the provisions of the Declaration bind, charge, and inure to the benefit of until their expiration.

The trial court held, and the Homeowners will argue, that the Declarant's powers lapsed after it sold its last lot to individual homeowners (R. at 406-408). However, a plain reading of the Declaration will show that only certain Declarant rights lapse. Article VI, Section I states, "Declarant shall have, retain and reserve certain rights as hereinafter **set forth in this Article VI** from the date hereof until 120 days after the date upon which one hundred percent (100%) of the Lots have

been conveyed to Owners other than the Declarant" (emphasis added)(Decl., Art. VI, § 1)(R. at 213). The rights set forth in Article VI, Sections 2 through 6 include: (1) Declarant's Rights to Complete Development of the Property; (2) Declarant's Rights to Grant and Create Easements; (3) Declarants Rights to Convey Additional Property to the District; (4) Withdrawal of Property; and (5) Expansion of Permitted Property Uses (Decl., Art. VI, § 2-6)(R. at 214-215). These five rights are the rights that lapsed when the Declarant sold its last lots to individuals. Nothing in the Declaration states that **all** of Declarant's rights lapse at a certain point in time. In fact, the contrary is true. As explained above, the Declarant's powers to enforce the Declaration exist until expiration of the Declaration. Hence, at the time of the execution of the D.R. Horton / Melody Contract, the Declarant still had extensive powers regarding the Declaration, including those regarding enforcement.

c. The WHMD has the power and authority to assess a covenant fee pursuant to Colo. Rev. Stat. § 32-1-1001(1)(j)(I)

The WHMD has the power, under Colo. Rev. Stat. § 32-1-1001(1)(j)(I), to "fix and from time to time to increase or decrease fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the special district." Colo. Rev. Stat. § 32-1-1001(1)(j)(I). One of the District's services or programs it

is now providing is covenant enforcement through the WHCMB. Colorado law does not require homeowners' permission to charge the fees. The homeowners' recourse is through the WHMD's Board of Director elections.

Further, Article V, Section 2 of the Declaration states:

> [t]he Owners further recognize and understand that the Property is within the boundaries of the District which supplies various municipal and recreational services to the property and that the Owner's Lots are subject to the ordinances, regulations, and various fees and charges now in force or which might be adopted by the District

(Decl., Art. V, § 2)(R. at 213). As set forth above, not only does the WHMD have the power to fix rates or fees upon homeowners within the District, but the Declaration solidifies this point. Title 32 districts have the express authority to provide covenant enforcement as set forth in Colo. Rev. Stat. § 32-1-1-1004(8) and the ability to establish charges for services provided by the district pursuant to Colo. Rev. Stat. § 32-1-1001(1)(j)(I).

CONCLUSION

Because of the Homeowners' sweeping claims for declaratory relief regarding various recorded documents burdening 185 residential lots, all property owners should be joined as parties in this action.

Further, since the Declarant still had rights regarding the Declaration, and is allowed to contract regarding covenant enforcement with the WHMD, the trial court's order granting summary judgment should be reversed. Further, pursuant to Colorado law, the WHMD is allowed to charge monthly fees regarding covenant enforcement.

DATED this 27th day of January, 2010.

SUSEMIHL, MCDERMOTT & COWAN, P.C.
Original signature on file at the offices of
Susemihl, McDermott & Cowan, P.C.

/s/ Geoffrey L. Lindquist
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response to Order to Show Cause was filed and served electronically through LexisNexis File & Serve this 27th day of October, 2009, on the following:

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