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6 *Attorneys for Woodcrest East, LLC*

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

8 IN AND FOR THE COUNTY OF MARICOPA

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

11 Plaintiff,

12 vs.

13 WOODCREST EAST, LLC, an Arizona  
limited liability company; VILLAGE EAST  
14 CONDOMINIUM, an Arizona non-profit  
corporation; KDL INVESTMENTS, LLC, an  
15 Arizona limited liability company,

16 Defendants.

17 WOODCREST EAST, LLC, an Arizona  
18 limited liability company,

19 Counterclaimant,

20 vs.

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

22 Counterdefendant.

Case No. CV2023-000397

**DEFENDANT/COUNTERCLAIMANT  
WOODCREST EAST, LLC'S *THIRD*  
SUPPLEMENTAL DISCLOSURE  
STATEMENT**

(Assigned to Hon. Bradley Astrowsky)

24 Defendant/Counterclaimant Woodcrest East, LLC, by and through undersigned counsel,  
25 makes the following disclosures pursuant to Rule 26.1 of the Arizona Rules of Civil Procedure.

26 *Changes and/or additions from the prior disclosure statement is indicated in bold and italic*

1 *type*. Woodcrest East reserves the right to seasonably supplement this disclosure statement as  
2 additional, relevant information becomes available.

3 **I. FACTUAL BASIS OF CLAIMS AND DEFENSES.**

4 Power Ranch Community Association (“Power Ranch”) is a master homeowners  
5 association with several sub-associations located within it. Woodcrest East, LLC (“Woodcrest  
6 East”) is a developer and the owner of real property located in Power Ranch. Woodcrest Village  
7 East Condominium Association (“sub-Association”) is one of the sub-associations located  
8 within Power Ranch and governed by the Declaration of Covenants, Conditions, Restrictions,  
9 Assessments, Charges, Servitudes, Liens, Reservations and Easements for Power Ranch,  
10 recorded with the Maricopa County Recorder's Office at Instrument No. 1999-0916556 and  
11 amendments thereto ("Master Declaration") and the Tract Declaration for Power Ranch HDR 1  
12 and HDR 2, recorded with the Maricopa County Recorder's Office at Instrument No. 2005-  
13 1723081 ("Tract Declaration").

14 Woodcrest East had originally intended to build a 3-story project. Woodcrest East gave  
15 up this valuable right when it submitted plans to Power Ranch for a 2-story project and received  
16 approval from Power Ranch for the same. Woodcrest East went through an extensive design  
17 review process with Power Ranch on its plans and elevations, eventually receiving approval of  
18 all plans and elevations. Power Ranch reviewed and approved all prior submissions of plans  
19 from Woodcrest East.

20 The condominium units making up the Woodcrest Village East Condominium  
21 Association (“Woodcrest Village East” or “sub-Association”) are currently under construction  
22 and were purposefully designed and built as condominiums for rent, not condominiums for sale.  
23 On or about October 18, 2022, Woodcrest East recorded the Declaration of Condominium and  
24 of Covenants, Conditions and Restrictions for Woodcrest Village (East), a condominium with  
25 the Maricopa County Recorder's Office at Instrument No. 2022-0782127 ("2022 Condominium  
26

1 Declaration") to govern and control the sub-Association, Woodcrest Village East Condominium  
2 Association (“Woodcrest Village East” or “sub-Association”).

3 Prior to recording the 2022 Condominium Declaration, Woodcrest East submitted the  
4 proposed 2022 Condominium Declaration to the Power Ranch Board of Directors for review  
5 and approval. The Board approved all terms and provisions of the 2022 Condominium  
6 Declaration except for its objections to Section 4.18. Section 4.18 allows for leasing of units in  
7 the sub-Association. Power Ranch demanded that the sub-Association revise the language of  
8 Section 4.18 - allowing all rentals - to completely restrict all rentals and further requiring the  
9 sub-Association to prohibit any and all rentals (including both long-term leasing and short-term  
10 leasing). To prohibit rentals in a condominium association of the type and kind of this sub-  
11 Association changes the entire character and marketability of its units.

12 Woodcrest East declined to revise the language in Section 4.18 of the 2022  
13 Condominium Declaration based on this unreasonable demand and had it recorded with the  
14 Maricopa County Recorder’s Office. The 2022 Condominium Declaration is valid and  
15 enforceable and governs and controls the sub-Association and the real property identified in  
16 Exhibit A to the 2022 Condominium Declaration.

17 **II. LEGAL THEORIES SUPPORTING CLAIMS AND DEFENSES.**

18 **A. Woodcrest East’s Defenses**

19 *1. Failure to State a Claim Upon Which Relief May Be Granted*

20 “A pleading that states a claim for relief must contain: (1) a short and plain statement of  
21 the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim  
22 needs no new jurisdictional support; (2) a short and plain statement of the claim showing that  
23 the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief  
24 in the alternative or different types of relief”16 A.R.S. 8(a). Power Ranch is required to prove  
25 that it is entitled to relief. With consideration of the Amended Complaint, Power Ranch failed to  
26

1 state a claim upon which relief can be granted. Simply, Power Ranch fails to allege any claim  
2 where relief can be sought.

3                   2.     *Prior Material Breach*

4             Power Ranch’s prior material breaches bar its claims. Whether a breach is material  
5 depends on the “‘extent to which the injured party will be deprived of the benefit which he  
6 reasonably expected,’ the extent to which the injured party may be compensated by damages  
7 and the extent to which, by contrast, the breaching party may suffer forfeiture, the likelihood of  
8 cure and ‘the extent to which the behavior of the party failing to perform or to offer to perform  
9 comports with standards of good faith and fair dealing’” *Maleki v. Desert Palms Prof’l*  
10 *Properties, L.L.C.*, 222 Ariz. 327, 333, 214 P.3d 415, 421 (App. 2009) (citing Restatement  
11 (Second) of Contracts § 241).

12             After an extensive design review process, Power Ranch approved the design and plans  
13 for Woodcrest East to build the 2-story condominiums only later to object to the 2022  
14 Condominium Declaration and insist on a revision to restrict all rentals.

15                   3.     *Plaintiff’s Exercise of Its Enforcement Powers is Arbitrary,*  
16                             *Unreasonable, and In Violation of Arizona Law*

17             Power Ranch has a duty to act reasonably in the exercise of its discretionary powers. *See*  
18 *Tierra Ranchos Homeowners Ass’n v. Kitchukov*, 216 Ariz. 195, 202 (App. 2007); *see also*,  
19 Restatement (Third) of Property: Servitudes § 6.13 (2000). It is unreasonable for Power Ranch  
20 to object to Woodcrest East’s 2022 Condominium Declaration and insist on a revision to Section  
21 4.18 and restrict all rentals after approving the design and plans to build the 2-story  
22 condominiums, which are only suitable for renting.

23                   4.     *Estoppel, Laches, and Waiver*

24             Waiver exists where there is an intentional relinquishment of a right, or conduct that  
25 warrants an inference of such a relinquishment. *See A.J. Bayless Markets, Inc. v. Industrial*  
26 *Comm’n*, 134 Ariz. 243, 245, 655 P.2d 363, 365 (App. 1982). Estoppel requires (1) acts

1 inconsistent with the claim afterwards relied on, (2) action by the adverse party on faith of such  
2 conduct and (3) injury to adverse party resulting from repudiation of such conduct. *See Holmes*  
3 *v. Graves*, 83 Ariz. 174 (1957). When a party unreasonably delays in bringing a claim and that  
4 delay results in prejudice to the other party, laches bars the claim. *See Mathieu v. Mahoney*, 174  
5 Ariz. 456, 458-61 (1993). Here, Woodcrest East reasonably relied on Power Ranch’s approval  
6 of their plans and designs to build 2-story condominiums and began its construction of the same  
7 under that reliability. Because of that reliance, Woodcrest East has incurred numerous expenses  
8 in the construction, which is currently ongoing. Power Ranch demanded Woodcrest East to  
9 revise its 2022 Condominium Declaration to restrict any rentals, the opposite of Woodcrest  
10 East’s extensive design plans in which Power Ranch approved of. As a result, Power Ranch  
11 should be prohibited from objecting to the 2022 Condominium Declaration now.

12                   5.       *Unclean Hands*

13            “It is a cardinal rule of equity that [one] who comes into a court of equity seeking  
14 equitable relief must come with clean hands.” *MacRae v. MacRae*, 57 Ariz. 157, 161, 112 P.2d  
15 213, 215 (1941). Power Ranch’s requested relief can properly be refused on the basis of unclean  
16 hands.

17                   6.       *Failure to Mitigate Damages*

18            “A basic principle of the law of damages is that one who claims to have been injured by a  
19 breach of contract must use reasonable means to avoid or minimize the damages resulting from  
20 the breach.” *Next Gen Cap., L.L.C. v. Consumer Lending Assocs., L.L.C.*, 234 Ariz. 9, 12 (App.  
21 2013). Power Ranch has no damages. But even if it did, it had a duty to mitigate those damages.  
22 It failed to do so in this case. Power Ranch approved Woodcrest East’s plans only later to reject  
23 its 2022 Condominium Declaration without providing justification based on their governing  
24 documents. If Power Ranch had specific references to its governing documents showing why the  
25 2022 Condominium Declaration is somehow out of compliance, then Woodcrest East could  
26 have adjusted and resolved this matter before any litigation costs were incurred. It further failed

1 to mitigate its damages when it authorized the filing of this lawsuit instead of making a  
2 reasonable effort to work with Woodcrest East directly.

3 **B. Woodcrest East's Claims**

4 *1. Breach of Contract*

5 The Master Declaration and Tract Declaration represent a valid and binding contract  
6 between the parties. *Dreamland Villa Community Club, Inc. v. Raimey*, 224 Ariz. 42, 47 ¶ 19  
7 (App. 2010). In order to prove a breach of contract claim, a plaintiff is required to prove the  
8 existence of the contract, breach, and damages resulting from the breach. *Coleman v. Watts*, 87  
9 F. Supp. 2d 944, 955 (D. Ariz. 1998) (citing *Clark v. Compania Ganadera de Cananea, S.A.*, 95  
10 Ariz. 90, 92 (1963)). Power Ranch breached its obligations under the Master and Tract  
11 Declarations by unreasonably withholding approval of the reasonable rental restrictions in the  
12 2022 Condominium Declaration.

13 Furthermore, Woodcrest Village East is a condominium association and the law  
14 governing condominium associations, A.R.S. § 33-1260.01(A), states:

15 A unit owner may use the Unit owner's unit as a rental property unless prohibited  
16 in the declaration and shall use it in accordance with the declaration's rental time  
period restrictions.

17 Power Ranch's Declaration was recorded on October 1, 1999 and is 73 pages long.  
18 Section 1.16 of the Master Declaration states that a "Condominium Development" shall mean a  
19 condominium established under the laws of the State of Arizona which is limited by a Tract  
20 Declaration to residential use." Woodcrest Village East is such a condominium development.  
21 The Master Declaration contains no prohibition against rentals of condominiums. Thus, A.R.S.  
22 § 33-1260.01(A) applies, which permits rentals of condominiums in the absence of an express  
23 prohibition.

24 The fact that the Master Declaration does not prohibit the condominium rentals is  
25 sufficient; however, there is other language in the Master Declaration that clearly supports  
26 rentals. For example, Section 4.4 of the Master Declaration restricts certain trade or business

1 activity in Dwelling Units. Subsection 4.4.1 states in part, “[t]he leasing of an entire Dwelling  
2 Unit by the Owner thereof shall not be considered a trade or business within the meaning of this  
3 section.” Subsection 4.4.2 states that “no portion of a Dwelling Unit but for the entire Dwelling  
4 Unit on a Lot may be rented, and then only to a Single Family Lessee from time to time by the  
5 Owner, subject to the provisions of this Declaration.....” Both subsections support rental activity  
6 generally.

7 Deeds containing restrictive covenants run with the land and are a contract. *Powell v.*  
8 *Washburn*, 211 Ariz. 553, ¶8, 125 P. 3d 373 (2006). Arizona courts interpret restrictive  
9 covenants in accordance with the Restatement (Third) of Property: Servitudes § 4.1(1) (2000),  
10 which gives effect to the intention of the parties as determined from the actual language used in  
11 the instrument. *Id.* at ¶13.

12 The Master Declaration and Tract Declaration constitute contracts between the parties.  
13 Paragraph 5 of the Tract Declaration states, in relevant part: “[t]he Developer of the Parcel shall  
14 form a separate condominium owners’ association for the parcel (a “sub-Association”) subject  
15 to prior approval of all proposed Sub-Association documents, including without limitation the  
16 declaration of covenants, conditions and restrictions...***The approval by the Board required by***  
17 ***this Section 5 shall not be unreasonably conditioned, withheld, or delayed.***” (Emphasis  
18 added). Power Ranch is contractually obligated to adhere to the provisions of the Tract  
19 Declaration.

20 To require the sub-Association to include terms that are contrary to A.R.S. § 33-  
21 1260.01(A) and its own Master Declaration is unreasonable and unlawful.

22 Also, to demand the entire 2022 Condominium Declaration be declared null and void  
23 when it approved all provisions with the exception of Section 4.18 is unreasonable. The  
24 unreasonable withholding of approval of the sub-Association’s declaration is a breach of  
25 contract, and the actions by Power Ranch are a breach of the Master Declaration and Tract  
26 Declaration.

1 Power Ranch has violated Arizona law and its own Declaration by insisting that  
2 Woodcrest Village East include language restricting ALL rentals of its property. Woodcrest  
3 Village East has included language in its recorded Declaration that rentals, including short-term,  
4 would be required to file a registration with the Association. Section 4.18 of the 2022  
5 Condominium Declaration addresses Leasing of Units and requires Unit Owners promptly  
6 notify the Association that a lease has been entered into (including for short-term rentals), to  
7 provide the name, address and contact information for the leasing agent and any other  
8 information requested by the Association and not otherwise prohibited pursuant to A.R.S. § 33-  
9 1260.01. As recorded, the 2022 Condominium Declaration is in compliance with Arizona law.  
10 Power Ranch is in breach of the contract because its Board unreasonably withheld approval of  
11 the reasonable rental restrictions in the 2022 Condominium Declaration.

12 As a direct and proximate result of Power Ranch's substantial and material breach of the  
13 Master and Tract Declarations, Woodcrest East has sustained damages, the amount of which  
14 shall be proven at trial. Woodcrest East is entitled to recover all attorneys' fees and costs  
15 pursuant to the governing documents and A.R.S. §§ 12-341 and 12-341.01. Further, Power  
16 Ranch has otherwise acted arbitrarily and unreasonably, as alleged herein, and not treated  
17 Woodcrest East fairly.

## 18 2. *Breach of Covenant of Good Faith and Fair Dealing*

19 All contracts contain an implied covenant of good faith and fair dealing. The Master and  
20 Tract Declarations are contracts between the parties. The implied covenant of good faith and fair  
21 dealing imposes that neither party will act to impair the right of the other to receive the benefits  
22 which flow from their contractual relationship. *See Rawlings v. Apodaca*, 151 Ariz. 149, 153  
23 (1986).

24 Woodcrest East has the right to be treated reasonably and fairly when it submitted the  
25 2022 Condominium Declaration to the Board for Power Ranch. By demanding Woodcrest East  
26 to revise the 2022 Condominium Declaration to restrict all rentals, Power Ranch has breached



1 the implied covenant of good faith and fair dealing. Power Ranch’s breach of the covenant of  
2 good faith and fair dealing has caused Woodcrest East to sustain damages in an amount to be  
3 proven at trial.

### 4 3. *Declaratory Relief*

5 The above facts give rise to a claim for inter alia, the Uniform Declaratory Judgment Act,  
6 A.R.S. § 12-1831, et seq. and Rule 57 of the Arizona Rules Civil Procedure. An actual  
7 controversy has arisen and exists between Power Ranch and Woodcrest East as to whether the  
8 2022 Condominium Declaration is valid and enforceable. Under *Kalway v. Calabria Ranch*  
9 *HOA, LLC*, 252 Ariz. 532 (2022), a homeowner’s association “cannot create new affirmative  
10 obligations where the original declaration did not provide notice to the homeowners that they  
11 might be subject to such obligations.” “Although contracts are generally enforced as written,  
12 *Gubb & Ellis Mgmt. Servs., Inc. v. 407417 B.C., L.L.C.*, 213 Ariz. 83, 86 ¶ 12, 138 P.3d 1210,  
13 1213 (App. 2006), in special types of contracts, we do not enforce ‘unknown terms which are  
14 beyond the range of reasonable expectation,’ *Darner Motor Sales, Inc. v. Universal*  
15 *Underwriters Ins. Co.*, 140 Ariz. 383, 391, 682 P.2d 388, 396 (1984) (quoting Restatement  
16 (Second) of Contracts § 211 cmt. f (Am. L. Inst. 1981)). CC&Rs are such contracts.” *Kalway*,  
17 252 Ariz. 532, ¶ 14 (2022).

18 After an extensive design review process, Power Ranch approved Woodcrest East’s plans  
19 to build 2-story condominiums, only later to demand Woodcrest East to revise its 2022  
20 Condominium Declaration and restrict all rentals, which changes the entire character and  
21 marketability of the sub-Association. Woodcrest East declined to revise its 2022 Condominium  
22 Declaration and recorded the same with the Maricopa County Recorder’s Office. As such,  
23 Woodcrest East seeks declaratory judgment from the Court determining that the 2022  
24 Condominium Declaration is valid in its entirety and is enforceable.

1 **III. WITNESSES EXPECTED TO TESTIFY AT TRIAL.**

2 Woodcrest East anticipates calling the following individuals as trial witnesses to testify  
3 consistent with the pleadings, disclosure statements, and any facts obtained during discovery:

- 4 1. Karl Huish  
5 c/o Dessauls Law Group  
6 7243 North 16<sup>th</sup> Street  
7 Phoenix, Arizona 85020

8 KDL Investments, LLC is the sole member of Woodcrest East. Mr. Huish is the Manager  
9 of KDL Investments and is expected to testify consistent with Woodcrest East's Answer,  
10 Counterclaim, and this disclosure statement. Mr. Huish is further expected to testify concerning,  
11 among other things, the circumstances surrounding the allegations as represented in the  
12 Complaint. More specifically, Mr. Huish will testify about the communications with Power  
13 Ranch concerning the design review process, the approval of the design and plans, and the 2022  
14 Condominium Declaration. Mr. Huish will further testify as to the design and plans to build the  
15 condominiums, communications with the City and County regarding any and all building  
16 permits, the intent of the condominiums to be used as rentals and not "for sale" units, and the  
17 drafting and recording of the 2022 Condominium Declaration.

- 18 2. Hudd Hassell  
19 c/o Dessauls Law Group  
20 7243 North 16<sup>th</sup> Street  
21 Phoenix, Arizona 85020

22 Mr. Hassell is Mr. Huish's business partner and has been directly involved with issues  
23 concerning this matter. Mr. Hassell is expected to testify concerning, among other things, the  
24 communications with Power Ranch concerning the design review process, the approval of the  
25 design and plans, and the 2022 Condominium Declaration. Mr. Hassell will further testify as to  
26 the design and plans to build the condominiums, communications with the City and County  
regarding any and all building permits, the intent of the condominiums to be used as rentals and  
not "for sale" units, and the drafting and recording of the 2022 Condominium Declaration.

1           3.     Gary Welchel, President  
2                     Power Ranch Community Association  
3                     c/o Scott Carpenter  
4                     Kyle A. von Johnson  
5                     CARPENTER, HAZLEWOOD, DELGADO, & BOLEN LLP  
6                     1400 E. Southern Ave., Suite 400  
7                     Tempe, Arizona 85282-5691

8           Mr. Welchel, President of Power Ranch, is expected to testify consistent with Power  
9 Ranch's complaint, answer to the counterclaim, and its disclosure statement. He is further  
10 expected to testify, among other things, the communications with representatives of Woodcrest  
11 East concerning the design review process, the approval of the design and plans, and  
12 consideration of the 2022 Condominium Declaration. Mr. Welchel will further testify as to the  
13 governing documents, including the Master Declaration and Tract Declaration and Power  
14 Ranch's consideration and decision to deny Section 4.18 of the 2022 Condominium Declaration.

15           4.     Heather Parker, Vice-President  
16                     Power Ranch Community Association  
17                     c/o Scott Carpenter  
18                     Kyle A. von Johnson  
19                     CARPENTER, HAZLEWOOD, DELGADO, & BOLEN LLP  
20                     1400 E. Southern Ave., Suite 400  
21                     Tempe, Arizona 85282-5691

22           Ms. Parker, Vice-President of Power Ranch, is expected to testify consistent with Power  
23 Ranch's complaint, answer to the counterclaim, and its disclosure statement. She is further  
24 expected to testify, among other things, the communications with representatives of Woodcrest  
25 East concerning the design review process, the approval of the design and plans, and  
26 consideration of the 2022 Condominium Declaration. Ms. Parker will further testify as to the  
governing documents, including the Master Declaration and Tract Declaration and Power  
Ranch's consideration and decision to deny Section 4.18 of the 2022 Condominium Declaration.

1           5.     Nick Carillo, Treasurer  
2                     Power Ranch Community Association  
3                     c/o Scott Carpenter  
4                     Kyle A. von Johnson  
5                     CARPENTER, HAZLEWOOD, DELGADO, & BOLEN LLP  
6                     1400 E. Southern Ave., Suite 400  
7                     Tempe, Arizona 85282-5691

8           Mr. Carillo, Treasurer of Power Ranch, is expected to testify consistent with Power  
9 Ranch's complaint, answer to the counterclaim, and its disclosure statement. He is further  
10 expected to testify, among other things, the communications with representatives of Woodcrest  
11 East concerning the design review process, the approval of the design and plans, and  
12 consideration of the 2022 Condominium Declaration. Mr. Carillo will further testify as to the  
13 governing documents, including the Master Declaration and Tract Declaration and Power  
14 Ranch's consideration and decision to deny Section 4.18 of the 2022 Condominium Declaration.

15           6.     Phadera Earhart, Secretary  
16                     Power Ranch Community Association  
17                     c/o Scott Carpenter  
18                     Kyle A. von Johnson  
19                     CARPENTER, HAZLEWOOD, DELGADO, & BOLEN LLP  
20                     1400 E. Southern Ave., Suite 400  
21                     Tempe, Arizona 85282-5691

22           Ms. Earhart, Secretary of Power Ranch, is expected to testify consistent with Power  
23 Ranch's complaint, answer to the counterclaim, and its disclosure statement. She is further  
24 expected to testify, among other things, the communications with representatives of Woodcrest  
25 East concerning the design review process, the approval of the design and plans, and  
26 consideration of the 2022 Condominium Declaration. Ms. Earhart will further testify as to the  
governing documents, including the Master Declaration and Tract Declaration and Power  
Ranch's consideration and decision to deny Section 4.18 of the 2022 Condominium Declaration.

1           7.     Stephen Whitworth, Director  
2                     Power Ranch Community Association  
3                     c/o Scott Carpenter  
4                     Kyle A. von Johnson  
5                     CARPENTER, HAZLEWOOD, DELGADO, & BOLEN LLP  
6                     1400 E. Southern Ave., Suite 400  
7                     Tempe, Arizona 85282-5691

8           Mr. Whitworth, Director of Power Ranch, is expected to testify consistent with Power  
9 Ranch's complaint, answer to the counterclaim, and its disclosure statement. He is further  
10 expected to testify, among other things, the communications with representatives of Woodcrest  
11 East concerning the design review process, the approval of the design and plans, and  
12 consideration of the 2022 Condominium Declaration. Mr. Whitworth will further testify as to  
13 the governing documents, including the Master Declaration and Tract Declaration and Power  
14 Ranch's consideration and decision to deny Section 4.18 of the 2022 Condominium Declaration.

15           8.     Lisa Rich, Director  
16                     Power Ranch Community Association  
17                     c/o Scott Carpenter  
18                     Kyle A. von Johnson  
19                     CARPENTER, HAZLEWOOD, DELGADO, & BOLEN LLP  
20                     1400 E. Southern Ave., Suite 400  
21                     Tempe, Arizona 85282-5691

22           Ms. Rich, Director of Power Ranch, is expected to testify consistent with Power Ranch's  
23 complaint, answer to the counterclaim, and its disclosure statement. She is further expected to  
24 testify, among other things, the communications with representatives of Woodcrest East  
25 concerning the design review process, the approval of the design and plans, and consideration of  
26 the 2022 Condominium Declaration. Ms. Rich will further testify as to the governing  
documents, including the Master Declaration and Tract Declaration and Power Ranch's  
consideration and decision to deny Section 4.18 of the 2022 Condominium Declaration.

1           9.     Becky Cholewka, Director  
2                 Power Ranch Community Association  
3                 c/o Scott Carpenter  
4                 Kyle A. von Johnson  
5                 CARPENTER, HAZLEWOOD, DELGADO, & BOLEN LLP  
6                 1400 E. Southern Ave., Suite 400  
7                 Tempe, Arizona 85282-5691

8           Ms. Cholewka, Director of Power Ranch, is expected to testify consistent with Power  
9           Ranch's complaint, answer to the counterclaim, and its disclosure statement. She is further  
10           expected to testify, among other things, the communications with representatives of Woodcrest  
11           East concerning the design review process, the approval of the design and plans, and  
12           consideration of the 2022 Condominium Declaration. Ms. Cholewka will further testify as to the  
13           governing documents, including the Master Declaration and Tract Declaration and Power  
14           Ranch's consideration and decision to deny Section 4.18 of the 2022 Condominium Declaration.

15           10.     Reese Anderson, Esq.  
16                 Pew & Lake, PLC  
17                 1744 S. Val Vista Dr., Ste. 217  
18                 Mesa, Arizona 85204

19           Mr. Anderson is expected to offer non-privileged testimony about his communications  
20           with Plaintiff, the Town of Gilbert, and others concerning the condominium on behalf of  
21           Woodcrest East. More specifically, he is expected to testify as to his non-privileged involvement  
22           in the development of the condominium, review process, design, and plans. He is also expected  
23           to testify concerning communications he had with Plaintiff's representatives, including but not  
24           limited to Curtis Ekmark, concerning the Condominium Declaration.

25           11.     Any witnesses disclosed by Plaintiff, Defendants, and Counterdefendants.

26           12.     Expert witnesses (unknown at this time; Woodcrest East will seasonably  
supplement this disclosure).

          In addition to the witness(es) named here, Woodcrest East reserves the right to name  
additional witness(es), including the custodian(s) of all records, if any, required for  
authentication of documents; all witness(es) named by any other party; and any and all

1 additional witnesses learned through the discovery process. Woodcrest East also reserves the  
2 right to supplement the substance of what the aforementioned witness(es) will testify to.  
3 Woodcrest East will seasonably supplement this disclosure if and when said information  
4 becomes known to it.

5 **IV. PERSONS WHO MAY HAVE KNOWLEDGE OR INFORMATION RELEVANT**  
6 **TO THE SUBJECT MATTER OF THE ACTION.**

7 In addition to the witnesses listed in Section III above, the individuals listed in any  
8 parties' disclosure statement may have pertinent knowledge. Woodcrest East further states the  
9 following individuals may have pertinent knowledge:

- 10 1. EPS Group, Inc.  
11 1130 N. Alma School Rd., Ste. 120  
12 Mesa, Arizona 85201

13 EPS Group, Inc. is the engineering firm that worked with Woodcrest East and worked  
14 with the city of Gilbert to record the condominium plat for Woodcrest East. Representatives of  
15 EPS Group, Inc., including but not limited to, Brian Nichols, may have knowledge or  
16 information pertaining to its involvement with the construction, approval, and recording of the  
17 plat and communications it had with the Town of Gilbert on behalf of Woodcrest East.

- 18 2. Biltform Architecture Group, Inc.  
19 11460 N. Cave Creek Rd., Ste. 11  
20 Phoenix, Arizona 85020

21 Biltform Architecture Group, Inc. is the architectural firm that worked with Woodcrest  
22 East, the Association, and the Town of Gilbert to prepare and update the site-plan for Woodcrest  
23 East. A representative from Biltform Architecture Group, Inc. may have knowledge or  
24 information pertaining to its involvement with the construction of the site-plan for Woodcrest  
25 East.

26 Woodcrest East will supplement this disclosure when additional individuals, if any, are  
located that it believes may have knowledge or information relevant to the events, transactions,  
or occurrences that gave rise to this action.

1 **V. PERSONS WHO HAVE GIVEN STATEMENTS RELEVANT TO THE SUBJECT**  
2 **MATTER OF THE ACTION.**

3 Woodcrest East is not presently aware of any person(s) who have given a statement  
4 relevant to this litigation.

5 **VI. ANTICIPATED SUBJECT AREAS OF EXPERT TESTIMONY.**

6 Woodcrest East has not yet identified subject areas of expert testimony and reserves the  
7 right to supplement this section as discovery progresses.

8 **VII. COMPUTATION AND MEASURE OF DAMAGES.**

9 Woodcrest East will seek attorneys' fees and costs incurred in defending this action. If  
10 Woodcrest East is forced to sell their units, it will seek additional damages for the difference in  
11 value as a "for sale" project verses the value as a rental project, in an amount to be proven at  
12 trial, but not less than \$15,000,000. *Additionally, Woodcrest East will incur damages to the*  
13 *extent it is required to sell the units rather than rent the units. To the extent Woodcrest East is*  
14 *required to sell the units in question, the net profit totals \$6,197,236.00. See Woodcrest East*  
15 *@ Power Ranch Forma Chart (Bates label Woodcrest East 00347). To the extend Woodcrest*  
16 *East is permitted to market the property as intended as rental units, Woodcrest East estimates*  
17 *that, after equity returns, the net profit would be \$18,508,163.00. See Woodcrest East @*  
18 *Power Ranch Investment Description and Period Cash Flows Chart (Bates label Woodcrest*  
19 *East 00343-346). The net profit between the sales of units and renting of units is*  
20 *\$12,310,927.00.*

21 **VIII. POTENTIAL TRIAL EXHIBITS.**

22 Woodcrest East may use the following exhibits at trial:

23 1. Woodcrest Village East Plat Map dated September 12, 2022 recorded with the  
24 Maricopa County Recorder's Office at 2022-0729849 [Woodcrest East 00001-00013]



1           2.       Special Warranty Deed from Power Ranch Recovery Acquisition LLC to  
2 Woodcrest East, LLC dated May 6, 2019 recorded with the Maricopa County Recorder's Office  
3 at 2019-0331454 [Woodcrest East 00014-00018]

4           3.       Public Waterline Easement from Woodcrest East to the Town of Gilbert dated  
5 March 8, 2022 recorded with the Maricopa County Recorder's Office at 2022-0516687  
6 [Woodcrest East 00019-00026]

7           4.       Board Resolution Power Ranch Community Association dated January 18, 2012  
8 recorded with the Maricopa County Recorder's Office at 2012-0037259 [Woodcrest East  
9 00027-00028]

10          5.       Declaration of Covenants, Conditions, Restrictions Assessments, Charges,  
11 Servitudes, Liens, Reservations and Easements for Power Ranch recorded with the Maricopa  
12 County Recorder's Office on October 1, 1999 at 1999-0916566 [Woodcrest East 00029-00101]

13          6.       Certificate of Amendment of Declaration of Covenants, Conditions, Restrictions  
14 Assessments, Charges, Servitudes, Liens, Reservations and Easements for Power Ranch  
15 recorded with the Maricopa County Recorder's Office on October 11, 2002 at 2002-1058428  
16 [Woodcrest East 00102-00104]

17          7.       Second Certificate of Amendment of Declaration of Covenants, Conditions,  
18 Restrictions Assessments, Charges, Servitudes, Liens, Reservations and Easements for Power  
19 Ranch recorded with the Maricopa County Recorder's Office on January 20, 2006 at 2006-  
20 0088440 [Woodcrest East 00105-00107]

21          8.       Reciprocal Easement and Common Elements Use Agreement between Power  
22 Ranch, Woodcrest East, and Woodcrest Village East recorded with the Maricopa County  
23 Recorder's Office on May 7, 2019 at 2019-0331455 [Woodcrest East 00108-00117]

24          9.       Tract Declaration Power Ranch HDR 1 and HDR 2 recorded with the Maricopa  
25 County Recorder's Office on November 14, 2005 at 2005-1723081 [Woodcrest East 00118-  
26 00131]

1           10. Declaration of Condominium and Declaration of Covenants, Conditions,  
2 Restrictions and Easements for Woodcrest Village at Power Ranch Condominium recorded with  
3 the Maricopa County Recorder's Office on October 10, 2007 at 2007-1108770 [Woodcrest East  
4 00132-00192]

5           11. Declaration of Condominium and Declaration of Covenants, Conditions,  
6 Restrictions and Easements for Woodcrest Village at Power Ranch Condominium [Re-Recorded  
7 for the Sole Purpose of Adding Page 28] recorded with the Maricopa County Recorder's Office  
8 on December 19, 2007 at 2007-1326537 [Woodcrest East 00193-00254]

9           12. First Amendment to Declaration of Condominium and Declaration of Covenants,  
10 Conditions, Restrictions and Easements for Woodcrest Village at Power Ranch Condominium  
11 recorded with the Maricopa County Recorder's Office on May 7, 2019 at 2019-0331335  
12 [Woodcrest East 00255-00259]

13           13. Declaration of Condominium and of Covenants, Conditions and Restrictions for  
14 Woodcrest Village (East) recorded with the Maricopa County Recorder's Office on October 18,  
15 2022 at 2022-0782127 [Woodcrest East 00260-00342]

16           14. Woodcrest East @ Power Ranch Investment Description and Period Cash Flows  
17 Chart [Woodcrest East 00343-00346]

18           15. Woodcrest @ Power Ranch Pro Forma Chart [Woodcrest East 00347]

19           16. Various e-mail communications between R. Anderson and representatives of  
20 Power Ranch and correspondence with the city of Gilbert [Woodcrest East 00348-00785]

21           17. Various e-mail communications between Ted Protonentis, Brian Nicholls, Robert  
22 Johnston, and Chelsea Hughes regarding CC&R's [Woodcrest East 00786-00806]

23           18. List of apartments for rent in Power Ranch Community Association [Woodcrest  
24 East 00807-00811]

25           Without waiving objections, Woodcrest East reserves the right to use any or all documents  
26 produced by any party or witness during the course of discovery of this litigation, including but

1 not limited to, all documents disclosed, all responses to written discovery, deposition transcripts  
2 and exhibits thereto, additional exhibits that become known during discovery, and any exhibits  
3 listed in initial or supplemental disclosure statements. Woodcrest East reserves the right to  
4 supplement this section as discovery progresses.

5 **IX. OTHER POSSIBLY RELEVANT DOCUMENTS.**

6 Woodcrest East believes there are documents in the possession, custody or control of the  
7 Association that contain information relevant to either party’s claims or defenses and  
8 proportional to the needs of the case. Woodcrest East continues to search for documents in its  
9 possession, custody, or control that may contain information that is relevant to either party’s  
10 claims or defenses and proportional to the needs of the case and will disclose any such  
11 documents to the extent they exist and as they become available.

12 **X. INSURANCE.**

13 Woodcrest East expects Power Ranch to disclose any information relating to insurance  
14 pursuant to Ariz. R. Civ. P. 26.1(a)(10).

15 DATED this 5<sup>th</sup> day of February 2024.

16 DESSAULES LAW GROUP

17 By:           /s/ F. Robert Connelly            
18 Jonathan A. Dessales  
19 F. Robert Connelly  
20 *Attorneys for Woodcrest East, LLC*  
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1 ORIGINAL of the foregoing emailed  
2 this 5<sup>th</sup> day of February 2024 to:

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