

After Recording Return to

Monarch Property Management

1240 East 100 South # 10

St. George, Utah 84790

DOC # 20170011439

Restrictive Page 1 of 8
Russell Shirts Washington County Recorder
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By MONARCH PROPERTY MANAGEMENT



**AMENDMENT TO THE DECLARATION OF THE
COVENANTS, CONDITIONS AND RESTRICTIONS OF THE
SHADOWBROOK HOMEOWNERS ASSOCIATION**

CONSENT TO AMENDMENT OF THE DECLARATION of Covenants, Conditions and Restrictions of the Shadowbrook Home Owners Association is made pursuant to Article 11.11 and executed this 20th day of MARCH, 2017, AND AMENDS THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTION OF SHADOWBROOK HOMEOWNERS ASSOCIATION,

Article 11.11 is hereby amended to add as follows:

ARTICLE 11.11 USE RESTRICTIONS

Section 1. Leasing/Rental Policy. The number of units leased or rented in the Shadowbrook Home Owners Association shall not exceed fifteen percent (15%) of the total numbers of units. The intent of this amendment is to provide at some time after the amendment date that there will be no more than fifteen percent (15%) of the units rented or leased subject to the right of an owner to obtain a hardship exemption. No unit may be leased/rented except as a single-family unit: All Leases shall be for no less than a twelve (12) month term.

Section 2. Application for Grandfathering. Within forty-five (45) calendar days of the Amendment Date, each Owner who was leasing his Unit on the Amendment date and who desires to continue to lease his Unit, must complete and execute the form attached hereto as Exhibit A (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 Unit, which loss of the right to lease shall be effective as of the time the current lessees of the Owner's Unit vacate the premises.

Section 3. Grandfathering. Any Owner not in violation of the leasing restrictions in the Original Declaration and 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 Unit until the earlier of the following:

A. The Unit becomes Owner-Occupied (as defined below).

B. The Unit is sold, or

C. The Owner is in violation of Section 11.11, including without limitation the failure to advise the Board of the execution of a lease and provide a copy thereof to the Board.

For the purposes hereof, a Unit shall be deemed "Owner-Occupied" if:

(1) The Owner or any member of his immediate or extended family occupies the Unit for

a period of seven days or more in any ten day consecutive day period;

(ii) The Owner is a corporation, limited partnership, limited liability company, general partnership, trust or other entity and such entity designates in writing to the Board the primary resident of the Unit which must be an officer, manager, member or partner. Such entities may not utilize the Lot in any form of fractional use.

Section 4. Extension of Grandfathering During Vacancy. An Owner in compliance with this Amendment to Declaration may continue to lease his/her Unit even if the lessee(s) change or the Unit remains unoccupied in between lease terms, provided the Unit does not become Owner-Occupied at any time after the Amendment Date. An Owner must comply with all the covenants and conditions of this Declaration to be able to Lease the owner's Unit.

Section 5. Inheritance and Grandfathering. A Unit that 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 instruments, may continue to be leased until the heirs sell the Unit or it becomes Owner-Occupied. Subject to Section (6) below, the purchasers shall not have the right to lease the Unit.

Section 6. Sale of Grandfathered Lot. Notwithstanding anything to the contrary herein, if an Owner sells his Unit at a time when a Lease is in effect with respect to that Unit, the Lease shall continue to its termination. However, the purchaser of the Unit shall not have the right to lease the Unit after such purchaser takes title to the Unit, except for the remainder of the term of the Lease in place at the time of sale.

Section 7. Terms of Sale. Any agreement for the leasing or rental of a Unit (both above and hereafter referred to as "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 to Declaration, the Articles, the Bylaws, the Rules and Regulations 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 Unit 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, to take any and all such action, including the institution of proceedings in unlawful detainer and/or eviction, on behalf of such Owner against Lessee.

Section 8. 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 address or telephone number of the Unit Owners. As soon as practicable after receiving such notification that an Owner has entered into a Lease, the Board may cause copies of the Governing Documents to be available to such lessee. (The Governing

Document shall be binding on the lessee whether or not the Board delivers the Governing Documents to the lessee.) Failure by an Owner to provide the information in this Section shall be deemed a default hereunder by such Owner. In the Event of a default under this section, the Board, after affording the Owner an opportunity to be heard, may 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 by and under the law, including without limitation to (i) levy continuing fines against any Owner for each day the violation continues, each day being considered a separate violation, (ii) collect such fines, costs and attorney's fees incurred in connection therewith, and (iii) deem the owner in violation and terminate all further rights of the Owner to Lease the Lot.

Section 9. Hardship. 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 Declaration. If an Owner decides 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 reason why such Owner should be entitled to same.
- B. **Approved Exemptions.** The following four Hardship exemptions shall be deemed expressly approved for up to a maximum of three (3) years, with the opportunity to obtain not more than one (1) year conditional exemption:
 1. Religious service;
 2. Government services;
 3. Civic/Humanitarian services;
 4. The owner is a mortgagee who has acquired title to the Unit through foreclosure or otherwise; and
 5. In the event the owner must reside in a skilled nursing or assisted living facility, the owner or their designated or appointed agent shall be allowed to rent or lease the owners residence.
- C. **Conditional Exemptions.** In addition to the foregoing exemptions set forth in subsection (B) above, 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 a waiver of lease restrictions up to a maximum of one (1) year.
- D. **Hardship Factors.** The types of Hardships that the Board may consider under

subsection (C) 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 resides with the Owner in the Owner's unit, that requires the Owner to be away from the Owner's unit during the medical treatment. The Board, in its sole discretion, may determine if a Hardship exemption shall be granted.

E. Application for Extension of Exemptions. In the event an owner has been granted a Hardship exemption, such Owner must reapply within thirty (30) Days of the expiration of such Hardship exemption, if such Owner wishes to request an extension thereof. The Board, in its sole discretion, may decide if an extension for such Hardship exemption shall be granted. However, in no event shall the Hardship be extended beyond a period of three (3) years.

F. Limit of Exemptions. In no event shall more than three (3) Hardship exemptions, not including extensions, be given to an Owner.

G. Leasing During Exemption. Any Lease entered into under this Subsection shall be in writing and for a period of no less than thirty (30) days, and no more than one year. The Lease will be subject to and must comply with all other requirements of this Amendment to the Declaration.

Section 10. Association Right to Lease. The Board shall have the right to lease any Association owned Units or any Unit which the Association has possession of, pursuant to any court order or foreclosure (judicial or non-judicial), and said Units shall not be subject to this Amendment to Declaration.

Section 11. Compliance with Governing Documents and Default. Any owner who shall lease his Unit 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 Unit in violation of this Amendment to Declaration, then after providing the Owner with the 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 Unit, then the Association may, but shall not have an obligation to, institute proceeding 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 to Declaration, including attorney fees and

cost of suit, shall be repaid to the Association by such Owner. Failure of 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

Unit, 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.

Section 11. 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, Shadowbrook Home Owners Association has executed this Amendment to the Declaration on the dates below.

Shadowbrook

Kelli Bliss
President

Date: 3-20-2017

STATE OF Utah)
:SS
County of Washington)

On the 20 day of March, 2017, personally appeared before me *Kelli Bliss* and *Joanne Ford* who, being first duly sworn, did that say that they are the President/Secretary of Shadowbrook and that the foregoing instrument was signed in behalf of said Association by authority of its Board of Directors; and each of them acknowledged said instrument to be their voluntary act and deed.

Susan E. Stucki
Notary Public

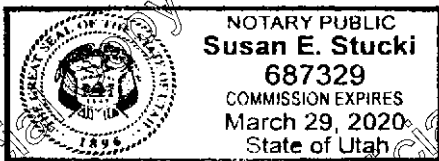


EXHIBIT A
NOTICE OF INTENT TO CONTINUE LEASING

SHADOWBROOK HOMEOWNER ASSOCIATION

TO ALL OWNERS:

DATE: January 14, 2017

The Amendment to Section 11.11 Use Restrictions of the Declaration of Covenants, Conditions and Restrictions (the "Amendment to Declaration") for Shadowbrook Homeowner Association has been adopted by the membership of Shadowbrook. Among other matters the Amendment to Declaration currently now has a 15% rental restriction cap. Grandfathering of dwelling units leased at the time of the Amendment to Declaration was approved and recorded in the records of the Washington County Recorder.

For those Owners seeking grandfathered status for the dwelling unit(s)/Lot(s) owned by them which were leased at the time the Amendment to Declaration was adopted you must return this completed form within forty-five (45) from the date of this NOTICE, along with a copy of the current lease with the tenants, to the Association c/o Monarch Property Management, 1240 East 100 South, #10, St George, Utah 84790. If you fail to do so your right to lease your dwelling unit(s) will lapse and terminate.

REGISTRATION INFORMATION

1. Names of Lessee(s)

- a. _____
- b. _____
- c. _____
- d. _____

2. Telephone numbers of lessee(s)

- a. Home: _____
- b. Work _____
- c. Mobile: _____
- d. e-mail: _____

3. Telephone numbers of Owners

- a. Home _____
- b. Work _____
- c. Mobile _____
- d. email _____

4. Current address of Owners

- _____
- _____
- _____

5. Copy of Lease: A true and correct copy of the lease must be attached. Each time there is a new lessee(s); Owner must provide a new copy of the lease.

I/We the Owners of Lot(s) _____ hereby verify that the above information is true, accurate and complete.

DATED this _____ day of _____, 20__.

(Sign) _____

Print: _____

(Sign) _____

Print: _____

EXHIBIT B

**LEGAL NOTICE
FOR TAKING WRITTEN CONSENTS
WITHOUT A MEETING TO APPROVE THAT CERTAIN AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
SHADOWBROOK
(Leasing Restrictions)**

The Declaration Covenants, Conditions and Restrictions for Shadowbrook (the "Original Declaration") requires the taking of written consents of at least sixty-seven percent (67%) of all members to amend the Original Declaration and to adopt the Amendment to the Declaration of Covenants, Conditions and Restrictions of Shadowbrook relating to restrictions on leasing (the "Amendment to Declaration").

Utah Code Ann. Section 16-6a-707 allows for the taking of written consents without a meeting of the members, provided the following are met:

1. The consents are signed by the number of members required to take the action if a meeting were held; in this instance sixty-seven percent (67%) of the members.
2. Unless 100% of the members sign a written consent, sixty-seven percent (67%) of the written consents must be obtained within a sixty (60) day period commencing on the date the first consent is executed.
3. The effective date of the Amendment to Declaration will be the date the Amendment to Declaration is recorded in the records of the Washington County Recorder.
4. Consents once given may only be revoked in a writing signed by the member(s) that references the Amendment to Declaration, that states the member's prior written consent is revoked; and that is received by the Association prior to the expiration of the sixty (60) day period.

You are hereby given notice that if at least sixty-seven percent (67%) of the members consent in writing to the Amendment to Declaration within the sixty (60) day period, the Shadowbrook Association, through its Board, will immediately cause the Amendment to Declaration to be recorded in the records of the Washington County Recorder.

A copy of the Amendment to Declaration and Consent form are provided herewith and you have hereby been given notice that the enclosed Amendment to Declaration has been provided to you more than ten (10) days in advance of the proposed effective date of the Amendment to Declaration.

A copy of this Legal Notice has been attached as Exhibit B to the Amendment to Declaration.

**Amendment to CC&RS
(leasing restrictions)
Shadowbrook**

EXHIBIT ~~2~~

This Amended Declaration of Covenants, Conditions and Restrictions of Shadowbrook Homes, a planned Unit Development, St. George, Utah, affects the property located in Washington County, State of Utah, more particularly described below:

All of Plat "A" recorded as Entry No. 28741.

All of Plat "B" recorded as Entry No. 298553.

All of Plat "C" recorded as Entry No. 308776.

All of Plat "D" recorded as Entry No. 338723.

All of Plat "E" recorded as Entry No. 458356.