



BANK OF AMERICA
PLAZA

901FIT

FITNESS CENTER APPLICATION AND AGREEMENT

GENERAL INFORMATION

Name of User _____ Gender M F

Name of Employer _____ Suite Number _____

HOME PHONE _____ CELL PHONE _____ EMAIL _____

HOME ADDRESS _____

PRIMARY PHYSICIAN _____ PHONE _____

EMERGENCY CONTACT _____ RELATIONSHIP _____ PHONE _____

FITNESS CENTER FEE

The current 901FiT Fitness Center (“Fitness Center”) fee is \$25.00 per month. The fee entitles the user identified above to unlimited use of the facilities during posted hours. The first monthly fee is payable concurrently with this application and agreement, and subsequent monthly fees are payable on the 1st day of each successive calendar month. The fee is subject to change upon notice at the end of any calendar month. User’s right to use the Fitness Center shall be subject to termination upon failure to pay fees by 5 pm on the 5th day of any month (in which event User’s access card will be deactivated).

All payments must be made by debit or credit through the 901FiT Fitness Center PayPal account. The undersigned hereby authorizes and agrees that the credit/debit card provided with this application and agreement will be charged for each payment of the then current fee, unless terminated as provided herein. A \$15 late fee will be charged if the credit/debit card submitted herewith is rejected.

User Agreement ARTICLE I – USERS

Eligibility for Use: Users of the Fitness Center is limited to persons eighteen (18) years of age or older who are current tenants of, or employed by current tenants of, Bank of America Plaza.

Nature of Use: Use of the Fitness Center confers solely the right to use and enjoy the Fitness Center facilities and equipment in accordance with the Fitness Center’s rules and regulations, as they may change from time to time, in the sole discretion of the Fitness Center management. Rights to use the Fitness Center do not confer any interest in the property or assets of the Fitness Center or any right to participate in the management or operations of the Fitness Center, financially or otherwise. The user identified above may not sell or otherwise transfer his or her right to use the Fitness Center to another party.

Voluntary Cancellation: User may cancel his or her Fitness Center membership effective only at the end of a calendar month upon not less than 10 days prior notice to **901fit@baplaza.com**. The unused portion of any monthly Fitness Center fee is non-refundable.

Involuntary Termination: The Fitness Center management reserves the right at any time to terminate the rights to use the Fitness Center of any user who has failed to timely pay any fees or charges, has acted inappropriately or has not complied with the terms of this agreement or with any of the rules and regulations adopted from time to time for the Fitness Center, or for any conduct the Fitness Center management determines, in its sole discretion, to be improper or in any way contrary to the best interests of the Fitness Center or its users. The right to use the Fitness Center may be terminated by notification from Manager via e-mail for the user being terminated. Possession, sale, exchange or use of firearms or any unlawful controlled substance while at the Fitness Center is prohibited.

ARTICLE II – RULES AND REGULATIONS

Access: Each User must use his or her Fitness Center access card each time he or she enters the Fitness Center. A fee of \$25.00 will be assessed for replacement of any Fitness Center access card. Photo identification is required at all times. The Fitness Center may prohibit the use of any personal equipment on the Fitness Center premises. Users must use personal music devices with earbuds or headphones that will not disturb other Fitness Center users.

Attire: Proper attire is required for use of the Fitness Center, which includes appropriate athletic shirts, bottoms and shoes. No jeans or work boots are to be worn while using the Fitness Center. Shirts and shoes must be worn at all times.

Food: No food or beverages, other than water and sports drinks, are permitted in the Fitness Center.

Damage: Any damage to the Fitness Center’s or another person’s property or to any person on the Fitness Center’s premises caused by any user shall be paid for by the applicable user.

Health and Cleanliness of User: Users shall not enter the Fitness Center with any medical condition (including, but not limited to, infections, maladies or communicable diseases) or with any failure to maintain appropriate personal hygiene, if such condition or failure poses any potential threat to the health, safety or comfort of others, and use of the Fitness Center shall be in accordance with all applicable public health requirements. It is each individual user’s responsibility to consult with his or her physician to determine if any such medical condition exists, and, if so, whether such condition poses a potential threat to the health, safety or comfort of others. The Fitness Center management reserves the right, however, to make the final determination in this regard.

Hours: The hours of operation are adjusted seasonally and in accordance with the frequency of usage. The Fitness Center management reserves the right to change the operating hours in its sole discretion.

Minors and Children: Persons under the age of eighteen (18) are not allowed in the Fitness Center at any time, regardless of whether such minors are utilizing Fitness Center equipment.

Personal Business: Users may not use the Fitness Center premises for personal business without prior written approval by an authorized representative of the Fitness Center, which approval may be withheld in the Fitness Center’s sole and absolute discretion. This shall include use of the Fitness Center to conduct personal training sessions for a fee.

Non-User: A user providing access to the Fitness Center to any unauthorized person shall be subject to termination of such user’s right to use the Fitness Center.

Lockers: Lockers are to be used only when using the Fitness Center and items cannot be kept overnight. The lockers are equipped with keypad locks. No personal key or combination locks are to be used in the Fitness Center. The Fitness Center shall not be responsible for lost or stolen property of users. All property in lockers at the end of each business day will be deemed abandoned and may be removed and discarded by the Fitness Center.

Monitoring: User acknowledges and agrees that the Fitness Center may be subject to electronic audio and video monitoring.

Amendment of Rules, Regulations or Policies: The Fitness Center may from time to time adopt rules, regulations or policies amending or supplementing those contained in this agreement, and all users will be obligated to comply with such rules, regulations or policies. Users will be advised in writing of the adoption of any new or amended rules or regulations, or, in the alternative, notice may be posted or distributed in the Fitness Center.

I confirm that I have carefully read the terms set forth above and agree that I will be subject to all policies and rules and regulations of the Fitness Center now in force or adopted in the future. I agree not to create any nuisance or disturbance or harass or threaten other users, guests or Fitness Center personnel or commit acts of moral turpitude or fraud while using the Fitness Center. I understand that breach of any policy or rule or regulation may result in the revocation of my rights to use the Fitness Center. I acknowledge that the Fitness Center management, in its sole discretion, reserves the right at any time to alter, change or modify the Fitness Center’s hours of operation, fees, facilities, equipment, activities, programs, classes or services.

Signature

Date

Print Name

ARTICLE III – WAIVER OF CLAIMS

Assumption of Risk: I understand and am aware that strength, flexibility and aerobic exercise, including the use of equipment, are potentially hazardous activities. I know, understand and appreciate the risks of entry upon and use of the Fitness Center’s facilities and equipment, including, but not limited to, loss or damage to personal property and serious, catastrophic or fatal personal injuries. **I acknowledge and confirm that no supervisory personnel will be present when I use the Fitness Center’s facilities and equipment, and I hereby expressly assume all risk of use, including that I may suffer personal bodily or mental injury or death, economic loss or other damage. I acknowledge and agree that I am solely responsible for my safe and responsible entry upon and use of the Fitness Center’s facilities and equipment.**

I declare myself to be physically sound and suffering from no condition, impairment, disease, infirmity or other illness that would prevent my use of the Fitness Center’s facilities and equipment. I acknowledge that I have either: (i) had a recent physical examination and have been given by my physician permission to use the Fitness Center’s facilities and equipment; or (ii) decided to use the Fitness Center’s facilities and equipment without approval of a physician and without regard to the possible consequences of such decision. In either case, I do hereby assume all responsibility for my use of the Fitness Center facilities and equipment.

Release and Waiver: In consideration for being permitted to enter upon and use the Fitness Center’s facilities and equipment, on behalf of myself and my spouse, children, unborn children, heirs, representatives, guardians, successors and assigns, I hereby agree not to sue and forever discharge the Fitness Center, Peloton Commercial Real Estate, L.P., Dallas Main L.P. and any mortgagee thereof or of any successor thereto, and their respective affiliated organizations, owners, partners, managers, members, directors, officers, employees, contractors, agents, successors and assigns (the “Fitness Center Parties”) from any and all claims, causes of action or liability for any damages to or loss of property, injuries or death I may suffer in or about the Fitness Center, resulting from my entry upon or use of the Fitness Center’s facilities or equipment, including the malfunctioning of any equipment or my slipping and/or falling while in or on the Fitness Center’s premises, including adjacent walkways and common areas, whether or not the same arises out of or results from any act, omission or conduct of any of the Fitness Center Parties, **WHETHER NEGLIGENT OR OTHERWISE.**

Indemnity: In addition, I agree to hold harmless, indemnify and defend the Fitness Center parties from all claims, demands, damages, causes of action and liability for any loss, damage or injury to person or property arising from or relating to my entry upon and use of the Fitness Center’s facilities or equipment, including without limitation, attorneys’ fees, expenses, costs and all consequential damages, **WHETHER OR NOT RESULTING FROM ANY ACT, OMISSION OR CONDUCT OF ANY OF THE FITNESS CENTER PARTIES, NEGLIGENT OR OTHERWISE.**

Miscellaneous: If any provision of this agreement or any supplement hereto is ruled invalid or unenforceable as applied to any person and circumstance, all other provisions of this agreement shall remain valid and enforceable as applied to all other persons and circumstances. Modifications or additions to the pre-printed terms of this agreement, other than completion of existing blank spaces as indicated herein, are unauthorized and will not be honored by the Fitness Center.

I acknowledge that I have carefully read this agreement and am aware that it contains a waiver and release of liability and that I am giving up substantial rights, including my right to sue. I understand that I have the right to have my attorney review this agreement. I am signing this agreement of my own free will and intend for my signature to be complete and unconditional release of all liability to the greatest extent allowed by law. I certify that I am eighteen (18) years of age or older.

Signature

Date

Print Name

You are encouraged to make a copy of this application and agreement form for your records.