

# EMERYSTATION JOINT VENTURE, LLC

## AGREEMENT AND RELEASE OF LIABILITY

In consideration of being allowed to utilize the exercise room ("Facilities") and equipment (the "Equipment") now or hereafter located at EmeryStation 5858 Horton St., Emeryville, California (the "Property"), I do hereby waive, release and forever discharge EmeryStation JV and its officers, agents, employees, representatives, owners, executors, and all others (collectively "Owner") from any and all responsibilities or liability for injuries or damages resulting from my use of any Equipment in the above-mentioned Facilities or arising out of my participation in any activities at the Facility. I do also hereby release Owner and all others acting upon Owner's behalf from any and all responsibility or liability for any injury or damage to myself, including, without limitation, those caused by a failure or defect in the equipment and those caused by the negligent act of omission of any of those mentioned others acting on their behalf or in any way arising out of or connected with my participation in any at that location or the use of any equipment at that location. **Notwithstanding Section 1542 of the California Civil Code which provides, in part that "a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the Release, which if known by him must have materially affected his settlement with the debtor", the provisions of this settlement respecting release, releases all claims for injury, damages or losses to person and property, real or personal, whether known or unknown, foreseen or unforeseen, patent or latent, which I may now have or which may later arise out of or in connection with my use of the exercise equipment and facilities at the Property against Owner. I understand and acknowledge the significance and consequence of such specific waiver of Section 1542 and hereby assume full responsibility for any injuries, damages and losses that I and my successors, heirs, and assignees may incur from the above-mentioned causes and subjects. (Please initial \_\_\_\_\_).**

1. I understand and am aware that exercise, including the use of exercise equipment, is a potentially hazardous activity. I also understand that fitness activities involve a risk of injury and even death and that I have chosen to voluntarily participate in these activities and use the Equipment on the Property with knowledge of the dangers involved. I hereby agree to and hereby do expressly assume and accept any and all risks of injury or death associated with my use of the Equipment or the Facilities. **(Please initial \_\_\_\_\_).**

2. I do hereby further declare myself to be physically sound and suffering from no known condition, impairment, disease, infirmity, or other illness that would prevent my safe use of the Equipment or the Facilities. I also acknowledge that it has been recommended that I have a yearly or more frequent physical examination and that I consult with my physician in advance of entering into a physical activity and exercise program. I assume all responsibility for any loss, damage or injury arising out of my utilization of the Facilities and the Equipment. **(Please initial \_\_\_\_\_).**

3. I acknowledge that the Owner has not sponsored nor caused any program to be presented on the Property, at the Facilities or in connection with the Equipment. Should any program be offered or presented in connection with the use of the Facilities and the Equipment by any party and should I choose to participate in such program, I agree that the Owner shall have no liability of any sort or nature with respect to my participation in any and all such programs. I further agree that I assume all risk of loss, damage and injury respecting my participation in any such program. **(Please initial \_\_\_\_\_).**

4. I understand that any exercise program should be undertaken with moderation and professional guidance. I have obtained or will obtain such advice and counsel as to the type and nature of exercise activities I should participate in as I deem necessary and appropriate from persons other than Owner or Owner's agents and will rely upon advice so received. **I understand that Owner has made arrangements for a presentation respecting the use of the equipment which presentation is a condition precedent to my use of the equipment. I represent that I have attended the presentation. I agree that the presenter at the program did not provide advice respecting my personal exercise programs. In the event that I separately contract with the presenter for physical training services, I agree that the Owner shall have no liability or responsibility for any aspect of that relationship or any injury that I incur as a result of participation in such training.** I agree that the Owner shall have no liability of any sort or nature with respect to my participation in any exercise program. I further agree that I assume all risk of loss, damage and injury respecting my participation in any such program. **(Please initial\_\_\_\_\_).**

5. I hereby agree to hold Owner harmless from all losses, claims and expenses resulting from any violation of this agreement by me or my successor, heirs, or assigns and from any claims made as a result of any injury suffered by me on the Property in connection with the use of the Facilities or the Equipment. As used in this Agreement, the term "Equipment" refers to all exercise mechanisms, whether powered electrically or manually including, without limitation, free weights, aerobic trainers of all sorts and types that may hereafter be placed in the Facilities. This agreement shall bind me, my heirs, successors and assigns. I hereby represent that I am over the age of 18 years as of the date of my execution of this Agreement. **I understand that this Agreement affects my legal rights. I have had the opportunity to obtain and have obtained such legal advice, as I deem necessary or advisable in connection with my execution of this document. I have read this document and understand it. (Please initial\_\_\_\_\_).**

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

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Access Card #