

2010 SEP 15 PM 4: 29

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7 Attorneys for Defendants

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF YAVAPAI**

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

16 Plaintiffs,

17 v.

18 DONALD COX and CATHERINE COX,
19 husband and wife, LEON H. VAUGHN and
20 NOREEN N. VAUGHN, husband and wife;
21 MARTHA LILLIAN CAUDILL and
22 SANDRA GODINEZ; JOHN D. AUDSLEY
23 and DUSTIL. AUDSLEY, husband and wife;
24 CURTIS D. KINCHELOE; JOHN L.
25 HATFIELD and GENA D. HATFIELD,
26 TRUSTEES of the BRIT- CHAR TRUST utd
27 July 10, 2007; CINDI E. LEBASH;
28 ROBERTA L. BALDWIN; JAMES H.
STROM and DORIS L. STROM, husband
and wife; MICHAEL K. DAVIS and JULIE
A. DAVIS, husband and wife; JOY D.
BASSET; JAMES B. DARRIN and
LORRAINE DARRIN, TRUSTEES of the
JAMES B. DARRIN FAMILY TRUST, utd
December 14, 1998; WILLIAM
HECKETHORN and SHAUNLA D.
HECKETHORN, husband and wife; JOHN J
FEDDEMA and REBECCA FEDDEMA,
husband and wife; GARY J. FEDDEMA and
SABRA J. FEDDEMA, husband and wife;

No. P1300CV20030399

Division 1

**ANSWER TO FIRST AMENDED
COMPLAINT BY JOINED PROPERTY
OWNER DEFENDANTS**

(Assigned to the Hon. David L. Mackey)

1 TRACY L. GREENLEE; LLOYD E. SELF
2 and MELVA J. SELF, husband and wife;
3 WILLIAM R. and JUDITH K. STEGEMAN,
4 TRUSTEES of the STEGEMAN TRUST utd
5 March 9, 2001; FRANKLIN B.
6 LAMBERSON and LAURA L.
7 LAMBERSON, husband and wife; RHONDA
8 L. FOLSOM; RICHARD A. STRISSEL and
9 BEVERLY A. STRISSEL, husband and wife;
10 BONNIE ROSSON; DANIEL BAUMAN and
11 LOUELLA BAUMAN, husband and wife;
12 RYNDA HOFFMAN and JIMMY
13 HOFFMAN, husband and wife; KENNETH
14 PALOUTZIAN; THERESA E. MASSARDI;
15 JAMES STEPHENSON and SHIRLEY
16 STEPHENSON, husband and wife; WEST R.
17 RIVERS and CATHERINE S. RIVERS,
18 husband and wife; LAWRENCE KYLE
19 MCCARTHY and HEIDE JANE
20 MCCARTHY, TRUSTEES of the
21 MCCARTHY LIVING TRUST utc May 20,
22 1981; EDWARD C. WOODWORTH and
23 CHRISTINE WOODWORTH, husband and
24 wife; DONALD J. KLIEN, and
25 CHARLOTTE F. KLEIN, as TRUSTEES to
26 the KLEIN FAMILY TRUST; JEFF and
27 MYCHEL WESTRA, husband and wife,
28 CHRISTINE L. BOWRA; CHARLES
RICHARD COAKLEY, TRUSTEE of the
CHARLES COAKLEY TRUST utd June 10,
1991; DANA E. TAPP and SHERRILYN G.
TAPP, husband and wife; ELSE CLARK,
TRUSTEE of the 2005 ELSE CLARK
REVOCABLE TRUST utd October 27, 2005;
WENDY L. CHANGOSE; KARI L.
DENNIS; JOHN P. HOUGH and KAREN R.
HOUGH, husband and wife; JAMES
BARSTAD; MICHAEL J. GLENNON and
DIANE GLENNON, husband and wife;
MICHAEL D. WHITE; STEVE M. WILSON
and DEBORAH D. WILSON, husband and
wife; WILLIAM M. GRACE and
CATHERINE ANNETTE GRACE, husband
and wife, OTTIS R. CLARK and DELORES
F. CLARK, husband and wife; JAMES C.
RICHIE and LESLIE M. RICHIE, husband and

1 wife; ROBERT LEE STACK and PATTI ANN
2 STACK, TRUSTEES of the ROBERT LEE
3 and PATTI ANN TRUST utd March 13, 2007;
4 MARK S. WILLIAMS and SOMA D.
5 WILLIAMS, TRUSTEES of the MARK AND
6 SOMA WILLIAMS TRUST utd October 10,
7 2007; RICHARD A. PINNEY and PATRICIA
8 A. PINNEY, husband and wife; LEO M.
9 MURPHY and MARILYN K. MURPHY,
10 husband and wife; GEOFFREY MOORE
11 MCNABB and KRISTIN D. MCNABB,
12 husband and wife; GRANT L. GRIFFITHS and
13 PAMELA L. GRIFFITHS, husband and wife;

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Defendants.

10 Defendants DONALD COX and CATHERINE COX, husband and wife, LEON
11 H. VAUGHN and NOREEN N. VAUGHN, husband and wife; MARTHA LILLIAN CAUDILL
12 and SANDRA GODINEZ; JOHN D. AUDSLEY and DUSTI L. AUDSLEY, husband and wife;
13 CURTIS D. KINCHELOE; JOHN L. HATFIELD and GENA D. HATFIELD, TRUSTEES of
14 the BRIT- CHAR TRUST utd July 10, 2007; CINDI E. LEBASH; ROBERTA L. BALDWIN;
15 JAMES H. STROM and DORIS L. STROM, husband and wife; MICHAEL K. DAVIS and
16 JULIE A. DAVIS, husband and wife; JOY D. BASSET; JAMES B. DARRIN and LORRAINE
17 DARRIN, TRUSTEES of the JAMES B. DARRIN FAMILY TRUST, utd December 14, 1998;
18 WILLIAM HECKETHORN and SHAUNLA D. HECKETHORN, husband and wife; JOHN J
19 FEDDEMA and REBECCA FEDDEMA, husband and wife; GARY J. FEDDEMA and SABRA
20 J. FEDDEMA, husband and wife; TRACY L. GREENLEE; LLOYD E. SELF and MELVA J.
21 SELF, husband and wife; WILLIAM R. and JUDITH K. STEGEMAN, TRUSTEES of the
22 STEGEMAN TRUST utd March 9, 2001; FRANKLIN B. LAMBERSON and LAURA L.
23 LAMBERSON, husband and wife; RHONDA L. FOLSOM; RICHARD A. STRISSEL and
24 BEVERLY A. STRISSEL, husband and wife; BONNIE ROSSON; DANIEL BAUMAN and
25 LOUELLA BAUMAN, husband and wife; RYNDA HOFFMAN and JIMMY HOFFMAN,

1 husband and wife; KENNETH PALOUTZIAN; THERESA E. MASSARDI; JAMES
2 STEPHENSON and SHIRLEY STEPHENSON, husband and wife; WEST R. RIVERS and
3 CATHERINE S. RIVERS, husband and wife; LAWRENCE KYLE MCCARTHY and HEIDE
4 JANE MCCARTHY, TRUSTEES of the MCCARTHY LIVING TRUST utc May 20, 1981;
5 EDWARD C. WOODWORTH and CHRISTINE WOODWORTH, husband and wife; DONALD
6 J. KLIEN, and CHARLOTTE F. KLEIN, as TRUSTEES to the KLEIN FAMILY TRUST; JEFF
7 and MYCHEL WESTRA, husband and wife, CHRISTINE L. BOWRA; CHARLES RICHARD
8 COAKLEY, TRUSTEE of the CHARLES COAKLEY TRUST utd June 10, 1991; DANA E.
9 TAPP and SHERRILYN G. TAPP, husband and wife; ELSE CLARK, TRUSTEE of the 2005
10 ELSE CLARK REVOCABLE TRUST utd October 27, 2005; WENDY L. CHANGOSE; KARI
11 L. DENNIS; JOHN P. HOUGH and KAREN R. HOUGH, husband and wife; JAMES
12 BARSTAD; MICHAEL J. GLENNON and DIANE GLENNON, husband and wife; MICHAEL
13 D. WHITE; STEVE M. WILSON and DEBORAH D. WILSON, husband and wife; WILLIAM
14 M. GRACE and CATHERINE ANNETTE GRACE, husband and wife, OTTIS R. CLARK and
15 DELORES F. CLARK, husband and wife; JAMES C. RICHIE and LESLIE M. RICHIE, husband
16 and wife; ROBERT LEE STACK and PATTI ANN STACK, TRUSTEES of the ROBERT LEE and
17 PATTI ANN TRUST utd March 13, 2007; MARK S. WILLIAMS and SOMA D. WILLIAMS,
18 TRUSTEES of the MARK AND SOMA WILLIAMS TRUST utd October 10, 2007; RICHARD A.
19 PINNEY and PATRICIA A. PINNEY, husband and wife; LEO M. MURPHY and MARILYN K.
20 MURPHY, husband and wife; GEOFFREY MOORE MCNABB and KRISTIN D. MCNABB,
21 husband and wife; GRANT L. GRIFFITHS and PAMELA L. GRIFFITHS, husband and wife; as
22 joined property owners in Coyote Springs Ranch, (collectively "**Joined Defendants**"), by and
23 through undersigned counsel, hereby answer Plaintiffs' First Amended Complaint ("**Complaint**")
24 in the above-captioned matter and admit, deny and allege as follows:
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- 1 1. Joined Defendants admit the allegations contained in Paragraph 1 of the Complaint.
- 2 2. Joined Defendants assert and allege that they are owners of property located within
3 the property described in Paragraph 1 of the Complaint.
- 4 3. Joined Defendants admit the allegations contained in Paragraphs 2 and 3 of the
5 Complaint.
- 6 4. Joined Defendants deny the allegations contained in Paragraphs 4 through 7 of the
7 Complaint.
- 8 5. Answering Paragraph 8 of the Complaint, Joined Defendants assert that the
9 Declaration of Restrictions attached as EXHIBIT A to the Complaint speaks for itself but deny
10 that the subject Declaration of Restrictions ever encumbered or now encumbers Joined
11 Defendants' or Defendants Coxes' property or were breached by Joined Defendants or
12 Defendants Cox in any way and therefore Joined Defendants deny the allegations or any
13 inferences contained in Paragraph 8 of the Complaint.
- 14 6. Joined Defendants deny the allegations contained in Paragraph 9 of the Complaint.
- 15 7. Answering Paragraph 10 of the Complaint, Joined Defendants admit that the subject
16 Declaration of Restrictions were part of the public record at the time they and Defendants Cox
17 acquired their respective properties but deny that they were on notice that the Declaration of
18 Restrictions were applicable, enforceable or in effect at the time of their acquisition of their
19 respective properties and further assert and allege that the subject Declaration of Restrictions were
20 long-ago abandoned and therefore Joined Defendants deny the allegations of Paragraph 10 of the
21 Complaint.
- 22 8. Answering Paragraphs 11 through 13 of the Complaint, Joined Defendants deny
23 that they or Defendants Cox have breached any provision of the Declaration of Restrictions and
24 further allege that because the subject Declaration of Restrictions were long-ago abandoned, the
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1 Declaration of Restrictions could no longer be breached by any property owner in the subject
2 subdivision and therefore Joined Defendants deny the allegations of Paragraphs 11 through 13 of
3 the Complaint.

4 9. Answering Paragraph 14 of the Complaint, Joined Defendants are without
5 knowledge or information sufficient to form a belief as to the truthfulness of the allegations
6 contained therein and therefore deny the same.
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8 10. Joined Defendants admit Paragraph 15 of the Complaint.

9 11. Answering Paragraph 16 of the Complaint, Joined Defendants reallege and
10 incorporate by reference their answers to Paragraphs 1-15 of the Complaint as if each were fully
11 set forth herein.

12 12. Joined Defendants deny the allegations contained in Paragraphs 17 and 18 of the
13 Complaint.
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15 13. Answering Paragraph 19 of the Complaint, Joined Defendants reallege and
16 incorporate by reference their answers to Paragraphs 1-18 of the Complaint as if each were fully
17 set forth herein.

18 14. Joined Defendants deny the allegations contained in Paragraphs 20 and 21 of the
19 Complaint.
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21 15. Answering Paragraph 22 of the Complaint, Joined Defendants reallege and
22 incorporate by reference their answers to Paragraphs 1-21 of the Complaint as if each were fully
23 set forth herein.

24 16. Joined Defendants deny the allegations contained in Paragraphs 23 and 24 of the
25 Complaint.
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1 17. Answering Paragraph 25 of the Complaint, Joined Defendants reallege and
2 incorporate by reference their answers to Paragraphs 1-24 of the Complaint as if each were fully
3 set forth herein.

4 18. Answering Paragraph 26 of the Complaint, Joined Defendants admit that a
5 controversy exists as to the enforceability of the subject Declaration of Restrictions and further
6 allege and assert that the subject Declaration of Restrictions do not constitute covenants and
7 restrictions running with the land and that they are not enforceable by any owner of the subject
8 property.
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10 19. Answering Paragraph 27 of the Complaint, Joined Defendants deny that they and
11 Defendants Cox or their respective properties are bound by or subject to the Declaration of
12 Restrictions and therefore deny that any obligation to comply with the same exists and therefore
13 they deny the allegations contained therein.
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15 20. Joined Defendants admit Paragraph 28 of the Complaint.

16 21. Answering Paragraph 29 of the Complaint, Joined Defendants reallege and
17 incorporate by reference their answers to Paragraphs 1-28 of the Complaint as if each were fully
18 set forth herein.

19 22. Joined Defendants deny the allegations contained in Paragraph 30 of the Complaint.
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21 23. Joined Defendants deny each and every allegation in the Complaint not expressly
22 admitted herein.

23 24. Defendants deny that Plaintiffs are entitled to any of the relief or remedies
24 requested in the Complaint or to any relief or remedy of any kind whatsoever.

25 25. Defendants are entitled to an award of their reasonable attorneys' fees incurred in
26 defending against the Complaint pursuant to A.R.S. §§ 12-341.01 and 12-349.
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AFFIRMATIVE DEFENSES

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2 26. Joined Defendants allege Plaintiffs have failed to state a claim upon which relief
3 can be granted.

4 27. Joined Defendants allege that the Declaration of Restrictions attached as EXHIBIT
5 A to the Complaint have been abandoned and are no longer enforceable as against Defendants.
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7 28. Joined Defendants allege that the counts against them in this action are barred by
8 the doctrines of estoppel, waiver and laches.

9 29. Joined Defendants allege the Complaint fails to allege a legitimate equitable or legal
10 basis for imposing any liability against them in this matter.

11 30. Joined Defendants allege that the Complaint is barred because of Plaintiffs' own
12 negligence, acts, omissions, carelessness and/or inattention.
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14 31. Joined Defendants allege that the Complaint is barred because the damages alleged
15 by Plaintiffs were a direct and proximate result of acts and omissions of persons or entities other
16 than Joined Defendants or Defendants Cox.

17 32. Joined Defendants allege that any legal obligations required of them under the law
18 have been discharged.

19 33. Joined Defendants allege for affirmative defenses release and any other matter
20 constituting an avoidance or affirmative defense and also alleges that discovery may reveal the
21 existence of other affirmative defenses as set forth in Rules 8(c) and 12(b), Ariz. R. Civ. P., and
22 they reserve the right to amend this Answer to allege any and all of said affirmative defenses as
23 may be applicable.
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25 WHEREFORE, having fully answered each and every Count of Plaintiffs' First Amended
26 Complaint, Joined Defendants request Judgment in their favor and against Plaintiffs as follows:
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A. For and Order dismissing the Complaint with prejudice and ordering that Plaintiffs take nothing thereby;

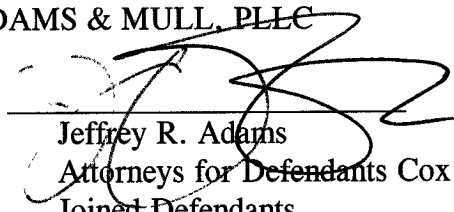
B. For an Order declaring that the subject Declaration of Restrictions is no longer enforceable as against any property owner in the subject subdivision;

C. For an Order declaring that the Defendants Cox and Joined Defendants and their respective properties are not bound or encumbered by the subject Declaration of Restrictions;

D. For an Order awarding Joined Defendants their reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12-341.01 and 12-348 and interest thereon at the highest legal rate;

E. For such other and further relief as the Court deems just and necessary under the premises.

Dated this 15 day September, 2010.

ADAMS & MULL, PLLC
By 
Jeffrey R. Adams
Attorneys for Defendants Cox and
Joined Defendants

A copy of the foregoing was hand-delivered this 15 day of September, 2010, to:

The Honorable David L. Mackey
Yavapai County Superior Court
Division 1
Yavapai County Courthouse
Prescott, Arizona

J. Jeffrey Coughlin, Esq.
J. Jeffrey Coughlin PLLC
114 South Pleasant Street
Prescott, Arizona 86303
Attorney for Plaintiffs

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