

MOUNTAIN BROOK METROPOLITAN DISTRICT

141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898
Tel: 303-987-0835 • 800-741-3254
<https://mountainbrookmd.com>

NOTICE OF A REGULAR MEETING AND AGENDA

<u>Board of Directors:</u>	<u>Office:</u>	<u>Term/Expiration:</u>
VACANT	President	2027/May 2027
Kenneth Spencer	Treasurer	2027/May 2027
Conley Smith	Assistant Secretary	2027/May 2027
Dale Bruns	Assistant Secretary	2025/May 2025
Mark Solomon	Assistant Secretary	2025/May 2025
Peggy Ripko	Secretary	

DATE: January 13, 2025
TIME: 9:00 a.m.
PLACE: Zoom

** Individuals requiring special accommodation to attend and/or participate in the meeting please advise the District Manager (pripko@sdmsi.com or 303-987-0835) of their specific need(s) before the meeting.*

<https://us02web.zoom.us/j/86267550643?pwd=V3RnRGRtWkRyUIZZc1VMWTJFZjFHdz09>

Meeting ID: 862 6755 0643
Passcode: 987572
Call In: 1-719-359-4580

I. PUBLIC COMMENT

- A. Members of the public may express their views to the Boards on matters that affect the Districts. Comments will be limited to three (3) minutes per speaker.
-

II. ADMINISTRATIVE MATTERS

- A. Present Disclosures of Potential Conflicts of Interest.

- B. Approve Agenda, confirm location of meeting, posting of notices.

- C. Review and approve the Minutes of the December 9, 2024 Regular Meeting and Statutory Annual Meeting (enclosures).

- D. Acknowledge resignation of Kevin Mulshine from the Board of Directors.

- E. Appointment of Officers

- F. Update regarding District Management

III. FINANCIAL MATTERS

- A. Review and ratify approval of the payment of claims (enclosure).
-

IV. LEGAL MATTERS

- A. Review and ratify approval of Push Pedal Pull Preventative Maintenance Agreement (enclosure).
-

- B. Review and consider approval of the Escrow Agreement with Splashtacular, LLC (enclosure).
-

V. CAPITAL IMPROVEMENT MATTERS

- A. _____

VI. OTHER BUSINESS

- A. _____

- VII. ADJOURNMENT **THE NEXT REGULAR MEETING IS SCHEDULED FOR APRIL 28, 2025.**

RECORD OF PROCEEDINGS

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE MOUNTAIN BROOK METROPOLITAN DISTRICT HELD DECEMBER 9, 2024

The Special meeting of the Board of Directors of the Mountain Brook Metropolitan District (referred to hereafter as the “Board”) and upon noting that a quorum was present a meeting was convened on Monday, the 9th day of December, 2024, at 9:00 a.m. The District Board meeting was held via Zoom. The meeting was open to the public.

ATTENDANCE

Directors In Attendance Were:

Kenneth Spencer, Treasurer
Conley Smith, Assistant Secretary
Dale Bruns, Assistant Secretary
Mark Soloman, Assistant Secretary

Also In Attendance Were:

Peggy Ripko; Special District Management Services, Inc.

Diane Wheeler; Simmons & Wheeler, P.C.

Alan D. Pogue, Esq.; Icenogle Seaver Pogue, P.C.

Don Burchett, JM Hinson, and Laura Moody; Planning Manager for City of Longmont

Becky Lettner, Resident

DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

Ms. Ripko noted that disclosures of potential conflict of interest statements for each of the Directors were filed with the Secretary of State seventy-two hours in advance of the meeting. Ms. Ripko requested that the Directors consider whether they had any additional conflicts of interest to disclose. Ms. Ripko noted for the record that there were no new disclosures made by the Directors present at the meeting and incorporated for the record those applicable disclosures made by the Board Members prior to this meeting and in accordance with the statutes. It was noted that disclosure statements had been timely filed for all Directors.

PUBLIC COMMENTS

None.

RECORD OF PROCEEDINGS

ADMINISTRATIVE MATTERS

Agenda/Director Absence: Ms. Ripko distributed for the Board's review and approval of the agenda for the District's meeting.

Following discussion, upon motion duly made by Director Smith, seconded by Director Spencer and, upon vote unanimously carried, the agenda was approved, as amended, and the absence of Directors Mulshine was excused.

Approval of Meeting Location: The Board entered into a discussion regarding the requirements of §32-1-903(1), C.R.S., concerning the location of the District's Board meeting.

Following discussion, upon motion duly made by Director Smith, seconded by Director Soloman and, upon vote, unanimously carried, the Board determined this District Board Meeting was held via Zoom. The Board further noted that notice of this meeting format was duly posted and that it has not received any objections to the meeting format or any requests that the meeting format be changed by taxpaying electors within the District boundaries.

Minutes of October 28, 2024 Regular Meeting: The Board reviewed the Minutes of the October 28, 2024 Regular Meeting.

Following review and discussion, upon motion duly made by Director Smith, seconded by Director Spencer, and upon vote unanimously carried, the Board approved the Minutes.

FINANCIAL MATTERS

Claims: Ms. Wheeler reviewed the payment of claims.

Following discussion, upon motion duly made by Director Smith seconded by Director Bruns, and upon vote, unanimously carried, the Board ratified the payment of claims.

Unaudited Financial Statements and Cash Position Statement: There was no discussion at this time.

LEGAL MATTERS

Reimbursement Application No. 3: The Board reviewed the Reimbursement Application No. 3 and considered acceptance of certified costs and public improvements associated therewith.

Following discussion, upon motion duly made by Director Smith, seconded by Director Spencer and, upon vote, unanimously carried, the Board approved the

RECORD OF PROCEEDINGS

Reimbursement Application No. 3 and acceptance of certified costs and public improvements associated therewith.

Covenant Enforcement Policy: The Board reviewed the Covenant Enforcement Policy.

Following discussion, upon motion duly made by Director Bruns, seconded by Director Spencer and, upon vote, unanimously carried, the Board approved the Covenant Enforcement Policy.

Warranty Agreement with Mountain Brook Partners, LLC: The Board reviewed the Warranty Agreement with Mountain Brook Partners, LLC.

Following discussion, upon motion duly made by Director Smith, seconded by Director Spencer and, upon vote, unanimously carried, the Board approved the Warranty Agreement with Mountain Brook Partners, LLC, subject to receiving certificate from Engineer and accounting review subject to amount of funds.

**CAPITAL
IMPROVEMENT
MATTERS**

None.

OTHER BUSINESS

None.

ADJOURNMENT

There being no further business to come before the Board at this time, upon motion duly made by Director Spencer, seconded by Director Smith, upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: _____
Secretary for the Meeting

RECORD OF PROCEEDINGS

MINUTES OF THE STATUTORY ANNUAL MEETING OF THE MOUNTAIN BROOK METROPOLITAN DISTRICT (THE “DISTRICT”) HELD DECEMBER 9, 2024

Pursuant to Section 32-1-903(6), C.R.S., a statutory annual meeting of the Mountain Brook Metropolitan District was convened on December 9, 2024, at 9:00 a.m., via video / telephone conference. The meeting was open to the public.

ATTENDANCE

Directors In Attendance Were:

Kenneth Spencer, Treasurer
Conley Smith, Assistant Secretary
Dale Bruns, Assistant Secretary
Mark Soloman, Assistant Secretary

Also In Attendance Were:

Peggy Ripko; Special District Management Services, Inc.

Diane Wheeler; Simmons & Wheeler, P.C.

Alan D. Pogue, Esq.; Icenogle Seaver Pogue, P.C.

Don Burchett, JM Hinson, and Laura Moody; Planning Manager for City of Longmont

Becky Lettner, Resident

ANNUAL MEETING ITEMS

Confirmation of Posting of Annual Meeting Notice: It was noted for the record that notice of the time, date and location of the annual meeting was duly posted on the District’s website and that no objections to the means of hosting the meeting by taxpaying electors within the District’s boundaries have been received.

Presentation Regarding the Status of the Public Infrastructure Projects Within the District and Outstanding Bonds, as appropriate: The District consultants presented information regarding the status of public infrastructure projects within the District.

Unaudited Financial Statements, Including Year-to-Date Revenue and Expenditures of the District in Relation to its Adopted Budget, for the Calendar Year: The District consultants presented the District’s Unaudited

RECORD OF PROCEEDINGS

Financial Statements, including year-to-date revenue and expenditures of the District in relation to the District's adopted budget, for the calendar year.

Public Questions: There were no public questions.

CONCLUSION

There being no further business, the statutory annual meeting was concluded.

Respectfully submitted,

By _____
Secretary for the Annual Meeting

Mountain Brook Metropolitan District
Claims
1/10/2025

<u>Invoice no.</u>	<u>Vendor</u>	<u>Description</u>	<u>Invoice date</u>	<u>Invoice amount</u>
26796	Icenogle Seaver Pogue, PC	11 Legal	11/30/2024	4,939.00
26928	Icenogle Seaver Pogue, PC	12 Legal	12/31/2024	6,535.50
284.001-10	Permontes Group	11 Engineering	12/04/2024	556.25
284.001-11	Permontes Group	12 Engineering	01/02/2025	855.00
39375	Simmons & Wheeler	10 Accounting	10/31/2024	2,746.00
39783	Simmons & Wheeler	11 Accounting	11/30/2024	936.00
39928	Simmons & Wheeler	12 Accounting	12/31/2024	1,471.50
11 30 24	Special District Management Services, Inc.	11 District Management	11/30/2024	4,828.24
12 31 24	Special District Management Services, Inc.	12 District Management	12/31/2024	4,398.99
33222#4	Splashtacular Waterslides and Water	Splash Pad	12/12/2024	108,705.00
33222#5	Splashtacular Waterslides and Water	Splash Pad	12/12/2024	27,176.00
				<u>163,147.48</u>



Preventive Maintenance Agreement

6850 N. Broadway Suite D Denver, CO 80221

303-908-3184 Cell 303-363-8965 Office

mmartin@pushpedalpull.com

Company: Mountain Brook Metropolitan District	Contact: John Hinson	Act.# 1900106582
Address: 2901 South Flat Circle	City: Longmont	State: Co Zip: 80503
jmhinson@me.com	Phone: 904-945-8636	Cell:

Equipment Location:

Equipment Covered

Treadmills	3	Quantity	PRECOR - TRM 835	Make/ Model
Ellipticals	2	Quantity	PRECOR - EFX 835	Make/ Model
Bikes	1	Quantity	PRECOR - RBK 835	Make/ Model
Spin Bikes	2	Quantity	PELTON - COMMERCIAL	Make/ Model
Steppers / AMT	1	Quantity	PRECOR -SCL 835	Make/ Model
Selectorized Weight Machines (# of Stacks)	8	Quantity	PRECOR - RESOLUTE LEG PRESS, LEG CURL, FTS, MJ4 (LAT, ROW, TRICEP, ADJ PULLEY	Make/ Model
Free Weight	2	Quantity	PRECOR - DISCOVERY/ MAB, HALF RACK	Make/ Model
Misc. B	1	Quantity	CONCEPT 2 - MDL D	Make/ Model

Service Inspection Options- BI-ANNUALLY: _____ TRI-ANNUALLY: _____ QUARTERLY: MONTHLY: _____

Agreement can be canceled by either party with 30 day written notice with out penalty. Due Upon Receipt Terms late fees can apply if not paid.

Term of Agreement: FROM: TBD TO:

Check One Payment Option:	Check One
Receive An Invoice Per Visit	<input checked="" type="checkbox"/>
Receive A Yearly Invoice	<input type="checkbox"/>

(Customer's Signature and Date Signed)

(Customer's Purchase Order - If Required)

Matt Martin 12/24/2024

(Manager's Signature and Date)

PMA Pricing:		
Per Visit Total:	\$465.00	
Annual Total:	\$1,860.00	

SERVICE DISCOUNTS:
10% Discount off all Precor Parts
\$50.00 Discount off Service Calls
\$10.00 Per Hour Discount on Labor for Service Calls
Priority Response Time Guaranteed

IMPORTANT: SEE INSPECTION DETAIL

MAINTENANCE INSPECTION DETAIL

TREADMILLS

Inspect display and housing for cracks and defects
Inspect motor cover for cracks and defects
Inspect running belt and deck for wear
Wax deck and reset wax schedule, if applicable
Track running belt
Inspect end caps for cracks and defects
Inspect treadmill for leveling
Inspect stop key for proper operation
Systems check, speed, elevation, heartrate
Calibrate treadmill, if applicable
Inspect DC motor brucher for wear and seating, as needed
Inspect alignment of drive pulleys
Vacuum under hood around motor and MCB
Test overall functioning

Record all problems and defects observed
Record all information necessary for repair or parts ordering

ELLIPTICALS

Inspect ramps & clean for excessive wear and scars
Inspect wheels for bearing failure and proper spinning movement
Inspect pedal arms for proper movement
Inspect pedal arm to pivot arm connection for worn bushings, loose bolts
Inspect crank arm to pivot arm for worn shafts, bushings
Inspect crank arm to flywheel for worn shafts and bushings
Inspect covers for mounting bolts and cracks
Inspect upper arms for loose mounting
Inspect display for proper function and cracked or defective faceplates
Lubricate pivot points and bearings, as needed
Test overall functioning
Record all problems and defects observed
Record all information necessary for repair or parts ordering

OTHER

Test overall functioning
Record all problems and defects observed
Record all information necessary for repair or parts ordering
Complete cleaning inside and out of all machines

BIKES

Inspect frame covers for cracks, missing parts, wear
Inspect belts and adjust as needed
Inspect chains and lubricate as needed
Inspect and clean alternator brushes and commutator, as needed
Inspect seat assembly and pads for wear, defects, tears
Test seat adjustment for proper functioning
Inspect display for proper functioning, wear, defects
Inspect pedals for proper functioning, wear, defects
Inspect crank assembly for tension, bearing play, defects
Test for proper resistance levels
Test overall functioning
Record all problems and defects observed
Record all information necessary for repair or parts ordering

WEIGHT MACHINES

Inspect pads and upholstery for excessive wear, defects
Inspect and lubricate guide rods for smooth operation
Inspect snap hooks, weight stack selector pins, pull pins, swivels, and links for excessive wear, defects
Inspect cables and/or belts for excessive wear, defects
Inspect cable ends for excessive wear, defects, if applicable
Inspect belt brackets and tighten, if necessary, if applicable
Test tension and alignment of cables and/or belts, adjust if needed
Inspect accessory handles, bars for proper functioning, defects
Inspect frame hardware for defects, tighten if needed
Lubricate bushings
Test overall functioning
Record all problems and defects observed
Record all information necessary for repair or parts ordering

CLIMBERS

Inspect frame covers for cracks, missing parts, wear
Inspect display and housing for cracks and defects
Inspect pedal arms and pedal for proper functioning, excessive wear, worn bushings, and defects
Lubricate chains, as needed
Test overall functioning
Record all problems and defects observed
Record all information necessary for repair or parts ordering

ESCROW AGREEMENT

This Escrow Agreement (this “**Agreement**”) is entered into as of the 23rd day of May, 2022, by and among Splashtacular, LLC, of Paola, Kansas (“**Splashtacular**”), and Mountain Brook Metropolitan District, of Longmont, Colorado (“**Owner**”), and MBC Business Services, Inc., a Missouri corporation (“**Escrow Agent**”) (each a “**Party**”; collectively, the “**Parties**”).

RECITALS

A. Splashtacular and Owner have executed that certain Construction Agreement dated May 23, 2022 (the “**Contract**”), pursuant to which Splashtacular agreed to perform certain Work (as described in the Contract) for the Longmont, CO – Mountain Brook Amenity Center Project.

B. Pursuant to Section 3.a. of the Contract, Splashtacular and Owner are required to enter into an escrow agreement, pursuant to which Owner will deposit \$ 25,961.00 (the “**Funds**”) with Escrow Agent to fund Splashtacular’s construction and completion of all Work on the Project in accordance with the Contract. The Funds shall constitute 10% of the Contract balance due to Splashtacular from Owner.

C. The Parties desire to enter into this Agreement for the purpose of satisfying the escrow obligations under the Contract.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants herein contained and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the Parties by their execution hereof, the Parties agree as follows.

1. Recitals. The above Recitals are hereby incorporated into this Agreement in full and form an integral part hereof. Capitalized terms not set forth herein shall have the meaning assigned to them under the Contract.

2. Appointment of Escrow Agent. Splashtacular and Owner hereby appoint Escrow Agent to act as escrow agent hereunder, and Escrow Agent hereby accepts such appointment and agrees to perform the duties of Escrow Agent hereinafter set forth, subject to the terms and conditions of this Agreement. Escrow Agent’s fee will be \$100.00 (which is to be paid by Splashtacular).

3. Escrow Funds. As set forth in Section 3a of the Contract, prior to delivery of materials by Splashtacular, Owner shall deposit the Funds with Escrow Agent which Escrow Agent shall hold in escrow in accordance with the terms and provisions of this Agreement. The escrowed Funds shall be held by the Escrow Agent in a federally insured non-interest bearing trust account in the name of the Escrow Agent for the benefit of Splashtacular in accordance with the terms of this Agreement. Upon deposit of the Funds, Owner shall provide written notice to Splashtacular that the Funds have been deposited with Escrow Agent. Upon Owner’s written request to Escrow Agent, Escrow Agent shall provide written confirmation that the Funds have been received and placed in escrow. Wiring instructions shall be provided by Escrow Agent to Owner. If Owner does not timely deliver the Funds to Escrow Agent, or if the Escrow Agent is not immediately able to obtain good funds in respect of the Funds, Splashtacular may, at its option, terminate this Agreement and no Party shall have any further right or obligation hereunder.

4. Distribution of Escrowed Funds. The Funds shall be disbursed by Escrow Agent as follows:

a. To Splashtacular upon receipt of periodic/final written requests for disbursement of the Funds (or portion thereof) signed by both Splashtacular and Owner for the completion of certain services, the receipt of certain goods and services, or the satisfaction of any other condition or event, as set forth in accordance with the payment terms of the Contract;

b. To Splashtacular and/or Owner as set forth in a written agreement executed by Splashtacular and Owner;

c. To Splashtacular and/or Owner as set forth in Section 5 below in the event of a dispute regarding the Funds;

d. To Splashtacular and/or Owner upon the failure of either party to execute a periodic/final request for payment to release the Funds (or a portion thereof) after the requesting party makes a written request for disbursement to Escrow Agent, with copy to the other party in accordance with the "Notice" requirements of Section 10 below, and the other party fails to respond or object in writing within ten (10) business days of the date on which the other party received a copy of such request for disbursement.

e. To Owner, as set forth below, upon the occurrence of any of the following events of default by Splashtacular:

i. Splashtacular is in default under the terms of the Contract or otherwise cancels the Contract for any reason whatsoever, except as permitted under the terms of the Contract;

then, upon written notice to Splashtacular and the Escrow Agent, Owner shall have the right to collect payment for such costs, damages or expenses as set forth in accordance with the terms of the Contract to the extent the Funds are sufficient therefor and shall be entitled to a disbursement from the Funds by submitting a request for payment for the same, together with accompanying documentation, subject to Sections 4.c. and 4.d. above.

f. To Splashtacular, as set forth below, upon the occurrence of any of the following events of default by Owner:

i. Owner is in default under the terms of the Contract or otherwise cancels the Contract for any reason whatsoever, except as permitted under the terms of the Contract; or

ii. Owner takes or there is taken on its behalf any action for the termination winding up, liquidation, or dissolution of Owner; or

iii. Owner makes a general assignment for the benefit of its creditors, becomes insolvent, or is unable to pay its debts as they mature; or

iv. Owner has a receiver appointed, or files or has filed against it any petition under any existing or future bankruptcy or insolvency;

then, upon written notice to the Owner and the Escrow Agent, Splashtacular shall: (a) have the right to collect payment to date: (i) for all Work and services completed, goods and services received, or the satisfaction of any other condition or event, as set forth in accordance with the terms of the Contract, and (ii) for proven loss with respect to tools, and construction equipment and machinery, including reasonable overhead, profit, and damages, to the extent the Funds are sufficient therefor and shall be entitled to a disbursement from the Funds by submitting an application for payment for the same, together with accompanying documentation, as set forth in Section 4.a. above, subject to Sections 4.c. and 4.d., and (b) have the right (but not the obligation) to cause the remainder of the Work to be completed to the extent the Funds are sufficient therefor and shall be entitled to periodic disbursement from the Funds by submitting applications for payment together with accompanying documentation as set forth in Section 4.a. above, subject to Sections 4.c. and 4.d. In accordance with Splashtacular's rights as set forth hereinabove, any remainder of the Funds not previously disbursed shall be disbursed to the Owner.

5. Distribution Dispute. In the event Owner or Splashtacular notifies Escrow Agent, in writing, of a dispute regarding the disbursement of all or part of the Funds, Escrow Agent shall settle the dispute as follows:

- a. Escrow Agent may disburse that part of the Funds to the requesting Party over which there is no dispute between Owner and Splashtacular, with the remaining Funds over which there is a dispute being held in escrow by Escrow Agent, subject to the provisions of Sections 5(b) through 5(d) below. Notwithstanding the foregoing, the Parties agree and acknowledge that the amount of any such "disputed" Funds to remain in escrow, subject to the provisions of Sections 5(b) through 5(d) below, shall not be more than two (2) times the amount of such Funds in dispute or if applicable, the material cost and labor required by Splashtacular to repair or replace such disputed item(s); or
- b. Escrow Agent may file an action in the District Court of Boulder County, Colorado for a declaratory judgment as to how to disburse the Funds (or such portion thereof), and/or may interplead the Funds into the registry of said Court, with the costs of any action so filed by Escrow Agent, including reasonable attorney's fees, to be deducted from the Funds. Splashtacular and Owner agree to the jurisdiction of said Court over their persons and over the Funds, waive personal service of process, and agree that service of process by certified or registered mail, return receipt requested, to the address set forth herein shall constitute adequate service. To the extent permitted by law, Splashtacular and Owner hereby agree to indemnify and hold the Escrow Agent harmless from any liability or losses occasioned thereby and to pay any and all of Escrow Agent's costs, expenses, and attorneys' fees incurred in any such action and agree that on such declaratory judgment or interpleader action that the Escrow Agent, its servants, agents, employees, attorneys, and officers will be relieved of further liability; or
- c. Escrow Agent may require that Splashtacular and Owner initiate arbitration proceedings to resolve any such dispute pursuant to the arbitration provision set forth in the Contract, with the arbitrator issuing a written decision as to how the Funds (or any portion thereof) should be disbursed; or

- d. In the event of any disagreement or the presentation of adverse claims or demands in connection with the distribution of the escrowed Funds (or portion thereof), Escrow Agent is, at its option, entitled to refuse to comply with any such claims or demands during the continuance of such disagreement and may refrain from distributing any disputed Funds or delivering any other items affected thereby. In so doing, Escrow Agent shall not become liable to the other Parties hereto due to its failure to comply with any such adverse claim or demand. Escrow Agent is entitled to continue, without liability, to refrain and refuse to act: (a) until all rights of the adverse claimants have been finally adjudicated by an arbitrator or court of competent jurisdiction having jurisdiction over the Parties, the disputed Funds, or any other items affected thereby, after which time Escrow Agent is entitled to act in conformity with such adjudication, or (b) until Owner and Splashtacular execute a written agreement indicating that all adverse claims or disputes relating to the disbursement of the Funds (or portion thereof) or the delivery of any other items affected thereby, have been resolved and providing instructions to Escrow Agent as to the disbursement or delivery of the same, at which time Escrow Agent is protected in acting in compliance therewith.

6. Liability and Indemnification of Escrow Agent.

- a. Escrow Agent shall not be liable to Splashtacular or Owner, or any of their successors or permitted assigns, for any action or failure to act by Escrow Agent hereunder, except for Escrow Agent's own gross negligence or willful misconduct. Splashtacular and Owner each agree to jointly and severally indemnify and hold harmless Escrow Agent, and any successor or permitted assign, from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees, arising out of or in connection with this Agreement, except for claims against Escrow Agent based upon gross negligence or willful misconduct.
- b. Escrow Agent is entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service thereof. Escrow Agent may act in reliance upon any instrument or signature believed by it to be genuine and may assume that any person purporting to give any notice or receipt or advice or to make any statement or executing any document in connection with the provisions hereof has been duly authorized to so do. If Escrow Agent is in doubt as to what action it should take hereunder, then in accordance with the terms set forth in Section 5.d. above, Escrow Agent shall be entitled to deposit the escrowed Funds (or portion thereof) with a court of competent jurisdiction and interplead the other Parties for a determination of the matter. Escrow Agent shall not undertake such deposit and interpleader unless it has given Splashtacular and Owner a written notice ten (10) days before such deposit and interpleader as to the intentions of Escrow Agent. In the event such Funds are deposited with the Court, then Splashtacular and Owner agree to the jurisdiction of said Court over their persons and over the Funds, waive personal service of process, and agree that service of process by certified or registered mail, return receipt requested, to the address set forth herein shall constitute adequate service. Further, Splashtacular and Owner hereby agree to

indemnify and hold the Escrow Agent harmless from any liability or losses occasioned thereby and to pay any and all of Escrow Agent's costs, expenses, and attorneys' fees incurred in any such action and agree that on such declaratory judgment or interpleader action that the Escrow Agent, its servants, agents, employees, attorneys, and officers will be relieved of further liability.

7. **Resignation.** Escrow Agent may resign upon giving ten (10) days' prior written notice to Splashtacular and Owner. Splashtacular and Owner shall use good faith efforts to identify a successor escrow agent (the "**Successor**") and cause the appointment of such Successor within ten (10) days following the date of such resignation. Notwithstanding the foregoing, in no event shall this Agreement terminate or Escrow Agent be permitted to resign until such time as a Successor has been appointed. Any appointed Successor must execute, acknowledge, and deliver to its predecessor escrow agent (the "**Predecessor**"), Splashtacular, and Owner an instrument accepting such appointment and agreeing to the terms of this Agreement. The resignation of the Predecessor thereupon becomes effective and the Successor succeeds to the rights and duties of the Predecessor hereunder. The Predecessor will immediately deliver to the Successor the Escrowed Funds and any documents then held by the Predecessor pursuant to this Agreement.

8. **Governing Law.** This Agreement shall be construed and enforced according to the laws of the State of Colorado.

9. **Termination of Agreement.** This Agreement (i) shall automatically terminate if and when, but in no event shall it terminate before, all of the Funds shall have been distributed by the Escrow Agent in accordance with the terms of this Agreement or (ii) may be earlier terminated by mutual written agreement of Owner and Splashtacular.

10. **Notice.** Any notice, requests, claims, demands and other communications permitted or required to be given under this Agreement by any party to another party shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by hand-delivery, by an internationally recognized overnight courier service or by registered or certified mail, return receipt requested, to the party at the address set forth for the party below:

If to Owner: _____

With copy to: _____
Attn: _____

Email: _____

If to Splashtacular: Alex Weidman, President
Splashtacular, LLC
401 N. East Street
Paola, Kansas 66071

With copy to: Rouse Frets White Goss Gentile Rhodes, P.C.
Attn: Ken Snow, Esq.
5250 West 116th Place, Suite 400
Leawood, KS 66211
Email: ksnow@rousepc.com

If to Escrow Agent: MBC Business Services, Inc.
5250 W. 116th Place, Suite 400
Leawood, Kansas 66211
Ph# (913) 647-3200
E-mail: mbcservices@gmail.com

11. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties hereto with respect to the transactions described herein, and supersedes all prior agreements of understandings, written or oral, between the Parties with respect thereto.

12. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

13. Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature of any Party delivered by facsimile or transmitted electronically in portable document format shall be deemed an original signature, may be relied upon by others and shall be binding upon the signor for all purposes.

15. Acknowledgement: Waiver of Conflict of Interest. The Parties hereto agree and acknowledge that this Agreement has been negotiated by all the Parties, and no Party shall be deemed to have drafted this Agreement for purposes of construing any ambiguity. The Parties further agree and acknowledge that the Escrow Agent and the law firm of Rouse Frets White Goss Gentile Rhodes, P.C. ("RFWGGR") are affiliated and that RFWGGR is acting as counsel for Splashtacular and Escrow Agent in connection with the Contract and this Agreement. In accordance thereto, each Party hereby waives any and all conflicts of interest that may exist or arise as a result of: (i) RFWGGR's representation of Splashtacular and Escrow Agent on any matter related to the Contract and this Agreement, including any issues that could arise with the respect to claims against the escrow Funds, and (ii) the affiliation of Escrow Agent and RFWGGR.

[Signature Page Follows]

The Parties hereto hereby execute this Agreement as of the day and year first above written.

SPLASHTACULAR, LLC

By:  _____

Name: Anita Burdge

Title: CFO

MOUNTAIN BROOK METROPOLITAN DISTRICT

By:  _____

Name: Kevin Mulshine

Title: President

MBC BUSINESS SERVICES, INC.

By:  _____

Name: P. Chuck Rouse

Title: President