

## PLAINTIFFS' UNDISPUTED FACTS

- a. 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" or "Covenants"). See Defendants Answer and Counterclaims Para. 7; Def. Initial Disclosures Para. 1; Defendants Answer to Third Party Counterclaims Para. 4. Defendants have also agreed in their Motion for Summary Judgment and Reply to same that this is an undisputed fact.
- b. The Declaration does not provide for any payment by the Owners of any assessments or other amounts nor does the Declaration provide for a homeowners association to collect or expend funds for such matters. See generally Declaration recorded in the real property records of El Paso County, Colorado.
- c. 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"). See Def. Initial Disclosures, Para. 2; Answer to Third Party Counterclaim Para. 6. Defendants have also agreed in their Motion for Summary Judgment and Reply to same that this is an undisputed fact.
- d. In the Amendment to Declaration, Article IV - Architectural Approval was deleted in its entirety. See Amendment to Declaration at Article IV. The Amendment to Declaration is duly recorded in the real property records of El Paso County, Colorado.
- e. Neither the Declaration nor the Amendment to Declaration contain an Enforcement section. Nor do either contain provisions for the organization of a governing body such as a homeowner's association, a provision for homeowner's dues for covenant enforcement, or a provision for fines in the event there was a "covenant violation." See generally Declaration and Amendment to Declaration.
- f. The Declarant under the Declaration and the Amendment to Declaration was Melody Homes, Inc.. See Declaration and Amendment to Declaration.
- g. The Amendment to Declaration was in place at the time several of the Plaintiffs purchased real property in Woodmen Hills Filing No. 8 and a Portion of Filing No. 9.  
See Defendants Answer and Counterclaims Para. 13.
- h. The real property records of El Paso County, Colorado indicate that the Declarant sold or transferred the last property in Fling No. 9 to an individual or individuals in September 2003. See Defendants Answer and Counterclaims Para. 13. See also real property records for El Paso County, Colorado.

**Exhibit 2**

- i. The real property records of El Paso County, Colorado indicate that the Declarant sold or transferred the last property in the affected portion of Filing No. 8 to an individual or individuals in April 2006. See Def. Initial Disclosures Para. 3; Answer to Third Party Counterclaims Para. 12. See also real property records for El Paso County, Colorado.
- j. 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 Assignment”). See Def. Answer to Second Amended Complaint at Para. 21.
- k. The Declaration at Article VI. Declarant’s Rights and Reservations, Section I. states that period of Declarant control ends 120 days after the date upon which one hundred percent (100%) of the Lots have been conveyed to Owners other than the Declarant. See Declaration, Article VI.
- l. The D.R. Horton/Melody Assignment was executed after the period of Declarant control had expired as the D.R. Horton/Melody Assignment was executed more than a year after Declarant sold or transferred the last property in Filing No. 8 and nearly four years after Declarant had sold or transferred its last property in the affected portion of Filing No. 9. See Def. Initial Disclosures Para. 4; see also Declaration, D.R. Horton/Melody Assignment and the real property records for El Paso County, Colorado.
- m. 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 Assignment”). See Def. Answer to Second Amended Complaint at Para. 25.
- n. Both the D.R. Horton/Melody Assignment and the Covenant Management Board Assignment were executed well after the period of Declarant control had expired. See Assignments and Declaration.
- o. The Declaration and Amendment to Declaration 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.

See Declaration, Amendment to Declaration and real property records of El Paso County, Colorado.