

1 Jonathan A. Dessaulles, State Bar No. 019439
F. Robert Connelly, State Bar No. 021031
2 **DESSAULES LAW GROUP**
7243 North 16th Street
3 Phoenix, Arizona 85020
Tel 602.274.5400
4 Fax 602.274.5401
jdessaulles@dessauleslaw.com
5 rconnelly@dessauleslaw.com

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; WOODCREST
14 VILLAGE EAST CONDOMINIUM
ASSOCIATION, an Arizona non-profit
15 corporation,

16 Defendants.

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

18 Counterclaimant,

19 vs.

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

22 Counterdefendant.

Case No. CV2023-000397

**DEFENDANTS’/
COUNTERCLAIMANTS’ MEDIATION
MEMORANDUM**

(Assigned to the Hon. Bradley Astrowsky)

(Assigned to Mediator Barry M. Markson)

Mediation: April 17, 2024 at 1:00 PM via Zoom

24 Woodcrest East, LLC (“Woodcrest”) and Woodcrest Village East Condominium
25 Association (“WVE”), by and through their counsel undersigned, hereby submit this mediation
26 memorandum in anticipation of the April 17, 2024 mediation before mediator Barry Markson.

1 The central question raised by this litigation is whether Woodcrest is a Condominium or
2 Apartment Development. Although the Master Declaration for Power Ranch (in which the
3 Woodcrest development is located) clearly and definitively define both terms, Plaintiff Power
4 Ranch Community Association (the “Master Association” or “Power Ranch”) rejects those
5 definitions in favor of its own self-serving analysis. Because Woodcrest plans to lease, and not
6 sell, WVE units at the present time, the Master Association argues it is an Apartment and not a
7 Condominium Development. As this conclusion is contrary to the express language of the Master
8 Declaration, the law, and the relevant facts – including the admissions of the representatives of
9 Power Ranch during their depositions – it is clear that WVE is a Condominium Development
10 under the Master Declaration.

11 **I. FACTUAL BACKGROUND AND SUMMARY OF LEGAL CLAIMS/DEFENSES.**

12 **A. General Background.**

13 Power Ranch Community Association (“Power Ranch”) is a master homeowners
14 association which consists of six sub-associations. *See* Exhibit 1 (relevant excerpts of March 6,
15 2024, deposition transcript of Power Ranch board member Becky Cholewka), pp. 9-11. Of these
16 six, three are apartment communities, and three are condominium communities. *See id.*, p. 11.
17 The two Rule 30(b)(6) representatives of Power Ranch have acknowledged that WVE is one of
18 the condominium communities within Power Ranch. *See* Exhibit 1, p. 66; *see also* Exhibit 2
19 (relevant excerpts of March 6, 2024, deposition transcript of Power Ranch board member
20 Matthew Dominy), pp. 9-11. Nevertheless Power Ranch brings this litigation, erroneously
21 asserting that Woodcrest is attempting to become an apartment community.

22 Woodcrest is a developer and the owner of real property located in Power Ranch.
23 Woodcrest Village East Condominium Association (“WVE”) is one of the sub-associations
24 located within Power Ranch and governed by the Declaration of Covenants, Conditions,
25 Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Power
26 Ranch, recorded with the Maricopa County Recorder's Office at Instrument No. 1999-0916556

1 and amendments thereto ("Master Declaration") and the Tract Declaration for Power Ranch HDR
2 1 and HDR 2, recorded with the Maricopa County Recorder's Office at Instrument No. 2005-
3 1723081 ("Tract Declaration"). *See generally*, Exhibit 3 (Declaration of Covenants, Conditions,
4 Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Power
5 Ranch).

6 Woodcrest originally intended to build a 3-story project. Woodcrest gave up this valuable
7 right when it submitted plans to Power Ranch for a 2-story project and received approval from
8 Power Ranch for the same. Woodcrest went through an extensive design review process with
9 Power Ranch on its plans and elevations, eventually receiving approval of all plans and elevations.
10 Power Ranch reviewed and approved all prior submissions of plans from Woodcrest.

11 The condominium units making up the WVE are currently under construction and were
12 purposefully designed and built as condominiums for rent, not condominiums for sale. On or
13 about October 18, 2022, Woodcrest recorded the Declaration of Condominium and of Covenants,
14 Conditions and Restrictions for Woodcrest Village (East), a condominium with the Maricopa
15 County Recorder's Office at Instrument No. 2022-0782127 ("2022 Condominium Declaration")
16 to govern and control the sub-Association, Woodcrest Village East Condominium Association.
17 *See* Exhibit 4 (Declaration of Condominium and of Covenants, Conditions and Restrictions for
18 Woodcrest Village (East), a condominium).

19 Prior to recording the 2022 Condominium Declaration, Woodcrest submitted the proposed
20 2022 Condominium Declaration to the Power Ranch Board of Directors for review and approval.
21 The Board approved all terms and provisions of the 2022 Condominium Declaration except for
22 its objections to Section 4.18. Section 4.18 allows for leasing of units in WVE. *See* Exhibit 5
23 (various communications between representatives of the parties). Power Ranch demanded that
24 WVE revise the language of Section 4.18 - allowing all rentals - to completely restrict all rentals
25 and further requiring WVE to prohibit any and all rentals (including both long-term leasing and
26 short-term leasing). *See id.* To prohibit rentals in a condominium association of the type and kind

1 in WVE changes the entire character and marketability of its units. The existing sub-Association
2 declaration (from 2005) contained no rental restrictions. Among Power Ranch’s thousands of
3 homes and other condominiums, none of them are subject to any rental prohibitions or restrictions,
4 whether short-term (e.g., Airbnb) or long term (e.g., 12 months). Plaintiff is unlawfully attempting
5 to single out Woodcrest Village East’s 120 units to impose a rental restriction on it, but on no
6 other home or condominium among the thousands in Power Ranch.

7 Woodcrest declined to revise the language in Section 4.18 of the 2022 Condominium
8 Declaration based on this unreasonable demand and recorded it with the Maricopa County
9 Recorder’s Office. The 2022 Condominium Declaration is valid and enforceable and governs and
10 controls the sub-Association and the real property identified in Exhibit A to the 2022
11 Condominium Declaration.

12 **B. WVE Is A Condominium Development.**

13 Whether WVE is a Condominium Development or Apartment Development turns entirely
14 on the definitions of “Condominium Development” in the Master Declaration. A “Condominium
15 Development” is defined simply as “a condominium established under the laws of the State of
16 Arizona which is limited by a Tract Declaration to residential use.” Exhibit 3, Section 1.16
17 (Woodcrest East 00039). Thus, WVE must meet two basic requirements to be a “Condominium
18 Development” under the Master Declaration: (1) it must be a condominium established under the
19 laws of the State of Arizona, and (2) it must be limited by a Tract Declaration to residential use.
20 *See id.* WVE indisputably satisfies both.

21 Further, the determination of whether a development is a condominium under Arizona law
22 turns on the application of the Arizona Condominium Act (“ACA”). The ACA defines a
23 condominium as “real estate, portions of which are designated for separate ownership and the
24 remainder of which is designated for common ownership solely by the owners of the separate
25 portions.” A.R.S. § 33-1202(10). Further, “[r]eal estate is not a condominium unless the
26

1 undivided interests in the common elements are vested in the unit owners.” *Id.* That is precisely
2 what is happening here.

3 The 2022 Condominium Declaration recorded by Woodcrest confirms both requirements
4 have been met in this case. *See* Exhibit 4, p.1 (Woodcrest East 00266) The Recitals identify the
5 intent for WVE as a “condominium form of ownership according to this Declaration and pursuant
6 to the Arizona Condominium Act.” The Recitals in the Declaration provides:

7 **RECITALS:**

8 **A.** Declarant is the owner of certain real property situated in the Town of Gilbert,
9 Arizona, which is more particularly described in **Exhibit A** (the “Parcel”) attached to this
10 Declaration. The Declarant desires to re-Plat the Parcel and to submit the Parcel as so replatted
to a condominium form of ownership according to this Declaration and pursuant to the Arizona
Condominium Act, A.R.S. §§33-1201 et seq. (hereinafter, the “Condominium Act”).

11 **B.** Declarant intends that all Owners, Lessees, Residents, First Mortgagees and other
Persons acquiring an interest in the Condominium shall at all times enjoy the benefits of and
12 shall hold their interest subject to this Declaration which is Recorded in furtherance of
establishing a general plan of condominium ownership for the Condominium, and for
13 establishing a framework and rules for the use, occupancy, management and enjoyment thereof,
all for the purpose of enhancing and protecting the value, desirability and attractiveness of the
Condominium and the quality of life for the Owners, Lessees, and other Residents.

14 *See id.*

15 The 2022 Condominium Declaration has “Units” that are “designated for separate
16 ownership and occupancy.” *Id.*, p. 9 (Woodcrest East 00274). Further, “all portions of the
17 Condominium other than the Units” are “Common Elements” under Section 1.21. *Id.*, p. 3
18 (Woodcrest East 00268). Section 2.2 confirms that “the undivided interests in the Common
19 Elements of the Association shall be allocated equally among the Units.” *Id.*, p. 12 (Woodcrest
20 East 00277).

21 The members of the Power Ranch Board of Directors have also confirmed that WVE is a
22 condominium and not an Apartment Development under the Master Declaration. Matthew
23 Dominy, the treasurer for the Power Ranch Board of Directors, was asked whether WVE was “a
24 condominium community or apartment development.” *See* Exhibit 2, p. 31. He responded with
25 one word: “Condominium.” *See id.* Likewise, Becky Cholewka, secretary for the Board of
26 Directors, has confirmed in her deposition testimony that WVE is a condominium development

1 (noting three condominium properties in Power Ranch, one of which is WVE). *See* Exhibit 1, p.
2 66.

3 Furthermore, these individuals have acknowledged that there can be Rental Apartments in
4 condominiums without the condominium development changing into an Apartment Development.
5 *See* Exhibit 1, pp. 30 - 32; *see also* Exhibit 2, p. 20. Indeed, the members of the Plaintiff have
6 admitted that an owner who owns 4, 8, or 12 condominiums in a building will not, without more,
7 change the nature of the development from a Condominium Development to an Apartment
8 Development. *See* Exhibit 2, p. 11; *see also* Exhibit 1, p. 67. Simply stated, the board members
9 of the Master Association, when asked under oath, agree with Woodcrest that WVE is a
10 condominium development, and not an Apartment Development.

11 These individuals were produced as Rule 30(b)(6) witnesses designated to appear on behalf
12 of the Power Ranch corporate entity. Rule 30(b)(6) is clear that individuals who appear on behalf
13 of a corporation will bind the corporation by the deponent's testimony. *See, e.g., Murphy v. Kmart*
14 *Corporation*, 255 F.R.D. 497, 506 (D. S. Dakota 2009). A "Rule 30(b)(6) deposition serves a
15 unique function – it is the 'sworn corporate admission that is binding on the corporation.'" *Id.* "In
16 a Rule 30(b)(6) deposition, there is no distinction between the corporate representative and the
17 corporation." *Sprint Communications Co., L.P. v. Theglobe.com, Inc.*, 236 F.R.D. 524, 527
18 (D.Kan. 2006). "The designee testifies on behalf of the corporation and thus holds it accountable."
19 *Id.*

20 This is precisely what occurred here. Plaintiff produced several members of the Power
21 Ranch board in response to a Rule 30(b)(6) deposition notice. The testimony of Ms. Cholewka
22 and Mr. Dominy, in admitting that WVE is a condominium community, serves to bind Power
23 Ranch regarding these admissions.

24

25

26

1 As well, WVE is subject to a Tract Declaration that limits it to residential use.

2
3 **2. Land Use Classification.** The Lots hereafter located within the
4 Parcel pursuant to the final condominium plat and declaration for the Parcel (as
5 approved by Declarant and the Board as provided in **paragraph 3** below and Recorded
6 in the Official Records of the Maricopa County Recorder, the "Plat"), together with the
7 Sub-Association Tracts (defined below), shall be developed and used for residential
8 Condominium Development, as such term is defined in the Declaration in *Article 1,*
9 *Section 1.16* thereof, and for no other purpose. Any tracts hereafter located within the
10 Parcel pursuant to the Plat which are designated on the Plat for ownership and
11 maintenance by the Association shall be developed and used for Association Use, as
12 defined in the Declaration in *Article 4, Section 4.1(i)* thereof. Prior to Recordation of the
13 Plat, the Parcel shall be developed and used for residential Condominium Development
14 and for no other purpose, in conformance with applicable zoning.

15 See Exhibit 6 (Tract Declaration), p. 2, ¶¶ 1-3, 5 (Woodcrest East 00119).

16 The Master Declaration does not define "residential use." The plain meaning of the phrase,
17 of course, is use by residents. "Residents" is a defined term in the Master Declaration as "each
18 natural person residing in a Dwelling Unit." See Exhibit 3, p. 7 (Woodcrest East 00042). As the
19 Tract Declaration confirms WVE is limited to "residential use," WVE meets the Master
20 Declaration's second requirement to be considered a "Condominium Development."

21 Based on the above, WVE is obviously a "Condominium Development" under the Master
22 Declaration because it is a "condominium established under the laws of the State of Arizona which
23 is limited by a Tract Declaration to residential use." Although Plaintiff may attempt to suggest
24 additional requirements to this definition during the mediation, the definition controls.
25
26

1 WVE’s Articles of Incorporation, Bylaws, and the Condominium Plat further confirm it is
2 a Condominium Development. The following is included on the Condominium Plat for WVE:

3 **CONDOMINIUM NOTES**

- 4 1. NO UNITS SHOWN ON THIS REPLAT SHALL EXIST OR BE A PART OF THE WOODCREST VILLAGE (EAST)
5 CONDOMINIUM UNLESS AND UNTIL SUCH UNITS ARE CREATED BY SUBJECTING THE UNITS TO THE TERMS
6 AND PROVISIONS OF THAT CERTAIN CONDOMINIUM DECLARATION FOR WOODCREST VILLAGE (EAST)
7 CONDOMINIUM TO BE RECORDED CONTEMPORANEOUSLY HEREWITH.
- 8 2. THE COMMON ELEMENTS ARE MORE SPECIFICALLY DESCRIBED IN THE CONDOMINIUM DECLARATION AND
9 SUCH COMMON ELEMENTS ARE TO BE MAINTAINED BY THE WOODCREST VILLAGE EAST CONDOMINIUM
10 ASSOCIATION SUBJECT TO AND AS FURTHER PROVIDED IN THE CONDOMINIUM DECLARATION. LIMITED
11 COMMON ELEMENTS SHALL BE MAINTAINED AS PROVIDED IN THE CONDOMINIUM DECLARATION.
- 12 3. THIS REPLAT FOR WOODCREST VILLAGE (EAST), A CONDOMINIUM, DOES NOT SUPERSEDE THE FINAL PLAT
13 BE PROVIDED IN OR INCONSISTENT WITH THE CONDOMINIUM DECLARATION FOR THIS CONDOMINIUM TO BE
14 RECORDED HEREAFTER.
- 15 4. THE NOTES ON THE FINAL PLAT REMAIN APPLICABLE TO THE PORTIONS OF THE REAL PROPERTY
16 DESCRIBED IN THIS REPLAT, PROVIDED, HOWEVER, THAT IF THERE ARE ANY CONFLICTS BETWEEN THE
17 NOTES IN THIS REPLAT AND THE CONDOMINIUM DECLARATION PROVISIONS WITH THE NOTES ON THE
18 FINAL PLAT, THE CONDOMINIUM DECLARATION AND THE NOTES ON THIS REPLAT SHALL CONTROL IN
19 THAT ORDER.
- 20 5. THE DECLARANT RESERVES THE RIGHT TO WITHDRAW ANY OF THE UNITS OR OTHER PROPERTY SHOWN
21 ON THIS REPLAT AFTER THE SAME HAVE BECOME PART OF THE WOODCREST VILLAGE (EAST)
22 CONDOMINIUM FOR SO LONG AS DECLARANT OWNS SUCH PROPERTY, PROVIDED SUCH WITHDRAWAL
23 COMPLIES WITH THE CONDOMINIUM DECLARATION.
- 24 6. IN ACCORDANCE WITH A.R.S. 33-1219 AND THE CONDOMINIUM DECLARATION, THE SPACES FOR THE
25 INSTALLATION, OPERATION, AND MAINTENANCE OF AIR CONDITIONING UNITS AND APPURTENANT
26 FACILITIES ARE EACH A LIMITED COMMON ELEMENT (“L.C.E”) AND ARE IN THE LOCATIONS SHOWN ON
THIS REPLAT.
7. THIS REPLAT CONTAINS ALL OF THE INFORMATION REQUIRED BY A.R.S. 33-1219 TO BE SET FORTH IN A
CONDOMINIUM PLAT.

17 See Exhibit 7 (Woodcrest Village (East) Condominium Plat), Woodcrest East 00001.

18 Nothing in the Master Declaration or associated documents prohibits the leasing of units
19 in a Condominium Development. And even the 2007 Woodcrest Declaration provides strong
20 support for the anticipated leasing of units within the community. See 2007 Woodcrest
21 Declaration, Exhibit 8, pp. 13-14 (Woodcrest East 00150). The documents clearly, unambitiously
22 establish the right to rent out individual units since 2007 – 17 years ago – and only now is Power
23 Ranch attempting, through selective enforcement, to take that right away. See *id.* The 2007
24 Declaration provides that Woodcrest has the right and easement to maintain both sales and
25 “leasing offices” on the property, in any unit, and may relocate such offices from time to time. *Id.*
26 Even the parking spaces were delineated in such a way as to be used by leasing agents. See *id.*, p.

1 14. And the leasing of any unit within Woodcrest shall “not be considered a trade or business
2 within the meaning” of the residential use of the property. *See id.*, p. 18 (Woodcrest East 00155).
3 In other words, since 2007, the rental of any unit was considered “Residential Use” under the
4 2007 Declaration. *See id.*

5 **C. The Mere Leasing of Units Does Not Create An Apartment Development.**

6 Plaintiff’s case is built on the false premise that WVE is a condominium in name only and
7 is actually an “Apartment Development” under the Master Declaration. The Master Declaration
8 defines “Apartment Development” as:

9 [A] Parcel which is limited by a Tract Declaration to residential use, and contains
10 Rental Apartments and surrounding area which are intended, as shown by the
site plan therefor approved by the Town and the Design Review Committee or
otherwise, as one integrated apartment operation under the same ownership.

11 *See Exhibit 3, p. 2 (Woodcrest East 00037).*

12 Thus, there are three requirements for a development to be an “Apartment Development.”
13 First, it is “limited by a Tract Declaration to residential use.” This is the same requirement for
14 both Condominium and Apartment Developments. Again, there is no dispute a Tract Declaration
15 limits WVE to residential use.

16 The second requirement is that an Apartment Development must contain “Rental
17 Apartments.” This is where Plaintiff stakes its claim that WVE is an Apartment Development.
18 Because Woodcrest does not have immediate plans to sell units and intends to lease at the present
19 time, Plaintiff argues WVE must be an “Apartment Development.” While an Apartment
20 Development necessarily must contain Rental Apartments, the reverse is not necessarily true.
21 Rental Apartments are not found only in Apartment Developments.

22 The Master Declaration’s definition of “Rental Apartments” expressly rejects this logical
23 fallacy. “Rental Apartments” means “four (4) or more Dwelling Units within a building under
24 single ownership...for rental or leased residential purposes to non-owners on a non-cooperative
25 basis.” *Id.* In other words, any four “Dwelling Units” owned by one owner and located in the same
26 building are Rental Apartments. *Id.* “Dwelling Units,” however, means “any building or portion

1 of a building situated upon a Lot designed and intended for use and occupancy as a residence by
2 a Single Family.” *Id.* The “portion of a building” language plainly encompasses both Apartment
3 and Condominium Developments.

4 Power Ranch includes several condominium communities. Nothing in the Master
5 Declaration precludes individual unit owners in any of those other communities from leasing their
6 units. Clearly, there is no prohibition against an owner of a condominium unit in a Power Ranch
7 condominium community from leasing their units. That Woodcrest might intend to lease, rather
8 than sell, its units is ultimately nothing more than a red herring.

9 Nothing in the Master Declaration prohibits Woodcrest from selling four or more units to
10 a single purchaser who plans to lease. *See generally*, Exhibit 3. Indeed, Arizona law allows a unit
11 owner to lease “unless prohibited in the declaration....” A.R.S. § 33-1260.01. If that one owner
12 leased all four of its units, those four units would meet the definition of “Rental Apartment.” The
13 existence of Rental Apartments in a Condominium Development is not inconsistent with the
14 definition of a Condominium Development. While an Apartment Development must have Rental
15 Apartments, a Condominium Development does not convert into an Apartment Development
16 merely because four or more units are leased. There is also nothing prohibiting Woodcrest from
17 selling a second tranche of four units to a second purchaser. That would bring the total number of
18 Rental Apartments in WVE to eight, but it would still not convert WVE into an Apartment
19 Development.

20 Even if Woodcrest sold all of its units in tranches of four or more to purchasers who leased
21 all of their purchased units, that would still be insufficient to convert WVE from a Condominium
22 Development into an Apartment Development. Woodcrest could sell off its units in tranches of
23 twenty to professional landlords; it does not alter the Condominium Development. As noted
24 above, the Power Ranch board has admitted that even owning 12 units within a building would
25 not serve to convert the building or development from condominium to apartment. *See* Exhibit 2,
26 p. 11; *see also* Exhibit 1, p. 67. Although the existence of Rental Apartments are a *sine qua non*

1 of an Apartment Development, it is in no way unique to or found only in Apartment
2 Developments. All Apartment Developments must have Rental Apartments. However, nothing
3 prohibits a Condominium Development from having Rental Apartments (regardless of the number
4 of owners who own four or more units). It is illogical and self-defeating to argue Woodcrest
5 cannot itself lease, but anyone who buys four or more units from it can.

6 Plaintiff does not object on the basis that individual unit owners might lease their units, but
7 on the basis that Woodcrest owns all individual units that might be leased. As Section 4.18 of the
8 Master Declaration does not prohibit leasing, it would conflict with Section 4.18 and unfairly
9 single out Woodcrest as the only owner not allowed to lease its units. The mere act of leasing, in
10 other words, does not alter the land use classification, which has been established on WVE—as a
11 condominium—for approximately two decades.

12 But finally, Plaintiff’s argument ultimately collapses around the third requirement: It must
13 be “one integrated apartment operation under the same ownership.” Though Plaintiff emphasizes
14 the “same ownership” language, it is the “one integrated apartment operation” where Plaintiff’s
15 claims will be rejected by a jury. The key distinction between a condominium and an apartment
16 is the ability for individual ownership of units. Each unit in a condominium is capable of being
17 sold; individual apartment units cannot be individually sold unless the apartment complex is
18 converted into a condominium. The ability to sell individual units at any time negates any
19 assertion that WVE is “one integrated apartment operation.”

20 Each of the 120 units in WVE are separately taxed. In an apartment complex, the entire
21 development is a single tax parcel. Perhaps most notably, Power Ranch has charged assessments
22 against WVE on the basis that it is a condominium and not an apartment. If WVE was an
23 “Apartment Development,” the Master Declaration would only require it to pay a single
24 assessment. Exhibit 3, p. 25 (Woodcrest East 00060). Power Ranch, however, will charge a
25 separate assessment for each of the 120 units in WVE. *See* Exhibit 6, p. 2 (Woodcrest East 00119);
26 *see also* Exhibit 9 (Power Ranch Invoices to Woodcrest dated January 11, 2024, and February 23,

1 2024). If WVE was an Apartment Development, it would receive only one tax bill and a single
2 assessment from Power Ranch. In such a case, it might be “one integrated apartment operation.”¹
3 *See id.*

4 Plaintiff contends the 2022 Condominium Declaration, “as written and recorded, permits
5 the Developer to use the Woodcrest Property as an apartment.” First Amended Complaint, ¶ 37.
6 If Woodcrest was allowed to use the Woodcrest Property “as an apartment,” Woodcrest would be
7 paying only a single tax and assessment for each completed unit. See Exhibits 6 and 8.

8 If Woodcrest sells even one unit to one integrated apartment operation, it would not be
9 “one integrated apartment operation.” The ability and right to sell defeats any suggestion that
10 WVE is one integrated apartment operation. Woodcrest always has that ability and right without
11 changing its declaration or other governing documents; Apartment Developments do not, and
12 cannot, without amending its governing documents. In sum, there is no evidence to establish that
13 WVE is an Apartment Development.

14 **D. Woodcrest’s Counterclaim For Unequal Treatment By Power Ranch.**

15 In light of the foregoing campaign of arbitrary rule enforcement by Power Ranch,
16 Woodcrest was compelled to initiate a counterclaim. This counterclaim is predicated upon Power
17 Ranch’s unreasonable withholding of approval of the condominium declaration provision
18 permitting leasing or renting of property in the Master Association. Because Power Ranch
19 unreasonably withheld approval of Woodcrest’s declaration, Woodcrest asserted causes of action
20 for breach of contract, breach of the covenant of good faith and fair dealing, as well as declaratory
21 relief.

22 Power Ranch has a duty to act reasonably in the exercise of its discretionary powers. *See*
23 *Tierra Ranchos Homeowners Ass’n v. Kitchukov*, 216 Ariz. 195, 202 (App. 2007); *see also*

25 ¹ Woodcrest’s voting rights in Power Ranch, likewise, refute the argument it is an
26 Apartment Development. Woodcrest has one vote for each individual unit. An Apartment
Development, on the other hand, has one vote for each four completed Rental Apartments.

1 Restatement (Third) of Property: Servitudes § 6.13 (2000). It is unreasonable for Power Ranch to
2 arbitrarily object to and reject Woodcrest’s 2022 Condominium Declaration and insist on a
3 revision to Section 4.18 and restrict all rentals, as set forth herein. Power Ranch’s conduct
4 amounts to selective enforcement of its discretionary powers in blocking Woodcrest of the
5 valuable rights involved in renting of condominium unit. As such, Power Ranch is in breach of
6 its contract with Woodcrest (in the form of the Master Declaration), liable for breach of the
7 covenant of good faith and fair dealing, and subject to declaratory judgment on the subject.
8 Indeed, Woodcrest has filed a motion for summary judgment on the issue. As well, Woodcrest is
9 entitled to its attorneys’ fees in opposing Power Ranch’s litigation, and bringing its counterclaims,
10 based upon the governing documents and A.R.S. § 12-341.01.

11 **II. WOODCREST’S DAMAGES.**

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

23 **III. SUMMARY OF SETTLEMENT NEGOTIATIONS.**

24 To this date, the parties have not engaged in substantive settlement negotiations with regard
25 to any aspect of this case. While the parties were preparing to attend a hearing on preliminary and
26 permanent injunctive relief, Woodcrest’s principal received communications indicating that

1 Power Ranch may be interested in discussing resolution of the matter. In light of that, the parties
2 stipulated to push off the evidentiary hearing and schedule mediation.

3 **IV. ANTICIPATED RESULT IF THE MATTER GOES TO TRIAL.**

4 If this matter proceeds to trial, the Woodcrest Parties have a very high level of confidence
5 in prevailing in their defenses and in their counterclaim against Power Ranch. The totality of the
6 evidence above, as well as the applicable law, establish that this development is a Condominium
7 Development and not an Apartment Development. Even the members of the Power Ranch board
8 have admitted to such categorically. All of the governing documents generated with regard to this
9 development indicate the same. As such, the Woodcrest Parties are confident in their claims and
10 defenses.

11 **V. OTHER HELPFUL INFORMATION.**

12 None at this time.

13 DATED this 10th day of April, 2024.

14 DESSAULES LAW GROUP

GOODMAN LAW

15 By: /s/ Jonathan A. Dessaulles

By: /s/ Clint Goodman

16 Jonathan A. Dessaulles
17 F. Robert Connelly
18 *Attorneys for Woodcrest East, LLC*

Clint Goodman
Erica L. Mortenson
*Attorneys for Woodcrest Village East
Condominium Assn.*

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1 ORIGINAL of the foregoing emailed
2 this same date to:

3 Barry M. Markson
4 Markson Mediation, LLC
5 9594 E. Jenan Dr.
6 Chandler, Arizona 85260
7 barry@marksonmediation.com
8 lisa@marksonmediation.com
9 *Mediator*

10 COPY of the foregoing emailed
11 this same date to:

12 Scott Carpenter
13 Kyle A. von Johnson
14 CARPENTER, HAZLEWOOD,
15 DELGADO & BOLEN, LLP
16 1400 E. Southern Ave., Ste. 400
17 Tempe, Arizona 85282
18 scott.carpenter@carpenterhazlewood.com
19 kyle.vonjohnson@carpenterhazlewood.com
20 *Attorneys for Plaintiff*

21 Clint Goodman
22 Erica L. Mortenson
23 GOODMAN LAW
24 3654 N. Power Rd., Ste. 132
25 Mesa, Arizona 85215
26 clint@goodlaw.legal
erica@goodlaw.legal
*Attorneys for Woodcrest Village East
Condominium Assn.*

27 /s/ Austin Erpelding