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JEANNE HICKS, CLERK

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8 *Attorneys for Defendants*

9 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

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

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

17 **Plaintiffs,**

18 **v.**

19 **DONALD COX and CATHERINE COX,**
20 **husband and wife,**

21 **Defendants.**

Case No. **2005-0399**

Division No. 1 ✓

RESPONSE TO PLAINTIFFS'
OBJECTION TO DEFENDANTS'
SUPPLEMENTAL AUTHORITIES RE:
PLAINTIFFS' MOTIONS FOR
SUMMARY JUDGMENT

22 Defendants Donald Cox's and Catherine Cox's (hereinafter "Cox") Supplemental Citation of
23 Authority Re: Waiver of Restrictive Covenant Prohibiting Business and Commercial Enterprises did
24 not contain any legal argument. Rather, it was limited to Arizona case law, the legal significance of
25 Plaintiffs' failure to controvert Cox's Separate Statement of Facts in Support of Response to Motion
26 for Summary Judgment filed on September 29, 2004 and Cox's Separate Statement of Facts in
27 Support of Response to Motion for Summary Judgment filed on January 11, 2005 and the legal
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1 significance of Plaintiffs' counsel's concession at oral argument on January 31, 2005 that they were
2 not seeking summary judgment on Cox's affirmative defense of abandonment as this was an issue for
3 trial.
4

5 The above legal authorities support Cox's position that there is a genuine issue of material fact
6 in dispute as to whether the Plaintiffs have waived or abandoned the entire set of Declaration of
7 Restrictions. See Burke v. Voicestream Wireless Corp., 207 Ariz. 393, 399, 87 P.3d 81 (App. 2004)
8 holding in part:
9

10 The non-waiver provision would be ineffective if a complete abandonment of the
11 entire set of Restrictions has occurred.

12 DATED this 14th day of February, 2005.

13 MUSGROVE, DRUTZ & KACK, P.C.

14 By 

15 Mark W. Drutz

16 Jeffrey R. Adams

17 *Attorneys for Defendants*

18 COPY of the foregoing was hand-delivered
19 this 14th day of February, 2005 to:

20 The Honorable David L. Mackey
21 Yavapai County Superior Court
22 Yavapai County Courthouse
23 Prescott, Arizona 86301

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