

## **AGREEMENT AND RELEASE**

I execute and submit this Agreement and Release (the "Agreement") with H2O FITNESS COLLABORATIVE, LLC, P.A. and BLACKBERRY HOLDINGS, LLC (collectively, "Owner"), in connection with my use of Owner's property located at 245 Gorham Road, Scarborough, Maine (the "Property"). In connection therewith, I represent, warrant and agree as follows:

1. In connection with my use of the Property, I shall follow and obey all reasonable rules, instructions, directions, and requirements of Owner in connection with use of the pool, exercise equipment, any other recreational equipment of any variety at the Property (the "Equipment").

2. **ACKNOWLEDGMENT AND ASSUMPTION OF RISKS OF ENGAGING IN EXERCISE, PHYSICAL THERAPY, AND WATER ACTIVITIES.** I acknowledge that there are inherent dangers in engaging in exercise-, physical therapy, and water-related activities. I also acknowledge that risks and dangers may be caused by the negligence of the Owner, and its respective heirs, shareholders, members, officers, directors, respective employees and agents, or my negligence or the negligence of others, and that risks and dangers may arise from foreseeable and unforeseeable causes. I further acknowledge that my participation in any activity on the Property is wholly voluntary and constitutes participation in dangerous activity. I fully understand, acknowledge and assume, for myself and for any of my minor children, guests, invitees or any other person, the aforementioned risks, dangers and hazards. Owner makes no representations or warranties as to the condition or fitness of any of the Equipment. I agree to take full responsibility for the usability and condition of any and all Equipment, including any injury or death resulting from their use. I acknowledge that there is no lifeguard employed or engaged by Owner, and that use of the pool and related water activities is at my own risk. By signing this release, I acknowledge a minimum skill set required for the operation of any Equipment that I and/or my minor children, invitees and/or guests, choose to use.

3. **INDEMNIFICATION, HOLD HARMLESS AND RELEASE.** To the maximum extent permitted by law, I agree to indemnify and hold harmless Owner and its heirs, legal representatives, shareholders, members, officers, directors, respective employees and agents from any liabilities or any loss or damage whatsoever, including reasonable attorney's fees and costs, arising out of or related to my activities upon the Property, including but not limited to, any and all claims or liability whatsoever, whether it be for personal injury, death, and/or damage or loss of property, that may in any way arise out of or relate to the use of the Equipment, which is made or incurred by me, my guests, or my invitees, whether such loss or damage be caused to me or others. I hereby release Owner and its heirs, legal representatives, shareholders, members, officers, directors respective employees and agents from any and all liability for any such personal injury, death, and/or damage or loss of property of mine and my minor children, if any, my guests, invitees or any other person resulting from Owner's and/or its heirs, legal representatives, shareholders, members, officers, directors or any of their respective employees' and agents' own acts of negligence. I understand that Owner and its heirs, legal representatives, shareholders, members, officers, directors or respective employees and agents are not responsible for the consequences of its/their own negligence, that is, its/their failure to use reasonable care in any way in the operation of the Property, as well as in the installation, maintenance, adjustment and use of any Equipment. I, on behalf of myself and my minor children, my guests, invitees or any other person, acknowledge that I am freely and expressly assuming and accepting any and all risks of any such personal injury, death, and/or damage or loss of property.

In addition, Owner shall not be held responsible for inadvertent or unintentional errors or omissions in its advertising materials, changes made by Owner in Equipment, acts of God, construction

work taking place in the vicinity, temporary or permanent malfunction of Equipment or Property, or other conditions and events beyond the reasonable control of Owner.

I acknowledge that I voluntarily enter into this Agreement and waive any recourse as stated above in this Section 3 in consideration of the benefit conferred on me by Owner's agreement to access and use the Property and Equipment.

4. I assure Owner that all members of my party, including any and all minor children, guests and/or invitees, will observe all conditions and terms of this Agreement, as well as any additional rules, relative to use of the Property and Equipment.

5. This Agreement is intended to operate and be construed as broadly as possible under applicable law. Accordingly, to the extent applicable law would limit this Agreement in any way, or invalidate any provisions hereof, any such limitations or invalid provisions shall not operate to invalidate this Agreement in its entirety. Rather, in any such instance, this Agreement shall be deemed to operate and to be effective to the maximum extent permitted by law, provided, however, that the Agreement shall be voidable at the sole discretion of Owner should the aggregate of all such provisions found to be invalid or unenforceable materially affects the benefits and obligations of the parties to this Agreement as a whole. All remedies, rights, undertakings, obligations, and agreements contained in this Agreement shall be in addition to, and shall not limit, any other remedies, rights, undertakings, obligations or agreements of either party. In addition, the promises, agreements, obligations and releases made in this Agreement shall be in addition to, and shall not be limited in any way by any agreements I may sign with any other third parties in connection with my participation in the use of the Property and the Equipment. No waiver of any breach of or default under any provision hereof shall be deemed a waiver of such provision, or of any subsequent breach or default.

6. I certify that I have made such an investigation of the facts pertinent to this Agreement and of all the matters pertaining thereto as I have deemed necessary, that I fully understand the contents of this Agreement, that I am of sound mind, and that I intend to be legally bound by this Agreement.

7. No one has made any promise, representation or warranty whatsoever that is not contained in this Agreement to induce me to execute this Agreement, whether express or implied, oral or written. I have not executed this Agreement in reliance on any promise, representation, or warranty not contained herein. This Agreement, any exhibits, appendices and/or attachments hereto constitutes the entire agreement and understanding between me and Owner concerning the subject matter of this Agreement, namely my release of liability and indemnification of Owner related to any and all use of the Property and Equipment, and cannot be changed or terminated except by a written instrument signed by me and Owner.

8. This Agreement shall bind and inure to the benefit of me and Owner, and each of my and Owner's respective successors, assigns, heirs, next of kin, spouses, legal representatives, administrators, executors, and guardians.

9. This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Maine without regard to that state's choice of law provisions. I consent to the exclusive personal jurisdiction and venue of any Maine state or federal court to the extent that any court proceedings are commenced; provided, however, that the foregoing shall not in any way diminish or limit the mediation and arbitration provisions set forth below.

10. This Agreement shall not be construed in favor of or against any party by reason of the drafting of all or any part of this Agreement.

**I HAVE HAD AMPLE OPPORTUNITY TO READ, AND HAVE IN FACT READ, THIS ENTIRE AGREEMENT. I FULLY UNDERSTAND ALL OF MY RIGHTS, OBLIGATIONS, PROMISES, RELEASES AND AGREEMENTS AS SET FORTH HEREIN.**

**SIGNED:** \_\_\_\_\_ **DATED:** \_\_\_\_\_

\_\_\_\_\_  
*Print your name*

Executed on behalf of minor child \_\_\_\_\_, of whom I am a parent or legal guardian.