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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 10-Q**

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**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934**

**For Quarter Ended September 30, 2007**

**Commission File Number 000-50368**



**ABX AIR, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State of incorporation  
or organization)

**91-1091619**  
(IRS Employer  
Identification No.)

**145 Hunter Drive  
Wilmington, Ohio 45177**  
(Address of Principal Executive Office)

**(937) 382-5591**  
(Registrant's telephone number, including area code)

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.  Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definitions of "accelerated filer" and "large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).  Yes  No

As of November 9, 2007, ABX Air, Inc. had outstanding 58,684,437 shares of common stock, par value \$.01.

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**ABX AIR, INC. AND SUBSIDIARIES**  
**Form 10-Q**

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## **FORWARD LOOKING STATEMENTS**

Statements contained in this quarterly report on Form 10-Q that are not historical facts are considered forward-looking statements (as that term is defined in the Private Securities Litigation Reform Act of 1995). Words such as “projects,” “believes,” “anticipates,” “will,” “estimates,” “plans,” “expects,” “intends” and similar words and expressions are intended to identify forward-looking statements. These forward-looking statements are based on expectations, estimates and projections as of the date of this filing, and involve risks and uncertainties that are inherently difficult to predict. Actual results may differ materially from those expressed in the forward-looking statements for any number of reasons, including those described in this report and in our 2006 Annual Report filed on Form 10-K/A with the Securities and Exchange Commission.

### **Filings with the Securities and Exchange Commission**

Our filings with the Securities and Exchange Commission, including annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, are available free of charge from our website at [www.ABXAir.com](http://www.ABXAir.com) as soon as reasonably practicable after filing with the SEC.

**PART 1. FINANCIAL INFORMATION**

*Item 1. Financial Statements*

**ABX AIR, INC. AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS**  
(In thousands, except share data)

	<u>Three Months Ended</u> <u>September 30</u>		<u>Nine Months Ended</u> <u>September 30</u>	
	<u>2007</u>	<u>2006</u>	<u>2007</u>	<u>2006</u>
REVENUES	\$285,964	\$281,348	\$855,323	\$954,091
OPERATING EXPENSES				
Salaries, wages and benefits	147,791	150,039	456,830	467,396
Fuel	66,154	69,253	186,505	200,305
Maintenance, materials and repairs	23,731	19,528	69,276	75,377
Depreciation and amortization	13,502	11,649	38,282	34,002
Landing and ramp	4,380	4,071	18,558	16,193
Rent	2,167	2,116	6,880	6,826
Purchased line-haul and yard management	1,432	1,879	4,649	86,328
Other operating expenses	19,555	14,641	48,787	41,660
	<u>278,712</u>	<u>273,176</u>	<u>829,767</u>	<u>928,087</u>
INTEREST EXPENSE	(3,736)	(2,832)	(10,302)	(8,398)
INTEREST INCOME	1,179	1,234	3,628	3,520
INCOME BEFORE INCOME TAXES	4,695	6,574	18,882	21,126
INCOME TAXES	(2,291)	—	(7,666)	—
NET EARNINGS	<u>\$ 2,404</u>	<u>\$ 6,574</u>	<u>\$ 11,216</u>	<u>\$ 21,126</u>
EARNINGS PER SHARE				
Basic	<u>\$ 0.04</u>	<u>\$ 0.11</u>	<u>\$ 0.19</u>	<u>\$ 0.36</u>
Diluted	<u>\$ 0.04</u>	<u>\$ 0.11</u>	<u>\$ 0.19</u>	<u>\$ 0.36</u>
WEIGHTED AVERAGE SHARES				
Basic	<u>58,288</u>	<u>58,270</u>	<u>58,284</u>	<u>58,270</u>
Diluted	<u>58,750</u>	<u>58,585</u>	<u>58,658</u>	<u>58,543</u>

See notes to condensed consolidated financial statements.

**ABX AIR, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(In thousands, except share data)

	<u>September 30,</u> <u>2007</u>	<u>December 31,</u> <u>2006</u>
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 33,640	\$ 63,219
Marketable securities available-for-sale	16,853	15,374
Accounts receivable, net of allowance of \$602 in 2007 and \$516 in 2006	18,969	10,365
Inventory	13,554	13,907
Prepaid supplies and other	5,799	6,395
Deferred income taxes	14,691	14,691
Aircraft and engines held for sale	<u>2,965</u>	<u>2,219</u>
<b>TOTAL CURRENT ASSETS</b>	<b>106,471</b>	<b>126,170</b>
Other assets	16,456	7,966
Deferred income taxes	74,926	87,024
Property and equipment, net	<u>518,377</u>	<u>458,638</u>
<b>TOTAL ASSETS</b>	<b><u>\$ 716,230</u></b>	<b><u>\$ 679,798</u></b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 52,179	\$ 65,313
Salaries, wages and benefits	43,949	53,173
Accrued expenses	9,675	10,298
Current portion of long-term obligations	14,854	11,413
Unearned revenue	<u>4,825</u>	<u>4,081</u>
<b>TOTAL CURRENT LIABILITIES</b>	<b>125,482</b>	<b>144,278</b>
Long-term obligations	228,894	189,118
Post-retirement liabilities	219,684	222,587
Other liabilities	4,409	3,605
Commitments and contingencies (Note G)		
<b>STOCKHOLDERS' EQUITY:</b>		
Preferred stock, 20,000,000 shares authorized, including 75,000 Series A Junior Participating Preferred Stock	—	—
Common stock, par value \$0.01 per share; 75,000,000 shares authorized; 58,684,437 and 58,539,300 shares issued and outstanding in 2007 and 2006, respectively	587	585
Additional paid-in capital	433,108	431,071
Accumulated deficit	(197,914)	(207,836)
Accumulated other comprehensive loss	<u>(98,020)</u>	<u>(103,610)</u>
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b><u>137,761</u></b>	<b><u>120,210</u></b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b><u>\$ 716,230</u></b>	<b><u>\$ 679,798</u></b>

See notes to condensed consolidated financial statements.

**ABX AIR, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	Nine Months Ended September 30	
	2007	(As restated, see Note N) 2006
<b>OPERATING ACTIVITIES:</b>		
Net earnings	\$ 11,216	\$ 21,126
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	38,282	34,002
Pension and post-retirement amortization	8,561	—
Deferred income taxes	7,606	—
Stock-based compensation	2,040	1,284
Impairment	325	257
Other	(225)	446
Changes in assets and liabilities:		
Accounts receivable	(8,604)	9,615
Inventory and prepaid supplies	(636)	(2,697)
Accounts payable	4,611	(25,592)
Unearned revenue	732	6,974
Accrued expenses, salaries, wages and benefits and other liabilities	(9,031)	(10,449)
Post-retirement liabilities	(2,903)	2,125
Other	397	195
NET CASH PROVIDED BY OPERATING ACTIVITIES	<u>52,371</u>	<u>37,286</u>
<b>INVESTING ACTIVITIES:</b>		
Capital expenditures	(118,372)	(77,668)
Proceeds from the sale of property and equipment	971	233
Restricted deposits of interest-bearing funds	(11,725)	—
Proceeds from redemptions of marketable securities	14,262	13,551
Purchases of marketable securities	(10,246)	(13,461)
NET CASH USED IN INVESTING ACTIVITIES	<u>(125,110)</u>	<u>(77,345)</u>
<b>FINANCING ACTIVITIES:</b>		
Principal payments on long-term obligations	(9,283)	(6,500)
Proceeds from borrowings on long-term obligations	52,500	18,208
Other	(57)	—
NET CASH PROVIDED BY FINANCING ACTIVITIES	<u>43,160</u>	<u>11,708</u>
NET DECREASE IN CASH	(29,579)	(28,351)
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	63,219	69,473
<b>CASH AND CASH EQUIVALENTS AT END OF PERIOD</b>	<u>\$ 33,640</u>	<u>\$ 41,122</u>
<b>SUPPLEMENTAL CASH FLOW INFORMATION:</b>		
Interest paid, net of amount capitalized	\$ 8,326	\$ 8,048
Income taxes paid	\$ —	\$ —
<b>SUPPLEMENTAL NON-CASH INFORMATION:</b>		
Accrued aircraft modification expenditures	\$ 15,724	\$ 12,359

See notes to condensed consolidated financial statements.

## ABX AIR, INC. AND SUBSIDIARIES

### NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

September 30, 2007

#### NOTE A—SUMMARY OF FINANCIAL STATEMENT PREPARATION AND SIGNIFICANT ACCOUNTING POLICIES

The interim period consolidated financial statements of ABX Air, Inc. and its subsidiaries (“ABX” or the “Company”) have been prepared in accordance with accounting principles generally accepted in the United States of America and rules and regulations of the Securities and Exchange Commission for interim financial information. Accordingly, they do not include all of the information, footnotes and disclosures required by generally accepted accounting principles for complete financial statements and are unaudited. The results of operations and cash flows for any interim periods are not necessarily indicative of results that may be reported for the full year. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. The December 31, 2006 financial amounts are extracted from the annual audited financial statements.

##### *Use of Estimates*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect amounts reported in the consolidated financial statements. Estimates and assumptions are used to record allowances for uncollectible amounts, self-insurance reserves, spare parts inventory, depreciation and impairments of property and equipment, labor contract settlements, post-retirement obligations, income taxes, contingencies and litigation. Changes in these estimates and assumptions may have a material impact on the consolidated financial statements.

##### *Consolidation*

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. Intercompany balances and transactions are eliminated.

##### *Revenue Recognition*

The Company derives approximately 93% of its revenues from an aircraft, crew, maintenance and insurance agreement (“ACMI agreement”) and a hub services agreement (“Hub Services agreement”) with DHL Express (USA), Inc. (“DHL”). Revenues from DHL are determined based on the expenses incurred during a period and recognized when the related services are performed. Expenses incurred under these agreements are generally subject to a base mark-up of 1.75%, which is recognized in the period the expenses are incurred. Certain costs, the most significant of which include fuel, interest on a promissory note due to DHL, airport rent, ramp and landing fees, incurred under the two commercial agreements are reimbursed and included in revenues without mark-up. Beginning April 1, 2006, no mark-up was recorded on the over-the-road truck line-haul network while those operations were transitioned to DHL. Beginning May 1, 2006, the Company no longer operated the line-haul network for DHL.

Both agreements also allow the Company to earn incremental mark-up above the base 1.75% mark-up (up to 1.60% under the ACMI agreement and 2.10% under the Hub Services agreement), as determined from the achievement of certain cost-related and service goals outlined in the two commercial agreements. The agreements stipulate the setting of quarterly and annual cost-related goals and annual service goals specified in each of the two agreements. At the end of each quarter, the Company measures the achievement of quarterly goals and records any incremental revenues earned by achieving the goals during the quarter. In a similar way, the Company measures annual goals and records incremental revenues at the end of its fiscal year.

The Company derives a portion of its revenues from customers other than DHL. Charter segment revenues are recognized on scheduled and non-scheduled flights when the specific flight has been completed. Aircraft parts and fuel sales are recognized when the parts and fuel are delivered. Revenues earned and expenses incurred in providing aircraft-related maintenance, repair and technical services are recognized in the period in which the services are completed and delivered to the customer. Revenues derived from transporting freight and sorting parcels are recognized upon delivery of shipments and completion of service.

#### *Cash and Cash Equivalents*

The Company classifies short-term, highly liquid investments with maturities of three months or less at the time of purchase as cash and cash equivalents. These investments are recorded at cost, which approximates fair value.

#### *Inventory*

The Company's inventory is comprised primarily of expendable spare parts and supplies used for internal consumption. These items are generally charged to expense when issued for use. The Company values aircraft spare parts inventory at weighted-average cost and maintains a related obsolescence reserve. The Company records an obsolescence reserve on a base stock of inventory for each fleet type. Inventory amortization for the obsolescence reserve corresponds to the expected life of each fleet type. Additionally, the Company monitors the usage rates of inventory parts and segregates parts that are technologically outdated or no longer used in its fleet types. Slow moving and segregated items are actively marketed and written down to their estimated net realizable values based on market conditions.

Management analyzes the inventory reserve for reasonableness at the end of each calendar quarter. That analysis includes consideration of the expected fleet life, amounts expected to be on hand at the end of a fleet life, and recent events and conditions that may impact the usability or value of inventory. Events or conditions that may impact the expected life, usability or net realizable value of inventory include additional aircraft maintenance directives from the Federal Aviation Administration, changes in Department of Transportation regulations, new environmental laws and technological advances.

#### *Income Taxes*

Income taxes have been computed using the asset and liability method, under which deferred income taxes are provided for the temporary differences between the financial reporting basis and the tax basis of the Company's assets and liabilities. Deferred taxes are measured using provisions of currently enacted tax laws. A valuation allowance against deferred tax assets is recorded when it is more likely than not that such assets will not be fully realized. Tax credits are accounted for as a reduction of income taxes in the year in which the credit originates. The Company recognizes the impact of a tax position, if that position is more likely than not of being sustained on audit, based on the technical merits of the position.

#### *Comprehensive Income (Loss)*

Comprehensive income includes net income and other comprehensive income or loss. Other comprehensive income or loss results from changes in the Company's pension liability, unrealized gains and losses on available-for-sale marketable securities and gains and losses associated with interest rate hedging instruments.

#### *Marketable Securities*

Marketable securities classified as available-for-sale are recorded at their estimated fair market values and any unrealized gains and losses are included in accumulated other comprehensive income or loss, net of income taxes, within stockholders' equity. Interest on marketable securities is included in interest income. Realized gains and losses of any securities sold are based on the specific identification method.



### *Property and Equipment*

Property and equipment are stated at cost, net of any impairment recorded. The cost and accumulated depreciation of disposed property and equipment are removed from the accounts with any related gain or loss reflected in earnings from operations.

The Company periodically evaluates, when events or circumstances require, the useful lives, salvage values and fair values of property and equipment. The acceleration of depreciation expense or the recording of significant impairment losses could result from changes in the estimated useful lives of assets due to a number of reasons, such as an assessment done quarterly to determine if excess capacity exists in the air or ground networks or changes in regulations governing the use of aircraft.

Long-lived assets are reviewed for impairment when circumstances indicate the carrying value of an asset may not be recoverable. For assets that are to be held and used, impairment is recognized when the estimated undiscounted cash flows associated with the asset or group of assets are less than their carrying value. If an impairment exists, an adjustment is made to write the asset down to its fair value, and a loss is recorded as the difference between the carrying value and fair value. Fair values are determined based on quoted market values, discounted cash flows or internal and external appraisals, as applicable. Assets held for sale or disposition are carried at the lower of carrying value or fair value less the cost to sell and have been classified as aircraft and engines held for sale.

The cost of modifying passenger aircraft to freighter aircraft configuration is capitalized as incurred. Interest costs incurred while aircraft are being modified are capitalized as an additional cost of the aircraft until the date the asset is placed in service. Capitalized interest was \$0.4 million and \$0.3 million for the quarters ended September 30, 2007 and 2006, respectively, and \$1.4 million and \$0.7 million for the nine month periods ended September 30, 2007 and 2006, respectively.

The cost of major airframe and engine overhauls on the Company's in-service fleet, as well as routine maintenance and repairs, are charged to expense as incurred.

### *Unearned Revenue*

As specified in the ACMI and Hub Services agreements with DHL, the Company is advanced funds on each Monday for the costs budgeted to be incurred for the upcoming week. The amount of the funding is agreed upon by the Company and DHL, typically at the beginning of each calendar quarter. Unearned revenue reflects those funds that the Company has received in advance of incurring the associated costs to perform under the commercial agreements. Unearned revenue also includes advance payments from customers other than DHL.

### *Stock-Based Payments*

The Company measures the cost of services received in exchange for stock-based awards using the grant-date fair value of the award. The cost of the awards is recognized over the period during which service is required to be provided. Restricted stock awards granted to employees vest over a service period. The restrictions on the non-vested restricted stock awards lapse at the end of a specified service period, which is approximately three years from the date of grant. Restrictions could lapse sooner upon a business combination, death, disability or after an employee qualifies for retirement.

### *Recent Accounting Pronouncements*

In September 2006, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standard No. 157, "Fair Value Measurements," ("SFAS 157") which defines fair value, establishes a framework for measuring fair value and expands disclosure about fair value measurements. SFAS 157 will be effective for the Company's fiscal year beginning January 1, 2008. The Company has not yet evaluated the impact that SFAS 157 will have on its financial statements and related disclosures.

In February 2007, the FASB issued SFAS 159, "The Fair Value Option for Financial Assets and Financial Liabilities — Including an Amendment of SFAS 115," ("SFAS 159") which allows for the option to measure financial instruments and certain other items at fair value. Unrealized gains and losses on items for which the fair value option has been elected are reported in earnings. Other than marketable securities and derivative instruments already measured at fair value, the Company does not presently have any financial assets or liabilities that it would elect to measure at fair value, and, therefore, the Company expects this standard will have no impact on its financial statements. SFAS 159 will be effective for the Company's fiscal year beginning January 1, 2008.

## NOTE B—TRANSACTIONS WITH DHL

The Company's revenues, cash flows and liquidity resources are highly dependent on DHL. Substantially all of the Company's revenues are derived through services provided to DHL. Revenues from services performed for DHL were \$262.5 million and \$269.8 million for the three month periods ended September 30, 2007 and 2006, respectively, and \$796.2 million and \$925.4 million for the nine month periods ended September 30, 2007 and 2006, respectively.

The Company's balance sheets include the following balances related to revenue transactions with DHL (in thousands):

	September 30, 2007	December 31, 2006
Assets (Liabilities):		
Accounts receivable	\$ 2,327	\$ 2,680
Accounts payable	(1,542)	(392)
Unearned revenue	(2,931)	(2,607)
Net liability	<u>\$ (2,146)</u>	<u>\$ (319)</u>

The ACMI agreement has a term of seven years, expiring in August 2010 and automatically renews for an additional three years unless a one-year notice of non-renewal is given. The Hub Services agreement had an amended term of four years, renewed in August 2007 for one year, with automatic annual renewals, unless a ninety-day notice of non-renewal is given.

## NOTE C—MARKETABLE SECURITIES

The marketable securities held by the Company consist of debt securities, which are classified as available-for-sale. Marketable securities of approximately \$5.4 million as of December 31, 2006 have an expected life of over one year and are included in other assets within the Company's consolidated balance sheets. As of September 30, 2007, no marketable securities held by the Company have an expected life of over one year. Expected maturities may differ from contractual maturities because the issuers of certain securities may have the right to prepay the obligations without prepayment penalties.

The following is a summary of the Company's marketable securities (in thousands):

	Estimated Fair Market Value	
	September 30, 2007	December 31, 2006
Obligations of U.S. Government Agencies	\$ 6,163	\$ 9,480
Obligations of U.S. corporations	10,690	11,336
Total marketable securities	<u>\$ 16,853</u>	<u>\$ 20,816</u>

## NOTE D—INCOME TAXES

The Company implemented the provisions of FASB Interpretation No. 48 "Accounting for Uncertainty in Income Taxes" ("FIN 48") as of January 1, 2007. This Interpretation requires financial statement recognition of the impact of a tax position, if that position is more likely than not of being sustained on audit, based on the technical merits of the position. As required by FIN 48, the cumulative effect of applying the provisions of the interpretation has been recorded as a \$1.3 million charge to the retained earnings balance as of January 1, 2007. This amount represents the full value of the Company's unrecognized tax benefits at January 1, 2007 and September 30, 2007 and, if recognized, would favorably impact the effective tax rate for the period of recognition. No changes to the unrecognized tax benefits are anticipated in the next twelve months.

The Company files income tax returns in the U.S. federal jurisdiction and various state and local jurisdictions. The returns may be subject to examination by the Internal Revenue Service ("IRS") and other jurisdictional authorities for years ending December 31, 2003 through 2006. All federal income tax returns of the Company's former parent, Airborne, Inc., are closed through 2001. Returns filed for calendar year 2002 and for the short period ended August 15, 2003 are still subject to examination by the IRS and state jurisdictions. As part of the separation agreement between the Company and Airborne, Inc., all tax liabilities resulting from returns prior to the August 15, 2003 separation date are the responsibility of Airborne, Inc. or its successors. Any adjustments to these returns could potentially increase or decrease deferred tax assets and liabilities carried over from the separation. The Company's 2003 U.S. federal income tax return was examined during 2006, and no changes were issued as a result of the examination.

The Company recognizes interest and penalties accrued related to uncertain tax positions in operating expense. As of January 1, 2007, no liability was recorded for interest or penalties related to income tax contingencies. Income tax interest and penalty expense for prior years were minimal.

The provision for income taxes for interim periods is based on management's best estimate of the effective income tax rate expected to be applicable for the current year, plus any adjustments arising from changes in the estimated amount of taxable income related to prior periods. Income taxes recorded through September 30, 2007 have been estimated utilizing a 40.6% rate based on year-to-date income and projected results for the full year. The effective tax rate for the third quarter of 2007 is 48.6%. The increase in the effective tax rate during the third quarter of 2007 is due to an increase in non-deductible items. The final effective tax rate to be applied to 2007 will depend on the actual amount of book income generated by the Company for the full year. In the first nine months of 2006, income tax expense was offset by reductions in the tax valuation allowance.

#### NOTE E—PROPERTY AND EQUIPMENT

At September 30, 2007, the Company's operating fleet consisted of 99 aircraft, including 38 Boeing 767, 57 McDonnell Douglas DC-9 and four McDonnell Douglas DC-8 aircraft. Additionally, four aircraft were undergoing modification from passenger to freighter configuration at September 30, 2007.

Property and equipment, to be held and used, consisted of the following (in thousands):

	September 30, 2007	December 31, 2006
Aircraft and flight equipment	\$ 772,177	\$ 685,652
Support equipment	49,477	48,602
Vehicles and other equipment	1,710	1,725
Leasehold improvements	1,004	849
	<u>824,368</u>	<u>736,828</u>
Accumulated depreciation	(305,991)	(278,190)
Property and equipment, net	<u>\$ 518,377</u>	<u>\$ 458,638</u>

Property and equipment included \$36.9 million of property held under capitalized leases as of September 30, 2007 and December 31, 2006. Accumulated depreciation included \$10.7 million as of September 30, 2007 and \$8.6 million as of December 31, 2006 for capital leases.

#### NOTE F—LONG TERM OBLIGATIONS

Long-term obligations consisted of the following (in thousands):

	September 30, 2007	December 31, 2006
Promissory note due to DHL	\$ 92,276	\$ 92,276
Capital lease obligations	66,453	73,551
Aircraft loans	85,019	34,704
Total long-term obligations	<u>243,748</u>	<u>200,531</u>
Less: current portion	(14,854)	(11,413)
Total long-term obligations, net	<u>\$ 228,894</u>	<u>\$ 189,118</u>

The unsecured promissory note is due in 2028 and bears interest at 5.00% per annum payable semi-annually. Interest on the promissory note is reimbursable under the ACMI agreement without mark-up. The capital lease obligations are primarily for five Boeing 767 aircraft and consist of two different leases, both expiring in 2011 with options to extend into 2017. The capital lease terms for three of the five aircraft include quarterly principal payments and variable interest of LIBOR plus 2.50% (7.73% at September 30, 2007). The capital lease for the other two Boeing 767 aircraft is at an imputed interest rate of 8.55%. At the termination of the leases, the Company is subject to normal aircraft return provisions for maintenance of the aircraft. As of September 30, 2007, the aircraft loans are collateralized by five financed aircraft, have amortizing maturities scheduled through 2016 and 2017 and bear interest at rates from 6.88% to 7.36% per annum payable monthly.

The Company has a \$45.0 million credit facility through a syndicated Credit Agreement that expires in December 2008. Borrowings under the agreement are collateralized by substantially all of the Company's assets, and bear interest equal to the prime rate or a short-term LIBOR (a one-, two- or three-month LIBOR at the Company's discretion) plus 2.25%. The agreement contains an accordion feature to increase the borrowings to a total of \$50.0 million if the Company needs additional borrowing capacity. The agreement provides for the issuance of letters of credit on the Company's behalf. As of September 30, 2007, the unused credit facility totaled \$33.3 million, net of outstanding letters of credit of \$11.7 million. There were no borrowings outstanding under the Credit Agreement as of September 30, 2007.

Under the Credit Agreement and the aircraft loans, the Company is subject to other expenses, covenants and warranties that are usual and customary. The loan agreements stipulate events of default and contain covenants including, among other things, limitations on certain additional indebtedness, guarantees of indebtedness, level of cash dividends, and certain other transactions as defined in the agreement. The conditions of the Credit Agreement and the aircraft loans cross-default.

## **NOTE G—COMMITMENTS AND CONTINGENCIES**

### *Leases*

The Company leases airport facilities and certain operating equipment under various long-term operating lease agreements. The Company subleases portions of the DHL Air Park from DHL. The term of the lease expires at the end of the transition period that follows termination of the ACMI agreement. The annual rent payable by the Company under the lease is approximately \$2.0 million and is reimbursable by DHL without mark-up.

### *Commitments*

The Company has purchase commitments to acquire one additional Boeing 767 aircraft in 2007. Based on the most current projections, the Company is planning to complete the modification of three aircraft by the end of 2007 and complete the modification of two aircraft in 2008. The Company has contracted with an aircraft maintenance and modification provider to convert aircraft from passenger to standard freighter configuration. The estimated costs of the remaining aircraft purchase commitments and the anticipated costs to complete the modification approximate \$57.7 million. The Company projects cash payments for aircraft purchases and modifications will be \$59.7 million in 2007 and \$13.7 million in 2008.

The Company anticipates that it may execute aircraft loans for three more of the aircraft as they are modified. These aircraft loans are expected to occur through a syndication process being arranged by the Company's lead bank.

### *Guarantees and Indemnifications*

Certain operating leases and agreements of the Company contain indemnification obligations to the lessor, service provider or vendor that are considered ordinary and customary (e.g. use, tax, environmental and employee indemnifications), the terms of which range in duration and are often limited. Such indemnification obligations may continue after expiration of the respective lease or agreement.

### *Legal Proceedings*

#### *Alleged Violations of Immigration Laws*

The Company reported in January of 2005 that it was cooperating fully with an investigation by the U.S. Department of Justice ("DOJ") with respect to Garcia Labor Co., Inc. ("Garcia"), a temporary employment agency based in Morristown, Tennessee, and ABX Air's use of contract employees that were being supplied to it by Garcia. The investigation concerns the immigration status of the Garcia employees assigned to the Company.

The Company terminated its contract with Garcia in February of 2005 and replaced the Garcia employees.

In July of 2006, a federal grand jury indictment was unsealed, charging two Garcia companies, the president of Garcia and two of their corporate officers with numerous counts involving the violation of federal immigration laws. The Garcia defendants subsequently entered guilty pleas in U.S. district court in October of 2006 and were sentenced in February and March of 2007. No formal proceedings have been initiated against the Company by the DOJ. In the event a settlement becomes necessary the Company believes it has adequately reserved for potential losses stemming from the investigation. If proceedings were initiated against the Company that resulted in an adverse finding, the Company could be subjected to a financial penalty that is materially greater than the amount it has accrued and restrictions on its ability to engage in business with agencies of the U.S. government.

On April 13, 2007, a former ABX employee filed a complaint against the Company, a total of three current and former executives and managers of ABX, DHL, Garcia Labor Company, Garcia Labor Company of Ohio, and three former executives of the Garcia Labor companies, in the U.S. District Court for the Southern District of Ohio. The case was filed as a putative class action against the defendants, and asserts violations of the Racketeer Influenced and Corrupt Practices Act (RICO). The complaint, which seeks damages in an unspecified amount, alleges that the defendants engaged in a scheme to hire illegal immigrant workers to depress the wages paid to hourly wage employees during the period from December 1999 to January 2005. The Company has filed a motion to dismiss the complaint, which is currently pending. Management believes the claim is without merit.

#### *Other*

In addition to the foregoing matters, the Company is also currently a party to legal proceedings in various federal and state jurisdictions arising out of the operation of its business. The amount of alleged liability, if any, from these proceedings cannot be determined with certainty; however, the Company believes that its ultimate liability, if any, arising from the pending legal proceedings, as well as from asserted legal claims and known potential legal claims which are probable of assertion, taking into account established accruals for estimated liabilities, should not be material to its financial condition or results of operations.

#### **NOTE H—COMPONENTS OF NET PERIODIC BENEFIT COST**

The Company sponsors a qualified defined benefit pension plan for its flight crewmembers and a qualified defined benefit pension plan for its other employees that meet minimum eligibility requirements. The Company also sponsors non-qualified defined benefit pension plans for certain employees. These non-qualified plans are unfunded. The Company sponsors a post-retirement healthcare plan which is unfunded.

The accounting and valuation for these post-retirement obligations are determined by prescribed accounting and actuarial methods that consider a number of assumptions and estimates. The selection of appropriate assumptions and estimates is significant due to the long time period over which benefits will be accrued and paid. The long-term nature of these benefit payouts increases the sensitivity of certain estimates on our post-retirement costs.

The Company's net periodic benefit cost for its qualified defined benefit pensions and post-retirement healthcare plans are as follows (in thousands):

	Three Months Ended September 30				Nine Months Ended September 30			
	Pension Plans		Post-retirement Healthcare Plan		Pension Plans		Post-retirement Healthcare Plan	
	2007	2006	2007	2006	2007	2006	2007	2006
Service cost	\$ 8,924	\$ 9,540	\$ 546	\$ 602	\$ 26,772	\$ 28,620	\$1,638	\$1,806
Interest cost	8,351	7,505	495	480	25,053	22,515	1,485	1,440
Expected return on plan assets	(7,950)	(6,305)	—	—	(23,850)	(18,915)	—	—
Amortization of prior service cost	1,205	1,052	—	—	3,615	3,156	—	—
Amortization of net loss	1,490	2,638	158	268	4,472	7,914	474	804
Net periodic benefit cost	<u>\$12,020</u>	<u>\$14,430</u>	<u>\$1,199</u>	<u>\$1,350</u>	<u>\$ 36,062</u>	<u>\$ 43,290</u>	<u>\$3,597</u>	<u>\$4,050</u>

During the three and nine month periods ended September 30, 2007, the Company paid \$15.5 million and \$33.7 million of contributions to its defined benefit pension plans, respectively. The Company presently anticipates contributing an additional \$11.3 million to fund its pension plans during the remainder of 2007 for a total of \$45.0 million.

## NOTE I—STOCK-BASED COMPENSATION

The Company's Board of Directors has granted stock incentive awards to certain employees and board members pursuant to a long-term incentive plan which was approved by the Company's stockholders in May 2005. Employees have been awarded non-vested stock units with performance conditions, non-vested stock units with market conditions and non-vested restricted stock. Board members were granted time-based awards. Restricted stock and time-based awards vest over a specified service period. The non-vested stock units will be converted at the end of a specified service period into a number of shares of Company stock depending on performance and market conditions. The Company expects to settle all of the stock unit awards by issuing new shares of stock. The table below summarizes award activity.

	Nine Months Ended September 30, 2007		Nine Months Ended September 30, 2006	
	Number of shares	Weighted average grant date value	Number of shares	Weighted average grant date value
Outstanding at beginning of period	597,000	\$ 7.37	264,600	\$ 8.33
Granted	319,100	8.13	332,400	6.61
Exercised	(22,200)	7.48	—	—
Cancelled	—	—	—	—
Outstanding at end of period	<u>893,900</u>	\$ 7.64	<u>597,000</u>	\$ 7.37
Vested	101,800	\$ 7.56	49,600	\$ 7.44

The grant-date fair value of each performance condition award, non-vested restricted stock award and time-based award granted by the Company in 2007 was \$7.83, the value of the Company's stock on the date of grant. The grant-date fair value of each market condition award granted in 2007 was \$9.20. The market condition awards were valued using a Monte Carlo simulation technique, a risk-free interest rate of 4.67%, a term of 36 months, and a volatility of 44.1% based on historical volatility over three years using daily stock prices.

For the nine month periods ended September 30, 2007 and 2006, the Company recorded expense of \$2.0 million and \$1.3 million, respectively, for stock incentive awards. At September 30, 2007, there was \$2.5 million of unrecognized expense related to the stock incentive awards that is expected to be recognized over a weighted-average period of 1.2 years. As of September 30, 2007, awards totaling 916,100 had been granted and 893,900 awards were outstanding. None of the awards were convertible, and none of the outstanding shares of restricted stock had vested as of September 30, 2007. These awards could result in a maximum number of 1,102,600 additional outstanding shares of the Company's common stock depending on service, performance and market results through December 31, 2009.

## NOTE J—DERIVATIVE INSTRUMENTS

To reduce its exposure to rising interest rates on anticipated aircraft financing transactions, the Company entered into five forward treasury lock agreements ("treasury locks") during the first quarter of 2006. The Company anticipated aircraft financing under fixed interest rate loans based on the interest rates of ten-year U.S. Treasury Notes. The value of the treasury locks were based on the ten-year U. S. Treasury interest rates, effectively offsetting the effect of changing interest rates on the anticipated loan transaction. The final remaining treasury lock was with a major U.S. financial institution and settled in cash in July 2007, near the forecasted execution date of the anticipated financing transaction.

In accordance with Statement of Financial Accounting Standards ("SFAS") No. 133, "Accounting for Derivative Instruments and Hedging Activities," the Company accounted for the treasury locks as a cash flow hedge. The treasury locks were evaluated and deemed to be highly effective as a hedge at inception and upon expiration. The Company recorded unrealized gain or losses resulting from the changes in fair value in the consolidated balance sheets under accumulated other comprehensive income in stockholders' equity. These gains and losses are recognized into earnings over the terms of the forecasted loan transactions.

**NOTE K—COMPREHENSIVE INCOME**

Comprehensive income includes the following transactions for the three and nine month periods ended September 30, 2007 and 2006 (in thousands):

	Three Months Ended September 30			Nine Months Ended September 30		
	Before Tax	Income Tax (Expense) Benefit	Net of Tax	Before Tax	Income Tax (Expense) Benefit	Net of Tax
<b>2007</b>						
Net income			\$ 2,447			\$11,259
Other comprehensive income:						
Unrealized loss on marketable securities	\$ (18)	\$ 7	(11)	\$ (26)	\$ 10	(16)
Unrealized gain on hedge derivatives	—	—	—	329	(125)	204
Reclassifications to net income:						
Hedging gain realized in net income	(30)	11	(19)	(77)	29	(48)
Pension actuarial loss	1,491	(493)	998	4,472	(1,626)	2,846
Post-retirement actuarial loss	157	(51)	106	474	(171)	303
Pension prior service cost	1,206	(399)	807	3,615	(1,314)	2,301
Total other comprehensive income	\$ 2,806	\$ (925)	1,881	\$8,787	\$ (3,197)	5,590
Comprehensive income			<u>\$ 4,328</u>			<u>\$16,849</u>
<b>2006</b>						
Net income			\$ 6,574			\$21,126
Other comprehensive income:						
Unrealized gain on marketable securities	\$ 58	\$ —	58	\$ 38	\$ —	38
Unrealized gain (loss) on hedge derivatives	(1,585)	—	(1,585)	442	—	442
Less: Reclassification of hedging gain realized in net income	(7)	—	(7)	(7)	—	(7)
Total other comprehensive income	\$(1,534)	\$ —	(1,534)	\$ 473	\$ —	473
Comprehensive income			<u>\$ 5,040</u>			<u>\$21,599</u>

**NOTE L—EARNINGS PER SHARE**

The calculation of basic and diluted earnings per common share follows (in thousands, except per share amounts):

	Three Months Ended September 30		Nine Months Ended September 30	
	2007	2006	2007	2006
Net income applicable to common stockholders	<u>\$ 2,447</u>	<u>\$ 6,574</u>	<u>\$11,259</u>	<u>\$21,126</u>
Weighted-average shares outstanding for basic earnings per share	58,288	58,270	58,284	58,270
Common equivalent shares:				
Effect of stock-based compensation awards	462	315	374	273
Weighted-average shares outstanding assuming dilution	<u>58,750</u>	<u>58,585</u>	<u>58,658</u>	<u>58,543</u>
Basic earnings per share	<u>\$ 0.04</u>	<u>\$ 0.11</u>	<u>\$ 0.19</u>	<u>\$ 0.36</u>
Diluted earnings per share	<u>\$ 0.04</u>	<u>\$ 0.11</u>	<u>\$ 0.19</u>	<u>\$ 0.36</u>

The number of equivalent shares that were not included in weighted average shares outstanding assuming dilution because their effect would have been anti-dilutive is insignificant.

## NOTE M—SEGMENT INFORMATION

The Company operates in two reportable segments. The air cargo transportation, logistics and package handling services provided to DHL under the ACMI and Hub Services agreements are aggregated below as “DHL” (see Note A). The ACMI and charter services that the Company provides outside of the ACMI agreement with DHL are referred to as “Charters” below. The Company’s other activities, which include contracts with the U.S. Postal Service and aircraft parts sales and maintenance services, do not constitute a reportable segment and are combined in “All other” with net interest income. Cash, cash equivalents, marketable securities and deferred tax assets are reflected in Assets – All other below (in thousands):

	Three Months Ended September 30		Nine Months Ended September 30	
	2007	2006	2007	2006
<b>Revenues:</b>				
DHL	\$260,562	\$269,774	\$792,395	\$925,435
Charters	16,704	6,587	37,911	15,838
All other	8,698	4,987	25,017	12,818
Total	<u>\$285,964</u>	<u>\$281,348</u>	<u>\$855,323</u>	<u>\$954,091</u>
<b>Depreciation and amortization expense:</b>				
DHL	\$ 10,484	\$ 10,864	\$ 31,329	\$ 31,280
Charters	2,828	715	6,389	2,559
All other	190	70	564	163
Total	<u>\$ 13,502</u>	<u>\$ 11,649</u>	<u>\$ 38,282</u>	<u>\$ 34,002</u>
<b>Pre-tax earnings:</b>				
DHL	\$ 3,163	\$ 3,595	\$ 10,383	\$ 12,487
Charters	191	834	3,396	1,780
All other	1,341	2,145	5,103	6,859
Total	<u>\$ 4,695</u>	<u>\$ 6,574</u>	<u>\$ 18,882</u>	<u>\$ 21,126</u>
			<b>September 30,</b>	<b>December 31,</b>
			<b>2007</b>	<b>2006</b>
<b>Assets:</b>				
DHL			\$ 333,174	\$ 358,211
Charters			220,799	126,682
All other			162,257	194,905
Total			<u>\$ 716,230</u>	<u>\$ 679,798</u>

The Company does not allocate overhead costs that are reimbursed by DHL to its non-DHL activities. The provisions of the commercial agreements with DHL do not require an allocation of overhead until such time as ABX derives more than 10% of its total revenue from non-DHL business activities.



## NOTE N—RESTATEMENT OF PREVIOUSLY ISSUED FINANCIAL STATEMENTS

Subsequent to the issuance of the Company's Form 10-Q for the nine months ended September 30, 2006, the Company's management determined that the unaudited condensed consolidated statement of cash flows for the nine month period ended September 30, 2006 did not properly classify certain payments made for capital expenditures as investing activities. Rather, such payments were reflected as operating activities. This misclassification resulted in an understatement of cash flows provided by operating activities and an equal understatement of cash flows used by investing activities. As a result, the condensed consolidated statement of cash flows for the nine month period ended September 30, 2006 has been restated to correct this error. This restatement does not impact the Company's previously reported condensed consolidated balance sheets, statements of earnings, comprehensive income, or changes in stockholders' equity.

The following table sets forth the effects of the restatement on certain line items within the Company's previously reported statements of cash flows (in thousands):

	Nine months ended September 30, 2006		
	Previously reported	Adjustments	Restated
Changes in accounts payable	\$(36,154)	\$ 10,562	\$(25,592)
Net cash provided by operating activities	26,724	10,562	37,286
Capital expenditures	(67,106)	(10,562)	(77,668)
Net cash used in investing activities	(66,783)	(10,562)	(77,345)

## NOTE O—SUBSEQUENT EVENTS

### *Cargo Holdings International*

On November 2, 2007, the Company announced that it entered into an agreement to acquire all of the outstanding stock of Cargo Holdings International, Inc. ("CHI"), a privately held provider of outsourced air cargo services based in Orlando, Florida, in a transaction valued at approximately \$350 million. The equity purchase price of the transaction is anticipated to be \$260 million. The transaction will be financed with the issuance of four million shares of ABX common stock and cash from a new \$345 million senior secured credit facility led by SunTrust Bank and Regions Bank, a portion of which will be used to refinance CHI's existing \$100 million credit facility. The acquisition is subject to customary regulatory approvals and is expected to close before the end of 2007. The financing of the transaction is also subject to the lenders' satisfaction that upon completion of the transaction, ABX would remain in compliance with its material agreements, including its ACMI agreement with DHL.

Through its wholly owned subsidiaries, CHI operates 32 aircraft, and also owns five Boeing 767-200s and one Boeing 757-200 that are undergoing conversions from passenger to freight configuration. Prior to the closing of the acquisition, CHI anticipates it will acquire and begin modification of two additional Boeing 757-200 aircraft. CHI companies also provide aircraft leasing, fuel management, specialized transportation management and air charter brokerage services. CHI's primary customer is BAX Global Inc./Schenker AG, and its roster of more than thirty customers includes the U.S. government, DHL, the U.S. Postal Service, and United Parcel Service, Inc. By acquiring CHI, the Company expects to diversify its revenue base and accelerate its growth opportunities.

During the first nine months of 2007, the Company has incurred approximately \$0.5 million in acquisition-related costs, and we expect to incur significant additional acquisition-related costs in the remainder of 2007.

### *Overhead expenses*

In a letter dated September 19, 2007, DHL communicated to the Company's management DHL's assertion that under provisions within the ACMI and Hub Services agreements 1) certain corporate overhead expenses incurred by ABX as a result of being a publicly traded company are not required to be reimbursed by DHL (these expenses include professional fees incurred by the Company to evaluate an offer by ASTAR Air Cargo Holdings, LLC to acquire all of the outstanding stock of ABX) and 2) ABX reached the 10% threshold for allocating overhead expenses to the Charter segment and other non-DHL operations during the second quarter of 2007 when excluding fuel revenues that are reimbursed without mark-up.

Since September 19, 2007, through an exchange of letters, a conference call and a meeting between the Company and DHL, the Company's management has explored DHL's assertions regarding the reimbursement of overhead costs. Management has not been able to find a basis in either of the agreements for excluding reimbursed fuel from the 10% threshold calculation or excluding public registrant related expenses from reimbursable costs. The Company maintains that the 10% threshold specified in the agreements includes the fuel revenues, and that until such time as the 10% threshold is met, all of the corporate overhead expenses are reimbursable under the commercial agreements.

On November 5, 2007, DHL reduced the weekly advanced funding payment to the Company for the ACMI and Hub Services agreements, citing the disagreement regarding overhead expenses discussed above as the cause for the reduction. DHL reduced the previously agreed upon weekly payment by \$8.8 million and placed that amount in an interest bearing bank account. DHL indicated that the amount of the reduction is intended to cover overhead allocations and public company costs for the second and third quarters of 2007; however, the process to derive the allocation was not disclosed to the Company. Because DHL failed to completely fund the Company with the agreed upon weekly amount stipulated by the ACMI and Hub Services agreements for the week of November 5, 2007, the Company was in default of its Credit Agreement and aircraft loans. The Company's banks subsequently waived the event of default and amended the debt agreements to modify the condition of the default, easing the related requirement.

By not remitting the full payment of weekly funding to the Company, DHL is in default of the ACMI and Hub Services agreements. On November 7, 2007, the Company notified DHL that it was in default under these agreements, an assertion that DHL is disputing. The dispute resolution procedures, as specified in the agreements, have begun and the Company is preparing to prosecute its position through arbitration. The Company expects to prevail in the dispute resolution process; accordingly, no charge or reserve for disputed overhead expenses has been recorded. The arbitration process could, however, result in an unfavorable outcome, requiring the Company to bear overhead expenses currently in dispute, without reimbursement from DHL.

## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

The following Management's Discussion and Analysis has been prepared with reference to the historical financial condition and results of operations of ABX Air, Inc. and its subsidiaries ("ABX"). The following discussion and analysis describes the principal factors affecting the results of operations, financial condition, cash flows, liquidity and capital resources. The following Management's Discussion and Analysis gives effect to the restatement discussed in Note N to the accompanying condensed consolidated financial statements. It should be read in conjunction with the accompanying unaudited financial statements and the related notes contained in this report and our Annual Report on Form 10-K/A for the year ended December 31, 2006.

### **BACKGROUND**

ABX is an independent airline that provides cargo transportation and package sorting and handling services. We operate an in-service fleet of 99 aircraft as of September 30, 2007. DHL Express (USA), Inc. ("DHL") is our largest customer. Our principal airline hub and largest package sorting operations are located in Wilmington, Ohio, and we operate sixteen regional hubs for DHL.

We assess our performance and operate in two reportable segments:

DHL: ABX provides services to DHL under two commercial agreements: an aircraft, crew, maintenance and insurance agreement ("ACMI agreement") and a hub services agreement ("Hub Services agreement"). Under the ACMI agreement, ABX provides air cargo transportation to DHL on a cost-plus pricing structure. Under the Hub Services agreement, ABX provides staff to conduct package handling, package sorting, warehousing, and logistics services, as well as airport facilities and equipment maintenance services for DHL, also on a cost-plus pricing structure. Costs incurred under these agreements are generally marked up by 1.75% and included in revenues. Both agreements also allow ABX to earn incremental mark-up above the base 1.75% mark-up from the achievement of certain cost-related and service goals specified in the two agreements. Fuel, rent, interest on the promissory note to DHL, and ramp and landing fees incurred under the ACMI agreement are the most significant cost items reimbursed without mark-up.

The ACMI agreement has a term of seven years, expiring in August 2010, and the Hub Services agreement had an amended term of four years, which renewed in August 2007 and is subject to automatic annual renewals unless cancelled with 90 days of prior notice. Under the agreements, DHL can terminate specific ACMI aircraft, add to, delete or modify the air routes we operate under the ACMI agreement and increase or reduce the scope of services we provide under the Hub Services agreement. Additionally, DHL can terminate the agreements if ABX does not comply with certain performance standards specified in the agreements.

Charter: We also offer ACMI (aircraft, crew, maintenance and insurance) and on-demand charter services to freight forwarders and other shippers. We usually charge customers based on the number of block hours flown, and typical agreements specify a minimum number of block hours to be charged monthly. At September 30, 2007, we had nine Boeing 767 aircraft in charter segment service. Based on the most current projections, we are expecting to deploy three more Boeing 767 aircraft in 2007 and two more in 2008.

Our other activities, which include contracts with the U.S. Postal Service ("USPS") and aircraft parts sales and maintenance services, do not constitute reportable segments.

### *Cargo Holdings International*

On November 2, 2007, we announced that ABX entered into an agreement to acquire all of the outstanding stock of Cargo Holdings International, Inc. ("CHI"), a privately held provider of outsourced air cargo services based in Orlando, Florida, in a transaction valued at approximately \$350 million. The equity purchase price of the transaction is anticipated to be \$260 million. The transaction will be financed with the issuance of four million shares of ABX common stock and cash from a new \$345 million senior secured credit facility led by SunTrust Bank and Regions Bank, a portion of which will be used to refinance CHI's existing \$100 million credit facility. The acquisition is subject to customary regulatory approvals and is expected to close before the end of 2007. The financing of the transaction is also subject to the lenders' satisfaction that upon completion of the transaction, ABX would remain in compliance with its material agreements, including its ACMI agreement with DHL. We filed a description of the terms and conditions of the acquisition agreement with the Securities and Exchange Commission on Form 8-K Current Report.

Through its wholly owned subsidiaries, CHI operates 32 aircraft and also owns five Boeing 767-200s and one Boeing 757-200 that are undergoing conversions from passenger to freighter configuration. Prior to the closing of the acquisition, CHI anticipates it will acquire and begin modification of two additional Boeing 757-200 aircraft. CHI companies also provide aircraft leasing, fuel management, specialized transportation management and air charter brokerage services. CHI's primary customer is BAX Global Inc./Schenker AG, and its roster of more than thirty customers includes the U.S. government, DHL, the U.S. Postal Service, and UPS.

#### *Overhead expenses*

In a letter dated September 19, 2007, DHL communicated to us its assertion that under provisions within the ACMI and Hub Services agreements 1) certain corporate overhead expenses incurred by ABX as a result of being a publicly traded company are not required to be reimbursed by DHL (these expenses include professional fees incurred by ABX to evaluate an offer by ASTAR Air Cargo Holdings, LLC to acquire all of the outstanding stock of ABX) and 2) ABX reached the 10% threshold for allocating overhead expenses to the Charter segment and other non-DHL operations during the second quarter of 2007 when excluding fuel revenues that are reimbursed without mark-up.

Since September 19, 2007, through an exchange of letters, a conference call and a meeting between ABX management and DHL, we explored DHL's assertions regarding the reimbursement of overhead costs. We have not been able to find a basis in either of the agreements for excluding reimbursed fuel from the 10% threshold calculation or excluding public registrant related expenses from reimbursable costs. We maintain that the 10% threshold specified in the agreements includes the fuel revenues, and that until such time as the 10% threshold is met, all of the corporate overhead expenses are reimbursable under the commercial agreements.

On November 5, 2007, DHL reduced the weekly advanced funding payment to ABX for the ACMI and Hub Services agreements, citing the disagreement regarding overhead expenses discussed above as the cause for the reduction. DHL reduced the previously agreed upon weekly payment by \$8.8 million and placed that amount in an interest bearing bank account. DHL indicated that the amount of the reduction is intended to cover overhead allocations and public company costs for the second and third quarters of 2007; however, the process to derive the allocation was not disclosed to us. Because DHL failed to completely fund ABX with the agreed upon weekly amount stipulated by the ACMI and Hub Services agreements for the week of November 5, 2007, ABX was in default of its Credit Agreement and aircraft loans. ABX's banks subsequently waived the default and amended the debt agreements to modify the condition of the default, easing the related requirement.

By not remitting the full payment of weekly funding to ABX, DHL is in default of the ACMI and Hub Services agreements. On November 7, 2007, we notified DHL that it was in default under these agreements, an assertion that DHL is disputing. The dispute resolution procedures, as specified in the agreements, have begun and ABX is preparing to prosecute its position through arbitration. We expect to prevail in the dispute resolution process; accordingly, no charge or reserve for disputed overhead expenses has been recorded.

## **RESULTS OF OPERATIONS**

Earnings in the third quarter of 2007 declined \$4.2 million compared to the third quarter of 2006, primarily due to \$2.3 million of incremental, deferred (non-cash) income tax expense. ABX began to record deferred income tax expense starting in 2007 and, accordingly, had no income tax expense for the third quarter of 2006. Pre-tax earnings in the third quarter of 2007 decreased \$1.9 million compared to the third quarter of 2006. The decline in pre-tax earnings primarily reflects lower charter segment results and increased interest expense. Total revenues increased \$4.6 million, or 1.6%, to \$286.0 million for the third quarter of 2007 compared to the third quarter of 2006. Revenue during the third quarter of 2007 was positively impacted by increased non-DHL charter flight hours, additional aircraft maintenance services and two additional USPS sorting centers added in September of 2006.

For the first nine months of 2007, we had net earnings of \$11.2 million compared to net earnings of \$21.1 million for the first nine months of 2006. Earnings from the first nine months of 2007 include a provision for deferred income tax expense of \$7.7 million, compared with no such provision in 2006. Before taxes, earnings for the nine-month period declined \$2.2 million, or 10.6%, to \$19.0 million. Increased earnings from charter segment operations partially offset increased interest expense and declines in earnings from our DHL contracts. Total revenues decreased 10.4% to \$855.3 million compared to the first nine months of 2006. Lower revenues from DHL, which declined 14.4%, were partially offset by increased charter segment revenues, which grew 139.4% compared to the first nine months of 2006.

#### DHL segment

Our pre-tax earnings from the DHL segment declined \$0.4 million and \$2.1 million in the third quarter and first nine months of 2007, respectively, compared to the corresponding 2006 periods. Declines were affected by lower base of expenses subject to

mark-up and lower achievement of cost-related incentives under the commercial agreements with DHL. Our DHL expense base declined during the first nine months of 2007 compared to the corresponding period of 2006 due to DHL assuming the management of line-haul operations in May 2006, the transfer of the Allentown, Pennsylvania and Riverside, California hubs to DHL during 2007 and the removal of 21 aircraft from the ACMI agreement in August 2006. During the first nine months of 2006, we earned \$1.3 million on revenues of \$82.8 million from management of DHL's line-haul trucking operations prior to the transfer of those operations to DHL. During the third quarter and first nine months of 2007, our expenses for the DHL segment included approximately \$0.8 million and \$1.7 million for costs and administrative expenses that are not reimbursable under the two DHL agreements, compared to approximately \$0.6 million and \$2.1 million for the corresponding 2006 periods.

Under the two agreements with DHL, we have the potential to earn additional revenues from an incremental mark-up each quarter based on achieving certain cost-related goals. We earned \$0.6 million of incremental mark-up under the ACMI agreement during the third quarters of both 2007 and 2006. We earned no incremental mark-up under the Hub Services agreement during the third quarter of 2007 and \$0.2 million during the third quarter of 2006. For the first nine months of 2007, we earned \$1.7 million under the ACMI agreement and no incremental mark-up under the Hub Services agreement compared to \$2.1 million and \$1.0 million of incremental mark-up under the ACMI and Hub Services agreements, respectively, in the first nine months of 2006. The incremental mark-up for the first nine months of 2007 under the ACMI agreement resulted from flying greater than budgeted aircraft hours during the periods, while incurring lower than budgeted aircraft maintenance expenses. The incremental mark-up under the Hub Services agreement decreased \$1.0 million during the first nine months of 2007 compared to 2006. We did not earn an incremental mark-up under the Hub Services agreement in the third quarter or first nine months of 2007 because our costs were higher than budgeted while shipment volumes handled during the periods were below anticipated levels.

No incremental mark-up contribution from the annual cost and service goals specified in the two agreements was included in our revenue for the third quarter or first nine months of 2007 and 2006. Any revenue earned through the achievement of annual goals is recorded in the fourth quarter. While the results through the first nine months are not necessarily indicative of full year performance, as of September 30, 2007, we were on pace to achieve nearly 100% of its ACMI maximum for full-year cost-related performance, but none of the annual incremental cost-related mark-up under its Hub Services agreement. The maximum amount of annual cost-related mark-up on eligible costs available in each agreement is approximately 0.81%. On the same projected basis, we were on pace to achieve annual mark-up for performance against service goals approximately equal to 80% of the maximum available under the ACMI agreement, and approximately 90% of the maximum under the Hub Services agreement. The maximum annual service mark-up available in the ACMI agreement is 0.25%; the maximum service mark-up available in the Hub Services agreement is 0.75%.

Our expenses for DHL that are reimbursed without mark-up decreased \$2.2 million and \$36.8 million for the third quarter and first nine months of 2007, respectively, compared to the same 2006 periods. The reason for the majority of this decrease is the transition of the management of the line-haul trucking network to DHL in May 2006. During the period of transition in April 2006, all costs incurred by ABX to manage the network were recorded as reimbursable without mark-up.

During the third quarter of 2007, DHL notified us that on November 3, 2007, it would take over management of the South Bend, Indiana hub operations and that on January 1, 2008, it would take over management of the Columbus, Ohio area logistics operations. In total, these operations contributed approximately \$18.9 million of revenues and approximately \$0.3 million of pre-tax earnings for the nine months ended September 30, 2007. During the third quarter of 2007 we recognized a \$0.3 million impairment charge associated with four DC-9 aircraft released in September 2007 from service for DHL. Three of the four aircraft will be sold to DHL, while ABX will retain the fourth.

#### Charter segment

Charter segment revenues grew 153.6% over the third quarter of 2006 to \$16.7 million for the third quarter of 2007. For the first nine months of 2007, charter revenues grew 139.4% to \$37.9 million compared to the first nine months of 2006. The growth of our non-DHL charter revenues reflects the deployment of six additional Boeing 767 aircraft into service since September 2006, including two aircraft contracted to All Nippon Airways Co., Ltd. ("ANA"). The two-year agreement, with an option for annual renewals, began May 15, 2007. We are supporting ANA's cargo operations throughout the Asian market, including Japan, China and Thailand.

Pre-tax earnings from the charter segment were \$0.2 million for the third quarter of 2007 compared to \$0.8 million for the third quarter of 2006. For the first nine months of 2007 and 2006, earnings from charter segment operations were \$3.4 million and \$1.8 million, respectively. Pre-tax earnings from the charter segment during the third quarter were negatively impacted by the start-up time necessary to get recently delivered aircraft deployed for customers and the timing of scheduled heavy maintenance. Additionally, our margins during the quarter were hurt by high aircraft crewing expenses in our Asia start-up operations. Efforts to cooperatively find a long term alternative to a foreign domicile at the request of the pilots union have been unsuccessful. We initially implemented a

temporary crew rotation plan for the Asian operations that was too costly to maintain. We are now proceeding to establish a domicile of crews in Japan under the provisions of our collective bargaining agreement. Although it will take a few more months to show benefits, this new cost structure is necessary for ABX to be competitive in Asia. In the meantime, the market demand for the Boeing 767s remains strong in South American and Asian markets that ABX serves. ABX was recently awarded route authority in Mexico, and we will begin service for a new South American customer under an ongoing contract in November 2007.

We expect to deploy three additional Boeing 767 aircraft into the charter segment by the end of 2007 and two more in 2008 as the freighter modifications are completed. While customer demand for these aircraft is currently strong, our operating results could be impacted by the time difference between the redelivery of a modified aircraft to us and that aircraft's deployment into revenue service. We begin to incur depreciation expense for each additional aircraft when an aircraft is ready for service. Revenue generating service may begin some time later, however, depending on satisfaction of a number of conditions, including international regulations and laws, contract negotiations, flight crew availability, and arranging resources for aircraft handling. New customer agreements typically involve start-up expenses including those for route authorities, over fly rights, travel and other activities, and may impact future operating results, particularly as we experience a surge in aircraft deployments. We may begin to incur interest expense from incremental aircraft loans before those aircraft reach normal utilization levels. Additionally, our pre-tax earnings will fluctuate due to the timing of scheduled heavy maintenance, which, under our policy, are expensed as maintenance is performed.

#### Other operations

Other, non-DHL revenues increased to \$8.7 million in the third quarter of 2007 compared to \$5.0 million in the third quarter of 2006. For the first nine months of 2007 and 2006, other, non-DHL revenues increased to \$25.0 million compared to \$12.8 million. Increased revenues were a result of being awarded two USPS sort center contracts in the fall of 2006 and an increase in aircraft maintenance work compared to 2006. As a result, earnings from all other, non-DHL activities increased \$0.4 million and \$0.6 million during the third quarter and first nine months of 2007, respectively, compared to the corresponding periods in 2006. Aircraft maintenance revenues continue to fluctuate and depend in part on hangar availability that coincides with customer maintenance schedules.

A summary of our earnings is shown below (in thousands):

	<u>Three Months Ended Sept. 30</u>		<u>Nine Months Ended Sept. 30</u>	
	2007	2006	2007	2006
<b>Revenues:</b>				
<b>DHL</b>				
ACMI				
Base mark-up	\$ 108,873	\$ 109,437	\$ 334,760	\$ 352,520
Incremental mark-up	587	621	1,724	2,052
Total ACMI	109,460	110,058	336,484	354,572
Hub Services				
Base mark-up	73,837	80,110	232,531	309,674
Incremental mark-up	—	160	—	952
Total Hub Services	73,837	80,270	232,531	310,626
Other Reimbursable	77,265	79,446	223,380	260,237
<b>Total DHL</b>	260,562	269,774	792,395	925,435
<b>Charters</b>	16,704	6,587	37,911	15,838
<b>Other Activities</b>	8,698	4,987	25,017	12,818
<b>Total Revenues</b>	<u>\$ 285,964</u>	<u>\$ 281,348</u>	<u>\$ 855,323</u>	<u>\$ 954,091</u>
<b>Expenses:</b>				
<b>DHL</b>				
ACMI				
Hub Services	\$ 107,528	\$ 107,984	\$ 329,960	\$ 347,201
Other Reimbursable	72,606	78,749	228,672	305,510
<b>Total DHL</b>	77,265	79,446	223,380	260,237
<b>Charters</b>	257,399	266,179	782,012	912,948
<b>Other Activities</b>	16,513	5,753	34,515	14,058
<b>Total Expenses</b>	7,562	4,243	21,657	10,044
<b>Total Expenses</b>	<u>\$ 281,474</u>	<u>\$ 276,175</u>	<u>\$ 838,184</u>	<u>\$ 937,050</u>
<b>Pre-tax Earnings:</b>				
<b>DHL</b>				
ACMI				
Hub Services	\$ 1,932	\$ 2,074	\$ 6,524	\$ 7,371
Other Reimbursable	1,231	1,521	3,859	5,116
<b>Total DHL</b>	—	—	—	—
<b>Charters</b>	3,163	3,595	10,383	12,487
<b>Other Activities</b>	191	834	3,396	1,780
<b>Interest Income and Other</b>	1,136	744	3,360	2,774
<b>Total Pre-tax Earnings</b>	205	1,401	1,743	4,085
<b>Total Pre-tax Earnings</b>	<u>\$ 4,695</u>	<u>\$ 6,574</u>	<u>\$ 18,882</u>	<u>\$ 21,126</u>

*Note: We do not allocate overhead costs that are reimbursed by DHL to charter and other non-DHL business activities. The provisions of the commercial agreements with DHL do not require an allocation of overhead until such time as ABX derives more than 10% of its total revenue from non-DHL business activities.*

Salaries, wages and benefits expense decreased 1.5% and 2.3% during the third quarter and first nine months of 2007 as compared to the corresponding periods of 2006. The decrease reflects an approximately 2% decrease in part time and full time staffing levels compared to the third quarter of 2006 and includes transferring the Allentown, Pennsylvania hub operation to DHL in January 2007 and the Riverside, California hub operation in June 2007. This expense line will further be affected by the transfer of the South Bend, Indiana hub operations to DHL in November 2007 and the Columbus logistics operations scheduled to be transferred to DHL in January 2008.

Fuel expense decreased 4.5% and 6.9% during the three and nine month periods ended September 30, 2007, respectively, compared to the corresponding periods in 2006. The decrease was driven by lower consumption of aviation fuel. The average aviation fuel price was \$2.32 and \$2.30 per gallon in the third quarters of 2007 and 2006, respectively. Our consumption of aviation fuel during the third quarter and first nine months of 2007 declined compared to 2006 in conjunction with the removal of aircraft by DHL since the third quarter of 2006.

Maintenance, materials and repairs increased 21.5% during the third quarter of 2007 but decreased 8.1% during the nine month period ended September 30, 2007, compared to the corresponding periods in 2006. The primary reason for the decrease was the timing of scheduled heavy maintenance work for aircraft. Our policy is to expense these maintenance costs as they are incurred. Accordingly, our aircraft maintenance expenses fluctuate from period to period due to the timing of scheduled heavy maintenance work for aircraft. During the third quarter of 2007, we processed eighteen heavy maintenance checks compared to eight checks in the third quarter of 2006. During the first nine months of 2007, 43 heavy maintenance checks were performed, compared to 46 checks in the first nine months of 2006.

Depreciation and amortization expense increased 15.9% and 12.6% during the three and nine month periods ended September 30, 2007, respectively, compared to the corresponding periods in 2006. The increase is primarily a result of six additional Boeing 767 aircraft that we placed in service since September of 2006.

Landing and ramp expense, which includes the cost of deicing chemicals, increased 7.6% and 14.6% during the three and nine month periods ended September 30, 2007, respectively, compared to the corresponding periods in 2006. These expenses increased over the nine month period due to the more difficult winter weather experienced during the first quarter of 2007 compared to the first quarter of 2006.

Purchased line-haul expense decreased 23.8% and 94.6% during the three and nine month periods ended September 30, 2007, respectively, compared to the corresponding periods in 2006. The decrease is a result of DHL assuming management of its line-haul trucking operations from ABX in May 2006. Expenses from those line-haul management operations were approximately \$81.5 million during the nine month period ended September 30, 2006.

Other operating expenses include pilot travel, professional fees, insurance, utilities, cost of parts sold to non-DHL customers and packaging supplies. Other operating expenses increased by \$4.9 million and \$7.1 million in the third quarter and first nine months of 2007 compared to the corresponding periods in 2006. The increase is driven by Asian travel cost in the charter segment and costs associated with increased non-DHL maintenance revenues. The increase includes approximately \$0.8 million for professional fees to legal and financial advisors engaged to advise ABX and evaluate an indication of interest by another company to purchase all of the outstanding shares of ABX stock. Other operating expenses will be impacted in future quarters by professional fees to legal and financial advisors engaged to advise ABX on its strategic direction, evaluate business alternatives and consider any offers to sell the Company that might be proposed.

Our interest expense for the third quarter of 2007 increased \$0.9 million to \$3.7 million compared to the third quarter of 2006. Our interest expense for the first nine months of 2007 increased \$1.9 million to \$10.3 million compared to the first nine months of 2006. The increase in interest expense is a result of five Boeing 767 aircraft financed through September 30, 2007.

Interest income decreased by less than \$0.1 million during the third quarter but increased by \$0.1 million during the first nine months of 2007, compared to the corresponding periods of 2006 due to higher short-term interest rates on our cash, cash equivalents and marketable securities in the first half of 2007.

Our effective tax rate for the third quarter and first nine months of 2007 was approximately 48.6% and 40.6%, respectively. The increase in the effective tax rate during the third quarter and first nine months of 2007 is due to an increase in non-deductible items. In the third quarter and the first nine months of 2006, income tax expense was offset by reductions in the tax valuation allowance.



## FINANCIAL CONDITION, LIQUIDITY AND CAPITAL RESOURCES

### Commitments

ABX has commitments to acquire one additional Boeing 767 aircraft and complete the modification of it and four additional aircraft. We have contracted with an aircraft maintenance and modification provider to convert aircraft from passenger to standard freighter configuration. Based on the most current projections, we expect to place three more Boeing 767s into service by the end of 2007 and two in 2008 as modifications are completed. The estimated costs of the remaining aircraft purchase commitments and the anticipated modification costs approximate \$57.7 million. Based on its existing commitments, we project cash payments for aircraft purchases and modifications will be \$59.7 million in 2007 and \$13.7 million in 2008. The status of the Boeing 767 freighter aircraft available outside the ACMI agreement with DHL is shown below:

	At September 30, 2007			<u>Total</u>
	<u>In Service</u>	<u>In Modification</u>	<u>Future Deliveries</u>	
Charter Segment Boeing 767 Freighter Aircraft	9	4	1	14

We plan to finance the cost of modifying the aircraft with existing cash and contractor-provided financing during the modification period. Upon completion of the modification, we anticipate three more aircraft will be financed through a syndication process being arranged by our lead bank, financing approximately \$43.8 million. Our future operating results will be affected by the interest rates and other terms and conditions of the new borrowings.

We estimate that contributions to our qualified defined benefit pension plans will be \$11.3 million for the remainder of 2007 and total \$45.0 million for the year. We estimate our total pension expense, which is primarily reimbursable under the two DHL agreements, will be \$12.0 million for the remainder of 2007 for all pension plans, totaling \$48.1 million for the year.

### Cash flows

Net cash generated from operating activities was \$52.4 million for the first nine months of 2007 compared to \$37.3 million in the first nine months of 2006.

Capital spending levels are primarily a result of aircraft acquisitions and related freighter modification costs. Cash payments for capital expenditures were \$118.4 million in the first nine months of 2007 compared to \$77.7 million in the first nine months of 2006. Our capital expenditures in the first nine months of 2007 included the acquisitions of four Boeing 767 aircraft and cargo modification costs for eleven aircraft. In the first nine months of 2006, our capital expenditures were primarily for the acquisition of five Boeing 767 aircraft, their cargo modification costs and modification costs for an aircraft purchased in 2005. We estimate the total level of capital spending for all of 2007, excluding the acquisition of CHI, will be approximately \$175.0 million compared to \$99.6 million in 2006.

### Liquidity and Capital Resources

As of September 30, 2007, we had approximately \$33.6 million of cash and cash equivalents and \$16.9 million of marketable securities. The Company has a \$45.0 million credit facility through a syndicated Credit Agreement that expires in December 2008. Borrowings under the agreement are collateralized by substantially all of the Company's assets. The agreement contains an accordion feature to increase the borrowings to a total of \$50.0 million if the Company needs additional borrowing capacity. The agreement provides for the issuance of letters of credit on the Company's behalf. As of September 30, 2007, the unused credit facility totaled \$33.3 million, net of outstanding letters of credit of \$11.7 million.

We anticipate that the acquisition of CHI will be financed through the issuance of four million shares of ABX common stock and cash from a new \$345 million senior secured credit facility, a portion of which will be used to refinance CHI's existing \$100 million credit facility. In the event that it becomes necessary to retire the \$92.3 million term note held by DHL, ABX has obtained a commitment for \$61 million of subordinated financing from certain shareholders of CHI.

## **CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

“Management’s Discussion and Analysis of Financial Condition and Results of Operations,” as well as certain disclosures included elsewhere in this report, are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to select appropriate accounting policies and make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingencies. In certain cases, there are alternative policies or estimation techniques which could be selected. On an on-going basis, we evaluate our selection of policies and the estimation techniques we use, including those related to revenue recognition, post-retirement liabilities, bad debts, self-insurance reserves, accruals for labor contract settlements, valuation of spare parts inventory, useful lives, salvage values and impairment of property and equipment, income taxes, contingencies and litigation. We base our estimates on historical experience, current conditions and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources, as well as for identifying and assessing our accounting treatment with respect to commitments and contingencies. Actual results may differ from these estimates under different assumptions or conditions. We believe the following significant and critical accounting policies involve the more significant judgments and estimates used in the preparation of the consolidated financial statements.

### ***Revenue Recognition***

Revenues from DHL are recognized when the related services are performed. Expenses incurred under the commercial agreements with DHL are generally subject to a base mark-up of 1.75%, which is recognized in the period during which the expenses are incurred. Certain costs, the most significant of which include fuel costs, interest on the promissory note to DHL, airport rent, ramp and landing fees incurred for performance under the ACMI agreement, are reimbursed and included in revenues without mark-up.

In addition to a base mark-up of 1.75%, both the ACMI and Hub Services agreements provide for an incremental mark-up potential above the base 1.75%, based on our achievement of specified cost and service goals. The ACMI agreement provides for a maximum potential incremental mark-up of 1.60%, with 1.35% based on cost performance and 0.25% based on service performance. The Hub Services agreement provides for a maximum potential incremental mark-up of 2.10%, with 1.35% based on cost performance and 0.75% on service performance. Both contracts call for 40% of any incremental mark-up earned from cost performance to be recognized based on quarterly results, with 60% measured against annual results. Accordingly, a maximum mark-up of approximately 0.54% may be achieved based on quarterly results and recognized in our quarterly revenues. Up to a maximum mark-up of approximately 0.81% based on annual cost performance could be recognized during the fourth quarter, when full-year results are known. Incremental mark-up potential associated with the service goals (0.25% in the ACMI agreement and 0.75% in the Hub Services agreement) is measured annually and any revenues earned from their attainment would be recognized during the fourth quarter, when full year results are known. Management cannot predict to what degree the Company will be successful in achieving incremental mark-up.

The Company derives a portion of its revenues from customers other than DHL. Non-DHL ACMI/charter service revenues are recognized on scheduled and non-scheduled flights when the specific flight has been completed. Aircraft parts and fuel sales are recognized when the parts and fuel are delivered. Revenues earned and expenses incurred in providing aircraft-related maintenance repair services or technical maintenance services are recognized in the period in which the services are completed and delivered to the customer. Revenues derived from transporting freight and sorting parcels are recognized upon delivery of shipments and completion of service.

### ***Depreciation***

Depreciation of property and equipment is provided on a straight-line basis over the lesser of the asset’s useful life or lease term. We periodically evaluate the estimated service lives and residual values used to depreciate our property and equipment. The acceleration of depreciation expense or the recording of significant impairment losses could result from changes in the estimated useful lives of our assets. We may change the estimated useful lives due to a number of reasons, such as the existence of excess capacity in our air system or ground networks or changes in regulations grounding or limiting the use of aircraft.

### ***Self-Insurance***

We self-insure certain claims relating to workers compensation, aircraft, automobile, general liability and employee healthcare. We record a liability for reported claims and an estimate for incurred claims that have not yet been reported. Accruals for these claims are estimated utilizing historical paid claims data, recent claims trends and, in the case of employee healthcare, an independent actuarial report. Changes in claim severity and frequency could result in actual claims being materially different than the amounts provided for in our results of operations.

### ***Contingencies***

We are involved in legal matters that have a degree of uncertainty associated with them. We continually assess the likely outcomes of these matters and the adequacy of amounts, if any, provided for these matters. There can be no assurance that the ultimate outcome of these matters will not differ materially from our assessment of them. There also can be no assurance that we know all matters that may be brought against us at any point in time.

### ***Income Taxes***

We account for income taxes under the provisions of SFAS No. 109, "Accounting for Income Taxes." The objectives of accounting for income taxes are to recognize the amount of taxes payable or refundable for the current year and deferred tax liabilities and assets for the future tax consequences of events that have been recognized in the Company's financial statements or tax returns. Judgment is required in assessing the future tax consequences of events that have been recognized in ABX's financial statements or tax returns. Fluctuations in the actual outcome of these future tax consequences could materially impact the Company's financial position or its results of operations. We recognize the impact of a tax position, if that position is more likely than not of being sustained on audit, based on the technical merits of the position.

### ***Post-retirement Obligations***

We sponsor qualified defined benefit plans for our pilots and other eligible employees. We also sponsor unfunded post-retirement healthcare plans for our flight crewmembers and non-flight crewmember employees. We also sponsor unfunded excess plans for certain employees in a non-qualified plan which includes our executive management that provide benefits in addition to amounts permitted to be paid under provisions of the tax law to participants in our qualified plans.

The accounting and valuation for these post-retirement obligations are determined by prescribed accounting and actuarial methods that consider a number of assumptions and estimates. The selection of appropriate assumptions and estimates is significant due to the long time period over which benefits will be accrued and paid. The long-term nature of these benefit payouts increases the sensitivity of certain estimates on our post-retirement costs. In actuarially valuing our pension obligations and determining related expense amounts, assumptions we consider most sensitive are discount rates, expected long-term investment returns on plan assets and future salary increases. Additionally, other assumptions concerning retirement ages, mortality and employee turnover also affect the valuations. For our post-retirement healthcare plans, consideration of future medical cost trend rates is a critical assumption in valuing these obligations. Actual results and future changes in these assumptions could result in future costs significantly higher than those recorded in our results of operations.

### ***Recent Accounting Pronouncements***

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements," ("SFAS 157") which defines fair value, establishes a framework for measuring fair value and expands disclosure about fair value measurements. SFAS 157 will be effective for the Company's fiscal year beginning January 1, 2008. The Company has not yet evaluated the impact that SFAS 157 will have on its financial statements and related disclosures.

In February 2007, the FASB issued SFAS 159, "The Fair Value Option for Financial Assets and Financial Liabilities — Including an Amendment of SFAS 115," which allows for the option to measure financial instruments and certain other items at fair value. Unrealized gains and losses on items for which the fair value option has been elected are reported in earnings. Other than marketable securities and derivative instruments already measured at fair value, the Company does not presently have any financial assets or liabilities that it would elect to measure at fair value, and therefore the Company expects this standard will have no impact on its financial statements. SFAS 159 will be effective for the Company's fiscal year beginning January 1, 2008.

**Item 3. Quantitative and Qualitative Disclosures about Market Risk**

We face financial exposure to changes in interest rates. ABX's variable interest rate debt exposes us to differences in future cash flows resulting from changes in market interest rates. This risk is largely mitigated, however, because our interest expense for the debt with variable rate risk is marked up and charged to DHL under the ACMI agreement. The debt issued at fixed interest rates is exposed to fluctuations in fair value resulting from changes in market interest rates. ABX has a portfolio of marketable securities consisting primarily of U.S. government agency obligations and U.S. corporation obligations. These securities are classified as available-for-sale and are consequently recorded at fair market value with unrealized gains or losses reported as a separate component of stockholders' equity. These financial instruments are denominated in U.S. dollars and are not held for the purpose of trading. Our market risk related to debt and marketable securities did not materially change since December 31, 2006 except for new fixed interest rate aircraft loans described in Note F.

To reduce ABX's exposure to rising interest rates on anticipated aircraft financing transactions, we entered into five forward treasury lock agreements ("treasury locks") with a major U.S. financial institution during the first quarter of 2006. The value of the treasury locks were also based on the ten-year U.S. Treasury rates, effectively countering the effect of changing interest rates on the anticipated financing transactions. The last outstanding treasury lock was settled in cash in July 2007, near the forecasted execution date of the anticipated financing transaction. See Note J for discussion of our accounting treatment for these hedging transactions.

**Item 4. Controls and Procedures**

(a) Evaluation of Disclosure Controls and Procedures

As of September 30, 2007, ABX carried out an evaluation, under the supervision and with the participation of the Company's Chief Executive Officer and Chief Financial Officer of the effectiveness of the design and operation of ABX's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")). Based upon the evaluation, ABX's Chief Executive Officer and Chief Financial Officer concluded that ABX's disclosure controls and procedures were effective to ensure that information required to be disclosed by ABX in the reports filed or submitted by it under the Exchange Act is recorded, processed, summarized and reported within time periods specified in the Securities and Exchange Commission rules and forms.

(b) Changes in Internal Controls

There were no changes in internal control over financial reporting during the most recently completed fiscal quarter that has materially affected, or is reasonably likely to materially affect, ABX's internal control over financial reporting.

## PART II. OTHER INFORMATION

### **Item 1. Legal Proceedings**

#### *Alleged Violations of Immigration Laws*

ABX reported in January of 2005 that it was cooperating fully with an investigation by the U.S. Department of Justice (“DOJ”) with respect to Garcia Labor Co., Inc., (“Garcia”) a temporary employment agency based in Morristown, Tennessee, and ABX’s use of contract employees that were being supplied to it by Garcia. The investigation concerns the immigration status of the Garcia employees assigned to ABX.

ABX terminated its contract with Garcia in February of 2005 and replaced the Garcia employees.

In July of 2006, a federal grand jury indictment was unsealed charging two Garcia companies, the president of Garcia and two of their corporate officers with numerous counts involving the violation of federal immigration laws. The Garcia defendants subsequently entered guilty pleas in U.S. district court and were sentenced in February and March of 2007. No proceedings have been initiated against ABX by the DOJ. See Note G to the consolidated financial statements of this report for additional information.

On April 13, 2007, a former ABX employee filed a complaint against ABX, a total of three current and former executives and managers of ABX, DHL, Garcia Labor Company, Garcia Labor Company of Ohio, and three former executives of the Garcia Labor companies, in the U.S. District Court for the Southern District of Ohio. The case was filed as a putative class action against the defendants, and asserts violations of the Racketeer Influenced and Corrupt Practices Act (RICO). The complaint, which seeks damages in an unspecified amount, alleges that the defendants engaged in a scheme to hire illegal immigrant workers to depress the wages paid to hourly wage employees during the period from December 1999 to January 2005. ABX has filed a motion to dismiss the complaint, which is currently pending. Management believes the claim is without merit.

#### *Other*

In addition to the foregoing matters, we are also currently a party to legal proceedings in various federal and state jurisdictions arising out of the operation of our business. The amount of alleged liability, if any, from these proceedings cannot be determined with certainty; however, we believe that our ultimate liability, if any, arising from the pending legal proceedings, as well as from asserted legal claims and known potential legal claims which are probable of assertion, taking into account established accruals for estimated liabilities, should not be material to our financial condition or results of operations.

### **Item 1A. Risk Factors**

Except as noted below, there have been no other material changes from the risk factors previously disclosed in Item 1A of ABX’s 2006 Annual Report on Form 10-K/A, filed with the Securities and Exchange Commission on August 14, 2007.

*Failure to complete the proposed acquisition of Cargo Holdings International, Inc. (“CHI”) could negatively impact the stock price and our future business and financial results.*

The acquisition is subject to customary regulatory approvals, including the FAA and DOT. The financing of the transaction is also subject to the lenders’ satisfaction that upon completion of the transaction, ABX would remain in compliance with its material agreements, including its ACMI agreement with DHL. There is no assurance that all of the various conditions will be satisfied.

If the proposed acquisition is not completed for any reason, we may be subject to several risks, including charges for certain costs relating to the proposed acquisition that are payable whether or not the acquisition is completed, including legal, accounting, and financial advisor fees. Additionally, we may be required to pay a termination fee to CHI.

*The combined company created by our acquisition of CHI and the creation of ABX Holdings, Inc., may not perform as well financially as we expect following the acquisition.*

We believe that combining ABX and CHI under a common ownership and management will result in a number of strategic benefits including:

- Increased customer diversification and revenues
- Cross-selling complementary service capabilities
- Improved economies from a larger base of operations
- Expanded market leadership in 767 freighter services

The combined company will be highly leveraged and will have a large fleet of recently modified, and soon to be modified, cargo aircraft, many of which are currently not under long-term contracts. The success of the combination will depend, in part, on our ability to realize the anticipated revenue opportunities while leveraging cost structures when possible. Benefits of the combination must be realized in a timely manner, due to significant debt servicing requirements presupposed by the acquisition. We will attempt to integrate our sales and marketing efforts without adversely affecting revenues or suffering a business interruption. If we are not able to successfully execute the combination or manage to bring cost effective, integrated service offering to the market, the anticipated benefits of the acquisition may not be realized or may take longer to realize than expected. We cannot assure you that the acquisition, even if achieved in an efficient, effective and timely manner, will result in combined results of operations and financial condition consistent with our expectations or superior to what ABX and CHI could have achieved independently.

*Speculation of buyout offers could impact the stock price.*

On June 12, 2007, DHL announced that it had acquired a 49% minority equity interest and a 24.9% voting interest in ASTAR Air Cargo Holdings, LLC ("ASTAR"), ABX's main competitor in providing air cargo lift to DHL in the U.S., and had extended its ACMI contract with ASTAR through 2019. DHL further announced that Hans Hickler, CEO of DHL Express (USA), Inc., had joined ASTAR's Board of Directors. On June 26, 2007, ASTAR expressed an indication of interest in acquiring all of the outstanding stock of ABX. The ABX Board of Directors, after consulting with its financial and legal advisors, rejected the proposal, stating that it did not adequately reflect the long-term value of ABX's business plan, and it did not compensate ABX shareholders for any synergies that could be garnered if ABX and ASTAR were combined. The trading price of ABX's stock may fluctuate due to market speculation about possible buyout offers or the absence of such buyout offers.

*Allocations of corporate overhead expenses will negatively impact our operating results.*

The provisions of the two commercial agreements with DHL do not require an allocation of overhead to the charter segment or to other non-DHL operations until such time as ABX derives more than 10% of its total revenue from non-DHL business activities. ABX expects to reach this threshold in 2008 or possibly sooner. ABX and DHL have begun to discuss how the expense allocations will be accomplished, but, at this time, management cannot predict with reasonable certainty the level of overhead cost that will be allocated to non-DHL operations.

DHL has communicated to ABX's management. DHL's assertion that under provisions within the ACMI and Hub Services agreements 1) certain corporate overhead expenses incurred by ABX as a result of being a publicly traded company are not required to be reimbursed by DHL (these expenses include professional fees incurred by the Company to evaluate an offer by ASTAR Air Cargo Holdings, LLC to acquire all of the outstanding stock of ABX) and 2) ABX reached the 10% threshold for allocating overhead expenses to the Charter segment and other non-DHL operations during the second quarter of 2007 when excluding fuel revenues that are reimbursed without mark-up. On November 5, 2007, DHL reduced its weekly pre-funding payment to ABX for the ACMI and Hub Services agreements, citing the disagreement over overhead expenses as the cause for the reduction.

ABX's management maintains that the 10% threshold included in the commercial agreements includes the fuel revenues, and, until such time as the 10% threshold is met, all of the corporate overhead expenses are reimbursable under the commercial agreements. The dispute resolution procedures, as specified in the agreements, have begun, and management is preparing to prosecute its position through arbitration. We expect to prevail in the dispute resolution process; accordingly, no charge or reserve for disputed overhead expenses has been recorded. The arbitration process could, however, result in an unfavorable outcome, requiring ABX to bear overhead expenses currently in dispute, without reimbursement from DHL.

**Item 5. Other Information**

On November 6, 2007, ABX filed a Form 8-K Current Report with the Securities and Exchange Commission, describing its proposed acquisition of CHI.

On November 9, 2007 ABX filed a Form 8-K Current Report with the Securities and Exchange Commission, describing its dispute with DHL.

The Audit Committee of the Board of Directors has approved the services rendered by our independent registered public accounting firm during the period covered by this Form 10-Q filing.

**Item 6. Exhibits**

The following exhibits are filed as part of, or are incorporated in, the Quarterly Report on Form 10-Q:

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
10	Aircraft Loan and Security Agreement and related promissory note, dated February 16, 2007, by and among ABX Air, Inc. and Chase Equipment Leasing, Inc. <sup>(1)</sup>
10.1	Aircraft Loan and Security Agreement and related promissory note, dated April 25, 2007, by and among ABX Air, Inc. and Chase Equipment Leasing, Inc. <sup>(2)</sup>
10.2	Aircraft Loan and Security Agreement and related promissory note, dated July 18, 2007, by and among ABX Air, Inc. and Chase Equipment Leasing, Inc., filed herewith.
31.1	Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith.
31.2	Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith.
32.1	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, filed herewith.
32.2	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, filed herewith.

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- (1) Incorporated by reference to the Company's Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on May 9, 2007.
- (2) Incorporated by reference to the Company's Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on August 14, 2007.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Quarterly Report on Form 10-Q to be signed on its behalf by the undersigned thereunto duly authorized:

ABX AIR, INC.,  
a Delaware Corporation  
Registrant

/s/ JOSEPH C. HETE

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Joseph C. Hete  
Chief Executive Officer

Date: November 14, 2007

/s/ QUINT O. TURNER

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Quint O. Turner  
Chief Financial Officer

Date: November 14, 2007



**LOAN AND SECURITY AGREEMENT**  
(aircraft)

Loan Number: 1000131072

This Agreement is dated as of July 18, 2007 and is executed by and between CHASE EQUIPMENT LEASING INC. ("Lender"), with Lender's principal office located at 1111 Polaris Parkway, Suite A3 (OH1-1085), Columbus, Ohio 43240 and the borrower identified below ("Borrower"):

**Borrower Name:** ABX Air, Inc.

**Borrower Address:** 145 Hunter Drive, Wilmington, Ohio 45177

**1. GRANT OF SECURITY INTEREST.** Borrower grants, pledges and assigns to Lender a security interest in all of Borrower's respective right, title and interest in and to the property described on the **attached Schedule A-1**, now or hereafter arising or acquired, wherever located, together with any and all additions, accessions, parts, accessories, substitutions and replacements thereof, now or hereafter installed in, affixed to or used in connection with said property (the "Equipment"), in all proceeds thereof, cash and non-cash, including, but not limited to, proceeds of notes, checks, instruments, indemnity proceeds, or any insurance on such and any refund or rebate of premiums on such ("Collateral"), and agrees that the foregoing grant creates in favor of Lender an International Interest in the Equipment. This Agreement secures the prompt payment and complete performance in full when due, whether at the stated maturity, by acceleration or otherwise, of all payment and other obligations of Borrower under or in connection with this Agreement, the Business Purpose Promissory Note executed in connection with the Loan Number referenced above with Borrower as the maker (the "Note"), and any and all renewals, extensions or substitutions for any such instrument (including principal, interest, late charges, collection costs, attorney fees and the like) (collectively, the "Obligations"). Borrower represents, warrants and covenants that while any Obligations are outstanding (i) Borrower is and will continue to be (or, with respect to after acquired property, will be when acquired) the legal and beneficial owner of the Collateral free and clear of any Lien except for the security interest created by this Agreement.; (ii) no effective Uniform Commercial Code ("UCC") financing statement or other instrument providing notice of a security interest in all or any part of the Collateral is on file in any recording office, except those in favor of Lender; (iii) no International Interest (other than that of Lender) is registered with the International Registry with respect to the Collateral, that Borrower shall not consent to any International Interest with respect to the Equipment (other than any such interest in favor of Lender), and (iv) Borrower has not executed or delivered an Irrevocable De-Registration and Export Request Authorization ("IDERA") to any party other than Lender. At its sole expense, Borrower shall protect and defend Lender's first priority security interest in the Collateral against all claims and demands whatsoever.

**2. MAINTENANCE; USE AND OPERATION; LOCATION.**

2.1 At its sole expense, Borrower shall: (a) repair and maintain the Equipment in good condition and working order and supply and install all replacement parts or other devices when required to so maintain the Equipment or when required by applicable law or regulation, which parts or devices shall automatically become part of the Equipment; (b) use and operate the Equipment in a careful manner in the normal course of its business and only for the purposes for which it was designed in accordance with the manufacturer's warranty requirements, and comply with all laws and regulations relating to the Equipment, and obtain all permits or licenses necessary to install, use or operate the Equipment; (c) make no alterations, additions, subtractions, upgrades or improvements to the Equipment with a cost in excess of \$150,000.00 without Lender's prior written consent (which consent will not be unreasonably withheld); provided, further, notwithstanding the foregoing, Lender's prior written consent shall not be required for any alteration, addition, subtraction, upgrade or improvement to the Equipment of any cost that relate to maintenance, Service Bulletins and Airworthiness Directives, but any such alterations, additions, upgrades or improvements shall automatically become part of the Equipment; (d) maintain, inspect, service and repair, overhaul and test the Equipment in accordance with the FAA approved maintenance program, manufacturer's approved maintenance program, FAA airworthiness directives, and the manufacturer's alert bulletins and urgently recommended service bulletins and procedures, and perform all duties and tasks which would be required to maintain the Equipment, including the engines, in full compliance with the manufacturer's specification (i) so as to keep the Equipment in as good operating condition as when delivered to the Borrower hereunder, ordinary wear and tear excepted, and (ii) so as to keep the Equipment in such operating condition as may be necessary to enable the airworthiness certification of such Equipment to be maintained in good standing at all times under the Act (as defined in Section 19 hereof); and (e) maintain all records, logs and other materials required by the FAA to be maintained in respect of the Equipment. Lender has the right upon reasonable notice to Borrower to inspect the Equipment wherever located. Notwithstanding anything to the contrary contained herein, Borrower may remove an Engine from the Airframe and install an Engine on another airframe owned or leased by Borrower provided that: (i) the Engine does not become subject to any Lien (other than Lender's security interest) or claim of ownership; and (ii) Borrower installs a Replacement Engine on the Airframe. "Airframe" means the airframe described on the Schedule A-1 attached hereto. "Engine" shall mean any one of the engines described on the Schedule A-1 attached hereto. "Replacement Engine" shall mean an engine of the same make and model (or an improved model engine) as the Engine. The Equipment will be maintained and inspected under Part 145 or



2.2 The Equipment will not be operated, used or located outside of the United States of America (“USA”) by Borrower or any other party; provided, that Borrower may use, operate and locate the Equipment outside the USA (any country or jurisdiction other than the USA hereinafter called a “Foreign Jurisdiction”) so long as all of the following conditions are satisfied: (a) the USA maintains full diplomatic relations with such Foreign Jurisdiction; (b) any notices, statements, documents and instruments necessary or required to be filed in any such Foreign Jurisdiction for the operation, use or location of the Equipment therein shall have been filed in accordance with applicable law and regulation and Borrower shall provide file stamped copies to Lender upon Lender’s request from time to time; (c) the Equipment shall remain insured in accordance with the terms of this Agreement at all times and shall be insured in accordance with the laws and regulations of each Foreign Jurisdiction in or over which the Equipment will be operated; (d) the Equipment will not be registered under the laws of any Foreign Jurisdiction and shall remain registered under the Act at all times; and (e) the Equipment shall not be used, operated or located in any Foreign Jurisdiction if at the time of such use, operation or location (i) the insurance covering the Equipment would not permit the use, operation or location of the Equipment in such Foreign Jurisdiction or such use, operation or location would otherwise void, result in the cancellation of, limit or diminish the coverage provided by the applicable insurance policy, or (ii) any law, regulation or presidential executive order of the USA prohibits the use, operation or location of the Equipment in such Foreign Jurisdiction, or (iii) there is any material risk of war (declared or civil), of other hostilities or of confiscation, seizure or detention of the Equipment in such Foreign Jurisdiction. The Equipment will not be operated by a national of any country in which the Equipment cannot be operated as provided herein. The Equipment shall be hangered at the location specified on Schedule A-1, or in any other permitted location . Borrower shall notify Lender prior to any change in the hanger location.

**3. INSURANCE.** At its sole expense, Borrower at all times shall keep the Equipment insured against (A) all-risk ground and flight aircraft hull insurance covering the Aircraft, and all-risk coverage with respect to the Aircraft or any Engines or parts while removed from the Aircraft, including foreign object damage whether resulting from ingestion or otherwise, and war risk (including government confiscation, hijacking and other acts of terrorism) protection for an amount not less than the greater of the full replacement value of the Equipment or 102% of the outstanding principal balance of the Note, and (B) public liability insurance with respect to third party bodily injury and property damage (including without limitation contractual liability, cargo liability, war risk (including government confiscation, hijacking and other acts of terrorism), passenger legal liability and property damage coverage) naming Lender as additional insured in an amount not less than \$50,000,000 per occurrence. Such insurance shall be with such deductibles, in such form and with such insurance companies of recognized responsibility as is satisfactory to Lender, and which is usually carried with respect to commercial cargo aircraft by corporations of established reputation owning or operating commercial cargo aircraft similar to the Aircraft. All insurers shall be reasonably satisfactory to Lender. Borrower shall deliver to Lender satisfactory evidence of such coverage. Proceeds of any insurance covering damage or loss of the Equipment shall be payable to Lender as loss payee and shall be applied as set forth in Section 4 below. Borrower hereby appoints Lender as Borrower’s attorney-in-fact with full power and authority in the place of Borrower and in the name of Borrower or Lender to make claim for, receive payment of, and sign and endorse all documents, checks or drafts for loss or damage under any such policy; provided, however, Lender agrees that it will not exercise such power of attorney unless an Event of Default has occurred and is continuing. Each insurance policy will require that the insurer give Lender at least 30 days prior written notice of any cancellation of such policy and will require that Lender’s interests remain insured regardless of any act, error, omission, neglect or misrepresentation of Borrower. The insurance maintained by Borrower shall be primary without any right of contribution from insurance that may be maintained by Lender.

**4. LOSS OR DAMAGE.** Borrower bears the entire risk of loss, theft, damage or destruction of Equipment in whole or in part from any reason whatsoever (“Casualty Loss”). No Casualty Loss to Equipment shall relieve Borrower from the obligation to pay the installment payments or from any other obligation under this Agreement. In the event of Casualty Loss to any item of Equipment, Borrower shall immediately notify Lender of the same and Borrower shall, if so directed by Lender, immediately repair the same. If Lender reasonably determines that the Equipment has suffered a Casualty Loss beyond repair or a Casualty Loss that substantially and permanently reduces the fair market value of the Equipment (“Lost Equipment”), then Borrower, at the option of Lender, shall: (1) immediately replace the Lost Equipment with similar equipment in good repair, condition and working order free and clear of any Liens, convey to Lender a security interest in such replacement equipment, and deliver to Lender such documents to evidence such conveyance and the International Interest and shall make such filings and registrations with the FAA and the International Registry (and hereby consents to such registrations with the International Registry) with respect thereto as Lender requests, in which event such replacement equipment shall automatically be Equipment under this Agreement; or (2) on the installment payment due date that is at least 30 days but no more than 60 days after the date of the Casualty Loss (“Loss Payment Due Date”), pay to Lender all accrued and unpaid principal, interest, late charges and other amounts then due and payable by Borrower under this Agreement or the Note plus 102% of the remaining principal balance of the Note as of the Loss Payment Due Date as determined by Lender’s records which shall not be considered a penalty. Upon payment by Borrower of all amounts due under the above clause (2), all security interests of the Lender in the Lost Equipment, including those under the International Registry, will terminate.

**5. TAXES.** Borrower will pay promptly when due all taxes, assessments and governmental charges upon or against Borrower, the Collateral or the property or operations of Borrower, in each case before same becomes delinquent and before penalties accrue thereon, unless and to the extent that same are being contested in good faith by appropriate proceedings.

**6. GENERAL INDEMNITY.** Borrower assumes all risk and liability for, and shall defend, indemnify and keep Lender harmless on an after-tax basis from, any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses, including reasonable attorney fees and expenses, of whatsoever kind and nature imposed on, incurred by or asserted against Lender, in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, possession, use, selection, delivery, operation, condition, sale, return or other disposition of the Equipment or any part thereof (including, without limitation, any claim for latent or other defects, whether or not discoverable by Borrower or any other person, any claim for negligence, tort or strict liability, any claim under any environmental protection or hazardous waste law and any claim for patent, trademark or copyright infringement). Borrower will not indemnify Lender under this section for loss or liability of any kind caused by the gross negligence or willful misconduct of Lender. In this section, "Lender" also includes any director, officer, employee, agent, successor or assign of Lender. Borrower's obligations under this section shall survive the expiration, cancellation or termination of this Agreement.

**7. PERSONAL PROPERTY.** Borrower represents and agrees that the Equipment is, and shall at all times remain, separately identifiable personal property. Lender may display notice of its interest in the Equipment by any reasonable identification and Borrower shall not alter or deface any such indicia of Lender's interest.

**8. FINANCIAL & OTHER REPORTS.** Borrower agrees to furnish to Lender: (a) annual audited financial statements setting forth the financial condition and results of operation of Borrower (financial statements shall include balance sheet, income statement and statement of cash flows and all notes and auditor's report thereto) within 90 days of the end of each fiscal year of Borrower; (b) upon Lender's request, quarterly financial statements setting forth the financial condition and results of operation of Borrower within 45 days of the end of each of the first three fiscal quarters of Borrower; and (c) such other financial information as Lender may from time to time reasonably request including, without limitation, financial reports filed by Borrower with federal or state regulatory agencies. All such financial information shall be prepared in accordance with generally accepted accounting principles on a basis consistently applied. Borrower will promptly notify Lender in writing with full details if any event occurs or any condition exists that constitutes, or that, but for a requirement of lapse of time or giving of notice or both would constitute, an Event of Default under this Agreement or that might materially and adversely affect the financial condition or operations of Borrower or any affiliate of Borrower. Borrower will promptly notify Lender in writing of the commencement of any litigation to which Borrower or any of its subsidiaries or affiliates may be a party (except for litigation in which Borrower's or the affiliate's contingent liability is fully covered by insurance) which, if decided adversely to Borrower would materially adversely affect or impair the security interest of Lender to the Equipment or which, if decided adversely to Borrower would materially adversely affect the business operations or financial condition of Borrower. Borrower will immediately notify Lender, in writing, of any judgment against Borrower if such judgment would have the effect described in the preceding sentence.

**9. NO CHANGES IN BORROWER.** Borrower shall not: (a) liquidate, dissolve or suspend its business; (b) sell, transfer or otherwise dispose of all or a majority of its assets, except that Borrower may sell its inventory in the ordinary course of its business; (c) enter into any merger, consolidation or similar reorganization unless it is the surviving corporation; (d) transfer all, or any substantial part of, its operations or assets outside of the United States of America; or (e) without 30 days advance written notice to Lender, change its name, state of incorporation or organization, or chief place of business. There shall be no transfer of more than a 25% ownership interest in Borrower or any Guarantor (as defined in Section 12 hereof) by shareholders, partners, members or proprietors thereof in any calendar year without Lender's prior written consent. All financial covenants of Borrower and any Guarantor under any Affiliate Credit Agreement (as defined in Section 12 hereof) shall remain fully applicable to Borrower and any Guarantor (as the case may be) and shall not be violated by Borrower or any Guarantor (as the case may be) at any time. If for any reason whatsoever an Affiliate Credit Agreement is canceled, discharged or otherwise terminated and if no other Affiliate Credit Agreement remains in effect as to Borrower or any Guarantor, then, automatically and without any action by Lender or any other party, all financial covenants that are in effect as of the date immediately prior to the cancellation, discharge or termination of such Affiliate Credit Agreement shall remain in full force and effect, shall be incorporated in this Agreement by reference, and shall be made a part of this Agreement.

**10. REPRESENTATIONS.** Borrower represents and warrants that: (a) Borrower is a corporation as stated below Borrower's signature duly organized, validly existing and in good standing under the laws of the state of Delaware and Borrower is qualified to do business and is in good standing under the laws of each other state in which the Equipment is or will be located; (b) Borrower's name as set forth at the outset of this Agreement is its complete and correct legal name as indicated in the public records of Borrower's state of organization; (c) Borrower has full power, authority and legal right to sign, deliver and perform this Agreement, the Note and all related documents and such actions have been duly authorized by all necessary corporate, company, partnership or proprietorship action; (d) this Agreement, the Note and each related document has been duly signed and delivered by Borrower and each such document constitutes a legal, valid and binding obligation of Borrower enforceable in accordance with its terms; (e) there is no litigation or other proceeding pending, or to the best of the Borrower's knowledge, threatened against or affecting Borrower that, if decided adversely to Borrower, would adversely affect, impair or encumber the interest of Lender in the Equipment or would materially adversely affect the business operations or financial condition of Borrower; (f) all balance sheets, income statements and other financial data that have been delivered to Lender (or JPMorgan Chase Bank, N.A.) with respect to Borrower are complete and correct in all material respects, fairly present the financial condition of Borrower on the dates for which, and the results of its operations for the periods for which, the same have been furnished and have



been prepared in accordance with generally accepted accounting principles consistently applied, (g) there has been no material adverse change in the condition of Borrower, financial or otherwise, since the date of the most recent financial statements delivered to Lender (or JPMorgan Chase Bank, N.A.), (h) Borrower's organizational number assigned to Borrower by the state of its organization is correctly stated below Borrower's signature; (i) this Agreement and the Note evidence a loan made primarily for business, commercial or agricultural purposes and not primarily for personal, family, or household purposes; (j) the Equipment is not, and will not, be registered under the laws of any foreign country; (k) the Equipment is, and shall remain at all times, eligible for registration under the Act (as defined in Section 19 hereof); (l) the Equipment shall be based in the United States as required by the Act; and (m) the Equipment will not be used in violation of any law, regulation, ordinance or policy of insurance affecting the maintenance, use or flight of the Equipment; and (n) Borrower qualifies as a citizen of the United States as defined in the Act and will continue to qualify as a United States citizen in all respects; (o) the Equipment is and will continue to be registered at all times with the FAA in the name of the Borrower.

**11. OTHER DOCUMENTS; EXPENSES; APPOINTMENT OF ATTORNEY-IN-FACT.** Borrower agrees to sign and deliver to Lender any additional documents deemed desirable by Lender to effect the terms of the Note or this Agreement including, without limitation, Uniform Commercial Code financing statements and instruments to be filed with the Federal Aviation Administration ("FAA"), all of which Lender is authorized to file with the appropriate filing officers. Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact with full power and authority in the place of Borrower and in the name of Borrower to prepare, sign, amend, file or record any Uniform Commercial Code financing statements or other documents deemed desirable by Lender to perfect, establish or give notice of Lender's interests in the Equipment or in any collateral as to which Borrower has granted Lender a security interest. Borrower agrees to sign and deliver to Lender any additional documents deemed desirable by Lender to effect the terms of this Agreement. Borrower shall pay upon Lender's request any reasonable out-of-pocket costs and expense paid or incurred by Lender in connection with the above terms of this Agreement or the funding and closing of this Agreement (including, without limitation, all reasonable out-of-pocket fees and expenses of any outside counsel to Lender).

**12. EVENTS OF DEFAULT.** Each of the following events shall constitute an Event of Default under this Agreement and the Note: (a) Borrower fails to pay any installment payment or other amount due under this Agreement or the Note within 10 days of its due date; or (b) Borrower fails to perform or observe any of its obligations in Sections 3, 9, or 18 hereof; or (c) Borrower fails to perform or observe any of its other obligations in this Agreement or the Note within 30 days after Lender notifies Borrower of such failure; or (d) Borrower or any Guarantor fails to pay or perform or observe any term, covenant (including, but not limited to, any financial covenant), agreement or condition contained in, or there shall occur any payment or other default under or as defined in, any loan, credit agreement, extension of credit or lease in which Lender or any subsidiary (direct or indirect) of JPMorgan Chase & Co. (or its successors or assigns) is the lender, creditor or lessor (each an "Affiliate Credit Agreement") that shall not be remedied within the period of time (if any) within which such Affiliate Credit Agreement permits such default to be remedied; or (e) any statement, representation or warranty made by Borrower in this Agreement or in any document, certificate or financial statement in connection with this Agreement proves at any time to have been untrue or misleading in any material respect as of the time when made; or (f) Borrower or any Guarantor becomes insolvent or bankrupt, or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or applies for, institutes or consents to the appointment of a receiver, trustee or similar official for it or any substantial part of its property or any such official is appointed without its consent, or applies for, institutes or consents to any bankruptcy, insolvency, reorganization, debt moratorium, liquidation or similar proceeding relating to it or any substantial part of its property under the laws of any jurisdiction or any such proceeding is instituted against it without stay or dismissal for more than 60 days, or it commences any act amounting to a business failure or a winding up of its affairs, or it ceases to do business as a going concern; or (g) with respect to any guaranty, letter of credit, pledge agreement, security agreement, mortgage, deed of trust, debt subordination agreement or other credit enhancement or credit support agreement (whether now existing or hereafter arising) signed or issued by any party (each a "Guarantor") in connection with all or any part of Borrower's obligations under this Agreement or the Note, the Guarantor defaults in its obligations thereunder or any such agreement shall cease to be in full force and effect or shall be declared to be null, void, invalid or unenforceable by the Guarantor; or (h) Borrower or any Guarantor fails to pay or perform or observe any term, covenant (including, but not limited to, any financial covenant), agreement or condition contained in, or there shall occur any payment or other default under or as defined in any Other Credit Agreement (as defined in Section 19 hereof) that shall not be remedied within the period of time (if any) within which such Other Credit Agreement permits such default to be remedied, regardless of whether such default is waived by any other party to such Other Agreement or such default produces or results in the cancellation of such Other Credit Agreement or the acceleration of the liability, indebtedness or other obligation under such Other Credit Agreement; or (i) Borrower or any Guarantor shall suffer the loss of any material license or franchise when Lender shall reasonably conclude that such loss fairly impairs Borrower's or such Guarantor's ability to perform its obligations required under this Agreement or the Note; or (j) Borrower or any Guarantor shall fail to pay any final judgment for the payment of money in an amount equal to or in excess of \$50,000.00; or (k) there shall occur in Lender's reasonable opinion any material adverse change in the financial condition, business or operations of Borrower or any Guarantor that will impair or impede Borrower's ability to meet its financial obligations hereunder or under the Note.

### 13. RIGHTS UPON DEFAULT.

13.1 If any Event of Default exists, Lender may exercise in any order one or more of the remedies described in the lettered subparagraphs of this section, and Borrower shall perform its obligations imposed thereby:

(a) Lender may require Borrower to turnover any and all Collateral to Lender.

(b) Lender or its agent may repossess any or all Collateral wherever found, may enter the premises where the Collateral is located and remove it, may use such premises without charge to store or show the Collateral for sale for up to 90 days, and may demand that Borrower cease using the Collateral.

(c) Lender may file with the FAA and exercise its rights pursuant to any IDERA delivered to Lender pursuant to Section 26(c) of this Agreement.

(d) Lender may sell any or all Collateral at public or private sale, with or without advertisement or publication, may lease or otherwise dispose of it or may use, hold or keep it.

(e) Lender may require Borrower to pay to Lender on a demand date specified by Lender, (i) all accrued and unpaid interest, late charges and other amounts due under the Note or this Agreement as of such demand date, plus (ii) the remaining principal balance of the Note as of such demand date, plus (iii) interest at the Overdue Rate on the total of the foregoing from such demand date to the date of payment. "Overdue Rate" means an interest rate per annum equal to the higher of 18% or 2% over the Prime Rate, but not to exceed the highest rate permitted by applicable law. If an Event of Default under section 12(f) of this Agreement exists, then Borrower will be automatically liable to pay Lender the foregoing amounts as of the next installment payment date under the Note unless Lender otherwise elects in writing.

(f) Borrower shall pay all reasonable costs, expenses and damages incurred by Lender because of the Event of Default or its actions under this section, including, without limitation any collection agency and/or attorney fees and expenses, and any costs related to the repossession, safekeeping, storage, repair, reconditioning or disposition of the Collateral.

(g) Lender may sue to enforce Borrower's performance of its obligations under the Note and this Agreement and/or may exercise any other right or remedy then available to Lender at law or in equity.

13.2 Except as otherwise expressly required by Section 12 hereof or by applicable law, Lender is not required to take any legal process or give Borrower any notice before exercising any of the above remedies. If Lender is required to give notice, 10 calendar days advanced notice is reasonable notification. None of the above remedies is exclusive, but each is cumulative and in addition to any other remedy available to Lender. Lender's exercise of one or more remedies shall not preclude its exercise of any other remedy. No action taken by Lender shall release Borrower from any of its obligations to Lender. No delay or failure on the part of Lender to exercise any right hereunder shall operate as a waiver thereof nor as an acquiescence in any default, nor shall any single or partial exercise of any right preclude any other exercise thereof or the exercise of any other right. After any Event of Default, Lender's acceptance of any payment by Borrower under the Note or this Agreement shall not constitute a waiver by Lender of such default, regardless of Lender's knowledge or lack of knowledge at the time of such payment, and shall not constitute a reinstatement of the Note or this Agreement if this Agreement has been declared in default by Lender, unless Lender has agreed in writing to reinstate this Agreement and to waive the default. With respect to any Collateral or any Obligation, Borrower assents to all extensions or postponements to the time of payment thereof or any other indulgence in connection therewith, to each substitution, exchange or release of Collateral, to the release of any party primarily or secondarily liable, to the acceptance of partial payment thereof or to the settlement or compromise thereof, all in such matter and such time or times as Lender may deem advisable.

13.3 If Lender actually repossesses any Collateral, then it will use commercially reasonable efforts under the then current circumstances to attempt to mitigate its damages; provided, that Lender shall not be required to sell, lease or otherwise dispose of any Collateral prior to Lender enforcing any of the remedies described above. Lender may sell or lease the Collateral in any manner it chooses, free and clear of any claims or rights of Borrower and without any duty to account to Borrower with respect thereto except as provided below. If Lender actually sells or leases the Collateral, it will credit the net proceeds of any sale of the Collateral, or the net present value (discounted at the then current Prime Rate) of the rents payable under any lease of the Collateral, against the amounts Borrower owes Lender. The term "net" as used above shall mean such amount after deducting the reasonable costs and expenses described in clause (e) of Section 13.1 above. Borrower shall remain liable for any deficiency if the net proceeds are insufficient to pay all amounts to which Lender is entitled hereunder.

**14. LATE CHARGES.** If any installment payment or other amount payable under the Note or this Agreement is not paid within 5 business days of its due date, then as compensation for the administration and enforcement of Borrower's obligation to make timely payments, Borrower shall pay with respect to each overdue payment on demand an amount equal to the greater of fifteen dollars (\$15.00) or five percent (5%) of the each overdue payment (but not to exceed the highest late charge permitted by applicable law) plus any collection agency fees and expenses. The failure of Lender to collect any late charge will not constitute a waiver of Lender's right with respect thereto.





**15. LENDER'S RIGHT TO PERFORM.** If Borrower fails to make any payment under this Agreement or fails to perform any of its other obligations in this Agreement (including, without limitation, its agreement to provide insurance coverage), Lender may itself make such payment or perform such obligation, and the amount of such payment and the amount of the reasonable expenses of Lender incurred in connection with such payment or performance shall be deemed to be additional principal under the Note which is payable by Borrower on demand.

**16. NOTICES; POWER OF ATTORNEY.** (a) Service of all notices under this Agreement shall be sufficient if given personally or couriered or mailed to the party involved at its respective address set forth herein or at such other address as such party may provide in writing from time to time. Any such notice mailed to such address shall be effective three days after deposit in the United States mail with postage prepaid. Notice by overnight courier shall be deemed given and received on the date scheduled for delivery. (b) With respect to any power of attorney covered by this Agreement, the powers conferred on Lender thereby: are powers coupled with an interest; are irrevocable; are solely to protect Lender's interests under this Agreement; and do not impose any duty on Lender to exercise such powers. Lender shall be accountable solely for amounts it actually receives as a result of its exercise of such powers.

**17. ASSIGNMENT BY LENDER.** Lender and any assignee of Lender, with notice to, but not consent of, Borrower, may sell, assign, transfer or grant a security interest in all or any part of Lender's rights, obligations, title or interest in the Collateral, the Note, this Agreement, or the amounts payable under the Note or this Agreement to any entity ("transferee"). The transferee shall succeed to all of Lender's rights in respect to this Agreement (including, without limitation, all rights to insurance and indemnity protection described in this Agreement). Borrower agrees to sign any acknowledgment and other documents reasonably requested by Lender or the transferee in connection with any such transfer transaction. Borrower, upon receiving reasonable notice of any such transfer transaction, shall comply with the terms and conditions thereof. Borrower agrees that Lender may provide loan information and financial information about Borrower on a confidential basis and under a written confidentiality agreement to any prospective transferee.

**18. NO ASSIGNMENT OR LEASING BY BORROWER.** BORROWER SHALL NOT, DIRECTLY OR INDIRECTLY, WITHOUT THE PRIOR WRITTEN CONSENT OF LENDER: (a) MORTGAGE, ASSIGN, SELL, TRANSFER, OR OTHERWISE DISPOSE OF INTEREST IN THIS AGREEMENT OR THE COLLATERAL OR ANY PART THEREOF; OR (b) WITHOUT THE PRIOR WRITTEN CONSENT OF LENDER, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, LEASE, RENT, LEND OR TRANSFER POSSESSION OR USE OF THE EQUIPMENT OR ANY PART THEREOF TO ANY PARTY; OR (c) CREATE, INCUR, GRANT, ASSUME OR ALLOW TO EXIST ANY LIEN ON ITS INTEREST IN THIS AGREEMENT, THE COLLATERAL OR ANY PART THEREOF; OR (d) REGISTER ANY PROSPECTIVE OR CURRENT INTERNATIONAL INTEREST OR CONTRACT OF SALE (OR ANY AMENDMENT, MODIFICATION, SUPPLEMENT, SUBORDINATION OR SUBROGATION THEREOF) WITH THE INTERNATIONAL REGISTRY WITH RESPECT TO THE EQUIPMENT OR ANY PART THEREOF TO ANY PARTY OTHER THAN LENDER; OR (e) EXECUTE OR DELIVER ANY IDERA (AS DEFINED IN SECTION 26 HEREOF) WITH RESPECT TO THE EQUIPMENT OR ANY PART THEREOF TO ANY PARTY OTHER THAN LENDER.

**19. CERTAIN DEFINITIONS.** "Act" means subtitle VII of Title 49 of the United States Code. "Cape Town Treaty" has the meaning provided in 49 U.S.C. section 44113(1). "International Interest" has the meaning provided thereto in the Cape Town Treaty. "International Registry" has the meaning provided in 49 U.S.C. section 44113(3). "Lien" means any security interest, lien, International Interest, Prospective Assignment, Prospective International Interest, mortgage, pledge, encumbrance, judgment, execution, attachment, warrant, writ, levy, other judicial process or claim of any nature whatsoever by or of any person. "Prime Rate" means the prime rate of interest announced from time to time as the prime rate by JPMorgan Chase Bank, N.A. (or its successors or assigns); provided, that the parties acknowledge that the Prime Rate is not intended to be the lowest rate of interest charged by said bank in connection with extensions of credit. "Other Credit Agreement" means any agreement applicable to Borrower or any Guarantor or by which Borrower or any Guarantor is bound involving a liability, indebtedness or performance obligation of Borrower or any Guarantor with a potential liability to Borrower or any Guarantor in an amount equal to or in excess of \$500,000.00. "Prospective Assignment" shall have the meaning provided thereto in the Cape Town Treaty. "Prospective International Interest" shall have the meaning provided thereto in the Cape Town Treaty. "Convention" means the Convention on International Interests in Mobile Equipment as implemented and modified by the Aircraft Protocol. "Aircraft Protocol" means the Protocol to the Convention on Matters Specific to Aircraft Equipment as adopted by the United States of America. All terms defined herein are equally applicable to both the singular and plural form of such terms.

**20. CONDITIONS.** Lender is not obligated to make any loan or disburse any principal hereunder unless: (a) Lender has received the Note signed by the Borrower; (b) Lender has received evidence of all required insurance; (c) in Lender's sole reasonable judgment, there has been no material adverse change in the financial condition or business of Borrower or any Guarantor that adversely impacts Borrower's ability to perform its obligations hereunder or under the Note; (d) Borrower has signed and delivered to Lender this Agreement and Lender has signed and accepted this Agreement; (e) Lender has received the documents, instruments and evidence as to satisfaction of the matters specified in **Schedule 2** attached hereto, each of which shall be satisfactory to Lender in form and substance and each document or instrument to be duly authorized, executed and delivered and in full force and effect; (f) Lender has received, in form and substance satisfactory to Lender, such other documents and information as Lender shall

reasonably request; and (g) Borrower has satisfied all other reasonable conditions established by Lender.

**21. USURY.** It is not the intention of the parties to this Agreement to make an agreement that violates any of the laws of any applicable jurisdiction relating to usury (“Usury Laws”). Regardless of any provision in this Agreement, the Note, or any document in connection therewith, Lender shall not be entitled to receive, collect or apply, as interest on any Obligation, any amount in excess of the Maximum Amount (the “Excess”). As used herein, “Maximum Amount” shall mean the maximum amount of interest which would have accrued if the unpaid principal amount of the Obligation outstanding from time to time had borne interest each day at the maximum amount of interest which lender is permitted to charge on the Obligation under the Usury Laws. If Lender ever receives, collects or applies as interest any Excess, such Excess shall be deemed a partial repayment of principal and treated hereunder as such; and if principal is paid in full, any remaining Excess shall be paid to Borrower. In determining whether or not the interest paid or payable under any specific contingency exceeds the Maximum Amount, Borrower and Lender shall, to the maximum extent permitted under the Usury Laws, (a) characterize any non-principal payment as an expense, fee or premium rather than as interest, (b) exclude voluntary prepayments and the effect thereof, and (c) amortize, prorate, allocate and spread in equal parts, the total amount of interest throughout the entire contemplated term of the Obligation so that the interest rate is uniform throughout the entire term of the Obligation; provided that if the Obligation is paid and performed in full prior to the full contemplated term thereof, and if the interest received for the actual period of existence thereof exceeds the Maximum Amount, Lender shall refund to Borrower the Excess, and, such event shall not be subject to any penalties provided by the Usury Laws.

**22. GOVERNING LAW. THE INTERPRETATION, CONSTRUCTION AND VALIDITY OF THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO CONFLICT OF LAW PROVISIONS.**

**23. MISCELLANEOUS.** (a) Subject to the limitations herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns. (b) This Agreement may be executed in any number of counterparts, which together shall constitute a single instrument. (c) Section and paragraph headings in this Agreement are for convenience only and have no independent meaning. (d) The terms of this Agreement shall be severable and if any term thereof is declared unconscionable, invalid, illegal or void, in whole or in part, the decision so holding shall not be construed as impairing the other terms of this Agreement and this Agreement shall continue in full force and effect as if such invalid, illegal, void or unconscionable term were not originally included herein. (e) All indemnity obligations of Borrower under this Agreement and all rights, benefits and protections provided to Lender by warranty disclaimers shall survive the cancellation, expiration or termination of this Agreement. (f) Lender shall not be liable to Borrower for any indirect, consequential or special damages for any reason whatsoever. (g) This Agreement may be amended, but only by a written amendment signed by Lender and Borrower. (h) If this Agreement is signed by more than one Borrower, each of such Borrowers shall be jointly and severally liable for payment and performance of all of Borrower’s obligations under this Agreement. (i) This Agreement represents the final, complete and entire agreement between the parties hereto, and there are no oral or unwritten agreements or understandings affecting this Agreement or the Collateral. (j) Borrower agrees that Lender is not the agent of any manufacturer or supplier, that no manufacturer or supplier is an agent of Lender, and that any representation, warranty or agreement made by manufacturer, supplier or by their employees, sales representatives or agents shall not be binding on Lender. (k) In order to secure all obligations of Borrower under this Agreement and the Note, Borrower assigns and grants to Lender a security interest in all rights, powers and privileges of Borrower under any lease of any Equipment hereafter authorized in writing by Lender.

**24. GOVERNMENT REGULATION.** Borrower shall not (a) be or become subject, at any time, to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Lender from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower or (b) fail to provide documentary and other evidence of Borrower’s identity as may be requested by Lender at any time to enable Lender to verify Borrower’s identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

**25. USA PATRIOT ACT NOTIFICATION.** The following notification is provided to Borrower pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for Borrower: When Borrower opens an account, if Borrower is an individual, Lender will ask for Borrower’s name, tax payer identification number, residential address, date of birth, and other information that will allow Lender to identify Borrower, and if Borrower is not an individual, Lender will ask for Borrower’s name, taxpayer identification number, business address, and other information that will allow Lender to identify Borrower. Lender may also ask, if Borrower is an individual, to see Borrower’s driver’s license or other identifying documents, and if Borrower is not an individual, to see Borrower’s legal organizational documents or other identifying documents.

**26. COMPLIANCE WITH CONVENTION; RECORDATION WITH THE INTERNATIONAL REGISTRY.** Without limiting any other terms or conditions of this Agreement, Borrower agrees as follows, all of which shall be undertaken at Borrower's sole expense:

(a) Prior to the closing and funding of any loan hereunder, Borrower shall register and be approved as a "user" with the International Registry.

(b) Prior to the closing and funding of any loan hereunder, Borrower shall take any and all such action, and shall execute and deliver such instruments, documents and certificates, as Lender may require in order to accurately register and timely record the respective interests of Borrower and Lender in the Equipment with the International Registry pursuant to the Convention, such interests to be searchable in the International Registry to the satisfaction of the Lender, and with the FAA pursuant to the Act, including, without limitation, providing such consents (and does hereby consent) as may be required to permit Lender to give effect to the timely registration and recordation with the International Registry of the respective interests of Borrower and Lender in the Equipment.

(c) Borrower shall execute and deliver to Lender a fully completed and originally executed Irrevocable De-Registration and Export Request Authorization ("IDERA"), in the form acceptable to the Lender in its sole reasonable and absolute discretion.

(d) Borrower shall take any and all such action, and shall execute and deliver such instruments, documents and certificates, as Lender may require in order to maintain the registration and recordation of the respective interests of Borrower and Lender in the Equipment with the International Registry pursuant to the Convention and with the FAA pursuant to the Act.

**27. RELEASE OF LIEN.** If Borrower pays in full all of the principal and interest due under the Note in accordance with its provisions and if Borrower pays and performs all other Obligations of Borrower and if no Event of Default then exists under this Agreement, then as promptly as reasonably possible after Borrower's written request, Lender will cause all Liens placed on the Equipment by or through Lender, its assignee or agent to be removed at Borrower's expense, and such Liens to be removed by Lender will include, without limitation, those Liens filed by or through Lender, its assignee or agent with the FAA and/or the International Registry, pursuant to the Convention and Aircraft Protocol, each as amended from time to time.

[The next page is the signature page.]

**ALL PARTIES TO THIS AGREEMENT IRREVOCABLY CONSENT TO THE JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT IN NEW YORK, AND WAIVE ALL RIGHTS TO TRIAL BY JURY, IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ON ANY MATTER WHATSOEVER ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THE NOTE OR THIS AGREEMENT.**

CHASE EQUIPMENT LEASING INC.  
(Lender)

ABX AIR, INC.  
(Borrower)

By: /s/ Stacey R. Roth

By: /s/ Joseph C. Hete and Quint O. Turner

Title: FUNDING MANAGER

Title: Chief Executive Officer and Chief Financial Officer

Acceptance Date: July 18, 2007

Borrower's Witness: /s/ Joseph E. Roux

**Borrower Organization Information:**

A corporation organized under the laws of the State of Delaware with State Organization # 0885720

SCHEDULE A-1

Loan No.: 1000130807

DESCRIPTION OF EQUIPMENT

Airframe Make/Model:	BOEING 767-232
Airframe Serial No.:	22224
U.S. Identification No.:	N747AX
Engine Quantity/Make/Model:	(2) GENERAL ELECTRIC CF6-80A2
Engine Serial No(s):	580109 and 580149

Together with all engines, avionics, communication equipment, navigation equipment, instruments, accessories, attachments, parts, appurtenances, accessions, furnishings and other equipment attached to, installed in or relating to any of the foregoing property and all maintenance and service logs and records relating to the foregoing property.

Each engine has 550 or more rated takeoff horsepower or the equivalent of such horsepower.

The Equipment shall be hangered at the following location:

DHL AIRPARK (ILN), 145 Hunter Drive, Wilmington, Ohio 45177 Clinton .  
Name of Airport and Street Address                      City      State                      County

This Schedule A-1 is attached to, and made a part of, the Loan Agreement and Security Agreement with the Loan Number referenced above and contains a true and accurate description of the Equipment.

ABX AIR, INC.  
(Borrower)

By:           /s/ Joseph C. Hete and Quint O. Turner            
Title: Chief Executive Officer and Chief Financial Officer

## SCHEDULE 2

Attached to Loan and Security Agreement for Loan No. 1000131072

### ADDITIONAL CONDITIONS TO FUNDING THE LOAN\*

1. Lender shall have been offered an opportunity to inspect the maintenance and service logs and records relating to the Collateral and such logs and records shall be reasonably satisfactory to Lender.
2. Lender shall receive terminations or releases of liens in a form recordable with the Federal Aviation Administration from all creditors with a lien on any part of the Collateral as shown in the FAA lien records.
3. Lender shall receive UCC-3 terminations or release of liens in recordable form from all creditors with a lien on any part of the Collateral as shown in state or local lien records.
4. Lender shall receive such evidence that any International Interest, Prospective Assignment, or Prospective International Interest in any way relating to the Equipment not consented to in writing by Lender has been discharged.
5. Lender has received the following documents, each executed by the parties thereto, in form acceptable to Lender:
  - a. Business Purpose Promissory Note in the principal amount of \$17,500,000.00 dated April 25, 2007
  - b. Prepayment Addendum
  - c. Assignment of Deposit Account, for Account #2330633872, in the amount of \$5,250,000.00, and Notice of Assignment, Acknowledgment and Control Agreement
  - d. Irrevocable De-Registration and Export Request Authorization
  - e. Secretary's Certificate and Corporate Resolution of ABX Air, Inc.
  - f. Partial Termination of Uniform Commercial Code financing statement number 40937948 showing Bank One, NA, as secured party, and Borrower, as debtor, filed on April 26, 2007, in the office of Delaware Secretary of State.
  - g. Evidence of Insurance in the name of Lender
  - h. Opinion of FAA and International Registry counsel dated April 25, 2007, addressed to Lender from Daugherty, Fowler, Peregrin, Haught & Jenson.

\* The inclusion of additional funding conditions in this Schedule 2 shall not limit the generality of the conditions set forth in the Agreement.

ABX AIR, INC.  
(Borrower)

By: /s/ Joseph C. Hete and Quint O. Turner  
Title: Chief Executive Officer and Chief Financial Officer

**BUSINESS PURPOSE PROMISSORY NOTE**

(fixed rate/principal and interest)

Loan Number: 1000131072

Amount \$17,500,000.00

Date: July 18, 2007

**This Note is executed together with the Loan and Security Agreement dated as of July 18, 2007 (the "Loan Agreement") and is executed at Wilmington, Ohio.**  
(City) (State)

For value received, receipt of which is hereby acknowledged, the undersigned ("Borrower") promises to pay to the order of CHASE EQUIPMENT LEASING INC. ("Lender") at its principal office or at such other place as Lender may designate from time to time in lawful money of the United States of America, the principal sum of Seventeen Million Five Hundred Thousand and 00/100ths Dollars (\$17,500,000.00), or such lesser portion thereof as may have from time to time been disbursed to, or for the benefit of Borrower, and as remains unpaid pursuant to the books or records of Lender, together with interest at the Interest Rate set forth below on the unpaid balance of principal advanced from the date(s) of disbursement until paid in full as set forth below. Principal sums(s) disbursed and repaid will not be available for redissemination. Interest shall be calculated on a 360 day year basis with each month consisting of 30 days.

**Interest Rate: Seven and 36/1000ths percent (7.36%) per annum.**

1. The term of this Note consists of the Interim Term plus the Base Term. The Interim Term begins on the Acceptance Date and continues up to the Commencement Date of the Base Term. The Commencement Date shall mean May 1, 2007.

2. If the Acceptance Date is before the Commencement Date, then on the Commencement Date of the Base Term, Borrower shall pay one installment of interest only based upon the number of days in the Interim Term.

3. During the Base Term, Borrower shall pay installments of principal and interest in the amounts and on the dates stated below:

(a) Base Term: **120 months**

(b) Amount of each installment payment due during the Base Term (includes principal and interest):

119 @ \$179,689.69

1 @ \$4,904,689.69

(c) The first installment payment during the Base Term shall be paid **one month** after the Commencement Date and all subsequent installment payments shall be paid on the same day of **each month** thereafter until paid in full.

4. On or before the date of this Note, Borrower shall pay a set-up/filing fee in the amount of **\$0.00**.

5. Payments shall be allocated between principal, interest and fees, if any, in the discretion of Lender. Borrower may not prepay the principal sum except as is otherwise provided for in that certain Prepayment Addendum executed as of July 18, 2007 by and between Lender and Borrower, and the Assignment of Deposit Account dated July 18, 2007. Borrower's obligation to pay all installment payments and all other amounts payable under this Note is absolute and unconditional under any and all circumstances and shall not be affected by any circumstances of any character including, without limitation, (a) any setoff, claim, counterclaim, defense or reduction which Borrower may have at any time against Lender or any other party for any reason, or (b) any defect in the condition, design or operation of, any lack of fitness for use of, any damage to or loss of, or any lack of maintenance or service for any of the Equipment (as defined in the Loan Agreement).



6. This Note is entitled to the benefits, and is subject to the terms and requirements of, the Loan Agreement executed by Borrower and Lender, which Loan Agreement, among other things, (a) provides for the making of the loan evidenced hereby, and (b) provides for events of default, acceleration and other remedies. Borrower waives presentment, demand, protest or notice of any kind in connection with this Note.

**7. LENDER AND BORROWER IRREVOCABLY CONSENT TO THE JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT IN OHIO, AND WAIVE ALL RIGHTS TO TRIAL BY JURY, IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ON ANY MATTER WHATSOEVER ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS INSTRUMENT.**

ABX Air, Inc.  
("Borrower")

/s/ Joseph E. Roux  
Witness as to Borrower's signature

By: /s/ Joseph C. Hete and Quint O. Turner  
Title: Chief Executive Officer and Chief Financial Officer

CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Joseph C. Hete, certify that:

1. I have reviewed this report on Form 10-Q of ABX Air, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2007

/s/ JOSEPH C. HETE

Joseph C. Hete  
Chief Executive Officer

CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Quint O. Turner, certify that:

1. I have reviewed this report on Form 10-Q of ABX Air, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2007

/s/ QUINT O. TURNER

Quint O. Turner  
Chief Financial Officer



CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of ABX Air, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Quint O. Turner, Chief Financial Officer, certify, pursuant to 18 U.S.C. 1350, as enacted by § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to ABX Air, Inc. and will be retained by ABX Air, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ QUINT O. TURNER

Quint O. Turner  
Chief Financial Officer

Date: November 14, 2007