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COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended

COM
 Mar 1 2024

AND IN THE MATTER OF THE COMPROMISE OR
 ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION
 and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **AFFIDAVIT OF MICHAEL WOODWARD**

ADDRESS FOR
 SERVICE AND
 CONTACT
 INFORMATION OF
 PARTY FILING THIS
 DOCUMENT

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 File Number: 1246361

AFFIDAVIT OF MICHAEL WOODWARD
SWORN FEBRUARY 28, 2024

I, Michael Woodward, of the City of Calgary, in the Province of Alberta, **MAKE OATH**
AND SAY THAT:

1. I am the Chief Executive Officer and Director of my personal company that has been contracted to provide the services of Interim Chief Financial Officer ("**Interim Contractor CFO**") to Lynx Air (as that term is defined below). I have been the Interim Contractor CFO of Lynx Air since March of 2023, and since that time I have been responsible for all financial-related

aspects of Lynx Air's business. Prior to this role, I served as Chief Financial Officer of Campus Energy Partners, an energy infrastructure and supply company, and as a Vice President of BMO Capital Markets. I hold a Bachelor of Commerce in Accounting from the University of British Columbia and have obtained Chartered Accountant and Chartered Financial Analyst designations.

2. As such, I have personal knowledge of the matters to which I depose in this Affidavit, except where stated to be based on information and belief, in which case I have stated the source of my information and, in all such cases, I believe such information to be true. In preparing this Affidavit, I consulted with the Applicants' (as that term is defined below) management teams and advisors and reviewed relevant documents and information concerning the Applicants' operations and business and financial affairs.

3. I swear this Affidavit in support of an application by the Applicants for:

- (a) an Amended and Restated Initial Order (the "ARIO"), among other things,
 - (i) extending the Stay Period (as such term is defined below) up to and including April 15, 2024, or such other date as this Court may deem appropriate;
 - (ii) increasing the quantum of the Interim Lending Facility (as such term is defined below) in amounts sufficient to cover the extended Stay Period up to an aggregate amount of approximately CAD\$5,013,000 (denominated in USD);

- (iii) approving a key employee retention plan for three executives and twelve employees (the “**KERP**”) and granting a Court-ordered charge (the “**KERP Charge**”) as security for payments under the KERP; and
- (b) a Sale and Investment Solicitation Process Order (the “**SISP Order**”), among other things, approving the proposed sale and investment solicitation process (the “**SISP**”) and authorizing the Applicants and FTI Consulting Canada Inc. (the “**Monitor**”) to perform their respective obligations thereunder; and
- (c) a Restricted Court Access Order (the “**Restricted Court Access Order**”) sealing the Confidential Affidavit of Michael Woodward, sworn February 28, 2024 (the “**Confidential Woodward Affidavit**”), which contains a copy of the KERP.

A. Overview of the Applicants’ Activities since the Initial Order

4. On February 22, 2024, Lynx Air Holdings Corporation and 1263343 Alberta Inc. (collectively, the “**Applicants**” or “**Lynx Air**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”) pursuant to an Initial Order (the “**Initial Order**”) of the Court of King’s Bench of Alberta (the “**Court**”). A copy of the Initial Order is attached hereto as **Exhibit “A”**.

5. In support of the Initial Order, I swore an Affidavit in these proceedings dated February 22, 2024 (the “**Initial Order Affidavit**”), which described, among other things, the events leading to the Applicants’ insolvency, their urgent need for relief under the CCAA, and their intended liquidation and orderly wind down within these CCAA proceedings. A copy of my Initial Order Affidavit (without exhibits) is attached hereto as **Exhibit “B”**.

6. The Initial Order, among other things: (i) declared that the Applicants are companies to which the CCAA applies; (ii) appointed FTI Consulting Canada Inc. as Monitor of the Applicants in these proceedings; (iii) granted a stay of proceedings in favour of the Applicants up to and including March 4, 2024 (the “**Stay Period**”); (iv) authorized the Applicants to obtain and borrow under a credit facility (the “**Interim Lending Facility**”) from Indigo Northern Ventures LP (the “**Interim Lender**”) and granted a charge (the “**Interim Lender’s Charge**”) to secure all obligations under the Interim Lending Facility; (v) granted a charge as security for the respective fees and disbursements of counsel to the Applicants (being the Applicants’ restructuring counsel Osler, Hoskin & Harcourt LLP and the Applicants’ corporate counsel Linmac LLP), the Monitor, and the Monitor’s counsel relating to services rendered in respect of the Applicants (the “**Administration Charge**”); and (vi) granted a charge in favour of the directors and officers of the Applicants (the “**D&O Charge**”).

7. Since the granting of the Initial Order, the Applicants, in consultation with and with the assistance of the Monitor, have been working in good faith and with due diligence to:

- (a) stabilize their business and wind-down operations as part of these CCAA proceedings;
- (b) coordinated with passengers, ground and flight crews, and other necessary operational support to complete the remaining flights in the days following the granting of the Initial Order until the landing of the Applicants’ last passenger flight, which occurred at 2:12 a.m. on Monday, February 26, 2024;
- (c) cancel flights which could not occur due to issues which were encountered with third parties who failed or refused to provide services in various locations as a result

of the granting of the Initial Order, and address the necessary passenger communication and operational issues which were necessary as a result of such cancelations;

- (d) advise their stakeholders, including employees, passengers, aircraft lessors, trade creditors, and other stakeholders, of the granting of the Initial Order and the implications of same for the Applicants' business;
- (e) engage in preliminary discussions with counsel to certain aircraft lessors and other critical suppliers regarding the relief being sought in the proposed ARIO, the SISP, and the proposed liquidation process;
- (f) respond to numerous creditor and stakeholder inquiries regarding these CCAA proceedings;
- (g) formulate a strategy with Elavon Canada Company ("**Elavon**") to refund passengers (as discussed below);
- (h) solicit proposals from aircraft maintenance companies in order to put an aircraft maintenance program in place to fulfil the Applicants' preservation, maintenance, insurance, and storage obligations set forth in the Aircraft Leases (as such term is defined in my Initial Order Affidavit) and the *Convention on International Interests in Mobile Equipment*, 16 November 2001, UNTS Vol 2307,1-41143 at 285 (entered into force 1 March 2006) and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*, 16

November 2001, UNTS Vol 2367,1-41143 at 517 (entered into force 1 March 2006); and

- (i) formulate a fair, efficient and competitive SISP in order to canvass the market for a potential sale to maximize the value of the Applicants' assets for the benefit of all stakeholders (as discussed below).

8. In addition, the Applicants completed the following outreach immediately after obtaining the Initial Order on February 22, 2024:

- (a) communicated with all employees to advise of the granting of the Initial Order and to advise of the Applicants' intention to cease operations in the following days;
- (b) issued a public press release (a copy of which is attached hereto as **Exhibit "C"**) which was disseminated via newswires and social media, alerting the public and Lynx Air passengers to the granting of the Initial Order and Lynx Air's intentions to cease operations in the coming days;
- (c) updated their website to advise of the granting of the Initial Order and the pending cessation of operations, and to include a series of "Frequently Asked Questions" and answers to same; and
- (d) instructed counsel to contact stakeholders to advise of the granting of the Initial Order and to coordinate next steps in these proceedings.

B. Amended and Restated Initial Order

- (a) **Extension of Stay Period**

9. The Applicants are seeking to extend the Stay Period up to and including April 15, 2024. The extension of the Stay Period is necessary and appropriate in the circumstances to allow time for the Applicants to continue the orderly wind down of the business and to conclude outstanding matters (including processing ticket refunds for all future cancelled flights and collecting ticket revenue from Elavon). This extension to the Stay Period will also allow time for the Applicants, with the assistance of the Monitor, to undertake the proposed SISP for the benefit of all stakeholders.

10. I believe that the Applicants have acted, and continue to act, in good faith and with due diligence in pursuing the orderly wind down of their business. As described above and in the First Report of the Monitor, the Applicants have given notice of these CCAA proceedings to stakeholders including, most significantly, their employees, passengers, airports, aircraft lessors, the Interim Lender and other significant stakeholders. In consultation with the Monitor, the Applicants have engaged, and will continue engaging, in discussions with its stakeholders as these CCAA proceedings progress.

11. The cash flow projections attached to the First Report of the Monitor demonstrate that the Applicants will, with the increase to the Interim Lending Facility discussed below, have access to sufficient liquidity to fund operations during the requested extension of the Stay Period.

(b) Increase to the Interim Lending Facility and Interim Lender's Charge

12. The Initial Order authorized borrowings under the Interim Lending Facility and granted the Interim Lender's Charge as security for the obligations owing under that facility, up to the maximum amount of USD\$750,000 (slightly more than CAD\$1,000,000).

13. The Applicants, with the support of the Monitor and the Interim Lender, seek to increase their permitted borrowings under the Interim Lending Facility and corresponding Interim Lender's Charge, from USD\$750,000 to a total of approximately CAD\$5,013,000 (denominated in USD).

14. As described at paragraphs 108 to 110 in my Initial Order Affidavit, the initial Interim Lending Facility was, at the time of the granting of the Initial Order, approved only to permit mandatory statutory payments and make the necessary arrangements with the Applicants' employees, contractors, vendors, and other stakeholders during the initial 10-day Stay Period. The requested increase to the Interim Lending Facility is therefore appropriate, as it provides the Applicants with the necessary liquidity to properly wind down its business operations in an orderly fashion, run the SISP up to the targeted completion date for the liquidation process, and implement the KERP (which is discussed below).

15. A copy of the final and signed Interim Lending Facility term sheet between the Applicants and the Interim Lender dated as of February 21, 2024 (the "**Interim Lending Term Sheet**") was not available when I swore my Initial Order Affidavit, but a "near final" copy was attached as Exhibit "43" to my Initial Order Affidavit. The Applicants and the Interim Lender have agreed to increase the amount of the Interim Lending Facility as described above on the same terms as set out in the Interim Lending Term Sheet, subject to the comment below.

16. It should be noted that although 11(1)(b) of the Interim Lending Term Sheet contemplates as a condition to subsequent advances that the Interim Lender's Charge have priority over Lessor Liens (as those terms are defined in the Interim Lending Term Sheet) the Interim Lender has waived that condition, and accordingly the Applicants will not be seeking on this application to

have any of the Court-ordered charges take priority over the interests of any of the equipment or aircraft lessors as described in paragraphs 70 and 71 of my Initial Order Affidavit.

(c) KERP and KERP Charge

17. The Applicants are seeking approval of the KERP for three executives and twelve employees and the granting of the KERP Charge up to a maximum aggregate amount of CAD\$1,179,094 as security for payments under the KERP.

18. The KERP was developed by the Applicants, in consultation with the Monitor, to facilitate the continued participation of three key executives and twelve key employees of the Applicants who each respectively have in-depth knowledge of the Applicants' business, including in particular, its payroll, operations and facilities. These executives and employees have significant experience and specialized expertise that cannot be easily replicated or replaced. Each of these executives and employees is required to guide the business through the contemplated orderly wind down process and the SISP in order to preserve value for the Applicants' stakeholders.

19. The KERP will provide the 15 participants with retention payments as an incentive to continue their employment, as required, through these CCAA proceedings. The Applicants propose that the KERP be structured so that:

- (a) two of the three executives will receive, in aggregate, 100% of their current annualized base salary, payable in two installments: (i) 50% payable upon the conclusion of the SISP (discussed below), and (ii) 50% payable on the earlier of the executive's departure or the end of these CCAA proceedings;

- (b) one of the three executives will receive, in aggregate, 50% of their current annualized base salary, payable on the earlier of the executive's departure or the end of these CCAA proceedings; and
- (c) each of the twelve employees will receive, in aggregate, a minimum of 7.5% of their current annualized base salary, or CAD\$5,000, payable on the earlier of the employee's departure or the end of these CCAA proceedings.

20. Any payments under the KERP are conditional upon the employee continuing to provide services to the Applicants until such time as they are advised that they are no longer required to assist in the wind down, SISP, or other matters in these CCAA proceedings. Attached as **Exhibit "D"** are copies of the KERP engagement letters to be provided to the executives and employees.

21. Assuming the Applicants are able to retain all 15 key personnel, the total amount payable under the KERP will be a maximum of approximately CAD\$1,179,094. As previously noted, the Applicants are seeking the KERP Charge to secure amounts payable under the KERP. The KERP Charge is proposed to rank behind the Administration Charge, the Interim Lender's Charge, and the D&O Charge, but in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise. However, the KERP Charge shall not rank in priority to the interests of any aircraft lessor or financier as described in paragraphs 70 and 71 of my Initial Order Affidavit.

22. A summary of the proposed KERP is provided in the Confidential Woodward Affidavit. The KERP summary contains commercially sensitive information, including compensation information, as well as personal information relating to the Applicants' employees. The Applicants

therefore seek a Restricted Court Access Order to seal the Confidential Woodward Affidavit and not form part of the Court record pending further order of the Court.

(d) Elavon

23. Elavon is the Applicants' credit card processing company. When passengers book airline tickets with Lynx Air, Elavon retains the payment until the booked flight is flown. During normal operations, after the flight is flown, Elavon would release the funds related to that ticket price to Lynx Air on confidential terms. If a flight were cancelled, the funds being held by Elavon would be refunded to the customer's credit card.

24. Since the Initial Order, Elavon has not released any of the held funds to the Applicants, despite 64 flights be flown post-filing. Elavon has advised that they must complete a reconciliation exercise and understand the magnitude of refund requests prior to releasing any funds to the Applicants. As such, Elavon and Lynx Air are now working jointly to formulate an efficient refund process that results in all future passengers being refunded to their original form of payment. As receipt of these revenues are critical to the Applicants' ongoing winddown process, the Applicants and Elavon are working diligently to this end, and the Applicants will seek the assistance of this Court in this regard if and as required.

C. The SISP

25. After considering restructuring options, and in consultation with the Monitor, the Applicants have determined that the best way to maximize value for their stakeholders is through the conduct of a proposed SISP. The Applicants have developed and drafted the proposed SISP in consultation with the Monitor.

26. The proposed SISP will provide an expedient and efficient means of soliciting offers for the acquisition of all, or substantially all, of the Applicants' assets. The key terms of the proposed SISP are set out in the Monitor's First Report.

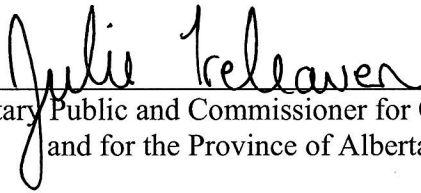
27. It should be noted that the terms of the SISP are necessarily at a high level, given that discussions are ongoing with the key contractual counterparties whose agreements will be included in the SISP as to the terms on which those contractual counterparties will allow prospective bidders access to the terms of their respective agreements. The Applicants, with the assistance of the Monitor, will conclude those discussions with those key contractual counterparties prior to launching the SISP.

28. The Applicants, in consultation with the Monitor, consider that the proposed SISP is in the Applicants' best interests and the best interests of its stakeholders. The Interim Lender has also reviewed the terms of the SISP and has indicated they are reasonable in the circumstances. It is my understanding that the Interim Lender is supportive of the proposed SISP.

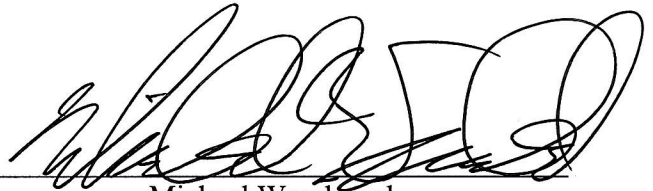
D. Conclusion

29. I make this Affidavit in support of the ARIO, the SISP Order, and the Restricted Court Access Order pursuant to the CCAA, for the purposes of allowing Lynx Air an opportunity to restructure its affairs and develop a plan of arrangement for the benefit of its creditors.

SWORN BEFORE ME at Calgary, Alberta,
this 28th day of February, 2024.



Notary Public and Commissioner for Oaths in
and for the Province of Alberta

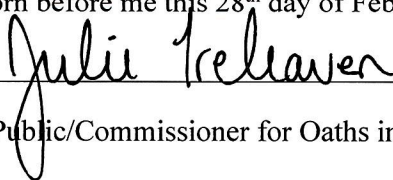


Michael Woodward

Julie Laura Treleaven
Barrister & Solicitor

This is **Exhibit "A"** to the Affidavit of Michael Woodward

sworn before me this 28th day of February 2024.

A handwritten signature in black ink, reading "Julie Treleaven", is written over a horizontal line. The signature is cursive and fluid.

Notary Public/Commissioner for Oaths in and for Alberta

Julie Laura Treleaven
Barrister & Solicitor

COURT FILE NUMBER 2401- 02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **CCAA INITIAL ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File Number: 1246361

DATE ON WHICH ORDER WAS PRONOUNCED: February 22, 2024

JUSTICE WHO MADE THIS ORDER: The Honourable Justice Gill

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

UPON THE APPLICATION of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (the “**Applicants**”); **AND UPON** having read the Originating Application, the Affidavit of Michael Woodward sworn February 22, 2024 (the “**Woodward Affidavit**”), the Confidential Affidavit of Michael Woodward sworn February 22, 2024, and the Affidavit of Service of Elena Pratt, to be filed; **AND UPON** reading the consent of FTI Consulting Canada Inc. (“**FTI**”) to act as Monitor; **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application and either do not oppose or alternatively consent to the within; **AND UPON** hearing counsel for Indigo Northern Ventures LP (the “**Interim Lender**”), counsel for FTI, and counsel for any other party present at the application; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPLICATION

2. The Applicants are companies to which the *Companies’ Creditors Arrangement Act* of Canada (the “**CCAA**”) applies.

PLAN OF ARRANGEMENT

3. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. The Applicants shall:
 - (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”);

- (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) or their Property;
 - (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order; and
 - (d) be entitled to continue to utilize the central cash management system currently in place as described in the Affidavit of Michael Woodward sworn February 22, 2024 or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.
5. To the extent permitted by law, the Applicants shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after this Order:
- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case

incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order.

6. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. The Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
 - (i) employment insurance,
 - (ii) Canada Pension Plan,
 - (iii) Quebec Pension Plan, and
 - (iv) income taxes,

but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;

- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
 - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicants.
- 8. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of this Order (“**Rent**”), but shall not pay any rent in arrears.
- 9. Except as specifically permitted in this Order, the Applicants are hereby directed, until further order of this Court:
 - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of this Order;
 - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and
 - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. The Applicants shall, subject to such requirements as are imposed by the CCAA, and such covenants as may be contained in the Definitive Documents (as hereinafter defined in paragraph 34), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA, excepting any aircraft purchase agreement between the Applicants and any airplane manufacturer, as any such agreement may be amended and supplemented from time to time, which shall not be disclaimed, resiliated or amended without the prior consent of the Interim Lender and the Monitor, or upon further order of the Court.; and
- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

11. Pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), SC 2005, c 47, s 1 ("WEPPA"), the Applicants and their collective former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 and are individuals to whom the WEPPA applies as of the date of this Order.
12. The Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.
13. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and
 - (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to

notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. Until and including March 4, 2024, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (including any airport, airport authority, Nav Canada or other air navigation service providers, travel agents, tour operators, general sales agents, ground handling services, ground handling equipment, aircraft and equipment maintenance suppliers and personnel (including Delta TechOps and Delta Air Lines, Inc.), fuel suppliers, catering, and all persons involved in the collection and distribution of monies in connection with passenger and air cargo operations) (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
 - (a) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on;

- (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
 - (c) prevent the filing of any registration to preserve or perfect a security interest;
 - (d) prevent the registration of a claim for lien; or
 - (e) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment.
16. Nothing in this Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

17. During the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. During the Stay Period, all Persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
 - (b) oral or written agreements or arrangements with either of the Applicants, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services (including aircraft and equipment maintenance services), utility or other services to the Business or the Applicants

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be

required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. Nothing in this Order has the effect of prohibiting a Person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person, other than the Interim Lender (as hereinafter defined) where applicable, be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 16 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. The Applicants shall indemnify their directors and officers against obligations and

liabilities that they may incur as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct. Without limiting the generality of the foregoing, for purposes of this Order "officer" shall include the Applicants' contractor providing the services of a Chief Financial Officer.

22. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.
23. Notwithstanding any language in any applicable insurance policy to the contrary:
 - (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
 - (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

24. FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein. The Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the

assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;
 - (c) assist the Applicants, to the extent required by the Applicants, in its dissemination to the Interim Lender and its counsel on a periodic basis as required by the Definitive Documents of financial and other information as agreed to between the Applicants and the Interim Lender which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lender;
 - (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the Interim Lender;
 - (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
 - (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
 - (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Property,

Business, and financial affairs of the Applicants or to perform their duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
 - (i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and
 - (j) perform such other duties as are required by this Order or by this Court from time to time.
26. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.
27. The Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the

Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
29. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a semi-monthly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the respective amounts of \$100,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
30. The Monitor and its legal counsel shall pass their accounts from time to time.
31. The Monitor, counsel to the Monitor, if any, and the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

INTERIM FINANCING

32. The Applicants are hereby authorized and empowered to obtain and borrow under a credit

facility from the Interim Lender in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed USD\$750,000 unless permitted by further order of this Court.

33. Such credit facility shall be on the terms and subject to the conditions set forth in the interim financing term sheet between the Applicants and the Interim Lender made as of February 21, 2024 (the "**Commitment Letter**").
34. The Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (together with the Commitment Letter, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
35. The Interim Lender shall be entitled to the benefits of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property to secure all obligations under the Definitive Documents incurred on or after the date of this Order which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Definitive Documents. The Interim Lender's Charge shall not secure any obligation existing before this the date this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 38 and 40 hereof.
36. Notwithstanding any other provision of this Order:
 - (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
 - (b) upon the occurrence of an event of default under the Definitive Documents or the

Interim Lender's Charge, the Interim Lender, upon three (3) days' notice (or such other period as set out in the Definitive Documents) to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents, and the Interim Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Interim Lender to the Applicants against the obligations of the Applicants to the Interim Lender under the Commitment Letter, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

- 37. The Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the Bankruptcy and Insolvency Act of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES

- 38. The priorities of the Administration Charge and the Interim Lender's Charge, as between them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – Interim Lender's Charge;

Third – Directors' Charge (to the maximum amount of \$500,000).

39. The filing, registration or perfection of the the Administration Charge, the Interim Lender's Charge, and the Directors' Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
40. Each of the Administration Charge, the Interim Lender's Charge, and Directors' Charge (each as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA the Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person. Without limiting the generality of the foregoing, and subject to further Order of this Court, the Charges shall not rank in priority to the interests of any aircraft lessor or financier as described in paragraphs 70 and 71 of the Woodward Affidavit.
41. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, the Administration Charge, the Interim Lender's Charge, or the Directors' Charge unless the Applicants also obtain the prior written consent of the Monitor, the Interim Lender, and the beneficiaries of the Administration Charge and the Directors' Charge, or further order of this Court.
42. The Administration Charge, the Commitment Letter, the Definitive Documents, and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender thereunder shall not otherwise be limited or impaired in any way by:
 - (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
 - (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;

- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Commitment Letter or the Definitive Documents, shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which they are a party;
 - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicants entering into the Commitment Letter, or the execution, delivery or performance of the Definitive Documents; and
 - (iii) the payments made by the Applicants pursuant to this Order, including the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION

43. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Charges amongst the various assets comprising the Property.

SERVICE AND NOTICE

44. The Monitor shall (i) without delay, publish in the Calgary Herald and the Globe and Mail a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.
45. The Monitor shall establish a case website in respect of the within proceedings at <http://cfcanada.fticonsulting.com/lynxair>.

GENERAL

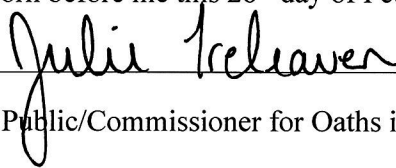
46. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
47. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
48. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicant, the Business or the Property.
49. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such

assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

50. Each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
51. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
52. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.


Justice of the Court of King's Bench of Alberta

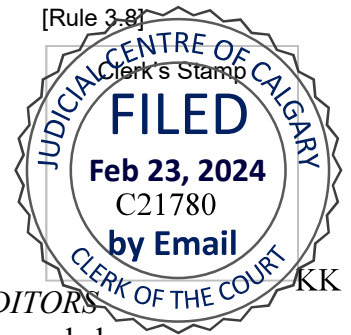
This is **Exhibit "B"** to the Affidavit of Michael Woodward
sworn before me this 28th day of February 2024.

A handwritten signature in black ink, reading "Julie Treleaven", is written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

Julie Laura Treleaven
Barrister & Solicitor

Form 7
[Rule 3-8]



COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION
and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **AFFIDAVIT OF MICHAEL WOODWARD**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

OSLER, HOSKIN & HARCOURT LLP

Barristers & Solicitors
Brookfield Place, Suite 2700
225 6 Ave SW
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Julie Treleaven
Telephone: (403) 260-7000
Facsimile: (403) 260-7024
Email: RVandemosselaer@osler.com / JTreleaven@osler.com
File Number: 1246361

AFFIDAVIT OF MICHAEL WOODWARD

SWORN FEBRUARY 22, 2024

I, Michael Woodward, of the City of Calgary, in the Province of Alberta, **MAKE OATH**
AND SAY THAT:

1. I am the Chief Executive Officer and Director of my personal company that has been contracted to provide the services of Interim Chief Financial Officer ("**Interim Contractor CFO**") to Lynx Air (as that term is defined below). I have been the Interim Contractor CFO of Lynx Air since March of 2023, and since that time I have been responsible for all financial-related

aspects of Lynx Air's business. Prior to this role, I served as Chief Financial Officer of Campus Energy Partners, an energy infrastructure and supply company, and as a Vice President of BMO Capital Markets. I hold a Bachelor of Commerce in Accounting from the University of British Columbia and have obtained Chartered Accountant and Chartered Financial Analyst designations.

2. As such, I have personal knowledge of the matters to which I depose in this Affidavit, except where stated to be based on information and belief, in which case I have stated the source of my information and, in all such cases, I believe such information to be true. In preparing this Affidavit, I consulted with the Applicants' (as that term is defined below) management teams and advisors and reviewed relevant documents and information concerning the Applicants' operations and business and financial affairs.

3. I swear this Affidavit in support of an application by the Applicants for an Order (the "**Initial Order**"):

- (a) declaring that the Applicants are companies to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") applies;
- (b) authorizing the Applicants to remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**") and continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property;
- (c) entitling the Applicants to make payment of all obligations owing in respect of employee wages and benefits;

- (d) entitling the Applicants to pay reasonable expenses incurred by them in operating the Business in the ordinary course, including making payment of obligations owing in respect of goods and services supplied to the Applicants prior to the date of the Initial Order, subject to the consent of the Monitor (as defined herein);
- (e) staying, for an initial period of not more than ten (10) days (the “**Stay Period**”), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Business, or the Property, except as otherwise set forth in the Initial Order or otherwise permitted by law;
- (f) preventing any Person (as defined in the Initial Order) from accelerating performance of any rights in respect of the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Honourable Court;
- (g) restraining any Person from interfering with the supply of goods or services to the Applicants;
- (h) staying all proceedings and remedies taken or that might be taken in respect of claims against the directors or officers of the Applicants that relate to liability of such Persons in their capacity as directors or officers of the Applicants, except as otherwise set forth in the Initial Order or otherwise permitted by law;
- (i) appointing FTI Consulting Canada Inc. (“**FTI**”) as Monitor of the Applicants in these proceedings;
- (j) authorizing the Applicants to pay all reasonable fees and disbursements of its counsel, the Monitor and the Monitor’s counsel;

- (k) granting a first ranking Administration Charge (as defined below) in the amount of CAD\$500,000;
- (l) authorizing and empowering the Applicants to obtain and borrow under a credit facility (the “**Interim Lending Facility**”) from Indigo Northern Ventures LP (the “**Interim Lender**” or “**Indigo**”) in order to finance the Applicants’ working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under the Interim Lending Facility:
 - (i) shall not exceed CAD\$1,000,000 during the initial Stay Period unless permitted by further order of this Court; and
 - (ii) shall not exceed an amount to be negotiated and approved by the Court during any subsequent stay period as may be ordered by the Court unless permitted by further order of this Court;
- (m) directing that such Interim Lending Facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the Interim Lender dated as of February 21, 2024 (the “**Interim Lending Term Sheet**”) and any definitive documents subsequently negotiated between the Applicants and the Interim Lender;
- (n) granting to the Interim Lender a second ranking charge (the “**Interim Lender’s Charge**”) on the Property to secure all obligations under the Interim Lending Term Sheet incurred on or after the date of this Initial Order which charge shall not exceed the aggregate amount advanced on or after the date of this Initial Order under the Interim Lending Term Sheet;

- (o) granting a third ranking charge to the Applicants' directors and officers as security for any obligations and liabilities they may incur as directors and officers of the Applicants after February 22, 2024, up to the maximum amount of CAD\$500,000 (the "**D&O Charge**");
- (p) declaring that the Administration Charge is a priority charge that ranks ahead of any and all charges, security interests, liens, trusts, deemed trusts and encumbrances against the Property, including liens and trusts created by federal and provincial legislation, and that the Administration Charge, Interim Lender's Charge and D&O Charge rank, as between themselves, in the following order of priority:
 - (i) First, the Administration Charge;
 - (ii) Second, the Interim Lender's Charge; and
 - (iii) Third, the D&O Charge;
- (q) scheduling a comeback application for hearing at 10:00 a.m. on February 28, 2024; and
- (r) such further and other relief as counsel may request and this Honourable Court may grant.

PART I - OVERVIEW

4. The Applicants operate a Canadian ultra-low-cost carrier ("**ULCC**") under the trade name "Lynx Air", having operated its business out of Calgary, Alberta and offered flights since April 2022. Lynx Air operates a uniform fleet of nine Boeing Model 737-8 aircraft ("**Boeing 737 MAX 8 aircraft**") at high utilization rates, in order to provide fares at significant discounts to prevailing market fares. The Applicants also use low operating costs and an unbundled service to further

lower their base fares below those being offered by legacy carriers. This in turn stimulates more demand and increases growth in a virtuous circle of benefits for Lynx Air.

5. However, as a true ULCC, the Applicants' revenue performance is highly sensitive to market fluctuations in jet fuel pricing and passenger demand, as well as evolving factors within Canada's competitive aviation landscape.

6. As has been well publicized, the price of jet fuel has significantly increased since 2019 and continues to increase in a sustained and upward spiral, and is projected to continue to increase through the first quarter of 2024. According to Statistics Canada, jet fuel costs increased by 62% in December 2022 as compared with December 2019.¹ At the same time, passenger demand fell below 2019 averages (largely due to COVID-19 travel restrictions and the lingering effects thereof): the number of passenger-kilometres flown by major Canadian airlines in December 2022 remained 12% below the December 2019 level.² For a ULCC like Lynx Air, these fuel price increases and reduced passenger demand, combined with a competitive aviation landscape have proved disastrous to the Applicants' ability to generate sufficient revenue to sustain a business in what is effectively a duopoly market in Canada.

7. In large part due to COVID-19 related travel restrictions imposed in March of 2020 and the grounding of the Boeing 737 MAX 8 aircraft in March of 2019, Lynx Air's first inaugural flight was delayed from the first quarter of 2019 until April of 2022. As such, the Applicants had to sustain administrative and operating costs without any significant revenue for three years beyond what had originally been planned.

¹ Statistics Canada, Jet fuel production and prices have taken off in tandem with air travel (June 2023), online: Statistics Canada <<https://www.statcan.gc.ca/o1/en/plus/3944-jet-fuel-production-and-prices-have-taken-tandem-air-travel>>.

² *Ibid.*

8. For these reasons, while the Applicants have a valuable and viable business, Lynx Air has been met with significant unforeseeable challenges to its business since its inception. As a result, Lynx Air is currently insolvent and has insufficient cash reserves to allow it to continue to fund its current ongoing operations. In addition, certain critical service suppliers have recently elected to take enforcement actions, which, if pursued, would jeopardize the Applicants' ongoing operations, and would likely result in the Applicants' operations being shut down in a chaotic and haphazard manner.

9. For these reasons, Lynx Air has decided that the only option available to it to preserve value in its assets is to urgently obtain protection under the CCAA to give it reasonable time to wind down its business operations in an orderly fashion, and to provide time for the Applicants to apply for and conduct a sales and investment solicitation process (if necessary), identify and assess potential transactions, and review other strategic alternatives that may be available to maximize the value of the Applicants' business for all their stakeholders.

PART II – THE APPLICANTS' BUSINESS

A. Corporate Structure

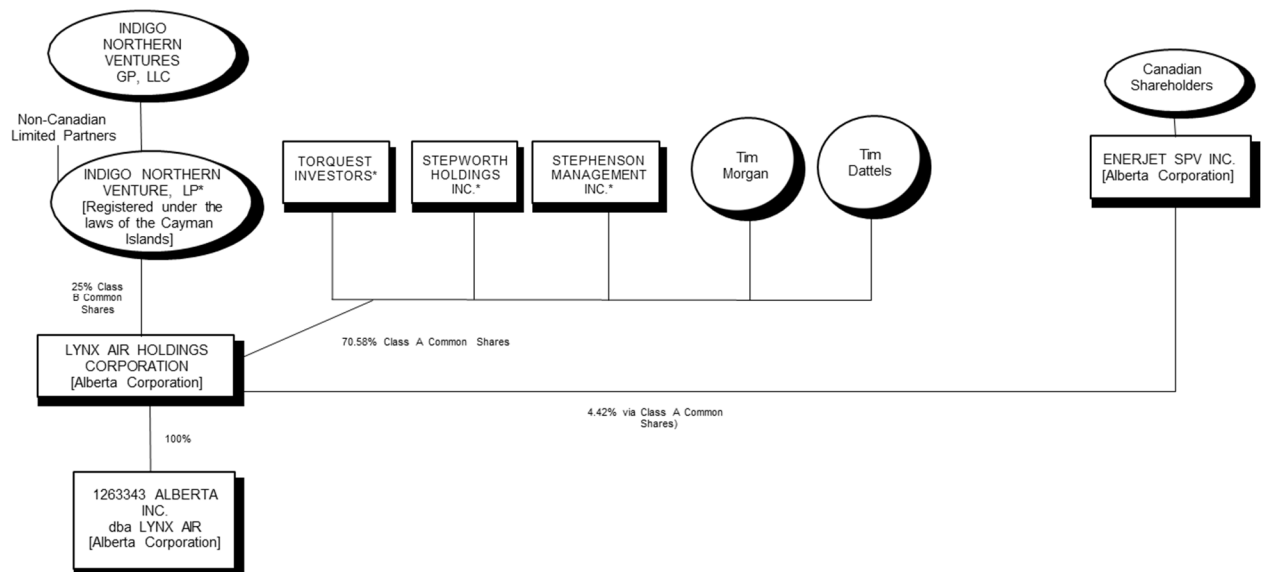
10. The Applicant Lynx Air Holdings Corporation (formerly named "Enerjet Holdco Inc.") ("**Lynx Holdco**") is a corporation incorporated under the laws of the Province of Alberta. Lynx Holdco was incorporated under the Alberta *Business Corporations Act* on December 17, 2018, and changed its name to Lynx Air Holdings Corporation on November 16, 2021.

11. Lynx Holdco is the 100% parent of the Applicant 1263343 Alberta Inc. ("**Lynx Opco**" and together with Lynx Holdco, the "**Applicants**" or "**Lynx Air**"), a corporation incorporated under the laws of the Province of Alberta. Both Lynx Holdco and Lynx Opco have registered offices at

1400, 350 – 7 Avenue SW, Calgary, Alberta, as well as the same two directors: Greg Melchin and Thomas Morgan. Additionally, the Applicants have the same three officers (or persons operating in the role of officers): myself, Vijay Bathija, acting as Chief Commercial Officer, and James Sullivan, acting as Chief Operating Officer and Interim Chief Executive Officer. Lynx Opco is the operating entity of Lynx Air, and is the Declarant of and operates under the registered trade name “Lynx Air”.

12. Lynx Holdco is in turn owned by seven entities, none of which are applicants in these CCAA proceedings: (a) Indigo, by its general partner Indigo Northern Ventures GP, LLC, (b) Torquest Investors, Stepworth Holdings Inc., Stephenson Management Inc., Tim Morgan, and Tim Dattels (collectively, the “**Canadian Investors**”); and (c) Enerjet SPV Inc. (“**EnerJet**”). The Canadian Investors hold 25,140,621 (70.58%) of the Class A Common Shares of Lynx Air, EnerJet holds 1,575,190 (4.42%) Class A Common Shares of Lynx Air, and Indigo holds 8,905,252 (25%) Class B Common Shares of Lynx Air.

13. A corporate chart detailing the structure of the Applicants as of February 2024 is reproduced below:



14. Copies of Alberta corporate searches for each of the Applicants are attached hereto as **Exhibit “1”**. A copy of the Alberta trade name search for “Lynx Air” is attached hereto as **Exhibit “2”**.

B. Financial Position

15. The Applicants’ financial reporting is completed on a consolidated basis in accordance with IFRS Accounting Standards. A copy of the Applicants’ unaudited consolidated financial statement for the years ended 2021 and 2022, and a draft, unaudited consolidated financial statement for the twelve months ended December 31, 2023 (the “**2023 Financial Statement**”), are attached hereto as **Exhibits “3”** and “**4**”, respectively. The 2023 Financial Statement is summarized below.

(a) Assets

16. As at December 31, 2023, the Applicants had total assets having a book value of approximately CAD\$429,091,000, broken down as follows:

Current Assets: \$53,331,000	
<i>(\$CAD 000’s)</i>	
Cash and Cash Equivalents	\$2,519
Restricted Cash	\$7,945
Accounts Receivables	\$37,655
Prepaid Expenses	\$4,092
Inventory	\$1,120
Non-Current Assets: \$375,760,000	
<i>(\$CAD 000’s)</i>	
Pre-delivery Payments and Lease Deposits	\$19,469
Property and equipment (net)	\$345,145
Deferred Purchase Incentive Credit	(\$22,711)
Intangible Assets	\$2,807
Goodwill	\$4,114
Long-term Receivables	\$9,427
Maintenance Reserves	\$17,462
Due from Enerjet SPV Inc.	\$47

(b) Liabilities

17. As at December 31, 2023, the Applicants had total liabilities of approximately CAD\$599,857,000, broken down as follows:

Current Liabilities: \$126,921,000	
<i>(\$CAD 000's)</i>	
Accounts Payable and Accrued Liabilities	\$62,383
Deferred Revenue	\$20,635
Convertible Notes Payable	\$22,819
Current Portion Lease Liability	\$21,084
Non-Current Liabilities: \$472,936,000	
<i>(\$CAD 000's)</i>	
Convertible Notes	\$93,521
Deferred Tax Liability	\$24,491
Long-Term Lease Liability	\$354,924

(c) Shareholder Equity

18. As at December 31, 2023, the shareholders' equity in the Applicants was recorded at negative CAD\$170,766,000.

C. Employees/Consultants

(a) Employees

19. As at December 31, 2023, Lynx Air employed approximately 500 employees. The geographic distribution of Lynx Air's employees is as follows:

Province	Number of Employees
Alberta	390
Ontario	110
Total (Canada)	500

20. Some of the Applicants' employees have recently elected to unionize: the pilots under the Air Line Pilots Association, International ("ALPA"), and the cabin crew employees under the Canadian Union of Public Employees ("CUPE"). On June 3, 2023, the Canada Industrial Relations Board ("CIRB") certified ALPA as the bargaining representative for all pilots of Lynx Air. Lynx Air and ALPA are currently in the process of negotiating their first collective bargaining agreement. On February 7, 2024, the CIRB certified CUPE as the bargaining representative for all cabin crew of Lynx Air. As this certification just occurred, neither party has served a notice to commence collective bargaining. As such, no collective bargaining agreements for the Applicants' employees currently exist.

21. Lynx Air maintains benefit plans for their employees providing medical, dental, prescription, and vision benefits, and life insurance policies. Lynx Air also sponsors a pension plan for all employees, and a stock option plan covering various Directors, Officers, and former Officers. As at the date of this Affidavit, Lynx Air has no outstanding payroll deductions, Canadian Pension Plan payments or Employment Insurance premiums owing to the Crown.

22. The Applicants also maintain Directors' and Officers' liability insurance coverage which is provided as part of the executive liability coverage programme maintained by Zurich Insurance Company Ltd. (the "**D&O Insurance Policy**"). The D&O Insurance Policy provides for Loss (as that term is defined in the D&O Insurance Policy) of up to USD\$10,000,000 and expires on October 14, 2024. The Applicants also maintain Excess Private Company Directors and Officers Liability with Markel Canada Limited in an aggregate amount of USD\$5,000,000, and with Arthur J. Gallagher Canada Limited in an aggregate amount of USD\$5,000,000 (collectively, the "**Excess Insurance Policies**"). The Excess Insurance Policies expire on October 14, 2024. Attached hereto as **Exhibit "5"** and **"6"** are copies of the D&O Insurance Policy and the Excess Insurance Policies.

23. In addition, on September 20, 2023, Lynx Holdco established a CAD\$2,000,000 irrevocable trust (the “**Lynx Air D&O Trust**”) with TSX Trust Company as trustee, and Lynx Air’s Directors and Officers as beneficiaries. A copy of the Trust Indenture (the “**D&O Trust Indenture**”) for the Lynx Air D&O Trust is attached hereto as **Exhibit “7”**. The Lynx Air D&O Trust was established to provide financial support for the defence of Lynx Air’s Directors and Officers against Liability Claims (as that term is defined in the D&O Trust Indenture) and for the payment of Liability Claims, to the extent that the D&O Insurance Policy, for any reason, does not do so and to maintain Directors’ and Officers’ insurance through the payment of premiums or other payments, if Lynx Air fails to do so.

(b) Consultants

24. As at February 1, 2024, Lynx Air has 19 independent contractors, retained through a number of holding corporations or agencies:

- (a) Amy Wheatley, Program and Policy Specialist;
- (b) Bob Alder, SIM Instructor;
- (c) Bradely Thomann, Consultant, Operations Advisor;
- (d) C. Ben Atkins, SIM Instructor;
- (e) George Acs, SIM Instructor;
- (f) Gerald Murphy, SIM Instructor;
- (g) Greg Mardon, IT Contractor;
- (h) Heather McKinnon, Interim Controller;

- (i) Jay Simacio, Senior Accountant;
- (j) Juan Carlos Flores Cortez, Technical Operations Specialist;
- (k) Kerwin Calder, Accounts Payable Analyst;
- (l) Larissa Ha, Payroll Analyst;
- (m) Michael Ritchie, SIM Instructor;
- (n) Myself;
- (o) Oluwatosin Harrison, Revenue Analyst;
- (p) Paul Lung Ip, SIM Instructor;
- (q) Rajarshi Ray, Director of Revenue Management;
- (r) Roger McIntosh, Technical Operations Consultant; and
- (s) Zeeshan Joseph, Financial Analyst.

D. Operations

25. As noted above, Lynx Air operates on a ULCC model, pursuant to which the Applicants maintain low operating costs to deliver fares at a significant discount to prevailing market fares. This in turn creates new demand from the price sensitive consumer segment and stimulates market growth.

26. As a ULCC, the Applicants follow significant operational and strategic diligence. Specifically, the Applicants: (i) focus on efficient use of their assets (aircraft, facilities, gates and employees); (ii) schedule aircraft to operate at least 25% more than legacy airlines, (iii) utilize

rapid turnarounds and minimize facilities overhead to create a structural cost advantage; (iv) selectively outsource services that can be most efficiently performed by third parties; and (v) maximize direct distribution channels and avoid third-party distribution agreements.

27. Due to multi-year delays caused by the COVID-19 pandemic and the Boeing 737 MAX 8 aircraft grounding (discussed more fully below), Lynx Air did not have its inaugural flight until April 7, 2022 (roughly 3 years after the originally planned inaugural flight date). However, Lynx Air now flies nine Boeing 737 MAX 8 aircraft to 18 destinations, namely:

- (a) 11 destinations in Canada:
 - (i) Calgary, Alberta;
 - (ii) Edmonton, Alberta;
 - (iii) Fredericton, New Brunswick;
 - (iv) Halifax, Nova Scotia;
 - (v) Hamilton, Ontario;
 - (vi) Montreal, Quebec;
 - (vii) St. Johns, Newfoundland and Labrador;
 - (viii) Toronto, Ontario;
 - (ix) Vancouver, British Columbia;
 - (x) Victoria, British Columbia; and
 - (xi) Winnipeg, Manitoba;

- (b) 6 destinations in the United States of America:
 - (i) Las Vegas, Nevada;
 - (ii) Fort Myers, Florida;
 - (iii) Los Angeles, California;
 - (iv) Orlando, Florida;
 - (v) Phoenix, Arizona; and
 - (vi) Tampa, Florida;

- (c) 1 destination in Mexico:
 - (i) Cancun, Mexico.

28. The Applicants' operations are primarily concentrated in Toronto and Calgary. However, the Applicants have airline partnership agreements with each respective destination's airport. These agreements contractually stipulate the obligations of both parties and require Lynx Air to make certain payments to each airport, such as aeronautical fees and charges, airport improvement fees, and other terms and conditions integral to the aeronautical activity at each airport. Lynx Air also has a variety of agreements for services in each location to which it flies, including for ground handling, de-icing, and other on-ground services. Two such agreements include: (i) a Comprehensive Fleet Support Agreement with Delta Airlines, Inc. ("**Delta**") dated September 20, 2022 (the "**CFS Agreement**") pursuant to which Delta provides all of Lynx Air's technical engineering and airworthiness support, line maintenance services, consumables and expendables supply, logistics and management services, warehousing and warranty management services, and

component maintenance, repair, pooling, modification and logistics services; and (ii) an agreement with the Calgary Glycol Facilities Corporation (“**CGFC**” and the “**CGFC Agreement**”) providing for de-icing services at the Calgary International Airport.

29. On February 2, 2024, Lynx Air received a notice of default from the Aeroports de Montreal (“**ADM**”) in the amount of CAD\$1,634,479.86 relating to outstanding airport improvement fees. However, on February 8, 2024, a payment schedule was agreed to between Lynx Air and ADM, such that the outstanding amounts are now payable by Lynx Air in four installments ending on April 1, 2024 (the “**ADM Payment Agreement**”). Attached as **Exhibit “8”** is a copy of ADM Payment Agreement.

30. On February 16, 2024, Lynx Air received a notice of default from the Greater Toronto Airports Authority (“**GTAA**”) in the amount of CAD\$2,441,284.71 relating to outstanding aeronautical fees and charges and airport improvement fees in respect of its aeronautical activity at Toronto Pearson (the “**GTAA Notice of Default**”). Pursuant to the GTAA Notice of Default, Lynx Air must cure the outstanding amount by February 21, 2024. Attached as **Exhibit “9”** is a copy of the GTAA Notice of Default.

31. On February 17, 2024, Lynx Air received a notice of default from Delta in the amount of USD\$3,331,730.57 (of which USD\$2,195,478.52 is overdue) with respect to payments due under the CFS Agreement (the “**Delta Notice of Default**”). Pursuant to the Delta Notice of Default, Lynx Air must cure the outstanding payment within 5 business days of issuance of the Delta Notice of Default, failing which Delta would have the right to suspend services under the CFS Agreement. Attached as **Exhibit “10”** is a copy of the Delta Notice of Default.

32. On February 1, 2024, Lynx Air received a notice of default from the CGFC in the amount of CAD\$351,688.44, relating to outstanding amounts under the CGFC Agreement (the “**CGFC**”

Notice of Default”). Pursuant to the CGFC Notice of Default, Lynx Air had to cure the outstanding payment by February 12, 2024. As at the date of this Affidavit, Lynx Air has paid CAD\$175,844.20 to CGFC.

33. Lynx Air does not have sufficient cash to allow it to cure the defaults under the CFS Agreement, the GTAA airline partnership agreement or the CGFC Agreement. In lieu of payment, the cure counterparties to these agreements will have the ability stop providing services under the agreements. Specifically, Delta will stop performing under the CFS Agreement, with the result that Lynx Air’s aircraft will be stranded due to outstanding maintenance issues, including maintenance which is necessary for the daily operation of aircraft. Similarly, the GTAA will obtain the ability to seize Lynx Air’s aircraft to enforce its security, and to prevent the airline from operating out of Toronto, which is the hub for approximately 30% of Lynx Air’s business. The withdrawal of services under these two agreements alone would effectively shut down Lynx Air’s business.

(a) Cash Management System

34. The Applicants maintain accounts at Canadian financial institutions, as follows:

- (a) *Depository Accounts*: The Applicants maintain two (2) US and three (3) Canadian depository accounts at ATB Financial (“**ATB**”), which is the central account for the Applicants and operates as the primary receipt and disbursement point for funds in connection with all of the Applicants’ operations.
- (b) *Cash Collateral – Letter of Credit Accounts*: As of December 31, 2023, Lynx Air has 13 letters of credit totalling CAD\$5,876,000 issued by ATB for the benefit of various creditors and vendors. These letters of credit are fully secured by cash

deposits held as cash collateral in eight (8) USD and seven (7) CAD Guaranteed Investment Certificates at ATB.

- (c) *Cash Collateral – E-Transfer Account*: The Applicants maintain one (1) bank account at the Bank of Nova Scotia (“**Scotiabank**”) used to send electronic transfers for passenger compensation when such compensation is required to be paid pursuant to the *Air Passenger Protection Regulations* (SOR/2019-150).
- (d) *Cash Collateral – Mexican Account*: The Applicants maintain one (1) Mexican peso depository account at Scotiabank. This is used to pay Mexican tax.

(b) Canadian Foreign Ownership Restrictions on Airlines

35. Canadian foreign ownership restrictions on airlines are governed by the *Canada Transportation Act*, S.C. 1996, c. 10 (the “CTA”), and overseen by the Canadian Transportation Agency. The CTA limits foreign ownership and control of Canadian air services to ensure that the industry remains predominantly Canadian and to protect national security interests.

36. To obtain and maintain a license to operate a Canadian domestic air service, the air license holder must meet the definition of “Canadian” as set out in section 55(1) of the CTA:

- (a) be a Canadian citizen or a permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act,
- (b) be a government in Canada or an agent or mandatary of such a government, or
- (c) be a corporation or entity that is incorporated or formed under the laws of Canada or a province, that is controlled in fact (within the meaning of the CTA) by Canadians and of which at least 51% of the voting interests are owned and controlled by Canadians and where
 - (i) no more than 25% of the voting interests are owned directly or indirectly by any single non-Canadian, either individually or in affiliation with another person, and
 - (ii) no more than 25% of the voting interests are owned directly or indirectly by one or more non-Canadians authorized to provide an air service in any

jurisdiction, either individually or in affiliation with another person;
(Canadien).

37. As such, Lynx Air must: (i) be incorporated under the laws of Canada, (ii) have 51% of its voting interest owned and controlled by Canadians; and (iii) be controlled in fact by Canadians.

PART III – CAPITAL STRUCTURE AND INDEBTEDNESS

A. Assets

38. As at December 31, 2023, the Applicants had total assets with a book value of approximately CAD\$429,091,000, including:

- (a) property and equipment of CAD\$345,145,000 comprised primarily of capitalized leases of which there are nine leases of Boeing 737 MAX 8 aircraft and three leases of CFM Leap 1-B25 spare engines (collectively, the “**Aircraft Leases**”);
- (b) security deposits of CAD\$14,019,000 consisting of two- or three-months’ rent owed to each of the engine and aircraft lessors (reflected on the balance sheet as Pre-Delivery Payments and Lease Deposits and Property and Equipment); and
- (c) long-term deposits of CAD\$2,732,000 consisting of amounts held as cash security by vendors, lessors (reflected on the balance sheet as Pre-Delivery Payments and Lease Deposits).

39. Each of these categories of assets will be discussed more fully below.

Property and Equipment

40. On October 18, 2015, Lynx Opco entered into a purchase agreement with an aircraft manufacturer (the “**Aircraft Purchase Agreement**”). Although the Aircraft Purchase Agreement

is not reflected in the 2023 Financial Statement, the Aircraft Purchase Agreement has considerable value in the global aviation market.

41. Pursuant to the Boeing Purchase Agreement, Lynx Opco had the right to purchase forty aircraft and lease six aircraft, to be delivered and paid for over six years (in addition to certain advance payments), such advance payments to be delivered at: (a) signing of the Aircraft Purchase Agreement, (b) 24 months prior to delivery, and (c) 18, 12, and 10 months prior to delivery.

42. Nine supplemental agreements relating to the Aircraft Purchase Agreement were subsequently entered into between the aircraft manufacturer and Lynx Opco, dated February 6, 2017, August 31, 2018, April 22, 2021, August 31, 2021, November 10, 2021, December 8, 2021, February 11, 2022, March 2, 2022, and August 17, 2023 (collectively, the “**Aircraft Supplemental Agreements**”).

43. Due to regulatory grounding of the Boeing 737 MAX 8 aircraft by Transport Canada Civil Aviation (“**TCCA**”) beginning on March 13, 2019 (discussed more fully below at paragraph 90), Lynx Opco was unable to take delivery of any aircraft which Lynx Air intended to purchase under the Aircraft Purchase Agreement. As such, the Aircraft Purchase Agreement’s delivery and payment schedule was revised to accommodate the Applicants’ re-entry into airspace, once the TCCA order released the Boeing 737 MAX 8 aircraft.

44. As of the date of this Affidavit, the Applicants have leased nine Boeing 737 MAX 8 aircraft; thirty-one Boeing 737 MAX 8 aircraft remain to be delivered under the Aircraft Purchase Agreement. The Applicants’ property and equipment is therefore comprised primarily of the Aircraft Leases.

45. The Aircraft Purchase Agreement and the Aircraft Supplemental Agreements contain confidential and commercially sensitive business information, the public disclosure of which would adversely affect and be prejudicial to the legitimate business interests of the Applicants and the counterparty to those agreements. For this reason, the Applicants are subject to non-disclosure obligations found within the Aircraft Purchase Agreement, prohibiting public disclosure of these agreements. As a result, copies of those agreements, along with a detailed discussion of the delivery schedule and purchase order dynamics, are attached to my Confidential Supplemental Affidavit which is sworn concurrent with this Affidavit, and the Applicants will be seeking a Restricted Court Access Order with respect to my Confidential Supplemental Affidavit.

Security Deposits

46. The security deposits are composed of pre-payments of rent to Lynx Air's lessors (as discussed in further detail below).

Long-Term Deposits

47. The long-term deposits consist of amounts provided to counterparties to reduce or eliminate credit while concurrently doing business with Lynx Air. This includes amounts provided to fuel providers, airports, real estate lessors, and others.

B. Liabilities

48. As at December 31, 2023, the Applicants had total liabilities of approximately CAD\$599,857,000, including:

- (a) secured obligations in an aggregate principal amount of CAD\$93,521,000 represented by promissory notes issued to Indigo pursuant to:

- (i) a Note Purchase Agreement dated December 20, 2018, as amended by Amending Agreement No. 1 dated June 30, 2023, between Lynx Holdco, as issuer, Lynx Opco as guarantor, and Indigo, as noteholder (the “**Note Purchase Agreement**”), a copy of which is attached hereto as **Exhibit “11”**;
- (ii) a Bridge Note Purchase Agreement dated February 24, 2023 as amended by Amending Agreement No. 1 dated January 12, 2024, between Lynx Holdco, as issuer, Lynx Opco as guarantor, and Indigo, as noteholder (the “**Bridge Note Purchase Agreement**”), a copy of which is attached hereto as **Exhibit “12”**;
- (iii) a Second Bridge Note Purchase Agreement dated October 26, 2023 as amended by Amending Agreement No. 1 dated January 12, 2024, between Lynx Holdco, as issuer, Lynx Opco as guarantor, and Indigo, as noteholder (the “**Second Bridge Note Purchase Agreement**”), a copy of which attached hereto as **Exhibit “13”**;
- (iv) a Third Bridge Note Purchase Agreement dated January 12, 2024 between Lynx Holdco, as issuer, Lynx Opco as guarantor, and Indigo, as noteholder (the “**Third Bridge Note Purchase Agreement**”), a copy of which attached hereto as **Exhibit “14”**;
- (v) a Fourth Bridge Note Purchase Agreement dated February 2, 2024 between Lynx Holdco, as issuer, Lynx Opco as guarantor, and Indigo, as noteholder (the “**Fourth Bridge Note Purchase Agreement**”), a copy of which attached hereto as **Exhibit “15”**;

- (vi) a Fifth Bridge Note Purchase Agreement dated February 7, 2024 between Lynx Holdco, as issuer, Lynx Opco as guarantor, and Indigo, as noteholder (the “**Fifth Bridge Note Purchase Agreement**”), a copy of which attached hereto as **Exhibit “16”**;

- (b) secured obligations of approximately CAD\$344,828,000 comprised of the Aircraft Leases;

- (c) secured obligations of CAD\$5,995,000 pursuant to a series of Assignment of Deposit Certificates (the “**Assignment Certificates**”) between ATB and Lynx Opco dated between May 2020 and November 2023 to stand as security for Letters of Credit and the credit card issued by ATB, copies of which Assignment Certificates are attached hereto as **Exhibit “17”**;

- (d) unsecured obligations in an aggregate amount of CAD\$72,375,279.00, comprised of:
 - (i) a tax payment arrangement with the Canada Revenue Agency (“**CRA**”) regarding account arrears (the “**CRA Arrears**”); and
 - (ii) obligations to trade creditors.

Indigo Promissory Notes

49. On start-up of Lynx Air, Indigo provided debt financing (represented by the Initial Notes, as that term is defined below) issued by Lynx Air to Indigo in the amount of CAD\$71,242,031. As discussed further below, the Applicants’ encountered various unforeseen events which resulted in a shortfall in projected revenue, such that revenues being generated from operations were

insufficient to sustain operations. Consequently, in 2023 and 2024 Indigo provided additional debt financing to the Applicants, in the amounts of CAD\$22,279,375 (provided in February, March, and October 2023) and CAD\$20,147,000 (provided in January and February 2024). These advances were also documented through convertible promissory notes issued by the Applicants to Indigo pursuant to the Note Purchase Agreement, the Bridge Note Purchase Agreement, the Second Bridge Note Purchase Agreement, the Third Bridge Note Purchase Agreement, the Fourth Bridge Note Purchase Agreement, and the Fifth Bridge Note Purchase Agreement.

(i) The Note Purchase Agreement

50. Pursuant to the Note Purchase Agreement, Indigo purchased convertible promissory notes (the “**Initial Notes**”) in the amount of USD\$54,100,000 (which, converted to CAD, is the \$71,242.031 referenced in the preceding paragraph). The Initial Notes bear non-convertible interest at an annual rate of 10%, payable annually in arrears in each year. The Initial Notes have a conversion price of \$1.00.

51. A \$1,000,000 fee related to the issuance of the Initial Notes was capitalized at inception and deducted from the purchase price prior to the transfer of the net proceeds to Lynx Holdco.

52. On June 30, 2023, Indigo accepted the Applicants request to defer the Initial Notes’ interest, as stipulated in the Note Purchase Agreement (the “**Deferral Agreement**”), pursuant to which Indigo granted the Applicants a deferral of all interest payments under the Initial Notes until the Fifth Anniversary (as that term is defined in the Note Purchase Agreement). A copy of the Deferral Agreement is attached hereto as **Exhibit “18”**.

53. Pursuant to the Note Purchase Agreement, the Applicants issued the Initial Notes on: (i) December 20, 2018 in the amount of CAD\$12,179,529; (ii) May 24, 2019 in the amount of

CAD\$7,295,806; (iii) January 27, 2022 in the amount of CAD\$10,149,603; (iv) April 14, 2022 in the amount of CAD\$13,532,804; (v) August 8, 2022 in the amount of CAD\$6,766,402; (vi) October 14, 2022 in the amount of CAD\$3,383,200; (vii) November 15, 2022 in the amount of CAD\$8,119,682; and (viii) December 13, 2022 in the amount of CAD\$9,815,005. Copies of the Initial Notes are attached hereto as **Exhibit “19”**.

54. All obligations of Lynx Holdco under the Note Purchase Agreement are guaranteed by Lynx Opco, pursuant to a Guarantee between Indigo and Lynx Opco dated October 28, 2021 (the “**Note Guarantee**”) and are also secured against all present and after-acquired personal property of the Applicants pursuant to a General Security Agreement dated October 28, 2021 (the “**Note General Security Agreement**”). Copies of the Note Guarantee and the Note General Security Agreement are attached hereto as **Exhibit “20”** and “**21**”.

55. As at December 31, 2023, the Initial Notes have a principal and accrued and outstanding interest amount of CAD\$91,489,000. The Initial Notes matured on December 20, 2023. The Applicants do not have sufficient resources to redeem the Initial Notes.

(ii) The Bridge Note Purchase Agreement

56. Pursuant to the Bridge Note Purchase Agreement, Indigo purchased convertible promissory notes (the “**Bridge Notes**”) up to an equivalent amount in Canadian Dollars of USD\$5,250,000 and was granted the ability to purchase subsequent promissory notes up to an equivalent amount of USD\$9,000,000. The Bridge Notes bear interest at an annual rate of 20%, convertible and payable semi-annually in arrears on August 23 and February 23 in each year. The Bridge Notes have a conversion price of \$0.25.

57. The Applicants issued two Bridge Notes pursuant to the Bridge Note Purchase Agreement: one on February 24, 2023, and the second on March 10, 2023, in the principal amounts of CAD\$7,110,000 CAD and CAD\$5,169,375, respectively. Interest accrued on these notes at 20%, and each of these notes mature on the earlier of the consummation of a transaction that Lynx Air is in the process of negotiating and June 30, 2024. As at December 31, 2023, the total amount outstanding under the Bridge Notes are (respectively) approximately CAD\$8,415,000 and CAD\$6,072,000. Copies of the Bridge Notes are attached hereto as **Exhibit “22”**.

58. All obligations of Lynx Holdco under the Bridge Note Purchase Agreement are guaranteed by Lynx Opco pursuant to a Guarantee between Indigo and Lynx Opco dated February 24, 2023 (the “**First Bridge Note Guarantee**”) and are also secured against all present and after-acquired personal property of the Applicants pursuant to a General Security Agreement dated February 24, 2023 (the “**First Bridge Note General Security Agreement**”). Copies of the First Bridge Note Guarantee and the First Bridge Note General Security Agreement are attached hereto as **Exhibit “23”** and **“24”**.

(iii) The Second Bridge Note Purchase Agreement

59. Pursuant to the Second Bridge Note Purchase Agreement, Indigo purchased a convertible promissory note (the “**Second Bridge Note**”) in the amount of CAD\$10,000,000. The Second Bridge Note was issued on October 26, 2023, and bears interest at a rate of 20% per annum, convertible and payable semi-annually in arrears. As at December 31, 2023, the total amount outstanding under the Second Bridge Note is approximately CAD\$10,365,000. The Second Bridge Note matures on the earlier of the consummation of a transaction that Lynx Air is in the process of negotiating and June 30, 2024. A copy of the Second Bridge Note is attached hereto as **Exhibit “25”**.

60. All obligations of Lynx Holdco under the Second Bridge Note Purchase Agreement are guaranteed by Lynx Opco, pursuant to a Guarantee between Indigo and Lynx Opco dated October 26, 2023 (the “**Second Bridge Note Guarantee**”) and are also secured against all present and after-acquired personal property of the Applicants pursuant to a General Security Agreement dated October 26, 2023 (the “**Second Bridge Note General Security Agreement**”). Copies of the Second Bridge Note Guarantee and the Second Bridge Note General Security Agreement are attached hereto as **Exhibit “26”** and “**27”**.

(iii) The Third Bridge Note Purchase Agreement

61. Pursuant to the Third Bridge Note Purchase Agreement, Indigo purchased a convertible promissory note (the “**Third Bridge Note**”) up to an equivalent amount in Canadian Dollars of USD\$5,000,000. The Third Bridge Note was issued on January 12, 2024 in the amount of CAD\$6,695,500, and bears interest at a rate of 20% per annum, payable semi-annually in arrears. The Third Bridge Note matures on the earlier of the consummation of a transaction that Lynx Air is in the process of negotiating and June 30, 2024. A copy of the Third Bridge Note is attached hereto as **Exhibit “28”**.

62. All obligations of Lynx Holdco under the Third Bridge Note Purchase Agreement are guaranteed by Lynx Opco, pursuant to a Guarantee between Indigo and Lynx Opco dated January 12, 2024 (the “**Third Bridge Note Guarantee**”) and are also secured against all present and after-acquired personal property of the Applicants pursuant to a General Security Agreement dated January 12, 2024 (the “**Third Bridge Note General Security Agreement**”). Copies of the Third Bridge Note Guarantee and the Third Bridge Note General Security Agreement are attached hereto as **Exhibit “29”** and “**30”**.

(iii) The Fourth Bridge Note Purchase Agreement

63. Pursuant to the Fourth Bridge Note Purchase Agreement, Indigo purchased a convertible promissory note (the “**Fourth Bridge Note**”) up to an equivalent amount in Canadian Dollars of USD\$5,000,000. The Fourth Bridge Note was issued on February 2, 2024 in the amount of CAD\$6,698,500, and bears interest at a rate of 20% per annum, convertible and payable semi-annually in arrears. The Fourth Bridge Note matures on the earlier of the consummation of a transaction that Lynx Air is in the process of negotiating and June 30, 2024. A copy of the Fourth Bridge Note is attached hereto as **Exhibit “31”**.

64. All obligations of Lynx Holdco under the Fourth Bridge Note Purchase Agreement are guaranteed by Lynx Opco, pursuant to a Guarantee between Indigo and Lynx Opco dated February 2, 2024 (the “**Fourth Bridge Note Guarantee**”) and are also secured against all present and after-acquired personal property of the Applicants pursuant to a General Security Agreement dated February 2, 2024 (the “**Fourth Bridge Note General Security Agreement**”). Copies of the Fourth Bridge Note Guarantee and the Fourth Bridge Note General Security Agreement are attached hereto as **Exhibit “32”** and “**33**”.

(iii) The Fifth Bridge Note Purchase Agreement

65. Pursuant to the Fifth Bridge Note Purchase Agreement, Indigo purchased a convertible promissory note (the “**Fifth Bridge Note**”) up to an equivalent amount in Canadian Dollars of USD\$6,753,000. The Fifth Bridge Note was issued on February 7, 2024, and bears interest at a rate of 20% per annum, payable semi-annually in arrears. The Fifth Bridge Note matures on the earlier of the consummation of a transaction that Lynx Air is in the process of negotiating and June 30, 2024. A copy of the Fifth Bridge Note is attached hereto as **Exhibit “34”**.

66. All obligations of Lynx Holdco under the Fifth Bridge Note Purchase Agreement are guaranteed by Lynx Opco, pursuant to a Guarantee between Indigo and Lynx Opco dated February

7, 2024 (the “**Fifth Bridge Note Guarantee**”) and are also secured against all present and after-acquired personal property of the Applicants pursuant to a General Security Agreement dated February 7, 2024 (the “**Fifth Bridge Note General Security Agreement**”). Copies of the Fifth Bridge Note Guarantee and the Fifth Bridge Note General Security Agreement are attached hereto as **Exhibit “35”** and “**36**”.

67. As at January 31, 2024, the total amount owing under all of the aforementioned promissory notes issued to Indigo is: CAD\$100,216,906 in principal, and CAD\$24,084,241 in interest.

(iv) The Noteholders’ and Shareholders’ Agreement

68. In connection with the Note Purchase Agreement, Lynx Holdco, Lynx Opco, the Canadian Investors and Indigo entered into a Noteholders’ and Shareholders’ Agreement dated December 20, 2018, as amended by amendment no. 1 to the Noteholders’ and Shareholders’ Agreement effective as of June 7, 2021, as further amended by amendment no. 2 to the Noteholders’ and Shareholders’ Agreement dated as of December 5, 2022, as further amended by amendment no. 3 to the Noteholders’ and Shareholders’ Agreement dated as of February 24, 2023, as further amended by amendment no. 4 of the Noteholders’ and Shareholders’ Agreement dated October 26, 2023, as further amended by amendment no. 5 to the Noteholders’ and Shareholders’ Agreement dated as of January 12, 2024, as further amended by amendment no. 6 to the Noteholders’ and Shareholders’ Agreement dated as of February 2, 2024, and as further amended by amendment no. 7 to the Noteholders’ and Shareholders’ Agreement dated as of February 7, 2024 (collectively, the “**Noteholders’ and Shareholders’ Agreement**”).

69. A copy of the Noteholders’ and Shareholders’ Agreement is attached hereto as **Exhibit “37”**.

The Aircraft Leases

70. The Applicants are party to nine 12-year leases for nine aircraft:
- (a) an aircraft lease novation and amendment agreement between Lynx Opco as lessee, Wellington Leasing No. 40 Limited as existing lessor, and Bank of Utah, not in its individual capacity but solely as owner trustee (“**Bank of Utah**”), as new lessor, dated June 24, 2023 (the “**Utah Lease Novation and Amendment Agreement**”) and effective March 16, 2022;³
 - (b) an aircraft lease novation and amendment agreement between Lynx Opco as lessee, Wellington Leasing No. 39 Limited as existing lessor, and High Ridge Aviation Trading 2 Limited (“**High Ridge**”) as new lessor, dated June 26, 2023 (the “**High Ridge Lease Novation and Amendment Agreement**”) and effective February 14, 2022;⁴
 - (c) an aircraft lease novation and amendment agreement between Lynx Opco as lessee, Wellington Leasing No. 41 Limited as existing lessor, AERDragon MSN44306 Leasing Limited (“**AERDragon**”) as new lessor, and Société Générale as security trustee dated June 27, 2023 (the “**AERDragon Lease Novation and Amendment Agreement**”) and effective April 5, 2022;⁵

³ The original lease agreement between Lynx Opco and Wellington Leasing No. 40 Limited (“**Wellington 40**”) is dated April 23, 2021, and was amended on November 4, 2021. A Certificate of Acceptance and Estoppel dated March 16, 2022 was given by Lynx Opco and delivered to Wellington 40, as well as a Short Form Lease Agreement 44314 dated March 16, 2022 between Wellington 40 and Lynx Opco.

⁴ The original lease agreement between Lynx Opco and Wellington Leasing No. 39 (“**Wellington 39**”) is dated April 23, 2021, and was amended on November 4, 2021 and February 11, 2022. A Certificate of Acceptance and Estoppel dated February 14, 2022 was given by Lynx Opco and delivered to Wellington 39, as well as a Short Form Lease Agreement 44312 dated February 14, 2022 between Wellington 39 and Lynx Opco.

⁵ The original lease agreement between Lynx Opco and Wellington Leasing No. 41 Limited (“**Wellington 41**”) is dated April 23, 2021, and was amended on November 4, 2021 and March 29, 2022. A Certificate of Acceptance and

- (d) three aircraft lease agreements with BOC Aviation Limited (“**BOCA**”), each dated February 23, 2022 (collectively, the “**BOCA Lease Agreements**”) and effective May 1, 2023, July 31, 2023, and August 18, 2023; and
- (e) three aircraft lease agreements with Wilmington Trust SP Services (Dublin) Limited (“**Wilmington Trust**”) each dated November 4, 2021 (collectively, the “**Wilmington Trust Lease Agreements**”), effective July 13, 2022, July 27, 2022, and August 26, 2022, respectively.

71. Additionally, the Applicants are party to three 12-year leases for three engines with Engine Lease Finance Corporation, each dated April 26, 2023 (collectively, the “**Engine Lease Agreements**”), effective April 27, 2023, May 11, 2023, and August 23, 2023.

72. Each of the above leases is associated with obligations to pay monthly lease rentals and monthly amounts in anticipation of an eventual maintenance spend; the aggregate payment under the twelve 12-year leases is CAD\$4,600,000. Additionally, all obligations of the Applicants under the Aircraft Leases are (i) guaranteed by the terms of various guarantees and (ii) secured by the corresponding security interests and international interests being registered pursuant to the *Alberta Personal Property Security Registry* and the International Registry (as such term is defined in *An Act to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*, S.C. 2005, c. 3).

ATB Cash Collateral

Estoppel dated April 5, 2022 was given by Lynx Opco and delivered to Wellington 41, as well as a Short Form Lease Agreement 44306 dated April 5, 2022 between Wellington 41 and Lynx Opco.

73. Lynx Air has 13 letters of credit totalling CAD\$5,876,000 issued by ATB for the benefit of Western Surety Company, Greater Toronto Airports Authority, Vancouver Airport Authority, City of Kelowna – City Hall, Aeroports de Montreal, City of Los Angeles, Department of Airports, City of Phoenix Aviation Department, Greater Orlando Aviation Authority, Clark County Department of Aviation Harry Reid International Airport, Tom Bradley International Terminal Equipment Company, Hillsborough County Aviation Authority, Lee County Port Authority, and His Majesty the King in right of the Province of British Columbia. As discussed above in paragraph 34(b), these letters of credit are fully secured by cash deposits which are held by ATB as security for the letters of credit which have been issued.

74. On November 6, 2023, ATB registered a security interest in the cash deposits in the amount of CAD\$1,027,613.62, and on February 14, 2024, ATB registered an additional security interest in the amount of CAD\$4,469,645.96.

Tax Payment Arrangement

75. Lynx Opco is in arrears with the CRA in the amount of CAD\$25,578,279 (the “**Outstanding Balance**”) for debt owing to the Canada Border Services Agency in respect of GST incurred on importation of aircraft into Canada. As such, the CRA and Lynx Opco have entered into a payment arrangement dated November 17, 2023 (the “**CRA Arrangement Agreement**”). Pursuant to the CRA Arrangement Agreement, as of October 2023, Lynx Opco is required pay a total of CAD\$500,000 towards the Outstanding Balance according to the following schedule: CAD\$100,000 on December 1, 2023, CAD\$100,000 on January 2, 2024, CAD\$100,000 on February 1, 2024, and CAD\$200,000 on March 1, 2024. Commencing April 1, 2024, Lynx Opco must make monthly payments on the first of each month, in a minimum amount of CAD\$700,000 towards the Outstanding Balance, until the arrears are retired.

76. A copy of the CRA Arrangement Agreement is attached hereto as **Exhibit “38”**.

Trade Creditors

77. The Applicants have ongoing supply and/or service arrangements with numerous vendors and services providers, including for operation and maintenance of the aircraft.

78. As at December 31, 2023, the Applicants owed accrued and outstanding amounts to trade creditors in the aggregate amount of CAD\$46,797,000, before taking into account any disputed amounts or claims to set-off which the Applicants may have or assert.

Office Lease Obligations

79. Lynx Opco is party to a lease agreement with Deerfoot Junction Holdings Inc., as landlord, dated December 30, 2021, as amended on May 1, 2023, pursuant to which it leases head office space in Calgary, Alberta, at 3215 – 12th Street N.E. (the “**Commercial Lease**”). All obligations of Lynx Holdco under the Commercial Lease are current.

Litigation Claims

80. The Applicants are involved in certain claims and litigation arising in the course of its business, including two ongoing claims in the Alberta Court of King’s Bench by one former Officer and one former employee against Lynx Air, each related to wrongful dismissal.

PPR Registrations

81. I am advised by Julie Treleaven of Osler, Hoskin & Harcourt LLP, counsel to the Applicants, that as of February 16, 2024, there are 16 registrations against the Applicants in the Alberta *Personal Property Security Registry*, being:

- (a) Two registrations against Lynx Holdco and Lynx Opco by Indigo of its security interest in all present and after-acquired personal property of the Applicants secured by the Note General Security Agreement, the First Bridge Note General Security Agreement, the Second Bridge Note General Security Agreement, the Third Bridge Note General Security Agreement, the Fourth Bridge Note General Security Agreement, and the Fifth Bridge Note General Security Agreement;
- (b) One registration against Lynx Opco by ATB of a security interest in the amount of USD\$1,027,613.62 and CAD\$4,469,645.96 for amounts on deposit with ATB;
- (c) One registration against Lynx Opco by High Ridge of security interests on certain Boeing airframes and engines supplied to the Applicants pursuant to the High Ridge Lease Novation and Amendment Agreement;
- (d) One registration against Lynx Opco by Bank of Utah of security interests on certain Boeing airframes and engines supplied to the Applicants pursuant to Bank of Utah Lease Novation and Amendment Agreement;
- (e) One registration against Lynx Opco by AERDragon of security interests on certain Boeing 737 MAX 8 aircraft and engines supplied to the Applicants pursuant to the AERDragon Lease Novation and Amendment Agreement;
- (f) One registration against Lynx Opco by Société Générale of security interests on certain Boeing 737 MAX 8 aircraft and engines supplied to the Applicants pursuant to the AERDragon Lease Novation and Amendment Agreement;

- (g) Three registrations against Lynx Opco by Wilmington Trust of security interests on certain Boeing 737 MAX 8 aircraft and engines supplied to the Applicants pursuant to the Wilmington Trust Lease Agreements;
- (h) Three registrations against Lynx Opco by BOCA of security interests on certain Boeing 737 MAX 8 aircraft and engines supplied to the Applicants pursuant to the BOCA Lease Agreements; and
- (i) Three registrations against Lynx Opco by Engine Lease Finance Corporation of security interests on certain engines supplied to the Applicants pursuant to the Engine Lease Agreements.

82. A copy of the Alberta *Personal Property Security Registry* search for Lynx Holdco and Lynx Opco is attached hereto as **Exhibit “39”** and **“40”**.

C. Equity

83. The Applicants’ authorized share capital consists of an unlimited number of Common Voting Shares, an unlimited number of Variable Voting Shares, an unlimited number of Non-Voting Shares, and an unlimited number of Preferred Shares. As at February 6, 2024, there were 35,621,063 Common Shares and 421,829,531 Convertible Shares issued and outstanding.

84. The Applicants also have a stock option plan pursuant to which options are granted to directors, officers, employees, consultants or other service providers as a form of compensation. As at February 6, 2024, there were approximately 2,183,829 outstanding stock options, all of which are out-of-the-money.

PART IV – RECENT EVENTS LEADING TO CCAA FILING

85. The Applicants' need to restructure is primarily driven by drastically reduced revenues over the past two years because of significant and sustained external factors, and a capital structure that can no longer be sustained in the face of these challenges. After Lynx Air started business (but before it flew its inaugural flight) it was met with a number of serious unforeseeable challenges to its business, as described below.

Competitive Landscape

86. The Canadian airline industry can be characterized as a duopoly dominated by two major airlines: Air Canada and WestJet. These airlines, in part through their well-established operations and market affluence, can decrease their base fares to prices comparable to ULCCs such as Lynx Air. This in turn saturates the market for ULCCs by reducing its consumer base, resulting in a reduction in passenger demand that ultimately correlates to decreases in revenue. This reduced passenger demand is further amplified by Lynx Air's direct ULCC competitors, Flair Airlines and Canada Jetlines, who operate on similar strategic and operational structures. As such, Lynx Air's entry into the Canadian market was a difficult and competitive venture.

87. However, the already competitive and constrained passenger market in Canada was significantly impacted by the COVID-19 pandemic. Government-imposed travel restrictions, health concerns, and the economic disruptions caused by the pandemic led to a substantial decrease in passenger demand which continues to be observed in the airline market today. As a result of this decreased demand, Lynx Air's competition among Canada's airlines intensified as they vied for a limited number of passengers. These market conditions ultimately resulted in unanticipated consequences to Lynx Air's capital structure.

Drastic Increase in Jet Fuel Prices

88. As outlined in paragraph 6 above, the dramatic and sustained increase in jet fuel prices since 2019 has had a direct and major impact on the Applicants' business. In 2023 alone, fuel was between 50-100% higher than projected in the Applicants' original business plan. This resulted in fuel expenses approximately CAD\$30,000,000 over the original business plan.

89. Unlike legacy airlines, these unprecedented price increases more dramatically affect ULCC airlines like Lynx Air. While legacy airlines or a low-cost-carriers can recoup increased fuel prices by increasing base fares, an ULCC cannot deviate from the established base fare without abandoning the ULCC model altogether.

The Boeing 737 MAX 8 Groundings

90. On October 29, 2018, and again on March 10, 2019, the Boeing 737 MAX 8 aircraft (which was the only model that Lynx Air was planning on using in its fleet) was involved in two mass-fatality incidents. Consequently, in March of 2019 most civil aviation authorities, including the TCCA, grounded the Boeing 737 MAX 8 aircraft over safety concerns. This grounding lasted until December of 2020, and coincided exactly with Lynx Air's intended first flight (the first quarter of 2019).

91. As the Boeing 737 MAX 8 aircraft was the only type of aircraft purchased for Lynx Air's fleet, the Applicants were unable to (a) begin operations, and (b) take delivery of additional aircraft purchased under the Boeing Purchase Agreement. This resulted in administrative and operating costs being incurred without any significant return of revenue until Lynx Air's inaugural flight in April of 2022 – 3 years after the intended inaugural flight in the first quarter of 2019.

PART V – THE APPLICANTS' URGENT NEED FOR PROTECTION

92. The Applicants are in urgent need of protection under the CCAA to preserve value for all stakeholders. The financial strains placed on the Applicants' business as a result of the foregoing events has been disastrous to the Applicants' business.

93. Accordingly, while the Applicants have significant business operations and assets, the reduced revenues required to conduct its ongoing operations, together with a combination of factors outside of its control, have placed the Applicants in a liquidity crisis.

94. While the Applicants have in the past received debt financing from Indigo to fund its operating costs, it has never been able to achieve profitability in order to become self-sustaining. More recently, the Applicants have been unsuccessful in efforts to secure additional capital in order to try to achieve profitability. As a result, the Applicants find themselves in a situation where not only can they not repay the Initial Notes, but they are unable to fund day to day operations without additional debt financing from Indigo.

95. In response to the liquidity crisis caused by the multiple outside factors described above, the Applicants have attempted to implement further cost mitigation measures to protect the minimum capital required to continue basic care and maintenance operations of its aircraft. Since September of 2023, the Applicants have, among other things, taken the following steps:

- (a) limited itself to essential hiring only;
- (b) implemented revenue-management technology;
- (c) optimized costs by re-routing flights to have "out and back flying" versus overnight stays; and
- (d) modified its flight network to avoid overlap in Canada's aviation market.

96. Notwithstanding these cost mitigation efforts, the Applicants' current revenue amounts have resulted in a significant amount of ageing trade payables and declining liquidity to support operations, and the Applicants are currently over-leveraged and unable to sustain operations at current revenue levels and at current expense levels – even with cost-cutting measures implemented. Accordingly, the Applicants currently find themselves in a situation where expenses are outstripping revenue, putting a strain on the Applicants' cash reserves which are being quickly depleted. As noted in the Applicants' cash flow forecast, the Applicants will soon have its cash reserves entirely exhausted and will be unable to pay its suppliers or staff.

97. Additionally, as discussed above in paragraphs 29 to 33, Lynx Air has received notices of default from various parties, such as the GTAA and Delta with cure periods expiring on February 21, 2024 and February 26, 2024, respectively. If unpaid, the GTAA and Delta may commence enforcement proceedings which could include measures which would significantly and negatively affect the Applicants' operations, including withdrawing services and seizure of aircraft.

98. As a result, for the past several months the Applicants have been exploring options both to raise additional capital which would permit the Applicants to continue to carry on business, or to enter into a transaction which would permit the Applicants to wind down operations in an orderly fashion to maximize value for the Applicants' affected stakeholders. As of February 21, 2024, the Applicants have entered into a Letter of Intent for a transaction that will allow an orderly wind down of operations while simultaneously maximizing the value of the Applicants' remaining assets. The Applicants therefore urgently require the protection of the CCAA in order to conclude this transaction for the benefit of all stakeholders. In absence of a CCAA filing, the Applicants will be in imminent danger of a disorderly operational shut-down that will result in aircraft and

passengers being haphazardly stranded across Lynx Air's network, and a myriad of individual creditors and service providers exercising enforcement measures against Lynx Air's assets.

PART VI – STATUTORY REQUIREMENTS UNDER THE CCAA

A. The Applicability of the CCAA

99. The Applicants are companies to which the CCAA applies. The Board of Directors of the Applicants have resolved to authorize the within CCAA proceedings.

100. The Applicants have claims against it in excess of CAD\$5,000,000. As at January 31, 2024, the Applicants are indebted to Indigo in the amount of CAD\$100,216,906 in principal, and CAD\$24,084,241 in interest. All obligations of the Applicants to Indigo are secured by security interests in all of the Applicants' present and after acquired property. As at December 31, 2023, the Applicants also owe outstanding amounts to certain trade creditors in the aggregate amount of CAD\$46,797,000. The Applicants are unable to pay these amounts.

101. The Applicants are insolvent and are, or soon will be, unable to meet their obligations generally as they become due by virtue of revenues falling below operating costs, as a result of the matters described above.

B. Cash-Flow Projections

102. The Applicants, with the assistance of FTI, have prepared cash flow statements, on a go forward basis up to and including March 2, 2024 (the "**Cash-Flow Projections**"). The Cash-Flow Projections are attached as **Exhibit "41"** hereto.

103. As set out in the Cash-Flow Projections, from the date hereof until March 2, 2024, the Applicants' principal use of cash will consist of funding operations. The Cash-Flow Projections

evidence that, subject to obtaining the limited relief sought as part of the Originating Application, the Applicants will have sufficient liquidity to fund its ongoing operations without the need for additional funding during the initial ten (10) day stay period.

C. Consent to Act by FTI

104. The Applicants seek appointment of FTI as Monitor in these proceedings (in such capacity, the “**Monitor**”). FTI has consented to act as Monitor of the Applicants, subject to Court approval. Attached as **Exhibit “42”** is FTI’s Consent to Act as Monitor.

D. Administration Charge

105. As noted above, FTI has consented to act as Monitor in these proceedings to provide supervision, monitoring and to generally assist the Applicants with its restructuring efforts, including the potential preparation of a CCAA plan to be put to the Applicants’ creditors pursuant to the terms of the proposed Initial Order and the statutory provisions of the CCAA.

106. The Monitor, counsel for the Monitor, and the Applicants’ counsel (being the Applicants’ restructuring counsel Osler, Hoskin & Harcourt LLP and the Applicants’ corporate counsel Linmac LLP) will be essential to the Applicants’ restructuring efforts. They are prepared to provide or continue to provide professional services to the Applicants, and require the protection of a first-ranking priority charge (the “**Administration Charge**”) over the Applicants’ assets. However, the Administration Charge shall not rank in priority to the interests of any aircraft lessor or financier as described in paragraphs 70 and 71 above.

107. The Applicants believe that an Administration Charge in the amount of CAD\$500,000 is fair and reasonable given the size and complexity of the Applicants’ business and will provide the level of appropriate protection for the payment of the Applicants’ essential professional services

during the initial ten (10) day stay period. The Applicants intend to apply for an increase of the Administration Charge to CAD\$750,000 at the comeback application.

E. Interim Lending and the Interim Lender's Charge

108. As demonstrated in the Cash-flow Projections, the Applicants require interim financing to pursue their restructuring efforts in the context of these CCAA proceedings and to allow payment of future financial obligations, including obligations to trade creditors, as well as to allow the Applicants to properly retain both the proposed monitor and legal counsel to assist and advise the Applicants in relation to restructuring options.

109. As at the date of this Affidavit, the Applicants and the Interim Lender have agreed upon interim financing in an amount of CAD\$1,000,000 during the initial Stay Period, pursuant to the terms of the Interim Lending Term Sheet that is subject to final approval by Indigo. It is the Applicants' intention, subject to receiving the necessary approval of this Honourable Court, to draw down on the Interim Financing to fulfil mandatory statutory payments and immediately make the necessary arrangements with its employees, contractors, vendors, and other stakeholders to wind-down its business operations in an orderly fashion. A copy of the draft Interim Lending Term Sheet (which I believe to be either final or near final) is attached hereto as **Exhibit "43"**.

110. The Interim financing is proposed to be secured by a second ranking Interim Lender's Charge on all of the Property of the Applicants. However, the Interim Lenders' Charge shall not rank in priority to the interests of any aircraft lessor or financier as described in paragraphs 70 and 71 above.

F. D&O Charge


111. The requested relief also contains a third ranking charge against the Applicants' Property as security for any obligations and liabilities the Applicants' directors and officers may incur in their roles as directors and officers after February 22, 2024, up to the maximum amount of CAD\$500,000. However, the D&O Charge shall not rank in priority to the interests of any aircraft lessor or financier as described in paragraphs 70 and 71 above.

112. The Applicants require the services of their directors and officers to develop a viable proposal. The Applicants' directors and officers have the technical and institutional knowledge, experience, and relationships necessary to preserve the value of Lynx Air's operations and business for the benefit of all stakeholders. The Applicants' chances to implement a successful restructuring are maximized by the continued involvement of their directors and officers.

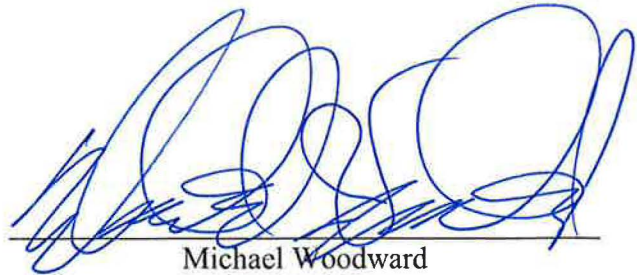
PART VII – RELIEF SOUGHT

113. I make this Affidavit in support of the Initial Order pursuant to the CCAA, including a stay of proceedings, for the purposes of allowing Lynx Air an opportunity to restructure its affairs and develop a plan of arrangement for the benefit of its creditors.

SWORN BEFORE ME at Calgary, Alberta,
this 22nd day of February, 2024.



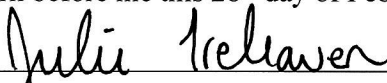
Notary Public and Commissioner for Oaths in
and for the Province of Alberta



Michael Woodward

Julie Laura Treleaven
Barrister & Solicitor

This is **Exhibit "C"** to the Affidavit of Michael Woodward
sworn before me this 28th day of February 2024.



Notary Public/Commissioner for Oaths in and for Alberta

Julie Laura Treleaven
Barrister & Solicitor



Source: Lynx Air

February 22, 2024 20:00 ET

Lynx Air Files for and Obtains CCAA Creditor Protection

Calgary-based low-cost airline will cease operations effective February 26

CALGARY, Alberta, Feb. 22, 2024 (GLOBE NEWSWIRE) -- Lynx Air (Lynx), a low-cost airline with service to destinations throughout Canada, the U.S. and Mexico, today announced that it has sought and obtained an initial order for creditor protection from the Court of King's Bench of Alberta under the Companies' Creditors Arrangement Act ("CCAA").

Over the past year, Lynx Air, has faced a number of significant headwinds including rising operating costs, high fuel prices, exchange rates, increasing airport charges and a difficult economic and regulatory environment.

Operating as an ultra low-cost carrier, Lynx launched its inaugural flight in April 2022, growing its fleet and number of destinations while doubling its volume of passengers over the past two years. However, despite substantial growth in the business, ongoing operational improvements, cost reductions and efforts to explore a sale or merger, the challenges facing the company's business have become too significant to overcome.

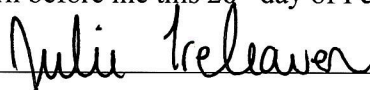
In connection with the commencement of proceedings, Lynx Air has made the decision to cease operations effective 12:01 a.m. MT on Monday, February 26, 2024, with flights continuing to operate until that time.

Every effort is being made to assist passengers at this time. Passengers with existing bookings are advised to contact their credit card company to secure refunds for pre-booked travel. Additional information for Lynx customers is available at this [Frequently Asked Questions](https://www.flylynx.com/en/faq-lynx) page (<https://www.flylynx.com/en/faq-lynx>).

Lynx would like to extend sincere gratitude to its loyal customers, dedicated employees and business partners for their commitment and dedication to the company.

Osler, Hoskin & Harcourt LLP are acting as legal advisors to Lynx Air. FTI Consulting Canada Inc. was appointed as the CCAA Monitor ("the Monitor"). Additional information related to the CCAA proceedings will be available on the Monitor's case website at: <http://cfcanada.fticonsulting.com/lynxair>.

This is **Exhibit "D"** to the Affidavit of Michael Woodward
sworn before me this 28th day of February 2024.



Notary Public/Commissioner for Oaths in and for Alberta

Julie Laura Treleaven
Barrister & Solicitor

[LYNX EXECUTIVE KERP LETTER – SULLIVAN AND WOODWARD]

Private & Confidential – [Method of Delivery]

[Date]

[Name/Address]

Dear [Name]:

As you are aware, Lynx Air Holdings Corporation and 1263343 Alberta Inc. (collectively, “**Lynx Air**”) filed for and were granted creditor protection under the Companies’ Creditors Arrangement Act (“**CCAA**”), pursuant to an initial order (the “**Initial Order**”) of the Court of the King's Bench of Alberta (the “**Court**” and the “**CCAA Proceedings**”) dated February 22, 2024 (the “**Filing Date**”).

Under the terms of the Initial Order, the Court has appointed FTI Consulting Canada Inc. as the Monitor to oversee the CCAA Proceedings. Additional information regarding the CCAA Proceedings is available at the Monitor’s website at: <http://cfcanada.fticonsulting.com/lynxair/>.

As part of the CCAA Proceedings, the Court has approved a Key Employee Retention Plan (the “**KERP**”) for certain critical executives. As a key Lynx Air executive, your continuing assistance and loyalty during this period are important. We are therefore pleased to offer you a retention bonus under the KERP, which is in addition to, and not in lieu of, any other payments or benefits to which you may be entitled. The terms of the retention bonus are:

1. You will be eligible to receive an aggregate amount of [●] (the “**Base Bonus**”), payable upon the termination of the CCAA Proceedings (the “**CCAA Termination Date**”).
2. In the event of a Transaction (as defined below), you will also be eligible to receive an aggregate amount of [●] (the “**Closing Bonus**”, collectively with the Base Bonus, the “**Retention Bonus**”).
3. In the event that the Closing Bonus becomes due, it will be payable forthwith upon the closing of a Transaction.
4. For purposes of this letter, a “**Transaction**” shall mean a sale of all or a material portion of Lynx Air or its assets to an entity that is not related to its current secured creditors.
5. In order to receive any portion of the Retention Bonus, you must (i) be actively employed with Lynx Air from now until the CCAA Termination Date, *and* (ii)

Confidential

perform to the best of your abilities your duties and responsibilities, including any reasonable additional or transitional duties, through the CCAA Termination Date. If you resign, abandon or otherwise choose to leave your employment for any reason prior to the CCAA Termination Date, or if you are terminated for cause, you will not be eligible for any further portion of the Retention Bonus. If your employment is terminated without cause and without any wrongdoing on your part at any point prior to the CCAA Termination Date, the full amount of the remaining Retention Bonus will become payable upon you signing a release in a form satisfactory to Lynx Air acting reasonably.

6. The Retention Bonus is subject to applicable withholdings and deductions. The Retention Bonus is inclusive of vacation pay and, subject to the terms of the applicable plan policies, is not considered earnings for purposes of any earnings-based employee benefit plan.
7. The KERP does not affect the other terms of your employment.
8. The Retention Bonus is designed to be, and any payments of such Retention Bonus shall be considered to be, extraordinary and not a part of your regular compensation. Accordingly, and for greater certainty, the KERP and the Retention Bonus payable to you will not be considered earnings for the purpose of determining any earnings-based employee benefits or any other bonus or incentive plan of Lynx Air and, for greater certainty, the Retention Bonus payable to you shall not be included in the determination of your annual base salary or annual compensation or in the calculation of any vacation pay, termination/severance or other payments which may become owing in the event of any termination of your employment howsoever caused (which shall be determined without reference to this agreement, the KERP or the Retention Bonus payable hereunder).
9. This letter agreement shall enure to the benefit of and be enforceable by your legal personal representatives, executors and administrators.

It is important that the terms of this letter agreement be kept strictly confidential and not disclosed to anyone other than your spouse and legal counsel and only then on condition that they also agree to keep the terms of this letter agreement strictly confidential.

We appreciate your efforts on behalf of Lynx Air and look forward to your continuing contributions. In the meantime, if you have any question regarding this letter please contact [●] at [phone/email].

Yours very truly,

Confidential

[Name/Title]

ACKNOWLEDGEMENT

I have read, understand and accept the terms of this letter agreement as set out above.

Signature

Printed Name

Date

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[LYNX EMPLOYEE KERP LETTER]

Private & Confidential – [Method of Delivery]

[Date]

[Name/Address]

Dear [Name]:

As you may be aware, Lynx Air Holdings Corporation and 1263343 Alberta Inc. (collectively, “**Lynx Air**”) filed for and were granted creditor protection under the Companies’ Creditors Arrangement Act (“**CCAA**”), pursuant to an initial order (the “**Initial Order**”) of the Court of the King’s Bench of Alberta (the “**Court**” and the “**CCAA Proceedings**”) dated February 22, 2024 (the “**Filing Date**”).

Under the terms of the Initial Order, the Court has appointed FTI Consulting Canada Inc. as the Monitor to oversee the CCAA Proceedings. Additional information regarding the CCAA Proceedings is available at the Monitor’s website at: <http://cfcanada.fticonsulting.com/lynxair/>.

As part of the CCAA Proceedings, the Court has approved a Key Employee Retention Plan (the “**KERP**”) for certain critical employees. As a key Lynx Air employee, your continuing assistance and loyalty during this period are important. We are therefore pleased to offer you a retention bonus under the KERP, which is in addition to, and not in lieu of, any other payments or benefits to which you may be entitled. The terms of the retention bonus are:

1. You will be eligible to receive an aggregate amount of [●] (the “**Retention Bonus**”), payable upon the earlier of the termination of your employment (except for cause) or the termination of the CCAA Proceedings (the “**Payment Date**”).
2. In order to receive the Retention Bonus, you must (i) be actively employed with Lynx Air from now until the Payment Date, *and* (ii) perform to the best of your abilities your duties and responsibilities, including any reasonable additional or transitional duties, through the Payment Date. If you resign, abandon or otherwise choose to leave your employment for any reason prior to the Payment Date, or if you are terminated for cause, you will not be eligible for the Retention Bonus. If your employment is terminated without cause and without any wrongdoing on your part at any point prior to the Payment Date, the full amount of the Retention Bonus will become payable upon you signing a release in a form satisfactory to Lynx Air acting reasonably.
3. The Retention Bonus is subject to applicable withholdings and deductions. The

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Retention Bonus is inclusive of vacation pay and, subject to the terms of the applicable plan policies, is not considered earnings for purposes of any earnings-based employee benefit plan.

4. The KERP does not affect the other terms of your employment.
5. The Retention Bonus is designed to be, and any payment of such Retention Bonus shall be considered to be, extraordinary and not a part of your regular compensation. Accordingly, and for greater certainty, the KERP and the Retention Bonus payable to you will not be considered earnings for the purpose of determining any earnings-based employee benefits or any other bonus or incentive plan of Lynx Air and, for greater certainty, the Retention Bonus payable to you shall not be included in the determination of your annual base salary or annual compensation or in the calculation of any vacation pay, termination/severance or other payments which may become owing in the event of any termination of your employment howsoever caused (which shall be determined without reference to this agreement, the KERP or the Retention Bonus payable hereunder).
6. This letter agreement shall enure to the benefit of and be enforceable by your legal personal representatives, executors and administrators.

It is important that the terms of this letter agreement be kept strictly confidential and not disclosed to anyone other than your spouse and legal counsel and only then on condition that they also agree to keep the terms of this letter agreement strictly confidential.

We appreciate your efforts on behalf of Lynx Air and look forward to your continuing contributions. In the meantime, if you have any question regarding this letter please contact [●] at [phone/email].

Yours very truly,

[Name/Title]

ACKNOWLEDGEMENT

I have read, understand and accept the terms of this letter agreement as set out above.

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Signature

Printed Name

Date

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