

OPERATION AGREEMENT

This Operation Agreement (“Agreement”) is made and entered into this _____ day of October, 2021 (the “Effective Date”), by and between the **CITY OF LAKE WALES**, a Florida municipal corporation, hereinafter referred to as (“CITY”), and **One Up Adventures, LLC**, a Florida limited liability company.

WITNESSETH

WHEREAS, the CITY owns the property commonly known as the Lake Wales Municipal Airport located at 450 Airport Road, Lake Wales, Florida; and

WHEREAS, the CITY desires to and has the legal authority to lease hangars, pasture lands and other airport property to individuals, firms or corporations; and

WHEREAS, One Up Adventures, LLC, desires to use portions of the airport property for basic and advanced ultralight flight training instruction; and

WHEREAS One Up Adventures, LLC, desires to utilize hangar space for storage of aeronautical equipment; and

WHEREAS, the CITY and One Up Adventures, LLC, desire to set forth an agreement regarding the use and operation of the airport premises by One Up Adventures, LLC.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS provided hereby, the parties hereto agree as follows:

1. AGREEMENT. THE CITY owns and operates the airport known as the Lake Wales Municipal Airport (the “Premises”). One Up Adventures, LLC, will use the Premises for basic and advanced ultralight flight training instruction. One Up Adventures, LLC, will also be allowed to store aeronautical equipment in its t-hangar that it currently leases from the CITY. Authority to allow for the storage of aeronautical equipment in t-hangars is in accordance with the Federal Aviation Administration (FAA) policy that allows this type storage in an airport t-hangar (Federal Register, volume 81, number 115, section 2: standards for aeronautical use of hangars).

2. The CITY and TENANT desire to set forth their agreement regarding the use by One Up Adventures, LLC, of the Premises and the respective rights and obligations of the CITY and One Up Adventures, LLC, regarding the use and operation of the Premises. This Agreement supersedes all previous operational agreements between the City of Lake Wales and One Up Adventures, LLC.

3. Fees Payable to CITY. One Up Adventures, LLC, hereby agrees, to

the following:

A. One Up Adventures, LLC, agrees to pay a student flight training fee of **\$5.00** per day, per student for the term of this Agreement.

4. TERM. The initial term of this Agreement shall be for a period of **Twelve (12) months** beginning on the Effective Date. This Agreement may be renewed for **two (2) twelve (12) month terms** subsequent to its initial term upon mutual agreement of the parties.

5. TERMINATION. In the event One Up Adventures, LLC, fails to abide by the terms described herein, the CITY may terminate this Agreement upon providing thirty (30) days' notice of default and an opportunity for One Up Adventures, LLC, to cure said default. In the event One Up Adventures, LLC, fails to cure said default within said thirty (30) day time period, the CITY may elect to terminate this Agreement.

Either party may terminate this Agreement for any reason or no reason at all upon provision of **one hundred eighty (180) days written notice**.

6. INDEMNIFICATION. One Up Adventures, LLC, shall indemnify, defend and save City and its elected or appointed officials, agents, and employees harmless from and against any and all liabilities, penalties, demands, claims, causes of action, suits, losses, damages, cost and expenses (including reasonable attorneys' fees) ("Claims") (whether the same arise out of or in connection with the services, or from any operations under or in connection with this Agreement) to the extent caused by One Up Adventures, LLC (or any of its employees), any of its subcontractors (or any employee thereof), or any person, firm or corporation (or any employee thereof) directly or indirectly employed or engaged by One Up Adventures, LLC.

7. INDEPENDENT CONTRACTOR: One Up Adventures, LLC, shall perform the terms and conditions of this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status.

8. NOTICE. ANY notice or other communication required or permitted to be given under this Agreement shall be in writing and mailed (by U.S. certified mail, return receipt requested, postage prepaid), sent by overnight delivery by a nationally recognized overnight courier service, or personally delivered to the parties as follows:

City of Lake Wales
Post Office Box 1320
Attn: City Manager
Lake Wales, FL 33859-1320

One Up Adventures, LLC
450 South Airport Road

Lake Wales, FL 33859

With Copy to:

One Up Adventures, LLC
Travis Burns, Manager
1119 Sunset Drive
Lake Wales, FL 33853

9. AMENDMENTS OR MODIFICATIONS. Any alterations, amendments, deletions or waivers of the provisions of this Agreement shall be valid only when reduced to writing, signed and executed by both parties with the same formality and equal dignity herewith.

10. PUBLIC RECORDS. One Up Adventures, LLC, agrees to comply with *Chapter 119 of Florida Statutes*, and to make all of its records open and available to the public for public inspection to the extent of providing the services described in paragraph 2 above. The other activities of the One Up Adventures, LLC, not covered by this Agreement shall not be subject to the Public Records law.

11. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL. The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related thereto. Venue for any action arising out of this Agreement shall lie in Polk County, Florida. In the event of any litigation arising in any way related to this Agreement, the parties shall each bear their own respective costs and attorney's fees. The parties, to the fullest extent that they may lawfully do so, hereby waive trial by jury in any action or proceeding brought by any party to this Agreement with respect to this Agreement, or any matter related to this Agreement.

12. SEVERABILITY. If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any report, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

13. ATTACHMENTS AND COUNTERPARTS. This Agreement may be executed in counterparts to be deemed a single Agreement and all attachments and exhibits hereto are incorporated hereby as a material and relevant part of this Agreement.

14. CODE OF CONDUCT. One Up Adventures, LLC, reserves the right to remove any participant from its programs or from the airport for failure to abide by the terms of its Code of Conduct.

15. ASSIGNMENT. Neither party shall, without the prior written consent of the other party (which consent shall not be unreasonably withheld, delayed or

conditioned), assign this Agreement by operation of law or otherwise, provided that such approved assignment shall not release the assigning party from its liabilities and obligations under this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

One Up Adventures, LLC

By: _____
Travis Burns, Manager

ATTEST:

DATED: October ____, 2021

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged by Travis Burns, Manager and on behalf of **One Up Adventures, LLC**, who is personally known by me or produced sufficient identification.

Witness my hand and official seal, this _____ day of October, 2021.

Notary Public, State of Florida
My Commission expires:

City of Lake Wales execution on the following page.

CITY OF LAKE WALES, FLORIDA

By: _____
Eugene Fultz, Mayor

ATTEST:

Jennifer Nanek, City Clerk

DATED: October ____, 2021.

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged by Eugene Fultz, Mayor and on behalf of the **City of Lake Wales, Florida**, who is personally known by me or produced sufficient identification.

Witness my hand and official seal, this ____ day of October, 2021.

Notary Public, State of Florida
My Commission expires: