

## **PARTICIPATION, INDEMNIFICATION, AND RELEASE AGREEMENT**

**RIDING ON THE FLYTYME™ IS A HIGH-RISK RECREATIONAL ACTIVITY THAT MAY RESULT IN INJURY, ILLNESS, DEATH, OR OTHER DAMAGE.**

**THIS PARTICIPATION, INDEMNIFICATION, AND RELEASE AGREEMENT (THE “AGREEMENT”) AFFECTS YOUR LEGAL RIGHTS AND THOSE FOR WHOM YOU ARE NATURAL OR LEGAL GUARDIAN. BY YOUR SIGNATURE BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THE DISCLOSURES OF RISKS, VOLUNTARILY ACCEPT THOSE RISKS, AND AGREE TO BE BOUND BY ALL TERMS OF THIS AGREEMENT.**

ACKNOWLEDGEMENTS OF RISKS: My signature acknowledges that I, or those for whom I am natural or legal guardian (collectively referred to as “I”, “me”, or “my”), have voluntarily chosen to participate in riding on the FlyTyme™ (collectively referred to as the “Activities”) and to use the facilities at the Garden City, Kansas, Water Park, (collectively referred to as the “Facilities”).

In consideration of the permission to participate in the Activities and use the Facilities, I hereby acknowledge, agree, promise, and covenant on behalf of myself, my heirs, assigns, personal representatives, and estate, with Splashtacular, LLC, and its lessors, parent companies, subsidiaries, related companies and business concerns, past and present, as well as its partners, insurers, trustees, directors, officers, members, intellectual property holders, agents, attorneys, servants and employees, past and present, and the City of Garden City, Kansas, (collectively referred to as “Releasees”) as follows:

I understand and acknowledge that the Activities in which I am about to voluntarily engage bear certain known risks and unanticipated risks that could result in injury, death, illness, or damage to me, or any person for whom I have signed this Agreement. I understand and acknowledge those risks may result in claims against Releasees. However, I am making an informed choice to voluntarily accept and assume such risks due to the thrills, excitement and benefits of the Activities, and I agree that the benefits of the Activities outweigh the risks, which include but in no way are limited to:

(1) The acts, omissions or negligence of Releasees; (2) the risks inherent in the Activities, including but not limited to any injuries such as a) broken bones, b) dislocations, c) torn ligaments and tendons, d) sprains and strains, e) cuts to the head, body and/or limbs, f) torn nails, and g) bumps and bruises; (3) latent or apparent defects (including, but not limited to design and/or construction defects) or conditions of the Activities or the Facilities; (4) improper or inadequate instruction or supervision regarding the Activities or use of the Facilities (5) the behavior of co-participants; (6) accidents or incidents in the Facilities, including but not limited to accidents or incidents in wet areas, such as pool decks, slides and rides (including, but not limited to, the FlyTyme™), tiled, concrete or other wet surfaces; and/or (7) first aid, emergency treatment or services rendered or failed to be rendered by Releasees, or their agents or employees.

I understand, acknowledge, and agree that the above list is not complete or exhaustive, and that other risks, known or unknown, identified or unidentified, anticipated or unanticipated, may also result in injury, death, illness, or disease to me or those for whom I am natural or legal guardian. I further understand and acknowledge that I, and those for whom I am natural or legal guardian, am in good physical and mental health, and not suffering from any condition, disease or disablement which would or could potentially affect participation in the Activities or use of the Facilities.

**VOLUNTARY ACCEPTANCE AND ASSUMPTION OF RISK AND RESPONSIBILITY: I EXPRESSLY AND VOLUNTARILY AGREE, COVENANT AND PROMISE TO ACCEPT AND ASSUME ALL RESPONSIBILITIES, AND RISK FOR INJURY, DEATH, ILLNESS, OR DAMAGE TO ME, ANY PERSON ON BEHALF OF WHOM I HAVE SIGNED THIS AGREEMENT, OR TO MY PROPERTY ARISING FROM THE PARTICIPATION IN THE ACTIVITIES OR USE OF THE FACILITIES.**

**RELEASE AND INDEMNITY: I VOLUNTARILY RELEASE AND FOREVER DISCHARGE AND COVENANT NOT TO SUE RELEASEES AND ALL OTHER PERSONS OR ENTITIES AFFILIATED THEREWITH, FROM ANY AND ALL LIABILITY, CLAIMS, DEMANDS, ACTIONS OR RIGHTS OF ACTION, WHICH ARE RELATED TO, ARISE OUT OF, OR ARE IN ANY WAY CONNECTED WITH THE PARTICIPATION IN THE ACTIVITIES OR USE OF THE FACILITIES, INCLUDING, BUT SPECIFICALLY NOT LIMITED TO ANY AND ALL NEGLIGENCE OR FAULT OF RELEASEES. I UNDERSTAND THIS IS A RELEASE OF**

**LIABILITY THAT IS VALID FOREVER, AND WILL APPLY TO ALL CURRENT AND FUTURE PARTICIPATION IN THE ACTIVITIES OR USE OF THE FACILITIES. I UNDERSTAND THAT THIS RELEASE OF LIABILITY WILL PREVENT ME, MY CHILD(REN), MY HEIRS, AND MY ESTATE FROM BRINGING ANY ACTION AT LAW, SUIT IN EQUITY, OR OTHER JURISDICTIONAL PROCEEDING OR MAKING ANY CLAIM FOR DAMAGES, INJURY, ILLNESS, OR DEATH IN THE EVENT OF DAMAGE, INJURY, ILLNESS, OR DEATH ARISING FROM PARTICIPATION IN THE ACTIVITIES OR USE OF THE FACILITIES.**

**I FURTHER AGREE, PROMISE AND COVENANT TO HOLD HARMLESS AND TO DEFEND AND INDEMNIFY RELEASEES, AND ALL OTHER PERSONS OR ENTITIES FROM ALL DEFENSE COSTS, INCLUDING ATTORNEYS' FEES, OR ANY OTHER COSTS INCURRED IN CONNECTION WITH CLAIMS FOR INJURY, ILLNESS, DEATH, OR DAMAGE THAT MAY BE FILED BY ME, THOSE FOR WHOM I AM NATURAL OR LEGAL GUARDIAN, MY HEIRS OR MY ESTATE. SUCH DEFENSE AND INDEMNITY OBLIGATION SHALL FURTHER EXTEND TO ANY CLAIM, LOSS OR LAWSUIT WHICH ALLEGES THAT I NEGLIGENTLY OR INTENTIONALLY CAUSED ANY INJURY, DEATH OR DAMAGE TO SPECTATORS OR OTHER THIRD PARTIES IN THE COURSE OF MY PARTICIPATION IN THE ACTIVITIES.**

ENTIRE AGREEMENT, SEVERABILITY AND VENUE: I understand that this is the entire Agreement between the undersigned and Releasees, and that it cannot be modified or changed in any way by the representations or statements of Releasees or any employee or agent of Releasees, or by the undersigned. I understand and agree that this Agreement is severable and that if any clause is found to be invalid, the balance of the Agreement will remain in effect and will be valid and enforceable. I further agree that if any clause in this Agreement is found to be invalid, that clause shall remain in effect to the extent it is valid. I agree that any action will be brought in a court in Finney County, Kansas. Any disputes will be subject to and determined under the laws of Kansas.

#### AFFIDAVIT OF PARENT OR LEGAL GUARDIAN

I, the undersigned, declare that I am the parent or legal guardian of the below named individual(s), and have the capacity to execute documents on behalf of such individual(s). I understand that as a condition to participate in riding on the FlyTyme™, the parent or legal guardian of the participating individual(s) must sign this Agreement. I am signing this Agreement, freely, without any fraud or duress. I have read and understand this Agreement. I am of sound mind and body, and I have had an opportunity to reject signing this Agreement. I further understand and agree that the terms of this Agreement are clear and unequivocal.

In the event that it is determined that I am not the parent or legal guardian of the minor, or did not have the legal capacity to execute the documents on behalf of said minor, then I agree to defend and indemnify: Splashtacular, LLC, its insurers, parent companies, subsidiaries, related companies and business concerns, past and present, as well as its partners, trustees, directors, officers, members, intellectual property holders, agents, attorneys, servants and employees, past and present, and the City of Garden City, Kansas, if any litigation is instituted, as a result of any actual or claimed injury, illness, death or damage arising out of, relating to, or in any way connected with, the minor or individual's participation in riding on the FlyTyme™ or use of the Facilities. I understand that this indemnity provision is in addition to (and not in lieu of) any other indemnity provision found in this document.

Signature of Rider over the age of 18:

Signature of Parent or Guardian of Minor or Other Individual:

Name of Minor or Other Individual: