



A handwritten signature in black ink, reading "Basil H. Lorch III". The signature is written in a cursive style and is positioned above a horizontal line.

Basil H. Lorch III
United States Bankruptcy Judge

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

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

**ORDER APPROVING (I) THE DEBTOR'S SELECTION
OF SOUTHWEST AIRLINES CO. AS THE PARTY SUBMITTING
THE HIGHEST AND BEST OFFER FOR THE ACQUISITION OF THE
DEBTOR'S BUSINESS AND (II) SOUTHWEST AIRLINES CO.'S BID PROPOSAL,
INCLUDING THE BID PROTECTIONS THEREIN**

This Court has considered the Emergency Motion for Order (I) Approving the Debtor's Selection of Southwest Airlines Co. as the Party Submitting the Highest and Best Offer for the Acquisition of the Debtor's Business; (II) Approving Southwest Airlines Co.'s Bid Proposal, Including the Bid Protections Therein; and (III) Authorizing the Debtor to Enter into a Lease Agreement Regarding Certain Slots at LaGuardia Airport (the "Motion") filed by ATA Airlines, Inc. (the "Debtor"). The Court finds that (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding under 28 U.S.C.

§ 157(b)(2); (c) the relief requested in the Motion is in the best interests of the Debtor, its bankruptcy estate, and its creditors; (d) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and (e) on the record herein and after due deliberation thereon, good and sufficient cause exists for the granting of the relief as described herein. Therefore,

IT IS ORDERED THAT:

1. The Motion is approved, and the relief sought therein is granted as set forth herein.
2. All objections to the relief requested in the Motion that have not been withdrawn, waived or settled as announced to the Court at the hearing on the Motion (the “Hearing”) are overruled.
3. The Debtor's selection of Southwest Airlines Co. (“Southwest”) as the party submitting the highest and best offer, pursuant to the bid procedures previously approved by the Court, for the acquisition of the Business (as defined in the Motion) is approved.
4. The bid proposal attached to this order as Exhibit A (the “Bid Proposal”) is approved, and the Debtor is authorized and directed to execute the Bid Proposal and to take any and all actions necessary and/or appropriate to implement the Bid Proposal.
5. The Expense Reimbursement and Break-Up Fee (as defined and contained in the Bid Proposal) are approved, and the Debtor is authorized and directed, without further action or order of this Court, to pay the Expense Reimbursement and/or Break-Up Fee in accordance with the Bid Proposal. If Southwest becomes entitled to payment of the Expense Reimbursement and/or Break-Up Fee in accordance with the Bid Proposal, then (a) Southwest shall be granted, pursuant to Bankruptcy Code §§ 105, 503 and 507, a claim for administrative expense in an

amount equal to the Expense Reimbursement and/or Break-Up Fee, as applicable, and (b) on the closing of any Alternative Transaction (as defined in the Bid Proposal), the Expense Reimbursement and Break-Up Fee shall be payable to Southwest out of the proceeds of such Alternative Transaction.

6. The terms and provisions of this Order shall be binding in all respects on Southwest; the Debtor and its bankruptcy estate, creditors, and shareholders; all interested parties; and such parties' respective successors and assigns, including trustees.

7. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

8. To the extent that this Order is inconsistent with any prior order or pleading in this bankruptcy regarding the relief requested in the Motion, the terms of this Order shall govern.

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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
Facsimile: (317) 237-1000
terry.hall@bakerd.com

Distribution:

Service List

Exhibit A

**Southwest Airlines Co.
2702 Love Field Dr.
Dallas TX 76235**

November 18, 2008

ATA Airlines, Inc.
c/o Haynes and Boone, LLP
Attn: Kourtney P. Lyda
1 Houston Center
1221 McKinney Street, Suite 2100
Houston, Texas 77010
Facsimile: (713) 236-5687
Email: kourtney.lyda@haynesboone.com

JPMorgan Chase Bank, N.A.
c/o Simpson Thacher & Bartlett LLP
Attn: Kathrine A. McLendon
425 Lexington Avenue
New York, New York 10017
Facsimile: (212) 455-2502
Email: kmclendon@stblaw.com

**The Official Committee
of Unsecured Creditors**
c/o Otterbourg, Steindler, Houston &
Rosen P.C.
Attn: Steven B. Soll
230 Park Avenue
New York, New York 10169
Facsimile: (917) 368-7139
Email: ssoll@oshr.com

Office of the United States Trustee
Attn: Ronald J. Moore
101 West Ohio Street, Suite 1000
Indianapolis, Indiana 46204
Facsimile: (317) 226-6356
Email: ronald.moore@usdoj.gov

Re: Bid Proposal to acquire Reorganized ATA through a chapter 11 plan in the case of ATA Airlines, Inc. ("ATA," or the "Debtor"), 08-03675, in the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Bankruptcy Court," and the "Bankruptcy Case")

Ladies and Gentlemen:

Southwest Airlines Co. ("Southwest") is pleased to make the following bid proposal (this "Bid Proposal") to ATA in connection with the acquisition by Southwest, on the terms and subject to the conditions set forth herein, of the entire equity interest of the entity ("Reorganized ATA") that will acquire the Debtor's business through a plan (the "Plan") in the Bankruptcy Case pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

Southwest submits this Bid Proposal in accordance with those certain bid procedures (the "Bid Procedures") established under the *Order Granting Expedited Motion Under Bankruptcy Code Sections 105 And 363 To Establish Solicitation And Bid Procedures For The Sale Of The Debtor's Business* [Bankruptcy Case Dkt No. 904] (the "Bid Procedures Order").

Concurrently with this Bid Proposal, Southwest has provided the Debtor with: (1) a Deposit (as defined in Bid Procedures Order ¶ 3(b)(iii)) in the amount of \$2.5 million in cash and (2) Southwest's most recent balance sheet from its Form 10-Q dated as of September 30, 2008, attached hereto as Exhibit A, showing cash and cash equivalents equal to \$2.39 billion, and evidencing Southwest's ability to consummate the sale transaction contemplated in this Bid Proposal (the "Transaction").

The material terms and conditions of this Bid Proposal are:

- A. Purchase. Southwest will purchase one-hundred percent (100%) of the common stock or similar equity interest issued by Reorganized ATA under the Plan (the "Purchased Equity") in exchange for \$7.5 million (the "Consideration"). The Consideration shall be paid at the Closing (defined below).
- B. Plan Conveyance. Under the Plan, the following shall be transferred to or otherwise vest in Reorganized ATA, in each case free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against.
 - 1. Those certain properties and authorizations listed on Schedule B.1 hereto (the "Included Assets"). Subject to ATA's agreement, Southwest may amend Schedule B.1 at any time on or before the date of the hearing on the disclosure statement concerning the Plan (the "Disclosure Statement Hearing").
 - 2. Those certain executory contracts and unexpired leases identified on Schedule B.2 hereto (the "Included Contracts"). Southwest may amend Schedule B.2 at any time on or before the Disclosure Statement Hearing.
- C. Terms & Conditions. Southwest's payment of the Consideration and performance of its commitments under this Bid Proposal are subject to the following terms and conditions, unless otherwise waived by the parties, each in its sole discretion:
 - 1. Closing. The closing (the "Closing") shall occur on or before three (3) business days after the order of the Bankruptcy Court confirming the Plan (the "Confirmation Order") is entered on the docket in the Bankruptcy Case; provided that the Confirmation Order is enforceable upon entry notwithstanding the provisions of Bankruptcy Rules 6004(g), 6006(d) and 7062.

2. Deadlines.

- a. Pursuant to a motion filed on or before November 18, 2008, the Bankruptcy Court shall enter an order (the "Approval Order"), on or before December 5, 2008: (i) approving this Bid Proposal and all of the terms hereof; (ii) designating Southwest as the party submitting the "highest and best" offer for the acquisition of the Purchased Equity (the "Prevailing Bidder"), which acquisition shall be subject to implementation under the Plan; (iii) authorizing ATA to execute this Bid Proposal; and (iv) approving the Expense Reimbursement and Break-Up Fee (each defined below). The form and substance of the motion and order described in this section shall be reasonably satisfactory to ATA and Southwest.
- b. If the Approval Order is entered by the Bankruptcy Court as set forth above; then, on or before December 5, 2008:
 - (i) Southwest and ATA shall have substantially completed the Definitive Documents (defined below); and
 - (ii) the Debtor shall file a motion seeking approval of a disclosure statement for the solicitation of votes on the Plan incorporating and adopting this Bid Proposal.
- c. Subject to the Bankruptcy Court's calendar and availability, the Bankruptcy Court shall enter an Order approving a disclosure statement for the solicitation of votes on the Plan on or before January 6, 2009.
- d. Subject to the Bankruptcy Court's calendar and availability, the Court shall have entered the Confirmation Order on or before March 2, 2009.

3. Definitive Documents. ATA and Southwest shall cooperate and use commercially reasonable efforts to prepare and negotiate in good faith and execute any and all agreements and other documents necessary to consummate the Transaction, including the Plan (the "Definitive Documents"). The Definitive Documents, other than the Plan, shall be in a form and substance reasonably satisfactory to ATA and Southwest.

4. Preservation of Assets. ATA shall preserve, up to and until the Closing, all of ATA's rights, privileges and interests (as constituted on the date of this Bid Proposal) in the Included Assets and the Included Contracts, including without limitation, satisfying all usage requirements with respect to the fourteen (14) specified "Operating Authorizations," also known as departure and landing slots, at New York's LaGuardia Airport (collectively, "ATA's Slot Rights"); provided, ATA shall not have to satisfy any usage requirements related to the two (2) Operating Authorizations at LaGuardia Airport that were leased to Delta Airlines under the Operating Authority Lease Agreement dated May 15, 2007 (the "Delta Slot Rights"); provided further, ATA will promptly notify Southwest of any communications between ATA and FAA related to the Delta Slot Rights and cooperate with Southwest as reasonably requested by Southwest to preserve ATA's interest in the Delta Slot Rights.
5. Termination of Slot Leases. Within two (2) business days after the Approval Order is entered on the docket in the Bankruptcy Case, ATA shall provide notice of termination under section 14(e) of the lease agreements relating to ATA's Slot Rights (the "Slot Leases") in order to effectuate termination of the Slot Leases in accordance with their terms as of the soonest possible date (the "Slot Lease Termination Date").
6. The Plan. The provisions of the Plan and Confirmation Order that are related to the Transaction shall be in a form and substance reasonably satisfactory to ATA and Southwest.
7. Effectiveness of the Plan. Each and every condition precedent to effectiveness of the Plan, other than payment of the Consideration, shall be satisfied, the Plan shall have become effective, and the Confirmation Order shall have been entered and become enforceable as described in paragraph C.1 above.
8. Plan Term Sheet. The plan term sheet among ATA, JPMorgan Chase Bank, N.A., the official committee of unsecured creditors appointed in the Bankruptcy Case, and ATA's labor constituencies that, among other things, incorporates the ATA Labor Settlement Agreement in Principle dated August 28, 2008 (the "Plan Term Sheet") shall provide for the implementation of the Transaction in the Plan.
9. Executory Contracts & Unexpired Leases. The Plan shall provide that ATA shall: (a) assume and assign to Reorganized ATA the Included Contracts (if any), including without limitation, leases associated with ATA's Slot Rights; and, (b) on or before the date of the Closing, reject all other executory contracts and unexpired leases, including without limitation, any and all collective bargaining agreements. Southwest shall be solely liable for the payment of any and all cure (within the meaning of 11 U.S.C. § 365) associated with the assumption and assignment of the Included Contracts (if any).

10. Conversion. The Bankruptcy Case shall not be converted to a case under chapter 7 of the Bankruptcy Code.
11. Discharge. Pursuant to the Confirmation Order, and subject to the requirements and limitations under the Bankruptcy Code, (a) Reorganized ATA shall receive a complete discharge of all liabilities and interests, including without limitation, any and all pre-petition tax liabilities of ATA; (b) all creditors of and interest holders in ATA shall be enjoined from pursuing such claims and interests against Reorganized ATA; and (c) there shall be no stamp or other transfer tax paid or payable in connection with the Transaction.
12. Regulatory Matters. Southwest shall have obtained, to its reasonable satisfaction, all regulatory approvals and/or assurances such that all of ATA's Slot Rights may pass to Reorganized ATA and the Purchased Equity may be conveyed to Southwest under the Plan without any degradation of ATA's Slot Rights. Specifically, without limitation, the Federal Aviation Administration's (the "FAA") Rule Clarification regarding the Congestion Management Rule For LaGuardia Airport, issued October 27, 2008, shall not have been revised, revoked, amended or cancelled in a manner not acceptable to Southwest. Southwest shall use commercially reasonable efforts to obtain the foregoing regulatory approvals and/or assurances.
13. Good Standing, Purchased Equity. Reorganized ATA shall be a business entity in good standing and the Purchased Equity, when issued to Southwest, shall be validly issued, fully paid and non-assessable, and free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and other interests.
14. Standard Representations, Warranties and Covenants. Southwest and ATA shall each receive representations, warranties, and covenants from each other that are customary in sales of a debtor or debtors under the Bankruptcy Code.
15. Tax Structuring. ATA and Southwest shall cooperate and use commercially reasonable efforts to structure the Transaction in a tax-efficient manner.

- D. Bid Protection. If the Approval Order is entered by the Bankruptcy Court as set forth above and Southwest is not in default hereunder; then:
1. at the closing of any sale of the Purchased Equity or equivalent transaction, including without limitation, any sale of substantially all of the Included Assets to a party other than Southwest, (an "Alternative Transaction"), ATA shall, upon submission of an invoice or invoices by Southwest, reimburse Southwest (the "Expense Reimbursement") for its reasonable and necessary legal fees, expenses and costs incurred in connection with the preparation of this Bid Proposal, preparation for the Auction and pursuit of the Transaction; provided, such reimbursement shall not exceed \$250,000; and
 2. upon the closing of an Alternative Transaction, ATA shall pay Southwest a fee in the amount of 5% of the proceeds of the Alternative Transaction (the "Break-Up Fee"), which fee shall be considered to be reasonable and necessary to induce Southwest to act as the purchaser with regard to the Transaction.

The Approval Order shall require that the Expense Reimbursement and the Break-Up Fee be paid out of the proceeds of any Alternative Transaction

- E. Alternative Transaction. From and after execution of this Bid Proposal, except as otherwise specifically permitted herein, ATA shall immediately terminate any pending discussions or negotiations with any person or entity concerning an Alternative Transaction and neither ATA nor any of its officers, directors, employees, agents, representatives or affiliates shall, directly or indirectly, solicit or initiate any inquiry or proposal from, or encourage, solicit or initiate any discussions or negotiations (collectively, "Solicitations") with any person or entity concerning an Alternative Transaction, or agree to endorse or take any other action to facilitate an Alternative Transaction. Notwithstanding the foregoing, nothing contained in this paragraph F shall prohibit ATA from furnishing information to, or entering into discussions or negotiations with, any person or entity that makes an unsolicited written proposal for an Alternative Transaction; provided, however, ATA agrees to notify Southwest and JPMorgan Chase Bank, N.A. promptly of (a) the interest from a third-party, (b) the identity of such third-party, (c) the nature of the interest expressed by such third-party, and (d) the terms and conditions of any proposal or indication of interest for an Alternative Transaction. The board of directors of ATA may consider the Alternative Transaction and, if the board of directors determines that approval of such Alternative Transaction is required for the board of directors to comply with its fiduciary duties or is required to comply with any orders of the Bankruptcy Court, the board of directors may approve such Alternative Transaction.
- F. Refund of the Deposit.
1. If the Approval Order is not entered by the Bankruptcy Court by December 5, 2008, then ATA shall refund the Deposit to Southwest within three (3) days of a written request by Southwest.

2. If the Approval Order is entered by the Bankruptcy Court, then ATA shall hold the Deposit in a segregated, interest bearing account until its release or forfeiture in accordance with this paragraph G.
3. If the Closing has not occurred before 5:00 p.m., prevailing eastern time, on March 5, 2009, then:
 - a. If the non-occurrence of the Closing is solely the result of Southwest's failure to comply with its obligations hereunder, then Southwest shall forfeit the Deposit, together with all interest earned thereon; provided, such forfeiture shall not constitute an exclusive remedy and shall be in addition to any other legal or equitable remedy ATA may have; provided, however, Southwest shall not be liable for any monetary damages awarded to ATA based upon Southwest's failure to comply with its obligations hereunder unless such monetary damages exceed the value of the Deposit, together with all interest earned thereon.
 - b. If the non-occurrence of the Closing is not solely the result of Southwest's failure to comply with its obligations hereunder, then ATA shall refund the Deposit, together with all interest earned thereon, to Southwest within three (3) days of a written request by Southwest.
4. If the Closing occurs, the Deposit, together with all interest earned thereon, shall not be returned, but shall be applied to the Consideration payable at Closing.

G. Contact Information. All correspondence to Southwest regarding this Bid Proposal shall be directed to:

Southwest Airlines Co.
c/o Bob Montgomery, Vice President
2702 Love Field Dr.
Dallas, TX 76235
Tel: 214-792-4365
Fax: 214-792-4086
Email: bob.montgomery@wnco.com

with a copy to:

David F. Heroy
Baker & McKenzie LLP
One Prudential Plaza, Suite 3500
130 East Randolph Drive
Chicago, IL 60601
Tel: 312-861-3731
Fax: 312-698-2704
Email: david.f.heroy@bakernet.com

Except as otherwise stated herein, this Bid Proposal may be amended, modified or waived only in a writing signed by both of the parties hereto.

Very truly yours,

SOUTHWEST AIRLINES CO.

By: _____

Name: Bob Montgomery

Title: Vice President

Agreed and accepted
on this ____ day of November, 2008

ATA AIRLINES, INC.

By: _____

Name:

Title:

EXHIBIT A

(Southwest Financial Information)

SOUTHWEST AIRLINES CO.
FORM 10-Q
Part I - FINANCIAL INFORMATION

Item 1. Financial Statements

Southwest Airlines Co.
Condensed Consolidated Balance Sheet
(in millions)
(unaudited)

| | September 30, 2008 | December 31, 2007 |
|--|-----------------------|----------------------|
| ASSETS | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 2,390 | \$ 2,213 |
| Short-term investments | 1,041 | 566 |
| Accounts and other receivables | 385 | 279 |
| Inventories of parts and supplies, at cost | 286 | 259 |
| Fuel derivative contracts | 1,122 | 1,069 |
| Prepaid expenses and other current assets | 77 | 57 |
| Total current assets | 5,301 | 4,443 |
| Property and equipment, at cost: | | |
| Flight equipment | 13,887 | 13,019 |
| Ground property and equipment | 1,655 | 1,515 |
| Deposits on flight equipment purchase contracts | 348 | 626 |
| | 15,890 | 15,160 |
| Less allowance for depreciation and amortization | 4,692 | 4,286 |
| | 11,198 | 10,874 |
| Other assets | 1,676 | 1,455 |
| | \$ 18,175 | \$ 16,772 |
| LIABILITIES AND STOCKHOLDERS' EQUITY | | |
| Current liabilities: | | |
| Accounts payable | \$ 701 | \$ 759 |
| Accrued liabilities | 3,540 | 3,107 |
| Air traffic liability | 1,275 | 931 |
| Current maturities of long-term debt | 72 | 41 |
| Total current liabilities | 5,588 | 4,838 |
| Long-term debt less current maturities | 2,580 | 2,050 |
| Deferred income taxes | 2,568 | 2,535 |
| Deferred gains from sale and leaseback of aircraft | 97 | 106 |
| Other deferred liabilities | 278 | 302 |
| Stockholders' equity: | | |
| Common stock | 808 | 808 |
| Capital in excess of par value | 1,221 | 1,207 |
| Retained earnings | 4,980 | 4,788 |
| Accumulated other comprehensive income | 1,066 | 1,241 |
| Treasury stock, at cost | (1,011) | (1,103) |
| Total stockholders' equity | 7,064 | 6,941 |
| | \$ 18,175 | \$ 16,772 |

See accompanying notes.

Schedule B.1

(Included Assets)

All of ATA's Slot Rights (as defined in paragraph 4 of Southwest's Bid Proposal dated November 17, 2008); Air Carrier Operating Certificate; all Certificates of Public Convenience & Necessity; ATA's Operations Specifications; transferable trademarks and trade names; Aircraft Manuals and Training Manuals, together with all documents and other records, electronic or otherwise, with respect thereto.

Schedule B.2

(Included Contracts)