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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 OCT -5 PM 4:50

JEANNE HICKS, CLERK

BY: B. Chamberlain

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,

No. P1300CV20030399

Division 1

16 Plaintiffs,

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

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 SANDRA
22 GODINEZ; JOHN D. AUDSLEY and DUSTI
23 L. AUDSLEY, husband and wife; CURTIS D.
24 KINCHELOE; JOHN L. HATFIELD and
25 GENA D. HATFIELD, TRUSTEES of the
26 BRIT- CHAR TRUST utd July 10, 2007;
27 CINDI E. LEBASH; ROBERTA L.
28 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;

(Assigned to the Hon. David L. Mackey)

1 TRACY L. GREENLEE; LLOYDE E. SELF and
2 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. LAMBERSON
6 and LAURA L. LAMBERSON, husband and
7 wife; RHONDA L. FOLSOM; RICHARD A.
8 STRISSEL and BEVERLY A. STRISSEL,
9 husband and wife; BONNIE ROSSON;
10 DANIEL BAUMAN and LOUELLA
11 BAUMAN, husband and wife; RYNDA
12 HOFFMAN and JIMMY HOFFMAN, husband
13 and wife; KENNETH PALOUTZIAN;
14 THERESA E. MASSARDI; JAMES
15 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 CHARLOTTE
25 F. KLEIN, as TRUSTEES to the KLEIN
26 FAMILY TRUST; JEFF and MYCHEL
27 WESTRA, husband and wife, CHRISTINE L.
28 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 and
3 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;
14 SERGIO MARTINEZ and SUSANA
15 NAVARRO, as joint tenants; VAN TONG
16 CONG and PHI THI NGUYEN, husband and
17 wife; CHARLES A. MARX and SHERRY S.
18 MARX, husband and wife; KENNETH R. and
19 ELIZABETH A. YARBROUGH, husband and
20 wife; GARY V. WANZEK, a single man, and
21 VINCENT J. and DOROTHY M. WANZEK,
22 husband and wife,

Defendants.

23 Defendants KENNETH R. and ELIZABETH A. YARBROUGH, husband and wife; GARY
24 V. WANZEK, a single man, and VINCENT J. and DOROTHY M. WANZEK, husband and wife,
25 as joined property owners in Coyote Springs Ranch, (collectively "**Joined Defendants**"), by and
26 through undersigned counsel, hereby answer Plaintiffs' First Amended Complaint ("**Complaint**")
27 in the above-captioned matter and admit, deny and allege as follows:

- 28 1. Joined Defendants admit the allegations contained in Paragraph 1 of the Complaint.
- 29 2. Joined Defendants assert and allege that they are owners of property located within
30 the property described in Paragraph 1 of the Complaint.
- 31 3. Joined Defendants admit the allegations contained in Paragraphs 2 and 3 of the
32 Complaint.
- 33 4. Joined Defendants deny the allegations contained in Paragraphs 4 through 7 of the
34 Complaint.

1 5. Answering Paragraph 8 of the Complaint, Joined Defendants assert that the
2 Declaration of Restrictions attached as EXHIBIT A to the Complaint speaks for itself but deny that
3 the subject Declaration of Restrictions ever encumbered or now encumbers Joined Defendants' or
4 Defendants Coxes' property or were breached by Joined Defendants or Defendants Cox in any way
5 and therefore Joined Defendants deny the allegations or any inferences contained in Paragraph 8 of
6 the Complaint.
7

8 6. Joined Defendants deny the allegations contained in Paragraph 9 of the Complaint.

9 7. Answering Paragraph 10 of the Complaint, Joined Defendants admit that the subject
10 Declaration of Restrictions were part of the public record at the time they and Defendants Cox
11 acquired their respective properties but deny that they were on notice that the Declaration of
12 Restrictions were applicable, enforceable or in effect at the time of their acquisition of their
13 respective properties and further assert and allege that the subject Declaration of Restrictions were
14 long-ago abandoned and therefore Joined Defendants deny the allegations of Paragraph 10 of the
15 Complaint.
16

17 8. Answering Paragraphs 11 through 13 of the Complaint, Joined Defendants deny that
18 they or Defendants Cox have breached any provision of the Declaration of Restrictions and further
19 allege that because the subject Declaration of Restrictions were long-ago abandoned, the Declaration
20 of Restrictions could no longer be breached by any property owner in the subject subdivision and
21 therefore Joined Defendants deny the allegations of Paragraphs 11 through 13 of the Complaint.
22

23 9. Answering Paragraph 14 of the Complaint, Joined Defendants are without knowledge
24 or information sufficient to form a belief as to the truthfulness of the allegations contained therein
25 and therefore deny the same.
26

27 10. Joined Defendants admit Paragraph 15 of the Complaint.
28

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

4 12. Joined Defendants deny the allegations contained in Paragraphs 17 and 18 of the
5 Complaint.

6 13. Answering Paragraph 19 of the Complaint, Joined Defendants reallege and
7 incorporate by reference their answers to Paragraphs 1-18 of the Complaint as if each were fully set
8 forth herein.

9 14. Joined Defendants deny the allegations contained in Paragraphs 20 and 21 of the
10 Complaint.
11

12 15. Answering Paragraph 22 of the Complaint, Joined Defendants reallege and
13 incorporate by reference their answers to Paragraphs 1-21 of the Complaint as if each were fully set
14 forth herein.
15

16 16. Joined Defendants deny the allegations contained in Paragraphs 23 and 24 of the
17 Complaint.

18 17. Answering Paragraph 25 of the Complaint, Joined Defendants reallege and
19 incorporate by reference their answers to Paragraphs 1-24 of the Complaint as if each were fully set
20 forth herein.
21

22 18. Answering Paragraph 26 of the Complaint, Joined Defendants admit that a
23 controversy exists as to the enforceability of the subject Declaration of Restrictions and further allege
24 and assert that the subject Declaration of Restrictions do not constitute covenants and restrictions
25 running with the land and that they are not enforceable by any owner of the subject property.
26

27 19. Answering Paragraph 27 of the Complaint, Joined Defendants deny that they and
28 Defendants Cox or their respective properties are bound by or subject to the Declaration of

1 Restrictions and therefore deny that any obligation to comply with the same exists and therefore they
2 deny the allegations contained therein.

3 20. Joined Defendants admit Paragraph 28 of the Complaint.

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

7 22. Joined Defendants deny the allegations contained in Paragraph 30 of the Complaint.

8 23. Joined Defendants deny each and every allegation in the Complaint not expressly
9 admitted herein.

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

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

14
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16 **AFFIRMATIVE DEFENSES**

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

19 27. Joined Defendants allege that the Declaration of Restrictions attached as EXHIBIT
20 A to the Complaint have been abandoned and are no longer enforceable as against Defendants.

21 28. Joined Defendants allege that the counts against them in this action are barred by the
22 doctrines of estoppel, waiver and laches.

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

25 30. Joined Defendants allege that the Complaint is barred because of Plaintiffs' own
26 negligence, acts, omissions, carelessness and/or inattention.
27
28

1 31. Joined Defendants allege that the Complaint is barred because the damages alleged
2 by Plaintiffs were a direct and proximate result of acts and omissions of persons or entities other than
3 Joined Defendants or Defendants Cox.

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

6 33. Joined Defendants allege for affirmative defenses release and any other matter
7 constituting an avoidance or affirmative defense and also alleges that discovery may reveal the
8 existence of other affirmative defenses as set forth in Rules 8(c) and 12(b), Ariz. R. Civ. P., and they
9 reserve the right to amend this Answer to allege any and all of said affirmative defenses as may be
10 applicable.
11 applicable.

12 WHEREFORE, having fully answered each and every Count of Plaintiffs' First Amended
13 Complaint, Joined Defendants request Judgment in their favor and against Plaintiffs as follows:
14

15 A. For and Order dismissing the Complaint with prejudice and ordering that
16 Plaintiffs take nothing thereby;

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

19 C. For an Order declaring that the Defendants Cox and Joined Defendants and
20 their respective properties are not bound or encumbered by the subject Declaration of Restrictions;
21

22 D. For an Order awarding Joined Defendants their reasonable attorneys' fees and
23 costs pursuant to A.R.S. §§ 12-341.01 and 12-348 and interest thereon at the highest legal rate;
24

25
26
27 / / /
28

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

3 Dated this 5 day October, 2010.

4 ADAMS & MULL, PLLC

5 By 

6 Jeffrey R. Adams

7 *Attorneys for Defendants Cox and*
8 *Joined Defendants*

9 A copy of the foregoing was
10 hand-delivered this 5 day of
October, 2010, to:

11 The Honorable David L. Mackey
12 Yavapai County Superior Court
13 Division 1
14 Yavapai County Courthouse
15 Prescott, Arizona

16 And a copy mailed First Class Mail
17 this 5 day of October, 2010 to:

18 J. Jeffrey Coughlin, Esq.
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21 Prescott, Arizona 86303
22 *Attorney for Plaintiffs*

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Joined Party pro per

