

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:
In re	: Chapter 11
	:
	: Case No. 12-11343 (REG)
	: Jointly Administered
PINNACLE AIRLINES CORP., et al.,	:
	:
	:
Debtors,	:
	:
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**JOINT AND COMMON INTEREST AND CONFIDENTIALITY STIPULATION**

Pursuant to Fed. R. Civ. P. 26(c), as incorporated by Fed. R. Bankr. P. 7026, IT IS  
HEREBY STIPULATED AND AGREED by and between the above-captioned debtors and  
debtors in possession (collectively, the “**Debtors**”) and the Official Committee of Unsecured  
Creditors (the “**Committee**”) (the Debtors and the Committee each a “**Party**” and collectively  
the “**Parties**”) appointed in the Debtors’ chapter 11 cases (the “**Bankruptcy Cases**”) pending in  
the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy  
Court**”), that:

1. This Joint and Common Interest and Confidentiality Stipulation (the  
“**Stipulation**”) shall govern the handling of all documents, testimony, deposition transcripts,  
exhibits, interrogatory answers, responses to requests to admit and any other materials and  
information, including all copies, excerpts and summaries thereof (collectively, the “**Materials**”)  
produced, exchanged or provided by the Committee or the Debtors in connection with the  
Committee’s investigation of the Debtors (the “**Committee Investigation**”). Certain of the  
Materials produced are or may be privileged and protected by the attorney-client privilege, the

work product doctrine, the joint defense privilege, the common interest doctrine, or any other privilege or protection from disclosure (“**Privileged Information**”).

2. The Debtors agree to produce certain confidential and/or privileged documents to the Committee subject to the agreement to treat these documents pursuant to the terms of this Stipulation. The Parties further agree that they have certain joint and common interest in connection the Committee Investigation. The Stipulation shall govern the cooperation and exchange of information between the Parties from and after the date hereof, in connection with and in further of the Parties’ common effort to allow for, among other things, the investigation of the Debtors. The nature of the Committee Investigation and the relationships among the Parties to this Stipulation make it likely that there are and will be legal and factual issues common to the Parties as well as to a certain extent common strategy among and between the Parties. In preparation for such efforts, it is and has been the desire and purpose of the Parties to this Stipulation that every lawful, ethical and proper step be taken to assure that the Parties share and exchange the Materials. Each Party’s counsel has advised its respective client(s) of the confidentiality and/or privileged nature of the Materials. In this manner, counsels’ ability to assert and protect common interests and strategies as well as the clients’ rights and interests, are expected to be enhanced. All Privileged Information shall remain as fully protected by the attorney-client privilege, the work product doctrine, or any other privilege or protection from disclosure as though the exchange had not occurred. The Materials are being exchanged by the Parties only in the interest of facilitating their common and joint interest; but for their expectation that the communications and documents will remain Privileged Information, no exchange of the Materials would take place between the Parties. For the avoidance of doubt, the production and/or disclosure of privileged communications or information shall not be and shall

not be deemed to be a waiver of the attorney-client privilege, the work product doctrine, the joint defense privilege, the common interest doctrine or any other privilege or protection with respect to any disclosed or undisclosed communication or information, including with respect to the Committee any privileged communication or information undisclosed to the Committee concerning the same subject matter as any privileged communication or information disclosed to the Committee.

3. All Materials, including Confidential Material (as defined below) and Privileged Information, produced or disclosed shall be used solely for the purposes of the Committee Investigation, or any other action which the Bankruptcy Court has directed, or the Parties hereto have agreed, and shall not be used for any other purpose. Any person or entity in possession of Materials shall maintain those Materials in a reasonably secure manner so that they are not further disclosed or used in any manner inconsistent with this Stipulation. The Parties agree that they will not show, give, produce or disclose the contents of the Materials or any other communication made or document received under this Stipulation with any person, entity, corporation, counsel or government agency or official, other than the Parties.

4. Material which contains or discloses information believed to be deemed a trade secret or other confidential research, development, commercial non-public business or financial information or other confidential information of the Debtors or its employees, officers, directors or clients, or is otherwise entitled to protective treatment under Federal Rule of Civil Procedure 26(c) or under any other applicable law, rule or regulation, may be designated by the Debtors as confidential (“**Confidential Material**”). All Confidential Material produced by the Debtors shall bear the legend, “Confidential” on each page in addition to an appropriate bates-stamp designation indicating the source of the document. Materials that are Privileged Information also

may be marked "Privileged and Confidential – Joint Interest Material" and shall be subject to the terms of this Stipulation. However, failure to mark Materials in the manner described in this paragraph with respect to confidentiality or privilege shall not result in the waiver of the confidential or privileged nature of such Materials.

5. To the extent that the Committee intends to use or disclose Confidential Material and/or Privileged Information in a manner not permitted under this Stipulation, the Committee agrees to provide reasonable notice of such intention to the Debtors so that the Debtors can take all steps necessary to protect the confidentiality and/or privileged nature of such Material. The Committee further agrees to meet and confer in good faith with the Debtors about appropriate steps that may be taken to protect the confidential and/or privileged nature of such Material, including, as may be appropriate, agreeing to the application for a protective order from a court, sealing pleadings or otherwise preserving the confidential and/or privileged nature of the Materials, and/or agreeing to redact such confidential and/or privileged Material.

6. Documents excluded from this Stipulation are only those that (i) are or become generally known or available to the public other than as a result of disclosure by the Committee or a third person who received the documents from the Committee; or (ii) are or become available to the Committee on a non-confidential basis from a source other than the Debtors, provided that such source is not known by either the Committee or the Debtors to be bound by this Stipulation. If such documents are later determined to be Confidential Materials or Privileged Information and protected as such by a judicial, administrative or other similar body then such documents shall be subject to this Stipulation.

7. The Parties agree that the designation of any Material as Confidential Material and/or Privileged Information is not intended to be, and shall not be construed as, an admission

that the Material is relevant, admissible in any actions, reasonably calculated to lead to the discovery of admissible evidence or not subject to an applicable privilege or protection.

8. In connection with the Committee Investigation, the Committee may not disclose Confidential Material except to (a) counsel and financial advisors representing the Committee or the Debtors as well as their support staff, (b) the Bankruptcy Court, Bankruptcy Court personnel, stenographers, and videographers, (c) witnesses at depositions and/or fact hearings, (d) experts and consultants hired to assist in the Committee Investigation, and (e) outside photocopying, data processing or graphic production services employed by the Committee, the Debtors or their counsel to assist in the Committee Investigation. Prior to disclosure, the Committee shall inform persons that the Confidential Material should not be used or disclosed for any purpose other than in connection with the Committee Investigation. Persons listed in categories (d) and (e) may only be given access to Confidential Materials after counsel has provided a copy of this Stipulation and causes each such person to execute a certificate in the form attached as Exhibit A hereto. Counsel disclosing Confidential Material to persons under categories (d) and (e) shall be responsible for holding executed certificates. Notwithstanding the foregoing, Materials that are Privileged Information, whether or not marked as "Privileged and Confidential – Joint Interest Material," shall not be provided or disclosed to persons under categories (b), (c), (d) or (e) without prior written consent from the producing Party and the appropriate protection of the privileged nature of the Material.

9. Subject to the terms and conditions herein, information or testimony disclosed at a deposition may be designated as Confidential Material by the person providing such testimony, or his or her counsel, or by either Party, if such person, counsel or Party (i) identifies on the record at the deposition those portions of the testimony that are designated as Confidential

Material, or (ii) provides written notification to all Parties within thirty (30) days after the conclusion of the deposition as to the portions of the transcript that are designated as Confidential Material. The entire transcript of any deposition shall be treated as Confidential Material until thirty (30) days after the conclusion of the deposition and thereafter such testimony shall be treated in accordance with its designation, if any. Each page of a deposition transcript designated as Confidential Material shall be marked as "Confidential" by the court reporter or counsel.

10. In the event that the Committee or the Committee's representatives receives a request to disclose Confidential Material and/or Privileged Information (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or otherwise) in a judicial, administrative or other similar proceeding or otherwise, the Committee shall give the Debtors prompt written notice of such request to permit the Debtors, among other things, to assert and protect any applicable rights and privileges with respect to the Materials. In the event of such a request for disclosure is received by the Committee, the Committee will take all steps necessary to assert and preserve any privileges as well as obtain reliable assurances that confidential treatment will be accorded to the disclosed Material of the Debtors. The Committee shall cooperate with and not oppose any request by the Debtors to appear and be heard in connection with any proceeding regarding such request for disclosure. The Committee may not waive any privilege under this Stipulation (whether affirmatively or by inaction) without prior notice and hearing before the Bankruptcy Court.

11. In the event that the Committee objects to the designation of any materials as Confidential Material or Privileged Information, the Committee shall meet and confer with the Debtors to attempt to resolve its differences. If the Parties are unable to reach an accord as to the

confidentiality or privileged nature of any particular materials, the Committee may move the Bankruptcy Court, in camera, to designate particular documents as non-confidential and/or non-privileged and excluded under the Stipulation.

12. Within thirty (30) days following a final order by the Court concluding the Bankruptcy Cases, or as otherwise agreed by the Parties, all Confidential Material and Privileged Information provided by the Debtors in connection with the Committee Investigation, including all copies, summaries and excerpts thereof, as well as any documents derived, in whole or in part, from Confidential Material and/or Privileged Information, shall be returned to the Debtors or destroyed, at the discretion of the Debtors. However, counsel for the Parties shall be entitled to retain court papers, deposition and trial transcripts and attorney work product, provided that such counsel (and employees of such counsel) shall not disclose the court papers, deposition and trial transcripts or attorney work product to any person except pursuant to a final court order or agreement with the Debtors. If the Confidential Material or Privileged Information is destroyed, counsel for the Committee shall certify in writing to the Debtors that all such Confidential Material and/or Privileged Information within its possession or control has been destroyed.

13. In the event that counsel for any Party decides to file with or submit to a court any Confidential Material and/or Privileged Information, the following procedures shall be used:

(a) All Material subject to confidential or privileged treatment in accordance with the terms of this Stipulation that is filed with a court and any pleading, motions, or other papers filed with a court or used at a hearing disclosing any Confidential Material and/or Privileged Information shall be accompanied by an appropriate motion to file under seal (or motion to impound and kept under seal) and a motion to preserve any privilege until further order of the appropriate court. The Debtors shall provide the Committee with a redacted version

of a document containing Confidential Material and/or Privileged Information upon request from the Committee so that the Committee can file a redacted version with a court if such a filing is required by court rule or order.

(b) The Parties shall not include Confidential Material or Privileged Information in the titles of the documents filed with a court so that, in all instances, the titles of the documents—and the court’s docket sheet reflecting those titles—may remain public.

(c) All filings to be filed under seal, in whole or in part, must be so designated by the Party making the filing. Filings containing Confidential Material and/or Privileged Information may be filed under seal in their entirety. If a filing containing such Confidential Material and/or Privileged Information is not placed under seal in its entirety, those portions containing Confidential Material and/or Privileged Information must be separated from the pleading and placed in an envelope bearing the caption of this case, the name of the filing, and the legend “Filed Under Seal.”

14. Subject to the terms and conditions of this Stipulation, if the Debtors believe Confidential Material and/or Privileged Information has been inadvertently produced, including by the Committee or its representatives to a non-Party or otherwise, the Debtors may take the following action with regard to such Confidential Material and/or Privileged Information:

(a) Within ten (10) days of the date of discovery by the Debtors of the inadvertent production, the Debtors shall notify the Committee in writing of the fact of inadvertent disclosure.

(b) Immediately upon receipt of such notification, the Committee shall take reasonable steps to seek the return of the Confidential Material and/or Privileged Information.



(c) Within five (5) business days of receiving written notice, the Committee shall return all copies of such Confidential Material and/or Privileged Information to the undersigned counsel for the Debtors.

15. If, at any time, the Committee notifies counsel for the Debtors in writing of an objection to a claim of privilege with respect to a document that was inadvertently produced, then within seven (7) calendar days of the receipt of such notification, counsel for the Debtors and the Committee shall meet-and-confer in an effort to resolve any disagreement regarding the Debtors' claim of privilege. After good faith efforts to resolve any dispute have failed, the Committee may move the Bankruptcy Court for an order compelling production of the material, but such motion shall not assert as grounds for entering such an order that the Debtors waived any privilege because of the inadvertent production. The provisions of this paragraph are without prejudice to any other rights that a Party may have with respect to challenging or defending any claim of privilege; provided, however, that no claim of waiver, estoppel, laches, or the like based on alleged delay or alleged lack of timeliness can be asserted against the Debtors claiming inadvertent production if the Debtors have notified the Committee of the inadvertent production in accordance with paragraph 14(a).

16. Subject to the terms and conditions of this Stipulation, inadvertent failure to designate material as Confidential Material or Privileged Information at the time of production pursuant to this Stipulation may be remedied by supplemental written notice given by the Debtors within thirty (30) days after such materials are made available for review by the Committee. Upon receipt of such notification, all documents, materials, or testimony so designated or re-designated shall be fully subject to this Stipulation as if they had been initially so designated; provided, however, that the Committee shall incur no liability for any previous

treatment of such material in conformance with its original designation. The Committee shall make a reasonable good-faith effort to ensure that any analyses, memoranda, or notes which were internally generated based upon such information shall immediately be treated in conformance with any such designation or re-designation.

17. This Stipulation applies to all Material produced before the signing and/or Bankruptcy Court approval of this Stipulation. The Parties shall promptly after execution of this Stipulation jointly seek approval of this Stipulation by order of the Bankruptcy Court, which order shall be satisfactory to the Parties. This Stipulation shall be binding upon execution by the Parties, and shall continue to be binding upon the Parties unless the Bankruptcy Court (subject to any appeals) rules otherwise by final order.

18. In the event the Debtors produce two or more identical copies of a document and any such copy is designated as Confidential Material or Privileged Information, all such identical copies shall be treated in accordance with the most restrictive designation given to any of the copies. The Debtors shall be responsible for informing the Committee of any inconsistent designation; however, if any person subject to this Stipulation receives such inconsistently designated information, and has actual knowledge of the inconsistent designation, the person shall treat all copies in accordance with the more restrictive designation.

19. The Parties shall be entitled to equitable relief, injunctive relief and specific performance, in the event of any breach of the provisions of this Stipulation without the necessity for posting a bond. Such remedy may be in addition to and not in lieu of all other remedies available at law or equity. In the event any action is commenced relating to the provisions of this Stipulation, the Party prevailing therein by final award or judgment, including any appeals, shall

be entitled to recover reasonable attorneys' fees from the losing Party in addition to any other relief awarded.

20. In rendering legal advice as to joint and common interest agreements and their effectiveness in maintaining and preserving the attorney-client privilege, the work product doctrine or any other privilege or protection from disclosure, and upon which advice the Parties relied in entering into the common litigation effort and this Stipulation, counsel specifically rely upon decisions such as *United States v. Bay State Ambulance and Hospital Rental Service*, 874 F.2d 20 (1st Cir. 1989); *Continental Oil Company v. United States*, 330 F.2d 347 (9th Cir. 1964); *Hunydee v. United States*, 355 F.2d 183 (9th Cir. 1965); *In the Matter of a Grand Jury Subpoena Duces Tecum dated November 16, 1974*, 406 F.Supp. 381 (S.D.N.Y. 1975); *Schachar v. American Academy of Ophthalmology, Inc.*, 106 F.R.D. 187 (N.D. Ill.1985); and *Western Fuels Ass'n. v. Burlington Northern R.R. Co.*, 102 F.R.D. 201 (W.D. Wyo. 1984).

21. This Stipulation may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any proceeding relating to this Stipulation may be brought in the court having jurisdiction over the Bankruptcy Cases. This Stipulation shall be governed by and construed in accordance with the laws of the State of New York and shall inure to the benefit of and be binding upon the Committee and each of their successors and assigns, and the Debtors and each of their successors or assigns. This Stipulation may be amended only upon the written Stipulation of the Parties. IN WITNESS WHEREOF, the Committee and the Debtors have caused this Stipulation to be executed as of the date below.

STIPULATED AND AGREED:

Dated: New York, NY  
February 8, 2013

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*Attorneys for the Official Committee of Unsecured  
Creditors*

*Attorneys for Debtors Pinnacle Airlines Corp.*

SO ORDERED.

Date: February 11, 2013

*s/ Robert E. Gerber*  
Honorable Robert E. Gerber

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	: Chapter 11
	:
	: Case No. 12-11343 (REG)
	: Jointly Administered
PINNACLE AIRLINES CORP., et al.,	:
	:
	:
Debtors,	:
	:
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**EXHIBIT A TO STIPULATION**

**ACKNOWLEDGMENT**

I hereby attest to my understanding that confidential and/or privileged documents, materials or information are being provided to me pursuant to the terms and conditions of the Stipulation executed by the Parties and entered by the Court in the above captioned litigation. I hereby attest that I have been given a copy of and have read the Stipulation and that I hereby agree to be bound by it and its terms. I agree that I shall not disclose to others, except in accordance with the terms of the Stipulation, such confidential and/or privileged documents, materials, or information. I further agree that the United States Bankruptcy Court for the Southern District of New York has jurisdiction to enforce the terms of the Stipulation, and I consent to jurisdiction of that Court over my person for that purpose.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_