

**RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF RISK, AND INDEMNITY AGREEMENT**

Flyin Hawaiian Zipline, LLC

**NOTICE: THIS RELEASE AND WAIVER AFFECTS YOUR LEGAL RIGHTS.**

**PLEASE READ IT VERY CAREFULLY AND UNDERSTAND IT BEFORE INITIALING OR SIGNING IT.**

Parents/Legal Guardians should initial on behalf of participating Minors after discussing each section with them, indicating that both the Minor and the Parent/Legal Guardian agree to each section.

Participant Name (Print): \_\_\_\_\_ If under 18, Name of Guardian: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone #: \_\_\_\_\_ Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

I, the above-named person, being above the age of eighteen (18) years, or the legal guardian of the above-named person who is under the age of eighteen (18) years (hereinafter referred to as "Minor") on behalf of myself, next of kin, heirs, guardians, assigns, personal representatives and estate (or those of the Minor if I am his/her Legal Guardian) and in consideration of the opportunity to participate in a Zipline tour experience with Flyin Hawaiian Zipline, LLC (the "Company") do hereby acknowledge, promise, agree, and covenant with Flyin Hawaiian Zipline, LLC, a Hawaii limited liability company, ADD, LLC, a Hawaii limited liability company, The Preserve at Waikapu, LLC, a Hawaii limited liability company, Allen Y. Ting III Trust, Donna P. Ting Trust, their officers, owners, agents, employees, affiliated companies, and owners and lessees of the Premises on which the Activity is conducted, and all other persons, companies or entities associated with those businesses (collectively hereinafter referred to as the "RELEASEES") as follows:

**ACKNOWLEDGMENT OF RISKS**

Participation in Flyin Hawaiian Zipline TOUR (the "Activity") involves: sliding down a suspended cable at high speeds, over significant heights and rugged terrain using a safety harness, pulley, and trolley suspended on a metal cable and stopping by impacting a braking system at over twenty (20) miles per hour; being driven by four-wheel-drive fifteen passenger van and Polaris Crew/Side-by-Side all-terrain vehicles over a bumpy, dusty and sometimes muddy road, which in some cases will be steep and will have a cliff on either side; and an approximate one mile hike across improved and unimproved trails, which include uneven and slippery terrain, which in some cases will be steep and will have a cliff on either side.

I acknowledge that my, or the Minors for whom I sign, **participation in the Activity entail known and inherent risks, as well as unknown and unanticipated risks that could result in physical or emotional injury, illness, paralysis, death, or damage to me, my property, or to third parties.** I understand that such risks cannot be eliminated without jeopardizing the essential qualities of the activity.

**These risks include, among other things:** slips and/or falls; scrapes, bruises, rope burns, broken bones, concussion, whiplash, and/or neck, back or spinal injuries; all manner of transportation accidents associated with using four-wheel-drive vans and all-terrain vehicles on rough, slippery and steep terrain; falling from platforms, ladders, cables and other structures; equipment malfunction including breakage of cables, tethers, pulleys and harnesses; collision with stationary objects; insect and animal bites and/or stings; consumption of food and/or drink; exposure to sun, strong winds, the elements and changing and/or inclement weather; branches falling from trees; falling rocks and erosive cliff edges through or near where I will be walking and/or traveling; fatigue and/or dizziness that my diminish my or others reaction time; my own physical inability to properly participate or to follow rules and directions concerning the Activity; and unforeseeable events. Furthermore, the Company's guides, instructors, and facilitators have difficult jobs to do. They seek safety, but they are not infallible. They might misjudge a participant's fitness or abilities, the weather, the elements, or the terrain or they may give inadequate warnings or instructions, and the equipment being used might malfunction.

I understand and acknowledge that that no amount of care, caution, instruction or expertise can eliminate this inherent danger and that the description of these Risks is not complete and that other unknown or unanticipated risks may result in accident, injury or death.

**I have read this section, and initial to show that I understand and agree:** \_\_\_\_\_

**ACCEPTANCE OF RISK AND RESPONSIBILITY**

Being aware that the Activity which I am about to voluntarily engage in as a participant bears certain known and unanticipated Risks, **I agree, covenant and promise, by my choice, to accept and assume all responsibility and risk for injury, death, illness or disease, or damage to my person and property,** or the minor for whom I sign, whether such risks are identified herein or are not specified, that may occur as a result of my participation, or that may be caused by my own actions or inactions or those of other participants, or that may be caused by the condition in which the Activity take place or by the negligence of the Releasees. My participation in this activity is entirely voluntary and I elect to participate in spite of the risks.

I understand and agree that the Company reserves the right, in its sole discretion, to refuse to permit me to participate in the Activity, and that the Company may terminate my participation in the Activity if it believes me, or the Minor for whom I sign, to be incapable of following the instructions or meeting the safety requirements or the rigors of participating in the Activity. I specifically agree to release the Company from any liability if I am prevented from participating in the Activity for any reason whatsoever.

**I have read this section, and initial to show that I understand and agree:** \_\_\_\_\_

**WARRANTIES**

I hereby acknowledge, agree, and represent that I, or the Minor for whom I sign, understand the nature of the Activity, have no physical infirmity, chronic ailment, and/or injury of any nature, am in good health and physically and mentally able to participate in the Activity. I am not pregnant or aware of any medical conditions, such as but not limited to heart, back or neck injuries, that could be aggravated by participating in the Activity or that would prohibit my, or the Minor for whom sign, participation in the Activity.

I further agree and warrant that I, or the Minor for whom I sign, shall use due care and caution during the use and enjoyment of the Activity and shall immediately report to the Company any unsafe conditions or unauthorized use witnessed by the undersigned. I agree and warrant that if at any time I believe conditions to be unsafe, I will immediately discontinue further participation in the Activity.

**I have read this section, and initial to show that I understand and agree:** \_\_\_\_\_

**CONFIRMATION**

I confirm I am capable of using the equipment provided to me by the Company and I will comply with all of the instructions, including those given verbally and/or visually, and safety requirements, provided to me by the Company, and the Company’s designated tour guides including, but not limited to: (1) I will not make any adjustments to my equipment and I agree that all adjustments will be made only by or with the assistance of a Company tour guide. (2) I will not smoke, drink alcohol, use illegal/unprescribed drugs, or use any open flame at any time during the Tour.

**I have read this section, and initial to show that I understand and agree:** \_\_\_\_\_

**MEDICAL EMERGENCY**

I hereby consent to receive medical treatment, for me and/or the Minor, including but not limited to, first aid and emergency transport, which may be deemed advisable in the event of injury, accident and/or illness during the Activity. I understand that the Activity I am participating in is conducted at sites that are remote from available medical assistance and agree to proceed with such participation in spite of the possible absence of medical assistance. I agree I will be personally responsible for the cost of any emergency or other medical care that I receive.

**I have read this section, and initial to show that I understand and agree:** \_\_\_\_\_

**RELEASE AND INDEMNIFICATION**

**I hereby voluntarily release and forever discharge the Releasees 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 my participation, or that of the Minor, in this Activity, including specifically, but not limited to, the negligent acts or omissions, or breach of contract of the Releasees, for any and all injury, death, illness, or disease, and damage to my person and property.

I further agree, promise and covenant **I will indemnify, save and hold harmless each of the Releasees** from any and all losses, claims, actions, costs, expenses, or proceedings of any kind which may be initiated by any third person, entity or organization for its loss or damage arising out of my participation in the Activity, including reimbursement of all legal costs and reasonable attorneys’ fees incurred by the Releasees in defending against any such claim, action or proceeding.

**I agree, promise and covenant not to sue, assert or otherwise maintain or assert any claim against the Releasees** for any injury, death, illness or disease, or damage to my property, arising from or connected with my participation, or that of the Minor, in this Activity.

**I have read this section, and initial to show that I understand and agree:** \_\_\_\_\_

**ACKNOWLEDGMENT OF EFFECT OF THIS RELEASE AGREEMENT**

I understand and acknowledge that by initialing and/or signing this document I have given up certain legal rights and/or possible claims which I might otherwise assert or maintain against the Releasees including specifically, but not limited to, my right to sue and rights arising from or claims for the acts or omissions, negligence in any degree, of the Releasees. I further acknowledge I have signed it freely and without any inducement or assurance of any nature, and I intend it to be as broad and inclusive in favor of the State of Hawaii as permitted by the laws of the State of Hawaii and that if any provision herein is held to be invalid, it is agreed that the remaining provisions shall, notwithstanding, continue in full force and effect. I further agree that any claim, action or dispute arising under this agreement or as a result of my participation in the Activity shall be commenced in the Second Circuit Court of the State of Hawaii.

**I have read this section, and initial to show that I understand and agree:** \_\_\_\_\_

**ENTIRE AGREEMENT**

I understand and agree that this agreement is made with full knowledge of the facts and legal implications of entering into such an agreement and that it cannot be modified or changed in any way by the representations or statements of any employee or agent of the Releasees, or by me. I further agree that this agreement contains the entire agreement between the parties, hereto, and that the terms of this agreement are contractual and not mere recitals.

**I have read this section, and initial to show that I understand and agree:** \_\_\_\_\_

My signature below indicates that I have read this entire document or had it explained to me if I do not read or speak English, and that I understand it completely and agree to be bound by its terms.

\_\_\_\_\_  
Signature of Participant / Parent / Legal Guardian

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Employee/Witness

Office use only: \_\_\_\_\_

RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF RISK, AND INDEMNITY AGREEMENT

Flyin Hawaiian Zipline, LLC

**Below section must be completed by Parent/Legal Guardian for any participant under the age of 18.**

**PARENTAL CONSENT**

I acknowledge that participation in the Activity involves risk of personal injury, illness or even death. I have read the above, been given the opportunity to ask questions, considered its effects, understand its content, and agree, on behalf of myself and the Minor, to the terms as stated above. I, understand the nature of the Activity and the Minor's experience and capabilities and believe the Minor to be qualified, in good health, and warrant that the Minor is fully capable of safely participating in the Activity and I expressly assume all risk of the Minor's participation, whether such risks are know or unknown to me at this time.

By signing this Release and Waiver of Liability, Assumption of Risk, and Indemnity Agreement("Waiver") and Parental Consent, I hereby voluntarily release and forever discharge the Releasees 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 Minor's participation in this Activity, including specifically, but not limited to, the negligent acts or omissions of the Releasees, for any and all injury, death, illness, or disease, and damage to the Minor's person and property. I agree, promise and covenant to hold harmless and indemnify the Releasees for any such injury, death, illness, disease or damage. I further agree, promise and covenant not to sue, assert or otherwise maintain or assert any claim against the Releasees for any injury, death, illness or disease, or damage to the Minor's property, arising from or connected with the Minor's participation in this activity.

I further agree, that if, despite this Release and Waiver of Liability, Assumption of Risk, and Indemnity Agreement I, the Minor, or anyone on the Minor's behalf make a claim against any of the Releasees, I will indemnify, save and hold harmless each of the Releasees in conjunction with any injury, disability, death, or loss or damage to person or property that may occur as a result of engaging in the Activity as well as from any litigation expenses, attorney fees, loss liability, damage, or cost which may be incurred as the result of such claim and to reimburse them for any such expenses incurred.

**I have read this section, and initial to show that I understand and agree:** \_\_\_\_\_

The undersigned parent or guardian represent that he/she has read this Waiver, and is fully aware of and understands the terms and the legal consequences of the signing of this Waiver. The undersigned parent or legal guardian intends his or her signature to be a complete and unconditional release of all liability to the greatest extent allowed by law and if any portion of the Waiver is held invalid, it is agreed that the balance, shall, notwithstanding, continue in full legal force and effect.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Parent/Legal Guardian

\_\_\_\_\_  
Signature of Employee/Witness