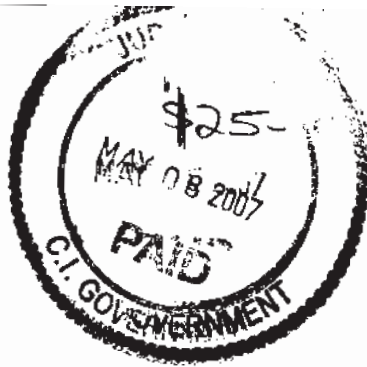




Stop Notice discharged by
Consent Order affixed with the
Seal of the Court on July 7, 2026
(attached)

1. Applicant
2. Clark McGinn
3. First Affidavit
4. Exhibits CM1, CM2
5. 1 May 2007

IN THE GRAND COURT OF THE CAYMAN ISLANDS

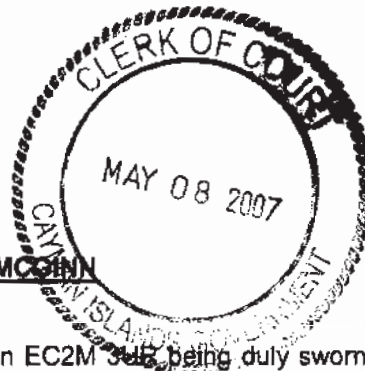
CAUSE NO: OF 2007
60194/07

IN THE MATTER OF: AN EQUITABLE MORTGAGE BETWEEN THE ROYAL BANK OF
SCOTLAND PLC AND MOHAMED ALI MOHAMED AL BARWANI

AND IN THE MATTER OF: GCR ORDER 50, RULE 11



AFFIDAVIT OF CLARK MCGINN



I, Clark McGinn, of 12th Floor, 135 Bishopsgate, London EC2M 3UB, being duly sworn **MAKE
OATH and SAY** as follows:

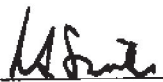
1. I am a Senior Director at The Royal Bank of Scotland plc ("**RBS**") and I am duly authorised to swear this affidavit on its behalf. I make this affidavit pursuant to Order 50, rule 2(a) of the Grand Court Rules in support of the Stop Notice appended hereto.
2. Mohamed Ali Mohamed Al Barwani is the legal owner of 1 ordinary share ("**the Share**") in MB Aviation Limited. MB Aviation Limited is a company incorporated in the Cayman Islands with its registered office at Trulaw Corporate Services, PO Box 866GT, George Town. The Share is specified in the notice hereto annexed.
3. RBS's beneficial entitlement to the Share arises pursuant to an equitable mortgage in respect of the Share (the "**Mortgage**") made in favour of RBS (as security trustee for itself and the lenders as defined in the Loan Agreement (see paragraph 4 below)) by Mohamed Ali Mohamed Al Barwani on 4 April 2007. Now produced and shown to me is a true copy of the Mortgage which is exhibited to this affidavit and marked "**CM1**".
4. RBS was granted a charge over the Share as security for a loan to MB Aviation Limited (a company wholly owned by Mohamed Ali Mohamed Al Barwani) in the amount of US \$18,120,000. The loan was separately documented in a loan agreement made between

MB Aviation Limited and RBS in its capacity as agent, security trustee and initial lender on 3 April 2007 (the "Loan Agreement"). Now produced and shown to me is a true copy of the loan agreement which is exhibited to this affidavit and marked "CM2".

5. As a result of the execution of the Mortgage and Loan Agreement I am advised by my attorneys, Walkers, that, solely based on their review of the Register of Members of MB Aviation Limited provided to them, legal title to the Share is registered in the name of Mohamed Ali Mohamed Al Barwani, and that RBS (as mortgagee) has a beneficial interest therein.
6. In accordance with Order 50, rule 11(3), the address for service of a notice under Order 50, rule 12 is care of RBS's attorneys in the Cayman Islands, Walkers, whose address is Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9001 (reference DMM/LDF/ACT).

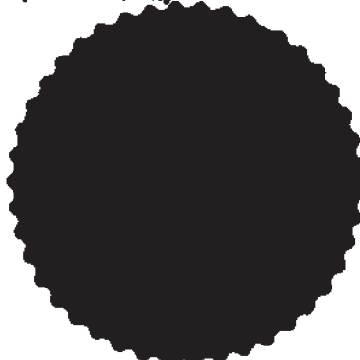
SWORN at London, United Kingdom)
on the 1st day of May 2007)
before me)





NOTARY PUBLIC

Notary Public London, England (Richard J. Saville)



STOP NOTICE

TO: MB Aviation Limited care of Trulaw Corporate Services, PO Box 866GT, George Town.

TAKE NOTICE that The Royal Bank of Scotland plc of 36 St. Andrew Square, Edinburgh, EH2 2YB, Scotland claims to be beneficially entitled to the securities referred to in the affidavit to which this notice is annexed, namely:

1. 1 ordinary Share in MB Aviation Limited registered in the name of Mohamed Ali Mohamed Al Barwani, who is registered as owner of 1 ordinary Share.

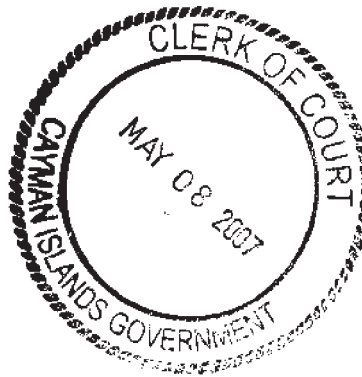
This notice is intended to stop the registration of the transfer of the said securities or any of them to any person other than The Royal Bank of Scotland plc without first giving fourteen days' notice in writing to The Royal Bank of Scotland plc.



NAME: CLARK MCGINN

POSITION: Senior Director

For and on behalf of **The Royal Bank of Scotland plc**



This Affidavit is filed by Walkers, Attorneys at Law, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9001 for Cayman Holdings LLC whose address for service is care of its said Attorneys at Law.

1. Applicant
2. Clark McGinn
3. First Affidavit
4. Exhibits CM1, CM2
6. 1 May 2007

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 194 OF 2007

IN THE MATTER OF: AN EQUITABLE MORTGAGE BETWEEN THE ROYAL BANK OF
SCOTLAND PLC AND MOHAMED ALI MOHAMED AL BARWANI

AND IN THE MATTER OF: GCR ORDER 50, RULE 11

THIS IS EXHIBIT "CM1" TO THE FIRST AFFIDAVIT OF

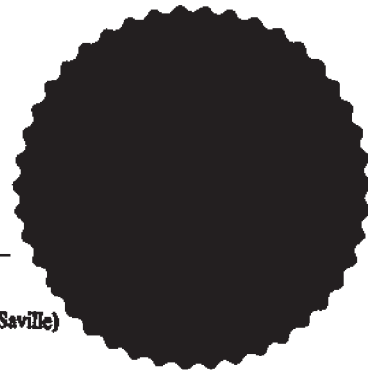
CLARK MCGINN

SWORN BEFORE ME THIS 1st DAY OF MAY 2007



NOTARY PUBLIC

Notary Public London, England (Richard J. Saville)



EXECUTION VERSION

MB AVIATION LIMITED
as Borrower

THE ROYAL BANK OF SCOTLAND PLC
as Security Trustee

AIRCRAFT MORTGAGE
relating to
one (1) 2001 Challenger 604 aircraft
bearing manufacturer's serial number 5520

CLYDE&CO

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
2. COVENANT TO PAY	2
3. MORTGAGE	2
4. REPRESENTATIONS AND WARRANTIES	3
5. COVENANTS BY BORROWER	3
6. PERFECTION OF SECURITY AND FURTHER ASSURANCES	4
7. CONTINUING SECURITY	5
8. SECURITY TRUSTEE	6
9. ENFORCEMENT OF SECURITY	6
10. DELEGATION BY SECURITY TRUSTEE	8
11. POWERS OF RECEIVER	8
12. PROTECTION OF THIRD PARTIES	9
13. POWER OF ATTORNEY	10
14. APPLICATION OF PROCEEDS	10
15. EXPENSES AND INDEMNITIES	10
16. SUCCESSORS IN TITLE	11
17. NOTICES	11
18. PARTIAL INVALIDITY	12
19. REMEDIES AND WAIVERS	12
20. AMENDMENTS	13
21. COUNTERPARTS	13
22. EFFECTIVE DATE	13
23. THIRD PARTY RIGHTS	13
24. GOVERNING LAW	13
25. ENFORCEMENT	13

THIS AIRCRAFT MORTGAGE (this "**Mortgage**") is made by way of deed on 5 April 2007

BETWEEN:

- (1) **THE ROYAL BANK OF SCOTLAND PLC**, a financial institution incorporated under the laws of Scotland and having its registered office at 36 St. Andrew Square, Edinburgh EH2 2YB, Scotland as security trustee (the "**Security Trustee**") for and on behalf and for the benefit of itself and other Finance Parties; and
- (2) **MB AVIATION LIMITED**, a company incorporated under the laws of Cayman Islands whose registered office is at PO Box 866 GT, Grand Cayman, Cayman Islands (the "**Borrower**").

WHEREAS:

- (A) The Borrower and, among others, the Security Trustee have entered into the Facility Agreement.
- (B) As security for the obligations of the Borrower under the Facility Agreement, the Borrower is required to enter into this Mortgage.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Mortgage, except where the context otherwise requires, the following terms have the meanings given to them in this Clause 1.1:

"Facility Agreement" means the facility agreement dated 3 April 2007 between, *inter alia*, the Borrower and the Security Trustee in relation to the Aircraft.

"LCIA" means The London Court of International Arbitration.

"Mortgaged Property" means the property, assets and rights for the time being and from time to time comprised in or subject to this Mortgage; and references to Mortgaged Property include references to any part of such Mortgaged Property.

"Receiver" means any receiver or receiver and manager appointed by the Security Trustee hereunder or under any statutory power.

"Secured Obligations" means all moneys, liabilities and obligations which are now or at any time hereafter may be due, owing or payable by the Borrower or any other Obligor in any currency, actually or contingently, solely or jointly and/or severally with another or others, as principal or surety, on any account whatsoever pursuant to the Facility Agreement, this Mortgage, any other Finance Document or any Other Agreement, or as a consequence of any breach, non-performance, disclaimer or repudiation by the Borrower or any other Obligor (or by any liquidator, receiver, administrative receiver, administrator or any similar officer of the Borrower or any other Obligor) of any of its obligations under the Facility Agreement, this Mortgage, any other Finance Document or any Other Agreement, and (i) (except as expressly otherwise provided) references to the Secured Obligations include references to any of them; and (ii) any amount expressed to be payable by the Borrower or any other Obligor under any Finance Document or any Other Agreement (as the case may be) shall be deemed to form part of the Secured Obligations notwithstanding that the liability of or recourse to the Borrower or its assets in respect thereof is limited by any provision of any Finance Document or any Other Agreement (as the case may be).

1.2 Interpretation

Except where the context otherwise requires, any references in this Mortgage to:

- (a) a term defined in the Facility Agreement shall have the same meaning in this Mortgage unless otherwise defined;
- (b) Clauses and schedules shall be to clauses of and schedules to this Mortgage;
- (c) any agreement or document (including, without limitation, references to this Mortgage) shall be deemed to include references to a concession, contract, deed, franchise, licence, treaty or undertaking and to such agreement or other document as varied, supplemented, novated or replaced from time to time;
- (d) persons shall be deemed to be references to or to include, as appropriate, any individual, corporation, association, partnership or other entity and includes their respective successors, transferees, assigns and any persons with whom they may at any time amalgamate;
- (e) winding up includes bankruptcy and any procedure under any applicable law which is analogous to winding up or bankruptcy; and
- (f) an enactment or statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted.

1.3 Headings and the table of contents are for ease of reference only.

2. COVENANT TO PAY

The Borrower hereby covenants to pay and discharge all of the Secured Obligations promptly and acknowledges to the Security Trustee that the amount secured by this Mortgage and in respect of which this Mortgage and the security hereby created is enforceable is the full amount of the Secured Obligations and the Borrower hereby covenants with the Security Trustee that the property hereby mortgaged is so mortgaged for the full payment, performance and discharge of the Secured Obligations.

3. MORTGAGE

3.1 Mortgage

As a continuing security for the payment and discharge of the Secured Obligations, the Borrower with full title guarantee mortgages to the Security Trustee all its right, title, interest, present and future, in and to the Aircraft.

3.2 Nature of Security

The parties hereto intend that this Mortgage shall create and constitute an effective first-ranking Security Interest over all the Mortgaged Property wheresoever the same may be situated, and under and so far as effective under all applicable laws.

3.3 Release of Security

If the Borrower shall have unconditionally and irrevocably repaid and discharged in full all of the Secured Obligations on or before the date of such request, and **provided that**:

- (a) no Event of Default has occurred and is continuing at the date of such request; and
- (b) the Security Trustee has not been advised by insolvency counsel that having regard to the facts then existing and by reason of any bankruptcy, insolvency or other

applicable laws affecting creditors rights and the discharge of obligations, the Security Trustee will or will become likely to be obliged to pay to or to account to the Borrower or any liquidator or trustee in bankruptcy of any of them any amount corresponding to all or any part of the amount paid in or towards such discharge, the Security Trustee shall (upon written request from, and at the cost of, the Borrower) do such acts and execute such documents as the Borrower may reasonably require in order to release and discharge this Mortgage (subject to Clause 7.6 (*Conditional Discharge*)).

4. REPRESENTATIONS AND WARRANTIES

4.1 The Borrower represents and warrants to the Security Trustee that:

- (a) the Borrower has the power to enter into, deliver and perform and has taken all necessary action to authorise its entry into, delivery and performance of this Mortgage;
- (b) no governmental authorisations are required in connection with the Borrower's entry into, delivery or performance of this Mortgage;
- (c) the Borrower is absolutely entitled to all of the Mortgaged Property at the date of this Mortgage;
- (d) the Borrower has not assigned, charged, pledged or otherwise encumbered or disposed of any of the Mortgaged Property, and the Mortgaged Property is free from all Security Interests other than this Mortgage;
- (e) at the time at which this Mortgage is created all of the Mortgaged Property is located in Arizona, United States of America and the Engines are installed on the Airframe; and
- (f) each of the representations given by the Borrower in Schedule 7 (*Representations*) of the Facility Agreement remains true and accurate at the date hereof as if given by reference to the facts and circumstances now existing.

5. COVENANTS BY BORROWER

5.1 Continuing Covenants

The Borrower hereby covenants and undertakes throughout the Security Period (but subject to and without prejudice to the provisions of the Facility Agreement and the other Finance Documents):

- (a) to take all steps reasonably required by the Security Trustee to preserve or protect the Borrower's interest and the interest of the Security Trustee in the Mortgaged Property;
- (b) to furnish to the Security Trustee from time to time such information and reports regarding the Mortgaged Property as the Security Trustee may reasonably request;
- (c) at all times following the occurrence of an Event of Default which is continuing, to promptly deliver all cash, proceeds, cheques, drafts, orders and other instruments for the payment of money received on account of any Mortgaged Property in the form received (properly endorsed, but without recourse, for collection where required) to the Security Trustee and not to commingle any such collections or proceeds with its other funds or property, and to hold the same upon an express trust for and on behalf of the Security Trustee until delivered;
- (d) to do or permit to be done each and every act or thing which the Security Trustee may from time to time require to be done for the purpose of enforcing the Security Trustee's rights granted pursuant to this Mortgage under any of the Mortgaged

Property and this Mortgage, and will allow its name to be used as and when reasonably required by the Security Trustee for that purpose;

- (e) promptly to deliver to the Security Trustee a copy of any material notice issued by the Borrower or received by the Borrower to or from any third party in connection with the Mortgaged Property;
- (f) not to alter or modify the Aircraft, excepted as permitted pursuant to Schedule 10 of the Facility Agreement;
- (g) to comply with local laws, the Aviation Authority of the State of Registration and the directives and other official requirements that the Aircraft is (or may become) subject to pursuant to Schedules 8 (*General Undertakings*) and 10 (*Operational and Maintenance Undertakings*) of the Facility Agreement;
- (h) to maintain in full force and effect insurance on the Aircraft, and to take out such other insurance as the Security Trustee may request (in accordance with and as required pursuant to Schedule 9 (*Insurance Undertakings*) and the Annex to Schedule 9 of the Facility Agreement); and
- (i) to operate and maintain the Aircraft in accordance with the Manufacturer's instructions and those of the appropriate aviation authorities (as outlined in Schedule 10 (*Operational and Maintenance Undertakings*) of the Facility Agreement).

5.2 No Sale or Encumbrance of Mortgaged Property

The Borrower covenants and undertakes that throughout the Security Period it shall not without the prior written consent of the Security Trustee (but subject to and without prejudice to the provisions of the Facility Agreement and the other Finance Documents) sell, assign, transfer or otherwise dispose of any of the Mortgaged Property or create or suffer to exist any Security Interests upon or with respect to any of the Mortgaged Property except for this Mortgage.

6. PERFECTION OF SECURITY AND FURTHER ASSURANCES

6.1 Filings

The parties will each procure that, and the Borrower shall bear any expense in relation thereto any registrations, filings and/or submissions required or generally made under the laws of any jurisdiction are made to the extent that the provisions of such laws apply to each of them. The parties will co-ordinate and co-operate with one another in providing such information and all reasonable assistance to the other as may be requested in connection with any such registrations, filings and/or submissions.

6.2 Further Assurances

The Borrower shall, at its own cost and expense and at the request of the Security Trustee, promptly sign, seal, execute, deliver, acknowledge, file, register and perfect all such assurances, documents, instruments, agreements, certificates and consents and do any and all such acts and things as may be reasonably necessary or desirable or as the security Trustee may reasonably request from time to time in order to perfect the security intended to be created by this Mortgage or to establish, maintain, protect or preserve such security or the rights of the Security Trustee under this Mortgage or to enable the Security Trustee to obtain the full benefits of such security and this Mortgage and to exercise and enforce its rights and remedies under this Mortgage in respect of the Mortgaged Property.

6.3 Change of State of Registration

Without prejudice to the generality of Clause 6.1 (*Filings*) and Clause 6.2 (*Further Assurances*), the Borrower shall upon the request of the Security Trustee upon a change of

the State of Registration, execute in favour of the Security Trustee an aircraft mortgage and/or a power of attorney and/or any other security document (each in such form as the Security Trustee may request) in relation to the Aircraft and the Aircraft Documents for the purpose of preserving and perfecting the Security Interest to be created hereby.

7. CONTINUING SECURITY

7.1 Continuing Security

Without prejudice to the generality of Clause 2 (*Covenant to Pay*), the mortgage contained in this Mortgage is made for securing all amounts that are (or that become) due and payable by the Borrower or any other Obligor pursuant to the Finance Documents and the Other Agreements. This Mortgage and the security hereby created shall be a continuing security and in particular (without limitation) shall not be, nor be considered as, satisfied by any intermediate discharge or payment on account of any liabilities or any settlement of accounts between the Borrower or any other Obligor (or any other person) and the Security Trustee or any other Finance Party (or any of them) or any other act, event or matter whatsoever, except only the execution by the Security Trustee under seal of an absolute and unconditional release of the security created by this Mortgage to the Borrower (or such other person as the Borrower may direct), and this Mortgage shall extend to cover any sum or sums of money or other liability and obligations which shall for the time being constitute the balance of the Secured Obligations until all of the Secured Obligations have been paid and discharged in full.

7.2 Additional Security

This Mortgage and the security hereby created shall be in addition to and not in substitution for or derogation of any other security (whether given by the Borrower, or any other Obligor or otherwise) now or from time to time hereafter held by the Security Trustee, any other Finance Party in respect of or in connection with any or all of the Secured Obligations.

- 7.3 Section 93 (Restriction on consolidation of mortgages) of the Law of Property Act 1925 (and any other relevant statutory provision of similar effect) shall not apply.

7.4 Exercise of Rights

The Security Trustee shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by this Mortgage or by law, to:

- (a) issue or initiate any proceedings or take action or obtain judgment against the Borrower, any other Obligor or any other person in any court or otherwise; or
- (b) make or file a claim or proof in a winding-up, liquidation, bankruptcy, insolvency, dissolution, reorganization or amalgamation of, or other analogous event of or with respect to the Borrower, any other Obligor or of any other person; or
- (c) enforce or seek to enforce the payment or performance of, or the recovery of, any of the moneys, obligations and liabilities hereby secured or any other security, guarantee or other assurance for all or any of the Secured Obligations.

7.5 Security not Discharged

The security created by this Mortgage shall continue in full force and effect and shall not be discharged, impaired or otherwise affected by:

- (a) any failure by the Security Trustee or any other person to take or enforce any other security, guarantee or other assurance taken or agreed to be taken or given for all or any of the Secured Obligations or under or pursuant to any Finance Document, any Other Agreement or otherwise; or

- (b) any time or indulgence given or agreed to be given by the Security Trustee or any other person or any failure or delay by the Security Trustee or any other person in exercising any right, remedy, power or privilege under this Mortgage, any other Finance Document or any Other Agreement or any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder; or
- (c) any amendment, modification, variation, supplement, novation, restatement or replacement of all or any part of the Secured Obligations or any Finance Document; or
- (d) any release or exchange of any Security Interest, guarantee or other assurance now or hereafter held by or enuring to the benefit of the Security Trustee or any other person for all or any part of the Secured Obligations; or
- (e) any other act, omission, fact, matter, circumstance, event or thing (including, without limitation, the invalidity, unenforceability or illegality of any of the obligations of the Borrower or any other Obligor under any Finance Document or any Other Agreement, or the bankruptcy, liquidation, winding-up, insolvency, dissolution, administration, reorganisation or amalgamation of, or other analogous event of or with respect to, the Borrower, any other Obligor or any other person) which, but for this provision, might operate to impair, discharge or adversely affect the rights of the Security Trustee or any other person under this Mortgage, any other Finance Document or any Other Agreement or to impair, discharge or adversely affect the Security Interest hereby created.

7.6 Conditional Discharge

Any settlement or discharge between the Security Trustee and the Borrower and/or any other person shall be conditional upon no Security Interest in favour of the Security Trustee or any of the other Finance Parties or payment to the Security Trustee or any of the other Finance Parties by the Borrower, any other Obligor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, liquidation, winding-up, insolvency, dissolution, reorganisation, administration, amalgamation or other analogous event or proceedings for the time being in force.

8. SECURITY TRUSTEE

8.1 Security Trustee

The Security Trustee shall hold title to the Mortgaged Property as trustee on behalf of itself and the other Finance Parties.

8.2 Nature of Rights

The Security Trustee shall be entitled and authorised to exercise all such rights, powers, authorities and discretions in relation to the Mortgaged Property as if the Security Trustee were solely beneficially entitled thereto (including, without limitation, the grant of an indemnity to any person or persons appointed as a Receiver).

8.3 Perpetuity Period

The perpetuity period under the rule against perpetuities (if applicable hereto) shall be the period of eighty (80) years from the date hereof.

9. ENFORCEMENT OF SECURITY

9.1 Time of Enforcement

The Secured Obligations shall become due for the purposes of this Mortgage and of Section 101 (Powers incident to estate or interest of mortgage) of the Law of Property Act 1925 (or

any other relevant statutory provision of similar effect) upon the occurrence of an Event of Default which is continuing.

9.2 Powers of Security Trustee

Without prejudice to any of its other rights, whether conferred under any of the Finance Documents or by law generally, immediately upon the Secured Obligations becoming due and at any time afterwards the Security Trustee shall be entitled:

- (a) to apply to any authority in the country in which the Mortgaged Property or any part thereof is located for an enforcement and attachment order in respect of the Mortgaged Property or any such part thereof;
- (b) to apply to any court of competent authority for an order for foreclosure absolute so as to vest all the Borrower's right, title and interest in the Mortgaged Property in the Security Trustee;
- (c) to take possession of the Mortgaged Property and for that purpose to enter upon any premises where the Mortgaged Property may be located;
- (d) to sell, call in, collect and convert into money the Mortgaged Property by public or private contract at any place in the world, with or without advertisement or notice to the Borrower or any other person in relation to any private contract, with all such powers in that respect as are conferred by law; and:
 - (i) by way of extension thereof, such sale, calling in, collection and conversion may be made for such consideration as the Security Trustee in its sole and absolute discretion shall deem reasonable (whether the same shall consist of cash or shares or debentures in some other company or companies or other property of whatsoever nature or partly of one and partly of some other species of consideration, and whether such consideration shall be presently payable or by instalments or at some future date, and whether such deferred or further payments shall be secured or not) in all other respects in such manner as the Security Trustee shall in its sole and absolute discretion think fit and without being liable to account for any loss of or deficiency in such consideration;
 - (ii) Section 103 (Regulation of exercise of power of sale) of the Law of Property Act 1925 shall not apply to this Mortgage or to the power of sale, calling in, collection or conversion hereinbefore contained; and
 - (iii) for the purposes of this Clause 9.2, the Security Trustee may (in its sole and absolute discretion) by notice appoint the Borrower or any other person as its non-exclusive agent to sell the Mortgaged Property on terms satisfactory to the Security Trustee;
- (e) to repair and keep in repair the Mortgaged Property;
- (f) to insure the Mortgaged Property against loss or damage in such sums and for such risks as the Security Trustee shall in its sole and absolute discretion think fit;
- (g) to lease or charter the Aircraft for such terms, at such rents and generally in such manner and upon such conditions and stipulations as the Security Trustee in its sole and absolute discretion thinks fit;
- (h) to settle, arrange, compromise or submit to arbitration any accounts, claims, questions or disputes whatsoever which may arise in connection with the Mortgaged Property or in any way relating to this Mortgage and execute releases or other discharges in relation thereto;

- (i) to bring, take, defend, compromise, submit to arbitration or discontinue any actions, suits or proceedings whatsoever, civil or criminal, in relation to the Mortgaged Property;
- (j) to execute and do all such acts, deeds and things as the Security Trustee may in its sole and absolute discretion consider necessary or proper for or in relation to any of the purposes aforesaid; and
- (k) to appoint a Receiver of all or any part of the Mortgaged Property upon such terms as to remuneration and otherwise as the Security Trustee shall deem fit; and the Security Trustee may from time to time remove any Receiver so appointed and appoint another in his place; and to fix (at or after the time of his appointment) the remuneration of any such Receiver. A Receiver so appointed shall be the agent of the Borrower and the Borrower shall be liable for such Receiver's actions and defaults to the exclusion of liability on the part of the Security Trustee. Nothing herein contained shall render the Security Trustee liable to any such Receiver for his remuneration, costs, charges or expenses or otherwise.

9.3 Law of Property Act 1925

Sections 109(6) and 109(8) (Appointment, powers, remuneration and duties of receiver) of the Law of Property Act 1925 shall not apply in relation to any Receiver appointed under Clause 9.2 (*Powers of Security Trustee*).

9.4 Other Powers

Notwithstanding any other provision of this Mortgage and without limiting, and as an addition to, the powers conferred upon the Security Trustee (and any Receiver appointed pursuant to Clause 9.2 (*Powers of Security Trustee*)) by the laws of England or of any other jurisdiction, the Security Trustee or the Receiver (as the case may be) may, at any time after the occurrence of an Event of Default which is continuing, exercise against or in respect of the Borrower and/or the Mortgaged Property any of the rights, powers, privileges or discretions conferred from time to time by any applicable law, domestic or foreign.

10. DELEGATION BY SECURITY TRUSTEE

The Security Trustee shall be entitled at any time and as often as it may deem expedient to delegate all or any of the powers, rights, remedies and discretions vested in it by or in connection with this Mortgage in such manner, upon such terms and to such persons as the Security Trustee in its absolute discretion may think fit.

11. POWERS OF RECEIVER

11.1 Powers of Receiver

Any Receiver appointed under Clause 9.2 (*Powers of Security Trustee*) shall have all the powers conferred on a receiver by law (save that Section 103 (Regulation of exercise of power of sale) of the Law of Property Act 1925 or any other relevant statutory provision of similar effect shall not apply) and, by way of addition to (but without limiting) those powers:

- (a) the Receiver shall have all the powers given to the Security Trustee hereunder of taking possession of, calling in, collecting, converting into money and selling, leasing and dealing with the Mortgaged Property or any part thereof and generally shall be entitled to the same protection and to exercise the same powers and discretions as are given to the Security Trustee hereunder, and shall also have such other of the powers and discretions given to the Security Trustee hereunder as the Security Trustee may from time to time confer on him;
- (b) the remuneration of the Receiver may be fixed by the Security Trustee (and may be or include a commission calculated by reference to the gross amount of all money

received or otherwise), but shall be payable by the Borrower and the amount of such remuneration may be debited by the Security Trustee from any amounts held, assigned or charged in favour of the Security Trustee pursuant to the Finance Documents but shall, in any event, be secured on the Mortgaged Property under this Mortgage;

- (c) the Receiver shall have power to make any payment and incur any expenditure which the Security Trustee is, by this Mortgage, expressly or impliedly authorised to make or incur. Any expenses incurred by the Receiver in the exercise of any of its powers hereunder may be paid or retained by him out of any moneys coming into his hands as receiver or may be paid by the Security Trustee in which case they shall be treated as expenses properly incurred by the Security Trustee;
- (d) the Receiver shall in the exercise of his powers, authorities and discretions conform with the reasonable directions from time to time made and given by the Security Trustee;
- (e) the Security Trustee may at any time require security to be given for the due performance of the Receiver's duties as receiver at the cost of the Borrower; and
- (f) the Security Trustee may from time to time determine what funds the Receiver shall be at liberty to keep in hand with a view to the performance of his duties as receiver.

11.2 No Liability as Mortgagee in Possession

Neither the Security Trustee nor the Receiver shall be liable to account as a mortgagee in possession of the Mortgaged Property and neither the Security Trustee nor any Receiver shall be liable for any loss arising from or in connection with the realisation of the Mortgaged Property or otherwise for any act, neglect, default or omission for which a mortgagee in possession might be liable as such, and if and whenever the Security Trustee enters into possession of the Mortgaged Property, it shall be entitled at any time thereafter which it thinks fit to go out of such possession.

11.3 Other Powers of Receiver

The foregoing powers of a Receiver shall be in addition to any statutory or other powers of the Security Trustee under the Law of Property Act 1925 and of a receiver under the Insolvency Act 1986 (as amended by the Enterprise Act 2002) and the Receiver shall, in any event, have and be entitled to exercise all the rights, powers and remedies conferred upon the Security Trustee by this Mortgage and by law with respect to the Mortgaged Property.

12. PROTECTION OF THIRD PARTIES

12.1 Protection of Third Parties

No persons dealing with the Security Trustee or any Receiver shall be concerned to enquire whether an Event of Default has occurred or whether the powers which the Security Trustee or such Receiver is purporting to exercise have become exercisable or whether any money remains due on the security of this Mortgage or otherwise as to the propriety, validity or regularity of any sale or other dealing (or exercise of such power) by the Security Trustee or such Receiver with the Mortgaged Property, and all the protections to purchasers conferred by law shall apply to such persons dealing with the Security Trustee or such Receiver.

12.2 Receipts

The receipt by the Security Trustee or such Receiver of the purchase moneys shall absolutely and conclusively discharge the purchaser who shall not be concerned with the manner of application of the same or be in any way answerable therefor.

12.3 Meaning of "purchaser"

In Clause 12.1 (*Protection of Third Parties*) and Clause 12.2 (*Receipts*), "purchaser" includes any person acquiring, for money or money's worth, any lease of, or Security Interest over, or any other interest or right whatsoever in relation to the Mortgaged Property.

13. POWER OF ATTORNEY

13.1 Power of Attorney

The Borrower, by way of security for the full and punctual payment, performance and discharge of the Secured Obligations, irrevocably appoints the Security Trustee to be its true and lawful attorney (with full power of substitution and delegation) to take any action which the Borrower is obliged to take under or pursuant to this Mortgage or entitled to take in respect of the Mortgaged Property **provided that** the Security Trustee shall not exercise the power of attorney granted hereunder until the occurrence of an Event of Default.

13.2 No Obligation to Exercise Power

The Security Trustee shall not have any obligation to exercise any of the powers hereby conferred upon it or to make any demand or enquiry as to the nature or sufficiency of any payment received by it with respect to the Mortgaged Property. No action taken by or omitted to be taken by the Security Trustee in the proper exercise of the power conferred on it pursuant to Clause 13.1 (*Power of Attorney*) shall give rise to any defence, counterclaim or set-off in favour of the Borrower or otherwise affect any of the Secured Obligations.

13.3 Ratification

The power hereby conferred shall be a general power of attorney under the Powers of Attorney Act 1971 and the Borrower shall ratify and confirm and agree to ratify and confirm, any deed, assurance, agreement, instrument, act or thing which the Security Trustee may execute or do in the exercise of such power.

14. APPLICATION OF PROCEEDS

All proceeds of any enforcement of this Mortgage (whether pursuant to Clause 9.2 (*Powers of Security Trustee*) or otherwise) shall be applied by the Security Trustee in or towards discharge of the Secured Obligations in accordance with the provisions of the Facility Agreement.

15. EXPENSES AND INDEMNITIES

15.1 Indemnities

The Borrower hereby agrees to indemnify on demand, and hold harmless, the Security Trustee, the Receiver and every attorney, manager, agent or other person appointed by the Security Trustee or the Receiver, in respect of all Losses from time to time suffered or incurred by any of them (though not in respect of any Loss suffered solely by virtue of the wilful misconduct of such indemnitee):

- (a) in the execution or purported execution of any rights, powers, remedies, authorities or discretions vested in any of them by or pursuant to this Mortgage, or otherwise in connection with the performance of this Mortgage or any documents required

pursuant hereto or any consent, waiver, amendment, supplement or approval which may be required or requested under this Mortgage, or in enforcing or endeavouring to enforce any provisions of this Mortgage or the security constituted hereby; or

- (b) by reason of any failure of the Borrower to perform any of its obligations pursuant to the Facility Agreement, this Mortgage or any other Finance Document save in respect of Gross Negligence.

15.2 Security Trustee's Right to Remedy

If at any time the Borrower fails to do any act which it is obliged to do hereunder or to make any payment which it is obliged to make hereunder (other than a payment to the Security Trustee), the Security Trustee may (but shall not be bound to) do such act or procure its doing or make such payment itself. The Borrower shall pay to the Security Trustee on demand the amount of payment made or Losses incurred by the Security Trustee in doing any act pursuant to this Clause 15.2, together with interest thereon at the Default Rate calculated from the date of payment by the Security Trustee until (but excluding) the date of payment by the Borrower.

16. SUCCESSORS IN TITLE

- 16.1 This Mortgage shall be binding upon and enure to the benefit of each of the parties hereto and their respective successors and assigns.
- 16.2 The Borrower shall not be entitled to assign or transfer any of its rights, benefits or obligations hereunder without the prior written consent of the Security Trustee.
- 16.3 Provided that the Borrower will not bear any additional costs or expenses hereunder as a result thereof, the Security Trustee may at any time during the Security Period assign or transfer its rights and/or obligations (whether by way of security or otherwise) under this Assignment in accordance with clause 24.23 of the Facility Agreement to an assignee without the Borrower's consent and shall notify the Borrower as soon as practicable after such assignment, transfer or charge, together with particulars of the Security Trustee, transferee or chargee.

17. NOTICES

- 17.1 Every notice, request, direction or other communication under this Mortgage shall:
 - (a) be in writing delivered personally or by first-class prepaid letter (airmail if international) or fax;
 - (b) be deemed to have been received:
 - (i) in the case of a fax, at the time of despatch with confirmed transmission report stating the correct facsimile number and number of pages sent and that such transmission is "OK" or equivalent (provided always that if the time of despatch is not within normal business hours on a business day in the country of the addressee it shall be deemed to have been received at the opening of business on the next business day); and
 - (ii) in the case of a letter when delivered personally or 3 Business Days after it has been put in the post; and
 - (c) be sent:

to the Security Trustee at:

Address: Project Finance Portfolio

The Royal Bank of Scotland plc
8th Floor
135 Bishopsgate
London EC2M 3UR

Attention: Head of Infrastructure

Facsimile: + 44 207 085 8166

with a copy to:

Address: c/o RBS Corporate Jet Capital
Structured Asset Finance
The Royal Bank of Scotland plc
12th Floor
135 Bishopsgate
London EC2M 3UR

Attention: Lee Warsop, RBS Corporate Jet Capital
Facsimile: + 44 20 7085 1821

to the Borrower at:

Address: P.O. Box 695
Muttrah
P.C. 114
Sultanate of Oman

Attention: Mr Sushil Srivastava, Head of Corporate Finance
Facsimile: + 698 24 580589

provided always that any communication document to be made or delivered to either party shall be effective only when received by that party in fully legible form.

17.2 English language

- (a) Any notice given under or in connection with this Mortgage must be in English.
- (b) All other documents provided under or in connection with this Mortgage must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Security Trustee, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

18. PARTIAL INVALIDITY

If any provision of this Mortgage becomes invalid, illegal or unenforceable in any respect under any law, the legality, validity and enforceability of the remaining provisions shall not in any way be affected or impaired.

19. REMEDIES AND WAIVERS

The rights of the Security Trustee under this Mortgage are cumulative, and may be exercised as often as the Security Trustee considers appropriate and are in addition to its rights under general law. The rights of the Security Trustee against the Borrower (whether arising under this Mortgage or the general law) shall not be capable of being waived or varied otherwise

than by an express waiver or variation in writing; and in particular any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right; any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right; and no act or course of conduct or negotiation on the Security Trustee's part or on its behalf shall in any way preclude it from exercising any such right or constitute a suspension or any variation of any such right.

20. AMENDMENTS

20.1 The provisions of this Mortgage shall not be varied otherwise than by an instrument in writing executed by or on behalf of all of the parties to this Mortgage.

20.2 Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Mortgage, nor shall it affect any rights, obligations or liabilities under or pursuant to this Mortgage which have already accrued up to the date of variation, and the rights and obligations of the parties under or pursuant to this Mortgage shall remain in full force and effect, except and only to the extent that they are so varied.

21. COUNTERPARTS

This Mortgage may be executed in counterparts each of which shall constitute one and the same document.

22. EFFECTIVE DATE

22.1 This Agreement shall enter into effect and be binding upon the parties from the Delivery Date.

23. THIRD PARTY RIGHTS

23.1 The Borrower agrees that any obligation of the Borrower in this Mortgage which benefits any Finance Party shall be enforceable by such Finance Party, subject always to any relevant restriction contained in any Finance Document. Subject to the express provisions of this Mortgage, the provisions of the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") shall apply for the benefit of each Finance Party.

23.2 Unless expressly provided to the contrary in this Mortgage, or any other Finance Documents, a person who is not a party to this Mortgage, or any other Finance Documents may not enforce any of its terms under the Third Parties Act.

23.3 Notwithstanding any term of any Finance Document, the consent of any third party is not required to rescind, vary, amend or terminate this Mortgage at any time.

24. GOVERNING LAW

This Mortgage shall be governed by, and construed in accordance with, English law.

25. ENFORCEMENT

25.1 Jurisdiction

(a) Subject to Clause 25.1(c), each of the Security Trustee and the Borrower irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this Mortgage (including a dispute regarding the existence, validity or termination of this Mortgage) (a "**Dispute**"). If any party considers that there is a Dispute, it shall promptly notify the other party in writing of the existence of such Dispute.

(b) The Borrower:

- (i) agrees that the courts of England are the most appropriate and convenient court to settle Disputes and accordingly no party will argue to the contrary;
 - (ii) irrevocably waives any objection to the courts of England on grounds of forum non conveniens or other judicial grounds as regards any Dispute;
 - (iii) irrevocably consents to the service of process by mail or in any other manner permitted by the relevant law; and
 - (iv) agrees that a judgment or order of a court of England in connection with this Mortgage is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.
- (c) This Clause 25.1 is for the benefit of the Security Trustee only. As a result, the Security Trustee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustee may take concurrent proceedings in any number of jurisdictions.

25.2 Arbitration

- (a) Notwithstanding the provisions of Clause 25.1, any Dispute may, at the option of the Security Trustee only, be referred to and finally resolved by arbitration in accordance with the LCIA rules, which rules are deemed to be incorporated by reference into this clause. If the Security Trustee wishes to exercise this option, the Security Trustee shall so notify the Borrower in writing within twenty one (21) days of the date of written notice issued pursuant to paragraph 25.1(a) above. Following receipt of such notice by the Borrower, the Borrower shall not object to the Security Trustee's reference to arbitration in accordance with this Clause 25.2(a).
- (b) The seat or legal place of arbitration shall be London, United Kingdom.
- (c) The number of arbitrators shall be three. The Security Trustee and the Borrower shall each nominate an arbitrator and the third arbitrator, who shall act as chairman shall be appointed by the LCIA. If any party defaults on its obligation to appoint any arbitrator within ten (10) Business Days of being requested to do so by the non-defaulting party then the non-defaulting party may request that the remaining members of the tribunal be appointed by the LCIA in accordance with the LCIA rules.
- (d) The language of arbitration shall be English.
- (e) The parties and the LCIA may appoint arbitrators from among the nationals of any country, whether or not a party is a national of that country.
- (f) The arbitrators have no authority to award punitive damages and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the Finance Documents.
- (g) Each party shall be entitled to seek at any time from any court in any jurisdiction (whether before or after commencement of any arbitration proceedings), any provisional, interim or conservatory relief against the other. The relief sought may include, but shall not be limited to attachment, taking possession, preservation, custody or detention of property and injunctive relief. This entitlement is strictly without prejudice to and shall exist in parallel with the right which the parties may have to seek such relief from any arbitral tribunal, whether under the LCIA rules or otherwise under law. Any request for such relief by a party to any court in any jurisdiction shall not be deemed incompatible with, or a waiver of, the agreement to arbitrate set forth herein. The parties agree that any ruling by the arbitral tribunal on such relief shall be deemed a final award with respect to subject matter of the ruling and shall be fully enforceable as such.

- (h) The Security Trustee and the Borrower irrevocably agree to preserve their right of appeal on questions of law in any award of an arbitral tribunal appointed pursuant to this Clause 25.2 pursuant to section 69 of the Arbitration Act 1996. For the avoidance of doubt, the parties' agreement in this clause 25.2(h) shall override Article 26.9 of the LCIA rules, which exclude any form of appeal to any state court from an arbitral award.
- (i) Costs of the arbitration (excluding each party's preparation, travel, attorneys' fees and similar costs), unless otherwise decided by the arbitrators, shall be borne in accordance with the decision of the arbitrators. In the event that the failure of a party to comply with the award of the arbitrators requires any other party to apply to any court for enforcement of such award, the non complying party shall be liable to the other for all costs of such application, including reasonable attorneys' fees.
- (j) If any Dispute raises issues which are substantially the same as or connected with issues raised in a Dispute which has already been referred to arbitration under any of the other Finance Documents (an "Existing Dispute"), or arises out of substantially the same facts as are the subject of an Existing Dispute, any party to the arbitration may request that the arbitrations be consolidated or heard together. The parties may agree that the arbitral tribunal(s) before which such arbitrations may be heard may, and shall have the power to, order the consolidation of arbitrations or order that they may be heard together.

25.3 Process Agent

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- (a) irrevocably appoints Law Debenture of 5th Floor, 100 Wood Street, London EC2V 7EX, England, as its agent for service of process in relation to any proceedings before the English courts in connection with this Mortgage; and
- (b) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

25.4 Waiver of Immunity

The Borrower irrevocably and unconditionally:

- (a) agrees that if the Security Trustee brings legal proceedings against it or its assets in relation to this Mortgage no immunity from such legal proceedings (which will be deemed to include without limitation, suit, attachment prior to judgement, other attachment, the obtaining of judgement, execution or other enforcement) will be claimed by or on behalf of itself or with respect to its assets;
- (b) waives any such right of immunity which it or its assets now has or may in the future acquire; and
- (c) consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgement which may be made or given in such proceedings.

IN WITNESS whereof this Mortgage has been executed by the Borrower as a deed and the Security Trustee has executed this Mortgage under hand, and is intended to be and is hereby delivered on the date first above written.

EXECUTION PAGE

The Security Trustee

SIGNED

by GAUIN C. NEILL

for and on behalf of

THE ROYAL BANK OF SCOTLAND PLC

(as security trustee for itself and the other Finance Parties)

)
)
)
)
)

G. C. 

The Borrower

EXECUTED as a DEED

by MB AVIATION LIMITED

and signed by

being a person who, in accordance with the law of the Cayman

Islands is acting under the authority of the company

)
)
)
)
)

1. Applicant
2. Clark McGinn
3. First Affidavit
4. Exhibits CM1, CM2
5. 1 May 2007

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 194 OF 2007

IN THE MATTER OF: AN EQUITABLE MORTGAGE BETWEEN THE ROYAL BANK OF
SCOTLAND PLC AND MOHAMED ALI MOHAMED AL BARWANI

AND IN THE MATTER OF: GCR ORDER 50, RULE 11

THIS IS EXHIBIT "CM2" TO THE FIRST AFFIDAVIT OF

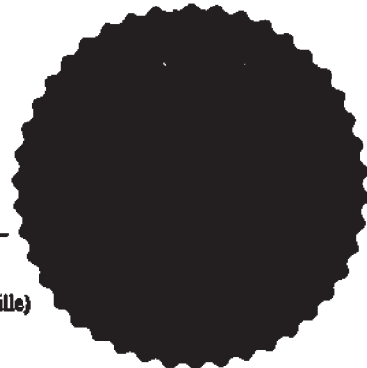
CLARK MCGINN

SWORN BEFORE ME THIS 1st DAY OF MAY 2007

R. Saville

NOTARY PUBLIC

Notary Public London, England (Richard J. Saville)



MB AVIATION LIMITED
as Borrower

CERTAIN FINANCIAL INSTITUTIONS
as Lenders

THE ROYAL BANK OF SCOTLAND PLC
as the Agent

THE ROYAL BANK OF SCOTLAND PLC
as Security Trustee

FACILITY AGREEMENT

US\$18,120,000 secured loan facility in respect of
one (1) 2001 Vintage Challenger 604 aircraft
bearing manufacturer's serial number 5520

CLYDE&CO

CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION.....	1
2. THE FACILITY	11
3. PURPOSE	11
4. CONDITIONS OF UTILISATION	11
5. UTILISATION.....	12
6. REPAYMENT.....	13
7. PREPAYMENT AND CANCELLATION.....	13
8. INTEREST	15
9. INTEREST PERIODS	16
10. CHANGES TO THE CALCULATION OF INTEREST.....	17
11. GOOD FAITH DEPOSIT.....	18
12. TAX GROSS UP AND INDEMNITIES.....	18
13. INCREASED COSTS	20
14. OTHER INDEMNITIES	21
15. MITIGATION BY THE LENDERS.....	23
16. COSTS AND EXPENSES	23
17. REPRESENTATIONS	24
18. BORROWER UNDERTAKINGS.....	24
19. GENERAL UNDERTAKINGS	24
20. INSURANCE UNDERTAKINGS.....	24
21. OPERATIONAL AND MAINTENANCE UNDERTAKINGS.....	25
22. EVENTS OF DEFAULT	25
23. CHANGES TO THE PARTIES	28
24. ROLE OF SECURITY TRUSTEE	32
25. ROLE OF THE AGENT	40
26. CONDUCT OF BUSINESS BY THE FINANCE PARTIES	44
27. SHARING AMONG THE FINANCE PARTIES	44
28. PAYMENT MECHANICS.....	46
29. SET OFF.....	48
30. NOTICES.....	48
31. CALCULATIONS AND CERTIFICATES	50
32. PARTIAL INVALIDITY	51
33. REMEDIES AND WAIVERS.....	51
34. ENTIRE AGREEMENT	51
35. AMENDMENTS AND WAIVERS.....	51
36. COUNTERPARTS	52
37. THIRD PARTY RIGHTS	52

38.	GOVERNING LAW	52
39	ENFORCEMENT	52
	SCHEDULE 1	55
	SCHEDULE 2	56
	SCHEDULE 3	62
	SCHEDULE 4	63
	SCHEDULE 5	64
	SCHEDULE 6	66
	SCHEDULE 7	70
	SCHEDULE 8	73
	SCHEDULE 9	76
	SCHEDULE 10	83
	SCHEDULE 11	95
	SCHEDULE 12	97
	SCHEDULE 13	98

THIS AGREEMENT is dated 3 April 2007 and made between:

BETWEEN:

- (1) **MB AVIATION LIMITED**, a company incorporated under the laws of the Cayman Islands whose registered office is at PO Box 866 GT, Grand Cayman, Cayman Islands (the "**Borrower**");
- (2) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 as lenders (the "**Original Lenders**");
- (3) **THE ROYAL BANK OF SCOTLAND PLC**, a financial institution incorporated under the laws of Scotland and having its registered office at 36 St. Andrew Square, Edinburgh EH2 2YB, Scotland as agent of the other Finance Parties (the "**Agent**"); and
- (4) **THE ROYAL BANK OF SCOTLAND PLC**, a financial institution incorporated under the laws of Scotland and having its registered office at 36 St. Andrew Square, Edinburgh EH2 2YB, Scotland as security trustee for the other Finance Parties (the "**Security Trustee**").

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Additional Cost Rate" has the meaning given to it in Schedule 11 (*Mandatory Cost Formulae*);

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

"Agreed Form" means substantially in the form provided by the Agent to the Borrower or otherwise agreed by the Agent and the Borrower;

"Aircraft" means the aircraft, details of which are set out in Schedule 12 (*Description of the Aircraft*), to be delivered to the Borrower pursuant to the Aircraft Purchase Agreement (which term includes, where the context admits, a separate reference to all Engines, Parts and Aircraft Documents);

"Aircraft Documents" means the documents, data, aircraft manuals and technical records relating to the Aircraft on the Delivery Date and any other documents and records referred to in paragraph 2.2 of Schedule 10, and all additions, renewals, revisions and replacements from time to time made thereto in accordance with this Agreement;

"Aircraft Purchase Agreement" means the aircraft purchase agreement dated 19 February 2007 between the Borrower and the Seller;

"Airframe" means the Aircraft excluding the Engines and the Aircraft Documents;

"Airframe Manufacturer" means Bombardier Inc.;

"Appraised Aircraft Value" means the current market value of the Aircraft at any particular time, as assessed on a half-life basis, by way of a desktop appraisal conducted by an independent appraiser appointed by the Agent at the cost of the Borrower;

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

"Availability Period" means the period from and including the date of this Agreement to and including the earlier of (i) the Delivery Date, and (ii) the date falling thirty (30) days after the Scheduled Delivery Date;

"Bill of Sale" means the bill of sale transferring title in and to the Aircraft under the Aircraft Purchase Agreement;

"Break Costs" means:

(a) the amount (if any) by which:

(i) the interest which a Lender should have received for the period starting on the date of receipt of all or any part of its participation in the Loan or Unpaid Sum and ending on the last day of the current Interest Period in respect of the Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

(ii) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current interest Period; and

(b) any reasonable costs, losses or expenses suffered or incurred by a Lender or the Agent in connection with the termination, liquidation or close-out of any swap or interest exchange agreement (including, but not limited to, any interest rate swap entered into pursuant to Clause 8.5) entered into by such Lender or the Agent in connection with its making of the Loan, provided that such Lender or the Agent (as the case may be) either entered into such swap or interest rate exchange agreement at the request of the Borrower or obtained the consent of the Borrower to enter into such swap or interest exchange agreement;

"Business Day" means:

(a) in the case of payments, any day (other than a Saturday or Sunday) on which banks are open for general business in New York, London and Muscat (Oman); and

(b) in all other cases, any day (other than a Saturday or Sunday) on which banks are open for business in New York, Muscat (Oman) and London and the capital city of the State of Registration;

"Commitment" means:

(a) in relation to any Original Lender, the amount opposite its name against the heading Commitment in Schedule 1 (*The Original Lenders*) and the amount of any other Commitment transferred to it under this Agreement; and

(b) in relation to any other Lender, the amount of any Commitment transferred to it as specified in the Transfer Certificate which relates to such Lender,

to the extent not cancelled, reduced or transferred by it under this Agreement;

"Confidentiality Undertaking" means a confidentiality undertaking substantially in the form set out in Schedule 6 (Form of Confidentiality Undertaking) or in any other form agreed between the Borrower and the Agent;

"Default" means any Event of Default or any condition, event or circumstance which (with the giving of notice and/or lapse of time and/or determination of materiality and/or fulfillment of any other condition) would in the reasonable opinion of the Agent (if such time had elapsed at the time of the occurrence of such condition, event or circumstance) constitute an Event of Default;

"Delivery Date" means the date on which the Borrower takes delivery of and title to the Aircraft pursuant to the Aircraft Purchase Agreement;

"Dollars" and **"\$"** mean the lawful currency for the time being of the United States of America;

"Elite Jets" means Elite Jets FZCO, a company organised and existing under the laws of the Dubai Airport Free Zone, Dubai in the United Arab Emirates whose registered office is at West Wing 3, Office 419, Dubai Airport Free Zone, Dubai, United Arab Emirates.

"Enforcement Proceeds" means any proceeds arising out of the enforcement of any of the Security Documents;

"Engine" means (whether or not from time to time installed on the Aircraft):

- (a) the two GECF34-3B engines furnished with the Aircraft on the Delivery Date; or
- (b) any engine which has replaced either of those engines, title to which has passed to the Borrower and which has, or should have, become subject to the Mortgage in accordance with this Agreement,

and in each case includes all modules and Parts from time to time belonging to or installed in that engine but excludes any properly replaced engine which has been released from the Mortgage in accordance with this Agreement;

"Event of Default" means any event or circumstance specified in Clause 22 (*Events of Default*);

"Existing Lender" has the meaning ascribed to it in Clause 23.1 (*Assignments and transfers by the Lenders*);

"Facility" means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*);

"Facility Office" means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement;

"Finance Documents" means this Agreement, each Security Document, the Aircraft Purchase Agreement, the Operations Agreement, the Maintenance Contract, the Maintenance Service Plan Contracts, the Bill of Sale and any other document designated as such by the Agent and the Borrower;

"Finance Party" means the Agent, the Security Trustee or any Lender;

"Finance Party Lien" means any Security Interest from time to time created by or through any Finance Party;

"Good Faith Deposit" means the sum referred to in Clause 11.1 (*Good Faith Deposit*);

"Government Entity" means:

- (a) any national government, political subdivision thereof, or local jurisdiction therein;

- (b) any instrumentality, board, commission, court or agency of any thereof, however constituted; and
- (c) any association, organisation or institution of which any of the above is a member or to whose jurisdiction any thereof is subject or in whose activities any of the above is a participant;

"Gross Negligence" means, in relation to an Indemnitee or a Finance Party, any intentional or conscious action or decision of such Indemnitee or Finance Party, which is taken with reckless disregard to the consequences of such action or decision;

"Guarantee" means the guarantee dated on the date of this Agreement between the Guarantor and the Security Trustee in respect of all of the Borrower's obligations under the Finance Documents;

"Guarantor" means Mr Mohammed Ali Mohammed Al Barwani, a resident and citizen of Sultanate of Oman and holder of Omani passport number 01642269;

"Holding Company" means, in relation to any company or corporation, any other company or corporation in respect of which it is a Subsidiary;

"Indemnities" means each Finance Party and their respective successors and assigns, shareholders, subsidiaries, affiliates, partners, contractors, directors, officers, servants, agents, employees and secondees;

"Insurances" means, the insurances required to be effected and maintained pursuant to this Agreement, which expression includes, where the context so admits, any relevant re-insurance(s);

"Interest Period" means, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*);

"LCIA" means the London Court of International Arbitration;

"Lender" means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other person which has become a Party in accordance with Clause 23 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement;

"LIBOR" means:

- (a) the applicable Screen Rate; or
- (b) if the applicable Screen Rate is not available for the Interest Period of the Loan the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

in each case, as of 11.00 a.m. on the Quotation Date for the offering of deposits in Dollars and for a period in respect of which LIBOR is to be determined;

"Loan" means the loan made or to be made under the Facility or the principal amount outstanding for the time being of such loan;

"Losses" has the meaning ascribed to it in Clause 14.1 (*Operational Indemnity*);

"Majority Lenders" means:

- (a) if there is no Loan then outstanding, a Lender or Lenders whose Commitments aggregate more than 66⅔ per cent of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66⅔ per cent of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Loan then outstanding aggregate more than sixty six and two thirds ($66\frac{2}{3}$) per cent of the Loan then outstanding;

"Mandatory Cost" means the percentage rate per annum calculated by the Agent in accordance with Schedule 11 (*Mandatory Cost Formulae*);

"Manufacturer" means Bombardier Inc. in relation to the Aircraft or, in relation to the Engines, General Electric;

"Margin" means 1.00 per cent per annum;

"Material Adverse Effect" means a material adverse effect on:

- (a) the business, conditions (financial or otherwise), assets, properties or prospects of any Obligor; or
- (b) the ability of any Obligor to observe or perform any of its obligations under the Finance Documents;

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c)) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end;

"Mortgage" means the first priority aircraft mortgage to be entered into on or about the Delivery Date between the Borrower as mortgagor and the Security Trustee as mortgagee in respect of the Aircraft, substantially in the Agreed Form;

"New Lender" has the meaning ascribed to it in Clause 23.1 (*Assignments and transfers by the Lenders*);

"Obligor" means either of the Borrower and the Guarantor;

"Operator" means the Borrower or Elite Jets;

"Operations Agreement" means where the Operator of the Aircraft is Elite Jets the agreement to be entered into between the Operator and the Borrower in respect of the operation of the Aircraft in a form satisfactory to the Agent;

"Other Agreements" means each aircraft lease agreement or secured debt financing agreement from time to time entered into between any Finance Party (or any Affiliate of a Finance Party) and an Obligor (or any Affiliate of an Obligor);

"Operations Agreement Long Stop Date" means ninety (90) days from the Utilisation Date;

"Outstanding Indebtedness" means the aggregate outstanding amount of the Loan, interest thereon and all moneys whatsoever now or thereafter payable by the Obligors to the Finance Parties under this Agreement and the other Finance Documents;

"Overdue Amount" has the meaning ascribed to it in Clause 8.3 (*Default Interest*);

"Parts" means, whether or not for the time being installed on the Aircraft:

- (a) any component, furnishing or equipment (other than a complete Engine) furnished with the Aircraft on the Delivery Date; and
- (b) any other component, furnishing or equipment (other than a complete Engine) title to which has, or should have, passed to the Borrower and which has become subject to the Mortgage in accordance with this Agreement,

but excludes any such items which have been released from the Mortgage in accordance with this Agreement;

"Party" means any party to this Agreement;

"Permitted Lien" means:

- (a) any lien for Taxes not assessed or, if assessed, not yet due and payable, or being contested in good faith by appropriate proceedings;
- (b) any lien of a repairer, mechanic, carrier, hangarkeeper, airport, air navigation authority or other similar lien arising in the ordinary course of business by operation of law in respect of obligations which are not overdue or are being contested in good faith by appropriate proceedings; and
- (c) any Finance Party Lien,

but only if (in the case of both (a) and (b)) (i) adequate resources have been provided by the Borrower for the payment of such Taxes or obligations; and (ii) such proceedings, or the continued existence of such lien, do not give rise to any material risk of the sale, forfeiture or other loss of the Aircraft or any interest therein or of criminal liability on any Finance Party or any other Indemnitee;

"Quotation Date" means, in relation to any period in respect of which LIBOR is to be determined, two (2) Business Days before the first day of that period unless market practice differs in the Relevant Interbank Market, in which case the Quotation Date for that currency will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Date will be the last of those days);

"Reference Banks" means, in relation to LIBOR and Mandatory Cost, the principal London offices of The Royal Bank of Scotland plc, Barclays Bank plc and Citibank N.A. or such other banks as may be appointed by the Agent in consultation with the Borrower;

"Relevant Interbank Market" means the London interbank market;

"Repayment Date" means the last day of each Interest Period;

"Repayment Instalment" means, in relation to any Repayment Date, each amount calculated in accordance with Clause 6.1;

"Repayment Schedule" means the schedule of Loan Repayment Instalments for each Interest Period, as set out in Schedule 4;

"Requisition Compensation" means any proceeds of requisition (whether for title, use, hire or otherwise) confiscation, nationalisation, sequestration, detention, forfeiture or any compulsory acquisition whatsoever or seizure of the Aircraft or any part thereof;

"Scheduled Delivery Date" means 3 April 2007;

"Screen Rate" means the British Bankers' Association Interest Settlement Rate for Dollars and for the relevant period, displayed on the appropriate page of the Reuters screen (which as at the date of this Agreement is page LIBOR01). If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Borrower and the Lenders;

"Secured Property" has the meaning ascribed to it in Clause 24.1 (*Role of Security Trustee*)

"Security Interest" means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, right of set-off, or any other agreement or arrangements having the effect of conferring security;

"Security Assignment" means, the security assignment entered into or to be entered into between the Borrower as assignor and the Security Trustee as assignee in relation to certain arrangements relating to the Aircraft including, inter alia, the Operations Agreement, the Maintenance Contract, the Maintenance Service Plan Contracts, the Requisition Compensation, the Aircraft Purchase Agreement, and the Insurances in respect of the Aircraft, together with all benefits and proceeds thereof, and the notices and acknowledgements in the form contained in the schedules thereto, substantially in the Agreed Form;

"Security Documents" means:

- (a) the Mortgage;
- (b) the Guarantee;
- (c) the Share Charge;
- (d) the Security Assignment; and
- (e) the Tripartite Agreement;

"Security Period" means the period starting on the date of this Agreement and ending on the date on which all of the Obligors' obligations under the Finance Documents have been paid and discharged in full;

"Seller" means Beneto Jet Sales, a company incorporated under the laws of Oregon whose principal place of business is 2250 NE 25th Avenue, Hillsboro, Oregon, USA;

"Share Charge" means the charge over the shares in the Borrower granted by the Guarantor in favour of the Security Trustee;

"Sharing Payment" has the meaning ascribed to it in Clause 27.1 (*Payments to Finance Parties*);

"State of Incorporation" means, in relation to each Obligor, its jurisdiction of incorporation;

"State of Registration" means the Cayman Islands or the United Arab Emirates or any other country in which the Aircraft is from time to time registered in accordance with this Agreement;

"Subsidiary" means:

- (a) in respect of a person incorporated or formed outside England and Wales, any company or entity directly or indirectly controlled by such person and for this purpose **"control"** means either the ownership of fifty (50) per cent. of the voting share capital (or equivalent rights of ownership) of such company or entity or the power to direct its policies and management by contract or otherwise; and
- (b) in respect of a person incorporated in England and Wales a subsidiary within the meaning of section 736 of the Companies Act 1985 (as maybe amended and/or supplemented from time to time);

"Tax Credit" means a credit against, relief or remission for, or repayment of any Tax;

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Finance Document;

"Tax(es)" means any present and future tax (including, without limitation stamp tax), levy, impost, duty, fees or other charge or withholding of a similar nature imposed by any national or local taxing authority or any other agency or Government Entity (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

"Tax Payment" means either the increase in a payment made by the Borrower to a Finance Party under Clause 12.1 (*Tax gross-up*) or a payment under Clause 12.2 (*Tax indemnity*).

"Termination Date" means the seventh (7th) anniversary of the first day of the calendar month following the Delivery Date;

"Total Commitments" means the aggregate of the Commitments, being eighteen million and one hundred and twenty thousand Dollars (\$18,120,000) at the date of this Agreement;

"Total Loss" means, with respect to the Aircraft (including for the purposes of this definition the Airframe) or an Engine:

- (a) the actual or constructive total loss of the Aircraft or any Engine (including any damage to the Aircraft or any Engine or requisition for use or hire which results in an insurance settlement on the basis of a total loss); or
- (b) the Aircraft or any Engine being destroyed, damaged beyond economic repair or permanently rendered unfit for normal use for any reason whatsoever; or
- (c) the requisition of title or other compulsory acquisition of title for any reason of the Aircraft or any Engine by the government of the State of Registration or any other authority (whether de jure or de facto); or
- (d) the hi-jacking, theft, disappearance, confiscation, seizure or requisition for use or hire of the Aircraft or any Engine which deprives any person permitted by this Agreement to have possession and/or use of the Aircraft of its possession and/or use for more than forty-five (45) days or beyond the Termination Date;

"Total Loss Date" means:

- (a) in the case of an actual total loss or destruction, damage beyond repair, or being rendered permanently unfit, the date on which such loss, destruction, damage or

rendition occurs (or, if the date of loss or destruction is not known, the date on which the Aircraft or Engine was last heard of);

- (b) in the case of a constructive, compromised, arranged or agreed total loss, whichever shall be the earlier of (i) the date being thirty (30) days after the date on which notice claiming such total loss is issued to the insurers or brokers and (ii) the date on which such loss is agreed or compromised by the insurers;
- (c) in the case of requisition for title or compulsory acquisition, the date on which the same takes effect; and
- (d) in the case of hi-jacking, theft, disappearance, confiscation, seizure or requisition for hire (other than by the State of Registration), the earlier of (i) the last day of the period referred to in paragraph (d) of the definition of Total Loss and (ii) the date on which the insurers make payment on the basis of a Total Loss;

"Total Loss Proceeds" means the proceeds of any insurance, or any compensation or similar payment, arising in respect of a Total Loss;

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 5 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrower;

"Transfer Date" means, in relation to any transfer, the later of:

- (a) the proposed Transfer Date specified in the Transfer Certificate; and
- (b) the date on which the Agent executes the Transfer Certificate;

"Tripartite Agreement" means, in the case where the Operator of the Aircraft is Elite, the agreement to be entered into between the Security Trustee, the Borrower and the Operator substantially in the form set out in Schedule 13 (*Form of Tripartite Agreement*) or in any other form acceptable to the Agent;

"Unpaid Sum" means any sum due and payable but unpaid by an Obligor under the Finance Documents;

"Utilisation" means the making of a utilisation of the Facility;

"Utilisation Date" means the Business Day on which the Loan is utilised pursuant to this Agreement;

"Utilisation Request" means a notice substantially in the form set out in Schedule 3 (*Utilisation Request*);

"VAT" means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature; and

the additional words and phrases defined in Schedule 9 (*Insurance Undertakings*) and Schedule 10 (*Operational and Maintenance Undertakings*) have the meanings given to them therein.

1.2 Construction

- (a) Unless the contrary intention appears, any reference in this Agreement to:
 - (i) the Agent, the Security Trustee, any Lender, any Finance Party, the Borrower, any Obligor or any Party or any person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

- (ii) an agreement also includes a concession, contract, deed, franchise, treaty or undertaking (in each case, whether oral or written);
- (iii) an amendment includes a supplement, novation, restatement or re-enactment and amend and amended (or any of their derivative forms) will be construed accordingly;
- (iv) assets includes present and future properties, revenues and rights of every description;
- (v) disposal includes a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary, and dispose will be construed accordingly;
- (vi) a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended;
- (vii) a financial statement includes the notes to that financial statement;
- (viii) a guarantee also includes any other obligation (whatever called) of any person to pay, purchase, provide funds (whether by way of the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment of, indemnity against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of any other person;
- (ix) the expressions hereof, herein, hereunder and similar expressions shall be construed as references to this Agreement as a whole (including all Schedules) and shall not be limited to the particular Clause or provision in which the relevant expression appears, and references to this Agreement and all like indications shall include references to this Agreement as supplemented by all Transfer Certificates and any other agreement or instrument which amends this Agreement;
- (x) include or including shall be construed without limitation;
- (xi) indebtedness includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (xii) a person includes any individual, firm, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity (whether or not having separate legal personality) or two or more of the foregoing;
- (xiii) a regulation includes any regulation, rule, treaty, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self regulatory or other authority or organisation;
- (xiv) repay (or any of its derivative forms) includes prepay (or any of its derivative forms);
- (xv) a provision of law is a reference to that provision as extended, applied or amended and includes any subordinate legislation;
- (xvi) a time of day is a reference to London time; and
- (xvii) a Default is continuing if it has not been remedied or waived by the Agent.

- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (d) Unless a contrary indication appears, in Clause 12 (*Tax Gross Up and Indemnities*) a reference to determines or determined means a determination made in the absolute discretion of the person making the determination.

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders agree to make available to the Borrower a term loan facility in the aggregate amount equal to the Total Commitments;

2.2 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents (other than the Security Documents).

3. PURPOSE

3.1 Purpose

The Loan shall be used by the Borrower solely for the purpose of financing the purchase of the Aircraft pursuant to the Aircraft Purchase Agreement and for no other purpose.

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 Conditions precedent to Utilisation

The obligations of the Finance Parties under the Finance Documents are subject to the Agent having received all of the documents and other evidence listed in Schedule 2 Part A (*Conditions Precedent*) in form and substance satisfactory to the Agent on or before the Utilisation Date. The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.

4.2 Further conditions precedent to Utilisation

The Lenders will be obliged to comply with Clause 5.4 (*Lenders' participation*) only if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan; and
- (b) the representations set out in Paragraph 1 of Schedule 7 (*Representations*) are (and, if the proposed Loan is made, will be) true in all material respects in relation to the Borrower by reference to the facts and circumstances then existing.

4.3 Security Documents

Each of the Security Documents are to be in Agreed Form prior to the issue of any Utilisation Request.

4.4 Waiver

The conditions specified in this Clause 4 are for the sole benefit of the Finance Parties and may be waived or deferred by the Agent in whole or in part and with or without conditions. If any of the conditions specified in this Clause 4 are not satisfied on the relevant Utilisation Date and the Agent (in its absolute discretion) nonetheless agrees to advance the Loan to the Borrower, the Borrower shall ensure that such conditions are fulfilled within five (5) days following the Utilisation Date, or such later date as the Agent may agree and the Agent may treat the failure of the Borrower to do so as an Event of Default.

5 UTILISATION

5.1 Delivery of a Utilisation Request

The Borrower may utilise the Loan under the Facility by delivery to the Agent of a duly completed Utilisation Request not later than three (3) Business Days prior to the proposed Utilisation Date.

5.2 Completion of a Utilisation Request

The Utilisation Request will not be regarded as having been duly completed unless:

- (a) the proposed Utilisation Date is a Business Day within the applicable Availability Period; and
- (b) the currency and amount of the Utilisation equals or is less than the Total Commitments.

Each correctly completed Utilisation Request is irrevocable.

5.3 Currency

The currency of the Loan is Dollars.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in the Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in the Loan will be equal to the proportion borne by its Commitment to the Total Commitments immediately prior to making the Loan.

- (c) The Agent shall determine and shall notify each Lender of the amount of participation in the Loan, in each case not later than three (3) Business Days prior to the Utilisation Date.

6. REPAYMENT

6.1 Repayment of Loan

The Borrower shall repay the Loan in instalments by paying the amount set out in the Repayment Schedule on the Repayment Dates relating thereto and set out therein.

6.2 Reborrowing

The Borrower may not reborrow any part of the Facility which is repaid.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

If it becomes unlawful or contrary to any applicable law in any jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or any Finance Document or to fund or maintain its participation in the Loan:

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) the Agent shall promptly provide the Borrower with a copy of the notice it has received from that Lender and (subject to any mitigation pursuant to Clause 15.1):
 - (i) if, at that time, the Utilisation has not occurred, the Commitment of that Lender will be cancelled immediately upon the Agent notifying the Borrower; and
 - (ii) if, at that time, the Loan has been made, the Borrower shall repay that Lender's participation in the Loan on the first day of the subsequent Interest Period or, if earlier, the date specified by the Lender in the notice delivered to the Agent.

7.2 Total Loss

If a Total Loss occurs in relation to the Aircraft the Borrower shall promptly notify the Agent upon becoming aware of that event and:

- (a) if, at that time, Utilisation has not occurred, then the Total Commitments will be immediately cancelled (and each Lender's Commitment shall be reduced *pro rata* according to the proportion which its Commitment bears to the Total Commitments); and
- (b) if, at that time, the Loan has been made, the Borrower shall repay the Outstanding Indebtedness, on the earlier of (A) the date on which the Total Loss Proceeds are received, and (B) forty five (45) days after the Total Loss Date unless otherwise agreed between the parties (subject to the Agent's discretion).

7.3 Cancellation of the Aircraft Purchase Agreement on Sale of Aircraft

If, at any time, the Aircraft Purchase Agreement is cancelled and:

- (a) if, at that time, the Utilisation has not occurred then the Total Commitments will be immediately cancelled (and each Lender's Commitment shall be reduced *pro rata*

according to the proportion which its Commitment bears to the Total Commitments); and

- (b) if the Aircraft is sold after the Utilisation has occurred, the Borrower shall repay the Outstanding Indebtedness on the earlier of:
 - (i) the receipt of sale proceeds; and
 - (ii) within ten (10) Business Days of the sale.

7.4 Death or Mental Incapacity of the Guarantor

If, at any time, the Guarantor dies or becomes permanently incapable of managing his affairs, the Borrower shall immediately notify the Agent and:

- (a) if, at that time, the Utilisation has not occurred, then the undrawn portion of the Total Commitments will be immediately cancelled (and each Lender's Commitment shall be reduced *pro rata* according to the proportion which its Commitment bears to the Total Commitments);
- (b) if, at that time, a Loan has been made, the Borrower shall, on receipt of notice from the Agent, immediately repay the Outstanding Indebtedness.

7.5 Voluntary prepayment of Loans

The Borrower may, if it gives the Agent not less than three (3) months' prior written notice and pays the relevant fee pursuant to Clause 7.7(g) together with Break Costs (if any) and any other amounts then due and payable under the Finance Documents, prepay on any Repayment Date the whole or any part of the Outstanding Indebtedness (but if a prepayment in part, being an amount which is at least \$2,000,000 (and integral multiples of \$500,000 above such amount) unless the amount of the Outstanding Indebtedness is less than \$2,000,000 in which case the Outstanding Indebtedness may be prepaid in full).

7.6 Right of repayment and cancellation in relation to a single Lender

- (a) If:
 - (i) any sum payable to any Lender by an Obligor is required to be increased under Clause 12.1(c) (*Tax gross up*);
 - (ii) any Lender claims indemnification from an Obligor under Clause 12.2 (*Tax indemnity*) or Clause 13.1 (*Increased costs*); or
 - (iii) any Lender notifies the Agent of its Additional Cost Rate under paragraph 3 of Schedule 11 (*Mandatory Cost Formulae*),

the Borrower may, provided no Default has occurred or is continuing, whilst (in the case of Clause 7.6(a)(i) and (ii) above) the circumstance giving rise to the requirement or indemnification continues or (in the case of Clause 7.6(a)(iii)) that Additional Cost Rate is greater than zero, give the Agent, if at that time the Loan has not been made notice of cancellation of the Commitment of that Lender or, if at the time the Loan has been made, notice of its intention to repay that Lender's participation in the Loan.

- (b) On receipt of a notice of calculation referred to in Clause 7.6(a), the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of the Interest Period during which the Borrower has given notice of its intention to prepay part or all of the Outstanding Indebtedness under Clause 7.6(a) the Borrower shall repay that Lender's participation in the Loan.

7.7 Restrictions and conditions

- (a) Any notice of cancellation or prepayment given by the Borrower under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with interest on the amount prepaid, any Break Costs and all other amounts due and payable under the Finance Documents and, following satisfaction of all such other amounts due and payable under the Finance Documents, the remaining amount shall be applied by the Agent against the Outstanding Indebtedness to reduce, the amount of each succeeding Repayment Instalment (in an order of maturity) (including, for the avoidance of doubt, the final Repayment Instalment).
- (c) The Borrower may not reborrow any part of the Facility which is prepaid.
- (d) The Borrower shall not repay or prepay all or any part of the Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrower or the affected Lenders, as appropriate.
- (g) A prepayment fee will be payable by the Borrower to the Agent on the date on which the Borrower makes a prepayment of the Loan under and pursuant to the terms of this Agreement in the following amounts:
 - (i) one point five per cent. (1.5%) of the amount that is pre paid if the prepayment is made within the first twelve (12) months following the Utilisation Date; or
 - (ii) zero point five per cent. (0.5%) of the amount that is prepaid if the prepayment is made within the first twenty four (24) months but after the first 12 months following the Utilisation Date; or
 - (iii) in all other cases, zero per cent. (0%) of the amount that is prepaid.
- (h) The prepayment fee described in Clause 7.7(g) above may be waived by the Agent if each Finance Party agrees with the Borrower or the Guarantor to re-finance an aircraft of similar or greater value to the outstanding Facility immediately following such prepayment.

8. INTEREST

8.1 Calculation of interest

The rate of interest on the Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

- (a) Margin;
- (b) LIBOR; and
- (c) Mandatory Cost, if any.

8.2 Payment of interest

The Borrower shall pay accrued interest on the Loan on each Repayment Date.

8.3 Default interest

- (a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date; or if any sum due and payable by the Borrower under any judgment in connection herewith or therewith is not paid on the date of such judgment, the Borrower shall pay interest on the overdue amount (the **Overdue Amount**) for the period from and including the due date (or as the case may be the date of such judgment) up to and excluding the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b), is two per cent. (2%) higher than the rate which would have been payable if the Overdue Amount had, during the period of non payment, constituted the Loan in the currency of the Overdue Amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Agent.
- (b) Default interest (if unpaid) arising on an Overdue Amount will be compounded with the Overdue Amount at the end of each Interest Period applicable to that Overdue Amount but will remain immediately due and payable.

8.4 Notification of rates of interest

The Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.

8.5 Fixed Interest Rate Option

The Borrower may elect by providing not less than five (5) Business Days written notice to the Agent prior to the Utilisation Date (or such other period of notice as the Agent and the Borrower shall agree in writing) to pay interest on the Loan at a fixed rate of interest plus Margin for the term of the Loan commencing on the Utilisation Date and ending on the Termination Date. The proposed fixed interest rate shall be determined by the Agent five (5) Business Days before the Utilisation Date on the basis of an amortising interest rate swap (on market terms) where:

- (a) the Agent would be the fixed rate payer and the counterparty would be the floating rate payer;
- (b) the floating rate payable to the Agent would be LIBOR;
- (c) the notional amount of the swap would be the Outstanding Indebtedness from time to time over the remaining term of the Loan until the Termination Date; and
- (d) the swap would have a term which ends on the Termination Date,

and, if the Borrower agrees to the proposed fixed interest rate so notified during the period in which such proposed fixed rate is valid for acceptance, such agreement shall be irrevocable and shall be immediately confirmed in writing by the Borrower to the Agent.

9. INTEREST PERIODS

- 9.1 Subject to the remaining provisions of this Clause 9, each Interest Period shall be of three (3) Month's duration.
- 9.2 The first Interest Period shall commence on the Utilisation Date in relation to the Loan and end on the first Repayment Date.

9.3 Each subsequent Interest Period shall commence on, but exclude, the last day of the preceding Interest Period and end on, and include, the first day of the next succeeding Interest Period.

9.4 An Interest Period shall not extend beyond the Termination Date.

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Absence of quotations

Subject to Clause 10.2 (*Market disruption*), if LIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation on or before three (3) Business Days prior to the Utilisation Date proposed in the Utilisation Notice, then on the Quotation Date, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

10.2 Market disruption

(a) If a Market Disruption Event occurs in relation to the Loan for any Interest Period, then the rate of interest on each Lender's share of the Loan for the Interest Period shall be the rate per annum which is the sum of:

- (i) the Margin;
- (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in the Loan from whatever source it may reasonably select; and
- (iii) the Mandatory Cost, if any, applicable to that Lender's participation in the Loan.

(b) In this Agreement, **Market Disruption Event** means:

- (i) at or about noon on the Quotation Date for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Agent to determine LIBOR for the relevant currency and Interest Period; or
- (ii) before close of business in London on the Quotation Date for the relevant Interest Period, the Agent receives notification from a Lender or Lenders (whose aggregate participations in the Loan exceed thirty-five per cent. (35%) of the Loan) that, the cost to it or them of obtaining matching deposits in the Relevant Interbank Market would be in excess of LIBOR.

10.3 Alternative basis of interest or funding

(a) If a Market Disruption Event occurs and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate of interest.

(b) Any alternative basis agreed pursuant to Clause 10.3(a) shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

10.4 Break Costs

- (a) The Borrower shall, within three (3) Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of the Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for the Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11. GOOD FAITH DEPOSIT

11.1 Good Faith Deposit

The Borrower shall pay to the Agent a Good Faith Deposit in the sum of seventy five thousand Dollars (US\$75,000) on or prior to the date of this Agreement.

12. TAX GROSS UP AND INDEMNITIES

12.1 Tax gross up

- (a) Each Obligor shall make all payments to be made by it pursuant to the Finance Documents to the relevant Finance Party (whether directly or indirectly) in the relevant currency without any withholding deduction, counter-claim or set-off whatsoever, and shall procure that all payments made on its behalf are made, without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) Each Obligor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall promptly notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall promptly notify the Borrower.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from such Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If an Obligor is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the relevant Obligor shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.2 Tax indemnity

- (a) The Borrower shall (within three (3) Business Days of demand by the Agent) pay to the Agent an amount equal to the loss, liability or cost (together with any interest, penalties and expenses payable or incurred in connection with it) which the Finance Party determines will be or has been (directly or indirectly) suffered by it for or on account of Tax on or by that Finance Party in respect of a Finance Document.
- (b) Paragraph (a) shall not apply:

- (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,
 if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party;
- (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 12.1 (*Tax gross up*); or
- (iii) to the extent a loss, liability or cost arises solely as a result of the Finance Party's or Agent's Gross Negligence.
- (c) A Finance Party making, or intending to make a claim under paragraph (a) shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Finance Party shall, on receiving a payment from the Borrower under this Clause 12.2 (*Tax Indemnity*), notify the Agent.

12.3 Tax Credit

- (a) If the Borrower makes a Tax Payment and the relevant Finance Party determines that:
 - (i) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms a part, or to that Tax Payment; and
 - (ii) that Finance Party has obtained, utilised and retained that Tax Credit,

the Finance Party shall pay an amount to the Borrower which that Finance Party determines will leave it (after that payment) in the same after Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower and the circumstances giving rise to it had not arisen.

- (b) Notwithstanding the above, nothing in this Clause 12.3 shall:
 - (i) interfere with the right of any Finance Party to arrange its tax affairs in whatever manner, in its absolute discretion, as it thinks fit, and in particular, but without limitation, such Finance Party shall not be under any obligation to claim credit, relief, Tax Credit, remission or repayment from or against its corporate profits or similar tax liability in respect of the amount of any deduction or withholding, its priority to any other claims, credits or deductions available to that Finance Party; or
 - (ii) oblige any Finance Party to disclose any information relating to its Tax Affairs or any computations in respect thereof.
- (c) If, following any payment by the Finance Party to the Borrower pursuant to Clause 12.3, the credit, relief, remission or repayment or Tax Credit in respect of which such payment was made is disallowed by an applicable tax or other authority or in the opinion of the Finance Party, in whole or in part, is not capable of being utilised or

retained by the Finance Party, in whole or in part, the Borrower shall on demand pay to the Finance Party an amount appropriate to restore the after Tax position of the Finance Party to that which it would have been in had such disallowance or non-receipt, non-utilisation or non-retention not occurred.

12.4 Stamp taxes

The Borrower shall pay and, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all present and future stamp duty, registration, transfer and other documentary and other similar Taxes payable in respect of any Finance Document in any jurisdiction and, in respect of any transactions or events contemplated under such Finance Document.

12.5 Value added tax

- (a) All consideration expressed to be payable under a Finance Document by any Party to a Finance Party shall be deemed to be exclusive of any VAT. If VAT is chargeable on any supply made by any Finance Party to any Party in connection with a Finance Document, that Party shall (upon receipt of a valid VAT receipt) pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT.
- (b) Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall (upon receipt of a valid VAT receipt) at the same time pay and within three (3) Business Days and indemnify the Finance Party against all VAT incurred by the Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that it is not entitled to credit or repayment of the VAT.

13 INCREASED COSTS

13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within three (3) Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
 - (ii) compliance with any law or regulation,in each case made, exacted or imposed after the date of this Agreement.
- (b) In this Agreement Increased Costs means:
 - (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
 - (ii) an additional or increased cost; or
 - (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

13.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

- (a) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) compensated for by Clause 12.2 (*Tax indemnity*) (or would have been compensated for under that Clause but was not so compensated solely because any of the exclusions in paragraph (b) of that Clause applied);
 - (iii) compensated for by the payment of the Mandatory Cost; or
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

14. OTHER INDEMNITIES

14.1 Operational Indemnity

The Borrower agrees to defend, indemnify and hold harmless each of the Indemnitees on demand from and against any and all losses, liabilities, actions, claims, proceedings, judgments, penalties, fines, damages, fees, costs expenses and Taxes (regardless of when the same are made or incurred) (**Losses**):

- (a) which may at any time be suffered or incurred directly or indirectly as a result of or connected with the possession, delivery, performance, transportation, replacement, exchange, removal, pooling, interchange, sub leasing, wet leasing, chartering, importation, exportation, storage, presence, management, ownership, registration, control, maintenance, condition, service, repair, overhaul, leasing, use, operation or redelivery of the Aircraft, any Engine or Part (either in the air or on the ground) whether or not such Losses may be attributable to any defect in the Aircraft, any Engine or any Part or to its design, testing or use or otherwise, and regardless of when the same arises or whether it arises out of or is attributable to any act or omission, negligent or otherwise, of any Indemnitee;
- (b) which arise out of any act or omission which invalidates or which renders voidable any of the Insurances;
- (c) which arise in relation to preventing or attempting to prevent the arrest, confiscation, seizure, taking in execution, impounding, forfeiture or detention of the Aircraft, any Engine or any Part, or in securing its release; or
- (d) which may at any time be suffered or incurred as a consequence of any design, article or material in the Aircraft, any Engine or any Part or its operation or use constituting an infringement of patent, copyright, trademark, design or other proprietary right or a breach of any obligation of confidentiality owed to any person in respect of any of the matters referred to in this Clause 14.1(d),

but excluding any Loss in relation to a particular Indemnitee to the extent that such Loss:

- (i) arises solely as a result of the Gross Negligence of such Indemnitee; or
- (ii) arises as a result of any sale, assignment, transfer or other disposition by such Indemnitee of the Aircraft or any interest therein unless such sale, assignment, transfer or other disposition is expressly contemplated by the Finance Documents or is in connection with an exercise of remedies under any Finance Document following an Event of Default which is continuing; or
- (iii) constitutes the ordinary and usual operating and overhead expenses of such Indemnitee (but excluding any such Loss which is suffered or incurred as a result of or following the occurrence of an Event of Default); or
- (iv) has been recovered and retained by such Indemnitee pursuant to another indemnity provision of this Agreement.

The indemnities contained in this Clause 14.1 will continue in full force after the end of the Security Period.

14.2 Currency indemnity

- (a) The Borrower shall, as an independent obligation, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability which that Finance Party incurs as a consequence of:
 - (i) that Finance Party receiving an amount in respect of the Borrower's liability under the Finance Documents; or
 - (ii) that liability being converted into a claim, order, judgment or award,
 in a currency (the **new currency**) other than the currency in which the amount is expressed to be payable under the relevant Finance Document, including any cost, loss or liability arising from any difference between exchange rates used to convert that liability to the new currency and exchange rates available to the Finance Party when it receives an amount in respect of that liability.
- (b) Unless otherwise required by law, the Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.3 Other indemnities

The Borrower shall, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including any cost, loss or liability arising as a result of Clause 27 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in the Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

The Borrower's liability in each case shall include any Break Costs and any loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under any Finance Document, any amount repaid, or the Loan.

14.4 Indemnity to the Agent

The Borrower shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default; or
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

15 MITIGATION BY THE LENDERS

15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax gross up and indemnities*), Clause 13 (*Increased costs*), Clause 14 (*Other Indemnities*) or paragraph 3 of Schedule 11 (*Mandatory Cost Formulae*) including transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) does not in any way limit the obligations of any Obligor under the Finance Documents.

15.2 Limitation of liability

- (a) The Borrower shall indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16 COSTS AND EXPENSES

16.1 Transaction expenses

- (a) The Good Faith Deposit shall be applied by the Agent towards costs and expenses incurred by the Finance Parties in connection with the negotiation, preparation, printing, execution and/or syndication of:
 - (i) this Agreement and any other documents referred to in this Agreement; and
 - (ii) any other Finance Document.
- (b) In case the Good Faith Deposit exceeds all the costs and expenses incurred by the Agent in connection with the negotiation, printing, execution and/or syndication of the transaction contemplated by this Agreement, the amount exceeding such costs and expenses shall be reimbursed to the Borrower provided that no Default has occurred and is continuing at such time.
- (c) All costs and expenses over and above the Good Faith Deposit (including legal and professional fees) reasonably incurred by the Agent in connection with the

preparation, negotiation and execution of the transaction documents shall be for the account of the Borrower and/or Guarantor and shall be paid promptly on demand whether or not the facility is advanced or utilised.

16.2 Amendment costs

16.2 If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 28.10 (*Change of currency*),

the Borrower shall, within three (3) Business Days of demand, reimburse the Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 Enforcement costs

The Borrower shall, within three (3) Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including any stamp tax or other similar tax and/or legal fees) incurred by that Finance Party in connection with the creation or enforcement of, or the preservation of any rights under, any Finance Document.

17. REPRESENTATIONS

The Borrower makes the representations and warranties set out in Schedule 7 (*Representations*) to each Finance Party, at the times specified in Schedule 7 (*Representations*) by reference to the facts and circumstances then existing.

18. BORROWER UNDERTAKINGS

18.1 Duration

The Borrower shall perform and comply with its undertakings and covenants in the Finance Documents at all times during the Security Period. All such undertakings and covenants shall, except where expressly otherwise stated, be performed at the expense of the Borrower.

18.2 Delegation

The Borrower shall remain liable for all of its obligations and liabilities under the Finance Documents notwithstanding any delegation by the Borrower to another person of any such obligations or liabilities or any reliance by the Borrower on another person to perform or discharge any such obligations or liabilities, whether or not such sub-delegation or reliance is permitted or contemplated by any Finance Document (provided that to the extent any such obligation or liability is actually performed or discharged by such other person on the Borrower's behalf, such performance or discharge shall constitute performance or discharge of the corresponding obligation or liability of the Borrower).

19. GENERAL UNDERTAKINGS

The Borrower shall comply in full with each of the covenants contained in Schedule 8 (*General undertakings*).

20. INSURANCE UNDERTAKINGS

The Borrower shall effect and maintain insurances or, as applicable, procure that insurances are effected and maintained in respect of the Aircraft in accordance with the requirements of Schedule 9 (*Insurance undertakings*) and otherwise comply with each of the covenants contained in Schedule 9 (*Insurance undertakings*).

21 **OPERATIONAL AND MAINTENANCE UNDERTAKINGS**

The Borrower shall comply with each of the covenants contained in Schedule 10 (Operational and maintenance undertakings).

22 **EVENTS OF DEFAULT**

22.1 **Events of Default**

Each of the events or circumstances set out in this Clause 22.1 is an Event of Default:

- (a) **Non-payment:** an Obligor fails to make any payment invoiced under any Finance Document at the place and in the currency in which it is expressed to be payable within three (3) Business Days following its due date; or
- (b) **Insurance:** an Obligor fails to comply with any provision of Clause 20 (*Insurance undertakings*) or Schedule 9 (Insurance undertakings), or any insurance required to be maintained under this Agreement does not remain in full force and effect, is cancelled or terminated, or a notice of cancellation is given in respect of any such insurance; or
- (c) **Breach:** an Obligor fails to comply with any other provision of this Agreement or any other Finance Document (save in respect of the Maintenance of the Aircraft referred to in Clause 22.1(e)) and, if such failure is in the opinion of the Agent capable of remedy, such failure continues for ten (10) Business Days following such Obligor's receipt of notice regarding such failure; or
- (d) **Representation:** any representation or warranty made (or deemed to be repeated) by an Obligor in or pursuant to any Finance Document or in any document or certificate or statement is or proves to have been incorrect or misleading in any material adverse respect when made or deemed to be repeated and such incorrect or misleading document, certificate or statement if capable of remedy in the reasonable opinion of the Agent, is not remedied within ten (10) days of the Borrower's receipt of notice from the Agent; or
- (e) **Maintenance:** the Aircraft is not maintained to the standard required under the Finance Documents and any such failure continues for a period of fifteen (15) days or the maintenance or operational arrangements with respect to the Aircraft are terminated or terminate and alternate arrangements (satisfactory to the Agent) are not put in place prior to such termination; or
- (f) **Security:** an Obligor repudiates any of the Security Documents to which it is a party or any security interest created pursuant to the Security Documents ceases to be in full force and effect; or
- (g) **Guarantee:** the Guarantee is terminated for any reason whatsoever or ceases to be in full force and effect; or
- (h) **Cross-Default:**
 - (i) any indebtedness of the Borrower in excess of twenty five thousand Dollars (\$25,000) or its equivalent in any other currency is not paid when due (after any applicable grace period), or becomes due or is declared due prior to the date on which it would otherwise have become due;
 - (ii) any indebtedness of the Guarantor in excess of two hundred and fifty thousand Dollars (US\$250,000) or its equivalent in any other currency is not paid when due (after any applicable grace period), or becomes due or is declared due prior to the date on which it would otherwise have become due;

- (iii) any judgement or order made against the Borrower for an amount in excess of twenty five thousand Dollars (\$25,000) or against the Guarantor for an amount in excess of two hundred and fifty thousand Dollars (\$250,000) or its equivalent in other currencies is not stayed or complied with as soon as practicable and in any event within thirty (30) days; or
 - (iv) any event of default or termination event, howsoever described, occurs under any Other Agreement; or
- (i) **Approvals:** any consent, authorisation, licence, certificate or approval of or registration with or declaration to any Government Entity required in connection with the Finance Documents, including:
- (i) any authorisation required by any Obligor to obtain and transfer freely Dollars (or any other relevant currency) out of any relevant country; or
 - (ii) any authorisation required by an Obligor to authorise, or required in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of any Finance Document or the performance by each Obligor of its obligations under any Finance Document; or
 - (iii) the registration of the Aircraft or its certificate of airworthiness or the Mortgage; or
 - (iv) in the case where the Operator is Elite Jets, the Operator's Air Operating Certificate.

is modified in a manner unacceptable to the Agent (acting reasonably) or is withheld, or is revoked, suspended, cancelled, withdrawn, terminated or not renewed, or otherwise ceases to be in full force (other than (A) where Elite Jets is the Operator in respect of the Operator's air operator's certificate where an alternative Operator with a valid air operator's certificate is appointed within thirty (30) days of such cancellation with the approval and consent of the Agent (such approval and consent not to be unreasonably withheld), and (B) as a result of the Aviation Authority issuing an airworthiness directive or other similar directive in which case the Borrower shall have a period of thirty (30) days to comply with the requirements or such airworthiness or other directive while at all times complying with all applicable laws and regulations); or

- (j) **Insolvency:**
- (i) any Obligor is, or is deemed for the purposes of any relevant law to be, unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due; or
 - (ii) any Obligor suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness; or
- (k) **Liquidation and Similar Proceedings:**
- (i) a meeting of the shareholders or directors of any Obligor is convened to consider a resolution to present an application for an administration order or to appoint an administrator (whether out of court or otherwise) or any such resolution is passed; or
 - (ii) any step (including filing of a petition or affidavit, giving of notice, petition proposal or convening a meeting or giving notice) is taken with a view to a composition, assignment or arrangement with any creditors of, or the rehabilitation, administration (whether out of court or otherwise), bankruptcy,

custodianship, liquidation, protection from creditors or dissolution of, any Obligor or any other insolvency proceedings involving any Obligor other than any step which is proved to the satisfaction of the Majority Lenders (acting in good faith) to be an abuse of process or to have no real prospect of success and which is, in any event, discharged within seven (7) Business Days of its presentation and before it is advertised; or

- (iii) any order is made or resolution passed for any such composition, assignment, arrangement, rehabilitation, administration (whether out of court or otherwise), individual voluntary arrangement, bankruptcy, custodianship, liquidation, dissolution, insolvency proceedings or analogous proceedings in respect of any Obligor, or any Obligor becomes subject to or enters into any of the foregoing; or
 - (iv) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, examiner or similar officer (in each case, whether out of court or otherwise) is appointed in respect of any Obligor or its respective directors or any of its respective assets; or
- (l) **Receiver:**
- (i) an administrative or other receiver or manager or other insolvency officer (in each case, whether out of court or otherwise) is appointed in respect of any Obligor or any part of their respective assets; or
 - (ii) any Obligor requests any person to appoint such a receiver or manager (whether out of court or otherwise); or
 - (iii) any other steps are taken to enforce any Security Interest over all or any part of the assets of any Obligor; or
 - (iv) any attachment, sequestration, distress or execution affects any assets of any Obligor and is not discharged within 14 days; or
- (m) **Other Jurisdiction:** there occurs in relation to any Obligor any event in any jurisdiction which corresponds with any of those mentioned in paragraphs (j), (k) or (l); or
- (n) **Unlawful:** it is or becomes unlawful for any Obligor to perform any of its obligations under any Finance Document or any Finance Document is or becomes wholly or partly invalid or unenforceable and, in respect of any Security Document, the Borrower fails to repay the Loan within five (5) Business Days of demand; or
- (o) **Suspension of Business:** the Borrower suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business other than for the purpose of a reorganisation the terms of which have received the prior written consent of the Agent; or
- (p) **Disposal:** the Borrower disposes, conveys or transfers or threatens to dispose, convey or transfer all or a material part of its assets, other than for fair market value obtained pursuant to a transaction at arm's length, or consolidates or merges with any other person (whether by one or a series of transactions, related or not), other than for the purpose of a reorganisation the terms of which have received the prior written approval of the Agent; or
- (q) **Disposal of Aircraft:** the Borrower sells, assigns, transfers or otherwise disposes of (or threatens or otherwise evidences an intention to sell, assign, transfer or otherwise dispose of) the Aircraft or any of its rights, title or interest thereto, without the prior consent of the Agent; or

- (r) **Rights and Remedies:** any Obligor or any other person claiming by or through any Obligor challenges the existence, validity, enforceability or priority of the rights of the Borrower as owner or the Security Trustee as mortgagee or assignee of the Aircraft; or
- (s) **Change of Control:** any single person or group of persons acting in concert acquires control of the Borrower; or
- (t) **Adverse Change:** any event or series of events occurs which, in the reasonable opinions of the Agent, might have a Material Adverse Effect; or
- (u) **Operations Agreement, Maintenance Contracts and Maintenance Service Plan Contracts:** any of the Operations Agreement, the Maintenance Contract or any Maintenance Service Plan Contract terminates or is terminated and alternate arrangements (satisfactory to the Agent) are not put into place with respect to the maintenance and/or operations as the (case may be) of the Aircraft prior to such termination; or
- (v) **Net worth:** If the total unencumbered net worth of the Guarantor falls below four (4) times the aggregate of (i) the Total Commitments and (ii) any other financial indebtedness owed by the Guarantor (or any of its Affiliates) to the Agent (or any of its Affiliates); or
- (w) **Conditions Subsequent:** If any Obligor or Elite Jets (as the case may be) fails to fulfil the conditions set out in Part B of Schedule 2 within the time frame specified therein.

22.2 Acceleration

- (a) On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower:
 - (i) cancel the Total Commitments whereupon they shall immediately be cancelled; and/or
 - (ii) declare that all or part of the Outstanding Indebtedness, Break Costs (if any) and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable.

22.3 Enforcement of Security

On and at any time after the occurrence of an Event of Default which is continuing the Security Trustee may, and shall if instructed by the Majority Lenders:

- (a) take such steps as the Security Trustee (as directed by the Majority Lenders) considers necessary or desirable to preserve, protect and enforce the rights of the Finance Parties under the Finance Documents; and/or
- (b) take such steps as the Security Trustee (as directed by the Majority Lenders) considers necessary or desirable for the enforcement, protection and preservation of the Security Interests constituted by the Security Documents.

23 CHANGES TO THE PARTIES

23.1 Assignments and transfers by the Lenders

- 23.1 Subject to this Clause 23, a Lender (*the Existing Lender*) may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the **New Lender**).

23.2 Conditions to assignment or transfer

- (a) The consent of the Borrower is required for an assignment or transfer by a Lender, unless:
 - (i) the assignment or transfer is to another Lender or an Affiliate of a Lender and, as a result of circumstances existing at the date the assignment or transfer occurs, no Obligor would be obliged to make any increased payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross-up and indemnities*) or Clause 13 (*Increased Costs*) as a result thereof; or
 - (ii) the assignment or transfer is to an entity which, upon becoming a New Lender will lend through a Facility Office located in the United Kingdom and as a result of circumstances existing at the date the assignment or transfer occurs, no Obligor would be obliged to make any increased payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross-up and indemnities*) or Clause 13 (*Increased Costs*) as a result thereof; or
 - (iii) subject to paragraph 23.2(a)(i) above, at the time of such transfer an Event of Default has occurred and/or is continuing.
- (b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent ten (10) Business Days after receipt by the Borrower of the Lender's request in writing unless consent is expressly refused by the Borrower within that time.
- (c) The consent of the Borrower to an assignment or transfer may be withheld if as a result of circumstances existing at the date the assignment or transfer is proposed to occur, an Obligor would be obliged to make any increased payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross-up and indemnities*) or Clause 13 (*Increased Costs*) as a result thereof.
- (d) An assignment will only be effective on receipt by the Agent of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender.
- (e) A transfer will only be effective if the procedure set out in Clause 23.5 (*Procedure for transfer*) is complied with.
- (f) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross up and indemnities*) or Clause 13 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

23.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of five thousand Dollars (\$5,000).

23.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause 23; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non performance by any Obligor of its obligations under the Finance Documents or otherwise.

23.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 23.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (b) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the

terms of this Agreement, execute that Transfer Certificate and as soon as reasonably practicable deliver a copy of such Transfer Certificate to the Borrower.

(b) On the Transfer Date:

- (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the Discharged Rights and Obligations);
- (ii) each of the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
- (iii) the Agent, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
- (iv) the New Lender shall become a Party as a Lender.

23.6 Disclosure of information

- (a) Each Finance Party must keep confidential any information supplied to it by or on behalf of the Borrower in connection with the Finance Documents or the Obligors. However, a Finance Party is entitled to disclose information:
 - (i) which is publicly available, other than as a result of a breach by that Finance Party of this Clause;
 - (ii) in connection with any legal or arbitration proceedings;
 - (iii) if required to do so under any law or regulation;
 - (iv) to a governmental, banking, taxation or other regulatory authority;
 - (v) to its professional advisers;
 - (vi) to the extent allowed under paragraph (b); or
 - (vii) with the agreement of the Borrower.
- (b) A Finance Party may disclose to an Affiliate, or any person with whom it may enter or has entered into, any kind of transfer, participation or other agreement in relation to this Agreement (a participant):
 - (i) a copy of any Finance Document; and
 - (ii) any information which that Finance Party has acquired under or in connection with any Finance Document.

However, before a participant may receive any confidential information about an Obligor, it must agree with the relevant Finance Party to keep that information

confidential on the terms of paragraph (a) and the participant must have entered into a Confidentiality Undertaking.

- (c) This Clause supersedes any previous confidentiality undertaking given by a Finance Party in connection with this Agreement prior to it becoming a Party.

23.7 No Assignments or transfer by an Obligor

An Obligor may not in any circumstance or at any time assign any of its rights, transfer any of its rights or obligations, or otherwise dispose of any of its rights or obligations under any of the Finance Documents.

24. ROLE OF SECURITY TRUSTEE

24.1 Appointment

- (a) Each other Finance Party irrevocably appoints the Security Trustee as its security agent and trustee of the Security Documents, the Security constituted thereunder, the Insurances any Enforcement Proceeds and Total Loss Proceeds (*the Secured Property*) for the purposes of Finance Documents on the terms set out in this Clause 24.
- (b) By virtue of the appointment set out above, each other Finance Party hereby authorises the Security Trustee (whether or not by or through its employees as agents) to take such action on its behalf and to exercise such rights, remedies and powers as are specifically delegated to the Security Trustee by any Finance Document together with such powers and rights as are reasonably incidental thereto.
- (c) No other Finance Party shall have any independent power to enforce any of the Security Documents, to exercise any rights and/or powers thereunder or to grant any consents or releases under or pursuant thereto or otherwise have direct recourse to the Secured Property except through the Security Trustee.

24.2 Duties of the Security Trustee

- (a) The Security Trustee shall have no duties, obligations or liabilities to any of the parties by whom it has been appointed beyond those expressly stated in the Finance Documents.
- (b) The Security Trustee shall not take any action or exercise any rights, remedies or powers in relation to the Secured Property beyond those which it is specifically instructed in writing to take or exercise by the Agent, which instructions shall be binding on all the Finance Parties, and then only to the extent stated in such specific written instructions.
- (c) Subject to the terms of this Agreement, upon the occurrence of an Event of Default or a Total Loss, the Security Trustee shall take such action (including, without limitation, the exercise of all rights and/or powers and the granting of consents or releases) or, as the case may be, refrain from taking such action under or pursuant to the Secured Property as the Agent shall specifically direct the Security Trustee.

24.3 Declaration of Trust

The Security Trustee hereby accepts its appointment and constitution under Clause 24.1 (*Appointment*) as security agent and trustee in relation to the Secured Property with effect from the date of this Agreement and irrevocably acknowledges and declares that from such date it holds the same on trust for the Finance Parties and that it shall apply, and deal with, the Secured Property in accordance with the provisions of this Agreement.

24.4 Perpetuities

The trusts constituted or evidenced by this Agreement shall remain in full force and effect until whichever is the earlier of the expiration of a period of eighty (80) years from the date of this Agreement, and receipt by the Security Trustee of written confirmation from the Agent that all the obligations and liabilities for which the Security Documents are constituted as security have been discharged in full. The Parties declare that the perpetuity period applicable to this Agreement shall be a period of eighty (80) years from the date of this Agreement.

24.5 Powers

In its capacity as trustee in relation to the Secured Property, the Security Trustee, without prejudice to any of the powers and immunities conferred upon trustees by law (and to the extent not inconsistent with the provisions of this Agreement and/or any of the Security Documents) shall have all the same powers as a natural person acting as the beneficial owner of such property and/or as are conferred upon the Security Trustee by this Agreement and/or any of the Security Documents.

24.6 Determination of Issues

In its capacity as trustee in relation to the Secured Property, the Security Trustee shall have full power to determine all questions and doubts arising in relation to the interpretation or application of any of the provisions of this Agreement or any of the Security Documents as it affects the Security Trustee.

24.7 Use of Agents

The Security Trustee may, in the conduct of any trusts constituted by this Agreement and in the conduct of its rights and/or obligations under and in respect of any Security Documents (otherwise than in relation to its right to make any declaration, determination or decision or the receipt of money), instead of acting personally (or through its employees or personnel), employ and pay any agent (whether being a lawyer, chartered accountant or any other person) to transact or concur in transacting any business and to do or concur in doing any acts required to be done by the Security Trustee (including the payment of money). Any such agent engaged in any profession or business shall be entitled to be paid all usual professional and other charges for business transacted and acts done by him or any partner or employee of his in connection with such trusts. The Security Trustee shall not be bound to supervise, or be responsible for any loss incurred by reason of any act or omission of any such agent if the Security Trustee shall have exercised reasonable care in the selection of such agent.

24.8 Information to Security Trustee

- (a) Each other Finance Party (whether directly or through the Agent) shall provide the Security Trustee with such written information as it may reasonably require for the purpose of carrying out its duties and obligations in relation to the Secured Property.
- (b) The Security Trustee shall promptly notify the Agent in writing of any Event of Default or Total Loss of which it is aware.
- (c) The Agent shall endeavour to provide the Security Trustee with a copy of any communication between any Obligor and the Agent or between any of the Lenders and the Agent relating to the Finance Documents, if the Agent considers that such communication contains information material to the Security Trustee, provided always that neither the Security Trustee nor the Agent shall incur or assume any liability or obligation to any Party as a result of failure to comply with the foregoing provision.

24.9 Indemnification out of Secured Property

Without prejudice to any right to indemnity by law given to trustees generally and to any provision of this Agreement and/or any of the Security Documents entitling the Security

Trustee or any other person to any indemnity in respect of, and/or reimbursement of, any liabilities, damages, costs, claims, charges or expenses incurred or suffered by it in connection with this Agreement and/or any of the Security Documents or the performance of any duties in relation to the Secured Property, the Security Trustee and every agent or other person appointed by it in connection with its appointment under this Agreement shall be entitled to be indemnified out of the Secured Property in respect of all liabilities, damages, costs and claims whatsoever properly incurred or suffered by it (unless such liabilities, damages, costs or claims arise from the Gross Negligence of the Security Trustee or such other agent or other person, as the case may be):

- (a) in the execution or exercise or bona fide purported execution or exercise of the trusts, rights, powers, authorities, herein and duties created or conferred by or pursuant to this Agreement; and/or
- (b) in respect of any matter or thing done or omitted or in any way relating to the Secured Property or the provisions of this Agreement and/or any of the Security Documents.

24.10 Indemnification by Lenders

Without prejudice to Clause 24.9 (*Indemnification out of Secured Property*), each Lender shall, in proportion which its Commitment bears to the Total Commitments, and to the extent the Security Trustee has not been reimbursed by any Obligor or pursuant to any other provisions of this Agreement and/or any of the Security Documents, indemnify the Security Trustee, against all liabilities, damages, costs and claims whatsoever incurred by the Security Trustee in connection with this Agreement and/or any of the Security Documents or any action taken or omitted thereunder or the performance of its duties in relation to the Secured Property, unless such liabilities, damages, costs or claims arise from the Security Trustee's own gross negligence or wilful misconduct.

24.11 No Obligation to Act

None of the Security Trustee or any of its personnel or agents shall be obliged:

- (a) to request any certificate or opinion under any Finance Document unless so required in writing by the Agent, in which case the Security Trustee shall promptly make the appropriate request of the relevant party; or
- (b) to make any enquiry as to any default by any party in the performance or observance of any provision of any of the Security Documents or as to whether any event or circumstance has occurred as a result of which the security constituted by any of the Security Documents shall have or may become enforceable; or
- (c) to take any action in accordance with the instructions of the Agent, until it has received such indemnity and/or security as it may require for any cost, loss, expense or liability (together with any associated VAT) which it would or may incur in complying with the instructions.

24.12 No Responsibility to Provide Information

The Security Trustee shall not have any duty or responsibility, either initially or on a continuing basis:

- (a) subject to Clause 24.17 (*Communications*), to provide any Finance Party with any information with respect to any Obligor or any other person whenever coming into its possession; or
- (b) to investigate or make any enquiry into the title of any party to the Secured Property or any part thereof.

24.13 No Responsibility for Other Parties

Neither the Security Trustee nor any of its personnel or agents shall have any responsibility or liability to any other Finance Party:

- (a) on account of the failure of any party to perform any of its or their obligations under any of the Finance Documents;
- (b) for the financial condition of any Obligor or any provider of insurances or reinsurances (or any party to any of the Security Documents);
- (c) for the adequacy, completeness or accuracy of any statements, representations or warranties in any of the Security Documents or any document delivered under any of them;
- (d) for the execution, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence of any of the Security Documents or of any certificate, report or other document executed or delivered under any of the Security Documents;
- (e) for the failure to register any of the Security Documents on any register with any authority, court or relevant body;
- (f) for the failure to take or require any Obligor to take any steps to render any of the Security Documents and/or any Secured Property effective or to secure the creation of any ancillary charge under the laws of the jurisdiction concerned;
- (g) for any shortfall which arises on the enforcement of the Security Documents;
- (h) for any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Security Documents and/or any Secured Property, whether in accordance with the instructions of the Agent or otherwise; or
- (i) in connection with the Security Documents or their negotiation, for acting (or, as the case may be, refraining from acting) in accordance with the directions of the Agent, which directions shall be binding on the Lenders, given pursuant to the terms hereof or in reliance upon information provided by any Finance Party pursuant to the terms hereof or otherwise.

24.14 Reliance on Communications

The Security Trustee shall be entitled to:

- (a) rely on any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper person;
- (b) rely as to any matter of fact which might reasonably be expected to be within the knowledge of any Obligor upon a certificate or other communication signed by any such person (or any person on its behalf); and
- (c) rely as to legal or other professional matters on opinions and statements of any legal or other professional advisers selected or approved by it.

24.15 Safekeeping of Security Documents

The Security Trustee shall be entitled to place all instruments, deeds, certificates and other documents relating to the Secured Property and/or any Security Document deposited with it in any safe deposit, safe or receptacle selected by the Security Trustee, or with any bank or company whose business includes undertaking the safe custody of documents, or with any

solicitor or firm of solicitors and may make any such arrangements as it thinks fit for allowing each Finance Party access to, or its solicitors or auditors possession of, such documents when necessary or convenient, and the Security Trustee shall not be responsible for any loss incurred in connection with any such deposit, access or possession.

24.16 No Obligation to Act in Breach of Applicable Law

The Security Trustee may refrain from doing anything which would, or might in its opinion, be contrary to any law of any jurisdiction or any directive, regulation or regulatory requirement of any state (or any agency thereof) or which would or might render it liable to any person and may do anything which is, in its opinion, necessary to comply with any such law, directive, regulation or regulatory requirement.

24.17 Communications

The Security Trustee shall, as soon as practicable, notify the Agent of any information, or the contents of any communication received by it from (or sent by it to) any Obligor pursuant to or in connection with any Security Document to the extent that such information may materially affect the rights and obligations of the parties to the Security Documents or this Agreement provided that the Security Trustee shall not be obliged to transmit any information if to do so would be a breach of contract or any other obligation of confidentiality.

24.18 Powers Supplemental

The rights, powers and discretions conferred upon the Security Trustee by this Agreement shall be supplemental to the Trustee Act 1925 and in addition to any which may be vested in the Security Trustee by general law or otherwise.

24.19 Trust Division Separate

In acting as trustee for the Finance Parties, the Security Trustee shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments and any information received by any other division or department of the Security Trustee may be treated as confidential and shall not be regarded as having been given to the Security Trustee's trustee division.

24.20 No Restriction on Other Business

The Security Trustee may, without any liability to account to any of the Finance Parties, accept deposits from, lend money to, purchase notes of, provide any advisory or other services to, and generally engage in any kind of trust or banking business with, or be the owner or holder of any shares or other securities of any Obligor or any Finance Party (or any Affiliates or associated companies of any of the foregoing) as if it were not the Security Trustee.

24.21 Rights of Security Trustee

With respect to its own participation in the Loans and under the Security Documents, the Security Trustee shall have the same rights and powers thereunder and under the Security Documents as any other Lender and may exercise the same as though it were not performing the duties and functions delegated to it under this Agreement.

24.22 Common Agent and Security Trustee

Notwithstanding that the Agent and the Security Trustee may from time to time be the same entity, the Agent and the Security Trustee have entered into this Agreement in their separate capacities as agent for the Lenders and as security agent and trustee for the Lenders to hold the Secured Property on the terms set out in this Agreement and/or the other Secured Documents provided that, where this Agreement provides for the Agent or the Security Trustee to communicate with or provide instructions to any of the Agent and/or the Security

Trustee, for as long as the Agent and the Security Trustee are the same entity it will not be necessary for there to be any such formal communication or instructions notwithstanding that this Agreement provides in certain cases for the same to be in writing.

24.23 Retirement of Security Trustee

The Security Trustee may and, if required by not less than 30 days' notice to the Security Trustee from the Majority Lenders, shall retire from its appointment as Security Trustee under this Agreement without the need to provide any reason and without being responsible for any costs occasioned by such retirement having given, other than where the Majority Lenders have required the Security Trustee's retirement, to the Finance Parties not less than 30 days' notice of its intention to do so; **provided that** no such retirement shall take effect unless there has been appointed as a successor security trustee by instrument in writing signed by the Security Trustee and accepted in writing by the successor:

- (a) who shall be a trust corporation, bank or financial institution nominated by the Majority Lenders or, failing such a nomination;
- (b) any trust corporation, bank or financial institution with offices in London nominated by the Security Trustee,

and, in either case, such successor security trustee shall have duly accepted such appointment by delivering to the Agent written confirmation (in a form acceptable to the Facility Agent) of such acceptance agreeing to be bound by this Agreement and the Security Documents in the capacity of Security Trustee as if it had been an original party to this Agreement and the Security Documents.

24.24 Discharge of Retiring Security Trustee

Upon any successor to the Security Trustee being appointed pursuant to Clause 24.23 (*Retirement of Security Trustee*), the retiring Security Trustee shall be discharged from any further obligation under this Agreement with respect to the Secured Property and its successor and each of the other parties to this Agreement shall have the same rights and obligations among themselves as they would have had if such successor had been a party to this Agreement and the Security Documents in place of the retiring Security Trustee.

24.25 Application of Proceeds by the Security Trustee

All moneys from time to time received or recovered by the Security Trustee in connection with the realisation or enforcement of all or part of the Secured Property shall be held by the Security Trustee on trust to apply them, to the extent permitted by applicable law, in the following order of priority:

- (a) in discharging any sums owing to the Security Trustee;
- (b) in payment to the Agent, on behalf of the Finance Parties, for application towards the discharge of all sums due and payable and unpaid by any Obligor to the Finance Parties under the Finance Documents in accordance with the provisions of this Agreement; and
- (c) in paying any surplus moneys to the Borrower.

24.26 Agency

In connection with its powers under this Agreement and/or the Security Documents, the Security Trustee shall act solely as the agent of the other Finance Parties and the Security Trustee shall not assume, and shall not be deemed to have assumed, any obligations to, or fiduciary relationship with, any Finance Party other than those for which specific provision is made by this Agreement and/or the Security Documents.

24.27 Various Rights

- (a) The Security Trustee may:
- (i) perform any of its duties, obligations or responsibilities under this Agreement and/or any Security Document by or through its personnel or agents (as set out in Clause 24.7 (*Use of Agents*));
 - (ii) obtain and pay for such legal or other advice or services as may seem necessary or desirable to it and rely on any such advice;
 - (iii) retain for its own benefit and without liability to account any fee or other sum receivable by it for its own account;
 - (iv) refrain from exercising any right, power or discretion vested in it under this Agreement and/or the Security Documents until it has received instructions from the Agent as to whether it is to be exercised, and, if it is to be exercised, as to the manner in which it is to be exercised, and shall in all cases be fully protected when acting, or refraining from acting, in accordance with instructions from the Agent;
 - (v) refrain from taking any action (or further action) to protect or enforce the rights of the Finance Parties under this Agreement and/or the Security Documents until it has been indemnified and/or secured to its satisfaction against any and all costs, losses, expenses or liabilities (including legal fees) which it would or might sustain or incur as a result;
 - (vi) assume that no Event of Default or Total Loss has occurred;
 - (vii) assume that any representation made by each Obligor or any other person under or pursuant to any Finance Document is true; and
 - (viii) assume that no Obligor is in default or breach of any of its obligations under any Finance Document;
 - (ix) unless, in the case of any matter referred to in paragraphs (vi), (vii) and (viii), it has received notice in writing to the contrary.
- (b) If the Agent notifies the Security Trustee that it has reason to believe that any representation made by any Obligor or any other person under or pursuant to any Finance Document may not be true, or that any default in performance by the any Obligor or any other person of its obligations under any Finance Document may have occurred, the Security Trustee shall (to the fullest extent possible), if requested by the Agent, request that the relevant Obligor or such other person supplies further information regarding the same.

24.28 Disclaimers

- (a) Neither the Security Trustee nor any of its personnel or agents:
- (i) shall be liable for anything done or not done by it or any of them under or in connection with the Finance Documents or this Agreement, save in the case of its or their own Gross Negligence; or
 - (ii) shall (subject to Clause 24.27 (*Various Rights*) above) be bound to enquire as to:
 - (A) whether or not any representation made by any Obligor (or any other person) in or pursuant to any Finance Document is true;

- (B) the occurrence or otherwise of any Event of Default or Total Loss;
 - (C) the performance by any Obligor or any other person of its obligations under any Finance Document; or
 - (D) any breach of or default by any Obligor or any other person of its obligations under any Finance Document.
- (b) Each other Finance Party confirms that it has itself been, and will at all times continue to be, solely responsible for making its own independent investigation and appraisal of the operations, financial condition, creditworthiness, status and affairs of the Obligors and any other person under the Finance Documents and has not relied, and will not at any time rely, on the Security Trustee:
- (i) to provide it with any information relating to the operations, financial condition, creditworthiness, status or affairs of any Obligor; or
 - (ii) to check or enquire into the adequacy, accuracy or completeness of any information provided by any Obligor (whether or not such information has been or is at any time circulated to it by the Security Trustee); or
 - (iii) to assess or keep under review the operations, financial condition, creditworthiness, status or affairs of any Obligor.

24.29 Powers

The Security Trustee shall have all the powers and discretions conferred: (i) upon trustees by the Trustee Act 2000 (to the extent not inconsistent herewith); and (ii) upon the Security Trustee by this Agreement; and (iii) upon a receiver by any security or Security Document (as though the Security Trustee were a receiver thereunder); and (iv) by way of supplement it is expressly declared as follows:

- (a) save as herein otherwise expressly provided, the Security Trustee shall as regards all rights, trusts, powers, authorities and discretions hereby vested in it have absolute and uncontrolled discretion as to the exercise or non exercise thereof and as to the manner and time of any such exercise thereof;
- (b) the Security Trustee may whenever it thinks fit delegate by power of attorney or otherwise to any person or persons or fluctuating body of persons all or any of the rights, trusts, powers, authorities and discretions vested in it by virtue of the provisions hereof, and such delegation may be made upon such terms and subject to such conditions and subject to such regulations as the Security Trustee may think fit and, provided that the Security Trustee shall have exercised reasonable care in the selection of any such delegate or sub delegate, the Security Trustee shall not be bound to supervise the proceedings or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate or sub delegate;
- (c) the Security Trustee shall be entitled to invest monies which in the opinion of the Security Trustee may not be paid out promptly following receipt in the name or under the control of the Security Trustee in any of the investments for the time being authorised by law for the investment by trustees of trust monies or in any other investments whether similar to the aforesaid or not which may be requested by all of the Lenders or by placing the same on demand in the name or under the control of the Security Trustee as the Security Trustee may think fit, and the Security Trustee may at any time vary or transpose any such investments for or into any others of a like nature and shall not be responsible for any loss due to depreciation in value or otherwise of such investments; and

- (d) the Security Trustee shall be entitled at any time, with the prior written consent of all of the Lenders (such consent not to be unreasonably withheld or delayed and no such consent being required after demand has been made for the Loan and the same remains unpaid) to appoint (and subsequently to dismiss) such other person as it thinks fit to become an additional trustee under any Security Document (or in relation to the Security constituted thereunder) to assist it in carrying out the duties imposed on it by virtue of the provisions hereof and each such additional trustee shall be entitled to the same rights and subject to the same obligations hereunder as the Security Trustee.

25 ROLE OF THE AGENT

25.1 Appointment of the Agent

- (a) Each other Finance Party appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each other Finance Party authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

25.2 Duties of the Agent

- (a) The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (b) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (c) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.
- (d) If the Agent is aware of the non payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (e) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

25.3 No fiduciary duties

- (a) Nothing in this Agreement constitutes the Agent as a trustee or fiduciary of any other person.
- (b) The Agent shall not be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

25.4 Business with the Group

- (a) The Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group (including acting as agent or trustee for any other financing and acquiring or disposing of any kind of security of any member of the Group).

- (b) If it is also a Lender, the Agent has the same rights and powers under this Agreement as any other Lender and may exercise those rights as though it were not also the Agent.

25.5 Rights and discretions of the Agent

- (a) The Agent may rely on:
 - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
 - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 22.1(a) (*Non payment*));
 - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
 - (iii) any notice or request made by the Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (f) Notwithstanding any other provision of any Finance Document to the contrary, the Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

25.6 Majority Lenders' instructions

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall:
 - (i) exercise any right, power, authority or discretion vested in it as the Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as the Agent); and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties.
- (c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may

require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.

- (d) In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (e) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

25.7 Responsibility for documentation

The Agent is not responsible for either:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, an Obligor or any other person given in or in connection with any Finance Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.

25.8 Exclusion of liability

- (a) Without limiting paragraph (b) below, the Agent will not be liable for any action taken by it under or in connection with any Finance Document, unless directly caused by its Gross Negligence.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

25.9 Lenders' indemnity to the Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within 3 Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's Gross Negligence) in acting as the Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

25.10 Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrower.
- (b) Alternatively the Agent may resign by giving notice to the other Finance Parties and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor the Agent.

- (c) If the Majority Lenders have not appointed a successor the Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the Agent (after consultation with the Borrower) may appoint a successor the Agent.
- (d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as the Agent under the Finance Documents.
- (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 25. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.

25.11 Confidentiality

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

25.12 Relationship with the Lenders

- (a) The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Each Lender shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost in accordance with Schedule 11 (Mandatory Cost Formulae).

25.13 Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other

agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

- (d) the adequacy, accuracy and/or completeness of the any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

25.14 The Agent's management time

Any amount payable to the Agent under Clause 14.4 (*Indemnity to the Agent*), Clause 16 (*Costs and expenses*) and Clause 25.9 (*Lenders' indemnity to the Agent*) shall, to the extent relating to actions taken as a result of or in the investigation of such Default, include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrower and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 11 (*Fees*).

25.15 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

26. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

27. SHARING AMONG THE FINANCE PARTIES

27.1 Payments to Finance Parties

If a Finance Party (a Recovering Finance Party) receives or recovers any amount from an Obligor other than in accordance with Clause 28 (*Payment mechanics*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 28 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the Sharing Payment) equal to such receipt or

recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 28.5 (*Partial payments*).

27.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 28.5 (*Partial payments*).

27.3 Recovering Finance Party's rights

- (a) On a distribution by the Agent under Clause 27.2 (*Redistribution of payments*), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.
- (b) If and to the extent that the Recovering Finance Party is not able to rely on its rights under paragraph (a) above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

27.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 27.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and
- (b) that Recovering Finance Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed.

27.5 Exceptions

- (a) This Clause 27 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

28. PAYMENT MECHANICS

28.1 Payments to the Agent

- (a) On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency with such bank as the Agent specifies.

28.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 28.3 (*Distributions to the Borrower*) and Clause 28.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than 5 Business Days' notice with a bank in the principal financial centre of the country of that currency.

28.3 Distributions to the Borrower

The Agent may apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due but unpaid from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

28.4 Clawback

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

28.5 Partial payments

- (a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Agent shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
 - (i) first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent and the Security Trustee under the Finance Documents;
 - (ii) secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
 - (iii) thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and

- (iv) fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

28.6 Enforcement Proceeds and Total Loss Proceeds

- (a) The Security Trustee shall, after deducting the unpaid fees, costs and expenses of the Security Trustee under the Finance Documents, promptly pay any Enforcement Proceeds and Total Loss Proceeds received by it to the Agent for application in accordance with this Clause 28.6.
- (b) If the Agent receives a payment in respect of Enforcement Proceeds or Total Loss Proceeds, the Agent shall apply that payment towards the obligations of the Obligors under the Finance Documents in the following order:
 - (i) first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent under the Finance Documents;
 - (ii) secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
 - (iii) thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement;
 - (iv) fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents; and
 - (v) fifthly, any surplus to the Borrower (for the account of the Borrower).
- (c) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs 28.5(a)(ii) to (iv) above.
- (d) Paragraphs (a), 28.5(a) and 28.5(b) above will override any appropriation made by an Obligor.

28.7 No set off by Obligors

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set off or counterclaim.

28.8 Business Days

Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the immediately preceding Business Day (if there is not) and during any extension of the due date for payment of any principal or Unpaid Sum under any Finance Document interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

28.9 Currency of account

- (a) Dollars is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) Each payment in respect of costs, expenses and taxes shall be made in the currency in which the cost, expense or tax are incurred.

28.10 Change of currency

- (a) Unless prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

29. SET OFF

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any obligation (whether or not matured) owed by that Finance Party to any Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set off.

30. NOTICES

30.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

30.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower,

Address: PO Box 695
Muttrah
PC 114
Sultanate of Oman

Attention: Mr Sushil Srivastava, Head of Corporate Finance
Facsimile: + 968 24 580859

in the case of the Agent and/or Security Trustee,

Address: RBS Corporate Jet Capital
Project Finance Portfolio
The Royal Bank of Scotland plc

8th Floor
135 Bishopsgate
London
EC2M 3UR

Attention: Senior Director
Head of Infrastructure

Facsimile: + 44 20 7085 1821

with a copy to:

Address: c/o RBS Corporate Jet Capital
Structured Asset Finance
The Royal Bank of Scotland plc
12th Floor
135 Bishopsgate
London
EC2M 3UR

Attention: Lee Warsop
Facsimile: + 44 20 7085 1821

- (b) in the case of each of the Original Lenders, that set out in Schedule 1 (*Original Lenders*); and
- (c) in the case of each Lender other than the Original Lenders, that notified in writing to the Agent on or prior to the date on which it becomes a Party,

or any substitute address or fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five (5) Business Days' notice.

30.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,
 - (iii) and, if a particular department or officer is specified as part of its address details provided under Clause 30.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.

30.4 Notification of address, fax number and telex number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 30.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

30.5 Electronic communication

- (a) Any communication to be made between the Agent and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent and the relevant Lender:
 - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Agent and a Lender will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.

30.6 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

31. CALCULATIONS AND CERTIFICATES

31.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

31.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

31.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days, or where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

32. **PARTIAL INVALIDITY**

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

33. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

34. **ENTIRE AGREEMENT**

This Agreement and the Finance Documents constitute the sole and entire agreement between the parties thereto in respect of the financing of the acquisition of the Aircraft and supersede all previous agreements in relation thereto.

35. **AMENDMENTS AND WAIVERS**

35.1 **Required consents**

- (a) Subject to Clause 35.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.

35.2 **Exceptions**

- (a) An amendment or waiver that has the effect of changing or which relates to:
 - (i) the definition of Majority Lenders in Clause 1.1 (*Definitions*);
 - (ii) an extension to the date of payment of any amount under the Finance Documents;
 - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
 - (iv) an increase in or an extension of any Commitment;
 - (v) any provision which expressly requires the consent of all the Lenders; or
 - (vi) Clause 2.2 (*Finance Parties' rights and obligations*), Clause 23 (*Changes to the Lenders*) or this Clause 35;
 - (vii) shall not be made without the prior consent of all the Lenders.
- (b) An amendment or waiver which relates to the rights or obligations of the Agent may not be effected without the consent of the Agent.

36 **COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

37 **THIRD PARTY RIGHTS**

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a party to a Finance Document may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 (the Third Parties Act).
- (b) Notwithstanding any term of any Finance Document, the consent of any third party is not required to rescind, vary, amend or terminate a Finance Document at any time.

38 **GOVERNING LAW**

This Agreement is governed by, and construed in accordance with, English law.

39 **ENFORCEMENT**

39.1 **Jurisdiction**

- (a) For the benefit of each Finance Party, the Borrower agrees that the courts of England are (subject to paragraph (c)) to have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement and claims for set-off and counterclaim) (each a "Dispute") and for such purposes the Borrower irrevocably submits to the jurisdiction of the English courts.
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 39.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction and the Borrower irrevocably submits to the jurisdiction of any such court. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.
- (d) A judgment or order in connection with a Finance Document of any court referred to in this Clause 39.1 is conclusive and binding on the relevant Borrower and may be enforced against it in the courts of any other jurisdiction.

39.2 **Arbitration**

- (a) Notwithstanding the provisions of Clause 39.1 any Dispute may, at the option of the Finance Parties only, be referred to and finally resolved by arbitration in accordance with the LCIA rules, which rules are deemed to be incorporated by reference into this Clause. If a Finance Party wishes to exercise this option, the Agent shall so notify the Borrower in writing within twenty one (21) days of the notification of the Dispute. Following receipt of such notice by the Borrower, the Borrower shall not object to the Agent's reference to arbitration in accordance with this Clause 39.2.
- (b) The seat or legal place of arbitration shall be London, United Kingdom.
- (c) The number of arbitrators shall be three. The Security Trustee and the Borrower shall each nominate an arbitrator and the third arbitrator, who shall act as chairman shall be appointed by the LCIA. If any party defaults on its obligation to appoint an arbitrator within ten (10) Business Days of being requested to do so by the non-

defaulting party then the non-defaulting party may request that the remaining members of the arbitral tribunal be appointed by the LCIA in accordance with the LCIA rules.

- (d) The language of arbitration shall be English.
- (e) The parties and the LCIA may appoint arbitrators from among the nationals of any country, whether or not a party is a national of that country.
- (f) The arbitrators have no authority to award punitive damages and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the Finance Documents.
- (g) Each party shall be entitled to seek at any time from any court in any jurisdiction (whether before or after commencement of any arbitration proceedings), any provisional, interim or conservatory relief against the other. The relief sought may include, but shall not be limited to attachment, taking possession, preservation, custody or detention of property and injunctive relief. This entitlement is strictly without prejudice to and shall exist in parallel with the right which the parties may have to seek such relief from any arbitral tribunal, whether under the LCIA rules or otherwise under law. Any request for such relief by a party to any court in any jurisdiction shall not be deemed incompatible with, or a waiver of, the agreement to arbitrate set forth herein. The parties agree that any ruling by the arbitral tribunal on such relief shall be deemed a final award with respect to subject matter of the ruling and shall be fully enforceable as such.
- (h) The parties irrevocably agree to preserve their right of appeal on questions of law in any award of an arbitral tribunal appointed pursuant to this Clause 39.2 pursuant to section 69 of the Arbitration Act 1996. For the avoidance of doubt, the parties' agreement in this clause 39.2(h) shall override Article 26.9 of the LCIA rules, which exclude any form of appeal to any state court from an arbitral award.
- (i) Costs of the arbitration (excluding each party's preparation, travel, attorneys' fees and similar costs), unless otherwise decided by the arbitrators, shall be borne in accordance with the decision of the arbitrators. In the event that the failure of a party to comply with the award of the arbitrators requires any other party to apply to any court for enforcement of such award, the non complying party shall be liable to the other for all costs of such application, including reasonable attorneys' fees.
- (j) If any Dispute raises issues which are substantially the same as or connected with issues raised in a Dispute which has already been referred to arbitration under any of the other Finance Documents (an "**Existing Dispute**"), or arises out of substantially the same facts as are the subject of an Existing Dispute, any party to the arbitration may request that the arbitrations be consolidated or heard together. The parties may agree that the arbitral tribunal(s) before which such arbitrations may be heard may, and shall have the power to, order the consolidation of arbitrations or order that they may be heard together.

39.3 Service of process

The Borrower shall at all times maintain an agent for service of process in the jurisdiction of the courts nominated in Clause 39.1. Such agent shall be Law Debenture of 5th Floor, 100 Wood Street, London EC2V 7EX, England. Any claim forms, judgment or other notice of legal process shall be sufficiently served on the Borrower if delivered to such agent at its address for the time being. The Borrower undertakes not to revoke the authority of such agent and, if for any reason such agent no longer serves as agent of the Borrower to receive service of process, the Borrower shall promptly appoint another person as its agent (with an address for service within the jurisdiction of the courts nominated in Clause 39.1 above and notify the Agent thereof.

IN WITNESS whereof the Parties have signed this Agreement on the date shown at the beginning of this Agreement.

SCHEDULE 1

THE ORIGINAL LENDERS

Name of Original Lender	The Royal Bank of Scotland plc
Commitment	\$18,120,000

SCHEDULE 2

CONDITIONS PRECEDENT

Part A - CONDITIONS PRECEDENT

Initial Conditions Precedent

Receipt by the Agent from the Borrower no later than the date of this Agreement of the following, each in form and substance satisfactory to the Agent:

1. Corporate Documents

- (a) **Constitutional Documents:** A copy of the Memorandum and Articles of Association of the Borrower.
- (b) **Certificate of Incorporation:** A copy of the Certificate of Incorporation of the Borrower.
- (c) **Resolutions:** A copy of a resolution of the Board of Directors of the Borrower:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party; and
 - (ii) authorising two specified officers of the Borrower to execute the power of attorney (referred to in paragraph 1(e)) as a deed on its behalf.
- (d) **Officer's Certificates:** A certificate of the Borrower (signed by an officer) certifying that each copy document relating to it specified in this Part A of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement and that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on any Obligor to be exceeded.
- (e) **Power of Attorney:** An original power of attorney duly executed by the Borrower authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf.
- (f) **Specimen of Signatures:** A specimen of the signature of each person authorised by the resolution referred to in paragraph 1(c) above.

Conditions Precedent to Utilisation

Receipt by the Agent from the Borrower no later than the Utilisation Date of the following, each in form and substance satisfactory to the Agent.

2. Finance Documents

Original counterparts of each of the Finance Documents (other than the Aircraft Purchase Agreement, the Operations Agreement, the Maintenance Contract and the Maintenance Service Plan Contracts) duly executed by all parties except the Finance Parties.

3. Legal and Tax Opinions

- (a) In respect of the Borrower, a legal opinion of counsel acceptable to the Agent in form and substance acceptable to the Agent, with respect to the capacity of the Borrower and the due execution by the Borrower and the validity and enforceability of the Finance Documents.

- (b) **Delivery Opinion:** A legal opinion of counsel acceptable to the Agent and in form and substance acceptable to the Agent from counsel in the jurisdiction where transfer of title will take place by the Seller to the Borrower pursuant to the Aircraft Purchase Agreement.
- (c) **Guarantor Opinion:** A legal opinion of counsel acceptable to the Agent in the form and substance acceptable to the Agent from counsel in the jurisdiction of the Guarantor's principal business interests.
- (d) **State of Registration:** A legal opinion of counsel acceptable to the Agent in the form and substance acceptable to the Agent from counsel in the jurisdiction of the State of Registration.
- (e) **Habitual Base:** A legal opinion of counsel acceptable to the Agent in the form and substance acceptable to the Agent from counsel in the jurisdiction of the Aircraft's Habitual Base.
- (f) **Mortgage:** Any legal opinion the Agent may require in relation to the Mortgage.
- (g) **Tax Opinions:** A tax opinion of tax advisers acceptable to the Agent and in form and substance acceptable to the Agent in connection with import taxes, stamp taxes, withholding tax and/or duties or duties payable in the State of Incorporation and the State of Registration.

4 Other documents and evidence

- (a) **Other Finance Documents:** Certified copies of the Aircraft Purchase Agreement and the Operations Agreement.
- (b) **Fees, costs and expenses:** Evidence that the Good Faith Deposit has been paid by the Borrower (or the Agent is otherwise satisfied that it will be paid).
- (c) **Process Agency:** A letter from the process agent appointed by the Borrower under this Agreement accepting its appointment.
- (d) **Authorisations:** A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance by each Obligor of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (e) **Know Your Customer:** the Agent shall have completed all "Know your customer" requirements (including compliance with all money laundering and anti-terrorism information requirements).
- (f) **Certificate of Director:** a certificate dated the Utilisation Date and signed by a director of the Borrower confirming that no Default has occurred or is continuing, and that the representations and warranties of the Borrower in Schedule 7 are correct as at the Utilisation Date.
- (g) **Approvals & Consents:** Copies of all requisite approvals and third party consents in connection with the entry into and performance by each Obligor of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document or written confirmation by each Obligor.

5 Aircraft documents and evidence

- (a) **Registrations:** Evidence that on the Delivery Date the Aircraft has been (or will upon transfer of title occurring immediately be) validly registered under the laws of the State of Registration and that all filings, registrations, recordings and other actions

have been or will be taken which are necessary or advisable to ensure the validity, effectiveness and enforceability of the Finance Documents and to protect the rights and interests of the Security Trustee as mortgagee, including certified true copies of the Aircraft's certificate of registration and certificate of airworthiness.

- (b) **Insurances:** A certificate of insurance evidencing the due compliance by the Borrower with the insurances required to be maintained in respect of the Aircraft pursuant to Clause 20 and Schedule 9 together with a broker's letter of undertaking.
- (c) **Insurance Opinion:** A satisfactory opinion from the Agent's insurance advisors in relation to the Insurances.
- (d) **Air Traffic Control Letter:** A letter from the Borrower or the Operator addressed to Eurocontrol pursuant to which the Borrower authorises the addressee to issue to the Agent, upon the Agent's request from time to time, a statement of account of all sums due by the Borrower to such authority in respect of all aircraft (including, without limitation, the Aircraft) operated by the Borrower or the Operator. Such letter to be substantially in the Agreed Form.
- (e) **Technical Review:** Completion of technical review of the Aircraft and its specifications by the Agent or its representatives to the Agent's satisfaction.
- (f) **Title:** Evidence that the Seller shall have transferred full legal and beneficial title to the Aircraft to the Borrower; and that the Aircraft is free from Security Interests (other than Permitted Liens), including copies of all bills of sale showing the complete "back to birth" chain of title transfers from the Aircraft Manufacturer to the Borrower.
- (g) **Delivery Documents:** Certified copy of the certificate of registration in respect of the Aircraft.
- (h) **Costs and expenses:** Evidence that the fees, costs and expenses due from the Borrower pursuant to Clause 16 (*Costs and expenses*) have been paid (or the Agent is otherwise satisfied that they will be paid).
- (i) **Mortgage:** The Agent shall be satisfied as to arrangements for attaching the Mortgage, including (i) a legal opinion in form and substance acceptable to, and from counsel acceptable to, the Agent in the jurisdiction where the aircraft is located at the time the Mortgage is created confirming, inter alia, that the Mortgage creates a valid and effective Security Interest in respect of the Aircraft, and (ii) any registration and the priority of such registration of the Mortgage in the State of Registration.
- (j) **Mortgage Filing Costs –** The Parties shall have agreed whether the Borrower or the Agent shall pay the costs associated with the registration and perfection of the Mortgage or, if applicable, how those costs should be apportioned between the Parties.
- (k) **Authorisations:** A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance by each Obligor of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document to which it is a party.
- (l) **Purchase Price:** Written confirmation from the Seller that the total purchase price for the Aircraft pursuant to Article 2 of the Aircraft Purchase Agreement is twenty two million six hundred and fifty thousand Dollars (\$22,650,000), and if the amount of the total purchase price is greater than twenty two million, six hundred and fifty thousand Dollars (\$22,650,000), evidence that the Seller has received from the Borrower an amount equal to the difference between twenty two million, six hundred and fifty thousand Dollars (\$22,650,000) and the actual total purchase price.

-
- (m) **International Interests:** No international interests are registered on the International Registry against the Seller in respect of the Aircraft.

PART B - CONDITIONS SUBSEQUENT

Receipt by the Agent no later than the dates specified below, the following, each in form and substance satisfactory to the Agent.

1. Finance Documents

1.1 Certified copies of the following Finance Documents:

- (a) Maintenance Contract; and
- (b) Maintenance Service Plan Contracts,

at the earlier of:

- (i) thirty (30) days after the Utilisation Date;
- (ii) Elite Jets becoming Operator of the Aircraft under the Operations Agreement provided that such date shall be no later than the Operations Agreement Longstop Date.

1.2 A certified true copy of the Smart Parts Programme within thirty (30) days of the Utilisation Date.

1.3 An original executed counterpart of the Tripartite Agreement duly executed by all parties thereto except any Finance Party on Elite Jets becoming the Operator of the Aircraft under the Operations Agreement provided that such date is no later than the Operations Agreement Longstop Date.

2. Aircraft Documents and Evidence

- (a) **Air Licences:** Certified true copies of the Operator's air transport licence and air operator's certificate no later than the earlier of

- (i) thirty (30) days after the Utilisation Date; and
- (ii) the execution of the Tripartite Agreement.

- (b) **Import:** Evidence that within ninety (90) days of the Delivery Date the following will be provided to the Agent: evidence that any required import licence, and all customs formalities relating to the Import of the Aircraft into the Habitual Base have been obtained or complied with (if no such licences or formalities are required, a statement to that effect included in the legal opinion described in paragraph 3 below will satisfy the Borrower's obligation under this paragraph 2(b)), and evidence that the import of the Aircraft into the Habitual Base is exempt from Taxes, or that any such Taxes have been paid in full.

- (c) **Approved Maintenance Programme:** A certified true copy of the Approved Maintenance Programme with an approval certificate from the Aviation Authority no later than thirty (30) days after the Utilisation Date where the State of Registration is the Cayman Islands and no later than ninety (90) days after the Utilisation Date where the State of Registration is a jurisdiction other than the Cayman Islands.

- (d) **Certificate of Airworthiness:** A certified true copy of the certificate of airworthiness no later than two (2) Business Days after the Utilisation Date.

3 **Legal Opinions**

If the State of Registration is a jurisdiction other than the Cayman Islands, receipt by the Agent of the following no later than the date the Aircraft is registered in the State of Registration:

- (a) **State of Registration:** A legal opinion of counsel acceptable to the Agent in the form and substance acceptable to the Agent from counsel in the jurisdiction of the State of Registration.
- (b) **Habitual Base:** A legal opinion of counsel acceptable to the Agent in the form and substance acceptable to the Agent from counsel in the jurisdiction of the Aircraft's Habitual Base.
- (c) **Mortgage:** Any legal opinion the Agent may require in relation to the Mortgage.

4. **Deregistration Power of Attorney**

If the State of Registration is a jurisdiction other than the Cayman Islands, receipt by the Agent of a deregistration power of attorney in a form acceptable to the Agent, no later than the date the Aircraft is registered in the State of Registration.

FORM OF UTILISATION REQUEST

Dear Sirs

[]

0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99

MB AVIATION LIMITED

SCHEDULE 4
REPAYMENT AMORTISATION SCHEDULE

Date	Payment Period	Principal repayment	Assumed Interest	Total Payment	Outstanding Balance
03 Apr 2007	0 - Delivery	0.00	0.00	0.00	(18,120,000.00)
03 Jul 2007	1	182,109.80	(290,851.16)	472,960.96	(17,937,890.20)
03 Oct 2007	2	181,868.87	(291,092.09)	472,960.96	(17,756,021.34)
03 Jan 2008	3	184,820.19	(288,140.77)	472,960.96	(17,571,201.14)
03 Apr 2008	4	190,918.78	(282,042.18)	472,960.96	(17,380,282.36)
03 Jul 2008	5	193,983.29	(278,977.67)	472,960.96	(17,186,299.07)
03 Oct 2008	6	194,065.52	(278,895.44)	472,960.96	(16,992,233.55)
03 Jan 2009	7	197,214.77	(275,746.19)	472,960.96	(16,795,018.78)
03 Apr 2009	8	206,340.04	(266,620.93)	472,960.96	(16,588,678.74)
03 Jul 2009	9	206,689.63	(266,271.33)	472,960.96	(16,381,989.11)
03 Oct 2009	10	207,117.68	(265,843.28)	472,960.96	(16,174,871.42)
03 Jan 2010	11	210,478.74	(262,482.22)	472,960.96	(15,964,392.68)
03 Apr 2010	12	219,526.23	(253,434.73)	472,960.96	(15,744,866.45)
03 Jul 2010	13	220,233.99	(252,726.97)	472,960.96	(15,524,632.46)
03 Oct 2010	14	221,030.68	(251,930.28)	472,960.96	(15,303,601.79)
03 Jan 2011	15	224,617.51	(248,343.44)	472,960.96	(15,078,984.27)
03 Apr 2011	16	233,582.09	(239,378.87)	472,960.96	(14,845,402.18)
03 Jul 2011	17	234,671.64	(238,289.33)	472,960.96	(14,610,730.54)
03 Oct 2011	18	235,861.27	(237,099.68)	472,960.96	(14,374,869.27)
03 Jan 2012	19	239,688.78	(233,272.19)	472,960.96	(14,135,180.49)
03 Apr 2012	20	246,071.68	(226,889.28)	472,960.96	(13,889,108.81)
03 Jul 2012	21	250,021.48	(222,939.49)	472,960.96	(13,639,087.33)
03 Oct 2012	22	251,628.88	(221,332.08)	472,960.96	(13,387,458.45)
03 Jan 2013	23	255,712.26	(217,248.70)	472,960.96	(13,131,746.18)
03 Apr 2013	24	264,494.49	(208,466.48)	472,960.96	(12,867,251.69)
03 Jul 2013	25	266,423.70	(206,537.26)	472,960.96	(12,600,827.99)
03 Oct 2013	26	268,477.53	(204,483.44)	472,960.96	(12,332,350.46)
03 Jan 2014	27	272,834.32	(200,126.85)	472,960.96	(12,059,516.14)
03 Apr 2014	28	12,059,516.14	(191,444.82)	12,250,960.96	0.00

Repayment Schedule based on an indicative three (3) month LIBOR of 5.35% + 1% margin.

SCHEDULE 5

FORM OF TRANSFER CERTIFICATE

To: [The Agent] as the Agent

From: [The Existing Lender] (the **Existing Lender**) and [The New Lender] (the **New Lender**)

Dated:

MB AVIATION LIMITED – \$18,120,000 Facility Agreement dated [] 2007 (the Agreement)

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 23.5 (*Procedure for transfer*):
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights and obligations referred to in the Schedule in accordance with Clause 23.5 (*Procedure for transfer*).
 - (b) The proposed Transfer Date is [].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 30.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 23.4 (*Limitation of responsibility of Existing Lenders*).
4. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
 - (i) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (ii) a partnership each member of which is a company resident in the United Kingdom for United Kingdom tax purposes; or
 - (iii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and interest payable in respect of an advance under a Finance Document falls to be brought into account in computing the chargeable profits of that company for the purposes of section 11(2) of the Corporation Taxes Act 1988.]
- [4/5] This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- [5/6] This Transfer Certificate is governed by English law.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments.]

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as [].

[The Agent]

By

SCHEDULE 6

FORM OF CONFIDENTIALITY UNDERTAKING

[Letterhead of Agent]

To: [Potential Lender]

Re: The Facility

Borrower:

Amount:

Agent:

Dear Sirs

We understand that you are considering participating in the Facility. In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

- 1 **Confidentiality Undertaking** You undertake:
 - (a) to keep the Confidential Information confidential and not to disclose it to anyone except as provided for by paragraph 2 below and to ensure that the Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information;
 - (b) to keep confidential and not disclose to anyone the fact that the Confidential Information has been made available or that discussions or negotiations are taking place or have taken place between us in connection with the Facility;
 - (c) to use the Confidential Information only for the Permitted Purpose;
 - (d) to use all reasonable endeavours to ensure that any person to whom you pass any Confidential Information (unless disclosed under paragraph 2(b) below) acknowledges and complies with the provisions of this letter as if that person were also a party to it; and
 - (e) not to make enquiries of any member of the Group or any of their officers, directors, employees or professional advisers relating directly or indirectly to the Facility.
- 2 **Permitted Disclosure** We agree that you may disclose Confidential Information:
 - (a) To members of the Participant Group and their officers, directors, employees and professional advisers to the extent necessary for the Permitted Purpose and to any auditors of members of the Participant Group;
 - (b) (i) where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body, (ii) where required by the rules of any stock exchange on which the shares or other securities of any member of the Participant Group are listed or (iii) where required by the laws or regulations of any country with jurisdiction over the affairs of any member of the Participant Group; or
 - (c) with the prior written consent of us and the Borrower.

3. **Notification of Required or Unauthorised Disclosure** You agree (to the extent permitted by law) to inform us of the full circumstances of any disclosure under paragraph 2(b) or upon becoming aware that Confidential Information has been disclosed in breach of this letter.
4. **Return of Copies** If we so request in writing, you shall return all Confidential Information supplied to you by us and destroy or permanently erase all copies of Confidential Information made by you and use all reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph 2(b) above.
5. **Continuing Obligations** The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease (a) if you become a party to or otherwise acquire (by assignment or sub participation) an interest, direct or indirect in the Facility or (b) twelve months after you have returned all Confidential Information made by you (other than any such Confidential Information or copies which have been disclosed under paragraph 2 above (other than sub paragraph 2(a)) or which, pursuant to paragraph 4 above, are not required to be returned or destroyed).
6. **No Representation; Consequences of Breach, etc** You acknowledge and agree that:
 - (a) neither we nor any of our officers, employees or advisers (each a Relevant Person) (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or any member of the Group or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or any member of the Group or be otherwise liable to you or any other person in respect to the Confidential Information or any such information; and
 - (b) we or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person or member of the Group may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.
7. **No Waiver; Amendments, etc** This letter sets out the full extent of your obligations of confidentiality owed to us in relation to the information the subject of this letter. No failure or delay in exercising any right, power or privilege under this letter will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges under this letter. The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.
8. **Inside Information** You acknowledge that some or all of the Confidential Information is or may be price sensitive information and that the use of such information may be regulated or prohibited by applicable legislation relating to insider dealing and you undertake not to use any Confidential Information for any unlawful purpose.
9. **Nature of Undertakings** The undertakings given by you under this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of the Borrower and each other member of the Group.

10 **Third party rights**

- (a) Subject to paragraph 6 and paragraph 9 the terms of this letter may be enforced and relied upon only by you and us and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- (b) Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person or any member of the Group to rescind or vary this letter at any time.

11 **Governing Law and Jurisdiction** This letter (including the agreement constituted by your acknowledgement of its terms) shall be governed by and construed in accordance with the laws of England and the parties submit to the non exclusive jurisdiction of the English courts.

12 **Definitions** In this letter (including the acknowledgement set out below):

Confidential Information means any information relating to the Borrower, the Group, and the Facility including, without limitation, the information memorandum, provided to you by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copies from such information but excludes information that (a) is or becomes public knowledge other than as a direct or indirect result of any breach of this letter or (b) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, other than from a source which is connected with the Group and which, in either case, as far as you are aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality;

Group means the Borrower and each of its holding companies and subsidiaries and each subsidiary of each of its holding companies (as each such term is defined in the Companies Act 2006);

Participant Group means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies (as each such term is defined in the Companies Act 2006); and

Permitted Purpose means considering and evaluating whether to enter into the Facility.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....

For and on behalf of

[Agent]

To **[Agent]**

The Borrower and each other member of the Group

We acknowledge and agree to the above:

.....

For and on behalf of

[Potential Lender]

SCHEDULE 7
REPRESENTATIONS

1. REPRESENTATIONS

The Borrower represents and warrants to each Finance Party as follows:

- (a) **Status:** the Borrower is a company, duly incorporated and validly existing under the laws of the Cayman Islands and has the power to own its assets and carry on its business as it is being conducted;
- (b) **Power and authority:** the Borrower has the power to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of the Finance Documents to which the Borrower is or will be a party and the transactions contemplated by the Finance Documents;
- (c) **Legal validity:** this Agreement has been duly authorised, executed and delivered by the Borrower, and this Agreement does, and the Finance Documents when executed and delivered by the Borrower will, constitute legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except in so far as enforceability may be limited by (i) applicable bankruptcy and similar laws affecting creditors' rights generally or (ii) general principles of equity;
- (d) **Title:** with immediate effect from the Delivery Date, the Borrower has good and lawful title to the Aircraft, and has not assigned, charged, pledged or otherwise encumbered or disposed of the Aircraft, and the Aircraft is free from all security interests other than the Mortgage;
- (e) **Non-conflict:** the entry into and performance by the Borrower of, and the transactions contemplated by, the Finance Documents do not and will not: (i) conflict with any laws binding on the Borrower; or (ii) conflict with the constitutional documents of the Borrower; or (iii) conflict with or result in default under any document which is binding upon the Borrower or any of its assets nor result in the creation of any Security Interest over any of its assets;
- (f) **Authorisation:** all authorisations, consents, registrations and notifications required by the Borrower in connection with the entry into, performance, validity and enforceability of, the Finance Documents and the transactions contemplated by the Finance Documents, have been (or will on or before the Delivery Date have been) obtained or effected (as appropriate) and are (or will on their being obtained or effected be) in full force and effect;
- (g) **No Immunity:** the Borrower is subject to civil commercial law with respect to its obligations under this Agreement and the other Finance Documents, neither the Borrower nor any of its assets is entitled to any right of immunity and the entry into and performance of this Agreement and the other Finance Documents by the Borrower constitute private and commercial acts;
- (h) **Excluded Countries:** the Borrower is not party to any contract allowing the operation of the Aircraft to or from any country which is an Excluded Country (as defined in Schedule 10 (Operational and Maintenance Undertakings));
- (i) **Registrations and Filings:** except for the filing of the Mortgage with the Aviation Authority, the filing of the Security Documents with the UK Companies registry and any other filings as may be noted in the legal opinions to be provided pursuant to Schedule 2 (Conditions precedent), it is not necessary or advisable under the laws of the State of Incorporation, the State of Registration or the Habitual Base in order to ensure the validity, effectiveness and enforceability of this Agreement or the other Finance Documents or to establish, perfect or protect the rights and interests of the

Finance Parties in the Aircraft or any Engine or Part that this Agreement, any other Finance Document or any instrument relating thereto be filed, registered or recorded or enrolled with any court of other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transaction contemplated by such Finance Documents or that any other action be taken;

- (j) **Pari Passu:** the obligations of the Borrower under the Finance Documents rank at least pari passu with all other present and future unsecured and unsubordinated obligations (including contingent obligations) of the Borrower, with the exception of such obligations as are mandatorily preferred by law and not by virtue of any contract;
- (k) **Material Adverse Effect:** no Material Adverse Effect has occurred;
- (l) **No Litigation:** no litigation, arbitration or administrative proceedings are pending or, to the Borrower's knowledge, threatened against the Borrower which, if adversely determined, would have a material adverse effect upon the Borrower's financial condition or business or its ability to perform its obligations under this Agreement;
- (m) **No Default:** no Default has occurred and is continuing or might result from the entry into or performance of this Agreement by the Borrower; and no other event has occurred and is continuing which constitutes (or with the lapse of time or the making of a determination would constitute) a material default under any document which is binding on the Borrower or any assets of the Borrower;
- (n) **Export:** no approvals, licences or consents are necessary to enable the Security Trustee to export the Aircraft from the Habitual Base and to deregister the Aircraft from the State of Registration having taken possession of an Aircraft on any enforcement of the mortgage;
- (o) **Import:** all required import licences and all customs formalities relating to the import of the Aircraft into the Habitual Base have been (or will be within the prescribed time limits) obtained or complied with and all Taxes payable in connection with the import of the Aircraft into the Habitual Base have been paid or will be paid on or before the due date;
- (p) **Full Disclosure:** each of the Finance Documents and any other document, certificate or statement furnished to any Finance Party by or on behalf of the Borrower in connection with the transactions contemplated hereby or thereby (including, without limitation, financial information) does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein and therein not misleading; all forecasts and opinions of the Borrower contained therein were honestly made on reasonable grounds after due and careful inquiry by the Borrower; and there is no fact or circumstance which has not been disclosed by the Borrower to the Agent in writing on or before the date of this Agreement and which (in any of the above cases) materially adversely affects or will materially adversely affect the ability of any Obligor to carry on its business or to perform its obligations under any of the Finance Documents to which such Obligor is a party;
- (q) **No Other Activities:** the Borrower has not undertaken any trading or business activities other than the purchase of the Aircraft pursuant to the Aircraft Purchase Agreement, the financing of the purchase price of the Aircraft, the entry by the Borrower into the Finance Documents and the performance of obligations or actions contemplated or permitted by the Finance Documents;
- (r) **No Other Contracts:** the Borrower has not entered into any agreement, instrument or arrangement (whether or not recorded in writing) with any person or otherwise created or incurred any liability to any person, other than (i) pursuant to and as permitted by the Finance Documents and (ii) such contracts, agreements or liabilities

with respect to Taxes, ordinary operating costs and expenses, legal fees and disbursements and overhead expenses as have arisen in the ordinary course of carrying on its business as referred to in paragraph (q); and

- (s) **No Acquisition of Other Assets:** it has not taken on lease, purchased or otherwise acquired, or agreed to do so, any asset from any person.
- (t) **Taxes:** the Borrower is tax resident solely in the State of Incorporation, and is not required under the laws of its State of Incorporation to make any deduction for or on account of Tax from any payment it may make to any Finance Party under any Finance Document to which it is a party.

2 REPETITION

The representations and warranties of the Borrower pursuant to paragraph 1 of this Schedule 7 are made on the date of this Agreement (save that paragraph 1(o) shall only be relevant on the importation of the Aircraft and shall not be repeated thereafter), the Utilisation Date and on each Repayment Date, in each case by reference to the facts and circumstances then existing. The representations and warranties of the Borrower pursuant to paragraph 1 of this Schedule 7 shall survive the execution of this Agreement and the making of the Loan.

SCHEDULE 8
GENERAL UNDERTAKINGS

1. DEFINITIONS

In this Agreement:

Damage Notification Threshold means \$100,000;

Flight Cycle means one take-off and landing of the Aircraft;

Flight Hour means each hour or part thereof (rounded up to 2 decimal places) elapsing from the moment at which the wheels of the Aircraft leave the ground on take off until the wheels of the Aircraft next touch the ground;

Major Checks means any annual heavy maintenance visit or segment thereof suggested for commercial aircraft of the same model as the Aircraft by the Airframe Manufacturer (however denominated) as set out in the Approved Maintenance Programme; and

Semi Annual Report means a report of the Borrower, in the Agreed Form duly executed, completed and delivered by the Borrower to the Agent pursuant to paragraph 2 of Schedule 8.

2. INFORMATION

The Borrower shall:

- (a) notify the Agent forthwith of the occurrence of any Default or any other event which might adversely affect the ability of any Obligor to perform any of its respective obligations under this Agreement or any other Finance Documents to which it is a party, and provide the Agent with full details of any steps which an Obligor is taking or proposes to take, in order to remedy or mitigate the effect of such Default;
- (b) furnish to the Agent as soon as available, but not in any event later than one hundred and eighty (180) days after the last day of each financial year of the Borrower, its audited consolidated balance sheet and cash flow statement as of such day and its audited consolidated profit and loss statement as of such day and its audited consolidated profit and loss statement for the year ending on such day (each in Dollars);
- (c) within ten (10) Business Days of the Agent's request, furnish to the Agent all information which the Agent may from time to time reasonably request regarding the Aircraft, any Engine, any engine installed on the Airframe, or any Part, and the use, location and condition of the Aircraft, including, without limitation, the Flight Hours, Flight Cycles or Months (as appropriate) on the Aircraft and any Engine since the last Major Check, Engine Performance Restoration or overhaul and remaining to the next such checks due under the Approved Maintenance Programme;
- (d) within ten (10) Business Days of the Agent's request, furnish to the Agent evidence satisfactory to the Agent that all amounts payable by the Borrower pursuant to paragraph 2 of Schedule 10 (*Operational and Maintenance Undertakings*) and Clause 12 (*Tax Gross Up and Indemnities*) have been paid and discharged in full within the periods permitted by the relevant Government Entity for payment of the same, including, without limitation, copies of receipts from the relevant tax authorities or other Government Entities for payment of any charges, withholding taxes, VAT, customs duties or other applicable Taxes;
- (e) provide to the Agent, within seven (7) days after the end of every sixth (6th) calendar month after the Delivery Date until the Termination Date, the Semi Annual Report on the Aircraft and each Engine;

- (f) give the Agent not less than thirty (30) days' written notice of the time and location of all Major Checks;
- (g) promptly notify the Agent of:
 - (i) any loss, theft, damage or destruction to the Aircraft, any Engine or any Part, or any modification to the Aircraft if the potential cost of repair of such damage or reversal of such modification may exceed the Damage Notification Threshold; and
 - (ii) any claim or other occurrence likely to give rise to a claim under the Insurances (but in the case of hull claims, only for any claim in excess of the Damage Notification Threshold) and details of any negotiations with the insurance brokers over any such claim; and
- (h) not petition for (i) its own liquidation or other analogous proceedings or (ii) the appointment of a receiver or other analogous officer in respect of the Borrower or any part of its assets so long as any of its obligations under this Agreement and the other Finance Documents remain outstanding.

3. **AUTHORISATIONS**

The Borrower shall promptly upon becoming aware of the same:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Agent of

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

4. **COMPLIANCE WITH LAWS**

The Borrower shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

5. **DISPOSAL OF ASSETS**

- 5.1 The Borrower shall not, either in a single transaction or in a series of transactions whether related or not and whether voluntary or involuntary:

- (a) sell, transfer or otherwise dispose of (i) the Aircraft or any interest in the Aircraft, or (ii) all or a substantial part of its property or assets; or
- (b) consolidate or merge with any other person (whether by one or a series of transactions, related or not) other than with the prior written consent of the Agent (such consent not to be unreasonably withheld or delayed), pursuant to a solvent reconstruction; or
- (c) engage in any type of business other than it is engaged in on the date of this Agreement or cease to operate in accordance with its constitutional documents.

6. SPECIAL PURPOSE UNDERTAKINGS

The Borrower undertakes to the Agent that at all times:

- (a) **No Other Activities:** the Borrower shall not undertake any trading or business activities other than the financing of the purchase price of the Aircraft, the entry by the Borrower into the Finance Documents and the performance of obligations or actions contemplated or permitted by the Finance Documents;
- (b) **No Other Contracts:** except as expressly permitted by this Agreement, the Borrower shall not enter into any agreement, instrument or arrangement (whether or not recorded in writing) with any person or otherwise create or incur any liability to any person, other than (i) pursuant to and as permitted by the Finance Documents, and (ii) such contracts, agreements or liabilities with respect to Taxes, ordinary operating costs and expenses, legal fees and disbursements and overhead expenses as have arisen or may arise in the ordinary course of carrying on its business as referred to in paragraph (a);
- (c) **No Acquisition of Other Assets:** it shall not take on lease, purchase or otherwise acquire, or agree to do so, any asset from any person;
- (d) **Loans / Guarantees:** it shall not make any loans, grant any credit or give and guarantee or indemnity (except as required hereby) to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any other person, except as may be required pursuant to the terms of the Finance Documents;
- (e) **Shareholders' Rights:** it shall procure that the Guarantor shall not sell, dilute, transfer or assign or otherwise encumber or dispose of any interest in the Borrower without the prior written consent of the Agent;
- (f) **Constitutional Documents:** it shall ensure the constitutional documents provided to the Agent pursuant to Schedule 2 (*Conditions Precedent*) remain in full force and effect and are not amended, varied or supplemented in any way.

SCHEDULE 9

INSURANCE UNDERTAKINGS

The covenants in this Schedule 9 shall apply in respect of the Borrower in relation to the Aircraft.

1. DEFINITIONS

In this Agreement:

Agreed Value means, at the date hereof, an amount equal to one hundred and ten per cent. (110%) of the purchase price payable by the Borrower to the seller pursuant to the Aircraft Purchase Agreement on the Delivery Date and on each anniversary of the Utilisation Date, the Agreed Value shall be reduced by an amount equal to three per cent (3%) of the Agreed Value as at the Utilisation Date or, as the case may be, the previous anniversary of the Utilisation Date;

Default Rate means a rate of interest which is two per cent. (2%) higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Repayment Instalment;

Manufacturer's Maintenance Planning Document means the planning document relating to recommended maintenance of the Aircraft issued by the Airframe Manufacturer as the same may from time to time be amended, modified or supplemented by such Manufacturer;

Minimum Liability Coverage means \$200,000,000, each occurrence, each Aircraft.

2. INSURANCE UNDERTAKINGS

2.1 The Borrower shall, at its own expense, maintain in full force during the Security Period insurances in respect of the Aircraft in form and substance satisfactory to the Agent complying with the requirements of this Schedule 9 and the Annex hereto (the Insurances, which expression includes, where the context so admits, any relevant re-insurance(s)).

(a) The Insurances shall be effected through such brokers and with such insurers, and shall be subject to such deductibles and subject to such exclusions, as may (in each case) be approved by the Agent.

(b) The Insurances shall be effected either:

(i) on a direct basis with insurers of recognised standing who normally participate in aviation insurances in the leading international insurance markets and led by reputable underwriter(s) approved by the Agent (and for such purposes the Borrower's current lead underwriter is deemed to be acceptable to the Agent); or

(ii) with a single insurer or group of insurers approved by the Agent who does not fully retain the risk but effects substantial reinsurance with reinsurers in the leading international insurance markets and through brokers each of recognised standing and acceptable to the Agent for a percentage acceptable to the Agent of all risks insured (the **Reinsurances**) (and for such purposes the Borrower's current lead underwriter is deemed to be acceptable to the Agent).

Requirements

2.2 The Agent's current requirements as to the Insurances are as specified in this Schedule 9. The Agent may from time to time stipulate other requirements for the Insurances so that (a)

the scope and level of cover are maintained in line with best industry practice; and (b) the interests of the Agent and the other Indemnitees continue to be fully protected.

- 2.3 The Agent confirms that notwithstanding the provisions of this Schedule 9, the Borrower shall be entitled to maintain insurance in respect of the Aircraft for the purposes of this Agreement which reflects Lloyds' endorsement AVN67B (as at the date hereof). In the event that any provision of AVN67B (as at the date hereof) conflicts or is otherwise inconsistent with the requirements of this Schedule 9 then (so long as it shall be general industry practice to insure aircraft financed or leased on the basis of such endorsement) such conflicting or inconsistent provision of AVN67B (as at the date hereof) shall prevail and such endorsement shall be deemed to satisfy the requirements of this Agreement.

Change

2.4

- (a) If at any time the Agent wishes to revoke its approval of any insurer, reinsurer, insurance or reinsurance, the Agent and/or its brokers shall consult with the Borrower and the Borrower's insurers or, if applicable, brokers (as for the time being approved by the Agent) regarding whether that approval should be revoked to protect the interests of the parties insured. If, following the consultation, the Agent considers that any change should be made, the Borrower shall then promptly arrange or procure the arrangement of alternative cover satisfactory to the Agent.
- (b) If at any time the Agent considers that the insurances effected or procured by the Borrower hereunder do not provide to the Indemnitees (or any of them) a satisfactory breach of warranty endorsement (in the case of hull and war risks policies) and a satisfactory breach of warranty endorsement and cross liability and/or severability of interests Clause (in the case of liability policies) then the Agent shall, subject to giving 10 days' notice to the Borrower, be entitled to effect and maintain, at the Borrower's cost, a policy in respect of all or any of the Indemnitees' interests and in their favour with such insurers and in such form as the Agent considers appropriate.

Insurance Covenants

2.5 The Borrower shall:

- (a) ensure that all legal requirements as to insurance of the Aircraft, any Engine or any Part which may from time to time be imposed by the laws of the State of Registration or any state to, from or over which the Aircraft may be flown, in so far as they affect or concern the operation of the Aircraft, are complied with, and in particular those requirements compliance with which it is necessary to ensure that:
 - (i) the Aircraft is not in danger of detention or forfeiture;
 - (ii) the Insurances remain valid and in full force and effect; and
 - (iii) the interests of the Indemnitees in the Insurances and the Aircraft, Engine or any Part are not thereby prejudiced;
- (b) comply with the terms and conditions of each policy of the Insurances and not do, consent or agree to any act or omission which:
 - (i) invalidates or may invalidate the Insurances; or
 - (ii) renders or may render void or voidable the whole or any part of any of the Insurances; or
 - (iii) brings any particular insured liability within the scope of an exclusion or exception to the Insurances;

- (c) not without the prior written approval of the Agent, take out any insurance or procure any reinsurance in respect of the Aircraft other than those required under this Agreement unless relating solely to liability insurances, hull total loss, business interruption, profit commission and deductible risk;
- (d) on request, provide to the Agent copies of documents evidencing the Insurances;
- (e) on request, provide to the Agent evidence that the Insurance premiums have been paid;
- (f) not make any modification or alteration to the Insurances material and adverse to the interests of any of the Indemnitees;
- (g) be responsible for any deductible under the Insurances;
- (h) if at any time insurance Clause AVN 2000 or its successor is endorsed on the policies of Insurance, ensure that the insurance write back Clauses AVN 2001 and AVN 2002 as applicable (or any equivalent Clauses) are endorsed on the policies of Insurance required to be maintained under this Agreement and give and comply with all representations, warranties and undertakings required by the insurers or reinsurers in connection with such Clauses; and
- (i) provide any other information and assistance in respect of the Insurances which the Agent may from time to time reasonably require.

Renewal of Insurances

- 2.6 The Borrower shall commence renewal procedures at least thirty (30) days prior to expiry of any of the Insurances, and provide to the Agent:
- (a) a written status report of renewal negotiation fourteen (14) days prior to each expiry date;
 - (b) confirmation of completion of renewal prior to each expiry date; and
 - (c) certificates of insurance (and where appropriate certificates of reinsurance), and a reinsurance brokers' letter of undertaking in a form acceptable to the Agent in English, detailing the coverage and confirming the insurers' (and any reinsurers') agreement to the specified insurance requirements of this Agreement within seven (7) days after each renewal date (and, in the case of the reinsurance certificate and reinsurance brokers' letter of undertaking, within fourteen (14) days after each renewal date).

Failure to Insure

- 2.7 If the Borrower fails to maintain the Insurances in compliance with this Agreement, the Borrower shall:
- (a) forthwith ground or cause to be grounded the Aircraft and shall keep or procure that the Aircraft be kept grounded until such time as the Insurances shall again be in full force and effect; and
 - (b) immediately notify the Agent of the non-compliance of the Insurances and provide the Agent with full details of any steps which the Borrower is taking or proposes to take, in order to remedy such non-compliance;

and each of the Finance Parties and the other Indemnitees will be entitled but not bound (without prejudice to any other rights of the Finance Parties under this Agreement):

- (a) to pay the premiums due or to effect and maintain insurances satisfactory to them or otherwise remedy the Borrower's failure in such manner (including, without limitation to effect and maintain an "owner's interest" policy) as they consider appropriate. Any sums so expended by them will become immediately due and payable by the Borrower to the Agent, together with interest thereon at the Default Rate, from the date of expenditure up to the date of reimbursement by the Borrower; and
- (b) at any time while such failure is continuing to require the Aircraft to remain at any airport or to proceed to and remain at any airport designated by it until the failure is remedied to its satisfaction.

Continuing Insurance for Indemnity

- 2.8 The Agent may require the Borrower to effect and to maintain (at no cost to the Finance Parties or the other Indemnities) insurance after the Security Period with respect to its liability under the indemnities in Clause 14.1 for such period as the Agent may reasonably require (but in any event for not more than two years or until completion of the next planned heaviest maintenance event, according to Manufacturer's Maintenance Planning Document (or equivalent check) with respect to the Aircraft (whichever is the earlier to occur)), which provides for each Indemnatee to be named as additional insured. The Borrower's obligation in this Clause 2.8 shall not be affected by the Borrower ceasing to be the Borrower in respect of the Aircraft and/or any of the Indemnitees ceasing to have any interest in respect of the Aircraft.

Application of Insurance Proceeds

- 2.9 As between the Agent and the Borrower:

- (a) all Total Loss Proceeds will be paid to the Security Trustee for distribution by the Agent among the Finance Parties towards satisfaction of the Borrower's obligations under the Finance Documents;
- (b) all insurance proceeds of any damage or loss to the Aircraft, any Engine or any Part occurring during the Security Period not constituting a Total Loss and in excess of the Damage Notification Threshold will be paid to the Security Trustee and applied in payment (or to reimburse the Borrower) for repairs or replacement property, upon the Security Trustee being satisfied that the repairs or replacement have been effected in accordance with this Agreement. Insurance proceeds in amounts below the Damage Notification Threshold may be paid by the insurer directly to the Borrower;
- (c) all insurance proceeds in respect of third party liability will, except to the extent paid by the insurers to the relevant third party, be paid to the Security Trustee to be paid directly in satisfaction of the relevant liability or to the Borrower in reimbursement of any payment so made; and
- (d) notwithstanding Clauses (a), (b) or (c), if at the time of the payment of any such insurance proceeds a Default is continuing, all such proceeds will be paid to or retained by the Security Trustee to be applied toward payment of any amounts which may be or become payable by the Borrower in such order as the Agent sees fit or as the Agent may elect.

ANNEX TO SCHEDULE 9
INSURANCE REQUIREMENTS

1. Types of Insurance

The Insurances required to be maintained are as follows:

- (a) **Hull All Risks** of loss or damage whilst flying and on the ground with respect to the Aircraft on an agreed value basis for an amount not less than the Agreed Value and with a deductible not exceeding one hundred thousand Dollars (\$100,000) each claim;
- (b) **Hull War and Allied Perils**, being such risks excluded from the Hull All Risks Policy to the fullest extent available from the leading international insurance markets, including confiscation and requisition by the State of Registration (but in relation to confiscation and requisition by the State of Registration, only if such cover is generally available at commercially reasonable premiums), for the Agreed Value;
- (c) **All Risks (including War and Allied Risk except when on the ground or in transit other than by air)** property insurance on all Engines and Parts when not installed on the Aircraft on an "agreed value" basis for their full replacement value and including engine test and running risks; and
- (d) **Aircraft Third Party, Property Damage, Passenger, Baggage and General Third Party Legal Liability** for a combined single limit (bodily injury/property damage) of an amount not less than the Minimum Liability Coverage for the time being for any one occurrence each aircraft.

2. Terms of Hull and Spares Insurance

All required hull and spares insurance, so far as it relates to the Aircraft, will:

- (a) **Additional Assureds:** name the Finance Parties and the other Indemnitees as additional assureds for their respective rights and interests;
- (b) **Settlement of Losses:** provide that any loss will be settled with the Security Trustee, and will be payable in Dollars in accordance with the terms of this Agreement, for the account of all interests, except where the insurance payment does not exceed the Damage Notification Threshold, and the Security Trustee has not notified the insurers to the contrary, in which case the loss will be settled with and paid to the Borrower; and
- (c) **50/50 Provision:** if separate hull "all risks" and "war risks" insurances are arranged, include a 50/50 provision in accordance with market practice (AVS 103 is the current market language).

3. Terms of Liability Insurance

All required liability insurances will:

- (a) **Additional Insureds:** include the Finance Parties and each of the other Indemnitees, and their respective successors and assigns and their respective shareholders, subsidiaries, directors, officers, agents, employees and indemnitees, as additional insureds for their respective rights and interests;
- (b) **Severability:** include a severability of interests Clause which provides that the insurance, except for the limit of liability, will operate to give each insured the same protection as if there was a separate policy issued to each insured; and

- (c) **Primary Policy:** contain a provision confirming that the policy is primary without right of contribution, and the liability of the insurers will not be affected by any other insurance of which any Indemnatee may have the benefit so as to reduce the amount payable to the additional insureds under such policies.

4. **Terms of All Insurances**

All Insurances will:

- (a) **Best Industry Practice:** be in accordance with best industry practice of persons operating similar aircraft in similar circumstances;
- (b) **Dollars:** provide cover denominated in Dollars and any other currencies which the Agent may reasonably require in relation to liability insurance;
- (c) **Worldwide:** operate on a worldwide basis subject to such limitations and exclusions as are standard at the date hereof in the London aviation market or as the Agent may agree;
- (d) **Acknowledgement:** acknowledge the insurer is aware (and has seen a copy) of this Agreement;
- (e) **Breach of Warranty:** provide that, in relation to the interests of each of the additional insureds, the Insurances will not be invalidated by any act or omission by the Borrower, or any other person other than the respective additional insureds seeking protection and shall insure the interests of each of the additional insureds regardless of any breach or violation by the Borrower, or any other person other than the respective additional insureds seeking protection of any warranty, declaration or condition, contained in such Insurances;
- (f) **Subrogation:** provide that the insurers will waive any rights of subrogation against the additional insureds. Upon indemnification of an additional insured under the Insurances, the insurers may, with the consent of such additional insured (such consent not to be unreasonably withheld) exercise subrogation rights;
- (g) **Premiums:** provide that the additional insureds will have no obligation or responsibility for the payment of any premiums due (but reserve the right to pay the same should any of them elect so to do) and that the insurers will not exercise any right of set-off or counter-claim in respect of any premium due against the respective interests of the additional insureds other than outstanding premiums relating to the Aircraft, any Engine or Part the subject of the relevant claim;
- (h) **Cancellation/Change:** provide that the Insurances will continue unaltered for the benefit of the additional insureds for at least thirty (30) days after written notice by registered mail or fax of any cancellation, change, event of non-payment of premium or instalment thereof has been sent to the Agent, except in the case of war risks for which 7 days (or such lesser period as is or may be customarily available in respect of war risks or allied perils) will be given, or in the case of war between the five great powers or nuclear peril for which termination is automatic; and
- (i) **Reinsurance:** if reinsurance is required pursuant to paragraph 2 of Schedule 9 such reinsurance will:
 - (i) be on the same terms as the original insurances and will include the provisions of this Annex to Schedule 9;
 - (ii) provide that notwithstanding any bankruptcy, insolvency, liquidation, dissolution or similar proceedings of or affecting the reinsured that the reinsurers' liability will be to make such payments as would have fallen due under the relevant policy of reinsurance if the reinsured had (immediately

before such bankruptcy, insolvency, liquidation, dissolution or similar proceedings) discharged its obligations in full under the original insurance policies in respect of which the then relevant policy of reinsurance has been effected; and

- (iii) contain a "cut-through" Clause in the following form (or otherwise satisfactory to the Agent):

"The Reinsurers and the Reinsured hereby mutually agree that, in the event of any claim arising under the reinsurances in respect of a total loss or other claim, as provided by the Facility Agreement and made between the Finance Parties and the Borrower, such claim is to be paid to the person named as sole loss payee under the primary insurances, the Reinsurers will in lieu of payment to the Reinsured, its successors in interest and assigns pay to the person named as sole loss payee under the primary insurances effected by the Reinsured that portion of any loss due for which the Reinsurers would otherwise be liable to pay the Reinsured (subject to proof of loss), it being understood and agreed that any such payment by the Reinsurers will (to the extent of such payment) fully discharge and release the Reinsurers from any and all further liability in connection therewith; subject to such provisions not contravening any law of the State of Incorporation;"

5 Deductibles

The Borrower shall be responsible for any and all deductibles under the Insurances.

SCHEDULE 10

OPERATIONAL AND MAINTENANCE UNDERTAKINGS

The covenants in this Schedule 10 shall apply in respect of the Borrower in relation to the Aircraft.

1. DEFINITIONS

In this Agreement:

Airworthiness Directive means any and all mandatory airworthiness directives issued by any of the JAA/EASA, the FAA or the State of Design and applicable to the Aircraft, either Engine or any Part;

Approved Maintenance Performer means the maintenance performers with the relevant JAA/EASA and FAA approvals to perform the relevant maintenance in respect of the Aircraft;

Approved Maintenance Programme means a maintenance programme approved by the Aviation Authority of the State of Registration and the Agent encompassing scheduled maintenance (including block maintenance), condition monitored maintenance and on-condition maintenance of Airframe, Engines and Parts of the Aircraft including, but not limited to, servicing, testing, preventive maintenance, repairs, structural inspections, system checks, overhauls, approved modifications, service bulletins, engineering orders, Airworthiness Directives, corrosion control, inspections and treatments;

APU means the auxiliary power unit installed on the Aircraft on the Delivery Date and any replacement auxiliary power unit installed in accordance with this Agreement title to which is transferred to the Borrower in accordance with this Agreement and which is subject to the Mortgage;

Aviation Authority means all and any of the authorities, government departments, committees or agencies which under the laws of the State of Registration shall from time to time:

- (a) have control or supervision of civil aviation in that state; or
- (b) have jurisdiction over the registration, airworthiness or operation of, or other matters relating to, the Aircraft;

Engine Limited Life Parts means any Part in relation to an Engine that has a pre-determined life limit as mandated by the Manufacturer, the Aviation Authority or any other Government Entity, which requires any such Part to be discarded upon reaching such life limit;

Engine Performance Restoration shall mean off-wing engine shop visits including performance restoration or full overhaul of core modules of the relevant Engine, accomplished in accordance with the Engine Manufacturer's maintenance service guide as customised for the Borrower;

Eurocontrol means the European Organisation for the Safety of Air Navigation;

Excluded Country means any country to which the export and/or use of aircraft manufactured by the Airframe Manufacturer or Engine Manufacturer is not permitted under any sanctions, orders or legislation from time to time promulgated by any of the United Nations, the European Union or any Government Entity of the State of Registration or any country having jurisdiction over the Finance Parties, the effect of which prohibits or restricts the export and/or use of aircraft manufactured by the Airframe Manufacturer to such country;

Geneva Convention means the Convention on the International Recognition of Rights in Aircraft signed at Geneva, Switzerland on 19 June 1948, and amended from time to time, but excluding the terms of any adhesion thereto or ratification thereof containing reservations to which the United Kingdom does not accede;

Habitual Base means the United Arab Emirates or any other country or jurisdiction approved from time to time by the Agent pursuant to paragraph 2.1(k) of Schedule 10;

JAA means the European Joint Aviation Authorities, and any successor thereof (including the European Aviation Safety Agency (EASA) to the extent that EASA has assumed certain responsibilities or the authority previously allocated to such European Joint Aviation Authorities);

JAR means the Joint Aviation Requirements of the JAA;

Maintenance Contract means the agreement to be entered into between the Maintenance Contractor and the Borrower (and approved by the Agent) in respect of the maintenance of the Aircraft;

Maintenance Contractor means an Airframe Manufacturer approved maintenance contractor approved by the Agent (such approval not be unreasonably delayed or withheld);

Maintenance Service Plan Contracts means the agreement to be entered into between the relevant MSP Contractor and the Borrower and the Smarts Parts Programme;

Mandatory Orders means all and any Aviation Authority, JAA and FAA mandatory orders and regulations;

MSP Contractor means in respect of the Airframe, an Airframe Manufacturer approved maintenance service plan contractor approved by the Agent (such approval not to be unreasonably withheld or delayed); and in respect of the Engines, an Engine Manufacturer approved maintenance service plan contractor approved by the Agent (such approval not to be unreasonably withheld or delayed);

Smart Parts Programme means the Airframe Manufacturer's Smart Parts Programme.

2 OPERATIONS, REGISTRATION AND TITLE

2.1 Operation of the Aircraft

The Borrower shall, or shall procure that the Operator shall:

- (a) ensure that no person other than the Operator shall operate the Aircraft and that the Operator shall have all the necessary approvals and consents for the operation of the Aircraft (including, without limitation, JAR OPS1 (private / public category) or its equivalent;
- (b) comply with the law for the time being in force in any country or jurisdiction which may for the time being be applicable to the Aircraft (including, without limitation, JAR OPS1 (private / public category) or FAR 135/91 or its equivalent); or, so far as concerns the use and operation of the Aircraft, an owner or operator thereof, and take all reasonable steps to ensure that the Aircraft is not used for any illegal purpose;
- (c) not use the Aircraft in any manner contrary to any recommendation of the Manufacturer of the Aircraft, any Engine or any Part or any recommendation or regulation of the Aviation Authority or for any purpose for which the Aircraft is not designed or reasonably suitable;

- (d) ensure that the crew and engineers employed by the Borrower or the Operator in connection with the operation and maintenance of the Aircraft have the qualifications and hold the licences required by the Aviation Authority and applicable law;
- (e) use the Aircraft solely for the purposes, as approved under the Certificate of Airworthiness issued in the State of Registration, for which the Borrower or the Operator is duly authorised by the Aviation Authority and applicable law;
- (f) not use the Aircraft for the carriage of any goods, materials, livestock or items of cargo which could reasonably be expected to cause damage to the Aircraft or which would not be adequately covered by the Insurances, or any item or substance whose possession or carriage is illegal under any applicable law; and comply with any carriage regulations or restrictions from time to time issued by the Aviation Authority;
- (g) not use the Aircraft for purposes of training, qualifying or re-confirming the status of cockpit personnel, except for the benefit of the Borrower's cockpit personnel, and then only if the use of the Aircraft for such purpose is not disproportionate to the use for such purpose of other aircraft of the same type operated by the Borrower;
- (h) not cause or permit the Aircraft to proceed to, or remain at, any location in an Excluded Country;
- (i) obtain and maintain in full force all certificates, licences, permits and authorisations for the time being required for the use and operation of the Aircraft, and for the making of payments required by, and the compliance by the Borrower with its other obligations under, this Agreement;
- (j) not use, operate, or locate the Aircraft or suffer or permit the Aircraft to be used, operated or located in any manner not covered by the Insurances or in any area excluded from coverage by the Insurances or in any manner which would prejudice the interests of the Indemnitees in the Insurances, the Aircraft, any Engine or any Part;
- (k) ensure that the Habitual Base remains the habitual base of the Aircraft unless the Agent gives its prior written consent to a change thereof (it being understood that the Borrower shall indemnify the Finance Parties for its costs and expenses incurred in relation to any reported change); and
- (l) not operate, maintain, modify, insure or deal with the Aircraft or any Engine or Part in a manner which discriminates against the Aircraft or such Engine or Part, when compared with the manner in which the Borrower operates, maintains, modifies, insures or deals with similar aircraft, engines or parts in the Borrower's fleet.

2.2 Records

The Borrower shall, or shall procure that the Operator shall:

- (a) procure that accurate, complete and current records as required by either JAR OPS1 (private / public category) or FAR 135/91 are kept of all flights made by, and all maintenance carried out on, the Aircraft (including in relation to each Engine and Part subsequently installed, before the installation) are kept in English in such manner as the Aviation Authority may from time to time require, and ensure that they comply with the recommendations of Manufacturer of the Airframe, Engine or any Part such records shall form part of the Aircraft Documents);
- (b) maintain in English (with an appropriate revision service) and in accordance with either JAR OPS1 (private / public category) or FAR 135/91 all Aircraft Documents, records, logs, and other materials required by applicable laws and best practice of major corporate jet operators in respect of the Aircraft;

- (c) retain such Aircraft Documents and other materials at the Borrower's or the Operator's principal place of business, and not permit any other person to have possession of or control over the same without the Agent's prior written consent; and
- (d) accomplish maintenance planning using the Airframe Manufacturer's Computer Aided Maintenance Programme (CAMPS); and
- (e) at the Agent's cost, provide access to the information maintained on CAMPS to the Agent upon request by the Agent.

2.3 Inspection

- (a) Upon giving reasonable notice to the Borrower, the Agent and/or its duly authorised representatives may at any time visit, inspect and survey the Aircraft and the Aircraft Documents provided that, unless a Default shall have occurred and be continuing or unless necessary to verify the rectification of deficiencies shown to require repair on a previous inspection, (i) the Agent shall not carry out such an inspection more frequently than twice a year during the Security Period, (ii) no unreasonable interference or delay will be caused to the Borrower's operation, maintenance and use of the Aircraft, the Agent shall have received written notice from the Borrower prior to the commencement of such Major Check in accordance with paragraph 2(f) of Schedule 8, and (iii) such inspection shall take place at such location or locations as shall be mutually agreed by the Agent and the Borrower.
- (b) The Borrower shall pay to the Agent on demand all reasonable out-of-pocket expenses incurred by the Agent in connection with any such visit, inspection or survey where the Aircraft is found not to be substantially in the condition required by this Agreement or if a Default or an Event of Default shall have occurred and be continuing.
- (c) The Agent will have no duty or obligation to make any such visit, inspection or survey nor shall it have any liability arising out of any such visit, inspection or survey.
- (d) If following any such inspection or survey, repairs are shown to be required and are due in order to comply with the terms of this Agreement, all such repairs shall be made at the Borrower's expense and shall be effected as soon as practicable.

2.4 Air Navigation, Airport and Other Fees and Charges

- (a) The Borrower shall promptly pay or cause to be paid within such period as may be agreed between the Borrower and the relevant Government Entity and/or Eurocontrol all licence, registration, navigation and airport fees and charges assessed and demanded by any Government Entity and/or Eurocontrol relating to the Aircraft or other aircraft operated by the Borrower or associated with the purchase, ownership, delivery, leasing, possession, use, operation, redelivery of or transfer of title to the Aircraft.
- (b) In the event that the Aircraft is detained or arrested in connection with outstanding charges incurred during the Security Period in connection with (i) the furnishing, issue or provision of information, directions and other facilities in connection with the navigation or movement of aircraft (including the control or movement of vehicles in any part of an airport used for the movement of aircraft), or (ii) the landing, parking or taking off of aircraft at airports or for the use of, or services provided at, airports, then, without prejudice to the Finance Parties' rights under Clause 22 (*Events of Default*), the Borrower agrees that it shall notify the Agent and shall promptly discharge such charges and procure that such detention or arrest is lifted. The Finance Parties shall not have any liability whatsoever as a result of any detention or arrest of the Aircraft in respect of any such charges or in relation to such detention or arrest or the lifting thereof.

- (c) Within thirty (30) days of making any payment under Clauses 2.4(a) or 2.4(b) above, the Borrower shall deliver to the Agent evidence reasonably satisfactory to the Agent that the relevant amount has been paid and discharged in full within the period permitted by the relevant Government Entity, Eurocontrol or other body concerned.

2.5 Outgoings

As between the Finance Parties and the Borrower, the Borrower shall be responsible for all costs, expenses, charges and other outgoings related to the operation of the Aircraft, and shall promptly pay:

- (a) all licence and registration fees and other amounts of any nature imposed by any Government Entity with respect to the Aircraft, including without limitation the purchase, ownership (but only to the extent relating to or arising as a result of the leasing, possession, operation, use or maintenance of the Aircraft), delivery, leasing, possession, use, operation, return, sale or other disposition of the Aircraft; and
- (b) all rent, fees, charges and other amounts in respect of any premises where the Aircraft or any Part thereof is located from time to time.

2.6 Registration and Title

The Borrower shall, or shall procure that the Operator shall:

- (a) do all such acts and things as may be necessary to register and maintain the registration of the Aircraft with the Aviation Authority reflecting (to the fullest extent permitted by applicable law) the interests of the Security Trustee as mortgagee and not do or suffer to be done anything which might adversely affect such registration;
- (b) do all acts and things (including, without limitation, making any filing or registration with the Aviation Authority or any other Government Entity or as required to comply with the Geneva Convention where applicable) and execute and deliver all documents (including, without limitation, any amendment of this Agreement) as may from time to time be required by the Agent:
- (i) following any modification of the Aircraft, any Engine or any Part or the permanent replacement of any Engine or Part in accordance with this Agreement, so as to ensure that the rights of the Security Trustee as mortgagee of the Aircraft and under this Agreement apply with the same effect as before; or
- (ii) to establish, maintain, preserve, perfect and protect the rights of the Security Trustee as mortgagee of the Aircraft, in particular (without limitation), if in the State of Registration there shall be, or shall be brought into force, any legislative or other provisions giving effect to the Geneva Convention or otherwise relating to recognition of rights in aircraft, the Borrower shall at its own cost forthwith do all such acts as may be necessary to perfect recognition of the rights of the Security Trustee as mortgagee of the aircraft and the rights of the Finance Parties under the Finance Documents in accordance with such legislative or other provisions;
- (c) if the state and/or any Regional Economic Integration Organisation and/or any territorial unit in which the Borrower is situated has, or at any time brings into force, any legislative or other provisions giving effect to the Convention and/or the Protocol and/or becomes a Contracting State, the Borrower at its own cost and expense shall from time to time, do or cause to be done any and all acts and things which may be required or desirable (in the sole discretion of the Security Trustee) to ensure that the Security Trustee and the other Finance Parties have or obtain the fullest (potential or otherwise) benefit(s) and advantage(s) available under the Convention and/or the Protocol in connection with the Aircraft and any Engine, including (but not limited to):

- (A) any matters connected with registering, perfecting, preserving and/or enhancing any international interest(s) vested in the Security Trustee with respect to the Aircraft and/or any Engine and constituted by this Agreement;
- (B) constituting any international interest(s) to be vested in the Security Trustee with respect to the Aircraft and/or any Engine in connection with this Agreement;
- (C) entry into agreements (subordination or otherwise) to protect and/or enhance and/or improve the priority of any international interest(s) referred to in the foregoing paragraph (i) and/or (ii); and
- (D) excluding in writing the application of any provisions of the Convention and/or Protocol that the Security Trustee may deem (acting reasonably) desirable in connection with the foregoing.

For the purposes of this paragraph 2.6 of Schedule 10 the place in which the **Borrower is situated** shall be construed and determined in accordance with the provisions of Article 4 (and Article 68) of the Consolidated Text and following terms and/or expressions have the following meanings:

Consolidated Text means the Consolidated Text of the Convention and the Protocol attached to Resolution No. 1 of the Final Act of the Diplomatic Conference to adopt the Convention and the Protocol held under the auspices of ICAO and UNIDROIT at Cape Town from 29 October to 16 November 2001;

Convention means the Convention on International Interests in Mobile Equipment signed in Cape Town on 16 November 2001;

ICAO means the International Civil Aviation Organisation;

Protocol means the Protocol to the Convention on Matters Specific to Aircraft Equipment;

UNIDROIT means the International Institute for the Unification of Private Law; and

the terms: "assignment" (for the purposes of this Clause 2.6 of Schedule 10 only), "Contracting State", "international interest", "International Registry", "Regional Economic Integration Organisation", "situated in", "State", and "territorial unit" shall have the meaning given to them in (or, as appropriate, shall be construed in accordance with) the Consolidated Text,

- (d) not without the prior written consent of the Agent change the State of Registration;
- (e) not do or knowingly permit to be done or omit or knowingly permit to be omitted to be done any act or thing which might reasonably be expected to jeopardise the rights of the Security Trustee as mortgagee of the Aircraft or of the Finance Parties under any Finance Document or the Finance Parties and the other Indemnities as additional insureds, contract parties or loss payees under the Insurances;
- (f) on all occasions when the ownership of the Aircraft, any Engine or any Part is relevant, make clear to third parties that title is held by the Borrower subject to a mortgage in favour of the Security Trustee;
- (g) not at any time (i) represent or hold out any Finance Party as carrying goods or passengers on the Aircraft or as being in any way connected or associated with any operation or carriage (whether for hire or reward or gratuitously) which may be undertaken by the Borrower; or (ii) pledge the credit of any Finance Party;

- (h) ensure that as soon as practicable following the Delivery Date there is always affixed, and not removed or in any way obscured, a fireproof plate (having dimensions of not less than 10 cm. x 7 cm.) in a reasonably prominent position on each Engine and in the cockpit of the Aircraft adjacent to the certificate of airworthiness stating:
- (i) "THIS [AIRCRAFT/ENGINE] IS OWNED BY MB AVIATION LIMITED AND IS SUBJECT TO A MORTGAGE IN FAVOUR OF THE ROYAL BANK OF SCOTLAND PLC AND IS OPERATED BY [ELITE JETS FZCO] [MB AVIATION LIMITED] AND MAY NOT BE OPERATED BY ANY OTHER PERSON WITHOUT THE PRIOR WRITTEN CONSENT OF THE ROYAL BANK OF SCOTLAND PLC";
- (j) not do or permit to be done anything which may reasonably be expected to expose the Aircraft, any Engine or any Part to penalty, forfeiture, impounding, detention, appropriation, damage or destruction and (without prejudice to the foregoing), if any such penalty, forfeiture, impounding, detention or appropriation, damage or destruction occurs, give the Agent notice thereof and use best endeavours to procure the immediate release of the Aircraft, any Engine or the Part, as the case may be;
- (k) not abandon the Aircraft, the Engine or any Part; and
- (l) not attempt, or hold itself out as having any power, to sell, lease or otherwise dispose of the Aircraft, any Engine or any Part.

2.7 No Security

The Borrower shall, and shall procure that the Operator shall, at all times during the Security Period:

- (a) not create or permit to exist any Security Interest (other than Permitted Liens or any Security Interest attributable to the acts or omissions of a Finance Party) upon the Aircraft, any Engine, any Part or any Insurances;
- (b) promptly at the Borrower's expense take or procure the taking of such action as may be necessary to discharge any such Security Interest if the same shall exist at any time; and
- (c) pay and discharge or cause to be paid and discharged when due and payable or make adequate provision by way of security or otherwise for all debts, damages, claims and liabilities which give or might give rise to a Security Interest (other than Permitted Liens or any Security Interest attributable to the acts or omissions of a Finance Party) over or affecting the Aircraft, any Engine or any Part.

2.8 Maintenance Contracts

- (a) The Borrower shall not enter into any contract for the maintenance or repair of the Aircraft which will grant, or may have the effect of granting, a general lien or similar arrangement over the Aircraft or Engine or Part, to the maintenance or repair contractor or any other person.
- (b) The Borrower shall procure that the Engines and the APU are maintained in accordance with the relevant Maintenance Service Plan Contract (which in any event shall be of a standard acceptable to the Agent acting reasonably).
- (c) The Borrower shall procure that the Airframe is enrolled in either (i) the Smart Parts Programme at a level of coverage acceptable to the Agent acting reasonably and in good faith, or (ii) an equivalent programme provided by a third party approved by the Agent, such approval not to be unreasonably withheld.
- (d) The Borrower shall promptly pay all amounts as the fall due and payable under each Maintenance Service Plan Contract and shall, on a yearly basis, provide the Agent

with a statement from relevant MSP Contractor in respect of such Maintenance Service Plan Contract, Smart Parts Programme and amounts paid by the Borrower thereunder.

3. LEASING

Possession

- 3.1 The Borrower shall not, without the prior written consent of the Agent, sub-lease or part with possession of the Aircraft, the Engines or any Part, except that the Borrower may part with possession:
- (a) with respect to the Aircraft, the Engines or any Part, to the relevant Manufacturers for testing or similar purposes or to the Approved Maintenance Performer for service, repair, maintenance or overhaul work, or alterations, modifications or additions to the extent required or permitted by this Agreement;
 - (b) with respect to an Engine or Part, as expressly permitted by this Agreement; and
 - (c) with respect to the Aircraft, the Engines or any Part, to the Operator in accordance with the provisions of the Operations Agreement and the Tripartite Agreement.

Wet leasing

- 3.2 The Borrower undertakes to the Finance Parties that it shall not permit the Operator to charter the Aircraft unless such chartering is effected strictly in accordance with the terms of the Tripartite Agreement.

4. MAINTENANCE AND REPAIR

Maintenance and Repair

- 4.1 The Borrower shall, or shall procure that the Operator shall, at all times during the Security Period:
- (a) keep the Aircraft airworthy in all respects and in good repair and condition;
 - (b) not change, to a material extent, the Approved Maintenance Programme or the schedule of the Approved Maintenance Programme without written notification being sent to the Agent;
 - (c) provide the Agent with a copy of all substantial changes to the Approved Maintenance Programme and, upon the Agent's request up to once per year, provide to the Agent a certified true copy of the Approved Maintenance Programme;
 - (d) maintain the Aircraft in accordance with the Approved Maintenance Programme through the Approved Maintenance Performer and perform (at the respective intervals provided in the Approved Maintenance Programme) all Major Checks;
 - (e) maintain the Aircraft in accordance with the requirements of either JAR OPS1 (private / public category) or FAR 135/91 and the Aviation Authority and comply with any other rules and regulations of the JAA/EASA and the FAA and the Aviation Authority which are of the standard of maintenance required by either JAR OPS1 (private / public category) or FAR 135/91 and in at least the same manner and with at least the same care as is the case with respect to similar aircraft owned or otherwise operated by the Borrower or the Operator (taken as a whole) including, without limitation, maintenance scheduling, modification status and technical condition, and all maintenance to the Airframe, any Engine or any Part required to maintain all warranties, performance guarantees or service life policies in full force and effect;

- (f) comply at the highest level possible with all Mandatory Orders and all Airworthiness Directives applicable to the Aircraft, any Engine or Part, having a compliance date during the Security Period;
- (g) comply with all applicable laws and regulations of the JAA and the FAA and the Aviation Authority and other aviation authorities with jurisdiction over the Borrower or the Aircraft, any Engine or Part, regardless of upon whom such requirements are imposed, and which relate to the maintenance, condition, use or operation of the Aircraft or require any modification or alteration to the Aircraft, any Engine or Part;
- (h) maintain in good standing a current Certificate of Airworthiness (in the appropriate category for the nature of the operations of the Aircraft) for the Aircraft issued by the Aviation Authority except where the Aircraft is undergoing maintenance, modification or repair required or permitted by this Agreement, and will from time to time provide to the Agent a copy within ten (10) days of the Agent's request;
- (i) if required by the Aviation Authority, maintain a current certification as to maintenance issued by or on behalf of the Aviation Authority in respect of the Aircraft and will from time to time provide to the Agent a copy within ten (10) days of the Agent's request; and
- (j) not amend, vary or terminate the Operations Agreement, the Maintenance Service Plan Contracts, Smart Part Contract or the Maintenance Contract without the prior written consent of the Agent.

5. INTERCHANGE AND REPLACEMENT OF ENGINES AND PARTS

5.1 Permanent Replacement of Engines and Parts

Subject to paragraph 5.2 of Schedule 10, the Borrower shall promptly procure the replacement of any Engine (an **Original Engine**) which has become time-, cycle- or calendar expired, or has suffered an Engine Total Loss with an engine complying with the following conditions:

- (a) it is of the same manufacturer and model as the Original Engine (or, at the Borrower's option, an improved model), it is certified in accordance with either JAA Form 1 or FAA 8130-3 for installation on the Aircraft, it is suitable for installation and use on the Airframe without impairing the value or utility of the Airframe and it is compatible with the remaining installed Engine, it has equivalent interchangeable modification status, equivalent or lower time elapsed since Engine Performance Restoration, equivalent or more time remaining to the expiry of each of the Engine Life Limited Parts and equivalent remaining warranty status as the Original Engine, and it is of an equivalent or greater value and utility as the Original Engine;
- (b) it has become and remains the property of the Borrower free from any Security Interest (except Permitted Liens) and is subject to the Mortgage, and on installation on the Aircraft will without further act be subject to this Agreement; and the Borrower shall supply to the Agent all such title documents as the Agent may require to evidence and perfect the same; and
- (c) the Borrower has full details of its source and maintenance records with back to birth traceability.
- (d) the Borrower shall promptly procure the replacement of any Part (an **Original Part**) which has become time-, cycle- or calendar-expired, lost, stolen, seized, confiscated, destroyed, damaged beyond repair, unserviceable or permanently rendered unfit for use, with a part complying with the following conditions:
 - (i) it is of the same manufacturer and model as the Original Part (or, at the Borrower's option, an improved model), it is certified in accordance with

either JAA Form 1 or FAA 8130-3 for installation on the Aircraft, it is in as good operating condition as the Original Part, it has equivalent interchangeable modification status and equivalent or more hours available until the next scheduled check, inspection, overhaul and shop visit as the Original Part and it is of an equivalent or greater value and utility as the Original Part;

- (ii) it has become and remains the property of the Borrower free from any Security Interest (except Permitted Liens) and subject to the Mortgage and on installation on the Aircraft will without further act be subject to this Agreement; and the Borrower shall supply to the Agent all such title documents as the Agent may require to evidence and perfect the same; and
- (iii) the Borrower has full details of its source and maintenance records with back to birth traceability.

5.2 Removal and Interchange of Engines

The Borrower will, and will procure that the Operator will:

- (a) ensure that no Engine is removed from the Airframe unless it is promptly replaced on the Airframe by an engine of the same model as, or an improved or more advanced version of such Engine and the Borrower has full details as to the source and maintenance records of the replacement engine;
- (b) ensure that any Engine which is not installed on the Aircraft if unserviceable is without delay placed into the Approved Maintenance Programme for progressive repair with such repairs to be completed within sixty (60) days from the date of removal of that Engine from the Aircraft;
- (c) ensure that any Engine which is not installed on the Aircraft (or an aircraft permitted by paragraph (e)) is insured and kept free from any Security Interest (other than Permitted Liens) and properly and safely stored;
- (d) from time to time, on request by the Agent, procure that any person to whom possession of an Engine is given, acknowledges in writing to the Agent, in form and substance satisfactory to the Agent, that it will respect the interests of the Borrower as owner and the Security Trustee as mortgagee of such Engine and will not seek to exercise any rights whatsoever in relation to such Engine; and
- (e) be permitted, if no Event of Default has occurred and is continuing, to install any Engine on an aircraft operated by the Borrower, provided that neither (i) the provisions of any applicable law nor (ii) the terms of any lease or other agreement or Security Interest to which such aircraft or engine is subject, prohibit such installation or will have the effect at any time of divesting or impairing the title and interests of the Borrower as owner and the Security Trustee as mortgagee of such Engine.

5.3 Removal and Interchange of Parts

The Borrower will, and will procure that the Operator will:

- (a) ensure that no Part is at any time removed from the Aircraft unless it is promptly replaced by a part as expressly permitted by this Agreement;
- (b) ensure that any Part which is not installed on the Aircraft is properly and safely stored and insured, and kept free from Security Interest (other than Permitted Liens); and
- (c) be permitted, if no Event of Default has occurred and is continuing, to install any Part on an aircraft operated by the Borrower, provided that paragraph 5.2(e) of Schedule 10 would be complied with in respect of such Part if it were an Engine.

5.4 Temporary Installation of Engines and Parts

Notwithstanding the provisions of paragraphs 5.2 and 5.3 of Schedule 10, the Borrower will be permitted, if no Event of Default has occurred and is continuing, to install, or permit the installation of, any engine or part on the Aircraft by way of temporary replacement if:

- (a) there is not available to the Borrower or at the time and in the place that engine or part is required to be installed on the Aircraft, a replacement engine or, as the case may be, part complying with the requirements of paragraph 5.2 of Schedule 10 and/or, as the case may be, paragraph 5.3 of Schedule 10;
- (b) it would result in an unreasonable disruption of the operation of the Aircraft and/or the business of the Borrower, to ground the Aircraft until an engine or part, as the case may be, complying with the requirements of paragraph 5.2 of Schedule 10 and/or, as the case may be, paragraph 5.3 of Schedule 10, becomes available for installation on the Aircraft; and
- (c) as soon as practicable after installation of the same on the Aircraft but, in any event, no later than the earlier of (i) the Termination Date, or (ii) ninety (90) days after installation of the same on the Aircraft, the Borrower, removes any such engine or part and replaces it with the Engine or Part replaced by it or by an engine or part, as the case may be, complying with paragraph 5.2 of Schedule 10 and/or as the case may be paragraph 5.3 of Schedule 10 above.

5.5 Pooling of Engines and Parts

Without prejudice to its rights pursuant to paragraphs 5.2(e) and 5.3(c) of Schedule 10, the Borrower shall not without the prior written consent of the Agent permit or enter into any agreement or arrangement for the pooling or interchange of any Engine or Part with any other person.

5.6 Equipment Changes

- (a) The Borrower shall and shall procure that the Operator shall not make any modification or addition to the Aircraft (each an Equipment Change), except for an Equipment Change which:
 - (i) is expressly permitted by this Agreement; or
 - (ii) does not diminish the value, utility, condition, or airworthiness of the Aircraft and either (aa) has a cost of less than \$50,000 or (bb) has the prior written approval of the Agent; or
 - (iii) arises due to the requirements of the Mandatory Order of the Aviation Authority or the JAA or an Airworthiness Directive by or otherwise constitutes an obligation of the Borrower under this Agreement;
 - (iv) so long as no Event of Default has occurred and is continuing, the Borrower may remove any Equipment Change to the extent it is severable from the Aircraft and (i) such Equipment Change is not required by the a Mandatory Order of Aviation Authority or the JAA or an Airworthiness Directive (ii) such severance will not adversely affect the value, utility, condition or airworthiness of the Aircraft.
 - (v) title to all Engines and Parts installed on the Aircraft whether by way of replacement, as the result of an Equipment Change or otherwise (except those installed pursuant to Clause 5.4 or any Equipment Change to the extent they are severable from the Aircraft and (i) such Equipment Change is not required by a Mandatory Order of the Aviation Authority or the JAA or the CAA and (ii) such severance will not adversely affect the value, utility,

condition or airworthiness of the Aircraft) will on installation, without further act, vest in the Borrower subject to this Agreement free and clear of all Security Interests (other than Permitted Liens and become subject to the Mortgage).

- (b) Any Engine or Part at any time removed from the Aircraft will remain subject to the Mortgage until a replacement has been made in accordance with this Agreement and until title in that replacement has passed, according to applicable laws, to the Borrower subject to this Agreement free of all Security Interests (other than Permitted Liens and become subject to the Mortgage).

SCHEDULE 11

MANDATORY COST FORMULAE

1. The Mandatory Cost is an addition to the interest rate to compensate Lenders for the cost of compliance with (a) the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions) or (b) the requirements of the European Central Bank.
2. On the first day of each Interest Period (or as soon as possible thereafter) the Agent shall calculate, as a percentage rate, a rate (the Additional Cost Rate) for each Lender, in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Agent as a weighted average of the Lenders' Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the Loan) and will be expressed as a percentage rate per annum.
3. The Additional Cost Rate for any Lender lending from a Facility Office in a Participating Member State will be the percentage notified by that Lender to the Agent. This percentage will be certified by that Lender in its notice to the Agent to be its reasonable determination of the cost (expressed as a percentage of that Lender's participation in all Loans made from that Facility Office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from that Facility Office.
4. The Additional Cost Rate for any Lender lending from a Facility Office in the United Kingdom will be calculated by the Agent as follows:

- (a) in relation to the Loan in any currency other than sterling:

$$\frac{Ax0.01}{300} \text{ per cent. per annum}$$

Where A is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Agent as being the average of the most recent rates of charge supplied by the Reference Banks to the Agent pursuant to paragraph 6 and expressed in pounds per £1,000,000.

5. For the purposes of this Schedule:
 - (a) **Eligible Liabilities** and **Special Deposits** have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;
 - (b) **Fees Rules** means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;
 - (c) **Fee Tariffs** means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and
 - (d) **Tariff Base** has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.
6. If requested by the Agent, each Reference Bank shall, as soon as practicable after publication by the Financial Services Authority, supply to the Agent, the rate of charge payable by that Reference Bank to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by that Reference Bank as being the average of the Fee Tariffs applicable to that Reference

Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of that Reference Bank.

7. Each Lender shall supply any information required by the Agent for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information on or prior to the date on which it becomes a Lender:

- (a) the jurisdiction of its Facility Office; and
- (b) any other information that the Agent may reasonably require for such purpose.

Each Lender shall promptly notify the Agent of any change to the information provided by it pursuant to this paragraph.

8. The rates of charge of each Reference Bank for the purpose of A above shall be determined by the Agent based upon the information supplied to it pursuant to paragraphs 6 and 7 and on the assumption that, unless a Lender notifies the Agent to the contrary, each Lender's obligations in relation to cash ratio deposits and Special Deposits are the same as those of a typical bank from its jurisdiction of incorporation with a Facility Office in the same jurisdiction as its Facility Office.
9. The Agent shall have no liability to any person if such determination results in an Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by any Lender or Reference Bank pursuant to paragraphs 3, 6 and 7 is true and correct in all respects.
10. The Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and each Reference Bank pursuant to paragraphs 3, 6 and 7.
11. Any determination by the Agent pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.
12. The Agent may from time to time, after consultation with the Borrower and the Lenders, determine and notify to all Parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties.

SCHEDULE 12
DESCRIPTION OF THE AIRCRAFT

Airframe

Manufacturer:	Bombardier Inc.
Model:	Challenger 604
Serial Number:	5520

Engines

Manufacturer:	General Electric
Model:	CF34-3B
Serial Numbers:	873241 and 873240

APU

Manufacturer:	Honeywell
Model:	P-718
Serial Number:	718

SCHEDULE 13
TRIPARTITE AGREEMENT

EXECUTION PAGE

SIGNED on behalf of:
MB AVIATION LIMITED
(as Borrower)

Name *Mohammed Al Barwan*
Title



SIGNED on behalf of:
THE ROYAL BANK OF SCOTLAND PLC
(as Original Lender)

Name
Title

SIGNED on behalf of:
THE ROYAL BANK OF SCOTLAND PLC
(as Agent)

Name
Title

SIGNED on behalf of:
THE ROYAL BANK OF SCOTLAND PLC
(as Security Trustee)

Name
Title

EXECUTION PAGE

SIGNED on behalf of:
MB AVIATION LIMITED
(as Borrower)

Name
Title

SIGNED on behalf of:
THE ROYAL BANK OF SCOTLAND PLC
(as Original Lender)

Name
Title

SIGNED on behalf of:
THE ROYAL BANK OF SCOTLAND PLC
(as Agent)

Name
Title

SIGNED on behalf of:
THE ROYAL BANK OF SCOTLAND PLC
(as Security Trustee)

Name
Title

}
}
}
}
} G. C. 
}
} GAVIN C. NEILL
} MANAGER, AEROSPACE & DEFENCE
} (A DULY AUTHORIZED ATTORNEY)

}
}
}
}
} G. C. 
}
} GAVIN C. NEILL
} MANAGER, AEROSPACE & DEFENCE
} (A DULY AUTHORIZED ATTORNEY)

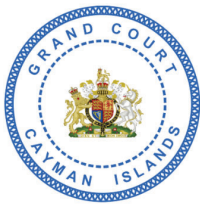
}
}
}
}
} G. C. 
}
} GAVIN C. NEILL
} MANAGER, AEROSPACE & DEFENCE
} (A DULY AUTHORIZED ATTORNEY)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 194 OF 2007

**IN THE MATTER OF AN EQUITABLE MORTGAGE BETWEEN THE ROYAL BANK OF SCOTLAND PLC
AND MOHAMED ALI MOHAMED AL BARWANI**

AND IN THE MATTER OF ORDER 50, RULE 11 OF THE GRAND COURT RULES



CONSENT ORDER

UPON the Stop Notice filed on or about 8 May 2007 by The Royal Bank of Scotland plc in respect of one ordinary share in MB Aviation Limited registered in the name of Mohamed Ali Mohamed Al Barwani ("Stop Notice");

AND UPON READING the Affidavit of Alex Davies sworn on 7th July 2026 and the exhibits thereto;

AND UPON READING the Deed of Release dated 20 January 2014;

AND UPON the equitable mortgage to which the Stop Notice relates having been released and discharged;

AND UPON READING the letter from NatWest Markets plc (formerly The Royal Bank of Scotland plc), dated 6th July 2026, confirming that it has reviewed the proposed Affidavit of Alex Davies and this Consent Order and consenting to the discharge of the Stop Notice pursuant to Order 50, Rule 14(4)(a) of the Grand Court Rules;

AND UPON the Court being satisfied that it is appropriate to make this Order administratively,

BY CONSENT IT IS ORDERED THAT:

1. The Stop Notice filed on 8 May 2007 by The Royal Bank of Scotland plc pursuant to Order 50, Rule 11 of the Grand Court Rules in respect of one ordinary share in MB Aviation Limited registered in the name of Mohamed Ali Mohamed Al Barwani be discharged.

2. The Clerk of the Court shall mark the Stop Notice as discharged.
3. MB Aviation Limited and its registered office may rely upon this Order and shall take all steps necessary to give effect to it.
4. There shall be no order as to costs.

Dated this 7 day of July 2026
Filed this 7 day of July 2026

Signed by: Deborah Lee Shung
Signed at: 2026-07-07 14:49:14 -04:00
Reason: Approved



JUDGE OF THE GRAND COURT*
DEPUTY CLERK OF COURT

CONSENT AS TO CONTENT AND FORM

J. Miller
FOR NATWEST MARKETS PLC
(Formerly The Royal Bank of Scotland plc)

HSM CHAMBERS
(as attorneys for Mohamed Ali Mohamed Al
Barwani)

NAME: JANETTE MILLER

TITLE: DIRECTOR CIB STRUCTURED
FINANCE, PORTFOLIO MANAGEMENT

Signature witnessed by:

N. Thompson
NOTARY PUBLIC
Notary Public London, England
(Nicholas A. Thompson)
6 July 2026

