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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

11 **IN AND FOR THE COUNTY OF YAVAPAI**

12 JOHN B. CUNDIFF and BARBARA C.
13 CUNDIFF, husband and wife; ELIZABETH
14 NASH, a married woman dealing with her
15 separate property; KENNETH PAGE and
16 KATHRYN PAGE, as Trustee of the Kenneth
17 Page and Catherine Page Trust,

18 Plaintiffs,

19 v.

20 DONALD COX and CATHERINE COX,
21 husband and wife, et al., et ux.,

22 Defendants.

Case No. CV 2003-0399

Division No. 4

**RESPONSE TO PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

(Assigned to the Hon. Kenton Jones)

(Oral argument requested)

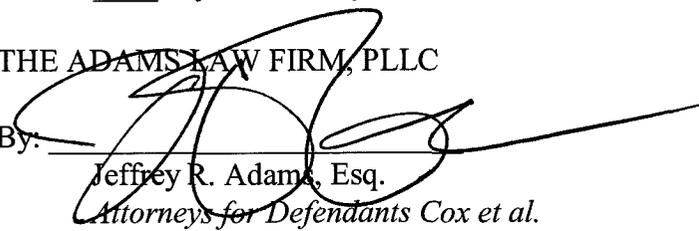
23 Defendants, by and through undersigned counsel, hereby respond to Plaintiffs' December
24 28, 2012, Motion for Summary Judgment ("MSJ") and respectfully request that said motion be
25 denied as this Court already has established that there is a material question of fact on the issue of
26 abandonment and waiver. *See* April 4, 2005, Under Advisement Ruling ("4/4/05 UAR").
27 Accordingly, Plaintiffs' MSJ is governed by the doctrine of law of the case, which Plaintiffs seem
28 to throw out with relative frequency. Given the baseless position taken by Plaintiffs in their latest

1 MSJ combined with the fact that this issue was fully briefed and ruled upon by the Court once
2 already, Defendants believe that an award of attorneys' fees, costs and expenses incurred in
3 responding to the instant Motion is appropriate as having to do so is a complete waste of
4 Defendants' limited litigation resources not to mention those of this Court.
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6 This Response is supported by the accompanying Memorandum of Points and Authorities
7 and Defendants' Separate Statement of Facts in Support of Response to Motion for Summary
8 Judgment ("DSOF") as well as the record on file which shall be incorporated by reference.
9

10 RESPECTFULLY SUBMITTED this 11 day of February, 2013.

11 THE ADAMS LAW FIRM, PLLC

12 By: 

13 Jeffrey R. Adams, Esq.

14 Attorneys for Defendants Cox et al.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. Summary Judgment Standard.**

17 The legal standard for granting or denying summary judgment is well-established. When a
18 party responding to a motion for summary judgment shows evidence creating a genuine issue of fact
19 on the element in question, summary judgment should not be entered. *See e.g., Nielson v. Savoy*, 105
20 Ariz. 325, 327, 464 P.2d 608 (1970); and *Orme School v. Reeves*, 166 Ariz. 301, 802 P.2d 1000
21 (1990). Two additional legal principles likewise require consideration in this case. In evaluating a
22 motion for summary judgment the Court should view the evidence and record in the light most
23 favorable to the non-moving party; evidence of the non-movant is to be believed and all justifiable
24 inferences are to be drawn in the non-movant's favor. *See Sanchez v. City of Tucson*, 191 Ariz. 128,
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1 953 P.2d 168 (1998). Summary judgment is not appropriate where the Court is required to pass on
2 the credibility of witnesses with differing versions of material facts, weigh the quality of documentary
3 or other evidence or choose among competing or conflicting inferences. *See Orme School*, 166 Ariz.
4 at 311, 802 P.2d at 1008. In considering the foregoing, the Court should heed the following
5 admonition from Justice White of the United States Supreme Court in *Anderson v. Liberty Lobby*, 477
6 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986), adopted by the Orme School court:
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8 Our holding ... does not denigrate the role of the jury. It by no means
9 authorizes trial on affidavits. Credibility determinations, the weighing of
10 the evidence, and the drawing of legitimate inferences from the facts are
11 jury functions, not those of the judge, whether he is ruling on a motion
12 for summary judgment or for directed verdict. The evidence of the
13 non-movant is to be believed, and all justifiable inferences are to be
14 drawn in his favor. Neither do we suggest that the trial court should act
15 other than with caution in granting summary judgment or that the trial
16 judge may not deny summary judgment in a case where there is reason
17 to believe that the better course would be to proceed to a full trial.

18 *See Orme School*, 166 Ariz. at 309-10, 802 P.2d at 1008 1008-09, *quoting Anderson*, 477 U.S. at 255,
19 106 S.Ct. at 2513 (citations omitted). In this case, there is a factual dispute that precludes summary
20 judgment. As such, Plaintiffs' Motion must be denied.

21 **II. The Factual Dispute Regarding Whether The Restrictive Covenants At Issue In**
22 **This Case Have Been Abandoned Precludes Summary Judgment.**

23 While stated in response to previous Motions for Summary Judgment, in light of the fact that
24 this Court was not involved when the parties' other Motions for Summary Judgment were considered,
25 we will attempt to bring this Court up to speed without requiring that the Court review the entire
26 docket of this case.
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1 Plaintiffs and Defendants own real property in Coyote Springs Ranch located along and north
2 of Highway 89A in Yavapai County, Arizona. See Defendants Controverting Statement of Facts filed
3 on September 29, 2004, at ¶¶ 1 and 2. This case involves that certain Declaration of Restrictions that
4 was recorded on June 13, 2004, in the Official Records of Yavapai County, Arizona at Book 416, Page
5 680 (“**Declaration**”) that purports to burden the portion of Coyote Springs Ranch where Plaintiffs’
6 and Defendants’ properties are located. See DSOF, ¶ 1. Plaintiffs have sued Defendants seeking to
7 enforce paragraphs 2, 7(e) and 15 of the Declaration against Defendants; Plaintiffs likewise have
8 sought the Court’s declaration that the Declaration is fully enforceable. *Id.* In response to Plaintiffs’
9 lawsuit, Defendants have asserted, *inter alia*, that the Declaration has been abandoned by the owners
10 of properties purportedly governed by the Declaration and that Plaintiffs have, as a result, waived their
11 right to enforce the same. See DSOF, ¶¶ 2-3.

12 Interestingly, Plaintiffs’ arguments supporting their MSJ are limited. First, they argue that
13 because the Court of Appeals, in its Memorandum Decision, stated that the intent of the Declaration
14 was to ensure a rural subdivision and because they have videos allegedly showing a rural subdivision
15 they are entitled to judgment as a matter of law. Second they argue that the ruling in *College Book*
16 *Centers, Inc. v. Carefree Foothills Homeowners’ Ass’n*, 225 Ariz. 533, 241 P.3d 897 (Ct.App. 2010),
17 dispositively requires judgment as a matter of law. However, neither arguments have merit.

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22 A. **Plaintiffs’ Misplace Their Reliance Upon The Court Of Appeals’**
23 **Memorandum Decision.**

24 With respect to the Memorandum Decision, what is noticeably absent therein is any judicial
25 determination on the issue of abandonment. That is the case because whether the subject Declaration
26 of Restrictions has been abandoned and thus waived was not an issue presented nor argued on appeal.
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1 Accordingly, any argument premised upon the Memorandum Decision lacks merit and the Plaintiffs'
2 Motion denied as a result.

3 **B. Defendants Have Established, At A Minimum, That A Question Of Fact**
4 **Exists Precluding Entry Of Summary Judgment Notwithstanding The**
5 **Ruling In *College Book Centers, Inc. v. Carefree Foothills Homeowners'***
6 ***Ass'n.***

7 With respect to the *College Book Centers* (“CBC”) decision, it is factually distinguishable to
8 the case at bar. While CBC did deal with the issues of waiver of a restrictive covenant encumbering
9 real property, it did not deal with the same facts and circumstances at issue before this court. CBC
10 involved a 76-lot subdivision governed by CC&Rs prohibiting non-residential structures, and each
11 lot owner was subject to mandatory membership in the HOA. *Id.* at 225 Ariz. at 535, 241 P.3d at 899.
12 Unlike the case at bar that involves virtually 90 percent of the non-vacant lots being in violation of
13 the subject restrictive covenants, CBC involved the question of whether the failure to enforce the
14 CC&Rs for two previous violations amounted to a waiver of the right to enforce the CC&Rs. *Id.* at
15 225 Ariz. at 537, 241 P.3d at 901. Accordingly, CBC is inapposite to this case.
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18 However, Defendants do not deny that the law set forth in CBC does apply to this case. As set
19 forth therein, the standard to be applied in abandonment cases is the same as that articulated in *Burke*
20 *v. Voicestream Wireless Corp. II*, 207 Ariz. 393, 87 P.3d 81 (Ct.App. 2004), which states:

21 The non-waiver provisions would be ineffective if a complete
22 abandonment of the entire set of Restrictions has occurred. The test for
23 determining a complete abandonment of deed restrictions – in contrast
24 to waiver of a particular set of restrictions – was set forth by our
25 supreme court in *Condos v. Home Development Company*, 77 Ariz. 129,
26 267 P.2d 1069 (1954): “[W]hether the restrictions imposed upon the use
27 of lots in this subdivision have been so thoroughly disregarded as to
28 result in such a change in the area as to destroy the effectiveness of the
restrictions, defeat the purposes for which they were imposed and

1 consequently [] amount to an abandonment thereof.” *Id.* at 133, 267
2 P.2d at 1071.

3 *Id.* at *Burke* at 207 Ariz. at 399, 87 P.3d at 87. And looking at *Condos* that was relied upon by *Burke*
4 provides even more insight into the legal standard to be followed. In *Condos*, our Supreme Court
5 framed the argument in that case in the following manner:

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7 The only question presented, as we view it, which deserves our
8 consideration is whether the restrictions imposed upon the use of lots in
9 this subdivision have been so thoroughly disregarded as to result in such
10 a change in the area as to destroy the effectiveness of the restrictions,
11 defeat the purposes for which they were imposed and consequently to
12 amount to an abandonment thereof.

13 *Condos* at 77 Ariz. at 133, 267 P.2d at 1071. *Condos* also quoted from *Benner v. Tacony Athletic*
14 *Ass'n*, 328 Pa. 577, 196 A. 390, 393 (1938), observing:

15 It is only when violations are permitted to such an extent as to indicate
16 that the entire restrictive plan has been abandoned that objection to
17 further violation is barred.

18 *Condos* at 77 Ariz. at 135, 267 P.2d at 1073 (emphasis added). And given the quantum of evidence
19 presented by Defendants, both when this issue was first addressed resulting in the 4/4/05 UAR, and
20 now, there is no question that violations of the subject Declaration of Restrictions have been permitted
21 “to such an extent as to indicate that the entire” Declaration of Restrictions has been abandoned.

22 As stated above, *supra*, Defendants have asserted that the entire Declaration, not just paragraph
23 2, has been abandoned. Defendants’ position in this regard is supported by the evidence that there has
24 been a complete and total disregard for the Declaration by the owners of properties in Coyote Springs
25 Ranch. See DSOF, ¶¶ 6-11. For example, prior to purchasing the Defendants’ Property, Defendants
26 drove around the portion of Coyote Springs Ranch where their property is located and saw evidence
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1 of many types of business and commercial activities that were not residential in nature including a
2 church under construction (that is since complete and actively used and operated), llama farms, alpaca
3 farms, horse breeding, boarding and training facilities, a hay sales facility, properties operated by
4 general contractors, a auto-mechanic shop (that is actually patronized by Plaintiffs) and numerous
5 properties out of which commercial vehicles are operated. *See* DSOF, ¶ 6. They likewise saw signs
6 posted on properties in the portion of Coyote Springs Ranch where the Defendants' Property is located
7 which advertised the sale of various types of goods and services. *Id.* Based upon their observations
8 of Coyote Springs Ranch and the uses being made of properties in the area by other property owners,
9 Defendants believed that their anticipated use of the Subject Property as a tree farm was permitted.
10 *See* DSOF, ¶ 6. Thereafter, in January, 2001, Defendants filed an application with Yavapai County
11 for an agricultural exemption for the Subject Property. *See* DSOF, ¶ 7. The exemption was granted
12 (and is still valid and effective today). *Id.* Receipt of the exemption led Defendants to believe that
13 their use of their property as a tree farm was allowed. *Id.*

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17 Furthermore, since the Plaintiffs filed their lawsuit on May 16, 2003, in which they alleged that
18 Defendants had violated paragraphs 2, 7(e) and 15 of the Declaration, Defendants have obtained
19 personal knowledge of, and have observed, numerous other commercial businesses being operated in
20 the Coyote Springs subdivision in which the Property is located. *See* DSOF, ¶ 8. Defendants likewise
21 obtained photographic evidence of business activities being conducted on properties in the portion of
22 Coyote Springs Ranch purportedly governed by the Declaration. *Id.* Defendants have also obtained
23 documentary evidence supporting their contention that businesses are being conducted on properties
24 in the portion of Coyote Springs Ranch purportedly governed by the Declaration. *Id.* Defendants have
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1 also observed and obtained photographs of numerous properties located in the portion of Coyote
2 Springs Ranch purportedly governed by the Declaration that appear to be in violation of other
3 paragraphs of the Declaration. *See* DSOF, ¶ 9.
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5 To verify the foregoing, a private investigator was hired to investigate potential violations of
6 the Declaration. *See* DSOF, ¶ 10. The private investigator originally did her work several years ago
7 and before this matter went to the Court of Appeals. In connection with that work done several years
8 ago, the private investigator found that in all of Coyote Springs, only 38 non-vacant properties, or
9 approximately ten percent (10%) of the total properties in Coyote Springs that were viewed, did not
10 appear to have a violation of the Declaration. *Id.* Thus, at the time of the investigator's original work,
11 approximately 90 percent (90%) of the properties that were investigated in Coyote Springs appeared
12 to violate the Declaration in some way, shape or form or another. *Id.* During her initial investigation,
13 the private investigator observed numerous apparent violations of paragraphs 6, 7(a), 7(b), 7(c), 7(e),
14 8, 9, 12, 13 and 16 of the Declaration. *See* DSOF, ¶ 10.
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17 The private investigator also verified several years ago that many business and commercial
18 activities were being conducted in Coyote Springs Ranch in apparent violation of paragraph 2 of the
19 Declaration. *Id.* In determining the status of any businesses or commercial activities that were being
20 operated on Coyote Springs properties several years ago, the private investigator searched the records
21 of the Arizona Secretary of State, the Arizona Corporation Commission, the Arizona Registrar of
22 Contractor, and the Yavapai County Recorder's Office. *Id.* The search covered the period from
23 January 1, 1970 to July 20, 2004. *Id.* Specific examples of business and commercial activities
24 identified included the following:
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- Parcel 401-01-042B - There are several horse trailers on this property, showing "Alvey Racing Diane Darrel Darcey" and "Saunders Racing Stables", along with the extra residences and all of the horses.
- Parcel 103-01-084D - According to the Arizona Secretary of State, Bruce Friss-Pettitt, the owner of the parcel, has an active trademark under the name of "Round Logo, Red, Navy and Cream Colored with All New Again Paintless Dent Removal, Windshield Repair, Interior Repair, Paint Touchup". His address is listed in the corporate records as 8750 E. Faraway Place, in Prescott Valley, which is in Coyote Springs.
- Parcel 103-01-078B - Daniel G. Belangeri, the owner, is involved in a lawsuit with Gloria A. Miller as Plaintiff, in the Yavapai County Superior Court case number CV 2003-0851. In this, Gloria Miller states in her complaint that Mr. Belangeri has a mobile home transportation company being operated at the property.
- Parcel 401-01-126A&B - Owned by the owners of Wargo Construction, Inc. and Wargo Masonry, Inc. On the records of the Arizona Registrar of Contractors, they are showing a P.O. Box 725, Prescott, Arizona, but use a Prescott Valley phone number, 928-772-3210. However, the property has a block fence around it and the observation of the property demonstrated that it was being used as a storage facility for construction materials, supplies and vehicles.
- Parcel 103-01-067F - The owners, Grant and Pamela Griffiths, have a company licensed with the Arizona Registrar of Contractors, and registered with the Arizona Corporation Commission, under the name of New Life Landscapes Inc. The address is listed as 8815 Spurr Lane, Prescott Valley, Arizona, which is the address in Coyote Springs.
- Parcel 401-01-037B - The owners, Shawn Timothy Kilduff and Virginia Marie Kilduff, have two licenses with the Registrar of Contractors, and a corporate filing with the Arizona Corporation Commission, under the name of Custom Crete Inc., with their address showing as 9315 E. Spurr Lane, Prescott Valley, Arizona, which is in Coyote Springs.

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- Parcel 401-01-015C - Owned by Robert Taylor, he is licensed with the Registrar of Contractors, and listed with the Arizona Corporation Commission under the name of R T Contracting Specialists LLC, which appears is being operated at the property. He also owns Parcel 103-01-130E.
- Parcel 401-01-015D - One of the owners of the property, Robert K. Gardiner, has a listing with the Arizona Corporation Commission under the name of Valley to Valley Transport, Inc. With the Secretary of State, he has registered the tradename Valley to Valley Transport/Feed, and shows himself as owner at the address of 9690 E. Plum Creek Way, Prescott Valley, which is in Coyote Springs.
- Parcel 103-01-065H - William H. Jensen is running a ranching/livestock corporation from this property under the corporate name of Coyote Springs Llama Ranch, Inc.
- Parcel 401-01-020E - The owners, Ross Rozendaal and Kara Rozendaal, are members of Dependable Dutchman Excavating, LLC, with the address of 9335 E. Turtle Rock Road, Prescott Valley, which is in Coyote Springs. They are listed with the Registrar of Contractors and the Arizona Corporation Commission.
- Parcel 401-01-020D - The owners, Leo M. and Marilyn K. Murphy, are also members of Dependable Dutchman Excavating, LLC. There is also a sign at the driveway which shows "Registered Quarter Horses Prescott Valley, AZ".
- Parcel 401-01-005Z - Wiley L. Williams, the owner, currently has a corporation listed with the Arizona Corporation Commission, being Northern Arizona Hay, Inc. The domestic address of the corporation is listed as 9575 E. Turtle Rock, Prescott Valley, in Coyote Springs.
- Parcel 103-01-133E - Arthur Gustafson, an owner of this property with his wife Debra Gustafson, have a listing with the Registrar of Contractors, Blackhawk Builders Inc., dba Blackhawk Construction. The property has on it plants, pallets, and buckets everywhere. It definitely looks like a nursery.

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- Parcel 103-01-056F - Leon H. and Noreen N. Vaughan operate "Arizona Alpacas" out of this property and have three active listings with the Secretary of State's Office for a trademark and tradenames.
- Parcel 103-01-056B - Michael Glennon and Diane Glennon, have a corporation listed to this address with the Arizona Corporation Commission under the name of Sparrow Lab, Inc.
- Parcel 103-01-057F - Jimmy Ray Hoffman and Nancy Ethel Hoffman have a current license with the Registrar of Contractors, under the name of Hoffman Barns, being a dba of Hoffman Building and Barns, Inc. The Arizona Corporation Commission lists the type of business as Contractor, and the corporation is in good standing. There is also a Financing Statement recorded on June 28, 1996, against the Hoffmans, listing the Coyote Springs Road address, covering all equipment, etc., for their business.
- Parcel 103-01-123D - The corporate records revealed that Michael T. Alexander and his wife, Kelly J. Alexander, use the address of 7515 Coyote Springs Road, Prescott Valley, for a corporation named Cobra Enterprises, Inc.
- Parcel 103-01-073F - This is a church owned by Living Faith Inc. It is obviously a business being conducted.
- Parcel 103-01-073D - Michael A. Kelly is currently listed with the Arizona Corporation Commission as the Statutory Agent, and Manager, of Northland Equipment Rental & Service, LLC. The address listed is 8920 Dreamy Draw Way, Prescott Valley, which is in Coyote Springs.

See DSOF, ¶ 10.

Once this case returned from the Court of Appeals and after the joinder issues were addressed, Defendants' private investigator updated her work. See DSOF, ¶ 11. In performing the same, she again discovered that substantial and continuing violations of the Declaration exist within the subdivision. *Id.* In this regard, the private investigator discovered that to this day, only 30 non-vacant

1 properties lack some sort of violation of the Declaration, which is less than ten percent (10%) of the
2 total properties in the subject subdivision. *Id.* Thus, as of today more than percent (90%) of the
3 properties viewed in Coyote Springs violate the Declaration. *Id.* As was the case during her original
4 investigation, the investigator again observed numerous violations of paragraphs 6, 7(a), 7(b), 7(c)
5 7(e), 8, 9, 12, 13 and 16 of the Declaration. *Id.* She observed that almost all of the properties have
6 a propane tank in open view while others have other violations such as trash receptacles being in open
7 view; junk and abandoned vehicles being on the property; dwellings on the property without a
8 residence being erected; travel trailers or campers on the property; two residences on the same
9 property; or they have more than one violation on the same property. The investigator confirmed also
10 that on multiple properties, the residences themselves are falling apart and are unlivable in apparent
11 violaton of the Declaration. By way of example, the investigator identified the following violations
12 based upon visual inspections:

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| 16 | Parcel 103-01-001T | - | Abandoned and unlivable trailer |
| 17 | Parcel 401-01-042D | - | Abandoned and boarded up |
| 18 | Parcel 401-01-042B | - | Residence on property along with a motor home which is also
19 being lived in along with propane tanks for both. |
| 20 | Parcel 103-01-131E | - | Empty house; overgrown weeds |
| 21 | Parcel 103-01-131D | - | There is a "not for hire" truck there and a couch left in the yard. |
| 22 | Parcel 401-01-025 | - | Lots of trailers, trucks and other items |
| 23 | Parcel 401-01-090C | - | Two residences |
| 24 | Parcel 401-01-019 | - | Appliances in the yard |

- 1 Parcel 401-01-024B - Two residences - one shows as a guest house with the
2 Yavapai County Assessor's Office
- 3 Parcel 401-01-036B - Trailer on the property has the slide out; possibly being lived
4 in
- 5 Parcel 103-01-224A - House looks to be abandoned
- 6 Parcel 103-01-137 - People were unloading a large truck filled with tires, and there
7 was an additional truck on the property, filled with tires.
- 8 Parcel 103-01-064A - Residents appear to be living in the travel trailer
- 9 Parcel 103-01-132 - There are two mobile homes affixed to this property, and
10 there are numerous vehicles on the property. A business is
11 being conducted from here.
- 12 Parcel 401-01-040H - Has not only a lot of junk but two abandoned school buses
- 13 Parcel 103-01-067C - Abandoned property
- 14 Parcel 401-01-028D - Multiple structures, trailers and other junk
- 15 Parcel 103-01-065F - Abandoned house and multiple vehicles
- 16 Parcel 103-01-065C - Multiple houses with addresses; face painting business; and
17 tanks
- 18 Parcel 401-01-005U - Multiple propane tanks, recreational vehicles and junk
- 19 Parcel 103-01-129B - Broken down vehicles
- 20 Parcel 401-01-005V - Two houses
- 21 Parcel 103-01-061F - Trailers and junk
- 22 Parcel 103-01-074G - Trailers, propane tanks, run down house
- 23 Parcel 401-01-134 - This property has a residence and a rental house on the same
24 property.
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- 1 Parcel 401-01-014 - There is a little shed type house on the property; it may not
2 make the square footage mentioned in the restrictions for a
3 structure.
- 4 Parcel 401-01-040A - Lots of trash, trailers and tanks
- 5 Parcel 103-01-083F - Trash, trucks and a possible refrigerator outside
- 6 Parcel 103-01-150C - Two houses
- 7 Parcel 103-01-186E - There is a big garage and two travel trailers, but there does
8 not seem to be a residence, which is in violation
- 9 Parcel 103-01-077E - Only a little shed is on the property; no residence
- 10 Parcel 103-01-068 - Two residences
- 11 Parcel 103-01-080K - Strange little building, may not comply with structure square
12 footage requirements
- 13 Parcel 103-01-092D - Blue shed and tank; no residence
- 14 Parcel 103-01-092E - Two residences
- 15 Parcel 103-01-113E - Abandoned buildings
- 16 Parcel 103-01-089L/E - Abandoned and demolished house; living in travel trailer or
17 other structure on property, in violation, along with a lot of
18 junk
- 19 Parcel 103-01-085D - Excessive amount of dogs and two houses; other violations
- 20 Parcel 103-01-113A - Excessive amount of dogs and kennels; other violations
- 21 Parcel 103-01-072J - Two houses
- 22 Parcel 103-01-103E - Trashed mobile home, propane tank and junk
- 23 Parcel 103-01-101J - Two houses, trailers, propane tanks
- 24 Parcel 103-01-057F - Numerous trailers, tanks and other items
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1 *Id.*

2 The investigator's update to her investigation again revealed numerous properties where
3 business and commercial activities are being conducted in apparent violation of paragraph 2 of the
4 Declaration, much of which were determined based upon searches of the records of the Arizona
5 Secretary of State, the Arizona Corporation Commission, the Arizona Registrar of Contractors, and
6 the Yavapai County Recorder's Office, that included the following:
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8 Parcel 401-01-042B - There are several horse trailers on this property showing
9 "Alvey Racing Diane Darrel Darcey" and "Saunders Racing
10 Stables", along with the extra residences and all of the horses.

11 Parcel 103-01-084D - According to the Arizona Secretary of State, Bruce Friss-
12 Pettitt, the owner of the parcel, has an active trademark under
13 the name of "Round Logo, Red, Navy and Cream Colored
14 with All New Again Paintless Dent Removal, Windshield
15 Repair, Interior Repair, Paint Touchup". His address is listed
16 in the corporate records as 8750 E. Faraway Place, in Prescott
17 Valley, which is in Coyote Springs.

18 Parcel 103-01-078B - Daniel G. Belangeri, the owner, is involved in a lawsuit with
19 Gloria A. Miller as Plaintiff, in the Yavapai County Superior
20 Court case number CV 2003-0851. In that case, Gloria Miller
21 alleges in her complaint that Mr. Belangeri operates a mobile
22 home transportation company on and at the property.

23 Parcel 401-01-126A&B - Owned by the owners of Wargo Construction, Inc. and Wargo
24 Masonry, Inc. In the records of the Arizona Registrar of
25 Contractors, they list P.O. Box 725, Prescott, Arizona, but use
26 a Prescott Valley phone number, 928-772-3210. The property
27 has a block fence around it and the observation of the
28 property revealed that it was being used as a storage facility
for construction materials, supplies and vehicles.

Parcel 103-01-067F - The owners, Grant and Pamela Griffiths, have a company
licensed with the Arizona Registrar of Contractors, and
registered with the Arizona Corporation Commission, under
the name of New Life Landscapes Inc. The address is listed as

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8815 Spurr Lane, Prescott Valley, Arizona, which is the address in Coyote Springs.

Parcel 401-01-037B - The owners, Shawn Timothy Kilduff and Virginia Marie Kilduff, have two licenses with the Registrar of Contractors, and a corporate filing with the Arizona Corporation Commission, under the name of Custom Crete Inc., with their address showing as 9315 E. Spurr Lane, Prescott Valley, Arizona, which is in Coyote Springs.

Parcel 401-01-015C - Owned by Robert Taylor, he is licensed with the Registrar of Contractors, and listed with the Arizona Corporation Commission under the name of R T Contracting Specialists LLC, which appears to being operated at the property. He also owns Parcel 103-01-130E.

Parcel 401-01-015D - One of the owners of the property, Robert K. Gardiner, has a listing with the Arizona Corporation Commission under the name of Valley-to-Valley Transport, Inc. With the Secretary of State, he has registered the trade name Valley-to-Valley Transport/Feed, and shows himself as owner at the address of 9690 E. Plum Creek Way, Prescott Valley, which is in Coyote Springs.

Parcel 103-01-065H - William H. Jensen is running a ranching/livestock corporation from this property under the corporate name of Coyote Springs Llama Ranch, Inc.

Parcel 401-01-020E - The owners, Ross Rozendaal and Kara Rozendaal, are members of Dependable Dutchman Excavating, LLC, with the address of 9335 E. Turtle Rock Road, Prescott Valley, which is in Coyote Springs. They are listed with the Registrar of Contractors and the Arizona Corporation Commission.

Parcel 401-01-020D - The owners, Leo M. and Marilyn K. Murphy, are also members of Dependable Dutchman Excavating, LLC. There is also a sign at the driveway which shows "Registered Quarter Horses Prescott Valley, AZ".

Parcel 401-01-005Z - Wiley L. Williams, the owner, currently has a corporation listed with the Arizona Corporation Commission, being Northern Arizona Hay, Inc. The domestic address of the

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corporation is listed as 9575 E. Turtle Rock, Prescott Valley, in Coyote Springs.

Parcel 103-01-133E - Arthur Gustafson, an owner of this property with his wife Debra Gustafson, have a listing with the Registrar of Contractors, Blackhawk Builders Inc., dba Blackhawk Construction. The property has on it plants, pallets, and buckets everywhere. It definitely looks like a nursery.

Parcel 103-01-056B - Michael Glennon and Diane Glennon, have a corporation listed to this address with the Arizona Corporation Commission under the name of Sparrow Lab, Inc.

Parcel 103-01-057F - Jimmy Ray Hoffman and Nancy Ethel Hoffman have a current license with the Registrar of Contractors, under the name of Hoffman Barns, being a dba of Hoffman Building and Barns, Inc. The Arizona Corporation Commission lists the type of business as Contractor, and the corporation is in good standing. There is also a Financing Statement recorded on June 28, 1996, against the Hoffmans, listing the Coyote Springs Road address, covering all equipment, etc., for their business.

Parcel 103-01-123D - The corporate records revealed that Michael T. Alexander and his wife, Kelly J. Alexander, use the address of 7515 Coyote Springs Road, Prescott Valley, for a corporation named Cobra Enterprises, Inc.

Parcel 103-01-073F - This is a church owned by Living Faith Inc.

Parcel 103-01-073D - Michael A. Kelly is currently listed with the Arizona Corporation Commission as the Statutory Agent, and Manager, of Northland Equipment Rental & Service, LLC. The address listed is 8920 Dreamy Draw Way, Prescott Valley, which is in Coyote Springs.

Parcel 103-01-001S - The address for the parcel is 8055 E. Dog Ranch Road. The Arizona Corporation Commission shows a Jared Lish with a business by the name of Cripple Creek Guide Services, LLC with this address. This parcel is actually owned by Linda McFarlin, who shows her mailing address as 11850 Coyote Springs Road, Prescott Valley, which does not exist according

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to the records of the Yavapai County Assessor. Linda McFarlin also has a business, which she runs out of her house, called LAM Investments LLC.

Parcel 103-01-131D - Owners Robert Kelley and Lisa Kelley owned Covenant Excavation Inc., which had two licenses: one for sewage treatment systems and the other for excavating, grading and oil surfacing, with the Arizona Registrar of Contractors. These licenses, however, were suspended in June of 2009 for non-renewal.

Parcel 103-01-001E - Bernard Carroll Simons and Carol Ceryes own this property. Mr. Simons owns Equipment Plus, and has a current license with the Arizona Registrar of Contractors for excavating, grading and oil surfacing, which has been renewed through February 28, 2013.

Parcel 103-01-001D - Dana S. Frank, DVM and her husband own P.V.P.C. It Forward, P.C., and runs it out of her house. It is veterinary medicine and animal care. The also own DNR Properties, LLC. Both companies have domestic addresses of 11600 Malouff, in Prescott Valley, according to records of the Arizona Corporation Commission.

Parcel 103-01-095K - Lori-Beth Anglin, one of the owners, is a real estate agent, but she seems to have an office that she works out of in town.

Parcel 401-01-042 - Diana K. Garcia and Robert L. Weaver run Orion Land Surveying, Inc. from this address.

Parcel 103-01-064J - Two businesses are registered to the owners of this property, being Picture This, LLC and P.V. Terra Visions, LLC, both with domestic addresses at this location. The owners are James Nardo and Cheryl Nardo.

Parcel 103-01-132 - Curtis Kincheloe is running Coyote Curts Auto Repair from this residence at 8950 E. Mummy View Drive, Prescott Valley.

Parcel 103-01-065C - A photograph of the FACE Painting trailer was taken at this address. It was found that Rex and Carrie Thompson own the business and work out of their house. The residence itself,

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however, is owned by Christine Bowra, Jeff Westra and Mychel Westra.

Parcel 103-01-056F - Leon and Noreen Vaughan own and run Arizona Alpacas & Flying "V" Alpacas at this location. They have been breeding alpacas since 1994 and breed and raise them currently. They have a trademark and a trade name at this address.

Parcel 401-01-038A - Michael and Julie Davis own this parcel, and Julie Davis works for Tarheel Towing, which is known as Rolaway Enterprises, Inc. There are vehicles from Tarheel Towing at this property, even though their office is elsewhere.

Parcel 103-01-002K - William Matthew Grace, also known as William M. Grace and W. Matthew Grace, run Calderaro Motor Sports LLC from this property.

Parcel 401-01-011A - Lloyd E. and Melva J. Self at 9250 Slash Arrow Drive, Prescott Valley, own and run Circle S Trucking LLC from this property.

Parcel 401-01-022B - Gary McCorkle does land surveying from this address; his business is called Advanced Surveys, Inc.

Parcel 103-01-089D - Christopher and Debra Vaughan run Coyote Springs Candleworks from this address.

Parcel 103-01-069H - Wendy L. Changose, who is now known as Wendy Dittbrenner, is running Peaceful Prairie Alpaca & Merino Ranch from this property, offering boarding and breeding services, owner support and fiber products.

Parcel 103-01-002Q - Kimberly Sharp is currently running Country Heritage Farm from this address.

Parcel 401-01-028A - JM Quarterhorses shows as being listed at this address

Parcel 103-01-113J - This is the Mountain View Paint Horse Ranch, owned by Sherry Marx.

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- Parcel 103-01-120 - Gwendolyn Anderson has a trade name registered for Coyote Springs Investments at this address, which is good until March 5, 2014.
- Parcel 103-01-063C - Prescott Area Animal Lifesavers is running out of this address, adopting out pets.
- Parcel 103-01-103A - Weir Stables
- Parcel 401-01-134 - Automated Entry Services is being ran out of this parcel

Id. And the foregoing violations of the Declaration do not include those violations observed by the multitude of Defendants in this case scheduled to testify in this case.

What should be clear from the foregoing is that this case is not the *College Book Centers* case that involved two violations in a subdivision with 76 lots. Rather, this is a case with massive, global and well-documented non-compliance with restrictive covenants that have been ignored and never enforced. See DSOF, ¶ 12. And contrary to Plaintiffs’ contention otherwise, those violations do include lot splits reducing lot sizes to less than nine acres. See DSOF, ¶ 6. At a minimum, Defendants’ evidence of existing violations of the Declaration, including paragraph 2, and the total failure of Coyote Springs Ranch property owners in enforcing the Declaration raises a material question of fact on the issue of abandonment precluding summary judgment. This is especially the case because (i) the Court is required to view the evidence and record in the light most favorable to the non-moving party – namely, Defendants; (ii) the evidence of the non-movant – namely, Defendants – is to be believed; and (iii) all justifiable inferences are to be drawn in the the non-movant’s – namely, Defendants’ – favor. See *Sanchez v. City of Tucson*, 191 Ariz. 128, 953 P.2d 168 (1998); and *Hegel v. O’Malley Ins. Co., Inc.*, 122 Ariz. 52, 593 P.2d 275 (1979). Thus, summary judgment against Defendants is inappropriate and Plaintiffs’ MSJ must be denied, especially in light

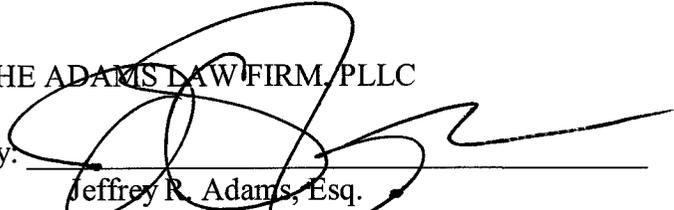
1 of the fact that the Court already determined, on April 4, 2005, that the abandonment issue was one
2 of a question of fact.

3 **III. Conclusion.**

4
5 For the foregoing reasons, Defendants respectfully request that Plaintiffs' Motion for
6 Summary Judgment be denied as there is a material question of fact concerning the abandonment
7 and waiver of the Declaration of Restrictions. Furthermore, inasmuch as the Court already has ruled
8 on this matter deeming there to be a question of fact rendering Plaintiffs' Motion moot, this Court
9 should Order that Plaintiffs' pay Defendants' attorneys' fees, costs and expenses incurred in
10 connection with having to respond to their Motion pursuant to A.R.S. § 12-341.01.
11

12 DATED this 11 day of February, 2013.

13
14 THE ADAMS LAW FIRM, PLLC

15 By: 

16 Jeffrey R. Adams, Esq.

17 Attorneys for Defendants

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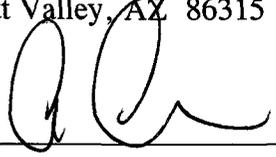
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