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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

POWER RANCH COMMUNITY  
ASSOCIATION, an Arizona  
non-profit corporation,

Plaintiff,

v

WOODCREST EAST, LLC, an  
Arizona limited liability  
company; WOODCREST VILLAGE  
EAST CONDOMINIUM ASSOCIATION,  
an Arizona non-profit  
corporation,

Defendants.

~~~~~

Case No.

CV2023-000397

DEPOSITION OF

KARL NATHAN HUIISH

February 20, 2024

1:00 p.m.

Carpenter Hazlewood Delgado & Bolen LLP  
1400 East Southern Avenue  
Suite 400  
Tempe, Arizona 85282-5691

Ernie J. Ambort, Jr., RPR, CM  
Arizona CSR-50731  
Esquire Assignment No. J10815366

1 WOODCREST EAST LLC, an  
2 Arizona limited liability  
company,

3 Counter-Claimant  
4 v

5 POWER RANCH COMMUNITY  
6 ASSOCIATION, an Arizona  
non-profit corporation,

7 Counter-Defendant.  
8 ~~~~~

9 THE DEPOSITION OF KARL NATHAN HUIISH, noticed  
10 by Scott Carpenter, was taken on February 20, 2024,  
11 from 1:00 p.m. to 4:59 p.m. at the Law Offices of  
12 Carpenter Hazlewood, Delgado & Bolen LLP, 1400 East  
13 Southern Avenue, Suite 1400, Tempe, Arizona  
14 85282-5691 before Ernie J. Ambort, Jr., Arizona  
15 certified reporter No. 50731.

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DEPOSITION OF KARL NATHAN HUIISH

February 20, 2024

KARL NATHAN HUIISH,  
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. von JOHNSON:

Q. Good afternoon, Karl.

If you would please state and spell your name for the record.

A. Karl Nathan Huish, K-a-r-l N-a-t-h-a-n H-u-i-s-h.

Q. Before I dig into the questions I have for the case, I have a -- a whole bunch of preliminary things to go over with you regarding depositions generally.

First and foremost, can you tell me if you have gone by any other names or aliases?

A. No.

Q. For the deposition, there are some general ground rules that we need to follow, the first one being that we can only talk one at a time because our court reporter is writing down everything that we say. If we talk at the same time, then words may get missed and we get yelled at by the court reporter.



1                   The second ground rule is I need audible  
2 responses. So the court reporter cannot take down a  
3 head nod or a tilt or an "uh-huh," "nah."

4           A. (Witness moving head up and down).

5           Q. So if at any time you respond like you just  
6 did where you just nodded your head and I need a  
7 verbal answer, I may just ask you to verbalize the  
8 answer.

9                   Does that make sense?

10          A. Yes.

11          Q. If you need to take a break at any time, let  
12 me know. I am more than happy to accommodate any  
13 breaks that you need. I am not expecting this  
14 deposition to take very long, but if for whatever  
15 reason in the middle of it you need to go to the  
16 bathroom, get a drink, or whatever, just let me know.  
17 We will pause the deposition.

18                   We have coffee and water over there. The  
19 bathroom is right through there. So if you need  
20 anything, don't hesitate to verbalized that. We will  
21 make sure you are taken care of.

22          A. Thank you.

23          Q. Throughout the questioning, I am going to be  
24 asking several questions, and your attorney is very  
25 likely going to be objecting. This is a situation

1 where you may try to answer while your attorney is in  
2 the middle of an objection. I just ask that you let  
3 your attorney make his objection, and then we will  
4 deal with the answer after that. That is another  
5 situation of multiple people verbalizing at the same  
6 time.

7 If you do not understand any of my  
8 questions or you need me to rephrase a question in  
9 any way, please let me know. I would rather you  
10 verbalize that you do not understand than try to  
11 answer a question that you are confused about.

12 On the same side of that issue, if you do  
13 answer a question, I am going to assume that you  
14 understood the question and formulated an answer to  
15 the question that was asked.

16 Does that make sense?

17 A. Yes.

18 Q. Is there any medical reason that would affect  
19 your ability to give coherent responses to the  
20 question?

21 A. No.

22 Q. Are you under the influence of any drug or  
23 medication that would impact your ability to -- to  
24 answer the questions?

25 A. No.

1 Q. Is there any other reason that you are unable  
2 to give accurate or truthful testimony?

3 A. No.

4 Q. Okay. At the beginning of the deposition,  
5 you were sworn in by the court reporter, which means  
6 you are now under oath to tell the truth, and that  
7 this testimony may be used in a court of law if this  
8 matter goes to trial.

9 Do you understand that?

10 A. Yes.

11 Q. All right. That gets through my preliminary  
12 questions. We can dig into more substantive  
13 questions.

14 Before we get into the questioning, I  
15 would like to establish a common understanding of the  
16 property that we are talking about in this case. I  
17 am going to refer to it as Woodcrest East.

18 Do you understand what property I mean  
19 when I say Woodcrest East?

20 A. Yes.

21 Q. For purposes of the record, I am going to  
22 refer to a deed dated the 6th day of May, 2019, from  
23 Power Ranch Recovery Acquisition, LLC, as grantor to  
24 Woodcrest East LLC, as grantee.

25 MR. VON JOHNSON: Let me get a copy for

1 everyone.

2 Since we don't have multiple people  
3 around the table, I am just going to pull -- not from  
4 these, I am just going to pull from these.

5 THE WITNESS: Okay.

6 Q. (By Mr. von Johnson) This is just the 2019  
7 deed to the property.

8 Karl, go ahead and look at that deed. Is  
9 this a deed to the property that we are collectively  
10 referring to as "Woodcrest East"?

11 A. Yes.

12 Q. Okay.

13 MR. VON JOHNSON: I am going to mark  
14 Exhibit 1 for our purposes. It says "Exhibit 5" on  
15 the cover page.

16 (At this time, Plaintiff's Exhibit No. 1  
17 was marked for identification by the court reporter).

18 Q. (By Mr. von Johnson) Karl, you do not need  
19 to hold onto that anymore. We can just set that  
20 aside.

21 MR. VON JOHNSON: Robert, do you want to  
22 keep yours?

23 MR. CONNELLY: Sure.

24 MR. VON JOHNSON: And, Robert, would you  
25 prefer me to mark it with the Exhibit 5 on the front

1 because that's how I gave it?

2 MR. CONNELLY: Sure. That's fine.

3 MR. VON JOHNSON: Okay. I am just going  
4 to mark this one Exhibit 1.

5 Where would you like these?

6 THE COURT REPORTER: Just set them in  
7 front of the witness and I will get them when we get  
8 through. I will take them with me, if that's okay.

9 Q. (By Mr. von Johnson) All right. So the  
10 purpose of that exhibit was just to establish a  
11 common understanding that that's the property I am  
12 talking about when I say Woodcrest East.

13 Does that make sense?

14 A. Yes.

15 Q. Now, I would like to just get some  
16 clarification on the people I call the players in the  
17 case, who are these people, what's their role.

18 So I have a -- just a list of people that  
19 have been referenced in the case. I am hoping that  
20 you can shed some light on who these people are, what  
21 their role is, for what companies, things like that.

22 So, first and foremost, is you, Karl  
23 Huish. What is your role within Woodcrest East LLC?

24 A. My entity, Katy L Investments LLC, is the  
25 100% member of Woodcrest East LLC, and I am the

1 manager of Katy L Investments.

2 Q. All right. I have got Katy L Investments  
3 further down the line. I will ask you about that in  
4 a minute.

5 Who is Hudd Hassell, H-u-d H-a-s-s-e-l-l?

6 A. Mr. Hassell is part of Bela Flor Communities,  
7 which is a development company.

8 Q. Do you have any business relationship with  
9 Hudd Hassell , or any of his business entities?

10 A. Yes.

11 Q. And let me clarify for the record. It's a  
12 30(b)(6) deposition of Woodcrest East, the entity.  
13 So when I say you, I am referring to the entity  
14 Woodcrest East LLC. If I have a question about Karl  
15 Huish's personal knowledge of something separate from  
16 a representation of Woodcrest East LLC, I will  
17 clarify that.

18 So -- so let me ask the question again.

19 So do you have a business relationship  
20 with Hudd Hassell in any capacity, you being  
21 Woodcrest East LLC?

22 A. Yes.

23 Q. Can you explain that relationship.

24 A. Yes.

25 Bela Flor Communities LLC is a

1 development company. Hudd and I are partners in that  
2 company. And we have a number of real estate  
3 development projects, each of which is in a separate  
4 legal entity, and one of which is Woodcrest East LLC.

5 Q. So tell me if I'm -- I am categorizing this  
6 correctly.

7 You are the member of Katy L Investments  
8 LLC that owns Woodcrest East LLC, and then you and --  
9 and Hudd also are partners in Bela Flor Communities  
10 LLC?

11 A. Yes.

12 Q. And you use Bela Flor Communities LLC to  
13 develop properties owned by other entities like  
14 Woodcrest East LLC?

15 A. Yes.

16 Q. Okay. And you hold those other entities --  
17 but you hold real estate in multiple LLCs that Bela  
18 Flor is developing?

19 A. Yes.

20 Q. Are there any other ownership interests in  
21 Katy L Investments LLC?

22 A. Katy L Investments LLC is an Arizona LLC,  
23 which is owned by Katy L Investments Nevis LLC,  
24 which, in turn, is 100% owned by me.

25 Q. Okay. So there is another -- there is

1 another entity in there -- from my description, there  
2 was another entity in there, and you said it was  
3 Katy L Investments Nevis?

4 A. Yes.

5 THE COURT REPORTER: Could you spell  
6 Nevis?

7 THE WITNESS: Nevis is N-e-v-i-s.

8 Q. (By Mr. von Johnson) Can you explain to me  
9 the difference between Bela Flor Communities LLC and  
10 Bela Flor Enterprises LLC? Are those separate  
11 entities or is -- or is that referring to the same  
12 entity and people may just not know what the legal  
13 entity? I have seen both of those names in the  
14 documents.

15 Can you explain to me, are they different  
16 entities and who the ownership is of those, if they  
17 are different?

18 A. Yes, they are different entities, separate  
19 and distinct. Bela Flor Communities LLC is our  
20 general contracting entity that holds general  
21 contractor licenses for us to do development, and  
22 Bela Flor Enterprises is used for different purposes.

23 Q. Is Bela Flor Enterprises LLC a partnership  
24 between you and Hudd, you being Karl Huish?

25 A. I am the member of -- I am the 100% member of



1 Bela Flor Communities and Bela Flor Enterprises.  
2 Hudd Hassell is an employee of Bela Flor Communities,  
3 period. Hudd and I are partners in the sense that we  
4 make decisions together and participate in the  
5 potential profits of any project.

6 Q. Does Hudd -- Hudd Hassell -- I will say him  
7 because there is a comma after the name Hudd; I don't  
8 want to confuse the two -- does Hudd Hassell have the  
9 authority to speak on behalf of Woodcrest East LLC?

10 A. Hudd Hassell is the president of Bela Flor  
11 Communities LLC. As part of his role there, he will  
12 work on behalf of various different legal entities  
13 that we have, but he is not a member of Woodcrest  
14 East LLC.

15 Q. So if Hudd, let's say emails -- Hudd Hassell  
16 emails a third party and -- and makes a  
17 representation in that email, is that a  
18 representation that can be attributed to Woodcrest  
19 East LLC or is that a representation that does not  
20 have the authority or backing of Woodcrest East LLC?

21 A. I guess it depends on what representation he  
22 is making. I don't know if I can answer that  
23 categorically.

24 Q. That's fair.

25 So we will get to some emails. I think

1 that will clarify things a little bit more.

2 My question is primarily when Hudd is --  
3 Hudd Hassell is emailing various other individuals  
4 involved in this litigation, say the town of Gilbert,  
5 or Maricopa County, or representatives of Power Ranch  
6 regarding plans or the development of Woodcrest East,  
7 is that -- can that be attributed to Woodcrest East  
8 LLC's representations as a entity?

9 A. It certainly would be done in furtherance of  
10 Bella Flor Community's development efforts to develop  
11 one of our projects, which would include Woodcrest  
12 East. I don't think you would have the power to bind  
13 Woodcrest East, but he is acting as an agent to  
14 further the interests of Bela Flor Communities and of  
15 various entities that we have.

16 Q. And would Bela Flor Communities LLC be acting  
17 as an agent of Woodcrest East LLC in the development  
18 of Woodcrest East, the property?

19 A. I don't know if it's a legal agent in the  
20 sense of principal/agency relationships, but it's a  
21 really common arrangement in development where a  
22 general contractor is acting as a general contractor.  
23 And general contractors need to do a variety of  
24 things like process plans, hire subcontractors, do  
25 development work, work with municipalities and

1 others.

2           There are a broad range of things that a  
3 general contractor could do, so I don't want to give  
4 a legal answer in terms of who is the principal and  
5 who is the agent--

6           Q. Sure.

7           A. --and what that is, but a general contractor  
8 does act on behalf of various principals in a number  
9 of capacities, and that is quite common.

10          Q. So would it be fair to say Bela Flor  
11 Communities LLC was the general contractor for  
12 Woodcrest East LLC on the Woodcrest East property?

13          A. Subsequent to the May, 2019, deed, yes.

14          Q. That's fair.

15                 Okay. Is it fair to say then any -- let  
16 me -- let me back up.

17                 Does Bela Flor Communities LLC have any  
18 other employees other than Hudd Hassell?

19          A. Yes. We have approximately ...

20          Q. Go ahead.

21          A. We have approximately 38 employees.

22          Q. The reason why I am asking is there's some  
23 correspondence where Bela Flor is signing at the end  
24 of either a document or an email, and it's not Hudd  
25 Hassell. And I assume that that is an employee of

1 Bela Flor other than Hudd that's operating as the  
2 general contractor in these communications.

3 Is that a fair assumption? If -- if a  
4 communication is coming from Bela Flor that it's --  
5 it's regarding general contractor duties on Woodcrest  
6 East?

7 MR. CONNELLY: Form.

8 A. Yes.

9 Q. (By Mr. von Johnson) Who is Dave Mazza  
10 (phonetic), M-a-z-a?

11 A. Dave Maza--

12 Q. Maza.

13 A. --if you don't mind me with our  
14 pronunciation, is our vice-president of construction  
15 at Bela Flor Communities.

16 Q. An example of somebody that may have been in  
17 correspondence, signing on behalf of Bela Flor, and  
18 so is that fair to say that Dave would be performing  
19 general contractor duties if he appears in  
20 correspondence regarding Woodcrest East?

21 A. Generally speaking, yes.

22 Q. Does Bela Flor Enterprises LLC have any  
23 employees?

24 A. No.

25 Q. All right. What about Pew & Lake, PLC?

1                   Who -- who is that entity?

2           A.   That is a law firm.

3           Q.   And do any of the entities that we have  
4 discussed so far have a contractual relationship with  
5 that law firm?

6           A.   Yes.   Bela Flor Communities has retained Pew  
7 & Lake.

8           Q.   Does Pew & Lake represent Woodcrest East LLC  
9 or do they just represent just Bela Flor Communities  
10 LLC?

11          A.   I think it's fair to say that they also  
12 represent Woodcrest East LLC in certain items.

13          Q.   Can you elaborate on that?

14          A.   Yes.   For example, if we are filing a  
15 pre-application with the town of Gilbert for  
16 Woodcrest East, then Pew & Lake could, and, in fact,  
17 did represent us in preparing and filing that  
18 pre-application.

19          Q.   So is it fair to say then that the  
20 communications that Pew & Lake attorneys were having  
21 with the town of Gilbert officials regarding a  
22 pre-application of the Woodcrest East development  
23 project were representations of Woodcrest East LLC?

24          A.   They are in furtherance of the objectives of  
25 Woodcrest East LLC.   That's what would be fair to

1 say.

2 Q. And they were acting as attorneys for  
3 Woodcrest East LLC in that application process?

4 A. Yes.

5 Q. And who is Reese Anderson?

6 A. He is an attorney who works at Pew & Lake  
7 PLC.

8 Q. And does Reese Anderson represent Bela Flor  
9 Communities LLC and Woodcrest East LLC in certain  
10 situations that you have just described, Reese  
11 Anderson is the attorney that was representing those  
12 two entities, is that correct?

13 A. Yes.

14 Q. What about Jon Gillespie, who is he?

15 A. Jon Gillespie was an attorney at Pew & Lake  
16 PLC.

17 Q. And did Jon also represent Bela Flor  
18 Communities LLC and Woodcrest East LLC at Pew & Lake,  
19 the law firm?

20 A. Yes.

21 Q. That's a mouthful saying the entire entity  
22 names. I just want to make sure that we get it  
23 correct.

24 Before I move on, I'd like to touch on --  
25 on that attorney/client relationship with the

1 corporate entities.

2 Who served as the point of contact  
3 between Woodcrest East LLC and the Pew & Lake  
4 attorneys?

5 A. It depends on the issue, and it can vary.  
6 Sometimes that would be me, and other times that  
7 would be Hudd Hassell, and I guess at other times  
8 Reese Anderson could reach out to others within the  
9 Bela Flor organization, so there isn't a set answer  
10 to that question.

11 Q. Can you explain the different circumstances  
12 where, say, you would be the main point of contact  
13 versus Hudd Hassell, what were those circumstances  
14 that dictate who -- who would communicate with the --  
15 with the attorneys?

16 A. I will do my best. It is more free flowing  
17 than anything else. It doesn't always follow a  
18 simple pattern.

19 But I will give you an example: If it's  
20 something such as a purchase and sell agreement of  
21 real estate, generally I would be the contact. If  
22 it's something concerning an entitlement issue, then  
23 Hudd Hassell would generally be the contact.

24 Q. What do you mean an entitlement issue?

25 A. So an entitlement issue would involve things

1 like I described with the pre-application process for  
2 the town of Gilbert.

3 In a pre-applicant, you are letting the  
4 town know that you intend to develop and giving them  
5 some type of notice about the request that you have  
6 and seeing what their feedback is.

7 So generally in those types of things,  
8 Hudd would be the main point of contact, but often it  
9 is both of us.

10 Q. I think I am understanding.

11 So in this pre-application process, if  
12 the town of Gilbert would send back comments or notes  
13 of issues with the plans, then very likely Hudd would  
14 be the one coordinating with either Reese or Jon,  
15 Reese Anderson or Jon Gillespie, in forming that  
16 response back to Gilbert, the town of Gilbert, is  
17 that fair?

18 A. Yes. Often, it would be Hudd. There is  
19 another important party here, and that's your civil  
20 engineers, because your civil engineers are heavily  
21 involved in that process. So you have got the  
22 developer, Bela Flor Communities; you have the law  
23 firm, in this case Pew & Lake; you have the civil  
24 engineers, EPS; at times there could be other  
25 consultants involved.



1                   So there is a lot of communication  
2 streams going on in a pre-application process which  
3 is very exploratory, by nature. You are asking for  
4 -- for things that some -- some that you need to  
5 have, and some that would be nice to have, but you  
6 don't know what the town of Gilbert is going to say,  
7 or some other governing body, until you ask and  
8 explore and discuss.

9                   And so it is meant to be the nature of  
10 something where you are opening the door to a  
11 conversation and to a discussion.

12           Q. It's a big project, lots of moving parts?

13           A. (Witness moving head up and down).

14           Q. That's what part of the purpose of my  
15 deposition here today is is to try to figure out  
16 where these moving parts all fit together.

17                   So if I do mischaracterize at any time,  
18 let me know. I truly am trying to figure out who  
19 these players are in this development.

20                   What about Phyllis Parise, P-a-r-i-s-e?

21                   Who is that?

22           A. Phyllis Parise--

23           Q. Parise.

24                   Thank you.

25           A. --is an attorney. I believe she's at her own

1 firm, named Phyllis Parise. I am not positive on  
2 that.

3 And she is an attorney that specializes  
4 in homeowners' associations and CC&Rs, and those  
5 types of documents.

6 We have retained Phyllis -- just to cut  
7 to the chase, we, meaning Bela Flor and Woodcrest  
8 East, have retained Phyllis from time to time to  
9 assist us in that area of her specialization.

10 Q. Now, you mentioned earlier EPS Group, Inc. I  
11 added the, "Inc.", but you said EPS Group was your  
12 engineers?

13 A. (Witness moving head up and down).

14 Q. Can you explain to me their involvement in  
15 the development of Woodcrest East.

16 A. So Woodcrest East started way back in 2005  
17 when it was zoned as multi-family. I believe it was  
18 an R-3 designation, which later it may have been  
19 adjusted administratively to an MF-M, a multifamily  
20 medium density designation, which it retains today.

21 Back in 2005 through 2008, substantial  
22 work was done on Woodcrest East in what we would term  
23 land development. Land development includes things  
24 such as water, sewer, storm drain, curb and gutter,  
25 roads, asphalt, all of the things that happen below

1 the ground, just to give a simple explanation there.

2 Then in 2008, we had a real estate  
3 recession, the big recession. And Woodcrest East sat  
4 dormant for 11 years until we purchased it in 2019.  
5 We then retained EPS Group, Inc., I will just refer  
6 to them as EPS, as a engineering firm.

7 They are independent. We don't own them.  
8 We don't control them. And they are not the only  
9 engineering firm that we use.

10 But we retained them to assist and help  
11 us with what we would term a busted project. Do the  
12 water pipes still work? Does the sewer still work?  
13 What are all of the issues and problems that we are  
14 going to have with this project that was built years  
15 ago?

16 So EPS would assist on things like that,  
17 so that's -- that's what a civil engineer would do,  
18 by example.

19 Q. Oh, I have several names from EPS Group:  
20 Brian Nicholls, does he ring a bell?

21 A. Yes.

22 Q. And what was Brian assisting with in his  
23 capacity at EPS?

24 A. So Brian Nicholls is a senior manager at EPS.  
25 I don't know if that's his exact title, but that's

1 how I see him.

2 And so he is generally the liaison or  
3 communications point between Bela Flor and EPS. And  
4 so he will help with the strategic thinking, the  
5 decisionmaking, and then he will give direction to  
6 several other engineers, of which I don't think I  
7 will know any of them.

8 In terms of doing the actual work,  
9 preparing plans, working up engineering drawings and  
10 submittals that would then funnel back through Brian  
11 Nicholls, come to Bela Flor, be associated with Pew  
12 & Lake in this conversation that is taking place, and  
13 eventually, perhaps, submitted somewhere.

14 Q. Rewinding the deposition back to Bela Flor  
15 and Woodcrest East LLC, the two entities, Woodcrest  
16 East LLC being the owner, Bela Flor being the general  
17 contractor, let's say, you -- you just testified that  
18 EPS Group would -- this Brian Nicholls at EPS Group  
19 is the liaison between Bela Flor and EPS.

20 Is that because Bela Flor is the general  
21 contractor handling the development construction  
22 project? Sorry. I will end the question there. It  
23 was a very long question.

24 MR. CONNELLY: Form.

25 A. Yes.

1                   But, if I may, Bela Flor Communities is  
2 the general contractor for the Woodcrest East  
3 development project.

4           Q. (By Mr. von Johnson) Did EPS have  
5 communications with Woodcrest East LLC or did EPS  
6 exclusively communicate with Bela Flor?

7           A. Well, entities are people, I guess, unless  
8 you are Mitt Romney, and so EPS is going to  
9 communicate with a human being, and that human being  
10 is going to be Hudd Hassell; it could be myself; it  
11 could be Dave Maza, you mentioned earlier, or someone  
12 else.

13                   And, really, I think from EPS's  
14 perspective -- and this is just a guess -- they see  
15 this as working with Bela Flor on a project that  
16 happens to be owned by a separate LLC. I think  
17 that's how they would see it.

18           Q. Who -- who is Ted Protonentis,  
19 P-r-o-t-o-n-e-n-t-i-s?

20           A. I don't know. I am sorry.

21           Q. That's okay.

22           A. I will do my best.

23                   If you have a company, or something, I  
24 can venture to help, but I don't know that name.

25           Q. He is at EPS Group, and we will very likely

1 see some emails from him that may jog your memory.

2 I just -- I am curious about who these  
3 people are. That's fine if you don't know them  
4 personally.

5 The same question, Chelsea Hughes--

6 A. I don't know.

7 Q. --H-u-g-h-e-s, another EPS, I assume,  
8 employee?

9 It sounds like you have not had any  
10 contact directly with Chelsea?

11 A. I have not, to my knowledge.

12 Q. Okay. We are almost done with the players.

13 Robert Johnston is another EPS -- just so  
14 I can get a verbalization, you are not -- you don't  
15 know who Robert Johnston is, correct?

16 A. To my recollection, I don't know Robert  
17 Johnston from EPS. That is kind of a common name. I  
18 am sure I have met a Robert Johnston at some point in  
19 my life.

20 Q. What about Power Ranch Community Association?

21 A. I apologize. Could you clarify what the  
22 question is?

23 Q. Who or what is Power Ranch Community  
24 Association? What's your knowledge of Power Ranch  
25 Community Association, generally?

1 A. Power Ranch is a homeowner's association for  
2 what is known as the Power Ranch Community or Power  
3 Ranch area of Gilbert, Arizona.

4 Q. And if I -- if I say Power Ranch, can we  
5 agree that I am referring to Power Ranch Community  
6 Association?

7 A. Yes.

8 Q. Thank you for saving me those words -- chunky  
9 words in the remaining questions.

10 Is it fair to say that Power Ranch is a  
11 homeowner's association at Woodcrest East?

12 MR. CONNELLY: Form.

13 A. I think we would say that Power Ranch is the  
14 Master of Homeowner's Association, of which Woodcrest  
15 East is a constituent part.

16 Q. (By Mr. von Johnson) Do you know who Rebecca  
17 Hill is?

18 A. I do not.

19 Q. What about Nick Ferre, F-e-r-r-e?

20 A. That name does not ring a bell to me.

21 Q. Jennifer Campbell?

22 A. I don't know who that is. Now, that isn't to  
23 say that I wasn't copied on some email years ago from  
24 some of these people, but I don't recall any -- I  
25 don't recall who those people are.

1 Q. Jennifer Partridge?

2 A. I don't recall her.

3 Q. Curtis Ekmark?

4 A. So Curtis is an attorney at your firm, I  
5 believe--

6 Q. Yes.

7 A. --and I have not met Curtis in person, but I  
8 believe I have been on a Zoom video conference with  
9 him once or twice, and so I -- I know who Curtis is.

10 Q. Aside from some Zoom meetings that you may  
11 have been a part of in the past, have you ever  
12 communicated with Curtis directly?

13 A. I know there have been some emails that I  
14 have been included on with Curtis. I don't think I  
15 have emailed him directly or Curtis has emailed me  
16 directly. I may be proven incorrect on that. That's  
17 my correction.

18 But at one point, there was a fair number  
19 of emails between Reese Anderson and Curtis Ekmark on  
20 some issues, and I think I was included or copied on  
21 some of those emails.

22 Q. And I'll -- I'll get to those emails very  
23 likely in this deposition.

24 But, just generally, if there's email  
25 correspondence between Reese Anderson and Curtis



1 Ekmark, is it a fair representation to say that Reese  
2 is communicating with Curtis on behalf of Bela Flor  
3 and Woodcrest East, and Curtis would be communicating  
4 on behalf of Power Ranch as their points of contact  
5 between those parties?

6 MR. CONNELLY: Form.

7 A. Yes.

8 Q. (By Mr. von Johnson) All right. Let's dig  
9 into some of these documents.

10 Now, last time I marked a different one.  
11 I am going to mark the one that I actually hand to  
12 you.

13 MR. VON JOHNSON: There's your copy.

14 it's got an "Exhibit 1" on the front.

15 This is now going to be for purposes of the  
16 deposition Exhibit 2, which if you get confused about  
17 any of these, just ask.

18 (At this time, Plaintiff's Exhibit No. 2  
19 was marked for identification by the court reporter).

20 Q. (By Mr. von Johnson) I -- I have just handed  
21 you a document that says "Exhibit 1" on the cover  
22 page.

23 Could you go ahead and open up to the  
24 second page.

25 Do you recognize this document?

1 A. Yes.

2 Q. And what is this document?

3 A. CC&Rs for Power Ranch.

4 Q. And Power Ranch is the Master Association --  
5 I want to make sure I match your phrasing -- what did  
6 you describe Power Ranch as, or what's your  
7 understanding of Power Ranch?

8 A. Power Ranch is the Master Association for the  
9 communities known as Power Ranch, within Gilbert,  
10 Arizona, of which there are several sub associations,  
11 including Woodcrest East.

12 Q. And just to be clear here, do you mean  
13 Woodcrest East, the property, is subject to the Power  
14 Ranch restrictions, as the Master Association?

15 You said Power -- or Woodcrest East was a  
16 sub association. I -- I am referring to Woodcrest  
17 East as a piece of property. Okay?

18 A. In that sense, the property known as  
19 Woodcrest East is part of the overall Power Ranch  
20 Association.

21 Q. Did you read this document prior to  
22 purchasing Woodcrest East under the Woodcrest East  
23 LLC entity?

24 A. I have read the CC&Rs at various times. If  
25 the question is did I read the CC&Rs in their

1 entirety prior to purchasing the property known as  
2 Woodcrest East, my recollection is the answer to that  
3 would be no, but if the question is did I look at  
4 certain provisions and discuss certain provisions  
5 with consultants prior to purchasing the property, I  
6 think the answer to that would be yes.

7 Q. And who did you discuss provisions within  
8 this document with prior to purchasing Woodcrest  
9 East?

10 A. I would have conversations with legal Counsel  
11 and likely conversations with our engineers.

12 Q. And when you say legal Counsel, do you mean  
13 Pew & Lake Attorneys--

14 A. Yes.

15 Q. --or do you mean ...

16 A. I am sorry.

17 Q. And when you say engineers, do you mean EPS  
18 Group?

19 A. Yes.

20 Q. EPS Group, Inc.?

21 A. We can just call them EPS.

22 Q. Prior to purchasing Woodcrest East, did you  
23 read the definition's section of this document which  
24 would be Article 1, all of Article 1?

25 A. I don't think I am going to recall specifics

1 as to what I read or didn't read four years ago --  
2 five years ago.

3 Q. Could you please flip to page 2 of the  
4 document, the original document page 2, which is  
5 Bates labeled as Woodcrest East 00037. And I don't  
6 need you to read it aloud, but could you please read  
7 the "Apartment Development" definition, and then in  
8 your words explain what your interpretation of that  
9 provision is?

10 A. Yes.

11 "Section 1.3. 'Apartment Development'  
12 shall mean a parcel which is limited by a tract  
13 declaration to residential use, and contains rental  
14 apartments and surrounding area which are intended,  
15 as shown by the site plan therefor approved by the  
16 town and the Design Review Committee or otherwise, as  
17 one integrated apartment operation under the same  
18 ownership."

19 Q. What does that mean to you?

20 A. Well, I think it speaks for itself, but to me  
21 this means that there is a definition within the  
22 CC&R's called, "Apartment Development," which  
23 contains rental apartments and has -- the site plan  
24 for that has been approved by the town, which I  
25 understand to be the town of Gilbert, and the Design

1 Review Committee, which I understand to be the Design  
2 Review Committee operating under the purview of the  
3 board at Power Ranch, and then it's in one integrated  
4 apartment operation under the same ownership, which I  
5 understand to mean that one entity or person owns the  
6 entirety of the, quote, "Apartment Development,"  
7 close quote.

8 Q. Go ahead and flip to page 4 of the document,  
9 Bates labeled as Woodcrest East 00039.

10 Could you please read Section 1.16,  
11 "Condominium Development."

12 You -- again, you don't need to read it  
13 aloud if you don't want to. I just need you to  
14 review that "Condominium Development" definition and  
15 then please tell me in your own words what you  
16 believe that means.

17 A. Well, the, "Condominium Development" in my  
18 own words, means a subdivision or a development that  
19 qualifies as a condominium under the Arizona Revised  
20 Statutes. There can be commercial condominiums and  
21 residential use condominiums. This definition here  
22 is specific to residential use condominiums.

23 Q. Please review the next section, Section 1.17,  
24 the, "Condominium Unit" definition. The same  
25 question: Please tell me your understanding of,

1 "Condominium Unit" after reviewing the definition.

2 A. So a "Condominium Unit" is one unit with all  
3 of the other rights and responsibilities associated  
4 with the condominium. I think that's what it means  
5 by appurtenant interest in the common elements that  
6 is part of or a unit that is part of the condominium  
7 development.

8 As part of these definitions, in the  
9 CC&Rs, it says that, "Such term," meaning Condominium  
10 Unit, "shall not include a rental apartment in an  
11 apartment development."

12 Q. Let's flip over to the, "Rental Apartment"  
13 definition, which is page 7 of the document, Bates  
14 labeled Woodcrest East 00042, it's Section 1.45.

15 The same question: Please review  
16 apartment, "Rental Apartment" definition, and tell me  
17 in your words what you interpret that to mean.

18 A. So if there is four or more dwelling units in  
19 a single building under a single ownership which is  
20 operated like a rented or leased apartment in the,  
21 quote, "typically regarded sense," close quote, and  
22 not something that is weird or strange or unusual,  
23 then it is under the definitions of Power Ranch's  
24 CC&Rs considered to be a, quote, "Rental Apartment,"  
25 close quote.

1 Q. So we have looked at the definition of,  
2 "Rental Apartments" and the definition of,  
3 "Condominium Unit."

4 Can you tell me in your words your  
5 understanding of the difference between what a  
6 "Condominium Unit" is and a "Rental apartment"?

7 A. They are not mutually exclusive in my words.  
8 So you can have a condominium unit, which is a unit  
9 within a condominium development established by  
10 Arizona law. And Power Ranch is such a condominium  
11 development. It has been since, I believe, 2005, and  
12 it is today as we sit here in 2024. So for 19 or 18  
13 or 17 years, Woodcrest East, the property, not the  
14 legal entity, has been a condominium development.

15 "Rental Apartment" is a separate  
16 definition. Again, these are not mutually exclusive.  
17 The CC&Rs do not provide them to be.

18 It simply says that if there's four or  
19 more dwelling units within a building under a single  
20 ownership that is for rent or leased and it's  
21 typically regarded since, that that is a rental  
22 apartment, according to Power Ranch.

23 Q. So I just want to make sure that I am  
24 understanding your understanding of the definitions.

25 You are saying that something can

1 simultaneously be a condominium unit and a rental  
2 apartment, so they are not mutually exclusive? It's  
3 not a one or the other; something can be both a  
4 condominium unit and a rental apartment?

5 A. Just as I can simultaneously be sitting in  
6 Tempe, Arizona, and also sitting in Maricopa County,  
7 Arizona, likewise a condominium unit and a  
8 condominium development may, in certain  
9 circumstances, also be considered, in my opinion, a  
10 rental apartment.

11 Q. Can you explain those circumstances?

12 A. Well, if you have a condominium development  
13 that has a single owner and it has four or more  
14 dwelling units within a building under a single  
15 ownership, and it's not operated as a hotel or some  
16 other transient basis, but it's operated as, quote,  
17 "rented or leased apartments in the  
18 typically-regarded sense," close quote, then that  
19 development could be both a condominium development  
20 and rental apartments.

21 You will notice that, "Condominium Unit,"  
22 under Section 1.17, says, "Such terms shall not  
23 include a rental apartment in an apartment  
24 development." What it does not say is that, "Such  
25 term shall not include a rental apartment," followed



1 by period.

2 The definition in the CC&R's indicates  
3 that there are rental apartments that are in an  
4 apartment development, and it opens the possibility  
5 that there are rental apartments that are not within  
6 an apartment development; otherwise, we would declare  
7 as a nullity the last four words of the definition of  
8 Section 1.17.

9 Q. That was a very thorough answer.

10 I am going to try to unpack it to what I  
11 understood the answer to mean.

12 Does -- does your interpretation of that  
13 language mean that an owner of a condominium unit  
14 under Power Ranch's definition under Section 1.17 of  
15 this document can own a rental apartment without  
16 being part of an apartment development?

17 MR. CONNELLY: Form.

18 A. "Apartment Development" is a separate  
19 definition, which requires approvals at both the  
20 municipal level and at the Power Ranch level.  
21 "Rental Apartment" is simply a definition, which in  
22 my reading requires no approvals. It is simply a  
23 definition met by meeting the terms of Section 1.45.

24 Q. Now, I -- I am not trying to put words in  
25 your mouth. I am truly trying to understand your --

1 your interpretations of these. So if I mischarac-  
2 terize, please let me know.

3 So does that mean that somebody who wants  
4 to own condominium units in Power Ranch and -- and  
5 that person purchases four condominium units and does  
6 not live in them, that person rents them out, does  
7 that mean that that person is not operating an  
8 "Apartment Development" under -- under these  
9 definitions of the terms?

10 A. Whether one is -- whether one is operating an  
11 apartment development requires approvals from Power  
12 Ranch and the town of Gilbert.

13 But we should back up. In Power Ranch  
14 today, homes are rented. In Power Ranch today,  
15 condominiums outside of Woodcrest East are rented.  
16 Rentals are occurring all of the time within Power  
17 Ranch.

18 So if we were to look and desire to on a  
19 short-term or long-term basis rent a condominium in  
20 Power Ranch, we could find those today on a listing  
21 and you could rent those or I could rent those. They  
22 are available.

23 The attempt here by Power Ranch is to  
24 treat these 120 units differently than the thousands  
25 of other units, which currently have no restrictions

1 for rentals.

2 So to answer your question, if a single  
3 owner purchased four condominiums, that may or may  
4 not be considered rental apartments.

5 How do we know? If they are four  
6 disparate units not adjacent, simply located within  
7 Power Ranch, I don't believe -- this is just my  
8 opinion -- that that meets the definition of, "Rental  
9 Apartments," but if someone were to purchase say like  
10 a Blackstone or an American Homes for rent, or some  
11 other large REIT, if they were to purchase four or  
12 more dwelling units within a building, which I  
13 interpret to mean it has to be a single building, So  
14 we need four units, five units, six, seven or more  
15 units, and it's not designed as a hotel or something  
16 of a transient basis and it's leased out, then I  
17 think it is quite clear that under Section 1.45 that  
18 is a, "Rental Apartment," close quote, under the  
19 Power Ranch CC&Rs. I have not heard anything to the  
20 contrary.

21 I think the Power Ranch Board of  
22 Directors is under a false impression that Woodcrest  
23 East is somehow pressing to be declared an "Apartment  
24 Development," which we are not.

25 Q. So I am going to use the -- the real-life

1 example in this case, Woodcrest East Condominiums,  
2 the subject of this litigation, because we have  
3 gotten far enough into this language that I think we  
4 can ask more specific questions here.

5 So my -- my question is Woodcrest East  
6 LLC intends to own 120 dwelling units at Woodcrest  
7 East, the property, is that a fair reflection of  
8 Woodcrest East LLC's intent?

9 A. Since May, 2019, Woodcrest East LLC has owned  
10 120 condominium units within the property known as  
11 Woodcrest East, which is within the larger property  
12 known as Power Ranch.

13 Q. Okay. And we will get to the status of the  
14 construction. I am not trying to put words in your  
15 mouth about the status of the construction, but  
16 eventually there will be buildings constructed at  
17 Woodcrest East where people will live in these  
18 buildings as residences, and is it a fair  
19 representation to say that Woodcrest East LLC intends  
20 to rent out the residence or dwelling units at  
21 Woodcrest East, the property?

22 MR. CONNELLY: Form.

23 A. Woodcrest East is a condominium development,  
24 and so Woodcrest East retains the right to sell these  
25 condos or to rent these condos, according to Arizona

1 Revised Statutes, which permit either to be done, and  
2 both are done currently in Power Ranch.

3 As I stated earlier, there are  
4 condominiums that we could look up on Zillo today and  
5 see that there are condominiums outside of Woodcrest  
6 East for rent within Power Ranch. And so it is our  
7 intent to make the best decision that we can, and  
8 right now that pathway would include us leasing these  
9 as condominiums.

10 Q. And if you lease out -- and when I say lease,  
11 the way you -- you have used the term, I mean  
12 Woodcrest East is signing a lease with a tenant,  
13 somebody to -- to form a tenancy relationship -- if  
14 you lease out four or more units or condos within the  
15 same building, will that be an apartment development?

16 A. No.

17 Q. And why will it not be an apartment  
18 development?

19 A. As I understand it -- this is just my  
20 interpretation -- but an, "Apartment Development"  
21 under page 2 of the CC&R's must be -- have a site  
22 plan "approved by the town and the Design Review  
23 Committee as one integrated apartment operation under  
24 the same ownership."

25 I do not believe -- well, it is debatable

1 whether Woodcrest East has received that approval or  
2 not. That doesn't matter to me. I don't rely on  
3 that.

4 That's a red herring to go down the path  
5 of apartment development. We can spend a lot of time  
6 on it. It doesn't matter.

7 Q. And -- and why -- why do you say that?

8 A. Because I think I have established -- and we  
9 have made this point now for a long time -- that the  
10 definition of "Apartment Development" and the  
11 definition of "Rental Apartments" are different and  
12 have different standard and different rules, but,  
13 regardless, whether Woodcrest East is an apartment  
14 development, which is uncertain, or a rental  
15 apartment, which we have discussed extensively in the  
16 last few minutes, it doesn't matter. Woodcrest East  
17 is a condominium, and under Arizona law condominiums  
18 can be sold or can be rented.

19 So, ultimately, the discussion about,  
20 "What's A Rental Apartment?" and, "What's an  
21 apartment Development?" to me don't bear a lot of  
22 relevance because under Arizona Revised Statutes  
23 condominiums can be sold or rented and condominiums  
24 within Power Ranch today are both sold and rented,  
25 unless there is some restriction within the CC&Rs,

1 and I have seen none.

2 We have asked. You haven't provided any.  
3 Previous attorneys at your firm have not provided  
4 any. And we see no restrictions from leasing  
5 condominiums, and, in fact, if there are then you  
6 have many, many people in violation of your CC&Rs at  
7 Power Ranch because there are condominiums today that  
8 are leased at Power Ranch, and there are homes that  
9 are leased today at Power Ranch.

10 I have gone through the documents on your  
11 website which indicate no restriction from any short-  
12 term or long-term leasing of homes or condominiums  
13 that at least I can find. If you know of any, please  
14 let me know.

15 I don't believe the board is fully  
16 informed as to what this litigation is. In fact, I  
17 think they have been misinformed -- not by you, but I  
18 do think they have been misinformed.

19 Q. What -- why do you say that? What  
20 misinformation do you think was given to the board?

21 A. When I read the 2021 minutes from the board,  
22 there is a -- it is conflated -- the issue of design  
23 review and an apartment development is conflated as  
24 one issue for purposes of securing the board's vote  
25 to pursue litigation. I do not believe that the

1 board understands that Woodcrest East is not seeking  
2 to be designated as an apartment development, is and  
3 has been and will be in the future a condominium  
4 development, nor do I think the board has been  
5 informed that under Arizona law condominiums can be  
6 sold or leased, and there are condominiums today  
7 within Power Ranch that are both sold and leased.

8 Q. So is -- is the distinction here -- or I am  
9 going to try to verbalize what I -- I think the  
10 misunderstanding is what you are verbalizing to me,  
11 is -- is the misunderstanding here that Woodcrest  
12 East LLC is not seeking approval to be an apartment  
13 development, and under the definition of, "Apartment  
14 Development" would need to obtain that approval from  
15 Power Ranch to be an apartment development, and  
16 you're -- so you are saying that Woodcrest East is  
17 not seeking to be an apartment development and is not  
18 an apartment development, and Power Ranch believes  
19 that Woodcrest East was seeking to become an  
20 apartment development or an approval to become a  
21 apartment developer?

22 MR. CONNELLY: Form.

23 A. Do you have the 2021 board minutes?

24 Q. (By Mr. von Johnson) Not here, no.

25 A. That's fine.



1                   When you read those through, if you have  
2 the chance to do that -- now, some of it is blacked  
3 out. I don't think it should be blacked out. This  
4 is a public forum, but what was handed to me, part of  
5 it was blacked out -- it's clear that there's a  
6 conflating, a mixing up of the issues between the  
7 Design Review Committee and between seeking apartment  
8 development.

9                   We filed a pre-app. Let's just back up  
10 and think about the pre-app. I think this will be  
11 helpful. I'm -- I am trying to offer helpful answers  
12 and not just give short answers, so I can be -- be  
13 helpful.

14                   We filed a -- a pre-app that sought an  
15 understanding or discussion about becoming an  
16 apartment development and filed that with both Power  
17 Ranch and with the town of Gilbert. The town of  
18 Gilbert said, "You will need to get Power Ranch's  
19 approval to do that." We had some discussions. The  
20 response was, "Power Ranch doesn't want to do that."  
21 We understand that that is within the purview and  
22 authority of Power Ranch to make that decision. We  
23 are not continuing to press that issue. So that has  
24 not been an issue that we have pressed for three  
25 years.

1                   Power Ranch also has the design and  
2 review authority, which we totally understand. We  
3 took our three-story product, and I evaluated the  
4 market back in 2019 and 2020, and now we are getting  
5 into Covid years and everything turned upside down in  
6 many ways in my life.

7                   We ultimately decided -- and I am happy  
8 to give you the -- my understanding of the  
9 discussions or recollections. I don't think they  
10 matter that much, but I will just cut to the chase in  
11 terms of where we ended up.

12                   We looked at, "For sale three stories;  
13 for rent three stories; for sale two stories; for  
14 rent two stories." I ultimately decided that  
15 Woodcrest West, across from us, would end up being  
16 three stories and, in fact, I think it will be. They  
17 now have approved plans for a three-story product.

18                   And so to offer some differentiation,  
19 which I think is to the benefit of Power Ranch, and  
20 knowing that a larger community was just to our west  
21 that was going to be three story, we changed our  
22 product to two stories.

23                   Having a three-story product, just take  
24 it on -- take it as a -- take my word for it, you can  
25 verify this, having a three-story product is a

1 valuable right. Giving up a three-story product for  
2 a two-story product is a giving up a valuable right.  
3 We voluntarily did this, went into Power Ranch Design  
4 Committee, and presented to them some beautiful  
5 two-story designs that would look very well and were  
6 modeled after some very nice Class A rental  
7 communities in Scottsdale.

8           Power Ranch didn't like it. They said,  
9 "We don't like this. We think it's too modern, too  
10 -- too new. We want something more like what we did  
11 back 20 years ago, 30 years ago."

12           We said, "We agree with you. You have  
13 the authority."

14           We went back and completely -- not just a  
15 little -- but completely changed our designs and  
16 presented a two-story design to Power Ranch showing  
17 the elevations. And the Design Review Committee  
18 approved that. They approved our paint colors and  
19 the various elements of our design, and based on  
20 that, we -- we built them.

21           Some of the units in this two-tore story  
22 design -- when you go from three story to two story,  
23 it gets smaller. I think that's obvious for  
24 everybody. We retained all of the garages. These  
25 are very luxury. A third of our units will be over

1 1500 square feet. That doesn't sound like an  
2 apartment, does it?

3           These are very nice, luxury condos,  
4 two-car garages, luxury condos, beautiful finishes.  
5 I invite the Power Ranch Board to tour them when they  
6 are complete.

7           Some, however, are small, 700 square  
8 feet. It is very difficult to sell these. We can  
9 get into the proformas and the difference between  
10 profitability or proforma profitability and "For  
11 rent", "For sale." I am happy to discuss any of that  
12 with you, based on my understanding of 2021. Things  
13 have changed -- interest rates, costs, et cetera. I  
14 can talk about all of those things, as well.

15           I will just say nearly impossible to sell  
16 a 700-square-foot condo in Gilbert, Arizona.  
17 Manhattan may be different, but, Gilbert, Arizona,  
18 very difficult.

19           But we voluntarily gave up a three-story  
20 right, went to two stories and analyzed the  
21 submitted, received approval from Power Ranch Design  
22 Committee for our elevations. We did not seek  
23 approval to be an apartment development. We  
24 recognized that that Power Ranch has the authority to  
25 designate that.

1                   And we have moved forward since then, and  
2 continue to, as a condominium. It's been a  
3 condominium, I believe, since 2005, or shortly  
4 thereafter, and we are now in 2024, and 19 years  
5 later it's still a condominium.

6                   So I apologize if that didn't fully  
7 answer your question, but I'm -- I am happy to take  
8 another chance at it if you will clarify the question  
9 for me.

10           Q. Let me -- let me ask you the -- the question  
11 then here.

12                   Can Woodcrest East LLC own all 120 units  
13 in Woodcrest East, the property, and rent those units  
14 to third parties without seeking Power Ranch  
15 approval?

16           A. Yes. And that's done right now everyday in  
17 Power Ranch. As I mentioned -- and I apologize for  
18 the repetition -- this is done today. There are  
19 condo owners that own one or two or three or 10  
20 condos who rent out their condos today in Power  
21 Ranch. They do not seek Power Ranch's approval, nor  
22 should they seek Power Ranch's approval because no  
23 approval is required. There are no conditions for  
24 renting out condominiums or homes that I can find  
25 within the CC&R's of Power Ranch.

1                   And so to answer your question, yes,  
2 Woodcrest East LLC, which is the owner of the 120  
3 condominium units that is part of the Woodcrest East  
4 property which is currently under construction has  
5 the legal right, and will enforce the legal right, to  
6 sell these or to lease these, as Woodcrest East LLC,  
7 the legal entity, decides.

8                   And I have not seen anyone challenge  
9 that. If there is anything in your CC&Rs or anything  
10 that prohibits that, please let us know, but your  
11 colleagues have not been able to identify any such  
12 thing.

13                   MR. VON JOHNSON: How are we doing? Do  
14 we need a break?

15                   THE COURT REPORTER: I am good.

16                   MR. CONNELLY: I am good.

17                   THE WITNESS: I am going to get a little  
18 glass of water, if I may. Is that okay?

19                   (Recess from 2:15 p.m. until  
20 glucose  
21 glucose

22                   Until 2:21 p.m.)

23                   MR. VON JOHNSON: All right. So we are  
24 back on the record.

25                   Q. (By Mr. von Johnson) Just to remind you, now

1 you are still under oath, the same spiel I went  
2 through at the beginning of the deposition: If you  
3 don't understand anything, let me know. Please speak  
4 one at a time, let your attorney object before you  
5 answer. All of the above.

6 I am going to move away from what is  
7 designated as Exhibit 2. You can set that to the  
8 side.

9 And I am going to refer to what is now  
10 going to be Exhibit 3, which is designated as  
11 Exhibit 2 on the cover sheet. So we are going to be  
12 off by one, moving forward.

13 I am GOING to mark this one.

14 MR. VON JOHNSON: Can I see that real  
15 quick?

16 THE WITNESS: Oh.

17 MR. VON JOHNSON: I will mark the front.  
18 Perfect!

19 (At this time, Plaintiff's Exhibit No. 3  
20 was marked for identification by the court report

21 Q. (By Mr. von Johnson) Do you recognize this  
22 document?

23 A. No.

24 Q. Do you know what I am referring to if I say,  
25 "HDR2," within Power Ranch?

1 MR. CONNELLY: Form.

2 A. I could guess, but I don't know.

3 Do you want me to guess, to see if I am a  
4 good guesser.

5 Q. (By Mr. von Johnson) Sure.

6 A. Woodcrest East property.

7 Q. So if you turn to -- this does not have a  
8 page designation on the actual document, but it's  
9 Bates labeled as Woodcrest East 00131.

10 Is that a depiction of the Woodcrest East  
11 property?

12 MR. CONNELLY: Form and foundation.

13 A. It sure looks like it to me.

14 Q. (By Mr. von Johnson) A piece of property on  
15 the southeast corner of Ranch House Parkway and  
16 Germann Road -- is that how you pronounce that road,  
17 Germann?

18 A. Yes. Nice job!

19 MR. CONNELLY: The same objection.

20 THE WITNESS: Sorry to interrupt you..

21 MR. CONNELLY: No. That's okay.

22 Q. (By Mr. von Johnson) Did you review this  
23 document prior to purchasing Woodcrest East?

24 A. I don't believe so.

25 MR. CONNELLY: Form and foundation.



1 A. I don't believe so.

2 Q. (By Mr. von Johnson) Are you aware that  
3 Woodcrest East is subject to this tract declaration?

4 MR. CONNELLY: Form and foundation.

5 A. I am not sure how to answer that. There's --  
6 there are a lot of declarations and CC&Rs regarding  
7 this property, so whether this is the governing  
8 document nor not, I can't say.

9 Q. (By Mr. von Johnson) We can set it aside.

10 A. Okay.

11 (At this time, Plaintiff's Exhibit No. 4  
12 was marked for identification by the court reporter).

13 Q. (By Mr. von Johnson) All right. I am going  
14 to refer you to what will be Exhibit 4.

15 MR. VON JOHNSON: There is your copy.  
16 And I will mark this copy. This is Bates-labeled  
17 POWER001810.

18 Q. (By Mr. von Johnson) Do you recognize this  
19 document?

20 A. I don't.

21 Q. Have you had an opportunity to review the  
22 document? I want to make sure that you've read the  
23 document before I start asking questions about it.

24 A. Okay. I glanced through it.

25 Q. My understanding of the first paragraph in

1 this letter says, "Bela Flor Communities LLC," Flor  
2 spelled F-l-o-o-r. I assume that's a typo that was  
3 made, and this is referring to, "Bela Flor  
4 Communities LLC" we have been discussing in the  
5 deposition, "hereinafter referred to as 'Owner,' is  
6 the Owner of approximately 7.08 acres located at the  
7 SEC," which I interpret as "southeast corner of  
8 Germann Road and Ranch House Parkway in Gilbert,  
9 Arizona," which I interpret as Woodcrest East.

10 Do you understand this reference to be to  
11 Woodcrest East, as well?

12 A. Yes.

13 MR. CONNELLY: Form and foundation.

14 Q. (By Mr. von Johnson) So it appears to be a  
15 letter signed by Hudd Hassell that says, "Bela Flor  
16 Communities LLC is the owner of Woodcrest East."

17 Is that an accurate representation of  
18 that first paragraph.

19 MR. CONNELLY: Form and foundation.

20 A. I think that's what the letter says, yes.

21 Q. (By Mr. von Johnson) And we've already  
22 discussed the ownership here, and -- and would it be  
23 fair to say that's not true that Woodcrest East LLC  
24 was the owner of Woodcrest East?

25 MR. CONNELLY: Form and foundation.

1           A. I don't know. It's often that we use an  
2 entity in a purchase and sale agreement, and then  
3 right before a closing or later will transfer title  
4 to the property to another entity. So it's not  
5 uncommon for us to move property between entities as  
6 we settle into what we are doing. In fact, it is  
7 actually very common.

8           Q. Was Woodcrest East ever owned by Bela Flor  
9 Communities LLC?

10          A. I don't know the answer to that.

11          Q. Or Bela Floor Communities, with Floor spelled  
12 F-l-o-o-r LLC?

13          A. I -- I don't know the answer to that, but  
14 this is something that if it was, it wouldn't  
15 surprise me. It is routinely done.

16          Q. Hudd Hassell appears to have signed this as  
17 an owner of Bela Flor Communities LLC.

18                        So we've discussed the ownership of that  
19 entity earlier. I just want to confirm, is Hudd  
20 Hassell an owner of Bela Flor Communities LLC or is  
21 he an employee?

22          A. Hudd Hassell is not representing himself as  
23 an owner. I think what he is representing here is  
24 that the owner is Bela Flor Communities LLC, and he  
25 is signing on behalf of that. He is the president of

1 that entity, so it would not be unusual for him to  
2 sign on behalf of that entity.

3 Q. All right. That makes sense. Thank you.

4 And, paragraph 2, the way I interpret  
5 that paragraph is that Hudd Hassell is authorizing  
6 the attorneys at Pew & Lake PLC to communicate  
7 directly with the town of Gilbert on behalf of Bela  
8 Flor.

9 MR. CONNELLY: Form and foundation.

10 A. Yes.

11 I am sorry. You didn't ask a question,  
12 but I jumped in.

13 I think the answer to that is yes.

14 Q. (By Mr. von Johnson) And that authorization  
15 -- the way I am reading this, that authorization  
16 includes filing of all required "land use,  
17 pre-application, due diligence, and development  
18 entitlement applications with the town of Gilbert for  
19 the benefit of Owner, together with all associated  
20 documents with the town of Gilbert as it relates to  
21 land use entitlements for use of the property."

22 Is that an accurate reading of part of  
23 that paragraph?

24 A. Yes. That's what it says.

25 Q. And -- and just for clarification, is this

1 intended to be the authorization to speak with the  
2 town of Gilbert for the development of Woodcrest East  
3 LLC? It appears that the entities may not be the  
4 correct entities, but the -- the purpose behind this  
5 letter is Pew & Lake can communicate with the town of  
6 Gilbert regarding Woodcrest East for this specified  
7 purposes?

8 MR. CONNELLY: Form.

9 Q. (By Mr. von Johnson) Is that an accurate  
10 interpretation of this letter?

11 A. As I read it now for the first time and  
12 understand it, I believe it is.

13 Q. (By Mr. von Johnson) So this letter would  
14 have equal application to Woodcrest East LLC -- it  
15 says Woodcrest East LLC was the technical entity that  
16 the property was titled to, instead of Bela Flor  
17 Communities LLC?

18 A. Well, again, I think we've established that I  
19 don't know if Woodcrest East LLC was always the owner  
20 of this property or if it was some other entity at  
21 the time.

22 This letter is really routine. This is  
23 something that is commonly done. I don't recall  
24 seeing this letter. That's not surprising. I  
25 wouldn't normally see this letter.

1           This is Reese Anderson saying, "I need to  
2 communicate with the town and the town needs to know  
3 that they can rely on what I am saying as being a  
4 representative for this parcel of land."

5           And so pretty normal stuff here.

6           Q. And we have already discussed it. I just  
7 want to confirm that Reese Anderson could, in fact,  
8 communicate with the town of Gilbert officials  
9 representing Woodcrest East?

10          A. Yes, could and did.

11          Q. All right. I am done with that document.

12                   I want to touch briefly on a Reduced  
13 Assessment Agreement for this Woodcrest East  
14 property.

15                   Did you meet with representatives of  
16 Power Ranch prior to purchasing Woodcrest East about  
17 a Reduced Assessment Agreement with Power Ranch?

18          A. I don't think I met with representatives of  
19 -- of Power Ranch -- and I will go beyond your  
20 question here -- but I -- I think somebody from our  
21 office did or we had some kind of communication, and  
22 I believe in the Power Ranch Master CC&Rs there is a  
23 provision for a reduced assessment if there are  
24 certain conditions that are met. I don't recall what  
25 those conditions are, but I believe that there was

1 communication back and forth and that there was some  
2 understanding or agreement reached that for a period  
3 of time there would be reduced assessments for the  
4 property owned by Woodcrest East LLC.

5 Q. I am going to refer to the Reduced Assessment  
6 Agreement, so that we are not just talking about it  
7 in hypothetical.

8 MR. VON JOHNSON: I am going to mark it  
9 as Exhibit 5.

10 (At this time, Plaintiff's Exhibit No. 5  
11 was marked for identification by the court reporter).

12 Q. (By Mr. von Johnson) It's indicated as  
13 Exhibit 4 on the cover page. Please turn to the  
14 final page of this document, POWER000318.

15 Is that your signature under, "Woodcrest  
16 East LLC"?

17 A. Well, that's my name for sure.

18 Q. But you are not able to confirm that that's  
19 your signature?

20 A. It could be. I may have been -- it looks  
21 pretty close to my signature. If I was in a hurry,  
22 it could be my signature.

23 Q. Is there somebody else that could have signed  
24 this development on your behalf?

25 A. Unlikely. I did -- I changed my signature a

1 number of years ago, and sometimes I go back and  
2 forth and have different signatures.

3           Once I started signing a number of checks  
4 it -- I know this will sound funny and sound odd --  
5 but if you have signed 200 checks in a row for small  
6 numbers, at some point you think should I change my  
7 signature?

8           And I -- but sometimes I may vacillate  
9 and go back, so it -- it looks like my signature.

10       Q. Well, let me ask you this.

11           Since we are not entirely sure that's  
12 your signature, is there any question that there was  
13 a Reduced Assessment Agreement with Power Ranch and  
14 does this appear to be that Reduced Assessment  
15 Agreement?

16       A. There is no question that there was a Reduced  
17 Assessment Agreement, and this does appear to be  
18 that. I haven't read it, and I may not have -- have  
19 read this. There are documents that I do sign that I  
20 haven't completely read. That is the -- just the  
21 nature of -- of what I do sometimes, but I do rely on  
22 others in my office, and legal Counsel, to review  
23 them and prepare them and tell me they are authorized  
24 for signature.

25           So I would agree with you that it looks



1 like there was an agreement to extend reduced  
2 assessments and working capital payments that were  
3 signed by Woodcrest East and by Power Ranch Community  
4 Association.

5 Q. Sure.

6 And my -- my curiosity is less with the  
7 agreement, itself, and maybe any discussions that the  
8 agreement may have triggered in your mind, which if  
9 you have never seen it very likely it did not trigger  
10 anything.

11 My question is do you remember discussing  
12 with Power Ranch building apartments versus  
13 condominiums prior to purchasing the woodcrest East  
14 property?

15 A. I don't.

16 And I don't recall that I have ever had  
17 discussions. Now, it's possible that I have, but I  
18 don't recall any discussions that I have had with  
19 Power Ranch officials. I am sure that I have been  
20 looped in and copied on some emails here and there,  
21 but, you know, something like this would normally not  
22 be an issue that I would be the direct point person  
23 on.

24 Q. Who would be the direct point person?

25 A. It could be -- I -- I don't know.

1                   Do you want me to venture guesses on  
2 that? I don't know who -- I don't -- I don't doubt  
3 this document, by the way. So I am not -- I am not  
4 questioning the validity of the document.

5           Q. Sure.

6           A. I just don't know how it came about. I do  
7 remember hearing about it in one of our meetings  
8 that, "This is what we are doing. This is the normal  
9 process for development within Power Ranch," and what  
10 we were seeking and what was granted was not -- to my  
11 recollection not anything unusual or different or  
12 special, just the normal process for having reduced  
13 assessments because you don't have any residents. If  
14 you don't have any residents, you are not using the  
15 facilities, and so it makes sense that you have  
16 reduced assessments.

17          Q. Sure.

18                   Well, at the beginning of the deposition,  
19 I have a long list of names where I was just trying  
20 to figure out how these people interplay in the  
21 development of Woodcrest East, and that's the purpose  
22 of my question.

23                   If -- if this is not something that you  
24 would have ordinarily been involved with, I am just  
25 trying to figure out who would have been a point of

1 contact--

2 A. Sure.

3 Q. --for this.

4 A. My apologies for the interruption.

5 It could have been Hudd Hassell. It  
6 could have been Reese Anderson. It could have been  
7 Malacia Goff. It could have been Dave Maza in my  
8 office. So it could have been be any of those people  
9 and I guess some other people, but I don't -- I don't  
10 doubt that this happened at all.

11 Q. Sure.

12 Okay. We can move away from that  
13 document.

14 (At this time, Plaintiff's Exhibit No. 6  
15 Was marked for identification by the court reporter).

16 Q. (By Mr. von Johnson) I am going to refer you  
17 to Exhibit 6, which should put us back at the correct  
18 numbers with our cover pages.

19 MR. VON JOHNSON: I am going to mark this  
20 one.

21 Q. (By Mr. von Johnson) Do you recognize this  
22 document?

23 A. Yes.

24 Q. What can you tell me about this document?

25 MR. CONNELLY: Form.

1           A. This, I believe, is the Power Ranch Design  
2 Review Committee approval letter for the project.

3           Q. (By Mr. von Johnson) And correct me if I am  
4 wrong, my understanding of what you are referring to  
5 as the project, the development of Woodcrest East,  
6 that Woodcrest East LLC submitted plans to Power  
7 Ranch in 2019 when the property was purchased for  
8 developing Woodcrest East LLC, is that an accurate  
9 representation of what happened?

10          A. Yes.

11                   Let me just add a caveat that we didn't  
12 necessarily submit plans to Power Ranch because Power  
13 Ranch and their Design Review Committee doesn't  
14 necessarily care about approving plans. What they  
15 care about is the look and feel of the community. So  
16 they want to see a site plan, and I think most of all  
17 what they care about are the elevations, in other  
18 words, how the buildings are going to look.

19                   So I -- I agree with what you are saying  
20 as a basic thing. I just want to be specific that we  
21 are not submitting construction plans to Power Ranch.  
22 We do submit those to the town of Gilbert for  
23 approval and go through a process there.

24           Q. So would it be an accurate representation to  
25 say that in 2019, Woodcrest East LLC submitted some

1 sort of design and review plans or what I will call a  
2 project description to Power Ranch, and this first  
3 page of this document is the approval that Power  
4 Ranch gave for that project description?

5 MR. CONNELLY: Form.

6 A. Yes.

7 I know we submitted things to Power  
8 Ranch, but as I am looking at this now these  
9 attachments don't match what was finally approved,  
10 and maybe they are not intended to. So I am not  
11 trying to trip you up at all. I am just looking at  
12 these. These are clearly three story, and they say  
13 old, and all of this looks like the old things that  
14 were submitted.

15 What I don't see are any newer plans that  
16 we submitted. And maybe it doesn't matter for your  
17 purposes, but I am just ...

18 Q. So let me try -- let me attempt to clarify.

19 So I'm -- I am not asking if these were  
20 the ultimate plans that were approved. I'm -- I am  
21 trying to build a timeline of what plans were  
22 submitted.

23 These appear to be the first set of plans  
24 that were submitted just based on the date of the  
25 approval letter that's associated with these plans

1 being July 10, 2019. It appears to be shortly after  
2 Woodcrest East LLC purchased the property, purchased  
3 Woodcrest East, and it appears that plans were  
4 submitted to Power Ranch shortly thereafter, is that  
5 a fair characterization of the initial timeline of  
6 this development project?

7 A. Yes, but seeing this date, I wonder if we  
8 submitted plans a second time.

9 Q. Very likely. And we will get to those plans.

10 A. Okay.

11 Q. I mean, there are multiple sets of plans that  
12 were submitted. I believe that these are the first  
13 set of plans submitted to Power Ranch, and that's  
14 partly why I am here to confirm that?

15 A. I agree with you that it -- it would seem  
16 difficult to have a set that came before this, but  
17 these are not the ultimate plans that were approved  
18 and that are being constructed today.

19 Q. I will refer you to Woodcrest 000675.

20 A. Yes.

21 Q. It's about three pages onto the document.  
22 It's the signature line for the application, and it  
23 appears to be signed by Bela Flor, and digitally  
24 signed by Hudd Hassell.

25 Am I reviewing that correctly from the

1 document?

2 A. Yes.

3 Q. And is this something that Hudd Hassell would  
4 be in charge of for Woodcrest East LLC, the -- the  
5 submittal of design applications to Power Ranch?

6 A. Yes.

7 Q. What I am trying to get at here is you didn't  
8 submit these, right? Hudd Hassell submitted these is  
9 what it appears?

10 A. Well, let's be candid. The law firm prepared  
11 the documents. They sent them to someone at Bela  
12 Flor to sign. That person was Hudd Hassell, who  
13 apparently digitally signed these, which would have  
14 been proper and appropriate, and they were submitted.

15 Q. I just want to touch briefly on the statement  
16 you just made. Okay?

17 I want to confirm who would -- who would  
18 actually create this document? So I -- I am looking  
19 at, "Project Description," which is Woodcrest 00676.  
20 It's the next page.

21 A. Yeah.

22 Q. Who would have actually created this?

23 A. So this document, starting on Bates 00676,  
24 was created by Pew & Lake, and also submitted by them  
25 on behalf of Bela Flor Communities.

1 Q. And you said that the attorneys would have  
2 drafted this modification -- Design Modification  
3 Application and sent it to Hudd for signature, is  
4 that a fair representation of -- of what you  
5 testified to about the pages preceding that?

6 A. Yes. That's -- that's likely what happened  
7 here.

8 Q. And under whose direction would the law firm  
9 Pew & Lake be creating these documents? Who is  
10 directing them to create these?

11 A. Well, ultimately, I am, but the specific  
12 direction, I am sure, came from Hudd Hassell.

13 Q. So the changes between these initial plans  
14 that were submitted in 2019 and subsequent plans that  
15 were submitted to Power Ranch, who would have been  
16 the authority to say, "Change this, this and this"?

17 MR. CONNELLY: Form and foundation.

18 A. I would be that person.

19 Q. (By Mr. von Johnson) Just so I can make sure  
20 that I get the appropriate form of the question, if  
21 there are any changes between these plans and  
22 subsequent plans that were submitted to Power Ranch,  
23 the changes would have been made at your direction?

24 A. So I -- I assume that to be a question?

25 Q. Yes.



1           A. So I'll -- I will do my best to answer that  
2 question and try to actually be helpful here.

3                   Big changes like going from three stories  
4 to two stories, I would certainly have made that  
5 decision. If -- if there's a change in a paint color  
6 that goes from one shade of white to another shade of  
7 white that is indistinguishable, but that former  
8 shade of white is no longer available, that's not a  
9 decision I would make. That's a decision that I  
10 would probably not be aware of, and someone else  
11 would make and just send it in.

12                   So there is -- I don't want to use the  
13 term "hierarchy," but there is -- we have an  
14 organization. We are a small organization, but the  
15 -- the bigger, more meaningful decisions, per se, I  
16 will certainly be involved in, but if there's small  
17 design decisions or little adjustments that may take  
18 place, certainly in the civil engineering side  
19 there's probably I would dare say hundreds of little  
20 adjustments that took place in the civil engineer  
21 drawings that I am not aware of and couldn't testify  
22 of, two inches here, three inches there, pull back  
23 the plans, you know, there's a lot of things that go  
24 into a -- a change, but a big change, such as, "We  
25 are going to move from three stories to two stories,"

1 I would be involved in that for sure.

2 Another big change, such as I testified  
3 that initially the Power Ranch Design Review  
4 Committee did not like our first submission on the  
5 two-story elevations, I would be involved in the new  
6 direction, how we are going to change those.

7 And I was involved in that, and -- and  
8 ultimately signed off and approved the new elevations  
9 that we then submitted to Power Ranch, even though I  
10 may not have been the person then that went to Power  
11 Ranch and said, "Here are the elevations that we are  
12 looking to get approved."

13 Q. Sure.

14 A. Is that helpful?

15 Does that kind of give you a sense of how  
16 the decisions might be made?

17 Q. Yes.

18 And for context for some future questions  
19 that I have, I am going to cite to some changes. I  
20 can see these initial plans, and then they change  
21 subsequently, and I will be asking, "Is this a big  
22 change that you were a part of? Is this a smaller  
23 change that you were not a part of?" I am just  
24 trying to figure out where that line is.

25 For your reference, i will refer to you

1 Woodcrest 00680. There's a -- there's a picture at  
2 the top of that page. Let's go to Woodcrest 00684,  
3 because I believe it's a blowup of that same photo,  
4 or not photo, but depiction of the property in the  
5 plans.

6 Is that accurate to say that those were  
7 -- those are the same -- the Woodcrest 00684 is just  
8 a blown-up image of the same image on Woodcrest  
9 00680?

10 A. It looks the same to me.

11 Q. The reason why I am asking is it appears as  
12 though the common area in Woodcrest East designated  
13 as -- I will just refer to it as the pool area,  
14 originally in 2019 the plans were to have a restroom  
15 building with a -- an equipment yard behind the  
16 restroom building kind of and we will say southeast  
17 of the pool, is that an accurate description of the  
18 plans at -- at this time?

19 A. Yes.

20 Q. This time, being back in 2019 when these  
21 original plans were submitted?

22 A. Yes.

23 Q. Do you remember reviewing these plans at all?  
24 Did you see these before they were submitted to Power  
25 Ranch?

1           A. I probably did, but I don't remember -- and  
2 -- and when I say I probably did, I probably saw  
3 pieces of them, but whether I saw the final package  
4 that went in, I don't recall.

5           Q. That's fine. I -- I am going to move on to a  
6 different document, which is going to be Exhibit 7.

7                         (At this time, Plaintiff's Exhibit No. 7  
8 was marked for identification by the court reporter).

9           Q. (By Mr. von Johnson) Do you recognize this  
10 document?

11          A. I don't, but I understand what it is.

12          Q. And what do you understand it to be?

13          A. The town of Gilbert providing approval for  
14 the design and review of the Woodcrest East project--

15          Q. Is this ...

16          A. --addressed to our attorney, which really  
17 ties in well to the prior authorization given, so  
18 that's the reason they would send it to him.

19          Q. So my understanding of this process -- and  
20 forgive me that I am not a property developer -- so  
21 if I -- if I am misunderstanding please correct me --  
22 that it appears as though in 2019, which is what this  
23 letter is dated, there were plans sent by Reese  
24 Anderson to Power Ranch, plans sent to Gilbert.

25                         And we have approval letters from both

1 Power Ranch and Gilbert, these last two exhibits, is  
2 that accurate?

3 A. Yes.

4 Q. And turning to the plans submitted to  
5 Gilbert, which is Bates Woodcrest 00599 -- it's the  
6 small print on the side of the document -- my  
7 layman's reading of these plans appear to be the same  
8 plans that were submitted to Power Ranch, most  
9 importantly for my purposes, restroom building and  
10 equipment yard sort of south and east of the pool  
11 area?

12 MR. CONNELLY: Form and foundation.

13 A. Yes.

14 Q. (By Mr. von Johnson) So me just tracking  
15 this timeline of the development plans, I can see in  
16 2019 plans sent to Power Ranch, plans sent to  
17 Gilbert, both approved. The project appears to be  
18 ready to move forward to the next phase.

19 MR. CONNELLY: Form and foundation.

20 Q. (By Mr. von Johnson) And by phase, I mean  
21 whatever development requirements are required by  
22 Gilbert and/or Power Ranch, is that fair to say?

23 A. Yes.

24 (At this time, Plaintiff's Exhibit No. 8  
25 was marked for identification by the court reporter).

1 Q. (By Mr. von Johnson) Okay. All right. I am  
2 going to skip ahead to what is going to be Exhibit 8,  
3 which is designated on the cover sheet as Exhibit 10.

4 MR. VON JOHNSON: Rob, here is your copy,  
5 and I will mark this copy.

6 Q. (By Mr. von Johnson) Do you recognize this  
7 document?

8 A. No.

9 Well, let me say that this document  
10 contains more than one thing. There is an email and  
11 there is a project description beyond that, so let me  
12 not be so hasty.

13 I don't recognize the emails, although I  
14 see that they are emails. I believe they are  
15 truthful emails--

16 Q. Sure.

17 A. --which are correct.

18 I don't have any doubts about the emails.  
19 I can agree with them.

20 And then it looks like there is another  
21 submission coming 18 months later.

22 Q. So let's just look at the emails real quick,  
23 Woodcrest 00739.

24 Email chains operating backwards than  
25 what we are used to reading on a document, there

1 appears to be an email from Julie DeMars -- well,  
2 actually Woodcrest 00740, page 2, is where the email  
3 chain starts, an email from Reese Anderson of Pew  
4 & Lake to Richmond Orduno, Jennifer Campbell, cc Jon  
5 Gillespie, subject line, "Woodcrest (East)."

6           Would it be a fair representation to  
7 categorize this as an email from the Woodcrest East's  
8 attorneys to Power Ranch?

9           A. Yes.

10          Q. He says, "We have been working on some  
11 updates to Woodcrest East's site plans and  
12 elevations. They are significant enough to warrant  
13 -- they are significant enough to warrant review by  
14 the PRCA. Can you remind me please of the processes  
15 we need to go through?"

16           It appears to be, "Okay. These plans are  
17 changing. As we discussed earlier, we had initial  
18 plans. Now we have modification to those 2019  
19 plans?"

20           It looks like Julie DeMars responded a  
21 few days later on December 4, "Hope you are doing  
22 well. Richard is no longer with the company.  
23 Rebecca Hill is the new community manager." She has  
24 been cc'ed. "You can submit a Design Modification  
25 Request and upload the documentation on their

1 website."

2 So I am reading that as general, "Here is  
3 how you submit a modification," is that an accurate  
4 reading of -- of the email exchange?

5 A. I agree with you.

6 Q. And then Reese Anderson responds back roughly  
7 10 days later to -- directly to Rebecca Hill and  
8 DeMars, "We are gearing up for our Design  
9 Modification Requests. I wanted to get your feedback  
10 on what exhibits would be best to bring up" -- or "to  
11 bring before the board. Attached you will find a  
12 project description, site plan, and front elevation."

13 And I can see -- I am not going to read  
14 the rest of the email, but I can see attachments  
15 designated on that email from Reese. My  
16 understanding is that these subsequent documents  
17 after the emails are the attachments.

18 Is it fair to say that this is a  
19 subsequent site plan to Power Ranch after the 2019  
20 site plan that we just reviewed previously?

21 A. Yes.

22 Q. And you had discussed that you had decided to  
23 change from three stories to two stories, and you  
24 gave it a modern look.

25 I am reviewing Woodcrest 00746, which is



1 two depictions of what I assume to be buildings that  
2 would be constructed on Woodcrest East, one old  
3 approved elevations for Woodcrest use of a  
4 three-story building, and then Figure 5 says, "New  
5 proposed elevations of Woodcrest Village East," is  
6 that fair?

7 MR. CONNELLY: Form and foundation.

8 A. Yes.

9 Q. (By Mr. von Johnson) All right. So these  
10 changes, according to your testimony earlier, would  
11 have been approved by you to these site plans?

12 A. Yes.

13 Q. Let me rephrase that question.

14 This appears to be the request to change  
15 from three stories to two stories of the Woodcrest  
16 East development, and that request would have or was,  
17 in fact, approved by you before these documents were  
18 sent to Power Ranch?

19 A. Yes.

20 Whether every word was approved by me,  
21 unlikely, but the overall change from three stories  
22 to two stories and the change in this look and feel  
23 from what I consider to be a very old -- beautiful,  
24 but old, dated look, and what I still consider to be  
25 a gorgeous, beautiful two-story building would have

1 been approved by me, and was approved by me.

2 Q. Included in the attachments to the email are  
3 some engineer's plans -- I call them engineer's plans  
4 from, "Biltform Architecture"--

5 A. Yeah.

6 Q. --Bates labeled Woodcrest 00748, small print.

7 What it appears to be is the Woodcrest  
8 East property, is that accurate?

9 A. Yes.

10 Q. And I can see the pool area designated  
11 towards the southern half of the Woodcrest East land,  
12 and on the northwest side of the pool now there's a  
13 leasing center designated on the plans.

14 And I can get a magnifying glass, if you  
15 would like.

16 A. It looks like it says that.

17 Q. Was that a big change that would have been  
18 reviewed by you or is this one of those smaller  
19 changes that would not have been reviewed by you?

20 A. A smaller change. I didn't review it.

21 Q. And who would have instructed the engineers  
22 to say, "Okay. We want -- there is a restroom  
23 facility here and now we are going to change that to  
24 leasing office"?

25 A. Well, this would have been, I am sure, as

1 Hudd and Dave Maza and Chad Schott, and others looked  
2 at this, the circular driveway was really too deep,  
3 and we were losing lots of space. I remember having  
4 those discussions. And so the idea was to pull the  
5 gates closer to Ranch House Parkway in a way that  
6 would reclaim some property and allow us to expand  
7 the community or amenity area, and I think that was  
8 all -- all part of this overall change.

9           So you are focused on the label on one  
10 building. What I would have been looking at is the  
11 overall depth of the entryway, making sure that we  
12 could meet the fire code for the turnaround, and  
13 making sure that we didn't have excessive wasted  
14 property.

15           Now, if that change was made between one  
16 and two or two and three, I am not sure, but it  
17 eventually did get made where those -- those gates  
18 were pulled up closer to the road so that we could do  
19 some things like add more parking, try to create a  
20 place for children to play, and some other things,  
21 try to expand the amenity area.

22           Q. Do you remember specifically approving a  
23 leasing center to be added to the plans?

24           A. No.

25           Q. Do you know why a leasing center was added to

1 the plans?

2 A. This is the architect's drawings, so he --  
3 this is something the architect put together there.  
4 I don't know why he designated certain buildings  
5 certain ways, but whether we call it a clubhouse, or  
6 something else, it's just designated that it's a  
7 building.

8 Q. Do you remember meeting with Power Ranch on  
9 February 3rd, 2021? It's a Zoom meeting.

10 A. I think I joined a couple of those meetings  
11 with Power Ranch. I don't know if it was that  
12 meeting.

13 Is my name mentioned, or anything, in  
14 there?

15 Q. Let me get you the emails. I will -- you  
16 might as well set that aside.

17 I will refer you to what's going to be  
18 Exhibit 9, which has Exhibit 11 as a cover page.

19 MR. VON JOHNSON: And I will get you a  
20 copy.

21 (At this time, Plaintiff's Exhibit No. 9  
22 was marked for identification by the court reporter).

23 Q. (By Mr. von Johnson) This appears to be  
24 another one of those email chains between Reese and  
25 Curtis, again email chains reading backwards.

1                   In order to review the emails  
2 chronologically, I can see that Reese emailed Curtis  
3 and cc'd to Karl Huish on February 3rd at 12:09 p.m.  
4 It says, "Curtis, I am writing to confirm that Karl  
5 Huish will be able to share our screen with those on  
6 the call today at 1:00 p.m. Please confirm."

7                   Does that refresh your recollection of  
8 meeting with Power Ranch on February 3rd?

9           A. I believe I did meet with them. I just  
10 didn't know what the date was when you give me a  
11 specific date that is three years ago.

12           Q. Sure.

13           A. But-- but, yes, whether it was once or twice,  
14 I don't -- or three times, I don't remember, but,  
15 yes, I -- I have met with them. I believe this was a  
16 Zoom meeting of some sort, a virtual meeting?

17           Q. That's my understanding, as well.

18                   Do you remember what the meeting was  
19 regarding?

20           A. I think the meeting was regarding the  
21 elevations that we just looked at.

22           Q. So there were plans submitted I can see  
23 December 11th, 2020, and then a subsequent meeting  
24 with the board in early February, 2021, which tracks  
25 on my timeline that naturally the board may have

1 questions about those plans, they may want to talk to  
2 you.

3 Is that accurate that this meeting was  
4 regarding those December plans we had just looked at?

5 MR. CONNELLY: Form.

6 A. I think it was. I don't know for sure,  
7 because then we changed the plans again, and so I  
8 don't know if this occurred -- if we had a first  
9 meeting with them, and then submitted new plans, and  
10 that's what this meeting was, or if this was, in  
11 fact, the meeting.

12 So if you can tell me if there is now a  
13 subsequent meeting that occurs in late February or  
14 March or April with a new set of elevations, then  
15 this would be the second set of meetings. The first  
16 one I think you referenced was July, 2019, and now we  
17 are dealing with the second ones that look like  
18 February, 2021, and then there is going to be a  
19 third.

20 Q. Sure.

21 And let's -- let's just speak generally,  
22 so we are on the same page here. My understanding is  
23 the initial plans in 2019, then the reduced  
24 elevations to two stories with a modern design, and  
25 then there was a subsequent plans of two stories with

1 a different design that was later approved by the  
2 board; does that -- does that accurately reflect  
3 generally the review process that Power Ranch went  
4 through?

5 A. Yes.

6 Q. Okay. And the way I understand your  
7 testimony, you are not denying there was a meeting  
8 February 3rd. You just don't know if it was about  
9 the second or the third set of the plans that I had  
10 just referenced?

11 A. Right.

12 But it was certainly one of those. We  
13 had the meeting.

14 Q. Sure.

15 A. I do remember people on Zoom, although how  
16 many people showed their face, and so was it -- so I  
17 don't remember all of those details.

18 Q. And what was the result of Power Ranch's  
19 decision on the plans -- forgive me; let me look at  
20 the exhibit number. I just want to look at the  
21 exhibit number at the front -- Exhibit 8 that we  
22 reviewed previously -- what was Power Ranch's  
23 decision on those plans?

24 A. So these were the modern plans that we  
25 submitted with Round 2, and the Power Ranch Design

1 Review Committee rejected this design and asked us to  
2 modify it.

3 Q. And did Power Ranch give a reason for the  
4 rejection?

5 A. We could look through emails to see what  
6 specifically they stated, but they felt like it was,  
7 I think, too modern for Power Ranch, too  
8 contemporary, and they wanted something that was more  
9 consistent with historic buildings, historic  
10 communities within Power Ranch.

11 Q. And just to confirm, a lot of the  
12 communication between the -- the parties in this  
13 litigation appears to have been through Reese  
14 Anderson or Woodcrest East and Curtis Ekmark, on  
15 behalf of Power Ranch. We are looking at one such  
16 email chain in -- in this exhibit.

17 Is it fair to say that Reese Anderson is  
18 -- is speaking on behalf of Woodcrest East in its --  
19 in his representations to Curtis Ekmark in this email  
20 correspondence?

21 A. Yes.

22 Q. He's -- he is acting as Woodcrest East LLC's  
23 attorney regarding the development of this project in  
24 communicating with Curtis Ekmark?

25 A. Yes.



1 Q. And my understanding of the development  
2 progression of Woodcrest East is that when new plans  
3 were drawn up, like the plans we saw in Exhibit 8,  
4 that those plans would be sent to Power Ranch and  
5 those plans would be sent to Gilbert to make sure  
6 that both Power Ranch and Gilbert were on the same  
7 page or on board with the new updated plans, is that  
8 accurate to how this development process goes with --  
9 with the town of Gilbert?

10 A. That is my understanding.

11 Q. So we saw in Exhibit 8 this modern set of  
12 plans that came subsequent to the 2019 plans we saw  
13 previously, and those plans would have been sent to  
14 Gilbert, as well, to get the town of Gilbert's  
15 approval to change from three stories to two stories,  
16 is that correct?

17 A. Eventually they would have been. I don't --  
18 I can't tell you for sure if they were sent there  
19 because the town of Gilbert, when it comes to designs  
20 and elevations, generally will follow the lead of  
21 Power Ranch, and they won't impose necessarily a  
22 second set of review and design guidelines. You can  
23 see how you would have a potential conflict where a  
24 staff member at the town of Gilbert could say, "I  
25 like this," and then Power Ranch could say, "I don't

1 like this," referring to the second set of  
2 submissions.

3 And so I don't know if we -- if for this  
4 one now that we were in the design review process  
5 with Power Ranch if we just said, "Okay. Let's first  
6 see if we can get the approval for Power Ranch and  
7 then go back for the final approval of the town of  
8 Gilbert," I can't tell you sitting here, but one way  
9 or another in the end you would have the approval by  
10 the town of Gilbert and by Power Ranch.

11 Q. Sure.

12 And the -- the 2019 plans that we had  
13 looked at previously, the two prior exhibits, one set  
14 of plans went to Power Ranch, one set of plans went  
15 to Gilbert, they appear to be a project narrative  
16 from Pew & Lake, Reese Anderson specifically.

17 Would Reese have been -- would Reese  
18 Anderson have been the person to submit the plans to  
19 Gilbert?

20 A. Or someone from his staff.

21 Q. Okay. So the -- but the plans would have  
22 come from Pew & Lake and not from somebody internal  
23 to Woodcrest East LLC or Bela Flor or EPS Group,  
24 Inc.?

25 A. So when we say the plans, again, we are

1 referring now to design elements, such as elevations.  
2 Those design elevations, I believe, were submitted  
3 from Reese Anderson's office.

4 (At this time, Plaintiff's Exhibit No. 10  
5 was marked for identification by the court reporter).

6 Q. (By Mr. von Johnson) I am going to refer to  
7 you what is going to be labeled as Exhibit 10. It is  
8 Exhibit 13 on the cover page.

9 MR. VON JOHNSON: Rob, here is your copy,  
10 and here is the official copy.

11 Q. (By Mr. von Johnson) Do you know what this  
12 document is?

13 A. No.

14 Q. I will give you a second to review, and I  
15 will have some questions about it. So let me know  
16 when you are done reviewing it.

17 A. Okay. I am done.

18 Q. Is this a Design Review Submittal to the town  
19 of Gilbert for the Woodcrest East property?

20 A. Yes.

21 Q. The way I read this, it -- it says towards  
22 the top of the paper, it says, "Request summary,  
23 parentheses, (briefly describe proposal here to  
24 attach here and attach a detailed narrative)." It  
25 says, "Changes in building elevations and minor site

1 plan changes to allow the development of a two-story,  
2 120 unit multi-family development."

3 Did I read that correctly?

4 A. Yes.

5 Q. And then it's -- it's signed -- and it  
6 appears to be signed by Hudd Hassell and Reese  
7 Anderson towards the middle--

8 A. Yes.

9 Q. --of the document?

10 Is this -- so is this the submittal to  
11 Gilbert to change it from three stories to two  
12 stories that would have been sent in by Reese  
13 Anderson?

14 A. It appears to be.

15 Q. All right.

16 MR. VON JOHNSON: That's all I needed for  
17 that document. I just wanted to confirm that that's  
18 the submittal.

19 How are we doing? Does anybody need a  
20 break?

21 THE WITNESS: No. I am going to grab  
22 some more water.

23 MR. VON JOHNSON: That's fine. I am  
24 going to organize my exhibits while you are gone.

25 Q. (By Mr. von Johnson) My understanding of the

1 plat for Woodcrest East is that this property was  
2 already in the development phase back in 2008  
3 roughly, and it had already had a plat approved from  
4 that time period roughly 2005 to 2008-ish, and that  
5 you subsequently replatted Woodcrest East to be  
6 separate from the plat that had Woodcrest East and  
7 Woodcrest West.

8 Is that an accurate characterization of  
9 the platting for Woodcrest East?

10 A. A new plat was filed at some point, and you  
11 are bringing up a good point that I have a vague  
12 recollection of whether the Woodcrest East and  
13 Woodcrest West plats were on one single plat and  
14 whether we replatted to make them separate.

15 That -- there is something to that that I  
16 am not remembering, but -- but I -- I agree with your  
17 characterization of that. I don't know the details  
18 of that, but whether they were one plat or two plats  
19 back in 2005, I don't know, but I know that they're  
20 now separate plats.

21 (At this time, Plaintiff's Exhibit No. 11  
22 was marked for identification by the court reporter).

23 Q. (By Mr. von Johnson) Let me just put the  
24 plat in front of you.

25 So I am going to refer you to 11, which

1 is cover page 15.

2 MR. VON JOHNSON: I will get you a copy.

3 Q. (By Mr. von Johnson) Okay. This is one  
4 version of the plat that I have.

5 And I'm -- I am trying to get some  
6 clarification on this. So I can see that it's a plat  
7 from "Woodcrest Village (East)," that it was drafted  
8 by EPS Group, and there is a stamp on the first page  
9 from "Senior Plans Examiner Michael MacDonald," and  
10 on "June 14 of 2022."

11 Am I -- am I accurately reviewing this  
12 document?

13 A. I am sure you are, but I can't read font that  
14 small.

15 Q. Would you like me to grab a magnifying glass?

16 A. So it looks like it was approved, as you  
17 said, June 14th, 2022, by Michael MacDonald, who it  
18 looks like is at the town of Gilbert, as I look at  
19 his email address.

20 Q. I'm -- I am reading that as, "Michael dot  
21 MacDonald at Gilbert AZ dot gov."

22 Is that accurate?

23 A. Yes.

24 Q. So the way I -- I am just reviewing these --  
25 this plat, this document, it appears to be a plat

1 that was submitted for Woodcrest East and approved by  
2 Gilbert, is that fair?

3 A. Yes.

4 Q. All right. My question is not regarding the  
5 engineering designs on the subsequent pages. I don't  
6 -- as a layman, I -- I don't think I am qualified to  
7 interpret those.

8 My question is on this very first page,  
9 it's Bates-stamped POWER003962, it's page 1 of the  
10 plat, it says, "Master Association Ratification" in  
11 the middle of the page on the left-hand side.

12 Is that accurate that it does say that on  
13 the document?

14 A. Yes.

15 Q. Okay. Let's -- let's look at a subsequent  
16 version of the plat. So we can set that side.

17 (At this time, Plaintiff's Exhibit No. 12  
18 was marked for identification by the court reporter).

19 Q. (By Mr. von Johnson) All right. I am going  
20 to refer you to Exhibit 12, which has a cover page of  
21 17 on my documents.

22 I'll give you a minute to familiarize  
23 yourself with this document. Let me know when you  
24 are ready to discuss.

25 A. Ready.

1 Q. So this appears to be an email chain between  
2 members of EPS Group, Inc. and officials at -- at the  
3 town of Gilbert, is that an accurate reading of this  
4 email chain?

5 A. Yes.

6 Q. Let's look at POWER004286.

7 This page appears to be an email from  
8 Brian Nicholls, at EPS Group, to Tom Condit, Michael  
9 MacDonald, Albert Pineda, at Gilbert, is that an  
10 accurate reading of the --

11 A. Yes.

12 Q. --the email recipients?

13 A. Yes.

14 Q. Brian says, "I am sorry for the delay in  
15 getting back to you on the Woodcrest Condo Plat. As  
16 our HOA attorney dug into the fine details of the  
17 CC&R she asked that we clean up the notes and add the  
18 correct lender ratification, which I did not know  
19 about before. Also, she noted several  
20 inconsistencies in the unit details that she asked us  
21 to update. No changes to -- no changes to made to  
22 the pages 2, 3 and 4, parentheses, (to the site -- or  
23 the site slash building coordination), end  
24 parentheses, where we had the bulk of our  
25 coordination. However, there were a number of



1 changes to the unit details to align better with the  
2 CC&Rs."

3 Is that an accurate reading of -- of that  
4 email, just the first paragraph.

5 A. You read it well.

6 Q. On POWER004285, it's the page prior, which  
7 would be the subsequent emails in that email chain,  
8 Tom Condit from Gilbert AZ writes back to Brian  
9 Nicholls at EPS: "Brian, can you provide a summary  
10 of the specific changes that were made. It will be  
11 easier for us to review the revised document with the  
12 details of those changes."

13 Is that an accurate reading--

14 A. Yes.

15 Q. --of that email?

16 A. Yes.

17 Q. And then on the bottom of the prior page,  
18 POWER004284, we have the to and from of the email,  
19 but the bulk of the email is on POWER004285. It  
20 looks like Brian Nicholls, at EPS Group, responded to  
21 Tom Condit and also Michael MacDonald and Albert  
22 Pineda with the requested summary of specific changes  
23 that Tom had requested in the email I just read.

24 Is that accurate?

25 A. Yes.

1 Q. It says, "Attached is the latest (and final)  
2 condo plat. Here is the list of changes: Sheet 1:

3 Owner signatures were updated.

4 No. 2. Lender Owner statement added.  
5 (old statement removed).

6 And, No. 3. Condo notes and  
7 ratifications adjusted per the attorney to match the  
8 CCNR."

9 This email appears to have the condo plat  
10 attached to it, which is at the end of this email  
11 correspondence. It's Bates POWER004287.

12 Is this the recorded Woodcrest Village  
13 (East) Condominium Plat?

14 MR. CONNELLY: Form.

15 A. I signed it. I -- I assume it's recorded,  
16 but ...

17 Q. (By Mr. von Johnson) On the top, left-hand  
18 corner, do you see the "Official records of Maricopa  
19 County Recorder Stephen Richer," and then there is a  
20 document number and a date associated with it?

21 A. Yes.

22 Q. Having the recorder's stamp at the top, is  
23 there any reason you would disagree that this is the  
24 official recorded plat for Woodcrest Villages (East)?

25 A. No.

1 Q. And does this plat that was recorded have the  
2 Master Association Ratification on it on that first  
3 page?

4 A. I don't see it.

5 Q. And do you remember referencing it from the  
6 previous exhibit? Do you need to see the previous  
7 exhibit again to compare the two?

8 A. No.

9 Q. Let's -- so let's flip back to the emails,  
10 POWER004282.

11 The way I interpret these emails is that  
12 EPS Group submitted a new plat with changes that were  
13 made to the town of Gilbert, and Gilbert was  
14 requesting a description of the changes that were  
15 made.

16 Is that an accurate description of the  
17 emails?

18 A. Yes.

19 Q. And EPS Group references that an attorney had  
20 requested the changes or that an attorney had made  
21 the changes.

22 What attorney was that?

23 MR. CONNELLY: Form and foundation.

24 A. I think there was a pronoun she used  
25 somewhere in that email chain, and so that would

1 likely be Phyllis Parise.

2 Q. (By Mr. von Johnson) Did you approve the  
3 deleting of that Master Association Ratification  
4 language in the first page of the plat?

5 A. I am not sure I recall what was on or not on  
6 the plat. I am just given plats when they are ready  
7 to sign.

8 MR. CONNELLY: Form.

9 Q. (By Mr. von Johnson) Do you recall who gave  
10 you this plat to sign?

11 A. So normally it will come from -- I don't,  
12 actually. This -- this plat is prepared by EPS, so  
13 usually EPS will send over a file because they are  
14 the ones preparing the plat and their name is on the  
15 side of it.

16 I don't recall exactly who -- who gave it  
17 to me or handed it to me.

18 Q. Do you recall any discussions you have had  
19 regarding deleting the Master Association  
20 Ratification language from the first page of this  
21 plat?

22 MR. CONNELLY: Form and foundation.

23 A. I am not recalling any discussions about it.

24 Q. (By Mr. von Johnson) Do you know who deleted  
25 that language, the language being the Master

1 Association Ratification language on the first page  
2 of the plat?

3 MR. CONNELLY: Form and foundation.

4 A. Well, there were a lot of changes, as  
5 referenced in the previous emails, so I can only  
6 imagine that EPS is making changes and adjustments to  
7 the plat at the direction of their own engineers and  
8 perhaps at the direction of some of the attorneys.

9 Q. And the attorney would be Phyllis Parise?  
10 Parisse (phonetic)?

11 A. Phyllis Parise is an HOA attorney that we  
12 use. I think the pronoun "she" was used in some of  
13 this email correspondence, so that could be Phyllis.  
14 That's her area of expertise.

15 Q. And who would I need to question about the  
16 deletion of that language to get an answer on -- on  
17 who actually deleted that language from the document?

18 MR. CONNELLY: Form and foundation.

19 A. Well, I think we know. In terms of manually,  
20 the document is prepared by EPS, so -- so EPS  
21 prepares this file and sends it over.

22 Q. (By Mr. von Johnson) Okay. Let's move onto  
23 the next document, which is going to be Exhibit 13,  
24 cover page No. 18 on my documents.

25 (At this time, Plaintiff's Exhibit No. 13

1 was marked for identification by the court reporter).

2 Q. (By Mr. von Johnson) Do you recognize this  
3 document?

4 A. I don't, but I read what it says.

5 Q. And what is this document?

6 A. Articles of Incorporation of Woodcrest  
7 Village East Condominium Association.

8 Q. All right. Please refer to POWER000901.  
9 It's the signature page.

10 Is that your signature?

11 A. Yes.

12 Q. It appears based on the top of the page on  
13 POWER000897, the first page of the document, that  
14 this document was received on August 26th, 2022, and  
15 filed by the Arizona Corporation Commission on August  
16 26th, 2022.

17 Is that an accurate reflection of what's  
18 on the top of the page?

19 A. Yes.

20 Q. Do you remember signing and filing this  
21 document with the Arizona Corporation Commission?

22 A. I don't specifically have a memory of doing  
23 that, but it sure appears that I did.

24 Q. Is this a document that you prepared or is  
25 this a document that would have been prepared for

1 your signature?

2 A. It would have been prepared for me.

3 Q. Who would have prepared this?

4 A. Probably Phyllis Parise, but it could have  
5 been Reese Anderson. As we sit here today, I don't  
6 know.

7 Q. Did you receive approval from Power Ranch to  
8 file this document?

9 A. I -- I am not sure we needed approval from  
10 Power Ranch to file it, but I don't -- I don't recall  
11 whether approval was received or was not received.

12 Q. That's fine. I am done with this document.

13 MR. VON JOHNSON: How are we doing?

14 THE WITNESS: Good.

15 MR. VON JOHNSON: Anybody need a break?

16 Q. (By Mr. von Johnson) I will go on to the  
17 next document.

18 (At this time, Plaintiff's Exhibit No. 14  
19 was marked for identification by the court reporter).

20 Q. (By Mr. von Johnson) I am going to refer you  
21 to Exhibit 14, which is cover page 20 in my  
22 documents. I will give you a minute to review this  
23 document, and let me know what you are ready.

24 A. Ready.

25 Q. Okay. What is this document?

1 A. A printout of some emails.

2 Q. And who are the senders and recipients of the  
3 emails?

4 A. It looks like we have some representatives of  
5 EPS, and also some people at Maricopa County.

6 Q. All right. For my purposes, I am really only  
7 interested in the first two pages of the document. I  
8 am going to be referring to the email correspondence  
9 on those first two pages, starting from Woodcrest  
10 East 00797, which is page 2, and reading backwards  
11 from there because it's an email chain.

12 It appears to be Rosa Solis, from  
13 Maricopa County. I can see in the second email in  
14 the chain it's Rosa Solis, at Maricopa County dot  
15 gov. It looks like she's emailing Robert Johnston as  
16 EPS Group. I know you had said that you don't  
17 remember a Robert Johnston, but this appears to be,  
18 subject line: "Woodcrest Village East."

19 I am assuming that this is somebody at  
20 EPS that is working for the benefit of Woodcrest East  
21 LLC communicating with Maricopa County, is that a  
22 fair assumption?

23 A. Yes.

24 Q. It looks like Rosa Solis on September 26th,  
25 2022, wrote to Robert Johnston: "Good afternoon. We



1 received the recorded plat for Woodcrest Village  
2 (East), Book 1696 Page 50. The following information  
3 below is needed in order to process the plat." And  
4 then there is a dash, and it says, "CAD file (Please  
5 see CAD submittal requirements and guidelines below,"  
6 Which I interpret the remaining pages of this  
7 document as the -- the CAD submittal requirements,  
8 which I have no interest in going into the  
9 engineering side of things.

10 Is that an accurate reading of Rosa's  
11 email on September 26th?

12 A. Yes.

13 Q. And then I can see Rosa appears to have  
14 responded to her own email. So the next email is  
15 sent from Rosa, again, to Robert Johnston, where she  
16 says, "Robert, please provide CC&R recorder number  
17 and CAD data for this condominium. Besides that, I  
18 need verification of total units, units labeled on  
19 plant view are..."-- and then there are a bunch of  
20 units that I don't think I need to read out, but is  
21 that an accurate reading of the first couple of  
22 sentences in that email?

23 A. Yes.

24 Q. So the way I -- I am reading that is Rosa  
25 Solis, at Maricopa County, is requesting the CC&R

1 recorder number and the CAD file--

2 A. Yes.

3 Q. --for Woodcrest East?

4 Then turning to the first page of the  
5 document, it looks like Robert Johnson or Johnston at  
6 EPS Group's emailing internally to other EPS Group  
7 employees, Brian Nicholls, Ted Protonentis, and  
8 Chelsea Hughes, where he says, "Brian, we need  
9 recordation number for CC&Rs. Ted, can you verify  
10 unit numbers and provide CAD file please."

11 Is that an accurate reading of that  
12 email?

13 A. Yes.

14 Q. The reason why I am pointing to this email  
15 correspondence is I am trying to figure out where  
16 Maricopa County has threatened to unwind the  
17 Woodcrest Village (East) plat if the CC&Rs for the  
18 subassociation, Woodcrest Villages Condominium  
19 Association, were not recorded?

20 Is this -- the email correspondence, is  
21 this where Maricopa County is pressuring Woodcrest  
22 Village (East) to record the subassociation  
23 declaration?

24 MR. CONNELLY: Form and foundation.

25 A. I doubt it. My guess is there were some

1 phone calls that have taken place here.

2 Q. (By Mr. von Johnson) And who would those  
3 phone calls have taken place with?

4 A. I don't know.

5 Q. So, to be clear, you don't believe that this  
6 is the correspondence that's been referenced in  
7 various litigation documents in this lawsuit where  
8 Woodcrest village (East) has represented that it was  
9 being threatened by the county to unwind the plat if  
10 a sub declaration was not recorded?

11 MR. CONNELLY: Form and foundation.

12 A. Yeah.

13 I don't know the answer to that question.  
14 That's not a communication that I was part of. I am  
15 seeing these emails for the first time, but I do know  
16 the communication from EPS, which is as you just  
17 stated.

18 Q. (By Mr. von Johnson) Who would I need to  
19 question to get an answer as to what representations  
20 the county was making to Woodcrest East LLC regarding  
21 the recording of a sub association's declaration?

22 A. I think your guess is as good as mine, but  
23 maybe you could start with Rosa, over at the county.

24 I don't know the answer to that.

25 (At this time, Plaintiff's Exhibit No. 15

1 was marked for identification by the court reporter).

2 Q. (By Mr. von Johnson) You can set those  
3 emails aside.

4 I am going to refer you to Exhibit 15,  
5 which is cover page 22 in my documents, and I will  
6 give you a minute to review those.

7 A. Ready.

8 A. So this appears to be a similar set of email  
9 correspondence similar to the ones that we just  
10 reviewed.

11 These ones appear to be Rosa Solis -- it  
12 starts with Rosa Solis to Robert Johnston, cc Dulce  
13 Rivas, D-u-l-c-e R-i-v-a-s, and Ted Protonentis,  
14 P-r-o-t-o-n-e-n-t-i-s.

15 "Good afternoon. We received the  
16 recorded plat for Woodcrest village (East), book 1696  
17 page 50. The following information below is needed  
18 in order to process the plat." And then it says,  
19 "CAD file."

20 Is that the same email that we reviewed  
21 in the prior exhibit?

22 A. If you say it is, I believe you.

23 Q. All right. We can look at the previous -- I  
24 -- I believe this is the same email. I am not trying  
25 to trip you up on this email in any way. I just want

1 to confirm that this is the same email chain that  
2 started. I believe this is a branch where some  
3 emails got responded to and we are looking at a  
4 different branch than the previous exhibit, but the  
5 same starting point?

6 A. Okay. That makes sense.

7 Q. It looks like the next email is a response to  
8 Rosa from Ted, at EPS Group, "Please find the  
9 attached requested CAD file for your use as such.  
10 Sorry for any delays. As always, please do not  
11 hesitate to contact me should you have any questions,  
12 comments or concerns," and then a confirmation of the  
13 plat or the unit numbers that was requested.

14 Is that an accurate reading of that  
15 email?

16 A. Yes.

17 Q. So it's just information she -- Rosa  
18 requested information. Ted is responding with a CAD  
19 file and confirmation on unit numbers that -- that  
20 were requested. It looks like after Ted's email,  
21 which was September 28th, Dulce Rivas, D-u-l-c-e  
22 R-i-v-a-s, from Maricopa County, responded to that on  
23 October 7 is the next email on that chain: "Good  
24 morning, Ted. Thank you very much for the  
25 information. Would you please provide me the owner's

1 email address so I can reach out to them and request  
2 the CC&Rs."

3 Is that an accurate reading?

4 A. Yes.

5 Q. The same question as with the other exhibit:  
6 Is this the pressure from the county to record the  
7 CC&Rs that has been referenced multiple times in the  
8 documents in this litigation?

9 A. I don't know.

10 Q. It looks like the next email on the chain is  
11 an email from Chelsea Hughes, at EPS Group to Dulce  
12 on November 4, 2022.

13 It says, "Just following up on some  
14 things. I wanted to make sure you received these.  
15 Have a good weekend. Best regards."

16 The way I read this, it looks like  
17 Chelsea is sending the recorded CC&Rs for Woodcrest  
18 village East Condominium Association to Dulce Rivas  
19 on November 4th, is that an accurate reading of that  
20 email?

21 MR. CONNELLY: Form and foundation.

22 A. I think so.

23 (At this time, Plaintiff's Exhibit No. 16  
24 was marked for identification by the court reporter

25 Q. (By Mr. von Johnston) That's all I have from

1 this document. Thank you.

2 Okay. I am going to refer you to Exhibit  
3 16, which is 24 on our cover pages.

4 MR. CONNELLY: Thank you.

5 Q. (By Mr. von Johnson) I will give you a  
6 minute to review. When you are ready?

7 A. Okay. Ready.

8 Q. Can you tell me what this exhibit is?

9 A. A printout of emails between Reese Anderson  
10 and Curtis Ekmark and maybe a Rebecca Hill on one of  
11 them, but that seems to be it.

12 Q. I primarily am concerned about Woodcrest  
13 00381. It's page 2 of the document. There is an  
14 email from Reese Anderson to Curtis Ekmark, cc  
15 Rebecca Hill, October 11th 2022 at 11:35 a.m.

16 Do you see that email?

17 A. Yes.

18 Q. He says, "Hello, Curtis. Client was out of  
19 the country for three weeks and just returned today  
20 so that I can brief him."

21 Is he referring to you or is he referring  
22 to somebody else in that email?

23 MR. CONNELLY: Form and foundation.

24 A. I don't know.

25 Q. (By Mr. von Johnson) Were you out of the

1 country for three weeks in October of 2022?

2 A. I don't know. Do you want me to check the  
3 calendar? I will be happy to do it. I don't know if  
4 my calendar will tell me, but I don't -- I don't  
5 remember.

6 Q. I would like you to check the calendar. I  
7 just want to know who he is referring to as his  
8 client in this email.

9 A. Well, his client is Bela Flor Community, so  
10 who he talked to or -- I was out of the country then.

11 Q. So is it fair for me to assume he is  
12 referring to you, and not somebody else?

13 MR. CONNELLY: Form and foundation.

14 A. No. And the reason is it could be a  
15 convenient excuse for the delay.

16 I am not trying to be cute about it. I  
17 am just trying to be realistic with how people  
18 respond to emails and make excuses.

19 Q. I am done with that.

20 A. Yeah. I am not, actually. Let me make a  
21 comment on it.

22 Here we have Curtis Ekmark requesting on  
23 Tuesday, October 11th, 2022. He is saying, "Let me  
24 know if your client is going to put restrictions into  
25 the declaration in order to make sure this property



1 is not used as an apartment absolutely contrary to  
2 Power Ranch master CC&Rs.

3 This is just absolutely an unreasonable  
4 request from Curtis Ekmark. Now, whether he was put  
5 up to it by the Power Ranch Board, I don't know, but  
6 the Power Ranch Master CC&Rs clearly state that the  
7 approval by the Master HOA shall not be unreasonably  
8 conditioned or delayed. And I know that there was  
9 quite a bit of communication between these two  
10 attorneys, and the only reason that Curtis -- and we  
11 can depose Curtis, you can depose Reese, and I  
12 imagine eventually we will get there, which I am  
13 delighted to see, actually -- but the only reason  
14 that there was a hold up from Power Ranch is because  
15 they unreasonably wanted Woodcrest East LLC to put  
16 restrictions into the declaration that are contained  
17 in no other -- no other -- properties within the  
18 entirety of Power Ranch.

19 So, in other words, "We will allow,"  
20 Power Ranch says, "any of the 2 or 3 or 4,000 condo  
21 owners and homeowners to sell their property, lease  
22 their property, or do whatever they want, except we  
23 are go going to place these specific unique  
24 restrictions and force Woodcrest East LLC to place  
25 unique restrictions that are contrary to the Arizona

1 Revised Statutes, contrary to the way we treated  
2 everybody else in Power Ranch, and are -- and are  
3 violations of the master CC&Rs, which -- which  
4 provide no restrictions to the renting or leasing of  
5 condominiums, and, yet, Curtis Ekmark is looking to  
6 unreasonably condition the approval of Power Ranch to  
7 that. That is exactly what is going on in this  
8 email.

9 Thank you for bringing this email up.  
10 This is an email that we will want to refer to over  
11 and over again, and have discussions about as this  
12 litigation proceeds.

13 But that's what's going on is we have an  
14 unreasonable request contrary, directly contrary, to  
15 the Power Ranch CC&Rs, which does not give carte  
16 blanche to Power Ranch. It doesn't say, "in our sole  
17 and absolute discretion." It says that "The approval  
18 of a sub HOA CC&Rs cannot be conditioned in any way  
19 that is unreasonable or causes undue delay, et  
20 cetera."

21 That's what is going on right here, and  
22 that's -- we are going to get to the heart of this.  
23 So glad you brought this up. This is exactly the  
24 heart of this. And I am looking forward to hearing  
25 the explanation of that. It's going to be

1 interesting.

2 Q. Any other comments on the exhibit before we  
3 move on?

4 A. I will have a lot more in the future, but in  
5 terms of for this deposition, no.

6 Q. Sure.

7 A. But thank you for bringing that email up  
8 because it brings to light exactly the  
9 unreasonableness of Power Ranch, the board members,  
10 and it also highlights whether or not the board  
11 members have full knowledge about what's actually  
12 going on in this litigation or whether they lack  
13 knowledge about specifically what is going on. And  
14 that will be interesting to see, as well, what  
15 communications have taken place between your law firm  
16 and the Power Ranch board in terms of their knowledge  
17 and information about this lawsuit that they are  
18 supporting, I think that will be revealing as we kind  
19 of roll down the path on litigation here to see  
20 what's happening.

21 No other comments at this time, but I  
22 will make further comments, and you can bet this will  
23 be a topic of -- of heavy scrutiny.

24 (At this time, Plaintiff's Exhibit No. 17  
25 was marked for identification by the court reporter).

1 Q. (By Mr. von Johnson) I am going to move on  
2 to the next exhibit, 17, which is cover page 25 in  
3 mine.

4 I will let you take a minute to familiarize  
5 yourself.

6 A. Ready.

7 Q. The same general questions as the other email  
8 chains. This appears to be a communication between  
9 Reese Anderson and Curtis Ekmark.

10 My interpretation of this is Reese is  
11 representing Woodcrest East LLC; Curtis is  
12 representing Power Ranch in their capacities as  
13 Counsel for each party.

14 Do you have the same understanding?

15 A. Yes.

16 Q. My question on this email chain is on  
17 Woodcrest 00506, which is the first page, it's an  
18 email from Reese to Curtis at 5:56 p.m. on October  
19 18, 2022.

20 The email is three paragraphs. My  
21 question is about the second, the middle paragraph,  
22 where Reese indicates that, "Since then the county  
23 has pressured us multiple times for the recorded  
24 condominium declaration, including a threat to unwind  
25 the condominium plat if the recording was not done

1 immediately. So, we needed to record the condominium  
2 declaration ASAP, which we did today as instrument  
3 No. 0022 dash 0782127, parentheses, (See attached)."

4 Did I read that correctly?

5 A. Yes. You read it well.

6 Q. My question is -- is similar to the EPS and  
7 Maricopa County emails from earlier.

8 Reese is referencing pressure from the  
9 county and a threat to unwind the plat, but I -- I  
10 don't see the threat in the documentation that's been  
11 provided in the litigation.

12 Do you know who the threat was made to  
13 and who made the threat at the county?

14 A. No. I don't know the answer to that.

15 Q. That's all I have for this exhibit.

16 A. I have more on this Exhibit, though.

17 And, again, we have more communication  
18 back and forth between Reese and Curtis Ekmark.

19 Reese is stating, the third paragraph  
20 in what you just read, "We remain open to consider  
21 additional changes if reasonable and necessary." No  
22 additional requests were made by Curtis Ekmark.

23 Curtis is -- is saying back in Wednesday, October  
24 12th, "As I mentioned, the big issue is making sure  
25 the condominium is not used as an apartment." He is

1 conflating two issues. Now, Curtis knows better. He  
2 is a smart guy. He's conflating the issue of a condo  
3 from an apartment development. We spent a lot of  
4 time going through that here. And Curtis mentioned  
5 other changes, by the way. All of those changes were  
6 agreed to and done.

7           So the only change -- the only change --  
8 that was holding up your law firm and Power Ranch  
9 approving the CC&Rs was Curtis insisting that there  
10 be a rental restriction on condominiums. Now,  
11 whether he mistakenly thought that somehow we were  
12 trying to get the Power Ranch approval to be an  
13 apartment development, I doubt it. That's possible.  
14 People make mistakes. I am willing to accept that,  
15 that he just misunderstood that we were no longer  
16 making that request, and haven't made it for years  
17 and didn't make it here, but it's clear what's going  
18 on.

19           "Thanks," says Curtis. "As I mentioned,  
20 the big issue is making sure the condominium is not  
21 used as an apartment."

22           We are not asking to use the apartment as  
23 an apartment. We are asking to use the condominium  
24 as a condominium. Condominiums can be sold and  
25 condominiums can be rented under Arizona law absent a

1 prohibition found in the CC&Rs, which there are none.  
2 You have not shown me any today. Curtis has not  
3 shown us any in three years. There are no  
4 prohibitions.

5 And so here we have an attorney  
6 unreasonably making a request on a sub CC&R for  
7 something that none of the other thousands of homes  
8 and condominiums are required to do.

9 That's going to be an interesting one to  
10 defend because I see no law, no document, no  
11 restriction that prevents condominiums from being  
12 rented.

13 Reese responds to that question:  
14 "Regarding the -- the question of restricting rentals  
15 within the condominium, I am not sure why our client  
16 would give up any existing legal right that they  
17 have. Thank you for the comments below."

18 And those comments, they had phone calls  
19 and, again, looking at emails just gives us a piece  
20 of the history. There are phone calls happening in  
21 all of these things, but, you know, Curtis ignores  
22 that question because he has no answer to that  
23 question. So he ignores it and then he is just  
24 coming -- he keeps coming back to, "Your client can't  
25 record a declaration without master association

1 approval."

2 He ignores what he knows full well, which  
3 was he is not permitted, nor is Power Ranch  
4 permitted, to unreasonably withhold the approval of  
5 CC&Rs, and which they attempted to do.

6 Q. And just to be clear, you are reading from  
7 Woodcrest 00507, the top of the page?

8 A. Yes. Bates stamped 00507, and then Bate  
9 stamped 00506.

10 And so there were communications. And we  
11 can depose Curtis. You can depose Reese. We can go  
12 through all of this, but it really comes down to  
13 this: Power Ranch unreasonably attempted to impose a  
14 restriction on these 120 lots that it has never in  
15 its history attempted to impose on any other lots  
16 within the thousands of lots within Power Ranch.

17 Q. And to be clear, can you tell me exactly what  
18 the restriction was that you are referencing?

19 A. We don't need myself to tell you. We -- we  
20 can use Curtis Ekmark's own words in Bate stamped  
21 00507, an email from Curtis to Reese, dated October  
22 12, 2022, at 9:51 a.m. He says, "As I  
23 mentioned..."-- what is he referencing? Phone calls  
24 that they have had.

25 "As I mentioned, the big issue is making



1 sure the condominium is not used as an apartment."

2 And, again, he is either mistaken as to  
3 our request or desire to have it be an "Apartment  
4 Development," quote, unquote, or he is trying to  
5 impose an unreasonable restriction on condos. Show  
6 me in the CC&Rs where condos can be restricted. You  
7 can't do it. Show me in the Arizona Revised Statutes  
8 where condos can be restricted from rentals. You  
9 can't do it.

10 But here we have Curtis attempting to do  
11 something unlawfully.

12 Q. I'm -- I am still trying to understand the  
13 exact restriction that you are claiming is  
14 unreasonable.

15 So I can see in Curtis' email ...

16 A. I am sorry for -- I am sorry for talking over  
17 you.

18 Really? Are you really trying to  
19 understand the -- the restriction? Is it really not  
20 clear after I have repeated this now about a dozen  
21 times?

22 Let me try it again!

23 These are condominiums, 120 condominiums.  
24 They are under construction right now. Curtis wants  
25 to restrict these so they must be sold and cannot be

1 rented, cannot be leased out. That's it.

2 Other condominiums within Power Ranch  
3 currently can be leased. Did you know that, by the  
4 way?

5 Q. So you -- your interpretation of Curtis'  
6 email that we are referencing ...

7 A. This is not my interpretation. This is just  
8 as -- as clear a as daylight, but you can say "your  
9 interpretation."

10 Q. Woodcrest 00507, middle of the page, Curtis  
11 Ekmark emailed to Reese Anderson, cc Rebecca Hill:  
12 "Thanks. As I mentioned, the big issue is making  
13 sure the condominium is not used as an apartment,"  
14 you are saying Curtis -- by stating that in the  
15 email, Curtis' restriction is that no units in  
16 Woodcrest East can be rented to third parties?

17 A. Well, Reese -- yes. That's -- that's what he  
18 is wanting. He is wanting Woodcrest East to modify  
19 the CC&Rs to put a rental prohibition in there so  
20 that none of the 120 units can be rented out. That  
21 prohibition does not exist anywhere in the Master  
22 CC&Rs. It does not exist anywhere in any other  
23 community within Power Ranch.

24 And so the question becomes what is  
25 Curtis' understanding of this? We are going to find

1 out. And what is the board members' understanding of  
2 this? We are going to find that out, too.

3 I think the board is going to be a little  
4 surprised, candidly, when they realize that this is  
5 not about approving or not approving a, quote,  
6 "Apartment Development," close quote, but this is  
7 about whether they are going to support litigation  
8 for a restriction that is contrary to their own CC&Rs  
9 and a right that is allowed to every other condo  
10 owner within Power Ranch.

11 It is astounding! It is amazing to me.  
12 Yet we will go down this path. And there is no  
13 restriction you can show me. We have been at it for  
14 years.

15 Q. So to confirm my understanding of your  
16 understanding, is -- are you allowed to rent a  
17 condominium?

18 MR. CONNELLY: Form and foundation.

19 A. Is that a general question in the state of  
20 Arizona, are you allowed to rent a condominium, if  
21 that's the question, the answer is yes.

22 Q. (By Mr. von Johnson) Okay. And under Power  
23 Ranch's governing documents, we looked at the  
24 declaration earlier, are you, as a property owner, an  
25 owner of a condominium, allowed to rent out that

1 condominium to third parties under Power Ranch's  
2 documents?

3 A. Yes.

4 Q. And ...

5 A. And -- and everybody knows it, by the way.  
6 And many condos are rented today under those same  
7 declarations.

8 Q. I -- I think I am getting to the heart of  
9 where I am confused about--

10 A. Okay. Go right ahead.

11 Q. --the interpretation of the email.

12 So I can see Curtis is saying, "We want  
13 to make sure the condominium is not used as an  
14 apartment"; phrased differently, "We want to make  
15 sure you use the condominium as a condominium"?

16 A. No. That's not -- that's a false premise.

17 Q. Okay. Explain, please.

18 A. For the 10th time, the 15th time, the 20th  
19 time today, I will explain.

20 Condominiums, under Arizona law, can be  
21 sold and can be rented, period. The only reason they  
22 couldn't be rented is if there is a clear restriction  
23 in the governing CC&Rs. There is no such restriction  
24 in the Power Ranch CC&Rs. You haven't pointed to  
25 one, nor has Curtis ever pointed to one. And I would

1 say, if we gave him truth serum and asked him on the  
2 stand, which could happen, "Is there a restriction in  
3 the Power Ranch CC&Rs?" he won't be able to answer  
4 that there is.

5 We can flip through the 70 plus pages and  
6 go through it. It doesn't exist.

7 So to say, "You are trying to treat  
8 condominiums as an apartment" is a false premise. I  
9 am trying to treat condominiums as a condominium,  
10 which can be sold or be rented. I reserve that  
11 right, period.

12 Show me a document that says I can't do  
13 that. You haven't shown me one. Curtis hasn't shown  
14 me one. It's not your fault. You are doing a great  
15 job. You are working hard trying to go through a  
16 deposition. I get it!

17 But there - you just don't have the  
18 documents. You don't have the facts on your side.  
19 Curtis is trying to impose a restriction that he is  
20 not allowed to impose. He knows it. He is trying to  
21 conflate the issue by mixing up condos and  
22 apartments, and what I am going to get to eventually  
23 is if he's trying to deceive the -- the board in  
24 conflating that issue, That's going to be interesting  
25 to see what the board's actual understanding is of

1 this dispute because I don't think they understand it  
2 in the -- in the way that we have been discussing it  
3 today. I think that there are supporting litigation  
4 only because they have been convinced that they need  
5 to do this litigation to prevent an, "Apartment  
6 Development," quote, unquote, from happening with  
7 Woodcrest East. That is not the case. That is  
8 false. That is a false assumption. If that's -- if  
9 that's what they actually believe, that being the  
10 board of directors of Power Ranch, that's a false  
11 assumption. We will get to the bottom of this and  
12 figure it out.

13 Now, maybe Cutis is just mistaken and  
14 maybe once he realizes, "Oh, of course. Condos can  
15 be leased. Condos can be sold. And if you are not  
16 really wanting to be an apartment development under  
17 -- under the Power Ranch CC&Rs, we are totally fine  
18 and we're -- and go forward and use condos."

19 But to say that, "Curtis wants condos not  
20 to be used as apartments" is mixing two issues. We  
21 are just saying -- and I am testifying today that I  
22 reserve the right -- and I have seen nothing to the  
23 contrary in three years, by the way; I know you are  
24 late to the party. I get it -- I have seen nothing  
25 to the contrary. I have seen nothing that indicates

1 that a condominium cannot be either leased or sold in  
2 Power Ranch, and condominiums today are both leased  
3 and sold in Power Ranch. Get on Zillo, get on  
4 Redfin, and you can find Power Ranch condominiums for  
5 lease, but yet Power Ranch, under the direction of  
6 Curtis Ekmark, is trying to impose an unreasonable  
7 restriction that my condominiums -- no other  
8 condominiums, just mine; none of the other thousands  
9 of homes that are used for airbnbs, that are used for  
10 short-term rentals, long-term rentals; we are not  
11 going to worry about those, but these and these  
12 alone, Woodcrest East Condominiums only have to have  
13 this restriction, and, "If you don't do it," so says  
14 Curtis to me, "I am going to hold things up and sue  
15 you and go forward."

16 We will get to the bottom of this in  
17 terms of what he knew, what he said, and what the  
18 board knows, but it's not reasonable for him to  
19 impose that restriction on me. It is contrary to  
20 your CC&Rs.

21 Does that answer your question?

22 Q. All right. So we are going -- and I -- I get  
23 your frustration.

24 A. No, no, no.

25 Q. So you keep repeating -- we are going around

1 in circles here.

2 A. Ask me the question again, and I will give  
3 you a short answer.

4 Q. I'm -- I am going to read directly from the  
5 email.

6 "As I mentioned, the big issue is making  
7 sure the condominium is not used as an apartment,  
8 period."

9 A. Okay.

10 Q. In that statement, Curtis does not say,  
11 "There is a rental prohibition on these units"?

12 A. Do you want me to respond to that?

13 MR. CONNELLY: Form and foundation.

14 A. Oh my goodness! I will give you a response  
15 to it, but you are going to get both barrels if you  
16 want a response to that. Just be careful, if that's  
17 the question you want.

18 Q. My reading of -- of that statement is not  
19 that Curtis is saying that there is a complete rental  
20 prohibition on the Woodcrest East Condominiums?

21 A. What is your reading?

22 Q. You have represented that your interpretation  
23 of that statement is a complete rental prohibition on  
24 the Woodcrest East condominium units, is that fair?

25 MR. CONNELLY: Form and foundation.



1 A. You know, I have answered this so many times,  
2 I am really curious to hear your interpretation of  
3 what that sentence is.

4 Q. (By Mr. von Johnson) Well, luckily, I am not  
5 under deposition.

6 A. I understand, but someone else in this email  
7 chain may be at some point.

8 It's -- I have lived through this for  
9 years. You haven't. I have lived through this. I  
10 know what he has talked to Reese about. I know the  
11 communications they have had back and forth. I know  
12 that what he wants in the CC&Rs, if we were to look  
13 at redlines, is he wants to prohibit the condominium  
14 from being rented.

15 If you have a different interpretation  
16 than that, let's hear it. I would love to hear it.  
17 Tell me how I am wrong.

18 Q. I am going to move on to my next question.

19 A. Okay. And -- and this is how it goes,  
20 because even Curtis has not been able to on the phone  
21 answer that question. He doesn't have an answer for  
22 it.

23 He's -- if, in fact, though, that what he  
24 really wants is for us to not be an "Apartment  
25 Development," quote, unquote, the litigation can end

1 in five minutes.

2 Q. What do you mean by that?

3 A. If that's all he is looking for is, don't  
4 force your way to be a, quote, "Apartment  
5 Development, close quote, we are not asking for that.

6 Q. Okay. I am going to move on to the next  
7 round of--

8 A. Okay.

9 Q. --questioning--

10 A. And I still ...

11 Q. --unless you have anything you would like to  
12 add?

13 A. No, no. I would still love to hear from  
14 Carpenter Hazlewood an answer to my questions, but  
15 that will come.

16 (At this time, Plaintiff's Exhibit No. 18  
17 was marked for identification by the court reporter).

18 Q. (By Mr. von Johnson) I am going to refer you  
19 to Exhibit 18, which is cover page 26.

20 Do you recognize this document?

21 A. I recognize what it is.

22 Q. Okay.

23 A. I can't say that I have read it.

24 Q. What is it?

25 A. These are the, "Declaration of -- of

1 Condominium and of Covenants, Conditions and  
2 Restrictions for Woodcrest Village (East), a  
3 condominium," so these are the CC&Rs for the property  
4 that we have been discussing here, Woodcrest East.

5 Q. And these were the recorded -- this is the  
6 recorded copy?

7 A. It -- it sure appears to be a recorded copy.  
8 I would agree with you.

9 Q. That's all I need from this one.

10 MR. VON JOHNSON: We are almost done.

11 (At this time, Plaintiff's Exhibit No. 19  
12 was marked for identification by the court reporter).

13 Q. (By Mr. von Johnson) I am going to refer you  
14 to Exhibit 19, which is cover page 27 in my  
15 documents.

16 A. Thank you.

17 Q. Do you recognize this document?

18 A. Yes.

19 Aren't you glad I can finally give you a  
20 yes for something here?

21 Q. And what is this document?

22 A. And I think you have another document that I  
23 submitted.

24 Q. That will be the next exhibit.

25 A. Okay. Is you want -- if you want to discuss

1 them together, that's fine. If you want to discuss  
2 them separately, that's your prerogative.

3 Q. Does it make sense to do them together or is  
4 there one you would like to review before the other?

5 A. No. Let's do it -- let's do it -- I want to  
6 do it the way that is most helpful for you. So let's  
7 go ahead and do it this way.

8 Q. Okay.

9 A. Do you want me to explain it or do you want  
10 to just ask questions? What's best?

11 Q. So I have a plethora of questions that are  
12 all the same question: "What is this? And please  
13 explain."

14 So I can let you have free rein of the  
15 document, subject to your attorney agreeing to that,  
16 or I can ask line by line, "What is this?" and, "What  
17 does it mean?"

18 MR. VON JOHNSON: So I will -- I will  
19 defer, if Rob will allow it, to save time.

20 MR. CONNELLY: Please do.

21 A. Okay. Help yourself?

22 Q. (By Mr. von Johnson) All right.

23 A. So this is -- may I will speak?

24 Q. Yes.

25 A. This is a financial model created a couple of

1 years ago. I don't know when it was created. It  
2 Rooks like June, 2021, but it could have been created  
3 before that date, analyzing -- well, I don't know if  
4 it was created after that date. So I don't know  
5 exactly when it was created, but -- but it hasn't  
6 been recently created. This has been a couple of  
7 years ago -- analyzing Woodcrest East as leasing the  
8 condominiums and -- and analyzing what that would  
9 look like.

10 And so I didn't prepare this document. I  
11 -- I have got some people in my office that prepared  
12 it, but have I reviewed it and looked at it and --  
13 and discussed it, yes. So I have spent time looking  
14 at this document -- not recently, but I have spent  
15 time looking at this document in the past.

16 And so what you are going to see here  
17 just at a high level is you are going to look at the  
18 cost to build, the hard cost and then the soft cost  
19 to build Woodcrest East, all of these condominiums,  
20 to build 120 condominiums.

21 So that's going to be the first section  
22 in here. I have to add a parenthetical comment that  
23 those costs have gone through the roof now. So  
24 whatever costs -- if we were to spend a lot of time  
25 looking at the exact cost on this number, at the end

1 I would say, "Throw it in trash," because what --  
2 what Covid, with inflation and Covid and other  
3 things, is construction costs have gone up 25 to 30  
4 to 35% for the last couple of years -- not evenly.  
5 We can't point to concrete or framing, or anything,  
6 and say, "It went up by this amount," but in sum  
7 total that's kind of what things have gone up. So  
8 all of these numbers are wrong.

9 But this was our mindset. This is how we  
10 would analyze and look at a project a couple of years  
11 ago. So this is looking at 100 -- 120 condos, two  
12 stories. Do you remember the adjustment from three  
13 stories to two stories? So this is looking at two  
14 stories, seeing what the cost is to build.

15 Q. And can you just point me to where you are  
16 looking at. So is, "120" at the top of the document  
17 where it says, "Units 120." "Average number of  
18 stories, 2.0."?

19 A. Yes.

20 Q. Okay. I -- I want to make sure that I can --  
21 when I am reviewing the record later I can--

22 A. Yes.

23 Q. --point to where you are discussing--

24 A. Yeah.

25 Q. --on the document.

1 A. Yeah.

2 And I have no problem, you know, chatting  
3 later or showing you through this -- talking you  
4 through this.

5 "120 units. 7.1 acres." Do you see that  
6 there in the middle of that top box?

7 I think we are technically, "7.08 acres,  
8 16.9 units per acre." So this is -- this is the  
9 two-unit version of Woodcrest East. And then we are  
10 putting together estimates. What the actuals will be  
11 will be different from estimates, but we don't know.

12 But in order to figure out whether a  
13 project makes sense or not and whether we are going  
14 to devote the time and energy to do this, we have to  
15 put some estimates together, and that is what you are  
16 looking at here.

17 Do you see the land cost? Do you see  
18 that 6.9 million? That's going to have some added in  
19 capitalized interest and other expenses there.

20 Do you see the hard cost for land  
21 development? We talked about water, sewer, things  
22 like that. We talked about site amenities. We  
23 talked about vertical construction. That's -- that's  
24 going from the curb up, right, so that is everything  
25 that goes up, the framing, the drywall, the

1 appliances, the electrical, all of that is in there.

2 And then all of the soft costs. The soft  
3 costs are what usually surprises people when they see  
4 what it costs to actually build something. You are  
5 going to pay over a million dollars in taxes to the  
6 town of Gilbert? Yep.

7 You are going to pay over 1.2 million in  
8 permits and fees to the town of Gilbert for building  
9 this? Yes.

10 And you realize how expensive development  
11 is. It isn't just the four walls. It's all of these  
12 fees and taxes that get paid.

13 Anyways, then we go down to go how we are  
14 going to have what's called the capital stack between  
15 equity and construction debt, so there's a page --  
16 there's a section that goes onto that.

17 And if I move over to Bate-stamped 00344  
18 ...

19 Q. Let's -- let's back up a little bit.

20 A. Please. You bet.

21 Q. I have got a couple of questions.

22 A. Fire away.

23 Q. Just to clarify, these numbers were  
24 estimates, you said? So this is not an actual 1.27  
25 million paid to permits -- for permits and fees?



1 It's just an estimate of what will be paid?

2 A. Yes.

3 Q. Okay.

4 A. That's right.

5 And it's -- and it's an estimate based on  
6 we know the rates of fees that are charged in the  
7 town of Gilbert. And so if our construction costs  
8 are "X," we know that "Y" will be our fees paid. So  
9 it's not just a total wag. It's not a guess. It's  
10 not like, "Oh, I don't know what it's going to be."

11 It is based on if we have these  
12 construction costs that will be it exactly in terms  
13 of the exact fees paid--

14 Q. Sure.

15 A. --to the town of Gilbert.

16 Q. So the bottom of that, the sum of that  
17 number, "Total Project Cost Before Financing,  
18 29,952,936"--

19 A. Yes.

20 Q. --what -- what is that figure intended to  
21 represent?

22 A. That's intended to represent before the  
23 interest payments that you would make to a  
24 construction lender what it would cost to build the  
25 entire project, the land, the land development work,

1 the construction costs, things that you can see  
2 physically, the -- you know, the framing going up on  
3 all of those things, and all of the what we call soft  
4 costs, which are you listed out there by line item.

5 Q. And the next section says, "Carry Costs,  
6 Capitalized Construction Interest," is that where you  
7 are referencing interest paid to lenders for a  
8 constructionist loan?

9 A. You are correct.

10 Q. Okay. So "Carry Costs," you estimated,  
11 "1,139,314"?

12 A. Yes.

13 Q. Okay. And then what's the next section, the  
14 one at the bottom of this page?

15 A. Right. And it's -- it's a carry over  
16 section.

17 Q. Okay.

18 A. And it is a sources and uses table, again,  
19 that looks at how much equity and how much debt is  
20 going to be required in this project at that time.

21 And it -- and it breaks it out further.  
22 So that's -- so if we were to look at what it -- what  
23 it costs to build, that's one Set of tables, right,  
24 the hard costs, the soft costs that we just talked  
25 about.

1                   Now where's the money to do that? That's  
2 this table. That's what you are looking at there.

3           Q. And -- and I am seeing the bottom two lines  
4 of Woodcrest 00343 says, "Construction Loan" and  
5 then, "Mezzanine Loan"?

6           A. Yes.

7           Q. Are those loans that were obtained by  
8 Woodcrest East LLC for the project or are these still  
9 just estimates?

10          A. We did obtain loans for the project, but this  
11 entire project now -- and I am going to give you an  
12 estimate because I don't remember offhand -- is 10  
13 million dollars higher. So whatever numbers you see  
14 here, it cost 10 million dollars more to build--

15          Q. So ...

16          A. --or so, something like that.

17          Q. So the line item that says, "Total Project  
18 Costs Before Financing" is "29,952,936," you are  
19 saying it's 10 million more than the 29.9 million, or  
20 is that a different figure?

21          A. If I were to look at the -- skip down a bit  
22 to the "1,092,250" -- and I don't know if it's 10  
23 million more. I don't have that in front of me, or I  
24 haven't looked at it recently, but it's millions  
25 more, not just one or two or three million. It's

1 several millions more. Maybe it's not quite 10, but  
2 it's a lot more.

3 Q. And -- and what do you attribute the roughly  
4 10 million dollar increase than over what was  
5 estimated to?

6 A. Covid.

7 Q. It's just construction costs increase?

8 A. You know, Covid caused a lot of changes in  
9 real estate development. We could discourse on that  
10 for a long time. And others could certainly explain  
11 that far better than I, but we could talk a lot about  
12 the whys, but let's ignore those unless you want me  
13 to delve into it, which would; d be just pure  
14 speculation, but let's talk about the results of what  
15 happened.

16 Q. Sure.

17 A. And the results of what happened -- and many  
18 people saw it, just lay people saw it, not in  
19 construction -- housing prices went up, rents went  
20 up.

21 So the construction costs went up  
22 unsubstancially. I think what happened is all of a  
23 sudden with Covid there became a higher intrinsic  
24 value on habitation, on your home, or your living  
25 place, whatever that may be, and a lower value was

1 placed on your office building, right? We see empty  
2 office buildings today. We see work from home.

3 And, remember, the big work-from-home  
4 revolution that's happened in the last two or three  
5 years, all of this was Covid generated.

6 Yes, that was happening prior, but it was  
7 accelerated or facilitated by Covid, and so all of a  
8 sudden now people are spending more time in their  
9 home.

10 And -- and what happened is the demand  
11 for housing really increased. And with that -- we  
12 need an economist to explain ail of the reasons --  
13 but I can tell you the results: Construction costs  
14 went through the roof.

15 And so this project that years ago we  
16 estimated would be 31 million, and change, now is  
17 going to be 37, 38, 39 million. I can -- that's not  
18 the exact number. We would have to get into those  
19 details, which I don't have at my memory, but at a  
20 substantial higher price.

21 Now rents have also gone up, and that's  
22 unfortunate, but rents have got significantly, but  
23 also construction costs have gone up significantly.  
24 So that's an easy explanation. It causes a lot of  
25 challenges and problems through that, but this was

1 our window picture at the time as we were looking at  
2 should we do a rental community or, let me properly  
3 say this, should I take condominiums and rent them  
4 and make them two stories?

5 I was looking at renting three stories,  
6 for example, and we looked at various models -- not  
7 this one, but I looked at various other models and  
8 ultimately came to the conclusion, "Let's make it a  
9 two-story condo rental community."

10 And if we were to go through this, you  
11 will see our assumptions. These are not real  
12 numbers. These are all just assumptions. We hope  
13 they are close to being accurate at the time. Now,  
14 none of these assumptions are worth the paper they  
15 are printed on because all of this has changed with  
16 Covid, and the impacts that have happened in the last  
17 two or three years.

18 All of these rents would be higher, for  
19 example. All of these operating expenses would be  
20 higher. All of this construction is higher.

21 But it gives you a sense of my mindset as  
22 we went into this project.

23 Q. Sure.

24 The first question before we dig back in  
25 on the document, has there been a new analysis or

1 report that -- that has been created similar to this  
2 since this one? You know, I am looking for are there  
3 more accurate figures since these are, as you  
4 testified, mostly hypothetical figures at -- at this  
5 point due to cost changes and rent changes?

6 MR. CONNELLY: Form.

7 A. We sure thought and hoped they were accurate  
8 numbers at the time, and then things changed in the  
9 construction world.

10 Yes. There are more updated ones, maybe  
11 dozens. I mean, there is a lot. This is something  
12 that this is a regular tool that we use, but at some  
13 point we stopped using this tool and we get under  
14 construction, and we morph from hypothetically, using  
15 your word, which is a correct word, "Hypothetically  
16 what do we think this will cost to build?" and then  
17 we move from estimates to actual bids, construction  
18 bids, from the framers, the concrete people, the  
19 roofers, and all of those. And then we move from  
20 bids to contracts. And then we actually start  
21 building it, which we are doing today. This is --  
22 this project is under construction.

23 And so at some point we stopped using  
24 these kind of financial models in a project and moved  
25 more to a different type of -- of analysis tool, but,

1 yes, we do many of these.

2 I haven't looked at any of them in a  
3 while because it doesn't matter. It is under  
4 construction, right? Whatever I thought it was going  
5 to cost a year or two or three years ago is  
6 irrelevant.

7 But this is the tool, an example of the  
8 tool that we would have used at the time.

9 Q. Sure.

10 Let's dig back into the document.

11 A. Sure.

12 Q. There's a bold line towards the top. It  
13 says, "Operating Period Cash Flows."

14 Can you explain the section above that  
15 bold line in the report?

16 A. Is it -- is this the section you are looking  
17 at right here?

18 Q. Yes.

19 For purposes of the record, it's the --  
20 the top one, two, three, four, five, six, seven,  
21 eight, nine -- nine lines in the report, starting  
22 with, "Cash Flow Of Sources," ending in, "Permanent  
23 Debt - Do Not Use."

24 A. This is a spreadsheet, and so--

25 MR. CONNELLY: Form.



1 A. --sometimes based on formulas there's  
2 different things that crop up here.

3 So, yes, what this is, notice in the  
4 bottom right-hand corner of the rectangle that you  
5 mentioned, "31,092,250." Do you see that number?

6 Q. (By Mr. von Johnson) I see it.

7 A. And you will notice if you flip back to Bate  
8 stamped 00343 and go up about seven or eight lines,  
9 you also see that, "31,092,250"?

10 A. I see it.

11 Q. So what we are seeing here is, "What does it  
12 cost to build this thing?" and -- and at the time our  
13 estimate was 31 million and change.

14 And then, "How do we get the money to  
15 build it? Where does the money come from?"

16 And that's what you are seeing in that  
17 top rectangle, the Bates stamp 344.

18 Does that make sense? Those two things  
19 need to balance.

20 Q. So is this section intended to represent the  
21 financing of the estimated cost of the development  
22 project?

23 A. Yes.

24 Q. Okay. That makes sense.

25 Let's move onto the next one. Below the

1 bold line at the top or towards the top of the  
2 document that has "Operating Period Cash Flows" in  
3 the bolded line, it looks like there's a -- a rental  
4 analysis section.

5 Can you please explain the figures in  
6 that section?

7 A. Yes.

8 And this is a page of a much larger  
9 spreadsheet, by the way, so -- and then maybe I have,  
10 I don't know, three, or ten, or 20 of these for any  
11 project, right? So this could go on and on for 1000  
12 pages, but what you are looking at is with Woodcrest  
13 East Condominiums as a rental community what would we  
14 assume -- we don't know -- what would we assume the  
15 rents would be as we sat there a couple of years ago.

16 So that's what you are seeing here. We  
17 have the different unit types. You see that on the  
18 left-hand side, "A-1, B-1, B-2," et cetera. Then we  
19 have the different estimated rents.

20 And all of that sums up to what we think  
21 will be the rents per month and per year for  
22 Woodcrest East.

23 Q. And can you confirm those figures per month  
24 and per year?

25 A. Do you want me to read down them?

1 Q. Yeah. I am looking for where that figure is  
2 located in the document?

3 A. Oh, I -- I apologize.

4 So if you look at the penultimate column,  
5 the next to last column, where it says, "Rent Per  
6 Month" -- "Rent Per Unit Per Month," do you see that?

7 Q. I see it, yes.

8 A. So that would have been at the time -- now,  
9 these -- these numbers are not worth the paper they  
10 are printed on, so much has changed in the years, but  
11 at that time these were our estimates for what we  
12 would rent. Unit A-1, 750 square feet, rent it for  
13 \$1,695. Do you follow that?

14 Q. I follow.

15 A. And then we could do the same thing for each  
16 of the other units.

17 Q. So the gross rent line, it says, "Gross Rent,  
18 120 units," is an average of -- because I am looking  
19 at the -- you are referencing the "Rent Per Unit Per  
20 Month," on the, "Gross Rent" line is, "\$2,021"?

21 A. Yes.

22 Q. Is that an average rent per unit?

23 A. Yes.

24 Q. And then there is a, "Total Rent" of,  
25 "2,910,420"?

1 A. And that 2,910,420 would represent the  
2 estimated rents for all 120 units over a 12-month  
3 period of time.

4 Q. Not -- this is not a per month for all 120  
5 units?

6 A. Bless you! That would be awesome. That  
7 would be great, but, no, it's not that.

8 Q. Referencing ...

9 A. What is this, optima, you know?

10 Q. There's a line item further up in the  
11 document, there is a box called, "Basic"--

12 A. Yeah.

13 Q. --in black, detailed in white.

14 Just below that box, it says, "Percent  
15 Preleased, 10%"?

16 A. Uh-huh.

17 Q. Can you explain that figure, please?

18 A. This is a complicated spreadsheet. We are  
19 just getting a -- even if we spent an hour, we would  
20 -- we would get through 10% of it because of the  
21 nature of the financial model, but, "Percent  
22 Preleased" is just -- what we are trying to do is to  
23 figure out what is going to be the shape of the curve  
24 of the lease up and how quickly properties will lease  
25 up.

1                   And so when we look at prelease, it's --  
2                   it's a number -- none of the units are preleased. I  
3                   will say that. We do not -- I think that was the  
4                   question you were getting at because I saw some  
5                   document there where someone made an incorrect  
6                   representation that, "They are already preleasing."  
7                   False.

8                   But it is simply put in the model to help  
9                   us understand how quickly after the unit receives a  
10                  certificate of occupancy can it then be leased. And  
11                  you have to have a lease contract to do that, right?  
12                  So it's just something that helps to generate the  
13                  proforma, but it does not represent anything that is  
14                  preleased.

15                 Q. There is a line item, "Total Potential  
16                 Income"--

17                 A. Yeah.

18                 Q. --of "3,198:420."

19                         Can you explain what the increase is? We  
20                         just reviewed the total rental income for 12 months  
21                         at 2.9 million, and now we have a total potential  
22                         income that's higher than that 2.9 million.

23                                 Where is the increase in income?

24                         A. Excellent question!

25                                 And the difference there is this other

1 income line, which you see at \$200 a month. That  
2 doesn't answer your question substantively. So may I  
3 do that?

4 The answer there will come from things  
5 like there's a technology package where we will  
6 provide certain technology services, such as Wi-Fi,  
7 internet services that would be included in there  
8 that every tenant would be using.

9 If you have a pet, there's a little bit  
10 of a pet fee. Sometimes there's fees based on  
11 premium locations, right? So all of that added  
12 together, and I think there's -- you know, there's a  
13 whole other table that figures that out, but you are  
14 seeing the sum of that.

15 Q. About three quarters of the way down the  
16 document, there is another box that says, "Basic."

17 A. Yes.

18 Q. --and then, "Detailed." Just below, it says,  
19 "Operating Expenses."

20 Can you explain this table?

21 A. Yes.

22 So in a condominium that is leased -- and  
23 by the way, I have a condominium complex with 236  
24 units that is fully leased, so I have had this for  
25 years. So this is a very common thing.

1                   So back at your question a few hours ago  
2 about, you know, "your understanding of the Arizona  
3 Revised Statutes," I have already done this. I have  
4 already done this in Mesa with my Bela Victoria  
5 project that is a 236-unit condo project that is  
6 completely leased. So part of that has -- has guided  
7 me in this.

8                   So if we're -- so back to your question,  
9 if we are looking at operating expenses, so this is  
10 just what it takes per unit or per year in these  
11 different categories to maintain a Class A project.

12                   I have seen some of the commentary in the  
13 Power Ranch minutes, they are worried about  
14 degradation, they are worried about pulling down the  
15 values of homes, and -- and I have to say this is a  
16 Class A project. Some of these condominiums are over  
17 1500 square feet, 11-foot ceilings, very nice,  
18 two-car garages.

19                   But this is what it costs in terms of  
20 operating expenses to maintain that very high  
21 standard of a project. And so you are seeing our  
22 estimates of what that will cost.

23                   Q. I am just to confirm, you believe that this  
24 document was generated sometime in 2021, based on the  
25 date that's on the first page?

1           A. You know what? I -- I don't know when it was  
2 generated, but it's been at least a couple of years.  
3 We're -- we are sitting here in 20 -- sometimes  
4 documents, especially Word documents, have a way of  
5 flipping their data if you just open it up again. I  
6 don't know what happened here, but this is clearly a  
7 two-years-plus-ago type of document, if -- if that's  
8 satisfactory for now. It's not a recent document.  
9 We are over two years old.

10                           (At this time, Plaintiff's Exhibit No. 20  
11 was marked for identification by the court reporter).

12           Q. (By Mr. von Johnson) All right. Let's move  
13 on to the next one.

14           A. Sure.

15                           MR. VON JOHNSON: We are almost done.  
16 Does anybody need a break--

17                           THE WITNESS: No.

18                           MR. VON JOHNSON: --or do you want to  
19 push through?.

20           Q. (By Mr. von Johnson) That will be Exhibit  
21 20, which is cover page 28 in my documents.

22                           THE WITNESS: No one ever wants to talk  
23 about what I can talk about for hours.

24                           So now you are getting to the subject --  
25 this is off the record.



1 (Discussion held off the record).

2 MR. VON JOHNSON: Okay. We are back on  
3 the record.

4 Q. (By Mr. von Johnson) Just to remind us, we  
5 are back on the record. You are under oath.

6 A. You bet.

7 Q. Let's take a look at Exhibit 20.

8 Do you recognize this document?

9 A. I do.

10 Q. And, similar to Exhibit 19, if it's okay with  
11 your Counsel, I will just have you explain the  
12 document so I don't have to ask the same question for  
13 every line item.

14 MR. CONNELLY: Sure.

15 A. Okay.

16 So this is looking at Woodcrest to Power  
17 Ranch, the same Woodcrest East 120 condominiums that  
18 we have been discussing now for a while, and looking  
19 at a for-sale model.

20 Again, this is a couple of years old. I  
21 don't know if I can read the dates down there. It  
22 looks like it's May, 2021. Maybe that's right, but  
23 this is at least two years old, and could be more  
24 like three years old.

25 And so this is imagining what revenue and

1 expenses we would have if we constructed these  
2 condominiums and went down the for-sale path.

3 That's the -- that's the high level here  
4 on this. Do you see the revenue? That is the  
5 estimates of what we would sell each unit for,  
6 although I have some differing views on that today,  
7 as I sit here, compared to what these looked like,  
8 but -- but that's -- that's what it is.

9 And then you look at the cost of sales.  
10 That's the base construction price to build these.  
11 Fees and permits, that should be familiar now because  
12 we talked about fees and permits. When you do forced  
13 sales, there are sometimes auctions. People want  
14 different options, you know, different cabinets,  
15 different flooring, different countertops, et cetera.  
16 Site improvements is what it takes to build the site.

17 So sometimes you use different  
18 terminology here, but it's basically the same kind of  
19 thing: What does it take to build this? And what  
20 would we sell it for if we were to go down the  
21 for-sale route.

22 Q. And what is the ultimate conclusion of the  
23 for-sale analysis?

24 A. So -- so the ultimate conclusion of the  
25 for-sale analysis is far worse than the for-rent

1 analysis, but the ultimate conclusion here, which I  
2 would not agree with today, by the way, I will just  
3 say that -- the conclusion, at least, of this  
4 financial model that I did not prepare, that someone  
5 prepared and sent to me that we looked at, showed a  
6 net profit, if everything works out the way you hope,  
7 of 6 million, and change.

8 Q. And we are seeing that on the bottom,  
9 right-hand corner of the table, one line up from the  
10 bottom--

11 A. Yes.

12 Q. --the "6,197,636"?

13 A. That is correct.

14 Q. And that is the net profit & loss of all  
15 sales of the 120 units, ideal situation?

16 A. Yes.

17 Q. All things going according to plan with the  
18 sale?

19 A. Well, at least according to one model from  
20 two years ago, three years ago. I thought more about  
21 this and had more discussions with some others and  
22 wonder if it's even possible to sell the 40 units  
23 that are 750 square feet. That's awfully small.

24 In our Phoenix market, that's just not  
25 done, frankly. In Manhattan, it may be different,

1 but in Phoenix you do not see a for-sale product  
2 that's 750 square feet, at least to my knowledge.

3 So those would be awfully difficult and  
4 -- and those may be nearly impossible to sell at any  
5 reasonable price, but things have changed. Home  
6 prices have gone up. Our construction costs have  
7 gone up. Again, this is a financial model we have  
8 looked at at the time, but it's certainly all  
9 different today.

10 Q. And you have recently supplemented your  
11 Disclosure Statement to include a damage calculation.  
12 The way I read the Disclosure Statement, the damage  
13 calculation is based on selling versus renting the  
14 units. You are saying that that was not based on  
15 these figures from this exhibit; it was based on  
16 other calculations you have done?

17 A. No. It was based on these figures.

18 Q. Okay.

19 A. Now, you may say, "Well, today, we're -- we  
20 are in February, 2024." This was back two years and  
21 three years ago.

22 Once we made the decision to go down a  
23 certain path, I don't keep updating these, right? I  
24 don't -- I don't sit here and update any of these  
25 documents, frankly. I am under construction. Why

1 would I talk hypotheticals when I deal with reality  
2 today?

3 So how those damages would come out would  
4 need to be something where we would get experts and  
5 appraisers and we would run all sorts of fun  
6 hypotheticals and see some things.

7 But when I -- when I looked at the  
8 decision point, which is in this range, because I did  
9 evaluate these, as I testified earlier, three story  
10 for sale, three story for rent, two story for sale,  
11 two story for rent, knowing full well already having  
12 a 236-unit condo project that is completely rentals,  
13 and going through the legal exercise five, six, seven  
14 years ago to understand that -- not this project, a  
15 different project -- and so I am analyzing these  
16 different models and came to the conclusion two  
17 stories, and at the time for rent, and we could still  
18 decide in a year, five, ten, twenty years, to sell  
19 these. We still retain those legal rights, but --  
20 but when we looked at it, these are the models that  
21 we looked at.

22 So how that comes out in a damage  
23 calculation, I actually think it would be worse --  
24 let me re-state that -- i think the delta between for  
25 rent and for sale would be wider today than it was

1 back then when I look at it, and the reason is I  
2 don't think I can sell these 750 square feet units.

3 Q. You previously testified that the other  
4 project where you have a condominium association or  
5 you own condos and you are renting them out was Bela  
6 Victoria, did I hear that ...

7 A. Bela Victoria--

8 Q. Bela Victoria.

9 A. --in Mesa.

10 Q. And--

11 A. Easy to find.

12 Q. --is there a Master Association that oversees  
13 that community?

14 A. There is not.

15 Q. And is there a condominium association that  
16 oversees the condominium development that you  
17 developed in that area?

18 A. Let me do something that my attorney won't  
19 want me to do, but my recollection is we actually did  
20 create an HOA and filed all of those kind of things.  
21 That's -- that is my recollection. It's a bit of  
22 supposition here, and I could be proven wrong on  
23 that. I don't know why we did that. I think there  
24 was some technical legal reason why we needed to do  
25 that and actually file a condo dec, but it's

1 immaterial. Why? Because the residents don't pay an  
2 HOA assessment fee. It's all paid by the owner on  
3 that, but there are sometimes just a technical reason  
4 why we needed to do that, but it's -- it's condos.

5 Q. All right. I am done with these exhibits,  
6 and I will go on to my final questions.

7 A. Okay.

8 Q. My final questions for you are regarding the  
9 status of the construction--

10 A. Yes.

11 Q. --at Woodcrest East.

12 When did construction begin? I  
13 understand that there was previous construction with  
14 a prior developer. You purchased in 2019. AT some  
15 point after your purchase, construction resumed.

16 When was that construction resumed?

17 A. My recollection, it's May, 2022.

18 Q. And what is the current status of the  
19 construction of the units at Woodcrest East?

20 A. They are completely framed. We are well into  
21 the vertical construction phase where the roofing is  
22 on most of them, and we're -- you know, we are just  
23 rolling through the -- we are rolling through the  
24 project. So, you know, some of them have -- some are  
25 being painted. Some are having their electrical work

1 completed, but -- but their all framed and -- and  
2 built to that point.

3 And so it's -- it's an active vertical  
4 construction project that will likely continue for 12  
5 months, 11 months, something like that. That's my --  
6 that's my estimate. When it -- when it rains, I lose  
7 time and I lose time through other things, but we are  
8 -- we are pushing to be at a 10, 11, 12, 13 months  
9 from now. That's the hope to have these completed.

10 Q. And -- and by complete, do you mean  
11 certificate of occupancy issued or is there a  
12 different benchmark for completion that you are  
13 using?

14 A. That is an excellent question.

15 Because by complete I mean two things  
16 really: One is having all 120 certificates of  
17 occupancy for the 120 condominium units and having  
18 these units in a -- in a fashion that they can be  
19 occupied.

20 A certificate of occupancy doesn't mean  
21 that it's ready to be occupied. It means that --  
22 that the governing body has said it's safe for  
23 someone to occupy it, but there is still usually what  
24 are called punch-list items that have to be done,  
25 clean up on paint, tweaking the cabinets, making sure



1 they work well, getting the place really clean,  
2 fixing little things that aren't life-safety-type  
3 issues, and you need to have so that it can be  
4 occupied by someone, and that can take a couple of  
5 weeks.

6 Q. Sure.

7 Q. Sometimes the - the -- Wi-Fi and the internet  
8 and some of these technology things come later. The  
9 -- the city doesn't care about that, right? They  
10 just care about gas, water, sewer, and then they can  
11 give you a certificate of occupancy.

12 Q. Sure.

13 So you testified completion would be  
14 certificate of occupancies for all 120 units plus the  
15 units being livable for tenants who want to rent?

16 A. I think -- I think you said it well.

17 Q. Could you tell me what your estimated  
18 timeline is for having the first certificates of --  
19 certificates of occupancy and the first tenants to  
20 the -- the units at Woodcrest East?

21 A. July.

22 Q. July of 2024?

23 A. This year.

24 Q. And what is the -- we have got a few more  
25 minutes before our four hours -- or, no -- wait --

1 yeah, our four hours are up.

2 A. I will give you brief answers. I promise.

3 Keep firing away.

4 Q. What's the expected timeline -- as far as you  
5 said July, 2024, you will have your first certificate  
6 of occupancy, hopefully your first tenants, what's  
7 the expected completion date for additional  
8 certificates of occupancy, you know, starting in  
9 July, assuming that's accurate?

10 A. The hope would be the first ones in July, and  
11 then the last ones sometime between December of this  
12 year, January, 2025, February, 2025, March, 2025,  
13 somewhere in that range.

14 Q. All right. I have no further questions.

15 If there is anything you want to clarify  
16 from the deposition today, now would be your chance  
17 to clarify any of the testimony, anything that you  
18 want to rephrase or -- or anything that have nature.

19 So is there anything you would like to  
20 clarify from your memory today?

21 A. No.

22 Mr. CONNELLY: We will read and sign.

23 THE WITNESS: Okay.

24 THE COURT REPORTER: Mr. Connelly, can I  
25 send you an electronic copy?

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MR. CONNELLY: Yes, please.

(The deposition was concluded at 4:59  
p.m.)

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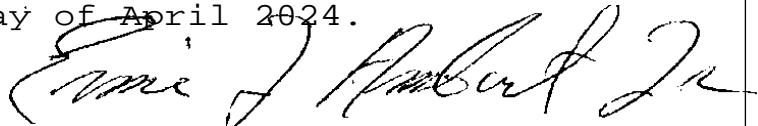
STATE OF ARIZONA )  
COUNTY OF MARICOPA )

I, Ernie J. Ambort, Jr., a Certified Court Reporter in the State of Arizona, do hereby certify that the foregoing deposition was taken before me in the County of Maricopa, State of Arizona; that an oath or affiliation was duly administered by me to the witness, KARL NATHAN HUIISH, pursuant to A.R.S. 41-324(B); that the questions propounded to the witness and the answers of the witness thereto were taken down by me in shorthand and thereafter reduced to typewriting; that the transcript is a full, true, and accurate record of the proceeding, all done to the best of my skill and ability; that the preparation, production and distribution of the transcript and copies of the transcript comply with the Arizona Revised Statutes and ACJA 7-206(J)(1)(g)(1) and (2).

The witness herein, KARL NATHAN HUIISH requested review and signature.

I FURTHER CERTIFY that I am in no way related to any of the parties nor am I in any way interested in the outcome hereof.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Maricopa, State of Arizona, this 10th day of April 2024.



Ernie J. Ambort, Jr.  
Arizona Certificate No. 50731

*ESQ /s/*

\_\_\_\_\_/s/  
For Esquire Deposition Solutions  
Registered Reporting Firm No. R1048

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D E P O S I T I O N   S I G N A T U R E   P A G E  
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

POWER RANCH COMMUNITY  
ASSOCIATION, an Arizona  
non-profit corporation,

Plaintiff,

v

WOODCREST EAST, LLC, an  
Arizona limited liability  
company; WOODCREST VILLAGE  
EAST CONDOMINIUM ASSOCIATION,  
an Arizona non-profit  
corporation,

Defendants.

~~~~~  
WOODCREST EAST LLC, an  
Arizona limited liability  
company,

Counter-Claimant

v

POWER RANCH COMMUNITY  
ASSOCIATION, an Arizona  
non-profit corporation,

Counter-Defendant.

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Assignment No. J10815366

Case No.

CV2023-000397

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DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the above-captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the \_\_\_\_\_ day of

\_\_\_\_\_, 2024.

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KARL NATHAN HUIISH

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KARL NATHAN HUISH

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KARL NATHAN HUISH