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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

NICDON 10663, LLC, an Arizona limited
liability company,

Plaintiff,

vs.

DESERT MOUNTAIN MASTER
ASSOCIATION, an Arizona nonprofit
corporation,

Defendant.

No. CV2018-015165

**PLAINTIFF'S FIRST SET OF NON-
UNIFORM INTERROGATORIES TO
DEFENDANT AND SUPPLEMENTAL
REQUEST FOR PRODUCTION**

TO: Desert Mountain Master Association and its attorneys of record:

PLEASE TAKE NOTICE that pursuant to Ariz. R. Civ. P. 33, Nicdon 10663, LLC ("Plaintiff"), hereby demands that defendant Desert Mountain Master Association answer under oath the following First Set of Non-Uniform Interrogatories and serve answers within ten (10) business days from the date of service of this demand pursuant to the parties' Stipulated Request to Continue Hearing and Set Status Conference and Motion for Expedited Discovery.

INSTRUCTIONS

A. In answering these Non-Uniform Interrogatories, you are requested to furnish all information, which is available to you, including information in your custody and control, in the possession of your attorneys, agents, investigators, representatives, officers, employees, directors,

1 or anyone acting in cooperation or concert with you including experts consulted or retained by
2 you.

3 B. If, after a reasonable and thorough investigation, using due diligence, you are unable to
4 answer any Non-Uniform Interrogatory, or any part thereof, on the grounds of lack of information
5 available to you, please specify in full and complete detail why the information is not available to
6 you and what has been done to locate the information. In addition, specify what knowledge or belief
7 you have concerning the unanswered portion of any Non-Uniform Interrogatory and set forth the
8 facts upon which such knowledge or belief is based.

9 C. Where a Non-Uniform Interrogatory does not specifically request a particular fact, but
10 where such fact or facts are necessary to make the answer to said Non-Uniform Interrogatory either
11 comprehensible, complete or not misleading, you should include such fact or facts as part of said
12 answer and said Non-Uniform Interrogatory shall be deemed specifically to request such fact or facts.

13 D. If you claim any form of privilege with regard to any oral communication, document
14 or tangible thing, whether based on a statute or otherwise, as a ground for not answering a Non-
15 Uniform Interrogatory or any portion thereof, or for not voluntarily disclosing any document or
16 tangible thing or part thereof, set forth in these answers, with respect to each such oral
17 communication, document or tangible thing for which you claim such a privilege, the following:

18 (i) the date of any oral communication or the date of preparation of any document;

19 (ii) the name, title and address of the present custodian of any such document or
20 tangible thing;

21 (iii) a description of each such oral communication, document or tangible thing (by
22 the subject matter or title) which is sufficient to identify the particular communication,
23 document or tangible thing without revealing the information for which the privilege is
24 claimed; and

25 (iv) each and every fact or basis upon which you claim any such privilege.

26 E. Whenever disclosure of documents is required, such required documentation is used in

1 its broadest sense under Rule 26(b) of the Arizona Rules of Civil Procedure, as more fully set
2 forth in the Definitions.

3 F. When statements of factual information are requested, such requested information
4 includes the disclosure of all formal and informal documentation which explains, clarifies,
5 describes or in any way relates to the requested statement of factual information.

6 G. If you claim that any documents responsive to any of these Non-Uniform
7 Interrogatories have been lost or destroyed, describe and identify each such document by stating
8 in writing:

9 (i) the name of the author, the name of the person(s) who received the original and
10 all copies and the date and subject matter;

11 (ii) the circumstances under which each such document was lost or destroyed; and

12 (iii) your efforts to locate each such document.

13 H. The documentation requested to be identified in the foregoing paragraphs and in the
14 Definitions include all documentation that was at any time in your possession or control of any of
15 your employees, agents, representatives, experts, accountants or attorneys without regard to
16 whether such documentation was originally prepared by you, or any of your vendors,
17 subcontractors, principals, consultants, employees, independent contractors, experts, suppliers,
18 sureties or any other persons, partnerships, corporations, or entities.

19 I. For the purposes of these Non-Uniform Interrogatories, whenever necessary to ensure
20 completeness or accuracy, words importing the singular number include the plural and words
21 importing the plural number include the singular, and words importing the masculine include the
22 feminine.

23 J. Along with the answer to each numbered Non-Uniform Interrogatory, identify each
24 person who participated in or supplied information with respect to the preparation of the response
25 to such Non-Uniform Interrogatory, specifying whether each such person supplied relevant
26 information, participated in the preparation of the response, or both. If the response to any Non-

1 Uniform Interrogatory claims information supplied by more than one person, specify the
2 particular information supplied by each such person. In addition, specify whether the information
3 supplied by each such person is based on first-hand knowledge as to the matters contained in such
4 answers and, if not, the manner in which such person acquired such information.

5 K. With respect to any Non-Uniform Interrogatory or answer in which reference is made
6 to an oral communication, specify the following:

7 (i) the name, company or other affiliation, title or identifying feature of the person
8 who made the oral communication;

9 (ii) the name, company or affiliation, title or other identifying feature of each
10 person to whom such oral communication was made;

11 (iii) the date upon which such oral communication was made;

12 (iv) the place where such communication was made;

13 (v) the name of each person who heard the oral communication, if different, or in
14 addition to those persons to whom such oral communication was made, and include such
15 description as to enable the parties serving these Non-Uniform Interrogatories to identify
16 those persons;

17 (vi) the nature and content of the oral communication, repeating the actual words
18 used to the extent possible and, when not possible, paraphrasing in detail those words;

19 (vii) state whether any person to whom such oral communication was made, or
20 hearing such oral communication, made any statements in response to such communication
21 and, if so, identify such response or responses in detail repeating the actual words used to the
22 extent possible and when not possible, paraphrasing those words; and

23 (viii) state whether the oral communication was ever memorialized in any document.

24 If so, identify each such document and attach a copy of same hereto.

25 L. These Non-Uniform Interrogatories are continuing in nature and responses which you
26 later learn are inaccurate or incomplete are to be reasonably supplemented.

1 **DEFINITIONS**

2 1. "You" (and its derivative forms), "DMMA" or "HOA" shall mean Desert Mountain
3 Master Association, its agents, its representatives, its employees, including but not limited to all
4 persons under its control or direction or acting on its behalf.

5 2. "CMMC" shall mean Capital Consultants Management Corporation, its agents, its
6 representatives, its employees, including but not limited to all persons under its control or
7 direction or acting on its behalf.

8 3. "Document" shall have the meaning proscribed to it in Rule 34(a).

9 4. "Communication" or "correspondence" shall mean all inquiries, discussions,
10 conversations, negotiations, agreements, understandings, meetings, meeting minutes (i.e., formal
11 and informal minutes and notes of meetings), telephone conversations, letters, notes, emails, or
12 other forms of information exchange, whether written or oral.

13 5. "Amendment" shall mean the Certificate of Amendment to Exhibit E of the Second
14 Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, Assessments,
15 Charges, Servitudes, Liens, Reservations and Easements for Desert Mountain and the Amendment
16 recorded in the Maricopa County Recorder's Office on or about July 16, 2018 at Instrument No.
17 20180540413, which imposes new leasing restrictions including, but not limited to, leases being
18 for a term of not less than thirty (30) days.

19 6. The terms "any," "each," "every" and "all" shall be construed as all-inclusive,
20 requiring the production of each and every document or item of information responsive to the
21 particular request in which such term appears.

22 **FIRST SET OF NON-UNIFORM INTERROGATORIES AND**
23 **SUPPLEMENTAL REQUEST FOR PRODUCTION**

24 **INTERROGATORY NO. 1 and SUPPLEMENTAL REQUEST FOR PRODUCTION**

25 Discuss in detail the history of the Amendment from its inception through to its recording
26 including, but not limited to, discussing:

- 1 a) who determined that the Amendment was necessary;
- 2 b) why did these person(s) determine that the Amendment was necessary;
- 3 c) who drafted the Amendment;
- 4 d) which provisions of the CC&Rs were relied upon for purposes of determining the
- 5 votes needed to pass the Amendment and the reasons why these provisions were relied upon;
- 6 e) when was each version of the Amendment drafted (please produce each version of
- 7 the Amendment and identify when it was drafted);
- 8 f) when was each version of the Amendment circulated throughout the community
- 9 (please produce all notices, mailers, announcements, meeting agenda, explanations of the
- 10 Amendment, etc. that were circulated along with the version of the Amendment that went with
- 11 it);
- 12 g) all HOA meetings (open, executive, special, etc.) where the Amendment was
- 13 discussed and specify what was discussed at each of these meetings (please produce all notices,
- 14 mailers, meeting agenda, meeting minutes etc. that noticed such meetings or evidence that the
- 15 Amendment was discussed);
- 16 h) the HOA meeting where the ultimate Amendment was voted upon (i.e., when was
- 17 the meeting, when was the notice of this meeting circulated (produce the notice), how was the
- 18 notice of this meeting circulated, what materials were circulated with this notice (please produce
- 19 all materials), which Board members were in physical attendance at the meeting, which Board
- 20 Members appeared remotely, and explain why DMMA chose to vote on the Amendment in this
- 21 manner and produce the Minutes of this Meeting.

22 RESPONSE:

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1 **INTERROGATORY NO. 2**

2 Please specify whether DMMA ever circulated a statement throughout the community
3 explaining the pros and cons of the Amendment; and, if not, why it did not do so. If it did circulate
4 such a statement, please produce same.

5 RESPONSE:

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9 **INTERROGATORY NO. 3**

10 Please state who tallied the votes and discuss the chain of custody from the point that the
11 votes were tallied to who is currently in possession of the ballots.

12 RESPONSE:

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15 DATED this 17th day of January 2019.

16 DESSAULES LAW GROUP

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18 By: 

19 Jonathan A. Dessaulles

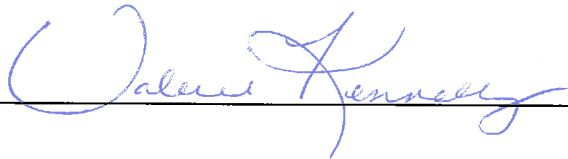
20 Jacob A. Kubert

21 Attorneys for Plaintiff
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26

1 ORIGINAL of the foregoing hand-delivered
2 this 17th day of January 2019.

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