



**TABLE OF CONTENTS**

	<b>PAGE</b>
I. PRELIMINARY STATEMENT .....	1
II. BACKGROUND .....	3
A. The Debt Documents and the Stanford Aviation Subsidiaries' Defaults Thereunder .....	3
B. The Letters of Credit .....	6
C. The Settlement Negotiations .....	7
D. The Settlement Terms .....	9
III. ARGUMENT AND AUTHORITIES .....	10
A. Receiver's Authority to Enter into Settlement .....	10
B. The Settlement Agreement Contemplates an Estimate of Aircraft Value that Is Favorable to the Receiver .....	10
C. Prompt Settlement Particularly Favors the Receiver and the Receivership Estate .....	13
D. Prompt Return of Collateral and Payment of Proceeds from Letters of Credit are Necessary to Counter Irreparable Harm to VFS, a Non-Culpable Non-Party .....	15
IV. CONCLUSION AND RELIEF REQUESTED .....	17

**TO THE HONORABLE UNITED STATES DISTRICT JUDGE:**

COME NOW, Receiver Ralph S. Janvey (“Receiver”) and VFS Financing, Inc. (“VFS”), through its attorney in fact, General Electric Capital Corporation (“GECC”), and file this Joint Submission Concerning Return of Collateral, Entry of Stipulation and Agreed Order, Request for Expedited Consideration, and Memorandum Brief in Support Thereof (the “Submission”), and respectfully state as follows:<sup>1</sup>

**I. PRELIMINARY STATEMENT**

Following months of arms-length negotiations which included an independent appraisal process, Receiver and VFS executed a Settlement Agreement (the “Settlement Agreement”) pursuant to which the Receivership Estate<sup>2</sup> will obtain \$4.8 million in cash in exchange for return of collateral in which VFS has a fully-secured priority interest. That collateral is completely unrelated to the certificates of deposit that form the basis of the underlying fraud action (the “Action”) brought by the Securities & Exchange Commission (the “SEC”). While no approval of the Settlement Agreement is necessary and the Amended Order Appointing Receiver (the “Receiver Order”) plainly permits Receiver to return the relevant collateral and otherwise execute the Settlement Agreement, Receiver and VFS herein submit the Settlement Agreement for this Court’s review out of the abundance of caution and in order to ensure that there is no objection to return of significant assets at a later date. Further, the parties seek entry of a stipulation and agreed order confirming that certain Letters of Credit (defined below) can be drawn; that title shall be conveyed free and clear of all liens and encumbrances; and, in order to

---

<sup>1</sup> An appendix (the “Appendix”) containing supporting materials is filed contemporaneously with this Submission and incorporated by reference as if fully set forth herein.

<sup>2</sup> Unless defined herein, capitalized terms shall have the meaning ascribed to them in the Amended Order Appointing Receiver.

streamline the return of collateral process for the Federal Aviation Administration (the “FAA”), confirmation that the Receivership Estate includes certain relevant Stanford Aviation Subsidiaries (defined below) and Stanford Group Holdings, Inc.

By way of background, in 2006 and 2007, VFS financed five aircraft (collectively, the “Aircraft”) for certain wholly-owned subsidiaries of Stanford Financial Group Company (collectively, the “Stanford Aviation Subsidiaries”) that are not named as defendants in the Action but are within the scope of the Receiver Order by being owned or controlled by certain of the named defendants. As memorialized by the debt documents, VFS holds a security interest in each of the Aircraft and certain security deposits posted by the Stanford Aviation Subsidiaries. VFS also is the beneficiary to four letters of credit (the “Letters of Credit”) issued by Comerica Bank (“Comerica”) at the request of the Stanford Aviation Subsidiaries.

The Stanford Aviation Subsidiaries are in default of their obligations under the debt documents. Instead of engaging in costly litigation that would delay the return of the depreciating collateral and greatly increase Receiver’s obligations to pay monthly installments on the debt, maintenance costs and insurance costs, Receiver and VFS have, over the course of many months, negotiated at arms-length to reach an amicable resolution that the Receiver believes is in the best interest of, and provides fair value to, the Receivership Estate. The resolution obviates the need for VFS to bring impending litigation in this Court for return of the collateral and permission to draw under the Letters of Credit;<sup>3</sup> it frees Receiver and the Receivership Estate from the cost, expense, and financial exposure of and to protracted and complex litigation concerning the Aircraft; it relieves the Receiver and the Receivership Estate

---

<sup>3</sup> In the interest of reaching an amicable and expeditious resolution of this dispute, and solely for purposes of settlement, the Receiver agrees not to object to VFS’s draw under the Letters of Credit.

of the time and financial burdens of monitoring and maintaining the Aircraft; and it provides the Receivership Estate substantial cash value from Letters of Credit that likely would not be paid to the Receivership Estate absent the settlement.

Accordingly, following expedited consideration, Receiver and VFS respectfully seek entry of an order clarifying that the Receivership Estate defined in the Receiver Order covers and includes the specific Stanford Aviation Subsidiaries subject to the return of collateral in the Settlement Agreement.

## **II. BACKGROUND**

### **A. The Debt Documents and the Stanford Aviation Subsidiaries' Defaults Thereunder.**

The Stanford Aviation Subsidiaries are a group of five aircraft owners indirectly owned by R. Allen Stanford. The Stanford Aviation Subsidiaries are not named in the Receiver Order and they are not named as defendants in the SEC's First Amended Complaint (the "Complaint"). They are, however, part of the Receivership Estate because they are wholly-owned subsidiaries of Stanford Financial Group Company, which is wholly owned by Defendant R. Allen Stanford.

In connection with the financing of the five Aircraft in 2006 and 2007 for the Stanford Aviation Subsidiaries, various debt documents were executed, including six promissory notes (collectively, the "Promissory Notes")<sup>4</sup> and five security agreements (collectively, the "Aircraft

---

<sup>4</sup> Specifically, the Global Aircraft (as defined below) and 1997 Hawker Aircraft (as defined below) secure promissory notes, dated December 4, 2006, in the principal amounts of \$26,647,930.41 and \$7,754,200.00, respectively. (See Aircraft Security Agmt. (Global Aircraft) (Ex. 5) (App. 023-024); *id.* (1997 Hawker Aircraft) (Ex. 6) (App. 035); Amendment to Aircraft Security Agreement (1997 Hawker Aircraft) (Ex. 7) (App. 051).) Stanford Aviation LLC was required to pay 119 monthly installments in the monthly amount of \$236,000.00. (See Promissory Note (Global Aircraft) (Ex. 2) (App. 007).) The first payment was made in January 1, 2007. (See *id.* (Ex. 2) (App. 007).)

Another promissory note between Stanford Aviation III, LLC, as maker, and VFS, as payee, in the amount of \$1,040,154.17, was executed on May 4, 2007, and required Stanford Aviation III, LLC to repay this amount in 114 consecutive monthly installments in the monthly amount of \$9,289.88. (See Promissory Note (1997 Hawker

Security Agreements”). In order to induce VFS to finance the Aircraft and as a credit enhancement, the Stanford Aviation Subsidiaries requested that Comerica issue the four irrevocable standby Letters of Credit in favor of VFS.<sup>5</sup>

Various defaults under the debt documents (collectively, the “Defaults”) support the right of VFS to enforce its perfected security interests in the Aircraft pursuant to the Settlement Agreement. The Defaults include, but are not limited to, the following:

---

Aircraft) (Ex. 4) (App. 019.) The loan and security documents concerning the Global Aircraft and 1997 Hawker Aircraft expressly call for cross-collateralization and cross-default between and among them.

Promissory notes concerning the remaining three aircraft—the 1989 G-IV Aircraft (as defined below), 1991 G-IV Aircraft (as defined below), and 1996 Hawker Aircraft (as defined below)—also were executed between Stanford Aviation II, LLC, Stanford Aviation 5555, LLC, Stanford Aircraft, LLC, and VFS in similar loan documents that also call, through a separately executed Cross-Collateral and Cross-Default Agreement, for cross-collateralization and cross-default between and among them. (*See* Promissory Note (1989 G-IV Aircraft) (Ex. 9) (App. 057-061); *id.* (1991 G-IV Aircraft) (Ex. 14) (App. 086-090); *id.* (1996 Hawker Aircraft) (Ex. 19) (App. 114-118); Cross-Collateral and Cross-Default Agmt., a true and correct copy of which is attached hereto and incorporated herein as Exhibit “24.” (App. 143-146).) These three aircraft secured promissory notes, dated August 8, 2007: (i) issued by Stanford Aviation II, LLC in the principal amount of \$7,000,000.00, to be paid in 119 monthly installments in the monthly amount of \$67,405.61; (ii) issued by Stanford Aviation 5555 LLC in the principal amount of \$17,000,000.00, to be paid in 119 monthly installments in the monthly amount of \$164,198.12; and (iii) issued by Stanford Aircraft LLC in the principal amount of \$17,000,000.00, to be paid in 119 monthly installments in the monthly amount of \$164,198.12. (*See* Promissory Note (1989 G-IV Aircraft) (Ex. 10) (App. 062); *id.* (1991 G-IV Aircraft) (Ex. 15) (App. 091); *id.* (1996 Hawker Aircraft) (Ex. 20) (App. 119).)

<sup>5</sup> A true and correct copy of the Letter of Credit Agreement, dated December 4, 2006, in the amount of \$2,500,000.00, and the related letter of credit is attached hereto as Exhibit “1” and incorporated by reference as if fully set forth herein. (*See* App. 001-006.) This letter of credit secures VFS’s exposure on both the Global (defined below) and the 1997 Hawker Aircraft (defined below). Also attached as Exhibits “2” to “8” are the promissory notes, security agreements and related guarantees on the Global and 1997 Hawker Aircraft. (*See* App. 007-056.)

Further, a true and correct copy of the Letter of Credit Agreement, dated August 8, 2007, in the amount of \$3,200,000.00, and the related letter of credit is attached hereto as Exhibit “9” and incorporated by reference as if fully set forth herein. (*See* App. 057-061.) Also attached as Exhibits “10” to “13” are the promissory notes, security agreements and related guarantees on the 1989 G-IV Aircraft (defined below). (*See* App. 062-085.)

A true and correct copy of the Letter of Credit Agreement, dated August 8, 2007, in the amount of \$3,200,000.00, and the related letter of credit is attached hereto as Exhibit “14” and incorporated by reference as if fully set forth herein. (*See* App. 086-090.) Also attached as Exhibits “15” to “18” are the promissory notes, security agreements and related guarantees on the 1991 G-IV Aircraft (defined below). (*See* App. 091-113.)

A true and correct copy of this Letter of Credit Agreement and the related letter of credit is attached hereto as Exhibit “19” and incorporated by reference as if fully set forth herein. (*See* App. 114-118.) Also attached as Exhibits “20” to “23” are the promissory notes, security agreements and related guarantees on the 1996 Hawker Aircraft (defined below). (*See* App. 119-142.)

- The Stanford Aviation Subsidiaries have breached the relevant Aircraft Security Agreements by failing to “pay within 10 days after its due date any installment,” (*see* Aircraft Security Agmt. (Global Aircraft) § 8(a) (Ex. 5) (App. 028); *accord id.* (1997 Hawker Aircraft) (Ex. 6) (App. 040); *id.* (1989 G-IV Aircraft) (Ex. 11) (App. 070); *id.* (1991 G-IV Aircraft) (Ex. 16) (App. 099); *id.* 1996 Hawker Aircraft (Ex. 21) (App. 126);
- The Stanford Aviation Subsidiaries have breached the relevant Promissory Notes by failing to “make any payment of any amount due [t]hereunder within ten (10) days after the same becomes due and payable,” (*see* Promissory Note (Global Aircraft) (Ex. 2) (App. 007); *accord id.* (1997 Hawker Aircraft) (Ex. 3) (App. 013); *id.* (1997 Hawker Aircraft) (Ex. 4) (App. 019); *id.* (1989 G-IV Aircraft) (Ex. 10) (App. 062); *id.* (1991 G-IV Aircraft) (Ex. 15) (App. 091); *id.* (1996 Hawker Aircraft) (Ex. 20) (App. 119));
- The Stanford Aviation Subsidiaries have breached the relevant Aircraft Security Agreements because a petition or application for the “appointment of a custodian, receiver or trustee” for the Stanford Aviation Subsidiaries or their “Guarantor,” defined under the relevant debt documents to be Stanford Group Holdings, Inc., has been filed and commenced and has not been dismissed within 30 days of such filing, (*see* Aircraft Security Agmt. (Global Aircraft) § 8(l) (Ex. 5) (App. 029); *accord id.* (1997 Hawker Aircraft) (Ex. 6) (App. 041); *id.* (1989 G-IV Aircraft) (Ex. 11) (App. 071); *id.* (1991 G-IV Aircraft) (Ex. 16) (App. 100); *id.* 1996 Hawker Aircraft (Ex. 21) (App. 127)); and
- The Stanford Aviation Subsidiaries have breached several of the representations, warranties and covenants in the relevant Aircraft Security Agreements, including: (i) covenants to “remain the sole lawful owner, in sole, open and notorious possession of the Aircraft, free from any Lien whatsoever,” (ii) covenants to not “encumber the Aircraft . . . or otherwise jeopardize or subordinate Secured Party’s rights under this Agreement . . . or part with possession of the Aircraft,” and (iii) covenants to “promptly notify Secured Party of any facts or circumstances which . . . will constitute a breach of the above warranties and covenants or an Event of Default hereunder,” such warranties including that there are no “suits or proceedings pending or threatened in court or before any commission, board or other administrative agency against or *affecting* [them] which could, in the aggregate, have a material adverse effect” on them, their business or operations, or their ability to perform their obligations under the debt documents. (*See* Aircraft Security Agmt. (Global Aircraft) §§ 3(f), (h), (k) and (m) (Ex. 5) (App. 024-025); *accord id.* (1997 Hawker Aircraft) (Ex. 6) (App. 036-037); *id.* (1989 G-IV Aircraft) (Ex. 11) (App.

067); *id.* (1991 G-IV Aircraft) (Ex. 16) (App. 096); *id.* 1996 Hawker Aircraft (Ex. 21) (App. 123)).<sup>6</sup>

**B. The Letters of Credit.**

In connection with the purchase of the Aircraft and as an inducement for VFS to finance the same, the Stanford Aviation Subsidiaries simultaneously caused the issuance by Comerica of the Letters of Credit to VFS in the amounts set forth below:

Entity	Aircraft	Irrevocable Letter of Credit
Stanford Aviation, LLC	Global Express 2001 enhanced model BD-700-1A10, Serial No. 9100 (the "Global Aircraft")	Letter of Credit Agreement, dated December 4, 2006, in the amount of \$2,500,000.00, and Letter of Credit No. 4654-30 from Comerica issued for this amount.
Stanford Aviation III, LLC	1997 Hawker 800XP, Serial No. 258339 (the "1997 Hawker Aircraft")	
Stanford Aircraft, LLC	Gulfstream Aerospace, GIV, Serial No. 1104 (the "1989 G-IV Aircraft")	Letter of Credit Agreement, dated August 8, 2007, in the amount of \$3,200,000.00, and Letter of Credit No. 3455-31 from Comerica issued for this amount.
Stanford Aviation 5555, LLC	Gulfstream Aerospace, GIV, Serial No. 1171 (the "1991 G-IV Aircraft")	Letter of Credit Agreement, dated August 8, 2007, in the amount of \$3,200,000.00, and Letter of Credit No. 3456-31 from Comerica issued for this amount.
Stanford Aviation II, LLC	1996 Hawker 800XP, Serial No. 258303 (the "1996 Hawker Aircraft")	Letter of Credit Agreement, dated August 8, 2007, in the amount of \$1,600,000.00, and Letter of Credit No. 3454-31 from Comerica issued for this amount.

Collectively, the potential amounts to be drawn under the Letters of Credit total \$10,500,000.00. (*See* Ltr. of Credit Agmt. (Global and 1997 Hawker Aircraft) at §§ 2, 3 (Ex. 1)

<sup>6</sup> VFS also believes that the Stanford Aviation Subsidiaries have breached the relevant Aircraft Security Agreements because the "Aircraft or any other property of Debtor [has been] confiscated, sequestered, seized or levied upon," (*see* Aircraft Security Agmt. (Global Aircraft) § 8(g) (Ex. 5) (App. 028); *accord id.* (1997 Hawker Aircraft) (Ex. 6) (App. 040); *id.* (1989 G IV Aircraft) (Ex. 11) (App. 070); *id.* (1991 G IV Aircraft) (Ex. 16) (App. 100); *id.* 1996 Hawker Aircraft (Ex. 21) (App. 127).

(App. 001-002); *id.* (1989 G-IV Aircraft) (Ex. 9) (App. 057); *id.* (1991 G-IV Aircraft) (Ex. 14) (App. 086); *id.* (1996 Hawker Aircraft) (Ex. 19) (App. 114.)

Pursuant to the express terms of the Letter of Credit Agreements, which accompany and set forth the terms and conditions of each issued Letter of Credit, the Letters of Credit can be drawn upon in the following circumstances:

**3. Upon the occurrence of any default under this Agreement, the Note or the Security Agreement, or upon the filing of any petition by or against Debtor under any bankruptcy, insolvency or similar law, then in any such event and at any time thereafter Secured Party shall have the right, with or without notice to or demand upon Debtor, to draw upon the Letter of Credit,** by presenting to the issuer one or more sight drafts and any other necessary documents, and to receive (in a lump sum or in several sums from time to time at the sole discretion of the Secured Party) and retain an amount not to exceed, in the aggregate, that available under the Letter of Credit.

(See, e.g., Ltr. of Credit Agmt. (Global and 1997 Hawker Aircraft) at §§ 2, 3 (Ex. 1) (App. 001-002); *accord id.* (1989 G-IV Aircraft) (Ex. 9) (App. 057); *id.* (1991 G-IV Aircraft) (Ex. 14) (App. 086); *id.* 1996 Hawker Aircraft (Ex. 1) (App. 114).)

**C. The Settlement Negotiations.**

As stated, the Settlement Agreement<sup>7</sup> is the product of months of arms-length negotiations between Receiver and VFS. Shortly after the Court's entry of the Receiver Order, VFS reached out to Receiver regarding the Aircraft and the Letters of Credit. Of immediate importance to VFS was protecting its rapidly-depreciating assets and immediately drawing under the Letters of Credit. Although VFS believed (and continues to believe) that it is entitled to the full amount of the Letters of Credit, it agreed to forego its efforts to immediately draw under the

---

<sup>7</sup> A true and correct copy of the Settlement Agreement is included as Exhibit 27 in the Appendix.

Letters of Credit and otherwise act to protect its rights as to the Aircraft in order to negotiate with the Receiver with a goal toward amicably resolving the matter. For purposes of settlement only, the Receiver agreed not to oppose VFS's draw under the Letters of Credit.

To aid in the negotiations, independent appraisals of the Aircraft were performed on March 23, 2009, and March 26, 2009, respectively (the "March 23 Appraisal" and "March 26 Appraisal," respectively). The March 23 Appraisal was prepared by Corporate Concepts International, Inc., an aviation servicer that has been providing air carrier and helicopter evaluation, appraisal, and assessment for over thirty years. It is a current member in good standing with the National Aircraft Finance Association, the International Society Transport Aircraft Trading, the National Business Aircraft Association, and the Aircraft Owner and Pilot Association. The appraisal was performed following an onsite inspection of the Aircraft and detailed review of the logbooks, maintenance records, and other available records. It was performed pursuant to standard methodology and approved market study methods by surveying the market conditions, the number of similar models on the market, the average time on the market, and the range of retail asking prices. The March 23 Appraisal calculates two sets of values of the Aircraft using the fair market value ("FMV") *and* the orderly liquidation value ("OLV"). As set forth in the appraisal reports, the OLV was intended to be used if the Aircraft were to be sold within one-hundred and twenty days or less.

The March 26 Appraisal was prepared by Ernest C. Killingsworth of Killingsworth Aircraft Valuation Services, a member in good standing of the American Society of Appraisers in the Machinery and Technical specialties. The appraisal was performed following an onsite inspection of the Aircraft and detailed review of the logbooks, maintenance records and other available records. It was performed pursuant to the Uniform Standards of Professional Appraisal

Practice, pursuant to which a comprehensive availability study was completed on the three types represented in the Aircraft and compared to the market situation that existed in the prior year, 2008.

As set forth more fully below, given the economic turbulence in the aircraft market and the average length of time on the market to sale found in the reports as to each relevant Aircraft, VFS strongly believes that the OLV should have been used as the most relevant negotiating tool; however, the Receiver opted to use the average of the two appraisals' FMVs during negotiations.

**D. The Settlement Terms.**

The Settlement Agreement permits VFS to draw under the Letters of Credit, and requires the Receiver to return the Aircraft to VFS in exchange for release of the obligations of the Stanford Aviation Subsidiaries and Stanford Group Holdings, Inc., the guarantor, under the debt documents and \$4.8 million in cash. More specifically, pursuant to the Settlement Agreement, VFS may draw, without objection of the Receiver, under the Letters of Credit and retain \$1 million in security deposits. (*See* Settlement Agmt. ¶ 2 (Ex. 27) (App. 301).) Following VFS's deposit of \$4.8 million in escrow, VFS's execution of certain lien release documents, and the Receiver's transfer of bills of sale for the Aircraft into escrow, \$4.8 million will be transferred to the Receiver and operational control of and title to the Aircraft will be transferred to VFS. (*See id.* ¶ 9 (App. 302).)

In sum, in order to promptly have its collateral returned, VFS was willing to amicably resolve the disputes with the Receiver for almost half the amount due under the Letters of Credit and pay the balance of \$4,800,000.00 to the Receiver.

### III. ARGUMENT AND AUTHORITIES

#### A. Receiver's Authority to Enter into Settlement.

Pursuant to the Receiver Order, the Receiver is authorized to “contract and negotiate with any claimants against the Receivership Estate (including, without limitation, creditors) for the purpose of compromising or settling any claim.” (Receiver Order ¶ 5(f).) The Stanford Aviation Subsidiaries are part of the Receivership Estate because they are wholly-owned subsidiaries of Stanford Financial Group Company which is wholly owned by Defendant R. Allen Stanford. (*See* Declaration of Ralph S. Janvey (“Janvey Dec.”) ¶¶ 3-4, attached hereto as Exhibit 26 (App. 150-51).) Because VFS’s potential claims in the dispute were against the Stanford Aviation Subsidiaries, the Settlement Agreement clearly falls within the Receiver’s authority under the Receiver Order.

Accordingly, this Court is not required to approve the Settlement Agreement and the Receiver is entitled to compromise and settle issues surrounding the return of the Aircraft and draws under the Letters of Credit. Out of an abundance of caution and in an effort to promote full transparency, however, Receiver and VFS provide notice of the Settlement Agreement to the Court and public through this Submission.

#### B. The Settlement Agreement Contemplates an Estimate of Aircraft Value that Is Favorable to the Receiver.

To ensure that any settlement would be fair and in the best interests of the Receivership Estate, during the course of negotiations, two appraisals of the Aircraft were performed by two independent appraisers, the March 23 and 26 Appraisals. Further, because the March 23 Appraisal calculated *two* separate values of the Aircraft, both an FMV and an OLV, three separate values or value ranges resulted from these two independent appraisals. (Janvey Dec.,

¶¶ 11-12 (Ex. 26) (App. 153-54); *see also* Declaration of S. Forsberg (“Forsberg Dec.”) ¶ 4, attached hereto as Exhibit 25 (App. 148).)

The following *three* separate values resulted from the three separate appraisals performed during the negotiation process:

Aircraft	March 23 Appraisal – OLV Average <sup>8</sup>	March 23 Appraisal – FMV Average	March 26 Appraisal
Global Aircraft	30,222,500	33,672,500	29,000,000
1997 Hawker Aircraft	5,272,500	5,855,000	4,700,000
1989 G-IV Aircraft	12,605,000	13,887,500	11,900,000
1991 G-IV Aircraft	14,387,500	16,025,000	12,300,000
1996 Hawker Aircraft	5,207,500	5,735,000	4,300,000
Total	67,695,000	75,175,000	62,200,000

When calibrated with the \$4.8 million to be paid to the Receivership Estate through the Settlement Agreement, these values demonstrate that the Settlement Agreement is fair to the Receiver and the Receivership Estate. Pursuant to the Debt Documents, the Stanford Aviation Subsidiaries owe more than \$74 million to VFS, including principal, default interest, and late charges. Further, as of June 2009, VFS’s own internal appraisal of the Aircraft reflects that the values of the Aircraft have fallen since March 2009. (*See id.* ¶ 5 (Ex. 25) (App. 148).) Although VFS contends it is entitled to have the collateral returned and the deficiency paid by the

---

<sup>8</sup> Because the March 23 Appraisal provided a high-low range of OLV and FMV for each Aircraft, the OLV Average and FMV Average in this table are the average of the high and the low numbers for each range.

Receivership Estate (in addition to any claims under the Letters of Credit), the settlement calls for payment to VFS of significantly less than that. The result obviously benefits the Receiver and the Receivership Estate.

The delta between the three values demonstrates the turmoil in the current economic climate. As stated in the March 26 Appraisal report, “[t]he overriding factor affecting [its] appraisal of these aircraft is the decreased demand for private lift and the extraordinary number of business jets being offered on the market.” (See Killingsworth Rep. at 2 (Ex. 26 at Tab B).) Further, as set forth in the March 23 Appraisal report, the average duration on the market for these Aircraft is lengthy: 213 days for the 1996 and 1997 Hawkers; 165 days for the Global Express; and 220 days for the 1989 and 1991 G-IVs. (See CCI Rep. at 5(1997 Hawker); 4 (1996 Hawker); 5 (1989 G-IV); 4 (1991 G-IV); and 5 (Global) (Ex. 26 at Tab A).) As a result of these economic conditions, the OLV as calculated in the March 23 Appraisal more accurately reflects the value of the Aircraft as of March 23 than the FMV. (Forsberg Dec. ¶ 4 (Ex. 25) (App. 148).) When that number is utilized, the \$4.8 million cash payment is particularly favorable to the Receivership Estate.

Further, as the table above indicates, the values of the Aircraft have declined since the March 23 and 26 Appraisals were conducted. As each day passes, values continue to erode; according to GECC’s Manager of Aircraft Remarketing, since August 2008, the market has experienced on average a 30-40% correction in the values across all makes and models of corporate aircraft. (*Id.*) This trend has continued, and the appraisals that were performed in March 2009 overstate the present value of the Aircraft and do not accurately reflect potential sale prices for the Aircraft. (*Id.*) Any further appraisal would only reflect that the value of the Aircraft has eroded further. (See *id.* ¶¶ 5-6 (App. 148-49).)

Pursuant to the debt documents, the Stanford Aviation Subsidiaries owe more than \$74 million to VFS, including principal, default interest, prepayment penalties and late charges. Accordingly, regardless of which of the three appraised values is used for the Aircraft, because the Receiver is also receiving \$4.8 million pursuant to the Settlement Agreement, the Settlement Agreement benefits the Receiver and the Receivership Estate. The Receiver will likewise welcome substantial savings from not having to make more monthly debt payments or maintain, insure, and house the Aircraft during the course of protracted litigation or a Court-ordered sale (which could take over a year).

Finally, from a practical standpoint, the Receiver will not be able to sell these Aircraft for values higher than those contemplated through the Settlement Agreement. (*See id.* ¶¶ 5-7 (App. 148-49).) Aircraft do not sell well in an auction environment, because, *inter alia*, aircraft must be carefully prepared for the marketplace and marketed by a broker who understands and has connections in the marketplace—particularly in the current buyer’s market. (*See id.* ¶ 7 (App. 149).) Unlike GECC, it is highly unlikely that the Receiver has the resources, the brand recognition, the market penetration, or experience necessary to properly sell these Aircraft. On the contrary, due to market perception, it is far more likely that potential buyers will heavily discount the value of the Aircraft should they be sold by the Receiver. (*See id.*)

**C. Prompt Settlement Particularly Favors the Receiver and the Receivership Estate.**

The terms of the Settlement Agreement are particularly reasonable for the Receivership Estate when the potential alternatives to settlement are considered. Virtually any course of action other than a settlement would necessarily involve substantial delay in the Receiver’s disposal of the Aircraft, which in turn would cost the Receivership Estate hundreds of thousands, or more likely millions, of dollars in additional debt and actual costs associated with keeping the

Aircraft. Such a delay would preclude the Receivership Estate from realizing any value from disposal of the Aircraft and would directly deplete the very limited assets currently available to the Receivership Estate. (Janvey Dec., ¶¶ 19-20 (Ex. 26) (App. 156).)

Each month, the amount of interest that accrues and is added to the balance of the loans for the Aircraft is approximately \$745,000. Thus, to the extent that the value of the Aircraft might exceed the debt owed today, any such excess would be wiped out completely after only a few months. (*See id.*)

More importantly, the monthly costs associated with keeping the Stanford Aircraft are substantial and would deplete the assets of the Receivership Estate, which already are insufficient to compensate the claimants against the estate. For March, April and May, the Receivership Estate had to pay a total of \$712,824 in expenses associated with the Aircraft -- \$235,268 for March, \$236,158 for April and \$241,398 for May. These costs are for maintenance on the aircraft, hangar lease and upkeep, hangar utilities, employee payroll and expenses and insurance on the aircraft, and most if not all of these expenses would continue until such time as the Receivership Estate is able to dispose of the Aircraft. (*See id.*)

Given the above figures, the cost to the Receivership Estate for each month of continued ownership of the Aircraft is approximately \$1,000,000. The Settlement Agreement allows the Receiver to avoid these expenses going forward and therefore is the only reasonable option available to the Receiver.

The Receiver could attempt to sell the Aircraft himself, but as demonstrated above, the minimum amount of time the Aircraft would spend on the market before sale is likely at least 6 months, which would cost the Receivership Estate approximately \$6,000,000. Alternatively, if

the parties waited to resolve VFS's claims through the Receiver's claims process, the delay and attendant costs would likely increase substantially.

Even if VFS were to immediately foreclose on the Aircraft, the result would be much less favorable to the Receivership Estate than the terms of the Settlement Agreement. Foreclosure sales often result in fire sale prices or, at best, if the lender bids, a credit against debt in an amount with which the borrower disagrees, preserving any deficiencies. Further, in a foreclosure scenario, substantial additional expenses would come out of the sale price before any funds in excess of the debt would be paid over to the Receiver, such as default interest, prepayment penalties, attorneys' fees, sale expenses, etc., making it virtually certain that the Receivership Estate not only would receive no money out of the deal, but that VFS would remain as a claimant against the Receivership Estate even after the foreclosure. This Settlement Agreement precludes that type of result. (Janvey Dec., ¶ 18 (Ex. 26) (App. 155-56).)

**D. Prompt Return of Collateral and Payment of Proceeds from Letters of Credit are Necessary to Counter Irreparable Harm to VFS, a Non-Culpable Non-Party.**

VFS entered into the Settlement Agreement in order to avoid protracted litigation and protect the value of its collateral. However, its rights will be unduly harmed absent the ability to promptly take possession of and title to the Aircraft and the ability to draw under the Letters of Credit without objection from the Receiver.

**1. VFS Believes It Can Draw Under the Letters of Credit.**

While the Receiver disagrees, VFS takes the position that VFS should be permitted to draw the full amount of the Letters of Credit without objection from the Receiver. But in the interest of expedient resolution, VFS has agreed to give the Receiver \$4.8 million effectively

from the proceeds of the Letters of Credit, thereby providing significant value to the Receivership Estate.

**2. The Complaint Is Unrelated to VFS's Secured Interest or the Aircraft.**

The allegations set forth in the Complaint bear no relationship to the Aircraft or VFS's secured interests therein. Rather, the Action concerns an alleged elaborate Ponzi scheme involving the sale of certificates of deposits. (*See, e.g.*, Compl. ¶¶ 1, 3 (“massive Ponzi scheme” involving the sale of “approximately \$8 billion of self-styled ‘certificates of deposits’” by “touting the (i) bank’s safety and security, (ii) consistent double-digit returns on the bank’s investment portfolio, and (iii) high return rates on the CD that greatly exceeded those offered by commercial banks in the United States.”).)

Moreover, VFS is a non-culpable non-party that has a perfected security interest that is completely unrelated to any wrongdoing of the defendants, with which it did not contract. Its financing of the Aircraft for non-party subsidiaries of a defendant is well-documented in the agreements included in the Appendix. (*See generally* Aircraft Security Agmt. (Global Aircraft) (Ex. 5) (App. 028); *accord id.* (1997 Hawker Aircraft) (Ex. 6) (App. 040); *id.* (1989 G-IV Aircraft) (Ex. 11) (App. 070); *id.* (1991 G-IV Aircraft) (Ex. 16) (App. 099); *id.* 1996 Hawker Aircraft (Ex. 21) (App. 126); *see also* Promissory Note (Global Aircraft) (Ex. 2) (App. 007); *accord id.* (1997 Hawker Aircraft) (Ex. 3) (App. 013); *id.* (1997 Hawker Aircraft) (Ex. 4) (App. 019); *id.* (1989 G-IV Aircraft) (Ex. 10) (App. 062); *id.* (1991 G-IV Aircraft) (Ex. 15) (App. 091); *id.* (1996 Hawker Aircraft) (Ex. 20) (App. 119).)

VFS's superior and perfected interest in a traceable asset that, again, is unrelated to the subject matter of the Complaint, without more, entitles it to the return of its collateral.

**3. The Passage of Time Has and Will Continue to Significantly Depreciate VFS's Collateral.**

In addition to the significant carrying costs that have to be borne by the Receivership Estate until the date of return of collateral, every day that goes by results in significant depreciation of the Aircraft, thereby causing VFS irreparable harm.

As stated, the values of the Aircraft continue to decline the longer they remain under the arm of the Receiver and off the market. (*See* Forsberg Dec. ¶ 4-5 (Ex. 25) (App. 148).) The Aircraft are not intended to sit idly in a hangar and remain operable; they need to be exercised routinely. (*See id.* ¶ 6 (App. 148-49).) Inactivity of aircraft increases the risk that costly maintenance would need to be performed to restore the aircraft to a sales-ready state. (*See id.*) Moreover, the Aircraft need to be put on the market promptly because sales are significantly down. Traditionally, an aircraft would remain on the market before being sold for a period of 90 to 120 days; today, the period is generally between 180 and 360 days. (*See id.* ¶ 5 (App. 148).) And, the longer these Aircraft wait to be put on the market, the more likely their sale prices will be lower and duration on the market will increase. (*See id.*) Potential buyers are scarce today. Indeed, throughout the first quarter of 2009, very few aircraft sales occurred. (*See id.*) Accordingly, VFS is irreparably harmed and the value of the Aircraft continues to deteriorate with each passing day.

**IV. CONCLUSION AND RELIEF REQUESTED**

WHEREFORE, the Receiver and VFS respectfully request that the Court take immediate action to:

1. Consider this Submission on an expedited basis;
2. Confirm that, under the Receiver Order, the Receiver may take all actions as contemplated by the Settlement Agreement with respect to Stanford Aviation,

LLC, Stanford Aviation II, LLC, Stanford Aviation III, LLC, Stanford Aircraft, LLC, Stanford Aviation 5555, LLC, Stanford Group Holdings, Inc., and any other Stanford entity that is part of the Receivership Estate,

3. Confirm that VFS may draw under the Letters of Credit;
4. Confirm that the title conveyed by the Stanford Aviation Subsidiaries to VFS pursuant to the Settlement Agreement shall be free and clear of all liens and encumbrances currently existing; and
5. Take all action necessary to afford Receiver and VFS such other and further relief, both general and special, at law and in equity, to which they are justly entitled.

**Dated: June 15, 2009**

Respectfully submitted,

By: /s/ David T. Arlington  
Kevin M. Sadler, Lead Attorney  
Texas Bar No. 17512450  
Kevin.sadler@bakerbotts.com  
Robert I. Howell  
Texas Bar No. 10107300  
Robert.howell@bakerbotts.com  
David T. Arlington  
Texas Bar No. 00790238  
david.arlington@bakerbotts.com

BAKER BOTTS L.L.P.  
1500 San Jacinto Center  
98 San Jacinto Blvd.  
Austin, Texas 78701-4078  
Tel.: 512.322.2500  
Fax: 512.322.2501

**ATTORNEYS FOR RECEIVER,  
RALPH S. JANVEY**

By: /s/ Michelle Hartmann  
Stephen A. Youngman  
Texas Bar No. 22226600  
stephen.youngman@weil.com  
Vance L. Beagles  
Texas Bar No. 00787052  
vance.beagles@weil.com  
Michelle Hartmann  
Texas Bar No. 24032402  
michelle.hartmann@weil.com  
Margaret Hope Allen  
Texas Bar No. 24045397  
margaret.allen@weil.com

WEIL, GOTSHAL & MANGES LLP  
200 Crescent Court, Suite 300  
Dallas, Texas 75201  
Telephone: (214) 746-7700  
Facsimile: (214) 746-7777

**ATTORNEYS FOR VFS  
FINANCING, INC.'S ATTORNEY  
IN FACT, GENERAL ELECTRIC  
CAPITAL CORPORATION**

**CERTIFICATE OF CONFERENCE**

I hereby certify that on June 15, 2009, counsel for the Receiver contacted David Reece with the Securities and Exchange Commission; Manual Lena with the Department of Justice; the Examiner; counsel for Defendant Laura Pendergest-Holt, Jeffrey Tillotson; and counsel for Defendant R. Allen Stanford, Paul Flack and Michael Sidow.

Counsel for Receiver, Kevin Sadler, advises that neither the Examiner, nor the SEC, the DOJ, or Mrs. Pendergest-Holt have any opposition to the relief requested herein.

Mr. Flack has stated that he is not in a position to oppose or not oppose because they have moved to withdraw as counsel of record, and Michael Sidow has stated that Mr. Stanford opposes the Submission.

/s/ David Arlington  
Michelle Hartmann

**CERTIFICATE OF SERVICE**

I hereby certify that on June 15, 2009, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ David Arlington  
Michelle Hartmann