



# COTTONWOOD MEMBERSHIP AGREEMENT

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

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

Zip Code: \_\_\_\_\_

City: \_\_\_\_\_

Phone: \_\_\_\_\_

Email (for all membership correspondence): \_\_\_\_\_

Partner Member (if applicable): \_\_\_\_\_

Membership Start Date: \_\_\_\_\_

Term of Agreement: \_\_\_\_\_

## membership options (please answer with a Yes and No)

☐

Individual Membership

\$2000 Joining Fee, \$180 Monthly Fees  
plus tax (subject to current tax rate)

☐

Couples Membership

\$3000 Joining Fee, \$230 Monthly Fees  
plus tax (subject to current tax rate)

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## membership benefits:

The private club that Omaha needs is here. Indulge in unmatched amenities for one-of-a-kind experiences close to home.

### complimentary stays

Five nights of the year are on the house. Really. Members enjoy the benefit of five complimentary stays per year at their home away from home. (Must be used within one year of agreement start date) After comp nights are used: \$109 room rate October - April up to forecast of 85% and 20% off of BFR for forecast of 86% and above. \$149 room rate May - September up to forecast of 85% and 20% off of BFR for forecast of 86% and above. (Please make your reservations by emailing [membership@thecottonwoodhotel.com](mailto:membership@thecottonwoodhotel.com)) Blackout dates may apply.

### kimpton cottonwood hotel & pool club

Enjoy full access to the seasonal resort-style pool and outdoor year-round hot tub. The Pool Club is a luxurious oasis for recreation and relaxation whether you're swimming laps or sipping cocktails from the in-pool loungers.

### valet parking

Your car is safe with us. Complimentary valet parking is always available to members when spending time at their favorite club, whether it's a few hours or a few days.

### guest pool passes

Monday through Thursday: reservations for up to three guests at no charge.

Friday through Sunday: one complimentary guest pass per visit (up to four annually). Additional Guest Passes are \$40 per person/visit with member. Visit our Experiences page to purchase.

### wellness & self-care

Take time for yourself with the added privilege of 24-hour access to our onsite fitness center. Enjoy the Precor Smith Machine and the Peloton anytime you're ready for a workout.

### special events

Expect the unexpected as Kimpton Cottonwood Hotel surprises and delights with a full calendar of social events and exclusive activities throughout the year only available to hotel guests and Cottonwood members.

### preferred pricing

Enjoy a \$25/\$45 food and beverage credit monthly at The Pool Club\*\* and 20% off daily at Orleans Room. Celebrate your birthday with us! Enjoy 20% off one reservation during your birthday month, plus a complimentary 8" cake made in-house by our pastry team.

(Please make your reservations by emailing [membership@thecottonwoodhotel.com](mailto:membership@thecottonwoodhotel.com) at least one week in advance)

Escape the office. Receive complimentary Wi-Fi, coffee, tea and \$2 specialty coffees with your member mug when working from the hotel. Work has never been this easy! Complimentary use of Boardrooms Plush Horse and Fitzpatrick (Based on availability. Reservations must be made within one week of event).

Special celebrations just got sweeter with 20% off private event space rental (not including Schimmel Ballroom or Goldcoast Ballroom)

\$150 Food & beverage credit when you refer a new member (upon signing & payment)

\*Please see terms & conditions

\*\*\$25 for an individual membership and \$45 for a couple's membership

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**authorization:**

I hereby submit this application for membership to The Cottonwood Club. If it is accepted, I agree my membership is for a minimum of one full year and that I will pay all dues and charges associated with my membership. At the end of the agreement term my membership will automatically renew unless I have given 30 days notice to cancel. I agree to abide by The Cottonwood Club and Kimpton Cottonwood Hotel Policies & Rules in the present form or as may be amended. I understand that all dues, food and beverage charges, and all other obligations due to the club shall be paid on or before the 15th day of the month following the month the charges were incurred. I agree to maintain a valid debit/credit card account on file with the business office at all times. Should my account become 30 days delinquent, I agree the Club shall have the right to bill such past due amount to my card on file.

Name (printed): \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_



This Membership Agreement (the "Agreement") for the Cottonwood Club at Kimpton Cottonwood Hotel between Blackstone Master Tenant LLC d/b/a Kimpton Cottonwood Hotel (collectively, the "Cottonwood Club") and the undersigned (hereinafter "You" or "Member") is made as of the date of the Member signature below ("Effective Date"). Pursuant to the Club Membership Application Form, Member hereby agrees to become a member of the Cottonwood Club and agrees to the terms and conditions set forth below, in addition to the Assumption of Risk and Waiver of Liability, and the Additional Terms, attached hereto and incorporated herein.

## NOTICE TO CUSTOMER - TERM AND TERMINATION RIGHTS

You are entitled to a copy of this Agreement at the time you sign it. You may terminate this Agreement without consequence at any time before midnight of the third business day after executing this Agreement. If you choose to terminate this Agreement within the three (3) day initial notice period, or for a reason described in the Additional Termination Rights below, you must either: (1) Send a signed and dated written notice of cancellation by certified mail, return receipt requested; or (2) Personally deliver a signed and dated written notice of termination to: The Cottonwood Club, 302 S. 36th Street, Omaha, NE 68131. If you cancel this Agreement within the three day period, you are entitled to a full refund of your money. If the third operating day falls on a Sunday or holiday, notice is timely given if it is mailed or delivered as specified in this notice on the next business day. This Agreement shall expire upon the first anniversary of the signature date below.

1. This Agreement is subject to termination by notice as described above upon the occurrence of any of the following:
2. Within three business days of execution of the Agreement;
  - I. If The Cottonwood Club goes out of business or moves more than five driving miles from the present location and does not provide an alternate facility under the same ownership within thirty (30) days at no additional cost:
  - II. If The Cottonwood Club determines that you are owed a refund, the refund shall be an amount computed by dividing the Agreement price by the number of weeks in the contract term and multiplying the result by the number of weeks remaining in the Agreement term.
  - III. The business location may not be deemed out of business when temporarily closed for repair and renovation of the premises: upon sale,

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for not more than fourteen (14) consecutive days, or during ownership, for not more than seven (7) consecutive days and not more than two (2) periods of seven (7) consecutive days in any calendar year.

- You are advised to contact The Cottonwood Club for information within sixty (60) days should the facility go out of business.
3. If you die or become physically unable to use a substantial portion of the facilities. A refund or termination under this section shall be computed by dividing the Agreement price by the number of weeks in the Agreement term and multiplying the result by the number of weeks remaining in the Agreement term. Termination under this section shall require you or your estate to provide proof of disability or death. A physical disability sufficient to warrant termination is established by providing a certification of such disability by a licensed physician and the diagnosis or treatment of the disability is within the physician's scope of practice.

## ACKNOWLEDGEMENT AND INCORPORATION OF ADDITIONAL DOCUMENTS

All covenants, conditions, and agreements contained in (a) the Club Membership Application Form, (b) the Assumption of Risk and Waiver of Liability, and (c) the Additional Terms, attached hereto and incorporated herein by reference, are hereby made a part of this Agreement to the same extent and with the same force as if fully set forth herein. I have read this Agreement thoroughly and understand all its terms. I agree to be bound to the terms of this Agreement, the Club Membership Application-Form, the Additional Terms, and the Assumption of Risk and Waiver of Liability. I acknowledge that my participation in this Agreement and the services are voluntary, and I knowingly and voluntarily sign this Agreement.

## ASSUMPTION OF RISK AND WAIVER OF LIABILITY

In consideration of the permission granted me to access, use, and or otherwise avail myself of The Cottonwood Club at Kimpton Cottonwood Hotel (hereafter, the "Facility"), I hereby irrevocably and unconditionally release, discharge, hold harmless, indemnify, defend, and covenant not to sue the Facility, Blackstone Master Tenant LLC, and, Davidson Hotel Company LLC d/b/a Davidson Hospitality Group, and their affiliates and subsidiaries, and all of their respective shareholders, partners, members, officers, directors, agents, employees, representatives, parents, subsidiaries, insurance companies, predecessors, successors, and assigns (collectively, the "Releasees") from any and all liabilities, injuries, losses, claims, damages, demands, penalties, costs (including costs of pursuing any insurance provid

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ers), attorneys' fees and expenses of any nature, suits, rights of action or causes of action, present or future, known or unknown, anticipated or unanticipated, arising out of, relating to, or in any manner resulting from my, or my Invitee's (as defined below), attendance at or use of the Facility, whether caused in whole or in part by the negligence, acts, omissions, carelessness, or other conduct of the Releasees. This Assumption of Risk and Waiver of Liability ("Release and Waiver") shall be binding upon my heirs, executors, administrators, and assigns. I accept full and complete responsibility for the safety of myself, including any guests, observers, or other individuals (collectively the "Invitees") who I have invited to the Facility, and any such property brought to the Facility by myself or my Invitees. Further, I hereby forever release and discharge the Releasees from any and all liability for any risk or loss, theft, damage, or injury to, myself, my Invitees, and any personal property of the same.

I understand that my access to, use of, or participation at the Facility carries certain inherent risks that cannot be eliminated, regardless of the care taken to avoid injuries. My access to, use of, or participation at the Facility is voluntary, and I assume all risk associated therewith, including but not limited to scrapes, lacerations, impact injuries, illness, infection, mental stress and anxiety, slips and falls, equipment failure, operator error, disfigurement, death, and any other risks, whether or not reasonably foreseeable. I acknowledge that any injuries that I sustain may result from or be compounded by the acts, omissions, or negligence of the Releasees, including negligent emergency response or rescue operations of the Releasees. I further authorize the Releasees to call for medical care for myself or my Invitees if, in the opinion of the Releasees, medical attention is needed and I hereby agree to pay all costs associated with such medical care. I hereby forever release, discharge, and hold harmless the Releasees from any claim based on such medical care.

I further agree to abide by all rules and instructions of the Facility and its personnel, as may be communicated from time to time. By signing below, I acknowledge that I have been apprised of the risks related to the Facility, and that I have read and understand this document in its entirety, and that I am releasing the Releasees from any and all liability, including negligence and losses due to the negligence of the Releasees. In the event that any provision of this Release and Waiver be held to be enforceable only if modified, or if any portion of this Release and Waiver is held to be unenforceable, such holding shall not affect the validity or enforceability of the remainder of this Release and Waiver, which shall remain binding upon the parties with any such modification to become a part hereof and treated as though originally included. This Release and Waiver is governed by, and will be interpreted, construed and enforced in accordance with, the laws of the State of Nebraska, without giving effect to Nebraska conflict of laws rules

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I FURTHER UNDERSTAND THAT I AM GIVING UP SUBSTANTIAL RIGHTS, INCLUDING MY RIGHT TO SUE. I FURTHER HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN ANY DISPUTE RESOLUTION ARISING OUT OF THIS RELEASE AND WAIVER.

I acknowledge that I am signing this Release and Waiver voluntarily. This document is intended to and shall be construed so as to provide the broadest possible protection for the Releasees under law. I voluntarily sign my name in physical or digital form as evidence of my acceptance of all the provisions contained herein and my agreement to be bound by them.

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Member Signature

Date

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Hotel Signature

Date

## **ADDITIONAL TERMS**

### **Article I: Membership Agreement**

Section 1. Provisions. The classification of Members, the amount of Dues payable by the Members of each class, the amount of Joining Fees, the suspension and expulsion of Members, and all other matters affecting or relating to the Membership Agreement shall be under the complete control of the Cottonwood Club at Kimpton Cottonwood Hotel (the "Facility"). The Dues applicable to any type of Membership Agreement and any other charges imposed by the Facility may be amended at any time without notice.

Section 2. Nondiscrimination. It shall be the policy of the Facility to accept applications for Membership Agreement from any individual or business group of good character and responsible credit background without regard to race, creed, color, sex, or national origin.

Section 3. Property. The Membership Agreement does not grant the Member any ownership or property rights in or to the Facility.

### **Article II: Classification of Members**

Section 1. Members. Members shall consist of individuals, whether or not married, having privileges to use the Facility upon payment of the appropriate initiation fee and dues (as set forth in the Club Membership Application Form), and execution of the Agreement. A significant other (unless Member has elected for a Couples Membership) or other family member shall be considered a guest of the Member ("Guest").



### Article III: Joining Fee Dues, and Other Charges

Section 1. Joining Fee. As set forth in the Club Membership Application Form, all Members shall pay a nonrefundable (except as set forth in the Membership Agreement) and nontransferable initiation fee ("Joining Fee"). The amount, manner, and time of payment of the Joining Fee shall be established by the Facility and may be changed without prior notice to Member.

Section 2. Dues. As set forth in the Club Membership Application Form, all Members shall pay nonrefundable monthly dues ("Dues"). The Facility shall, from time to time, determine the amount and terms of payment of Dues. The obligation to pay Dues is not dependent the Member's use of the Facility's facilities or on the availability of all the Facility's facilities for Member use. Activities, repairs, and/or maintenance of facilities may make it necessary for the Facility to restrict use of one or more facilities or to temporarily close all or any part of the Facility, which will not reduce or suspend the Member's obligation for payment of Dues unless otherwise stated herein or required by law.

Section 3. Late or Returned Item Charges. Payments for bills rendered, including Joining Fees, Dues, and other charges for food, beverages, and other miscellaneous charges, that are not received by the fifteenth (15th) of any month will be considered delinquent and will be assessed a late charge of \$10.00 per payment missed. A \$25.00 fee will be assessed to any Member for a returned check or credit card draft as a result of insufficient funds, account closed, or similar circumstances. Facility may, in its sole discretion, suspend a Member's use of the facilities until all delinquent payments are paid in full.

Section 4. Delinquent Accounts. Members failing to make payment within thirty (30) days will be classified as delinquent and will be responsible for all collection costs including attorney and other collection fees.

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#### Article IV: Termination of Membership Agreement by the Facility

Section 1. Involuntary Termination. In addition to the termination rights in the Membership Agreement, the Facility, in its sole discretion, reserves the right at any time to immediately terminate the Membership of any Member without prior notice, for any reason, including but not limited to: any failure to comply with any of the Kimpton Cottonwood Hotel & Pool Club Terms & Conditions March 2022 rules and regulations, including The Cottonwood Club & Kimpton Cottonwood Hotel Policies and Rules, adopted by the Facility ("Facility Rules and Regulations"), disruptive or dangerous conduct of a Member or their Guest. A terminated Member will remain liable for all incurred and remaining Dues for the term of the Agreement and other indebtedness incurred prior to termination of the Agreement. The Membership Agreement of any Member may be terminated without prior notice, in the sole discretion of the Facility, in the event that any payment for Initiation Fee, Dues, or other charges are thirty (30) days in arrears. All outstanding Dues or other charges are due immediately upon termination.

#### Article V: Rules and Regulations

Section 1. Registration. Members MUST check in each time they use the Facility. Members requesting access to the Facility may be requested to show their photo ID.

Section 2. Guest. Guests may use the Facility only when accompanied by a Member and must sign in at the front desk and pay the Guest usage fee determined by the Facility. Members of the Facility are responsible for the appropriateness of attire and conduct of their Guests. The Facility reserves the right to limit the number of Guests a Member may bring at any given time to use the Facility. Furthermore, The Facility reserves the right to limit the number of times a Guest may visit the Facility per year.

Section 3. Attire and Equipment. Proper attire is required for all Members and Guests using the Facility. Shirts and shoes are required in all public and recreation areas. No attire shall be left in the Facility overnight unless the Member has an assigned locker.

Section 4. Damages. The cost to repair damage to any property caused by Member or Member's Guest shall be paid by the Member.

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Section 5. Etiquette. As a Member of the Facility, it is expected the Member and their Guest abide by appropriate etiquette for fellow members and staff. Cell phone usage is not allowed in the Facility in changing areas or common areas. Use of profane language or aggressive behavior will not be tolerated. Members should notify the Facility to resolve matters, and not take measures into their own hands or confront other Members or their Guests. Members may be limited to the length of time when using equipment that other Member's and/or their Guests may be waiting for. Additional rules throughout the Facility do apply and are clearly stated throughout the Facility.

Section 6. Rules Not Inclusive. The rules contained herein are not inclusive. Additions and amendments to these Additional Terms or the Facility Rules and Regulations may be made from time to time at the sole discretion of the Facility, without prior notice to Members. On all questions regarding the construction of the Facility Rules and Regulations, the decision of the Facility will be final. Members who violate these Additional Terms or the Facility Rules and Regulations shall be subject to termination of their Membership Agreement pursuant to

#### Article IV.

A copy of the Facility Rules and Regulations will be made available upon request.

#### Article VI: Limitation of Liability

Section 1. Limitation of Liability. IN NO EVENT WILL THE FACILITY, ITS MANAGEMENT COMPANY, OR THEIR RESPECTIVE AFFILIATES BE LIABLE TO MEMBER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR "COSTS OF COVER" ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING OUT OF ANY MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, DEFECTS, LOSS OF PROFITS, LOSS OF BUSINESS, OR ANTICIPATORY PROFITS, REGARDLESS OF WHETHER THE POSSIBILITY OF SUCH DAMAGES WAS MADE KNOWN OR WAS FORESEEABLE. THE MAXIMUM AGGREGATE LIABILITY OF FACILITY AND ITS AFFILIATES TO MEMBER, UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL FEES PAID BY MEMBER TO THE FACILITY UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

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## Article VII: Miscellaneous

Section 1. This Agreement: (a) except as otherwise stated herein, may be modified only by a writing signed by each of the parties; (b) may be executed in several counterparts, each of which is deemed an original but all of which constitute one and the same instrument; (c) is governed by, and will be interpreted, construed, and enforced in accordance with, the laws of the State of Nebraska, without giving effect to Nebraska conflict of laws rules; (d) is binding upon, and will inure to the benefit of, the parties and their respective successors and permitted assigns; and (e) constitutes the sole and entire agreement of the parties with respect to the subject matter herein, and supersedes all prior and contemporaneous written or oral negotiations, understandings, agreements, representations, and warranties, with respect to the subject matter herein. In entering into this Agreement, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this Agreement. Member shall not directly or indirectly assign, transfer, or delegate any of or all of its rights or obligations under this Agreement, voluntarily or involuntarily, including by change of control, merger (whether or not such party is the surviving entity), operation of law, or any other manner, without the prior written consent of the Facility. Any purported assignment or delegation in violation of this Section shall be null and void. If the Facility is sold or otherwise transferred or ownership of the The Cottonwood Club is sold or otherwise transferred, this Agreement may be assigned or transferred to the new owner. Unless otherwise agreed by the parties, no assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder. Each party expressly consents to the exclusive jurisdiction of the federal, state, and local courts serving Douglas County, Nebraska, to govern all disputes arising out of or relating to this Agreement. The due performance or observance by a party of any of its obligations under this Agreement may be waived only by a writing signed by the party against whom enforcement of such waiver is sought, and any such waiver will be effective only to the extent specifically set forth in such writing. The waiver by a party of any breach or violation of any provision of this Agreement will not operate as, or be construed to be, a waiver of any subsequent breach or violation hereof. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. Articles III, IV, VI and VII of this Agreement, and the Assumption of Risk and Waiver of Liability, as well as any other provision that, in order to give proper effect to its intent, should survive the expiration or termination of this Agreement, will survive such expiration or termination.

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