

IN THE CIRCUIT COURT FOR THE 11TH
JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

CIRCUIT COURT CIVIL DIVISION

BANK OF AMERICA, N.A.,

CASE NO. 13-08545 CA 23

Plaintiff,

v.

UGO COLOMBO, an individual and
UC CHALLENGER, LLC, a Florida
limited liability company,

Defendants.

-AND-

UGO COLOMBO and CMC GROUP, INC.,

Third-Party Plaintiffs/Counterdefendants

v.

DACRA DEVELOPMENT CORP., CL36
LEASING LLC and CRAIG ROBINS,

Third-Party Defendants

-AND-

CL36 Leasing, LLC,

Counterplaintiff and Third-Party Plaintiff,

v.

UGO COLOMBO,

Counterdefendant, and

ARTHUR J. MURPHY and
MASSIMO VALENTINI,

Third-Party Defendants.

**ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIM AND THIRD-
PARTY COMPLAINT**

Third-party defendants, Dacra Development Corp. (“Dacra”), CL36 Leasing LLC (“CL36”), and Craig Robins, respond to the Second Amended Third Party Complaint (the “Complaint”) filed by third-party plaintiffs Ugo Colombo (“Colombo”) and CMC Group, Inc. (“CMC”), as follows:

1. Third-party defendants admit the allegations in paragraph 1.
2. Third-party defendants admit the allegations in paragraph 2.
3. Third-party defendants admit the allegations in paragraph 3.
4. Third-party defendants admit the allegations in paragraph 4.
5. Third-party defendants admit the allegations in paragraph 5.
6. In response to paragraph 6, third-party plaintiffs admit that the Court has personal jurisdiction over them. Third-party plaintiffs otherwise deny the allegations in paragraph 6.
7. In response to paragraph 7, third-party defendants admit that this Court has jurisdiction over the subject matter of this action. Third-party defendants further admit that this action purports to seek in excess of \$15,000, exclusive of interest, court costs and attorneys’ fees, and that it is a third-party claim related to the claims of BOA against

Colombo. Third-party defendants deny that third-party plaintiffs are entitled to any of the relief sought.

8. In response to paragraph 8, Third-party defendants admit that venue is proper because the parties reside and conduct business in Miami-Dade County, Florida. Third-party defendants otherwise deny the allegations in paragraph 8.

9. In response to paragraph 9, Third-party defendants admit that UC Challenger, LLC owned the "Aircraft." Third-party defendants otherwise deny the allegations in paragraph 9.

10. Third-party defendants admit the allegations in the first sentence of paragraph 10. Third-party defendants have insufficient knowledge to admit or deny the remaining allegations in paragraph 10 and demand strict proof thereof.

11. Third-party defendants deny the allegations in paragraph 11.

12. Third-party defendants deny the allegations in paragraph 12.

13. In response to paragraph 13, third-party defendants admit that financial duties and expectations are set forth in written contracts between the parties to those contracts; that in or about 2007 Colombo entered into a written contract with CL36 and sold the latter 50% of his interest in UC Challenger, LLC; that Robins owns 99% of CL36, that CL36 Managing Member, Inc. owns 1% of CL36, and that Robins owns 100% of CL36 Managing Members, Inc., and that Robins is the President of that company; otherwise denied.

14. Third-party defendants deny the allegations in the first sentence of paragraph 14, except that Robins owns Dacra and is its president and director.

15. In response to paragraph 15, third-party defendants admit that true and correct copies of the Operating Agreement, Management Agreement, Dacra lease, and Side Agreement are attached as Exhibits A through D respectively. Third-party defendants deny the remaining allegations in paragraph 15, including third-party plaintiffs' characterizations of Exhibits A through D, and further state that those documents speak for themselves.

16. Third-party defendants admit the allegations in paragraph 16.

17. Third-party defendants admit that a true and correct copy of the CL36 Loan from BOA is attached as Exhibit G. Third-party defendants further admit that the CL36 Loan reduced the original Colombo Loan to \$9.25 million. Third-party defendants otherwise deny the allegations in paragraph 17.

18. Third-party defendants admit the allegations in paragraph 18.

19. Third-party defendants admit the allegations in paragraph 19.

20. Third-party defendants admit the authenticity of the documents attached as Exhibit J to paragraph 20 and that the obligation of those documents were secured by the "Aircraft Mortgage." Third party defendants have insufficient knowledge to admit or deny the remaining allegations in paragraph 20 and demand strict proof thereof.

21. Third-party defendants deny the allegations in paragraph 21.

22. Third-party defendants deny the allegations in paragraph 22.

23. Third-party defendants deny the allegations in paragraph 23.
24. Third-party defendants deny the allegations in paragraph 24.
25. Third-party defendants deny the allegations in paragraph 25.
26. Third-party defendants deny the allegations in paragraph 26.
27. In response to paragraph 27, third-party defendants admit that Turnberry filed a lawsuit against Dacra and CL36. Third-party defendants otherwise deny the allegations in paragraph 27.
28. Third-party defendants deny the allegations in paragraph 28.
29. Third-party defendants deny the allegations in paragraph 29.
30. Third-party defendants deny the allegations in paragraph 30.
31. Third-party defendants deny the allegations in paragraph 31.
32. Third-party defendants deny the allegations in paragraph 32, except admit that Exhibit K was sent.
33. Third-party defendants deny the allegations in paragraph 33.
34. Third-party defendants deny the allegations in paragraph 34.
35. Third-party defendants deny the allegations in paragraph 35.
36. Third-party defendants deny the allegations in paragraph 36.
37. Third-party defendants deny the allegations in paragraph 37.
38. Third-party defendants deny the allegations in paragraph 38, including third-party plaintiffs' characterizations of the BOA Complaint. Third-party defendants

further state that the BOA Complaint speaks for itself in the context of the entire document.

39. Third-party defendants deny the allegations in paragraph 39. Third-party defendants have insufficient knowledge of Exhibit N and demand strict proof thereof.

40. Third-party defendants deny the allegations in paragraph 40.

41. Third-party defendants deny the allegations in paragraph 41.

42. Third-party defendants have insufficient knowledge to admit or deny the allegations in paragraph 42 and demand strict proof thereof.

43. In response to paragraph 43, third-party defendants incorporate and reallege their responses to paragraphs 1 through 42 above as if fully set forth herein.

44. Third-party defendants deny the allegations in paragraph 44.

45. Third-party defendants admit the allegations in the first sentence of paragraph 45. Third-party defendants deny the allegations in the second sentence of paragraph 45.

46. Third-party defendants admit the allegations in paragraph 46.

47. Third-party defendants deny the allegations in paragraph 47.

48. Third-party defendants deny the allegations in paragraph 48.

49. Third-party defendants deny the allegations in paragraph 49.

In response to the unnumbered "Wherefore" clause after paragraph 49, third-party defendants deny that Colombo is entitled to any of the relief sought.

50. In response to paragraph 50, third-party defendants incorporate and reallege their responses to paragraphs 1 through 42 above as if fully set forth herein.

51. Third-party defendants deny the allegations in paragraph 51.

52. Third-party defendants deny the allegations in paragraph 52.

53. Third-party defendants deny the allegations in paragraph 53.

In response to the unnumbered "Wherefore" clause after paragraph 53, third-party defendants deny that Colombo is entitled to any of the relief sought.

54. In response to paragraph 54, third-party defendants incorporate and reallege their responses to paragraphs 1 through 42 above as if fully set forth herein.

55. Third-party defendants admit the allegations in paragraph 55.

56. Third-party defendants deny the allegations in paragraph 56.

57. In response to the first sentence of paragraph 57, third-party defendants admit that Colombo executed the Amended Colombo Loan with BOA. In response to the second sentence of paragraph 57, third-party defendants admit that CL36 entered into the CL36 Loan with BOA. Third-party defendants otherwise deny the allegations in the second sentence of paragraph 57. Third-party defendants admit the allegations in the third sentence of paragraph 57.

58. Third-party defendants deny the allegations in paragraph 58.

59. Third-party defendants deny the allegations in paragraph 59.

60. Third-party defendants deny the allegations in paragraph 60.

61. Third-party defendants have insufficient knowledge to admit or deny the allegations in paragraph 61 and demand strict proof thereof.

62. Third-party defendants deny the allegations in paragraph 62.

63. Third-party defendants have insufficient knowledge to admit or deny the allegations in paragraph 63 and demand strict proof thereof.

64. Third-party defendants deny the allegations in paragraph 64.

65. Third-party defendants deny the allegations in paragraph 65.

66. Third-party defendants deny the allegations in paragraph 66.

67. Third-party defendants deny the allegations in paragraph 67.

68. Third-party defendants deny the allegations in paragraph 68.

69. Third-party defendants deny the allegations in paragraph 69.

70. Third-party defendants deny the allegations in paragraph 70.

In response to the unnumbered "Wherefore" clause after paragraph 70, third-party defendants deny that Colombo is entitled to any of the relief sought.

71. In response to paragraph 71, third-party defendants incorporate and reallege their responses to paragraphs 1 through 42 above as if fully set forth herein.

72. In response to paragraph 72, third-party defendants admit that CMC and Dacra are parties to the Management Agreement and are jointly referred to as "Operator" therein. Third-party defendants otherwise deny the allegations in paragraph 72, including third-party plaintiffs' characterization of the Management Agreement, and further state that the Management Agreement speaks for itself in the context of the entire agreement.

73. Third-party defendants deny the allegations in paragraph 73.

74. Third-party defendants deny the allegations in paragraph 74.

75. Third-party defendants deny the allegations in paragraph 75.

76. Third-party defendants deny the allegations in paragraph 76.

In response to the unnumbered "Wherefore" clause after paragraph 76, third-party defendants deny that Colombo is entitled to any of the relief sought.

77. In response to paragraph 77, third-party defendants incorporate and reallege their responses to paragraphs 1 through 42 above as if fully set forth herein.

78. In response to paragraph 78, third-party defendants admit that CMC and Dacra are parties to the Management Agreement and are jointly referred to as "Operator" therein. Third-party defendants otherwise deny the allegations in paragraph 78, including third-party plaintiffs' characterization of the Management Agreement, and further state that the Management Agreement speaks for itself in the context of the entire agreement.

79. Third-party defendants deny the allegations in paragraph 79.

80. Third-party defendants deny the allegations in paragraph 80.

81. Third-party defendants deny the allegations in paragraph 81.

82. Third-party defendants deny the allegations in paragraph 82.

83. Third-party defendants deny the allegations in paragraph 83.

84. Third-party defendants deny the allegations in paragraph 84.

85. Third-party defendants deny the allegations in paragraph 85.

86. Third-party defendants deny the allegations in paragraph 86.

87. Third-party defendants deny the allegations in paragraph 87.

In response to the unnumbered "Wherefore" clause after paragraph 87, third-party defendants deny that Colombo is entitled to any of the relief sought.

No response is required for paragraphs 88 through 92, as Count VI has been dropped. *See* Order Denying Motion to Dismiss, 10/16/15.

93. In response to paragraph 93, third-party defendants incorporate and reallege their responses to paragraphs 1 through 42 above as if fully set forth herein.

94. In response to paragraph 94, third-party defendants admit that there was a Management Agreement with Turnberry, the terms of which are set forth therein in context; the allegations of paragraph 94 are otherwise denied.

95. In response to paragraph 95, third-party defendants admit that there was a Management Agreement with Turnberry, the terms of which are set forth therein in context; the allegations of paragraph 95 are otherwise denied.

96. Third-party defendants deny the allegations in paragraph 96.

97. Third-party defendants deny the allegations in paragraph 97.

98. Third-party defendants deny the allegations in paragraph 98.

99. Third-party defendants deny the allegations in paragraph 99.

In response to the unnumbered "Wherefore" clause after paragraph 99, third-party defendants deny that Colombo is entitled to any of the relief sought.

100. In response to paragraph 100, third-party defendants incorporate and reallege their responses to paragraphs 1 through 42 above as if fully set forth herein.

101. In response to paragraph 101, third-party defendants admit that Colombo had a relationship with BOA set forth in various documents which speak for themselves in context, and which are further referenced in an agreement between CL36 and Colombo; otherwise denied.

102. In response to paragraph 102, third-party defendants admit that Colombo had a relationship with BOA set forth in various documents which speak for themselves in context, and which are further referenced in an agreement between CL36 and Colombo; otherwise denied.

103. In response to paragraph 103, third-party defendants admit that Colombo had a relationship with BOA set forth in various documents which speak for themselves in context, and which are further referenced in an agreement between CL36 and Colombo; otherwise denied.

104. Third-party defendants deny the allegations in paragraph 104.

105. Third-party defendants deny the allegations in paragraph 105.

106. Third-party defendants deny the allegations in paragraph 106.

107. Third-party defendants deny the allegations in paragraph 107.

In response to the unnumbered "Wherefore" clause after paragraph 107, third-party defendants deny that Colombo is entitled to any of the relief sought.

108. In response to paragraph 108, third-party defendants incorporate and reallege their responses to paragraphs 1 through 42 above as if fully set forth herein.

109. Third-party defendants deny the allegations in paragraph 109.

110. Third-party defendants deny the allegations in paragraph 110.
111. Third-party defendants deny the allegations in paragraph 111.
112. Third-party defendants deny the allegations in paragraph 112.
113. Third-party defendants deny the allegations in paragraph 113.
114. Third-party defendants deny the allegations in paragraph 114.

In response to the unnumbered "Wherefore" clause after paragraph 114, third-party defendants deny that Colombo is entitled to any of the relief sought.

AFFIRMATIVE DEFENSES

115. Third-party plaintiffs' claims are barred by res judicata because those claims have been or could have been raised and litigated to final judgment in a prior action between the parties.

116. Third-party plaintiffs' claims are barred by the doctrine against splitting causes of action because those claims have been or could have been raised and litigated to final judgment in a prior action between the parties.

117. Third-party plaintiffs' claims are barred as a matter of law because those claims should have been asserted as compulsory counterclaims in a prior action between the parties.

118. Third-party plaintiffs fail to state a cause of action.

119. Third-party plaintiffs' claims against Mr. Robins are barred as a matter of law because the third-party plaintiffs have failed to allege any basis for piercing the corporate veil.

120. All third-party plaintiffs' tort claims are barred because there are contracts containing bargained-for remedies for the allegedly wrongful conduct.

121. All third-party plaintiffs' claims are barred upon failure to provide notice and opportunity to cure alleged breaches as required in pertinent contract documents.

122. Counts VII and VIII against Mr. Robins alleging tortious interference with a business relationship are barred as a matter of law because Mr. Robins is a party to the alleged business relationship and/or has a beneficial or economic interest in the alleged relationship.

DEMAND FOR JURY TRIAL

Third-party defendants demand a trial by jury on all issues so triable.

WHEREFORE, third-party defendants respectfully request that the Court enter judgment in their favor and against third-party plaintiffs on all claims of the Second Amended Third Party Complaint, and award third-party defendants their costs, attorneys' fees, and any other relief that the Court deems just and proper.

COUNTERCLAIM AND THIRD-PARTY CLAIM

CL36 Leasing, LLC ("CL36") counter-sues Colombo and sues third parties, Arthur J. Murphy ("Murphy") and Massimo Valentini ("Valentini"), as follows:

Common Allegations

123. Murphy is a resident of Miami, Florida and is sui juris in all respects.

124. Valentini is a resident of Miami, Florida and is sui juris in all respects.

125. This Court has jurisdiction over the parties and subject matter and venue is proper in Miami-Dade County, Florida.

126. At all times material hereto Colombo and CL36 have been the members of UC Challenger, LLC, each owning a 50% member interest.

127. UC Challenger, LLC is a manager-managed limited liability company. Colombo appointed Murphy as his designated manager of UC Challenger, LLC. CL36 appointed CL36 Managing Member, LLC as its designated manager of UC Challenger, LLC. However, Colombo removed CL36 Managing Member, LLC as a manager and appointed Valentini as a manager in CL36 Managing Member LLC's stead.

128. In their capacity as the Managers of UC Challenger, LLC, Murphy and Valentini had a duty to facilitate the sale of the asset of UC Challenger, LLC, an aircraft, for its then market value. Murphy and Valentini failed to fulfill this duty, instead frustrating the sale for the benefit of Colombo who was their primary source of employment and income.

129. In February, 2012, while Murphy and Valentini were the managers of UC Challenger, LLC, it entered into a Forbearance Agreement with the Bank of America, N.A. ("BOA"), whereby UC Challenger LLC agreed, *inter alia*, to market for sale UC Challenger, LLC's sole asset, a Challenger CL-600-2B16 Aircraft (the "Aircraft"). A true and correct copy of that Forbearance Agreement is attached hereto as Exhibit "A". Upon sale, the Forbearance Agreement provided that the proceeds would be applied "on a

50/50 basis to the obligations of CL36 . . . and the obligations of Colombo” under their respective loans with the BOA. See Exhibit “A” p.4, ¶ 7.

130. Murphy and Valentini, however, repeatedly and intentionally ignored or overlooked offers made for the Aircraft for ulterior motives, including but not limited to permitting Colombo to continue his exclusive use of the Aircraft or to purchase the Aircraft for himself. As a result, the Aircraft was ultimately sold for less than it would have sold for, resulting in the 50% proceeds applied to CL36’s loan with BOA being less than it should have been.

131. Ultimately, Murphy and Valentini filed a bankruptcy petition on behalf of UC Challenger, LLC which in turn filed a motion to sell the Aircraft. Debtor’s Motion to Sell, dated 3/26/13, attached hereto as Exhibit “B”.

132. In that motion, UC Challenger LLC represented:

Notwithstanding the best efforts of O’Gara Aviation and [UC Challenger LLC] to sell the Aircraft. . . , even in the face of recent “AS-IS” purchase offers of \$7.5 Million and \$8 Million respectively, the Debtor has been unable to finalize or communicate any sale as a result of factors beyond [UC Challenger LLC’s] control. * * * As a result of these developments, it became necessary for [UC Challenger LLC] to file the instant bankruptcy case.

Contrary to this representation, Murphy and Valentini were in fact avoiding any sale to any entity that was not affiliated with Colombo.

133. Colombo directed and materially aided and abetted managers Murphy and Valentini to engage in this behavior, and to continue their efforts to obtain a purchase of the Aircraft on his behalf in the bankruptcy. This also caused delay and further damage

to CL36, including additional carrying costs on the BOA loan and other foreseeable expenses.

**COUNT I - BREACH OF FIDUCIARY DUTY
(CL36 v. Murphy and Valentini)**

134. CL36 repeats and realleges paragraphs 123 through 133 herein by reference as if fully set forth herein.

135. This is an action by CL36 and against third party defendants Murphy and Valentini for breach of fiduciary duty.

136. As managers of UC Challenger, LLC, Murphy and Valentini owed CL36 a fiduciary duty. *See Fla.Stat. §605.04091.*

137. Murphy and Valentini breached that duty to CL36 by engaging in the acts and omissions set forth herein above and by engaging in conduct inconsistent with their obligation of good faith and fair dealing.

138. As a result of Murphy and Valentini's breach of fiduciary duty, CL36 suffered damages.

**COUNT II – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(CL36 v. Colombo)**

139. CL36 repeats and realleges paragraphs 123 through 133 herein by reference as if fully set forth herein.

140. This is an action by CL36 and against Colombo for aiding and abetting a breach of fiduciary duty.

141. As managers of UC Challenger, LLC, Murphy and Valentini owed CL36 a fiduciary duty of loyalty and care. See Fla.Stat. §605.04091.

142. Murphy and Valentini breached that duty to CL36 by engaging in the acts and omissions set forth herein above and by engaging in conduct inconsistent with their obligation of good faith and fair dealing.

143. Colombo knew that Murphy and Valentini were violating their fiduciary duty as set forth above.

144. Murphy's and Valentini's wrongdoing, set forth above was undertaken in an attempt to provide Colombo with an improper personal benefit, and Colombo directed and provided them with substantial assistance and encouragement in that wrongdoing.

145. As a result, CL36 was damaged.

WHEREFORE, CL36 requests the entry of judgment in its favor and against counterdefendant Colombo and third-party defendants Murphy and Valentini for damages.

DEMAND FOR JURY TRIAL

CL36 demands a trial by jury of all issues so triable.

Respectfully submitted,

RICHARD AND RICHARD, P.A.

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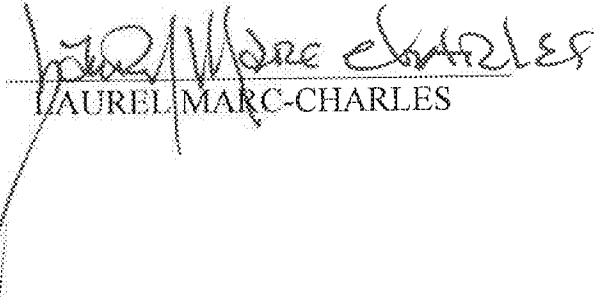
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been emailed this 25th day of November, 2015, to: David S. Weinstein, Esq., Clark Silvergate, P.A., co-counsel for Ugo Colombo and CMC at dweinstein@cspalaw.com; David Zack, Esq., Jeffrey Crockett, Esq., Coffey Burlington, P.L., as counsel for Ugo Colombo and CMC Group, Inc. at dzack@coffeyburlington.com, vmontejo@coffeyburlington.com, service@coffeyburlington.com; Thomas E. Scott, Cole Scott & Kissane at thomas.scott@csklegal.com and Juan A. Gonzalez, Esq., Miguel M. Cordano, Esq., Liebler, Gonzalez and Portuondo, P.A., Courthouse Tower, 25th Floor, 44 W. Flagler Street, Miami, FL 33130, jag@lgplaw.com, mc@lgplaw.com, counsel for Bank of America, N.A.


LAUREL MARC-CHARLES

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FORBEARANCE AGREEMENT

This FORBEARANCE AGREEMENT (this "Agreement"), dated as of February 15, 2012 is entered into by and among UC Challenger, LLC (the "UC Challenger") and Bank of America, N.A., (the "Bank"). All capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Aircraft Mortgage (hereinafter defined).

RECITALS

A. The Bank has previously made loans to (i) CL36 Leasing, LLC ("CL36") pursuant to that certain Business Loan Agreement dated September 24, 2007 (as amended from time to time, the "CL36 Loan Agreement"), between the Bank and CL36 and to (ii) Mr. Ugo Colombo ("Colombo") pursuant to that certain Loan Agreement dated as of May 16, 2007 (as amended from time to time, the "Colombo Loan Agreement"), between the Bank and Colombo. UC Challenger, CL36, Colombo and Mr. Craig Robins ("Robins") are hereinafter referred to as the "Obligors".

B. The obligations of CL36 under the CL36 Loan Agreement have been guaranteed (i) by UC Challenger pursuant to that certain Continuing Guaranty dated as of September 24, 2007 (as amended from time to time, the "Aircraft Guaranty") executed by UC Challenger, in its capacity as a guarantor of the obligations of CL36 and of Colombo to the Bank, and (ii) by Robins pursuant to that certain Continuing Guaranty dated as of September 24, 2007 (as amended from time to time, the "Robins Guaranty") executed by Robins, in his capacity as guarantor of the obligations of CL36 to the Bank.

C. In connection with the obligations of CL36 and of Colombo to the Bank, UC Challenger has executed that certain Mortgage, Security Agreement and Assignment dated as of May 18, 2007 between the Bank and UC Challenger (as amended by that certain Amendment Number One to Mortgage, Security Agreement and Assignment dated as of September 24, 2007 and as further amended from time to time, the "Aircraft Mortgage") granting the Bank a security interest in, *inter alia*, that certain Bombardier, Inc. model CL-600-2B16 aircraft and associated parts (the "Aircraft") as collateral for the obligations of CL36 under the CL36 Loan Agreement and of Colombo under the Colombo Loan Agreement.

D. Certain events of default have occurred and are continuing under the CL36 Loan Agreement as a result of the failure by CL36 to make certain principal and interest payments and certain interest rate hedging agreement payments as and when due (the "CL36 Defaults"). The CL36 Defaults constitute Events of Default under the Aircraft Mortgage (the "Aircraft Defaults") and the Bank has reserved its rights against UC Challenger as a result of such Aircraft Defaults. The CL36 Defaults have not been cured by CL36, UC Challenger or Colombo and they are continuing.

E. UC Challenger has requested that, in accordance with the terms of this Agreement, the Bank forbear from exercising its rights under the Aircraft Mortgage as a result of the Aircraft Defaults during the Forbearance Period (hereinafter defined).

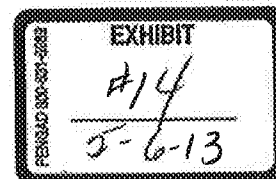
F. The Bank has agreed to do so, but only pursuant to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

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EXHIBIT A



1. Estoppel, Acknowledgement and Reaffirmation. UC Challenger hereby acknowledges that the Aircraft Defaults exist and have not been waived by the Bank. UC Challenger hereby (i) acknowledges its obligations under the Aircraft Mortgage and the Aircraft Guaranty, (ii) reaffirms that the security interests created and granted pursuant to the Aircraft Mortgage is valid, subsisting, of first priority and duly perfected and (iii) acknowledges that this Agreement shall in no manner impair or otherwise adversely affect such security interest or such Aircraft Guaranty.

2. Forbearance. Subject to the terms and conditions set forth herein, the Bank shall, during the Forbearance Period (hereinafter defined), forbear from exercising any and all rights or remedies available to the Bank against UC Challenger under the Aircraft Mortgage, the Aircraft Guaranty and applicable law, but only to the extent that such rights or remedies arise exclusively as a result of the existence of the Aircraft Defaults; provided, however, that the Bank shall be free to exercise any or all of its rights and remedies arising on account of the Aircraft Defaults at any time upon or after the occurrence of a Forbearance Termination Event (hereinafter defined). Nothing set forth herein is intended to obligate the Bank to forbear from exercising any rights or remedies against CL36, as a result of the CL36 Defaults, or against Colombo, as a result of any defaults arising under the Colombo Loan Agreement (including any cross-defaults as a result of the CL36 Defaults), it being understood that any such obligation to forbear shall be documented separately from this Agreement.

3. Forbearance Period. Nothing set forth herein or contemplated hereby is intended to constitute an agreement by the Bank to forbear from exercising any of the rights available to the Bank (all of which rights and remedies are hereby expressly reserved by the Bank) upon or after the occurrence of a Forbearance Termination Event. As used herein, a "Forbearance Termination Event" shall mean the occurrence of any of the following: (i) the breach of any provision of this Agreement; provided, that if such breach is the failure to consummate a sale of the Aircraft as contemplated herein and such failure is attributable solely to the failure by CL36 to deliver any instruments or documentation required by the proposed buyer of such Aircraft to confirm that CL36 has no objection to the sale and disclaims any interest in the Aircraft, then such breach shall not constitute a Forbearance Termination Event hereunder, (ii) any default or event of default under the Aircraft Mortgage or the other respective loan documents (other than to the extent attributable to the Aircraft Defaults or any future defaults by CL36 under the CL36 Loan Agreement), (iii) the sale of the Aircraft, and (iv) ~~November 30, 2012~~. The Forbearance Period shall mean the period from the Effective Date (hereinafter defined) until the occurrence of a Forbearance Termination Event. *December 31, 2012*


4. Marketing and Sale of Aircraft Covenants. UC Challenger shall:

(a) On or before February ²⁴ ~~17~~, 2011, engage one of the brokers identified on Exhibit A hereto (the "Broker") to market the Aircraft for sale in a commercially reasonable manner with the goal of consummating a sale transaction as provided herein; provided, the Broker engaged by UC Challenger must represent in connection with its engagement that it is not affiliated in any way with UC Challenger or the other Obligors and has no current or prior contractual relationships with UC Challenger or any other Obligors;

(b) On or before April 30, 2012, have obtained at least one bona fide expression of interest or letter of intent to purchase the Aircraft that is either (x) from an unaffiliated third party purchaser or (y) from any Obligor, but in the case of clause (y) for a purchase price at or above the Appraised Value (hereinafter defined);

(c) By no later than ^{September} ~~August~~ 30, 2012, have entered into a bona fide binding agreement to sell the Aircraft to either (x) an unaffiliated third party purchaser, with no

contingencies other than financing or (y) an Obligor, but in the case of clause (y) for a purchase price at or above the Appraised Value;

December 31 

(d) On or before ~~November 30~~, 2012, have sold the Aircraft (the "Sale") and delivered the Net Cash Proceeds (hereinafter defined) to the Bank.

5. General Covenants. UC Challenger shall (i) permit the Bank, and its agents, periodic access to the Aircraft and the logs, maintenance records and other records maintained with respect to the Aircraft upon request (with reasonable notice, if possible, from the Bank) and at the expense of UC Challenger; (ii) deliver all expressions of interest, letters of intent and Proposed Contracts (hereinafter defined) to the Bank and to the Obligors promptly upon receipt and cause the Broker to deliver, all written communications with potential buyers concerning the sale of the Aircraft, expressions of interest, letters of intent and Proposed Contracts to the Bank and to the Obligors promptly upon receipt; and (iii) exercise commercially reasonable efforts to consummate a sale of the Aircraft pursuant to the process described herein. Except as limited in the Aircraft Mortgage or in this Agreement, UC Challenger shall be permitted to continue to lease the Aircraft during the Forbearance Period, subject to priority of use for customary access and inspections (including any "pre-buy") requested by any Proposed Purchaser that has delivered a Proposed Contract (each as defined below).

6. Sale Procedure.

(a) If at any time, UC Challenger receives a proposed contract to purchase the Aircraft for a purchase price that equals or exceeds \$12,612,000 (the appraised value as provided by the appraiser engaged by the Bank) (the "Appraised Value"), before any reduction (if any) for deficiencies identified in any inspection or pre-buy, and otherwise on commercially reasonable terms (a "Proposed Contract"), whether from an unaffiliated third-party purchaser or any Obligor (a "Proposed Purchaser"), UC Challenger shall proceed to consummate a sale to such Proposed Purchaser as soon as practicable thereafter, unless UC Challenger shall receive within 7 calendar days of receiving the Proposed Contract a proposed contract (a "Topping Contract") from an Obligor or an affiliate of an Obligor generating not less than \$100,000 more in anticipated Net Cash Proceeds (as defined below) than the Proposed Contract, together with a \$250,000 deposit by bank wire or cashiers check payable to Bank. Such deposit shall be non-refundable except to the extent that (i) a pre-buy inspection identifies material corrosion or the existence of other physical conditions that would render the Aircraft not airworthy and cannot be reasonably addressed through maintenance or repairs ("Disqualifying Conditions") or (ii) CL36 fails to deliver any instruments or documentation required to confirm that CL36 has no objection to the sale and disclaims any interest in the Aircraft. Any pre-buy inspection conducted in connection with a Topping Contract shall be conducted by a party that is reasonably acceptable to the Broker and the Bank. Any other deficiencies identified in such pre-buy inspection, the correction of which would be reasonably required by any unaffiliated third-party purchaser but which do not constitute Disqualifying Conditions, shall be addressed through purchase price adjustments reasonably acceptable to the Broker and the Bank.

(b) In the event that the Proposed Contract is subject to customary access to and inspections of the Aircraft, including any pre-buy, then UC Challenger and the Broker shall facilitate such access and cooperate with such inspections as soon as reasonably practicable, but in any event within the next 14 calendar days.

(c) In the event that there are multiple Proposed Contracts for a purchase price at or in excess of the Appraised Value, then the highest and best offer shall be determined by the Broker after a telephonic auction conducted by the Broker (to which the Bank shall be invited)

among all potential purchasers that have submitted Proposed Contracts within three Banking Days of determining there are multiple potential purchasers. UC Challenger shall sell the Aircraft to the party that has submitted the highest offer (to be determined based upon the Net Cash Proceeds to be received by UC Challenger in connection with the sale) at the conclusion of the three Banking Day period, or, if applicable, the telephonic auction.

7. Release of Aircraft Mortgage / Application of Proceeds. Provided that the Sale is made (i) pursuant to a commercially reasonable marketing effort and sale process (as contemplated above) and (ii) for a purchase price consistent with the Appraised Value (or such lesser amount as the Bank may agree in its sole discretion to accept), before any reduction for deficiencies identified in any inspection or pre-buy, the Bank shall release the Aircraft Mortgage in connection with the Sale upon its receipt of the cash proceeds of such sale net of any customary broker's fees and other customary charges payable in connection therewith, including any pre-buy, other than any such broker's fees or charges payable to any of the Obligors or any of their respective affiliates (the "Net Cash Proceeds"). Upon the Bank's receipt of the Net Cash Proceeds, the Bank shall apply the Net Cash Proceeds on a 50/50 basis to the obligations of CL36 under the CL36 Loan Agreement and the obligations of Colombo under the Colombo Loan Agreement.

8. Representations and Warranties. UC Challenger represents and warrants to the Bank as follows:

(a) Other than the Aircraft Defaults, no Default or Event of Default exists under the Aircraft Mortgage and the Aircraft Guaranty on and as of the Effective Date.

(b) After giving effect to this Agreement, the representations and warranties of UC Challenger contained in the Aircraft Mortgage and the Aircraft Guaranty are true, accurate and complete on and as of the Effective Date to the same extent as though made on and as of such date except to the extent such representations and warranties specifically relate to an earlier date.

9. Effectiveness. This Agreement shall become effective as of the date hereof (the "Effective Date") when, and only when, each of the following conditions shall have been satisfied or waived, as determined by the Bank in its sole discretion:

(a) The Bank shall have received counterparts of this Agreement executed by UC Challenger and the Bank.

(b) The Bank shall have received payment from CL36 of all unpaid principal and interest under the CL36 Loan Agreement and any outstanding payments owing regarding the hedging agreement between CL36 and the Bank (the "CL36 Past-Due Amounts").

(c) The Bank shall have received reimbursement from CL36 for all fees and expenses of the Bank (including without limitation, all fees and expenses of counsel to the Bank) incurred in connection with the Aircraft Defaults and this Agreement (the "Expenses").

10. Incorporation of Agreement. Except as specifically modified herein, the terms of the Aircraft Mortgage and the Aircraft Guaranty shall remain in full force and effect. The execution, delivery and effectiveness of this Agreement shall not operate as a waiver of any right, power or remedy of the Bank under the Aircraft Mortgage and the Aircraft Guaranty, or constitute a waiver or amendment of any provision of the Aircraft Mortgage and the Aircraft Guaranty, except as expressly set forth herein. The breach in any material respect of any provision or representation under this Agreement shall constitute an immediate Event of Default under the Aircraft Mortgage and the Aircraft Guaranty.

11. Further Assurances. UC Challenger agrees to execute and deliver, or to cause to be executed and delivered, all such instruments as may reasonably be requested to effectuate the intent and purposes, and to carry out the terms, of this Agreement.

12. Release. In consideration of the agreements of the Bank contained herein, UC Challenger hereby releases the Bank and each of its respective officers, employees, representatives, affiliates, advisors, agents, managers, counsel, and directors from any and all actions, causes of action, claims, demands, damages and liabilities of whatever kind or nature, in law or in equity, now known or unknown, suspected or unsuspected.

13. No Third-Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns. No other person or entity shall have or be entitled to assert rights or benefits under this Agreement.


14. Counterparts: Electronic Delivery. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail shall be effective as an original.

15. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Illinois and applicable United States federal law.

[Signature Pages Follow.]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

UC Challenger, LLC,
a Florida limited liability company



Arthur J. Murphy, Manager

BANK:

BANK OF AMERICA, N.A.

By: *Liz Muspell*
Name:
Title:

Exhibit A

[Potential Brokers]

Jetcraft Corporation

Avpro, Inc.

Free Stream Aircraft

O'Gara Aviation

Jet Effect



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:
UC CHALLENGER, LLC,

Case No. 13-16721-LMI
Chapter 11

Debtor.

**APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR
ENTRY OF AN ORDER PURSUANT TO SECTIONS 327(a) AND 328(a) OF
THE BANKRUPTCY CODE AUTHORIZING EMPLOYMENT AND RETENTION
OF O'GARA AVIATION, L.L.C. AS AIRCRAFT BROKER FOR THE DEBTOR**

AND

**DEBTOR'S MOTION TO SELL THE BOMBARDIER INC. CHALLENGER
CL-600-2B16 (VARIANT 604) AIRCRAFT (N64UC) FREE AND CLEAR
OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS**

(Expedited Hearing Requested -- Within Seven Days)

The Debtor respectfully requests an expedited hearing on this Motion inasmuch the Aircraft sits unused and grounded by the FAA, losing value from lack of required major maintenance and inspections.

UC Challenger, LLC (the "*Debtor*"), debtor and debtor-in-possession herein, hereby submits this application (the "*Application*") for an Order pursuant to Sections 327(a) and 328(a) of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the "*Bankruptcy Code*") and Fed. R. Bankr. P. 2014(a) and 2016 authorizing the employment and retention of O'Gara Aviation, L.L.C. ("*O'Gara Aviation*"), the prepetition aircraft broker of the Debtor, as the Debtor's postpetition aircraft broker for the purposes of selling a Bombardier Inc. Challenger CL-600-2B16 (Variant 604) aircraft consisting of the following components: (i) airframe bearing FAA Registration Mark N64UC and manufacturer's serial no. 5587 and (ii) two (2) GE CF 34

Series jet aircraft engines respectively bearing manufacturer's serial nos. GE-E950141 and GE-E950142, together with all parts, items of equipment, instruments, components and accessories installed therein or thereon Tail No. N64UC (collectively, the "*Aircraft*") owned by the Debtor.

The Debtor further moves this Court for the entry of an Order pursuant to Sections 105(a) and 363(b) and (f) of the Bankruptcy Code and Fed. R. Bankr. P. 6004(c) and 9014 authorizing and approving the sale of the Aircraft so long as the price paid by the buyer results in a purchase price of at least \$7,500,000.¹ In support of this Application and Motion, the Debtor respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A),(K),(M),(N) and (O).

2. Venue of this case, and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief sought herein are Sections 327(a) and 328(a) of the Bankruptcy Code and Fed. R. Bankr. P. 2014(a) and 2016 with regard to the Application and Sections 105(a), 363(b) and (f) of the Bankruptcy Code and Fed. R. Bankr. P. 6004(c) and 9014.

FACTUAL BACKGROUND

4. On May 17, 2007, in contemplation of the purchase of the Aircraft described

¹ For the avoidance of doubt, the Debtor seeks approval of the sale free and clear of liens, claims, interests, encumbrances, demands, suits, actions and other judicial or administrative proceedings or investigations (collectively, the "*Encumbrances*"), with such Encumbrances, if any, to attach to the consideration received or retained by the Debtor in respect of such Encumbrances.

herein, Ugo Colombo ("*Colombo*") formed the Debtor of which he was the beneficial owner of 100% of the member interests in the Debtor.

5. On or about May 16, 2007, pursuant to that certain Loan Agreement (the "*Colombo Loan Agreement*") executed and delivered to Bank of America (the "*Bank*"), Colombo acquired the Aircraft by making a down payment of approximately \$3.5 Million and obtaining a loan from the Bank for the \$18.5 Million balance.

6. Pursuant to that certain Continuing Guaranty dated as of May 16, 2007, executed by the Debtor in favor of the Bank (the "*UC Challenger Colombo Guaranty*"), Colombo's obligations under the Colombo Loan Agreement are guaranteed by the Debtor.

7. In or about September 2007, pursuant to a written contract, Colombo sold fifty percent (50%) of his membership interest in the Debtor to CL36 Leasing, LLC (the "*Robins Member*"), an affiliate of Craig Robins ("*Robins*"). Specifically, Robins owns and controls the Robins Member through CL36 Managing Member, Inc., for which Robins owns and serves as President, CEO and Director.

8. Thus, in or about September 2007, Colombo and Robins (through entities that Craig Robins owns and controls) became 50/50 members of the Debtor.

9. When the Robins Member agreed to purchase 50% of the membership interest in the Debtor from Colombo, it chose to finance its purchase with a \$9.25 Million loan from the Bank in September 2007 (the "*Robins Loan*"). The Robins Loan was applied to Colombo's loan and paid down the balance such that each member now had a loan with the Bank for the principal amount of \$9.25 Million. Upon an event of default under the new Robins Loan, the Bank had the option to accelerate the Robins Loan and charge a default interest rate that is 4% higher than the Bank's lender rate.

10. Pursuant to that certain Continuing Guaranty dated as of September 24, 2007, executed by the Debtor in favor of the Bank (the "*UC Challenger Robins Guaranty*"), Robin's obligations under the Robins Loan are guaranteed by the Debtor.

11. In connection with the obligations of Robins and of Colombo to the Bank, the Debtor has executed that certain Mortgage, Security Agreement and Assignment dated as of May 18, 2007 between the Bank and the Debtor (as amended by that certain Amendment Number one to Mortgage, Security Agreement and Assignment dated as of September 24, 2007, and as further amended from time to time, the "*Aircraft Mortgage*") granting the Bank a security interest in, *inter alia*, the Aircraft as collateral for the obligations of Robins under the Robins Loan and of Colombo under the Colombo Loan— obligations guaranteed by the Debtor.

12. On or about June 1, 2011, the Robins Member defaulted on the Robins Loan by, among other things, failing to make certain principal and interest payments and interest rate hedging agreement payments as and when due. This in turn caused a cross-default under the Colombo Loan and the Aircraft Mortgage.

13. On February 15, 2012, after having declared events of default under the Robins Loan Agreement, the Bank and the Debtor entered into that certain Forbearance Agreement (the "*Forbearance Agreement*"), pursuant to which, among other things, the Debtor was required to market and sell the Aircraft with the following summarized terms:

- a. On or before February 24, 2012, engage a *Bank approved* aircraft broker to market the Aircraft in a commercially reasonable manner;
- b. On or before April 30, 2012, have obtained at least one bona fide expression of interest or letter of intent to purchase the Aircraft from (x) an unaffiliated third party purchaser or (y) from any Obligor,² but in the case of

² UC Challenger, LLC, CL36 Leasing, LLC, Colombo and Robins, each an "*Obligor*" and collectively, the "*Obligors*".

clause (y) for a purchase price at or above the Appraised Value³;

c. By no later than September 30, 2012, have entered into a bona fide binding agreement to sell the Aircraft to either (x) an unaffiliated third party purchaser, with no contingencies other than financing or (y) an Obligor, but in the case of clause (7) for a purchase price at or above the Appraised Value;

d. On or before December 31, 2012, have sold the Aircraft and delivered the net proceeds to the Bank.

See Forbearance Agreement at ¶ 4 (emphasis added).

14. Exhibit A to the Forbearance Agreement clearly identifies O'Gara Aviation as a "potential broker" acceptable to the Bank.

15. On February 24, 2012, the Debtor and O'Gara Aviation, L.L.C. entered into that certain Aircraft Brokerage Agreement, which set forth the terms agreed between the parties for O'Gara Aviation to market and sell the Aircraft. A true and correct copy of the Aircraft Brokerage Agreement is attached hereto as "Exhibit B."

16. Notwithstanding the best efforts of O'Gara Aviation and the Debtor to sell the Aircraft in accordance with the terms of the Forbearance Agreement, even in the face of recent "as-is" purchase offers of \$7.5 Million and \$8 Million respectively, the Debtor has been unable to finalize or consummate any sale as a result of factors beyond the Debtor's control. Specifically, the Bank will not agree to release its lien on the Aircraft without Robins' agreement to sell the Aircraft, but Robins will not confirm his agreement to sell the Aircraft. Thus, the Debtor has been caught in a catch-22 that has prevented it from selling the Aircraft to a willing purchaser, and will lose potential purchasers now and in the future because of the failure of Robins to agree to the sale of the Aircraft. Meanwhile, the Aircraft sits unused and grounded by the FAA, losing value from lack of required major maintenance and inspections. As a result of

³ As defined in the UC Challenger Forbearance Agreement attached hereto as "Exhibit A."

these developments, it became necessary for the Debtor to file the instant bankruptcy case.

PROCEDURAL BACKGROUND

17. As a result of the Debtor's inability to sell the Aircraft for the reasons described in the preceding paragraph, on March 7, 2013, the Bank filed suit against Colombo for an alleged breach of his loan (caused by the Robins Member's failure to timely pay interest under the Robins Loan) and against the Debtor for an alleged breach of the UC Challenger Guaranty and the Forbearance Agreement in the case styled *Bank of America, N.A. v. Colombo, et al.*, Case No. 13-08545-CA-23 pending in the Circuit Court of the 11th Judicial circuit in and for Miami-Dade County, Florida (the "*Bank Action*").

18. On March 26, 2013 (the "*Petition Date*"), the Debtor filed this voluntary chapter 11 bankruptcy case before this Court

19. The Debtor is operating as a debtor-in-possession. As of the time of this filing, the United States Trustee has not appointed an official committee of unsecured creditors.

SUMMARY OF RELIEF REQUESTED

20. The Debtor seeks an Order of this Court both approving the Debtor's retention of O'Gara Aviation as the Debtor's aircraft broker to market and sell the aircraft pursuant to the same terms as the prepetition Aircraft Brokerage Agreement, and authorizing the Debtor to sell the Aircraft in a transaction that results in a sale price of at least \$7,500,000 (less commissions and other costs) for the Aircraft. In other words, the Debtor seeks Court approval of O'Gara Aviation's postpetition retention and the terms under which the Debtor may sell the Aircraft. Once the Debtor finds a buyer for the Aircraft, the Debtor will come back before the Court for approval of the sale terms.

21. To that end, the Debtor seeks authorization for this employment and sale pursuant

to Sections 105(a), 327(a), 328(a) and 363(b) and (f) of the Bankruptcy Code. The Debtor respectfully submits that the relief requested herein is practical and in the best interests of the estate and its creditors.

RELIEF REQUESTED REGARDING EMPLOYMENT OF BROKER

22. The Debtor seeks to employ and retain O'Gara Aviation as the Debtor's aircraft broker for the limited purpose of marketing and selling the Aircraft in order to maximize the return to creditors. Accordingly, the Debtor respectfully requests the entry of an order pursuant to Section 327(a) of the Bankruptcy Code and Fed. R. Bankr. P. 2014(a) authorizing the Debtor to employ and retain O'Gara Aviation as the Debtor's aircraft broker pertaining to the sale of the Aircraft.

23. The Debtor seeks to retain O'Gara Aviation as the Debtor's aircraft broker because (1) O'Gara Aviation has been the Debtor's aircraft broker since February 24, 2012; and thus, will not need to expend time familiarizing itself with the Aircraft and the universe of potential purchasers and (2) O'Gara Aviation is already an acceptable broker to the Bank as is evidenced by O'Gara Aviation 's inclusion on the list of "potential brokers" on Exhibit A of the Forbearance Agreement. In addition, O'Gara Aviation has extensive experience and knowledge with regard to the matter for which it is to be engaged. The Debtor believes that O'Gara Aviation is both well qualified and uniquely able to represent the Debtor in an efficient and timely manner.

24. As more fully described in the Aircraft Brokerage Agreement attached hereto as Exhibit B, the terms of which the Debtor seeks Court approval, provides in pertinent part:⁴

- a. The Aircraft will be sold in an "as is" condition;

⁴ The following description is for summary purposes only. For a detailed description of the terms of the Aircraft Brokerage Agreement, the Court and parties in interest are respectfully directed to review the full text of the Aircraft Brokerage Agreement attached hereto as Exhibit B.

- b. Broker will use its best efforts to obtain the most favorable sale price, terms and conditions for Seller;
- c. The Agreement shall continue in effect until such time as one party gives the other at least fifteen (15) days written notice of termination;
- d. The Agreement grants to O'Gara Aviation the exclusive worldwide right to broker and market the Aircraft for sale; and
- e. The total commission of O'Gara Aviation for any sale shall be One Hundred Twenty Five Thousand U.S. Dollars (\$125,000) (the "*Commission*"), payable at delivery of the Aircraft from client to purchaser.

25. The flat fee compensation arrangement is consistent with the fees charged by O'Gara Aviation in bankruptcy and non-bankruptcy matters of this type.

26. To the best of the Debtor's knowledge, and except as disclosed in the attached affidavit of David D. Foster filed in connection herewith as "Exhibit C" pursuant to Fed. R. Bankr. P. 2014 (the "*Affidavit*"), O'Gara Aviation has not represented the Debtor's creditors, equity security holders, or any other party in interest, or their respective attorneys and accountants, other than its prepetition representation of the Debtor pursuant to the terms of the Aircraft Brokerage Agreement.

27. To the best of the Debtor's knowledge, O'Gara Aviation is a "disinterested person" as that phrase is defined in Section 101(14) of the Bankruptcy Code, and O'Gara Aviation's employment is necessary to assist the Debtor in carrying out the Debtor's duties under Title 11.

RELIEF REQUESTED REGARDING SALE OF AIRCRAFT

28. O'Gara Aviation has suggested an initial list price for the Aircraft in the amount of \$8,995,000. Based on the Debtor's consultation with O'Gara Aviation and in reliance upon its own understanding of the value of the Aircraft, the Debtor has determined that a sale of the Aircraft for a price of at least \$7,500,000 is reasonable and will maximize the value of the

Aircraft to the estate. The Debtor proposes accepting the best offer that meets or exceeds this minimum threshold of \$7,500,000 before selling the Aircraft.

29. Selling the Aircraft at this price will result in the estate receiving net sales proceeds in an amount that will give O'Gara Aviation the flexibility necessary to ensure a sale of the Aircraft while also providing a sufficient return to the estate for the value of the Aircraft.

30. Any sale of the Aircraft will obviously be subject to final approval of the Court.

31. The Debtor has obtained a title search of the Aircraft to determine if any liens or encumbrances have been filed of record against the Aircraft. According to the results of the title report and a search of the Florida Secured Transaction Registry, copies of which are attached hereto as composite "Exhibit D," Bank of America (the "*Bank*") recorded a UCC-1 against the Debtor with the Florida Secured Transaction Registry on June 14, 2007 No. 200705794235. The Bank's Encumbrance will attach to the sale proceeds which will be distributed for the benefit of creditors in the priority scheme set forth in the Bankruptcy Code.

32. In the Debtor's business judgment, sale of the Aircraft is in the best interests of the Debtor's estate and its creditors, and should be authorized by this Court.

Valid Business Justification Exists to Consummate a Sale

33. Section 363(b) of the Bankruptcy Code provides that a debtor-in-possession, after notice and a hearing, may sell property of the estate outside the ordinary course of business. 11 U.S.C. §§ 363(b) and 1107(a) (giving the Chapter 11 debtor, as a debtor-in-possession, all the rights and powers of a trustee, with certain exceptions not applicable here).

34. Approval of such a sale is appropriate if the Debtor can demonstrate that there is "some articulated business justification for using, selling, or leasing the property outside the ordinary course of business." *Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Continental Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986). Factors

to consider in evaluating such a sale include the proportionate value of the asset to the estate as a whole, the duration of the proceeding, the effect on any future plan of reorganization, and the value of the proceeds to be obtained for the estate. *Id.* Considering the foregoing factors and the Debtor's lack of future need for the Aircraft, the Debtor selling the Aircraft is clearly justified.

35. In this case, the Debtor's decision to sell the Aircraft is amply supported by a sound business purposes. The Debtor has determined that the Aircraft should be liquidated immediately for the benefit of its creditors. Accordingly, the Debtor submits that he has demonstrated sound business justification and otherwise meets the requirements for a sale of the Aircraft outside the ordinary course of business.

Sale of the Aircraft Free and Clear of Liens and other Interests is Appropriate

36. Section 363(f) of the Bankruptcy Code provides in part that a debtor-in-possession may sell property of the estate outside the ordinary course of business free and clear of any other entity's interest in such property if such entity consents, such interest is in bona fide dispute, or if such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. §§ 363(f)(2), (f)(4), (f)(5); 1107(a). In addition, pursuant to Section 363(f)(3), the Debtor can sell property pursuant to Section 363 if the price at which the property is sold is greater than the aggregate value of all liens on the property. Because Section 363(f)(3) refers to value, rather than amount of liens, it authorizes a free and clear sale when the price is greater than or equal to the actual value of the aggregate liens on the property as determined by the court, even if the price is less than the aggregate amount of such liens. *See In re Greater Miami Neighborhoods, Inc.*, Case No. 08-10694, 2008 WL 2444530 at *5 (observing that the Court may authorize the sale of property for less than the amount of recorded liens); *In re Oneida Lake Dev. Inc.*, 114 B.R. 352, 356-57 (Bankr. N.D.N.Y. 1990); *In*

re Terrace Gardens Park P'Ship, 96 B.R. 707 (Bankr. W.D. Tex. 1989); *see also*, *United Savings Ass'n of Tex. V. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 372 (1988) ("The phrase 'value of such creditor's interest' in § 506(a) means 'the value of the collateral.' [Citations omitted]. We think the phrase 'value of such entity's interest' in § 361(1) and (2), when applied to secured creditors, means the same"). *See also*, *In re Bygraph, Inc.*, 56 B.R. 596, 606 (Bankr. S.D.N.Y. 1986); *In re Beker Indus. Corp.*, 63 B.R. 474, 476 (Bankr. S.D.N.Y. 1986).

37. Finally, to the extent the Debtor needs any additional authority to sell the Aircraft, Section 105(a) of the Bankruptcy Code provides that bankruptcy courts "may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

38. The Aircraft is encumbered by the pre-petition lien of the Bank which will be paid out of the proceeds of the sale of the Aircraft. It is unknown, as of the time of this filing, whether the Bank will consent to the sale of the Aircraft. However, it or any other creditor arguably holding a lien in the Aircraft, could be compelled to accept a money satisfaction of their respective liens and interests, if any.

39. Based on the foregoing, sale of the Aircraft free and clear of liens and other interests is appropriate under § 363(f) of the Bankruptcy Code. Accordingly, the Debtor respectfully requests that the Court approve its request to sell the Aircraft in the manner described herein.

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WHEREFORE, the Debtor respectfully requests that the Court enter an Order (i) approving the retention of O'Gara Aviation on the terms set forth herein and in greater detail in Exhibit B attached hereto, (ii) authorizing the Debtor to market and sell the Aircraft free and clear of Encumbrances as described herein; and (iii) providing the Debtor such other and further relief as this Court deems just and proper.

Dated: March 26, 2013.

s/ James C. Moon
Peter D. Russin, Esquire
Florida Bar No.: 765902
prussin@melandrussin.com
James C. Moon, Esquire
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Attorneys for Debtor in Possession

FORBEARANCE AGREEMENT

This FORBEARANCE AGREEMENT (this "Agreement"), dated as of February 15, 2012 is entered into by and among UC Challenger, LLC (the "UC Challenger") and Bank of America, N.A., (the "Bank"). All capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Aircraft Mortgage (hereinafter defined).

RECITALS

A. The Bank has previously made loans to (i) CL36 Leasing, LLC ("CL36") pursuant to that certain Business Loan Agreement dated September 24, 2007 (as amended from time to time, the "CL36 Loan Agreement"), between the Bank and CL36 and to (ii) Mr. Ugo Colombo ("Colombo") pursuant to that certain Loan Agreement dated as of May 16, 2007 (as amended from time to time, the "Colombo Loan Agreement"), between the Bank and Colombo. UC Challenger, CL36, Colombo and Mr. Craig Robins ("Robins") are hereinafter referred to as the "Obligors".

B. The obligations of CL36 under the CL36 Loan Agreement have been guaranteed (i) by UC Challenger pursuant to that certain Continuing Guaranty dated as of September 24, 2007 (as amended from time to time, the "Aircraft Guaranty") executed by UC Challenger, in its capacity as a guarantor of the obligations of CL36 and of Colombo to the Bank, and (ii) by Robins pursuant to that certain Continuing Guaranty dated as of September 24, 2007 (as amended from time to time, the "Robins Guaranty") executed by Robins, in his capacity as guarantor of the obligations of CL36 to the Bank.

C. In connection with the obligations of CL36 and of Colombo to the Bank, UC Challenger has executed that certain Mortgage, Security Agreement and Assignment dated as of May 18, 2007 between the Bank and UC Challenger (as amended by that certain Amendment Number One to Mortgage, Security Agreement and Assignment dated as of September 24, 2007 and as further amended from time to time, the "Aircraft Mortgage") granting the Bank a security interest in, *inter alia*, that certain Bombardier, Inc. model CL-600-2B16 aircraft and associated parts (the "Aircraft") as collateral for the obligations of CL36 under the CL36 Loan Agreement and of Colombo under the Colombo Loan Agreement.

D. Certain events of default have occurred and are continuing under the CL36 Loan Agreement as a result of the failure by CL36 to make certain principal and interest payments and certain interest rate hedging agreement payments as and when due (the "CL36 Defaults"). The CL36 Defaults constitute Events of Default under the Aircraft Mortgage (the "Aircraft Defaults") and the Bank has reserved its rights against UC Challenger as a result of such Aircraft Defaults. The CL36 Defaults have not been cured by CL36, UC Challenger or Colombo and they are continuing.

E. UC Challenger has requested that, in accordance with the terms of this Agreement, the Bank forbear from exercising its rights under the Aircraft Mortgage as a result of the Aircraft Defaults during the Forbearance Period (hereinafter defined).

F. The Bank has agreed to do so, but only pursuant to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Estoppel, Acknowledgement and Reaffirmation. UC Challenger hereby acknowledges that the Aircraft Defaults exist and have not been waived by the Bank. UC Challenger hereby (i) acknowledges its obligations under the Aircraft Mortgage and the Aircraft Guaranty, (ii) reaffirms that the security interests created and granted pursuant to the Aircraft Mortgage is valid, subsisting, of first priority and duly perfected and (iii) acknowledges that this Agreement shall in no manner impair or otherwise adversely affect such security interest or such Aircraft Guaranty.

2. Forbearance. Subject to the terms and conditions set forth herein, the Bank shall, during the Forbearance Period (hereinafter defined), forbear from exercising any and all rights or remedies available to the Bank against UC Challenger under the Aircraft Mortgage, the Aircraft Guaranty and applicable law, but only to the extent that such rights or remedies arise exclusively as a result of the existence of the Aircraft Defaults; provided, however, that the Bank shall be free to exercise any or all of its rights and remedies arising on account of the Aircraft Defaults at any time upon or after the occurrence of a Forbearance Termination Event (hereinafter defined). Nothing set forth herein is intended to obligate the Bank to forbear from exercising any rights or remedies against CL36, as a result of the CL36 Defaults, or against Colombo, as a result of any defaults arising under the Colombo Loan Agreement (including any cross-defaults as a result of the CL36 Defaults), it being understood that any such obligation to forbear shall be documented separately from this Agreement.

3. Forbearance Period. Nothing set forth herein or contemplated hereby is intended to constitute an agreement by the Bank to forbear from exercising any of the rights available to the Bank (all of which rights and remedies are hereby expressly reserved by the Bank) upon or after the occurrence of a Forbearance Termination Event. As used herein, a "Forbearance Termination Event" shall mean the occurrence of any of the following: (i) the breach of any provision of this Agreement; provided, that if such breach is the failure to consummate a sale of the Aircraft as contemplated herein and such failure is attributable solely to the failure by CL36 to deliver any instruments or documentation required by the proposed buyer of such Aircraft to confirm that CL36 has no objection to the sale and disclaims any interest in the Aircraft, then such breach shall not constitute a Forbearance Termination Event hereunder, (ii) any default or event of default under the Aircraft Mortgage or the other respective loan documents (other than to the extent attributable to the Aircraft Defaults or any future defaults by CL36 under the CL36 Loan Agreement), (iii) the sale of the Aircraft, and (iv) ~~November 30, 2012~~. The Forbearance Period shall mean the period from the Effective Date (hereinafter defined) until the occurrence of a Forbearance Termination Event. December 31, 2012

4. Marketing and Sale of Aircraft Covenants. UC Challenger shall:

(a) On or before ~~February 17, 2011~~²⁴, engage one of the brokers identified on Exhibit A hereto (the "Broker") to market the Aircraft for sale in a commercially reasonable manner with the goal of consummating a sale transaction as provided herein; provided, the Broker engaged by UC Challenger must represent in connection with its engagement that it is not affiliated in any way with UC Challenger or the other Obligors and has no current or prior contractual relationships with UC Challenger or any other Obligors;

(b) On or before April 30, 2012, have obtained at least one bona fide expression of interest or letter of intent to purchase the Aircraft that is either (x) from an unaffiliated third party purchaser or (y) from any Obligor, but in the case of clause (y) for a purchase price at or above the Appraised Value (hereinafter defined);

(c) By no later than ~~August 30, 2012~~^{September}, have entered into a bona fide binding agreement to sell the Aircraft to either (x) an unaffiliated third party purchaser, with no

contingencies other than financing or (y) an Obligor, but in the case of clause (y) for a purchase price at or above the Appraised Value;

(d) On or before ~~November 30~~, 2012, have sold the Aircraft (the "Sale") and delivered the Net Cash Proceeds (hereinafter defined) to the Bank.

5. General Covenants. UC Challenger shall (i) permit the Bank, and its agents, periodic access to the Aircraft and the logs, maintenance records and other records maintained with respect to the Aircraft upon request (with reasonable notice, if possible, from the Bank) and at the expense of UC Challenger; (ii) deliver all expressions of interest, letters of intent and Proposed Contracts (hereinafter defined) to the Bank and to the Obligors promptly upon receipt and cause the Broker to deliver, all written communications with potential buyers concerning the sale of the Aircraft, expressions of interest, letters of intent and Proposed Contracts to the Bank and to the Obligors promptly upon receipt; and (iii) exercise commercially reasonable efforts to consummate a sale of the Aircraft pursuant to the process described herein. Except as limited in the Aircraft Mortgage or in this Agreement, UC Challenger shall be permitted to continue to lease the Aircraft during the Forbearance Period, subject to priority of use for customary access and inspections (including any "pre-buy") requested by any Proposed Purchaser that has delivered a Proposed Contract (each as defined below).

6. Sale Procedure.

(a) If at any time, UC Challenger receives a proposed contract to purchase the Aircraft for a purchase price that equals or exceeds \$12,612,000 (the appraised value as provided by the appraiser engaged by the Bank) (the "Appraised Value"), before any reduction (if any) for deficiencies identified in any inspection or pre-buy, and otherwise on commercially reasonable terms (a "Proposed Contract"), whether from an unaffiliated third-party purchaser or any Obligor (a "Proposed Purchaser"), UC Challenger shall proceed to consummate a sale to such Proposed Purchaser as soon as practicable thereafter, unless UC Challenger shall receive within 7 calendar days of receiving the Proposed Contract a proposed contract (a "Topping Contract") from an Obligor or an affiliate of an Obligor generating not less than \$100,000 more in anticipated Net Cash Proceeds (as defined below) than the Proposed Contract, together with a \$250,000 deposit by bank wire or cashiers check payable to Bank. Such deposit shall be non-refundable except to the extent that (i) a pre-buy inspection identifies material corrosion or the existence of other physical conditions that would render the Aircraft not airworthy and cannot be reasonably addressed through maintenance or repairs ("Disqualifying Conditions") or (ii) CL36 fails to deliver any instruments or documentation required to confirm that CL36 has no objection to the sale and disclaims any interest in the Aircraft. Any pre-buy inspection conducted in connection with a Topping Contract shall be conducted by a party that is reasonably acceptable to the Broker and the Bank. Any other deficiencies identified in such pre-buy inspection, the correction of which would be reasonably required by any unaffiliated third-party purchaser but which do not constitute Disqualifying Conditions, shall be addressed through purchase price adjustments reasonably acceptable to the Broker and the Bank.

(b) In the event that the Proposed Contract is subject to customary access to and inspections of the Aircraft, including any pre-buy, then UC Challenger and the Broker shall facilitate such access and cooperate with such inspections as soon as reasonably practicable, but in any event within the next 14 calendar days.

(c) In the event that there are multiple Proposed Contracts for a purchase price at or in excess of the Appraised Value, then the highest and best offer shall be determined by the Broker after a telephonic auction conducted by the Broker (to which the Bank shall be invited)

among all potential purchasers that have submitted Proposed Contracts within three Banking Days of determining there are multiple potential purchasers. UC Challenger shall sell the Aircraft to the party that has submitted the highest offer (to be determined based upon the Net Cash Proceeds to be received by UC Challenger in connection with the sale) at the conclusion of the three Banking Day period, or, if applicable, the telephonic auction.

7. Release of Aircraft Mortgage / Application of Proceeds. Provided that the Sale is made (i) pursuant to a commercially reasonable marketing effort and sale process (as contemplated above) and (ii) for a purchase price consistent with the Appraised Value (or such lesser amount as the Bank may agree in its sole discretion to accept), before any reduction for deficiencies identified in any inspection or pre-buy, the Bank shall release the Aircraft Mortgage in connection with the Sale upon its receipt of the cash proceeds of such sale net of any customary broker's fees and other customary charges payable in connection therewith, including any pre-buy, other than any such broker's fees or charges payable to any of the Obligors or any of their respective affiliates (the "Net Cash Proceeds"). Upon the Bank's receipt of the Net Cash Proceeds, the Bank shall apply the Net Cash Proceeds on a 50/50 basis to the obligations of CL36 under the CL36 Loan Agreement and the obligations of Colombo under the Colombo Loan Agreement.

8. Representations and Warranties. UC Challenger represents and warrants to the Bank as follows:

(a) Other than the Aircraft Defaults, no Default or Event of Default exists under the Aircraft Mortgage and the Aircraft Guaranty on and as of the Effective Date.

(b) After giving effect to this Agreement, the representations and warranties of UC Challenger contained in the Aircraft Mortgage and the Aircraft Guaranty are true, accurate and complete on and as of the Effective Date to the same extent as though made on and as of such date except to the extent such representations and warranties specifically relate to an earlier date.

9. Effectiveness. This Agreement shall become effective as of the date hereof (the "Effective Date") when, and only when, each of the following conditions shall have been satisfied or waived, as determined by the Bank in its sole discretion:

(a) The Bank shall have received counterparts of this Agreement executed by UC Challenger and the Bank.

(b) The Bank shall have received payment from CL36 of all unpaid principal and interest under the CL36 Loan Agreement and any outstanding payments owing regarding the hedging agreement between CL36 and the Bank (the "CL36 Past-Due Amounts").

(c) The Bank shall have received reimbursement from CL36 for all fees and expenses of the Bank (including without limitation, all fees and expenses of counsel to the Bank) incurred in connection with the Aircraft Defaults and this Agreement (the "Expenses").

10. Incorporation of Agreement. Except as specifically modified herein, the terms of the Aircraft Mortgage and the Aircraft Guaranty shall remain in full force and effect. The execution, delivery and effectiveness of this Agreement shall not operate as a waiver of any right, power or remedy of the Bank under the Aircraft Mortgage and the Aircraft Guaranty, or constitute a waiver or amendment of any provision of the Aircraft Mortgage and the Aircraft Guaranty, except as expressly set forth herein. The breach in any material respect of any provision or representation under this Agreement shall constitute an immediate Event of Default under the Aircraft Mortgage and the Aircraft Guaranty.



11. Further Assurances. UC Challenger agrees to execute and deliver, or to cause to be executed and delivered, all such instruments as may reasonably be requested to effectuate the intent and purposes, and to carry out the terms, of this Agreement.

12. Release. In consideration of the agreements of the Bank contained herein, UC Challenger hereby releases the Bank and each of its respective officers, employees, representatives, affiliates, advisors, agents, managers, counsel, and directors from any and all actions, causes of action, claims, demands, damages and liabilities of whatever kind or nature, in law or in equity, now known or unknown, suspected or unsuspected.

13. No Third-Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns. No other person or entity shall have or be entitled to assert rights or benefits under this Agreement.

14. Counterparts; Electronic Delivery. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail shall be effective as an original.

15. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Illinois and applicable United States federal law.

[Signature Pages Follow.]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

UC Challenger, LLC,
a Florida limited liability company



Arthur J. Murphy, Manager

BANK:

BANK OF AMERICA, N.A.

By: *Lpi Marshall*
Name:
Title:

Exhibit A

[Potential Brokers]

Jetcraft Corporation

Avpro, Inc.

Free Stream Aircraft

O'Gara Aviation

Jet Effect



AIRCRAFT BROKERAGE AGREEMENT

For value received, UC Challenger LLC ("Client"), a Florida limited liability company, whose address is c/o CMC Group, Inc., 701 Brickell Avenue, Suite, 3150, Miami, Florida 33131, hereby accepts the services of, grants, and conveys to O'Gara Aviation, L.L.C. ("O'Gara"), a Nevada limited liability company, doing business as O'Gara Aviation Company at 1600 RiverEdge Parkway NW, Suite 975, Atlanta, Georgia 30328, the exclusive right to list for sale and to solicit offers of purchase for the following aircraft ("Aircraft"):

Year, Manufacturer & Model: BOMBARDIER CL-600-2B16 (CHALLENGER 604)
Serial Number: 5587
Registration Number: N64UC

1. The Aircraft made the basis of this Aircraft Brokerage Agreement ("Agreement") is to be sold by the undersigned in "as is" condition. There are no express or implied warranties accompanying said Aircraft, either with respect to merchantability or fitness. Upon request, Client shall review and provide written approval to O'Gara for all marketing materials prepared by O'Gara to market the Aircraft.
2. Broker will use its best efforts to obtain the most favorable sale price, terms, and conditions for Seller, with the goal of achieving a sale price of Thirteen Million Six Hundred Thousand U.S. Dollars (\$13,600,000). Seller reserves the right to accept or reject any or all offers. Any purchase offer must be (a) accompanied by an earnest money deposit of at least Five Hundred Thousand U.S. Dollars (\$500,000), to be held by Kirk Woford, President, Insured Aircraft Title Service, Inc., Oklahoma City, Oklahoma ("Escrow Agent"), until settlement is made and (b) subject to the timely completion of a mutually acceptable sales agreement between the purchaser and Seller.
3. This Agreement shall commence upon execution and shall continue for six (6) months (the "Initial Term"). The Agreement shall continue in full effect thereafter until such time as one party gives the other at least fifteen (15) days written notice of termination.
4. This Agreement grants to O'Gara the exclusive worldwide right to broker and market the Aircraft for sale. Client shall not grant any other entity or individual any rights whatsoever in connection with the sale of the Aircraft during the term of this Agreement.
5. (a) The total commission of O'Gara for any sale made hereunder shall be One Hundred Twenty Five Thousand U.S. Dollars (\$125,000) (the "Commission"), payable at delivery of the Aircraft from Client to purchaser. Any applicable taxes are not to be considered a part of the sale price.
(b) Notwithstanding any other provision of this Agreement, it is agreed that the full Commission above referred to is to be paid to O'Gara in the event of (i) any sale of the Aircraft during the term of this Agreement upon the settlement of such sale and Buyer's receipt of the closing proceeds from such sale, (ii) any sale of the Aircraft within ninety (90) days after the term hereof, to any person or entity, their associated companies or affiliates, whom O'Gara, or any agent or representative of O'Gara, has listed with Client in writing during the term of this Agreement upon the settlement of such sale and Buyer's receipt of the closing proceeds from such sale or (iii) any bona fide offer obtained by O'Gara per the terms in paragraph 2 above but which Client rejected.
6. Client agrees to indemnify, hold harmless and defend O'Gara from and against any and all liabilities, claims, or demands resulting or arising from the sale of the Aircraft, including, without limitation, any claim, demand, or liability arising from any representations made by Client in connection with said sale, but excluding any liabilities, claims and/or demands related to O'Gara's negligence or misconduct.

7. Client shall keep the Aircraft fully insured during the term of this Agreement. Upon request, Client shall provide to O'Gara a copy of Client's certificate of insurance on the Aircraft reflecting O'Gara as additional insured. Client shall provide O'Gara with thirty (30) days notification of cancellation of such coverage.
8. Client may elect to assign its right, title and interest in the Aircraft to a Qualified Intermediary ("QI"), in exchange for other property of like kind and qualifying use within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended and the Regulations promulgated thereunder. Client expressly reserves the right to assign its rights, but not its obligations, hereunder to a QI as provided in IRC Reg. 1.1031(k)-1(g)(4). Client shall reimburse the purchaser of the Aircraft for any costs it incurs as part of the exchange, so long as the purchaser agrees to reasonably cooperate with Client to facilitate such exchange.
9. All communications required or permitted to be given under this Agreement shall be in writing and shall be deemed sent when properly addressed to the parties at the address set forth in this Agreement or at any other address that such parties may designate by written notice to the other party, and when (a) delivered personally, (b) sent by express courier, (c) sent by regular or certified first-class mail, postage prepaid, or (d) sent by email or telefax, with confirmation of receipt.
10. This Agreement shall be construed in accordance with, and its performance shall be governed by, the laws of the State of Georgia, without respect to that state's conflicts of law doctrine. The federal and state courts of Georgia shall have exclusive jurisdiction to hear and determine all claims, disputes, actions or suits which may arise hereunder. In any action or proceeding brought by any party against the other arising under or in connection with this Agreement or any other documents related thereto, the prevailing party shall, in addition to other allowable costs, be entitled to an award of reasonable attorneys' fees.
11. The date of this Agreement shall be the date that the last party executes or initials this Agreement. This Agreement contains the entire agreement of the parties hereto and supersedes any prior written or oral agreements, understandings, negotiations, or representations between them concerning the subject matter contained herein. This Agreement may not be varied, amended, or supplemented except by an instrument in writing by both parties.

AGREED AND ACCEPTED

UC CHALLENGER LLC
(Client)

By: Arthur J. Murphy
Title: Manager

(Signature)

Date: February 24, 2012
Phone/Fax: 305-372-0550 / 305-372-8213
Email: AMurphy@cmcrealestate.com

O'GARA AVIATION, L.L.C.
(O'Gara)

By: David D. Foster
Title: Vice President

(Signature)

Date: February 24, 2012
Phone/Fax: 770-955-3554 / 678-669-2269
Email: davidfoster@ogarajets.com

UNITED STATE BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

UC CHALLENGER, LLC,

Case No. 13-16721-BKC-LMI

Chapter 11

Debtor.

..... /

AFFIDAVIT OF DAVID D. FOSTER

STATE OF GEORGIA)
)SS:
COUNTY OF FULTON)

BEFORE ME, the undersigned authority, duly authorized to administer oaths and take acknowledgments, personally appeared, DAVID D. FOSTER, who after being duly sworn, deposes and says:

1. My name is DAVID D. FOSTER, and I am a Vice President of O'Gara Aviation, L.L.C. ("*O'Gara Aviation*" or the "*Firm*"), a Nevada limited liability company, doing business as O'Gara Aviation Company, which maintains offices at 1600 RiverEdge Parkway NW, Suite 975, Atlanta, Georgia 30328. I make this Affidavit in support of the *Application Pursuant to Fed. R. Bank. P. 2014(a) for Entry of an Order Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code Authorizing Employment and Retention of O'Gara Aviation, L.L.C. as Aircraft Broker for the Debtor* (the "*Application*").

2. As a Vice President of O'Gara Aviation, I am one of the persons who has custody and control of the Firm's business records regarding UC Challenger, LLC (the "*Debtor*"). These records were made at or near the time of the event recorded by a person (or persons) with knowledge of the event and charged with the responsibility for recording such events. These records are kept in the ordinary course of O'Gara Aviation's business activities, which is the

customary practice of O'Gara Aviation. I have reviewed O'Gara Aviation's records regarding the Debtor, which leads me to the summary set forth herein. All facts and procedures set forth herein are either (a) facts or procedures of which I have personal knowledge or (b) an accurate summary of O'Gara Aviation's business records and practices.

Services to be Provided

3. The Debtor seeks to retain O'Gara Aviation as the Debtor's aircraft broker to market and sell a Bombardier Inc. Challenger CL-600-2B16 (Variant 604) aircraft consisting of the following components: (i) airframe bearing FAA Registration Mark N64UC and manufacturer's serial no. 5587 and (ii) two (2) GE CF 34 Series jet aircraft engines respectively bearing manufacturer's serial nos. GE-E950141 and GE-E950142, together with all parts, items of equipment, instruments, components and accessories installed therein or thereon Tail No. N64UC (collectively, the "*Aircraft*") pursuant to the same terms as the prepetition Aircraft Brokerage Agreement executed on February 24, 2012 between the Debtor and O'Gara Aviation which has not been terminated as of the Petition Date. A true and correct copy of the Aircraft Brokerage Agreement is attached to the Application as Exhibit B.

4. The services to be provided are set forth with more particularity in the Aircraft Brokerage Agreement but provide in pertinent part:

- a. The Aircraft will be sold in an "as is" condition;
- b. Broker will use its best efforts to obtain the most favorable sale price, terms and conditions for Seller;
- c. The Agreement shall continue in effect until such time as one party gives the other at least fifteen (15) days written notice of termination;
- d. The Agreement grants to O'Gara Aviation the exclusive worldwide right to broker and market the Aircraft for sale; and
- e. The total commission of O'Gara Aviation for any sale shall be One Hundred Twenty Five Thousand U.S. Dollars (\$125,000) (the "*Commission*"), payable at delivery of the Aircraft from client to purchaser.

5. To the best of my knowledge, O'Gara Aviation has not represented the Debtor's

creditors, equity security holders, or any other parties in interest, or their respective attorneys and accountants in any matter relating to the Debtor or its estate, other than its prepetition representation of the Debtor pursuant to the terms of the Aircraft Brokerage Agreement.

6. To the extent O'Gara Aviation identifies any other parties in interest which the Firm has represented, or currently represents; O'Gara Aviation will disclose such information as it becomes known.

7. To the best of my knowledge, neither I nor O'Gara Aviation holds or represents any interest adverse to the Debtor or the Debtor's estate.

8. O'Gara Aviation has not shared, nor agreed to share any compensation or reimbursement it has received or will received from the Debtor, other than with the members, principals, and employees of O'Gara Aviation.

FURTHER AFFIANT SAYETH NOT.

O'GARA AVIATION, L.L.C.

By: [Signature]
Print Name/ David D. Foster
Its: Vice President

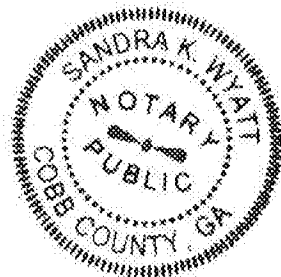
SWORN TO AND SUBSCRIBED before me this 26th day of March 2013, by David D. Foster, as Vice President for O'Gara Aviation, L.L.C., who: G is personally known to me; G produced a current driver's license as identification; or G produced _____ as identification.

[Signature]
SIGNATURE OF NOTARY

SANDRA K. WYATT
PRINTED NAME OF NOTARY

My Commission Expires: 04-09-2015

(Notary Seal)



Acme Air Title Service, Inc.

P.O. BOX 891916 TOLL FREE: 800-543-9085 FAX: 405-681-7088
OKLAHOMA CITY, OK 73159-1916 <http://www.acmeairtitleservice.com>

***** AIRCRAFT TITLE SEARCH REPORT *****

Meland, Russin & Budwick
Attn: Lisa Tannenbaum
200 S. Biscayne Blvd., Suite 3200
Miami, FL 33131

N Number: 64UC
Make: Bombardier Inc.
Model: CL-600-2B16
SN: 5587

The following information is provided by Acme Air Title Service, Inc. through the examination of the FAA records.

Record Owner: UC Challenger, LLC
Address: 701 Brickell Avenue, Suite 3150, Miami, FL 33131
Date Registered: 5-18-07*
Title: Manager
Acquired By: Bill of Sale
Filed: 5-18-07 Recorded: 5-18-07
Previous Owner: Florida Jet Sales, Inc.
Address: Not Given

Type: Corporation
Signed By: Arthur J. Murphy
Dated: 5-18-07
FAA Doc. #: UU040916

***** LIEN STATUS AND ADDITIONAL INFORMATION *****

Subject to: Security Agreement Dated: 5-18-07
Filed: 5-18-07 & 6-6-07 Recorded: 6-7-07
Debtor: UC Challenger, LLC
Address: 701 Brickell Avenue, Suite 3150, Miami, FL 33131
Secured Party: Bank of America, N.A.
Address: 477 South Third Street, Geneva, IL 60134

Amount: Not Given
FAA Doc. #: Y017182**

Subject to: Amendment Number*** Dated: 9-24-07
Filed: 9-24-07 Recorded: 10-9-07
Debtor: UC Challenger, LLC
Address: Not Given
Secured Party: Bank of America, N.A.
Address: 477 South Third Street, Geneva, IL 60134

Amount: Not Given
FAA Doc. #: TT028086**

The above described Security Agreement dated 5-18-07 as FAA Doc. # Y017182, states that UC Challenger, LLC is assigning their interest in an Aircraft Lease Agreement dated 5-17-07, between UC Challenger, LLC and CMC Group, Inc.; however this document does not appear in the aircraft record.

The above described Amendment Number One to FAA Doc. # Y017182, dated 9-24-07 as FAA Doc. # TT028086, states that UC Challenger, LLC is assigning their interest in the Amended and Restated Aircraft Lease Agreement dated 7-1-07, between UC Challenger, LLC and CMC Group, Inc. and a Lease Agreement dated 7-1-07, between UC Challenger, LLC and Dacra Development Corporation; however these documents does not appear in the aircraft record.

SEE ATTACHED PAGE TWO

Acme Air Title Service, Inc.

P.O. BOX 891916 TOLL FREE: 800-543-9085 FAX: 405-681-7088
OKLAHOMA CITY, OK 73159-1916 <http://www.acmeairtitleservice.com>

PAGE TWO TITLE SEARCH REPORT

N Number: 64UC
Make: Bombardier Inc.
Model: CL-600-2B16
SN: 5587

The FAA records contain 4 (four) FAA Entry Point Filing Forms - International Registry (FAA Form 8050-135) for N826JS (now N64UC) which reflect Authorization Codes to be used to transmit 2 (two) Contracts of Sale and 2 (two) International Interest to the International Registry for subject aircraft. For more detailed information and the Authorization Codes assigned by the FAA, see copies attached hereto and made a part hereof by reference.

*Re-Registration issued 5-3-11, expires 5-31-14

**Covers N826JS (now N64UC) and 2 (two) General Electric, CF34-3B Engines, Serial Numbers GE-E950141 and GE-E950142

***One to FAA Doc. # Y017182

This search is subject to and controlled by the filings on record with the FAA. FAA has advised that the imaging system (formerly used by FAA) and the RMS system, currently in use at the FAA Aircraft Registry, may contain discrepancies and or inaccuracies of records maintained at the aircraft registry. Acme Air Title Service, Inc. assumes no responsibility to the accuracy of FAA records and does not guarantee, warrant, or insure FAA index or records to be free of error nor does Acme Air Title Service, Inc. insure, warrant, or guarantee any services beyond specific written liability.

*****BILLING INFORMATION*****

Title Search: \$ 100.00
Fax Fee: \$
Other: \$
Prepaid: \$

TOTAL DUE: \$ 100.00

Examiner: Chuck Brock
CB/cp Chuck Brock

Date: March 21, 2013
Time: 7:29 a.m. CDT

Paperwork Reduction Act Statement: The information collected on this form is necessary to obtain authorization to transmit information to the International Registry. The information is a condition for the issuance of a unique authorization code. We estimate that it will take approximately 30 minutes to complete the form. Please note that any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB 2120-0697.

AUTHORIZATION CODE
 IRN20070518093518

**FAA ENTRY POINT FILING FORM
 INTERNATIONAL REGISTRY**

PARTY: (At least one party is required)

PARTY:

Name: Florida Jet Sales, Inc.
 Address: 1514 Perimeter Road, Suite 109
West Palm Beach, FL 33406
 Phone: 561-615-8231
 Electronic Address: _____

Name: _____
 Address: _____
 Phone: _____
 Electronic Address: _____

COLLATERAL: (Required)

Aircraft Make/Model	Serial Number	U.S. Registration Number
Bombardier, Inc. model CL-600-2B16 (described on the International Registry drop down menu as BOMBARDIER model CHALLENGER 604)	5587	N826JS
Engine Manufacturer/Make	Model	Serial Number

Additional collateral listed on attachment

TYPE OF INTEREST: (At least one block must be checked)

- Notice of Prospective International Interest, Prospective assignment, prospective sale
- International Interest
- Contract of Sale
- Discharge or Release
- Other (specify type) _____

SUBMITTED BY: McAfee & Taft A Professional Corporation, 10th Floor, Two Leadership Square, 211 North Robinson, Oklahoma City, OK 73102, (405) 631-9393 - Janet Bennett

Filed 5-18-07

Paperwork Reduction Act Statement: The information collected on this form is necessary to obtain authorization to transmit information to the International Registry. The information is a condition for the issuance of a unique authorization code. We estimate that it will take approximately 30 minutes to complete the form. Please note that any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB 2120-0697.

AUTHORIZATION CODE
 IRN20070518093519

**FAA ENTRY POINT FILING FORM
 INTERNATIONAL REGISTRY**

PARTY: (At least one party is required)

PARTY:

Name Delaware Challenger Operations LLC
 Address 2711 Centerville Rd, Ste 400
Wilmington, DE 19808
 Phone 305-682-4108
 Electronic Address _____

Name _____
 Address _____
 Phone _____
 Electronic Address _____

COLLATERAL: (Required)

Aircraft Make/Model	Serial Number	U.S. Registration Number
Bombardier, Inc. model CL-600-2B16 (described on the International Registry drop down menu as BOMBARDIER model CHALLENGER 604)	5587	N9263S
Engine Manufacturer/Make	Model	Serial Number

5-18-07
 filed

Additional collateral listed on attachment

TYPE OF INTEREST: (At least one block must be checked)

- Notice of Prospective International Interest, Prospective assignment, prospective sale
- International Interest
- Contract of Sale
- Discharge or Release
- Other (specify type) _____

SUBMITTED BY: McAfee & Taft A Professional Corporation, 10th Floor, Two Leadership Square, 211 North Robinson, Oklahoma City, OK 73102. (405) 681-9393 -- Janet Bennett

Paperwork Reduction Act Statement: The information collected on this form is necessary to obtain authorization to transmit information to the International Registry. The information is a condition for the issuance of a unique authorization code. We estimate that it will take approximately 30 minutes to complete the form. Please note that any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB 2120-0697.

AUTHORIZATION CODE
 IRN20070518093520

**FAA ENTRY POINT FILING FORM
 INTERNATIONAL REGISTRY**

PARTY: (At least one party is required)

Name UC Challenger, LLC
 Address 701 Brickell Avenue, Suite 3150
Miami, Florida 33131
 Phone 305-372-0550
 Electronic Address _____

PARTY:

Name Bank of America, N.A.
 Address _____
 Phone _____
 Electronic Address _____

COLLATERAL: (Required)

Aircraft Make/Model	Serial Number	U.S. Registration Number
Bombardier, Inc. model CL-600-2B16 (described on the International Registry's drop down menu as BOMBARDIER model CHALLENGER 604)	5587	N326JS
Engine Manufacturer/Make	Model	Serial Number

Additional collateral listed on attachment

TYPE OF INTEREST: (At least one block must be checked)

- Notice of Prospective International Interest, Prospective assignment, prospective sale
- International Interest
- Contract of Sale
- Discharge or Release
- Other (specify type) _____

SUBMITTED BY: McAfee & Taft A Professional Corporation, 10th Floor, Two Leadership Square, 211 North Robinson, Oklahoma City, OK 73102. (405) 681-9393 -- Janet Bennett

filed 5/8-07

Paperwork Reduction Act Statement: The information collected on this form is necessary to obtain authorization to transmit information to the International Registry. The information is a condition for the issuance of a unique authorization code. We estimate that it will take approximately 30 minutes to complete the form. Please note that any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number: OMB 2120-0697.

AUTHORIZATION CODE
 IRN20070924112853

**FAA ENTRY POINT FILING FORM
 INTERNATIONAL REGISTRY**

PARTY: (At least one party is required)

Name UC Challenger, LLC
 Address 701 Brickell Avenue, Suite 3150
Miami, Florida 33131
 Phone 305-372-0550
 Electronic Address _____

PARTY:

Name _____
 Address _____
 Phone _____
 Electronic Address _____

COLLATERAL: (Required)

Aircraft Make/Model	Serial Number	U.S. Registration Number
Bombardier, Inc. model CL-600-2B16 (described on the International Registry drop down menu as BOMBARDIER model CHALLENGER 604)	5587	N826JS
Engine Manufacturer/Make	Model	Serial Number

*LC-126-B
 pdf*

Additional collateral listed on attachment

TYPE OF INTEREST: (At least one block must be checked)

- Notice of Prospective International Interest, Prospective assignment, prospective sale
- International Interest
- Contract of Sale
- Discharge or Release
- Other (specify type) _____

SUBMITTED BY: McAfee & Taft A Professional Corporation, 10th Floor, Two Leadership Square, 211 North Robinson, Oklahoma City, OK 73102. (405) 681-9393 – Janet Bennett

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

FLORIDA SECURED TRANSACTION REGISTRY

FILED


2007 Jun 14 AM 12:00

***** 200705794235 *****

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address) SAL

Corporation Service Company
1201 Hays Street
Tallahassee, FL 32301



2 2 1 0 7 3 - 0 0 0 6 9 3
948424-1

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
OR 1b. INDIVIDUAL'S LAST NAME
UC Challenger, LLC

1c. MAILING ADDRESS
701 Brickell Avenue, Suite 3150

1d. SEE INSTRUCTIONS
ADD'L INFO RE ORGANIZATION DEBTOR
1e. TYPE OF ORGANIZATION
LLC
1f. JURISDICTION OF ORGANIZATION
FL
1g. ORGANIZATIONAL ID #, if any
L07000040709 NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME
OR 2b. INDIVIDUAL'S LAST NAME

2c. MAILING ADDRESS

2d. SEE INSTRUCTIONS
ADD'L INFO RE ORGANIZATION DEBTOR
2e. TYPE OF ORGANIZATION
2f. JURISDICTION OF ORGANIZATION
2g. ORGANIZATIONAL ID #, if any NONE

3. SECURED PARTY'S NAME (in NAME of TOTAL ASSIGNEE of ASSIGNOR (SP) - Insert only one secured party name (3a or 3b))

3a. ORGANIZATION'S NAME
OR 3b. INDIVIDUAL'S LAST NAME
Bank of America, N.A.

3c. MAILING ADDRESS
200 South College Street

3d. SEE INSTRUCTIONS
ADD'L INFO RE ORGANIZATION DEBTOR
3e. TYPE OF ORGANIZATION
3f. JURISDICTION OF ORGANIZATION
3g. ORGANIZATIONAL ID #, if any NONE

4. This FINANCING STATEMENT covers the following collateral:
All Documentary Stamps Due or Payable or to Become Due or Payable Pursuant to s.201.22 F.S., Have Been Paid
ALL OF DEBTOR'S RIGHT, TITLE AND INTEREST IN AND TO THE BOMBARDIER, INC. MODEL CL-600-2B16 AIRCRAFT, ENGINES AND PARTS AND THE PROCEEDS THEREOF AS MORE FULLY DESCRIBED ON SCHEDULE I ATTACHED HERETO.

5. ALTERNATIVE DESIGNATION (if applicable): LESSOR/LESSOR CONSIGNEE/CONSIGNEE SALES/BALOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. THE FINANCING STATEMENT is to be filed (for records) for recording in the REAL ESTATE RECORDS of (check one): Debtor 1 Debtor 2 All Parties Debtor 1 Debtor 2

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (if applicable) (ADDITIONAL FEE) (optional)

8. OPTIONAL FILER REFERENCE DATA

**SCHEDULE I
TO FINANCING STATEMENT
NAMING UC CHALLENGER, LLC
DEBTOR
AND
BANK OF AMERICA, N.A.
SECURED PARTY**

The financing statement covers the following items of property:

(i) all of Debtor's rights, title and interests in the Equipment (as such term and other capitalized terms used herein are defined below) (including the Airframe, the Engines, the APU, and the Parts) and substitutions and replacements of any of the foregoing;

(ii) all of the Debtor's rights, title and interests in the Records;

(iii) all of the Debtor's rights, title and interests in any Third Party Agreements;

(iv) all of Debtor's rights, title and interests in the Purchase Agreement and the bill of sale for the Aircraft, together with all of Debtor's rights, powers, privileges, options and other benefits under the Purchase Agreement and such bill of sale;

(v) all of Debtor's rights, title and interests in any and all service and warranty rights related to the Equipment, including the Engines, and in any claims thereunder;

(vi) all proceeds of any or all of the foregoing, whenever acquired, including, but not limited to, the proceeds of any insurance maintained with respect to any of the foregoing, all proceeds payable or received with respect to any condemnation, expropriation, requisition or other loss with respect to any item of the Equipment, and the proceeds of any warranty.

Capitalized terms used herein are defined as follows:

Aircraft means the Airframe purchased under the Purchase Agreement, together with the Engines initially installed on such Airframe when delivered to Debtor (or any replacement Engine substituted for any of such Engines), whether or not any such initial or replacement Engines may from time to time thereafter be installed on such Airframe or may be installed on any other airframe or on any other aircraft, and all Parts, including avionics, any APU and related equipment and Records.

Airframe means (i) the Bombardier, Inc. model CL-600-2B16 (described on the International Registry as Bombardier Model Challenger 604) aircraft (excluding the Engines or engines from time to time installed thereon) bearing United States Federal Aviation Administration registration number N826JS and manufacturer's serial number 5587, and (ii) any and all Parts so long as the same shall be incorporated in such aircraft and any and all Parts removed from such aircraft so long as such Parts remain subject to the Mortgage and Security Agreement.

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APU means (i) any auxiliary power unit installed on the Airframe as of the Closing Date, whether or not hereafter installed on the Airframe or any other airframe from time to time; (ii) any auxiliary power unit that may from time to time be substituted, pursuant to the applicable terms of the Mortgage and Security Agreement, for an APU; and (iii) any and all Parts incorporated in or installed on or attached to such auxiliary power unit or any and all Parts removed therefrom so long as the Lender shall retain an interest therein in accordance with the applicable terms of this Agreement after such removal.

Closing Date means May 18, 2007.

Engine means (i) each of the two General Electric Model CF34-3B engines bearing manufacturer's serial numbers GE-E950141 and GE-E050142 (described on the International Registry as GE Model CF34-3 and serial numbers 950141 and 950142), each of which engines has at least 1750 lbs of thrust or the equivalent thereof, which engines were originally installed on the Aircraft at the time of Debtor's acquisition of Debtor's interest therein, whether or not from time to time thereafter installed on such Aircraft or installed on any other airframe or on any other aircraft, and (ii) any engine which shall have been substituted for an engine described in preceding clause (i), whether or not from time to time thereafter installed on the Aircraft or any other airframe or on any other aircraft, together in each case with any and all Parts incorporated in such Engine and any and all Parts removed from such Engine so long as Debtor has an interest in such Parts.

Equipment means any and all of the Airframe, Engines, APU and Parts.

Mortgage and Security Agreement means the Mortgage, Security Agreement and Assignment dated as of May 18, 2007 between Debtor and Bank of America, N.A., as secured party, as it may be amended, amended and restated, modified or supplemented from time to time.

Parts means all appliances, parts, components, instruments, appurtenances, accessories, furnishings and other equipment of whatever nature (other than the complete Engines or engines) whether now owned or hereafter acquired which may from time to time be incorporated in the Airframe, any Engine or any APU (and "Part" means any of the foregoing) or, after removal therefrom, so long as such Parts remain subject to the security interest created by the Mortgage and Security Agreement.

Purchase Agreement means the Aircraft Purchase and Sale Agreement dated January 31, 2007 between Delaware Challenger Operations LLC, as seller, and the Debtor, as assignee of UC Aviation LLC, as buyer, as it may be amended, modified or supplemented from time to time.

Records means any and all logs, manuals, certificates and data and inspection, modification, maintenance, engineering, technical, and overhaul records (whether in written or electronic form) with respect to the Aircraft, including, without limitation, all records (i) required to be maintained by the FAA or any other governmental agency or authority having jurisdiction with respect to the Aircraft or by any manufacturer or supplier of the Aircraft (or any part thereof) with respect to the enforcement of warranties or otherwise, (ii) evidencing the Debtor's compliance with the provisions of the Mortgage and Security Agreement, and (iii) with respect to any maintenance service program for the Airframe or Engines.

Third Party Agreements means any and all leases, subleases, interchange agreements, charter agreements, pooling agreements, timeshare agreements and any other similar agreements or arrangements of any kind whatsoever relating to the Aircraft or any part thereof.