StoneSummit
CLIMBING & FITNESS CENTER

WAIVER OF LIABILITY AND COVENANT NOT TO SUE

NOTICE: THIS IS A LEGALLY BINDING AGREEMENT. PLEASE READ CAREFULLY.

I desire to participate in one or more activities or programs (each individually an **"Activity"**; collectively, **"Activities"**) offered, operated, sponsored or directed by, or otherwise involving, Stone Summit, LLC (**"Stone Summit"**). The Activities may occur in whole or in part at the climbing and recreation facility (the **"Facility"**) located at 3701 Presidential Parkway, Doraville, Georgia 30340 owned by Silex Capital, LLC (**"Silex"**) and operated by Stone Summit. The Activities may involve, without limitation, rock climbing (including but not limited to climbing on artificial surfaces, outdoor instruction, and expeditions) and other recreational activities, programs, events, instruction, and classes both inside and outside the Facility and with or without supervision of Stone Summit or any of its employees, contractors or personnel (collectively, "**Personnel"**). I understand that each Activity poses inherent and extreme risks. With full knowledge and understanding of these risks, and in consideration of my use of the Facility and participation in Activities, I acknowledge and agree as follows:

1. Acknowledgement and Assumption of the Risk

I acknowledge that participation in Activities, use of the Facility and any services provided by the Facility subjects me to the following risks, among others: (i) personal injury, including but not limited to death or paralysis, from falling off of the climbing walls or any gym apparatus, from contact with walls, equipment, landing areas and other climbers, belayers, or objects, or from any other risk specified herein; (ii) rope abrasion, entanglement and other injuries resulting from activities on or near the climbing walls or apparatus; (iii) injuries resulting from falling climbers or dropped items; (iv) cuts and abrasions resulting from skin contact with ropes, climbing hardware and climbing walls; (v) injury resulting from holds which may have become loose or damaged; (vi) failure of ropes, slings, harnesses, shoes, climbing hardware, anchor points, belay devices, or any part of the climbing wall structure; (vii) injuries resulting from the use of exercise equipment and free weights as well as participation in group exercise classes; (viii) injuries due to another participant acting in a negligent manner that may contribute to injury to the participant, me or others, such as failing to maintain control over climbing equipment, or other climbers, or not acting within a participant's ability; (ix) damaged, lost or stolen personal property located at the Facility, including, but not limited to , a vehicle or its contents or any property left in a locker; and (x) accidents which cannot be foreseen.

I understand and acknowledge that:

A. The above list is not inclusive of all the possible risks to which I will be subject in participating in Activities and using the Facility and that the list in no way limits the extent or reach of this Waiver of Liability and Covenant Not to Sue (this **"Agreement"**) or any provision of this Agreement.
B. Climbing at the Facility is not the same as climbing outdoors or on other artificial rock surfaces. I understand that any instruction I may receive at the Facility or in connection with any Activity is not necessarily applicable to other real or artificial rock climbing and that such instruction does not prepare me to climb without supervision.
C. While wearing a helmet while climbing in the Facility is not required, I assume additional risks of possible injury and death by not wearing a helmet. I understand that I may request a helmet from the Facility and the Facility will provide one for my use. Gym users are encouraged to use helmets at all times when climbing or belaying other climbers. I understand that helmets may reduce or mitigate the severity of head injuries, but are in no way a guarantee of safety. I further recognize that helmets have limited capability as far as shock absorption and that serious injury or death can result from both low and high-energy impacts, even when a helmet is worn.
D. If I rent equipment through the Facility, I accept for use the equipment rented "AS IS", I accept responsibility for the care of the equipment during the rental period and agree to be responsible for the replacement at full value of any equipment that I rent but do not return or return in a damaged condition. I understand that climbing gear could become damaged or defective. I am capable of examining and assessing my own equipment that I use during a climb. If damage occurs to equipment belonging to Stone Summit while I am using it, I will bring it to the attention of the Stone Summit personnel so they can evaluate the equipment.

I VOLUNTARILY ASSUME ALL OF THE RISKS ASSOCIATED WITH PARTICIPATION IN ANY ACTIVITY OR USE OF THE FACILITY, INCLUDING BUT NOT LIMITED TO RISK OF INJURY, PARALYSIS AND DEATH. I VOLUNTARILY ASSUME ALL SUCH RISKS WITH FULL KNOWLEDGE, UNDERSTANDING AND APPRECIATION OF THE RISKS INVOLVED.

2. Waiver of Liability and Covenant Not to Sue

I, on behalf of myself, my heirs, representatives, executors, administrators and assigns, hereby knowingly and intentionally (A) waive any and all liability of Silex, Stone Summit and their respective successors, assigns, owners, shareholders, officers, directors, members and Personnel (each individually, a **"Released Party"**; collectively, **"Released Parties"**) for, (B) release Released Parties from, and (C) covenant not to sue Released Parties for any and all causes of action, claims, injuries, liabilities, damages or demands of any nature whatsoever, whether known or unknown, anticipated or unanticipated, which I, my heirs, representatives, executors, administrators and assigns may now have, or may have in the future against any Released Party on account of any and all known and unknown, foreseen and unforeseen personal injuries, property damage, death, paralysis or accident of any kind and whenever occurring, arising out of or in any way related to any Activity, any occurrence or event involving the Facility, any Released Party or any service or program related to any thereof, whether such Activity, occurrence or event is supervised or unsupervised and however and whenever any injury, property damage, death, paralysis or accident is caused. **THIS WAIVER OF LIABILITY AND COVENANT NOT TO SUE SHALL BE EFFECTIVE EVEN THOUGH SAID LOSS, DAMAGE OR INJURY RESULTS OR HAS RESULTED FROM THE NEGLIGENCE, WRONGFUL ACTS, OMISSIONS, BREACH OF WARRANTY, OR STRICT TORT LIABILITY OF ANY RELEASED PARTY. NOTWITHSTANDING THE IMMEDIATELY PRECEDING SENTENCE, THIS WAIVER OF LIABILITY AND COVENANT NOT TO SUE SHALL NOT BE EFFECTIVE IN REGARD TO LOSS, DAMAGE OR INJURY RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT OF ANY OF THE RELEASED PARTIES.**

3. Indemnification Agreement

I hereby agree to **INDEMNIFY, HOLD HARMLESS AND DEFEND** the Released Parties from and against any and all causes of action, claims, demands, losses, damages, liabilities and costs (including but not limited to attorneys' fees and costs incurred by Released Parties or any thereof) of any nature whatsoever, including but not limited to those caused by the negligence of any Released Party (except for those resulting from the gross negligence or willful or wanton misconduct of any Released Party), arising out of or in any way relating to my use of the Facility or the services provided thereby or my participation in any Activity.

4. Miscellaneous

I certify that I am in proper physical and mental condition to participate in Activities and that I have no physical limitations that would preclude my safely using the Facility or participating in Activities, subject to the risks assumed. I agree to read and abide by all rules from time to time posted in the Facility or otherwise communicated to me. I agree to comply with requests and instructions of all Personnel. In the event of an accident, if I should be unconscious or otherwise unable to make medical decisions for myself, I hereby grant the Released Parties permission to administer necessary first aid, and/or to solicit emergency medical services as deemed necessary. This authorization includes permission for emergency medical transportation to the nearest medical facility for additional medical treatment.

I hereby voluntarily waive any right I may have to a trial by jury in any action, proceeding or litigation involving any Released Party. The laws of the State of Georgia shall govern the rights and obligations of the parties to this Agreement and the interpretation, construction and enforceability thereof. I agree that any lawsuit brought against any Released Party shall be brought solely in Fulton or DeKalb County, Georgia. If any portion of this Agreement is held invalid, the remainder shall remain in full force and effect.

I hereby grant to Stone Summit, and Stone Summit reserves the right to use for promotional purposes any photographs taken by Stone Summit at the Facility or during any Activity. Such images may be used in Stone Summit's brochures, posters, website or other promotional materials without liability or payment.

I ACKNOWLEDGE AND AGREE THAT BY SIGNING THIS AGREEMENT I AM RELIEVING THE FACILITY AND ALL RELEASED PARTIES OF ANY AND ALL LIABILITY FOR ANY LOSS, DAMAGE, INJURY OR DEATH RESULTING FROM ANY ACTIVITY AND WAIVING MY RIGHT TO MAINTAIN A LAWSUIT AGAINST ANY OF THE RELEASED PARTIES, EXCEPT FOR ANY LIABILITY BASED UPON THEIR GROSS NEGLIGENCE OR WANTON AND WILFULL MISCONDUCT. I CERTIFY THAT MY AGE IS ACCURATELY SET FORTH BELOW; THAT, IF I AM AT LEAST 18 YEARS OF AGE, I AM LEGALLY COMPETENT TO SIGN THIS AGREEMENT; I HAVE CAREFULLY READ THIS AGREEMENT AND UNDERSTAND THAT THE TERMS OF THIS AGREEMENT ARE LEGALLY BINDING UPON ME AND UPON MY ASSIGNS, HEIRS, REPRESENTATIVES, EXECUTORS AND ADMINISTRATORS; AND THAT I AM SIGNING THIS AGREEMENT, AFTER HAVING CAREFULLY READ IT, OF MY OWN FREE WILL.

IF PARTICIPANT IS UNDER 18 YEARS OLD –UNDERSIGNED PARENT/GUARDIAN CONSENT: I am the parent or legal guardian of the undersigned one or more minors (whether one or more, the "Minor") under 18 years of age and hereby consent to the Minor's using the Facility or participating in Activities, all as defined above. In consideration of permission to the Minor to use the Facility and participate in one or more Activities, I agree, personally and on behalf of the Minor and any other parent or legal guardian of the Minor, to be bound by the terms and conditions set forth in this Agreement. Without limiting the immediately preceding sentence, I expressly, personally and on behalf of the Minor and any other parent or legal guardian of the Minor, (a) acknowledge and consent to the Minor's assumption of the risks described above, (b) make and enter into for the benefit of the Released Parties the agreements set forth above in Paragraph 2, entitled " **Waiver of Liability and Covenant Not to Sue"** and (c) agree to indemnify, hold harmless and defend all Released Parties from and against any loss, damage, liability and expense, including but not limited to costs and attorneys' fees, incurred by any Released Party, as a result of the Minor's using the Facility or participating in any Activity. I represent that I am at least eighteen (18) years of age and legally competent to sign this Agreement.

A photocopy hereof, or a record of this Agreement sent and received by facsimile, email or other electronic transmission, shall be enforceable and shall have full legal effect as an original.

IN WITNESS WHEREOF, this Agreement is duly executed this _____ day of _____,_____.

ADULT PARTICIPANT AND SIGNATURE OF PARENT/LEGAL GUARDIAN

I AM AWARE THAT I AM RELEASING CERTAIN LEGAL RIGHTS THAT I OR MY CHILD(REN) OTHERWISE MAY HAVE.

_____ X _____

ADULT PARTICIPANT /PARENT OR GUARDIAN – Print First Name, Last Name SIGNATURE DATE

_____

ADDRESS – Street Address/Mailing Address (please print) City, State Zip Code

_____

DATE OF BIRTH (MM-DD-YYYY) Phone Number E-Mail Address

_____

EMERGENCY CONTACT RELATION PHONE NUMBER

MINOR PARTICIPANT (UNDER 18) INFORMATION

**Requires signature of Parent or Legal Guardian in the Box Above*

_____

MINOR PARTICIPANT #1 – First Name, Last Name (please print) Date of Birth

_____

MINOR PARTICIPANT #2 – First Name, Last Name (please print) Date of Birth

_____

MINOR PARTICIPANT #3 – First Name, Last Name (please print) Date of Birth

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