

## FITNESS CENTER AGREEMENT

This Fitness Center Agreement (the "Agreement") dated as of \_\_\_\_\_, 20\_\_ (the "Effective Date") is entered into by and between HAYDEN FERRY WEST ASSOCIATION, INC. an Arizona non-profit corporation (the "Owner"), whose address is 60 E Rio Salado Parkway, Tempe, AZ 85281 the address of the property commonly known as Hayden Ferry Lakeside, and the undersigned (the "Permittee") for the right or privilege to use the exercise facility, including the exercise equipment, improvements, furnishings, and fixtures therein situated, at 74 E Rio Salado, Suite 101 Tempe, AZ 85281 (collectively, the "Fitness Center" or the "Facility").

1. Term. Subject to and upon the terms herein set forth, and the rules and regulations promulgated by Owner from time to time, Permittee shall have the right to use the Fitness Center. Owner may revoke the Permittee's right to use the Fitness Center at any time with or without cause, in Owner's sole discretion. In addition, this Agreement shall automatically terminate at such time as Permittee is no longer a tenant or an employee of a tenant of Owner. The term of this Agreement shall commence on the Effective Date and shall continue month to month, unless this Agreement is sooner terminated by Owner, or otherwise terminated in accordance with the terms set forth herein or otherwise extended by a written agreement by and between the Permittee and Owner.
2. Fee. Permittee shall pay the Owner a one-time, non-refundable administration fee of \$200.00 made payable in advance of receiving access to the Fitness Center and shall be paid by either check or money order made payable to HAYDEN FERRY LAKESIDE WEST ASSOCIATION, INC.
3. Use of Fitness Center
  - a. Fitness Center Rules. Permittee shall use the Fitness Center in accordance with the rules and regulations promulgated by Owner (the "Rules") and posted at the Fitness Center. Any and all persons who participate in or use the Fitness Center or its services must be a Permittee in good standing. Any unauthorized persons discovered by Owner within the Facility will be deemed a trespasser and requested to leave the Fitness Center. Owner further reserves the right to close the Fitness Center during legal holidays. Permittee acknowledges that he or she has received a copy of the current Rules prior to entering into this Agreement and that he or she has read, understands, and agrees to the Rules attached hereto as EXHIBIT A which new Rules may from time to time be adopted by Owner, including but not limited to, the provisions of the Rules which may govern or affect the terms of this Agreement such as renewal or termination of Permittee. Permittee's failure to observe the rules and regulations shall, at Owner's election, result in the termination of Permittee's right to use the Fitness Center.
  - b. Permittee's Responsibilities. Permittee understands that the Fitness Center is not staffed and takes full liability for the use of the Facility. The Fitness Center may be equipped from time to time with free weights, weight lifting machines, stationery bicycles, stair climbers, treadmills and other exercise equipment, lockers, and showers. In addition to the other responsibilities of the Permittee set forth herein or in the Rules, Permittee is responsible for becoming fully informed as to the function and operation of all exercise equipment, machines, apparatus, furnishings and fixtures within the Fitness Center prior to using the Fitness Center, and will exercise ordinary and reasonable care in his or her operation and use of the Fitness Center. In the event Permittee is not fully informed as to the function and operation of all exercise equipment, machines, apparatus, furnishing, and fixtures (the "Fitness Center Equipment") within the Fitness Center, Permittee shall be responsible for reviewing the equipment instruction brochures on file with Owner regarding the safe and appropriate use and operation of all Fitness Center Equipment prior to Permittee's use of the Fitness Center. In the event Permittee requires additional explanation regarding the use of the Fitness Center Equipment, Permittee, with Landlord's prior written consent and at Permittee's sole cost and expense, may use a personal trainer who is certified by the National Academy of Sports Medicine or other similar association reasonably acceptable to Landlord to explain the safe and appropriate use and operation of all Fitness Center Equipment prior to Permittee's use of the Fitness Center. Permittee agrees to use the Fitness Center

Equipment for the purposes to which such equipment is intended and apparently designed to be used. Permittee agrees that Permittee's uses of the Fitness Center at all times will be within Permittee's own physical capabilities and limitation. Where instructions from the manufacturer, any independent instruction, or notices concerning use of the exercise equipment within the Fitness Center have been made available, Permittee agrees to follow such instructions in utilizing the Fitness Center. Permittee agrees and understands that using the Fitness Center involves dangers of personal injuries such as muscle strain, as well as other dangers and injuries that cannot be foreseen, and that injury or death could result from his or her use of the Fitness Center. Use of the Fitness Center means that the Permittee has knowledge of and appreciates the risks involved with such use, including potential injuries, which may arise therefrom. Permittee shall be responsible for undertaking all reasonable steps to guard against injury to his or her self and to other persons or property within the Fitness Center or the premises of 74 E Rio Salado Parkway, Suite 101, Tempe AZ 85281, and to prevent damage to the Fitness Center or any other property within 74 E Rio Salado Parkway, Suite 101, Tempe AZ 85281. Permittee shall promptly notify Manager of any defective exercise equipment, as well as any damage to the equipment. Permittee is responsible for safeguarding all valuables prior to entry, or while within the Fitness Center, and agrees that the lockers provided within the Fitness Center are designed for clothing and gym bags and that valuables are not secure in the Fitness Center. Owner is not responsible for lost or stolen items.

- c. Assumption of Risk. Permittee has personally conducted an inspection of the Fitness Center and hereby acknowledges that no security personnel, exercise consultant or other attendant shall be present in the Fitness Center. Permittee shall be solely responsible for his or her own safety and shall determine his or her own physical capabilities and limitation in using utilizing the Fitness Center. Permittee agrees that upon any use of, or presence within, the Fitness Center, Permittee is making an informed choice to use or be present within the Fitness Center and expressly assumes the risk of such use or presence. Permittee acknowledges that the American College of Sports Medicine advises that each Permittee, especially those 35 years of age and older, should consult his or her physician and follow such physician's recommendation before using the Facility or otherwise beginning any exercise program at the Fitness Center. Furthermore, if Permittee has a history of heart disease, Permittee should consult a physician before using the Fitness Center.
4. No Waiver. Permittee does hereby acknowledge that failure of Owner to enforce any Rules, or any conditions of Permittee's use of the Fitness Center or any of the Owner's rights under this Agreement or under law shall not be deemed or construed to be a waiver by Owner of its rights thereafter to insist upon the Permittee's compliance with all Rules adopted by Owner, from time to time, and with all terms and conditions of this Agreement.
5. Release. In consideration of the use of the exercise and recreational facilities at the Fitness Center, Permittee does hereby agree to release and hold harmless HAYDEN FERRY LAKESIDE WEST ASSOCIATION, INC, Cousins Properties Incorporated, Cousins Properties LP, Cousins Realty Services, LLC, CPI Services LLC and any successor owner or manager of the building wherein the Fitness Center is located and their respective subsidiaries and affiliates, employees, officers, agents, contractors, contract managers, successors and assigns (collectively hereinafter, the "Released Parties") from liability for all injuries sustained by Permittee, any loss or damages of any nature or kind and/or cost of liability resulting from any act or omission, including negligence of the Released Parties, in connection with the use of the Fitness Center by Permittee or others. Permittee agrees to indemnify and hold harmless the Released Parties from any loss, liability, damage or cost that they may incur from Permittee's presence at the Fitness Center or use of the Fitness Center, including but not limited to any liability or loss the Released Parties may be held responsible for because of any torts committed by the Permittee or any guest of Permittee, against the Permittee or against any other persons present at the Fitness Center or present within the premises of 74 E Rio Salado Parkway, Suite 101, Tempe AZ 85281, and Permittee further agrees to reimburse the Released Parties for any damage that he or she may cause, or any guest of the Permittee may cause, to the Fitness Center or the asset or property of the Released Parties. It is intended that this release shall constitute a good sufficient and complete defense against any actions which might be brought by the Permittee or anyone acting on the

Permittee's behalf or claiming by or through the Permittee alleging injury, loss or damage arising out of use of or presence within the Fitness Center. The execution and delivery of this release and indemnity is a material inducement for the rights granted to Permittee hereunder, and Permittee acknowledges that Owner are relying on this release and indemnity and that Owner would not grant rights to Permittee as provided herein in the absence of this release and indemnity. Permittee has signed this release and indemnity of his or her own free will and agrees with all terms and conditions.

6. Miscellaneous. By signing this Agreement, Permittee acknowledges that he or she has read this entire Agreement and fully understands and agrees to all terms and conditions of this Agreement and the Rules as amended from time to time. This Agreement shall inure to be the benefit of Owner, and the Released Parties and their respective successors and assigns. In consideration for being allowed to use the Fitness Center, Permittee hereby releases HAYDEN FERRY LAKESIDE WEST ASSOCIATION, INC., Cousins Properties Incorporated, Cousins Properties LP, Cousins Realty Services, LLC, CPI Services LLC, their subsidiary and affiliate companies, as well as the employees, officers, directors and agents of such companies and any other designees of owner from any liability for claims concerning injuries, damages, or any other causes of action arising from the use of the Facility.
  
7. Limitation of Liability. **USER'S SOLE AND EXCLUSIVE METHOD OF COLLECTING ON ANY JUDGMENT THAT USER MAY OBTAIN AGAINST OWNER OR MANAGER, OR ANY OTHER AWARD MADE TO USER IN ANY JUDICIAL PROCESS REQUIRING THE PAYMENT OF MONEY BY OWNER OR MANAGER, SHALL BE TO PROCEED AGAINST THE INTERESTS OF OWNER IN AND TO THE BUILDING. NEITHER OWNER NOR MANAGER, NOR THEIR RESPECTIVE EMPLOYEES, AGENTS OR CONTRACTORS, SHALL HAVE ANY PERSONAL LIABILITY OF ANY KIND WHETHER UNDER THIS AGREEMENT OR OTHERWISE.**

PERMITTEE:

Signature: \_\_\_\_\_

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

Full Name: \_\_\_\_\_ Access Card#: \_\_\_\_\_

Employer/Company: \_\_\_\_\_ Suite#: \_\_\_\_\_

Work Phone#: \_\_\_\_\_ Mobile Phone#: \_\_\_\_\_

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

Email Address: \_\_\_\_\_ Gender: M / F

Emergency Contact Name: \_\_\_\_\_ Phone#: \_\_\_\_\_

## EXHIBIT A



### Fitness Center Rules and Regulations

**Hours of Operation: *24 Hours* starting at 5am on Monday and closing at 7pm on Friday  
Saturday: 7am-1pm & Sunday: **CLOSED****

*A signed Fitness Center Agreement & headshot photo must be on file with the Management Office and the \$200.00 administration fee must be paid prior to receiving access or use of the Fitness Center.*

- ❖ Your current building access card assigned to you will be programmed to allow you access into the Fitness Center. You must use your assigned building access card only to enter. The use of another individual's card will result in termination of your access and use of the Fitness Center.
- ❖ Use of the Fitness Center is solely for the individual who is given access. You may not allow any other person into the Fitness Center. The Fitness Center is for Hayden Ferry employees only. No family, friends, or employees from other locations will be permitted. Children are never allowed to be present in the Fitness Center. Allowing any person into the fitness center will result in termination of your access and use of the Fitness Center. *If you observe someone attempting to enter the Fitness Center without a building access card, please notify security immediately at (480)966-1289.*
- ❖ No personal trainers or instructors are permitted in the Fitness Center.
- ❖ Proper exercise attire must be worn when using the Fitness Center. All users will be required to wear shirts and athletic shoes at all times. Street clothes and shoes are not permitted.
- ❖ The Fitness Center does not utilize an operator and will not be staffed. There is no towel service provided. All users will be required to bring their own towel, toiletries, and clean any areas used.
- ❖ All users are required to wipe down all equipment and machines after their use. This includes all components of the equipment or machine and the floor area around them if necessary. Disinfecting wipes are provided for use inside the Fitness Center. All machines or weights must be returned to the proper position and location they were in before use.
- ❖ Users may not bring their own equipment for use in the fitness center.
- ❖ There is a 20-minute time limit on the cardiovascular machines when the Fitness Center is full or when there is another user waiting for that machine. All users must be courteous when working out and equipment or machines may not be reserved at any time. Dropping weights is strictly prohibited.
- ❖ Televisions are provided for use inside the Fitness Center. Please avoid loud or offensive programming. All users are expected to be courteous when changing the station.

- ❖ Music is provided inside the Fitness Center. The use of headphones or ear buds is required at all times when listening to music (or any other audio) on a personal device. Devices that do not connect to headphones or ear buds are strictly prohibited.
  - ❖ Lockers are available on a first come, first serve basis and cannot be reserved. They may be utilized only when using the Fitness Center and no more than two hours maximum. All users must bring their own lock, no locks are provided. All items must be removed from the locker immediately after use of the Fitness Center. Management reserves the right to remove and discard any locks and any items stored longer than two hours.
  - ❖ There are separate Men's and Women's showers, restrooms, and changing areas. All users must use the appropriate area(s) and may not enter the opposing one. Water shoes or sandals are recommended for use inside the showers and restrooms. All users must remove their personal items from these areas when not in use. Management reserves the right to remove and discard any items that are left behind.
  - ❖ The Fitness Center showers, restrooms, and changing areas are cleaned twice daily during the daytime hours by the building day porter. These areas may be closed while they are being cleaned.
  - ❖ The Fitness Center is cleaned by the building janitorial contractor Monday-Friday between the hours of 6:00pm and 2:00am. Certain areas may be closed for cleaning during these hours.
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Name: \_\_\_\_\_

Signature: \_\_\_\_\_

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