

Garden Communities Bike Share Rental Agreement

Table of Contents

- I. Fees.
 - Section 1 Hourly Rental Rate.
 - Section 2 Lost or Damaged Bicycles.
 - Section 3: Lost or Damaged BikeLink Cards
 - Section 4: Credit/Debit Card Matters.
- II. Releases; Disclaimers; Limited Liability; Assumption of Risk.
 - Section 5 Releases.
 - Section 6 DISCLAIMERS.
 - Section 7 LIMITED LIABILITY.
 - Section 8 Assumption of Risk by User.
- III. Directions and Additional Terms of Use.
 - Section 9 Activation of User Key.
 - Section 10 Lost or Stolen Bicycle.
 - Section 11 Helmets; Safety.
 - Section 12 Prohibited Acts.
 - Section 13 Additional Terms of Use.
 - Section 14 Limitations on Availability of Service.
- IV. Miscellaneous.
 - Section 15 Term and Termination.
 - Section 16 Confidentiality of Information.
 - Section 17 Notice.
 - Section 18 Choice of Law; Dispute Resolution.
 - Section 19 Waiver.
 - Section 20 Cumulative Remedies.
 - Section 21 Final Agreement; Modification by Garden Communities.
 - Section 22 Contract Interpretation.

In consideration of your use of any of the Garden Communities Bike Share Service, as defined below, Garden Communities, INC. ("Garden Communities") requires that you ("User", "You", or "Your") agree to all terms and conditions in this Bicycle Rental Agreement ("Agreement"). The "Service" is composed electronic bike lockers ("eLockers"), which vend Bike Share bicycles, the Garden Communities Bike Share bicycles, and all related equipment, personnel, and information.

I. Fees.

Section 1 Hourly Rental Rate. All Users are subject to hourly rental fees. The hourly fees are subject to change and are set forth in the chart below.

less than 6 hours	\$0.50 per hour*
6 to 24 hours	\$1.50 per hour*
more than 24 hours	up to \$1000

* by the minute in full cent increments

Section 2 Lost or Damaged Bicycles. Use of the Service is limited to a period of less than 24 consecutive hours. If the Garden Communities Bike Share bicycle is not returned to an eLocker within a period of 24 consecutive hours, then User will be charged a fee of \$1,000. The Garden Communities Bike Share bicycle must be returned by User in the same condition in which it was rented. If the Garden Communities Bike Share bicycle is returned to an eLocker damaged or in a state of disrepair, then User will be charged a fee that is equal to the cost of repair. Such fees may be charged as soon as 24 hours after the Garden Communities Bike Share bicycle is not returned or is returned in a damaged state. BikeLink will attempt to contact User via telephone and email before charging the User's credit or debit card on behalf of Garden Communities, by using the contact information provided by User when registering to use the Service.

Section 3: Lost or Damaged BikeLink Cards Loss or theft of a card should be reported to BikeLink immediately by calling 1-888-540-0546, emailing support@bikelink.org or contacting BikeLink through www.BikeLink.org. While the value on the card never expires, if you lose your card the value is also lost. The value is stored on the card itself, not on a network. If User's BikeLink card has been lost or damaged, a new card may be ordered online, over the phone or picked up from a local vendor.

Section 4: Credit/Debit Card Matters. You must input a valid Visa or MasterCard credit or debit card number and expiration date before You will be registered to use the Service. You represent and warrant that You are authorized to use the card. You authorize BikeLink and Garden Communities to charge Your card for all fees incurred by You. If You dispute any charge on Your credit or debit card account, then You must contact BikeLink within 10 days of receipt of Your statement containing the disputed charge. You agree to immediately inform Garden Communities of all changes relating to Your card. If your credit or debit card on file expires or is otherwise invalid, your access to the System may be suspended or revoked.

II. Releases; Disclaimers; Limited Liability; Assumption of Risk.

Section 5 Releases. "Claims" means, collectively, any and all claims, injuries, demands, liabilities, disputes, causes of action (including statutory, contract, negligence, or other tort theories), proceedings, obligations, debts, liens, fines, charges, penalties, contracts, promises, costs, expenses (including attorneys' fees, whether incurred at trial, on appeal, or otherwise), damages (including consequential, compensatory, or punitive damages), or losses (whether known, unknown, asserted, unasserted, fixed, conditional, or contingent) that arise from or relate to any of the Service, including, without limitation, User's use of any of the Service and further including any of/use of the foregoing by a third party (including a minor) using a bicycle rented by the User or authorized by User to use the Service and/or utilize User's credit or debit card or Usership to rent bicycles. In exchange for being allowed to use the Service, User hereby (i) waives any Claims against and fully and forever releases and discharges Garden Communities, BikeLink and all of their owners, officers, directors, affiliates, employees, agents, representatives, successors, and assigns (collectively, "Garden Communities and its Related Parties" and "BikeLink and its Related Parties") and any municipality with any part of the Services within their jurisdiction and all of its elected and appointed officers, officials, employees, and agents (collectively, the "Municipalities") from all Claims that User has or may have against Garden Communities and/or BikeLink and their Related Parties and/or the Municipalities, except for Claims caused by Garden Communities' gross negligence or willful misconduct, and (ii) agrees to indemnify and hold harmless Garden Communities and its Related Parties, BikeLink and its Related Parties, and the Municipalities from and against all Claims, except for Claims caused by Garden Communities' gross negligence or willful misconduct. Such releases are intended to be general and complete releases of all Claims. Garden Communities and its Related Parties, BikeLink and its Related Parties, and the Municipalities may plead such releases as a complete and sufficient defense to any Claim, as intended third beneficiaries of such releases. User agrees that the forgoing terms and conditions of this Section 5 shall be binding upon all of User's agents, affiliates, representatives, successors, heirs, and assigns.

Section 6 DISCLAIMERS. YOU ACKNOWLEDGE AND AGREE THAT YOUR USE OF ANY OF THE SERVICE IS AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, GARDEN COMMUNITIES AND ITS RELATED PARTIES, BIKELINK AND ITS RELATED PARTIES DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY OF THE SERVICE, WHICH ARE ALL PROVIDED "AS IS" AND "AS AVAILABLE" (AND YOU RELY ON THEM SOLELY AT YOUR OWN RISK). NONE OF GARDEN COMMUNITIES AND ITS RELATED PARTIES OR BIKELINK AND ITS RELATED PARTIES REPRESENT OR WARRANT THAT ANY OF THE SERVICE WILL BE IN GOOD REPAIR OR ERROR-FREE, AND DELAYS, OMISSIONS, INTERRUPTIONS, OR INACCURACIES COULD EXIST IN ANY OF THE SERVICE. YOU ASSUME FULL RESPONSIBILITY AND RISK OF LOSS FOR USING ANY OF THE SERVICE, AND NONE OF GARDEN COMMUNITIES AND ITS RELATED PARTIES AND/OR BIKELINK AND ITS RELATED PARTIES ARE LIABLE FOR ANY CLAIM ATTRIBUTABLE TO ANY OF THE FOREGOING. YOU ASSUME FULL RESPONSIBILITY AND LIABILITY FOR ALL CONSEQUENCES, CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, LIABILITIES, DAMAGES, INJURIES, COSTS, EXPENSES, PENALTIES, ATTORNEYS' FEES, JUDGMENTS, SUITS, OR DISBURSEMENTS OF ANY KIND OR NATURE WHATSOEVER RELATED TO YOUR STOLEN OR LOST BICYCLE OR SYSTEM ACCESS CARD.

Section 7 LIMITED LIABILITY. YOU ACKNOWLEDGE AND AGREE THAT NONE OF GARDEN COMMUNITIES AND ITS RELATED PARTIES, BIKELINK AND ITS RELATED PARTIES AND/OR THE MUNICIPALITIES ARE RESPONSIBLE OR LIABLE FOR ANY CLAIM, INCLUDING THOSE THAT ARISE OUT OF OR RELATE TO (A) ANY RISK, DANGER, OR HAZARD DESCRIBED IN THIS AGREEMENT, (B) YOUR USE OF, OR INABILITY TO USE, ANY OF THE SERVICE, (C) YOUR BREACH OF THIS AGREEMENT OR YOUR VIOLATION OF ANY LAW, (D) ANY NEGLIGENCE, MISCONDUCT, OR OTHER ACTION OR INACTION BY YOU, (E) YOUR FAILURE TO WEAR A BICYCLE HELMET WHILE USING A GARDEN COMMUNITIES BIKE SHARE BICYCLE, OR (F) ANY NEGLIGENCE, MISCONDUCT, OR OTHER ACTION OR INACTION OF ANY THIRD PARTY. YOU HEREBY WAIVE ALL CLAIMS WITH RESPECT TO ANY OF THE FOREGOING, INCLUDING THOSE BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTORY, OR OTHER GROUNDS, EVEN IF ANY OF GARDEN COMMUNITIES AND ITS RELATED PARTIES AND/OR THE MUNICIPALITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS. OUR TOTAL LIABILITY FOR ALL CLAIMS, INCLUDING THOSE BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTORY, OR OTHER GROUNDS, IS LIMITED TO THE SUM OF \$100. Some jurisdictions do not allow for limited liability or exclusion of implied warranties; and, if any of those laws apply to You, then some or all of the above disclaimers, exclusions, or limitations might not apply to You, and You might have additional rights.

Section 8 Assumption of Risk by User. User agrees that riding a Garden Communities Bike Share bicycle involves many obvious and not-so-obvious risks, dangers, and hazards, which may result in injury or death to User or others, as well as damage to property, and that such risks, dangers, and hazards cannot always be predicted or avoided. User agrees that such risks, dangers, and hazards are User's sole responsibility. User agrees that if User's use of any of the Service causes injury or damage to another person or property, then User may be liable for all resulting injuries, damages, and related costs. By choosing to ride a Garden Communities Bike Share bicycle, User assumes all responsibility for all related risks, dangers, and hazards, and User agrees that Garden Communities and BikeLink are not responsible for any injury, damage, or cost caused by User with respect to any person or property, including the Garden Communities Bike Share bicycle itself. User is solely and fully responsible for the safe operation of the Garden Communities Bike Share bicycle at all times.

III. Directions and Additional Terms of Use.

Section 9 Lost or Stolen Bicycle. If User maintains possession of the Garden Communities Bike Share bicycle beyond a period of 24 consecutive hours, then the Garden Communities Bike Share bicycle is deemed lost or stolen, User's credit or debit card will be charged a fee of \$1,000, and a police report may be filed with local authorities. The data generated by the Service's computer is conclusive evidence of the period of use of a Garden Communities Bike Share bicycle by a User. For any disappearance of a Garden Communities Bike Share bicycle where a User is held responsible, User must report the disappearance to Garden Communities within 24 hours following the disappearance and must report the disappearance to the local police department within 48 hours. Any use that exceeds a period of 24 consecutive hours is deemed a disappearance of the Garden Communities Bike Share bicycle, until the Garden Communities Bike Share bicycle is found or returned to an eLocker.

Section 10 Helmets; Safety. All riders are required wear a Snell, CPSC, ANSI, or ASTM approved helmet that has been properly sized, fitted, and fastened, according to the manufacturer's instructions. Wearing a Snell, CPSC, ANSI, or ASTM approved helmet, properly sized, fitted, and fastened, while cycling may protect against an injury, or may lessen the severity of an injury, caused by an impact to the head; however, bicycle helmets are not 100% effective, do not protect against all head injuries, and do not protect against other injuries. None of Garden Communities and its Related Parties and/or BikeLink and its Related Parties represent or warrant the quality or safety characteristics of any helmet, and User agrees that none of Garden Communities and its Related Parties and/or BikeLink and its Related Parties are liable for any injury suffered by User while using the Service, whether or not User is wearing a helmet at the time of injury. User may need to take additional safety measures or precautions not specifically addressed in this Agreement. User represents and warrants that User has and shall wear a Snell, CPSC, ANSI, or ASTM approved helmet, properly sized, fitted, and fastened, at all times while using the Service.

Section 11 Prohibited Acts. User must not:

1. Ride a Garden Communities Bike Share bicycle while carrying any briefcase, backpack, bag, or other item if it impedes User's ability to operate a Garden Communities Bike Share bicycle safely.
2. Ride a Garden Communities Bike Share bicycle while using any cellular telephone, text messaging device, portable music player, or other device that may distract User from safely operating a Garden Communities Bike Share bicycle.
3. Operate a Garden Communities Bike Share bicycle while under the influence of any alcohol, drugs, any medication or other substance that may impair User's ability to safely operate a Garden Communities Bike Share bicycle.
4. Carry a second person on a Garden Communities Bike Share bicycle.
5. Use any locking mechanism, other than the locking mechanism provided by Garden Communities at the eLocker, to lock a Garden Communities Bike Share bicycle inside an eLocker. Security of the bicycle while not parked in an eLocker is the responsibility of the User. A lock may be provided as a courtesy, but is not a guarantee against theft or damage.
6. Violate any applicable federal, state, or local law, including those for bicycle riders.
7. Dismantle or modify a Garden Communities Bike Share bicycle in any way. (This rule does not apply to the use of the seat height adjustment feature on Garden Communities Bike Share bicycles.)
8. Exceed the maximum weight limit for the Garden Communities Bike Share bicycle (260 pounds) or the cargo carrier (17 pounds), and User must not otherwise use the cargo carrier improperly with regard to type of contents or any visual obstruction or riding impediment.
9. Operate a Garden Communities Bike Share bicycle in extreme weather conditions which make it more dangerous to operate a Garden Communities Bike Share bicycle. User is advised to adjust User's riding behavior and braking distance to suit the weather conditions.
10. Allow others to use a Garden Communities Bike Share bicycle that User has removed from an eLocker. User understands that when User removes from a Garden Communities Bike Share bicycle from an eLocker, it is to be used only by User. User must not transfer or share User's BikeLink Card.

Section 12 Additional Terms of Use.

1. User agrees, represents, and warrants that User is a safe and competent bicycle operator, is physically able to safely ride a bicycle without a risk to the User's health, is knowledgeable about the operation of a bicycle, and is knowledgeable about the laws pertaining to bicycles operated within the State of California and all cities and towns where the Service is offered and/or used.
2. Like any physical activity, riding a Garden Communities Bike Share bicycle may cause minor or major injuries or discomfort and may worsen or complicate underlying medical conditions or diseases. By choosing to ride Garden Communities Bike Share bicycle, User assumes all responsibilities and risks for all such injuries or other medical conditions.
3. User agrees that bicycles are machines that may malfunction, even if the bicycle is properly maintained, and that such malfunction may cause injury.
4. User agrees that Garden Communities does not provide or maintain places where to ride Garden Communities Bike Share bicycles, and that Garden Communities and the Municipalities do not guarantee that there will always be a safe place to ride a Garden Communities Bike Share bicycle. Roads, bicycle lanes, and bicycle routes may become dangerous due to weather, traffic, or other hazards. User must not use a Garden Communities Bike Share bicycle for racing, riding off road, or any other use, besides safe operation on public or private roads or property and designated bicycle routes.
5. User agrees that Garden Communities, BikeLink and the Municipalities are not a common carrier. Alternative means of public and private transportation are available to the general public and to User individually, including public buses and rail service, taxis, and pedestrian paths. Garden Communities provides Garden Communities Bike Share bicycles only as a convenience, and such rental availability is intended to be used only by those persons who are able and qualified to operate a Garden Communities Bike Share bicycle on their own and who have agreed to all terms and conditions of this Agreement.
6. User agrees that access to the Service is denied to any person less than 16 years of age, whether or not accompanied by a parent or guardian. Minors who are at least 16 years of age may use the Service, but only if the Service is subscribed for by and under the responsibility of the minor's parent or legal guardian. By authorizing use of the Service by a minor, the parent or legal guardian agrees s/he is fully responsible and liable for all injuries, damages, and costs and expenses arising from or related to the minor's use of the Service and guarantees, represents, and warrants: (i) the parent's or legal guardian's; and (ii) the minor's acceptance of and agreement and compliance with all terms and conditions of this Agreement as a User.
7. User must report to the police and to BikeLink Customer Service at 1-888-540-0546 as soon as possible, but in no event later than 24 hours, after the occurrence of any of the following events: any crash, damage, loss, or personal injury while using a Garden Communities Bike Share bicycle; any vandalism; any stolen or lost bicycle; and, any stolen or lost Access Device (BikeLink card).
8. User is responsible for all charges, damages, or injuries incurred either directly or indirectly resulting from use of User's key prior to deactivation of the key.

Section 13 Limitations on Availability of Service. We make every effort to provide the Service reliably, but do not guarantee that the Service will be available at all times, as force majeure events or other circumstances might prevent Service from being provided. Access to the Service also is conditioned on the availability of Garden Communities Bike Share bicycles at each eLocker. Garden Communities does not represent or warrant the availability of any Service or the availability of any Garden Communities Bike Share bicycle at any eLocker. User agrees that Garden Communities may require User to return a Garden Communities Bike Share bicycle at any time.

IV. Miscellaneous.

Section 14 Term and Termination. The term of this Agreement begins when You first use the Service, and the term ends 10 years after Your last use of the Service; provided, however, that Your personal financial responsibility under Section 4 of this Agreement, titled Credit/Debit Card Matters, expires one year after the later of (i) Your last use of the Service, or (ii) the cancelation of Your Usership. At any time and from time to time, and without User's consent, BikeLink and/or Garden Communities may unilaterally terminate Your right to use the Service, in Garden Communities' sole discretion and without any notice or cause. User may terminate User's use of the Service at any time; provided, however, that (i) no refund will be provided by Garden Communities or BikeLink, (ii) the term of this Agreement continues in accordance with this Section 18 of the Agreement, (iii) User may still be charged any applicable additional fees in accordance with Sections 2 and 3 of this Agreement. This Agreement remains in full force and effect, in accordance with its terms and conditions, after any termination of Your right to use any of the Service, regardless of how the Agreement is terminated.

Section 15 Confidentiality of Information. See BikeLink Cardholder Agreement Section 15

Section 16 Notice.

You may contact BikeLink by writing, calling, or emailing Garden Communities at the street address, telephone number, and email address listed below:

BikeLink
800 Heinz Ave, Suite 11 Berkeley CA 94710
e-mail: support@bikelink.org
24hr support: (888) 540-0546
Office: (510) 549-2853

You may contact Garden Communities by writing, calling, or emailing Garden Communities at the street address, telephone number, and email address listed below:

Garden Communities
9110 Judicial Drive - OFC
San Diego, CA 92122
Phone: (858) 558-9573 ext. 239

Section 17 Choice of Law; Dispute Resolution. This Agreement is governed by, and must be construed and enforced in accordance with, the laws of the State of California, excluding principles of conflicts of laws. For every dispute regarding this Agreement: (i) the prevailing party is entitled to its costs, expenses, and reasonable attorney fees (whether incurred at trial, on appeal, or otherwise) incurred in resolving or settling the dispute, in addition to all other damages or awards to which the party may be entitled; (ii) each party consents to the jurisdiction of the courts of the Commonwealth of Massachusetts and agrees that those courts have personal jurisdiction over each party; (iii) venue must be in the State of California; and (iv) the parties must submit the dispute to mandatory mediation held in the State of California. Every mediation must be completed within 6 months of the date when the initial notice demanding mediation was provided by any party. If, for any reason, the dispute is not resolved through mediation within the 6-month period, then the parties may continue seeking to resolve the dispute by use of any process, including litigation by trial.

Section 18 Waiver. No waiver of any breach of any provision of this Agreement is a waiver of any other breach or of any other provision of this Agreement of the BikeLink Cardholder Agreement. The terms of this Agreement may be waived or amended only in writing and only by the party that is entitled to the benefits of the term being waived or amended.

Section 19 Cumulative Remedies. All rights and remedies granted under or referred to in this Agreement are cumulative and nonexclusive, and resort to one does not preclude the availability or applicability of another or to any other right or remedy provided by law.

Section 20 Final Agreement; Modification by Garden Communities. This Agreement contains the complete, final, and exclusive integrated agreement between the parties with respect to its subject matter. This Agreement supersedes all other prior agreements, written or oral, relating to such subject matter. At any time and from time to time, and without User's consent, Garden Communities may unilaterally amend, modify, or change this Agreement, in its sole discretion and without any notice or cause. By continuing to use any Service after any amendment, modification, or change, User has agreed to be bound by all such amendments, modifications, and changes. User must carefully review this Agreement on a regular basis to maintain awareness of all amendments, modifications, and changes. Whenever a change is made to this Agreement, Garden Communities will post a notification on the Website.

Section 21 Contract Interpretation. The headings in this Agreement do not affect the interpretation of this Agreement. "Or" is not be exclusive in its meaning. "Including" means "including, but not limited to." Unless the context otherwise requires, words in the singular number or in the plural number shall each include the singular number or the plural number. All pronouns include the masculine, feminine, and all other pronoun forms.