

KELLEN PONDEROSA, L.L.C.
Season Pass Agreement

This Season Pass Agreement (this “Agreement”) is made and entered into as of the Effective Date by and between KELLEN PONDEROSA, L.L.C., an Iowa limited liability company (hereinafter “Kellen”) and the Season Pass Holder(s) identified on the signature page of this Agreement (hereinafter “Pass Holder”).

RECITALS

WHEREAS Kellen proudly provides a season pass for access to, and use of its pond and other recreational equipment (including beach equipment such as tables and volleyball nets, floating docks, jumping platforms, slip-and-slides, water slides, and all other equipment) located at **20384 K49, Le Mars, Iowa 51031**(collectively, hereinafter the “Pond”);

WHEREAS Season pass holder wishes to have access to, and use of the Pond, subject to the terms and conditions set forth in this Agreement;

WHEREAS this Agreement constitutes the full agreement between Kellen and Pass Holder and sets forth all of the rights and responsibilities of each party related to the Pass Holder’s pass in and to the Pond.

AGREEMENT

NOW, THEREFORE, for and in consideration of the promises, agreements, and payments given hereunder, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Parties agree as follows:

1. **GENERAL SEASON PASS TERMS:** During the term of this Season Pass, the Pass Holder is entitled to the non-exclusive use of the Pond, subject to certain exceptions as specified in Paragraph 3. This Pass does not extend to use of the facility building (the “Pond Shed”) adjacent to the pond. Season Pass shall not be created until both this signed Agreement, the Season Pass application and the applicable “Season Pass Fee” specified in Paragraph 2 are received by Kellen. **The Season Pass is not valid on August 7, 2021 as it is a benefit date.**
2. **SEASON PASS TYPES & PAYMENT:** Kellen offers the following Season Passes:

Membership Type	Price (with taxes)
Adult (16 and older)	\$128.40
Couple	\$160.50
Small Family (immediate family, 4 or less members)	\$192.60
Large Family (immediate family, 5-8 members)	\$246.10

3. **ACCESS TIMES:** Season Pass Holders have access to the Pond from 1:00 p.m. to 7:00 p.m. The water slide and slip-and-slide will be turned on/off in Kellen's absolute discretion.

From time to time, it may be necessary for the Pond (including various pieces of recreational materials and equipment) to be partially or fully unavailable for use for reasons including, but not limited to, renovation, repair, special events, holidays or routine maintenance. Kellen will make every effort to minimize disruption to during these periods. Closures will be posted on Kellen's Facebook page.

4. **NON-EXCLUSIVE USE OF POND:** Through this Season Pass, Pass holder shall be entitled to the **non-exclusive** use of the Pond. The Pond is open daily to the public.

5. **RELEASE & IDEMNIFICATION:**

- a. **Assumption of Risk:** Kellen will not supply any life jackets, lifeguards, safety devices, or other floatation apparatuses for use at the Pond. All swimming and recreational activities taking place at the Pond are at your own risk and you assume the risk upon entering this Agreement and accessing the Pond. Signs are posted around the Pond that everyone swims at their own risk when using the Pond.
 - b. **Release of Liability:** Season Pass Holder, on behalf of itself, its heirs, representatives, successors and assigns, hereby releases and forever discharges Kellen (together with its guests, owners, managers, officers, employees, and agents) from any and all liability, claims, losses, expenses, or damages of any and every kind or nature sustained, whether to property or for bodily or personal injury including death of Pass Holder, resulting from or related to Pass Holder's use of the Pond to the fullest extent permitted under Iowa law. Pass Holder shall sign a Release of Claims and Agreement to Defend and Indemnify, which is attached hereto.
 - c. **Indemnification:** Pass Holder hereby agrees to indemnify, defend, and hold harmless Kellen, including its Season Pass Holders, managers, officers and agents, from any and all liability for damage to or loss of property, or for bodily or personal injury including death of Pass Holder except for liability for bodily or personal injury caused by the gross negligence or willful misconduct of Kellen.
6. **COMPLIANCE WITH LAW:** Pass Holder hereby agrees to abide by all applicable laws and regulations (local, State, and Federal) in its use of the Pond including, without limitation, not allowing any minors to possess or consume any alcoholic beverages at the Pond.
 7. **PROHIBITED ACTIVITIES:** Pass Holder agrees to comply with all policies, practices, rules and regulations of Kellen listed below, provided to Pass Holder, and/or posted at the Pond. The following activities are strictly prohibited:

- a. Cigarette and cigar smoking anywhere outside of designated smoking areas. Cigarettes or cigars shall be disposed of in the provided receptacles.
 - b. Littering. Pass Holder shall prevent any litter and wind disbursement of litter onto, or around the Pond.
 - c. No pets are allowed on property.
 - d. All illegal activities are strictly prohibited, including without limitation any illegal fireworks, use of illegal drugs, and/or use of possession of alcohol by minors.
8. **TERMINATION/CANCELLATION OF SEASON PASS:** Pass Holder may terminate or cancel its Season Pass at any time, provided, however, that no part or amount of the Season Pass Fee specified in Paragraph 2 shall be refunded to Pass Holder. In the event Pass Holder breaches or violates any term of this Agreement, or takes any action or engages in any behavior that is dangerous or contrary to the best interests of other guests, Kellen may terminate or cancel the Season Pass without notice and, in that event, no part or amount of the Season Pass Fee specified in Paragraph 2 shall be refunded to the Pass Holder.
9. **RESPONSIBILITY FOR DAMAGES:** Pass Holder hereby assumes full responsibility for all of its acts and conduct and all of the acts and conduct of all guests invited or admitted to the Pond under Paragraph 2 above. In the event any portion of the Pond shall be damaged by the acts or omissions of Pass Holder, Pass Holder shall pay to Kellen upon demand such sums as shall be necessary to restore the damaged property to the condition that existed prior to the occurrence of the damage.
10. **Miscellaneous:**
- a. **Force Majeure:** Both the Pass Holder and Kellen will be released from their respective obligations in the event of acts of God, war, terrorism, severe natural disasters or if any other cause beyond the reasonable control of the parties renders performance of the contract between them impossible.
 - b. **Check Return Fee:** Kellen will charge, and the Pass Holder agrees to pay, a \$35.00 fee for any check returned due to insufficient funds.
 - c. **Capacity to Sign:** Each has the legal capacity and authority to execute this Agreement. The persons executing this Agreement are duly authorized agents of the Party for whom they represent and have full authority to enter into this Agreement.
 - d. **Integration Clause:** This Agreement constitutes the sole understanding of the Parties and represents the entire agreement between the Parties regarding the Pass Holder's access to, and use of the Pond.

- e. Successors: This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors, assigns, heirs, purchasers, and representatives.
- f. Interpretation and Construction: This Agreement shall be governed by Iowa law.
- g. Amendments: No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed by the Party against whom such amendment, change or modification is sought to be enforced.
- h. Enforcement: Should any Party breach any term or condition of this Agreement, the non-breaching Party may bring an action in the Iowa District Court for Plymouth County, Iowa, to enforce the Agreement and shall be entitled to recover all damages caused by said breach as well as the costs of the action, including reasonable attorney fees, provided, however, that the Pass Holder's damages shall be limited solely to the return or refund of the applicable Season Pass Fee specified in Paragraph 2.
- i. Effective Date: The Effective Date of this Agreement shall be the date it becomes fully executed by the Parties, *i.e.*, the execution date of the later of the Parties to sign.

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Season Pass RULES

- Swimming hours are Daily from 1:00 p.m. until 7:00, must have your ID card with you
- Children 15 years and younger must be accompanied by someone 18 and older (no children drop offs)
 - If you have a season pass, ages 16 and 17 do not need to be accompanied by an adult but are NOT allowed to bring younger children with them, the release and agreement MUST be signed.
- No walking up slides
- No glass bottles
- No smoking on beach or any other illegal activity (ie: illegal drugs; use of possession of alcohol by minors. There are designated smoking areas)
- No turning on pumps
- Clean up after yourself
- No pets

*RULES SUBJECT TO CHANGE

IN WITNESS WHEREOF this agreement has been executed by the parties hereto as of the date first written above.

KELLEN PONDEROSA, L.L.C.
20384 K49
Le Mars, Iowa 51031
712-540-4929

Season Pass Holder

Signature:

By: _____

Address: _____

Title: _____

Phone: _____

Date: _____

Date: _____