

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401 Telephone: 303-271-6215	DATE FILED: March 21, 2023 4:49 PM FILING ID: 554429189D703 CASE NUMBER: 2005CV3044
IN RE: THE ORGANIZATION OF FOSSIL RIDGE METROPOLITAN DISTRICT NO. 1, CITY OF LAKEWOOD, JEFFERSON COUNTY, COLORADO	
<i>Attorneys for Fossil Ridge Metropolitan District Nos. 1, 2 and 3</i> Kelley B. Duke, #35168 Benjamin J. Larson, #42540 IRELAND STAPLETON PRYOR & PASCOE, PC 717 17 th Street, Suite 2800 Denver, Colorado 80202 Telephone: (303) 623-2700 Fax No.: (303) 623-2062 E-mail: kduke@irelandstapleton.com blarson@irelandstapleton.com	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case No. 2005 CV 003044 Division: 1
<p style="text-align: center;">DEFENDANT FOSSIL RIDGE METROPOLITAN DISTRICT NO. 1'S RESPONSE TO AMENDED MOTION PURSUANT TO C.R.S. § 32-1-207(3)(a) TO ENJOIN A MATERIAL MODIFICATION TO THE SERVICE PLAN AND ENFORCE MANDATORY OBLIGATIONS OF THE SERVICE PLAN</p>	

Defendant Fossil Ridge Metropolitan District No. 1 (the “Service District”), by and through undersigned counsel, IRELAND STAPLETON PRYOR & PASCOE, PC, hereby files this Response to Solterra, LLC’s Amended Motion Pursuant to C.R.S. § 32-1-207(3)(a) to Enjoin a Material Modification to the Service Plain and Enforce Mandatory Obligations of the Service Plan (“Amended Motion”), stating as follows:

RESPONSE TO CONFERRAL

The initial Motion to Enjoin Material Modification (“Initial Motion”) filed by Solterra, LLC (“Brookfield”)¹ contained numerous misstatements and omissions, which counsel for the Service District addressed in a February 24, 2023 letter to Brookfield’s counsel (attached as **Exhibit 1**). The most concerning issue with the Initial Motion was its glaring omissions. Nowhere did the Initial Motion explain that pursuant to the governing extra-territorial sewer service agreement, *which was negotiated by Brookfield*, Green Mountain Water and Sanitation District (“Green Mountain”)’s obligation to reserve additional capacity for 15 years for future service (“Reserved Capacity Term”) expired on January 15, 2023. Green Mountain has no contractual obligation to extend the Reserved Capacity Term. Therefore, Brookfield’s present situation with Green Mountain is the product of its own making, including Brookfield’s failure to timely finish its development by the expiration of the Reserved Capacity Term. While the Amended Motion corrects certain objective misstatements, it inexplicably continues to leave out critical aspects of the background and falsely contends that the Service District negotiated with Green Mountain to deny sewer service to Brookfield’s unfinished development.

SUMMARY

Brookfield prepared the governing Service Plan (as defined below) for the Service District and Fossil Ridge Metropolitan District Nos. 2 and 3 (the “Financing Districts”, and with the Service District, the “Districts”). Green Mountain is not a party to the Service Plan, which instead

¹ Solterra LLC is the developer and commonly known by its parent company, Brookfield Residential (Colorado) LLC. “Brookfield” is used to avoid confusion with the Solterra community. As noted in the Amended Motion, Solterra LLC was formerly known as Carma Lakewood, LLC. Am. Mot. at 3.

provides that sewer service will be provided by Green Mountain through a separate Intergovernmental Agreement. To that end, in 2008, Brookfield negotiated and caused the Service District to enter into an Intergovernmental Agreement for Extra-Territorial Sewer Service with Green Mountain (as amended in 2014, the “Green Mountain IGA”).

Pursuant to the Green Mountain IGA, Green Mountain has provided—and continues to provide—sanitary sewer service to residential units completed and online prior to the expiration of the Reservation Capacity Term on January 15, 2023. The Green Mountain IGA does not require Green Mountain to extend the Reserved Capacity Term beyond January 15, 2023; rather, Brookfield expressly gave Green Mountain the *option* to extend the Reserved Capacity Term by five years. Brookfield’s failure to negotiate the Districts’ inclusion into Green Mountain’s service territory, combined with the express sunset of the reservation of capacity, left the Service District with its hands tied in negotiating an extension of the Reserved Capacity Term to serve the unfinished portions of Brookfield’s development.

The Service District cannot force Green Mountain to enter into an amended IGA. Nor can it force Green Mountain to extend Reserved Capacity Term beyond the 15 years as set forth in the Green Mountain IGA. Nevertheless, the Service District acted in good faith to negotiate an extension to the Reserved Capacity Term and proposed multiple rounds of draft language to that effect, but Green Mountain’s board rejected the Service District’s requests to extend the Reserved Capacity Term.

The Service District timely informed Brookfield of Green Mountain’s position and invited Brookfield (as the party seeking the sewer service) to negotiate directly with Green Mountain to extend the Reserved Capacity Term in an amended IGA that the Service District would sign, so

long as the existing terms of service to the Districts remained unaffected. Brookfield has since been in direct negotiations with Green Mountain.

Accordingly, the Districts have done nothing to modify the Service Plan, nor have they “denied” sewer service to Brookfield. Rather, Brookfield’s dispute is with Green Mountain, as evidenced by the relief Brookfield seeks, i.e., the issuance of Certificates of Service and tap permits, which only Green Mountain can provide. Accordingly, Brookfield’s options are to file a motion to enforce Green Mountain’s service plan in Green Mountain’s original case number or pursue a civil action against Green Mountain.

STATEMENT OF FACTS

Brookfield Enters into the Green Mountain IGA, Which Includes a 15-Year Term for Reservation of Capacity

1. Brookfield controlled the Districts for the first ten years of their existence because Brookfield owned all the property in the postage-stamp sized “master” Service District and all of the Directors on each of the District Boards were Brookfield representatives. *See* Nov. 13, 2017 Order Re: Appointment Motions, Case No. 05CV3044 (“Appointment Order”), at 1-2. As a result, Brookfield prepared the August 27, 2007 Second Amended and Restated Service Plan (“Service Plan”) that is the subject of the Amended Motion.

2. The Service Plan that Brookfield prepared does not authorize the Districts to be a sanitation service provider; instead, it states that “sanitation services will be provided to the Project by Green Mountain Water and Sanitation District.” Am. Mot, Urban Aff., Ex. A, § I.C(4)(b), p. 12.

3. Green Mountain is not a party to the Service Plan, which contemplates a separate IGA with Green Mountain for the provision of sanitary sewer service. Am. Mot, Urban Aff., Ex. A, § IV.B, p. 16.

4. At the outset of the development and in conformance with the Service Plan, Brookfield undertook negotiations with Green Mountain for the provision of sanitary sewer service to the Solterra community. In September 2007 (after the Service Plan was approved), Green Mountain issued a “will serve letter”, indicating it would provide sewer service to the development “conditioned upon . . . Green Mountain negotiating and entering into a satisfactory Intergovernmental Agreement with [the Service District].” See Sept. 11, 2007 letter from C. Stefl to K. Bear (attached hereto as **Exhibit 2**).

5. Over the next few months, representatives of Brookfield and Green Mountain negotiated the January 15, 2008 Green Mountain IGA, which was subsequently amended in November 2014.² Am. Mot., Urban Aff., Ex. C.

6. The Green Mountain IGA is for “extra-territorial service” and does not require Green Mountain to include any part of the Solterra development into its service territory. Am. Mot., Urban Aff., Ex. C, § 12.2, p. 21. If the entire area within the Districts’ boundaries had been included into Green Mountain’s jurisdictional boundaries, Green Mountain would have been required by law to provide the sewer services to the entire Solterra development. The failure to include the entire Solterra development within Green Mountain left Brookfield subject to the terms of the Green Mountain IGA that Brookfield negotiated.

² The provisions at issue are the same as between the 2008 and 2014 Green Mountain IGAs.

7. Section 2.1 of the Green Mountain IGA requires Green Mountain to accept up to 1,727 equivalent residential units (“EQRs”) of wastewater generated within the Service Area (as defined in the agreement). *Id.* at 4. Section 2.2 provides that Green Mountain will continue to reserve the 1,727 EQRs of capacity to allow Brookfield to finish building out the development, but only for a period of 15 years through January 15, 2023. *Id.* Green Mountain has the option to extend the Reserved Capacity Term but is not required to do so. *Id.* (providing that the parties “may mutually agree, in writing, to extend the period of time such capacity will be reserved by additional 5 year periods”) *Id.*

8. The Financial Plan that Brookfield attached to the Service Plan projected that Brookfield would complete the Solterra development by 2017. Am. Mot., Urban Aff., Ex. A, Financial Plan at Schedule 1 (showing no new residential units constructed after 2017). Thus, at the time Brookfield entered into the Green Mountain IGA, it certainly believed that 15 years was more than sufficient time to complete the development and bring homes onto Green Mountain’s system prior to the expiration of the Reserved Capacity Term.

The Service District’s Efforts to Negotiate an Extension of the Reserved Capacity Term

9. Brookfield is several years behind schedule in building out the development, with another 94 residential units still to be completed. Am. Mot. at 2. Because Green Mountain’s reservation of capacity was set to expire on January 15, 2023, the Service District began negotiating an amendment to the Green Mountain IGA in late summer 2022 to extend the Reserved Capacity Term.

10. To that end, the Service District worked to determine how many additional units Brookfield anticipates developing, so that the extended reservation of capacity limit could be

tailored accordingly.³ The Service District then communicated this figure to Green Mountain. **Exhibit 3**, Oct. 5, 2022 email from K. Duke to D. Woods (advising that Brookfield’s full anticipated buildout is now approximately 1,352 EQRs).

11. After multiple follow ups from the Service District’s counsel, Green Mountain’s counsel circulated a draft amended IGA that would extend the Reserved Capacity Term for another two years. **Exhibit 4**, Nov. 7, 2022 email from D. Woods to K. Duke (attaching draft agreement). Counsel for the Service District responded that Brookfield’s “anticipated build out date is 2026” and proposed a revision to allow the remaining undeveloped homes to be put into service by January 15, 2026. **Exhibit 5**, Nov. 30, 2022 email from K. Duke to D. Woods. Consequently, the Service District was attempting to negotiate an extension of the Reserved Capacity Term *in an effort to help Brookfield*, not negotiating to “deny sewer service to the remaining Solterra development” as Brookfield falsely contends in the Amended Motion. Am. Mot. at 2.

12. Then, on November 30, 2022, without any prior notice or discussion, Green Mountain presented the Service District with a new draft of an amended IGA that differs materially from what the parties had been negotiating. **Exhibit 6**, Nov. 30, 2022 email from D. Woods to K. Duke. This new draft amendment proposed to reserve no additional capacity beyond what is actually in service as of the January 15, 2023 expiration. *See id.* at Draft Second Am. IGA, § 2.1. This draft also created one-year service terms for those units already on Green Mountain’s system, even though the existing Green Mountain IGA has no term on the provision of service for units already being served by Green Mountain. *Id.* Counsel for the Service District then had multiple

³ The number of homes Brookfield now anticipates building out is hundreds less than originally projected at the time the Green Mountain IGA was originally signed.

follow-up communications with Green Mountain’s counsel via phone and email to understand the intent of the new draft. *See, e.g., Exhibit 7*, Dec. 5, 2022 email chain between K. Duke and D. Woods.

13. By the express terms of the Green Mountain IGA, the Service District cannot contractually force Green Mountain to continue to reserve capacity beyond the Reserved Capacity Term outlined in the original Green Mountain IGA. Consequently, the Service District’s counsel inquired as to whether Green Mountain had made promises to Brookfield (via certificates of availability or otherwise) that might require Green Mountain to continue reserving capacity beyond the Reserved Capacity Term for Brookfield’s unfinished development. *See, e.g., Exhibit 8*, Dec. 9, 2022 email chain between K. Duke and Dylan Woods.

14. When it became clear that Green Mountain would not deviate from its position, the Service District’s counsel immediately informed Brookfield’s counsel of the situation. **Exhibit 9**, Dec. 9, 2022 email from K. Duke to N. Arney. The Service District made clear to Brookfield on multiple occasions that, as the party seeking service, it should negotiate directly with Green Mountain regarding extending the Reserved Capacity Term. *See, e.g., Exhibit 10*, Dec. 20, 2022 email from K. Duke to N. Arney (advising that the “Service District does not want me acting as middle man between Brookfield and Green Mountain, but has no problem with [Brookfield] proposing alternate language.”).

15. During this time, Green Mountain’s board held a meeting on December 13, 2022, to discuss an amended Green Mountain IGA. No Brookfield representatives attended.⁴ Green

⁴ *See generally* video of board meeting (commencing at approximately 2:06 mark), *available at* <https://www.youtube.com/watch?v=1Afvrsp3dpQ>.

Mountain’s board reiterated that Green Mountain would not continue reserving additional capacity beyond January 15, 2023. *Id.*

16. Brookfield’s characterization of statements by one of the Service District’s board members at that meeting as somehow influencing Green Mountain’s position on reserved capacity is out of context and wrong. First, that meeting occurred *after* Green Mountain had already taken the position not to extend the reservation of capacity in its latest draft amendment to the Green Mountain IGA. The video of the board meeting also makes clear that the position of Green Mountain’s board on reserved capacity is its own and stems from how long it has taken Brookfield to build out its development—well past any obligation Green Mountain has to continue reserving capacity under the Green Mountain IGA.⁵ In fact, the District board members in attendance made clear that Brookfield is in the process of ongoing development and specifically invited Green Mountain’s board to reach out to Brookfield to get information regarding Brookfield’s EQR expectations for its remaining buildout.⁶

17. Thus, Brookfield’s attempt to blame the Districts for Green Mountain’s position is baseless. *See Exhibit 11*, Dec. 30, 2022 Letter from K. Duke to N. Arney (disputing Brookfield’s revisionist history and reconfirming that “if Brookfield is able to negotiate language acceptable to it regarding reservation of EQRs with GMWSD, the FRMD Board will review and consider that language, and likely accept it, *particularly given that is what FRMD originally proposed*”).

18. Brookfield accepted the Districts’ invitation to negotiate with Green Mountain directly and had multiple communications with Green Mountain at the end of December and

⁵ See <https://www.youtube.com/watch?v=1Afvrsp3dpQ> (commencing at approximately 2:06 mark).

⁶ See *id.* (commencing at approximately 2:17:20 mark).

beginning of January 2023. *See, e.g.*, **Exhibit 12**, Jan. 9, 2023 email chain between N. Arney and D. Woods. In early January, Brookfield also submitted requests for 87 Certificates of Service and tendered a Tap Fee Check (both as defined in the Amended Motion) *to Green Mountain* for sewer service for remaining undeveloped filings. Am. Mot. at 10. These requests and payments were not tendered to the Districts because, as Brookfield knows, the District is not a sanitary sewer service provider, it simply pays Green Mountain to maintain the infrastructure within the Solterra development necessary to receive the sanitary sewer services from Green Mountain. *See id.* at 6, 10.

19. During this same timeframe, the Service District objected to Green Mountain’s attempt to insert a service term for units already on Green Mountain’s system because the existing Green Mountain IGA contains no such term. **Exhibit 13**, Jan. 11, 2023 email chain between K. Duke and D. Woods. Green Mountain agreed, advising that “[s]ervice to those units online as of January 15, 2023 will continue according to the terms of the Amended and Restated IGA after that date, although the obligation to reserve additional capacity will sunset at that time.” *Id.* Thus, the Green Mountain IGA remains unchanged and in full force and effect.

ARGUMENT

I. There Has Been No Material Modification of the Service Plan Because the Districts Have Not Taken Any Action to Deny Brookfield Sewer Service; Rather, the Green Mountain IGA Is in Full Force and Effect.

The Service Plan provides that Green Mountain will provide sanitary sewer service to the development pursuant to an IGA with the Service District. Statement of Facts (“SoF”) ¶¶ 2-3. In conformance with that requirement, the Service District coordinated Green Mountain’s provision of sewer service through the Green Mountain IGA, which Brookfield negotiated and put in place.

SoF ¶¶ 4-5. The Green Mountain IGA remains in full force and effect, with Green Mountain continuing to provide sewer service pursuant to its terms. SoF ¶ 19. Nothing further is required of the Service District under the Service Plan.

Contrary to Brookfield’s claims, the Districts have never negotiated to alter the Green Mountain IGA or take any other action to “deny” sewer service to Brookfield. SoF ¶ 11. In fact, the Districts have no ability to “deny” sewer service to Brookfield because they do not provide the service in the first place. SoF ¶ 2. Consequently, there is nothing for this Court to enjoin. Am. Mot. at 15 (seeking to “enjoin” the Districts from purportedly modifying the Service Plan by “denying sanitary sewer service” to Brookfield).

To the extent Brookfield contends that the Service District must somehow “coordinate” with Green Mountain to extend the Reserved Capacity Term or otherwise force Green Mountain to serve Filings 18, 20, and 21, the Service District has no contractual or legal authority to do so under the Green Mountain IGA. Brookfield negotiated the 15-year term for reserved capacity, which, unfortunately, does not obligate Green Mountain to extend the term in the event Brookfield failed to timely finish its development. SoF ¶¶ 4-8.

In short, the Districts have not done anything to modify the Service Plan and the Motion should be denied.

II. The Relief Brookfield Seeks Is Against Green Mountain, Which Is Not a Party to the Service Plan or this Proceeding; Thus, the Motion Is Procedurally Improper.

Brookfield purports to be moving to enjoin a material modification of the *Districts’* Service Plan. However, because the Districts do not provide sanitary sewer service, the relief Brookfield seeks is actually against Green Mountain. SoF ¶ 18. Specifically, Brookfield asks the Court to issue an order requiring Green Mountain to issue 87 Certificates of Service and sewer tap permits

based on the Tap Fee Check tendered to Green Mountain. *See* Am. Mot. at 15. Green Mountain is not a party to the Service Plan and, as such, is not a named party in the organizational docket for the Service District.

The Districts are not aware of any authority that allows Brookfield to enforce another special district's service plan against Green Mountain under C.R.S. 32-1-107(3)(a). Brookfield cites to *Plains Metro. Dist. v. Ken-Caryl Ranch Metro. Dist.*, 250 P.3d 697 (Colo. App. 2010) in support of its position that the Court can issue a "mandatory injunction" requiring Green Mountain to issue the Certificates of Service and tap permits. Am. Mot. at 14. However, in *Plains*, the obligation to be enforced against Plains Metropolitan District (i.e., building recreational facilities) was found *in its own* service Plan. *Plains*, 250 P.3d at 700; *see also* C.R.S. § 32-1-107(3)(a) (providing for a motion to enjoin material modification of "*such* special district" that is the subject of the service plan) (emphasis added).

To the extent Brookfield is asking the Court to order the Districts to provide sanitary sewer service, such relief is impossible because the Districts cannot provide the sanitary sewer services, only Green Mountain can do that. The District can only do what they have done, construct infrastructure within the Solterra development that is necessary to receive the sanitary sewer service from Green Mountain. *See* Am. Mot. at 15 (requesting that "they"—presumably including the "Districts"—be required to provide Certificates of Service and tap permits); *see* SoF ¶ 2. Not only would the Districts' provision of sanitary sewer services not be "practicable" as required by C.R.S. § 32-1-207(1), it would also be impossible.

Brookfield tries to gloss over the fact that the Districts cannot actually provide sanitary sewer service by repeatedly and incorrectly treating the Districts and Green Mountain as one and

the same. *See, e.g.*, Am. Mot. at 2, 14 (falsely contending that Green Mountain *and the Districts* are “denying” sewer service); *id.* at 13 (incorrectly contending that *Green Mountain’s* refusal to provide additional sewer service would be a decrease in the services offered *by the Districts* under the Service Plan). Green Mountain is a separate public entity with its own independent resident-elected board and its own service plan. The Districts have no control over Green Mountain and its board.

If Brookfield believes that Green Mountain’s service plan requires Green Mountain to provide extra-territorial service to Brookfield’s unfinished development, Brookfield should move to enforce that plan. Alternatively, Brookfield’s remedy is to file a civil action against Green Mountain if Brookfield believes it has enforceable rights under the Green Mountain IGA or based on any other promises Green Mountain has made to Brookfield. The Amended Motion seeking to enforce the Service District’s Service Plan against Green Mountain is a procedural end-around these proper channels and should be denied.

III. Even If the Districts’ Service Plan Could Somehow Be Enforced Against Green Mountain, Green Mountain Is a Non-Joined Indispensable Party.

Counsel for the Districts conferred with Brookfield’s counsel regarding the fact that Green Mountain’s absence from this proceeding is another basis for denying the Amended Motion pursuant to C.R.C.P. 19(b). **Exhibit 14**, Mar. 3, 2023 email chain between K. Duke and N. Arney. Brookfield brushed aside this fundamental problem with the Amended Motion, stating that Green Mountain should just “appear” in this proceeding to which it is not a party. *Id.* To date, Green Mountain has not appeared, and Brookfield has not moved to join it.

C.R.C.P. 19(a) provides that a party is necessary to a proceeding if: “(1) In his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating

to the subject of the action and is so situated that the disposition of the action in his absence may: (A) As a practical matter impair or impede his ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.”

Here, Green Mountain is a necessary party to this proceeding because Brookfield seeks an order requiring Green Mountain to issue Certificates of Service and tap permits. Am. Mot. at 15. Thus, Green Mountain’s presence as a party is necessary to accord *any* relief, let alone complete relief. Further, Green Mountain certainly has an interest in a proceeding in which Brookfield is demanding that Green Mountain be ordered to provide extra-territorial service.

Because Green Mountain is a necessary party, the Motion should be denied because Green Mountain is also an indispensable party that cannot be joined. *Hidden Lake Dev. Co. v. Dist. Court In & For Adams Cnty.*, 515 P.2d 632, 635 (Colo. 1973) (dismissal of proceeding is proper for failure to join indispensable party). “[A] judgment which adversely affects an indispensable party who is not joined is void.” *Id.* Factors to determine if a party is indispensable include: “First, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.” C.R.C.P. 19(b).

Here, Green Mountain is also an indispensable party because an order issued in Green Mountain’s absence requiring it to provide extra-territorial sewer service would be extremely prejudicial to Green Mountain. *Lyon v. Amoco Prod. Co.*, 923 P.2d 350, 357 (Colo. App. 1996)

(considering prejudice to non-joined party in dismissing action). Additionally, any order requiring the provision of sewer service that is effective only as to the Districts (and not Green Mountain) would be extremely prejudicial to the Districts because they cannot be a sanitary sewer service provider like Green Mountain. *Id.* (considering prejudice to those already parties to the action in dismissing action). Further, the Court cannot reshape Brookfield's requested relief to decrease the resulting prejudice in Green Mountain's absence because only Green Mountain can provide the requested sewer service, including issuing the Certificates of Service and tap permits. *Id.* Brookfield's failure and refusal to join Green Mountain is yet another reason the Amended Motion should be denied.

CONCLUSION

The Service District is hopeful that Brookfield and Green Mountain can reach a resolution of their differences such that Green Mountain will provide sanitary sewer service to Brookfield's Filings 18, 20, and 21. However, that is a dispute that must be worked out between those parties, not through a misguided attempt to enforce the Districts' Service Plan. Accordingly, the Service District respectfully requests that this Court deny Brookfield's Motion. The Service Districts plans to seek its attorneys' fees and costs in connection with responding to the Amended Motion.

DATED: March 21, 2023

IRELAND STAPLETON PRYOR & PASCOE, PC

/s/ Kelley B. Duke

Kelley B. Duke, #35168

Benjamin J. Larson, #42540

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2023, a true and correct copy of the foregoing **DEFENDANT FOSSIL RIDGE METROPOLITAN DISTRICT NO. 1'S RESPONSE TO AMENDED MOTION PURSUANT TO C.R.S. § 32-1-207(3)(A) TO ENJOIN A MATERIAL MODIFICATION TO THE SERVICE PLAN AND ENFORCE MANDATORY OBLIGATIONS OF THE SERVICE PLAN** was filed and served via CCEF on all counsel of record.

/s/ Dawn A. Brazier

Dawn A. Brazier