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17
 18 **UNITED STATES BANKRUPTCY COURT**
 19 **FOR THE DISTRICT OF NEVADA**

20 In re: 21 DESERT CAPITAL REIT, INC., 22 Debtor.	Case No.: 11-16624-LBR Chapter 11 Date: July 20, 2011 Time: 2:00 p.m.
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 25 **APPLICATION FOR ORDER LIMITING NOTICE TO DEBTOR'S EQUITY**
SECURITY HOLDERS PURSUANT TO BANKRUPTCY RULE 2002(d)

26 Desert Capital REIT, Inc. (the "Debtor"), through this Application for Order Limiting
 27 Notice to Debtor's Equity Security Holders Pursuant to Bankruptcy Rule 2002(d) (the
 28 "Application"), by and through their proposed attorneys, the law firms of Gordon Silver, and

1 Heller, Draper, Hayden, Patrick & Horn, LLC, hereby apply to this Court for an order
2 establishing that Debtor shall provide notice to its equity security holders consistent with the
3 provisions limiting the instances of notice to such parties as enumerated in Bankruptcy Rule
4 2002(d).

5 This Motion is made and based on the points and authorities below, the Omnibus
6 Declaration of David M. Bagley in Support of Debtor’s Motions (the “Omnibus Declaration”),¹
7 the pleadings and papers and other records contained in this Court’s file, judicial notice of which
8 is respectfully requested, and any evidence or oral argument presented at the time of the hearing
9 on this Motion.

10
11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I.**
13 **INTRODUCTION**

14 1. On April 29, 2011 (the “Petition Date”), Taberna Preferred Funding VI, Ltd.
15 (“Taberna VI”), Taberna Preferred Funding VIII, Ltd. (“Taberna VIII,” and together with
16 Taberna VI, “Taberna”), and Sage Trust, and its participants (collectively, “Sage Trust,” and
17 with Taberna, the “Petitioning Creditors”), filed an involuntary petition for relief (the
18 “Involuntary Petition”) under Chapter² 11 against Debtor, thereby commencing the above-
captioned bankruptcy case (the “Bankruptcy Case”). See ECF No. 1.

19 2. With the consent of Debtor, an Order for Relief (the “Order For Relief”), pursuant
20 to Chapter 11 of the Bankruptcy Code, was entered by this Court on the 15th day of June, 2011
21 (the “Order For Relief Date”). See ECF Nos. 34-35.

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25 ¹ Each capitalized term used, but not otherwise defined herein, shall have the meaning ascribed thereto in the
Omnibus Declaration.

26 ² All references to “Chapter” and “Section” herein shall be to the Bankruptcy Code appearing in Title 11 of the U.S.
27 Code; all references to a “Bankruptcy Rule” shall refer to the Federal Rules of Bankruptcy Procedure; and all
28 references to a “Local Rule” shall refer to the Local Rules of Bankruptcy Practice of the U.S. District Court for the
District of Nevada.

1 3. Since that time, Debtor has continued to operate its business and manage its
2 property as a debtor in possession, pursuant to §§ 1107(a) and 1108.

3 4. No request has been made for the appointment of a trustee or examiner, and no
4 official committees have been appointed in the Case.

5 **II.**
6 **JURISDICTION AND VENUE**

7 5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
8 1334. Consideration of this Application is a core proceeding pursuant to 28 U.S.C. §
9 157(b)(2)(A). Venue of Debtor's Bankruptcy Case in this District is proper pursuant to 28
10 U.S.C. §§ 1408 and 1409. The statutory basis for the relief sought herein is bankruptcy Rule
11 2002(d).

12 **III.**
13 **PERTINENT FACTS**

14 6. As more fully discussed in the Omnibus Declaration,³ Debtor is a Maryland
15 corporation formed in December 2003, as a real estate investment trust. At its inception, Debtor
16 initially operated as a hard money lender that specialized in the financing of real estate projects
17 by providing short-term mortgage loans to homebuilders and commercial developers in markets,
18 which were primarily in the western United States, and in Las Vegas, in particular. At that time,
19 Debtor typically invested in 12 to 18 month first and second lien mortgage loans for acquisition
20 and development, construction, and for commercial property loans to both local and national
21 developers and homebuilders. Debtor derived its revenues primarily from interest payments
22 received from mortgage investments funded with its equity capital and with borrowed funds.

23 7. In connection with the collapse of the national real estate economy, which
24 severely effected the real estate market in Las Vegas, the performance of Debtor's loan portfolio
25 since 2007 has significantly deteriorated due to a disastrous level of borrower defaults. In
26 conjunction therewith, foreclosures of various parcels has virtually eliminated Debtor's source of

27 ³ The factual background and events leading up to the filing of this Bankruptcy Case are set forth at length in the
28 Omnibus Declaration filed contemporaneously herewith. For brevity, the facts set forth in the Omnibus Declaration
have not been repeated herein; rather, such facts are incorporation herein in their entirety by this reference.

1 operating funds from its normal loan portfolio. Thus, Debtor's severely restricted ability to
2 generate revenue from its investment loan portfolio has caused Debtor to resort to debt
3 incurrence and the sale of its properties to generate cash to fund its operating expenses and make
4 its debt payments.

5 8. Whereas the Petitioning Creditors filed the Involuntary Petition to implement a
6 court supervised liquidation of Debtor's assets, Debtor has consented to the entry of the Order
7 For Relief after engaging in negotiations with Petitioning Creditors to avoid litigation and create
8 a satisfactory process to provide for the liquidation of Debtor's assets, an investigation of claims
9 of the estate related to Debtor's financial demise, and the eventual distribution of proceeds of
10 liquidation and claims recoveries, in accordance with the priorities established in the Bankruptcy
11 Code.

12 9. Upon the involuntary filing, the Debtor, through its bankruptcy counsel, and the
13 petitioning creditors engaged in negotiations to avoid litigation and create a satisfactory process
14 for the wind down and liquidation of the Debtor and its complicated business transactions. As a
15 result of those discussions, the petitioning creditors and the Debtor agreed on a general process
16 to provide for the liquidation of the Debtor's assets, an investigation of claims of the estate
17 related to its financial demise, and a distribution of the proceeds of the liquidation and recoveries
18 based on claims, in accordance with the priorities established in the Bankruptcy Code.

19 10. As evidenced in Debtor's recently filed Creditor Matrix,⁴ Debtor has relatively
20 few creditors (the "Creditors"), estimated at approximately 75-80. In contrast, Debtor's Equity
21 Matrix reveals that Debtor has in excess of 3,000 equity security holders (the "Equity Holders").
22 See Omnibus Declaration ¶ 42.

23 11. To the best of Debtor's knowledge, information, and belief, after a thorough
24 review of the assets and claims against Debtor, the Equity Holders likely will not receive any
25 distribution from Debtor's estate. See id. ¶ 43.

26 12. Where the ongoing mailings of notices to all Equity Holders would be costly and

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28 ⁴ Due to the large number of Debtor's equity security holders, as compared to Debtor's relatively small number of
creditors, for clarity and convenience, Debtor filed both a Creditor Matrix and an Equity Matrix. See ECF No. 39.

1 unduly burdensome to Debtor, its counsel, and its estate, Debtor believes that it is not in the best
2 interest of Debtor's creditors and parties-in-interest to provide such Equity Holders with
3 continued mailings of notices throughout the course of this Bankruptcy Case. See id. ¶ 44.

4 13. Debtor currently hosts a corporate website located at: www.desertcapital.com
5 (the "Website"), which website includes a page devoted entirely to "Investor Communications"
6 that has in the past provided its Equity Holders with updates and newsletters containing relevant
7 information as to the financial condition and developments of Debtor's business. Debtor intends
8 to maintain the Website to keep the Equity Holders apprised of significant events that occur
9 throughout the course of this Bankruptcy Case. See id. ¶ 45.

10 14. As such, this Motion seeks to appropriately balance the interests of Debtor's
11 creditors and parties-in-interest in this Bankruptcy Case with the reasonable and efficient
12 administration of Debtor's estate by only mailing the notice required by the Bankruptcy Rules to
13 Debtor's Equity Holders, unless an Equity Holder otherwise requests special notice.

14 **IV.**
15 **BASIS FOR RELIEF**

16 By this Application, Debtor requests entry of an order establishing that Debtor must only
17 provide notice to its Equity Holders, unless an Equity Holder specifically requests special notice,
18 consistent with the provisions in Bankruptcy Rule 2002(d), which expressly limit the requisite
19 notice to such parties to the following seven instances:

20 (1) the order for relief; (2) any meeting of equity security holders held pursuant to
21 § 341 of the code; (3) the hearing on the proposed sale of all or substantially all
22 of the debtor's assets; (4) the hearing on the dismissal or conversion of a case to
23 another chapter; (5) the time fixed for filing objections to and the hearing to
consider approval of a disclosure statement; (6) the time fixed for filing
objections to and the hearing to consider confirmation of a plan; and (7) the time
fixed to accept or reject a proposed modification of a plan.

24 See Fed. R. Bankr. P. 2002(d).

25 Ensuring that Debtor will only be required to provide notice to its Equity Holders in the
26 seven instances, as enumerated in Bankruptcy Rule 2002(d), unless an Equity Holder otherwise
27 requests special notice, reduces the administrative costs for the Bankruptcy Case without
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1 impairing the Creditors' and other interest holders' rights to meaningful participation. As any
2 Equity Holder may request special notice, no party will be prejudiced by granting this
3 Application. As all Equity Holders, pursuant to their entitlement under Bankruptcy Rule 2002(d)
4 shall receive notice of commencement of this Bankruptcy Case, they, therefore, will have
5 adequate opportunity to request special notice. Furthermore, as Debtor intends to maintain its
6 current Website throughout the course of this Bankruptcy Case, the Equity Holders will be
7 sufficiently apprised of any significant events or developments with Debtor.

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V.
CONCLUSION

WHEREFORE, based on the foregoing, Debtor respectfully requests the entry of an order that limits notice to Debtor's Equity Holders to the seven enumerated instances as required in Bankruptcy Rule 2002(d); and granting Debtor such other legal and equitable relief to which it is entitled.

DATED this 22 day of June, 2011.

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