

10

MONTE VERDE AT GREEN
PROPOSED AMENDMENT



Dear Monte Verde Owners,

The Board proposes the adoption of an Amendment which will limit the number of rentals allowed within the Association to 10 Units.

This restriction would not affect any current homeowners who are leasing. All current homeowners who are leasing would be able to continue, as long as a Notice of Intent to Continue Leasing is provided to the Association within 10 days of the recording of the amendment. The Board believes that ultimately having fewer rentals within the community will benefit the property values and livability of the project. **THE TEXT OF THE AMENDMENT IS ATTACHED.**

Your vote for this proposed amendment is requested. We have provided herewith the proposed amendment and the ballot. Instructions are provided below.

FOR YOUR INFORMATION:

At least fifty percent (50%) of the votes of all Members must respond to this proposal in order to meet quorum requirements. After a quorum is reached, the approval of not less than sixty-seven percent (67%) of the total votes of Members is required to adopt the proposed Amendment to the Declaration.

Please cast your vote by returning the completed ballot no later than **JUNE 15, 2019**, to:

Monte Verde at Green Spring Owners Association
c/o Monarch Property Management
1240 East 100 South, #10, St George, Utah 84790

OFFICIAL MAIL-IN BALLOT

PLEASE RETURN BALLOT BEFORE **JUNE 15, 2019**

Please mark one of the boxes below to indicate whether you are “**FOR**” or “**AGAINST**” adopting the proposed Rental Amendment to the Monte Verde Declaration.

_____ **FOR** adopting the Rental Amendment (as provided to me).

_____ **AGAINST** adopting the Rental Amendment (as provided to me).

OWNER OF RECORD:

Name: _____ (print) _____

Address _____

Date: _____

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**IT IS PROPOSED TO ARTICLE 6 OF THE MONTE VERDE DECLARATION, BY
ADDING A NEW SECTION 6.8 AS FOLLOWS:**

Section 6.8 ADDITIONAL USE RESTRICTIONS

6.8.1 Leasing/Rental Policy

Consistent with the provisions of the Declaration and the Utah Community Association Act, the leasing and renting of Lots/Units by Owners shall be in accordance with the terms herein.

The terms “leasing,” “lease,” “renting,” “rent,” or “rental” used in reference to any Lot/Unit within the Association shall mean and refer to the granting of a right to use or occupy a Lot/Unit to any person or entity for a specific term or indefinite term (with rent stated on a periodic basis), in exchange for the payment of rent (money, property or other goods or services of value); but shall not mean nor include joint ownership of a Lot/Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

A. Restrictions. All Owners and Lot/Units shall be subject to the following restrictions (subject to Section B below):

(i) Rental Cap. It is hereby amended and agreed that no more than ten (10) of the Lot/Units in the Project, may be rented at any given time, except as provided within this document or as may be required by law (“Rental Cap”).

(ii) No Owner may lease or rent less than their entire Lot/Unit, unless and only as long as the Owner also resides in the Lot/Unit (that is, no individual rooms or partial Lot/Unit rentals are permitted unless the Lot/Unit Owner also resides in the Lot/Unit) and no Owner may lease or rent any Lot/Unit for a period of less than **twelve (12) consecutive months**.

(iii) No short term, daily, weekly or monthly rentals are permitted including, but not limited to, nightly or other short-term rentals through programs such as VRBO, Airbnb, or similar arrangements. Individual room rentals are not permitted, unless and only as long as the Owner also resides in the Lot/Unit.

(iv) Any Owner allowing a non-owner occupant to occupy his or her Lot/Unit shall be responsible for the occupant’s compliance with the Declaration, Bylaws and Rules.

B. Exemptions. The following Owners and their respective Lot/Units, upon proof sufficient to the Board, are exempt from the rental cap limit outlined herein below unless otherwise stated:

(i) A Unit Owner in the military for the period of the Unit Owner’s deployment;

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- (ii) A Unit occupied by a Unit Owner's parent, child, or sibling;
- (iii) A Unit Owner whose employer has relocated the Unit Owner for two (2) years or less;
- (iv) A Unit owned by an entity that is occupied by an individual who:
 - (a) Has voting rights under the entity's organizing documents; and
 - (b) Has a 25% or greater share of ownership, control and right to profits and losses of the entity; or,
- (v) A Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of:
 - (a) A current resident of the Unit; or,
 - (b) The parent, child, or sibling of the current resident of the Unit.

C. Multiple Unit Ownership. An Owner is not eligible to rent more than one unit until the pending applications of:

- (i) All Owners who are not currently renting or leasing unit have been approved; and
- (ii) All Owners who are currently renting or leasing fewer units than the applicant have been approved.

D. Application and Approval. Owners desiring to rent or lease their Lot/Units shall submit a written application to the Board (and/or its agent). Additionally, the Owner shall submit to the Board within ten (10) days of occupancy by the tenants, the names of those occupying the Lot/Unit. The Board shall monitor and make a determination of whether the rental or lease will exceed the Rental Cap.

- (i) The Board shall:
 - (a) Approve the application if it determines that the rental or lease will not exceed the Rental Cap; or
 - (b) Deny the application if it determines that the rental or lease of the Unit will exceed the Rental Cap.
- (ii) Applications from an Owner for permission to rent or lease shall be reviewed and approved or denied by the Board as set forth in this subsection.

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(a) The Board shall review applications for permission to rent or lease in chronological order based upon the date of receipt of the application and application fee. Within ten (10) business days of receipt, the Board shall approve or deny an application as provided herein and shall notify the Owner within fifteen (15) business days of receipt of the application if permission is not given and the reason for the denial.

(b) If an Owner's application is denied, the applicant may be placed on a waiting list according to the date the application was received so that the Owner whose application was earliest received will have the first opportunity to rent or lease, subject to subsection D of this Section.

(c) The Board is authorized to adopt, by Board rule, procedures and policies that govern the creation, organization and process to implement the above-mentioned waiting list. Said procedures may be modified from time-to-time by the Board to fairly implement the waiting list program described herein.

(iii) An application form, the application approval process, a waiting list, and any other rules deemed necessary by the Board to implement this section shall be established by rules or resolution adopted by the Board consistent with this Declaration and to ensure the consistent administration and enforcement of the rental restrictions contained herein.

(iv) All Owners provide the Board with a copy the executed lease, which shall be kept on file with the books and records of the Association so that the Association may determine the number of Lot/Units rented or leased. The Approved Lease Agreement, or its equivalent, shall be on a form prescribed by resolution of the Board.

(v) If an Owner fails to submit the required application, fails to use and submit a copy of the Approved Lease Agreement and rents or leases any Lot/Unit, and/or rents or leases any Lot/Unit after the Board has denied the Owner's application, the Board may assess fines against the Owner or Tenant (as may be consistent with Utah law, Utah Code §57-8-8.1) and the Owner's Lot/Unit in an amount to be determined by the Board pursuant to a schedule of fines adopted by resolution.

In addition, regardless of whether any fines have been imposed, the Board may proceed with any other available legal remedies, including but not limited to an action to, terminate the rental or lease agreement and removal of any tenant or lessee.

(vi) The Association shall be entitled to recover from the offending Owner its costs and attorney's fees incurred for enforcement of this Section regardless of whether any lawsuit or other action is commenced. The Association may assess such costs and attorney's fees against the Owner and the Lot as an assessment pursuant to the Declaration.

E. Grandfathering Clause. All Owners of record prior to the recordation of this amendment currently renting or leasing their Lot/Unit, may continue to rent or lease their Lot/Unit, for as long as they own the Lot/Unit, until such time as title to the Lot/Unit changes, for whatever reason, unless an exemption (above) is required, if, within thirty (30) days of the

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recording of this amendment, completes and executes the form attached hereto as Exhibit B (“Notice of Intent to Continue Leasing”). A copy of the current lease must accompany the Notice. An Owner who fails to timely deliver the Notice of Intent to Continue Leasing and the current rental lease to the Board shall lose the right to lease their Unit.

At such time title changes, the “grandfathered status” is lost. However, notwithstanding the grandfather provision above, if a Grandfathered Owner fails to re-let their Lot/Unit within ninety (90) days of the expiration or termination of a rental or lease agreement by any tenant, then the Grandfathered Owner and Lot/Unit shall lose their grandfathered status and become subject to the Rental Cap expressed above and shall apply to the Board for permission to rent or lease the Lot/Unit.

F. Lease Agreements. Rental and lease agreements shall comply with this subsection.

(i) The Owner shall provide the tenant or lessee with a copy of the Declaration, the Bylaws, including any relevant amendments to such documents, and all rules and regulations then in effect and shall take a receipt for delivery of the documents. In the event any such documents are amended, revised, changed, or supplemented by the Association, the Owner shall provide the tenant or lessee with a copy of the amendments, revisions, changes, or supplements within ten (10) calendar days of adoption by the Association, its Board, or its membership.

(ii) Upon the commencement of the rental or lease period, the Owner shall provide the Association with a signed copy of the Approved Lease Agreement.

G. Hardship Exemptions. An Owner may appeal to the Board for a Hardship exemption from the Rental Cap by submitting a request in writing to the Board requesting a Hardship Exemption and setting forth in detail the reason why such Owner should be entitled to the same.

(i) A Hardship Exemption may be granted for a maximum of one (1) year, with the opportunity to obtain not more than one (1) year extension for the following reasons:

- (a) Religious or Charitable Service;
- (b) Civic or Humanitarian Service;
- (c) In the event the Owner must reside in a skilled nursing or assisted living facility

(ii) The Board, at its sole discretion, may decide if an exemption shall be granted for any other reason.

(iii) In no event shall more than two (2) Hardship Exemptions, not including extensions, be given to an Owner.

(iv) Any Lease entered into under this Section shall be in writing and for a

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period of no less than six (6) months, and no more than one (1) year. The Lease will be subject to and must comply with all other requirements of this Amendment.

H. Remedies. In addition to any other remedies available to the Association, the Board may require the Owner to terminate a lease or rental agreement if the Board determines that any lessee or tenant has violated any provision of this Declaration, the Articles of Incorporation, the Bylaws, or any amendments thereto, or the rules and regulations adopted thereto. If an Owner fails to correct any such violations related to their tenants or fails to terminate the lease pursuant to the above, the Owner hereby grants the Board standing to initiate eviction proceedings against their tenant and considers the Association a third-party beneficiary to its rental/lease agreement.

I. Additional Rules. The Board is authorized to promulgate additional rules, procedures and requirements regarding rentals and the rental process as it deems necessary from time to time to give effect to, or further clarify, this amendment.

(i) Fines, Sanctions and Attorney's Fees. The Board shall have the power to enforce the Association's governing documents, including by obtaining injunctive relief from the courts, by issuing fines, by terminating any common service paid for as a common expense, and by utilizing any other remedy authorized by law or the governing documents in order to maintain and operate the project and to enforce these rental restrictions. The Association shall be entitled to its attorney's fees and costs in any action to enforce the terms of this Amendment or its rules.

(ii) Lease Payments by Tenant to Association. If an Owner who is renting his or her Lot/Unit fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board may demand that the tenant, and the tenant thereafter shall, pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic payment, until the amount due to the Association is paid in accordance with the procedures established by law, and such amounts shall be the personal obligation and debt of the tenant to the Association, jointly and severally with the Owner.

(iii) Hardship Exemptions to Rental Prohibition. The Board shall have the sole discretion to allow rentals that would otherwise exceed the rental cap stated herein upon the showing of an undue hardship by the requesting owner. The Board shall state the terms and duration of the hardship exemption granted and cause the owner to sign an agreement to such terms. No hardship exemptions are guaranteed, nor may this Section be relied on by any owner that such an exemption will be granted.

J. Limitation of Unit Ownership.

In order to help assure that Units within the Association qualify and are eligible for loans on the secondary and primary mortgage market, as also may be required by Fannie Mae, Freddie Mac and/or the Federal Housing Administration, which helps with the ability to purchase or securitize mortgages within the Association, no single entity (the same individual, investor group, entity, partnership, or corporation) may own more than 10% of the total number of units within the Association at any given time.

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Should this provision be violated, the Association, through the Board, shall be able to enforce this restriction to protect the interests of the Association and its members, with or without legal action as deemed necessary, and the offending purchaser/owner shall be responsible for all costs and attorney fees associated with said enforcement.

[END OF AMENDMENT]

EXHIBIT A

Legal Description

All Lots and Common Area, MONTE VERDE VILLAGES AT GREEN SPRING 1,
according to the official plat thereof recorded in the records of the Washington County Recorder.

Parcel No. W-MVGS-1-1 through W-MVGS-1-15

All Lots and Common Area, MONTE VERDE AT GREEN SPRING 2, according to the
official plat thereof recorded in the records of the Washington County Recorder.

Parcel No. W-MOGS-2-72 through W-MOGS-2-84

All Lots and Common Area, MONTE VERDE AT GREEN SPRING 3, according to the
official plat thereof recorded in the records of the Washington County Recorder.

Parcel No. W-MOGS-3-16 through W-MOGS-3-43
W-MOGS-3-64 through W-MOGS-3-71

EXHIBIT B
NOTICE OF INTENT TO CONTINUE LEASING

(Monte Verde)

Date _____

The Amendment to the Declaration of Covenants, Conditions and Restrictions (the "Amendment to Declaration") for Monte Verde has been adopted by the membership of Monte Verde. Among other matters the Amendment currently now has a Ten (10) Unit rental restriction cap. Grandfathering of Owners currently leasing at the time the Amendment to Declaration was approved and recorded in the records of the Washington County Recorder.

For those Owners seeking grandfathered status for the Unit/Lot owned and being leased at the time the Amendment to Declaration was adopted you must return this completed form within thirty (30) from the date of this NOTICE 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 Unit 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: _____

3. Telephone numbers of Owners

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

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 to the address provided above.

I/We the Owners of Unit # _____ hereby verify that the above information is true, accurate and complete. If any of the above information shall no longer be current, I will update the Association within ten (10) days of any change.

DATED this _____ day of _____, 20__.

Name _____ Name _____
 (Sign) _____ (Sign) _____

IN WITNESS WHEREOF, the Association executed this Declaration on the 21 day of June, 2019.

MONTE VERDE AT GREEN SPRING OWNERS ASSOCIATION

David E. Humphrey
By:
Its: President

STATE OF UTAH)
:ss.
County of Washington.)

On this 21 day of June, personally appeared before me David E. Humphrey who being personally known to me (or satisfactorily proved to me), and who being by me duly sworn did say that they are the President of the Association and that they are authorized and empowered this Declaration on behalf of its members.

Susan E. Stucki
Notary Public

