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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re

TEM ENTERPRISES,

Debtor in Possession.

Case No.: 14-13955-abl  
Chapter 11

**CHAPTER 11 DISCLOSURE STATEMENT**

**Hearing Date: October 8, 2014  
Hearing Time: 1:30 p.m.**

**Hearing Place: Foley Federal Building, 300  
Las Vegas Blvd. South, Las Vegas, Nevada  
89101**

**THIS PROPOSED DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA UNDER SECTION 1125(b) OF THE BANKRUPTCY CODE FOR USE IN THE SOLICITATION OF ACCEPTANCES OF THE CHAPTER 11 PLAN OF REORGANIZATION DESCRIBED HEREIN. ACCORDINGLY, THE FILING AND DISTRIBUTION OF THIS PROPOSED DISCLOSURE STATEMENT IS NOT INTENDED, AND SHOULD NOT BE CONSTRUED, AS A SOLICITATION OF ACCEPTANCES OF SUCH PLAN. THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON FOR ANY PURPOSE UNLESS AND UNTIL A DETERMINATION HAS BEEN MADE BY THE BANKRUPTCY COURT THAT THIS DISCLOSURE STATEMENT CONTAINS "ADEQUATE INFORMATION" WITHIN THE MEANING OF SECTION 1125(a) OF THE BANKRUPTCY CODE.'**

**[Legend to be removed upon entry of Disclosure Statement Order]**

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PURSUANT TO BANKRUPTCY CODE SECTION 1128, A CONFIRMATION HEARING WILL BE HELD WITH RESPECT TO THE DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION ON OCTOBER 8, 2014, AT 1:30 P.M. (PREVAILING PACIFIC TIME) BEFORE THE HONORABLE JUDGE AUGUST B. LANDIS, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA, COURTROOM 1, 300 LAS VEGAS BOULEVARD SOUTH, LAS VEGAS, NEVADA 89101 (THE "CONFIRMATION HEARING"). OBJECTIONS, IF ANY, TO CONFIRMATION OF THE PLAN MUST BE FILED AND SERVED ON OR BEFORE SEPTEMBER 24, 2014. THE CONFIRMATION HEARING MAY BE ADJOURNED FROM TIME TO TIME WITHOUT FURTHER NOTICE EXCEPT FOR AN ANNOUNCEMENT MADE AT THE CONFIRMATION HEARING OR AT ANY SUBSEQUENT ADJOURNED DATE OF THE CONFIRMATION HEARING.

THIS DISCLOSURE STATEMENT (THE "DISCLOSURE STATEMENT") IS BEING DISTRIBUTED FOR THE PURPOSE OF SOLICITING ACCEPTANCES OF THE PLAN FROM THE PARTIES ENTITLED TO VOTE ON THE PLAN. THE DEBTOR INTENDS TO SEEK TO CONFIRM THE PLAN AND TO CAUSE THE EFFECTIVE DATE OF THE PLAN TO OCCUR AS PROMPTLY AFTER CONFIRMATION OF THE PLAN AS POSSIBLE, HOWEVER THERE CAN BE NO ASSURANCE AS TO WHETHER OR WHEN THE CONFIRMATION OR THE EFFECTIVE DATE OF THE PLAN ACTUALLY WILL OCCUR.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND BANKRUPTCY RULE 3016(b) AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NONBANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS BEEN NEITHER REVIEWED NOR APPROVED BY THE U.S. SECURITIES AND EXCHANGE COMMISSION (THE "SEC") OR THE INTERNAL REVENUE SERVICE (THE "IRS"), NOR HAS THE SEC OR THE IRS PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. THE INFORMATION IN THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO PROVIDE CERTAIN INFORMATION OF POTENTIAL RELEVANCE IN DETERMINING HOW TO VOTE ON THE PLAN. NO SOLICITATION OF VOTES TO ACCEPT THE PLAN MAY BE MADE EXCEPT PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE.

A COPY OF THE PLAN IS ATTACHED AS EXHIBIT 1 HERETO. ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR THAT ARE ENTITLED TO VOTE ON THE PLAN ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. UNLESS OTHERWISE SPECIFIED HEREIN, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT WILL BE CORRECT AT ANY LATER DATE. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS DISCLOSURE STATEMENT AND THE TERMS OF THE PLAN, THE TERMS OF THE PLAN SHALL GOVERN.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT WILL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, OR AS A STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT WILL NOT BE ADMISSIBLE IN ANY BANKRUPTCY OR NONBANKRUPTCY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY (OTHER THAN IN CONNECTION WITH APPROVAL OF THIS DISCLOSURE STATEMENT OR CONFIRMATION OF THE PLAN), NOR WILL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, THE DEBTOR. YOU ARE ADVISED TO OBTAIN INDEPENDENT EXPERT ADVICE ON SUCH SUBJECTS.

SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995: ALL FORWARD-LOOKING STATEMENTS CONTAINED HEREIN OR OTHERWISE MADE BY THE DEBTOR INVOLVE MATERIAL RISKS AND UNCERTAINTIES AND ARE SUBJECT TO CHANGE BASED ON NUMEROUS FACTORS, INCLUDING FACTORS THAT ARE BEYOND THE DEBTOR'S CONTROL. ACCORDINGLY, THE DEBTOR'S FUTURE PERFORMANCE AND FINANCIAL RESULTS MAY DIFFER MATERIALLY FROM THOSE EXPRESSED OR IMPLIED IN ANY SUCH FORWARD-LOOKING STATEMENTS. SUCH FACTORS INCLUDE, BUT ARE NOT LIMITED TO, THOSE DESCRIBED IN THIS DISCLOSURE STATEMENT. THE DEBTOR DOES NOT UNDERTAKE TO PUBLICLY UPDATE OR REVISE FORWARD-LOOKING STATEMENTS EVEN IF EXPERIENCE OR FUTURE CHANGES MAKE IT CLEAR THAT ANY PROJECTED RESULTS EXPRESSED OR IMPLIED THEREIN WILL NOT BE REALIZED.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN EVENTS IN THE DEBTOR'S CHAPTER 11 CASE AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT ARE ATTACHED HERETO OR HAVE BEEN OR WILL BE SEPARATELY FILED WITH THE BANKRUPTCY COURT. ALTHOUGH THE DEBTOR BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THE SUMMARIES DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY CONFLICT, INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER SUCH DOCUMENTS, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN AND CONTROL FOR ALL PURPOSES, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTOR'S MANAGEMENT. SUBJECT TO THE TERMS OF ANY DEFINITIVE DOCUMENTATION TO BE EXECUTED IN CONNECTION WITH THE PLAN, THE DEBTOR DOES NOT

1 **REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR**  
2 **ATTACHED HERETO IS WITHOUT ANY MATERIAL INACCURACY OR**  
3 **OMISSION.**

4 **EXCEPT AS OTHERWISE SPECIFICALLY NOTED, THE FINANCIAL**  
5 **INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED**  
6 **PUBLIC ACCOUNTANT AND HAS NOT NECESSARILY BEEN PREPARED IN**  
7 **ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.**  
8 **THE FINANCIAL INFORMATION CONTAINED HEREIN HAS BEEN PRODUCED**  
9 **BASED UPON THE DEBTOR'S BOOKS AND RECORDS AS THEY ARE**  
10 **MAINTAINED IN THE ORDINARY COURSE OF BUSINESS AND IN ACCORDANCE**  
11 **WITH THE DEBTOR'S ORDINARY AND CUSTOMARY ACCOUNTING**  
12 **PRACTICES.**

13 **IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS**  
14 **CIRCULAR 230, HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE HEREBY**  
15 **NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED**  
16 **OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR**  
17 **WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR**  
18 **INTERESTS FOR PURPOSES OF AVOIDING PENALTIES THAT MAY BE IMPOSED**  
19 **ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS**  
20 **WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE**  
21 **DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C)**  
22 **HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD SEEK ADVICE BASED**  
23 **ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX**  
24 **ADVISOR.**

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Exhibit 1	Plan
Exhibit 2	Security Deposits
Exhibit 3	Administrative Claim Breakdown
Exhibit 4	Executory Contracts
Exhibit 5	Stock Purchase Agreement
Exhibit 6	Projected Budget
Exhibit 7	Liquidation Analysis
Exhibit 8	Commitment Letter



## 1. INTRODUCTION

This Disclosure Statement is being filed by the above captioned Debtor and Debtor in Possession - TEM ENTERPRISES dba XTRA AIRWAYS, a Nevada corporation (the “Debtor” or “Proponent”). This Disclosure Statement has been prepared in accordance with section 1125 of the Bankruptcy Code and Rules 3016 and 3017 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). Debtor is seeking conditional approval of this Disclosure Statement pursuant to Local Rule of Bankruptcy Practice for the District of Nevada (“LR”) 3016. This Disclosure Statement is being provided to creditors by the debtor and debtor-in-possession, in connection with the solicitation of acceptances of the Debtor’s Plan of Reorganization (the “Plan”) attached hereto as Exhibit 1, including any subsequent amendments to the Plan. Upon conditional approval, Debtor will solicit its creditors for acceptances. The Debtor’s reorganization case is proceeding under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), and was initiated by voluntary petition on June 4, 2014 (the “Petition Date”), in the United States Bankruptcy Court for the District of Nevada, as Case No. 14-13955-abl.

Capitalized terms used herein shall have the meanings ascribed to such terms in Section 1 of the Plan. The Debtor is a proponent of the Plan within the meaning of 11 U.S.C. § 1129 of Title 11 of the United States Code, sections 101, *et.seq.* (the “Bankruptcy Code”).

Subject to certain restrictions and requirements set forth in Bankruptcy Code Section 1127 and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtor expressly reserves its respective rights to alter, amend, modify, revoke or withdraw the Plan, one or more times, prior to the Plan’s substantial consummation as defined under the Bankruptcy Code.

Under Bankruptcy Code Section 1125(b), a vote to accept or reject the Plan cannot be solicited from Claimholders or Holders of Equity Interests until such time as the Disclosure Statement has been approved by the Bankruptcy Court and distributed to the Holders of such Claims and Interests. This Disclosure Statement is being distributed simultaneously with the Plan to all parties whose votes are being solicited. The Disclosure Statement contains, among other things, a discussion of the Debtor’s history, a summary and analysis of the Plan, and related matters that affect the treatment of the Claims and Interests of the Debtor.

**ALL CLAIMHOLDERS AND INTERESTHOLDERS ARE ENCOURAGED TO READ THE PLAN AND THIS DISCLOSURE STATEMENT AND RELATED SOLICITATION MATERIALS IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

### 1.1 Purpose of the Disclosure Statement

The purpose of this Disclosure Statement is to ensure that claimants have adequate information to enable each class to make an informed judgment about the Plan. The assets and liabilities of the Debtor are summarized herein. To the extent the information contained in this Disclosure Statement may be inconsistent with the Debtor’s Statement and Schedules filed initially in the Bankruptcy Case, or subsequent amendments thereto, this Disclosure Statement shall supersede such Statements and Schedules (as amended).



1 This Disclosure Statement describes the background and operating history of the Debtor  
2 before filing of the case. It also summarizes certain significant events that have taken place  
3 during the case and described the terms of the Plan, which divides creditor claims and the  
4 interests of shareholders into classes and provides for the satisfaction of allowed claims and  
interests.

5 The Bankruptcy Court will set a time and date as the last day to file acceptances or  
6 rejections of the Plan. Thereafter, a hearing on confirmation of the Plan will be held in the  
7 United States Bankruptcy Court for the District of Nevada, located at the U.S. Foley Federal  
8 Building & Courthouse, 3rd Floor, Courtroom 1, 300 Las Vegas Boulevard South, Las Vegas,  
9 Nevada 89101. Creditors may vote on the Plan by filling out and mailing a special form of  
ballot. The form of ballot and special instructions for voting will be forthcoming. Creditors are  
urged to carefully read the contents of this Disclosure Statement before making a decision to  
accept or reject the Plan.

### 10 **1.2 Acceptance and Confirmation**

11 In order for the Debtor's Plan to be confirmed, each Impaired class of Claims or Interests  
12 must accept the Plan, except as set forth below. In order for the Plan to be deemed accepted, a  
13 majority in number and two-thirds in dollar amount of the claims of each class of creditors  
14 impaired under the Plan of those that actually vote, must vote for acceptance of the Plan.  
Holders of claims who fail to vote are not counted as either accepting or rejecting the Plan.

15 Classes of claims that are not "Impaired" under a Plan are deemed to have accepted the  
16 Plan. Acceptances of the Plan are being solicited only from those persons who hold Allowed  
17 Claims or Interests in Impaired classes. A class is "impaired" if the legal, equitable, or  
contractual rights attaching to the claims or interests of that class are modified, other than by  
curing defaults and reinstating maturities, or by payment in full in cash.

### 18 **1.3 Confirmation Without Acceptance By All Impaired Classes**

19 The Bankruptcy Code allows for confirmation of a Plan even if the Plan is not accepted  
20 by all impaired classes, as long as at least one Impaired class of claims has accepted the Plan.  
21 These "cram-down" provisions for the confirmation of a Plan, despite non-acceptance of one or  
more Impaired classes of claims or interest, are set forth in 11 U.S.C. § 1129(b).

22 If a class of unsecured claims rejects the Plan, it may still be confirmed so long as the  
23 Plan provides that (i) each holder of a claim included in the rejecting class receives or retains on  
24 account of that claim, property which has a value as of the Effective Date equal to the allowed  
25 amount of such claim; or that (ii) the holder of any claim or interest that is junior to the claims of  
such class will not receive or retain on account of such junior claim or interest any property at  
all.

26 If a class of secured claims rejects the Plan, it may still be confirmed so long as the Plan  
27 provides (i) the holders of such claims retain their lien(s) securing such claims; (ii) the holders of  
28 such claims receive on account of such claims deferred cash payments totaling at least the  
allowed amount of such claims, of a value, as of the Effective Date of the Plan, of at least the  
value of such claimant's interest in the estate's interest in such property; (iii) for the sale of the

property in accordance with 11 U.S.C. § 1129(b)(2)(A)(ii); or (iv) for the realization by such claims of the indubitable equivalent of the claim.

#### 1.4 Disclaimer

No representations concerning the Debtor are authorized by the Debtor except as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan other than as contained herein have not been authorized and should not be relied upon by you in making your decision, and such additional representations and inducements should be reported to counsel for the Debtor, who in turn should deliver such information to the Bankruptcy Court for such action as may be deemed appropriate. The information contained herein has not been subjected to a certified audit. The records kept by the Debtor and other information relied on herein are dependent upon investigations and accounting performed by the Debtor and others employed by the Debtor. The Debtor is unable to warrant that the information contained herein is without inaccuracy, although a great effort has been made to be accurate, and the Debtor believes that the information contained herein is, in fact, accurate.

#### 1.5 Summary of Classification and Treatment of Claims and Old Equity Interests Under the Plan.

The Plan proposes to divide Claims into four (4) separate classes. Administrative Claims and Priority Tax Claims (the “Unclassified Claims”) are not classified pursuant to 11 U.S.C. § 1123(a)(1) and the Holders of such Allowed Unclassified Claims will receive the full amount they are entitled to under the Bankruptcy Code and their legal and equitable rights are unaltered by the Plan. Class 1 includes Debtor’s Priority Claims. Class 2 is AerLine Holdings LLC’s (“AerLine”) Secured Claim. Class 3 consists of all of the Debtor’s General Unsecured Claims, Class 4 comprises of the Old Equity Interests.

The Plan proposes that AerLine makes a New Capital Contribution in exchange for the New Equity in the Reorganized Debtor. The Reorganized Debtor will make distributions from the New Capital Contribution to pay all Allowed Unclassified Claims, Class 1 Claims and Class 2 Claims in full. Class 3 claims will be paid from the remaining Cash left in the New Capital Contribution and the Holders of such Allowed General Unsecured Claims in Class 3 shall receive their Pro Rata portion of the Allowed amount of their Claims on the Effective Date of the Plan or when such Claim becomes Allowed, whichever is later. The interests of Holders of Old Equity Interests in Class 4 will be forever extinguished, canceled and terminated under the Plan.

The Plan provides for distributions on account of certain Allowed General Unsecured Claims. The Plan distributions will be in various amounts and will take various forms, depending on the classification and treatment of any particular Claim. The following tables summarize the classification and treatment of Claims and Equity Interests under the Plan. For a more detailed description of the classification and treatment of Claims and Equity Interests under the Plan, please see Sections 5 and 6 below.

**THE FOLLOWING CHART IS A SUMMARY OF THE CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS AND THE POTENTIAL DISTRIBUTIONS UNDER THE PLAN. THE AMOUNTS SET FORTH BELOW ARE**

ESTIMATES ONLY. ANY ESTIMATES OF CLAIMS OR EQUITY INTERESTS IN THIS DISCLOSURE STATEMENT MAY VARY FROM THE FINAL AMOUNTS ALLOWED BY THE BANKRUPTCY COURT. AS A RESULT OF THE FOREGOING AND OTHER UNCERTAINTIES WHICH ARE INHERENT IN THE ESTIMATES, THE ESTIMATED RECOVERIES IN THIS DISCLOSURE STATEMENT MAY VARY FROM THE ACTUAL RECOVERIES RECEIVED. IN ADDITION, THE ABILITY TO RECEIVE DISTRIBUTIONS UNDER THE PLAN DEPENDS UPON THE ABILITY OF THE DEBTOR TO OBTAIN CONFIRMATION OF THE PLAN AND MEET THE CONDITIONS TO CONFIRMATION AND EFFECTIVENESS OF THE PLAN, AS DISCUSSED IN THIS DISCLOSURE STATEMENT. THE RECOVERIES SET FORTH BELOW ARE PROJECTED RECOVERIES ONLY AND MAY CHANGE BASED UPON CHANGES IN THE AMOUNT OF ALLOWED CLAIMS AS WELL AS OTHER FACTORS RELATED TO THE DEBTOR'S BUSINESS OPERATIONS AND GENERAL ECONOMIC CONDITIONS. REFERENCE SHOULD BE MADE TO THE ENTIRE DISCLOSURE STATEMENT AND THE PLAN FOR A COMPLETE DESCRIPTION OF THE CLASSIFICATION AND TREATMENT OF ALLOWED CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR.

**Summary of Classification and Treatment of Unclassified Claims, Classified Claims and Equity Interests**

<b><u>Class</u></b>	<b><u>Claimholders</u></b>	<b><u>Treatment</u></b>	<b><u>Estimated Allowed Claims<sup>1</sup></u></b>	<b><u>Projected Recovery</u></b>
Unclassified Claims (Administrative)	VX37X-737 LLC, TP Aerospace, Triton Aviation California, AWAS. <sup>2</sup>	Allowed Unclassified Claims Paid in Full on or before the Effective Date	\$2,196,272.32	100%
Unclassified Claims	Priority Tax Claims	Allowed Unclassified Claims Paid in Full on or before the Effective Date	\$ 37,218.76	100%
Class 1	Priority Claims	Unimpaired	\$ 34,162.22	100%
Class 2	AerLine Secured Claim	Unimpaired. To be credited to the New Capital Contribution Upon Confirmation.	\$ 500,000.00	100%
Class 3	General Unsecured Claims	Impaired, solicitation required.	\$12,881,551.00	5.9%
Class 4	Old Equity	Impaired, no	\$0.00	0%

<sup>1</sup> These are estimates only. Unless specified otherwise, these amounts were compiled by combining the list of undisputed Claims listed in the Debtor's bankruptcy schedules and accounting for payments made or to be made during this Chapter 11 Case. Furthermore, these amounts were estimated based on information provided to the Debtor and its Professionals by certain Creditors as of the date of this Disclosure Statement. These amounts are subject to change and do not constitute an admission of their validity, priority or amount, and Debtor reserves all rights with respect to the defense and prosecution of any Claims in this Chapter 11 Case, including the specific right to contest Claims pursuant to the Plan.

<sup>2</sup> See Exhibit 3, attached.

	Interests	solicitation required; deemed rejected		
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## 1.6 Hearings on Confirmation and Objections

The Debtor intends to file an *Ex Parte Motion for Order: (1) Conditionally Approving Disclosure Statement; and (2) Setting a Hearing to Determine Adequacy of Disclosure Statement and Confirmation of Debtor's Plan of Reorganization* (the "DS Motion").

The Debtor's DS Motion contemplates the following schedule with respect to the Disclosure Statement and Plan:

1. October 8, 2014 at 1:30 p.m. is the hearing date for the final approval of the adequacy of the Debtor's Disclosure Statement and the Confirmation of the Plan (the "Combined Hearing"). This hearing may be continued from time to time without further written notice. 11 U.S.C. § 1125 sets forth the requirements for a Disclosure Statement.

2. September 24, 2014 as the deadline for Creditors to object to the adequacy of this Disclosure Statement and/or confirmation of the Plan and to serve and file any supporting declarations. 11 U.S.C. § 1128(b) provides that a party-in-interest may object to confirmation of a plan.

3. October 1, 2014 as the deadline for Debtor to: (a) reply to any objections to the adequacy of this Disclosure Statement, and (b) file a brief in support of Plan Confirmation (and to serve and file any supporting declarations, exhibits, and supporting evidence).

4. September 24, 2014 as the deadline for the Debtor's counsel to receive Ballots from holders of Claims and Interests.

5. September 25, 2014 as the deadline for the Debtor to submit a tabulation of ballots.

6. Any objections to the adequacy of the Disclosure Statement or to confirmation of the Plan must be in writing and specify in detail the name and address of the objector, the grounds for the objection and the amount of the Claim of the objector. All objections must be filed with the Bankruptcy Court and served on counsel for the Debtor, Ryan J. Works, Esq., McDonald Carano Wilson LLP, at 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102. The above hearings may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment date made at the hearing.

The Debtor anticipates that the Bankruptcy Court will enter the scheduling order requested by the Debtor's DS Motion. When the DS Motion is granted, at the Disclosure Statement Hearing, the Bankruptcy Court will: (a) determine whether this Disclosure Statement contains "adequate information" as set forth in 11 U.S.C. § 1125; and (b) otherwise complies with 11 U.S.C. § 1125.

With respect to the Plan Confirmation Hearing, the Bankruptcy Court will: (a) determine whether the Plan has been accepted by the requisite majorities of each Voting Class; (b) resolve

all objections to the Plan and to Confirmation of the Plan; (c) determine whether the Plan meets the requirements for Confirmation of the Plan; (d) determine whether the Plan meets the requirements of the Bankruptcy Code and has been proposed in good faith; and (e) order the Plan confirmed or deny confirmation of the Plan.

Separate notices will be served which reflect the dates and deadlines set forth above, or any change in the dates.

## **2. HISTORY OF THE DEBTOR AND EVENTS LEADING TO THE FILING OF THE CHAPTER 11 CASE**

### **2.1 Description of the Business**

The Debtor is an operating charter airline based in Boise, Idaho and incorporated in the State of Nevada. The Debtor has been in business for more than 23 years and currently leases two (2) aircraft from AerSale (defined below). The Debtor primarily provides charter services to various customers including: (a) Bahamas Air, up and down the East Coast (the "Bahamas Charter"); and (b) Immigration and Customs Enforcement ("ICE") deporting illegal immigrants out of the United States from San Antonio, Texas (the "ICE Charter"). The Debtor recently operated a charter flight out of Santiago, Chile, transporting Chilean mine-workers (the "Chile Charter"); however, due to non-payment by the charterer OneSpa, among other things, the Debtor rejected the Chile Charter agreement<sup>3</sup> and the Bankruptcy Court entered an order approving of the same. Debtor also provides ad hoc charter flight services to various contracting parties when available. For more information about the Debtor and its business and operations, see [www.xtraairways.com](http://www.xtraairways.com).

### **2.2 Events Leading to the Chapter 11 Filing**

Prior to the Petition Date, the Debtor was a party to several lease agreements which provided Debtor with the exclusive use and possession of certain aircraft and engines. All of those lease agreements have now been amended, terminated, rejected, or will no longer exist post-confirmation. In particular, as of the Petition Date, the Debtor was a party to the following Aircraft and Engine Lease Agreements<sup>4</sup>:

#### **VX AIRCRAFT 25109**

1. On January 13, 2012, Wells Fargo Bank Northwest, National Association, not in its individual capacity, but solely as owner trustee (the "Owner Trustee"),<sup>5</sup> as lessor, and

<sup>3</sup> See also *Motion for Determination that Charter Agreement was Terminated Pre-Petition or Alternatively for Order Approving Rejection of Executory Contract or Unexpired Lease* [Docket No. 70]; see also [Docket No.'s 117 & 120].

<sup>4</sup> See also *Stipulation and Agreed Order Authorizing Debtor to Use Cash Collateral and Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363* [Docket No. 102] (the "Cash Collateral Order").

<sup>5</sup> Owner Trustee is the Owner Trustee under that certain Trust Agreement (MSN 25109 Trust), dated as of November 21, 2011 (the "25109 Trust Agreement"), between Owner Trustee, as owner trustee, and V43X-737 LLC, as trustor (in such capacity, "Owner Participant"), relating to the Aircraft (as defined in the 25109 Lease) and establishing the MSN 25109 Trust (the "25109 Trust").



the Debtor, entered into that certain Aircraft Lease Agreement (MSN 25109) (as amended, modified, or supplemented, and together with all underlying documents, collectively, the “25109 Lease”), with respect to one (1) Boeing Model 737-400 aircraft bearing Manufacturer's Serial Number 25109 and U.S. Registration Number N416BC (the “Airframe”), together with two CFM International, Inc. model CFM56-3C1 engines with Engine Serial Numbers 857892 and 856773 (the “Engines” and along with the Parts,<sup>6</sup> the Airframe, and the Aircraft Documents (as defined in the Lease to be the documents, data and records, listed in the Certificate of Delivery Condition signed by Owner Trustee and Debtor at the time of Delivery, and all additions, renewals, revisions, and replacements from time to time made in accordance with the 25109 Lease, together with any logos on the Airframe), the “Vx 25109 Aircraft”).

2. Pursuant to Section 3.1 and Exhibit C of the 25109 Lease, Debtor was required to pay to Owner Trustee, Basic Rent for each Basic Rent Period during the Lease Term, in each case, on or before each Basic Rent Payment Date. Pursuant to Section 13.1 of the 25109 Lease, during the Lease Term, Debtor was required to pay to Owner Trustee, monthly Overhaul Payments, on or before the 15th day of each month for the month previously ended.

3. Over a period of approximately fourteen [14] months, Debtor was unable to timely pay to Owner Trustee, Basic Rent and Overhaul Payments, plus interest due thereon at the Past Due Rate in accordance with the terms of the 25109 Lease, which Basic Rent, Overhaul Payments, and accrued, unpaid interest were in an aggregate amount of \$1,769,659.83 as of May 29, 2014, which constituted various Events of Default under the 25109 Lease.

4. Owner Trustee provided Debtor written notices of Events of Default in June, 2013, and May, 2014, evidencing Debtor's continued inability to timely meet its obligations under the 25109 Lease. Owner Participant, as authorized representative of Owner Trustee, also provided Debtor a written notice of Events of Default in May, 2014.

5. Based on the foregoing Events of Default, (a) Owner Participant sent to Debtor on May 28, 2014, a Notice of Events of Default Under the Lease, Termination of Lease of Aircraft, Demand For Immediate Payment and Return of Aircraft, and Reservation of Rights and Remedies (the “May 28, 2014 Termination Notice”), and (b) Owner Trustee sent to Debtor on May 29, 2014, a certain Notice of Events of Default and Termination of Lease of Aircraft (With Continuing Obligations of Debtor To Satisfy Remaining Obligations Under Lease) for Failure to Pay Basic Rent and Overhaul Payments; Demand for Redelivery and Payment of Outstanding Amounts (the “May 29, 2014 Termination Notice”, and together with the May 28, 2014 Termination Notice, the “Termination Notices”). Pursuant to the Termination Notices, Owner Trustee terminated the Debtor's right to lease the Vx 25109 Aircraft under the 25109 Lease, effective as of May 28, 2014.

6. Owner Participant, as authorized representative of Owner Trustee, and Owner Trustee, respectively, made demand upon the Debtor to not only make the outstanding payments due and payable under the 25109 Lease, but also made demand for (a) redelivery of any and all Parts, Records, and all other documents relating to the Vx 25109 Aircraft in Debtor's possession or control, in each case, to Owner Trustee, in the condition required by Section 21.3

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<sup>6</sup> Capitalized terms used in paragraphs 1 through 8 but not otherwise defined therein shall have the meanings set forth in the 25109 Lease.

of the Lease and Exhibit F to the 25109 Lease, and (b) the execution and delivery to Owner Trustee, of a Return Acceptance Certificate in connection therewith.

7. As of the Petition Date, the total amount owed by Debtor to Owner Trustee under the 25109 Lease was \$1,560,609.03 (after application of security deposits held by Owner Trustee), plus any further Basic Rent and Overhaul Payments due for the remaining term of the 25109 Lease and attorneys' fees, costs of collection and other administrative and recovery expenses for which Debtor remains obligated as an unsecured claim, even after Owner Trustee has terminated the lease of the Vx 25109 Aircraft. In addition to such pre-petition amounts owed to the Owner Trustee, the Owner Trustee has asserted additional damages on account of the Debtor's breach of the 25109 Lease, including the Debtor's failure to return the Vx 25109 Aircraft in accordance with the return conditions set forth in the 25109 Lease.

8. As adequate protection of Owner Trustee's interest in the Vx 25109 Aircraft, the Debtor was required to comply with its "return and surrender" obligations under Section 1110 of the Bankruptcy Code and fully cooperated with the requirements and covenants of the Debtor under the 25109 Lease to effect (a) the complete turnover of all Parts, Records, and all other documents relating to the Vx 25109 Aircraft in Debtor's possession or control, and (b) the execution and delivery of a Return Acceptance Certificate and FAA Lease Termination, in each case, to Owner Trustee.

### **VX AIRCRAFT 25729**

1. On December 22, 2010, V37X-737 LLC, as lessor ("25729 Lessor"), and Debtor, entered into that certain Aircraft Lease Agreement (as amended, modified, or supplemented, and together with all underlying documents, collectively, the "25729 Lease"), with respect to one (1) Boeing Model 737-400 aircraft bearing Manufacturer's Serial Number 25729 and U.S. Registration Number N42XA (the "Airframe"), together with two CFM International, Inc. model CFM56-3C1 engines with Engine Serial Numbers 725625 and 727216 (the "Engines" and along with the Parts,<sup>7</sup> the Airframe, and the Aircraft Documents (as defined in the Lease to be the documents, data and records, listed in the Certificate of Delivery Condition signed by 25729 Lessor and Debtor at the time of Delivery, and all additions, renewals, revisions, and replacements from time to time made in accordance with the 25729 Lease, together with any logos on the Airframe), the "Vx 25729 Aircraft").

2. Pursuant to Section 3.1 and Exhibit C of the 25729 Lease, Debtor was required to pay to 25729 Lessor, Basic Rent for each Basic Rent Period during the Lease Term, in each case, on or before each Basic Rent Payment Date. Pursuant to Section 13.1 of the 25729 Lease, during the Lease Term, Debtor was required to pay to 25729 Lessor, monthly Overhaul Payments, on or before the 15th day of each month for the month previously ended.

3. Over a period of approximately fourteen [14] months, and notwithstanding 25729 Lessor's demand for payment thereof, Debtor was unable to timely pay to 25729 Lessor, Basic Rent and Overhaul Payments, plus interest due thereon at the Past Due Rate in accordance with the terms of the 25729 Lease, which Basic Rent, Overhaul Payments, and accrued, unpaid

<sup>7</sup> Capitalized terms used in paragraphs 1 through 8 but not otherwise defined therein shall have the meanings set forth in the 25729 Lease.



1 interest were in an aggregate amount of \$1,120,272.81 as of May 29, 2014, which constituted  
2 various Events of Default under the 25729 Lease.

3 4. 25729 Lessor provided Debtor written notices of Events of Default in  
4 June, 2013, and May, 2014, thereby evidencing Debtor's continued inability to timely meet its  
5 obligations under the 25729 Lease.

6 5. Based on the foregoing Events of Default, 25729 Lessor sent to Debtor (a)  
7 on May 28, 2014, a Notice of Events of Default Under the Lease, Termination of Lease of  
8 Aircraft, Demand For Immediate Payment and Return of Aircraft, and Reservation of Rights and  
9 Remedies (the "May 28, 2014 Termination Notice"), and (b) on May 29, 2014, a certain Notice  
10 of Events of Default and Termination of Lease of Aircraft (With Continuing Obligations of  
11 Debtor To Satisfy Remaining Obligations Under Lease) for Failure to Pay Basic Rent and  
12 Overhaul Payments; Demand for Redelivery and Payment of Outstanding Amounts (the "May  
13 29, 2014 Termination Notice", and together with the May 28, 2014 Termination Notice, the  
14 "Termination Notices"). Pursuant to the Termination Notices, 25729 Lessor terminated the  
15 Debtor's right to lease the 25729 Aircraft under the 25729 Lease, effective as of May 28, 2014.

16 6. 25729 Lessor has made demand upon the Debtor to not only make the  
17 outstanding payments due and payable under the 25729 Lease, but has made demand for (a)  
18 redelivery of the Vx 25729 Aircraft (including, without limitation, the Parts, Records, and all  
19 other documents relating to the Vx 25729 Aircraft in Debtor's possession or control), in the  
20 condition required by Section 21.3 of the Lease and Exhibit F to the 25729 Lease, and (B)  
21 execution and delivery, a Return Acceptance Certificate in connection therewith, in each case, to  
22 25729 Lessor.

23 7. As of the Petition Date, the total amount owed by Debtor to 25729 Lessor  
24 under the 25729 Lease is \$899,157.05 (after application of security deposits held by 25729  
25 Lessor which Debtor shows to be \$221,400), plus any further Basic Rent and Overhaul Payments  
26 due for the remaining term of the 25729 Lease and attorneys' fees, costs of collection and other  
27 administrative and recovery expenses for which Debtor remains obligated as an unsecured claim,  
28 even after 25729 Lessor has terminated the leasing of the Vx 25109 Aircraft. In addition to such  
pre-petition amounts owed to the 25729 Lessor, the 25729 Lessor has asserted additional  
damages on account of the Debtor's breach of the 25729 Lease, including the Debtor's failure to  
return the Vx 25729 Aircraft in accordance with the return conditions set forth in the 25109  
Lease.

8. As adequate protection of 25729 Lessor's interest in the Aircraft, the  
Debtor was required to comply with its "return and surrender" obligations under Section 1110 of  
the Bankruptcy Code and fully cooperated with the requirements and covenants of the Debtor  
under the 25729 Lease to effect (a) the complete turnover of the Vx 25109 Aircraft (including,  
without limitation, the Parts, Records, and all other documents relating to the Aircraft in Debtor's  
possession or control), and (b) the execution and delivery of a Return Acceptance Certificate and  
FAA Lease Termination, in each case, to 25729 Lessor. The 25729 Lessor has asserted an  
administrative expense claim against the Debtor in the amount of \$368,044.14, together with  
supporting documentation of such claim. The Allowed Amount of the Administrative Claim  
shall be paid to the 25729 Lessor on the Effective Date.

9. 25729 Lessor agreed to provide credit to the Debtor, in the approximate amount of \$40,000, to fund the fuel costs necessary for the Debtor to comply with its post-petition return and surrender requirements under Section 1110 of the Bankruptcy Code. Accordingly, the Cash Collateral Order [Docket No. 102] granted the 25729 Lessor a super-priority administrative claim in the amount of the advance necessary to pay for such fuel, in the approximate amount of \$40,000<sup>8</sup>, together with interest accruing thereon at the rate of 15% per annum, until paid. The Debtor was required to satisfy such obligation owing to 25729 Lessor, with two (2) equal installments on July 31, 2014 and August 30, 2014, which was reflected in the Approved Budget (*see* Docket No. 102 at Exhibit 1). Debtor has timely paid \$20,000 of the \$40,000 by wire transfer to Vx Capital Partners, LLC, in accordance with the existing wiring instructions. Debtor intends on timely paying the balance of the fuel charges, upon proper documentation by the 25729 Lessor of the amount of fuel required to recover the Vx 25109 Aircraft from Chile. The 25729 Lessor provided to the Debtor's counsel appropriate documentation evidencing the calculation of the fuel claim referenced above, which amount totaled \$42,571.58. Upon payment of the fuel charges, in full, the above super-priority administrative claim described in this paragraph 9 will be extinguished in its entirety.

### ENGINE 726322

1. Prior to the Petition Date, V48R-737X5 LLC ("726322 Owner"), and the Debtor had been in discussions for the lease by 726322 Owner to Debtor of one (1) CFM International, Inc. model CFM56-3C1 Aircraft Engine with Engine Serial Number 726322 (the "726322 Used Engine") and along with the associated parts and associated aircraft documents with respect thereto, the "726322 Used Engine").

2. In connection with such discussions, and in anticipation of reaching a definitive written agreement with respect to the lease thereof, 726322 Owner permitted Debtor to use the 726322 Used Engine in one or more of Debtor's airplanes for a period of at least 18 days.

3. Despite their efforts to reach an agreement with respect thereto, no written lease or other agreement with respect to the 726322 Used Engine was entered into by 726322 Owner and Debtor. Based on that fact, and the fact that Debtor had been using the 726322 Used Engine for at least 18 days without remitting any payment or other consideration to 726322 Owner for the use thereof, 726322 Owner sent to Debtor (a) on May 28, 2014, an e-mail (the "May 28, 2014 Redelivery Notice"), and (b) on May 29, 2014, a certain Notice of Demand for Redelivery and Payment of Outstanding Amounts (the "May 29, 2014 Redelivery Notice", and together with the May 28, 2014 Redelivery Notice, the "Redelivery Notices"). Pursuant to the Redelivery Notices, 726322 Owner terminated the Debtor's right to use the 726322 Used Engine, effective as of May 28, 2014.

4. 726322 Owner has made demand upon the Debtor to not only make the appropriate usage payments due 726322 Owner for the use of the 726322 Used Engine, but also made demand upon Debtor to (a) redeliver the 726322 Used Engine (including, without limitation, all associated parts, records, and all other documents relating to the 726322 Used Engine in Debtor's possession or control) to 726322 Owner, in the condition as existed prior to

<sup>8</sup> To date, the Debtor has paid \$20,000 of the approximate \$40,000 in fuel charges pursuant to the Cash Collateral Order [Docket No. 102].

the use of the 726322 Used Engine by the Debtor, and (b) execute and deliver to 726322 Owner, a Return Acceptance Certificate in connection therewith.

5. 726322 Owner and the Debtor agreed that based on the \$13,000 per month usage rate for the 726322 Used Engine that was previously under discussion by 726322 Owner and Debtor, as of the Petition Date, the aggregate use charges<sup>9</sup> owed by Debtor to 726322 Owner with respect to the 726322 Used Engine were \$7,800.00, plus the Additional Use Charges with respect to recovering or restoring the 726322 Used Engine.

6. After the Petition Date, 726322 Owner was be entitled to a per diem of \$433.33 for each day that Debtor utilized the 726322 Used Engine, plus the Additional Use Charges based on the number of flight hours and flight cycles in which the 726322 Used Engine is used. Debtor's right to continue to use the 726322 Used Engine under the terms and conditions set forth above continued until the earlier of (a) the date upon which 726322 Owner made demand for return therefor, upon 726322 Owner (or the date upon which the Debtor returned the 726322 used Engine to the 726322 Owner); and (b) the effective date of any post-petition written lease agreement entered into by 726322 Owner and Debtor with respect to the 726322 Used Engine, as approved by the Bankruptcy Court. Upon any written demand by 726322 Owner to the Debtor for the immediate return of the 726322 Used Engine (at the election of the 726322 Owner, in its sole discretion, including, without limitation, for non-payment), the automatic stay was deemed lifted and terminated with respect to the 726322 Used Engine, without further action or subsequent order of the Bankruptcy Court, and the Debtor was required to deliver and return the 726322 Used Engine (together with any other parts, accessories, and documents with respect thereto in Debtor's possession or control) to the 726322 Owner, and execute and deliver to 726322 Owner, a Return Acceptance Certificate in connection therewith in each case, within two (2) business days after delivery of such notice. The Approved Budget included a line item for the payment to the 726322 Owner of the monthly use charge of \$13,433.23, together with an Additional Use Charge of not less than \$40,000 (subject to adjustment upon execution of further documentation), each charge prorated from and after the Petition Date, which was to be paid by the Debtor to the 726322 Owner, to the attention of Vx Capital Partners, LLC in accordance with the existing wiring instructions. The Approved Budget provided for the payment to the 726322 Owner of (i) the foregoing use charge for the month of June, 2014, on or before the date that was three (3) days after the entry of the Cash Collateral Order, and (ii) the foregoing Additional Use Charge for the month of June, 2014, on or before July 15, 2014, and thereafter, each subsequent monthly payment to the 726322 Owner of the foregoing use charge and the Additional Use Charge was to be paid as follows: (x) one-half of such use charge and the Additional Use Charge was to be paid to 726322 Owner on the third (3rd) day of each calendar month, and (y) one-half of such use charge and the Additional Use Charge was to be paid to 726322 Owner on the eighteenth (18th) day of each calendar month (except with respect to the Additional Use Charge for the month of June, 2014, due and payable to 726322 Owner on or before July 15, 2014).

<sup>9</sup> 726322 Owner is also asserting a \$201.91/flight hour and a \$117.89/flight cycle usage charges, as further modified by a schedule of surcharges for excessive use measured over and above a straight hourly or cycle use (the "Additional Use Charges") for the 726322 Used Engine and the 857562 Used Engine (as defined below), which can only be determined after the Debtor provides such relevant information to 726322 Owner or the 857562 Owner, as applicable.

7. Debtor has returned the 726322 Used Engine to the 726322 Owner as of August 18, 2014 eliminating further obligations of the Debtor to the 726322 Owner or Vx Capital Partners, LLC, or their professionals or advisors, under this provision of the Cash Collateral Order or Approved Budget.

### **ENGINE 857562**

1. Prior to the Petition Date, V47A-737X10 LLC ("857562 Owner"), and the Debtor had been in discussions for the lease by 857562 Owner to Debtor of one (1) CFM International, Inc. model CFM56-3C1 Aircraft Engine with Engine Serial Number 857562 (the "857562 Used Engine") and along with the associated parts and associated aircraft documents with respect thereto, the "857562 Used Engine").

2. In connection with such discussions, and in anticipation of reaching a definitive written agreement with respect to the lease thereof, 857562 Owner permitted Debtor to use the 857562 Used Engine in one or more of Debtor's airplanes for a period of at least 18 days.

3. Despite their efforts to reach an agreement with respect thereto, no written lease or other agreement with respect to the 857562 Used Engine was entered into by 857562 Owner and Debtor. Based on that fact, and the fact that Debtor had been using the 857562 Used Engine for at least 18 days without remitting any payment or other consideration to 857562 Owner for the use thereof, 857562 Owner sent to Debtor (a) on May 28, 2014, an e-mail (the "May 28, 2014 Redelivery Notice"), and (b) on May 29, 2014, a certain Notice of Demand for Redelivery and Payment of Outstanding Amounts (the "May 29, 2014 Redelivery Notice", and together with the May 28, 2014 Redelivery Notice, the "Redelivery Notices"). Pursuant to the Redelivery Notices, 857562 Owner terminated the Debtor's right to use the 857562 Used Engine, effective as of May 28, 2014.

4. 857562 Owner has made demand upon the Debtor to not only make the appropriate usage payments due 857562 Owner for the use of the 857562 Used Engine, but also made demand upon Debtor to (a) redeliver the 857562 Used Engine (including, without limitation, all associated parts, records, and all other documents relating to the 857562 Used Engine in Debtor's possession or control) to 857562 Owner, in the condition as existed prior to the use of the 857562 Used Engine by the Debtor, and (b) execute and deliver to 857562 Owner, a Return Acceptance Certificate in connection therewith.

5. 857562 Owner and the Debtor agreed that based on the \$13,000 per month rental rate set forth in the draft lease agreement for the 857562 Used Engine that was previously under discussion by 857562 Owner and Debtor, as of the Petition Date, the Additional Use Charges owed by Debtor to 857562 Owner with respect to the 857562 Used Engine were \$7,800.00, plus the Additional Use Charges.

6. After the Petition Date, 857562 Owner was entitled to a per diem of \$433.33 for each day that Debtor utilized the 857562 Used Engine, plus the Additional Use Charges based on the number of flight hours and flight cycles in which the 857562 Used Engine was used. Debtor's right to continue to use the 857562 Used Engine under the terms and conditions set forth above continued until the earlier of (a) the date upon which 857562 Owner made demand for return therefor, upon 857562 Owner (or the date upon which the Debtor returned the 857562 used Engine to the 857562 Owner), and (b) the effective date of any post-



petition written lease agreement entered into by 857562 Owner and Debtor with respect to the 857562 Used Engine, as approved by the Bankruptcy Court. Upon any written demand by 857562 Owner to the Debtor for the immediate return of the 857562 Used Engine (at the election of the 857562 Owner, in its sole discretion, including, without limitation, for non-payment), the automatic stay was deemed lifted and terminated with respect to the 857562 Used Engine, without further action or subsequent order of the Bankruptcy Court, and the Debtor was required to deliver and return the 857562 Used Engine (together with any other parts, accessories, and documents with respect thereto in Debtor's possession or control) to the 857562 Owner, and execute and deliver to 857562 Owner, a Return Acceptance Certificate in connection therewith, in each case, within two (2) business days after delivery of such notice. The Approved Budget included a line item for the payment to the 857562 Owner of the monthly use charge of \$13,433.23 together with an Additional Use Charge of not less than \$40,000 (subject to adjustment upon execution of further documentation), each charge prorated from and after the Petition Date, which was required to be paid by the Debtor to the 857562 Owner, to the attention of Vx Capital Partners, LLC in accordance with the existing wiring instructions. The Approved Budget provided for the payment to the 857562 Owner of (i) the foregoing use charge for the month of June, 2014, on or before the date that was three (3) days after the entry of the Cash Collateral Order, and (ii) the foregoing Additional Use Charge for the month of June, 2014, on or before July 31, 2014, and thereafter, each subsequent monthly payment to the 857562 Owner of the foregoing use charge and the Additional Use Charge were required to be paid as follows: (x) one-half of such use charge and the Additional Use Charge were required to be paid to 857562 Owner on the third (3rd) day of each calendar month, and (y) one-half of such use charge and the Additional Use Charge were required to be paid to 857562 Owner on the eighteenth (18th) day of each calendar month (except with respect to the Additional Use Charge for the month of June, 2014, due and payable to 857562 Owner on or before July 31, 2014).

7. Debtor has returned the 857562 Used Engine to the 857562 Owner as of August 18, 2014 eliminating further obligations of the Debtor to the 857562 Owner or Vx Capital Partners, LLC, or their professionals or advisors, under this provision of the Cash Collateral Order or Approved Budget.

### ENGINE 726312

1. On August 10, 2011, the Debtor: (a) executed and delivered to V31-A&E LLC (the "Vx Lender"), that certain Secured Promissory Note (the "Note"), in the original principal amount of \$602,619.00, and (b) entered into that certain Engine Mortgage and Security Agreement (ESN 726312), between Debtor and the Vx Lender (as amended by that certain Security Agreement (ESN 726312) Supplement No. 1, dated August 10, 2011, the "Security Agreement"), and together with the 25109 Lease, the 25729 Lease, the oral arrangements by which the 726322 Used Engine and the 857562 Used Engine were used, and the Note, the "Loan and Lease Documents").

2. Pursuant to the Note, Debtor was required to make, among other payments, principal and interest payments in such amounts, and on such dates, as more fully set forth on the Schedule to the Note.

3. Pursuant to the terms and conditions of the Security Agreement, Debtor granted to the Vx Lender a first-priority security interest in, and lien on, all assets of the Debtor

(collectively, the “Collateral”), in order to secure the Secured Obligations<sup>10</sup>, and all proceeds of the foregoing.

4. The Vx Lender properly perfected its security interest in, and lien on, the Collateral, by filing (a) a UCC-1 Financing Statement naming the Vx Lender, as secured party, and Debtor, as debtor, with the Nevada Secretary of State on August 11, 2011, as filing number 2011021300-6, (b) a registration with The International Registry for International Interests In Mobile Equipment (Aircraft Equipment) on August 10, 2011, as registration number 763968, and (c) the Security Agreement with the Federal Aviation Administration, on August 31, 2011, as document number SG006125.

5. Debtor breached the terms of the Note and Security Agreement by reason of the Debtor's inability to pay to the Vx Lender the full amount of the indebtedness due and owing thereunder, on or before February 10, 2012, the maturity date of the Note. The full amount of the indebtedness owing under the Note in accordance with the terms of the Note, was in an aggregate amount of approximately \$163,148.36 as of May 29, 2014.

6. The Vx Lender provided Debtor written notices of Events of Default in June, 2013, and May, 2014, thereby evidencing Debtor's inability to timely meet its obligations under the Note.

7. Based on the foregoing Event of Default, the Vx Lender sent to Debtor on May 29, 2014, a certain Notice of (i) Event of Default; (ii) Demand For Immediate Payment of All Indebtedness; (iii) Demand For Immediate Turnover of Engine 726312, Parts, and Engine Documents; (iv) Objection to Use of Cash Collateral; and (v) Notice of Reservation of Rights and Remedies (the “May 29, 2014 Demand Notice”).

8. The Vx Lender made demand upon Debtor to not only make the outstanding payment due and payable to the Vx Lender under the Note, but made demand upon Debtor to (a) deliver to the Vx Lender the possession and control of the Engine, Parts, and Engine Documents; and (b) immediately take all steps necessary to enable the Vx Lender to take possession or control of Engine 726312, Parts, and Engine Documents. As adequate protection of the Vx Lender's interests in Engine 726312, Parts, and Engine Documents, and given the fact that the Debtor was not using such equipment in its operations, the Debtor returned and delivered possession of Engine 726312, Parts, and Engine Documents to the Vx Lender, and cooperated fully in executing and delivering to the Vx Lender all documents in connection therewith.

9. The total amount owed by Debtor to the Vx Lender under the Note was \$163,604.29 as of the Petition Date, together with accrued but unpaid interest on and after May 29, 2014, and attorneys' fees, costs of collection and other administrative and recovery expenses for which Debtor remains obligated the (“Pre-Petition Vx Loan Debt”, and together with the Pre-Petition Vx Lease Obligations, the “Pre-Petition Vx Obligations”).

10. The Debtor satisfied the Pre-Petition Vx Loan Debt, in its entirety, pursuant to the Bankruptcy Court’s *Order Granting Motion For Interim Approval Of Post-Petition Financing Pursuant To 11 U.S.C. Section 364(c)(2)* [Docket No. 181]. Pursuant thereto,

<sup>10</sup> Capitalized terms used in paragraphs 1 through 10 under “Engine 726312” but not otherwise defined therein shall have the meanings set forth in the Security Agreement.

the Debtor, AerLine and the Vx Lender closed the DIP financing transaction, with AerLine funding approximately \$234,195.24 (\$244,195.24 less \$10,000 as set forth in paragraph 9 above) to the Debtor to satisfy its repayment obligations to the Vx Lender. In connection with such DIP financing, AerLine was granted a post-petition security interest in all of the Debtor's unencumbered Collateral pursuant to 11 U.S.C. Section 364(c)(2). The total amount due and owing to AerLine under the DIP Loan Facility is estimated will be in the approximate amount of \$500,000.00 as of the Effective Date. *See* below at Section 3.1.3. The Debtor has no further obligations to the Vx Lender under this Section.

### **TRITON AIRCRAFT 24796**

1. On, or about, December 15, 2005, Triton Aviation California ("Triton"), as lessor, and the Debtor, entered into that certain Aircraft Lease Agreement (as amended, modified, or supplemented, and together with all underlying documents, collectively, the "24796 Lease"), with respect to one (1) Boeing Model B737-4S3 aircraft bearing Manufacturer's Serial Number 24796 and U.S. Registration Mark N43XA (the "Airframe"), together with two CFM International, Inc. model CFM56-3C1 engines with Engine Serial Numbers 724661 and 724679 (the "Engines" and along with the Parts, the Airframe, and the Aircraft Documents (the "Triton Aircraft").

2. Pursuant to the Cash Collateral Order, Debtor will deliver all payments payable to Triton under the Approved Budget by wire transfer to Triton's Bank Account as defined in Schedule I of the 24796 Lease on or before the close of business on the 10th day of the calendar month for Aircraft maintenance reserves and on the 4th day of August, 2014 for Triton's Aircraft lease payment pursuant to the Approved Budget. Although Debtor remains in arrears on certain of the above payments to Triton, it will pay those amounts as Unclassified Administrative Expenses on or before the Effective Date pursuant to the Plan.

3. Pursuant to the Cash Collateral Order, nothing therein modified the rights of Triton, or any other similarly situated party, under 11 U.S.C. § 1110. However, the Debtor and Triton later agreed to stipulate to an extension of the time periods set forth in 11 U.S.C. § 1110(b). The Bankruptcy Court entered an order extending the time in which the Debtor could assume the Triton Aircraft 24796 Lease up to and including October 3, 2014. *See* [Docket No. 173]. Triton and the Debtor reserved their rights with respect to any security deposit on account with Triton (the "Triton Security Deposit"). The Debtor currently shows that the Triton Security Deposit is \$175,000.00.

4. Debtor was required to make appropriate payments as set forth in the Approved Budget, for insurance, maintenance, reserves, spare parts – including wheels and brakes, and all applicable fees and costs for the benefit of Triton's interest in the Triton Aircraft 24796. Debtor agreed that at least \$105,000 of the \$150,000 set forth in the Approved Budget for "Aircraft lease payments" was to be payable to Triton. Debtor agreed that approximately \$90,000 of the \$130,000 set forth in the Approved Budget for "Aircraft maintenance reserves" was also payable to Triton. The Triton Security Deposit was not to be used in the Approved Budget.



5. In exchange for the above agreements, Triton withdrew its Opposition to Debtor's *Motion for Approval of Stipulation and Order Authorizing Debtor to Use Cash Collateral and Granting Adequate Protection Under 11 U.S.C. §§ 361 and 363* [Docket No. 82].

6. The Debtor recently renegotiated the 24796 Lease which is being amended to substantially lower the monthly basic rent payment, in an approximate amount to the AerSale Leases. Debtor will continue paying full maintenance reserves while leasing the 24796 Aircraft until its next major check-up ("C-Check") when the Debtor will return 24796 Aircraft "as-is". However Debtor will not cure the pre-petition and post-petition delinquency associated with the 24796 Lease, which condition is expressly waived by Triton and approved by the Bankruptcy Court upon entry of the Confirmation Order. As a result, the Debtor is assuming the 24796 Lease, as amended, and any Allowed Claims arising therefrom shall be treated as: (a) if pre-petition, a General Unsecured Claim; and (b) if post-petition, an Administrative Claim. Upon entry of an order confirming the Plan the 24796 Lease, as amended, will be assumed by the Reorganized Debtor, without a cure of the pre-petition or post-petition arrears. An amendment to the 24796 Lease will be drafted and executed by Triton and the Debtor, memorializing the terms of the amendment and assumption, effective as of the Effective Date.

#### **AWAS AIRCRAFT 26279**

1. In or about late 2009, MSA V, a Delaware statutory trust ("AWAS"), as lessor, and the Debtor, entered into that certain Aircraft Lease Agreement [26279] (as amended, modified, or supplemented, and together with all underlying documents, collectively, the "26279 Lease"), with respect to one (1) Boeing Model 737-400 aircraft bearing Manufacturer's Serial Number 26279 (the "Airframe"), together with two CFM International, Inc. model CFM56-3C1 engines with Engine Serial Numbers 727223 and 727224 (the "Engines" and along with the Parts, the Airframe, and the Aircraft Documents (the "AWAS 26279 Aircraft").

2. Upon filing for bankruptcy, the Debtor was in default of the AWAS 26279 Lease in the amount of approximately \$1,439,755.93. *See* Schedule F [Docket No. 85]. Because Debtor was not likely to cure such default, AerLine's affiliate, AerSale, purchased the AWAS 26279 Aircraft and leased it back to the Debtor for a substantially reduced amount.

3. The amount of the security deposit being held by AWAS with respect to the 26279 Lease is \$150,000.

#### **AWAS AIRCRAFT 25105**

1. Debtor was also a party to a pre-petition lease with MSA V, a Delaware statutory trust ("AWAS"), as lessor pursuant to that certain Aircraft Lease Agreement [25105] (as amended, modified, or supplemented, and together with all underlying documents, collectively, the "25105 Lease"), with respect to one (1) Boeing Model 737-400 aircraft bearing Manufacturer's Serial Number 25105 and U.S. Registration Number N772AS (the "Airframe"), together with two CFM International, Inc. model CFM56-3C1 engines with Engine Serial Numbers 858852 and 857639 (the "Engines" and along with the Parts, the Airframe, and the Aircraft Documents (the "AWAS 25105 Aircraft").

2. Debtor returned the AWAS 25105 Aircraft pre-petition. The amount of the security deposit being held by AWAS with respect to the 25105 Lease is \$225,000.

## **THE CHARTER AGREEMENTS**

The Debtor utilized the above referenced Aircraft and Engines in its daily operations to operate charter flights for various third-parties and on an ad-hoc basis when available. When a party to a charter agreement failed to tender a payment to the Debtor, the Debtor was, at times, left without sufficient funds to pay its lessors. For instance, in or around April 2014, One SpA failed to tender its monthly reconciliation payment to the Debtor arising from the Chile Charter. One SpA again failed to tender its monthly payment to the Debtor on June 1, 2014. As a result, the Debtor was unable to tender its monthly payments due to the Vx Lessors and in turn the Vx Lessors issued the above referenced Termination Notices. The Debtor then terminated its charter agreement with OneSpa (and later received Bankruptcy Court authority for rejection of the Chile Charter). Facing a serious shortage of cash, and having several major obligations pending, the Debtor filed its voluntary petition shortly thereafter on the Petition Date (June 4, 2014). Pre-petition, the Debtor was forced to return the AWAS 25105 Aircraft due to a shortage of charter flights in which to utilize the AWAS 25105 Aircraft as a result the return of the AWAS 25105 Aircraft resulted in a significant pre-petition liability.

### **3. SIGNIFICANT DEVELOPMENTS DURING THE COURSE OF THE CHAPTER 11 CASE**

#### **3.1 Ongoing Business**

Since the Petition Date, the Debtor has remained in possession of its property and has operated its affairs as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

##### **3.1.1 The Aircraft Leases**

As set forth above, the right of the Debtor to lease the 25109 VX Aircraft was terminated pre-petition; the AWAS 25105 Lease was terminated pre-petition and those Aircraft were returned to their owners. As of the Petition Date, Debtor remained in possession of the AWAS 26279 Aircraft pursuant to the 26279 Lease; however, the Debtor sought, and received approval for rejecting the 26279 Lease. *See* [Docket No. 182]. In addition, the Debtor rejected its charter agreement with One SpA pursuant to Bankruptcy Court approval [Docket No. 117] and Debtor has just recently renegotiated the Triton lease (the “24796 Lease”), which will be assumed as amended and which will result in a substantially lower monthly payment to Triton. Debtor has entered into new lease agreements with AerSale, an affiliate of the proposed New Equity Investor AerLine. Debtor’s decision to reject, or assume as amended, its pre-petition lease agreements was a simple one as it was not possible for the Debtor to cure these amounts. Debtor’s decision to amend the Triton Lease was instrumental in continuing the Debtor’s lease of that Aircraft through the next C-Check.

The Debtor is now a party to four (4) lease agreements. Pursuant to the Bankruptcy Court’s *Order Authorizing Debtor In Possession To: (A) Reject The AWAS Aircraft Lease Agreement; And (B) Enter Into New Aircraft Lease Agreements* [Docket No. 182], Debtor currently leases the following Aircraft from AerSale: (1) Boeing 737-400 series aircraft bearing Manufacturer’s Serial Number 25314 and two CFM International CFM56-3C1 Engines bearing Manufacturer’s Serial Numbers 727430 and 727260 (the “25314 Aircraft”) (the “25314 Lease”); (2) Boeing 737-400 Aircraft, bearing Manufacturer’s Serial Number 25313 and two CFM

International CFM56-3C1 Engines bearing Manufacturer's Serial Numbers 726316 and 727339 (the "25313 Aircraft") (the "25313 Lease"); and (3) Boeing 737-400 Aircraft, bearing Manufacturer's Serial Number 26279 and two CFM International CFM56-3C1 Engines bearing Manufacturer's Serial Numbers 727223 and 727224 (the "26279 Lease") collectively, the "AerSale Leases").<sup>11</sup> Finally, the Debtor recently renegotiated its fourth lease (4) the 24796 Lease with Triton for use until the Aircraft's next C- Check. A lease amendment will be drafted and executed by the parties memorializing the amendment to the assumed 24796 Lease.

The Debtor now leases four (4) Aircraft at below-market lease rates and is currently in the process of executing new charter agreements to put these Aircraft to work.

### **3.1.2 Debtor's Charter Agreements**

As set forth above, Debtor's primary source of revenue is from long-term charter agreements, whereby Debtor provides one of the above Aircraft, pilots, crew and a maintenance team, to transport passengers throughout the United States, Mexico and the Bahamas. Debtor's current charter agreements are with Immigration and Customs Enforcement ("ICE"), Bahamas Air, and more recently Aviation Advantage ([www.aviationadvantage.com](http://www.aviationadvantage.com)). Debtor anticipates entering into a new charter agreement this week, with Apple Vacations ([www.applevacations.com](http://www.applevacations.com)). As a result of the above charter agreements, all four of Debtor's leased Aircraft, at substantially reduced basic rental prices, will be utilized in the coming months.

### **3.1.3 Debtor's Secured Obligations and Use of Cash Collateral**

As noted above, the Debtor was obligated to repay the Vx Lender on account of its secured claim, secured by a lien on all of the Collateral. After substantial negotiation, the Bankruptcy Court entered a Cash Collateral Order, authorizing the Approved Budget on July 1, 2014. [Docket No. 102] at Ex. 1. The Approved Budget provided that, beginning in August, 2014 Debtor was required to make adequate protection payments of \$5,000 per week, and of not less than \$20,000 per month, to Lender, for the period beginning on the Petition Date, through the date the Pre-Petition Vx Loan Debt was paid in full; provided, that for purposes of clarity, the first of such payments made by Debtor to Lender was required to be made on August 3, 2014. For the months of June, 2014 and July, 2014, Debtor was required to make adequate protection payments on the Vx Loan Debt from its ending cash balance in excess of \$50,000. For the avoidance of doubt, and as an example, if the Debtor had available cash of \$60,000 at the end of August 2014, it was required to pay \$10,000 toward the June 2014 and July 2014 \$5,000 per week adequate protection arrearages.

Pursuant to the Cash Collateral Order, Debtor made two \$5,000 payments beginning in August 2014 to the VX Lender, for a total of \$10,000 to be credited to the Pre-Petition Vx Loan Debt and Pre-Petition Vx Obligations (defined below). The total amount owed by Debtor to Lender under the Note was \$163,604.29 as of the Petition Date, together with accrued but unpaid interest on and after May 29, 2014, and attorneys' fees, costs of collection and other administrative and recovery expenses for which Debtor was obligated the ("Pre-Petition Vx Loan

<sup>11</sup> Again, in addition to AerLine's substantial commitment to the Debtor pursuant to the DIP Loan Facility and the New Equity Investment, totaling \$3.5 million, AerLine's affiliate, AerSale, purchased the AWAS 26279 Aircraft and leased it to Debtor anew. AerSale is also providing the 25313 and 25314 Leases at below-market lease rates. See Dunn Declaration [Docket No. 146] at ¶ 26.

Debt”, and together with the Pre-Petition Vx Lease Obligations, the “Pre-Petition Vx Obligations”). The accrued but unpaid interest, Debtor’s attorneys’ fees and expenses, and other administrative and recovery expenses totaled \$80,590.95, bringing the total Pre-Petition Loan Debt to \$244,195.24 at the time of payoff.

The Debtor satisfied the Pre-Petition Vx Loan Debt, in its entirety, pursuant to the Bankruptcy Court’s *Order Granting Motion For Interim Approval Of Post-Petition Financing Pursuant To 11 U.S.C. Section 364(c)(2)* [Docket No. 181]. Pursuant thereto, the Debtor, AerLine and VX Lender closed the transaction, with AerLine funding approximately \$234,195.24 (\$244,195.24 less \$10,000 in adequate protection payments made by the Debtor as set forth above) to the Debtor to satisfy its repayment obligations to the VX Lender. In exchange, AerLine took a post-petition security interest in all of the Debtor’s unencumbered Collateral pursuant to 11 U.S.C. Section 364(c)(2). The total amount due and owing to AerLine pursuant to this Section 11 and under the DIP Loan Facility is currently \$250,000, excluding accrued interest at the contract rate; however, it is anticipated that as of the Effective Date of the Plan, the DIP Loan Facility may be in the approximate amount of \$500,000. Debtor has no further obligations to the VX Lender under this Section.

### 3.1.4 The Initial Debtor Interview and Meeting of Creditors

On July 11, 2014, the Debtor submitted its questionnaire and list of documents to the Office of the United States Trustee (“OUST”). Mr. Jim Palmer of the OUST conducted the initial debtor interview (“IDI”) on July 15, 2014 at the Foley Federal Bankruptcy Court in Las Vegas, Nevada. Ms. Dunn appeared with counsel for MCW – Mr. Ryan J. Works, Esq. (“Mr. Works”). Mr. Palmer requested an analysis and potentially an amendment of the Debtor’s schedules for any trust fund monies that the Debtor is collecting for the benefit of various airports that the Debtor utilizes. These passenger facility charges (“PFC”) are rarely collected by the Debtor due to the nature of its business as a charter airline that gets paid directly from the chartering company – which in turn sells the seats to passengers and is required to collect the PFC. To the extent that the Debtor owes any PFC to airports that it utilizes, those payments will be made on or prior to Confirmation. In addition, to the extent the Debtor is required to collect PFCs in the future, it will establish a separate trust account to segregate and hold those PFCs. Similarly, the TSA previously had a claim against the Debtor in the amount of \$42,688.71. This amount has since been paid in full. Accordingly, the newly amended schedules reflect these changes to ensure that all PFCs are adequately paid in full. The IDI was concluded on July 15, 2014.

Ms. Dunn and Mr. Works appeared for the meeting of creditors pursuant to 11 U.S.C. § 341 on July 24, 2014 at noon. Mr. Jonas Anderson, trial attorney for the OUST, conducted the meeting with several interested parties in attendance, including representatives for major creditors Triton and TP Aerospace. The meeting of creditors was concluded on July 24, 2014. No official creditors committee was formed by the U.S. Trustee’s office.

### 3.2 Schedules and Statement of Affairs

The Debtor filed its voluntary Chapter 11 petition on June 4, 2014 [Docket No. 1] and filed its Schedules and Statement of Financial Affairs (the “SOFA”) on June 26, 2014 [Docket Nos. 85-86]. The Schedules (“Schedules”) were further amended on August 25, 2014. [Docket

No. 204]. Those Schedules and the SOFA may be amended from time to time; however, the Debtor does not anticipate any major changes. The Schedules and SOFA may be viewed online at [www.nvb.uscourts.gov](http://www.nvb.uscourts.gov) or may be obtained from the Bankruptcy Clerk or by contacting counsel for the Debtor.

### **3.3 Monthly Operating Reports**

The Debtor is current on its monthly operating reports. The monthly operating for the month of July, 2014 is forthcoming and lists a balance of \$546,542.00 in the Debtor's DIP Account. The monthly operating reports may be viewed online at [www.nvb.uscourts.gov](http://www.nvb.uscourts.gov) or may be obtained from the Bankruptcy Clerk or by contacting counsel for the Debtor.

### **3.4 Employment and Payment of Professionals**

#### **(a) General Counsel – McDonald Carano Wilson LLP**

On June 12, 2014, the Debtor filed an application to employ McDonald Carano Wilson LLP ("MCW" or the "Firm") as general bankruptcy and reorganization counsel for the Debtor [Docket No. 29] (the "Application to Employ"). On July 23, 2014, the Bankruptcy Court conducted a hearing on the Application to Employ and approved the Debtor's employment of MCW *nunc pro tunc* to the Petition Date. [Docket No. 167]. The Order authorizing and approving the employment of MCW was entered on July 28, 2014 and allows for the Debtor to make payments to MCW in the ordinary course, for work performed in connection with this Chapter 11 Case. *Id.* MCW is authorized to be paid 100% of reimbursable expenses and 80% of its total monthly fees incurred, with a 20% holdback. *Id.*; *see also* Application to Employ at ¶ 4.

In or around May 2014, MCW obtained a \$35,000.00 pre-payment for services to be performed by MCW relating to the Chapter 11 Bankruptcy. *See* Disclosure of Compensation [Docket No. 48]. In addition, MCW has received payments of \$38,135.06 from the Debtor for fees and costs incurred on behalf of the Debtor. Of course, all such amounts received are subject to final court approval, pursuant to fee applications to be filed not more than every 120 days in this Chapter 11 Case. MCW remains disinterested as set forth in its Application to Employ.

MCW has incurred additional unpaid fees and expenses in addition to the amount already paid. Pursuant to the Cash Collateral Order, MCW obtained a carve-out for payment of its fees and costs pursuant to the above formula. MCW will continue to incur fees and expenses through confirmation and expects to continue receiving compensation on a monthly basis. MCW reserves the right to seek court approval and amend its compensation structure going forward.

## **4. DESCRIPTION OF PENDING AND COMPLETED LITIGATION**

### **4.1 Pending Litigation.**

Prior to the Petition Date, Debtor was the target of a pre-petition preference action in the Southern Sky Air & Tours, LLC Bankruptcy Case pending in the United States Bankruptcy



Court, District of Massachusetts; Case No. 40944. Although the amount in controversy was alleged in excess of \$4,000,000.00, the Chapter 7 trustee was willing to accept \$65,000.00, pre-petition, to settle this claim, likely because the Debtor has substantial defenses (assuming the amount in controversy satisfies the elements of a preference).

The lawsuit has not yet been filed; however, the Debtor anticipates that it will be capable of settling this claim for substantially less than the full amount asserted. If so, upon reaching an agreement, the Debtor will request approval from the Bankruptcy Court pursuant to a Bankruptcy Rule 9019. Alternatively, the Debtor will file an objection to the claim pursuant to the Plan.

The Debtor is unaware of any additional disputes and/or lawsuit filed against it at this time.

#### **4.2 Post-Petition Litigation.**

Since the Petition Date, the Debtor has been involved in only one contested matter which involved the return of the aircraft utilized under the Debtor's charter agreement with One SpA. See [Docket No. 70]. The Debtor obtained an order from the Bankruptcy Court which provided that the One SpA charter agreement was rejected and which required One SpA to execute the proper documentation to allow for the 25729 Aircraft to be returned to the United States and to its owner, 25729 Lessor. [Docket Nos. 117 & 124]. One SpA's refusal to return this aircraft caused substantial damages to the Debtor and resulted in a delay in 25729 Lessor recovering its aircraft.

### **5. DESCRIPTION OF DEBTOR'S ASSETS AND LIABILITIES**

#### **5.1 Debtor's Assets**

##### **(A) Real Property**

The Debtor does not own any real property. The Debtor currently occupies two office buildings wherein it operates its business pursuant to a lease agreement entered into by and between the Debtor and EP Investments 805, LLC and a lease agreement entered into by and between the Debtor and First Class Properties, LP (collectively the "Office Leases"). The Debtor has filed a *Motion to Assume Leases of Non-Residential Real Property* which seeks the Bankruptcy Court's approval of the assumption of the foregoing Office Leases. [Docket No. 152]. That motion is scheduled to be heard on August 27, 2014.

##### **(B) Personal Property**

##### **1. Debtor in Possession's Bank Accounts ("DIP Accounts")**

The Debtor currently has the following bank accounts out of which it funds its operations:

<u>Depository</u>	<u>Account No.</u>	<u>Amount</u> <sup>12</sup>
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<sup>12</sup> Cash Balance is as of July 31, 2014, as fully set forth in the July Monthly Operating Report. The filing of this monthly operating report is forthcoming.

Wells Fargo Bank XXXXXX9682 \$546,542.00

2. Accounts Receivable

Debtor has \$1,451,250.99 in accounts receivable as of June 4, 2014. However, it is anticipated that much of this is stale, and uncollectible.

3. Federal Aviation Administration Air Carrier Certificate

The Debtor is the titled owner of an Air Carrier Certificate issued by the Federal Aviation Administration, valued at approximately \$2,000,000.00 subject to the Debtor in Possession remaining a going concern and also dependent upon several other important factors and conditions. The Air Carrier Certificate is valueless in a Chapter 7 Liquidation scenario.

4. Security Deposits

As of June 4, 2014, Debtor had security deposits with its landlords, lessors and utility companies in the amount of \$1,338,797.07. See **Exhibit 2**, appended hereto. Many of these security deposits, or a substantial portion of these security deposits, are non-refundable and/or will be applied to offset pre-petition obligations; therefore the security deposits have no value to anyone other than the Debtor In Possession.

5. Vehicles and Equipment

As of June 4, 2014, Debtor had two vehicles valued at approximately \$4,000.00 and IT, Office and Ground Equipment and Parts worth approximately \$866,068.21.

6. Potential Claims Against Third Parties

The Debtor, jointly, with Aviation Sales, LLC ("Aviation") holds a judgment against Michael Morisi ("Morisi"). Aviation and the Debtor have agreed, subject to the Bankruptcy Court's approval under a Rule 9019 Motion, to settle the amount due under the judgment with Morisi for \$80,000.00 split evenly between the parties. As a result, the Debtor holds a contingent asset in the amount of approximately \$40,000.00.

The Debtor also has a potential claim against CSI Aviation, Inc. ("CSI") for withholding funds due to it. CSI has asserted a right to "recoup" claims against the Debtor with such funds it currently has in its possession. The Debtor believes that CSI's refusal to return such funds is a set-off and prohibited by the automatic stay set forth in 11 U.S.C. § 362. The Debtor estimates that its total claim against CSI is approximately \$106,268.65 (excluding fees and costs).

**5.2 Debtor's Liabilities**

**(A) Administrative Claims**

1. Attorneys' Fees/McDonald Carano Wilson



The Debtor's attorneys at McDonald Carano Wilson LLP ("MCW") have incurred post-petition fees and expenses of \$99,930.47 through July 31, 2014 for services rendered as general bankruptcy counsel for the Debtor. Debtor has paid a portion of these fees and expenses and MCW will apply 80% of such payments to MCW's fees while reimbursing expenses at 100%. MCW's fees have been provided for in the Approved Budget and remain carved-out of any security interest or pledge of cash collateral. Debtor has not filed an application for interim approval for payment of such fees and expenses as 120 days have not expired from the Petition Date. MCW will file one or more fee applications in conformity with the deadlines set forth in the Plan.

## 2. Office of the United States Trustee Fees

All fees required to be paid to the OUST have been paid in full. As of the date of this Disclosure Statement, the Debtor currently owes no fees to the OUST for administration of this case. Additional fees will be incurred throughout the case and fee statements will be paid accordingly.

## 3. Vendor Claims

During the course of the Debtor in Possession's post-petition operations, the Debtor has paid its vendors in the ordinary course of business for services rendered to the Debtor.

## 4. Post-Petition Debt

The Debtor has incurred certain debt arising from its Executory Contracts, Prepetition Leases and the Cash Collateral Order which may be deemed Administrative Claims. A list of all of the claims asserted as "Administrative Expense Claims" and the value thereof is attached hereto as **Exhibit 3**. Unless disputed, all Allowed Administrative Expense Claims will be paid in full under the Plan.

### **(B) Priority Tax Claims**

All of the Priority Tax Claims to be paid under the Plan are set forth in Schedule E [Docket No. 85]. Additional claims have been filed by government entities asserting rights to priority payments which may be disputed by the Debtor or Reorganized Debtor at a later time.

### **(C) Priority Claims**

Although atypical, in rare instances the Debtor has collected Passenger Facility Charges ("PFCs") to be held in trust for the benefit of a particular airport utilized for taking off and landing. Debtor intends to pay any delinquent PFCs on or prior to confirmation of the Plan. To the extent that these PFCs are deemed claims, such claims will be treated as priority claims and be paid, in full, on the Effective Date of the Plan. None of the foregoing funds held in trust for such PFCs should be deemed an asset of the estate.

### **(D) Secured Claims**

The Debtor has just one secured creditor. AerLine holds a secured claim for the amounts advanced to the Debtor pursuant to the DIP Loan Facility.<sup>13</sup>

### (E) Unsecured Claims

The Debtor owes approximately \$17,847,802.14<sup>14</sup> in general unsecured claims including disputed, unliquidated and contingent claims. Debtor has not evaluated the legitimacy of all of its claims, and reserves the right to bring objections to any and all claims.

The Allowed Unsecured Claims will be paid on a Pro Rata basis.

### (F) Claims Bar Dates

The bar dates for Claims shall be set by the Bankruptcy Court in its forthcoming order. The Debtor anticipates that the Administrative Claims Bar Date and the Executory Contracts Claims Bar Date will be set thirty (30) days following the Confirmation Date of the Plan. The Proof of Claim bar date is currently set for October 8, 2014 which is the same date as the Hearing on the Final Approval of the Disclosure Statement and Plan Confirmation.

## 6. OVERVIEW OF THE PLAN

### 6.1 Unclassified Claims

#### (A) Administrative Claims

*Deadline to File Administrative Claims.* The Holder of an Administrative Claim, other than (i) a Professional Fee Claim, or (ii) a liability incurred and paid in the ordinary course of business by the Debtor, must file with the Bankruptcy Court and serve on the Debtor and its counsel, notice of such Administrative Claim on or before the Administrative Claim Bar Date. Such notice must include, at minimum, (i) the name of the Holder of such Claim, (ii) the basis of the Claim, and (iii) the amount of the Claim. Failure to file such notice timely and properly shall result in the Administrative Expense Claim being forever barred and discharged.

*Payment Provisions.* Subject to the provisions of Bankruptcy Code sections 330(a), 331 and 503(b), each Holder of an Administrative Claim shall, either: (i) from the New Capital Contribution, be paid in Cash in the Allowed amount of any such Claim, on, or as soon as reasonably practicable after, the later of (A) the Effective Date, (B) the date upon which such Administrative Claim becomes Allowed, or (C) such date as is otherwise agreed by the Debtor and the Holder of such Claim; or (ii) receive such other treatment as is agreed to by the Holder of an Administrative Claim and the Debtor.

#### (B) Professional Fee Claims.

<sup>13</sup> Although unsecured as to the Debtor, Avfuel Corporation has an alleged \$52,008.69 statutory re-fueling lien claim against the 26279 Aircraft now owned by AerSale. Debtor does not believe that this claim is secured vis-à-vis the Debtor.

<sup>14</sup> This amount excludes the PFCs which were previously listed as general unsecured claims in the amended schedules [Docket No. 85]. The schedules have since been amended to reflect this distinction.

*Deadline to File Professional Fee Claims.* The Holder of a Professional Fee Claim must file with the Bankruptcy Court, and serve on all necessary parties and their counsel, a request for final payment of such Professional Fees, and reimbursement of expenses, pursuant to Bankruptcy Code sections 328, 330 and/or 331 and the terms of the Plan, no later than forty-five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court.

*Payment Provisions.* Subject to the provisions of Bankruptcy Code sections 330(a), 331 and 503(b), each Holder of a Professional Fee Claim shall be paid in Cash in the Allowed amount of any such Professional Fee Claim on, or as soon as reasonably practicable after, the later of (i) the Effective Date, (ii) the date upon which such Administrative Claim becomes Allowed, or (iii) such date as is otherwise agreed by the Debtor and the Holder of such Professional Fee Claim.

**(C) United States Trustee Fees.**

Notwithstanding the foregoing or anything to the contrary in the Plan, the Debtor shall pay, or cause to be paid, all accrued U.S. Trustee Fees on or before the Effective Date of the Plan; and following the Effective Date, the Debtor shall be responsible for timely payment of all U.S. Trustee Fees until such time as the Final Decree closing this Chapter 11 Case are entered and all U.S. Trustee Fees due are paid in full. The Debtor shall File with the Bankruptcy Court and serve on the U.S. Trustee a quarterly financial report for each quarter (or portion thereof) that the Chapter 11 Case remains open in such format as reasonably may be required by the U.S. Trustee.

**(D) Priority Tax Claims.**

The legal and equitable rights of the Holders of Priority Tax Claims are unaltered by the Plan. If a governmental entity is entitled to a priority under 11 U.S.C. 507(a)(8), the claim will be paid in full.

Each Holder of an Allowed Priority Tax Claim shall, either:

- (1) be paid the Allowed amount of such Claim in Cash on the Effective Date;
- (2) receive such other treatment as is agreed to by the Holder of the Allowed Priority Tax Claim and the Debtor; or
- (3) have such Claim assumed by Reorganized Debtor, to be paid by Reorganized Debtor in Cash in the Allowed amount of any such Claim on the date on which such Claim is payable under applicable law or any agreement relating thereto.

Under the Plan, Holders of Allowed Priority Tax Claims against the Debtor shall not be entitled to any payments on account of any post-Petition Date interest or penalty with respect to or in connection with an Allowed Priority Tax Claim. Any such Claim or demand for any post-Petition Date interest or penalty will be discharged upon the entry of the Confirmation Order by Bankruptcy Code section 1141(d)(1), and the Allowed Priority Tax Claim Holder shall not assess or attempt to collect such accrued interest or penalty from the Debtor, the Reorganized Debtor, or their property.

**6.2 Classified Claims, Estimates By Class and Proposed Treatment.**

**(A) Class 1: Priority Claims**

*Claims in Class:* Class 1 consists of Priority Claims against the Debtor.

*Treatment:* The legal and equitable rights of the Holders of Allowed Priority Claims are unaltered by the Plan. Each Holder of an Allowed Priority Claim shall, either: (i) be paid the Allowed amount of such Claim in Cash on the Effective Date, (ii) have such Claim assumed by Reorganized Debtor, to be paid by Reorganized Debtor in Cash in the Allowed amount of any such Claim on the date on which such Claim is payable under applicable law or any agreement relating thereto; or (iii) receive such other treatment as is agreed by the Holder of the Allowed Priority Claim, the Debtor and the Reorganized Debtor.

*Impairment and Voting:* Class 1 is Unimpaired and the Holders of Allowed Priority Claims are conclusively deemed to have accepted the Plan, pursuant to Bankruptcy Code section 1126(f). The Holders of Class 1 are not entitled to vote to accept or reject the Plan.

**(B) Class 2: Secured Claims**

*Claims in Class:* Class 2 consists of the AerLine Secured Claim.

*Treatment:* On the Effective Date, the Holders of Allowed Secured Claims shall receive, in full satisfaction, settlement, release and exchange for the Secured Claim either (a) payment, in full, from the New Capital Contribution or (b) if the New Equity Investor is AerLine the AerLine Secured Claim may be satisfied by a credit of \$500,000.00 towards the total amount due under the New Capital Contribution.

*Impairment and Voting:* Class 2 is Unimpaired. The Holders of the Class 2 Secured Claims are not entitled to vote to accept or reject the Plan.

**(C) Class 3: General Unsecured Claims**

*Claims in Class:* Class 3 consists of General Unsecured Claims against the Debtor.

*Treatment:* On the Effective Date, Holders of Class 3 General Unsecured Claims shall, in full satisfaction, settlement, release and exchange for such Allowed General Unsecured Claims, receive their Pro Rata share of the New Capital Contribution. Upon the Effective Date, all General Unsecured Claims shall be released without further action by Debtor or notice to Holders of General Unsecured Claims being necessary, except that Holders of Class 3 General Unsecured Claims shall receive such treatment under the Plan.

*Impairment and Voting:* Class 3 is Impaired. Holders of Class 3 General Unsecured Claims are entitled to vote to accept or reject the Plan.

**(D) Class 4: Old Equity Interests**

*Claims in Class:* Class 4 consists of all Old Equity Interests.

*Treatment:* Holders of Old Equity Interests shall have their Old Equity Interests extinguished under the Plan.

*Impairment and Voting:* Class 4 is Impaired and are deemed to have rejected the Plan because they will receive nothing under the Plan and their votes will not be solicited.

### **6.3 Executory Contracts and Unexpired Leases**

On the Effective Date of the Plan, the Debtor will be deemed to have assumed or rejected its executory contracts and leases as is indicated in **Exhibit 4**, appended hereto. Any contracts or leases which are not listed in the attached exhibit shall be deemed rejected as of the Effective Date of the Plan.

For the avoidance of doubt, the Debtor intends to assume its insurance policy provided by the Conglomerate Insurers<sup>15</sup> (the “Insurance Policy”) for coverage of its use and operation of the Aircraft. The Insurance Policy is subject to renewal on November 1, 2014. Debtor intends to renew coverage with the same Conglomerate insurers. Debtor intends to cure all arrearages in assuming the Insurance Policy. Debtor proposes to pay the cure payment from the New Capital Contribution prior to November 1, 2014, and shall do so to ensure that the Policy is extended to avoid any lapse in insurance coverage.

### **6.4 Objections to Claims**

Unless otherwise extended by the Bankruptcy Court, objections to the allowance of Claims and Equity Interests shall be Filed and served exclusively by the Reorganized Debtor upon the Persons asserting such Claims or Equity interests within sixty (60) days after the Confirmation Date.

### **6.5 Vesting of Assets**

Except as otherwise expressly provided in the Plan or in the Confirmation Order, effective as of the Effective Date, without any further action, the Reorganized Debtor will be vested with all of the property of the Estate, wherever situated, free and clear of all Claims, Liens and Equity Interests (except for Liens provided or authorized pursuant to the Plan and Permitted Encumbrances). Without limiting the generality of the foregoing, on and after the Effective Date, the Reorganized Debtor shall be vested with all of the property of the Estate, wherever situated, free and clear of any Claims based on any form of successor liability or similar or related theory of liability. On and after the Effective Date, but subject to the terms of the Plan, the Reorganized Debtor shall be free of any restrictions imposed by the Bankruptcy Code or Bankruptcy Court, may operate its business and may use, acquire or dispose of its assets (including the Property) free of any restrictions imposed by the Bankruptcy Code and the Bankruptcy Rules and without supervision or approval by the Bankruptcy Court, other than the obligations set forth in the Plan, or the Confirmation Order. Without limiting the generality of the foregoing and except as otherwise expressly provided herein or in the Confirmation Order,

<sup>15</sup> The term “Conglomerate Insurers” shall include all of the following entities: Global Aerospace Inc., Underwriters at Lloyd’s, London and Various Insurance Companies, AIG Aerospace Insurance Services Inc. on behalf of National Union Fire Insurance Co of Pittsburgh PA, C V Starr Company on behalf of Starr Surplus Lines Insurance Company, C V Starr Company on behalf of Ironshore Specialty Insurance Company, Allianz Global Risks US Insurance Company through Allianz Global Corporate & Specialty, XL Insurance on behalf of XL Specialty Insurance Company, and Berkley Aviation LLC on behalf of StarNet Insurance Company.



any Causes of Action, will be preserved and retained solely for the Reorganized Debtor's commencement, prosecution, use and benefit.

## 6.6 Discharge

IN CONJUNCTION WITH BANKRUPTCY CODE SECTION 1141, EXCEPT AS OTHERWISE PROVIDED FOR IN THE PLAN, THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND EQUITY INTERESTS IN THE PLAN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION, DISCHARGE AND RELEASE OF CLAIMS AND EQUITY INTERESTS OF ANY NATURE WHATSOEVER AGAINST THE DEBTOR, REORGANIZED DEBTOR, AND OF THE ASSETS OR PROPERTIES OF THE ESTATE, INCLUDING ANY INTEREST ACCRUED ON SUCH CLAIMS FROM AND AFTER THE PETITION DATE AND ANY PROPERTIES TRANSFERRED TO SECURED LENDERS.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS PROVIDED IN THE CONFIRMATION ORDER, CONFIRMATION WILL DISCHARGE THE DEBTOR AND THE REORGANIZED DEBTOR FROM ALL CLAIMS, OR OTHER DEBTS THAT AROSE BEFORE THE EFFECTIVE DATE, AND ALL DEBTS OF THE KIND SPECIFIED IN SECTIONS 502(g), 502(h) OR 502(i) OF THE BANKRUPTCY CODE, WHETHER OR NOT: (X) A PROOF OF CLAIM BASED ON SUCH A DEBT HAS BEEN FILED, OR DEEMED TO HAVE BEEN FILED, UNDER BANKRUPTCY CODE SECTIONS 501 OR 1111(a); (Y) A CLAIM BASED ON SUCH DEBT IS ALLOWED UNDER SECTION 502 OF THE BANKRUPTCY CODE; OR (Z) THE HOLDER OF A CLAIM BASED ON SUCH DEBT HAS VOTED TO ACCEPT THE PLAN. EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, (I) ON THE EFFECTIVE DATE, ALL CLAIMS AGAINST THE DEBTOR WHICH AROSE BEFORE THE EFFECTIVE DATE SHALL BE SATISFIED, DISCHARGED AND RELEASED IN FULL, (II) ON THE EFFECTIVE DATE, THE RIGHTS AND INTERESTS OF ALL HOLDERS OF OLD EQUITY INTERESTS SHALL BE TERMINATED, CANCELED AND OF NO FORCE AND EFFECT, AND (III) ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTOR, THE REORGANIZED DEBTOR, ANY SECURED LENDER THAT IS A TRANSFEREE OF A PROPERTY, OF THEIR SUCCESSORS, OR ANY OF THEIR ASSETS OR PROPERTIES, ANY OTHER OR FURTHER CLAIMS OR EQUITY INTERESTS BASED UPON ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE, AS WELL AS ANY DEBT OF A KIND SPECIFIED IN BANKRUPTCY CODE SECTIONS 502(g), 502(h), OR 502(i), IRRESPECTIVE OF WHETHER (X) A PROOF OF CLAIM BASED ON SUCH A DEBT HAS BEEN FILED, OR DEEMED TO HAVE BEEN FILED, UNDER BANKRUPTCY CODE SECTIONS 501 OR 1111(a), (Y) SUCH CLAIM IS ALLOWED UNDER BANKRUPTCY CODE SECTION 502, OR (Z) THE HOLDER OF THE CLAIM HAS ACCEPTED THE PLAN.

## 6.7 Injunctions

(a) Injunction Against Releasors. All of the Releasors, along with any of their successors or assigns, are permanently enjoined, from and after the Effective Date, from (1) commencing or continuing in any manner any action or other proceeding of any kind against the

Releasees or any of their respective Representatives in respect of any Released Liabilities; (2) enforcing, attaching, collecting or recovering by any manner or means of any judgment, award, decree or order against the Releasees or any of their respective Representatives in respect of any Released Liabilities; (3) creating, perfecting, or enforcing any encumbrance of any kind against any property in the possession, custody or control of the Releasees or any of their respective Representatives with respect to any Released Liabilities; or (4) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Releasees or any of their respective Representatives or against the property or interests in property of the Releasees or any of their respective Representatives, with respect to any Released Liabilities; provided, however, that nothing contained herein shall preclude such Releasors from exercising their rights pursuant to and consistent with the terms hereof and the contracts, instruments, releases and other agreements and documents delivered under or in connection with the Plan; provided, further, that nothing contained herein shall be deemed to enjoin any Releasor from taking any action against any Releasee or any of its Representatives based on the release exceptions contained in Section 11.4 of the Plan.

(b) Injunction Protecting Exculpation of Releasees and Debtor. All Claimholders and any other parties-in-interest, along with any of their Representatives and any of their successors or assigns are permanently enjoined, from and after the Effective Date, from (1) commencing or continuing in any manner any action or other proceeding of any kind against Releasees or any of their respective Representatives in respect of any potential liability for which exculpation is granted pursuant to Section 11.3 of the Plan; (2) enforcing, attaching, collecting or recovering by any manner or means of any judgment, award, decree or order against Releasees or any of their respective Representatives in respect of any potential liability for which exculpation is granted pursuant to Section 11.3 of the Plan; (3) creating, perfecting, or enforcing any encumbrance of any kind against Releasees or any of their respective Representatives in respect of any potential liability for which exculpation is granted pursuant to Section 11.3 of the Plan; or (4) asserting any right of setoff, subrogation or recoupment of any kind against any Releasee or any of their respective Representatives or against the property or interests in property any Releasee or any of their respective Representatives, in respect of any potential liability for which exculpation is granted pursuant to Section 11.3 of the Plan; provided, however, that nothing contained herein shall preclude any Claimholder or other party-in-interest from exercising its rights pursuant to and consistent with the terms hereof and the contracts, instruments, releases and other agreements and documents delivered under or in connection with the Plan.

(c) Injunction Against Interference With Plan. Upon the Effective Date, all Claimholders and their respective Representatives and any of their successors or assigns shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

## **6.8 Exculpation**

None of the Releasees, nor any of their respective Representatives shall have or incur any liability to any Claimholder, or any other party-in-interest, or any of their Representatives, or any of their successors or assigns, for any act, omission, transaction or other occurrence in connection with, relating to, or arising out of the Chapter 11 Case, the pursuit of confirmation of the Plan, or the consummation of the Plan, except and solely to the extent such liability is based on fraud, gross negligence or willful misconduct. The Releasees shall be entitled to reasonably



rely upon the advice of counsel with respect to any of their duties and responsibilities under the Plan or in the context of the Chapter 11 Case. No Claimholder, or any other party-in-interest, including their respective Representatives, shall have any right of action against the Releasees or any of their Representatives, for any act, omission, transaction or other occurrence in connection with, relating to, or arising out of, the Chapter 11 Case, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of the Plan, except to the extent arising from fraud, gross negligence and willful misconduct. Nothing herein shall be deemed an exculpation by any Claimholder, or any other party-in-interest, including their respective Representatives, of any Releasee or any of its Representatives for any acts, omissions, transactions, events or other occurrences taking place after the Effective Date or unrelated to this Plan and/or Chapter 11 Case.

## **6.9 Releases**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, each Releasor will be deemed to release, waive and forever discharge all Released Liabilities against each Releasee and each Releasee's respective Representatives; provided, however, that, the releases provided herein shall not constitute a release of any liability based on willful misconduct, gross negligence or fraud; provided, further, that nothing herein shall be deemed to constitute a release by any Releasor of any Releasee or any of its Representatives for any acts, omissions, transactions, events or other occurrences taking place after the Effective Date or unrelated to this Plan and/or Chapter 11 Case.

From and after the Effective Date, neither the Debtor nor its respective present or former members, directors, officers, managers, employees, advisors, attorneys or agents, shall have any liability to any holder of a Claim or Equity Interest or any other party-in-interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or Affiliates, or any of their respective agents, employees, representatives, financial advisors, attorneys or Affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of (from the Petition Date forward), the Bankruptcy Case, the pursuit of confirmation of the Plan or the consummation of the Plan, except for gross negligence and willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan or in the context of the Case. No holder of a Claim or Equity Interest, nor any other party-in-interest, including their respective agents, employees, representatives, financial advisors, attorneys or Affiliates, shall have any right of action against the Debtor or any of its present or former members, officers, directors, managers, employees, advisors, attorneys or agents, for any act or omission in connection with, relating to, or arising out of the Bankruptcy Case, the pursuit of Confirmation, the consummation of the Plan or the administration of the Plan, except for (a) their willful misconduct; and (b) matters specifically contemplated by the Plan.

## **7. POST-CONFIRMATION OWNERSHIP, MANAGEMENT AND COMPENSATION**

### **7.1 AerLine and AerSale**

AerLine Holdings, LLC, a Delaware limited liability company, will be the New Equity Investor pursuant to the Plan. AerLine is 100% wholly owned by AerSale.

AerLine's affiliate, AerSale, is an international leader in the supply of aftermarket aircraft, engines, Original Equipment Manufacturers' ("OEM") material and asset management services. AerSale specializes in the sale and lease of mid-life commercial aircraft, while simultaneously offering their clients comprehensive material solutions and asset management services. AerSale has acquired over 100 aircraft and 400 engines over the past several years, AerSale employs more than 200 people and provides services to passenger and cargo airlines, governmental entities, leasing companies, multi-national OEMs and independent Maintenance, Repair, and Overhaul providers ("MROs").

Throughout this Chapter 11 Bankruptcy Case, AerLine has been instrumental by providing the DIP Loan Facility, and has caused its affiliate, AerSale, to purchase the AWAS Aircraft, and lease several additional Aircraft at below-market lease rates to the Debtor. AerLine has been working with the Debtor, its employees, and professionals on a daily basis, with conference calls several times per day to move this Chapter 11 Case forward. In addition to the \$3.5 million New Equity Contribution, AerLine has provided substantial capital investment behind the scenes, including manpower and human capital that cannot be quantified in this Disclosure Statement. For more information on AerSale and its Management Team, go to: [www.aersale.com](http://www.aersale.com)

## **7.2. Post-Confirmation Management and Compensation of Key Employees**

It is anticipated that the Reorganized Debtor will be managed by a management team designated by the New Equity Investor. All Old Equity Interests will be extinguished under the Plan and New Equity Interests issued to the New Equity Investor as supplemented or memorialized at the option of the New Equity Investor by a stock purchase agreement. *See Exhibit 5.* While Lisa Dunn will no longer be a holder of Old Equity Interests, her experience and expertise in this industry is desirable and necessary for the continued operations of the Reorganized Debtor.

The Plan proposes that Lisa Dunn (as a member of AerLine's designated management team) be compensated \$200,000.00 annually, plus benefits, for a 2-year employment contract as the Reorganized Debtor's Chief Operating Officer. Ms. Dunn has more than 30 years of experience in the airline industry and has adequately and professionally managed the Debtor throughout this Chapter 11 Case. Based on Ms. Dunn's experience, qualifications, connections, relationships, and history with the Debtor, such employment and retention is reasonable, necessary, and consistent with public policy. Ms. Dunn's employment with the Reorganized Debtor is not in contravention to the Bankruptcy Code or Rules.

In addition, key employees Joshua Weinshank (Director of Operations) and Sandra Davis (Director of In-Flight) will retain employment at their current salaries (\$131,485.20 and \$38,500, respectively) each being given a 2-year employment agreement, including benefits.

The duties of the post-confirmation management will remain largely unchanged. Ms. Dunn and her team will oversee the day-to-day management and operations of the Debtor which activities will include leasing and maintaining the Reorganized Debtor's several Aircraft, contracting with charter companies and ad hoc flight requests, maintaining and nurturing key relationships in the industry, and directing the regular maintenance of the Aircraft consistent with local, state and federal law.

## **8. MEANS OF IMPLEMENTATION OF THE PLAN**

### **8.1 Continued Operation of the Debtor.**

The Reorganized Debtor will continue to operate its business in the ordinary course, following confirmation of the Plan. The continued business of the Reorganized Debtor will include, but is not necessarily limited to, the marketing, management, leasing and chartering of the Aircraft and related services.

### **8.2 Assumption of Leases.**

Upon the filing of the Notice of Effective Date all unexpired executory contracts and leases will be automatically assumed or rejected, as set forth in the attached **Exhibit 4**. Any other executory contracts and leases not listed therein shall be deemed rejected. Rejection Claims must be filed within thirty (30) days of the Confirmation Date.

### **8.3 Return of Property.**

To the extent the Debtor is leasing property, or holding property belonging to another Person, upon the filing of the Notice of Effective Date, the Debtor will return the property that is the subject of the rejected executory contract or unexpired lease, or property that is being held by the Debtor for another.

### **8.4 New Capital Contribution.**

On or prior to the Effective Date, consistent with the terms of the Plan, the New Equity Investor shall fund the New Capital Contribution in return for the New Equity Interests. The New Capital Contribution shall be used for, among other things, providing the Reorganized Debtor with the amount of Cash required for first, the satisfaction of the Allowed Unclassified Claims, and Allowed Secured Claims; and second, a Pro Rata distribution to the Allowed General Unsecured Claims and for funding of the Cash Reserve, if necessary.

### **8.6 Issuance of New Equity Interests.**

On the Effective Date, Old Equity Interests shall be extinguished, canceled, terminated and of no force and effect. In consideration of the New Capital Contribution, one hundred percent (100%) of the New Equity Interests in the Reorganized Debtor shall be issued to the New Equity Investor or to whom the New Equity Investor may, in its sole discretion, direct. The Reorganized Debtor Bylaws or Articles and Organization shall prohibit the issuance of non-voting securities or any other securities inconsistent with 11 U.S.C. § 1123(a)(6).

### **8.7 Plan Implementation Steps Occurring on Payment Date.**

In accordance with the terms of the Plan and the Stock Purchase Agreement, on the date of Confirmation Closing, the New Equity Investor shall deposit its New Capital Contribution, consisting of one lump sum payment, into escrow or pursuant to another similar arrangement, as agreed between the Debtor and AerLine, to hold securely for the benefit of the Reorganized Debtor to distribute to Creditors pursuant to the Plan. The

principals of the New Equity Investor will cause to issue to the Debtor, for filing on the Exhibit Filing Deadline, a commitment letter evidencing their intent and ability to close the transactions contemplated under the Plan. *See* Commitment Letter, to be appended hereto as **Exhibit 8**.

On the date of the Confirmation Closing, Old Equity Interests shall be extinguished, canceled, terminated and of no force and effect. In consideration of the New Capital Contribution, one hundred percent (100%) of the New Equity Interests in the Reorganized Debtor shall be issued to the New Equity Investor or to any other person or Entity as the New Equity Investor may direct.

#### **8.8 Termination of Plan Administrator.**

The Plan Administrator will be terminated immediately after the final Cash is distributed in accordance with the Bankruptcy Court's determination concerning the allowance of any remaining Disputed Claims.

### **9. CERTAIN TAX CONSEQUENCES OF THE PLAN**

THE FOLLOWING SUMMARY DOES NOT CONSTITUTE TAX ADVICE TO ANY CREDITOR OR EQUITY SECURITY HOLDER. NO REPRESENTATIONS REGARDING THE EFFECT OF IMPLEMENTATION OF THE PLAN ON INDIVIDUAL CREDITORS OR EQUITY SECURITY HOLDERS ARE MADE HEREIN OR OTHERWISE. ALL CREDITORS AND EQUITY SECURITY HOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES OF THE PLAN TO THEIR SPECIFIC SITUATION.

CREDITORS SHOULD CONSULT THEIR TAX ADVISOR REGARDING THE TAX TREATMENT (INCLUDING FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES) OF THEIR RESPECTIVE ALLOWED CLAIMS. THIS DISCLOSURE IS NOT A SUBSTITUTE FOR TAX PLANNING OR SPECIFIC ADVICE FOR PERSONS AFFECTED BY THE PLAN.

Pursuant to the Plan, the Debtor intends to pay all Taxes associated with its post-confirmation Reorganization. The Debtor believes that there are no federal tax consequences peculiar to its Plan.

### **10. INSIDER AND AFFILIATE CLAIMS**

The following Holders of Claims are Insiders and Insider Affiliates and such Claims will not be considered for voting purposes:

Creditor	Class	Scheduled Amount of Claim	Estimated Amount of Allowed Claim	Basis for Claim
Lisa Dunn	3	\$23,019.22	\$23,019.22	Loans to the Debtor

### **11. RISK FACTORS**

PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, HOLDERS OF CLAIMS AGAINST THE DEBTOR SHOULD READ AND CAREFULLY CONSIDER THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT, THE DOCUMENTS DELIVERED TOGETHER WITH THIS DISCLOSURE STATEMENT, AND ANY PLAN SUPPLEMENT. THE RISK FACTORS SET FORTH BELOW SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

### **11.1 Purpose of the Disclosure Statement**

#### **(A) The Debtor Has No Duty To Update.**

The statements in this Disclosure Statement are made by the Debtor as of the date hereof, unless otherwise specified herein. The delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Debtor has no duty to update this Disclosure Statement unless ordered to do so by the Bankruptcy Court.

#### **(B) Information Presented Is Based On The Debtor's Books And Records, And Is Unaudited.**

While the Debtor has endeavored to present information fairly in this Disclosure Statement, there is no assurance that the Debtor's books and records upon which this Disclosure Statement is based are complete and accurate. The financial information contained herein has been produced based upon the Debtor's books and records as they are maintained in the ordinary course of business and in accordance with the Debtor's ordinary and customary accounting practices. The financial information contained herein, however, has not been audited.

#### **(C) Projections And Other Forward-Looking Statements Are Not Assured, And Actual Results Will Vary.**

Certain information in this Disclosure Statement is, by nature, forward looking, and contains estimates and assumptions which might ultimately prove to be incorrect, and projections which may differ materially from actual future results. There are uncertainties associated with all assumptions, projections and estimates, and they should not be considered assurances or guarantees of the amount of funds that will be distributed or the amount of Claims in the various Classes that will be allowed. The allowed amount of Claims in each Class, as well as Administrative Claims, could be significantly more than projected, which in turn, could cause the value of Distributions to be reduced substantially.

#### **(D) This Disclosure Statement Was Not Approved By The SEC.**

This Disclosure Statement has not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or applicable state securities laws. Neither the SEC nor any state regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement or the exhibits contained herein, and any representation to the contrary is unlawful.

#### **(E) Certain Tax Implications of the Plan.**



1 Holders of Allowed Claims should carefully review Article 9 herein, "Certain Tax  
2 Consequences of the Plan" to determine how the tax implications of the Plan and the Chapter 11  
3 Case may affect holders of Allowed Claims and the Debtor. The contents of this Disclosure  
4 Statement should not be construed as legal, business or tax advice. Each holder of an Allowed  
Claim should consult his, her or its own legal counsel and accountant as to legal, tax and other  
matters concerning his, her or its Claim or Equity Interest.

## 5 **11.2 Certain Bankruptcy Considerations**

### 6 **(A) Risk of Non-Confirmation of the Plan.**

7 In order for the Debtor to implement the Plan, the Debtor, like any other chapter 11 plan  
8 Debtor, must obtain approval of the Plan from the creditors and confirmation of the Plan through  
9 the Bankruptcy Court, and then successfully implement the Plan. The foregoing process requires  
10 the Debtor to: (a) meet certain statutory requirements with respect to the adequacy of this  
Disclosure Statement; (b) solicit and obtain creditor acceptances of the Plan; and (c) fulfill other  
statutory conditions with respect to the confirmation of the Plan.

11 The Debtor may not receive the requisite acceptances to confirm the Plan. If the requisite  
12 acceptances of the Plan are received, the Debtor will seek confirmation of the Plan by the  
13 Bankruptcy Court. If the requisite acceptances are not received, the Debtor will nevertheless seek  
14 confirmation of the Plan pursuant to the "cramdown" provisions of the Bankruptcy Code as long  
as at least one Impaired Class has accepted the Plan (determined without including the  
acceptance of any "insider" in such Impaired Class).

15 Even if the requisite acceptances of the Plan are received, or the Debtor is able to seek a  
16 "cram-down" confirmation, the Bankruptcy Court may not confirm the Plan as proposed. A  
17 holder of a Claim in a Non-Accepting Class could challenge the balloting procedures and results  
18 as not being in compliance with the Bankruptcy Code. Even if the Bankruptcy Court determined  
19 that the balloting procedures and results were appropriate, the Bankruptcy Court could decline to  
confirm the Plan if it found that any of the statutory requirements for confirmation had not been  
met.

20 The Bankruptcy Court may determine that the Plan does not satisfy one or more of these  
21 applicable requirements, in which case the Plan could not be confirmed by the Bankruptcy Court.  
22 If the Plan is not confirmed by the Bankruptcy Court, the liquidation of the Debtor in a Chapter 7  
23 liquidation would result in a substantial increase to administrative costs and, therefore,  
24 Distributions to Claimholders would be significantly reduced or even eliminated due to the  
increase in priority claims arising from a Chapter 7 liquidation. In addition, there can be no  
assurance that the Debtor will be able to successfully develop, prosecute, confirm, and  
consummate an alternative plan of reorganization with respect to the Chapter 11 Case that is  
acceptable to the Bankruptcy Court and the Holders of Claims.

### 25 **(B) Risk of Non-Occurrence of Effective Date.**

26 Although the Debtor anticipates that the Effective Date will occur soon after the  
27 Confirmation Date, there can be no assurance as to such timing. If each of the conditions  
28 precedent are not satisfied or duly waived, consistent with the terms of the Plan, notice shall be

1 given that the Effective Date did not occur and the Confirmation Order will be vacated without  
2 further order of the Bankruptcy Court, in which event the Plan would be deemed null and void.

3 **(C) Risk that Claims Will Be Higher Than Estimated.**

4 The projected distributions and recoveries set forth in this Disclosure Statement and the  
5 Liquidation analysis are based on the Debtor's initial estimate of Allowed Claims, without  
6 having undertaken a substantive review of all filed Claims. The Plan allows for the establishment  
7 of reserves (the "Cash Reserve") for the purposes of satisfying the Disputed Claims, as necessary  
8 or appropriate. The Debtor reserves the right to fund a Cash Reserve and seek estimation of such  
9 Disputed Claims pursuant to section 502(c) of the Bankruptcy Code. The actual amount at which  
10 such Disputed Claims are ultimately allowed may differ from the estimates. Holders of Disputed  
11 Claims are entitled to receive distributions under the Plan upon allowance of such Claims as set  
12 forth in the Plan. If a Cash Reserve is established, and the Holders of Disputed Claims exhaust  
13 the Cash Reserve, there will be no further recourse against the Debtor, Reorganized Debtor,  
14 AerSale, AerLine or any other Creditor, or party-in-interest on account of such deficiency. The  
15 Debtor projects that the Claims asserted against the Debtor will be resolved in and reduced to an  
16 amount that approximates their estimates. There can be no assurance, however, that the Debtor's  
17 estimates will prove accurate. If claims are ultimately allowed in amounts higher than estimated,  
18 for example, distributions and recoveries on account of claims may be lower than estimated.

13 **(D) The Debtor's Management Team May Allocate Less Time to the  
14 Operation of the Debtor's Business Operations.**

15 So long as the Chapter 11 Case continues, the Debtor's management team will be  
16 required to spend a significant amount of their time attending to the Debtor's Reorganization  
17 instead of focusing exclusively on the Debtor's business operations.

17 **(E) Estimated Valuation and the Estimated Recoveries to Holders of  
18 Allowed Claims Are Not Intended to Represent the Potential Market  
19 Value (if any) of the Plan Consideration.**

19 The Debtor's estimates of the recoveries to the Debtor's Holders of Allowed Claims are  
20 not intended to represent the market value of any components of the consideration under the  
21 Plan. The estimated recoveries are based on numerous assumptions, including, without  
22 limitation: (a) the successful implementation of the Plan; and (b) an assumed date for the  
23 occurrence of the Effective Date.

22 **(F) No Representations Outside of this Disclosure Statement are  
23 Authorized.**

24 No representations concerning or related to the Debtor, the Chapter 11 Case or the Plan  
25 are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this  
26 Disclosure Statement. Any representations or inducements made to secure your acceptance or  
27 rejection of the Plan that are other than as contained in, or included with, this Disclosure  
28 Statement should not be relied upon by you in arriving at your decision.

27 **(G) Release and Exculpation of Liability Arising Out of Administration  
28 of Plan.**

The Plan protects certain parties from incurring liability, absent gross negligence, fraud or willful misconduct. Holders of Allowed Claims should carefully read these provisions, set forth in Article 11 of the Plan, to consider the liability implications arising under the Plan.

## **12. LIQUIDATION ANALYSIS AND ALTERNATIVES TO THE PLAN**

### **12.1 Alternatives to the Plan**

The Debtor believes that the Plan, described herein, enables all Creditors and Holders of Equity Interests to receive payment of their Allowed Claims and Allowed Interests as quickly as possible and for the greatest return. If the Plan is not confirmed, the only alternative is conversion to Chapter 7 Liquidation, as the failure of the Plan will require the immediate repayment of the DIP Loan and termination of the AerSale Leases. The Debtor has been unable to find alternate, acceptable financing or aircraft available on terms as favorable as those offered by AerLine or its affiliate, AerSale. A projected budget for the 12-month period, starting January 2015, is attached hereto as **Exhibit 6**. In a Chapter 7 Liquidation, Holders of General Unsecured Claims would not receive any distribution because the Debtor's only valuable asset is its charter agreements and the income derived out of such, all of which would be consumed by Holders of the Allowed Unclassified Claims (including the Priority Tax Claims and substantial Administrative Claims) and the Allowed Secured Claims. Under the Plan, the infusion of the New Capital Contribution from the New Equity Investor will provide some recovery to the Holders of General Unsecured Claims which is significantly more than that anticipated in a Chapter 7 Case. See Chapter 7 Liquidation Analysis, appended hereto as **Exhibit 7**.

Holders of Allowed General Unsecured Claims will be entitled to a greater portion of their Allowed Claims than in a Chapter 7 Liquidation. Pursuant to Section 1129(a)(7) of the Bankruptcy Code, for the Plan to be confirmed it must provide that Holder of Allowed General Unsecured Claims and Holders of Equity interests will receive more under the Plan than they would receive in a Chapter 7 Liquidation. As set forth above, the Plan is in the best interests of the creditors because the Holders of Allowed General Unsecured Claims will receive more under the Plan than in Chapter 7. See Liquidation Analysis.

## **13. CONCLUSION AND RECOMENDATION**

The Debtor believes that confirmation and implementation of the Plan is preferable to any of the alternatives described above because it will provide the greatest recoveries to the Claimholders. Other alternatives would involve significant delay, uncertainty and substantial additional administrative costs. The Debtor urges those Creditors entitled to vote on the Plan to accept the Plan and to evidence such acceptance by returning their Ballots so that they will be received no later than **September 24, 2014**.

Dated this August 25, 2014

TEM Enterprises dba XTRA Airways

By: Lisa Dunn, its President

/s/ Lisa Dunn

1 MCDONALD CARANO WILSON LLP

2 By: /s/ Ryan J. Works  
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7 *Counsel to the Debtor*

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# EXHIBIT 1



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*Electronically Filed August 22, 2014*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re

TEM ENTERPRISES,

Debtor in Possession.

Case No.: 14-13955-abl  
Chapter 11

**CHAPTER 11 PLAN OF  
REORGANIZATION**

**Confirmation Hearing Date: October 8, 2014  
Confirmation Hearing Time: 1:30 p.m.**

**Hearing Place: Foley Federal Building, 300  
Las Vegas Blvd. South, Las Vegas, Nevada  
89101**

This Chapter 11 Plan of Reorganization (the “Plan”) is provided to creditors by the debtor and debtor-in-possession, TEM ENTERPRISES dba XTRA AIRWAYS, a Nevada corporation (the “Debtor” or “Proponent”), in connection with the solicitation of acceptances of the Debtor’s Plan. The Debtor’s case remains pending under Chapter 11 of the United States Code, and was initiated on June 4, 2014 (the “Petition Date”), in the United States Bankruptcy Court for the District of Nevada, as Case No. 14-13955-abl (the “Chapter 11 Case”). This Plan is the Debtor’s proposal to its creditors to provide an orderly reorganization of the Debtor’s estate.

All Claimholders against Debtor and any other interested parties are encouraged to read this Plan, the Disclosure Statement and the related solicitation materials in their entirety before voting to accept or reject the this Plan.

This Plan provides for the reorganization of the Debtor. This reorganization will be

governed and administered by the Plan Administrator, who will distribute funds or property of the Debtor's estate to the Holders of Allowed Claims under this Plan.

Creditors and other parties-in-interest should refer to the Disclosure Statement supporting this Plan for a discussion of Debtor's history, business, operations, risk factors, a summary and analysis of this Plan, and other related matters. Debtor is the proponent of this Plan, within the meaning of Section 1129 of the Bankruptcy Code.

Subject to the restrictions on modifications set forth in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, Bankruptcy Rules, and those restrictions on modifications set forth in this Plan, Debtor expressly reserves the right to alter, amend, strike, withdraw or modify this Plan.. Based on the factors described above, Debtor believes that confirmation of this Plan is in the best interests of Creditors and asks that Creditors vote in favor of this Plan.

The Plan must receive creditor approval and the Court must find that it meets the requirements of the law in order to be confirmed. If this Plan is not confirmed, then the Court may:

- (a) allow the Debtor to propose another plan;
- (b) dismiss the Chapter 11 Case; or
- (c) convert the Chapter 11 Case to a Chapter 7 case, with the assets of the Debtor being sold by a Court appointed trustee rather than pursuant to this Plan.

### **DISCLAIMER**

Reference is made to the Disclosure Statement accompanying this Plan, including the exhibits appended thereto. For a discussion of Debtor's history, business, operations and assets, and brief summary and detailed analysis of this Plan, all Creditors are encouraged to read the Disclosure Statement and this Plan carefully and completely before voting to accept or reject this Plan.

THIS PLAN HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT AND IS ONLY INTENDED FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THIS PLAN.

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**ARTICLE I**

**DEFINITIONS AND RULES OF INTERPRETATION**

**A. Definitions.**

For purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I of this Plan. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules.

1.1 “24796 Aircraft” means one (1) Boeing Model B737-4S3 aircraft bearing Manufacturer's Serial Number 24796 and U.S. Registration Mark N43XA, together with two CFM International, Inc. model CFM56-3C1 engines with Engine Serial Numbers 724661 and 724679.

1.2 “25313 Aircraft” means one (1) Boeing 737-400 Aircraft, bearing Manufacturer’s Serial Number 25313 and two CFM International CFM56-3C1 Engines bearing Manufacturer’s Serial Numbers 726316 and 727339.

1.3 “25314 Aircraft” means one (1) Boeing 737-400 series aircraft bearing Manufacturer’s Serial Number 25314 and two CFM International CFM56-3C1 Engines bearing Manufacturer’s Serial Numbers 727430 and 727260.

1.4 “26279 Aircraft” means one (1) Boeing Model 737-400 aircraft bearing Manufacturer's Serial Number 26279, together with two CFM International, Inc. model CFM56-3C1 engines with Engine Serial Numbers 727223 and 727224.

1.5 “Administrative Claim” means a Claim for any cost or expense of administration of the Chapter 11 Case allowed under §§ 503(b), 507(a)(2) and 507(b) of the Bankruptcy Code, including: (a) fees and charges assessed to the estate and payable under 28 U.S.C. § 1930; (b) actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate, administering the Chapter 11 Case, and operating the Debtor’s business (such as – wages, salaries, commissions and payments for services and goods); (c) compensation and reimbursement of expenses for legal, financial advisory, accounting and

other services including but not limited to Professional Fees including those allowed by Final Order under §§ 328, 330(a) and 331 of the Bankruptcy Code for the period commencing on the Petition Date and ending on the Effective Date; and (d) all Bankruptcy Court approved requests for compensation or expense reimbursements for making a substantial contribution in the Chapter 11 case pursuant to sections 503(b)(3), (4) and (5) of the Bankruptcy Code.

1.6 “Administrative Claims Bar Date” means the deadline for filing proof of claims or requests for payment of Administrative Claims, which shall be thirty (30) days after the Confirmation Date, unless otherwise ordered by the Bankruptcy Court, except with respect to Professional Claims.

1.7 “AerLine Secured Claim” means the Secured Claim held by AerLine.

1.8 “Affiliate” has the meaning given such term by § 101(2) of the Bankruptcy Code.

1.9 “Aircraft” means the 25313 Aircraft, 25314 Aircraft, the 26279 Aircraft, the 24796 Aircraft and any other aircraft acquired or leased by the Debtor.

1.10 “Allowed” means, with reference to any Claim, Equity Interest or Interest and with respect to the Debtor: (a) any Claim against or Interest in the Debtor that has been listed by the Debtor in its Schedules, as such Schedules may be amended by Debtor from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary Proof of Claim or Interest has been Filed; (b) any Claim or Interest allowed (i) under this Plan, (ii) by Final Order, or (iii) as to which the liability of the Debtor and the amount thereof are determined by a final order of a court of competent jurisdiction other than the Bankruptcy Court; or (c) as to which a Proof of Claim has been timely Filed in a liquidated amount with the Bankruptcy Court, pursuant to the Bankruptcy Code or any order of the Bankruptcy Court, or has been Filed with leave of the Bankruptcy Court after notice and a hearing, provided that no objection to the allowance of such Claim or motion to expunge such Claim has been interposed by any party in interest before any final date for the filing of such objections or motions set forth in this Plan, the Confirmation Order or other order of the Bankruptcy Court. For purposes of determining the amount of an Allowed Claim, there shall be deducted therefrom an amount equal to the amount of any valid and enforceable Claim that the

Debtor may hold against the Holder thereof, to the extent such Claim may be validly offset, recouped, or otherwise reduced under applicable law. Any Claim or interest that has been or is hereafter listed in the Schedules as disputed, contingent, or unliquidated, and for which no Proof of Claim or Interest has been timely filed, is not considered Allowed and is expressly a Disallowed Claim, and shall be expunged without further action by the Debtor and without any further notice, action, order, or approval of the Bankruptcy Court.

1.11 “Assets” means any and all real property of nature, including, without limitation, any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, work in process, inventory, accounts, chattel paper, cash, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, Claims, Avoidance Actions, and any other general intangibles of Debtor, as the case may be, of any nature whatsoever (whether liquidated or unliquidated, matured or unmatured, or fixed or contingent), including, without limitation, property of the Estate within the scope of section 541 of the Bankruptcy Code.

1.12 “Avoidance Claims” means Causes of Action arising under §§ 510, 547, 548, 549, 550 and 551 of the Bankruptcy Code, or under similar or related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation has been commenced as of the Confirmation Date to prosecute such Avoidance Claims.

1.13 “Ballot” means each of the ballot forms that are distributed with the Disclosure Statement to Claimholders or Interest holders included in Classes that are Impaired under this Plan and entitled to vote to accept or reject this Plan.

1.14 “Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as amended and codified in title 11 of the United States Code, as in effect on the date hereof.

1.15 “Bankruptcy Court” means the United States Bankruptcy Court for the District of Nevada or such other court as may have jurisdiction over the Chapter 11 Case.

1.16 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended, as applicable to the Chapter 11 Cases or proceedings therein, and the Local Rules of the Bankruptcy

1 Court, as applicable to the Chapter 11 Case.

2 1.17 “Business Day” means any day, excluding Saturdays, Sundays and “legal  
3 holidays” (as defined in Bankruptcy Rule 9006(a)), on which commercial banks are open for  
4 business in Nevada.

5 1.18 “Cash” means cash or cash equivalents.

6 1.19 “Cash Collateral Order” means any order entered by the Bankruptcy Court in  
7 which the Court authorized the Debtor’s use of a secured creditor’s Cash Collateral, as defined  
8 by the Bankruptcy Code.

9 1.20 “Cash Reserve” means a reserve holding Cash for potential distribution for  
10 Disputed Claims.

11 1.21 “Causes of Action” means any and all actions, proceedings, claims, demands,  
12 suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable  
13 remedies, and rights to payment, whether known, unknown, suspected or unsuspected, reduced  
14 to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,  
15 unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable  
16 directly or derivatively, in law, equity or otherwise, including Avoidance Claims and Derivative  
17 Claims, unless otherwise waived or released by the Debtor.

18 1.22 “Chapter 11 Case” means the Chapter 11 Case of the Debtor pending in the  
19 Bankruptcy Court as Case No. 14-13955-abl.

20 1.23 “Claim” has the meaning set forth in section 101(5) of the Bankruptcy Code and  
21 includes an Administrative Claim as defined herein.

22 1.24 “Claimholder” means a holder of a Claim.

23 1.25 “Class” means a category of Claimholders or Interestholders.

24 1.26 “Confirmation” means entry of an order confirming the Plan.

25 1.27 “Confirmation Closing” means the closing of the New Capital Contribution by  
26 AerLine in exchange for New Equity Interests in the Reorganized Debtor and otherwise in  
27 accordance with the Stock Purchase Agreement and the provisions of this Plan, intended to occur  
28 within seven (7) days after the Confirmation Order becomes a Final Order, on a date to be agreed



1 between the Debtor and AerLine.

2 1.28 “Confirmation Date” means the date of entry of the Confirmation Order.

3 1.29 “Confirmation Hearing” means the hearing before the Bankruptcy Court held to  
4 consider confirmation of this Plan and related matters under § 1128 of the Bankruptcy Code, as  
5 such hearing may be adjourned or continued from time to time. In the event that objections have  
6 been filed to the Plan and/or Disclosure Statement, that remain unresolved three (3) Business  
7 Days prior to the Confirmation Hearing, the Confirmation Hearing shall be continued to a date  
8 that is not less than fourteen (14) days following the Confirmation Hearing.

9 1.30 “Confirmation Order” means the order entered by the Bankruptcy Court  
10 confirming this Plan.

11 1.31 “Conglomerate Insurers” shall include all of the following entities: Global  
12 Aerospace Inc., Underwriters at Lloyd’s, London and Various Insurance Companies, AIG  
13 Aerospace Insurance Services Inc. on behalf of National Union Fire Insurance Co of Pittsburgh  
14 PA, C V Starr Company on behalf of Starr Surplus Lines Insurance Company, C V Starr  
15 Company on behalf of Ironshore Specialty Insurance Company, Allianz Global Risks US  
16 Insurance Company through Allianz Global Corporate & Specialty, XL Insurance on behalf of  
17 XL Specialty Insurance Company, and Berkley Aviation LLC on behalf of StarNet Insurance  
18 Company.

19 1.32 “Contingent Claim” means a Claim that is contingent, unmatured or unliquidated  
20 on or immediately before the Confirmation Date.

21 1.33 “Creditor” means the holder of any Claim, whether or not such Claim is an  
22 Allowed Claim, encompassed within the statutory definition set forth in §101(10) of the  
23 Bankruptcy Code.

24 1.34 “Debtor” means TEM Enterprises dba Xtra Airways.

25 1.35 “DIP Account” means the bank account created for post-petition operations of the  
26 Debtor.

27 1.36 “DIP Loan Facility” means that certain credit facility, not to exceed \$500,000.00  
28 as approved by the Court, by interim order, on August 1, 2014 [Docket No. 181] and by final

1 order on August 20, 2014 [Docket No. 199].

2 1.37 “Disallowed Claim” means (a) any Claim or any portion thereof that has been  
3 disallowed by a Final Order of the Bankruptcy Court; or (b) any Claim or interest that has been  
4 listed in the Schedules as disputed, contingent, or unliquidated, and for which no Proof of Claim  
5 has been timely filed.

6 1.38 “Disclosure Statement” means the written disclosure statement that relates to this  
7 Plan, as such disclosure statement may be amended, modified or supplemented from time to  
8 time, including all exhibits and schedules thereto.

9 1.39 “Disputed Claim” means a claim or any portion thereof, or any Interest or any  
10 portion thereof, that is neither an Allowed Claim nor a Disallowed Claim, as the case may be,  
11 and includes, without limitation, Claims that (a) have not been Scheduled by the Debtor or have  
12 been Scheduled at zero, or have been Scheduled as unknown, contingent, unliquidated or  
13 disputed and are the subject of a timely filed proof of claim or interest that differs in nature,  
14 amount or priority from the Schedules; or (b) are the subject of an objection filed with the  
15 Bankruptcy Court, which has not been withdrawn or overruled by a Final Order of the  
16 Bankruptcy Court.

17 1.40 “Distribution” means the Cash or other Assets to be distributed to Holders of  
18 Allowed Claims under this Plan.

19 1.41 “Effective Date” means the first Business Day determined by the Reorganized  
20 Debtor on which all conditions to the consummation of this Plan have been either satisfied in full  
21 or waived as provided in this Plan and is the day upon which this Plan is substantially  
22 consummated, provided that, such Effective Date shall be no later than November 24, 2014.

23 1.42 “Equity Interests” mean the Debtor’s shareholders holding Equity Interests  
24 in the Debtor.

25 1.43 “Equity Interests” shall mean all ownership interests in the Debtor.

26 1.44 “Estate” means the bankruptcy estate of the Debtor created pursuant to section  
27 541 of the Bankruptcy Code.

28 1.45 “Executory Contracts Claims Bar Date” means the last day on which Rejection

1 Claims must be filed with the Bankruptcy Court, which date shall be thirty (30) days after the  
2 Confirmation Date.

3 1.46 “Exhibit Deadline” means the date, not later than fourteen days prior to the  
4 Confirmation Hearing, when all Exhibit referenced in the Plan or Disclosure Statement must be  
5 filed on the Docket in the Chapter 11 Case.

6 1.47 “Face Amount” means: (a) when used in reference to a Disputed or Disallowed  
7 Claim, the full stated liquidated amount claimed by the holder of such Claim in any proof of  
8 claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final  
9 Order of the Bankruptcy Court or other applicable bankruptcy law, or the amount of the Claim  
10 acknowledged by the applicable Debtor in any objection Filed to such Claim or in the Schedules  
11 as a noncontingent, liquidated and undisputed Claim, estimated by the Bankruptcy Court  
12 pursuant to section 502(c) of the Bankruptcy Code or proposed by the Debtor or the Plan  
13 Administrator and approved by the United States Trustee, if no proof of Claim has been Filed by  
14 the Bar Date or has otherwise been deemed timely filed under applicable law or if the proof of  
15 Claim specifies an unliquidated amount; and (b) when used in reference to an Allowed Claim,  
16 the allowed amount of such Claim.

17 1.48 “File” shall mean electronically submitting a document on PACER.gov under the  
18 Chapter 11 Case.

19 1.49 “Final Order” means an order or judgment, the operation or effect of which has  
20 not been stayed, reversed or amended and as to which order or judgment the time to appeal or  
21 seek review or rehearing has expired and as to which no appeal or petition for review or  
22 rehearing was filed or, if filed, remains pending.

23 1.50 “General Unsecured Claim” means a Claim that is not secured by a charge  
24 against, Lien or interest in property in which the Estate has an interest and is not an  
25 Administrative Claim or Priority Tax Claim. General Unsecured Claims shall also include all  
26 claims arising under § 502(g).

27 1.51 “General Unsecured Claims Bar Date” means the deadline to file a proof of Claim  
28 by Holders of any General Unsecured Claims which shall be October 8, 2014, other than for

governmental units, which deadline shall be December 1, 2014.

1.52 “Holder” means the holder of a Claim or Equity Interest.

1.53 “Impaired” refers to any Claim or Interest that is impaired within the meaning of § 1124 of the Bankruptcy Code.

1.54 “Insurance Policy” means that insurance policy provided by the Conglomerate Insurers as amended, extended or renewed.

1.55 “Lien” shall have the meaning set forth in § 101(37) of the Bankruptcy Code.

1.56 “New Capital Contribution” means the \$3,500,000.00, less any amount outstanding under the DIP Loan Facility, to be utilized for subsequent distribution to Creditors pursuant to the terms of this Plan. The New Capital Contribution shall be paid on the date of Confirmation Closing into escrow or other arrangement agreed between Debtor and AerLine to hold on behalf of the Reorganized Debtor for distribution as set forth above. On the Exhibit Filing Deadline, the Debtor will file with the Bankruptcy Court, one or more commitment letters from the principals of AerLine evidencing their intent and ability to close on or before the Confirmation Closing.

1.57 “New Equity Interests” means those new shares of common stock or membership interests in the Reorganized Debtor to be authorized and issued to New Equity Investor pursuant to this Plan.

1.58 “New Equity Investor” means AerLine Holdings, LLC (“AerLine”), the entity that will provide the New Capital Contribution to the Debtor in exchange for the New Equity Interests under the Plan.

1.59 “Objection Date” means the date for Objection to the Plan, as more particularly set forth in an order of the Bankruptcy Court requested by the Debtor.

1.60 “Old Equity Interest” means all previously issued shares of common stock in the Debtor, securities convertible or exchangeable into shares of stock or equity interests or options to acquire same in the Debtor or Reorganized Debtor or other instruments or documents having same or similar effect.

1.61 “Person” means an individual, corporation, partnership, joint venture, association,

joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization, governmental unit (as defined in section 101(27) of the Bankruptcy Code) or other entity.

1.62 “Petition Date” means June 4, 2014.

1.63 “Plan” means this plan of reorganization of the Debtor and resolution of outstanding Claims in the Chapter 11 Case, as herein proposed by the Debtor including all Exhibits, supplements, appendices and schedules hereto, either in their present form or as the same may be further altered, amended or modified from time to time in accordance with the Bankruptcy Code and Bankruptcy Rules.

1.64 “Plan Administrator” means the Debtor’s President and representative, Lisa Dunn, charged with the duty of effectuating the Plan and disbursing the available proceeds pursuant to the priority scheme set forth in the Bankruptcy Code under the Plan.

1.65 “Plan Supplement Deadline” means at least fourteen (14) days prior to the Voting Deadline.

1.66 “Priority Tax Claim” means any Claim against the Debtor entitled to priority in payment under Section 507(a)(8) of the Bankruptcy Code.

1.67 “Professional” means those Persons retained in the Chapter 11 Case by orders of the Bankruptcy Court pursuant to sections 327 and 1103 of the Bankruptcy Code or otherwise; provided, however, that Professional does not include those Persons retained and/or compensated in the ordinary course of business.

1.68 “Professional Fee” means all reasonable fees and expenses or other charges and disbursements incurred by Debtor’s Professionals.

1.69 “Professional Fee Bar Date” means the deadline by which all applications for compensation or expense reimbursement, including Professional Claims, must be filed, which deadline shall be forty-five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court.

1.70 “Pro Rata” means, with respect to an amount of Cash or other consideration to be paid or Distributed on a particular date to a Holder of an Allowed Claim, such Distribution shall

be made in accordance with the ratio, as of such date, of the amount of such Allowed Claim to the aggregate amount of Claims in the Class to which such Allowed Claim belongs.

1.71 “Rejection Claim” means a Claim arising from the rejection of an Executory Contract or Unexpired Lease.

1.72 “Released Liability” means, with respect to a given Releasor, all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities based on any act, omission, transaction, event or other occurrence (other than rights to enforce the terms of this Plan or any related document or agreement), whether known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that arose prior to the Effective Date and relate to this Plan or the Chapter 11 Case, which could have been asserted by such Releasor (or on behalf of Debtor or its Estate) against any Releasee or any of its Representatives.

1.73 “Releasee” means, collectively, all officers, directors, managers and members of the Debtor, and all independent contractors employed by the Debtor, in each case, as of the date of the commencement of the hearing on the Disclosure Statement, the Plan Administrator in her capacity as such, all Professionals, the Reorganized Debtor, the New Equity Investor, and with respect to each of the above-named Persons, such Person’s affiliates, principals, shareholders, partners, members, representatives, employees, agents, officers, directors, financial advisors, attorneys and other professional and any of their respective Representatives.

1.74 “Releasor” means any Claimholder, party-in-interest, and their respective Representatives which is or becomes the holder of a Released Liability.

1.75 “Reorganized Debtor” means the Debtor on and after the Effective Date.

1.76 “Representative” means any party acting on behalf of any Person for such Person’s benefit.

1.77 “Retained Actions” means all claims, Causes of Action, rights of action, suits and proceedings, whether in law or in equity, whether known or unknown, which the Debtor or Debtor’s Estate may hold against any Person, including, without limitation, (a) claims and Causes of Action brought prior to the Effective Date; and (b) claims, Causes of Action brought



1 as part of an Adversary Proceeding.

2 1.78 “Scheduled” means, with respect to any Claim or Interest, the status, priority, and  
3 amount, if any, of such Claim or Interest as set forth in the Schedules.

4 1.79 “Schedules” means the schedules of assets and liabilities and the statement of  
5 financial affairs filed in the Chapter 11 Case by the Debtor, as such schedules or statement has  
6 been or may be further modified, amended or supplemented from time to time in accordance  
7 with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

8 1.80 “Secured Claims” means all Claims secured by a security interest in or a lien on  
9 property in which a Debtor’s Estate has an interest or that is subject to setoff under section 553  
10 of the Bankruptcy Code, to the extent of the value, as of the Effective Date or such other date as  
11 is established by the Bankruptcy Court, of such Claimholder’s interest in the applicable Estate’s  
12 interest in such property or to the extent of the amount subject to setoff, as applicable, as  
13 determined by a Final Order of the Bankruptcy Court or as otherwise agreed upon in writing by  
14 the Debtor and the Claimholder.

15 1.81 “Stock Purchase Agreement” means that stock purchase agreement between the  
16 Debtor and Aerline in connection with the New Capital Contribution and further terms regarding  
17 the transactions contemplated by the Plan, which the Debtor shall file with the Bankruptcy Court  
18 no later than the Exhibit Filing Deadline.

19 1.82 “Tax” means any income, franchise, excise, sales, use, employment, withholding,  
20 property, payroll or other taxes, assessments, or governmental charges, with any interest  
21 penalties, additions to tax, fines, and similar amounts related thereto, imposed, or collected by  
22 any federal, state, local or foreign governmental authority.

23 1.83 “Unclassified Claims” means Administrative Claims and Priority Tax Claims.

24 1.84 “Voting Class” means any Class which is entitled to vote for acceptance or  
25 rejection of the Plan.

26 1.85 “Voting Deadline” means the date established by the Bankruptcy Court by which  
27 holders of Allowed Claims are determined for purposes of such Claimholders’ right to submit  
28 Ballots.

**B. Rules of Interpretation**

For purposes of this Plan, unless otherwise provided herein, (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) each pronoun stated in the masculine, feminine or neutral includes the masculine, feminine and neutral; (c) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (d) any reference in this Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified or supplemented pursuant to this Plan; (e) any reference to an entity as a Claimholder or Equity Interestholder includes that entity's successors and assigns; (f) all references in this Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to this Plan; (g) the words "herein," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (h) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (i) subject to the provisions of any contract, certificates of incorporation, by-laws, instrument, release or other agreement or document entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules; and (j) the rules of construction set forth in section 102 of the Bankruptcy Code will apply.

**C. Computation of Time**

In computing any period of time prescribed or allowed by this Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply.

**D. Exhibits**

All Exhibits are incorporated into and are a part of this Plan as if set forth in full herein and, to the extent not annexed hereto, such exhibits shall be filed with the Bankruptcy Court prior to the Confirmation Hearing. Copies of Exhibits can be obtained upon written request by

electronic mail: [rworks@mcdonaldcarano.com](mailto:rworks@mcdonaldcarano.com); or by U.S. Mail or hand delivery to: McDonald Carano Wilson LLP, 2300 West Sahara, 12th Floor, Las Vegas, Nevada 89102 (Attn: Ryan J. Works, Esq.), counsel to the Debtor.

## ARTICLE II

### **CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

#### **2.1. Introduction.**

All Claims and Interests are placed in the Classes set forth below. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such Claim has not been paid, released or otherwise settled prior to the Effective Date.

#### **2.2 Unclassified Claims.**

##### **(a) Administrative Claims**

(1) *Deadline to File Administrative Claims.* The Holder of an Administrative Claim, other than (i) a Professional Fee Claim, or (ii) a liability incurred and paid in the ordinary course of business by the Debtor, must file with the Bankruptcy Court and serve on the Debtor and its counsel, notice of such Administrative Claim on or before the Administrative Claim Bar Date. Such notice must include, at minimum, (i) the name of the Holder of such Claim, (ii) the basis of the Claim, and (iii) the amount of the Claim. Failure to file such notice timely and properly shall result in the Administrative Expense Claim being forever barred and discharged.

(2) *Payment Provisions.* Subject to the provisions of Bankruptcy Code sections 330(a), 331 and 503(b), each Holder of an Administrative Claim shall, either: (i) from the New Capital Contribution, be paid in Cash in the Allowed amount of any such Claim, on, or as soon as reasonably practicable after, the latest of: (A) the Effective Date, (B) the date upon which such Administrative Claim becomes Allowed, or (C) such date as is otherwise agreed by the Debtor and the Holder of an Administrative Claim; or (ii) receive such other treatment as is

1 agreed to by the Holder of an Administrative Claim and the Debtor.

2 (b) Professional Fee Claims.

3 (1) *Deadline to File Professional Fee Claims.* The Holder of a Professional  
4 Fee Claim must file with the Bankruptcy Court, and serve on all necessary parties and their  
5 counsel, a request for final payment of such Professional Fees, and reimbursement of expenses,  
6 pursuant to Bankruptcy Code sections 327, 328, 330 and/or 331 and the terms of this Plan, no  
7 later than forty-five (45) days after the Effective Date, unless otherwise ordered by the  
8 Bankruptcy Court.

9 (2) *Payment Provisions.* Subject to the provisions of Bankruptcy Code  
10 sections 330(a), 331 and 503(b), each Holder of a Professional Fee Claim shall, from the New  
11 Capital Contribution, be paid in Cash in the Allowed amount of any such Professional Fee Claim  
12 on, or as soon as reasonably practicable after, the later of (i) the Effective Date, (ii) the date upon  
13 which such Administrative Claim becomes Allowed, or (iii) such date as is otherwise agreed by  
14 the Debtor and the Holder of such Professional Fee Claim.

15 (c) U.S. Trustee Fees.

16 Notwithstanding the foregoing or anything to the contrary in this Plan, the Debtor shall  
17 pay all accrued U.S. Trustee Fees on or before the Effective Date of the Plan; and following the  
18 Effective Date, the Debtor shall be responsible for timely payment of all U.S. Trustee Fees until  
19 such time as the Final Decree closing this Chapter 11 Case are entered and all U.S. Trustee Fees  
20 due are paid in full. The Debtor shall File with the Bankruptcy Court and serve on the U.S.  
21 Trustee a quarterly financial report for each quarter (or portion thereof) that the Chapter 11 Case  
22 remains open in such format as reasonably may be required by the U.S. Trustee.

23 (d) Priority Tax Claims.

24 The legal and equitable rights of the Holders of Priority Tax Claims are unaltered by this  
25 Plan. If a governmental entity is entitled to a priority under 11 U.S.C. 507(a)(8), the claim will be  
26 paid in full.

27 Each Holder of an Allowed Priority Tax Claim shall, either:

28 (a) be paid the Allowed amount of such Claim in Cash on or before the

Effective Date;

(b) receive such other treatment as is agreed to by the Holder of the Allowed Priority Tax Claim and the Debtor; or

(c) have such Claim assumed by Reorganized Debtor, to be paid by Reorganized Debtor in Cash in the Allowed amount of any such Claim on the date on which such Claim is payable under applicable law or any agreement relating thereto.

Under the Plan, Holders of Allowed Priority Tax Claims against the Debtor shall not be entitled to any payments on account of any post-Petition Date interest or penalty with respect to or in connection with an Allowed Priority Tax Claim. Any such Claim or demand for any post-Petition Date interest or penalty will be discharged upon the entry of the Confirmation Order by Bankruptcy Code section 1141(d)(1), and the Allowed Priority Tax Claim Holder shall not assess or attempt to collect such accrued interest or penalty from the Debtor, the Reorganized Debtor, or their property.

### **2.3 Classified Claims.**

#### **(a) Class 1: Priority Claims.**

(1) *Claims in Class:* Class 1 consists of Priority Claims against the Debtor.

(2) *Treatment:* The legal and equitable rights of the Holders of Allowed Priority Claims are unaltered by this Plan. Each Holder of an Allowed Priority Claim shall, either: (i) be paid the Allowed amount of such Claim in Cash on or before the Effective Date, (ii) have such Claim assumed by Reorganized Debtor, to be paid by Reorganized Debtor in Cash in the Allowed amount of any such Claim on the date on which such Claim is payable under applicable law or any agreement relating thereto; or (iii) receive such other treatment as is agreed by the Holder of the Allowed Priority Claim, the Debtor and the Reorganized Debtor.

(3) *Impairment and Voting:* Class 1 is Unimpaired and the Holders of Allowed Priority Claims are conclusively deemed to have accepted this Plan, pursuant to Bankruptcy Code section 1126(f) and solicitation of acceptances with respect to Class 1 is not required because the Holders in Class 1 are not entitled to vote.

#### **(b) Class 2: Secured Claims.**

(1) *Claims in Class:* Class 2 consists of the AerLine Secured Claim.

(2) *Treatment:* On the Effective Date, the Holder of Allowed the Secured Claim shall receive payment from the Debtor, in full satisfaction, settlement, release and exchange for the Secured Claim either (a) by payment, in full, in cash, funded from the New Capital Contribution; or (b) a credit of all amounts outstanding under the DIP Loan Facility towards the total amount due under the New Capital Contribution.

(3) *Impairment and Voting:* Class 2 is Unimpaired and the Holder of the Class 2 Secured Claim is conclusively deemed to have accepted this Plan, pursuant to Bankruptcy Code section 1126(f) and solicitation of acceptance with respect to Class 2 is not required because the Holder in Class 2 is not entitled to vote.

(c) Class 3: General Unsecured Claims.

(1) *Claims in Class:* Class 3 consists of General Unsecured Claims against the Debtor.

(2) *Treatment:* On the Effective Date, Holders of Class 3 General Unsecured Claims shall, in full satisfaction, settlement, release and exchange for such Allowed General Unsecured Claims, receive their Pro Rata share of the New Capital Contribution following full payment of Allowed Claims constituting the Unclassified Claims, Class 1 Claims, and Class 2 Claims, on account of their Allowed General Unsecured Claims. Upon the Effective Date, but subject to the treatment to be afforded to such parties under this Plan, all General Unsecured Claims shall be released and expunged, and of no further effect, without further action by Debtor or notice to Holders of General Unsecured Claims being necessary.

(3) *Impairment and Voting:* Class 3 is Impaired. Holders of Class 3 General Unsecured Claims are entitled to vote to accept or reject the Plan.

(e) Class 4: Old Equity Interests.

(1) *Claims in Class:* Class 4 consists of all Old Equity Interests.

(2) *Treatment:* The Holders of Old Equity Interests shall not receive or retain any property on account of such Old Equity Interests under the Plan. Upon the



Effective Date, all Old Equity Interests shall be extinguished and cancelled without further action by Debtor or notice to Holders of Old Equity Interests being necessary.

(3) *Impairment and Voting:* Class 4 is Impaired and they are deemed to have rejected the Plan because the Holders of Old Equity Interests will receive nothing under the Plan. Holders of Old Equity Interests will not be solicited under the Plan and any votes to accept or reject the Plan will not be considered for voting purposes.

#### **2.4. Retention of Defenses Regarding Claims.**

Except as otherwise provided in this Plan, nothing shall affect Debtor's rights and defenses, both legal and equitable, with respect to any Claims.

#### **2.5. Voting by Impaired Classes.**

Holders of Claims in Classes 3 and 4 are Impaired. Only Holders in Class 3 are entitled to vote to accept or reject this Plan.

#### **2.6. Disputed, Contingent and Unliquidated Claims.**

Except as otherwise provided herein, any Claim or Interest that has been or is hereafter listed in the Schedules as disputed, contingent, or unliquidated, and for which no Proof of Claim or Interest has been timely Filed by the Bar Date, is not considered Allowed, and is expressly disallowed, and shall be expunged without further action by the Debtor and without any further notice to or action, order, or approval of the Bankruptcy Court.

### **ARTICLE III**

#### **ACCEPTANCE OR REJECTION OF THIS PLAN**

##### **3.1. Summary of Classes Voting on this Plan.**

(a) Impaired Classes of Claims Entitled to Vote. Except as otherwise provided in Orders of the Bankruptcy Court pertaining to solicitation of votes on this Plan, Holders of Allowed Claims in each Impaired Class are entitled to vote in their respective classes as a class to accept or reject the Plan. Only the votes of members of Class 3 will be solicited with respect to this Plan.

(b) Classes of Claims Not Entitled to Vote. Classes 1 and 2 are Unimpaired and are not entitled to vote under this Plan because such classes are deemed to accept this Plan. Class 4

is Impaired; however, as an insider, the Holder of Equity Interests is not entitled to vote under this Plan.

### **3.2 Acceptance by an Impaired Class.**

In accordance with Bankruptcy Code section 1126(c) and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Claims shall be deemed to have accepted this Plan if this Plan is accepted by the Claimholders of at least two-third (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

### **3.3 Nonconsensual Confirmation Under Section 1129(b) of the Bankruptcy Code.**

If any Impaired Class of Claims entitled to vote should not accept this Plan by the requisite statutory majorities provided in section 1126(c) of the Bankruptcy Code, Debtor reserves the right to request that the Bankruptcy Court confirm this Plan under section 1129(b) of the Bankruptcy Code.

### **3.4. Tabulation of Votes.**

Counsel for the Debtor will tabulate all votes on this Plan for the purpose of determining whether this Plan satisfies Bankruptcy Code sections 1129(a)(8) and (10).

## **ARTICLE IV**

### **EXECUTORY CONTRACTS AND LEASES**

#### **4.1 Executory Contracts and Unexpired Leases.**

On the Effective Date of the Plan, the Debtor will be deemed to have assumed the executory contracts and leases as is indicated in Debtor's Disclosure Statement at Exhibit 6. Any contracts or leases which are not listed in Exhibit 6 shall be deemed rejected as of the Effective Date of the Plan.

For the avoidance of doubt, the Debtor intends to assume its Insurance Policy provided by the Conglomerate Insurers for coverage of its use and operation of the Aircraft. The Policy is subject to renewal on November 1, 2014. Debtor intends to renew coverage with the same Conglomerate Insurers. Debtor intends to cure all arrearages in assuming the Policy. Debtor proposes to pay the cure payment from the New Capital Contribution prior to November 1, 2014,

and shall do so to ensure that the Policy is extended to avoid any lapse in insurance coverage.

In addition, the Debtor submits that it has recently renegotiated its 24796 Lease (as defined in the Disclosure Statement) with Triton Aviation California, Inc. (“Triton”). Triton has agreed to allow for substantially lower monthly basic rent payment, in an approximate amount to the AerSale Leases. Debtor will continue paying full maintenance reserves while leasing the 24796 Triton Aircraft until its next major check-up (“C-Check”) when the Debtor will return 24796 Triton Aircraft “as-is”. However Debtor will not cure the pre-petition and post-petition delinquency associated with the Triton 24796 Lease, which condition is expressly waived by Triton and approved by the Bankruptcy Court upon entry of the Confirmation Order. As a result, the Debtor is assuming the 24796 Lease, as amended, including any other executory contracts set forth in Exhibit 6, and Allowed Claims arising therefrom shall be treated as: (a) if pre-petition, a General Unsecured Claim; and (b) if post-petition, an Administrative Claim. Upon entry of the Confirmation Order, and effective as of the Effective Date, the 24796 Lease, as amended, will be assumed by the Reorganized Debtor, without a cure of the pre-petition or post-petition arrears. An amendment to the Triton 24796 Lease will be drafted and executed by Triton and the Debtor, memorializing the terms of the amendment and assumption.

#### **4.2 Designation of Executory Contracts to be Assumed and Assigned.**

To the extent that any Claimholder elects to be assigned any of the Debtor’s executory contracts or unexpired leases, such Claimholder must notify and inform the Debtor, by writing to its counsel, no later than five business days prior to the Confirmation Hearing of those executory contracts that the Claimholder would have designated as assumed and assigned contracts.

#### **4.3 Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.**

(a) On or prior to the Confirmation Hearing date, and effective as of the Effective Date, for those assumed contracts that are assigned to a Claimholder who elects assignment pursuant to Article 4.2 of this Plan, the Cure Amount, if any, owed to the non-Debtor parties to such assumed contracts shall be made by the Claimholder.

(b) If a counterparty objects to any cure or any other matter related to assumption and assignment, the Bankruptcy Court shall determine the Allowed amount of such cure and any

related issues. If there is a dispute regarding such cure, the ability of the Claimholder to provide “adequate assurance of future performance” within the meaning of Bankruptcy Code section 365, or any other matter pertaining to assumption, then cure shall occur as soon as reasonably practicable after entry of an order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be otherwise agreed upon. Any counterparty to an Assumed Contract that fails to object timely to the proposed assumption and assignment of any such contract or unexpired lease will be deemed to have consented to such assumption and assignment.

(c) Effective as of the Effective Date, assumption of any assumed contract pursuant to this Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults with respect to provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed contract at any time prior to the effective date of assumption and assignment. Any proof of claim Filed with respect to an assumed contract that has been assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

(d) If an objection to assignment or cure amount is sustained by the Bankruptcy Court, the Debtor may elect to reject such executory contract or unexpired lease in lieu of assuming and assigning it.

#### **4.4 Rejection of Executory Contracts.**

Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute the approval, pursuant to Bankruptcy Code sections 365(a) and 1123(b)(2), of the rejection of all executory contracts and unexpired leases other than the assumed and assigned contracts set forth herein.

Any holder of a Claim that arises from the rejection of an executory contract or unexpired lease with the Debtor shall have the rights of a Holder of a General Unsecured Claim and shall receive the treatment provided to Holders of Class 3 General Unsecured Claims as set forth in this Plan.

**4.5 Filing of Rejection Claims.**

Any Person or Entity who believes they are entitled to assert a Claim against the Debtor by virtue of the rejection of an executory contract or unexpired lease may File a proof of Claim with the Clerk of the Bankruptcy Court not later than thirty (30) days after the Confirmation Date, or such later time as ordered by the Bankruptcy Court. If such Claim is not so Filed, it shall be forever barred from assertion against the Debtor or a Claimholder by assignment. Nothing in this Section 4.5 shall affect the right of any party-in-interest to object to any Claim, which has been improperly Filed or not Filed on a timely basis.

**4.6 Modifications, Amendments, Supplements, Restatements, or Other Agreements.**

Unless otherwise provided in a supplement to this Plan, any contract that is assumed and assigned shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such assumed contract, and all executory contracts and unexpired leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under this Plan.

Modifications, amendments, supplements, and restatements to pre-petition executory contracts and unexpired leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the pre-petition nature of the executory contract or unexpired lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

**4.7 Reservation of Rights.**

Nothing contained in this Plan shall constitute an admission by the Debtor that any such contract or lease is in fact an executory contract or unexpired lease or that the Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor shall have thirty (30) days following the Filing of a Rejection Claim to resolve such dispute to alter their treatment of such contract or lease.

**ARTICLE V**

**PLAN IMPLEMENTATION****5.1. General Terms.**

This Plan shall be implemented in all respects in a manner that is consistent with the terms and conditions of this Plan and the requirements of section 1123(a) and other applicable provisions of the Bankruptcy Code.

**5.2. New Capital Contribution**

(a) General. AerLine's principals will cause to issue commitment letters to the Debtor, evidencing AerLine's ability to fund the New Capital Contribution Date, which commitment letters will be filed with the Bankruptcy Court on the Exhibit Filing Deadline. In accordance with the terms of this Plan and the Stock Purchase Agreement, on or before the date of Confirmation Closing, the New Equity Investor shall deposit its New Capital Contribution into escrow or pursuant to another similar arrangement, as agreed between the Debtor and AerLine to hold on behalf of the Reorganized Debtor for distribution as set forth in the Plan.

(b) Issuance of Equity Interests. On the date of the Confirmation Closing, and effective as of the Effective Date, Old Equity Interests shall be extinguished, canceled, terminated and of no force and effect. In consideration of the New Capital Contribution, one hundred percent (100%) of the New Equity Interests in the Reorganized Debtor shall be issued to the New Equity Investor or to any other person or Entity as the New Equity Investor may direct. The Reorganized Debtor bylaws shall prohibit the issuance of non-voting securities or any other securities inconsistent with 11 U.S.C. § 1123(a)(6). The issuance of securities pursuant to this Plan will be exempt from any securities laws registration to the fullest extent permitted by Section 1145 of the Bankruptcy Code.

**5.3. Disposition of Assets, Properties and Equity Interests.**

(a) Reorganized Debtor. On the Effective Date (as more fully set forth in Article XI of this Plan), without any further action, the Reorganized Debtor will be vested with all Assets, free and clear of all Liens, Claims and Old Equity Interests.

(b) Secured Creditors. On or after the Effective Date (as applicable), and in accordance with the Confirmation Order, any Claims and Liens not provided for and/or



specifically addressed under the Plan, including, but not limited to, Liens of record for Claims, which are disputed based upon such Claims being reflected in the Debtor's books and records as having been paid and satisfied and for which no proof of claim has been filed, shall be deemed satisfied and shall be discharged of record.

#### **5.4. Assumption of Liabilities.**

On the Effective Date, unless such Claims are paid on or prior to such date, Reorganized Debtor shall be deemed to have assumed any Claim that is an Administrative Claim, a Priority Tax Claim or a Priority Claim (including any such Claims that are Disputed Claims or with respect to which any applicable period for asserting a Claim has not expired).

#### **5.5. Corporate Actions.**

(a) Adoption of Reorganized Debtor Operating Agreement. On the Effective Date and without further order of the Bankruptcy Court or need for corporate approval, the Reorganized Debtor bylaws shall supersede and replace all other corporate agreements and operating agreements previously governing the Debtor.

(b) Renaming Reorganized Debtor and Authority to Execute Operative Documents.

The Confirmation Order shall, among other things, constitute an Order authorizing the managers, officers, and agents of the Reorganized Debtor, effective as of the Effective Date, to execute and deliver the operative documents, as applicable (to the extent they have not already been executed and delivered), including without limitation all documents necessary to, on or prior to the Effective Date, rename the Reorganized Debtor without requiring any further corporate authorizations and notwithstanding the requirements under any applicable non-bankruptcy law.

(c) Good Faith and Non Avoidability. The Confirmation Order shall, among other things, provide that: (1) the Debtor, the Reorganized Debtor, and the New Equity Investor have acted in good faith; and (2) the Distributions and/or consideration received by the New Equity Investor shall not be subject to avoidance, turnover or disgorgement in any subsequent insolvency proceeding by any Person or Entity.

#### **5.6. Management.**

1 It is anticipated that the Reorganized Debtor will be managed by a management team  
2 designated by the New Equity Investor and including the Debtor's current president, Lisa Dunn.  
3 AerLine is also affiliated with AerSale, the current lessor of most of the Debtor's Aircraft. All  
4 Old Equity Interests will be extinguished under this Plan. While Ms. Dunn will no longer be a  
5 holder of Old Equity Interests, her experience and expertise in this industry is desirable and  
6 necessary for the continued operations of the Reorganized Debtor.

7 The Plan proposes that Lisa Dunn be compensated \$200,000 annually, plus benefits, for a  
8 2-year employment contract as the Reorganized Debtor's President, reporting to the Board of  
9 Directors, consisting of Nicolas Finazzo and Robert Nichols, who are the members of AerLine.  
10 Ms. Dunn has more than 30 years of experience in the airline industry and has adequately and  
11 professionally managed the Debtor throughout this Chapter 11 Case. Based on Ms. Dunn's  
12 experience, qualifications, connections, relationships, and history with the Debtor, such  
13 employment and retention is reasonable, necessary, and consistent with public policy. Ms.  
14 Dunn's employment with the Reorganized Debtor is not in contravention to the Bankruptcy  
15 Code or Rules.

16 The duties of the post-confirmation management will remain largely unchanged. Ms.  
17 Dunn and her team will oversee the day-to-day management and operations of the Debtor from  
18 Boise, Idaho, which activities will include leasing and maintaining the Reorganized Debtor's  
19 several Aircraft, contracting with charter companies and ad hoc flight requests, maintaining and  
20 nurturing key relationships in the industry, and directing the regular maintenance of the Aircraft  
21 consistent with local, state and federal law.

#### 22 **5.7. Exemption from Certain Transfer Taxes and Further Transactions.**

23 Pursuant to Bankruptcy Code section 1146(a), the issuance or exchange of any security,  
24 or the making or delivery of any instrument of transfer under, in furtherance, or in connection  
25 with this Plan, including, but not limited to, any deeds, bills of sale, assignments or other  
26 instruments of transfer shall not be subject to any stamp tax, real estate transfer tax or similar tax.

#### 27 **5.8. Final Decree.**

28 The Reorganized Debtor shall not request entry of the Final Decree with respect to this

Chapter 11 Case, unless and until:

(a) The New Capital Contribution has been made available to the Reorganized Debtor;

(b) The New Equity Interests have been issued in accordance with this Plan;

(c) All adversary proceedings and contested matters pending before the Bankruptcy Court have been resolved by a Final Order;

(d) All Claims have either: (1) become Allowed Claims and have been paid in accordance with the treatment to be given such Allowed Claim pursuant to this Plan; (2) been disallowed by a Final Order or deemed to be a Disallowed Claim, in accordance with the terms of this Plan; (3) been assumed by Reorganized Debtor, or (4) reinstated; and

(e) All Distributions to be made to Holders of Allowed Claims shall have been made by the Plan Administrator, in accordance with the requirements of this Plan.

#### **5.9. Effectuating Documents, Further Transactions.**

On and after the Effective Date, the Reorganized Debtor and its agents, officers and members thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of this Plan in the name of and on behalf of Debtor, as applicable, without the need for any approvals, authorizations, or consents except for those expressly required pursuant to this Plan.

#### **5.10. Post Effective Date Fees and Expenses.**

(a) From and after the Effective Date, the Plan Administrator shall pay all Post Effective Date Fees without the necessity of any approval by the Bankruptcy Court.

(b) In order to seek payment of Post Effective Date Fees, each respective Professional will send its invoice to the Reorganized Debtor and Plan Administrator, and the Reorganized Debtor shall have fourteen (14) days thereafter within which to notify the Professional and the Plan Administrator in writing that it objects to the invoice. If no objection is made within that time frame, Plan Administrator or Reorganized Debtor (as applicable) shall pay the invoice

within thirty (30) days thereafter. In the event the Reorganized Debtor objects and the parties are unable to resolve the objection, the Professional may bring the matter before the Bankruptcy Court on a motion for determination.

## ARTICLE VI

### **PROVISIONS CONCERNING PLAN DISTRIBUTIONS**

#### **6.1. Distributions on Account of Claims Allowed as of the Effective Date.**

Distributions under this Plan on account of Claims Allowed on or before the Effective Date shall be made on or before the Effective Date, or on the first date thereafter as is reasonably practicable.

#### **6.2. Distributions on Account of Claims Allowed After the Effective Date.**

(a) Payments and Distributions on Disputed Administrative and Priority Claims. In the event that there are Disputed Administrative Claims or Disputed Priority Claims requiring adjudication and resolution and such Claims have not become Allowed or Disallowed prior to the Effective Date, then the obligation to satisfy such Claims shall be from the Cash Reserve. To the extent there are no funds available in the Cash Reserve from which to pay such Claim, the obligation to satisfy such Claims will be paid or assumed by Reorganized Debtor, subject to Allowance or Disallowance by the Bankruptcy Court. Except as otherwise provided in this Plan, or Final Order, any Disputed Administrative Claim or Disputed Priority Claim that becomes Allowed after the Effective Date shall be satisfied from the Cash Reserve or paid or performed by Reorganized Debtor in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice.

(b) Special Rules for Distributions to Holders of Disputed Claims. Except as otherwise provided in this Plan and except as otherwise agreed by the relevant parties: (1) no partial payments and no partial Distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order, and (2) any Person that holds both an Allowed Claim and a Disputed Claim shall not receive any Distribution on the Allowed Claim unless and until all objections to the Disputed

Claim have been resolved by settlement or Final Order and the Claims have been Allowed.

**6.3. Manner of Payment Under this Plan.**

(a) Cash Distributions. Distributions of Cash to be made by the Plan Administrator pursuant to this Plan shall be made, at the discretion of the Plan Administrator, by check drawn on the Plan Administrator's bank account or by wire transfer from a domestic bank.

(b) Whole Dollars. Any other provision of this Plan to the contrary notwithstanding, no payments of cents will be made. Whenever any payment of cents would otherwise be called for, the actual payment may reflect a rounding of such fraction to the nearest whole dollar (up or down).

**6.4. Escheat.**

Holders of Allowed Claims shall have three (3) months from the check date to negotiate Distribution checks issued by the Plan Administrator under the terms of this Plan, otherwise payment on such checks may at the Plan Administrator's sole discretion be stopped and the funds shall escheat to the Plan Administrator and shall be promptly distributed to Reorganized Debtor (in accordance with Bankruptcy Code section 347).

**6.5. Delivery of Distributions.**

(a) Record Date for Distributions. On the Distribution Record Date, the Claims Register shall be closed and any Person responsible for making Distributions shall be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date. Notwithstanding the foregoing, if a Claim is transferred twenty (20) or fewer days before the Distribution Record Date, the Plan Administrator shall make Distributions to the transferee only to the extent practical and in any event only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

(b) Plan Administrator. The Plan Administrator shall make all Distributions required under this Plan.

(c) Delivery of Distributions in General. Except as otherwise provided in this Plan, and notwithstanding any authority to the contrary, Distributions to all Holders of Allowed

Claims shall be made to Holders of record as of the Distribution Record Date by the Plan Administrator: (1) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (2) to the signatory set forth on any of the proofs of Claims Filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if no proof of Claim is Filed or if Debtor has been notified in writing of a change of address); (3) at the addresses set forth in any written notices of address changes delivered to the Debtor after the date of any related proof of Claim; (4) at the addresses reflected in the Schedules if no proof of Claim has been Filed and the Plan Administrator has not received a written notice of a change of address; or (5) on any counsel that has appeared in the Chapter 11 Case on the Holder's behalf.

Except as otherwise provided in this Plan, Distributions under this Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or any similar legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the Distributions in the manner set forth in this Plan. Absent willful misconduct or gross negligence, the Plan Administrator, the Debtor, the Reorganized Debtor, and any representative, agent or officer of the such parties, as applicable, shall not incur any liability on account of any Distributions made under this Plan.

#### **6.6 Returned Distributions.**

In the case of Distributions to the Holders of Allowed Claims that are returned to the Plan Administrator due to an incorrect or incomplete address, the Plan Administrator shall retain any such returned Distribution in a segregated account established by the Plan Administrator to keep track of any returned Distributions. Unless the Holder of the Allowed Claim relating to any such returned Distribution contacts the Plan Administrator (or its designee) within three (3) months from the date on which such Distribution was returned and provides the Plan Administrator (or its designee) with acceptable proof of identity and an accurate address, such Holder shall forfeit all rights thereto, and to any and all future Distributions or rights under this Plan. In such event, the Claim for which such Distributions were issued shall be treated as a Disallowed Claim and the Distribution on account of such Disallowed Claim shall promptly be distributed to the



Reorganized Debtor.

#### **6.7 Disputed Distributions.**

In the event of any dispute between or among Holders of Claims as to the right to any Holder of a Claim to receive or retain any Distribution to be made to such Holder under this Plan, the Plan Administrator, in lieu of making such Distribution to such Holder, may make it instead into an escrow account for payment as ordered by the Bankruptcy Court or as the interested parties to such dispute may otherwise agree among themselves. Any such Holder who fails to raise such dispute by filing an appropriate request for relief with the Bankruptcy Court prior to the issuance of such disputed Distribution by the Plan Administrator shall be deemed to have forever waived any right to dispute such Distribution or to enjoin, impair or otherwise restrict the use of any such Distribution.

#### **6.8 Setoffs.**

The Plan Administrator may, but shall not be required to, setoff against any Distributions to be made pursuant to this Plan to a Holder of an Allowed Claim, Claims of any nature whatsoever that Debtor may have, or may have had, against such Holder that have not been previously released, but neither the failure to do so, nor the allowance of any Claim held by such Holder shall constitute a waiver or release by the Plan Administrator of any such Claim Debtor may have, or may have had, against such Holder.

#### **6.9 Withholding Taxes.**

The Plan Administrator shall be entitled to deduct any applicable federal or state withholding taxes from any payments made with respect to Allowed Claims, as appropriate, and shall otherwise comply with Bankruptcy Code section 346.

#### **6.10 Allocation of Distributions.**

Distributions on account of Allowed Claims shall, for tax purposes, be treated as allocated first to principal, and thereafter to interest only to the extent that the entire principal amount has been recovered, if applicable.

### **ARTICLE VII**

#### **PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

**7.1 Objection to and Resolution of Claims.**

Except as to applications for allowance of compensation and reimbursement of expenses under Bankruptcy Code sections 330, 331 and/or 503, the Reorganized Debtor shall, on and after the Confirmation Date, have the exclusive right to make and file objections to any Disputed Claim. The Reorganized Debtor shall also have the authority to compromise, settle, otherwise resolve or withdraw any objections to any Claims and compromise, settle or otherwise resolve any Disputed Claim without approval of the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court, the Debtor and, on and after the Confirmation Date, the Reorganized Debtor, shall file all objections to Claims that are the subject of a proof of Claim or requests for payment filed with the Bankruptcy Court (other than applications for allowances of compensation and reimbursement of expenses with respect to Professional Fee Claims) and serve such objections upon the Holder of the Claim as to which the objection is made as soon as is practicable, but in no event later than sixty (60) days after the Confirmation Date or such later date as may be approved by the Bankruptcy Court. It is the responsibility of the Reorganized Debtor to set any objection for hearing pursuant to the Bankruptcy Rules.

**7.2. Payments.**

Payments and Distributions to each Holder of a Disputed Claim that ultimately becomes an Allowed Claim shall be made in accordance with the provision of this Plan with respect to the Class of Creditors to which the respective Holder of an Allowed Claim belongs. Without limiting the generality of the foregoing, the Debtor shall not be required to object to any Claim irrespective of whether such Claim is Allowed or Disputed, whether in whole or in part.

**7.3. Contingent Claims.**

Until such time as a Contingent Claim or a contingent portion of an Allowed Claim becomes fixed or absolute or is Disallowed, such Claim will be treated as a Disputed Claim for all purposes related to Distributions under the Plan. The Holder of a Contingent Claim will only be entitled to a Distribution under the Plan when and if such Contingent Claim becomes an Allowed Claim.

**7.4. Personal Injury Claims.**

1 All objections to Claims Filed for personal injury tort damages, if any, shall be  
2 determined by the United States District Court for the District of Nevada.

3 **7.5. Estimation of Claims.**

4 The Debtor, prior to the Effective Date, and the Reorganized Debtor, after the Effective  
5 Date, shall be permitted, at any time, to request that the Bankruptcy Court estimate any  
6 contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless  
7 of whether the Debtor previously had objected to such Claim or whether the Bankruptcy Court  
8 had ruled on such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any  
9 Claim at any time during any litigation concerning any objection to such Claim, including during  
10 the pendency of any appeal relating to such objection.

11 **7.6. Reserve for Disputed General Unsecured Claims.**

12 On and after the Effective Date, the Plan Administrator shall, at the Reorganized  
13 Debtor's election, hold a Cash Reserve in a segregated reserve account in an aggregate amount  
14 sufficient to make Pro Rata Distributions to each Holder of a Disputed General Unsecured Claim  
15 at the time Distributions are made in the amount that such Holder would have been entitled to  
16 receive if such Claim had been an Allowed General Unsecured Claim on or before the Effective  
17 Date. Nothing contained herein shall be deemed to entitle the Holder of a Disputed General  
18 Unsecured Claim to post-Petition Date interest on such Claim. To the extent that a Cash Reserve  
19 is funded, any funds remaining in the Cash Reserve after all Distributions on account of Disputed  
20 Claims which have become Allowed have been made shall be promptly distributed to  
21 Reorganized Debtor. A Cash Reserve shall not be necessary if it is determined that no Disputed  
22 Claims exist, as of the Effective Date of the Plan. The Debtor reserves the right to fund a Cash  
23 Reserve and seek estimation from the Bankruptcy Court of such Disputed Claims pursuant to  
24 section 502(c) of the Bankruptcy Code. The actual amount at which such Disputed Claims are  
25 ultimately allowed and paid may differ from the estimates. Holders of Disputed General  
26 Unsecured Claims are entitled to receive Pro Rata Distributions under the Plan upon allowance  
27 of such General Unsecured Claims as set forth in this Plan. If a Cash Reserve is established, and  
28 the Cash Reserve is exhausted, there will be no further recourse against the Debtor, Reorganized

Debtor (except as otherwise provided under Section 6.2(a) of the Plan), AerSale, AerLine or any other Creditor, or party-in-interest on account of such deficiency.

## ARTICLE VIII

### **RESERVATION OF RIGHTS PENDING CONFIRMATION AND EFFECTIVE DATE**

#### **8.1. Rights If Plan Not Confirmed or Effective Date Does Not Occur.**

(a) Reservation of Rights. The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File subsequent plans of reorganization. If the Debtor revokes or withdraws this Plan, or if Confirmation of this Plan or the Effective Date does not ultimately occur, then: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain of any Claim or Class of Claims), assumption or rejection of executory contracts or unexpired leases effected by this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (3) nothing contained in this Plan shall: (i) constitute a waiver or release of any Claims by or against the Debtor or any Person or Entity; (ii) prejudice in any manner the rights of the Debtor or any other Person or Entity in any further proceedings involving the Debtor; or (iii) constitute an admission, acknowledgment, offer, or undertaking of any sort by the Debtor or any other Person or Entity.

(b) No Admissions or Waiver. Without limiting the generality of any similar provision in this Plan, notwithstanding anything in the Plan to the contrary, nothing contained in the Plan, any plan supplements or in the Disclosure Statement shall be deemed an admission by the Debtor or any Person with respect to any matter set forth herein. If Confirmation of this Plan or the Effective Date does not ultimately occur, no statement contained in the Plan, any plan supplements or in the Disclosure Statement may be used or relied on in any manner in any suit, action, proceeding or controversy within or outside of the Chapter 11 Case against the Debtor or any other Person. Without in any way limiting the provisions set forth in this Section 8.1, the Debtor reserves any and all of their rights as against all Persons in the event Confirmation of this Plan or the Effective Date does not ultimately occur.

#### **8.2 Term of Bankruptcy Injunction or Stays.**

All injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date unless the Bankruptcy Court shall order otherwise.

## ARTICLE IX

### CONDITIONS TO EFFECTIVE DATE

#### **9.1. Conditions to Occurrence of Effective Date.**

Each of the following are conditions to be met on or before the Effective Date, which conditions must be satisfied or waived in writing by the Debtor or Reorganized Debtor, except for subparagraphs (a), (b), and (c) below:

(a) The Confirmation Order shall be entered by the Bankruptcy Court and shall have become a Final Order;

(b) The New Capital Contribution has been fully funded and paid to the Debtor, pursuant to the terms of this Plan and released to the Debtor in accordance with the terms of this Plan;

(c) The required amount of funds have been paid and turned over to the Plan Administrator for Distribution on the Effective Date to the Priority Claims and the Administrative Claims in accordance with this Plan and the Bankruptcy Code;

(d) The Reorganized Debtor has assumed all contracts and leases which this Plan dictates are to be assumed;

(e) To the extent the Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims are not satisfied in full, the Reorganized Debtor will assume or will pay the remaining amounts unless otherwise agreed by the Holders of such; and

(f) Any outstanding U.S. Trustee Fees shall have been paid in full.

Any condition precedent for the occurrence of the Effective Date set forth in Section 9.1 of this Plan except for subparagraphs (a), (b), and (c) above, may be waived by the Debtor, if such waiver occurs before the Confirmation Date, or the Reorganized Debtor, if such waiver occurs after the Confirmation Date, in its sole discretion, without notice, leave, or order of the Bankruptcy Court or any other formal action.

1 **ARTICLE X**

2 **RETENTION OF JURISDICTION**

3 **10.1. Retention of Jurisdiction.**

4 Except to the extent otherwise expressly set forth herein, the Bankruptcy Court shall  
5 retain jurisdiction of the Chapter 11 Case following the Confirmation Date for the following  
6 purposes, it being expressly intended that such retention of jurisdiction shall in all cases hereafter  
7 set forth, extend to any actions or proceedings commenced prior or subsequent to the  
8 Confirmation Date and/or the Effective Date whether by the Debtor, the Reorganized Debtor or  
9 the parties specified herein:

10 (a) To hear and determine any objections to the allowance of Claims, including any  
11 objections by Reorganized Debtor with respect to any Claims which have been reinstated or  
12 assumed in accordance with the terms of this Plan;

13 (b) To determine any and all applications for compensation for any Professionals and  
14 similar fees to the extent made specifically subject to a hearing under this Plan and applicable  
15 provisions of the Bankruptcy Code;

16 (c) To determine any and all applications for the rejection or assumption and  
17 assignment of executory contracts or for the rejection or assumption and assignment, as the case  
18 may be, of unexpired leases to which the Debtor is a party or with respect to which it may be  
19 liable, and to hear and determine, and if need be to liquidate, any and all Claims arising from the  
20 rejection or assumption or assignment of an executory contract or lease;

21 (d) To modify this Plan pursuant to Bankruptcy Code section 1127 or to remedy any  
22 defect or omission or reconcile any inconsistency in the Confirmation Order to the extent  
23 authorized by the Bankruptcy Code;

24 (e) To hear and determine all controversies, suits and disputes, if any, as may arise in  
25 connection with the interpretation or enforcement of this Plan;

26 (f) To hear and determine all controversies, suits and disputes, if any, as may arise  
27 with regard to orders of this Bankruptcy Court entered in the Chapter 11 Case;

28 (g) To adjudicate all controversies concerning the classification of any Claim;



1 (h) To liquidate damages in connection with any disputed, contingent or unliquidated  
2 Claim;

3 (i) To adjudicate all alleged secured Claims or ownership interest in any of the  
4 Assets, or in any proceeds thereof,

5 (j) To adjudicate all Claims or controversies arising out of any purchases, sales,  
6 leases or other contracts entered into by the Debtor;

7 (k) To determine all questions and disputes regarding recovery of and entitlement to  
8 any Assets of the Debtor, or in any proceeds thereof;

9 (l) To adjudicate all Claims with respect to which the Debtor and/or the Reorganized  
10 Debtor are a party, whether or not such Claim or controversy is raised or filed before or after the  
11 Effective Date;

12 (m) To determine issues and disputes concerning entitlement to Distributions to be  
13 made under and pursuant to this Plan;

14 (n) To enter any order, including injunctions, necessary to enforce the title, rights and  
15 powers of the Debtor and/or the Reorganized Debtor, or the rights of any Person hereunder and  
16 to impose such limitations, restrictions, terms and conditions on such title, rights and powers as  
17 the Bankruptcy Court may deem necessary or appropriate;

18 (o) To determine such other matters as may be provided for in the Confirmation  
19 Order and this Plan, or as may from time to time be authorized under the provisions of the  
20 Bankruptcy Code or any other applicable law;

21 (p) To enter a Final Decree closing the Chapter 11 Case;

22 (q) To enforce the Administrative Claim Bar Date and Executory Contracts Claims  
23 Bar Date entered by the Bankruptcy Court;

24 (r) To make such orders as are necessary or appropriate to carry out the provisions of  
25 this Plan, including but not limited to orders interpreting, clarifying or enforcing the provisions  
26 thereof;

27 (s) Without limiting the generality of any of the foregoing, to hear and determine  
28 matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections

345, 505, and 1146.

## **10.2. Jurisdiction Unaffected.**

The occurrence of the Effective Date and/or the entry of a Final Decree shall not divest the Bankruptcy Court of any jurisdiction otherwise retained under this Article X or the Confirmation Order.

## **10.3. Failure of Bankruptcy Court to Exercise Jurisdiction.**

If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction over any matter arising under, arising in or related to the Bankruptcy Case, including any of the matters set forth in the Plan, the Plan shall not prohibit or limit the exercise of jurisdiction by any other court of competent jurisdiction with respect to such matter.

# **ARTICLE XI**

## **EFFECT OF CONFIRMATION OF PLAN**

### **11.1 Discharge**

In conjunction with Bankruptcy Code section 1141, except as otherwise provided for in the Plan, the rights afforded in the Plan and the treatment of all Claims and Equity Interests in the plan shall be in exchange for and in complete satisfaction, discharge and release of Claims and Equity Interests of any nature whatsoever against the Debtor, Reorganized Debtor, and of the Assets or properties of the Estate, including any interest accrued on such Claims from and after the Petition Date and any properties transferred to secured lenders.

Without limiting the generality of the foregoing, except as provided in the Confirmation Order, Confirmation will Discharge the Debtor and the Reorganized Debtor from all Claims, or other debts that arose before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not: (x) a proof of claim based on such a debt has been Filed, or deemed to have been Filed, under Bankruptcy Code sections 501 or 1111(a); (y) a Claim based on such debt is Allowed under section 502 of the Bankruptcy Code; or (z) the Holder of a Claim based on such debt has voted to accept the Plan.

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, (I) ON THE EFFECTIVE

DATE, ALL CLAIMS AGAINST THE DEBTOR WHICH AROSE BEFORE THE EFFECTIVE DATE SHALL BE SATISFIED, DISCHARGED AND RELEASED IN FULL, (II) ON THE EFFECTIVE DATE, THE RIGHTS AND INTERESTS OF ALL HOLDERS OF OLD EQUITY INTERESTS SHALL BE TERMINATED, CANCELED AND OF NO FORCE AND EFFECT, AND (III) ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTOR, THE REORGANIZED DEBTOR, ANY SECURED LENDER THAT IS A TRANSFEREE OF A PROPERTY, OF THEIR SUCCESSORS, OR ANY OF THEIR ASSETS OR PROPERTIES, ANY OTHER OR FURTHER CLAIMS OR EQUITY INTERESTS BASED UPON ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE, AS WELL AS ANY DEBT OF A KIND SPECIFIED IN BANKRUPTCY CODE SECTIONS 502(g), 502(h), OR 502(i), IRRESPECTIVE OF WHETHER (X) A PROOF OF CLAIM BASED ON SUCH A DEBT HAS BEEN FILED, OR DEEMED TO HAVE BEEN FILED, UNDER BANKRUPTCY CODE SECTIONS 501 OR 1111(a), (Y) SUCH CLAIM IS ALLOWED UNDER BANKRUPTCY CODE SECTION 502, OR (Z) THE HOLDER OF THE CLAIM HAS ACCEPTED THE PLAN.

## **11.2 Injunctions**

(a) Injunction Against Releasors. All of the Releasors, along with any of their successors or assigns, are permanently enjoined, from and after the Effective Date, from (1) commencing or continuing in any manner any action or other proceeding of any kind against the Releasees or any of their respective Representatives in respect of any Released Liabilities; (2) enforcing, attaching, collecting or recovering by any manner or means of any judgment, award, decree or order against the Releasees or any of their respective Representatives in respect of any Released Liabilities; (3) creating, perfecting, or enforcing any encumbrance of any kind against any property in the possession, custody or control of the Releasees or any of their respective Representatives with respect to any Released Liabilities; or (4) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Releasees or any of their respective Representatives or against the property or interests in property of the Releasees

1 or any of their respective Representatives, with respect to any Released Liabilities; provided,  
 2 however, that nothing contained herein shall preclude such Releasors from exercising their  
 3 rights pursuant to and consistent with the terms hereof and the contracts, instruments, releases  
 4 and other agreements and documents delivered under or in connection with this Plan; provided,  
 5 further, that nothing contained herein shall be deemed to enjoin any Releasor from taking any  
 6 action against any Releasee or any of its Representatives based on the release exceptions  
 7 contained in Section 11.4 of this Plan.

8 (b) Injunction Protecting Exculpation of Releasees and Debtor. All Claimholders and  
 9 any other parties-in-interest, along with any of their Representatives and any of their successors  
 10 or assigns are permanently enjoined, from and after the Effective Date, from (1) commencing or  
 11 continuing in any manner any action or other proceeding of any kind against Releasees or any of  
 12 their respective Representatives in respect of any potential liability for which exculpation is  
 13 granted pursuant to Section 11.3 of this Plan; (2) enforcing, attaching, collecting or recovering  
 14 by any manner or means of any judgment, award, decree or order against Releasees or any of  
 15 their respective Representatives in respect of any potential liability for which exculpation is  
 16 granted pursuant to Section 11.3 of this Plan; (3) creating, perfecting, or enforcing any  
 17 encumbrance of any kind against Releasees or any of their respective Representatives in respect  
 18 of any potential liability for which exculpation is granted pursuant to Section 11.3 of this Plan;  
 19 or (4) asserting any right of setoff, subrogation or recoupment of any kind against any Releasee  
 20 or any of their respective Representatives or against the property or interests in property any  
 21 Releasee or any of their respective Representatives, in respect of any potential liability for which  
 22 exculpation is granted pursuant to Section 11.3 of this Plan; provided, however, that nothing  
 23 contained herein shall preclude any Claimholder or other party-in-interest from exercising its  
 24 rights pursuant to and consistent with the terms hereof and the contracts, instruments, releases  
 25 and other agreements and documents delivered under or in connection with this Plan.

26 (c) Injunction Against Interference With Plan. Upon the Effective Date, all  
 27 Claimholders and their respective Representatives and any of their successors or assigns shall be  
 28 enjoined from taking any actions to interfere with the implementation or consummation of the

1 Plan.

2 **11.3 Exculpation.**

3 None of the Releasees, nor any of their respective Representatives shall have or incur  
4 any liability to any Claimholder, or any other party-in-interest, or any of their Representatives,  
5 or any of their successors or assigns, for any act, omission, transaction or other occurrence in  
6 connection with, relating to, or arising out of the Chapter 11 Case, the pursuit of confirmation of  
7 this Plan, or the consummation of this Plan, except and solely to the extent such liability is based  
8 on fraud, gross negligence or willful misconduct. The Releasees shall be entitled to reasonably  
9 rely upon the advice of counsel with respect to any of their duties and responsibilities under this  
10 Plan or in the context of the Chapter 11 Case. No Claimholder, or any other party-in-interest,  
11 including their respective Representatives, shall have any right of action against the Releasees or  
12 any of their Representatives, for any act, omission, transaction or other occurrence in connection  
13 with, relating to, or arising out of, the Chapter 11 Case, the pursuit of confirmation of this Plan,  
14 the consummation or the administration of this Plan, except to the extent arising from fraud,  
15 gross negligence and willful misconduct. Nothing herein shall be deemed an exculpation by any  
16 Claimholder, or any other party-in-interest, including their respective Representatives, of any  
17 Releasee or any of its Representatives for any acts, omissions, transactions, events or other  
18 occurrences taking place after the Effective Date or unrelated to this Plan and/or Chapter 11  
19 Case.

20 **11.4 Releases.**

21 As of the Effective Date, for good and valuable consideration, the adequacy of which is  
22 hereby confirmed, each Releasor will be deemed to release, waive and forever discharge all  
23 Released Liabilities against each Releasee and each Releasee's respective Representatives;  
24 provided, however, that, the releases provided herein shall not constitute a release of any  
25 liability based on willful misconduct, gross negligence or fraud; provided, further, that nothing  
26 herein shall be deemed to constitute a release by any Releasor of any Releasee or any of its  
27 Representatives for any acts, omissions, transactions, events or other occurrences taking place  
28 after the Effective Date or unrelated to this Plan and/or Chapter 11 Case.

**11.5 Adequate Protection Liens; Cash Collateral Orders.**

(a) As of the Effective Date, any replacement Liens granted as adequate protection pursuant to the terms of any Cash Collateral Order shall be deemed to be terminated, discharged, eliminated and of no further force and effect;

(b) All rights, protections, benefits and interests as provided under the Cash Collateral Order and any other orders of the Bankruptcy Court, entered in these proceedings, shall remain in effect, to the extent permitted therein; provided, however, nothing in such orders shall be deemed to extend or enlarge the rights, protections, interests, and claims set forth therein. Following the indefeasible payment in full of the various Allowed Claims arising from the Cash Collateral Order and the other order, the obligations of the Debtor and the Reorganized Debtor under such Cash Collateral Order and the other orders shall be deemed to be fully satisfied, released, discharged and terminated.

**11.6 Termination of Debt Instruments.**

On the Effective Date, all instruments evidencing indebtedness of the Debtor held by Holders of Claims that are Impaired by this Plan or have been paid in full pursuant thereto shall be deemed canceled as against the Debtor.

**11.7 Judgments Void.**

Any judgment obtained before or after the Effective Date in any court other than the Bankruptcy Court shall be null and void as a determination of liability of the Debtor and/or the Reorganized Debtor with respect to any debt treated by the Plan.

**11.8 Revesting of Assets.**

Except as otherwise expressly provided herein or in the Confirmation Order, on the Effective Date, but retroactive to the Confirmation Date, without any further action, the Reorganized Debtor will be vested with all of the property of the Estate, wherever situated, free and clear of all Claims, Liens and Equity Interests (except for Liens provided or authorized pursuant to the Plan and Permitted Encumbrances).

Without limiting the generality of the foregoing, on and after the Effective Date, the Reorganized Debtor shall be vested with all of the property of the Estate, wherever situated, free



1 and clear of any Claims based on any form of successor liability or similar or related theory of  
 2 liability. On and after the Effective Date, the Reorganized Debtor shall be free of any  
 3 restrictions imposed by the Bankruptcy Code or Bankruptcy Court, may operate its business and  
 4 may use, acquire or dispose of its assets free of any restrictions imposed by the Bankruptcy  
 5 Code and the Bankruptcy Rules and without supervision or approval by the Bankruptcy Court,  
 6 other than the obligations set forth herein, or the Confirmation Order. Without limiting the  
 7 generality of the foregoing and except as otherwise expressly provided herein or in the  
 8 Confirmation Order, any Causes of Action, will be preserved and retained solely for the  
 9 Reorganized Debtor's commencement, prosecution, use and benefit, including any Causes of  
 10 Action or Avoidance Actions (which the Reorganized Debtor does not intend on pursuing).

#### 11 **11.9 Preservation of Causes of Action.**

12 Pursuant to Bankruptcy Code section 1123(b), the Debtor as Reorganized Debtor shall  
 13 retain and reserve the right to enforce all rights to commence and pursue Causes of Action  
 14 whether arising prior to or after the Petition Date, and whether pending as of or Filed after the  
 15 Effective Date, in any court or other tribunal. Unless a Cause of Action is expressly waived,  
 16 relinquished, released, compromised or settled in the Plan, or any Final Order, the Debtor and  
 17 the Reorganized Debtor expressly reserve all Causes of Action for later adjudication and,  
 18 therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata,  
 19 collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise)  
 20 or laches shall apply to any Causes of Action upon Confirmation or the Effective Date. No  
 21 entity may rely on the absence of a specific reference in the Plan, any plan supplement, or the  
 22 Disclosure Statement to any Cause of Action against them as an indication that the New Equity  
 23 Investor, the Debtor, or the Reorganized Debtor, will not pursue any and all available Causes of  
 24 Action against them. The Debtor and the Reorganized Debtor, expressly reserve all rights to  
 25 prosecute, and when necessary settle, any and all Causes of Action against any Person, except as  
 26 otherwise expressly provided in the Plan. Debtor and Reorganized Debtor's right to settle all  
 27 such Causes of Action shall not require Bankruptcy Court approval notwithstanding the  
 28 requirements set forth in Rule 9019 of the Bankruptcy Rules.

**ARTICLE XII****MISCELLANEOUS PROVISIONS****12.1 Plan Modification and Amendment.**

(a) Prior to Confirmation, Debtor may alter, amend or modify this Plan under Section 1127(a) of the Bankruptcy Code at any time. After the Confirmation Date and prior to substantial consummation of this Plan as defined in Section 1101(2) of the Bankruptcy Code, the Debtor may under Section 1127(b), (c), and (d) of the Bankruptcy Code, alter, amend or modify this Plan or institute proceedings in the Bankruptcy Court to remedy any defect or omissions or reconcile any inconsistencies in this Plan, the Disclosure Statement or the Confirmation Order, to make appropriate adjustments and modifications to this Plan or the Confirmation Order as may be necessary to carry out the purposes and effects of this Plan so long as such proceedings do not materially adversely affect the treatment of Claimholders under this Plan.

(b) A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder. Prior to the Effective Date, Debtor may make appropriate technical non-material modifications to the Plan or the Disclosure Statement without further order or approval of the Bankruptcy Court, provided that such technical modifications do not adversely affect the treatment of Holders of Claims or Equity Interests.

**12.2 Notices.**

Except as otherwise set forth in Section 12.3 below, all notices, requests, elections or demands in connection with this Plan, including any change of address of any Holder of a Claim for the purposes of receiving any Distributions under this Plan, shall be in writing and shall be delivered personally or by facsimile, electronic mail or overnight courier (confirmed by first class mail or express mail) or mailed by first class mail. Such notice shall be deemed to have been given when received or, if mailed by first class mail, seven (7) days after the date of mailing, or if express mailed, the next Business Day following the date of mailing and addressed to the following:

TEM Enterprises dba XTRA Airways  
 Attn: Lisa Dunn  
 805 W. Idaho St., Suite 400  
 Boise, ID 83702

with copies to:

McDonald Carano Wilson LLP  
 2300 West Sahara Ave.  
 Suite 1200  
 Las Vegas, Nevada 89102  
 Attention: Ryan J. Works, Esq.  
 Email: [rworks@mcdonaldcarano.com](mailto:rworks@mcdonaldcarano.com)

All notices and requests to Holders of Claims of any Class shall be sent to them at their known address. Any Holder of a Claim of any Class may designate in writing any other address for purposes of this Section 12.2, which designation shall be effective upon receipt.

### **12.3. Limitation of Notice.**

The Debtor shall give the following notice with regard to the following matters, which notice shall be deemed to be good and sufficient notice of such matters, with no requirement for any additional or further notice:

(a) Notice of Entry of Confirmation Order and the Effective Date. Notice of the entry of the Confirmation Order and the occurrence of the Effective Date shall be sufficient if mailed to all known Holders of Claims (which have not become Disallowed Claims) and Equity Interests within five (5) Business Days of the entry of Confirmation Order and the occurrence of the Effective Date.

(b) Post-Confirmation Date Service List - Additional Persons Entitled to Notice. Except as set forth in Section 12.2 hereof, from and after the date the Confirmation Order becomes a Final Order, notices of appearances and demands for service of process Filed with the Bankruptcy Court prior to such date shall no longer be effective, and no further notices, other than Notice of Confirmation Order, shall be required to be sent to such parties, unless such parties File a new notice of appearance and demand for service of process dated subsequent to the Effective Date, which subsequent notice and demand must be Filed with the Bankruptcy Court and served upon the Persons and Entities listed in Section 12.2 above.

(c) Subordination. Nothing in this Plan shall in any way be deemed to have impaired, altered or otherwise affected the rights of the Debtor or Reorganized Debtor to enforce any right of subordination that may exist by agreement or otherwise, including under Bankruptcy Code section 510.

#### **12.4 Headings.**

The headings used in this Plan are inserted for convenience only and neither constitute a portion of this Plan nor in any manner affect the provisions of this Plan.

#### **12.5 Plan Supplement.**

Any supplement to this Plan will be filed with the Clerk on or before the Plan Supplement Deadline. Upon its filing with the Bankruptcy Court, such supplement(s) may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours. Holders of Claims may obtain a copy of such supplements on the Bankruptcy Court's website <http://ecf.nvb.uscourts.gov> or upon written request to the Debtor's counsel.

#### **12.6 Exhibits.**

All exhibits and documents included in any supplements are incorporated into and are a part of this Plan, as if set forth in full. Except as otherwise provided in this Plan, such exhibits and documents included in any supplements shall be Filed with the Bankruptcy Court on or before the Plan Supplement Deadline. After the exhibits and documents are Filed, copies of such exhibits and documents shall have been available upon written request to the Debtor's counsel at the address above or by downloading such exhibits and documents from the Bankruptcy Court's website at <http://www.nvb.uscourts.gov>. To the extent any exhibit or document is inconsistent with the terms of this Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of this Plan shall control.

#### **12.7 Nonseverability of Plan Provisions.**

If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void,

or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, Impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to this Plan and may not be deleted or modified without the consent of Debtor, the Reorganized Debtor and any other Person or Entity affected by such provision; and (c) nonseverable and mutually dependent.

#### **12.8 Waiver or Estoppel.**

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with Debtor or its counsel or any other Entity, if such agreement was not disclosed in this Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the Confirmation Date.

#### **12.9 Conflicts.**

To the extent that any provision of the Disclosure Statement, any amendments or supplements to the Plan, or any other order (other than the Confirmation Order) referenced in this Plan (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing), conflict with or are in any inconsistent with any provision of this Plan, this Plan shall govern and control, unless expressly set forth herein.

#### **12.10. Governing Law.**

Except to the extent that the Bankruptcy Code or any other Federal law is applicable, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Nevada.

#### **12.11. Successors and Assigns.**

The rights and obligations of any Person named or referred to in this Plan shall be

1 binding upon, and shall inure to the benefit of, the successors and assigns of such Person or  
2 Entity.

3 **12.12 Good Faith.**

4 Confirmation of the Plan will constitute a finding that the Plan has been proposed in  
5 good faith and in compliance with all applicable provisions of the Bankruptcy Code.

6 **12.13 Entire Agreement.**

7 The Plan, as described herein, the Disclosure Statement and exhibits thereto, and any  
8 supplements to this Plan set forth the entire agreement and understanding of the parties hereto  
9 relating to the subject matter hereof and supersede all prior discussions and documents. No party  
10 hereto shall be bound by any terms, conditions, definitions, warrants, understandings or  
11 representations with respect to the subject matter hereof, other than as in expressly provided for  
12 herein or as may hereafter be agreed by the parties in writing.

13 DATED: August 25, 2014

14  
15 TEM Enterprises dba XTRA Airways

16 By: Lisa Dunn, its President

17 /s/ Lisa Dunn

18  
19  
20 MCDONALD CARANO WILSON LLP

21 By: /s/ Ryan J. Works

22 RYAN J. WORKS (NV Bar No. 9224)

23 AMANDA M. PERACH (NV Bar No. 12399)

24 2300 West Sahara Avenue, Suite 1000

25 Las Vegas, Nevada 89102

26 Telephone: (702) 873-4100

27 Facsimile: (702) 873-9966

28 [rworks@mcdonaldcarano.com](mailto:rworks@mcdonaldcarano.com)

[aperach@mcdonaldcarano.com](mailto:aperach@mcdonaldcarano.com)

*Attorneys for Debtor and Debtor in Possession*



## EXHIBIT 2

**SECURITY DEPOSITS**

## Security Deposits

		Beg Bal	Refunds	Applied	New	Write Offs	End Bal
Chicago O'Hare	10/01/95	2,192.00					2,192.00
Chicago Midway	10/01/95	3,069.00					3,069.00
Huntleigh Corp	10/01/95	500.00					500.00
Arinc	02/01/97	800.00					800.00
Calgary	01/01/97	3,500.00					3,500.00
Vancouver	06/01/97	4,435.20					4,435.20
Air SMX	09/01/00	160.00					160.00
Dynair	09/01/00	13,000.00					13,000.00
Air SCK	Yr-01	150.00					150.00
Airport Group Intl ATL	01/31/04	500.00					500.00
Receiver General for Canada	08/10/05	9,465.00					9,465.00
Air PDX (portland)	09/30/05	1,200.00					1,200.00
Port City Air	11/01/06	450.00					450.00
BWC State Ins Fund	11/01/06	739.95					739.95
Ohio Workers Comp Deposit	10/01/06	10.00					10.00
Triton Aviation California, Inc.	01/01/07	175,000.00					175,000.00
AirInc	03/30/07	1,200.00					1,200.00
AirInc	03/31/07	1,400.00					1,400.00
Parair	06/29/07	2,500.00					2,500.00
AIRENV	08/31/07	600.00					600.00
Dynair/Annex Rental	07/15/08	6,000.00	(6,000.00)				-
STS Services	07/23/08	8,577.60					8,577.60
Laser Line Lease Finance	08/31/08	30,000.00					30,000.00
AWAS N279AD	Various	150,000.00					150,000.00
AWAS N772AS	Various	225,000.06					225,000.06
CA Shea Co - Hold for Customs Bonds	11/09/09	125,000.00					125,000.00
Boise Mode	03/01/10	15,251.32					15,251.32
Air PDX (portland)	09/01/10	2,677.00					2,677.00
PGD Office	02/28/11	3,450.00					3,450.00
Grnd Handling Dep CSI Flights	03/31/11	2,509.00					2,509.00
MYR Rooms for Flight Crew	05/31/11	500.00				(500.00)	-
MYR Rooms for Flight Crew	05/31/11	500.00				(500.00)	-
MYR Rooms for Flight Crew	06/07/11	500.00				(500.00)	-
VX Capital - New Engine	8/31/2011	221,400.00		(221,400.00)			-
MYR Rooms for Flight Crew	11/30/11	(274.93)				274.93	-
New Office in Boise	12/02/11	15,000.00					15,000.00
Refund on MYR Room	12/31/11	(305.80)				305.80	-
VX Capital Deposit N416BC	01/31/12	210,000.00		(210,000.00)			-
Security Deposit Refund	04/05/12	(750.00)				750.00	-
Aeroturbine Deposit on Engine	05/31/12	65,000.00		(65,000.00)			-
First Class Prop Sec Deposit	09/30/12	2,269.50				(2,269.50)	-
Air Houston	12/31/12	30,000.00	(28,486.79)			(1,513.21)	-
AD CPSENERGY BK DEPOSIT	07/02/14	-			435.00		435.00
AD STERLING SHIPPING DEPOSIT	07/17/14	-			6,000.00		6,000.00
		-					-
<b>Totals</b>		<b>1,333,174.90</b>	<b>(34,486.79)</b>	<b>(496,400.00)</b>	<b>6,435.00</b>	<b>(3,951.98)</b>	<b>804,771.13</b>

## EXHIBIT 3

### Estimated Administrative Claims

[illegible]

## EXHIBIT 4

**TO BE FILED ON OR BEFORE  
EXHIBIT FILING DEADLINE**



## EXHIBIT 5

**TO BE FILED ON OR BEFORE  
EXHIBIT FILING DEADLINE**

## EXHIBIT 6

**TO BE FILED ON OR BEFORE  
EXHIBIT FILING DEADLINE**

## EXHIBIT 7

**Exhibit 7**  
**Debtor's Estimated Liquidation Value of Assets**

<b>Assets</b>	<b>Estimated Value<sup>1</sup></b>
a. Cash on hand/Bank Accounts	\$ 0.00
b. Accounts receivable	\$ 72,562.55
c. Inventory	\$ 0.00
d. Office furniture & equipment	\$ 0.00
e. Machinery & equipment	\$ 86,606.82
f. Automobiles	\$ 500.00
g. Building & Land	\$ 0.00
h. Customer list	\$ 0.00
i. Investment property (such as stocks, bonds or other financial assets)	\$ 0.00
j. Lawsuits or other claims against third-parties	\$ 0.00
k. Other intangibles (such as avoidance actions) (security deposits and Air Carrier Certificate)	\$ 150,000.00
<b>Total Assets at Liquidation Value</b>	<b>\$ 309,669.37</b>
<b>Less:</b>	
Secured creditors= recoveries	<b>\$ 500,000.00</b>
<b>Less:</b>	
Chapter 7 trustee fees and expenses	\$ 68,178.59
<b>Less:</b>	
Chapter 11 approximate administrative expenses	\$ 2,196,272.32
<b>Less:</b>	
Priority claims, excluding administrative expense claims	\$ 71,380.98 <sup>2</sup>
<b>[Less:</b>	
Debtor=s claimed exemptions]	\$ 0.00
(1) Balance for unsecured claims	\$ 0.00
(2) Total dollar amount of unsecured claims	\$17,847,802.12
<b>Percentage of Claims Which Unsecured Creditors Would Receive Or Retain in a Chapter 7 Liquidation:</b>	0% [Divide (1) by (2)]
<b>Percentage of Claims Which Unsecured Creditors Will Receive or Retain under the Plan:</b>	0 %

<sup>1</sup> The Debtor anticipates that the majority of its assets will be of de minimus value in the event of a liquidation.

<sup>2</sup> This amount consists of all scheduled priority tax claims and Passenger Facility Charges, previously scheduled as general unsecured claims. There are several other claims which have been filed as priority claims by governmental agencies; however, in the interest of consistency, this analysis will defer, solely, to the Schedules, unless otherwise noted.

## EXHIBIT 8



**TO BE FILED ON OR BEFORE  
EXHIBIT FILING DEADLINE**