

**LAS BRISAS ASSOCIATION
CABANA USE AGREEMENT**

This Agreement is made on _____, at Santa Clara, California, between Las Brisas Association (hereinafter, "Association") and _____ (Resident/Owner, hereinafter "Member").

License

1. Association grants to Member a revocable license for use of the Cabana in the Las Brisas condominium project, pursuant to its authority under the Declaration of Covenants, Conditions and Restrictions of Las Brisas recorded July 21, 1982. The license is for the period (state hours of use) _____. The reservation of the Cabana does not include the tennis court, pool, spa, or courtyard area.

The Member's responsibility begins upon signing this Agreement, receipt of the Cabana checklist, and ends at the conclusion of a walk-through inspection of the Cabana, subject to any liabilities created during the term of the Agreement.

Consideration

2. Member agrees to pay \$1.00 to Association as consideration for the license.

Security Deposit

3. Member has deposited a Three Hundred Dollar (\$300) refundable security deposit, a Twenty Dollar (\$20) non-refundable service fee with Association, plus a Thirty Dollar (\$30) non-refundable fee made payable to the Association. Association may use any amounts from that deposit that are reasonably necessary to remedy Association's defaults under this Agreement, including the repair of damages caused by Member. The security deposit will be mailed to Member at Member's last known address within fourteen (14) days after usage of the Cabana, less any sums applied to damages. The \$300 security deposit may be applied by Association to remedy any defaults of Member.

Use of Cabana

4. Member shall strictly comply with each of the following rules pertaining to the use of the Cabana:

a). Member must use the Cabana solely for the purpose stated in the application. Member may not cause or permit any nuisance or other condition or act that may interfere with the quiet enjoyment of any resident.

b). The Member must be with his/her guests at all times when they are in the Cabana. Children are not permitted without parental supervision.

c). All lights, heaters, and appliances must be turned off after use and the Cabana, including windows and sliding glass doors, must be locked when finished.

- d). Maximum occupancy of the Cabana is seventy-five (75) people.
- e). The Cabana hours are 8:00 a.m. to 9:30 p.m. Monday through Thursday, and until 10:30 p.m. on Friday and Saturday. Reservations are for no longer than six hours and these times include set up and clean up. No reservations will be taken on Sundays.
- f). No pets are allowed in the Cabana at any time.
- g). No wet bathing suits are allowed in the Cabana.
- h). Undue noise or amplified music is not allowed.
- i). Member may not sell liquor.
- j). The Member assumes responsibility for maintaining clean conditions in the Cabana and is responsible for disposing of his/her trash in the appropriate parking lot garbage dumpster.
- k). Member may not charge fees or accept donations for any function held in the Cabana.
- l). The Member assumes full responsibility for the Cabana furniture and equipment (see Cabana checklist). The Member is responsible for returning all items in the same condition in which they were received. The Member will be charged for any repairs or replacements necessary after the use of the Cabana.
- m). The cleaning or repair charge incurred by the Association shall be deducted from the Member's deposit and should said deposit not cover all charges incurred, Member shall, immediately upon receipt of an invoice, pay all additional amounts due. All unexpended portions of the Member's deposit shall be returned to the Member.
- n). Any major repair work or cleaning required would be accomplished by contractors under the supervision of the Association's management company or their designated agent and charges for such repair and cleaning will be billed to the Member responsible for the Cabana. If the security deposit is not large enough to cover these costs, the Board of Directors or management company will notify the Member of the required repair and/or cleaning and the subsequent charges.
- o). If two events are scheduled on the same weekend, and the Member who uses the Cabana first does not clean up adequately causing the latter Member to have to clean up prior to his/her event, there will be an automatic assessment of \$50 made from the deposit of the first Member. This sum will be given to the second Member for the inconvenience of having to clean up after the earlier event. The decision regarding this assessment will be made by the management company or the Association representative responsible for the walk-through.
- p). The refundable security deposit will be returned, provided the Cabana is returned in the same condition as reserved following a joint walk-through of the facilities with an authorized agent of the Association at a time (check-out time) previously agreed to by both.

Sublease or Assignment

5. Member may not assign this Agreement, sublease all or any part of the Cabana, or permit any other person to occupy or use all or any part of the Cabana without the prior written consent of Association.

Risk of Loss

6. Member bears all risk of loss or damage to any property stored in the Cabana. Association will not provide insurance for any property of Member or his guest(s) in the Cabana and is not responsible for any damage to or loss of the property, whether caused by fire, water, earthquake, theft, or any other risk.

Insurance

7. Member shall furnish Association a policy of liability insurance in the minimum sum of \$1,000,000, in form satisfactory to Association, and naming Association as an additional insured for the period of use referred to in Paragraph 1 of this Agreement. Said insurance shall provide that member's insurance is primary to that of the Association. The Cabana shall not be available to Member or Member's agents until proper evidence of such insurance has been furnished to Association.

Entry for Maintenance and Inspection

8. Association is entitled to enter into the Cabana at any reasonable time and for any reasonable purpose, including but not limited to maintenance of the premises and the surrounding premises, inspection by governmental agencies, and determining whether Member is conforming to the terms of this Agreement and all applicable laws.

Indemnification

9. To the fullest extent permitted by law, Member shall indemnify, defend and hold harmless Association, its Board of Directors, and officers, agents and members of Association, from and against any liability, suits, actions, causes of action, claims, damages, losses or expenses, including but not limited to attorneys' fees (collectively "claims"), which arise from or relate to the use of the Cabana by Member, his family members, tenants and guests, excepting only any such claims arising out of the sole negligence or willful misconduct of an indemnitee. Member further agrees to voluntarily release, discharge, waive and relinquish any and all actions or causes of action for personal injury, property damage or wrongful death arising as a result of said activities. Member and Member's heirs, executors, administrators and assigns hereby release, waive, discharge and relinquish any action or causes of action, which may hereafter arise for Member and for Member's estate, and agree that under no circumstances will Member or Member's executors, administrators and assigns prosecute, present any claim for personal injury, property damage or wrongful death against Association or any of its officers, directors, agents or employees, for any of said causes of action, whether the same shall arise by the negligence of any of said persons, or otherwise. It is the intention of Member to exempt Association, its officers and directors from liability for personal injury, property damage or wrongful death caused by negligence.

Termination for Breach of Agreement

10. The failure of Member to comply with any term or condition contained in this Agreement or the Association Rules constitutes a breach of this Agreement. In the event that Member breaches this Agreement by failing to comply with any term or condition, Association may, at Association's sole option, immediately terminate this Agreement. The waiver by Association of Member's breach of any term or condition of this Agreement does not constitute a waiver of any subsequent breach.

Should Member violate any of the terms of this Agreement or any of the rules and regulations governing the use of the Cabana as specified in the CC&Rs, Member shall lose the security deposit and (following noticed hearing and an opportunity to be heard) shall be denied the use of the Cabana for up to twelve (12) months. In addition, Member shall be subject to such other discipline as provided in the Declaration of Covenants, Conditions and Restrictions for Las Brisas.

Rights of Association on Expiration of License

11. On expiration of this Agreement, Association may, at Association's option, enter the Cabana and remove all personal property; clean and repair the Cabana, at Member's expense, if necessary, and exercise any and all rights otherwise available. Association's remedies as specified in this Agreement are in addition to, and not in lieu of, any other legal or equitable relief to which Association would otherwise be entitled.

Notices

12. All notices required or permitted to be given under this Agreement must be personally served or mailed by certified United States mail, return receipt requested, postage prepaid, to the parties at their addresses stated in Paragraph 21, below, or any other address subsequently furnished in writing to the other party.

Both parties are entitled to rely on the currency of the addresses set forth in Paragraph 21, below, unless notified otherwise in writing. Any notice mailed in accordance with this Paragraph will conclusively be presumed to have been received within two (2) business days after mailing.

Attorneys' Fees

13. If any action is instituted in a court to enforce this Agreement or any provision of this Agreement, the prevailing party is entitled to recover reasonable attorneys' fees and all costs of suit from the other party, in addition to any other relief to which the prevailing party may be entitled.

Nonwaiver

14. Failure of either party to enforce any provision of this Agreement is not construed as a waiver of that provision or of either party's right to enforce that provision or any other provision of this Agreement.

Severability

15. If any term of this agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of this Agreement remains in full force and effect.

Effect on Heirs and Assigns

16. This Agreement is binding on and inures to the benefit of the heirs, executors, administrators, successors and assigns of Association and Member.

Time of the Essence

17. Time is of the essence of this Agreement.

Entire Agreement

18. This Agreement contains the entire agreement between Association and Member with respect to the subject matter of this Agreement. Any prior agreements, promises, or negotiations, whether oral or written, that are not expressly set forth in this Agreement are of no force or effect.

Modification

19. This Agreement can be modified only by a writing signed by both Association and Member. Any purported oral modification of the terms of this Agreement is of no force or effect.

Governing Law

20. This Agreement is governed by and construed in accordance with the laws of the State of California.

Addresses

21. The mailing addresses of the parties are as follows:

Association:
Las Brisas Association
c/o The Masters Group
P.O. Box 20094
San Jose, California 95160

Member:

_____ [Name]

_____ [Street Address]

_____ [city, state, and zip Code]

Date: _____

MEMBER:

_____ [type name]

ASSOCIATION:

By: _____ [signature]

Las Brisas Association