

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
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ONE AVIATION CORPORATION, <i>et al.</i> , <sup>1</sup>	:	Case No. 18-12309 (CSS)
	:	
Debtors.	:	Jointly Administered
	:	
	:	<b>Obj. Deadline: To Be Determined</b>
	X	<b>Hearing Date: To Be Determined</b>

**DEBTORS' MOTION FOR ENTRY OF: (A) ORDER (I) APPROVING FORM AND MANNER OF NOTICE IN CONNECTION WITH SALE OF ASSETS OF THE DEBTORS, (II) SCHEDULING SALE HEARING, (III) APPROVING BID PROTECTIONS, (IV) AUTHORIZING PROCEDURES GOVERNING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (V) GRANTING RELATED RELIEF; AND (B) ORDER (I) APPROVING PURCHASE AGREEMENT, (II) AUTHORIZING SALE FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (III) GRANTING RELATED RELIEF**

ONE Aviation Corporation and its affiliated debtors as debtors in possession in the above-captioned cases (collectively, the "Debtors") submit this motion (this "Motion") for entry of:

- (a) an order, in substantially the form attached hereto as **Exhibit A** (the "Sale Procedures and Scheduling Order"):
- i. approving procedures in connection with the sale (the "Sale") to the Buyer (as defined in the Purchase Agreement, defined below) of the "Seller Assets," which are all or substantially all of the assets of the Debtors as described in the Asset Purchase Agreement (the "Purchase Agreement," a copy of which is attached

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The debtors' corporate headquarters is located at 3520 Spirit Drive SE, Albuquerque, NM 87106.

hereto as **Exhibit B**)<sup>2</sup> and defined as the “Purchased Assets” in such agreement, between the Debtors, as the Sellers, and the Buyer (the “Buyer”);

- ii. scheduling the hearing to approve a sale of the Seller Assets (the “Sale Hearing”);
- iii. approving the form and manner of notice of the proposed sale transactions and the Sale Hearing;
- iv. approving the Bid Protections (defined below);
- v. authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “Assigned Contracts”) by the Buyer; and
- vi. granting related relief.

(b) an order to be filed with the Court in the Chapter 11 Cases (as defined below) and served on the entities receiving this Motion to consummate the sale contemplated by the Purchase Agreement or as may be modified to consummate a transaction on account of a higher or otherwise better offer (the “Sale Order”)<sup>3</sup>:

- i. approving the Purchase Agreement;
- ii. authorizing, at Closing, the sale of the Seller Assets and the assumption and assignment of the Assigned Contracts to the Buyer free and clear of all liens, claims, encumbrances, and other interests (collectively, “Liens”), other than any Permitted Encumbrances as set forth in the Purchase Agreement; and
- iii. granting related relief.

In support of this Motion, the Debtors rely upon and incorporate herein by reference the First Day Declaration (as defined below) and the *Declaration of James Patrick Carroll in Support of the Debtors’ Additional DIP Financing and Sale Motions and Motion to Shorten* (the “Carroll Declaration”) filed concurrently herewith. In further support of this Motion, the Debtors respectfully represent as follows:

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<sup>2</sup> Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Purchase Agreement.

<sup>3</sup> The form of Sale Order will be filed as soon as practicable with the Court before the Sale Hearing.

### **PRELIMINARY STATEMENT**

1. The Debtors have reached a critical turning point in these chapter 11 cases. Despite the Debtors' and their advisors' considerable efforts in successfully obtaining confirmation of the Plan (defined below) on a largely consensual basis, the Debtors' efforts to consummate the transactions set forth in the Plan have been consistently thwarted by Citiking International US LLC ("Citiking" or the "Existing DIP Lender"), the Debtors' prepetition lender, existing DIP lender, and plan sponsor. Citiking has persistently refused to fulfill its obligations under the confirmed Plan required to bring the Plan effective. As a direct result of Citiking's continual recalcitrance, the Debtors' financial stability has been compromised. Absent the relief requested herein and in the Senior DIP Motion,<sup>4</sup> the Debtors will not only be unable to achieve Plan effectiveness but will be unable to meet operating obligations in the very near term, including payroll obligations after September 4, 2020.

2. To avoid these catastrophic results, and to preserve the value of the Debtors' estates and the compromises embodied in the confirmed Plan, the Debtors and their advisors have actively sought out any possible alternatives that could allow them to proceed with a restructuring transaction without Citiking's cooperation. These efforts yielded only one viable alternative, namely the sale of the Debtors' assets to the Buyer pursuant to the Purchase Agreement and the Debtors' entry into the Senior DIP Facility (as defined in the Senior DIP Motion) to provide critical short-term funding through the closing of the sale. The Debtors believe that entry into this sale transaction, and the funding provided by the Senior DIP Facility, is currently the only viable option for preserving the value of the Debtors' estates and the

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<sup>4</sup> "Senior DIP Motion" means the *Debtors' Emergency Motion for Entry of a Final Order (I) Authorizing the Debtors to (A) Obtain Additional Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying Existing Final DIP Financing Order, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* filed contemporaneously herewith.

recoveries for the Debtors' creditors as set forth in the Plan. The Debtors have reached this conclusion based upon, among other things, the Debtors' extensive pre- and post-petition marketing processes, which yielded no other viable offers, and the current depressed economic environment caused by the novel coronavirus pandemic ("COVID-19"). Accordingly, the Debtors request that the Court approve the sale transaction, as set forth in this Motion.

## **BACKGROUND**

### **I. General.**

3. Commencing on October 9, 2018 (the "Petition Date"), the Debtors filed voluntary cases under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases") in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On October 22, 2018, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Committee"). No trustee or examiner has been appointed in the Chapter 11 Cases.

5. As discussed in the *Declaration of Michael Wyse in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 2] (the "First Day Declaration") and the Carroll Declaration, the Debtors comprise a private company that combines Eclipse Aerospace, Inc. and Kestrel Aircraft Company, Inc. products and personnel to research and develop, produce, deliver, service, upgrade, and provide technical support to a number of twin-turboprop very light jets and

single turboprop-engined aircrafts. The Debtors generate revenue from the following business lines: aircraft sales; aircraft parts sales; training programs; upgrades (including large upgrades and structural maintenance); service (including general service, inspections, and product improvements); and refurbishment. The aircraft refurbishment line of business allows the Debtors to capture value and revenue from their current fleet of jets through updating certain features of older jets and through the resell of aircraft into the secondary market. Additional factual background information about the Debtors, including their business operations, their corporate and capital structure, and the events leading to the Chapter 11 Cases, is set forth in detail in the First Day Declaration.

## **II. The Debtors' Prior Marketing and Sales Efforts.**

6. Prepetition, the Debtors engaged Duff & Phelps Securities, LLC ("Duff & Phelps") as their investment banker on December 27, 2017, to explore multiple restructuring alternatives, including the sale of all or specific portions of the Debtors' operations, a new debt infusion, and a comprehensive restructuring of the Debtors' balance sheets. After the Debtors launched the sale process, communications between Duff & Phelps and potential acquirers began immediately and increased during the following weeks. As part of that marketing process (the "Prepetition Marketing Process"), Duff & Phelps contacted a total of 161 strategic and 315 potential investors, distributing a teaser regarding the sale to a total of 476 potential buyers. The extensive marketing process resulted in 41 parties executing non-disclosure agreements (each, an "NDA") to receive more information and then receiving a confidential information memorandum with detail on the Debtors' business. Throughout this process, Duff & Phelps and the Debtors worked closely to respond to potential investor inquiries and to encourage interest in acquiring or financing the Debtors. As detailed in the *Declaration of Vineet ("Vin") Batra, Managing Director of Duff & Phelps Securities, LLC in Support of the Proposed Debtor in*

*Possession Financing Facility and the Joint Prepackaged Chapter 11 Plan of Reorganization of ONE Aviation Corporation and Its Debtor Affiliates* [Docket No. 16] (the “Batra Declaration”), despite an extensive outreach process and efforts to engage with interested potential buyers, the Prepetition Marketing Process resulted in no viable bids for the Debtors’ business or assets.

7. Ultimately, the Debtors sought to pursue a chapter 11 bankruptcy with a prepackaged plan supported by the Debtors’ prepetition first lien lender (and subsequently the DIP Lender). However, the Debtors continued to conduct a post-petition marketing process (the “Post-Petition Marketing Process”) in conjunction with the plan process. Most importantly, Duff & Phelps continued to focus on identifying strategic and financial buyers and provided the Debtors and their boards of directors or managers, as applicable, with continuous updates.

8. In addition to contacting all of the parties who had previously signed an NDA during the Prepetition Marketing Process, as part of the Debtors’ Post-petition Marketing Process, the Debtors and their advisors corresponded with some 55 parties who the Debtors believed to have potential interest in a transaction given their experience and knowledge of the Debtors and their businesses. All of these parties received an investment summary based on public information and were invited to enter into an NDA to receive additional information. Three of these parties subsequently executed an NDA with the Debtors, two of which received a confidential information package. Of the three parties who executed an NDA, there were no firms that submitted preliminary indications of interest. Unfortunately, no other offers came forward, and the debtors decided to pursue instead the debt-for-equity transaction contemplated in the Plan.

### **III. The Confirmed Plan and Citiking’s Failure to Perform Its Obligations.**

9. On the Petition Date, the Debtors filed their joint plan of reorganization, which the Court ultimately confirmed as amended and modified [Docket No. 707-1] (the “Plan”) by

entry of an order on September 18, 2019 [Docket No. 707] (the “Confirmation Order”). The delay in confirmation of the Plan was due to, among other reasons, negotiating a number of settlements with parties in interests in the face of Citiking’s recalcitrance in coming to the negotiating table.<sup>5</sup> Unfortunately, Citiking’s unwillingness to engage in meaningful discussions, finalize transaction documents, and meet its funding obligations has persisted even after confirmation of the Plan.

10. For the effective date of the Plan to occur, the Plan and Confirmation Order require Citiking to fund various settlements and distributions to parties in interest, including \$825,000 to holders of Allowed ONE Aviation General Unsecured Claims, \$50,000 for the Claims Reconciliation Expense Fund, \$225,500 for holders of Allowed Kestrel Secured Claims, \$700,000 for holders of Allowed Senior Subordinated Secured Note Claims, as well as certain administrative expense claims.<sup>6</sup> However, to date, and despite the Debtors’ continual best efforts, Citiking has only funded a fraction of these amounts and then only when necessary to stave off objections or conversion of these Chapter 11 Cases. In addition, the Plan obligates Citiking to provide the reorganized Debtors with exit financing and provides that the New ABL / Term Loan Facility Documents (as defined in the Plan) will be in form and substance acceptable to the Debtors, Citiking, and DWC Pine Investments I, LTD (“DW”).<sup>7</sup> Due to Citiking’s lack of cooperation and refusal to engage with the Debtors and DW, none of the exit financing documents have been finalized and, as a result, Citiking has not provided any of the

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<sup>5</sup> This included having to abandon temporarily the plan process and pivot to a sale process in June 2019. *See* Docket Nos. 561, 633.

<sup>6</sup> *See* Plan §§ 1.91, 9.1.6, 9.1.8, 9.1.10; Confirmation Order ¶ 131.

<sup>7</sup> Plan § 9.1.2.

required exit financing. Furthermore, Citiking has told the Debtors' senior management that it is now unable to do so.<sup>8</sup>

11. The most recent and illustrative example of Citiking's behavior in these Chapter 11 Cases has played out over the past few months. In May 2020, after Citiking's continued refusal to meet its Plan obligations, the Committee filed a motion to convert these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code [Docket No. 831] (the "Conversion Motion"). At the eleventh hour, shortly before the June 4, 2020 hearing on the Conversion Motion, Citiking reassured the Debtors that it would work to finalize the outstanding financing documents, meet its Plan funding obligations, and actually fund accrued and unpaid United States Trustees fees. The Debtors relied on these assurances from Citiking, and the Court did not grant Conversion Motion at that time. While the Debtors were relieved to avoid conversion of their chapter 11 cases, Citiking once again failed to deliver on its promises (beyond funding the United States Trustee payment and providing some light comments to draft documents). Nevertheless, at a July 28, 2020 status hearing, the Debtors were still laboring toward effecting the Plan Transactions, believing that the threat of case conversion had finally pushed Citiking to act to bring the Plan effective within two weeks. However, as has now happened so many times in these Chapter 11 Cases, Citiking has either been unresponsive to the Debtors' and other constituents' requests or otherwise has failed to perform its obligations and make good on its promises to the Court.<sup>9</sup>

12. In summary, during the year that has followed confirmation of the Plan, Citiking has repeatedly attempted to recut deals that were already memorialized in the confirmed Plan and merely provided a fraction of the required funding in an obvious attempt to gain leverage over

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<sup>8</sup> Carroll Decl. ¶ 16.

<sup>9</sup> *Id.* ¶ 17.



other parties in interest. After repeated assurances from Citiking over the months following entry of the Confirmation Order, and the persistent efforts of the Debtors and other parties in interest to do everything in their power to finalize the Plan transaction documents and resolve open Plan-effectiveness issues within their control, Citiking now claims that it *cannot* meet its funding obligations under the Plan.<sup>10</sup>

13. Given the Debtors' extremely limited funding under the existing DIP facility, which never contemplated a chapter 11 process extending through the current timeframe, and the compounding effects of the economic downturn caused by COVID-19, the Debtors were left with no choice but to seek out an alternative transaction that would avoid conversion of the chapter 11 cases, preserve the recoveries contemplated by the Plan, and maximize the value of the Debtors' estates for all stakeholders.

#### **IV. The Current Sale and Financing Process.**

14. Upon realizing that Citiking either would not or could not consummate the transactions required under the confirmed Plan and given the dire projected cash-flow shortage that would result, the Debtors were left with no choice but to pursue an alternative transaction that would both preserve recoveries for its stakeholders and provide the immediate liquidity the Debtors desperately needed.<sup>11</sup> Only after diligently exhausting all other viable options, including corresponding with industry experts and the Debtors' various contacts in the aviation field in search for a viable financing option, the Debtors finally decided that entry into the Senior DIP Documents (as defined in the Senior DIP Motion) and the Purchase Agreement was the best, if not the only, available option.<sup>12</sup> The Senior DIP Facility and the Purchase Agreement are the

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<sup>10</sup> *Id.* ¶¶ 16, 17.

<sup>11</sup> *Id.* ¶ 24.

<sup>12</sup> *Id.*

result of a vigorous arm's-length negotiation between the Debtors and their advisors, on the one hand, and the Senior DIP Lender and its own advisors, on the other hand.<sup>13</sup>

15. The terms of the Purchase Agreement, contemplate that the Sale shall occur no later than the October 15, 2020, provided that the Debtors and the Buyer may extend the closing deadline by up to 15 days, which conforms with the size and timing of the Senior DIP Facility and corresponding budget.<sup>14</sup>

16. The Sale and the Senior DIP Facility, taken together, provide for a transaction that benefits the Debtors' unsecured creditors. As part of the Purchase Price, the Buyer will provide cash consideration that includes the accrued and unpaid and the expected Professional Fee Claims as of the date of closing in an amount not to exceed \$1,500,000. The Purchase Price also includes additional cash components of (a) \$825,000.00 for the holders of ONE Aviation General Unsecured Claims, (b) \$700,000 for holders of Allowed Senior Subordinated Secured Note Claims, (c) \$225,000 for holders of Allowed Kestrel Secured Claims, (d) \$50,000 for the Claims Reconciliation Fund, and (e) 75,000 for a general wind down fund. As a result, the Sale, pursuant to the Purchase Agreement, preserves the recoveries provided under the confirmed Plan. In addition, the priming liens that will be provided under the Senior DIP Facility does not unfairly prejudice Citiking because Citiking had the power to prevent such a priming by simply complying with its previously agreed-upon obligations under the Plan. However, as mentioned above, Citiking has informed the Debtors' counsel, as well as several members of the Debtors' Board of Directors, that it does not intend to do so.<sup>15</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* ¶ 25.

<sup>15</sup> *Id.* ¶ 16.

17. In order to complete the Sale process, and thereby preserve the value of their estates and the anticipated Plan recoveries, the Debtors require the additional liquidity that will be provided by the Senior DIP Facility. Barring the Senior DIP Facility, the Debtors will lack the wherewithal to continue operations in the near term, much less to complete a successful restructuring transaction and continue as a going concern after emergence from chapter 11.

**V. Terms and Conditions of Purchase Agreement.**

18. Through arm's-length negotiations, the Debtors and the Buyer have agreed to the terms of the Sale set forth in the Purchase Agreement, which is subject to higher and better offers and the Court's approval. The following sets forth a summary of the material terms and conditions of the Purchase Agreement, pursuant to Local Rule 6004-1(c).<sup>16</sup>

<b>MATERIAL TERMS OF PURCHASE AGREEMENT</b>	
<b><u>Sellers</u></b>	ONE Aviation Corporation; ACC Manufacturing, Inc.; Aircraft Design Company; Brigadoon Aircraft Maintenance, LLC; DR Management, LLC; Eclipse Aerospace, Inc.; Innovatus Holding Company; Kestrel Aircraft Company, Inc.; Kestrel Brunswick Corporation; Kestrel Manufacturing, LLC; Kestrel Tooling Company; and OAC Management, Inc.
<b><u>Buyer</u></b>	SEF OA LLC
<b><u>Sale to Insider</u></b>	The Buyer is not an insider of the Debtors within the meaning set forth in section 101(31) of the Bankruptcy Code.

<sup>16</sup> If there are any inconsistencies between the summary set forth herein and the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern.

<b>MATERIAL TERMS OF PURCHASE AGREEMENT</b>	
<b><u>Credit Bid/Consideration</u></b> <b><u>(§ 3.1)</u></b>	The aggregate consideration for the sale and transfer of the Seller Assets is (a) a cash payment to the Sellers equal to \$7,000,000 plus the balance of the “new money” portion of the Senior DIP Facility as of the Closing Date, all or part of which may be credit bid in accordance with section 363(k) of the Bankruptcy Code by releasing and waiving an equivalent amount of any loans made or acquired by Purchaser to the extent that such loans are secured by a most-senior priority lien on the Purchase Assets as of the Closing Date; (b) a cash payment of \$75,000 for wind-down expenses; (c) a cash payment of \$825,000 for the Committee Settlement; (d) a cash payment of \$225,000 for paying holders of Allowed Kestrel Secured Claims; (e) a cash payment of \$50,000 for funding the Claims Reconciliation Expense Fund; (f) a cash payment of \$700,000 for paying holders of Allowed Senior Subordinated Secured Note Claims; (g) a cash payment not to exceed \$1,500,000 equal to all (i) accrued and unpaid and (ii) expected Professional Fee Claims; and (h) assumption of the Assumed Liabilities (collectively, the “ <i>Purchase Price</i> ”).
<b><u>Good Faith Deposit</u></b>	\$500,000, payable within two (2) business days of entry of the Sale Procedures and Scheduling Order.
<b><u>Transfer of the Acquired Assets (§§ 2.1, 2.3)</u></b>	The Buyer agrees to purchase, acquire, and accept all of the Debtors’ right, title, and interest in the Acquired Assets. In addition, the Buyer will assume and pay, perform, and discharge the Assumed Liabilities.
<b><u>Excluded Assets and Liabilities (§§ 2.2, 2.4)</u></b>	The Sale shall not include the Excluded Assets or the Excluded Liabilities.
<b><u>Agreements with Management</u></b>	No agreements with management have been entered into in connection with the Sale.
<b><u>Transition Services (§ 4.2(e))</u></b>	The Purchase Agreement contemplates that the Debtors will provide certain transition services to the Buyer and that the Buyer will provide certain operations support services to the Debtors for a period designated in the Transition Services Agreement, which is an Ancillary Agreement to be appended to the Purchase Agreement.

<b>MATERIAL TERMS OF PURCHASE AGREEMENT</b>	
<b><u>Representations and Warranties; Covenants (Articles V, VI, and IX)</u></b>	The representation and warranties and covenants include: (a) representations and warranties regarding (i) organization and qualifications of the Sellers and Buyer, (ii) authorization to enter into and the validity of the transaction contemplated by the Agreement, (iii) consents and approvals and notification of the transaction contemplated by the Agreement, (iv) brokers, finders or financial advisors, (v) Sellers' good title to the Purchase Assets, (vi) true and correct copies of all leases, (vii) leases of personal property, (viii) Intellectual Property and proprietary rights, (ix) litigation, (x), Permits, (xi) Inventory, (xii) Contracts, (xiii) taxes, (xiv) employees and employee benefits, (xv) labor matters, (xvi) bank accounts, (xvii) non-WARN Act occurrence, (xviii) environmental matters, (xix) absence of certain changes; and (b) covenants regarding (i) conduct of business by Sellers, (ii) access to information, (iii) conduct of business by Buyer, (iv) rejected contracts, (v) reasonable efforts to cooperate, (vi) further assurances, (vii) notification of certain matters, (viii) confidentiality, (ix) preservation of records, (x) publicity, (xi) Material Adverse Effect, (xii) casualty loss, (xiii) no successor liability, (xiv) change of name, (xv) receivables, (xvi) governmental approvals, and (xvii) certifications.
<b><u>Releases</u></b>	The Purchase Agreement provides for releases and the waiver of claims.
<b><u>Use of Proceeds</u></b>	The cash proceeds from the Sale will be used to pay Administrative Expense Claims, the Committee Settlement, other Plan payments, and a general winddown fund. Pursuant to this Motion, the Debtors intend to transfer the Seller Assets to the Buyer and wind down their operations.
<b><u>Tax Exemption</u></b>	The Debtors are not seeking pursuant to the Purchase Agreement to have the Sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code.
<b><u>Record Retention</u></b>	Prior to the Closing, the Debtors shall provide the Buyer with reasonable access to business records, and, after the Closing, the Buyer shall provide the Debtors with reasonable access to business records.
<b><u>Sale of Avoidance Actions</u></b>	The Buyer will acquire all avoidance actions under chapter 5 of the Bankruptcy Code, except such avoidance actions that have been waived, relinquished or released under the Committee Settlement.

<b>MATERIAL TERMS OF PURCHASE AGREEMENT</b>	
<b><u>Requested Findings as to Successor Liability</u></b>	The Debtors' consummation of a sale of the Seller Assets shall be sold free and clear of any successor liability.
<b><u>Sale Free and Clear of Unexpired Leases</u></b>	The sale of the Seller Assets and the assignment of the Assigned Contracts shall be free and clear of any and all Liens (other than the Permitted Encumbrances that the Buyer has agreed to assume) pursuant to section 363(f) of the Bankruptcy Code.
<b><u>Relief from Bankruptcy Rule 6004(h)</u></b>	The Sale Order will provide for a waiver of the 14-day stay thereof, arising under Bankruptcy Rules 6004(h) and 6006(d), including the parties' ability to close the Sale and assign the Assigned Contracts in connection therewith.

## **VI. Proposed Sale Procedures and Timeline.**

19. Pursuant to the Purchase Agreement, and to adequately compensate the Buyer for its diligence and efforts in negotiating the terms of the Purchase Agreement and the risk that the Debtors could receive a higher or better offer prior to the entry of the Sale Order, the Buyer will be entitled to the following bid protections (collectively, the "Bid Protections"): (a) reimbursement for Buyer's reasonable and documented fees and expenses incurred in connection with the Sale up to an aggregate amount of \$500,000 (the "Expense Reimbursement") following termination of the Purchase Agreement on any of the bases set forth in Article 8.7(a) of the Purchase Agreement, but excluding, among other things, breach by the Buyer; (b) payment in cash of a break-up fee equal to \$500,000 (the "Break-Up Fee"), payable upon consummation of an Alternative Transaction, which shall not be reduced by the Expense Reimbursement; and (c) initial overbid protection in an amount of the Break-Up Fee plus the Expense Reimbursement plus \$250,000 over and above the Purchase price, and minimum bid increments thereafter of \$100,000 (the "Overbid Protection").

20. By this Motion, the Debtors seek entry of an order approving the Bid Protections. The Bid Protections form a necessary component of the Buyer's offer, and the Debtors do not

believe that the Buyer would have submitted its offer, let alone permitted such proposal to be subject to superior offers consistent with the Debtors' fiduciary duties, without the Bid Protections.<sup>17</sup> Accordingly, the Debtors believe that the benefit of the Purchase Agreement significantly outweighs the cost associated with the Bid Protections.

21. Prior to the entry of the Sale Order, the sale of the Seller Assets pursuant to the Purchase Agreement remains subject to higher or otherwise better offers in accordance with the terms of the Purchase Agreement and the Bid Protections.

22. The Debtors' proposed timeline with respect to the Bidding Procedures, the Sale Hearing, and the Sale is as follows:<sup>18</sup>

<b><u>Key Events and Deadlines</u></b>	<b><u>Date</u></b>
<b>Sale Procedures and Scheduling Objection Deadline</b>	At the Sale Procedures and Scheduling Hearing
<b>Sale Procedures and Scheduling Hearing</b>	September 4, 2020 at 11:00 a.m. (ET)
<b>Deadline for Debtors to Serve Sale Notice and Assumption and Assignment Notice</b> (providing deadline for any (i) objections to the Sale to the Buyer and entry of the Sale Order and (ii) Contract Objections)	September 8, 2020
<b>Sale Objection Deadline</b>	September 22, 2020 at 4:00 p.m. (ET)
<b>Sale Hearing</b>	September 29, 2020
<b>Closing Date</b>	October 15, 2020 <sup>19</sup>

## **VII. Proposed Assumption Procedures.**

23. To facilitate and effect the sale of the Seller Assets, the Debtors seek authority to assume and assign certain of the Debtors' executory contracts and unexpired leases (each, as

<sup>17</sup> Carroll Decl. ¶ 34.

<sup>18</sup> The dates in this timeline are subject to the terms of the Sale Procedures and Scheduling Order.

<sup>19</sup> The Closing Date is subject to extension by the Debtors and the Buyer by up to 15 days.

applicable, a “Contract” or “Lease” and, collectively, the “Contracts and Leases”), consistent with the Purchase Agreement (the “Assumption Procedures”).

24. The proposed Assumption Procedures are as follows:

- (a) **Assumption and Assignment Notice.** No later than **September 8, 2020**, the Debtors will serve the notice attached as Exhibit 2 to the Sale Procedures and Scheduling Order (the “Assumption and Assignment Notice”) on all non-Debtor counterparties to the Contracts and Leases (collectively, the “Contract Parties”) and its attorney, if known, *provided, however*, that the presence of any Contract or Lease on an Assumption and Assignment Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease or that the Debtors have any liability thereunder; *provided, further, however*, that to the extent the cure amount for any Contract or Lease was established pursuant to the confirmation of the Plan, the Debtors shall not be required to serve any additional notice of such cure amount and the cure amount established under the Plan for such Contract or Lease shall be binding upon the non-Debtor counterparty to such Contract or Lease. Subject to the conditions set forth in the Purchase Agreement, the determination whether a Contract or Lease is to be assumed and assigned is subject to a subsequent decision by the Buyer to be made prior to the Designation Deadline and approval by the Court. Until the Designation Deadline, the Buyer, in its sole and absolute discretion, may amend the list of executory contracts to (i) add or remove any Contract or Lease or (ii) modify the treatment of any Contract or Lease. The Debtors reserve all of their rights, claims, and causes of action with respect to any Contract or Lease.
- (b) **Content of the Assumption and Assignment Notice.** The Assumption and Assignment Notice will include the following information: (i) the title of the Contract or Lease that potentially may be assumed; (ii) the name of the counterparty to the Contract or Lease; (iii) any applicable cure amounts, whether arising prepetition or postpetition (the “Cure Amount”); (iv) the deadline by which any such Contract Party must object to the assumption or assignment of such Contract or Lease; and (iv) other objection-related requirements.
- (c) **Objections.** Objections to the proposed Cure Amount and adequate assurance of future performance obligations to the Contract Parties, and any other objections to the assumption and assignment of the Contracts and Leases must: (i) be in writing; (ii) set forth the nature of the objector’s claims against or interests in the Debtors’ estates and the basis for the objection and the specific grounds therefor; (iii) comply with the Bankruptcy Rules, Local Rules, and orders of the Court; and (iv) be filed with the Court and served upon the Objection Notice Parties. **Objections to the proposed Cure Amount, the adequate assurance of future**



performance by the Buyer, and any other objections to the assumption and assignment of the Contract or Lease (collectively, the “Contract Objections”) must be filed and served so as to be actually received no later than the Sale Objection Deadline of 4:00 p.m. (prevailing Eastern time) on September 22, 2020.

(d) **Effects of Objecting to a Assumption and Assignment Notice.** A properly filed and served objection to an Assumption and Assignment Notice will reserve such objecting party’s rights against the Debtors with respect to the relevant cure objection but will not constitute an objection to the remaining relief requested in this Motion. If any validly filed objection is not consensually resolved, the Court shall adjudicate such objection at the Sale Hearing or on such other date and time as agreed to by the Debtors and Buyer or as may be fixed by the Court.

(e) **Supplemental Assumption and Assignment Notice Procedures.**

- i. If, at any time after the entry of the Sale Procedures and Scheduling Order, the Debtors identify additional Contracts or Leases that may be assumed and assigned to the Buyer as Assigned Contracts (whether before or after closing of the Sale), as applicable, the Debtors shall file with the Court and serve a supplemental Assumption and Assignment Notice on the applicable Contract Party (and its attorney, if known) (the “Supplemental Assumption and Assignment Notice”).
- ii. For a Contract Party listed on a Supplemental Assumption and Assignment Notice, the deadline to file Contract Objections shall be the later of (A) fourteen (14) days after the date the Supplemental Assumption and Assignment Notice is filed and (B) the Sale Objection Deadline.
- iii. If the Supplemental Assumption and Assignment Notice provides for a deadline to file Contract Objections that is after the date of the Sale Hearing, unless the Contract Party timely files and serves an objection to the Supplemental Assumption and Assignment Notice, the Debtors shall be authorized to assume and assign the applicable Contract or Lease, subject to the occurrence of the Closing, without further order or notice of hearing. If a validly filed objection is not consensually resolved, then the Debtors will schedule a hearing to consider the objection on the next scheduled omnibus hearing date.

**JURISDICTION AND VENUE**

25. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

26. The statutory bases for the relief requested herein are sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 3007, 6004, 6006, 9007, 9014, and Local Rule 6004-1.

**RELIEF REQUESTED**

27. By this Motion, the Debtors seek entry of the Sale Procedures and Scheduling Order (a) approving the form and manner of notice of the proposed sale transactions and the Sale Hearing, (b) scheduling the Sale Hearing, (c) approving the Bid Protections, (d) authorizing procedures governing the assumption and assignment of the Assigned Contracts, and (e) granting related relief.

28. The Debtors also seek entry of the Sale Order (a) approving the Purchase Agreement by and between the Debtors and the Buyer, (b) authorizing the sale of the Seller Assets and the assumption and assignment of the Assigned Contracts to the Buyer free and clear of all Liens, other than any Permitted Encumbrances as set forth in the Purchase Agreement, and (c) granting related relief.

**BASIS FOR RELIEF**

**I. Approval of Sale Procedures Is Appropriate and in Best Interests of the Debtors' Estates.**

**A. Proposed Notices of Sale and Sale Hearing Are Appropriate.**

29. Under Bankruptcy Rule 2002(a) and (c), the Debtors are required to notify creditors of the proposed sale of the Seller Assets, including disclosure regarding the terms and conditions of the Sale and the deadline for filing any objections. The Debtors request notice of the Sale, the Sale Hearing, and the Sale Procedures and Scheduling Order be deemed adequate and sufficient if:

- (a) No later than three business days after the entry of the Sale Procedures and Scheduling Order, the Debtors (or their agent) serves by first-class mail copies of (i) the Sale Procedures and Scheduling Order and (ii) a notice regarding the Sale (the "Sale Notice"), substantially in the form attached to the Sale Procedures and Scheduling Order as Exhibit 1<sup>20</sup> on the following entities or their counsel, if known (collectively, the "Notice Parties"):
  - (1) the U.S. Trustee;
  - (2) the Existing DIP Lender;
  - (3) the Debtors' prepetition lenders;
  - (4) the Committee;
  - (5) the Internal Revenue Service;
  - (6) the United States Attorney for the District of Delaware;
  - (7) all federal, state, and local regulatory or taxing authorities or recording offices that have a reasonably known interest in the relief requested herein;

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<sup>20</sup> In accordance with Bankruptcy Rule 2002(c)(1), the Sale Notice will include, among other things: (a) the date, time, and place of the Sale Hearing; (b) a summary of certain of the terms and conditions of the Sale; (c) the time fixed for filing objections to the Sale; and (d) a description that the Sale of the Seller Assets is free of any liens or encumbrances as set forth in the Purchase Agreement. The Sale Notice and Publication Notice (as defined herein) also will direct parties to access the website of the Debtors' claims and noticing agent, <http://dm.epiq11.com/Oneaviation>, or call the Debtors' restructuring information line at (855) 255-4838. The Sale Notice will provide that any party that wishes to obtain a copy of this Motion (and any related documents) may make such a request by calling the Debtors' claims and notice agent, Epiq Bankruptcy Solutions, LLC at (855) 255-4838 or by visiting <http://dm.epiq11.com/Oneaviation>.

- (8) any party known or reasonably believed to have asserted any lien, claim or encumbrance or other interest in the Debtors' assets;
  - (9) any party known or reasonably believed to have expressed an interest in acquiring some or substantially all of the Debtors' assets;
  - (10) the non-Debtor counterparties to the Contracts and Leases; and
  - (11) any parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002.
- (b) Within five business days after the entry of the Sale Procedures and Scheduling Order (or as soon as reasonably practicable thereafter, but no later than 14 days prior to the Sale Objection Deadline), the Debtors also will publish the Sale Notice, which may be modified for publication, in the national edition of *USA Today* and the *Albuquerque Journal*, or other national or local publications as the Debtors deem appropriate.

30. In addition, the Debtors requests the establishment of an objection deadline prior to the Sale Hearing such that that any objections related to the proposed Sale be served upon the following parties (the "Objection Notice Parties"), **so as to be actually received by or before 4:00 p.m. (prevailing Eastern time) on September 22, 2020** (the "Sale Objection Deadline"): (i) co-counsel for the Debtors, (x) Paul Hastings, LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn: Chris L. Dickerson, chrisdickerson@paulhastings.com, Brendan M. Gage, brendangage@paulhastings.com, Nathan S. Gimpel, nathangimpel@paulhastings.com, and 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Todd M. Schwartz, toddschwartz@paulhastings.com, and (y) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: M. Blake Cleary and Jaime Luton Chapman, Mbcleary@ycst.com and JChapman@ycst.com; (ii) counsel for the Buyer, King & Spalding LLP, 1180 Peachtree Street NE, Suite 1600, Atlanta, GA 30309, Attn: W. Austin Jowers, ajowers@kslaw.com; (iii) co-counsel for the Committee, (x) Lowenstein Sandler, One Lowenstein Drive, Roseland, NJ 07068, Attn: Bruce D. Buechler, Bbuechler@lowenstein.com, and 1251 Avenue of the

Americas, New York, NY 10020, Attn: Wojciech F. Jung, Wjung@lowenstein.com, and (y) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801, Attn: Adam G. Landis and Kerri Mumford, Landis@lrclaw.com and mumford@lrclaw.com; (iv) counsel for the Senior Subordinated Secured Noteholders, Montgomery McCracken Walker & Rhoades, LLP, 1105 North Market Street, Suite 1500, Wilmington, DE, 19801, Attn: Marc J. Phillips, mphilips@mmwr.com; (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Room 2207, Lockbox 35, Wilmington, Delaware 19899-0035, Attn: Linda Casey, linda.casey@usdoj.gov; and (vi) those parties who have formally filed requests for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

31. The Debtors submit that the foregoing notice and Sale Objection Deadline comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice to the Debtors' creditors and other parties in interest of the Sale Hearing and the Sale, and, if the Debtors believe that additional entities have a legitimate interest, then also to those who have expressed an interest, or may express an interest, in bidding on the Seller Assets. Based upon the foregoing, the Debtors respectfully request that the Court approve the notice procedures and the Sale Objection Deadline proposed above.

**B. Approval of the Bid Protections Is Appropriate.**

32. The Debtors request authority to offer customary Bid Protections to the Buyer. The Debtors have agreed to pay the Expense Reimbursement and the Break-Up Fee (if triggered) to the Buyer as an allowed administrative expense priority claim and to require the Overbid Protection with respect to any competing bid for the Debtors' assets.

33. Break-up fees and other forms of bid protections are a normal and, in many cases, necessary component of significant sales conducted under section 363 of the Bankruptcy Code: "Break-up fees are important tools to encourage bidding and to maximize the value of the

debtor's assets . . . . In fact, because the . . . corporation has a duty to encourage bidding, break-up fees can be necessary to discharge [such] duties to maximize value.” *Integrated Res., Inc.*, 147 B.R. 650, 659–60 (S.D.N.Y. 1992) (emphasis added). Specifically, bid protections “may be legitimately necessary to convince a ‘white knight’ bidder to enter the bidding by providing some form of compensation for the risks it is undertaking.” *995 Fifth Ave. Assocs., LP*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (quotations omitted); *see also Integrated Res.*, 147 B.R. at 660–61 (bid protections can prompt bidders to commence negotiations and “ensure that a bidder does not retract its bid”); *In re Hupp Int’l Indus., Inc.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) (“[W]ithout such fees, bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder’s . . . due diligence.”). As a result, courts routinely approve such bid protections in connection with proposed bankruptcy sales where a proposed fee or reimbursement provides a benefit to the estate. *See In re O’Brien Envtl. Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999).

34. Based on the marketing processes that the Debtors and their advisors have conducted thus far, the Debtors have determined that the Bid Protections were necessary to attract and retain the Buyer’s offer. Indeed, the Bid Protections were a material inducement for the Buyer and a condition of the Buyer’s entry into the Purchase Agreement subject to the Debtors’ fiduciary duties to continue to evaluate other potential offers. The Debtors and the Buyer specifically negotiated the terms of the Bid Protections in good faith and at arm’s length.<sup>21</sup> As such, the Bid Protections will, among other things, enable the Debtors to maximize the value of their estates for the benefit of all economic stakeholders in these Chapter 11 Cases while

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<sup>21</sup> Carroll Decl. ¶ 34.

preserving their ability to review and consider alternative offers in accordance with their fiduciary duties.

35. Furthermore, as set forth in the Carroll Declaration, the Debtors believe that the Bid Protections are well within market, are fair and reasonable in amount in light of the size and nature of the proposed Sale and the efforts that will be have been expended by the Buyer in connection with negotiating and entering into the Purchase Agreement.<sup>22</sup> In addition, given that the Break-Up Fee will be paid out of the proceeds of any competing Alternative Transaction (as defined in the Purchase Agreement) that may be consummated, such payment will not diminish the Debtors' estates, and the estates will only be liable for the Expense Reimbursement. Finally, the Buyer is not an "insider" of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

36. Courts in this district have previously approved the grant of administrative expense status to claims for break-up fees and expense reimbursements as requested here. *See, e.g., In re Brooks Brothers Group, Inc.*, No. 20-11785 (CSS) (Bankr. D. Del. August 3, 2020) (authorizing priority expense status for break-up fee and expense reimbursement); *In re Exide Holdings, Inc.*, No. 20-11157 (CSS) (Bankr. D. Del. June 19, 2020) (same); *In re Bumble Bee Parent, Inc.*, No. 19-12502 (LSS) (Bankr. D. Del. Dec. 19, 2019) (same); *In re Things Remembered, Inc.*, No. 19-10234 (KG) (Bankr. D. Del. Feb. 21, 2019) (same); *In re Scottish Holdings, Inc.*, No. 18-10160 (LSS) (Bankr. D. Del. Feb. 28, 2018 (same); *In re Terravia Holdings, Inc.*, No. 17-11655 (CSS) (Bankr. D. Del. Aug. 22, 2017) (same); *In re Ensequence Inc.*, No. 18-10182 (KG) (Bankr. D. Del. Mar. 26, 2018) (same); *In re CIBER, Inc.*, No. 17-10772 (BLS) (Bankr. D. Del. May 2, 2017) (same).

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<sup>22</sup> *Id.*

37. For these reasons set forth above, the Debtors respectfully request that the Court approve the Bid Protections.

**C. The Proposed Notice Procedures For The Assigned Contracts And Leases And The Identification Of Related Cure Amounts Are Appropriate.**

38. As part of this Motion, the Debtors also seek authority to assume (to the extent not already assumed) and assign the Assigned Contracts to the Successful Bidder. To facilitate such assumption and assignment, the Debtors also seek approval of the related Assumption Procedures. The Assumption Procedures, as detailed above, outline the process by which the Debtors will serve the Assumption and Assignment Notice and the procedures and deadlines for Contract Parties to file and serve related objections.

39. The Assumption and Assignment Procedures ensure that each Contract Party will have sufficient notice of the potential assumption and assignment of its Contract or Lease and an opportunity to contest any asserted Cure Amount, as well as the ability of the Buyer or other Successful Bidder to provide adequate assurance of future performance.

40. Accordingly, the Debtors submit that the Assumption Procedures are fair and reasonable, and respectfully request that the Court approve such procedures.

**II. Approval of Proposed Sale Transaction Is Appropriate and in Best Interest of the Debtors' Estates.**

41. In accordance with Bankruptcy Rule 6004(f)(1), sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtors, in their business judgment, determined that a private sale of the Seller Assets to the Buyer will enable the Debtors to obtain the highest or otherwise best offer in a sale of their assets at this time and is in the best interests of the Debtors, their estates, and their creditors.



**A. Sale of Seller Assets is a Sound Exercise of the Debtors' Business Judgment.**

42. Section 363 of the Bankruptcy Code provides, in relevant part, that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Section 105(a) of the Bankruptcy Code provides, in relevant part that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

43. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, bankruptcy courts routinely authorize sales of a debtor's assets if such sale is based upon the sound business judgment of the debtor.<sup>23</sup>

44. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith.<sup>24</sup> In *In re Del. & Hudson Ry.*, the court further held that:

[o]nce a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale, the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the [proposed] Buyer is proceeding in good faith.<sup>25</sup>

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<sup>23</sup> See, e.g., *In re Trans World Airlines, Inc.*, Case No. 01-00056, 2001 WL 1820326, at \*10–11 (Bankr. D. Del. Apr. 2, 2001); *Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991).

<sup>24</sup> See *In re Del. & Hudson Ry.*, 124 B.R. at 176; *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987); *In re United Healthcare Sys., Inc.*, Case No. 97-1159, 1997 WL 176574, at \*4-5, \*4 n.2 (D.N.J. Mar. 26, 1997).

<sup>25</sup> 124 B.R. at 176.

45. The business judgment rule shields a debtor's management from judicial second-guessing.<sup>26</sup> Once a debtor articulates a valid business justification, "[t]he business judgment rule is a presumption that directors act in good faith, on an informed basis, honestly believing that their action is in the best interests of the company."<sup>27</sup> Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code.

46. A sound business purpose for the sale of a debtor's assets outside the ordinary course of business may be found where such a sale is necessary to preserve the value of assets for the estate, its creditors, or interest holders.<sup>28</sup> In fact, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate.<sup>29</sup>

47. The sale of the Seller Assets will be consummated only after thorough consideration of all viable alternatives and after concluding that such transactions are supported by sound business justifications. Based on available information, the Debtors believe that the consideration to be received for the Seller Assets under the Purchase Agreement is fair and reasonable under the circumstances.

48. As further assurance of value, the Buyer's will be subject to higher or otherwise better offers, consistent with the requirements of the Bankruptcy Code and the Bankruptcy Rules.

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<sup>26</sup> See *In re Tower Air*, 416 F.3d 229, 238 (3d Cir. 2005).

<sup>27</sup> *Id.*

<sup>28</sup> See, e.g., *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2nd Cir. 1983).

<sup>29</sup> See *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (noting that in bankruptcy sales, "a primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand"); *In re Integrated Res., Inc.*, 147 B.R. at 659 ("It is a well-established principle of bankruptcy law that the . . . [Debtor's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)).

**B. Sale of Seller Assets and Assigned Contracts Free and Clear of Liens Is Authorized By Section 363(f) of the Bankruptcy Code.**

49. The Debtors further submit that it is appropriate to sell the Seller Assets and to assign the Assigned Contracts free and clear of any Liens as set forth in the Purchase Agreement pursuant to section 363(f) of the Bankruptcy Code, with any such Liens attaching to the net sale proceeds of the Seller Assets, as and to the extent applicable. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interests;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- (4) such interest is in *bona fide* dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

50. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Seller Assets “free and clear” of Liens.<sup>30</sup>

51. The Debtors believe that one or more of the tests of section 363(f) of the Bankruptcy Code are satisfied with respect to the transfer of the Seller Assets and the assignment of the Assigned Contracts pursuant to the Purchase Agreement. In particular, the Debtors expect that at least section 363(f)(2) of the Bankruptcy Code will be met in connection with the

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<sup>30</sup> *In re Decora Indus., Inc.*, Case No. 00-4459 (JJF), 2002 WL 32332749, at \*7 (D. Del. May 20, 2002) (“Because §363(f) is drafted in the disjunctive, the satisfaction of any of the requirements outlined is sufficient to warrant Debtors’ sale of the Acquired Assets free and clear of all Interests as provided in the Purchase Agreement, except with respect to such Interests as are assumed liabilities pursuant to the Purchase Agreement.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (same).

transactions proposed under the Purchase Agreement because each of the parties holding Liens on the Seller Assets, if any, will consent, or, absent any objection to this Motion, will be deemed to have consented to, the Sale.

52. Any holder of a Lien also will be adequately protected by having its Liens, if any, attach to the sale proceeds received by the Debtors for the Sale of the Seller Assets to the Buyer, in the same order of priority, with the same validity, force, and effect that such creditor had prior to such Sale, subject to any claims and defenses that the Debtors and their estates may possess with respect thereto. Accordingly, section 363(f) of the Bankruptcy Code authorizes the sale of the Seller Assets and the assignment of the Assigned Contracts free and clear of any such Liens.

**C. If the Debtors Consummate Sale of Assets, Seller Assets Should Be Sold or Assumed Free and Clear of Successor Liability.**

53. The Buyer of the Seller Assets is unlikely to be liable for any of the Debtors' liabilities as a successor to the Debtors' business or otherwise, unless the Buyer expressly assumes such liabilities. Extensive case law exists providing that claims against the purchaser are directed to the proceeds of a free-and-clear sale of property and may not subsequently be asserted against a buyer.

54. Although section 363(f) of the Bankruptcy Code provides for the sale of assets "free and clear of any interests," the term "any interest" is not defined in the Bankruptcy Code.<sup>31</sup> In *Trans World Airlines, Inc.*, the Third Circuit specifically addressed the scope of the term "any interest."<sup>32</sup> The Third Circuit observed that while some courts have "narrowly interpreted interests in property to mean *in rem* interests in property," the trend in modern cases is toward "a more expansive reading of 'interests in property' which 'encompasses other obligations that may

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<sup>31</sup> *Folger Adam Security v. DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000). *Folger Adam Security v. DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000).

<sup>32</sup> 322 F.3d 283, 288–89 (3d Cir. 2003).

flow from ownership of the property.”<sup>33</sup> As determined by the Fourth Circuit in *Leckie Smokeless Coal Co.*, a case cited extensively and approvingly by the Third Circuit in *Folger*, the scope of section 363(f) of the Bankruptcy Code is not limited to *in rem* interests.<sup>34</sup> Thus, the Third Circuit in *Folger* quoted *Leckie* as holding that the debtors “could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute.”<sup>35</sup>

55. Courts have held that a buyer of a debtor’s assets pursuant to a section 363 sale takes free from successor liability resulting from pre-existing claims.<sup>36</sup>

56. Here, the Debtors filed the Chapter 11 Cases in good faith. The Debtors expect that if they seek to complete an asset sale of the Seller Assets, they will be able to satisfy the Court that (a) the Buyer engaged in arm’s-length negotiations with the Debtors and did not exert control or undue influence over the Debtors, (b) the Buyer is a completely and wholly unrelated entity to the Debtors, (c) the Buyer does not, and will not, share any common incorporators, officers, directors, or stockholders with the Debtors, and (d) the Buyer is not an insider of the Debtors.

57. For obvious reasons, the very purpose of an order purporting to authorize the transfer of assets free and clear of all “interests” would be frustrated if claimants could thereafter

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<sup>33</sup> *Id.* at 289 (citing 3 *Collier on Bankruptcy* ¶ 363.06[1]).

<sup>34</sup> 99 F.3d 573, 581–82 (4th Cir. 1996).

<sup>35</sup> *Folger*, 209 F.3d at 258 (internal quotation marks omitted).

<sup>36</sup> *See The Ninth Ave. Remedial Grp. v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93–94 (2d Cir. 1988) (holding channeling of claims to proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); *In re New England Fish Co.*, 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (holding transfer of property in free and clear sale included free and clear of Title VII employment discrimination and civil rights claims of debtor’s employees); *In re Hoffman*, 53 B.R. 874, 876 (Bankr. D.R.I. 1985) (holding that transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes was permissible).

use the transfer as a basis to assert claims against a buyer arising from a seller's pre-sale conduct. Furthermore, the Debtors will provide notice of the proposed sale to all known parties in interest that may assert claims or interests relating to the Seller Assets against the Debtors, including trade creditors, contract counterparties, lenders, and other parties known to the Debtors to be asserting claims relating to the Seller Assets.

58. Under section 363(f) of the Bankruptcy Code, a buyer of assets is entitled to know that the purchased assets are not infected with latent claims that will be asserted against the Buyer after the proposed transaction is completed. Accordingly, consistent with the above-cited case law, the order approving the Sale of the Seller Assets may provide that the Buyer of the Seller Assets is not liable as a successor under any theory of successor liability for claims that encumber or relate to the Seller Assets.

**D. Buyer Is Good Faith Buyer and Is Entitled to Full Protection of Section 363(m) of the Bankruptcy Code, and Transfer and Sale of Seller Assets Does Not Violate Section 363(n) of the Bankruptcy Code nor Will Transfer and Sale of Seller Assets Negate the Committee Settlement.**

59. The Debtors believes that the Purchase Agreement has been negotiated at arm's length and in good faith. Thus, the Buyer is entitled to the full protections of section 363(m) of the Bankruptcy Code, which provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

While the Bankruptcy Code does not define "good faith," the Third Circuit in held that:

[t]he requirement that a Buyer act in . . . good faith speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a Buyer's good faith status at a judicial sale involves fraud, collusion between the

[proposed] Buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.<sup>37</sup>

60. Accordingly, absent a showing of fraud or collusion between a buyer and a debtor, or an attempt by the buyer to take grossly unfair advantage the sale process, courts will uphold the transaction under section 363(m) of the Bankruptcy Code.<sup>38</sup>

61. The Debtors and the Buyer engaged in thorough arm's-length negotiations over the terms of the Purchase Agreement and there has been no fraud, improper insider dealing, or collusion in those negotiations. In addition, the Buyer is not an "insider," as that term is defined in section 101(31) of the Bankruptcy Code, of any of the Debtors. If the Debtors proceed to consummate the Purchase Agreement, it will be because the Debtors believe that the consideration to be received by the Debtors pursuant to the Purchase Agreement is substantial, fair, reasonable, and the best and highest offer under the circumstances.

62. The Purchase Agreement does not constitute an avoidable transaction pursuant to section 363(n) of the Bankruptcy Code, and the Buyer or other prevailing bidder should receive the protections afforded good faith Buyers by section 363(m) of the Bankruptcy Code. Accordingly, the Debtors request that the Court make a finding at the Sale Hearing that the Purchase Agreement reached with the Buyer was at arm's length and is entitled to the full protections of section 363(m) of the Bankruptcy Code.

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<sup>37</sup> *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (citation omitted).

<sup>38</sup> See, e.g., *In re Trans World Airlines, Inc.*, Case No. Civ.A. 01-226 (SLR), 2002 WL 500569, \* 1 (D. Del. Mar. 26, 2002) (upholding bankruptcy court's ruling premised on finding that there was "no evidence of unlawful insider influence or improper conduct," nor was there "any evidence of fraud or collusion between [the Successful Bidder] and [debtors], or [the Successful Bidder] and other bidders," that sale was in good faith); *In re Tempo Tech. Corp.*, 202 B.R. at 367 ("A Buyer's good faith status at a bankruptcy sale would be destroyed by misconduct involving 'fraud, collusion between the Buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'" (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d at 147); see also *Kabro Assocs. of West Islip, L.L.C. v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) ("Typically, the misconduct that would destroy a Buyer's good faith status at a judicial sale involves fraud, collusion between the Buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.").

63. Crucially, the Purchase Agreement preserves the Committee Settlement as set forth in the Plan.

**E. Credit Bidding Should Be Authorized under Section 363(k) of the Bankruptcy Code.**

64. A secured creditor is allowed to “credit bid” the amount of its claim in a sale. Section 363(k) of the Bankruptcy Code provides, in relevant part, that unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of the sale “may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.” Even if a secured creditor is undersecured as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such secured creditor to bid the total face value of its claim and does not limit the credit bid to the claim’s economic value.<sup>39</sup>

65. In this situation, the Buyer should be entitled to credit bid some or all of the claims for the Buyer’s collateral pursuant to section 363(k) of the Bankruptcy Code. Because the Buyer holds claims that are secured by substantially all of the Seller Assets, the Buyer should be allowed to credit bid the face value of its secured claims to effectuate the transactions under the Purchase Agreement to the fullest extent permitted by applicable law.

**F. Assumption and Assignment of the Assigned Contracts Is Authorized by Section 365 of the Bankruptcy Code.**

66. Sections 365(a) and (b) of the Bankruptcy Code authorize a debtor in possession to assume, subject to the court’s approval, executory contracts or unexpired leases of the debtor. Under section 365(a) of the Bankruptcy Code, a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” Section 365(b)(1) of

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<sup>39</sup> See *Cohen v. KB Mezzanine Fund II, LP (In re Submicron Sys. Corp.)*, 432 F.3d 448, 459–60 (3d Cir. 2006) (“It is well settled among district and bankruptcy courts that creditors can bid the full face value of their secured claims under § 363(k).”).



the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

67. The standard applied by the Third Circuit to determine whether an executory contract or unexpired lease should be assumed is the “business judgment” test, which requires a debtor to determine that the requested assumption or rejection would be beneficial to its estate.<sup>40</sup>

68. Courts generally will not second-guess a debtor’s business judgment concerning the assumption of an executory contract.<sup>41</sup>

69. In the present case, the Debtors’ assumption and assignment of the Assigned Contracts to the Buyer will meet the business judgment standard and satisfy the requirements of

<sup>40</sup> See *Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989).

<sup>41</sup> See *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (stating that section 365 is traditionally subject to the “business judgment” standard); *In re Decora Indus., Inc.*, No. 00-4459 JJF, 2002 WL 32332749, at \*8 (D. Del. 2002); *Official Comm. for Unsecured Creditors v. Aust (In re Network Access Solutions, Corp.)*, 330 B.R. 67, 75 (Bankr. D. Del. 2005) (“The standard for approving the assumption of an executory contract is the business judgment rule.”); *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006) (“The propriety of a decision to reject an executory contract is governed by the business judgment standard.”), *vacated on other grounds*, 607 F.3d 957 (3d Cir. 2010); see also *Phar-Mor, Inc. v. Strauss Bldg. Assocs.*, 204 B.R. 948, 952 (N.D. Ohio 1997) (“Courts should generally defer to a debtor’s decision whether to reject an executory contract.”) (citation omitted). Further, “[n]othing in the Code suggests that the debtor may not modify its contracts when all parties to the contract consent.” *Network Access Solutions*, 330 B.R. at 74 (citations omitted). While “[s]ection 363 of the Bankruptcy Code allows a debtor to . . . modify contracts . . . [t]o the extent they are outside the ordinary course of business, court approval is necessary.” *Id.* Regardless, “[t]here is . . . no discernable difference in the notice requirements or standard for approval under section 363 and 365.” *Id.*

section 365 of the Bankruptcy Code. As discussed above, the transactions contemplated by the Purchase Agreement will provide significant benefits to the Debtors' estates. Because the Debtors cannot obtain the benefits of the Purchase Agreement without the assumption of the Assigned Contracts, the assumption of these Assigned Contracts is undoubtedly a sound exercise of the Debtors' business judgment.

70. Further, a debtor in possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with section 365(a) of the Bankruptcy Code and provides adequate assurance of future performance by the assignee, whether or not there has been a default under the agreement.<sup>42</sup> Significantly, among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned.<sup>43</sup>

71. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction."<sup>44</sup>

72. To assist in the assumption, assignment and sale of the Assigned Contracts, the Debtors also request that the Sale Order provide that anti-assignment provisions in the Assigned Contracts shall not restrict, limit or prohibit the assumption, assignment and sale of the Assigned Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

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<sup>42</sup> See 11 U.S.C. § 365(f)(2).

<sup>43</sup> See, e.g., *In re Bygaph, Inc.*, 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance to be present where prospective assignee of a lease from debtor had financial resources and expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding).

<sup>44</sup> *EBG Midtown South Corp. v. McLaren/Hart Envtl. Eng'g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), *aff'd*, 993 F.2d 300 (2d Cir. 1993); *Carlisle Hornes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

73. Section 365(f)(1) of the Bankruptcy Code permits a debtor to assign unexpired leases and contracts free from such anti-assignment restrictions, providing, in pertinent part, that:

[N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection.

74. Section 365(f)(1) of the Bankruptcy Code, by operation of law, invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease.<sup>45</sup>

75. Other courts have recognized that provisions that have the effect of restricting assignments cannot be enforced.<sup>46</sup> Similarly, in *Mr. Grocer, Inc.*, the court noted that:

[the] case law interpreting § 365(f)(1) of the Bankruptcy Code establishes that the court does retain some discretion in determining that lease provisions, which are not themselves *ipso facto* anti-assignment clauses, may still be refused enforcement in a bankruptcy context in which there is no substantial economic detriment to the landlord shown, and in which enforcement would preclude the bankruptcy estate from realizing the intrinsic value of its assets.<sup>47</sup>

Thus, the Debtors request that any anti-assignment provisions be deemed not to restrict, limit, or prohibit the assumption, assignment, and sale of the Assigned Contracts and be deemed and

<sup>45</sup> See *Coleman Oil Co., Inc. v. The Circle K Corp. (In re The Circle K Corp.)*, 127 F.3d 904, 910–11 (9th Cir. 1997) (“[N]o principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases’ terms, when to do so will effectuate the purposes of section 365.”). Section 365(f)(3) of the Bankruptcy Code goes beyond the scope of section 365(f)(1) of the Bankruptcy Code by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof. See, e.g., *In re Jamesway Corp.*, 201 B.R. 73, 77–78 (Bankr. S.D.N.Y. 1996) (providing that section 365(f)(3) of the Bankruptcy Code prohibits enforcement of any lease clause creating right to terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court’s scrutiny regarding anti-assignment effect).

<sup>46</sup> See *In re Rickel Home Ctrs., Inc.*, 240 B.R. 826, 831 (D. Del. 1998) (“In interpreting section 365(f), courts and commentators alike have construed the terms to not only render unenforceable lease provisions which prohibit assignment outright, but also lease provisions that are so restrictive that they constitute de facto anti-assignment provisions.”).

<sup>47</sup> *In re Mr. Grocer, Inc.*, 77 B.R. 349, 354 (Bankr. D.N.H. 1987).

found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

**WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)**

76. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**RESERVATION OF RIGHTS**

77. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to contest any invoice or claim related to the relief requested herein in accordance with applicable law.

**CONSENT TO JURISDICTION**

78. Pursuant to Local Rule 9013-1(f), the Debtors confirm their consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

**NOTICE**

79. Notice of this Motion with respect to the Sale Procedures and Scheduling Order has been provided to the following, or their counsel, if known: (i) the U.S. Trustee; (ii) the DIP Lender; (iii) the Debtors' prepetition lenders; (iv) the Committee; (v) the Internal Revenue Service; (vi) any parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002. Notice of this Motion with respect to the Sale Order will be provided in accordance with

the Sale Procedures and Scheduling Order. The Debtors submit that in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of Page Intentionally Left Blank]*

**WHEREFORE**, the Debtors respectfully request entry of the Sale Procedures and Scheduling Order, substantially in the form attached hereto, and the Sale Order granting the relief requested in this Motion and such other and further relief as is just and proper.

Dated: August 28, 2020

Wilmington, Delaware

/s/ Jaime Luton Chapman

Robert S. Brady (No. 2847)

M. Blake Cleary (No. 3614)

Sean M. Beach (No. 4070)

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*Counsel for the Debtors and Debtors in Possession*

**EXHIBIT A**

**SALE PROCEDURES AND SCHEDULING ORDER**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
ONE AVIATION CORPORATION, <i>et al.</i> , <sup>1</sup>	:	Case No. 18-12309 (CSS)
	:	
	:	
Debtors.	:	Jointly Administered
	:	
	:	<b>RE: Docket No. ____</b>
	X	

**ORDER (A) APPROVING FORM AND MANNER OF NOTICE IN CONNECTION  
WITH SALE OF ASSETS OF THE DEBTORS, (B) SCHEDULING SALE HEARING,  
(C) APPROVING BID PROTECTIONS, (D) AUTHORIZING PROCEDURES  
GOVERNING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES, AND (E) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of ONE Aviation Corporation and its affiliated debtors as debtors in possession (collectively, the “Debtors”) for the entry of an order: (a) approving the form and manner of notice of the proposed sale transactions and the Sale Hearing, (b) scheduling the Sale Hearing, (c) approving the Bid Protections, (d) authorizing procedures governing the assumption and assignment of the Assigned Contracts, and (e) granting related relief, as more fully described in the Motion; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The debtors’ corporate headquarters is located at 3520 Spirit Drive SE, Albuquerque, NM 87106.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Purchase Agreement and the Motion, as applicable, and to the extent of any inconsistency in the defined terms, the Purchase Agreement shall govern.



and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the particular circumstances; and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND THAT:**<sup>3</sup>

A. The statutory bases for the relief requested in the Motion are sections 105(a), 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 2002, 3007, 6004, 6006, 9007, and 9014, and Local Rule 6004-1.

B. Notice of the Motion having been given to the following entities, or their counsel, if known: (i) the U.S. Trustee; (ii) the DIP Lender; (iii) the Debtors’ prepetition lenders; (iv) the Committee; (v) the Internal Revenue Service; and (vi) any parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002, is sufficient in light of the circumstances and the nature of the relief requested in the Motion.

C. The Debtors have articulated good and sufficient reasons for this Court to: (i) set the Sale Hearing and approve the manner of notice of the Sale Hearing; (ii) approve the Bidding Protections; and (iii) approve the procedures for the assumption and assignment of the Assigned Contracts, including notice of proposed Cure Amounts.

D. Notice of Sale. This Order and the Sale Notice, substantially in the form attached as **Exhibit 1** to this Order, are reasonably calculated and sufficient to provide interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the deadline

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<sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (ii) reasonably specific identification of the Seller Assets to be sold pursuant to the terms of the Purchase Agreement; (iii) a description of the Sale as being free and clear of liens, claims, encumbrances and other interests, with all such liens, claims, encumbrances and other interests attaching with the same validity and priority to the Sale proceeds; and (iv) notice of the proposed Assumption and Assignment Procedures (as provided herein), and no other or further notice of the Sale shall be required.

E. Bid Protections. The Bid Protections (i) have been negotiated by the Buyer and the Debtors and their respective advisors at arm's length and in good faith and (ii) are necessary to ensure that the Buyer will continue to pursue the Purchase Agreement and the Sale transaction contemplated thereby. The Break-Up Fee (as defined in the Purchase Agreement), to the extent payable under the Purchase Agreement, (a) (x) is an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code and (y) shall be treated as an allowed superpriority administrative expense claim against the Debtors' estates pursuant to sections 105(a), 364, 503(b), and 507(a)(2) of the Bankruptcy Code; (b) is commensurate to the real and material benefits conferred upon the Debtors' estates by the Buyer; and (c) is fair, reasonable, and appropriate, including in light of the size and nature of the Sale transaction and the efforts that have been and will be expended by the Buyer. The Bid Protections are a material inducement for, and condition of, the Buyer's execution of the Purchase Agreement.

F. Assumption and Assignment Procedures. This Order, the Assumption and Assignment Procedures set forth herein, and the Assumption and Assignment Notice substantially in the form attached as Exhibit 2 to this Order, are reasonably calculated to provide

each Contract Party to any Contracts and/or Leases to be assumed by the Debtors and assigned to the Buyer with proper notice of the intended assumption and assignment of their Contracts and/or Leases, the procedures in connection therewith, and any Cure Amounts relating thereto.

G. Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as provided herein.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion, are overruled.

**A. Important Dates and Deadlines**

3. Sale Hearing. The Sale Hearing shall commence on **September 29, 2020, at \_\_\_:\_\_\_ .m.<sup>4</sup> (Eastern Time)** before the Honorable Christopher S. Sontchi, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, DE 19801. Following consultation with the Consultation Parties, the Debtors may adjourn the Sale Hearing without further notice other than by announcement in open Court or on the Court's calendar.

4. Sale Objection Deadline. Objections, if any, to the Sale of the Seller Assets, the Cure Amounts, or any relief requested in the Motion other than the relief granted by this Court in the Sale Procedures and Scheduling Order must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and applicable local rules; (d) filed with the Clerk of the Bankruptcy Court, at 824 Market Street, 5th Floor, Wilmington, DE 19801; and (e) to be served upon the following parties (collectively,

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<sup>4</sup> Subject to Court availability.

the “Objection Notice Parties”) so as to be **actually received** by or before **4:00 p.m. (Eastern Time) on September 22, 2020** (the “Sale Objection Deadline”): (i) co-counsel for the Debtors, (x) Paul Hastings, LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn: Chris L. Dickerson, Chrisdickerson@paulhastings.com, Brendan M. Gage, brendangage@paulhastings.com, Nathan S. Gimpel, nathangimpel@paulhastings.com, and 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Todd M. Schwartz, Toddschwartz@paulhastings.com, and (y) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: M. Blake Cleary and Jaime Luton Chapman, Mbcleary@ycst.com and JChapman@ycst.com; (ii) counsel for the Buyer, King & Spalding LLP, 1180 Peachtree Street NE, Suite 1600, Atlanta, GA 30309, Attn: W. Austin Jowers, ajowers@kslaw.com; (iii) co-counsel for the Committee, (x) Lowenstein Sandler, One Lowenstein Drive, Roseland, NJ 07068, Attn: Bruce D. Buechler, Bbuechler@lowenstein.com, and 1251 Avenue of the Americas, New York, NY 10020, Attn: Wojciech F. Jung, Wjung@lowenstein.com, and (y) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801, Attn: Adam G. Landis and Kerri Mumford, Landis@lrclaw.com and mumford@lrclaw.com; (iv) counsel for the Senior Subordinated Secured Noteholders, Montgomery McCracken Walker & Rhoades, LLP, 1105 North Market Street, Suite 1500, Wilmington, DE, 19801, Attn: Marc J. Phillips, mphilips@mmwr.com; and (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Room 2207, Lockbox 35, Wilmington, Delaware 19899-0035, Attn: Linda Casey, linda.casey@usdoj.gov (these procedures are collectively referred to as the “Sale Objection Procedures”). Each objection shall state the legal and factual basis of such objection. For the avoidance of any doubt, and subject to compliance with the Sale Objection Procedures set forth herein, nothing herein shall operate to

limit the right of any third party, including the Committee, from asserting any objection to approval of the Sale, all such objections being expressly reserved and preserved hereby.

5. Only those objections made in compliance with the Sale Objection Procedures and the Assigned Contract Objection Procedures will be considered by the Court at the Sale Hearing. The failure of any objecting person or entity to file its objections by the Sale Objection Deadline and in accordance with the Sale Objection Procedures or the Assigned Contract Objection Procedures (as applicable) will be a bar to the assertion, at the Sale Hearing or thereafter, of any objection (including to the sale of the Seller Assets and assumption and assignment of Contracts and Leases free and clear of all liens and interests) and shall be deemed to constitute any such party's consent to the entry of the Sale Order and consummation of the sale and all transactions related thereto, including, without limitation, such assumption and assignment.

**B. Bid Protections**

6. The Bid Protections are approved in their entirety. The Break-Up Fee and the Expense Reimbursement shall constitute allowed superpriority administrative expense Claims pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code with priority over all other administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code, other than, and subject and subordinate in all respects to, the Carve Out and the DIP Obligations (each as defined in the Senior DIP Order (as defined in the Purchase Agreement)).

**C. Assumption and Assignment Procedures**

7. The following procedures regarding the assumption and assignment of the Contracts and Leases in connection with the Sale are hereby approved to the extent set forth herein, and shall govern the assumption and assignment of all Contracts and/or Leases proposed

to be assumed by the Debtors pursuant to section 365(b) of the Bankruptcy Code and assigned to the Successful Bidder(s) following a sale or sales pursuant to section 365(f) of the Bankruptcy Code (as defined in the Motion, the “Assigned Contracts”).

8. On September 8, 2020, or as soon as reasonably practicable thereafter, the Debtors shall serve on all Contract Parties an Assumption and Assignment Notice substantially in the form attached hereto as **Exhibit 2**, that identifies, to the extent applicable, (i) the Contract(s) and/or Lease(s) that may be assumed by the Debtors and assigned to the Buyer; (ii) the name and address of the Contract Party thereto; (iii) notice of the proposed effective date of the assignment (subject to the right of the Debtors and Buyer to withdraw such request for assumption and assignment of the Assigned Contract(s) prior to the Closing); (iv) the amount, if any, determined by the Debtors to be necessary to be paid to cure any applicable cure amounts, whether arising prepetition or postpetition (the “Cure Amount”); provided, however, that to the extent the Cure Amount for any Contract or Lease was established pursuant to the confirmation of the Plan, the Debtors shall not be required to serve any additional notice of such Cure Amount and the Cure Amount established under the Plan for such Contract or Lease shall be binding upon the non-Debtor counterparty to such Contract or Lease; (v) the deadlines by which any such Contract Party must file an objection to the proposed assumption and assignment of any Assigned Contract; provided, however, that the presence of any Contract or Lease on an Assumption and Assignment Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease; and (vi) the deadline by which the Buyer must pay any and all proposed Cure Amounts and disputed Cure Amounts.

9. The Buyer may designate in writing any Contract or Lease to be assumed and assigned to it under the Purchase Agreement by the Designation Deadline of **October 15, 2020**

(or such other date as shall constitute the Designation Deadline as set forth in the Purchase Agreement). The Buyer may, in its sole discretion, add or remove a Contract or Lease to be assumed and assigned to the Buyer on the Closing Date by amending the Closing Assumed Contract List until five (5) business days prior to the Closing Date. The Buyer may also, in its sole discretion, designate a Contract or Lease to be excluded or rejected by delivering written notice to the Sellers, as defined under the Purchase Agreement, until five (5) business days prior to the Closing Date.

10. All objections to the assumption and assignment of any Assigned Contract (“Assumption and Assignment Objections”), including, without limitation, any objection to the provision of adequate assurance of future performance under any Assigned Contract pursuant to section 365 of the Bankruptcy Code (“Adequate Assurance”), must: (a) comply with the Sale Objection Procedures (excluding compliance with the Sale Objection Deadline); (b) identify the Contract(s) or Lease(s) to which the objector is party; (c) describe with particularity any cure the claimant contends is required under section 365 of the Bankruptcy Code (the “Cure Claim”) and identify the basis(es) of the alleged Cure Claim under the Contract or Lease; (d) attach all documents supporting or evidencing the Cure Claim; and (e) if the response contains an objection to Adequate Assurance, state with specificity what the objecting party believes is required to provide Adequate Assurance (collectively with the Sale Objection Procedures, the “Assigned Contract Objection Procedures”). Assumption and Assignment Objections must be filed so as to be actually received no later than the Sale Objection Deadline. For the avoidance of doubt, any objection to the Debtors’ proposed Cure Amount under any Assigned Contract must comply with subsections (a) through (d) of this paragraph, *provided, however*, that

such objections must be filed with the Court and served on the Objection Notice Parties by the Sale Objection Deadline.

11. If no objection is timely and properly filed and served in accordance with the Assigned Contract Objection Procedures, (a) the Cure Amount set forth in the Assumption and Assignment Notice shall be controlling notwithstanding anything to the contrary in any Assigned Contract or other document and the Contract Party thereto shall be forever barred from asserting any other claim against the Debtors or Buyer with respect to such Assigned Contract arising prior to the assignment thereof and (b) the Buyer's promise to perform under the Assigned Contract shall be deemed Adequate Assurance thereunder. To the extent the Debtors dispute any Cure Claim, such dispute shall be presented to the Court at the Sale Hearing, or such later date and time as the Debtors and the Contract Party may agree or the Court may order, but such dispute shall not affect in any way the effectiveness of any assumption and assignment of any Assigned Contract.

12. If at any time after the entry of this Order the Debtors identify additional prepetition executory contracts and/or unexpired leases to be assumed and assigned to the Buyer as Assigned Contracts (whether before or after closing of the Sale), the Debtors shall serve a supplemental Assumption and Assignment Notice by first-class mail, facsimile, electronic transmission (including email), or overnight mail on the Contract Party (and its attorney, if known) to each supplemental Assigned Contract at the last known address available to the Debtors by no later than fourteen (14) calendar days before the proposed effective date of the assignment. A Contract Party receiving any such supplemental Assumption and Assignment Notice shall have until the later of (a) the Sale Objection Deadline or (b) fourteen (14) calendar days from service of the supplemental Assumption and Assignment Notice to file an objection to



the assumption and assignment of its Contract(s) and/or Lease(s) in accordance with the Assigned Contract Objection Procedures set forth herein.

**D. Publication Notice and Sale Notice**

13. The Publication Notice and Sale Notice are hereby approved. On or within three (3) business days following the entry of this Order, the Debtors shall cause the Sale Notice to be served on the following entities, or their counsel, if known: (i) the U.S. Trustee; (ii) the DIP Lender; (iii) the Debtors' prepetition lenders; (iv) the Committee; (v) the Internal Revenue Service; (vi) the United States Attorney for the District of Delaware; (vii) any party known or reasonably believed to have asserted any lien, claim or encumbrance or other interest in the Debtors' assets; (ix) any party known or reasonably believed to have expressed an interest in acquiring some or substantially all of the Debtors' assets; (x) the counterparties to the Debtors' executory contracts and unexpired leases; and (xi) any parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002. On or within five (5) business days following the entry of this Order, the Debtors shall cause the Publication Notice to be published in the national edition of *USA Today* and in the *Albuquerque Journal* or other similar publications.

**E. Credit Bidding**

14. In connection with the bidding and sale process authorized herein, the Buyer shall have the right to credit bid all or a portion of the value of Buyer's claims within the meaning of section 363(k) of the Bankruptcy Code; *provided* that Buyer shall have the right to credit bid its claims only with respect to the collateral by which the Buyer's claims are secured.

**F. Miscellaneous**

15. The Debtors are authorized to take all actions necessary and appropriate to implement and effectuate the relief granted pursuant to this Order in accordance with the Motion

and to expend such sums of money and do other things as may be necessary and appropriate to comply with the requirements established by this Order.

16. The Debtors are authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

17. The Debtors shall submit to the Court the proposed Sale Order approving the Sale prior to the Sale Hearing.

18. In the event of any conflict between this Order and the Purchase Agreement, the terms of this Order shall control.

19. Any stay of this Order, whether arising from Bankruptcy Rules 6004 and/or 6006 or otherwise, is hereby expressly waived and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

20. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of the Bidding Procedures and this Order.

**EXHIBIT 1**

**SALE NOTICE**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:	X	
	:	
	:	Chapter 11
ONE AVIATION CORPORATION, <i>et al.</i> , <sup>1</sup>	:	
	:	Case No. 18-12309 (CSS)
	:	
Debtors.	:	Jointly Administered
	X	

**NOTICE OF SALE HEARING  
IN CONNECTION WITH THE SALE OF ASSETS OF ONE AVIATION**

**PLEASE TAKE NOTICE** that on **August 28, 2020**, ONE Aviation Corporation and its affiliated debtors as debtors in possession in the above-captioned cases (collectively, the “Debtors”) entered into an Asset Purchase Agreement (the “Purchase Agreement”) with SEF OA LLC, a Delaware limited liability company (the “Buyer”), as more fully set forth in the *Debtors’ Motion for Entry of: (A) Order (I) Approving Form and Manner of Notice in Connection With Sale of Assets of the Debtors, (II) Scheduling Sale Hearing, (III) Approving Bid Protections, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (V) Granting Related Relief; and (B) Order (I) Approving Purchase Agreement, (II) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (III) Granting Related Relief* filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on **August 28, 2020** [Docket No. \_\_\_\_] (the “Motion”). The debtors seek to sell all or substantially all of the Debtors’ assets (collectively, the “Seller Assets”) to the Buyer free and clear of Liens or encumbrances as set forth in the Purchase Agreement pursuant to section 363 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that on [\_\_\_\_], 2020, the Bankruptcy Court entered an order [Docket No. \_\_\_\_] (the “Sale Procedures and Scheduling Order”),<sup>2</sup> which, among other things, set the key dates, times, and procedures related to the sale pursuant to the terms outlined in the Motion.

**PLEASE TAKE FURTHER NOTICE THAT** objections, if any, to the Motion, shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of Practice and Procedure for the United States Bankruptcy Court for the District of Delaware, shall set forth the name of the objecting party, the nature and amount of any claims or interests held or asserted against the Debtors’ estate or properties, the basis for the objection, and the specific grounds therefore and shall be filed with the Bankruptcy Court and served upon the following **so that they are actually received by no later than 4:00 p.m. (prevailing Eastern time) on September 22, 2020** (the “Sale Objection Deadline”): (i) co-counsel for the Debtors, (x) Paul Hastings, LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn: Chris L. Dickerson, [Chrisdickerson@paulhastings.com](mailto:Chrisdickerson@paulhastings.com), Brendan M. Gage, [brendangage@paulhastings.com](mailto:brendangage@paulhastings.com), Nathan S. Gimpel, [nathangimpel@paulhastings.com](mailto:nathangimpel@paulhastings.com), and 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Todd M. Schwartz, [Toddschwartz@paulhastings.com](mailto:Toddschwartz@paulhastings.com), and (y) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: M. Blake Cleary and Jaime Luton Chapman, [Mbcleary@ycst.com](mailto:Mbcleary@ycst.com) and [JChapman@ycst.com](mailto:JChapman@ycst.com); (ii) counsel for the Buyer, King & Spalding LLP, 1180 Peachtree Street NE, Suite 1600, Atlanta, GA 30309, Attn: W. Austin Jowers, [ajowers@kslaw.com](mailto:ajowers@kslaw.com); (iii) co-counsel for the Committee, (x) Lowenstein Sandler, One Lowenstein Drive, Roseland, NJ 07068, Attn: Bruce D. Buechler,

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The debtors’ corporate headquarters is located at 3520 Spirit Drive SE, Albuquerque, NM 87106.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Sale Procedures and Scheduling Order.

Bbuechler@lowenstein.com, and 1251 Avenue of the Americas, New York, NY 10020, Attn: Wojciech F. Jung, Wjung@lowenstein.com, and (y) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801, Attn: Adam G. Landis and Kerri Mumford, Landis@lrclaw.com and mumford@lrclaw.com; (iv) counsel for the Senior Subordinated Secured Noteholders, Montgomery McCracken Walker & Rhoades, LLP, 1105 North Market Street, Suite 1500, Wilmington, DE, 19801, Attn: Marc J. Phillips, mphilips@mmwr.com; and (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Room 2207, Lockbox 35, Wilmington, Delaware 19899-0035, Attn: Linda Casey, linda.casey@usdoj.gov.

**PLEASE TAKE FURTHER NOTICE** that failure of any entity to file an objection on or before the Sale Objection Deadline shall be deemed to constitute consent to the sale of the Seller Assets to the Buyer and the other relief requested in the Motion, and be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, the sale of the Seller Assets, or the Debtors' consummation and performance of the terms of the Purchase Agreement entered into with the Buyer.

**PLEASE TAKE FURTHER NOTICE** that the Sale Procedures and Scheduling Order provides that a hearing to approve the sale of the Seller Assets to the Buyer (the "Sale Hearing"), and approve the other relief requested in the Motion, is scheduled to take place on **September 29, 2020 at [\_\_:\_\_ .m.]<sup>3</sup> (prevailing Eastern Time)** before the Honorable Christopher S. Sontchi, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, DE 19801, or as soon thereafter as counsel may be heard.

For ease of reference, the following chart has been included to summarize key dates relevant to this notice:<sup>4</sup>

<u>Key Events and Deadlines</u>	<u>Date</u>
<b>Sale Objection Deadline</b> (including the deadline to object to assumption and assignment of Contracts and Leases)	September 22, 2020 at 4:00 p.m. (ET)
<b>Sale Hearing</b>	September 29, 2020

**PLEASE TAKE FURTHER NOTICE** that this Notice is subject to the full terms and conditions of the Motion and the Sale Procedures and Scheduling Order, which shall control in the event of any conflict, and the Debtors' encourage parties in interest to review such documents in their entirety. A copy of the Motion, the Purchase Agreement, and the Sale Procedures and Scheduling Order, in addition to any related documents that may be filed, may be obtained by accessing (a) the website of the Debtors' notice and claims agent, Epiq Corporate Restructuring, LLC, at <http://dm.epiq11.com/Oneaviation> for no charge, or (b) the Court's internet site: <https://ecf.deb.uscourts.gov>, for a fee, through an account obtained from the PACER website at <http://pacer.psc.uscourts.gov>. The documents also may be obtained from the Debtors' claims and notice agent, Epiq Bankruptcy Solutions, LLC at (855) 255-4838 or by visiting <http://dm.epiq11.com/Oneaviation>.

#### CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE AN OBJECTION

**ANY PARTY OR ENTITY WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE SALE ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE SALE PROCEDURES AND SCHEDULING ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE SELLER ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS AFFECTED THEREUNDER.**

<sup>3</sup> Subject to Court availability.

<sup>4</sup> All dates, times, and deadlines are subject to change or modification in accordance with the Sale Procedures and Scheduling Order. Please see the Sale Procedures and Scheduling Order for additional information.

**NO SUCCESSOR OR TRANSFeree LIABILITY**

The proposed Sale Order provides that the Buyer in the Sale will have no responsibility for, and the assets will be sold free and clear of, any successor liability, including the following:

The Buyer shall not be deemed, as a result of any action taken in connection with the Purchase Agreement, the consummation of the Transactions (as defined in the Sale Order) contemplated by the Purchase Agreement, or the transfer or operation of the Seller Assets, to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for the Buyer, with respect to any obligations as an assignee under the Assigned Agreements arising after the Closing); (b) have, de facto or otherwise, merged with or into the Debtors; or (c) be an alter ego or mere continuation or substantial continuation of the Debtors including, without limitation, within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 et seq., the Comprehensive Environmental Response Compensation and Liability Act (“**CERCLA**”), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, et seq., environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, any liabilities, debts or obligations of or required to be paid by the Debtors for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors’ liability under such law, rule or regulation or doctrine. Other than as expressly set forth in the Purchase Agreement with respect to Assumed Liabilities, the Buyer shall not have any responsibility for (a) any liability or other obligation of the Debtors or related to the Seller Assets or (b) any remaining Claims (as defined in the Sale Order) against the Debtors or any of their predecessors or affiliates. The Buyer shall have no liability whatsoever with respect to the Debtors’ (or their predecessors’ or affiliates’) respective businesses or operations or any of the Debtors’ (or their predecessors’ or affiliates’) obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Seller Assets prior to the Closing.

Dated: [\_\_\_\_], 2020  
Wilmington, Delaware

---

Robert S. Brady (No. 2847)  
M. Blake Cleary (No. 3614)  
Sean M. Beach (No. 4070)  
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*Counsel for the Debtors and Debtors in Possession*

**EXHIBIT 2**

**ASSUMPTION AND ASSIGNMENT NOTICE**



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
ONE AVIATION CORPORATION, <i>et al.</i> , <sup>1</sup>	:	Case No. 18-12309 (CSS)
	:	
	:	
Debtors.	:	Jointly Administered
	:	
	:	
	X	

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES ONE AVIATION MAY ASSUME AND ASSIGN**

---

**PLEASE TAKE NOTICE** that on **August 28, 2020**, ONE Aviation Corporation and its affiliated debtors as debtors in possession in the above-captioned cases (collectively, the “Debtors”) entered into an Asset Purchase Agreement (the “Purchase Agreement”) with SEF OA LLC, a Delaware limited liability company (the “Buyer”), as more fully set forth in the *Debtors’ Motion for Entry of: (A) Order (I) Approving Form and Manner of Notice in Connection With Sale of Assets of the Debtors, (II) Scheduling Sale Hearing, (III) Approving Bid Protections, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (V) Granting Related Relief; and (B) Order (I) Approving Purchase Agreement, (II) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (III) Granting Related Relief* filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on **August 28, 2020** [Docket No. \_\_\_\_] (the “Motion”). The debtors seek to sell all or substantially all of the Debtors’ assets (collectively, the “Seller Assets”) to the Buyer free and clear of Liens or encumbrances as set forth in the Purchase Agreement pursuant to section 363 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that on [\_\_\_\_], **2020**, the Bankruptcy Court entered an order [Docket No. \_\_\_\_] (the “Sale Procedures and Scheduling Order”),<sup>2</sup> which, among other things, set the key dates, times, and procedures related to the sale pursuant to the terms outlined in the Motion, including the procedures for assumption and assignment of executory contracts and unexpired leases.

---

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The debtors’ corporate headquarters is located at 3520 Spirit Drive SE, Albuquerque, NM 87106.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Sale Procedures and Scheduling Order.

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU OR ONE OF YOUR AFFILIATES IS A COUNTERPARTY (A “CONTRACT PARTY”) TO ONE OR MORE CONTRACTS OR LEASES THAT MAY BE EXECUTORY CONTRACTS OR UNEXPIRED LEASES WITH ONE OR MORE OF THE DEBTORS AS SET FORTH ON EXHIBIT A ATTACHED HERETO.<sup>3</sup>**

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Sale Procedures and Scheduling Order, the Debtors may assume and assign to the Buyer the executory contract(s) or unexpired lease(s) listed on Exhibit A attached hereto (each, as applicable, a “Contract” or “Lease” and, collectively, the “Contracts and Leases”) to which you are a counterparty. The Debtors have conducted a review of their books and records and have determined that the cure amount for unpaid monetary obligations under such Contract(s) or Lease(s) is as set forth on Exhibit A attached hereto (the “Cure Amount”). **If you object to the proposed assumption and assignment of any of the Contract(s) or Lease(s), including the proposed Cure Amount of any Contract(s) or Lease(s) or the Buyer’s ability to provide adequate assurance of future performance with respect to any Contract(s) or Lease(s), you must file an objection with the Bankruptcy Court no later than 4:00 p.m. (prevailing Eastern Time) on September 22, 2020, (the “Sale Objection Deadline”). All objections must be served so as to be received at the applicable deadline by: (i) co-counsel for the Debtors, (x) Paul Hastings, LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn: Chris L. Dickerson, [Chrisdickerson@paulhastings.com](mailto:Chrisdickerson@paulhastings.com), Brendan M. Gage, [brendangage@paulhastings.com](mailto:brendangage@paulhastings.com), Nathan S. Gimpel, [nathangimpel@paulhastings.com](mailto:nathangimpel@paulhastings.com), and 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Todd M. Schwartz, [Toddschwartz@paulhastings.com](mailto:Toddschwartz@paulhastings.com), and (y) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: M. Blake Cleary and Jaime Luton Chapman, [Mbcleary@ycst.com](mailto:Mbcleary@ycst.com) and [JChapman@ycst.com](mailto:JChapman@ycst.com); (ii) counsel for the Buyer, King & Spalding LLP, 1180 Peachtree Street NE, Suite 1600, Atlanta, GA 30309, Attn: W. Austin Jowers, [ajowers@kslaw.com](mailto:ajowers@kslaw.com); (iii) co-counsel for the Committee, (x) Lowenstein Sandler, One Lowenstein Drive, Roseland, NJ 07068, Attn: Bruce D. Buechler, [Bbuechler@lowenstein.com](mailto:Bbuechler@lowenstein.com), and 1251 Avenue of the Americas, New York, NY 10020, Attn: Wojciech F. Jung, [Wjung@lowenstein.com](mailto:Wjung@lowenstein.com), and (y) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801, Attn: Adam G. Landis and Kerri Mumford, [Landis@lrclaw.com](mailto:Landis@lrclaw.com) and [mumford@lrclaw.com](mailto:mumford@lrclaw.com); (iv) counsel for the Senior Subordinated Secured Noteholders, Montgomery McCracken Walker & Rhoades, LLP, 1105 North Market Street, Suite 1500, Wilmington, DE, 19801, Attn: Marc J. Phillips, [mphillips@mmwr.com](mailto:mphillips@mmwr.com); and (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Room 2207, Lockbox 35, Wilmington, Delaware 19899-0035, Attn: Linda Casey, [linda.casey@usdoj.gov](mailto:linda.casey@usdoj.gov).**

**PLEASE TAKE FURTHER NOTICE** that the Debtors propose that if no objection to the Cure Amount(s) is filed by the Sale Objection Deadline, (i) you will be deemed to have agreed and stipulated that the Cure Amount(s) as determined by the Debtors is correct, and (ii) you shall be forever barred, estopped, and enjoined from asserting any additional cure amount under the Assigned Contract(s).

<sup>3</sup> This Notice is being sent to counterparties to contracts and leases that may be executory contracts and unexpired leases. This notice is *not* an admission by the Debtors that such contract or lease is executory or unexpired

**PLEASE TAKE FURTHER NOTICE** that the Debtors propose that if no objection to the proposed assumption and assignment of certain contracts and leases to the Buyer (the “Assigned Contracts”) or to the Buyer’s ability to provide adequate assurance of future performance is filed by the Sale Objection Deadline, you will be forever barred from objecting to the assumption and assignment of the Assigned Contract(s) to the Buyers or to the Buyer’s adequate assurance of future performance.

**PLEASE TAKE FURTHER NOTICE** that with respect to any Assigned Contract assumed and assigned to the Buyer, all Cure Amounts shall be satisfied by payment of the Cure Amounts on the Closing Date (as defined in the Purchase Agreement) or on such other terms as the parties to each such Assigned Contract may otherwise agree without any further notice to or action, order or approval of the Bankruptcy Court. In addition, the assumption and assignment of each such Assigned Contract may be conditioned upon the disposition of all issues with respect to such Assigned Contract.

**PLEASE TAKE FURTHER NOTICE THAT** pursuant to the Sale Procedures and Scheduling Order, with respect to any Contract or Lease, in the event of a timely filed objection and dispute regarding: (a) any Cure Amount with respect to any of the Contracts or Leases; (b) the ability of the Buyer to provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code, if applicable, under an Assigned Contract; or (c) any other matter pertaining to assumption and assignment, the Cure Amount shall be paid as soon as reasonably practicable and following the entry of a final order resolving the dispute and approving the assumption and assignment of such Assigned Contract; *provided, however*, that the Debtors are authorized to settle any dispute regarding the amount of any Cure Amount or assumption and assignment to the Buyer without any further notice to or action, order or approval of the Court.

**PLEASE TAKE FURTHER NOTICE THAT** pursuant to the Sale Procedures and Scheduling Order, the Buyer may designate in writing any Contract or Lease to be assumed and assigned to it under the Purchase Agreement by the Designation Deadline. The Buyer may add or remove any Contract or Lease to be assumed and assigned or excluded and rejected by amending the Closing Assumed Contract List, as defined under the Purchase Agreement, up until five (5) business days prior to the Closing Date. At the Closing, the Buyer shall pay any proposed Cure Amounts associated with the assumption and assignment of an Assigned Contract. The Buyer shall pay any disputed Cure Amounts as soon as practicable after the entry of an order of the Court resolving such dispute or pursuant to mutual agreement with the applicable Contract Party and entry of an order of the Court regarding the same. Further, no later than **October 15, 2020** (or such other date as shall constitute the Designation Deadline as set forth in Section 1.1(tt) of the Purchase Agreement), the Buyer may designate additional Contracts or Leases, which had not previously been designated for assumption and assignment, to be assumed and assigned to the Buyer or other Successful Bidder notwithstanding the occurrence of the Closing. The Buyer or other Successful Bidder shall pay any proposed Cure Amounts associated with the assumption and assignment of such additional Contracts or Leases on the earlier of the Closing Date or entry of an order of the Court regarding the effectiveness of such assumption and assignment or resolving any dispute over Cure Amounts, or pursuant to mutual agreement with the applicable Contract Party and entry of an order of the Court regarding the same.

**PLEASE TAKE FURTHER NOTICE THAT** notwithstanding anything herein, this Notice shall not be deemed to be an assumption, assignment, adoption, rejection, or termination

of any of the Assigned Contracts. Moreover, the Debtors explicitly reserve their rights, in their sole discretion, to reject or assume each Assigned Contract pursuant to section 365(a) of the Bankruptcy Code and nothing herein (a) alters in any way the prepetition nature of the Assigned Contracts or the validity, priority, or amount of any claims of a counterparty to an Assigned Contract against the Debtors that may arise under such Assigned Contract, (b) creates a postpetition contract or agreement, or (c) elevates to administrative expense priority any claims of an counterparty to an Assigned Contract against the Debtors that may arise under such Assigned Contract.

Dated: [\_\_\_\_\_] , 2020

Wilmington, Delaware

---

Robert S. Brady (No. 2847)

M. Blake Cleary (No. 3614)

Sean M. Beach (No. 4070)

Jaime Luton Chapman (No. 4936)

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*Counsel for the Debtors and Debtors in Possession*

**EXHIBIT A TO ASSUMPTION AND ASSIGNMENT NOTICE**

<b>Counterparty Name</b>	<b>Counterparty Address</b>	<b>Contract/Lease</b>	<b>Cure Amount</b>

**EXHIBIT B**

**PURCHASE AGREEMENT (WITHOUT EXHIBITS)**

**EXECUTION VERSION  
STRICTLY CONFIDENTIAL  
SUBJECT TO FRE 408**

---

**ASSET PURCHASE AGREEMENT**

**By and Among**

**SEF OA LLC, as Purchaser,**

**ONE AVIATION CORPORATION,**

**and**

**CERTAIN SUBSIDIARIES OF ONE AVIATION CORPORATION NAMED HEREIN**

**as the Sellers.**

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**Dated as of August 28, 2020**

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”), dated as of August 28, 2020 (the “**Agreement Date**”), has been entered into by and among SEF OA LLC, a Delaware limited liability company (“**Purchaser**”), ONE Aviation Corporation, a Delaware corporation, and certain direct and indirect wholly owned subsidiaries set forth on Annex I hereto (individually a “**Seller**,” and collectively, the “**Company**” or the “**Sellers**”). Purchaser and the Sellers are individually referred to herein as a “**Party**,” and collectively as the “**Parties**.” For the purposes of this Agreement, capitalized terms used herein shall have the meanings set forth herein or in Article I.

### RECITALS:

WHEREAS, on October 9, 2018, each Seller filed a voluntary petition (the “**Chapter 11 Petitions**”) for relief under chapter 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), commencing jointly administered chapter 11 cases under lead case no. 18-12309 (the “**Bankruptcy Case**”);

WHEREAS, in accordance with Sections 1107 and 1108 of the Bankruptcy Code, each Seller continues to manage its properties and operate its business as a “debtor-in-possession” under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code;

WHEREAS, Purchaser desires to purchase the Purchased Assets and assume the Assumed Liabilities from the Sellers, with such sale to be free and clear of all Claims and Encumbrances (other than Permitted Encumbrances), and the Sellers desire to sell, convey, assign and transfer to Purchaser the Purchased Assets together with the Assumed Liabilities, all in the manner and subject to the terms and conditions set forth herein, and subject further to all requisite Bankruptcy Court and other applicable approvals as set forth herein; and

WHEREAS, each Seller’s board of directors (or similar governing body) has determined that it is advisable and in the best interests of such Seller and its constituencies to enter into this Agreement and to consummate the transactions provided for herein, subject to entry of the Sale Order, and each has approved the same.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Purchaser and the Sellers hereby agree as follows:

### ARTICLE I. DEFINITIONS

#### 1.1. Definitions. As used herein:

- (a) “**Accounts Receivable**” shall have the meaning set forth in Section 2.1(c).
- (b) “**Action**” means any action, dispute, claim, complaint, grievance, summons, suit, litigation, arbitration, mediation, proceeding (including any civil, criminal,

administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation by or before any Governmental Body.

(c) “**Administrative Expense Claims**” means Claims for costs and expenses of administration of the Bankruptcy Cases arising after the Petition Date and prior to the Closing Date under sections 328, 330, 363, 364(c)(1), 365, 503(b), 507(a)(2), or 507(b) of the Bankruptcy Code.

(d) “**Affiliate**” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise, or (ii) an officer, director, or any Person that has the power, directly or indirectly, to vote five (5%) or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person.

(e) “**Agreement**” shall have the meaning set forth in the preamble.

(f) “**Agreement Date**” shall have the meaning set forth in the preamble.

(g) “**Aircraft**” means all aircraft owned by Sellers (whether registered with the FAA or otherwise), and shall include all aircraft objects, airframes, engines, rotors and propellers, parts and other goods, accessions and property attached to, incorporated in, affixed to or used in connection with such aircraft and any other log books, CAMP records and maintenance, repair and other records and related information (in English) for each aircraft and aircraft engine.

(h) “**Aircraft Certificates**” shall have the meaning set forth in Section 5.3(d).

(i) “**Allocation**” shall have the meaning set forth in Section 11.2.

(j) “**Alternative Transaction**” means (i) the approval by the Bankruptcy Court of one or more sales, assignments or other transfers of a material portion of the Purchased Assets to a Person other than Purchaser or its designee or its Affiliates, or (ii) the confirmation of a plan of reorganization that does not contemplate the sale of the Purchased Assets to Purchaser in accordance with the terms hereof.

(k) “**Ancillary Documents**” means any certificate, agreement, document or other instrument (other than this Agreement) to be executed and delivered by a Party in connection with the consummation of the transactions contemplated this Agreement.

(l) “**Assigned Contracts**” shall have the meaning set forth in Section 2.1(b).

(m) “**Assignment and Assumption Agreement**” shall have the meaning set forth in Section 3.2(b).

(n) “**Assumed Leased Real Property**” means those certain leases of real property related to the Sellers’ Business locations that are subject to Assigned Contracts and that are identified in Schedule 2.1(b).

- (o) “**Assumed Liabilities**” shall have the meaning set forth in Section 2.3.
- (p) “**Assumed Plans**” shall have the meaning set forth in Section 7.1(f).
- (q) “**Assumption Approval**” shall have the meaning set forth in Section 2.6(h).
- (r) “**Avoidance Actions**” means all causes of action, lawsuits, claims, rights of recovery and other similar rights of each Seller under chapter 5 of the Bankruptcy Code.
- (s) “**Back-up Bidder**” shall have the meaning set forth in Section 8.2(c).
- (t) “**Bankruptcy Case**” shall have the meaning set forth in the Recitals.
- (u) “**Bankruptcy Code**” shall have the meaning set forth in the Recitals.
- (v) “**Bankruptcy Court**” shall have the meaning set forth in the Recitals.
- (w) “**Bankruptcy Rules**” shall have the meaning set forth in the Recitals.
- (x) “**Benefit Plan**” means (i) all “*employee benefit plans*” (including, without limitation, as defined in Section 3(3) of ERISA), including all employee benefit plans which are “*pension plans*” (including, without limitation, as defined in Section 3(2) of ERISA) and any other employee benefit arrangements or payroll practices (including severance pay, vacation pay, Seller awards, salary continuation for disability, sick leave, death benefit, hospitalization, welfare benefit, group or individual health, dental, medical, life, insurance, fringe benefit, deferred compensation, profit sharing, retirement, retiree medical, supplemental retirement, bonus or other incentive compensation, stock purchase, equity-based, stock option, stock appreciation rights, restricted stock and phantom stock arrangements or policies), and (ii) all other employment, termination, bonus, severance, change in control, collective bargaining or other similar plans, programs, contracts, or arrangements (whether written or unwritten), in each case, maintained, contributed to, or required to be contributed to by Seller or any ERISA Affiliate for the benefit of any current or former employee, director, officer or independent contractor of Seller or under which Seller or any ERISA Affiliate has any liability.
- (y) “**Bill of Sale**” shall have the meaning set forth in Section 4.2(a).
- (z) “**Break-up Fee**” means an amount equal to \$500,000.
- (aa) “**Business**” shall have the meaning set forth in the Section 2.1.
- (bb) “**Business Day**” means any day other than a Saturday, Sunday or other day on which banks in New York City, New York are authorized or required by Law to be closed.
- (cc) “**Business Software**” shall have the meaning set forth in Section 2.1.
- (dd) “**Business Systems**” shall have the meaning set forth in Section 2.1.
- (ee) “**Cash and Cash Equivalents**” means all of the Sellers’ cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account



balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held (but specifically excluding any cash payable by Purchaser to the Sellers pursuant to this Agreement).

(ff) “**CFIUS**” means the Committee on Foreign Investment in the United States.

(gg) “**Chapter 11 Petitions**” shall have the meaning set forth in the Recitals.

(hh) “**Claim**” shall have the meaning given that term in Section 101(5) of the Bankruptcy Code and includes, inter alia, all rights, claims, causes of action, defenses, debts, demands, damages, offset rights, setoff rights, recoupment right, obligations, and liabilities of any kind or nature under contract, at law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto.

(ii) “**Closing**” shall have the meaning set forth in Section 4.1.

(jj) “**Closing Assumed Contract List**” shall have the meaning set forth in Section 2.6(b).

(kk) “**Closing Date**” means the date on which the Closing occurs.

(ll) “**Code**” means the United States Internal Revenue Code of 1986, as the same may be amended from time to time.

(mm) “**Committee Settlement**” means the settlement agreement set forth in Article 5.17 of the Plan.

(nn) “**Competing Bid**” shall have the meaning set forth in Section 8.2(b).

(oo) “**Consent**” means any approval, consent, ratification, permission, clearance, designation, qualification, waiver or authorization, or an order of the Bankruptcy Court that deems or renders unnecessary the same.

(pp) “**Contract**” means any legally binding contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license, understanding, instrument or other agreement, arrangement or commitment that is binding upon a Person.

(qq) “**COVID-19 Measures**” means any quarantine, “shelter in place”, “stay at home”, workforce reduction, social distancing, shutdown, closure, sequester or any other Law or Order or guideline or recommendation by any Governmental Body in connection with or in response to COVID-19.

(rr) “**Cure Amounts**” shall have the meaning set forth in Section 2.3(b).

(ss) “**Deposit**” shall have the meaning set forth in Section 3.2.

(tt) “**Designation Deadline**” means October 15, 2020.

(uu) “**DIP Budget**” means the pro forma budget delivered to the Purchaser prior to the date hereof specifying the Sellers’ operating budget as debtors-in-possession, as attached hereto as Exhibit I.

(vv) “**DIP Financing**” means that means that certain Senior Secured Superpriority Debtor in Possession Credit and Security Agreement, entered into on the Petition Date (as defined below), by and among the DIP Lender (as defined below), Eclipse Aerospace, Inc., a Delaware corporation, and Brigadoon Aircraft Maintenance, LLC, a Delaware limited liability company, as borrowers, debtors and debtors-in-possession, the other the Sellers designated as loan parties, each as a debtor and debtor-in-possession, to be provided in connection with the chapter 11 case and this Agreement as such DIP Financing may be amended, modified, supplemented, or restated from time to time.

(ww) “**DIP Obligations**” means the “DIP Obligations” as defined under the DIP Order.

(xx) “**DIP Lender**” means the financial institutions that are or may from time to time become lenders under the DIP Financing and their assignees thereof.

(yy) “**DIP Order**” means, collectively, (i) that *Final Order (I) Authorizing Debtor Borrowers to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), (B) Grant Senior Liens and Superpriority Administrative Expense Status, and (C) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361,362,363, and 364; and (III) Granting Related Relief*, and (ii) that *Amended and Restated Final Order (I) Authorizing Debtor Borrowers to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361,362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), (B) Grant Senior Liens and Superpriority Administrative Expense Status, and (C) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; (III) Modifying Final Junior DIP Financing Order; (IV) Scheduling a Final Hearing and (V) Granting Related Relief*.

(zz) “**Documents**” means all of the Sellers’ written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental plans and reports, data, Permits and Permit applications, studies and documents, Tax Returns, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test results, maintenance schedules, functional requirements, operating instructions, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form relating to the Business.

(aaa) “**DOJ**” shall have the meaning set forth in Section 9.16.

(bbb) “**Eclipse**” means Eclipse Aerospace, Inc., a Delaware corporation.

(ccc) “**Eclipse EASA Certificate**” means the revised type certificate for model EA500, identified as NBR: EASA.IM.A.171 issued to Eclipse Aerospace, Inc., on November 13, 2009 with major change approval on November 18, 2015.

(ddd) “**Eclipse Production Certificate**” means production certificate number 550SW for model EA500 as amended and forwarded to Eclipse Aerospace, Inc., on December 11, 2017 by the U.S. Department of Transportation Federal Aviation Administration.

(eee) “**Eclipse Type Certificate**” means type certificate number A00002AC for model EA500 issued to Eclipse Aviation Corporation on July 27, 2006, reissued on September 30, 2006 (change from provisional to standard type certificate) and transferred to Eclipse Aerospace, Inc., on September 30, 2009 by the U.S. Department of Transportation Federal Aviation Administration.

(fff) “**Employee**” means an individual who, as of the applicable date, is employed by a Seller in connection with the Business.

(ggg) “**Employer**” means the Sellers.

(hhh) “**Encumbrance**” means any lien (as defined in Section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined in Section 101(5) of the Bankruptcy Code), right, demand, charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, restrictive covenants, encroachments, rights of first refusal, preemptive rights, judgments, conditional sale or other title retention agreements and other impositions, imperfections or defects of title or restrictions on transfer or use of any nature whatsoever.

(iii) “**Environmental Law**” means any foreign, federal, state or local statute, regulation, ordinance rule of common law or agency guidance or policies relating to the protection of human health, safety, the environment, natural resources or consumer products.

(jjj) “**Environmental Liabilities and Obligations**” means all Liabilities arising from any actual or threatened impairment, impact or damage to the environment, health or safety, or any actual or threatened failure to comply with Environmental Law in connection with the prior or ongoing ownership or operation of the Business, the Purchased Assets, or the Assumed Leased Real Property where the Business is currently located, including Liabilities related to: (i) the transportation, storage, use, arrangement for disposal or disposal of Hazardous Materials; (ii) the Release of Hazardous Materials, including migration onto or from the real property where the Business is located; (iii) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments; (iv) any other obligations imposed under Environmental Law including all applicable Permits; (v) Orders, notices to comply, notices of violation, alleged non-compliance and inspection reports; and (vi) all obligations with respect to personal injury, property damage, wrongful death and other damages and losses arising under applicable Law as a result of any of the matters identified in clauses (i)-(v) of this definition.

(kkk) “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

(lll) “**ERISA Affiliate**” means any entity which is a member of (A) a controlled group of corporations (as defined in Section 414(b) of the Code), (B) a group of trades or businesses under common control (as defined in Section 414(c) of the Code), (C) an affiliated service group (as

defined under Section 414(m) of the Code) or (D) any group specified in Treasury Regulations promulgated under Section 414(o) of the Code, any of which includes or included Seller.

(mmm) “**Excluded Assets**” shall have the meaning set forth in Section 2.2.

(nnn) “**Excluded Contract**” shall have the meaning set forth in Section 2.6(c).

(ooo) “**Excluded Liabilities**” shall have the meaning set forth in Section 2.4.

(ppp) “**Expense Reimbursement**” means the sum of the aggregate amount of Purchaser’s reasonable documented out-of-pocket costs and expenses (including expenses of outside counsel, accountants and financial advisors) incurred by Purchaser prior to termination of this Agreement in connection with or related to Purchaser’s evaluation, consideration, analysis, negotiation, and documentation of a possible transaction with Sellers pursuant to this Agreement or in connection with or related to the transactions contemplated by this agreement, up to a maximum amount of \$500,000, subject to the entry of the Sale Procedures Order by the Bankruptcy Court.

(qqq) “**FAA**” means the United States Federal Aviation Administration.

(rrr) “**FAA Bills of Sale**” shall have the meaning set forth in Section 4.2(b).

(sss) “**Final Order**” means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction entered by the Clerk of the Bankruptcy Court or such other court on the docket in the Sellers’ Bankruptcy Case or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, reargument or rehearing shall then be pending, or (ii) if an appeal, writ of certiorari new trial, reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other court of competent jurisdiction shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause such order not to be a Final Order.

(ttt) “**FTC**” shall have the meaning set forth in Section 9.16(a).

(uuu) “**GAAP**” means United States generally accepted accounting principles as in effect from time to time.

(vvv) “**Governmental Body**” means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether foreign, federal, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

(www) “**Hazardous Material**” means any substance, material or waste which is regulated by any Governmental Body, including petroleum and its by-products, asbestos, and any material or substance which is defined or identified as a “hazardous waste,” “hazardous substance,” “hazardous material,” “restricted hazardous waste,” “industrial waste,” “solid waste,” “contaminant,” “pollutant,” “toxic waste” or “toxic substance” or otherwise regulated under or the subject of any provision of Environmental Law.

(xxx) “**HSR Filing**” shall have the meaning set forth in Section 9.16.

(yyy) “**Indebtedness**” of any Person means, without duplication, (i) the interest in respect of, principal of and premium (if any) in respect of (x) indebtedness of such Person for money borrowed and (y) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person with respect to any Contracts relating to the deferred and unpaid purchase price of property or services, including any interest accrued thereon and prepayment or similar penalties and expenses; (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Encumbrance (other than Permitted Encumbrances), on any property or asset of such Person (whether or not such obligation is assumed by such Person).

(zzz) “**Intellectual Property**” means all intellectual property and proprietary rights of any kind, including the following: (i) trademarks, service marks, trade names, slogans, logos, designs, symbols, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, any fictitious names, d/b/a’s or similar filings related thereto, or any variant of any of them, and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (ii) copyrights and copyrightable subject matter (including any registration and applications for any of the foregoing); (iii) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, intangibles, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, industrial property rights, and methodologies; (iv) computer software, computer programs, and databases (whether in source code, object code or other form); and (v) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

(aaaa) “**Inventory**” means all inventory (including finished goods, supplies, raw materials, work in progress, spare, replacement and component parts) related to the Business maintained or held by, stored by or on behalf of, or in transit to, any Seller.

(bbbb) “**IP Assignment and Assumption Agreement**” shall have the meaning set forth in Section 4.2(d).

(cccc) “**IRS**” shall have the meaning set forth in Section 4.14(c).

(dddd) “**Knowledge**” or (“**Knowledge of the Sellers**” or the “**Sellers’ Knowledge**”) means the actual knowledge of Alan Klapmeier, Steve Serfling and Jon Hansen, after commercially reasonable due inquiry.

(eeee) “**Law**” means any federal, state, local, municipal, foreign or international, multinational or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, airworthiness directive, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body, including but not limited to Environmental Laws.

(ffff) “**Lease**” shall have the meaning set forth in Section 5.6(a).

(gggg) “**Leased Real Property**” means all of the real property leased, subleased, used or occupied by any of the Seller, together with all buildings, structures, fixtures and improvements erected thereon, and any and all rights privileges, easements, licenses, hereditaments and other appurtenances relating thereto, and used, or held for use, in connection with the operation of the Business.

(hhhh) “**Liability**” means, as to any Person, any debt, adverse claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

(iiii) “**Material Adverse Effect**” means any event, change, occurrence or state of facts that has had, individually or in the aggregate, a material adverse effect on the assets, Liabilities, Business, properties, or financial condition of the Sellers, taken as a whole; provided, however, that in no event shall any of the following, alone or in combination, be deemed to constitute, or be taken into account, in determining whether there has been, or would be, a Material Adverse Effect: (a) changes in the U.S. or global economy or capital markets in general but that do not have a disproportionate effect on the Sellers relative to other participants in the industry in which the Sellers conduct the Business, (b) changes that affect generally the industry in which the Sellers operate but that do not have a disproportionate effect on the Sellers relative to other participants in the industry in which the Sellers conduct the Business, (c) changes (other than due to the COVID-19 virus) after the Agreement Date in any applicable Law or GAAP or the interpretation or enforcement thereof, (d) the commencement of the Bankruptcy Case and the Sellers’ inability to pay certain obligations as a result of the filing of the Bankruptcy Case, (e) any actions taken or proposed to be taken by Purchaser or any of its Affiliates or actions taken or proposed to be taken by any of the Sellers at the request or direction of the Purchaser or any of its Affiliates, (f) any effect resulting from the public announcement of this Agreement, compliance with terms of this Agreement or the consummation of the transactions contemplated by this Agreement, (g) the sale process of the Business to the extent in accordance with the terms of the Sale Procedures Order, (h) actions or omissions of the Sellers resulting from restrictive covenants contained in this Agreement which Purchaser does not waive following an explanation and request from the Sellers, or (i) any change arising in connection with acts of God, natural disasters, earthquakes, epidemics, plagues, pandemics, disease outbreaks, illnesses or public health events (other than the COVID-19 virus and any non-human epidemic, plague, pandemic or other similar disease outbreak or illness), the declaration of a national emergency, hostilities, acts of war, sabotage or

terrorism or military actions or any escalation or material worsening of any such epidemics, plagues, pandemics, disease outbreaks, illnesses or public health events or hostilities, acts of war, sabotage or terrorism or military actions.

(jjjj) “**New Certificates**” shall have the meaning set forth in Section 9.17.

(kkkk) “**New EASA Certificate**” shall have the meaning set forth in Section 9.17.

(llll) “**New FAA Production Certificate**” shall have the meaning set forth in Section 9.17.

(mmmm) “**New FAA Type Certificate**” shall have the meaning set forth in Section 9.17.

(nnnn) “**New FAA Parts Certificate**” shall have the meaning set forth in Section 9.17.

(oooo) “**Non-Real Property Contracts**” means the Contracts to which a Seller is a party other than the Leases.

(pppp) “**Order**” means any award, writ, injunction, judgment, order, ruling, decision, subpoena, mandate, precept, command, directive, consent, approval, award, decree or similar determination or finding entered, issued, made or rendered by any Governmental Body.

(qqqq) “**Ordinary Course of Business**” means the ordinary and usual course of normal day to day operations of the Business consistent with past practice taking into account (i) the contemplation, commencement and pendency of the Bankruptcy Case and (ii) any changes to such practices as may have occurred since and as a result of the outbreak of COVID-19, including compliance with COVID-19 Measures.

(rrrr) “**Organizational Documents**” means, with respect to a particular entity Person, (i) if a corporation, the articles or certificate of incorporation and bylaws, (ii) if a general partnership, the partnership agreement and any statement of partnership, (iii) if a limited partnership, the limited partnership agreement and certificate of limited partnership, (iv) if a limited liability company, the articles or certificate of organization or formation and any limited liability company or operating agreement, (v) if another type of Person, all other charter and similar documents adopted or filed in connection with the creation, formation or organization of the Person, and (vi) all amendments or supplements to any of the foregoing.

(ssss) “**Outside Back-up Date**” shall have the meaning set forth in Section 8.2(c).

(tttt) “**Outside Date**” shall have the meaning set forth in Section 4.4(b).

(uuuu) “**Overbid Protection**” shall have the meaning set forth in Section 8.1.

(vvvv) “**Party**” shall have the meaning set forth in the preamble.

(wwwv) “**Pension Plan**” shall have the meaning set forth in Section 5.14(e).

(xxxx) “**Permits**” means to the fullest extent permitted under applicable law, all notifications, licenses, permits (including environmental, construction and operation permits), franchises, certificates, approvals, consents, waivers, clearances, exemptions, classifications, registrations, variances, orders, tariffs, rate schedules and other similar documents and authorizations issued by any Governmental Body to any of the Sellers and used, or held for use, in connection with the operation of the Business or applicable to ownership of the Purchased Assets or assumption of the Assumed Liabilities.

(yyyy) “**Permitted Encumbrances**” means (i) Encumbrances for utilities and current Taxes not yet due and payable or being contested in good faith; (ii) easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments against any of the Purchased Assets which do not, individually or in the aggregate, adversely affect the operation of the Business and Leased Real Property, or materially detract from the value of the Leased Real Property, (iii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law, (iv) materialmans’, mechanics’, artisans’, shippers’, warehousemans’ or other similar common law or statutory liens incurred in the Ordinary Course of Business that relate to obligations of the Sellers that are either not past due as of the Closing Date or otherwise included in the Assumed Liabilities, (v) licenses granted on a non-exclusive basis, and (vii) such other Encumbrances or title exceptions as Purchaser may approve in writing in its sole and exclusive discretion or which do not, individually or in the aggregate, materially and adversely affect the operation of the Business.

(zzzz) “**Person**” means an individual, corporation, partnership, limited liability Seller, joint venture, association, trust, unincorporated organization, labor union, estate, Governmental Body or other entity or group.

(aaaaa) “**Personal Property Leases**” shall have the meaning set forth in Section 5.7.

(bbbbb) “**Petition Date**” means the date on which each Seller commenced the Bankruptcy Case by the filing of a Chapter 11 Petition.

(ccccc) “**Plan**” means the Second Amended Joint Prepackaged Chapter 11 Plan of Reorganization (as Modified) for ONE Aviation Corporation and Its Debtor Affiliates [Docket No. 707-1].

(ddddd) “**Post-Closing Plans**” shall have the meaning set forth in Section 7.1(b).

(eeee) “**Post-Closing Tax Period**” means any taxable period (or portion thereof) beginning after the Closing Date.

(fffff) “**Pre-Closing Period**” means the period commencing on the Agreement Date and ending on the earlier of the date upon which this Agreement is terminated pursuant to Section 4.4 or the Closing Date.

(ggggg) “**Pre-Closing Tax Period**” means any taxable period (or portion thereof) ending on or before the Closing Date.



(hhhhh) “**Prepetition Credit Agreement**” means that certain Credit and Security Agreement, dated as of July 20, 2012 (as amended, restated, supplemented or otherwise modified from time to time), entered into among the Sellers and Crystal Financial SBIC LP as Administrative Agent and Collateral Agent, and the lenders signatories thereto.

(iiiiii) “**Prepetition First Lien Obligations**” means the “Obligations” as defined in the DIP Order.

(jjjjj) “**Prevailing Bidder**” shall have the meaning set forth in Section 8.2(c).

(kkkkk) “**Professional**” means any Person retained by the Sellers or a statutory committee pursuant to a Final Order of the Bankruptcy Court entered pursuant to sections 327, 328, or 1103 of the Bankruptcy Code.

(lllll) “**Professional Fee Claim**” means any Claim of a Professional for allowance of compensation and/or reimbursement of costs and expenses incurred in the Bankruptcy Cases on or before the Closing Date.

(mmmmm) “**Purchase Price**” shall have the meaning set forth in Section 3.1(a).

(nnnnn) “**Purchased Assets**” shall have the meaning set forth in Section 2.1.

(ooooo) “**Purchased Intellectual Property**” shall have the meaning set forth in Section 5.8.

(ppppp) “**Purchaser**” shall have the meaning set forth in the preamble.

(qqqqq) “**Rejection Effective Date**” shall have the meaning set forth in Section 2.6(c).

(rrrrr) “**Release**” means any actual or threatened release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal or leaching into the indoor or outdoor environment, or including migration to or from a property, including, but not limited to, any Leased Real Property.

(sssss) “**Remedial Action**” means all actions to (i) investigate, clean up, remove, treat or in any other way address any Hazardous Material; (ii) prevent the Release of any Hazardous Material; (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care; or (iv) to correct a condition of noncompliance with Environmental Laws.

(ttttt) “**Representative**” of a Person means such Person’s Subsidiaries and the officers, directors, managers, employees, advisors, representatives (including its legal counsel and its accountants) and agents of such Person or its Subsidiaries.

(uuuuu) “**Sale Hearing**” means the hearing to approve this Agreement and seeking entry of the Sale Order.

(vvvvv) “**Sale Motion**” means the motion or motions of the Sellers, in form and substance reasonably acceptable to the Sellers and Purchaser, seeking approval and entry of the Sale Procedures Order and Sale Order.

(wwwww) “**Sale Order**” means an order substantially in the form attached hereto as Exhibit G and otherwise in form and substance satisfactory to Purchaser in its sole and exclusive discretion.

(xxxxx) “**Sale Procedures Order**” means an order substantially in the form attached hereto as Exhibit F and otherwise in form and substance reasonably satisfactory to Seller and Purchaser.

(yyyyy) “**Seller**” or the “**Sellers**” shall have the meaning set forth in the preamble.

(zzzzz) “**Subsidiary**” or “**Subsidiaries**” means, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities of such entity, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body.

(aaaaa) “**Systems**” means all software, systems, servers, computers, hardware, firmware, middleware, networks, data communications lines, routers, hubs, switches and other information technology equipment that are used to process, store, maintain and operate business data, information, and functions.

(bbbbbb) “**Tax**” and “**Taxes**” mean (i) any and all taxes, including any federal, state, provincial, local, foreign or other income, gross receipts, sales, value added, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, capital, production, recapture, net worth, surplus, customs, duties, levies, surtaxes or other taxes, fees, assessments, reassessments or charges of any kind whatsoever, together with any interest, additions, installments or penalties with respect thereto and any interest in respect of such additions or penalties, (ii) any Liability for the payment of any items described in clause (i) above as a result of being (or ceasing to be) a member of an affiliated, consolidated, combined, unitary or aggregate group (or being included (or being required to be included)) in any Tax Return related to such group (including any Liability pursuant to Section 1.1502-6 of the Treasury Regulations, or any similar provision of state, local or non-U.S. Law), and (iii) any Liability for the payment of any amounts as a result of any express or implied obligation to indemnify any other Person, or any successor or transferee liability, by contract or otherwise in respect of any items described in clause (i) or (ii) above.

(ccccc) “**Tax Proceeding**” means any action, suit, investigation, audit, Claim, investigation, or other action or proceeding with respect to Taxes.

(ddddd) “**Tax Refunds**” shall have the meaning set forth in Section 2.1(r).

(eeeeee) “**Tax Return**” means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) supplied or required to be supplied to any Governmental Body with respect to Taxes, including amendments thereto.

(ffffff) “**Transferred Employee**” shall have the meaning set forth in Section 7.1(a).

(gggggg) “**Treasury Regulations**” means the regulations promulgated under the Code by the United States Department of the Treasury (whether in final, proposed or temporary form), as the same may be amended from time to time.

(hhhhhh) “**WARN Act**” means the United States Worker Adjustment and Retraining Notification Act, and the rules and regulations promulgated thereunder.

(iiiiii) “**Wind-Down Account**” shall have the meaning set forth in Section 3.1(a).

(jjjjjj) “**Wind-Down Budget**” means an amount equal to \$75,000 as set forth in a budget setting forth priority claims, administrative expenses, and other costs incurred from and after the Closing Date to be paid from the Wind-Down Account for the post-Closing administration and wind-down of the Sellers’ estates.

(kkkkkk) “**Wind-Down Payment**” shall have the meaning set forth in Section 3.1(a).

1.2 Interpretations. Unless otherwise indicated herein to the contrary:

(a) When a reference is made in this Agreement to an Article, Section, Exhibit, Schedule, clause or subclause, such reference shall be to an Article, Section, Exhibit, Schedule, clause or subclause of this Agreement.

(b) The words “include,” “includes” or “including” and other words or phrases of similar import, when used in this Agreement, shall be deemed to be followed by the words “without limitation.”

(c) The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

(d) The word “if” and other words of similar import shall be deemed, in each case, to be followed by the phrase “and only if.”

(e) The use of “or” herein is not intended to be exclusive.

(f) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa.

(g) All terms defined in this Agreement have their defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein.

(h) References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any Contract are to that Contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References herein to a Person are also to its successors and permitted assigns. Any reference herein to a Governmental Body shall be deemed to include reference to any successor thereto. References from or through any date means, unless otherwise specified, from and including or through and including such date, respectively.

(i) Any reference herein to “Dollars” or “\$” shall mean United States dollars.

(k) References to “days” shall refer to calendar days unless Business Days are specified. If any period expires on a day which is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.

(l) Unless the context otherwise requires, the word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase does not mean simply “if.”

## ARTICLE II.

### PURCHASE AND SALE OF THE PURCHASED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

2.1. Purchase and Sale of the Purchased Assets. Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code and the Bankruptcy Rules, and on the terms and subject to the conditions set forth herein and the Sale Order, at the Closing, the Sellers shall sell, transfer, assign, convey and deliver to Purchaser (or any entity or person designated by Purchaser), and Purchaser shall purchase, acquire and accept from the Sellers all of the Sellers’ right, title and interest in, to and with respect to the design, engineering, manufacture, repair, warranty repair, general maintenance, inspection, general support, upgrade and customer support of commercial aircraft under the Sellers’ tradenames (hereinafter, the “**Business**”), including the following, but excluding the Excluded Assets (regardless of whether any of the following subsections expressly excludes Excluded Assets) (the “**Purchased Assets**”), as of the Closing:

(a) all of the Sellers’ properties, rights, claims, and assets (other than the Excluded Assets) of every kind and description, wherever situated or located, real, personal or mixed, tangible or intangible, contingent, owned, leased, or licensed, for use in or relating to the Business, whether or not reflected on the books and records of the Seller, as the same shall exist on the Closing Date;

(b) subject to Section 2.6 hereof, unless the Bankruptcy Court shall have ruled that such Contract is not assignable pursuant to Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006 after a properly filed objection by the counterparty thereto, all rights under Contracts, agreements and purchase and sale orders that are not Excluded Contracts (as defined in Section 2.6(a)), including all rights under any lease for Assumed Leased Real Property and any customer contracts and any contract renewal rights, but excluding obligations under the DIP Financing or any other debtor-in-possession financing (the “**Assigned Contracts**”), each as listed on Schedule 2.1(b);

(c) to the extent related to the Business, except as set forth on Schedule 2.1(c), all trade and non-trade accounts receivable, notes receivable and negotiable instruments of the Sellers (the “***Accounts Receivable***”);

(d) all of the Sellers’ Cash and Cash Equivalents (except to the extent of the Cash Purchase Price Payment, Wind-Down Payment, Committee Settlement Payment, Kestrel Secured Claim Payment, Senior Subordinated Notes Claim Payment, Professional Fee Payment, Closing Date Administrative and Priority Claim Payment, and those amounts set forth on Schedule 2.1(d));

(e) all Documents relating to the Purchased Assets or Assumed Liabilities, including, without limitation, customer lists; provided, however, that the Sellers have the right to retain copies at the Sellers’ expense;

(f) all tangible assets of the Sellers relating to the Business, including, without limitation, the tangible assets of the Sellers located at any Assumed Leased Real Property or at the locations listed on Schedule 2.1(b);

(g) all personnel files for the Employees except as prohibited under Law; provided, however, that the Sellers have the right to retain copies at the Sellers’ expense to the extent not prohibited by Law;

(h) any chattel paper owned or held by the Sellers relating to the Business or the Purchased Assets, except to the extent constituting an Excluded Asset;

(i) any lock boxes to which account debtors of the Sellers remit payment relating to the Business or the Purchased Assets;

(j) all other or additional assets, properties, privileges, rights (including prepaid expenses) and interests of the Sellers relating to the Business or the Purchased Assets of every kind and description and wherever located, whether known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, and whether or not specifically referred to in this Agreement;

(k) to the extent transferrable hereunder and at the time when Sellers are able, all Permits relating to the Business or the Purchased Assets, and all pending applications therefor, including, without limitation, the Aircraft Certificates (as defined in Section 5.3(d));

(l) all express or implied guarantees, warranties, representations, covenants, indemnities, rights, claims, counterclaims, defenses, credits, causes of action or rights of set off against third parties relating to the Purchased Assets (including, for the avoidance of doubt, those arising under, or otherwise relating to the Assigned Contracts) or Assumed Liabilities, including rights under vendors’ and manufacturers’ warranties, indemnities, guaranties and claims and causes of action under applicable Law that are possessed by the Sellers (excluding Avoidance Actions);

(m) the Purchased Intellectual Property, including all claims (including all rights to bring claims for past, present or future infringement of the Purchased Intellectual Property owned by the Seller) and causes of action of the Sellers as of the Closing against any Persons (regardless of whether or not such claims and causes of action have been asserted by the Sellers) related thereto;

(n) all goodwill, payment intangibles and general intangible assets and rights of the Sellers to the extent associated with the Business or the Purchased Assets;

(o) all Inventory, including raw materials, work in process, parts, subassemblies and finished goods, wherever located and whether or not obsolete or carried on the Sellers' books of account, in each case with any transferable warranty and service rights of the applicable Seller with respect to such Purchased Assets to the extent owned by the Sellers;

(p) to the extent permitted by Law, the Sellers' Documents, and without limiting the foregoing, each of the following: financial accounting and other books and records, correspondence, and all customer sales, marketing, advertising, packaging and promotional materials, files, data, software (whether written, recorded or stored on disk, film, tape or other media, and including all computerized data), drawings, engineering and manufacturing data and other technical information and data, and all other business and other records, in each case arising under or relating to the Purchased Assets, the Assumed Liabilities or the Business; provided, however, that the Sellers have the right to retain copies of all of the foregoing at the Sellers' expense;

(q) to the extent transferable, all rights and obligations under or arising out of all insurance policies relating to the Business or any of the Purchased Assets or Assumed Liabilities (including returns and refunds of any premiums paid, or other amounts due back to the Sellers, with respect to cancelled policies);

(r) all Tax assets net of any Liability (including all state and federal Tax refunds (or the right to such state and federal refunds of Taxes, whether claimed or unclaimed) for all taxable periods (or portions thereof), whether ending on, prior to, or after the Closing Date (the "***Tax Refunds***"));

(s) except to the extent set forth on Schedule 2.1(s), all rights and obligations under non-disclosure or confidentiality, key employee retention plans and similar arrangements with (or for the benefit of) employees and agents of the Sellers or with third parties (including any non-disclosure or confidentiality agreements or any key employee retention plans or similar arrangements entered into in connection with or in contemplation of the filing of the Bankruptcy Case;

(t) to the extent designated pursuant Section 7.1(f), all Assumed Plans, if any (including all assets, trusts, insurance policies and administration service contracts related thereto), listed on Schedule 2.1(t);

(u) to the extent owned by the Sellers, all fixed assets and other personal property and interests related to the Business or Purchased Assets, wherever located, including all vehicles, tools, parts and supplies, fuel, machinery, equipment, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and licensed computer hardware and related documentation, stored data, communication equipment, trade fixtures and leasehold improvements, in each case with any freely transferable warranty and service rights of the applicable Sellers with respect to such Purchased Assets;

(v) to the extent owned by the Sellers, all telephone, fax numbers and email addresses of the Sellers;

(w) all of the Sellers' rights to receive refunds, payments or overpayments, clawbacks or other amounts (whether from a workers' compensation administrator or otherwise) in respect of any and all workers' compensation matters, claims, potential claims, purported claims and similar related items with respect to any Employee;

(x) except for the excluded Claims, all causes of action, lawsuits, judgments, claims, refunds, rights of recovery, rights of set-off, counterclaims, defenses, demands, warranty claims, rights to indemnification, contribution, advancement of expenses or reimbursement, or similar rights of any Seller (at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, now existing or hereafter acquired, contingent or noncontingent), including all Avoidance Actions except as set forth in Section 2.2(m);

(y) any and all claims, deposits, prepayments, refunds, rebates, causes of action, rights of recovery, rights of set-off and rights of recoupment relating to or in respect of a Purchased Asset;

(z) any and all bank, deposit and/or escrow accounts used by the Sellers for the retention of customer purchase deposits (but not the deposits themselves);

(aa) to the extent transferable, all Systems related to the Business that are owned by the Sellers (the “**Business Systems**”);

(bb) to the extent transferable, all software related to the Business that is owned by the Sellers (the “**Business Software**”);

(cc) without duplication of the above, all other current assets of the Sellers as of the Closing Date; and

(dd) without duplication of the above, all other assets that are related to or used in connection with the Purchased Assets or the Business (but excluding all of the Excluded Assets).

2.2. Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall the Sellers be deemed to sell, transfer, assign or convey, and the Sellers shall retain all right, title and interest to, in and under only the following assets, properties, interests and rights of the Sellers (collectively, the “**Excluded Assets**”):

(a) any asset of the Sellers that otherwise would constitute a Purchased Asset but for the fact that it is sold or otherwise disposed of in the Ordinary Course of Business of the Sellers and in conformity with the terms and conditions of this Agreement, during the time from the Agreement Date until the Closing Date, or Purchaser otherwise agrees to such disposition;

(b) copies of any and all information not relating to the Business that is stored on the Sellers’ computer systems, data networks or servers;

(c) all agreements and contracts of the Sellers other than the Assigned Contracts;

(d) all Documents and all personnel records of the Sellers’ employees that the Sellers are required by Law to retain and are prohibited by Law from providing a copy thereof to Purchaser;

(e) the Sellers’ Organizational Documents, corporate charter, minute and stock record books, Tax Returns, corporate seal, checkbooks and canceled checks;

(f) all shares of capital stock or other equity interests issued by the Sellers or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests;

(g) the Sellers' rights under this Agreement, the Purchase Price hereunder, any agreement, certificate, instrument or other document executed and delivered by Purchaser to the Sellers in connection with the transactions contemplated hereby, or any side agreement between the Sellers and Purchaser entered into on or after the Agreement Date;

(h) all causes of action arising out of or related to any Excluded Asset;

(i) all causes of action set forth on Schedule 2.2(i);

(j) all current, as of the date of Closing, and prior director and officer insurance policies of the Sellers and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(k) all Benefit Plans (including all assets, trusts, insurance policies and administration service contracts related thereto), except for the Assumed Plans (if any);

(l) all assets expressly excepted from the subsections of Section 2.1, including those set forth on applicable schedules, regardless of whether such assets are listed in this Section 2.2; and

(m) all causes of action, including Avoidance Actions, in each case, to the extent that such cause of action has been waived, relinquished, and released under the Committee Settlement.

2.3. Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement and the Sale Order, effective as of the Closing, Purchaser shall assume from the Sellers (and pay, perform, discharge or otherwise satisfy in accordance with their respective terms or as required by Law), and the Sellers shall irrevocably convey, transfer and assign to Purchaser, the following Liabilities (and only the following Liabilities) (collectively, the "***Assumed Liabilities***"):

(a) all Liabilities of the Sellers arising from the ownership of the Purchased Assets, relating to periods occurring on or after the Petition Date, but excluding any Liabilities to the extent relating to the Sellers' ownership or operation of the Purchased Assets prior to the Petition Date or relating to any services that were sold or provided by the Sellers prior to the Petition Date;

(b) all Liabilities and obligations of the Seller under the Assigned Contracts, including any costs of cure with respect to the Assigned Contracts (the "***Cure Amounts***," or with respect to an individual Assigned Contract, the "***Cure Amount***") in each case to the extent arising and relating to the period through the Closing Date;

(c) all open purchase orders set forth on Schedule 2.3(c) arising out of the conduct of the Business and Liabilities arising under drafts or checks outstanding at the Closing incurred in the Ordinary Course of Business;

(d) all Liabilities relating to, or in respect of vacation days, sick days or other paid time-off, that is earned or accrued by, or with respect to, Transferred Employees;



(e) the obligations to provide benefits or payments under the Assumed Plans, if any;

(f) with respect to the Transferred Employees, the liabilities with respect to any unpaid base wages and base salaries, and accrued commissions, vacation, sick leave, personal time (to the extent not paid) as of the Closing Date to the extent such Liabilities are set forth in Schedule 2.3(f) or such liabilities are specifically assumed by Purchaser pursuant to this Agreement, but not including any bonus, retention or severance obligations or arising from any violation of Law by the Sellers prior to the Petition Date;

(g) without duplication, and to the extent not otherwise included, the payments set forth in Section 3.1 hereof, the Administrative Expense Claims and priority claims (i) set forth on Schedule 2.3(g), or (ii) set forth in the DIP Budget (and limited by the amount therein), to the extent not otherwise paid or accounted for as of the Closing; and

(h) all other Liabilities related to any Purchased Asset or ownership thereof.

Notwithstanding the foregoing or any other provisions of this Agreement, Purchaser shall not assume hereunder, and “Assumed Liabilities” shall not include, Liabilities under any Contract to the extent such Liabilities arise as a result of a breach or failure of such Contract occurring prior to, as of, or as a result of, the Closing.

The assumption by Purchaser of the Assumed Liabilities shall not, in any way, enlarge the rights of any third parties relating thereto.

2.4. Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, Purchaser is assuming only the Assumed Liabilities and is not assuming, and shall not be deemed to have assumed, any other Liabilities of the Sellers of whatever nature (whether arising prior to, at the time of, or subsequent to Closing), whether absolute, accrued, contingent or otherwise, whether due or to become due and whether or not assets, and whether or not known or unknown or currently existing or hereafter arising or matured or unmatured, direct or indirect, and the Sellers shall be solely and exclusively liable for any and all such Liabilities, including those relating to, arising out of or in connection with the operation of the Business or the Purchased Assets (including the use and ownership thereof) at any time prior to the Closing Date, and including, without limitation, those Liabilities set forth below (collectively, the “**Excluded Liabilities**”):

(a) all Liabilities of the Seller relating to or otherwise arising, whether before, on or after the Closing, out of, or in connection with, any of the Excluded Assets;

(b) any and all Liabilities for Indebtedness with respect to borrowed money;

(c) subject to Section 2.3, all Liabilities of the Sellers resulting from the conduct of the Sellers or ownership or lease of any properties or assets or any properties or assets previously used by the Sellers at any time, or other actions, omissions or events occurring prior to the Petition Date and which (i) constitute, may constitute or are alleged to constitute a tort, breach of contract or violation of any Law or (ii) relate to all Actions against the Sellers or their predecessors or Affiliates whether past, present, future, known or unknown, liquidated or unliquidated, accrued or unaccrued, pending or threatened;

(d) any and all Liabilities of the Sellers in respect of Contracts that are not Assigned Contracts;

(e) all Liabilities related to the WARN Act, to the extent applicable, with respect to separation of employment of any Employees prior to or on the Closing Date, unless the WARN Act did not apply to such separation but for any act or omission of the Purchaser or any of its Affiliates after the Closing Date;

(f) all Liabilities arising out of or relating to any business or property formerly owned or operated by the Sellers, any Affiliate or predecessor thereof, but not presently owned and operated by the Sellers, except in each case to the extent related to the Business or the Purchased Assets;

(g) all Environmental Liabilities and Obligations arising prior to the Closing;

(h) any and all Liabilities of the Sellers for any (i) Taxes (including any Taxes owed by the Sellers and arising in connection with the consummation of the transactions contemplated by this Agreement), and (ii) Taxes attributable to the Purchased Assets or the operation of the Business for any Pre-Closing Tax Period; and

(i) any and all Liabilities of the Sellers arising under this Agreement and/or any Ancillary Document executed and delivered by the Sellers to Purchaser in connection with the transactions contemplated hereby, or any side agreement between the Sellers and Purchaser entered into on or after the Agreement Date.

2.5. Post-Closing Liabilities. Purchaser acknowledges that Purchaser shall be responsible for all Liabilities and obligations relating to Purchaser's ownership or use of, or right to use, the Purchased Assets and the Assumed Liabilities after the Closing Date, including, without limitation, all Taxes arising out of or related to the Purchased Assets or the operation of conduct of the Business acquired pursuant to this Agreement for all Tax periods beginning on or after the Closing Date.

2.6. Assumption/Rejection of Certain Contracts.

(a) The Sale Order shall provide for the assumption by the Sellers (to the extent not already assumed by the Sellers), and the assignment to the extent legally capable of being assigned by the Sellers to Purchaser, of the Assigned Contracts on the terms and conditions set forth in the remainder of this Section 2.6, and shall provide for the Designation Deadline as defined herein. At Purchaser's reasonable request, the Sellers shall reasonably cooperate from the date hereof forward with Purchaser: (i) to allow Purchaser to enter into an amendment of any Lease or Contract upon assumption of such Lease or Contract by Purchaser (and the Sellers shall reasonably cooperate with Purchaser to the extent reasonably requested with Purchaser in negotiations with the lessors and contract counterparties thereof), or (ii) to otherwise amend any Lease or Contract to the extent such amendments would not adversely affect the Sellers; provided, that the Sellers shall not be required to enter into any such amendment if such amendment would result in an assumption by the Sellers of such Lease or Contract, unless such Lease or Contract will be assigned to Purchaser at the time of such assumption and the Sellers will have no Liability in connection therewith following such assignment and assumption. The Sellers shall have no obligation to Purchaser to provide adequate assurances of future performance under any Assigned Contract in connection with the assignment and assumption thereof by the Seller.

(b) Purchaser shall, five (5) days prior to the Sale Hearing, identify the Non-Real Property Contracts and Leases that Purchaser has decided will be Assigned Contracts to be assumed and assigned to Purchaser on the Closing Date by providing a list thereof to the Sellers (as updated in accordance with this Agreement, the “**Closing Assumed Contract List**”); provided it is understood by the Purchaser that the Sellers have already assumed the Leases related to their Business locations and such Leases shall be included as Assigned Contracts (the “**Assumed Leases**,” and Leases that are not Assumed Leases are “**Assumable Leases**”). Until two (2) Business Days prior to the Closing Date, Purchaser may, in its sole discretion, add or remove any Non-Real Property Contract or Assumable Lease as an Assigned Contract to be assumed and assigned to Purchaser on the Closing Date by amending the Closing Assumed Contract List, and, in connection with the Closing, the Sellers shall move in the Bankruptcy Court to assign any such Non-Real Property Contract or Lease on the Closing Assumed Contract List to Purchaser, and at the Closing shall assign to, and Purchaser shall accept the assignment of and assume such Non-Real Property Contract or Lease. Until two (2) Business Days prior to the Closing Date, Purchaser may, in its sole discretion, designate a Non-Real Property Contract or Assumable Lease for exclusion and rejection by delivering written notice to the Sellers and, in connection with the Closing, the applicable Sellers shall move to reject any such Non-Real Property Contract or Assumable Lease as of the Closing Date (which date shall constitute the Rejection Effective Date (defined below) with respect thereto).

(c) From and after the Agreement Date until the Designation Deadline, with respect to any Non-Real Property Contract or Assumable Lease that was neither included on the Closing Assumed Contract List nor excluded and rejected as of the Closing Date, Purchaser may, in its sole discretion, (i) designate such Non-Real Property Contract or Assumable Lease as an Assigned Contract by providing written notice to the Sellers, specifying the Non-Real Property Contracts or Assumable Leases to be assumed by the Sellers and assigned to Purchaser, or (ii) designate such Non-Real Property Contract or Assumable Lease for exclusion and rejection for purposes of this Agreement and, if executory, to be rejected by providing written notice to the Sellers, specifying the Non-Real Property Contracts or Assumable Leases to be excluded and rejected by the applicable Seller and the date that such rejection shall be effective, which rejection shall be effective upon the delivery of such notice to Seller (each, a “**Rejection Effective Date**”). Upon delivery of a notification by Purchaser with respect to any Non-Real Property Contract or Assumable Lease under Section 2.6(c)(i), the applicable Seller shall move in the Bankruptcy Court within two (2) days of receipt of such notice to assign such Non-Real Property Contract or Lease to Purchaser and shall assume and assign to, and Purchaser shall accept the assignment of and assume such Non-Real Property Contract or Assumable Lease. Upon delivery of a notification by Purchaser with respect to any Non-Real Property Contract or Assumable Lease under Section 2.6(c)(ii), the applicable Seller shall move in the Bankruptcy Court within two (2) days of receipt of such notice to reject such Non-Real Property Contract or Assumable Lease as of the applicable Rejection Effective Date. In the event that Purchaser has not provided a written designation to assume and assign or reject any Non-Real Property Contract or Assumable Lease pursuant to this Section 2.6(c) by the Designation Deadline, then such Non-Real Property Contract or Assumable Lease shall be deemed to be excluded and the Sellers may move in the Bankruptcy Court to reject such Non-Real Property Contract or Assumable Lease as of the Designation Deadline (which Designation Deadline shall constitute the Rejection Effective Date with respect thereto), and no Seller shall have any obligation to assign any such Non-Real Property Contract or Assumable Lease to Purchaser hereunder. Any Non-Real Property Contract or Assumable Lease that is designated (or deemed to be designated) for exclusion and rejection pursuant to this Section 2.6(c) shall constitute an “**Excluded Contract**” as of the Closing Date or, if thereafter, as of the Rejection Effective Date. To the extent that a Non-Real Property Contract or Assumable Lease has not at Closing been designated as an Excluded Contract or an

Assigned Contract, then, until the Rejection Effective Date, Purchaser shall be obligated to perform or cause to be performed all of the Sellers' obligations under such Non-Real Property Contract or Assumable Lease, and Purchaser shall be entitled to all benefits of the Sellers thereunder.

(d) After the Closing and prior to the Designation Deadline, the Sellers shall not terminate, amend, supplement, modify, waive any rights under, or create any lien with respect to any Non-Real Property Contract or any Lease, or take any affirmative action not required by the terms thereof, without the prior written consent of Purchaser (not to be unreasonably withheld or delayed), unless Purchaser has provided notice to the Sellers in writing designating such Non-Real Property Contract or Lease for rejection pursuant to Section 2.6(c).

(e) Within two (2) Business Days of Purchaser's delivery of any notice of removal or designation of any Non-Real Property Contract or Assumable Lease as an Assigned Contract by Purchaser pursuant to Section 2.6(c), or such lesser time as is approved by the Bankruptcy Court, the Sellers shall give notice of the removal or designation of such Non-Real Property Contract or Assumable Lease as an Assigned Contract to the other parties thereto.

(f) As part of the Sale Motion (or as necessary in one or more separate motions), the Sellers shall request that, by virtue of the Sellers' providing ten (10) days' prior notice of its intent to assume and assign any Contract or Lease, the Bankruptcy Court deem any non-debtor party to such Contract or Lease that does not file an objection with the Bankruptcy Court during such notice period to have given any required Consent to the assumption of the affected Contract or Lease by the relevant Seller and assignment to Purchaser.

(g) In connection with the assumption and assignment to Purchaser of any Assigned Contract that is executory pursuant to this Section 2.6, the Cure Amounts, as determined by the Bankruptcy Court, if any, necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Assigned Contracts, including any amounts payable to any landlord under any Lease that is an Assigned Contract that relates to the period prior to the Assumption Approval, shall be paid by Purchaser, on or before the Assumption Approval; provided, however, that to the extent that the aggregate Cure Amounts for the Assigned Contracts (as determined by the Bankruptcy Court or otherwise agreed to by the Parties and the counterparties to the Assigned Contracts) exceeds the aggregate amount of the Cure Payments for such Assigned Contracts set forth on Schedule 2.6(g), Purchaser shall receive a credit against the Cash Purchase Price in an equal amount.

(h) The Sellers shall use their commercially reasonable efforts to obtain an order of the Bankruptcy Court to assign the Assigned Contracts to Purchaser (the "**Assumption Approval**") on the terms set forth in this Section 2.6. In the event the Sellers are unable to assign any such Assigned Contract to Purchaser pursuant to an order of the Bankruptcy Court, then the Parties shall use their commercially reasonable efforts until the Designation Deadline to obtain, and to cooperate in obtaining, all Consents from Governmental Bodies and third parties necessary to assume and assign such Assigned Contracts to Purchaser.

(i) To the extent that any Consent that is required to assign to Purchaser any Assigned Contract is not obtained by the Designation Deadline, the Sellers shall, with respect to each such Assigned Contract, from and after the Closing and until the earliest to occur of (x) the date on which such applicable Consent is obtained (which Consents the Parties shall use their reasonable best efforts, and cooperate with each other, to obtain promptly; provided, however, that none of the

Parties or any of their respective Affiliates shall be required to pay any consideration therefor other than filing, recordation or similar fees, which shall be borne by Purchaser), (y) the date on which such Contract is rejected following the written request of Purchaser, and (z) thirty (30) days after the Closing Date, use commercially reasonable efforts during the term of such Assigned Contract to (i) provide to Purchaser the benefits under such Assigned Contract, (ii) cooperate in any reasonable and lawful arrangement (including holding such Contract in trust for Purchaser pending receipt of the required Consent) designed to provide such benefits to Purchaser and (iii) use its commercially reasonable efforts to enforce for the account of Purchaser any rights of the Sellers under such Assigned Contract (including the right to elect to terminate such Assigned Contract in accordance with the terms thereof upon the written direction of Purchaser). Purchaser shall reasonably cooperate with the Sellers in order to enable Seller to provide to Purchaser the benefits contemplated by this Section 2.6(i).

(j) Notwithstanding the foregoing, a Contract shall not be an Assigned Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such Contract (i) is rejected by the Sellers or terminated by the Sellers in accordance with the terms hereof or by the other party thereto, or terminates or expires by its terms, on or prior to the Designation Deadline and is not continued or otherwise extended upon assumption, or (ii) requires a Consent of any Governmental Body or other third party (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of the Sellers' rights under such Contract, and no such Consent has been obtained prior to the Designation Deadline. In addition, a Permit shall not be assigned to, or assumed by, Purchaser to the extent that such Permit requires a Consent of any Governmental Body or other third party (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of the Sellers' rights under such Permit, and no such Consent has been obtained prior to the Closing.

### ARTICLE III.

#### CONSIDERATION

3.1. Consideration. The aggregate consideration for the Purchased Assets (collectively, the "**Purchase Price**") shall be equal to the sum of:

(a) a cash payment to the Sellers of (i) \$7,000,000, plus (ii) the senior most priority debtor-in-possession financing approved under the DIP Order in an amount not to exceed \$2,750,000 to the extent that such amounts were borrowed by the Sellers after the date of this Agreement and in accordance with the DIP Budget (collectively, the "**Cash Purchase Price Payment**"); provided, however, that Purchaser may satisfy its obligation to make the Cash Purchase Price Payment (in whole or in part) by releasing and waiving an equivalent amount of any loans made or acquired by Purchaser to the extent that such loans are secured by a most-senior priority lien on the Purchase Assets as of the Closing Date;

(b) a cash payment to the Sellers of \$75,000 (the "**Wind-Down Payment**"), which shall be deposited into a segregated bank account (the "**Wind-Down Account**") for distribution therefrom solely in accordance with Section 9.18 herein;

(c) a cash payment in the amount of \$825,000 (the "**Committee Settlement Payment**"), which shall be deposited into a segregated interest-bearing escrow account (the "**Creditor Distribution Account**") maintained by counsel for the official committee of unsecured creditors in the

Bankruptcy Case (the “**Creditor Disbursing Party**”), which shall be used to make a *pro rata* distribution to the holders of ONE Aviation General Unsecured Claims (as defined in the Plan). The Creditor Disbursing Party shall make, or cause to be made, distributions from the Creditor Distribution Account to the holders of ONE Aviation General Unsecured Claims in the pro rata amounts allocable to the amount of any such holder’s allowed general unsecured claim; provided that no payment shall be made to a holder of ONE Aviation General Unsecured Claim whose pro rata distribution would be in the amount of \$25.00 or less. To the extent a distribution from the Creditor Distribution Account is not cashed within four (4) months after the issuance of such distribution, such uncashed distribution shall be deemed null and void and the applicable amount shall be donated by the Creditor Disbursing Party to a 501(c)(3) charity such as the New Jersey Bankruptcy Lawyers Foundation;

(d) a cash payment to the Sellers of \$225,500 for purposes of paying holders of Allowed Kestrel Secured Claims (the “**Kestrel Secured Claim Payment**”)

(e) a cash payment to the Sellers of \$50,000 for purposes of funding the Claims Reconciliation Expense Fund (the “**Claims Reconciliation Expense Fund Payment**”);

(f) a cash payment to the Sellers of \$700,000 for purposes of paying holders of Allowed Senior Subordinated Secured Note Claims (the “**Senior Subordinated Note Claims Payment**”);

(g) a cash payment to the Sellers in an amount not to exceed \$1,500,000, equal to all (i) accrued and unpaid and (ii) expected Professional Fee Claims of Professionals to the Sellers in connection with the chapter 11 cases (the “**Professional Fee Payment**”);

(h) to the extent that Sellers have inadequate cash on hand at Closing sufficient to pay same, a cash payment equal to such Administrative Expense Claims and priority claims (i) set forth on Schedule 2.3(g), and (ii) without duplication, set forth in the DIP Budget (and limited by the amount therein), in each case, to the extent that such claims are liquidated, due and payable as of the Closing Date (the “**Closing Date Administrative and Priority Claim Payment**”), with such Closing Date Administrative and Priority Claim Payment to be used by the Sellers solely for the purpose of satisfy the Administrative Expense Claims and priority claim set forth in this section; and

(i) the assumption and, without duplication, payment of the Assumed Liabilities.

On the Closing Date, any payment required to be made pursuant to any provision hereof in cash shall be made by the Purchaser by wire transfer of immediately available funds to such bank account as shall be designated in writing by the Sellers not later than two (2) Business Days prior to the Closing Date.

3.2. Deposit. Within two (2) Business Days following the Bankruptcy Court’s entry of the Sale Procedures Order, Purchaser shall deposit with an escrow agent mutually acceptable to Sellers and Purchaser (the “**Escrow Agent**”), a deposit in the amount of \$500,000 (the “**Deposit**”), by wire transfer of immediately available funds for deposit into a separate escrow account (the “**Escrow Account**”), established pursuant to a mutually acceptable escrow agreement, to be executed by and among Sellers, Purchaser and the Escrow Agent (the “**Escrow Agreement**”). If the Closing occurs, Sellers and Purchaser shall deliver a joint written instruction to the Escrow Agent authorizing the Escrow Agent to release from the Escrow Account the entire Deposit, by wire transfer of immediately available funds to an account designated by Sellers to the Escrow Agent, and the Deposit shall be credited against the amount required to be paid by Purchaser to Sellers at Closing. If this Agreement

is validly terminated by Sellers in accordance with the terms of this Agreement prior to Closing pursuant to Section 4.4(i), then Sellers and Purchaser shall deliver a joint written instruction to the Escrow Agent authorizing the Escrow Agent to release from the Escrow Account the entire Deposit, by wire transfer of immediately available funds to an account designated by Sellers to the Escrow Agent, with such Deposit to be retained by Sellers as Sellers' sole and exclusive remedy as liquidated damages for any and all losses or damages of any nature against Purchaser in respect of this Agreement or the transactions contemplated hereby. In all other circumstances, if this Agreement is validly terminated in accordance with the terms of this Agreement prior to Closing, then within two (2) Business Days of such termination, Sellers and Purchaser shall deliver a joint written instruction to the Escrow Agent authorizing the Escrow Agent to release all funds held in the Escrow Account, including any interest or earnings thereon, by wire transfer of immediately available funds to an account designated by Purchaser to the Escrow Agent.

#### ARTICLE IV.

#### CLOSING AND TERMINATION

4.1. Closing. Subject to the satisfaction or waiver by the appropriate Party of the conditions set forth in Article IX, the closing of the purchase and sale of the Purchased Assets, the payment of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the "**Closing**") shall occur as soon as practicable following the satisfaction or waiver of all conditions set forth in this Agreement (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions). The Closing shall take place at the offices of Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, or at such other place as the Parties may agree. Unless otherwise agreed by the Parties in writing, the Closing shall be deemed effective and all right, title and interest of each of the Sellers in the Purchased Assets to be acquired by Purchaser hereunder shall be deemed to have passed to Purchaser and the assumption of all of the Assumed Liabilities shall be deemed to have occurred as of 12:01 a.m., Eastern Time on the Closing Date.

4.2. Closing Deliveries by the Sellers. At or prior to the Closing, the Sellers shall deliver to Purchaser:

- (a) a Bill of Sale substantially in the form of Exhibit A (the "**Bill of Sale**") duly executed by each Seller;
- (b) FAA bills of sale (the "**FAA Bills of Sale**") or warranty bills of sale for all Aircraft executed by each applicable Seller and, in each case, filed with the FAA;
- (c) one or more assignment and assumption agreements substantially in the form of Exhibit B (the "**Assignment and Assumption Agreement**") duly executed by the Sellers;
- (d) one or more assignment and assumption of lease substantially in the form of Exhibit C (a "**Lease Assignment Agreement**"), duly executed by the Sellers;
- (e) an Intellectual Property Assignment and Assumption Agreement substantially in the form of Exhibit D (the "**IP Assignment and Assumption Agreement**"), duly executed by the Sellers;

(f) a transition services agreement substantially in the form of Exhibit E (the “*Transition Services Agreement*”), duly executed by the Sellers;

(g) a file-stamped copy of the Sale Order;

(h) copies of all instruments, certificates, documents and other filings (if applicable) necessary to release the Purchased Assets from all Encumbrances, including any applicable UCC termination statements, releases of mortgages, and FAA or International Registry releases or terminations, all in a form reasonably satisfactory to Purchaser;

(i) copies of the waivers, consents and approvals for those executory contracts on Schedule 2.1(b), where such waivers, consents and approvals are required to operate the Business in the ordinary course;

(j) an officer’s certificate, dated as of the Closing Date, executed by a duly authorized officer of each of the Sellers certifying that the conditions set forth in Section 10.3 have been satisfied;

(k) a copy of the resolutions adopted by the Board of Directors or similar governing body of each Seller evidencing the authorization of the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, certified by an authorized officer of each Seller;

(l) certificates executed by the Sellers, in the form prescribed under Treasury Regulation Section 1.1445-2(b), that no Seller is a foreign person within the meaning of Section 1445(0(3) of the Code;

(m) copies of all certificates of airworthiness for the Aircraft, as applicable;

(n) copies of any statements of account from each subscription, program, and service provider on the Aircraft, including the corresponding engines, propellers or APU, as applicable, of such Aircraft, confirming in each case that the relevant statement of account has been paid in full, with no account deficit, failing which any deficit amounts shall be paid out of the purchase price proceeds owing to the applicable Seller at Closing;

(o) access to all of Sellers’ Transacting User Entity accounts on the International Registry, including any necessary passwords;

(p) an irrevocable power of attorney (and any necessary authorizing documents), duly executed by each applicable Seller, in form(s) and substance satisfactory to Purchaser, granting Purchaser the power to take any and all appropriate action and to make, execute, endorse, deliver, file and/or record registrations at the FAA or International Registry in connection with the Aircraft and any prior owned aircraft, including any corresponding engines, propellers or APU, by Sellers for which such actions are required to be taken and Sellers are unable to take such actions;

(q) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Purchaser, as Purchaser may reasonably request to vest in Purchaser all of the Sellers’ right, title and interest of the Sellers in, to or under any or all the Purchased Assets;



(r) written agreements (or such other evidence satisfactory to Purchaser) demonstrating that Sellers have entered into agreements or other binding arrangements with counterparties to the Assigned Contracts (on terms and conditions reasonably acceptable to Purchaser) that have the effect of (i) obligating the Purchaser to pay no more than \$1,000,000 of the Cure Amounts owed on account of such Assigned Contracts on the Closing Date, and (ii) amortize the remaining Cure Amounts owed with respect to such Assigned Contracts on a timeline reasonably acceptable to Purchaser; and

(s) such other documents as Purchaser may reasonably request that are not inconsistent with the terms of this Agreement and customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

4.3. Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver to (or at the direction of) the Sellers:

- (a) the Assignment and Assumption Agreement duly executed by Purchaser;
- (b) the Lease Assignment Agreement duly executed by Purchaser;
- (c) the Intellectual Property Assignment and Assumption Agreement duly executed by Purchaser;
- (d) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser certifying that the conditions set forth in Sections 10.2(a) and 10.2(b) have been satisfied;
- (e) other agreements required by the terms of the Agreement;
- (f) all other certificates, agreements and other documents required by this Agreement to be delivered by Purchaser at or prior to the Closing in connection with the transactions contemplated by this Agreement;
- (g) such other documents as the Sellers may reasonably request that are not inconsistent with the terms of this Agreement and customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement; and
- (h) for the avoidance of doubt, such funds as necessary to pay the remainder of the cash consideration of the Purchase Price due upon Closing.

4.4. Termination of Agreement. This Agreement may be terminated only in accordance with this Section 4.4. This Agreement may be terminated at any time prior to the Closing, as follows:

- (a) by the mutual written consent of the Sellers and Purchaser;
- (b) by written notice of either the Sellers or Purchaser to such other Party, if the Closing shall not have been consummated prior to October 15, 2020 (the "***Outside Date***"); provided, however, that the Outside Date may be extended by the mutual written consent of the Sellers and Purchaser, for a period up to fifteen (15) days to the extent that all conditions to Closing set forth in this Agreement are capable of being satisfied as of such time; provided, further, however, that a Party shall not be permitted to terminate this Agreement pursuant to this Section 4.4(b) if such Party is in

material breach of this Agreement; provided, further, however, that if the Closing has not occurred by the Outside Date, but on such date all of the conditions set forth in Article 10 have been satisfied or waived (to the extent such conditions may be waived) other than the condition set forth in Section 10.1(b), then the Outside Date shall automatically be extended until the earlier to occur of the following: (i) the date all of the conditions set forth in Article 10 have been satisfied or waived (to the extent such conditions may be waived), or (ii) October 30, 2020 (and such extended date shall be deemed to be the “Outside Date” for all purposes hereunder) unless two (2) Business Days prior to the end of the earlier to occur of (i) or (ii) hereof, Purchaser provides written notice to the Sellers that it is no longer extending the Outside Date pursuant to this Section 4.4(b); provided further that the Sellers and Purchaser may further extend the Outside Date by mutual written consent of each Party and consent of the Official Committee of Unsecured Creditors appointed in these chapter 11 cases (the “Committee”), each given in their sole and absolute discretion; notwithstanding anything contrary in this Agreement, the Outside Date may not be extended past October 30, 2020 absent prior written consent of the Committee. In evaluating any requests for an extension of the Outside Date beyond October 30, 2020, the Committee may consider, among other factors, matters such as the amount of progress made by the Parties in achieving the requisite (if any) governmental approvals of the transaction, other efforts of the Parties related to consummation of the transaction, and the liquidity position and funding (including the administrative solvency) of the chapter 11 cases;

(c) by written notice from Purchaser to the Sellers, if (i) the Sellers seek to have the Bankruptcy Court enter an Order dismissing, or converting the Bankruptcy Case into a case(s) under chapter 7 of the Bankruptcy Code, or appointing a trustee in the Bankruptcy Case or appointing a responsible officer or an examiner with enlarged powers relating to the operation of the Business (beyond those set forth in Section 1106(a)(3) or (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code, or (ii) an order of dismissal, conversion or trustee appointment is entered for any reason and is not reversed or vacated within twenty-one (21) days after entry thereof;

(d) by written notice of either the Sellers or Purchaser to such other Party, if (i) the Sale Procedures Order shall not have been approved by the Bankruptcy Court by the close of business on September 4, 2020, (ii) the Bankruptcy Court issues an order granting leave to any Person to commence an appeal of the Sale Procedures Order, or (iii) following its entry, the Sale Procedures Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any material respect without the prior written consent of Purchaser;

(e) by written notice of either the Sellers or Purchaser to such other Party, if (i) the Sale Hearing has not taken place on or prior to September 28, 2020, (ii) the Bankruptcy Court has not entered the Sale Order on or prior to September 29, 2020, or (iii) the Sale Order shall have been stayed (and such stay results in the Closing not being consummated prior to the Outside Date), vacated, modified or supplemented without Purchaser’s prior written consent;

(f) by written notice of either the Sellers or Purchaser to such other Party, if following its entry, the Sale Order shall fail to be in full force and effect or shall have been stayed (and such stay results in the Closing not being consummated prior to the Outside Date), reversed, modified or amended in any material respect without the prior written consent of Purchaser;

(g) by written notice of either the Sellers or Purchaser to such other Party, if Seller has entered into an Alternative Transaction;

(h) automatically upon the consummation of an Alternative Transaction;

(i) by written notice from the Sellers to Purchaser, if Purchaser breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform: (i) would give rise to the failure of a condition set forth in Article X, (ii) cannot be or has not been cured within ten (10) days following delivery of notice to Purchaser of such breach or failure to perform and (iii) has not been waived by the Sellers;

(j) by written notice from Purchaser to the Sellers, if the Sellers breach or fail to perform in any respect any of their representations, warranties or covenants contained in this Agreement and such breach or failure to perform: (i) would give rise to the failure of a condition set forth in Article X, (ii) cannot be or has not been cured within ten (10) days following delivery of notice to the Sellers of such breach or failure to perform and (iii) has not been waived by Purchaser; or

(k) by Sellers, if the Deposit is not timely paid by Purchaser in accordance with Section 3.2.

Each condition set forth in this Section 4.4 pursuant to which this Agreement may be terminated shall be considered separate and distinct from each other such condition. If more than one of the termination conditions set forth in this Section 4.4 is applicable, the applicable Party shall have the right to choose the termination condition pursuant to which this Agreement is to be terminated. The Parties acknowledge and agree that no notice of termination or extension of the Outside Date provided pursuant to this Section 4.4 shall become effective until two (2) Business Days after the delivery of such notice to the other Parties (unless such Outside Date is less than two (2) Business Days after the delivery of such notice, in which case such notice shall become effective upon the Outside Date), and only if such notice shall not have been withdrawn during such two (2) Business Day (or shorter) period.

4.5. Procedures Upon Termination. In the event of termination and abandonment by Purchaser or the Sellers, or both such Parties, pursuant to Section 4.4 hereof, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate, and the purchase of the Purchased Assets and the assumption of the Assumed Liabilities hereunder shall be abandoned, without further action by Purchaser or the Sellers. If this Agreement is terminated as provided herein, each Party shall return all documents, work papers and other material of any other Party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to the Party furnishing the same. If this Agreement is terminated pursuant to Section 4.4(h), the Parties shall have no further obligations to one another except for any obligations that, by their terms, survive the termination of this Agreement, as described in Section 4.6.

#### 4.6. Effect of Termination.

(a) In the event of termination of this Agreement pursuant to Section 4.4, this Agreement shall forthwith become null and void and there shall be no Liability on the part of any Party or any of its partners, officers, directors or shareholders; provided, however, that (a) this Section 4.6, Section 3.2 (Deposit), Section 8.7 (8.7. Expense Reimbursement and Break-up Fee), Article XII (Miscellaneous), and the Sale Procedures Order (if entered) shall survive any such termination. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law. Each Party acknowledges that the agreements contained in this Section 4.6 and in Section 4.5 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement, and that any amounts payable pursuant to this Section 4.6 and Section 4.5 do not constitute a penalty.

(b) Subject in all respects to the Sale Procedures Order, Sellers shall pay to Purchaser the Break-up Fee and/or the Expense Reimbursement, to the extent applicable, by wire transfer of immediately available funds in the event that this Agreement is terminated and the Expense Reimbursement and/or the Termination Fee are payable by Sellers in connection with the such termination pursuant to the terms of Section 8.7.

## ARTICLE V.

### REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Subject to the exceptions noted in the schedules delivered by the Sellers concurrently herewith (any matters listed or referenced on one schedule will be deemed to be listed or referenced on any other schedule, regardless of the absence of a cross reference, if the applicability of such matter is reasonably apparent), and with the Sellers having the right (but not the obligation) to supplement or amend the schedules hereto, prior to the Closing Date, with respect to any change, event, occurrence, state of facts, development or effect so long that, individually or in the aggregate, such supplements or amendments are not likely to result in a Material Adverse Effect on the assets, Liabilities, Business, properties, or financial condition of the Sellers, taken as a whole, the Sellers represent and warrant to Purchaser as follows as of the date hereof and as of the Closing Date:

5.1. Organization and Qualification. Each Seller is duly incorporated or organized under the Laws of the jurisdiction of its formation. Each Seller has previously delivered to Purchaser complete and correct copies of its Organizational Documents, as amended and in effect on the Agreement Date. Each Seller is licensed to do business in each jurisdiction where the character of the Business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed as would not, individually or in the aggregate, have a Material Adverse Effect, or where such failure is the result of the filing of the Bankruptcy Case or pursuant to any Order entered by the Bankruptcy Court.

5.2. Authorization of Agreement. Subject to the entry of the Sale Order, the Sellers have or will have at Closing all requisite power and authority to execute and deliver this Agreement and each of the Ancillary Documents to which it is a party, to perform their obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and each of the Ancillary Documents to which they are a party, the performance by the Sellers of their obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been or will be at the Closing duly and validly authorized by all necessary action on the part of the Sellers. This Agreement has been, and at or prior to the Closing, each of the Ancillary Documents to which they are a party will be, duly and validly executed and delivered by the Sellers and (assuming the due authorization, execution and delivery by the other Parties, and the entry of the Sale Order) this Agreement constitutes, and each Ancillary Document to which they are a party when so executed and delivered (assuming the due authorization, execution and delivery by the other parties thereto) will constitute, legal, valid and binding obligations of the Sellers, enforceable against the Sellers in accordance with its terms. Subject to entry of the Sale Order, except (a) as required to comply with the HSR Act, if applicable, (b) for entry of the Sale Order, (c) for notices, filings and consents required in connection with the Bankruptcy Case and (d) for the notices, filings and consents set forth on Schedule 5.2, no Seller is required to give any notice to, make any registration, declaration or filing with or obtain any consent, waiver or approval from, any Person (including any Governmental Body) in connection with the execution and delivery of this Agreement and each of the Ancillary Documents or the consummation or performance of any of the transactions

contemplated hereby and thereby, other than such notices, registrations, declarations, filings, consents, waivers, or approvals, the failure of which to make or obtain would not have a Material Adverse Effect.

5.3. Conflicts; Consents; Compliance with Law.

(a) Except as set forth on Schedule 5.3(a), the execution, delivery and performance by the Sellers of this Agreement or any Ancillary Document to which they are a party, the compliance by the Sellers with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby and the taking by the Sellers of any other action contemplated hereby or thereby, do not and will not at the Closing contravene, violate or conflict with any term or provision of its respective Organizational Documents.

(b) Except (i) for the entry of the Sale Order, (ii) for filings as may be required under the HSR Act, and (iii) as set forth on Schedule 5.3(b), no filing with, notice to or consent from any Person is required in connection with the execution, delivery and performance by the Sellers of this Agreement or the Ancillary Documents to which they are a party, the compliance by the Sellers with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, or the taking by the Sellers of any other action contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not have a Material Adverse Effect.

(c) Each Seller is in compliance in all material respects with all applicable Laws. Except as set forth on Schedule 5.3(c), neither any Seller nor any Subsidiary has received any outstanding written notice from any Governmental Body regarding any actual or possible material violation of, or failure to comply in any material respect with, any Law. The Sellers are not in default in any material respect of any order, writ, injunction, judgment or decree applicable to the Business or the Purchased Assets.

(d) To the Sellers' Knowledge, each Seller is in compliance in all material respects with all applicable laws and regulations of applicable Governmental Bodies, including the Department of Transportation and the FAA and each other civil aviation authority and respective jurisdiction that has oversight with respect to any of the Purchased Assets which are required for the Sellers to operate the Business, including, without limitation, all valid and enforceable (i) Type Certificate(s), (ii) Production Certificate(s), (iii) Production Under Type Certificate(s), (iv) Parts Certificate(s), and (v) Supplemental Type Certificate(s) (collectively the "***Aircraft Certificates***"), as set forth on Schedule 5.3(d).

5.4. Brokers and Finders. Except as set forth on Schedule 5.4, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for the Sellers in connection with the transactions contemplated by this Agreement and Purchaser is not or will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of the Sellers.

5.5. Title to Purchased Assets. Other than the Leased Real Property and the personal property subject to the Personal Property Leases, and except for Permitted Encumbrances, the Sellers have good title to the Purchased Assets and, at the Closing, Purchaser, pursuant to this Agreement and the Sale Order, shall acquire good and marketable title in, and under all of such Purchased Assets, in each case free and clear of all Encumbrances (other than Permitted Encumbrances) and other claims

and interests to the fullest extent permissible under Section 363(f) of the Bankruptcy Code. The Purchased Assets include all of the properties and assets required to operate, in all material respects, the Business in the Ordinary Course of Business. For the sake of clarity, the right to use any assets included in the Purchased Assets in which the Sellers have leasehold or non-ownership rights to use shall be assigned to Purchaser only through the assumption and assignment of the Assigned Contracts in accordance with and subject to this Agreement.

5.6. Real Property.

(a) Schedule 5.6(a) contains a list and brief description of all Leased Real Property held or used for, or necessary to the operation of the Business. Each Seller has made available true and complete copies of all leases with respect to such Leased Real Property (individually, a “***Lease***” and collectively the “***Leases***”) to Purchaser. To the Sellers’ Knowledge, other than as noted on Schedule 5.6(a), none of the Leased Real Property is subject to any sublease or grant to any Person of any right to the use, occupancy or enjoyment of the Leased Real Property or any portion thereof that would materially impair the use of the Leased Real Property in the operation of the Business. To the Sellers’ Knowledge, the Leased Real Property is not subject to any Encumbrances (other than Permitted Encumbrances) that were placed on the Leased Real Property through the action or inaction of the Sellers and materially impact the Business use of the Leased Real Property. To the Sellers’ Knowledge, the Leased Real Property is not subject to any use restrictions, exceptions, reservations or limitations which in any material respect interfere with or impair the present and continued use thereof in the Ordinary Course of Business. To the Sellers’ Knowledge, there are no pending or threatened condemnation proceedings related to the Leased Real Property. No rent under any Lease has been paid more than one month in advance.

(b) To the Sellers’ Knowledge, no Leased Real Property serves any adjoining property for any purpose inconsistent with the use of the Leased Real Property and, to the Sellers’ Knowledge, no Leased Real Property is located within a flood plain or subject to any similar type of construction for which Permits necessary to the use thereof have not been obtained. To the Sellers’ Knowledge, neither the current use of the Leased Real Property nor the operation of the Business violates any instrument of record or agreement or any applicable legal requirements, building code or zoning ordinance. To the Sellers’ Knowledge, neither the whole nor any material portion of any Leased Real Property has been damaged or destroyed by fire or casualty.

5.7. Tangible Personal Property. Schedule 5.7 sets forth all material leases of personal property (“***Personal Property Leases***”) relating to personal property used by the Sellers or to which a Seller is a party or by which the properties or assets of such Seller is bound, in each case relating to the Business. The Sellers have a valid and enforceable leasehold interest under each Personal Property Lease under which it is a lessee.

5.8. Intellectual Property. Schedule 5.8 sets forth an accurate and complete list of all Intellectual Property necessary to the Business as currently conducted, including, without limitation, all Intellectual Property and proprietary rights of any kind, including the following: (i) trademarks, service marks, trade names, slogans, logos, designs, symbols, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, any fictitious names, d/b/a’s or similar filings related thereto, or any variant of any of them, and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (ii) copyrights and copyrightable subject matter (including any registration and applications for any of the foregoing); (iii) trade secrets and other confidential or proprietary business information (including manufacturing and

production processes and techniques, research and development information, technology, intangibles, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, industrial property rights, and methodologies; (iv) computer software, computer programs, and databases (whether in source code, object code or other form); and (v) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith (the “**Purchased Intellectual Property**”). For the avoidance of doubt, the Purchased Intellectual Property shall include all Intellectual Property related to the Sellers’ “Project Canada.” The Sellers own all right, title and interest to the Purchased Intellectual Property, such rights, title and interest are valid and enforceable, and the Sellers can convey the Purchased Intellectual Property free and clear of liens and other claims and interests pursuant to the Sale Order. To the Knowledge of the Sellers, (i) no Person is engaging in any activity that infringes any Purchased Intellectual Property and (ii) no claim has been asserted to the Sellers that the use of any Purchased Intellectual Property or the operation of the Business infringes or violates the Intellectual Property of any third party. The Purchased Intellectual Property and the rights under the Assigned Contracts necessarily include the rights to use all Intellectual Property required to operate the Business as currently conducted. The representations set forth in this Section 5.8 are the only representations given by the Sellers with respect to matters related to Intellectual Property and no other representations given by the Sellers relate to Intellectual Property.

5.9. Litigation. Except as set forth on Schedule 5.9 and other than in connection with the Bankruptcy Case, there is no Action, in progress or pending against or relating to the Sellers or any Order which, in any case, would adversely affect the ability of the Sellers to enter into this Agreement or to consummate the transactions contemplated hereby.

5.10. Permits. To the Sellers’ Knowledge, each Seller is in compliance with the material terms of all material Permits used by the Sellers in the Business, all such Permits are valid and in full force and effect, and no proceeding is pending or threatened, the object of which is to revoke, limit or otherwise affect any such Permit.

5.11. Inventory.

(a) All Inventory required for the core operations of the Business consists of items of a good and merchantable quality useable or saleable in the Ordinary Course of Business, for the purposes for which they are intended, subject to normal, customary, or non-material allowances for damage and obsolescence. To the Sellers’ Knowledge, no Inventory required for the core operations of the Business is materially damaged in any way that has or would require any repair pursuant to any Law (where or not required to be reported on Form 337), including but not limited to damage caused by water;

(b) To the Sellers’ Knowledge, the Inventory is not part of a current or past recall;

(c) The Inventory is in working condition except for such failure to be in working condition which would not have a Material Adverse Effect on the Inventory taken as a whole; and

(d) Except as set forth on Schedule 5.11(d), Seller does not hold any Inventory on consignment.

5.12. Contracts. The Assigned Contracts as of the date hereof include all Contracts material to the ownership and/or operation of the Business. Except as set forth on Schedule 5.12, the Sellers have not, and, to the Sellers' Knowledge, no other party to any Assigned Contract has, commenced any Action against any of the parties to any Assigned Contract or given or received any written notice of any default or violation under any Assigned Contract that has not been withdrawn or dismissed except to the extent such default or violation will be cured as a result of the payment of the applicable Cure Amounts. Assuming payment of the Cure Amounts, each Assigned Contract is, or will be upon the Closing, valid, binding and in full force and effect in accordance with its terms.

5.13. Tax Returns: Taxes.

(a) Except as set forth on Schedule 5.13(a), all Tax Returns required to have been filed by the Sellers have been duly and timely filed and are true, correct and complete in all material respects, and no material fact has been omitted therefrom. Except as set forth on Schedule 5.13(a), no Seller is currently the beneficiary of any extension of time within which to file any Tax Return. True, correct and complete copies of such Tax Returns have been delivered to Purchaser (or its representatives) prior to the Agreement Date.

(b) Except as precluded by the Bankruptcy Code, all Taxes due and payable by the Sellers have been paid in full. All Taxes of the Sellers attributable to Tax periods (or portions thereof) commencing after the date hereof have arisen in the ordinary course of business.

(c) The Sellers have not waived any statute of limitations affecting any Liability for Taxes or agreed to any extension of time during which a Tax assessment or deficiency assessment may be made or extending the time within which to file any Tax Return.

(d) No amount of income (or deduction) will be required to be included in (or excluded from) taxable income by any Person for any Post-Closing Tax Period with respect to the Purchased Assets or the Business as a result of any prepaid amount received during a Pre-Closing Tax Period, or for any other reason.

(e) Except as set forth on Schedule 5.13(e), no material Tax Proceeding is being asserted in writing with respect to the Sellers, nor to the Knowledge of the Sellers has any claim with respect to Taxes been threatened or asserted. All deficiencies for Taxes asserted or assessed against the Sellers have been fully and timely paid or settled.

(f) Except as set forth on Schedule 5.13(f), no Seller is a party to any Tax sharing, indemnity or similar agreement (written or otherwise), and the Sellers have no Liability for the Taxes of any other Person as a transferee or successor, or by Contract or otherwise. To the Sellers' Knowledge, no Seller has received any Tax Refund to which it is not entitled, either pursuant to applicable Law or any Contract.

(g) No Encumbrances or other liens with respect to Taxes have been filed on or with respect to the Purchased Assets or the Business.

(h) Except as set forth on Schedule 5.13(h), each Seller has properly and timely imposed, collected and paid all sales, use and similar Taxes as required by Law with respect to the sale, rental or lease of any product or service in connection with the Purchased Assets and the Business.



(i) No transaction contemplated by this Agreement is subject to withholding under any Law (including Section 1445 of the Code), and the Purchaser's acquisition of the Purchased Assets will not otherwise result in any Tax liability to the Purchaser (or any direct or indirect owner thereof).

(j) No Seller has ever been subject to Tax in a jurisdiction in which it does not currently file Tax Returns or pay Taxes, and no claim has been made by any Governmental Body in a jurisdiction where such Seller does not file Tax Returns that it is or may be subject to Tax by that jurisdiction. The Sellers have no permanent establishment in any country other than the United States.

For purposes of this Section 5.13, any reference to a Seller shall be deemed to include any Person that merged, or was merged, with or was liquidated into such Seller. The representations set forth in this Section 5.13 are the only representations given by the Sellers with respect to matters related to Taxes and no other representations given by the Sellers relate to Taxes.

#### 5.14. Employees; the Sellers' Benefit Plans.

(a) The Sellers have provided Purchaser with a true, complete and correct list of the Employees as of the Agreement Date, specifying their position, annual salary and date of hire. The Sellers are in compliance in all material respects with all Laws relating to the employment or termination of employment of the Employees.

(b) Except as set forth on Schedule 5.14(b), there are no material Actions pending or, to the Knowledge of the Sellers, threatened, against any Seller by any Employee.

(c) Set forth on Schedule 5.14(c) is a true and complete list of each Benefit Plan. As applicable with respect to each Benefit Plan, the Sellers have delivered to Purchaser true and complete copies of (i) each Benefit Plan, including all amendments thereto, and in the case of an unwritten Benefit Plan, a written description thereof, (ii) all current trust documents, investment management contracts, custodial agreements and insurance contracts relating thereto, (iii) the current summary plan description and each summary of material modifications thereto, (iv) the annual report (Form 5500 and all schedules thereto) for the past two years, (v) the most recent Internal Revenue Service ("**IRS**") determination or opinion letter and (vi) the annual report, actuarial report, financial statement and trustee report for the past two years.

(d) Except as set forth on Schedule 5.14(d), each Benefit Plan has been maintained, operated and administered in compliance in all material respects with its terms and any related documents or agreements and the applicable provisions of ERISA, the Code and all other Laws. All contributions or other amounts payable by the Sellers with respect to each Benefit Plan in respect of current or prior plan years have been paid or accrued on the Financial Statements (other than with respect to amounts not yet due).

(e) The Benefit Plans which are "employee pension benefit plans" within the meaning of Section 3(2) of ERISA and which are intended to meet the qualification requirements of Section 401(a) of the Code (each, a "**Pension Plan**") have received determination letters from the IRS to the effect that such plans are qualified and exempt from federal income taxes under Sections 401(a) and 501(a) of the Code, respectively, and nothing has occurred that would reasonably be expected to adversely affect the qualification of such Benefit Plan.

(f) No Benefit Plan is subject to Part 3, Subtitle B of Title I of ERISA or Title IV of ERISA. Neither the Sellers nor any ERISA Affiliate has ever contributed to, or been required to contribute to, any “multiemployer plan” (within the meaning of Section 3(37) of ERISA) and neither the Sellers nor any ERISA Affiliate has any liability (contingent or otherwise) relating to the withdrawal or partial withdrawal from such a multiemployer plan.

(g) Except as set forth on Schedule 5.14(g), there are no pending audits or investigations by any governmental agency involving any Benefit Plan, and no pending or threatened claims (except for individual claims for benefits payable in the normal operation of the Benefit Plans), suits or proceedings involving any Benefit Plan, any trust or other funding medium thereof, fiduciary thereof or service provider thereto, nor to the Knowledge of the Sellers is there any reasonable basis for any such claim, suit or proceeding. There has not been any nonexempt prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, with respect to any Benefit Plan.

(h) Except as set forth on Schedule 5.14(h), no Benefit Plan provides benefits, including, without limitation, death or medical benefits, beyond termination of service or retirement other than (A) coverage mandated by law or (B) death or retirement benefits under a Benefit Plan qualified under Section 401(a) of the Code and neither the Sellers nor any ERISA Affiliate has made a written or oral representation promising the same.

(i) The Sellers’ execution of, and performance of the transactions contemplated by this Agreement will not either alone or in connection with any other event(s) (I) result in any payment or benefit, or increase in payments or benefits or acceleration in the timing of payments or benefits becoming due to any current or former employee, director, officer, or independent contractor of Seller, (II) limit the right to merge, amend or terminate any Benefit Plan or (III) result in the payment or provision of an “excess parachute payment” under Section 280G of the Code, whether under a Benefit Plan or otherwise.

(j) Each Benefit Plan that constitutes a “non-qualified deferred compensation plan” within the meaning of Section 409A of the Code, complies in both form and operation with the requirements of Section 409A of the Code so that no amounts paid pursuant to any such Benefit Plan is subject to Tax under Section 409A of the Code.

(k) Except as set forth on Schedule 5.14(k), the Sellers have performed all obligations required to be performed by them and are not in any respect in default under or in violation of any Benefit Plan, nor do the Sellers have any Knowledge of any such default or violation by any other party to any Benefit Plan.

#### 5.15. Labor Matters.

(a) Other than as set forth on Schedule 5.15(a), (i) no Seller is a party to any labor or collective bargaining agreement with respect to its Employees, (ii) no Employee of any Seller is represented by any labor organization, (iii) no labor organization or group of Employees of the Sellers has made a pending demand for recognition or request for certification, (iv) and there are no representation or certification proceedings or petitions seeking a representation election presently pending or, to the Knowledge of the Sellers, threatened, to be brought or filed with the National Labor Relations Board or other labor relations tribunal involving the Sellers.

(b) There are no strikes, lockouts, work stoppages or slowdowns pending or, to the Knowledge of the Sellers, threatened against or involving the Sellers.

(c) There are no unfair labor practice charges, arbitrations, grievances or complaints pending or, to the Knowledge of the Sellers, threatened in writing against the Sellers relating to the employment or termination of employment of any individual by the Sellers except those which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(d) There are no complaints, charges, administrative proceedings or claims against any Seller pending or, to the Knowledge of the Sellers, threatened in writing to be brought or filed with any Governmental Body based on or arising out of the employment by the Sellers of any Employee except those which, individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

(e) No Seller has incurred any liability or obligation under the WARN Act or similar state Laws, which remains unpaid or unsatisfied.

(f) Except as set forth on Schedule 5.15(f), the employment of each Employee of the Seller is at-will. Schedule 5.15(f) lists all written (and includes a summary of all legally binding oral) employment and consulting agreements to which the Sellers are a party or by which it is bound in connection with the Business. Complete and correct copies of the agreements or arrangements listed and summarized on Schedule 5.15(f) have been provided or made available to Purchaser.

(g) The representations set forth in Section 5.14 and this Section 5.15 are the only representations given by the Sellers with respect to matters related to Employees and labor matters and no other representations given by the Sellers relate to Employees or labor matters.

5.16. Bank Accounts. Schedule 5.16 sets forth a complete list of all bank accounts (including any deposit accounts, securities accounts and any sub-accounts) of the Sellers.

5.17. Aircraft Matters.

(a) Sellers have the full power, right and authority to sell and convey the Aircraft to Purchaser.

(b) At the time of the Closing, Sellers shall convey to Purchaser good and marketable title to the Aircraft, free and clear of all Encumbrances except Permitted Encumbrances.

(c) Neither Sellers nor any of their employees (or any assignee) are listed by the United States Department of Treasury on the Specifically Designated Nationals and Blocked Persons List or by the United States Department of Commerce on the Denied Persons List. There exists no prohibition on the transactions contemplated by this Agreement related to the identity, citizenship, location or business of Sellers or to the purpose for which the Aircraft were previously used.

5.18. Aircraft Certificates.

(a) Schedule 5.3(d) lists, as of the Closing Date, all Aircraft Certificates and their applicable expiration dates. Sellers hold all Aircraft Certificates required for the operation of its

Business as currently conducted and the present operation and ownership of its assets, each of which is in full force and effect.

(b) As of the Closing Date, Sellers are in compliance with the terms of, and there exists no default under or breach of, the Aircraft Certificates it holds. No Seller, to any Seller's knowledge, has been issued any citations, written notices, or orders of non-compliance under any Aircraft Certificate that are still pending or otherwise unresolved, and no Government Body or holder of Intellectual Property related to such Aircraft Certificate has given written notice to any Seller of, or otherwise indicated in writing, any violation of, or failure to comply with, any Aircraft Certificate. To the extent applicable to the Aircraft Certificates, no Seller has received any written notice that an Aircraft Certificate will not be renewed in the ordinary course and no Government Body has taken, or, to any Seller's knowledge, threatened to take, any action to terminate, cancel, fail to renew or reform any Aircraft Certificate.

5.19. WARN Act. Except as otherwise disclosed to Purchaser, the Sellers have not, within the ninety (90) days immediately prior to the Closing Date, in whole or in part taken any action or actions which would, independently of the transaction contemplated hereby or any act or omission of Purchaser or any of its Affiliates after the Closing Date, result in a plant closing or mass layoff, temporary or otherwise, within the meaning of the WARN Act, or any similar legal requirement.

5.20. Environmental Matters. Except as set forth on Schedule 5.20 and except for facts, circumstances or conditions that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) with respect to the Purchased Assets, there is no Order by any Governmental Body nor has Seller received any verbal or written notice, complaint or inquiry from a Governmental Body respecting Environmental Laws, (b) there is no investigation, action or proceeding pending, or, to the Knowledge of the Sellers, threatened that could reasonably be expected to result in any Seller(s) or Purchaser incurring any Environmental Liabilities or Obligations, (c) the Sellers are not aware of and have not caused or allowed the Release of Hazardous Materials at, on or under the Assumed Leased Real Property, and (d) to the Sellers' Knowledge, the Sellers have obtained and have complied with all Permits, and all Permits remain effective which are required under or pursuant to Environmental Laws for the operation of the Purchased Assets. The Sellers have delivered or made available to Purchaser copies of all Permits, Permit applications, reports, assessments or tests with respect to compliance of the Purchased Assets with any Environmental Laws or the presence of Hazardous Material which are in the Sellers' possession, custody or control, including the following records: (i) reports concerning the removal of underground storage tanks from the Assumed Leased Real Property and Remedial Actions; (ii) correspondence from Government Bodies informing the Sellers that no further action is required to address Releases which have been the subject of Remedial Action conducted by or on behalf of the Sellers; (iii) the most recent final Phase I Environmental Site Assessment reports for any Assumed Leased Real Property; (iv) Permits, Permit applications, and Permit disapprovals; and (v) inventories of asbestos and asbestos-containing materials, if any, for the Purchased Assets. The representations set forth in this Section 5.20 are the only representations given by the Sellers with respect to matters related to Environmental Laws and Environmental Liabilities or Obligations and no other representations given by the Sellers relate to Environmental Laws and Environmental Liabilities or Obligations.

5.21. [Reserved].

5.22. Absence of Certain Changes.

- (a) Since January 1, 2020, there has not been a Material Adverse Effect.
- (b) Except as set forth on Schedule 5.22(b) or as contemplated by this Agreement, from the Petition Date to the Agreement Date, no Seller has:
  - (i) other than the filing of the Bankruptcy Case, except for executory contracts and unexpired leases previously rejected by the Sellers or by operation of the Bankruptcy Code, or pursuant to the Sale Order with the prior written consent of Purchaser and other unexpired leases, terminated, modified or amended any material Assigned Contract or taken any action which materially violates, materially conflicts with or resulted in a material breach of any provision of, or constitutes a default under, or give rise to the right of any counterparty to accelerate the obligations under or modify the terms of, any Assigned Contract;
  - (ii) purchased or otherwise acquired any material properties or assets (tangible or intangible) or sold, leased, transferred or otherwise disposed of any Purchased Assets, except for purchases of materials and sales of Inventory in the Ordinary Course of Business, permitted, allowed or suffered any of the Purchased Assets to be subjected to any Encumbrance (other than Permitted Encumbrances);
  - (iii) waived or released any claim or rights included in or related to the Purchased Assets or the Business with a value individually or in the aggregate in excess of \$100,000 or revalued any of the Purchased Assets, except for adjustments to the value of Inventory in the Ordinary Course of Business or as disclosed on the docket of the Bankruptcy Case;
  - (iv) entered into any material contractual relationship with any third party related to the Purchased Assets or the Business, other than in the Ordinary Course of Business or as disclosed on the docket of the Bankruptcy Case;
  - (v) made any material commitments for capital expenditures other than in accordance with DIP Budgets that have been approved by the Bankruptcy Court;
  - (vi) other than in the Ordinary Course of Business, increased the benefits of or compensation (whether in the form of salary, bonus or otherwise) payable to any employee, contractor or consultant of the Sellers, or granted any bonus, benefit, payment (contingent or otherwise) or other direct or indirect compensation to any employee, contractor or consultant of the Sellers;
  - (vii) except as required by Law, adopted, amended or terminated any Seller Plan;
  - (viii) except for consequences relating to the filing of the Bankruptcy Case, introduced any material change with respect to the operations of the Business;
  - (ix) suffered any damage or destruction to or loss of any assets or properties relating to the Purchased Assets or the Business except for any such damage as would not have

a Material Adverse Effect on the Business taken as a whole whether or not covered by insurance;

(x) changed in any way the Sellers' accounting methods, principles or practices other than required by changes in GAAP;

(xi) incurred any Indebtedness or paid, discharged or satisfied any claims, liabilities or obligations, other than the incurrence of Indebtedness under the DIP Financing and the payment, discharge or satisfaction in the Ordinary Course of Business of Liabilities incurred in the Ordinary Course of Business;

(xii) allowed any Permit held by any Seller to terminate, expire or lapse relating to the Purchased Assets or the Business except for any such damage as would not have a Material Adverse Effect on the Business taken as a whole; or

(xiii) agreed or committed to do any of the foregoing.

5.23. No Other Representations or Warranties. The representations and warranties set forth in this Agreement constitute the sole and exclusive representations and warranties of the Sellers to Purchaser in connection with the transactions contemplated by this Agreement and by the Ancillary Documents. Except as expressly set forth in this Agreement, no Seller or its Representatives, nor any other Person, make any representation or warranty, expressed or implied, under contract, at Law, or in equity, with respect to any of the Purchased Assets or the Assumed Liabilities, including representations or warranties with respect to merchantability or fitness for any particular purpose, suitability, usage, workmanship, quality, physical condition, or value, and any and all such other representations and warranties are hereby expressly disclaimed. Without limiting the generality of the foregoing, no Seller or its Representatives, nor any other Persons make any representations or warranties with respect to (a) any projections, estimates, or budgets delivered to or made available to Purchaser of future financial reserves, future revenues, future results of operations (or any component thereof), future cash flows, future financial condition (or any component thereof) of the Sellers, or the future business and operations of the Sellers or (b) any other information or documents made available to Purchaser or its counsel, accountants, or advisors with respect to the Sellers or the Business, including in any data room. Except for the representations and warranties of the Sellers specifically set forth in this Agreement, all of the Purchased Assets and the Assumed Liabilities are being acquired or assumed "as is, where is" on the Closing Date and in their present condition, with all faults, and Purchaser shall rely on its own examination and investigation thereof in making its acquisition investment decision. Except as otherwise set forth herein, there shall be no Purchase Price adjustments of any type or manner, including any quality assessment of the Purchased Assets or Assumed Liabilities being conveyed.

## **ARTICLE VI.**

### **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Subject to the exceptions noted in the schedules delivered by Purchaser concurrently herewith, Purchaser represents and warrants to the Sellers as follows as of the date hereof and as of the Closing Date:

6.1. Organization and Qualification. Purchaser is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization. Purchaser has all requisite power and authority to own, lease and operate its properties and to carry on its business (including the Business) as it is now being conducted, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Purchaser's ability to consummate the transactions contemplated hereby.

6.2. Authority. Purchaser has the requisite power and authority to execute and deliver this Agreement and each of the Ancillary Documents to which it is a party, to perform its obligations hereunder and thereunder, to consummate the transactions contemplated hereby and thereby and to assume and perform the Assumed Liabilities. The execution and delivery of this Agreement by Purchaser and each of the Ancillary Documents to which it is a party, the performance by Purchaser of its obligations hereunder and thereunder, the consummation of the transactions contemplated hereby and thereby and the assumption and performance of the Assumed Liabilities have been duly and validly authorized by all necessary actions on the part of Purchaser. This Agreement has been, and at or prior to the Closing, each of the Ancillary Documents to which it is a party will be, duly and validly executed and delivered by Purchaser. Assuming the due authorization, execution and delivery of this Agreement and the Ancillary Documents by the Sellers and subject to the effectiveness of the Sale Order, this Agreement constitutes, and each Ancillary Document to which Purchaser is a party when so executed and delivered will constitute, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with its terms.

6.3. No Inconsistent Obligations. Neither the execution and delivery of this Agreement or any other documents contemplated hereby, nor the consummation of the transactions contemplated herein or therein in accordance with the Sale Order, will, to Purchaser's knowledge, result in a violation or breach of, or constitute a default under, (a) the certificate of incorporation, as amended, the bylaws, or other organizational instruments of Purchaser, (b) any applicable ruling or order of any Governmental Body, (c) any term or provision of any contract or agreement, (d) any writ, order, judgment, decree, Law, rule, regulation or ordinance, and (e) any other commitment or restriction to which Purchaser is a party, nor will such actions result in the creation of a lien.

6.4. Conflicts: Consents.

(a) The execution, delivery and performance by Purchaser of this Agreement or any Ancillary Document to which it is a party, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby and the taking by Purchaser of any other action contemplated hereby or thereby, do not and will not contravene, violate or conflict with any term or provision of its Organizational Documents.

(b) Except as set forth on Schedule 6.4(b), no consent, waiver, approval, order or authorization of, or registration, qualification, designation or filing with any Person or Governmental Body is required in connection with the execution, delivery and performance by Purchaser of this Agreement or the Ancillary Documents to which it is a party, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, the assumption and performance of the Assumed Liabilities or the taking by Purchaser of any other action contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Purchaser's ability to perform its obligations under this Agreement and the

Ancillary Documents to which it is a party, to assume and perform the Assumed Liabilities or to consummate on a timely basis the transactions contemplated hereby or thereby.

6.5. Brokers. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchaser in connection with the transactions contemplated by this Agreement and the Sellers are not or will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Purchaser.

6.6. Adequate Assurances Regarding Assigned Contracts. As of the Closing, Purchaser will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts.

6.7. No Litigation. To Purchaser's knowledge, there are no material actions, suits, claims, investigations, hearings, or proceedings of any type pending (or, to the knowledge of Purchaser, threatened) instituted against Purchaser challenging the legality of the transactions contemplated in this Agreement (other than with respect to any objection which may be filed in connection with the Bankruptcy Case).

6.8. Sufficient Funds. The Purchaser will have sufficient funds, including its committed financing, available (i) to pay the Purchase Price, its obligations hereunder, and any expenses incurred by the Purchaser in connection with the transactions contemplated by this Agreement and (ii) to fund operations of the Business for at least twelve (12) months post-Closing.

## ARTICLE VII.

### EMPLOYEES

#### 7.1. Employee Matters.

(a) All Employees offered employment with Purchaser or its Affiliates who accept such offers of employment are hereinafter referred to as the "**Transferred Employees**," and such acceptance of offers shall be effective immediately after the Closing. The Transferred Employees' acceptance of offers from Purchaser shall terminate the employment of the Transferred Employees with the Sellers. Except as provided in Section 7.1(b), each Transferred Employee shall continue to participate in any Assumed Plans included in the Assumed Liabilities.

(b) Subject to Purchaser's right to terminate any Transferred Employees, with regard to Transferred Employees only, Purchaser shall provide such Transferred Employee(s) with (i) base compensation/wage rate that is no lower than that provided to such Transferred Employees as of the date of this Agreement; and (ii) other employee benefits that are no less favorable in the aggregate than those provided by the Sellers, including, but not limited to, vacation days and other paid-time-off. For purposes of eligibility, vesting, participation and benefit accrual under any Purchaser plans and programs providing employee benefits to Transferred Employees after the Closing Date (the "**Post-Closing Plans**"), each Transferred Employee shall be credited with his or her years of service with Seller before the Closing Date to the same extent as such Transferred Employee was entitled, before the Closing Date, to credit for such service under substantially similar Seller Employee Benefit Plans in which such Transferred Employees participated before the Closing Date, except to the extent such credit would result in a duplication of benefits.



(c) For purposes of each Post-Closing Plan providing medical, dental, hospital, pharmaceutical or vision benefits to any Transferred Employee, Purchaser shall use reasonable efforts to cause to be waived all pre-existing condition exclusions and actively-at-work requirements of such Post-Closing Plan for such Transferred Employee and his or her covered dependents (unless such exclusions or requirements were applicable under comparable Benefit Plans). In addition, Purchaser shall use reasonable efforts to cause any co-payments, deductible and other eligible expenses incurred by such Transferred Employee and/or his or her covered dependents under any Benefit Plan providing, medical, dental, hospital, pharmaceutical or vision benefits during the plan year ending on the Closing Date to be credited for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Transferred Employee and his or her covered dependents for the applicable plan year of each comparable Post-Closing Plan in which he or she participates.

(d) Purchaser shall assume and honor all vacation days and other paid-time-off accrued or earned, but not yet taken, by each Transferred Employee as of the Closing Date, which shall be delivered by the Sellers to Purchaser no later than five (5) Business Days after the Closing Date.

(e) The Sellers shall be solely responsible for the payment of any severance payment or benefits that become due to any current or former employee, officer, director, member, partner or independent contractor as a result of the termination of such individual by Seller or ERISA Affiliate thereof prior to the Closing Date, unless such termination is requested or directed by the Purchaser. The Sellers shall cease to maintain any group health plan as a result of the transactions contemplated by this Agreement, and Purchaser acknowledges and agrees that to the extent required by Section 4980B of the Code (and any regulations issued thereunder), Purchaser shall be responsible for complying with the health care continuation required of COBRA with respect to any individuals who are deemed to be "M&A Qualified Beneficiaries" (as such term is defined by COBRA and any regulations issued thereunder) in connection with the transactions contemplated by this Agreement whether the qualifying event resulting in such coverage occurred before, on or after the Closing Date. The Purchaser or its Affiliates shall be responsible for any severance benefits for any Transferred Employee who terminates employment with the Purchaser or such Affiliate after the Closing Date.

(f) At least two (2) days prior to the Closing, Purchaser will provide the Sellers a list of the Benefit Plans that it will assume, if any (the "***Assumed Plans***"). Purchaser, on the one hand, and the Sellers, on the other, shall take such actions as are necessary and reasonably requested by the other Party to cause Purchaser to assume sponsorship of the Assumed Plans as of the Closing and to effect the transfer of all assets and benefit liabilities of the Assumed Plans together with all related trust, insurance policies and administrative services agreements, effective as soon as practicable following the Closing.

(g) On and following the Agreement Date, the Sellers and Purchaser shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this Section 7.1, including exchanging information and data relating to workers' compensation, employee benefits and employee benefit plan coverage, and in obtaining any governmental approvals required hereunder, except as would result in the violation of any applicable Law, including without limitation, any Law relating to the safeguarding of data privacy.

(h) The provisions of this Section 7.1 are for the sole benefit of the parties to this Agreement only and shall not be construed to grant any rights, as a third party beneficiary or otherwise, to any person who is not a party to this Agreement, nor shall any provision of this Agreement be deemed to be the adoption of, or an amendment to, any employee benefit plan, as that term is defined

in Section 3(3) of ERISA, or otherwise to limit the right of Purchaser or the Sellers to amend, modify or terminate any such employee benefit plan.

## ARTICLE VIII.

### BANKRUPTCY COURT MATTERS

8.1. Approval of Overbid Protection, Break-up Fee and Expense Reimbursement. Subject to the entry of the Sale Procedures Order, the Sale Procedures Order shall provide for an initial overbid protection in an amount of the Break-up Fee plus the Expense Reimbursement plus \$250,000 over and above the Purchase Price, and minimum bid increments thereafter of \$100,000 (the “Overbid Protection”). Additionally, the Sale Procedures Order will provide for the approval of the Break-up Fee and Expense Reimbursement on the terms set forth in Section 8.7 hereof.

8.2. Competing Bid and Other Matters.

(a) The Sellers shall file the Sale Motion seeking approval of (i) the Sale Procedures Order and (ii) this Agreement (a true and complete copy of which shall be attached to such application or motion without schedules) and the Sellers’ authority to enter into this Agreement; provided, that the Sale Motion and all exhibits thereto shall be in form and substance reasonably acceptable to Purchaser.

(b) This Agreement and the transactions contemplated hereby are subject to the Sellers’ right and ability to consider higher or better competing bids with respect to the Business and the Purchased Assets (whether in component parts or subsets of the Purchased Assets, or a material portion of the Purchased Assets as provided herein) pursuant to the Sale Procedures Order (each a “**Competing Bid**”). Upon entry of the Sale Order, the Sellers shall not initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person in connection with any sale or other disposition of the Purchased Assets.

(c) If the Sellers receive one or more Competing Bids, and Purchaser is not the prevailing party with respect to such Competing Bids (such prevailing party, the “**Prevailing Bidder**”), Purchaser shall, if its bid is determined to be the next highest bid, serve as a back-up bidder (the “**Back-up Bidder**”) and keep Purchaser’s bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in response to any Competing Bid) open and irrevocable until the earlier of (i) 5:00 p.m., (prevailing Eastern time) on the date which is fifteen (15) days after all closing conditions set forth in the applicable purchase agreement have been satisfied or waived by the parties thereto (the “**Outside Back-up Date**”); provided, however, that notwithstanding the foregoing, in no event shall the Outside Back-up Date be later than the date of closing of an Alternative Transaction with the Prevailing Bidder. Following the Sale Hearing and prior to the Outside Back-up Date, if the Prevailing Bidder fails to consummate the applicable Alternative Transaction as a result of a breach or failure to perform on the part of such Prevailing Bidder, the Back-up Bidder will be deemed to have the new prevailing bid, and the Sale Order shall provide that the Sellers will be authorized and the Back-Up Bidder shall be directed, without further order of the Bankruptcy Court, to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in response to any Competing Bid) with the Back-up Bidder.

(d) The Sellers shall promptly serve true and correct copies of the Sale Motion and all related pleadings in accordance with the Sale Procedures Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules for the Bankruptcy Court and any other applicable order of the Bankruptcy Court.

8.3. Sale Order. The Sale Order shall be entered by the Bankruptcy Court. The Sale Order shall, among other things, (i) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (A) the execution, delivery and performance by the Sellers of this Agreement, (B) the sale of the Purchased Assets to Purchaser on the terms set forth herein and free and clear of all Claims, Liabilities and Encumbrances (other than Liabilities and Encumbrances included in the Assumed Liabilities and Permitted Encumbrances), and (C) the performance by Sellers of their obligations under this Agreement; (ii) authorize and empower the Sellers to assume and assign to Purchaser the Assigned Contracts; and (iii) find that Purchaser is a “good faith” Purchaser within the meaning of Section 363(m) of the Bankruptcy Code, not a successor to any Seller and grant Purchaser the protections of Section 363(m) of the Bankruptcy Code. Purchaser agrees that it will promptly take such actions requested by the Sellers to assist in obtaining Bankruptcy Court approval of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (a) demonstrating that Purchaser is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code, and (b) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code.

8.4. Contracts. The Sellers shall use commercially reasonable efforts to serve on all non-Seller counterparties to all of their respective Contracts a notice specifically stating that the Sellers are or may be seeking the assumption and assignment of such Contracts and shall notify such non-Seller counterparties of the deadline for objecting to the Cure Amounts, if any, which deadline shall be set forth in the Sale Procedures Order.

8.5. Bankruptcy Filings. From and after the Agreement Date and until the Closing Date, the Sellers shall use their reasonable efforts to deliver to Purchaser drafts of any and all material pleadings, motions, notices, statements, schedules, applications, reports and other papers to be filed or submitted in connection with this Agreement for Purchaser’s prior review and comment, and such filings shall be reasonably acceptable to Purchaser to the extent they relate to the Purchased Assets, any Assumed Liabilities or any of Purchaser’s obligations hereunder. The Sellers agree to diligently prosecute the entry of the Sale Procedures Order and the Sale Order. In the event the entry of the Sale Procedures Order or the Sale Order shall be appealed, the Sellers shall use their reasonable efforts to defend such appeal. The Sellers shall comply with all notice requirements (i) of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, or (ii) imposed by the Sale Order, in each case, in connection with any pleading, notice or motion to be filed in connection herewith. Purchaser agrees that it will promptly take such actions as are reasonably requested by the Sellers to assist in obtaining entry of the Sale Procedures Order and a finding of adequate assurance of future performance by Purchaser under the Assigned Contracts as required by Section 365(b)(1)(C) of the Bankruptcy Code, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court. With respect to each Assigned Contract, Purchaser shall use best efforts to provide adequate assurance as required under the Bankruptcy Code of the future performance of the applicable Assigned Contract.

8.6. Sale Free and Clear. The Sellers acknowledge and agree, and the Sale Order shall provide that, on the Closing Date and concurrently with the Closing, all then existing or thereafter arising obligations, Liabilities and Encumbrances (other than Permitted Encumbrances and Assumed Liabilities) of, against or created by the Sellers or their bankruptcy estates shall be fully released from

and with respect to the Purchased Assets. On the Closing Date, the Purchased Assets shall be transferred to Purchaser free and clear of all obligations, Liabilities and Encumbrances, other than Permitted Encumbrances and the Assumed Liabilities.

8.7. Expense Reimbursement and Break-up Fee.

(a) Sellers shall, subject to entry of the Sale Procedures Order, and without the requirement of any notice or demand from Purchaser, pay the Expense Reimbursement in cash to Purchaser within five (5) Business Days only in the event that this Agreement is terminated pursuant to Section 4.4(c), Section 4.4(e), Section 4.4(f), Section 4.4(g), Section 4.4(h), or by Purchaser pursuant to Section 4.4(j).

(b) Sellers shall, subject to entry of the Sale Procedures Order, and without the requirement of any notice or demand from Purchaser, pay the Break-up Fee in cash to Purchaser within five (5) Business Days only in the event that this Agreement is terminated pursuant to Section 4.4(g), Section 4.4(h), or upon Bankruptcy Court approval of the Prevailing Bidder in the event that a bidder other than Purchaser is the Prevailing Bidder (unless Purchaser is the Back-up Bidder, in which event the Break-up Fee shall be payable by Sellers to Purchaser upon the closing of the sale of the Purchased Assets to such alternative Prevailing Bidder).

(c) Pursuant to the Sale Procedures Order, the obligations of the Sellers to pay the Break-up Fee and/or Expense Reimbursement (i) shall be entitled to administrative expense claim status under Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code and shall be a superpriority administrative expense claim (i.e., senior to all other administrative expense claims and payable out of Sellers' cash or other collateral and prior to any recovery by such lenders holding liens and claims on such collateral) of the Sellers under Section 364(c)(1) of the Bankruptcy Code, (ii) shall not be subordinate to any other administrative expense claim against the Sellers, and (iii) shall survive the termination of this Agreement.

## ARTICLE IX.

### COVENANTS AND AGREEMENTS

9.1. Conduct of Business of the Sellers. During the Pre-Closing Period, the Sellers shall use commercially reasonable efforts, except as otherwise required, authorized or restricted pursuant to the Bankruptcy Code or an Order of the Bankruptcy Court or this Agreement, to (A) operate the Business in the Ordinary Course of Business, (B) preserve intact their respective business organizations, (C) maintain the Business and the Purchased Assets (normal wear and tear excepted), (D) keep available the services of its officers and Employees, (E) maintain commercially satisfactory relationships with licensors, licensees, suppliers, contractors, distributors, consultants, customers, vendors and others having business relationships with the Sellers in connection with the operation of the Business (other than payment of pre-petition claims), (F) subject to the terms and any restrictions arising under or in connection with any Bankruptcy Court approved debtor-in-possession financing facility, pay all of its post-petition obligations in the Ordinary Course of Business, and (G) continue to operate the Business and Purchased Assets in all material respects in compliance with all Laws applicable to the Business and the Sellers. Without limiting the generality of the foregoing, and except (i) as otherwise expressly provided in, permitted by or contemplated by this Agreement, or (ii) required, authorized or restricted pursuant to the Bankruptcy Code or an Order of the Bankruptcy Court or this Agreement, on or prior to the Closing Date, the Sellers may not, without the prior written consent of Purchaser, which consent

may be withheld, denied, delayed or conditioned in Purchaser's sole and exclusive discretion, take any of the following actions with respect to the Business or the Purchased Assets:

(a) other than as set forth in Schedule 9.1(a), (i) modify in any manner the compensation of any of the Employees or officers, or accelerate the payment of any such compensation (other than such that the liability associated with such modification is excluded from the Assumed Liabilities), (ii) grant any (a) bonuses, whether monetary or otherwise, (b) increase wages or salary or (c) increase other compensation or material benefits, in any case, in respect of any current or former employee, independent contractor, director or officer of the Sellers, except in each case as required by Law or in the Ordinary Course of Business;

(b) other than the type of Employees as set forth in Schedule 9.1(b), engage any new Employee other than in the Ordinary Course of Business, provided, however, that the Sellers shall not engage any new Employee whose aggregate annual salary exceeds \$100,000;

(c) except as set forth in Schedule 9.1(c), remove or permit to be removed from any building, facility, or real property any asset or any Inventory (other than in connection with the sale of Inventory in the Ordinary Course of Business and the sale of fixtures, equipment and related assets in an amount not to exceed \$25,000);

(d) sell, lease or otherwise dispose of mortgage, hypothecate or otherwise encumber any asset (other than sales of Inventory in the Ordinary Course of Business and other than any liens provided for in the DIP Order);

(e) amend, terminate or renew any Contract other than (i) in the Ordinary Course of Business or (ii) outside of the Ordinary Course of Business, which in the case of this clause (ii) results in an increase in the term of any such Contract by more than one (1) year or results in an obligation of the Sellers in excess of \$100,000;

(f) fail to use commercially reasonable efforts to maintain the validity of the Sellers' rights in, to or under any Intellectual Property;

(g) fail to use commercially reasonable efforts to maintain all material Permits of the Sellers used in the operation of the Business or the Purchased Assets;

(h) make any unusual or extraordinary efforts to collect any outstanding Accounts Receivable or intercompany obligation, liability or Indebtedness, give any discounts or concessions for early payment of such accounts receivable or intercompany obligation, liability or Indebtedness, other than the usual discounts given by the Business in the Ordinary Course of Business and make any sales of, or, other than liens provided for in the DIP Order, convey any interest in, any accounts receivable or intercompany obligation, liability or Indebtedness to any third party;

(i) other than transactions pursuant to agreements or arrangements in effect on the Petition Date as set forth on Schedule 9.1(i), engage in any transaction with any Affiliate, subsidiary, shareholder, officer or director of any Seller (other than in the Ordinary Course of Business), incur or assume any long term or short term debt with or on behalf of any such Person or guarantee, endorse or otherwise be liable or responsible (whether directly, indirectly, contingently or otherwise) for the obligations of any such Person;

(j) make any change in their method of accounting, except in accordance with GAAP;

(k) fail to maintain any insurance policy in effect on the date hereof or amend any such policy other than extensions in the Ordinary Course of Business;

(l) accelerate the payment of any obligation, Liability or Indebtedness of any Seller;

(m) file any Tax Return (other than consistent with past practice and applicable Law) or make, change or rescind any Tax election or file any amended Tax Return or change its fiscal year or financial or Tax accounting methods, policies or practices or settle any Tax liability, except in each case as would not reasonably be expected to result in any Liability to, or have any adverse effect on, the Purchaser or the Business;

(n) enter into, termination of, adoption of or amendment to any Benefit Plan (other than amendments required by law or to maintain the tax qualified status of any Benefit Plan under Section 401(a) of the Code), any change in control or severance agreement or any other Benefit Plan or collective bargaining agreement;

(o) loan to, or enter into any other transaction (other than in the Ordinary Course of Business) with, any employee, officer, director or independent contractor;

(p) settle or agree to settle any pending or threatened litigation, except to the extent that such settlement is either (i) pursuant to an insured claim; (ii) less than \$100,000 or (iii) approved by the Bankruptcy Court;

(q) other than transactions pursuant to agreements or arrangements in effect as set forth in Schedule 9.1(q), enter into new agreements to construct or remodel any of the Sellers' facilities;

(r) engage in substantive discussion with any Governmental Body related to any alleged or actual non-compliance with Environmental Laws without at least three days advance notice to Purchaser or enter into any settlement thereof including fines or payments in excess \$25,000 or otherwise providing for injunctive relief of any kind;

(s) agree with the applicable landlord to a material modification of terms of the existing Lease for any Assumed Leased Real Property; and

(t) agree, whether in writing or otherwise, to do any of the foregoing.

9.2. Access to Information. The Sellers agree that, between the Agreement Date and the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 4.4, Purchaser shall be entitled, through its Representatives, to have such reasonable access to and make such reasonable investigation and examination of the books and records, properties, businesses, assets, Employees, accountants, auditors, counsel and operations of the Sellers as Purchaser's Representatives may reasonably request. Any such investigations and examinations shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances. The Sellers shall use commercially reasonable efforts to cause their Representatives to reasonably cooperate with Purchaser and Purchaser's Representatives in connection with such investigations and examinations, and Purchaser shall, and use its commercially reasonable efforts to

cause its Representatives to, reasonably cooperate with the Sellers and their Representatives, and shall use its commercially reasonable efforts to minimize any disruption to the Business.

9.3. DIP Financing. During the Pre-Closing Period, Sellers shall not (a) deviate from the DIP Budget in a material manner (as it relates to either revenue or expenditures), or (b) fail to maintain access to and the right to use a combination of debtor-in-possession loan commitments and/or cash collateral that are, in the aggregate, sufficient for the Sellers to make the payments contemplated by the DIP Budget.

9.4. Rejected Contracts. The Sellers shall not reject any Assigned Contract in any bankruptcy proceeding following the Agreement Date without the prior written consent of Purchaser, which Purchaser may withhold, condition or delay, in its sole discretion.

9.5. Reasonable Efforts; Cooperation.

(a) Subject to the other provisions hereof, each Party shall use its commercially reasonable efforts to perform its obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to cause the transactions contemplated herein to be effected as soon as practicable, but in any event on or prior to the Outside Date, in accordance with the terms hereof and shall cooperate in a commercially reasonable manner with each other Party and its Representatives in connection with any step required to be taken as a part of its obligations hereunder.

(b) In the event that any of the Parties to this Agreement discovers a Contract related to the Business, the Purchased Assets or the Assumed Liabilities during the period from and after the Agreement Date, and such Contract (i) was unknown as of the Agreement Date, (ii) is a Contract that Purchaser wishes to assume the rights and obligations of and (iii) such Contract would not be deemed an Excluded Contract by Seller, Purchaser and the Sellers shall execute, acknowledge and deliver such other instruments and take such further actions as are reasonably practicable for Purchaser to assume the rights and obligations under such Contract.

(c) The obligations of the Sellers pursuant to this Section 9.5 shall be subject to any orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Bankruptcy Case), and the Sellers' obligations as a debtor-in-possession to comply with any order of the Bankruptcy Court (including the Sale Procedures Order and the Sale Order) and the Sellers' duty to seek and obtain the highest or otherwise best price for the Business as required by the Bankruptcy Code.

(d) The Sellers, on the one hand, and Purchaser, on the other hand, will provide each other with such cooperation and information as either of them may reasonably request of the other in connection with filing any Tax Return, amended Tax Return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes, or participating in or conducting any audit or other proceeding in respect of Taxes (such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with intercompany schedules, related work papers and documents relating to rulings and other determinations by Tax authorities). In addition, Purchaser shall make available to the Sellers, without charge to the Sellers, such office space and employee support reasonably necessary to assist the Sellers to wind up the Sellers' operations following the Closing, resolve the Bankruptcy Case, dissolve any or all of the Seller and prepare and file the Tax Returns. Any information obtained under this Section 9.5(d) shall be kept

confidential except as may be otherwise necessary in connection with the filing of Tax Returns or claims for refund or in conducting any audit or other proceeding.

(e) The Sellers, on the one hand, and Purchaser, on the other hand, (i) shall promptly inform each other of any communication from any Governmental Body concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) shall permit the other to review in advance any proposed written or material oral communication or information submitted to any such Governmental Body in response thereto. In addition, none of Parties shall agree to participate in any meeting with any Governmental Body in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated hereby, unless such Party consults with the other Parties in advance and, to the extent permitted by any such Governmental Body, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to restrictions under any Law, each of Purchaser, on the one hand, and the Sellers, on the other hand, shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and the Governmental Body or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine or which refer to valuation of the Business) or any such filing, notification or request for approval. Each Party shall also furnish the other Party with such necessary information and assistance as such other Party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Body in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval (including, if reasonably necessary, any approval from CFIUS and the FAA).

(f) The execution, delivery and performance of this Agreement by the Purchaser do not and will not require any U.S. Government approvals, authorization, consent, order, license, permit or approval of, or registration, declaration, notice or filing with, any Governmental Entity, except for joint notification to, and prompt submission of any supplementary information and prompt compliance with any mitigation agreement requested by The Committee on Foreign Investment in the U.S. (CFIUS), in order to obtain CFIUS approval. The Parties agree to use their best efforts to obtain CFIUS approval within ninety (90) days after entry of the Sale Order by the Bankruptcy Court, and undertake all necessary steps to make an initial joint CFIUS filing within ten (10) days of entry of the Sale Procedures Order by the Bankruptcy Court. The Purchaser agrees that if CFIUS requires mitigation in order to provide a safe harbor for this transaction, the Purchaser will work with the Seller to comply with such requirements which may include altering the ownership, access or control of the Purchaser.

9.6. Further Assurances. Each Party shall execute and cause to be delivered to each other Party such instruments and other documents, and shall take such other actions, as such other Party may reasonably request (prior to, at or after the Closing) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement. After the Closing, the Sellers shall promptly transfer or deliver to Purchaser cash, checks (which shall be properly endorsed) or other property that the Sellers may receive in respect of any deposit, prepaid expense, receivable or other item that constitutes part of the Purchased Assets or relates to the Assumed Liabilities.

9.7. Notification of Certain Matters. The Sellers shall give prompt notice to Purchaser, and Purchaser shall give prompt notice to the Sellers, of (i) any notice or other communication from any



Person alleging that the consent of such Person which is or may be required in connection with the transactions contemplated by this Agreement or the Ancillary Documents is not likely to be obtained prior to Closing, (ii) any written objection or proceeding that challenges the transactions contemplated hereby or the entry of the approval of the Bankruptcy Court and (iii) the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by the Sellers or Purchaser or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement.

9.8. Confidentiality.

(a) Purchaser acknowledges that the confidential information provided to it in connection with this Agreement, including under Section 9.2, and the consummation of the transactions contemplated hereby, is subject to the Purchaser's covenant and agreement to maintain the confidentiality thereof.

(b) Following entry of the Sale Order, the Sellers agree to maintain, unless disclosure is required by applicable Law, the confidentiality of any confidential information regarding the Business which is in the Sellers' possession or of which any Seller is aware. The Sellers hereby further agree, unless disclosure is required by applicable Law, to take all appropriate steps, consistent with the Sellers' past practice, to safeguard such confidential information and to protect it against disclosure, misuse, loss and theft. In furtherance and not in limitation of the foregoing, the Sellers shall not, unless required by applicable Law, disclose to any Person (a) any confidential information regarding the Business, provided, that confidential information shall not include information that becomes generally available to the public other than as a result of the breach of this Section 9.8(b) or information not otherwise known by the Sellers that becomes available to the Sellers from a Person other than Purchaser, or (b) any of the discussions or negotiations conducted with Purchaser in connection with this Agreement, provided, that the Sellers shall be entitled to disclose (i) any information required to be disclosed by the Sellers to the Bankruptcy Court, the United States Trustee, parties in interest in the Bankruptcy Case, other Persons bidding on assets of the Sellers, (ii) any information required to be disclosed by the Sellers pursuant to any applicable Law (including, without limitation, the Bankruptcy Code), Action or Governmental Body, or (iii) any information to the Sellers' Representatives; provided, that in each case, such disclosure shall be limited to the information that is so required to be disclosed and the Person(s) to whom such disclosure is required. Notwithstanding anything in this Section 9.8 to the contrary, unless disclosure is required by applicable Law, the confidentiality of any trade secrets of the Business shall be maintained for so long as such trade secrets continue to be entitled to protection as trade secrets of the Business.

9.9. Preservation of Records. The Sellers (or any subsequently appointed bankruptcy estate representative, including, but not limited to, a trustee, a creditor trustee or a plan administrator) and Purchaser agree that each of them shall preserve and keep the books and records (both hard copies and those electronically stored) held by it relating to the pre-Closing Business for a period of at least five (5) years from and after the Closing Date and shall make such books and records available to the other Parties (and permit such other Party to make extracts and copies of such books and records at its own expense) as may be reasonably required by such Party in connection with, among other things, any insurance claims by, legal proceedings or Tax audits against or governmental investigations of the Sellers or Purchaser or in order to enable the Sellers or Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby.

9.10. Publicity. Neither the Sellers nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of Purchaser or the Sellers, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement; provided, that the party intending to make such release shall use its best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other party with respect to the text thereof.

9.11. Material Adverse Effect. During the period prior to the Closing Date, the Sellers shall promptly inform Purchaser in writing of the occurrence of any event that has had, or is reasonably expected to have, a Material Adverse Effect.

9.12. Casualty Loss. Notwithstanding any provision of this Agreement to the contrary, if, before the Closing, all or any material portion of the Purchased Assets is (a) condemned or taken by eminent domain, or (b) is damaged or destroyed by fire, flood or other casualty, the Sellers shall notify Purchaser promptly in writing of such fact, (i) in the case of condemnation or taking, the Sellers shall assign or pay, as the case may be, any proceeds thereof to Purchaser at the Closing, and (ii) in the case of fire, flood or other casualty, the Sellers shall assign the insurance proceeds therefrom to Purchaser at Closing. Notwithstanding the foregoing, the provisions of this Section 9.12 shall not in any way modify Purchaser's other rights under this Agreement, including any applicable right to terminate the Agreement if any condemnation, taking, damage or other destruction resulted in a Material Adverse Effect.

9.13. No Successor Liability. The Parties intend that, except where expressly prohibited under applicable Law, upon the Closing, Purchaser shall not be deemed to: (i) be the successor of the Sellers, (ii) have, de facto, or otherwise, merged with or into the Sellers, (iii) be a mere continuation or substantial continuation of the Sellers or the enterprise(s) of the Sellers, or (iv) be liable for any acts or omissions of the Sellers in the conduct of the Business or arising under or related to the Purchased Assets other than as set forth in this Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, the Parties intend that Purchaser shall not be liable for any Encumbrance (other than Assumed Liabilities and Permitted Encumbrances) against the Sellers or any of the Sellers' predecessors or Affiliates, and Purchaser shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Business, the Purchased Assets or any Liabilities of Seller arising prior to the Closing Date. The Parties agree that the provisions substantially in the form of this Section 9.13 shall be reflected in the Sale Order.

9.14. Change of Name. Promptly following the Closing, the Sellers shall, and shall cause their direct and indirect Subsidiaries to, discontinue the use of its current name (and any other trade names or "d/b/a" names currently utilized by the Sellers or its direct or indirect Subsidiaries) and shall not subsequently change its name to or otherwise use or employ any name which includes the words "Eclipse," "Eclipse Aviation," or any derivation thereof, without the prior written consent of Purchaser, and the Sellers shall cause the names of the Sellers in the caption of the Bankruptcy Case to be changed to the new name of the Sellers.

9.15. Receivables. From and after the Closing, if the Sellers receive or collect any funds relating to Accounts Receivable, in respect of the Purchased Assets, the Sellers shall use commercially

reasonable efforts to remit such funds to Purchaser within ten (10) Business Days after its receipt thereof.

9.16. Government Approvals.

(a) If applicable, such that the final Purchase Price meets certain minimum reporting thresholds, subject to Section 9.16(c), as soon as reasonably practicable, the Sellers, and Purchaser shall each prepare and file, or cause to be prepared and filed, an appropriate filing of a Notification and Report Form (the “**HSR Filing**”) pursuant to the HSR Act with the United States Federal Trade Commission (“**FTC**”) and the United States Department of Justice (“**DOJ**”), and request early termination of the waiting period under the HSR Act. Subject to the limitations set forth in this Section 9.16, each party shall promptly respond to any requests for additional information in connection with such filings and shall take all other reasonable actions to cause the waiting periods under the HSR Act to terminate or expire at the earliest possible date after the date of filing.

(b) In addition to the actions to be taken under Section 9.16(a), during the period prior to the Closing Date, the Sellers and Purchaser shall act diligently and reasonably, and shall cooperate with each other, to do or cause to be done, all things necessary, proper or advisable consistent with applicable confidentiality and legal requirements to cause the conditions precedent to the Closing to be satisfied and to cause the Closing to occur, including to secure any consents and approvals of any Governmental Body required to be obtained by them under non-United States antitrust or competition laws, in order to assign or transfer any Permits to Purchaser, to permit the consummation of the transactions contemplated by this Agreement, or to otherwise satisfy the conditions set forth in Article VIII, in each case as necessary to the extent such consents are not provided for or satisfied by the Sale Order; provided, however, that the Sellers shall not make any agreement or understanding affecting the Purchased Assets or the Business (excluding the Excluded Assets or Excluded Liabilities) as a condition for obtaining any such consents or approvals except with the prior written consent of Purchaser. Subject to the limitations set forth in this Section 9.16, Purchaser shall act diligently and reasonably to cooperate with the Sellers, to the extent commercially reasonable, to obtain the consents and approvals contemplated by this Section 9.16(b); provided, however, Purchaser shall not be required to waive any of the conditions to Closing set forth in Article X.

(c) Subject to all applicable confidentiality and legal requirements, each Seller and Purchaser (i) shall promptly inform each other of any communication from any Governmental Body concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) shall permit the other Party to review in advance any proposed written communication or information submitted to any such Governmental Body in response thereto; provided, however, that no Party shall be required to provide any other Party with copies of confidential documents or information included in its filings and submissions under the HSR Act, and provided, further, that a Party may request entry into a joint defense agreement as a condition to providing any such materials and that, upon receipt of that request, the Parties shall work in good faith to enter into a joint defense agreement to create and preserve attorney-client privilege in a form and substance mutually acceptable to the Parties. In addition, none of Parties shall agree to participate in any meeting with any Governmental Body in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated hereby, unless such Party consults with the other Parties in advance and, to the extent permitted by any such Governmental Body, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable laws, rules or regulations, each Party shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the

substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and the Governmental Body or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval. Each Party shall also furnish the other Party with such necessary information and assistance as such other party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Body in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval. The Sellers and Purchaser shall prosecute all required requests for approval with all necessary diligence and otherwise use their respective commercially reasonable efforts to obtain the grant thereof by an Order as soon as possible.

(d) Notwithstanding anything else to the contrary in this Agreement, in the event that any administrative or judicial action or proceeding is instituted (or threatened to be instituted) by a Governmental Body or private party challenging the transactions hereunder or any other agreement contemplated hereby, (i) each Party shall cooperate in all respects with each other and use its respective best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the transactions contemplated by this Agreement, and (ii) Purchaser must defend, at its sole cost and expense, any action or actions, whether judicial or administrative, in connection with the transactions contemplated by this Agreement. Notwithstanding the foregoing, in no event shall Purchaser be required to divest any of the Purchased Assets in order to comply with this Section 9.16(d).

9.17. Certifications. Prior to the Closing Date, to extent applicable or reasonably necessary, the Sellers shall cooperate with and provide reasonable assistance to the Purchaser in connection with the Purchaser's negotiation with (i) all EASA authorities, employees, officials and personnel to obtain the issuance to Purchaser of a new EASA certificate, of the same quality and type, and as applicable to each Seller, as the Sellers' Eclipse EASA Certificate (the "**New EASA Certificate**") and (ii) all FAA authorities, employees, officials and personnel to obtain the issuance to Purchaser of a new (x) FAA Production Certificate (the "**New FAA Production Certificate**"), (y) FAA Type Certificate (the "**New FAA Type Certificate**"), and (z) FAA Parts Certificate (the "**New FAA Parts Certificate**" and collectively with the New EASA Certificate, New FAA Production Certificate, and New FAA Type Certificate, the "**New Certificates**"), in each case of the same quality and type, and as applicable to each Seller, as the Eclipse Production Certificate, Eclipse Type Certificate and Eclipse Parts Certificate. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, it is expressly understood and agreed by the Sellers and Purchaser that Purchaser shall bear all risk that the New Certificates are not obtained by Purchaser.

9.18. Wind-Down Account. From and after the Closing, the proceeds from the causes of action set forth on Schedule 2.2(i) and the Wind-Down Payment deposited into the Wind-Down Account shall be held in trust by the Sellers, free and clear of any and all Encumbrances, for the benefit of Persons entitled to be paid priority claims, administrative expenses and other costs relating to the post-Closing administration and wind-down of the Sellers' estates, including, without limitation, confirmation of a liquidating plan for the Sellers, in accordance with the Wind-Down Budget and the following provisions:

(a) All priority claims, administrative expenses or other costs to be paid from the Wind-Down Account pursuant to the Wind-Down Budget must be submitted by the claimant that

earned or incurred such priority claims, administrative expenses or other costs to the Sellers and Purchaser in writing.

(b) Upon the submission of any such priority claims, administrative expenses or other costs to be paid from the Wind-Down Account, Purchaser and the Sellers each shall have thirty (30) days to object in writing to any such priority claims, administrative expenses or other costs on the basis that it: (i) is not consistent in kind or amount with the Wind-Down Budget or (ii) is not reasonably necessary for administering and winding-down of the Sellers' estates.

(c) In the event a timely written objection is made by Purchaser or the Sellers and an agreement thereafter cannot be reached among the claimant, the Sellers and Purchaser resolving such objection, the allowance and payment of the priority claims, administrative expenses or other costs still in dispute shall be determined by Order of the Bankruptcy Court upon application by the claimant, the Sellers, or Purchaser.

(d) Notwithstanding the foregoing, if the priority claims, administrative expenses or other costs sought to be paid from the Wind-Down Budget consist of fees and/or expenses of estate Professionals or similar Persons earned or incurred during the pendency of the Bankruptcy Cases, the allowance of such fees and expenses shall be governed by Sections 327, 328, 330, 331 and/or 363 of the Bankruptcy Code, Fed. R. Bankr. P. 2016, the Local Rules of the Bankruptcy Court, and Orders of the Bankruptcy Court entered in the Bankruptcy Cases and the amount contained in the Wind-Down Budget.

(e) If and to the extent that the amount of any such priority claims, administrative expenses or other costs (or portion thereof) has been allowed by (i) a lack of a timely objection by the Sellers and Purchaser, (ii) an agreement among the claimant, the Sellers and Purchaser, or (iii) entry of an Order by the Bankruptcy Court, as set forth above, the Sellers shall promptly pay to the claimant the allowed amount of such priority claims, administrative expenses or other costs (or portion thereof) from the Wind-Down Account.

(f) Subsequent to Closing, the Sellers shall reduce the amount of the Wind-Down Account as and to the extent that the Sellers may agree, or the Bankruptcy Court determines by entry of an Order, that the Wind-Down Account, or portions thereof, are no longer required to fund the administration and wind-down expenses and costs of the Sellers' estates by distributing to Purchaser the amount of such reductions.

## **ARTICLE X.**

### **CONDITIONS TO CLOSING**

10.1. Conditions Precedent to the Obligations of Purchaser and Sellers. The respective obligations of each Party to this Agreement to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by each of the Sellers and Purchaser) on or prior to the Closing Date, of each of the following conditions:

(a) there shall not be in effect any order, writ, injunction, judgment or decree entered by a Governmental Body of competent jurisdiction, or any Law preventing, enjoining, restraining, making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or the Ancillary Documents; and

(b) the Bankruptcy Court shall have entered the Sale Procedures Order and the Sale Order (as provided in Article VIII) in form and substance reasonably satisfactory to the Sellers and Purchaser, which orders shall not have been reversed, modified, amended or stayed.

10.2. Conditions Precedent to the Obligations of the Sellers. The obligations of the Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions, any of which may be waived in writing by the Sellers in their sole discretion:

(a) the representations and warranties made by Purchaser in this Agreement shall be true and correct in all material respects (without giving effect to any materiality or similar qualification contained therein), in each case as of the Agreement Date and as of the Closing Date, with the same force and effect as though all such representations and warranties had been made as of the Closing Date (other than representations and warranties that by their terms address matters only as of another specified date, which shall be so true and correct only as of such other specified date), except where the failure of such representations or warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Purchaser's ability to consummate the transactions contemplated hereby;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date; and

(c) Purchaser shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 4.3.

10.3. Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions, any of which may be waived in writing by Purchaser in its sole discretion:

(a) The Sellers shall have delivered to Purchaser (i) a file-stamped copy of the Sale Order (which shall contain the terms described in Section 8.3) and (ii) copies of all affidavits of service of the Sale Motion or notice of such motion filed by or on behalf of Seller (which service shall comply with Section 8.2(d));

(b) the representations and warranties made by each Seller in this Agreement shall be true and correct in all material respects (provided that any such representation or warranty that is subject to any materiality, Material Adverse Effect or similar qualification shall be true and correct in all respects after giving effect to any such qualification), in each case as of the Agreement Date and as of the Closing Date, with the same force and effect as though all such representations and warranties had been made as of the Closing Date (other than representations and warranties that by their terms address matters only as of another specified date, which shall be so true and correct only as of such other specified date), except where the failure of such representations and warranties to be true and correct as of the applicable date would not have a Material Adverse Effect;

(c) The Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them on or prior to the Closing Date;

(d) The Sellers shall have delivered, or caused to be delivered, to Purchaser, all of the items set forth in Section 4.2; and

(e) the Sellers shall have complied with the sale process deadlines set forth in the Sale Procedures Order.

## ARTICLE XI.

### TAXES

11.1. Certain Taxes. Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or other Taxes and recording charges which may be payable by reason of the sale of the Purchased Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby, and that are not exempt under Section 1146(a) of the Bankruptcy Code, shall be borne and timely paid by the Purchaser. The Sellers shall, at their own expense, timely file any Tax Return or other document required to be filed with respect to such Taxes, and Purchaser shall join in the execution of any such Tax Return if required by Law.

#### 11.2. Allocation of Purchase Price.

(a) As soon as reasonably practicable after the Closing Date, the Purchaser shall determine the allocation of (i) the Purchase Price, plus (ii) the Assumed Liabilities, plus (iii) all other items required to be treated as consideration for federal income Tax purposes, among the Purchased Assets and the agreements provided for herein, for all purposes (including financial, accounting and Tax) (the “**Allocation**”). The Purchaser and the Sellers shall each report the federal, state and local income and other Tax consequences of the transactions contemplated hereby in a manner consistent with the Allocation, including, if applicable, the preparation and filing of Forms 8594 under Section 1060 of the Code (or any successor form or successor provision of any future Tax Law) with their respective federal income Tax Returns for the taxable year which includes the Closing Date, and neither will take any position inconsistent with the Allocation unless otherwise required under applicable Law. The Sellers shall provide the Purchaser and the Purchaser shall provide the Sellers with a copy of any information required to be furnished to the Secretary of the Treasury under Code Section 1060.

(b) Notwithstanding the allocation of the Purchase Price in Section 11.2(a), nothing in the foregoing shall be determinative of values ascribed to the Purchased Assets or the allocation of the value of the Purchased Assets in any chapter 11 plan of reorganization or liquidation that may be proposed. The Sellers reserve the right on their own behalf and on behalf of the Sellers’ estates, to the extent not prohibited by applicable law and accounting rules, for purposes of any chapter 11 plan of reorganization or liquidation, to ascribe values to the Purchased Assets and to allocate the value of the Purchased Assets to the Sellers in the event of, or in order to resolve, creditor disputes in the Bankruptcy Case.

11.3. Cooperation on Tax Matters. The Purchaser and the Sellers agree to provide each other with such information and assistance as is reasonably necessary, including access to records, Tax Returns and personnel, for the preparation of any Tax Returns or for the defense of any Tax claim or assessment, whether in connection with a Tax Proceeding or otherwise.

11.4. Tax Refunds. The Sellers agree to cooperate with the Purchaser in all respects, and take or cause to be taken any steps necessary, in order to apply for and obtain any Tax Refunds with respect to the Sellers for any taxable year, provided that the Purchaser pays all reasonable expenses incurred in connection therewith.

## ARTICLE XII.

### MISCELLANEOUS

12.1. Payment of Expenses. The Purchaser shall bear its own expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, regardless of whether or not such contemplated transactions are consummated.

12.2. Survival of Representations and Warranties; Survival of Confidentiality. The Parties agree that the representations and warranties contained in this Agreement shall expire upon the Closing Date. The Parties agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive in accordance with the terms of the particular covenant or until fully performed.

12.3. Entire Agreement; Amendments; Waivers. This Agreement, together with the Ancillary Documents, represents the entire understanding and agreement between the Parties with respect to the subject matter hereof. This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by each Party; provided, that the Schedules hereto may be amended in accordance with Section 2.6. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

12.4. Execution of Agreement; Counterparts; Electronic Signatures.

(a) This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterparts.

(b) The exchange of copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in “portable document format” (“*.pdf*”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all



purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

12.5. Governing Law. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF (EXCEPT FOR ANY LAWS OF THAT STATE WHICH WOULD RENDER SUCH CHOICE OF LAWS INEFFECTIVE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

12.6. Jurisdiction, Waiver of Jury Trial.

(a) THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER AT LAW OR IN EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY; PROVIDED, HOWEVER, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF NEW YORK AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN NEW YORK COUNTY, NEW YORK WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER AT LAW OR IN EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY.

(b) EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.7. Notices. Unless otherwise set forth herein, any notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a Party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid), or (b) sent by facsimile or e-mail, in each case, if sent during the normal business hours of the recipient, with confirmation of transmission by the transmitting equipment confirmed with a copy delivered as provided in clause (a), in the case of each of clauses (a) and (b), to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a Party may designate by notice to the other Parties):

If to Seller, to:

ONE Aviation Corporation  
3520 Spirit Drive SE  
Albuquerque, New Mexico 87106  
Attn: Alan Klapmeier  
Jim Carroll  
Email: alan.klapmeier@oneaviation.aero  
jim.carroll@carrollservicesllc.com

With a copy (which shall not constitute effective notice) to:

Paul Hastings, LLP  
71 South Wacker Drive, Suite 4500  
Chicago, Illinois 60606  
Attn: Chris Dickerson  
Brendan Gage  
Nathan Gimpel  
Email: chrisdickerson@paulhastings.com  
brendangage@paulhastings.com  
nathangimpel@paulhastings.com

-and-

Paul Hastings, LLP  
1117 South California Avenue  
Palo Alto, California 94304  
Attn: Todd Schwartz  
Email: toddschwartz@paulhastings.com

If to Purchaser, to:

SEF OA LLC  
35 Sage Terrace  
Scarsdale, NY 10583  
Attn: Joseph Torres  
Email: jtorres@lwpholdings.com

With a copy (which shall not constitute effective notice) to:

King & Spalding LLP  
1180 Peachtree Street  
Atlanta, Georgia 30309  
Attn: W. Austin Jowers  
Email: ajowers@kslaw.com

12.8. Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and, subject to entry of the Sale Procedures Order (with respect to the matters covered thereby) and the Sale Order, the Sellers, and inure to the benefit of the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Case or any successor Chapter 7 case. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made by the Sellers or Purchaser (by operation of law or otherwise) without the prior written consent of the other Parties and any attempted assignment without such required consents shall be void.

12.9. Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction and in lieu of such invalid, illegal or unenforceable provision or portion of any provision, there will be added automatically as a part of this Agreement a valid legal and enforceable provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible.

12.10. Bulk Sales Laws. Each Party hereby waives compliance by the Parties with the “bulk sales,” “bulk transfers” or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the transactions contemplated by this Agreement or any Ancillary Document.

12.11. Access and Right to Use. Purchaser shall, upon reasonable advance notice, afford to the Sellers’ officers, independent public accountants, attorneys, consultants and other representatives, reasonable access during normal business hours to the Purchased Assets and all records pertaining to the Purchased Assets on a royalty-free basis solely for the purpose of enabling the Sellers to conduct an orderly wind-down of the Sellers’ operations until such time as the wind-down is completed on or before the one-year anniversary of the Closing Date. The Sellers expressly acknowledge that nothing in this Section is intended to give rise to any contingency to the Sellers’ obligations to proceed with the transactions contemplated herein or any subsequently appointed trustee (either in a chapter 7 or 11 bankruptcy case), liquidating trustee, plan administrator or similar successor to the Sellers. In addition, the Purchaser agrees that it shall maintain and safeguard all of the Sellers’ books and records (both hard copies and those electronically stored) for a period of at least five (5) years from and after the Closing Date.

12.12. Enforcement of Agreement. Each Party acknowledges and agrees that the other Parties would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by any of the Parties could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which the Parties may be entitled, at law or in equity, each Party shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

12.13. Interpretation; Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

12.14. Waiver of Setoff. All payments hereunder by the Sellers to the Purchaser or by the Purchaser to the Sellers shall be made without setoff, counterclaim or other defense and each of the Purchaser and the Sellers hereby waives any and all of its rights to assert any right of setoff, counterclaim or other defense to the making of a payment due hereunder to the Sellers or the Purchaser, as the case may be.

**[Remainder of page intentionally left blank]  
[Signatures Follow Next Page]**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**SELLERS:**

**ACC MANUFACTURING, INC.,**  
as a Debtor and Debtor in Possession

By:   
Name: Alan Klapmeier  
Its: CEO

**AIRCRAFT DESIGN COMPANY,**  
as a Debtor and Debtor in Possession

By:   
Name: Alan Klapmeier  
Its: CEO


**BRIGADOON AIRCRAFT MAINTENANCE, LLC,**  
as a Debtor and Debtor in Possession

By:   
Name: Alan Klapmeier  
Its: CEO

**DR MANAGEMENT, LLC,**  
as a Debtor and Debtor in Possession

By:   
Name: Alan Klapmeier  
Its: CEO

**ECLIPSE AEROSPACE, INC.,**  
as a Debtor and Debtor in Possession

By:   
Name: Alan Klapmeier  
Its: CEO

**INNOVATUS HOLDING COMPANY,**  
as a Debtor and Debtor in Possession

By:   
Name: Alan Klapmeier  
Its: CEO

**KESTREL AIRCRAFT COMPANY,**  
as a Debtor and Debtor in Possession

By:   
Name: Alan Klapmeier  
Its: CEO


**KESTREL BRUNSWICK CORPORATION,**  
as a Debtor and Debtor in Possession

By:   
Name: Alan Klapmeier  
Its: CEO


**KESTREL MANUFACTURING, LLC,**  
as a Debtor and Debtor in Possession

By:   
Name: Alan Klapmeier  
Its: CEO

**KESTREL TOOLING COMPANY,**  
as a Debtor and Debtor in Possession

By:   
Name: Alan Klapmeier  
Its: CEO

**OAC MANAGEMENT, INC.,**  
as a Debtor and Debtor in Possession

By:   
Name: Alan Klapmeier  
Its: CEO

**ONE AVIATION CORPORATION,**  
as a Debtor and Debtor in Possession

By:   
Name: Alan Klapmeier  
Its: CEO

**[Signatures Continue Next Page]**

**PURCHASER:**

**SEF OA LLC**



By: \_\_\_\_\_

Name: Joseph Torres

Its: Managing Member

**Annex I**

ACC Manufacturing, Inc., a Delaware corporation  
Aircraft Design Company , a Delaware corporation  
Brigadoon Aircraft Maintenance, LLC, a Delaware limited liability company  
DR Management, LLC, a Wisconsin limited liability company  
Eclipse Aerospace, Inc., a Delaware corporation  
Innovatus Holding Company, a Delaware corporation  
Kestrel Aircraft Company, Inc., a Delaware corporation  
Kestrel Brunswick Corporation, a Maine corporation  
Kestrel Manufacturing, LLC, a Wisconsin limited liability company  
Kestrel Tooling Company, a Maine corporation  
OAC Management, Inc., a Delaware corporation



**EXHIBIT C**

**PUBLICATION NOTICE**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
ONE AVIATION CORPORATION, <i>et al.</i> , <sup>1</sup>	:	Case No. 18-12309 (CSS)
	:	
	:	
Debtors.	:	Jointly Administered
	:	
	:	
	X	

**NOTICE OF SALE HEARING IN CONNECTION WITH  
THE SALE OF ASSETS OF ONE AVIATION CORPORATION**

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**PLEASE TAKE NOTICE** that on **August 28, 2020**, ONE Aviation Corporation and its affiliated debtors as debtors in possession in the above-captioned cases (collectively, the “Debtors”) entered into an Asset Purchase Agreement (the “Purchase Agreement”) with SEF OA LLC, a Delaware limited liability company (the “Buyer”), as more fully set forth in the *Debtors’ Motion for Entry of: (A) Order (I) Approving Form and Manner of Notice in Connection With Sale of Assets of the Debtors, (II) Scheduling Sale Hearing, (III) Approving Bid Protections, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (V) Granting Related Relief; and (B) Order (I) Approving Purchase Agreement, (II) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (III) Granting Related Relief* filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on **August 28, 2020** [Docket No. \_\_\_\_] (the “Motion”). The debtors seek to sell all or substantially all of the Debtors’ assets (collectively, the “Seller Assets”) to the Buyer free and clear of Liens or encumbrances as set forth in the Purchase Agreement pursuant to section 363 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that on [\_\_\_\_], **2020**, the Bankruptcy Court entered an order [Docket No. \_\_\_\_] (the “Sale Procedures and Scheduling Order”),<sup>2</sup> which, among other things, set the key dates, times, and procedures related to the sale pursuant to the terms outlined in the Motion.

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The debtors’ corporate headquarters is located at 3520 Spirit Drive SE, Albuquerque, NM 87106.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Sale Procedures and Scheduling Order.

**PLEASE TAKE FURTHER NOTICE** that a hearing to approve the sale of the Seller Assets to the Buyer (the “Sale Hearing”), and approve the other relief requested in the Motion, is scheduled to take place on **September 29, 2020 at [\_\_:\_\_ .m.]<sup>3</sup> (prevailing Eastern time)** before the Honorable Christopher S. Sontchi, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, DE 19801, or as soon thereafter as counsel may be heard.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the Motion, shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules, shall set forth the name of the objecting party, the nature and amount of any claims or interests held or asserted against the Debtors’ estate or properties, the basis for the objection, and the specific grounds therefore, and must be filed and served **so that they are actually received by the following entities by no later than 4:00 p.m. (prevailing Eastern Time) on September 22, 2020:** (i) co-counsel for the Debtors, (x) Paul Hastings, LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn: Chris L. Dickerson, [Chrisdickerson@paulhastings.com](mailto:Chrisdickerson@paulhastings.com), Brendan M. Gage, [brendangage@paulhastings.com](mailto:brendangage@paulhastings.com), Nathan S. Gimpel, [nathangimpel@paulhastings.com](mailto:nathangimpel@paulhastings.com), and 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Todd M. Schwartz, [Toddschwartz@paulhastings.com](mailto:Toddschwartz@paulhastings.com), and (y) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: M. Blake Cleary and Jaime Luton Chapman, [Mbcleary@ycst.com](mailto:Mbcleary@ycst.com) and [JChapman@ycst.com](mailto:JChapman@ycst.com); (ii) counsel for the Buyer, King & Spalding LLP, 1180 Peachtree Street NE, Suite 1600, Atlanta, GA 30309, Attn: W. Austin Jowers, [ajowers@kslaw.com](mailto:ajowers@kslaw.com); (iii) co-counsel for the Committee, (x) Lowenstein Sandler, One Lowenstein Drive, Roseland, NJ 07068, Attn: Bruce D. Buechler, [Bbuechler@lowenstein.com](mailto:Bbuechler@lowenstein.com), and 1251 Avenue of the Americas, New York, NY 10020, Attn: Wojciech F. Jung, [Wjung@lowenstein.com](mailto:Wjung@lowenstein.com), and (y) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801, Attn: Adam G. Landis and Kerri Mumford, [Landis@lrclaw.com](mailto:Landis@lrclaw.com) and [mumford@lrclaw.com](mailto:mumford@lrclaw.com); (iv) counsel for the Senior Subordinated Secured Noteholders, Montgomery McCracken Walker & Rhoades, LLP, 1105 North Market Street, Suite 1500, Wilmington, DE, 19801, Attn: Marc J. Phillips, [mphillips@mmwr.com](mailto:mphillips@mmwr.com); and (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Room 2207, Lockbox 35, Wilmington, Delaware 19899-0035, Attn: Linda Casey, [linda.casey@usdoj.gov](mailto:linda.casey@usdoj.gov).

**PLEASE TAKE FURTHER NOTICE** that this Notice is subject to the full terms and conditions of the Motion and the Sale Procedures and Scheduling Order, which shall control in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. A copy of the Motion, the Purchase Agreement, and/or the Sale Procedures and Scheduling Order, in addition to any related motions that may be filed, may be obtained by accessing (a) the website of the Debtors’ notice and claims agent, Epiq Corporate Restructuring, LLC, at <http://dm.epiq11.com/Oneaviation> for no charge, or (b) the Court’s internet site: <https://ecf.deb.uscourts.gov>, for a fee, through an account obtained from the PACER website at <http://pacer.psc.uscourts.gov>. The documents also may be obtained by written request made to counsel for the Debtors, Paul Hastings, LLP, 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn: Chris L. Dickerson, [Chrisdickerson@paulhastings.com](mailto:Chrisdickerson@paulhastings.com), Brendan M. Gage, [brendangage@paulhastings.com](mailto:brendangage@paulhastings.com), Nathan S. Gimpel, [nathangimpel@paulhastings.com](mailto:nathangimpel@paulhastings.com), and 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Todd M. Schwartz, [Toddschwartz@paulhastings.com](mailto:Toddschwartz@paulhastings.com).

<sup>3</sup> Subject to Court availability.

CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE AN OBJECTION

**ANY PARTY OR ENTITY WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE SALE ON OR BEFORE THE OBJECTION DEADLINE IN ACCORDANCE WITH THE SALE PROCEDURES AND SCHEDULING ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE SELLER ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS AFFECTED THEREUNDER.**

**NO SUCCESSOR OR TRANSFeree LIABILITY**

The proposed Sale Order provides that the Buyer in the Sale (the “**Buyer**”) will have no responsibility for, and the assets will be sold free and clear of, any successor liability, including the following:

The Buyer shall not be deemed, as a result of any action taken in connection with the Purchase Agreement, the consummation of the Transactions (as defined in the Sale Order) contemplated by the Purchase Agreement, or the transfer or operation of the Seller Assets, to (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for the Buyer, with respect to any obligations as an assignee under the Assigned Agreements arising after the Closing); (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) be an alter ego or mere continuation or substantial continuation of the Debtors including, without limitation, within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 et seq., the Comprehensive Environmental Response Compensation and Liability Act (“**CERCLA**”), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, et seq., environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, any liabilities, debts or obligations of or required to be paid by the Debtors for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors’ liability under such law, rule or regulation or doctrine. Other than as expressly set forth in the Purchase Agreement with respect to Assumed Liabilities, the Buyer shall not have any responsibility for (a) any liability or other obligation of the Debtors or related to the Seller Assets or (b) any remaining Claims (as defined in the Sale Order) against the Debtors or any of their predecessors or affiliates. The Buyer shall have no liability whatsoever with respect to the Debtors’ (or their predecessors’ or affiliates’) respective businesses or operations or any of the Debtors’ (or their predecessors’ or affiliates’) obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including

liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Seller Assets prior to the Closing.