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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, vs. WOODCREST EAST, LLC, an Arizona limited liability company; WOODCREST VILLAGE EAST CONDOMINIUM ASSOCIATION, an Arizona non-profit corporation; Defendants.	Case No. CV2023-000397 **MEDIATION MEMORANDUM** (assigned to the Hon. Bradley Astrowsky) Mediation: April 17, 2024, 1:00 P.M. Mediator: Berry Markson
WOODCREST EAST, LLC, an Arizona limited liability company, Counterclaimant, vs. POWER RANCH COMMUNITY ASSOCIATION, an Arizona non-profit corporation, Counterdefendant.	

Plaintiff/Counterdefendant Power Ranch Community Association ("Power Ranch") hereby submits its Mediation Memorandum pursuant to the Mediation Engagement Letter dated March 20, 2024.

I. INTRODUCTION

The Developer wants to use their property as an apartment complex. Rather than selling any Units, they want to own them all and rent them out. Regardless of what the Developer calls the development, they want to operate exactly like an apartment developer/owner.

II. FACTS SUPPORTING ESTOPPEL/BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

A. Representations to Power Ranch

Power Ranch, like many planned communities, charges regular assessments to its members and also charges a capital contribution assessment when a lot/unit within Power Ranch is sold. As part of the Developer's purchase of the Woodcrest East Property, and as an incentive to get the vacant land developed, Power Ranch and the Developer entered into a Reduced Assessment Agreement attached hereto as **Exhibit 1.** The Reduced Assessment Agreement provides that the Developer would pay 50% of the 120 Capital Contribution payments at the time it purchased. *Id.* at 2 (Section 1.01). The Developer agreed to pay the remaining 50% of the Capital Contributions when it sold the individual condominium units after development. *Id.* (Section 1.02). Article 2 of the Reduced Assessment Agreement also provided a period of time where the regular assessments for the condominium units at the Woodcrest East Property would be reduced to 25%. *Id.* at 3. When

asked how many closings the Developer expected to have in 2020, the Developer responded with an estimate of 30 units closing for 2020. **Exhibit 2.** The only way for Power Ranch to collect on the Capital Contributions is for the Developer to Sell the units in question.

Power Ranch has consistently maintained that the Sub-Association must be a Condominium Development. On January 27, 2021, for example, the Power Ranch's counsel emailed Developer's counsel the following:

> [Power Ranch]recently informed me that your client [Developer] is now attempting to build apartments in direct contradiction to its earlier representation to the Board that the Board relied upon. In order to change the project from condominiums to apartments, your client needs approval from the [Power Ranch] Board.

See Email from Curtis Ekmark to Reese Anderson dated January 27, 2021 and attached hereto as **Exhibit 3.**

When asked for confirmation that Developer was building condominiums, Developer consistently affirmed that it was building condominiums. On February 27, 2021, for example:

> Mr. Ekmark: "Are you doing condominiums?"
>
> Mr. Anderson: "The answer to your questions is yes. These buildings are planned as condominiums."

See Email Correspondence between Curtis Ekmark and Reese Anderson dated February 27, 2021 and attached hereto as **Exhibit 4.**

Similarly, on June 28, 2021:

> Mr. Ekmark: "I just got off the phone with Reese. … He also confirmed that the intention remains to build a condominium as

> opposed to an apartments / rentals. Reese – let me know if I missed anything."
>
> Mr. Anderson: "Thank you Curtis. That is an accurate summary of our conversation"

See Email Correspondence between Curtis Ekmark and Reese Anderson dated June 28, 2021 and attached hereto as **Exhibit 5.**

And again, on July 7, 2022:

> Mr. Ekmark: "Reese – just tried to call. Wanted to check in and make sure the plan to build condominiums has not changed."
>
> Mr. Anderson: "No change in plans"

See Email Correspondence between Curtis Ekmark and Reese Anderson dated July 7, 2022 and attached hereto as **Exhibit 6**

B. Representations to the Town of Gilbert

In December of 2020, the Developer submitted plans to both the Town of Gilbert and to the Association. Compare the December 9, 2020 plans submitted to the Town of Gilbert and attached hereto as **Exhibit 7** to the December 22, 2020 plans Submitted to Power Ranch and attached hereto as **Exhibit 8**.

The plans submitted to the Town of Gilbert detail Developer's intent to change the development from a "condo plat to a single lot plat." Exhibit 7 at POWER002667. The same plans also request to re-plat the property to a single lot plat (Exhibit 7, Section 2 on POWER002672) and request confirmation on the "process to revise existing condo plat to a single lot plat for apartments" (Exhibit 7, Section 4 on POWER002675) (emphasis added). The plans submitted to Power Ranch

omit the above language in Section 2 (Exhibit 8, Section 2 at POWER000376) and completely omit Section 4 and its reference to apartments (Exhibit 8, Sections 3 and 5 at POWER000376-378). When challenged by the Town of Gilbert as to the Developer's intent to build apartments instead of condominiums, the Developer backtracked and instead confirmed that it intends to build for sale condominiums. **Exhibit 9** at POWER003192 Project Narrative 2:

> Town of Gilbert: "Please be clear that you are amending a for sale condo plat to a for lease apartment unit single parcel plat. This changes the entire previous approval concept. This in (sic) not administrative."
> Developer Response: "***The proposal is for a for-sale condominium plat***. The condominium plat will be processed with the construction documents per Albert Pineda instruction." (emphasis added).

III. VIOLATION OF THE MASTER DECLARATION

The Master Declaration sets forth a land use classification system. Under that system, a property owner can only use the property for the use set forth on the tract declaration. The Master Declaration lists eighteen different uses.

One type of use is Apartment Development Use. Another type is Condominium Development Use. The Master Declaration treats these as separate and distinct uses. In fact, the distinction is so important that the Master Declaration requires Board approval to converts from Apartment to Condominium and vice versa.

Section 1.45 of the Master Declaration defines "Rental Apartments" as any situation where a single owner attempts to rent out four or more Units within a building. In order to operate a Rental Apartment, section 1.3 of the Master Declaration requires a property owner to have a tract

declaration that authorizes Apartment Development. Because the Developer does not have a tract declaration that authorizes Apartment Development, it cannot operate Rental Apartments. Thus, the Master Declaration prohibits the Developer from owning all the Units and renting them all out.

The Developer's argument that its proposed use falls within the Condominium Use category both ignores the definition of Apartment Use and the definition of Condominium Use set forth in the Master Declaration. Whether or not the Developer meets the definition of Condominium Use is not relevant. In any event, the plan to own and rent all Units violates the Master Declaration because the applicable tract declaration does authorize Apartment Use. Calling the development a condominium does not change the analysis.

Even if it were relevant and possible to be in two categories at once, the Developer's plan does not fit within the definition of Condominium Use set forth in the Master Declaration sections 1.16 and 1.17. Section 1.17 specifically states that the term Condominium Unit "shall not include a Rental Apartment in an Apartment Development." Furthermore, section 1.16 requires that any condominium must be established under Arizona law. One owner holding and renting all Units is contrary to the Arizona Condominium Act in a multitude of ways. For example, the definition of Condominium under the Act is real estate "designated for separate ownership." Moreover, there would be no point in levying assessments, electing a board, requiring open meetings, etc. if one owner were allowed to own all the Units.

The bottom line is that owning and renting all Units within a single building is not consistent with Condominium Development Use, as that term is defined in the Master Declaration.

IV. THE COUNTERCLAIM IS FRIVOLOUS AND IN VIOLATION OF ARS 12-349

There will soon be a hearing to decide whether the Developer's plan violated the Master Declaration. If Power Ranch wins, the Developer will have no counterclaim because the Court will have ruled that it does not have a legal right to maintain ownership of all units to rent them out to others. If the Developer wins, it will have no damages because it will have a right to maintain ownership of all units and rent them out to others.

V. CONCLUSION

The Association's position is strong. The only way the Developer can win is if the Court ignores the Master Declaration. However, the Association is willing to participate in the mediation in good faith to determine if there is a creative path forward that is beneficial to both the Developer and Power Ranch.

RESPECTFULLY SUBMITTED this 15th day of April, 2024.

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ORIGINAL of the foregoing e-mailed this 15th day of April, 2024.

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COPY of the foregoing emailed this 15th day of April, 2024, to:

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