

WESTHEIMER LAKES PROPERTY OWNERS ASSOCIATION

**WAIVER OF LIABILITY, DISCLAIMER, ASSUMPTION OF RISK, AND INDEMNITY
AGREEMENT FOR USE OF THE ASSOCIATION FACILITY**

First Name: _____ **Last Name:** _____

STREET ADDRESS, CITY/STATE/ZIP: _____

HOME PHONE: _____ **CELL PHONE:** _____

EMAIL ADDRESS: _____

This Waiver of Liability, Disclaimer, Assumption of Risk, and Indemnity Agreement (this "*Agreement*") is made by the above-named resident (the "*Resident*"), the undersigned Guardian (as applicable), and Westheimer Lakes Property Owners Association (the "*Association*").

In consideration of the right to use and enjoy the fitness center facilities located at 6201 Westheimer Lakes North Blvd., Katy, Texas 77494 and 25501 Canyon Crossing Drive, Richmond, Texas 77406 (collectively the "*Association Facility*") and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Resident, Resident agrees to the following terms and conditions:

1. RESIDENT ACKNOWLEDGES THE INHERENT RISKS INVOLVED IN THE USE OF THE ASSOCIATION FACILITY, INCLUDING BUT NOT LIMITED TO BODILY INJURY, SICKNESS, DISEASE, AND DEATH. RESIDENT ALSO ACKNOWLEDGES THAT USE OF THE ASSOCIATION FACILITY IS POTENTIALLY DANGEROUS AND THAT THE TYPE OF INJURY OR DAMAGE DESCRIBED ABOVE CAN OCCUR WHEN USING THE ASSOCIATION FACILITY. RESIDENT ALSO ACKNOWLEDGES THE RISK OF CONTRACTING THE VIRUS THAT CAUSES COVID-19 ASSOCIATED WITH USE OF THE ASSOCIATION FACILITY. RESIDENT HEREBY ACKNOWLEDGES THAT THE RESIDENT'S USE THE ASSOCIATION FACILITY IS DONE WITH FULL KNOWLEDGE AND DISCLOSURE OF THE RISKS AND DANGERS ASSOCIATED WITH SUCH USE. RESIDENT SHALL COMPLY (AND SHALL CAUSE ANY GUESTS, INVITEES, OR LICENSEES OF RESIDENT TO COMPLY) WITH THE ASSOCIATION'S RULES, REGULATIONS, GUIDELINES, POLICIES, AND RESTRICTIONS AND ANY LOCAL OR FEDERAL GUIDANCE OR RULES GOVERNING RESIDENT'S (AND RESIDENT'S GUESTS', INVITEES', AND LICENSEES') USE OF THE ASSOCIATION FACILITY.

2. RESIDENT HEREBY ASSUMES ALL RESPONSIBILITY FOR AND ALL RISK OF DAMAGE OR LOSS OF ANY KIND, INCLUDING BUT NOT LIMITED TO BODILY INJURY, SICKNESS, DISEASE, DEATH, AND DAMAGES OF ANY KIND (COLLECTIVELY, "*DAMAGE*"), SUSTAINED BY RESIDENT OR ANY OTHER PARTY ARISING OUT OF OR RELATING TO RESIDENT'S (OR RESIDENT'S GUESTS', INVITEES', OR LICENSEES') PRESENCE IN OR USE OF THE ASSOCIATION FACILITY. THIS ASSUMPTION OF RESPONSIBILITY AND RISK INCLUDES (WITHOUT LIMITATION) SUCH DAMAGE

CAUSED, OR ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY OF: THE ASSOCIATION AND ANY OF THE ASSOCIATION'S OFFICERS, DIRECTORS, MANAGEMENT COMPANY(S), MANAGERS, EMPLOYEES, AGENTS, CONTRACTORS AND SUBCONTRACTORS OF ANY TIER (COLLECTIVELY, THE "INDEMNIFIED PARTIES"). RESIDENT ACKNOWLEDGES THAT INDEMNIFIED PARTIES ARE NOT INSURERS AND THAT RESIDENT ASSUMES ALL RISKS FOR PERSONAL INJURY, LOSS, DAMAGE, OR DEATH, INCLUDING PERSONAL PROPERTY LOSS OR DAMAGE, AND RESIDENT FURTHER ACKNOWLEDGES THAT THE INDEMNIFIED PARTIES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS THE RESIDENT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE SAFETY OF THE ASSOCIATION FACILITY.

3. RESIDENT ACKNOWLEDGES THAT IT IS RESIDENT'S (AND RESIDENT'S GUESTS', INVITEES', AND LICENSEES') RESPONSIBILITY TO CONSULT WITH A PHYSICIAN BEFORE USING THE ASSOCIATION FACILITY. RESIDENT REPRESENTS AND WARRANTS TO THE INDEMNIFIED PARTIES THAT RESIDENT AND ANY OF RESIDENT'S GUESTS, INVITEES, AND LICENSEES ARE SUFFICIENTLY HEALTHY AND PHYSICALLY ABLE TO USE THE ASSOCIATION FACILITY AND ENGAGE IN PHYSICAL ACTIVITIES IN THE ASSOCIATION FACILITY. RESIDENT REPRESENTS AND WARRANTS TO THE INDEMNIFIED PARTIES THAT RESIDENT WILL NOT USE THE ASSOCIATION FACILITY FOR A PERIOD OF FOURTEEN (14) DAYS IF RESIDENT OR SOMEONE IN RESIDENT'S HOME IS SICK OR HAS BEEN EXPOSED TO SOMEONE WHO IS SICK.

4. RESIDENT SHALL INDEMNIFY, PROTECT, HOLD HARMLESS, AND DEFEND (ON DEMAND) THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS (INCLUDING WITHOUT LIMITATION CLAIMS BROUGHT BY RESIDENT OR BY ANY GUESTS, INVITEES, OR LICENSEES OF RESIDENT) IF SUCH CLAIMS ARISE OUT OF OR RELATE TO RESIDENT'S OR ANY OF SUCH THIRD PARTIES' PRESENCE IN OR USE OF THE ASSOCIATION FACILITY. THIS COVENANT TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INCLUDES (WITHOUT LIMITATION) CLAIMS CAUSED, OR ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE INDEMNIFIED PARTIES' OWN NEGLIGENCE, REGARDLESS OF WHETHER SUCH NEGLIGENCE IS THE SOLE, JOINT, COMPARATIVE OR CONTRIBUTORY CAUSE OF ANY CLAIM.

5. _____ (INITIAL HERE) Resident acknowledges and stipulates that Resident has read, understands, and will abide by the following rules:

Rules Governing Use of Fitness Center During COVID-19 Pandemic

- a) Use of the fitness center is limited to ___ people at any given time.
- b) The fitness center is open to owners and residents only. No guests are permitted.
- c) Owners and residents must maintain at least six feet (6') of distance from anyone who is not a member of their household while in the fitness center. This may require waiting to use certain equipment until the equipment can be used without violating the distance requirement.
- d) Owners and residents must bring their own towels.
- e) Owners and residents must bring their own water.
- f) Owners and residents must sanitize any equipment used immediately before and immediately after use.

- g) Owners and residents are must wear face coverings while in the fitness center.
Owners and residents should familiarize themselves with CDC recommendations and self-monitor for symptoms prior to using the fitness center.
- i) Owners and residents must leave the fitness center immediately upon completing of their workout.
Owners and residents should avoid loitering and congregating in groups.
- j) If an owner or resident comes into contact with someone who is sick or suspected to be sick, such owner or resident should wait at least fourteen (14) days from the last date of contact before using the fitness center.
- k) The Association reserves the right to close the fitness center if these Rules are violated.
- l) The Association may suspend an owner’s or resident’s right to use the fitness center for a violation of these Rules.

6. **Miscellaneous.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. If any term or provision of this Agreement or the application thereof to any party or circumstance is held invalid, illegal, or unenforceable to any extent, then the remaining terms and provisions and their application to other parties or circumstances will not be affected thereby and will be enforced to the greatest extent permitted by law. This Agreement is binding on and will inure to the benefit of the Association and Resident and their respective successors and assigns. All matters arising out of or relating to this Agreement will be governed by and construed in accordance with the internal laws of the State of Texas, excluding any conflict-of-laws rule or principle that might refer the governance or the construction of this Agreement to the laws of another jurisdiction. Any claim or cause of action arising under this Agreement may be brought only in the state courts located in Fort Bend County, Texas and I hereby consent to the exclusive jurisdiction of such courts.

Resident acknowledges that Resident has read and understands this Waiver of Liability, Disclaimer, Assumption of Risk, and Indemnity Agreement, as well as the rules, regulations, guidelines, policies, and restrictions promulgated by the Association governing Resident’s use of the Association Facility. Resident knowingly and voluntarily agrees to the terms and conditions stated above.

RESIDENT:

Signature _____

Print Name: _____

Date: _____

IF THE RESIDENT IS 17 YEARS OF AGE OR YOUNGER, PRINT THE MINOR RESIDENT’S NAME ABOVE, AND A PARENT/GUARDIAN MUST SIGN BELOW.

THE UNDERSIGNED GUARDIAN (THE “GUARDIAN”) IS A PARENT OR LEGAL GUARDIAN OF THE RESIDENT. AS A CONDITION OF THE RESIDENT’S USE OF THE

ASSOCIATION FACILITY, GUARDIAN SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, INDEMNIFY, HOLD HARMLESS, AND DEFEND (ON DEMAND) THE INDEMNIFIED PARTIES FROM, FOR, AND AGAINST ALL CLAIMS (INCLUDING WITHOUT LIMITATION CLAIMS BROUGHT BY THE RESIDENT AND ANY GUESTS, INVITEES, OR LICENSEES OF GUARDIAN) IF SUCH CLAIMS ARISE OUT OF OR RELATE TO RESIDENT'S OR ANY OF GUARDIAN'S GUESTS', INVITEES', OR LICENSEES' PRESENCE IN OR USE OF THE ASSOCIATION FACILITY (THE "GUARDIAN INDEMNIFIED CLAIMS"). THIS COVENANT TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INCLUDES (WITHOUT LIMITATION) CLAIMS CAUSED, OR ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE INDEMNIFIED PARTIES' OWN NEGLIGENCE. FURTHERMORE, THE GUARDIAN SHALL NOT COMMENCE OR MAINTAIN ANY GUARDIAN INDEMNIFIED CLAIMS AGAINST ANY OF THE RELEASED PARTIES.

PARENT/GUARDIAN OF MINOR RESIDENT:

Signature _____

Print Parent/Guardian Name: _____

Parent/Guardian Address: _____

Date: _____