



**Fourth Report to Court of
KSV Restructuring Inc. as
Monitor of
Skylink Express Inc.**

June 28, 2024

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COURT FILE NO.: CV-24-00716267-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SKYLINK EXPRESS INC.

FOURTH REPORT OF KSV RESTRUCTURING INC.
AS MONITOR

June 28, 2024

1.0 Introduction

1. Pursuant to an order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on March 11, 2024 (the “**Filing Date**”), Skylink Express Inc. (the “**Company**”) was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and KSV Restructuring Inc. (“**KSV**”) was appointed monitor (the “**Monitor**”).
2. Pursuant to the terms of the Initial Order, among other things, the Court granted:
 - a) a stay of proceedings until March 21, 2024, being the date of the comeback motion in these proceedings (the “**Comeback Motion**”);
 - b) the following charges on the Company’s current and future assets, property and undertaking (collectively, the “**Property**”), in the order of priority provided below, each of which is subordinate to secured credit facilities (the “**TD Loan Facilities**”) provided to the Company by TD Bank (“**TD**”):
 - i. a charge in favour of the Company’s counsel, Norton Rose Fulbright Canada LLP (“**Norton Rose**”), the Monitor and its counsel, Cassels Brock & Blackwell LLP (“**Cassels**”), in the amount of \$350,000 to secure their fees and disbursements in these proceedings;
 - ii. a charge in favour of the Company’s sole shareholder, Momentum Decisive Solutions Canada Inc. (“**Momentum**” and, in such capacity, the “**DIP Lender**”), to secure advances made under a DIP facility (the “**DIP Facility**”) pursuant to an interim financing term sheet which advances were limited to \$1.35 million until the Comeback Motion (the “**DIP Lender’s Charge**”); and
 - iii. a charge in the amount of \$480,000 in favour of the sole director and officers of the Company (the “**Directors’ Charge**”).

3. On March 21, 2024, the Court issued an amended and restated initial order (the “**ARIO**”), which granted:
 - a) an extension of the stay of proceedings to April 26, 2024;
 - b) an increase in the Directors’ Charge to \$970,000; and
 - c) an increase in the Company’s permitted borrowings under the DIP Facility to \$2.5 million, which amounts are secured by the DIP Lender’s Charge.

A copy of the ARIO is provided in Appendix “A”.

4. On April 25, 2024, the Court issued an order, which approved:
 - a) an extension of the stay of proceedings to May 31, 2024;
 - b) a forbearance agreement dated April 19, 2024 among the Company, Momentum and TD (the “**Forbearance Agreement**”); and
 - c) an escrow agreement dated April 19, 2024 among Momentum, TD, the Monitor and Norton Rose (the “**Escrow Agreement**” and with the Forbearance Agreement, the “**TD Stand Still Agreements**”).
5. On May 30, 2024, the Court issued an order (the “**Sale Process Order**”) which approved:
 - a) an extension of the stay of proceedings to July 30, 2024;
 - b) a sale process for certain of the Company’s assets, primarily the Company’s aircraft (the “**Aircraft**”), aircraft parts inventory and potentially its air operator certificate (the “**Sale Process**”) and the retention of 1262396 Alberta Ltd. dba Pollock Aviation (the “**Agent**”) to act as sales agent to market and sell its assets;
 - c) an increase in the Company’s permitted borrowings under the DIP Facility to \$3 million, which amounts are secured by the DIP Lender’s Charge; and
 - d) the activities of the Monitor and the fees of the Monitor and Cassels.
6. To date, the principal purpose of these proceedings has been to provide the Company an opportunity, in the context of the stabilized environment created by CCAA protection, to address its liquidity challenges resulting from an uneconomic contract (the “**UPS Contract**”) with United Parcel Service Canada Ltd. (“**UPS**”), the Company’s largest customer.

7. As discussed in the Monitor's third report to Court dated May 24, 2024 (the "**Third Report**"), since the outset of these proceedings, the Company has attempted to renegotiate the UPS Contract on a basis that would allow it to remain viable; however, as noted in the Third Report, the Company and UPS have not been able to reach an agreement in this regard. The Company and UPS continue to discuss a wind-down agreement (the "**Wind Down Agreement**") pursuant to which the Company would continue to operate for UPS, on a reduced and declining basis. It is expected that the Company will discontinue providing service to UPS by the end of July 2024.
8. The Sale Process is set out in the Third Report, a copy of which is provided in Appendix "B", without appendices. Since the granting of the Sale Process Order, the Company, with the assistance of the Agent, has been marketing the Aircraft and other assets for sale.
9. The Affidavit of Kyle Dennhardt, the Company's CFO, sworn March 8, 2024 in support of the CCAA application (the "**Dennhardt Affidavit**") and KSV's pre-filing report dated March 8, 2024 (the "**Pre-filing Report**") filed in connection with the initial application, provide, *inter alia*, background information concerning the Company, its business and the reasons for the commencement of these proceedings.
10. The Dennhardt Affidavit, the Pre-filing Report, the Monitor's first report to Court dated March 18, 2024, the Monitor's second report to Court dated April 22, 2024, the Third Report, this report (the "**Report**"), the affidavits of Mr. Dennhardt sworn April 20, 2024 and May 24, 2024, as well as other Court materials filed in these proceedings, can be found on the Monitor's case website at www.ksvadvisory.com/experience/case/skylink.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) summarize a proposed transaction (the "**Transaction**") between the Company and LAD Inc. (the "**Purchaser**") pursuant to an aircraft purchase agreement dated June 24, 2024 (the "**APA**") for the sale of i) a Cessna Grand Caravan aircraft, manufacturer's serial number 208B-0662 and one Pratt and Whitney Canada PT6A-114 engine; ii) all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the APA; and iii) all documents and records relating to and/or required to be maintained with respect to the aircraft (collectively, the "**Purchased Assets**");
 - b) provide the Monitor's rationale for sealing the purchase price and deposit set out in the APA; and
 - c) recommend that the Court issue an Order (the "**AVO**"):
 - i. approving the APA and the Transaction;

- ii. transferring and vesting all of the Company's right, title and interest in and to the Purchased Assets in the Purchaser, free and clear of all liens, charges, security interests and encumbrances, following the Monitor's delivery of the Monitor's certificate substantially in the form attached as Schedule "A" to the proposed AVO;
- iii. sealing the purchase price and the deposit in the APA; and
- iv. approving the distribution of the net sale proceeds of the Purchased Assets to TD.

1.2 Restrictions

1. In preparing this Report, the Monitor has relied upon the Company's unaudited financial information, books and records and discussions with the Company's management and legal counsel.
2. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied upon to prepare this Report in a manner that complies with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.

1.3 Currency

1. All currency references in this Report are in Canadian dollars.

2.0 Background

1. The Company is an Ontario corporation and has operated for over 25 years providing regional air cargo services throughout North America. The Company is one of Canada's largest air cargo operators, specializing in regional courier feeder operations and time-sensitive, cost effective, air cargo charters throughout North America. Momentum is the Company's sole shareholder.
2. The Company's focus is to provide "last mile" services to secondary (remote) locations, primarily in Canada. As of the commencement of these proceedings, the Company operated from hangars in Vancouver, Winnipeg, Hamilton, Montreal-Mirabel and Québec City. The Company terminated certain routes out of its Vancouver hangar in late May 2024 and, as noted above, is negotiating the Wind-Down Agreement with UPS.
3. The Company has a fleet of 16 aircraft, comprised of 208B (4), 1900C (10) and 1900D (2) all-cargo aircraft, of which 14 are owned by the Company. The two 1900D aircraft were acquired by Momentum at the request of, and for the use of, the Company and must be converted to cargo planes before they can be flown by the Company. Conversion of one of the 1900D aircraft, C-FSXH (Serial Number UE-268) has started but was paused at the commencement of this CCAA proceeding. Conversion of the other 1900D aircraft has not started.

4. UPS is the Company's primary customer. The Company and UPS are party to the UPS Contract, a long-term feeder aircraft charter agreement pursuant to which the Applicant provides cargo services for UPS throughout Canada. The Applicant generates almost all its revenue from the UPS Contract. The UPS Contract expires in 2027.
5. The Company's registered office is 55 St. Clair Avenue West, Suite 210, Toronto, Ontario.
6. As of the Filing Date, the Company employed 79 full-time employees, seven part-time employees and 11 independent contractors. The Company's pilots are members of UNIFOR. The Company does not maintain any registered pension plans. The Company has been reducing its headcount since it determined that it would discontinue operations, or most of its operations, by the end of July 2024.
7. Pursuant to the ARIO, Momentum has been funding these proceedings under the DIP Facility, which ranks subordinate to the Company's obligations to TD under the TD Loan Facilities. As of the date of this Report, Momentum has advanced \$1.8 million to the Company under the DIP Facility.
8. Additional background information about the Company, the causes of the Company's financial challenges, the reasons the Company sought protection under the CCAA and these proceedings is provided in the Dennhardt affidavits and Monitor's Reports filed in these proceedings.

2.1 TD

1. TD is the only party with a registration filed against the Company in the applicable provincial personal property security registration systems. The Monitor understands that TD is the Company's only secured creditor, other than the DIP Lender and the beneficiaries of the Court-ordered charges issued in these proceedings, each of which is subordinate to TD.
2. The Company is indebted to TD pursuant to a credit facilities letter agreement dated November 2, 2020. TD was granted security over all of the Company's assets pursuant to a general security agreement, aircraft security, assignment of insurance and hypothec (the "**TD Loan Security**"). Momentum has also provided a limited recourse guarantee of the TD Loan Facilities in the amount of \$15 million and provided security in connection with its guarantee. As at the date of this Report, the balance on the TD Loan Facilities was approximately \$12.2 million.
3. Cassels has provided the Monitor with an opinion confirming the validity and enforceability of the TD Loan Security in the Purchased Assets, subject to standard assumptions and qualifications.

3.0 The Transaction

1. The Company retained the Agent to carry out the Sale Process. As noted in the Sale Process, the Agent is marketing the Aircraft on an individual aircraft and 'en bloc' basis.
2. The Sale Process has been conducted in accordance with the Sale Process Order and remains ongoing.

3. The Company, the Agent and Monitor prepared a template letter of intent to purchase and a template aircraft purchase agreement which have both been made available to potential purchasers.

3.1 Transaction

1. The Purchaser submitted a letter of intent (the “**LOI**”) which was acceptable to the Agent, the Company, the Monitor and TD. On execution of the LOI, the Purchaser paid the deposit to the Monitor, as escrow agent. The purchase price was consistent with the value estimate the Agent provided to the Monitor prior to the commencement of the Sale Process.
2. The Company and the Purchaser have settled the terms of the APA. The Monitor supports the Transaction based on the recommendation of the Agent. The Monitor understands that TD does not oppose the Transaction and that Momentum, as guarantor, consents to the Transaction. A copy of the redacted APA is provided in Appendix “C”. The only redactions are to the purchase price and the deposit, for the reasons provided in Section 3.4 below.

3.2 The APA

1. The key terms and conditions of the APA are provided below¹.
 - **Purchaser**: LAD Inc.
 - **Assets to be purchased**: (i) One Cessna Grand Caravan airframe, manufacturer’s serial number 208-0662, together with one Pratt and Whitney Canada PT6A-114 engine; and (ii) all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached as Exhibit “A” to the APA; and (iii) all Aircraft Documents.
 - **Purchase price and deposit**: For the reasons provided in Section 3.4, the Company is seeking to have the purchase price and the amount of the deposit sealed pending closing of the sale of all of the Fleet.
 - **Delivery location**: The Company’s designated facility at Vancouver International Airport.
 - **“As is, where is”**: The APA is consistent with standard insolvency transactions, i.e. to be completed on an “as is, where is” basis with minimal representations, warranties and conditions.
 - **Closing Date**: Five Business Days following the date the court makes the AVO or such other date as may be agreed by the parties in writing.

¹ Capitalized terms in this section have the meaning provided to them in the APA unless otherwise defined herein.

- **Material Conditions:** include, among other things:
 - i. the Company shall have delivered or cause to be pre-delivered to the Escrow Agent (being the Monitor) any documentation as may be reasonably required to release any Liens against the Purchased Assets;
 - ii. the Company shall have delivered or caused to be pre-delivered to the Escrow Agent, any documentation as may be required to deregister the Purchased Assets from the register of civil aircraft maintained by Transport Canada or to transfer registration of the Purchased Assets to the Purchaser; and
 - iii. the Court shall have issued the AVO.

- **Destruction or Material Damage:**

Notwithstanding any contrary provision of the APA, if at any time prior to Closing, the Purchased Assets are destroyed, (i) the Escrow Agent shall confirm that the Inspection Facility has been paid in full for any work commissioned for the Purchaser's expense, then shall refund the Deposit, immediately to Purchaser; and (ii) the APA shall terminate and be of no further force or effect and the parties shall have no further obligations or liabilities with respect to the APA except that termination of the APA shall not release a party in respect of any breaches of the APA arising prior to such termination.

In the event of any Material Damage to the Purchased Assets following the date of the APA and prior to Closing, Seller shall promptly notify Purchaser in writing of such damage and Purchaser shall, within 10 Business Days, notify Seller in writing whether it desires (i) that the Purchased Assets be repaired by Seller in anticipation of the Closing with costs to be agreed between the parties in writing; or (ii) to terminate the APA. In the event that Purchaser elects to terminate the APA as a result of damage, Seller refuses to repair the damage, the parties cannot agree on costs for repairing any such damages or the Monitor refuses that the damage be repaired, at its sole discretion, (i) the Escrow Agent shall refund the Deposit (less any amounts owed by Purchaser) immediately to Purchaser, and (ii) the APA shall terminate and be of no further force or effect and neither party shall have any further obligations to the other arising out of the APA subject to any provisions that survive their termination except that termination of the APA shall not release a party in respect of any breaches of the APA arising prior to such termination.

3.3 Recommendation

1. The Monitor recommends the Court issue the AVO for the following reasons:
 - a) the process undertaken by the Agent to market the Purchased Assets was commercially reasonable and consistent with the terms of the Sale Process Order;
 - b) the Agent is an experienced aircraft broker and is well known in the aviation industry;

- c) in the Agent's view, the purchase price under the Transaction is acceptable and consistent with its expectations considering the age and condition of the Purchased Assets;
- d) the Transaction is unconditional, except for Court approval;
- e) the deposit is non-refundable unless the Court does not approve the Transaction;
- f) TD does not oppose the Transaction and Momentum consents to the Transaction; and
- g) as at the date of this Fourth Report, the Monitor is not aware of any party objecting to or likely to object to the Transaction.

3.4 Sealing

1. The Monitor recommends that the unredacted copy of the APA (which redactions are solely with respect to the purchase price and deposit) be filed with the Court on a confidential basis and remain sealed pending further order of the Court or upon the completion of the sale of all of the Purchased Assets, as making the purchase price publicly available may negatively impact i) the sale of the Purchased Assets if the Transaction does not close; and ii) the sale of other assets available for sale in the Sale Process. As the Sale Process requires the deposit to be 15% of the purchase price, disclosing the deposit will allow the Purchase Price to be ascertained.
2. Sealing this information until the completion of the Sale Process or further Order of the Court is necessary to maximize recoveries in these proceedings and maintain the integrity and confidentiality of the Sale Process.
3. The salutary effects of sealing such information from the public record outweigh the deleterious effects of doing so under the circumstances. The Monitor is of the view that the sealing of the Confidential Appendices is consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25. Accordingly, the Monitor believes the proposed sealing of the Confidential Appendices is appropriate in the circumstances.

3.5 Distribution

1. The Purchase Price is required to be paid to the Monitor as an escrow agent. Given TD's priority interest in the Purchased Assets, the Monitor recommends that it be authorized to distribute the sale proceeds from the Purchased Assets, net of the commission payable to the Agent, directly to TD to reduce the balance owing by the Company under the TD Loan Facilities.

4.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief requested in this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS MONITOR IN THE CCAA PROCEEDINGS OF
SKYLINK EXPRESS INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”



Court File No. CV-24-00716267-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE CAVANAGH)
MONDAY, THE 11TH
DAY OF MARCH, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SKYLINK EXPRESS INC. (the "**Applicant**")

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Kyle Dennhardt sworn March 8, 2024 and the Exhibits thereto, the Pre-Filing report of KSV Restructuring Inc. ("**KSV**") in its capacity as the proposed monitor of the Applicant (in such capacity, the "**Monitor**"), the first report of KSV in its capacity as Court-appointed Monitor dated March 18, 2024, the supplementary affidavit of Kyle Dennhardt sworn March 9, 2024, the affidavit of Kathryn Furfaro sworn March 8, 2024, the supplementary affidavit of Kathryn Furfaro sworn March 10, 2024 and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, Momentum Decisive Solutions Canada Inc. ("**Momentum**"), The Toronto-Dominion Bank ("**TD Bank**") and those other parties present although duly served as appears from the affidavits of service of Katie Parent sworn March 9, 11 and 18, 2024 and on reading the consent of KSV to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application, Application Record, Notice of Motion and Motion Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges; and

- (c) with the consent of the Monitor, amounts owing in respect of the Applicant's corporate credit cards in respect of charges incurred prior to this Order up to a maximum amount of \$250,000 if, in the opinion of the Applicant and the Monitor, such payments are critical to the preservation of the Business.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

7. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and

which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time (“Rent”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court:

- (a) Except with respect to payments on account of the TD Bank Credit Facilities (as defined in the Affidavit of Kathryn Furfaro sworn March 8, 2023), to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$300,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

11. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable Secured Creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such Secured Creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.

12. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours’ prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

13. THIS COURT ORDERS that until and including April 26, 2024, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all

Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

Notwithstanding the foregoing or any other provision of this Order, the rights and remedies of TD Bank shall not be stayed during the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

14. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

15. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

16. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in

accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

17. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

18. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

19. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

20. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$970,000, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 37 and 39 herein.

21. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 19 of this Order.

APPOINTMENT OF MONITOR

22. THIS COURT ORDERS that KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a periodic basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;

- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

24. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

27. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, whether incurred prior to, on or subsequent to the date of this Order, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a monthly basis or as may otherwise be agreed on.

29. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$350,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37 and 39 hereof.

DIP FINANCING

31. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Momentum (the "**DIP Lender**") in order to finance

the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$2.5 million unless permitted by further Order of this Court.

32. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicant and the DIP Lender dated as of March 8, 2024 (the "**DIP Term Sheet**"), filed.

33. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 37 and 39 hereof.

35. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 5 business days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's

Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

36. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$350,000);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum amount of \$970,000).

38. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. THIS COURT ORDERS that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person however, the Charges shall rank subordinate to the TD Loan Security (as defined in the Affidavit) and provided that the Charges shall rank behind Encumbrances in favour of any Persons that have

not been served with notice of this application. The Applicant and the beneficiaries of the Charges shall be entitled to seek priority ahead of such Encumbrances on notice to those parties.

40. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

41. THIS COURT ORDERS that the Charges, the DIP Term Sheet and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

42. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

43. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the *Globe and Mail* (national edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

44. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL www.ksvadvisory.com/experience/case/skylink .

45. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

46. THIS COURT ORDERS that the Applicant, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements

GENERAL

47. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

49. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

50. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

51. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

52. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



Digitally signed
by Mr. Justice
Cavanagh

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36,
AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SKYLINK EXPRESS INC.

Court File No. CV-24-00716267-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

AMENDED AND RESTATED INITIAL ORDER

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Appendix “B”



**Third Report to Court of
KSV Restructuring Inc. as
Monitor of
Skylink Express Inc.**

May 24, 2024

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COURT FILE NO.: CV-24-00716267-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SKYLINK EXPRESS INC.

THIRD REPORT OF KSV RESTRUCTURING INC.
AS MONITOR

MAY 24, 2024

1.0 Introduction

1. Pursuant to an order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on March 11, 2024 (the “**Filing Date**”), Skylink Express Inc. (the “**Company**”) was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and KSV Restructuring Inc. (“**KSV**”) was appointed monitor (the “**Monitor**”).
2. Pursuant to the terms of the Initial Order, among other things, the Court granted:
 - a) a stay of proceedings until March 21, 2024, being the date of the comeback motion in these proceedings (the “**Comeback Motion**”);
 - b) the following charges on the Company’s current and future assets, property and undertaking (collectively, the “**Property**”), in the order of priority provided below, each of which is subordinate to secured credit facilities provided to the Company by TD Bank (“**TD**”) (the “**TD Loan Facilities**”):
 - i. a charge in favour of the Company’s counsel, Norton Rose Fulbright Canada LLP (“**Norton Rose**”), the Monitor and its counsel, Cassels Brock & Blackwell LLP (“**Cassels**”), in the amount of \$350,000 to secure their fees and disbursements in these proceedings (the “**Administration Charge**”);
 - ii. a charge in favour of the Company’s sole shareholder, Momentum Decisive Solutions Canada Inc. (“**Momentum**” and, in such capacity, the “**DIP Lender**”), to secure advances made under a DIP facility (the “**DIP Facility**”) pursuant to an interim financing term sheet (the “**DIP Term Sheet**”) which advances were limited to \$1.35 million until the Comeback Motion (the “**DIP Lender’s Charge**”); and
 - iii. a charge in the amount of \$480,000 in favour of the sole director and officers of the Company (the “**Directors’ Charge**”).

3. On March 21, 2024, the Court issued an amended and restated initial order (the “**ARIO**”), which granted:
 - a) an extension of the stay of proceedings to April 26, 2024;
 - b) an increase in the Directors’ Charge to \$970,000; and
 - c) an increase in the Company’s permitted borrowings under the DIP Facility to \$2.5 million, which amounts are secured by the DIP Lender’s Charge.

A copy of the ARIO is provided in Appendix “A”.

4. On April 25, 2024, the Court issued an order (the “**Stay Extension Order**”), which approved:
 - a) an extension of the stay of proceedings to May 31, 2024 (the “**Stay Extension Period**”);
 - b) a forbearance agreement dated April 19, 2024 among the Company, Momentum and TD (the “**Forbearance Agreement**”); and
 - c) an escrow agreement dated April 19, 2024 among Momentum, TD, the Monitor and Norton Rose (the “**Escrow Agreement**” and with the Forbearance Agreement, the “**TD Stand Still Agreements**”).¹
5. To date, the principal purpose of these proceedings has been to provide the Company an opportunity, in the context of the stabilized environment created by CCAA protection, to address its liquidity challenges resulting largely from its contract (the “**UPS Contract**”) with United Parcel Service Canada Ltd. (“**UPS**”), which is integral to the Company’s business. The UPS Contract is uneconomic for the Company.
6. As discussed below, since the outset of these proceedings, the Company has attempted to reach a solution with UPS that provides a framework for a future business relationship; however, as of the date of this Report, the Company and UPS have not been able to agree on a long-term arrangement that would see the Company continue to provide services to UPS. The Monitor understands that the Company and UPS are in advanced discussions concerning a short-term arrangement pursuant to which the Company will continue to operate for UPS, on a reduced basis, until July 31, 2024, unless an agreement is reached for the Company to provide services beyond that date.
7. Based on the status of the Company’s negotiations with UPS and the uncertainty with respect to a long-term arrangement, the Company intends to commence a sale process and to seek the retention of 1262396 Alberta Ltd. DbA Pollock Aviation (the “**Agent**”) to act as its sales agent to market and sell its assets, which consist primarily of the Company’s aircraft (the “**Fleet**”), aircraft parts inventory and potentially its air

¹ The key terms of the TD Stand Still Agreements were summarized in the Second Report (as defined below) and copies of the TD Stand Still Agreements were appended to the Second Report.

operator certificate (the “**AOC**”) (the “**Sale Process**”). The Sale Process is discussed in Section 5 below.

8. The Affidavit of Kyle Dennhardt, the Company’s CFO, sworn March 8, 2024 in support of the CCAA application (the “**Dennhardt Affidavit**”) and KSV’s pre-filing report dated March 8, 2024 (the “**Pre-filing Report**”) filed in connection with the initial application, provide, *inter alia*, background information concerning the Company, its business and the reasons for the commencement of these proceedings. Mr. Dennhardt swore his third affidavit on May 24, 2024 in support of the relief sought by the Company in its present motion (the “**Third Dennhardt Affidavit**”).
9. The Dennhardt Affidavit, the Pre-filing Report, the Monitor’s first report to Court dated March 18, 2024 (the “**First Report**”), the Monitor’s second report to Court dated April 22, 2024 (the “**Second Report**”), this report (the “**Report**”, with the Pre-filing Report, First Report and Second Reports, the “**Monitor’s Reports**”), the affidavit of Mr. Dennhardt sworn April 20, 2024 and the Third Dennhardt Affidavit, as well as other Court materials filed in these proceedings, can be found on the Monitor’s case website at www.ksvadvisory.com/experience/case/skylink.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide the Court with an update on the Company’s:
 - i. business and operations since the commencement of these proceedings; and
 - ii. negotiations with UPS;
 - b) summarize the proposed Sale Process and the material terms of the Pollock Engagement Letter (as defined below);
 - c) summarize the Company’s cash flow forecast for the period May 18, 2024 to July 30, 2024 (the “**Updated Cash Flow Forecast**”);
 - d) provide the Court with an update on the Monitor’s and the Company’s activities since the date of the Second Report;
 - e) detail the fees and disbursements of the Monitor and counsel to the Monitor, Cassels Brock and Blackwell LLP (“**Cassels**”), for the period ending April 30, 2024 and seek approval of same; and
 - f) provide the Monitor’s recommendation that the Court issue an Order:
 - i. extending the stay of proceedings from May 31 to July 30, 2024;
 - ii. approving the Sale Process and the retention of the Agent pursuant to its engagement letter dated May 23, 2024 (the “**Engagement Letter**”);

- iii. increasing the Company's permitted borrowings under the DIP Facility from \$2.5 million to \$3 million in accordance with an amendment to the DIP Term Sheet dated May 23, 2024 (the "**Amended DIP Term Sheet**"), which borrowings are to be secured by the DIP Lender's Charge;
- iv. approving the fees of the Monitor and Cassels through April 30, 2024; and
- v. approving the Reports and the Monitor's activities described therein.

1.2 Restrictions

1. In preparing this Report, the Monitor has relied upon the Company's unaudited financial information, books and records and discussions with the Company's management and legal counsel.
2. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied upon to prepare this Report in a manner that complies with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
3. An examination of the Cash Flow Forecast (defined below) as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon the Company's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance on whether the Cash Flow Forecast will be achieved.

1.3 Currency

1. All currency references in this Report are in Canadian dollars.

2.0 Background

1. The Company is an Ontario corporation and has operated for over 25 years providing regional air cargo services throughout North America. The Company is one of Canada's largest air cargo operators, specializing in regional courier feeder operations and time-sensitive, cost effective, air cargo charters throughout North America. The Company's focus is to provide "last mile" services to secondary (remote) locations, primarily in Canada. As of the commencement of these proceedings, the Company operated from hangars in Vancouver, Winnipeg, Hamilton, Montreal-Mirabel and Québec City. The Company is in the process of reducing the number of hangars from which it operates. Momentum is the Company's sole shareholder.

2. The Company has a fleet of 16 aircraft, comprised of 208B (4), 1900C (10) and 1900D (2) all-cargo aircraft, of which 14 are owned by the Company. The two 1900D aircraft were acquired by Momentum at the request of, and for the use of, the Company and must be converted to cargo planes before they can be flown by the Company. Conversion of one of the 1900D aircraft, C-FSXH (Serial Number UE-268) has started and was paused at the commencement of this CCAA proceeding. Conversion of the other 1900D aircraft has not started.
3. UPS is the Company's primary customer. The Company and UPS are party to the UPS Contract, a long-term feeder aircraft charter agreement pursuant to which the Applicant provides cargo services for UPS throughout Canada. The Applicant generates almost all its revenue from the UPS Contract. The UPS Contract expires in 2027. A principal focus of these proceedings has been to renegotiate the UPS Contract.
4. The Company's registered office is 55 St. Clair Avenue West, Suite 210, Toronto, Ontario.
5. As of the Filing Date, the Company employed 79 full-time employees, seven part-time employees and 11 independent contractors. The Company's pilots (37) are members of UNIFOR. The Company does not maintain any registered pension plans. Since the Filing Date, the Company's headcount has increased by one due to three terminations, two resignations and six new hires.
6. Momentum acquired the Company in 2020. At that time, the Company was performing well and forecasting significant growth. The Monitor understands that since acquisition, Momentum has provided financial and other support to the Company, including injecting working capital of \$7 million on acquisition, funding expenses of approximately \$1 million prior to these proceedings and, as noted, making certain of its aircraft available to the Company at no cost. Momentum's employees also support the Company's business with no overhead or management fee charged to the Company.
7. Pursuant to the ARIO, Momentum has been funding these proceedings under the DIP Facility, which ranks subordinate to the Company's obligations to TD under the TD Loan Facilities. As of the date of this Report, Momentum has advanced \$1.8 million to the Company under the DIP Facility.
8. The Company began experiencing liquidity challenges in late 2022. The Company's financial performance was impacted by higher-than-expected capital expenditures and, in 2023, the loss of a material customer. The Company is presently operating on a cash flow negative basis as a result of several factors, including i) a reduction in demand for cargo delivery services; ii) increased turnover in the Company's staff, notably for aircraft maintenance engineers and pilots due to regulatory changes, labour shortages and the recent unionization of the Company's pilot group; iii) increases in the cost and decreases in availability of aircraft parts; and iv) material increases in capital expenditures due to, among other things, regulatory changes.
9. The revenue escalation provisions of the UPS Contract are not sufficient to compensate the Company for its cost increases and, accordingly, the Company is unable to generate sufficient cash flow to operate its business unless the UPS Contract can be renegotiated.

10. Additional background information about the Company and these proceedings is provided in the various Dennhardt affidavits and Monitor's reports filed in these proceedings.

2.1 TD

1. TD is the only party with a registration filed against the Company in the applicable provincial personal property security registration systems and the Monitor understands it is the Company's only secured creditor, other than the DIP Lender.
2. The Company is indebted to TD pursuant to a credit facilities letter agreement dated November 2, 2020. TD was granted security over all of the Company's assets pursuant to a general security agreement, aircraft security, assignment of insurance and hypothec (the "**TD Loan Security**"). Momentum has also provided a limited recourse guarantee of the TD Loan Facilities in the amount of \$15 million and provided security in connection with its guarantee. As at the date of this Report, the balance on the TD Loan Facilities was approximately \$12.4 million which is net of an insurance refund in the amount of approximately \$780,000 which was recently paid to TD and applied against the Company's obligations owing to it.
3. As of the date of this Report, Cassels is continuing to review TD's security.
4. Prior to the Filing Date, TD served and filed court materials for, among other things, the appointment of a receiver and manager over all the assets, property and undertaking of the Company.
5. The Company, Momentum and TD, with the assistance of the Monitor, reached a consensual agreement prior to the Filing Date and TD did not oppose the relief sought in the Initial Order based on terms reflected in the Endorsement, which included:
 - a) the receivership application that had been brought by TD would be adjourned to the Comeback Motion;
 - b) the Company, Momentum and TD would negotiate in good faith the terms of a forbearance agreement pending the Comeback Motion;
 - c) the Administration Charge would be subordinated to the TD Loan Security; and
 - d) Momentum would post \$2 million of cash collateral (the "**Additional Cash Collateral**") in escrow to be held in trust with Norton Rose, subject to agreeing on the terms of an escrow agreement.
6. Momentum also agreed that the Additional Cash Collateral would be sourced from an injection of fresh capital and not from its existing working capital. TD agreed to allow the Company to continue to use its cash management system with TD.
7. Following the Filing Date, the Company repaid from the DIP Facility the full amount owing under an operating line provided by TD. The Company no longer has access to this facility.
8. As noted above, the Forbearance Agreement and the Escrow Agreement were executed on April 19, 2024 and approved by the Court on April 25, 2024.
9. Pursuant to the terms of the Escrow Agreement, Momentum has posted the Additional Cash Collateral with Norton Rose.

10. Pursuant to the terms of the Forbearance Agreement, the Monitor has provided TD with the Company's weekly cash flow reporting.
11. The Company has also continued to make scheduled debt service payments to TD from advances under the DIP Facility.
12. During these CCAA proceedings, the Monitor has provided TD with routine updates regarding the status of the Company's negotiations with UPS and information on the proposed Sale Process, as well as cash flow reporting.

3.0 UPS Update

1. Immediately following the Filing Date, the Company contacted UPS to continue discussions concerning the UPS Contract which were ongoing at that time. The Company advised UPS that the Company was facing a liquidity crisis that necessitated the CCAA filing and that absent amendments to the financial terms of the UPS Contract, the Company would not be able to continue to service the UPS Contract. UPS was also advised that Momentum was funding the Company's business and was not prepared to continue to fund the Company's losses beyond the April 26, 2024 stay extension date. The Monitor also contacted UPS and its external counsel to impress the urgency of the situation.
2. As discussed in the Second Report, the Company provided UPS with several proposals for an amended contract which UPS advised were not acceptable to UPS. UPS has also provided proposals to the Company, but those proposals were not acceptable to the Company. Also, as discussed in the Second Report, the Company planned to use the stay extension period through May 31, 2024 to develop a contingency plan which would include the sale of its assets and/or its business and that the proposed sale process would be discussed with TD. As noted in the Second Report, the Company's intention was to seek approval of a sale process prior to the end of the May 31, 2024 stay extension period.
3. As of the date of this Report, no agreement has been reached with respect to a long-term arrangement between the Company and UPS; however, there is an ongoing dialogue between UPS and the Company. In this regard, as of the date of this Report, the Company and UPS are in advanced discussions concerning a short-term arrangement pursuant to which the Company is prepared to continue to operate on a reduced basis until July 31, 2024, which could be extended if the Company and UPS can negotiate acceptable terms. The Company's ability to perform the UPS Contract is also contingent on its ability to retain the required personnel, including a sufficient number of pilots. An update concerning this issue will be provided to the Court on the return of this motion.
4. The Company has advised the Monitor that it remains open to further discussions with UPS concerning a new contract.

4.0 Cash Flow

1. A comparison of the Company's actual cash flow for the period April 20 to May 17, 2024 (the "**Forecast Period**") to the cash flow forecast provided in the Second Report is provided below.

(unaudited; \$)	Forecast	Actual	Variance
Receipts			
UPS revenues	1,916,231	2,029,226	112,995
GST/HST/QST refunds	-	10,090	10,090
	<u>1,916,231</u>	<u>2,039,316</u>	<u>123,085</u>
Disbursements			
Payroll	512,475	458,772	(53,703)
Capital expenditures	77,520	78,569	1,049
Leases	125,713	125,713	-
Insurance	-	-	-
Maintenance	228,515	221,902	(6,614)
Aircraft operating expenses	683,835	643,614	(40,221)
Other general expenses	41,179	40,920	(259)
GST/HST/QST on expenditures	145,650	113,130	(32,520)
TD Loan - principal repayment	244,830	244,830	-
TD Loan – interest	101,301	135,504	34,203
	<u>2,161,018</u>	<u>2,062,954</u>	<u>(98,064)</u>
Net cash flow before the undernoted	(244,787)	(23,638)	221,149
Professional fees	425,000	158,410	(266,590)
Net Cash Flow	<u>(669,787)</u>	<u>(182,048)</u>	<u>487,739</u>
Opening Cash Balance	359,023	359,023	-
Net Cash Flow	(669,787)	(182,048)	487,739
DIP Financing	500,000	300,000	(200,000)
Ending Cash Balance	<u>189,236</u>	<u>476,975</u>	<u>287,739</u>

2. As reflected above, as of May 17, 2024, the Company borrowed \$300,000 during the Forecast Period versus forecasted borrowings of \$500,000. Since the commencement of these proceedings, borrowings under the DIP Facility have totalled \$1.8 million compared to the forecasted borrowings of \$2 million. The variances generally relate to revenue slightly exceeding the forecast, while expenses, including professional fees, have been less than the forecast, as discussed below:

- UPS revenues: due to lower than expected route cancellations.
- Payroll: due to the termination of certain members of the senior management team early in these proceedings.
- Aircraft operating expenses: due to a lower than projected sub-charter costs resulting from less than forecasted aircraft maintenance.
- Professional fees: the involvement of Norton Rose, the Monitor and Cassels has been less than projected, resulting in lower than projected fees and costs.

4.1 Updated Cash Flow Forecast

1. The Company, with the assistance of the Monitor, has prepared the Updated Cash Flow Forecast. The Updated Cash Flow Forecast is provided in Appendix "B". The Company's and the Monitor's statutory reports on the Updated Cash Flow Forecast are attached as Appendices "C" and "D", respectively.

2. Based on the Monitor's review of the Updated Cash Flow Forecast, the cash flow assumptions appear reasonable.
3. The Updated Cash Flow Forecast reflects that the Company is projected to require advances of \$1.2 million under the DIP Facility during the Updated Cash Flow Forecast period. As the authorized borrowing under the DIP Facility is \$2.5 million, the Company is seeking an increase in the DIP Facility from \$2.5 million to \$3 million and corresponding increase in the DIP Lender's Charge.
4. The Monitor understands that the DIP Lender is prepared to fund the Company and these proceedings in accordance with the Updated Cash Flow Forecast, subject to: (a) the Court's approval of an increase in the permitted borrowings under the DIP Facility to \$3 million; (b) the Court's approval of a corresponding increase in the DIP Lender's Charge; and (c) the Company remaining in compliance with the terms and conditions of the Amended DIP Term Sheet, a copy of which is appended to the Third Dennhardt Affidavit.
5. The only material change to the Amended DIP Term sheet from the original DIP Term Sheet is the increase in the amount of the permitted borrowings.

4.2 DIP Facility Recommendation

1. For the following reasons, the Monitor recommends that the Court issue an order approving the increase in the amount of the permitted borrowings under the DIP Facility and the Amended DIP Term Sheet:
 - a) the Company is projected to require the increase in the permitted borrowings to fund its business and operations during the Stay Extension Period;
 - b) without the cash to be provided under the DIP Facility, the Company may not have sufficient cash flow to continue operating and carry out the Sale Process;
 - c) as set out in the Pre-Filing Report, KSV has compared the terms of the DIP Facility to other interim financing facilities approved by Canadian courts in recent CCAA proceedings. The comparison was appended to the Pre-Filing Report. The cost of the proposed DIP Facility is within the range of similar facilities recently approved by the Court and other Canadian courts in CCAA and other restructuring proceedings;
 - d) the DIP Facility ranks subordinate to TD's security interest, which is a requirement of TD;
 - e) the Monitor believes it is unlikely that any other lender would provide DIP funding on a subordinated basis to TD;
 - f) TD does not oppose the proposed increase in the DIP Facility and corresponding DIP Lender's Charge; and
 - g) there are no structuring, facility, standby or other fees being charged by the DIP Lender under the DIP Facility.

5.0 Sale Process

1. The purpose of the Sale Process is to market the Company’s assets and business for sale, including the Fleet, parts inventory and the AOC.
2. The Agent is an experienced sales agent and broker of aircraft and is well known in the aviation industry, including to the Company and Momentum. Background information concerning the Agent is included as Appendix “E”.
3. Subject to Court-approval, the Company engaged the Agent pursuant to an engagement letter dated May 23, 2024 (the “**Pollock Engagement Letter**”). A copy of the Pollock Engagement Letter is included as Appendix “F”.
4. Pursuant to the Pollock Engagement Letter, the Agent is to receive a 2% commission on the sale of any assets subject to the Sale Process, plus HST and disbursements.
5. The Sale Process has been developed based on consultation among the Agent, the Company and the Monitor. TD has also been provided the Sale Process and a copy of the Pollock Engagement Letter.

5.1 Sale Process

1. The Sale Process provides that the Fleet will be marketed for sale on a one-off or en-bloc basis without a specific bid deadline. The Agent is of the view that certain of the aircraft will be sold quickly, while some aircraft may require several months to complete a sale.
2. The Company intends to maintain, to the extent possible, the personnel required to maintain, service and preserve the value of the Fleet and the parts inventory, while also securing and safeguarding the books and records related to the Fleet, which is critical to preserve value.
3. The Sale Process is set out in the table below².

Summary of Sale Process		
Milestone	Description of Activities	Timeline
Retention of Agent	<ul style="list-style-type: none"> • Company to retain the Agent to conduct the Sale Process for the Fleet, which will be marketed and sold on an en bloc, bulk or individual aircraft basis. • Agent will also market the AOC and aircraft inventory owned by the Company. 	Complete, subject to Court approval.
Marketing	<ul style="list-style-type: none"> • Agent, with input from the Company and the Monitor, to prepare a list of potentially interested buyers. • Agent to prepare marketing material concerning the opportunity, including an Information Memorandum (the Information Memorandum) detailing the aircraft available for sale and details of each aircraft. The Agent will market the opportunity on its website, in publications such as Jetnet, Amstat, Global Air, Planefax, MyAirtrade and Wingslist among other publications and sites suitable to 	<p>Approximately 4 weeks to prepare marketing materials and buyer’s list.</p> <p>Data room will be prepared during</p>

² The description of the Sale Process below is slightly different than the one appended to the Engagement Letter. The Sale Process in this section is the prevailing process.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
	<p>this type of aircraft. Agent will contact an established base of clients operating these aircraft and draw on extensive network of brokers and dealers specializing in these aircraft.</p> <ul style="list-style-type: none"> • Agent, with the assistance of the Company, to establish a data room, with key information for each aircraft. 	the pre-marketing period.
Prospect Identification	<ul style="list-style-type: none"> • Interested buyers will execute a confidentiality agreement (“CA”) in order to be provided access to the Company’s confidential information, to the extent relevant, in the discretion of the Monitor. 	
Diligence	<ul style="list-style-type: none"> • Interested buyers shall be provided copies of the Information Memorandum and access to non-confidential information in the data room. • Interested parties wanting access to information determined to be confidential by the Company or the Monitor (such as employee information or historical financial information), will only be provided to parties who sign a CA. • Interested parties may be permitted to take aircraft for test flights. 	
Offers	<ul style="list-style-type: none"> • Offers may be received and considered at any time. • To be a qualified offer, it must include the following (a “Qualified Offer”): <ul style="list-style-type: none"> – identify which Aircraft are included in the offer for purchase; – indicate the consideration payable for the Aircraft; – include a 15% deposit to the Monitor to be held in trust within 24 hours of being notified that its offer is accepted; – not be conditioned on: (i) the outcome of any further due diligence; or (ii) financing; – indicate the estimated closing date; – provide sufficient financial information to determine that the buyer has the ability to satisfy and perform any liabilities or obligations assumed pursuant to the Qualified Offer; – provide that the Qualified Offer shall remain irrevocable for 45 days; – include acknowledgements and representations that confirm that the transaction is on an “as is, where is” basis; the bidder has had an opportunity to conduct any and all due diligence necessary prior to entering into the Qualified Offer and has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the property in making its bid; and it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the completeness of any information provided in connection therewith, except as expressly stated in the executed Qualified Offer; and – include any other terms or conditions the bidder believes are material to the transaction. 	

Summary of Sale Process		
Milestone	Description of Activities	Timeline
Offer Review	<ul style="list-style-type: none"> • Upon receipt of any offer, the Agent, the Company and the Monitor shall review such offer to determine whether such offer constitutes a Qualified Offer. • The Monitor and Company shall consult with TD with respect to any offers received. • Provide TD with copies of any offers within 48 hours of receipt. 	
Sale Approval	<ul style="list-style-type: none"> • Upon acceptance of one or more Qualified Offers, the Company shall seek Court-approval of such transactions. 	

4. Additional terms of the Sale Process include:

- a) the Agent, Company and the Monitor shall not be required to accept Qualified Offers and shall be entitled to seek further clarification or further negotiation of any offer received;
- b) if multiple Qualified Offers are received for the same Aircraft, the Agent, Company and the Monitor may establish further bidding procedures, including to hold an auction; and
- c) the Agent, with the consent of the Monitor and the Company, shall be entitled to waive strict compliance with any of the terms of the Sale Process provided that any material variation shall require further approval of the Court.

5.2 Recommendation

1. The Monitor recommends that the Court issue an order approving the Sale Process and the retention of the Agent pursuant to the Engagement Letter for the following reasons:
 - a) the Agent is an experienced aircraft sales agent and broker, and is well known to the Company and Momentum;
 - b) the Sale Process is a fair, open and transparent process and is intended to canvass the market broadly to obtain the highest and best price for the Company's assets, and therefore maximize value for the Company's creditors;
 - c) the Sale Process is flexible and provides the Company with the timelines, procedures and discretion that it believes are necessary to maximize value;
 - d) the Sale Process will be carried out contemporaneously while the Company continues to provide services to UPS and will provide the Company additional time to determine whether a long-term arrangement can be agreed with UPS;
 - e) the Agent's fee is success-based and is to be paid on the sale of any of the assets subject to the Sale Process. The amount of the fee (2%) is reasonable considering the time, cost and effort that will be required to sell the assets. It is also reasonable when considering the fees of other types of sales agents normally retained by debtor companies in insolvency proceedings, including liquidators, realtors and investment bankers;

- f) TD, the Company's only secured creditor, does not oppose the Sale Process;
- g) Momentum, as the guarantor of the TD debt and the DIP Lender, consents to the Sale Process; and
- h) the Monitor is of the view that no party will be prejudiced by the Sale Process.

6.0 Company's Activities

1. The Company's activities since the Second Report have included:
 - a) operating its business, subject to the terms of the ARIO, in the ordinary course;
 - b) communicating with employees and other stakeholders regarding these proceedings and dealing with all human resource matters;
 - c) corresponding extensively with UPS in the context of its daily operations and the negotiation of the UPS Contract;
 - d) corresponding with Norton Rose and the Monitor regarding UPS, critical vendors, the Sale Process, and other issues;
 - e) corresponding with the Agent regarding the proposed Sale Process;
 - f) communicating with suppliers to secure goods and services during these proceedings and to address payment terms;
 - g) considering cost-saving initiatives;
 - h) reviewing the Company's cash flow forecast and comparing actual results to projected results;
 - i) reporting weekly on its financial performance during these proceedings;
 - j) preparing the Updated Cash Flow Forecast.

7.0 Monitor's Activities

1. Since the date of the Second Report, the Monitor has been, among other things:
 - a) meeting and corresponding regularly with the Company's management team regarding operating issues and CCAA matters;
 - b) monitoring the Company's receipts and disbursements and attending weekly calls with the Company regarding same;
 - c) reviewing the Company's weekly cash flow reporting;
 - d) engaging with Cassels concerning TD, UPS, the Sale Process and this motion;
 - e) corresponding with UPS and its external counsel;
 - f) dealing with Norton Rose regarding all aspects of these proceedings, including UPS, TD and the Sale Process;

- g) considering the Sale Process and the retention of the Agent;
- h) assisting the Company to deal with key suppliers;
- i) reviewing and commenting on the Company's materials to be filed in support of the relief sought at this motion; and
- j) preparing this Report.

8.0 Professional Fees

1. The Monitor's fees (excluding disbursements and HST) from February 15 to April 30, 2024 total approximately \$110,325.
2. Cassels' fees (excluding disbursements and HST) from February 28 to April 30, 2024 total approximately \$67,187.
3. The average hourly rates for the Monitor and Cassels for the referenced billing periods were \$696.50 and \$748.18, respectively.
4. Detailed invoices in respect of the fees and disbursements of the Monitor and Cassels are provided as exhibits to the affidavits (the "Fee Affidavits") sworn by representatives of the Monitor and Cassels, attached as Appendices "G" and "H", respectively.
5. The Monitor is of the view that the hourly rates charged by Cassels are consistent with the rates charged by law firms practicing corporate insolvency and restructuring in the Toronto market, and that the overall fees charged by Cassels and the Monitor are validly incurred in accordance with the provisions of the Orders in this CCAA proceeding and are reasonable and appropriate in the circumstances.

9.0 Stay Extension

1. The stay of proceedings currently expires on May 31, 2024. The Company is requesting an extension of the stay of proceedings to July 30, 2024.
2. The Monitor supports the request for an extension of the stay of proceedings for the following reasons:
 - a) the Company is acting in good faith and with due diligence;
 - b) the Updated Cash Flow Forecast reflects that the Company is projected to have sufficient liquidity to fund its post-filing obligations;
 - c) it will provide the Company the opportunity to carry out the Sale Process and provide it with additional time to consider whether there is a workable long-term business model for the UPS Contract while concurrently implementing the proposed Sale Process and winding down its business, if necessary;
 - d) TD does not oppose the stay extension and Momentum supports it;

- e) the Monitor believes that the extension is in the best interest of the Company's stakeholders and that no stakeholder will be prejudiced by extending the stay of proceedings; and
- f) as of the date of this Report, neither the Company nor the Monitor is aware of any party opposed to an extension of the stay of proceedings.

10.0 Conclusion and Recommendation

1. Based on the foregoing, KSV respectfully recommends that this Honourable Court make an Order granting the relief detailed in Section 1.1(1) (f) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS MONITOR IN THE CCAA PROCEEDINGS OF
SKYLINK EXPRESS INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “C”

AIRCRAFT PURCHASE AGREEMENT

dated as of June 24, 2024

between

Skylink Express Inc.,

as Seller,

and

LAD Inc.

as Purchaser,

concerning one (1) Cessna Grand Caravan aircraft,
manufacturer's serial number 208B-0662
equipped with one (1) Pratt and Whitney Canada PT6A-114 engine
(the **Aircraft**)

AIRCRAFT PURCHASE AGREEMENT

This **AIRCRAFT PURCHASE AGREEMENT** (this **Agreement**) is made and entered into as of June 24, 2024 (the **Effective Date**), by and between Skylink Express Inc. (**Seller**), a corporation existing under the laws of Ontario, having its registered address at 55 Clair West, Suite 210, Toronto, Ontario, Canada, and LAD INC. (**Purchaser**), a corporation existing under the laws of Alberta with its place of business at 575 Palmer Road NE, Calgary, Alberta.

WITNESSETH:

WHEREAS on March 11, 2024, Seller sought and obtained an initial order from the Ontario Superior Court of Justice (Commercial List) (the **Court**) commencing proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the **CCAA** and the proceedings under the CCAA, the **CCAA Proceedings**). Pursuant to the Initial Order, KSV Restructuring Inc. has been appointed as the Monitor (the **Monitor**);

WHEREAS, Seller desires to sell the Aircraft to Purchaser, and Purchaser desires to purchase the Aircraft from Seller, upon the terms and subject to the conditions set forth herein and terms customary to CCAA transactions and subject to the Court's approval (as defined herein).

WHEREAS, the parties have executed the LOI (as defined herein), the Purchaser has paid the Deposit to the Escrow Agent and completed the Inspection (as defined in the LOI) of the Aircraft and is satisfied therewith and no Discrepancies (as defined in the LOI) were identified;

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in Article 1 hereto.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, obligations and agreements herein contained, the parties, intending to be legally bound hereby, agree as follows:

ARTICLE 1 - DEFINITIONS

The following terms shall have the following meanings for all purposes of this Agreement:

Aircraft means (i) that certain Cessna Grand Caravan airframe, manufacturer's serial number 208B-0662 (the **Airframe**), together with one (1) Pratt and Whitney Canada PT6A-114 engine (the **Engine**), (ii) all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached hereto as Exhibit A, and (iii) all Aircraft Documents.

Aircraft Documents means all documents and records relating to and/or required to be maintained with respect to the Aircraft, including, without limitation, all Airframe, Engines and accessory logbooks, manuals, weight and balance manuals, maintenance records, wiring diagrams, drawings and data in the possession of Seller.

Aircraft Protocol means official English language text of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, adopted on 16 November 2001 at a diplomatic conference held in Cape Town, as adopted by Canada and the province of Ontario, and as the same may be amended or modified from time to time.

Aircraft Specification means the Aircraft Specification attached hereto as Exhibit A, which are provided as information and without warranty or representation of exactitude from Seller whatsoever and are strictly subject to Purchaser's duty of diligent verification during Purchaser's Inspection of the Aircraft and Aircraft Documents.

Approval and Vesting Order means an order by the Court, approving and authorizing the transaction contemplated by this Agreement and vesting in Purchaser all the right, title and interest of the Seller in and to the Aircraft, free and clear from any Liens.

Bill of Sale means a Bill of Sale for the Aircraft in the form of Exhibit B attached hereto.

Business Day means any day of the year in which (i) banks are not authorized or required to close in Toronto, Ontario, and (ii) Transport Canada is open for filing documents.

Cape Town Convention means, collectively, the Convention and the Aircraft Protocol.

CCAA has the meaning ascribed to this term in the Recitals.

CCAA Proceedings has the meaning ascribed to this term in the Recitals.

Closing means the consummation of the purchase and sale transaction contemplated by this Agreement, as described in Section 3.5.

Closing Date means the date the Closing occurs.

Convention means the official English language text of the Convention on International Interests in Mobile Equipment, adopted on 16 November 2001 at a diplomatic conference held in Cape Town, South Africa, as adopted by Canada and the province of Ontario and as may be amended or modified from time to time.

Court has the meaning ascribed to this term in the Recitals.

Court's Approval means the Court shall have issued the Approval and Vesting Order.

Damage Election has the meaning ascribed to this term in Section 7.1.2.

Delivery Location means Seller's designated facility at Vancouver International Airport (C-YVR) unless otherwise agreed in writing by the parties.

Delivery Receipt means an Aircraft Delivery Receipt in the form of Exhibit C attached hereto.

Deposit the total amount of [REDACTED] held by the Escrow Agent and includes any interest earned thereon from time to time while such amount is held by the Escrow Agent.

Escrow Agent means the Monitor.

Final Payment means the Purchase Price plus applicable taxes minus the Deposit.

International Interest has the meaning given to it in the Convention.

International Registry means the International Registry of Mobile Assets located in Dublin, Ireland, established pursuant to the Cape Town Convention.

International Registry Procedures means the official English language text of the Procedures of the International Registry issued by the supervisory authority thereof pursuant to the Cape Town Convention.

International Registry Regulations means the official English language text of the Regulations of the International Registry issued by the supervisory authority thereof pursuant to the Cape Town Convention.

Lien means any lien, mortgage, security interest, lease, or encumbrance.

LOI means the Letter of Intent for the sale/purchase of the Aircraft dated June 11, 2024 entered into between the parties.

Monitor has the meaning ascribed to this term in the Recitals.

Monitor's Certificate has the meaning ascribed to this term in Section 3.5.4.

Purchase Price means the amount of [REDACTED]

ARTICLE 2- AGREEMENT TO BUY AND SELL

- 2.1 Agreement.** For and in consideration of the Purchase Price, on the Closing Date, Seller shall sell and deliver the Aircraft to Purchaser, and Purchaser shall purchase and accept delivery of the Aircraft from Seller, on and subject to the terms and conditions set forth herein. Purchaser shall accept to purchase the Aircraft without any warranty whatsoever, express or implied, in an "as is where is" condition, at its sole risks and perils.
- 2.2 Deposit.**
- 2.2.1 Upon execution of this Agreement, the Deposit, or any part thereof currently held by the Escrow Agent, becomes immediately non-refundable and shall be applied towards the Purchase Price, except as specifically provided in this Agreement.
- 2.2.2 The Deposit shall be applied to the Purchase Price at Closing and is considered non-refundable to Purchaser, except as otherwise specifically provided herein.
- 2.2.3 The Deposit shall be held by the Escrow Agent in an interest bearing account, interest bearing investment certificate or term deposit, with a Canadian Schedule I chartered bank pending completion of the transactions contemplated under this Agreement or earlier termination of this Agreement.
- 2.2.4 Except as expressly provided in this Agreement, if the transactions contemplated by this Agreement are not completed for any reason, without limiting any other rights or remedies available to the Seller under this Agreement or applicable law, the Deposit shall be forfeited to the Seller as liquidated damages, in full and final satisfaction of any and all losses that the Seller may sustain as a result thereof or otherwise pursuant to this Agreement.
- 2.2.5 The provisions of this Section 2.2 shall survive termination of this Agreement.

ARTICLE 3- CLOSING PROCEDURES

- 3.1 Final Payment.** At least one (1) business day before the Closing Date, Purchaser shall deliver the Final Payment to the Escrow Agent by way of a wire transfer of immediately available funds to the account designated in writing by the Escrow Agent. The Escrow Agent shall confirm receipt of the Final Payment via email to Seller and Purchaser.
- 3.2 Pre-Closing Obligations.** On or before the Closing Date, Seller shall, (i) deliver the Aircraft to the Delivery Location, and (ii) deliver or cause to be pre-delivered with the Escrow Agent:
- 3.2.1 An undated, but otherwise fully executed Bill of Sale conveying title from Seller to Purchaser;
- 3.2.2 A copy of the Approval and Vesting Order;

- 3.2.3 Any other documentation from the Seller or its secured lenders as the Seller and the Purchaser may agree in writing is required to release any Liens against the Aircraft, including but not limited to any Liens published on the International Registry; and
- 3.2.4 Any other documentation as may be required to deregister the Aircraft from the register of civil aircraft maintained by Transport Canada or to transfer registration of the Aircraft to the Purchaser, as applicable, including any IDERA termination from the Seller's lender (executed but undated).

3.3 Conditions Precedent to Seller's Obligations. Seller's obligation to sell and deliver the Aircraft to Purchaser on the Closing Date shall be subject to the following conditions precedent:

- 3.3.1 All of Purchaser's representations set forth in Section 4.2 shall be true and accurate as of the time of Closing;
- 3.3.2 Purchaser shall have delivered the Final Payment to the Escrow Agent in advance of the Final Payment deadline;
- 3.3.3 Purchaser shall have delivered to the Escrow Agent an executed but undated Aircraft Delivery Receipt along with or before the Final Payment;
- 3.3.4 the Court's Approval shall have been received; and
- 3.3.5 Purchaser shall have performed and complied with all the terms, conditions and covenants required by this Agreement to be performed or complied with by it prior to or at the Closing.

3.4 Conditions Precedent to Purchaser's Obligations. Purchaser's obligation to purchase and accept delivery of the Aircraft from Seller on the Closing Date shall be subject to the following conditions precedent:

- 3.4.1 All of Seller's representations set forth in Section 4.1 shall be true and accurate as of the time of Closing;
- 3.4.2 Seller shall have delivered or caused to be delivered the items identified in Section 3.2 required to be delivered by it; and
- 3.4.3 the Court's Approval shall have been received; and
- 3.4.4 at the moment of Closing, Seller shall have performed and complied with all of the terms, conditions and covenants required by this Agreement to be performed or complied with by

3.5 Closing. Closing shall occur on the date that is five (5) Business Days following the Court's Approval, or such later date as may be agreed by the parties in writing. It is Purchaser's obligation to have all financing in place before Closing. The Closing is not conditional upon and will not be delayed due to financing issues. On the Closing Date, the parties shall perform the following actions which shall be coordinated via e-mail, in the order presented, and which collectively shall constitute the Closing:

- 3.5.1 Seller shall confirm to Purchaser and Escrow Agent that the conditions precedent to Seller's obligations as set forth in Section 3.3 have been satisfied or waived;
- 3.5.2 Purchaser shall confirm to Seller and Escrow Agent that the conditions precedent to Purchaser's obligations as set forth in Section 3.4 have been satisfied or waived;

- 3.5.3 The Purchase Price plus applicable taxes then held by the Escrow Agent shall be delivered by the Escrow Agent to Toronto-Dominion Bank (the **Lender**) in satisfaction of that amount of outstanding indebtedness payable by the Seller to the Lender or as may otherwise be agreed by the Seller, the Escrow Agent and the Lender in writing.
- 3.5.4 The Monitor shall provide an executed certificate of the Monitor substantially in the form attached to the Approval and Vesting Order (the **Monitor's Certificate**) confirming that all other conditions to Closing have either been satisfied or waived by both the Purchaser and the Seller.
- 3.5.5 The Seller or the Escrow Agent shall:
 - 3.5.5.1 file or cause to be filed any necessary mortgage/Lien release documents to discharge any remaining Liens/International Interests on the Aircraft; and
 - 3.5.5.2 date and release the Bill of Sale to Purchaser; and
 - 3.5.5.3 date and release the IDERA termination to Purchaser.
- 3.5.6 Seller shall tender the Aircraft to Purchaser at the Delivery Location.
- 3.5.7 Purchaser shall accept delivery of the Aircraft from Seller at the Delivery Location, and the Escrow Agent shall simultaneously deliver to Seller a fully executed and completed Delivery Receipt.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

4.1 Seller's Representations and Warranties. Seller hereby represents and warrants that, as of the date hereof, and as of the Closing:

- 4.1.1 Seller is duly formed, validly existing, and in good standing under the laws of Ontario having the capacity to sue and be sued in its own name, having full power, legal right and authority to carry on its business as currently conducted, and to execute, deliver and perform the provisions of this Agreement subject to the Court's Approval;
- 4.1.2 Subject to the Court's Approval, the execution, delivery, and performance by Seller of this Agreement, and the sale of the Aircraft, has been duly authorized by all necessary action on behalf of Seller and do not conflict with or result in any breach of any of the terms or constitute a default under any document, instrument, or agreement to which Seller is a party; and
- 4.1.3 This Agreement constitutes the legal, valid and binding obligations of Seller and is enforceable against Seller in accordance with its terms subject only to obtaining the Court's Approval.

4.2 Purchaser's Representations and Warranties. Purchaser hereby represents and warrants that, as of the date hereof, and as of the Closing:

- 4.2.1 Purchaser is duly formed, validly existing, and in good standing under the laws of Alberta, having the capacity to sue and be sued in its own name, having full power, legal right and authority to carry on its business as currently conducted, and to execute, deliver and perform the provisions of this Agreement;
- 4.2.2 The execution, delivery, and performance by Purchaser of this Agreement, and the acquisition of the Aircraft, has been duly authorized by all necessary action on behalf of

Purchaser and do not conflict with or result in any breach of any of the terms or constitute a default under any document, instrument, or agreement to which Purchaser is a party;

- 4.2.3 This Agreement constitutes the legal, valid and binding obligations of Purchaser and is enforceable against Purchaser in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting the enforceability of contractual obligations and creditors' rights generally and by the application of equitable principles by courts of competent jurisdiction, sitting at law or in equity; and
- 4.2.4 The Purchaser is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

ARTICLE 5- DISCLAIMER

- 5.1 **DISCLAIMER AND LIMITATION OF LIABILITY.** THE AIRCRAFT AND EACH PART THEREOF IS BEING SOLD AND DELIVERED TO PURCHASER IN "**AS IS, WHERE IS, WITH ALL FAULTS**" CONDITION, WITHOUT ANY REPRESENTATION, WARRANTY OR GUARANTY OF ANY KIND BEING MADE OR GIVEN BY SELLER, ITS DIRECT AND INDIRECT SHAREHOLDERS, PARTNERS, DIRECTORS, OFFICERS, MANAGERS, AGENTS, EMPLOYEES OR ATTORNEYS, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE AND SELLER DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES WHETHER ARISING IN LAW, IN EQUITY, IN CONTRACT OR IN TORT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE NOR EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, AIRWORTHINESS, DESIGN, CONDITION, OR FITNESS FOR A PARTICULAR USE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER SHALL NOT BE LIABLE OR RESPONSIBLE TO PURCHASER FOR ANY DEFECTS, EITHER PATENT OR LATENT IN THE AIRCRAFT OR FOR ANY DIRECT OR INDIRECT DAMAGE TO PERSONS OR PROPERTIES RESULTING THEREFROM OR FOR PURCHASER'S LOSS OF USE OF OR A DIMINUTION IN VALUE OF THE AIRCRAFT OR FOR ANY INTERRUPTION IN PURCHASER'S BUSINESS CAUSED BY PURCHASER'S INABILITY TO USE THE AIRCRAFT FOR ANY REASON WHATSOEVER.
- 5.2 UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS, LOSS OF BUSINESS, LOSS OF USE OR ANY OTHER INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF OR RELATED TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY DELAY IN CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY, AND EACH PARTY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO SUCH DAMAGES.

ARTICLE 6 - TAXES

- 6.1 **Calculation of Taxes.** The parties acknowledge that sales taxes payable by the Purchaser are calculated on the Purchase Price as converted into Canadian dollars at the rate published by the Bank of Canada for the date of execution of the Bill of Sale.
- 6.2 **Taxes.** Purchaser shall pay when due, and shall defend, indemnify and hold Seller harmless from and against any and all sales, use, value added, excise and other similar taxes (including excise-equivalent customs duty), and any taxes, fees, duties, interest, penalties, charges, invoices, claims and statements relating thereto, which may be imposed by any federal, state, county, local, foreign or other governmental authority as a result of the sale, delivery or transfer of the Aircraft to Purchaser, or the ownership, possession, use or storage of the Aircraft on or after the Closing, except to the extent (i) imposed on or measured by Seller's income or (ii) related to a period (or portion thereof) ending prior to the Closing which are not a result of any action or omission of Purchaser. In the event Seller receives written notice of any audit, claim, assessment or proposed assessment of any tax for which Purchaser may be responsible under this Section 6.1, Seller shall

notify Purchaser within ten (10) Business Days thereof, and Seller and Purchaser shall reasonably cooperate to manage and/or defend any such audit, claim, assessment or proposed assessment.

ARTICLE 7- MISCELLANEOUS

7.1 Risk of Loss, Damage or Destruction of Aircraft.

7.1.1 **Risk of Loss.** Title to, and risk of loss, injury, destruction or damage to the Aircraft, shall pass from Seller to Purchaser at the time of Closing.

7.1.2 **Destruction or Damage.** Notwithstanding any contrary provision of this Agreement, if at any time prior to the Closing the Aircraft is destroyed, (i) the Escrow Agent shall confirm that the Inspection Facility has been paid in full for any work commissioned for Purchaser's expense, then shall refund the Deposit, immediately to Purchaser, and (ii) this Agreement shall terminate and be of no further force or effect and the parties shall have no further obligations or liabilities with respect to this Agreement except that termination of this Agreement shall not release a party in respect of any breaches of this Agreement arising prior to such termination. In the event of any Material Damage to the Aircraft following the date of this Agreement and prior to Closing, Seller shall promptly notify Purchaser in writing of such damage and Purchaser shall, within ten (10) Business Days, notify Seller in writing (such notice, the **Damage Election**) whether it desires (i) that the Aircraft be repaired by Seller in anticipation of the Closing with costs to be agreed between the parties in writing or (ii) to terminate this Agreement. In the event that Purchaser elects to terminate this Agreement as a result of damage in accordance with this Section 7.1.2, Seller refuses to repair the damage, the parties cannot agree on costs for repairing any such damages or the Monitor refuses that the damage be repaired, at its sole discretion, (i) the Escrow Agent shall refund the Deposit (less any amounts owed by Purchaser) immediately to Purchaser, and (ii) this Agreement shall terminate and be of no further force or effect and neither party shall have any further obligations to the other arising out of this Agreement subject to any provisions that survive their termination except that termination of this Agreement shall not release a party in respect of any breaches of this Agreement arising prior to such termination.

7.2 Default/Termination.

7.2.1 **Seller's Default.** This Agreement may be terminated by Purchaser in the event of a breach by Seller of any material provision of this Agreement (provided that Purchaser is in compliance with its material obligations under this Agreement), which breach is not cured within fifteen (15) Business Days following the delivery to Seller of written notice thereof from Purchaser or which breach by its nature cannot be cured prior to Closing. If Purchaser elects to terminate this Agreement under this Section 7.2.1, within two (2) Business Days following Purchaser's written demand for same, and as Purchaser's sole remedy hereunder, the Escrow Agent shall refund the Deposit to Purchaser, Seller shall reimburse Purchaser for its Inspection costs pursuant to this transaction and the parties shall have no further obligations or liabilities with respect to this Agreement except that termination of this Agreement shall not release a party in respect of any breaches of this Agreement arising prior to such termination.

7.2.2 **Purchaser's Default.** This Agreement may be terminated by Seller in the event of a breach by Purchaser of any material provision of this Agreement (provided that Seller is in compliance with its material obligations under this Agreement) which breach is not cured within seven (7) Business Days of the delivery to Purchaser of written notice thereof from Seller or which breach by its nature cannot be cured prior to Closing. If Seller elects to terminate this Agreement under this Section 7.2.2, without limiting any other rights or remedies available to the Seller under this Agreement or applicable law, Seller shall be entitled to be paid the Deposit as liquidated damages, and the Escrow Agent shall pay the

Deposit to Seller within two (2) Business Days of written demand by Seller, and this Agreement shall be of no further force or effect except that termination of this Agreement shall not release a party in respect of any breaches of this Agreement arising prior to such termination.

- 7.3 Force Majeure.** The term **Force Majeure** means any cause beyond a party's reasonable control that prevents a party from meeting its obligations under this Agreement, including, but not limited to, acts of God or the public enemy, acts of terrorism, war or other outbreak of hostilities, civil commotion, strikes, lockouts, and labor disputes (but excludes events described in Section 7.1.2 above, the remedies for which are described therein). A party shall promptly notify the other party that it will be unable to perform its obligations hereunder, other than payment obligations, due to a Force Majeure. In such event, the time for such party's performance shall be extended for the pendency of such event, provided, however, that should such non-performance extend beyond thirty (30) days, the unaffected party may at its option terminate this Agreement upon written notice to the other party. In such event, the Escrow Agent shall remit the balance of the Deposit to Purchaser. Thereafter, neither party shall have any obligation or liability to the other with respect to the subject matter of this Agreement subject to any provisions that survive their termination. Notwithstanding the foregoing, Force Majeure shall not excuse the failure to make timely payment pursuant to this Agreement.
- 7.4 Amendments.** The provisions of this Agreement may not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by both parties hereto.
- 7.5 Severability.** Any provision of this Agreement that may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- 7.6 Assignment.** This Agreement may not be assigned by any party without the prior written consent of the other party. In the case of an authorized assignment, the assignor shall remain primarily obligated for its assignee's payment and performance of assignor's obligations hereunder, including warranting title to the Aircraft (if applicable). Any assignment of this Agreement by Purchaser shall include an express assignment of the Deposit.
- 7.7 Successor and Assigns.** This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors and permitted assigns.
- 7.8 Headings and References.** The division of this Agreement into Sections, and the insertion of headings, are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 7.9 Notices.** All communications, declarations, demands, consents, directions, approvals, instructions, requests and notices required or permitted by this Agreement shall be in writing and shall be deemed to have been duly given or made when delivered personally or transmitted electronically by email, facsimile, receipt acknowledged, or in the case of documented overnight delivery service or registered or certified mail, return receipt requested, delivery charge or postage prepaid, on the date shown on the receipt therefor, in each case at the address set forth below:

If to Seller: Skylink Express Inc.
55 Clair West, Suite 210,
Toronto, Ontario, Canada

Attention: David Atkins, President/COO
E-mail: datkins@skylinkexpress.com

with a copy (which shall not constitute notice) to:

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 2000
PO Box 53, Toronto, Ontario M5K 1E7

Attention: Eric Reither and Jennifer Stam
Email: eric.reither@nortonrosefulbright.com
and Jennifer.stam@nortonrosefulbright.com

If to Purchaser: LAD INC.
575 Palmer Road NE
Calgary, Alberta T2E 7G4

Attention: Dan Anderson
Email: dan@ladinc.ca

If to Monitor/Escrow Agent:

KSV Restructuring Inc.
220 Bay Street, 13th Floor, PO Box 20,
Toronto, Ontario, M5J 2W4

Attention: Bobby Kofman
Email: bkofman@ksvadvisory.com

- 7.10 Non-Waiver.** Any failure at any time of either party to enforce any provision of this Agreement shall not constitute a waiver of such provision or prejudice the right of such party to enforce such provision at any subsequent time.
- 7.11 Entire Agreement.** The parties agree that the terms and conditions of this Agreement (and the confidentiality provisions of the LOI) constitute the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements between the parties, express or implied. To the extent of any conflict between the terms of this Agreement and the terms of any other invoice or other standard form document delivered by the parties under this Agreement, the terms of this Agreement shall govern.
- 7.12 Transaction Costs and Expenses.** Except as otherwise set forth herein, each party to this Agreement shall bear its own transaction costs and expenses, including, without limitation, any brokers' commissions and/or attorneys' fees.
- 7.13 Survival.** The representations, warranties and certifications of the Seller and the Purchaser contained in this Agreement and in any documents to be delivered pursuant to this Agreement shall merge on Closing and not survive following Closing.
- 7.14 Further Assurances.** Each of the parties hereto covenants and agrees to execute such other and further documents relating to the matters set forth herein and to take or cause to be taken such other and further actions, as may be reasonably necessary or appropriate to carry out the purposes and intent of this Agreement, and to consummate the transactions contemplated hereby.
- 7.15 Governing Law/Jurisdiction.** This Agreement is deemed to have been concluded in Toronto, Ontario, Canada and is governed by the laws of Ontario and those of Canada applicable therein, without regard to conflict of law provisions.

7.16 Submission to Jurisdiction. Each of the parties irrevocably and unconditionally submits and attorns to the exclusive jurisdiction of the courts of the Province of Ontario to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by applicable Law, each of the parties:

7.16.1 irrevocably waives any objection, including any claim of inconvenient forum, that it may now or in the future have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that Province, or that the subject matter of this Agreement may not be enforced in those courts; and

7.16.2 irrevocably agrees not to seek, and waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 8.21, of the substantive merits of any suit, action or proceeding.

7.17 Cape Town Convention

7.17.1 Prior to Closing, Seller shall, and Purchaser shall, become a “transacting user entity” with the International Registry. Each party shall bear their own expense in doing so.

7.17.2 Seller and Purchaser shall provide to each other, as a condition precedent to Closing, evidence that they have been approved by the International Registry as a “transacting user entity” and have duly registered with, are authorized to make filings with and have received all approvals from the International Registry, and have appointed an “administrator” (as such term is defined and used in the International Registry Procedures and International Registry Regulations).

7.17.3 Seller shall and Purchaser shall, as a condition precedent to Closing, authorize Norton Rose Fulbright Canada LLP to act as, and shall designate Norton Rose Fulbright Canada LLP or another mutually agreed party as, their “professional user entity” (as such term is defined and used in the International Registry Procedures and International Registry Regulations) to effect, amend, discharge and consent to registrations with respect to the Airframe and the Engines on their behalf. No party shall revoke such authorization until after the earlier to occur of (i) the discharge of any International Interests and registration of a Contract of Sale of the Airframe and Engines with the International Registry following the release of the Bill of Sale conveying the Aircraft to Purchaser (**Transfer of Title**) or (ii) termination of this Agreement in accordance with its terms. Neither Purchaser, nor anyone claiming by or through Purchaser, shall effect or cause to effect a prospective International Interest on the Airframe or the Engines. Should any such registration(s) be made, such shall be a material breach of this Agreement and Purchaser shall take all necessary actions to discharge or cause to discharge such registration(s).

7.17.4 Seller and Purchaser shall cause Norton Rose Fulbright Canada LLP, as a professional user entity, to register a Contract of Sale of the Airframe and Engines with the International Registry immediately after Transfer of Title. Seller and Purchaser each hereby expressly consents to the registration of the International Interest arising from the Contract of Sale with respect to the Airframe and the Engines.

7.18 Agreement Negotiated. The parties to this Agreement are sophisticated and have been represented or had the opportunity to be represented in connection with the negotiation and performance of this Agreement. The parties agree that no presumptions relating to the interpretation of contracts against the drafter of any particular clause should or may be applied in this case and, therefore, waive their effects.

7.19 Confidentiality. The terms and conditions of this Agreement, and all writings, discussions, and negotiations in connection with the transaction contemplated by this Agreement (including, without

limitation, the fact that discussions and negotiations have been conducted by the parties), shall remain strictly confidential and shall not be disclosed by either party, without the prior written consent of the other party, except that each party shall be entitled to disclose the terms and conditions of this Agreement (i) as may be required by law or legal process; (ii) to such party's attorneys, accountants, consultants, lenders, and other advisors performing services for such party with respect to or affected by the transaction contemplated by this Agreement including Escrow Agent and Inspection Facility and their personnel; (iii) to each party's employees with a need to know; (iv) as may be required to permit such party to pursue all available remedies for breach of this Agreement by the other party; (v) to any entity that may provide financing to Purchaser in connection with the acquisition of the Aircraft; and (vi) in connection with the CCAA Proceedings. For greater certainty, the Purchaser acknowledges that this the transaction shall be subject to approval by the Court and the Seller shall be entitled to disclose whatever terms of this Aircraft Purchase Agreement are required in order to seek such approval.

- 7.20 Payment and Currency.** Any money to be advanced, paid or tendered by one Party to another under this Agreement must be advanced, paid or tendered by bank draft, certified cheque or wire transfer of immediately available funds payable to the Person to whom the amount is due. Unless otherwise specified, the word "dollar" and the "\$" sign refer to United States currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in United States currency.
- 7.21 Monitor's Certificate.** The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the Purchaser, and file with the Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Monitor shall have no Liability to the Parties in connection therewith. The Parties further acknowledge and agree that upon written confirmation from both Parties that all conditions of Closing in favour of such Party have been satisfied or waived, the Monitor may deliver the executed Monitor's Certificate to the Purchaser's counsel in escrow, with the sole condition of its release from escrow being the Monitor's written confirmation that all such funds have been received, the Monitor's Certificate will be released from escrow to the Purchaser, and the Closing shall be deemed to have occurred.
- 7.22 Monitor's Capacity.** In addition to all of the protections granted to the Monitor under the CCAA or any order of the Court in the CCAA Proceedings, the Seller and the Purchaser acknowledge and agree that the Monitor, acting in its capacity as Monitor of the Seller and not in its personal capacity, will have no liability, in its personal capacity or otherwise, in connection with this Agreement or the transactions contemplated herein whatsoever as Monitor.
- 7.23 Language.** The Parties confirm their express wish that this Agreement and all related documents be drafted in the English language. Les Parties confirment leur volonté expresse que la présente convention et tous les documents s'y rattachant soient rédigés en langue anglaise.
- 7.24 Counterparts.** This Agreement may be fully executed in two or more counterparts by each of the parties hereto, such counterparts together constituting but one and the same instrument. Such counterparts may be exchanged via facsimile or other electronic transmission.

[Remainder of this page intentionally left blank. Signature Page follows.]

IN WITNESS WHEREOF, the undersigned parties have caused this Aircraft Purchase Agreement to be executed, delivered and effective as of the date first above written.

SKYLINK EXPRESS INC.

By: 

Printed Name: DAVID ATKINS

Title: PRESIDENT / COO

LAD INC.

By: 

Printed Name: DAN ANDERSON

Title: PRESIDENT

EXHIBIT A

AIRCRAFT SPECIFICATION

These Aircraft Specifications are provided as information only, without any warranty or representation of exactitude from Seller whatsoever and are strictly subject to Purchaser's duty of diligent verification during Purchaser's Inspection of the Aircraft and Aircraft Documents.

Airframe:

Information as of: April 30, 2024
Year of Manufacture: 1998
Serial Number: 208B-0662
TTSN: 18,956.3
Landings: 28,611

Engine:

Pratt & Whitney: PT6-114A ESN: 19255
Operator TBO: 8000 Hrs.
TSO: 1,450.5 hrs (Standard Aero O/H 2016)
SHSI: 1,450.5 hrs

Propeller:

McCaughey: 3GFR34C703-B Prop S/N: 080626
Operator TBO: 4000 hrs or 6 years. Tba
TSPOH: 3,526.8 or 1,311 days

Avionics

KFC-150 Autopilot	KRA-10A RadAlt	KMA-24H Audio
Dual KX-165 Nav/Coms	KR-87 ADF	KT-70 Transponder
KN-63 DME	RDS 81 Radar	KLN-89 GPS

Equipment

Garmin USB charger Cargo Pod De-Ice

Interior

Currently in Cargo Configuration

Exterior

Painted 1998, Blue and White

Notes

Aircraft based at Vancouver, British Columbia, Canada (CYVR)

EXHIBIT B

BILL OF SALE

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, for \$10.00 and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Skylink Express Inc. (**Seller**), an Ontario corporation, hereby grants, conveys, transfers, delivers and sets over all right, title and interest in and to the Aircraft and the Aircraft Documents unto LAD Inc. (**Purchaser**), an Alberta corporation, and unto Purchaser's successors and assigns forever, the following tangible personal property.

1. that certain one (1) Cessna Grand Caravan aircraft, manufacturer's serial number 208B-0662 (the **Airframe**) equipped with one (1) Pratt and Whitney Canada PT6A-114 engine, manufacturer's serial number 19255 (the **Engine**) and all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories and tool kits installed thereon or appurtenant thereto (collectively, the **Aircraft**); and
2. all documents and records relating to or required to be maintained with respect to the Aircraft, including, without limitation, all Airframe, Engines and accessory logbooks, manuals, weight and balance manuals, tags, technical records, traceability records, task cards, information, overhaul records, maintenance records, wiring diagrams, drawings, data, completion manuals and any and all other records related to the Aircraft and delivered with the Aircraft and in the possession of Seller (collectively, the **Aircraft Documents**).

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has caused this Bill of Sale to be executed, delivered and effective as of this ____ day of _____, 2024.

SKYLINK EXPRESS INC.

By: _____

Printed Name: _____

Title: _____

EXHIBIT C

AIRCRAFT DELIVERY RECEIPT

LAD INC. (**Purchaser**) hereby acknowledges delivery and acceptance of that certain one (1) Cessna Grand Caravan aircraft, manufacturer's serial number 208B-0662 (the **Airframe**) equipped with one (1) Pratt and Whitney Canada PT6A-114 engine, manufacturer's serial number 19255 (the **Engine**) and all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories and tool kits installed thereon or appurtenant thereto (collectively, the **Aircraft**) from Skylink Express inc. (**Seller**), at _____ o'clock (am / pm) local time on the ____ day of _____, 2024, at the Delivery Location, pursuant to the terms and conditions of the Aircraft Purchase Agreement dated as of June 24, 2024, between Purchaser and Seller (the **Agreement**). Purchaser hereby acknowledges that the Aircraft satisfies all the requirements, terms and conditions of the Purchase Agreement. By reason of the execution and delivery by Purchaser of this Aircraft Delivery Receipt, it is conclusively stated that (i) Purchaser has approved and accepted the Aircraft and the Aircraft Documents (as defined in the Agreement) "**as is**" in its then-current technical condition and state of repair, with all faults, limitations and defects (whether hidden or apparent), regardless of cause; and (ii) Seller has not made, with respect to the title and condition of the Aircraft, any representation, warranty or guaranty of any kind, express or implied, whether arising in law, in equity, in contract, or in tort, including, without limitation, any implied warranty of merchantability, airworthiness, design, condition, or fitness for a particular use.

TOTAL TIME AIRFRAME: _____ hours / _____ cycles

TOTAL TIME ENGINES:

Engine _____: _____ hours _____ cycles

Engine _____: _____ hours _____ cycles

APU _____ hours _____ cycles

Purchaser:

LAD INC.

By: _____

Name:

Title:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SKYLINK EXPRESS INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

FOURTH REPORT OF THE MONITOR

CASSELS BROCK & BLACKWELL LLP

Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance Street
Toronto, Ontario M5H 0B4

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Lawyers for the Monitor