

COURT FILE NUMBER 2401-02664
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's Stamp

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 **APPLICATION**
(AMENDED AND RESTATED INITIAL ORDER)

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 / 7048
Email: RVandemosselaer@osler.com / JTreleaven@osler.com
File Number: 1246361

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: March 1, 2024
Time: 10:00 a.m.
Where: Edmonton Law Courts (by WebEx - See **Schedule "A"**)
Before: The Honourable Mr. Justice Whitling

Go to the end of this document to see what you can do and when you must do it.

Order Sought:

1. Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (collectively, the “**Applicants**”), seek an Amended and Restated Initial Order under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”), a Sale and Investment Solicitation Process Order, and a Restricted Court Access Order, each respectively and substantially in the forms attached hereto as **Schedules “B”, “C” and “D”**:
 - (a) amending and restating the order granted by the Honourable Justice Gill in the within proceedings on February 22, 2024 (the “**Initial Order**”) including, without limitation:
 - (i) extending the Stay Period (as such term is defined in the Initial Order) up to and including April 15, 2024, or such other date as this Court may deem appropriate;
 - (ii) 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
 - (iii) increasing the quantum of the Interim Lending Facility (as such term is defined below) previously granted in the Initial Order in an amount sufficient to provide liquidity during the extended Stay Period up to an aggregate amount of approximately CAD\$5,013,000 (denominated in USD);
 - (b) approving the proposed sale and investment solicitation process (the “**SISP**”) substantially in the form attached as Appendix “A” to Schedule “C” hereto, and authorizing the Applicants and FTI Consulting Canada Inc. (the “**Monitor**”) to perform their respective obligations thereunder;
 - (c) sealing the Confidential Affidavit of Michael Woodward, sworn February 28, 2024 (the “**Confidential Woodward Affidavit**”) on the Court file on the terms of the Restricted Court Access Order attached hereto as Schedule “D”; and

- (d) such further and other relief as the Applicants may request and this Honourable Court may grant.

Basis for this claim:

Amended and Restated Initial Order

2. On February 22, 2024, this Court granted the Initial Order, *inter alia*: (i) declaring that the Applicants are companies to which the CCAA applies; (ii) appointing FTI Consulting Canada Inc. as Monitor of the Applicants in these proceedings; (iii) granting a stay of proceedings up to and including March 4, 2024; (iv) authorizing the Applicants to obtain and borrow under a credit facility (the “**Interim Lending Facility**”) from Indigo Northern Ventures LP (the “**Interim Lender**”) and granting a charge to secure all obligations under the Interim Lending Facility; (v) granting a charge as security for the respective fees and disbursements of counsel to the Applicants, the Monitor and the Monitor’s counsel relating to services rendered in respect of the Applicants; and (vi) granting a charge in favour of the directors and officers of the Applicants.
3. The purpose of these CCAA proceedings is to stabilize the business and provide time to the Applicants to apply for and conduct the SISP, identify and assess potential transactions, and review other strategic alternatives that may be available to maximize the value of the Applicants for all stakeholders.
4. The Applicants have been acting diligently and in good faith in these CCAA proceedings since the Initial Order was granted, including, in consultation with the Monitor:
 - (a) reducing their forecasted operating costs and expenses in order to preserve capital by, among other things, winding down operations and ending all passenger flights effective February 26, 2024;
 - (b) engaging with their suppliers, employees, noteholders, lenders, equipment lessors, and other stakeholders regarding these CCAA proceedings in an effort to build consensus and work cooperatively to streamline these proceedings; and

- (c) formulating a fair, efficient and competitive SISP in order to fulsomely canvass the market for a transaction to maximize the value of the Applicants' assets for the benefit of all stakeholders.
5. Circumstances exist which make the relief sought in the Amended and Restated Initial Order appropriate, including, without limitation:
- (a) the Applicants require an extension of the Stay Period and an increase in the Interim Lending Facility to continue to maintain stability in respect of the business, reduce costs and manage liquidity, and complete the wind-down of the Applicants' business in an orderly fashion; and
 - (b) the continued involvement of the Applicants' key executives and employees is vital to the continuation of its efforts in winding-down the Applicants' business. The KERP and KERP Charge sought is reasonable, proportional, and necessary to ensure the continued involvement of such critical persons in these CCAA proceedings.
6. The Applicants have acted, and are acting, in good faith and with due diligence.

Sale and Investment Solicitation Process

7. In consultation with the Monitor, the Applicants have analyzed and evaluated their property and business and determined that a SISP in respect of same is the most commercially reasonable manner by which to maximize value for all of the Applicants' stakeholders.
8. Discussions with key contractual counterparties whose agreements will be included in the SISP are ongoing with respect 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.

Restricted Court Access

9. The Applicants seek to seal the Confidential Woodward Affidavit, which contains a copy of the proposed KERP.

10. The KERP contains commercially sensitive and personal information about and related to the beneficiaries listed therein. It reveals individually identifiable information, including, among other things, compensation information. Disclosure of such sensitive personal information may cause harm to the KERP beneficiaries. A Restricted Court Access Order is necessary to prevent the information in the Confidential Woodward Affidavit from forming part of the public record or otherwise being published and disclosed.
11. For these reasons, the usual openness of the Court process would pose a serious risk to an important public interest, namely, maintaining confidentiality and personal information. The granting of the Restricted Court Access Order is necessary to prevent this serious risk to this important interest because there are no reasonable alternatives that will prevent such risk. Finally, as a matter of proportionality, the benefits of the Restricted Court Access Order outweigh any deleterious effects on the rights and interests of the public.

Affidavit or other evidence to be used in support of this application:

12. The Affidavit of Michael Woodward, sworn February 22, 2024.
13. The Affidavit of Michael Woodward, sworn February 28, 2024.
14. The Confidential Affidavit of Michael Woodward, sworn February 22, 2024.
15. The Confidential Affidavit of Michael Woodward, sworn February 28, 2024.
16. The First Report of the Monitor, dated February 28, 2024.
17. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

18. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.
19. *Judicature Act*, RSA 2000, c J-2.
20. *Rules of Court*, Alta Reg 124/2010.

21. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

The above booking is Confirmed

File #(s) : MAR012024

Style of Cause: ITMO v. Lynx Air Holdings Corporation and 1263343 Alberta Inc

Date/Duration:

Mar 01, 2024 10:00 AM

Total: 120 Minute(s)

Booking Type/List: Commercial

Purpose of Hearing: Commercial Hearing

Counsel:

Special Requirements:

Requirements: Courtroom Required

Equipment: Video Conferencing

Notes: CCAA

Counsel: Please ensure that all relevant parties have received Webex information.

Virtual Courtroom 60 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**

- 5. Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

Schedule "B"

COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

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DOCUMENT **AMENDED AND RESTATED INITIAL ORDER**

ADDRESS FOR
SERVICE AND
CONTACT **OSLER, HOSKIN & HARCOURT LLP**
Barristers & Solicitors
Brookfield Place, Suite 2700
INFORMATION OF 225 6 Ave SW
PARTY FILING THIS Calgary, AB T2P 1N2
DOCUMENT

Solicitors: Randal Van de Mosselaer / Julie Treleaven
Telephone: (403) 260-7000 / 7048
Email: RVandemosselaer@osler.com / JTreleaven@osler.com
File Number: 1246361

DATE ON WHICH ORDER WAS PRONOUNCED: March 1, 2024

JUSTICE WHO MADE THIS ORDER: The Honourable Justice Whitling

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 Application, the Affidavit of Michael Woodward sworn February 22, 2024 (the "**First Woodward Affidavit**"), the Confidential Affidavit of Michael Woodward sworn February 22, 2024, the Affidavit of Micheal Woodward sworn February 28, 2024 (the "**Second Woodward Affidavit**"), and the Confidential Affidavit of Michael Woodward sworn February 28, 2024 (the "**Second Confidential Woodward Affidavit**"); **AND UPON** reading the First Report of FTI Consulting Canada Inc. ("**FTI**") in its capacity as monitor of the Applicants (the "**Monitor**"), filed February 28, 2024; **AND UPON** hearing the submissions of counsel for the Applicants, counsel for Indigo Northern Ventures LP (the "**Interim Lender**"), counsel for the Monitor, and counsel for any other party present at the application; **AND**

UPON reviewing the initial order granted in the within proceedings pursuant to the *Companies' Creditors Arrangement Act (Canada)* (the "CCAA") by the Honourable Justice Gill on February 22, 2024 (the "**Initial Order**");

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.

DEFINED TERMS

2. Capitalized terms used but not otherwise defined shall have the meaning given to such terms in the Initial Order.

APPLICATION

3. The Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

4. 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

5. 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.

6. 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.

7. 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.

8. 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.
9. 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.
10. 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

11. 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 35), 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**”).

12. 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 the Initial Order.
13. 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 resciliation of the lease shall be without prejudice to the Applicants’ claim to the fixtures in dispute.
14. If a notice of disclaimer or resciliation is delivered pursuant to section 32 of the CCAA, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resciliation, 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 resciliation, 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

15. Until and including April 15, 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

16. 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.
17. 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

18. 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

19. 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

20. 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 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

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 17 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 the Initial 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

22. 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.

23. 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 22 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 43 and 45 herein.
24. 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 22 of this Order.

APPOINTMENT OF MONITOR

25. 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.
26. 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.
27. 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.
28. 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.

29. In addition to the rights and protections afforded to 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.
30. 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.
31. The Monitor and its legal counsel shall pass their accounts from time to time.
32. 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 the Initial 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 the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 43 and 45 hereof.

INTERIM FINANCING

33. 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 CAD\$5,013,000 (denominated in

USD) unless permitted by further order of this Court.

34. 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**”).
35. 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.
36. 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 the Initial Order which charge shall not exceed the aggregate amount advanced on or after the date of the Initial Order under the Definitive Documents. The Interim Lender’s Charge shall not secure any obligation existing before the date the Initial Order was made. The Interim Lender’s Charge shall have the priority set out in paragraphs 43 and 45 hereof.
37. 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.

- 38. 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.

KEY EMPLOYEE RETENTION PLAN AND CHARGE

- 39. The terms and conditions of the key employee retention plan ("**KERP**") as attached as Exhibit "A" to the Confidential Woodward Affidavit are hereby approved. The Applicants are hereby authorized to perform their obligations under the KERP, including making all payments to the key employees identified in the KERP in accordance with the terms and conditions thereof.
- 40. The employees covered by the KERP shall be entitled to the benefit of and are granted a charge on the Property (the "**KERP Charge**") which shall not exceed the maximum amount of CAD\$1,179,094 as security for the obligations of the Applicants under the KERP.
- 41. The KERP Charge shall have the respective priority as set out in paragraph 43 of this Order.

42. The filing, registration or perfection of the KERP Charge shall not be required, and the KERP Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered recorded or perfected subsequent to the KERP Charge coming into existence, notwithstanding any such failure to file, register record or perfect.

VALIDITY AND PRIORITY OF CHARGES

43. The priorities of the Administration Charge, the Interim Lender's Charge, the KERP Charge, and the Director'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);

Fourth – KERP Charge.

44. The filing, registration or perfection of the Administration Charge, the Interim Lender's Charge, the Directors' Charge, and the KERP 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.

45. Each of the Administration Charge, the Interim Lender's Charge, the Directors' Charge, and the KERP 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 First Woodward Affidavit.

46. 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, the Directors' Charge or the KERP Charge unless the Applicants also obtain the prior written consent of the Monitor, the Interim Lender, and the beneficiaries of the Administration Charge, KERP Charge, and the Directors' Charge, or further order of this Court.

47. 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

48. 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

49. 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.

50. The Monitor shall establish a case website in respect of the within proceedings at <http://cfcanada.fticonsulting.com/lynxair>.

GENERAL

51. 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.

52. 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.
53. 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.
54. 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.
55. 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.
56. 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.

57. 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

Schedule "C"

COURT FILE NUMBER 2401-02664

Clerk's Stamp

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 **ORDER**
(Sale and Investment Solicitation Process)

ADDRESS FOR **OSLER, HOSKIN & HARCOURT LLP**
SERVICE AND Barristers & Solicitors
CONTACT Brookfield Place, Suite 2700
INFORMATION OF 225 6 Ave SW
PARTY FILING THIS Calgary, AB T2P 1N2
DOCUMENT

Solicitors: Randal Van de Mosselaer / Julie Treleaven
Telephone: (403) 260-7000 / 7048
Email: RVandemosselaer@osler.com / JTreleaven@osler.com
File Number: 1246361

DATE ON WHICH ORDER WAS PRONOUNCED: March 1, 2024

JUSTICE WHO MADE THIS ORDER: The Honourable Justice Whitling

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 Application, the Affidavit of Michael Woodward sworn February 22, 2024, the Confidential Affidavit of Michael Woodward sworn February 22, 2024, the Affidavit of Micheal Woodward sworn February 28, 2024, and the Confidential Affidavit of Michael Woodward sworn February 28, 2024; **AND UPON** reading the First Report of FTI Consulting Canada Inc. in its capacity as monitor of the Applicants (the “**Monitor**”), filed February 28, 2024; **AND UPON** hearing the submissions of counsel for the Applicants, counsel for Indigo Northern Ventures LP, counsel for the Monitor, and counsel for any other party present at the application; **AND UPON** reviewing the initial order granted in the

within proceedings pursuant to the *Companies' Creditors Arrangement Act (Canada)* (the "CCAA") by the Honourable Justice Gill on February 22, 2024; **AND UPON** noting that capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the SISP;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, this Application is properly returnable today, and no other person is required to have been served with notice of this Application.
2. The "Procedures for the Sale and Investment Solicitation Process" which are attached hereto as Appendix "A" (the "SISP") are (subject to any amendments thereto that may be made in accordance therewith and with this Order) hereby approved, and the Applicants and the Monitor are hereby authorized and directed to implement the SISP in accordance with the terms thereof and do all things as may be reasonably necessary to conduct and give full effect to the SISP and implement and carry out the terms thereof.
3. The Monitor (and their respective affiliates, partners, directors, employees, agents, consultants, advisors, experts, accountants, counsel and controlling persons) shall have no liability whatsoever for any and all losses, claims, damages or liabilities, of any nature or kind to any person or party for any act or omission related to the SISP, except to the extent such act or omission is the result of gross negligence or wilful misconduct of the Monitor.
4. The Applicants shall serve by courier, fax transmission, email transmission or ordinary post, a copy of this Order on all parties present at this Application and on all parties who are presently on the service list established in these proceedings and such service shall be deemed good and sufficient for all purposes.

Justice of the Alberta Court of King's Bench

Appendix “A”

PROCEDURES FOR THE SALE AND INVESTMENT SOLICITATION PROCESS

Preamble

- A. On February 22, 2024, Lynx Air Holdings Corporation and 1263343 Alberta Inc. (collectively, “Lynx Air”) commenced proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) before the Court of King's Bench of Alberta (the “**Court**”) pursuant to an initial order granted by the Court on the same day (collectively, as further amended or restated from time to time, the “**Initial Order**”). On March 1, 2024, the Court also issued a Sale Process Order (the “**Sale Process Order**”) that, among other things, authorized Lynx Air to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof.
- B. This SISP sets out the manner in which (i) binding bids for the purchase of the assets of Lynx Air, including *inter alia* the Aircraft Leases and the Boeing Agreement (collectively, the “**Assets**”) will be solicited from interested parties, (ii) any such bids received will be addressed, (iii) any Successful Bid (as defined below) will be selected, and (iv) Court approval of any Successful Bid will be sought.
- C. The SISP shall be conducted by Lynx Air under the oversight of FTI Consulting Canada Inc., in its capacity as court-appointed monitor (the “**Monitor**”).
- D. Parties who wish to have their bids considered shall participate in the SISP as conducted by Lynx Air and the Monitor in accordance with the present bidding procedures set out herein (the “**Bidding Procedures**”) governing the solicitation of offers or proposals for the acquisition of the Assets.

Defined Terms

1. Capitalized terms used in this SISP have the meanings given thereto in Appendix A.

Bidding Procedures

Opportunity

2. The SISP is intended to solicit interest in, and opportunities for one or more sales of the Assets (the “**Opportunity**”).
3. The Bidding Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning Lynx Air and the Assets, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder (as defined below) and the requisite approvals to be sought from the Court in connection therewith. Lynx Air and the Monitor shall conduct the SISP in the manner set forth herein.

Lynx Air, in consultation with the Monitor and the Interim Lender, may at any time and from time to time, modify, amend, vary or supplement the SISP or the Bidding Procedures, without the need for obtaining an order of the Court, provided that the Monitor determines that such modification, amendment, variation or supplement are useful in order to give

effect to the substance of the SISP, the Bidding Procedures, the Sale Process Order and the Initial Order.

The Monitor shall post on the Monitor's website, as soon as practicable, any such modification, amendment, variation or supplement to the Bidding Procedures and Lynx Air or the Monitor shall inform the bidders impacted by such modifications.

In the event of a dispute as to the interpretation or application of the SISP or Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute.

As more particularly set out herein, a summary of the key dates pursuant to the SISP are as follows:

<u>Event</u>	<u>Date</u>
1. <u>Approval of the SISP and Bidding Procedures by the Court</u>	March 1, 2024
2. <u>Monitor and Lynx Air to create list of Pre-Qualified Known Potential Bidders</u>	March 1, 2024
3. <u>Monitor to prepare the VDR</u>	By no later than March 4, 2024
4. <u>Monitor to distribute Teaser and NDAs to Pre-Qualified Known Potential Bidders</u>	By no later than March 8, 2024
5. <u>Binding Bid Deadline</u>	By no later than April 1, 2024, at 5:00 p.m. (Calgary Time)
6. <u>Auction (if required)</u>	By no later than April 5, 2024, at 5:00 p.m. (Calgary Time)
7. <u>Definitive documentation</u>	By no later than April 7, 2024
8. <u>Approval Application – Successful Bid(s)</u>	By no later than April 10, 2024
9. <u>Outside Date – Closing</u> Outside Date by which the Successful Bid must close	April 12, 2024

Solicitation of Interest: Notice of the SISP

4. As soon as reasonably practicable after the granting of the Sale Process Order, Lynx Air, with input from the Monitor, will prepare a list of potential bidders (the “**Pre-Qualified Known Potential Bidders**”) who may have interest in the Assets.
5. The Monitor shall identify potential buyers and investors.
6. By March 8, 2024, the Monitor will send a package to the Pre-Qualified Known Potential Bidders which includes (i) a process summary (“**Teaser**”); and (ii) a non-disclosure agreement (“**NDA**”).

Virtual Data Room

7. As soon as practicable, and only after reaching agreement with the Boeing and the Counterparties to the Aircraft Leases on appropriate and acceptable confidentiality protections and terms of access, a confidential virtual data room (the “**VDR**”) in relation to the Assets will be made available by the Monitor to each Pre-Qualified Known Potential Bidder who has executed an NDA with Lynx Air in accordance with paragraph 8 herein (and Boeing or any of the Counterparties to the Aircraft Leases as may be necessary). Lynx Air, in consultation with the Monitor, may establish or cause the Monitor to establish separate VDRs (including “clean rooms”), if Lynx Air reasonably determines that doing so would further compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information. Lynx Air, in consultation with the Monitor, may also limit the access to any confidential information in the VDR where Lynx Air reasonably determines that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Assets or their value.

Non-Disclosure Agreement

8. In order to participate in the SISP, and prior to the distribution of any confidential information to a Pre-Qualified Known Potential Bidder (including access to the VDR), such Pre-Qualified Known Potential Bidder must deliver to the Monitor an executed non-disclosure agreement in form and substance satisfactory to Lynx Air, and to Boeing, and to the Counterparties to the Aircraft Leases (as may be necessary) in consultation with the Monitor (each, an “**NDA**”), which shall enure to the benefit of any Successful Bidder (as defined below) that closes a transaction contemplated by its Successful Bid. Pursuant to the terms of the NDA to be signed by a Pre-Qualified Known Potential Bidder, each Pre-Qualified Known Potential Bidder will be prohibited from communicating with any other Pre-Qualified Known Potential Bidder regarding the Assets during the term of the SISP, without the consent of the Monitor, in consultation with Lynx Air. Prior to Lynx Air executing an NDA with any Pre-Qualified Known Potential Bidder, any Pre-Qualified Known Potential Bidder may be required to provide evidence, reasonably satisfactory to Lynx Air and to Boeing, in consultation with the Monitor, of its financial wherewithal to complete a transaction in respect of the Assets (either with existing capital or with capital reasonably anticipated to be raised prior to closing) in accordance with the key dates described above and/or to disclose details of their ownership and/or investors.

Binding Offers

9. Any Pre-Qualified Known Potential Bidder that wishes to make a formal offer with respect to the Assets shall submit a binding offer (a “**Binding Offer**”) not later than 5:00 p.m. (prevailing Central Standard Time) on April 1, 2024, or such other date or time as may be agreed by Lynx Air, with the consent of the Monitor (as may be extended the “**Binding Bid Deadline**”).
10. A Binding Offer will only be considered if it:
 - (a) has been received by the Binding Bid Deadline;

- (b) identifies the Assets of interest to the Pre-Qualified Known Potential Bidder;
- (c) if the Assets of interest include the Aircraft Leases, includes consent of the applicable lessors to the assignment to such Aircraft Lease to the Pre-Qualified Known Potential Bidder;
- (d) is not subject to any due diligence or financing condition;
- (e) is unconditional, other than upon the receipt of the Approval Order(s) (as defined below) and satisfaction of any other conditions expressly set forth in the Binding Offer;
- (f) does not provide for any break fee, expense reimbursement or similar type of payment;
- (g) contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein by no later than April 12, 2024 (the “**Outside Date**”);
- (h) contemplates that the Pre-Qualified Known Potential Bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid, is agreeing to refrain from and waive any assertion or request for reimbursement on any basis.

Selection of Successful Bid(s)

11. Lynx Air, in consultation with the Monitor and the Interim Lender, may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer.
12. Lynx Air and the Monitor will: (a) review and evaluate each Binding Offer with respect of, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the likelihood of the Pre-Qualified Known Potential Bidder ability to close a transaction and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; financial wherewithal to meet all commitments; and required governmental or other approvals), (iii) the likelihood of the Court’s approval of the Binding Offer, (iv) the net benefit to Lynx Air and its stakeholders, and (v) any other factors Lynx Air may deem relevant; and (b) identify the highest or otherwise best non-overlapping bids (the “**Successful Bid(s)**”). Any Successful Bid shall be subject to approval by the Court.
13. In the alternative, Lynx Air, in consultation with the Monitor, may: (a) continue negotiations with a selected number of Pre-Qualified Known Potential Bidders (collectively, the “**Selected Bidders**”) with a view to finalizing an agreement with one or more of the Selected Bidders and declaring such bids to constitute Successful Bids, or (b) conduct one or more auctions (the “**Auction(s)**”) to determine the highest or otherwise best non-overlapping Binding Offers, pursuant to Auction rules to be determined by Lynx Air, in consultation with the Monitor and the Interim Lender.

14. In the event no Pre-Qualified Known Potential Bidder submits Binding Offer, Lynx Air may, and in consultation with the Monitor and the Interim Lender, terminate the SISP.
15. The definitive documentation in respect of the Successful Bid must be finalized and executed no later than April 7, 2024, which definitive documentation shall be conditional only upon the receipt of the Approval Order(s) (as defined below) and the express conditions set out therein. In any event, the Successful Bid must be closed by no later than the Outside Date.

Approval of Successful Bid(s)

16. Lynx Air shall apply to the Court (the “**Approval Application**”) for one or more orders: approving the Successful Bid(s) and authorizing the taking of such steps and actions and completing such transactions as are set out therein or required thereby. The Approval Application will be held on a date to be scheduled by Lynx Air and confirmed by the Court upon application by Lynx Air, who shall use its best efforts to schedule the Approval Application by no later than April 10, 2024, subject to Court availability. With the consent of the Monitor and the Successful Bidder(s), the Approval Application may be adjourned or rescheduled by Lynx Air without further notice, by an announcement of the adjourned date at the Approval Application or in a notice to the service list of the CCAA Proceedings prior to the Approval Application. Lynx Air shall consult with the Monitor and the Successful Bidder regarding the application material to be filed by Lynx Air for the Approval Application.

Further Orders

17. At any time during the SISP, Lynx Air, or the Monitor may apply to the Court for advice and directions with respect to any aspect of this SISP and the Bidding Procedures including, but not limited to, the continuation of the SISP or with respect to the discharge of their powers and duties hereunder.

APPENDIX A DEFINED TERMS

“Aircraft Leases” means nine 12-year aircraft lease agreements and three engine lease agreements for three CFM LEAP-1B25 spare engines as more particularly described in paragraphs 70 and 71 of the Affidavit of Michael Woodward sworn on February 22, 2024 in the CCAA Proceedings..

“Approval Application” shall have the meaning set forth in paragraph 16.

“Approval Order(s)” shall have the meaning set forth in paragraph 16.

“Auction(s)” shall have the meaning set forth in paragraph 13.

“Bidding Procedures” shall have the meaning set forth in the preamble.

“Binding Offer” shall have the meaning set forth in paragraph 9.

“Boeing” means the Boeing Company.

“Boeing Agreement” means an agreement between Lynx Air and Boeing for the purchase 737 MAX aircraft.

“CCAA Proceedings” shall have the meaning set forth in the preamble.

“CCAA” shall have the meaning set forth in the preamble.

“Court” shall have the meaning set forth in the preamble.

“Initial Order” shall have the meaning set forth in the preamble.

“Interim Lender” means Indigo Northern Ventures LP.

“Monitor” shall have the meaning set forth in the preamble.

“NDA” shall have the meaning set forth in paragraph 6.

“Outside Date” shall have the meaning set forth in paragraph 10(g).

“Sale Process Order” shall have the meaning set forth in the preamble.

“Selected Bidders” shall have the meaning set forth in paragraph 13.

“SISP” shall have the meaning set forth in the preamble.

“Successful Bid” shall have the meaning set forth in paragraph 12.

“Successful Bidder” shall have the meaning set forth in paragraph 12.

“Teaser” shall have the meaning set forth in paragraph 6.

“VDR” shall have the meaning set forth in paragraph 7.

Schedule "D"

COURT FILE NUMBER 2401-02664

Clerk's Stamp

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 **ORDER**
(Restricted Court Access Order)

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 / 7048
Email: RVandemosselaer@osler.com / JTreleaven@osler.com
File Number: 1246361

DATE ON WHICH ORDER WAS PRONOUNCED: March 1, 2024

JUSTICE WHO MADE THIS ORDER: The Honourable Justice Whitling

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 Application, the Affidavit of Michael Woodward sworn February 28, 2024, and the Confidential Affidavit of Michael Woodward sworn February 28, 2024 (the “**Confidential Woodward Affidavit**”); **AND UPON** reading the First Report of FTI Consulting Canada Inc. in its capacity as monitor of the Applicants (the “**Monitor**”), filed February 28, 2024; **AND UPON** hearing the submissions of counsel for the Applicants, counsel for the Monitor, and any other counsel or other interested parties present; **AND UPON** reviewing the initial order granted in the within proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) by the Honourable Justice Gill on February 22, 2024;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Subject to further Order of this Honourable Court, the Confidential Woodward Affidavit shall be sealed on the Court file and shall not form part of the public record, notwithstanding Division 4, Part 6 of the *Alberta Rules of Court*, subject to further Order of this Court made on notice to the Applicants.
2. The Clerk of this Honourable Court shall file the Confidential Woodward Affidavit in a sealed envelope, and the Confidential Woodward Affidavit and envelope shall each have attached to them a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED
BY LYNX AIR HOLDINGS CORPORATION AND 1263343 ALBERTA
INC. DBA LYNX AIR WHICH IS SEALED PURSUANT TO THE
RESTRICTED COURT ACCESS ORDER ISSUED BY THE
HONOURABLE JUSTICE WHITLING ON MARCH 1, 2024.

3. Leave is hereby granted to any person, entity or party affected by this Order to apply to this Court for a further Order vacating, substituting, modifying, or varying the terms of this Order, with such application to be brought on notice to the Applicants and the Monitor.

Justice of the Alberta Court of King's Bench