

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

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

<p><b>FIRST DAY MOTION FOR INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL AND MOTION FOR FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363(c)(2) AND FED. R. BANKR. P. 4001(B)</b></p>	<p>Hearing: April 4, 2008 10:00 a.m. EDT</p> <p>Location: U.S. Courthouse 121 W. Spring Street Room 103 New Albany, IN 47150</p> <p>Telephonic Participation Dial-In: 1-800-446-2106</p> <p>Passcode: 7875464#</p>
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**FIRST DAY MOTION FOR  
INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL AND  
MOTION FOR FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL  
PURSUANT TO 11 U.S.C. § 363(c)(2) AND FED. R. BANKR. P. 4001(B)**

ATA Airlines, Inc. (the “Debtor” or “ATA”), files this its *First Day Motion For Interim Order Authorizing Use of Cash Collateral and Motion for Final Order Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c)(2)(B) and Fed. R. Bankr. P. 4001(b)* (the “Motion”). In support of this Motion, the Debtor submits the *Declaration of Steven S. Turoff in Support of First-Day Pleadings* (the “First Day Declaration”), which includes a Twenty-Six (26) Week Cash Flow Forecast (the “26 Week Forecast”) attached thereto as Exhibit A. As indicated in the 26 Week Forecast, the Debtor projects to use Cash Collateral, as defined herein, in the total amount of \$24.935 million. As indicated in the 26 Week Forecast, during the period of the requested Interim

Order, the Debtor seeks to use approximately \$2.1 million of Cash Collateral. The Secured Lenders (as defined below) have consented to the use of only \$2.1 million of Cash Collateral for the period April 2, 2008 through April 25, 2008 as set forth in the Budget (as defined below). The proposed interim order (the “Interim Order”) is attached hereto as Exhibit A. A proposed final order (the “Final Order”) will be submitted in advance of the final hearing on this Motion.

**The proposed form of Interim Order includes the following provisions: (i) a provision granting a security interest in post-petition assets in which the Secured Lenders did not have a pre-petition security interest (see ¶ 4(a)); and (ii) a provision that binds the Debtor with respect to the validity, perfection or amount of the Secured Lenders’ liens and debt provided that other parties in interest shall have the right to review such matters during the 90 days after the entry of the order appointing a statutory committee of unsecured creditors (see ¶ D).**

In further support of this Motion, the Debtor represents as follows:

**I. Jurisdiction**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On April 2, 2008 (the Petition Date”), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the U. S. Code (11 U.S.C. § 101, *et seq.*, as amended) (the “Bankruptcy Code”). The Debtor continues to manage its business and assets as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. No trustee or examiner has been appointed in this Chapter 11 case, and no unsecured creditors’ committee has been appointed or designated.

4. The statutory bases for relief sought herein are Sections 105(a), 361, 363(c)(2) and

502(b) of the Bankruptcy Code, Bankruptcy Rules 4001(b), (d) and 9014, and Local Bankruptcy Rules of the Southern District of Indiana (the “Local Rules”) B-4001-2 and 9013-3. The Motion is a “First Day Motion” in regards to the interim relief requested pursuant to Local Rule 9013-3(f)(2).

## **II. Background**

5. On October 26, 2004, ATA, together with its former parent, ATA Holdings Corp., and certain other affiliated entities, filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Indiana. These cases were administratively consolidated under case number 04-19866 (the “First Bankruptcy Case”). ATA and certain affiliates emerged from bankruptcy protection on February 28, 2006, with a new capital structure. In general, a plan of reorganization was confirmed in the First Bankruptcy Case pursuant to which ATA and certain subsidiaries were substantively consolidated into the current reorganized ATA Airlines, Inc. ATA Holdings Corp. was not included in the substantive consolidation, and was administratively dissolved. New ATA Holdings, Inc. was formed and later became Global Aero Logistics, Inc. (“Global Aero”), the ultimate and current corporate parent of ATA.

6. Currently, the Debtor is a wholly owned subsidiary of New ATA Acquisition, Inc. (“ATA Acquisition”). ATA Acquisition is a wholly owned subsidiary of New ATA Investment, Inc. (“ATA Investment”) and ATA Investment is a wholly owned subsidiary of Global Aero. The remaining ATA subsidiaries that were not substantively consolidated in the First Bankruptcy Case were sold or otherwise liquidated. ATA Acquisition also owns another holding company subsidiary, World Air Holdings, Inc. (“World Air Holdings”), which it acquired through merger on August 14, 2007. World Air Holdings owns and operates two other airlines, North American Airlines and

World Airways. None of the World Air Holdings entities are involved in this case.

7. Pursuant to the Term Loan Agreement dated as of August 14, 2007 (as amended, supplemented or otherwise modified prior to the Petition Date, the “Term Loan Agreement”), among New ATA Acquisition Inc., as borrower (the “Borrower”), the lenders party thereto (collectively, the “Secured Lenders”, with each being a “Secured Lender”) and JPMorgan Chase Bank, N.A., as administrative agent for the Secured Lenders (in such capacity, the “Administrative Agent”), the Secured Lenders made loans and other financial accommodations to or for the benefit of the Borrower, the Debtor (a wholly-owned subsidiary of the Borrower) and the Borrower’s other subsidiaries in an amount in excess of \$365,000,000 (inclusive of accrued but unpaid interest) as of the Petition Date (the “Financing”). Pursuant to a Guarantee and Collateral Agreement executed in connection with the Term Loan Agreement and dated as of August 14, 2007 (as amended, supplemented or otherwise modified prior to the Petition Date, the “Guarantee and Collateral Agreement”; and together with all collateral (including bank account control agreements) and ancillary documentation executed in connection therewith, collectively, the “Prepetition Loan Documents”)<sup>1</sup>, the Debtor guaranteed the Borrower’s obligations under the Term Loan Agreement and granted a security interest in substantially all of its personal property as collateral security for its obligations under the Guarantee and Collateral Agreement (all such obligations of the Debtor, the “Prepetition Obligations”).

8. Pursuant to the Prepetition Loan Documents, the Debtor granted to the Administrative Agent and the Secured Lenders liens and security interests to secure the Prepetition Obligations, upon and in certain of the Debtor’s assets and property, including without limitation,<sup>2</sup>

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1 Unless otherwise defined herein, each capitalized term used herein shall have the meaning assigned thereto in the Guarantee and Collateral Agreement.

2 Each capitalized term used in this sentence is as defined in the Guarantee and Collateral Agreement.

certain owned aircraft, all Accounts, Chattel Paper, Contracts, Deposit Accounts, Securities Accounts, Commodity Accounts, Documents, Equipment, Fixtures, General Intangibles, Instruments, Intellectual Property, Inventory, Investment Property, Letter of Credit Rights, and all other tangible and intangible personal property and the proceeds thereof (including the setoff rights described in the Loan Documents and arising by operation of law, but excluding all “Excluded Property” as defined in the Guarantee and Collateral Agreement) (collectively the “Prepetition Collateral”). The Debtor’s cash, including without limitation, all cash and other amounts on deposit or maintained in any account or accounts by the Debtor, but excluding all “Excluded Cash” and “Excluded Accounts” as each of such terms is defined in the Guarantee and Collateral Agreement, and any amounts generated by the collection of accounts receivable, sale of inventory or other disposition of the Prepetition Collateral constitute proceeds of the Prepetition Collateral and, therefore, are cash collateral of the Secured Lenders within the meaning of Section 363(a) of the Bankruptcy Code (the “Cash Collateral”).

9. In connection with the Financing, MatlinPatterson Global Opportunities Partners II, L.P. and certain of its affiliates (“MatlinPatterson”) agreed to extinguish approximately \$54.3 million in outstanding indebtedness owed by ATA to MatlinPatterson in respect of borrowings under a \$24.2 million term loan and a \$28 million bridge loan (the “MP Loans”) in exchange for Series A Preferred Stock issued by Global Aero. The MP Loans arose in connection with MatlinPatterson’s investment in ATA pursuant to ATA’s exit from the First Bankruptcy Case. In addition to extinguishing the outstanding indebtedness under the MP Loans, MatlinPatterson also invested significant cash in Global Aero as part of the Financing.

10. As a result, the proceeds from, or exchanged for securities issued in, the Financing were used to repay or extinguish \$135.9 million in previously outstanding indebtedness, consisting

of (i) the exchange for Series A preferred stock of \$54.3 million (including accrued interest) owed to MatlinPatterson in respect of borrowings under the MP Loans, and (ii) the repayment of \$81.6 million owed to the Air Transportation Stabilization Board (“ATSB”), International Lease Finance Corporation, Citibank, Boeing Capital Corporation and GECAS (the “ATSB Loan”), all as restructured in the First Bankruptcy Case. ATA was a borrower under both the MP Loans and the ATSB Loan.

### **III. Relief Requested And Basis Therefor**

11. The proceeds of the Prepetition Collateral constitute Cash Collateral of the Secured Lenders pursuant to 11 U.S.C. §§ 363 and 552. The Debtor needs to use the cash collateral to continue limited business operations, effectuate an orderly wind down of its businesses and avoid immediate and irreparable harm.

12. The Debtor projects to use Cash Collateral in the total amount of \$23.585 million, as more fully set forth in the 26 Week Forecast. As indicated in the 26 Week Forecast and in the four week budget (the “Budget”) attached to the Interim Order, during the period of the proposed Interim Order (April 2, 2008 through April 25, 2008), the Debtor seeks to use approximately \$2.1 million of Cash Collateral to meet the necessary expenditures as outlined in the Budget. The Secured Lenders have consented to the use of only \$2.1 million of Cash Collateral for the period April 2, 2008 through April 25, 2008 as set forth in the Budget. While the Debtor is not able to accurately assess the value of all ATA’s assets at this time, the Debtor believes that the estimated liquidation value of the collateral owned by ATA that secures the obligations to the Secured Lenders is approximately \$50 million. The total debt owed to the Secured Lenders is approximately \$365 million, including accrued but unpaid interest. The use of Cash Collateral is necessary to the orderly wind down of the Debtor’s business operations, and the Debtor will be irreparably harmed if it cannot use Cash

Collateral as set forth in the Budget.

13. The Secured Lenders are entitled, pursuant to Sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral to the extent of the diminution in value thereof, including for the use of the Cash Collateral, the use, sale, lease or other diminution in value of the Prepetition Collateral other than the Cash Collateral, and the imposition of the automatic stay.

**A. The Use of Cash Collateral**

14. 11 U.S.C. § 363 regulates the use of cash collateral by debtors-in-possession. In relevant part, section 363 provides:

(c) (2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

(3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

11 U.S.C. § 363(c)(2),(3) and (4).

15. 11 U.S.C. §§ 102(1) and 363 provide that cash collateral may be used upon notice and opportunity for a hearing appropriate in the particular circumstances. Relief may be authorized

without an actual hearing if there is insufficient time available and adequate protection has been provided. 11 U.S.C. 363(e). The Debtor requests the use of Cash Collateral on an interim and final basis.

16. The immediate use of Cash Collateral, as proposed herein, is essential to avoid irreparable harm to the Debtor, its employees, its creditors and the estate in order to ensure that adequate funding is available for the orderly shut down and liquidation of the Debtor's business.

**B. Adequate Protection**

17. The Secured Lenders are entitled to adequate protection of their interest in the Cash Collateral. 11 U.S.C. § 363(e).

18. 11 U.S.C. § 361 describes various forms of adequate protection. Under § 361, adequate protection may be provided by the following:

- a. making periodic cash payments to the extent that the creditor suffers a decrease in the value of its interest in such property;
- b. granting replacement liens in collateral to compensate the creditor for any decrease in the value of the creditor's interest in such property; or
- c. granting other relief as will result in the realization of the indubitable equivalent of the creditor's interest in collateral.

11 U.S.C. § 361 (1984).

19. The purpose of adequate protection for a creditor "is to insure that the creditor receives the value for which he bargained for prebankruptcy," *In re Swedeland Development Group, Inc.*, 16 F.3d 552, 564 (3<sup>rd</sup> Cir. 1994) (en banc), quoting *In re O'Connor*, 808 F.2d 1393, 1396 (10<sup>th</sup> Cir. 1987), and to "preserve the secured creditor's position at the time of the bankruptcy." *In re Dunes Casino Hotel*, 69 B.R. 784, 793 (Bankr. D.N.J. 1986), citing *In re Coors of the Cumberland*, 19 B.R. 313, 321 (Bankr. M. D. Tenn. 1982).

20. The Debtor believes it has satisfied the Secured Lenders' entitlement to adequate



protection of their interest in the Debtor's property. Pursuant to the terms of the Interim Order and as more specifically set forth below, the Debtor will, among other things, provide adequate protection to the Secured Lenders for the use of their Cash Collateral by granting the Secured Lenders Replacement Liens (as defined below) on the Post-Petition Collateral (as defined below), by the granting of a superpriority claim, by complying with certain reporting requirements and by conducting an orderly liquidation of the Debtor's business.

21. As adequate protection for, and to the extent of, any diminution in the value of the Secured Lenders' interests in the Prepetition Collateral resulting from (x) the use of the Cash Collateral pursuant to Section 363(c) of the Bankruptcy Code, (y) the use, sale, lease or other diminution in value of the Prepetition Collateral (other than the Cash Collateral) pursuant to Section 363(c) of the Bankruptcy Code and (z) the imposition of the automatic stay pursuant to Section 362(a) of the Bankruptcy Code (the amount of any such diminution being referred to hereinafter as the "Adequate Protection Obligations"), the Administrative Agent and the Secured Lenders will be granted pursuant to the Interim Order (effective as of the Petition Date and without the necessity of the execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements or otherwise), valid and perfected, replacement security interests in and liens (the "Replacement Liens") on all prepetition and postpetition assets and properties (tangible, intangible, real, personal and mixed) of the Debtor of any kind or nature, whether now existing or newly acquired or arising, and wherever located, including, without limitation, all accounts, accounts receivable, chattel paper, electronic chattel paper, inventory, machinery, equipment, contract rights, documents, goods, fixtures, intellectual property and other general intangibles, investment property, owned and leased real property, vehicles, instruments, letters of credit, letter of credit rights, commercial tort claims, causes of action, cash, deposit accounts, securities, securities

accounts, books and records and all proceeds and products of the foregoing (excluding Deposit Accounts used exclusively for, and only funded to the extent necessary to pay, payroll, payroll taxes, union dues, and other employee wage and benefit payments, as set forth in the definition of "Excluded Accounts" in the Guarantee and Collateral Agreement, and Tax Trust Accounts, as defined in the Debtor's Prepetition Wages Motion and Trust Fund Taxes Motion (as defined in the First Day Declaration)) and, subject to the entry of the Final Order, causes of action arising under Chapter 5 of the Bankruptcy Code<sup>3</sup> and the proceeds thereof (collectively, the "Postpetition Collateral"). Subject to the Carveout (as defined in the Interim Order), said Replacement Liens shall be (i) a first priority perfected lien upon all of the Postpetition Collateral that is not otherwise encumbered by a validly perfected, non-avoidable security interest or lien on the Petition Date, (ii) a first priority, senior, priming and perfected lien upon Postpetition Collateral subject to a lien that is junior to the liens securing the Prepetition Obligations and (iii) a second priority, junior perfected lien upon all Postpetition Collateral (other than the portion described in the preceding clause (ii)), which is subject to a validly perfected first priority lien as of the Petition Date.

22. In addition, subject to the Carveout, the Adequate Protection Obligations shall constitute expenses of administration under Sections 503(b)(1), 507(a) and 507(b) of the Bankruptcy Code (the "507(b) Claims") with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, Sections 326, 328, 330, 331 and 726 of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtor, and any successor trustee or any creditor, in the Chapter 11 Case or any subsequent proceedings under the Bankruptcy Code.

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<sup>3</sup> The Administrative Agent and the Secured Lenders intend to seek in the Final Order a lien on causes of action arising under Chapter 5 of the Bankruptcy Code and proceeds thereof.

**C. Interim Approval Should Be Granted**

23. Fed. R. Bankr. P. 4001(b)(2) provides that a final hearing on a motion to use cash collateral may not be commenced earlier than fifteen (15) days after service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral to the extent necessary to avoid immediate and irreparable harm to the Debtor's estate. Local Bankruptcy Rules 4001-2(b) and 9013-3(f)(2) authorize the Court to hear motions for use of cash collateral as "First Day Motions" on an interim basis so as to avoid irreparable harm to the Debtor's estate. The Debtor hereby requests that the Court conduct an interim hearing on the Cash Collateral Motion and authorize the Debtor's use of cash collateral, as set forth in the Budget period from April 2, 2008 through April 25, 2008, from and after the entry of the Interim Order until a final hearing is conducted.

WHEREFORE, the Debtor requests that the Court (i) authorize the use of cash collateral proposed in the Interim Order on an interim basis; (ii) set a final hearing on this Motion pursuant to Bankruptcy Rule 4001(b)(2) for the entry of a final cash collateral order, and (iii) grant the Debtor such other and further relief to which it is justly entitled.

Dated: April 3, 2008

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**EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

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

**INTERIM ORDER (I) AUTHORIZING DEBTOR TO USE THE SECURED LENDERS’  
CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO THE  
SECURED LENDERS PURSUANT TO 11 U.S.C. §§ 361, 362 AND 363 AND (III)  
SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(b)**

Upon the motion (the “Motion”), dated April 3, 2008, of ATA Airlines, Inc., the debtor-in-possession in the above-captioned bankruptcy case (“ATA” or the “Debtor”), (a) seeking this Court’s authorization (i) pursuant to Section 363 of Title 11, United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the Bankruptcy Code), to use the Cash Collateral (as defined below) of the Secured Lenders and (ii) pursuant to Sections 361, 362 and 363 of the Bankruptcy Code, to provide adequate protection to the Secured Lenders with respect to any diminution in the value of the Secured Lenders’ interests in the Prepetition Collateral (as defined below), whether from

the use of the Cash Collateral, the use, sale, lease or other diminution in value of the Prepetition Collateral other than the Cash Collateral, and the imposition of the automatic stay pursuant to Section 362(a) of the Bankruptcy Code; and (b) requesting that a final hearing (the “Final Hearing”) be scheduled, and that notice procedures in respect of the Final Hearing be established by this Court to consider entry of a final order (the “Final Order”) authorizing on a final basis the Debtor’s continued use of the Cash Collateral; and due and sufficient notice of the Motion and the Preliminary Hearing under the circumstances having been given; and the Preliminary Hearing on the Motion having been held before this Court on April 4, 2008; and upon the entire record made by the Debtor at the Preliminary Hearing, and this Court having found good and sufficient cause appearing therefor,

**IT IS HEREBY FOUND THAT:**

A. On April 2, 2008 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the “Chapter 11 Case”). The Debtor is continuing to manage its business as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no official committee has yet been appointed in the Chapter 11 Case.

B. This Court has jurisdiction over the Chapter 11 Case and the Motion pursuant to 28 U.S.C. § 157(b) and 1334. Consideration of this Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

C. Pursuant to the Term Loan Agreement dated as of August 14, 2007 (as amended, supplemented or otherwise modified prior to the Petition Date, the “Term Loan Agreement”), among New ATA Acquisition Inc., as borrower (the “Borrower”), the lenders party thereto

(collectively, the “Secured Lenders”, with each being a “Secured Lender”) and JPMorgan Chase Bank, N.A., as administrative agent for the Secured Lenders (in such capacity, the “Administrative Agent”), the Secured Lenders made loans and other financial accommodations to or for the benefit of the Borrower, the Debtor (a wholly-owned subsidiary of the Borrower) and the Borrower’s other subsidiaries in an amount in excess of \$365,000,000 (inclusive of accrued but unpaid interest) as of the Petition Date. Pursuant to a Guarantee and Collateral Agreement executed in connection with the Term Loan Agreement and dated as of August 14, 2007 (as amended, supplemented or otherwise modified prior to the Petition Date, the “Guarantee and Collateral Agreement”; and together with all collateral (including bank account control agreements) and ancillary documentation executed in connection therewith, collectively, the “Prepetition Loan Documents”)<sup>1</sup>, the Debtor guaranteed the Borrower’s obligations under the Term Loan Agreement and granted a security interest in substantially all of its personal property as collateral security for its obligations under the Guarantee and Collateral Agreement (all such obligations of the Debtor, the “Prepetition Obligations”).

D. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in decretal paragraph 11), the Debtor acknowledges and agrees that, as of the Petition Date, in accordance with the terms of the Guarantee and Collateral Agreement, the Debtor is truly and justly indebted to the Secured Lenders in respect of the Prepetition Obligations, without defense, counterclaim or offset of any kind.

E. Without prejudice to the rights of any other party (but subject to the limitations thereon described below in decretal paragraph 11), the Debtor acknowledges and agrees that it

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<sup>1</sup> Unless otherwise defined herein, each capitalized term used herein shall have the meaning assigned thereto in the Guarantee and Collateral Agreement. For purposes of this Order, “Required Secured Lenders” shall mean, at any time, Secured Lenders holding more than 50% in principal amount of outstanding Loans (as defined in the Term Loan Agreement).



will not, and hereby waives any right to, challenge the validity, perfection, enforceability, or priority of the liens and security interests granted by the Debtor pursuant to the Prepetition Loan Documents to the Administrative Agent and the Secured Lenders to secure the Prepetition Obligations, upon and in substantially all of the Debtor's assets and property, including without limitation, certain owned aircraft, all Accounts, Chattel Paper, Commercial Tort Claims, Contracts, Deposit Accounts, Securities Accounts, Commodity Accounts, Documents, Equipment, Fixtures, General Intangibles, Instruments, Intellectual Property, Inventory, Investment Property, Letter of Credit Rights, and all other tangible and intangible personal property and the proceeds thereof securing the Prepetition Obligations (including the setoff rights described in the Prepetition Loan Documents and arising by operation of law, but excluding all "Excluded Property", as defined in the Guarantee and Collateral Agreement, collectively the "Prepetition Collateral"). The Debtor's cash, including without limitation, all cash and other amounts on deposit or maintained in any account or accounts by the Debtor, but excluding all "Excluded Cash" and "Excluded Accounts", as each such term is defined in the Guarantee and Collateral Agreement, and any amounts generated by the collection of accounts receivable, sale of inventory or other disposition of the Prepetition Collateral constitute proceeds of the Prepetition Collateral and, therefore, are cash collateral of the Secured Lenders within the meaning of Section 363(a) of the Bankruptcy Code (the "Cash Collateral"). The Secured Lenders are entitled, pursuant to Sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral to the extent of the diminution in value thereof, including for the use of the Cash Collateral, the use, sale, lease or other diminution in value of the Prepetition Collateral other than the Cash Collateral, and the imposition of the automatic stay.

F. Shortly after the filing of the Chapter 11 Case, the Debtor, in consultation with its financial and legal advisors, as more specifically described in the *Declaration of Steven S. Turoff in Support of First-Day Pleadings* (the “First Day Declaration”), determined that the options it was reviewing which would have enabled the Debtor to maintain operations were not going to be successful and that it was necessary to pursue an orderly liquidation of the Debtor’s assets through the Chapter 11 Case.

G. Good cause has been shown for the entry of this Order. The Debtor does not have sufficient available sources of working capital and financing to wind down the operation of its business and conduct the orderly liquidation without the use of the Cash Collateral and the Prepetition Collateral. The Debtor is unable to obtain additional financing. Among other things, entry of this Order will minimize disruption caused by the cessation of the Debtor’s business operations and permit it to pay wind-down operating expenses and expenses relating to the orderly liquidation. The use of the Cash Collateral is, therefore, of the utmost significance and importance to the preservation of the value of the Debtor’s assets and its estate pending consummation of an orderly liquidation, and will enhance the prospects for the Debtor to confirm a liquidating Chapter 11 plan. Additionally, the Debtor has an immediate need to use the Cash Collateral to permit the orderly wind-down of its business.

H. The Administrative Agent, the Secured Lenders and the Debtor have negotiated at arms’ length and in good faith regarding the Debtor’s use of the Cash Collateral to fund the wind-down of the Debtor’s business operations and orderly liquidation of the Debtor’s assets. The Administrative Agent and the Secured Lenders have agreed to permit the Debtor to use the Cash Collateral subject to the terms and conditions set forth in this Order, including the

protection afforded a party acting in “good faith” pursuant to Section 363(m) of the Bankruptcy Code.

I. Notice of the Preliminary Hearing and the relief requested in the Motion has been given to (i) the Office of the United States Trustee, (ii) counsel to the Administrative Agent, and (iii) the Debtor’s twenty (20) largest unsecured creditors as set forth in the list accompanying the Debtor’s Petition. In view of the urgency of the relief requested, such notice of the Preliminary Hearing complies with Sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b), and Local Rule B-4001-2.

J. Based on the record presented to this Court at the Preliminary Hearing, the Debtor has an immediate need to use Cash Collateral prior to the Final Hearing, and the terms of the Debtor’s use of the Cash Collateral appear to be fair and reasonable and to reflect the Debtor’s exercise of prudent business judgment consistent with its fiduciary duties.

K. The Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2). The permission granted herein to use the Cash Collateral is necessary to avoid immediate and irreparable harm to the Debtor, its creditors and its estate. This Court concludes that entry of this Order is in the best interest of the Debtor’s estate and creditors.

Based upon the foregoing findings and conclusions, and upon the record made before this Court at the Preliminary Hearing, and good and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED** that:

1. The Motion is granted on an interim basis.
2. The Debtor is hereby authorized to use the Cash Collateral during the period from the Petition Date through and including the Termination Date for general corporate

purposes during the Chapter 11 Case in accordance with the terms and conditions of this Order and of the Budget (as defined below).

3. The Debtor shall only use the Cash Collateral for the payment of the costs and expenses associated with the wind-down operations of the Debtor's business, the orderly liquidation of the Debtor's assets and the conduct of the Chapter 11 Case as set forth in a four-week budget to be submitted to the Required Secured Lenders (any such budget deemed reasonably acceptable by the Required Secured Lenders, the "Budget"). A copy of the Budget for the time period from April 2, 2008 to April 25, 2008 is attached hereto as Exhibit A.<sup>2</sup> No later than ten (10) days prior to the last day covered by the Budget then in effect, the Debtor shall deliver to the Secured Lenders and the Administrative Agent a proposed budget covering the subsequent four-week period (a "Proposed Budget"). Unless the Administrative Agent provides written notice to the Debtor, within five (5) days after receipt of the Proposed Budget, that the Proposed Budget is not reasonably acceptable to the Required Secured Lenders, the Proposed Budget shall become the "Budget" for purposes hereof. Except as expressly set forth herein, this Order does not address the disposition of any Prepetition Collateral outside the ordinary course of business or the Debtor's use of the Cash Collateral resulting therefrom.

4. (a) As adequate protection for, and to the extent of, any diminution in the value of the Secured Lenders' interest in the Prepetition Collateral resulting from (x) the use of the Cash Collateral pursuant to Section 363(c) of the Bankruptcy Code, (y) the use, sale, lease or other diminution in value of the Prepetition Collateral (other than the Cash Collateral) pursuant to Section 363(c) of the Bankruptcy Code and (z) the imposition of the automatic stay pursuant

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<sup>2</sup> A proposed twenty-six week forecast (the "26 Week Forecast") is attached to the First Day Declaration as Exhibit A, representing the Debtor's best estimate of the costs and expenses of the Chapter 11 Case as of the Petition Date. Only the portion of the 26 Week Forecast applicable to the time period April 2, 2008 through April 25, 2008 has been approved by the Required Secured Lenders, and constitutes the applicable Budget referenced in this Order.

to Section 362(a) of the Bankruptcy Code (the amount of any such diminution being referred to hereinafter as the “Adequate Protection Obligations”), the Administrative Agent and the Secured Lenders are hereby granted (effective as of the Petition Date and without the necessity of the execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements or otherwise), valid and perfected, replacement security interests in and liens (the “Replacement Liens”) on all prepetition and postpetition assets and properties (tangible, intangible, real, personal and mixed) of the Debtor of any kind or nature, whether now existing or newly acquired or arising, and wherever located, including, without limitation, all accounts, accounts receivable, chattel paper, electronic chattel paper, inventory, machinery, equipment, contract rights, documents, goods, fixtures, intellectual property and other general intangibles, investment property, owned and leased real property, vehicles, instruments, letters of credit, letter of credit rights, commercial tort claims, causes of action, cash, deposit accounts, securities, securities accounts, books and records and all proceeds and products of the foregoing (excluding Deposit Accounts used exclusively for, and only funded to the extent necessary to pay, payroll, payroll taxes, union dues, and other employee wage and benefit payments, as set forth in the definition of "Excluded Accounts" in the Guarantee and Collateral Agreement, and Tax Trust Accounts, as defined in the Debtor’s Prepetition Wages Motion and Trust Fund Taxes Motion (as defined in the First Day Declaration) and, subject to the entry of the Final Order, causes of action arising under Chapter 5 of the Bankruptcy Code<sup>3</sup> and the proceeds thereof (collectively, the “Postpetition Collateral”). Subject to the Carveout, said Replacement Liens shall be (i) a first priority perfected lien upon all of the Postpetition Collateral that is not otherwise encumbered by a validly perfected, non-avoidable security interest or lien on the Petition Date, (ii) a first

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<sup>3</sup> The Administrative Agent and the Secured Lenders intend to seek in the Final Order a lien on causes of action arising under Chapter 5 of the Bankruptcy Code and proceeds thereof.

priority, senior, priming and perfected lien upon Postpetition Collateral subject to a lien that is junior to the liens securing the Prepetition Obligations and (iii) a second priority, junior perfected lien upon all Postpetition Collateral (other than the portion described in the preceding clause (ii)), which is subject to a validly perfected first priority lien as of the Petition Date.

(b) As further adequate protection hereunder, the Debtor shall provide the following reports to the Administrative Agent and the Secured Lenders (the “Reporting Requirements”), each in form reasonably satisfactory to the Administrative Agent: (i) commencing on Friday, April 11, 2008, and every Friday thereafter, (A) thirteen-week rolling cash flow projections for the Debtor, substantially in the form attached as Exhibit B hereto, showing on a weekly basis for the current week and the succeeding twelve weeks (x) beginning and ending liquidity, (y) weekly receipts by significant category and (z) weekly disbursements by significant category, and (B) a comparison of actual weekly cash flows for the week preceding the week in which such comparison is being delivered to the projected cash flows for such week as shown in the most recent thirteen-week rolling cash flow projections delivered to the Administrative Agent and the Secured Lenders, together, in the case of each of the foregoing clauses (A) and (B), with a certification of the Debtor’s Chief Restructuring Officer (“CRO”) confirming such CRO’s review of such projections or comparison, as applicable; and (ii) within 30 days after the end of every month, monthly financial statements prepared by the Debtor, which shall include such financial statements for such month and for the portion of such fiscal year through the end of such month. In addition, the Debtor shall permit representatives, agents and/ or employees of the Administrative Agent or any of the Secured Lenders to have reasonable access to its premises and non-privileged records during normal business hours (without unreasonable interference with the proper operation of the Debtor’s business) and shall

cooperate, consult with and provide to such persons all such non-privileged information as they may reasonably request from time to time.

(c) The Debtor further agrees to use any cash that is not Cash Collateral prior to use of the Cash Collateral, and to use such cash in accordance with the terms and conditions of this Order and the Budget.

(d) As additional adequate protection, the Debtor is authorized and directed, within 20 days of the submission of invoices therefor, to pay or reimburse all reasonable fees, costs and charges incurred by the Administrative Agent and any of the Secured Lenders (including, without limitation, the reasonable fees and out-of-pocket disbursements of lead and local counsel to the Administrative Agent and any of the Secured Lenders), in each case, in connection with matters relating to this Order and the monitoring of the Chapter 11 Case or the enforcement and protection of the rights and interests of the Administrative Agent and the Secured Lenders in respect of the Adequate Protection Obligations and the Prepetition Obligations. None of the fees, costs and expenses payable pursuant to this paragraph shall be subject to separate approval by this Court (but this Court shall resolve any dispute as to the reasonableness of any such fees, costs and expenses), and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto.

(e) Based solely upon the Secured Lenders' consent, the adequate protection provided herein is reasonable under the circumstances to protect the interests of the Secured Lenders. Notwithstanding any other provision hereof, the grant of adequate protection to the Administrative Agent and the Secured Lenders pursuant hereto is without prejudice to the right of the Secured Lenders to seek modification of the grant of adequate protection provided hereby

so as to provide different or additional adequate protection, and without prejudice to the right of the Debtor or any other party in interest to contest any such modification.

5. As used in this Order, “Carveout” means (a) the unpaid fees of the clerk of the Bankruptcy Court and of the United States Trustee pursuant to 28 U.S.C. § 1930(a) and (b) (the “Statutory Fees”), (b) following delivery of written notice to the Debtor that an Event of Default (as defined below) has occurred and is continuing and, provided that such Event of Default has not been waived or cured, the payment of allowed professional fees and disbursements (the “Professional Fees and Disbursements”) incurred after delivery of such written notice by the professionals retained by the Debtor or any statutory committee (including the reasonable expenses of the members of any such statutory committee) appointed in the Chapter 11 Case not to exceed \$750,000 in the aggregate, plus all unpaid Professional Fees and Disbursements previously incurred prior to delivery of written notice to the Debtor and any such committee of the occurrence of such Event of Default and (c) the costs and administrative expenses (other than the fees and expenses, if any, incurred, directly or indirectly, in respect of, arising from or relating to, the initiation or prosecution (but not the investigation conducted prior to such initiation or prosecution) of any action for preferences, fraudulent conveyances, other avoidance power claims or any other claims or causes of action against the Administrative Agent or the Secured Lenders) not to exceed \$100,000 in the aggregate that are permitted to be incurred by any Chapter 7 trustee pursuant to an order of this Court following any conversion to Chapter 7 of the Chapter 11 Case. So long as written notice of the occurrence of an Event of Default shall not have been delivered to the Debtor and such committee, or any such Event of Default shall have been waived by the Required Secured Lenders or cured, the Debtor shall be permitted to pay without reduction of the Carveout the Professional Fees and Disbursements, as the same may be



due and payable. Nothing herein shall be construed as a waiver of the right of the Administrative Agent or any Secured Lender to object to the allowance of any Professional Fees and Disbursements. The Carveout shall be senior to the Replacement Liens and the liens securing the Prepetition Obligations.

6. Subject to the Carveout, the Adequate Protection Obligations shall constitute expenses of administration under Sections 503(b)(1), 507(a) and 507(b) of the Bankruptcy Code (the “507(b) Claims”) with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, Sections 326, 328, 330, 331 and 726 of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtor, and any successor trustee or any creditor, in the Chapter 11 Case or any subsequent proceedings under the Bankruptcy Code. Subject to the Carveout, no cost or expense of administration under Sections 503(b) or 507(b) or otherwise, including those resulting from the conversion of the Chapter 11 Case pursuant to Section 1112 of the Bankruptcy Code, shall be senior to, or pari passu with, the 507(b) Claims of the Secured Lenders arising out of the Adequate Protection Obligations.

7. Except as expressly set forth in this Order, the Replacement Liens granted pursuant to this Order shall not be (i) subject to any lien that is avoided and preserved for the benefit of the Debtor’s estate under Section 551 of the Bankruptcy Code or (ii) subordinated to or made pari passu with any other lien under Sections 363 and 364 of the Bankruptcy Code. Subject to the Carveout, the Replacement Liens shall be prior and senior to all liens and encumbrances of all other secured creditors in and to such Postpetition Collateral granted or arising after the Petition Date (including, without limitation, liens and security interests, if any, granted in favor of any federal, state, municipal or other governmental unit, commission, board

or court for any liability of the Debtor). The Replacement Liens granted pursuant to this Order shall constitute valid and duly perfected security interests and liens, and the Administrative Agent and the Secured Lenders shall not be required to file or serve financing statements, notices of lien or similar instruments which otherwise may be required under federal or state law in any jurisdiction or take any action, including taking possession, to validate and perfect such security interests and liens; and the failure by the Debtor to execute any documentation relating to the Replacement Liens shall in no way affect the validity, perfection or priority of such Replacement Liens. If, however, the Administrative Agent, in its sole discretion, shall determine to file or serve any such financing statements, notices of lien or similar instruments, or to otherwise confirm perfection of such Replacement Liens, the Debtor is directed to cooperate with and assist in such process, the stay imposed by Section 362(a) of the Bankruptcy Code is hereby lifted to allow the filing and recording of a certified copy of this Order or any such financing statements, notices of lien or similar instruments, and all such documents shall be deemed to have been filed or recorded at the time of and on the date of this Order.

8. The Debtor's right to use the Cash Collateral pursuant to this Order shall terminate (the date of any such termination, the "Termination Date") on the earliest to occur of (x) September 30, 2008 (or such later date if the Required Secured Lenders consent, which extension thereof shall be effective without further Court approval), (y) unless extended by the Required Secured Lenders, thirty (30) days after the Petition Date if the Final Order has not been entered by this Court on or before such date or (z) upon three (3) business days' written notice to the Debtor (with a copy to counsel for any statutory committee appointed in the Chapter 11 Case and the United States Trustee) after the occurrence and continuance of any of the following

events (unless waived by the Required Secured Lenders, “Events of Default”) beyond any applicable grace period set forth below:

- a. Failure of the Debtor to make any payment to the Administrative Agent or the Secured Lenders as and when required by this Order;
- b. Failure of the Debtor to (i) comply with the Budget or any other material terms of this Order, (ii) maintain a cash balance as of any week covered by the Budget that is equal to or greater than the amount for such week shown on the Budget under the line “Ending Balance”, (iii) comply with any other covenant or agreement specified in this Order (other than those described in clauses (i) and (ii) above and clause (iv) below) and such failure to comply with any such other covenant or agreement shall continue unremedied for more than three (3) business days after written notice thereof or (iv) comply with any of the Reporting Requirements and such failure shall continue unremedied for more than three (3) business days;
- c. To the extent applicable, prior to entry of the Final Order, expiration of the then applicable Budget without a new Proposed Budget’s becoming the Budget in accordance with paragraph 3 of this Order;
- d. Any representation or warranty made in writing by the Debtor in the Reporting Requirements (other than with respect to projected financial information) shall prove to have been incorrect in any material respect when made;
- e. The Chapter 11 Case shall be dismissed or converted to a Chapter 7 case; or a Chapter 11 trustee with plenary powers, a responsible officer, or an examiner with enlarged powers relating to the operation of the businesses of the Debtor (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed in the Chapter 11 Case;
- f. This Court shall enter an order granting relief from the automatic stay to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of the Debtor which have an aggregate value in excess of \$250,000; provided, however, that this Event of Default shall not apply to equipment abandoned or returned in accordance with Section 1110 of the Bankruptcy Code;
- g. An order shall be entered reversing, amending, supplementing, staying for a period in excess of three (3) business days, vacating or otherwise modifying this Order without the consent of the Secured Lenders;
- h. The Debtor shall create, incur or suffer to exist any postpetition liens or security interests other than (i) those granted pursuant to this Order, (ii) carriers’, mechanics’, warehousemen’s, repairmen’s or other similar liens arising in the ordinary course of business, (iii) pledges or deposits in connection with workers’ compensation, unemployment insurance and other social security legislation and

(iv) deposits to secure the payment of any postpetition statutory obligations, performance bonds and other obligations of a like nature incurred in the ordinary course of business; provided that the aggregate value of the liens, pledges or deposits referred to in clauses (iii) and (iv) above shall not exceed \$100,000 at any one time; or any other claim which is pari passu with or senior to the claims of the Administrative Agent and the Secured Lenders shall be granted in the Chapter 11 Case;

- i. Any judgment in excess of \$500,000 as to any postpetition obligation not covered by insurance shall be rendered against the Debtor and the enforcement thereof shall not be stayed; or there shall be rendered against the Debtor a non-monetary judgment with respect to a postpetition event which has or could reasonably be expected to have a material adverse effect on the property, business, condition (financial or otherwise) of the Debtor taken as a whole or the ability of the Debtor to perform its obligations under this Order; and
- j. A filing by the Debtor (or any of its successors and assigns) of any motion or application or adversary proceeding challenging the validity, enforceability, perfection or priority of the liens securing the Prepetition Obligations or any other cause of action against and/or with respect to the Prepetition Obligations, the prepetition liens securing such Prepetition Obligations, the Administrative Agent or the Secured Lenders.

The Debtor shall promptly provide notice to the Administrative Agent (with a copy to counsel for any statutory committee appointed in the Chapter 11 Case and the United States Trustee) of the occurrence of any Event of Default.

9. On the Termination Date, upon five (5) business days' written notice to the Debtor (with a copy to counsel for any statutory committee appointed in the Chapter 11 Case and the United States Trustee) (i) the Adequate Protection Obligations shall become immediately due and payable, (ii) the Administrative Agent and each Secured Lender may setoff amounts which are included in the Secured Lenders' Postpetition Collateral in any account maintained with, or subject to a control agreement in favor of, the Administrative Agent or any Secured Lender, respectively and (iii) the Administrative Agent and the Secured Lenders may exercise the rights and remedies available under the Prepetition Loan Documents, this Order or applicable law, including without limitation, foreclosing upon and selling all or a portion of the Prepetition

Collateral or Postpetition Collateral in order to collect the Adequate Protection Obligations. The actions described in clauses (ii) and (iii) above may be taken without further order of or application to this Court as the Required Secured Lenders shall elect, and the automatic stay is hereby deemed modified and vacated to the extent necessary to permit such actions, provided that such actions may not be taken without further order of this Court during the period prior to entry of the Final Order. The Administrative Agent and the Secured Lenders shall be entitled to apply the payments or proceeds of the Prepetition Collateral or the Postpetition Collateral in accordance with the provisions of the Prepetition Loan Documents and this Order to pay the Adequate Protection Obligations and, subject to the rights of any other party in interest to challenge the Prepetition Obligations and the Administrative Agent's liens on the Prepetition Collateral as set forth in paragraph 11 below, to pay the Prepetition Obligations, and in no event shall the Administrative Agent or any of the Secured Lenders be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Prepetition Collateral, the Postpetition Collateral or otherwise. Notwithstanding the occurrence of the Termination Date or anything herein, all of the rights, remedies, benefits and protections provided to the Administrative Agent and the Secured Lenders under this Order shall survive the Termination Date. Upon receipt by the Debtor of a three (3) business days' written notice of the termination of the Debtor's ability to use the Cash Collateral after the occurrence and continuance of an Event of Default pursuant to paragraph 8 above, the Debtor shall retain the right to seek approval of this Court under Sections 361 and 363 of the Bankruptcy Code to use the Cash Collateral and/or to obtain alternative financing under Section 364 of the Bankruptcy Code, and the Secured Lenders reserve the right to object to any such proposed use or alternative financing.

10. The provisions of this Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (a) confirming any plan of reorganization or plan of liquidation in the Chapter 11 Case; (b) converting the Chapter 11 Case to a Chapter 7 case; or (c) dismissing the Chapter 11 Case. If an order dismissing the Chapter 11 Case under Section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that (a) the Replacement Liens granted pursuant to this Order to the Administrative Agent and the Secured Lenders shall continue in full force and effect, shall remain binding on all parties in interest notwithstanding such dismissal until the obligations secured thereby shall have been paid and satisfied in full and (b) this Court shall retain jurisdiction, notwithstanding such dismissal, for the limited purposes of enforcing such Replacement Liens.

11. The acknowledgments and agreements contained in paragraphs D and E shall be binding upon the Debtor in all circumstances, and shall be binding upon all other parties in interest, including without limitation, any statutory committee appointed in the Chapter 11 Case, unless (a) a party in interest (including any statutory committee appointed in the Chapter 11 Case) has properly filed an adversary proceeding or contested matter (subject to the limitations set forth in paragraph 17) challenging the validity, enforceability or priority of the Prepetition Obligations or the Administrative Agent's liens on the Prepetition Collateral in respect thereof, or otherwise asserting any claims or causes of action against the Administrative Agent or the Secured Lenders on behalf of the Debtor's estate, no later than the date that is ninety (90) days after the date of the appointment of a statutory committee of unsecured creditors, and (b) this Court rules in favor of the plaintiff in any such timely and properly filed adversary proceeding or contested matter. If no such adversary proceeding or contested matter is commenced as of such

date, the Prepetition Obligations shall constitute allowed claims, not subject to subordination and otherwise unavoidable, for all purposes in the Chapter 11 Case or any subsequent Chapter 7 case, the Administrative Agent's liens on the Prepetition Collateral shall be deemed legal, valid, binding, perfected, not subject to defense, counterclaim, offset of any kind, subordination and otherwise unavoidable, and the Administrative Agent, the Secured Lenders, the Prepetition Obligations and the Administrative Agent's liens on the Prepetition Collateral shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtor's estate, including without limitation, any successor thereto. If any such adversary proceeding or contested matter is timely commenced as of such date, the acknowledgements and agreements contained in paragraphs D and E shall nonetheless remain binding and preclusive (as provided in this paragraph) except to the extent that such acknowledgements and agreements were expressly challenged in such adversary proceeding or contested matter.

12. Entry of this Order shall be without prejudice to any and all rights, remedies, claims and causes of action which the Administrative Agent or the Secured Lenders may have against the Debtor or any other parties, and without prejudice to the right of the Administrative Agent and the Secured Lenders to seek relief in the Chapter 11 Case, including without limitation, relief from the automatic stay in effect pursuant to Bankruptcy Code Section 362 or conversion to Chapter 7 of the Chapter 11 Case, and the right of the Debtor and any other party in interest to oppose any such relief. The provisions of this Order shall be binding upon and inure to the benefit of the Administrative Agent, the Secured Lenders, the Debtor, and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Chapter 11 Case as a legal representative of the Debtor or the Debtor's estate.

13. (a) In order to facilitate the processing of claims, to ease the burden upon this Court and to reduce any unnecessary expense to the Debtor's estate, the Administrative Agent is authorized to file a master proof of claim on behalf of itself and the Secured Lenders on account of their claims arising under the Prepetition Loan Documents and hereunder against the Debtor (the "Master Proof of Claim"), and the Administrative Agent shall not be required to file a verified statement pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure.

(b) Upon the filing of the Master Proof of Claim against the Debtor, the Administrative Agent and each Secured Lender, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against the Debtor arising under the Prepetition Loan Documents, and the claim of the Administrative Agent and each Secured Lender (and each of their respective successors and assigns), named in the Master Proof of Claim shall be allowed or disallowed as if such entity had filed a separate proof of claim in the Chapter 11 Case in the amount set forth opposite each name in the Master Proof of Claim; provided that the Administrative Agent may but shall not be required to amend the Master Proof of Claim from time to time to, among other things, reflect a change in the holders of claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from any transfer of any such claims.

(c) The provisions set forth of this paragraph and the Master Proof of Claim are intended solely for the purpose of administrative convenience and, except to the extent set forth herein or therein, neither the provisions of this paragraph nor the Master Proof of Claim shall affect the substantive rights of the Debtor, any statutory committee appointed in the Chapter 11 Case, the Administrative Agent or the Secured Lenders or any other party in interest or their respective successors in interest including, without limitation, the right of each Secured



Lender (or their successors in interest) to vote separately on any plan of reorganization or plan of liquidation proposed in the Chapter 11 Case.

14. Pursuant to Sections 105, 361 and 363 of the Bankruptcy Code, the Administrative Agent and the Secured Lenders are hereby found to be entities that have acted in “good faith” in connection with the negotiation and entry of this Order, and each is entitled to the protection provided to such entities under Section 363(m) of the Bankruptcy Code.

15. Except on the terms of this Order, the Debtor shall be prohibited from at any time using the Cash Collateral. Notwithstanding any provision in other “first day” orders entered by this Court authorizing the Debtor to make payments in respect of prepetition obligations, the provisions in this Order and the Budget conditioning the payment of such amounts or limiting the amount of such payments are controlling.

16. Subject to entry of the Final Order, in consideration of the Secured Lenders’ consent to the use of the Cash Collateral, no expenses of administration of the Chapter 11 Case or any future proceeding or case which may result therefrom, including without limitation, a case under Chapter 7, shall be charged pursuant to Section 506(c) of the Bankruptcy Code against the Prepetition Collateral or the Postpetition Collateral without the prior written consent of the Required Secured Lenders, except for the Carveout, and no such consent shall be implied from any action, inaction or acquiescence by the Secured Lenders or otherwise.

17. Notwithstanding anything herein to the contrary, the Cash Collateral and the Carveout may not be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of the Prepetition Obligations or the liens of the Administrative Agent or the Secured Lenders in the Prepetition Collateral, or the liens or claims granted under this Order (but may be used for the investigation in connection therewith, subject to a limitation

of \$50,000), (b) assert any claims, counterclaims, defenses or causes of action against the Administrative Agent or the Secured Lenders or their respective affiliates, agents, representatives or professionals or (c) seek to modify or otherwise alter any of the rights granted to the Administrative Agent or the Secured Lenders hereunder or under the Prepetition Loan Documents, in each of the foregoing cases without such parties' prior written consent.

18. The Debtor shall, within three (3) business days of entry of this Order, mail copies of a notice of the entry of this Order, together with a copy of this Order and a copy of the Motion, to the parties having been given notice of the Preliminary Hearing, to any party which has filed prior to such date a request for notices with this Court and to counsel for any statutory committee appointed pursuant to Section 1102 of the Bankruptcy Code. The notice of entry of this Order shall state that (a) any party in interest objecting to the use of the Cash Collateral and/or entry of the Final Order shall file written objections with the United States Bankruptcy Court Clerk for the Southern District of Indiana, Indianapolis Division no later than [\_\_\_\_\_]m. on [\_\_\_\_\_] , 2008 and objections shall be served so that the same are received on or before such date by: (i) Haynes and Boone LLP, 153 East 53rd Street, Suite 4900, New York, NY 10022, Attention: Judith Elkin, counsel to the Debtor; (ii) Baker & Daniels LLP, 300 North Meridian St., Suite 2700, Indianapolis, IN 46204, Attention: Terry E. Hall, counsel to the Debtor; (iii) the Office of the United States Trustee, 101 West Ohio, Suite 1000, Indianapolis, IN 46204, Attention: Nancy Gargula; (iv) Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, NY 10017, Attention: Kathrine A. McLendon and Anne L. Knight, counsel to the Administrative Agent; (v) Dann Pecar Newman & Kleiman, 2300 One American Square, Indianapolis, IN 46282, Attention: Jon B. Abels, counsel to the Administrative Agent and (b) a hearing to consider entry of the Final Order shall be held on [\_\_\_\_\_] , 2008 at [\_\_\_\_\_]m.

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Requested:

Terry E. Hall (#22041-49)  
Baker & Daniels, LLP  
300 N. Meridian Street  
Suite 2700  
Indianapolis, Indiana 46204  
Telephone: (317) 237-0300  
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terry.hall@bakerd.com

Distribution:

Master Service List

**EXHIBIT A**

Confidential and subject to change

ATA Airlines  
4 Week Cash Forecast  
2-Apr-08  
Confidential

	W/E 4-Apr	W/E 11-Apr	W/E 18-Apr	W/E 25-Apr
<b>Receipts</b>				
Military	\$ -	\$ -	\$ -	\$ -
Charter				
Scheduled Service				
US Bank				
Amex				
Discover				
Diner's Club				
Other Scheduled Service				
Asset Sales--Inventory				
Asset Sales--Ground Equipment				
Asset Sales--Rotables				
Return of Deposits/Prepays				
Cash Collateral/LOCs				850,000
Interest				56,487
Miscellaneous				327,888
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,234,375</b>
<b>Disbursements</b>				
Base Payroll	\$ -	\$ 152,420	\$ -	\$ 762,099
Stay Bonus		-		1,385
Benefits		84,500		52,500
Payroll Taxes		17,528		87,801
Employee Expense Payments				500,000
Facilities		-		401,104
Utilities			105,000	46,700
Communications			336,500	49,500
Professional Fees				
Professional Fees--Ord. Course				
Aircraft Ferry Cost		355,900	355,900	177,950
Engine Changes		200,000	200,000	100,000
Insurance--D&O				
Health Insurance Run-off Reserve				1,000,000
Cobra Reserve				300,000
Security			50,000	10,000
Shipping/Cargo			50,000	75,000
Miscellaneous	50,000	50,000	50,000	50,000
<b>Total</b>	<b>\$ 50,000</b>	<b>\$ 860,348</b>	<b>\$ 1,147,400</b>	<b>\$ 3,614,038</b>
<b>Cash</b>				
Beginning Balance	\$ 23,600,816	\$ 23,550,816	\$ 22,690,468	\$ 21,543,068
Receipts	-	-	-	1,234,375
Disbursements	(50,000)	(860,348)	(1,147,400)	(3,614,038)
<b>Ending Balance</b>	<b>\$ 23,550,816</b>	<b>\$ 22,690,468</b>	<b>\$ 21,543,068</b>	<b>\$ 19,163,405</b>