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Attorneys for Defendants

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

**NICDON 10663, LLC, an Arizona limited liability company,**

**Plaintiff,**

**v.**

**DESERT MOUNTAIN MASTER ASSOCIATION, an Arizona nonprofit corporation,**

**Defendant.**

**Case No. CV2018-015165**

**VERIFIED ANSWER**

(Assigned to the  
Honorable Colleen French)

Defendant The Desert Mountain Master Association, Inc. (the “Association” and/or Defendant), by and through undersigned counsel, hereby responds to the Complaint (the “Complaint”) filed by Plaintiff Nicdon 10663, LLC (“Plaintiff” and/or “Nicdon”) as follows:

**PARTIES AND JURISDICTION**

1. The Association admits the allegations made in Paragraph 1 of Nicdon’s Complaint.

2. The Association admits the allegations made in Paragraph 2 of Nicdon’s Complaint.

1           3.     The Association admits the allegations made in Paragraph 3 of Nicdon's  
2 Complaint.

3  
4           4.     The Association admits the allegations made in Paragraph 4 of Nicdon's  
5 Complaint.

6  
7                               **GENERAL ALLEGATIONS**

8           5.     The Association admits the allegations made in Paragraph 5 of Nicdon's  
9 Complaint.

10          6.     The Association admits the allegations made in Paragraph 6 of Nicdon's  
11 Complaint.

12  
13          7.     The Association admits the allegations made in Paragraph 7 of Nicdon's  
14 Complaint.

15          8.     The Association denies the allegations made in Paragraph 8 of Nicdon's  
16 Complaint.

17  
18          9.     The Association admits that Section 1.2.2 of Exhibit E to the Declaration  
19 contains the phrase "entire Dwelling Unit on a Lot." The Association denies any  
20 remaining allegations set forth in Paragraph 9 of Nicdon's Complaint.

21  
22          10.    The Association admits the allegations made in Paragraph 10 of Nicdon's  
23 Complaint.

24          11.    The Association admits that the Amendment imposes leasing restrictions on  
25 Association members that, among other things, prohibits short-term leases to "Ineligible  
26 Renter(s) for a term of less than thirty (30) days." The Association admits that the  
27 Amendment defines "Ineligible Renter(s)" as "individuals and/or entities that are neither  
28

1 Members of the Association nor Members of the Desert Mountain Club.” The Association  
2 denies any remaining allegations set forth in Paragraph 11 of Nicdon’s Complaint.

3  
4 12. Paragraph 12 of Nicdon’s Complaint asserts a legal conclusion, which  
5 requires no response. To the extent a response is required, the Association denies any  
6 allegations set forth in Paragraph 12 of Nicdon’s Complaint.

7  
8 13. The Association admits the allegations made in Paragraph 13 of Nicdon’s  
9 Complaint.

10 14. The Association admits the allegations made in Paragraph 14 of Nicdon’s  
11 Complaint.

12  
13 15. The Association admits the allegations made in Paragraph 15 of Nicdon’s  
14 Complaint.

15 16. The Association admits the allegations made in Paragraph 16 of Nicdon’s  
16 Complaint.

17  
18 17. The Association denies the allegations made in Paragraph 17 of Nicdon’s  
19 Complaint.

20 18. The Association denies the allegations made in Paragraph 18 of Nicdon’s  
21 Complaint.

22  
23 19. The Association admits the allegations made in Paragraph 19 of Nicdon’s  
24 Complaint, with the exception of Nicdon’s assertion that the Association “received a total  
25 of 1,768 ballots....” As stated in the correspondence regarding the short-term rental  
26 amendment attached to Nicdon’s Complaint as Exhibit 6, the Association received a total  
27 of 1,761 ballots.  
28

1           20.    The Association admits the allegations made in Paragraph 20 of Nicdon's  
2 Complaint.

3  
4           21.    The Association admits the allegations made in Paragraph 21 of Nicdon's  
5 Complaint.

6           22.    Paragraph 22 of Nicdon's Complaint asserts a legal conclusion, which  
7 requires no response. To the extent a response is required, the Association denies any  
8 allegations set forth in Paragraph 22 of Nicdon's Complaint.

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10          23.    Paragraph 23 of Nicdon's Complaint asserts a legal conclusion, which  
11 requires no response. To the extent a response is required, the Association denies any  
12 allegations set forth in Paragraph 23 of Nicdon's Complaint.

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14          24.    The Association admits the allegations made in Paragraph 24 of Nicdon's  
15 Complaint.

16  
17          25.    The Association admits the allegations made in Paragraph 25 of Nicdon's  
18 Complaint, with the exception of Nicdon's assertion that the "Resolution Establishing a  
19 Leasing Restriction Fine Schedule [is] attached as Exhibit...8." The document attached  
20 as Exhibit 8 to Nicdon's Complaint appears to be a website printout of the Restatement  
21 (Third) of Property: Servitudes.

22  
23          26.    The Association lacks the information to admit or deny the allegations set  
24 forth in Paragraph 26 of Nicdon's Complaint and therefore denies the same.

25  
26                   **COUNT ONE**  
27                   **(Declaratory Judgment)**

28          27.    The Association repeats its responses to Paragraphs 1-26 of Nicdon's  
Complaint.

1           28. Paragraph 28 of Nicdon's Complaint asserts a legal conclusion, which  
2 requires no response.

3           29. The Association admits the allegations made in Paragraph 29 of Nicdon's  
4 Complaint.

5           30. Paragraph 30 of Nicdon's Complaint contains no factual allegations and/or  
6 asserts a legal conclusion, which require no response. To the extent a response is required,  
7 the Association denies any allegations set forth in Paragraph 30 of Nicdon's Complaint.  
8

9           31. The Association denies the allegations made in Paragraph 31 of Nicdon's  
10 Complaint.  
11

12  
13                           **COUNT TWO**  
14                           **(Injunctive Relief)**

15           32. The Association repeats its responses to Paragraphs 1-31 of Nicdon's  
16 Complaint.

17           33. Paragraph 33 of Nicdon's Complaint asserts a legal conclusion, which  
18 requires no response. To the extent a response is required, the Association denies any  
19 allegations set forth in Paragraph 33 of Nicdon's Complaint.  
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21           34. The Association denies the allegations made in Paragraph 34 of Nicdon's  
22 Complaint.  
23

24           35. Paragraph 35 of Nicdon's Complaint asserts a legal conclusion, which  
25 requires no response. To the extent a response is required, the Association denies any  
26 allegations set forth in Paragraph 35 of Nicdon's Complaint.  
27  
28

1       36. Paragraph 36 of Nicdon's Complaint asserts a legal conclusion, which  
2 requires no response. To the extent a response is required, the Association denies any  
3 allegations set forth in Paragraph 36 of Nicdon's Complaint.  
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5       37. Paragraph 37 of Nicdon's Complaint asserts a legal conclusion, which  
6 requires no response. To the extent a response is required, the Association denies any  
7 allegations set forth in Paragraph 37 of Nicdon's Complaint.  
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9       38. The Association denies the allegations made in Paragraph 38 of Nicdon's  
10 Complaint.  
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#### 12                   **GENERAL DENIAL AND AFFIRMATIVE DEFENSES**

13       39. The Association denies any allegation not expressly admitted herein.

14       40. The Association affirmatively alleges that the present case qualifies as a  
15 "Tier 2" case in accordance with Ariz. R. Civ. P. 26.2(b).  
16

17       41. For its affirmative defenses, the Association alleges failure to state a claim  
18 upon which relief may be granted, Plaintiff's own conduct, estoppel, waiver, unclean  
19 hands, Plaintiff suffered no damages as a result of any alleged breach of the contract, and  
20 all other matters constituting a defense that the Association may subsequently discover,  
21 including all defenses set forth in Ariz. R. Civ. P. 8 and 12.  
22

23       42. The Association is entitled to its attorneys' fees and costs pursuant to Article  
24 5, Section 5.13 of the Declaration and A.R.S. §§ 12-341 and 12-341.01.  
25

26       WHEREFORE, the Association prays for judgment against Nicdon as follows:

- 27       a. For a judgment of dismissal of Nicdon's claims with prejudice;
- 28       b. For its court costs and attorneys' fees incurred herein under any applicable  
statute, rule, regulation, legal authority, or contract, including but not limited  
to the Declaration and A.R.S. §§ 12-341 and 12-341.01.

1 c. For such other and further relief as the Court deems just and proper.

2  
3 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of January, 2019.

4 **CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**

5  
6 By: /s/ Curtis S. Ekmark  
7 Curtis S. Ekmark, Esq.  
8 Gregory A. Stein, Esq.  
9 1400 E. Southern Ave., Suite 400  
10 Tempe, AZ 85282  
11 *Attorneys for Defendant*

12 ORIGINAL E-filed w/the Superior Court  
13 this 8<sup>th</sup> day of January 2019 at:

14 www.AZTurboCourt.gov

15 COPY of the foregoing mailed and emailed  
16 this 8<sup>th</sup> day of January 2019 to:


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*Attorney for Plaintiff*

23  
24 By: /s/ Sarah Andon

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I am the Executive Director of the Desert Mountain Master Association; I have read the foregoing Answer and know the contents thereof; the matters and things stated therein are true and of my own knowledge, except those matters therein stated upon information and belief, and, as to those matters, I believe them to be true.

under penalty of perjury that the foregoing is true and correct.



\_\_\_\_\_  
Kevin Pollock, Executive Director  
Desert Mountain Master Association