IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re: ATA Holdings Corp., Debtor.	)	Chapter 11 Case No. 04-19866
In re: ATA Airlines, Inc., Debtor.	)	Chapter 11 Case No. 04-19868
In re: Ambassadair Travel Club, Inc., Debtor.	)	Chapter 11 Case No. 04-19869
In re: ATA Leisure Corp., Debtor.	)	Chapter 11 Case No. 04-19870
In re: Amber Travel, Inc., Debtor.	)	Chapter 11 Case No. 04-19871
In re: American Trans Air Execujet, Inc., Debtor.	)	Chapter 11 Case No. 04-19872
In re: ATA Cargo, Inc., Debtor.	)	Chapter 11 Case No. 04-19873
In re: Chicago Express Airlines, Inc., Debtor.	)	Chapter 11 Case No. 04-19874

FIRST DAY MOTION FOR AUTHORIZATION TO HONOR CERTAIN PREPETITION OBLIGATIONS TO CUSTOMERS AND TO CONTINUE OTHER CUSTOMER PROGRAMS

Hearing:	October 29, 2004 11:00 a.m. EST
Location:	U.S. Courthouse 46 E. Ohio Street, Room 310 Indianapolis, IN 46204
Telephonic Participation Dial-In:	1-877-213-2541
Passcode:	9070313#

FIRST DAY MOTION FOR AUTHORIZATION TO HONOR CERTAIN PREPETITION OBLIGATIONS TO CUSTOMERS AND TO CONTINUE OTHER CUSTOMER PROGRAMS

("First Day Motion To Honor Customer Obligations")

The debtors and debtors in possession (collectively, the "Debtors") in the above captioned chapter 11 cases (the "Chapter 11 Cases"), hereby file this motion (the "Customer Program Motion") for entry of bridge and final orders authorizing Debtors to honor certain prepetition obligations to customers and to continue other customer programs on a postpetition basis pursuant to 11 U.S.C. §§ 105(a), 363, 1107(a) and 1108. The proposed form of the bridge order ("Bridge Order") is attached hereto as Exhibit A. A proposed final order will be submitted in advance of the final hearing on this Customer Program Motion.

In support of this Customer Program Motion, the Debtors rely on the affidavits of J. George Mikelsons and James W. Hlavacek filed herewith in support of this Motion and the Debtors' other "first day motions" and may present additional evidence at the hearing on the Customer Program Motion.

JURISDICTION

1. On October 26, 2004 (the "Petition Date"), each of the Debtors filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Bankruptcy Court"), its respective voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. as amended (the "Bankruptcy Code") commencing these Chapter 11 Cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have, pursuant to a separate motion, moved this Court for an order authorizing the joint administration of the Chapter 11 Cases.

2. No trustee or examiner has been appointed, and no committee has yet been appointed or designated.

3. This Court has jurisdiction to consider this Customer Program Motion 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), (M) and (O). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are §§ 105(a), 363, 1107(a) and 1108 Bankruptcy Code.

5. This Customer Program Motion is a "First Day Motion" as defined and allowed under section 4.6 of General Order No. 03-10 entered September 18, 2003 by the United States Bankruptcy Court for the Southern District of Indiana (the "Chapter 11 Procedures Order").

6. Pursuant to the Chapter 11 Procedures Order, the Court shall schedule and conduct a hearing on the First Day Motion within two business days (if possible) of the filing of a First Day Motion.

BACKGROUND

7. In 1973, J. George Mikelsons founded the precursor to ATA Airlines, Inc. ("ATA"), in Indianapolis, Indiana. Today, ATA Holdings Corp. ("ATAH") and its wholly-owned direct and indirect subsidiaries operate the tenth largest passenger airline in the United States. Operating a fleet consisting of eighty-four aircraft, ATA is a leading provider of low-cost scheduled airline services, is one of the largest commercial charter airline in the United States and is one of the largest providers of passenger airline charter services to the U.S. military. ATA currently provides scheduled service primarily from its gateway cities of Chicago-Midway and Indianapolis to popular vacation and business destinations such as Phoenix, Las Vegas, Florida,

California, Mexico and the Caribbean, as well as to New York's LaGuardia Airport, Philadelphia, Denver, Dallas-Ft. Worth, Washington, D.C., Boston, Seattle, Minneapolis-St. Paul, Newark, Charlotte and Pittsburgh. ATA also provides transpacific service between the Western United States and Hawaii. ATAH's wholly-owned subsidiary, Chicago Express Airlines, Inc. ("Chicago Express") provides commuter passenger scheduled service between Chicago-Midway and the cities of Indianapolis, Dayton, Des Moines, Flint, Grand Rapids, Madison, Milwaukee, Moline, Toledo, South Bend and Fort Wayne. ATAH's other subsidiaries are Ambassadair Travel Club, Inc., ATA Leisure Corp., Amber Travel, Inc., American Trans Air ExecuJet, Inc. and ATA Cargo, Inc. As of the Petition Date, the Debtors employed a staff of approximately 7,324 full- and part-time personnel, of whom approximately 3,550 were employed under collective bargaining agreements.

8. The geopolitical impact of the conflict in the Middle East and generally weak economic conditions of the past several years have adversely affected the airline industry as a whole, and have caused many airlines, including ATA and Chicago Express, to suffer massive financial losses since 2001. This trend continues in 2004, as the industry and ATA experience a very weak revenue environment and substantially increased fuel costs. These conditions have caused several air carriers, including United Airlines, American Airlines, Delta Airlines, Hawaiian Airlines, and US Airways, to seek bankruptcy protection or warn that bankruptcy may be in the offing.

9. ATA faces a competitive pricing environment that includes extraordinary fare discounting by several airlines in many of the scheduled service markets that ATA serves. At the same time, jet aviation fuel prices have escalated far beyond any price per gallon previously experienced on a sustained basis by the air carrier industry and far beyond the

increases expected by ATA. In addition, the highly destructive hurricanes and tropical storms which hit Florida and the Southern coast of the United States in the third quarter of 2004 had a very severe and continuing impact on ATA's revenues as a significant portion of the scheduled service routes of ATA serve these hard-hit areas of the United States.

10. A significant portion of ATA's current leases of aircraft were negotiated with higher payments in early years in order to reduce total rental costs over the related lease terms. These large cash payments made in 2003 and 2004 resulted in substantial use of ATA's cash.

11. ATA has taken many measures to prevent the filing of the Chapter 11 Cases, including working with its three major lessors to restructure its lease obligations. ATA also has sought to reduce costs through, among other measures, negotiating labor cost reductions under its collective bargaining agreements, implementing pay reductions for its non-union employees and substantially reducing the number of employees. In addition to cutting costs, ATAH has conducted an exhaustive search for buyers for certain of ATAH's significant assets, such as the Chicago Midway operations of ATA and Chicago Express, as well as for ATA as a whole. Despite its cost-cutting efforts, Debtors will realize an overwhelming net loss for the full year of 2004. Based on current operating assumptions and market conditions, absent the initiation of these Chapter 11 Cases, ATAH projects that it would not be able to meet its cash obligations within the next 60 days, and perhaps sooner.

12. Coincident with the filing of the Chapter 11 Cases, the Debtors will ask the Court to approve a sale of "Midway Assets" to AirTran Airways, Inc. for $87.5 million or to another buyer making a higher or better offer for such assets (the "AirTran Transaction"). Debtors are discussing the procurement of adequate DIP financing from third-party lenders.

Debtors intend to procure such DIP financing during the period in which the ATSB Lending Parties consent to Debtors' use of the cash collateral to support Debtors' obligations. The combination of the AirTran Transaction and a DIP Lending Facility will provide liquidity and business arrangements that will allow ATA and Chicago Express to continue normal airline operations for the foreseeable future and provide a springboard for a successful reorganization of ATAH and the affiliated Debtors.

RELIEF REQUESTED

13. By this Customer Program Motion, the Debtors request entry of an order pursuant to sections 105(a), 363, 1107(a), and 1108 of the Bankruptcy Code authorizing, but not directing, the Debtors, in their business judgment, to (a) perform and honor such of their prepetition obligations related to the Customer Programs (as defined below) as they see fit, and (b) continue, renew, replace, implement new, and/or terminate those Customer Programs as they see fit, in the ordinary course of business, without further application to the Court.

14. The Debtors' core business is selling and honoring tickets for reliable air transportation services to the public. Prior to the Petition Date and in the ordinary course of their businesses, the Debtors engaged in certain practices to conduct their businesses and develop and sustain positive reputations with their customers and in the marketplace for their services. The uninterrupted continuation of these practices is critical for the Debtors to avert any disruption to their core businesses. Such practices include, among others, ticket sales, transporting cargo, transporting baggage, frequent flyer programs, travel membership accounts, barter arrangements and certain travel-related co-branded credit card agreements (collectively, the "Customer Programs"). Several of the Customer Programs are described in greater detail below. The common goals of the Customer Programs have been to meet competitive pressures, ensure

customer satisfaction, and generate goodwill for the Debtors, thereby retaining current customers, attracting new ones, and ultimately enhancing net revenue.

15. In essence, the Debtors desire to continue during the postpetition period those Customer Programs that they believe were beneficial to their business and cost-effective during the prepetition period. The Debtors believe that such relief is necessary to preserve, during the postpetition period, their critical business relationships and goodwill among the flying public for the benefit of their estates and their creditors. The total operational and administrative cost to the Debtors in connection with the implementation and maintenance of the Customer Programs is minor relative to the net revenue that they generate for the Debtors.

16. The Debtors believe that most, if not all, of the obligations with regard to the Customer Programs discussed herein will arise postpetition and, therefore, will be entitled to administrative expense priority under section 503 of the Bankruptcy Code. Nevertheless, because certain of the Customer Programs may give rise to postpetition obligations from prepetition practices, out of an abundance of caution, the Debtors are seeking authority to satisfy such obligations in the ordinary course. For the reasons set forth herein, it is in the best interest of the Debtors, their estates, and their creditors to continue the Customer Programs as they see fit, in the ordinary course of business.

17. The Debtors also request that all applicable banks and other financial institutions be authorized to receive, process, honor and pay any and all checks drawn on the Debtors' accounts on account of the Customer Programs, whether such checks were presented prior to or after the Petition Date.

THE DEBTORS' CUSTOMER PROGRAMS GENERALLY

18. Airlines routinely offer travel to the same locations as their competitors. This competition makes retaining loyal customers and attracting new customers critical. Without

loyal customers, the Debtors' businesses would inevitably fail in a short period of time. It is integral, therefore, that the Debtors maintain their current customers and position themselves to attract new ones. The Customer Programs accomplish this result.

19. The Customer Programs have proven to be successful business strategies in the past and are directly responsible for having generated valuable goodwill, repeat business, and net revenue increases. The Debtors believe that maintaining these benefits throughout the Chapter 11 Cases is essential to the continued vitality and going concern value of their businesses. The Debtors believe, however, that unless the Debtors are authorized to take the measures requested by this Customer Program Motion, the cloud cast by the Chapter 11 Cases could negatively influence customers' attitudes and behavior towards their services. In particular, the Debtors' goodwill and ongoing business relationships may erode if their customers perceive that the Debtors are unable or unwilling to fulfill the prepetition promises they have made through the Customer Programs. The same would be true if customers perceived that the Debtors will no longer be offering the full package of services or quality of services that they demand. The Debtors, therefore, request the authority to honor such obligations related to the Customer Programs.

20. The Customer Programs generally consist of six separate categories: (a) Ticket Holder Claims; (b) Cargo Revenue; (c) Frequent Flyer Programs/Customer Loyalty Programs; (d) Member Travel Accounts ;(e) Co-Branded Credit Card Agreements; and (f) Barter Arrangements. The following are general descriptions and examples of some (but not all) of the Customer Programs offered by the Debtors.

A. Ticket Holder Claims

21. The Debtors seek the authority, but not the direction, to honor tickets that were purchased prepetition but have not yet been used (collectively, the "Prepetition Tickets"),[1] by providing the agreed upon air transportation or other related services.

22. Customer confidence and goodwill will be harmed severely if the Debtors are prevented from honoring the Prepetition Tickets. Moreover, the holders of the Prepetition Tickets of the Debtors (the "Ticket Holders") will likely have priority claims under section 507(a)(6) of the Bankruptcy Code, which generally entitles individuals to priority claims for deposits in connection with the purchase of services. 11 U.S.C. §507(a)(6). Such priority claims would have to be paid in full in any event before the unsecured creditors could receive any distribution in these cases. Thus, to the extent individual claims do not exceed the statutory limit of $2,225.00, honoring such claims will have no detrimental effect upon the Debtors' general unsecured creditors. In fact, honoring such claims now will benefit all general unsecured creditors by preserving the going concern value of the Debtors' businesses.

23. Similarly, the Debtors must be able to honor any and all prepetition transportation orders, travel vouchers, travel certificates, miscellaneous change orders, Universal Air Travel Plan credits, Captain's Drafts[2] and other authorizations for travel and other services. These authorizations are, from time to time, issued by the Debtors as: (a) compensation for late, canceled or over-booked flights; (b) claims associated with lost or damaged bags; (c) part of the Debtors' promotional programs; and/or (d) part of the Debtors' regulatory requirements.

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[1] By this Motion, Prepetition Tickets shall include honoring tickets, contracts, and/or agreements relating to customer baggage.

[2] As described in greater detail in the Cash Management Motion, "Captain's Drafts" are negotiable instruments which may be issued to customers as compensation where a customer was denied board or for a ticket refund. Though Captain's Drafts are also issued to vendors for payment of services or supplies, by this Customer Program Motion, Debtors seek only to honor the prepetition Captain's Drafts issued to its customers.

24. The Debtors also request the authority, but not the direction, to issue refunds on tickets purchased, or otherwise contracted for, prior to the Petition Date. To remain competitive with other carriers and to retain the goodwill and confidence of their customers and travel agents, it is extremely important that the Debtors continue to issue refunds with respect to those tickets (or portions of those tickets) originally sold as refundable (collectively, the "Refundable Tickets").[3] From January 2004 to December 2004, the Debtors refunded approximately $13,516,741.43 or 1.9% of the transactions volume. The average refund value per refund transaction was $123.52. In addition, the Debtors also seek authority to continue to exchange those tickets originally sold as non-refundable and to issue exchanges and refunds in accordance with their current policies and procedures.

25. Maintaining the refundability of tickets purchased prepetition will demonstrate management's confidence in the Debtors and enhance the public's confidence in the Debtors' continued reliability and operations.[4] In that regard, the Debtors believe that any extra refunds occasioned by the Chapter 11 Cases will be more than offset by the revenue from sales made because the ticket refund policy is in place. Moreover, most of the ticket refunds requested may be accorded priority in any event under section 507(a)(6) of the Bankruptcy Code.

26. To the extent the Debtors are unable to continue honoring the claims of Ticket Holders, the Debtors risk alienating their customers and are likely encouraging customers to select competing airlines, all to the detriment of the Debtors, their estates, and their creditors. For the foregoing reasons, the Debtors seek the authority, but not the direction, to continue

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[3] Not all prepetition tickets issued by the Debtors are refundable. Moreover, non-refundable tickets may be exchangeable only upon the payment of certain fees.

[4] In addition, a customer who purchases services from the Debtors via credit card, which account for the vast majority of the Debtors' sales, may be able to obtain a refund from the credit card issuer who may, in turn, be able to assert a chargeback against the Debtors. Consequently, the costs relating to the refundability of tickets

honoring their obligations related to the Customer Programs involving Prepetition Ticket Sales and Refundable Tickets (collectively, the "Ticket Holder Claims").

B. Cargo Revenue

27. In addition to transporting passengers to destinations, debtor ATA Cargo, Inc. also transports certain goods and packages on behalf of third parties (the "Cargo Revenue"). By this Motion, the Debtors also seek the authority, but not the direction, to honor the transportation and services related to the Cargo Revenue that were purchased and/or contracted for prepetition but have not yet been performed (the "Prepetition Cargo Revenue").

28. The Cargo Revenue is an integral part of the Debtors' business. The Debtors generate revenue from transporting cargo for its customers. For the year preceding the Petition Date, cargo generated revenue of approximately $11,894,00 for the Debtors. Similar to the Prepetition Tickets, goodwill and confidence will be severely harmed if the Debtors are unable to honor their transportation and service obligations to their cargo customers.[5] If the Debtors are unable to perform services relating to the Cargo Revenue, the Debtors risk alienating a proven constituency of cargo customers and potentially encouraging these customers to select competing air carriers, all to the detriment of the Debtors, their estates, and their creditors. For the foregoing reasons, the Debtors seek the authority, but not the direction, to continue honoring their obligations related to the Prepetition Cargo Revenue claims.

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may have to be borne by the Debtors in any event, and the relief requested herein will avoid the loss of customer loyalty and patronage.

[5] In addition, many of these customers for whom the Debtors transport cargo may have priority claims pursuant to 11 U.S.C. §507(a)(6).

C. ATA Travel Awards Program

29. The ATA Travel Awards Program ("ATA Travel Awards") is a frequent flyer program maintained by debtor ATA Airlines, Inc. ("ATA").[6] Frequent flier programs, like ATA Travel Awards, have been adopted by most major air carriers and are considered an important marketing tool for developing brand loyalty among travelers and accumulating demographic data pertaining to business travelers. Frequent flier programs are essential to building and maintaining a loyal customer base, especially among business travelers, who generally pay higher fares than leisure travelers.

30. Honoring ATA Travel Awards obligations does not involve appreciable net cash expense to the Debtors' estates. Rather, the ATA Travel Awards participants who redeem mileage credit receive only air transportation from ATA on flights that would operate in any event, or other related services from certain other participants in ATA Travel Awards. ATA uses the incremental cost method to account for liabilities associated with ATA Travel Awards. Estimated future travel awards are valued at the estimated average incremental cost of carrying one additional passenger.

31. ATA has approximately 820,000 active ATA Travel Awards participants who had accumulated approximately 52,856 in potential ATA Travel Awards points ("Points") in the aggregate.[7] ATA's customers redeemed approximately 35,000 Points for free travel for the 12 month period that ended September 2004, which represents less than 1% of the ATA's revenue passenger miles during this time period.

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[6] Though the ATA Travel Awards program is maintained by ATA, purchases of tickets on www.ata.com for travel on Chicago Express flights and for travel on any other air carrier which is an affiliate of ATA may qualify to earn ATA Travel Awards points.

[7] Points are redeemed by ATA's customers for certain awards. For example, 1000 Points can be redeemed for one roundtrip business class flight.

32. Customers who participate in ATA Travel Awards and who have accumulated Points are some of ATA's best and most loyal customers. If the Points, which represent the customers' loyalty, are not honored, ATA risks alienating the customers who are generally business travelers, fly often, and are less price sensitive than infrequent leisure travelers. ATA seeks the authority, but not the direction, to provide air transportation postpetition to travelers who attempt to redeem miles earned prepetition in the ATA Travel Awards program. ATA simply cannot compete successfully against other major airlines unless they are able to maintain the integrity of ATA Travel Awards. Failure to honor the obligations of ATA Travel Awards would severely harm ATA's competitive position and its reorganization efforts.

D. Ambassadair Signature Trips

33. Ambassadair Signature Trips (the "Signature Trips Program") is an awards program maintained by debtor Ambassadair Travel Club, Inc ("Ambassadair"). Signature Trips Program rewards Ambassadair Members ("Members") for traveling to Ambassadair's thirty "signature" destinations. For example, if a Member travels to five signature destinations, the member will receive a travel voucher (the "Voucher") for $200.00 on a future Ambassadair trip. As the Member travels to more signature destinations, the member can earn additional dollars in travel vouchers. As of the Petition Date, the total amount of dollars earned and not yet used in the Signature Trips Program was approximately $400.00.

34. Ambassadair's Members travel with Ambassadair, on average, twice a year. Thus, the Signature Trips Program, which awards Members who travel to five signature destinations, rewards some of Ambassadair's best and most loyal customers. If the Vouchers, which represent the customers' loyalty, are not honored, Ambassadair risks alienating some of its

most valuable Members. Ambassadair seeks the authority, but not the direction, to honor the Vouchers earned prepetition to members seeking to redeem the Vouchers postpetition.

E. Member Travel Accounts

35. Members include individuals and large corporations. Each Member is designated a "travel account" (the "Travel Accounts"). For promotional or customer service purposes, Ambassadair occasionally deposits travel dollars ("Travel Dollars") into a Member's Travel Account. The Travel Dollars can be used for travel through Ambassadair or ATA. Similarly, through trade agreements, many of Ambassadair's corporate Members earn travel dollars through trade agreements. In addition, cash can be deposited directly into a Member's Travel Account, either as a gift, or by the individual Member. In the case of direct cash deposits, refunds, or credit card deposits or refunds, Members may request a cash refund in the amount of their Travel Account balance.

36. Ambassadair keeps detailed records of each Travel Account. As of the Petition Date, the Travel Accounts, in the aggregate, held approximately 1.5 million dollars worth of Travel Dollars. Of this total, approximately $500,000.00 of the Travel Dollars reflect direct cash deposits or credit card refunds. Approximately 1 million dollars represents trade credits.

37. For the Travel Dollars accumulated through cash deposits or refunds or credit card deposits or refunds, Ambassadair holds those funds "in trust" for its Members. However, the Travel Dollars are not segregated from Ambassadair or ATA's other bank accounts. It would be impossible to trace the Travel Dollars through the Debtors' cash management system.

38. By this Customer Program Motion, Ambassadair and ATA seek the authority to honor its obligation to redeem the Travel Dollars for travel on Ambassadair or ATA.

Where Travel Dollars were accumulated by cash deposit or refund, the Debtors seek authority to, upon request, return to its Members the balances of their respective Travel Accounts.

F. Co-Branded Credit Card Agreements[8]

39. In connection with the ATA Travel Awards program, ATA offers co-branded credit cards pursuant to a Co-Branded Credit Card Agreement between U.S. National Association ND ("U.S. Bank") and ATA, dated March 31, 2004 (the "U.S. Bank Agreement"). Under the U.S. Bank Agreement, ATA grants to U.S. Bank a non-exclusive, non-transferable limited license to make certain, limited use of ATA's logos, trademarks, and service marks (collectively, the "ATA Trademarks"). U.S. Bank, in turn, agrees to offer Visa credit card products bearing the ATA Trademarks as well as U.S. Bank's marks (the "Co-Branded Cards"). Holders of the Co-Branded Cards ("ATA Cardholders") are entitled to earn Points at set formulas established by the U.S. Bank Agreement.

40. Pursuant to the U.S. Bank Agreement, U.S. Bank (i) pays to ATA a certain amount for each new qualifying account opened and used pursuant to the terms of the U.S. Bank Agreement; (ii) pays to ATA a "Usage Fee" for every dollar of all purchases made with the Co-Branded Card; and (iii) purchases Points at an agreed-upon rate. The U.S. Bank Agreement establishes certain "Minimum Annual Revenue Payments."

41. In addition to the U.S. Bank Agreement, pursuant to an Agreement (the "National City Agreement") dated December 28, 1987, among First of America Bank-Indianapolis ("First of America"), ATA and Ambassadair. National City Bank ("National City") thereafter bought out First of America. By the Agreement, Members are eligible to receive a

[8] Concurrently with this Customer Program Motion, Debtors are filing their Motion On Expedited Basis To Assume Certain Credit Card Agreements And Utilize Particular Notice Procedures, wherein Debtors seek the Court's authority to assume certain credit card agreements, including the U.S. Bank Agreement and the National City Agreement.

Visa credit card bearing the name and logo of ATA, Ambassadair, and Visa (the "Ambassadair Co-Branded Cards").

42. National City pays to Ambassadair, on a monthly basis, one eighth of one percent[9] of the total sales volume generated by usage of the Ambassadair Co-Branded Cards as well as a set fee upon the establishment of each Ambassadair Co-Branded Card account and a set fee for each subsequent year the Ambassadair Co-Branded Card account is maintained. In addition, cardholders earn bonus points, redeemable for travel on Ambassadair or ATA for using the Ambassadair Co-Branded Card. National City purchases the bonus points, resulting in approximately 2 million dollars of revenue to Ambassadair and ATA each year.[10]

43. To the extent that Debtors are not authorized to honor their obligations under the U.S. Bank Agreement and the National City Agreement, the Debtors risk losing a proven customer base. For the foregoing reasons, the Debtors seek the authority, but not the direction, to continue their participation under the U.S. Bank Agreement and the National City Agreement and honor any prepetition obligations thereunder.[11]

G. Barter Arrangements

44. The Debtors maintain barter arrangements with a number of organizations that provide varied services to support the Debtors' operations in return for the Debtors providing air transportation. The range of services provided to the Debtors includes exclusive sponsorship of corporate and sporting events, advertising, sales promotion, public relations, and other professional consulting services (collectively, the "Barter Arrangements").

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[9] Approximately .125%. Ambassadair receives approximately $250,000 per year as a result of usage of the Ambassadair Co-Branded Card.

[10] Approximately 55% of this revenue is earned for bonus points redeemed for ATA travel, and approximately 45% of the revenue is earned for bonus points redeemed for Ambassadair travel.

[11] Debtors reserve their rights under section 365 of the Bankruptcy Code and any other similar rights under the Bankruptcy Code with respect to the U.S. Bank Agreement and the National City Agreement.

45. The Debtors seek the authority, but not the direction, to continue to honor these Barter Arrangements. The Barter Arrangements are an important component of the Debtors' promotional strategy. Conversely, the Debtors believe that the amount of unredeemed air transportation obligations related to Barter Arrangements as of the Petition Date is not substantial. Therefore, honoring the Barter Arrangements will enhance the value of the estates at little cost.

46. For the foregoing reasons, the Debtors request the authority, but not the direction, to honor their prepetition obligations related to the Customer Programs involving Barter Arrangements.

APPLICABLE AUTHORITY

47. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor-in-possession to continue to operate its business. Section 363(c) of the Bankruptcy Code authorizes a debtor-in-possession operating its business pursuant to section 1108 of the Bankruptcy Code to use property of the estate in the ordinary course of business without notice or hearing. The Debtors submit that continuing, renewing, replacing, initiating, and/or terminating their Customer Programs, in the ordinary course of business, is permitted by sections 363(c), 1107(a), and 1108 of the Bankruptcy Code, without further application to the Court. Notwithstanding the foregoing, out of an abundance of caution, the Debtors are seeking the Court's authorization, but not direction, to continue, renew, replace, initiate, and/or terminate their Customer Programs.

48. As described above, the loyalty and continued patronage of the Debtors' customers is vital to the Debtors' financial health and reorganization prospects, particularly in the Debtors' industry. Other courts, considering similar customer programs in the airline industry, have granted relief similar to that requested herein. See In re US Airways Group, Inc., Case No. 04-13819 (Bankr. E.D. Va. Sept. 14, 2004) (Docket No. 71); In re UAL Corp., et al,

Case No. 02-18191 (Bankr. N.D. Ill. Dec. 11, 2002) (Docket No. 245); In re US Airways Group, Inc., Case No. 02-83984 (Bankr. E.D. Va. Aug. 12, 2002) (Docket No. 66).

49. In addition, to the extent Debtors' obligations under the Customer Programs are considered prepetition obligations, Debtors should be authorized to honor and continue the Customer Programs pursuant to sections 363(b)(1) of the Bankruptcy Code. The Seventh Circuit Court of Appeals recently became the first federal appellate court to articulate the circumstances under which business debtors may be authorized to pay the prepetition claims of certain creditors. See In re Kmart Corp., 359 F.3d 866 (7th Cir. 2004). In the Kmart decision, the Seventh Circuit acknowledged the practical business utility of allowing corporate debtors limited authority to make such payments if the circumstances warrant.

50. The Court identified Section 363(b)(1) of the Code as the source of authority for such payments. 359 F.3d at 872-73. Section 363(b)(1) of the Code authorizes a bankruptcy court, after notice and a hearing, to authorize a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." The Court reasoned that "satisfaction of a prepetition debt in order to keep 'critical' supplies [customers] flowing is a use of property other than in the ordinary course of administering an estate in bankruptcy," and thus is within the literal ambit of the statute's language. Id. at 872. The Court cautioned, however, that "it is prudent to read, and use, § 363(b)(1) to do the least damage possible to the priorities established by contract and by other parts of the Bankruptcy Code." Id.

51. To that end, the Court articulated a dual-pronged requirement that business debtors must satisfy as a condition to honoring prepetition obligations. First, debtors must prove that the creditors whose claims are to be paid will cease dealing with the debtor if not immediately paid for prepetition goods and services. Second, debtors must prove that "the

business will gain enough from continued transactions with the favored [creditors] to provide some residual benefit to the remaining . . . creditors, or at least leave them no worse off." Id. at 868.

52. Debtors obligations under the Customer Programs meet this requirement. Here, the continued loyalty of Debtors' customers is critical to their continued operations and the success of the Chapter 11 Cases. If the Debtors are prohibited from honoring and maintaining the Customer Programs consistent not only with their past business practices, but with the common business practice of all of Debtors' competitors, then customers' lost confidence in the Debtors will damage the Debtors' business to an extent that far exceeds the cost associated with honoring and continuing such practices. The Debtors believe some current and future customers will cease dealing with the Debtors if the Debtors do not honor their Customer Programs. Debtors cannot afford to lose their loyal customer base at this critical juncture. The requested order will protect the Debtors' goodwill and going concern value during this restructuring process and enhance the Debtors' ability to generate revenue, thereby benefiting Debtors' other creditors.

53. Courts have granted similar relief in other cases, and some of these decisions were rendered after the Seventh Circuit's decision in Kmart. See, e.g., In re Paul Harris Stores, Inc., Case No. 00-12467 (BHL) (Bankr. S.D. Ind. October 16, 2000); In re Jays Foods, L.L.C., Case No. 04-08681 (Bankr. N.D. Ill., March 5, 2004); In re FV Steel and Wire Company, et al., Case No. 04-22421 (SVK) (Bankr. E.D. Wis., Feb. 27, 2004); In re National Equipment Services., Inc., Case No. 03-27626 (PSH) (Bankr. N.D. Ill. July 2, 2003); In re Eagle Food Centers, Inc., Case No. 03-15299 (PSH) (Bankr. N.D. Ill. April 8, 2003); In re UAL Corp., Case No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002); In re Special Metals Corporation, et

al., Case Nos. 02-10335 to 02-10338 (Bankr. E.D. Ky. Mar. 29, 2002); In re Kmart Corp., Case No. 02-02474 (SPS) (Bankr. N.D. Ill. Jan. 25, 2002); In re Hayes Lemmerz International, Inc., Case No. 01-11490 (MFW) (Bankr. D. Del. Dec. 27, 2001); In re Montgomery Ward, LLC, Case No. 00-4667 (PJW) (Bankr. D. Del. Dec. 29, 2000); In re Einstein/Noah Bagel Corp., Case No. 00-04447 (CGC), (Bankr. Ariz. April 28, 2000); In re Service Merchandise Company, Inc., Case No. 399-02649 (Paine) (Bankr. M.D. Tenn. March 30, 1999); In re Long John Silver's Restaurants, Inc., et al., Case No. 98-1164 (PJW) (Bankr. D. Del. June 2, 1998); In re Levitz Furniture Incorporated, Case No. 97-1942 (JJF) (Bankr. D. Del. Sept. 5, 1997).

54. Accordingly, the Debtors request that they be authorized, but not directed, in their business judgment, to (a) perform their obligations under the Customer Programs as they deem appropriate, and (b) continue, renew, replace, implement new, and/or terminate such Customer Programs as they deem appropriate in the ordinary course of business, without further application to the Court.

55. Finally, the Debtors do not have an equitable interest in the Travel Dollars accumulated by cash deposit or refund. Section 541(d) of the Bankruptcy Code provides, in relevant part, as follows: "Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (a)(2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." 11 U.S.C. § 541(d). Thus, the Debtors request the authority to honor or refund the Travel Dollars accumulated by cash deposit or refund in their full amounts.

56. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to

dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

NOTICE

57. The Debtors will provide, on the Petition Date, notice of this Customer Program Motion and the First Day Hearing by telephone, telecopy, electronic mail, overnight delivery service, hand delivery or by regular mail, to (i) the office of the United States Trustee for the Southern District of Indiana; (ii) Securities and Exchange Commission; (iii) Internal Revenue Service; (iv) the Air Transportation Stabilization Board; (v) the Debtors' thirty (30) largest general unsecured creditors (to the extent practicable); (vi) all unions representing employees of the Debtors; (vii) all secured Creditors; (viii) any indenture trustees; and (ix) any party who has filed an appearance and served same on the Debtors prior to service (the "Initial Notice Parties").

COORDINATION WITH UNITED STATES TRUSTEE

58. Prior to the Petition Date, Debtors' counsel conferred with the United States Trustee concerning the intent of this Customer Program Motion.

NO PRIOR REQUEST

59. No previous request for the relief requested herein has been made to this Court in these Chapter 11 Cases.

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) authorizing the Debtors to continue their Customer Programs on a postpetition basis and honor

prepetition obligations on account of such Customer Programs, (ii) granting such other and further relief as is just and proper.

Respectfully Submitted,

BAKER & DANIELS

By: /s/Terry E. Hall

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served this 26th day of October, 2004, by expedited service (facsimile, e-mail, and/or overnight delivery) on the attached list.

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