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

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

16 Plaintiffs,

17 v.

18 DONALD COX and CATHERINE COX,
19 husband and wife, et al. et ux.,

20 Defendants.

1300
Case No. CV 2003-0399

Division No. 1

**DEFENDANTS' COX ET AL. PRETRIAL
CONFERENCE MEMORANDUM IN
ACCORDANCE WITH RULE 16(b), ARIZ.
R. CIV. P.**

(Assigned to the Hon. Kenton Jones)

21 Defendants Cox et al., through their counsel undersigned, hereby submit the following Joint
22 Pretrial Conference Memorandum pursuant to Rule 16(b), Ariz. R. Civ. P. The time frames which
23 the parties have set forth in this memorandum are based upon the premise that the trial will occur
24 at the earliest May 31, 2012. Should the actual trial date be set prior to or later than that anticipated
25 date, it will be necessary to reevaluate the deadlines set forth herein.

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1 **1. Discovery**

2 The parties completed substantial discovery in this case already in anticipation of trial in
3 August, 2005. However, Defendants do agree that some additional discovery will be necessary.
4 That discovery will including updating the results obtained by Defendants' expert witness, Sheila
5 Cahill, who conduct substantial research of the uses of the properties in the subdivision that will be
6 required because of changes that have occurred in the economy and changes in ownership.
7 Defendants do not believe that there is a need to engage in a significant number of depositions but
8 do believe that at least a few will need to be taken. Further, Defendants believe that additional
9 discovery could be completed by March 31, 2012.

10 At this time Defendants are unaware of any pending discovery disputes between the parties.

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14 **2. Expert Witnesses**

15 Expert witnesses shall be disclosed no later than 60 days before trial.

16 **3. Determination or Designation of Experts**

17 Defendants have designated Sheila Cahill as an expert witness. We expect that Plaintiffs will
18 renew their objection to Ms. Cahill being called as an expert or even as a lay witness although we
19 believe that this Court has resolved and disposed of that issue already and made a judicial
20 determination that Ms. Cahill be allowed to testify in this case. To date, Plaintiffs have neither
21 designated nor disclosed and expert witness.

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24 **4. Disclosure of Nonexpert Witnesses**

25 The parties have each disclosed a number of lay witnesses in their respective disclosure
26 statements. However, following the joinder of all subdivision property owners, Defendants believe
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1 that additional witnesses will be identified and require disclosure. Defendants believe that non-
2 expert witnesses will be disclosed no later than 75 days before trial.

3
4 **5. Discovery Disputes**

5 Defendants are unaware of any currently pending discovery disputes.

6 **6. Elimination of Unmeritorious Claims or Defenses**

7 Defendants believe all issues with respect to the merits of the claims and defenses asserted
8 in this case have been resolved and that there is not, at present, a need to eliminate any claims or
9 defenses.
10

11 **7. Amendment of Pleadings**

12 Defendants do not believe that any amendment of pleadings is necessary or forthcoming.

13
14 **8. Identification of Issues of Fact**

15 The parties dispute whether the recorded Declaration of Restrictions has been
16 abandoned/waived and is enforceable.
17

18 **9. Stipulations re Foundation or Admissibility**

19 Defendants will agree that they will entertain and address any necessary stipulations by or
20 before 20 days before trial.

21 **10. Special Procedures**

22 No special procedures for management of this case are necessary.

23
24 **11. Alternative Dispute Resolution**

25 The parties already have participated in two mediations and a settlement conference, none of
26 which were successful. Further, given the joinder of all subdivision property owners, Defendants
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1 believe that there are significant practical and legal barriers to the likelihood of success of any
2 mediation or settlement conference.

3
4 **12. Modification/Suspension of Any Rules**

5 The parties do not believe this is necessary.

6 **13. Rule 26.1 Compliance**

7 See paragraph 1 above. Defendants will agree to full compliance with Rule 26.1, Ariz. R. Civ.
8 P., will have been made by the discovery cut-off, which Defendants agree should be 30 days prior to
9 trial.
10

11 **14. Settlement Conference**

12 See paragraph 11 above.

13
14 **15. Joint Pretrial Statement**

15 Defendants believe that the parties should file a Joint Pretrial Statement should be filed within
16 ten (10) days of trial.

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18 **16. Trial Date**

19 Defendants believe a trial date on or after May 31, 2012, would be reasonable.

20 **17. Motions in Limine/Dispositive Motions**

21 Defendants believe that any motions *in limine*, if necessary, should be filed no later than 20
22 days before trial. Dispositive motions should be filed no later than 60 days prior to trial.

23
24 **18. Jury Trial**

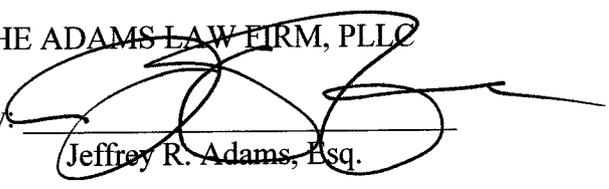
25 Defendants have requested a jury trial.

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DATED this 16 day of December, 2011

THE ADAMS LAW FIRM, PLLC
By: 
Jeffrey R. Adams, Esq.

COPY of the foregoing mailed
this 16th December 2011 to:

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