

**KELLEN PONDEROSA, L.L.C.**  
**FACILITY USE AGREEMENT**

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This Facility Use 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 \_\_\_\_\_ (hereinafter “Client”).

**RECITALS**

**WHEREAS** Kellen proudly offers its facility located at **20384 K49, Le Mars, Iowa 51031**(hereinafter the “Facility”) for rental for special events;

**WHEREAS** Client wishes to rent the Facility from Kellen, subject to the terms and conditions set forth in this Agreement;

**WHEREAS** this Agreement constitutes the full agreement between Kellen and Client and sets forth the rights and responsibilities of each party related to the Facility rental.

**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 TERMS: This is *not* a lease;** it is only an agreement for the use of a specified facility, for a specified purpose and term. In consideration for use of the Facility as specified herein, Client agrees to pay Kellen the applicable “Usage Fee” described in Paragraph 2 below. Kellen reserves the right to deny any person(s) other than the Client access to, or use of, the Facility without terminating or otherwise breaching this Agreement.
2. **RESERVATION & PAYMENT:** To reserve the Facility, Client shall sign this Agreement **and** pay the applicable Usage Fee listed below (the “Usage Fee”). The Facility **shall not** be reserved for Client until both this signed Agreement and the applicable Usage Fee are received. **A code will be text to the phone number provided on the contract to access the building’s NORTH door when full payment is received.**

<b>Summer Rates (Memorial Day Weekend-September 30<sup>th</sup>)</b>				
<b><u>Rental Date</u></b>	<b><u>Rental Period</u></b>	<b><u>Usage Fee</u></b>	<b><u>Deposit</u></b>	<b><u>Total</u></b>
	Mon.-Thurs.	\$267.50	\$100.00	<b>\$367.50</b>
	Friday	\$428.00	\$100.00	<b>\$528.00</b>
	Sat., Sun., Holiday	\$588.50	\$100.00	<b>\$688.50</b>

<b>Winter Rates (October 1st – Friday before Memorial Day)</b>				
<b><u>Rental Date</u></b>	<b><u>Rental Period</u></b>	<b><u>Usage Fee</u></b>	<b><u>Deposit</u></b>	<b><u>Total</u></b>
	Non-Holidays	\$321.00	\$100.00	<b>\$421.00</b>
	Holidays		\$100.00	

3. **ACCESS TIMES:** Client shall have access to the Facility from 10:00 a.m. to 11:59 p.m. on the day reserved for the rental (the “Rental Period”). Additional charges may be incurred if an event runs beyond the Rental Period. In its absolute discretion, Kellen may allow Client access to the Facility outside the Rental Period for purposes of set-up and/or clean-up if the Facility is not reserved by other clients or otherwise being used. In the absence of these special arrangements, set-up and clean-up must take place during the Rental Period.
4. **NON-EXCLUSIVE USE OF POND:** In addition to the use of the Facility, Client shall be entitled to the **non-exclusive** use of the pond (including beaches, slip-and-slide, water slide, floating docks, jumping platform, etc.) (collectively, the “Pond”). This means that Client, and Client’s guests, will have shared use of the Pond, along with members of Kellen Ponderosa, L.L.C. **The water slide and slip-and-slide will be turned on no earlier than 1:00 p.m. and run no later than 7:00 p.m.**
5. **CANCELLATION & RETURN OF USAGE FEE:** Client shall have the right to cancel this Agreement and be entitled to the return/refund of its Usage Fee, only as follows:

<b><u>Cancellation – Days before Rental Date</u></b>	<b><u>Amount of Refund</u></b>
30 days or more	100%
15 – 29 days	50%
14 day or less	0%

6. **USE & RETRURN OF DEPOSIT:**
  - a. **Full Refund of Deposit:** In order to be entitled to a full refund of the deposit, the Client shall return the Facility in its pre-rental condition, which shall include meeting **all** of the following conditions:
    - i. The Facility and all items therein, including without limitation tables, chairs, pictures, televisions, electronic games, pool table/sticks/balls, shuffle board tables and accessories, foosball table/balls and all other items located in the Facility (collectively, the “Fixtures”) shall be undamaged.
    - ii. Facility must be returned in reasonably cleaned condition, including all of the following:

1. All garbage bags shall be removed from garbage cans, tied, and placed in the outdoor dumpster.
  2. All decorative items must be removed from walls and tables.
  3. All cans and bottles shall be placed in the appropriate bins.
  4. All tables and chairs shall be cleaned and the floors swept.
- b. Use of Deposit: If the Client fails to return the Facility in its pre-rental condition, Kellen shall use the deposit as follows:
  - i. Cleaning Fee: If the Client fails to clean the Facility as specified in Paragraph 6(a)(ii) above, Kellen shall charge a cleaning fee in the amount of \$75.00, which shall be deducted from the deposit.
  - ii. Damage to Facility or Fixtures: The Client shall be responsible for, and hereby agrees to pay the actual cost of, any damage caused to the Facility or Fixtures by the Client or the Client's guests. Client shall receive an invoice for any such damage, which shall be paid within thirty (30) days from the date of the invoice. Any invoices not paid within thirty (30) days of the invoice date shall accrue interest at the rate of 1.5% per month (18% per annum).
  - iii. Refund of Balance: Any amount of the deposit not used to clean the Facility (as specified in this Paragraph 6(b)(i)) or to repair damage to the Facility or Fixtures (as specified in this Paragraph 6(b)(ii)) shall be refunded to Client within thirty (30) days of the Rental Date.
  - iv. If caught with pets you will not receive your deposit back.
  - v. If you leave doors open with the A/C on you will not receive your deposit back.
7. **EVENT SPONSOR:** The Client signing this Agreement shall be deemed the event sponsor and must be an individual, must be at least 21 years of age, and shall accept responsibility for the conduct and activity of all those attending any event or activity covered by this Agreement. The individual signing this agreement shall be in or at the Facility and shall supervise its guests at all times.
8. **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. Signs are posted around the Facility that all members and guests swim at their own risk when using the pond.

- b. Release of Liability: Client, on behalf of itself, its heirs, representatives, successors and assigns, hereby releases and forever discharges Kellen (together with its members, 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 Client or of any guest of Client, resulting from or related to Client's use of the Facility to the fullest extent permitted under Iowa law. Client, and each guests of Client, shall sign a Release of Claims and Agreement to Defend and Indemnify, which is attached hereto.
  - c. Indemnification: Client hereby agrees to indemnify, defend, and hold harmless Kellen, including its members, 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 Client or of any guest of Client, except for liability for bodily or personal injury caused by the gross negligence or willful misconduct of Kellen.
9. **COMPLIANCE WITH LAW:** Client hereby agrees to abide by all applicable laws and regulations (local, State, and Federal) in its use of the Facility including, without limitation, not allowing any minors to possess or consume any alcoholic beverages at the Facility.
10. **PROHIBITED ACTIVITIES:** Client agrees to comply with all policies, practices, rules and regulations of Kellen listed below, provided to Client, and/or posted at the Facility. The following activities are strictly prohibited:
- a. Cigarette and cigar smoking anywhere inside the Facility or inside the fenced area of the Facility. Cigarettes or cigars shall be disposed of in the provided receptacles.
  - b. Littering. Client shall prevent any litter and wind disbursement of litter on the Facility or onto the pond.
  - c. No materials may be nailed to any ceilings, walls, floors or furnishings inside or outside of the Facility.
  - d. No pets are allowed in the Facility or inside the fenced area of the Facility.
  - e. 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.
11. **FACILITY CONDITION & RESPONSIBILITY FOR DAMAGES:** Client hereby assumes full responsibility for the acts and conduct of all guests invited or admitted to the Facility by the consent of, or failure to object by, the Client or with consent of, or failure to object by, any person acting for or on behalf of Client, which shall include all patrons and guests. In the event any portion of the Facility or Fixtures shall be damaged by the

act or omission of Client or by Client's agents, employees, customers, guests, invitees or licensee, Client shall be responsible for such damage, as specified in Paragraph 6(b)(ii).

12. **Miscellaneous:**

- a. Force Majeure: Both the Client 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 Client 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 rental of the Facility.
- 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 Client's damages shall be limited solely to the return or refund of the applicable Usage 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.

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**

**CLIENT**

Name: \_\_\_\_\_

By: \_\_\_\_\_

Address: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date Rented: \_\_\_\_\_