

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re) Chapter 11
)
ATA AIRLINES, INC.,) Case No. 08-03675-BHL-11
)
Debtor.)

**AIRTRAN AIRWAYS, INC.’S OBJECTION
TO DEBTOR’S (A) MOTION UNDER
BANKRUPTCY CODE SECTION 105 AND
1129 TO DESIGNATE AMERICAN
AVIATION INVESTMENTS AS THE PARTY
SUBMITTING THE HIGHEST AND BEST
OFFER FOR THE DEBTOR’S BUSINESS
AND RELATED AUTHORITIES AND
ASSETS AND (B) NOTICE OF ABILITY TO
SUBMIT COMPETING OFFERS**

COMES NOW, AirTran Airways, Inc. (“AirTran”) and files its Objection to Debtor’s (A) Motion Under Bankruptcy Code Section 105 and 1129 To Designate American Aviation Investments as the Party Submitting the Highest and Best Offer For The Debtor’s Business And Related Authorities And Assets and (B) Notice of Ability to Submit Competing Offers (the “Motion”) and respectfully shows the court as follows:

Jurisdiction

1. This Court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (N) and (O). Venue is proper in this Court.

Case Background

2. On April 2, 2008 (the “Petition Date”), ATA Airlines, Inc. (“ATA” or the “Debtor”) filed its voluntary petition under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

3. The Debtor continues to manage its properties and assets as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. No trustee or examiner has been appointed in this case.

5. On April 16, 2008, the United States Trustee appointed an Official Committee of Unsecured Creditors in this case.

Proposed Sale of Debtor’s Assets

6. On September 23, 2008, ATA filed the Motion.

7. By the Motion, the Debtor seeks approval of American Aviation Investments (“AIA”) as purchaser of the assets of the Debtor, including: (i) Air Carrier Operating Certificate; (ii) Department of Transportation Certificate of Public Commerce and Necessity, (iii) unexpired intellectual property and intangibles of the Debtor, (iv) stock, and (v) the rights to such airport slots¹ that are “non-transferable, adhere to, and are inseparable from the Debtor”², which would consist of the Debtor’s slots at LaGuardia Airport (the “LaGuardia Slots”) in New York pursuant to a plan of reorganization for a purchase price of \$3,800,000.00.

8. The Motion refers to a letter of intent from AIA (the “LOI”) in which AIA proposes to purchase certain specified assets of the Debtor for \$1,300,000.00 and for the

¹ A “slot” is a take off or landing time interval at certain airports which allows the holder of the slot to use that specific time for take off or landing, as the case may be, at the designated airport.

² AirTran is using the quoted phrase from the Motion for purposes of identifying the slots to which the Motion refers, but does not concede that the phrase accurately characterizes the slots.

purchase of the LaGuardia Slots for \$2,500,000.00. *See* LOI ¶¶1.1 and 1.2. In addition, the LOI states that AIA “is also interested in acquiring any airline slots at Ronald Reagan National Airport in Arlington, VA that are owned by the Seller and are transferable.” *See* LOI ¶1.6.

9. Each of the LOI and the Motion state that AIA’s offer to purchase is subject to higher and better offers which must be submitted before a hearing to be held on October 7, 2008, at 10:00 a.m. *See* Motion ¶15; LOI ¶1.4.

The Slot Leases

10. Prior to the Petition Date, on or about May 21, 2007, ATA and AirTran entered into that certain Operating Authority Lease Agreement (the “May Lease”), pursuant to which ATA agreed to lease to AirTran two (2) air carrier operating authorizations at New York LaGuardia Airport. A true and correct copy of the May Lease is attached hereto as Exhibit “A” and is incorporated herein by reference.

11. On or about October 23, 2007, ATA and AirTran entered into that certain Operating Authority Lease Agreement (the “October Lease” and with the May Lease, the “Leases”), pursuant to which ATA agreed to lease to AirTran ten (10) air carrier operating authorizations at New York LaGuardia Airport and two (2) air carrier operating authorizations at Ronald Reagan Washington National Airport (the twelve (12) air carrier operating authorizations located at LaGuardia are the LaGuardia Slots and the two (2) air carrier operating authorizations located at Ronald Reagan Washington National Airport are the “Reagan Slots” and together with the LaGuardia Slots, the “Slots”). A true and correct copy of the October Lease is attached hereto as Exhibit “B” and is incorporated herein by reference.

12. Among other things, each of these Leases provides AirTran with a “right of first refusal to match ‘best’ offer by another purchaser, but upon notification must agree to stated terms within a 48 hour period.” See each Lease ¶ 5.

Basis for Objection

13. By the Motion ATA requests that the Court approve AIA (or such other bidder who may submit a higher and better bid) as the purchaser of, among other things, the LaGuardia Slots, without providing for AirTran’s right of first refusal for the purchase of the Slots.

14. Because the highest and best price for the LaGuardia Slots will not be determined until the October 7 hearing, the Debtor cannot sell the LaGuardia Slots without making the sale subject to AirTran’s right to purchase the Slots by matching the highest and best price once it is determined.

15. If the Court approves AIA (or such other bidder who may submit a higher and better bid) as the purchaser of the LaGuardia Slots without recognizing AirTran’s right of first refusal, AirTran would be denied a valuable property right without legal justification and in violation of its Constitutional rights. U.S. Constitution, Art. V. See *In re Farmland Industries, Inc.*, 284 B.R. 111 (Bankr. W.D. Mo. 2002)(failure to provide notice of bid procedures and auction of property subject to objecting parties’ right of first refusal a denial of due process such that the Court reopened bidding to allow holder of refusal right opportunity to match bid).

16. Even if ATA had provided for the designation of the highest and best bidder subject to AirTran’s right of first refusal for the LaGuardia Slots, AIA’s “offer” for the LaGuardia Slots cannot be determined from the LOI, because the proposed price is tied to the price for the other assets being sold. While the LOI allocates the consideration for the LaGuardia Slots and the other assets to be purchased (the “price” for the LaGuardia Slots is stated to be

\$2,500,000), absent a binding offer to acquire the LaGuardia Slots for a price stated independent of the other assets the allocation is meaningless as an indication of an "offer" for the LaGuardia Slots.

17. In order to preserve AirTran's right of first refusal, ATA may offer the LaGuardia Slots for sale only after a determination has been made as to the highest and best bid for the LaGuardia Slots, standing alone, and after AirTran has been given the required 48-hour period in which to match the bid and acquire the LaGuardia Slots. Nothing would prevent ATA from offering its assets and the LaGuardia Slots as both a single lot and as separate lots, as long as in either case, AirTran is given the right to match the best offer for the Slots as a single lot.

WHEREFORE, AirTran respectfully requests the Court sustain its objection and (i) require a bidding and approval process that protect AirTran's right of first refusal, and (ii) for such other and further relief as the Court deems just and proper

Dated: Atlanta, Georgia
October 2, 2008

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP

/s/ Barbara Ellis-Monro
Michael S. Haber
Georgia Bar No. 316250
Barbara Ellis-Monro
Georgia Bar No. 246117

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Suite 3100, Promenade II
1230 Peachtree St., NE
Atlanta, Georgia 30308
404-815-3500 tel.
404-815-3509 fax

EXHIBIT "A"

OPERATING AUTHORITY LEASE AGREEMENT

This Operating Authority Lease Agreement ("Lease") entered into as of this twenty-first day of May, 2007

by and between ATA Airlines Inc, an Indiana corporation ("Lessor"), and AirTran Airways, a Delaware corporation ("Lessee").

WHEREAS, Lessee desires to lease from Lessor certain air carrier takeoff and landing Operating Authorizations at New York LaGuardia Airport more particularly described on Schedule A attached hereto; and

WHEREAS, Lessor is willing to lease such Operating Authorizations to Lessee;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Lease, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Definitions**. For purposes of this Lease, the term:

"Effective Date" means 10 July, 2007.

"FAA" means the Federal Aviation Administration of the United States Department of Transportation or any successor agency.

"Governmental Agency" means any agency or instrumentality of the United States Government or any state, local or municipal government.

"Leased Operating Authorizations" means the two (2) air carrier operating authorizations at LGA described on Schedule A attached hereto.

"Lien" means any lien, mortgage, pledge, claim, charge or other similar encumbrance.

"LGA" means New York LaGuardia Airport.

"Operating Authority" has the meaning ascribed in Section 93.213(a)(2) of the Operating Authority Regulations.

"Operating Authority Regulations" means the Federal Aviation Regulations, Title 14 Code of Federal Regulations, Part 93, Subparts K and S.

"Term" has the meaning ascribed in Section 4 hereof.

"Use Provisions" means Section 93.227 of the Operating Authority Regulations or any waiver or official interpretation by FAA thereof and shall include any future statutory or regulatory amendments to such provisions or successor statutes or regulations.

2. **Lease**. Subject to the conditions precedent set forth in Section 6 hereof, and pursuant to the terms and conditions of this Lease, Lessor shall lease to Lessee the Leased Operating Authorizations beginning on the Effective Date and continuing for the Term.

3. **Rent.** Lessee shall pay Lessor eighteen thousand and 00/100 Dollars (\$18,000.00) per Leased Operating Authorization per month, (i.e. for a total of \$36,000.00 per month) for the Leased Operating Authorizations during the Term (as adjusted pursuant to the provisions set forth below, the "**Rent**"). Rent shall be payable in advance on or before the first day of each calendar month during the Term. If this Lease is in effect for only a portion of any calendar month, then the Rent payment shall be prorated on the basis of the number of days in such month and the actual number of days elapsed. Each monthly installment of Rent shall be paid by settlement under the procedures used by the Airline Clearing House ("**ACH**"). Lessor shall timely submit an invoice to the ACH monthly in order to receive credit for the upcoming month's Rent. In the event of a payment failure pursuant to ACH procedures, Rent shall be paid by check or wire transfer within five (5) business days after notice to Lessee of such payment failure. Except when Lessor shall have failed to timely deliver an invoice to ACH, if Lessee fails to pay when due any amounts or charges required to be paid by Lessee hereunder, such unpaid amount shall bear per annum interest from and including the date that payment was due until, but not including the date that payment is made, at an annual percentage rate equal to the lesser of eighteen percent (18.0%) or the maximum lawful rate. In no event shall such interest exceed the maximum lawful rate.

4. **Term.** The term of the Lease shall commence on the Effective Date and shall continue until 31 October, 2009, unless this Lease is earlier terminated in accordance herewith (the "**Term**").

5. **Purchase Option.** In the event FAA regulations allow Lessor to sell the Leased Operating Authorizations and Lessor desires to do so, Lessor shall provide Lessee with notice of such intent to sell and the parties will have fifteen (15) days to negotiate a sale agreement. In the event a sale agreement between Lessee and Lessor is not executed within such 15 day period, Lessor shall be free to sell the Leased Operating Authorizations to another purchaser. Lessee would retain the right of first refusal to match "best" offer by another purchaser, but upon notification must agree to stated terms within a 48 hour period.

6. **Conditions Precedent.** The lease of the Leased Operating Authorizations as set forth herein is subject to the receipt of all required consents and approvals necessary for the consummation of the transaction set forth herein, including, but not limited to the consent of the FAA pursuant to Section 93.221 of the Operating Authority Regulations.

7. **Representations and Warranties of Lessor.** Lessor represents and warrants to Lessee that:

(a) Lessor is the lawful owner and holder of the Leased Operating Authorizations subject to the Operating Authority Regulations.

(b) Lessor is entitled to lease the Leased Operating Authorizations as provided herein, subject only to the consent of the FAA or other applicable Governmental Agency.

(c) The consummation of this Lease on the terms and conditions provided herein does not violate or breach any agreement or restriction to which Lessor is subject.

(d) Other than FAA regulatory approval, Lessor has obtained all approvals necessary to lease the Leased Operating Authorizations to Lessee.

(e) Lessor is in compliance with all applicable requirements of any Governmental Agency having jurisdiction with respect to the use of the Leased Operating Authorizations.

(f) Lessor is not aware of any pending or threatened actions or proceedings or any reasonable set of existing circumstances that could adversely affect Lessee's ability to use the Leased Operating Authorizations during the Term in substantially the same manner as Lessor was authorized to use the Leased Operating Authorizations prior to the Effective Date.

(g) Lessor has used, or caused the use of, each Leased Operating Authority at least 80% of the maximum amount that such Leased Operating Authority could have been used during the two months prior to the Effective Date or such greater amount of minimum usage as may have been required to protect such Leased Operating Authorizations from withdrawal, recall, or any other termination under the Use Provisions or any other applicable regulations of any Governmental Agency or airport authority; except during any period in which such use has been waived by the FAA.

8. **Representation and Warranties of Lessee.** Lessee represents and warrants to Lessor that:

(a) Lessee is an air carrier certificated under Title 49 of the United States Code that is authorized to use the Leased Operating Authorizations under the Operating Authority Regulations and Use Provisions.

(b) Other than FAA regulatory approval, Lessee has obtained all approvals necessary to consummate this transaction.

(c) The execution and delivery of this Lease by Lessee does not violate or breach any agreement or restriction to which Lessee is subject.

9. **Lessor's Covenants.** Except as may be required by law and as long as Lessee is not in default hereunder, during the Term of this Lease, Lessor shall not enter into any contract or otherwise act to restrict, interfere with or prevent the use and quiet enjoyment of the Leased Operating Authorizations by Lessee as contemplated herein, nor shall Lessor allow anyone acting in its name or on its behalf to do any such things.

10. **Lessee's Covenants.** During the term of this Lease, Lessee agrees and covenants as follows:

(a) Lessee shall use the Leased Operating Authorizations in accordance with the Use Provisions, the Operating Authority Regulations and all applicable laws, rules and regulations.

(b) In accordance with standard FAA slot submission practices (Within fifteen (15) days of the end of every other calendar month during the Term), Lessee shall provide Lessor with a report of Lessee's scheduled operations of the Leased Operating Authorizations for the previous two calendar months (i.e. July 2007 & August 2007 reported by September 15th). Such reports shall be communicated in a means and in a form reasonably acceptable to Lessor.

(c) Lessee shall not use the Leased Operating Authorizations for the provision of basic or

enhanced essential air service as those terms are defined in Subchapter II of Chapter 417 of Title 49, United States Code (49 U. S. C. Sections 41731 and 41732 *et. seq.*).

(d) Lessee shall, prior to the Effective Date and at the end of the Term, and whenever it is otherwise required, notify the FAA pursuant to Section 93.221 of the Operating Authority Regulations of the contemplated use of the Leased Operating Authorizations by Lessee.

11. **Governmental Filings.** In connection with the consummation of the transactions contemplated hereby, Lessor and Lessee shall promptly file with each applicable Governmental Agency any required applications for approval, waiver or consent for consummation of the transactions contemplated by this Lease, including but not limited to any filings with the FAA required under 14 C.F.R. Part 93, Section 93.221. Each party agrees to use its reasonable business efforts to take, or cause to be taken, and to assist and cooperate with the other party in obtaining all necessary actions, waivers, consents and approvals from the FAA and other Governmental Agencies.

12. **Transfer Prohibited.** Lessee agrees and covenants that during the Term it shall not return to the FAA, trade, rent, lease, slide, sell, assign, encumber in any manner whatsoever or otherwise transfer the Leased Operating Authorizations, without the prior written consent of Lessor.

13. **Default.**

(a) Each of the following shall constitute an event of default by Lessee hereunder (a "Lessee Event of Default"):

(i) Lessee fails to make a Rent payment in accordance with Section 3 hereof and such failure continues for ten (10) days after written notice of such failure is received by Lessee.

(ii) Lessee fails to use the Leased Operating Authorizations in accordance with Section 10 hereof, or the then applicable Operating Authority Regulations or Use Provisions.

(iii) Lessee fails to abide by the provisions of sections 12, 15 or 17 of this Lease and such failure continues for ten (10) days after receipt of Lessor's written notice of such failure.

(iv) Lessee ceases operation or fails to maintain its status as an air carrier under Title 49 of the United States Code.

(b) Lessor shall be deemed to be in default hereunder if Lessor fails to perform any of its material obligations hereunder and such failure continues for ten (10) days after receipt of Lessee's written notice of such failure (a "Lessor Event of Default").

14. **Termination and Remedies.**

(a) If a Lessee Event of Default occurs and continues under this Lease, Lessor shall have the right to immediately terminate this Lease by delivery of notice to Lessee, and such termination shall be without prejudice to Lessor's rights, if any, in respect of all obligations set forth herein and any other obligations under this Lease then accrued and remaining unsatisfied.

(b) If a Lessor Event of Default occurs and continues under this Lease, Lessee shall have the right to immediately terminate this Lease by delivery of notice to Lessor, and such termination shall be without prejudice to Lessee's rights, if any, in respect of all obligations set forth herein.

(c) If the Congress, a judicial body, or any other governmental entity amends, rescinds or otherwise repeals 14 CFR §§ 93.221 et seq., with the result being that slots are no longer necessary for peak time (0700-2159) operation at LGA, then either party shall have the right to terminate this Lease upon delivery of notice to the other.

(d) If this Lease is terminated effective on a date other than the last day of a month, Lessor will refund to Lessee within ten (10) business days the pro-rata portion of Rent received by Lessor with respect to the terminated Leased Operating Authorizations for the number of days after the termination, provided that Lessee has otherwise paid to Lessor all amounts then due and owing hereunder.

(e) Notwithstanding any other provisions of this Lease, Lessor shall have the right at anytime upon six (6) months prior written notice to Lessee to terminate this Lease.

15. **Non-Use.** If Lessor reasonably determines that Lessee has failed to use the Leased Operating Authorizations, or any one of them, in accordance with this Lease and the Use Provisions, then Lessor shall have the right, but not the obligation, to use any such Leased Operating Authorizations during any period of non-use by Lessee. If the FAA takes control of or otherwise restricts Lessor's use of the Leased Operating Authorizations because of such non-use by Lessee, then Lessee agrees and understands that it shall be obligated to transfer to Lessor, without cost to Lessor, a substitute Operating Authority at LGA for each Leased Operating Authorization so taken or restricted. Each such substitute Operating Authority shall be as similar to the forfeited Leased Operating Authorization as possible, including but not limited to, being within the same control period and having an equal or better withdrawal priority number. In the event that Lessee is unable to transfer a substitute Operating Authority to Lessor within three (3) months after the recall, withdrawal, taking of control of or other restriction by the FAA of the use of a Leased Operating Authorization because of non-compliance by Lessee with the Use Provisions, then Lessee shall pay to Lessor as liquidated damages, by wire transfer of immediately available funds, the then current fair market value of the affected Leased Operating Authorization. The fair market value shall be determined by a mutually acceptable appraiser within ten (10) business days after the expiration of such three (3) month period (each of Lessor and Lessee shall assist the Operating Authority appraiser in finalizing such determination within such ten (10) day period) and Lessee shall pay such fair market value within five (5) days after such determination. The cost of any such appraisal shall be borne by Lessee. Lessor shall thereupon transfer to Lessee any remaining rights to the Leased Operating Authorizations so restricted or controlled.

16. **FAA Withdrawal.**

(a) If the FAA withdraws any or all of the Leased Operating Authorizations pursuant to the Operating Authority Regulations and such withdrawal was not the result of (i) a failure by the Lessee to comply with the Use Provisions, or (ii) a breach of this Lease, this Lease shall be deemed terminated as to any such withdrawn Leased Operating Authorization(s), the monthly Rent shall be proportionately reduced, and neither party shall have any liability to

the other as a result of such withdrawal, except that Lessee shall pay all Rent due hereunder up to the date of such withdrawal by the FAA and Lessor shall refund or credit Lessee for any Rent paid by Lessee for such withdrawn Leased Operating Authorizations for any portion of a month after such withdrawal.

(b) Notwithstanding any other provisions of this Lease, in the event that Congress hereinafter directs the FAA to withdraw any Operating Authority at LGA used or operated by Lessor and such withdrawal was not the result of a failure by Lessor to comply with the Use Provisions, Lessor shall have the right to terminate this Lease as to such number of Leased Operating Authorizations as is equal to the number of Operating Authorities at LGA which were withdrawn by the FAA and the specific Leased Operating Authorizations as to which the Lease shall be terminated shall be determined by Lessor in its sole and absolute discretion. Lessor shall have the right to terminate this Agreement with respect to such withdrawn Operating Authority upon sixty (60) days' advance written notice.

17. **Reciprocal Indemnity.** Lessee shall defend, indemnify, and hold harmless Lessor from and against any and all claims, losses, damages, and liabilities (including reasonable attorney's fees and costs) arising from, relating to, or pertaining to any breach of this Lease by Lessee. Lessor shall defend, indemnify, and hold harmless Lessee from and against any and all claims, losses, damages, and liabilities (including reasonable attorney's fees and costs) arising from, relating to, or pertaining to any breach of this Lease by Lessor.

18. **Severability of Provisions.** If any provision of this Lease is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties also agree to promptly replace the invalid, unenforceable, or illegal provision, or portion thereof, with a substitute provision that will satisfy the intent of the parties hereunder.

19. **Notices.** Unless otherwise specified, any notice required by this Lease shall be mailed, first class, postage prepaid, or USPS express mail or other means of expedited delivery, or personally delivered, to the following address:

To Lessor: Josef Loew
Senior Vice President Scheduled Service, ATA Airlines Inc.
7337 West Washington Street
Indianapolis, IN 46231

With copy to Brian Hunt
Senior Vice President, General Counsel and Secretary, ATA Airlines Inc.
7337 West Washington Street
Indianapolis, IN 46231

To Lessee: Kevin Healy
Vice President, Planning
9955 AirTran Blvd
Orlando, FL 32827

Whenever the words "notice" or "notify" or similar words are used herein, they mean the provision of formal notice as set forth in this Section 20.

20. **No Waiver.** The failure of Lessor or Lessee to subscribe or to require performance by the other of any provision of this Lease shall in no way affect that party's right thereafter to enforce such provision nor shall the waiver by Lessor or Lessee of any breach of any provision of this Lease be taken or held to be a waiver of any further breach of the same provision or any other provision.

21. **Choice of Law.** This Lease shall be governed by and interpreted in accordance with the Federal laws of the United States and, to the extent not inconsistent therewith, the laws of the State of New York. Without limiting in any way the jurisdiction of the courts of any state, nation or province, or either of Lessor's or Lessee's right to invoke the jurisdiction of such courts, each of Lessor and Lessee hereby submits and consents to the jurisdiction of the courts of the United States of America and the State of New York in any dispute arising out of this Lease.

22. **Entirety of Agreement.** Lessor and Lessee agree that this Lease embodies all prior discussions, whether oral or written, with respect to the subject matter hereof, and to the extent such prior discussions have not been incorporated herein, they are without effect.

23. **Assignment.** This Lease shall not be assignable by Lessee to any other entity without the express written consent of Lessor.

24. **Modification.** Lessor and Lessee agree that this Lease may be modified only by a writing signed by the duly authorized representatives of each party.


25. **Headings.** The headings used to identify Sections are for reference purposes only and shall have no bearing on the interpretation of this Lease.

26. **Counterparts.** This Lease may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their authorized representatives as of the date first above written.

(Lessor)  _____

By: Josef Loew
Title: Senior VP Scheduled Service

(Lessee)  _____

By: Kevin Healy
Title: Vice President, Planning

SCHEDULE A

LEASED OPERATING AUTHORIZATIONS

Identification Number	Operating Authority	Frequency	Effective Date	Discontinue Date
3877	1430A	X6	07/01/07	11/03/07
Replaced by				
35042	1600A	X6	11/04/07	10/31/09

3653	1530D	X6	07/01/07	11/03/07
Replaced by				
4361	1630D	X6	11/04/07	10/31/09

EXHIBIT "B"

OPERATING AUTHORITY LEASE AGREEMENT

This Operating Authority Lease Agreement ("Lease") entered into as of this twenty-third day of October, 2007 by and between ATA Airlines Inc, an Indiana corporation ("Lessor"), and AirTran Airways, Inc. a Delaware corporation ("Lessee").

WHEREAS, Lessee desires to lease from Lessor certain air carrier takeoff and landing Operating Authorizations at New York LaGuardia Airport and Ronald Regan Washington National Airport more particularly described on Schedule A attached hereto; and

WHEREAS, Lessor is willing to lease such Operating Authorizations to Lessee;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Lease, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Definitions**. For purposes of this Lease, the term:

"Effective Date" means December 06, 2007.

"FAA" means the Federal Aviation Administration of the United States Department of Transportation or any successor agency.

"Governmental Agency" means any agency or instrumentality of the United States Government or any state, local or municipal government.

"Leased Operating Authorizations" means ten (10) air carrier operating authorizations at LGA and two (2) air carrier operating authorizations at DCA as described on Schedule A attached hereto.

"Lien" means any lien, mortgage, pledge, claim, charge or other similar encumbrance.

"LGA" means New York LaGuardia Airport.

"DCA" means Ronald Reagan Washington National Airport.

"Operating Authority" has the meaning ascribed in Section 93.213(a)(2) of the Operating Authority Regulations.

"Operating Authority Regulations" means the Federal Aviation Regulations, Title 14 Code of Federal Regulations, Part 93, Subparts K and S.

"Term" has the meaning ascribed in Section 4 hereof.

"Use Provisions" means Section 93.227 of the Operating Authority Regulations or any waiver or official interpretation by FAA thereof and shall include any future statutory or regulatory amendments to such provisions or successor statutes or regulations.

2. **Lease**. Subject to the conditions precedent set forth in Section 6 hereof, and pursuant to the

terms and conditions of this Lease, Lessor shall lease to Lessee the Leased Operating Authorizations beginning on the Effective Date and continuing for the Term.

3. **Rent.** Lessee shall pay Lessor an average of fifteen thousand six hundred and 00/100 Dollars (\$15,660.00) per LGA Leased Operating Authorization per month, (i.e. for a total of \$156,600.00 per month) for the LGA Leased Operating Authorizations during the Term (as adjusted pursuant to the provisions set forth below, the "Rent") as described on Schedule B. Lessee shall pay Lessor ten thousand and 00/100 Dollars (\$10,000.00) per DCA Leased Operating Authorization per month, (i.e. for a total of \$20,000.00 per month) for the DCA Leased Operating Authorizations during the Term (as adjusted pursuant to the provisions set forth below, the "Rent") as described on Schedule B. Grand total for both DCA and LGA Leased Operating Authorizations will be One hundred seventy six thousand and six hundred 00/100 Dollars (\$176,600.00) per month during the Term (as adjusted pursuant to the provisions set forth below, the "Rent") as described on Schedule B. Rent shall be payable in advance on or before the first day of each calendar month during the Term. If this Lease is in effect for only a portion of any calendar month, then the Rent payment shall be prorated on the basis of the number of days in such month and the actual number of days elapsed. Each monthly installment of Rent shall be paid by settlement under the procedures used by the Airline Clearing House ("ACH"). Lessor shall timely submit an invoice to the ACH monthly in order to receive credit for the upcoming month's Rent. In the event of a payment failure pursuant to ACH procedures, Rent shall be paid by check or wire transfer within five (5) business days after notice to Lessee of such payment failure. Except when Lessor shall have failed to timely deliver an invoice to ACH, if Lessee fails to pay when due any amounts or charges required to be paid by Lessee hereunder, such unpaid amount shall bear per annum interest from and including the date that payment was due until, but not including the date that payment is made, at an annual percentage rate equal to the lesser of eighteen percent (18.0%) or the maximum lawful rate. In no event shall such interest exceed the maximum lawful rate. As part of the Rent, Lessee shall establish an Interline Pass Agreement for reduced rate positive space travel for employees of the Lessor, In addition, certain key executives of Lessor will qualify for positive space term pass travel benefits on Lessee. These travel benefits will be valid for the term of this Agreement..

4. **Term.** The term of the Lease shall commence on the Effective Date and shall continue until 31 December, 2010, unless this Lease is earlier terminated in accordance herewith (the "Term").

5. **Purchase Option.** In the event FAA regulations allow Lessor to sell the Leased Operating Authorizations and Lessor desires to do so, Lessor shall provide Lessee with notice of such intent to sell and the parties will have fifteen (15) days to negotiate a sale agreement. In the event a sale agreement between Lessee and Lessor is not executed within such 15 day period, Lessor shall be free to sell the Leased Operating Authorizations to another purchaser. Lessee would retain the right of first refusal to match "best" offer by another purchaser, but upon notification must agree to stated terms within a 48 hour period.

6. **Conditions Precedent.** The lease of the Leased Operating Authorizations as set forth herein is subject to the receipt of all required consents and approvals necessary for the consummation of the transaction set forth herein, including, but not limited to the consent of the FAA pursuant to Section 93.221 of the Operating Authority Regulations.

7. **Representations and Warranties of Lessor.** Lessor represents and warrants to Lessee that:
- (a) Lessor is the lawful owner and holder of the Leased Operating Authorizations subject to the Operating Authority Regulations.
 - (b) Lessor is entitled to lease the Leased Operating Authorizations as provided herein, subject only to the consent of the FAA or other applicable Governmental Agency.
 - (c) The consummation of this Lease on the terms and conditions provided herein does not violate or breach any agreement or restriction to which Lessor is subject.
 - (d) Other than FAA regulatory approval, Lessor has obtained all approvals necessary to lease the Leased Operating Authorizations to Lessee.
 - (e) Lessor is in compliance with all applicable requirements of any Governmental Agency having jurisdiction with respect to the use of the Leased Operating Authorizations.
 - (f) Lessor is not aware of any pending or threatened actions or proceedings or any reasonable set of existing circumstances that could adversely affect Lessee's ability to use the Leased Operating Authorizations during the Term in substantially the same manner as Lessor was authorized to use the Leased Operating Authorizations prior to the Effective Date.
 - (g) Lessor has used, or caused the use of, each Leased Operating Authority at least 80% of the maximum amount that such Leased Operating Authority could have been used during the two months prior to the Effective Date or such greater amount of minimum usage as may have been required to protect such Leased Operating Authorizations from withdrawal, recall, or any other termination under the Use Provisions or any other applicable regulations of any Governmental Agency or airport authority; except during any period in which such use has been waived by the FAA.
8. **Representation and Warranties of Lessee.** Lessee represents and warrants to Lessor that:
- (a) Lessee is an air carrier certificated under Title 49 of the United States Code that is authorized to use the Leased Operating Authorizations under the Operating Authority Regulations and Use Provisions.
 - (b) Other than FAA regulatory approval, Lessee has obtained all approvals necessary to consummate this transaction.
 - (c) The execution and delivery of this Lease by Lessee does not violate or breach any agreement or restriction to which Lessee is subject.
9. **Lessor's Covenants.** Except as may be required by law and as long as Lessee is not in default hereunder, during the Term of this Lease, Lessor shall not enter into any contract or otherwise act to restrict, interfere with or prevent the use and quiet enjoyment of the Leased Operating Authorizations by Lessee as contemplated herein, nor shall Lessor allow anyone acting in its name or on its behalf to do any such things.

10. **Lessee's Covenants.** During the term of this Lease, Lessee agrees and covenants as follows:

(a) Lessee shall use the Leased Operating Authorizations in accordance with the Use Provisions, the Operating Authority Regulations and all applicable laws, rules and regulations.

(b) In accordance with standard FAA slot submission practices (Within fifteen (15) days of the end of every other calendar month during the Term), Lessee shall provide Lessor with a report of Lessee's scheduled operations of the Leased Operating Authorizations for the previous two calendar months. Such reports shall be communicated in a means and in a form reasonably acceptable to Lessor.

(c) Lessee shall not use the Leased Operating Authorizations for the provision of basic or enhanced essential air service as those terms are defined in Subchapter II of Chapter 417 of Title 49, United States Code (49 U. S. C. Sections 41731 and 41732 *et. seq.*).

(d) Lessee shall, prior to the Effective Date and at the end of the Term, and whenever it is otherwise required, notify the FAA pursuant to Section 93.221 of the Operating Authority Regulations of the contemplated use of the Leased Operating Authorizations by Lessee.

11. **Governmental Filings.** In connection with the consummation of the transactions contemplated hereby, Lessor and Lessee shall promptly file with each applicable Governmental Agency any required applications for approval, waiver or consent for consummation of the transactions contemplated by this Lease, including but not limited to any filings with the FAA required under 14 C.F.R. Part 93, Section 93.221. Each party agrees to use its reasonable business efforts to take, or cause to be taken, and to assist and cooperate with the other party in obtaining all necessary actions, waivers, consents and approvals from the FAA and other Governmental Agencies.

12. **Transfer Prohibited.** Lessee agrees and covenants that during the Term it shall not return to the FAA, trade, rent, lease, slide, sell, assign, encumber in any manner whatsoever or otherwise transfer the Leased Operating Authorizations, without the prior written consent of Lessor.

13. **Default.**

(a) Each of the following shall constitute an event of default by Lessee hereunder (a "Lessee Event of Default"):

(i) Lessee fails to make a Rent payment in accordance with Section 3 hereof and such failure continues for ten (10) days after written notice of such failure is received by Lessee.

(ii) Lessee fails to use the Leased Operating Authorizations in accordance with Section 10 hereof, or the then applicable Operating Authority Regulations or Use Provisions.

(iii) Lessee fails to abide by the provisions of sections 12, 15 or 17 of this Lease and such failure continues for ten (10) days after receipt of Lessor's written notice of such failure.

(iv) Lessee ceases operation or fails to maintain its status as an air carrier under

Title 49 of the United States Code.

(b) Lessor shall be deemed to be in default hereunder if Lessor fails to perform any of its material obligations hereunder and such failure continues for ten (10) days after receipt of Lessee's written notice of such failure (a "Lessor Event of Default").

14. **Termination and Remedies.**

(a) If a Lessee Event of Default occurs and continues under this Lease, Lessor shall have the right to immediately terminate this Lease by delivery of notice to Lessee, and such termination shall be without prejudice to Lessor's rights, if any, in respect of all obligations set forth herein and any other obligations under this Lease then accrued and remaining unsatisfied.

(b) If a Lessor Event of Default occurs and continues under this Lease, Lessee shall have the right to immediately terminate this Lease by delivery of notice to Lessor, and such termination shall be without prejudice to Lessee's rights, if any, in respect of all obligations set forth herein.

(c) If the Congress, a judicial body, or any other governmental entity amends, rescinds or otherwise repeals 14 CFR §§ 93.221 *et seq.*, with the result being that slots are no longer necessary for peak time (0700-2159) operation at LGA, then either party shall have the right to terminate this Lease upon delivery of notice to the other.

(d) If this Lease is terminated effective on a date other than the last day of a month, Lessor will refund to Lessee within ten (10) business days the pro-rata portion of Rent received by Lessor with respect to the terminated Leased Operating Authorizations for the number of days after the termination, provided that Lessee has otherwise paid to Lessor all amounts then due and owing hereunder.

(e) Notwithstanding any other provisions of this Lease, Lessor shall have the right at anytime upon six (6) months prior written notice to Lessee to terminate this Lease.

15. **Non-Use.** If Lessor reasonably determines that Lessee has failed to use the Leased Operating Authorizations, or any one of them, in accordance with this Lease and the Use Provisions, then Lessor shall have the right, but not the obligation, to use any such Leased Operating Authorizations during any period of non-use by Lessee. If the FAA takes control of or otherwise restricts Lessor's use of the Leased Operating Authorizations because of such non-use by Lessee, then Lessee agrees and understands that it shall be obligated to transfer to Lessor, without cost to Lessor, a substitute Operating Authority at LGA for each Leased Operating Authorization so taken or restricted. Each such substitute Operating Authority shall be as similar to the forfeited Leased Operating Authorization as possible, including but not limited to, being within the same control period and having an equal or better withdrawal priority number. In the event that Lessee is unable to transfer a substitute Operating Authority to Lessor within three (3) months after the recall, withdrawal, taking of control of or other restriction by the FAA of the use of a Leased Operating Authorization because of non-compliance by Lessee with the Use Provisions, then Lessee shall pay to Lessor as liquidated damages, by wire transfer of immediately available funds, the then current fair market value of the affected Leased Operating Authorization. The fair market value shall be determined by a mutually acceptable appraiser within ten (10) business days after the expiration of such three (3) month period

(each of Lessor and Lessee shall assist the Operating Authority appraiser in finalizing such determination within such ten (10) day period) and Lessee shall pay such fair market value within five (5) days after such determination. The cost of any such appraisal shall be borne by Lessee. Lessor shall thereupon transfer to Lessee any remaining rights to the Leased Operating Authorizations so restricted or controlled.

16. **FAA Withdrawal.**

(a) If the FAA withdraws any or all of the Leased Operating Authorizations pursuant to the Operating Authority Regulations and such withdrawal was not the result of (i) a failure by the Lessee to comply with the Use Provisions, or (ii) a breach of this Lease, this Lease shall be deemed terminated as to any such withdrawn Leased Operating Authorization(s), the monthly Rent shall be proportionately reduced, and neither party shall have any liability to the other as a result of such withdrawal, except that Lessee shall pay all Rent due hereunder up to the date of such withdrawal by the FAA and Lessor shall refund or credit Lessee for any Rent paid by Lessee for such withdrawn Leased Operating Authorizations for any portion of a month after such withdrawal.

(b) Notwithstanding any other provisions of this Lease, in the event that Congress hereinafter directs the FAA to withdraw any Operating Authority at LGA used or operated by Lessor and such withdrawal was not the result of a failure by Lessor to comply with the Use Provisions, Lessor shall have the right to terminate this Lease as to such number of Leased Operating Authorizations as is equal to the number of Operating Authorities at LGA which were withdrawn by the FAA and the specific Leased Operating Authorizations as to which the Lease shall be terminated shall be determined by Lessor in its sole and absolute discretion. Lessor shall have the right to terminate this Agreement with respect to such withdrawn Operating Authority upon sixty (60) days' advance written notice.

17. **Reciprocal Indemnity.** Lessee shall defend, indemnify, and hold harmless Lessor from and against any and all claims, losses, damages, and liabilities (including reasonable attorney's fees and costs) arising from, relating to, or pertaining to any breach of this Lease by Lessee. Lessor shall defend, indemnify, and hold harmless Lessee from and against any and all claims, losses, damages, and liabilities (including reasonable attorney's fees and costs) arising from, relating to, or pertaining to any breach of this Lease by Lessor.

18. **Severability of Provisions.** If any provision of this Lease is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties also agree to promptly replace the invalid, unenforceable, or illegal provision, or portion thereof, with a substitute provision that will satisfy the intent of the parties hereunder.

19. **Notices.** Unless otherwise specified, any notice required by this Lease shall be mailed, first class, postage prepaid, or USPS express mail or other means of expedited delivery, or personally delivered, to the following address:

To Lessor: Josef Loew
Senior Vice President Scheduled Service, ATA Airlines Inc.
7337 West Washington Street
Indianapolis, IN 46231

With copy to Brian Hunt
Senior Vice President, General Counsel and Secretary, ATA Airlines Inc.
7337 West Washington Street
Indianapolis, IN 46231

To Lessee: Kevin Healy
Vice President, Planning
9955 AirTran Blvd
Orlando, FL 32827

Whenever the words "notice" or "notify" or similar words are used herein, they mean the provision of formal notice as set forth in this Section 20.

20. **No Waiver.** The failure of Lessor or Lessee to subscribe or to require performance by the other of any provision of this Lease shall in no way affect that party's right thereafter to enforce such provision nor shall the waiver by Lessor or Lessee of any breach of any provision of this Lease be taken or held to be a waiver of any further breach of the same provision or any other provision.

21. **Choice of Law.** This Lease shall be governed by and interpreted in accordance with the Federal laws of the United States and, to the extent not inconsistent therewith, the laws of the State of New York. Without limiting in any way the jurisdiction of the courts of any state, nation or province, or either of Lessor's or Lessee's right to invoke the jurisdiction of such courts, each of Lessor and Lessee hereby submits and consents to the jurisdiction of the courts of the United States of America and the State of New York in any dispute arising out of this Lease.

22. **Entirety of Agreement.** Lessor and Lessee agree that this Lease embodies all prior discussions, whether oral or written, with respect to the subject matter hereof, and to the extent such prior discussions have not been incorporated herein, they are without effect.

23. **Assignment.** This Lease shall not be assignable by Lessee to any other entity without the express written consent of Lessor.

24. **Modification.** Lessor and Lessee agree that this Lease may be modified only by a writing signed by the duly authorized representatives of each party.

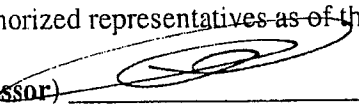
25. **Headings.** The headings used to identify Sections are for reference purposes only and shall have no bearing on the interpretation of this Lease.

26. **Counterparts.** This Lease may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall

together constitute but one and the same instrument.

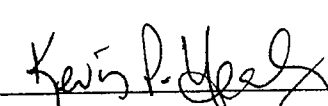
IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their authorized representatives as of the date first above written.

(Lessor)



By: Josef Loew
Title: Senior VP Scheduled Service

(Lessee)



By: Kevin Healy
Title: Vice President, Planning

SCHEDULE A**LGA LEASED OPERATING AUTHORIZATIONS**

Identification Number	Operating Authority	Frequency	Effective Date	Discontinue Date
3771	0700D	X6	12/06/07	03/08/08
3018	0900A	X6	01/07/08	03/08/08
3451	1000D	X6	01/07/08	03/08/08
3123	1300D	X6	01/07/08	03/08/08
3294	1230A	X6	01/07/08	03/08/08
04360	1530A	X6	01/07/08	03/08/08
3251	1600D	X6	01/07/08	03/08/08
35080	1730A	X6	12/06/07	03/08/08
3006	1930D	X6	01/07/08	03/08/08
35087	1830A	X6	01/07/08	03/08/08

Identification Number	Operating Authority	Frequency	Effective Date	Discontinue Date
35083	0800D	X6	03/09/08	12/31/10
04306	0930A	X6	03/09/08	12/31/10
04362	1030D	X6	03/09/08	12/31/10
35084	1330A	X6	03/09/08	12/31/10
35077	1500D	X6	03/09/08	12/31/10
04360	1530A	X6	03/09/08	12/31/10
04363	1700D	X6	03/09/08	12/31/10
35086	1730A	X6	03/09/08	12/31/10
35047	1800D	X6	03/09/08	12/31/10
35087	1830A	X6	03/09/08	12/31/10

DCA LEASED OPERATING AUTHORIZATIONS

Identification Number	Operating Authority	Frequency	Effective Date	Discontinue Date
4119	2100	Daily	12/06/07	12/31/10
4122	2100	Daily	12/06/07	12/31/10

SCHEDULE B

LGA LEASED OPERATING AUTHORIZATION RENT

Identification Number	Operating Authority	Monthly Rent
35083	0800D	\$18,000
04306	0930A	\$16,200
04362	1030D	\$12,600
35084	1330A	\$12,600
35077	1500D	\$14,400
04360	1530A	\$12,600
04363	1700D	\$18,000
35086	1730A	\$16,200
35047	1800D	\$18,000
35087	1830A	\$18,000

DCA LEASED OPERATING AUTHORIZATION RENT

Identification Number	Operating Authority	Monthly Rent
4119	2100	\$10,000
4122	2100	\$10,000