

**RAMS HILL RACQUET AND SWIM CLUB  
ASSUMPTION OF RISK AND RELEASE AGREEMENT**

I, \_\_\_\_\_ ("Member"), acknowledge that I have voluntarily applied for membership in the Rams Hill Racquet and Swim Club ("Club") at the premises of Considine Borrego LLC ("Operator"), located at Las Casitas Road, Borrego Springs, California, commonly known as the recreation center. In consideration of (i) the opportunity to participate in swimming, tennis, and exercise offered by Operator and/or its owners, affiliates including T2 Borrego LLC, subsidiaries, parents, agents, directors, officers, shareholders, partners, members, managers, employees and staff (collectively, the "Operator Parties"), and (ii) other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, I, as Member, hereby represent, warrant, covenant and agree as follows:

1. Membership Agreement. I have completed the Membership Agreement attached hereto as Exhibit A and represent and warrant that all matters set forth therein are true and correct as of the date of this Agreement.

2. Rules and Regulations. I acknowledge I have received a copy of the Rules & Regulations attached hereto as Exhibit B. Furthermore, I agree to abide by all rules and regulations of the Club that may be in effect at any time.

3. Assumption of Risk: I AM AWARE THAT PARTICIPATION BY ME, MY FAMILY AND MY GUESTS AT THE CLUB, AND RELATED ACTIVITIES, INVOLVE POSSIBLE HAZARDS. I AM VOLUNTARILY ENTERING THE CLUB AND USING THE CLUB'S EQUIPMENT AND FACILITIES WITH KNOWLEDGE OF THE DANGER INVOLVED, AND HEREBY AGREE TO ACCEPT ANY AND ALL RISKS OF INJURY OR DEATH.

4. Release and Waiver of Liability and Indemnity: **IMPORTANT: RELEASE AND WAIVER OF LIABILITY AND INDEMNITY.** I hereby acknowledge and agree that use of the Club, services, equipment or premises, involves risks of injury to persons and property, including those described below, and I assume full responsibility for such risks. In consideration of being permitted to enter the Club for any purpose including, but not limited to, observation, use of facilities, services, equipment or premises, or participation at the Club in any physical, recreational or other activities, I agree to the following: I hereby release and hold the Operator Parties, and each of them, and each of their respective personal representatives, heirs, distributees, guardians, legal representatives, successors, and assigns (and the supplier of any of the equipment at the Club) (individually and collectively, "Releasee") harmless from all liability to me and my personal representatives, assigns, heirs and next of kin for any loss or damage, and I forever give up any claims or demands therefor, on account of personal injury, death, property damage, monetary damage, or damage of any other kind, including injury leading to my death, arising out of or resulting from use of the Club, its facilities, equipment or premises, whether caused by the negligence of Releasee or otherwise to the full extent permitted by law while I am in, upon or about the Club or using the Club's facilities, services, equipment or premises. I also hereby agree to indemnify Releasee from any loss, liability, damage, cost or expense, including attorneys' fees Releasee may incur due to my presence in, upon or about the Club or in any way

observing or using any facilities, equipment or premises of the Operator Parties whether caused by my own negligence or otherwise. I represent (a) that I am in good physical condition and have no disability, illness, or other condition that could prevent me from utilizing the Club without injury or impairment of my health, and (b) that I have consulted a physician concerning an exercise or recreation program that will not risk injury to me or impair my health. Such risk of injury includes (but is not limited to): injuries arising from my use or the use of others of exercise equipment and machines; injuries arising from my participation or the participation of others in supervised or unsupervised activities or programs at, in or about the Club; injuries and medical disorders arising from exercising at, in or about the Club such as drowning, heart attacks, strokes, heat stress, sprains, broken bones, and torn muscles and ligaments, among others; and accidental injuries occurring anywhere at, in or about the dressing rooms, showers and other facilities associated with the Club. I further expressly agree that the foregoing release, waiver and indemnity agreement is intended to be as broad and inclusive as is permitted by the laws of the State of California and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full force and effect. I have read this release and waiver of liability and indemnity clause, and agree that no oral representations, statements or inducement apart from this agreement have been made by anyone or relied upon by me.

It is my intention that this release will be effective with respect to each and every claim, demand, liability, judgment, cause of action and expense specified above, and in furtherance of this intention, I waive all rights and benefits under Section 1542 of the Civil Code of the State of California, which provides:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

The terms and provisions of this Release shall be binding upon and benefit the respective successors and assignees, personal representatives, heirs, distributees, guardians, and legal representatives of the undersigned and Releasee.

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Member's Initials

5. Agreement to Arbitrate. Any claim, grievance, demand, cause of action or dispute of any kind whatsoever ("Dispute") of or by Member, a family privilege card holder, the Member's family member or any Member's guest arising out of, in connection with or in relation to use of the Club, its facilities, equipment and premises, including, but not limited to any claim, cause of action or loss due to bodily injury, emotional or psychological injury, property damage/loss or death as well as, to the extent allowed under applicable law, all claims for contract breach, violation of law, discrimination and equitable relief, shall be settled by binding arbitration before a single arbitrator in accordance with the JAMS Comprehensive Arbitration Rules & Procedures (the "JAMS Rules") and the California Arbitration Act (California Code of

Civil Procedure Sections 1280 et. seq.). A copy of the JAMS Rules can be obtained online at [www.jamsadr.com](http://www.jamsadr.com), or by requesting a copy from the Club's Secretary.

The arbitrator, besides being empowered to act as set forth in the JAMS Rules, shall decide all issues, including but not limited to issues involving the existence, scope and validity of this arbitration provision and any issue involving the parties' respective bargaining positions in connection with agreeing to this binding arbitration provision. Such binding arbitration shall take place in San Diego, California, and judgment on the award rendered by the arbitrator may be confirmed and entered by the Superior Court of the State of California, County of San Diego.

6. Other Provisions.

(a) The interpretation and application of this document's provisions shall be governed by California law, including but not limited to the agreement to arbitrate.

(b) If any portion or provision of this document is declared void or invalid, it shall be severed from this document and the remainder of the document shall remain in full force.

(c) This document is an integrated one, i.e., there are no verbal or "side" agreements complementing or altering what is written in this document.

(d) Where the Member is under 18 years of age, this Agreement must be signed by his/her parent or legal guardian on his/her behalf; the parent or legal guardian signing this Agreement on behalf of the minor Member represents by his/her signature to this Agreement that he/she has full power and authority to sign on behalf of the minor Member and that this Agreement is binding and enforceable against minor member and his/her parent or legal guardian, as applicable.

7. Knowing and Voluntary Execution: I HAVE CAREFULLY READ THIS AGREEMENT AND FULLY UNDERSTAND ITS CONTENTS. I AM AWARE THAT THIS IS A RELEASE OF LIABILITY AND A CONTRACT BETWEEN ME AND CONSIDINE BORREGO LLC AND SIGN IT OF MY OWN FREE WILL.

Executed on \_\_\_\_\_, 201\_, in Borrego Springs, California.

OPERATOR:  
Considine Borrego LLC

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

\_\_\_\_\_  
MEMBER'S SIGNATURE

Its: \_\_\_\_\_

Member Name: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF PARENT/LEGAL  
GUARDIAN OF MEMBER

Name of Parent/Legal  
Guardian: \_\_\_\_\_

(Parent or legal guardian to sign above the line. Print or type his/her name and membership number if applicable – where signing Member is under age 18 on date the Member signs this Agreement).

MEMBERSHIP # \_\_\_\_\_

**EXHIBIT A**  
**MEMBERSHIP AGREEMENT**

**RAMS HILL RACQUET AND SWIM CLUB  
MEMBERSHIP AGREEMENT AND MEMBER INFORMATION**

**I. MEMBER PERSONAL INFORMATION**

Member's Name \_\_\_\_\_

Member's ID Number  
(Club to provide) \_\_\_\_\_

Birth Date \_\_\_\_\_

Spouse's Name \_\_\_\_\_

Birth Date \_\_\_\_\_

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

Billing Address \_\_\_\_\_

Telephone:  
Residence: ( ) \_\_\_\_\_

Telephone:  
Cell ( ) \_\_\_\_\_

E-mail Address \_\_\_\_\_

Children who will use the Club: *(Children under 16 must be accompanied by an adult member)*

Name

Birth Date

_____	_____
_____	_____
_____	_____

**II. MEMBERSHIP**

I hereby acquire a monthly membership in the Rams Hill Racquet and Swim Club (the "Club"). I agree to timely pay to the Club the membership fees, including any applicable sales tax, or other taxes.

**III. PAYMENT OF DUES, FEES AND CHARGES**

I acknowledge that I am required to pay to the Club the membership dues, including any applicable sales tax, or other taxes, on a quarterly or annual basis. I request that all dues, fees and charges be billed directly to me. In the event that any amounts owed to the Club are not paid on a timely basis, I understand that I may be charged a late payment charge and/or collection fee, and club privileges may be revoked, in accordance with the Rules and Regulations. Dues for the 2014 season will be \$120.00. Dues may be increased from time to time and at

any time, at the discretion of the Club, and such increases will be communicated to members in advance.

**IV. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS**

Membership in the Club permits the member to use the Club Facilities in accordance with the Club's Rules and Regulations. Membership in the Club is not an investment in the Company referred to below or the Club Facilities and does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club does not provide a member with an equity or ownership interest or any other property interest in the Company or the Club Facilities. A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Rules and Regulations, as the same may be amended from time to time, and this Membership Agreement.

The Club reserves the right, in its sole discretion, to terminate or modify the Rules and Regulations, to resign any membership at any time for any or no reason whatsoever, to discontinue operation of any or all of the Club Facilities, and to make any other changes in the terms and conditions of membership or in the Club Facilities available for use by members.

I acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my family and guests sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club.

I further acknowledge I am not relying on any oral representation in acquiring a membership in the Club.

This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California without giving effect to principles of conflicts of law.

Dated: \_\_\_\_\_  
Member's Signature

\_\_\_\_\_  
Printed Name

This Membership Agreement shall not be binding on the Club until signed below.

ACCEPTED BY:

**Considine Borrego LLC**

By: \_\_\_\_\_  
Authorized Representative

Dated: \_\_\_\_\_ Printed Name: \_\_\_\_\_

## **EXHIBIT B**

### **RULES AND REGULATIONS**

#### **RAMS HILL RACQUET AND SWIM CLUB RULES AND REGULATIONS**

- A. The Club Facilities (pool, tennis courts, and related areas) open at 7:00 a.m., except on special holidays, and will close at dark or 8:00 p.m., whichever occurs earlier. The Club Facilities will not be open on holidays and will be closed periodically for cleanings and maintenance. The Club Facilities hours are subject to change by the Owner or Operator.
- B. No Member or guest shall take any article belonging to the Club from the Club Facilities. Members are liable for property damaged or destroyed by themselves or their guests.
- C. Children under 16 years of age are not allowed in the Club Facilities or in the locker room area unless accompanied by an adult.
- D. Members are responsible for the conduct of their guests, as well as any indebtedness incurred to the Club by their guests. The Club has the right to discipline the Member for any violations of these Rules by the Member or his/her guests.
- E. The Club reserves the right to request Members and guests to provide information relating to their health status and contact information as a prerequisite to participation in certain Club services, activities and events. Failure to provide any such information as required may result in that person not being able to obtain and/or participate in such services, events or activities.
- F. Only certified animals used to assist the disabled will be permitted in the Club Facilities or on Club property and only when assisting a Member or guest.
- G. The Club, Owner, and Operator not responsible for any loss incurred or damage to the property of Members or their guests whether or not such property is in the care or custody of the Club.
- H. No glass bottles, glass containers or other glass or sharp objects of any type are allowed in or around the pool facilities. Damage to any Club property (whether deliberate or accidental or whether by the Member or his/her guest) will be charged to the account of the Member and immediately due and payable.
- I. Members and guests must wear appropriate swimwear while using the pool.
- J. Running, pushing, jumping and/or diving in the pool area are not permitted. Children under 16 years of age must be accompanied by a responsible adult while in the pool area.
- K. Lifeguards are not provided in the pool area at any time.



- L. Children and toddlers must be appropriately dressed when in public view and in all common areas of the Club.
- M. Children in the Kiddie Pool must wear swimwear and swim diapers, if needed, at all times.
- N. All open tennis courts are assigned on a first-come, first-served basis. Advance court assignments, if any, will be posted inside the recreation building, and advance sign-ups may be available online. All players waiting on a waiting list for an open court must be present to sign up for the court and must be available to play immediately upon an open play court being available. If an open play court becomes available and the group waiting is not complete and ready to play, the group with second priority will take the court. The first group will then resume first priority.
- O. No food or beverages are allowed on the tennis courts at any time.
- P. Proper tennis attire is required on the courts at all times, and tennis shoes must be worn. Shoes, shirts, and socks must be worn at all times anywhere on the Club property (except for the swimming pool areas). No tank tops allowed. No black soled shoes will be permitted on the courts.
- Q. Spectators and children are permitted on the tennis courts to observe, if no player objects.
- R. The Owner or Operator may, at any time, or from time-to- time, amend or repeal these Rules and Regulations, or adopt new ones. These Rules and Regulations are supplemented by specified posted or printed rules and regulations and by the rules pertaining to special events.
- S. If any of the terms and conditions of these Rules are held by any court to contravene, or be invalid under the laws of any political body having jurisdiction over the subject matter hereof, such contravention or invalidity shall not nullify the entire Rules, but these Rules shall be construed as if not containing that particular provision or provisions held to be invalid and the rights of obligations of the members and other parties concerned shall be construed and enforced accordingly.
- T. Any person whose membership is suspended or terminated immediately loses all Club privileges and rights of membership including, but not limited to, the ability to use the Club as a guest or visitor.
- U. Suspended Members are responsible for continuing timely payments of all dues and required minimums throughout the period of their suspension.

Rules updated January 19, 2014