

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Application of)
)
)

«Aircompany Constanta» PrJSC)

Docket No. DOT- OST-2020-0022

For a foreign air carrier permit pursuant to)
49 USC § 41301 and for exemption authority)
pursuant to 49 USC § 40109)
(US – Ukraine Open Skies))
)

**REPLY TO RESPONSE OF AP HOLDINGS LTD. TO AIRCOMPANY CONSTANTA
PRJSC’S RESPONSE TO AP HOLDINGS LTD.’S OBJECTION AND MOTION TO
DISMISS AS OF JULY 31st, 2020**

Communications with respect to this document should be addressed to:

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Phone: (203) 375-7724
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pmg@lopal.com

Counsel for
«Aircompany Constanta» PrJSC

Dated: August 31, 2020

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Application of)	
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«Aircompany Constanta» PrJSC)	
)	Docket No. DOT- OST-2020-0022
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49 USC § 41301 and for exemption authority)	
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**REPLY TO RESPONSE OF AP HOLDINGS LTD. TO AIRCOMPANY
CONSTANTA PRJSC’S RESPONSE TO AP HOLDINGS LTD.’S OBJECTION AND
MOTION TO DISMISS AS OF JULY 31st, 2020**

On July 31, 2020, AP Holdings Ltd. (“AP”) filed an Objection and Motion to Dismiss (“Motion to Dismiss”), seeking to have dismissed «Aircompany Constanta» PrJSC’s (“Constanta”) application for a foreign air carrier permit and an exemption (“Application”) with the Department of Transportation (“DOT”). On August 7, 2020, Constanta filed an Objection to AP’s Motion to Dismiss (“Objection”). On August 22, 2020, AP filed a Response to Constanta’s Objection (“Response”). Constanta, by and through undersigned counsel, hereby submits the following Reply to AP’s Response (“Reply”).¹

As set forth in Constanta’s Objection, AP’s Motion to Dismiss was filed almost five months after the regulatory deadline to submit same expired, despite AP being notified of the Application via emails more than four months before it was filed. AP argues that those emails fail to establish that AP was notified of the Application because they were addressed to CA Southerland, who

¹ Any capitalized terms not defined herein shall have the definitions set forth in Constanta’s Objection.

allegedly does not have any authority to act on behalf of AP, as opposed to Justin Southerland (“Mr. Southerland”), who has authority to act on behalf of AP. It is not necessary to address the merits of whether CA Southerland had authority to act on behalf of AP, as Mr. Southerland unequivocally was copied on those emails. Mr. Southerland was explicitly notified of the Application and had several months to inquire about and/or object to the Application; he simply chose not to do so. The fact that AP claims a lack of notice defies the facts and logic. Mr. Southerland’s dereliction is insufficient to excuse his failure to object within the time required by law. On this basis alone, AP’s Motion to Dismiss must be dismissed as a matter of law.

In its Objection, Constanta also pointed to the applicable Amendments to the respective Leases, which further establish that Constanta is acting in accordance with its obligations under the Leases. AP’s Response appears to argue that the Amendments to the Leases are not actually amendments; rather, they are “Agreements” that must be filed with the Ukrainian Civil Aviation Authority (“UCAA”), which did not occur. This argument lacks merit and fails for several reasons:

- The Amendments to the Leases certainly are, in fact, amendments. Indeed, each Amendment’s plain language specifically references the applicable Lease that it is amending and specifically states the Section (1.3) of the Lease that is being replaced with the new language in the Amendment.² AP’s argument is one of form over substance and is unpersuasive.
- AP claims that an unidentified representative of AP recently met with an unidentified representative of the UCAA, and such UCAA representative stated that all leases must be filed with the UCAA. Neither confirming nor denying AP’s unsupported legal claim, the applicable Leases were filed with the UCAA. AP does not dispute this.
- Based upon the alleged statement from the unidentified UCAA representative that leases must be filed with the UCAA, AP appears to presume that the Amendments must also be filed. AP does not provide any evidence or cite to any legal authority to support

² AP’s Response argues that the language in the Amendments merely supplements, and does not replace, Section 1.3 in the Leases. This argument lacks merit. It is unambiguous from the plain text of the Amendment that the language therein replaces, and does not supplement, Section 1.3 of the Lease. Indeed, the Amendment specifically provides that the language set forth therein is intended to “Set out paragraph 1.3 [of the] [Lease] as follows.” This language unambiguously conveys the intent to replace Section 1.3 of the Lease with the language in the Amendment. The Amendment does not use the word “supplement” or any similar word/term. Moreover, the contradictory nature of Section 1.3 of the Lease versus the language in the Amendment necessarily and logically conveys that the language in the Amendment replaces, and does not supplement, Section 1.3 of the Lease.

this argument. Constanta disputes that the subject Amendments are required to be filed with the UCAA.

- Finally, even assuming for sake of argument that the Amendments were required to be filed with the UCAA but were not, that does not somehow automatically render the Amendments void or unenforceable. AP has not provided any support to suggest otherwise.

Incredibly, in an extreme and improper attempt to grasp at straws, AP's Response makes a conclusory, wholly unsupported, and false claim that the Amendments were created after AP's Motion to Dismiss and that the dates were nefariously fabricated. AP makes this claim despite the fact that: (1) it did not provide a scintilla of evidence to support such a serious allegation; and (2) Andrew Little, who signed the Amendments on behalf of AP, and who is a Director and 50% shareholder of AP, confirmed that the Amendments appended to Constanta's Objection are true and accurate copies of the Amendments. See Exhibit 1, ¶¶7-8. As such, AP's baseless allegation is not only false, it also is improper, defamatory, and intended to wrongfully cause harm to Constanta. Such an improper allegation is emblematic of AP's strategy to use objectively false, unsupported, and defamatory allegations to harm Constanta's Application because AP lacks any actual evidence to support its meritless position.

Finally, AP's Response alleges that Constanta violated the Leases and ignored AP's requests for relevant information concerning the Leases. As addressed in detail in Constanta's Objection, this allegation is false. To reiterate in short, pursuant to Mr. Little's attached Affidavit; he confirms that: (1) he has been continuously informed about the operation of the aircraft used by Constanta under the Leases; (2) Constanta has provided him with all information and reports that have been requested by AP regarding the aircraft used by Constanta under the Leases; (3) he has no objection to the operation of aircraft used by Constanta under the Leases; (4) he is satisfied that Constanta has satisfied and currently is in compliance with its obligations under the Leases;³ (5)

³ Including the obligation of Constanta to maintain the aircraft.

Constanta is a professional operator, meeting EASA standards; (6) and Constanta successfully has completed many operational audits to the highest standards. See Exhibit 1, ¶¶9-12, 15.

Wherefore, in light of the foregoing, Constanta respectfully requests that AP's Motion to Dismiss with denied and that the DOT Application be granted.

Respectfully submitted,



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Fax: (203) 375-9397
pmg@lopal.com

Counsel for
«Aircompany Constanta» PrJSC

Dated: August 31, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing document by first class mail, postage prepaid, upon the persons shown on the following service list.

U.S. Department of Transportation – Dockets Section
1200 New Jersey Avenue, SE
West Building
W12-140 Dockets
Washington, DC 20590

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Office of International Aviation
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Tel.: (202) 647-5843
Email: WilliamsDS3@state.gov

Justin Southerland
COO/Co-Founder/Co-Owner
AP Holdings Ltd. (UAE)
c/o Airgenium, Inc. (as authorized agent for AP Holdings Ltd.)
12340 Coyle Road
Fort Myers, FL 33905
(561) 445-6051

jsoutherland@aero-pioneer.com

Dated: September 1, 2020

EXHIBIT 1

BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Application of)
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«Aircompany Constanta» PrJSC)
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Docket No. DOT- OST-2020-0022


AFFIDAVIT OF ANDREW DOUGLAS LITTLE

Communications with respect to this document should be addressed to:

Kseniia Goncharenko
Quality and Compliance Monitoring Manager
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Zaporizhzhya International Airport
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kgoncharenko@constantairlines.com

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Phone: (203) 375-7724
Fax: (203) 375-9397
pmg@lopall.com

Counsel for
«Aircompany Constanta» PrJSC

Dated: ~~August 7, 2020~~ 


August 26, 2020

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Application of)
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«Aircompany Constanta» PrJSC)
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Docket No. DOT- OST-2020-0022

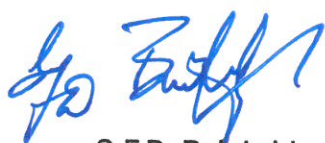
AFFIDAVIT OF ANDREW DOUGLAS LITTLE

The undersigned, Andrew Douglas Little, being duly sworn, states under the penalty of perjury:

1. I am over the age of 18 years and understand the meaning of an oath. I make the following statements based upon my personal knowledge.
2. I am an Airline Transport rated Captain with 14,000 flight hours in operation of commercial aircraft.
3. I am a 50% shareholder of AP Holdings Limited (“AP”).
4. I am the Director of AP and have the authority to make all decisions that bind AP.
5. AP owns 49% of the shares of «Aircompany Constanta» PrJSC (“Constanta”).
6. Constanta has been and currently is in compliance with the leases of the three aircraft owned by AP and leased to Constanta, serial numbers 2208, 113-05, and 120-08, respectively (each a “Lease” and together as “Leases”), attached to Justin Southerland’s Objection dated July 31, 2020 (“Objection”).

7. Each of the Leases was amended pursuant to written, signed agreements between AP and Constanta, dated June 4, 2018 (each an "Amendment" and together as "Amendments").
8. A true and accurate copy of each Amendment is appended hereto as Attachment 1, Attachment 2, and Attachment 3, respectively.
9. I am satisfied that Constanta has satisfied and currently is in compliance with all of its obligations under the Leases and Amendments.
10. I have been continuously informed about the Operation of Leased aircraft by Constanta.
11. Constanta has provided me with all information and operational reports that have been requested on behalf of AP regarding Constanta's use of the Leased aircraft.
12. I have no objection to any operation of the Leased aircraft by Constanta, as all operations are consistent with and satisfy Constanta's obligations under the Leases and Amendments.
13. I have no objection to Constanta's pending application with the United States Department of Transportation ("DOT") for a foreign air carrier permit and an exemption ("Application").
14. AP was notified of Constanta's intention to file the Application with the DOT well in advance of the Application having been filed.
15. I know Constanta to be a professional operator, meeting EASA standards, and having successfully completed many operational audits to the highest standards.

Personally appeared, Andrew Douglas Little, before me, this ^{26TH}~~7th~~ day of August 2020, who, after having been sworn, attested to the accuracy of the facts laid out in this affidavit.



S.F.D. Bainbridge
Barrister, Solicitor & Notary Public
British Columbia, Canada
Law Society of B.C. ID # 503701
Canadian Bar Assoc. ID # 8159401



Dated: August 7, 2020

^{26TH}
August 26, 2020



CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing Motion for Confidential Treatment by first class mail, postage prepaid, upon the persons shown on the following service list.

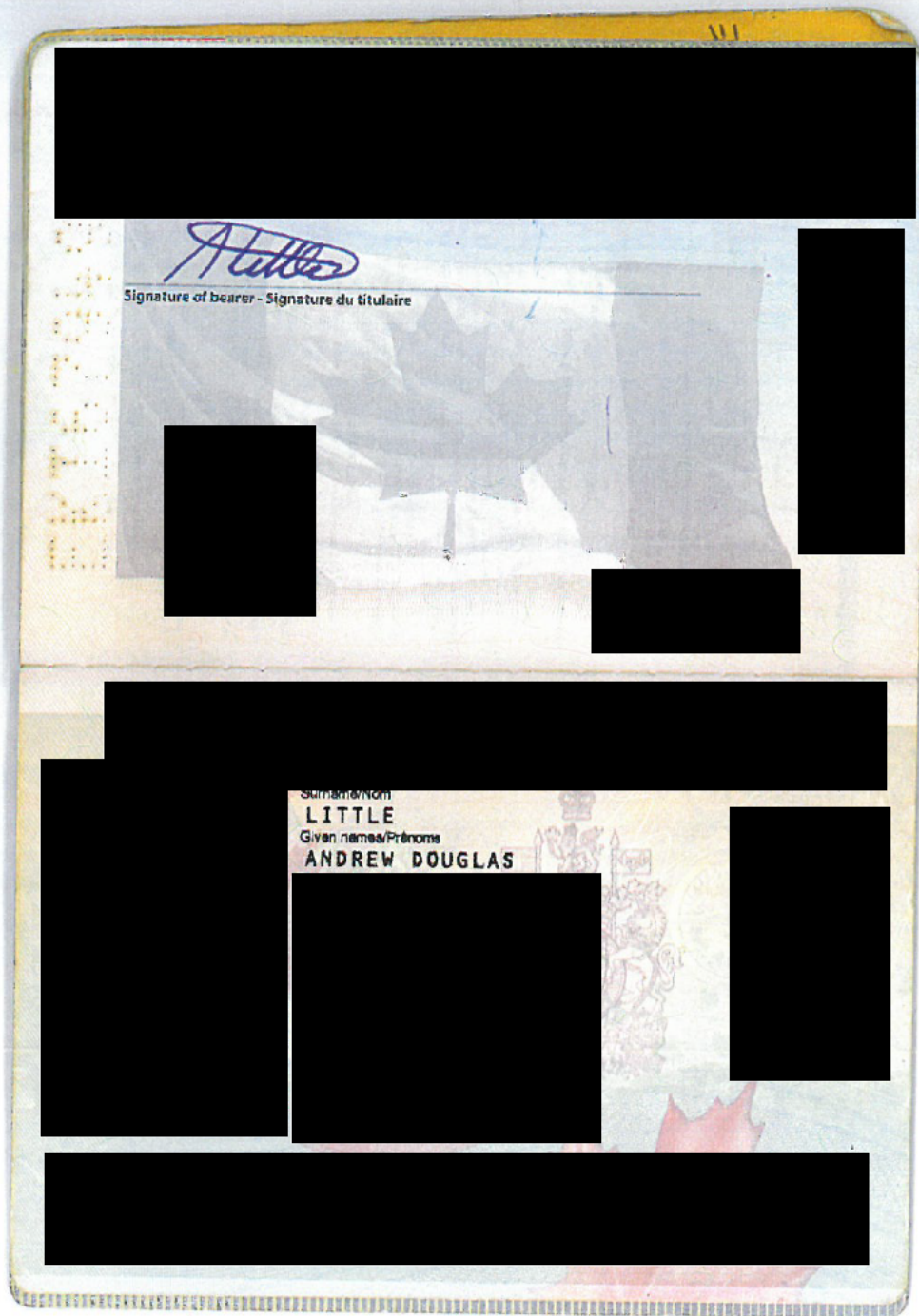
U.S. Department of Transportation – Dockets Section
1200 New Jersey Avenue, SE
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Washington, DC 20590

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Justin Southerland
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c/o Airgenium, Inc. (as authorized agent for AP Holdings Ltd.)
12340 Coyle Road
Fort Myers, FL 33905
(561) 445-6051
jsoutherland@aero-pioneer.com

Dated: August 7, 2020



I hereby certify this document to be a
true copy of the original presented before me
this 26th day of AUGUST 2020

S.F.D. Bainbridge
Barrister, Solicitor & Notary Public
British Columbia, Canada
Law Society of B.C. ID # 503701
Canadian Bar Assoc. ID # 8159401



Attachment 1

г. Запорожье

«04» июня 2018 года

Zaporozhye city

June 04, 2018

Частное акционерное общество «Авиакомпания Константа» (Запорожье, Украина), именуемое в дальнейшем «Лизингополучатель», в лице Первого заместителя генерального директора Андрея Таланова, действующего на основании доверенности от 25.04.2018, с одной стороны, и компания «AP Holdings LTD», (Дубай, ОАЭ), именуемая в дальнейшем «Лизингодатель», в лице Андрею Литтл, действующего как директор, с другой стороны, именуемые в дальнейшем Стороны, заключили настоящее Соглашение (далее именуется Соглашение) к Договору №1-10/16 «Оперативного лизинга (аренды) воздушного судна АН-26» от «10» октября 2016г. (далее именуется Договор) о нижеследующем:

Private Joint Stock Company "Aircompany Constanta" (Zaporozhye, Ukraine), hereinafter referred to as "Lessee", represented by the First Deputy Director General Mr. Andrey Talanov, acting on the basis of the power of attorney of April 25, 2018, on the one hand, and the company «AP Holdings LTD», (Dubai, UAE), hereinafter referred to as "Lessor", represented by Mr. Andrew Little, acting as the Director on the other hand, hereinafter referred to as Parties, have concluded this Agreement (hereinafter referred to as the Agreement) to the Lease Contract №1-10/16 of AN-26 Aircraft dated October 10, 2016 (hereinafter referred to as the Contract) as follows:

1. Изложить пункт 1.3. Договора в следующей редакции:

«Лизингополучатель будет использовать Арендованное ВС в своих коммерческих интересах. Лизингодатель имеет преимущественное право коммерческого использования Арендованного ВС.

1. Set out paragraph 1.3. Contract as follows:

«The Lessee will use the Leased aircraft in its commercial interests. The Lessor has the preemptive right to commercial use of the Leased aircraft»

2. Настоящее Соглашение является неотъемлемой частью Договора № 1-10/16 «Оперативного лизинга (аренды) воздушного судна АН-26» от «10» октября 2016 года, составлено на русском и английском языке, в 2-х экземплярах, каждый из которых имеет одинаковую юридическую силу и вступает в силу с 04 июня 2018 года.

2. This Agreement is an integral part of Lease Contract No. 1-10/16 of AN-26 Aircraft dated October 10, 2016, compiled in Russian and English, in 2 copies, each having equal legal force and comes into force on June 04, 2018.

ЛИЗИНГОПОЛУЧАТЕЛЬ / THE LESSEE

Первый заместитель генерального директора/
First Deputy Director General

Андрей Таланов
Andrey Talanov



ЛИЗИНГОДАТЕЛЬ / THE LESSOR

Директор/
Director

Андрю Литтл
Andrew Little



Attachment 2

г. Запорожье

«04» июня 2018 года

Zaporozhye city

June 04, 2018

Частное акционерное общество «Авиакомпания Константа» (Запорожье, Украина), именуемое в дальнейшем «Лизингополучатель», в лице Первого заместителя генерального директора Андрея Таланова, действующего на основании доверенности от 25.04.2018, с одной стороны, и компания «AP Holdings LTD», (Дубай, ОАЭ), именуемая в дальнейшем «Лизингодатель», в лице Андрю Литтл, действующего как директор, с другой стороны, именуемые в дальнейшем Стороны, заключили настоящее Соглашение (далее именуется Соглашение) к Договору №1-05/18 «Оперативного лизинга (аренды) воздушного судна» от «23» мая 2018г. (далее именуется Договор) о нижеследующем:

1. Изложить пункт 1.3. Договора в следующей редакции:

«Лизингополучатель будет использовать Арендванное ВС в своих коммерческих интересах. Лизингодатель имеет преимущественное право коммерческого использования Арендванного ВС.

2. Настоящее Соглашение является неотъемлемой частью Договора № 1-05/18 «Оперативного лизинга (аренды) воздушного судна» от «23» мая 2018 года, составлено на русском и английском языке, в 2-х экземплярах, каждый из которых имеет одинаковую юридическую силу и вступает в силу с 04 июня 2018 года.

Private Joint Stock Company "Aircompany Constanta" (Zaporozhye, Ukraine), hereinafter referred to as "Lessee", represented by the First Deputy Director General Mr. Andrey Talanov, acting on the basis of the power of attorney of April 25, 2018, on the one hand, and the company «AP Holdings LTD», (Dubai, UAE), hereinafter referred to as "Lessor", represented by Mr. Andrew Little, acting as the Director on the other hand, hereinafter referred to as Parties, have concluded this Agreement (hereinafter referred to as the Agreement) to the Aircraft Lease Contract №1-05/18 dated May 23, 2018 (hereinafter referred to as the Contract) as follows:

1. Set out paragraph 1.3. Contract as follows:

«The Lessee will use the Leased aircraft in its commercial interests. The Lessor has the preemptive right to commercial use of the Leased aircraft.

2. This Agreement is an integral part of Aircraft Lease Contract No. 1-05/18 dated May 23, 2018, compiled in Russian and English, in 2 copies, each having equal legal force and comes into force on June 04, 2018.

ЛИЗИНГОПОЛУЧАТЕЛЬ / THE LESSEE

Первый заместитель генерального директора/
First Deputy Director General

Андрей Таланов/
Andrey Talanov



ЛИЗИНГОДАТЕЛЬ / THE LESSOR

Директор/
Director

Андрю Литтл/
Andrew Little



Attachment 3

г. Запорожье

«04» июня 2018 года

Zaporozhyc city

June 04, 2018

Частное акционерное общество «Авиакомпания Константа» (Запорожье, Украина), именуемое в дальнейшем «Лизингополучатель», в лице Первого заместителя генерального директора Андрея Таланова, действующего на основании доверенности от 25.04.2018, с одной стороны, и компания «AP Holdings LTD», (Дубай, ОАЭ), именуемая в дальнейшем «Лизингодатель», в лице Андрею Литтл, действующего как директор, с другой стороны, именуемые в дальнейшем Стороны, заключили настоящее Соглашение (далее именуется Соглашение) к Договору №2-05/18 «Оперативного лизинга (аренды) воздушного судна» от «30» мая 2018г. (далее именуется Договор) о нижеследующем:

Private Joint Stock Company "Aircompany Constanta" (Zaporozhyc, Ukraine), hereinafter referred to as "Lessee", represented by the First Deputy Director General Mr. Andrey Talanov, acting on the basis of the power of attorney of April 25, 2018, on the one hand, and the company «AP Holdings LTD», (Dubai, UAE), hereinafter referred to as "Lessor", represented by Mr. Andrew Little, acting as the Director on the other hand, hereinafter referred to as Parties, have concluded this Agreement (hereinafter referred to as the Agreement) to the Aircraft Lease Contract №2-05/18 dated May 30, 2018 (hereinafter referred to as the Contract) as follows:

1. Изложить пункт 1.3. Договора в следующей редакции:

«Лизингополучатель будет использовать Аренднованное ВС в своих коммерческих интересах. Лизингодатель имеет преимущественное право коммерческого использования Аренднованного ВС.

1. Set out paragraph 1.3. Contract as follows:

«The Lessee will use the Leased aircraft in its commercial interests. The Lessor has the preemptive right to commercial use of the Leased aircraft.

2. Настоящее Соглашение является неотъемлемой частью Договора № 2-05/18 «Оперативного лизинга (аренды) воздушного судна» от «30» мая 2018 года, составлено на русском и английском языке, в 2-х экземплярах, каждый из которых имеет одинаковую юридическую силу и вступает в силу с 04 июня 2018 года.

2. This Agreement is an integral part of Aircraft Lease Contract No. 2-05/18 dated May 30, 2018, compiled in Russian and English, in 2 copies, each having equal legal force and comes into force on June 04, 2018.

ЛИЗИНГОПОЛУЧАТЕЛЬ / THE LESSEE

Первый заместитель генерального директора/
First Deputy Director General

Андрей Таланов
Andrey Talanov



ЛИЗИНГОДАТЕЛЬ / THE LESSOR

Директор/
Director

Андрю Литтл/
Andrew Little

