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Province of Ontario  
Province de l'Ontario  
Ministry of Government Services  
Ministère des Services gouvernementaux

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# Certificate of Incorporation Certificat de constitution

This is to certify that

Ceci certifie que

**C A R G O J E T I N C .**

Ontario Corporation No.

Numéro matricule de la personne morale en  
Ontario

**0 0 2 2 3 9 6 7 4**

is a corporation incorporated,  
under the laws of the Province of Ontario.

est une société constituée aux termes  
des lois de la province de l'Ontario.

These articles of incorporation  
are effective on

Les présents statuts constitutifs  
entrent en vigueur le

**A P R I L 0 7 A V R I L , 2 0 1 0**



Director/Directrice  
Business Corporations Act/Loi sur les sociétés par actions

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FORM 1

FORMULE NUMÉRO 1

BUSINESS CORPORATIONS ACT

/

LOI SUR LES SOCIÉTÉS PAR ACTIONS

ARTICLES OF INCORPORATION  
STATUTS CONSTITUTIFS

1. The name of the corporation is: *Dénomination sociale de la compagnie:*  
CARGOJET INC.

2. The address of the registered office is: *Adresse du siège social:*

350 BRITANNIA ROAD EAST Suite 5 AND 6

(Street & Number, or R.R. Number & if Multi-Office Building give Room No.)  
(Rue et numéro, ou numéro de la R.R. et, s'il s'agit édifice à bureau, numéro du bureau)

MISSISSAUGA  
CANADA  
(Name of Municipality or Post Office)  
(Nom de la municipalité ou du bureau de poste)

ONTARIO  
L4Z 1X9  
(Postal Code/Code postal)

3. Number (or minimum and maximum number) of directors is: *Nombre (ou nombres minimal et maximal) d'administrateurs:*  
Minimum 3 Maximum 10

4. The first director (s) is/are: *Premier(s) administrateur(s):*

First name, initials and surname  
*Prénom, initiales et nom de famille*

Resident Canadian State Yes or No  
*Résident Canadien Oui/Non*

Address for service, giving Street & No.  
or R.R. No., Municipality and Postal Code

*Domicile élu, y compris la rue et le numéro, le numéro de la R.R., ou le nom de la municipalité et le code postal*

\* AJAY VIRMANI YES

350 BRITANNIA ROAD EAST Suite 5 AND 6

MISSISSAUGA ONTARIO  
CANADA L4Z 1X9

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\* JAMIE  
PORTEOUS YES

350 BRITANNIA ROAD EAST Suite 5 AND 6

MISSISSAUGA ONTARIO  
CANADA L4Z 1X9

\* PAUL  
GODFREY YES

350 BRITANNIA ROAD EAST Suite 5 AND 6

MISSISSAUGA ONTARIO  
CANADA L4Z 1X9

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5. Restrictions, if any, on business the corporation may carry on or on powers the corporation may exercise.

*Limites, s'il y a lieu, imposées aux activités commerciales ou aux pouvoirs de la compagnie.*

There are no restrictions on the business the Corporation may carry on or the powers the Corporation may exercise.

6. The classes and any maximum number of shares that the corporation is authorized to issue:

*Catégories et nombre maximal, s'il y a lieu, d'actions que la compagnie est autorisée à émettre:*

The Corporation is authorized to issue an unlimited number of Variable Voting Shares, an unlimited number of Common Voting Shares and an unlimited number of Preferred Shares, issuable in series.

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

1. INTERPRETATION

1.1 Definitions

For purposes of these Articles of Incorporation, the following terms have the following meanings:

"Board of Directors" means the board of directors of the Corporation;

"body corporate" includes a corporation, partnership and unincorporated organization;

"Canadian" shall have the meaning set forth in Subsection 55(1) of the CTA or as specified in any regulation made thereunder, as the same may be amended, supplemented or replaced from time to time;

"Common Voting Shares" means the common voting shares of the share capital of the Corporation and "Common Voting Share" shall mean any one of them;

"CTA" means the Canada Transportation Act, S.C. 1996, Ch. 10;

"OBCA" means the Business Corporations Act, R.S.O. 1990 c. B.16 and the regulations made pursuant thereto, as from time to time amended, and every statute that may be substituted therefor and, in the case of such substitution, any reference in the by-laws of the Corporation to provisions of the OBCA shall be read as references to the substituted provisions therefor in the new statute or statutes;

"OBCA Regulations" means any regulations promulgated from time to time under the OBCA;

"person" includes an individual, sole proprietorship, partnership, limited partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his or her capacity as trustee, executor, administrator, or other legal representative;

"Transfer Agent" means the transfer agent and the registrar of the Voting Shares of the Corporation;

"Variable Voting Shares" means collectively the variable voting shares of the share capital of the Corporation and "Variable Voting Share" means any one of them; and

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

"Voting Shares" means the Variable Voting Shares and the Common Voting Shares.

1.2 Control

For purposes of these Articles of Incorporation:

1.2.1 a body corporate is controlled by a person if:

(a) voting securities of the first-mentioned body corporate carrying more than fifty percent (50%) of the votes for the election of directors are held, other than by way of security only, by or for the benefit of such other person or by or for the benefit of such other bodies corporate; and

(b) the votes carried by such securities are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned body corporate; and

1.2.2 a partnership or unincorporated organization is controlled by a person if an ownership interest therein representing more than fifty percent (50%) of the assets of the partnership or organization is held, otherwise than by way of security only, by or for the benefit of that person.

1.3 Undefined Terms

All terms used herein that are not defined herein shall have the meanings ascribed thereto in the OBCA. Any provision herein shall be read so as to be consistent with the OBCA.

2. VARIABLE VOTING SHARES

Subject to the rights, privileges, restrictions and conditions which attach to any other class of shares of the Corporation, the Variable Voting Shares shall, as a class, have the following rights, privileges, restrictions and conditions:

2.1 Voting

The holders of the Variable Voting Shares shall be entitled to receive notice of, and to attend and vote at, all meetings of the shareholders of the Corporation, except where the holders of a specified class are entitled to vote separately as a class as provided in the OBCA.

The Variable Voting Shares shall carry one (1) vote per Variable Voting Share, unless:

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

2.1.1 the number of issued and outstanding Variable Voting Shares exceeds twenty-five percent (25%) of the total number of all issued and outstanding Voting Shares; or

2.1.2 the total number of votes cast by or on behalf of holders of Variable Voting Shares at any meeting exceeds twenty-five percent (25%) of the total number of votes cast at such meeting.

If either of the above-noted thresholds is surpassed at any time, the vote attached to each Variable Voting Share in such circumstances shall decrease automatically and without further act or formality to equal the maximum permitted vote per Variable Voting Share such that (a) in the circumstance described in paragraph 2.1.1, the Variable Voting Shares as a class shall be restricted to twenty-five percent (25%) of the aggregate votes attached to all issued and outstanding Voting Shares and (b) in the circumstance described in paragraph 2.1.2, the number of votes cast by all holders of Variable Voting Shares at such shareholder's meeting, shall be twenty-five percent (25%) of the total number of votes cast at such meeting.

## 2.2 Dividends

Subject to the rights, privileges, restrictions and conditions attached to any other class of shares of the Corporation ranking prior to the Variable Voting Shares, the holders of Variable Voting Shares shall be entitled to receive any dividend declared by the Board of Directors of the Corporation at the times and for the amounts that the Board of Directors may, from time to time, determine. The Variable Voting Shares and the Common Voting Shares shall rank equally as to dividends on a share-for-share basis, and all dividends declared in any fiscal year of the Corporation shall be declared in equal or equivalent amounts per share on all Variable Voting Shares and Common Voting Shares then outstanding, without preference or distinction.

## 2.3 Subdivision or Consolidation

No subdivision or consolidation of the Variable Voting Shares or the Common Voting Shares shall occur unless, simultaneously, the shares of the other class are subdivided or consolidated in the same manner, so as to maintain and preserve the relative rights of the holders of the shares of each of such classes.

## 2.4 Liquidation, Dissolution or Winding-up

Subject to the rights, privileges, restrictions and conditions attaching to any other class of shares of the Corporation ranking prior to the Variable Voting

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

Shares, in the case of liquidation, dissolution or winding-up of the Corporation or other distribution of the Corporation's assets among its shareholders for the purpose of winding-up its affairs, the holders of Variable Voting Shares and Common Voting Shares shall be entitled to receive the remaining property of the Corporation and shall be entitled to share equally, share for share, in all distributions of such assets.

## 2.5 Conversion

### 2.5.1 Automatic

Each issued and outstanding Variable Voting Share shall be automatically converted into one Common Voting Share, without any further act on the part of the Corporation or of the holder, if:

(a) such Variable Voting Share is or becomes beneficially owned and controlled, directly or indirectly, by a Canadian; or

(b) a holder of a Variable Voting Share subsequently becomes a member of any class of persons, which class of shareholders is not restricted under the laws of Canada from owning shares of the Corporation or from holding a specified percentage (or part) of all issued and outstanding shares in the capital of the Corporation.

### 2.5.2 Upon an Offer

If an offer is made to purchase Common Voting Shares and such offer is one which is required, pursuant to applicable securities legislation or the rules of a stock exchange on which the Common Voting Shares are then listed, to be made to all or substantially all the holders of Common Voting Shares in a province of Canada to which the requirement applies, each Variable Voting Share shall become convertible at the option of the holder into one Common Voting Share at any time while such offer is in effect until one day after the time prescribed by applicable securities legislation for the person making the offer (for the purposes of section 2.5, the "Offeror") to take up and pay for such shares as are to be acquired pursuant to such offer. The conversion right may only be exercised in respect of Variable Voting Shares for the purpose of depositing the resulting Common Voting Shares pursuant to such offer, and for no other reason, including with respect to voting rights attached thereto, which are deemed to remain subject to section 2.1, notwithstanding their conversion. The Transfer Agent shall deposit the resulting Common Voting Shares pursuant to such offer on behalf of such holder.

To exercise the conversion right in this paragraph 2.5.2, the holder or the



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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

attorney of such holder duly authorized in writing shall:

- (a) give written notice to the Transfer Agent of the exercise of such right and of the number of Variable Voting Shares in respect of which the right is being exercised;
- (b) deliver to the Transfer Agent the share certificate or certificates representing the Variable Voting Shares in respect of which the right is being exercised, together with duly executed stock powers of attorney for each such certificate; and
- (c) pay any applicable stamp tax or similar duty on or in respect of such conversion.

No share certificates representing the Common Voting Shares resulting from the conversion of the Variable Voting Shares in accordance with this paragraph 2.5.2 shall be delivered to the holders on whose behalf such deposit is being made or to the Transfer Agent.

### 2.5.3 Conversion Into Variable Voting Shares

If the Offeror takes up and pays for the Common Voting Shares resulting from conversion in accordance with this paragraph 2.5.2, the Transfer Agent shall deliver to the holders thereof the consideration paid for such shares by the Offeror.

If (a) Common Voting Shares resulting from such conversion and deposited pursuant to the offer are withdrawn by the holder or are not taken up by the Offeror; (b) such offer is abandoned or withdrawn by the Offeror or (c) if such offer otherwise expires without such Common Voting Shares being taken up and paid for, then each Common Voting Share resulting from the conversion under paragraph 2.5.2 shall be automatically re-converted into one Variable Voting Share, without any further act on the part of the Corporation or of the holder and the share certificate(s) representing such Variable Voting Shares referred to in subparagraph 2.5.2(b) shall be returned to the holder in question by the Transfer Agent and the Transfer Agent shall destroy each of the stock powers of attorney previously delivered to it in subparagraph 2.5.2(b).

If the Offeror is not Canadian, each Common Voting Share resulting from the conversion provided for in paragraph 2.5.2 and taken up and paid for by the Offeror shall be automatically converted into one Variable Voting Share, without any further act on the part of the Corporation or of the Offeror at the time when the Offeror is required under the applicable securities legislation to take up and pay for such shares.

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

#### 2.5.4 Exceptions

There will be no right to convert the Variable Voting Shares into Common Voting Shares in each of the following circumstances:

(a) if the offer to purchase Common Voting Shares is not required under applicable securities legislation or the rules of a stock exchange on which the Common Voting Shares are then listed to be made to all or substantially all of the holders of Common Voting Shares in a province of Canada to which the requirement applies, that is, the offer is an "exempt take-over bid" within the meaning of the foregoing securities legislation; or

(b) if an offer to purchase Variable Voting Shares is made concurrently with the offer to purchase Common Voting Shares and the two offers are identical in respect of price per share, percentage of outstanding shares for which the offer is made, and in all other material respects; provided only that the offer for the Variable Voting Shares shall contain a condition to the effect that the Offeror is not required to take up and pay for Variable Voting Shares deposited to such offer if no shares are purchased pursuant to the contemporaneous offer for the Common Voting Shares.

### 3. COMMON VOTING SHARES

Subject to the rights, privileges, restrictions and conditions which attach to the shares of any other class of shares of the Corporation, the Common Voting Shares, as a class, shall have attached thereto the following rights, privileges, restrictions and conditions:

#### 3.1 Voting

The holders of Common Voting Shares shall be entitled to receive notice of, and to attend and vote at, all meetings of the shareholders of the Corporation, except where the holders of a specified class are entitled to vote separately as a class as provided in the OBCA. Each Voting Share shall confer the right to one (1) vote at all meetings of shareholders of the Corporation.

#### 3.2 Dividends and Distributions

Subject to the rights, privileges, restrictions and conditions attached to any class of shares of the Corporation ranking prior to the Common Voting Shares, holders of Common Voting Shares shall be entitled to receive the dividends declared by the Board of Directors of the Corporation at the times and for the amounts that the Board of Directors may, from time to time, determine. The

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

Common Voting Shares and Variable Voting Shares shall rank equally as to dividends on a share for share basis and all dividends declared in any fiscal year of the Corporation shall be declared in equal or equivalent amounts per share on all Common Voting Shares and Variable Voting Shares then outstanding, without preference or distinction.

### 3.3 Subdivision or Consolidation

No subdivision or consolidation of the Common Voting Shares or the Variable Voting Shares shall occur unless, simultaneously, the shares of the other class are subdivided or consolidated in the same manner, so as to maintain and preserve the respective rights of the holders of the shares of each of such classes.

### 3.4 Liquidation, Dissolution or Winding-up

Subject to the rights, privileges, restrictions and conditions attaching to any class of shares of the Corporation ranking prior to the Common Voting Shares, in the case of liquidation, dissolution or winding-up of the Corporation or other distribution of the Corporation's assets among its shareholders for the purposes of winding-up its affairs, the holders of Common Voting Shares and Variable Voting Shares shall be entitled to receive the remaining property of the Corporation and shall be entitled to share equally, share for share, in all distributions of such assets.

### 3.5 Conversion

#### 3.5.1 Automatic

Each issued and outstanding Common Voting Share shall be automatically converted into one Variable Voting Share, without any further act of the Corporation or the holder, if such Common Voting Share is or becomes beneficially owned or controlled, directly or indirectly, by a person who is a member of a class of persons who under Canadian law is restricted from holding a specified percentage (or part) of all the issued and outstanding shares of the Corporation, as a body corporate to which such restrictions apply.

#### 3.5.2 Upon an Offer

If an offer is made to purchase Variable Voting Shares, and such offer is one which is required, pursuant to applicable securities legislation or the rules of a stock exchange on which the Variable Voting Shares are then listed, to be made to all or substantially all the holders of Variable Voting Shares, each Common Voting Share shall become convertible at the option of the holder into one

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Variable Voting Share at any time while such offer is in effect until one day after the time prescribed by applicable securities legislation for the person making the offer (for the purposes of section 3.5, the "Offeror") to take up and pay for such shares as are to be acquired pursuant to such offer. The conversion right may only be exercised in respect of Common Voting Shares for the purpose of depositing the resulting Variable Voting Shares pursuant to such offer, and for no other reason, including with respect to voting rights attached thereto, which are deemed to remain subject to section 3.1, notwithstanding their conversion. The Transfer Agent shall deposit the resulting Variable Voting Shares pursuant to such offer, on behalf of such holder.

To exercise the conversion right in this paragraph 3.5.2, the holder or the attorney of such holder duly authorized in writing shall:

- (a) give written notice to the Transfer Agent of the exercise of such right and of the number of Common Voting Shares, in respect of which the right is being exercised;
- (b) deliver to the Transfer Agent the share certificate or certificates representing the Common Voting Shares, in respect of which the right is being exercised, together with duly executed stock powers of attorney for each such certificate; and
- (c) pay any applicable stamp tax or similar duty on or in respect of such conversion.

No share certificates representing the Variable Voting Shares resulting from the conversion of the Common Voting Shares in accordance with this paragraph 3.5.2 shall be delivered to the holders on whose behalf such deposit is being made or the Transfer Agent.

### 3.5.3 Conversion Into Common Voting Shares

If (a) Variable Voting Shares resulting from the conversion and deposited pursuant to such offer are withdrawn by the holder or are not taken up by the Offeror; (b) such offer is abandoned or withdrawn by the Offeror or (c) such offer otherwise expires without such Variable Voting Shares being taken up and paid for, then each Variable Voting Share resulting from the conversion under paragraph 3.5.2 shall be automatically re-converted into one Common Voting Share, without any further act on the part of the Corporation or of the holder and the share certificate(s) representing such Common Voting Shares referred to in subparagraph 3.5.2(b) shall be returned to the holder in question by the Transfer Agent and the Transfer Agent shall destroy each of the stock powers of attorney previously delivered to it in subparagraph 2.5.2(b).

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If the Offeror is Canadian, each Variable Voting Share resulting from the conversion provided for in paragraph 3.5.2 and taken up and paid for by the Offeror shall be automatically converted into one Common Voting Share, without any further act on the part of the Corporation or of the Offeror at the time when the Offeror is required under the applicable securities legislation to take up and pay for such shares.

If the Offeror takes up and pays for the Variable Voting Shares resulting from conversion in accordance with this paragraph 3.5.2, the Transfer Agent shall deliver to the holders thereof the consideration paid for such shares by the Offeror.

#### 3.5.4 Exceptions

There will be no right to convert the Common Voting Shares into Variable Voting Shares in the following circumstances:

(a) if the offer to purchase Variable Voting Shares is not required, under applicable securities legislation or the rules of a stock exchange on which the Variable Voting Shares are then listed, to be made to all or substantially all of the holders of Variable Voting Shares in a province of Canada to which the requirement applies, that is, the offer is an "exempt take-over bid" within the meaning of the foregoing securities legislation; or

(b) if an offer to purchase Common Voting Shares is made concurrently with such offer to purchase Variable Voting Shares, and the offers are identical in respect of price per share, percentage of outstanding shares for which the offer is made, and in all other material respects; provided only that the offer for the Common Voting Shares shall contain a condition to the effect that the Offeror is not required to take up and pay for Common Voting Shares deposited to such offer if no shares are purchased pursuant to the contemporaneous offer for the Variable Voting Shares.

#### 4. PREFERRED SHARES

The Preferred Shares shall have attached thereto the following rights, privileges, restrictions and conditions:

##### 4.1 Issuable in Series

The Preferred Shares may at any time or from time to time be issued in one or more series. Before any shares of a particular series are issued, the Board of Directors shall, by resolution, fix the number of shares that will form such

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

series and shall, subject to the limitations set out herein, by resolution fix the designation, rights, privileges, restrictions and conditions to be attached to the Preferred Shares of such series, including, but without in any way limiting or restricting the generality of the foregoing, the rate, amount or method of calculation of dividends thereon, the time and place of payment of dividends, the consideration for and the terms and conditions (if any) of any purchase for cancellation, retraction or redemption thereof, conversion or exchange rights (whether into or for securities of the Corporation or otherwise), the terms and conditions of any share purchase or retirement plan or sinking fund, restrictions on the payment of dividends on any shares other than Preferred Shares or payment in respect of capital on any shares in the capital of the Corporation, and the creation or issue of debt or equity securities; the whole subject to filing with the Director (as defined in the OBCA) of articles of amendment setting forth a description of such series including the designation, rights, privileges, restrictions and conditions attached to the shares of such series.

#### 4.2 Voting

Subject to applicable law, the holders of Preferred Shares shall not be entitled as such to any voting rights at any meeting of shareholders of the Corporation.

#### 4.3 Board of Directors

The Board of Directors of the Corporation may at any time or from time to time fix the rights, privileges, restrictions and conditions attached to any series of Preferred Shares in respect of which series no Preferred Shares are then issued and outstanding, provided only that in all circumstances the Preferred Shares of each series shall rank on a parity with the Preferred Shares of every other series with respect to dividends and to the return of capital.

#### 4.4 Rights, Privileges, Restrictions and Conditions Attaching to All Preferred Shares

Unless otherwise fixed by the Board of Directors under section 4.3, the Preferred Shares shall be entitled to a preference over the Common Voting Shares and the Variable Voting Shares, and over any other shares of the Corporation ranking junior to the Preferred Shares with respect to priority in the payment of dividends and in the distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs. If any cumulative dividends or amounts payable on a return of capital are not paid in full, the Preferred Shares of all series shall participate rateably in respect of such

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

dividends, including accumulations, if any, in accordance with the sums that would be payable on such shares if all such dividends were declared and paid in full, and in respect of any repayment of capital in accordance with the sums that would be payable on such repayment of capital if all sums so payable were paid in full; provided, however, that in the event of there being insufficient assets to satisfy in full all such claims as aforesaid, the claims of the holders of the Preferred Shares with respect to repayment of capital shall first be paid and satisfied and any assets remaining thereafter shall be applied towards the payment in satisfaction of claims in respect of dividends.

#### 4.5 Rights Attaching to a Preferred Share Series

Provided they are not inconsistent with any other provision of this Article 4, the Preferred Shares of any series may also be given such other preferences over the Common Voting Shares and the Variable Voting Shares and any other shares ranking junior to the Preferred Shares.

#### 4.6 Variation of Preferred Share Rights, Privileges, Restrictions and Conditions

The rights, privileges, restrictions and conditions attaching to the Preferred Shares as a class as provided herein and as may be provided from time to time may be repealed, altered, modified, amended or otherwise varied only with the approval of the holders of the Preferred Shares given in such manner as may then be required by law, subject to a minimum requirement that such approval be given by resolution passed by the affirmative vote of at least two-thirds of the votes cast at a meeting of holders of Preferred Shares duly called for such purpose and held upon at least twenty-one (21) days notice at which a quorum is present comprising at least two persons present, holding or representing by proxy at least twenty percent (20%) of the then issued and outstanding Preferred Shares. If any such quorum is not present within half an hour after the time appointed for the meeting, then the meeting shall be adjourned to a date being not less than fifteen (15) days later and at such time and place as may be appointed by the chairman and at such meeting a quorum will consist of that number of shareholders present in person or represented by proxy. The formalities to be observed with respect to the giving of notice of any such meeting or adjourned meeting and the conduct thereof shall be those which may from time to time be prescribed in the by-laws of the Corporation with respect to meetings of shareholders. On every vote taken at every such meeting or adjourned meeting each holder of a Preferred Share shall be entitled to one (1) vote per Preferred Share held.

#### 5. RESTRICTIONS ON SHARE TRANSFERS - CONSTRAINTS ON OWNERSHIP OF SHARES

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12094568

2239674

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

5.1 Variable Voting Shares

The Variable Voting Shares may only be beneficially owned or controlled, directly or indirectly, by persons who are not Canadians.

5.2 Common Voting Shares

The Common Voting Shares may only be beneficially owned and controlled, directly or indirectly, by Canadians.

5.3 OBCA Constraints

In the event that any Canadian federal or provincial legislation applicable to the Corporation should become prescribed for the purposes of subsections 42.(2), 42.(3) and 42.(4) of the OBCA or any other similar provision in the OBCA or OBCA Regulations, these provisions shall be read as if they included additional constraints that assist the Corporation or any of its affiliates or associates (within the meaning of the OBCA) to qualify under such prescribed law to receive licenses, permits, grants, payments or other benefits by reason of attaining or maintaining a specified level of Canadian ownership and control and such specified level of Canadian ownership and control shall be the level of Canadian ownership and control designated by such prescribed law of Canada or a province.

5.4 Joint Ownership

Where Voting Shares of the Corporation are beneficially owned or controlled by several persons jointly, the number of Voting Shares beneficially owned or controlled by any one such person shall include the number of Voting Shares beneficially owned or controlled jointly with such other persons. Where the Voting Shares are beneficially owned or controlled jointly by a person who is not Canadian and another person or persons, the Voting Shares shall be deemed to be owned or controlled by such person who is not Canadian.

5.5 Exceptions

5.5.1 Nothing in these articles shall be construed to apply in respect of Voting Shares of the Corporation that:

(a) are held by one or more underwriters solely for the purpose of distributing the shares to the public; or

(b) are held by any person that is acting in relation to the shares solely in its capacity as an intermediary in the payment of funds or the delivery of securities, or both, in connection with trades in securities and that provides



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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

centralized facilities for the clearing of trades in securities.

5.5.2 The constraints imposed herein do not apply to the extent that a person who is not Canadian holds Voting Shares by way of security only and such holding by way of security only is evidenced in such manner as may be prescribed by the by-laws or resolutions adopted by the shareholders or directors of the Corporation, executed copies of which security shall have been provided by such holder with the Corporation.

#### 5.6 Powers of Directors

5.6.1 In the administration of the provisions of these articles, the Board of Directors shall have, in addition to the powers set forth herein, all of the powers necessary or desirable, in their opinion, to carry out the intent and purpose of these articles, including but not limited to all powers contemplated by the provisions relating to constrained share corporations in the OBCA and the OBCA Regulations.

5.6.2 No shareholder of the Corporation nor any other person claiming an interest in shares of the Corporation shall have any claim or action against the Corporation or against any director or officer of the Corporation, and the Corporation shall have no claim or action against any director or officer of the Corporation, arising out of any act (including any omission to act) taken by any such director or officer pursuant to, or in intended pursuance of, the provisions of these articles or any breach or alleged breach of such provisions.

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8. The issue, transfer or ownership of shares is/is not restricted and the restrictions (if any) are as follows:

*L'émission, le transfert ou la propriété d'actions est/n'est pas restreinte. Les restrictions, s'il y a lieu, sont les suivantes:*

None

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9. Other provisions, (if any, are):  
*Autres dispositions, s'il y a lieu:*

Without in any way restricting the powers conferred upon the Corporation or its board of directors by the Business Corporations Act, as now enacted or as the same may from time to time be amended, re-enacted or replaced, the board of directors may from time to time, without authorization of the shareholders, in such amounts and on such terms as it deems expedient:

- (a) borrow money upon the credit of the Corporation;
- (b) issue, re-issue, sell or pledge debt obligations of the Corporation;
- (c) subject to the provisions of the Business Corporations Act, as now enacted or as the same may from time to time be amended, re-enacted or replaced, give a guarantee on behalf of the Corporation to secure performance of an obligation of any person; and
- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation owned or subsequently acquired, to secure any obligation of the Corporation.

The board of directors may from time to time delegate to a director, a committee of directors or an officer of the Corporation any or all of the powers conferred on the board as set out above, to such extent and in such manner as the board shall determine at the time of such delegation.

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10. The names and addresses of the incorporators are  
*Nom et adresse des fondateurs*

First name, initials and last name  
or corporate name

*Prénom, initiale et nom de  
famille ou dénomination sociale*

Full address for service or address of registered office or of principal place of business  
giving street & No. or R.R. No., municipality and postal code  
*Domicile élu, adresse du siège social au adresse de l'établissement principal, y compris  
la rue et le numéro, le numéro de la R.R., le nom de la municipalité et le code postal*

\* AJAY VIRMANI

350 BRITANNIA ROAD EAST Suite 5 AND 6

MISSISSAUGA ONTARIO  
CANADA L4Z 1X9

\* JAMIE PORTEOUS

350 BRITANNIA ROAD EAST Suite 5 AND 6

MISSISSAUGA ONTARIO  
CANADA L4Z 1X9

\* PAUL GODFREY

350 BRITANNIA ROAD EAST Suite 5 AND 6

MISSISSAUGA ONTARIO  
CANADA L4Z 1X9



Ministry of  
Government Services

Ministère des  
Services gouvernementaux

Ontario

**CERTIFICATE**

This is to certify that these articles  
are effective on

**CERTIFICAT**

Ceci certifie que les présents statuts  
entrent en vigueur le

**JANUARY 01 JANVIER, 2011**

Director / Directrice

Business Corporations Act / Loi sur les sociétés par actions

**ARTICLES OF ARRANGEMENT  
STATUTS D'ARRANGEMENT**

Form B  
Business  
Corporations  
Act

Formule B  
Loi sur les  
sociétés par  
actions

1. The name of the corporation is: (Set out in BLOCK CAPITAL LETTERS)  
*Dénomination sociale de la société : (Écrire en LETTRES MAJUSCULES SEULEMENT) :*

C	A	R	G	O	J	E	T												

2. The new name of the corporation if changed by the arrangement: (Set out in BLOCK CAPITAL LETTERS)  
*Nouvelle dénomination sociale de la société si elle est modifiée par suite de l'arrangement : (Écrire en LETTRES MAJUSCULES SEULEMENT)*

N	/	A																	

3. Date of incorporation/amalgamation: / *Date de la constitution ou de la fusion :*

2010/4/7

Year, Month, Day / *année, mois, jour*

4. The arrangement has been approved by the shareholders of the corporation in accordance with section 182 of the *Business Corporation Act*. / *Les actionnaires de la société ont approuvé l'arrangement conformément à l'article 182 de la Loi sur les sociétés par actions.*

5. A copy of the arrangement is attached to these articles as Exhibit "A". / *Une copie de l'arrangement constitue l'annexe «A».*

6. The arrangement was approved by the court on / *La cour a approuvé l'arrangement le*

2010/5/27 and 2010/12/17

Year, Month, Day / *année, mois, jour*

and a certified copy of the Order of the court is attached to these articles as Exhibit "B". / *Une copie certifiée conforme de l'ordonnance de la cour constitue l'annexe «B».*

7. The terms and conditions to which the scheme is made subject by the Order have been complied with.  
*Les conditions que l'ordonnance impose au projet d'arrangement ont été respectées.*

These articles are signed in duplicate. / *Les présents statuts sont signés en double exemplaire.*

CARGOJET INC.

Name of Corporation / *Dénomination sociale de la société*

By/  
Par :

Signature / *Signature*

John Kim

Secretary

Description of Office / *Fonctions*

**PLAN OF ARRANGEMENT**  
**UNDER SECTION 182 OF THE**  
***BUSINESS CORPORATIONS ACT (ONTARIO)***

**ARTICLE 1**  
**INTERPRETATION**

1.1 In this Plan of Arrangement, the following terms have the following meanings:

- (a) **"Airways"** means Cargojet Airways Ltd., a corporation incorporated under the OBCA;
- (b) **"Arrangement", "herein", "hereof", "hereto", "hereunder"** and similar expressions mean and refer to the arrangement pursuant to Section 182 of the OBCA set forth in this Plan of Arrangement as amended, modified or supplemented, and not to any particular article, section or other portion hereof;
- (c) **"Arrangement Agreement"** means the agreement dated as of April 8, 2010, among the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership with respect to the Arrangement and all amendments thereto, including the amending agreement to which this Exhibit A is attached;
- (d) **"Articles of Arrangement"** means the articles of arrangement in respect of the Arrangement required under Subsection 183(1) of the OBCA to be filed with the Director after the Final Order has been granted giving effect to the Arrangement;
- (e) **"Canadian"** shall have the meaning set forth in Subsection 55(1) of the CTA or as specified in any regulation made thereunder, as the same may be amended, supplemented or replaced, from time to time;
- (f) **"Certificate"** means the certificate which may be issued by the Director pursuant to Subsection 183(2) of the OBCA giving effect to the Arrangement;
- (g) **"Common Voting Shares"** means the common voting shares of the share capital of New Cargojet;
- (h) **"Court"** means the Ontario Superior Court of Justice;
- (i) **"CTA"** means the *Canada Transportation Act*, S.C. 1996, Ch. 10;
- (j) **"Debentures"** means the debentures of the Fund convertible into Fund Units pursuant to the Indenture;
- (k) **"Director"** means the director appointed under Section 278 of the OBCA;
- (l) **"Effective Date"** means the date the Arrangement is effective under the OBCA;

- (m) **“Effective Time”** means 8:00 a.m. (Toronto time) on the Effective Date or such other time on the Effective Date as may be specified in writing by New Cargojet;
- (n) **“Exchangeable L.P. Units”** means the Class B limited partnership units of the Partnership;
- (o) **“Exchangeable L.P. Unitholders”** means the holders of the Exchangeable L.P. Units from time to time;
- (p) **“Final Order”** means the final order of the Court approving the Arrangement pursuant to Subsection 182(5) of the OBCA, as such order may be affirmed, amended, modified or supplemented by any court of competent jurisdiction;
- (q) **“Fund”** means Cargojet Income Fund, a trust established under the laws of the Province of Ontario;
- (r) **“Fund Declaration of Trust”** means the amended and restated declaration of trust of the Fund dated as of April 25, 2005 and amended and restated as of June 1, 2005, as it may be amended, modified or supplemented from time to time;
- (s) **“Fund Units”** means the units of beneficial interest of the Fund designated as “Fund Units” under the Fund Declaration of Trust;
- (t) **“Fund Unitholders”** means the holders of Fund Units from time to time;
- (u) **“GP”** means Cargojet GP Inc., a corporation formed under the laws of Ontario;
- (v) **“Holdings”** means Cargojet Holdings Ltd., a corporation incorporated under the laws of the Province of Ontario;
- (w) **“Indenture”** means the indenture dated as of April 9, 2008, between the Fund and Computershare Trust Company of Canada governing the Debentures;
- (x) **“Interim Order”** means the interim order of the Court under Subsection 182(5) of the OBCA containing declarations and directions with respect to this Arrangement, as such order may be affirmed, amended, modified or supplemented by any court of competent jurisdiction;
- (y) **“Meeting”** means the special meeting of the Voting Unitholders to be held on May 18, 2010, and any adjournment or postponement thereof, to, among other things, consider and vote on the Arrangement Resolution and related matters;
- (z) **“New Cargojet”** means Cargojet Inc., a corporation incorporated under the OBCA;
- (aa) **“OBCA”** means the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B-16, including the regulations promulgated thereunder, in either case as amended;
- (bb) **“Operating Partnership”** means Cargojet Partnership, a general partnership formed under the laws of the Province of Ontario;

- (cc) **“Partnership”** means Cargojet Holdings Limited Partnership, a limited partnership formed under the laws of the Province of Ontario;
  - (dd) **“Partnership Agreement”** means the limited partnership agreement dated as of April 28, 2005 in respect of the Partnership, as the same may be amended, modified or supplemented from time to time;
  - (ee) **“Party”** means a party to the Arrangement Agreement;
  - (ff) **“Person”** means and includes individuals, corporations, partnerships, general partnerships, joint stock companies, limited liability corporations, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, business trusts or other organizations, whether or not legal entities, and governments, agencies and political subdivisions thereof;
  - (gg) **“Special Voting Unitholders”** means the holders of Special Voting Units from time to time;
  - (hh) **“Special Voting Units”** means the units of the Fund designated as “Special Voting Units” under the Fund Declaration of Trust;
  - (ii) **“Trust”** means Cargojet Operating Trust, a trust established under the laws of the Province of Ontario;
  - (jj) **“Variable Voting Shares”** means the variable voting shares of the share capital of New Cargojet;
  - (kk) **“Voting Shares”** means the Variable Voting Shares and the Common Voting Shares of the share capital of New Cargojet, or, as applicable, any one of them as the context requires;
  - (ll) **“Voting Unitholders”** means the holders of Voting Units from time to time; and
  - (mm) **“Voting Units”** means, collectively, the Fund Units and Special Voting Units.
- 1.2 The division of this Plan of Arrangement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan of Arrangement.
- 1.3 Unless reference is specifically made to some other document or instrument, all references herein to articles and sections are to articles and sections of this Plan of Arrangement.
- 1.4 Unless the context otherwise requires, words importing the singular number shall include the plural and vice versa; and words importing any gender shall include all genders.
- 1.5 References in this Plan of Arrangement to any statute or sections thereof shall include such statute as amended or substituted and any regulations promulgated thereunder from time to time in effect.



**ARTICLE 2  
ARRANGEMENT AGREEMENT**

- 2.1 This Plan of Arrangement is made pursuant to, and is subject to the provisions of, and forms part of, the Arrangement Agreement.
- 2.2 This Plan of Arrangement, upon the filing of the Articles of Arrangement and the issue of the Certificate, if any, shall become effective on, and be binding on and after, the Effective Time on: (i) Fund Unitholders and Exchangeable LP Unitholders; (ii) the Fund; (iii) New Cargojet, (iv) the Trust, (v) the Partnership; (vi) the GP; (vii) Holdings; and (viii) the Operating Partnership.
- 2.3 The Articles of Arrangement and Certificate shall be filed and issued, respectively, with respect to this Arrangement in its entirety. The Certificate shall be conclusive evidence that the Arrangement has become effective and that each of the provisions of Article 3 has become effective in the sequence and at the times set out therein.
- 2.4 Other than as expressly provided for herein, no portion of this Plan of Arrangement shall take effect with respect to any Party or Person until the Effective Time. Furthermore, each of the events listed in Article 3 shall be, without affecting the timing set out in Article 3 mutually conditional, such that no event described in said Article 3 may occur without all steps occurring, and those events shall effect the integrated transaction which constitutes the Arrangement.

**ARTICLE 3  
ARRANGEMENT**

- 3.1 Commencing at the Effective Time, each of the events set out below in this Section 3.1 and in Sections 3.2, 3.3 and 3.4 shall occur and shall be deemed to occur in the following order, each occurring five minutes apart (unless otherwise noted), without any further act or formality except as otherwise provided herein. Notwithstanding the foregoing, some of the steps may be amended if the tax advisers of New Cargojet are of the view that it would be tax advantageous to do so.

**Amendment of the Fund Declaration of Trust and the Partnership Agreement**

- (a) the Fund Declaration of Trust and the Partnership Agreement shall be amended to the extent necessary to facilitate the Arrangement as provided therein;

**Conversion of debt to units of the Trust**

- (b) the Trust shall issue units of the Trust to the Fund in consideration for notes issued by the Trust and held by the Fund;

**Transfer of partnership units of the Operating Partnership held by Holdings to Airways**

- (c) Holdings shall transfer all of the partnership units of the Operating Partnership held by Holdings to Airways in exchange for common shares of Airways;

**Conversion of debt to common shares of Holdings**

- (d) Holdings shall issue common shares of Holdings to the Partnership in consideration for the settlement of the loan payable by Holdings to the Partnership;

**Exchange of Fund Units for Common Voting Shares**

- (e) the Fund Units held by Fund Unitholders shall be transferred to New Cargojet, free and clear of any claims, solely in consideration for Common Voting Shares on the basis of one Common Voting Share for each Fund Unit so transferred;

**Redemption of Special Voting Units**

- (f) the Special Voting Units shall be redeemed for cancellation by the Fund for consideration of \$0.000001 per Special Voting Unit and will be cancelled;

**Exchange of Exchangeable L.P. Units for Common Voting Shares**

- (g) the Exchangeable L.P. Units held by Exchangeable L.P. Unitholders shall be transferred to New Cargojet, free and clear of any claims, solely in consideration for Common Voting Shares on the basis of one Common Voting Share for each Exchangeable L.P. Unit so transferred;

**Exchange of Common Voting Shares for Variable Voting Shares by non-Canadians**

- (h) the Common Voting Shares issued to Fund Unitholders that are non-Canadian shall be converted into Variable Voting Shares in accordance with the Articles of Incorporation of New Cargojet;

**Cancellation of the Initial Common Voting Shares**

- (i) the 100 Common Voting Shares issued to the Fund in connection with the organization of New Cargojet shall be purchased for cancellation by New Cargojet in consideration for \$100;

**Conversion of debt to units of the Partnership**

- (j) the Partnership shall issue units of the Partnership to the Trust in consideration for the settlement of the loan payable by the Partnership to the Trust; and

**Settlement of debt of the Fund**

- (k) the Fund shall settle its loan to the Partnership;

**Reduction of Stated Capital of New Cargojet**

- (l) there shall have been added to the stated capital account(s) maintained for the Voting Shares an amount determined by the directors in accordance with Section 24 of the OBCA in respect of the Voting Shares issued under the Arrangement, and the directors shall be authorized to subsequently reduce its stated capital in an amount determined by the directors, in respect of which no amount is to be distributed to the shareholders of New Cargojet, as contemplated by Subsection 34(l)(b)(ii)(B) of the OBCA; and

**Assumption of Debentures**

- (m) New Cargojet shall assume all of the covenants and obligations of the Fund under the Indenture in respect of the Debentures for consideration with a fair market value equivalent to the principal amount of Debentures such that the Debentures shall be valid and binding obligations of New Cargojet entitling the holders thereof, as against New Cargojet, to all the rights of holders of Debentures under the Indenture and in connection therewith, the Fund, New Cargojet and Computershare Trust Company of Canada shall enter into a supplemental indenture. If there is accrued and unpaid interest on the Debentures at the Effective Time, New Cargojet will assume the accrued and unpaid interest liability for consideration with a fair market value equal to such accrued and unpaid interest.

3.2 The members of the board of directors of New Cargojet shall be set at five (5), in accordance with the Articles of Incorporation of New Cargojet, and each of the following persons shall be appointed to the board of directors of New Cargojet to hold office until the next annual meeting of shareholders of New Cargojet or until his successor is elected or appointed:

Terence Francis  
John Webster  
Jamie Porteous

Paul Godfrey  
Ajay Virmani

3.3 The registered office of New Cargojet shall be 350 Britannia Road East, Units 5 and 6 Mississauga, Ontario L4Z 1X9.

3.4 Initially, the auditors of New Cargojet shall be Deloitte & Touche LLP.

3.5 Upon the exchange of Fund Units and Exchangeable L.P. Units for Common Voting Shares and the redemption of Special Voting Units, pursuant to Section 3.1:

- (i) each former holder of Fund Units shall cease to be the holder of the Fund Units so exchanged and the name of each such former holder of Fund Units shall be removed from the register of Fund Units and New Cargojet shall become the sole holder of the Fund Units and shall be added to the register of Fund Units as the sole owner of the Fund Units;
- (ii) each former holder of Exchangeable L.P. Units (and Special Voting Units) shall cease to be the holder of the Exchangeable L.P. Units (and Special Voting Units) so exchanged and the name of each Exchangeable L.P. Unitholder (and Special Voting Unitholder) shall be removed from the record of limited partners of the Partnership and the register of Special Voting Units, as applicable, and New Cargojet shall become the sole holder of the Exchangeable L.P. Units and shall be added to the record of limited partners of the Partnership as the sole owner of the Exchangeable L.P. Units and the cancellation of the Special Voting Units shall be noted on the register of Special Voting Units;
- (iii) each such holder of Fund Units and Exchangeable L.P. Units shall become the holder of the Common Voting Shares exchanged for Fund Units and Exchangeable L.P. Units, as applicable, by such holder and shall be added to the register of holders of Common Voting Shares in respect thereof; and
- (iv) each holder of Common Voting Shares that is non-Canadian shall cease to be the holder of Common Voting Shares and the name of each holder of Common Voting Shares that is non-Canadian shall be removed from the register of Common Voting Shares, and thereafter shall become the holder of Variable Voting Shares in accordance with the Articles of Incorporation of New Cargojet and shall be added to the register of holders of Variable Voting Shares in respect thereof.

**ARTICLE 4  
OUTSTANDING CERTIFICATES AND  
FRACTIONAL SECURITIES**

- 4.1 From and after the Effective Time, any certificates formerly representing Fund Units or Exchangeable L.P. Units shall represent only the right to receive Voting Shares in respect thereof as provided in this Plan of Arrangement.
- 4.2 If any certificate which immediately prior to the Effective Time represented an interest in outstanding Fund Units or Exchangeable L.P. Units (and Special Voting Units) that were transferred pursuant to Section 3.1 hereof has been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such certificate to have been lost, stolen or destroyed, the former registered holder thereof in the register of Fund Units or record of limited partners of the Partnership, as applicable, shall, as a condition precedent to the receipt of any Voting Shares, or in the case of the Special Voting Units, the consideration payable in respect thereof, to be issued to such person, provide to New Cargojet, the Fund and the Partnership a bond, in form and substance satisfactory to New Cargojet, or otherwise indemnify New Cargojet, the Fund and the Partnership to their satisfaction, in their sole and

absolute discretion, against any claim that may be made against them with respect to the certificate alleged to have been lost, stolen or destroyed.

- 4.3 No fractional Voting Shares, and no certificates representing fractional Voting Shares, shall be issued pursuant to the Plan of Arrangement.

#### **ARTICLE 5 AMENDMENTS**

- 5.1 The Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership may amend this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment must be: (i) set out in writing; (ii) approved by the other Parties to the Arrangement Agreement; and (iii) filed with the Court.
- 5.2 Any amendment, modification or supplement to this Plan of Arrangement may be made prior to the Effective Time by the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership (or, following the Effective Time, by New Cargojet) without the approval of the Court or the Voting Unitholders, provided that it concerns a matter which, in the reasonable opinion of the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership (or, following the Effective Time, New Cargojet), is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement or is not adverse to the financial or economic interests of any former holder of Fund Units or Exchangeable L.P. Units (and Special Voting Units).
- 5.3 Subject to Section 6.2, any amendment to this Plan of Arrangement may be proposed by the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership at any time prior to or at the Meeting (provided that the other Parties to the Arrangement Agreement shall have consented thereto) with or without any prior notice or communication to Voting Unitholders, and if so proposed and accepted by the persons voting at the Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.
- 5.4 Subject to Section 6.2, the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time after the Meeting and prior to the Effective Time with the approval of the Court and, if and as required by the Court, after communication to the Voting Unitholders.

#### **ARTICLE 6 GENERAL**

- 6.1 Notwithstanding that the transactions and events set out herein shall occur and be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the Parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them in order to further document or evidence any of the transactions or events set out herein.

- 6.2 If, prior to the Effective Date, any term or provision of this Plan of Arrangement is held by the Court to be invalid, void or unenforceable, the Court, at the request of any Parties, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan of Arrangement shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.
- 6.3 This Plan of Arrangement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any questions as to the interpretation or application of this Plan of Arrangement and all proceedings taken in connection with this Plan of Arrangement and its provisions shall be subject to the exclusive jurisdiction of the Court.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR ) THURSDAY, THE 27<sup>th</sup> DAY  
JUSTICE C. CAMPBELL ) OF MAY, 2010

**IN THE MATTER OF AN APPLICATION UNDER Section 182 of the *BUSINESS CORPORATIONS ACT (ONTARIO)*, being Chapter B.16 of The Revised Statutes of Ontario 1990, as amended, and Rules 14.05(2) and 14.05(3) of the Rules of Civil Procedure**

**AND IN THE MATTER OF a Proposed Arrangement involving CARGOJET INCOME FUND, CARGOJET INC., CARGOJET OPERATING TRUST, CARGOJET HOLDINGS LIMITED PARTNERSHIP, CARGOJET GP INC., CARGOJET HOLDINGS LTD., CARGOJET PARTNERSHIP and the UNITHOLDERS OF CARGOJET INCOME FUND and CARGOJET HOLDINGS LIMITED PARTNERSHIP**

Applicants



**FINAL ORDER**

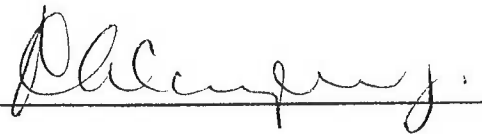
**THIS APPLICATION** was heard this day at 330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario in the presence of counsel for the Applicants, no one appearing for any other interested person or entity although served in accordance with the affidavits appended to the Application Record, as filed,

**ON READING** the Notice of Application, the evidence filed by the Applicants, upon hearing the submissions of counsel for the Applicants and upon being advised that the Applicants intend to rely upon this Order for the purposes of obtaining an exemption from the registration requirements under United States securities laws, as provided by section 3(a)(10) of the *United States Securities Act* of 1933, as amended,

with respect to the securities to be issued pursuant to the Plan of Arrangement on the basis of the court's approval of the fairness of the terms and conditions as set forth in the Plan of Arrangement attached as **Schedule "A"** hereto,

**UPON BEING SATISFIED** that: (i) the meeting of the holders of "Fund Units" and "Special Voting Units" (as those terms are defined in the attached Plan of Arrangement and hereinafter collectively referred to as the "Voting Unitholders") was held on Thursday, May 18, 2010 and conducted in accordance with the terms of the Interim Order of the Honourable Madam Justice Hoy dated April 9, 2010 (the "Interim Order"); (ii) the Voting Unitholders have approved the Plan of Arrangement in accordance with the terms of the Interim Order; and (iii) the terms and conditions of the Plan of Arrangement are fair and reasonable to the Voting Unitholders,

1. **THIS COURT ORDERS** that the Plan of Arrangement, as attached as Schedule "A" hereto, be and is hereby approved by this Court.
2. **THIS COURT ORDERS** that the Applicants shall be entitled at any time to seek leave to vary this Order, to seek the advice and direction of this Court, or to apply for such further order or orders as may be appropriate.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

MAY 27 2010

PER / PAR: 



## SCHEDULE "A"

### PLAN OF ARRANGEMENT UNDER SECTION 182 OF THE *BUSINESS CORPORATIONS ACT* (ONTARIO)

#### ARTICLE 1 INTERPRETATION

- 1.1 In this Plan of Arrangement, the following terms have the following meanings:
- (a) "Airways" means Cargojet Airways Ltd., a corporation incorporated under the OBCA;
  - (b) "Arrangement", "herein", "hereof", "hereto", "hereunder" and similar expressions mean and refer to the arrangement pursuant to Section 182 of the OBCA set forth in this Plan of Arrangement as amended, modified or supplemented, and not to any particular article, section or other portion hereof;
  - (c) "Arrangement Agreement" means the agreement dated as of April 8, 2010, among the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership with respect to the Arrangement and all amendments thereto;
  - (d) "Articles of Arrangement" means the articles of arrangement in respect of the Arrangement required under Subsection 183(1) of the OBCA to be filed with the Director after the Final Order has been granted giving effect to the Arrangement;
  - (e) "Canadian" shall have the meaning set forth in Subsection 55(1) of the CTA or as specified in any regulation made thereunder, as the same may be amended, supplemented or replaced, from time to time;
  - (f) "Certificate" means the certificate which may be issued by the Director pursuant to Subsection 183(2) of the OBCA giving effect to the Arrangement;
  - (g) "Common Voting Shares" means the common voting shares of the share capital of New Cargojet;
  - (h) "Court" means the Ontario Superior Court of Justice;
  - (i) "CTA" means the *Canada Transportation Act*, S.C. 1996, Ch. 10;
  - (j) "Debentures" means the debentures of the Fund convertible into Fund Units pursuant to the Indenture;
  - (k) "Director" means the director appointed under Section 278 of the OBCA;
  - (l) "Effective Date" means the date the Arrangement is effective under the OBCA;

- (m) **“Effective Time”** means 8:00 a.m. (Toronto time) on the Effective Date or such other time on the Effective Date as may be specified in writing by New Cargojet;
- (n) **“Exchangeable L.P. Units”** means the Class B limited partnership units of the Partnership;
- (o) **“Exchangeable L.P. Unitholders”** means the holders of the Exchangeable L.P. Units from time to time;
- (p) **“Final Order”** means the final order of the Court approving the Arrangement pursuant to Subsection 182(5) of the OBCA, as such order may be affirmed, amended, modified or supplemented by any court of competent jurisdiction;
- (q) **“Fund”** means Cargojet Income Fund, a trust established under the laws of the Province of Ontario;
- (r) **“Fund Declaration of Trust”** means the amended and restated declaration of trust of the Fund dated as of April 25, 2005 and amended and restated as of June 1, 2005, as it may be amended, modified or supplemented from time to time;
- (s) **“Fund Units”** means the units of beneficial interest of the Fund designated as “Fund Units” under the Fund Declaration of Trust;
- (t) **“Fund Unitholders”** means the holders of Fund Units from time to time;
- (u) **“GP”** means Cargojet GP Inc., a corporation formed under the laws of Ontario;
- (v) **“Holdings”** means Cargojet Holdings Ltd., a corporation incorporated under the laws of the Province of Ontario;
- (w) **“Indenture”** means the indenture dated as of April 9, 2008, between the Fund and Computershare Trust Company of Canada governing the Debentures;
- (x) **“Interim Order”** means the interim order of the Court under Subsection 182(5) of the OBCA containing declarations and directions with respect to this Arrangement, as such order may be affirmed, amended, modified or supplemented by any court of competent jurisdiction;
- (y) **“Meeting”** means the special meeting of the Voting Unitholders to be held on May 18, 2010, and any adjournment or postponement thereof, to, among other things, consider and vote on the Arrangement Resolution and related matters;
- (z) **“New Cargojet”** means Cargojet Inc., a corporation incorporated under the OBCA;
- (aa) **“OBCA”** means the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B-16, including the regulations promulgated thereunder, in either case as amended;

- (bb) **“Operating Partnership”** means Cargojet Partnership, a general partnership formed under the laws of the Province of Ontario;
- (cc) **“Partnership”** means Cargojet Holdings Limited Partnership, a limited partnership formed under the laws of the Province of Ontario;
- (dd) **“Partnership Agreement”** means the limited partnership agreement dated as of April 28, 2005 in respect of the Partnership, as the same may be amended, modified or supplemented from time to time;
- (ee) **“Party”** means a party to the Arrangement Agreement;
- (ff) **“Person”** means and includes individuals, corporations, partnerships, general partnerships, joint stock companies, limited liability corporations, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, business trusts or other organizations, whether or not legal entities, and governments, agencies and political subdivisions thereof;
- (gg) **“Special Voting Unitholders”** means the holders of Special Voting Units from time to time;
- (hh) **“Special Voting Units”** means the units of the Fund designated as “Special Voting Units” under the Fund Declaration of Trust;
- (ii) **“Trust”** means Cargojet Operating Trust, a trust established under the laws of the Province of Ontario;
- (jj) **“Variable Voting Shares”** means the variable voting shares of the share capital of New Cargojet;
- (kk) **“Voting Shares”** means the Variable Voting Shares and the Common Voting Shares of the share capital of New Cargojet, or, as applicable, any one of them as the context requires;
- (ll) **“Voting Unitholders”** means the holders of Voting Units from time to time; and
- (mm) **“Voting Units”** means, collectively, the Fund Units and Special Voting Units.

1.2 The division of this Plan of Arrangement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan of Arrangement.

1.3 Unless reference is specifically made to some other document or instrument, all references herein to articles and sections are to articles and sections of this Plan of Arrangement.

1.4 Unless the context otherwise requires, words importing the singular number shall include the plural and vice versa; and words importing any gender shall include all genders.

- 1.5 References in this Plan of Arrangement to any statute or sections thereof shall include such statute as amended or substituted and any regulations promulgated thereunder from time to time in effect.

## **ARTICLE 2 ARRANGEMENT AGREEMENT**

- 2.1 This Plan of Arrangement is made pursuant to, and is subject to the provisions of, and forms part of, the Arrangement Agreement.
- 2.2 This Plan of Arrangement, upon the filing of the Articles of Arrangement and the issue of the Certificate, if any, shall become effective on, and be binding on and after, the Effective Time on: (i) Fund Unitholders and Exchangeable LP Unitholders; (ii) the Fund; (iii) New Cargojet, (iv) the Trust, (v) the Partnership; (vi) the GP; (vii) Holdings; and (viii) the Operating Partnership.
- 2.3 The Articles of Arrangement and Certificate shall be filed and issued, respectively, with respect to this Arrangement in its entirety. The Certificate shall be conclusive evidence that the Arrangement has become effective and that each of the provisions of Article 3 has become effective in the sequence and at the times set out therein.
- 2.4 Other than as expressly provided for herein, no portion of this Plan of Arrangement shall take effect with respect to any Party or Person until the Effective Time. Furthermore, each of the events listed in Article 3 shall be, without affecting the timing set out in Article 3, mutually conditional, such that no event described in said Article 3 may occur without all steps occurring, and those events shall effect the integrated transaction which constitutes the Arrangement.

## **ARTICLE 3 ARRANGEMENT**

- 3.1 Commencing at the Effective Time, each of the events set out below in this Section 3.1 and in Sections 3.2, 3.3 and 3.4 shall occur and shall be deemed to occur in the following order, each occurring five minutes apart (unless otherwise noted), without any further act or formality except as otherwise provided herein. Notwithstanding the foregoing, some of the steps may be amended if the tax advisers of New Cargojet are of the view that it would be tax advantageous to do so.

### **Amendment of the Fund Declaration of Trust and the Partnership Agreement**

- (a) the Fund Declaration of Trust and the Partnership Agreement shall be amended to the extent necessary to facilitate the Arrangement as provided therein;

### **Conversion of debt to units of the Trust**

- (b) the Trust shall issue units of the Trust to the Fund in consideration for notes issued by the Trust and held by the Fund;

### **Dissolution of the Operating Partnership**

- (c) the Partnership shall transfer its 0.01% interest in the Operating Partnership to Holdings in consideration for common shares of Holdings and the Operating Partnership shall be dissolved;

### **Partial settlement of debt of Holdings**

- (d) the Partnership shall settle its loan payable to Holdings against a portion of its loan receivable from Holdings;

### **Conversion of debt to common shares of Holdings**

- (e) Holdings shall issue common shares of Holdings to the Partnership in consideration for the settlement of the loan payable by Holdings to the Partnership;

### **Sale of debt of Airways**

- (f) the Partnership shall sell the loan receivable from Airways to Holdings in exchange for common shares of Holdings;

### **Conversion of debt to common shares of Airways**

- (g) Airways shall issue common shares of Airways to Holdings in consideration for the settlement of the loan payable by Airways to Holdings;

### **Exchange of Fund Units for Common Voting Shares**

- (h) the Fund Units held by Fund Unitholders shall be transferred to New Cargojet, free and clear of any claims, solely in consideration for Common Voting Shares on the basis of one Common Voting Share for each Fund Unit so transferred;

### **Redemption of Special Voting Units**

- (i) the Special Voting Units shall be redeemed for cancellation by the Fund for consideration of \$0.000001 per Special Voting Unit and will be cancelled;

### **Exchange of Exchangeable L.P. Units for Common Voting Shares**

- (j) the Exchangeable L.P. Units held by Exchangeable L.P. Unitholders shall be transferred to New Cargojet, free and clear of any claims, solely in consideration for Common Voting Shares on the basis of one Common Voting Share for each Exchangeable L.P. Unit so transferred;

#### **Exchange of Common Voting Shares for Variable Voting Shares by non-Canadians**

- (k) the Common Voting Shares issued to Fund Unitholders that are non-Canadian shall be converted into Variable Voting Shares in accordance with the Articles of Incorporation of New Cargojet;

#### **Cancellation of the Initial Common Voting Shares**

- (l) the 100 Common Voting Shares issued to the Fund in connection with the organization of New Cargojet shall be purchased for cancellation by New Cargojet in consideration for \$100;

#### **Conversion of debt to units of the Partnership**

- (m) the Partnership shall issue units of the Partnership to the Trust in consideration for the settlement of the loan payable by the Partnership to the Trust; and

#### **Settlement of debt of the Fund**

- (n) the Fund shall settle its loan to the Partnership;

#### **Reduction of Stated Capital of New Cargojet**

- (o) there shall have been added to the stated capital account(s) maintained for the Voting Shares an amount determined by the directors in accordance with Section 24 of the OBCA in respect of the Voting Shares issued under the Arrangement, and the directors shall be authorized to subsequently reduce its stated capital in an amount determined by the directors, in respect of which no amount is to be distributed to the shareholders of New Cargojet, as contemplated by Subsection 34(1)(b)(ii)(B) of the OBCA; and

#### **Assumption of Debentures**

- (p) New Cargojet shall assume all of the covenants and obligations of the Fund under the Indenture in respect of the Debentures for consideration with a fair market value equivalent to the principal amount of Debentures such that the Debentures shall be valid and binding obligations of New Cargojet entitling the holders thereof, as against New Cargojet, to all the rights of holders of Debentures under the Indenture and in connection therewith, the Fund, New Cargojet and Computershare Trust Company of Canada shall enter into a supplemental indenture. If there is accrued and unpaid interest on the Debentures at the Effective Time, New Cargojet will assume the accrued and unpaid interest liability for consideration with a fair market value equal to such accrued and unpaid interest.

- 3.2 The members of the board of directors of New Cargojet shall be set at five (5), in accordance with the Articles of Incorporation of New Cargojet, and each of the following persons shall be appointed to the board of directors of New Cargojet to hold office until

the next annual meeting of shareholders of New Cargojet or until his successor is elected or appointed:

Terence Francis  
John Webster  
Jamie Porteous

Paul Godfrey  
Ajay Virmani

- 3.3 The registered office of New Cargojet shall be 350 Britannia Road East, Units 5 and 6 Mississauga, Ontario L4Z 1X9.
- 3.4 Initially, the auditors of New Cargojet shall be Deloitte & Touche LLP.
- 3.5 Upon the exchange of Fund Units and Exchangeable L.P. Units for Common Voting Shares and the redemption of Special Voting Units, pursuant to Section 3.1:
- (i) each former holder of Fund Units shall cease to be the holder of the Fund Units so exchanged and the name of each such former holder of Fund Units shall be removed from the register of Fund Units and New Cargojet shall become the sole holder of the Fund Units and shall be added to the register of Fund Units as the sole owner of the Fund Units;
  - (ii) each former holder of Exchangeable L.P. Units (and Special Voting Units) shall cease to be the holder of the Exchangeable L.P. Units (and Special Voting Units) so exchanged and the name of each Exchangeable L.P. Unitholder (and Special Voting Unitholder) shall be removed from the record of limited partners of the Partnership and the register of Special Voting Units, as applicable, and New Cargojet shall become the sole holder of the Exchangeable L.P. Units and shall be added to the record of limited partners of the Partnership as the sole owner of the Exchangeable L.P. Units and the cancellation of the Special Voting Units shall be noted on the register of Special Voting Units;
  - (iii) each such holder of Fund Units and Exchangeable L.P. Units shall become the holder of the Common Voting Shares exchanged for Fund Units and Exchangeable L.P. Units, as applicable, by such holder and shall be added to the register of holders of Common Voting Shares in respect thereof; and
  - (iv) each holder of Common Voting Shares that is non-Canadian shall cease to be the holder of Common Voting Shares and the name of each holder of Common Voting Shares that is non-Canadian shall be removed from the register of Common Voting Shares, and thereafter shall become the holder of Variable Voting Shares in accordance with the Articles of Incorporation of New Cargojet and shall be added to the register of holders of Variable Voting Shares in respect thereof.

**ARTICLE 4**  
**OUTSTANDING CERTIFICATES AND FRACTIONAL SECURITIES**

- 4.1 From and after the Effective Time, any certificates formerly representing Fund Units or Exchangeable L.P. Units shall represent only the right to receive Voting Shares in respect thereof as provided in this Plan of Arrangement.
- 4.2 If any certificate which immediately prior to the Effective Time represented an interest in outstanding Fund Units or Exchangeable L.P. Units (and Special Voting Units) that were transferred pursuant to Section 3.1 hereof has been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such certificate to have been lost, stolen or destroyed, the former registered holder thereof in the register of Fund Units or record of limited partners of the Partnership, as applicable, shall, as a condition precedent to the receipt of any Voting Shares, or in the case of the Special Voting Units, the consideration payable in respect thereof, to be issued to such person, provide to New Cargojet, the Fund and the Partnership a bond, in form and substance satisfactory to New Cargojet, or otherwise indemnify New Cargojet, the Fund and the Partnership to their satisfaction, in their sole and absolute discretion, against any claim that may be made against them with respect to the certificate alleged to have been lost, stolen or destroyed.
- 4.3 No fractional Voting Shares, and no certificates representing fractional Voting Shares, shall be issued pursuant to the Plan of Arrangement.

**ARTICLE 5**  
**AMENDMENTS**

- 5.1 The Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership may amend this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment must be: (i) set out in writing; (ii) approved by the other Parties to the Arrangement Agreement; and (iii) filed with the Court.
- 5.2 Any amendment, modification or supplement to this Plan of Arrangement may be made prior to the Effective Time by the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership (or, following the Effective Time, by New Cargojet) without the approval of the Court or the Voting Unitholders, provided that it concerns a matter which, in the reasonable opinion of the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership (or, following the Effective Time, New Cargojet), is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement or is not adverse to the financial or economic interests of any former holder of Fund Units or Exchangeable L.P. Units (and Special Voting Units).
- 5.3 Subject to Section 6.2, any amendment to this Plan of Arrangement may be proposed by the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership at any time prior to or at the Meeting (provided that the other Parties to the Arrangement Agreement shall have consented thereto) with or without any prior notice or



communication to Voting Unitholders, and if so proposed and accepted by the persons voting at the Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.

- 5.4 Subject to Section 6.2, the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time after the Meeting and prior to the Effective Time with the approval of the Court and, if and as required by the Court, after communication to the Voting Unitholders.

## **ARTICLE 6 GENERAL**

- 6.1 Notwithstanding that the transactions and events set out herein shall occur and be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the Parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them in order to further document or evidence any of the transactions or events set out herein.
- 6.2 If, prior to the Effective Date, any term or provision of this Plan of Arrangement is held by the Court to be invalid, void or unenforceable, the Court, at the request of any Parties, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan of Arrangement shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.
- 6.3 This Plan of Arrangement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any questions as to the interpretation or application of this Plan of Arrangement and all proceedings taken in connection with this Plan of Arrangement and its provisions shall be subject to the exclusive jurisdiction of the Court.

**IN THE MATTER OF CARGOJET INCOME FUND et al**  
Applicants

Commercial List Court File No:  
CV-10-8660-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at **TORONTO**

**FINAL ORDER**

**CASSELS BROCK & BLACKWELL LLP**  
Scotia Plaza, Suite 2100  
40 King Street West  
Toronto, Ontario M5H 3C2

**Robert B. Cohen** LSUC#: 32187D  
Tel: 416-869-5425  
Fax: 416-350-6929

Lawyers for the Applicants

Commercial List Court File No. CV-10-8660-00CL



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE *MR*  
JUSTICE *NEUBOLD*

) FRIDAY, THE 17<sup>th</sup> DAY  
)  
) OF DECEMBER, 2010

**IN THE MATTER OF AN APPLICATION UNDER Section 182 of the *BUSINESS CORPORATIONS ACT (ONTARIO)*, being Chapter B.16 of The Revised Statutes of Ontario 1990, as amended, and Rules 14.05(2) and 14.05(3) of the Rules of Civil Procedure**

**AND IN THE MATTER OF a Proposed Arrangement involving CARGOJET INCOME FUND, CARGOJET INC., CARGOJET OPERATING TRUST, CARGOJET HOLDINGS LIMITED PARTNERSHIP, CARGOJET GP INC., CARGOJET HOLDINGS LTD., CARGOJET PARTNERSHIP and the UNITHOLDERS OF CARGOJET INCOME FUND and CARGOJET HOLDINGS LIMITED PARTNERSHIP**

Applicants

**ORDER**

**THIS MOTION** made, without notice, by the Applicants to vary the Final Order of The Honourable Mr. Justice Campbell dated May 27, 2010 (the "Final Order") was heard this day at 330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario in the presence of counsel for the Applicants,

**ON READING** the Affidavit of John Kim sworn December 9, 2010 and upon hearing the submissions of counsel for the Applicants and upon being advised that the Applicants intend to rely upon this Order for the purposes of obtaining an exemption from the registration requirements under United States securities laws, as provided by section 3(a)(10) of the *United States Securities Act* of 1933, as amended, with respect

to the securities to be issued pursuant to the Plan of Arrangement on the basis of the court's approval of the fairness of the terms and conditions as set forth in the Plan of Arrangement attached as **Schedule "A"** hereto,

1. **THIS COURT ORDERS** that the Final Order be varied such that the revised Plan of Arrangement, as attached as Schedule "A" hereto, be and is hereby approved by this Court.

2. **THIS COURT ORDERS** that the Applicants shall be entitled at any time to seek leave to vary this Order, to seek the advice and direction of this Court, or to apply for such further order or orders as may be appropriate.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

DEC 17 2010

PER / PAR:



SCHEDULE "A"

PLAN OF ARRANGEMENT

UNDER SECTION 182 OF THE  
*BUSINESS CORPORATIONS ACT* (ONTARIO)

ARTICLE 1  
INTERPRETATION

1.1 In this Plan of Arrangement, the following terms have the following meanings:

- (a) "Airways" means Cargojet Airways Ltd., a corporation incorporated under the OBCA;
- (b) "Arrangement", "herein", "hereof", "hereto", "hereunder" and similar expressions mean and refer to the arrangement pursuant to Section 182 of the OBCA set forth in this Plan of Arrangement as amended, modified or supplemented, and not to any particular article, section or other portion hereof;
- (c) "Arrangement Agreement" means the agreement dated as of April 8, 2010, among the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership with respect to the Arrangement and all amendments thereto, including the amending agreement to which this Exhibit A is attached;
- (d) "Articles of Arrangement" means the articles of arrangement in respect of the Arrangement required under Subsection 183(1) of the OBCA to be filed with the Director after the Final Order has been granted giving effect to the Arrangement;
- (e) "Canadian" shall have the meaning set forth in Subsection 55(1) of the CTA or as specified in any regulation made thereunder, as the same may be amended, supplemented or replaced, from time to time;
- (f) "Certificate" means the certificate which may be issued by the Director pursuant to Subsection 183(2) of the OBCA giving effect to the Arrangement;
- (g) "Common Voting Shares" means the common voting shares of the share capital of New Cargojet;
- (h) "Court" means the Ontario Superior Court of Justice;
- (i) "CTA" means the *Canada Transportation Act*, S.C. 1996, Ch. 10;
- (j) "Debentures" means the debentures of the Fund convertible into Fund Units pursuant to the Indenture;
- (k) "Director" means the director appointed under Section 278 of the OBCA;
- (l) "Effective Date" means the date the Arrangement is effective under the OBCA;

- (m) **“Effective Time”** means 8:00 a.m. (Toronto time) on the Effective Date or such other time on the Effective Date as may be specified in writing by New Cargojet;
- (n) **“Exchangeable L.P. Units”** means the Class B limited partnership units of the Partnership;
- (o) **“Exchangeable L.P. Unitholders”** means the holders of the Exchangeable L.P. Units from time to time;
- (p) **“Final Order”** means the final order of the Court approving the Arrangement pursuant to Subsection 182(5) of the OBCA, as such order may be affirmed, amended, modified or supplemented by any court of competent jurisdiction;
- (q) **“Fund”** means Cargojet Income Fund, a trust established under the laws of the Province of Ontario;
- (r) **“Fund Declaration of Trust”** means the amended and restated declaration of trust of the Fund dated as of April 25, 2005 and amended and restated as of June 1, 2005, as it may be amended, modified or supplemented from time to time;
- (s) **“Fund Units”** means the units of beneficial interest of the Fund designated as “Fund Units” under the Fund Declaration of Trust;
- (t) **“Fund Unitholders”** means the holders of Fund Units from time to time;
- (u) **“GP”** means Cargojet GP Inc., a corporation formed under the laws of Ontario;
- (v) **“Holdings”** means Cargojet Holdings Ltd., a corporation incorporated under the laws of the Province of Ontario;
- (w) **“Indenture”** means the indenture dated as of April 9, 2008, between the Fund and Computershare Trust Company of Canada governing the Debentures;
- (x) **“Interim Order”** means the interim order of the Court under Subsection 182(5) of the OBCA containing declarations and directions with respect to this Arrangement, as such order may be affirmed, amended, modified or supplemented by any court of competent jurisdiction;
- (y) **“Meeting”** means the special meeting of the Voting Unitholders to be held on May 18, 2010, and any adjournment or postponement thereof, to, among other things, consider and vote on the Arrangement Resolution and related matters;
- (z) **“New Cargojet”** means Cargojet Inc., a corporation incorporated under the OBCA;
- (aa) **“OBCA”** means the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B-16, including the regulations promulgated thereunder, in either case as amended;
- (bb) **“Operating Partnership”** means Cargojet Partnership, a general partnership formed under the laws of the Province of Ontario;

- (cc) **“Partnership”** means Cargojet Holdings Limited Partnership, a limited partnership formed under the laws of the Province of Ontario;
  - (dd) **“Partnership Agreement”** means the limited partnership agreement dated as of April 28, 2005 in respect of the Partnership, as the same may be amended, modified or supplemented from time to time;
  - (ee) **“Party”** means a party to the Arrangement Agreement;
  - (ff) **“Person”** means and includes individuals, corporations, partnerships, general partnerships, joint stock companies, limited liability corporations, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, business trusts or other organizations, whether or not legal entities, and governments, agencies and political subdivisions thereof;
  - (gg) **“Special Voting Unitholders”** means the holders of Special Voting Units from time to time;
  - (hh) **“Special Voting Units”** means the units of the Fund designated as “Special Voting Units” under the Fund Declaration of Trust;
  - (ii) **“Trust”** means Cargojet Operating Trust, a trust established under the laws of the Province of Ontario;
  - (jj) **“Variable Voting Shares”** means the variable voting shares of the share capital of New Cargojet;
  - (kk) **“Voting Shares”** means the Variable Voting Shares and the Common Voting Shares of the share capital of New Cargojet, or, as applicable, any one of them as the context requires;
  - (ll) **“Voting Unitholders”** means the holders of Voting Units from time to time; and
  - (mm) **“Voting Units”** means, collectively, the Fund Units and Special Voting Units.
- 1.2 The division of this Plan of Arrangement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan of Arrangement.
- 1.3 Unless reference is specifically made to some other document or instrument, all references herein to articles and sections are to articles and sections of this Plan of Arrangement.
- 1.4 Unless the context otherwise requires, words importing the singular number shall include the plural and vice versa; and words importing any gender shall include all genders.
- 1.5 References in this Plan of Arrangement to any statute or sections thereof shall include such statute as amended or substituted and any regulations promulgated thereunder from time to time in effect.

**ARTICLE 2  
ARRANGEMENT AGREEMENT**

- 2.1 This Plan of Arrangement is made pursuant to, and is subject to the provisions of, and forms part of, the Arrangement Agreement.
- 2.2 This Plan of Arrangement, upon the filing of the Articles of Arrangement and the issue of the Certificate, if any, shall become effective on, and be binding on and after, the Effective Time on: (i) Fund Unitholders and Exchangeable LP Unitholders; (ii) the Fund; (iii) New Cargojet, (iv) the Trust, (v) the Partnership; (vi) the GP; (vii) Holdings; and (viii) the Operating Partnership.
- 2.3 The Articles of Arrangement and Certificate shall be filed and issued, respectively, with respect to this Arrangement in its entirety. The Certificate shall be conclusive evidence that the Arrangement has become effective and that each of the provisions of Article 3 has become effective in the sequence and at the times set out therein.
- 2.4 Other than as expressly provided for herein, no portion of this Plan of Arrangement shall take effect with respect to any Party or Person until the Effective Time. Furthermore, each of the events listed in Article 3 shall be, without affecting the timing set out in Article 3 mutually conditional, such that no event described in said Article 3 may occur without all steps occurring, and those events shall effect the integrated transaction which constitutes the Arrangement.

**ARTICLE 3  
ARRANGEMENT**

- 3.1 Commencing at the Effective Time, each of the events set out below in this Section 3.1 and in Sections 3.2, 3.3 and 3.4 shall occur and shall be deemed to occur in the following order, each occurring five minutes apart (unless otherwise noted), without any further act or formality except as otherwise provided herein. Notwithstanding the foregoing, some of the steps may be amended if the tax advisers of New Cargojet are of the view that it would be tax advantageous to do so.

**Amendment of the Fund Declaration of Trust and the Partnership Agreement**

- (a) the Fund Declaration of Trust and the Partnership Agreement shall be amended to the extent necessary to facilitate the Arrangement as provided therein;



**Conversion of debt to units of the Trust**

- (b) the Trust shall issue units of the Trust to the Fund in consideration for notes issued by the Trust and held by the Fund;

**Transfer of partnership units of the Operating Partnership held by Holdings to Airways**

- (c) Holdings shall transfer all of the partnership units of the Operating Partnership held by Holdings to Airways in exchange for common shares of Airways;

**Conversion of debt to common shares of Holdings**

- (d) Holdings shall issue common shares of Holdings to the Partnership in consideration for the settlement of the loan payable by Holdings to the Partnership;

**Exchange of Fund Units for Common Voting Shares**

- (e) the Fund Units held by Fund Unitholders shall be transferred to New Cargojet, free and clear of any claims, solely in consideration for Common Voting Shares on the basis of one Common Voting Share for each Fund Unit so transferred;

**Redemption of Special Voting Units**

- (f) the Special Voting Units shall be redeemed for cancellation by the Fund for consideration of \$0.000001 per Special Voting Unit and will be cancelled;

**Exchange of Exchangeable L.P. Units for Common Voting Shares**

- (g) the Exchangeable L.P. Units held by Exchangeable L.P. Unitholders shall be transferred to New Cargojet, free and clear of any claims, solely in consideration for Common Voting Shares on the basis of one Common Voting Share for each Exchangeable L.P. Unit so transferred;

**Exchange of Common Voting Shares for Variable Voting Shares by non-Canadians**

- (h) the Common Voting Shares issued to Fund Unitholders that are non-Canadian shall be converted into Variable Voting Shares in accordance with the Articles of Incorporation of New Cargojet;

**Cancellation of the Initial Common Voting Shares**

- (i) the 100 Common Voting Shares issued to the Fund in connection with the organization of New Cargojet shall be purchased for cancellation by New Cargojet in consideration for \$100;

**Conversion of debt to units of the Partnership**

- (j) the Partnership shall issue units of the Partnership to the Trust in consideration for the settlement of the loan payable by the Partnership to the Trust; and

**Settlement of debt of the Fund**

- (k) the Fund shall settle its loan to the Partnership;

**Reduction of Stated Capital of New Cargojet**

- (l) there shall have been added to the stated capital account(s) maintained for the Voting Shares an amount determined by the directors in accordance with Section 24 of the OBCA in respect of the Voting Shares issued under the Arrangement, and the directors shall be authorized to subsequently reduce its stated capital in an amount determined by the directors, in respect of which no amount is to be distributed to the shareholders of New Cargojet, as contemplated by Subsection 34(1)(b)(ii)(B) of the OBCA; and

**Assumption of Debentures**

- (m) New Cargojet shall assume all of the covenants and obligations of the Fund under the Indenture in respect of the Debentures for consideration with a fair market value equivalent to the principal amount of Debentures such that the Debentures shall be valid and binding obligations of New Cargojet entitling the holders thereof, as against New Cargojet, to all the rights of holders of Debentures under the Indenture and in connection therewith, the Fund, New Cargojet and Computershare Trust Company of Canada shall enter into a supplemental indenture. If there is accrued and unpaid interest on the Debentures at the Effective Time, New Cargojet will assume the accrued and unpaid interest liability for consideration with a fair market value equal to such accrued and unpaid interest.

- 3.2 The members of the board of directors of New Cargojet shall be set at five (5), in accordance with the Articles of Incorporation of New Cargojet, and each of the following persons shall be appointed to the board of directors of New Cargojet to hold office until the next annual meeting of shareholders of New Cargojet or until his successor is elected or appointed:

Terence Francis  
John Webster  
Jamie Porteous

Paul Godfrey  
Ajay Virmani

- 3.3 The registered office of New Cargojet shall be 350 Britannia Road East, Units 5 and 6 Mississauga, Ontario L4Z 1X9.
- 3.4 Initially, the auditors of New Cargojet shall be Deloitte & Touche LLP.
- 3.5 Upon the exchange of Fund Units and Exchangeable L.P. Units for Common Voting Shares and the redemption of Special Voting Units, pursuant to Section 3.1:

- (i) each former holder of Fund Units shall cease to be the holder of the Fund Units so exchanged and the name of each such former holder of Fund Units shall be removed from the register of Fund Units and New Cargojet shall become the sole holder of the Fund Units and shall be added to the register of Fund Units as the sole owner of the Fund Units;
- (ii) each former holder of Exchangeable L.P. Units (and Special Voting Units) shall cease to be the holder of the Exchangeable L.P. Units (and Special Voting Units) so exchanged and the name of each Exchangeable L.P. Unitholder (and Special Voting Unitholder) shall be removed from the record of limited partners of the Partnership and the register of Special Voting Units, as applicable, and New Cargojet shall become the sole holder of the Exchangeable L.P. Units and shall be added to the record of limited partners of the Partnership as the sole owner of the Exchangeable L.P. Units and the cancellation of the Special Voting Units shall be noted on the register of Special Voting Units;
- (iii) each such holder of Fund Units and Exchangeable L.P. Units shall become the holder of the Common Voting Shares exchanged for Fund Units and Exchangeable L.P. Units, as applicable, by such holder and shall be added to the register of holders of Common Voting Shares in respect thereof; and
- (iv) each holder of Common Voting Shares that is non-Canadian shall cease to be the holder of Common Voting Shares and the name of each holder of Common Voting Shares that is non-Canadian shall be removed from the register of Common Voting Shares, and thereafter shall become the holder of Variable Voting Shares in accordance with the Articles of Incorporation of New Cargojet and shall be added to the register of holders of Variable Voting Shares in respect thereof.

**ARTICLE 4  
OUTSTANDING CERTIFICATES AND  
FRACTIONAL SECURITIES**

- 4.1 From and after the Effective Time, any certificates formerly representing Fund Units or Exchangeable L.P. Units shall represent only the right to receive Voting Shares in respect thereof as provided in this Plan of Arrangement.
- 4.2 If any certificate which immediately prior to the Effective Time represented an interest in outstanding Fund Units or Exchangeable L.P. Units (and Special Voting Units) that were transferred pursuant to Section 3.1 hereof has been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such certificate to have been lost, stolen or destroyed, the former registered holder thereof in the register of Fund Units or record of limited partners of the Partnership, as applicable, shall, as a condition precedent to the receipt of any Voting Shares, or in the case of the Special Voting Units, the consideration payable in respect thereof, to be issued to such person, provide to New Cargojet, the Fund and the Partnership a bond, in form and substance satisfactory to New Cargojet, or otherwise indemnify New Cargojet, the Fund and the Partnership to their satisfaction, in their sole and

absolute discretion, against any claim that may be made against them with respect to the certificate alleged to have been lost, stolen or destroyed.

- 4.3 No fractional Voting Shares, and no certificates representing fractional Voting Shares, shall be issued pursuant to the Plan of Arrangement.

#### **ARTICLE 5 AMENDMENTS**

- 5.1 The Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership may amend this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment must be: (i) set out in writing; (ii) approved by the other Parties to the Arrangement Agreement; and (iii) filed with the Court.
- 5.2 Any amendment, modification or supplement to this Plan of Arrangement may be made prior to the Effective Time by the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership (or, following the Effective Time, by New Cargojet) without the approval of the Court or the Voting Unitholders, provided that it concerns a matter which, in the reasonable opinion of the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership (or, following the Effective Time, New Cargojet), is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement or is not adverse to the financial or economic interests of any former holder of Fund Units or Exchangeable L.P. Units (and Special Voting Units).
- 5.3 Subject to Section 6.2, any amendment to this Plan of Arrangement may be proposed by the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership at any time prior to or at the Meeting (provided that the other Parties to the Arrangement Agreement shall have consented thereto) with or without any prior notice or communication to Voting Unitholders, and if so proposed and accepted by the persons voting at the Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.
- 5.4 Subject to Section 6.2, the Fund, New Cargojet, the Trust, the Partnership, the GP, Holdings and the Operating Partnership may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time after the Meeting and prior to the Effective Time with the approval of the Court and, if and as required by the Court, after communication to the Voting Unitholders.

#### **ARTICLE 6 GENERAL**

- 6.1 Notwithstanding that the transactions and events set out herein shall occur and be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the Parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them in order to further document or evidence any of the transactions or events set out herein.

- 6.2 If, prior to the Effective Date, any term or provision of this Plan of Arrangement is held by the Court to be invalid, void or unenforceable, the Court, at the request of any Parties, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan of Arrangement shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.
- 6.3 This Plan of Arrangement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any questions as to the interpretation or application of this Plan of Arrangement and all proceedings taken in connection with this Plan of Arrangement and its provisions shall be subject to the exclusive jurisdiction of the Court.

**IN THE MATTER OF CARGOJET INCOME FUND et al**  
Applicants

Commercial List Court File No:  
CV-10-8660-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER**

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