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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re:)
)
PENINSULA AIRWAYS, INC., d/b/a)
PENAIR,) **Case No.: 17-00282 GS**
) **Chapter 11**
Debtor.)
_____)

**MOTION FOR RENEWED AUTHORITY TO ENTER INTO
AIRCRAFT LEASE COVERING SAAB 2000 AIRCRAFT046**

Debtor Peninsula Airways, Inc., dba PenAir (“Debtor”) seeks an order authorizing it to enter into an Aircraft Lease Agreement (“the Lease”), attached hereto as Exhibit A, covering one Saab 2000 Aircraft, serial number 2000-046 (“046”). This Court has already authorized the Debtor to enter into the lease covering 046, but for the reasons stated herein, Debtor seeks a new order.

Background

At Docket 151, this Court entered an *Order Granting Debtor’s Motion for Authority to Enter into One Aircraft Lease Covering One Saab 2000 Aircraft*, which

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authorized the Debtor to enter into an aircraft lease for 046, according to the terms of a term sheet which was an exhibit to Debtor's underlying motion at Docket 138. Docket 151 is attached hereto as Exhibit B, and Docket 138 is attached hereto as Exhibit C.

The aircraft lease authorized by Docket 151 was a financing lease, as opposed to all of Debtor's other aircraft leases which are operating leases. The term sheet called for a security deposit of \$90,000, monthly lease payments of \$45,000 per month for 120 months, and also contained a purchase option under which at any time during the lease, the Debtor could purchase 046 for prices set forth in an exhibit to the term sheet. The purchase price is \$2,939,297.45 after the first month. The purchase price declines each month thereafter, and is \$0 at the end of the 120th month.¹ The \$90,000 security deposit is a credit to the purchase price, so the aircraft is actually paid in full after 118 months.²

PenAir negotiated the 046 lease terms with Montrose Global, LLP ("Montrose"), who at the time of the Chapter 11 petition herein, was lessor to Debtor for four (4) Saab 340B aircraft: aircraft that the parties refer to as 403, 404, 406, and 410.³ Under separate agreements,⁴ Debtor assumed the leases on 403 and 404 without modification. The leases on 406 and 410 were modified to call for rent based upon actual usage ("power by the

¹ These terms compare favorably with the Jetstream leases, which also cover Saab 2000's. The Jetstream leases are straight leases at \$50,000 per month, with no purchase option, and range in term for 12 to 54 months. See Docket 187.

² \$45,000 of this security deposit has already been paid to Montrose.

³ Tail numbers N403XJ, N404XJ, N406XJ, and N410XJ respectively.

⁴ See Dockets 166, 167, 168 and 169 respectively.

hour,” or “PBH”) instead of a monthly rate, subject to 60 days early termination by the lessor.⁵ The pre-petition arrearages on 403 and 404 totaled \$351,750, and as a result of the assumption of those leases have administrative priority. As part of the conversion to PBH, Montrose waived any claim for pre-petition damages on 406 and 410.

Although all the parties treated Montrose as the lessor of 046, the actual lessor in the transaction was Montrose’s lender, Wells Fargo, National Association. Wells Fargo is specifically identified in the term sheet as the lessor of the Aircraft.

Later, Montrose switched lessors. The new lessor, MG Alaska Leasing Limited (“MG”), an Irish entity unaffiliated with Wells Fargo, requests an order specifically authorizing MG to enter into the transaction. This request is the primary driver for this motion. Moreover, as described below, other events have transpired since entry of Docket 151 that relate to 046 and to this Chapter 11 case as a whole.

After entry of Docket 151, a number of modifications were made to 046 in order to conform it to United States airworthy requirements and also to PenAir’s custom specifications. The parties’ term sheet called for Montrose to absorb “up to \$600,000 of pre-delivery costs” for a list of identified modifications; Montrose exceeded that amount but has agreed to absorb that excess. PenAir’s customized specifications cost \$173,190.46 - these are costs that Montrose incurred at PenAir’s request, and that PenAir

⁵ Functionally, the conversion to PBH was a rejection of the leases, but part of the PBH arrangement was that Debtor insured and stored the aircraft until Montrose could find a new lessee, thereby substantially reducing Montrose’s repossession costs. The PBH arrangement also gave Debtor access to a backup aircraft if that became necessary.

would otherwise have had to incur on its own. Montrose has agreed to reduce this amount by \$100,000 to account for estimated pre-delivery usage of the two propellers, and is willing to accept payments on the \$73,190.46 difference over 24 months at 10% interest. That is, the parties have agreed that PenAir will make 24 monthly payments of \$3,377.37 per month to repay Montrose for these charges.

As additional incentive for PenAir to close this transaction, Montrose has agreed to waive its administrative claim of \$351,750 on account of the pre-petition arrearages on the leases on 403 and 404. This is a significant concession by Montrose.

The various understandings and agreements described herein are set forth in the Agreement which is attached as Exhibit D hereto.

Whereas Docket 138 simply had a term sheet attached to it which described the key terms under which Debtor would lease 046, the parties have by now agreed to the form of the full aircraft lease itself. Attached hereto as Exhibit A is the form of the lease. The lease document is a typical airline lease, and contains no unusual provisions.

Docket 151 was entered in September, 2017. Debtor has designed its summer flying schedule on the assumption that 046 would be available. Debtor has trained three crews in anticipation of bringing 046 on line. Debtor's Saab 2000 fleet has become the backbone of its emergence from Chapter 11. The driver for this motion is Montrose's change of lessor.

Debtor requests that this motion be heard on shortened time. Normally, Debtor would seek a hearing to be held on shortened time for approximately April 27, but at

previous hearings, this Court has indicated that it will be out of Alaska during the last part of April. At the upcoming April 20 hearing, Debtor requests the opportunity to address how and when this motion may be heard.

Conclusion

The lease/purchase of 046 has already been approved by this Court. Since that time, Montrose's concessions on the pre-petition arrearages on 403 and 404, and on PenAir's responsibility for make-ready costs on 046, have improved the economics of the transaction. Debtor therefore requests renewed authority to enter into the Lease of 046. A proposed order is attached hereto as Exhibit E.

Dated this April 19, 2018.

LAW OFFICES OF CABOT CHRISTIANSON, PC
Attorneys for Debtor

By: /s/ Cabot Christianson
Cabot Christianson

Exhibits

- A - proposed Lease
- B - Docket 151
- C - Docket 138
- D - Agreement re 406
- E - Proposed order

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 19, 2018, a true and correct copy of the above document was served by electronic means through the ECF system as indicated on the Notice of Electronic Filing.

By: /s/ Margaret Stroble
Margaret Stroble

DATED 2018

MG ALASKA LEASING LIMITED

as Lessor

PENINSULA AIRWAYS, INC.

as Lessee

AIRCRAFT LEASE AGREEMENT

relating to
one Saab 2000
with manufacturer's serial number 2000-046

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This **AIRCRAFT LEASE AGREEMENT** (this "**Agreement**") is dated _____, 2018 and entered into by and between:

- (1) **MG ALASKA LEASING LIMITED**, a limited liability company incorporated under the laws of Ireland, whose registered office is at 6th Floor, South Bank House, Barrow Street, Dublin 4, Ireland ("**Lessor**"); and
- (2) **PENINSULA AIRWAYS, INC.**, a corporation organised and existing pursuant to the laws of the State of Alaska, United States of America, whose registered office is at 6100 Boeing Avenue, Anchorage, Alaska 99502, United States of America ("**Lessee**").

BACKGROUND

Lessor wishes to Lease the Aircraft (as defined below) to Lessee, and Lessee wishes to lease the Aircraft from Lessor, subject to the terms of this Agreement.

1 INTERPRETATION

1.1 Definitions

"**Acceptance Certificate**" means a certificate substantially in the form set out in Schedule 1, Part 2 (*Form of Acceptance Certificate*).

"**Aircraft**" means the aircraft described in Schedule 1, Part 1 (*Description of Aircraft*) (which term includes where the context admits a separate reference to the Airframe, each Engine, each Propeller and any of the Parts and Aircraft Documents).

"**Aircraft Documents**" means the documents, data and records listed in Schedule 1, Part 1 (*Description of Aircraft*) and any other documents and records referred to in Clause 7.6 (*Records*), and all additions, renewals, revisions and replacements from time to time made to any of the foregoing in accordance with this Agreement.

"**Airframe**" means the airframe identified in Schedule 1, Part 1 (*Description of Aircraft*) including all related Parts, but excluding the Engines, the Propellers and the Aircraft Documents.

"**Airworthiness Directive**" means an airworthiness directive applicable to the Aircraft issued by the FAA.

"**Aircraft Warranty Agreement**" means any agreement in respect of any warranties relating to the Airframe, the Engines, the Propellers or any part thereof (which are still in effect at the relevant time) provided by any manufacturer (including the Manufacturer and Engine and Propeller manufacturers), vendor, subcontractor or supplier in respect of the Aircraft before or during the Lease Period, and any other document which is provided or entered into in relation to each such warranty agreement.

"**AOC**" means an air operator's certificate in respect of the Aircraft type issued by the Aviation Authority.

"**Approved Maintenance Performer**" means Lessee or if Lessee itself is not so certified:

- (a) an FAA-certified maintenance performer having a valid repair station licence and otherwise approved by the FAA and approved in writing by Lessor (such approval not to be unreasonably withheld, conditioned or delayed); or

- (b) any other Person from time to time approved in writing by Lessor (such approval not to be unreasonably withheld, conditioned or delayed).

"Assignment of Insurances" means the assignment granted by Lessee to Lessor dated on or about the Delivery Date in respect of the Insurances.

"Aviation Authority" means the FAA or any of the authorities, government departments, committees or agencies which under the Laws of the State of Registration have control or supervision of civil aviation in that state or have jurisdiction over the registration, airworthiness or operation of, or other matters relating to, the Aircraft.

"Business Day" means any day (other than a Saturday or Sunday or holidays scheduled by Law) on which banks are open for foreign exchange business in Dublin, New York, Anchorage and London.

"Cape Town Convention" means the Convention on International Interests in Mobile Equipment (the **"Convention"**) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the **"Protocol"**), both signed in Cape Town, South Africa on 16 November, 2001, together with any protocols, regulations, rules, orders, agreements, instruments, amendments, supplements, revisions or otherwise that have or will be subsequently made in connection with the Convention or the Protocol by the Supervisory Authority (as defined in the Protocol), the International Registry or Registrar (as defined in the Convention) or appropriate registry authority (as defined in the Protocol) or any other international, or national, body or authority.

"Certificated Air Carrier" means a Citizen of the United States holding an air carrier operating certificate issued by the Secretary of Transportation pursuant to Chapter 447 of Title 49, United States Code, for aircraft capable of carrying ten or more individuals or 6,000 pounds or more of cargo or that otherwise is certified or registered to the extent required to fall within the purview of 11 U.S.C. Section 1110 or any analogous successor provision of the Bankruptcy Reform Act of 1978, as amended, or any subsequent legislation that amends, supplements or supersedes such provisions.

"Change in Law" means the enactment, making, introduction or variation of, or any change in, any law, treaty, order, regulation, official directive, concession, guideline, request or requirement (including any change in, or any new or further or different, interpretation or application thereof by any court or tribunal or by any central bank, tax, fiscal, monetary or other competent authority) and whether or not having the force of law but, if not having the force of law, in respect of which compliance by banks or other institutions of a similar nature to any relevant party is customary, in each case taking effect after the date of this Agreement.

"Citizen of the United States" has the meaning specified in Section 40102(a)(15) of Title 49 of the United States Code or any similar legislation of the United States of America enacted in substitution or replacement thereof.

"Conditions Precedent" means the conditions referred to in Clause 3.1 (*Lessor's Conditions Precedent*) and set out in Schedule 2, Part 1 (*Lessor's pre-delivery conditions precedent*) and Schedule 2, Part 2 (*Lessor's delivery conditions precedent*) for the benefit of Lessor and part C for the benefit of Lessee.

"Cut-off Date" means the date which is 60 days after the Scheduled Delivery Date.

"**Cycle**" means one take-off and landing of the Airframe or in the case of an Engine or any part, the airframe on which such Engine or Part is then installed.

"**Damage Notification Threshold**" means US\$100,000.

"**Default**" means any Event of Default and any event or circumstance which, with the giving of notice and/or lapse of time and/or determination of materiality and/or fulfillment of any other condition, would constitute an Event of Default.

"**Default Rate**" means a rate of 5% per annum.

"**Default Termination Amount**" means with respect to a date when the relevant event occurs, the Default Termination Value for that date plus any other amounts then due and unpaid under this Agreement to Lessor or any Indemnitee.

"**Default Termination Value**" means, with respect to any date, 102% of the amount stipulated in Schedule 7 (*Purchase Option Price and Termination Value*) by reference to the period in which such date occurs.

"**Delivery**" means delivery of the Aircraft by Lessor to, and acceptance of the Aircraft by, Lessee.

"**Delivery Conditions**" means the conditions set out in Schedule 6 (*Delivery Conditions*).

"**Delivery Date**" means the date on which Delivery occurs.

"**Delivery Location**" means Worldwide Aviation Services, Missouri, United States of America or such other location as may be mutually agreed by Lessor and Lessee.

"**Designated Bank Account**" means the account designated as the Designated Bank Account in Schedule 3 (*Designated Bank Account*) or any other account Lessor designates to Lessee by not less than ten (10) Business Days' notice.

"**Dollars**" and "**US\$**" means the lawful currency of the United States of America.

"**Engine**" means, whether or not for the time being installed on the Aircraft:

- (a) each engine of the manufacture, model and serial number specified in Schedule 1, Part 1 (*Description of Aircraft*); or
- (b) any engine which has replaced that engine or any successor engine, title to which has passed to Lessor in accordance with this Agreement,

and in each case includes all propellers, modules and Parts from time to time belonging to or installed in that engine but excludes any properly replaced engine title to which has passed to Lessee pursuant to this Agreement.

"**Equipment Change**" means any modification or addition to the Aircraft.

"**European Union**" means the member states of the European Union as of the date of this Agreement.

"**Event of Default**" means any event specified in Clause 18 (*Events of Default*).

"**Expiry Date**" means the date determined in accordance with Clause 4.4 (*Expiry Date*).

“**FAA**” means the Federal Aviation Administration.

“**Final Inspection**” has the meaning given to it in Clause 17.2 (*Final Inspection*).

“**Finance Parties**” means any Lender and Security Trustee.

“**Geneva Convention**” means the Convention on the International Recognition of Rights in Aircraft signed at Geneva, Switzerland on 19 June 1948, as amended from time to time.

“**Government Entity**” means:

- (a) any national, regional or provincial government, political subdivision thereof, or local jurisdiction therein;
- (b) any instrumentality, board, commission, court, or agency of any thereof, however constituted; and
- (c) any association, organisation, or institution of which any of the above is a member or to whose jurisdiction any thereof is subject or in whose activities any of the above is a participant.

“**Habitual Base**” means Anchorage, Alaska, or Boston, Massachusetts, United States of America.

“**Hour**” means:

- (a) each hour or part thereof (rounded up to two decimal places) elapsing from the moment the wheels of the Aircraft leave the ground on take off until the wheels of the Aircraft next touch the ground on landing; or
- (b) in the case where the term “Hour” is used in this Agreement to refer to a limiting factor regarding future use of the Aircraft, any Engine, Propeller or any Part then (if different from the foregoing) the definition applied by the Aviation Authority, the FAA, the relevant manufacturer or in the Manufacturer’s Maintenance Planning Document (as appropriate) in defining the permitted future operation of any such item.

“**IATA**” means the International Air Transport Association.

“**IDERA**” means the irrevocable deregistration and export request authorisation substantially in the form set forth in the Protocol and granted by Lessee in favour of the Security Trustee in respect of the Aircraft.

“**Indemnitees**” means Lessor, any Lender, Security Trustee and their respective successors and assigns, shareholders, subsidiaries, affiliates, partners, contractors, directors, officers, servants, agents and employees.

“**Insolvent**” means in relation to any relevant Person that such Person:

- (a) cannot or is deemed by applicable Law to be unable to pay its debts;
- (b) stops trading or threatens to stop trading;
- (c) goes into liquidation or is wound up in any jurisdiction (other than a solvent re-organisation which Lessor approves in writing);

- (d) goes into administrative receivership, examinership or administration, has a receiver appointed over all or a substantial part of its assets or is the subject of any similar proceedings in any country;
- (e) proposes a voluntary arrangement or scheme of arrangement to creditors; or
- (f) enters into any process or scheme for the benefit of creditors as a whole under which their rights are suspended or affected; or
- (g) becomes subject to any circumstances or events which correspond with or have an effect equivalent or similar to any of those mentioned in the other paragraphs of this definition in any country or territory in which it carries on business, or in any country or territory in which it or any of its assets is subject to the jurisdiction of that country's or territory's courts,

in each case, excluding any proceedings commenced, or arising out of proceedings commenced, prior to the date hereof under Chapter 11 of the United States Bankruptcy Code.

"Insurances" means the insurances in respect of the Aircraft described in Clause 14 (*Insurance*) and Schedule 4 (*Insurance Requirements*) and includes any reinsurances effected in respect thereof.

"Landing Gear" means the nose, main right and main left landing gear assemblies of the Aircraft including any subcomponents and subassemblies in accordance with the Landing Gear Overhaul manual.

"Landing Gear Overhaul" means any full overhaul of any Landing Gear in accordance with the manufacturer's overhaul manual, and not just any unscheduled replacement, repair, overhaul or attachment of component parts or assemblies.

"Law" means and includes:

- (a) any statute, decree, constitution, regulation, order, judgement or other directive of any Government Entity;
- (b) any treaty, pact, compact or other agreement to which any Government Entity is a signatory or party;
- (c) any judicial or administrative interpretation or application of any law described in (a) or (b) above; and
- (d) any amendment or revision of any law described in (a), (b) or (c) above.

"Lease Period" means the period commencing on the Delivery Date and ending on the Expiry Date.

"Lender" means Proventus Capital Partners III KB or any other person providing financing to Lessor in respect of its acquisition and/or ownership of the Aircraft, as notified by Lessor to Lessee from time to time.

"Lessee Notice and Acknowledgement" means the notice from Lessor and Security Trustee to, and acknowledged by, Lessee in respect of the Security Assignment.

"Lessor Lien" means:

- (a) the Security Assignment and any other Security Interest from time to time created by or through Lessor in connection with the financing of the Aircraft;
- (b) any other Security Interest in respect of the Aircraft which results from acts of or claims against Lessor; and
- (c) any Security Interest in respect of the Aircraft for Lessor Taxes.

“**Lessor Taxes**” means, in respect of Lessor, any Tax imposed on that Lessor in its capacity as such, and in respect of any Tax Indemnitee, any Tax:

- (a) imposed as a direct result of activities of the relevant Tax Indemnitee in the jurisdiction imposing the liability which are unrelated to the relevant Tax Indemnitee’s dealings with Lessee or to the transactions contemplated by this Agreement or the other Operative Documents or the operation of the Aircraft by Lessee;
- (b) imposed on the net income, profits or gains of the relevant Tax Indemnitee by any Government Entity in its State of Incorporation, other than:
 - (i) Tax payable by the relevant Tax Indemnitee as a result of that Tax Indemnitee being required to include in its gross income any amount attributable to any improvement, alteration, substitution or addition to the Aircraft made prior to redelivery of the Aircraft to Lessor in accordance with the terms of this Agreement;
 - (ii) Tax imposed by reason of the presence, registration, use, maintenance, repair, overhaul or operation of the Aircraft, the Airframe, any Engine, any Propeller or any Part in any location during the Lease Period;
 - (iii) Tax imposed by reason of or consequent upon any Default; or
 - (iv) Tax imposed by reason of the wilful misconduct or gross negligence of Lessee;
- (c) imposed solely as a result of an event occurring after the Expiry Date which is not related to the relevant Tax Indemnitee’s dealings with Lessee or the transactions contemplated by this Agreement or the other Operative Documents or the operation of the Aircraft;
- (d) which would not have arisen but for the delay or failure by the relevant Tax Indemnitee in the filing of Tax returns or the payment of Tax assessed on the relevant Tax Indemnitee which delay or failure has not been requested or consented to in this Agreement or in any of the other Operative Documents to which Lessee is a party or any transaction or document contemplated or entered into pursuant thereto or requested or consented to in writing by Lessee unless such failure or delay by the relevant Tax Indemnitee arises directly from a failure by Lessee to provide the relevant Tax Indemnitee with information in accordance with this Agreement;
- (e) caused by any act or omission of the relevant Tax Indemnitee:
 - (i) which constitutes wilful misconduct;
 - (ii) which constitutes gross negligence;

- (iii) which is carried out with reckless disregard for the consequences of such act or omission; or
 - (iv) which is a breach by the relevant Tax Indemnitee of any of its obligations, representations and warranties in the Operative Documents to which Lessee is a party;
- (f) would not have been imposed pursuant to applicable Law at the time but for a sale, transfer, novation, assignment or other disposition by the relevant Tax Indemnitee of all or part of its interest in the Aircraft or under any Operative Document (each a "**relevant disposition**") save where the relevant disposition was caused or reasonably required as a consequence of an Event of Default; or
- (g) imposed solely on the ownership or purchase of the Aircraft other than to the extent arising from the exercise by Lessee of its rights under this Agreement or the performance or non-performance by Lessee of its obligations under this Agreement.

"Loan Agreement" means any loan agreement or loan facility agreement made between the Lessor and any Finance Parties in respect of the financing of the acquisition and/or ownership of the Aircraft, and any other document which is provided or entered into in relation to such loan agreement or loan facility agreement.

"Life Limited Part or LLP" means any Part that has a pre-determined life limit as mandated by the manufacturer of that Part, any other relevant manufacturer, the FAA or the state having jurisdiction over the person responsible for the design of such Part.

"Loss" and **"Losses"** means any loss, liability, action, claim, proceeding, judgment, penalty, fine, damages, fee, cost or expense.

"Loss of the Airframe" shall have the meaning ascribed to it in Clause 15.3.1.

"Maintenance Programme" as of any date of determination, means Lessee's programme of overhaul and maintenance for the Aircraft, approved by the Aviation Authority which:

- (a) at all times complies in all material respects with the then latest revision of the Manufacturer's Maintenance Planning Document for Saab 2000 aircraft; and
- (b) at all times complies in all material respects with the then latest revision of the Engine manufacturer's engine management programme.

"Manufacturer" means Saab Aircraft AB.

"Manufacturer's Maintenance Planning Document" means the recommended maintenance programme for the Aircraft issued by the Manufacturer.

"Minimum Liability Coverage" means on each occurrence US\$250,000,000 (or, if greater, any minimum liability insurance amount required by applicable Law to be carried by operators of Saab 2000 aircraft).

"Operative Documents" means this Agreement, the Assignment of Insurances, the IDERA, the Acceptance Certificate, any Aircraft Warranty Agreement, the Security

Documents, and any schedules or documents executed pursuant to this Agreement, any notices, acknowledgements or certificates from time to time issued by Lessee pursuant to this Agreement, and any side letters, supplements, amendments or modifications to any of the foregoing from time to time executed by Lessee.

"Other Lease Agreement" means any aircraft lease or other agreement between Lessor and Lessee relating to Saab model 2000 aircraft, as the same may be amended, supplemented and modified, and for so long as such agreement remains in effect in accordance with its terms.

"Other Operative Documents" means the "Operative Documents" as defined in a relevant Other Lease Agreement.

"Part" means, whether or not for the time being installed on the Aircraft:

- (a) any component, furnishing or equipment (other than a complete Engine or a Propeller) furnished with the Aircraft on the Delivery Date; and
- (b) any other component, furnishing or equipment (other than a complete Engine or a Propeller) title to which has passed to Lessor pursuant to this Agreement,

but excludes any such items title to which has passed to Lessee pursuant to this Agreement.

"Party" means a party to this Agreement.

"Permitted Lien" means:

- (a) any Security Interest for Taxes not assessed or, if assessed, not yet due and payable, or being contested in good faith by appropriate proceedings;
- (b) Security Interests arising out of any judgment or award against Lessee with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith by appropriate proceedings diligently conducted;
- (c) any Security Interest of a repairer, mechanic, carrier, hangarkeeper or other similar lien arising in the ordinary course of business by operation of Law in respect of obligations which are not overdue or are being contested in good faith by appropriate proceedings;

but only if (in the case of both (a) and (b) above):

- (i) adequate resources have been provided by Lessee for the payment of such Taxes or obligations; and
- (ii) such proceedings, or the continued existence of the Security Interest,

do not give rise to any material likelihood of the sale, forfeiture or other loss of the Aircraft or any interest therein or of criminal liability on Lessor, or, with respect to any proceedings, there shall have been secured (and be continuing), a stay of execution pending such appeal or proceeding for review;

- (d) any Lessor Lien; and

- (e) any Security Interest which is not covered by (a), (b), or (c) above but only to the extent that it is expressly created, required or permitted by the terms of this Agreement or the other Operative Documents.

"Person" means any individual person, any form of corporate or business association, trust, Government Entity, or organisation or association of which any of the above is a member or a participant.

"Propeller" means:

- (a) each propeller of the manufacture, model and serial number specified in Schedule 1, Part 1 (*Description of Aircraft*); or
- (b) any propeller which has replaced that propeller or any successor propeller, title to which has passed to Lessor in accordance with this Agreement,

and in each case includes all modules and Parts from time to time belonging to or installed in that propeller but excludes any properly replaced propeller, title to which has passed to Lessee pursuant to this Agreement.

"Purchase Option Price" means the difference between:

- (a) the sale price specified in Schedule 7 (*Purchase Option Price and Termination Value*) by reference to the month of the Lease Period in which the Sale Date occurs; and
- (b) the aggregate of the Security Deposits held by Lessor on the Sale Date.

"Redelivery Date" means the date on which the Aircraft is redelivered to Lessor in accordance with Clause 17 (*Redelivery*).

"Redelivery Location" means a location in the continental United States or Europe mutually agreed by Lessor and Lessee.

"Regulations" means any Law or regulation (including any internal corporate regulation), official directive or recommendation, mandatory requirement or contractual undertaking which applies to Lessee or the Aircraft and any Law or regulation, official directive or recommendation or mandatory requirement which applies to Lessor.

"Rent" means: US\$45,000 (forty five thousand Dollars) per month.

"Rent Date" means the first day of each Rent Period.

"Rent Period" means a period commencing, in respect of the first Rent Period on and including the Delivery Date, and in respect of each subsequent Rent Period on and including the day following the last day of the previous Rent Period. Each Rent Period will end on and include the date immediately before the day in the next month that numerically corresponds to the commencement date of that Rent Period, except that:

- (a) if there is no numerically corresponding day in that month, it will end on the last day of that month; and
- (b) if a Rent Period would otherwise end after the Expiry Date, it will end on the Expiry Date.

"Return Conditions" means the conditions specified in Schedule 5 (*Return Conditions*); provided, that, notwithstanding anything in this Agreement (including Schedule 5 (*Return Conditions*)) to the contrary, in the event of redelivery of the Aircraft by Lessee to Lessor pursuant to this Agreement, Lessee shall not be required to redeliver the Aircraft with a better status as regards each of the requirements set forth in Schedule 5 (*Return Conditions*) than the condition of the Aircraft with respect to each such requirement at the time of Delivery.

"Sale Date" means the date on which title to the Aircraft is transferred by Lessor to Lessee in accordance with Clause 16 (*Purchase Option*).

"Scheduled Delivery Date" means such date as the parties mutually agree in writing.

"Scheduled Expiry Date" means the day falling one hundred and twenty (120) months after the Delivery Date (or if such day is not a Business Day then the preceding Business Day).

"Security Assignment" means the collateral assignment granted by Lessor to Security Trustee dated on or about the Delivery Date in respect of the rights of Lessor in and under this Agreement.

"Security Deposit" has the meaning given to that term in Clause 5.3.

"Security Documents" means (i) the Security Assignment; (ii) the Lessee Notice and Acknowledgement; (iii) the Assignment of Insurances; (iv) any document, instrument or agreement agreed by Lessor and Lessee to be designated as a "Security Document" hereunder; and (v) any other document which is provided or entered into in connection with the foregoing.

"Security Interest" means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, right of set-off or any other agreement or arrangement having the effect of conferring security.

"Security Trustee" means Proventus Capital Partners III AB (publ) or any other person appointed by the Lenders to act as security trustee or security agent on their behalf under the Loan Agreement (and in each case acting solely in such capacity), as notified by Lessor to Lessee.

"State of Incorporation" means in relation to Lessee, the State of Alaska, United States of America.

"State of Registration" means the United States of America.

"Supplemental Rent" means, as the context so requires any payment other than Rent to be made by Lessee to any Person under the terms of this Agreement.

"Tax" means any and all sales, use, business, gross income, personal property, transfer, fuel, leasing, occupational, value added, turnover, excess profits, excise, gross receipts, franchise, stamp, registration, licence, corporation, capital gains, export/import, income, levies, imposts, withholdings or other taxes or duties of any nature whatsoever (or any other amount corresponding to any of the foregoing) now or hereafter imposed, levied, collected, withheld or assessed by any Government Entity or taxing authority anywhere in the world, together with any penalties, fines, surcharges, charges or interest thereon.

"Tax Indemnitee" means Lessor.

"Termination Amount" means, with respect to a date when the relevant event occurs, the Termination Value for that date plus any other amounts then due and payable by Lessee but unpaid under this Agreement to Lessor or any Indemnitee.

"Termination Value" means, with respect to a date, the amount stipulated in Schedule 7 (*Purchase Option Price and Termination Value*) by reference to the period in which such date occurs.

"Total Loss" means with respect to the Aircraft (including for the purposes of this definition any Engine):

- (a) the actual, constructive, compromised, arranged or agreed total loss of the Aircraft (including any damage to the Aircraft or requisition for use or hire which results in an insurance settlement on the basis of a total loss);
- (b) the Aircraft being destroyed, damaged beyond repair or permanently rendered unfit for normal use for any reason whatsoever;
- (c) the requisition of title, or other compulsory acquisition, seizure, deprivation, confiscation or detention for any reason of the Aircraft by the government of the State of Registration or any other competent authority (whether de jure or de facto), but excluding requisition for use or hire not involving requisition of title; or
- (d) the hi-jacking, theft, disappearance, confiscation, seizure or requisition for use or hire of the Aircraft which deprives any Person permitted by this Agreement to have possession and/or use of the Aircraft of its possession and/or use for more than sixty (60) days.

"Total Loss Date" means:

- (a) in the case of an actual total loss or destruction, damage beyond repair, or being rendered permanently unfit, the date on which such loss, destruction, damage or rendition occurs (or, if the date of loss or destruction is not known, the date on which the Aircraft was last heard of);
- (b) in the case of a constructive, compromised, arranged or agreed total loss, whichever shall be the earlier of:
 - (i) the date being ninety (90) days after the date on which notice claiming such total loss is issued to the insurers or brokers; and
 - (ii) the date on which such loss is agreed or compromised by the insurers;
- (c) in the case of requisition for title, confiscation, sequestration, detention, forfeiture, compulsory acquisition or seizure, the date on which the same takes effect;
- (d) in the case of requisition for hire, the date being one hundred and eighty (180) days after the requisition commenced; and
- (e) in the case of hi-jacking, theft or disappearance, the date being sixty (60) days after the date on which Lessee lost possession of the Aircraft.

"Total Loss Proceeds" means the proceeds of any insurance (other than in respect of liability) or any compensation or similar payment, arising in respect of a Total Loss.

"Unforeseen Event" means any cause beyond the reasonable control of Lessor, including damage to the Aircraft not amounting to a Total Loss, acts of God, war, riot, insurrection, fire, flood, adverse weather, natural disasters, the action or inaction of any government or competent authority, Change in Law, breach of contract by any Person or other failure to deliver or redeliver the Aircraft by any Person (whether or not a breach) other than Lessor with possession or control of the Aircraft, or any delays Lessor cannot control in obtaining the Aircraft.

"VAT" means value added tax and any goods and services, sales or turnover tax, imposition or levy of a like nature, in any case whether imposed now or at any time hereafter.

1.2 Construction

References in this Agreement to:

- (a) clauses or schedules are, unless otherwise specified, references to clauses of, and schedules to, this Agreement;
- (b) any statutory or other legislative provision shall be construed as including any statutory or legislative modification or re-enactment thereof, or any provision enacted in substitution therefor;
- (c) **"Lessor"**, **"Lessee"**, **"Lender"**, **"Security Trustee"**, **"Finance Party"** each includes any assignee, transferee or successor in title to such Person (subject to the provisions of Clause 20 (*Assignment and Transfer*));
- (d) any agreement or instrument shall include such agreement or instrument as it may from time to time be amended, restated, supplemented, substituted or otherwise modified from time to time;
- (e) an **"agreement"** also includes a concession, contract, deed, franchise, licence, treaty or undertaking (in each case, whether oral or written);
- (f) the **"assets"** of any Person shall be construed as a reference to the whole or any part of its business, undertaking, property, assets and revenues (including any right to receive revenues);
- (g) **"month"** is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month (and references to **"months"** shall be construed accordingly) save that, where any such period would otherwise end on a non-Business Day, it shall end on the next Business Day, provided that if a period starts on the last Business Day in a calendar month or if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last Business Day in that later month;
- (h) headings are for ease of reference only; and
- (i) where the context so admits, words importing the singular number only shall include the plural and vice versa, and words importing neuter gender shall include the masculine or feminine gender.

2 **REPRESENTATIONS AND WARRANTIES**

2.1 **Lessee's Representations and Warranties**

Lessee represents and warrants to Lessor as of the date hereof that:

- (a) **Status:** Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Incorporation and has the corporate power to carry on its business as it is being conducted;
- (b) **Licences:** Lessee is the holder of all air transport and other licences required in connection with the use and operation of the Aircraft;
- (c) **Power and authority:** Lessee has the corporate power to enter into and perform, and all necessary corporate action has been taken to authorise the entry into, performance and delivery of, this Agreement and the transactions contemplated in it;
- (d) **Legal validity:** this Agreement has been duly authorised, executed and delivered by Lessee, and does, along with the Operative Documents to which it is a party when executed and delivered by Lessee, constitute legal, valid and binding obligations of Lessee, enforceable in accordance with their terms, except insofar as such enforcement may be limited by (i) applicable bankruptcy, insolvency, administration or similar laws affecting creditors' rights generally or (ii) general principles of equity;
- (e) **Non-conflict:** the entry into and performance by Lessee of this Agreement do not and will not conflict with:
 - (i) any laws applicable to it in the State of Incorporation and as far as Lessee is aware in any other jurisdiction;
 - (ii) its constitutional documents; or
 - (iii) any material document which is binding it or any of its assets;
- (f) **Authorisation:** all authorisations, consents, registrations and notifications required by Lessee in connection with the entry into, performance, validity and enforceability of, this Agreement and the transactions contemplated by this Agreement, have been (or will on or before the Delivery Date have been) obtained or effected (as appropriate) and are (or will on their being obtained or effected be) in full force and effect;
- (g) **No Immunity:** Lessee is subject to civil commercial Law with respect to its obligations under this Agreement; and neither Lessee nor any of its assets is entitled to any right of immunity, and the entry into and performance of this Agreement by Lessee constitute private and commercial acts;
- (h) **Registrations:**
 - (i) except for the filing and subsequent recordation of this Agreement and the applicable Security Documents with the Aviation Authority and the registration of any corresponding international interests and any assignments thereof in accordance with the Cape Town Convention, it is not necessary or advisable under the Laws of the State of Registration in order to ensure the validity, effectiveness and enforceability of this Agreement or the Operative Documents or

to establish, perfect or protect the rights and interests of Lessor or the Finance Parties in the Aircraft, any Engine, Propeller or Part or in this Agreement that this Agreement or any instrument relating thereto be filed, registered or recorded in any public office in the United States of America or that any other action be taken in respect thereof; and

- (ii) subject to Clause 2.1(h)(i), the rights and interests of Lessor or the Finance Parties in the Aircraft and in this Agreement have been (or will upon completion of the formalities described in Clause 2.1(h)(i) have been) fully established, perfected and protected under the Laws of the State of Registration;
- (i) **Pari Passu:** the obligations of Lessee under this Agreement rank at least *pari passu* with all other present and future unsecured and unsubordinated obligations (including contingent obligations) of Lessee, with the exception of such obligations as are mandatorily preferred by Law and not by virtue of any contract;
- (j) **Tax:** Lessee is current in filing its tax returns and in paying its Taxes;
- (k) **Financial Statements:** the financial statements of Lessee most recently delivered to Lessor have been prepared in accordance with generally accepted accounting principles, consistently applied, and present fairly the financial condition of Lessee as at the date to which they were drawn up;
- (l) **Material Adverse Change:** there has been no change in the financial condition of Lessee which would have a material adverse effect on Lessee's ability to perform its obligations under this Agreement since the date on which the financial statements most recently provided to Lessor, on or prior to the Delivery Date were drawn up;
- (m) **Litigation:** no proceedings of any type, other than proceedings commenced under Chapter 11 of the United States Bankruptcy Code, are pending or threatened against Lessee which, if adversely determined, would have a material adverse effect upon Lessee's financial condition or business or Lessee's ability to perform its obligations under this Agreement in each case by reference to such financial condition, business or ability determined by reference to the accounts referred to in Clause 2.1(k);
- (n) **No Default:** no Default has occurred and is continuing or might result from the entry into or performance of this Agreement by Lessee;
- (o) **Full Disclosure:** each document, certificate or statement furnished to Lessor by or on behalf of Lessee in connection with this Agreement does not contain any untrue statement or omit to state a material fact the omission of which makes the statements therein in the light of the circumstances under which they were made misleading;
- (p) **Certificated Air Carrier:** Lessee is a Certificated Air Carrier engaged in interstate air transportation, is a Citizen of the United States of America, is authorised to operate Saab model 2000 aircraft and possesses all necessary certificates, licences, permits, authorisations, rights and consents of or from all applicable governmental authorities or agencies of the United States of America, including, without limitation, the FAA, that are required for the operation of the Aircraft, routes flown by Lessee and the conduct of its business as it is being conducted;

- (q) **Forecasts and Opinions:** all forecasts and opinions contained in any document given by Lessee to Lessor in connection with this Agreement were honestly made on reasonable grounds after due and careful inquiry by Lessee; and
- (r) **Choice of Law:** the choice by Lessee of New York Law to govern this Agreement and the other Operative Documents and the submission by Lessee to the jurisdiction of the New York courts is valid and binding on Lessee.

2.2 Repetition

The representations and warranties in Clause 2.1 (*Lessee's Representations and Warranties*) will be deemed to be repeated by Lessee on (and only on) the Delivery Date with reference to the facts and circumstances then existing.

3 CONDITIONS PRECEDENT

3.1 Lessor's Conditions Precedent and Subsequent

- 3.1.1 Lessor's Conditions Precedent in Schedule 2, Part 1 (*Lessor's pre-delivery conditions precedent*) and Schedule 2, Part 2 (*Lessor's delivery conditions precedent*) must be satisfied before Lessor is obliged to perform its obligations under this Agreement.
- 3.1.2 The Conditions Precedent referred to in Clause 3.1.1 may be waived or deferred by Lessor in whole or in part and with or without conditions.
- 3.1.3 If any of the Conditions Precedent are not satisfied and Lessor (in its absolute discretion) nonetheless agrees to perform its obligations under this Agreement, Lessee shall ensure that such Conditions Precedent are fulfilled within fifteen (15) days after the Delivery Date or such other date as the Parties agree (failure to do so being a breach of this Agreement) unless such Conditions Precedent have been waived or further deferred in accordance with Clause 3.1.2.

3.2 Lessee's Conditions Precedent

- 3.2.1 The Conditions Precedent in Schedule 2, Part 3 (*Lessee's conditions precedent*) must be satisfied before Lessee is obliged to perform its obligations under this Agreement.
- 3.2.2 The Conditions Precedent referred to in Clause 3.2.1 may be waived or deferred by Lessee in whole or in part and with or without conditions.
- 3.2.3 If any of the Conditions Precedent are not satisfied and Lessee (in its absolute discretion) nonetheless agrees to perform its obligations under this Agreement, Lessor shall ensure that such Conditions Precedent are fulfilled within fifteen (15) days after the Delivery Date (failure to do so being a breach of this Agreement) unless such Conditions Precedent have been waived or further deferred in accordance with Clause 3.2.2.

4 DELIVERY AND LEASE PERIOD

4.1 Pre-delivery inspection

- 4.1.1 Prior to the Scheduled Delivery Date, Lessor will make the Aircraft (including, without limitation, the Aircraft Documents) available to Lessee for inspection to verify that the Aircraft complies with the Delivery Conditions at the Delivery Location. Such inspection shall be limited to:

- (a) a physical inspection of the Aircraft, which shall include a visual inspection of the Airframe, Engines, Landing Gear, the Propellers and cabin interior;
- (b) an inspection of the Aircraft Documents; and
- (c) at Lessee's request and expense, a Pre-Delivery Flight Test ("**Pre-Delivery Flight Test**") of the Aircraft of no more than 60 minutes duration. The Pre-Delivery Flight Test shall be conducted by Lessor in accordance with the Manufacturer's standard flight operation procedures for the Aircraft with up to two (2) representatives of Lessee aboard the Aircraft during such flight.

Unless Lessee reasonably determines on the basis of the pre-delivery inspection that Non-Conformities (as defined below) may be present that would otherwise not be discoverable during such inspection, there shall be no borescope inspection permitted of either Engine nor the removal of any panels. Should the Aircraft in the reasonable opinion of Lessee be found not to be in compliance with the Delivery Conditions (any such discrepancy a "**Non-Conformity**"), then the provisions of Clause 4.2.3 shall apply.

4.1.2 Lessee undertakes and warrants to Lessor, in relation to the inspection referred to in Clause 4.1.1, as follows:

- (a) to carry out the inspection with due skill, care and diligence, in a good and professional manner and to the highest applicable standard relevant to such an inspection;
- (b) that its employees or agents who carry out the inspection shall be duly authorised in accordance with applicable airport and governmental regulations, appropriately experienced, qualified and trained to carry out the inspection;
- (c) that it will supply all tools required for the inspection and that such tools shall be appropriate and of suitable quality; and
- (d) that it has all rights, consents and licenses necessary to carry out the inspection.

4.2 **Delivery**

4.2.1 Subject to the provisions of this Agreement, Lessor shall deliver and Lessee shall itself or acting through an agent (the identity of whom has been notified to Lessor prior to the date hereof) accept delivery of the Aircraft from Lessor in the Delivery Condition on the Delivery Date at the Delivery Location.

4.2.2 Upon Delivery, Lessee shall deliver a duly executed Acceptance Certificate in relation to the Aircraft to Lessor, which shall be conclusive proof that Lessee has examined the Aircraft and that the Aircraft and the Aircraft Documents are satisfactory to Lessee, that the Aircraft is in the Delivery Condition and that Lessee has unconditionally accepted the Aircraft under this Agreement.

4.2.3 If, prior to Delivery the Aircraft has any Non-Conformities, Lessee shall promptly notify Lessor and Lessee and Lessor shall promptly rectify any such Non-Conformities. Following the rectification of any Non-Conformity, Lessee shall be entitled to inspect the Aircraft to ensure the Non-Conformity has been so rectified to its reasonable satisfaction. At Lessee's request, Lessor shall conduct a second flight test following rectification of any Non-Conformities. Such flight test shall be

conducted in the same manner and subject to the same requirements as the Pre-Delivery Flight Test.

4.2.4 If an Unforeseen Event happens and, as a result, Delivery takes place after the Scheduled Delivery Date or does not happen:

- (a) none of Lessor will be responsible for any Losses (including, without limitation, any loss of profit) Lessee suffers resulting from the delay or from the non-delivery of the Aircraft and Lessee will not be responsible for any Losses (including, without limitation, any loss of profit) Lessor suffers resulting from the delay or from the non-delivery of the Aircraft;
- (b) Lessee will not, except in the circumstances described in Clause 4.2.4(c), be entitled to terminate this Agreement or to reject the Aircraft when it is offered for Delivery because of the delay; and
- (c) if the Aircraft has not been offered for Delivery, in accordance with this Agreement, by the Cut-off Date, either Party may terminate its obligations under this Agreement by serving notice in writing on the other Party within ten (10) days following the Cut-off Date. Upon delivery of such notice all obligations of each Party under this Agreement will terminate without any liability whatsoever, except that Lessor will promptly repay to Lessee an amount equal to the Security Deposit (to the extent received from Lessee) and any other monies received by Lessor from Lessee in contemplation of this Agreement, in each case without any deduction or withholding whatsoever.

4.3 Lease Period

Lessor shall lease the Aircraft to Lessee and Lessee shall take the Aircraft on lease on the terms of this Agreement for the Lease Period.

4.4 Expiry Date

4.4.1 The Expiry Date shall be the earlier of:

- (a) the Scheduled Expiry Date;
- (b) if Lessee exercises its option to purchase the Aircraft pursuant to Clause 16 (*Purchase Option*) the date on which the title to the Aircraft is transferred to Lessee pursuant to such Clause when Lessee becomes obligated to purchase the Aircraft in accordance with Clause 16 (*Purchase Option*);
- (c) the date on which the leasing of the Aircraft is terminated under Clause 18.2 (*Lessor's Rights on Default*);
- (d) the date on which the leasing of the Aircraft is terminated under Clause 19.2 (*Mitigation and Termination*);
- (e) the date Lessor (or Security Trustee as Lessor's designee, as the case may be) receives the Termination Amount following a Total Loss of the Aircraft; and
- (f) the date on which the leasing of the Aircraft is terminated under Clause 15.3.1.

- 4.4.2 If the provisions of Clause 15.5.2 become applicable the Expiry Date shall be extended until the date specified by Lessor under Clause 15.5.2 for redelivery of the Aircraft by Lessee. Rent shall continue to be payable during the extension in accordance with Clause 5 (*Rent and Other Payments*).
- 4.4.3 If the provisions of Clause 17.4(a) become applicable, the Expiry Date shall be extended to the date when any non-compliance referred to therein has been fully rectified and Lessor shall have accepted redelivery of the Aircraft with Rent continuing to be payable in accordance with Clause 5 (*Rent and Other Payments*).
- 4.4.4 If paragraph (d) of the definition of Total Loss becomes applicable, the Expiry Date shall (if it would, but for this Clause, occur prior to the end of the sixty (60) day period referred to therein) be extended to the end of such sixty (60) day period.

4.5 Risk

- 4.5.1 Throughout the Lease Period and until redelivery of the Aircraft in accordance with this Agreement, Lessee shall bear all risk of loss, theft, requisition, damage and destruction of or to the Aircraft and every part thereof.
- 4.5.2 Lessee shall remain obliged to perform its obligations under this Agreement in full despite the occurrence of any loss, theft, requisition, damage or destruction of or to the Aircraft or any part thereof or any other event, circumstance or Change in Law which may deprive Lessee of the use, possession or enjoyment of the Aircraft, unless such obligations are terminated pursuant to the express provisions of this Agreement.

4.6 Licences

Lessee will at its own expense obtain all licences, permits and approvals which may be necessary, if any, to transport the Aircraft from the Delivery Location following Delivery.

5 RENT AND OTHER PAYMENTS

5.1 Payment of Rent

During the Lease Period Lessee shall pay to Lessor an instalment of Rent in respect of each Rent Period in advance on the Rent Date for such Rent Period.

5.2 Basis of Extension Payments

Rent payable for periods of extension of the Lease Period under Clause 4.4.2, Clause 4.4.3 and Clause 4.4.4 shall be calculated on a daily basis and payable in arrears and any balance accrued shall in any event be paid in full on the Expiry Date.

5.3 Payment of Security Deposit

- 5.3.1 Lessee shall on or prior to the Delivery Date pay to Lessor a security deposit in cash equal to two (2) months' Rent (the "**Security Deposit**") as follows:

- (a) US\$45,000 (forty five thousand Dollars) prior to the signing of this Agreement; and
- (b) US\$45,000 (forty five thousand Dollars), upon the Delivery of the Aircraft,

in each case by wire transfer of immediately available funds to the Designated Bank Account.

- 5.3.2 Lessee shall not be entitled to interest on the Security Deposit.
- 5.3.3 Lessor may co-mingle the Security Deposit with its own funds and Lessor will not hold such funds as agent or on trust for Lessee or in any similar capacity. The Security Deposit (and any interest accrued thereon) will be the sole and absolute property of Lessor and will be non-refundable except as set out in this Agreement. If and to the extent that, under applicable Law in any relevant jurisdiction, the Security Deposit is considered to be the property of Lessee, the Security Deposit shall be held by Lessor as security for the full, timely and faithful performance by Lessee or any of its affiliates of any of their respective obligations under this Agreement, any Other Operative Documents or any other Operative Documents, then in addition to all the rights and remedies under this Agreement, the other Operative Documents, the Other Operative Documents or under any Regulations, and Lessee hereby assigns and charges in favour of Lessor, and hereby grants to Lessor a first priority security interest in, the Security Deposit to secure such payment and such performance, and in such circumstances Lessee shall not create or permit to exist any Security Interest in or otherwise dispose of the Security Deposit. Lessee shall, from time to time, execute and file with the appropriate Government Entity any and all documents necessary or reasonably requested by Lessor to evidence and perfect such security interest in favour of Lessor with respect to the Security Deposit.
- 5.3.4 If (a) an Event of Default has occurred and is continuing under this Agreement, or (b) Lessee breaches any of its obligations under any other Operative Document or any Other Operative Document (taking into account any applicable grace period), then in addition to all the rights and remedies under this Agreement, the other Operative Documents, the Other Operative Documents or under any Regulations, Lessor may set-off against, use, retain, or apply all or any part of the Security Deposit, and apply the amounts drawn, in or towards the payment or discharge of any matured obligation owed by Lessee or any of its affiliates to Lessor or any of its affiliates under this Agreement, the other Operative Documents or any Other Operative Document, in such order as Lessor chooses and will notify Lessee in writing thereof as soon as reasonably practicable.
- 5.3.5 If, as a result of the exercise by Lessor of its rights under this Agreement, the Security Deposit is reduced, Lessee will pay to Lessor on written demand an amount equal to such reduction. Application of the Security Deposit shall not be deemed to cure any Event of Default otherwise cured by the application of such monies, unless and until Lessee pays to Lessor, within ten (10) Business Days of such application, an amount equal to the reduction in the Security Deposit.
- 5.3.6 Lessor may assign or pledge its interest in or otherwise create a Security Interest in respect of the Security Deposit to the Security Trustee or to any permitted transferee or assignee (and Lessee shall, at the cost and expense of Lessor, perform such acts and deliver such instruments as Lessor may reasonably request in order to carry out and effect any such assignment or pledge or Security Interest).
- 5.3.7 Lessor will return an amount equal to any balance of the Security Deposit (without interest) not applied in accordance with this Agreement to Lessee within ten (10) Business Days following the Expiry Date, provided that:
- (a) Lessor is satisfied Lessee has irrevocably paid to Lessor and each Indemnitee all amounts which may then be outstanding or payable under this Agreement; and/or

- (b) the Security Deposit has not been returned to Lessee pursuant to any other provision of this Agreement.

5.4 Method of Payment

All amounts payable by Lessee under this Agreement must be paid for value on the due date by wire transfer to the relevant Designated Bank Account (save that indemnity payments shall be paid to a relevant Indemnitee or as it may direct).

5.5 Value Added Tax

- 5.5.1 Each amount stated as payable by Lessee under this Agreement is exclusive of VAT (if any).

- 5.5.2 Lessee will pay to Lessor or the relevant taxing authority and indemnify Lessor against the amount of any VAT chargeable in respect of any payment to be made by Lessee under this Agreement. Lessee shall provide evidence to Lessor, if available, in respect of any payment it makes of such VAT. The Parties shall reasonably cooperate to minimize the applicability of VAT to this Agreement and any payments hereunder.

5.6 Accrual of Rent

Rent will accrue from day to day.

5.7 Obligations Absolute

Lessee's obligation to pay Rent and all other amounts payable under this Agreement is absolute and unconditional irrespective of any contingency, including:

- (a) any right of set-off, counterclaim, defence or other right which any party to this Agreement and any other Operative Document may have against any other;
- (b) any interference with, unavailability of or interruption of the use of the Aircraft for any reason, including (but not limited to) its requisition, any prohibition or other restriction against its use, operation or possession;
- (c) any defect in the title, airworthiness, condition, design, operation or fitness for use or purpose of the Aircraft;
- (d) any defect in any Operative Document or the registration of any Operative Document or of the Aircraft under the Laws of any state;
- (e) subject to Clause 15.2.3, the Total Loss of or any damage to the Aircraft;
- (f) any failure, breach or delay by any party to this Agreement, however fundamental and whether with or without fault on its part, in performing or complying with any of its obligations under this Agreement;
- (g) any insolvency, bankruptcy, examinership, reorganisation, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against Lessor, any Finance Party or Lessee; or
- (h) any other cause which but for this provision would or might have the effect of terminating, frustrating or in any way affecting any obligation of Lessee under this Agreement,

provided that nothing in this Clause 5.7 (*Obligations Absolute*) will prejudice Lessee's right to claim damages and/or specific performance and/or injunctive relief in the event of any breach by Lessor of its obligations under this Agreement or any of the other Operative Documents to which it is a party.

5.8 No Deductions or Withholdings

5.8.1 All payments by Lessee under this Agreement and all other Operative Documents to which it is a party shall be made in full without any deduction or withholding (whether in respect of set-off, counter-claim, duties, Tax, charges or otherwise) unless a deduction or withholding is required by any applicable Law, in which event Lessee will:

- (a) ensure that the deduction or withholding does not exceed the minimum amount legally required;
- (b) pay immediately the additional amount that will result in the net amount received by the relevant payee being equal to the amount which would have been received had no such deduction or withholding been made;
- (c) pay to the relevant agency within the period for payment permitted by any applicable Law the full amount of the deduction or withholding (including the full amount of any deduction or withholding on any additional amount paid under this Clause 5.8 (*No Deductions or Withholdings*)); and
- (d) when requested to do so by Lessor, provide to Lessor, within the period for payment permitted by any applicable Law, an official receipt (if available) of the relevant agency for all amounts deducted or withheld, or if such receipts are not issued by the relevant agency, a certificate of deduction or any other evidence of the relevant deduction or withholding reasonably required by Lessor.

5.8.2 If Lessor determines in its absolute discretion (acting reasonably and in good faith) that it has received, realised, utilised and retained a Tax benefit by reason of any deduction or withholding in respect of which Lessee has made an increased payment, Lessor (provided it has received all amounts which are then due and payable by Lessee under any of the provisions of any Operative Document or any transaction or document contemplated by or entered into pursuant thereto) shall pay Lessee (to the extent that Lessor can do so without prejudicing the amount of that benefit and the right of Lessor to obtain any other benefit relief or allowance which may be available to it) such amount, if any, as Lessor determines will leave Lessor in no better and no worse position than Lessor would have been in if the deduction or withholding had not been required.

5.9 Currency of Payments

5.9.1 Unless specifically stated otherwise in this Agreement, all amounts payable by Lessee (other than payments under Clause 12 (*Indemnities*) which shall be paid in the currency of claim) will be paid in Dollars in time to enable the funds to be cleared on the due date for payment.

5.9.2 If any sum due from Lessee has to be converted from the currency ("**First Currency**") in which that sum is payable into another currency ("**Second Currency**") for the purpose of:

- (a) making or filing a claim or proof against Lessee;

- (b) obtaining an order or judgment in any court or other tribunal; or
- (c) enforcing any order or judgment given or made in relation to this Agreement,

or is received or recovered in the Second Currency, Lessee will, when Lessor receives that sum, indemnify and hold harmless Lessor from and against any loss suffered as a result of any discrepancy between:

- (i) the rate of exchange used for converting the sum in question from the First Currency into the Second Currency; and
- (ii) the rate or rates of exchange at which Lessor may on the relevant date purchase in London or New York the First Currency with the Second Currency.

5.10 Authorisations for Payments

Lessee will obtain and maintain in full force and effect all certificates, licences, permits and other authorisations which are from time to time required to enable it to make the payments required by this Agreement.

5.11 Interest on Late Payments

If Lessee fails to pay any Rent or Supplemental Rent (excluding any interest payable under this Clause 5.11 (*Interest on Late Payments*)) on its due date for payment under this Agreement, without prejudice to any other rights which Lessor may have, Lessee will pay to Lessor on demand an amount by way of Supplemental Rent equal to interest at the Default Rate on that sum from the due date up to the date of actual payment.

5.12 Non-Business Days

If any payment would otherwise be due on a day which is not a Business Day, it will be due on the Business Day immediately succeeding such date unless such Business Day immediately succeeding falls in another month, in which case the payment will be due on the Business Day immediately preceding such date.

5.13 Certificate of Lessor

5.13.1 Any certificate or determination of Lessor as to any rate or amount payable under this Agreement or any other Operative Document will set out the relevant calculation of the amount concerned in reasonable detail and will, in the absence of manifest error, be *prima facie* evidence of the matters to which it relates.

5.13.2 In any proceedings arising out of or in connection with this Agreement or any other Operative Document, the entries made in the accounts of Lessor are *prima facie* evidence of the matters to which they relate.

5.14 Lessor's Payment Obligations

Lessor will not be obliged to pay or release any amount of the Security Deposit that is due to Lessee under this Agreement unless it has received in full all amounts then due and payable, and for which the deadline for payment and any applicable grace period has already passed and a written notice of such overdue payment obligation has been sent to Lessee, by Lessee to it and any Indemnitee under this Agreement, any other Operative Document, or under any other agreement for the time being

between Lessor and Lessee (including without limitation the Other Lease Agreements and the Other Operative Documents).

5.15 **Application of Monies**

If any sum paid or recovered in respect of the obligations of Lessee under this Agreement is less than the amount then due, Lessor may, following notice in writing thereof to Lessee, apply that sum to Rent, interest, fees or any other amount due under this Agreement or any of the other Operative Documents in such proportions and order and generally in such manner as Lessor may determine.

5.16 **Costs and Expenses**

Each Party agrees to pay its own costs and expenses incurred in connection with the preparation, negotiation, execution and performance of any of the Operative Documents.

5.16.1 Lessee shall promptly pay to Lessor all costs and expenses (including properly documented legal and other costs) reasonably incurred or payable by Lessor:

- (a) in connection with any amendment to, or the granting of any waiver or consent under any Operative Document, which is requested by Lessee;
- (b) in connection with the review of any proposed sub-lease (when required under Clause 8.1) and the making of any consequential amendments to this Agreement requested by Lessee or required by Lessor as a result of an action or omission by Lessee; and
- (c) in respect of the breach by Lessee of any representation, warranty, covenant or other provision contained in any Operative Document.

5.16.2 All costs and expenses payable pursuant to this Clause 5.16 (*Costs and Expenses*) shall be paid in the currency in which they are incurred by Lessor.

5.17 **Outgoings**

5.17.1 Save as otherwise provided herein to the contrary and except any costs and expenses attributable to any financing of the Aircraft by Lessor, Lessee shall promptly pay all costs and expenses arising as a consequence of or after Delivery from:

- (a) the registration, deregistration, possession, control, leasing, sub-leasing, operation, storage, maintenance, repair, modification, replacement, removal, repossession or redelivery of the Aircraft;
- (b) the insurance of the Aircraft; and
- (c) all other costs and expenses otherwise arising in connection with possession and/or operation of the Aircraft by Lessee or the performance of Lessee's obligations under this Agreement,

(each an "Outgoing").

5.17.2 If Lessee fails to pay any Outgoing when due:

- (a) Lessor and each Indemnitee may, without being obliged to do so and without prejudice to its right to treat that failure as an Event of Default, pay it and notify Lessee thereof as soon as reasonably practicable;

- (b) Lessee shall on demand immediately reimburse Lessor or the relevant Indemnitee for any amounts paid by Lessor under Clause 5.17.2(a), together with interest at the Default Rate on those amounts from the date of payment by Lessor or the relevant Indemnitee to the date of reimbursement by Lessee,

provided however, that Lessee's bona fide disputes with service providers over payment amounts or terms in respect of any Outgoing shall not constitute a breach of this Agreement during the pendency of such disputes if adequate reserves are available to Lessee for the payment of such Outgoing(s).

5.18 Set-off

Lessor may set off any matured obligation owed by Lessee under this Agreement against any obligation (whether or not matured) owed by Lessor to Lessee, regardless of the place of payment or currency. If the obligations are in different currencies, Lessor may convert either obligation at the market rate of exchange available in London or (at Lessor's option) New York for the purpose of the set-off. Notwithstanding any other provision of this Agreement, Lessor shall not be obliged to pay any amount to Lessee under this Agreement so long as any sums which are then due from Lessee under this Agreement remain unpaid, and any such amount which would otherwise be due from Lessor shall fall due only if and when Lessee has paid all such sums, except to the extent that Lessor otherwise agrees in writing or sets off such amounts against such payment.

6 LESSOR'S COVENANTS

6.1 Quiet Enjoyment

Lessor covenants that provided no Event of Default has occurred and is continuing, Lessor shall not interfere, and shall procure that neither any Finance Party, nor any other creditor of Lessor or any other Person claiming by, through or under Lessor interferes, with the quiet use, possession and enjoyment of the Aircraft by Lessee during the Lease Period; provided however, that the exercise by Lessor of its rights in accordance with this Agreement will not constitute such an interference.

6.2 Lessor Obligations Following Expiry Date

Within five (5) Business Days after:

- (a) redelivery of the Aircraft by Lessee in accordance with Clause 17 (*Redelivery*) or redelivery of the Aircraft by Lessee in accordance with any other provision of this Agreement (as the case may be);
- (b) payment to Lessor (or Security Trustee as Lessor's designee, as the case may be) of the Termination Amount following a Total Loss after the Delivery Date; or
- (c) receipt by Lessor (or Security Trustee as Lessor's designee, as the case may be) of the Termination Amount pursuant to Clause 15.3.2,

or in each case such later time as Lessor is satisfied Lessee has irrevocably paid to Lessor and each Indemnitee all amounts which may then be outstanding or payable under this Agreement, Lessor shall pay to Lessee the amount of any Rent received in respect of any period falling after the date of redelivery of the Aircraft or payment of the Termination Amount, as the case may be.

7 **LESSEE'S COVENANTS**

7.1 **Duration**

7.1.1 Lessee shall perform and comply with its undertakings and covenants in this Agreement at all times during the Lease Period. All Lessee's undertakings and covenants shall, except where expressly otherwise stated, be performed at the expense of Lessee.

7.1.2 Lessee will take such steps as are necessary to ensure that no Person rightfully claiming through Lessee acts in any manner inconsistent with Lessee's obligations under this Agreement.

7.2 **Information**

Lessee shall:

- (a) notify Lessor forthwith of the occurrence of any Default or any other event which might adversely affect Lessee's ability to perform any of its obligations under this Agreement, and provide Lessor with full details of any steps which Lessee is taking or proposes to take, in order to remedy or mitigate the effect of such Default;
- (b) provide to Lessor:
 - (i) upon request in writing, financial statements of Lessee (comprising a balance sheet and profit and loss statement) prepared for the most recent previous financial quarter certified by a qualified financial officer of Lessee as being true and correct;
 - (ii) as soon as available, but not in any event later than one hundred and eighty (180) days after the last day of each financial year of Lessee, Lessee's consolidated financial statements as of such day for the year ending on such day prepared in accordance with the generally accepted accounting principles and practices in Lessee's State of Incorporation that have been reviewed by KPMG or another reputable firm acceptable to Lessor;
 - (iii) at any time when any of Lessee's shares are listed on a share trading exchange, a copy of each notice or circular issued to Lessee's shareholders or creditors as a group at the same time as it is so issued;
 - (iv) all information which Lessor may from time to time reasonably request in writing regarding the business or financial affairs of Lessee, regarding the Aircraft, any Engine, any engine installed on the Airframe, any Propeller, any propeller installed on any Engine or any Part, and the use, location and condition of the Aircraft, including, without limitation, the Hours remaining on the Aircraft and any Engine until the next scheduled check, inspection, overhaul or shop visit, as the case may be;
 - (v) on reasonable request in writing, evidence satisfactory to Lessor that all Tax, charges and other Outgoings incurred by Lessee with respect to the Aircraft, including without limitation all payments due to the relevant air traffic control authorities, have been paid and discharged in full;

- (vi) promptly after receipt, with a copy of any letter, notice, claim or threat of suit, if such relates to the Aircraft, the leasing of the Aircraft pursuant to this Agreement and/or is related to any matter which could result in the Aircraft (or any part of it) being detained, seized and/or sold;
- (c) within ten (10) Business Days after the end of each calendar month, provide Lessor with a report on the Aircraft and each Engine, substantially in the format of Schedule 8 (*Form of Monthly Report*) or otherwise in the form required by Lessor; and
- (d) promptly notify Lessor of:
 - (i) any loss, theft, damage or destruction to the Aircraft, any Engine, any Propeller or any Part, or any modification to the Aircraft if the potential cost of repair or of such modification may exceed the Damage Notification Threshold;
 - (ii) any claim or other occurrence likely to give rise to a claim under the Insurances (but in the case of hull claims, only for any claim in excess of the Damage Notification Threshold) and details of any negotiations with the insurance brokers over any such claim; and
 - (iii) the removal of an Engine off wing for a period of more than ninety (90) days.

7.3 Operation of the Aircraft

Lessee shall:

- (a) comply with the Law from time to time in force in any country or jurisdiction which is applicable to the Aircraft or, so far as concerns the use and operation of the Aircraft, an owner or operator thereof, and take all reasonable steps to ensure that the Aircraft is not used for any illegal purpose;
- (b) not use the Aircraft in any manner contrary to any recommendation of the Manufacturer or the manufacturers of any Engine, Propeller or any Part or any recommendation or regulation of the Aviation Authority or for any purpose for which the Aircraft is not designed or reasonably suitable;
- (c) ensure that the crew and engineers employed or contracted by Lessee in connection with the operation and maintenance of the Aircraft have the qualifications and hold the licences required by the Aviation Authority and applicable Law;
- (d) use the Aircraft solely in commercial passenger and cargo transport duly authorised by the Aviation Authority and applicable Law;
- (e) not use the Aircraft for the carriage of any goods, materials, livestock or items of cargo which could reasonably be expected to cause damage to the Aircraft or which would not be adequately covered by the Insurances, or any item or substance whose possession or carriage is illegal under any applicable Law; and comply with any carriage regulations or restrictions from time to time issued by the Aviation Authority;
- (f) not use the Aircraft for purposes of training other than type qualifying or re-confirming the status of cockpit personnel and then only if the use of the

- Aircraft for such purpose is not disproportionate to the use for such purpose of other aircraft of the same type operated by Lessee;
- (g) not cause or permit the Aircraft to proceed to, or remain at, any location which is for the time being the subject of a prohibition order (or any similar order or directive) or sanctions or restrictions by:
 - (i) any Government Entity of the State of Registration or the Habitual Base; or
 - (ii) any Government Entity of the country in which such location is situated; or
 - (iii) any Government Entity having jurisdiction over Lessor, any Finance Party or the Aircraft; or
 - (iv) the United Nations Security Council; or
 - (v) the European Union;
 - (h) obtain and maintain in full force all certificates, licences, permits and authorisations for the time being required for the use and operation of the Aircraft and the compliance by Lessee with its other obligations under, this Agreement;
 - (i) ensure that the Aircraft is not used, operated or located in any manner not covered by the Insurances (including excluded areas) or in any manner which would prejudice the interests of the Indemnitees in the Insurances, the Aircraft, any Engine, any Propeller or any Part;
 - (j) ensure that the Habitual Base is not changed unless Lessor gives its prior written consent; and
 - (k) not operate, maintain, insure or deal with the Aircraft, any Engine, any Propeller or Part in a manner which discriminates against the Aircraft or such Engine, Propeller or Part, when compared with the manner in which Lessee operates, maintains, insures or deals with similar aircraft, engines or parts in Lessee's fleet. Lessee also agrees that it will not discriminate against the Engines with respect to performance restoration build standards.

7.4 **Inspection**

7.4.1 At any time during the Lease Period, Lessor and any Person designated by Lessor (who may also be representatives of any Finance Party) may each, upon giving Lessee not less than five (5) days' prior written notice (provided that such notice period shall not apply if any Default has occurred and is continuing) visit, inspect and survey the Aircraft, any Engine, any Propeller or any Part and for such purpose shall comply with all applicable security procedures and safety rules (which shall be in writing and of general application and not obstruct the reasonable exercise of Lessor's rights under this Clause). Any such inspection shall not disrupt the commercial flight or maintenance operations of Lessee (unless any Default has occurred and is continuing).

7.4.2 The cost of inspection or survey referred to in Clause 7.4.1 shall be borne by Lessor unless such inspection or survey:

- (a) is carried out following the occurrence of an Event of Default; or

(b) reveals that Lessee has failed in a material respect to comply with its obligations (which failure has been notified to Lessee in writing) under this Agreement regarding maintenance or operation of the Aircraft, in which event Lessee shall bear the cost of such inspection or survey.

7.4.3 Lessor or any relevant representatives will have no duty or liability to make, or to act arising out of, any such visit, inspection or survey.

7.4.4 If following any such inspection or survey repairs are shown to be required in respect of any items related to the airworthiness of the Aircraft, all such repairs shall be made at Lessee's expense and shall be effected as soon as practicable following such inspection or survey.

7.4.5 If any such inspection or survey indicates that Lessee is not in compliance with its maintenance requirements in respect of the Aircraft pursuant to this Agreement, Lessee shall rectify all such non-compliance at its own expense within ten (10) Business Days or as otherwise agreed between Lessor and Lessee.

7.5 **Aircraft ownership and registration**

Lessee shall:

(a) at its own cost, do all such acts and things as may be necessary to maintain the registration of the Aircraft with the Aviation Authority reflecting (as far as permitted by applicable Law and with Lessor's cooperation as required) the interests of Lessor, and not do or suffer to be done anything which might adversely affect such registration;

(b) do all acts and things (including, without limitation, making any filing or registration with the Aviation Authority or any other Government Entity or as required to comply with the Geneva Convention or the Cape Town Convention where applicable) and execute and deliver all documents (including, without limitation, any amendment of this Agreement) as may from time to time be required by Lessor:

(i) following any change or proposed change in the ownership of the Aircraft, with reasonable and properly documented costs necessarily incurred by Lessee in connection with any such voluntary transfer of an interest in the Aircraft by Lessor to be borne by Lessor (unless any such change of ownership in the Aircraft results from the exercise by Lessor of its rights under Clause 18.2 (*Lessor's Rights on Default*) following the occurrence of an Event of Default);

(ii) following any modification of the Aircraft, any Engine, any Propeller or any Part or the permanent replacement of any Engine, any Propeller or Part in accordance with this Agreement, so as to ensure that the rights of Lessor, as lessor of the Aircraft under this Agreement and the rights of Lessor and any Finance Party apply with the same effect as before; or

(iii) to establish, maintain, preserve, perfect and protect the rights of Lessor and any Finance Party under the Operative Documents or in the Aircraft, and in particular (without limitation), if in the State of Registration there shall be, or shall be brought into force, any legislative or other provisions giving effect to the Geneva Convention or the Cape Town Convention or otherwise relating to recognition of rights in aircraft, Lessee shall at its own cost forthwith

do all such acts as may be necessary to perfect recognition of Lessor's title to and/or Lessor's and/or any Finance Party's respective interests in the Aircraft in accordance with such legislative or other provisions;

- (c) not omit or do or knowingly permit the omission or doing of any act or thing which might reasonably be expected to jeopardise the rights of Lessor and/or any Finance Party in the Aircraft, or any Indemnitee as an additional insured, contract party or loss payee under the Insurances or the validity, enforceability or priority of the Operative Documents;
- (d) on all occasions when the ownership of the Aircraft, any Engine, any Propeller or any Part is relevant, make clear to third parties that title is held by Lessor;
- (e) not at any time:
 - (i) represent or hold out Lessor as carrying goods or passengers on the Aircraft or as being in any way connected or associated with any operation or carriage (whether for hire or reward or gratuitously) which may be undertaken by Lessee or any permitted sub-lessee; or
 - (ii) pledge the credit of Lessor and/or any Finance Party;
- (f) no later than five (5) Business Days of the date of the Delivery Date, affix and thereafter ensure that there is always affixed, and not removed or in any way obscured, a fireproof plate (having dimensions of not less than 10cm x 7cm) in a reasonably prominent position in the cockpit of the Aircraft adjacent to the certificate of airworthiness and on each Engine stating:

“THIS SAAB 2000 AIRCRAFT MSN 2000-046 WITH 2 ROLLS ROYCE ALLISON AE2100A ENGINES HAVING SERIAL NUMBERS CAE510101 AND CAE510113 IS OWNED BY MG ALASKA LEASING LIMITED AND IS MORTGAGED IN FAVOUR OF PROVENTUS CAPITAL PARTNERS III AB (PUBL) AND LEASED TO PENINSULA AIRWAYS, INC.”;
- (g) not do or permit to be done anything which may reasonably be expected to expose the Aircraft, any Engine, any Propeller or any Part to penalty, forfeiture, impounding, detention, appropriation, damage or destruction and (without prejudice to the foregoing), if any such penalty, forfeiture, impounding, detention or appropriation, damage or destruction occurs, give Lessor notice thereof and use best endeavours to procure the immediate release of the Aircraft, any Engine, any Propeller or the Part, as the case may be;
- (h) not abandon the Aircraft, any Engine, any Propeller or any Part; and
- (i) not attempt, or hold itself out as having any power, to sell, lease or otherwise dispose of the Aircraft, any Engine, any Propeller or any Part.

7.6 Records

Lessee shall:

- (a) procure that accurate, complete and current records of all flights made by, and all maintenance carried out on, the Aircraft (including in relation to each

Engine, each Propeller and Part subsequently installed, before the installation) are kept, in such manner as the Aviation Authority may from time to time require, and ensure that they comply with the recommendations of the Manufacturer and the manufacturers of any Engine, any Propeller or any Part. Such records will form part of the Aircraft Documents;

- (b) maintain in English (with an appropriate revision service) all Aircraft Documents, records, logs, and other materials in respect of the Aircraft required by applicable Laws and in accordance with the rules of the Aviation Authority; and
- (c) retain the Aircraft Documents, records, logs and other materials at Lessee's principal place of business or in the possession of an Approved Maintenance Performer, and not permit any other Person (other than to the extent that a Person is entitled to possession or control over the Aircraft under the terms of this Agreement) to have possession of or control over such without Lessor's prior written consent (not to be unreasonably withheld).

7.7 General

Lessee will:

- (a) maintain its business as a scheduled airline, will preserve its corporate existence (other than in connection with a solvent reconstruction or reorganisation on terms which have previously been notified in writing to Lessor and provided that the financial standing of the surviving entity, the identity of whom has been notified to Lessor in writing prior to the date of such reconstruction or reorganisation coming into effect, is, in Lessor's reasonable opinion, no worse than that of Lessee) and will maintain all rights, privileges, licences and franchises material thereto or material to performing its obligations under this Agreement; and
- (b) during the Lease Period keep and maintain complete and accurate records, including originals, of any documentation submitted to, and of all documentation issued and/or stamped or otherwise marked by, the customs, Tax and any other relevant authorities of the United States of America in relation to any import or export of the Aircraft into or from the territory of the United States of America during the Lease Period. At the request of Lessor, Lessee will promptly make such records and originals available for inspection by Lessor at the Habitual Base and/or provide Lessor with such copies thereof as it may reasonably require.

7.8 The Cape Town Convention

7.8.1 If the state in which Lessee is situated or the State of Registration is or becomes "Contracting State" for the purposes of the Cape Town Convention, the Parties will do or cause to be done any and all acts which may be required by either of them to constitute and establish, register, perfect, protect or preserve any international interests of Lessor and any Finance Party with respect to aircraft objects to which the Operative Documents relate provided that no action shall be required if it:

- (a) would have the effect of materially altering the term of this Agreement or otherwise involve any re-negotiation of any of the substantive terms of the Operative Documents; or
- (b) it would, or would be reasonably likely to, adversely affect the tax treatment of the transactions contemplated by the Operative Documents.

7.8.2 In this Clause 7.8 (*The Cape Town Convention*) the terms "aircraft object", "international interest", "state" and "State of registry" have the respective meanings accorded to them in the Convention or Protocol, as applicable and the expression "the state in which Lessee is situated" shall be construed in accordance with the provisions of Article 4 of the Convention as if the word "Lessee" was the word "debtor"

7.8.3 The cost of any action taken by Lessee or Lessor under this Clause 7.8 (*The Cape Town Convention*) for the purposes of the constitution and establishment, registration, perfection, protection or preservation of the international interests of Lessee or Lessor shall be borne by Lessee.

7.9 Warranties

7.9.1 Provided that no Event of Default has occurred and is continuing and subject to the terms of each such Aircraft Warranty Agreement, with effect from Delivery and until the Lease Period ends, Lessor shall make available, or shall procure that the Manufacturer makes available to Lessee, and authorises Lessee to exercise, such rights as Lessor may have under each Aircraft Warranty Agreement or the warranties to which such Aircraft Warranty Agreement relates.

7.9.2 Lessee shall promptly provide to Lessor notice of any warranty claim which is settled with Lessee in respect of the Aircraft, under an Aircraft Warranty Agreement or otherwise. Lessee shall pay or assign to Lessor (as applicable), without cost and without any future assignment restrictions, any cash paid or credit made to Lessee in respect of a warranty claim which is not paid or made to Lessee in respect of compensation and which Lessee has not or will not apply to the repair or remedy of the relevant defect.

7.9.3 On the Expiry Date Clause 17.8 (*Warranties and intellectual property rights*) shall apply.

7.10 Further Assurances

If further documentation or other action is necessary or advisable to give effect to, or to clarify the intent of, any Operative Document or Security Document or in order to establish and protect Lessor's title to and any Finance Party's Security Interest in the Aircraft, Lessee shall promptly sign and deliver such further documentation and take such steps which Lessor reasonably requests, provided that any costs and expenses incurred by Lessee in connection with any further action taken by it to establish or protect any Finance Party's Security Interest in the Aircraft shall be for the sole responsibility of Lessor.

8 SUB-LEASING

8.1 Lessee shall not, without Lessor's prior written consent, sub-lease, or part with possession of the Aircraft, the Engines or any Part, except that Lessee may part with possession:

(a) with respect to the Aircraft, any Engine, any Propeller or any Part to the relevant manufacturers for testing or similar purposes or to the Approved Maintenance Performer for service, repair, maintenance or overhaul work, or alterations, modifications or additions to the extent required or permitted by this Agreement; and

(b) with respect to an Engine, a Propeller or Part, as expressly permitted by this Agreement.

8.2 So long as there is no subsisting Event of Default, Lessee may sub-lease the Aircraft by way of wet lease of the Aircraft in the ordinary course of Lessee's business pursuant to which:

- (a) Lessee will at all times maintain exclusive possession and operational control of the Aircraft which shall be operated on Lessee's AOC and will operate the Aircraft exclusively with Lessee's employees (it being understood that cabin attendants need not be employees of Lessee:
 - (i) if so authorised by the Aviation Authority and the aviation authority of the wet-lessee;
 - (ii) such cabin attendants are able to speak the same language as Lessee's pilots; and
 - (iii) such cabin attendants are trained on the Aircraft to the satisfaction of the Aviation Authority and wet-lessee's aviation authority);
- (b) the Aircraft will be maintained by Lessee and insured by Lessee in accordance with this Agreement;
- (c) the rights of the wet lessee shall be subject and subordinate to, and the wet lease shall be made expressly subject and subordinate to, all the terms and conditions of this Agreement including Lessor's right to take immediate possession of the Aircraft following an Event of Default;
- (d) Lessee shall remain primarily liable for the performance of all of the terms of this Agreement to the same extent as if the wet lease had not occurred;
- (e) the wet lease shall not be for a period (including any options of Lessee or the wet lessee to renew or extend for successive wet leases) longer than ninety (90) days and in any event not longer than the remainder of the Lease Period;
- (f) the wet lease shall not contain any provision in conflict with any of the provisions hereof;
- (g) the wet lease does not contravene any applicable Law;
- (h) the wet lease does not affect the terms of any Insurances; and
- (i) the wet lease shall expressly prohibit any assignment or further leasing of the Aircraft or any rights thereunder.

9 SECURITY INTERESTS

9.1 No Security Interests

Lessee shall:

- (a) not at any time create or permit to exist any Security Interest (other than Permitted Liens) upon the Aircraft;
- (b) promptly at Lessee's expense take or procure the taking of such action as may be necessary to discharge any such Security Interest that exists (other than Permitted Liens); and

- (c) discharge or cause to be discharged when due and payable or make adequate provision by way of security or otherwise for all debts, damages, claims and liabilities which give or might give rise to a Security Interest (other than a Permitted Lien) upon the Aircraft.

9.2 Maintenance Contract Liens

Lessee shall not enter into any contract for the maintenance or repair of the Aircraft which has or may have the effect of granting a contract lien or similar arrangement over the Aircraft, other than a Permitted Lien to the maintenance or repair contractor or any other Person or in circumstances where the relevant maintenance or repair contractor or any other Person acknowledges the ownership interest in the Aircraft of Lessor and the Security Interests in the Aircraft of the Security Trustee.

10 MAINTENANCE AND REPAIR

10.1 Maintenance and Repair

10.1.1 Lessee will:

- (a) keep the Aircraft airworthy in all respects and in good repair and good operating condition subject to ordinary fair wear and tear;
- (b) not change the Maintenance Programme or the schedule of the Maintenance Programme unless approved under the Aviation Authority airworthiness scheme in which case Lessee shall immediately inform Lessor of any change in the Maintenance Programme;
- (c) maintain the Aircraft in accordance with any requirements and recommendations of the Manufacturer and the manufacturers of any Engine, Propeller or Part and with the Maintenance Programme through the Approved Maintenance Performer and perform (at the respective intervals provided in the Maintenance Programme) all major checks;
- (d) maintain the Aircraft and Aircraft Documents in accordance with the FAA requirements (except to the extent of any conflict with the Aviation Authority requirements) and Lessee shall maintain the Aircraft to at least the same standard as it maintains the other aircraft owned or leased by it;
- (e) ensure the Aircraft complies with all applicable Laws and regulations and the terminating action requirements of all Airworthiness Directives and all service bulletins designated as “**mandatory**”, and required to be carried out before the date on which Lessee returns the Aircraft to Lessor as required under this Agreement or within one hundred and eighty (180) days after that date;
- (f) comply with all applicable Laws and the regulations of the Aviation Authority regardless of upon whom such requirements are imposed and which relate to the maintenance, condition, use or operation of the Aircraft or require any modification or alteration to the Aircraft;
- (g) maintain in good standing a current certificate of airworthiness (in the appropriate category for the nature of the operations of the Aircraft) for the Aircraft issued by the Aviation Authority, except where:
 - (i) the Aircraft is undergoing maintenance, modification or repair required or permitted by this Agreement; or

- (ii) Lessee complies with all associated Aviation Authority directions, during any period when the certificate of airworthiness for all aircraft of the same model or type as the Aircraft has been suspended or withdrawn by the Aviation Authority,

and provide Lessor from time to time with a copy on request;

- (h) if required by the Aviation Authority, maintain a current certification as to maintenance issued by or on behalf of the Aviation Authority in respect of the Aircraft and provide Lessor a copy on request; and
- (i) promptly procure the replacement of any Engine, Propeller or Part which has become time, cycle or calendar expired, lost, stolen, seized, confiscated, destroyed, damaged beyond repair, unserviceable or permanently rendered unfit for use, with an engine, propeller or part complying with the express conditions of this Agreement.

10.1.2 Lessee shall make arrangements in relation to the enrolment of the Engines in Rolls Royce ECTA programme at all times during the Lease Period and Lessor shall cooperate with Lessee in relation to such arrangements.

10.2 **Removal**

Lessee will ensure that no Engine, Propeller or Part installed on the Aircraft is at any time removed from the Aircraft other than:

- (a) if replaced, as expressly permitted by this Agreement; or
- (b) if the removal is of an obsolete item and is in accordance with the Maintenance Programme; or
- (c) during the course of maintaining, servicing, repairing, overhauling or testing that Engine, Propeller, Part or the Aircraft, as the case may be; or
- (d) as part of a normal engine, propeller or part rotation programme; or
- (e) for the purpose of making such modifications to the Engine, Propeller, Part or the Aircraft, as the case may be, as are permitted under this Agreement,

and then in each case only if it is reinstalled or replaced by an engine, propeller or part complying with Clause 10.3(a) or Clause 10.3(b) as applicable below (and subject to the terms of Clause 10.4 (*Temporary Replacement*) where applicable) as soon as practicable and in any event no later than the Expiry Date.

10.3 **Installation**

Lessee may install an engine, propeller or part on the Aircraft if:

- (a) in the case of an engine or a propeller, it is an engine or, as the case may be, a propeller of the same model as, or an improved or advanced version of the Engine or the Propeller it replaces and which has the same or greater value and utility, and be in as good operating condition (ordinary wear and tear excepted), as the replaced Engine or the Propeller;
- (b) in the case of a part, it is of the same or a more advanced make and model and is of the same interchangeable modification status as the replaced Part;

- (c) in each case, within 90 days of installation, it has become and remains the property of Lessor free from Security Interests (other than Permitted Liens) and, within such time period and following any actions taken in accordance with Clause 10.8, will be subject to this Agreement; and
- (d) in each case, Lessee has full details as to its source and maintenance records.

10.4 Temporary Replacement

10.4.1 Lessee will, if no Event of Default is subsisting, be entitled to install any engine, propeller or part on the Aircraft by way of replacement notwithstanding Clause 10.3 (*Installation*) if:

- (a) there is not available to Lessee at the time and in the place that that engine, propeller or part is required to be installed on the Aircraft, a replacement engine or, as the case may be, propeller or part complying with the requirements of Clause 10.3 (*Installation*); and
- (b) it would result in an unreasonable disruption of the operation of the Aircraft and/or the business of Lessee to ground the Aircraft until an engine, propeller or part, as the case may be, complying with Clause 10.3 (*Installation*) becomes available for installation on the Aircraft.

10.4.2 Any engine, propeller or part installed pursuant to Clause 10.4.1 shall be replaced by the Engine, Propeller or Part replaced by it or by an engine, propeller or part, as the case may be, complying with Clause 10.3 (*Installation*) no later than the date that the Aircraft is required by this Agreement to be redelivered to Lessor.

10.5 Other

10.5.1 Lessee will ensure that any Engine, Propeller or Part which is not installed on the Aircraft (or any other aircraft as permitted by this Agreement) is, except as expressly permitted by this Agreement, properly and safely stored, and kept free from Security Interests (other than Permitted Liens).

10.5.2 Lessee will, notify Lessor whenever any Engine is removed from the Aircraft or any Propeller is removed from an Engine in accordance with Clause 7.2(d)(iii) and, from time to time, on request, procure that any Person to whom possession of an Engine or, as the case may be, such Propeller is given acknowledges in writing to Lessor, in form and substance satisfactory to Lessor, that it will respect the interests of Lessor in the Engine or, as the case may be, such Propeller and will not seek to exercise any rights whatsoever in relation to it.

10.5.3 Notwithstanding the foregoing provisions of this Clause 10.5 (*Other*), Lessee will be permitted, if no Event of Default is subsisting, to install any Engine, Propeller or Part on a suitable aircraft or in the case of a Propeller or Part, an engine, in each case which is both:

- (a) owned by or leased or hired to or financed by Lessee; and
- (b) operated by Lessee and provided Lessor is satisfied that the terms of any relevant lease, conditional sale agreement or Security Interest will not have the effect of prejudicing the interests of Lessor in the Engine, Propeller or Part or in respect thereof under any Operative Document.

10.6 **Pooling**

Lessee will not enter into or permit any pooling agreement or arrangement in respect of any Engine, Propeller or Part without the prior written consent of Lessor (such consent not to be unreasonably withheld).

10.7 **Equipment Change**

10.7.1 Lessee will not make any Equipment Change unless it:

- (a) is expressly permitted by this Agreement, or
- (b) does not diminish the value, utility, condition, or airworthiness of the Aircraft;
or
- (c) arises because of the requirements of the Aviation Authority.

10.7.2 So long as there is no subsisting Event of Default, Lessee may remove any Equipment Change provided the Aircraft will, following such removal, be restored to the condition it was in prior to that Equipment Change and conform with all applicable Laws and Lessee shall on the Expiry Date remove any Equipment Change and restore the Aircraft to its condition prior to that Equipment Change if so required by Lessor (unless such Equipment Change was and remains required by the Aviation Authority) and shall remove any Equipment Change if required so to do by the Aviation Authority and then restore the Aircraft to its condition prior to that Equipment Change.

10.8 **Title to Lessor**

Title to all Engines, Propellers and Parts installed on the Aircraft whether by way of replacement, as the result of an Equipment Change or otherwise (except those installed pursuant to Clause 10.4 (*Temporary Replacement*)) will vest in Lessor subject to this Agreement and each other Operative Document free and clear of all Security Interests (other than Permitted Liens). Lessee will at its own expense take all such steps and execute, and procure the execution of, all such instruments as Lessor may require and which are necessary to ensure that title so passes to Lessor according to all applicable Laws. At any time when requested by Lessor, Lessee will provide evidence in the form of a duly executed bill of sale or confirmation of sale to Lessor's satisfaction that title has so passed to Lessor.

10.9 **Title to Lessee**

Any Engine, Propeller or Part at any time removed from the Aircraft or, as the case may be, an Engine, will remain the property of Lessor until a replacement has been made in accordance with this Agreement and until title in that replacement has passed, according to applicable Laws, to Lessor, subject to this Agreement and each other Operative Document and free of all Security Interests (other than Permitted Liens) whereupon title to the replaced Engine, Propeller or Part, will pass to Lessee. Lessor will at Lessee's cost take or will procure the taking of all such actions (including any filings with the Aviation Authority and registrations with the International Registry) and execute all such documents as are reasonably requested by Lessee to effect and evidence the transfer described in this Clause 10.9 and any related discharge, release or termination of any Security Interests.

11 **DISCLAIMERS**

Lessor and Lessee agree that the disclaimers, waivers and confirmations set forth in Clause 11.1 (*Disclaimers; Waiver of Warranties; Waiver of Remedies*) through

Clause 11.3 (*No Duty of Indemnitees to Inspect, etc.*) shall apply at all times during the Lease Period with effect from Lessee's acceptance of the Aircraft by execution of the Acceptance Certificate, which shall be conclusive evidence that Lessee has fully inspected the Aircraft and every part thereof and that the Aircraft, the Engines, the Propellers, the Parts and the Aircraft Documents are technically acceptable to Lessee and satisfy the Delivery Conditions requirements (if any) and are in suitable condition for Delivery and acceptance by Lessee.

11.1 Disclaimer; Waiver of Warranties; Waiver of Remedies

11.1.1 LESSEE AGREES THAT IT ACCEPTS DELIVERY OF THE AIRCRAFT "AS-IS, WHERE-IS". LESSEE ACKNOWLEDGES AND AGREES THAT NO INDEMNITEE HAS MADE, OR SHALL BE DEEMED TO HAVE MADE, (WHETHER BY VIRTUE OF HAVING LEASED THE AIRCRAFT UNDER THIS AGREEMENT, OR HAVING ACQUIRED THE AIRCRAFT, OR HAVING DONE OR FAILED TO DO ANY ACT, OR HAVING ACQUIRED OR FAILED TO ACQUIRE ANY STATUS UNDER OR IN RELATION TO THIS LEASE OR OTHERWISE), AND LESSOR, FOR ITSELF AND FOR EACH INDEMNITEE, HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE (EXCEPT AS HEREIN BELOW PROVIDED), AIRWORTHINESS, CONDITION, DESIGN, OPERATION, MERCHANTABILITY, FREEDOM FROM CLAIMS OF INFRINGEMENT OR THE LIKE, OR FITNESS FOR USE FOR A PARTICULAR PURPOSE OF THE AIRCRAFT, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE AIRCRAFT, THE ABSENCE THEREFROM OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE OR CAPABLE OF DISCOVERY, OR AS TO ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED (INCLUDING ANY IMPLIED WARRANTY ARISING FROM A COURSE OF PERFORMANCE OR DEALING OR USAGE OF TRADE), WITH RESPECT TO THE AIRCRAFT; AND LESSEE HEREBY WAIVES, RELEASES, RENOUNCES AND DISCLAIMS EXPECTATION OF OR RELIANCE UPON ANY SUCH WARRANTY OR WARRANTIES. NO INDEMNITEE SHALL HAVE ANY RESPONSIBILITY OR LIABILITY TO LESSEE OR ANY OTHER PERSON, WHETHER ARISING IN CONTRACT OR TORT OUT OF ANY NEGLIGENCE OR STRICT LIABILITY OF LESSOR OR OTHERWISE, FOR (i) ANY LIABILITY, LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY THE AIRCRAFT OR ANY PORTION THEREOF OR BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN OR BY ANY OTHER CIRCUMSTANCE IN CONNECTION THEREWITH, (ii) THE USE, OPERATION OR PERFORMANCE OF THE AIRCRAFT OR ANY RISKS RELATING THERETO, (iii) THE DELIVERY OR DELAY IN DELIVERY (WHERE ANY SUCH DELAY IS NOT DUE TO THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF LESSOR) OR EXCUSABLE DELAY, OR (iv) OPERATION, SERVICING, MAINTENANCE, REPAIR, IMPROVEMENT OR REPLACEMENT OF THE AIRCRAFT OR ANY ITEM OF EQUIPMENT. THE WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS CLAUSE 11 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, AND NO INDEMNITEE SHALL BE DEEMED TO HAVE MADE ANY OTHER WARRANTIES.

11.1.2 LESSEE ACKNOWLEDGES THAT THE DESCRIPTION OF THE AIRCRAFT SET FORTH IN THIS AGREEMENT AND ANY OPERATIVE DOCUMENT IS BASED UPON INFORMATION SUPPLIED BY THE MANUFACTURER. LESSEE REPRESENTS TO LESSOR THAT LESSEE HAS USED ITS OWN JUDGMENT IN SELECTING THE AIRCRAFT AND HAS DONE SO BASED ON ITS SIZE, DESIGN AND TYPE. LESSEE ACKNOWLEDGES THAT (i) NO INDEMNITEE IS A SELLER, MANUFACTURER, REPAIRER OR SERVICING AGENT OF THE AIRCRAFT AND (ii) THE RENT AND OTHER AMOUNTS HAVE BEEN CALCULATED HAVING DUE REGARD FOR THE PROVISIONS OF THIS CLAUSE 11.

- 11.1.3 IN CONSIDERATION OF (i) LESSEE'S RIGHTS HEREUNDER TO INSPECT THE AIRCRAFT AND (ii) LESSOR'S ASSIGNMENT TO LESSEE OF ANY EXISTING AND ASSIGNABLE WARRANTIES OF ANY MANUFACTURER, LESSEE HEREBY AGREES THAT ITS ACCEPTANCE OF THE AIRCRAFT AT DELIVERY AND ITS EXECUTION AND DELIVERY OF THE ACCEPTANCE CERTIFICATE CONSTITUTE LESSEE'S WAIVER OF THE WARRANTY OF DESCRIPTION, ANY CLAIMS LESSEE MAY HAVE AGAINST LESSOR BASED UPON THE FAILURE OF THE AIRCRAFT TO CONFORM WITH SUCH DESCRIPTION AND ANY AND ALL RIGHTS IT MAY HAVE UNDER APPLICABLE LAW. EVEN IF AT ANY TIME THE FAILURE OF THE AIRCRAFT TO CONFORM TO SUCH DESCRIPTION SUBSTANTIALLY IMPAIRS THE VALUE AND UTILITY OF THE AIRCRAFT AND EITHER (1) LESSEE ACCEPTED THE AIRCRAFT BASED ON A REASONABLE ASSUMPTION THAT THE NONCONFORMITY WOULD BE CURED AND IT WAS NOT CURED WITHIN THE TIME PROVIDED OR, IF NOT PROVIDED, WITHIN A REASONABLE PERIOD OF TIME OR (2) LESSEE ACCEPTED THE AIRCRAFT WITHOUT DISCOVERING THE NONCONFORMITY BUT LESSEE'S ACCEPTANCE OF THE AIRCRAFT WAS REASONABLY INDUCED EITHER BY AN INDEMNITEE'S ASSURANCES OR BY THE DIFFICULTY OF DISCOVERING ANY DEFECT PRIOR TO ACCEPTANCE, LESSEE AGREES NOT TO LOOK TO ANY INDEMNITEE FOR DAMAGES OR RELIEF ARISING OUT OF THE FAILURE OF THE AIRCRAFT TO CONFORM TO SUCH DESCRIPTION.
- 11.1.4 DELIVERY BY LESSEE TO LESSOR OF THE ACCEPTANCE CERTIFICATE WILL BE CONCLUSIVE PROOF AS BETWEEN LESSOR AND LESSEE THAT LESSEE HAS EXAMINED AND INVESTIGATED THE AIRCRAFT, INCLUDING THE ENGINES AND THE AIRCRAFT DOCUMENTS, AND THAT EACH IS IN THE CONDITION REQUIRED HEREUNDER AND WITHOUT DEFECT, EXCEPT AS SPECIFICALLY SET FORTH IN SUCH ACCEPTANCE CERTIFICATE, (WHETHER OR NOT DISCOVERABLE OR DIFFICULT TO DISCOVER AT DELIVERY) AND OTHERWISE IN EVERY WAY SATISFACTORY TO LESSEE.
- 11.1.5 LESSEE HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS WHICH IT MAY NOW HAVE OR WHICH AT ANY TIME HEREAFTER MAY BE CONFERRED UPON IT, BY STATUTE OR OTHERWISE, TO SUSPEND ITS PERFORMANCE HEREUNDER OR TO TERMINATE, CANCEL, QUIT OR SURRENDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, (X) ON ACCOUNT OF ANY GROUNDS OF INSECURITY WITH RESPECT TO LESSOR'S PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND (Y) ON ACCOUNT OF ANY REPUDIATION BY LESSOR OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, EXCEPT IN ACCORDANCE WITH THE EXPRESS TERMS HEREOF. EACH PAYMENT OF RENT MADE BY LESSEE TO LESSOR SHALL BE FINAL AND LESSEE WILL NOT SEEK TO RECOVER ANY PART OF SUCH PAYMENT FROM LESSOR FOR ANY REASON WHATSOEVER, EXCEPT FOR NEGLIGENCE OR MANIFEST ERROR IN THE CALCULATION OF THE AMOUNT OR REMITTANCE OF SUCH PAYMENT. LESSEE'S COVENANTS AND PROMISES IN THIS AGREEMENT ARE IRREVOCABLE AND INDEPENDENT UPON DELIVERY HEREUNDER, AND NONE OF SUCH COVENANTS OR PROMISES IS SUBJECT TO CANCELLATION, TERMINATION, MODIFICATION, REPUDIATION, EXCUSE, OR SUBSTITUTION WITHOUT LESSOR'S CONSENT OR THE CONSENT OF SUCH OTHER PERSON TO WHOM THE COVENANT OR PROMISE RUNS. LESSEE AGREES THAT ITS ONLY RIGHT WITH RESPECT TO A DEFAULT BY LESSOR UNDER THIS AGREEMENT IS, AFTER COMPLYING WITH ITS OBLIGATIONS UNDER THIS AGREEMENT, TO MAKE A CLAIM AGAINST LESSOR FOR ACTUAL DAMAGES RESULTING DIRECTLY FROM SUCH DEFAULT AND LESSEE HEREBY WAIVES ANY OTHER RIGHTS OR REMEDIES IT MAY HAVE UNDER ARTICLE 2A (UNIFORM COMMERCIAL CODE — LEASES) OF THE NEW YORK UNIFORM COMMERCIAL CODE OR OTHERWISE.

11.2 **DISCLAIMER WAIVER OF INCIDENTAL, CONSEQUENTIAL, SPECIAL AND PUNITIVE DAMAGES.** EACH PARTY AGREES THAT IT SHALL NOT BE ENTITLED TO RECOVER, AND HEREBY DISCLAIMS AND WAIVES ANY RIGHT THAT IT MAY OTHERWISE HAVE TO RECOVER, (i) INCIDENTAL, CONSEQUENTIAL, SPECIAL AND PUNITIVE DAMAGES, AND/OR (ii) DAMAGES IN CONNECTION WITH ANY INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATED PROFITS AS A RESULT OF ANY BREACH OR ALLEGED BREACH BY THE OTHER PARTY OF ANY OF THE AGREEMENTS, REPRESENTATIONS OR WARRANTIES OF THE OTHER PARTY CONTAINED IN THIS AGREEMENT OR ANY OPERATIVE DOCUMENTS.

11.3 **NO DUTY OF INDEMNITEES TO INSPECT, ETC.** NO INDEMNITEE SHALL HAVE ANY DUTY OR OBLIGATION TO DETERMINE WHETHER ANY ITEM OF EQUIPMENT IS REQUIRED TO BE OVERHAULED OR MAINTAINED, OR TO OBSERVE OR INSPECT THE OVERHAUL OR MAINTENANCE OF THE AIRCRAFT OR ANY PORTION THEREOF OR TO CONFIRM OR VERIFY THE FITNESS OR QUALIFICATION OF LESSEE OR ANY APPROVED MAINTENANCE ORGANISATION TO PERFORM ANY MAINTENANCE TO THE AIRCRAFT OR ANY PORTION THEREOF AND NO INDEMNITEE SHALL INCUR ANY LIABILITY OR OBLIGATION IN CONNECTION WITH THE FOREGOING OR BY REASON OF THE FAILURE OF ANY ITEM TO BE PROPERLY MAINTAINED OR BY REASON OF ANY INDEMNITEE'S ELECTION TO OBSERVE OR INSPECT OR NOT TO OBSERVE OR INSPECT ANY MAINTENANCE CHECK OR OTHER MAINTENANCE OF THE AIRCRAFT OR ANY PORTION THEREOF PERFORMED DURING THE LEASE TERM.

12 **INDEMNITIES**

12.1 **Claims against Lessor**

Lessee shall indemnify and hold harmless each of the Indemnitees from and against any costs or expenses which Lessee has agreed to pay but which are claimed from or assessed against or paid by such Indemnitee, and against any Losses incurred by an Indemnitee by reason of any delay or failure of Lessee to pay any such costs or expenses.

12.2 **Specific Indemnities**

Lessee agrees at all times, whether before, during or after the Lease Period, to indemnify and hold harmless the Indemnitees and each of them on demand from and against all Loss which may be incurred by, or made or asserted against the Indemnitees or any of them at any time:

- (a) relating to, or arising directly or indirectly in any manner whatsoever out of, the condition, testing, delivery, design, manufacture, sale, import, export, registration, ownership (but in the case of ownership only to the extent that the Loss arises from the exercise by Lessee of its rights under this Agreement or the performance or non-performance by Lessee of its obligations under this Agreement or any Operative Documents to which it is a party), existence, possession, control, use, leasing, sub-leasing (including wet leasing), operation, insurance, inspection, maintenance, repair, refurbishment, storage, service, modification, overhaul, replacement, removal, re-delivery, any sale or disposition of the Aircraft following the termination of the leasing of the Aircraft pursuant to Clause 18.2 (*Lessor's Rights on Default*), or otherwise in connection with the Aircraft;
- (b) on the grounds that any design, article or material in the Aircraft or the operation or use thereof constitutes an infringement of any patent, intellectual property right or any other right whatsoever; or

- (c) in preventing or attempting to prevent the arrest, confiscation, seizure, taking in execution, impounding, forfeiture or detention of the Aircraft, or in securing the release of the Aircraft.

12.3 **Payments under Indemnities**

Monies becoming due by Lessee to the Indemnitees under the indemnities contained in this Agreement shall be paid promptly on demand in writing made by the relevant Indemnitee and shall be paid together with interest at the Default Rate such to accrue on and from the date of demand until the date of reimbursement by Lessee to Lessor or the relevant Indemnitee (after as well as before judgment).

12.4 **Exclusions to Indemnities**

Notwithstanding anything to the contrary herein, Lessee shall not be under any obligation to indemnify an Indemnitee:

- (a) to the extent that a Loss is caused by an act or omission of such Indemnitee:
 - (i) which constitutes fraud or wilful misconduct; or
 - (ii) which constitutes gross negligence,in each case other than any such arising through the agency of Lessee or its employees, agents or contractors;
- (b) to the extent that a Loss arises as a result of any failure on the part of such Indemnitee to comply with any of the express terms of, or as a result of any misrepresentation of such Indemnitee contained in any Operative Document to which such Indemnitee is a party;
- (c) to the extent that a Loss represents a Tax or loss of Tax benefits, whether or not Lessee is required to indemnify such Indemnitee or to make any payment or increased payment in respect thereof;
- (d) to the extent that the relevant Indemnitee receives a payment under the Insurances or from any other source which is made in settlement or reimbursement of the relevant Loss;
- (e) if and to the extent that a Loss arises as a result of an act or event occurring after the Expiry Date unless such act or event is attributable to any act or omission of, or is otherwise the responsibility of, Lessee or any of its employees, agents or contractors or in circumstances which occurred prior to the Expiry Date (and which is not otherwise excluded pursuant to this Clause 12.4 (*Exclusions to Indemnities*));
- (f) to the extent that a Loss constitutes a cost which is expressly to be borne or recovered by the relevant Indemnitee under any other provision of this Agreement or any other Operative Document;
- (g) to the extent that a Loss is part of the normal administrative or overhead expenses of the relevant Indemnitee except to the extent the same arise on or following a Default;
- (h) without prejudice to Clause 18.3 (*Default Payments*) to the extent that a Loss arises as a result of any sale, assignment, transfer or other disposition

(whether voluntary or involuntary) of the Aircraft or any interest therein or in any Operative Document;

- (i) to the extent a Loss constitutes or arises solely as a result of any Lessor Lien attributable to the relevant Indemnitee; or
- (j) to the extent that the Loss constitutes a cost which Lessor has expressly agreed to be responsible for under any other provisions of this Agreement or any other Operative Document.

12.5 Mitigation

Lessor will make all reasonable efforts to ensure that each Indemnitee takes all reasonable steps which do not involve such Indemnitee in incurring or suffering any further Loss (unless borne or indemnified by Lessee) to mitigate or reduce the amount of any Loss suffered by it for which Lessee may be required to indemnify it.

12.6 Indemnity for Payment Default

Without prejudice to any of the other rights of the Indemnitees under this Agreement, Lessee shall indemnify each of the Indemnitees against any Loss which the relevant Indemnitee certifies (through Lessor) as having been sustained or incurred by it as a consequence of the subsistence of an event as described in Clause 18.1(a) (*Non-payment*). The certificate of Lessor shall provide reasonably sufficient detail of the loss or expense concerned and the calculation thereof and shall constitute (as between Lessee and Lessor) conclusive evidence (save in the case of manifest error) of the Loss specified in that certificate.

12.7 Continuation of Indemnities

Except as otherwise expressly stated in this Agreement, the indemnities by Lessee contained in this Agreement shall continue in full force and effect notwithstanding any breach by Lessee of the terms of this Agreement, the termination of the leasing of the Aircraft to Lessee under this Agreement, the repudiation by Lessor or Lessee of this Agreement, or the expiration of the Lease Period by effluxion of time or otherwise.

12.8 Notification and Contest

12.8.1 Without prejudice to the provisions of this Clause 12 (*Indemnities*) and without limiting in any way whatsoever, or being a condition precedent or subsequent to, the indemnities in favour of the Indemnitees hereunder, the relevant Indemnitee shall:

- (a) notify Lessee in writing as soon as practicable after the relevant Indemnitee becomes aware of any liability in respect of which the relevant Indemnitee will require to be indemnified pursuant to this Agreement (a "**Liability**"). Such notification to Lessee shall give such details as in all the circumstances are reasonable having regard to the contents of any notices relating to such Liability received by the relevant Indemnitee; and
- (b) where reasonably practicable, notify Lessee of the relevant Indemnitee's intention to pay or procure the payment of any monies in respect of any such Liability before any such payment is made.

12.8.2 Subject always to the relevant Indemnitee first being indemnified and secured to its satisfaction by Lessee against all losses, costs, damages and expenses and provided that Lessee does not take any action in the name of the relevant Indemnitee where

that Indemnitee considers that it would be materially prejudicial to its interests for such action to be taken by Lessee in the name of the relevant Indemnitee, Lessee shall be entitled to take (at its cost) such action as Lessee reasonably deems fit to defend or avoid any liability arising in respect of a Liability or to take action against any third party in respect of a Liability. Lessee shall be entitled if so agreed by the relevant Indemnitee in writing, to take such action in the name of the relevant Indemnitee. Any amount or any increase in any amount payable by the relevant Indemnitee as a result of any delay consequent upon the operation of this Clause 12 (*Indemnities*) shall, for the avoidance of doubt, be for the account of Lessee.

13 **TAXATION**

13.1 **General Tax Indemnity**

Lessee shall indemnify and hold harmless each of the Tax Indemnitees from and against:

- (a) all Tax relating to or in respect of the Aircraft or any right, title or interest therein;
- (b) all Tax in respect of any document, payment, matter, circumstance or transaction pursuant to any Operative Document; and
- (c) all air transportation taxes arising from the operation of the Aircraft,

in each case that are referable to the Lease Period, irrespective of the date on which such Tax may be levied.

13.2 **Exclusions to Tax Indemnity**

Lessee shall not be obliged to indemnify any Tax Indemnitee pursuant to Clause 13.1 (*General Tax Indemnity*) against Lessor Taxes or any Tax attributable to or assessed against such Tax Indemnitee or which arise due to the gross negligence or wilful misconduct of any Tax Indemnitee.

13.3 **Tax Claim**

13.3.1 If Lessor receives any information, communication or document which causes it to become aware that it is or may become subject to any Tax liability (the "**Tax Claim**") in respect of which Lessee would be liable to indemnify a Tax Indemnitee pursuant to Clause 13.1 (*General Tax Indemnity*) it shall:

- (a) notify Lessee of the Tax Claim and the amount of the Tax Claim as soon as reasonably practicable after becoming aware of it; and
- (b) subject to the following provisions of this Clause, provide Lessee with a description, in reasonable detail, of the circumstances giving rise to such Tax Claim and attaching the relevant information evidencing such Tax Claim.

Lessee shall keep any information and documents that it receives from Lessor private and confidential but this shall not prevent disclosure to Lessee's professional advisers or as required by law.

13.3.2 So long as there is no subsisting Default, Lessor shall, after consultation with Lessee and to the extent that it can do so lawfully and without prejudice to its own position or the position of any other Tax Indemnitee and/or to Lessee's indemnity and other

obligations under any of the Operative Documents to which Lessee is a party, agree steps that shall be taken at Lessee's expense with a view to mitigating or where possible eliminating any circumstances which arise and which would result in any amount becoming payable by Lessee pursuant to Clause 13.1 (*General Tax Indemnity*). This Clause 13.3.2 shall not in any way limit the obligations of Lessee under the Operative Documents to which it is a party.

13.4 Mitigation of Increased Tax

If after the date of this Agreement any new income-related Tax or increase in existing income Tax is imposed on Lessor in its State of Incorporation, Lessee will co-operate with Lessor to mitigate such tax burden. Proposals for mitigation shall be made in good faith with the costs of implementing such mitigation being borne by Lessor.

13.5 Tax Treatment

The amount of any payment made by Lessee under any of Clause 5.8 (*No Deductions or Withholdings*), Clause 5.8 (*Costs and Expenses*), Clause 5.17 (*Outgoings*), Clause 12 (*Indemnities*) or Clause 13 (*Taxation*), must take into account the Tax treatment of the payment and of the Loss in respect of which the payment is claimed so that the Indemnitee or Tax Indemnitee, as the case may be, is fully compensated by Lessee, after that Tax treatment has been taken into account, for the Loss for which the relevant claim is made.

14 INSURANCE

14.1 Insurances

14.1.1 Lessee shall, at its own expense, maintain the Insurances in full force during the Lease Period in form and substance satisfactory to Lessor.

14.1.2 The Insurances shall be effected through such brokers and with such insurers, and shall be subject to such deductibles and subject to such exclusions, as may (in each case) be approved by Lessor (such approval not to be unreasonably withheld, delayed or withdrawn).

14.1.3 The Insurances shall be effected either:

- (a) on a direct basis with insurers of recognised standing who normally participate in aviation insurances in the leading international insurance markets and led by reputable underwriter(s); or
- (b) with a single insurer or group of insurers approved by Lessor who does not fully retain the risk but effects substantial reinsurance with reinsurers in the leading international insurance markets and through brokers each of recognised standing for a percentage acceptable to Lessor of all risks insured.

14.2 Requirements

Lessor's current requirements as to the Insurances are as specified in this Clause 14 (*Insurance*) and in Schedule 4 (*Insurance Requirements*). Lessor may from time to time (after consulting Lessee) stipulate other requirements for the Insurances so that:

- (a) the scope and level of cover are maintained in line with best industry practice; and

- (b) the interests of Lessor and the other Indemnitees continue to be fully protected,

provided however, that any such additional requirements stipulated in accordance with this Clause 14.2 must be available to Lessee on a commercially reasonable basis in the then-prevailing aviation insurance market.

14.3 **Change**

If Lessor wishes to revoke its approval of any insurer, reinsurer, insurance or reinsurance, Lessor and/or its brokers shall consult with Lessee and Lessee's insurers or, if applicable, brokers, as to whether approval should be revoked to protect the interests of the parties insured. If after this Lessor considers that any change should be made, Lessee shall promptly arrange commercially reasonable alternative cover satisfactory to Lessor and available in the then-prevailing aviation insurance market.

14.4 **Insurance Covenants**

Lessee shall:

- (a) ensure that all legal requirements as to insurance of the Aircraft which may from time to time be imposed by the Laws of the State of Registration or any state to, from or over which the Aircraft may be flown, in so far as they affect or concern the operation of the Aircraft, are complied with, and in particular those requirements compliance with which is necessary to ensure that:
 - (i) the Insurances remain valid and in full force and effect; and
 - (ii) the interests of the Indemnitees in the Insurances and the Aircraft are not prejudiced;
- (b) comply with the terms and conditions of each policy of the Insurances and not do, consent or agree to any act or omission which:
 - (i) invalidates or may invalidate the Insurances; or
 - (ii) renders or may render void or voidable the whole or any part of any of the Insurances; or
 - (iii) brings any particular insured liability which would have otherwise have been covered by the Insurances within the scope of an exclusion or exception to the Insurances;
- (c) not without the prior written approval of Lessor (not to be unreasonably withheld) take out any insurance or procure any reinsurance in respect of the Aircraft other than those required under this Agreement unless relating solely to liability insurances, hull total loss, business interruption, profit commission and deductible risk;
- (d) on request, provide to Lessor copies of certificates in respect of the Insurances;
- (e) not make any modification or alteration to the Insurances which is adverse to the interests of any of the Indemnitees;
- (f) be responsible for any deductible under the Insurances; and

- (g) provide any other information and assistance in respect of the Insurances which Lessor may from time to time reasonably require.

14.5 **Renewal of Insurances**

Lessee shall commence renewal procedures prior to expiry of any of the Insurances, and provide to Lessor:

- (a) written confirmation of completion of renewal prior to each expiry date; and
- (b) certificates of insurance (and where appropriate certificates of reinsurance), and brokers' letter(s) of undertaking in a form acceptable to Lessor in English, detailing the coverage and confirming the insurers' (and any reinsurers') agreement to the specified insurance requirements of this Agreement within ten (10) days after each renewal date (and, in the case of the reinsurance certificate and reinsurance brokers' letter of undertaking, within fourteen (14) days after each renewal date).

14.6 **Failure to Insure**

If Lessee fails to maintain the Insurances in compliance with this Agreement, Lessee shall:

- (a) immediately ground the Aircraft and keep it grounded until the Insurances are again in full force and effect; and
- (b) immediately notify Lessor of the non-compliance of the Insurances and provide Lessor with full details of any steps which Lessee is taking or proposes to take, in order to remedy such non-compliance,

and each of the Indemnitees will be entitled but not bound (without prejudice to any other rights of Lessor under this Agreement) to pay the premiums due or to effect and maintain insurances satisfactory to Lessor or otherwise remedy Lessee's failure in such manner (including, without limitation to effect and maintain an "owner's interest" policy) as Lessor considers appropriate. Any sums so expended by Lessor or an Indemnitee to ensure the minimum insurance requirements set forth in Schedule 4 (*Insurance Requirements*) are met will become immediately due and payable by Lessee to Lessor or such Indemnitee, as the case may be, together with interest thereon at the Default Rate, from the date of expenditure by Lessor or the relevant Indemnitee up to the date of reimbursement by Lessee.

14.7 **Continuing Insurance for Indemnity**

Lessor may require Lessee to effect and to maintain or to procure that there be maintained (at no cost to Lessor) insurance (to the extent of the risks covered by the policies) during the period commencing on the Expiry Date with respect to its liability under the indemnities in Clause 12 (*Indemnities*) and ending upon completion of the 4,000-Hour check on the Aircraft after the Expiry Date or two (2) years after the Expiry Date, whichever is the earlier to occur (such period, the "**Insurance Period**"), which provides for each Indemnitee to be named as additional insured under Lessee's Aviation and Airline General Third Party Liability Insurance. This obligation of Lessee shall not be affected by any sale of the Aircraft, Lessee ceasing to be lessee of the Aircraft and/or any of the Indemnitees ceasing to have any interest in respect of the Aircraft.

14.8 Application of Insurance Proceeds

As between Lessor and Lessee:

- (a) subject to Clause 15.4 (*Total Loss of Engine(s)*) all insurance payments received as the result of a Total Loss occurring during the Lease Period will be paid to Lessor (or Security Trustee as Lessor's designee, as the case may be) and applied in satisfaction of payment of the Termination Amount;
- (b) all insurance proceeds of any damage or loss to the Aircraft occurring during the Lease Period not constituting a Total Loss and in excess of the Damage Notification Threshold will be paid in accordance with AVN67B (or any replacement thereof);
- (c) all insurance proceeds in respect of third party liability will, except to the extent paid to Lessee in reimbursement of any payment so made, be paid directly by the insurers to the relevant third party in satisfaction of the relevant liability; and
- (d) notwithstanding Clause 14.8(b) or 14.8(c), if at the time of the payment of any such insurance proceeds an Event of Default has occurred and is continuing, all such proceeds will be paid to or retained by Lessor (or Security Trustee as Lessor's designee, as the case may be) to be applied toward payment of any amounts which may be or become payable by Lessee in such order as Lessor sees fit or as Lessor may elect.

14.9 Lessee's Additional Insurance

Lessee at its option and at its sole expense, may obtain additional insurance with respect to the Aircraft; provided, that no such insurance shall have the effect of suspending, impairing, defeating, invalidating or rendering unenforceable or reducing, in whole or in part, the coverage of or the proceeds payable under the Insurances. Lessor shall have no right to any proceeds of any insurance policies maintained by Lessee beyond that required by this Clause 14 (*Insurance*).

14.10 Assignment

If any Indemnitee transfers or assigns any of its rights and/or obligations under and in accordance with an Operative Document Lessee will, upon request, promptly procure that the transferee or assignee shall be added as a further additional insured to the Insurances so as to enjoy the same rights and protection as such Indemnitee is entitled to under the Insurances.

15 LOSS, DAMAGE AND REQUISITION

15.1 Total Loss prior to Delivery

- 15.1.1 If a Total Loss or a Loss of the Airframe occurs prior to Delivery, this Agreement shall immediately terminate, and except as expressly stated in this Agreement neither party will have any further obligation or liability under this Agreement.
- 15.1.2 Upon termination of this Agreement pursuant to Clause 15.1.1, Lessor shall promptly return, without any interest, the Security Deposit (to the extent received from Lessee) to Lessee.

15.2 Total Loss after Delivery

15.2.1 If a Total Loss occurs after Delivery, Lessee shall pay or cause to be paid the Termination Amount to Lessor (or Security Trustee as Lessor's designee, as the case may be) on or prior to the earlier of:

- (a) ninety (90) days after the Total Loss Date; and
- (b) the date of receipt of insurance proceeds in respect of that Total Loss.

15.2.2 Subject to the rights of any insurers and reinsurers or other third parties, upon irrevocable payment in full to Lessor (or Security Trustee as Lessor's designee, as the case may be) of the Termination Amount, Lessor shall procure that Lessor transfers to Lessee all of Lessor's residual rights to the Aircraft, and any Engines, Propellers and Parts not installed when the Total Loss occurred, on an as-is where-is basis and without recourse or warranty (save as to freedom from Lessor Liens), and Lessor shall procure that Lessor executes and delivers such bills of sale and other instruments as Lessee may reasonably request to evidence such transfer, free and clear of all rights of the Indemnitees and Lessor Liens. Lessee shall indemnify the Indemnitees for all fees, expenses and Tax incurred by any Indemnitee in connection with any such transfer.

15.2.3 If a Total Loss occurs during the Lease Period, Rent shall continue to be payable in respect of the period after the Total Loss Date until Lessor (or Security Trustee as Lessor's designee, as the case may be) has received payment of the Termination Amount under Clause 15.2.1 whereupon the leasing of the Aircraft shall immediately terminate, but without prejudice to the continuing obligations of Lessee under this Agreement.

15.2.4 Any balance remaining of Total Loss Proceeds remaining after the application of Total Loss Proceeds to payment of the Termination Amount shall be paid to Lessee.

15.3 Loss of Airframe

15.3.1 If at any time after Delivery there shall be sustained the actual total loss of the Airframe or the Airframe is destroyed, damaged beyond repair or permanently rendered unfit for normal use for any reason whatsoever ("**Loss of the Airframe**"), and provided that such Loss of the Airframe does not constitute a Total Loss for the purposes of insurance in respect of the Aircraft, Rent shall continue to be payable in respect of the period after the date on which the Loss of the Airframe occurs until Lessor (or Security Trustee as Lessor's designee, as the case may be) has received payment of the Termination Amount pursuant to Clause 15.3.2 whereupon the leasing of the Aircraft under this Agreement shall immediately terminate, but without prejudice to the continuing obligations of Lessee under this Agreement.

15.3.2 In the event of Loss of the Airframe, Lessee shall pay or cause to be paid the Termination Amount to Lessor (or Security Trustee as Lessor's designee, as the case may be) on or prior to the earlier of:

- (a) ninety (90) days after the date on which the Loss of the Airframe occurs; and
- (b) the date of receipt of insurance proceeds in respect of the Loss of the Airframe.

15.3.3 Subject to the rights of any insurers and reinsurers or other third parties, upon irrevocable payment in full to Lessor (or Security Trustee as Lessor's designee, as

the case may be) of the Termination Amount pursuant to Clause 15.3.2, Lessor shall transfer to Lessee all of Lessor's residual rights to the Airframe, title to any Engines, Propellers and Parts on an "*as-is, where-is*" basis and without recourse or warranty (save as to freedom from Lessor Liens), and Lessor shall execute and deliver such bills of sale and other instruments as Lessee may reasonably request to evidence such transfer, free and clear of all rights of the Indemnitees and Lessor Liens. Lessee shall indemnify the Indemnitees for all fees, expenses and Tax incurred by any Indemnatee in connection with any such transfer, if any.

15.4 Total Loss of Engine(s)

15.4.1 Upon a Total Loss of any Engine not installed on the Aircraft, or a Total Loss of an Engine installed on the Airframe not involving a Total Loss of the Airframe (in either case, a "**Destroyed Engine**"), Lessee shall give Lessor prompt written notice thereof and Lessee shall replace the Destroyed Engine as soon as reasonably possible by procuring that Lessor acquires, at Lessee's expense, title to a replacement engine complying with the requirements of this Clause 15.4.1. The replacement engine shall have a value and utility at least equal to, and be in as good operating condition as, the Destroyed Engine with respect to which such Total Loss shall have occurred, based on but not limited to (i) Cycles accumulated on each Engine Life Limited Part, (ii) Hours accumulated since new (and accumulated since completion of the most recent heavy maintenance shop visit that completed a workscope at least equivalent to that of an engine performance restoration if an engine performance restoration had previously been accomplished on the Engine that suffered such Total Loss), and (iii) Hours and Cycles accumulated since new (and accumulated since the most recent restoration or refurbishment of each engine module with respect to any module for which a restoration or refurbishment had previously been accomplished on the Engine that suffered such Total Loss), assuming such Engine was of the value and utility and in the condition and repair as required by the terms hereof immediately prior to the occurrence of such Total Loss. Such replacement engine shall (upon acquisition by Lessor) be an Engine as defined herein.

15.4.2 Lessee agrees to take such action as Lessor may reasonably request to ensure that any such replacement engine becomes Lessor's property and is leased on the same terms as the Destroyed Engine. Lessee's obligation to pay Rent shall continue in full force and effect and Lessor shall pay to Lessee an amount equal to the Total Loss Proceeds received by Lessor with respect to the Destroyed Engine, less any expenses, taxes or duties incurred in connection with the collection thereof, and, subject to Lessor's right to deduct any amounts then due and payable by Lessee under the Operative Documents within three (3) Business Days of the date of receipt of insurance proceeds in respect of such Total Loss of an Engine.

15.4.3 Immediately upon such substitution and without further act title to the replaced engine shall vest in Lessee, in an "*AS-IS, WHERE-IS*" condition, with a warranty by Lessor that such engine is free and clear of all rights of Lessor and Lessor Liens (but without any other recourse or warranty whatsoever) and shall no longer be deemed an Engine hereunder.

15.5 Requisition

15.5.1 During any hi-jacking, theft, disappearance, confiscation, seizure or requisition for use or hire of the Aircraft, any Engine, any Propeller or any Part which does not constitute a Total Loss (each a "**Loss of Possession**"):

- (a) the Rent and other charges payable under this Agreement will not be suspended or abated either in whole or in part, and Lessee will not be released from any of its other obligations (other than operational obligations

with which Lessee is unable to comply solely by virtue of the Loss of Possession, which obligations shall be automatically suspended whilst the Loss of Possession is continuing);

- (b) so long as no Event of Default has occurred and is continuing, Lessee will be entitled to any hire or other compensation paid by the requisitioning or other relevant authority for the Loss of Possession in respect of the Lease Period;
- (c) Lessee will, as soon as practicable after the end of any Loss of Possession, cause the Aircraft to be put into the condition required by this Agreement; and
- (d) Lessor will be entitled to receive all compensation payable by the requisitioning authority in respect of any change in the structure, state or condition of the Aircraft arising during the period of requisition, and Lessor will apply such compensation in reimbursing Lessee for the cost of complying with its obligations under this Agreement in respect of any such change, but, if any Event of Default has occurred and is continuing, Lessor may apply the compensation or hire in or towards settlement of any amounts owing by Lessee under this Agreement and/or under any other Operative Document.

15.5.2 If the Aircraft is subject to a Loss of Possession on the Scheduled Expiry Date the redelivery of the Aircraft shall be postponed until the Aircraft is no longer subject to such Loss of Possession or up to the date that such Loss of Possession would be considered a Total Loss, as the case may be. The Lease Period shall (subject to Clause 4.4.2) be extended to the date of such redelivery or Total Loss Date, as applicable.

16 PURCHASE OPTION

16.1 Early Purchase Option Election

At any time during the Lease Period Lessee shall be entitled on giving Lessor not less than one (1) month's prior written notice to purchase the Aircraft from Lessor on a Rent Date during the Lease Period (or if such day is not a Business Day, the preceding Business Day) at the Purchase Option Price, and such notice, once given, shall be irrevocable.

16.2 Purchase

Lessee shall pay the Purchase Option Price above on or before the Sale Date and Lessee shall thereupon take title to the Aircraft in accordance with the provisions of Clause 16.3 (*Transfer*).

16.3 Transfer

Upon receipt by Lessor of the Purchase Option Price in full and provided Lessor and any Indemnitee has received all other amounts then due and payable by Lessee to Lessor and any Indemnitee under the Operative Documents, Lessor shall procure the transfer to Lessee all of Lessor's right, title and interest in and to the Aircraft and such transfer shall be:

- (a) on as "*as-is, where-is*" basis, and no express or implied condition, warranty or representation of any kind shall be made or given by Lessor or any of its officers, employees or agents in relation to the airworthiness, condition, design, merchantability, fitness for use or operation of, or (subject to Clause 16.3(c)) otherwise in relation to, the Aircraft, and all express and

implied conditions, warranties and representations (or obligations or liability, in contract or in tort) in relation to any such matters, expressed or implied, statutory or otherwise, shall be expressly excluded. Lessor and Lessee shall co-operate to ensure that the transfer of title occurs, to the extent practicable, in a jurisdiction where such transfer of title will not attract stamp, documentary, value added, turnover, transfer, consumption and sales or similar Taxes and all other Taxes referred to in Clause 16.3(b);

- (b) on terms that all costs and expenses (including all stamp, documentary, value added, turnover, transfer, consumption and sales or similar Taxes and all other Taxes) relating to the sale and/or purchase of the Aircraft and/or to the transfer of title of the Aircraft to Lessee or execution and delivery of any bill of sale or other instrument, agreement or document shall be borne by Lessee; and
- (c) without recourse or warranty (except that Lessor shall warrant that it shall transfer such title to the Aircraft as it has and that the Aircraft is free of Lessor Liens).

16.4 **Bill of Sale**

Lessor shall, at Lessee's expense, upon purchase of the Aircraft by Lessee (or Lessee's nominee) execute and deliver to Lessee (or Lessee's nominee) a bill of sale to evidence the transfer of title to the Aircraft from Lessor to Lessee (or Lessee's nominee).

17 **REDELIVERY**

17.1 **Redelivery**

17.1.1 On the Expiry Date and if Lessee has not purchased the Aircraft in accordance with Clause 16 (*Purchase Option*) and unless a Total Loss or a Loss of the Airframe has occurred, Lessee shall redeliver the Aircraft and Aircraft Documents at Lessee's expense to Lessor at the Redelivery Location, in accordance with the procedures and in compliance with the Return Conditions, free and clear of all Security Interests (other than Lessor Liens) and in a condition qualifying for immediate certification of airworthiness under the FAA or as otherwise agreed by Lessor and Lessee. If requested by Lessor, Lessee at Lessee's cost shall thereupon cause (or assist Lessor in causing) the Aircraft to be deregistered by the Aviation Authority.

17.1.2 If Lessor and Lessee, acting in good faith and having consulted for a minimum period of fourteen (14) days, cannot agree that the Aircraft is in compliance with the Return Conditions, either party may elect an independent technical adjudicator to confirm whether Lessee or Lessor is correct in its opinion and during such adjudication period no Rent shall be payable, but if such adjudicator confirms that Lessor's opinion is correct, Lessee shall pay Rent retrospectively for the period of adjudication.

17.2 **Final Inspection**

17.2.1 Immediately prior to redelivery of the Aircraft, Lessee shall make the Aircraft available to Lessor for inspection ("**Final Inspection**") in order to verify that the condition of the Aircraft complies with this Agreement. The Final Inspection shall be of such reasonable duration as will permit Lessor to:

- (a) inspect the Aircraft Documents;
- (b) inspect the Aircraft;

- (c) inspect the Engines and Propellers, including without limitation:
 - (i) a borescope inspection of the Engines; and
 - (ii) full maximum power assurance engine runs; and
- (d) observe a two-hour demonstration flight in accordance with Manufacturer's standard flight operation check flight procedures (with up to three (3) Lessor representatives as on-board observers).

17.2.2 Lessee shall remove the Aircraft from scheduled service and open the areas of the Aircraft as required to perform the Final Inspection. During such checks Lessor's personnel may make reasonable requests that adjacent additional panels or areas be opened in order to allow further inspection or correct any discrepancies from the condition required by the provisions of this Agreement which are observed during such inspection and are communicated in writing by Lessor to Lessee.

17.2.3 Lessor shall use reasonable endeavours to carry out during any 4,000-Hour check which occurs during the last month of the Lease Period, such of the checks referred to in this Clause 17.2 (*Final Inspection*) as may properly be carried out during a 4,000-Hour check. If, after making any such check, the Aircraft, any Engine, any Propeller or any Part suffers a failure or a major incident, Lessor will be entitled to re-perform any check the prior result of which, in Lessor's reasonable opinion, might be inaccurate or misleading as a consequence of such failure or major incident.

17.3 **Operational Ground Check**

Promptly after completion of any corrections required under Clause 17.2 (*Final Inspection*), Lessee shall conduct an operations ground check in accordance with Lessee's maintenance manual criteria for the purpose of demonstrating to Lessor the satisfactory operation of the systems that are normally ground checked by Lessee, including a full fuel tank leak stand test, hydraulic internal leak check and pilot and static systems check. Lessee shall promptly correct any discrepancies required to be corrected in order to comply with the maintenance manual criteria or the provisions of this Agreement.

17.4 **Non-Compliance**

To the extent that, at the time of Final Inspection, the condition of the Aircraft does not comply with this Agreement, Lessee shall at Lessor's option (exercised reasonably):

- (a) promptly rectify the non-compliance and if rectification has not been effected by the Expiry Date, the Lease Period will be automatically extended (on the basis of payment of Rent as stated in Clause 4.4 (*Expiry Date*)) until the non-compliance has been rectified (all rectification to be carried out in accordance with and to the standard required by the relevant manufacturer's reference manual or otherwise to Lessor's reasonable satisfaction) and during such extension Lessee shall not use the Aircraft in flight operations except those related directly to the re-delivery of the Aircraft to Lessor; or
- (b) redeliver the Aircraft to Lessor and indemnify Lessor, with cash security (as specified by Lessor) for that indemnity to be given to Lessor, against the cost of putting the Aircraft into the condition required by this Agreement.

17.5 Export Documents

On redelivery Lessee shall provide Lessor with all documents necessary to export the Aircraft from the Habitual Base (including, if required, a valid and subsisting export certificate of airworthiness for the Aircraft) unless, with Lessee having complied with its redelivery obligations under this Agreement, such an export certificate of airworthiness is only obtainable after modification of the Aircraft, in which event such modification will be outside the terms of this Agreement) and to obtain deregistration of the Aircraft from the Aviation Authority.

17.6 Acknowledgement

Once Lessee has complied with its obligations under this Agreement, following redelivery of the Aircraft at the Redelivery Location, Lessor shall give Lessee an acknowledgement stating that Lessee has redelivered the Aircraft in accordance with this Agreement.

17.7 Maintenance Programme

17.7.1 Prior to the Expiry Date and at Lessor's request, Lessee shall provide Lessor or its agent reasonable access to the Maintenance Programme and one copy of the Aircraft Documents updated and maintained by Lessee up to the date of redelivery in order to facilitate the Aircraft's integration into any subsequent operator's fleet.

17.7.2 Upon redelivery Lessee, if requested by Lessor, shall deliver to Lessor a certified true current and complete copy of the Maintenance Programme. Lessor shall not disclose the contents of the Maintenance Programme to any Person or entity except to the extent necessary to monitor Lessee's compliance with this Agreement and/or to bridge the maintenance programme for the Aircraft from the Maintenance Programme to another programme after the Expiry Date. Any copy of the Maintenance Programme delivered hereunder shall be destroyed or returned as soon as practicable, but in any event no later than 60 days following Lessor's receipt thereof.

17.7.3 All no-charge vendor and manufacturer's service bulletin kits ordered and received by Lessee for the Aircraft but not installed shall be returned as cargo in the Aircraft at the time of return.

17.8 Warranties and intellectual property rights

17.8.1 On the Redelivery Date all rights under any warranties referred to in Clause 7.9.1 shall immediately revert to Lessor, including any relevant claims, and Lessee shall take all steps and shall sign all documents that Lessor may reasonably require to effect such reversion.

17.8.2 If any other warranties in respect of the Aircraft are available under any Aircraft Warranty Agreement (other than those referred to in Clause 7.9.1), then Lessee shall, on the Redelivery Date assign to Lessor, without cost, any rights and benefits that Lessee may have under any such Aircraft Warranty Agreement if such warranty may be assigned or otherwise made available in accordance with the terms of the relevant Aircraft Warranty Agreement.

17.8.3 Lessee shall pay or assign to Lessor (as applicable), without cost, any claims made by Lessee, or cash paid or credit made to Lessee in respect of a warranty claim (made under any Aircraft Warranty Agreement) with the value of any such payment or credit being split on the basis of Lessor's and Lessee's relevant interests, in each case acting reasonably and in good faith.

17.9 **Parking**

Following redelivery (if any), Lessor shall have the option to request in writing that Lessee provides Lessor, at Lessor's expense, with three (3) months outside storage (with Lessee conducting all Manufacturer recommended short term outside storage protection) of the Aircraft at the Redelivery Location with no obligation on Lessee to do so. Thereafter, if Lessor so requests in writing (acting reasonably), and Lessee agrees to such request, Lessee, at Lessor's expense, shall use its reasonable endeavours to provide up to an additional three (3) months outside parking at the Redelivery Location. The costs of insuring the Aircraft during this six (6) month period shall be for the sole account of Lessor.

18 **EVENTS OF DEFAULT**

18.1 **Events**

Each of the following events will constitute an Event of Default and a repudiation of this Agreement by Lessee:

- (a) **Non-payment:** Lessee fails to pay any sum due from it under any Operative Document within three (3) Business Days of the due date therefore in the case of scheduled payments, and seven (7) Business Days in respect of other payments (and so that, for this purpose, sums payable on demand (and validly demanded) shall be treated as having been paid on the due date if paid within seven (7) Business Days of demand);
- (b) **Insurance:** Lessee fails to comply with any provision of Clause 14 (*Insurance*) or Schedule 4 (*Insurance Requirements*), or any insurance required to be maintained under this Agreement is cancelled or terminated and not replaced with fully effective replacement insurance complying with Clause 14 (*Insurance*) and Schedule 4 (*Insurance Requirements*) prior to such cancellation or termination;
- (c) **Breach:** Lessee fails to comply with any other provision of an Operative Document or any Other Operative Document and Lessor considers (acting reasonably) that this will have a material adverse effect on the interest of Lessor in the Aircraft, or any Operative Document or any Other Operative Document or the ability of Lessee to perform its obligations under any Operative Document or any Other Operative Document, and if such failure is capable of remedy, the failure continues for thirty (30) days after notice of such failure in writing from Lessor to Lessee;
- (d) **Representation:** any representation or warranty made by Lessee in or pursuant to this Agreement or any other Operative Document to which it is a party is or proves to have been untrue or incorrect in any material respect when made or deemed to be repeated and the same, in the reasonable opinion of Lessor, has or is likely to have a material adverse effect on the rights and interests of Lessor in the Aircraft, or under any Operative Document or the ability of Lessee to perform its obligations under any Operative Document to which it is a party and, if it is possible to remedy the circumstances which causes such representation or warranty to be false or incorrect, the same has not been remedied to the reasonable satisfaction of Lessor within thirty (30) days of a written notice from Lessor to Lessee requiring such remedy;
- (e) **Cross-Default:**

- (i) an Event of Default (as defined in any Other Lease Agreement) occurs pursuant to such Other Lease Agreement; or
 - (ii) any event of default or termination event based on default, however it is described, occurs and is acted upon (by way of a termination or an acceleration) under any other agreement or instrument constituting a debt for borrowed money in favour of a third party other than the Lessor or any affiliate thereof to which Lessee is a party, provided that such event of default or termination event based on default arises out of Lessee's failure to pay any sums due thereunder in excess of US\$250,000.
- (f) **Approvals:** any consent, authorisation, licence, certificate or approval of or registration with or declaration to any Government Entity in connection with any Operative Document, including:
- (i) any such authorisation required by Lessee to authorise, or in connection with, the execution, delivery, validity, enforceability, admissibility in evidence of or the performance by Lessee of its obligations under any Operative Document;
 - (ii) the Aircraft's certificate of airworthiness; or
 - (iii) any operating licence or air transport licence required by Lessee is modified or is withheld, or any such operating licence or air transport licence is revoked, suspended, cancelled, withdrawn, terminated or not renewed, or otherwise ceases to be in full force (excluding a suspension of the Aircraft's certificate of airworthiness during any period when the Aviation Authority shall have withdrawn or suspended such certificates in respect of all aircraft of the same type and model as the Aircraft which are registered in the State of Registration and provided that Lessee promptly complies with all recommendations and directions of the Aviation Authority in order to effect restoration of such certificate of airworthiness), and as a result:
 - (A) the ability of Lessee to comply with its obligations under the Operative Documents; or
 - (B) the rights of Lessor including the ability of Lessor to enforce its rights under the Operative Documents or the rights of Lessor in the Aircraft,are or will be materially adversely affected;
- (g) **Insolvency:** Lessee is or becomes Insolvent;
- (h) **Security:** any Security Interest over any asset of Lessee is enforced by the beneficiary of such Security Interest;
- (i) **Registration:** the registration of the Aircraft with the Aviation Authority is cancelled without the prior consent of Lessor;
- (j) **Disposal:** Lessee disposes of, conveys or transfers or threatens to dispose of, convey or transfer all or a material part of its assets (other than a disposal or transfer in the ordinary course of business for full commercial value or for the purpose of a consolidation or merger which has received Lessor's prior

written approval) and such disposal, conveyance or transfer has or is likely to have a material adverse effect on Lessee's ability to perform its obligations under this Agreement and/or any other Operative Documents or Lessee (otherwise than for the purpose of a consolidation or merger which has received Lessor's prior written approval) liquidates or dissolves or consolidates or merges with any other entity (whether by one or a series of transactions, related or not) or enters or becomes subject to or takes any steps towards any other Corporate Reorganisation and such liquidation, dissolution, consolidation or merger has or is likely to have, in Lessor's reasonable opinion, a material adverse effect on Lessee's ability to perform its obligations under this Agreement and/or any other Operative Documents;

- (k) **Cessation of Business:** Lessee ceases or threatens to cease to carry on its business as a commercial air carrier;
- (l) **Rights and Remedies:** Lessee or any other Person claiming by or through Lessee challenges the existence, validity, enforceability or priority of the rights of Lessor as Lessor in respect of the Aircraft;
- (m) **Redelivery:** subject to Clause 17.1.2 and provided Lessee has not exercised its purchase option in accordance with Clause 16 (*Purchase Option*), Lessee fails to return the Aircraft to Lessor on the Expiry Date in accordance with the redelivery conditions in Clause 17 (*Redelivery*);
- (n) **Charges or Duties:** the FAA, any air traffic control authority and/or any airport authority with jurisdiction over any aircraft operated by Lessee (or any authority on its behalf) or any other authority notifies Lessor in writing that there are navigation, landing, airport or similar charges invoiced, due and unpaid from Lessee, and such charges remain outstanding for a period of thirty (30) days from the date of such notice; provided that:
 - (i) no Event of Default shall arise under this Clause 18.1(n) for so long as such charges are being contested in good faith and by appropriate proceedings, an adequate bond has been provided and such proceedings do not involve any danger of the detention, interference with use or operation or sale, forfeiture or loss of the Aircraft; and
 - (ii) such thirty (30) day period shall not apply if Lessor has evidence that there is an imminent risk of interference with the use or operation or sale, forfeiture or loss of the Aircraft; or
- (o) **Litigation:** a final judgment of a court or tribunal for the payment of money in excess of US\$500,000 and not covered by a valid insurance claim shall be rendered against Lessee and the same shall remain undischarged for a period of ninety (90) days; or
- (p) Lessee rejects or repudiates its obligations under this Agreement.

18.2 Lessor's Rights on Default

- 18.2.1 If an Event of Default occurs, Lessor may at its option (and without prejudice to any of its other rights under this Agreement), at any time thereafter (and provided that at such time as Lessor first begins to exercise any such rights an Event of Default is continuing):

- (a) accept such repudiation and by notice to Lessee and with immediate effect terminate the leasing of the Aircraft (but without prejudice to the continuing obligations of Lessee under this Agreement), whereupon all rights of Lessee under this Agreement shall cease; and/or
- (b) proceed by appropriate court action or actions to enforce performance of this Agreement or to recover damages for the breach of this Agreement; and/or
- (c) either:
 - (i) take possession of the Aircraft and/or Aircraft Documents, for which purpose Lessor may enter any premises belonging to or in the occupation of or under the control of Lessee where Lessor reasonably believes the Aircraft and/or Aircraft Documents may be located, or cause the Aircraft and/or Aircraft Documents to be redelivered to Lessor at the Redelivery Location (or such other location as Lessor may require); Lessor shall not be liable or responsible, in any manner, for any inadvertent damage to any of Lessee's property in repossessing and holding the Aircraft and Aircraft Documents except for that directly and solely caused by Lessor's gross negligence or wilful misconduct; or
 - (ii) by serving notice, require Lessee to redeliver the Aircraft to Lessor at the Redelivery Location (or such other location as Lessor may require); and/or
- (d) Lessor shall not be liable, in conversion or otherwise, for the taking of any personal property of Lessee which is in or attached to any of the Aircraft and/or Aircraft Documents; provided, however, that Lessor shall return to Lessee all personal property of Lessee and other Persons, including its employees or its passengers, which was on the Aircraft at the time Lessor repossessed the Aircraft; and/or
- (e) exercise any of the rights, and avail itself of any of the remedies, provided by Article 2A (Uniform Commercial Code—Leases) and, to the extent applicable, Article 9 (Uniform Commercial Code—Secured Transactions) of the New York Uniform Commercial Code; and/or
- (f) no remedy referred to in this Article 18.2 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor; and the exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all of such other remedies. No express or implied waiver by Lessor of any Default or Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default.

18.3 **Default Payments**

18.3.1 If an Event of Default occurs and/or Lessor terminates the leasing of the Aircraft pursuant to Clause 18.2 (*Lessor's Rights on Default*), Lessee shall indemnify Lessor on demand against any Loss which Lessor may sustain or incur directly or indirectly as a result, including:

- (a) any Loss (including loss of profit) suffered by Lessor because of Lessor's inability to place the Aircraft on lease with another lessee on terms as

- favourable to Lessor as this Agreement or because whatever use, if any, to which Lessor is able to put the Aircraft upon its return to Lessor, or the funds arising upon a sale or other disposal of the Aircraft, is not as profitable to Lessor as this Agreement;
- (b) interest at the Default Rate for the period from any payment date required by Lessor to the date that Lessor actually receives the relevant payment from Lessee;
 - (c) any amount of interest, fees or other sums whatsoever paid or payable on account of funds borrowed in order to carry any unpaid amount;
 - (d) any Loss incurred in repaying funds raised to finance the Aircraft or in unwinding any swap, forward interest rate agreement or other financial instrument relating in whole or in part to Lessor's financing of the Aircraft (provided that Lessor shall provide to Lessee evidence of such Loss satisfactory to Lessee (acting reasonably));
 - (e) any Loss sustained or incurred by Lessor in or as a result of exercising, enforcing and/or preserving any of its rights or remedies pursuant to Clause 18.2 (*Lessor's Rights on Default*) or any other provision of the Operative Documents or as a result of Lessee's failure to redeliver the Aircraft on the date, at the place and in the condition required by this Agreement;
 - (f) any Loss sustained or incurred by Lessor in insuring, parking and protecting the Aircraft; and
 - (g) any Loss sustained or incurred by Lessor in putting the Aircraft into the condition required by Clause 17 (*Redelivery*).
- 18.3.2 In respect of its obligations under Clause 18.3.1 Lessee shall, on Lessor's first written demand pay (absolutely and unconditionally), to Lessor the Default Termination Amount.
- 18.3.3 Provided that Lessor is satisfied that the amount of the Default Termination Amount retained by Lessor is at all times not less than the total of the Loss assessed under Clause 18.3.1 at any time, to the extent that during the period from the termination of the leasing of the Aircraft under Clause 18.2 (*Lessor's Rights on Default*) until the scheduled end of the Lease Period, Lessor irrevocably receives any payment of rent under a subsequent lease of the Aircraft, Lessor will pay to Lessee an amount equal thereto up to but never exceeding the Default Termination Amount received from Lessee, such payment to be made upon receipt by Lessor of each such rent payment amount.
- 18.3.4 When the full extent of the Loss assessed under Clause 18.3.1 has been ascertained by Lessor (the "**Ascertained Loss**") then any amount of the Default Termination Amount (if applicable reduced by payments under Clause 18.3.3) in excess of the Ascertained Loss shall be reimbursed to Lessee by Lessor.
- 18.3.5 If an Event of Default occurs and Lessor terminates the leasing of the Aircraft under Clause 18.2 (*Lessor's Rights on Default*), Lessor shall take all reasonable steps to mitigate its loss and Lessor may sell or re-lease or otherwise deal with the Aircraft at such time and in such manner and on such terms as Lessor as appropriate considers appropriate free and clear of any interest of Lessee, as if this Agreement had never been entered into.

18.3.6 If an Event of Default occurs and Lessor terminates the leasing of the Aircraft, Lessee will at the request of Lessor immediately take all steps necessary to effect (if applicable) deregistration of the Aircraft from the State of Registration and its export from the country where the Aircraft then is, and any other steps necessary to enable the Aircraft to be redelivered to Lessor in accordance with this Agreement and Lessee hereby irrevocably and by way of security for its obligations under this Agreement appoints (which appointment is coupled with an interest) Lessor as its attorney to execute and deliver any documentation and to do any act or thing required in connection with fulfilling this Clause 18 (*Events of Default*).

19 ILLEGALITY

19.1 Illegality

If it is or becomes unlawful in any jurisdiction for Lessor or Lessee to give effect to any of its obligations as contemplated by the Operative Documents or to continue this Agreement, Lessor and Lessee will consult in good faith as to any steps which may be taken to restructure the transaction to avoid such unlawfulness and use reasonable endeavours to effect such restructuring as may reasonably be implemented to avoid such unlawfulness. Each Party shall bear its own costs of any restructuring required pursuant to this Clause 19.1 (*Illegality*).

19.2 Mitigation and Termination

If restructuring as envisaged in Clause 19.1 (*Illegality*) cannot reasonably be implemented within thirty (30) days of the commencement of the consultation period referred to in Clause 19.1 (*Illegality*) or, if shorter, the period ending on the date on which such unlawfulness shall occur, Lessee shall redeliver the Aircraft to Lessor in accordance with Clause 17 (*Redelivery*) upon the occurrence of the unlawfulness or if later, within fifteen (15) days of the expiry of such thirty (30) day period and upon such redelivery, the leasing of the Aircraft under this Agreement shall terminate.

20 ASSIGNMENT AND TRANSFER

20.1 By Lessee

Lessee shall not assign, transfer (whether voluntarily or involuntarily, by operation of Law or otherwise) or create or permit to exist any Security Interest over, any of its rights under this Agreement or any other Operative Document.

20.2 By Lessor

20.2.1 Lessor shall be entitled to assign any of its rights or transfer any of its rights or obligations under this Agreement or any other Operative Document provided that any such assignment or transfer complies with the provisions of Clause 20.2 (*By Lessor*).

20.2.2 Assignments and transfers by Lessor as referred to in Clause 20.2.1 shall be subject to the due satisfaction of each of the following conditions, as appropriate:

(a) **Quiet Enjoyment:** as a condition precedent to such assignment or transfer becoming effective, Lessor will procure that:

(i) any assignee or transferee or any holder of a leasehold or Security Interest (as referred to in paragraph (a) of the definition of Lessor Lien) and any other Security Interest granted by Lessor in the Aircraft, as the case may be, shall execute and deliver to Lessee a

quiet enjoyment undertaking in respect of Lessee's use, enjoyment and possession of the Aircraft in a form substantially similar to Lessor's covenant in Clause 6.1 and such other supporting documentation as Lessee shall reasonably require in connection with the quiet enjoyment undertaking in the Lessee Notice and Acknowledgement; and

- (ii) any transferee of Lessor's obligations enters into a novation agreement on such terms as Lessee may reasonably require providing for such transferee to undertake in place of Lessor such obligations in favour of Lessee, together with such other documents in connection therewith as Lessee shall reasonably require;
- (b) **Costs:** responsibility for costs incurred in connection with any such assignment or transfer pursuant to Clause 20.2.1 shall be borne by Lessor or, in the case of an assignment or transfer pursuant to Clause 19.1 (*Illegality*), costs shall be borne as envisaged therein, and in the case of an assignment or transfer as a result, of an Event of Default costs they shall be borne by Lessee;
- (c) **No Additional Costs and Obligations:** if, at the time of such assignment or transfer and/or as a result of Lessor mortgaging, charging or otherwise dealing with title to the Aircraft, there arises an obligation (actual or contingent based on the prevailing circumstances known at the time of such transfer or mortgaging, charging or other dealing with title to the Aircraft by Lessor) of Lessee to make a payment to the assignee or transferee or any other person or to pay any Tax, in any case which exceeds the amount which Lessee would have been obliged to pay under this Agreement to Lessor or the appropriate governmental authority if no such assignment, transfer or mortgaging, charging or other dealing with title to the Aircraft by Lessor had taken place, then Lessee shall not be obliged to pay the amount of such excess;
- (d) **No breach of applicable Law:** Lessee is not put in breach of any applicable Law as a consequence of such assignment or transfer; and
- (e) **No competition:** the relevant assignment or transfer (as the case may be) is not to a competitor of Lessee.

21 MISCELLANEOUS PROVISIONS

21.1 Rights Cumulative, Waivers

The rights of each Person under this Agreement may be exercised as often as necessary, are cumulative and not exclusive of its rights under any applicable Law and may be waived or varied only in writing and specifically. Subject to any time limits expressed in this Agreement, delay by any Person in exercising, or non-exercise of, any such right will not constitute a waiver of that right. In exercising such rights, powers or discretions any such Person shall be subject to the applicable conditions and limitations in the exercise thereof as are set out in this Agreement. Unless otherwise expressly provided herein, the party requesting any waiver or amendment shall bear the other party's costs in relation thereto.

21.2 Delegation

Lessor may delegate to any Person all or any of its rights, powers or discretions vested in it by this Agreement, and any such delegation may be made upon such

terms and conditions and subject to such regulations (including power to sub-delegate) as Lessor in its absolute discretion thinks fit.

21.3 Lessor's Right to Remedy

If Lessee fails to comply with any provision of this Agreement, Lessor may, without being in any way obliged or responsible to do so and without prejudice to the ability of Lessor to treat such non-compliance as an Event of Default, effect compliance on behalf of Lessee, whereupon Lessee shall become liable to pay as Supplemental Rent on demand any sums expended by Lessor together with all costs and expenses (including legal costs) in connection therewith and Lessor shall notify Lessee in writing of its intention to effect such compliance.

21.4 Time of Essence

The time stipulated in this Agreement for all payments by Lessee to Lessor and for the prompt performance of Lessee's other obligations under this Agreement will be of the essence of this Agreement subject always to applicable grace and cure periods.

21.5 Entire Agreement

This Agreement and the other Operative Documents to which Lessee is a party are the sole and entire agreement between Lessor and Lessee in relation to the leasing of the Aircraft, and supersede all previous agreements in relation to that leasing.

21.6 Third Parties

No third parties, other than the Indemnitees and the affiliates of Lessor, are intended nor shall they be deemed to have a right to (i) benefit from or (ii) seek to enforce any of the provisions of this Agreement.

21.7 Counterparts

This Agreement may be executed in any number of counterparts each of which shall constitute one and the same document.

21.8 Language

All notices to be given under this Agreement will be in English. All documents delivered to Lessor pursuant to this Agreement will be in English or, if not in English, will be accompanied by a certified English translation. If there is any inconsistency between an English translation and the document of which it is a translation, the English translation will prevail.

21.9 Confidentiality

Lessee and Lessor shall, and shall procure that their respective officers, employees and agents shall, keep the content of the Operative Documents confidential and shall not, without the prior written consent of the other party(ies) thereto, disclose to any third party this Agreement or any of the terms of this Agreement or any Operative Document or any documents or materials supplied by or on behalf of either party in connection with this Agreement the structure of the transactions contemplated by this Agreement or any Operative Document, save that any such party shall be entitled to make such disclosure:

- (a) in connection with any proceedings arising out of or in connection with this Agreement to the extent that either party may consider necessary to protect its interests;
- (b) if required to do so by an order of a court of competent jurisdiction whether in pursuance of any procedure for discovering documents or otherwise or pursuant to any Law;
- (c) to its auditors or legal advisors or other professional advisers;
- (d) by Lessor to any Finance Party, to any prospective financier, proposed assignee or proposed transferee or by any party to an Operative Document to another party to an Operative Document;
- (e) if required to do so by any applicable Law or in order for such party to comply with its obligations under this Agreement or any other Operative Document; or
- (f) to the extent that any such document, terms or materials is, are or becomes part of the public domain otherwise than by a breach of this Clause 21 (*Miscellaneous Provisions*).

21.10 Variation

The provisions of this Agreement shall not be varied otherwise than by an instrument in writing executed by or on behalf of Lessor and Lessee.

21.11 Invalidity of any Provision

If any provision of this Agreement becomes invalid, illegal or unenforceable in any respect under any Law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

21.12 Chapter 11 Proceedings

Notwithstanding anything to the contrary in this Agreement, Lessor (i) acknowledges that Lessee is a debtor in *In re Peninsula Airways, Inc. d/b/a PenAir*, Case No. 17-00282 in the United States Bankruptcy Court for the District of Alaska (the "Case") and (ii) agrees that no provision hereof shall be interpreted or construed such that Lessee would be considered in breach or violation thereof solely as a result of the Case.

22 NOTICES

22.1.1 Any notice or other communication under or in connection with this Agreement will, unless otherwise stated, be given in writing by letter or e-mail in each case to the address or e-mail address set out below or to such other address or e-mail address as the recipient may have notified to the sender in writing. Any such notice shall be deemed effectively to be given as follows:

- (a) if by letter, on the tenth (10th) Business Day after posting;
- (b) if by way of e-mail, when transmitted and receipt delivery confirmation from the e-mail system is produced confirming that the message has been sent to the e-mail address of the recipient notified for the purpose of this Clause 22 (*Notices*).

22.1.2 The address, e-mail address and telephone numbers of Lessor and Lessee are as follows:

(a) Lessor: MG Alaska Leasing Limited
Address: 6th Floor
South Bank House
Barrow Street
Dublin 4
Ireland
Attention: Michael Mooney
E-mail: Michael.Mooney@montroseleasingireland.ie

With a copy to:

MG 2000 Leasing Limited
6th Floor, South Bank House
Barrow Street
Dublin 4
Ireland

Attention: Raymond Eyre
E-mail: raymond.eyre@montroseglobal.co.uk

And:

Address: Montrose Global LLP
1-2 Jacob's Well Mews
London W1U 3DT
England

Attention: Nick Brice
Telephone: +44 207 3171502
E-mail: nick.brice@montroseglobal.co.uk

(b) Lessee: Peninsula Airways, Inc.
Address: 6100 Boeing Avenue
Anchorage
Alaska 99502
United States of America
Attention: Scott Bloomquist, President
E-mail: Scott.Bloomquist@penair.com

23 GOVERNING LAW AND JURISDICTION

23.1 Governing Law

THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, U.S.A., APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE WITHOUT REGARD FOR CONFLICT OF LAW PRINCIPLES (OTHER THAN THE PROVISIONS OF SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

23.2 Jurisdiction

23.2.1 Lessor and Lessee each hereby irrevocably submits itself to the non-exclusive jurisdiction of the state courts in the State of New York and the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of the Operative Documents, the subject matter hereof or any of the transactions contemplated hereby brought by Lessor or Lessee.

23.2.2 TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSEE HEREBY WAIVES, AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENCE, OR OTHERWISE, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY OBJECTION WHICH LESSEE MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT BROUGHT IN THE STATE OF NEW YORK, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF THE ABOVE-NAMED COURTS, THAT ITS PROPERTY IS EXEMPT OR IMMUNE FROM EXECUTION, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS INCONVENIENT OR OTHERWISE IMPROPER, OR THAT ANY OF THE LESSEE DOCUMENTS OR THE SUBJECT MATTER THEREOF MAY NOT BE ENFORCED IN OR BY SUCH COURTS. FINAL JUDGMENT AGAINST LESSEE IN ANY SUCH SUIT AFTER ALL APPEALS BY LESSEE HAVE BEEN EXHAUSTED SHALL BE CONCLUSIVE, AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT, A CERTIFIED OR TRUE COPY OF WHICH SHALL BE CONCLUSIVE EVIDENCE OF THE FACT AND OF THE AMOUNT OF ANY INDEBTEDNESS OR LIABILITY OF LESSEE THEREIN DESCRIBED.

23.3 Service of Process

23.3.1 Lessee and Lessor each irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified airmail, postage prepaid, to Lessee or Lessor, as the case may be, at its address set forth in Clause 22.1.2. The foregoing, however, shall not limit the rights of Lessee or Lessor to serve process in any other manner permitted by Law or to bring any legal action or proceeding or to obtain execution of judgment in any jurisdiction.

23.4 Waiver of Immunity

Lessee irrevocably and unconditionally:

- (a) agrees that if Lessor brings legal proceedings against it or its assets in relation to this Agreement no immunity from such legal proceedings (which will be deemed to include without limitation, suit, attachment prior to judgment, other attachment, the obtaining of judgment, execution or other enforcement) will be claimed by or on behalf of itself or with respect to its assets;
- (b) waives any such right of immunity which it or its assets now has or may in the future acquire; and
- (c) consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.

23.5 **Waiver of Jury Trial**

LESSEE AND LESSOR HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING TO WHICH THEY ARE BOTH PARTIES INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT, ANY OTHER OF THE OPERATIVE DOCUMENTS, ANY OF THE OTHER OPERATIVE DOCUMENTS OR THE RELATIONSHIP ESTABLISHED HEREUNDER AND THEREUNDER.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized signatories on the date stated at the beginning of this Agreement.

LESSOR
MG ALASKA LEASING LIMITED

By: _____

Name: _____

Title: _____

LESSEE
PENINSULA AIRWAYS, INC.

By: _____

Name: _____

Title: _____

**Schedule 1
The Aircraft
Part 1
Description of Aircraft**

1 Aircraft

Manufacturer: Saab Aircraft AB

Model: Saab 2000

Serial Number: 2000-046

Current Registration Number: N462PA

Year of Manufacture: 1997

2 Engines

Manufacturer: Rolls-Royce Allison

Model: AE2100A

Serial Numbers: 1. CAE510101

2. CAE510113

Each Engine 550 or more takeoff horsepower.

3 Propellers

Manufacturer: Dowty Rotol

Model: R381

Serial Numbers: 1. DAP0013

2. DAP0034

Each Propeller is capable of absorbing 750 or more takeoff horsepower or 1875 lbs of thrust.

**Part 2
Form of Acceptance Certificate**

This Acceptance Certificate is delivered, on the date set out below by Peninsula Airways, Inc. ("Lessee"), to MG Alaska Leasing Limited ("Lessor"), pursuant to the Aircraft Lease Agreement dated [●] 2018 between Lessor and Lessee ("Lease"). Capitalised terms used in this Acceptance Certificate shall have the meanings given to such terms in the Lease.

1 Details of Acceptance

Lessee hereby confirms to Lessor that Lessee has at [●] o'clock local time on this [●] day of [●] 2018, at [●], accepted the following, in accordance with the provisions of the Lease:

- (a) Airframe
 - Aircraft Type: Aircraft Reg:
 - Saab 2000
 - Aircraft S/N
 - 2000-046
 - Aircraft TT/TC: [●] FH / [●] FC

- (b) Engines: Rolls-Royce Allison
 - AE2100A
 - No. 1 S/N: CAE510101 No 2 S/N: CAE510113
 - TT/TC: [●] FH / [●] FC TT/TC: [●] FH / [●] FC

- (c) Propellers: Dowty Rotol
 - No. 1 S/N: DAP0013 No 2 S/N: DAP0034
 - TT/TC: [●] FH / [●] FC TT/TC: [●] FH / [●] FC

2 Confirmation

Lessee confirms to Lessor that as at the time indicated above, being the Delivery Date:

- (i) the representations and warranties contained in Clause 2.1 (*Lessee's Representations and Warranties*) of the Lease are hereby repeated by reference to the facts and circumstances now existing;
- (ii) the Aircraft is insured as required by the Lease; and

- (iii) Lessee has accepted delivery of the Aircraft Documents listed in Schedule 1 (*The Aircraft*) of the Lease (whether such Aircraft Documents were on the Aircraft as at the Delivery Date or otherwise).

IN WITNESS WHEREOF, Lessee has, by its duly authorised representative, executed this Certificate on the date specified in paragraph 1 (*Details of Acceptance*).

PENINSULA AIRWAYS, INC.

By: [•]

Title: [•]

**Schedule 2
Conditions Precedent**

**Part 1
Lessor's pre-delivery conditions precedent**

Receipt by Lessor prior to the Scheduled Delivery Date of the following, each to be satisfactory to Lessor:

1. **Constitutional documents and corporate approvals:**
 - (a) **Lessee:** A corporate certificate of Lessee signed by a director or the company secretary of Lessee attaching a true copy, complete and up to date copy of:
 - (i) its constitutional documents;
 - (ii) its corporate approvals, approving the transactions to be carried out by the Operative Documents to which it is a party and authorising one or more persons to sign and deliver the Operative Documents to which it is a party and to accept Delivery;
 - (iii) any related power of attorney (if applicable); and
 - (iv) its air operator certificate and all other licences, certificates and permits required by Lessee in respect of and appropriate for the Aircraft and its proposed operation, maintenance and repair in accordance with this Agreement (if any), and

setting out a specimen signature for each person authorised in resolution(s) referred to in paragraph (a)(ii) above.
2. **Legal opinions:** favourable legal opinions addressed to Lessor and the Finance Parties to be issued on the Delivery Date in a form and on such matters concerning the laws of:
 - (a) the State of Alaska (which Lessee will obtain at its own cost); and
 - (b) the State of New York; and
 - (c) such other relevant jurisdiction as Lessor may require acting reasonably (which Lessor will obtain).
3. **Authorisations:** Evidence that all material relevant authorisations (governmental and otherwise), if any, necessary for Lessee to perform its obligations under this Agreement, the other Operative Documents to which Lessee is a party and in respect of the transactions contemplated hereby and thereby and for the validity, enforceability or priority of the liabilities and obligations of Lessee under this Agreement and the other Operative Documents to which Lessee is a party have been obtained or effected on an unconditional basis and remain in full force and effect (or, in the case of effecting of any registrations and filings, that arrangements satisfactory to Lessor have been made for the effecting of the same within any applicable time limit).
4. **Original documents:** duly executed original of each Operative Document to which Lessee is a party.

5. **Insurance:** draft certificates of insurance and reinsurance (if applicable), draft letter of undertaking from Lessee's insurance broker and from Lessee's reinsurance broker (if applicable) and other evidence satisfactory to Lessor and Finance Parties that Lessee is taking the required steps to ensure due compliance with the provisions of this Agreement as to insurance with effect on and after the Delivery Date.
6. **Financial Statements:** certified copies of the latest available annual financial statements and the latest available quarterly accounts of Lessee.

Part 2
Lessor's delivery conditions precedent

The following to be received by Lessor on or before the Delivery Date:

- 3 **Corporate certificate:** a corporate certificate of Lessee signed by an authorised officer attaching a statement to the effect that:
 - (a) no Default or Event of Default has occurred and is continuing on Delivery, and
 - (b) its representations and warranties contained in Clause 2.1 (*Lessee's Representations and Warranties*) are true and correct on Delivery.
- 4 **Acceptance certificate:** the Acceptance Certificate dated and signed by Lessee.
- 5 **Payments:** all payments required to be paid to Lessor by Lessee under this Agreement.
- 6 **Insurance:** certificates of insurance and reinsurance and a broker's letter of undertaking from Lessee's insurance broker and Lessee's reinsurance broker evidencing that Lessee has arranged and placed the Insurances with effect on and after the Delivery Date.
- 7 **No unlawfulness:** No unlawfulness contemplated by Clause 19.1 (*Illegality*) shall have occurred.
- 8 Any other documents and evidence Lessor reasonably requests.

Part 3
Lessee's conditions precedent

On or before the Scheduled Delivery Date, Lessor shall comply with the Conditions Precedent set out below by ensuring that Lessee receives the following documents and by taking the actions described below, in each case in a manner satisfactory to Lessee.

1. **Delivery Conditions:** The Aircraft shall be delivered in compliance with the Delivery Conditions set forth in Schedule 6.
2. **Lease:** the Lease Agreement, duly executed by Lessor;
3. **Quiet Enjoyment:** an undertaking given by Security Trustee and/or any relevant Lender addressed to Lessee in relation to the utilisation of the Aircraft by Lessee, in a form satisfactory to Lessee (acting reasonably), which shall be included in the Lessee Notice and Acknowledgement; and
4. **Other Lease Agreement Amendments:** an amendment to each Other Lease Agreement as agreed by Lessee and Lessor, duly executed by Lessor;

**Schedule 3
Designated Bank Account**

Account Name:	Montrose Intergalactic Leasing Limited
Account Number:	44696301
Sort Code:	99-02-12
Bank:	Barclays Bank Ireland PLC, Two Park Place, Hatch Street, Dublin 2, Ireland
IBAN:	IE 56 BARC 990212 44696301
Swift:	BARCIE2D

**Schedule 4
Insurance Requirements**

1 Types of Insurance

The Insurances required to be maintained are as follows:

- (a) Hull All Risks of loss or damage whilst flying and on the ground with respect to the Aircraft on an agreed value basis for the amount not less than US\$3,000,000 (reducing by US\$100,000 per annum during the Lease Period) for the relevant insurance period and with a deductible not exceeding US\$100,000 or such other amount agreed by Lessor from time to time;
- (b) Hull War Risks and Allied Perils to the fullest extent available from the leading international insurance markets as per LSW555.B, but including:
 - (i) confiscation or requisition (excluding by State of Registration and state where airline is domiciled);
 - (ii) hijacking or other unlawful seizure or wrongful exercise of control of the Aircraft or crew in flight (including any attempt at such seizure or control) and covering claims excluded from Hull All Risks Policy while Aircraft outside Lessee's control by reasons of perils insured under this policy,for the amount not less than \$3,000,000 for the relevant insurance period (reducing by US\$100,000 per annum during the Lease Period).
- (c) All Risks (including War Risks and Allied Perils except when on the ground or in transit other than by air) property insurance on all Engines when not installed on the Aircraft on an "agreed value" basis as is determined by an independent third party appraiser (and including engine test and running risks and all Parts on a full replacement value basis);
- (d) Aircraft Third Party, Property Damage, Passenger, Baggage, Cargo and Mail Liability and Airline General Third Party Liability (including Premises, Hangarkeepers and Products Liability) for combined single limit (bodily injury/property damage) of an amount not less than the Minimum Liability Coverage operating for the time being for any one occurrence (but in respect of Products and personal injury liability, this limit may be an aggregate limit for any and all losses occurring during the currency of the policy) or such higher amount as Lessee may carry on any other aircraft of the same or similar type as the Aircraft in its fleet any one accident/occurrence (but in the aggregate in relation to Products Liability), and in any event not less than US\$100,000,000 extended to cover Lessee's liability under this Agreement to the extent of the risks covered by the policy including war and allied perils under Extended Coverage Endorsement as per AVN 52E (or a replacement thereof) (however, the total War and Allied Perils Liability Coverage including Third Party War Risks must be the same amount as the combined single limit either by the purchase of Excess Third Party War Risks insurance or through a government indemnity acceptable to Lessor) subject to a US\$25,000,000 annual aggregate for non-passenger personal injury and any other exclusions as specified below, unless otherwise agreed by Lessor in writing.

(e) Terms of Hull and Spares Insurance

All required hull and spares insurance, so far as it relates to the Aircraft, will:

- (i) Additional Insureds: name Lessor and each Indemnitee and their respective successors and assigns as additional insureds for their respective rights and interests;
- (ii) Settlement of Losses: provide that any loss will be settled in accordance with AVN67B and Lessor or Security Trustee be named as loss payee;
- (iii) 50/50 Provision: if separate hull "all risks" and "war risks" insurances are arranged, include a 50/50 provision in accordance with market practice (AVS. 103 is the current market language);
- (iv) No Option to Replace: confirm that the insurers are not entitled to replace the Aircraft in the event of an insured Total Loss;
- (v) No Discharge by Broker: confirm that the insurers will not obtain a valid discharge of the obligations under the Insurances by payment to the broker, notwithstanding market practice to the contrary;

(f) Terms of Liability Insurance

All required liability insurances will:

- (i) Additional Insureds: include Lessor and each of the other Indemnitees, and their respective affiliates, successors and assigns and their respective shareholders, subsidiaries, directors, officers, agents, employees and indemnitees, as additional insureds for their respective rights and interests, warranted, each as to itself only, no operational interest;
- (ii) Severability: include a severability of interests clause which provides that the insurance, except for the limit of liability, will operate to give each assured the same protection as if there was a separate policy issued to each assured;
- (iii) Primary Policy: contain a provision confirming that the policy is primary without right of contribution and the liability of the insurers will not be affected by any other insurance of which any Indemnitee may have the benefit so as to reduce the amount payable to the additional insureds under such policies;

(g) Terms of All Insurances

All Insurances will:

- (i) Best Industry Practice: be in accordance with best industry practice of Persons operating similar aircraft in similar circumstances;
- (ii) Currency: provide cover denominated in Dollars;
- (iii) Worldwide: operate on a worldwide basis subject to such limitations and exclusions as are generally applicable in the London and International Insurance markets and which are approved by the insurers;
- (iv) Breach of Warranty: provide that, in relation to the interests of each of the additional assureds, the cover afforded to each such additional assured by

the Insurances shall not be invalidated by any act or omission (including misrepresentation and non-disclosure) of any other Person or party which results in a breach of any term, condition or warranty of the Insurances PROVIDED THAT the additional assured so protected has not caused, contributed to or knowingly condoned the said act or omission.

- (v) Subrogation: provide that the insurers will hold harmless and waive any rights of recourse against the additional assureds or to be subrogated to any rights of Lessor or Lessee;
- (vi) Premiums: provide that the additional assureds will have no obligation or responsibility for the payment of any premiums due (but reserve the right to pay the same should any of them elect so to do) and that the insurers will not exercise any right of set-off or counter-claim in respect of any premium due against the respective interests of the additional assureds other than outstanding premiums relating to the Aircraft;
- (vii) Cancellation/Change: provide that the Insurances will continue unaltered for the benefit of the additional assureds for at least thirty (30) days after written notice by registered mail, fax or email of any cancellation, adverse change, event of non-payment of premium or instalment thereof has been sent to Lessor, except in the case of war risks for which seven (7) days (or such lesser period as is or may be customarily available in respect of war risks or allied perils) will be given, or in the case of war between the five great powers or nuclear peril for which termination is automatic;
- (viii) Reinsurance: if reinsurance is required pursuant to Clause 14 (*Insurance*), such reinsurance will:
 - (A) be on the same terms as the original insurances and will include the provisions of this schedule;
 - (B) provide that notwithstanding any bankruptcy, insolvency, liquidation, dissolution or similar proceedings of or affecting the reinsured that the reinsurers' liability will be to make such payments as would have fallen due under the relevant policy of reinsurance if the reinsured had (immediately before such bankruptcy, insolvency, liquidation, dissolution or similar proceedings) discharged its obligations in full under the original insurance policies in respect of which the then relevant policy of reinsurance has been effected; and
 - (C) if available in the London insurance market contain a "**cut-through**" Clause in the following form (or otherwise satisfactory to Lessor):

"The Reinsurers and the Reinsured hereby mutually agree that in the event of any claim arising under the reinsurances in respect of a total loss or other claim where as provided by this Agreement dated [●] 2018 and made between MG Alaska Leasing Limited and Peninsula Airways, Inc. Such claim is to be paid to the Person named as sole loss payee under the primary insurances, the Reinsurers will in lieu of payment to the Reinsured, its successors in interest and assigns pay to the Person named as sole loss payee under the primary insurances effected by the Reinsured that portion of any loss due for which the Reinsurers would otherwise be liable to pay the Reinsured (subject to proof of loss), it being understood and agreed that any such payment by the Reinsurers will (to the extent

of such payment) fully discharge and release the Reinsurers from any and all further liability in connection therewith; subject to such provisions not contravening any Law of the State of Incorporation;”

- (ix) Initiating Claims: contain a provision entitling Lessor or any insured party to initiate a claim under any policy in the event of the refusal or failure of Lessee to do so; and
- (x) Indemnities: accept and insure the indemnity provisions of this Agreement, to the extent of the risks covered by the policies.

(h) Deductibles

Lessee shall be responsible for any and all deductibles under the Insurances.

(i) Application of Insurance Proceeds

The Insurances will be endorsed to provide for payment of proceeds in accordance with Clause 14.8 (*Application of Insurance Proceeds*) of this Agreement.

Notwithstanding the foregoing paragraphs, if at the time of the payment of any such insurance proceeds an Event of Default has occurred and is continuing, all such proceeds will be paid to or retained by Lessor (or Security Trustee as Lessor's designee, as the case may be) to be applied toward payment of any amounts which may be or become payable by Lessee in such order as Lessor may elect.

To the extent that insurance proceeds are paid to Lessee, Lessee agrees to comply with the foregoing provisions and apply or pay over such proceeds as so required.

- (j) Lessor recognises that Lessee's insurance programme is subject to the application of the London Insurance Market Clause AVN67B (or a replacement thereof). Lessee shall maintain Insurances in respect of the Aircraft for the purposes of this Agreement which incorporate the terms and conditions of AVN67B (or a replacement thereof) and in the event of any conflict between the terms of AVN67B (or a replacement thereof) and this Agreement, AVN67B (or a replacement thereof) shall prevail.

**Schedule 5
Return Conditions**

Redelivery of the Aircraft on the Expiry Date shall be in compliance with Clause 17 (*Redelivery*) and the following requirements:

- (a) all Engines, Propellers and Parts shall be installed on the Aircraft;
- (b) the Aircraft shall be free from all Security Interests, other than Lessor Liens;
- (c) the Aircraft will be returned in good overall condition, clean by international airline standards, reasonable wear and tear excepted, and fully equipped with all equipment required for international passenger operations;
- (d) all systems will be functioning within manufacturers' manual limits, including the Manufacturer's or the Engine manufacturer's maintenance manual and approved flight manual, with all pilots' discrepancies cleared and no deferred maintenance items;
- (e) the Aircraft will be returned in full compliance with the latest revision of the Manufacturer's Maintenance Planning Document;
- (f) the Aircraft will be redelivered fresh from the next due complete 4000 FH check, such that all inspections and maintenance tasks are clear for a complete 4000 FH check interval and all defects identified during the check will have been permanently repaired;
- (g) the Aircraft, including fuselage, wings, fin and tail will be completely stripped and repainted in a colour scheme reasonably requested by Lessor. All mandatory markings on the airframe exterior and in the passenger cabin and cargo compartments will be clear and legible in the English language. All visible markings and logos of Lessee will have been removed from the cabin;
- (h) the Airframe will be free of all dents and abrasions, loose, missing or pulling rivets. All structural repairs will be flush where possible and permanent in accordance with the Manufacturer's structural repair manual ("**SRM**"), and repairs outside the SRM limits will have Manufacturer's and/or EASA approval (from the Manufacturer);
- (i) the Aircraft will be in full compliance with all relevant governing body Airworthiness Directives that have a compliance date up to 2 months after the Redelivery Date, without waiver, exemption or extension. All Airworthiness Directives will be complied with on a terminating action basis where such an option is available. All dirty finger print paperwork will be available for all Airworthiness Directives accomplished on the Aircraft;
- (j) all time controlled components having a combination of an Hour, Cycle or calendar maintenance requirement will be redelivered with a minimum of 12 months, 2000 Hours and 2000 Cycles life remaining to the next scheduled maintenance event. All such time controlled components will have their FAA Release Certificate available, as will all on condition and condition monitored components installed within 24 months prior to the Redelivery Date;
- (k) the Aircraft will be re-weighed after the painting and the weight and balance report updated;

- (l) fuel tanks will be free from contamination of water and microbiological organisms as evidenced by a fuel tank contamination test;
- (m) the Aircraft will be re-delivered with the same time and Cycles remaining to the 4 year corrosion check, the 12,000 Cycle fatigue check, the propeller overhaul status, and Landing Gear Overhaul status as when delivered to Lessee. Financial compensation to be payable between Lessee and Lessor based on a mirror in mirror out principle;
- (n) the Aircraft will be delivered with the auxiliary power unit (APU) in a fully serviceable condition with no limitations;
- (o) each Engine shall be serviceable for commercial passenger airline operation under the latest FAA-approved Saab 2000 maintenance review board (MRB) program, and shall have been maintained in the condition required by the provisions of this Agreement;
- (p) each Engine temperature margins from Ground Power Assurance checks as described by the relevant Engine manufacturers shall be provided and each Engine shall not exhibit any adverse trends that would reasonably indicate a removal to be required within an estimated time of six (6) months;
- (q) at the time of Redelivery, each Engine shall not require any Life Limited Parts to be replaced that would necessitate a removal within a period of twelve (12) months or 1000 Cycles or 1000 Hours;
- (r) no Engine LLP, Landing Gear LLP, Propeller LLP and component installed on the Aircraft at Redelivery will have accrued more Hours and Cycles at Redelivery than the Airframe;
- (s) Engines will have a complete video borescope of all sections accomplished after the test flight and immediately prior to return. Lessor may accomplish full maximum power assurance engine runs. Any conditions which place the Engine on watch or reduced inspection interval will be rectified prior to Redelivery;
- (t) all Engine, Propeller, Landing Gear and Airframe Life Limited Parts will be supplied with complete back to birth traceability records; and
- (u) the Aircraft will be redelivered with an unrestricted Certificate of Airworthiness in the Public Transport category. If so requested by Lessor, Lessee will also assist with the procurement of an Export Certificate of Airworthiness to a country designated by Lessor.

**Schedule 6
Delivery Conditions**

Lessor shall deliver the Aircraft at the Delivery Location in the following Delivery Condition at Lessor's sole expense and upon such delivery, the Aircraft shall have a current and valid Certificate of Airworthiness issued by the FAA, shall be in compliance with all applicable maintenance and inspection requirements of the FAA and of the Aircraft manufacturer, the Aircraft shall have no history of nonstandard repairs or inspections; shall have no history of major damage or of major alterations or major repairs (as set forth in Appendix A to Part 43 of the Federal Aviation Regulations) having been performed on the Aircraft, shall conform to its type design, be in condition for safe operation, with no corrosion beyond manufacturer's limits, and with all systems, equipment and components functioning normally according to the use intended and within limits approved by manufacturer's specifications with all required time and calendar actions completed.

The Aircraft shall be in a configuration and condition suitable and required for operations by Lessee in regularly scheduled commercial operations under US FAR Part 121, and to enable Lessee to add the Aircraft on its FAA Part 121 Operations Specification. Without limitation to the foregoing, on the Delivery Date the Aircraft shall:

- (a) comply with the specification stated in Schedule 1;
- (b) have the Engines, Propellers and all of their respective Parts installed;
- (c) be fully compliant with FAA Part 121 certification standards;
- (d) be fresh from a 4,000-Hour check in compliance with the Maintenance Programme;
- (e) have at least the following modifications installed or made to Lessee's reasonable satisfaction:
 - (i) Reinforced Cockpit Door;
 - (ii) Automatic Flap Retraction;
 - (iii) Intergrated Hydraulic Package Aileron Roll Trim Control;
 - (iv) Misc. Components agreed by Lessee and Lessor;
 - (v) Dual GPS or Dual FMS;
 - (vi) Collins DFDR Upgrade;
 - (vii) 406MhZ ELT;
 - (viii) Lav O2 Mask; and
- (f) except as otherwise specified in this Schedule 6 and subject to rectification of any Non-Conformities in accordance with the Agreement, be delivered in "AS IS", "WHERE-IS" and "WITH ALL FAULTS" condition.

In addition, the Lessor shall further satisfy all the following delivery conditions:

- a. Scheduled Maintenance – Landing Gear. Lessor will be responsible for ensuring that all applicable landing gear overhauls and inspections shall be current.

- b. Scheduled Maintenance – Engines and Propellers. All Engines and propellers installed on the Aircraft will be in compliance with the manufacturer’s maintenance program. Lessor will be responsible for ensuring that all applicable Engine, Engine component and propeller overhauls and inspections shall be current.
- c. Scheduled Maintenance - Rotables. All rotables installed on the Aircraft will be in compliance with the manufacturer’s maintenance program.
- d. Service Bulletins & Airworthiness Directives. All mandatory service bulletins and airworthiness directives will be complete.
- e. Deferred Maintenance. Each Aircraft shall be current on the manufacturer’s maintenance program, without temporary extensions for convenience. There will be no open, outstanding, or deferred maintenance items, scheduled or unscheduled, against the Aircraft, including those identified in pre-delivery inspections or test flights.
- f. Corrosion. There shall be no untreated or uncorrected corrosion on the Aircraft upon its delivery by Lessor to Lessee, including within the fuel tanks.

Schedule 7
Purchase Option Price and Termination Value

Rental Payment	Post Rent Sum	Rental Payment	Post Rent Sum
1	\$2,939,297.45	61	\$1,487,324.89
2	\$2,915,936.08	62	\$1,462,586.65
3	\$2,892,590.54	63	\$1,437,776.36
4	\$2,869,190.55	64	\$1,412,894.54
5	\$2,845,736.80	65	\$1,390,049.46
6	\$2,822,168.78	66	\$1,368,479.10
7	\$2,798,600.15	67	\$1,346,345.24
8	\$2,775,025.21	68	\$1,323,640.89
9	\$2,751,404.80	69	\$1,294,528.99
10	\$2,727,719.07	70	\$1,272,532.62
11	\$2,703,955.35	71	\$1,249,779.98
12	\$2,680,105.24	72	\$1,225,433.71
13	\$2,656,163.02	73	\$1,200,609.58
14	\$2,632,124.68	74	\$1,175,307.31
15	\$2,607,987.43	75	\$1,149,525.91
16	\$2,584,559.52	76	\$1,123,263.83
17	\$2,560,455.92	77	\$1,096,519.05
18	\$2,536,259.72	78	\$1,062,681.28
19	\$2,511,968.34	79	\$1,036,922.53
20	\$2,487,579.79	80	\$1,010,393.24
21	\$2,464,373.92	81	\$983,080.10
22	\$2,440,218.34	82	\$954,968.82
23	\$2,416,027.28	83	\$921,263.69
24	\$2,391,801.00	84	\$892,731.48
25	\$2,367,539.72	85	\$863,336.50
26	\$2,343,243.72	86	\$833,062.12
27	\$2,318,913.25	87	\$800,971.54
28	\$2,294,548.60	88	\$769,335.33
29	\$2,270,150.09	89	\$729,525.69
30	\$2,245,718.05	90	\$703,283.41
31	\$2,221,252.86	91	\$668,847.51
32	\$2,196,438.40	92	\$634,536.67
33	\$2,171,463.23	93	\$598,508.95
34	\$2,148,398.76	94	\$561,429.66
35	\$2,123,926.50	95	\$523,275.52
36	\$2,099,433.27	96	\$489,652.71
37	\$2,074,919.66	97	\$450,468.66
38	\$2,050,386.25	98	\$410,122.83
39	\$2,025,833.68	99	\$368,589.30
40	\$2,001,262.57	100	\$325,841.32
41	\$1,976,673.61	101	\$281,851.32
42	\$1,952,067.51	102	\$260,162.45
43	\$1,927,445.01	103	\$246,827.31
44	\$1,902,806.90	104	\$233,492.16
45	\$1,878,154.00	105	\$220,157.02
46	\$1,853,487.16	106	\$206,821.87
47	\$1,828,807.32	107	\$193,486.73
48	\$1,804,115.41	108	\$180,151.58
49	\$1,779,412.43	109	\$166,816.44
50	\$1,754,699.45	110	\$153,481.30
51	\$1,729,977.55	111	\$140,146.15
52	\$1,705,247.89	112	\$126,811.01
53	\$1,680,511.66	113	\$113,475.86
54	\$1,655,770.13	114	\$100,140.72
55	\$1,631,024.61	115	\$86,805.58
56	\$1,606,276.45	116	\$73,470.43
57	\$1,585,550.71	117	\$60,135.29
58	\$1,561,103.74	118	\$46,800.14
59	\$1,536,583.69	119	\$33,465.00
60	\$1,511,990.67	120	\$0.00

Schedule 8

Form of Monthly Report

To be provided

Aircraft Type		Operator:	
Aircraft Serial Number:		Date:	
Current Registration:			

Monthly Utilisation of Aircraft for [Month] [Year]

Airframe Utilisation		
Airframe total Flight Hours		Hours
Airframe total Flight Cycles		Cycles
Next C check due at		

Left Engine, Serial Number [SN] Utilisation	
Flight Hours since new	
Flight Cycles since new	
Next overhaul due at	
Right Engine, Serial Number [SN] Utilisation	
Flight Hours since new	
Flight Cycles since new	
Next overhaul due at	

Left Propeller [SN] Utilisation	
Flight Hours since new	

Flight Cycles since new	
Next overhaul due at	
Right Propeller [SN] Utilisation	
Flight Hours since new	
Flight Cycles since new	
Next overhaul due at	

Nose Landing Gear	
Flight Cycles since new	
Flight Cycles since overhaul	
Date of last overhaul	
Next overhaul due at	
Left Main Landing Gear	
Flight Cycles since new	
Flight Cycles since overhaul	
Date of last overhaul	
Next overhaul due at	
Left Main Landing Gear	
Flight Cycles since new	
Flight Cycles since overhaul	
Date of last overhaul	
Next overhaul due at	

Prepared by

Signature: _____

Print Name:

Date:

Cabot Christianson, Esq.
Alaska Bar No. 7811089
LAW OFFICES OF CABOT CHRISTIANSON, P.C.
911 W. 8th Avenue, Suite 201
Anchorage, Alaska 99501
(907) 258-6016
cabot@cclawyers.net

Attorneys for Debtor

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re:)
)
PENINSULA AIRWAYS, INC., d/b/a)
PENAIR,) **Case No.: 17-00282 GS**
) **Chapter 11**
Debtor.)
_____)

**MOTION FOR AUTHORITY TO ENTER INTO
AIRCRAFT LEASE COVERING ONE
SAAB 2000 AIRCRAFT**

Debtor Peninsula Airways, Inc., dba PenAir (“Debtor”) seeks an order authorizing it to enter into an aircraft lease covering one Saab 2000 Aircraft, on the terms of the proposal attached hereto as Exhibit A.

The proposal is from Montrose Global, who currently is lessor to Debtor on four Saab 340B Aircraft.

Debtor currently leases all of its four Saab 2000 aircraft from Jetstream and its affiliates. Those are straight leases at \$80,000 per month.

Under the proposal for which approval is sought herein, the lease payments are \$45,000 per month, with a purchase option schedule set forth in the proposal. At any time during the lease, the option to purchase can be exercised. The option price is approximately \$3 million at the beginning of the lease, and is lower for each succeeding month, until month 120, at which time the option price is zero. The lease is therefore essentially a purchase of the aircraft.

The Saab 2000 proposed to be leased is comparable to the four Saab 2000's currently in Debtor's fleet. The disparity in the monthly payments, combined with the buildup of equity, makes the proposed Saab 2000 lease an attractive alternative.

Debtor estimates that the imputed interest rate on the lease payments is approximately 13%. This is relatively high interest rate, but Debtor is willing to pay this imputed rate because it has an immediate need to acquire the aircraft, and because the option to purchase the aircraft can be made at any time. A proposed order is attached hereto.

Dated this September 15, 2017.

LAW OFFICES OF
CABOT CHRISTIANSON, PC
Attorneys for Debtor

By: /s/ Cabot Christianson
Cabot Christianson

- Exhibits
A - Montrose Global proposal
B - Proposed order

LAW OFFICES OF CABOT CHRISTIANSON, P.C.
911 WEST 8TH AVENUE, #201 • ANCHORAGE, ALASKA 99501
(907) 258-6016 • Fax (907) 258-2026

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 15, 2017, a true and correct copy of the above document was served by electronic means through the ECF system as indicated on the Notice of Electronic Filing.

By: /s/ Margaret Stroble
Margaret Stroble

LAW OFFICES OF CABOT CHRISTIANSON, P.C.
911 WEST 8TH AVENUE, #201 • ANCHORAGE, ALASKA 99501
(907) 258-6016 • Fax (907) 258-2026

EXECUTION VERSION

MONTROSE GLOBAL^{LLP}

PROPOSAL FOR THE OPERATING LEASE OF ONE (1) SAAB 2000 AIRCRAFT WITH PENINSULA AIRWAYS INC.

APRIL 2017

Montrose Global
1 – 2 Jacob's Well Mews,
London, W1U 3DT

Tel: 0207 317 1500 Facsimile: 0207 224 3112

**TERM SHEET LETTER AGREEMENT FOR THE OPERATING LEASE OF ONE (1)
SAAB 2000 AIRCRAFT**

SUMMARY OF TERMS AND CONDITIONS

1. Background: Montrose Global LLP ('**Montrose**') will arrange the lease of the Aircraft to Lessee according to the terms agreed below.
2. Lessor: Wells Fargo, National Association ('**Lessor**') located in the State of Utah which shall have title to the Aircraft and will Lease the Aircraft to the Lessee.
3. Lessee: Peninsula Airways, Inc. (trading as PenAir) of the United States of America ('**Lessee**').
4. Aircraft: One Saab 2000 ('**Aircraft**') as described further in Appendix A.
5. Lease: The Lessor agrees to lease the Aircraft to Lessee pursuant to the terms hereof and otherwise subject to the conditions determined and agreed to be contained in the relevant lease agreement.
6. Delivery Date: Expected to be 15th August 2017 or at a date to be mutually agreed.
7. Lease Term: One hundred and twenty (120) months from the Delivery Date, as per Appendix A.
8. Lease Rentals: As described in Appendix A, paid monthly in advance.
9. Delivery Location: Worldwide Aviation Services, Missouri, or such other location as mutually agreed between Lessor and lessee.
10. Delivery Conditions: "As is, where is," as delivered with Lessor. The aircraft will be delivered (i) fully compliant with Federal Aviation Administration (FAA) Part 121 certification standards, (ii) fresh from a 4,000-flight hour check in compliance with Lessee's approved maintenance program, (iii) in the condition as more fully described in Appendix A hereto and (iv) subject to customary Lessee inspection rights.
11. Redelivery Location: At a location in Europe to be agreed. All redelivery costs will be borne by Lessee.
12. Payments: All payments due under the documents to the Lessor shall be made (unless the Lessor directs otherwise in writing) by wire transfer of immediately available funds in United States Dollars to the Lessor's account to be specified by Lessor to Lessee. All payments to the Lessor will be free and clear of taxes, levies and duties including but not limited to withholding taxes and use taxes. Subject to standard tax carve outs, all taxes, other than taxes on the net income of Lessor and any taxes arising as a result of the Lessor's financing of the Aircraft, will be the responsibility of Lessee.
13. Purchase Option: On any rental date, Lessee may choose to purchase the aircraft for the amount specified in Appendix B.

14. Governing Law The State of New York.
15. Return Conditions: As more fully described in Appendix C, but generally mirror in/mirror out.
16. Registration: Lessor, at its own cost and expense, shall cause the Aircraft to be registered under the name of the Lessor with the FAA reflecting, to the extent possible under applicable law, the ownership and respective rights of the Lessor and any relevant financing parties.
17. Aircraft Operations: Lessee will not maintain or operate the Aircraft in violation of applicable law, rule or certificate of any applicable government authority, or in violation of airworthiness certificates, registration requirements or insurance policy.
18. Insurance: US\$250,000,000 (or such higher amount as required by the operation of the Aircraft) liability and US\$3,000,000 (reducing by US\$100,000 per annum) hull per aircraft. Lessee will not operate the Lease Aircraft in any area excluded from insurance coverage.
19. Security Deposit: By Delivery Date, two (2) months rental will be paid to Lessor. One month deposit is payable on or before May 15, 2017 and the remainder is due upon execution of the lease supplement/acceptance of the Aircraft. Subject to the Provisions of Point 25, the Security Deposit is refundable in full in the event that binding lease agreements are not entered into by the Lessor and Lessee within two months from the date of this Term Sheet, or Lessor's Board approval is not obtained.
20. ADs: The Lessee will be responsible for implementing all FAA applicable airworthiness directives issued during the lease term and requiring compliance during the lease term or during the 60-day period following redelivery.
21. Sub-Leasing: Lessee may not dry lease the Aircraft to a third party without prior written consent of Lessor which will not be unreasonably withheld. ACMI and wet leasing are permitted.
22. Documentation: Lessor will provide aircraft documentation, corporate resolutions and other documentation and conditions precedent reasonably required by Lessee. Lessee will provide Board Resolutions, incumbency certificates, opinion of counsel in respect of Lessee and other documentation and conditions precedent reasonably required by Lessor.
23. Financial Statements: Annual financial statements reviewed by KPMG or other acceptable accounting firm, and such other financial information as may be reasonably required by Lessor.
24. Language: All notices, communications, reports, loss records, opinions, maintenance records, logs and other documents given under the Lease will be submitted and maintained in the English language.
25. Confidentiality: This Term Sheet and its contents are intended for the exclusive use of respectively the Lessee/Lessor and shall not

be disclosed by the Lessee/Lessor to any person other than the Lessee/Lessor's legal, commercial and financial advisers for the purposes of the proposed transaction unless the prior written consent of the Lessee/Lessor is obtained.

26. Cost:

Each party shall be responsible for its own expenses associated with negotiating, documenting and closing this transaction.

Lessee agrees to pay costs associated with the Aircraft after delivery including any filing costs in the Lessee's jurisdiction, the State of Registration or the Habitual Base of the Aircraft.

27. Maintenance Reserves:

No maintenance reserves will be payable during the Lease term.

28. Other:

This Term Sheet is not a contract and its provisions (other than those relating to costs and expenses, confidentiality and the payment and return of the Security Deposit) are not intended to be legally binding. Consummation of the transaction contemplated hereby is conditioned and contingent upon, among other things:

- a. The approval, authorisation or consent of:
 - i. Lessor's and Lessee's senior management;
 - ii. All other third party consents and approvals for the lease of aircraft.
 - iii. Lessor's and Lessee's Board of Directors approval.

- b. The negotiation, execution and delivery of an acceptable lease agreement and other documents and satisfaction of all conditions included therein, including, but not limited to, internal approval by Lessor and Lessee. It is intended that such documentation will incorporate the provisions of this Term Sheet and other terms normal for this type of transaction and that such documentation is executed within three months of the date of this Letter of Intent (or such other period as the parties may agree).

Please acknowledge your concurrence with the above terms and conditions by returning an executed copy of this Term Sheet.

MONTROSE GLOBAL LLP

By:  N.C. BRICE

Its: DIRECTOR

Date: 18/4/2017

ACCEPTED AND AGREED TO.

PENINSULA AIRWAYS, INCORPORATED

By: 

Its: PRESIDENT

Date: 17 APRIL 2017

APPENDIX B

PURCHASE OPTION SCHEDULE

Rental Payment	Post Rent Sum	Rental Payment	Post Rent Sum
1	\$2,939,297.45	61	\$1,487,324.89
2	\$2,915,936.08	62	\$1,462,586.65
3	\$2,892,590.54	63	\$1,437,776.36
4	\$2,869,190.55	64	\$1,412,894.54
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23	\$2,416,027.28	83	\$921,263.69
24	\$2,391,801.00	84	\$892,731.48
25	\$2,367,539.72	85	\$863,336.50
26	\$2,343,243.72	86	\$833,062.12
27	\$2,318,913.25	87	\$800,971.54
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53	\$1,680,511.66	113	\$113,475.86
54	\$1,655,770.13	114	\$100,140.72
55	\$1,631,024.61	115	\$86,805.58
56	\$1,606,276.45	116	\$73,470.43
57	\$1,585,550.71	117	\$60,135.29
58	\$1,561,103.74	118	\$46,800.14
59	\$1,536,583.69	119	\$33,465.00
60	\$1,511,990.67	120	\$0.00

APPENDIX C

END OF LEASE RETURN CONDITIONS

Standard industry Redelivery Conditions will be incorporated into the Lease agreement, the significant features of which will be as follows.

On redelivery at the end of the Lease, the aircraft will be returned in full compliance with the following conditions:

1. The aircraft will be returned in good overall condition, clean by international airline standards, reasonable wear and tear accepted, and fully equipped with all equipment required for international passenger operations.
2. All systems will be functioning within manufacturers' manual limits, including Maintenance Manual and Approved Flight Manual, with all pilots' discrepancies cleared and no deferred maintenance items.
3. The aircraft will be returned in full compliance with the latest revision of the manufacturers Maintenance Planning Document (MPD) and Maintenance Review Board (MRB) requirements, subject to exceptions as needed to ensure that Lessee's compliance with its approved maintenance program is sufficient to satisfy this requirement.
4. The aircraft, including fuselage, wings, fin and tail will be completely stripped and repainted in a colour scheme reasonably requested by the Lessor. All mandatory markings on the airframe exterior and in the passenger cabin and cargo compartments will be clear and legible in the English language. All visible markings and logos of the Lessee will have been removed from the cabin.
5. The airframe will be free of dents and abrasions in accordance with the Manufacturer's Structural Repair Manual (SRM) and free of and loose, missing or pulling rivets. All structural repairs will be flush where possible and permanent in accordance with the SRM, and repairs outside the SRM limits will have manufacturer's and governing body (EASA, FAA etc.) approval.
6. The aircraft will be in full compliance with all relevant governing body Airworthiness Directives (ADs) that have a compliance date up to 2 months after the Redelivery Date, without waiver, exemption or extension. All ADs will be complied with on a terminating action basis where such an option is available. All dirty finger print paperwork will be available for all ADs accomplished on the aircraft.
7. All time controlled components having a combination of a flight hour, flight cycle or calendar maintenance requirement will be redelivered with a minimum of 12 months, 2000 hours and 2000 cycle's life remaining to the next scheduled maintenance event. All such time controlled components will have their FAA or EASA Release Certificate available, as will all on condition and condition monitored components installed within 24 months prior to the Redelivery Date.
8. The aircraft will be re-weighed after the painting and the weight and balance report updated.

9. Fuel tanks will be free from contamination of water and microbiological organisms as evidenced by a fuel tank contamination test.
10. The aircraft will be re-delivered with the same time and cycles remaining to the 4 year corrosion check, the 12,000 cycle fatigue check, the propeller overhaul status, and landing gear overhaul status as when delivered to Lessee. Financial compensation to be payable between lessee and lessor based on a mirror in mirror out principle.
11. The APU will be redelivered in a fully serviceable condition with no limitations;
12. Each Engine shall be serviceable for commercial passenger airline operation under the latest Civil Aviation Authority approved Saab 2000 MRB Maintenance Program, shall have been maintained in accordance with what has been agreed between Lessor and Lessee during the Lease Term and shall otherwise be in the condition required by the provisions of the Lease.
13. Engine temperature margins from Ground Power Assurance checks as described by the relevant Engine Manufacturers shall be provided and each Engine shall not exhibit any adverse trends that would reasonably indicate a removal to be required within an estimated time of six (6) months
14. At the time of its return, each Engine shall not require any life limited parts to be replaced that would necessitate a removal within a period of 12 months or 1000 cycles or 1000 hours
15. No engine LLP, landing gear LLP, propeller LLP and component installed on the aircraft at redelivery will have accrued more hours and cycles at redelivery than the airframe.
16. Engines and APU will have a complete video borescope of all sections accomplished after the test flight and immediately prior to return. Any conditions which place the engine or APU on watch or reduced inspection interval will be rectified prior to redelivery. Lessor may accomplish full maximum power assurance engine runs.
17. All engine, propeller, landing gear and airframe life limited parts will be supplied with complete back to birth traceability records.
18. Aircraft will be redelivered with an unrestricted Certificate of Airworthiness in the Public Transport category. If so requested by Lessor, Lessee will assist with the procurement of an Export Certificate of Airworthiness to a country designated by Lessor.

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Attorneys for Debtor

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re:)
)
PENINSULA AIRWAYS, INC., d/b/a)
PENAIR,) **Case No.: 17-00282 GS**
) **Chapter 11**
Debtor.)
_____)

**ORDER GRANTING DEBTOR'S
MOTION FOR AUTHORITY TO ENTER INTO
AIRCRAFT LEASE COVERING ONE
SAAB 2000 AIRCRAFT**

At Docket _____, Debtor Peninsula Airways, Inc., dba PenAir ("Debtor") filed a *Motion for Authority to Enter Into Aircraft Lease Covering One Saab 2000 Aircraft* ("the Motion"). A hearing on the Motion was held September 22, 2017. Good cause appearing,

IT IS HEREBY ORDERED that the Motion is GRANTED. Debtor may enter into an aircraft lease covering one Saab 2000 Aircraft, on the terms of the proposal attached as Exhibit A to the Motion.

LAW OFFICES OF CABOT CHRISTIANSON, P.C.
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(907) 258-6016 • Fax (907) 258-2026

DATED this ____ day of September 2017.

By: _____
Gary Spraker
U.S. Bankruptcy Court Judge

LAW OFFICES OF CABOT CHRISTIANSON, P.C.
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PAGE 2: ORDER AUTHORIZING DEBTOR TO ENTER INTO LEASE COVERING ONE SAAB 2000
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PENAIR,) **Case No.: 17-00282 GS**
) **Chapter 11**
Debtor.)
_____)

**ORDER GRANTING DEBTOR'S
MOTION FOR AUTHORITY TO ENTER INTO
AIRCRAFT LEASE COVERING ONE
SAAB 2000 AIRCRAFT**

At Docket 138, Debtor Peninsula Airways, Inc., dba PenAir (“Debtor”) filed a *Motion for Authority to Enter Into Aircraft Lease Covering One Saab 2000 Aircraft* (“the Motion”). A hearing on the Motion was held September 22, 2017. Good cause appearing,

IT IS HEREBY ORDERED that the Motion is GRANTED. Debtor may enter into an aircraft lease covering one Saab 2000 Aircraft, on the terms of the proposal attached as Exhibit A to the Motion.

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AGREEMENT RE: 406

This *Agreement Re: 406* (the "Agreement") is entered into between Montrose Global LLP ("Montrose"), and Peninsula Airways, Inc. dba PenAir ("PenAir").

WHEREAS:

- A. On August 6, 2017, ("the Petition Date") PenAir filed a Chapter 11 proceeding in Case No. 17-00282 in the United States Bankruptcy Court for the District of Alaska ("the Court").
- B. In that bankruptcy case, at Dockets 166 and 167, PenAir agreed to assume, under 11 U.S.C. Section 1110, aircraft leases between Montrose and PenAir covering a Saab 340B, N403XJ, Serial No. 340B-403 ("403") and a Saab 340B, N404XJ, Serial No. 340B-404 ("404").
- C. MG Alaska Leasing Limited ("MG"), an entity associated with Montrose, intends to lease an a Saab 2000, Serial No. 2000-046 ("046") to PenAir, pursuant to an Aircraft Lease Agreement ("the Lease") between MG as Lessor and PenAir as Lessee. PenAir is seeking bankruptcy court approval for the Lease.
- D. Montrose and PenAir have entered into this Agreement in order to set forth certain agreements and understandings between them.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. Nothing in this Agreement affects or impairs MG's rights, or PenAir's rights, under the Lease.
- 2. Upon Court approval of the Lease, Montrose waives any and all rights to any lease payments, or any other kind of payments, claims or obligations, accruing prior the Petition Date, that relate to aircraft 403 or 404, or arise under the leases covering those two aircraft.
- 3. In connection with readying 046 for delivery to PenAir, Montrose has, at PenAir's specific request, incurred certain costs in order to improve, or facilitate the operation of, 046. These costs, net of all applicable offsets, total \$79,500. PenAir and Montrose agree that, upon Court approval of the Lease, such amount will be paid by PenAir to Montrose in 24 monthly payments of \$3,668.72 per month including 10% interest, the first payment due 30 days after 046 is accepted for delivery.
- 4. There are no obligations between Montrose on the one hand, and PenAir on the other hand, that relate to 046, except as specifically agreed to herein.
- 5. This is the entire agreement of the parties with respect to 046 and the pre-petition amounts owed on 403 and 404. There are no side deals, expectations or understandings, except as set forth herein.

Dated April ____, 2018.

Montrose Global, LLP

By _____

Dated April ____, 2018

Peninsula Airways, Inc.

By _____

Cabot Christianson, Esq.
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Attorneys for Debtor

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re:)
)
PENINSULA AIRWAYS, INC., d/b/a)
PENAIR,) **Case No.: 17-00282 GS**
) **Chapter 11**
Debtor.)
_____)

**ORDER GRANTING DEBTOR'S
MOTION FOR RENEWED AUTHORITY TO ENTER INTO
AIRCRAFT LEASE COVERING SAAB 2000 AIRCRAFT046**

Debtor Peninsula Airways, Inc., dba PenAir ("Debtor") filed a *Motion for Renewed Authority to Enter Into Aircraft Lease Covering Saab 2000 Aircraft 046* ("the Motion"). The Motion was heard at a hearing on _____, 2018. Good cause appearing,

IT IS HEREBY ORDERED that the Motion is GRANTED. Debtor is authorized to enter into the Aircraft Lease Agreement attached hereto as Exhibit A, covering one Saab 2000 Aircraft, serial number 2000-046 ("046").

LAW OFFICES OF CABOT CHRISTIANSON, P.C.
911 WEST 8TH AVENUE, #201 T ANCHORAGE, ALASKA 99501
(907) 258-6016 T Fax (907) 258-2026

Dated _____, 2018.

Gary Spraker
United States Bankruptcy Judge

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PAGE 2: ORDER GRANTING M/RENEWED AUTHORITY TO ENTER INTO LEASE COVERING ONE SAAB 2000
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AIRCRAFT LEASE ON SAAB 2000.WPD