

HOLTON MOUNTAIN RENTALS

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TERMS OF AGREEMENT, PART II Posted to HMR Website Last Updated: April 1, 2021

This "TERMS OF AGREEMENT, PART II consists of three parts.

Section 1: Cellular Calling and Text Messaging

Section 2: HMR's Online Portal for Electronic Communications and Electronic Documents

Section 3: Other Terms and Conditions

This HMR Terms of Agreement, Part II contains additional terms and conditions that are incorporated by reference and made a part of the HMR Terms of Agreement, Part I (either version) as if fully set out within it. By signing the HMR Terms of Agreement, Part I (either as part of the online Rental Application or the HMR website version), you are giving your express written consent to this HMR Terms of Agreement, Part II.

By signing the Lease Contract for the dwelling unit you are renting from HMR or signing any other rental documents agreeing to express consent, you agree to give your "Express Consent" to electronic communications between you and HMR for transactional and informational purposes the term "Express Consent" is defined in "Electronic Communications and Electronic Documents" (R&R, Article II, Section 17). This definition of express consent incorporates by reference Sections 3.4 through 3.12 of this Terms of Agreement, Part II and makes them a part of the express consent definition, terms and conditions. Express consent is limited and only allows for certain types of electronic communications between you and HMR.

Due to the various different laws that regulate electronic communications, electronic documents and content, it is necessary for HMR to get your "Express Written Consent" so HMR and you can fully use them. These laws are: the Telephone Consumer Protection Act "TCPA", [47 U.S.C. § 227 *et seq.*], the CAN-SPAM Act OF 2003, [15 U.S. Code Chapter 103], and the North Carolina Uniform Electronic Transaction Act ("UETA"), [NCGS Chapter 66 Article 40, §§ 66-311 through 66-339].

The term "Express Written Consent" is defined in the HMR Terms of Agreement, Part I (either version) and in this HMR Terms of Agreement, Part II. It is also defined in "Electronic Communications and Electronic Documents" (R&R, Article II, Section 17). By giving your express written consent, you and HMR can use a variety of electronic communications and electronic documents. The similar sounding term "Express Consent" (discussed above in the 3rd paragraph) has a different meaning and is much more limited in the type of electronic communications allowed between you and HMR. While not all levels, or types, or ways of electronic communications and electronic documents may require your express written consent, it is necessary for you to provide it and for you to agree to the required legal disclosures and to the terms and conditions in HMR's Terms of Agreement, Part I (either version) and in HMR's Terms of Agreement, Part II, in order for you and HMR to fully use electronic communications and electronic documents for the rental process. Without your express written consent, your use of certain functions on the HMR Portal will be limited, you will be unable to use electronic documents and electronic signatures with HMR, and some types electronic communications will be unable to be used or will be limited to certain types of use. **YOU DO HAVE THE OPTION NOT TO GIVE YOUR EXPRESS WRITTEN CONSENT AND/OR TO WITHDRAW CONSENT AFTER IT HAS BEEN GIVEN.**

PLEASE CAREFULLY REVIEW THE HMR TERMS OF AGREEMENT, PART I (EITHER VERSION) AND THIS HMR TERMS OF AGREEMENT, PART II AND THEIR DISCLOSURES, TERMS AND CONDITIONS IN THEIR ENTIRETY, WHICH CONTAIN PROVISIONS THAT AFFECT YOUR LEGAL RIGHTS, INCLUDING THOSE FOR: CELLULAR CALLING, TEXT MESSAGING, ELECTRONIC DOCUMENTS, E-SIGNATURES AND EMAILS AS DEFINED IN "ELECTRONIC COMMUNICATIONS AND ELECTRONIC DOCUMENTS". THE DISCLOSURES, TERMS AND CONDITIONS OF THESE AGREEMENTS ALSO INCLUDE PROVISIONS REGARDING SEVERABILITY, RELEASE, NO WARRANTIES, LIMITATION OF LIABILITY, ARBITRATION AGREEMENT, CLASS ACTION AND JURY WAIVERS, ATTORNEY FEES, APPLICABLE LAW, SURVIVAL, AND MORE.

YOU AND YOUR: The terms you and your (where applicable) shall refer to any person applying to rent a dwelling unit from HMR, currently renting a dwelling unit from HMR or the Co-Signer for an Applicant/Tenant. The terms you and your (where applicable) shall also refer to Tenant once Applicant becomes Tenant.

HMR: The term HMR is an abbreviation that refers to Holton Management, Inc. dba Holton Mountain Rentals which is a rental business and the property manager and leasing agent for the Owner of the dwelling unit that you are applying to rent or Co-Sign for an Applicant. As applicable, in this HMR Terms of Agreement, Part II, HMR shall also refer to HMR as Landlord, i.e., "HMR, Landlord".

LEGAL DOCUMENTS: The term "Legal Documents" in this document shall refer to the online Rental Application, the HMR Terms of Agreement, Part I (either as part the online Rental Application or as a separate HMR Website document), the HMR Terms of Agreement, Part II document, and the HMR Privacy Policy ("Legal Document"). They are available for review at HMR's Website www.HoltonMountainRentals.com under Rental Information.

Us: The terms "Us" "We" and "Our" (when applicable) shall refer to HMR, Build Repair, LLC (an affiliated maintenance provider of HMR), HMR's and Build Repair LLC's service providers and their representatives, agents, successors, assigns, employees, officers and directors and the Property Owner (of the dwelling unit that you are applying to rent (or co-sign for) or are renting from and will be named on the Lease Contract).

ELECTRONIC COMMUNICATIONS AND ELECTRONIC DOCUMENTS: The term "electronic communications and electronic documents" in this agreement shall include the following:

- A. Sending and receiving mobile cellular calls, SMS/MMS/text messages ("text messages"), internet to phone (email to email, email to text messages) messages, VOIP calls and/or landline calls (if applicable), between you and Us as stated in Section 1 and 3 of the HMR Terms of Agreement, Part I (both part of the online Rental Application or as a separate HMR Website version). They can be sent by various methods including **INDIVIDUALLY OR SENT USING THE PORTAL'S AUTOMATIC TELEPHONE DIALING SYSTEM DIALER ("ATDS") OR AUTODIALER FEATURE** from HMR or others acting on HMR's behalf.
- B. Electronic documents, electronic contracts, electronic notices, electronic forms, electronic initials and/or signatures (as defined in the HMR Terms of Agreement, Part I and Part II), and other electronic communications (hereinafter called e-notices) between you and Us that may be transmitted through the online Portal and/or by other means including but not limited to: www.HoltonMountainRentals.com, the HMR website, email, fax, cellular calls, text messages and/or other electronic means.
- C. e-Notices also includes other documents and/or contracts that you may complete via web page and save on your computer or attach to e-mail. They can be printed out, but exist independently in an electronic form if located on the Portal, a server or on your computer.
- D. Use of the HMR Portal and/or HMR Website

If you are a Co-Signer, wherever it says "you," it shall mean "you the Co-Signer" and, wherever it says "Tenant" substitute "Co-Signer" and wherever it refers to the term "Rental Application," substitute the words "Co-Signer Application" in its place.

Section 1. Cellular Calling and Text Messaging

Below are disclosures, terms and conditions regarding mobile cellular calls, SMS/MMS/text messages ("text messages"), internet to phone (email to email, email to text messages) messages, VOIP and/or landline calls (if applicable), that you should read and review. These are in addition to the ones in the HMR Terms of Agreement, Part I (either version).

- 1.1 SUPPORTED CARRIERS:** The HMR Portal and the HMR Website should be available for you to access through your equipment or mobile device when the equipment or device is within the operating range of your wireless service provider. The HMR Portal and the HMR Website may not be available on all equipment/mobile devices, or through all wireless carriers, and not all functionalities of the HMR Portal and the HMR Website are available on all equipment/mobile devices, or through all wireless carriers. HMR may, from time to time, in its discretion and without notice to you, limit the carriers that support use of the HMR Portal and HMR Website. Certain other carriers may not support use of the HMR Portal and/or HMR Website
- 1.2 INTERRUPTION:** Delivery of content and information to your mobile device, wireless device and/or other equipment may fail due to a variety of conditions, circumstances or problems. The HMR Portal and HMR

Website access is subject to transmission interruption or limitation. You understand and acknowledge that mobile telephone network services are outside of the control of HMR, and HMR is not liable or responsible for issues or problems arising from them, or the failure of them, including, without limitation, telephone, network, software, electronic, hardware, technical, or other communications errors, failures, or malfunctions of any kind, lost or unavailable network connections, wireless phone connections, telephone connections, errors in transmission, traffic congestion, website, Internet, or internet service provider availability, unauthorized intervention, incomplete or inaccurate capture of the information entered (regardless of cause) or incomplete, garbled, failed, delayed or jumbled transmissions which may restrict or limit your ability to send or receive a message, including any damage or injury to your or any person's equipment/wireless device resulting from or relating to using the HMR Portal and HMR Website. If access to the HMR Portal and/or HMR Website is not available at or in any location that you are using or want to use, you agree that your sole remedy is not to use the HMR Portal and/or HMR Website.

- 1.3 CHANGES TO CELLULAR CALLING AND TEXT MESSAGING TERMS AND CONDITIONS:** For details on changes to Cellular Calling and Text Messaging, see "Changes to Terms and Conditions" (Terms of Agreement, Part II, Section 3.2) for more details.
- 1.4 SUSPENSION OR TERMINATION OF CELLULAR CALLING AND TEXT MESSAGING:** HMR may terminate or suspend sending you HMR cellular calls and/or text messages if HMR believes you are in breach of the HMR Cellular Calling and Text Messaging terms and conditions. In the event that your mobile cellular phone service terminates or lapses, your receipt of HMR Cellular calls and/or text messages is also subject to termination. HMR reserves the right to discontinue or modify, temporarily or permanently, for any reason and with or without notice, all or any part or type of HMR cellular calls and text messages and use of the HMR Portal.
- 1.5 SECURITY:** By enrolling in cellular calling and text messaging, you hereby expressly agree and acknowledge that there are confidentiality and privacy risks inherent in providing access to your cellular phone by others. You agree that access to your cellular telephone and to all text messages stored within, is your sole responsibility to manage.
- 1.6 PRIVACY POLICY:** You agree that HMR may satisfy any obligation HMR has to provide you with the latest updated version of HMR's PRIVACY POLICY by keeping it available for review at www.HoltonMountainRentals.com under Rental Information.

Section 2. HMR's Online Portal for Electronic Communications and Electronic Documents

The Portal is a service to which HMR contracts, licenses and subscribes to from a third-party provider AppFolio, Inc. ("AppFolio") located at 50 Castilian Dr., Goleta, CA 93117. It is called AppFolio property manager and the software for it is provided by AppFolio. HMR calls it the "Portal" or "HMR Portal"). If you use the Portal you must agree to the terms and conditions in the Terms of Service for AppFolio found on the Portal.

- 2.1 HMR PORTAL:** The Portal is a digital online website that can be used on your computer or you can download its mobile app. There are certain legal requirements and written disclosures that HMR is required to make you aware of, plus there are terms and conditions that HMR needs you to agree to in order to be able to use the Portal. They are stated in the HMR Terms of Agreement, Part I (either as part of the online Rental Application or the HMR Website version) and in this HMR Terms of Agreement Part II which can be reviewed at www.HoltonMountainRentals.com under Rental Information. By giving your express written consent to them and signing up for HMR's Portal, you and HMR can communicate electronically through emails, your cellular calling number, text messages and/or internet to phone (email to email and/or email to text messages) messages, very efficiently. You can share, conveniently receive, review and sign electronic documents and contracts electronically, submit work orders from different locations, make online payments, and more.
- 2.2 ONLINE PAYMENTS:** HMR agrees to accept your payments online via the HMR Portal. You can use eCheck, Debit Cards and Credit Cards (there is an additional convenience fee for you to use Debit/Credit Cards). There are instructions on the Portal on how to make online payments. Online payments are a privilege that HMR may suspend or discontinue at any time and require that you make payment by other means acceptable to HMR.
- 2.3 ACH CHECKS:** You can use eCheck ("ACH check") to pay HMR. If your check or eCheck is returned or dishonored for any reason there will be a TWENTY-FIVE (\$25.00) dollar handling fee (bad check fee) charged to you for each time it is refused payment by any bank. Check writing is a privilege that HMR may suspend or discontinue at any time and require that you make payment by other means acceptable to HMR.

- 2.4 CREDIT AND DEBIT CARD PAYMENTS:** Debit and credit card payments can be made through the Portal. You are responsible for paying the additional fee charge when you use debit/credit cards. Once payment is made for monies you owe to HMR through the Portal Payment Service by debit, credit card or other electronic means, you agree that you will not revoke, request them to be reversed or charged back to HMR and you understand if you do so you may be in default of the Lease Contract. If a payment was made by mistake or the wrong amount was paid, contact HMR bookkeeping the next business day to get it resolved. If, however you dispute, request the charge to be reversed or it was charged back to HMR (“chargeback”), the amount of that chargeback will be considered as unpaid monies and/or rent owed (whichever is applicable) HMR from the date it was originally due. You are responsible for paying HMR the amount of the chargeback and for any late fees owed from the original date it would have been past due.
- 2.5 PARTIAL PAYMENT OF RENT:** You shall make all payments in full regardless of the type of payment. You understand and agree that acceptance by HMR of a partial payment of any monies due HMR of less than the amount stated in the Lease Contract or billed to you shall be deemed to be a partial payment. You remain obligated to pay any remaining balance due, if you made a partial payment, as soon as possible. Under no circumstances shall HMR’s acceptance of a partial payment constitute accord and satisfaction. For more details see “Partial Payments/Money Paid” (R&R, Article II, Section 53).
- 2.6 RECEIPTS:** The Lease Contract is not a receipt for monies paid. It is a statement of what is to be paid for rent, other monthly fees due HMR, additional rent, security deposit, extra rent, and other rent. HMR does not issue receipts if you pay through the online Portal. The Portal will email you a payment confirmation. For payment information and history, you can view your payment record through the online Portal. A cancelled check, debit or credit card statement can also show you have made a payment.
- 2.7 RENTAL DOCUMENT OWNERSHIP:** HMR owns the rights to HMR’s rental documents and content on the HMR Portal and the HMR Website with the exception of some parts of the online rental documents on the Portal that belong to AppFolio the Portal software provider.
- 2.8 NO MISREPRESENTATION:** You agree that all information that you provide to HMR and to AppFolio in connection with your use of the Portal and the HMR Website will be complete, correct and true. You agree not to provide false information or to misrepresent information about yourself, or your authority to use certain features of the Portal, including, but not limited to, designating bank accounts to send payments, viewing billing statements, or scheduling electronic payments. You represent and warrant that you are authorized to conduct all of your transactions or actions on the Portal and the HMR Website.
- 2.9 CORPORATION OR OTHER LEGAL ENTITY:** If you register for a corporate account on behalf of a corporation, LLC, partnership or other legal entity, you represent and agree that you are authorized to do so and that the corporation, LLC, partnership or other legal entity shall fully be responsible and liable for all actions of any of its authorized representatives in connection with its account.

Section 3. Other Terms and Conditions

- 3.1 TERMS OF AGREEMENT PART II: THIS HMR TERMS OF AGREEMENT, PART II CONTAINS ADDITIONAL TERMS AND CONDITIONS THAT ARE INCORPORATED BY REFERENCE AND ARE MADE A PART OF THE HMR TERMS OF AGREEMENT, PART I (EITHER VERSION) AS IF FULLY SET OUT WITHIN.** By giving your express written consent and signing the HMR Terms of Agreement, Part I (either as part of the online Rental Application or the HMR website version), you are giving your express written consent to this HMR Terms of Agreement, Part II. In addition, if you have given your express written consent to the HMR Terms of Agreement, Part I and Part II, they also become a part of the Lease Contract for the dwelling unit you are renting from HMR and are incorporated into the Lease Contract for it by reference. This HMR Terms of Agreement, Part II can be found under Rental Information at www.HoltonMountainRentals.com.
- 3.2 CHANGES TO TERMS AND CONDITIONS:** HMR may revise, modify, or amend and change the terms and conditions in the HMR Terms of Agreement, Part I (either as part of the online Rental Application or the HMR website version) and in this HMR Terms of Agreement, Part II documents, including the ones for cellular calling and text messaging, at any time. AppFolio, the Portal’s software provider, may also revise, modify, or amend the AppFolio Terms of Service at any time. Any such revision, modification, or amendment shall be dated and take effect when it is posted to HMR’s Website at www.HoltonMountainRentals.com and in the case of AppFolio to the Portal. You agree to review the terms and conditions in the Terms of Agreement, Part I

(either version) and Part II periodically to ensure that you are aware of any changes. When changes are made, we will change the "Last Updated" date at the top of the agreement and if material (as determined by HMR at our sole discretion), will notify you. Your continued consent to receive HMR electronic communications and electronic documents, as defined in the Terms of Agreement, Part I (either version) and Part II, including cellular calls and text messages, will indicate your acceptance of those changes.

- 3.3 TERMINATION OF ELECTRONIC COMMUNICATIONS AND ELECTRONIC DOCUMENTS:** HMR may suspend or terminate your receipt of HMR electronic communications and electronic documents, as defined herein, including cellular calls and text messages and emails, if HMR believes you are in breach of the HMR Terms of Agreement, Part I (either version) and/or Part II. Your receipt of HMR electronic communications and electronic documents is also subject to termination in the event that your mobile cellular phone service and/or email address terminates, lapses or otherwise stops working. HMR reserves the right to modify or discontinue, temporarily or permanently, all or any part of HMR electronic communications and electronic documents and access to the HMR Portal, for any reason, with or without notice to you. **HMR and/or Appfolio have the right to terminate, suspend or withdraw your access to the Portal and to electronic communications and electronic documents with HMR for any reason they feel is necessary, without affecting the remainder of an existing or future Lease Contract, and HMR WILL NOT discount, abate or prorate your rent. Use of the Portal is offered as a convenience to you and is not a right of tenancy.**

If you do not comply with the terms and conditions in the HMR Terms of Agreement, Part I and Part II and HMR does not take action right away, it shall not be deemed a continuing or further waiver of your failure to comply. Likewise, HMR's failure to enforce the terms and conditions under the HMR Terms of Agreement, Part I (either version) and the HMR Terms of Agreement, Part II shall not constitute a waiver of such term or condition.

- 3.4 SEVERABILITY:** In the event any portion of the HMR Terms of Agreement, Part I (either version) and the HMR Terms of Agreement, Part II, Privacy Policy ("Legal Documents") shall be determined to be invalid under applicable law, such provision shall be deemed void and the remainder of the said Legal Document shall continue in full force and effect.

- 3.5 RELEASE:** By participating and using the HMR Portal and HMR Website and using electronic communications and electronic documents with HMR, you agree to release and hold Us harmless from any and all liability for loss, harm, damage, injury, attorneys' fees, cost or expense whatsoever including without limitation, property damage, personal injury and death that may occur in connection with the HMR Portal and/or HMR Website and including any electronic communications and electronic documents with Us, or your use thereof, and for any claims, matters, or disputes based on violation of law or infringement or violation of any rights of any person or entity, including, without limitation, violation of publicity rights, defamation, or invasion of privacy.

- 3.6 NO WARRANTIES: THE HMR PORTAL AND HMR WEBSITE AND ANY OTHER ELECTRONIC COMMUNICATIONS AND ELECTRONIC DOCUMENTS WITH US ARE PROVIDED AS IS, WHERE IS AND WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EITHER ORAL, WRITTEN, EXPRESS, IMPLIED, OR ARISING UNDER TRADE OR CUSTOM. HMR DISCLAIMS ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND MERCHANTABILITY.**

- 3.7 LIMITATION OF LIABILITY:** In no event shall We be liable to you, or to any third party, for any losses or damages whatsoever arising out of or resulting from the use of the HMR Portal and HMR Website, electronic communications and electronic documents with Us, or your use thereof, regardless of the theory of recovery, including, without limitation, direct, indirect, compensatory, consequential, special or incidental damages, punitive damages, lost profits, attorneys fees or any damages arising out of or resulting from a regulatory or statutory violation, negligence, gross negligence, strict liability, tortious conduct, fraud or willful misconduct, breach of warranty, or breach of contract. To the extent this waiver of damage is contrary to applicable law, your or any third party's maximum recovery for any damages or losses whatsoever arising out of or resulting from use of the HMR Portal and HMR Website, and any use of other electronic communications and electronic documents with Us, or your use thereof, regardless of the theory of recovery, is ten dollars (\$10.00).

- 3.8 CLASS ACTION WAIVER:** You agree that you will not participate in any class action claims against Landlord, HMR, Build Repair, LLC (an affiliated maintenance provider for HMR), HMR's and Build Repair LLC's service providers and their representatives, agents, successors, assigns, employees, officers and directors and the Property Owner (as named on the Lease Contract of the dwelling unit you are applying to rent (or Co-Sign for)), ("Us"). You must file any claim against Us individually, and you expressly waive your ability to bring,

represent, join or otherwise maintain a class action, collective action or other similar proceeding against Us in any forum. **YOU UNDERSTAND THAT WITHOUT THIS WAIVER, YOU COULD BE A PARTY IN A CLASS ACTION LAWSUIT. BY SIGNING EITHER THE HMR WEBSITE VERSION OF THE TERMS OF AGREEMENT, PART I OR SIGNING THE ONLINE RENTAL APPLICATION VERSION WHICH INCLUDES THE HMR TERMS OF AGREEMENT, PART I AS PART OF IT, YOU ACCEPT THIS WAIVER AND CHOOSE TO HAVE ANY CLAIMS DECIDED INDIVIDUALLY. THE PROVISIONS OF THIS PARAGRAPH 3.8 OF THIS HMR TERMS OF AGREEMENT, PART II SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE HMR TERMS OF AGREEMENT, PART I (EITHER VERSION) AND THIS HMR TERMS OF AGREEMENT, PART II AND ANY LEASE CONTRACT THEY ARE A PART OF AND ANY RENEWALS OF SAID LEASE CONTRACT. THEY SHALL REMAIN IN EFFECT UNTIL THE APPLICABLE STATUTE OF LIMITATIONS HAS EXPIRED.**

3.9 ARBITRATION: All disputes, matters, or claims between you and Us arising out of or relating in any way to the HMR Portal and HMR Website including the use Electronic Communications and Electronic Documents as defined herein between you and Us or anyone acting on your or Our behalf, and regardless of the theory of liability or recovery, must be resolved solely by arbitration conducted expeditiously in accordance with the North Carolina Revised Uniform Arbitration Act [or the corresponding provision(s) of any future North Carolina (“NC”) arbitration law], an arbitrator must be acceptable to all parties and arbitration conducted in NC. In the event the parties cannot agree upon an arbitrator, the resident senior Superior Court Judge for Watauga County, NC shall be authorized to select an arbitrator. Judgement upon the award may be entered in the Superior Court for Watauga County, NC. All disputes, matters, or claims between you and Us includes, without limitation, any actual or alleged statutory or regulatory violation, equitable claim, or claim for money damages (compensatory, consequential, punitive or nominal), negligence, gross negligence, strict liability, tortious conduct, willful misconduct or fraud, breach of contract, breach of warranty, as well as all disputes, matters, or claims arising out of or relating in any way to any of the following provisions found in Sections 3.4 through Section 3.12 of this Terms of Agreement, Part II. They are: Severability, Release, No Warranties, Limitation of Liability, Arbitration, Class Action Waiver, Attorney Fees, Applicable Law, and Survival.

Notwithstanding, anything stated herein to the contrary, all arbitration provisions and terms shall apply only to claims, matters or disputes brought under the Telephone Consumer Protection Act “TCPA”, [47 U.S.C. § 227 *et seq.*], the CAN-SPAM Act OF 2003, [15 U.S. Code Chapter 103], and/or under the North Carolina Uniform Electronic Transaction Act (“UETA”), [NCGS Chapter 66 Article 40, §§ 66-311 through 66-339] or any other statute, regulation, or legal or equitable theory regarding electronic communications and electronic documents as described herein. Arbitration shall not apply to actions brought by Us for summary ejection, recovery of monies owed, or for other violations brought by you or Us of the terms and conditions of the Lease Contract that do not concern the use Electronic Communications and Electronic Documents or that do not involve the laws and regulations cited above.

THIS PROVISION MUST BE CONSTRUED IN ACCORDANCE WITH, AND THE ARBITRATION MUST BE GOVERNED BY, THE NC REVISED UNIFORM ARBITRATION ACT AND CONDUCTED IN NC. ANY JUDGMENT UPON THE DECISION RENDERED BY THE ARBITRATOR MAY BE ENTERED BY ANY COURT HAVING JURISDICTION. UNLESS OTHERWISE REQUIRED BY LAW, THE ARBITRATOR IS PROHIBITED FROM AWARDING DAMAGES IN EXCESS OF THE LIMITATIONS SET FORTH IN THESE HMR TERMS OF AGREEMENT, PART II.

ARBITRATION PROCEEDINGS MAY BE COMMENCED BY EITHER PARTY TO THIS AGREEMENT BY DELIVERING TO THE OTHER PARTY A WRITTEN NOTICE IN ACCORDANCE WITH THE NC REVISED UNIFORM ARBITRATION ACT. ANY ARBITRATION HEARING SHALL BE HELD IN WATUAGA COUNTY, NC, UNLESS THE PARTIES TO THE DISPUTE AGREE OTHERWISE. ANY JUDGMENT RENDERED BY ARBITRATION SHALL BE FINAL AND BINDING ON THE PARTIES, AND MAY BE ENTERED IN THE SUPERIOR COURT FOR WATAUGA COUNTY, NC. NOTWITHSTANDING ANY NC REVISED UNIFORM ARBITRATION ACT RULES TO THE CONTRARY, THE AWARD OF THE ARBITRATOR MUST BE MADE NO LATER THAN THREE (3) MONTHS FOLLOWING THE DATE ON WHICH THE ARBITRATOR IS APPOINTED, UNLESS THE ISSUE IS THE SUBJECT OF LITIGATION BROUGHT BY A THIRD PARTY AND THE ARBITRATOR DEEMS IT APPROPRIATE TO DEFER ITS AWARD UNTIL THE LITIGATION IS RESOLVED.

The resolution of any claims, matters, or disputes must proceed solely on an individual basis without the right for any claims, matters, or disputes to proceed on a class action or collective basis or on bases

involving claims, matters, or disputes brought in a purported representative capacity on behalf of others. The arbitrator's authority to resolve and make written awards is limited to claims, matters, and disputes between you and Us alone. Claims, matters, or disputes may not be joined or consolidated unless agreed to in writing by all parties. No arbitration award or decision will have any preclusive effect as to issues, claims, matters, or disputes with anyone who is not a named party to the arbitration.

3.10 ATTORNEY FEES: In the event of any claim, matter, or dispute between you and Us arising out of or relating in any way to the Legal Documents, HMR Portal and HMR Website, electronic communications and electronic documents between you and Us or anyone acting on your behalf or behalf of Us, the prevailing party shall be awarded all costs of bringing or defending the claim, matter, or dispute, including, without limitation, reasonable attorneys' fees and the ordinary costs and expenses incurred in resolving the claim, matter, or dispute, including, without limitation, all arbitration related fees and expenses.

3.11 APPLICABLE LAW: The law of the State of **North Carolina** including its statutes of limitations and without reference to any conflict of legal principles, shall be applied to any claim, matter, or dispute between you and Us when governing, construing, or enforcing and arising out of or relating in any way to the HMR Portal (regarding Us) and HMR Website, the Legal documents, the use Electronic Communications and Electronic Documents as defined herein between you and Us or anyone acting on your or Our behalf, or any of the rights, duties, or obligations of the parties arising from or relating in any way to the subject matter of these the Legal Documents, electronic communications and electronic documents between you and Us, and the laws and regulations cited above in "Arbitration" (Terms of Agreement, Part II, Section 3.9, paragraph 2).

3.12 SURVIVAL: By giving your express written consent to the Terms of Agreement, Part I (either version) and this Terms of Agreement, Part II (which is incorporated and made a part of the Terms of Agreement, Part I (either version) by reference), you agree that all provisions in Sections 3.4 through 3.12 of this Terms of Agreement, Part II regarding Severability, Release, No Warranties, Limitation of Liability, Class Action Waiver, Arbitration, Attorney Fees, Applicable Law, and Survival shall survive the termination of any or all of the Legal Documents. They shall remain in effect until the applicable statute of limitations has expired.

You have given your express consent if you have signed the Lease Contract for the dwelling unit you are renting from HMR or signed any other rental documents where you gave your express consent. Express consent is a more limited type of electronic communications between you and Us using email or cellular calls for transactional and informational purposes. You agree that all provisions in Sections 3.4 through 3.12 of this Terms of Agreement, Part II regarding Severability, Release, No Warranties, Limitation of Liability, Class Action Waiver, Arbitration, Attorney Fees, Applicable Law, and Survival are incorporated in the express consent definition by reference and have been made a part of it. These provisions shall survive the termination of any Lease Contract and/or any other rental documents that you signed giving your express consent. They shall remain in effect until the applicable statute of limitations has expired.

All other provisions in the Legal Documents shall apply from the date you sign the online Rental Application (with the Terms of Agreement, Part I, a part) or the separate HMR Website version of the Terms of Agreement, Part I, and they shall continue to apply once you become a Tenant and shall survive for 12 months past the end date of your Lease Contract and any renewals of it, or if is terminated early, 12 months from the Lease Contract termination date. This gives you and Us time to complete the rental process after move-out, if there are any issues that still need to be resolved (hopefully, there will be none). If you submit your Pre-leasing form, Pre-leasing Application, online Rental Application and you are declined by HMR or you decline to rent from HMR ("decline date"), all other provisions shall survive 12 months from that date.

During this 12-month period that all other provisions survive including the provisions that give you and Us the right to use electronic communications and electronic documents with each other and to use the HMR online Portal and HMR website for the 12 months after the end date, termination date, decline date of the online Rental Application, Lease Contract (including any renewals) and as stated in the Terms of Agreement, Part I (either version) and this Terms of Agreement, Part II.

If you withdraw your consent to use the Portal and the use of electronic communications and electronic documents with Us in the manner as allowed in Sections 1-4 of the Terms of Agreement, Part I (either as part of the online Rental Application or the HMR Website version) or HMR terminates your access to the Portal and the use of electronic communications and electronic documents with you, all provisions in Sections 3.4 through 3.12 of this Terms of Agreement, Part II regarding: Severability, Release, No Warranties, Limitation of Liability, Arbitration, Class Action Waiver, Attorney Fees, Applicable Law, Survival, shall survive your withdrawal or HMR's termination of your use, and remain in effect until the applicable statute of limitations has expired. All

other provisions shall terminate as soon as HMR terminates your access either after receiving your withdrawal request or notifying you it is terminating your access.

If you have any questions regarding the Terms of Agreement, Part I or Part II you may contact us using the contact information below.

HOLTON MOUNTAIN RENTALS

Mail: PO Box 3075 Boone, NC 28607 Office: 480 Highway 105 Extension Boone, NC 28607
Phone: 828-264-3644 Fax: 828-264-3725 email: Info@HoltonMountainRentals.com