

DEFENSE AND INDEMNIFICATION AGREEMENT

This Defense and Indemnification Agreement (hereinafter “**Agreement**”), is made and entered into this 5th day of December, 2025, by and between City of Marshall (“**Owner**”) and Splashtacular, L.L.C. (hereinafter “**Splashtacular**”), a Kansas limited liability company.

WITNESSETH:

WHEREAS, the Owner has approved design and construction services (the “**Project**”) to expand and update its Marshall Aquatic Center (the “**Facility**”) and has retained Global Specialty Contractors, Inc., a corporation formed under the laws of the state of Minnesota to design the Project (“**Global**”); and

WHEREAS, Global has entered into an agreement with Splashtacular for Splashtacular supply and install the FlyTyme slide (the “**Equipment**”) which the parties understand and agree is part Global’s design of the Facility and which Equipment may be used by users upon completion of the Project and the opening of the Facility; and

WHEREAS, the parties understand and agree that using the Equipment is a high-risk recreational activity that may result in injury, illness, death, or other injury to the user; and

WHEREAS, the parties understand and agree that, as an essential term of Splashtacular’s willingness to supply and install the Equipment, the Owner agrees to obtain executed Participation, Indemnification, and Release Agreements from each user, or each user’s natural or legal guardian, upon their entrance into the Facility (the “**Release**”), and a sample form of the Release is attached hereto as **Exhibit A** and made part of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the parties hereto do hereby agree as follows:

1. A material term of Splashtacular’s agreement with Global to supply and install the Equipment as part of the Project is the Owner’s representation that it will present the Release to each user of the Equipment and obtain each user’s signature, or for those users who are not capable of contracting, the signature of such user’s natural or legal guardian prior to the user entering the Facility.

2. The Owner agrees that upon the opening of the Facility for recreational use, it shall present the Release to each user entering the Facility, or to the user’s parent or natural or legal guardian if the user is under the age of eighteen (18). The Owner agrees that it shall obtain a properly executed copy of the Release by the user, or the user’s natural or legal guardian if the user is under the age of eighteen (18). Pursuant to applicable law, the Owner shall also allow Splashtacular to inspect such records in the same manner that the public may inspect public records.

3. The Owner further agrees that, in the event a user of the Facility refuses to sign the Release, such user shall be prohibited from utilizing the Equipment until such time as the user has provided a fully executed Release. Additionally, the Owner shall require a new Release to be executed each calendar day that the user visits the Facility.

4. The Owner agrees that, in the event the Owner fails to obtain an executed version the Release as provided herein, and any such user for whom no properly executed Release was obtained sustains, or alleges to have sustained, damages of any kind as a result of using the Equipment, the Owner agrees that it shall defend, indemnify, and hold harmless Splashtacular from all defense costs, including reasonable attorneys’ fees, or any other costs, damages, fees, losses, fines, penalties, and/or claims incurred, or anticipated to be incurred, by Splashtacular in connection with claims for injury, illness, death, damage, or loss of any kind that may be filed or alleged by the user, the user’s representative, natural or legal guardian, or the user’s estate.

5. The Owner agrees that its defense obligation of Splashtacular shall be at the Owner's sole cost and expense and it shall commence upon written demand by Splashtacular. Upon receipt of such written demand, the Owner shall appoint defense counsel, which appointment shall be approved by Splashtacular and which approval shall not be unreasonably withheld, conditioned, or delayed, , to defend Splashtacular from any claims arising out of or related to the user's use of the Equipment and asserted against Splashtacular.

6. The parties hereto acknowledge that nothing in this Agreement shall release or indemnify Splashtacular from any claims related to the design, installation, or operation of the Equipment provided that the Owner is using the Equipment in the manner intended and based on the instructions provided by Splashtacular. Splashtacular's indemnity and defense obligations and guarantees to Global and Owner are provided in the Master Subcontract Agreement dated May 24th, 2022 between Splashtacular and Global (the "Subcontract Agreement") and incorporated for this Project by the Work Order executed on July 24th, 2025. The parties acknowledge that Global remains Splashtacular's contractual counterparty for the Work. Splashtacular hereby expressly acknowledges and ratifies its indemnification obligations to the Owner provided in the Subcontract Agreement. This Agreement does not create performance obligations for Splashtacular to the Owner different or greater than those owed to the Contractor. The procedural requirements, additional terms, and dispute resolutions terms in the Master Subcontract Agreement and Work Order shall remain in effect to the extent those terms expressly apply to the Owner under the Subcontract Agreement.

7. This Agreement shall be construed according to the laws of Minnesota. Any disputes hereunder shall be brought in the state or federal courts with jurisdiction seated in Lyon County, Minnesota or the District of Minnesota.

8. There are no representations, warranties, terms, conditions, undertakings or collateral agreements or understandings, express or implied, between the parties hereto other than as expressly set forth in this Agreement.

9. Splashtacular shall promptly provide written notice to the Owner of any claim or demand which it believes may result in an indemnification claim being made hereunder. Failure to provide such notice shall not relieve the Owner its obligations hereunder, except insofar as such failure materially prejudices the Owner's ability to defend such claims.

10. This Agreement constitutes the entire agreement between the parties with respect to the subject matter referenced herein and does not amend, replace, or supersede the terms of the Master Subcontract Agreement between the Subcontractor and Contractor, which remain in full force and effect.. This Agreement may not be modified except by a written amendment signed by both parties.

11. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable under the laws of the state of Minnesota, such provision shall be modified to the minimum extent necessary to make it valid and enforceable, and the remaining provisions shall remain in full force and effect. The parties intend that any such invalid or unenforceable provision shall be reformed, if possible, to reflect the parties' original intent as closely as permitted by law.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective this _____ day of _____, 2025.

SPLASHTACULAR, LLC

CITY OF MARSHALL

By: _____

By: _____

Name: Brian Faulkner

Name: _____

Title: President

Title: _____

EXHIBIT A

General Form of Release Waiver

PARTICIPATION, INDEMNIFICATION, AND RELEASE AGREEMENT
RIDING ON THE FLYTYME™ IS A HIGH-RISK RECREATIONAL ACTIVITY THAT
MAY RESULT IN PERSONAL INJURY, ILLNESS, DEATH.

THIS PARTICIPATION, INDEMNIFICATION, AND RELEASE AGREEMENT (THE “AGREEMENT”) AFFECTS YOUR LEGAL RIGHTS AND THOSE FOR WHOM YOU ARE NATURAL OR LEGAL GUARDIAN. BY SIGNING BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THE DISCLOSURES OF RISKS AND 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 **Marshall Aquatic Center** (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 Marshall and its employees, agents, and representatives (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 unknown 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 as a prerequisite of participating in 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 Equipment (including, but not limited to, the FlyTyme™ slide), 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 reasonable 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 Lyon County, Minnesota. Any disputes will be subject to and determined under the laws of Minnesota.

AFFIDAVIT OF PARENT OR LEGAL GUARDIAN: I, the undersigned, declare that I am the natural 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 natural 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 the Releasees.

Signature of Rider over the age of 18:

Signature of Guardian of Minor or Other Individual:

Name of Minor or Other Individual:
