

EXHIBIT D

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this “**Agreement**”) has been made and entered into as of this 3rd day of April, 2014 (the “**Execution Date**”), by and among Jonathan L. Flaxer, as Chapter 11 Trustee (the “**Trustee**”) for the bankruptcy estate (the “**Estate**”) of Lehr Construction Corp. (“**Lehr**” or the “**Debtor**”), a New York corporation, having been duly appointed in the Chapter 11 bankruptcy case for the Debtor pending in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), Case No. 11-10723(SHL) (the “**Bankruptcy Case**”); Travel Yesterday Incorporated d/b/a Fischer Travel Enterprises (“**TY**”); Direct Airway, Inc. (“**DA**”), and Gerald Lazar (“**Lazar**”) (where applicable, the Trustee, TY and DA are collectively referred to as the “**Parties**” and individually each as a “**Party**”).

WHEREAS, the Trustee is conducting an investigation into the affairs of Lehr including the existence of and claims or causes of action that may be brought on behalf of Lehr’s estate; and

WHEREAS, the Trustee alleges that Lehr transferred (the “**Transfers**”) \$3,904,878.82 to TY prior to the commencement of Lehr’s Chapter 11 case; and

WHEREAS, a portion of the Transfers were further transferred by TY to DA; and

WHEREAS, the Trustee contends that the Transfers were for the benefit of Gerald Lazar, not Lehr, and that the Transfers are subject to avoidance pursuant to, *inter alia*, 11 U.S.C. §§ 544, 547 and 548 and sections 273, 274, 275 and 276 of the New York Debtor and Creditor Law; and

WHEREAS, TY and DA dispute the Trustee’s claims; and

WHEREAS, by Amended Complaint, dated June 13, 2013, in Adversary Proceeding No. 13-101268 (the "**Adversary Proceeding**") against TY and DA in the Bankruptcy Court the Trustee sought to recover the Transfers; and

WHEREAS, TY served and filed a Third Party Complaint against Lazar seeking equitable indemnification, among other relief; and

WHEREAS, the Parties, in order to save the expense of litigation, and without any acknowledgment of any liability whatsoever, now wish to settle all disputes between them upon the terms and conditions for the aggregate sum of two hundred and seventy five thousand dollars (\$275,000) (the "**Settlement Amount**"), two hundred thousand dollars (\$200,000) of which shall be paid by TY and seventy five thousand dollars (\$75,000) of which shall be paid by DA on the terms set forth below; and

NOW, THEREFORE, in consideration of the covenants and mutual promises and agreements contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree and covenant as follows:

1. **Initial Payments**. Subject to the terms and provisions hereof, no later than three (3) business days after the date of the Execution Date, TY shall pay to the Trustee seventy two thousand seven hundred twenty seven and 27/100ths dollars (\$72,727.27) (the "**TY Deposit**") and DA shall pay to the Trustee twenty seven thousand two hundred seventy two and 73/100ths dollars \$27,272.73 (the "**DA Deposit**") to be held in the IOLA account of Golenbock Eiseman Assor Bell & Peskoe LLP pending the entry of a final order of the Bankruptcy Court or other Court of competent jurisdiction (the "**Approval Order**") approving this Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019. If the Approval Order is not entered by the

Bankruptcy Court or other court of competent jurisdiction by August 1, 2014, the Trustee shall immediately return TY Deposit and the Capital Deposit to TY and DA respectively. After the Approval Order is final and no longer subject to appeal, the Trustee shall transfer the TY Deposit and the DA Deposit to an account for the Estate.

2. Court Application and Effective Date. The Trustee shall file with the Bankruptcy Court a motion seeking entry of an Approval Order promptly after the Execution Date. The Trustee's motion shall be subject to the approval of each of the Parties, which approval shall not be unreasonably withheld or delayed. The Trustee shall not disburse the TY Deposit, the DA Deposit or any other payment received pursuant to this Agreement to any person or entity including the Estate or any creditor of the Estate until such time as the Approval Order is final and no longer subject to appeal (the "Effective Date"). With the exception of paragraphs 1, 2 and 3 of this Agreement, which shall become effective immediately upon the Execution Date, this Agreement shall become effective on the Effective Date. The Trustee shall return all amounts received by him to TY and DA in the event that the Effective Date does not occur on or before June 30, 2015.

3. Payment of Balance. The balance of the Settlement Amount shall be paid as follows: beginning on May 1, 2014 and continuing on the first day of each month for eight (8) consecutive months, (a) TY shall pay to the Trustee fifteen thousand nine hundred nine and 9/100ths dollars (\$15,909.09) *per* month, and (b) DA shall pay to the Trustee five thousand nine hundred sixty five dollars and 91/100ths dollars (\$5,965.91) *per* month. In the event of any default in the making payment of any payment, the balance owing by TY or DA as the case may be shall upon five (5) business days written notice be accelerated and become immediately due

and payable. All payment obligations of TY and DA pursuant to this Agreement shall be several, not joint.

4. Trustee Releases. On the Effective Date, and in consideration of the terms and provisions of this Agreement, DA and TY each hereby release the Estate, the Trustee and any successor chapter 11 or chapter 7 trustee that may be appointed in the Bankruptcy Case, and their respective attorneys, agents, accountants and other professionals (acting in such capacities) (the "Trustee Releasees") from any and all actions and causes of action, suits, debts, obligations, covenants, rights, claims, including any proofs of claim, counterclaims, sums of money, judgments, executions, damages, demands, and liabilities of any type or nature, whether known or unknown, suspected or unsuspected, asserted or unasserted, direct or indirect, vested, fixed, contingent or conditional, at law or in equity (collectively, "Claims") that either TY or DA has or ever had against the Trustee Releasees from the beginning of the world to the Effective Date that relates in any way to Lehr or the Transfers.

5. Section 502(h) Waivers. TY and DA each hereby waive any claim against the Estate under section 502(h) of the Bankruptcy Code.

6. TY/DA Releases by Trustee. On the Effective Date, and in consideration of the terms and provisions of this Agreement and the payment of the Settlement Amount, the Trustee, on behalf of himself as Trustee, the Debtor and the Estate hereby release TY and DA and their shareholders, members, officers, directors, employees, attorneys, agents, accountants, representatives and other professionals (the "TY/DA Releasees") solely in their capacities as agents for TY and DA from, as the case may be, any and all Claims related in any way to Lehr or the Transfers, including claims under chapter 5 of the United States Bankruptcy Code or

otherwise, that the Trustee, the Debtor and the Estate has or ever had against the TY/DA Releasees from the beginning of the world to the Effective Date.

7. General Releases Among TY, DA and Lazar. On the Effective Date, and in consideration of the terms and provisions of this Agreement, TY, DA and Lazar hereby release each other, TY and DA's respective shareholders, members, officers, directors, employees, agents, accountants, representatives and other professionals solely in their capacity as agents for TY and DA, and Lazar's successors, assigns, heirs, executors, and administrators from any and all actions and causes of action, suits, debts, obligations, covenants, rights, claims, including any proofs of claim, counterclaims, sums of money, judgments, executions, damages, demands, and liabilities of any type or nature, whether known or unknown, suspected or unsuspected, asserted or unasserted, direct or indirect, vested, fixed, contingent or conditional, at law or in equity from the beginning of the world to the Effective Date.

8. Dismissal of Adversary Proceeding. Within ten (10) days from the Effective Date, the Trustee shall cause a dismissal with prejudice of the Adversary Proceeding to be filed with the Bankruptcy Court.

9. Governing Law. This Agreement is made pursuant to, shall be governed by, and incorporates herein, the provisions of New York General Obligations Law Section § 15-108. Nothing contained herein shall be construed as a release of any party other than the parties to this Agreement, provided, however, that TY and DA not to seek to recover any of the amount paid to the Trustee pursuant to this Agreement from any other person or entity. This Agreement shall be governed by the internal laws of the State of New York, without regard to any conflict of law provision that could require the application of the law of any other jurisdiction.

10. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, representatives, successors (including any Chapter 11 plan representative or successor chapter 11 or chapter 7 trustees that may be appointed in the Bankruptcy Case) and assigns of each of the Parties.

11. No Admissions. The Parties acknowledge that this Agreement represents a settlement of the dispute as herein recited and is not an adjudication of the merits of such dispute. Further, the Parties acknowledge that by entering into this Agreement no Party admits or acknowledges the existence of any liability or wrongdoing, and that no inferences may be drawn from the Agreement in any other litigation or context.

12. Confidential Information.

(a) "Confidential Information" shall mean all Documents and all information contained therein, and other information designated as confidential, if such Documents contain trade secrets, proprietary business information, competitively sensitive information, or other information the disclosure of which would, in the good faith judgment of TY and DA, be detrimental to the conduct of that party's business or the business of any of that party's customers or clients.

(b) Except with the prior written consent of the Producing party or by Order of the Court, Confidential Information shall not be furnished, shown or disclosed to any person or entity.

(c) Confidential Information utilized by the Trustee and DA and its counsel only for purposes of this litigation and for no other purpose.

(d) The Trustee and DA shall return to TY all TY's Confidential Information and shall otherwise preserve and keep all TY's information confidential.

(e) Any person receiving Confidential Information shall not reveal or discuss such information to or with any person not entitled to receive such information under the terms hereof.

(f) Within sixty (60) days after the final termination of this litigation by settlement, all Confidential Information by TY produced or designated and all reproductions thereof, shall be returned to the TY party or shall be destroyed, at the option of TY. In the event that the Trustee or DA chooses to destroy physical objects and documents, such party shall certify in writing within sixty (60) days of the final termination of this litigation that it has undertaken its best efforts to destroy such physical objects and documents, and that such physical objects and documents have been destroyed to the best of its knowledge. Notwithstanding anything to the contrary, counsel of record for the parties may retain one copy of documents constituting work product, a copy of pleadings, motion papers and discovery responses. This Agreement shall not be interpreted in a manner that would violate any applicable canons of ethics or codes of professional responsibility.

13. Parties' Authority. Each of the undersigned represents and warrants that she, he or it has full power and authority to execute this Agreement on behalf of the parties set forth below its, her or his name. The Trustee, on behalf of the Debtor and the Debtor's chapter 11 bankruptcy estate, is authorized to take all actions necessary to effectuate this Agreement. The Parties recognize and acknowledge that their agreement herein is subject to the approval of the Bankruptcy Court. Should the Bankruptcy Court fail to approve this Agreement then this Agreement, and all of its provisions except applicable provisions of paragraphs 1, 2 and 3 hereof, shall be rendered null and void and the Parties shall be restored to their original factual and legal positions.

14. Drafting of Agreement. The drafting and negotiation of this Agreement have been participated in by each of the Parties, and for all purposes this Agreement shall be deemed to have been drafted jointly by each of the Parties.

15. Counterparts and Electronic Transmission. This Agreement may be signed by facsimile or other electronic transmission and in counterpart originals with the same force and effect as if fully and simultaneously signed on a single original document. Copies of signed counterparts transmitted by facsimile or other electronic transmission shall be considered original. executed counterparts for the purposes of this paragraph. This Agreement shall not be effective unless and until signed by all Parties.

16. Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court solely for such purposes.

17. Representations. Each Party represents and warrants that such Party is the sole owner of any claims and matters subject to release hereunder and that neither such Party, nor its or his predecessors or assigns or affiliates, has sold, assigned, transferred, or purported to assign or transfer any claim released in this Agreement to any person or entity.

18. Breach of Agreement. Breach of this Agreement will subject the breaching Party to liability for such remedies as may be available at law or in equity. The Parties hereby agree

that the releases set forth in paragraphs 4, 6 and 7 hereof shall not apply or be deemed to apply to any claims or defenses arising out of any breach, by either Party, of this Agreement.

19. Fees and Costs. The Parties will bear their own fees, costs, and expenses incurred in connection with the Adversary Proceeding and the negotiation and preparation of this Agreement and any other documents necessary to effectuate this Agreement, and no Party shall seek an award of attorneys' fees from any other Party.

20. Merger Clause. The terms of this Agreement are contractual and not mere recitals, and no representations have been made which are not contained herein. All prior representations and understandings relied upon by the Parties have been incorporated into the text of this Agreement.

21. Further Steps. Each Party promises to take or cause to be taken all lawful acts to effect the promises, covenants, agreements, and acknowledgements in this Agreement.

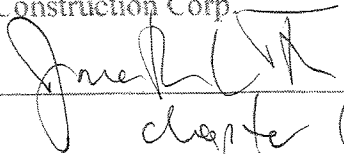
22. Amendments. This Agreement may be amended or modified only by a written instrument executed by both Parties. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a continuing waiver or as a waiver of any other breach.

23. Entire Agreement. Except as otherwise expressly stated herein, this Agreement represents and contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous negotiations, agreements, and understandings, whether written or oral, between the Parties with respect to the subject matter of this Agreement. The Trustee and Lazar are entering into a separate agreement

that concerns Lazar's liability to the Estate. This Agreement does not supersede or modify such separate agreement between the Trustee and Lazar.

IN WITNESS WHEREOF, the undersigned hereto have executed this Agreement as of the date first above written.

JONATHAN L. FLAXER, solely in his
capacity as Chapter 11 Trustee for Lehr
Construction Corp.


chapter 11 trustee

TRAVEL YESTERDAY INCORPORATED
d/b/a FISCHER TRAVEL ENTERPRISES

By: 
Its: 

DIRECT AIRWAY, INC.

By: /s/ William Boos
Its:

/s/ Gerald Lazar
GERALD LAZAR