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P. CUNNINGHAM

BY: _____

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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. **CV 2003-0000**

Division No. 1

**RESPONSE TO PLAINTIFFS'
OBJECTION TO DEFENDANTS'
SUPPLEMENTAL AUTHORITIES RE:
PLAINTIFFS' MOTION IN LIMINE
REGARDING DEFENDANTS'
INTRODUCTION OF LAY WITNESS
OPINION TESTIMONY**

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 references to the Arizona Rules of Evidence
25 and Arizona case law specifically addressing the legal significance of Plaintiffs' counsel's argument
26 in opposition to Defendants' Response to Plaintiffs' Motion In Limine to Preclude Defendants'

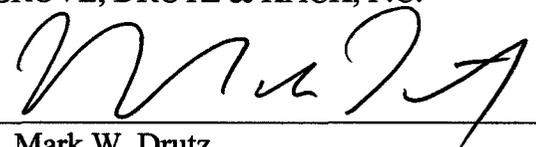
27 **DIV. 1**
28 FEB 16 2005

1 Introduction of Lay Witness Opinion Testimony and his assertion that this Court should not consider
2 or allow testimony of Defendants' lay witnesses including their opinions.

3
4 The legal authorities cited in the Defendants' Supplemental Citation of Authorities on this
5 issue supports the Defendants' position that their witnesses should not only be allowed to testify as
6 to their own personal knowledge regarding issues and facts at issue in this case but to offer their
7 opinions on those facts and issues under Rules 601 and 702, Ariz. R. Evid. The need to provide the
8 foregoing did not arise until Plaintiffs' counsel urged during his oral argument that residents of Coyote
9 Springs Ranch should not be permitted to express opinions concerning business and commercial
10 activities or the enforcement or abandonment of the Declaration of Restrictions at issue in this case.
11 As such, it was proper for Defendants to provide this Court with additional supplemental legal
12 authorities on this legal issue, which again contained no additional argument.

13
14 DATED this 15th day of February, 2005.

15
16 MUSGROVE, DRUTZ & KACK, P.C.

17
18 By 

19 Mark W. Drutz

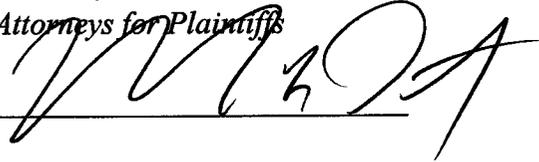
20 Jeffrey R. Adams

21 *Attorneys for Defendants*

22 COPY of the foregoing was hand-delivered
23 this 15th day of February, 2005 to:

24 The Honorable David L. Mackey
25 Yavapai County Superior Court
26 Yavapai County Courthouse
27 Prescott, Arizona 86301
28

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