

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>ALOSTAR BANK OF COMMERCE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION FILE</b>
	)	
	)	<b>NO. _____</b>
<b>AIRNET HOLDINGS, INC.,</b>	)	
<b>AIRNET MANAGEMENT, INC.,</b>	)	
<b>AIRNET SYSTEMS, INC.,</b>	)	
<b>FLIGHT EXPRESS, INC.,</b>	)	
<b>FLIGHT EXPRESS SERVICE</b>	)	
<b>CORP., and</b>	)	
<b>FLIGHT ICE, INC.,</b>	)	
	)	
<b>Defendants.</b>	)	
_____	)	

**VERIFIED COMPLAINT OF ALOSTAR BANK OF COMMERCE  
FOR DAMAGES, APPOINTMENT OF A RECEIVER  
AND INJUNCTIVE RELIEF**

**ALOSTAR BANK OF COMMERCE**, an Alabama banking institution ("Plaintiff"), for its Verified Complaint against Defendants **AIRNET SYSTEMS, INC.** ("AirNet Systems"), **AIRNET MANAGEMENT, INC.** ("AirNet Management"), **FLIGHT EXPRESS, INC.** ("Flight Express"), **FLIGHT ICE, INC.** ("Flight Ice"), **FLIGHT EXPRESS SERVICE CORP.** ("Flight Express Service"), and **AIRNET HOLDINGS, INC.** ("Holdings"; together with AirNet Systems, AirNet Management, Flight Express, Flight Ice and Flight Express

**ATTACHMENT A**

Service, collectively, "**Defendants**" and each individually, a "**Defendant**"), respectfully states and shows the Court as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff is an Alabama banking institution with its corporate headquarters and designated main office at 3680 Grandview Parkway, Suite 200, Birmingham, Alabama 35243.

2. AirNet Holdings is a Delaware corporation that has its principal place of business at 7250 Star Check Drive, Columbus, Ohio 43217. AirNet Holdings may be served by service upon its registered agent, The Corporation Trust Company, at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

3. AirNet Management is an Ohio corporation that has its principal place of business at 7250 Star Check Drive, Columbus, Ohio 43217. AirNet Management may be served by service upon its registered agent, Statuent, Inc., at 450 W. Wilson Bridge Road, Suite 340, Worthington, Ohio 43085.

4. AirNet Systems is an Ohio corporation that has its principal place of business at 7250 Star Check Drive, Columbus, Ohio 43217. AirNet Systems is registered to do business in Georgia and may be served by service upon its registered agent, National Registered Agents Inc., at 1201 Peachtree Street, N.E., Atlanta, Georgia 30361.

5. Flight Express is a Florida corporation that has its principal place of business at 7250 Star Check Drive, Columbus, Ohio 43217. Flight Express may be served by service upon its registered agent, NRAI Services, Inc., at 1200 South Pine Island Road, Plantation, Florida 33324.

6. Flight Express Service is a Florida corporation that has its principal place of business at 7250 Star Check Drive, Columbus, Ohio 43217. Flight Express Service may be served by service upon its registered agent, NRAI Services, Inc., at 1200 South Pine Island Road, Plantation, Florida 33324.

7. Flight Ice is a Florida corporation that has its principal place of business at 7250 Star Check Drive, Columbus, Ohio 43217. Flight Ice may be served by service upon its registered agent, Pat Hawk, at 83 Nilson Way, Orlando, Florida 32803.

8. This Court has personal jurisdiction over each of the Defendants.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. Among other things, each Defendant has consented to jurisdiction and venue in this Court in writing.

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 on the grounds that this civil action constitutes a controversy between citizens of different states and the amount in controversy exceeds \$75,000.

## SUMMARY OF MATERIAL FACTS

### **A. Revolver Loans**

11. On or about December 17, 2012, Plaintiff began making revolving credit loans to, and extending other financial accommodations for the benefit of, Defendants (such loans and financial accommodations being hereinafter referred to collectively as the "**Revolver Loans**"). The Revolver Loans are governed by, among other documents, a certain Loan and Security Agreement dated December 17, 2012 (as at any time amended, modified, restated or supplemented, the "**Loan Agreement**"; together with all related documents, instruments and agreements, as at any time amended, modified, restated or replaced, the "**Loan Documents**"), among Plaintiff, on the one hand, and Defendants, on the other hand. A true and correct copy of the Loan Agreement is attached hereto and incorporated herein as Exhibit A.

12. As of the opening of business on January 17, 2014, Defendants were indebted to Plaintiff under the Loan Documents for Revolver Loans in the approximate principal amount of \$14,513,192.00, plus accrued interest, fees, costs, expenses, attorneys' fees and other charges.

13. To secure the payment and performance of the Obligations (as defined in the Loan Agreement), each Defendant granted to Plaintiff a security interest in and lien upon all or substantially all of such Defendant's real and personal property

assets (collectively, the "Collateral") pursuant to, among other documents, (a) the Loan Agreement; (b) certain Trademark Security Agreements each dated December 17, 2012, between Plaintiff, on the one hand, AirNet Systems and AirNet Management, respectively, on the other hand, true and correct copies of which are attached hereto and incorporated herein as Exhibits B-C, respectively; (c) a certain Copyright Security Agreement between Plaintiff and AirNet Management dated December 17, 2012, a true and correct copy of which is attached hereto and incorporated herein as Exhibit D; (d) a certain Open-Ended Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Leasehold Mortgage") executed by AirNet Systems, Inc., in favor of Plaintiff dated December 17, 2012, a true and correct copy of which is attached hereto and incorporated herein as Exhibit E; (e) certain Aircraft Security Agreements each dated December 17, 2012, between Plaintiff, on the one hand, and AirNet Systems, Flight Express and Flight Express Service, respectively, on the other hand, true and correct copies of which are attached hereto and incorporated herein as Exhibits F-H, respectively; and (f) certain Deposit Account Control Agreements each dated December 17, 2012, among, respectively, (i) AirNet Systems, Flight Express, Plaintiff and PNC Bank, National Association, and (ii) AirNet Systems, Flight Express, Flight Express Service, Flight Ice, Plaintiff, and PNC Bank, National Association (collectively, the "DACAs"), true

and correct copies of which are attached hereto and incorporated herein as Exhibits I-J, respectively.

14. The Collateral consists of, among other things, the following:

- (a) all of each Defendant's accounts; goods, including all inventory and equipment (including fixtures); instruments; chattel paper; documents (including bills of lading); general intangibles, including intellectual property, payment intangibles and software; deposit accounts; investment property (including all securities and securities accounts, but excluding any securities that constitute margin stock unless otherwise expressly provided in any Loan Document); all letter-of-credit rights; supporting obligations; commercial tort claims; monies now or at any time or times hereafter in the possession or under the control of Plaintiff; accessions to, substitutions for and replacements, products and cash and non-cash proceeds of any of the foregoing, including proceeds of and unearned premiums with respect to insurance policies insuring any of the Collateral and claims against any person for loss of, damage to or destruction of any of the Collateral; and books and records;
- (b) the aircraft, airframes, engines, propellers, parts, spare parts and proceeds thereof owned by AirNet Systems, Flight Express and Flight Express Service; and
- (c) existing leases of real property to which any Defendant is a party, whether as lessor or lessee, and all extensions, renewals, modifications and proceeds thereof, including, without limitation, the interests of AirNet Systems under that certain land lease dated as of January 20, 2004, between AirNet Systems, as lessee, and Columbus Regional Airport Authority, the operator of Rickenbacker International Airport, as lessor (the "**Rickenbacker Lease**").

15. Plaintiff perfected its security interests in the Collateral by, among other things, (a) recording the Leasehold Mortgage and a UCC-1 Financing



Statement (Fixture Filing) naming Plaintiff as secured party and AirNet Systems as Debtor on December 28, 2012, as Instrument Nos. 2012122801199962 and 201212280199964, respectively, in the Recorder's Office, Franklin County, Ohio; (b) recording Trademark Assignment notices with respect to the Trademark Security Agreements with the United States Patent and Trademark Office on December 18, 2012, at Reel 4921, Frame 0896, and on December 19, 2012, at Reel 4923, Reel 0296, respectively; (c) recording the Copyright Security Agreement with the United States Copyright Office; (d) recording UCC-1 Financing Statements naming Plaintiff as Secured Party and Flight Express, Flight Ice and Flight Express Service, respectively, as Debtors, in the Florida Secured Transactions Registry on December 13, 2012, bearing registry nos. 201208038476, 201208038484 and 201208038492; (e) recording a UCC-1 Financing Statement naming Plaintiff as Secured Party and Holdings as Debtor, with the Delaware Department of State on December 13, 2012, bearing Initial Filing No. 2012 4844371; (f) recording a UCC-1 Financing Statement naming Plaintiff as Secured Party and AirNet Management as Debtor, with the Ohio Secretary of State on December 13, 2012, bearing Document ID No. 201234800396; (g) recording a UCC-1 Financing Statement naming Plaintiff as Secured Party and AirNet Systems as Debtor, with the Ohio Secretary of State on December 13, 2012, bearing Document ID No. 201234800347; (h) recording the Aircraft Security Agreements

and Irrevocable De-registration and Export Request Authorizations in the Federal Aviation Administration Civil Aircraft Registry; and (i) entering into the DACAs. True and correct copies of the UCC-1 Financing Statements recorded by Plaintiff are attached hereto and incorporated herein as collective Exhibit K.

**B. Defendants' Business and Financial Difficulties**

16. Defendants operate a small package express cargo airline that services customers requiring speed, security and flexibility in the delivery of small packages.

17. Defendants operate a fleet of more than one hundred thirty (130) aircraft that conduct nearly two hundred (200) scheduled and on-demand charter flights per night throughout North America.

18. In 2013, Defendants began experiencing significant financial difficulties.

19. As of June 6, 2013, an Event of Default had occurred under the Loan Agreement by virtue of Defendants' breach of financial covenants made by Defendants pursuant to the Loan Agreement.

20. Defendants decided to seek investors or asset purchasers who might be willing to invest in Defendants or purchase Defendants' assets in a manner that would alleviate Defendants' financial distress and maximize the value of their assets. On or about July 3, 2013, AirNet Systems engaged an investment banker



to assist Defendants in locating investors who might be interested in engaging in one or more transactions (a "**Transaction**") to acquire a controlling interest in the equity of Defendants or purchase all or substantially all of Defendants' assets.

21. On July 11, 2013, at the request of Defendants, Plaintiff and Defendants entered into a certain Forbearance Agreement (as at any time amended, the "**First Forbearance Agreement**") pursuant to which Plaintiff agreed, subject to the terms and conditions set forth in the First Forbearance Agreement, to forbear and continue to extend credit to Defendants pending Defendants' efforts to achieve an acceptable a Transaction.

22. In the First Forbearance Agreement, Defendants stipulated that Events of Default had occurred and were continuing under the Loan Agreement by reason of, among other things, Defendants' failure to comply with financial covenants and failure to deliver a certificate of good standing for AirNet Systems from the State of Illinois, which Events of Default were stipulated to be material.

23. During the forbearance period established by the First Forbearance Agreement, Defendants worked with their investment banker and negotiated with prospective asset purchasers and investors for several months in an effort to achieve an acceptable Transaction.

24. The forbearance period established by the First Forbearance Agreement ended on October 4, 2013, at which time Defendants requested that

Plaintiff continue to forbear from exerting certain of its rights and remedies under the Loan Documents and applicable law pending Defendants' continued efforts to achieve an acceptable Transaction.

25. On October 21, 2013, Plaintiff and Defendants entered into a Second Forbearance Agreement (as at any time amended, the "Second Forbearance Agreement") pursuant to which Plaintiff agreed, subject to the terms and conditions set forth in the Second Forbearance Agreement, to forbear and to extend credit to Defendants pending Defendants' efforts to achieve an acceptable Transaction.

26. In the Second Forbearance Agreement, Defendants stipulated that the Events of Default identified in the First Forbearance Agreement continued in existence, and that additional Events of Default had occurred and were continuing under the Loan Agreement.

27. During the forbearance periods established pursuant to the First Forbearance Agreement and Second Forbearance Agreement, Defendants received several non-binding letters of interest or intent describing possible Transactions ranging from equity investments contemplating the purchase of all or substantially all of Defendants' stock to asset purchases involving the purchase of some or all of Defendants' assets. In some cases the prospective purchasers expressed interest in

purchasing all or substantially all of Defendants' assets, and in other cases the purchasers express interested in purchasing only a few planes.

28. Defendants engaged in extensive communications and negotiations with interested parties in an effort to organize and achieve an acceptable Transaction, but the negotiations never resulted in a binding agreement to complete an acceptable Transaction. At the same time, ongoing losses from the operation of the business have resulted in increasing "overadvances," as the funding needs of Defendants have exceeded the eligible Collateral available to support such loans according to the formulas in the Loan Agreement.

29. Defendants do not dispute that under these circumstances, the wind down of Defendants' affairs and orderly liquidation of their assets is appropriate, is in the best interests of creditors, and is the best (or perhaps only) way to maximize the value of their assets.

30. Plaintiff has provided written notice to Defendants of the continuing existence of Events of Default under the Loan Agreement and has accelerated the maturity of the Obligations, which are immediately due and payable.

**C. Need and Grounds for Appointment of Receiver**

31. Defendants operate in the highly-regulated aviation industry and maintain a fleet of small aircraft that, along with other assets and books and records, are located in numerous jurisdictions at any given time.

32. Defendants lack the financial resources to fund the wind down of their affairs, including the geographic consolidation of their aircraft and other assets, or the orderly liquidation of their assets.

33. The appointment of a receiver is necessary to wind down the affairs of Defendants in an orderly and professional manner; gain control of and organize for sale the assets of Defendants; provide an effective, experienced decision-maker for Defendants; and preserve, protect, collect and dispose of the Collateral.

34. In the Loan Agreement, Defendants agreed that, upon the occurrence and during the continuation of an Event of Default, Plaintiff was entitled to elect in its discretion to:

Petition for and obtain the appointment of a receiver to take possession of any or all of the Collateral and to operate [each Defendant's] business and to exercise such rights and powers as the court appointing such receiver shall confer upon such receiver, [and Defendants waive] any requirement under applicable law that [Plaintiff] post a bond in connection with the appointment of any such receiver.

(Loan Agreement at Section 10.2(g), p. 53.)

35. Absent the granting of the relief requested in this Complaint, Defendants' inability to finance continued operations will leave the management of Defendants in disarray and the Collateral at risk of damage or loss; and neither Defendants nor Plaintiff will be able to maximize value by liquidating the assets of Defendants in a controlled, orderly fashion.

36. Defendants' financial problems have intensified and accelerated to the point that there is danger that Plaintiff's property interests in the Collateral will be irreparably harmed if a receiver is not appointed to take control of and to manage the business and assets of Defendants.

**Count One - Breach of Contract**

37. The averments contained in paragraphs 1 through 36 hereof are incorporated herein as if fully set forth verbatim in this paragraph.

38. Events of Default have occurred and are continuing under the Loan Agreement.

39. The maturity of all Obligations has been accelerated, and all Obligations are immediately due and payable by Defendants to Plaintiff.

40. As of the opening of business on January 17, 2014, Defendants were indebted to Plaintiff under the Loan Agreement in the approximate principal amount of \$14,513,192.00, plus (i) accrued but unpaid prejudgment interest on the principal amount of the Obligations at the Default Rate (as defined in the Loan Agreement), (ii) Plaintiff's attorneys' fees and legal expenses, (iii) all other fees, expenses, bank fees, costs and other charges and obligations at any time owing to Plaintiff under the Loan Documents, and (iv) post-judgment interest as provided by law.



41. Plaintiff is entitled to judgment as a matter of law against Defendants, jointly and severally, for the aforesaid Obligations owing to Plaintiff under the Loan Documents.

**Count Two - Appointment of Receiver for Defendants and the Collateral**

42. The averments contained in paragraphs 1 through 41 hereof are incorporated herein as if fully set forth verbatim in this paragraph.

43. Defendants each have consented in writing to the appointment of a receiver for Defendants, their properties and their assets, upon the occurrence and during the continuation of an Event of Default.

44. As a matter of enforcement of the Loan Agreement, Plaintiff is entitled to the appointment of a receiver.

45. Despite good faith efforts over a period of many months, Defendants have been unable to formulate or execute a plan to maximize the value of their assets.

46. The financial condition of Defendants has deteriorated to the point that the Collateral is at risk of diminution and loss of value if a receiver is not appointed to wind down the affairs of Defendants and liquidate their assets in an orderly fashion.

47. By reason of the foregoing, Plaintiff is suffering and will continue to suffer immediate and irreparable injury, loss and damage unless a receiver is appointed in this case.

48. The dire financial condition of Defendants and their inability to preserve and protect the Collateral have jeopardized Plaintiff's secured position.

49. The appointment of a receiver is necessary to preserve, protect, and maintain the value of Plaintiff's secured interests in the Collateral.

50. The Collateral and the proceeds thereof constitute a fund in litigation, and the rights of Plaintiff cannot be fully protected without the appointment of a receiver as requested herein.

51. There is an imminent and foreseeable danger of harm to the Collateral, thereby authorizing the intervention of equity to appoint a receiver to take possession and control of same.

52. The Collateral securing Plaintiff's claims constitutes an asset charged with the payment of debts where there is manifest danger of loss, destruction or diminution in value thereof.

53. Appointment of a receiver in this case is consistent with Rule 66 of the Federal Rules of Civil Procedure, 28 U.S.C. § 959, and applicable law.

54. Plaintiff is entitled to the immediate appointment of a receiver having the powers, privileges, immunities and duties substantially as set forth in the draft

proposed form of order annexed hereto and incorporated herein as Exhibit L (the "**Proposed Order**").

**Count Three – Injunction in Aid of Receivership**

55. The averments contained in paragraphs 1 through 54 hereof are incorporated herein as if fully set forth verbatim in this paragraph.

56. Plaintiff has no adequate remedy at law and is in danger of suffering irreparable harm and injury as a result of imminent damage to or loss of the Collateral.

57. Plaintiff is likely to succeed on the merits in this action.

58. In connection with the appointment of a receiver as prayed for herein, it is necessary and appropriate for the Court to enter an order imposing an injunction in aid of the receiver fulfilling his duties as set forth in the Proposed Order. Such relief is necessary to the implementation of the Proposed Order and the protection and preservation of the Collateral.

WHEREFORE, Plaintiff prays that process issue and that Plaintiff have judgment as follows:

(a) Pursuant to Count One, that judgment for monetary damages be entered against Defendants, jointly and severally, and in favor of Plaintiff in the principal amount of \$14,513,192.00, plus (i) accrued but unpaid prejudgment interest on the principal amount of the Obligations at the Default Rate, (ii)

Plaintiff's attorneys' fees and legal expenses, (iii) all other fees, expenses, bank fees, costs and other charges and obligations at any time owing to Plaintiff under any of the Loan Documents, and (iv) post-judgment interest as provided by law;

(b) Pursuant to Count Two, that the Court enter the Proposed Order appointing a receiver for each Defendant and all of the Collateral, and all of the assets, income, revenue, expenditures, disbursements, aircraft, books and records, accounts, inventory, goods and equipment relating thereto, with all of the powers and authorities set forth in the Proposed Order;

(c) Pursuant to Count Three, that the Court grant the injunctive relief provided in the Proposed Order; and

(d) That the Court grant to Plaintiff such other and further relief as is just and equitable under the circumstances.

Respectfully submitted, this 17th day of January, 2014.

**PARKER, HUDSON, RAINER & DOBBS LLP**  
Attorneys for Plaintiff AloStar Bank of Commerce

By: /s/ James S. Rankin, Jr.  
James S. Rankin, Jr.  
Georgia Bar No. 594620  
Joshua J. Lewis  
Georgia Bar No. 303211

1500 Marquis Two Tower  
285 Peachtree Center Avenue, NE  
Atlanta, Georgia 30303  
Telephone: (404) 523-5300  
Email: [jrankin@phrd.com](mailto:jrankin@phrd.com)  
[jlewis@phrd.com](mailto:jlewis@phrd.com)

## **CERTIFICATE OF COMPLIANCE**

Pursuant to LR 7.1(D), the undersigned counsel hereby certifies that the foregoing pleading has been prepared in Times New Roman 14 point, one of the fonts and points approved by LR 5.1(B).

Respectfully submitted this 17th day of January, 2014.

**PARKER, HUDSON, RAINER & DOBBS LLP**  
Attorneys for Plaintiff AloStar Bank of Commerce

By: /s/ James S. Rankin, Jr.  
James S. Rankin, Jr.  
Georgia Bar No. 594620  
Joshua J. Lewis  
Georgia Bar No. 303211

1500 Marquis Two Tower  
285 Peachtree Center Avenue, NE  
Atlanta, Georgia 30303  
Telephone: (404) 523-5300  
Email: jrankin@phrd.com  
jlewis@phrd.com



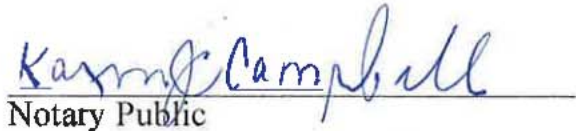
### VERIFICATION

I, Christopher Nairne, a Director, Senior Account Executive and authorized officer of Plaintiff AloStar Bank of Commerce, an Alabama banking institution, the Plaintiff named in the within and foregoing Verified Complaint of AloStar Bank of Commerce For Damages, Appointment of Receiver, and Injunctive Relief (the "**Complaint**"), do hereby swear and affirm that I am more than 21 years of age; that I have personal knowledge of the matters stated in the within and foregoing Complaint; and that such matters of fact as pled in the within and foregoing Complaint are true and correct to the best of my knowledge.



Christopher Nairne, Director and Senior  
Account Executive

Sworn to and subscribed before me, this  
17th day of January, 2014.

  
Notary Public

[NOTARY SEAL]

My commission expires: 4/2/16

