

## BUSINESS MEMBER USE AGREEMENT

THIS BUSINESS MEMBER USE AGREEMENT (“Agreement”) is made effective as of (date/year) \_\_\_\_\_, by the undersigned person(s), \_\_\_\_\_, identified herein as “Business Member” and governs the terms and conditions of the Business Member’s use of the Recreation Facilities, as defined below, owned or operated by the Highlands Ranch Community Association, Inc., a Colorado nonprofit corporation (“HRCA”).

### RECITALS

- A. HRCA is the community association for Highlands Ranch.
- B. HRCA owns and operates four recreation centers and backcountry trails in the Highlands Ranch Community (“Recreation Facilities”) for the benefit of its members (the “HRCA Members”).
- C. HRCA has agreed to allow a certain number of Business Members the right to use the Recreation Facilities, on and subject to, the terms of this Agreement.
- D. The undersigned Business Member desires to so use the Recreation Facilities and has agreed that their use will be on and subject to the terms of this Agreement.

THEREFORE, in consideration of the mutual promises and agreements of the parties herein contained, the parties agree as follows:

### 1. **TERM AND FEES**

- 1.1 **Grants of Membership.** Business Member is hereby granted a license to use the Recreation Facilities during the term of this Agreement. Use of the Recreation Facilities under this license shall be limited to the Business Member and the Related Parties of the Business Member (if applicable), and is not transferable.
- 1.2 **Term.** The Term of this Agreement (the “Term”) shall commence on the Agreement date and continue through the end of the current calendar year unless terminated earlier as provided herein. This Agreement shall be automatically renewed for consecutive periods of one year coinciding with the next calendar year (the “Renewal Term”) unless either party notifies the other in writing, at least 30 days prior to expiration date of the Term or any Renewal Term that it declines to so renew the Agreement or the Agreement is otherwise terminated pursuant to the terms hereof.
- 1.3 **Annual Use Fee.** In consideration for HRCA granting the license granted hereunder, Business Member shall pay to HRCA an “Annual Fee.” The initial Annual Fee for the Term shall be:

(a) **\$620.00 for an individual membership, which may be paid in quarterly fees of \$155.00**, plus a fee for a member access card (“Membership Card”); or

(b) **\$760.00 for a dual membership, which may be paid in quarterly fees of \$190.00**, plus a fee for each Membership Card; or

(c) **\$920.00 for a family membership, which may be paid in quarterly fees of \$230.00**, plus a fee for each membership Card.

The initial Annual Fee set forth above is based upon 365 days and shall be prorated to reflect the actual number of days in the initial Term.

**1.4 Payment Terms.** Payment of the Annual Fee shall be made by one of the following options:

(a) Payment in Full. The Annual Fee may be paid in full, in advance, for the entire year, which amount is due upon signing of this Agreement.

(b) Payment in Quarterly Installments. The Annual Fee may be paid in four equal quarterly installments, which payments are due and payable in advance on or before the tenth day prior to the first day of each calendar quarter (i.e. the first day of January, April, July and October) during the Term. Payment of the first quarterly installment under this Agreement is due, in advance, upon signing of this Agreement. **Quarterly installments shall be due and payable, without notice or demand, on the due dates set forth above.** Failure to timely pay a quarterly installment of the Annual Fee shall result in immediate termination of this Agreement on the last day of the calendar quarter for which payment was last made by Business Member. **In addition, as consideration for reinstatement of the license under this Agreement or for entering into a new agreement to use the Recreation Facilities in the future, Business Member shall pay any quarterly installment of an Annual Fee not paid by Business Member during the Term.**

If the Agreement date is other than the first day of a calendar quarter, the Annual Fee for the first partial calendar quarter shall be prorated on a daily basis for such partial quarter based on number of days remaining in that calendar quarter.

**1.5. Payment for Renewal Term.** The Annual Fee for any Renewal Term shall be determined from time-to-time by HRCA and must be paid in advance upon commencement of the Renewal Term at least 30 days prior to the beginning of the Renewal Term in accordance with the payment options set forth above. Failure to timely pay the Annual Fee or any quarterly installment for and during any Term or Renewal Term shall result in immediate termination of this Agreement upon the expiration of the Term or any portion of the Term or Renewal Term for which Business Member has paid.

**1.6 Business Membership Terms.** The Business Member acknowledges and agrees that in order to be eligible for membership as set forth herein the Business Member and Related Parties, as defined in Section 3.1 below, must have their principal place of business in an area, designated as the Business Member Eligible Area, as defined from time to time by HRCA ("Business Member Eligible Area"). The Business Member Eligible Area was established due to the close proximity of certain neighborhoods and businesses to the Community Association Area, as defined in the Community Declaration for HRCA, served by HRCA, which neighborhoods while immediately adjacent to or in the general vicinity of the Community Association Area are not part thereof. By signing this Agreement, the Business Member represents and warrants that the Business Member's

and Related Parties' principal place of business is located in an Business Member Eligible Area. Business Member shall immediately notify HRCA in writing if he or she, or any person who is registered or has a Membership Card as a Related Party, no longer reside or work in the Business Member Eligible Area. If Business Member breaches this obligation or if, while ineligible, Business Member or any Related Party uses any of the Recreation Centers, Business Member shall pay to HRCA, as liquidated damages, an amount equal to two times the Annual Fee from the date of ineligibility through the date HRCA is notified. Business Member acknowledges that the exact damages HRCA may suffer will be speculative, and the foregoing amount is agreed to be liquidated damages and not a penalty. Payment of such amount shall not in any event give the ineligible party any right to use the Recreation Centers.

Business Member understands and agrees that HRCA reserves the right to change the Business Member Eligible Area, including removing a neighborhood from the Business Member Eligible Area, at any time in its sole discretion. Business Member shall not be deemed to be in default of his or her obligation under this paragraph unless HRCA provides Business Member with written notice that Business Member's principal residence is no longer in the Business Member Eligible Area. Business Member may obtain a copy of the Business Member Eligible Area upon written request submitted to HRCA.

- 1.7 **Discontinuance of Business Membership Program.** HRCA reserves the right to discontinue the program allowing use of its Recreation Facilities by Business Members, at any time. If HRCA exercises that right, HRCA may terminate this Agreement at any time by giving thirty (30) days' prior written notice to Business Member, in which event HRCA shall refund to Business Member the portion of the Annual Fee paid by Business Member attributable to the period following the effective date of the termination.

## 2. **TERMS OF USE**

- 2.1 **HRCA Rules and Regulations.** Use of the Recreation Facilities is subject to the HRCA Rules and Regulations, as modified, supplemented, repealed or replaced from time to time by HRCA in its sole discretion. Business Member and the Related Parties shall comply with all HRCA Rules and Regulations. It is the responsibility of Business Member and the Related Parties to familiarize themselves with all such HRCA Rules and Regulations, all of which will be made available by HRCA to Business Member upon request. **Business Member acknowledges he or she has received and read the current HRCA Rules and Regulations.**

- 2.2 **Facility Availability.** Business Member's use of the Recreation Facilities will be limited to the operating hours of the Recreation Facilities, as modified from time to time by HRCA. HRCA may eliminate or change the Recreation Facilities including the hours or terms of use from time to time in its sole discretion. Business Member understands that access to the Recreation Facilities may be occasionally limited or restricted due to heavy demand, scheduling of special events, mechanical failure, construction, repairs, maintenance, weather conditions, holidays or other causes. Any such limitation or restriction shall not be considered a breach of this Agreement by HRCA, nor entitle Business Member to any reduction in or refund of the Annual Fee.

- 2.3. **Membership Card.** Business Member and any of its Related Parties over 7 years old must present to HRCA a Membership Card for access to and use of the Recreation

Facilities. Business Member and each such Related Party will be required to purchase a Membership Card from HRCA at the then-current cost being charged by HRCA to the HRCA Members. If a Membership Card is lost, stolen, destroyed or otherwise must be replaced for any reason, Business Member will be required to purchase a replacement Membership Card, at the then current charge being imposed by HRCA. Guests of Business Member will be issued a pass upon payment by Business Member of the guest fee. The fees for the purchase and issuance of Membership Cards are required to be paid in addition to the Annual Fee.

**2.4 HRCA Programs and Facilities.** Certain HRCA recreational programs and activities (e.g. aerobics programs, fitness classes, swimming lessons, sports leagues, crafts, etc.) require participants to pay a fee. HRCA will make available to Business Member all recreation programs and activities for which fees are charged at the same cost, if any, as is charged to HRCA Members. HRCA reserves the right to change or discontinue any of the Recreation Facilities, activities or programs from time to time in its sole discretion, none of which shall be deemed to be a breach of this Agreement by HRCA, nor entitle Business Member to any reduction in or refund of the Annual Fee.

**2.5 Non-Use of Facilities.** Business Member understands and agrees any non-use of the Recreation Facilities by Business Member shall not be cause for reduction, refund or deferral of payment of any fees paid by the Business Member to HRCA, including the Annual Fee.

### **3. RELATED PARTY**

**3.1 The “Related Parties”** of a Business Member means any family members of the Business Member who reside in the same principal residence as the Business Member. Family members shall be limited to the spouse and minor children of Business Member and adult children of Business Member, who are full time students.

**3.2 Confirmation of Terms.** HRCA may condition the issuance of a Membership Card to a Related Party and use of the Recreation Facilities by any Related Party may be conditioned upon each Related Party also executing an agreement to be bound by the terms of this Agreement relating to use of the Recreation Facilities and a Waiver and Release as defined in Paragraph 4.3 of this Agreement; provided, however, the failure to execute such agreement or Waiver and Release, will not affect the Related Party's obligation to be bound by the terms of this Agreement or Business Member's responsibility for the actions of and defaults by a Related Party under this Agreement.

**3.3 Notice of Change in Status.** In registering any person as a Related User, Business Member will be representing and warranting that such person in fact satisfies all of the qualifications to be a Related Party. Business Member shall immediately notify HRCA in writing if any such person no longer satisfies all of the qualifications to be a Related Party. If Business Member breaches this obligation or if Business Member or any Related Party uses any of the Recreation Facilities while ineligible for any reason, Business Member will be in default and, in addition to any other remedies HRCA has under this Agreement, Business Member shall pay to HRCA, as liquidated damages, an amount equal to two times the Annual Fee charged to Business Member, pro-rated to per diem amount, from the date of ineligibility through the date HRCA is notified. Business Member acknowledges that the exact damages HRCA may suffer will be difficult to determine, and the foregoing amount is agreed to be liquidated damages and not a

penalty. Payment of such liquidated damages shall not give the ineligible party any right to use the Recreation Facilities.

**3.4 Guests.** Guests of Business Member (“Guests”) may use the Recreation Facilities subject to the HRCA Rules and Regulations, including payment of applicable guest fees. The Business Member shall be liable for all of the actions of his or her Guests.

**3.5 Responsibility for Related Parties.** Business Member shall be responsible for all of the acts of the Related Parties and Guests, and any breach of any of the HRCA Rules and Regulations or any of the terms of this Agreement by a Related Party or Guest shall be deemed to be a breach by Business Member.

#### **4. RISKS OF USE**

**4.1 Protection of Personal Property.** HRCA is not and will not be liable for loss, theft, or damage of any personal property of Business Member or the Related Parties or Guests, including that of property placed in lockers. For this reason, HRCA recommends that Business Member and its Related Parties and Guests not bring valuables into any Recreation Facilities. Business Member understands that, although HRCA may maintain property insurance, such insurance is solely for the benefit of HRCA.

**4.2 Damage to HRCA Property.** Business Member and each Related Party and Guest shall be liable for any property damage or personal injury at the Recreation Facilities or any activity or function operated, organized, arranged or sponsored by HRCA, caused by Business Member or any Related Parties or Guest of Business Member, regardless of whether a separate agreement has been signed in connection with that activity or function. Business Member shall indemnify HRCA for any such damage or injury suffered or incurred by HRCA caused by Business Member or any Related Parties or Guest of Business Member, and each Related Party shall indemnify HRCA for any such damage or injury suffered or incurred by HRCA caused by such Related Party or Guest.

**4.3 Assumption of Risk and Waiver.** Business Member understands there are certain risks inherent in the fitness, exercise, recreational and other activities and programs conducted at Recreation Facilities, which risks Business Member assumes on behalf of himself or herself or any Related Parties of Business Member. **Business Member, on behalf of himself or herself and any Related Parties (if applicable), hereby covenants not to sue, and voluntarily agrees to waive, release, discharge, indemnify and hold harmless HRCA, its members, directors, officers, employees, volunteers, contractors, agents and representatives (the “Indemnified Parties”) from any and all causes of action, demands, claims, losses, or damages (including reasonable attorneys’ fees) of any nature whatsoever (collectively, “Claims”),** including any claims or actions for negligence Business Member, his or her minor child or other Related Parties may now have or have in the future against Indemnified Parties on account of personal injury, property damage, death, or accident of any kind, arising out of or in any way related to use of the Recreation Facilities by Business Member, his or her minor child, or other Related Parties, whether the use is supervised or unsupervised, however the injury is caused, including, but not limited to the negligence of any of the Indemnified Parties, the negligence of other participants, the negligence of third parties, accidents, breaches of contract, the forces of nature, or other causes. If Business Member, his or her minor child or any other Related Party or anyone on behalf of Business Member, his or her minor child or any other Related Party brings any Claim

intended to be barred by the terms of this paragraph, including any claim barred by the foregoing waiver, release of liability, assumption of risk, indemnification or covenant not to sue, Business Member shall indemnify and hold harmless Indemnified Parties against such Claim and, in connection therewith, Business Member shall reimburse Indemnified Parties for the reasonable attorneys' fees and costs Indemnified Parties incur in defending against such Claims, including the reasonable attorneys' fees it incurs in presenting the defense of this release, regardless of the outcome of such claim.

Business Member's use of the Recreation Facilities is conditioned upon each person using the Recreation Facilities, whether Business Member, Related Party, Guests, or otherwise, executing an individual Waiver, Release of Liability, Assumption of Risk, Indemnification and Covenant Not to Sue ("Waiver and Release"), provided that failure to execute the Waiver and Release will not relieve Business Member from any of his or her obligations or agreements under this Agreement.

- 4.4 Waiver for Third Parties.** Business Member specifically understands that he or she is waiving, releasing and discharging and represents and warrants that he or she has the authority to waive, release and discharge any Claims that Business Member or his or her minor child or other Related Parties may have presently or in the future for any negligent acts or omissions by HRCA and the other Indemnified Parties in connection with HRCA programs and the use of the Recreation Facilities.

## **5. DEFAULT AND REMEDIES**

- 5.1 Default by Business Member.** Business Member shall be in default under this Agreement if (a) Business Member fails to pay, when due, any amount owed to the HRCA under this Agreement, (b) Business Member or any Related Party of Business Member violates any HRCA Rules or Regulations, or (c) if Business Member or any Related Party breaches any of the terms of this Agreement.

- 5.2 Remedies.** Upon any default by Business Member, in addition to any other remedies set forth herein, HRCA may in its sole discretion (a) terminate this Agreement without prior notice to Business Member, (b) temporarily or permanently suspend or expel Business Member and its Related Parties from the Recreation Facilities, and (c) exercise any other remedies under this Agreement or at law, it being understood all such remedies shall be cumulative. If HRCA terminates this Agreement prior to the expiration of the Term because of a default HRCA shall have no obligation to refund any payment made pursuant to this Agreement to Business Member for any reason.

- 5.3 Costs and Attorneys Fees.** If HRCA files suit or brings any other action against Business Member or the Related Parties or Guests on any cause arising in any way from this Agreement, Business Member shall pay to HRCA such reasonable costs, such as attorneys' fees and court costs, that the court having jurisdiction may determine, in addition to costs and disbursements allowed to a prevailing party as a matter of law.

- 5.4 Default by HRCA.** In the event of any default by HRCA under this Agreement, Business Member's sole remedy shall be to terminate this Agreement and receive a refund, as liquidated damages and in full settlement of all claims by Business Member under this Agreement, of the portion of the Annual Fee prepaid by Business Member attributable to the period following the effective date of the termination. Business Member waives the right to and agrees not to make any Claims for any other damages or

specific performance. Business Member and Related Parties acknowledge that HRCA has relied upon this limitation on remedies in allowing nonresident members and their Related Parties to use the Recreation Facilities and in establishing the amount of the Annual Fee charged to Business Member and if there was not such a limitation on remedies, the Annual Fee charged to Business Member under the terms of this Agreement would be significantly higher.

## **6. GENERAL PROVISIONS**

- 6.1 No Assignment.** Neither Business Member nor any Related Parties of Business Member may sell, assign, transfer or otherwise convey any right granted under this Agreement. Likewise, Membership Cards issued to Business Member or Related Parties are not transferable or assignable and may be used only by the person named thereon.
- 6.2 Entire Agreement.** This Agreement shall constitute the entire understanding and agreement between the parties, and no variance, modification or amendment thereof shall be valid and enforceable, except by agreement in writing executed by HRCA and Business Member.
- 6.3 Severability.** If any provision of this Agreement proves to be illegal, invalid or unenforceable, the remainder of this Agreement will not be affected by such finding and, in lieu of each provision of this Agreement that is illegal, invalid or unenforceable, a provision will be added as a part of this Agreement as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- 6.4 Governing Law.** The laws of the State of Colorado will govern this Agreement. The exclusive venue for any disputes arising out of this Agreement is in Douglas County, Colorado. The waiver of or failure to enforce any term or condition of this Agreement shall not be construed as a waiver of any other term or condition.
- 6.5 Binding Effect.** This Agreement shall be binding upon Business Member and the Related Parties and their respective successors, heirs and personal representatives, and shall inure to the benefit of HRCA and, where applicable, the Indemnified Parties, and their respective successors and assigns.
- 6.6 Interpretation.** Captions and headings used in this Agreement are for convenience of reference only and will not affect the construction of any provision of this Agreement. As used herein, the singular will include the plural, and vice versa; any gender will be deemed to include the masculine, feminine and neuter gender; and the terms “including,” “include” or derivatives thereof, unless otherwise specified, shall be interpreted in as broad a sense as possible to mean “including, but not limited to,” or “including, by way of example and not limitation.”
- 6.7 Waiver of Jury Trial.** To the extent permitted by law, Business Member and HRCA each hereby waive trial by jury in any action, proceeding or counterclaim brought between the parties hereto or their successors or assigns in any matters arising out of or in any way connected with this Agreement.
- 6.8 Confirmation of Terms.** Business Member acknowledges that this Agreement includes certain waivers, releases of liability, assumptions of risk, agreements to

indemnify and covenants not to sue, and that Business Member has read and understands all of such terms. Business Member has been advised not to execute this Agreement if he or she does not understand or agree to such terms and Business Member acknowledges that he or she has had the opportunity to have his or her attorney review this document and explain it to Business Member. Such waivers, releases, assumptions, agreements, and covenants are intended to be interpreted and construed as broad and inclusive as is permitted by the laws of the State of Colorado.

**6.9 Effective Date.** This Agreement has been executed by Business Member to be effective as of the date it is executed by Business Member or the date of first use of the Recreation Center by Business Member, whichever is earlier. The terms hereof shall be binding upon Business Member upon its first use of the Recreation Center regardless of whether this Agreement has been executed by HRCA.

**Business Member certifies that he or she, or Business Member's authorized representative, has read and understands this Agreement and the HRCA Rules and Regulations and agrees that a violation of any provision of this Agreement, the HRCA Rules and Regulations, or any other HRCA policies or procedures or law by Business Member or any Related Parties is a breach of this Agreement.**

**BUSINESS MEMBER:**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Authorized Representative- Signature

\_\_\_\_\_  
Business Member – Print Name

\_\_\_\_\_  
Title

**Business Member Contact Information:**

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip

Home Telephone No. \_\_\_\_\_

E-Mail: \_\_\_\_\_

**Authorized Card Users**

1. Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

2. Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_



- 3. Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_
- 4. Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

*Please list names of Related Parties and telephone numbers for individuals to contact in case of emergency, and/or alternate telephone numbers for the Parent or Guardian:*

- 1. \_\_\_\_\_ Phone \_\_\_\_\_
- 2. \_\_\_\_\_ Phone \_\_\_\_\_
- 3. \_\_\_\_\_ Phone \_\_\_\_\_
- 4. \_\_\_\_\_ Phone \_\_\_\_\_

Accepted by:

HIGHLANDS RANCH COMMUNITY ASSOCIATION, INC.,  
a Colorado nonprofit corporation

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

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