

Objection Deadline: June 18, 2009 at 4:00 p.m. (prevailing Eastern Time)  
Hearing Date (if necessary): June 24, 2009 at 10:00 a.m. (prevailing Eastern Time)

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and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**In re:** :  
:  
: **Chapter 11 Case No.**  
:  
**FRONTIER AIRLINES** : **08-11298 (RDD)**  
**HOLDINGS, INC., et al.,** :  
: **(Jointly Administered)**  
:  
**Debtors.**<sup>1</sup> :  
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**DEBTORS' MOTION FOR AUTHORIZATION  
TO ENTER INTO AIRCRAFT LEASE AGREEMENTS**

Frontier Airlines Holdings, Inc. ("**Frontier Holdings**") and its two  
subsidiaries that are debtors and debtors in possession in these cases (collectively, the  
"**Debtors**") respectfully represent:

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<sup>1</sup> The Debtors are the following entities: Frontier Holdings; Frontier Airlines, Inc. ("**Frontier**");  
and Lynx Aviation, Inc. The employer tax identification numbers and addresses for each of the Debtors are  
set forth in the Debtors' chapter 11 petitions.

### **Background and Jurisdiction**

1. On April 10, 2008 (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case (together the “**Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

2. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by the Bankruptcy Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Relief Requested**

3. By this motion (the “**Motion**”), the Debtors seek an order in the form attached hereto as Exhibit A (the “**Order**”) authorizing the Debtors, pursuant to section 363(b)(1) of the Bankruptcy Code, to lease from AerCap Group Services B.V., one of its affiliates or a related owner trust (together, “**AerCap**”) three Airbus A320-200 aircraft substantially on the terms contemplated by the Letters of Intent between Frontier and AerCap dated April 22, 2009 (as amended by the Side Letter No. 1 to Letter of Intent between AerCap and Frontier dated May 13, 2009, the “**AerCap Term Sheets**”) and to enter into and perform under aircraft lease agreements (such agreements, the “**Aircraft Lease Agreements**” and such leases, the “**AerCap Leases**”)<sup>2</sup> substantially on the terms

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<sup>2</sup> The AerCap Term Sheets require the parties to keep the terms thereof and the terms of the AerCap Leases confidential. Accordingly, the Debtors have not attached copies thereof to this Motion but will provide copies to the Court, the Office of the United States trustee (the “**U.S. Trustee**”) and the

contemplated by the AerCap Term Sheets.

**Terms of the AerCap Term Sheets**<sup>3</sup>

4. The AerCap Term Sheets contemplate that Frontier will lease from AerCap three Airbus A320-200 aircraft bearing manufacturer serial numbers to be determined (the “**Aircraft**”), each complete with two CFM International, Inc. CFM56-5B4/3 engines. The three Aircraft are scheduled to be delivered to Frontier in March 2010, April 2010 and May 2010. The lease term for the Aircraft will be 144 calendar months from their respective delivery dates. Rent will be payable monthly in advance commencing on the delivery date of each Aircraft. It is contemplated that each Aircraft Lease Agreement will contain a cross default provision to the other Aircraft Lease Agreements, and the obligations under each of the Aircraft Lease Agreement will be cross collateralized by the three Aircraft.

5. Pursuant to the terms of the AerCap Term Sheets, Frontier paid a deposit for each Aircraft equal to one month’s base rent, which deposit is fully refundable if, among other things, this Motion is not ultimately approved by the Court. In return, AerCap has taken the Aircraft off the market for a period of time while the parties negotiate the Aircraft Lease Agreements in good faith. In addition, so long as this Motion is approved by the Court, Frontier will owe AerCap additional deposits equal to (i) one month’s base rent 180 days prior to each applicable scheduled delivery month and

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statutory committee of unsecured creditors appointed in these chapter 11 cases (the “**Creditors’ Committee**”). Failure to describe in this Motion any provision of the AerCap Term Sheets or the AerCap Leases shall not affect its enforceability. Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to such terms in the AerCap Term Sheets.

<sup>3</sup> This summary is qualified in its entirety by reference to the provisions of the AerCap Term Sheets.

(ii) one month's base rent 90 days prior to each applicable delivery date. These deposits are refundable in certain circumstances as set out in the AerCap Term Sheets. The closing of the AerCap Leases will be subject to certain conditions.

### **Basis for Relief**

6. As of the Petition Date, the Debtors' fleet consisted of 72 aircraft. Since then, the Debtors and their advisors have explored and implemented various strategies to rationalize both the Debtors' overall flying operations and the size of their fleet so as to maximize profitability and enhance operational liquidity. As of the date hereof, the Debtors operate a fleet of 61 aircraft, consisting of 38 Airbus A319 aircraft, ten Airbus A318 aircraft, three Airbus A320 aircraft and ten Bombardier Q400 aircraft. On March 20, 2009, the Court approved the Debtors' agreements to sell one Airbus A318 aircraft to Q Aviation, LLC and to lease one Airbus A320 aircraft from C.I.T. Leasing Corporation. The Debtors completed those transactions.<sup>4</sup>

7. As part of their ongoing fleet rationalization, the Debtors have assessed various aircraft lease and purchase options, and they have determined that the AerCap Leases and the Aircraft are well suited to their long-term needs. The pricing terms of the AerCap Leases are significantly more favorable to the Debtors than the terms of many of their current aircraft lease agreements and other leasing alternatives. Moreover, the Aircraft are of higher capacity and newer vintage than many of the other alternatives available to the Debtors. The addition of the Aircraft to the Debtors' fleet will permit

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<sup>4</sup> See Order Authorizing the Debtors to (i) Transfer an Aircraft to Q Aviation, LLC Free and Clear of All Liens, Claims and Encumbrances and (ii) Receive a Release of All the Debtors' Outstanding Obligations Under Loan Documentation, dated March 20, 2009 [Docket No. 801] and Order Authorizing Debtors to Enter Into an Aircraft Lease Agreement, dated March 20, 2009 [Docket No. 800].

additional operational flexibility and economies of scale, and it will facilitate the replacement of less efficient aircraft.

8. Based on the foregoing considerations, the Debtors seek approval of the AerCap Term Sheets and authority to enter into and perform under the AerCap Leases contemplated therein.

### **Applicable Authority**

9. Section 363(b)(1) of the Bankruptcy Code empowers courts to allow debtors to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Debtors’ decisions to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented before him a good business reason to grant such application); *see also Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674 (Bankr. S.D.N.Y. 1989) (noting that standard for determining a section 363(b) motion is a “good business reason”).

10. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). In fact, “[w]here the debtor articulates a

reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.”

*Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

11. The Debtors' decision to lease the Aircraft is justified by the fact that the AerCap Leases will provide economic benefits to the Debtors' estates. Specifically, the AerCap Leases include pricing and other terms favorable to the Debtors and the addition of the late-vintage, higher capacity Aircraft to the Debtors' fleet will increase the Debtors' operational flexibility, provide economies of scale and facilitate the replacement of less efficient aircraft. Consequently, the Debtors' entry into, and performance under, the AerCap Leases represents a sound exercise of the Debtors' business judgment, is for a valid business purpose and should be authorized under section 363(b)(1) of the Bankruptcy Code.

#### **Relief Under Bankruptcy Rule 6004(h)**

12. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” The Debtors request that any order granting the relief sought herein be effective immediately by providing that the 10-day stay under Bankruptcy Rule 6004(h) is waived.

#### **Notice**

13. No trustee or examiner has been appointed in these Cases. Pursuant to the Case Management Order, the Debtors will serve notice of this Motion on counsel to AerCap, the Core Parties and the Non-ECF Service Parties (as those terms are defined in

the Case Management Order). All parties who have requested electronic notice of filings in these cases through the Court's ECF system will automatically receive notice of this motion no later than the day after its filing with the Court. Moreover, a copy of this Motion and any Order approving it will be made available on the Debtors' Case Information Website (located at [www.frontier-restructuring.com](http://www.frontier-restructuring.com)). In light of the relief requested, the Debtors submit that no further notice is necessary.

14. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court grant the Debtors the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: New York, New York  
June 8, 2009

By: /s/ Damian S. Schaible

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# **Exhibit A**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**In re:** :  
: **Chapter 11 Case No.**  
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**FRONTIER AIRLINES** : **08-11298 (RDD)**  
**HOLDINGS, INC., et al.,** :  
: **(Jointly Administered)**  
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**Debtors.**<sup>1</sup> :  
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**ORDER AUTHORIZING DEBTORS TO ENTER  
INTO AIRCRAFT LEASE AGREEMENTS**

Upon the motion (the “**Motion**”)<sup>2</sup> of Frontier Airlines Holdings, Inc. and its two subsidiaries that are debtors and debtors in possession in these cases (collectively, the “**Debtors**”), pursuant to section 363(b) of the Bankruptcy Code, seeking authority to enter into and perform under the AerCap Leases, as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with the Case

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<sup>1</sup> The Debtors are the following entities: Frontier Holdings; Frontier Airlines, Inc. (“**Frontier**”); and Lynx Aviation, Inc. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

<sup>2</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Motion.

Management Order, and it appearing that no other or further notice need be provided; [and there being no objections timely filed to the Motion;] and the Court having reviewed the Motion [and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”)]; and the relief requested in the Motion being in the best interests of the Debtors and their respective estates and creditors; and the Debtors having articulated good, sufficient and sound business justifications and compelling circumstances therefor; and the Court having determined that the legal and factual bases set forth in the Motion [and at the Hearing] establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that, pursuant to section 363(b) of the Bankruptcy Code, the relief requested in the Motion is hereby granted; and it is further

ORDERED that, pursuant to section 363(b)(1) of the Bankruptcy Code, the Debtors are authorized to enter into agreements contemplated by and substantially on the terms set forth in the AerCap Term Sheets and to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions that may be reasonably necessary or appropriate to implement the AerCap Term Sheets or the AerCap Leases, and perform all obligations contemplated thereunder, including, without limitation, the payment of any fees, charges and expenses required thereby. In the event of any inconsistency between the provisions of this Order and the AerCap Term Sheets or the Aircraft Lease Agreements, the provisions of this Order shall govern; and it is further

ORDERED that the failure to specifically describe or include herein any particular provision in the AerCap Term Sheets shall not diminish or impair the effectiveness of any such provision, it being the intent of this Court that the Debtors be authorized to perform under the AerCap Term Sheets and the AerCap Leases, in their entirety; and it is further

ORDERED that the Debtors' entry into and performance under the AerCap Leases are in the best interests of the Debtors and their respective estates and creditors and are within the Debtors' sound business judgment; and it is further

ORDERED that, pursuant to sections 105 and 362(d)(1) of the Bankruptcy Code, the automatic stay of section 362 of the Bankruptcy Code is hereby modified to the extent necessary to enable Frontier and AerCap to perform under the AerCap Term Sheets and the Aircraft Lease Agreements; and it is further

ORDERED that, upon the occurrence of a default under the terms of the agreements contemplated by and entered into substantially on the terms set forth in the AerCap Term Sheets, the automatic stay imposed by section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit AerCap to enforce any and all of their rights and remedies under such agreements and under applicable law, including suspension of and performance and termination of such agreements; and it is further

ORDERED that the notice procedures satisfy Bankruptcy Rules 2002, 4004(c), 6004 and 9014 and Local Bankruptcy Rules 6004-1(a) and 9006-1 by providing interested parties with notice and an opportunity to object and be heard at a hearing and such notice shall be deemed good and sufficient notice of the Motion; and it is further

ORDERED that this Order shall constitute findings of fact and

conclusions of law and, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or any other provision of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the provisions and effect of this Order, any actions taken pursuant to this Order and AerCap's and the Debtors' respective rights, obligations, remedies and protections provided for herein and in the agreements contemplated by and entered into substantially on the terms set forth in the AerCap Term Sheets shall survive the conversion, dismissal or closing of these chapter 11 cases, appointment of a trustee herein, confirmation of a plan or plans of reorganization, or the substantive consolidation of these Cases with any other case or cases, and the terms and provision of this Order shall continue in full force and effect notwithstanding the entry of any such order; and it is further

ORDERED that in the event of a liquidation of Frontier's business (other than in connection with a sale of all or a material portion of Frontier's assets as a going concern, in which case the limitation of AerCap's administrative claim set out in this paragraph shall not apply) or a conversion of Frontier's case into a chapter 7 case, AerCap shall have an allowed administrative claim only for accrued and unpaid lease rent and maintenance rent with respect to the period up to and including the surrender and return of the Aircraft and all records and for reasonable and documented legal fees incurred to enforce the Aircraft Lease Agreements, and no additional or other amounts shall be entitled to administrative expense or other priority status, but all other claims due AerCap under the terms of the agreements contemplated by and entered into substantially on the terms set forth in the AerCap Term Sheets shall be allowed as a general non-

priority unsecured claim at the same time that the administrative claim is allowed; and it is further

ORDERED that this Order shall be binding upon and enforceable against, among others, AerCap, the Debtors, their estates and any and all chapter 7 and 11 trustees thereof; and it is further

ORDERED that this Court shall retain jurisdiction until the effective date of a plan of reorganization or liquidation (i) to enforce and implement the terms and provisions of the AerCap Term Sheets or the AerCap Leases and all amendments thereto, (ii) to resolve any disputes arising under or related to the AerCap Term Sheets or the AerCap Leases, except as otherwise provided therein and (iii) to interpret, implement and enforce the provisions of this Order; and it is further

ORDERED that AerCap shall be entitled to the benefits of section 1110 of the Bankruptcy Code in respect of the AerCap Leases in connection with any subsequent chapter 11 proceedings in which the Debtors are debtors.

Dated: \_\_\_\_\_, 2009  
New York, New York

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THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE