

# SUMMERCOLONYLIVING.COM Terms of Use

*Last Updated November 1, 2022*

Please review these Terms of Use carefully. They include a binding arbitration clause (see Section 20) requiring you and us to arbitrate our claims instead of suing in court.

- Introduction
- Your Use of the Summer Colony Living Sites
- Content and Ideas
- Monitoring by Summer Colony Living
- Materials Available on the Summer Colony Living Sites
- Merchandise
- Third Party Sites
- Placing an Order with Summer Colony Living
- Shipping and Delivery
- Export Policy
- Intellectual Property
- Procedure for Making a Claim of Copyright Infringement
- Privacy
- Third-Party Software & Licensing Notices
- Promotions
- Terms Applicable to Special Summer Colony Living Services
- Disclaimer of Warranties
- Limitation of Liability
- Indemnification
- Disputes & Arbitration; Applicable Law
- Termination
- General
- Filtering
- How to Contact Us

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## 1. Introduction

Welcome to the family of websites and applications provided by Summer Colony Living. These Terms of Use govern your access to and use of all Summer Colony Living Sites. By using the Summer Colony Living Sites, you affirm that you are of legal age to enter into these Terms of Use, or, if you are not, that you have obtained parental or guardian consent to enter into these Terms of Use. If you violate or do not agree to these Terms of Use, then your access to and use of the Summer Colony Living Sites is unauthorized. Additional terms and conditions apply to some services offered on the Summer Colony Living Sites (e.g., Gift Cards). Those terms and conditions can be found where the relevant service is offered on the Summer Colony Living Sites and are incorporated into these Terms of Use by reference.

**DEFINED TERMS:** In these Terms of Use:

- When we say “**Summer Colony Living**,” we mean Summer Colony Living, LLC (including any subsidiaries that Summer Colony Living, LLC may form or acquire in the future). We also refer to Summer Colony Living as “**we**,” “**us**” and “**our**.” But when we say “**Summer Colony Living**

**Entities,**” we mean Summer Colony Living and its affiliates; its and their suppliers, vendors, contractors, and licensors; and its and their directors, officers, employees, and agents.

- When we say “**Summer Colony Living Sites,**” we mean [www.Summer Colony Living.com](http://www.SummerColonyLiving.com), the Summer Colony Living mobile site [https://mobile.Summer Colony Living.com](https://mobile.SummerColonyLiving.com), the Summer Colony Living Apps, and all related functionality, services, and Content offered by or for Summer Colony Living on or through [www.Summer Colony Living.com](http://www.SummerColonyLiving.com) and the Summer Colony Living Apps or the systems, servers, and networks used to make the Summer Colony Living Sites available.
- When we say “**Summer Colony Living Apps,**” we mean the official “Summer Colony Living App” for iPhone and Android.
- When we say “**you**” or “**your**” we mean any user (like you!) of any Summer Colony Living Site.
- When we say “**Terms of Use,**” we mean these Terms of Use and all other terms and policies posted by Summer Colony Living on the Summer Colony Living Sites (and any updates by Summer Colony Living to these Terms of Use and those terms and policies).
- A few other key terms used in these Terms of Use:
  - When we say “**Content,**” we mean merchandise information, product descriptions, reviews, comments, messages, reviews, communications, feedback, submissions, suggestions, questions, and other information, data, content, and materials (including page headers, images, text, illustrations, formats, logos, hashtags, designs, icons, photographs, software programs, music clips or downloads, video clips, and written and other materials.)
  - When we say “**Ideas,**” we mean ideas, concepts, feedback, and know-how that you make available in connection with the Summer Colony Living Sites.
  - When we say “**make available,**” we mean post, transit, publish, upload, distribute, transmit, display, provide, or otherwise submit or make available (including through any part of the Summer Colony Living Sites administrated by third-party social media platforms (e.g., Facebook or Instagram) that allow interaction with the Summer Colony Living Sites through the tools offered by such social media platforms).
  - When we say “**Materials,**” we mean Content that Summer Colony Living Entities make available on or through the Summer Colony Living Sites, including In Store Now information.

**IMPORTANT: THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION THAT, AS FURTHER SET FORTH IN SECTION 20 BELOW, REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES. THIS MEANS THAT YOU AND SUMMER COLONY LIVING ARE EACH GIVING UP OUR RIGHTS TO SUE EACH OTHER IN COURT OR IN CLASS ACTIONS OF ANY KIND.**

**WARRANTY DISCLAIMERS AND LIABILITY LIMITATIONS:** While there are important points throughout these Terms of Use, please note the warranty disclaimers and limitations on Summer Colony Living’s liability explained in Sections 17 and 18, respectively.

**UPDATES:** We may update these Terms of Use from time to time by notifying you of such changes by any reasonable means, including by posting a revised Terms of Use through the Summer Colony Living

Sites. Any such changes will not apply to any dispute between you and us arising prior to the date on which we posted the revised Terms of Use incorporating such changes or otherwise notified you of such changes. By continuing to use or access any of the Summer Colony Living Sites after we post any changes, you accept the updated Terms of Use. The “*Last Updated*” legend above indicates when these Terms of Use were last changed.

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## **2. Your Use of the Summer Colony Living Sites**

You certify that the Content you provide on or through the Summer Colony Living Sites is accurate and that the information you provide on or through the Summer Colony Living Sites is complete. You are solely responsible for maintaining the confidentiality and security of your account including username, password, and PIN. Summer Colony Living is not responsible for any losses arising out of the unauthorized use of your account. You agree that Summer Colony Living does not have any responsibility if you lose or share access to your device. Any agreement between you and the issuer of your credit card, debit card, or other form of payment will continue to govern your use of such payment method on the Summer Colony Living Sites. You agree that Summer Colony Living is not a party to any such agreement, nor is Summer Colony Living responsible for the content, accuracy, or unavailability of any method used for payment. Your account may be restricted or terminated for any reason, at our sole discretion. Except as otherwise provided by law, at any time without notice to you, we may (1) change, restrict access to, suspend, or discontinue the Summer Colony Living Sites or any portion of the Summer Colony Living Sites, and (2) charge, modify, or waive any fees required to use any services, functionality or other content available through the Summer Colony Living Sites or any portion of the Summer Colony Living Sites.

- In connection with the Summer Colony Living Sites, you will not:
  - Make available any Content through or in connection with the Summer Colony Living Sites that is or may be in violation of the content guidelines set forth in [Section 3.C](#) (Prohibited Content) below.
  - Make available through or in connection with the Summer Colony Living Sites any virus, worm, Trojan horse, Easter egg, time bomb, spyware, or other computer code, file or program that is or is potentially harmful or invasive or intended to damage or hijack the operation of, or to monitor the use of, any hardware, software, or equipment.
  - Use the Summer Colony Living Sites for any commercial purpose, or for any purpose that is fraudulent or otherwise tortious or unlawful.
  - Harvest or collect information about users of the Summer Colony Living Sites.
  - Interfere with or disrupt the operation of the Summer Colony Living Sites or the systems, servers, or networks used to make the Summer Colony Living Sites available, including by hacking or defacing any portion of the Summer Colony Living Sites; or violate any requirement, procedure or policy of such servers or networks.
  - Restrict or inhibit any other person from using the Summer Colony Living Sites.
  - Reproduce, modify, adapt, translate, create derivative works of, sell, rent, lease, loan, timeshare, distribute, or otherwise exploit any portion of (or any use of) the Summer Colony Living Sites except as expressly authorized in these Terms of Use, without Summer Colony Living’s express prior written consent.

- Reverse engineer, decompile, or disassemble any portion of the Summer Colony Living Sites, except where such restriction is expressly prohibited by applicable law.
  - Remove any copyright, trademark, or other proprietary rights notice from the Summer Colony Living Sites.
  - Frame or mirror any portion of the Summer Colony Living Sites, or otherwise incorporate any portion of the Summer Colony Living Sites into any product or service, unless you obtain Summer Colony Living’s express prior written consent to do so.
  - Systematically download and store any Materials.
  - Use any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, “scrape,” “data mine” or otherwise gather any Materials, or reproduce or circumvent the navigational structure or presentation of the Summer Colony Living Sites, without Summer Colony Living’s express prior written consent.
  - Cause injury to any person or entity.
  - Violate any law, rule, or regulation, or these Terms of Use.
- You will not use the Summer Colony Living Sites or Summer Colony Living’s name, logo, or brand to (1) send any unsolicited or unauthorized Content, including advertising, promotional materials, email, junk mail, spam, or other form of solicitation; or (2) use any meta tags or other hidden text or metadata utilizing a Summer Colony Living trademark, logo, URL, or product name without Summer Colony Living’s written consent;
  - You will not attempt to do anything, or permit, encourage, assist, or allow any third party to do anything, prohibited in this Section, or attempt, permit, encourage, assist, or allow any other violation of these Terms of Use.

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### **3. Content and Ideas**

#### **A. Submitting Content and Ideas**

Summer Colony Living provides functionality that enables users to make available Content and Ideas in connection with the Summer Colony Living Sites. Any text in Content should be written in English. You acknowledge and agree that you are responsible for all Content and Ideas you make available in connection with any Summer Colony Living Site. You represent and warrant that (1) you have the authority to grant the rights in such Content and Ideas as set forth in these Terms of Use, including in Section 3(B) below; and (2) such Content and Ideas, and the use of such Content and Ideas, will not violate any term of these Terms of Use. This means you will be responsible for the legality, the accuracy, the appropriateness, the originality, and your rights in any such Content and Ideas.

#### **B. Summer Colony Living’s Rights to Use Content and Ideas**

You grant to Summer Colony Living a royalty-free, perpetual, irrevocable, worldwide, unlimited, nonexclusive license to use, reproduce, create derivative works from, modify, publish, edit, translate, distribute, perform and display (publicly or otherwise) any Content that you make available, in any media or medium, and in any form, format, or forum now known or hereafter developed. You further agree that Summer Colony Living is free to use any Ideas for any purpose. Summer Colony Living may sublicense its rights in Content and Ideas through multiple tiers of sublicenses. Summer Colony Living is, and will be,

under no obligation (1) to maintain any Content or Idea in confidence; (2) to pay any compensation for any Content or Idea; or (3) to respond to any Content or Idea. You grant to Summer Colony Living the right to use any name associated with any Content or Idea that you make available to Summer Colony Living, although Summer Colony Living has no obligation to exercise such right, or to otherwise provide any attribution for any Content or Idea.

### **C. Prohibited Content**

You agree that you will not make available Content in connection with the Summer Colony Living Sites that:

- is false, fraudulent, inaccurate, or misleading;
- contains your full name(s), or any other confidential personally identifiable information of yourself or others;
- violates any local, state, federal, or international laws or is otherwise tortious;
- is protected by or would infringe on the rights of others (including Summer Colony Living), including any patent, copyright, trademark, trade secret, right of publicity or privacy, or any other proprietary right, without the express prior written consent of the applicable owner;
- is obscene, indecent, pornographic, or otherwise objectionable;
- is derogatory, defamatory, threatening, harassing, abusive, slanderous, hateful, or embarrassing to any other person or entity as determined by Summer Colony Living in its sole discretion;
- victimizes, harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age or disability;
- is violent or threatening, or promotes violence against, or actions that are threatening to, any individual or group;
- contains advertisements, solicitations, or spam links to other web sites or individuals, without prior written permission from Summer Colony Living;
- contains or relates to chain letters or pyramid schemes;
- impersonates another business, person, or entity, including Summer Colony Living, its related entities, employees, and agents;
- violates any policy posted on the Summer Colony Living Sites; or
- is intended to cause harm, damage, disable, or otherwise interfere with the Summer Colony Living Sites or our partners.

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### **4. Monitoring by Summer Colony Living**

Summer Colony Living will have the right (but not the obligation), in our sole discretion, to monitor, evaluate, and analyze Content, and any use of and access to the Summer Colony Living Sites, including to determine compliance with these Terms of Use and any other operating rules that may be established by Summer Colony Living from time to time. Summer Colony Living will also have the right (but not the obligation), in our sole discretion, to edit, move, delete, or refuse to make available any Content made available through, the Summer Colony Living Sites, for any reason, including violation of these Terms of Use, whether for legal or other reasons. Despite this right of ours, you are solely responsible for any Content you make available, and you agree to indemnify Summer Colony Living for all claims resulting from any Content you make available.

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### **5. Materials Available on the Summer Colony Living Sites**

Summer Colony Living and its suppliers and licensors may make available various Materials. The Materials are for educational and informational purposes only, and errors may appear from time to time. Before you act in reliance on any Materials, you should confirm any facts that are important to your decision. The Summer Colony Living Entities make no warranty as to the reliability, accuracy, timeliness, usefulness, or completeness of any Materials. If you find an error or notice something that does not look

quite right on the Summer Colony Living Sites, we would appreciate it if you let us know by contacting us at <http://help.SummerColonyLiving.com/>. (Your feedback is a big part of what helps Summer Colony Living to get better at helping you!)

NO MATERIALS RELATED TO HEALTH, WELLNESS, PRESCRIPTIONS, OR PHARMACEUTICALS ARE INTENDED TO SUBSTITUTE FOR THE DIAGNOSIS, TREATMENT AND ADVICE OF A MEDICAL PROFESSIONAL, AND SUCH MATERIALS DO NOT COVER ALL POSSIBLE USES, PRECAUTIONS, SIDE EFFECTS, AND INTERACTIONS, AND SHOULD NOT BE CONSTRUED TO INDICATE THAT ANY DRUG IS SAFE OR EFFECTIVE FOR YOU. CONSULT THE PRODUCT INFORMATION (INCLUDING PACKAGE INSERTS) REGARDING DOSAGE, PRECAUTIONS, WARNINGS, AND INTERACTIONS, AND YOUR MEDICAL PROFESSIONAL, FOR GUIDANCE BEFORE USING ANY PRESCRIPTION OR OVER-THE-COUNTER DRUG.

THE SUMMER COLONY LIVING ENTITIES ASSUME NO RESPONSIBILITY FOR ANY CONSEQUENCE RELATING DIRECTLY OR INDIRECTLY TO ANY ACTION OR INACTION YOU TAKE BASED ON THE MATERIALS.

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## 6. Merchandise

The Sites may make available listings, descriptions, and images of goods and services (collectively, “**Products**”). Such Products may be made available by us or by third parties. We make no representations as to the completeness, accuracy, reliability, validity, or timeliness of such listings, descriptions, or images (including any features, specifications, and prices contained on the Sites). Such information and the availability of any Product are subject to change at any time without notice. We have made efforts to accurately display the attributes of Products, including the applicable colors. However, as the actual colors you see will depend on your monitor, we cannot guarantee that your monitor’s display of any color will accurately reflect actual product color or finish. In addition, certain weights, measures, and similar descriptions are approximate and are for convenience only.

We sell Products for children’s use; however, these Products are intended for sale to adults.

Summer Colony Living has no liability to you for content on the Summer Colony Living Sites that you find to be offensive, indecent, or objectionable. Certain Products are labeled with age restrictions or are intended for individuals of certain ages or “mature audiences” only. By ordering an age restricted item, you certify that you satisfy the age restrictions.

Summer Colony Living is not responsible for, and cannot guarantee the performance of, goods and services provided by third parties, including any Summer Colony Living Entity, Marketplace Retailer (as defined below in [Section 16.A](#)), our advertisers, or other third parties to whose sites we link. While our goal is to provide accurate information, product packaging and material may contain more and/or different information than that provided on Summer Colony Living Sites, including the product description, country of origin, nutrition, ingredient, allergen, and other information. Always read labels, warnings, directions, and other information provided with the product before using or consuming the product. For additional information about a product, please contact the manufacturer. Information and statements regarding dietary supplements have not been evaluated by the Food and Drug Administration and are not intended to diagnose, treat, cure, or prevent any disease or health condition. If you find a product is not as described, your sole remedy is to return it in unused condition (excluding products that are not eligible for return), in accordance with Summer Colony Living’s return policy. It is your responsibility to ascertain and obey all applicable local, state, federal, and foreign laws (including minimum age requirements) regarding the purchase, possession, and use of any Product.

## **7. Third Party Sites**

References on Summer Colony Living Sites to any names, marks, products, or services of third parties, or links to third-party sites or information, are not an endorsement, sponsorship, or recommendation of the third party or its information, products, or services. Summer Colony Living is not responsible for the content of any third-party linked site or any link contained in a linked site, including any third-party social media or mobile app platform with which the Summer Colony Living Sites operate or otherwise interact, nor is Summer Colony Living responsible for the acts or omissions of any operator of any such site or platform. Your use of any such third-party site or platform is at your own risk and will be governed by such third party's terms and policies (including its privacy policy).

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## **8. Placing an Order**

### **A. Order Acceptance and Billing**

You represent and warrant that you have the right to use any credit card or other means of payment that you provide to us. By providing payment card information to us, you authorize us to store and use the card as a payment method for purchases made through your Summer Colony Living.com account, including on Summer Colony Living affiliated sites and properties which you access via your Summer Colony Living.com account credentials. Summer Colony Living participates in account update services offered by some banks. If your bank participates in account updater services, these services will automatically update your card number or expiration date in our system when it changes. If you do not want to have your cards automatically updated, you can opt out of these services by contacting your issuing bank. All billing information you provide to us must be truthful and accurate. Providing any untruthful or inaccurate information is a breach of these Terms of Use and may result in cancellation of your order. Prior to accepting an order we may also request additional information from you. Verification of information may be required prior to the acknowledgment or completion of any purchase. We reserve the right to refuse or cancel an order for any reason including limitations on quantities available for purchase, inaccuracies, or errors in product or pricing information, or problems identified by our credit and fraud avoidance department. If your order is canceled after your credit card (or other payment account) has been charged, we will issue a credit to your credit card (or other applicable payment account) in the amount of the charge. We will attempt to contact you if all or any portion of your order is canceled or if additional information is required to accept your order. Summer Colony Living may request a pre-authorization for some orders placed online with a credit or debit card. This pre-authorization will not be billed to you; however, your card issuer may hold this amount for a short period. Your card issuer determines the length of time the pre-authorization is held. We do this to ensure that the card details are still valid and that you have sufficient funds to complete the transaction.

By confirming your purchase at the end of the checkout process, you agree to accept and pay for the Products, as well as all shipping and handling charges and applicable taxes. You will not be charged for most orders until the order has shipped. Some exceptions (when you will be charged at the time your order is placed) are: (i) orders or preorders paid for with a Gift Card, eGift Card, or PayPal account; and (ii) orders paid using the in-store "Cash" payment method.

Summer Colony Living reserves the right, including without prior notice, to limit the quantity of items purchased per person, per household, or per order for any reason. We will attempt to notify you should such limits be applied. Summer Colony Living also reserves the right, at our sole discretion, to prohibit sales to dealers or resellers. For purposes of these Terms of Use, "reselling" will be defined as purchasing or intending to purchase any Product(s) from Summer Colony Living for the purpose of engaging in a commercial sale of the same Product(s) to a third party.

## **B. Pricing Information; Availability**

Summer Colony Living cannot confirm the price or availability of an item until after your order is placed. Pricing or availability errors may occur on the Summer Colony Living Sites or through Marketplace Retailers. The receipt of an order confirmation does not constitute our acceptance of an order or our confirmation of an offer to sell a Product. Summer Colony Living reserves the right to cancel any orders containing pricing or availability errors, with no further obligations to you, even after your receipt of an order confirmation or shipping notice from Summer Colony Living. Summer Colony Living may, at its discretion, either contact you for instructions or cancel your order and notify you of such cancellation. Pricing for products may be different on the Summer Colony Living Sites or from prices available in Summer Colony Living stores or on Summer Colony Living Apps.

## **C. Promotional Codes**

Promotional codes are limited in nature and may expire or be discontinued with or without notice. Promotional codes are void where prohibited by law. Promotional codes may not be copied, sold, or otherwise transferred. They are not redeemable for cash and are subject to cancellation or change at any time for any reason without notice. We reserve the right in our discretion to impose conditions on the offering of any promotional code.

## **D. Gift Cards**

The risk of loss and title to any gift cards passes to the purchaser upon our electronic transmission to the recipient or delivery to the carrier, whichever is applicable. Your purchase and use of gift cards is subject to the full terms and conditions related to gift cards, available at [http://help.SummerColonyLiving.com/app/answers/detail/a\\_id/57](http://help.SummerColonyLiving.com/app/answers/detail/a_id/57).

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## **9. Shipping and Delivery**

Products will be shipped to an address designated by you, if applicable, so long as such address is complete and complies with the shipping restrictions contained on the Summer Colony Living Sites. All transactions are made pursuant to a shipping contract, and, as a result, risk of loss and title for Products pass to you upon delivery of the Products to the carrier.

Delivery of Products purchased from the Summer Colony Living Sites to addresses outside the United States is limited. Some Products also have restricted delivery within the United States. Delivery restrictions are available at

[https://www.SummerColonyLiving.com/cservice/contextual\\_help\\_popup.gsp?modId=119506](https://www.SummerColonyLiving.com/cservice/contextual_help_popup.gsp?modId=119506).

Some Products may be available for pick up at physical Summer Colony Living store location(s). Estimated delivery times are determined based on the method of shipping chosen when Products are purchased and the destination of the Products.

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## **10. Export Policy**

You acknowledge that (a) goods licensed or sold on the Summer Colony Living Sites, and (b) any software or technology purchased, downloaded, or used from the Summer Colony Living Sites, are subject to the customs and export control laws and regulations of the United States of America and may also be subject to the customs and export laws and regulations of the country in which the products are manufactured and/or received, and you agree to comply with all applicable laws. You agree, represent, and warrant that no



Materials will be accessed from, downloaded in, released in, carried to, transferred to, transshipped through, exported to, or re-exported (collectively “transferred”) to any territory (or national resident thereof), person, entity, or organization to which such Materials could not be transferred directly from the United States or by a U.S. person without a license, including without limitation to any person on the U.S. Treasury Department’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Denied Persons List or Entity List.

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## **11. Intellectual Property**

The Summer Colony Living Sites and all Materials, and all copyrights, trademarks, trade dress, and other intellectual property rights there (collectively, the “IP”) are owned or controlled by or licensed to Summer Colony Living, and are protected by U.S. and international trademark, copyright, and other intellectual property laws. Materials are licensed (not sold) to end users. Subject to your compliance with these Terms of Use, and solely for so long as you are permitted by Summer Colony Living to use the Summer Colony Living Sites, you may access, view, download, and print the Materials for your personal, non-commercial use only; provided, however, that you (1) retain all copyright, trademark, or other proprietary designations contained on all Materials; (2) do not modify or alter the Materials in any way; and (3) do not provide or make available the Materials to any third party in a commercial manner. In addition, subject to your compliance with these Terms of Use, and solely for so long as you are permitted by Summer Colony Living to use the Summer Colony Living Apps, we permit you, on a limited, non-exclusive, revocable, non-transferable, non-sublicensable basis, to install and use the Summer Colony Living Apps on a mobile device that you own or control, solely for your personal, non-commercial use. If you fail to comply with any of the terms or conditions of these Terms of Use, you must immediately cease using the Summer Colony Living Apps and remove (that is, uninstall and delete) the Summer Colony Living Apps from your mobile device.

No license, right, title, or interest in the Summer Colony Living Sites or any Materials is transferred to you as a result of your use of the Summer Colony Living Sites or your accessing, viewing, downloading, or printing of the Materials. You may not reproduce (except as noted above), publish, transmit, distribute, display, modify, create derivative works from, sell, or participate in any sale of or exploit in any way, in whole or in part, any of the Materials or the Summer Colony Living Sites. The Summer Colony Living Sites and Materials may be used only as a personal shopping resource. Any other use, including the reproduction, modification, distribution, transmission, republication, display, or performance, of the Summer Colony Living Sites and the Materials is strictly prohibited. The compilation (meaning the collection, arrangement, and assembly) of the Summer Colony Living Sites and Materials is the exclusive property of Summer Colony Living and is also protected by U.S. and international copyright laws.

SUMMER COLONY LIVING, the SUMMERCOLONYLIVING.COM names and logos, and all other graphics, logos, page headers, button icons, scripts, and service names included in or made available through any of the Summer Colony Living Sites are trademarks or trade dress of Summer Colony Living in the U.S. and other countries. All other marks are the property of their respective companies.

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## **12. Procedure for Making a Claim of Copyright Infringement**

We respect the intellectual property of others. If you believe that your work has been copied and is accessible on the Summer Colony Living Sites in a way that constitutes copyright infringement, please see our DMCA Procedure

(available at [http://help.SummerColonyLiving.com/app/answers/detail/a\\_id/254](http://help.SummerColonyLiving.com/app/answers/detail/a_id/254)) for instructions on how to contact us to report possible copyright infringement.

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### 13. Privacy

You acknowledge that any personal information that you provide through the Summer Colony Living Sites will be used by Summer Colony Living in accordance with Summer Colony Living's Privacy Policy (available at <http://corporate.SummerColonyLiving.com/privacy-security/SummerColonyLiving-privacy-policy>), which may be updated by Summer Colony Living from time to time. If you purchase an item on Summer Colony Living.com sold by a Marketplace Retailer or a Summer Colony Living supplier, Summer Colony Living may share certain information with that Marketplace Retailer or supplier to permit the Marketplace Retailer or supplier, as applicable, to fulfill and ship your order, process returns, and provide customer service.

You authorize your wireless operator (AT&T, Sprint, T-Mobile, US Cellular, Verizon, or any other branded wireless operator) to disclose to Summer Colony Living and its third-party service providers your mobile number, name, address, email, network status, customer type, customer role, billing type, mobile device identifiers (IMSI and IMEI) and other subscriber status and device details, if available, solely to verify your identity and prevent fraud for the duration of the business relationship. See the Summer Colony Living Privacy Policy for how Summer Colony Living treats your data.

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### 14. Third-Party Software & Licensing Notices

The Summer Colony Living Sites may include certain third-party technologies and open source materials (collectively, "**Third-Party Technology**"). Your use of such Third-Party Technology is subject to these Terms of Use, as well as well the applicable terms and conditions of such third parties, set forth at [https://help.SummerColonyLiving.com/app/answers/detail/a\\_id/1657/kw/software](https://help.SummerColonyLiving.com/app/answers/detail/a_id/1657/kw/software) which is incorporated in these Terms of Use by reference.

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### 15. Promotions

Any sweepstakes, contests, raffles, surveys, games, or similar promotions (collectively, "**Promotions**") made available through the Summer Colony Living Sites may be governed by rules that are separate from these Terms of Use. If you participate in any Promotions, please review the applicable rules as well as our Privacy Policy. If the rules for a Promotion conflict with these Terms of Use, the Promotion rules will govern.

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### 16. Terms Applicable to Special Summer Colony Living Services

#### A. Summer Colony Living Marketplace

Summer Colony Living operates an online marketplace program on the Summer Colony Living Sites (available at <https://marketplace.SummerColonyLiving.com/>) which enables Marketplace Retailers to sell their products alongside Summer Colony Living products and, once an order is placed, to ship such Marketplace Retailers' products directly to the customer (the "**Summer Colony Living Marketplace**"). Any use of the Summer Colony Living Marketplace is subject to the following additional terms:

- When we say “**Marketplace Retailer**,” we mean any entity or retailer that sells goods or services in the Summer Colony Living Marketplace through the Summer Colony Living Sites, uses any order processing, fulfillment, shipping, or other services related to the Summer Colony Living Marketplace provided by or for Summer Colony Living, or uses any platform, portal, web service, application, interface, or other tool provided by or for Summer Colony Living in connection with the Summer Colony Living Marketplace.
- By purchasing a product from any of our Marketplace Retailers, you acknowledge that all Summer Colony Living Marketplace orders will be fulfilled by the third party Marketplace Retailer and not Summer Colony Living. The Marketplace Retailer (and not Summer Colony Living) will be responsible for all processing, shipping, returns, and customer service related to your Summer Colony Living Marketplace order. Products purchased from a Marketplace Retailer can only be returned to that Marketplace Retailer in accordance with its return policy and cannot be returned to Summer Colony Living stores or Summer Colony Living.com. Each Marketplace Retailer’s shipping information, return policy, customer service information, and Marketplace Privacy Policy can be found on that Marketplace Retailer’s Seller Information page. For other terms that apply to Summer Colony Living Marketplace, including important notices and disclosures, see About Marketplace (at [http://help.SummerColonyLiving.com/app/answers/detail/a\\_id/997](http://help.SummerColonyLiving.com/app/answers/detail/a_id/997)).
- To the fullest extent provided by applicable law, Summer Colony Living has no responsibility or liability for any Marketplace Retailer or their products.

## **B. iOS Summer Colony Living App**

In addition to your agreement with these Terms of Use, the following provisions apply with respect to your use of any version of the Summer Colony Living App compatible with the iOS operating system of Apple Inc. (“**Apple**”):

- Apple is not a party to these Terms of Use and does not own and is not responsible for any Summer Colony Living App. Apple is not providing any warranty for the Summer Colony Living App except, if applicable, to refund the purchase price for it. Apple is not responsible for maintenance or other support services for the Summer Colony Living App and will not be responsible for any other claims, losses, liabilities, damages, costs, or expenses with respect to the Summer Colony Living App, including any third-party product liability claims, claims that the Summer Colony Living App fails to conform to any applicable legal or regulatory requirement, claims arising under consumer protection or similar legislation, and claims with respect to intellectual property infringement. Any inquiries or complaints relating to the use of the Summer Colony Living App, including those pertaining to intellectual property rights, must be directed to Summer Colony Living in accordance with the “How to Contact Us” section.
- The license you have been granted in these Terms of Use is limited to a non-transferable license to use the Summer Colony Living App on an Apple-branded product that runs Apple’s iOS operating system and is owned or controlled by you, or as otherwise permitted by the Usage Rules set forth in Apple’s App Store Terms of Service. In addition, you must comply with the terms of any third-party agreement applicable to you when using the Summer Colony Living App, such as your wireless data service agreement.
- You represent and warrant that (1) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (2) you are not listed on any U.S. Government list of prohibited or restricted parties.

- Apple and Apple’s subsidiaries are third-party beneficiaries of these Terms of Use and, upon your acceptance of the terms and conditions of these Terms of Use, will have the right (and will be deemed to have accepted the right) to enforce these Terms of Use against you as a third-party beneficiary thereof; notwithstanding the foregoing, Summer Colony Living’s right to enter into, rescind or terminate any variation, waiver, or settlement under these Terms of Use is not subject to the consent of any third party.

### **C. Mobile Checkout Services**

Summer Colony Living Apps may enable customers to scan products at Summer Colony Living store(s) with their mobile devices and use mobile checkout solutions (“**Mobile Checkout Services**”). Any use of the Mobile Checkout Services is subject to the following additional terms:

- You agree to accurately scan all products before checkout when using any Mobile Checkout Services, and to pay for all products you obtain from any Summer Colony Living store. If you are unable to scan any products for any reason (including due to lack of connectivity with your mobile service), please consult with a Summer Colony Living employee to make sure all items are reflected on your physical or electronic receipt.
- You agree that Summer Colony Living may review the products in your possession and/or your receipt or proof of purchase on your mobile or other electronic device at any time and request that any products be re-scanned, and that any product or order price be re-calculated. In the event you and any Summer Colony Living employee calculate different totals for your purchase, the calculation confirmed by the Summer Colony Living employee will be the amount payable by you.
- You agree to fully cooperate with us and our employees during your use of any Mobile Checkout Services, including by providing any identification or verification required for the purchase of certain products.
- We may restrict, suspend, or terminate your right to use any Mobile Checkout Services at any time in our sole discretion. We may cease or suspend offering any Mobile Checkout Services at any time without notice to you.

### **D. Summer Colony Living Pay**

“**Summer Colony Living Pay**” is a feature built into the Summer Colony Living App that allows you to use your smartphone to pay for in-store purchases. Any use of the Summer Colony Living Pay service is subject to the following additional terms:

- By using Summer Colony Living Pay or otherwise by agreeing to these Terms of Use, you agree to receive an eReceipt in lieu of a paper receipt for all purchases made through Summer Colony Living Pay. You must register through a Summer Colony Living.com account to receive eReceipts (see below for more information).
- There is no charge from us to use Summer Colony Living Pay, but your data service provider’s message and data charges may apply. Except as otherwise provided by law, we may block, restrict, suspend or terminate your use of Summer Colony Living Pay at any time, without notice, and in our sole discretion.

- All Summer Colony Living policies applicable to sales occurring at a store location, including those regarding Ad Match, Price Matching, Coupon use, Returns, and Exchanges, apply to purchases made through Summer Colony Living Pay. We reserve the right to limit the availability of Summer Colony Living Pay during specific times, for specific items, or for certain events or promotions.
- Some products or services may not be eligible for purchase using Summer Colony Living Pay, or may require additional verification prior to completion of purchase through Summer Colony Living Pay.
- Your device’s camera must be enabled in order to use Summer Colony Living Pay to complete the checkout process and to use additional features. Enabling the Summer Colony Living App to utilize location services on your device may provide you with access to other Summer Colony Living Pay features. You can turn off location services at any time on your device.

## **E. eReceipts**

Certain Summer Colony Living Sites may permit or require the use of electronic receipts (“**eReceipt**”) for purchases made by you through a mobile device or other electronic device. Your eReceipt is a digital copy of your Summer Colony Living in-store purchase receipt. Any use of the Summer Colony Living eReceipt service is subject to the following additional terms:

- To register for eReceipts, you must first have an account with Summer Colony Living.com and then validate your mobile number via a text message. Summer Colony Living.com accounts are subject to these Terms of Use. If you initiate the registration process for eReceipts at the cash register, you will be required to enter a mobile number into the PIN pad and then validate your mobile number via a text message. By registering for Summer Colony Living eReceipts, you consent to receive an automated text message and accept any message and data rates that may apply for receipt of a text message.
- There is no charge from us to use Summer Colony Living eReceipts, but your data service provider’s message and data charges may apply. Summer Colony Living and text message carriers are not liable for delayed or undeliverable messages.
- All information provided to Summer Colony Living by users of the Summer Colony Living eReceipts will be subject to our Privacy Policy.
- We may alter, suspend, or terminate your use of Summer Colony Living eReceipts at any time at our discretion, without notice to you. We are not responsible for any losses associated with your inability to access the Internet and/or Summer Colony Living eReceipts. Requesting an eReceipt at the register will not automatically submit your eReceipt. Use of the Summer Colony Living eReceipts service is subject to all applicable laws and regulations.

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## **17. Disclaimer of Warranties**

THE SUMMER COLONY LIVING SITES, AND ALL CONTENT, MATERIALS, PRODUCTS, SERVICES, FUNCTIONALITY, AND OTHER ITEMS INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SUMMER COLONY LIVING SITES, ARE PROVIDED BY SUMMER COLONY LIVING ON AN “AS IS” AND “AS AVAILABLE” BASIS. NO SUMMER COLONY LIVING ENTITY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SUMMER COLONY LIVING SITES OR THE CONTENT, MATERIALS, PRODUCTS, SERVICES, FUNCTIONALITY, OR OTHER ITEMS

INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SUMMER COLONY LIVING SITES. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, THE SUMMER COLONY LIVING ENTITIES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, THE SUMMER COLONY LIVING ENTITIES DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, FOR ANY MERCHANDISE OFFERED ON THE SUMMER COLONY LIVING SITES. YOU ACKNOWLEDGE THAT, TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, YOUR USE OF THE SUMMER COLONY LIVING SITES IS AT YOUR SOLE RISK. THIS SECTION 17 DOES NOT LIMIT THE TERMS OF ANY PRODUCT WARRANTY OFFERED BY THE MANUFACTURER OF AN ITEM THAT IS SOLD BY SUMMER COLONY LIVING TO YOU THROUGH THE SUMMER COLONY LIVING SITES. THIS DISCLAIMER CONSTITUTES AN ESSENTIAL PART OF THESE TERMS OF USE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU ASSUME FULL RESPONSIBILITY FOR YOUR USE OF THE SUMMER COLONY LIVING SITES AND AGREE THAT ANY INFORMATION YOU SEND OR RECEIVE DURING YOUR USE OF THE SUMMER COLONY LIVING SITES MAY NOT BE SECURE AND MAY BE INTERCEPTED OR OTHERWISE ACCESSED BY UNAUTHORIZED PARTIES. YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NO SUMMER COLONY LIVING ENTITY IS RESPONSIBLE FOR ANY LOSS OR DAMAGE TO YOUR PROPERTY OR DATA THAT RESULTS FROM ANY MATERIALS YOU ACCESS OR DOWNLOAD FROM THE SUMMER COLONY LIVING SITES. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU.

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## **18. Limitation of Liability**

YOU ACKNOWLEDGE AND AGREE THAT, TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, SUMMER COLONY LIVING WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL OR EQUITABLE THEORY, WHETHER IN TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY NATURE ARISING OUT OF OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE SUMMER COLONY LIVING SITES, EVEN IF AN AUTHORIZED REPRESENTATIVE OF A SUMMER COLONY LIVING ENTITY HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, THIS DISCLAIMER APPLIES TO ANY DAMAGES OR INJURY ARISING FROM ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECTS, DELAY IN OPERATION OR TRANSMISSION, LOST PROFITS, LOSS OF GOODWILL, LOSS OF DATA, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, COMPUTER VIRUSES, FILE CORRUPTION, COMMUNICATION FAILURE, NETWORK OR SYSTEM OUTAGE, THEFT, DESTRUCTION, UNAUTHORIZED ACCESS TO, ALTERATION OF, LOSS OF USE OF ANY RECORD OR DATA, AND ANY OTHER TANGIBLE OR INTANGIBLE LOSS. SUBJECT TO THE FOREGOING, TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, NO SUMMER COLONY LIVING ENTITY WILL BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE FEES PAID BY YOU IN CONNECTION WITH YOUR USE OF THE SUMMER COLONY LIVING SITES DURING THE SIX (6) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT, TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, NO SUMMER COLONY LIVING ENTITY WILL BE LIABLE FOR ANY DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY SELLER (INCLUDING

ANY MARKETPLACE RETAILER), SHOPPER, OR OTHER USER OF THE SUMMER COLONY LIVING SITES.

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## **19. Indemnification**

You agree to defend (at Summer Colony Living's option), indemnify, and hold the Summer Colony Living Entities harmless from and against any and all liabilities, claims, damages, costs, and expenses, including attorneys' fees and costs, arising from or related to your misuse of the Summer Colony Living Sites or any breach by you of these Terms of Use. Summer Colony Living reserves the right, at our expense, to assume exclusive defense and control of any matter otherwise subject to indemnification by you and, in any case, you agree to cooperate with Summer Colony Living if and as requested by Summer Colony Living in the defense and settlement of such matter.

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## **20. Disputes & Arbitration; Applicable Law**

**PLEASE READ THIS SECTION CAREFULLY. IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.** Using or accessing the Summer Colony Living Sites constitutes your acceptance of this Arbitration provision. Please read it carefully as it provides that you and Summer Colony Living will waive any right to file a lawsuit in court or participate in a class action for matters within the terms of the Arbitration provision.

EXCEPT FOR DISPUTES THAT QUALIFY FOR SMALL CLAIMS COURT, ALL DISPUTES ARISING OUT OF OR RELATED TO THESE TERMS OF USE OR ANY ASPECT OF THE RELATIONSHIP BETWEEN YOU AND SUMMER COLONY LIVING, WHETHER BASED IN CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION, OR ANY OTHER LEGAL THEORY, WILL BE RESOLVED THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY, AND YOU AGREE THAT SUMMER COLONY LIVING AND YOU ARE EACH WAIVING THE RIGHT TO SUE IN COURT AND TO HAVE A TRIAL BY A JURY. YOU AGREE THAT ANY ARBITRATION WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED AND YOU ARE AGREEING TO GIVE UP THE ABILITY TO PARTICIPATE IN A CLASS ACTION. The arbitration will be administered by Judicial Arbitration Mediation Services, Inc. ("JAMS") pursuant to the JAMS Streamlined Arbitration Rules & Procedures effective July 1, 2014 (the "JAMS Rules") and as modified by this agreement to arbitrate. The JAMS Rules, including instructions for bringing arbitration, are available on the JAMS website at <http://www.jamsadr.com/rules-streamlined-arbitration>. The Minimum Standards are available at <http://www.jamsadr.com/consumer-arbitration>.

The arbitrator will conduct hearings, if any, by teleconference or videoconference, rather than by personal appearances, unless the arbitrator determines upon request by you or by us that an in-person hearing is appropriate. Any in-person appearances will be held at a location which is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, such determination should be made by JAMS or by the arbitrator. The arbitrator's decision will follow the terms of these Terms of Use and will be final and binding. The arbitrator will have authority to award temporary, interim, or permanent injunctive relief or relief providing for specific performance of these Terms of Use, but only to the extent necessary to provide relief warranted by the individual claim before the arbitrator. The award rendered by the arbitrator may be confirmed and enforced in any court having jurisdiction thereof. Notwithstanding any of the foregoing, nothing in these Terms of Use will preclude you from bringing issues to the attention of federal, state, or local agencies and, if the law allows, they can seek relief against us for you.

These Terms of Use will be governed by and construed under the laws of the United States (including federal arbitration law) and the State of California, without regard to conflicts of law principles.

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## 21. Termination

These Terms of Use are effective unless and until terminated by either you or Summer Colony Living. You may terminate these Terms of Use at any time, provided that you discontinue any further use of the Summer Colony Living Sites. We also may terminate these Terms of Use at any time and may do so immediately without notice, and deny you access to the Summer Colony Living Sites, if in our sole discretion you fail to comply with any term or provision of these Terms of Use. Upon any termination of these Terms of Use by either you or Summer Colony Living, you must promptly destroy all Materials and other Content downloaded or otherwise obtained from the Summer Colony Living Sites, as well as all copies of such Content, whether made under these Terms of Use or otherwise. The following sections will survive any termination of these Terms of Use: “Your Use of the Summer Colony Living Sites,” “Content and Ideas,” “Monitoring by Summer Colony Living,” “Materials Available on the Summer Colony Living Sites,” “Merchandise,” “Third Party Sites,” “Placing an Order with Summer Colony Living,” “Shipping and Delivery,” “Export Policy,” “Intellectual Property” (excluding the rights granted to you in that Section), “Privacy,” “Third-Party Software & Licensing Notices,” “Indemnification,” “Termination,” “Disclaimer of Warranties,” “Limitation of Liability,” “Disputes & Arbitration,” and “General”.

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## 22. General

These Terms of Use represent the complete agreement and understanding between you and Summer Colony Living and supersede all prior agreements and representations between the parties with respect to the subject matter of these Terms of Use. These Terms of Use do not, and shall not be construed to, create any partnership, joint venture, employer-employee, agency, or franchisor-franchisee relationship between you and Summer Colony Living. Headings used in these Terms of Use are for reference purposes only and in no way define or limit the scope of the section. If any provision of these Terms of Use is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable and the other terms of these Terms of Use will remain in full force and effect. The failure of Summer Colony Living to act with respect to a breach of these Terms of Use by you or others does not constitute a waiver and will not limit Summer Colony Living's rights with respect to such breach or any subsequent breaches. You may not assign, transfer, or sublicense any or all of your rights or obligations under these Terms of Use without our express prior written consent. We may assign, transfer, or sublicense any or all of our rights or obligations under these Terms of Use without restriction. Any use of the term “including” or variations thereof in these Terms of Use shall be construed as if followed by the phrase “without limitation.” Notices to you (including notices of changes to these Terms of Use) may be made via posting to the Summer Colony Living Sites or by e-mail (including in each case via links), or by regular mail. Without limitation, a printed version of these Terms of Use and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

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## 23. Filtering

This is to notify you that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist you in limiting access to material that is harmful to minors. Information identifying current providers of such protections is available from [https://en.wikipedia.org/wiki/Comparison\\_of\\_content-control\\_software\\_and\\_providers](https://en.wikipedia.org/wiki/Comparison_of_content-control_software_and_providers). Please note that



we do not endorse any of the products or services listed on such site.

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## **24. How to Contact Us**

If you have any questions or comments, please contact us at [https://help.Summer Colony Living.com/](https://help.SummerColonyLiving.com/), or by mail at the following address: Summer Colony Living.com; 73061 El Paseo, Palm Desert CA 92260.

Please note that e-mail communications will not necessarily be secure; accordingly, you should not include credit card information or other sensitive information in your e-mail correspondence with us. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

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