

After recording mail to:
Red Mountain Townhomes
C/O Monarch Property Management
1240 E. 100 S. Bldg. 10
St. George, UT 84790

AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
RED MOUNTAIN TOWNHOMES

(Rental Restrictions)

This Amendment to the Declaration of Covenants, Conditions, and Restrictions of Red Mountain Townhomes (rental restrictions) (this "Amendment" amends the following: (i) Declaration of Covenants, Conditions and Restrictions of Red Mountain Townhomes, dated November 11, 2010, (ii) any and all supplements or amendments to the Declaration prior to the date of this Amendment, whether or not such were recorded in the records of the Washington County Recorder. In the event of a conflict between the Declaration, Bylaws or the Rules & Regulations for the Red Mountain Townhomes and the Amendment, this Amendment shall control.

This Amendment is undertaken pursuant to Article A, Section 8.13 titled Leases, and was adopted pursuant to the written consents of not less than sixty-seven percent (67%) or 2/3 of the members.

Owners in the Red Mountain Townhomes Association (the "Association") were also given notice of the requirements under Utah Code Ann. Section 16-6a-707 for taking action without meetings. A true and correct copy of such notices is attached hereto and incorporated herein as Exhibit "B".

Even though a meeting of the Membership was held to consider this Amendment, the adoption of this amendment is governed by and evidenced by the written consents of the Members.

This Amendment shall take effect upon the date it is recorded in the records of the Washington County Recorder ("the Amendment Date").

As used herein, "Board" shall mean and refer to the Board of Directors of Red Mountain Townhomes Owners Association.

The following amends and wholly replaces Article A, Section 8.13 of the Declaration.

Article A, Section 8.13. Leases. Notwithstanding anything to the contrary contained in the Declaration, the Leasing of any residence/Lot (hereinafter collectively referred to as a "Lot") within the Red Mountain Townhomes shall be governed by this Article A, Section 8.13, as amended hereby.

(A) **PURPOSE AND PROHIBITION.** IN ORDER TO INCREASE THE FUTURE AVAILABILITY OF FINANCING FOR THE PURCHASE/SALE OF LOTS WITHIN THE RED MOUNTAIN TOWNHOMES PROPERTIES, TO PROMOTE THE AVAILABILITY OF INSURANCE FOR THE ASSOCIATION AND ITS MEMBERS AT REASONABLE RATES, TO ATTEMPT TO MAXIMIZE THE PROPERTY VALUES WITHIN THE RED MOUNTAIN TOWNHOMES PROPERTIES, AND TO PROMOTE A SENSE OF COMMUNITY BY AND THROUGH OWNER-OCCUPANTS, FROM AND AFTER THE AMENDMENT DATE NO OWNER SHALL BE ABLE TO LEASE HIS LOT OR ANY PORTION THEREOF, EXCEPT AS SPECIFICALLY PROVIDED BELOW. THE INTENT OF

THIS AMENDMENT IS TO PROVIDE THAT AT SOME TIME AFTER THE AMENDMENT DATE THERE WILL ULTIMATELY BE NO LOTS THAT ARE NOT OWNER-OCCUPIED AND THAT ALL LEASING OF LOTS WITHIN THE RED MOUNTAIN TOWNHOMES DEVELOPMENT WILL ULTIMATELY BE ELIMINATED; SUBJECT TO THE RIGHT OF AN OWNER TO OBTAIN A HARDSHIP EXEMPTION.

- (B) **APPLICATION OF GRANDFATHERING.** Within forty-five (45) calendar days of the Amendment Date, each Owner who is Leasing a Lot on the Amendment Date and who desires to continue to Lease the Lot, must complete and execute the form attached hereto as Exhibit "C" (the "Notice of Intent to Continue Leasing"). An Owner who fails to timely deliver the Notice of Intent to Continue Leasing to the Board shall lose the right to lease the Owner's Lot, which loss of the right to lease shall be effective as of the time the current lessees of the Owner's Lot vacate the premises.
- (C) **GRANDFATHERING.** Any Owner who timely returns to the Board a complete and accurate Notice of Intent to Continue Leasing, shall have the right to continue to Lease such Lot until the earlier of the following:
- (i) The Lot becomes Owner-Occupied (as defined below)
 - (ii) The Lot is sold, or
 - (iii) The Owner is in violation of this section, including without limitation the failure to advise the Board of the execution of a Lease and to provide a copy thereof to the Board.
- For the purpose hereof, a Lot shall be deemed "Owner Occupied" if:
- (i) The Owner or any member of his immediate or extended family occupies the Lot for a period of seven (7) days or more in any ten (10) consecutive day period;
 - (ii) The Owner is a corporation, limited partnership, limited liability company, general partnership, trust or other legal entity and such entity designates in writing to the Board the primary resident of the Lot which must be an officer, manager, member or partner of the legal entity. Such entities may not utilize the Lot in any form of fractionalized use.
- (D) **EXTENSION OF GRANDFATHERING DURING VACANCY.** An Owner in compliance with this Amendment may continue to Lease the Owner's Lot even if the lessees change or the Lot remains unoccupied in between Lease terms, provided the Lot does not become Owner-Occupied at any time after the Amendment Date. An Owner must comply with all the covenants and conditions of this Amendment to be able to Lease the owner's Lot
- (E) **HEIRS AND GRANDFATHERING.** A Lot which is being Leased by an Owner at the time of the Owner's death and is passed to the heirs of such Owner by intestacy or testamentary instrument, may continue to be Leased until the heirs sell the Lot or it becomes Owner Occupied. Subject to subsection (f) below, the purchaser shall NOT have the right to Lease the Lot.
- (F) **SALE OF A GRANDFATHERED LOT.** Notwithstanding anything to the contrary herein, if an Owner sells the Owner's Lot at a time when a Lease is in effect with respect to that Lot, the Lease shall continue to its termination. However, the purchaser of the Lot shall not have the right to Lease the Lot after such purchaser takes title to the Lot, except for the remainder of the term of the Lease in place at the time of sale.

(G) **TERMS OF LEASE:** Any agreement for the leasing or rental of a Lot (both above and hereafter referred to as a "Lease") shall be in writing and shall provide that the terms of such Lease shall be subject in all respects to the provisions of the Declaration, this Amendment, the Article, the Bylaws, the Rules & Regulation and any other governing documents of the Association (collectively the "Governing Documents"). Any failure by the lessee to comply with the terms of the Governing Documents shall be a default under the Lease. Owners with the right to Lease their lots shall be responsible for assuring compliance by such Owner's lessee(s) with the Governing Documents and the Lease. Failure of an Owner to cure the lessee's default within fifteen (15) calendar days after receiving written notice from the Board of such default, shall entitle the Association, through the Board, upon order of a court of competent jurisdiction to take any and all such action, including the institution of proceedings in unlawful detainer and/or eviction, on behalf of such Owner against his lessee.

(H) **NOTIFICATION OF LEASE:** Immediately upon entering into a Lease, an Owner shall furnish the Board with (i) a copy of such Lease (with the lease amount redacted, if desired by the lessee or Owner), (ii) the telephone number of the lessee, and (iii) any change in the address or telephone number of the Lot Owner. As soon as practicable after receiving such notification that an Owner has entered into a Lease, the Owners shall, and the Board may, cause copies of the Governing Documents to be delivered to such lessee. (The Governing Documents shall be binding on the lessee whether or not the Owner or the Board delivers the Governing Documents to the lessee.) In the event of a default under this subparagraph (h), the Board may, after affording the Owner an opportunity to be heard, levy a fine against such Owner in an amount determined by the Board, but in no event less than One Hundred Dollars (\$100.00). The Owner shall have fifteen (15) calendar days after receiving written notice of default from the Board to either pay the fine or request a hearing before the Board. If the fine is not timely paid or a hearing requested or the Board finds the Owner in violation after a hearing, the Board shall be entitled to exercise all of its rights hereunder and under the law, including without limitation to (i) levy continuing fines against any Owner in violation for each day the violation continues, each day being considered a separate violation, (ii) as such fines, costs and attorney's fees incurred in connection therewith to the monthly assessment against the Owner's Lot, and (iii) deem the owner in violation and terminate all further rights of the Owner to Lease the Lot.

(I) **NO TRANSIENT LODGING.** No Lot shall be Leases for hotel or transient purposed. A Lease for a period of less than six (6) months shall be deemed to be for transient purposed. No Owner of lessee shall lease less than his entire Lot. Any lease of a Lot shall be in writing and shall include an acknowledgement by the lessee of the applicability of all Governing Documents. Copies of al Leases shall be provided to the Board for its records, as set forth above.

(J) **EXEMPTIONS:**

- (i) **Extended Absence Exemption.** If, at any time after the Amendment Date, an Owner desires to temporarily not reside in the Owner's Townhome for a period not to exceed one (1) years, the Owner may submit advance written notice to the Board. The Owner need not provide details to the Board of the reasons for the extended absence.
- (ii) **Mortgage Exemption.** The holder of a Mortgage who has acquired title to the Lot through foreclosure or otherwise is exempt from the rent prohibitions in this Amendment. The holder of a Mortgage, however, shall comply with all other terms of this Amendment. Moreover, any person

or entity acquiring title from such Mortgage holder shall be bound by all rent prohibitions and terms of this Amendment.

- (iii) **Hardship Exemption.** If, at any time after the Amendment Date, an Owner believes that a hardship is being endured (the "Hardship") pursuant to which such Owner needs to Lease the Owner's Lot, the Owner may apply to the Board for a Hardship exemption from the leasing restrictions contained in this Amendment. If an owner decided to apply for a Hardship exemption, such Owner must take the following steps:
- (a) **Application.** The Owner must submit a request in writing to the Board requesting a Hardship exemption setting forth in detail the reasons why such owner should be entitled to same.
- (b) **Board Approval.** If based on the information supplied to the Board by the Owner, the Board finds, in its sole discretion, that a reasonable Hardship exists, the Board may grant waiver of Lease restrictions up to a maximum of one (1) year.
- (c) **Hardship Factors.** The types of Hardships that the Board may consider under subsection (iii) above, shall include, but not be limited to, Hardships for a death in the family, transfers for jobs, or one or more significant medical treatments for an Owner or an immediate family member of the Owner (such as a spouse or child) or for a person who resided with the Owner in the Owner's unit, that required the Owner to be away from the unit during medical treatment. The Board, in its sole discretions, may determine if a Hardship exemption shall be granted.
- (iv) **Application for Extension of Exemptions.** In the event an Owner has qualified for an Exemption, such Owner must reapply within thirty (30) days of the expiration of such Exemption, if such Owner wishes to request an extension thereof. The Board, in its sole discretion, may decide if an extension for such Exemption shall be granted. However, in no event shall the Exemption be extended beyond a period of three (3) years.
- (v) **Limit of Exemptions.** In no event shall more than two (2) Extended Absence and two (2) Hardship Exemptions, not including extensions, be given to an Owner.
- (vi) **Leasing During Exemption.** Any Lease entered into under this Subsection (j) shall be in writing and for a period of no less than ninety (90) days, and no more than one (1) year. The lease will be subject to and must comply with all other requirements of this Amendment.

(K) **ASSOCIATION RIGHT TO LEASE.** The Board shall have the right to lease any Association owned Lots or any Lot which the Association has possession of, pursuant to any court order or foreclosure (judicial or non-judicial), and said Lots shall not be subject to this Amendment.

(L) **COMPLIANCE WITH GOVERNING DOCUMENTS AND DEFAULT.** Any Owner who shall lease his Lot shall be responsible for assuring compliance by such Owner's lessee(s) with the Governing Documents. Failure by an Owner to take legal action, including the institution of proceedings in Unlawful Detainer and/or Eviction against the lessee in violation of the Governing Documents within fifteen (15) calendar days after receipt of written demand from the Board to take action against the lessee(s) in violation, shall entitle the Association, through the Board to take any and all action available

in law or equity, including without limitation the institution of proceedings in Unlawful Detainer/Eviction, on behalf of such Owner against his lessee. Additionally, if any Owner leases his Lot in violation of this amendment, then after providing the Owner with appropriate notice and hearing as required by law, the Owner fails to institute proceedings in Unlawful Detainer/Eviction against the lessee to have him removed from the Owner's Lot, then the Association may, but shall not have an obligation to, institute proceedings in Unlawful Detainer/Eviction on behalf of the Owner against the lessee to have the lessee evicted from the property. Any expenses incurred by the Association in enforcing this Amendment, including attorney's fees and costs of suit, shall be repaid to the Association by such Owner. Failure to such Owner to make such repayment within fifteen (15) days after receipt of written demand thereof, shall entitle the Board (i) to levy and add to the assessment against such Owner and his Lot, all expenses incurred by the Association and to foreclose the assessment lien according to Utah law, or (ii) to file suit to collect the amounts due and owing, or both.

(M) **POWER OF ATTORNEY.** In the event an Owner fails to enforce the terms of that Owner's Lease and the covenants and conditions of this Amendment, such Owner hereby appoints the Association upon approval of a court of competent jurisdiction as its limited attorney in fact for the purposes of filing and prosecuting any proceeding in Unlawful Detain/Eviction that the Association elects to commence pursuant to the terms of this Amendment.

(N) **NOTICE.** Notices required hereunder shall be deemed given three (3) days after placing the same in the U.S First Class Mail, postage pre-paid, to the last address of the Owner known to the Association. An Owner shall be obligated to notify the Association in writing of the Owners correct address and any change in address.

IN WITNESS WHEREOF, on the 1 day of MAY, 2017, the President of the Association hereby represents that attached to this amendment are the signed consents of not less than sixty-seven (67%) of all the Owners and that not less than fifty-one (51%) of the first mortgages have consented to this Amendment.

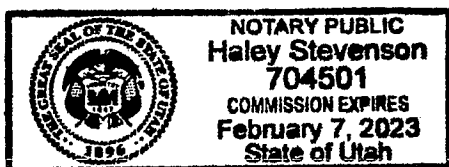
RED MOUNTAIN TOWNHOMES, a Utah non-profit corporation

FRANK E. JOHNSON
By: Frank E. Johnson
Its: President
FRANK E. JOHNSON
FRANK E. JOHNSON

Witnessed:
By: Danna C. Stevenson
Secretary, Red Mountain Townhomes

STATE OF UTAH)
)
:SS.
COUNTY OF WASHINGTON)

On the 1 day of MAY, 2017, personally appeared before me Frank E. Johnson who being by me duly sworn, did say that he is the President of the Red Mountain Townhomes Homeowners Association, the authorized individual empowered to sign this Amendment and that the Amendment was signed on behalf of said Association and said person acknowledged to me that said Association authorized the execution of same.



Haley Stevenson Notary Public