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

8 JOHN B. CUNDIFF and BARBARA C.)
CUNDIFF, husband and wife;)
9 ELIZABETH NASH, a married woman)
dealing with her separate property;)
10 KENNETH PAGE and KATHRYN)
PAGE, as Trustee of the Kenneth Page)
and Catherine Page Trust,

CASE NO. CV 2003-0399
DIVISION 1

12 Plaintiffs,
13 v.
14 DONALD COX and CATHERINE)
COX, husband and wife,
15 Defendants.
16

**DEFENDANTS' REPLY TO
PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANTS'
REQUEST FOR ORAL
ARGUMENTS ON PLAINTIFFS'
REQUEST FOR THE COURT'S
ON-SITE INSPECTION OF
SUBJECT REAL PROPERTY
SUBDIVISION**

17 Defendants, Donald Cox and Catherine Cox, by and through undersigned counsel hereby reply
18 to Plaintiffs' objection to Defendants' request for oral argument on Plaintiffs' Request for the Court's
19 On-Site Inspection of Subject Real Property Subdivision and urge that oral argument on the Plaintiffs'
20 requested inspection by the Court is necessary to clarify the scope, breadth and purpose for said
21 inspection if there is going to be any. This Reply is supported by the accompanying memorandum of
22 points and authorities.

23 Respectfully submitted this 25th day of August, 2004.

25 MUSGROVE, DRUTZ & KACK, P.C.
26 By Mark W. Drutz
27 Mark W. Drutz, Esq.
Jeffrey R. Adams, Esq.
Attorneys for Defendants

28 **DIV. 1**
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MEMORANDUM OF POINTS AND AUTHORITIES

In Plaintiffs' Request for On-Site Inspection, Plaintiffs urge the court to inspect Defendants' property only. In their Reply to Defendants' Response to Plaintiffs' Request, Plaintiffs erroneously contend that this case relates only to the Defendants' use of their property and their alleged violation of the Declaration of Restrictions and argue that on that basis this Court should restrict the scope of its site visit. In their Response to Defendants' Request For Oral Argument on Plaintiffs' request for the site visit, Plaintiffs again erroneously state that there are no issues in this case other than Defendants' use of their property. They also erroneously state in their objection to Defendants' request for oral argument that Defendants' basis for asking for a more comprehensive visit to Coyote Springs Ranch than that requested by Plaintiffs – namely that doing so is necessary for a full understanding of and inquiry into Defendants' defenses in this case including, *inter alia*, that the Declaration of Restrictions has been abandoned – is unsubstantiated and uncorroborated.

However, the fact remains that while Plaintiffs have only named the present Defendants as parties to this case, other properties in the portion of Coyote Springs Ranch where Plaintiffs' and Defendants' respective properties are located and those properties owners are and will be materially at issue. If this Court were to limit its inspection to Defendants' property only it would be akin to this Court allowing Plaintiffs' to question their witnesses during trial without allowing Defendants' the right to cross-examine those witnesses.

Furthermore, Defendants *have* substantiated and corroborated the existence of a plethora of other properties in the portion of Coyote Springs Ranch where Plaintiffs' and Defendants' respective properties are located that suffer from the same and other violations of the Declaration of Restrictions Plaintiffs' claim Defendants have violated, each of which will establish the viability and validity of Defendants' defenses. Whether Plaintiffs wish to ignore the plethora of substantiating information and documentation that has already been produced to Plaintiffs during depositions in this case concerning the other persons and properties violating the Declaration of Restrictions is up to them, but this Court cannot do the same. Rather, if this Court is going to conduct an inspection of Coyote Springs Ranch, it must consider and view those properties in that portion of Coyote Springs Ranch

1 where Plaintiffs' and Defendants' respective properties are located that will validate and substantiate
2 Defendants' defenses. The maps and identification of specific properties in the portion of Coyote
3 Springs Ranch where Plaintiffs' and Defendants' respective properties are located that have been
4 identified by Defendants as properties they wish this Court to inspect were provided merely to assist
5 the Court in its inspection. The only reasonable and justifiable alternative to the inspection requested
6 by Defendants is for the Court to not conduct any inspection of its own.

7 Finally, with respect to Plaintiffs' contention that it is not necessary for the parties or their
8 counsel to be present during the Court's inspection, Defendants object to that position. Defendants
9 believe that any inspection of Coyote Springs Ranch by this Court should be done with the parties and
10 their counsel present as the inspection will be performed as part of the litigation of this case and is not
11 dissimilar to a hearing on a motion at which the parties and their counsel are entitled to be present.
12 Therefore, Defendants and their counsel request the opportunity to be present if and when the Court
13 conducts its inspection of Coyote Springs Ranch.

14 Because Plaintiffs and their counsel obviously disagree with Defendants' position regarding
15 the scope, breadth and nature of the site inspection to be conducted by this Court, if any, Defendants
16 believe oral argument on the issue is appropriate and therefore the request for the same is renewed.

17 Respectfully submitted this 25th day of August, 2004.

18 MUSGROVE, DRUTZ & KACK, P.C.

19
20 By 

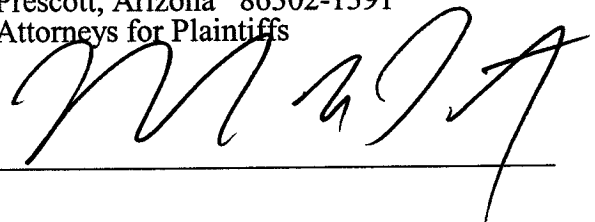
21 Mark W. Drutz, Esq.
22 Jeffrey R. Adams, Esq.
23 Attorneys for Defendant
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1 A copy of the foregoing
was hand-delivered this
2 7th day of August, 2004 to:

3 Honorable David L. Mackey
Yavapai County Superior Court
4 Division 1
Yavapai County Courthouse
5 Prescott, Arizona 86301

6 and a copy was hand-delivered this
7 25th day of August, 2004 to:

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