

Downtown Athletic Club Membership Agreement

Texas Health Spa Certificate of Registration Number: 970026

This Membership Agreement ("Agreement") is between Hodge Management Services d/b/a Downtown Athletic Club, LLP ("DAC") and the undersigned applicant ("Applicant") for the type of membership indicated below to the DAC located at 320 S. Polk Street, Suite 350, Amarillo, TX 79101, and managed by Cooper Aerobics Enterprises, Inc. d/b/a Cooper Wellness Strategies ("Cooper").

ARTICLE I. MEMBERSHIP

Section 1. Nature of Membership. Membership does not confer or carry with it any interest in the property or assets of the DAC or any right on the part of the members to participate in the management of DAC, financially or otherwise. Membership confers solely the right to use and enjoy the Facilities (defined in Article VI) and Offerings (defined in Article VI) of DAC in accordance with the house rules and regulations, as they may change from time to time, and subject to payment of any additional fees that may be applicable for participation in certain Offerings. Memberships in DAC are not assignable, resalable or transferable with the exception of the redesignation rights for Corporate Memberships as outlined in Article II, Section 3 of this Agreement. For the purpose of aiding medical research, Cooper and DAC may accumulate and analyze aggregate data regarding members' participation at DAC. Individually identifiable data will be held strictly confidential; no individual names will be included in reports.

Section 2. Approval of Membership. All applications and Membership Agreements shall be on forms prescribed by DAC and shall be subject to payment of the required initiation fees and the approval by DAC. Only persons 12 years of age or older are eligible to become members.

Section 3. Non-Discrimination. It shall be the policy of DAC to accept applications for membership from any individual, family or corporation of good character and responsible credit background without regard to race, creed, color, sex, national origin, or disability.

ARTICLE II. CLASSES OF MEMBERSHIP

Section 1. Individual Membership. An individual membership may be granted to individuals, whether or not married. Spouses of such individual members are not entitled to the rights and privileges of membership but may be guests in accordance with the rules and regulations of DAC.

Section 2. Couple Membership. A couple membership shall be a concurrent membership. Dependent children, age 11 and younger living with such couple, are entitled to usage of DAC Facilities only during children's hours and special events in accordance with the rules and regulations in Article V.

Section 3. Family Membership. A family membership shall be a concurrent membership. Up to two (2) adults and five (5) dependent children, ages 12-26, living in the same household, may be included in a family membership, and are entitled usage of DAC Facilities in accordance with the rules and regulations in Article V.

Section 4. Corporate Memberships. A corporate membership may be granted to a business of responsible credit background. Such business must purchase a minimum of 10 memberships and must designate one employee as the user of each membership. The business owning the corporate membership and the users thereof shall be jointly and severally liable for all membership fees, charges and obligations incurred on the membership account. Once the minimum of 10 memberships has been reached to establish a corporate membership, spouses of designated employees may be added to the corporate membership as a "corporate spouse" and will be subject to the same membership fee structure as that of the employees participating in the corporate membership.

Section 5. Other Memberships. Other membership classes may be added by DAC from time to time, and guidelines for those will be listed in DAC membership office.

ARTICLE III. INITIATION, MEMBERSHIP FEES, AND CHARGES

Section 1. Payment of Initiation Fee. Each new member shall pay an initiation fee to DAC. The amount, manner and time of payment of such fee shall be established by DAC and may be changed from time to time. Except as herein provided, no portion of such fee will be refunded.

Initiation Fee \$ _____

Initial _____

Section 2. Membership Fees. DAC shall, from time to time, determine the amount and terms of membership fees which shall be payable by the members. The obligation to pay fees is not dependent upon the availability of all DAC Facilities or Offerings. For example, tournaments, repairs, maintenance, special events, a Force Majeure Event (defined herein), and/or other occurrences may make it necessary for DAC to restrict use of one or more of its Facilities or Offerings or to temporarily close DAC. Membership fees will not be reduced or suspended during the

time when one or more of DAC Facilities or Offerings are not available for use by DAC members, except as otherwise expressly stated herein.

Auto Draft Information

I, _____, authorize my bank to make my payment of \$ _____ to be taken from my account on the _____ day of each month by the method indicated below, and post it to my account.

Checking Account Number _____ Routing Number _____

*** Please attach voided check*

Credit Card Number _____ Expiration Date ____/____/____

I understand that I am in full control of my payment and if at any time I decide to make any changes in my method of payment prior to the effective date of that charge, I will complete a membership change form in person of the intended change and of an acceptable alternative payment plan.

Initial _____

Section 3. Charges. DAC shall, from time to time, fix the amount and terms of payment charges for goods, services and use of DAC Facilities and Offerings by members and guests. Any upcoming changes in fees or other charges will be communicated at least thirty (30) days in advance by a written notification emailed or mailed by DAC to the last address shown on DAC membership records, and/or by conspicuously posting the changes at the DAC premises. Any member that continues his/her membership beyond the thirty (30) day notice period acknowledges his/her agreement to be bound by such changes. Notwithstanding the foregoing, DAC may assess partial or reduced fees at any time in its sole discretion.

ARTICLE IV. TERMINATION OF MEMBERSHIP

Section 1. Voluntary Resignation. A member may resign from DAC for any reason by providing written notice to DAC, surrendering any membership credentials, if applicable, and paying any fees or other charges which the member incurred prior to termination of membership. Subsequent to his/her voluntary resignation, a member shall not be subject to any further fee or other charges. Prepaid dues or fees are refundable.

Section 2. Involuntary Termination. DAC reserves the right at any time to terminate the membership, or any privileges granted there under, of any member for any reason, including without limitation, failure to comply with any of the rules or regulations adopted by DAC, or for any conduct DAC determines, in its sole discretion, to be improper or in any way inimical to the best interests of DAC. The membership may be terminated by a written notification mailed by DAC to the last address shown on DAC membership records. The terminated member will be required to promptly return his/her membership card to DAC. The membership of any member who is sixty (60) days in arrears with respect to the payment of his/her account to DAC may, at the option of DAC management, be terminated.

Section 3. Reinstatement of Membership. A former DAC member who voluntarily discontinues membership, may reinstate their membership by either

- a) submitting membership payment to cover the lapse in membership from their previous membership period to current date; or,
- b) paying the reinstatement fee in accordance with the rules and regulations of DAC.

A member expelled due to unpaid charges and dues may request reinstatement of membership after all balances outstanding at the time of expulsion, including back dues, are paid in full. Reinstatement fees apply in accordance with the rules and regulations of DAC.

Section 4. Effect of Termination. Resignation, termination, or discontinuance of membership by either party for any reason will not release the member from the obligation to pay all past due fees along with any other charges which the member incurs prior to the effective date of termination.

ARTICLE V. RULES AND REGULATIONS

Section 1. Registration. Members must check in and present their membership card each time they use any DAC Facilities.

Section 2. Member Guests. Member Guests may use DAC only when accompanied by a member and must register at the front desk each time they use the Facilities. A Member Guest fee will be charged each time a guest uses the Facilities and/or any Offerings, if applicable.

DAC reserves the right to limit the number of guests a member may sponsor and the number of visits a guest may

make per month. Members of DAC are responsible for the appropriateness of attire and conduct of their guests.

Section 3. Reservation Policy. Any DAC courts used on a reservation basis may be reserved by members one (1) day in advance. Members may only reserve one court per day but are entitled to unlimited use of any court when such court is not reserved. Court cancellations should be called in to the Service Desk at least two (2) hours before the reserved court time. A ten (10) minute default will be enforced on all reservations. In case of questions, the reservation clock is the official court time.

Section 4. Attire. Proper attire is required for participants using DAC. Shirts and shoes are required in all indoor public and recreational areas. The management may prohibit the use of any equipment. Athletic footwear must be worn. No street clothes are permitted in any workout areas.

Section 5. Accounting-Billing. Membership fees will be billed to members monthly and will reflect the next monthly billing period. Bills not paid by the end of the billing month are past due and are subject to a late charge.

Section 6. Damages. Any damage to DAC property by any member, member's guest or dependent children shall be paid by the member.

Section 7. Hours. DAC's operating hours are: Weekdays 5 a.m.–8:00 p.m., Saturdays 7:00 a.m.– 6:00 p.m., Sundays 12 noon–6 p.m. DAC will either be closed or will be open reduced hours on holidays. DAC's hours may be changed from time to time.

Section 8. Leave of Absence. A member may apply for a leave of absence if the member will be out of the Amarillo area two (2) months through six (6) months or more, if the member is unable to use DAC because of prolonged illness or injury, or if the DAC premises are closed for more than thirty (30) days for any reason including a Force Majeure Event (defined below). Members must request a leave of absence in writing. The fees of members on an approved leave of absence shall be reduced to thirty dollars (\$30) per month or waived with official documentation from member's treating physician. If the member's leave of absence is due to a closure of the DAC premises as described above, standard membership fees will automatically reinstate upon the date of reopening.

Section 9. Dependent Children.

- a) Children age 11 and younger whose parent(s) are DAC members may use DAC Facilities and applicable Offerings only during designated children's hours or special events. Children must be signed in at the front desk and must remain under parental supervision at all times.
- b) Children aged 12-15 who are enrolled on a Family Membership may use DAC Facilities and applicable Offerings and must remain under parental supervision at all times.
- c) Children aged 16-17 who are enrolled on a Family Membership may use DAC Facilities and applicable Offerings after completing an equipment and facility safety orientation.

Section 10. Rules Not Inclusive. The rules contained herein are not inclusive.

Section 11. Force Majeure. Without limiting any other provisions of this Agreement, DAC is excused from any liability, failure, or delay (including without limitation, the restriction, unavailability, and/or closure of Facilities, Offerings, and/or the DAC premises) caused by or arising from a "Force Majeure Event" which means any event or circumstance beyond DAC's reasonable control, including without limitation, network failure, interruption in utilities, unavailability of supplies, labor dispute, strike, terrorism, war or other hostilities, epidemic or other public health crisis, governmental order or regulation, severe weather, fire, flood, or act of God.

ARTICLE VI. RELEASE OF LIABILITY AND WAIVER OF CLAIMS

- a) Applicant acknowledges that as a member he or she (and his/her children and guests) may, from time to time, use or be present on the DAC premises, grounds, amenities, and indoor and outdoor facilities, as those premises, grounds, amenities, and facilities may be modified by DAC from time to time, which may include without limitation, running track, sports courts, gyms, studios, weights, equipment, locker rooms, spa, sauna, steam rooms, whirlpools, dressing rooms, shower rooms, childcare facilities, and common areas such as lobbies, dining facilities, retail shops, stairs, elevators, parking areas, meeting rooms, and classrooms (collectively, the "Facilities"). Applicant also acknowledges that he or she (and his/her children and guests) may, from time to time, participate in or attend various offerings available to members (and children and guests), as those offerings may be modified by DAC from time to time, which may include without limitation, transportation, activities, programs, classes, individual and group training, private lessons and group sessions, tournaments, social and family events and outings, exercise challenges, youth programs and events, childcare, promotions, contests, giveaways, and educational/informational lectures, demonstrations, programs, and presentations (collectively, the "Offerings"). In connection with Applicant's membership and/or participation in the Offerings, Applicant may request or receive assessments, screenings, tests, evaluations, recommendations, suggestions, opinions, guidance, training, and/or advice from DAC's and Cooper's employees or contractors or third parties (collectively, "Information").

b) Applicant acknowledges and agrees that being present at and/or using the Facilities and/or participating in the Offerings involves certain inherent risks and dangers that may result in serious bodily injury, illness, permanent disability, and even death, resulting from or relating to, among other things, the use or misuse of equipment, malfunction of equipment, disrepair of equipment or premises, patent or latent defects, slippery or uneven surfaces, falling or flying objects, extreme temperatures, risks associated with weights and exercise equipment, risks associated with physical exertion, community transmission of disease, acts or omissions of third parties at the Facilities, and various other risks and dangers which may occur or exist at or in connection with the Facilities and/or the Offerings. Some Offerings may include the opportunity for Applicant to have his or her blood drawn and tested; risks associated with having blood drawn may include, without limitation, excessive bleeding, fainting or feeling lightheaded, hematoma (blood accumulating under the skin), bruising, and infection (a risk any time the skin is broken), and other unknown risks depending on Applicant's health condition, medication, and other factors. Applicant acknowledges his or her recognition and knowing acceptance of such risks and dangers, foreseen or unforeseen, known or unknown, anticipated or unanticipated, and regardless of whether specifically noted here. Applicant is responsible for his or her own (and his/her children's and guests') use of the Facilities and participation in any Offerings in a safe and cautious manner, including complying with all rules, regulations, policies, and posted signs, and Applicant agrees to immediately notify DAC or Cooper staff if Applicant becomes aware of any defect, unsafe condition or practice, or need for maintenance or repairs.

c) Applicant acknowledges and agrees that DAC has no obligation to provide security services for the Facilities and are not responsible to Applicant or any guests for articles or property damaged, lost or stolen in or about the Facilities (including in lockers), or for loss or damage to any property, including, but not limited to, automobiles and the contents thereof. Members and guests who bring their children to the Facilities during the specified times further agree to accept full responsibility for the safety and well-being of their children and agree to maintain control and supervision over their children at all times while they are at the Facilities.

d) Applicant acknowledges and agrees that the Offerings are voluntary and ANY INFORMATION PRESENTED THEREIN IS INFORMATIONAL AND/OR EDUCATIONAL IN NATURE, IS NOT MEDICAL ADVICE, SHOULD NOT BE RELIED ON AS SUCH, AND IS NOT OFFERED OR INTENDED TO DIAGNOSE, EVALUATE, TREAT, CURE, OR PREVENT ANY PHYSICAL OR MENTAL DISEASE OR CONDITION. Applicant must not rely on the accuracy or completeness of any information and acknowledges and understands the importance of consulting his or her treating physician for individualized medical advice and guidance before commencing a fitness routine, making lifestyle or dietary changes, participating in activities that may or may not be advisable due to individual health conditions, taking or changing medications or supplements, or making decisions regarding any medical (including mental health) diagnosis or treatment.

e) Except as expressly stated in this Agreement, DAC makes no representations or warranties regarding: (i) the qualifications of Cooper staff; (ii) the availability, quality, or extent of the Facilities, Offerings, or other services; or (iii) the results obtained through exercise, diet, weight control, or physical fitness conditioning programs.

f) APPLICANT'S (AND HIS/HER CHILDREN'S AND GUESTS') USE OF THE FACILITIES, THE OFFERINGS, AND THE INFORMATION IS AT HIS OR HER SOLE RISK. APPLICANT HEREBY ACCEPTS THE FACILITIES, THE OFFERINGS, AND THE INFORMATION IN "AS IS" CONDITION WITH ANY AND ALL FAULTS AND LATENT OR PATENT DEFECTS AND WITHOUT RELYING UPON ANY REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED) OF DAC OR ANY REPRESENTATIVE OF DAC. DAC HAVE NOT MADE AND DO NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE FACILITIES, THE OFFERINGS, AND THE INFORMATION AND APPLICANT HAS NOT RELIED ON ANY SUCH REPRESENTATIONS OR WARRANTIES.

g) Applicant acknowledges and agrees that he or she (and his/her children and guests) would not be allowed access to the Facilities and would not be allowed to participate in the Offerings or receive any Information without the execution of this Agreement for the protection of the Released Parties (defined below).

h) With the aforementioned recognitions in mind, Applicant, on behalf of him/herself and his or her guests, spouse, children, executors, administrators, successors, and assigns (collectively, the "Releasing Parties"), does hereby fully, finally, completely, generally, and forever release, discharge, and relinquish DAC and Cooper, including their respective owners, employees, directors, officers, agents, representatives, assigns and successors (collectively, the "Released Parties") from any and all claims, actions, demands, liens, and causes of action, of whatever kind or character, at law or in equity, whether now known or unknown, present or future, that the Releasing Parties have or might claim to have against the Released Parties, for any and all injuries, illness, harm, damages (actual and punitive), penalties, costs, losses, expenses, attorney's fees, and/or other liability or detriment, if any, whatsoever, and whenever incurred or suffered, and whether arising in contract or in tort, breach of any duty, violation of any law or regulation, under common law or statute, arising out of or in any way related to the Releasing Parties' presence on or about or use of the Facilities, participation in or attendance at any Offerings, and/or requesting or receiving any Information, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM ANY NEGLIGENCE OF

THE RELEASED PARTIES. The Releasing Parties agree and covenant not to file or prosecute any lawsuit, arbitration, legal proceeding, or other dispute resolution procedure with respect to the Released Parties relating directly or indirectly to the subject matter released herein.

i) The Released Parties shall not be liable or responsible for, and the Releasing Parties hereby agree to indemnify, defend and hold the Released Parties harmless from and against any and all claims, actions, demands, liens, and causes of action, of whatever kind or character, at law or in equity, whether now known or unknown, present or future, for any and all injuries, illness, harm, damages (actual and punitive), penalties, costs, losses, expenses, attorney's fees, and/or other liability or detriment, if any, whatsoever, and whenever incurred or suffered, and whether arising in contract or in tort, breach of any duty, violation of any law or regulation, under common law or statute, arising out of or in any way related to the Releasing Parties' presence on or about or use of the Facilities, participation in or attendance at any Offerings, and/or requesting or receiving any Information, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM ANY NEGLIGENCE OF THE RELEASED PARTIES.

j) IT IS THE EXPRESS INTENT OF APPLICANT THAT THE RELEASE AND INDEMNITY PROVIDED FOR IN THIS AGREEMENT IS EXTENDED BY THE RELEASING PARTIES TO INDEMNIFY AND PROTECT THE RELEASED PARTIES FROM THE CONSEQUENCES OF THE RELEASED PARTIES' OWN NEGLIGENCE.

k) Applicant agrees that, regardless of where this Agreement is executed and where any injury, illness, or damage occurs, the terms of this Agreement shall be governed by Texas law, excluding any provisions on conflicts of laws. Applicant agrees that Potter County, Texas shall have exclusive venue for any legal action relating to claims or disputes arising out of or in any way related to this Agreement.

l) APPLICANT CERTIFIES THAT HE/SHE HAS READ THIS AGREEMENT AND FULLY UNDERSTANDS ITS CONTENT. APPLICANT IS AWARE THAT THIS AGREEMENT CONTAINS A RELEASE OF LIABILITY AND WAIVER OF CLAIMS AND APPLICANT SIGNS IT OF HIS OR HER OWN FREE WILL.

ARTICLE VII. MISCELLANEOUS

DAC may from time to time adopt other house rules, regulations or policies not herein covered, and all members will be obligated to comply with such rules, regulations or policies not herein covered. If any term of this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement.

Agreed to this date: _____

Applicant: _____
(Print)

Signature: _____
(For minors, signature of parent or guardian required below)

Type of Membership: _____

DAC/Cooper Representative: _____

PARENT/GUARDIAN SIGNATURE FOR MINORS (Under 18 years old)

The undersigned parent or legal guardian does hereby represent that he/she is, in fact, acting in such capacity, and has consented to his/her child or ward's presence at the Facilities and/or participation in the Offerings, and has agreed individually and on behalf of the child or ward, to the terms of this Agreement, including without limitation, ARTICLE VI. RELEASE OF LIABILITY AND WAIVER OF CLAIMS.

PRINT CLEARLY each minor's name:

Minor's date of birth:

Signature of parent or guardian

Date

(1) "NOTICE TO PURCHASER: DO NOT SIGN THIS CONTRACT UNTIL YOU READ IT OR IF IT CONTAINS BLANK SPACES."

(2) "IF YOU DECIDE YOU DO NOT WISH TO REMAIN A MEMBER OF THIS HEALTH SPA, YOU MAY CANCEL THIS CONTRACT BY MAILING TO THE HEALTH SPA BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DAY YOU SIGN THIS CONTRACT A NOTICE STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS: 320 S. POLK STREET, SUITE 350, AMARILLO, TX 79101."

(3) "IF THE HEALTH SPA GOES OUT OF BUSINESS AND DOES NOT PROVIDE FACILITIES WITHIN 10 MILES OF THE FACILITY IN WHICH YOU ARE ENROLLED OR IF THE HEALTH SPA MOVES MORE THAN 10 MILES FROM THE FACILITY IN WHICH YOU ARE ENROLLED, YOU MAY CANCEL THIS CONTRACT BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT, ACCOMPANIED BY PROOF OF PAYMENT ON THE CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS: 320 S. POLK STREET, SUITE 350, AMARILLO, TX 79101."

(4) "IF YOU DIE OR BECOME TOTALLY AND PERMANENTLY DISABLED AFTER THE DATE OF THIS CONTRACT TAKES EFFECT, YOU OR YOUR ESTATE MAY CANCEL THIS CONTRACT AND RECEIVE A PARTIAL REFUND OF YOUR UNUSED MEMBERSHIP FEE BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE HEALTH SPA MAY REQUIRE PROOF OF DISABILITY OR DEATH. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS: 320 S. POLK STREET, SUITE 350, AMARILLO, TX 79101."

Add-On Member #1

Member # _____

_____ M F _____ / /
 Last Name First Name MI Gender Date of Birth

_____ State Zip
 Address City

_____ Primary Phone
 Email Address

Add-On Member #2

Member # _____

_____ M F _____ / /
 Last Name First Name MI Gender Date of Birth

_____ State Zip
 Address City

_____ Primary Phone
 Email Address

Add-On Member #3

Member # _____

_____ M F _____ / /
 Last Name First Name MI Gender Date of Birth

_____ State Zip
 Address City

_____ Primary Phone
 Email Address

Add-On Member #4

Member # _____

_____ M F _____ / /
 Last Name First Name MI Gender Date of Birth

_____ State Zip
 Address City

_____ Primary Phone
 Email Address

Add-On Member #5

Member # _____

_____ M F _____ / /
 Last Name First Name MI Gender Date of Birth

_____ State Zip
 Address City

_____ Primary Phone
 Email Address

Add-On Member #6

Member # _____

_____ M F _____ / /
Last Name First Name MI Gender Date of Birth

_____ City State Zip
Address

_____ Primary Phone
Email Address

Add-On Member #7

Member # _____

_____ M F _____ / /
Last Name First Name MI Gender Date of Birth

_____ City State Zip
Address

_____ Primary Phone
Email Address

Add-On Member #8

Member # _____

_____ M F _____ / /
Last Name First Name MI Gender Date of Birth

_____ City State Zip
Address

_____ Primary Phone
Email Address

Add-On Member #9

Member # _____

_____ M F _____ / /
Last Name First Name MI Gender Date of Birth

_____ City State Zip
Address

_____ Primary Phone
Email Address

Add-On Member #10

Member # _____

_____ M F _____ / /
Last Name First Name MI Gender Date of Birth

_____ City State Zip
Address

_____ Primary Phone
Email Address