

RELEASE OF CLAIMS AND AGREEMENT TO DEFEND AND INDEMNIFY

I, _____, of _____, in the city
(My Name) (My Street address)

of _____, in the State of _____, both individually and as parent or

guardian of _____, in consideration of, and in exchange
Name(s) of my Child/Children (if applicable)

for being permitted to observe and/or participate in swimming and other recreational water activities at the facilities at Kellen Ponderosa, L.L.C. (hereinafter, the "Ponderosa") hereby state and agree to the following:

- _____ 1. **THIS RELEASE AND AGREEMENT APPLIES BOTH TO ME AND MY CHILDREN.** I understand and agree this Release and Agreement applies both to me individually and to any child or children named above, *even though* the terms of this Release and Agreement refer to "I," "me," or "myself." I am entering this Release and Agreement both on behalf of myself, and on behalf of the child or children named above, for whom I am a parent or guardian.
- _____ 2. **DEFINITION OF "I," "ME," and "MYSELF."** I understand and agree that, in this Release and Agreement, the words "I," "me," and "myself" apply both to me and any children named above.
- _____ 3. **DEFINITION OF "KELLEN."** I understand and agree that, in this Release and Agreement, the term "Kellen" includes: Kellen Ponderosa, L.L.C., including its owners, members, managers, officers, officials, directors, employees, instructors, volunteers, lawyers, insurers or insurance brokers, and any and all other agents of Kellen Ponderosa, L.L.C.
- _____ 4. **SWIMMING IS RISKY AND DANGEROUS.** I wish to participate in swimming and other beach and water-related activities, including beach volleyball, swimming, diving, water slides, slip-and-slides, zip lines, and jumping platforms at the Ponderosa. I know and understand that such swimming activities are naturally risky and dangerous. **I understand that, by being near water, and/or swimming or participating in water-related activities, I am exposing myself to a number of risks and dangers, which include *but are not limited to*:**
 - a. **Death;**
 - b. **Disability, including permanent total disability or impairment; and/or**
 - c. **Other injury to my body and mind.**
- _____ 5. **AT ANY BODY OF WATER, THERE ARE MANY SOURCES OF RISK AND DANGERS.** I understand that swimming or participating in water-related activities, or simply being at or around any body of water, can involve risks and dangers from many different sources. The sources of risk and danger can include *but are not limited to*: submerged dangers (including sharp objects, rocks or uneven pond floor), low lighting, murky waters, and tripping on, or falling from recreational equipment (including zip lines, floating docks, jumping platforms, water slides or slip-and-slides) and the use or misuse of such recreational equipment by myself and/or others. **I understand there are no lifeguards at the Ponderosa. I understand the risks of swimming and participating in water-related activities without lifeguard supervision, including the risk of drowning.** There are also many other risks and dangers, some of which cannot be foreseen in advance.

6. **I AM ASSUMING THE RISKS & DANGERS OF SWIMMING AND BEING AROUND THE POND.** I understand and agree that, by signing this Release and Agreement, I am assuming all of the risks and dangers that I may encounter while swimming or participating in swimming activities, including floating docks, water slides, slip-and-slides, zip lines, and jumping platforms, and/or simply being in or around the pond, including *but not limited to* all of the risks and dangers described above. **I understand that Kellen will NOT supply any life jackets, lifeguards, safety devices, or any other floatation or apparatuses for use at the Ponderosa. I understand, acknowledge, and accept the risks of swimming and participating in water-related activities without lifeguard supervision.**

7. **I AGREE TO FOLLOW THE POND RULES.** I understand and agree that the rules for the Ponderosa have been provided to me. I have read and understood those rules. I agree to follow those rules while at the Ponderosa.

8. **I WILL USE THE FACILITIES IN A SAFE AND RESPONSIBLE MANNER.** I will use the facilities at the Ponderosa, including floating docks, water slides, slip-and-slides, zip lines, and jumping platforms, safely and responsibly. Kellen is not responsible for teaching me, reminding me, or forcing me to use the facilities, or to conduct my actions and activities, in a safe and responsible manner.

9. **I AM NOT UNDER ANY PHYSICAL OR LEGAL DISABILITY.** I do not have any medical, psychological, or other conditions that would prevent me from using the facilities at the Ponderosa safely or from following the pond rules.

10. **I AM RELEASING KELLEN FROM LIABILITY.** I understand and agree that, by signing this Release and Agreement, I am giving up my right to sue Kellen for anything that may happen to me during or because of my visit to the Ponderosa. I am agreeing that Kellen will not and cannot be held responsible for any injuries or losses, *even if* those injuries or losses are caused by the negligence or recklessness of Kellen. This Release and Agreement releases and discharges Kellen from any liability to anyone, including me, my family, my heirs, or anyone to whom I assign any of my rights.

I knowingly, voluntarily, freely, and expressly release Kellen from any and all claims having any connection whatsoever to my visit to or activities at the Ponderosa.

11. **I WILL DEFEND & INDEMNIFY KELLEN.** I agree to defend and indemnify Kellen against any claims and lawsuits having any connection whatsoever to my visit to or activities at the Ponderosa, including any injuries or losses that happen because of the negligence or recklessness of Kellen. I understand and agree that “defend” means I will pay Kellen for *all* costs, including but not limited to the hourly fees charged by lawyers or experts that are billed to Kellen. I understand and agree that “indemnify” means I will pay any judgments entered against Kellen. I understand and agree that my duty to defend and indemnify applies to any and all lawsuits, *including but not limited to* any lawsuits brought by me, my spouse, my children, any of my other relatives, or any other person or entity who may have a claim having any connection whatsoever to my visit to or activities at the Ponderosa.

- _____ 12. **I AM AN ADULT. I UNDERSTAND AND WILL HONOR THIS RELEASE AND AGREEMENT.** I am over 18 years of age. I am mature enough and intelligent enough to enter this legally-binding Release and Agreement. I can read and understand written English. I have had ample opportunity to read and understand this Release and Agreement. I have also had ample opportunity to hire an attorney to help me understand this Release and Agreement. **I understand this Release and Agreement, and I have entered it voluntarily.** I understand and agree that this Release and Agreement is fully enforceable in a court of law.
- _____ 13. **MY INTENT AND PURPOSE IS TO PROTECT KELLEN.** I understand and agree this Release and Agreement is intended to provide maximum protection to Kellen against any lawsuit or claim having any connection whatsoever to my visit to or activities at the Ponderosa. If any part of this Release and Agreement is vague, ambiguous, overly-broad, or in any way unenforceable, it should be read in the way that will protect Kellen to the greatest extent possible under Iowa law.
- _____ 14. **OTHER IMPORTANT LEGAL AGREEMENTS.** I understand and agree that any lawsuit having any connection whatsoever to my activities at the Ponderosa or to this Release and Agreement can only be brought in the Iowa District Court for Plymouth County, Iowa. I understand and agree that Iowa law will govern any such lawsuit. I understand and agree that, if a court determines that any part or parts of this Release and Agreement is unenforceable, all other parts of this Release and Agreement will remain enforceable.

_____ Date of Event (for Facility Use Agreement): _____
 (Date of Event)

_____ Annual Membership (for Membership Agreement): _____
 (Membership Year)

By my signature below, I represent that I understand and agree to each and every term of this Release and Agreement.

 (Printed name)

 (Signature)

 (Date)