

CLERK'S STAMP

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*, RSC
1985, c C-36, AS AMENDED

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

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT **BENNETT JONES LLP**
Barristers and Solicitors
4500, 855 – 2nd Street SW
Calgary, Alberta T2P 4K7

Attention: Kelsey Meyer / Adam J. Williams
Telephone No.: (403) 298-3323 / 3307
Fax No.: (403) 265-7219
Client File No.: 68007.47

AFFIDAVIT OF STEPHEN JONES

Affirmed February 29, 2024

I, Stephen Jones, of the City of Vancouver, in the Province of British Columbia, AFFIRM AND SAY THAT:

1. I am the Chief Executive Officer of Flair Airlines Ltd. ("**Flair**"). As such, I have personal knowledge of the matters deposed to in this Affidavit, except where stated to be based on information and belief, in which case I verily believe same to be true.

2. I affirm this Affidavit in relation to Flair's interest in participating in a sale and investment solicitation process in the *Companies' Creditors Arrangement Act* ("*CCAA*") proceedings of Lynx Air Holding Corporation and 1263343 Alberta Inc. dba Lynx Air ("*Lynx*").

I. OVERVIEW

3. Flair is an ultra-low-cost carrier ("*ULCC*") airline, operating in Canada, the United States, Mexico, Jamaica, and the Dominican Republic. Flair flies 99 routes to more than 30 destinations, with approximately 90 daily flights. Attached hereto and marked as **Exhibit "1"** is a true copy of Flair's flight route map.

4. Flair employs more than 1,200 people, primarily in British Columbia, Alberta, and Ontario. Flair is incorporated and registered pursuant to the laws of the Province of British Columbia, with its head office and primary place of business in Edmonton, Alberta. Attached hereto and marked as **Exhibits "2"** and **"3"** are true copies of Alberta and British Columbia corporate registry searches in respect of Flair.

5. Flair has operated in Canada for approximately 20 years. The airline started as a cargo carrier only, before moving from Kelowna to Edmonton and expanding to offer charter flights for the Alberta oil and gas industry. In 2018, Flair obtained its passenger license and began offering commercial flights as a low-cost carrier.

6. In 2020, following the outbreak of the COVID-19 pandemic, Flair restructured its C-Suite with an eye to reconfiguring its offerings. In 2021, the airline re-launched its passenger line utilizing a ULCC model. Under the ULCC model, Flair's initial offerings consisted of a single aircraft flying to multiple stops as it crossed Canada once a week. In May 2021, two additional aircraft were added and shortly thereafter Flair brought eight more aircraft online and offered services to 35 new airports.

7. Flair continues to be one of the most cost-efficient airline in Canada. Flair is dedicated to offering affordable, on-time flights to Canadians. Flair's overall flight completion factor in 2023 was 98.2%, which was the best of any airline in Canada. The completion factor measures flights flown compared to those originally scheduled. During 2023, Flair transported 4.5

million passengers, maintaining a strong 86% load factor consistently throughout the year. The load factor reflects the percentage of network-wide seats sold to paying passengers.

II. THE ULTRA-LOW-COST CARRIER INDUSTRY IN CANADA

8. Flair is a ULCC, as was Lynx, prior to Lynx ceasing operations on February 25, 2024. As noted in the First Woodward Affidavit, Lynx was a competitor of Flair in the ULCC segment of the airline industry.

9. As a ULCC, Flair's mission is to make affordable air travel accessible to all Canadians, by offering affordable fares without compromising on quality or reliability. A ULCC is an airline that keeps costs low by running a simple and efficient business model, and through the low cost base can charge a low base fare. The low base fare for the basic product drives passenger demand. A ULCC airline's base ticket revenue is augmented through the offering of multiple ancillary products as choices for customers.

10. The Government of Canada has publicly acknowledged a policy of encouraging the growth of ULCCs in Canada. The Government of Canada has enacted legislative changes aimed at providing travellers with more choice and lower prices through increased competition.

11. There is a public interest in ULCCs continuing to exist in Canada, which is consistent with Flair's mission. The survival of ULCCs in Canada is dependent, to some extent, upon Flair's competitors not gaining unfair competitive advantages over Flair.

III. FLAIR'S INTEREST IN ASSETS OF LYNX

12. As referenced in Exhibits "11" to "16" appended to the Affidavit of Michael Woodward, sworn February 22, 2024 (the "**First Woodward Affidavit**"), Flair and Lynx were engaged in negotiations prior to Lynx filing for protection under the *CCAA*. The negotiations contemplated what is referred to in those Exhibits to the First Woodward Affidavit as the "Flair Transaction". The details of the Flair Transaction are not public knowledge and are confidential.

13. As is referenced in Exhibits "11" to "16" of the First Woodward Affidavit, on January 11, 2024, Flair and Lynx Air Holdings Corporation entered into a Term Sheet contemplating the Flair Transaction.

14. Flair was and remains interested in pursuing a transaction with respect to the assets of Lynx.

15. Flair is interested in participating in the proposed Sale and Investment Solicitation Process (the "**SISP**") as described in the Affidavit of Michael Woodward sworn February 28, 2024 (the "**Second Woodward Affidavit**") and the First Report of FTI Consulting Inc., in its capacity as Monitor of Lynx (the "**First Monitor's Report**").

IV. THE SISP AND PRE-QUALIFIED KNOWN POTENTIAL BIDDERS

16. Flair has advised counsel for each of Lynx, the Monitor and Indigo Northern Ventures LOP ("**Indigo**") that it wants to be part of the solution that is to emerge from Lynx's insolvency. Flair has a vested interest in the survival of the ULCC model in Canada, and in fulfilling the public interest in the survival of the same. In order to advance these interests, Flair seeks to participate in the SISP.

17. Flair notes that according to the proposed SISP, as currently contemplated in the Second Woodward Affidavit and the First Monitor's Report, only Pre-Qualified Known Potential Bidders selected by Lynx with input from the Monitor will be allowed to participate in the SISP. Lynx and the Monitor can effectively bar any party from participating in the SISP. There is no opportunity for interested parties to participate in the proposed SISP unless Lynx, with input from the Monitor, permits them to do so, nor does the SISP contemplate any marketing of an opportunity to acquire assets of Lynx or to participate in the SISP.

18. On February 29, 2024, Flair wrote to counsel for each of Lynx and the Monitor to request that they confirm that if the SISP is approved by this Court, that Flair will be included as a Pre-Qualified Known Potential Bidder with the opportunity to participate in the SISP. Flair acknowledges that Pre-Qualified Known Potential Bidders would need to execute and deliver to the Monitor a non-disclosure agreement as described in the proposed SISP. Attached hereto as **Exhibit "4"** is a copy of this correspondence.

19. To date, neither Lynx nor the Monitor have confirmed that Flair will be a Pre-Qualified Known Potential Bidder if the SISP is approved by this Court.

20. The airline industry in Canada is dominated by two carriers. The proposed SISP plan is easily exploitable in a manner that could lead to a highly anti-competitive result and cannot be justified for commercial reasons. If Flair is not permitted to participate in the SISP (or in any other sales process in relation to Lynx), but dominant carriers are, this will allow the dominant carriers an opportunity to acquire additional Boeing Model 737 Max 8 aircraft, for which there is high demand globally, while excluding Flair from participating in that opportunity. A process that provides Lynx with the ultimate discretion to select the Pre-Qualified Known Potential Bidders would therefore facilitate an anti-competitive outcome, and unfairly prejudice the remaining ULCC in Canada's passenger airline industry, Flair.

V. CONCLUSION

21. I affirm this my Affidavit in support of a fair and reasonable sales and investment solicitation process in relation to the assets of Lynx that permits the participation of all interested parties, and for no other or improper purpose.

AFFIRMED BEFORE ME at Vancouver,)
British Columbia, this 29th day of February,)
2024.)



Notary Public in and for the Province of
British Columbia

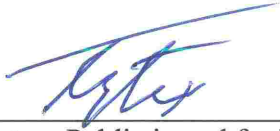


Stephen Jones

TY MITCHEL FOX
Barrister & Solicitor
BENNETT JONES LLP
2500 PARK PLACE – 666 BURRARD ST
VANCOUVER, B.C. V6C 2X8
TEL: 604.891.5393 FAX: 604.891.5100



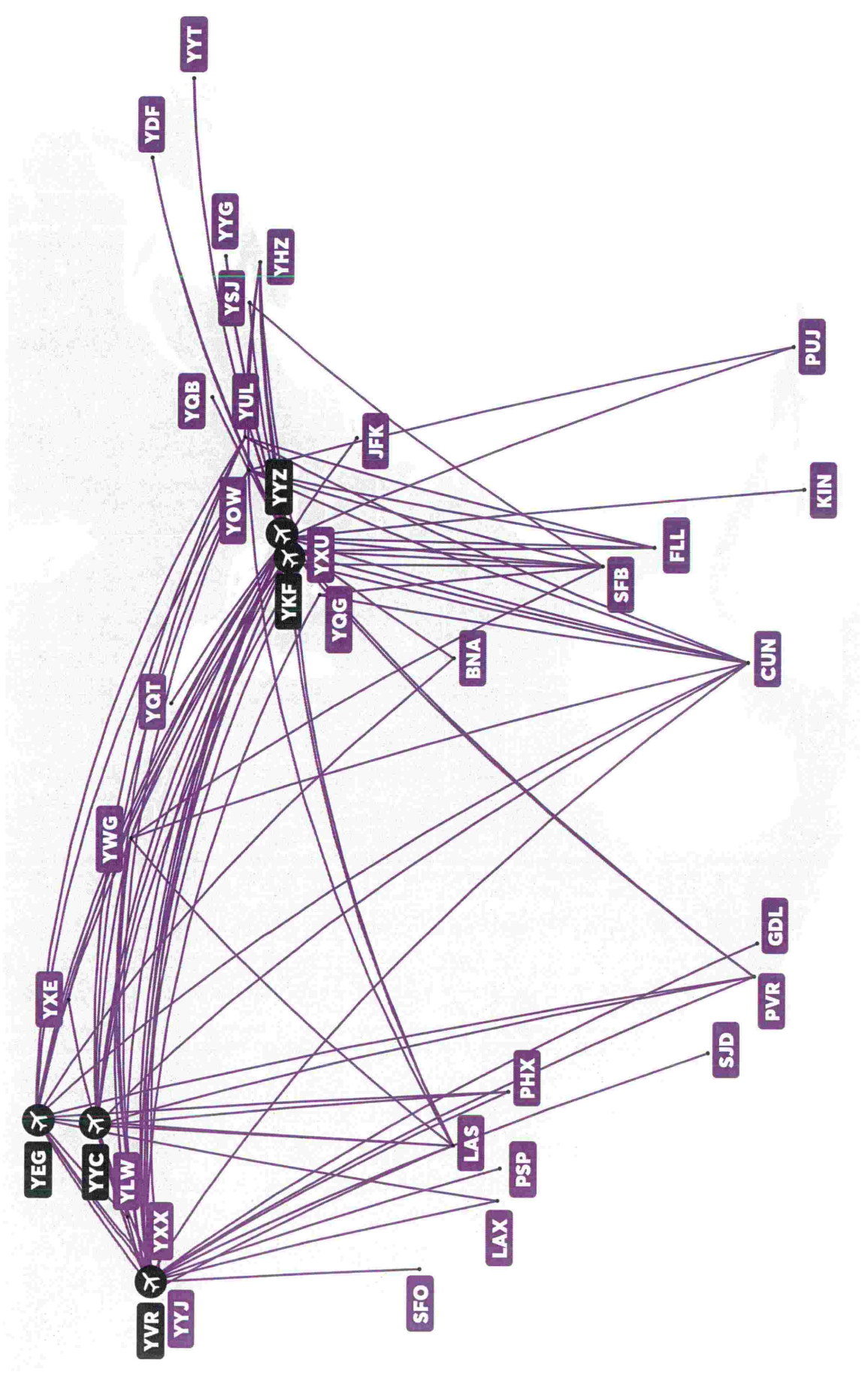
THIS IS **EXHIBIT "1"** REFERRED TO IN
THE AFFIDAVIT OF STEPHEN JONES
SWORN BEFORE ME THIS 29TH DAY OF
FEBRUARY, 2024.



A Notary Public in and for British Columbia

TY MITCHEL FOX
Barrister & Solicitor
BENNETT JONES LLP
2500 PARK PLACE – 666 BURRARD ST
VANCOUVER, B.C. V6C 2X8
TEL: 604.891.5393 FAX: 604.891.5100



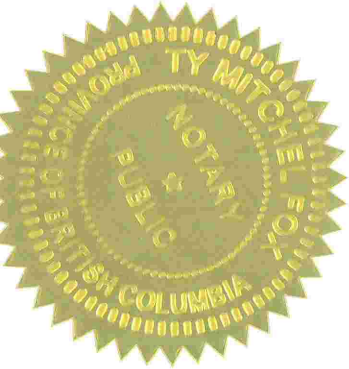


THIS IS **EXHIBIT "2"** REFERRED TO IN
THE AFFIDAVIT OF STEPHEN JONES
SWORN BEFORE ME THIS 29TH DAY OF
FEBRUARY, 2024.



A Notary Public in and for British Columbia

TY MITCHEL FOX
Barrister & Solicitor
BENNETT JONES LLP
666 PARK PLACE – 666 BARRARD ST
VANCOUVER, B.C. V6C 2X8
TEL: 604.891.5393 FAX: 604.891.5100



Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2023/11/15
Time of Search: 02:17 PM
Search provided by: BENNETT JONES LLP (CALGARY)
Service Request Number: 40880851
Customer Reference Number: 68007.47/K.Meyer/jc

Corporate Access Number: 2116031614

Business Number:

Legal Entity Name: FLAIR AIRLINES LTD.

Legal Entity Status: Active
Extra-Provincial Type: Other Prov/Territory Corps
Registration Date: 2011/06/27 YYYY/MM/DD
Date Of Formation in Home Jurisdiction: 2003/09/09 YYYY/MM/DD
Home Jurisdiction: BRITISH COLUMBIA
Home Jurisdiction CAN: BC0676747

Head Office Address:

Street: 20TH FLOOR, 250 HOWE STREET
City: VANCOUVER
Province: BRITISH COLUMBIA
Postal Code: V6C3R8
Email Address: CORPRECORDS.VANCOUVER@DENTONS.COM

Primary Agent for Service:

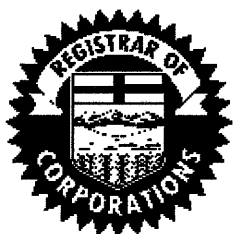
Last Name	First Name	Middle Name	Firm Name	Street	City	Province	Postal Code	Email
LEMIEUX	JOHN		DENTONS CANADA LLP	2500- 10220 103 AVE NW	EDMONTON	ALBERTA	T5J0K4	JR.LEMIEUX@DENTONS.COM

Other Information:

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2011/06/27	Register Extra-Provincial Profit / Non-Profit Corporation
2021/03/05	Change Attorney
2021/03/28	Attorney for Service converted to Agent for Service
2022/05/27	Change Agent for Service
2023/02/22	Change Address

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



THIS IS **EXHIBIT "3"** REFERRED TO IN
THE AFFIDAVIT OF STEPHEN JONES
SWORN BEFORE ME THIS 29TH DAY OF
FEBRUARY, 2024.



A Notary Public in and for British Columbia

TY MITCHEL FOX
Barrister & Solicitor
BENNETT JONES LLP
2500 PARK PLACE – 666 BURRARD ST
VANCOUVER, B.C. V6C 2X8
TEL: 604.891.5393 FAX: 604.891.5100





BC Company Summary

For
FLAIR AIRLINES LTD.

Date and Time of Search: November 15, 2023 01:30 PM Pacific Time
Currency Date: June 06, 2023

ACTIVE

Incorporation Number: BC0676747
Name of Company: FLAIR AIRLINES LTD.
Business Number: 875435307 BC0001
Recognition Date: Incorporated on September 09, 2003
Last Annual Report Filed: September 09, 2023
In Liquidation: No
Receiver: No

COMPANY NAME INFORMATION

Previous Company Name 676747 B.C. LTD.
Date of Company Name Change March 11, 2004

REGISTERED OFFICE INFORMATION

Mailing Address:
20TH FLOOR, 250 HOWE STREET
VANCOUVER BC V6C 3R8
CANADA
Delivery Address:
20TH FLOOR, 250 HOWE STREET
VANCOUVER BC V6C 3R8
CANADA

RECORDS OFFICE INFORMATION

Mailing Address:
20TH FLOOR, 250 HOWE STREET
VANCOUVER BC V6C 3R8
CANADA
Delivery Address:
20TH FLOOR, 250 HOWE STREET
VANCOUVER BC V6C 3R8
CANADA

DIRECTOR INFORMATION

Last Name, First Name, Middle Name:
Dutton, Anthony

Mailing Address:
6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA
Delivery Address:
6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

Last Name, First Name, Middle Name:

Haywood, Julia

Mailing Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

Delivery Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

Last Name, First Name, Middle Name:

Jordan, Blair

Mailing Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

Delivery Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

Last Name, First Name, Middle Name:

Ouaknine, David

Mailing Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

Delivery Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

Last Name, First Name, Middle Name:

Pasko, Steve W.

Mailing Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

Delivery Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

Last Name, First Name, Middle Name:

Sheikh, Muneeza

Mailing Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

Delivery Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

Last Name, First Name, Middle Name:

Wander, Josh

Mailing Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

Delivery Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

OFFICER INFORMATION AS AT September 09, 2023

Last Name, First Name, Middle Name:

Jones, Stephen

Office(s) Held: (CEO)

Mailing Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

Delivery Address:

6543 - 1000 AIRPORT ROAD
EDMONTON AB T9E 0V3
CANADA

THIS IS **EXHIBIT "4"** REFERRED TO IN
THE AFFIDAVIT OF STEPHEN JONES
SWORN BEFORE ME THIS 29TH DAY OF
FEBRUARY, 2024.



A Notary Public in and for British Columbia

MITCHEL FOX
Barrister & Solicitor
BENNETT JONES LLP
650 PARK PLACE – 666 BURRARD ST
VANCOUVER, B.C. V6C 2X8
TEL: 604.891.5393 FAX: 604.891.5100





Bennett Jones

Bennett Jones Services LP
4500 Bankers Hall East, 855 - 2nd Street SW
Calgary, Alberta, Canada T2P 4K7
Tel: 403.298.3100 Fax: 403.265.7219
www.bennettjones.com

Kelsey Meyer
Partner
Direct Line: 403.298.3323
e-mail: meyerk@bennettjones.com
Our File No.: 68007.28
Your File No.: 1246361

February 29, 2024

Via Email

Randal Van de Mosselaer
Osler, Hoskin & Harcourt LLP
Brookfield Place, Suite 2700
225 6 Ave SW
Calgary, AB T2P 1N2

Sean Collins, Walker McLeod, Pantelis
Kyriakakis, Nathan Stewart
McCarthy Tétrault LLP
Suite 4000, 421 – 7th Ave SW
Calgary, AB T2P 4K9

Kelly Bourassa
Blake, Cassels & Graydon LLP
Suite 3500
Bankers Hall East Tower
855 2nd St SW
Calgary AB T2P 4J8

Chris Burr and Auriol Marasco
Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9

Dear Counsel:

**Re: Court file no. 2401-02664: 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****

As you know, we are legal counsel for Flair Airlines Ltd. We have reviewed the Application of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air ("Lynx") returnable March 1, 2024, and note that the proposed sale and investments solicitation process ("SISP") that Lynx seeks approval only permits "Pre-Qualified Known Potential Bidders" to participate in the SISP, being a list of potential bidders who may have interest in the assets of Lynx, prepared by Lynx, with input from the Monitor, and without any other marketing or other opportunity to participate in the SISP by any other

February 29, 2024

Page 2

interested parties. As discussed with Mr. Van de Mosselaer on February 23, 2024, there is a global market for the assets of Lynx, which includes Boeing Max 737 Max 8 aircraft and the Boeing order book for the same which are in high demand globally.

We write to request that if the SISP proposed by Lynx, or any other sales process, is approved by the Court of King's Bench of Alberta, that Flair be permitted to participate in that sales process. With respect to the proposed SISP, this would entail Flair being included as a Pre-Qualified Known Potential Bidder. Flair is prepared to enter into a non-disclosure agreement with Lynx in accordance with the proposed SISP (including with Boeing or any of the counter parties to aircraft leases as may be necessary). If Flair is not permitted to participate in the court-approved sale process, and other participants in the Canadian airline industry are permitted to do so, that will give Flair's competitors an unfair competitive advantage over Flair and will prejudice Flair and all stakeholders in the passenger airline industry in Canada, including the public.

Would you please advise whether Lynx and the Monitor agree to include Flair as a Pre-Qualified Known Potential Bidder in relation to the proposed SISP, assuming the SISP is approved the Court?

Yours truly,

BENNETT JONES LLP



Kelsey Meyer

KM/jw

cc: FTI Consulting Canada Inc. attn: Deryck Helkaa, Dustin Olver, Brett Wilson
Pat Brennan KC, Adam Kalbfleisch, Kyle Donnelly, Adam Williams – Bennett Jones
Flair Airlines attn: Kent Breedlove, Stephen Jones