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12 Attorneys for Defendants

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

14 **IN AND FOR THE COUNTY OF MARICOPA**

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

17 **Case No. CV2018-015165**

18 **Plaintiff,**

19 **v.**

20 **DESERT MOUNTAIN MASTER**
21 **ASSOCIATION, an Arizona nonprofit**
22 **corporation,**

23 **Defendant.**

24 **VERIFIED ANSWER**

25 (Assigned to the
26 Honorable Colleen French)

27 Defendant The Desert Mountain Master Association, Inc. (the “Association” and/or
28 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:

29 **PARTIES AND JURISDICTION**

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

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

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

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

6 **GENERAL ALLEGATIONS**

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

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

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.

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.

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

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

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

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

17 16. The Association admits the allegations made in Paragraph 16 of Nicdon’s
18 Complaint.
19

20 17. The Association denies the allegations made in Paragraph 17 of Nicdon’s
21 Complaint.
22

23 18. The Association denies the allegations made in Paragraph 18 of Nicdon’s
24 Complaint.
25

26 19. The Association admits the allegations made in Paragraph 19 of Nicdon’s
27 Complaint, with the exception of Nicdon’s assertion that the Association “received a total
28 of 1,768 ballots....” As stated in the correspondence regarding the short-term rental
amendment attached to Nicdon’s Complaint as Exhibit 6, the Association received a total
of 1,761 ballots.
29

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

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

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

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

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

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

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

COUNT ONE
(Declaratory Judgment)

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

4 29. The Association admits the allegations made in Paragraph 29 of Nicdon's
5 Complaint.
6

7 30. Paragraph 30 of Nicdon's Complaint contains no factual allegations and/or
8 asserts a legal conclusion, which require no response. To the extent a response is required,
9 the Association denies any allegations set forth in Paragraph 30 of Nicdon's Complaint.
10

11 31. The Association denies the allegations made in Paragraph 31 of Nicdon's
12 Complaint.
13

**COUNT TWO
(Injunctive Relief)**

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

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.
20

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.
4

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.
8

9 38. The Association denies the allegations made in Paragraph 38 of Nicdon's
10 Complaint.
11

GENERAL DENIAL AND AFFIRMATIVE DEFENSES

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

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

- 28 a. For a judgment of dismissal of Nicdon's claims with prejudice;
- 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 8th 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
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11 *Attorneys for Defendant*

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

14 www.AZTurboCourt.gov

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

17 Jonathan A. Dessaules, Esq.
18 Jacob A. Kubert, Esq.
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23 *Attorney for Plaintiff*

24 By: /s/ Sarah Andon

VERIFICATION

I, Kevin Pollock, declare and state as follows:

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.

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

Kevin Pollock, Executive Director
Desert Mountain Master Association