

LUTHER BURBANK ART & GARDEN CENTER FACILITY LICENSE AGREEMENT

This License Agreement is made by and between Luther Burbank Art & Garden Center, Inc., Owner, and the License Holder identified in the Basic Terms that follow and pertains to the use of the Facility known as 2050 Yulupa Avenue in Santa Rosa, California for the single event described below.

1. Basic Terms:

Renter/License Holder:

Name: _____

Address: _____

Phone: _____

Email: _____

Owner:

Name: Luther Burbank Art & Garden Center, Inc.
Patty Gundry, Managing Agent

Phone: (707) 577-7334 message/(707) 280-2143 cell

Address: 2050 Yulupa Avenue
Santa Rosa, CA 95405

Email: lbagc@yahoo.com

Event Details:

Date of Event: _____

Rental Begins: _____ Rental Ends: _____

Description of Event: _____

Estimated Number of Guests: _____

License/Rental Fees:

Facility License Fee: \$_____ (50% is a *non-refundable License Fee Deposit*)

Optional Cleaning Fee: \$_____

Optional Setup Fee: \$_____

Total License Fee: \$_____

Security Deposits:

Cleaning/Damage, Refundable: \$_____

Overtime Deposit, Refundable: \$_____

Total Security Deposit: \$_____

Deadlines:

One half (50%) of the Facility License Fee is due upon signing of this Agreement as a *non-refundable License Fee Deposit* to reserve the date for the Event.

The balance of the Total License Fee in addition to the Total Security Deposit must be received by Owner no fewer than sixty (60) days prior to the Date of Event. The Total License Fee and Total Security Deposit are due upon signing this Agreement if fewer than sixty (60) days remain until the Date of Event.

The Certificate of Insurance and Additional Insured Endorsement or any request to reschedule the Event must be received by Owner no fewer than thirty (30) days prior to the Date of Event.

2. Grant of License

Upon the timely payment of all amounts due from License Holder and full compliance with all other obligations set forth in this Agreement, Owner grants to License Holder an exclusive license, subject to the conditions and restrictions contained herein, to use the Facility for the sole purpose of holding the Event described in the Basic Terms. This Agreement does not allow the Event to be opened to the general public.

For the purposes of this Agreement, the Facility shall comprise the Luther Burbank Art & Garden Center building, including the hall, restrooms, and kitchen, and its patio, common areas, and parking lot.

3. Fees

The License Holder shall pay to Owner the fees in the amounts and at the times specified in the Basic Terms. A non-refundable License Fee Deposit equal to one half (50%) of the Facility License Fee is payable upon execution of this Agreement. The Facility shall be reserved for the Event as soon as Owner receives (1) an original of this Agreement document signed by License Holder and Owner and (2) the non-refundable License Fee Deposit. If an Optional Cleaning Fee is paid, then License Holder shall not be responsible for any reasonable cleaning required of the Facility after the Event.

4. Damage and Overtime Security Deposits:

License Holder agrees to pay a Damage Security Deposit in the amount specified in the Basic Terms no later than the date for payment specified in the Basic Terms. If License Holder fails to pay any amount when due under this Agreement, or License Holder or its contractors, subcontractors, vendors, agents, volunteers, or guests cause damage to the Facility or its contents, or License Holder defaults with regard to any provision of this Agreement, Owner, at its sole discretion, may apply or retain all or any portion of the Damage Deposit for the payment of any delinquent amount, or to compensate Owner for any loss or damage.

License Holder agrees to pay an Overtime Security Deposit in the amount specified in the Basic Terms no later than the date for payment specified in the Basic Terms.

Events are not to exceed nine (9) hours nor continue beyond 11:00 p.m., including the time needed for removal of License Holder's belongings and clean up if performed by License Holder. Overtime fees are charged at the rate of \$150 per hour, or portion thereof, for time over nine (9) hours and \$200 per hour for time after 11:00 p.m. These fees are cumulative, so an event lasting more than nine (9) hours and going past 11:00 p.m. would incur an overtime fee at the rate of \$350 per hour. If, by agreement, no Overtime Security Deposit is taken, Owner may apply all or any portion of the Damage Security Deposit to cover any overtime charges.

5. Rescheduling:

Subject to availability, License Holder may reschedule the Event to another date that falls within six (6) months of the original Event Date provided that License Holder notifies Owner of its request for rescheduling no later than thirty (30) days prior to the initially scheduled Event Date. If License Holder so reschedules the Event, the License Fees and Security Deposits already paid to Owner will be applied to the rescheduled Event.

6. Default by License Holder:

If License Holder fails to pay the required License Fees, Security Deposit, or other amount when due, or fails to furnish evidence of required insurance by the deadline specified in the Basic Terms, or otherwise fails to perform any obligation under this agreement, Owner may, without liability to or recourse by the Certificate Holder, terminate this Agreement and License Holder's right to use the Facility.

7. Cancellation:

If Owner terminates this Agreement for any reason other than a default by License Holder, Owner shall refund the License Fee Deposit, the License Fee, the Damage and Overtime Security Deposits and all other payments made by License Holder within thirty (30) days of such cancellation and Owner shall have no further liability to License Holder. If License Holder cancels the Event and is unable or unwilling to reschedule the Event as set forth above, or if Owner terminates this Agreement due to the default of License Holder, Owner shall be entitled to retain the License Fee Deposit as liquidated damages. License Holder and Owner expressly agree that such amount is not a penalty, but a reasonable sum given that it is impractical or extremely difficult to establish the actual amount of damages Owner would suffer in the event of any such default of this Agreement by License Holder.

8. Insurance:

License Holder shall, at its own expense, secure and deliver to Owner no fewer than thirty (30) days prior to the Event and shall keep in force for the duration of the Event, including set-up and clean-up, a Certificate of Insurance which includes coverage of general liability with limits of not less than \$1,000,000 per occurrence and fire damage with limits not less than \$1,000,000.

License Holder's insurance shall (1) be primary to any other insurance available to the additional insureds with respect to claims covered under the policy and shall apply separately to each insured against whom a claim is made or suit is brought, (2) include coverage of independent contractors, (3) be written on an occurrence basis and (4) include a thirty (30) day cancellation clause.

License Holder shall submit to Owner by the deadline specified in the Basic Terms an original policy or Certificate of Insurance with Additional Insured Endorsement naming as additional insureds as follows:

Luther Burbank Art & Garden Center, Inc., its Executive Board and Board of Managers, its Managing Agent, and their respective officers, members, agents, employees, and contractors.

9. Indemnity:

To the maximum extent permitted by law, License Holder shall, at its sole cost and expense, indemnify and hold harmless Owner and Owner's Managing Agent from and against all claims, losses, costs, fines, penalties, damages, consequential damages, expenses (including reasonable attorney fees), liabilities, actions and causes of action of any kind (including injury to or death of any person or loss of, injury or damage to, or destruction of any property) arising out of or relating directly or indirectly to (1) the condition of the Facility, (2) the use or manner of use of the Facility by License Holder and its contractors, subcontractors, vendors, agents, volunteers, or guests, including the service of alcoholic beverages, (3) any act, omission, negligence, or fault of the License Holder, its contractors and guests in, on, or about the Facility, or (4) the failure of License Holder to comply with, or to cause it contractors, subcontractors, vendors, agents, volunteers, or guests to comply with, any applicable law, ordinance, regulation, license or permit, or any provision of this Agreement.

10. Waiver of Claims:

To the maximum extent permitted by law, License Holder, on its own behalf and on behalf of its agents, contractors, subcontractors, vendors, agents, volunteers, and guests, waives all claims against Owner and Owner's Managing Agent arising out of, and assumes the risk of (1) injury to or death of any person or (2) loss of, injury or damage to, or destruction of any property in, on, or about the Facility. In no event shall Owner or Owner's Managing Agent be liable for any consequential damages suffered by License Holder.

The foregoing waiver, indemnification, and defense obligations shall survive the expiration or termination of this Agreement and shall apply without regard to the active or passive negligence of Owner, but shall not extend to injury or damages caused by the willful misconduct of Owner.

11. Compliance with Laws:

License Holder shall be fully responsible for identifying and complying with, and causing its contractors and guests to comply with, all laws, ordinances, and regulations relating to its use of the Facility, including Fire Department regulations, event permits, and licenses. License Holder agrees that it, along with its contractors and vendors, shall make no claim whatsoever against Owner for any consequences that may result from failure to obtain or comply with such permits or licenses.

12. Warranties:

The Facility is air conditioned and heated. The Facility kitchen is equipped with two (2) gas ranges, two (2) refrigerators, a microwave, and two (2) coffee makers with a third for hot water. Other equipment included in this Agreement for use by the License Holder during the Event include 130 folding chairs, 3 eight-foot long (96" x 30") table, 14 six-foot long (72" x 30") tables and 14 rounds (60" diameter) that seat 6-8 people.

License Holder agrees that it has inspected the Facility and agrees to accept it "as is." Owner makes no representations nor warranties with regard to the condition of the Facility or its suitability for the event or that it fully complies with ADA standards.

13. Decorations:

License Holder's plans for decorating the Facility must be approved in advance by Owner's Managing Agent. Use of free-floating balloons, confetti and silly string is not allowed. Neither balloons nor decorations may be attached to the trees. Only Blue 3M tape may be used inside, but no pins, tacks, or staples may be used to attach decorations to the interior or exterior walls. Hooks are provided to hang decorations from the ceiling and ladders for decorating are located in the storeroom. Decorations must be flameproof and no fog machines are allowed.

Use of birdseed outside is permitted. No rice, glitter, or confetti may be thrown either inside or outside of the Facility.

14. Prohibitions:

No smoking is allowed anywhere within the Facility building or in the Patio area. The carrying of firearms or weapons of any kind anywhere upon the premises is strictly prohibited.

15. Alcoholic Beverages:

Distilled spirits are not allowed. Service of wine, sparkling wine, and beer is permitted, but keg beer must be served in the courtyard only. License Holder agrees to comply with all applicable local, state, and federal ordinances, statutes, laws, and regulations pertaining to the service of such beverages. In accordance with law, Owner forbids the service of alcohol to anyone under the age of twenty-one. The sobriety of all guests is the sole responsibility of License Holder.

16. Music:

Bands and amplified recorded music are allowed provided the volume is low enough that the neighbors are not disturbed. If the music can be heard from the north or south property lines, it is too loud. Closing the doors helps to contain the volume level. **All music must end by 10:00 p.m.** If the Managing Agent, at his sole discretion, deems it necessary to contact local law enforcement to ensure the safety or security of the Facility or to prevent any disturbance of the neighbors, the License Holder will automatically forfeit the full amount of the Total Security Deposit.

17. Cleaning:

Unless License Holder is paying a Cleaning Fee, it is the responsibility of License Holder to remove all decorations, personal property, trash, and debris from the Facility before the license period is scheduled to end, to clean all kitchen surfaces used, and to return the Facility to Owner in the same clean condition the Facility was in upon License Holder's arrival for the Event. See the Closing the Center procedures page.

18. Transfer of Rights:

This Agreement is for the sole benefit of License Holder and may not be sold, transferred, or assigned any other party without the prior written consent of Owner.

19. Unenforceability:

If any provision of this Agreement shall be held to be unenforceable or invalid for any reason, it shall be adjusted, rather than voided, in order to achieve the intent of the parties to the fullest extent possible.

20. Legal Fees:

In any action or proceeding in a court of law between any of the parties to this Agreement, the prevailing party shall be entitled to all reasonable attorney fees and all reasonable litigation expenses.

21. Force Majeure:

If it is illegal or impractical for Owner to provide the Facility or services for the Event due to fire, earthquake, strike or other labor disturbance, threat to public safety, governmental restrictions, or any other circumstances beyond Owner's reasonable control, Owner may terminate this Agreement without liability to License Holder. In such event, Owner will be refunded any and all fees that have already been received.

22. Entire Agreement:

This Agreement shall constitute the entire agreement of the parties and shall supersede any other agreements that may exist between the parties as of the date of execution. Any modifications to this Agreement must be made by written amendment signed by both parties.

23. Governing Law:

This Agreement is governed by the laws of the State of California.

24. Notices:

All notices required or permitted under this Agreement shall be in writing and shall be deemed effectively given (1) upon personal delivery to the party to be notified, (2) when sent, if sent by electronic mail and sent during normal business hours or, if not, then on the next business day, (3) five calendar days after having been sent by certified mail, return receipt requested, postage prepaid, or (4) one business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to Owner or License Holder, as applicable, at the respective addresses specified in the Basic Terms or at such other address as either party may later designate.

25. Declaration:

Luther Burbank Art & Garden Center, Inc. does not discriminate on the basis of gender, race, religious opinion, age, national origin, ancestry, creed or sexual orientation. It does, however, reserve the right to decline any event.

* * *

By signing below, License Holder confirms that it has read and agrees to the terms and conditions of this Agreement.

Reenterer/License Holder:

Signature: _____

Printed Name: _____

Date: _____

Owner:

Signature: _____

Printed Name: Luther Burbank Art & Garden Center, Inc.
Patty Gundry, Managing Agent

Date: _____

