

KIRKWOOD COMMUNITY ASSOCIATION
ASSUMPTION OF RISK, HOLD HARMLESS, AND WAIVER OF LIABILITY AGREEMENT
(INCLUDING CORONAVIRUS/COVID-19)

No person may use the Facility (as defined below) or participate in Association-sponsored activities (as defined below) without first (a) signing and returning this Agreement to the Association or electronically consenting to its terms and (b) providing complete and full contact information to the Association. (An Agreement must be entered into on behalf of and contact information provided for each minor by a parent, guardian or other authorized adult.)

In consideration of receiving permission to utilize the Facility or participate in an Association-sponsored activity, the undersigned acknowledges, accepts and agrees to the following terms:

1. Authority to Enter Agreement - The undersigned agrees to the terms set forth in this Assumption of Risk, Hold Harmless, and Waiver of Liability Agreement (“Agreement”) and has the authority and capacity to agree to these terms on behalf of themselves, their Family (as defined below) and their Guests (as defined below).
2. Definitions - For purposes of this Agreement, the following definitions shall apply:

“Agreement” has the meaning set forth in Paragraph 1.

“Association” means the Kirkwood Community Association, a California nonprofit corporation.

“Association-sponsored activities” shall mean any activity or function operated, organized, arranged or sponsored by the Association, whether at the Facility or elsewhere.

“Coronavirus Disease” (or “COVID-19”) means an infectious disease caused by severe acute respiratory syndrome Coronavirus 2 as defined by the Centers for Disease Control. This disease can cause serious illness and death; “seniors” and those whose health is otherwise compromised by lung, heart or other diseases are particularly susceptible to becoming sick as a result of the Coronavirus Disease. Scientists continue to study how this disease is spread. As used in this Agreement, the terms “COVID-19” and “Coronavirus Disease” also include any other infectious diseases.

“COVID-19 Rules” has the meaning set forth in Paragraph 4.c.

“Facility” means the Association’s property located at 1550 Kirkwood Meadows Drive, Kirkwood, CA 95646, including without limitation, all of the Association’s indoor and outdoor amenity offerings, its workout facility/gym, its children’s and family lounge area, its bar/café area, its locker rooms, showers and bathrooms, its sauna and steam rooms, its hot tubs, and its pool. As used in this Agreement, the term “Facility” also includes all other facilities and all apparatuses, appliances, privileges and services whatsoever owned, leased, operated, maintained or managed by the Association from time to time in Kirkwood, CA, including without limitation, the tennis and basketball courts.

“Family” means spouse or domestic partner, siblings, parents, children or grandchildren, aunts, uncles, nieces, nephews or cousins or other extended members of a family (whether related through blood ties, marriage, adoption or legal contracts). As used in this Agreement, the term “Family” shall include adults and minors.

“Guests” means any person invited by a KCA Card Holder or allowed by a Member or a KCA Card Holder to use the Facilities, whether Family or not. As used in this Agreement, the term “Guest” shall include adults and minors.

“KCA Card Holder” means any Family of a Member or seasonal lease holder of a Member who has an active access card to the KCA Club issued pursuant to the KCA’s rules, regulations and other governing documents.

“Member” has the meaning set forth in the Association’s Declaration of Covenants, Conditions and Restrictions.

“RELEASEES” has the meaning set forth in Paragraph 6.c.

“Social Distancing” means any safety and other measures adopted by the federal, California or Alpine County government or entities or by Kirkwood valley entities or the Association from time to time to prevent the spread of COVID-19.

“they,” “their,” “themselves,” and “themselves” means any person singular or plural regardless of gender.

All definitions include singular, plural and possessive uses.

3. General Terms – The undersigned agrees -
 - a. That acceptance of and agreement to abide by all the terms of this Agreement is a condition to use of the Facility and participation in any Association-sponsored activities;
 - b. To abide by all of the rules and regulations adopted by the Association from time to time;
 - c. To assume sole responsibility for their personal property and that the Association shall not be responsible for any loss or damage to any personal property used or left at the Facility or an Association-sponsored event;
 - d. That they use the Facility and participate in Association-sponsored events at their own risk; and
 - e. That they are liable for any property damage, personal injury or other harm at the Facility or an Association-sponsored event caused by them, their Family and Guests or arising from their actions.
4. COVID-19 and Coronavirus Disease – By using the Facility or participating in any Association-sponsored activities, the undersigned acknowledges and agrees to the following on behalf of themselves and all Family and Guests, including minors:
 - a. They are aware of and understand the risks and hazards associated with COVID-19. They understand and accept that use of the Facility includes possible exposure to and illness from COVID-19. They fully acknowledge and are aware of the potential hazards and risks associated with COVID-19, including bodily injury, illness and/or death and the fact that COVID-19 can be transmitted to others.
 - b. They are familiar with the guidelines and orders set forth by the Centers for Disease Control and Prevention, the federal government, State of California, Alpine County, Kirkwood valley entities and the Association regarding COVID-19, including without limitation all Social Distancing requirements. They acknowledge, accept, and understand that these guidelines change rapidly and are updated on an ongoing basis and that they are responsible for familiarizing themselves with the most current updates.
 - c. They understand their responsibility to comply with all Social Distancing requirements and all COVID-19 rules, regulations, resolutions, communications and signage adopted and/or posted by the Association, Kirkwood valley entities, Alpine County, the State of California or the federal government (collectively “COVID-19 Rules”). They understand that adherence to the COVID-19 Rules may reduce the risk of contracting COVID-19, but adherence to the conditions is not a guarantee against the transmission of any infectious disease, including, but not limited to, COVID-19. They understand that Association may not have insurance to cover claims arising out of exposure to COVID-19.
5. Members – If the undersigned is a Member, the undersigned takes full responsibility for all Family and Guests and shall make sure all Family and Guests each sign an Agreement, and understand and abide by its terms, the COVID-19 Rules and all other rules and regulations of the Association.
6. Assumption of Risk, Waiver and Release – The undersigned on behalf of themselves and all Family and Guests:
 - a. acknowledges and fully assumes all risks and accepts sole responsibility for any risk of illness, injury, disability, and/or death arising from entering or using the Facility or participating in Association-sponsored events, whether arising or resulting from or out of, or related to, directly or indirectly, COVID-19 or otherwise;
 - b. knowingly and freely assumes all such risks, both known and unknown, and assumes full responsibility for their use of the Facility and participation in Association-sponsored events; and
 - c. to the greatest extent permitted by law, hereby RELEASES, WAIVES, HOLDS HARMLESS, DISCHARGES, AND COVENANTS NOT TO SUE the Association and its officers, directors, agents, employees, representatives, volunteers, and assigns (collectively, the “RELEASEES”) from any liability which might occur (except for the RELEASEES’ gross negligence or intentional misconduct) as a result of them entering or using the Facility or participating in an Association-sponsored event, whether arising or resulting from or out of, or related to, directly or indirectly, COVID-19 or otherwise.
7. Indemnification – To the greatest extent permitted by law, the undersigned agrees on behalf of themselves and all Family and Guests to indemnify, defend, and hold harmless the RELEASEES from and against any and all claims, injuries, damages, demands, suits, judgments, losses, liabilities, costs, or expenses of any kind or nature whatsoever (including, without limitation, attorneys’ fees, costs, and disbursements and whether or not an action is brought, on appeal or otherwise), whether due to the negligence or otherwise (except for the RELEASEES’ gross negligence or intentional misconduct) of the RELEASEES, arising or resulting from or out of, or relating to, directly or indirectly,

- a. the infection of COVID-19;
- b. entering or using the Facility or participating in an Association-sponsored event;
- c. failure of any Family or Guest to sign an Agreement or provide complete contact information; and
- d. actions or omissions of themselves, their Family and their Guests, including, without limitation any breach of the terms of this Agreement, the COVID-19 Rules or the rules and regulations of the Association.

9. Release - It is the undersigned's express intent that this Agreement shall to the greatest extent permitted by law bind all Family and Guests and any assigns and representatives, and shall be deemed as a RELEASE, WAIVER, HOLD HARMLESS, DISCHARGE, AND COVENANT NOT TO SUE the above-named RELEASEES. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of California.

10. Disputes – THE UNDERSIGNED HEREBY KNOWINGLY AND VOLUNTARILY WAIVES ON BEHALF OF THEMSELVES AND ALL FAMILY AND GUESTS ANY RIGHT TO A JURY TRIAL OF ANY DISPUTE ARISING IN CONNECTION WITH THIS AGREEMENT. IN THE EVENT OF ANY DISPUTE ARISING IN CONNECTION WITH THIS AGREEMENT, THE UNDERSIGNED HEREBY KNOWINGLY AND VOLUNTARILY AGREES ON BEHALF OF THEMSELVES AND ALL FAMILY AND GUESTS TO ATTEND MEDIATION, AND IF THAT DOES NOT FULLY RESOLVE THE DISPUTE, THE UNDERSIGNED AGREES ON BEHALF OF THEMSELVES AND ALL FAMILY AND GUESTS TO ATTEND AND SUBMIT THE DISPUTE TO BINDING ARBITRATION IN SACRAMENTO, CALIFORNIA AND PURSUANT TO THE RULES OF THE JUDICIAL ARBITRATION AND MEDIATION SERVICE (OR OTHER ORGANIZATION TO WHICH THE PARTIES MAY MUTUALLY AGREE). THE COSTS OF MEDIATION AND ARBITRATION WILL BE DIVIDED EQUALLY BETWEEN THE PARTIES (and the RELEASEES are collectively considered one party for this purpose). THE UNDERSIGNED UNDERSTANDS THAT IF THEY OR THEIR FAMILY OR GUESTS ARE THE PREVAILING PARTY AT MEDIATION OR ARBITRATION, THEY DO NOT HAVE THE RIGHT TO RECOVER ATTORNEYS' FEES AND COSTS.

11. Materiality of Agreement – THE UNDERSIGNED ACKNOWLEDGES THAT THIS AGREEMENT WAS EXPRESSLY NEGOTIATED AND IS MATERIAL FOR THE RELEASEES TO ALLOW USE OF THE FACILITY AND/OR PARTICIPATION IN ANY ASSOCIATION-SPONSORED EVENT.

12. In signing this Agreement, the undersigned acknowledges and represents that they have read the foregoing Agreement, understand it and sign it voluntarily; no oral representations, statements, or inducements, apart from the foregoing written agreement, have been made; they are at least eighteen (18) years of age and fully competent; they have the authority to sign on behalf of all minors, Family and Guests; and they execute this Agreement for full, adequate and complete consideration fully intending to be bound by same.

Date:		Home Address:	
Name:		Kirkwood Address:	
Signature:		Email:	
Mobile Phone:			

Minor Child -

Date:		Minor's Home Address:	
Minor's Name:		Minor's Kirkwood Address:	
Adult's Signature:		Adult's Email:	
Adult's Name:		Adult's Mobile Phone:	
Adult's Relationship to Minor:			