

1 Timothy J. Conway, OSB No. 851752
Direct Dial: (503) 802-2027
2 Email: tim.conway@tonkon.com
3 Michael W. Fletcher, OSB No. 010448
Direct Dial: (503) 802-2169
4 E-Mail: michael.fletcher@tonkon.com
Ava Schoen, OSB No. 044072
5 Direct Dial: (503) 802-2143
Email: ava.schoen@tonkon.com
6 Tonkon Torp LLP
888 SW Fifth Ave., Suite 1600
7 Portland, OR 97204
Main: 503.221.1440
8 Facsimile: 503.274.8779

9 Attorneys for Debtor

10 UNITED STATES BANKRUPTCY COURT
11 DISTRICT OF OREGON

12 In re

13 Van's Aircraft, Inc.,

14 Debtor.
15

Case No. 23-62260-dwh11

**DEBTOR'S PRECAUTIONARY
MOTION FOR AUTHORITY TO HOLD
CUSTOMER POST-PETITION
DEPOSITS IN TRUST ACCOUNT**

EXPEDITED HEARING REQUESTED

17 Van's Aircraft, Inc., Debtor and Debtor-in-Possession ("Debtor") hereby moves this
18 court, on a precautionary basis, for entry of an order authorizing Debtor to hold certain post-
19 petition customer deposits in a segregated account to be held in trust for the customer pursuant to
20 the New Deposit Practice (defined below). A proposed Order is attached to this Motion as

21 **Exhibit 1.** In support of this motion, Debtor represents as follows:

22 1. On December 4, 2023 (the "Petition Date"), Debtor filed a voluntary petition for
23 relief under Chapter 11 of Title 11 of the United States Code.

24 2. Debtor has continued in possession of its property and is continuing to operate
25 and manage its business as debtor-in-possession pursuant to Sections 1107(a) and 1108 of
26 Title 11 of the United States Code.

1 3. No request has been made for the appointment of a trustee or examiner, and no
2 official committee of unsecured creditors has been appointed in Debtor's case at this time.

3 4. Debtor is a kit aircraft manufacturer, founded in 1972. The Van's RV series of
4 aircraft are all-aluminum, low-wing monoplanes of monocoque construction. As of October,
5 2023, over 11,000 Van's RV kits have been reported as completed and flown by customers, with
6 thousands more under construction, making them most numerous of all homebuilt aircraft.

7 5. Debtor receives deposits from customers in connection with the purchase and
8 sale of parts, aircraft kits, and completed aircrafts ("Customer Deposits"). The general practice
9 has been to use Customer Deposits and payments to fund company operations and the production
10 of parts and kits upon receipt. However, on October 6, 2023 and October 12, 2023, notices were
11 inadvertently sent to customers asking for final payment for kits that were not yet ready to be
12 delivered. Mistakenly, a number of customers with orders that were not going to ship until 2024
13 were asked to pay their deposit. As a result of the inadvertent notice, Debtor commenced a
14 policy that it would take all Customer Deposits received from and after October 6, 2023, and
15 place them in a separate bank account to be held in trust for the benefit of those customers who
16 remitted payment (the "Deposit Practice") as opposed to the prior practice where the Customer
17 Deposits were immediately made available and used for operations of the company. Pursuant to
18 the new Deposit Practice, Customer Deposits received after implementation of the Deposit
19 Practice are presently held in a separate account at Key Bank ("Customer Deposit Account").

20 6. The Deposit Practice provided that the Customer Deposits would be held in the
21 Customer Deposit Account until the time the parts, aircraft kits, or completed Aircraft was ready
22 for production. At that point, the customer would be provided a Notice of Commencement of
23 Production stating that their kit was in the process of being produced and assembled. At that
24 time, the funds would be released from the Customer Deposit Account and transferred to the
25 Debtor's general fund to be used for the production of the product. If the customer requested a
26 refund prior to the Notice of Commencement of Production, the customer's funds in the

1 Customer Deposit Account would be returned to the customer. The Debtor intends to offer this
2 Deposit Practice during the pendency of the Chapter 11 proceeding to provide additional
3 assurance to prospective customers that their deposits for new orders will be protected during the
4 pendency of the bankruptcy process.

5 7. Post-petition funds received by customers who place new orders after the Petition
6 Date will have their funds placed in the Customer Deposit Account and held in trust pursuant to
7 the terms of the new order agreements. Those funds will remain the property of the customer
8 who placed the deposit and will only become property of Debtor's estate after the Debtor
9 provides the customer a Notice of Commencement of Production or as otherwise set forth in the
10 new order agreement, at which time the funds will be moved from the Customer Deposit
11 Account to the Debtor's general operating account and applied towards the purchase price of the
12 product.

13 8. During the pendency of the Chapter 11 proceeding, the Debtor intends to offer
14 this Deposit Practice and other constraints on its use of customer deposits, which are outlined in
15 greater detail on Van's new customer order agreements ("New Deposit Practice"). Debtor's
16 placement of customer deposits into a trust account will protect and reassure customers and
17 enable Van's to better accept orders and operate its business in the ordinary course and maintain
18 the going concern value of its business.

19 9. Although Debtor believes that continued performance of the New Deposit
20 Practice could be viewed as in the ordinary course of business, given the policy was
21 implemented shortly prior to the filing of the case, and to provide clear guidance and assurance
22 to customers who will be placing new deposits with the Debtor, Debtor seeks an order
23 confirming that it can continue the New Deposit Practice during the pendency of this Chapter 11
24 proceeding and that all funds placed into the Customer Deposit Account shall be and remain the
25 customer's funds and not property of the bankruptcy estate until such time as set forth in the new
26 order agreements. A proposed form of order is attached as **Exhibit 1**.

10. It is the Debtor's sound business judgment that it is in the best interest of Debtor, its estate, and customers for Debtor to continue the New Deposit Practice during the pendency of this case.

TONKON TORP LLP

Timothy J. Conway, OSB No. 851752
Michael W. Fletcher, OSB No. 010448
Ava Schoen, OSB No. 044072
Attorneys for Debtor

EXHIBIT 1

Proposed Form of Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

Van's Aircraft, Inc.,

Debtor.

Case No. 23-62260-dwh11

**ORDER AUTHORIZING DEBTOR TO
HOLD CUSTOMER POST-PETITION
DEPOSITS IN TRUST ACCOUNT**

THIS MATTER having come before the Court on Debtor's Motion to Hold Customer Deposits in Trust [Dkt. # ____]; now therefore,

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED.
2. Debtor is authorized to maintain a separate and segregated account in which it will deposit Customer Deposits (as defined in the Motion) to hold customer deposits in trust for the respective customer as set forth in the Motion.
3. Funds held in trust will only become property of Debtor's estate after such funds have been applied consistent with the New Deposit Practice (as defined in the Motion) as set forth on the new customer order agreements.

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DEPOSITS IN TRUST ACCOUNT**

TONKON TORP LLP
888 SW FIFTH AVE., SUITE 1600
PORTLAND, OR 97204
503.221.1440

I certify that I have complied with the requirements of LBR 9021-1(a).

Presented by:

TONKON TORP LLP

By _____
Timothy J. Conway, OSB No. 851752
Michael W. Fletcher, OSB No. 010448
Ava Schoen, OSB No. 044072
888 SW Fifth Avenue, Suite 1600
Portland, OR 97204-2099
Telephone: (503) 221-1440
Facsimile: (503) 274-8779
Email: tim.conway@tonkon.com
Attorneys for Debtor