

# Apache Villa HOA User Agreement

## Terms and Conditions

By using or accessing ApacheVillaHOA.com and referred to herein as the “**Site**”, you acknowledge that you agree to and are subject to the following terms and conditions (the “**Terms**”) as well as our **Privacy Policy**. If you do not fully agree to these Terms, you are not authorized to access or otherwise use the Site. You should read through all the Terms carefully. The Terms constitute a legally binding agreement between you and ApacheVillaHOA.com. You are not authorized to use this Site unless you are able to enter into legally binding contracts. Further, in some cases, we and a user may enter into a separate written agreement or contract providing additional terms and conditions of such user's use of this Site and incorporating these Terms by reference.

### **1. The Site is a Venue and We are Not a Party to any Rental Transaction.**

We urge all users to be responsible about their use of this Site and any transaction entered into as a result of either listing a property or renting a property. We do not own or manage, nor can we contract for, any rental property listed on the Site. Instead, the Site acts as a venue to allow homeowners and property managers who advertise on our Site (each, a “**member**”) to offer for rent in a variety of pricing formats, a specific rental property to potential renters (each, a “**user**”). We are not involved in any transaction between users and members even though we may from time to time provide tools that relate to a booking, such as a tool to enable a traveler to enter into a transaction to lease a specific property directly from a member. As a result, any part of an actual or potential transaction between a traveler and a member, including the quality, safety or legality of the properties advertised, the truth or accuracy of the listings (including the content thereof or any property or guest book review), the ability of members to rent a vacation property or the ability of travelers to pay for vacation rental properties are solely the responsibility of each user.

We are also not responsible for the condition of the vacation rental properties listed on our Site or the compliance with laws, rules or regulations that may be applicable to any vacation rental property in any jurisdiction.

Finally, while we do take certain measures with a goal to assist users to avoid potentially fraudulent or other illegal activity of which we become aware, we assume no liability or obligation to take any such measures or actions. In the event we do

provide warnings or messages to users about any such activity, we do not warrant that such messages or accurate or that such messages will reach any or all users they should have reached in a timely manner or at all or that such messages or measures will prevent any harm, result or action.

## 2. Limited License to Use the Site.

Users are granted a limited, revocable, non-exclusive license to access the Site and the content and services provided on the Site all in accordance with these Terms.

Any use of the Site that is not in accordance with these Terms or as otherwise authorized by us in writing is expressly prohibited.

## 3. Unauthorized Uses of the Site.

The license to use the site granted to users in these Terms does not include any right of collection, aggregation, copying, scraping, duplication, display or derivative use of the Site nor any right of use of data mining, robots, spiders or similar data gathering and extraction tools without our prior written permission; provided, however, that a limited exception from the foregoing exclusion is provided to general purpose internet search engines and non-commercial public archives that use tools to gather information for the sole purpose of displaying hyperlinks to the Site, provided they each do so from a stable IP address or range of IP addresses using an easily identifiable agent and comply with our robots.txt file. "General purpose internet search engines" do not include a website or search engine or other service that provides classified listings or property rental advertisements, or any subset of the same or which is in the business of providing vacation property rental services or other services that compete with us.

Unauthorized uses of the Site also include, without limitation, those listed below. You agree not to do any of the following, unless otherwise previously authorized by us in writing:

- o Any commercial use (other than by members with a fully paid up subscription in good standing (a "**valid subscription**") of the Site or any content on the Site;
- o Any use of the Site or the tools and services on the Site for the purpose of booking or soliciting a rental for a property other than a property listed under a valid subscription;

- Copy, reproduce, upload, post, display, republish, distribute, or transmit any part of the content in any form whatsoever;
- Reproduce any portion of the Site on your website or otherwise, using any device including, but not limited to, use of a frame or border environment around the Site, or other framing technique to enclose any portion or aspect of the Site, or mirror or replicate any portion of the Site;
- Modify, translate into any language or computer language, or create derivative works from, any content or any part of the Site;
- Reverse engineer any part of the Site;
- Sell, offer for sale, transfer, or license any portion of the Site in any form to any third parties;
- Use any robot, spider, scraper, other automatic device, or manual process to monitor, copy, or keep a database copy of the content or any portion of the Site;
- Use the Site and its inquiry functionality other than to advertise and/or research vacation rentals, to make legitimate inquiries to our members or any other use expressly authorized on the Site;
- Use the Site or post or transmit information that is in any way false, fraudulent, or misleading, including making any reservation or inquiry under false pretenses, or taking any action that may be considered phishing or that would give rise to criminal or civil liability;
- Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, indecent, inflammatory, sexually explicit, pornographic or profane material;
- Violate, plagiarize or infringe the rights of us or third parties including, without limitation, copyright, trademark, patent, trade secrets, rights of publicity or privacy or any other intellectual or proprietary rights; or
- Use or access the Site in any way that, in our sole discretion, adversely affects or could adversely affect the performance or function of the Site or any other system used by us or the Site.

If you are aware of or experience any content, activity or communication through or in connection with the Site that appears to be in violation of the above restrictions, or in violation of any other provision of these Terms, we ask that you please inform us of any such violation by sending an email to [info@apachevillahoa.com](mailto:info@apachevillahoa.com).

#### **4. Proprietary Rights and Downloading of Information from the Site.**

The Site and all content on the Site are protected by copyright as a collective work and/or compilation, pursuant to applicable U.S. and international copyright laws and conventions and database rights. You agree to abide by any and all copyright notices, information, or restrictions contained in or relating to any content on the Site. Copying, storing or otherwise accessing the Site or any content on the Site for other than for your personal, noncommercial use (other than in accordance with a valid subscription) is expressly prohibited without prior written permission from us.

As part of the rental inquiry process, for your own personal, noncommercial use and not for further distribution, you may download, display, and/or print one copy of any portion of the Site. You may not modify the same, and you must reproduce our copyright notice in the form "© 2011 – [present year] ApacheVillaHOA.com - All Rights Reserved", in the form displayed on the relevant portion(s) of the Site that you desire to download, display or print.

## **5. Your E-mail Address and Our Privacy Policy; Data Transmittal.**

When you provide your e-mail address to us in connection with any service or tool provided on the Site, you agree to allow the Site and its affiliated websites to add your e-mail address to our database of users. You may receive one or more promotional e-mails from either the Site. You are welcome to opt not to receive such promotional e-mails from the Site or such affiliates' websites at any time. Please review our [Privacy Policy](#) for more information regarding our information collection practices and safeguards, and how to opt not to receive such emails. Your use of the Site signifies your acknowledgment of an agreement with our Privacy Policy.

Each user acknowledges and agrees that, regardless of such user's physical location, we may store and process any data transmitted to the Site from such user at locations both within and outside of the United States.

## **6. Identity Verification.**

User verification on the Internet is difficult and we cannot, and do not assume any responsibility for, the confirmation of each user's purported identity. We encourage you to communicate directly with a traveler or member through the tools available on the Site.

You agree to (i) keep your password and online ID secure and strictly confidential, providing it only to authorized users of your account, (ii) instruct each person to

whom you give your online ID and password that he or she is not to disclose it to any unauthorized person, (iii) notify us immediately and select a new online ID and password if you believe your password may have become known to an unauthorized person, and (iv) notify us immediately if you are contacted by anyone requesting your online ID and password. We discourage you from giving anyone access to your online ID and password. However, if you do give someone your online ID and online password, or if you fail to adequately safeguard such information, you are responsible for any and all transactions that the person performs while using your account, even those transactions that are fraudulent or that you did not intend or want performed.

EACH USER ACKNOWLEDGES AND AGREES THAT: (1) NEITHER Apache Villa HOA WILL HAVE ANY LIABILITY TO ANY USER FOR ANY UNAUTHORIZED TRANSACTION MADE USING ANY USER'S PASSWORD THAT OCCURS BEFORE SUCH USER HAS NOTIFIED US OF POSSIBLE UNAUTHORIZED USE OF SUCH PASSWORD AND WE HAVE HAD A REASONABLE OPPORTUNITY TO ACT ON THAT NOTICE; AND (2) THE UNAUTHORIZED USE OF YOUR ONLINE ID AND PASSWORD COULD CAUSE YOU TO INCUR LIABILITY TO BOTH Apache Villa HOA AND OTHER USERS. Further, we may, without notice to you, suspend or cancel your listing at any time even without receiving notice from you if we suspect, in our sole discretion, that your password is being used in an unauthorized or fraudulent manner.

## **7. Limitations on Communications and Use of Other Users' Information; No Spam.**

You agree that, with respect to other users' personal information that you obtain through the Site or through any Site-related communication or transaction, we have granted to you a license to use such information only for: (a) Site-related communications that are not unsolicited commercial messages, (b) using services offered through the Site, (c) facilitating a financial transaction between you and the other user (such as an on-line booking or charging a personal credit card) and (d) any other purpose that a user expressly agrees to after you tell them the purpose you would like to use it for. In all cases, you must give users an opportunity to remove themselves from your address book or database and a chance to review what information you have collected about them. In addition, under no circumstances, except as defined in this provision, may you disclose personal information about another user to any third party without both our consent and the consent of the other user. You agree that other users may use your personal information to communicate with you in accordance with this provision. Further, you agree that you will protect other users' personal information with the same degree of

care that you protect your own confidential information (using at minimum a reasonable standard of care), and you assume all liability for the misuse, loss, or unauthorized transfer of such information.

We do not tolerate spam or unsolicited commercial electronic communications of any kind. Therefore, without limiting the foregoing, you are not licensed to add a Site user, even a user who has rented a vacation property from you or to you, to your mailing list (email or physical mail) without the user's express consent. You may not use any tool or service on the Site to send spam or unsolicited commercial electronic communications of any kind or in any other way that would violate these Terms. You are responsible for all content you provide to the Site or through any tool or service provided on the Site.

## **8. Responsibility for User-Contributed Content; Translations**

We have no duty to pre-screen content posted on the Site by members, travelers or other users (including, without limitation, reviews of or guest book entries for any particular rental property), (collectively, "user-contributed content") and we are not responsible for user-contributed content. We do, however, reserve the right to decline to permit the posting on the Site of, or to remove from the Site, any user-contributed content that fails to meet our [Content Guidelines](#) or if it otherwise violates these Terms. We may also remove user-contributed content if it is brought to our attention, such as by notice given to us by a user or any third party that any part of these Terms, or any other requirements governing the posting of such content, has/have been apparently breached in respect of such content. Finally, we reserve the right (but do not assume the obligation) to edit member's content in a non-substantive manner solely to cause the content to comply with our content guidelines or formatting requirements.

All property listings on the Site are submitted by the member (who may be the owner or a property manager or duly authorized property manager or agent of the owner) and are the sole responsibility of the member, and we specifically disclaim any and all liability arising from the alleged accuracy of the listings, property reviews, guest book entries, or any alleged breaches of contract on a member's part. Members are solely responsible for keeping their property information up-to-date on the Site, including, but not limited to any and all representations about any property, its amenities, location, price, and its availability for a specific date or range of dates. We do not represent or warrant that any of the copy, content, property reviews, guest book entries, property location, suitability, pricing or availability

information published on the Site is accurate or up-to-date even in the case where prospective travelers have searched for specific special offers, dates, or types of properties. Members are solely responsible for ensuring the accuracy of any property descriptions, and travelers are solely responsible for verifying the accuracy of such descriptions.

If any content created by members or users is translated for display on this Site, the member or user is solely responsible for the review and accuracy of such translation. Unless we specify otherwise to the user or member, any translation services are offered by us free of charge.

We reserve the right to disclose any information as permitted by prevailing law to satisfy any law, regulation or government request if we determine, in our sole discretion, that we are required to respond to, or if it would be in our interests to, respond to such request.

## **9. Notification of Infringement; DMCA Policy.**

We respect the intellectual property rights of others, and Apache Villa HOA does not permit, condone, or tolerate the posting of any content on the Site that infringes any person's copyright. Apache Villa HOA will terminate, in appropriate circumstances, a member or user who is the source of repeat infringements of copyright. Should you become aware of or suspect any copyright infringement on this Site, please refer to our [procedures for Notification of Copyright Infringement](#).

## **10. Unsolicited Ideas and Feedback.**

Unsolicited Ideas: From time to time, users submit to us ideas or suggestions pertaining to our business, such as ideas for new or improved products or technologies, website or tool enhancements, processes, materials, marketing plans or new product names. We do not solicit such ideas or suggestions and are under no obligation to review or consider them. If you choose to submit any ideas, original creative artwork, suggestions or other works ("**submissions**") in any form to us, then regardless of what you say, write or provide to us in connection with your submissions, the following terms shall apply. The sole purpose of this policy is to avoid potential misunderstandings or disputes in the event that any part of our business, such as our products, websites, technologies or marketing strategies, seem similar to any of your submissions. If you provide any submissions to us, you agree that: (1) your submission and its contents will automatically become the property of Apache Villa HOA, without any compensation to you; (2) Apache Villa HOA may use or redistribute any such submission and its contents for any purpose and in any way;

(3) there is no obligation for Apache Villa HOA to review any submission; and (4) there is no obligation to keep any submission confidential.

Feedback on our Business: We welcome your feedback regarding many areas of our business. If you want to send us your feedback, we simply request that you send it to us using the links below or you can choose from the many other listed areas for your feedback. Please provide only specific feedback on our websites and services. Keep in mind that we assume no obligation to keep any feedback you provide confidential and we reserve the right to use or disclose such information in any manner.

To provide feedback, you can go to: [rentals@ApacheVillaHOA.Com](mailto:rentals@ApacheVillaHOA.Com) (for Apache Villa HOA).

## **11. Links to Third Party Sites.**

This Site may contain links and pointers to other Internet sites, resources, and sponsors of the Site. Links to and from the Site to other third-party sites, maintained by third parties, do not constitute an endorsement by us of any third parties, the third-party sites or the contents thereof. We are not responsible in any way for such third-party sites or resources and your use of such sites and resources will not be governed by these Terms.

## **12. Limitation of Liability.**

**IN NO EVENT WILL Apache Villa HOA, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, CONSULTANTS, AGENTS AND/OR EMPLOYEES, OR ANY THIRD PARTY PROVIDER OF A SERVICE OR TOOL OFFERED ON ANY SITE OF A MEMBER. EACH A "THIRD PARTY PROVIDER"), BE LIABLE FOR ANY LOST PROFITS OR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF, BASED ON, OR RESULTING FROM (A) OUR SITE, (B) THESE TERMS, (C) ANY BREACH OF THESE TERMS BY YOU OR A THIRD PARTY, (D) USE OF THE SITE, TOOLS OR SERVICES WE PROVIDE RELATED TO THE BUSINESS WE OPERATE ON THE SITE BY YOU OR ANY THIRD PARTY AND/OR (E) ANY ACTUAL OR ATTEMPTED COMMUNICATION OR TRANSACTION BETWEEN USERS, IN EACH CASE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS AND EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER THE DAMAGES ARISE FROM (1) BREACH OF CONTRACT, (2) BREACH OF WARRANTY, (3) STRICT LIABILITY, (4) TORT, (5) NEGLIGENCE, OR (6) ANY OTHER CAUSE OF ACTION, TO THE MAXIMUM**



EXTENT SUCH EXCLUSION AND LIMITATIONS ARE NOT PROHIBITED BY APPLICABLE LAW.

IF YOU ARE DISSATISFIED WITH THE SITE, YOU DO NOT AGREE WITH ANY PART OF THE TERMS, OR HAVE ANY OTHER DISPUTE OR CLAIM WITH OR AGAINST US OR ANOTHER USER OF THE SITE WITH RESPECT TO THESE TERMS OR THE SITE, THEN YOUR SOLE AND EXCLUSIVE REMEDY AGAINST US IS TO DISCONTINUE USING THE SITE. IN ALL EVENTS, OUR LIABILITY, AND THE LIABILITY OF ANY MEMBER OF THE Apache Villa HOA, TO YOU OR ANY THIRD PARTY IN ANY CIRCUMSTANCE ARISING OUT OF OR IN CONNECTION WITH THE SITE IS LIMITED TO THE GREATER OF (A) THE AMOUNT OF FEES YOU PAY TO US IN THE TWELVE MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY OR (B) \$100.00 IN THE AGGREGATE FOR ALL CLAIMS .

### **13. Disclaimers.**

THE SITE, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE ON OR ACCESSED THROUGH THE SITE, IS PROVIDED "AS IS." TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER FOR THE CONTENT ON THE SITE OR THE MATERIALS, INFORMATION AND FUNCTIONS MADE ACCESSIBLE BY THE SOFTWARE USED ON OR ACCESSED THROUGH THE SITE, FOR ANY PRODUCTS OR SERVICES OR HYPERTEXT LINKS TO THIRD PARTIES OR FOR ANY BREACH OF SECURITY ASSOCIATED WITH THE TRANSMISSION OF SENSITIVE INFORMATION THROUGH THE SITE OR ANY LINKED SITE, EVEN IF WE BECOME AWARE OF ANY SUCH BREACHES. FURTHER, WE EXPRESSLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ACCURACY. WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SITE OR ANY MATERIALS OR CONTENT CONTAINED THEREIN WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

YOU ACKNOWLEDGE AND AGREE THAT ANY TRANSMISSION TO AND FROM THIS SITE IS NOT CONFIDENTIAL AND YOUR COMMUNICATIONS MAY BE READ OR INTERCEPTED BY OTHERS. YOU FURTHER ACKNOWLEDGE AND

AGREE THAT BY SUBMITTING COMMUNICATIONS TO US AND BY POSTING INFORMATION ON THE SITE, INCLUDING PROPERTY LISTINGS, NO CONFIDENTIAL, FIDUCIARY, CONTRACTUALLY IMPLIED OR OTHER RELATIONSHIP IS CREATED BETWEEN YOU AND US OTHER THAN PURSUANT TO THESE TERMS.

YOU ACKNOWLEDGE AND AGREE THAT YOU WILL NOT HOLD OR SEEK TO HOLD US OR ANY THIRD PARTY PROVIDER RESPONSIBLE FOR THE CONTENT PROVIDED BY ANY USER, INCLUDING, WITHOUT LIMITATION, ANY TRANSLATION THEREOF, AND YOU FURTHER ACKNOWLEDGE AND AGREE THAT WE ARE NOT A PARTY TO ANY RENTAL TRANSACTION. WE HAVE NO CONTROL OVER AND DO NOT GUARANTEE (OTHER THAN PURSUANT TO ANY GUARANTEE THE MAY BE OFFERED ON THE SITE) THE SAFETY OF ANY TRANSACTION, RENTAL PROPERTY OR THE TRUTH OR ACCURACY OF ANY LISTING OR OTHER CONTENT PROVIDED ON THE SITE.

#### 14. Release; Indemnification.

IN THE EVENT THAT YOU HAVE A DISPUTE WITH ONE OR MORE OTHER USERS OF THE SITE (INCLUDING, WITHOUT LIMITATION, ANY DISPUTE BETWEEN USERS REGARDING ANY TRANSACTION OR USER-CONTRIBUTED CONTENT), YOU HEREBY AGREE TO RELEASE, REMISE AND FOREVER DISCHARGE EACH MEMBER OF THE Apache Villa HOA, EACH OF THEIR RESPECTIVE AGENTS, DIRECTORS, OFFICERS, EMPLOYEES, AND ALL OTHER RELATED PERSONS OR ENTITIES FROM ANY AND ALL MANNER OF RIGHTS, CLAIMS, COMPLAINTS, DEMANDS, CAUSES OF ACTION, PROCEEDINGS, LIABILITIES, OBLIGATIONS, LEGAL FEES, COSTS, AND DISBURSEMENTS OF ANY NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, WHICH NOW OR HEREAFTER ARISE FROM, RELATE TO, OR ARE CONNECTED WITH SUCH DISPUTE AND/OR YOUR USE OF THE SITE. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD EACH MEMBER OF THE Apache Villa HOA, THE "INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY AND COSTS INCURRED BY THE INDEMNIFIED PARTIES IN CONNECTION WITH ANY CLAIM ARISING OUT OF

YOUR USE OF THE SITE OR OTHERWISE RELATING TO THE BUSINESS WE CONDUCT ON THE SITE (INCLUDING, WITHOUT LIMITATION, ANY POTENTIAL OR ACTUAL COMMUNICATION, TRANSACTION OR DISPUTE BETWEEN YOU AND ANY OTHER USER OR THIRD PARTY), ANY CONTENT POSTED BY YOU OR OTHER USERS OF YOUR ACCOUNT TO THE SITE, ANY USE OF ANY TOOL OR SERVICE PROVIDED BY A THIRD PARTY PROVIDER, OR ANY BREACH BY YOU OF THESE TERMS OR THE REPRESENTATIONS, WARRANTIES AND COVENANTS MADE BY YOU HEREIN, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS. YOU SHALL COOPERATE AS FULLY AS REASONABLY REQUIRED IN THE DEFENSE OF ANY CLAIM. WE RESERVE THE RIGHT, AT OUR OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY YOU AND YOU SHALL NOT IN ANY EVENT SETTLE ANY MATTER WITHOUT OUR WRITTEN CONSENT.

## **15. Choice of Law and Forum; Time Limit.**

ANY AND ALL SERVICES AND RIGHTS OF USE HEREUNDER ARE PERFORMED, PERFORMABLE AND/OR SOLD IN THE STATE OF ARIZONA, UNITED STATES OF AMERICA, AND YOU IRREVOCABLY AGREE THAT ANY CAUSE OF ACTION YOU MAY SUBMIT IN CONNECTION WITH YOUR USE OF THE SITE OR PURSUANT TO THESE TERMS WILL BE FILED IN PINAL COUNTY, ARIZONA WHICH YOU ACKNOWLEDGE AND AGREE WILL BE THE EXCLUSIVE FORUM AND VENUE FOR ANY LEGAL DISPUTE BETWEEN YOU AND US. YOU ALSO AGREE THAT ANY DISPUTE BETWEEN YOU AND US WILL BE GOVERNED BY THE LAWS OF THE STATE OF ARIZONA, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

ANY CAUSE OF ACTION YOU MAY HAVE HEREUNDER OR WITH RESPECT TO YOUR USE OF THE SITE MUST BE COMMENCED BY FILING SUIT IN PINAL COUNTY, ARIZONA, WITHIN ONE (1) YEAR AFTER THE INCIDENT UPON WHICH THE CLAIM OR CAUSE OF ACTION IS BASED FIRST OCCURRED.

## **16. GENERAL**

No Agency: Our relationship is that of independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relations is intended or created by these Terms or your use of the Site.

Notices: Except as explicitly stated otherwise, any notices to us shall be given by email to [info@apachevillahoa.com](mailto:info@apachevillahoa.com).

When we need to send you notice, it will be sent to the email address you provide to the Site during the registration process or as later updated in your account (if applicable). Notice shall be deemed given upon receipt or 24 hours after an email is sent, unless the sending party is notified that the email address is invalid. Alternatively, we may give you notice by certified mail, postage prepaid and return receipt requested, to any physical or electronic address provided to us during the registration process or as later updated in your account (if applicable). In such case, notice shall be deemed given three days after the date of mailing to a physical address and one day after mailing to an electronic address.

Changes to the Site or these Terms and Conditions: We may change, suspend or discontinue any aspect of the Site at any time, including the availability of any Site features, database, or content. We may also impose limits on certain features or services or restrict your access to parts or all of the Site without notice or liability.

This version of the Terms became effective on **December 9, 2010** and this version amends the version effective prior to such date. We reserve the right, in our sole discretion, to amend these Terms, in whole or in part, at any time, with or without your consent, and you acknowledge and agree that your consent to any such amendment is not required in the event the proposed amendment is clerical and/or non-substantive in nature. Notification of any amendment will be posted on the Site and will be effective immediately. If you disagree with any non-clerical and/or substantive amendment to these Terms, then (i) your sole remedy as a traveler is to discontinue your use of the Site, and (ii) your sole remedy as a member is to withhold your consent to the applicability of the proposed amendment to your use of the Site, in which case your use of the Site will continue to be governed by the terms and conditions that were applicable to your use of the Site during the then current term of your subscription as the same were in effect immediately prior to the proposed amendment and you agree that you are responsible for keeping a copy of such terms. When members renew subscriptions, the terms in effect at the time of renewal will govern, provided that such terms may change as described above.

We also reserve the right, in our sole discretion and from time to time, to offer special programs with unique terms and conditions that are separate from and may supersede or supplement in certain respects these Terms. In such cases, your use of the Site with respect to such special program is governed by the terms and conditions of such special program.

Subscription rates are set at the time of a user or member's subscription or renewal, as applicable. Such rates are subject to change without notice or approval. The rates in effect at the time of the member's next subscription renewal, new listing or a

member's upgrade or any other additional or new order of any product or service will govern for such renewal or other order.

The types of products and services (including the features, terms and operation thereof) offered at the time of a member's subscription are subject to change without notice or approval. We further reserve the right to offer additional products, services or features for purchase at any time. See also the section below relating to auto renewal of subscriptions.

Your Record of These Terms: We do not separately file the Terms entered into by each user of the Site. Please make a copy of these Terms for your records by printing and/or saving a downloaded copy of the Terms on your personal computer.

Enforcement of These Terms: We may immediately terminate any user's access to or use of the Site due to such user's breach of these Terms or any other unauthorized use of the Site. However, we do not guarantee that we will take action against all breaches of these Terms. Our failure to take immediate action with respect to a breach by you or others does not waive our right to act with respect to such breach or any other breach. Any action or inaction by us in response to any breach of these Terms does not limit our rights with respect to actions we may take in response to any other similar or different type of breach.

Entire Agreement, Headings and Severability: These Terms constitute the entire agreement between us and you with respect to the matters set forth herein, and supersede any prior agreement between us and you with respect to your use of the Site. Headings in these Terms are for reference only and do not limit the scope or extent of such section. If any portion of these Terms is found to be invalid or unenforceable by any court of competent jurisdiction, the other provisions of these Terms shall remain in full force and effect. Further, any provision of these Terms held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Assignment: We may assign these Terms in our sole discretion. Users must obtain our prior written consent to assign these Terms, which may be granted or withheld by us in our sole discretion.

## **Additional Terms and Conditions Applicable to Our Members**

In addition to being bound by the terms set forth above, members who purchase subscriptions from us are also bound by the following terms, which are in addition to any other terms agreed to in connection with purchasing or renewing a subscription.

## **17. Member Eligibility; Accuracy of Information; Representations.**

Our services may only be used by members who can form legally binding contracts under applicable law. If you are registering as a business entity, you represent that you have the authority to bind the entity to these Terms. Each member represents and covenants that all information submitted to us and to the Site during such member's registration with the Site shall be true and correct. Each member further agrees to promptly provide notice to the Site by the completing the member rental form or contacting [info@apachevillahoa.com](mailto:info@apachevillahoa.com), as applicable, regarding any updates to any such contact information previously submitted by such member to the Site. Each member agrees to promptly provide such proof of personal identification, proof of ownership of the property listed on the Site, and proof of authority to list the property as we may request. Each member further represents and covenants that: (i) it owns and/or has all necessary rights and authority to offer for rent and to rent the property listed by such member; (ii) it will not wrongfully withhold a rental deposit in breach of the underlying rental agreement; (iii) that it will accurately describe the subject rental property and will not fail to disclose a material defect in, or material information about, a rental property; (iv) that it will not wrongfully deny access to the listed property; and (v) that it will not fail to provide a refund when due in accordance with the underlying rental agreement. Upon our request, each member agrees to promptly provide to us such proof of personal identification, proof that the condition, location, or amenities associated with the property are accurately described in the listing, proof of ownership of the property listed on the Site, and/or proof of authority to list the property as we may request.

## **18. Content, Layout and Copy.**

All content and copy edits submitted by members are subject to review and approval by us in our sole discretion. We reserve the right to refuse to publish any content that we determine, in our sole discretion, does not meet these Terms or is otherwise unacceptable to us. However, we assume no duty to review content and we shall not have any liability for any loss or damage resulting from the design or positioning of the copy, properties, content and/or photographs or any change made to any content, photograph or copy submitted by any member. All content must meet our [Content Guidelines](#). We reserve the right to edit content submitted to the Site in a

non-substantive manner solely to cause the content to comply with our content guidelines or formatting requirements. Members are responsible for reviewing and ensuring that any content displayed on the Site appears as the member intended.

## **19. Photographs**

All printed (paper based) photographs submitted by a member will be discarded after we have scanned the same into our electronic database. We have no responsibility to return such photographs to you. We will use reasonable efforts to reproduce faithfully any photograph submitted, but we are not responsible for any loss or damage or harm otherwise resulting from any defect in this regard.

Photographs should depict the vacation rental as the main subject of the photograph and may not include children or adults if you do not have their legal consent or any information that would violate the privacy rights, intellectual property rights or any other rights of a third party. Photographs must meet our Content Guidelines. We reserve the right not to display or to remove any photographs that we determine, in our sole discretion, do not meet these Terms or are otherwise unacceptable to us.

By submitting a photograph either electronically through the Site or by mailing a paper photograph to our offices, the member represents and warrants that (a) (i) it holds all intellectual property rights with respect to each submitted photograph, or (ii) it has secured from the copyright holder all rights necessary for the photograph to be used in an online advertisement, (b) that any people in the photograph have given permission for their likeness to be displayed in an online advertisement on the Site, (c) that the photograph accurately and fairly represents the subject of the photograph and has not been altered in any manner that would mislead a viewer of that photograph, and (d) that it will indemnify and hold harmless the Site and any member of the Apache Villa HOA from any cause of action arising from any misrepresentation with respect to any and all photographs so submitted.

It is the member's responsibility to obtain reproduction permission for all photographic and other material used in its advertisements. The member warrants that it is the owner of the copyright in such material or is authorized by the owner thereof to grant to us the rights therein contained and agrees to provide any proof of such rights to us that we may request.

## **20. Copyright Grant.**

By accepting these Terms and by posting a listing on the Site, you grant to us and our affiliates a perpetual, worldwide, irrevocable, unrestricted, non-exclusive,

royalty-free and fully paid-up license to use, copy, license, sublicense (through multiple tiers), adapt, distribute, display, publicly perform, reproduce, transmit, modify, edit and otherwise exploit the copy, the photographs and the likenesses (if any) of any content you post on the Site or the websites of our affiliates, and you grant the Site and the members of the Apache Villa HOA the ability to copyright and protect the images, copy, and content available via your listing from the unauthorized use by unaffiliated third parties who may, from time to time, attempt to pirate such information via electronic or other means. This includes, but is not limited to, the right to file suit to seek injunctive relief to protect such material. We need these rights to host and display your listing. You further agree to assist us—at our expense and control—to protect such copyrighted material from unauthorized redistribution. We are not responsible for any infringement or violation of laws resulting from content supplied by any member and each member agrees to indemnify and hold harmless the Site and any member of the Apache Villa HOA against any action brought for breach of copyright or other rights from the use of such content supplied by such member. Each member hereby waives and releases all rights to any claim against us for any alleged or actual infringement of any proprietary rights, rights of privacy and publicity, moral rights and rights of attribution in connection with any user-contributed content posted or provided to us by any member.

Further, each member agrees that we may reproduce in whole or in part any photographic material supplied by such member in the promotion of either such member's property or the promotion of the Site.

## **21. Uses of Our Trademarks or Logos.**

There are limited ways in which you may use our trademarks or logos without specific prior written authorization. The following are general guidelines: It is usually permissible for you to refer Apache Villa HOA or the name of one of our affiliate websites on which you list your property in a descriptive manner in your listing on the Site or in other permissible communications.

### **Hypertext Links.**

We reserve the right to refuse hypertext links to, or addresses of, other web sites from members' pages, and to remove links or web addresses without notice at our sole discretion. Further, we reserve the right to charge for hypertext links at any time.

## **22. Legal Requirements Applicable to Rental Properties**



You agree that you are solely responsible for compliance with any and all laws, rules and regulations that may apply to any rental property you list on the Site. We assume no responsibility for your compliance. Please be aware that, even though we are not a party to any rental transaction and assume no liability for legal compliance pertaining to rental properties listed on the Site, there may be circumstances where we are nevertheless legally obligated (as we may determine in our sole discretion) to provide information relating to your listing in order to comply with governmental bodies in relation to investigations, litigation or administrative proceedings, and we may choose to comply with or disregard such obligation in our sole discretion.