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Of Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BLUE SKY AVGROUP, LLC,

Plaintiff,

v.

EPIC AIR, LLC, a Delaware Limited
Liability Company,

Defendant.

3:09-CV-628-AC

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S EMERGENCY MOTION
FOR APPOINTMENT OF RECEIVER**

I. Introduction.

Defendant Epic AIR, LLC, ("Epic"), by and through its undersigned attorney, hereby opposes plaintiff Blue Sky Avgroup, LLC's ("Blue Sky") Emergency Motion for Appointment of Receiver. Epic denies the operative allegations in Blue Sky's motion and further opposes Blue Sky's motion on the grounds set forth herein.

Blue Sky is not entitled to the extraordinary and harsh remedy of receivership, and its motion must therefore be denied for the following reasons: (1) Blue Sky has no valid claim against Epic, which has completed its performance pursuant to the Blue Sky-Epic contract for delivery of an airframe; (2) Blue Sky has no substantive right to any property in Epic's possession; (3) Property in Epic's possession is not in imminent danger of being lost or diminished in value; (4) The harm to Epic and its customers if a



receiver is appointed would be catastrophic, while the denial of a receivership does not substantially affect Blue Sky's rights vis a vis Epic; (5) Blue Sky has failed to provide notice to the owners of property over which it seeks a receivership; and (6) Blue Sky failed to confer with regard to its motion prior to filing it.

Epic's opposition is supported by the pleadings on file with the Court, the Declaration of Rick Schrameck, and the following memorandum of law.

Epic further requests an expedited hearing on Blue Sky's motion, because the pendency of that motion has created substantial disruption in Epic's business affairs.

II. Brief Statement of Facts.

Blue Sky bases its claims and its motion upon its contract with Epic. A full copy of the Epic-Blue Sky contract, with exhibits, is attached as Exhibit A to the Declaration of Rick Schrameck¹. The contract requires Epic to deliver an "Epic airframe kit" to Blue Sky. The contents of the "Epic airframe kit" are described in Exhibit B to the contract. Those contents do not include an engine.

The aircraft kit was delivered by Epic as required under the contract on or before June 2, 2008. (Declaration of Rick Schrameck, ¶ 3). By doing so, Epic completed performance under its contract with Blue Sky. And while the airframe kit continues to be housed in the facility used by Epic, Epic, having made delivery, is no longer in possession of the kit. (Schrameck Dec., ¶ 3).

Epic's President and Chief Executive Officer, has over 40 years of business experience and extensive experience in the aircraft industry. (Schrameck Dec., ¶ 1).

¹ Blue Sky represents in its complaint that it attached a copy of its contract with Epic as an exhibit to that complaint. However, the exhibit to the complaint includes documents not part of that contract. The next page after "Page 6 of 7" is "Page 7 of 8." Pages "7 of 8" and "8 of 8" included in Blue Sky's exhibit appear to refer to a "Completion Assistance Agreement," and not to the Airframe Purchase Agreement at issue in Blue Sky's complaint.



Epic does not own the facility out of which it operates. (Schrameck Dec., ¶ 4). That facility houses airplanes and equipment owned by people and entities other than Epic. (Schrameck Dec., ¶ 4).

The facility out of which Epic operates is secured to ensure the preservation of all property inside the facility. (Schrameck Dec., ¶ 5). Although it, along with the rest of the aviation industry, has been hurt by the current economic downturn, Epic is solvent (Schrameck Dec., ¶ 7). Epic is actively pursuing promising opportunities for additional revenue and has every intention of continuing as an active business. (Schrameck Dec., ¶ 6). In sum, Epic is doing everything reasonable and required of it to safeguard property belonging to it and others housed within its facility.

Blue Sky did not attempt to confer with Epic until after Blue Sky filed its motion. (Schrameck Aff, ¶ 8). Blue Sky's motion has harmed Epic as it seeks to improve its cash flow and find new customers. (Schrameck Dec., ¶ 9).

III. Appointment of Receiver for Epic is Inappropriate.

A. Applicable Law.

As a preliminary matter, Blue Sky is in error when it states that the appointment of a receiver is determined by Oregon law. In the Ninth Circuit, federal law governs the issue of whether to appoint a receiver in a diversity action. *Canada Life Assurance Co. v. LaPeter*, 563 F.3d 837, 843 (9th Cir. 2009).

Under federal law, appointing "a receiver is an extraordinary equitable remedy," which should be applied with caution." *Id.* at 844 quoting *Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.*, 999 F.2d 314, 316 (8th Cir. 1993). "[T]he power to appoint a receiver is a drastic, harsh and dangerous one and should be exercised with care and caution." *Connolly v. Gishwiller*, 162 F.2d 428, 435 (7th Cir. 1947).

Federal courts consider a variety of factors in making the determination, including: whether the party seeking the appointment has a valid claim; whether the



property is in imminent danger of being lost, concealed, injured, diminished in value, or squandered; and whether the harm to the party seeking the receivership by denial of the appointment would outweigh injury to the party opposing appointment. *Id.*

Courts "should not use the extraordinary remedies of a temporary injunction and the appointment of a receiver merely to allay litigants' fears in a case where the facts are so sharply disputed and where plaintiff's assertions in his complaint seem to be contradicted by exhibits attached to the opposing affidavits." *Margolis v. Franks*, 138 F. Supp. 9, 10-11 (S.D.N.Y. 1956).

The allegations in Blue Sky's complaint and in its motion are sharply disputed as set forth herein. Blue Sky has not and cannot meet its high burden to achieve appointment of a receiver.

B. Blue Sky Does Not Have a Valid Claim Justifying Appointment of Receiver.

Blue Sky has no substantive claim to any property in Epic's possession, and Blue Sky's contract-based claim against Epic is invalid in any event.

Because the remedy of receivership interferes with the property rights of the party opposing receivership, the party seeking receivership must show "the existence of some legally recognized right held by the creditor in the debtor's property amounting to more than a mere claim against the debtor." *Mintzer v. Arthur L. Wright & Co., Inc.*, 263 F.2d 823, 825 (3rd Cir. 1959).

[A]n unsecured simple contract creditor has, in the absence of statute, no substantive right, legal or equitable, in or to the property of his debtor. This is true, whatever the nature of the property, and although the debtor is a corporation and insolvent. The only substantive right of a simple contract creditor is to have his debt paid in due course . . . he has no right whatsoever in equity until he has exhausted his legal remedy . . . A receivership is not final relief. The appointment determines no substantive right, nor is it a step in the determination of a right.

Pusey & Jones v. Hanssen, 261 U.S. 491, 497, 43 S.Ct. 454, 455 (1923).

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Blue Sky is but a plaintiff with contract-based claims, and sharply disputed and suspect claims at that. Epic has completed its contract in full. Blue Sky's claims and motion center largely around perceived delays in delivery of an engine the delivery of which was not required in Blue Sky's contract with Epic.

Even if Blue Sky's claims were valid, they are merely contract-based claims. The contract does not give Blue Sky a security interest in any of Epic's property. It certainly does not give Blue Sky a claim to the entire contents of Epic's facility, which include property of other customers and other entities.

Therefore, Blue Sky has no substantive right to any property in Epic's possession. Blue Sky has stated a contract-based claim, and that claim, for the reasons set forth herein, is both invalid, and even if valid, legally insufficient to justify appointment of a receiver.

A hearing on an emergency motion is not the time for the Court to determine, ultimately, whether Blue Sky or Epic prevails in this lawsuit. However, there is no question that Blue Sky has failed to meet its burden of proof for appointment of a receivership.

C. Epic's Facility and Its Contents Are not in Imminent Danger of Being Lost, Concealed, Injured, Diminished in Value, or Squandered.

Blue Sky seeks the extraordinary remedy of receivership over the entirety of Epic's facility and its contents. Blue Sky's stated reasons for seeking receivership - lack of information with regard to parts; a perceived drop-off in orders for new airplanes; and recent layoffs - hardly can support the requested receivership. *Macon Lumber Co. v. Bishop*, 229 F.2d 305, 307 (6th Cir. 1956) ("Dissatisfaction with existing management and the fact that the business is a losing venture are not sufficient to warrant a receivership").

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Indeed, Blue Sky points to no specific reasons, other than perceived delay, that it believes Epic's property may be in danger. However, the alleged delays do not relate to deliveries required by the Epic-Blue Sky contract. Even so, the alleged delays alone would be insufficient to demonstrate that any property in Epic's possession is in imminent danger of being lost or diminished in value.

Epic is a solvent, ongoing business doing everything reasonable to protect its assets. A receivership under these circumstances is clearly inappropriate.

D. The Harm to Epic and its Customers if Receivership is Granted would Far Outweigh any Harm to Blue Sky if Receivership is Denied.

The standard required for appointment of a receiver over an operating business is especially high, and for good reason. *Macon*, 229 F.2d at 307 ("the appointment of a receiver for a solvent going business corporation is a drastic measure which will be taken by a court of equity . . . only where there is imminent danger of loss to the stockholders and there is no adequate remedy at law").

Seizure of Epic's facility and its contents by a receiver would be catastrophic for Epic, its customers, and its employees. Moreover, that seizure would destroy Epic's ongoing efforts to generate more business. A receiver would not be better able to manage a complex airplane firm than its current, highly experienced management team. Blue Sky's motion has already damaged Epic's business. Epic's cash flow and solvency, supposed concerns of Blue Sky, would be further dramatically and negatively impacted by receivership.

Alternatively, if the Court denies Blue Sky's motion, Blue Sky will enjoy precisely the same rights it currently has with regard to its contract claims. As described in some detail above, the property in Epic's facility is not in imminent danger of loss.

The harm to Epic under receivership far outweighs any harm to Blue Sky without receivership.



IV. Notice Has Not Been Provided to All Property Owners.

The only persons bound by a receivership are parties who receive actual notice of the application for receivership. FRCP 65(d)(2). As noted previously, Blue Sky seeks receivership over Epic's facility and its contents. Epic does not own that facility. That facility contains equipment, airplanes and other property owned by entities other than Epic, including by customers. Neither the owner of the facility nor the owners of the contents of the facility have been named as defendants or provided notice of Blue Sky's motion.

Granting a receivership over the property of non-parties without notice would constitute a severe violation of those non-parties' rights. Blue Sky's motion must be denied because it seeks receivership over property owned by persons and entities who are not parties to this lawsuit and have not received notice of Blue Sky's motion.

V. Blue Sky failed to confer properly with Epic.

The first paragraph of every motion must certify either that the parties made a good faith effort through personal or telephone conference s to resolve the dispute or that the opposing party willfully refused to confer on the motion. LR 7.1(1). The Court may deny any motion that fails to meet this certification requirement. LR 7.1(2).

Blue Sky did not include the required certification in its motion. Moreover, the motion came shortly after Blue Sky and Epic reached an agreement whereby Epic agreed to accept service in exchange for a 60-day response deadline to Blue Sky's complaint. There were no material changes of pertinent facts between the filing of the complaint on June 5 and the filing of the "Emergency Motion" on June 29. Instead, Blue Sky's filing of its "Emergency Motion" and its failure to confer as required appears to have been an effort to interfere with Epic's business operations and to generate ill will toward Epic amongst its other customers.

On those grounds, Blue Sky's motion should be denied.



VI. Conclusion.

Blue Sky has failed to meet the high burden to obtain the extraordinary and harsh remedy of a receivership. Blue Sky does not have a valid or sufficient claim to justify receivership. It seeks a receivership over property to which it has no substantive right. It failed to provide notice to affected parties, and failed to confer with Epic as required by this Court.

Blue Sky's motion must be denied.

DATED: July 2, 2009.

BALYEAT EAGER & STEELE, LLP

By:



Jeffrey T. Eager, OSB #045405
BALYEAT EAGER & STEELE, LLP
920 NW Bond Street, #209
Bend, OR 97701

Of Attorneys for Defendant



Epic

AIRFRAME PURCHASE AGREEMENT

This Purchase Agreement ("Purchase Agreement") is made and entered into as of this 30 day of April 2008 by and between EPIC AIR, LLC, a Delaware limited liability company ("EA"), and BLUE SKY AV GROUP LLC ("Purchaser").

Purchaser Contact Information:

If Purchaser is an entity, state the organization: <u>BLUE SKY AV GROUP LLC</u>		Telephone Work # <u>561 307 5555</u>
Address <u>5011 N. Ocean Blvd #5</u>	<input type="checkbox"/> Cell# <input type="checkbox"/> Home# <u>561 307 5555</u>	
City, State <u>OCEAN RIDGE FL</u>		Fax # <u>877 817-7826</u>
Zip code <u>33435</u>	E-Mail <u>rich@lucibella.com</u>	

The contract consists of this Purchase Agreement, Exhibit A (Purchase Price and Payment Schedule) and Exhibit B (Epic Airframe Kit).

RECITALS

("ACS").

A. EA will perform its duties and obligations hereunder directly or through contractors, partners or affiliates ("EA Affiliate").

E. In the event that EA and Purchaser previously entered into a Deposit Agreement regarding an EPIC Airframe Kit ("Deposit Agreement"), the amount of the Deposit (as defined in the Deposit Agreement) shall be retained by EA and credited against the Purchase Price.

B. Purchaser desires to purchase an EPIC airframe kit as defined on Exhibit B ("EPIC Airframe Kit") from EA and EA desires to sell an EPIC Airframe Kit to Purchaser for a purchase price as defined in Exhibit A ("Purchase Price") which is exclusive of all sales, excise, transfer and similar taxes as well as all other duties, imposts, charges and fees (collectively, "imposts") for whose payment Purchaser is responsible.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

C. EA is the designer and manufacturer of the unassembled Epic Airframe Kit. This aircraft kit is intended for use in the amateur category of the FAA "FAR" regulations. The Purchaser desires to build an Epic aircraft from a kit purchased from EA and understands and agrees with the following terms and conditions in consideration of the purchase of the kit.

Section 1. PURCHASE OF EPIC AIRFRAME

Purchaser shall purchase and EA shall sell Purchaser an EPIC Airframe Kit pursuant to the terms of this Airframe Purchase Agreement.

D. Purchaser will complete construction of the EPIC aircraft ("EPIC") via a Completion Assistance Agreement ("Completion Agreement") between Purchaser and Aircraft Completion Services, LLC

Section 2. PURCHASE PRICE AND TERMS

The entire Purchase Price shall be paid by Purchaser in accordance with the payment schedule covered by Exhibit A. The full amount of Purchaser's Deposit, if any, shall be credited against the Purchase Price as provided for in Exhibit A and the unpaid balance shall be paid by Purchaser in accordance with the payment terms in Exhibit A.

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Section 3. IMPOSTS.

Purchaser is responsible for the payment of all imposts imposed with respect to Purchaser's EPIC Airframe Kit. Purchaser shall pay all such imposts or reimburse EA for the payment thereof promptly after Purchaser's receipt of EA's written statement with respect thereto.

Section 4. AIRFRAME DELIVERY PRIORITY.

EA shall make commercially reasonable efforts to deliver EPIC Airframe Kits in the same order that the purchase agreements are numbered so that, for example, the EPIC Airframe Kit covered by purchase agreement #1 would be delivered first. The parties, however, acknowledge that intervening events, conditions and circumstances may prevent EA from strictly adhering to this delivery sequence, and thus there is no guaranty that the EPIC Airframe Kits will be delivered in the same order that the purchase agreements are numbered.

Section 5. DELIVERY.

(a) Acceptance: Title and Risk. Within fifteen (15) business days, a business day being a day other than a Saturday, Sunday or federal banking holiday ("Business Day") after Purchaser's receipt of EA's written statement (which may be in the form of an email or a fax) that Purchaser's EPIC Airframe Kit is complete and ready for shipment, Purchaser shall either accept Purchaser's EPIC Airframe Kit or provide a written punch list to EA detailing items described on Exhibit B that need to be added, completed or corrected. In the event EA receives from Purchaser a punch list before the end of such period, EA shall utilize reasonable commercial efforts to remedy the items set forth in the first punch list. EA shall then provide written notice to Purchaser stating that the first punch list items have been remedied and Purchaser shall have ten (10) Business Days to either accept Purchaser's EPIC Airframe Kit or to deliver a second punch list regarding items identified in the first punch list that have not been remedied. This process shall be repeated until Purchaser accepts its EPIC Airframe Kit. At any time, Purchaser may terminate any of these periods by delivery to EA of Purchaser's written acceptance of its EPIC Airframe Kit (which may be in the form of an email or a fax). In addition, in the event that the appropriate punch list is not received before the end of any of the above-identified periods, Purchaser shall be deemed to have accepted its EPIC Airframe Kit as of the end of the period in question. Within ten (10) Business Days after Purchaser's acceptance of its EPIC Airframe Kit, Purchaser shall designate a carrier to which EA should deliver Purchaser's EPIC Airframe Kit, which designation shall be made in writing delivered to EA

(which may be in the form of an email or a fax). If Purchaser fails to designate a carrier, EA may select a carrier at its discretion. All deliveries are FOB Bend, Oregon. Title to the EPIC Airframe Kit and risk of loss or damage shall pass from EA to Purchaser upon delivery of Purchaser's EPIC Airframe Kit to the designated carrier.

(b) Shipping Costs. All shipping and transport expenses and duties shall be borne by Purchaser. ACS will provide shipping assistance to the Purchaser under the Completion Agreement.

(c) Packing. EA shall preserve, package and handle Purchaser's EPIC Airframe Kit so as to materially protect it from loss or damage. EA shall be responsible for any loss or damage arising from the sole negligence of EA which occurs while EA is attempting to properly preserve, package or handle Purchaser's EPIC Airframe Kit.

(d) Packing List. EA shall provide with respect to Purchaser's EPIC Airframe Kit a packing list identifying all parts and components included therein.

Section 6. RISKS REGARDING THE EPIC.

Injury or death can occur as the result of the existence or occurrence of mechanical and structural failures, adverse weather conditions, human error and other factors during the operation of an aircraft. The EPIC is intended to qualify as an "amateur-built" ("Amateur-Built") aircraft as such term is defined in FAR. No EPIC has ever been submitted for a type certificate. Its design does not meet the requirements of Part 23 of FAR or any other regulatory design standard. The Amateur-Built category is an anomaly in the highly regulated world of general aviation; no governmental standard exists for the design, development and testing of these aircraft.

The category was introduced decades ago under the conditions and purpose of individual education and recreation. While the EPIC developer chose certain design criteria and tests to satisfy itself that the product was suited for the intended purpose, development and test budgets for designers and manufacturers of experimental Amateur-Built aircraft are substantially different than those of designers and manufacturers of certified aircraft. Since the Purchaser is required to apply for and obtain the Experimental Certificate (with the assistance of ACS under the Completion Agreement), the Purchaser will have the duty and obligation to make the appropriate application for the Purchaser's EPIC. EA has followed design criteria and performed tests to satisfy itself that the EPIC will be appropriate for its intended use as defined by EA. Likewise; EA has followed design criteria and

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Exhibit A

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performed tests to satisfy itself that the completed EPIC should be appropriate for its operation as an Amateur-Built aircraft. Modifications and/or substitutions of any equipment and/or parts included in the EPIC or equipment and parts not procured or installed pursuant to the Completion Agreement may result in diminished or impaired structural, aerodynamic, control and/or performance characteristics which may create increased risks of severe personal injury, death or property damage.

Section 7. ASSUMPTION OF RISK, RELEASE AND

INDEMNITY

Purchaser acknowledges that Purchaser understands the risks involved in the ownership and operation of an Amateur-Built aircraft like the EPIC, including the risks identified above. EXCEPT FOR BREACH OF WARRANTY CLAIMS ARISING UNDER SECTION 10, PURCHASER, TO THE GREATEST EXTENT ALLOWED BY APPLICABLE LAW, HEREBY WAIVES AND RELEASES EA, EA AFFILIATES AND EA OFFICERS, MEMBERS AND EMPLOYEES FROM EVERY KIND AND TYPE OF CLAIM, DAMAGE AND INJURY RESULTING FROM OR ARISING OUT OF THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF PURCHASER'S EPIC AIRFRAME KIT AND/OR THE EPIC, TO THE GREATEST EXTENT ALLOWED BY APPLICABLE LAW, PURCHASER SHALL INDEMNIFY, DEFEND AND HOLD EA, EA AFFILIATES AND EACH EA OFFICER, MEMBER AND EMPLOYEE HARMLESS AGAINST EVERY KIND AND TYPE OF CLAIM, DAMAGE AND INJURY AGAINST EA RESULTING FROM OR ARISING OUT OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF PURCHASER'S EPIC AIRFRAME KIT, PURCHASER'S EPIC OR PURCHASER'S OWNERSHIP THEREOF, INCLUDING CLAIMS BASED ON THE NEGLIGENCE OF EA, EA AFFILIATES AND EA OFFICERS, MEMBERS AND EMPLOYEES. The assumption of risk, release and indemnity contained in this Section 7 are material factors in determining the Purchase Price for Purchaser's EPIC Airframe Kit. If these legal protections for EA were substantially reduced, the Purchase Price inevitably would be substantially increased.

Section 8. CONFIDENTIAL INFORMATION.

(a) **Confidential Information.** As used in this Section 8, the term "Confidential Information" shall mean: (i) all information of EA to be considered confidential, and marked or disclosed (in writing or verbally) as

"confidential" prior to disclosure to Purchaser or within a reasonable time thereafter; and (ii) all information or data concerning or related to the EPIC Airframe Kit, the EPIC or EA's other products (including the discovery, invention, research, improvement, development, manufacture, or sale thereof) or EA's business operations (including sales costs, profits, pricing methods, documentation, procedures, organizations, employee lists, and processes).

(b) **Exclusions.** Notwithstanding any provision to the contrary, the provisions of this Section 8 shall not apply to any information that: (i) is rightfully known to Purchaser prior to disclosure; (ii) is rightfully obtained by Purchaser from a third party without any obligation of confidentiality; (iii) is made available by EA to the public without restrictions; (iv) is independently developed by Purchaser without reference to any Confidential Information of EA; or (v) is disclosed by Purchaser with the prior written approval of EA.

(c) **Nondisclosure.** Without EA's express written consent, Purchaser shall not disclose to any person or entity (other than Purchaser's agents or employees who have a need to know and are under similar confidentiality obligations), or utilize in any way that is harmful to EA's business, any Confidential Information, whether written, oral, or visual which Purchaser may obtain from EA, or otherwise discover in the performance of this Purchase Agreement. Without limiting the generality of the above, Purchaser shall maintain all such Confidential Information in confidence using no less than a reasonable degree of care. Purchaser shall take reasonable steps to ensure that no unauthorized person or entity has access to Confidential Information, and that all authorized persons having access to Confidential Information refrain from any unauthorized disclosure.

Section 9. GOVERNMENTAL COMPLIANCE

EA shall furnish to Purchaser any information possessed by EA and required to comply with the requirements of any governmental agency including, without limitation, obtaining an Experimental Certificate from the FAA.

Section 10. EXPRESS LIMITED WARRANTY

EA warrants that the EPIC Airframe Kit shall (a) materially conform to all portions of the specifications that relate to the EPIC Airframe Kit described on Exhibit B, (b) be free from defects in material and workmanship, and (c) be free and clear of all liens and other encumbrances. EA MAKES NO OTHER REPRESENTATIONS OR WARRANTIES REGARDING PURCHASER'S EPIC AIRFRAME KIT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WHETHER CONTAINED IN ANY PROVISION OF THIS PURCHASE AGREEMENT OR ARISING FROM COMMUNICATION OF ANY KIND

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WITH PURCHASER, AND EA SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO EMPLOYEE OR AGENT OF EA IS AUTHORIZED TO ALTER OR EXPAND THE LIMITED REPRESENTATIONS AND WARRANTIES MADE BY EA IN THIS SECTION 10. IN THE EVENT OF A BREACH OF A REPRESENTATION OR WARRANTY PROVIDED IN THIS SECTION 10, PURCHASER'S SOLE AND EXCLUSIVE REMEDY WILL BE REPAIR OR REPLACEMENT OF THE DEFECTIVE OR NONCONFORMING ITEM OR REMOVAL (OR BONDING OVER) OF ANY LIEN OR ENCUMBRANCE. IN NO EVENT WILL EA BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES RESULTING FROM A BREACH OF THIS SECTION 10.

Section 11. DELEGATION AND ASSIGNABILITY.

EA shall have the power and authority, in its unfettered discretion, to assign any or all of its rights hereunder to an EA Affiliate or EA Affiliates and to delegate any or all of its duties and obligations hereunder to an EA Affiliate or EA Affiliates. In the event that EA delegates any of its duties or obligations to an EA Affiliate that expressly assumes performance of such duties or obligations, EA shall no longer in any way be responsible for, or liable regarding, such assumed duties or obligations, including, without limitation, their performance. Subsequent to such a delegation, Purchaser shall look only to such assuming EA Affiliate and such EA Affiliates shall be the sole party responsible for, or liable regarding, such assumed duties or obligations, including, without limitation, their performance. In the event of any such delegation of duties hereunder to an EA Affiliate, such EA Affiliate will also be entitled to assert the rights and benefits accruing to EA under this Purchase Agreement.

This Purchase Agreement, including EPIC Airframe Kit delivery rights accruing thereunder, are not assignable or transferable by Purchaser without the prior written consent of EA.

Section 12. OTHER PROVISIONS.

(a) Purchaser's Legal Counsel. EA strongly recommends that Purchaser have this Purchase Agreement reviewed by legal counsel before Purchaser executes it, particularly given the fact that this Purchase Agreement limits and/or eliminates various important rights that Purchaser might otherwise enjoy vis-a-vis EA and the EA Affiliates.

(b) Independent Contractors. The relationship of the parties under this Purchase Agreement is that of

independent contractors and neither party is an employee, agent, partner or joint venturer of the other.

(c) Governing Law. This Purchase Agreement shall be governed by and construed under the laws of the State of Oregon. The parties consent to the exclusive jurisdiction of the state and Federal courts in Deschutes County, Oregon. Either party, acting in good faith, may at its respective sole discretion request arbitration as a method of dispute resolution rather than litigation. If either party requests arbitration, then upon mutual agreement of the parties (and such agreement to arbitrate will not be unreasonably withheld by either party) the following will apply: a) American Arbitration Association will conduct said arbitration; b) the substantive law of the State of Oregon will apply; c) the procedural rules of the American Arbitration Association will apply; d) there will be a panel of three (3) arbitrators, one (1) each chosen exclusively by each party and one (1) chosen by both parties by mutual agreement, if the parties cannot agree to the third arbitrator, the American Arbitration Association will appoint one; e) all hearings and findings will be kept confidential and will not be public record; and f) choice of venue for the actual hearings will be Bend, Oregon.

(d) Attorneys' Fees, Costs and Expenses. In any action or proceeding between the parties hereto (including any arbitration), the prevailing party will be entitled to recover its reasonable attorneys' fees and other reasonable costs and expenses incurred, in addition to any other relief to which it may be entitled.

(e) Severability and Waiver. If any provision of this Purchase Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect if the fundamental purpose of the contract is not materially impacted, and the parties will negotiate in good faith a substitute valid and enforceable provision which most nearly affects the parties' intent in entering into this Purchase Agreement. Neither party's failure to exercise any of its rights hereunder shall constitute or be deemed a waiver or forfeiture of any such rights.

(f) Late Payments. All customer payments are due when invoiced. Twenty days after the invoice date, all invoices are past due and subject to an eighteen percent annual simple interest charge. Additionally, if customer payments go past due sixty (60) days, EA at its option can stop progress, withhold materials and parts; and allocate company resources to other customer projects. For every additional week past twenty (20) days, EA at its option can place aircraft behind one (1) aircraft in the production line.

(g) Buy-Back. If customer fails to make payments beyond sixty (60) days past the invoice due date, EA at its option can buy back the aircraft at 50% of the payment history.

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AIR Initials: 

(h) Entire Agreement. This document and its attachments represent the entire agreement between the parties as to the matters set forth herein and supersede all prior discussions, representations or understandings between them, except for prior or contemporaneous agreements specifically referenced herein. The captions and headings used in this Purchase Agreement are for convenience in reference only and are not to be construed in any way as terms or be used to interpret the provisions of this Purchase Agreement. This Purchase Agreement may

only be modified by written amendment signed by an authorized representative of each party.

(i) Counterparts. This Purchase Agreement may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, a party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting part

IN WITNESS WHEREOF, the parties hereto have entered into this Purchase Agreement as of the day and year first written. By signing below Purchaser acknowledges that it has read, understood and agrees to comply with the statements, specifications, waivers, terms and conditions of this Purchase Agreement for the Epic Airframe Kit. This Purchase Agreement will become binding on the parties only upon acceptance by EA as evidenced by a signature of an authorized representative below.

AMATEURBUILDER

[Signature]
Date 30 April 2008

Consent of Spouse, if applicable:

Date _____

Epic AIR, LLC
a Delaware Limited Liability Company

By: [Signature]

Name: Rick Schramm

Title: CEO

Date 5/16/08

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AIR Initials [Signature]

Exhibit A
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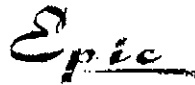


Exhibit A to Airframe Purchase Agreement

PURCHASE PRICE AND PAYMENT SCHEDULE

Purchase Price:

Epic LT Basic Airframe: \$800,000.00

Payment Schedule:

- A. 1st Invoice of \$250,000 (minus any previous payments including Deposits) of the Purchase Price ninety (90) days prior to airframe production as notified by EPIC for kit manufacturing process.
- B. 2nd Invoice of \$137,500 sixty (60) days prior to airframe production.
- C. 3rd Invoice of \$137,500 thirty (30) days prior to airframe production.
- D. 4th Invoice of \$137,500 at the beginning of airframe production.
- E. 5th Invoice of \$137,500 one month after airframe production begins and prior to delivery of the EPIC Airframe Kit to customer build center or carrier on behalf of the Purchaser.

Invoices will see additional amounts as options are selected. The attached cash flow model indicates how options will be included in the monthly invoices.

Payments for additional airframe and avionics options as required by EA may be invoiced at any time upon selection and approval. Payments are due promptly upon receipt of each Invoice Date per section 12, subsection (f) and (g) of this agreement.

All taxes, duties, fees and Import will be due upon invoice by EA.

CPI adjustments may be amortized over all invoices mentioned above.

Please make payments payable to:

Epic Air, LLC
22590 Nelson Road
Bend, OR 97701-9701

Customer Initials

Confidential: EPIC AIR, LLC
Page 6 of 7
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Revised 04/04/08

AJR Initials

Exhibit A
Page 6 of 7



Exhibit B to Airframe Purchase Agreement

Epic Airframe Kit:

- 1. Fuselage skins, Right and Left joined together with all integral required firewall and formers.
- 2. All fuselage bulkheads doors, hatches webs and close outs required for fuselage structure and function.
- 3. Horizontal stabilizer skins, Upper and Lower. All necessary spars, ribs and hardware required for functionality.
- 4. Wing skins Top and Bottom. Also included are all spars, webs, fuel bays, flaps and ailerons. Standard wing tips include.
- 5. Engine cowl and inlet scoop
- 6. Assembly materials: drawings, tech support, carbon fabric, epoxy, peel ply and all hardware required to complete the basic airframe

Note: EA may change, add or delete any parts or components from this list as specifications or requirements change.

Customer Initials

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AIR Initials

Exhibit A
Page 7 of 7

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(541) 322-0505 FAX

Of Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

BLUE SKY AVGROUP, LLC,

3:09-CV-628-AC

Plaintiff,

**DECLARATION OF RICK SCHRAMECK
IN SUPPORT OF DEFENDANT'S
OPPOSITION TO PLAINTIFF'S
EMERGENCY MOTION FOR
APPOINTMENT OF RECEIVER**

v.

EPIC AIR, LLC, a Delaware Limited
Liability Company,

Defendant.

I, RICK SCHRAMECK, declare as follows:

1. I am the Chief Executive Officer of Epic AIR, LLC ("Epic"). I founded Epic in 2003 and have been the CEO since that time. I have more than 40 years of business experience. Epic manufactures composite aircraft at its facility located in Bend, Oregon. I make this declaration based on personal knowledge and could and would testify accordingly if called upon to do so.

2. Attached hereto as Exhibit A is a true and accurate copy of the contract entered into between Epic and Blue Sky Avgroup, LLC ("Blue Sky") for the delivery of an airframe and payment for same.

///



3. Pursuant to its contract with Blue Sky, Epic made delivery of the airframe on or before June 2, 2008. Having made delivery of the airframe to Blue Sky, Epic is no longer in possession of the airframe, although the airframe continues to be housed in the facility used by Epic.

4. Epic leases the facility out of which it operates in Bend, Oregon. That facility contains equipment, airframes, and other property owned by other entities and persons.

5. The facility out of which Epic operates is a state-of-the-art aircraft manufacturing facility which is fully secured at all times to protect the property contained within.

6. Epic's business has been hurt by the current economic downturn. However, I and my management and marketing teams are constantly seeking new customers and revenue sources. Later this month, Epic will take part in the Airventure show in Oshkosh, Wisconsin, which is the major showcase for airplane products in the U.S. In the past, Epic's participation in Airventure has been a substantial source of new customers and revenues. In addition to participating in Airventure, Epic continues to pursue vigorously other promising opportunities for new customers. I and my management team have every intention of continuing to operate Epic as a successful business.

7. Epic is solvent. It had a positive ending balance in 2008. While it does suffer from cash flow problems currently, Epic has adequate assets to meet its debts. Epic is striving to resolve its cashflow issues.

8. Epic received no notice of Blue Sky's motion for appointment of receivership from Blue Sky. I heard about the motion from other customers after the motion was filed on June 29.

9. Blue Sky's motion has created a major roadblock to Epic's efforts to recruit new customers and improve its cashflow situation. A number of current customers



have refrained from paying sums owed because of their fear that a receiver will be appointed to take over Epic.

10. Receivership for Epic would be catastrophic for Epic and for its customers. It would impede our ongoing efforts to recruit new customers and improve cashflow. While the challenges are substantial, I am convinced that Epic can improve its cashflow and continue to help its customers build great airplanes.

Executed this 2nd day of July, 2009, at Bend, Oregon.


RICK SCHRAMECK, Declarant



CERTIFICATE OF SERVICE

I certify that on July 2, 2009, I served, by notice of electronic filing using the CM/ECF system, a full and correct copy of the foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR APPOINTMENT OF RECEIVER; DECLARATION OF RICK SCHRAMECK** to the interested parties of record, addressed as follows:

Norman Malinski, Esq.
2875 Northeast 191st Street
Suite 508
Aventura, FL 33180

Michael F. Van Hoomissen
1619 SW 1st Ave. Ste. 319
Portland, OR 97201

Of Attorney for Plaintiff

Dated: July 2, 2009



JEFFREY T. EAGER, OSB #045405
Of Attorneys for Defendant