

# User's Representations, Express Assumption of All Risks, and Release of Liability Agreement

## Purpose of This Binding Agreement

By reading and signing this document, "You," the undersigned, sometimes also referred to as "User" or "I," will agree to release and hold Martin Performance harmless from, and assume all responsibility for, all claims, demands, injuries, damages, actions or causes of action to persons or property, arising out of or connected with your use of the Club's facilities, premises, or services. The agreement and release is for the benefit of the Club, its employees, agents, independent contractors, other users of the Club and all persons on the Club's premises. This agreement includes your release of these persons from responsibility for injury, damage, or death to yourself because of those acts or omissions claimed to be related to the ordinary negligence of these persons. This agreement also includes your representations as to important matters which the Club will rely upon.

## A. Representations

The undersigned, You, represent: (a) that you understand that use of the Club premises, facilities, equipment, services and programs includes an inherent risk of injury to persons and property; (b) that you are in good physical condition and have no disabilities, illnesses, or other conditions that could prevent you from exercising and using the Club's equipment/facilities without injuring yourself or impairing your health; and (c) that you have consulted a physician concerning an exercise program that will not risk injury to yourself or impairment of your health. Such risk of injury includes, but is not limited to, injuries arising from or relating to use by you or others of exercise equipment and machines, locker rooms, spa and other wet areas, and other Club facilities; injuries arising from or relating to participation by you or others in supervised or unsupervised activities or programs through the Club; injuries and medical disorders arising from or relating to use of the Club's facilities including heart attacks, sudden cardiac arrests, strokes, heat stress, sprains, strains, broken bones, and torn muscles, tendons, and ligaments, among others; and accidental injuries occurring anywhere in the Club including lobbies, hallways, exercise areas, locker rooms, steam rooms, pool areas, Jacuzzis, saunas, and dressing rooms. Accidental injuries include those caused by you, those caused by other persons, and those of a "slip-and-fall" nature. If you have any special exercise requirements or limitations, you agree to disclose them to the Club before using the Club's facilities; and when seeking help in establishing an exercise program, you hereby agree that all exercise and use of the Club's facilities, services, programs, and premises are undertaken by you at your sole risk. As used herein, the terms "include," "including," and words of similar import are descriptive only, and are not limiting in any manner.

You also acknowledge and represent that you realize and appreciate that access to and use of the Club's facilities during nonsupervised times increases and enhances certain risks to you. You realize that if you use the Club during nonsupervised hours, any emergency response to you in the event of need for same may be impossible or delayed. While we encourage you to use the Club's facility with a partner during nonsupervised times, you may choose to do so without a partner, therefore enhancing and increasing the risks to you as to the provision of first aid and emergency response. You realize that a delay in the provision of first aid and/or emergency response may result in greater injury and disability to you and may cause or contribute to your death. Use of the Club with no one else present to supervise or watch your activities is not recommended and would not be allowed unless you agree to assume all risks of injury, whether known or unknown to you.

You do hereby further declare yourself to be physically sound and suffering from no condition, impairment, disease, infirmity, or other illness that would prevent your participation or use of equipment or machinery except as hereinafter stated. You do hereby acknowledge that you have been informed of the need for a physician's approval for your participation in an exercise/fitness activity or in the use of exercise equipment and machinery. You also acknowledge that it has been recommended that you have a yearly or more frequent physical examination and consultation with your physician as to physical activity, exercise, and use of exercise and training equipment so that you might have his recommendations concerning these fitness activities and equipment use. You acknowledge either that you have had a physical examination and have been given your physician's permission to participate, or that you have decided to participate in activity and use of equipment and machinery without the approval of your physician and do hereby assume all responsibility for your participation and activities, and utilization of equipment and machinery in your activities.

**YOU HAVE READ THE FOREGOING, ACKNOWLEDGE THAT YOU UNDERSTAND THE TERMS AND CONDITIONS SET FORTH IN THE PRECEDING PARAGRAPHS, AND AGREE TO SAME.**

Initials: \_\_\_\_\_

## **B. Express Assumption of All Risks**

You have represented to us and acknowledged that you understand and appreciate all of the risks associated with your participation in various activities at the Club and in the use of equipment/facilities at the Club, including the risks of injury, disability, and death. You have also acknowledged that there are greater, enhanced, and even other risks to you if you decide to use the Club's facility during nonsupervised times. Knowing and appreciating all of these risks and enhanced risks, you have knowingly and intelligently determined to expressly assume all risks associated with all of your activities and use of equipment/facilities at the Club.

You understand and are aware that strength, flexibility and aerobic exercise, including the use of equipment, is a potentially hazardous activity. You also understand that fitness activities involve the risk of injury and even death, and that you are voluntarily participating in these activities and using equipment and machinery with knowledge of the dangers involved. We have also reviewed the risks with you on the date when you signed this Agreement and answered any questions that you may have had. You hereby agree to expressly assume and accept any and all risks of injury or death including those related to your use of or presence at this facility, your use of equipment, and your participation in activity, including those risks related to the ordinary negligence of those released by this Agreement and including all claims related to ordinary negligence in the selection, purchase, setup, maintenance, instruction as to use, and use and/or supervision of use, if any, associated with all equipment and facilities.

**YOU HAVE READ THE FOREGOING, ACKNOWLEDGE THAT YOU UNDERSTAND THE TERMS AND CONDITIONS SET FORTH IN THE PRECEDING PARAGRAPHS, AND AGREE TO SAME.**

Initials: \_\_\_\_\_

## **C. Agreement and Release of Liability**

In consideration of being allowed to participate in the activities and programs of the Club and to use its equipment/facilities and machinery in addition to the payment of any fee or charge, you do hereby waive, release, and forever discharge the Club and its directors, officers, agents, employees, representatives, successors and assigns, administrators, executors, and all others from any and all responsibilities or liability from injuries or damages resulting from your participation in any activities or your use of equipment/facilities or machinery in the above-mentioned activities. You do also hereby release all of those mentioned and any others acting upon their behalf from any responsibility or liability for any injury or damage to yourself, including those caused by the negligent act or omission of any of those mentioned or others acting on their behalf or in any way arising out of or connected with your participation in any activities of the Club. This provision shall apply to ordinary acts of negligence but shall not apply to gross acts/omissions of negligence, willful or wanton acts/omissions, or those of an intentional/criminal nature.

**YOU HAVE READ THE FOREGOING, ACKNOWLEDGE THAT YOU UNDERSTAND THE TERMS AND CONDITIONS SET FORTH IN THE PRECEDING PARAGRAPHS, AND AGREE TO SAME.**

Initials: \_\_\_\_\_

## **D. Loss or Theft of Property**

The Club is not responsible for lost or stolen articles. You should keep any valuables with you at all times while using the facilities. Storage space or lockers do not always protect valuables. Consequently, by executing this Agreement and any accompanying documents, you do hereby agree to assume all responsibility for your own property and that of any dependent(s) and to insure that property against risk of loss as you see fit. By the execution hereof, you expressly, on behalf of yourself and any dependents, do hereby knowingly agree to forego, waive, release, and prospectively give up any right to institute any claim or action against the Club relating to lost or stolen property, including property lost or stolen due to the negligent act or omission of the Club. You agree to indemnify and save the Club and all of its personnel harmless from any action, claim, suit, or subrogated claim or suit instituted at any time hereafter against the Club related to the theft or loss of your or your dependents' property at the Club. The Club shall be indemnified by you for all costs, expenses, fees, including attorney fees, incurred by the Club or its personnel by reason of any such action.

**YOU HAVE READ THE FOREGOING, ACKNOWLEDGE THAT YOU UNDERSTAND THE TERMS AND CONDITIONS SET FORTH IN THE PRECEDING PARAGRAPHS, AND AGREE TO SAME.**

Initials: \_\_\_\_\_

User shall receive a copy of the foregoing Agreement at the time of its initialing and signing and hereby acknowledges User's receipt of same.

**YOU HAVE READ THE FOREGOING, ACKNOWLEDGE THAT YOU UNDERSTAND THE TERMS AND CONDITIONS SET FORTH IN THE PRECEDING PARAGRAPHS, AND AGREE TO SAME.**

Initials: \_\_\_\_\_

This Agreement shall be interpreted according to the laws of the State of \_\_\_\_\_. If any part of this Agreement should ever be determined by a court of final jurisdiction to be invalid, the remaining portions hereof shall be deemed to be valid and enforceable.

**YOU HAVE READ THE FOREGOING, ACKNOWLEDGE THAT YOU UNDERSTAND THE TERMS AND CONDITIONS SET FORTH IN THE PRECEDING PARAGRAPHS, AND AGREE TO SAME.**

Initials: \_\_\_\_\_

### **Acknowledgment**

I have read and received a completed copy of this Agreement and all of its Exhibits, as well as any Rules and Regulations of the Club which are incorporated herein by reference. I agree to be bound by the terms and conditions of the Agreement and the Rules and Regulations of the Club, as same exist or as same may be amended from time to time hereafter. This Agreement shall be binding upon me and my spouse, my heirs, my estate, my executors, my administrators, and my successors and/or assigns. I realize that this Agreement is designed to prevent me and/or them from filing any personal injury or other lawsuit based upon ordinary negligence, including negligent battery, or even negligent wrongful death, loss of consortium, or any other similar lawsuit arising out of any injury to me which I or they may possess hereafter.

The undersigned, on behalf of myself and my heirs, executors, administrators, successors, and assigns hereby agree to indemnify the Club and all those hereby released and to hold them absolutely harmless if anyone, including the undersigned, should hereafter file suit against the Club or those released hereby for any matter intended to be released by this Agreement, including claims based upon ordinary negligence such as but not limited to personal injury, wrongful death, loss of consortium, or other similar actions.

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

Print name: \_\_\_\_\_

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

Phone number: ( \_\_\_\_\_ ) \_\_\_\_\_