

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

|                        |     |                                       |                             |                 |
|------------------------|-----|---------------------------------------|-----------------------------|-----------------|
| First Name             |     | Last Name                             |                             | Middle Initial  |
| Street Address         |     | City                                  | State                       | Zip             |
| Email Address          |     |                                       | Telephone Number            |                 |
| Birth Date             | Age | State Driver's License/ID Card Number | Issuing State               | Expiration Date |
| 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 Blue Harbor Resot, 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 WHITEWATER WEST INDUSTRIES, Sheboygan Acquisitions LLC; New Frontiers Capital LLC; Sheboygan Resort Operator and Blue Harbor Resort 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.

**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: WHITEWATER WEST INDUSTRIES, Sheboygan Acquisitions LLC; New Frontiers Capital LLC; Sheboygan Resort Operator and Blue Harbor Resort 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: \_\_\_\_\_