

# McClellan Mobile Home Park

## Pool Rules

### NO USE OF POOL AFTER DARK

1. NO ALCOHOLIC BEVERAGES IN POOL AREA.
2. SWIM SUITS ONLY, NO CUTOFFS.
3. NO RUNNING, ROUGHHOUSING, PUSHING OR PROFANITY.
4. NO SMOKING OR GLASS ITEMS IN POOL AREA, PLASTIC OR CANS ONLY.
5. ALL TRASH MUST BE THROWN IN TRASH CANS.
6. NO FOOD, PETS BIKES, SKATEBOARDS, BALLS, OR FRISBEES ALLOWED.
7. NO SUNTAN OR BABY OIL.
8. PERSONS UNDER THE AGE OF 14 SHOULD BE ACCOMPANIED BY AN ADULT.
9. ALL CHILDREN UNABLE TO SWIM THE LENGTH OF THE POOL MUST STAY SHALLOW END.
10. ALL BABIES MUST WEAR RUBBER PANTS AND CLOTH DIAPERS. NO DISPOSABLES.
11. NO JUMPING ON OR NEAR PEOPLE IN THE POOL. VIOLATORS WILL BE BARED FROM POOL.
12. DO NOT THROW ITEMS SUCH AS TOYS, FLOATS, ETC INTO POOL FROM APRON.
13. ALL PEOPLE ENTERING POOL AREA MUST BE CLEAN, INCLUDING FEET, NO BATHING IN POOL.
14. ATTENDANT WILL CLOSE POOL AREA AT 8:00PM. IF NOT IN USE OR IF TEMPERATURE IS 70 DEGREES.
15. FOOTWEAR MUST BE WORN TO POOL.
16. GUESTS MUST REGISTER WITH MANAGER AND BE ACCOMPANIED BY REGISTERED TENANT.
17. CHILDREN 7 AND UNDER MAY USE LIFE RING.
18. SAFETY RAILS AT POOL STEPS ARE FOR ENTRY AND NOT TO BE PLAYED ON OR JUMPED FROM.
19. NO AIR MATTRESSES.

### FACILITIES RELEASE ADDENDUM

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Space: \_\_\_\_\_ (“Tenant”) agrees as follows:

**THERE IS NO LIFEGUARD AT THE POOL. THE POOL IS NOT SUPERVISED BY THE MANAGEMENT. NO PARK PERSONNEL HAVE ANY TRAINING OR PROFICIENCY IN LIFE-GUARDING, RESCUE OR MEDICAL TREATMENT.**

**PERSONS USING THE POOL, OR USING OR PRESENT IN OTHER RECREATIONAL FACILITIES, DO SO AT THEIR OWN RISK!! DO NOT SWIM ALONE!**

**PERSONS WITH HEART OR HEALTH CONDITIONS WHICH COULD BE ADVERSELY AFFECTED BY THE USE OF THE FACILITIES SHOULD FORBEAR UNTIL AND UNLESS THEY HAVE OBTAINED THEIR PHYSICIAN’S APPROVAL.**

1. YOU, THE UNDERSIGNED, AGREE TO ASSUME ALL RISKS FOR USE OF THE POOL, SURROUNDING POOL AREA AND OTHER RECREATIONAL FACILITIES, AND TO ACCORDINGLY RELEASE OWNER, OWNER’S FAMILY MEMBERS AND OWNER’S AGENTS, EMPLOYEES AND REPRESENTATIVES FROM ALL INJURY AND HARM AS SET FROTH BELOW. YOU AGREE THAT:

**A. THE POOL AND OTHE RECREATIONAL FACILITIES ARE USED AND OCCUPIED AT YOUR SOLE RISK AND PERIL.**

**B. ACCESS TO THE POOL AND RECREATIONAL FACILITIES IS BASED ON THE AWARENESS OF INHERENT RISKS OF INJURY AND HARM IN THE USE AND PRESENCE IN THE POOL AND RECREATIONAL FACILITIES.**

**C. INHERENT RISKS OF INJURY AND HARM EXIST EVEN WHEN UTMOST CAUTION IS EXERCISED BY THE UNDERSIGNED IN ENTERING THE POOL AND OTHER RECREATIONAL FACILITIES.**

**D. ENTERING THE POOL AND OTHER RECREATIONAL FACILITIES IS OPTIONAL AND NOT PART OF A CORE FUNCTION OF OR LANDLORD'S DUTY TO PROVIDE HABITABILITY OF THE PREMISES.**

**E. THE UNDERSIGNED SHALL TAKE ALL REASONABLE PRECAUTIONS TO AVOID UNREASONABLE RISKS OF HARM TO THE UNDERSIGNED, ALL MEMBERS OF YOUR HOUSEHOLD, GUESTS AND INVITEES.**

**F. DESPITE THESE INHERENT RISKS, THE UNDERSIGNED SHALL, ON BEHALF OF ALL MEMBERS OF THE HOUSEHOLD, GUESTS AND INVITEES, ASSUME FULL RESPONSIBILITY FOR INJURY, HARM AND DAMAGE TO THE UNDERSIGNED FOR HIMSELF OR HERSELF AND ANY FAMILY MEMBERS, GUESTS, AND INVITEES, INCLUDING PERSONS IN THE UNDERSIGNED'S CARE, CUSTODY OR SUPERVISION, INCLUDING ALL PERSONAL REPRESENTATIVES, HEIRS, AND NEXT OF KIN THEREOF AND ALL OTHERS, AND RELEASE LANDLORD AND HOLD IT FREE AND HARMLESS FROM ALL CLAIMS, DEMANDS AND LAWSUITS FOR INJURY, DAMAGE OR OTHER HARM, LOSS, EXPENSE CAUSED IN OR ABOUT THE POOL AND OTHER RECREATIONAL FACILITIES AS NOW PROVIDED.**

**G. THE UNDERSIGNED'S ASSUMPTION OF INHERENT RISKS INCLUDES VOLUNTARILY ASSUMING ALL RISKS KNOWN AND UNKNOWN, OF HARM, BODILY INJURY, DEATH, LOSS, OR PROPERTY DAMAGE RESULTING OR ARISING FROM THE PRESENCE, OBSERVATION, USE OR PARTICIPATION WHILE UPON OR ABOUT THE POOL AND ALL OTHER RECREATIONAL FACILITIES.**

2. Accordingly, the undersigned releases, waives, discharges and covenants not to sue the Landlord, including employees, agents and representatives thereof, from all liabilities to the undersigned, his/her/their personal representatives, assigns, heirs, and next of kin, and all other tenants or residents, family members, occupants, guests, and invitees, for all personal or bodily injury, property damage, damages, loss or expense, of any kind whatsoever, even if caused in whole or in part by the action, inaction or negligence or gross negligence of Landlord, or its agents, employees, or representatives. The undersigned agrees to indemnify and save and hold harmless Landlord from any claims of loss, injury, liability, damage or other cost or expense Landlord may incur arising from the undersigned's presence in or use of the pool and other recreational facilities, or caused by in any way, observing or using any pool and other recreational facilities, or caused by, in any way, observing or using any pool or other recreational facilities, whether caused by the negligence or gross negligence of Landlord, other residents, or guests or invitees, to the fullest extent allowed by law.

A. This paragraph is intended as full and complete release as to any and all claims resulting from the use of the Facilities, notwithstanding Civil Code 1542, which provides that:

**“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.”**

B. The undersigned has read this Release and agrees that no oral representations or inducement apart from the foregoing written agreement have been made. The undersigned has been given the opportunity to review this release with its attorneys and acknowledges. The undersigned chooses to enter this Release having now acknowledged the right and opportunity to seek legal advice and acknowledges that the undersigned has done so, or that with such notification, voluntarily elects to forego obtaining such counsel and advice. The undersigned understands that this is a release of all claims for injury, harm, loss or damage of any and all kinds that there can be no claim against Landlord arising from presence or use of the pool or other recreational facilities after executing this release of liability.

C. The undersigned further expressly agrees that the foregoing release and waiver of liability and indemnity agreement is intended to be as broad and inclusive as is permitted by the law of the State of California and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full force and effect. This release of liability for non-essential function of tenancy are in accordance with the principles and ruling of *Lewis Operating Corporation v. Superior Court*, decided in 2011. Tenant expressly agrees that if any portion of this Facilities Release Addendum is held invalid, it is agreed that the balance shall continue in full force and effect.

D. **GENERAL PUBLIC PROHIBITED:** The use of common area facilities is dedicated to tenants, their personally invited guests and family members. Under no circumstances is the general public allowed or permitted to be invited. No activity requested to be attended by the general public, or the public at large, is allowed. No business or commercial activity may be conducted in the common areas including by any resident using the facility.

**I HAVE READ, UNDERSTOOD AND AGREE TO THE TERMS AND CONDITIONS OF THIS FACILITIES RELEASE ADDENDUM, INCLUDING THE RELEASES SET FORTH ABOVE.**

DATED: \_\_\_\_\_, 20\_\_\_\_ TENANT \_\_\_\_\_

DATED: \_\_\_\_\_, 20\_\_\_\_ TENANT \_\_\_\_\_

**ALTERNATE DISPUTE RESOLUTION (MEDIATION/ARBITRATION):**

A. Mediation: Tenant and Landlord agree to mediate any dispute arising from this Release before arbitration or court action, within 45 days from demand. Fees, if any, are to be divided equally among the parties. If as to any dispute to which this paragraph applies, any party files a lawsuit without first seeking mediation, or refuses to mediate after request, that party shall not be entitled to attorney’s fees even if otherwise available to that party. This provision shall be construed consistent with decisional law upholding use of mandatory mediation as included in the residential purchase and sale forms of the California Association of Realtors.

B. Arbitration: If the dispute is not successfully mediated within 45 days, the matter shall be arbitrated in accordance with the Federal Arbitration Act. This clause benefits both parties by reason of the speed, less cost, and convenience to the parties resulting from such a procedure.

1. Selection: The arbitrator shall be selected by the parties from a list supplied by the American Arbitration Association. The arbitrator shall determine all issues including whether the dispute may be arbitrated or not arbitrated. State laws shall not apply.

2. Procedures: The Commercial Rules of the American Arbitration Association (“AAA”) will apply and the dispute heard determined according the legal standards based on preponderance of legally-admissible evidence only. No joinder of actions or consolidation or class actions allowed.

3. Costs: Arbitrator to determine advance of costs and arbitrability. Costs shall be awarded to the prevailing party. No party shall recover their attorney’s fees in arbitration (notwithstanding an attorney’s fees clause to the contrary).

4. Location: The matter shall be submitted to any alternative dispute resolution organization within 75 miles of the situs of the Park who shall select an arbiter from a provided list of 5 proposed arbitrators from which each side may not strike more than 2 names. The decision of the arbitrator is final.

5. Final Decision: The decision may be entered in any proper court. Arbitration does not apply to small claims actions, foreclosure actions or eviction actions (preserving the right to trial by jury); nor shall it apply to injunction actions, where public policy provided for prompt relief. Arbitration shall be completed within 6 months from demand for arbitration.

6. Preparing for Arbitration: Discover permitted as per Federal Rules of Civil Procedure; punitive damages up to ten percent of compensatory damages if any. This clause promotes federal policy favoring arbitration and is construed in accordance with the AT&T Mobility v. Conception, decided in April, 2011 by the United States Supreme Court.

**AGREED.**

TENANT initials here: \_\_\_\_\_ TENANT initials here: \_\_\_\_\_