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7 Attorneys for Plaintiffs

8 **IN THE SUPERIOR COURT OF ARIZONA**
9 **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 vs.)
18 **DONALD COX** and **CATHERINE COX,**)
19 husband and wife,)
20 Defendants.)

Case No. CV 2003-0399

Division 1

**Plaintiffs' Reply to Defendants'
Response to Plaintiffs' Request for the
Court's On-Site Inspection of
Subject Real Property Subdivision**

21 Plaintiffs, John and Barbara Cundiff, Becky Nash, and Kenneth and Kathryn Page, by and
22 through undersigned counsel, hereby replies to Defendants' response to Plaintiffs' request that the
23 Court view the subdivision real property at issue in this case, including Plaintiffs' and Defendants'
24 property, as well as the surrounding area.

25 A map of the subdivision was provided for the Court's convenience and indicated *only* the
26 boundaries of the subdivision, and the location of Plaintiffs' and Defendants' real property. In their
27 response, Defendants have attached a map of the subdivision which indicates *their unsubstantiated*
28 *claims in this case that various other property owners are allegedly conducting a business* or are
29 otherwise in violation of the recorded Declaration of Restrictions.

30 However, the issue in this litigation is the Defendants Cox's use of their land as a commercial
31 enterprise in violation of the recorded Declaration of Restrictions. The Court's inspection of the other
32 properties in the subdivision Defendants allege are in violation of Declaration of Restrictions would

1 require an onerous undertaking by the Court. There is a genuine dispute between the parties whether
2 other property owners are in violation of the covenant restricting business development of property
3 in the subdivision. On the other hand, there is no dispute in this case that Defendants are indeed
4 engaged in a business on their property in violation of the prohibitive covenant.

5 Therefore, Plaintiffs respectfully request that the Court disregard Defendants' Cox map and
6 attachment of alleged violations of the Declaration of Restrictions as Defendants' characterization
7 of those properties are unsubstantiated allegations. The scope of Plaintiffs' request for injunctive
8 relief concerns Defendants Cox use of their property as a business, which was the basis for the request
9 for the Court's on-site inspection. Plaintiffs further request that the Court view the Coyote Springs
10 Ranch subdivision referring to the map of the subdivision provided by Plaintiffs which provides the
11 subdivision's boundaries and the location of the parties' property.

12 RESPECTFULLY SUBMITTED this 12th day of August, 2004.

13 FAVOUR, MOORE & WILHELMSSEN, P.A.

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By Marguerite Kirk
David K. Wilhelmsen
Marguerite Kirk
Attorneys for Plaintiffs

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19 Original of the foregoing filed
20 this 12th day of August, 2004 with:

21 Clerk, Superior Court of Arizona
22 Yavapai County
23 Prescott, Arizona

24 A copy hand-delivered this 12th day
25 of August, 2004 to:

26 Honorable David L. Mackey
Division One
Superior Court of Arizona
Prescott, Arizona

1 and, a copy mailed this
12th day of August, 2004 to:

2 Jeffrey Adams
3 MUSGROVE, DRUTZ & KACK, P.C.
4 1135 Iron Springs Road
5 Prescott, Arizona 86302

6 By: Marguerite Kirk
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