

SQUIRE, SANDERS & DEMPSEY L.L.P.  
350 Park Avenue  
New York, New York 10022-6022  
Phone: 212.872.9800  
Fax: 212.872.9815  
Stephen D. Lerner (NY 2067841)  
Tim J. Robinson (OH 0046668)  
Christine M. Pierpont (OH 0051286)  
Nicholas J. Brannick (OH 0079642)

Attorneys for Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
:  
**In re:** :  
: **CHAPTER 11**  
**EOS AIRLINES, INC.** :  
: **CASE NO. 08-22581 (ASH)**  
**Debtor** :  
:  
-----X

**DEBTOR'S DISCLOSURE STATEMENT REGARDING PLAN OF LIQUIDATION  
UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

**OCTOBER 24, 2008**

**DISCLAIMER PURSUANT TO LOCAL BANKRUPTCY RULE 3017-1(b)**

**THIS IS NOT A SOLICITATION OF ACCEPTANCE OR  
REJECTION OF THE PLAN. ACCEPTANCES OR  
REJECTIONS MAY NOT BE SOLICITED UNTIL A  
DISCLOSURE STATEMENT HAS BEEN APPROVED BY  
THE BANKRUPTCY COURT. THIS DISCLOSURE  
STATEMENT IS BEING SUBMITTED FOR APPROVAL  
BUT HAS NOT BEEN APPROVED BY THE COURT**

SQUIRE, SANDERS & DEMPSEY L.L.P.  
/s/ Tim J. Robinson  
Stephen D. Lerner (NY 2067841)  
Tim J. Robinson (OH 0046668)  
Nicholas J. Brannick (OH 0079642)  
350 Park Avenue  
New York, New York 10022-6022  
Phone: 212.872.9800



Fax: 212.872.9815

*Counsel for the Debtor and Debtor-in-Possession*

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## INTRODUCTION AND SUMMARY

On April 26, 2008 (the “**Petition Date**”), Eos Airlines, Inc., a Delaware corporation (“**Debtor**”), filed its petition for relief under Chapter 11 of Title 11 of the Bankruptcy Code before the Bankruptcy Court commencing a Chapter 11 proceeding captioned *In re Eos, Inc.* and having case number 08-22582-ASH (the “**Chapter 11 Case**”).

The purpose of this Disclosure Statement is to provide the Debtor’s Creditors and Interest Holders with adequate information to make an informed judgment about the Debtor’s proposed plan of liquidation, attached hereto as **Exhibit A-1** (the “**Plan**”). This information includes, among other matters, a brief history of the Debtor, a summary of its Chapter 11 Case, a description of the Debtor’s assets and liabilities, a description of the Debtor’s liquidation during its Chapter 11 Case, and an explanation of how the Plan will function.

The Plan proposed is a liquidating plan. On the Effective Date of the Plan, the Liquidating Trustee will be appointed to liquidate all of the Debtor’s remaining non-cash assets, if any, and to distribute the Debtor’s cash assets, net of the costs of administration, to the Debtor’s creditors in accordance with the Bankruptcy Code and the Plan. The Debtor believes that the Plan is in the best interests of all holders of Claims against the Debtor’s estate. Accordingly, Creditors are encouraged to vote in favor of the Plan. Voting instructions are set forth in Article 3 of this Disclosure Statement. **To be counted, your ballot must be fully completed, executed and received by Kurtzman Carson Consultants, L.L.C. (the “Claims Agent”) no later than 5:00 p.m. Pacific Time on \_\_\_\_\_, 2008:**

EOS Airlines Claims Processing Center  
c/o Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, CA 90245

It is important that Creditors and Interest Holders read and carefully consider this Disclosure Statement and the Plan, and that Creditors vote promptly on the acceptance of the Plan. The Debtor believes that the transactions contemplated by the Plan will yield a recovery to Creditors greater than the return that could be achieved through other liquidation alternatives or liquidation under Chapter 7 of the Bankruptcy Code.

**YOU SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN IN ITS ENTIRETY BEFORE VOTING ON THE PLAN. THIS DISCLOSURE STATEMENT SUMMARIZES CERTAIN TERMS OF THE PLAN, BUT THE PLAN ITSELF IS THE GOVERNING DOCUMENT. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN CONTROL.**

If you have any questions concerning the procedures for voting or concerning your treatment under the Plan, please contact legal counsel to the Debtor, Tim J. Robinson, Squire, Sanders & Dempsey L.L.P., 41 South High Street, Suite 2000, Columbus, Ohio 43215, telephone number: 614.365.2700, facsimile number: 614.365.2499, or legal counsel to the Official Committee of Unsecured Creditors (the “**Unsecured Creditors’ Committee**” or “**Committee**”), Joseph M. Vann, Cohen, Tauber, Spievack & Wagner, L.L.P., 420 Lexington Avenue Suite

2400, New York, NY 10170, telephone number: 212.586.5800, facsimile number: 212.586.5095.

A SUMMARY DESCRIPTION OF THE CLASSIFICATION OF YOUR CLAIM OR EQUITY INTEREST AND THE TREATMENT PROPOSED UNDER THE PLAN ARE CONTAINED IN ARTICLE 2 OF THIS DISCLOSURE STATEMENT.

The Debtor reserves the right to amend, modify, or supplement the Plan at any time before the confirmation of the Plan, provided that such amendments or modifications do not materially alter the treatment of, or distributions to, Creditors under the Plan.

THE FINANCIAL PROJECTIONS CONTAINED IN THIS DISCLOSURE STATEMENT REPRESENT THE DEBTOR'S ESTIMATES OF FUTURE EVENTS BASED ON CERTAIN ASSUMPTIONS MORE FULLY DESCRIBED BELOW, SOME OR ALL OF WHICH MAY NOT BE REALIZED. NONE OF THE FINANCIAL ANALYSES CONTAINED IN THIS DISCLOSURE STATEMENT ARE CONSIDERED TO BE A "FORECAST" OR "PROJECTION" AS TECHNICALLY DEFINED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS. THE USE OF WORDS SUCH AS "ANTICIPATE," "SHOULD," "FORECAST," "PROJECT," OR "PROJECTION" WITHIN THIS DISCLOSURE STATEMENT RELATE TO THE BROAD EXPECTATIONS OF FUTURE EVENTS OR MARKET CONDITIONS AND QUANTIFICATIONS OF THE POTENTIAL RESULTS OF OPERATIONS UNDER THOSE CONDITIONS.

ALL FINANCIAL INFORMATION PRESENTED IN THIS DISCLOSURE STATEMENT WAS PREPARED BY THE DEBTOR WITH THE ASSISTANCE OF ITS PROFESSIONAL FINANCIAL ADVISORS. EACH CREDITOR IS URGED TO REVIEW THE PLAN IN FULL BEFORE VOTING ON THE PLAN TO ENSURE A COMPLETE UNDERSTANDING OF THE PLAN AND THIS DISCLOSURE STATEMENT.

THIS DISCLOSURE STATEMENT IS INTENDED FOR THE SOLE USE OF CREDITORS, INTEREST HOLDERS AND OTHER PARTIES IN INTEREST AND FOR THE SOLE PURPOSE OF ASSISTING THEM IN MAKING AN INFORMED DECISION ABOUT THE PLAN. NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS IN CONJUNCTION WITH THE SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT OR IN THE BALLOTS. IF GIVEN OR MADE, ANY SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE DEBTOR.

THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION TO PERMIT CREDITORS TO VOTE ON THE PLAN. APPROVAL OF THE LEGAL ADEQUACY OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT IS NOT A CERTIFICATION BY THE BANKRUPTCY COURT AS TO THE TRUTH OR ACCURACY OF THE FACTUAL MATTERS THAT ARE CONTAINED IN THIS DISCLOSURE STATEMENT.



THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT.

CAPITALIZED TERMS USED BUT NOT DEFINED IN THIS DISCLOSURE STATEMENT HAVE THE DEFINITIONS GIVEN TO THEM IN THE PLAN.

THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS STRONGLY URGE YOU TO VOTE FOR THE PLAN AS THEY BELIEVE THAT THE PLAN WILL PROVIDE FOR A LARGER DISTRIBUTION TO HOLDERS OF CLAIMS THAN WOULD OTHERWISE RESULT IF AN ALTERNATIVE RESTRUCTURING PLAN WERE PROPOSED OR THE DEBTOR'S CHAPTER 11 CASE WERE CONVERTED TO A PROCEEDING UNDER CHAPTER 7 OF THE BANKRUPTCY CODE.

**ARTICLE 1**  
**SUMMARY OF CLASSIFICATION**

As set forth above, the Plan provides for the liquidation of the Debtor's remaining assets and distribution of the proceeds and all cash on hand to Creditors. Interest Holders will receive no distribution under the Plan and all equity interests in the Debtor will be cancelled. Set forth below is a summary of the classification and treatment of Claims and Equity Interests in the Debtor:

<b><u>Class</u></b>	<b><u>Title</u></b>	<b><u>Estimated Recovery</u></b>	<b><u>Entitled To Vote</u></b>	<b><u>Distributions</u></b>
Class 1	Allowed Secured Claims	100%	No	On the Effective Date, either (A) the Collateral; (B) if the value of the Collateral exceeds the value of the Allowed Secured Claim, proceeds from the sale of the Collateral in the amount of any Allowed Secured Claim; (C) such other treatment as necessary for holder to be unimpaired.
Class 2	Allowed Priority Unsecured Non-Tax Claims	100%	No	Cash on the Effective Date.
Class 3	Allowed Unsecured WARN Act Claims	100%	Yes	Following the Effective Date, distribution of 35.5% of funds available for distribution to Class 4 General Unsecured Claims on each Distribution Date. Governed by the WARN Act Settlement Agreement.
Class 4	Allowed General Unsecured Claims	Approximately 1.3% to 6.0%	Yes	Pro Rata distribution from Available Cash on hand on each Distribution Date.
Class 5	Allowed Equity Interests and Equity Related Claims	0%	No	No distribution. Equity Interests to be cancelled.

As described more fully in this Disclosure Statement, the Plan provides for the liquidation of all of the Debtor's remaining assets and the cancellation of all of the Debtor's equity securities. Under the Plan, the Liquidating Trustee will be responsible for payments to

holders of all Unclassified Claims and Allowed Claims in Classes 1-4. Set forth in the following Article 2 is a summary of the classification and treatment of Claims and Interests under the Plan.

The Plan divides the Claims of known Creditors and Interests Holders into Classes and sets forth the treatment afforded to each Class. The classification of Claims and the distributions to be made under such classification takes into account the relative priorities of Claims, Equity Interests, and Equity Related Claims. The Debtor believes that it has classified all Claims, Interests, and Equity Related Claims in compliance with the provisions of Section 1122 of the Bankruptcy Code.

If the Plan is confirmed by the Bankruptcy Court, each holder of an Allowed Claim, Allowed Equity Interest or Equity Related Claim will receive the same treatment as all holders of other Allowed Claims, Allowed Equity Interests or Equity Related Claims in the same Class, regardless of whether a particular holder voted to accept the Plan. Moreover, upon confirmation, the Plan will be binding on all Creditors and Interest Holders regardless of whether such Creditors or Interest Holders voted to accept the Plan.

In accordance with Section 1123(a)(1) of the Bankruptcy Code, all Claims of Creditors and Interest Holders (except those Unclassified Claims receiving treatment as set forth in Article 2) are placed in the Classes described below for all purposes, including voting on, confirmation of, and distribution under, the Plan:

## **ARTICLE 2**

### **TREATMENT OF CLAIMS AND EQUITY INTERESTS**

The following describes the Plan's classification of Claims against the Debtor and Equity Interests in the Debtor and the treatment the holders of Allowed Claims and Allowed Equity Interests will receive under the Plan. The treatment of Claims and Equity Interests set forth below is consistent with the requirements of Section 1129(a)(9)(A) of the Bankruptcy Code.

**2.1 Treatment of Unclassified Claims Under the Plan.** As provided in Section 1123(a)(1) of the Bankruptcy Code, Allowed Administrative Claims and Allowed Priority Unsecured Tax Claims against the Debtor are not classified for purposes of voting on, or receiving Distributions under, the Plan. Holders of such Claims are not entitled to vote on the Plan. All such Claims are instead treated separately in accordance with Section 2 of the Plan and in accordance with the requirements set forth in Section 1129(a)(9)(A) of the Bankruptcy Code.

**(a) Payment of Administrative Claims and Professional Fees.** Allowed Administrative Claims and Allowed Professional Fees shall be paid by the Liquidating Trustee from Trust Cash within ten (10) days after the Allowance Date.

**(b) Payment of Allowed Priority Unsecured Tax Claims.** Any Allowed Priority Unsecured Tax Claim shall, at the Liquidating Trustee's discretion, either: (i) be paid in full by the Liquidating Trustee from Trust Cash within ten (10) days from the Allowance Date, or (ii) receive in regular installments of Cash, the total value of such Claim as of the Effective Date over a period of not more than five years from the Petition Date.

(c) **U.S. Trustee Fees.** All fees owing to the United States Trustee pursuant to 28 U.S.C. § 1930 shall be paid by the Debtor as such fees may become due for periods up to and including the Effective Date. Following the transfer of all Estate Assets to the Trust on the Effective Date, no further U.S. Trustee Fees shall be due or payable from the Trust. The amount of not less than \$10,000 shall remain with the Debtor following the Effective Date to satisfy all U.S. Trustee Fees until the Chapter 11 Case is closed or dismissed, with any balance of this amount remaining in the Debtor's estate reverting to the Trust upon the date the Chapter 11 Case is closed or dismissed.

**2.2 Bar Dates for Unclassified Claims.** The Plan proposes the establishment of the following bar dates for certain Unclassified Claims:

(a) **Administrative Claim Bar Date.** All requests for payment of Administrative Claims (except for Professional Fees) must be filed with the Bankruptcy Court by the Administrative Claim Bar Date and served on the Debtor, Debtor's Counsel, Committee Counsel, and the Liquidating Trustee, or the holders thereof shall be forever barred from asserting such Administrative Claims and shall not be entitled to any Distributions under the Plan on account of such Administrative Claim.

(b) **Professional Fee Bar Date.** All requests for payment of Professional Fees arising on or before the Effective Date shall be filed with the Bankruptcy Court and served on the Debtor, Debtor's Counsel, Committee Counsel, and the Liquidating Trustee within thirty (30) days following the Effective Date. Any Professional Fees for which an application or request for payment is not filed within that time period shall be deemed discharged and forever barred, and shall not be entitled to any Distribution under the Plan.

**2.3 Class 1 – Secured Claims.** Class 1 consists of all Secured Claims.

(a) **Impairment and Voting.** Class 1 is unimpaired by the Plan; consequently, all holders of Allowed Claims in Class 1 are deemed to accept the Plan and are not entitled to vote on the Plan.

(b) **Treatment.** Each holder of an Allowed Secured Claim shall receive (i) the collateral securing such Claim; (ii) proceeds in the amount of such Allowed Secured Claim, to the extent the value of the collateral exceeds the Allowed Secured Claim; or (iii) such other consideration as is necessary to render such Allowed Secured Claim unimpaired.

(c) **Sale of Collateral.** The Liquidating Trustee may sell for Cash any Trust Asset serving as collateral for an Allowed Secured Claim. Any sale proceeds remaining after full satisfaction of the Allowed Secured Claim shall remain a Trust Asset and shall be free and clear of all interests, Liens, Claims, and encumbrances.

**(d) Transfer of Collateral.** Except as otherwise provided in Section 4.1 of the Plan, the Liquidating Trustee may satisfy any Allowed Secured Claim by transferring and conveying any Trust Asset serving as collateral for such Claim to the holder of the Allowed Secured Claim to the extent of such Claim. Any collateral remaining after satisfaction of the Allowed Secured Claim shall remain a Trust Asset and shall be free and clear of any interests, Liens, Claims, and encumbrances.

**(e) Retention of Lien.** Except as otherwise provided in the Plan, each holder of an Allowed Secured Claim shall retain the Liens on Estate Property securing such Allowed Secured Claim until such Allowed Secured Claim is satisfied in accordance with the Plan or until such earlier date agreed to by the holder of the Allowed Secured Claim and the Liquidating Trustee. Upon satisfaction of an Allowed Secured Claim, whether in Cash or in kind, such Liens shall be deemed automatically released, and any Trust Asset formerly securing such Allowed Secured Claim shall be free and clear of all interests, Liens, Claims and encumbrances. Holders of satisfied Secured Claims will execute all necessary Lien releases and file such releases with the appropriate Governmental Units or deliver such releases to the Liquidating Trustee within seven (7) business days of receiving satisfaction or notice thereof.

**(f) Deficiency Claim.** If the holder of an Allowed Secured Claim has an Unsecured Deficiency Claim, the Unsecured Deficiency Claim shall be treated under the Plan as a Class 4 General Unsecured Claim or Priority Unsecured Tax Claim, as determined by the Bankruptcy Court or consented to by the holder of the Allowed Secured Claim and the Liquidating Trustee.

**(g) Interest.** Pursuant to Section 506(b) of the Bankruptcy Code, holders of Allowed Secured Claims secured by Collateral, the value of which exceeds the allowed amount of such Secured Claim, may receive interest from the Allowance Date at the Federal Judgment Rate. All holders of Allowed Secured Claims seeking interest under Section 506(b) of the Bankruptcy Code must notify the Debtor, Debtor's Counsel, Committee Counsel, and the Liquidating Trustee on or before the Administrative Claim Bar Date of the amount of such interest demanded or be forever barred from asserting a right to such interest.

**2.4 Class 2 - Allowed Priority Non-Tax Claims.** Class 2 consists of all Allowed Priority Non-Tax Claims.

**(a) Impairment and Voting.** Class 2 is unimpaired by the Plan; consequently, all holders of Allowed Claims in Class 2 are deemed to accept the Plan and are not entitled to vote on the Plan.

**(b) Treatment.** Holders of Allowed Class 2 Claims shall be paid by the Liquidating Trustee from Trust Cash within ten (10) days after the Allowance Date.

**2.5 Class 3 - Allowed Unsecured WARN Act Claims.** Class 3 consists of all Allowed Unsecured WARN Act Claims.

(a) **Impairment and Voting.** Class 3 is impaired by the Plan, and all holders of Allowed Unsecured WARN Act Claims are entitled to vote on the Plan, except as otherwise provided by contract.

(b) **Deemed Acceptance.** Pursuant to the terms of the WARN Act Settlement Agreement, holders of Allowed Unsecured WARN Act Claims are deemed to have voted in favor of the Plan.

(c) **Treatment.** Class 3 Allowed Unsecured WARN Act Claims shall be treated in accordance with the terms of the WARN Act Settlement Agreement.

**2.6 Class 4 – General Unsecured Claims.** Class 4 consists of all General Unsecured Claims.

(a) **Impairment and Voting.** Class 4 is impaired by the Plan, and all holders of Allowed General Unsecured Claims are entitled to vote on the Plan, except as otherwise provided by contract or the Bankruptcy Code.

(b) **Treatment.** Each holder of an Allowed General Unsecured Claim in Class 4 will receive its Pro Rata share of Available Cash on each Distribution Date.

**2.7 Class 5 – Equity Interests and Equity Related Claims.** Class 5 consists of all Equity Interests, and Equity Related Claims.

(a) **Equity Interests.** As of the Effective Date, all Equity Interests in the Debtor shall be cancelled, terminated, extinguished and void. Interest Holders will neither receive nor retain any property on account of their Equity Interests under the Plan, are deemed to reject the Plan, and are not entitled to vote to accept or reject the Plan.

(b) **Equity Related Claims.** Pursuant to Section 510(b) of the Bankruptcy Code, all Equity Related Claims are subordinated to all Unclassified Claims and Allowed Class 1-4 Claims. Because Class 4 Claims will not be satisfied in full, holders of Equity Related Claims will likely receive no Distribution under the Plan and are, therefore, deemed to have rejected the Plan.

### **ARTICLE 3 VOTING AND CONFIRMATION PROCEDURES**

**3.1 Enclosures.** This Disclosure Statement is accompanied by copies of the following: (a) the Plan, attached as **Exhibit A-1** to this Disclosure Statement; (b) an Order of the Bankruptcy Court approving, among other things, the Disclosure Statement under Section 1125 of the Bankruptcy Code and setting the Confirmation Hearing attached as **Exhibit A-2**; (c) a Ballot to accept or reject the Plan, the form of which is attached as **Exhibit A-3**; and (d) a letter

of recommendation from the Official Committee of Unsecured Creditors recommending that all holders of General Unsecured Claims vote to accept the Plan attached as **Exhibit A-4**.

**3.2 Ballots.** The appropriate form of Ballots are to be used by holders of Claims in Class 4. Holders of Unclassified Claims and Claims in Classes 1 and 2 are unimpaired under the Plan and are deemed to have accepted the Plan without voting. Holders of Claims in Class 3 are deemed to have accepted the Plan and holders of Equity Interests and Equity Related Claims in Class 5 are deemed to have rejected the Plan.

**3.3 Who May Vote.** Under the Bankruptcy Code, impaired Classes of Claims or Equity Interests are entitled to vote to accept or reject a plan of reorganization. A Class that is not impaired under a plan is deemed to have accepted a Plan and does not vote. A Class is “impaired” under the Bankruptcy Code when the legal, equitable, and contractual rights of the holders of Claims or Equity Interests in that Class are modified or altered. For purposes of the Plan, and in accordance with the Bankruptcy Code, holders of Claims in Class 4 are impaired and Class 4 is the only Class entitled to vote on the Plan.

If, however, an objection is filed by the Debtor with respect to your Claim, you will have the responsibility to request that the Bankruptcy Court temporarily grant allowance of your Claim for purposes of voting on the Plan. Rule 3018 of the Federal Rules of Bankruptcy Procedure provides that the Bankruptcy Court after notice and hearing may temporary allow the Claim in an amount which the Bankruptcy Court deems proper for the purpose of accepting or rejecting the Plan. If an objection is filed by the Debtor with respect to your Claim, you are urged to seek the assistance of an attorney with respect to this matter.

**3.4 Voting Instructions.** All votes to accept or reject the Plan must be cast by using the appropriate form of Ballot enclosed with this Disclosure Statement. No votes other than ones using such Ballots will be counted, except to the extent the Bankruptcy Court orders otherwise. The Bankruptcy Court has set \_\_\_\_\_ as the Voting Record Date under the Plan. The Voting Record Date is the date for the determination of record holders of Claims entitled to receive a copy of this Disclosure Statement and vote, using appropriate Ballots, to accept or reject the Plan. All Ballots must be actually received by the Claims Agent by 5:00 p.m. Pacific Time, on \_\_\_\_\_ (the “Voting Deadline”), unless the Bankruptcy Court extends such date prior to the Voting Deadline.

For your vote to count, your Ballot must be properly completed according to the voting instructions on the Ballot and received no later than the Voting Deadline by the Claims Agent. Any Ballot not indicating an acceptance or rejection will be deemed an acceptance of the Plan.

For questions about voting procedures, the amount of your Claim, or the packet that you received, please contact the Claims Agent:

Karen M. Wagner  
Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, CA 90245  
Tel: 310.823.9000

Fax: 310.751.1845  
[www.kcellc.com](http://www.kcellc.com)

If you have any questions concerning the Plan, please contact:

Tim J. Robinson  
Squire, Sanders & Dempsey L.L.P.  
41 South High Street, Suite 2000  
Columbus, Ohio 43215  
Tel: 614.365.2700  
Fax: 614.365.2499

**3.5 Acceptance or Rejection of the Plan.** Under the Bankruptcy Code, a class of claims entitled to vote is deemed to have accepted a plan if it is accepted by creditors in such class who, of those actually voting on the plan, hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class. A class of equity interests entitled to vote is deemed to have accepted the plan if it is accepted by holders of equity interests who hold at least two-thirds in amount of the equity interests of such class that have actually voted on the plan.

If a plan is not accepted by all impaired classes of allowed claims, the plan may still be confirmed by a bankruptcy court under Section 1129(b) of the Bankruptcy Code if: (a) the plan has been accepted by at least one impaired class of claims; and (b) a bankruptcy court determines, among other things, that the plan “does not discriminate unfairly” and is “fair and equitable” with respect to each non-accepting impaired class (the “**Cramdown Provisions**”). If the Plan is not accepted by all Impaired Classes of Allowed Claims or Equity Interests, the Debtor reserves the right to ask the Bankruptcy Court to confirm the Plan under the Cramdown Provisions.

**3.6 Confirmation Hearing; Objections.** Section 1128(a) of the Bankruptcy Code requires a bankruptcy court, after notice, to hold a confirmation hearing. Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of a plan. Under Section 1128 of the Bankruptcy Code and Rule 3017(c) of the Bankruptcy Rules, the Bankruptcy Court has scheduled the Confirmation Hearing before the Honorable Adlai S. Hardin, Courtroom 520, 300 Quarropas Street, White Plains, NY 10601-4140 at \_\_\_\_\_ Eastern Time on \_\_\_\_\_. A notice (the “**Confirmation Hearing Notice**”) setting forth the time and date of the Confirmation Hearing has been included along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of such adjourned hearing date by the Bankruptcy Court in open court at such hearing.

Any objection to confirmation of the Plan must be in writing, must comply with the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, and must be filed and served as required in the Confirmation Hearing Notice.



## ARTICLE 4

### BACKGROUND AND EVENTS PRECIPITATING THE CHAPTER 11 FILING

#### **4.1 Overview of the Debtor's History and Business Operations.**

Eos was incorporated as a Delaware corporation on April 8, 2003 and was a United States certified scheduled international passenger airline that provided air transportation between the United States and the United Kingdom. As of the Petition Date, Eos provided single class premium service between New York's John F. Kennedy International Airport ("**JFK**") and London's Stansted Airport ("**Stansted**") using four uniquely configured Boeing 757 aircraft containing 48 seats (the "**Low-Density Aircraft**"). Eos also provided charter service using the Low-Density Aircraft and a Boeing 757 with a more conventional two-class cabin configuration. Eos commenced flight operations in October of 2005. Prior to that, Eos was in a pre-operating and development stage, which included obtaining an operating certificate and various regulatory approvals, raising capital, acquiring aircraft and spare parts, recruiting and training flight personnel, establishing systems and building a business strategy.

As of the Petition Date, Eos employed approximately 458 employees, of which 118 were stationed at the Debtor's headquarters in Purchase, New York, 297 were stationed at JFK, and 43 were stationed at Stansted.

Also as of the Petition Date, Eos leased seven aircraft from three lessors. Three aircraft were leased from International Lease Finance Corporation ("**ILFC**"), three aircraft were subleased from Compania Mexicana de Aviacion, S.A. de C.V. ("**Mexicana**"), and one aircraft was leased from Wells Fargo Bank Northwest, National Association ("**Wells Fargo**"), not in its individual capacity but solely as owner trustee. The aircraft leased from Wells Fargo was, in fact, owned by Aircastle Limited ("**Aircastle**"). Four of the aircraft were configured as Low-Density Aircraft, one of the aircraft had a standard high-density 757 configuration and two of the aircraft were in Mexico City for retro-fitting to Low-Density Aircraft, including one aircraft subleased from Mexicana and the aircraft leased from Aircastle.

#### **4.2 History of Financing and Operating Losses**

Throughout its existence, Eos' operations and losses were funded primarily through equity financing resulting in the issuance of one series of common stock and four series of convertible preferred stock: Class A Convertible Preferred Stock, Class B Convertible Preferred Stock, Class C Convertible Preferred Stock, and Class D Convertible Preferred Stock.

On October 27, 2006, Eos completed a private placement of \$75 million to certain institutional and individual accredited investors for 7,031,250 shares of Class C Convertible Preferred Stock, a new class of stock, at \$10.67 per share. The immediate proceeds of the private placement, \$65 million, were used to satisfy the principal and capitalized interest on a revolving credit facility of \$22.2 million and costs of issuance. The balance of the proceeds were used for working capital to support future growth. The Company received the final \$10 million of the \$75 million subscribed in January 2007.

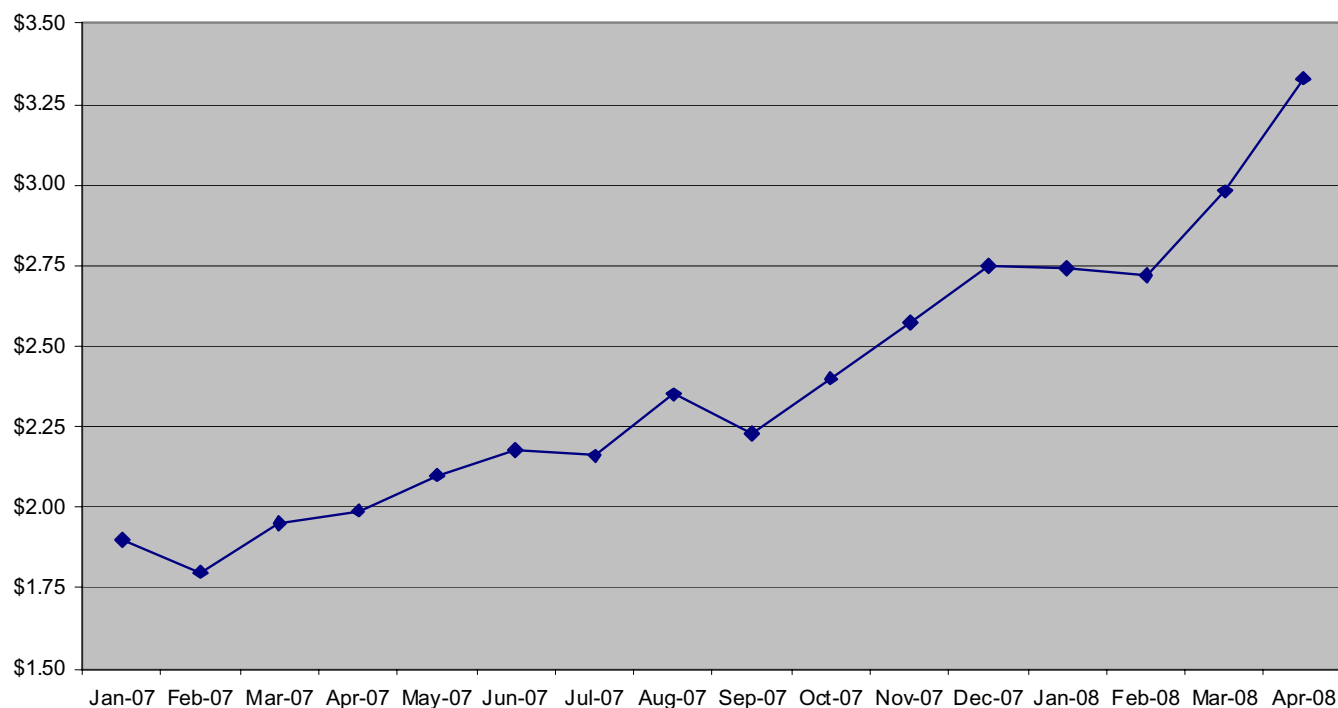
Most recently, on August 17, 2007, Eos closed a private placement of \$50 million to certain individual accredited investors for 8,559,540 shares of Class D-1 Convertible Preferred

Stock at \$5.84 per share. Half of the proceeds were received at closing and the remainder was paid by September 27, 2007. Despite obtaining the Class D-1 financing, Eos management, its board of directors (the “**Board**”) and its shareholders knew, based on Eos’ projections and modeling, that an additional \$50 million in financing would be necessary by April of 2008 in order to continue executing Eos’ business plan and Eos promptly started efforts to obtain an additional round of fundraising.

For the years ended December 31, 2005, December 31, 2006 and December 31, 2007, Eos generated revenues of approximately \$1 million, \$36 million and \$85 million, respectively. For these same periods the Debtor realized operating losses of approximately \$37 million, \$67 million and \$52 million, respectively and used approximately \$32 million, \$51 million and \$42 million in cash due to operating activities. For the first three months of 2008, Eos generated total revenues of approximately \$25 million, incurred an operating loss of approximately \$17.3 million and used cash of approximately \$50 million.

The Debtor’s operating losses and use of cash accelerated between the end of fiscal 2007 and the end of the first three months of 2008 due to several factors, including an unprecedented increase in jet fuel prices and the loss of significant business as investment bankers and other professionals stopped traveling due to the precipitous decline in the market for mergers and acquisitions in both the United States and United Kingdom. As the following table shows, between April 2007 and April 2008, Eos’ total jet fuel prices increased by 67.3%.

**Eos Airlines Jet Fuel Total Cost Per Gallon**



Source: Bureau of Transportation Statistics.

### **4.3     Efforts to Raise Additional Capital**

Eos' last financing efforts commenced shortly after the closing of the Class D Preferred Stock financing in August of 2007, and Eos was engaged in serious discussions with possible financing sources as early as September and October of 2007. One possible source, a hedge fund, presented a term sheet to Eos, but the parties were unable to come to agreement after discussions throughout September and October of 2007.

During the months of November and December 2007, Eos engaged in extensive efforts to launch a route between London and Dubai and another between Newark and London, and these routes were announced to the public on February 11, 2008. Simultaneously, Eos was engaged in preliminary discussions with various parties regarding the structure and form of the new round of financing, and commenced discussions with investment banks regarding leading a fundraising effort. Furthermore, Eos was engaged in preliminary discussions with other airlines regarding possible strategic transactions that may have eliminated the need for additional financing or changed the environment for obtaining such financing.

At the January 23, 2008 Board meeting, the Board authorized the company to engage Jefferies & Company, Inc. ("**Jefferies**"), a full-service investment bank, and SkyWorks Capital, LLC ("**SkyWorks**"), a specialty investment advisor in the airline industry, and Eos and those entities worked over the following weeks to finalize the engagement, prepare investor materials and investment models, and evaluate the investment security to be offered.

Throughout February and March of 2008, Eos pursued various avenues to obtain financing and expand its business model and base. Specifically, on or about March 7, 2008, Eos engaged Jefferies to raise up to \$50 million for Eos. Additionally, Eos was in direct discussions with Silkroute, an entity that was contemplating making an investment of at least \$50 million in Eos and also potentially creating a joint venture in the Gulf Cooperation Council ("**GCC**") region to own and operate an Eos-branded airline and pay licensing and various start-up and management fees to Eos. Furthermore, Eos was simultaneously in discussions with Addax Bank, a Bahraini bank, regarding Addax Bank leading an effort to raise funds from its clients for Eos and the possible formation of an Eos-branded GCC-based airline to be owned by Addax Bank clients that would obtain various services from Eos for a fee, and license Eos' brand and various intellectual property for a licensing fee. This GCC-based initiative was designed to be supportive of Eos' efforts to raise capital. Addax Bank was the investment bank involved in placing Series D Preferred Stock with Rizon United Corporation ("**Rizon**"), a Cayman Islands entity controlled by GCC interests, representing a 23% ownership interest in Eos.

During March of 2008, Eos' management inquired of its institutional and major stockholders regarding participation in another round of equity financing through a Class E preferred share offering. All declined except Rizon, though Parrish Capital Advisers, LLP, which held less than 5% of Eos' shares, subsequently indicated it would participate up to its pro rata share of the offered security. Rizon consistently stated that it would acquire its pro rata share of the offering. During the end of March, 2008 and beginning of April, 2008, Jefferies and Jack Williams, Eos' former chief executive officer, made presentations regarding an investment in convertible debt to various possible investors, including: Harbinger Capital Investments, LLC, a Bahraini entity; Guggenheim Partners LLC; Avenue Capital Group; Highland Capital Partners;

Indigo and Deutsche Bank. Furthermore, Eos had various discussions with Airline Partner Associates/TransPacific Airlines and its investors regarding an investment in a to-be-created Class E Preferred Stock, including discussions on a proposed term sheet.

Efforts to raise capital from new sources proved unsuccessful as the airline industry fell victim to rising fuel costs. While Eos was attempting to raise capital, the markets witnessed the shut down and bankruptcy of several airlines, including MAXjet - one of the Debtor's primary competitors - on December 24, 2007, Aloha Airlines on March 20, 2008, ATA Airlines on April 2, 2008 and Skybus Airlines on April 4, 2008. On April 10, 2008, Frontier Airlines sought bankruptcy protection in order to reorganize. Finally, on May 30, 2008, just one month after the Petition Date, Eos' other primary competitor, Silverjet, shut down.

On April 18, 2008, Eos and Dawn Finance Co. ("**Dawn**"), an affiliate of Rizon, entered into a term sheet setting forth the main terms for Dawn to make a \$50 million investment in Eos. However, during the afternoon of Friday, April 25, 2008, Dawn unexpectedly informed Eos that it was terminating the term sheet. Eos attempted to negotiate an alternative transaction structure with Dawn throughout the evening on April 25, 2008 and during the morning of April 26, 2008. On Saturday, April 26, 2008, Dawn indicated that it had no interest in pursuing a transaction with Eos.

#### **4.4 Bankruptcy Preparation and Filing**

In late March of 2008, Eos' management realized that, if it was unable to find the additional \$50 million in financing, the company would likely run out of cash by May or June and that a bankruptcy filing would be necessary. As a result, Eos retained both restructuring counsel and financial advisors to assist in the process of analyzing possible reorganization scenarios, while at the same time seeking the necessary financing.

During the first week of April, Eos management and the company's restructuring advisors began the process of determining when Eos would likely need to seek relief under the Bankruptcy Code if the necessary financing was not obtained. Management's stated goal was to accomplish an orderly wind-down - a "soft landing" - with sufficient post-petition flying to avoid the "slam down" scenario, where passengers and employees are simply stranded when the airline abruptly ceases all flying. Initially, management and its advisors believed that filing a bankruptcy petition on April 19, 2008 would allow for sufficient post-petition flying to accomplish the goal of a "soft landing."

By April 16, 2008, Eos believed that it had a deal in principle in place with Rizon through its affiliate, Dawn. As a result, Eos' management decided to delay any potential bankruptcy filing until April 22, 2008. At this time, Eos' management and financial advisors also realized that Eos would not be able to continue flying for two to three weeks as anticipated after a bankruptcy filing on April 22, 2008 and would need to cease operations on April 28, 2008.

Pre-petition efforts to obtain concessions from Eos' aircraft lessors prompted preemptory lease termination notices from all three lessors. Specifically, Eos received termination notices from ILFC and Mexicana on April 16, 2008 and a termination notice from Aircastle on April 17,

2008. Each of the termination notices asserted various defaults or events of default under the leases, all of which Eos denied. Eos' former chief executive officer met with a senior vice president of ILFC on April 18, 2008. Following this meeting, both ILFC and Mexicana agreed to withdraw their termination notices. Aircastle continued to assert that events of default had occurred, which Eos disputed.

On April 19, 2008, Eos received a signed term sheet from Dawn. Around this time, most bankruptcy preparation efforts were suspended in order for the Debtor and its advisors to respond to due diligence requests received from Dawn. However, as indicated above, on April 25, 2008, Dawn abruptly and unexpectedly terminated the term sheet. Eos' desperate efforts to restructure the terms of a transaction with Dawn proved unsuccessful. During a Board call on Saturday, April 26, 2008, the Board authorized Eos' management to seek relief under Chapter 11 of the Bankruptcy Code. Eos' Chapter 11 petition was filed on the evening of April 26, 2008 before the Bankruptcy Court.

**4.5 Financial Statements.** Attached as **Exhibit B** to this Disclosure Statement are income statements and balance sheets of the Debtor for the prior fiscal years ending December 31, 2006 and 2007. Unless otherwise indicated, this information is un-audited.

**4.6 Current Directors and Executive Officers.**

(a) **Directors.** Listed below are the names of each director of Debtor (each a "**Director**"), the entity represented by such Director, and the year of commencement of each person's term as a Director of the Debtor. As of the Effective Date of the Plan, the Debtor's current Directors will no longer serve in their appointed capacities.

Name	Entity Represented	Year of Commencement of Term
Jake Mizrahi	Golden Gate Capital	2004
Jesse Rogers	Golden Gate Capital	2004
Ronald Graves	Maveron	2005
David Pottruck	Red Eagle Ventures	2005
G. Leonard Baker	Sutter Hill Ventures	2004
David Coltman	Independent Director	2007
Ghassan Bin Abdullah Al Binali	Rizon United Corp.	2007
William Curtis	Rizon United Corp.	2007
Ghanim Bin Saad Alsaad	Rizon United Corp.	2007
Charles Merritt	Parish Capital Advisors, LLP	2008
Jack Williams	N/A (Eos CEO)	2007
David Dominik	Golden Gate Capital	2004

(b) **Executive Officers.** All of the Debtor's executive officers were either terminated or voluntarily resigned from the Debtor's employ no later than June 9, 2008. On June 12, 2008, the Board appointed Caralyn Galletta as Chief

Responsible Officer and Michael Gumiel as Vice Chief Responsible Officer and vested these individuals with all authority necessary to complete the Debtor's liquidation and to propose a plan of liquidation. The following table provides a list of the Debtor's executive officers (the "**Executives**") as of the Petition Date.

<b>Name</b>	<b>Title</b>	<b>Year of Commencement of Term</b>
Jack Williams	President and Chief Executive Officer	2007
Thomas Martin	Chief Financial Officer	2008
Andrew "Gil" Morgan	Chief Operations Officer	2004
Holly Nelson	Vice President Finance and Controller	2007
Dave Spurlock	Founder and Chief Commercial Officer	2004
John Turnipseed	Chief People & Culture Officer	2007

**(c) Capital Structure**

**(i) General.** The Debtor is a Delaware corporation and the Debtor was governed by Articles of Incorporation and By-Laws, as amended, under Delaware law.

**(ii) Stock.** The Debtor was privately owned and had one series of common stock and four series of preferred stock issued and outstanding.

**ARTICLE 5  
SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE**

**5.1 Commencement of the Chapter 11 Case.** On the Petition Date, the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Chapter 11 Case was assigned to the Honorable Adlai S. Hardin, United States Bankruptcy Court for the Southern District of New York (White Plains). Since the Petition Date, the Debtor has continued to operate its business and manage its property as debtor-in-possession under Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee has been appointed in the Chapter 11 Case.

**5.2 Commencement of United Kingdom Ancillary Proceeding.** On April 28, 2008, the Debtor also commenced ancillary UNCITRAL proceedings (the "**UK Proceedings**") in the United Kingdom (the "**UK**") under the local equivalent of Chapter 15 of the Bankruptcy Code via Part 2 of the UK Insolvency Act 1986. Andrew Stoneman and Geoff Bouchier (of Menzies Corporate Restructuring), were appointed as administrators (the "**Administrators**") by the Supreme Court of England and Wales, court reference 3439/08. The purpose of the UK Proceedings was to support the Chapter 11 Case by providing the Debtor with protection from its creditors within the UK. The Administrators were also responsible for liquidating the Debtor's assets in the UK and paying certain priority claims under UK law. After the payment of the legal

fees of the Administrators and the Administrators' fees and commissions, the Debtor anticipates that funds held by the Administrators in the UK will be repatriated to the United States.

**5.3 First Day Orders.** Shortly after the Petition Date, the Bankruptcy Court entered several orders authorizing the Debtor to pay wages, salaries, employment taxes, employee benefit payments, and workers compensation payments related to employees remaining in the Debtor's employ following the Petition Date, authorizing the Debtor to pay certain sales, use and various transportation taxes and authorizing the Debtor to maintain certain bank accounts, cash management systems and business forms.

**5.4 Retention of Professionals.** During the Bankruptcy Case, the Bankruptcy Court entered orders authorizing the Debtor to retain, among others:

<b>Professional</b>	<b>Employment</b>	<b>Bankruptcy Court Order</b>
Squire, Sanders & Dempsey, L.L.P.	Counsel to the Debtor	May 16, 2008
Alvarez & Marsal Transaction Advisory Group, LLC	Financial Advisor to the Debtor	May 22, 2008
A. Uzzo & Co.	Audit of 401(k) Plan	June 23, 2008
Burkhardt & Co.	Accountant	September 25, 2008

**5.5 Non-Management Incentive Plan.** On May 13, 2008, the Bankruptcy Court entered an order authorizing the Debtor to implement a non-management incentive plan (the "**Incentive Plan**") in order to induce certain employees to remain in the Debtor's employ for a sufficient period to assist in the orderly wind-down of the Debtor's operations and the liquidation of the Debtor's assets. None of the Executives found in the table at Article 4.6 above were entitled to receive benefits under the Incentive Plan. Under the Incentive Plan, employees asked to remain through various retention periods received a bonus of 50% of that employee's pre-petition pay during each pay period plus all accrued but unpaid vacation. Certain employees that remained following the final retention period, which ended July 15, 2008, also received a bonus of one month's salary. As of the date of this Disclosure Statement, the Debtor has only three employees remaining.

**5.6 Appointment of Official Unsecured Creditors' Committee.** On May 8, 2008, the Office of the United States Trustee filed the Appointment of Committee of Unsecured Creditors. The Committee is comprised of: Servisair, LLC; Systems and Software Enterprises, Inc. d/b/a IMS Consultants; Pan Am International Flight Academy; Peter Mochnal; and Sourcespeed LLC. The Bankruptcy Court authorized the Unsecured Creditors' Committee to employ and retain the law firm of Cohen, Tauber, Spievack & Wagner P.C. as its legal counsel.

**5.7 Effort to Sell Assets.** Shortly after the Petition Date, the Debtor entered into negotiations to sell either its entire business or various assets to several parties. Certain former Executives undertook an effort to obtain the necessary financing to restart the Debtor's business. The Debtor held early negotiations with an air carrier that expressed interest in acquiring the Debtor's operating certificates and possibly its aircraft leases. However, as fuel prices continued to escalate after the Petition Date, these negotiations were terminated.

In an effort to maximize the value of the Debtor's assets, the Debtor filed a motion seeking the approval of various sale, auction and bidding procedures for the Debtor's assets. These procedures were approved by the Bankruptcy Court over the objections of ILFC, Mexicana and Delta Airlines, Inc. on May 22, 2008. Thereafter, the Debtor, its counsel and financial advisors and counsel for the Committee engaged in the process of actively marketing both the Debtor's business and its assets. These efforts included negotiations with various parties interested in either purchasing the Debtor's operating certificate and parties that expressed an interest in recapitalizing the Debtor and restarting its business. Neither of these scenarios, however, could be brought to fruition in light of the continuing rise in fuel prices and decline of the airline industry following the Petition Date. On July 31, 2008, the Debtor returned its operating certificate to the Federal Aviation Administration.

The Debtor's effort to market and sell its assets resulted in the following transactions, approved by the Bankruptcy Court:

<b>Asset</b>	<b>Purchaser</b>	<b>Sales Price</b>	<b>Date Approved by Bankruptcy Court</b>
All Spares Parts and Rotables	GoIndustry U.S.A., Inc.	\$915,000	June 23, 2008
U.S. Ground Service Equipment	F&E Aircraft Maintenance (New York ) LLC	\$69,000	July 10, 2008

In addition, pursuant to an order of the Bankruptcy Court authorizing the sale of *de minimis* assets of the Debtor, the Debtor entered into the following transactions:

<b>Asset</b>	<b>Purchaser</b>	<b>Sales Price</b>	<b>Date</b>
Eos Promotions	Various	\$10,255	May 22, 2008
Office Supplies	Worktopia	\$1,071	June 2, 2008
IT Equipment	Worktopia	\$4,555	June 19, 2008
Vehicles	Robert Caldwell	\$8,000	July 17, 2008
IT Equipment <sup>1</sup>	National Computer Liquidators	\$31,250	July 21, 2008
Catering Equipment	Inflight Supplies & Services	\$20,952	July 24, 2008
Eos Headsets	Robert Caldwell	\$4,158	July 25, 2008
Desktop Flight Simulator	Marlon Ramos	\$3,500	July 28, 2009

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<sup>1</sup> No single asset was valued in excess of \$25,000.



**5.8 Bar Date for Filing Proofs of Claim.** The Bankruptcy Court set a deadline of July 28, 2008 for holders of Claims other than Governmental Units to submit their proofs of claim. The Bankruptcy Court set October 23, 2008, as the bar date for Governmental Units to submit their proofs of claim.

**5.9 Termination or Rejection of Aircraft Leases.** On May 13, 2008, the Bankruptcy Court approved a stipulation between the Debtor and Aircastle providing for the return of the Aircastle aircraft and the return of \$50,000 to the Debtor and termination of the aircraft lease between the Debtor and Aircastle. On May 27, 2008, the Bankruptcy Court entered an order authorizing the Debtor to utilize an expedited lease and contract rejection process under which the Debtor could reject any lease or executory contract with two business days' notice. On May 28, 2008, the Debtor rejected all of its remaining leases or subleases of aircraft with ILFC and Mexicana, effective May 30, 2008. All of the Debtor's remaining aircraft were returned to ILFC or Mexicana shortly thereafter.

**5.10 WARN Act Litigation.** On April 28, 2008, Peter Mochnal, a former employee of the Debtor, commenced a class action lawsuit against the Debtor alleging violations of the Worker Adjustment and Retraining Notification (WARN) Act. The WARN Act is a federal statute that requires, among other things, 60 days advance notice prior to certain layoffs or plant shutdowns. Mr. Mochnal alleged that the Debtor's shutdown and the termination of substantially all of its employees without the requisite 60 days notice violated the WARN Act. The Debtor asserted various defenses to these allegations, including that the Debtor was actively seeking capital at the time of its shutdown that, if obtained, would have obviated the need for such a shutdown, that the shutdown was the result of unforeseen events, and that the Debtor was not actually an employer, as required by the statute, at the time of the shutdown. The Debtor, counsel for the Committee and counsel for Mr. Mochnal agreed to undertake mediation in an effort to resolve the WARN Act litigation. While this mediation did not immediately produce a settlement, the parties continued to negotiate thereafter.

On August 29, 2008, the Debtor, the Committee and counsel for Mr. Mochnal entered into the Warn Act Settlement Agreement, which provided for, among other things: certification of a class of former employees as the WARN Act Class; appointment of Mr. Mochnal's counsel as counsel for the WARN Act Class; allowance of a \$350,000 Administrative Claim against the Debtor's estate for the benefit of the WARN Act Class; and payment of 35.5% of all funds available for distribution to holders of Allowed Class 4 Unsecured Claims to the WARN Act Class.

Judgment in favor of the WARN Act Class could have resulted in an Administrative Claim or Priority Unsecured Non-Tax Claim against the Debtor's estate in excess of \$3.8 million, which would have likely rendered the Debtor's estate administratively insolvent. The Debtor and the Committee believe that the compromise set forth in the WARN Act Settlement Agreement would substantially decrease the likelihood of the Debtor being rendered administratively insolvent, substantially increase the likelihood of a distribution - and the amount distributed - to holders of Class 4 Unsecured Claims, and eliminate significant administrative costs in the form of attorneys' fees and expenses. On September 25, 2008 the Bankruptcy Court entered an order approving the WARN Act Settlement Agreement.

**5.11 Resolution of Significant Claims Against the Estate.** During the pendency of the Chapter 11 Case the Debtor resolved several significant Claims against the Estate. The Debtor and its Professionals proactively returned goods subject to reclamation under Section 546(c) of the Bankruptcy Code, some of which were delivered during the twenty days preceding the Petition Date and could have been entitled to administrative priority under Section 503(b)(9) of the Bankruptcy Code. The Debtor estimates that these efforts reduced potential Administrative Claims by approximately \$655,000.

Prior to the Petition Date the Debtor obtained jet fuel primarily from Servisair, LLC (“Servisair”) or its affiliates. Servisair asserted an Administrative Claim against the estate in the amount of \$1,105,085.95 and an Unsecured Claim in the amount of \$26,532.48. The Debtor resolved these Claim, resulting in the allowance of an Administrative Claim against the Debtor’s estate in the amount of \$1,098,500, of which the Debtor paid \$933,725, and an allowed Unsecured Claim against the estate in the amount of \$197,893, resulting in administrative savings to the Estate of approximately \$164,775.

Mexicana has asserted a Claim (the “**Mexicana Claim**”) against the Debtor’s Estate in the amount of approximately \$21,602,457.20, consisting of \$20,401,731.90 related to the Debtor’s subleases with Mexicana and \$1,200,725.30 related to a maintenance agreement between the Debtor and Mexicana. According to Mexicana, the Mexicana Claim was partially secured by deposits totaling \$2,300,000, maintenance reserves totaling \$1,444,558.57, and various parts and equipment belonging to the Debtor located at a Mexicana facility in Mexico City. Pursuant to the Mexicana Claim, Mexicana asserted an Administrative Claim in the amount of \$940,000, Secured Claims of \$3,700,000, and an Unsecured Claim of approximately \$16,962,457.20. The Debtor engaged in negotiations with Mexicana resulting in a settlement that provided Mexicana with an Allowed Administrative Claim of \$317,647.05, of which the Debtor paid \$270,000. Mexicana retained all lease deposits and maintenance reserves and all of the Debtor’s equipment located in Mexico City. Mexicana agreed to release all additional Claims against the Estate, *except, however* for partial indemnification by the Debtor of Mexicana with regard to a certain alleged lien against one of the aircraft subleased by the Debtor from Mexicana, and the Debtor agreed to release all potential claims, Avoidance Actions or other Causes of Action against Mexicana.

**5.12 Remaining Assets of the Debtor.** Substantially all of the Debtor’s assets have now been liquidated. The remaining assets (excluding Avoidance Actions and other Causes of Action) consist primarily of: (i) potential claims against various banks with which the Debtor had credit card processing agreements with regard to amounts “held back” under those agreements; (ii) the seat sets that were used in the Debtor’s uniquely configured aircraft and (iii) claims against certain parties to charter agreements regarding funds held in escrow.

**(a) Credit Card Holdbacks.** The Debtor had agreements with several banks whereby the banks processed customer payments by credit card. Each of these contracts allowed the bank to hold back at least 100% of all amounts processed on behalf of the Debtor in order to protect the bank against so-called “charge backs,” or customer requests for refunds. The Debtor believes that certain banks are holding approximately \$2.3 million in excess of amounts necessary to satisfy all potential charge backs and intends to seek recovery of this amount.

(b) **Seat Sets.** The Debtor installed custom seats in its aircraft in order to provide its unique 48-seat configuration. As of the Petition Date, the Debtor owned six sets of 48 seats (“**Seat Sets**”), four installed on aircraft and two uninstalled. The Debtor has received an offer to purchase three of these Seat Sets for \$25,000 per Seat Set. However, these Seat Sets were installed in an aircraft leased directly from ILFC and ILFC has asserted that it now owns these Seat Sets. The Debtor disputes ILFC’s claim to ownership of the Seat Sets. Title to the remaining three Seat Sets passed to Mexicana pursuant to a settlement between the Debtor and Mexicana regarding the Mexicana Claim.

(c) **Charter Funds.** Prior to the Petition Date, the Debtor offered both public and private charter services. Under U.S. Department of Transportation regulations, all charters must be evidenced by a written charter agreement and estimated charter costs must be paid in advance and held in escrow. As of the Petition Date, the Debtor was party to several charter contracts. All escrow funds relating to charter contracts that the Debtor would not be able to perform under were returned to the contract counterparties. However, the Debtor believes that it is entitled to retain certain other escrow funds. The Debtor has commenced two adversary proceedings against parties to charter contracts seeking turnover of approximately \$880,000 held in escrow. Certain de minimis amounts related to other charter agreements remain in the Debtor’s escrow account to which the Debtor believes it is entitled due to rights of setoff and recoupment.

**5.13 Claims Against the Debtor’s Estate.** Approximately 778 Claims had been filed as of July 28, 2008. The Debtor believes that the amount of Claims filed significantly overstates the likely amount of Allowed Claims in each Class after the claims reconciliation process is completed for the several reasons, including but not limited to:

(i) Many of the Claims filed as Secured Claims have been improperly characterized, are not entitled to such treatment or have not accounted for the application of collateral, such as security deposits;

(ii) Certain Administrative Claims are significantly overstated and seek to recover amounts that are not entitled to administrative priority under the Bankruptcy Code;

(iii) Many claims have been filed as “priority” claims under Section 507(a) of the Bankruptcy Code that, on the face of such Claims, are not entitled to such priority.

(iv) Many unsecured claims have been filed in duplicate, are improperly calculated or do not account for mitigation of damages;

(v) Certain filed claims have previously been paid as they constituted ordinary course, post-petition administrative claims or were paid pursuant to various orders entered by the Bankruptcy Court.

Thus, the Debtor believes that the amount of Claims against the Estate will be reduced significantly. The Debtor has filed or will file several objections to Claims in order to begin the Claims reconciliation process.

## **ARTICLE 6 OVERVIEW OF THE PLAN**

A copy of the Plan accompanies this Disclosure Statement as **Exhibit A-1**. The following summary of the material provisions of the Plan is qualified in its entirety by the specific provisions of the Plan, including the Plan's definitions of certain terms used below. The following is intended to provide a general description of the Plan. For more specific information, please refer to the attached Plan. Please note that the Debtor has attempted to minimize the use of defined terms in describing the Plan. However, any capitalized terms that are not defined in this Disclosure Statement are defined in the Plan. It is recommended that one refer to those definitions when reading this document.

**6.1 Brief Explanation of Chapter 11 Liquidation.** The Debtor is being liquidated under Chapter 11 of the Bankruptcy Code ("**Chapter 11**"). Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. However, under Chapter 11, a debtor is authorized to liquidate its business and/or assets for the benefit of its creditors and other parties in interest. Confirmation of a plan of reorganization or liquidation is the principal objective of a Chapter 11 case.

In general, a Chapter 11 plan of liquidation (a) divides claims and equity interests into separate classes, (b) specifies the property that each class is to receive under the plan, and (c) contains other provisions necessary to the reorganization of the debtor. A Chapter 11 plan may provide that certain classes of claims or equity interests are either: (i) to be paid in full upon the effective date of the plan; (ii) reinstated; or (iii) the legal, equitable and contractual rights of claim or interest holders are to remain unchanged by the reorganization or liquidation effectuated by the plan. These classes are referred to under the Bankruptcy Code as "unimpaired" and, because of such treatment, are deemed to accept the Chapter 11 plan. Accordingly, it is not necessary to solicit votes from the holders of claims or equity interest in such unimpaired classes. A Chapter 11 plan may also provide that certain classes will not receive any distributions of property. Such classes are deemed to reject the plan.

All other classes of claims and/or equity interests contain "impaired" claims and/or equity interests which have the right to vote on the Chapter 11 plan, except as provided under the Bankruptcy Code. An "impaired" class is generally a class which will receive something less than the full amount of its claim under the plan of liquidation. Before a plan can be confirmed by the bankruptcy court, the Bankruptcy Code generally requires that each impaired class of claims or equity interests votes to accept a plan. Acceptances must be received (a) from the holders of claims constituting at least two-thirds in dollar amount and more than one-half in number of the allowed claims in each impaired class of claims that have voted to accept or reject the plan, and (b) from the holders of at least two-thirds in dollar amount of the allowed equity interests in each impaired class of equity interests that have voted to accept or reject the plan. However, even if an "impaired" class rejects the plan, the bankruptcy court may confirm the plan

if certain minimum treatment standards are met with respect to such class or classes. These standards are discussed in Article 9.3 of this Disclosure Statement.

Chapter 11 of the Bankruptcy Code does not require each holder of a claim or equity interest to vote in favor of a plan of liquidation in order for the bankruptcy court to confirm the plan. However, the bankruptcy court must find that the plan of liquidation meets a number of tests (other than the voting requirements described in this section) before it may confirm, or approve, the plan of liquidation. Many of these tests are designed to protect the interests of holders of claims or equity interests who do not vote to accept the plan of reorganization but who will nonetheless be bound by the plan's provisions if it is confirmed by the bankruptcy court.

**6.2 Solicitation of Acceptances of the Plan.** The Debtor is seeking acceptances of the Plan from holders of Allowed Claims in Class 4 under the Plan, which is the only Class entitled to vote under the Plan. Holders of Unclassified Claims and those holding Claims in Classes 1 and 2 are deemed to accept the Plan. Pursuant to the WARN Act Settlement Agreement, Class 3 is deemed to have voted in favor of the Plan. Holders of Claims in Class 5 will receive nothing under the Plan and are deemed to have rejected the Plan. If the requisite acceptances by Class 4 are received, the Debtor will use those acceptances, as evidenced by the Ballots solicited in accordance with this Disclosure Statement and the Disclosure Statement Approval Order, to seek confirmation of the Plan under Chapter 11.

If any impaired Class is determined to have rejected the Plan in accordance with Section 1126 of the Bankruptcy Code, the Debtor may use the provisions of Section 1129(b) of the Bankruptcy Code to satisfy the requirements for confirmation of the Plan. This process is further described in Article 9.3 of this Disclosure Statement.

The Debtor believes that this Disclosure Statement complies with applicable bankruptcy and non-bankruptcy law. This Disclosure Statement and the Plan are being transmitted to all known holders of impaired Claims and Equity Interests. The Debtor believes that this Disclosure Statement contains adequate information for all holders of impaired Claims entitled to vote on the Plan to cast an informed vote to accept or reject the Plan. Furthermore, the Debtor believes that holders of impaired Claims will obtain a greater recovery under the Plan than they would otherwise obtain if the Chapter 11 Case were immediately converted to a proceeding under Chapter 7 of the Bankruptcy Code.

If the Plan is confirmed by the Bankruptcy Court, each holder of an impaired Claim will receive the same pro rata consideration as other holders of Claims in the same Class, whether or not such holder voted to accept the Plan. Moreover, upon Confirmation, the Plan will bind all Creditors and Interest Holders regardless of whether or not such Creditors and Interest Holders voted to accept the Plan.

**6.3 Classification of Claims and Equity Interests.** Section 1123 of the Bankruptcy Code provides that a plan of reorganization must classify claims against a debtor. Under Section 1122 of the Bankruptcy Code, a plan must classify claims and equity interests into classes that contain substantially similar claims and equity interests. The Plan divides the Claims of known Creditors and the Equity Interests into Classes and sets forth the treatment offered each Class. The Debtor believes it has classified all Claims and Equity Interests in compliance with the

provisions of Section 1122 of the Bankruptcy Code, but it is possible that a Creditor or Interest Holder may challenge such classification of Claims and Equity Interests and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. If so, the Debtor intends, to the extent permitted by the Bankruptcy Code and the provisions of the Plan, to amend or revoke the Plan and file an amended or different Plan that would make modifications to the classification of Claims or Equity Interests required by the Bankruptcy Court for Confirmation.

The Classes under the Plan take into account the differing nature and priority of Claims against the Debtor. Section 101(5) of the Bankruptcy Code defines “Claim” as a “right to payment, whether or not such right is reduced to judgment, liquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or a “right to an equitable remedy for breach of performance if such breach gives rise to a right to payment whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.” A “Claim” against the Debtor also includes a Claim against the Debtor’s property as provided in Section 102(2) of the Bankruptcy Code. An “interest” in the Debtor is an Equity Interest in the Debtor.

For the holder of a claim to participate in a reorganization plan and receive the treatment offered to the class in which it is classified, its claim must be allowed. Under the Plan, an Allowed Claim is defined as a Claim: (a) proof of which, requests for payment of which, or application for allowance of which, was filed or deemed filed on or before the Bar Date, Administrative Claim Bar Date, or the Professional Fee Bar Date, as applicable, for filing proofs of claim or requests for payment for Claims of such type against the Debtor; (b) if no proof of claim is filed, which has been or is ever listed by the Debtor in the Schedules as liquidated in amount and not disputed or contingent; or (c) a Claim that is allowed in any contract, instrument, indenture, or other agreement entered into in connection with the Plan and, in the case of (a), (b) or (c), a Claim as to which no objection to its allowance has been interposed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court.

**6.4 Treatment of Claims and Equity Interests under the Plan.** See Article 2 of this Disclosure Statement.

**6.5 Distributions Under the Plan.** Except as otherwise provided in the Plan or the Confirmation Order, Distributions to holders of Claims shall be governed by the Trust Agreement, attached to the Plan as **Appendix A**.

## **ARTICLE 7**

### **ADDITIONAL IMPLEMENTATION OF THE PLAN**

**7.1 Selection of the Liquidating Trustee.** The Committee may select a qualified entity or individual to serve as Liquidating Trustee under the Trust Agreement. If the Committee elects to appoint the Liquidating Trustee, the Committee shall file with the Bankruptcy Court and serve on the Debtor, the United States Trustee, and all parties then receiving notice of pleadings in this Chapter 11 Case pursuant to Federal Rule of Bankruptcy Procedure 2002, not later than ten (10) days prior to the Confirmation Hearing, a disclosure identifying a candidate for

Liquidating Trustee, said person or entity's qualifications for serving as Liquidating Trustee, and the terms of any fee arrangement. If the Committee elects not to appoint the Liquidating Trustee, the Debtor shall file with the Bankruptcy Court and serve on the Committee, the United States Trustee, and all parties then receiving notice of pleadings in this Chapter 11 Case pursuant to Federal Rule of Bankruptcy Procedure 2002, not later than nine (9) days prior to the Confirmation Hearing, a disclosure identifying a candidate for Liquidating Trustee, said person or entity's qualifications for serving as Liquidating Trustee, and the terms of any fee arrangement. The candidate to serve as Liquidating Trustee shall be approved at the Confirmation Hearing, and, upon execution of the Trust Agreement at Closing, shall thereafter undertake the required duties under the Trust Agreement.

**7.2 Dissolution of the Committee.** The appointment and operation of the Committee shall terminate on the Effective Date. Any dissolution or termination of the appointment and operations of the Committee shall not prejudice the rights of any agents of the Committee (including their Professionals and individual Committee Members) to pursue their separate claims for compensation and reimbursement of expenses, including Professional Fees, under the provisions of Sections 328, 330, 331 and/or 503(b)(3)(F) of the Bankruptcy Code.

**7.3 Section 1145 Determination.** Confirmation of the Plan shall constitute a determination, in accordance with Section 1145 of the Bankruptcy Code, that except with respect to an entity that is an underwriter as defined in section 1145(b) of the Bankruptcy Code, Section 5 of the Securities Act, the Securities Exchange Act and any other federal, state or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, broker or dealer in, a security do not apply to the offer, sale, or issuance under the Plan of the Trust Assets or the Beneficial Interests in exchange for Claims against the Debtor. Nonetheless, if the Liquidating Trustee determines that registration and reporting under the Securities Act, Securities Exchange Act or any other federal, state or local law is required, the Liquidating Trustee will take steps to comply with those requirements.

**7.4 Settlement and Compromise.** Pursuant to Section 1123(b)(3) of the Bankruptcy Code, the Plan incorporates the following compromises and settlements, and (to the extent necessary) constitutes a motion under Bankruptcy Rule 9019 to approve such compromises and settlements:

(a) \_\_\_\_\_

**7.5 Vesting of Assets.** Upon the Effective Date, title to all of the Estate Property, in whatever form and wherever found, shall vest in the Liquidating Trust.

**7.6 Discharge.** Except as provided in the Plan or the Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Equity Interests under the Plan are in exchange for and in complete satisfaction, discharge, and release of, all Claims against the Debtor or Estate Property and the termination of all Equity Interests. Except as provided in the Plan or the Confirmation Order, on the Effective Date: (a) the Debtor shall be discharged from all Claims or other debts that arose before the Effective Date, and all debts of the kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not: (i) a proof of claim based on such debt is filed or deemed filed under Section 501 of the Bankruptcy Code; (ii) a

Claim based on such debt is Allowed under Section 502 of the Bankruptcy Code; or (iii) the holder of a Claim based on such debt has accepted the Plan; and (b) all Equity Interests and other rights of Interest Holders in the Debtor shall be terminated. Except as otherwise provided in the Plan, the Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtor arising before the Effective Date. Pursuant to Section 524 of the Bankruptcy Code, the discharge shall avoid any judgment against the Debtor at any time obtained (to the extent it relates to a discharged Claim), and operates as an injunction against the prosecution of any action against the Debtor, Estate Property, Trust Assets, and the Liquidating Trustee (to the extent such action relates to a discharged Claim).

**7.7 Injunction.** Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all entities that have held, currently hold or may hold a Claim or other debt or liability that is discharged or an Equity Interest, Equity Related Claim, or other right of an Interest Holder that is terminated under the Plan are permanently enjoined from taking any of the following actions on account of any such discharged Claims, debts, liabilities, or terminated Equity Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against the Debtor, the Liquidating Trust, the Liquidating Trustee, the Committee or any individual Committee Member (including any officer or director acting as a representative of the Debtor, Committee or individual Committee Member) to the extent that such action or proceeding arises from any act or omission of such party in connection with, relating to, or arising out of the Chapter 11 Case, the negotiation and pursuit of Confirmation of the Plan or the consummation of the Plan, except for the Debtor's or Liquidating Trustee's acts or omissions constituting gross negligence or willful misconduct as finally determined by a court of competent jurisdiction; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree, or order against the Debtor, the Liquidating Trust, the Liquidating Trustee, the Committee or any individual Committee Member, or their respective property; (c) creating, perfecting, or enforcing any lien or encumbrance against the Debtor, the Liquidating Trust, the Liquidating Trustee, the Committee or any individual Committee Member, or their respective property; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability, or obligation due to the Debtor, the Liquidating Trust, the Liquidating Trustee, the Committee or any individual Committee Member, or their respective property; and (e) commencing or continuing any action, in any manner, in any place, that does not comply with or is inconsistent with the provisions of the Plan or the Bankruptcy Code.

**7.8 Exculpation.** None of Debtor, the Committee, the Liquidating Trustee, or any individual Committee Member or any of their respective members, officers, directors, employees or Professionals have or may incur any liability to any holder of a Claim or Equity Interest, including the holder of any Equity Related Claim, or any other Person or party in interest, or any of their respective members or former members, agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any Chapter 11 Activities except for, in the case of the Debtor and the Liquidating Trustee, their acts or omissions constituting willful misconduct or gross negligence, as finally determined by a court of competent jurisdiction, and in all respects are entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities in connection with the Chapter 11 Activities. No holder of a Claim, Equity Interest, Equity Related Claim or any other Person or party in interest, including their respective agents, employees, representatives, financial advisors, attorneys or affiliates, have any right of action against the Debtor, the Liquidating Trust, the



Liquidating Trustee, the Committee, or any individual Committee Member or any of their respective officers, directors, employees or Professionals for any act or omission in connection with the Chapter 11 Activities, except for, in the case of the Debtor and the Liquidating Trust, their acts or omissions constituting willful misconduct or gross negligence as finally determined by a court of competent jurisdiction.

**7.9 Retention of Causes of Action/Reservation of Rights.** Except as set forth in the Plan or the Confirmation Order, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights, Causes of Action or Avoidance Actions that the Debtor or the Debtor's Estate may have or that the Liquidating Trustee may choose to assert on behalf of the Debtor or the Debtor's Estate under any provision of the Bankruptcy Code or any applicable non-bankruptcy law, including, without limitation: (i) any and all claims against any Person, to the extent such Person asserts a cross-claim, counterclaim and/or claim for setoff or recoupment that seeks affirmative relief against the Debtor or its officers, directors or representatives; (ii) the turnover of any Estate Property; and (iii) rights against financial advisors, underwriters, lenders or auditors relating to acts or omissions occurring prior to the Petition Date.

Except as set forth in the Plan or the Confirmation Order, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any claim, right of setoff or other legal or equitable defense that the Debtor had immediately prior to the Petition Date or arising thereafter. The Liquidating Trustee shall have, retain, reserve and be entitled to assert all such Claims, rights of setoff and other legal or equitable defenses that the Debtor had immediately prior to the Petition Date or arising thereafter and all of the Debtor's legal and equitable rights with regard to any Claim may be asserted by the Liquidating Trustee after the Effective Date.

Schedule 3b of the Debtor's Statement of Financial Affairs reflects that, within ninety (90) days before the Petition Date, approximately \$41.5 million in potential preference payments were made. Many of those payments, however, may be subject to one or more defenses under Section 547(c) of the Bankruptcy Code. As of the date of this Disclosure Statement, the Debtor has not undertaken a comprehensive review of the above payments, but believes that the actual amount of recoverable preferences, if any, will be substantially lower than \$41.5 million. The Debtor may also have Causes of Action against third parties under other provisions of the Bankruptcy Code or under applicable non-bankruptcy law, but no significant analysis of these claims has yet been performed.

**THE DEBTOR HAS NOT UNDERTAKEN A COMPLETE INVESTIGATION OR ANALYSIS OF THE CAUSES OF ACTION IT MAY HAVE, INCLUDING, BUT NOT LIMITED TO, AVOIDANCE ACTIONS UNDER CHAPTER 5 OF THE BANKRUPTCY CODE. AS A RESULT, EXCEPT FOR PERSONS OR ENTITIES RECEIVING AN EXPRESS RELEASE FROM THE DEBTOR, ALL PERSONS AND ENTITIES SHOULD UNDERSTAND THAT THEY MAY BECOME A DEFENDANT IN AN ACTION BROUGHT BY THE DEBTOR OR THE LIQUIDATING TRUSTEE, EVEN THOUGH IT IS NOT POSSIBLE AT THIS TIME TO ENUMERATE ALL SUCH ACTIONS OR IDENTIFY ALL SUCH DEFENDANTS.**

**7.10 Preservation Of Insurance.** The Debtor's discharge and release from Claims as provided in this Plan, except as necessary to be consistent with this Plan, do not diminish or impair the enforceability of any insurance policy that may cover Claims against the Debtor or any other Person, including, but not limited to, any D&O Policy.

**7.11 Retention of Jurisdiction.** Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court retains such jurisdiction over the Chapter 11 Case after the Effective Date as is legally permissible including, without limitation, jurisdiction to:

(a) Allow, disallow, determine, liquidate, classify, estimate, reconsider, value, compromise, settle, adjust, or establish the amount, priority, validity, or secured or unsecured status of any Claim, including the resolution of any request for payment of any Unclassified Claim and the resolution of any and all objections to the allowance or priority of Claims;

(b) Grant or deny any applications for allowance of compensation or reimbursement of expenses arising out of or related to the Chapter 11 Case, including but not limited to Professional Fees, or any Claim or Equity Interest authorized under the Bankruptcy Code or the Plan;

(c) Resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which the Debtor is a party and to hear, determine and, if necessary, liquidate, any Claims arising from, or cure amounts related to, such assumption or rejection.

(d) Ensure that Distributions to holders of Allowed Claims are accomplished in accordance with the Plan;

(e) Decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications or motions involving the Debtor that may be pending on the Effective Date;

(f) Enter such orders as may be necessary or appropriate to implement, consummate, or enforce the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan or the Disclosure Statement, except as otherwise provided in the Plan;

(g) Resolve any case, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any Person's obligations incurred in connection with the Plan;

(h) Modify the Plan before or after the Effective Date under Section 1127 of the Bankruptcy Code or modify the Disclosure Statement or any contract, instrument, release, or other agreement or document created in connection with the Plan or the Disclosure Statement; or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the

Disclosure Statement, or any contract, instrument, release, or other agreement or document created in connection with the Plan or the Disclosure Statement, in such manner as may be necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code, and determine matters concerning federal, state, and local taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code or other applicable law;

(i) Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation or enforcement of the Plan, except as otherwise provided in the Plan;

(j) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

(k) Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, the Trust Agreement or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, the Confirmation Order or the Trust Agreement except as otherwise provided in the Plan;

(l) Enter an order closing the Chapter 11 Case which provides for retention of jurisdiction for the Bankruptcy Court for purposes of Article 7.8;

(m) Adjudicate any Avoidance Actions (including those to be initiated and prosecuted by the Liquidating Trust as the Estate's representative under Section 1123(b)(3)(B) of the Bankruptcy Code), and any other Cause of Action or claims of the Debtor;

(n) Resolve any disputes between the Liquidating Trustee and any holder of a Beneficial Interest; and

(o) Approve settlements of any Avoidance Actions, Causes of Action or other disputes.

**7.12 Amendment of the Plan.** At any time before the Confirmation Date, the Debtor may alter, amend, or modify this Plan pursuant to Section 1127(a) of the Bankruptcy Code *provided* that such alteration, amendment, or modification does not materially and adversely affect the treatment and rights of the holders of Class 4 Claims under the Plan. After the Confirmation Date and before Substantial Consummation of the Plan, the Debtor may, under Section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan so long as such proceedings do not materially and adversely affect the treatment of holders of Claims under this Plan; *provided, however*, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or applicable order of the Bankruptcy Court.

## **ARTICLE 8**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**8.1     Executory Contracts and Unexpired Leases.** Unless otherwise provided for in the Plan, on the Effective Date, all executory contracts and unexpired leases not previously rejected by the Debtor during the Chapter 11 Case shall be deemed rejected.

**8.2     Rejection Damage Claim Bar Date.** Except as otherwise provided in Article 8.1, all Rejection Damage Claims shall be filed with the Bankruptcy Court no later than thirty (30) days after the Effective Date. Any Rejection Damage Claim not filed by the applicable deadline shall be forever barred and shall not be entitled to any Distributions under the Plan. The Debtor and the Liquidating Trustee shall have the right to object to any Rejection Damage Claim.

## **ARTICLE 9**

### **ACCEPTANCE AND CONFIRMATION OF THE PLAN**

The following is a brief summary of the provisions of the Bankruptcy Code relevant to acceptance and confirmation of a plan of reorganization. Holders of Claims are encouraged to review the relevant provisions of the Bankruptcy Code with their own attorneys.

**9.1     Acceptance of the Plan.** This Disclosure Statement is provided in connection with the solicitation of acceptances of the Plan. The Bankruptcy Code defines acceptance of a plan of liquidation by a class of claims as acceptance by holders of at least two-thirds in dollar amount, and more than one-half in number, of the allowed claims of that class that have actually voted or are deemed to have voted to accept or reject a plan. The Bankruptcy Code defines acceptance of a plan of liquidation by a class of interests as acceptance by at least two-thirds in amount of the allowed interests of that class that have actually voted or are deemed to have voted to accept or reject a plan.

If one or more impaired Class rejects the Plan, the Debtor may, in its discretion, nevertheless seek confirmation of the Plan if the Debtor believes that the requirements of Section 1129(b) of the Bankruptcy Code for Confirmation of the Plan (which are summarized below) will be met, despite the lack of acceptance by all impaired Classes.

**9.2     Confirmation.**

**(a)     Confirmation Hearing.** Section 1128(a) of the Bankruptcy Code requires the bankruptcy court, after notice, to hold a hearing on confirmation of a plan. Notice of the Confirmation Hearing regarding the Plan has been provided to all known holders of Claims and Equity Interests or their respective representatives along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

**(b)     Objection to Confirmation.** Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan.

Any objection to Confirmation of the Plan must be in writing, must conform with the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, must set forth the name of the objecting party, the nature and amount of Claims or Equity Interests held or asserted by that party against the Debtor's Estate or property, and the specific basis for the objection. Such objection must be filed with the Bankruptcy Court, with a copy forwarded directly to the chambers of the Honorable Adlai S. Hardin, together with a proof of service, and served on all parties by the date set forth on the Confirmation Hearing Notice.

**(c) Statutory Requirements for Confirmation of the Plan.** At the Confirmation Hearing, the Debtor will request that the Bankruptcy Court determine that the Plan satisfies the requirements of Section 1129 of the Bankruptcy Code. If the Bankruptcy Court so determines, the Bankruptcy Court will enter an order confirming the Plan. The applicable requirements of Section 1129 of the Bankruptcy Code are as follows:

**(i)** The Plan must comply with the applicable provisions of the Bankruptcy Code;

**(ii)** The Debtor must have complied with the applicable provisions of the Bankruptcy Code;

**(iii)** The Plan must have been proposed in good faith and not by any means forbidden by law;

**(iv)** Any payment made or promised to be made by the Debtor under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan, must have been disclosed to the Bankruptcy Court, and any such payment made before Confirmation of the Plan must be reasonable, or if such payment is to be fixed after Confirmation of the Plan, such payment must be subject to the approval of the Bankruptcy Court as reasonable;

**(v)** The Debtor must have disclosed the identity and affiliates of any individual proposed to serve, after Confirmation of the Plan, as a director, officer, or voting trustee of the Debtor under the Plan. Moreover, the appointment to, or continuance in, such office of such individual, must be consistent with the interests of holders of Claims and Equity Interests and with public policy, and the Debtor must have disclosed the identity of any insider that the reorganized debtor, if any, will employ or retain, and the nature of any compensation for such insider;

**(vi)** With respect to each Class of impaired Claims or Equity Interests, either each holder of a Claim or Equity Interest of such Class must have accepted the Plan, or must receive or retain under the Plan on account of such Claim or Equity Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder

would receive or retain if the Debtor were liquidated on such date under Chapter 7 of the Bankruptcy Code. In a Chapter 7 liquidation, creditors and interest holders of a debtor are paid from available assets generally in the following order, with no lower class receiving any payments until all amounts due to senior classes have either been paid in full or payment in full is provided for: (i) first to secured creditors (to the extent of the value of the collateral), (ii) next to priority creditors, (iii) next to unsecured creditors, (iv) next to debt expressly subordinated by its terms or by order of the bankruptcy court, and (v) last to holder of equity interests. Attached as **Exhibit C** to this Disclosure Statement is a liquidation analysis prepared by the Debtor's financial advisors, which indicates that, in light of the foregoing priority scheme, if the Chapter 11 Case were converted to a Chapter 7 liquidation, holders of Allowed Claims and Equity Interests would receive less than they will receive under the Plan;

(vii) Each Class of Claims or Equity Interests must have either accepted the Plan or not be impaired under the Plan;

(viii) Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that Allowed Administrative and Priority Claims (other than Allowed Priority Tax Claims) will be paid in full on the Effective Date and that Allowed Priority Tax Claims will either be paid in full or receive on account of such Claims deferred Cash payments, over a period not exceeding five years after the Petition Date equal to the value of the Allowed amount of such Claim;

(ix) At least one impaired Class of Claims must have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim of such Class; and

(x) Confirmation of the Plan must not be likely followed by the liquidation, or the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan unless such is specifically provided for under the Plan.

**9.3 Confirmation Without Acceptance by All Impaired Classes.** Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan, even if such plan has not been accepted by all impaired classes entitled to vote on such plan, provided that such plan has been accepted by at least one impaired class. If any impaired Classes reject or are deemed to have rejected the Plan, the Debtor reserves its right to seek the application of the requirements set forth in Section 1129(b) of the Bankruptcy Code for Confirmation of the Plan despite the lack of acceptance by all impaired Classes.

Section 1129(b) of the Bankruptcy Code provides that, notwithstanding the failure of an impaired class to accept a plan or reorganization, the plan must be confirmed, on request of the plan proponent, in a procedure commonly known as "cramdown," so long as the plan does not

“discriminate unfairly” and is “fair and equitable” with respect to each class of impaired claims or interests that has not accepted the plan.

The condition that a plan be “fair and equitable” with respect to a rejecting class of secured claims includes the requirements that (a) the holders of such secured claims retain the liens securing such claims to the extent of the allowed amount of the claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the plan, and (b) each holder of a secured claim in the class receives deferred cash payments totaling at least the allowed amount of such claim with a present value, as of the effective date of the plan, at least equivalent to the value of the secured claimant’s interest in the debtor’s property subject to the liens.

The condition that a plan be “fair and equitable” with respect to a rejecting class of unsecured claims includes the requirement that either (a) such class receive or retain under the plan property of a value as of the effective date of the plan equal to the allowed amount of such claim or (b) if the class does not receive such amount, no class junior to the non-accepting class will receive a distribution under the plan.

The condition that a plan be “fair and equitable” with respect to a rejecting class of equity interests includes the requirements that either (a) the plan provides that each holder of an equity interest in such class receive or retain under the plan, on account of such equity interest, property of a value, as of the effective date of the plan, equal to the greater of (i) the allowed amount of any fixed liquidation preference to which such holder is entitled, (ii) any fixed redemption price to which such holder is entitled, or (iii) the value of such equity interest, or (b) if the class does not receive such amount, no class of equity interests junior to the rejecting class will receive a distribution under the plan.

## **ARTICLE 10**

### **CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

A summary description of certain material federal income tax consequences of the Plan is provided below. Such description only applies to holders of Allowed Claims in Class 4. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan and no tax opinion is given by this Disclosure Statement. No rulings or determination letters from the Internal Revenue Service (“IRS”) or any other tax authorities have been obtained or sought with respect to the Plan, and the description below is not binding upon the IRS or such other tax authorities.

The following discussion of federal income tax consequences is based on the Internal Revenue Code of 1986, as amended (the “Code”), regulations promulgated thereunder, judicial decisions, and published administrative rulings and pronouncements of the IRS as in effect on the date hereof. Legislative, judicial, or administrative changes or interpretations enacted or promulgated in the future could alter or modify the analyses and conclusions set forth below.

This discussion does not address foreign, state, or local tax consequences of the Plan, nor does it purport to address the federal income tax consequences of the Plan to special classes of taxpayers (such as foreign entities, nonresident alien individuals, mutual funds, insurance

companies, financial institutions, small business investment companies, regulated investment companies, broker-dealers, and tax-exempt organizations). Furthermore, estate and gift tax issues are not addressed herein.

No representations are made regarding the particular tax consequences of the Plan to any individual holder of an Allowed Claim in Class 4. Each holder of an Allowed Claim in Class 4 is strongly urged to consult its own tax advisor regarding the federal, state, local and foreign tax consequences of the transactions described herein and in the Plan.

**10.1 Federal Income Tax Consequences to the Holders of Allowed Claims in Class 4.** If a holder of an Allowed Claim in Class 4 receives cash in full satisfaction of such Class 4 Allowed Claim, the holder may be permitted to recognize a loss (or may be required to recognize gain) equal to the difference between (i) the adjusted tax basis such holder had in its Class 4 Allowed Claim, and (ii) the amount of cash received. Depending upon the manner in which the Class 4 Allowed Claim arose, such loss (or gain) may either be capital or ordinary in nature. Due to limitations set forth in the Code, a holder of a Class 4 Allowed Claim that recognizes a capital loss upon the receipt of cash in full satisfaction of such Class 4 Allowed Claim may not be able to utilize such capital loss in the taxable year it arises or possibly ever.

If a holder of an Allowed Claim in Class 4 receives property in partial or full satisfaction of such Class 4 Allowed Claim, the holder may be permitted to recognize a loss (or may be required to recognize gain). Such loss (or gain) will equal the difference between (i) the adjusted tax basis such holder had in the portion of its Class 4 Allowed Claim that is satisfied by the receipt of property, and (ii) the fair market value of the property on the date it is received. Depending upon the manner in which the Class 4 Allowed Claim arose, such loss (or gain) may either be capital or ordinary in nature. Due to limitations set forth in the Code, a holder of a Class 4 Allowed Claim may not be able to utilize a capital loss in the taxable year it arises or possibly ever.

If a holder of a Class 1 Allowed Claim also has an Allowed Unsecured Deficiency Claim, such holder shall also be a Beneficiary (as defined below) of the Liquidating Trust with regard to the Allowed Unsecured Deficiency Claim because, pursuant to the terms of the Plan, such Allowed Unsecured Deficiency Claim is deemed to be in Class 4. (The federal income tax consequences of which are discussed below).

**10.2 Federal Income Tax Consequences Associated With the Liquidating Trust.** If the Liquidating Trust is operated in accordance with the guidelines set forth in the Plan and the Trust Agreement, it will be a “grantor trust” under the Code. For federal income tax purposes, the holders of the Allowed Claims in Class 4 will be treated as the grantors, owners and beneficiaries of the Liquidating Trust. (The holders of the Allowed Claims in Class 4 will be referred to as the “Beneficiaries” in the remainder of this discussion regarding the federal income tax consequences of the Plan).

**10.3 Federal Income Tax Consequences to the Beneficiaries.** For federal income tax purposes, on the Effective Date, the Debtor will be deemed to transfer to the Beneficiaries, the Trust Assets (i.e., all remaining property of the Debtor’s estate) followed by a deemed transfer of such assets by the Beneficiaries to the Liquidating Trust. Each holder of an Allowed



Claim in Class 4 will be treated as receiving its pro rata share of the Trust Assets upon the transfer of the Trusts Assets to the Liquidating Trust.

Each Beneficiary may be permitted to recognize a loss (or may be required to recognize gain) upon the deemed transfer of the Trust Assets by the Debtor to the Beneficiaries. Each Beneficiary's loss (or gain) will equal the difference between (i) the adjusted tax basis such Beneficiary had in its Allowed Claim, and (ii) the fair market value of such Beneficiary's pro rata share of the Trust Assets on the Effective Date. The fair market value of any Avoidance Actions or other Causes of Action will be determined by the Liquidating Trustee and will be binding on the Beneficiaries, but will not be binding on the IRS. Depending upon the manner in which the Allowed Claim arose, such loss (or gain) may either be capital or ordinary in nature. Due to limitations set forth in the Code, a Beneficiary who recognizes a capital loss as a result of the deemed transfer to it of its pro rata share of the Trust Assets may not be able to utilize such capital loss in the taxable year it arises or possibly ever.

Although many Beneficiaries will not be required to recognize gain/income as a result of the deemed transfer to them of Pro Rata shares of the Trust Assets, certain situations may exist which will require a Beneficiary to do so. For example, if a Beneficiary's Allowed Claim relates to a transaction pursuant to which the Beneficiary is required to recognize gain upon payment (for example, an installment sale), the Beneficiary may be required to recognize gain as a result of the deemed transfer to it of its pro rata share of the Trust Assets. Also, if (1) a Beneficiary previously took a deduction or loss relating to the partial or entire worthlessness of its Allowed Claim, and (2) the fair market value of such Beneficiary's pro rata share of the Trust Assets exceeds its remaining adjusted tax basis, if any, in its Allowed Claim, such Beneficiary will be required to recognize gain/income. There are also numerous other reasons why a Beneficiary may be required to recognize gain/income as a result of the deemed transfer to it of its pro rata share of the Trust Assets. Therefore, each Beneficiary should consult its own tax advisor to determine if such Beneficiary will be required to recognize gain/income as a result of the deemed transfer.

Each Beneficiary's adjusted tax basis in its pro rata share of the Trust Assets will equal the fair market value of such pro rata share on the Effective Date. Because the assets of a grantor trust are deemed to be owned by the grantors, the Beneficiaries will not be required to recognize income or gain upon its deemed contribution of the Trust Assets to the Liquidating Trust.

Grantor trusts are generally ignored for federal income tax purposes. Accordingly, the grantors (in this case, the Beneficiaries) of a grantor trust are treated as directly owning shares of the assets of the trust and are required to include in its taxable income its proportionate share of the trust's gains, losses, income, deductions and credits (without regard to the timing of distributions from the trust). For example, each holder of a Class 4 Allowed Claim will be required to report, as ordinary income, its pro rata share of any interest the Liquidating Trust earns. Each holder of an Allowed Claim in Class 4 will also be required to recognize gain or loss when the Liquidating Trust settles each Avoidance Action or other Cause of Action if such holder's adjusted tax basis in its Pro Rata share of the Avoidance Action or other Cause of Action is different than its Pro Rata share of the amount actually received by the Liquidating Trust for such Avoidance Action or Cause of Action. Such gain or loss will be a capital gain or loss and may be short term or long term depending upon the date such Avoidance Action or

Cause of Action is settled. The holding period for such Avoidance Action or Cause of Action will begin when the assets are placed in the Liquidating Trust, and will end when each Avoidance Action or Cause of Action is finally settled. Due to limitations set forth in the Code, a holder of an Allowed Claim in Class 4 who recognizes a capital loss, may not be able to utilize such capital loss in the taxable year it arises or possibly ever. Each year the Liquidating Trust is in existence, each holder of an Allowed Claim in Class 4 will receive from the Liquidating Trust a statement, a copy of which will be filed with the IRS, informing such holder of the amount of income, gains, losses, deductions and credits such holder recognized from its share of the assets of the Liquidating Trust.

Because each holder of an Allowed Claim in Class 4 should have been reporting on its federal income tax returns its proportionate share of the Liquidating Trust's income, gain, losses, deductions and credits each taxable year, the actual cash distribution by the Liquidating Trust to each such holder should not be a taxable event.

HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS TO DETERMINE THE TAX EFFECT OF THE PLAN IN THEIR PARTICULAR CIRCUMSTANCES.

**10.4 Federal Income Tax Consequences to Holders of Equity Interests.** Holders of Equity Interests will not receive or retain any property in exchange for the Equity Interests and such Equity Interests will be cancelled on the Effective Date pursuant to the Plan. Interest Holders that hold such Equity Interests as capital assets should be entitled to a worthless stock deduction, but the proper timing of such deduction is not clear. Section 165(b) of the Code provides that if a security that is held as a capital asset becomes wholly worthless during the taxable year, the holder is entitled to a capital loss, which is treated as recognized from the sale or exchange of such security on the last day of such taxable year. The definition of "security" includes: (i) shares of stock in a corporation and (ii) the right to subscribe for shares of stock in a corporation. The amount of loss deductible is limited to the holder's basis in the security.

**10.5 Income Tax Withholdings.** Necessary tax withholdings will be made by the Liquidating Trustee from all Distributions to holders of Administrative WARN Act Claims and Class 3 Unsecured WARN Act claims as described in the WARN Act Settlement Agreement, as well as all Priority Unsecured Non-Tax Claims arising under Section 507(a)(4) or (5) of the Bankruptcy Code and Unsecured Claims of the Debtor's former employees arising from unpaid pre-petition wages or benefits.

**10.6 Treasury Circular 230 Disclosure.** THIS DISCLOSURE IS PROVIDED TO COMPLY WITH TREASURY CIRCULAR 230. THIS WRITTEN ADVICE IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY PERSON FOR THE PURPOSE OF AVOIDING TAX PENALTIES THAT MAY BE IMPOSED ON SUCH PERSON. THIS ADVICE WAS WRITTEN TO SUPPORT THE PROMOTING, MARKETING OR RECOMMENDING OF THE TRANSACTION(S) OR MATTER(S) ADDRESSED BY THIS WRITTEN ADVICE, AND THE TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR. NO LIMITATION HAS BEEN IMPOSED ON SQUIRE,

SANDERS & DEMPSEY L.L.P. ON DISCLOSURE OF THE TAX TREATMENT OR TAX STRUCTURE OF THE TRANSACTION(S).

**ARTICLE 11**  
**RISK FACTORS**

The restructuring of Debtor involves a degree of risk, and this Disclosure Statement and certain of its Exhibits contain forward-looking statements that involve risks and uncertainty. HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD CONSIDER CAREFULLY THE FOLLOWING FACTORS, IN ADDITION TO THE OTHER INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, BEFORE SUBMITTING A VOTE TO ACCEPT OR REJECT THE PLAN.

**11.1 Reorganization Factors.** As with any plan of reorganization or other financial transaction, there are certain risk factors that must be considered. All risk factors cannot be anticipated; some events will develop in ways that were not foreseen, and many or all of the assumptions that have been used in connection with this Disclosure Statement and the Plan will not be realized exactly as assumed. Some or all of such variations may be material. While efforts have been made to be reasonable in this regard, there can be no assurance that subsequent events will bear out the analyses set forth in this Disclosure Statement. Holders of Claims and Equity Interests should be aware of some of the principal risks associated with the contemplated reorganization:

(a) There is a risk that one or more of the required conditions or obligations under the Plan will not occur, be satisfied or waived, as the case may be, resulting in the inability to confirm the Plan.

(b) The total amount of all Claims filed in the Chapter 11 Case may be materially in excess of the estimated amounts of Allowed Claims assumed in the development of the Plan and in the valuation estimates provided above. The actual amount of all Allowed Claims in any Class may differ significantly from the estimates provided in this Disclosure Statement. Accordingly, the amount and timing of the Distributions that will ultimately be received by any particular holder of an Allowed Claim in any Class may be materially and adversely affected should the estimates be exceeded as to any Class.

(c) Proceeds realized from the liquidation of the Debtor's remaining assets may be materially lower than anticipated or the Debtor may not prevail in its efforts to either obtain or retain certain funds currently held by third parties, including credit card processors and funds held in escrow.

**11.2 Certain Bankruptcy-Related Considerations**

(a) **Risk of Non-Confirmation of the Plan.** Although the Debtor believes that the Plan will satisfy all requirements necessary for Confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. There can also be no assurance that modifications of the Plan will not be required for Confirmation, that such negotiations would not

adversely affect the holders of Allowed Claims, or that such modifications would not necessitate the re-solicitation of votes.

**(b) Nonconsensual Confirmation.** If any impaired class of claims or equity interests does not accept a plan of reorganization, a bankruptcy court may nevertheless confirm such a plan of reorganization at the proponent's request if at least one impaired class has accepted the plan of reorganization (without including the acceptance of any "insider" in such class) and, as to each impaired class that has not accepted the plan of reorganization, the bankruptcy court determines that the plan of reorganization "does not discriminate unfairly" and is "fair and equitable" with respect to rejecting impaired classes. If any Impaired Class of Claims or Equity Interests fails to accept the Plan in accordance with Section 1129(a)(8) of the Bankruptcy Code, the Debtor reserves the right to request nonconsensual Confirmation of the Plan in accordance with Section 1129(b) of the Bankruptcy Code.

## **ARTICLE 12**

### **EXEMPTION FROM SECURITIES ACT REGISTRATION; REGISTRATION RIGHTS**

Under the Plan, holders of Allowed Claims in Class 4 will receive securities (the uncertificated, beneficial interests in the Liquidating Trust) in exchange for their Claims against the Debtor. In many cases, when securities are issued by an entity, they must be registered with the Securities and Exchange Commission and state securities commissions. However, Section 1145 of the Bankruptcy Code creates certain exemptions from the registration and licensing requirements of federal and state securities laws with respect to the issuance and distribution of securities by a debtor under a plan or reorganization to holders of claims or interests wholly or principally in exchange for those claims or interests.

**12.1 Issuance of New Securities Under the Plan.** In issuing the uncertificated beneficial interests in the Liquidating Trust, the Debtor will rely on the exemption from the registration requirements of the Securities Act and/or the Securities Exchange Act (and the equivalent state statutes commonly referred to as "blue sky" laws) provided by Section 1145(a)(1) of the Bankruptcy Code. This means that the Debtor will not be required to register the securities with any federal or state agencies.

The specific reasons that the Debtor will not be required to register the securities is that Section 1145(a)(1) of the Bankruptcy Code exempts the issuance of securities from the requirements of the Securities Act of 1933, as amended, and the "blue sky" laws if the following conditions are satisfied:

- (a)** the securities are issued by a debtor, an affiliate participating in a joint plan of reorganization with the debtor, or a successor of the debtor under a plan of reorganization;
- (b)** the recipients of the securities hold a claim against, an interest in, or a claim for an administrative expense against, the debtor; and

(c) the securities are issued entirely in exchange for the recipient's claim against or interest in the debtor, or are issued "principally" in such exchange and "partly" for cash or property.

The Debtor believes that the issuance of uncertificated, beneficial interests in the Liquidating Trust in accordance with the Plan will satisfy these requirements and therefore, the issuance of such securities is exempt from the registration requirements of federal and state securities laws. First, the securities are issued by the Liquidating Trust, which is considered a successor to the Debtor. Second, the persons and entities who receive beneficial interests in the Liquidating Trust currently hold claims against and interests in the Debtor, so they are eligible to receive the securities without registering them. Third, the claims of the holders of Allowed Claims in Class 4 will be extinguished under the Liquidating Plan and in return they will receive the securities. Therefore, the requirements of the Bankruptcy Code are satisfied, and there is no need to register the securities.

**12.2 Subsequent Transfer of Securities Issued Under the Liquidating Plan.** The beneficial interests in the Liquidating Trust issued pursuant to the Plan may not be transferred or sold by the holders of such beneficial interests other than by operation of law.

The beneficial interests will be held in book-entry form meaning that the Liquidating Trust and Registrar will place each holder's name in a register with a notation indicating the fractional interest that each holder owns in the Liquidating Trust. No holder of a beneficial interest will receive an actual piece of paper representing its interest unless the Liquidating Trustee determines that such beneficial interests should be represented by certificates.

## **ARTICLE 13**

### **ALTERNATIVES TO THE PLAN AND CONSEQUENCES OF REJECTION**

If the Plan is not timely confirmed, the Chapter 11 Case may be converted to a Chapter 7 liquidation proceeding. In a Chapter 7 liquidation proceeding, a trustee would be appointed by the Bankruptcy Court to oversee the liquidation of the Debtor's assets. Such trustee would be entitled to retain a new set of professionals, including lawyers and accountants, to review and analyze all of the Claims and the Debtor's assets. In addition, the trustee would be entitled to request a commission on all distributions made to the Creditors. The Debtor believes that conversion to a Chapter 7 liquidation proceeding and the appointment of a new trustee and new estate professionals would increase professional fees and result in further delays and a reduction in distributions to the Creditors.

The Debtor could continue in a Chapter 11 proceeding while the Debtor's assets are being liquidated and distributed. In a Chapter 11 proceeding, the Debtor's assets would be sold subject to higher and better bids under Bankruptcy Court supervision, and the Debtor's Avoidance Actions and other Causes of Action would be pursued. However, the professionals would continue to be retained and their services would be necessary in preparing the motions and applications and advising the Debtor and the Committee. In addition, every action of the Debtor would be subject to the same level of scrutiny and the objections of the various parties in interest. Obviously, this would further delay the receipt of any distributions by the Creditors since the Bankruptcy Court's approval would need to be obtained prior to the sale of any assets, and the

professional fees incurred in the Chapter 11 proceeding would drain the Debtor of the cash that would otherwise be paid to the Creditors.

In addition, another alternative plan could be pursued by another party-in-interest to the extent that it is allowed by the Bankruptcy Court and the Bankruptcy Code. These plans could be pursued with permission of the Bankruptcy Court or after the Debtor have failed to gain acceptance of the Plan. Pursuit of multiple plans would be expensive, since the Estate's Professionals would need to evaluate the competing plans and file objections, if appropriate, to one or more competing plans. This would incur a substantial amount of Professional Fees which would ultimately reduce the funds available to repay the Creditors of the Debtor.

The Debtor and its Professionals have explored various alternative scenarios, including the scenarios described above, and believe that the Plan enables the holders of Claims to realize the maximum recovery under the circumstances. The Debtor believes that the Plan is the best plan that can be proposed and served the best interests of the Debtor and other parties in interest.

Attached to this Disclosure Statement as **Exhibit C** is a liquidation analysis prepared by the Debtor with the assistance of, and in consultation with, its financial and legal advisors. The estimated recoveries set forth on **Exhibit C** are based upon, among other things, the Debtor's estimate of certain Claims to which the Debtor either has objected or will object, and expected recoveries or certain assets or Claims the Debtor holds against third parties.

## **ARTICLE 14 GENERAL PROVISIONS**

**14.1 Dissolution of the Debtor.** Upon the Effective Date, the Liquidating Trustee shall be entitled to thereafter seek dissolution of the Debtor pursuant to applicable state law.

**14.2 Exemption from Transfer Taxes.** Pursuant to Section 1146(a) of the Bankruptcy Code: (i) the creation of any Lien or other security interest, (ii) the making or assignment of any lease or sublease or (iii) the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, any restructuring, disposition, liquidation or dissolution, deeds, bills of sale or transfer of tangible property, will not be subject to any stamp tax or other similar tax.

**14.3 Recognition of Subordination Rights.** Except as otherwise provided in the Plan, all Claims and Equity Interests based upon any claimed contractual subordination rights pursuant to any provision of the Bankruptcy Code or other applicable law, shall be deemed satisfied by the Distributions proposed under the Plan to holders of Allowed Claims having any such contractual subordination rights. The Distributions to the various classes of Claims under the Plan shall not be subject to levy, garnishment, attachment or like legal process for any holder of a Claim by reason of any claimed contractual subordination rights or otherwise of the holder of a Claim against the holder of another Claim, except as expressly provided in the Plan. On the Effective Date, all holders of Claims shall be deemed to have waived any and all contractual subordination rights that they may have with respect to such Distributions, and the Bankruptcy Court shall permanently enjoin, effective as of the Effective Date, all holders of such Claims

from enforcing or attempting to enforce any such subordination rights with respect to such Distributions.

**14.4 Plan Classifications.** The Debtor reserves the right to separate the Classes of Claims and Equity Interests hereunder and create subclasses to the extent necessary to effectuate confirmation of the Plan.

**14.5 Binding Effect.** The Plan shall be binding upon and inure to the benefit of the Debtor, the holders of Claims, the holders of Equity Interests and their respective successors and assigns, *provided, however*, that if the Plan is not confirmed or the Effective Date does not occur, the Plan shall be null and void and nothing contained in the Plan or in this Disclosure Statement shall be deemed to: (i) constitute a waiver, acknowledgment or release of any Claim by or against or any Equity Interest in the Debtor or any other Person; (ii) prejudice in any manner the rights of the Debtor, its Estate or any other Person; or (iii) constitute an admission by the Debtor or any other Person with respect to any matter set forth in the Plan or this Disclosure Statement, including any liability on any Claim or the amount, priority or validity of such Claim.

**14.6 No Attorneys' Fees.** Other than the Professional Fees, no attorneys' fees or other professional fees shall be paid by the Debtor with respect to any Claim or Equity Interest except as specified in the Plan or as provided by the Confirmation Order or other Final Order of the Bankruptcy Court.

**14.7 No Interest.** Except as otherwise provided in the Plan, no interest shall accrue or be payable with respect to any Claim or Equity Interest, disputed or otherwise.

**14.8 Severability.** If the Bankruptcy Court determines that any provision of the Plan is unenforceable either on its face or as applied to any Claim or Equity Interest, the Debtor may modify the Plan in accordance with Section 15.9 thereof so that such provision shall not be applicable to the holder of any Claim or Equity Interest. Any such determination of unenforceability shall not (i) limit or affect the enforceability and operative effect of any other provision of the Plan or (ii) require the resolicitation of any acceptance or rejection of the Plan unless otherwise ordered by the Bankruptcy Court.

**14.9 Governing Law.** Except to the extent the Bankruptcy Code or Bankruptcy Rules are applicable, the Plan and any agreements, documents and instruments executed in connection therewith shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

## **ARTICLE 15**

### **RECOMMENDATION AND CONCLUSION**

The Debtor, the Committee and their respective professional advisors have analyzed different scenarios and believe that the Plan will provide for a larger distribution to holders of Claims than would otherwise result if an alternative restructuring plan were proposed or the Debtor's assets were liquidated in a Chapter 7 proceeding. In addition, any alternative other than Confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in potentially smaller distributions to the holders of Claims. Accordingly, the Debtor and the Committee recommend confirmation of the Plan and urge all holders of Impaired Claims

and Equity Interests to vote to accept the Plan and to indicate acceptance by returning its Ballots so as to be received by no later than the Voting Deadline.

Dated: October 24, 2008

**Eos Airlines, Inc., debtor and debtor-in-possession**

By: /s/ Caralyn Galletta  
Name: Caralyn Galletta  
Title: Chief Responsible Officer

Respectfully submitted,

SQUIRE, SANDERS & DEMPSEY L.L.P.

/s/ Tim J. Robinson  
Stephen D. Lerner (NY 2067841)  
Tm J. Robinson (OH 0046668)  
Nicholas J. Brannick (OH 0079642)  
350 Park Avenue  
New York, New York 10022-6022  
Phone: 212.872.9800  
Fax: 212.872.9815

*Counsel for the Debtor and Debtor-in-Possession*



## SUMMARY OF EXHIBITS

Exhibit A-1	Plan of Reorganization of Debtor under Chapter 11 of the Bankruptcy Code dated October 23, 2007
Exhibit A-2	Order of the Bankruptcy Court approving (i) the Disclosure Statement, (ii) forms of Ballots and (iii) notice of, and fixing the time for submitting Ballots and the Confirmation Hearing
Exhibit A-3	Ballot to Accept or Reject Plan
Exhibit A-4	Letter of Recommendation of Official Committee of Unsecured Creditors
Exhibit B	Income Statements and Balance Sheets for Fiscal Years Ending December 31 2006 and 2007
Exhibit C	Liquidation Analysis

EXHIBIT A-1

PLAN OF REORGANIZATION

[SEE ATTACHED]

EXHIBIT A-2

ORDER APPROVING DISCLOSURE STATEMENT

EXHIBIT A-3

BALLOT TO ACCEPT OR REJECT PLAN

SQUIRE, SANDERS & DEMPSEY L.L.P.

350 Park Avenue

New York, New York 10022-6022

Phone: 212.872.9800

Fax: 212.872.9815

Stephen D. Lerner (NY 2067841)

Tim J. Robinson (OH 0046668)

Christine M. Pierpont (OH 0051286)

Nicholas J. Brannick (OH 0079642)

Attorneys for Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	X
	:
<b>In re:</b>	:
	: <b>CHAPTER 11</b>
<b>EOS AIRLINES, INC.</b>	:
	: <b>CASE NO. 08-22581 (ASH)</b>
<b>Debtor</b>	:
	:
-----	X

**CLASS 4 BALLOT FOR ACCEPTING OR REJECTING PLAN**

**PLEASE READ AND FOLLOW THE VOTING INSTRUCTIONS CAREFULLY BEFORE  
COMPLETING THIS BALLOT**

1. Eos Airlines, Inc.(the “**Debtor**”) has filed a Liquidating Plan of Reorganization (the “**Plan**”) pursuant to Chapter 11 of the United States Bankruptcy Code in its Chapter 11 Case pending before the United States Bankruptcy Court for the Southern District of New York (the “**Court**”). By this Ballot you will vote to accept or reject the Plan.
2. The Court has approved a Disclosure Statement with respect to the Plan. The Disclosure Statement provides information to assist you in deciding how to cast your Ballot. If you do not have a Disclosure Statement, you may obtain a copy from the attorneys for the Debtor whose contact information is set forth below. Court approval of the Disclosure Statement does not indicate approval of the Plan by the Court.
3. You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the classification and treatment of your Claim under the Plan.
4. The amount of your Class 4 General Unsecured Claim for purposes of voting on the Plan is set forth in the margin above. If you disagree with this amount, you must file appropriate a timely and appropriate pleading before the Court to have your Claim estimated at a different amount for voting purposes.
5. If your Ballot is not received by the Debtor’s claims agent (the “**Claims Agent**”), whose name appears below, by 5:00 p.m., prevailing Pacific Time, on \_\_\_\_\_, 2008, and such deadline is not extended,

your vote will not count as either an acceptance or rejection of the Plan.

6. If the Plan is confirmed by the Bankruptcy Court, it will be binding on you whether or not you vote.
7. The undersigned *[check one box only]*:

☐ **ACCEPTS THE PLAN**

☐ **REJECTS THE PLAN**

**THE DEBTOR RECOMMENDS THAT YOU ACCEPT THE PLAN  
BY CHECKING THE "ACCEPT THE PLAN" BOX ABOVE**

Dated: \_\_\_\_\_

Name *[Print or type]*:

Signature:

Title *[if corporation or partnership]*:

Address:

Telephone/Facsimile Number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RETURN THIS BALLOT TO THE DEBTOR'S CLAIMS AGENT AT:**

EOS Airlines Claims Processing Center  
c/o Kurtzman Carson Consults LLC  
2335 Alaska Avenue  
El Segundo, CA 90245

**THIS BALLOT DOES NOT CONSTITUTE A PROOF OF CLAIM AND WILL NOT BE  
CONSIDERED A PROOF OF CLAIM**

**Counsel to the Debtor:** Squire, Sanders & Dempsey L.L.P., Attn: Nicholas Brannick, 2000 Huntington Center, 41 South High Street, Columbus, OH 43215, Phone: 614.365.2700

**APPENDIX A**  
**VOTING INSTRUCTIONS FOR COMPLETING THE CLASS 4 BALLOT**

The Debtor is soliciting your vote with respect to the Debtor's Plan. Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan and the Disclosure Statement. Please review the Plan and the Disclosure Statement carefully and thoroughly before you vote.

To have your vote count, you must complete, sign and return the attached Ballot so that it is received by the Debtor's Claims Agent:

EOS Airlines Claims Processing Center  
c/o Kurtzman Carson Consults LLC  
2335 Alaska Avenue  
El Segundo, CA 90245

in either case, no later than 5:00 p.m. prevailing Pacific Time, on \_\_\_\_\_, 2008 (the "**Voting Deadline**"), unless the Debtor extends or waives such Voting Deadline, in which case the term "Voting Deadline" for such solicitation shall mean the last time and date to which such solicitation period is extended.

If a Ballot is received after the Voting Deadline, it may not be counted. Except as otherwise provided herein, delivery of Ballots will be deemed made only on the date the original executed Ballot is **actually received** by the Claims Agent. In all cases, sufficient time should be allowed to assure timely delivery. **Delivery of a Ballot to the Claims Agent by facsimile, e-mail or any other electronic means will not be accepted. No Ballot should be sent to the Debtor, counsel for the Debtor, counsel for the Official Committee of Unsecured Creditors, or the Bankruptcy Court.**

If a creditor casts simultaneous duplicative Ballots which are voted inconsistently, such Ballots shall count as one vote accepting the Plan.

The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan.

The Ballot does not constitute, and shall not be deemed to be, a Proof of Claim or Interest or an assertion or admission of a Claim or Equity Interest.

Please be sure to sign and date your Ballot. If you are completing the Ballot on behalf of an entity, indicate your relationship with such entity and the capacity in which you are signing. In addition, please provide your name and mailing address if different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot.

**PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT TO THE CLAIMS AGENT IN THE ENVELOPE PROVIDED. PLEASE RETURN YOUR BALLOT PROMPTLY!**

If you would like to request a copy of the Disclosure Statement via email, please send your email to [nbrannick@ssd.com](mailto:nbrannick@ssd.com).

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, PLEASE CALL COUNSEL FOR THE DEBTOR AT THE FOLLOWING NUMBER:

**614.365.2700**

EXHIBIT A-4

LETTER RECOMMENDATION OF  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS



EXHIBIT B

SELECTED FINANCIAL STATEMENTS

[SEE ATTACHED]

**Eos Airlines, Inc.**  
**Balance Sheet**

	12/31/2006	12/31/2007
Assets		
Current Assets		
Cash & Cash Equivalents	31,407,086.52	6,802,866.18
Short term Investments	3,785,000.00	32,328,125.00
Receivables, Less Allowance	3,499,048.85	8,760,624.20
Cargo Receivable	131,223.05	153,801.98
Charter Receivable	-	49,479.15
Agency Receivable	604,516.41	1,612,485.69
Taxes Receivable	290,436.96	255,347.26
Credit Cards & Other	2,543,648.43	6,747,138.18
Allowances for Bad Debts	(70,776.00)	(57,628.06)
Prepaid Expenses & Other	1,930,651.66	4,107,628.99
Total Current Assets	40,621,787.03	51,999,244.37
Flight Equipment Cost	21,660,262.13	30,401,571.51
Flight Equipment Accumulated Depreciation	(4,549,480.40)	(8,597,737.08)
Flight Equipment (Net)	17,110,781.73	21,803,834.43
Other Property & Equipment Cost	5,574,413.84	8,125,521.13
Other Property & Equipment Accun Depreciation	(1,722,309.92)	(3,528,970.41)
Other Property & Equipment (Net)	3,852,103.92	4,596,550.72
TotalProperty & Equipment	20,962,885.65	26,400,385.15
Other Assets		
Restricted Cash	346,646.60	330,763.29
Deposits & Other Assets	2,490,896.40	5,893,225.50
Total Other Assets	2,837,543.00	6,223,988.79
Total Assets	64,422,215.68	84,623,618.31
Liabilities & Stockholder's Equity		
Current Liabilities		
Accounts Payable	(6,630,264.18)	(9,486,161.09)
Air Traffic Liability	(8,470,109.62)	(15,387,268.54)
Accrued Salaries & Related Costs	(2,457,709.92)	(3,257,699.70)
Other Accrued Liabilities	(468,649.97)	(2,282,529.87)
Current Portion of Long Term Debt	(1,586,060.00)	(703,093.32)
Total Current Liabilities	(19,612,793.69)	(31,116,752.52)
Long Term Debt & Capital Lease Obligations	(834,797.09)	(503,500.91)
Long Term Liabilities	-	(462,646.64)
Stockholder's Equity		
Preferred Stock	(154.67)	(245.25)
Common Stock	(6.63)	(5.55)
Additional Paid in Capital	(160,661,651.08)	(210,903,638.24)
Preferred Stock Receivable	10,000,000.00	-
Retained Earnings (Loss)	106,687,187.48	158,363,170.80
Total Stockholder's Equity	(43,974,624.90)	(52,540,718.24)
Total Liabilities & Stockholder's Equity	(64,422,215.68)	(84,623,618.31)

**Eos Airlines, Inc.**  
**Profit & Loss**

	<b>2006</b>	<b>2007</b>
Statement of Operations		
Operating Revenue		
Passenger Revenue	31,538,933.51	76,866,088.96
Other Revenue	4,468,946.40	7,959,642.13
Charter Revenue	3,641,291.44	6,707,304.40
Cargo Revenue	574,062.00	350,054.70
Other	253,592.96	902,283.03
	<hr/>	<hr/>
Total Operating Revenue	36,007,879.91	84,825,731.09
	<hr/>	<hr/>
Operating Expenses		
Salaries & Related Costs	(21,231,197.94)	(29,487,166.68)
Aircraft Fuel	(14,813,487.90)	(26,381,623.21)
Selling & Marketing	(15,747,332.41)	(16,747,504.15)
Aircraft Rent & Maintenance Reserves	(10,057,013.68)	(14,894,516.88)
Landing Fees and Other Rents	(2,508,439.28)	(2,360,173.33)
Maintenance Materials & Repairs	(3,133,648.57)	(3,367,119.43)
Passenger Service	(9,046,104.25)	(15,198,622.42)
Depreciation & Amortization	(4,816,604.88)	(5,969,245.39)
Other Operating Expenses	(22,242,653.60)	(24,147,138.83)
	<hr/>	<hr/>
Total Operating Expenses	(103,596,482.51)	(138,553,110.32)
	<hr/>	<hr/>
Other Income (Expense)		
Interest Income	881,958.86	2,051,399.98
Interest Expense	(544,736.16)	(137,304.86)
Capitalized Interest	93,000.00	137,300.79
Other Income (Expense)	67,590.48	-
	<hr/>	<hr/>
Total Other Income (Expense)	497,813.18	2,051,395.91
	<hr/>	<hr/>
Net Income /(Loss)	(67,090,789.42)	(51,675,983.32)
	<hr/>	<hr/>

## EXHIBIT C

### LIQUIDATION ANALYSIS

[SEE ATTACHED]

THE FINANCIAL PROJECTIONS CONTAINED IN THIS LIQUIDATION ANALYSIS REPRESENT THE DEBTOR'S ESTIMATES OF FUTURE EVENTS BASED ON CERTAIN ASSUMPTIONS, SOME OR ALL OF WHICH MAY NOT BE REALIZED. NONE OF THE FINANCIAL ANALYSES CONTAINED IN THIS LIQUIDATION ANALYSIS ARE CONSIDERED TO BE A "FORECAST" OR "PROJECTION" AS TECHNICALLY DEFINED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS.

NOTHING IN THIS LIQUIDATION ANALYSIS MAY BE CONSIDERED, CONSTRUED OR INTRODUCED AS EVIDENCE OF AN ADMISSION OF ANY LIABILITY OF THE DEBTOR OR ITS ESTATE OR THE AMOUNT, PRIORITY OR VALIDITY OF ANY CLAIM. CERTAIN CLAIMS HAVE BEEN ESTIMATED BASED ON THE DEBTOR'S REVIEW OF THOSE CLAIMS IN ORDER TO PROVIDE THIS LIQUIDATION ANALYSIS. THESE CLAIMS MAY BE ALLOWED AT AMOUNTS THAT ARE HIGHER THAN THE DEBTOR'S ESTIMATES OR MAY BE DISALLOWED IN FULL.

THE DEBTOR HAS NOT COMPLETED ITS ANALYSIS OF POTENTIAL AVOIDANCE ACTIONS AND, THEREFORE, NO ESTIMATED AMOUNT OF POTENTIAL RECOVERIES FROM AVOIDANCE ACTIONS IS INCLUDED IN THIS LIQUIDATION ANALYSIS. THIS INTENTIONAL OMISSION IS NEITHER AN ADMISSION AS TO THE EXISTENCE OR NON-EXISTENCE, OR THE POTENTIAL AMOUNT OF, ANY AVOIDANCE ACTION, NOR A WAIVER OF ANY POTENTIAL AVOIDANCE ACTION OR CAUSE OF ACTION THE DEBTOR OR ITS ESTATE MAY HOLD.

EOS Airlines, Inc.  
Liquidation Analysis  
PRELIMINARY - UNAUDITED

	Estimated Range of Recovery				Notes:
	Low	%	High	%	
Cash on Hand - 10/17/2008	\$ 4,188,337	100%	\$ 4,188,337	100%	(1)
Net Proceeds from Credit Card Holdbacks	825,000	33%	2,500,000	100%	(2)
Proceeds from Collection of Prepaid taxes	322,000	50%	644,000	100%	(3)
Proceeds from Liquidation of Assets (PP&E)					
Seat Shipsets	-	0%	75,000	100%	(4)
Charter Revenue Recovery					
Constellation	-	0%	409,281	100%	(5)
Hasan Tatanaki	-	0%	470,174	100%	(6)
Preference Recoveries	-	0%	-	100%	
<b>Total Proceeds Available for Distribution</b>	<b>5,335,337</b>		<b>8,286,792</b>		
Post-petition Accounts Payable	180,000		180,000		(7)
Salary and Accrued Vacation	75,029		75,029		(8)
Payroll Tax	6,973		6,973		(8)
Professional Fees	1,500,000		1,500,000		(9)
Reclamation Claims	241,123		241,123		(10)
Non Insider Retention	50,766		50,766		(8)
Post-petition aircraft rent and maintenance	950,000		950,000		(11)
WARN Litigation	350,000		350,000		(12)
Total Administrative Expenses	3,003,891		3,003,891		
<b>Administrative Claims Estimated Recovery</b>	<b>100.0%</b>		<b>100.0%</b>		
<b>Net Proceeds Available for Distribution</b>	<b>2,331,446</b>		<b>5,282,901</b>		
Priority Claims					
Pre-Petition Wages, Salary, Tax and Expenses	688,645		688,645		
Pre-Petition Accrued Vacation	281,684		281,684		
Pre-Petition Taxes	68,864		68,864		
Total Priority Claims	1,039,193		1,039,193		
<b>Priority Claims Estimated Recovery</b>	<b>100.0%</b>		<b>100.0%</b>		
<b>Net Proceeds Available for Distribution</b>	<b>1,292,252</b>		<b>4,243,707</b>		
WARN ACT Claimants	458,749		1,506,516		(12)
<b>Net Proceeds Available for Distribution</b>	<b>833,503</b>		<b>2,737,191</b>		
Total General Unsecured Claims	63,140,859		45,282,961		
<b>Unsecured Claims Estimated Recovery</b>	<b>1.3%</b>		<b>6.0%</b>		

**NOTES:**

- Represents cash on hand per bank statements at 10/17/2008.
- Represents the current estimate of net credit card holdback through August 2008 (includes American Express, Barclaycard, U.S. Bank, etc.).
- Represents the pre-petition prepayment for all Federal and State Taxes including Excise, Immigration, and Sales & use taxes.
- Represents the current highest bid for Eos seat shipsets (3 sets).
- Represents monies applicable to Charter flights flown and currently residing in escrow. Release of funds is subject to results pending litigation.
- Represents monies applicable to Charter flights flown and currently residing in escrow. Release of funds is subject to results pending litigation.
- Estimated amount of operating accounts payable through December 31, 2008.
- Represents remaining salary, taxes, accrued vacation and non-insider incentive payments to remaining (3) Eos employees necessary to assist in the claims reconciliation and win-down of the case.
- Represents an estimate of remaining professional fees (including current 20% holdback) for Squire Sanders, Cohen Tauber, Alvarez & Marsal and MCR assuming a December 31, 2008 confirmation.
- Represents estimate of remaining payments due on 503 (b) 9 claims.
- Represents settlement with Mexicana and reduction of administrative claim filed by ILFC to remove amounts that are clearly invalid or not entitled to administrative priority.
- Represents settlement of WARN Act litigation consisting of \$350,000 Administrative payment and 35.5% of proceeds after Priority Claims are satisfied.

SQUIRE, SANDERS & DEMPSEY L.L.P.  
350 Park Avenue  
New York, New York 10022-6022  
Phone: 212.872.9800  
Fax: 212.872.9815  
Stephen D. Lerner (NY 2067841)  
Tim J. Robinson (OH 0046668)  
Christine M. Pierpont (OH 0051286)  
Nicholas J. Brannick (OH 0079642)

Attorneys for Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	-----X
	:
<b>In re:</b>	:
	: <b>CHAPTER 11</b>
<b>EOS AIRLINES, INC.</b>	:
	: <b>CASE NO. 08-22581 (ASH)</b>
<b>Debtor</b>	:
	:
	-----X

**DEBTOR'S PLAN OF LIQUIDATION UNDER CHAPTER 11  
OF THE UNITED STATES BANKRUPTCY CODE  
OCTOBER 24, 2008**

SQUIRE, SANDERS & DEMPSEY L.L.P.  
/s/ Tim J. Robinson  
Stephen D. Lerner (NY 2067841)  
Tim J. Robinson (OH 0046668)  
Nicholas J. Brannick (OH 0079642)  
350 Park Avenue  
New York, New York 10022-6022  
Phone: 212.872.9800  
Fax: 212.872.9815  
*Counsel for the Debtor and Debtor-in-Possession*

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Eos Airlines, Inc., the debtor and debtor-in-possession in the above-captioned Chapter 11 case (“**Debtor**”), proposes the following plan of liquidation (the “**Plan**”) for the resolution of Claims against and Equity Interests in the Debtor. All creditors and other parties-in-interest should refer to the Disclosure Statement for a discussion of the Debtor’s history, business, properties, results of operations, events leading up to the Chapter 11 Case, financial projections for Creditor recoveries, and for a summary and analysis of this Plan and certain related matters.

All holders of Claims against, and Equity Interests in, the Debtor are encouraged to read this Plan, the Disclosure Statement and the related solicitation materials in their entirety before voting to accept or reject this Plan.

Subject to the restrictions on modifications set forth in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, and those restrictions on modifications set forth in Section 13 of this Plan, the Debtor expressly reserves the right to alter, amend, or modify this Plan one or more times before its substantial consummation.

NO SOLICITATION MATERIALS, OTHER THAN THE DISCLOSURE STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH AND APPROVED BY THE BANKRUPTCY COURT, HAVE BEEN AUTHORIZED BY THE BANKRUPTCY COURT FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THIS PLAN.

## **SECTION 1 DEFINITIONS AND RULES OF INTERPRETATION**

For purposes of this Plan, (i) any reference in this Plan to an existing document or exhibit filed or to be filed means that document or exhibit as it may have been or may be amended, supplemented, or otherwise modified; (ii) unless otherwise specified, all references in this Plan to sections, articles, and exhibits are references to sections, articles, or exhibits of this Plan; (iii) the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to this Plan in its entirety and not to any particular portion of this Plan; (iv) captions and headings contained in this Plan are inserted for convenience and reference only, and are not intended to be part of or to affect the interpretation of this Plan; (v) wherever appropriate from the context, each term stated in either the singular or the plural includes the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender; and (vi) the rules of construction outlined in Section 102 of the Bankruptcy Code and in the Bankruptcy Rules apply to this Plan.

As used in this Plan, the following terms have the meanings specified below:

**Administrative Claim.** A Claim, cause of action, right, or other liability, or the portion thereof, that is allowable under Section 503(b) of the Bankruptcy Code and entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including, without limitation: (a) fees payable under 28 U.S.C. § 1930; (b) actual and necessary costs and expenses incurred after the Petition Date and in the ordinary course of the Debtor’s business; (c) actual and necessary costs and expenses of preserving the Estate or administering the Chapter 11 Case; (d) all Claims for Professional Fees; and (e) the Allowed WARN Act Administrative Claim.

**Administrative Claim Bar Date.** The date set forth in Section 2.5 of this Plan for the filing of Administrative Claims, *except* Claims for Professional Fees.

**Administrative Expense Reserve.** The reserve of the Debtor's Cash to be established by the Liquidating Trustee prior to making any Distributions to provide for the payment of Allowed Administrative Claims.

**Affiliate.** Any Person within the definition set forth in Section 101(2) of the Bankruptcy Code.

**Allowance Date.** With respect to (a) a Disputed Claim, the date on which such Disputed Claim becomes an Allowed Claim by Final Order; (b) a Claim Allowed by Final Order, the date on which such Claim becomes an Allowed Claim under the Final Order; and (c) any other Claim that is not a Disputed Claim, the date that is 60 days after the Effective Date.

**Allowed Claim or Allowed Equity Interest.** With respect to any Claim against, or Equity Interest in, the Debtor: (a) proof of which, requests for payment of which, or application for allowance of which, was filed or deemed filed on or before the Bar Date, Administrative Claim Bar Date, the Professional Fee Bar Date or the Rejection Damage Bar Date, as applicable, for filing proofs of claim or equity interest or requests for payment for Claims of such type against the Debtor; (b) if no proof of claim or equity interest is filed, which has been or is ever listed by the Debtor in the Schedules as liquidated in amount and not disputed or contingent; or (c) a Claim or Equity Interest that is allowed pursuant to the terms of this Plan and, in the case of (a), (b) or (c), a Claim or Equity Interest as to which no objection to its allowance has been interposed within the applicable period of limitation fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court. If a Claim becomes Allowed by virtue of an Order of the Bankruptcy Court, it shall be deemed Allowed upon the order becoming a Final Order. For purposes of determining the amount of an Allowed Claim (other than a Claim specifically allowed under this Plan), there shall be deducted therefrom an amount equal to the amount of any claim or debt that the Debtor may hold against the Creditor under Section 553 of the Bankruptcy Code.

**Allowed [...] Claim.** An Allowed Claim in the particular Class or category specified.

**Allowed Class 5 Equity Interest.** An Allowed Equity Interest in Class 5 of this Plan.

**Allowed WARN Act Administrative Claim.** An Administrative Claim under Section 503(b)(1) of the Bankruptcy Code in the amount of \$350,000 arising pursuant to the terms of the WARN Act Settlement Agreement and payable pursuant to the terms thereof.

**Allowed Unsecured WARN Act Claim.** A Claim against the Debtor's estate arising pursuant to the WARN Act Settlement Agreement entitling the WARN Act Class to 35.5% of all funds available for Distribution to holders of Allowed Class 4 General Unsecured Claims.

**Available Cash.** Trust Cash less (i) any Cash held in Trust Reserves; (ii) Cash that is Cash Collateral; and (iii) amounts distributable to holders of Allowed Class 3 Unsecured WARN Act Claims pursuant to the terms of the WARN Act Settlement Agreement.

**Avoidance Actions.** All statutory causes of action preserved for the Estate under Sections 506, 510, 542, 543, 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code.

**Ballot.** The form of ballot or ballots distributed with the Disclosure Statement to holders of Claims entitled to vote on this Plan on which an acceptance or rejection of this Plan is to be indicated.

**Bankruptcy Code.** Title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended from time to time prior to the Petition Date and as applicable to the Chapter 11 Case.

**Bankruptcy Court.** The United States Bankruptcy Court for the Southern District of New York having jurisdiction over the Chapter 11 Case or, in the event that court ceases to exercise jurisdiction over the Chapter 11 Case, such court that may have jurisdiction over the reorganization of the Debtor under chapter 11 of the Bankruptcy Code.

**Bankruptcy Rules.** Collectively, the Federal Rules of Bankruptcy Procedure as promulgated under 28 U.S.C. § 2075 and any Local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Case.

**Bar Date.** The date or dates fixed by the Bankruptcy Court by which Persons asserting a Claim against the Debtor (*except* Administrative Claims, Claims for Professional Fees or Rejection Damage Claims arising after the Confirmation Date) must file a proof of claim or be forever barred from asserting a Claim against the Debtor or any Estate Property, from voting on this Plan, and sharing in Distributions under this Plan. The Bar Dates for non-governmental Claims was July 28, 2008, and, with respect to certain enumerated Claims, November 7, 2008. The Bar Date for Claims of Governmental Units was October 23, 2008.

**Beneficial Interest.** A beneficial interest in the Trust Assets that shall be allocated to each Beneficiary pursuant to Article 7.1 of the Trust Agreement.

**Beneficiary.** A Person holding a Beneficial Interest under the Trust.

**Business Day.** Any day other than a Saturday, Sunday, or legal holiday, as defined in Bankruptcy Rule 9006(a).

**Cash.** Legal tender of the United States of America and equivalents thereof, including readily marketable direct obligations of the United States of America, certificates of deposit issued by a federally insured bank, money market accounts of federally insured banks, currency, checks drawn on a bank insured by the Federal Deposit Insurance Corporation, certified checks, money orders, negotiable instruments, and wire transfers of immediately available funds.

**Cash Collateral.** Has the meaning ascribed in Section 363(a) of the Bankruptcy Code.

**Cause of Action.** Any and all claims, debts, demands, rights, defenses, actions, causes of action, suits, contracts, agreements, obligations, accounts, defenses, offsets, powers, privileges, licenses and franchises of any kind or character whatsoever, known or unknown, suspected or unsuspected, whether arising before, on, or after the Petition Date, in contract or in tort, at law or in equity, or under any other theory of law, of the Debtor or its Estate, including (a) rights of

setoff, counterclaim, or recoupment, and claims on contracts or for breaches of duties imposed by law, (b) claims pursuant to Section 362 of the Bankruptcy Code, (c) such claims and defenses as fraud, mistake, duress, and usury, and (d) all Avoidance Actions.

**Chapter 11 Activities.** Is defined in Section 10.4 of this Plan.

**Chapter 11 Case.** The case under chapter 11 of the Bankruptcy Code in which Debtor is debtor and debtor-in-possession, pending before the Bankruptcy Court, bearing case number 08-22581.

**Claim.** A claim against a Person or its property as defined in Section 101(5) of the Bankruptcy Code, including, without limitation: (a) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured arising at any time before the Effective Date and (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

**Claims Agent.** Kurtzman Carson Consultants, L.L.C.

**Claim Objection.** An objection to any Claim or Equity Interest pursuant to Section 502 of the Bankruptcy Code.

**Class.** A category of holders of Claims or Equity Interests which are substantially similar in nature to the Claims or Equity Interests of other holders placed in such category, as designated in Section 4 of this Plan.

**Class 4 Beneficial Interest.** Any Beneficial Interest to be allocated to holders of Allowed Class 4 General Unsecured Claims pursuant to the Trust Agreement.

**Collateral.** Any property or interest in property of the Estate subject to a Lien to secure the payment or performance of a Claim, to the extent such Lien is not subject to avoidance under the Bankruptcy Code, disallowance under Section 506 of the Bankruptcy Code, or that otherwise is invalid or unenforceable under the Bankruptcy Code or applicable state law.

**Committee.** The Official Committee of Unsecured Creditors, appointed by the United States Trustee in the Chapter 11 Case in accordance with Section 1102(a)(1) of the Bankruptcy Code, as may be reconstituted from time to time.

**Committee Member.** Any current or former member of the Committee.

**Confirmation Date.** The date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case within the meaning of Bankruptcy Rules 5003 and 9021.

**Confirmation Hearing.** The hearing or hearings held by the Bankruptcy Court to consider confirmation of this Plan under Section 1129 of the Bankruptcy Code, as such hearing may be adjourned from time to time.

**Confirmation Order.** The order of the Bankruptcy Court confirming this Plan in accordance with the Bankruptcy Code.

**Contingent Claim.** Any Claim (a) that was listed by the Debtor in the Schedules as unliquidated or contingent and for which no proof of claim was filed in the Chapter 11 Case or (b) for which a proof of claim has been filed with the Bankruptcy Court that: (i) was not filed in a sum certain, or that has not accrued and is dependent on a future event that has not occurred and may never occur, and (ii) has not been allowed on or before the Effective Date, or such other date as the Bankruptcy Court may establish.

**Creditor.** Any Person within the definition in Section 101(10) of the Bankruptcy Code.

**D&O Policy.** Any directors and officers liability insurance policy or any errors and omissions policy applicable to current or former directors and officers of Debtor.

**Debtor.** Eos Airlines, Inc., as debtor and debtor-in-possession in the Chapter 11 Case, in accordance with Sections 1107 and 1108 of the Bankruptcy Code.

**Debtor's Cash.** All of the Cash of the Debtor as of the Effective Date.

**Disclosure Statement.** The written disclosure statement relating to this Plan including, without limitation, all exhibits and schedules to such disclosure statement, in the form approved by the Bankruptcy Court under Section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017.

**Disclosure Statement Approval Order.** The Final Order of the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017 approving the Disclosure Statement.

**Disputed Claim or Disputed Equity Interest.** Any Claim or Equity Interest: (a) that is listed in the Schedules as unliquidated, disputed, or contingent, irrespective of the amount scheduled; (b) for which a proof of claim or proof of interest, as applicable, has been filed or deemed to have been filed under applicable law; (c) as to which the Debtor or any other party-in-interest has interposed a timely objection or request for estimation, or has sought to equitably subordinate, recharacterize or otherwise limit recovery in accordance with the Bankruptcy Code and the Bankruptcy Rules, or which is otherwise disputed by the Debtor in accordance with applicable law, such objection, request for estimation, action to limit recovery or dispute has not been withdrawn or determined by a Final Order; (d) that is a Contingent Claim; and (e) with respect to an Administrative Claim, as to which an objection has been or is filed in accordance with this Plan, the Bankruptcy Code, or the Bankruptcy Rules, which objection has not been withdrawn or determined by a Final Order. For the purposes of this Plan, a Claim or Equity Interest is a Disputed Claim or Disputed Equity Interest prior to any objection to the extent that (i) the amount of a Claim or Equity Interest specified in a proof of claim or proof of interest exceeds the amount of any corresponding Claim or Equity Interest scheduled by the Debtor in the Schedules or (ii) no corresponding Claim or Equity Interest has been scheduled by the Debtor in the Schedules.

**Disputed Claim Reserve.** A reserve account established within the Trust and funded with Trust Cash to satisfy in full any Disputed Unclassified Claim, Administrative Claim or

Priority Unsecured Non-Tax Claim or to pay the Pro Rata portion of any Distribution to which the holder of a Disputed Claim would be entitled if such Disputed Claim were an Allowed Claim.

**Disputed [...] Claim.** A Disputed Claim in the particular Class or category specified.

**Distribution.** A distribution of Available Cash or non-Cash consideration to the Beneficiaries under the Trust Agreement.

**Distribution Date.** The date or dates on which the Liquidating Trustee makes a Distribution to the holders of Unclassified Claims, Allowed Class 1, Class 2, or Class 3 Claims or the holders of Beneficial Interests in the Trust.

**Distribution Record Date.** The Effective Date.

**Effective Date.** The later of: (a) the first Business Day following the tenth day (as calculated under Bankruptcy Rule 9006(a)) after the Confirmation Date and on which no stay of the Confirmation Order is in effect and (b) the Business Day on which all of the conditions to effectiveness set forth in this Plan have been satisfied or waived as provided in this Plan.

**Equity Interest.** Any issued, unissued, authorized or outstanding capital stock, and any other equity security (as defined in Section 101(16) of the Bankruptcy Code) in the Debtor and any and all (i) shares, (ii) securities, options, warrants, rights, calls, subscriptions, agreements, commitments or understandings of any nature whatsoever, fixed or contingent, that directly or indirectly (A) call for the issuance, redemption, sale, pledge or other disposition of any shares of capital stock of the Debtor, (B) obligate the Debtor to grant, offer or enter into any of the foregoing or (C) relate to the voting or control of such capital stock, securities or rights, and (iii) “phantom stock”, stock appreciation rights or other similar rights, the value of which is related to or based upon the price or value of any class or series of capital stock of the Debtor.

**Equity Related Claim.** Any Claim arising from the rescission of a purchase or sale of an Equity Interest, or for damages arising from the purchase or sale of an Equity Interest, or any Claim by any Person that asserts equitable or contractual rights of reimbursement, contribution, or indemnification arising from such Claim, including any Claim that has been or may be asserted against the Debtor and their officers and/or directors asserting violations of federal securities laws including, without limitation, actions under Sections 11 and 15 of the Securities Act and Sections 10(b) and 20 of the Exchange Act, and Rule 10b-5 promulgated under the Exchange Act by the SEC, and any applicable non-federal law.

**Estate.** The bankruptcy estate of the Debtor and all Estate Property comprising the bankruptcy estate within the meaning of Section 541 of the Bankruptcy Code.

**Estate Cash.** All Cash held by the Debtor as of the Effective Date, wherever located.

**Estate Property.** All right, title, and interest in and to any and all property of every kind or nature owned and wherever located by the Debtor or comprising its Estate on the Effective Date.

**Exchange Act.** The Securities Exchange Act of 1934, as amended, and the regulations promulgated under that act.

**Federal Judgment Rate.** Pursuant to 28 U.S.C. § 1961(a), the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System.

**Final Distribution Date.** The Distribution Date on which the Liquidating Trust distributes the remaining proceeds of the Trust Assets pursuant to the Trust Agreement.

**Final Order.** An order or judgment: (a) as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired; (b) as to which any right to appeal, petition for certiorari, reargue, or rehear has been waived in writing in form and substance satisfactory to the Debtor or Liquidating Trustee; or (c) in the event of an appeal, writ of certiorari, or motion for reargument or rehearing has been filed, such judgment or order has not been reversed, modified, stayed, or amended; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order does not prevent such order from being a Final Order.

**GAAP.** Means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or in such other statements by such other entity as approved by a significant segment of the accounting profession which are in effect in the United States).

**General Unsecured Claim.** Any Unsecured Claim, including an Unsecured Deficiency Claim, if any, that is not a: (a) Secured Claim; (b) Administrative Claim; (d) Priority Unsecured Tax Claim; (e) Priority Unsecured Non-Tax Claim; or (f) Allowed WARN Act Unsecured Claim.

**Governmental Unit.** Shall have the meaning ascribed to such term under Section 101(27) of the Bankruptcy Code.

**Initial Distribution Date.** The first Business Day after the Effective Date or as soon thereafter as is practical on which Distributions are made to holders of Class 1, 2 or 3 Claims and Beneficial Interests in accordance with the Liquidating Trust Agreement.

**Interest Holder.** Any Person holding an Equity Interest in the Debtor.

**IRS.** The United States Internal Revenue Service.

**Lien.** A lien, security interest, or other interest or encumbrance as defined in Section 101(37) of the Bankruptcy Code asserted against any Estate Property, except a lien that has been avoided in accordance with Sections 544, 545, 546, 547, 548, or 549 of the Bankruptcy Code or applicable law.

**Liquidating Trustee.** The Person (and any successor) appointed to serve as the liquidating trustee under the Trust Agreement.



**Objection Deadline.** The date by which objections to any Claims or Equity Interests must be filed with the Bankruptcy Court and served upon the holders thereof, which date shall be, unless otherwise ordered by the Bankruptcy Court, (a) for Administrative Claims, thirty (30) Business Days after the Administrative Claims Bar Date; (b) for Professional Fees, the date that is thirty (30) Business Days after the Professional Fee Bar Date; (c) for Rejection Damage Claims, the date that is thirty (30) Business Days after the Rejection Damage Claim Bar Date; and (d) for all other Claims, the date that is sixty (60) Business Days after the Effective Date.

**Oversight Committee.** The Oversight Committee as may be appointed and reconstituted from time to time under the Trust Agreement.

**Person.** shall have the meaning set forth in Section 101(41) of the Bankruptcy Code.

**Petition Date.** April 26, 2008.

**Plan.** This Plan of Reorganization of Debtor under Chapter 11 of the Bankruptcy Code dated October 24, 2008, as it may be amended, supplemented or modified from time to time, including all its annexed exhibits and schedules.

**Priority/Secured Claim Reserve.** The reserve of Trust Cash to be established by the Liquidating Trustee pursuant to the Trust Agreement for the payment of Priority Unsecured Tax Claims and Class 1 and Class 2 Claims.

**Priority Unsecured Non-Tax Claim.** Any Unsecured Claim (or portion of such Claim) entitled to priority under Sections 507(a)(2-7) and 507(a)(9) of the Bankruptcy Code.

**Priority Unsecured Tax Claim.** Any Unsecured Claim (or portion of such Claim) of a Governmental Unit entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

**Professionals.** Those Persons (a) employed in accordance with an order of the Bankruptcy Court under Sections 327 or 1103 of the Bankruptcy Code and to be compensated for services under Sections 327, 328, 329, 330, and 331 of the Bankruptcy Code, or (b) for which compensation and reimbursement has been Allowed by the Bankruptcy Court under Section 503(b) of the Bankruptcy Code.

**Professional Fee Bar Date.** The date by which all applications for compensation or expense reimbursement for Professional Fees, must be filed with the Bankruptcy Court in accordance with Section 2.6 of this Plan.

**Professional Fees.** The Administrative Claims of Professionals for compensation and reimbursement of expenses submitted in accordance with Sections 328, 330, 331, or 503(b) of the Bankruptcy Code.

**Pro Rata.** As to a holder of a particular Claim, the ratio that the amount of such Claim held by such Creditor bears to the aggregate amount of all Claims in the particular Class or category of Claims to which such holder's Claim has been assigned. Such ratio shall be calculated as if all Claims in the particular Class or category asserted against the Debtor are Allowed Claims as of the Effective Date, unless specifically provided otherwise in this Plan.

**Rejection Damage Claim.** A Claim arising from the rejection of an executory contract or unexpired lease of non-residential real property under Section 365 of the Bankruptcy Code.

**Registrar.** Initially the Liquidating Trustee and thereafter any registrar appointed by the Liquidating Trustee pursuant to the terms of the Trust Agreement.

**Reserved Beneficial Interest.** A Beneficial Interest that has been reserved on the Trust Register pursuant to the Trust Agreement.

**Schedules.** The schedules of assets and liabilities, the list of holders of interests, and the statements of financial affairs filed by the Debtor in the Chapter 11 Case under Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules, lists, and statements may have been or may be supplemented or amended from time to time.

**SEC.** The United States Securities and Exchange Commission.

**Secured Claim.** A Claim for which a Creditor asserts a valid, perfected, and enforceable Lien, not subject to avoidance or subordination under the Bankruptcy Code or applicable non-bankruptcy law, or a Claim for which a Creditor asserts a setoff under Section 553 of the Bankruptcy Code, but only to the extent of the value, determined in accordance with Section 506(a) of the Bankruptcy Code, of the Creditor's interest in the Debtor's interest in Estate Property or to the extent of the amount subject to such setoff, as the case may be, unless a timely election has been made under Section 1111(b)(2) of the Bankruptcy Code.

**Securities Act.** The Securities Act of 1933, as amended, and its applicable regulations.

**Securities Exchange Act.** The Securities Exchange Act of 1934, as amended, and its applicable regulations.

**Substantial Consummation.** Shall mean: (i) the transfer of all or substantially all of the Estate Property as proposed under this Plan; (ii) assumption by the Liquidating Trustee of the management of all or substantially all of the Estate Property as directed by this Plan and the Trust Agreement; and (iii) commencement of Distributions under this Plan, all of which shall be deemed to have occurred on the Effective Date.

**Trust.** The trust established pursuant to this Plan and the Trust Agreement.

**Trust Agreement.** The Trust Agreement dated \_\_\_\_\_, 2008, which shall be substantially in the form of Appendix A attached hereto.

**Trust Assets.** All Property of the Estate as of the Effective Date, including, but not limited to, Estate Cash, all Rights of Action, all Avoidance Actions and all proceeds of the foregoing (including, without limitation, "proceeds" as defined in the Uniform Commercial Code).

**Trust Cash.** All Cash received and held by the Trust, including Cash Collateral and Cash held in the Trust Reserves.

**Trust Cost.** Any reasonable cost and expense of the Liquidating Trustee of administering the Trust (including making distributions of holders of Beneficial Interests), paying taxes on behalf of the Trust, and including paying of professional fees and expenses incurred by the Liquidating Trustee in connection with the administration of the Trust.

**Trust Operating Reserve.** The reserve of Trust Cash to be established under the Trust Agreement for the payment of Trust Costs.

**Trust Reserve.** Any reserve established and maintained by the Liquidating Trustee under the Trust Agreement into which the Liquidating Trustee shall deposit, or shall cause to be deposited, Trust Cash in connection with the operation of the Trust and the distributions to holders of Class 1, Class 2 or Class 3 Claims or Beneficial Interests.

**Unclassified Claims.** Those Claims enumerated in Section 2.1 of this Plan.

**United States Trustee.** The Office of the United States Trustee for Region 2.

**Unsecured Claim.** A Claim that is not a Secured Claim. The term specifically includes any tort Claims or contractual Claims or Claims arising from damage or harm to the environment and, pursuant to Section 506(a) of the Bankruptcy Code, any Unsecured Deficiency Claim, any Claim for damages resulting from rejection of any Executory Contract under Section 365 of the Bankruptcy Code.

**Unsecured Deficiency Claims.** Any portion of a Claim (a) to the extent the value of the holder's interest in the Estate Property securing such Claim is less than the amount of such Claim or (b) to the extent the amount of a Claim subject to setoff is less than the amount of the Claim, each as determined by the Bankruptcy Court under Section 506(a) of the Bankruptcy Code.

**Unsecured WARN Act Claim.** The Claim of the WARN Act Class arising under the WARN Act Settlement Agreement whereby the WARN Act Class is entitled to 35.5% of all Funds available for Distribution to holders of Allowed Class 4 Claims.

**Voting Record Date.** The date that the Bankruptcy Court enters an order on the docket of the Chapter 11 Case approving the Disclosure Statement.

**WARN Act.** The federal Worker Adjustment and Retraining Notification (WARN) Act, 49 U.S.C §§ 2101-2109.

**WARN Act Class.** Shall have the meaning ascribed to the term "Class" in the WARN Act Settlement Agreement.

**WARN Act Litigation.** That certain adversary proceeding captioned *Mochnal v. Eos Airlines, Inc. (In re Eos Airlines, Inc.)*, Adversary Proceeding Number 08-08279, filed before the Bankruptcy Court on April 28, 2008.

**WARN Act Settlement Agreement.** The settlement agreement among the Debtor, Committee and counsel for the WARN Act Class resolving the WARN Act Litigation and approved by the Bankruptcy Court on September 25, 2008.

## **SECTION 2**

### **TREATMENT OF UNCLASSIFIED CLAIMS**

**2.1 Unclassified Claims.** As provided in Section 1123(a)(1) of the Bankruptcy Code, Allowed Administrative Claims and Allowed Priority Unsecured Tax Claims against the Debtor are not classified for purposes of voting on, or receiving Distributions under, this Plan. Holders of such Claims are not entitled to vote on this Plan. All such Claims are instead treated separately in accordance with Section 2 of this Plan and in accordance with the requirements set forth in Section 1129(a)(9)(A) of the Bankruptcy Code.

**2.2 Payment of Administrative Claims and Professional Fee Claims.** Allowed Administrative Claims and Allowed Professional Fees incurred through the Effective Date shall be paid by the Liquidating Trustee from Trust Cash within ten (10) days after the Allowance Date for such Administrative Claims.

**2.3 Payment of Allowed Priority Unsecured Tax Claims.** Any Allowed Priority Unsecured Tax Claim shall, at the Liquidating Trustee's discretion, either: (i) be paid in full by the Liquidating Trustee from Trust Cash within ten (10) days from the Allowance Date of such Priority Unsecured Tax Claim, or (ii) receive in regular installments payments in Cash of the total value of such Claim as of the Effective Date over a period of not more than five years from the Petition Date.

**2.4 U.S. Trustee Fees.** All fees owing to the United States Trustee pursuant to 28 U.S.C. § 1930 shall be paid by the Debtor as such fees may become due up to and including the Effective Date. Following the transfer of all Estate Assets to the Trust on the Effective Date, no further U.S. Trustee Fees shall be due or payable from the Trust. The amount of not less than \$10,000 shall remain with the Debtor following the Effective Date to satisfy all U.S. Trustee Fees until the Chapter 11 Case is closed or dismissed, with any balance of this amount remaining in the Debtor's estate reverting to the Trust upon the date the Chapter 11 Case is closed or dismissed.

**2.5 Administrative Claim Bar Date.** All requests for payment of Administrative Claims (except for Professional Fee Claims) not already filed must be filed by the date that is five (5) days after the Effective Date and served on the Debtor, the Committee and the Liquidating Trustee, or the holders of such Administrative Claims shall be forever barred from asserting such Administrative Claims and shall not be entitled to any Distributions under this Plan.

**2.6 Professional Fee Claims Bar Date.** All requests for payment of Professional Fee Claims arising on or before the Effective Date shall be filed with the Bankruptcy Court and served on the Debtor, the United States Trustee, the Liquidating Trustee and the Committee within thirty (30) days following the Effective Date. Any Professional Fee Claims for which an application or request for payment is not filed within that time period shall be deemed discharged and forever barred, and shall not be entitled to any Distribution under this Plan.

**2.7 Post-Effective Date Professional Fees.** Any Professional Fee Claims incurred by any Professionals arising after the Effective Date, shall be paid by the Liquidating Trustee out of the Trust Operating Reserve without further application to the Bankruptcy Court.

### **SECTION 3**

#### **CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

**3.1 Summary of Classification.** In accordance with Section 1123(a)(1) of the Bankruptcy Code, all Claims of Creditors and holders of Equity Interests (except those Unclassified Claims receiving treatment as set forth in Section 2) are placed in the Classes described below for all purposes, including voting on, confirmation of, and distribution under, this Plan:

<b><u>Class</u></b>	<b><u>Title</u></b>	<b><u>Estimated Recovery</u></b>	<b><u>Entitled To Vote</u></b>	<b><u>Distributions</u></b>
Class 1	Allowed Secured Claims	100%	No	On the Effective Date, either (A) the Collateral; (B) if the value of the Collateral exceeds the value of the Allowed Secured Claim, proceeds from the sale of the Collateral in the amount of any Allowed Secured Claim; (C) such other treatment as necessary for holder to be unimpaired.
Class 2	Allowed Priority Unsecured Non-Tax Claims	100%	No	Cash on the Effective Date.
Class 3	Allowed Unsecured WARN Act Claims	100%	Yes	Following the Effective Date, distribution of 35.5% of funds available for distribution to Class 4 General Unsecured Claims on each Distribution Date. Governed by the WARN Act Settlement Agreement.
Class 4	Allowed General Unsecured Claims	Approximately 1.3% to 6.0%	Yes	Pro Rata distribution from Available Cash on hand on each Distribution Date.
Class 5	Allowed Equity Interests and Equity Related Claims	0%	No	No distribution. Equity Interests to be cancelled.

### **3.2 Specific Classification.**

**3.2.1**      Class 1 – Secured Claims. Class 1 consists of all Allowed Secured Claims.

**3.2.2**      Class 2 - Allowed Priority Unsecured Non-Tax Claims. Class 2 consists of all Allowed Priority Non-Tax Claims.

**3.2.3**      Class 3 – Allowed Unsecured WARN Act Claims. Consists of the Allowed Unsecured WARN Act Claims held by members of the WARN Act Class.

**3.2.4**      Class 4 – General Unsecured Claims. Class 4 consists of all General Unsecured Claims.

**3.2.5**      Class 5 – Equity Interests and Equity Related Claims. Class 5 consists of all Equity Interests and Equity Related Claims.

## **SECTION 4 TREATMENT OF CLAIMS AND EQUITY INTERESTS; IMPAIRMENT**

### **4.1 Class 1 – Secured Claims.**

**4.1.1**      Impairment and Voting. Class 1 is unimpaired by this Plan; consequently, all holders of Allowed Class 1 Claims are deemed to accept this Plan and are not entitled to vote on this Plan.

**4.1.2**      Treatment. Each holder of an Allowed Secured Claim shall receive (i) the Collateral securing such Claim; (ii) proceeds in the amount of such Allowed Secured Claim, to the extent the value of the Collateral exceeds the Allowed Secured Claim; or (iii) such other consideration as is necessary to render such Allowed Secured Claim as unimpaired.

**4.1.3**      Sale of Collateral. The Liquidating Trustee may sell for Cash any Trust Asset serving as Collateral for an Allowed Secured Claim. Any sale proceeds remaining after full satisfaction of the Allowed Secured Claim shall remain a Trust Asset and shall be free and clear of all interests, Liens, Claims, and encumbrances.

**4.1.4**      Transfer of Collateral. Except as otherwise provided in this Section 4.1, the Liquidating Trustee may satisfy any Allowed Secured Claim by transferring and conveying any Trust Asset serving as Collateral for such Claim to the holder of the Allowed Secured Claim to the extent of such Claim. Any Collateral remaining after satisfaction of the Allowed Secured Claim shall remain a Trust Asset and shall be free and clear of any interests, Liens, Claims, and encumbrances.

**4.1.5**      Retention of Lien. Except as otherwise provided in this Plan, each holder of an Allowed Secured Claim shall retain the Liens on Estate Property securing such Allowed Secured Claim until such Allowed Secured Claim is satisfied in accordance with this Plan or until such earlier date agreed to by the holder of the Allowed Secured Claim and the Liquidating Trustee. Upon satisfaction of an Allowed Secured Claim, whether in Cash or in kind, such Liens

shall be deemed automatically released, and any Trust Asset formerly securing such Allowed Secured Claim shall be free and clear of all interests, Liens, Claims and encumbrances. Holders of satisfied Secured Claims will execute all necessary Lien releases and file such releases with the appropriate Governmental Units or deliver such releases to the Liquidating Trustee within seven (7) business days of receiving satisfaction or notice thereof.

**4.1.6**      Unsecured Deficiency Claims. If the holder of an Allowed Secured Claim has an Unsecured Deficiency Claim, the Unsecured Deficiency Claim shall be treated under this Plan as a Class 4 General Unsecured Claim or Priority Unsecured Tax Claim, as determined by the Bankruptcy Court or consented to by the holder of the Allowed Secured Claim and the Liquidating Trustee.

**4.1.7**      Interest. Pursuant to Section 506(b) of the Bankruptcy Code, holders of Allowed Secured Claims secured by Collateral the value of which exceeds the allowed amount of such Secured Claim may receive interest from the Allowance Date at the Federal Judgment Rate. All holders of Allowed Secured Claims seeking interest under Section 506(b) of the Bankruptcy Code must notify the Debtor, Debtor's Counsel, Committee Counsel, and the Liquidating Trustee on or before the Administrative Claim Bar Date of the amount of such interest demanded or be forever barred from asserting a right to such interest.

## **4.2      Class 2 – Allowed Priority Non-Tax Claims.**

**4.2.1**      Impairment and Voting. Class 2 is unimpaired by this Plan; consequently, all holders of Allowed Claims in Class 2 are deemed to accept this Plan and are not entitled to vote on this Plan.

**4.2.2**      Treatment. Holders of Allowed Class 2 Claims shall be paid by the Liquidating Trustee from Trust Cash within ten (10) days after the Allowance Date.

## **4.3      Class 3 – Allowed Unsecured WARN Act Claims.**

**4.3.1**      Impairment and Voting. Class 3 is impaired by this Plan, and all holders of Allowed Unsecured WARN Act Claims are entitled to vote on this Plan, except as otherwise provided by contract.

**4.3.2**      Deemed Acceptance. Pursuant to the terms of the WARN Act Settlement Agreement, holders of Allowed Unsecured WARN Act Claims are deemed to have voted in favor of this Plan.

**4.3.3**      Treatment. Class 3 Allowed Unsecured WARN Act Claims shall be treated in accordance with the terms of the WARN Act Settlement Agreement.

## **4.4      Class 4 – General Unsecured Claims.**

**4.4.1**      Impairment and Voting. Class 4 is impaired by this Plan, and all holders of Allowed General Unsecured Claims are entitled to vote on this Plan, except as otherwise provided by contract or the Bankruptcy Code.

**4.4.2**      Treatment. Each holder of an Allowed General Unsecured Claim in Class 4 will receive its Pro Rata share of the Available Cash on each Distribution Date.

**4.5      Class 5 – Equity Interests and Equity Related Claims.**

**4.5.1**      Equity Interests. As of the Effective Date, all Equity Interests in the Debtor shall be cancelled, terminated, extinguished and void. Interest Holders will neither receive nor retain any property on account of their Equity Interests, are deemed to reject this Plan, and are not entitled to vote to accept or reject this Plan.

**4.5.2**      Equity Related Claims. Pursuant to Section 510(b) of the Bankruptcy Code, all Equity Related Claims are subordinated to all Unclassified Claims and Allowed Class 1-4 Claims. Because Class 4 Claims will not be satisfied in full, holders of Equity Related Claims will likely receive no Distribution under this Plan and are, therefore, deemed to have rejected this Plan.

**SECTION 5**  
**IMPLEMENTATION OF THE PLAN**

**5.1      Selection of the Liquidating Trustee.** The Committee may select a qualified entity or individual to serve as Liquidating Trustee under the Trust Agreement. If the Committee elects to appoint the Liquidating Trustee, the Committee shall file with the Bankruptcy Court and serve on the Debtor, the United States Trustee, and all parties then receiving notice of pleadings in this Chapter 11 Case pursuant to Federal Rule of Bankruptcy Procedure 2002, not later than ten (10) days prior to the Confirmation Hearing, a disclosure identifying a candidate for Liquidating Trustee, said person or entity's qualifications for serving as Liquidating Trustee, and the terms of any fee arrangement. If the Committee elects not to appoint the Liquidating Trustee, the Debtor shall file with the Bankruptcy Court and serve on the Committee, the United States Trustee, and all parties then receiving notice of pleadings in this Chapter 11 Case pursuant to Federal Rule of Bankruptcy Procedure 2002, not later than nine (9) days prior to the Confirmation Hearing, a disclosure identifying a candidate for Liquidating Trustee, said person or entity's qualifications for serving as Liquidating Trustee, and the terms of any fee arrangement. The candidate to serve as Liquidating Trustee shall be approved at the Confirmation Hearing, and, upon execution of the Trust Agreement at Closing, shall thereafter undertake the required duties under the Trust Agreement.

**5.2      Dissolution of the Committee.** The appointment and operation of the Committee shall terminate on the Effective Date. Any dissolution or termination of the appointment and operations of the Committee shall not prejudice the rights of any agents of the Committee (including their Professionals and Committee members) to pursue their separate claims for compensation and reimbursement of expenses, including Professional Fees under the provisions of Sections 328, 330, 331 and/or 503(b)(3)(F) of the Bankruptcy Code.

**5.3      Execution and Ratification of the Trust Agreement.** The Trust Agreement shall be executed by all necessary parties thereto. Each holder of a Claim shall be deemed to have ratified and become bound by the terms of the Trust Agreement.



**5.4 Transfer of Trust Assets.** On the Effective Date, all Estate Property shall be conveyed and transferred by the Debtor to the Trust, free and clear of all interests, claims, Liens, and encumbrances.

**5.5 Implementation of the Trust.** On the Effective Date, the Trust shall become operative and binding upon all holders of Claims. The Liquidating Trustee shall establish all necessary Trust Reserves and commence Distributions in accordance with the terms of this Plan and the Trust Agreement.

**5.6 Execution of Documents.** On or before the Effective Date, the Debtor shall execute and deliver all documents and perform all actions reasonably contemplated with respect to implementation of this Plan, including the Liquidating Trust Agreement. After the Effective Date, the Liquidating Trustee is authorized to execute any documents or instruments necessary to consummate this Plan.

**5.7 Surrender of Instruments.** Each Claimant, holding a certificate or instrument evidencing a Claim against the Debtor or Estate Property and whose Claims are treated under this Plan, shall surrender such certificate or instrument to the Trust, prior to receiving any Distribution under this Plan, unless the non-availability of such certificate or instrument is established to the satisfaction of the Liquidating Trustee.

**5.8 Section 1145 Determination.** Confirmation of this Plan shall constitute a determination, in accordance with Section 1145 of the Bankruptcy Code, that except with respect to an entity that is an underwriter as defined in section 1145(b) of the Bankruptcy Code, Section 5 of the Securities Act, the Securities Exchange Act and any other federal, state or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, broker or dealer in, a security do not apply to the offer, sale, or issuance under the Plan of the Trust Assets or the Beneficial Interests in exchange for Claims against the Debtor. Nonetheless, if the Liquidating Trustee determines that registration and reporting under the Securities Act, Securities Exchange Act or any other federal, state or local law is required, the Liquidating Trustee will take steps to comply with those requirements.

**5.9 Settlement and Compromise.** Pursuant to Section 1123(b)(3) of the Bankruptcy Code, this Plan incorporates the following compromises and settlements, and (to the extent necessary) constitutes a motion under Bankruptcy Rule 9019 to approve such compromises and settlements:

(a) \_\_\_\_\_

## **SECTION 6**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**6.1 Executory Contracts and Unexpired Leases.** Unless otherwise provided for in this Plan, on the Effective Date, all executory contracts and unexpired leases not previously rejected by the Debtor during the Chapter 11 Case shall be deemed rejected.

**6.2 Rejection Damage Claim Bar Date.** All Rejection Damage Claims arising by operation of Section 6.1 of this Plan shall be filed with the Bankruptcy Court no later than thirty

(30) days after the Effective Date. Any Rejection Damage Claim not filed by this date shall be forever barred and shall not be entitled to any Distributions under this Plan. The Debtor or the Liquidating Trustee shall have the right to object to any Rejection Damage Claim.

## **SECTION 7 OBJECTIONS TO CLAIMS**

**7.1 Pre-Confirmation Objections.** The Bankruptcy Court shall retain jurisdiction over any Claim Objection filed by the Debtor or Committee prior to the Confirmation Date.

**7.2 Claim Objection Deadline.** All Claim Objections must be filed by the applicable Objection Deadline.

**7.3 Disputed Claims.** Any Claim to which a timely Claim Objection is interposed shall be treated as a Disputed Claim for purposes of Distribution under this Plan and the Trust Agreement.

## **SECTION 8 CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVENESS OF PLAN**

**8.1 Conditions To Confirmation.** The following are conditions precedent to confirmation of this Plan:

**8.1.1** The Bankruptcy Court shall have entered a Final Order approving the Disclosure Statement with respect to this Plan;

**8.1.2** The Confirmation Order has been entered in form and substance reasonably acceptable to the Debtor and the Committee.

**8.2 Conditions To Effectiveness.** The following are conditions precedent to the occurrence of the Effective Date:

**8.2.1** The Confirmation Date has occurred;

**8.2.2** The Confirmation Order is a Final Order, except that the Debtor reserves the right to cause the Effective Date to occur notwithstanding the pendency of an appeal of the Confirmation Order, under circumstances that would moot such appeal;

**8.2.3** No request for revocation of the Confirmation Order under Section 1144 of the Bankruptcy Code has been made, or, if made, remains pending;

**8.2.4** The execution and delivery of all documents necessary to implement the transactions contemplated by this Plan, which are in form and substance reasonably acceptable to the Debtor, the Committee and the Liquidating Trustee;

**8.2.5** The Trust Assets have been transferred and delivered to the Trust;

**8.2.6** The Bankruptcy Court has approved the appointment of the Liquidating Trustee.

**8.3 Waiver Of Conditions.** The conditions to confirmation and the Effective Date may be waived in whole or in part by agreement of the Debtor and the Committee at any time without notice, an order of the Bankruptcy Court, or any further action other than proceeding to confirmation and consummation of this Plan.

**8.4 Notice of Effective Date.** Upon the Effective Date, the Debtor shall file a notice before the Bankruptcy Court that the Plan has become effective and shall serve such notice on all Creditors and Interest Holders of record on the Effective Date.

## **SECTION 9 NON-ALLOWANCE OF PENALTIES AND FINES**

Except as expressly provided for in this Plan, no Distribution shall be made under this Plan on account of, and no Allowed Claim shall include, any fine, penalty, or exemplary or punitive damages relating to or arising from any default or breach by the Debtor, and any Claim on account of such fine, penalty, or exemplary or punitive damages shall be deemed to be disallowed, whether or not an objection is filed to such Claim.

## **SECTION 10 TITLE TO PROPERTY; DISCHARGE; INJUNCTION**

**10.1 Vesting of Assets.** Upon the Effective Date, title to all of the Estate Property, in whatever form and wherever found, shall vest in the Liquidating Trust.

**10.2 Discharge.** Except as provided in this Plan or the Confirmation Order, the rights afforded under this Plan and the treatment of Claims and Equity Interests under this Plan are in exchange for and in complete satisfaction, discharge, and release of, all Claims against the Debtor or Estate Property and termination of all Equity Interests. Except as provided in this Plan or the Confirmation Order, on the Effective Date: (a) the Debtor shall be discharged from all Claims or other debts that arose before the Effective Date, and all debts of the kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not: (i) a proof of claim based on such debt is filed or deemed filed under Section 501 of the Bankruptcy Code; (ii) a Claim based on such debt is Allowed under Section 502 of the Bankruptcy Code; or (iii) the holder of a Claim based on such debt has accepted this Plan; and (b) all Equity Interests and other rights of Equity Interests in the Debtor shall be terminated. Except as otherwise provided in this Plan, the Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtor arising before the Effective Date. Pursuant to Bankruptcy Code Section 524, the discharge shall void any judgment against the Debtor at any time obtained (to the extent it relates to a discharged Claim), and operates as an injunction against the prosecution of any action against the Debtor, Estate Property, and the Liquidating Trustee (to the extent such action related to a discharged Claim).

**10.3 Injunction.** Except as provided in this Plan or the Confirmation Order, as of the Confirmation Date, all entities that have held, currently hold or may hold a Claim or other debt or liability that is discharged or an Equity Interest, Equity Related Claim, or other right of an equity security holder that is terminated under this Plan are permanently enjoined from taking any of the following actions on account of any such discharged Claims, debts, liabilities, or

terminated Equity Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against the Debtor, the Liquidating Trust, the Committee or any individual Committee Member (including any officer or director acting as a representative of the Debtor, Committee or individual Committee Member) to the extent that such action or proceeding arises from any act or omission of such party in connection with, relating to, or arising out of the Chapter 11 Case, the negotiation and pursuit of Confirmation of this Plan or the consummation of this Plan except for the Debtor's or Liquidating Trustee's acts or omissions constituting gross negligence or willful misconduct as finally determined by a court of competent jurisdiction; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree, or order against the Debtor, the Liquidating Trust, the Committee or any individual Committee Member, or their respective property; (c) creating, perfecting, or enforcing any lien or encumbrance against the Debtor, the Liquidating Trust, the Committee or any individual Committee Member, or their respective property; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability, or obligation due to the Debtor, the Liquidating Trust, the Committee or any individual Committee Member, or their respective property; and (e) commencing or continuing any action, in any manner, in any place, that does not comply with or is inconsistent with the provisions of this Plan or the Bankruptcy Code.

**10.4 Exculpation.** None of Debtor, the Committee, or any individual Committee Member or any of their respective members, officers, directors, employees or Professionals have or may incur any liability to any holder of a Claim or Equity Interest, including the holder of any Equity Related Claim, or any other Person or party in interest, or any of their respective members or former members, agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to or arising out of the Chapter 11 Case, the negotiation and pursuit of confirmation of this Plan, the consummation of this Plan or the administration of this Plan (the "**Chapter 11 Activities**") except for, in the case of the Debtor and the Liquidating Trust, their acts or omissions constituting willful misconduct or gross negligence, as finally determined by a court of competent jurisdiction, and in all respects are entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities in connection with the Chapter 11 Activities. No holder of a Claim, Equity Interest, Equity Related Claim or any other Person or party in interest, including their respective agents, employees, representatives, financial advisors, attorneys or affiliates, have any right of action against the Debtor, the Liquidating Trust, the Liquidating Trustee, the Committee, or any individual Committee Member or any of their respective officers, directors, employees or Professionals for any act or omission in connection with the Chapter 11 Activities, except for, in the case of the Debtor and the Liquidating Trust, their acts or omissions constituting willful misconduct or gross negligence as finally determined by a court of competent jurisdiction.

#### **10.5 Retention of Causes of Action/Reservation of Rights.**

**10.5.1** Except as set forth in this Plan or the Confirmation Order, nothing contained in this Plan or the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights, Causes of Action or Avoidance Actions that the Debtor may have or that the Liquidating Trustee may choose to assert on behalf of the Debtor's Estate under any provision of the Bankruptcy Code or any applicable non-bankruptcy law, including, without

limitation: (i) any and all claims against any Person, to the extent such Person asserts a cross-claim, counterclaim and/or claim for setoff or recoupment that seeks affirmative relief against the Debtor or its officers, directors or representatives; (ii) the turnover of any Estate Property; and (iii) rights against financial advisors, underwriters, lenders or auditors relating to acts or omissions occurring prior to the Petition Date.

**10.5.2** Except as set forth in the Plan or the Confirmation Order, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any claim, right of setoff or other legal or equitable defense that the Debtor had immediately prior to the Petition Date or arising thereafter. The Liquidating Trustee shall have, retain, reserve and be entitled to assert all such Claims, rights of setoff and other legal or equitable defenses that the Debtor had immediately prior to the Petition Date or arising thereafter and all of the Debtor's legal and equitable rights with regard to any Claim may be asserted by the Liquidating Trustee after the Effective Date.

**10.6 Preservation Of Insurance.** The Debtor's discharge and release from Claims as provided in this Plan, except as necessary to be consistent with this Plan, do not diminish or impair the enforceability of any insurance policy that may cover Claims against the Debtor or any other Person, including, but not limited to, any D&O Policy.

## **SECTION 11 EVENTS OF DEFAULT**

**11.1 Events of Default.** An event of default shall have occurred if the Debtor, the Liquidating Trustee or any other Person takes any action, fails to take any action, or fails to refrain from taking an action prevented, required, or otherwise set forth in this Plan or the Trust Agreement.

**11.2 Remedies of Default.** Subject to Section 1112 of the Bankruptcy Code, should an event of default occur by the Debtor, Liquidating Trustee or any other Person, at least one other party-in-interest (including the Debtor) must provide written notice of the default to the defaulting party and serve copies of the notice to all parties identified in Section 15.7 of this Plan. If the default is not cured within ten (10) days after service of the notice of default, the notifying party may present an *ex parte* order to the Bankruptcy Court setting a date and time when the defaulting party must appear before the Bankruptcy Court and show cause why it should not be held in contempt of the Confirmation Order. If the defaulting party is found to be in default of this Plan, the Bankruptcy Court shall:

(i) assess the costs of the Liquidating Trustee or other party-in-interest of proceeding on the order to show cause against the defaulting party, such costs to be the greater of the actual amounts incurred or \$10,000;

(ii) designate a person to appear, sign, and/or accept on behalf of the defaulting party the documents required under this Plan in accordance with Federal Rule of Civil Procedure 70, or enter such other order compelling compliance with this Plan that may be necessary and that does not materially alter the terms of this Plan as confirmed; and/or

- (iii) grant equitable relief in the form of specific performance.

## **SECTION 12**

### **RETENTION OF JURISDICTION**

**12.1 Jurisdiction.** Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court retains such jurisdiction over the Chapter 11 Case after the Effective Date as is legally permissible including, without limitation, jurisdiction to:

**12.1.1** Allow, disallow, determine, liquidate, classify, estimate, reconsider, value, compromise, settle, adjust, or establish the amount, priority, validity, or secured or unsecured status of any Claim, including the resolution of any request for payment of any Unclassified Claim and the resolution of any and all Claim Objections;

**12.1.2** Grant or deny any applications for allowance of compensation or reimbursement of expenses arising out of or related to the Chapter 11 Case, including but not limited to Claims of Professionals for Professional Fees, or any Claim or Equity Interest authorized under the Bankruptcy Code or this Plan;

**12.1.3** Resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which the Debtor is a party and to hear, determine and, if necessary, liquidate, any Claims arising from, or cure amounts related to, such assumption or rejection;

**12.1.4** Ensure that Distributions to holders of Allowed Claims are accomplished in accordance with this Plan;

**12.1.5** Decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications or motions involving the Debtor that may be pending on the Effective Date;

**12.1.6** Enter such orders as may be necessary or appropriate to implement, consummate, or enforce the provisions of this Plan and all contracts, instruments, releases, and other agreements or documents created in connection with this Plan or the Disclosure Statement, except as otherwise provided in this Plan;

**12.1.7** Resolve any case, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of this Plan or any Person's obligations incurred in connection with this Plan;

**12.1.8** Modify this Plan before or after the Effective Date under Section 1127 of the Bankruptcy Code or modify the Disclosure Statement or any contract, instrument, release, or other agreement or document created in connection with this Plan or the Disclosure Statement; or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, this Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created in connection with this Plan or the Disclosure Statement, in such manner as may be necessary or appropriate to consummate this Plan, to the extent authorized by the

Bankruptcy Code, and determine matters concerning federal, state, and local taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code or other applicable law;

**12.1.9** Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation or enforcement of this Plan, except as otherwise provided in this Plan;

**12.1.10** Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

**12.1.11** Determine any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Liquidating Trust Agreement or any contract, instrument, release, or other agreement or document created in connection with this Plan, the Disclosure Statement, the Confirmation Order or the Liquidating Trust Agreement except as otherwise provided in this Plan;

**12.1.12** Enter an order closing the Chapter 11 Case which provides for retention of jurisdiction for the Bankruptcy Court for purposes of Section 10.4;

**12.1.13** Adjudicate the Causes of Action and Avoidance Actions (including those to be initiated and prosecuted by the Liquidating Trust as the Estate's representative under Section 1123(b)(3)(B) of the Bankruptcy Code), and any other Cause of Action or Claims of the Debtor;

**12.1.14** Resolve any disputes between the Liquidating Trustee and the Oversight Committee or the Liquidating Trustee and any holder of a Beneficial Interest; and

**12.1.15** Approve settlements of any Avoidance Actions, Causes of Action or other disputes.

## **SECTION 13**

### **AMENDMENT AND WITHDRAWAL OF PLAN**

**13.1 Amendment of this Plan.** At any time before the Confirmation Date, the Debtor may alter, amend, or modify this Plan pursuant to Section 1127(a) of the Bankruptcy Code *provided* that such alteration, amendment, or modification does not materially and adversely affect the treatment and rights of the holders of Class 4 Claims under this Plan. After the Confirmation Date and before Substantial Consummation of this Plan, the Debtor may, under Section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in this Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of this Plan so long as such proceedings do not materially and adversely affect the treatment of holders of Claims under this Plan; *provided, however*, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or applicable order of the Bankruptcy Court.

**13.2 Revocation or Withdrawal of this Plan.** The Debtor reserves the right to revoke or withdraw this Plan at any time before the Confirmation Date. If this Plan is

withdrawn or revoked, then this Plan shall be deemed null and void and nothing contained in this Plan shall be deemed a waiver of any Claims by or against the Debtor or any other Person in any further proceedings involving the Debtor or an admission of any sort, and this Plan and any transaction contemplated by this Plan shall not be admitted into evidence in any proceeding.

## **SECTION 14**

### **ACCEPTANCE OR REJECTION OF THE PLAN**

**14.1 Impaired Classes to Vote.** Except as otherwise provided by agreement or the terms of this Plan, each holder of a Claim in an impaired Class shall be entitled to vote separately to accept or reject this Plan unless such holder is deemed to accept or reject this Plan.

**14.2 Acceptance by Class of Creditors.** An impaired Class of holders of Claims shall have accepted this Plan if this Plan is accepted by at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims of such Class that have voted to accept or reject this Plan. A Class of holders of Claims shall be deemed to accept this Plan in the event that no holder of a Claim within that Class submits a Ballot by the Ballot Date.

**14.3 Cramdown.** If any impaired Class of Claims entitled to vote shall not accept this Plan by the requisite statutory majorities provided in Section 1126(c) of the Bankruptcy Code, the Debtor reserves the right to request that the Bankruptcy Court confirm this Plan under Section 1129(b) of the Bankruptcy Code. With respect to impaired Classes of Claims that are deemed to reject this Plan, the Debtor shall request the Bankruptcy Court to confirm this Plan under Section 1129(b) of the Bankruptcy Code.

## **SECTION 15**

### **MISCELLANEOUS**

**15.1 Binding Effect.** The Plan shall be binding on, and shall inure to the benefit of, the Debtor, the Liquidating Trust and the holders of all Claims and Equity Interests, including the holders of Equity Related Claims, and their respective successors and assigns.

**15.2 Dissolution of the Debtor.** Upon the Effective Date, the Liquidating Trustee shall be entitled to seek dissolution of the Debtor pursuant to applicable state law.

**15.3 Exemption from Transfer Taxes.** Pursuant to Section 1146(a) of the Bankruptcy Code: (i) the creation of any Lien or other security interest, (ii) the making or assignment of any lease or sublease or (iii) the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with this Plan, including, without limitation, any restructuring, disposition, liquidation or dissolution, deeds, bills of sale or transfer of tangible property, will not be subject to any stamp tax or other similar tax.

**15.4 Recognition of Subordination Rights.** Except as otherwise provided in this Plan, all Claims and Equity Interests based upon any claimed contractual subordination rights pursuant to any provision of the Bankruptcy Code or other applicable law, shall be deemed satisfied by the Distributions proposed under this Plan to holders of Allowed Claims having any such contractual subordination rights. The Distributions to the various classes of Claims under



this Plan shall not be subject to levy, garnishment, attachment or like legal process for any holder of a Claim by reason of any claimed contractual subordination rights or otherwise of the holder of a Claim against the holder of another Claim, except as expressly provided in this Plan. On the Effective Date, all holders of Claims shall be deemed to have waived any and all contractual subordination rights that they may have with respect to such Distributions, and the Bankruptcy Court shall permanently enjoin, effective as of the Effective Date, all holders of such Claims from enforcing or attempting to enforce any such subordination rights with respect to such Distributions.

**15.5 Governing Law.** Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights, duties and obligations of the Debtor, the Liquidating Trust, and any other Person arising under this Plan shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York.

**15.6 Setoffs.** The Debtor or the Liquidating Trust may, but are not required to, set off or recoup against any Claim and the payments or other Distributions to be made under this Plan in respect of such Claim, claims of any nature whatsoever that arose before the Petition Date or Effective Date, as applicable, that the Debtor may have against the holder of such Claim to the extent such Claims may be set off or recouped under applicable law, but neither the failure to do so nor the allowance of any Claim under this Plan shall constitute a waiver or release by the Debtor or the Liquidating Trust of any such claim that it may have against such holder.

**15.7 Notices.** Any notice required or permitted to be provided under this Plan shall be in writing and served by either: (a) certified mail, return receipt requested, postage prepaid; (b) hand delivery; (c) reputable overnight courier service, freight prepaid; or (d) by fax; addressed as follows:

If to Debtor:	Eos Airlines, Inc. Attn: Mike Gumiela P.O. Box 598 Purchase, NY 10577
With a copy to:	Squire, Sanders & Dempsey L.L.P. Attn: Tim J. Robinson 41 South High Street, Suite 2000 Columbus, OH 43215
If to the Committee:	Joseph M. Vann Robert A. Boghosian Ira R. Abel Cohen Tauber Spievack & Wagner P.C. 420 Lexington Avenue, Suite 2400 New York, NY 10170

If to the Liquidating Trustee:	<hr/> <hr/> <hr/> <hr/>
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**15.8 Delivery Of Notices.** If personally delivered, such communication shall be deemed delivered upon actual receipt; if electronically transmitted in accordance with this Plan, such communication shall be deemed delivered by the next noon at point of arrival occurring on a Business Day following transmission; if sent by overnight courier in accordance with this Plan, such communication shall be deemed delivered within twenty-four hours of deposit with such courier or noon of the first Business Day following such deposit, whichever first occurs; and if sent by U.S. Mail in accordance with this Plan, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service; or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Any party to this Plan may change its address for the purposes of this Plan by giving notice of such change to the parties set forth in Section 15.7.

**15.9 Severability.** If any provision of this Plan is found by the Bankruptcy Court to be invalid, illegal or unenforceable, if this Plan is found by the Bankruptcy Court to be invalid, illegal or unenforceable, or if this Plan cannot be confirmed under Section 1129 of the Bankruptcy Code, the Bankruptcy Court, at the Debtor's request, shall retain the power to alter and interpret such term to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable in accordance with its terms.

**15.10 No Attorneys' Fees.** Other than the Professional Fees, no attorneys' fees or other professional fees shall be paid by the Debtor with respect to any Claim or Equity Interest except as specified in this Plan or as provided by the Confirmation Order or other Final Order of the Bankruptcy Court.

**15.11 No Interest.** Except as otherwise provided in this Plan, no interest shall accrue or be payable with respect to any Claim or Equity Interest, whether a Disputed Claim, Disputed Equity Interest or otherwise.

**15.12 Unclaimed Funds.** If any payment under this Plan is returned as undeliverable, any check evidencing such payment remains uncashed for sixty (60) days after the date on which the check was issued, or if a Creditor fails to provide a correct address to the Liquidating Trustee, then the underlying Claim shall be deemed to be waived, and such funds shall be distributed on the next Distribution Date to holders of Beneficial Interests as if such funds were Available Cash.

[Signature to Follow]

**Eos Airlines, Inc., debtor and debtor-in-  
possession**

By: /s/ Caralyn Galletta

Name: Caralyn Galletta

Title: Chief Responsible Officer

**APPENDIX A**  
**LIQUIDATING TRUST AGREEMENT**

[see attached]

**LIQUIDATING TRUST AGREEMENT  
FOR THE EOS AIRLINES, INC. LIQUIDATING TRUST**

DATED: \_\_\_\_\_, 2008

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**LIQUIDATING TRUST AGREEMENT**  
**FOR THE EOS AIRLINES, INC. LIQUIDATING TRUST**

THIS TRUST AGREEMENT (the "Trust Agreement") is made as of this \_\_\_\_ day of December, 2008, by and between EOS AIRLINES, INC., a corporation organized under the laws of the State of Delaware ("Debtor" or "Eos") for the benefit of the Beneficiaries (as defined below) entitled to the Trust Assets (as defined in the Plan of Liquidation of Debtor Under Chapter 11 of the Bankruptcy Code Dated [October \_\_], 2008 (the "Plan")), and \_\_\_\_\_ as liquidating trustee (the "Liquidating Trustee").

**RECITALS**

WHEREAS on April 26, 2008, Eos filed with the Bankruptcy Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On [October \_\_], 2008, the Debtor filed the Plan, which is supported by the Official Committee of Unsecured Creditors of Eos Airlines, Inc. (the "Committee"). This Trust Agreement is executed to facilitate implementation of the Plan. Under the terms of the Plan, the Trust Assets will be transferred to the Trust created and evidenced hereby so that (i) the Trust Assets can be held in trust for the benefit of the Beneficiaries entitled thereto as a liquidating trust in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan, (ii) the Claims can be resolved, (iii) Distributions may be made in accordance with the Plan, (iv) the Trust Assets can be liquidated, and (v) administrative services relating to the activities of the Trust and relating to the implementation of the Plan can be performed by the Liquidating Trustee. The Liquidating Trustee will make continuing efforts to dispose of the Trust Assets, make timely distributions, and not unduly prolong the duration of the Trust.

**DECLARATION OF TRUST**

NOW, THEREFORE, to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan pursuant to the Bankruptcy Code and other good and valuable consideration, the receipt of which is hereby acknowledged, the Debtor and the Liquidating Trustee have executed this Trust Agreement for the benefit of the Beneficiaries entitled to the Trust Assets, and, at the direction of such Beneficiaries (because the transfer of title to undivided interests in each of the Trust Assets to such Beneficiaries, and the transfer of such interests by such Beneficiaries to the Trust, would be impractical), absolutely and irrevocably assign to the Liquidating Trustee and to its successors or assigns, all right, title, and interest of the Debtor and the Debtor's Estate in and to the Trust Assets in the form and manner provided for in the Plan;

TO HAVE AND TO HOLD unto the Liquidating Trustee and its successors in trust and its successors and assigns;

IN TRUST NEVERTHELESS, under and subject to the terms and conditions of the Plan and this Trust Agreement for the benefit of the Beneficiaries of the Trust (as their respective interests may appear in accordance with the Plan and this Trust Agreement);

PROVIDED, HOWEVER, that upon termination of the Trust in accordance with Article 9 hereof, this Trust Agreement shall cease, terminate, and be of no further force and effect.

IT IS HEREBY FURTHER COVENANTED AND DECLARED, that the Trust Assets are to be held and applied by the Liquidating Trustee subject to the further covenants, conditions, and terms set forth below.

## **ARTICLE 1** **DEFINITIONS**

**1.1 Terms Used in the Plan.** If not defined in this Trust Agreement, capitalized terms have the meanings assigned to them in the Plan.

**1.2 General Construction.** As used in this Trust Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. “Includes” and “including” are not limiting, and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections, and other subdivisions of this Trust Agreement, and the words “herein,” “hereafter,” and words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section, or subdivision of this Trust Agreement.

## **ARTICLE 2** **THE TRUST**

**2.1 Creation and Name.** There is hereby created the Trust, which shall be known as the “Eos Airlines, Inc. Liquidating Trust.”

**2.2 Objectives and Purposes.** The purpose of the Trust is to provide a mechanism for the liquidation of the Trust Assets, and to distribute the proceeds of the liquidation, net of all claims, expenses, charges, liabilities, and obligations of the Trust, to the holders of Beneficial Interests and certain Allowed Claims in accordance with the terms of the Plan. No business activities will be conducted by the Trust other than those associated with or related to the liquidation of the Trust Assets. It is intended that the Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of section 301.7701 4(d) of the Treasury Regulations. In furtherance of this objective, the Liquidating Trustee shall make continuing best efforts to (i) dispose of the Trust Assets, (ii) make timely Distributions, and (iii) not unduly prolong the duration of the Trust, in accordance with this Trust Agreement. The purposes of the Trust include, but are not limited to the following:

- (a) to marshal, liquidate, and distribute the Trust Assets in an expeditious but orderly manner;
- (b) to perform the functions and take the actions provided for or permitted by this Trust Agreement and in any other agreement executed by the Liquidating Trustee for the Trust pursuant to the Plan;

(c) to prosecute, settle, or abandon any Avoidance Actions and any Causes of Action transferred and assigned to the Trust under the Plan as Trust Assets and to distribute the proceeds of any recoveries thereon in accordance with the terms of the Plan and this Trust Agreement; and

(d) to reconcile, object to, prosecute, or settle all Claims held by or against the Debtor for purposes of determining the appropriate amount of Distributions to be made hereunder to the Beneficiaries and payments to other claimants under the terms and conditions set forth in this Trust Agreement.

**2.3 Acceptance.** The Liquidating Trustee accepts the trust terms imposed under this Trust Agreement and agrees to manage the Trust in accordance with this Trust Agreement and subject to the terms and conditions of the Plan.

**2.4 Further Assurances.** The Debtor or an authorized agent thereof will, upon reasonable request of the Liquidating Trustee, execute, acknowledge, and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Liquidating Trustee any portion of the Trust Assets intended to be conveyed hereby in the form and manner provided for in the Plan and to vest in the Liquidating Trustee the powers, instruments, or funds in trust hereunder.

**2.5 Nature of Trust Assets.** The Trust shall not receive transfers of any listed stock or securities or any readily marketable assets, or any operating assets of an ongoing business. Furthermore, the Trust shall not receive transfers of any unlisted stock of a single issuer that represents 80 percent or more of the stock of such issuer, and shall not receive transfers of any general or limited partnership interests.

**2.6 Ownership by Liquidating Trustee.** The Liquidating Trustee shall promptly record or register in its name, as Liquidating Trustee, or in the name or names of any nominee or Person in accordance with Section 7.5 hereof, ownership of and title to all Trust Assets received by it as Liquidating Trustee and comply with all provisions of law that may bear on the evidencing of ownership of and title to any portion of the Trust Assets as are necessary and appropriate and that the Liquidating Trustee determines are in the best interests of the Trust.

**2.7 Incidents of Ownership.** The Beneficiaries shall be the sole beneficiaries of the Trust and the Liquidating Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

### **ARTICLE 3** **THE LIQUIDATING TRUSTEE**

**3.1 Number and Qualifications.** Except as otherwise provided herein, there shall be one Liquidating Trustee of the Trust, who shall be the Person approved by the Bankruptcy Court as provided in the Plan. The Liquidating Trustee shall give a bond or other surety in an amount to be approved by the Bankruptcy Court, as applicable. All costs and expenses of procuring any such bond shall be paid as a Trust Cost (as defined herein). The Liquidating Trustee shall be entitled to engage in such other activities as the Liquidating Trustee deems appropriate, so long as such activities are not in conflict with the interests of the Trust and the Liquidating Trustee

devotes such time as is necessary to fulfill all of the Liquidating Trustee's duties as Liquidating Trustee. No holder of a Claim against or Interest in the Debtor may serve as Liquidating Trustee.

**3.2 Action by Liquidating Trustee.** The Trust shall be managed by the Liquidating Trustee as set forth in this Trust Agreement.

**3.3 Binding Nature of Liquidating Trustee's Action.** All actions taken and determinations made by the Liquidating Trustee in accordance with the provisions of the Plan or this Trust Agreement shall be final and binding upon any and all Persons holding Beneficial Interests in the Trust.

**3.4 Term of Service.** The Liquidating Trustee shall serve as the Liquidating Trustee for the duration of the Trust, subject to death, resignation, or removal.

**3.5 Resignation.** The Liquidating Trustee may resign as Liquidating Trustee of the Trust by an instrument in writing delivered to the Oversight Committee at least sixty (60) days before the proposed effective date of resignation. The Liquidating Trustee shall continue to serve as Liquidating Trustee after the delivery of the Liquidating Trustee's resignation until the proposed effective date of the Liquidating Trustee's resignation, unless the Oversight Committee consents by majority vote to an earlier effective date of the Liquidating Trustee's resignation, which shall be the date appointment of a successor Liquidating Trustee in accordance with Section 3.7 hereof becomes effective, but nothing in this Section 3.5 shall restrict the right to remove the Liquidating Trustee as provided in Section 3.6 hereof.

**3.6 Removal.** The Liquidating Trustee may be removed from office for (i) fraud or willful misconduct in connection with the affairs of the Trust, (ii) for such physical or mental disability as substantially prevents the Liquidating Trustee from performing the duties of Liquidating Trustee hereunder, or (iii) for cause, which shall include a breach of fiduciary duty or an unresolved conflict of interest, in each case, upon a unanimous vote of the Oversight Committee.

**3.7 Appointment of Successor Liquidating Trustee.**

**3.7.1 Appointment of Successor Liquidating Trustee.** In the event of a vacancy by reason of the death or removal of the Liquidating Trustee or prospective vacancy by reason of resignation, a successor Liquidating Trustee shall be appointed by the Oversight Committee upon a majority vote. The Oversight Committee may appoint a successor Liquidating Trustee as soon as practicable, but in any event within thirty (30) days after the occurrence of the vacancy or, in the case of resignation, at least thirty (30) days before the proposed resignation. If the Oversight Committee fails to appoint a successor Liquidating Trustee within the prescribed period or cannot select a successor by a majority vote, any member of the Oversight Committee or any Beneficiary may nominate a successor Liquidating Trustee and seek Bankruptcy Court approval of the proposed successor Liquidating Trustee. If the Oversight Committee and the Beneficiaries fail to appoint a successor Liquidating Trustee, then (i) if the Liquidating Trustee is resigning pursuant to Section 3.5, the Liquidating Trustee may appoint a qualified successor or (ii) if the Liquidating Trustee is removed pursuant to Section 3.6

or upon the Liquidating Trustee's death, the Bankruptcy Court may appoint a successor Liquidating Trustee.

**3.7.2 Vesting of Rights in Successor Liquidating Trustee.** Every successor Liquidating Trustee shall execute, acknowledge, and deliver to the Trust, the Oversight Committee, and the retiring Liquidating Trustee, if any, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Liquidating Trustee shall provide a bond or surety as provided in Section 3.1. The successor Liquidating Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the predecessor Liquidating Trustee, except that the successor Liquidating Trustee shall not be liable for the acts or omissions of the predecessor Liquidating Trustee.

**3.8 Continuance of Trust.** The death, resignation, or removal of the Liquidating Trustee shall not operate to terminate the Trust created by this Trust Agreement or to revoke any existing agency (other than any agency of the Liquidating Trustee as the Liquidating Trustee) created pursuant to the terms of this Trust Agreement or invalidate any action taken by the Liquidating Trustee, and the Liquidating Trustee agrees that the provisions of this Trust Agreement shall be binding upon and inure to the benefit of the Liquidating Trustee and the Liquidating Trustee's legal and personal representatives, successors or assigns, as the case may be. In the event of the resignation or removal of the Liquidating Trustee, the Liquidating Trustee shall promptly (i) execute and deliver by the effective date of resignation or removal such documents, instruments, and other writings as may be reasonably requested by the successor Liquidating Trustee to effect the termination of the resigning or removed Liquidating Trustee's capacity under this Trust Agreement and the conveyance of the Trust Assets then held by the resigning or removed Liquidating Trustee to the successor Liquidating Trustee; (ii) deliver to the successor Liquidating Trustee all documents, instruments, records, and other writings relating to the Trust as may be in the possession or under the control of the resigning or removed Liquidating Trustee; and (iii) otherwise assist and cooperate in effecting the assumption of the resigning or removed Liquidating Trustee's obligations and functions by the successor Liquidating Trustee. The resigning or removed Liquidating Trustee hereby irrevocably appoints the successor Liquidating Trustee as its attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such resigning or removed Liquidating Trustee is obligated to perform under this Section 3.8. Such appointment shall not be affected by the subsequent disability or incompetence of the Liquidating Trustee making such appointment.

**3.9 Compensation.** As compensation for services as Liquidating Trustee, and under any other agreements to which the Liquidating Trustee is a party as contemplated by the Plan, the Liquidating Trustee shall receive the compensation provided for in a separate compensation arrangement approved by the Committee or, if the Committee fails to appoint a Liquidating Trustee, the Debtor, and the Bankruptcy Court at the time of Plan Confirmation. Compensation of any successor Liquidating Trustee shall be determined and approved by majority vote of the Oversight Committee.

**3.10 Standard of Care; Indemnification; Exculpation.** The Liquidating Trustee, acting in the capacity as the Liquidating Trustee or in any other capacity contemplated by this Trust Agreement or the Plan, and the members of the Oversight Committee shall not be

personally liable in connection with the affairs of the Trust to the Trust or to any Person except for such of the Liquidating Trustee's or Oversight Committee member's acts or omissions that constitute fraud, willful misconduct, or gross negligence. The Liquidating Trustee shall not be personally liable to the Trust or to any Person for the acts or omissions of any officer, employee, or agent of the Trust unless the Liquidating Trustee acted with gross negligence or willful misconduct in the selection, retention, or supervision of such officer, employee, or agent of the Trust. Except in those situations in which the Liquidating Trustee is not exonerated of personal liability in accordance with the foregoing, the Liquidating Trustee (including each former Liquidating Trustee) shall be indemnified by the Trust against and held harmless by the Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorney fees, disbursements, and related expenses) to which the Liquidating Trustee may become subject in connection with any action, suit, proceeding, or investigation brought or threatened against the Liquidating Trustee in the Liquidating Trustee's capacity as Liquidating Trustee, or in any other capacity contemplated by this Trust Agreement or the Plan or in connection with any matter arising out of or related to the Plan, this Trust Agreement, or the affairs of the Trust. If the Liquidating Trustee becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Trust Agreement or the affairs of the Trust, the Trust shall periodically advance or otherwise reimburse on demand the Liquidating Trustee's reasonable legal and other expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and related expenses) incurred in connection therewith, but the Liquidating Trustee shall be required to repay promptly to the Trust the amount of any such advanced or reimbursed expenses paid to the Liquidating Trustee to the extent that it shall be ultimately determined by Final Order that the Liquidating Trustee engaged in fraud, willful misconduct, or gross negligence in connection with the affairs of the Trust with respect to which such expenses were paid. The Trust may indemnify and hold harmless the employees and agents of the Trust, including the members of the Oversight Committee, to the same extent as provided in this Section 3.10 for the Liquidating Trustee. The provisions of this Section 3.10 shall remain available to and be binding on any former Liquidating Trustee or the estate of any decedent Liquidating Trustee.

**3.11 Reliance by Liquidating Trustee.** The Liquidating Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document that the Liquidating Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Liquidating Trustee may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein, but the Liquidating Trustee shall be under a duty to have examined, or caused to be examined, the same to determine whether or not such writings conform to the requirements of this Trust Agreement. The Liquidating Trustee may consult with counsel, and any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Liquidating Trustee in accordance therewith. The Liquidating Trustee shall have the right at any time to seek instructions from the Bankruptcy Court (or any other court of competent jurisdiction after the Chapter 11 Case is finally closed) concerning the Trust Assets, this Trust Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or suffered by the Liquidating Trustee in accordance therewith.

**3.12 Reliance by Persons Dealing With the Trust.** In the absence of actual knowledge to the contrary, any person dealing with the Trust shall be entitled to rely on the authority of the Liquidating Trustee to act in connection with the acquisition, management, or disposition of Trust Assets and shall have no obligation to inquire into the existence of such authority. Upon the sale by the Liquidating Trustee of any portion of the Trust Assets, such Trust Assets shall be delivered to the purchaser thereof free and clear of any liens or other encumbrances, claims, or interests of the Liquidating Trustee or the Beneficiaries, except as may otherwise be agreed to by the purchaser.

**3.13 Discharge of Liquidating Trustee.**

**3.13.1 Statement of Discharge.** The Liquidating Trustee shall upon termination of the Trust or upon the Liquidating Trustee's resignation, removal, or death (in which case the Liquidating Trustee's estate shall) render a statement of charge and discharge containing the following information: (i) all assets and funds of the Trust originally charged under the Liquidating Trustee's control, (ii) a summarized accounting, in sufficient detail, of all purchases, sales, gains, losses, and income in connection with the Trust during the Liquidating Trustee's term of service, and (iii) the ending balance of all assets and funds of the Trust as of the date of discharge. At the discretion of the Liquidating Trustee and Oversight Committee, such statement may be audited by independent accountants in accordance with generally accepted auditing standards.

**3.13.2 Approval of Statement of Discharge.** The statement of charge and discharge required by Section 3.13.1 shall be presented to the Oversight Committee. Unless a majority of the Oversight Committee requests that such statement of charge and discharge not be approved within thirty (30) days after the date on which such statement of charge and discharge was presented to the Oversight Committee, the withdrawing Liquidating Trustee shall be discharged from all liability to the Trust or any Person who has had or may then or thereafter have an interest in the Trust for acts or omissions in the Liquidating Trustee's capacity as the Liquidating Trustee or in any other capacity contemplated by this Trust Agreement or the Plan.

**3.13.3 Costs Relating to Statement of Discharge.** The expenses of any accounting, including, but not limited to any statement of charge or discharge, shall be paid by the Trust as a Trust Cost.

**ARTICLE 4**  
**OVERSIGHT COMMITTEE**

**4.1 Appointment of the Oversight Committee.** Upon the Effective Date, the Oversight Committee shall be appointed. The Oversight Committee shall consist of three members appointed from among members of the Committee or their delegates, appointees, agents or proxies. If three members of the Committee are not willing to serve on the Oversight Committee, counsel for the Committee or counsel for the Debtor may solicit potential Oversight Committee members from among those holding Allowed Class 4 General Unsecured Claims, beginning with the largest Allowed Class 4 General Unsecured Claim holder or holders and proceeding in order of the amount of each Allowed General Unsecured Claim. Holders of

Allowed Class 4 General Unsecured Claims that also hold Class 5 Claims or Interests shall not be eligible for participation or membership on the Oversight Committee.

**4.1.1 Term of Oversight Committee Members.** Oversight Committee members shall serve until the later of (i) the effective date of the resignation or removal of such member; (ii) the date on which the Liquidating Trustee has finally determined that no additional Trust Assets exist for distribution to holders of Class 4 Beneficial Interests; or (iii) the termination of the Liquidating Trust pursuant to the terms of this Trust Agreement.

**4.1.2 Confidentiality of Information and Conflicts of Interest.** Upon appointment to the Oversight Committee, each member shall execute and deliver to the Liquidating Trustee a confidentiality agreement in substantially the form attached hereto as Exhibit A (the “Confidentiality Agreement”). The Liquidating Trustee shall have authority to exclude any Oversight Committee member from any deliberations, or withhold any information from any Oversight Committee member, regarding matters affecting the Trust or Trust Assets in which such excluded member is encumbered by a conflict of interest. The non-conflicted members of the Oversight Committee may overrule the Liquidating Trustee’s decision to exclude or withhold information from a conflicted member by unanimous vote. Any Oversight Committee member that is excluded from deliberations or denied access to information under this Section may challenge the Liquidating Trustee’s determination in accordance with the dispute resolution procedures set out in Section 5.5 of this Trust Agreement.

**4.2 Powers and Duties of Oversight Committee.** The Oversight Committee shall review the activities and performance of and advise the Liquidating Trustee as set forth in this Trust Agreement, and will have authority to remove and/or replace the Liquidating Trustee as set forth in Sections 3.6 and 3.7 hereof. Neither the Oversight Committee nor its respective members shall exercise any control or authority over the Liquidating Trust or the Trust Assets that is inconsistent with the powers and duties of the Liquidating Trustee as set forth in this Trust Agreement.

**4.2.1 Retention of Professionals.** The Oversight Committee and individual members thereof may retain professionals in the performance of their respective duties hereunder at their own expense. Except as provided in Section 3.10, neither the Trust nor the Liquidating Trustee shall be responsible or in any way liable for the Fees and/or expenses of professionals retained by the Oversight Committee or its members.

**4.2.2 Reliance by Oversight Committee Members.** The Oversight Committee members may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document that the Oversight Committee member has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Oversight Committee members may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein. The Oversight Committee members may consult with any counsel employed by the Trust, and any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Oversight Committee in accordance therewith.



**4.3 Resignation or Death of Oversight Committee Members.** Upon the resignation or death of a member of the Oversight Committee appointed by the Committee, the remaining members of the Oversight Committee appointed by the Committee shall nominate a replacement member from either (i) the former members of the Committee or (ii) if no former member of the Committee accepts such nomination, then from among the Class 4 Beneficial Interest holders that did not hold a Class 5 Claim or Interest on the Effective Date of the Plan. A member of the Oversight Committee may resign at any time.

**4.4 Removal of Oversight Committee Members.** A member of the Oversight Committee may be removed from office upon the unanimous vote of the Liquidating Trustee and the other members of the Oversight Committee for (i) fraud or willful misconduct in connection with the affairs of the Trust; (ii) such physical or mental disability as substantially prevents such Oversight Committee member from performing the duties of a member of the Oversight Committee; or (iii) for cause, including breach of fiduciary duty or an unresolved conflict of interest. Any Oversight Committee member removed under this Section 4.4 will be replaced in accordance with Section 4.3 of this Agreement.

**4.5 Compensation of Oversight Committee.** The Oversight Committee shall not be compensated for services rendered to the Trust. However, the Oversight Committee members shall be reimbursed for all reasonable out-of-pocket expenses incurred by serving on the Oversight Committee, except fees and expenses of professionals retained by individual members of the Oversight Committee.

**4.6 Failure to Form or Act.** If less than three members of the Committee or holders of Class 4 Allowed General Unsecured Claims agree to serve on the Oversight Committee, then counsel for the Committee or, if the Committee fails to appoint a Liquidating Trustee, counsel for the Debtor may appoint independent third parties to serve on the Oversight Committee. Such individual(s) or entity(s) shall not be a former employee of the Debtor and shall not hold a Class 5 Claim or Interest. If an Oversight Committee cannot be formed then each reference to the Oversight Committee found within this Trust Agreement will be disregarded and the Liquidating Trustee may act in accordance with this Trust Agreement without regard or reference to the Oversight Committee.

## **ARTICLE 5**

### **POWERS OF THE LIQUIDATING TRUSTEE**

**5.1 Title.** Legal title to all Trust Assets shall be vested in the Liquidating Trustee, except that the Liquidating Trustee, upon approval by a majority of the Oversight Committee, shall have the power to cause legal title (or evidence of title) to any of the Trust Assets to be held by any nominee or Person, on such terms, in such manner, and with such powers as the Liquidating Trustee hereunder may determine.

**5.2 Management Power.** Except as otherwise expressly limited in this Trust Agreement or the Plan, the Liquidating Trustee shall have control and authority over the Trust Assets, including all Avoidance Actions, and any other Causes of Action transferred and assigned to the Trust under the Plan as Trust Assets, over the management and disposition thereof (including any transfer of Trust Assets that does not constitute a disposition) over the

management of the Trust to the same extent as if the Liquidating Trustee were the sole owner thereof in its own right. Except as provided in the Plan, or otherwise specified in the Trust Agreement, the Liquidating Trustee need not obtain the order or approval of any court in the exercise of any power or discretion conferred hereunder, or account to any court in the absence of a breach of trust. The Liquidating Trustee shall exercise its judgment for the benefit of the Beneficiaries in order to maximize the value of Distributions, giving due regard to the cost, risk, and delay of any course of action. In connection with the management and use of the Trust Assets, the Liquidating Trustee's powers, except as otherwise expressly limited in this Trust Agreement, or the Plan, shall include, but shall not be limited to, the following:

(a) to accept the Trust Assets, to pursue the liquidation and marshaling of the Trust Assets, and to preserve and protect the Trust Assets;

(b) subject to Section 6.1.1 of this Trust Agreement, and in accordance with Section 1123(b)(3)(B) of the Bankruptcy Code and the Plan, to engage in, intervene in, prosecute, join, defend, settle, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, controversies, demands or other litigation relating to the Plan, the Trust, the Trust Assets or the Trust's affairs, to enter into agreements relating to the foregoing, whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding arbitration, adjudication or settlement thereof, all in the name of the Liquidating Trust if necessary or appropriate, and institute or continue actions which were or otherwise could have been brought by the Debtor, and prosecute or defend all litigation or appeals on behalf of the Debtor and, when appropriate, settle such actions and claims;

(c) subject to Section 6.1.1 of this Trust Agreement, and in accordance with Section 1123(b)(3) of the Bankruptcy Code and the Plan, to own and retain, and prosecute, enforce, compromise, settle, release, or otherwise dispose of, all Avoidance Actions, Causes of Action and any and all other claims, defenses, counterclaims, setoffs, and recoupments transferred and assigned to the Trust under the Plan as Trust Assets;

(d) to make or cause to be made Distributions of Available Cash at least quarterly in accordance with the terms of this Trust Agreement and the Plan;

(e) to liquidate and distribute Trust Assets or any part thereof or any interest therein, and to dispose of the Trust Assets for Cash or upon such terms and for such consideration as the Liquidating Trustee deems proper;

(f) to engage in all acts that would constitute ordinary performance of the obligations of a trustee under a liquidating trust and to file all returns of the Trust as a grantor trust for the Beneficiaries pursuant to Treasury Regulation Section 1.671-4(a) or (b);

(g) to enforce the payment of notes or other obligations of any Person or to make contracts with respect thereto;

(h) to purchase insurance with such coverage and limits as it deems desirable consistent with the budget referred to in Section 6.1.2, including, without limitation, insurance covering liabilities of the Liquidating Trustee or employees or agents of the Trust incurred in connection with their services to the Trust;

(i) to appoint, engage, employ, supervise, and compensate officers, employees, and other Persons as may be necessary or desirable, including managers, consultants, accountants, technical, financial, real estate, or investment advisors or managers, attorneys, agents or brokers, corporate fiduciaries, or depositories and the Registrar;

(j) subject to the limitations in Section 6.2, to the extent reasonably required to meet claims and contingent liabilities (including Disputed Claims) or to maintain the value of assets during liquidation, to invest and reinvest Cash available to the Trust, pending distribution, and to liquidate such investments (however, during its existence, the Trust shall not receive or retain cash or cash equivalents in excess of a reasonable amount necessary to meet claims and contingent liabilities (including Disputed Claims) or to maintain the value of its assets during liquidation);

(k) to execute, deliver, and perform any closing agreement made with the IRS;

(l) to determine the manner of ascertainment of income and principal, and the apportionment of income and principal, and the apportionment between income and principal of all receipts and disbursements, and to select an annual accounting period;

(m) establish such funds, reserves and accounts within the Trust estate, as deemed by the Liquidating Trustee in its discretion to be useful in carrying out the purposes of the Trust;

(n) sue and be sued and participate, as a party or otherwise, in any judicial, administrative, arbitative or other proceeding;

(o) delegate any or all of the discretionary power and authority herein conferred at any time with respect to all or any portion of the Trust estate to any one or more reputable individuals or recognized institutional advisers or investment managers without liability for any action taken or omission made because of any such delegation, except for such liability as is provided in Section 3.10;

(p) consult with the Oversight Committee at such times and with respect to such issues relating to the conduct of the Trust as the Liquidating Trustee considers desirable and in accordance with the terms of the Trust Agreement;

(q) undertake any duties or obligations and exercise any rights concerning the treatment of Claims or Equity Interests under the Plan;

(r) execute, deliver and perform such other agreements and documents and to take or cause to be taken any and all such other actions as it may deem necessary or desirable to effectuate and carry out the purposes of this Trust Agreement; and

(s) as soon as is practicable, request that the Bankruptcy Court enter a final decree fully and finally closing the Chapter 11 Case;

(t) undertake any action or perform any obligation provided for or required by the Plan.

**5.3 Commingling of Trust Assets.** The Liquidating Trustee shall not commingle any of the Trust Assets with its own property or the property of any other Person.

**5.4 Employment and Compensation of Professionals.** The Liquidating Trustee shall have the authority to employ and compensate attorneys, accountants, investment advisors and other professionals, including a Registrar and a disbursing agent to make Distributions (collectively, the “Liquidating Trustee Professionals”) as determined from time to time by the Liquidating Trustee. The Liquidating Trustee may pay the reasonable fees and expenses of such professionals as a Trust Cost without application to the Bankruptcy Court. Upon request by any member of the Oversight Committee, the Liquidating Trustee will provide copies of any invoices or billing summaries relating to professional fees incurred by the Trust.

**5.5 Dispute Resolution.** In the event of a dispute between the Liquidating Trustee and the Oversight Committee involving an allegation that either party has failed to act in a manner consistent with the Plan or the Trust Agreement, or is in breach of any applicable fiduciary duty, the parties shall meet and confer and attempt to reach a consensual resolution of the dispute. Should a consensual resolution not be reached, the Liquidating Trustee or any member of the Oversight Committee may seek appropriate relief from the Bankruptcy Court, and the Bankruptcy Court shall retain jurisdiction to resolve such disputes.

## **ARTICLE 6**

### **OBLIGATIONS OF THE LIQUIDATING TRUSTEE**

#### **6.1 Reports and Records.**

**6.1.1 Consultation.** The Liquidating Trustee shall consult with the Oversight Committee in good faith regarding all material issues affecting the Trust, including the resolution of objections to Claims resulting in an Allowed Claim exceeding \$50,000, the pursuit, prosecution, settlement or abandonment of any Avoidance Actions, or other Causes of Action for which the potential recovery by the Trust exceeds \$50,000, and the disposition of Trust Assets, except to the extent the Oversight Committee or an individual Oversight Committee member is encumbered by a conflict of interest, as provided in Section 4.1.2. In addition, the Liquidating Trustee shall seek the advice of the Oversight Committee regarding proposed budgets for the Trust, setting forth expected receipts and disbursements for litigation, operations, and other purposes.

**6.1.2 Budget.** The Liquidating Trustee shall cause to be prepared within thirty (30) days before the end of each fiscal year, budget and cash flow projections covering the next

fiscal year and each succeeding fiscal year for which estimates are feasible. On or before 30 days after the Effective Date, the Liquidating Trustee shall prepare a budget and cash flow projection for the current fiscal year. Such budget and cash flow projections shall be prepared by the Liquidating Trustee in consultation with the Oversight Committee.

**6.1.3 Quarterly and Annual Reports.** The Liquidating Trustee shall cause to be prepared (a) within forty-five (45) days after the end of each of the first three quarters of a fiscal year (for such quarter) and (b) within ninety (90) days after the end of each fiscal year (for such fiscal year), financial statements of the Trust as of the end of and for such periods, prepared in accordance with GAAP, including (i) a balance sheet, (ii) a statement of operations, (iii) a statement of cash flows, (iv) a schedule, summarizing by type of investment and asset, all acquisitions and dispositions, and (v) a summary listing of the status of the resolution of Claims by category and Claim, and (vi) a summary of pending litigation. In addition, such financial statements shall contain the following supplementary information, (A) a statement of changes in the number of Beneficial Interests outstanding, including Distributions and cancellations from whatever source, (B) a schedule of investments acquired directly by the Trust after the Effective Date, including the number of shares or principal amount, the name, a description, the cost, the date disposed of, proceeds of disposition, and gain or loss, and (C) a schedule of expenses of the Trust, including accrued and paid administrative expenses. The financial statements prepared as of the end of the fiscal year may be audited by independent public accountants in accordance with generally accepted auditing standards. The materiality and scope of audit determinations shall be established between the Liquidating Trustee and the appointed auditors with a view toward safeguarding the value of the Trust Assets, but nothing relating to the mutually agreed-on scope of work shall result in any limitation of audit scope that would cause the auditors to qualify their opinion as to scope of work with respect to such financial statements.

**6.1.4 Distribution of Reports.** Within ten (10) business days after the end of the relevant report preparation period, the Liquidating Trustee shall distribute any information listed in Section 6.1.3 above to the Oversight Committee and (if requested) to the Office of the United States Trustee, and shall file the same with the Clerk of the Bankruptcy Court. Upon request, the Liquidating Trustee shall provide copies of any quarterly or annual reports to any Beneficiary of record.

**6.1.5 Records.** The Liquidating Trustee shall maintain records and books of account relating to the Trust Assets, the management thereof and all transactions undertaken by the Liquidating Trustee, which records and books of account shall be maintained in accordance with GAAP consistently applied, except to the extent that any change is approved by the Trust's independent public accountants. The Liquidating Trustee shall also maintain records and books of account relating to all Distributions contemplated under the Plan.

**6.2 Eligible Investments.** Cash held pending distribution, including Cash held in Trust Reserves, shall, to the extent permitted by applicable law, be invested by the Liquidating Trustee in (i) direct obligations of, or obligations guaranteed by, or obligations secured by, the United States of America (including without limitation United States Treasury Bills); (ii) obligations of any agency or corporation that is or may hereafter be created by or pursuant to an Act of the Congress of the United States as an agency or instrumentality thereof, or (iii) demand deposits or short-term certificates of deposit at any bank or trust company that has, at the time of

the acquisition by the Liquidating Trustee of such investments, capital stock and surplus aggregating at least \$100 million and whose short-term debt obligations are rated by at least two nationally recognized statistical rating organizations in one of the two highest categories therefore but the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust, within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to any amendment or addition to the Internal Revenue Code or to the Treasury Regulations, or any modification in IRS guidelines whether set forth in IRS rulings, other IRS pronouncements, or otherwise. Such investments shall mature in such amounts and at such times as, in the judgment of the Liquidating Trustee at the times such investments are made, are necessary, or are desirable with a view to providing funds when needed to make payments from the Trust Assets. Any investment purchased with the Trust Assets shall be deemed a part of the Trust Assets. All interest, distributions, dividends and proceeds received by the Liquidating Trustee in respect of such investments shall be a part of the Trust Assets.

**6.3 Access to Information by Beneficiaries.** Each Beneficiary shall have access to the business records of the Trust for the purpose of obtaining information relating to the management of Trust Assets for any purpose reasonably related to the interests generally of the Beneficiaries, so long as access is reasonably exercised during normal business hours (after at least two business days' notice to the Liquidating Trustee), does not constitute an undue burden on the Liquidating Trustee, and is not detrimental to the Trust. Nothing herein contained is intended to restrict any Beneficiary from access to the business records of the Liquidating Trustee, which the Liquidating Trustee, in its discretion elects to provide.

**6.4 United States Trustee Fees.** Following transfer of all Estate Assets to the Trust on the Effective Date, the Trust shall not be obligated to pay any U.S. Trustee Fees pursuant to 28 U.S.C. § 1930(a)(6). The Estate shall retain sufficient Estate Cash to pay any U.S. Trustee Fees arising from the initial transfer of Estate Assets to the Trust and not less than \$10,000 to satisfy future U.S. Trustee Fees arising between the Effective Date and the date on which the Chapter 11 Case is closed or dismissed.

## **ARTICLE 7**

### **BENEFICIAL INTERESTS**

**7.1 Allocation of Class 4 Beneficial Interests.** Within sixty (60) days of the Effective Date, the Trust shall allocate as of the Effective Date to each holder of a Class 4 General Unsecured Claim, a Class 4 Beneficial Interest in the Trust equal to the ratio that the amount of such holder's Class 4 General Unsecured Claim bears to the total amount of all Class 4 General Unsecured Claims. The allocation of Class 4 Beneficial Interests shall be made as if all Disputed Claims were Allowed Claims as of the Effective Date.

**7.2 Register Entries Regarding Beneficial Interests.** The Liquidating Trustee or the Registrar shall make the following notations in the Trust Register:

- (a) a notation reflecting the Class 4 Beneficial Interest and Claim held by each Beneficiary holding an Allowed Class 4 General Unsecured Claim, and the Pro Rata share of Trust Assets allocable to each holder of a Class 4 Beneficial Interest;

(b) a notation reflecting the Class 4 Beneficial Interest and Claim held by each Beneficiary holding a Disputed Class 4 General Unsecured Claim (a “Reserved Beneficial Interest”), and the Pro Rata share of Trust Assets allocable to each holder of a Reserved Beneficial Interest; and

**7.3 Allocation of Beneficial Interests to Holders of Disputed Claims.** The allocation of any Beneficial Interest on account of a Disputed Claim pursuant to Section 7.1 of this Trust Agreement, shall be reserved on the Trust Register maintained by the Registrar and shall become a Reserved Beneficial Interest. Any Claim filed, in whole or in part, in an unknown or undetermined amount may be estimated by the Liquidating Trustee, subject to approval by the Bankruptcy Court, and such Claim as estimated shall be deemed a Disputed Claim until otherwise allowed. To the extent all or a portion of a Disputed Claim is ultimately disallowed, the Trust shall reallocate among the remaining Beneficial Interests, the Reserved Beneficial Interest that relates to the portion of the Disputed Claim that was disallowed and either modify or remove such Beneficial Interest from the Trust Register. To the extent all or a portion of a Disputed Claim ultimately becomes an Allowed Claim, the Reserved Beneficial Interest that relates to the portion of the Disputed Claim that was allowed, shall be removed from the reserve.

**7.4 Representation of Beneficial Interest.** The Beneficial Interests shall be uncertificated. The Beneficial Interests shall be represented by appropriate book entries in the Trust Register only.

**7.5 Trust Register and Registrar.**

**7.5.1 Appointment of Registrar.** The Liquidating Trustee shall appoint a Registrar for the purpose of registering Beneficial Interests as herein provided. The Registrar may be a duly qualified institution or the Liquidating Trustee. For its services hereunder, the Registrar, unless it is the Liquidating Trustee, shall be entitled to receive reasonable compensation from the Trust as a Trust Cost.

**7.5.2 Register of Beneficial Interests.** The Liquidating Trustee shall cause the Trust Register to be kept at the office of the Registrar or at such other place or places that shall be designated by the Liquidating Trustee from time to time.

**7.5.3 Access to Register by Beneficiaries.** Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Registrar and the Liquidating Trustee, and in accordance with reasonable regulations prescribed by the Registrar and the Liquidating Trustee, to inspect and at the expense of the Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Beneficiary’s Beneficial Interest in the Trust.

**7.5.4 Absolute Owners.** The Liquidating Trustee may deem and treat the Beneficiary of record as determined pursuant to Section 7.1 or Section 7.2 of this Trust Agreement as the absolute owner of such Beneficial Interests for the purpose of receiving Distributions and payment thereon or on account thereof and for all other purposes whatsoever.

**7.6 Beneficial Interests Non-Transferable.** Beneficial Interests shall not be transferred other than by operation of law.

**7.7 Class 3 Unsecured WARN Act Claims.** For the avoidance of doubt, holders of Class 3 Unsecured WARN Act Claims are not Beneficiaries under this Trust Agreement except to the extent such holder of a Class 3 Unsecured WARN Act Claim also holds a Class 4 General Unsecured Claim, in which event only the Class 4 General Unsecured Claim shall give rise to a Beneficial Interest. The rights of holders of Class 3 Unsecured WARN Act Claims are governed by the Plan and the WARN Act Settlement Agreement.

## **ARTICLE 8**

### **ADMINISTRATION OF THE TRUST ESTATE**

**8.1 Establishment of Available Cash.** Prior to making any Distributions, the Liquidating Trustee shall determine the total amount of Available Cash, taking into account any Trust Reserves created pursuant to this Article 8. Available Cash shall consist of Trust Cash less the Administrative Expense Reserve, Priority/Secured Claim Reserve, Operating Reserve and the Disputed Claim Reserve, each as is further described in Article 8.2 hereof.

#### **8.2 Establishment of Trust Reserves and Payment of Creditor Claims.**

**8.2.1 Administrative Expense Reserve.** Before making any Distributions, the Liquidating Trustee may establish (in consultation with the Oversight Committee), fund and segregate a reserve account (the “Administrative Expense Reserve”) with Trust Cash in an amount that the Liquidating Trustee reasonably estimates is sufficient to satisfy any obligation of the Trust to pay Allowed Administrative Claims. Upon the satisfaction of all Administrative Claims, the Administrative Expense Reserve may be dissolved and all funds held therein treated as Trust Cash available for Distribution.

**8.2.2 Priority/Secured Claim Reserve.** Before making any Distributions, and within thirty (30) days from the Effective Date, the Liquidating Trustee shall establish, fund and segregate a reserve account with Trust Cash sufficient to pay the claimed amount of all Priority Unsecured Tax Claims, Class 1 Secured Claims, and Class 2 Priority Unsecured Non-Tax Claims, including any applicable interest accruing from the Effective Date to the Allowance Date (the “Priority/Secured Class Claim Reserve”). Priority Unsecured Tax Claims, Class 1 Secured Claims that are secured by an interest in Trust Cash and Class 2 Priority Unsecured Non-Tax Claims shall be fully and completely satisfied by the payment of Trust Cash from the Priority/Secured Claim Reserve in an amount equal to the Allowed Priority Unsecured Tax Claim, Allowed Class 1 Secured Claim, and Allowed Class 2 Priority Unsecured Non-Tax Claim on the later of the Allowance Date or initial Distribution Date. Class 1 Secured Claims shall be entitled to Trust Cash only in the event that such Trust Cash constitutes Collateral or proceeds from the sale of Collateral. To the extent any funds held in the Priority/Secured Claim Reserve relate to a Priority Unsecured Tax Claim, Class 1 Secured Claim or Class 2 Priority Unsecured Non-Tax Claim that has either been disallowed by the Bankruptcy Court or is no longer claimed as evidenced by a written release of such Claim, then such funds shall be distributed on the next Distribution Date to holders of Beneficial Interests as if such funds were Available Cash. The



Priority/Secured Class Claim Reserve shall be dissolved once all required payments have been made.

**8.2.3 Operating Reserve.** Before making any Distributions, and within thirty (30) days from the Effective Date, the Liquidating Trustee shall establish, fund and segregate a reserve account (the “Operating Reserve”) with Trust Cash in the amount of \$\_\_\_\_\_ for the payment of Trust Costs, including, but not limited to (i) the unpaid liabilities, debts or obligations of the Trust; (ii) all fees associated with the retention of either Liquidating Trustee Professionals; (iii) the costs of pursuing, litigating, settling or abandoning any Avoidance Actions or any other Causes of Action transferred and assigned to the Trust under the Plan as Trust Assets; and (iv) any and all other costs associated with the liquidation or preservation of the Trust Assets. The Operating Reserve may be funded from time to time with additional Trust Cash in an amount determined by the Liquidating Trustee, in consultation with the Oversight Committee, to be reasonably necessary to pay anticipated Trust Costs, fund litigation, fund contingent liabilities, and otherwise conduct the affairs of the Trust.

**8.2.4 Disputed Claims Reserve for Beneficiaries.** Within thirty (30) days from the Effective Date, the Liquidating Trustee shall establish, fund with Trust Cash and segregate funds sufficient to satisfy the Pro Rata amount of Trust cash distributable to holders of Beneficial Interests that would be distributed to holders of Disputed Claims as though such Disputed Claims were Allowed Claims for the gross amount of the aggregate Disputed Claims as of the Effective Date (the “Disputed Claims Reserve”). The Liquidating Trustee shall deposit into the Disputed Claims Reserve any Distribution payable to a Beneficiary holding a Reserved Beneficial Interest.

### **8.3 Distributions**

**8.3.1 Distributions Generally.** Except as otherwise provided for under the Plan, the Liquidating Trustee shall only make Distributions from Available Cash. The Liquidating Trustee shall have authority to make Distributions of Available Cash at least quarterly and at such other time or times as the Liquidating Trustee believes there is sufficient Available Cash to warrant a Distribution. The Trust shall not, in any event, retain Trust Cash in excess of what is reasonably necessary to fund the Trust Reserves.

**8.3.2 Distributions to Class 4 Beneficiaries.** A Beneficiary who is the holder of a Class 4 General Unsecured Claim shall receive on a Distribution Date its Pro Rata share of Available Cash, less that portion of Available Cash distributable to holders of Class 3 Unsecured WARN Act Claims, based on such Beneficiary’s Class 4 Beneficial Interest, until such Beneficiary’s Allowed Class 4 General Unsecured Claim is paid in full, all Trust Assets have been distributed or all Available Cash is exhausted.

**8.3.3 Distributions to Holders of Reserved Beneficial Interests.** No Distributions shall be made to holders of a Reserved Beneficial Interest. To the extent a Reserved Beneficial Interest is removed from the reserve on the Trust Register in accordance with Section 7.3 and becomes a Beneficial Interest, any Cash in the Disputed Claims Reserve relating to such Beneficial Interest shall become Available Cash and shall be released and distributed to such Beneficiary on the next Distribution Date. To the extent a Reserved

Beneficial Interest is reallocated among the remaining Beneficial Interests in accordance with Sections 7.3 and 8.2.4, any Cash in the Disputed Claims Reserve relating to such Reserved Beneficial Interest shall become Available Cash and shall be released and distributed on the next Distribution Date to the holders of such remaining Beneficial Interests. Distributions, if any, to holders of Reserved Beneficial Interests shall be made on the next Distribution Date following removal of the Reserved Beneficial Interest from the reserve on the Trust Register.

**8.4 Place and Manner of Payments or Distributions.** The Liquidating Trustee shall make Distributions to the Beneficiaries of record as of the Distribution Record Date by mailing such Distribution to the Beneficiary at the address of such Beneficiary as listed in the Schedules of Assets and Liabilities, or any proof of claim filed by the Beneficiary, or as listed in the Trust Register, or at such other address as such Beneficiary shall have specified for payment purposes in a written notice to the Liquidating Trustee and the Registrar at least thirty (20) days before such Distribution Record Date. The Liquidating Trustee shall distribute any Cash by wire, check, or such other method as the Liquidating Trustee deems appropriate under the circumstances. Prior to receiving any Distributions, all Beneficiaries, at the Liquidating Trustee's request, must provide to the Liquidating Trustee written notification of their respective Federal Tax Identification Numbers or Social Security Numbers.

**8.5 Minimum Distributions.** Notwithstanding any other provision of this Trust Agreement or the Plan to the contrary, there will be no Distributions of Available Cash unless the aggregate amount to be distributed on such date is at least \$100,000.00 (other than in connection with a final Distribution and payments to be made from any Administrative Expense Reserve or from the Priority/Secured Claim Reserve), but the Trust will distribute at least quarterly to Beneficiaries all of its net income and any Available Cash. To the extent a Distribution to a particular Beneficiary is less than \$100.00, the Liquidating Trustee may hold such Distribution until the Final Distribution or until the aggregate of Distributions to such Beneficiary exceeds \$100.00.

**8.6 Unclaimed or Undeliverable Distributions.** In the event (i) a Beneficiary fails to provide to the Liquidating Trustee its Federal Tax Identification Number or Social Security Number within forty-five (45) days after the date of the Liquidating Trustee's written request, (ii) a check issued to a Beneficiary remains uncashed for sixty (60) days after its issuance date, or (iii) a Distribution is returned as undeliverable, then the Distribution and any Claim related to such Beneficiary shall be deemed waived, such Beneficiary shall no longer be entitled to receive Distributions, and such unclaimed or undeliverable Distribution shall be distributed on the next Distribution Date to the holders of Beneficial Interests as if such Distribution were Available Cash.

**8.7 Tax Matters.**

**8.7.1 Certain Income Tax Matters.** The Trust established pursuant to this Trust Agreement is established for the purpose of satisfying claims by liquidating the Trust Assets transferred to it and the Trust shall have no objective of continuing or engaging in any trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust. The purpose of the Trust is to provide a mechanism for the liquidation of the Trust Assets of the Debtor, and to distribute the proceeds of the liquidation, net

of all claims, expenses, charges, liabilities, and obligations of the Trust, to the holders of Beneficial Interests in accordance with the terms of the Plan. No business activities will be conducted by the Trust other than those associated with or related to the liquidation of the Trust Assets. It is intended that the Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations. All parties hereto shall treat the transfers in trust described herein as transfers to the Beneficiaries for all purposes of the Internal Revenue Code of 1986, as amended (including, sections 61, 483, 1001, 1012, and 1274). All the parties hereto shall treat the transfers in trust as if all the transferred assets, including all the Trust Assets, had been first transferred to the Beneficiaries and then transferred by the Beneficiaries to the Trust. The Beneficiaries shall be treated for all purposes of the Internal Revenue Code of 1986, as amended, as the grantors of the Trust and the owners of the Trust. The Liquidating Trustee shall file returns for the Trust as a grantor trust pursuant to Treasury Regulations section 1.671-4(a) or (b). The parties hereto, including the Liquidating Trustee and the Beneficiaries shall value the property transferred to the Trust consistently and such valuations shall be used for all federal income tax purposes. The Beneficiaries (except to the extent a Beneficiary is the Internal Revenue Service) shall be responsible for payment of any taxes due with respect to the operations of the Trust. During its existence, the Trust shall not receive or retain cash or cash equivalents in excess of a reasonable amount necessary to satisfy Claims and contingent liabilities (including Disputed Claims) or to maintain the value of its assets during liquidation. The Liquidating Trustee shall use its continuing best efforts to dispose of the Trust Assets, make timely distributions, and shall not unduly prolong the duration of the Trust. The Liquidating Trustee is authorized to take any action as may be necessary or appropriate to minimize any potential tax liability of the Trust and, thereafter, the Beneficiaries arising out of the operations of the Trust. The Liquidating Trustee is directed to allocate all costs, charges, expenses and deductions, or any of them in whole or in part, to income or principal at such time and in such a manner as the Liquidating Trustee shall determine will reduce or eliminate the Trust’s taxes, if any. The Liquidating Trustee shall file in a timely manner all such tax returns as are required by applicable law by virtue of the existence and operations of the Trust. The Trust shall distribute, at least annually, all Trust income and gain, Cash (whether or not allocable to income or principal, including all capital gains allocable to principal), any other property the Liquidating Trustee in its discretion determines is properly distributable (whether out of income or principal), and liquidation proceeds to the Beneficiaries, after payment of expenses and liabilities, less the Trust Reserves and reasonably necessary reserves for expenses and other Trust Costs. In addition, the Liquidating Trustee shall, not less often than annually, provide to Beneficiaries such information as is appropriate or necessary, to enable the Beneficiaries to determine their respective tax obligations, if any, arising out of the operations of the Trust. The Beneficiaries (except to the extent the Internal Revenue Service is a Beneficiary) shall each report their share of the net income of the Trust as reported to them by the Liquidating Trustee and pay any tax owing thereon on a current basis. All income of the Trust, including amounts retained in a Disputed Claims Reserve, will be taxed either to the Beneficiaries (except to the extent the Internal Revenue Service is a Beneficiary) or to the Trust (in the case of amounts allocated to a Disputed Claims Reserve) each taxable year. No Beneficiary shall have any claim to or with respect to any specific property held in trust and shall have no claim to or for a distribution of property in kind.

**8.7.2 Treatment of Trust Assets for Tax Purposes.** The value of the Trust Assets shall be consistently reported for federal income tax purposes by Debtor, the Trust, and the Beneficiaries.

**8.7.3 Withholding.** The Liquidating Trustee may withhold from the amount distributable from the Trust at any time to any Person (except with respect to the Internal Revenue Service) such sum or sums as may be sufficient to pay any tax or taxes or other charge or charges that have been or may be imposed on such Person or upon the Trust with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any Distribution provided for in this Article 8, whenever such withholding is determined by the Liquidating Trustee in its discretion to be required by any law, regulation, rule, ruling, directive or other governmental requirement, and the Liquidating Trustee, in the exercise of its discretion and judgment, may enter into agreements with taxing or other authorities for the payment of such amounts as may be withheld in accordance with the provisions of this Section 8.7.3. Notwithstanding the foregoing but without prejudice to the Liquidating Trustee's rights hereunder, such Person shall have the right with respect to the United States, or any state, or any political subdivision of either, to contest the imposition of any tax or other charge by reason of any Distribution hereunder.

**8.7.4 Tax Reporting.** To the extent that any Beneficiary may be able to use the installment method of reporting income with respect to an Distribution, the Liquidating Trustee will annually compile and disseminate to Beneficiaries who request such information all available tax return information with respect to interest (stated or unstated) and otherwise necessary or useful in reporting under the installment method.

**8.7.5 Interest.** In the Liquidating Trustee's discretion, interest received with respect to principal distributed pursuant to this Trust Agreement shall be distributed along with the underlying principal.

**8.7.6 Allocation of Income and Losses.** Unless otherwise determined by the Liquidating Trustee in its reasonable discretion, allocations between Beneficiaries of taxable income of the Trust for each of its tax years shall be determined by reference to the manner in which an amount of Cash equal to the amount of such taxable income would be distributed (without regard to any restrictions on Distributions described in the Plan) if, immediately before such deemed Distribution, the Trust had distributed all its other assets (valued for this purpose at their tax book value) in respect of the Beneficial Interests (treating the Disputed Claims Reserve for this purpose as Beneficiaries entitled to Distributions), taking into account all prior and concurrent Distributions from the Trust made in accordance with the Plan. Similarly, taxable loss generally will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating Distribution of the remaining assets of the Trust. The tax book value of assets for purpose of Articles 8 and 9 of this Trust Agreement means their fair-market value on the Effective Date or, if later, the date on which such assets were acquired by the Trust, adjusted in either case in accordance with applicable tax accounting principles. Taxes payable in respect of taxable income of the Trust allocated to the Disputed Claims Reserve shall be paid as a Trust Cost. With regard to transfers of Beneficial Interests in accordance with Section 7.6 hereof the Liquidating Trustee shall promptly establish a standard convention for allocating and apportioning taxable income and loss between a transferor and its transferee and

shall not be required to so allocate and apportion based on the actual Trust activities prior and subsequent to the date of any transfer. The Liquidating Trustee shall notify the Beneficiaries of the convention adopted promptly after such adoption. The Liquidating Trustee shall use its sole discretion to establish a fair and equitable convention to apply and may, but is not required to, adopt a monthly, quarterly, or similar Distribution Record Date convention.

## **ARTICLE 9**

### **TERMINATION**

The Trust shall terminate upon the earlier of (i) the date which is five (5) years after the date this Trust is created, or (ii) the distribution of all Trust Assets. Notwithstanding the foregoing, with Bankruptcy Court approval, the Liquidating Trustee may extend the term of the Trust for one or more finite terms based upon the particular facts and circumstances at that time, if it is in the best interest of the Beneficiaries and an extension is necessary to the liquidating purpose of the Trust. If permitted under applicable law and not contrary to the classification of the Trust as a liquidating trust and a pass-through entity under applicable income tax law, and if in the best interests of the Beneficiaries, the Liquidating Trustee may distribute interests in the Trust Assets or distribute the Trust Assets to another Person and then distribute interests in such Person to the Beneficiaries. Trust Assets to be distributed in kind shall be valued by the Liquidating Trustee in its reasonable discretion at their tax book value. After all liabilities of the Trust have been satisfied or duly provided for, such remaining Trust Assets shall be distributed to Beneficiaries as a final Distribution. The Trust may not be terminated at any time by the Beneficiaries.

## **ARTICLE 10**

### **MISCELLANEOUS**

**10.1 Notices.** Any notice required to be given by this Trust Agreement to all Beneficiaries shall be in writing and shall be sent by first class mail, or in the case of mailing to a non-United States address, air mail, postage prepaid. All other notices, requests or other communications required or permitted to be made in accordance with this Trust Agreement shall be in writing and shall be delivered by U.S. certified mail, return receipt requested, to:

- (a) If to the Liquidating Trustee:

**[TO BE INSERTED]**

Attention: \_\_\_\_\_

- (b) if to any Beneficiary in such Beneficiary's capacity as a Beneficiary, at such Beneficiary's address as listed in the Trust Register or as identified in a written request for notice delivered to the Liquidating Trustee.

- (c) If to the Oversight Committee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Notice mailed shall be effective on the date mailed. All other notices shall be effective on the date of delivery. Any Person may change the address at which it is to receive notices under this Trust Agreement by furnishing written notice pursuant to the provisions of this Section 10.1 to the entity to be charged with knowledge of such change.

**10.2 Amendment.** Material amendments to this Trust Agreement require Bankruptcy Court approval after notice to the Oversight Committee and Beneficiaries. This Trust Agreement may be amended by the Liquidating Trustee without Bankruptcy Court approval to correct typographical errors or if such amendment is not material and does not adversely affect the interests of any Beneficiary, but such amendment shall not be effective until forty-five (45) days after the Oversight Committee shall have been given notice of such amendment. The Liquidating Trustee shall consult with the Oversight Committee before making any non-material amendment and before seeking Bankruptcy Court approval of any material amendment.

**10.3 Counterparts.** This Trust Agreement may be executed in one or more counterparts, all of which shall taken together to constitute one and the same instrument.

**10.4 Governing Law; Severability.** This Trust Agreement shall be governed by construed under and interpreted in accordance with the laws of the State of New York. If a court of competent jurisdiction determines that any provision of this Trust Agreement is invalid or unenforceable under such applicable law, such invalidity or unenforceability shall not invalidate the entire Trust Agreement. In that case, this Trust Agreement shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of applicable law, and, if such term or provision cannot be so limited, this Trust Agreement shall be construed to omit such invalid or unenforceable provisions, provided that such construction, to the maximum extent possible, shall give effect to the purposes of the Plan.

**10.5 Headings.** Sections, subheadings and other headings used in this Trust Agreement are for convenience only and shall not affect the construction of this Trust Agreement.

**10.6 Relationship to Plan.** The Liquidating Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan and shall be bound by the terms of the Plan. In the event of a conflict between the Plan (excluding this Trust Agreement) and this Trust Agreement, the Plan shall govern.

**10.7 Consent to Jurisdiction.** Each of the parties hereto (and each Beneficiary by its acceptance of the benefits of the Trust created hereunder) (i) consents and submits to the jurisdiction of the Courts of the State of New York and of the Courts of the United States for the Southern District of New York for all purposes of this Trust Agreement, including, without limitation, any action or proceeding instituted for the enforcement of any right, remedy, obligation, or liability arising under or by reason hereof.

**10.8 Waiver of Jury Trial.** ANY AND ALL RIGHT TO TRIAL BY JURY IS HEREBY WAIVED, AND THERE SHALL BE NO RIGHT TO TRIAL BY JURY IN ANY

LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS TRUST AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**10.9 References to Oversight Committee.** If the Oversight Committee no longer exists at any time during the terms of this Trust, then the Liquidating Trustee shall take all actions under this Trust Agreement without regard to requirements that it meet with, consult with, or seek approval from the Oversight Committee.

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement or have caused this Trust Agreement to be duly executed by duly authorized officers as of the day and year first above written.

**LIQUIDATING TRUSTEE**

By: \_\_\_\_\_

Print : \_\_\_\_\_

Title: \_\_\_\_\_

**EOS AIRLINES, INC., as debtor and  
debtor-in-possession**

By: \_\_\_\_\_

Print : \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT A**

**CONFIDENTIALITY AGREEMENT**

**APPENDIX B**  
**PROPOSED CONFIRMATION ORDER**

[see attached]