

FIXED BASED OPERATIONS AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2012, by and between the **City of Middleton**, a Wisconsin municipal corporation (“Middleton”), and **Morey Airplane Co., Inc.**, a domestic corporation (“Operator”).

WITNESSETH:

WHEREAS, Middleton owns and operates Middleton Municipal Airport – Morey Field (the “Airport”), located within the corporate limits of the City of Middleton, Dane County, Wisconsin, and has jurisdiction over the operation and maintenance of land within the Airport; and

WHEREAS, in order to insure adequate aeronautical services and facilities for the users of the Airport, to encourage the development of the Airport and its activities, and to foster the economic health and orderly development of commercial aeronautical operators at the Airport, Middleton has determined to contract with Operator to provide aeronautical services at the Airport; and

WHEREAS, Operator has provided such services as an independent fixed base operator to Middleton at the Airport under a series of Agreements commencing November 17, 1998 and the most recent Agreement terminating on December 31, 2011, and desires to continue to provide such services as an independent fixed base operator; and

WHEREAS, both parties hereto agree that this Fixed Based Operations Agreement (the “Agreement”) constitutes the entire agreement between the parties and, upon execution, all previous Agreements between the parties are hereby terminated as of the date of this Agreement; and

WHEREAS, Middleton Area Development Corporation (“MADC”) owns an airport terminal building under a Lease from Middleton and Operator has maintained a separate Agreement with MADC for the use of the terminal building, but its use thereof is subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement to be kept and performed by both parties, the parties hereby agree as follows:

1. **Leased Premises.**
 - (a) Middleton has leased to MADC by separate Agreement real property (herein referred to as the “Leased Premises”) consisting of approximately one (1) acre of Airport property, including the airport terminal building, the parking lot and access drive for the terminal building, and associated landscaping on the

grounds of the terminal building and between the parking lot and the sidewalk fronting the leased premises. Operator understands and agrees that all of the leasehold improvements that MADC and Middleton constructed have been designed for use by Operator for its services of selling gasoline, oil and other lubricants, maintaining and operating full aircraft servicing facilities, selling aircraft engines, accessories and parts, providing storage space for one or more aircraft, a repair shop for the repairing and servicing of aircraft engines, instruments, propellers and accessories in connection with said business, giving flying lessons, providing pilots for operating planes for others and carrying passengers and freight for hire.

- (b) Non-Exclusive Rights. In addition to the area referred to in Section 1(a) above, Operator shall be entitled to the non-exclusive use, in common with other airport tenants and users, of the premises (the “non-exclusive space”) identified on Exhibit “A,” a copy of which is attached hereto and incorporated herein by this reference. It is expressly understood that Middleton reserves the right to create, amend, repeal, modify or otherwise alter, in any fashion whatsoever as Middleton, in its sole discretion, may determine, rules for the use of the non-exclusive space, and Operator shall be bound thereby, provided that all such creations, amendments, repeals, modifications and alterations to the rules for the use of the non-exclusive space are made applicable to all users and tenants of the Airport. Middleton reserves the right to alter the boundaries of the non-exclusive space available to Operator.

2. **Term.**

- (a) The term of this Agreement shall be for a period of five (5) years, commencing on January 1, 2012 and continuing through December 31, 2016, unless earlier terminated under the provisions of this Agreement.
- (b) Option to Renew. Operator shall have an option to renew this Agreement for an additional period of five (5) years upon the terms and conditions set forth herein:
- (1) Operator shall provide written notice to Middleton no less than one (1) year before the termination date of this Agreement of its intention to seek renewal of this Agreement.
 - (2) Upon receipt of said notice from Operator, Middleton agrees to negotiate in good faith concerning the terms and conditions on which this Agreement could be extended for another five (5) year period.

- (3) No such extension shall be effective unless Operator also agrees with MADC concerning extending the terms and conditions of a lease for the same period of time.
- (4) In the event the parties are unable to agree concerning the terms of any extension of this Agreement by the 180th day prior to the termination date of this Agreement, such nonagreement shall act to terminate any right to extend the term of this Agreement.

3. **Payments by Operator to Middleton.**

- (a) Operator agrees to pay to Middleton during the term of this Agreement the following payments:
 - (1) Operator shall pay Middleton monthly the sum of Two Thousand Dollars (\$2,000.00).
 - (2) Middleton agrees to waive this monthly payment for the period of time commencing January 1, 2012 and terminating on December 31, 2012. Prior to December 31, 2012, the parties will evaluate the payments to be made hereunder as compared to those made by other airport operators under similar FBO Agreements; based on that information, the parties will negotiate in good faith the required payments by Operator to be made thereafter under the terms of this Agreement.
- (b) Flowage Fee. In addition to the payments made under Section 3(a), Operator shall pay Middleton a fuel flowage fee of seven cents (\$.07) per gallon of aviation fuel sold by Operator. Middleton reserves the right in its discretion to increase the charges provided herein from the current seven cents (\$.07) per gallon to such sum as Middleton shall determine to be reasonable and necessary in connection with the operation and development of the Airport. Any such increase shall be limited to one cent (\$.01) per gallon adjusted with thirty days' (30) prior written notice in any one calendar year.
- (c) Time of Payment. The payments specified in Sections 3(b) shall be paid to Middleton on or before the twentieth (20th) day following the end of each month during the term of this Agreement, together with a report of Operator's fuel sales and Adjusted Gross Sales during the preceding month. Payments specified in Section 3(a) shall be paid in advance on the first (1st) of each month of this Agreement.
- (d) Failure to Pay Charges. In the event Operator fails to make timely payment of any fee or payment due and payable in accordance with the terms of this

Agreement within ten (10) days after such payment shall become due and payable, interest at the rate of one and one-half percent (1 1/2%) per month or a fraction thereof on the unpaid balance shall accrue against the delinquent payment from the date due until the date payment is received by Middleton. Notwithstanding the foregoing, Middleton shall be permitted to terminate this Agreement for default in the payment of any of the any fee or payment due and payable to Middleton in accordance with the terms of this Agreement, or from enforcing any other provisions contained herein or implied by law.

- (e) Independent Covenant. Operator shall not, for any reason, withhold or reduce Operator's required payments provided in this Agreement, it being expressly understood and agreed by the parties that the payments described herein are a covenant by Operator that is independent from the other covenants of the parties hereunder.

4. Services. In accordance with the minimum standards for fixed base operators at the Airport, Operator agrees to provide, and Middleton hereby grants Operator, the right to engage in and shall furnish the following aeronautical activities and services:

- (a) Aircraft fueling and de-icing;
- (b) Aircraft guidance, parking and tie-down;
- (c) Line service and aircraft maintenance;
- (d) Charter service;
- (e) Pilot and passenger facilities;
- (f) Flight planning and information services;
- (g) Flight instruction;
- (h) Removal of and assistance to disabled aircraft;
- (i) Providing pilots to operate planes for others and carry passengers and freight for hire; and
- (j) Aircraft rental.

If, at any time during the term of this Agreement, Operator is unable to provide the above-mentioned aeronautical activities and services, Operator shall immediately provide written notice to the Middleton City Clerk, explaining the circumstances, including Operator's plan to remedy the deficiency. If Operator fails to remedy the deficiency within a

period of three (3) continuous months following the provision of such notice to the City, Operator shall be considered to be in default of the terms and conditions of this Agreement.

5. **Appurtenant Privileges.**

- (a) **Public Areas.** Operator shall be entitled, in common with others so authorized, to the use of all facilities and improvements of a public nature which now are or may hereafter be constructed on or appurtenant to the Airport, including the use of landing areas, runways, taxi ways, navigational aids and aircraft parking areas as designated by Middleton. Operator's permitted use of any of these areas shall be at the discretion of Middleton and subject to change to facilitate the general development and operations, or both, of the Airport and to comply with FAA or other regulatory agency directives.
- (b) Middleton reserves the right to take any action it considers necessary to protect the airspace and approaches of the Airport against obstruction, together with the right to prevent Operator from erecting, or permitting to be erected or located, any light fixture, building, object or structure on the Leased Premises described in Section 1(a) or adjacent to the Airport which, in the opinion of Middleton, would limit the usefulness of the Airport or constitute a hazard to aircraft.

6. **Operating Standards.**

- (a) **Minimum Standards for Aeronautical Services.** The minimum standards, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, shall constitute the minimum operating standards to be met by Operator in order to conduct any aeronautical activity or endeavor at the Airport. Operator agrees that all aeronautical activities authorized under this Agreement and engaged in by Operator shall be performed in accordance with the said minimum standards, including such amendments thereto as may be adopted by Middleton from time to time.
- (b) **Standard Requirements for All Services.** In providing any of the required services or activities specified herein, Operator shall operate for the use and benefit of the public, and shall meet or exceed the following standards:
 - (1) Operator shall furnish service on a fair, reasonable and not unjustly discriminatory basis to all users of the Airport. Operator shall furnish good, prompt and efficient service adequate to meet all reasonable demands for the services at the Airport.

- (2) Operator shall charge fair, reasonable and nondiscriminatory prices for each unit of sale or service; provided, however, that Operator may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.
- (c) Operator shall select and appoint a full-time manager for its operations at the Airport.
 - (1) The manager shall be qualified in experience and vested with full power and authority to act in the name of Operator with respect to the method, manner and conduct of the operation of the fixed base operation services to be provided by Operator. The manager shall be available at the Airport during regular business hours. In the manager's absence, a duly authorized and experienced subordinate shall be in charge and available at the airport.
 - (2) The current manager for the Airport operations of Operator shall be Richard Morey. Any designation by Operator of a different individual to act as manager shall be subject to Middleton's approval.
- (d) Operator shall control the conduct, demeanor and appearance of its employees, agents, vendors and contractors, who shall be trained by Operator and shall possess such technical qualifications and hold such certificates or qualifications, or both, as may be required in carrying out assigned duties. It shall be Operator's responsibility to maintain close supervision over its employees and contractors to assure a high standard of service to Operator's customers.
- (e) Operator shall comply with all Federal, State and local laws, as well as standards set forth in the Airport plan, standards and regulations which may apply to the conduct of Operator's business, and as may be amended from time to time, including rules and regulations promulgated by Middleton. Operator shall keep in effect and post in a prominent place all necessary and/or required licenses, certificates and permits.
- (f) It is expressly understood and agreed that, in providing the services required under this Agreement, Operator shall have the exclusive right to choose, at its sole discretion, its vendors and suppliers.
- (g) Operator shall have the right, at its expense, to place in or on the Leased Premises described in Section 1(a) one or more signs identifying Operator. Such signs shall conform to Middleton's Sign Ordinance, and shall be of a size, shape and design and at one or more locations approved by Middleton.

Middleton's approval shall not be unreasonably withheld. At the termination of this Agreement, Operator shall remove, at its expense, all lettering, signs and placards erected on the Leased Premises.

- (h) It is not the intent of this Agreement to grant Operator the exclusive right to provide any or all of the services described herein at any time during the term of this Agreement. Nothing herein shall preclude Middleton from granting to others certain rights and privileges at the Airport which are similar in part or in whole to those granted to Operator. However, Middleton does covenant and agree that it shall enforce, without discrimination or partiality, all minimum standards or requirements for all aeronautical endeavors and activities conducted at the Airport, and will not allow the conduct of any commercial aeronautical endeavor or activity at the Airport by any person or firm except under an Agreement approved by Middleton.
- (i) Operator shall not contract out to a third party the performance of any of the aeronautical activities or services required under the Agreement or engage in any business or activity at the Airport other than those specifically authorized under this Agreement, unless otherwise approved, in writing, by Middleton.
- (j) Operator shall submit to Middleton the prescribed State gasoline forms showing deliveries to Operator and sales by Operator. Such form shall be submitted by the twentieth (20th) day of the month following the month of account. Middleton may require Operator to submit for examination any other forms evidencing fuel transactions between Operator and any third party.

7. **Maintenance and Repair.** Operator agrees to maintain in a first class condition and in a good state of repair, normal wear and tear excepted, at all times, the Leased Premises described in Section 1(a). So long as Middleton does not contract with any other fixed base operator, Operator shall also maintain, in a first class condition and in a good state of repair, normal wear and tear excepted, at all times, all other grounds and public facilities at the Airport, whether owned by Operator or Middleton, including all interior, exterior, custodial responsibilities and snow removal, except as specified in Section 7(d) of this Agreement. Middleton shall be the sole judge of the quality and sufficiency of Operator's maintenance and repairs. For purposes of this Agreement, interior, exterior, custodial responsibilities and snow removal are defined as follows:

- (a) "Interior Maintenance." The maintenance and keeping in good repair of all items such as the interior walls and ceilings, painting, repairs or alterations of plumbing, doors, window or door glass, electrical fixtures, air conditioning, water fixtures, locking devices and all other fixtures, janitorial services such as sweeping, dusting, mopping and waxing floors, relamping, interior and

exterior washing of windows, and the arrangement for sanitary removal of solid waste from the property.

- (b) “Exterior Maintenance.” The maintenance and keeping in good repair of all items such as fences, building doors, painting, siding, roof, gutters and downspouts, trimming of the grounds and landscaping of the lands appurtenant to buildings and keeping the grounds, including drainage ditches and all paved areas, in a neat and serviceable condition. Operator shall be responsible for patrolling the grounds and apron surfaces adjacent to the FBO operation in the vicinity of the fuel farm and removing any solid waste. This shall include the general responsibility for keeping all operational areas around any hangars and terminal buildings and fuel farm in a clean and orderly condition at all times.
- (c) “Custodial Responsibilities.” The cleaning and custodial maintenance of the lands described in Section 1(a) (and, in the absence of any other Agreements by Middleton with other fixed base operators, all other public portions of the Airport), including common hallways, public restrooms, ramp areas, parking lots, and runways, including snow removal, except as specified in Section 7(d) of this Agreement. Operator shall be responsible for all snow removal within ten (10) feet of terminal building and hangar doors, the fuel farm area and all parking lots and pedestrian walkways.
- (d) “Prairie Maintenance.” Middleton shall be responsible for maintenance of the portion of the Airport designated for prairie restoration outside the limits of the Leased Premises described in Section 1(a). Operator understands that Middleton’s primary maintenance action for the prairie area shall be annual controlled burning and/or mowing of the prairie area. Middleton shall notify Operator prior to any scheduled burning of the prairie area.

8. **Personal Property.** Any personal property of Operator or others placed at the Leased Premises described in Exhibit “A” shall be at the sole risk of Operator or the owners thereof, and Middleton shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage. Operator hereby releases Middleton, for itself and any of its insurers, and waives all rights of subrogation or recovery for such damage, destruction or loss.

9. **Assignment.** Operator shall not assign this Agreement, in whole or in part, without prior written consent from Middleton, which consent shall not be unreasonably withheld. No request for, or consent to, such assignment shall be considered unless Operator shall have paid all outstanding fees and charges which have accrued in favor of Middleton and shall have otherwise met all other legal obligations to be performed, kept and observed by it under the terms and conditions of this Agreement, or as it may be subsequently amended. Operator shall provide Middleton, at the time notice is given of any proposed

assignment, with whatever information Middleton shall request concerning the identity, background, financial responsibility and other qualifications of the entity involved in any such proposed transfer. Operator acknowledges that Middleton cannot and will not act upon any request for approval of any such proposed transfer unless and until complete and accurate information is supplied regarding the proposed transferee.

10. **Insurance.**

- (a) **Liability Insurance.** In order to protect itself and Middleton, as well as Middleton's officers, Boards, Commissions, employees and agents under the indemnity provisions of Section 11 of this Agreement, Operator shall at all times during the terms of this Agreement keep in full force and effect comprehensive general liability insurance issued by one or more companies authorized to do business in the State of Wisconsin with liability limits provided for therein in the amount of at least \$5,000,000 combined single limit.
- (1) Any such insurance shall apply as primary coverage.
 - (2) Middleton shall receive no less than fifteen (15) days' advance notice of cancellation or non-renewal of any such insurance policy.
 - (3) Upon execution of this Agreement, Operator shall furnish Middleton with a Certificate of Insurance listing Middleton and its Airport Commission, officers, agents and employees as additional named insureds and, upon request, certified copies of the required insurance policy.
 - (4) If Operator's insurance is underwritten on a claims made basis, the retroactive date shall be prior to or coincide with the date of this Agreement, and this information shall be provided in the Certificate of Insurance.
 - (5) Operator shall maintain such coverage for the duration of this Agreement and, if coverage is underwritten on a claims made basis, for two years following termination of this Agreement.
 - (6) Operator shall furnish Middleton, annually on the policy renewal date, with similar Certificates of Insurance as evidence of coverage.
 - (7) On claims made policies, the parties agree that either Operator or Middleton may invoke the tail option, if available, for two years following termination of this Agreement, on behalf of both parties, and

that the extended reporting period premium shall be paid by Operator. This provision shall not apply in the event that Operator's coverage is underwritten on an occurrence basis.

- (8) Middleton reserves the right to increase the minimum liability insurance set forth herein when, in Middleton's opinion, the risks attendant to Operator's operations hereunder have increased.
- (b) Fire and Extended Coverage Insurance. Operator shall, at all times during the term of this Agreement, keep or cause all improvements on the Leased Premises described in Section 1(a) to be kept fully insured, for all risks of direct physical loss with insurers authorized to do business in Wisconsin. Operator agrees to cause an inspection of the improvements to be made by the company or companies providing this insurance at least every five years and to increase the insurance coverage, if necessary, so that the full insurable value of the improvements is at all times fully covered. Operator shall furnish Middleton with copies of the above inspection reports when received by Operator, and with Certificates of Insurance as policies are acquired by Operator.
- (c) Cancellation. The cancellation or other termination of any insurance policy issued in compliance with this section shall automatically terminate this Agreement, unless another policy has been filed and approved pursuant to this section and shall be in full force and effect at the time of such cancellation or termination.

11. Indemnification. Operator agrees to protect, defend, reimburse, indemnify and hold Middleton, as well as its Airport Commission, agents, employees and elected officers, and each of them, free and harmless at all times from and against any and all claims, liabilities, expenses, losses, costs, fines and damages (including reasonable attorneys' fees) and causes of action of every kind and character against and from Middleton by reason of any:

- (a) damage to property or the environment, including any contamination of airport property such as the soil or storm water by fuels and other petroleum products, chemicals or other substances deemed by the Federal Environmental Protection Agency to be environmental contaminants at the time this Agreement is executed or may be redefined by the appropriate regulatory agencies in the future; or
- (b) bodily injury (including death) incurred or sustained by any party hereto, arising out of or incident to or in connection with Operator's performance

under this Agreement, Operator's use or occupancy of the improvements located on the Leased Premises described in Section 1(a); or

- (c) acts, omissions or operations hereunder or the performance, nonperformance or purported performance of Operator or any breach of the terms of this Agreement.

Operator recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges that it is an express condition of this Agreement. This section shall survive the termination of this Agreement and shall remain in full force and effect with respect to any and all claims, liabilities, expenses, losses, costs, fines and damages (including reasonable attorneys' fees) and causes of action of every kind and character set forth herein. Compliance with the insurance requirements set forth in Section 10 shall not relieve Operator of its liability or obligation to indemnify Middleton as set forth herein.

12. **Default.**

- (a) The occurrence of any of the following events shall constitute a default under this Agreement:
 - (1) Operator's failure to make any payment due hereunder for a period of ten (10) days after written notice by Middleton.
 - (2) Operator's failure to observe, keep or perform any of the other terms, covenants, agreements or conditions of this Agreement or in the Airport Operating Rules and Regulations for a period of ten (10) days after written notice by Middleton.
 - (3) The filing by or against Operator of any proceedings seeking the benefit of any bankruptcy, reorganization or insolvency law, or Operator making an assignment for the benefit of creditors, or a receiver or a trustee being appointed for Operator or a substantial portion of Operator's assets.
 - (4) Operator vacating or abandoning the airport.
 - (5) Operator's interest under this Agreement being sold, without the prior written consent of Middleton, as provided in Section 9 above.
 - (6) Operator's interest under this Agreement being sold under execution or other legal process.

- (7) Operator's interest under this Agreement being modified by any unauthorized assignment or by operation of law.
 - (8) Operator's failure to cooperate with any environmental laws, programs or audits promulgated by any applicable regulatory agency as the same may be revised from time to time.
 - (9) Change of control of Operator without Middleton's prior written consent.
 - (10) Cancellation or termination of any insurance policy required by this Agreement unless a replacement policy is acquired at or prior to the effective date of the terminated policy, pursuant to Section 10.
- (b) In the event that any of the foregoing acts of default occurs, Middleton may, at its election, declare this Agreement to be terminated and null and void, whereupon all rights of Operator to continue its operations shall end. This declaration shall not be deemed to preclude the exercise of any other action otherwise provided by statute or general law at any time.

13. **Rights Reserved to Middleton.** The rights and privileges granted to Operator under this Agreement are subject to the following reservations and conditions:

- (a) **Adverse Use.** Middleton expressly reserves the right to prevent any use of the property which would interfere with or adversely affect the operation and maintenance of the Airport, or otherwise constitute an airport hazard.
- (b) **Improvements.** Middleton reserves the right to further develop or improve the Airport and all publicly owned air navigation facilities of the Airport as it sees fit, regardless of the views or desires of Operator, and without interference or hindrance.
- (c) **Tie-downs.** Middleton shall have the right to add tie-down locations for aircraft. Operator shall act as agent for Middleton in collecting tie-down fees for Middleton.
- (d) **Ramps.** Ramp space shall be used on a non-exclusive basis by Operator, and Operator agrees to manage and operate ramp space as Middleton's agent.
- (e) **Utilities.** Middleton shall have the right, without cost to Operator, to install and maintain in, on or across the Leased Premises described in Section 1(a) sewer, water, gas, electric, steam and telephone lines and streets or other installations necessary to the operations of the Airport, or to service other

users of the Airport; provided, however, that Middleton shall carry out all such work and locate any above-ground structures in a manner so as not to unreasonably interfere with Operator's activities.

14. **Right of Entry**. Middleton, through its City Administrator, shall have the right at any time to request from Operator the right to be provided entry to the Leased Premises described in Section 1(a) for the purposes and to the extent necessary to protect Middleton's rights and interest and to confirm Operator's compliance with the terms of this Agreement.

15. **Right of Flight**. Middleton reserves unto itself, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing at, taking off from or operating on the airport.

16. **Operator's Rights**. Operator shall have the following rights:

- (a) In common with others so authorized, to use common areas of the Airport, including runways, taxi ways, aprons, roadways, flood lights, landing lights, signals and other conveniences for the take-off, flying and landing of aircraft.
- (b) In common with others, the non-exclusive use of the Airport parking areas, appurtenances and improvements thereon, but this shall not restrict the right of Middleton to charge visitors a fee for the use of such areas.
- (c) To install, operate, maintain, repair and store, subject to approval of Middleton, in the interests of safety and convenience of all concerned, all equipment necessary for the conduct of Operator's business.
- (d) To have access to and from the Leased Premises described in Section 1(a), limited to streets, driveways or sidewalks designed for such purposes by Middleton, and which right shall extend to Operator's employees, passengers, guests, invitees and patrons.
- (e) To sell gasoline, oil and other lubricants in and on the premises, to maintain and operate full aircraft servicing facilities, sell aircraft, engines, accessories and parts (and to provide storage space for aircraft), a repair shop for the repairing and servicing of aircraft engines, instruments, propellers and accessories in connection with Operator's business. The right to conduct these activities shall apply to aircraft owned by other persons as well as aircraft belonging to Operator.

- (f) To give flying instructions, to provide pilots for operating aircraft owned by others, and to carry passengers and freight for hire, subject to all appropriate laws of the Federal and State governments, the Middleton ordinances, and the requirements of the FAA and the Wisconsin Department of Transportation or any other duly authorized governmental agency.

17. **Non-Exclusive Rights.** Operator shall have the right and privilege of engaging in and conducting the businesses previously described on the Airport premises under the terms and conditions set forth in this Agreement; provided, however, that this Agreement shall not be construed in any manner to grant Operator or those claiming under Operator the exclusive right to the use of the airport premises and facilities of Middleton Municipal Airport—Morey Field other than those premises under Operator’s exclusive control.

18. **Aircraft Service by Other Owners or Operators.** It is clearly understood by Operator that no right or privilege has been granted which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees (including, but not limited to, maintenance and repair) that it may choose to perform.

19. **Hours of Operation.** Operator agrees to maintain operations during scheduled hours, normally eight (8) hours per day. This schedule shall be filed with and approved by the Middleton Airport Commission. Hours of operation shall not be reduced below the stated minimum without written consent of the Middleton Airport Commission, except during any period when the Airport is closed by any lawful authority restricting the use in such a manner as to interfere with use by Operator in its business operations.

20. **Financial Disclosure.** Operator shall furnish such evidence as may be reasonably requested by Middleton to show that Operator is financially capable of providing the services set forth in this Agreement.

- (a) **Books and Records.** Operator shall keep, for a period of at least seven years following the end of each calendar year during the term of this Agreement, all books of account and records of fuel delivery receipts, fuel flowage receipts and accounts receivable and Adjusted Gross Sales prepared in accordance with Generally Accepted Accounting Principles. All of Operator’s books and records in relation to this Agreement shall be open for inspection by authorized representatives of Middleton upon request and at reasonable times during business hours, and such information shall be held in strict confidentiality against unauthorized disclosure.
- (b) **Disclosure of Existing Records.** Within one hundred twenty (120) days after execution of this Agreement by the parties, Operator shall furnish to

Middleton its annual books of account, records of fuel delivery receipts, fuel flowage receipts, accounts receivable and Adjusted Gross Sales for the year 2011. All such records shall be furnished and prepared in accordance with generally accepted accounting principles. In the event such accounting records are unavailable, Operator shall furnish its corporate income tax returns for the year 2011. Middleton shall have the right to request further financial information about the said accounting records. All information furnished by Operator to Middleton pursuant to this subparagraph shall be held in strict confidentiality against unauthorized disclosure.

- (c) Annual Statement. Within one hundred twenty (120) days after the end of each calendar year, Operator shall furnish to Middleton a statement of fuel sales and Adjusted Gross Sales generated during the preceding fiscal year, certified by an officer of Operator as to its correctness. Middleton reserves the right to audit said statements and Operator's books and records, including examination of the general ledger and all other supporting material, at any reasonable time during business hours, for the purpose of verifying the reported fuel sales and Adjusted Gross Sales.

If an audit establishes that Operator has underestimated or overstated fuel sales or Adjusted Gross Sales by five percent (5%) or more, the entire expense of said audit shall be borne by Operator. Any additional payment due from Operator shall be paid forthwith to Middleton, with interest thereon at the rate of one and one-half percent (1.5%) per month from the date such amount originally became payable to Middleton. Any overpayment by Operator shall be refunded by Middleton.

- (d) Disputes. In the event that any dispute may arise as to fuel sales or Adjusted Gross Sales, the amount claimed due by Middleton shall be paid forthwith and the dispute shall be submitted to a certified public accountant, agreeable to both parties, who shall determine the rights of the parties hereunder in conformity with Generally Accepted Accounting Principles. The fees due to said accountant for such services shall be paid by the unsuccessful party or, in the event the determination is partially in favor of each party, the accountant's fee shall be prorated between the parties in accordance with the percentage of the discrepancy attributable to each party.

21. **Property Rights Reserved.** This Agreement shall be subject to and subordinate to the provision of any existing or future Agreement between Middleton and the United States of America, the State of Wisconsin, or any of their agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the

Airport, and to any terms and conditions imposed upon Middleton by any other governmental entity.

22. **Compliance With Laws, Regulations, Ordinances and Rules.** Operator shall at all times comply with applicable Federal, State and local laws and regulations, Airport rules and regulations, all applicable health rules and regulations and other mandates, whether existing or as promulgated from time to time by the Federal, State or any local government, or airport management, including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters relating to the operation of the Airport. This shall include, but not be limited to, Operator precluding its employees, agents, customers or invitees from entering upon any restricted area at the Airport as noted in §§ 107 and 108 of the Federal Aviation Regulations.

23. **Environmental Regulations.** Operator hereby expressly warrants, guarantees and represents to Middleton that:

- (a) Operator shall, acting in good faith and to the best of its ability, familiarize itself with all Federal, State, regional and local governmental laws, ordinances, regulations, orders and rules, without limitation, which govern or which in any way apply to the direct or indirect results and impacts to the environment and natural resources due to, or in any way resulting from, the conduct of Operator of its operations. Operator agrees to keep informed of and comply with future changes in environmental laws, regulations and ordinances.
- (b) With respect to its operations and activities, Operator shall assume and accept full responsibility and liability for compliance with all applicable Federal, State and local laws, regulations and ordinances protecting the environment and natural resources and all rules and regulations promulgated or adopted in accordance with these rules from time to time.
- (c) Prior to commencement of any operations under this Agreement, Operator shall secure any and all permits and properly make all necessary notifications as may be required by and to all governmental agencies having jurisdiction over any portion of the subject matter hereof.
- (d) Operator, as well as its employees, agents, contractors and all persons working for or on behalf of Operator, shall be fully and properly trained in the handling and storage of all hazardous and toxic waste materials and other pollutants and contaminants involved in its operations.
- (e) Operator shall supply Middleton with satisfactory evidence of all such required permits and notifications.

- (f) Operator shall cooperate with any investigation, audit or inquiry by Middleton or any governmental agency regarding possible violation of any environmental law or regulation. If Middleton conducts an investigation, audit or inquiry, and the results of such action show that Operator is in compliance with applicable Federal, State and local laws, regulations, ordinances, rulings, orders and standards, the cost of such investigation, audit, or inquiry shall be reimbursed to Operator.
- (g) If Operator is deemed to be a generator of hazardous waste, as defined by Federal or State law, Operator shall obtain an EPA identification number and the appropriate generator permit and shall comply with all Federal, State and local requirements imposed upon a generator of hazardous waste, including, but not limited to, insuring that the appropriate transportation and disposal of such materials are conducted in full compliance with the law.
- (h) Operator shall provide an accurate inventory list (including quantities) of any hazardous, toxic or other contaminated or polluted material in its possession, whether stored, disposed of or recycled, available at all times for inspection by Middleton inspectors or Fire Department officials having jurisdiction for implementation of proper storage, handling or disposal procedures.
- (i) Any notice of violation or similar enforcement action or notice of noncompliance received by Operator shall be provided to Middleton within 24 hours of receipt by Operator or its agent.

24. **Storage Tanks.** Operator shall comply with all Federal, State and local regulations concerning the installation, operation, maintenance and inspection of both above ground and underground storage tanks, including financial responsibility requirements.

25. **Change of Corporate Control.** Operator represents that the ownership and power to vote Operator's entire outstanding stock belongs to and is vested in the officer or officers executing this Agreement or members of their immediate families. If any change in the ownership of and/or power to vote the majority of the outstanding capital stock of Operator shall occur, whether such change of ownership is by sale, assignment, bequest, inheritance, operation of law or otherwise, without the prior written consent of Middleton, then Middleton shall have the option to terminate this Agreement upon 30 days' prior written notice to Operator. In addition, Operator shall have an affirmative obligation to notify Middleton immediately of any such change.

26. **Americans With Disabilities Act.** Operator shall comply with the Americans With Disabilities Act, 42 U.S.C. § 1210, as well as the regulations implementing the Act, and the Wisconsin Fair Employment Law, Wis. Stats. Chap. 111, subch. II.

27. **Relationship of Parties.** Operator is, and shall be deemed to be, an independent contractor responsible to all parties for its respective acts and omissions, and Middleton shall in no way be responsible therefor.

28. **Severability.** The invalidity of any portion, article, paragraph or provision of this Agreement shall not have any effect upon the validity of any other part or portion thereof.

29. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

30. **Amendments.** All actions seeking amendment of this Agreement shall be in writing approved by both parties. The Middleton Airport Commission shall be charged with jurisdiction to review any requests to amend this Agreement.

31. **Notices.** All notices to either of the parties shall be deemed validly given upon deposit in the United States Mail, certified, with proper postage and certified fee prepaid, addressed as follows:

To Middleton:
Attention: City Administrator
City of Middleton
7426 Hubbard Avenue
Middleton, WI 53562

To Operator:
Richard Morey, President
Morey Airplane Co., Inc.
8300 Airport Road
Middleton, WI 53562

32. **Binding Effect.** The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, as well as their respective heirs, successors and assigns.

CITY OF MIDDLETON

MOREY AIRPLANE CO., INC.

By: _____
Kurt J. Sonnentag, Mayor

By: _____
Richard Morey, President

ATTEST:

By: _____
Lorie J. Burns, City Clerk

By: _____
Name/Title: _____