

## **RELEASE AND WAIVER**

This Release and Waiver (the "Waiver") is made and entered into by \_\_\_\_\_ (the "Member").

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### **RECITALS**

A. Michiana Air Activities, Inc., an Indiana nonprofit corporation ("MAA"), is a private, nonprofit flying club that owns and/or leases certain equipment, facilities, materials, resources, and other property, including, without limitation, aircraft, tugs, tools, hangars, handbooks, guides, manuals, policies, procedures, logs, weight and balance data and spreadsheets, aircraft materials, reference materials, training materials, software programs, written and electronic resources, and other real and/or personal property (collectively, the "Property");

B. MAA allows its members to rent, operate, and use the Property, subject to and in accordance with MAA's rules, policies, and procedures; and

C. As a condition of renting, operating, and using the Property, MAA has required, and the Member has agreed, to execute this Waiver, which shall be fully applicable to and govern any rental, operation, and use of the Property by the Member.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the rental, operation, and use of the Property by the Member, as well as the covenants, waivers, releases, and agreements contained in this Waiver, the Member hereby covenants and agrees as follows:

1. **Acknowledgement of Risks.** The Member understands, acknowledges, accepts, and agrees that his or her rental, operation, and use of the Property exposes the Member to risks of death, personal injury, loss of property, damage to property, and other losses, injuries, and damages.

2. **Compliance with Legal Requirements.** The Member may rent, operate, and use the Property, as a privilege of his or her membership in MAA, and subject to the rules, policies, and procedures of MAA, as may be modified or amended from time to time; provided, however, that the Member shall at all times remain responsible to obtain all training and experience that are necessary for the safe rental, operation, and use of the Property, as well as for ensuring the possession and retention of all necessary certificates, licenses, and ratings. In addition, the Member shall, at all times, ensure that the Member's rental, operation, and use of the Property fully complies with and adheres to any and all applicable laws, regulations, and legal requirements, including, without limitation, under any applicable Federal Aviation Regulations (FARs), as well as any and all privileges and limitations applicable to the Member's certificates, licenses, and ratings.

3. **Inspection and Use of Property.** The Member shall be responsible for the proper inspection, operation, and use of the Property. The Member further acknowledges, accepts, and agrees that he or she shall be responsible for ensuring that the Property is in a condition that is safe and fit for the Member's rental, operation, and use, as well as for determining that the Property will remain in a safe and fit condition throughout the duration of any rental, operation, or use.

4. **Disclaimer of Representations and Warranties.** THE MEMBER HEREBY ACKNOWLEDGES, ACCEPTS, AND AGREES THAT MAA (A) MAKES NO REPRESENTATIONS OR WARRANTIES AS TO, AND ASSUMES NO RESPONSIBILITY FOR, THE CONDITION OF THE PROPERTY, WHICH SAID RESPONSIBILITY SHALL AT ALL TIMES REMAIN WITH THE MEMBER, AND (B) EXPRESSLY DISCLAIMS AND NEGATES ANY AND ALL WARRANTIES OF EVERY KIND AND NATURE, BOTH EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. **Release and Covenant Not to Sue.** The Member, for himself or herself, and for his or her heirs, executors, administrators, representatives, and assigns, hereby irrevocably waives, releases, and discharges MAA and its directors, officers, representatives, employees, agents, successors, and assigns (collectively, the “Released Parties”), jointly and severally, from, and irrevocably covenants not to sue any of the Released Parties for, any claims, demands, losses, injuries, damages, actions, causes of actions, and liabilities of every kind and nature whatsoever, sustained or incurred by reason of personal injury, death, loss of personal property, damage to personal property, or otherwise, whether known or unknown, accrued or contingent, or foreseen or unforeseen, and whether arising by common law, contract, statute, or otherwise, that arise or result in whole or in part from, or otherwise relate in any way to, the Member’s rental, operation, or use of the Property, including, without limitation, any claims, demands, injuries, losses, damages, actions, causes of actions, and liabilities that arise or result in whole or in part from, or relate in any way to, the carelessness, negligence, or misfeasance of any of the Released Parties.

6. **Assumption of Risk.** By executing this Waiver, the Member expressly, fully, and voluntarily assumes all risks of death, personal injury, loss of property, damage to property, and other losses, injuries, and damages that may arise or result from, or in way relate to, the Member’s rental, operation, or use of the Property. The Member further acknowledges, accepts, and agrees that included in the risks assumed is the risk of active or passive carelessness, negligence, or misfeasance on the part of one or more of the Released Parties that may directly or indirectly affect or impair the Member’s rental, operation, or use of the Property, as well as all other risks, dangers, and uncertainties that are inherent in or may be encountered during the rental, operation, or use of the Property. By executing this Waiver, the Member expressly, fully, and voluntarily assumes these risks, dangers, and uncertainties even though, as a result of the Released Parties’ carelessness, negligence, or misfeasance, the Member may suffer death, personal injury, loss of property, damage to property, and/or other losses, injuries, and damages.

7. **Attorney Consultation; No Reliance on Other Statements.** The Member hereby represents, acknowledges, and agrees that he or she relies fully upon his or her own judgment and discretion and the advice of his or her own attorney, if any, in choosing to execute this Waiver, and that the Member has not relied, and does not rely, upon any representations or advice from the Released Parties or any other persons, representatives, or attorneys acting for or on behalf of any of the Released Parties.

8. **Sufficiency of Consideration.** The Member acknowledges and agrees that full and sufficient consideration exists for his or her execution of this Waiver, and the Member waives any defense that he or she may have or claim for lack, failure, want, or inadequacy of consideration.

9. **Choice of Law; Exclusive Venue.** The laws of the State of Indiana (without regard for its choice or conflicts of law provisions) shall govern the validity of this Waiver, as well as the construction and interpretation of its terms. The Member further agrees that the exclusive venue for any suits, actions, or proceedings arising out of or relating to this Waiver shall be the state courts located in the County of Elkhart, State of Indiana, or the United States District Court for the Northern District of Indiana, South Bend Division. The Member hereby consents and submits to the exclusive jurisdiction of such courts and

hereby waives any right to transfer or change venue or to claim any such proceeding has been brought in an improper or inconvenient forum.

10. **Attorneys' Fees.** In the event that any of the Released Parties prevail in any action or other legal proceeding arising out of or relating to this Waiver, then the Member shall pay, in addition to all other sums that the Member may be liable to pay, a reasonable sum for the Released Parties' attorneys' fees, costs, and expenses incurred in connection with such action or other legal proceeding.

11. **Miscellaneous.** If any term, covenant, paragraph, clause, condition, or provision of this Waiver is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Waiver shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby, and this Waiver shall be construed as if such invalid, void, or unenforceable provisions were omitted. This Waiver sets forth the entire agreement and understanding between the Member and the Released Parties relating to the subject matter of this Waiver, and this Waiver fully supersedes any and all prior and contemporaneous oral, written, or implied agreements or understandings between the Member and the Released Parties relating to the subject matter of this Waiver. The Member further acknowledges and agrees that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Waiver. This Waiver may be executed by original, electronic, or facsimile signature. No changes or modifications to this Waiver, nor any waiver of any provision of this Waiver, shall be valid unless in writing and signed by the Member and the President of MAA. This Waiver shall be binding upon the Member and his or her heirs, executors, administrators, representatives, and assigns, and this Waiver shall inure to the benefit of the Released Parties.

**IN WITNESS WHEREOF**, the Member has executed this Release and Waiver, effective as of the date indicated immediately beneath his or her signature below.

**MEMBER:**

\_\_\_\_\_

Printed: \_\_\_\_\_

Date: \_\_\_\_\_