



REPORT/RECOMMENDATION

To: EDINA CITY COUNCIL	Agenda Item <u>Item No. IV. D.</u>
From: John Keprios, Director Park and Recreation Department	<input checked="" type="checkbox"/> Action <input type="checkbox"/> Discussion <input type="checkbox"/> Information
Date: June 5, 2012	
Subject: License to Operate and FLOW Membership Agreement	

ACTION REQUESTED:

Staff recommends that the City Council approve the attached License to Operate and FLOW Membership Agreement.

INFORMATION/BACKGROUND:

Wave Loch LLC is the manufacturer of the FlowRider attraction that was recently installed at the Edina Aquatic Center. Wave Loch is requesting that the City of Edina enter into a License to Operate and FLOW Membership Agreement (see attached) that in short covers the following:

- Use of Attraction images.
- Protection language for Wave Loch’s patents and proprietary information and licensed rights.
- Trademark protection language (referred to as the *Marks*).
- Advertising and promotion policies and procedures.
- Membership in FLOW (promotes FlowRider competitions with common rules and regulations).
- FlowRider merchandise rights.
- The City’s responsibility to ensure government required permits, bonds, fees, etc.
- Safe operation and maintenance manual.
- Liability waiver.
- Software license protection.

- Patented devices, materials and process.
- Terms and general provisions of the agreement.

Attorney Roger Knutson has reviewed the agreement and made changes that are in the best interest of the City of Edina.

Staff recommends that the City Council approve the proposed License to Operate and FLOW Membership Agreement.

ATTACHMENT:

- License to Operate and FLOW Membership Agreement



210 Westbourne Street, La Jolla CA 92037 | Tel: +1 (858) 454 1777 | Fax: +1 (858) 454 1888 | www.waveloch.com

FlowRider® Sheet Wave Attraction License to Operate and FLOW Membership Agreement

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FlowRider® Sheet Wave Attraction License to Operate and FLOW Membership Agreement

This FlowRider® Sheet Wave Attraction License to Operate and FLOW Membership Agreement (“*Agreement*”) is entered into by the indicated parties pursuant to the following terms and conditions:

1. Parties, Attraction and Site Information.

1.1. <u>Parties</u>	Wave Loch, LLC, a Delaware limited liability company (“ <i>Wave Loch</i> ”) <u>City of Edina Aquatic Center, a municipality in the State of Minnesota</u> (“ <i>Operator</i> ”).		
1.2. <u>Attraction</u>	<p>The <i>FlowRider</i>® sheet wave attraction as substantially illustrated:</p> <div style="text-align: center;">  </div> <p>The Attraction does not include <i>Site Works</i> (including the containment structure shown in gray). While the Attraction image is of a FlowRider Double, this Agreement shall cover all embodiments of the FlowRider such as the FlowRider Junior, FlowRider Single, FlowRider Double, and FlowRider Wave-in-a-Box.</p>		
1.3. <u>Site</u>	<u>4300 W. 66th St., Edina, MN 55435-1617</u> is where the Attraction shall be situated.		
1.4. <u>Address For Notices</u>	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>To Wave Loch: Wave Loch LLC Attn.: Marshall Myrman 210 Westbourne Street La Jolla, CA 92037 USA Tel. +1 (858) 678-9650 Email marsh@waveloch.com</p> <p>With Copy to: W. David Osborne Wave House / Wave Loch 3146 Mission Boulevard, Ste. F Tel. +1 (858) 678-9677 Email david.osborne@wavehouse.com</p> </td> <td style="width: 50%; vertical-align: top;"> <p>To Operator: City of Edina, MN Attn.: John Keprios, P & R Director 4801 W. 50th Street Edina, MN 55424-1330 Tel. (952) 826-0430</p> </td> </tr> </table>	<p>To Wave Loch: Wave Loch LLC Attn.: Marshall Myrman 210 Westbourne Street La Jolla, CA 92037 USA Tel. +1 (858) 678-9650 Email marsh@waveloch.com</p> <p>With Copy to: W. David Osborne Wave House / Wave Loch 3146 Mission Boulevard, Ste. F Tel. +1 (858) 678-9677 Email david.osborne@wavehouse.com</p>	<p>To Operator: City of Edina, MN Attn.: John Keprios, P & R Director 4801 W. 50th Street Edina, MN 55424-1330 Tel. (952) 826-0430</p>
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1.5. <u>Effective Date</u>	_____.		

2. Definitions. In order to simplify this Agreement, italicized words are defined in Exhibit 1.

3. Grant of License to Operate and Promote Attraction.

3.1. License to Operate Attraction. Wave Loch hereby grants to Operator, and Operator accepts a limited license to:

3.1.1. operate and maintain the Attraction solely at the Site; and

3.1.2. use the Attraction and the *Attraction Images* for the sole purpose of promoting the Site's ordinary course of business, and use the Attraction for on-site sponsorship. Operator cannot, however, unilaterally allow the Attraction or Attraction Images to be used for any third party advertising, television/motion picture production, sponsorship, or promotion without Wave Loch's prior written consent. For example, Operator can enter into a contract allowing a third party to have a banner or sign near the Attraction, but cannot enter into a contract with a third party allowing that third party to use images of the Attraction to sell or showcase their products in commercials without Wave Loch's prior written consent.

3.2. Limitation on Licensed Rights.

3.2.1. This Agreement does not provide any ownership interest in or to Wave Loch's *Patents, Proprietary Information, Improvements* or *Licensed Rights* nor any right to sublicense or divide any of the rights granted herein. Operator shall not register any intellectual property rights related in any way to the Patents, Proprietary Information, or Improvements.

3.2.2. Operator shall not resell or reinstall the Attraction, reverse engineer the Attraction, or manufacture install or operate any derivative stationary wave inside or outside of the Site.

3.2.3. The rights and licenses granted herein are personal and non-assignable, and are granted herein only as specifically enumerated above and no other rights are intended by the parties or shall be implied by this Agreement, by any custom in the trade or by any course or history of dealing between the parties. All other rights are reserved by Wave Loch.

3.3. Use and Ownership of the Marks in the Promotion and Operation of the Attraction. Wave Loch places great value on the *Marks* and the goodwill associated with the Marks. Therefore, it is the intent of the parties that the terms and conditions of this Agreement shall be adequate and reasonable to assure the consuming public and the industry that the Attraction advertised and promoted by Operator under the Marks are of the same consistently high quality as that offered by Wave Loch and others licensed under the Marks. Accordingly, Operator shall use the Marks, if at all, only in the form and under the specific conditions as set forth herein. Without limitation Operator acknowledges and agrees that:

3.3.1. Wave Loch shall provide the Attraction with the Wave Loch and FlowRider Marks displayed on the Attraction as indicated in Section 1.2, which Marks Operator shall maintain throughout the life of the Attraction.

3.3.2. Operator will advertise and promote the Attraction in compliance with all applicable laws and shall at all times conduct its activities under this Agreement in a lawful manner;

3.3.3. Operator will abide by the policies and procedures established by Wave Loch regarding proper trademark usage as set forth in the *FlowRider Brand Book*. Operator shall submit to Wave Loch for its prior approval any new uses of the Marks that do not follow the trademark usage guide set forth in the *FlowRider Brand Book*.

3.3.4. Operator will not engage or become involved in any activities that diminish or tarnish the image or reputation of the Marks or of Wave Loch.

3.3.5. In no event shall Operator have the right to modify the Marks or use them in combination with other marks not licensed herein, or use the Marks as a trade name, company name, trade style, d.b.a. or fictitious name. Wave Loch may, in its sole discretion, prohibit Operator from using the Marks on or in connection with the advertising or promotion of any goods or services which fail to conform to the high quality standards prescribed by Wave Loch. Upon notification from Wave Loch, Operator shall immediately discontinue its use of the Marks in connection with any such substandard goods or services.

3.3.6. All uses by Operator of the Marks, whether authorized or not, shall inure solely to the benefit of Wave Loch. Operator further agrees that it has not and will not seek to obtain, either directly or indirectly, any registration of the Marks in any countries and that any such registrations so obtained are hereby irrevocably assigned to Wave Loch.

3.4. Operator agrees to allow the marking of the Attraction with a patent notice in compliance with applicable patent marking requirements or as Wave Loch shall otherwise specify from time-to-time.

3.5. Operator agrees that it will not take any action, either directly or indirectly, challenging the validity of the Patents or the Marks or any other of the Licensed Rights or Wave Loch's lawful possession of the Licensed Rights anywhere in the world.

4. Membership in FLOW (Flowriding League Of the World).

4.1. To develop the sport of Flowriding, Wave Loch has established FLOW to develop consistent competitive rules and regulations to promote increased participation at the local level and coordinate local marketing with Wave Loch's national and international marketing and advertising efforts. FLOW currently operates, sanctions and supports the United States FLOW(RIDER) Tour, International Flowriding Championships and the World FlowRider Championships,

4.2. Operator shall be a member of FLOW at no additional cost and as such, shall be granted the potential opportunity at Wave Loch's and Operator's mutual agreement to be a FLOW competitive event venue and part of a FLOW tour event.

4.3. Operator agrees that FLOW shall be the exclusive sanctioning body for all FLOW competitive events and agrees to abide by all FLOW guidelines when conducting competitive events and that Wave Loch shall retain a sole reservation of media and sponsor rights specific to all FLOW competitions.

5. **FlowRider Merchandise.** Wave Loch shall provide to Operator the opportunity to purchase flowboards, bodyboards and FlowRider® branded clothing and other *Merchandise*. Operator, however, has no independent merchandising rights to the Attraction, Attraction Images or any trademark rights associated with the Attraction or related goods and services.

6. **Government Permits.** Operator shall be responsible for all governmental stamps, permits, and licenses state and local taxes, building fees, permit fees, bonds, inspection fees, surcharges, and any other costs relating to the operation of the Attraction at the Site.

7. Promotion of Safe Use and Maintenance of the Attraction.

7.1. To promote the safe use and maintenance of the Attraction, Operator will: maintain and operate the Attraction in accordance with the *Manual*; post and maintain all warnings and notices as issued by Wave Loch (such as those in Exhibit 2) modify or alter the Attraction only with the express prior written authorization of Wave Loch; increase or decrease the discharge flow rate or velocity of the Attraction only with the express prior written authorization of Wave Loch; and use only Wave Loch approved bodyboards and flowboards.

7.2. Operator must require all persons, including but not limited to paying or complimentary guests, employees, staff, or any other riders on the Attraction to sign a Release of Liability Agreement with the form and substance set forth as Exhibit 3. (With Wave Loch written consent, Operator may modify the Release for purposes of enforceability).

8. Confidentiality.

8.1. Operator shall hold the *Confidential Information* in confidence and shall use its best efforts to protect the secrecy of, and avoid inadvertent or purposeful disclosure and unauthorized use of, such Confidential Information. Without limiting the foregoing, Operator shall use at least the same degree of care it uses to safeguard its own proprietary information to safeguard the confidentiality of Wave Loch's Confidential Information. Operator agrees not to disclose any of the Confidential Information to its employees, agents, third parties, customers, or vendors except to the extent necessary to install, operate and maintain the Attraction at the Site. Operator shall use its best efforts to prevent any unauthorized disclosure by those employees, agents or third parties to whom such

Confidential Information is disclosed. Operator shall be responsible for any breach of the provisions hereof and/or improper disclosure by such employee, agent, third party, customer, or vendor.

8.2. Operator agrees that it shall only use Confidential Information solely to operate and maintain the Attraction at the Site and for no other purpose or reason.

8.3. It is agreed that the obligations of confidentiality and non-use imposed hereunder are world-wide in scope and will apply to all Confidential Information disclosed to Operator (whether or not such information is obtained by Operator after the effective date of this Agreement from other sources, including without limitation from third parties or through reverse engineering or independent derivation), except that the obligations set forth in this Agreement shall not apply to any Confidential Information which: (i) is, or later becomes, public knowledge other than by breach of the Agreement or any other confidentiality obligation; (ii) is already in the possession of Operator with full rights to disclose at the time of disclosure by Operator, as evidenced by written records; (iii) is obtained by Operator from a third party without a breach of such third party's obligations of confidentiality; (iv) was independently developed by Operator without use of or reference to Wave Loch's Confidential Information, as evidenced by written records; or (v) is required by law or court order to be disclosed by the receiving party, provided that Operator gives Wave Loch prompt written notice of such requirement prior to such disclosure.

8.4. All data created, collected, received, maintained or disseminated for any purpose in the course of this Agreement is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 which supersedes paragraphs 8.1, 8.2, and 8.3 if the provisions conflict

9. **Software License.** If the equipment provided pursuant to this Agreement contains software, including that which the manufacturer may have imbedded into the hardware an integral part of the equipment, Wave Loch shall pay all software licensing fees. Wave Loch shall also pay for all software updating licensing fees for a period of one year following cutover. Wave Loch shall have no obligation to pay for such fees thereafter. Nothing in the software license or licensing agreement shall obligate the operator to pay any additional fees as a condition for continuing to use the software.

10. **Patented Devices, Materials and Processes.** If this Agreement requires, or Wave Loch desires, the use of any design, devise, material or process covered by letters patent or copyright, trademark or trade name, Wave Loch shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with the owner. If no such agreement is made or filed as noted, Wave Loch shall indemnify and hold harmless the owner from any and all claims for infringement by reason of the use of any such patented design, devise, material or process, or any trademark or trade name or copyright in connection with the project agreed to be performed under the Agreement, and shall indemnify and defend the owner for any costs, liability, expenses and attorney's fees that result from any such infringement.

11. Term and Termination.

11.1 This Agreement shall continue in effect so long as any Attraction is operating at the Site, unless terminated sooner as provided below.

11.2 In the event of any breach of this Agreement, the party alleging such breach shall give written notice of the breach to the allegedly breaching party specifying the nature of the breach and how it is to be cured. The breaching party shall have thirty (30) days from the date of receipt of the notice in which to cure such breach, save that where the breach is a failure to pay any sum by the due date such period shall be three (3) days. In the event that such breach has not been cured within thirty (30) days or three (3) days, as the case may be, of receipt of such notice, the non-breaching party shall have the right, upon giving written notice to the breaching party, to terminate this Agreement and recover its actual damages not to exceed the amount of Wave Loch's sales price of the Attraction.

11.3 Upon termination of this Agreement, all rights and licenses granted (if any) by Wave Loch shall immediately cease and Operator shall cease operation of the Attraction.

11.4 All data created, collected, received, maintained or disseminated for any purpose in the course of this Agreement is governed by the Minnesota Government Data Practices Act (the "Act"), Minn. Stat. CH 13 when applicable, any other applicable statute or any state rules adopted to implement the Act, as well as federal

regulations on data privacy (collectively the "Data Laws"). In the event of a conflict between the Data Laws and any other provisions of this Agreement, the Data Laws shall govern.

12. General Provisions. (a) Nothing herein should be construed to create an employer-employee relationship, partnership, or joint venture. (b) This Agreement is the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter hereof. (c) No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties. (d) Except where specified otherwise in this agreement, no party may assign this Agreement or any of its rights or delegate any of its duties here under this Agreement without the consent of all other parties. (e) No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. (f) Each individual executing this Agreement on behalf of a business entity, or submitting any documents required during the term of this Agreement, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said business entity and that this Agreement is binding upon said business entity in accordance with its terms. (g) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. It is agreed that an original, photocopy, PDF or fax copy of a signature may serve as an original. (h) If any legal action or other proceeding, including any bankruptcy proceeding, is brought for the enforcement of the Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled. "Prevailing party" within the meaning of this Section includes, without limitation, a party who agrees to dismiss an action or proceeding upon the other's payment of sums allegedly due or performance of covenants allegedly breached, or who obtains substantially the relief sought by it. (i) Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law. In the event that any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining provisions shall remain in full force and effect. (j) The parties' rights and obligations will bind and inure to the benefit of their respective successors, heirs, executors and administrators and permitted assigns. (k) All notices shall be by international mail or by other commercially reasonable means where receipt is acknowledged, and shall be effective on the date of receipt thereof. Notice may also be given by telex, facsimile or similar electronic means, provided that the party giving such notice obtains acknowledgement that such notice has been received, in which case such notice shall be effective as of the date receipt is acknowledged. Either party may change the address to which notice is to be sent by giving notice to the other party at the address and in the manner provided above.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and become effective as of the date above first written.

Wave Loch:

WAVE LOCH LLC

By: _____
Marshall Myrman
Chief Operating Officer

Operator:

CITY OF EDINA, MINNESOTA

By: _____

Name: _____

Title: _____

Exhibit 1

Definitions

For purposes of this Agreement the following terms shall have the specific meanings as set forth below:

1. “Attraction Image” means any image, photograph, video, rendering or other likenesses of the Attraction, whether currently in existence or hereinafter devised, or otherwise.
2. “Confidential Information” means information disclosed by Wave Loch or its affiliates to Operator and either identified by Wave Loch as secret or confidential or which, from the circumstances, in good faith and conscience Operator should realize is confidential regardless of the form of disclosure, e.g., orally, visually, in writing or electronically, including, without limitation, information concerning any Licensed Rights, Attraction, Proprietary Information, Improvements, business plans, product plans, materials, sources and/or vendors of materials, products, processes, manufacturing plans, methods and/or techniques, samples, designs, drawing, specifications, models or prototypes, marketing information, pricing information, research and development information, and any other proprietary, non-public information related to the products offered by Wave Loch and the business operated by Wave Loch.
3. “FlowRider” means the sheet wave water ride attraction as substantially shown in paragraph 1 of this Agreement, and shall include the ride structure itself, along with any appurtenant equipment.
4. “Improvement(s)” means any improvements, inventions, discoveries, techniques, systems, methods, processes, developments, enhancements or modifications (whether or not patentable, commercially useful or reducible to writing or practice) developed in connection with any sheet waves by any party to the Agreement
5. “Licensed Rights” means inclusively all rights held by Wave Loch under the Patents, Improvements and Proprietary Information.
6. “Manual” means Wave Loch’s Operations and Procedure Manual for the Attraction regarding the operation and maintenance of sheet waves, which may from time to time be updated by Wave Loch.
7. “Marks” means the trademarks and service marks available online in the FlowRider Brand Book at the password protected site media.waveloch.com, whether appearing alone or in combination with any other marks (if any) as may be authorized in writing by Wave Loch.
8. “Merchandise” means clothing and souvenirs such as shirts, hats, sweatshirts, headgear, footwear, and beach towels containing the Marks, trade dress, names, logos and symbols set forth in the FlowRider Brand Book.
9. “Patents” means the patent or patents that cover sheet waves, including the Attraction, and any continuations, continuations in part, reissues, extensions and divisionals thereof, and all corresponding foreign patents and applications throughout the world.
10. “Proprietary Information” means the drawings, design specifications, software, know-how, trade secrets, licenses, and other confidential information relating to the design, construction, operation or maintenance of FlowRiders.
11. “Site Works” means the works necessary to build the concrete pool and civil infrastructure that will house the Attraction including, but not limited to excavation; grading; steel placement; drains and drain placement; sewer and storm drains; fresh water fill and potable water lines; backfill; concrete works including caissons, footings, floors, decking, walls, entry supports and stairs; walkways, pool construction including plumbing, steel, electrical, mechanical, waterproofing, filtration, heating, water sanitation, gratings, and pool walk coatings or anti-slip coverings; all welding and mechanical connections; landscaping, railings, barriers, fencing, signage, furniture, sound and lighting.

Exhibit 2

Notices, Instructions & Warnings

WHO CAN RIDE THE FLOWRIDER®

For your safety, participate only if in good health. Only YOU know your physical condition or limitations. If you suspect that your health or safety could be at risk, or you could aggravate a pre-existing condition of any kind, DO NOT RIDE!

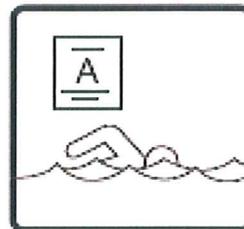
Minimum Requirements:



You must be at least 42" to bodyboard



You must be at least 52" to stand-up ride



You must be able to swim in fast moving turbulent water

Do NOT participate if you have any of the following conditions:



Recent Surgery or Illness



Heart Condition



Neck, Back or Bone Ailments



Pregnancy



High Blood Pressure or Aneurysms



Under the Influence of Drugs or Alcohol

© 2009 Wave Loch LLC, all Rights Reserved. The FlowRider® and wave attraction is proprietary technology covered by one or more of the following U.S. Patents: 6,164,169; 4,792,268; 4,914,814; 5,171,201; 5,221,547; 5,266,285; 5,271,641; 5,405,112; 5,412,792; 5,493,170; 5,501,597; 5,564,856; 5,626,588; 5,748,590; 5,899,879; 6,115,122; 6,512,817; 6,518,112; 6,468,201; 6,491,589; 6,626,530; 6,736,187; 6,738,992; 6,758,215; 6,818,578; 6,817,862; 7,048,991; BE 34,487; BE 39,172 and other patents pending. Global coverage is provided by patents and pending applications in foreign countries.

WARNING

WHAT ARE THE RISKS?

- **RIDING THE FLOWRIDER IS AN EXTREME SPORT AND HIGH RISK RECREATIONAL ACTIVITY. YOU WILL FALL:**



- **FALLING MAY RESULT IN THE BOARD STRIKING YOUR BODY; OR YOUR BODY STRIKING THE SURFACE OF THE FLOWRIDER WITH GREAT FORCE:**



- **BEFORE ATTEMPTING TO RIDE, WATCH THE SAFETY VIDEO AND UNDERSTAND THE RISKS OF THIS ACTIVITY**
- **READ AND OBEY ALL POSTED SIGNS AND PICTORIALS**
- **OBEY ALL LIFEGUARD INSTRUCTIONS**
- **FAILURE TO COMPLY WITH SIGNS OR INSTRUCTIONS MAY INCREASE THE RISK OF SEVERE PERMANENT INJURIES OR EVEN DEATH**

THERE ARE INHERENT RISKS IN THE PARTICIPATION OF ANY AMUSEMENT RIDE, DEVICE, OR ATTRACTION. YOUR PARTICIPATION IN THIS ACTIVITY IS VOLUNTARY, AND AS SUCH, YOU ARE ASSUMING SUCH RISKS.

THE FOLLOWING TECHNIQUES MAY HELP MINIMIZE THE RISK OF INJURY:



TUCK INTO A BALL AS YOU BEGIN TO FALL



COVER YOUR HEAD & FACE WITH BOTH ARMS & HANDS



TRY TO ORIENT FEET FIRST BEFORE HITTING ANY SURFACE

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Exhibit 2

HOW TO BODYBOARD



PROPER BOARD POSITION
PLACE SLICK SIDE FACING DOWN
FLOWRIDER LOGO FACING UP
BOARD'S ROUND TAIL AT STOMACH



GENTLE ENTRY
PLACE BOARD INTO FLOW AND
AIM TOWARD THE FRONT-CENTER



USE OF LEGS
CONTROL YOUR MOVEMENT BY
USING YOUR LEGS AS RUDDERS



ELBOWS AND HANDS ON TOP
KEEP YOUR ELBOWS IN AND FINGERS
ON TOP OF BOARD RAIL



PUSH DOWN = GO DOWN



PULL UP = GO UP



LEAN TO TURN

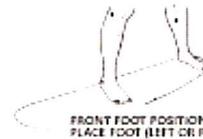
HOW TO FLOWBOARD "Stand-up"



PROPER BOARD POSITION
SLICK SIDE FACING DOWN
NOSE OF BOARD FACING FLOW



REAR FOOT POSITION
PLACE FOOT (LEFT OR
RIGHT) ON "IN" OF BOARD



FRONT FOOT POSITION
PLACE FOOT (LEFT OR RIGHT)
ON FRONT-MIDDLE OF BOARD



**ENTER
FROM THE SIDE OR
THE TOP OF RIDE**



**KEEP ALL WEIGHT ON
REAR FOOT WHEN RIDING**



**BEND KNEES
TO HELP BALANCE**

⚠ WARNING - TO MINIMIZE RISK OF INJURY:

- DO NOT STEP OFF BOARD ONTO INCLINED RIDE SURFACE
- AVOID THE SIDE SURFACES WHERE THERE IS MINIMAL WATER FLOW



Exhibit 2

Notices, Instructions & Warnings

1. This is a very strenuous ride. The moving water is extremely turbulent.
2. Bodyboarding or Flowboarding on this sheet wave is a body-active, participatory sport. As with all sports, care must be taken to avoid a mishap.
3. Riders must be in good physical condition and free from any physical limitations to participate. Pregnant women and persons with or having a history of heart, back, neck, shoulder or joint problems should not ride.
5. Jewelry, hats, foot wear, eye glasses, or loose articles of any type are not recommended on the ride as they may injure the participant.
6. Bathing suit tops, bottoms and loose clothing may be pulled off by the flowing water. Cover-ups are suggested.
7. Avoid jumping into or entering the ride at high speed; avoid weight on front foot -- YOU WILL WIPE OUT!
8. Steer your board into the center of the flowing water. You can control your board by gently shifting your weight. Try to keep your board pointed in the direction of the oncoming flow of water. Edge control is the key. Keep weight on your back foot!
9. If you wipe out, do not hold your board. Release board immediately, cover your head, and keep limbs close to body and try to brace for impact with feet first.
10. Single riding only is permitted. No tandem riders or multi-person riding is allowed.
11. To reduce the risk of a tear, trimmed nail digits are recommended.
12. Rider should be barefoot as water shoes may get caught on the ride and injure the participant.
13. CAUTION! The ride surface of this ride is very slippery. DO NOT attempt to walk on the ride surface. You may only stand to walk and exit after coming to a complete stop on the dark blue drain grating.
14. Obey the lifeguard at all times.

Exhibit 3

Participation Waiver

FlowRider® Voluntary Acknowledgement of Risks, Release of Liability and Indemnity Agreement

First Name	Last Name	Middle Initial	Birth Date
First Name	Last Name	Middle Initial	Birth Date
First Name	Last Name	Middle Initial	Birth Date
Street Address	City	State	Zip
Email Address	Telephone Number		
Emergency Contact Name	Emergency Contact Telephone		

RIDING ON THE FLOWRIDER® IS AN EXTREME SPORT AND HIGH RISK RECREATIONAL ACTIVITY. SHEET WAVE SURFING ON OR IN PROXIMITY TO THE FLOWRIDER MAY RESULT IN PHYSICAL OR MENTAL INJURY, ILLNESS OR DISEASE, OR DEATH

This document affects your legal rights. By writing 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 Release of Liability and Indemnity Agreement

My signature acknowledges that I or the minor for whom I am a legal guardian (collectively referred to as "I", "me", or "my") have voluntarily chosen to participate in the sheet wave surfing attraction known as the FlowRider or use a Flowboard (collectively referred to as the "Activities") and to use the facilities at the Edina Aquatic Center, including but not limited to the FlowRider (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 Wave Loch, Aquatic Development Group, Inc., the City of Edina, MN and Edina Aquatic Center, each of their lessors, parent companies, subsidiaries, related companies and business concerns, past and present, and each of them, as well as each of their partners, trustees, directors, officers, members, intellectual property holders, agents, attorneys, servants and employees, past and present, and each of them (collectively referred to as "Releasees") as follows:

ACKNOWLEDGEMENTS OF RISKS: 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 PHYSICAL OR MENTAL INJURY, DEATH, ILLNESS OR DISEASE, OR DAMAGE to me or my property. I understand and acknowledge those risks may result in claims against Releasees. However, I am making an informed choice to voluntarily accept such risks due to the thrills, excitement and benefits of the Activities, and I agree that the benefit of the Activities outweigh the risks, which include but in no way are limited to:

(1) The acts, omissions or negligence in any degree of Releasees, or their agents or employees; (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 suffered while riding these extreme sporting attractions; (3) latent or apparent 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, 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 AND ACKNOWLEDGE 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, disease, or damage to me or to my property. I FURTHER ACKNOWLEDGE that I 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. Further, I acknowledge that I am not purchasing or leasing the attraction, but rather, am being afforded a non-exclusive right to use the attraction. Additionally, I acknowledge that Releasees are providing recreational services.

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 DISEASE OR DAMAGE to me 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 or 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, my heirs or my estate from bringing any action at law, suit in equity, or other jurisdictional proceeding or making any claim for damages, injury or death in the event of damage, injury or death arising from participation in the Activities or use of the Facilities.

I FURTHER AGREE, PROMISE AND COVENANT TO HOLD HARMLESS AND TO 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 mental or bodily injury, wrongful death or property damage that may be filed by me, my child, my heirs or my estate. Such indemnity and defense 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.

This release does not apply in the event of the Released Party's gross negligence or willful and wanton misconduct.

RELEASE OF ALL RIGHTS RELATED TO MY AUDIO AND PHOTOGRAPHIC IMAGE: I hereby agree to a blanket release of all rights related to my audio and photographic image that may arise out of my participation in the Activities or use of the Facilities. I understand that this release includes any and all marketing, promotion or advertising that may occur anywhere and anytime on any media as later used by Releasees. Further, I hereby grant full permission for Releasees, to record any or all of my participation, and my name and likeness in the Activities for photos, motion pictures, TV, radio, Internet, recordings, videotapes, and other media, known or unknown, and to use them in perpetuity, no matter by whom taken or recorded, in any manner for publicity, promotions, advertising, trade or commercial purposes, without any reimbursement of any kind due to me, or the need to pay me any fee whatsoever. I agree that Releasees will be the exclusive owner of all rights, including but not limited to the copyrights, in and to the recordings and the results and proceeds of my participation hereunder ("Materials"). I agree that the Materials shall constitute a "work made for hire" pursuant to the United States Copyright Act. To the extent any of the Materials are not considered a "work made for hire," I hereby assign all rights in the Materials to Releasees. Such assignment shall be deemed irrevocable and coupled with an interest.

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 contract will remain in effect and will be valid and enforceable. I agree that any action will be brought in a court in the County of San Diego, State of California or alternatively, in a court of competent jurisdiction in the State of California. Any disputes will be subject to and determined under the laws of the State of California.

I have read this entire document, understand it completely, and agree to be bound by its terms.

Participant's Legal Name (please print): _____

Participant's Signature: _____ Date: _____

(If Participant is a minor) Legal Guardian Name: _____

(If Participant is a minor) Legal Guardian Signature: _____ Date: _____

AFFIDAVIT OF PARENT OR LEGAL GUARDIAN

I, the undersigned, declare that I am the parent of, or the legal guardian of, the below named minor, and have the capacity to execute documents on behalf of such minor. I understand that as a condition to participate in sheet wave surfing on the FlowRider the parent or legal guardian of the minor participant must sign certain legal documents, including but not limited to Acknowledgements of Risks, Releases, and Indemnity Agreements. I am signing those documents, freely, without any fraud or duress and acknowledge that I have read and understand the same.

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: Wave Loch, Aquatic Development Group, Inc. the City of Edina, MN and Edina Aquatic Center, each of their lessors, parent companies, subsidiaries, related companies and business concerns, past and present, and each of them, as well as each of their partners, trustees, directors, officers, members, intellectual property holders, agents, attorneys, servants and employees, past and present, and each of them, if any litigation is instituted, as a result of any injury or death or claim for damage arising out of, relating to, or in any way connected with, minor's participation in sheet wave surfing on the FlowRider 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.

Participant's Legal Name (please print): _____

Legal Guardian Name: _____

Legal Guardian Signature: _____ Date: _____