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

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**FORM 10-K**

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

For the fiscal year ended December 31, 2007

Commission file number 000-50368

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**ABX HOLDINGS, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State of Incorporation)

**26-1631624**  
(I.R.S. Employer Identification No.)

**145 Hunter Drive, Wilmington, OH 45177**  
(Address of principal executive offices)

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

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**Securities registered pursuant to Section 12(b) of the Act:**  
**Common Stock, Par Value \$.01 per share**  
**Preferred Stock Purchase Rights**  
(Title of class)

**Name of each exchange on which registered: NASDAQ Stock Market LLC**  
**Securities registered pursuant to Section 12(g) of the Act:**  
**Title of class: None**

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES  NO

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. YES  NO

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Accelerated filer

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, as of the last business day of the registrant's most recently completed second fiscal quarter: \$467,635,502.

As of March 17, 2008, 62,678,856 shares of the registrant's common stock, par value \$0.01, were outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the Proxy Statement for the Annual Meeting of Stockholders scheduled to be held May 13, 2008 are incorporated by reference into Part III.

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## **FORWARD LOOKING STATEMENTS**

Statements contained in this annual report on Form 10-K, including “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” in Item 7, 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 “Risk Factors” starting on page 10 and “Outlook” starting on page 22.

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

The Securities and Exchange Commission maintains an Internet site that contains reports, proxy and information statements and other information regarding ABX Air at [www.sec.gov](http://www.sec.gov). Additionally, our filings with the Securities and Exchange Commission, including annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to these reports, 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.

**ABX HOLDINGS, INC. AND SUBSIDIARIES**  
**2007 FORM 10-K ANNUAL REPORT**

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## PART I

### ITEM 1. BUSINESS

#### General Business Development

ABX Holdings Inc. (the “Company”) is a holding company whose principal subsidiaries include three independently U.S. certificated airlines: ABX Air, Inc. (“ABX”), Capital Cargo International Airlines, Inc. (“CCIA”), and Air Transport International, LLC (“ATI”). The Company, which is incorporated in Delaware, was reorganized into a holding company structure on December 31, 2007. At that time, ABX became a wholly-owned subsidiary of the Company and all of the common shares of ABX, which were then publicly-traded, were converted into shares of the Company. The Company’s shares are publicly traded on the NASDAQ Stock Market under the symbol ABXA. When the context requires, we may also use the term “Company” in this report to refer to the business of the Company and its subsidiaries on a consolidated basis.

ABX was incorporated in 1980 and is based in Wilmington, Ohio. ABX provides air cargo transportation through a fleet of Boeing 767 and McDonnell Douglas DC-9 (“DC-9”) aircraft. ABX complements its air transport capabilities with package handling and warehousing services. Between 1980 and August 2003, ABX was an affiliate of Airborne, Inc. (“Airborne”), a publicly traded, integrated delivery service provider. On August 15, 2003, ABX was separated from Airborne in conjunction with the acquisition of Airborne by an indirect wholly owned subsidiary of DHL Worldwide Express, B.V. The merger agreement required Airborne to separate its air operations from its ground operations with the air operations being retained by ABX. At that time, ABX became an independent publicly traded company. Airborne was subsequently merged into DHL.

Immediately after ABX became a wholly-owned subsidiary of the Company, the Company completed the acquisition of Orlando, Florida based Cargo Holdings International, Inc. (“CHI”), the privately-owned parent company of CCIA and ATI. The Company acquired all of the outstanding stock, stock options and warrants of CHI for a combination of cash, shares of the Company, and debt repayment. The overall transaction value was approximately \$340 million. ABX financed the deal partially through a \$270 million unsubordinated term loan.

CCIA obtained its airline operating certificate in 1996 and currently operates fourteen Boeing 727 aircraft, primarily providing air freight transportation for BAX Global, Inc. (“BAX”). In February 2006, CHI acquired all of the outstanding stock of ATI from Brink’s, Inc., who at the time also owned BAX. ATI, based in Little Rock, Arkansas, began operations in 1979. ATI operates sixteen McDonnell Douglas DC-8 aircraft, also for BAX, and provides airlift to the U.S. military through the Air Mobility Command. The acquisition of CHI also includes the operations of Cargo Aircraft Management, Inc. (“CAM”) and LGSTX Services, Inc. These CHI companies provide aircraft leasing, fuel management, specialized transportation management and air charter brokerage services. Besides BAX, CHI’s customers include the U.S. government, DHL Aviation Americas, Inc. (an affiliate of DHL), the U.S. Postal Service (“USPS”), and United Parcel Service, Inc.

#### Description of Business

During 2007, the Company operated two reportable segments, “DHL” and “Charters.” As described below, ABX’s other business operations included aircraft maintenance and modification services, aircraft part sales and mail handling for the USPS. These other business operations do not constitute reportable segments. Financial information about our segments is presented in Note N to the accompanying consolidated financial statements. In 2008, the Company’s reportable segments will include the airline and leasing operations of CHI.

#### Business with DHL

DHL is ABX’s largest customer, constituting substantially all of ABX’s revenues in recent years. Using its aircraft, ABX provides the airlift for DHL’s domestic express and deferred delivery services. ABX also manages a network of sixteen hubs for DHL, providing package sorting and handling. It processes shipments ranging from individual letters to shipper-packaged pallets of electronic equipment, retail catalogs, movies and

pharmaceuticals. DHL's express delivery services include its Next Day Service and DHL 2<sup>nd</sup> Day Service. Next Day Service packages are primarily transported by ABX's fleet of aircraft and sorted through the nightly hub operations it staffs for DHL. 2<sup>nd</sup> Day and DHL's other deferred delivery services, which include DHL@home and DHL Ground Service, are primarily transported by contracted trucks and sorted through the Wilmington daytime sort and regional hub operations that ABX staffs for DHL.

ABX and DHL operate primarily under two commercial agreements. The aircraft, crew, maintenance and insurance agreement with DHL Network Operations (USA), Inc. ("ACMI agreement") and the hub services agreement ("Hub Services agreement") with DHL Express (USA), Inc., both of which became effective August 16, 2003, in conjunction with the acquisition of Airborne (DHL Network Operations (USA), Inc. and DHL Express (USA), Inc. are individually and collectively referred to herein as "DHL").

ABX operates and maintains DHL's primary U.S. hub facility located in Wilmington, Ohio. In addition to the sort facility in Wilmington, ABX operates fifteen regional hubs on behalf of DHL. These regional hub facilities primarily sort shipments originating and having a destination within approximately 250 miles. ABX also conducts daytime sort operations in Wilmington that process deferred delivery shipments. The day sort generally receives shipments through a combination of aircraft and trucks originating from regional hubs, DHL station facilities or customer sites. The night sort and day sort operations at Wilmington handle approximately 57% of the total system-wide shipment weight, while the regional hubs handle the remaining 43%.

The fifteen regional hubs are located near Atlanta, Georgia; Baton Rouge, Louisiana; Chehalis, Washington; Kansas City, Missouri; Denver, Colorado; Erie, Pennsylvania; Fresno, California; Memphis, Tennessee; Minneapolis, Minnesota; Orlando, Florida; Phoenix, Arizona; Providence, Rhode Island; Roanoke, Virginia; Salt Lake City, Utah; and Waco, Texas.

#### *ACMI Agreement*

Air cargo transportation services are provided to DHL under the ACMI agreement on a cost-plus pricing structure. Costs incurred under the ACMI agreement are generally marked-up 1.75% and recorded in revenues. Certain costs which are reimbursed by DHL, the most significant of which include fuel, rent, interest on a promissory note to DHL, ramp fees and landing fees incurred under the ACMI agreement, are recorded in revenues without mark-up. By achieving certain cost-related and service goals specified in the agreement, the mark-up can increase from a base of 1.75% up to approximately 3.35%.

The initial term of the ACMI agreement expires August 15, 2010 and automatically renews for an additional three years unless a one-year notice of non-renewal is given. DHL may terminate the ACMI agreement if, after a cure period, ABX is not in compliance with applicable performance standards specified in the agreement. The agreement allows DHL to reduce the air routes that ABX flies or to remove aircraft from service. For any aircraft removed from service during the term of the ACMI agreement, the agreement allows ABX to put the aircraft to DHL, requiring DHL to buy such aircraft from ABX at the lesser of book value or fair market value. If ABX's stockholders' equity is less than or equal to \$100 million at the time of sale, any amount by which the appraised fair market value is less than net book value would be applied to a promissory note ABX owes to DHL. However, if ABX's stockholders' equity is greater than \$100 million, as it is at this time, any amount by which fair market value is less than net book value would be recorded as an operating charge. For purposes of applying the \$100 million stockholders' equity threshold, ABX's stockholders' equity will be calculated after including the effect of any charges caused by the removal of aircraft.

During 2007, DHL removed three DC-8 and four DC-9 aircraft from service under the ACMI agreement, bringing the total aircraft reductions to 35 (17 DC-8 and 18 DC-9 aircraft) since 2004. DHL agreed to continue to reimburse ABX's depreciation expense on eight (DC-9 aircraft) of these 35 aircraft through their remaining depreciable lives in exchange for access to their engines for use as spares. During that same time, DHL has added seven of ABX's Boeing 767 freighter aircraft into its network, five under the ACMI agreement and two under other contractual terms.

### *Hub Services Agreement*

Under the Hub Services agreement, ABX provides staff to conduct package sorting, warehousing, and logistics services, as well as airport, facilities and equipment maintenance services for DHL. Costs incurred under the agreement are generally marked-up 1.75% and included in revenues. By achieving certain cost and service goals specified in the agreement, the mark-up can increase from a base of 1.75% up to approximately 3.85%.

The Hub Services agreement renewed on August 15, 2007 for one year and automatically renews for periods of one year each unless a ninety-day notice of non-renewal is given. DHL may terminate the Hub Services agreement if, after a cure period, ABX is not in compliance with applicable performance standards specified in the agreement. DHL may also terminate the Hub Services agreement if the ACMI agreement has been terminated. The agreement allows DHL to terminate specific services after giving at least sixty days advance notice.

DHL has reduced the scope of services provided by ABX in recent years. Since the second quarter of 2006, DHL has directly managed the truck line-haul network previously managed by ABX. In 2006, DHL transferred the international gateway operations from ABX. In 2007, DHL transferred management of the following operations from ABX's management to its own management: in January, the regional hub in Allentown, Pennsylvania; in June, the regional hub in Riverside, California; and in November, the regional hub in South Bend, Indiana. In January 2008, management of the Columbus, Ohio logistics center was transferred from ABX to DHL, and the Wilmington, Ohio logistics operations will be transferred from ABX to DHL management in May 2008.

### **Business with BAX**

CCIA and ATI each have contracts to provide air lift to BAX under ACMI agreements. BAX provides freight transportation and supply chain management services, specializing in the heavy freight market for business-to-business shipping. CHI has the exclusive right to supply all main deck freighter air lifts in BAX's U.S. domestic network through December 31, 2011. During the exclusivity period, BAX had the option to buy CHI's exclusive rights for \$4.0 million at December 31, 2007. After this date, the amount of the buy-out declines on a straight-line basis through December 31, 2011.

### **ABX ACMI and Charter Services for Customers other than DHL**

ABX also has aircraft that are not under contract to DHL. It deploys these aircraft to provide ACMI services and fly charters for other customers. We refer to this ABX business as our Charter segment. A typical ACMI contract requires the ABX to supply, at a specific rate per block hour, the aircraft, crew, maintenance and insurance for specified cargo operations, while the customer is responsible for substantially all other aircraft operating expenses, including fuel, landing fees, parking fees and ground and cargo handling expenses. Charter agreements usually require the airline to provide full service, including fuel and other operating expenses in addition to aircraft, crew, maintenance and insurance for a fixed, all-inclusive price. Under ABX's ACMI and charter arrangements, it has exclusive operating control of its aircraft, and its customers must typically obtain any government authorizations and permits required to service the designated routes.

In May 2007, ABX deployed two Boeing 767s on regularly scheduled flights in Asia for All Nippon Airways Co. under an ACMI agreement and recently extended the agreement into January 2010. In late 2007, ABX began to implement a domicile for its flight crewmembers in Japan. The Company's airlines are pursuing additional opportunities in Asia for Boeing 767 aircraft.

## **Other Products and Services**

### *U.S. Postal Service*

During the third quarter of 2006, ABX's subsidiary, ABX Cargo Services, Inc. ("ACS"), was awarded contracts to manage USPS mail sort centers in Dallas, Texas and Memphis, Tennessee. In 2006, ACS was also awarded a renewal of a USPS sort center in Indianapolis, Indiana that it has operated since 2004. Under each of these contracts, ACS is compensated at a firm price for fixed costs and an additional amount based on the volume of mail handled at each sort center. Each of the contracts has a four-year term with extensions at the discretion of the USPS.

### *Airport-to-Airport Transportation of Freight on a Space-Available Basis*

The ACMI agreement with DHL allows ABX, subject to certain limitations described in the agreement, to sell to other customers any aircraft space that DHL does not use. On the routes ABX operates for DHL, we sell airport-to-airport transportation services to freight forwarders and to the USPS.

### *Aircraft Maintenance and Modification Services*

ABX operates a Federal Aviation Administration ("FAA") certified 145 repair station. ABX leverages the repair station facilities (including hangars and a component shop leased from DHL) and its engineering capabilities to perform airframe and component maintenance and repair services for other airlines and maintenance repair organizations. ABX has developed technical expertise related to aircraft modifications as a result of its long history in aviation. ABX owns many Supplemental Type Certificates ("STCs"). An STC is granted by the FAA and represents an ownership right, similar to an intellectual property right, which authorizes the alteration of an airframe, engine or component. ABX markets its capabilities by identifying aviation-related maintenance and modification opportunities and matching them to its capabilities.

ABX's marketable capabilities include the installation of terrain awareness warning systems ("TAWS"), traffic collision avoidance systems ("TCAS"), reduced vertical separation minima ("RVSM") and flat panel displays for Boeing 757 and Boeing 767 cockpits. The flat panel display updates aircraft avionics equipment and reduces maintenance costs by combining multiple display units into a single instrumentation panel. ABX performs heavy maintenance and airframe overhauls on DC-9 and Boeing 767 aircraft and line maintenance on DC-8, DC-9, Boeing 747 and Boeing 767 aircraft. ABX has the capabilities to refurbish approximately 60% of the airframe components for DC-8 and DC-9 aircraft and the wheels and brakes for DC-8, DC-9 and Boeing 767 aircraft types. ABX can also perform intermediate repairs on the engines for DC-8 aircraft and the engines and auxiliary power units for DC-9 aircraft. Additionally, ABX provides digital aircraft manuals for customers in conjunction with the modification of aircraft from passenger to cargo configuration.

### *Aircraft Parts Sales and Brokerage*

ABX's subsidiary, ABX Material Services, Inc. ("AMS"), which holds a certificate relating to free trade zone rights, is an ASA (Aviation Suppliers Association) 100 Certified reseller and broker of aircraft parts. AMS carries an inventory of DC-8, DC-9 and Boeing 767 spare parts and also maintain inventory on consignment from original equipment manufacturers, resellers, lessors and other airlines. AMS's customers include the commercial air cargo industry, passenger airlines, aircraft manufacturers and contract maintenance companies serving the commercial aviation industry, as well as other resellers.

### *Flight Crew Training*

ABX is FAA-certificated to offer training to customers and rent usage of ABX's flight simulators for outside training programs. ABX trains flight crewmembers in-house, utilizing its own classroom instructors and facilities. It owns four flight simulators, including one Boeing 767, one DC-8 and two DC-9 flight simulators.

ABX's Boeing 767 and one of its DC-9 flight simulators are level C certified, which allows ABX to qualify flight crewmembers under FAA requirements without performing check flights in an aircraft. The DC-8 and the other DC-9 flight simulator are level B certified, which allows ABX to qualify flight crewmembers by performing a minimum number of flights in an aircraft.

## **Airline Operations**

### *Flight Operations and Control*

ABX's flight operations, including aircraft dispatching, flight tracking and crew scheduling, are planned and controlled by ABX personnel from the DHL Air Park in Wilmington, Ohio. The airline staffs aircraft dispatching and flight tracking 24 hours per day, 7 days per week. ABX's flight operations office at the DHL Air Park also coordinates the technical support necessary for its flights to operate into other airports. CCIA flight operations, including flight tracking and crew scheduling, are controlled by on-duty personnel in CCIA's operations center in Orlando, Florida, and the same functions for ATI are controlled from ATI's operations center in Little Rock, Arkansas.

### *Maintenance*

Our airline subsidiaries operations are regulated by the FAA for aircraft safety and maintenance. ABX is certificated as an FAA repair station to perform maintenance on DC-8, DC-9 and Boeing 767 aircraft and their related avionics and accessories. ABX's maintenance and engineering personnel coordinate all routine and non-routine maintenance requirements. The maintenance programs include tracking the maintenance status of each aircraft, consulting with manufacturers and suppliers about procedures to correct irregularities and training maintenance personnel on the requirements of ABX's FAA-approved maintenance program. ABX conducts nearly all of its own maintenance training. Performing a majority of the aircraft maintenance themselves reduces costs, minimizes the out-of-service time for aircraft and achieves a higher level of reliability.

ABX performs airframe heavy maintenance and modification on its DC-9 and Boeing 767 aircraft. They perform routine inspections and airframe maintenance, including Airworthiness Directives and Service Bulletin compliance on all of their aircraft. Additionally, ABX contracts with a maintenance repair organization to perform the passenger-to-freighter cargo conversions on its Boeing 767 airframes. ABX contracts with maintenance repair organizations to perform heavy airframe maintenance on its Boeing 767 airframes. ABX also contracts with maintenance repair organizations for the performance of heavy maintenance on its aircraft engines. ABX owns a supply of spare aircraft engines, auxiliary power units, aircraft parts and consumable items. The number of spare items maintained is based on the size of the fleet of each aircraft and engine type operated and the reliability history of the item types. CAM contracts for airframe heavy maintenance, modification and repairs on CCIA's fleet of Boeing 727 aircraft and ATI's fleet of DC-8 aircraft, both of which are leased from CAM.

### *Insurance*

Our airline subsidiaries are required by the Department of Transportation ("DOT") to carry liability insurance on each of their aircraft. Their aircraft leases, loans and the ACMI agreement also require them to carry such insurance. The Company currently maintains public liability and property damage insurance and our airline subsidiaries currently maintain aircraft hull and liability insurance and war risk insurance for their respective aircraft fleets in amounts consistent with industry standards.

## **Employees**

As of December 31, 2007, ABX Holdings and its subsidiaries had approximately 10,150 employees, including 5,835 full-time employees and 4,315 part-time employees. We employ approximately 775 flight crewmembers, 1,650 aircraft maintenance technicians and flight support personnel, 3,760 sort employees at the

DHL Air Park, 2,315 sort employees at the regional hubs and postal centers, 515 employees for airport and hub maintenance, 630 employees for warehousing and logistics and 505 employees for administrative functions. We also use contracted labor during business peaks, particularly during the fourth calendar quarter.

*Labor Agreements*

The Company’s flight crewmembers are unionized employees. The table below summarizes the representation of the Company’s flight crewmembers.

<u>Airline</u>	<u>Labor Agreement Unit</u>	<u>Date Contract Became Amendable</u>	<u>Approximate Number of Employees Represented</u>
ABX	International Brotherhood of Teamsters	7/31/2006	610
ATI	International Brotherhood of Teamsters	5/1/2004	95
CCIA	Airline Pilot Association	3/31/2004	70

Under the Railway Labor Act (“RLA”), as amended, the labor agreements do not expire, so the existing contract remains in effect throughout any negotiation process. If required, mediation under the RLA is conducted by the National Mediation Board, which has the sole discretion as to how long mediation can last and when it will end. In addition to direct negotiations and mediation, the RLA includes a provision for potential arbitration of unresolved issues and a 30-day “cooling-off” period before either party can resort to self-help.

*Training*

Our airline subsidiaries’ flight crewmembers are required to be licensed in accordance with Federal Aviation Regulation (“FAR”) Part 121, with specific ratings for the aircraft type to be flown, and to be medically certified as physically fit to fly aircraft. Licenses and medical certifications are subject to recurrent requirements as set forth in the FARs to include recurrent training and minimum amounts of recent flying experience.

The FAA mandates initial and recurrent training for most flight, maintenance and engineering personnel. Mechanics and quality control inspectors must also be licensed and qualified for specific aircraft. Our airline subsidiaries pay for all of the recurrent training required for their flight crewmembers and provide training for their ground service and maintenance personnel. Their training programs have received all required FAA approvals.

**Industry**

The primary competitive factors in the air cargo industry are price, fuel efficiency, geographic coverage, flight frequency, reliability and capacity. Our airline subsidiaries compete for domestic cargo volume principally with other cargo airlines and passenger airlines which have substantial belly cargo capacity. Other cargo airlines include Astar Air Cargo, Inc. (“Astar”), World Air Holdings, Inc., Atlas Air, Inc., and Evergreen International, Inc. The industry is highly competitive. At least two other cargo airlines have an ACMI agreement with DHL.

Cargo volumes within the U.S. are highly dependent on the economic conditions and the level of commercial activity. Generally, time-critical delivery needs, such as just-in-time inventory management, increase the demand for air cargo delivery, while higher costs of jet fuel generally reduces the demand for air delivery services within the U.S. When jet fuel prices increase, shippers will consider using ground transportation within the U.S. if the delivery times allows. Historically, the cargo industry has experienced higher volumes during the fourth calendar quarter of each year.

The scheduled delivery industry is dominated by integrated, door-to-door carriers including DHL, the USPS, FedEx Corporation, BAX and United Parcel Service, Inc. Although the volume of our DHL business is being impacted by competition among these integrated carriers, we do not usually compete directly with these integrated carriers.

### **Intellectual Property**

ABX owns a small number of U.S. patents that are important to its business operations and have nominal commercial value. It also owns approximately 160 STCs issued by the FAA. ABX uses these STCs mainly in support of its own fleet; however, it has marketed certain STCs to other airlines.

### **Information Systems**

ABX has invested significant management and financial resources in the development of information systems to facilitate cargo, flight and maintenance operations. ABX utilizes its systems to maintain records about the maintenance status and history of each major aircraft component, as required by FAA regulations. Using its systems, ABX tracks and controls inventories and costs associated with each maintenance task, including the personnel performing those tasks. In addition, ABX's flight operations system coordinates flight schedules and crew schedules. It has developed and procured systems to track flight time, flight crewmember duty and flight hours and crewmember training status.

### **Regulation**

Our subsidiaries' air carrier operations are generally regulated by the DOT and the FAA. Those operations must comply with numerous security and environmental laws, ordinances and regulations. In addition, they must also comply with various other federal, state, local and foreign authorities.

#### *Environment*

Under current federal, state and local environmental laws, ordinances and regulations, a current or previous owner or operator of real property may be liable for the costs of removal or clean-up of hazardous or toxic substances on, under, or in such property. Such laws often impose liability whether or not the owner or operator knew of, or was responsible for, the presence of such hazardous or toxic substances. In addition, the presence of contamination from hazardous or toxic substances, or the failure to properly clean up such contaminated property, may adversely affect the ability of the owner of the property to use such property as collateral for a loan or to sell such property. Environmental laws also may impose restrictions on the manner in which a property may be used or transferred or in which businesses may be operated and may impose remediation or compliance costs. Under the DHL sublease, ABX and DHL are required to defend, indemnify and hold each other harmless from and against certain environmental claims associated with DHL Air Park.

We are subject to the regulations of the U.S. Environmental Protection Agency and state and local governments regarding air quality and other matters. In part, because of the highly industrialized nature of many of the locations at which we operate, there can be no assurance that we have discovered all environmental contamination for which we may be responsible.

Our subsidiaries' aircraft currently meet all known requirements for engine emission levels. However, under the Clean Air Act, individual states or the U.S. Environmental Protection Agency may adopt regulations requiring reduction in emissions for one or more localities based on the measured air quality at such localities. Such regulations may seek to limit or restrict emissions by restricting the use of emission-producing ground service equipment or aircraft auxiliary power units. There can be no assurance that, if such regulations are adopted in the future or changes in existing laws or regulations are promulgated, such laws or rules would not have a material adverse effect on our financial condition or results of operations.

The federal government generally regulates aircraft engine noise at its source. However, local airport operators may, under certain circumstances, regulate airport operations based on aircraft noise considerations. The Airport Noise and Capacity Act of 1990 provides that, in the case of Stage 3 aircraft (all of our operating aircraft satisfy Stage 3 noise compliance requirements), an airport operator must obtain the carriers' consent to or the government's approval of the rule prior to its adoption. We believe the operation of our airline subsidiaries' aircraft either complies with or is exempt from compliance with currently applicable local airport rules. However, some airport authorities are considering adopting local noise regulations, and, to the extent more stringent aircraft operating regulations are adopted on a widespread basis, our airlines subsidiaries may be required to spend substantial funds, make schedule changes or take other actions to comply with such local rules.

The U.S. government, working through the International Civil Aviation Organization, has in the past adopted more stringent aircraft engine emissions regulations with regard to newly certificated engines and aircraft noise regulations applicable to newly certificated aircraft. Although these rules will not apply to any of our airlines subsidiaries' existing aircraft, additional rules could be adopted in the future that would either apply these more stringent noise and emissions standards to aircraft already in operation or require that some portion of the fleet be converted over time to comply with these new standards.

#### *Department of Transportation*

The DOT maintains authority over certain aspects of domestic air transportation, such as requiring a minimum level of insurance and the requirement that a person be "fit" to hold a certificate to engage in air transportation. In addition, the DOT continues to regulate many aspects of international aviation, including the award of international routes. The DOT has issued to ABX, CCIA and ATI separately Domestic All-Cargo Air Service Certificates for air cargo transportation between all points within the U.S., the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Additionally, the DOT has issued ABX a Certificate of Public Convenience and Necessity (Route 377) to engage in scheduled foreign air cargo transportation between the U.S. and Canada. Prior to issuing such certificates, the DOT examines a company's managerial competence, financial resources and plans, compliance, disposition and citizenship in order to determine whether the carrier is fit, willing and able to engage in the transportation services it has proposed to undertake. By maintaining these certificates, the Company, through its airline subsidiaries, can conduct all-cargo charter operations worldwide.

The DOT has the authority to impose civil penalties, or to modify, suspend or revoke our certificates for cause, including failure to comply with federal law or DOT regulations. A corporation holding either of such certificates must qualify as a U.S. citizen, which requires that (1) it be organized under the laws of the U.S. or a state, territory or possession thereof, (2) that its president and at least two-thirds of its Board of Directors and other managing officers be U.S. citizens, (3) that not more than 25% of its voting interest be owned or controlled by non-U.S. citizens, and (4) that it not otherwise be subject to foreign control. Neither type of certificate confers proprietary rights on the holder, and the DOT may impose conditions or restrictions on such certificates. We believe we possess all necessary DOT-issued certificates and authorities to conduct our current operations and continue to qualify as a U.S. citizen.

#### *Federal Aviation Administration*

The FAA regulates aircraft safety and flight operations generally, including equipment, ground facilities, maintenance, flight dispatch, training, communications, the carriage of hazardous materials and other matters affecting air safety. The FAA issues operating certificates and operations specifications to carriers that possess the technical competence to conduct air carrier operations. In addition, the FAA issues certificates of airworthiness to each aircraft that meets the requirements for aircraft design and maintenance. ABX, CCIA and ATI believe they hold all airworthiness and other FAA certificates and authorities required for the conduct of their business and the operation of their aircraft, although the FAA has the power to suspend, modify or revoke such certificates for cause, or to impose civil penalties for any failure to comply with federal law and FAA regulations.

The FAA has the authority to issue maintenance directives and other mandatory orders relating to, among other things, the inspection and maintenance of aircraft and the replacement of aircraft structures, components and parts, based on the age of the aircraft and other factors. For example, the FAA has required ABX to perform inspections of its DC-9 and Boeing 767 aircraft to determine if certain of the aircraft structures and components meet all aircraft certification requirements. If the FAA were to determine that the aircraft structures or components are not adequate, it could order operators to take certain actions, including but not limited to, grounding aircraft, reducing cargo loads, strengthening any structure or component shown to be inadequate, or making other modifications to the aircraft. New mandatory directives could also be issued requiring the Company's airline subsidiaries to inspect and replace aircraft components based on their age or condition. As a matter of routine, the FAA issues airworthiness directives applicable to the aircraft operated by our airline subsidiaries, and our airlines comply, sometimes at considerable cost, as part of our aircraft maintenance program.

The FAA is proposing legislation that would permit the adoption of rules that would limit the number of daily airline operations to control airport and air traffic control congestion. The FAA would seek to do so by permitting airport rates and charges to be set at levels reflecting the scarcity of airspace and airside capacity. With this new authority, the FAA or airport operators may in the future seek to impose limits on the number of arrivals and departures and, were they to do so, the Company's airline subsidiaries may incur higher airport fees and charges as a result. Currently, the Company's airline subsidiaries has all of the necessary airport operator permission to operate at each of the airports we serve.

#### *Transportation Security Administration*

The Transportation Security Administration ("TSA"), an administration within the Department of Homeland Security, is responsible for the screening of passengers, baggage and cargo and the security of aircraft and airports. Our airline subsidiaries comply with all applicable aircraft and cargo security requirements. TSA is currently considering the adoption of additional cargo security-related rules that, if adopted as proposed, could impose additional burdens on our airlines, which could have an impact on their ability to efficiently process cargo or otherwise increase costs. In addition, we may be required to reimburse the TSA for the cost of security services it may provide to the Company's airlines subsidiaries in the future.

#### *Other Regulations*

We believe that our subsidiaries' current operations are in compliance with the numerous regulations to which their businesses are subject; however, various regulatory authorities have jurisdiction over significant aspects of their business, and it is possible that new laws or regulations or changes in existing laws or regulations or the interpretations thereof could have a material adverse effect on their operations. In addition to the above, other laws and regulations to which they are subject, and the agencies responsible for compliance with such laws and regulations, include the following:

- The labor relations of our airline subsidiaries are generally regulated under the Railway Labor Act, which vests in the National Mediation Board certain regulatory powers with respect to disputes between airlines and labor unions arising under collective bargaining agreements;
- The Federal Communications Commission regulates our airline subsidiaries' use of radio facilities pursuant to the Federal Communications Act of 1934, as amended;
- U.S. Customs and Border Protection inspects cargo imported from our subsidiaries' international operations;
- Our airlines must comply with U.S. Citizenship and Immigration Services regulations regarding the citizenship of our employees;
- The Company and its subsidiaries must comply with wage, work conditions and other regulations of the Department of Labor regarding our employees.

## Security and Safety

### *Security*

The Company's subsidiaries have instituted various security procedures to comply with FAA and TSA regulations and comply with the directives outlined in the federal Domestic Security Integration Program. The airline subsidiaries' customers are required to inform them in writing of the nature and composition of any freight which is classified as "Dangerous Goods" by the DOT. In addition, the Company and its subsidiaries conduct background checks on our respective employees, restrict access to aircraft, inspect aircraft for suspicious persons or cargo, and inspect all dangerous goods. Notwithstanding these procedures, our airline subsidiaries could unknowingly transport contraband or undeclared hazardous materials for customers, which could result in fines and penalties and possible damage to their aircraft.

### *Safety and Inspections*

Management is committed to the safe operation of its aircraft. In compliance with FAA regulations, our subsidiaries' aircraft are subject to various levels of scheduled maintenance or "checks" and periodically go through phased overhauls. In addition, a comprehensive internal review and evaluation program is in place and active. Our subsidiaries' aircraft maintenance efforts are monitored closely by the FAA. They also conduct extensive safety checks on a regular basis.

## **ITEM 1A. RISK FACTORS**

The risks described below could adversely affect our financial condition or results of operations. The risks below are not the only risks that the Company faces. Additional risks that are currently unknown to us or that we currently consider immaterial or unlikely could also adversely affect the Company.

*We continue to rely on DHL for a substantial portion of our revenue and operating cash flows. DHL could reduce the scope of service provided by ABX.*

DHL may make strategic changes in its network in an effort to reduce its operating losses in the U.S. DHL can, after a contractual advance-notice period, reduce the scope of services that ABX provides under the ACMI or Hub Services agreements. For example, DHL can reduce the number of aircraft or the number of routes that ABX flies, or DHL can transfer the management of any or all of the hubs that ABX operates. Further, DHL continues to place pressure on its vendors and service providers, including ABX, to reduce costs, improve productivity and stem its operating losses in the U.S.

DHL competes in the U.S. against FedEx Corporation and United Parcel Service, Inc., each of which has significant resources, market penetration and brand recognition. ABX may experience declines in its revenues and operating cash flows if volume reductions are experienced by DHL.

The term of the Hub Services agreement will automatically renew for an additional year unless either party gives notice of termination on or before May 17, 2008. Termination of the Hub Services agreement would adversely impact our business, resulting in a significant decline in our revenues and earnings. As a condition to renewal, DHL may seek to negotiate new terms, possibly creating greater risk/reward opportunities related to ABX's performance and cost controls or a reduction in the scope of services ABX provides to DHL.

*The Company is highly leveraged and relies on debt arrangements for liquidity.*

ABX and CHI have a Credit Agreement and other debt arrangements that subject them to covenants and stipulate events of default. The removal of services from the ACMI agreement or other significant declines in our business could result in a condition of default that could limit ABX's and CHI's use of the credit arrangements.

Conditions in the credit market may affect the cost of the Company's borrowings. The Company and the lead bank for its Credit Agreement are currently marketing the \$270 million unsubordinated term loan to other banks and investors. Conditions in the credit market may result in a higher cost of borrowing to attract additional lenders.

On January 14, 2008, ABX received from DHL a demand for payment in full of all amounts due under the DHL Note (including principal and accrued but unpaid interest), which would total \$92.9 million. In its demand, DHL asserts that the acquisition by the Company of CHI and the related financing transaction, which closed on December 31, 2007, constituted a “change of control” under the terms of the DHL Note. We do not believe a “change of control” occurred in connection with the CHI acquisition and, accordingly, have disputed DHL’s demand. If, however, it becomes necessary for ABX to repay the DHL Note, it has secured back-up financing through January 2009. See Note H to the consolidated financial statements of this report for additional information. The costs to the Company of such back-up financing could be significantly greater than the financing costs under the DHL Note.

*The combined Company created by our acquisition of CHI may not perform as well financially as we expect.*

The Company, through its subsidiaries, is highly leveraged and has 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 identify and realize synergies without adversely affecting revenues or suffering a business interruption. If we are not able to successfully bring cost effective service offerings to the market, the anticipated benefits of the acquisition may not be realized or may take longer to realize than expected. Leveraging certain business functions, even if achieved in an efficient, effective and timely manner, may not produce results of operations and financial condition consistent with our expectations or superior to what ABX and CHI could have achieved independently.

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

The provisions of the two commercial agreements ABX has 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 may reach this threshold in 2008, depending on the timeframe over which the revenues are measured. Once the 10% threshold is reached, a portion of overhead costs will be allocated to ABX’s charter segment and other non-DHL operations and will no longer be reimbursed by DHL. 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 costs that will be allocated to non-DHL operations.

DHL has communicated to ABX’s management its assertions 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 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. 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. While we expect to prevail in the dispute resolution process and, accordingly, no charge or reserve for disputed overhead expenses has been recorded, the arbitration process could result in an unfavorable outcome, requiring ABX to bear overhead expenses currently in dispute, without reimbursement from DHL.

*Certain terms of the ACMI agreement and Hub Services agreement with DHL may adversely affect ABX’s operating results.*

Under the ACMI agreement and Hub Services agreement, if ABX does not meet certain performance standards, after a cure period, DHL may terminate the ACMI agreement and Hub Services agreement prior to the

end of their respective terms. A recurring work slowdown or strike by one or more groups of employees, such as ABX's mechanics, sorters or flight crews, could adversely impact our operating performance. These events could result in reductions by DHL to the scope of services provided under the DHL agreements, leading to the termination of those agreements.

Although the ACMI agreement and Hub Services agreement with DHL are structured as cost-plus arrangements, the costs for which ABX can be reimbursed are subject to certain limitations. For instance, labor rate increases are capped at predetermined levels and certain other costs are non-reimbursable. DHL can dispute whether expenses ABX has incurred are reimbursable under the agreements. The agreements give DHL, within reason, certain rights to audit ABX's expenses. Further, the agreements stipulate dispute and arbitration procedures. If labor costs sharply increase or ABX incurs excessive non-reimbursable costs, there can be no assurance that the revenues from these agreements will generate sufficient income for ABX to recover its costs.

*The Company is dependent upon the economic conditions in the U.S.*

An economic downturn in the U.S. is likely to adversely affect demand for delivery services offered by DHL and BAX, in particular expedited services shipped via aircraft. During an economic slowdown, customers generally use ground-based delivery services instead of more expensive air delivery services. A prolonged economic slowdown may increase the likelihood that DHL would reduce the scope of services ABX provides under the ACMI agreement. Although the cost of jet fuel does not directly affect our net earnings, increased prices of jet fuel could also reduce the demand for air delivery services from DHL, BAX or our other ACMI customers.

*The Company has made a significant investment in Boeing 767 aircraft.*

The Company, through its subsidiaries, is planning to add six Boeing 767 aircraft to service through 2008. This is in addition to eleven Boeing 767 aircraft that ABX added to its Charter segment operations since 2005. Our future operating results and financial condition will depend in part on our subsidiaries ability to successfully deploy these aircraft in operations that provide a positive return on investment. Our success will depend, in part, on their ability to obtain and operate additional cargo volumes with customers other than DHL and BAX. Certain of our subsidiaries are pursuing international opportunities, including flights in Asia, Central America, South America and Europe. Deploying aircraft in new international markets may pose additional risk, regulatory requirements and costs. Our future operating results will be affected by the interest rates, limits and other terms and conditions of the borrowings or leases. See page 31 for further discussion of these aircraft.

*We may need to reduce the carrying value of our assets.*

We own a significant amount of aircraft, aircraft parts and related equipment. Additionally, our balance sheet reflects assets for income tax carryforwards and other deferred tax assets. The removal of aircraft from service could require the Company to evaluate the recoverability of the carrying value of those aircraft in accordance with Statements of Financial Accounting Standard ("SFAS") No. 144 and result in an impairment charge. At the Company's current level of stockholders' equity, the removal of additional aircraft from the DHL ACMI agreement could result in impairment charges for aircraft if their fair market values are less than their carrying values.

As a result of acquiring CHI, we have recorded significant amounts of goodwill and acquisition-related intangibles, which will be tested periodically for impairment. If we are unable to achieve the projected levels of operating results and these assets are impaired, it may be necessary to record a charge to earnings.

If we incur operating losses or our estimates of expected future earnings indicate a decline, it may be necessary to reassess the need for a valuation allowance for some or all of the Company's net deferred tax assets.

*Penalties, fines, and sanctions levied by governmental agencies or the costs of complying with government regulations could negatively affect our results of operations.*

Our subsidiaries' operations are subject to complex aviation, transportation, environmental, labor, employment and other laws and regulations. These laws and regulations generally require us to maintain and comply with a wide variety of certificates, permits, licenses and other approvals. Their inability to maintain required certificates, permits or licenses, or to comply with applicable laws, ordinances or regulations could result in substantial fines or, in the case of DOT and FAA requirements, possible suspension or revocation of their authority to conduct operations.

All aircraft in our airline subsidiaries' in-service fleet of 127 aircraft were manufactured prior to 1990. The average ages of our Boeing 767, Boeing 727, DC-9 and DC-8 aircraft are approximately 24, 28 and 36 and 40 years, respectively. Manufacturer Service Bulletins and the FAA Airworthiness Directives issued under its "Aging Aircraft" program cause aircraft operators of such aged aircraft to be subject to extensive aircraft examinations and require such aircraft to undergo structural inspections and modifications to address problems of corrosion and structural fatigue at specified times. Airworthiness Directives have been issued that require inspections and both major and minor modifications to such aircraft. It is possible that additional Service Bulletins or Airworthiness Directives applicable to the types of aircraft or engines included in our fleet could be issued in the future. The cost of compliance with Airworthiness Directives and of following Service Bulletins cannot currently be reasonably estimated but could be substantial.

*Failure to maintain the operating certificates and authorities of ABX, ATI and CCIA would adversely affect our business.*

Our airline subsidiaries have the necessary authority to conduct flight operations within the U.S. and maintain Domestic All-Cargo Air Service Certificates for their domestic services, a Certificate of Public Convenience and Necessity for Route 377 for ABX's Canada service, and Air Carrier Operating Certificates issued by the FAA. The continued effectiveness of such authority is subject to their compliance with applicable statutes and DOT, FAA and TSA rules and regulations, including any new rules and regulations that may be adopted in the future.

Under U.S. laws and DOT precedents, non-U.S. citizens may not own more than 25% of, or have actual control of, a U.S. certificated air carrier. The separation of ABX from Airborne required it to file a notice of a substantial change with the DOT. In connection with the filing, the DOT will determine whether ABX continues to be fit, willing and able to engage in air transportation of cargo and a U.S. citizen. The DOT may determine that DHL actually controls ABX as a result of the commercial arrangements (in particular, the ACMI agreement and the Hub Services agreement) between ABX and DHL. If the DOT determined that ABX was controlled by DHL, the DOT could bring an enforcement action against ABX to revoke its certificates. The DOT could take action requiring ABX to show cause that it is a U.S. citizen and that it is fit, willing and able to engage in air transportation of cargo, or requiring amendments or modifications of the ACMI agreement, the Hub Services agreement or the other transaction documents. If ABX was unable to modify these agreements to the satisfaction of the DOT, the DOT may seek to suspend, modify or revoke its air carrier certificates and/or authorities.

The loss of our airlines' authorities, including in the situation described above, would materially and adversely affect our airline operations and would effectively eliminate our ability to operate the air services.

*Employees may decide to institute labor agreements.*

Our subsidiaries rely on a diverse group of employees, including sorters, mechanics and pilots. Today, only flight crewmembers are organized under labor agreements. Operations could be interrupted and business could be adversely affected if no agreements are reached with the pilots or if other employee groups choose to organize with a union.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

Not applicable.

**ITEM 2. PROPERTIES**

ABX leases its corporate offices, 210,000 square feet of maintenance hangars and a 100,000-square-foot component repair shop from DHL. These facilities are located at the DHL Air Park in Wilmington, Ohio. ABX also has the non-exclusive right to use the airport which includes two runways, taxi ways, and ramp space comprising approximately 300 paved acres. The term of the lease runs concurrently with the term of the ACMI agreement with DHL. We believe our existing facilities are adequate to meet our current and reasonably foreseeable future needs.

*Aircraft*

Our airline subsidiaries currently utilize pre-owned Boeing 767, Boeing 727, McDonnell Douglas DC-9 and McDonnell Douglas DC-8 aircraft. Once acquired, aircraft are modified for use in our cargo operation. As of December 31, 2007, the combined in-service fleet consisted of 127 aircraft, including 40 Boeing 767 aircraft, 14 Boeing 727 aircraft, 57 DC-9 aircraft and 16 DC-8 aircraft.

Most of ABX's DC-9 aircraft and 24 of its Boeing 767 aircraft are not equipped with standard cargo doors, but instead utilize the former passenger doors for the loading and unloading of freight. This reduced the cost of modifying the aircraft from passenger to freighter configuration but limits the size of the freight that can be carried onboard the aircraft and necessitates the use of specialized containers and loading equipment. The absence of a cargo door may also negatively impact the market value of the aircraft.

At December 31, 2007, ABX had a total 16 Boeing 767 aircraft in service that have been converted from passenger aircraft to a standard cargo door configuration. Seven more Boeing 767 freighters will be added into certain of our subsidiary fleets in 2008. Additionally, CCIA will begin operating a Boeing 757 freighter in the first quarter of 2008. The timing of acquisitions and modification payments are described on page 31 of this report.

The tables below show our subsidiaries' aircraft fleets and the certificates under which they operate.

**ABX Air, Inc. In-Service Fleet**

<u>Aircraft Type</u>	<u>Number of Aircraft as of Dec. 31, 2007</u>	<u>Year of Manufacture</u>	<u>Gross Payload (Lbs.)</u>	<u>Still Air Range (Nautical Miles)</u>
DC-9	49	1967-1978	26,000-36,000	550-1,100
DC-9-F (1)	8	1967-1970	26,000-36,000	550-1,100
767-200	24	1983-1985	67,000-91,000	1,800-4,400
767-200SF (2)	16	1982-1987	67,000-91,000	1,800-4,400
Total	<u>97</u>			

### Air Transport International, LLC In-Service Fleet

Aircraft Type	Number of Aircraft as of Dec. 31, 2007	Year of Manufacture	Gross Payload (Lbs.)	Still Air Range (Nautical Miles)
DC-8-F	12	1967-1969	96,000-108,800	1,800-4,400
DC-8-CF (3)	4	1968-1970	80,000-85,000	1,800-4,400
Total	<u>16</u>			

### Capital Cargo International Airlines, Inc. In-Service Fleet

Aircraft Type	Number of Aircraft as of Dec. 31, 2007	Year of Manufacture	Gross Payload (Lbs.)	Still Air Range (Nautical Miles)
727-200SF	14	1973-1981	52,300-61,000	1,200-2,100

### Aircraft Currently Undergoing Modification

Aircraft Type	Number of Aircraft as of Dec. 31, 2007	Year of Manufacture	Expected In-Service Date
757-200 SF	1	1986	4/2008
767-200 SF	3	1982-1984	4/2008-7/2008
767-200 ER	4	1984-1985	7/2008-12/2008
Total	<u>8</u>		

- (1) These aircraft were manufactured with a cargo door for transporting freight. The cargo doors are currently deactivated.
- (2) These passenger aircraft are configured for standard cargo containers, including activated cargo doors.
- (3) These aircraft are configured as “combi” aircraft capable of carrying passenger and cargo containers on the main flight deck.

Because our airline subsidiaries’ flight operations can be hindered by inclement weather, they use sophisticated landing systems and other equipment that is intended to minimize the effect that weather may have on their flight operations. For example, ABX’s Boeing 767 aircraft are equipped for Category III landings. This allows their crews to land under weather conditions with runway visibility of only 600 feet at airports with Category III Instrument Landing Systems. All of ABX’s DC-9 aircraft are equipped for Category II landings, which enable landing with runway visibility of only 1,200 feet.

### **ITEM 3. LEGAL PROCEEDINGS**

#### **Department of Transportation (“DOT”) Continuing Fitness Review**

ABX filed a notice of substantial change with the DOT arising from its separation from Airborne, Inc. In connection with the filing, which was initially made in mid-July of 2003 and updated in April of 2005 and again in September of 2007, the DOT will determine whether ABX continues to be fit, willing and able to engage in air transportation of cargo and a U.S. citizen.

Under U.S. laws and DOT precedents, non-U.S. citizens may not own more than 25% of, or have actual control of, a U.S. certificated air carrier. The DOT may determine that DHL actually controls ABX as a result of its commercial arrangements (in particular, the ACMI agreement and Hub Services agreement) with DHL. If the

DOT determines that ABX is controlled by DHL, the DOT could require amendments or modifications of the ACMI and/or other agreements between ABX and DHL. If ABX were unable to modify such agreements to the satisfaction of the DOT, the DOT could seek to suspend, modify or revoke ABX's air carrier certificates and/or authorities, and this would materially and adversely affect the business.

The DOT has yet to specify the procedures it intends to use in processing ABX's filing. We believe the DOT should find that ABX is controlled by U.S. citizens and continues to be fit, willing and able to engage in air transportation of cargo.

### **ALPA Lawsuit**

On August 25, 2003, ABX intervened in a lawsuit filed in the U.S. District Court for the Southern District of New York by DHL Holdings (USA), Inc. (Now DPWN Holdings (USA), Inc.) ("DPWN Holdings") and DHL Worldwide Express, Inc. ("DHL Worldwide") against the Air Line Pilots Association ("ALPA"), seeking a declaratory judgment that neither DHL entity is required to arbitrate a grievance filed by ALPA. ALPA represents the pilot group at Astar. The grievance seeks to require DPWN Holdings to direct its subsidiary, Airborne, Inc. (Now DHL Network Operations (USA), Inc.), to cease implementing its ACMI agreement with ABX on the grounds that DHL Worldwide is a legal successor to Astar. ALPA similarly filed a counterclaim requesting injunctive relief that includes having DHL's freight currently being flown by ABX transferred to Astar.

The proceedings were stayed on September 5, 2003, pending the National Labor Relations Board's ("NLRB") processing of several unfair labor practice charges ABX filed against ALPA on the grounds that ALPA's grievance and counterclaim to compel arbitration violates the National Labor Relations Act. In March 2004, the NLRB prosecuted ALPA on the unfair labor practice charges. On July 2, 2004, an Administrative Law Judge ("ALJ") for the NLRB issued a decision finding that ALPA's grievance and counterclaim violated the secondary boycott provisions of the National Labor Relations Act, and recommended that the NLRB order ALPA to withdraw both actions. ALPA appealed the ALJ's finding to the full NLRB, which subsequently affirmed the ALJ's decision in its own decision and order dated August 27, 2005.

On September 14, 2005, ALPA filed a petition for review with the U.S. Court of Appeals for the Ninth Circuit and that Court subsequently granted ABX's motion to intervene in the case. The parties filed briefs in the matter and oral arguments were heard on October 17, 2007. We are currently awaiting the U.S. Court of Appeals decision in this matter. The declaratory judgment matter and related counterclaim in the U.S. District Court remain stayed at this time.

We believe the NLRB's decision will be sustained on appeal and that ALPA's grievance and counterclaim will be denied.

### **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 October of 2005, the DOJ notified ABX that ABX and a few Company employees in its human resources department, in addition to Garcia, were targets of a criminal investigation. ABX cooperated fully with the investigation. In June of 2006, a non-senior management employee of the Company entered a plea to a misdemeanor related to this matter. 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 I 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 filed a motion to dismiss on June 11, 2007 and that motion is currently pending. We believe the claim is without merit.

#### **Arbitration under ACMI Agreement and Hub Services Agreement**

On November 15, 2007, DHL filed a demand for arbitration with the American Arbitration Association in accordance with the dispute resolution provisions under the ACMI agreement and Hub Services agreement. DHL is seeking certain declarations, including that (i) ABX may not include fuel costs as revenues under the ACMI agreement for purposes of determining whether it receives more than 10% of its revenues from other customers; (ii) ABX exceeded the 10% threshold in the second quarter of 2007 and therefore must begin absorbing a portion of its overhead for the second quarter of 2007 and each quarter going forward under the Agreements; and (iii) DHL is not obligated to reimburse ABX for the costs incurred in maintaining its status as a public company, including those costs incurred in evaluating a recent unsolicited indication of interest from another company.

On December 5, 2007, ABX filed an answer and counterclaim denying DHL's claims and requesting certain declarations, including that (i) DHL is in default of the ACMI agreement and Hub Services agreement; (ii) reimbursable costs, including fuel costs, are properly included as revenue under the Agreements for purposes of determining whether ABX has crossed the 10% threshold, and (iii) costs incurred by ABX in maintaining its status as a public company are properly included in the cost recovery amount under the Agreements.

An arbitration panel has been convened and the parties are currently engaged in the discovery process. The arbitration panel currently anticipates issuing its decision in mid-June of 2008.

We believe that ABX will prevail on all of its counterclaims and that all of DHL's claims will be denied.

#### **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 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

No matters were submitted to a vote of security holders during the fourth quarter of 2007.

## PART II

### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS, AND ISSUER PURCHASES OF EQUITY SECURITIES

#### Common Stock

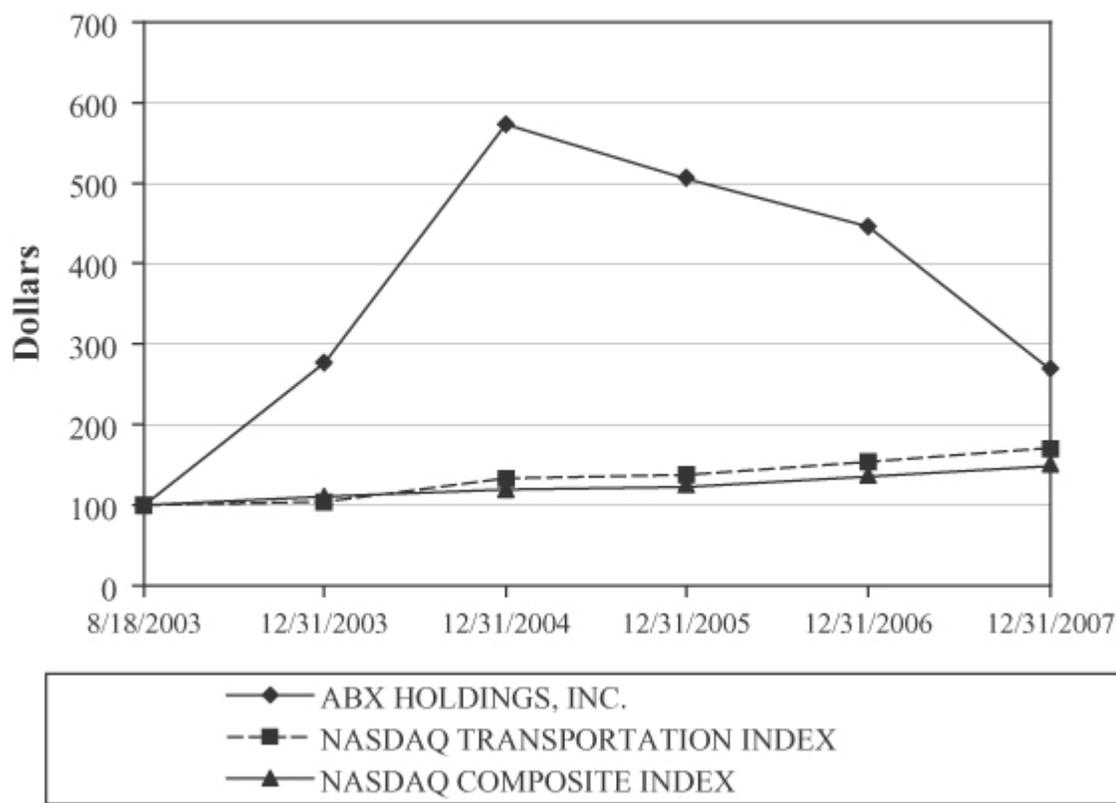
Our common stock became publicly traded on the NASDAQ Global Select Market under the symbol ABXA on May 9, 2005. The following table shows the range of high and low prices per share of our common stock for the periods.

<u>2007 Quarter Ended:</u>	<u>Low</u>	<u>High</u>
December 31, 2007	\$3.45	\$7.39
September 30, 2007	\$6.51	\$8.36
June 30, 2007	\$6.00	\$8.56
March 31, 2007	\$6.47	\$7.95
<u>2006 Quarter Ended:</u>	<u>Low</u>	<u>High</u>
December 31, 2006	\$5.12	\$6.94
September 30, 2006	\$4.94	\$6.07
June 30, 2006	\$5.73	\$7.11
March 31, 2006	\$6.48	\$8.50

On March 14, 2008, there were 2,122 stockholders of record of the Company's common stock. The closing price of the Company's common stock was \$2.91 on March 14, 2008.

## Performance Graph

The graph below compares the cumulative total stockholder return on a \$100 investment in the Company's common stock with the cumulative total return of a \$100 investment in the NASDAQ Global Select Market and the cumulative total return of a \$100 investment in the NASDAQ Transportation Index for the period beginning on August 18, 2003, the date on which the Company's shares first began trading publicly, and ending on December 31, 2007.



	8/18/2003	12/31/2003	12/31/2004	12/31/2005	12/31/2006	12/31/2007
ABX Holdings, Inc.	100.00	277.42	573.55	506.45	447.10	269.68
NASDAQ Transportation Index	100.00	104.11	133.24	137.77	154.32	171.22
NASDAQ Composite Index	100.00	110.63	119.93	122.57	135.15	148.57

## Dividends

ABX is restricted from paying dividends on its common stock in excess of \$1.0 million during any calendar year under the provisions of its promissory note due to DHL, while the Company is restricted from paying dividends on its common stock in excess of \$50.0 million during any calendar year under the provisions of the credit facility agreement. No cash dividends have been paid or declared.

**ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA**

Comparability of financial data among years is affected by ABX's separation from Airborne on August 15, 2003. The following selected consolidated financial data should be read in conjunction with the consolidated financial statements and the notes thereto and the information contained in Item 7 of Part II, "Management's Discussion and Analysis of Financial Condition and Results of Operations."

The selected consolidated financial data and the consolidated operations data below are derived from the Company's audited consolidated financial statements.

	As of and for the Years Ended December 31				
	2007	2006	2005	2004	2003
(In thousands, except per share data)					
<b>OPERATING RESULTS:</b>					
Revenues (1)	\$1,174,515	\$1,260,361	\$1,464,390	\$1,202,509	\$1,160,959
Operating expenses (2)	1,131,717	1,217,576	1,425,627	1,157,511	1,720,125
Net interest expense	9,510	6,772	8,451	8,025	16,379
Earnings (loss) before income taxes	33,288	36,013	30,312	36,973	(575,545)
Income tax benefit (expense) (3)	(13,701)	54,041	—	—	128,644
Net earnings (loss) (2)	<u>\$ 19,587</u>	<u>\$ 90,054</u>	<u>\$ 30,312</u>	<u>\$ 36,973</u>	<u>\$ (446,901)</u>
<b>EARNINGS (LOSS) PER SHARE FROM CONTINUING OPERATIONS</b>					
Basic (2)	\$ 0.34	\$ 1.55	\$ 0.52	\$ 0.63	\$ (8.52)
Diluted (2)	\$ 0.33	\$ 1.54	\$ 0.52	\$ 0.63	\$ (8.52)
<b>WEIGHTED AVERAGE SHARES:</b>					
Basic	58,296	58,270	58,270	58,270	52,474
Diluted	58,649	58,403	58,475	58,270	52,474
<b>SELECTED CONSOLIDATED FINANCIAL DATA:</b>					
Cash and cash equivalents	\$ 59,271	\$ 63,219	\$ 69,473	\$ 38,749	\$ 63,101
Deferred income taxes (3)	35,056	101,715	—	—	—
Goodwill and intangible assets	210,354	—	—	—	—
Property and equipment, net	690,813	458,638	381,645	351,646	312,803
Total assets	1,162,967	679,798	516,043	472,923	413,106
Post-retirement liabilities (4)	190,028	224,376	89,319	79,770	66,825
Capital lease obligations	88,483	73,551	80,908	88,861	96,193
Long-term debt	495,704	125,126	92,276	92,949	92,949
Stockholders' equity	\$ 200,003	\$ 120,210	\$ 113,079	\$ 87,949	\$ 58,666

- (1) Prior to August 16, 2003, revenues were calculated as pre-tax net expenses plus two percent. See revenue recognition policy on page 33 of this report.
- (2) Operating expenses for 2003 include an impairment charge of \$600.9 million recorded in conjunction with ABX's separation from Airborne, Inc. A tax benefit of \$134.8 million occurred primarily as a result of recording the impairment charge.
- (3) In the fourth quarter of 2006, an income tax benefit was recognized to completely reverse the valuation allowance on ABX's deferred tax assets. See Note G to the accompanying consolidated financial statements.
- (4) Post-retirement liabilities for 2006 reflect the adoption of SFAS No. 158. See Note J to the accompanying consolidated financial statements.

## **ITEM 7. 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 Holdings, Inc, and its subsidiaries ("the Company") and should be read in conjunction with the "Risk Factors" on page 10 of this report, our historical financial statements, and the related notes contained in this report.

### **INTRODUCTION**

On December 31, 2007, ABX Air, Inc. ("ABX") was reorganized such that it became a subsidiary under a holding company structure. The holding company, ABX Holdings, Inc. ("the Company"), acquired all outstanding ownership of Orlando, Florida based Cargo Holdings International, Inc. ("CHI") on December 31, 2007. CHI is the parent company of two certificated airline subsidiaries, CCIA and ATI. The consolidated financial statements of the Company include the balance sheet of CHI and its subsidiaries, including Capital Cargo International Airlines, Inc. ("CCIA") and Air Transport International L.L.C. ("ATI"), as of the date of acquisition; accordingly, the activities of CHI are not included in the Company's consolidated statements of earnings or consolidated statements of cash flows for 2007, 2006 or 2005. For this reason and in the interest of convenience, ABX Holdings, Inc. and its subsidiaries may hereinafter individually and collectively be referred to as "the Company", "we", "our" or "us" from time to time.

ABX is an independent airline that provides cargo transportation and package sorting and handling services. ABX operates an in-service fleet of 97 aircraft as of December 31, 2007. DHL is ABX's largest customer, accounting for over 90% of our revenues. We are DHL's primary provider for air cargo transportation and for package handling and warehousing services within the U.S. ABX provides staffing, management and maintenance services for DHL's primary hub in Wilmington, Ohio and fifteen regional hubs throughout the U.S. In addition to DHL, ABX provides air cargo services to other customers through a fleet of Boeing 767 aircraft. Additionally, ABX provides aircraft part sales and maintenance services to other airlines and, through a wholly-owned subsidiary, operates three sorting facilities for the U.S. Postal Service ("USPS"). During 2007, ABX operated in two reportable segments: DHL and Charter. Its other business activities, including the USPS sort centers, aircraft part sales and maintenance services, do not constitute reportable segments.

### **DHL Segment**

ABX has two commercial agreements with DHL: 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 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% (the base mark-up) and included in revenues. Both agreements also allow ABX to earn incremental mark-up above the 1.75% base mark-up (up to an additional 1.60% under the ACMI agreement and an additional 2.10% under the Hub Services agreement) 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.

ABX's DHL revenues declined 10.6% in 2007 compared to 2006 due to reductions in the services we provide to DHL. As a result, our pre-tax earnings from the DHL segment declined \$1.3 million, or 5.7%, to \$21.2 million for 2007 compared to \$22.5 million in 2006. Declines were affected by a 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 2007 compared to 2006 due to DHL assuming the management of line-haul operations in May 2006, the removal of 21 aircraft from the ACMI agreement in August 2006, the transfer of the

Allentown, Pennsylvania and Riverside, California hubs to DHL management during 2007 and the removal of seven aircraft from the ACMI agreement in 2007. Additionally, in November 2007, DHL assumed management of the South Bend, Indiana hub. Our 2006 pre-tax earnings included approximately \$2.3 million on revenues of \$111.2 million from management of DHL's line-haul trucking operations, the Allentown, Pennsylvania hub and the Riverside, California hub prior to the transfer of those operations to DHL.

By the end of 2007, ABX was no longer flying any DC-8 aircraft for DHL. Under the ACMI agreement with DHL, ABX had the option to put each of the four DC-9 aircraft and three DC-8 aircraft released in 2007 to DHL at the lower of their fair value or net book value. After having the aircraft appraised, management decided to exercise the put provisions on three of these aircraft. ABX is marketing the remaining aircraft to part dealers and other operations. The removal of aircraft from service to DHL required us to evaluate the recoverability of the carrying value of those aircraft removed from the ACMI agreement. In accordance with Statement of Financial Accounting Standards ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," we recorded an impairment charge of \$0.3 million in 2007 for the excess of the carrying value of the aircraft over their fair value less cost to sell. The charge is reflected under the ACMI expenses but is not reimbursed by DHL.

### *Outlook*

The ACMI agreement automatically renews for a period of three years in August 2010, unless at least a one year notice of non-renewal is given. The Hub Services agreement renewed in August 2007 and automatically renews for additional periods of one year each, unless at least 90 days notice of non-renewal is given. However, DHL can terminate specific ACMI aircraft, 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 before their respective renewal dates. In addition to the reductions noted above, DHL assumed the management of the Columbus, Ohio area logistics service operations in January 2008 and will assume management of the Wilmington, Ohio logistics operations in May 2008.

Our level of business depends substantially on DHL's ability to compete in the U.S., where FedEx Corporation and United Parcel Service, Inc., have significant resources, market penetration and brand recognition. DHL has indicated that it is incurring significant losses from its U.S. operations. DHL may make strategic changes in its network in efforts to reduce its operating losses in the U.S. Those changes may include the removal of ABX aircraft or the transfer of hub management from ABX. Our future operating results will depend, in part, on DHL's sourcing preferences for providing ACMI and hub services and the volume of business it is able to generate. In recent years, DHL has removed seventeen DC-8 aircraft and eighteen DC-9 aircraft from service. Since 2005, we have added seven Boeing 767 freighter aircraft to service in the DHL network and may provide more Boeing 767 freighter airlift if needed by DHL's network plan.

### **Charter Segment**

ABX offers ACMI (aircraft, crew, maintenance and insurance) and full service charters to freight forwarders, airlines and other shippers through a fleet of Boeing 767 freighters. As of December 31, 2007, ABX had eleven Boeing 767 aircraft in this segment. 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.

Charter segment revenues were \$55.6 million for 2007 and grew 127.4% compared to 2006. The growth of our charter revenues reflects the deployment of seven additional Boeing 767 aircraft into service since 2006, including two aircraft contracted to All Nippon Airways Co. ("ANA"). The agreement began May 15, 2007 and expires in January 2010. We are supporting ANA's cargo operations throughout the Asian market, including Japan, China and Thailand.

Pre-tax earnings from the charter segment were \$4.6 million for 2007 compared to \$3.7 million for 2006. Pre-tax earnings from the charter segment in 2007 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 2007 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 proved unsuccessful. We initially implemented a temporary crew rotation plan for the Asian operations that was too costly to maintain. In December 2007, we established a crew domicile in Japan under the provisions of our collective bargaining agreement. The full cost efficiency benefit of establishing a crew domicile will not be evident until the end of the first quarter in 2008.

### *Outlook*

The market demand for the Boeing 767s remains strong in the Central American, South American and Asian markets that ABX serves. The fuel efficiency, cubic capacity, payload and operating cost of the Boeing 767 make it a desirable freighter aircraft in medium-range international air cargo markets and in trans-U.S. routes (less than 3,000 nautical miles). While some Boeing 767 aircraft may be contracted to DHL, interest from non-DHL customers is currently strong, particularly from cargo markets outside of the U.S. ABX expects to deploy two additional Boeing 767 aircraft into this segment in early 2008 as the freighter modifications are completed.

While customer demand for these aircraft is currently strong, our operating results could be impacted by aircraft utilization levels, including the timing 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, overfly rights, travel and other activities, and may impact future operating results, particularly if 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 ABX's policy, are expensed as maintenance is performed.

Our operating results during 2008 may be impacted by the allocation of overhead expenses to the Charter segment and other activities. The provisions of the two commercial agreements ABX has with DHL do not require an allocation of overhead to the charter segment or to other activities until such time as ABX derives more than 10% of its total revenue from non-DHL business activities. ABX may reach this threshold in 2008. 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.

### **Other Activities**

Other activities revenue increased to \$36.0 million in 2007 compared to \$24.1 million in 2006. Increased revenues were a result of being awarded two additional USPS sort center contracts in September of 2006 and an increase in aircraft maintenance work compared to 2006. As a result, pre-tax earnings from all other activities increased \$1.2 million during 2007, compared to 2006. In aggregate, pre-tax earnings on these operations as a percentage of revenues declined to 16% for 2007 from 20% for 2006, due primarily to the increase in lower-margin USPS revenues.

Our aircraft part sales and maintenance business activities typically earn operating margins relative to revenues that are higher than the margin on our DHL business. These other opportunities typically involve single sales or short-term service arrangements across many different customers. These opportunities have different economic and risk profiles that often dictate a higher sales price and expected return than our DHL business segment. Our pre-tax earnings relative to revenues from the DHL segment are predicated on large business volumes. We expect that revenues and earnings from non-DHL business could vary widely among quarters, due

to the capacity of ABX's hangar and maintenance facilities and the timing of our non-DHL customers' demand for services. Our direct costs to develop, market and offer services to non-DHL customers are not reimbursed by DHL.

## **CHI**

The purchase price for all of CHI's equity securities was approximately \$259 million, consisting of approximately \$215 million in cash from the Company, \$18 million in cash from CHI and the value of four million common shares of ABX Holdings, Inc., valued at \$25 million, which were issued to certain shareholders. ABX also repaid \$101 million of CHI's existing indebtedness under its senior credit facility and acquired approximately \$20 million in CHI cash. The overall transaction value was approximately \$340 million. The Company obtained \$270 million of these funds from a new unsubordinated term loan.

Through its wholly-owned subsidiaries, CHI operates 30 aircraft, and, at December 31, 2007, also owned four Boeing 767-200s and one Boeing 757-200 that were undergoing conversions from passenger to freighter configurations. The Boeing 757-200 conversion was completed in the first quarter of 2008. 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 USPS, and United Parcel Service, Inc. By acquiring CHI, the Company expects to diversify its revenue base and accelerate its growth opportunities. We believe the acquisition of CHI and its wholly owned subsidiaries will result in a number of strategic benefits, including improved economies from a larger base of operations and expanded market leadership in 767 freighter services. We expect to continue the business operations of CHI's subsidiaries with largely the same management and employee team that was in place at the time of the acquisition.

The acquisition of CHI will have a significant impact on our future financial results. Unaudited pro forma combined financial information is presented on page 49 of this report. The unaudited pro forma information is not necessarily indicative of what the Company's results of operations actually would have been had the acquisition been completed by the earlier dates indicated. In addition, the unaudited pro forma financial information does not purport to project the future financial position or operating results of the combined company. The unaudited pro forma financial information was prepared using the purchase method of accounting with ABX Holdings, Inc. treated as the acquirer. Accordingly, the historical consolidated financial information has been adjusted to give effect to the impact of the consideration issued in connection with the acquisition. More detailed unaudited pro forma results and the basis of adjustments are included in ABX Holdings' 8-K/A submitted for filing with the Securities and Exchange Commission on March 14, 2008.

Based on the unaudited pro forma information referred to above, DHL would have represented 74% of combined revenues, while BAX would have represented 14% of combined revenues in 2007.

## **RESULTS OF OPERATIONS**

### ***2007 compared to 2006***

Net earnings decreased \$70.5 million to \$19.6 million for 2007 compared to \$90.1 million in 2006, which included a \$54.0 million income tax benefit recorded in 2006. Pre-tax earnings decreased \$2.7 million in 2007 compared to 2006. Improved pre-tax earnings from the Charter segment and aircraft parts sales and maintenance services were offset by lower pre-tax earnings from the DHL segment and increased interest expense during 2007. Pre-tax earnings from the DHL segment decreased primarily due to a lower base of DHL expenses subject to mark-up and lower achievement of cost-related incentives under the commercial agreements. Our DHL expense base declined during 2007 compared to 2006 due to DHL assuming the management of line-haul operations in May 2006, the removal of aircraft from the ACMI agreement and the transfer of the Allentown, Pennsylvania and Riverside, California hubs to DHL management during 2007. Our incremental mark-up from

hub services decreased \$0.7 million, the incremental mark-up from the DHL ACMI agreement decreased by \$0.4 million during 2007 and base earnings from the DHL agreements decreased \$0.2 million compared to 2006. Charter segment earnings increased \$0.8 million, earnings from all other activities increased \$1.2 million and net interest income decreased \$3.5 million due to seven aircraft financed by the end of 2007. Earnings were also negatively affected by \$13.7 million in deferred income tax expense recorded in 2007.

During the fourth quarters of 2007 and 2006, we recognized \$3.8 million and \$4.1 million, respectively, or approximately 100%, of the maximum available incremental mark-up from the *annual cost-related* goal under the ACMI agreement. Also, during the fourth quarter of 2007, we recognized revenue from the *annual service* goal in the ACMI agreement of \$0.9 million, or 80% of the maximum available. During the fourth quarter of 2006, we recognized revenue from the *annual service* goal in the ACMI agreement of \$1.2 million, or 100% of the maximum available. During the fourth quarter of 2007, we recognized \$2.3 million, or 100% of the maximum, from the *annual service* goal under the Hub Services agreement, compared to \$2.1 million, or 70% of the maximum, during 2006. During 2007, our expenses for the DHL segment included approximately \$2.2 million for costs and administrative expenses that are not reimbursable under the two DHL agreements, compared to approximately \$3.3 million in the corresponding 2006 period.

A summary of our revenues, expenses and pre-tax earnings is shown below (in thousands):

	Year Ended December 31,		
	2007	2006	2005
<b>Revenues:</b>			
<b>DHL Contracts</b>			
ACMI			
Base mark-up	\$ 445,390	\$ 466,967	\$ 480,322
Incremental mark-up - cost goals	6,170	6,303	6,319
Incremental mark-up - service goals	874	1,148	708
<b>Total ACMI</b>	<b>452,434</b>	<b>474,418</b>	<b>487,349</b>
Hub Services			
Base mark-up	314,687	400,336	605,094
Incremental mark-up - cost goals	—	951	753
Incremental mark-up - service goals	2,316	2,064	—
<b>Total Hub Services</b>	<b>317,003</b>	<b>403,351</b>	<b>605,847</b>
Other Reimbursable	313,506	334,101	337,151
<b>Total DHL</b>	<b>1,082,943</b>	<b>1,211,870</b>	<b>1,430,347</b>
<b>Charters</b>	<b>55,580</b>	<b>24,440</b>	<b>13,864</b>
<b>Other Activities</b>	<b>35,992</b>	<b>24,051</b>	<b>20,179</b>
<b>Total Revenues</b>	<b>\$1,174,515</b>	<b>\$1,260,361</b>	<b>\$1,464,390</b>
<b>Expenses:</b>			
<b>DHL Contracts</b>			
ACMI			
Hub Services	\$ 438,823	\$ 459,926	\$ 472,283
Other Reimbursable	309,435	395,391	599,591
<b>Total DHL</b>	<b>313,506</b>	<b>334,101</b>	<b>337,151</b>
<b>Total DHL</b>	<b>1,061,764</b>	<b>1,189,418</b>	<b>1,409,025</b>
<b>Charters</b>	<b>51,016</b>	<b>20,736</b>	<b>12,726</b>
<b>Other Activities</b>	<b>30,094</b>	<b>19,356</b>	<b>14,786</b>
<b>Total Expenses</b>	<b>\$1,142,874</b>	<b>\$1,229,510</b>	<b>\$1,436,537</b>
<b>Pre-Tax Earnings:</b>			
<b>DHL Contracts</b>			
ACMI			
Hub Services	\$ 13,611	\$ 14,492	\$ 15,066
Other Reimbursable	7,568	7,960	6,256
<b>Total DHL</b>	<b>—</b>	<b>—</b>	<b>—</b>
<b>Total DHL</b>	<b>21,179</b>	<b>22,452</b>	<b>21,322</b>
<b>Charters</b>	<b>4,564</b>	<b>3,704</b>	<b>1,138</b>
<b>Other Activities</b>	<b>5,898</b>	<b>4,695</b>	<b>5,393</b>
<b>Interest Income and Other</b>	<b>1,647</b>	<b>5,162</b>	<b>2,459</b>
<b>Total Pre-Tax Earnings</b>	<b>\$ 33,288</b>	<b>\$ 36,013</b>	<b>\$ 30,312</b>

For the purposes of internal reporting, ABX 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.

### Operating Expenses

Our expenses are driven by operational variables, including the number of aircraft hours flown, the volume and size of packages handled for DHL, the services that DHL requests (such as electronic package scanning) and the number of instances in which a package is handled during the sort and transportation process. Pounds processed reflects the weight of a package at multiple times as it moves through the network. The design of the DHL air and ground network, which includes routing standards and transportation determinations, is generally communicated to us by DHL.

	<u>Year Ended December 31,</u>		<u>Percentage</u>
	<u>2007</u>	<u>2006</u>	<u>Increase (Decrease)</u>
Pounds processed for DHL (millions)	2,686	2,817	(5%)
Labor hours (thousands)	19,413	21,976	(12%)
DHL agreement aircraft block hours flown	94,098	101,014	(7%)
Charter segment aircraft block hours flown	14,414	6,382	126%

Labor hours decreased in 2007 compared to 2006 due primarily to lower levels of staffing to operate DHL's main hub in Wilmington, Ohio and DHL's network of regional hubs. Aircraft block hours flown for the DHL ACMI agreement declined 7% in 2007 compared to 2006, due to the removal of DC-9 and DC-8 aircraft in 2006 and 2007. Aircraft block hours flown for Charter segment customers increased 126% in 2007 compared to 2006, reflecting the deployment of ten Boeing 767 aircraft since April 2006.

Salaries, wages and benefits expense decreased 2.8% during 2007 compared to 2006. The decrease reflects an approximately 1.3% decrease in part-time and full-time staffing levels compared to 2006 and includes transferring the Allentown, Pennsylvania hub operation to DHL in January 2007, the Riverside, California hub operation in June 2007, and the South Bend, Indiana hub operation in November 2007.

Fuel expense increased slightly in 2007 compared to 2006. Gallons consumed for the DHL network flights declined due to the flight reductions made by DHL. These declines were offset by increased fuel prices compared to 2006. We do not hedge fuel prices or purchase fuel derivatives. During 2007, the volatility of fuel prices was effectively assumed by DHL and other customers through ACMI agreements.

Maintenance, materials and repairs decreased 4.0% during 2007 compared to 2006. The primary reason for the decrease was reduced spending on scheduled heavy maintenance checks for aircraft, which was a result of DHL's removal of aircraft from operations under the ACMI agreement.

Depreciation and amortization expense increased \$6.1 million in 2007 compared to 2006. The increase is primarily a result of seven additional Boeing 767 aircraft that we placed in service in 2007. Our depreciation expense for 2008 will be impacted by the timing of the additional Boeing 767s and 757s we anticipate placing into service.

Landing and ramp expense, which includes the cost of deicing chemicals, increased 22.9% in 2007 compared to 2006. These expenses increased due to the more difficult winter weather experienced during the first quarter of 2007 compared to the first quarter of 2006.

Purchased line-haul and yard management expenses decreased \$82.2 million, or 93.2%, during 2007 compared to 2006. The decrease is primarily a result of DHL assuming management of its line-haul trucking operations from ABX in May 2006.

Other operating expenses include pilot travel, professional fees, insurance, utilities, costs of parts sold to non-DHL customers and packaging supplies. Other operating expenses increased by \$6.8 million in 2007 compared to 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 \$1.6 million for professional fees to legal and financial advisors engaged to assist ABX in evaluating an indication of interest by another company to purchase all of the outstanding shares of ABX stock.

#### *Interest Income and Expense*

Our interest expense for 2007 increased \$2.5 million to \$14.1 million compared to 2006. The increase in interest expense is a result of seven Boeing 767 aircraft financed through December 31, 2007.

Interest income decreased \$0.2 million during 2007 compared to 2006 due to lower cash balances and lower interest rates in 2007 compared to 2006.

#### *Income Tax*

Our effective tax rate for 2007 was approximately 41.1%. The increase in the effective tax rate for 2007 is due to an increase in non-deductible expenses. In the third quarter and the first nine months of 2006, income tax expense was offset by reductions in the tax valuation allowance.

In the fourth quarter of 2006, we recorded an income tax benefit to completely reverse the remaining valuation allowance on ABX's deferred tax assets. The valuation allowance had originally been placed on income tax carryforwards and other deferred tax assets since ABX's separation from Airborne, Inc. in August 2003. The allowance was originally recorded due to a significant operating loss at that time and uncertainty in ABX's future earnings prospects. ABX's former parent, Airborne, Inc., which had been our predominant source of business for over twenty years, was acquired by DHL in 2003.

Since that time, ABX has generated annual pre-tax earnings in each of the last four years while diversifying its business. ABX has diversified its revenues and earnings, growing non-Airborne/DHL revenues from \$16.6 million in 2002 to \$91.6 million in 2007. Our projections of taxable income and a successful implementation of diversification strategies, combined with a four-year record of profitable results, indicate it is more likely than not that all the deferred tax assets will be realized prior to their expiration. As a result, the asset valuation allowance that had been placed on income tax carryforwards and other deferred tax assets was completely reversed in 2006.

As of December 31, 2007, ABX had operating loss carryforwards for U.S. federal income tax purposes of approximately \$129.9 million, which will begin to expire in 2022. We expect to utilize the loss carryforwards to offset federal income tax liabilities ABX will generate in the future. As a result, we do not expect to pay federal income taxes for the next three years. ABX may, however, be required to pay alternative minimum taxes and certain state and local income taxes before then.

#### ***2006 compared to 2005***

Net earnings increased \$59.7 million to \$90.1 million for 2006 compared to \$30.3 million in 2005, including a \$54.0 million income tax benefit recorded in 2006. Pre-tax net earnings increased \$5.7 million primarily due to achieving a higher level of incremental mark-up under the DHL Hub Services agreement in 2006 compared to 2005 and an increase in non-DHL charter/ACMI earnings. Our incremental mark-up from hub services increased \$2.3 million, the incremental mark-up from the DHL ACMI agreement increased by \$0.4 million, and our earnings from non-DHL charter operations increased by \$2.6 million. Pre-tax earnings from base mark-up under the DHL agreements declined \$1.5 million during 2006 compared to 2005 and our earnings from all other activities declined \$0.8 million. These declines were offset by an increase in net non-DHL interest income of \$2.7 million.

### DHL Segment

While our revenues from DHL declined 15.3% during 2006, reflecting DHL's decision to take over the management of the line-haul trucking operation during the year, our 2006 earnings from the DHL segment increased \$1.1 million to \$22.5 million. Pre-tax earnings for achieving cost-related and service goals increased \$2.7 million to \$10.5 million for 2006.

The increase in our 2006 DHL pre-tax earnings and in the annual cost-related and service mark-up was primarily due to higher achievement of incentives within the Hub Services agreement. Mark-ups of \$2.1 million from the *annual* service-related goals under the Hub Services agreement were recognized for 2006 while none were recognized in 2005. The improvement in incremental hub services revenues primarily reflects operational issues we experienced in 2005 during the Wilmington hub consolidation, the relocation of two smaller hubs and other changes that were made by DHL to their network in 2005. In an effort to share responsibility and demonstrate our commitment to DHL, we agreed to forego approximately \$0.9 million of 2005 annual service incentive revenue that was otherwise earned under the agreement.

Our pre-tax earnings from the base mark-up for 2006 declined \$1.5 million to \$12.0 million compared to \$13.5 million for 2005. The decline was principally because DHL assumed management of its line-haul trucking operations from ABX Air in May 2006. Full-year results from those operations were \$1.6 million in pre-tax earnings in 2006, and \$4.3 million in pre-tax earnings in 2005, including fuel surcharge.

During the fourth quarters of 2006 and 2005, we recognized \$4.1 million and \$4.0 million, respectively, or approximately 100%, of the maximum available incremental mark-up from the *annual cost-related* goal under the ACMI agreement. Also, during the fourth quarter of 2006, we recognized revenue from the *annual service* goal in the ACMI agreement of \$1.2 million, or 100% of the maximum available. During the fourth quarter of 2005, we recognized revenue from the *annual service* goal in the ACMI agreement of \$0.7 million, or 60% of the maximum available.

### Charter Segment

Our revenues from our Charter segment were \$24.4 million in 2006 compared to \$13.9 million in 2005. Contributing to the higher revenues in 2006 was high utilization of the Boeing 767 freighter aircraft we operated for customers other than DHL. Early in 2005, we reached an agreement with DHL to temporarily defer two Boeing 767 freighter aircraft from DHL service and instead deploy the aircraft in our charter operations for a twelve-month period. As a result, during the twelve months, the depreciation, maintenance and other operating costs associated with the aircraft were borne by ABX and not reimbursed by DHL under the ACMI agreement. By mid-2006, we deployed two newly modified Boeing 767 cargo aircraft into our charter business, allowing us to return the two 767s previously deferred to service for DHL. By the end of 2006, we had deployed two additional newly modified Boeing 767 aircraft into service for our charter operations, bringing the total to four. Pre-tax earnings from our Charter segment were \$3.7 million in 2006 compared to \$1.1 million in 2005. The pre-tax charter earnings in the first half of 2005 were hampered by low utilization and higher fixed costs while we transitioned the 767 freighters into non-DHL service.

### Other Activities

Other activities revenue increased \$3.9 million to \$24.1 million in 2006 compared to \$20.2 million for 2005, while pre-tax earnings declined \$0.8 million to \$4.7 million. In September 2006, ABX began managing two USPS sorting facilities in Dallas and Memphis to go along with a third USPS facility in Indianapolis that ABX has operated since September 2004. Fourth quarter 2006 pre-tax earnings for ABX's other activities were affected by start-up losses from the two added USPS sorting facilities.

## Operating Expenses

The table below summarizes certain operational measures that affect ABX's expense levels.

	Year Ended December 31,		Percentage
	2006	2005	Increase (Decrease)
Pounds processed for DHL (millions)	2,817	2,834	(1%)
Labor hours (thousands)	21,976	20,702	6%
Aircraft block hours flown	107,396	121,508	(12%)

Labor hours increased 6% in 2006 compared to 2005 due primarily to higher levels of staffing to operate DHL's main hub in Wilmington, Ohio and DHL's network of regional hubs. Labor hours increased as a result of DHL's hub integration project in September 2005. At that time, DHL consolidated its Cincinnati, Ohio hub, which was not operated by ABX, with its Wilmington hub, which we operate. Aircraft block hours flown for DHL declined 14% in 2006 compared to 2005, reflecting the lower level of flying since the September 2005 hub consolidation, which eliminated redundant routes within the DHL air network. Aircraft block hours flown for non-DHL customers increased 67% in 2006 compared to 2005 reflecting the deployment of two Boeing 767 aircraft in mid 2005 and two more Boeing 767 aircraft in 2006.

Salaries, wages and benefits expense increased 4.1% during 2006 compared to 2005 due to increased staffing to operate the main hub in Wilmington, Ohio and additional resources to service the network of regional hubs located outside of Ohio after DHL's hub integration project in September 2005. The increase reflects higher healthcare costs and increases in our defined benefit pension plan expense.

Purchased line-haul and yard management expenses decreased \$224.1 million, or 71.7%, during 2006 compared to 2005. The decrease was primarily a result of DHL assuming management of its line-haul trucking operations from ABX in May 2006. ABX's expenses from those line-haul management operations were approximately \$81.5 million in 2006, compared with \$293.3 million in 2005.

Fuel expense increased 2.0% in 2006 compared to 2005. The increases were driven by higher market prices for aviation fuel. The average aviation fuel price was \$2.14 and \$1.85 per gallon in 2006 and 2005, respectively. Our aviation fuel consumption declined to 130 million gallons in 2006 from 142 million gallons of aviation fuel in 2005, due to the flight reductions made by DHL. We did not hedge fuel prices or purchase fuel derivatives. The volatility of fuel prices were effectively assumed by DHL and other customers through ACMI agreements.

Maintenance, materials and repairs expense decreased 10.4% in 2006 compared to 2005. Our aircraft engine maintenance expenses declined in conjunction with the lower level of flight hours for DHL since the September 2005 hub consolidation. 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 2006, we processed 54 heavy maintenance checks compared to 67 checks in 2005.

Depreciation and amortization expense increased \$4.5 million in 2006 compared to 2005. The increase is primarily a result of four additional Boeing 767 aircraft that we placed in service in 2006.

Landing and ramp expense decreased by 20.4% during 2006 compared to 2005. The reduction reflected lower deicing costs due to a milder winter in 2006 and a lower level of landing fees as a result of scheduled flight reductions in conjunction with the DHL hub consolidation in September 2005.

Rent expense increased \$2.2 million during 2006 compared to 2005, due to equipment rentals in support of the consolidated Wilmington hub and expanded regional hubs since September 2005 and additional building rentals to support the USPS centers.

Other operating expenses include pilot travel, professional fees, insurance, utilities, and packaging supplies. Other operating expenses decreased by \$4.0 million in 2006 compared to 2005. During the third quarter of 2005, our expenses included significant costs associated with DHL's hub integration project and bad debt expenses associated with airline customer bankruptcy filings.

#### *Interest Income and Expense*

Our interest expense increased by \$0.7 million in 2006 compared to 2005. The increase in interest expense in 2006 was a result of the Boeing 767 aircraft we financed in 2006. Interest income increased by \$2.4 million in 2006 compared to 2005 due to holding a higher level of marketable securities, cash and cash equivalent balances compared to 2005 and by achieving higher yields.

#### *Income Tax*

As described on page 28, in the fourth quarter of 2006, we recorded an income tax benefit to completely reverse the remaining valuation allowance on ABX's deferred tax assets. During 2005, income tax expense was offset by reductions in the tax valuation

## **FINANCIAL CONDITION, LIQUIDITY AND CAPITAL RESOURCES**

#### *Commitments*

As of December 31, 2007, the Company had eight aircraft in various stages of modification from passenger to freighter configuration. 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 six more Boeing 767s and one Boeing 757 into service during 2008 as modifications are completed. Currently, the Company is considering alternatives to freighter modification for one of the Boeing 767s. The estimated costs of the remaining anticipated modification costs approximate \$61.3 million, all of which is expected to be paid in 2008. Additionally, the Company is committed to purchase another Boeing 767 for approximately \$23.5 million after the aircraft is completely modified to freighter configuration in 2009.

The table below summarizes our contractual obligations and commercial commitments (in thousands) as of December 31, 2007. It does not include cash contributions for pension funding due to the absence of scheduled maturities. The timing of pension and post-retirement healthcare payments cannot be reasonably determined, except for \$41.3 million scheduled to be paid in 2008, which is discussed under "Cash Flows" in Note J to the accompanying consolidated financial statements. At its discretion, the Company may contribute additional pension amounts, currently estimated to be no more than \$8.0 million in 2008. The long-term debt bears interest at 5.00% to 9.00% per annum.

<u>Contractual Obligations</u>	<u>Payments Due By Period</u>				
	<u>Total</u>	<u>Less Than 1 Year</u>	<u>2-3 Years</u>	<u>4-5 Years</u>	<u>After 5 Years</u>
Long-term debt, including interest payments	\$750,248	\$ 42,782	\$135,929	\$315,896	\$255,641
Capital lease obligations	111,588	22,737	45,112	22,749	20,990
Operating leases	35,038	18,397	14,226	1,418	997
Unconditional purchase obligations	84,759	61,259	23,500	—	—
Uncertain tax positions	5,820	—	—	—	5,820
Total contractual cash obligations	<u>\$987,453</u>	<u>\$145,175</u>	<u>\$218,767</u>	<u>\$340,063</u>	<u>\$283,448</u>

The unconditional purchase obligations consist of commitments to acquire and modify aircraft to a standard cargo configuration. We plan to finance the cost of modifying the aircraft with existing cash and cash generated from operations during the modification period. Upon completion of the modifications, we anticipate one more aircraft will be financed for approximately \$17.5 million.

The table includes the contingent FASB Interpretation No. 48, "Accounting for Income Taxes" ("FIN 48") liability of \$5.8 million. At December 31, 2007, the total amount of unrecognized tax benefits of \$9.4 million

includes \$5.8 million recorded as a non-current FIN 48 liability and a \$3.6 million charge against the net operating loss deferred tax asset. The amount of the FIN 48 liability and the timing of its recognition are subject to significant uncertainty and are contingent on the occurrence of future events, such as audits and examinations by various income tax authorities.

#### *Cash flows*

Operating cash flows were \$95.5 million, \$65.0 million and \$119.1 million for 2007, 2006 and 2005, respectively. Our operating cash flows are primarily a function of aircraft depreciation expense reimbursed by DHL and the mark-up earned under our commercial agreements with DHL. Net operating cash flows may vary among periods due to the timing of cash receipts and payments. The decline in operating cash flows in 2006 reflects the lower level of line-haul and contracted labor costs reimbursed by DHL. Net operating cash flows for 2005 reflect the receipt of a large receivable due from DHL at the end of 2004.

#### *Capital Expenditures*

Total capital expenditures were \$160.2 million in 2007 compared to \$99.6 million and \$60.7 million in 2006 and 2005, respectively. Our capital expenditures for 2007 included the acquisitions of five Boeing 767 aircraft and cargo modification costs for eleven aircraft. Our capital expenditures in 2006 included the acquisitions of eight Boeing 767 aircraft and cargo modification costs for nine aircraft. In 2005, our capital expenditures were primarily for two Boeing 767 aircraft that were undergoing freighter modification at that time. During 2007, we completed seven Boeing 767 cargo modifications, in 2006, we completed four and in 2005, we completed three.

#### *Proceeds from Borrowing*

During 2007, the Company raised \$378.8 million to finance five Boeing aircraft and the acquisition of CHI. In 2006, the Company raised \$35 million to finance two Boeing 767 aircraft. During 2007, debt origination costs, primarily associated with the new Credit Agreement, were \$9.2 million.

#### *Liquidity*

At December 31, 2007, the Company had approximately \$108.9 million of cash balances and marketable securities. The Company had \$35.4 million of unused credit facility through a syndicated Credit Agreement that expires in December 2012. Borrowings under the agreement are collateralized by substantially all of the Company's assets. We believe that our current cash balances and forecasted cash flows provided by commercial agreements with DHL, combined with our credit facility and anticipated financing for aircraft acquisitions, will be sufficient to fund our planned operations and capital expenditures for 2008. We project that ABX's 2008 depreciation expense subject to mark-up under the DHL agreements will be approximately \$38.1 million, while the Company's depreciation expense is estimated to total \$97.6 million for 2008.

In the event it becomes necessary to retire the \$92.3 million term note held by DHL, the Company has obtained a commitment for \$61 million of subordinated financing from certain former shareholders of CHI. The promissory note due to DHL limits cash dividends that ABX can pay to \$1.0 million annually. We have not declared any cash dividends and intend to retain earnings to pay down debt as well as finance future growth and operating requirements.

#### *Off-Balance Sheet Arrangements*

As part of our ongoing business, we do not participate in transactions that generate relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities ("SPEs"), which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. As of December 31, 2007, we are not involved in any material unconsolidated SPE transactions.

Certain of our operating leases and agreements contain indemnification obligations to the lessor or one or more other parties that are considered ordinary and customary (e.g. use, tax and environmental indemnifications), the terms of which range in duration and are often limited. Such indemnification obligations may continue after the expiration of the respective lease or agreement. No amounts have been recognized in our financial statements for the underlying fair value of guarantees and indemnifications.

## 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 ongoing 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 preparing the consolidated financial statements.

### *Revenue Recognition*

Revenues from DHL are recognized when the related services are performed. Prior to August 16, 2003, revenues from Airborne were calculated as the sum of pre-tax net expenses incurred plus 2.0%. Prior to August 16, 2003, net expenses included all operating and interest expenses, including allocated expenses from Airborne, less revenues recorded from customers other than Airborne. Since August 16, 2003, revenues from DHL are determined based on the expenses incurred during a reporting period for the ACMI and Hub Services agreements. Expenses incurred under these agreements 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-related and service goals. The ACMI agreement provides for a maximum potential incremental mark-up of 1.60%, with 1.35% based on cost-related goals 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-related goals and 0.75% based on service performance. Both contracts call for 40% of any incremental mark-up earned from cost-related goals to be recognized based on quarterly results, with 60% measured against annual results. Accordingly, a maximum incremental mark-up of approximately 0.54% may be achieved based on quarterly results and recognized in our quarterly revenues. Up to a maximum incremental mark-up of approximately 0.81% based on annual cost-related goals 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 ABX will be successful in achieving incremental mark-up.

In August 2005, DHL and ABX agreed to amend the Hub Services agreement to extend the initial term of the Hub Services agreement in exchange for temporarily placing more of ABX’s revenue potential under a cost-related incentive. The amendment temporarily reduced the base mark-up under the Hub Services agreement from 1.75% to 1.25% during the last six months of 2005. The maximum incremental mark-up that ABX could have earned during the third and fourth quarters of 2005 from its quarterly cost-related incentives under the Hub Services agreement was temporarily increased from approximately 0.54% to 1.04%. Additionally, the initial term of the Hub Services agreement was extended for an additional year and was not subject to annual renewals until

August 15, 2007. In 2006, the base mark-up reverted to the previous level of 1.75% and the maximum incremental mark-up from the quarterly cost-related incentive reverted to the previous level of approximately 0.54%. The amendment did not change the annual cost and service-related incremental mark-up opportunities under the Hub Services agreement. The Hub Services agreement, as amended, continued to allow DHL to terminate specific services upon providing at least sixty days notice. The amendment did not affect the mark-up or the term of the ACMI agreement, which began on August 15, 2003, is for seven years and automatically renews for an additional three years unless a one-year notice of non-renewal is given.

ABX derives a portion of its revenues from customers other than DHL. ACMI and 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.

#### *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 and workers compensation, an independent actuarial evaluation. Changes in claim severity and frequency could result in actual claims being materially different than the costs provided for in our annual 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 assets and liabilities 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.

#### *Post-retirement Obligations*

In 2006, the FASB issued SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106, and 132(R)" ("SFAS 158").

SFAS 158 required ABX to recognize on its balance sheet the funded status (measured as the difference between the fair value of plan assets and the projected benefit obligation) of pension and other post-retirement benefit plans.

We sponsor qualified defined benefit plans for ABX's flight crewmembers and other eligible employees. We also sponsor unfunded post-retirement healthcare plans for ABX's flight crewmembers and non-flight crewmember employees. We also sponsor non-qualified, unfunded excess plans that provide benefits to executive management and pilots that are in addition to amounts permitted to be paid through our qualified plans under provisions of the tax laws.

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. 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 an important assumption in valuing these obligations. Actual results and future changes in these assumptions could result in future costs that are materially different than those recorded in our annual results of operations.

The plan assets related to our funded pension plans have experienced an actual investment return of approximately 7.04% over the last ten years. Our actuarial valuation includes an assumed long-term rate of return on plan assets of 8.00%. Our assumed rate of return is based on a targeted long-term investment allocation of 50% equity securities, 45% fixed income securities and 5% real estate. The actual asset allocation at December 31, 2007 was 49.5% equities, 45.7% fixed income and 4.8% real estate. The Company's pension investments include \$190.7 million (16% of the Company's assets) whose fair values have been estimated in the absence of readily determinable fair values. Such investments include private equity, multi-fund investments and real estate funds. Management's estimates are based on information provided by the fund managers or general partners of those funds.

In evaluating our assumption regarding expected long-term investment returns on plan assets, we consider a number of factors including: our historical plan returns in connection with our asset allocation policies, assistance from investment consultants hired to provide oversight over our actively managed investment portfolio and long-term inflation assumptions. The selection of the expected return rate materially affects our pension costs. We selected an expected rate of return of 8% in 2007 and continue to use this rate for determining pension costs in 2008. We continue to believe that 8% is a reasonable long-term rate of return. If we were to lower our long-term rate of return assumption by a hypothetical 100 basis points, expense in 2008 would be increased by approximately \$6.2 million. We use a market value of assets as of the measurement date for determining pension expense.

In selecting the interest rate to discount estimated future benefit payments that have been earned to date to their net present value (defined as the projected benefit obligation), we match the plan's benefit payment streams to high-quality bonds of similar maturities. The selection of the discount rate not only affects the reported funded status information as of December 31 (as shown in Note J to the consolidated financial statements) but also affects the succeeding year's pension and post-retirement healthcare costs. The discount rate selected for December 31, 2007, based on the method described above, was 6.5%. If we were to lower our discount rate by a hypothetical 50 basis points, pension expense in 2008 would be increased by approximately \$7.4 million.

The assumed future increase in salaries and wages is also a significant estimate in determining pension costs. In selecting this assumption, we consider ABX's historical wage and pensionable earnings increases, future wage increase projections, ABX's collective bargaining agreements with its flight crewmembers, and inflation. We have used a 4.0% salary increase assumption for ABX's non-flight crewmembers and a 4.5% salary increase

for flight crewmembers in 2007 and will use the same assumptions for 2008. In 2008, if we used a salary increase assumption which was 100 basis points higher than that used, pension costs would have increased by approximately \$7.2 million.

The following table illustrates the sensitivity of the aforementioned assumptions on our pension expense.

<u>Change in assumption</u>	<u>Effect of change (in thousands)</u>		
	<u>2008 Pension expense</u>	<u>Funded status</u>	<u>December 31, 2007 Accumulated other comprehensive income (pre-tax)</u>
100 basis point decrease in rate of return	\$ 6,173	\$(11,000)	\$ 11,000
50 basis point decrease in discount rate	7,385	(49,907)	49,907
100 basis point increase in compensation rates	7,160	(32,529)	32,529
Aggregate effect of all the above changes	21,642	(99,112)	99,112

Scheduled cash contributions to the defined benefit pension plans are currently approximately \$39.9 million in 2008. We will periodically evaluate whether to make additional contributions during the year. Funding for the contributions will be generated primarily from ABX's operating agreements with DHL. Under the agreements with DHL, the actuarial expense of pension and post-retirement health care plans is reimbursed with mark-up.

## NEW ACCOUNTING PRONOUNCEMENTS

In September 2006, the FASB issued SFAS No. 157, "Fair Value Accounting" ("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.

In February 2007, the FASB issued SFAS No. 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.

In December 2007, the FASB issued SFAS No. 141(R), "Business Combinations" ("SFAS 141R"). SFAS 141R amends SFAS 141 and provides guidance for recognizing and measuring identifiable assets and goodwill acquired, liabilities assumed, and any non-controlling interest in the acquiree. It also provides disclosure requirements to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS 141R will be effective for fiscal years beginning on or after December 15, 2008 and will be applied prospectively.

In December 2007, the FASB issued SFAS No. 160, "Non-Controlling Interests in Consolidated Financial Statements—an amendment of ARB No. 51" ("SFAS 160"). SFAS 160 requires that ownership interests in subsidiaries held by parties other than the parent, and the amount of consolidated net income, be clearly identified, labeled and presented in the consolidated financial statements. It also requires once a subsidiary is deconsolidated, any retained non-controlling equity investment in the former subsidiary be initially measured at fair value. Sufficient disclosures are required to clearly identify and distinguish between the interests of the parent and the interests of the non-controlling owners. SFAS 160 is effective for fiscal years beginning on or after December 15, 2008 and requires retroactive adoption of the presentation and disclosure requirements for existing minority interests. All other requirements shall be applied prospectively.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

In the ordinary course of our business, we are exposed to market risk for changes in the price of jet and diesel fuel; however, this risk is largely mitigated by reimbursement through the DHL ACMI agreement and charter agreements with other customers.

The Company also faces financial exposure to changes in interest rates. As of December 31, 2007, we have \$256.6 million of fixed interest rate debt and \$334.2 million of variable interest rate debt outstanding.

Variable interest rate debt exposes us to differences in future cash flows resulting from changes in market interest rates. This risk was largely mitigated during 2007, since the majority of our interest expense for the debt with variable rate risk was marked up and charged to DHL under our ACMI agreement. At December 31, 2007, \$296.5 million of variable rate debt outstanding had interest that was not marked up and charged to DHL under this agreement. Variable interest rate risk can be quantified by estimating the change in annual cash flows resulting from a hypothetical 20% increase in interest rates. A hypothetical 20% increase in interest rates would have resulted in an increase in interest expense of approximately \$0.4 million for the year ended December 31, 2007.

The debt issued at fixed interest rates is exposed to fluctuations in fair value resulting from changes in market interest rates. Fixed interest rate risk can be quantified by estimating the increase in fair value of our long-term debt through a hypothetical 20% decrease in interest rates. As of December 31, 2007, a 20% decrease in interest rates would have increased the fair value of our fixed interest rate debt by approximately \$16.1 million.

To reduce our exposure to rising interest rates before aircraft financing transactions are executed, we entered into forward treasury locks for five aircraft during the first quarter of 2006. The remaining treasury locks expired in mid-2007, near the execution dates of the anticipated financing transactions. The financing transactions were executed as fixed interest rate aircraft loans based on ten-year U.S. Treasury Notes. 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 treasury locks were with major U.S. financial institutions and settled in cash at the time each expired. See Note L for a discussion of our accounting treatment for these hedging transactions.

ABX has a portfolio of marketable securities consisting of U.S. government agency obligations and U.S. corporate obligations. These securities are classified as available-for-sale and, consequently, are recorded at fair market value with unrealized gains or losses reported as a separate component of stockholders' equity. The following table presents expected cash flows from market-risk sensitive financial instruments. These financial instruments are denominated in U.S. dollars and are not held for the purpose of trading.

	<u>Fair Value</u>	<u>Expected Maturities 2008</u>
Fixed Rate Securities	\$10,516	\$ 10,516
Weighted Average Interest Rate		4.07%
Variable Rate Securities	\$ 972	\$ 972
Weighted Average Interest Rate		4.56%

At December 31, 2007, the Company's defined benefit pension plan had total investment assets of \$445.1 million under investment management. See Note J for further discussion of these assets.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

**Index to Consolidated Financial Statements**

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of ABX Holdings, Inc.  
Wilmington, Ohio

We have audited the accompanying consolidated balance sheets of ABX Holdings, Inc. (formerly ABX Air, Inc.) and subsidiaries (the "Company") as of December 31, 2007 and 2006, and the related consolidated statements of earnings, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2007. Our audits also included the financial statement schedule listed in the Index at Item 15a(2). These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2007 and 2006, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2007, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedules, when considered in relation to the basic consolidated financial statements taken as a whole, present fairly, in all material respects, the information set forth therein.

As discussed in Note A to the consolidated financial statements, the Company's principal customer accounts for substantially all of the Company's revenue. As discussed in Note C to the consolidated financial statements, the Company is in arbitration with this principal customer related to certain overhead allocation matters. The Company's prospects for growth and financial security are dependent on its relationship with their customer.

As discussed in Note J to the consolidated financial statements, the defined benefit plans assets include investments of approximately \$191,000,000 and \$216,000,000 as of December 31, 2007 and 2006, respectively, whose fair values have been estimated by management in the absence of readily determinable fair values. Management's estimates are based on information provided by the fund managers or general partners.

As discussed in Note B to the consolidated financial statements, on December 31, 2007, the Company acquired 100% of Cargo Holdings International, Inc.

As discussed in Note J to the consolidated financial statements, the Company adopted the recognition and disclosure provisions of Statement of Financial Accounting Standards No. 158, *Employers Accounting for Defined Benefit Pension and Other Postretirement Plans (an amendment of FASB Statements No. 87, 88, 106, and 132(R))*, effective December 31, 2006.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2007, based on the criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 17, 2008 expressed an unqualified opinion on the Company's internal control over financial reporting.

DELOITTE & TOUCHE LLP

Dayton, Ohio  
March 17, 2008

**CONSOLIDATED BALANCE SHEETS**  
(In thousands, except share data)

	December 31	
	2007	2006
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 59,271	\$ 63,219
Marketable securities—available-for-sale	49,636	15,374
Accounts receivable, net of allowance of \$363 and \$516 in 2007 and 2006, respectively	55,339	10,365
Inventory	14,701	13,907
Prepaid supplies and other	19,621	6,395
Deferred income taxes	19,262	14,691
Aircraft and engines held for sale	1,896	2,219
<b>TOTAL CURRENT ASSETS</b>	<b>219,726</b>	<b>126,170</b>
Property and equipment, net	690,813	458,638
Other assets	26,280	7,966
Deferred income taxes	15,794	87,024
Intangibles	31,700	—
Goodwill	178,654	—
<b>TOTAL ASSETS</b>	<b>\$1,162,967</b>	<b>\$ 679,798</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 76,425	\$ 65,313
Accrued salaries, wages and benefits	64,560	53,173
Accrued expenses	11,266	10,298
Current portion of debt obligations	22,815	11,413
Unearned revenue	21,046	4,081
<b>TOTAL CURRENT LIABILITIES</b>	<b>196,112</b>	<b>144,278</b>
Long-term obligations	567,987	189,118
Postretirement liabilities	186,338	222,587
Other liabilities	12,527	3,605
Commitments and contingencies (Note I)		
<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; 62,650,278 and 58,539,300 shares issued and outstanding in 2007 and 2006, respectively	626	585
Additional paid-in capital	458,091	431,071
Accumulated deficit	(189,544)	(207,836)
Accumulated other comprehensive loss	(69,170)	(103,610)
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b>200,003</b>	<b>120,210</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$1,162,967</b>	<b>\$ 679,798</b>

See notes to consolidated financial statements.

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

	Year Ended December 31		
	2007	2006	2005
REVENUES	\$1,174,515	\$1,260,361	\$1,464,390
OPERATING EXPENSES:			
Salaries, wages and benefits	617,172	635,015	610,251
Fuel	263,352	262,948	257,710
Maintenance, materials and repairs	93,254	97,108	108,343
Depreciation and amortization	51,747	45,660	41,167
Landing and ramp	25,924	21,099	26,522
Rent	9,656	9,716	7,506
Purchased line-haul and yard management	5,980	88,223	312,286
Other	64,632	57,807	61,842
	<u>1,131,717</u>	<u>1,217,576</u>	<u>1,425,627</u>
INTEREST EXPENSE	(14,067)	(11,547)	(10,805)
INTEREST INCOME	4,557	4,775	2,354
EARNINGS BEFORE INCOME TAXES	\$ 33,288	\$ 36,013	\$ 30,312
INCOME TAX BENEFIT (EXPENSE)	(13,701)	54,041	—
NET EARNINGS	<u>\$ 19,587</u>	<u>\$ 90,054</u>	<u>\$ 30,312</u>
EARNINGS PER SHARE:			
Basic	<u>\$ 0.34</u>	<u>\$ 1.55</u>	<u>\$ 0.52</u>
Diluted	<u>\$ 0.33</u>	<u>\$ 1.54</u>	<u>\$ 0.52</u>
WEIGHTED AVERAGE SHARES:			
Basic	<u>58,296</u>	<u>58,270</u>	<u>58,270</u>
Diluted	<u>58,649</u>	<u>58,403</u>	<u>58,475</u>

See notes to consolidated financial statements.

**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	Year Ended December 31		
	2007	2006	2005
<b>OPERATING ACTIVITIES:</b>			
Net earnings	\$ 19,587	\$ 90,054	\$ 30,312
Adjustments to reconcile net earnings to net cash provided by operating activities:			
Depreciation and amortization	51,747	45,660	41,167
Pension and post-retirement	16,853	—	—
Deferred income taxes	13,589	(54,041)	—
Stock-based compensation	2,381	1,734	702
Other	(1,878)	(1,491)	(55)
Changes in assets and liabilities:			
Accounts receivable	(30,910)	5,411	38,901
Inventory and prepaid supplies	(2,995)	(2,636)	(3,929)
Accounts payable	5,093	(35,722)	4,871
Unearned revenue	17,287	(318)	(3,166)
Accrued expenses, salaries, wages, benefits and other liabilities	5,267	7,293	4,799
Post-retirement liabilities	(774)	8,523	5,294
Other	259	513	215
<b>NET CASH PROVIDED BY OPERATING ACTIVITIES</b>	<b>95,506</b>	<b>64,980</b>	<b>119,111</b>
<b>INVESTING ACTIVITIES:</b>			
Acquisition of CHI, net of cash acquired	(296,918)	—	—
Capital expenditures	(160,166)	(99,565)	(60,685)
Proceeds from the sale of property and equipment	3,255	3,095	466
Proceeds from the redemptions of marketable securities	19,934	17,151	4,250
Purchases of marketable securities	(10,246)	(17,909)	(24,362)
Long-term deposit	(11,725)	—	—
<b>NET CASH USED IN INVESTING ACTIVITIES</b>	<b>(455,866)</b>	<b>(97,228)</b>	<b>(80,331)</b>
<b>FINANCING ACTIVITIES:</b>			
Principal payments on long-term obligations	(12,971)	(8,959)	(7,953)
Proceeds from borrowings	378,750	35,000	—
Financing fees	(9,367)	(47)	(103)
<b>NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES</b>	<b>356,412</b>	<b>25,994</b>	<b>(8,056)</b>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>(3,948)</b>	<b>(6,254)</b>	<b>30,724</b>
<b>CASH AND CASH EQUIVALENTS AT BEGINNING OF YEAR</b>	<b>63,219</b>	<b>69,473</b>	<b>38,749</b>
<b>CASH AND CASH EQUIVALENTS AT END OF YEAR</b>	<b>\$ 59,271</b>	<b>\$ 63,219</b>	<b>\$ 69,473</b>
<b>SUPPLEMENTAL CASH FLOW INFORMATION:</b>			
Interest paid, net of amount capitalized	\$ 13,061	\$ 10,904	\$ 10,251
Income taxes paid	\$ 3	\$ —	\$ —
<b>SUPPLEMENTAL NON-CASH INFORMATION:</b>			
Accrued aircraft modification expenditures	\$ 8,564	\$ 33,529	\$ 10,562
Capital leases	\$ —	\$ 1,306	\$ —
Issuance of common shares	\$ 24,680	\$ —	\$ —

See notes to consolidated financial statements.

**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(In thousands, except share data)

	Common Stock		Additional Paid-in Capital	Restricted Stock	Retained (Deficit) Earnings	Accumulated Other Comprehensive Income (Loss)	Total
	Number	Amount					
<b>BALANCE AT DECEMBER 31, 2004</b>	58,270,400	\$ 583	\$ 428,637	\$ —	\$(328,202)	\$ (13,069)	\$ 87,949
<b>Stock-based compensation plans</b>							
Amortization of stock awards			496				496
Issuance of restricted stock	114,700	1	893	(894)			—
Amortization of restricted stock				206			206
<b>Comprehensive loss:</b>							
Net earnings					30,312		30,312
Other comprehensive income (loss)						(5,829)	(5,829)
Minimum pension liabilities						(55)	(55)
Unrealized loss on available-for-sale securities							
<b>Total comprehensive loss</b>							\$ 24,428
<b>BALANCE AT DECEMBER 31, 2005</b>	<u>58,385,100</u>	<u>\$ 584</u>	<u>\$ 430,026</u>	<u>\$ (688)</u>	<u>\$(297,890)</u>	<u>\$ (18,953)</u>	<u>\$113,079</u>
<b>Stock-based compensation plans</b>							
Issuance of restricted stock	154,200	1	(1)				—
Amortization of stock awards and restricted stock			1,734				1,734
Adjustment for FASB Statement No. 123(R)			(688)	688			—
<b>Comprehensive income</b>							
Net earnings					90,054		90,054
Other comprehensive income, net of tax						7,995	7,995
Minimum pension liabilities						24	24
Unrealized gain on available-for-sale securities						347	347
Unrecognized net gain on derivatives							
<b>Total comprehensive income</b>							\$ 98,420
Adjustment to initially apply FASB Statement No. 158, net of tax						(93,023)	(93,023)
<b>BALANCE AT DECEMBER 31, 2006</b>	<u>58,539,300</u>	<u>\$ 585</u>	<u>\$ 431,071</u>	<u>\$ —</u>	<u>\$(207,836)</u>	<u>\$ (103,610)</u>	<u>\$120,210</u>
Issuance of common shares (see Note B)	4,000,000	40	24,640				24,680
<b>Stock-based compensation plans</b>							
Issuance of restricted stock	104,978	1	(1)				—
Issuance of common shares	6,000						—
Amortization of stock awards and restricted stock			2,381				2,381
<b>Comprehensive income</b>							
Net earnings					19,587		19,587
Other comprehensive income, net of tax (see Note M)						34,440	34,440
<b>Total comprehensive income</b>							\$ 54,027
Adjustment to initially apply FIN 48					(1,295)		(1,295)
<b>BALANCE AT DECEMBER 31, 2007</b>	<u>62,650,278</u>	<u>\$ 626</u>	<u>\$ 458,091</u>	<u>\$ —</u>	<u>\$(189,544)</u>	<u>\$ (69,170)</u>	<u>\$200,003</u>

See notes to consolidated financial statements.

## **NOTE A—BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

### **Nature of Operations**

ABX Holdings Inc. (the “Company”) includes three independently certificated airlines through its wholly-owned subsidiaries. Its airline subsidiaries are ABX Air, Inc. (“ABX”), Capital Cargo International Airlines, Inc. (“CCIA”), and Air Transport International, LLC (“ATI”). The Company acquired CCIA and ATI through its acquisition of Cargo Holdings International, Inc. (“CHI”) on December 31, 2007. At that time, the Board of Directors of ABX reorganized the Company as a holding company structure, converting all of the common shares of ABX to shares of the Company. The airlines primarily operate as cargo airlines within the U.S. At December 31, 2007, 127 aircraft made up the combined in-service aircraft fleet of the Company’s subsidiaries. The Company also provides package handling, warehousing, and other air cargo transportation related services. DHL Express (USA), Inc. and DHL Network Operations (USA), Inc. (collectively, “DHL”) provided the Company with substantially all of its revenues in 2007, 2006 and 2005. The Company operates and maintains DHL’s main air hub and package sorting center, located in Wilmington, Ohio. The Company also provides staffing and management for fifteen DHL regional sort facilities and three United States Postal Service (“USPS”) facilities in the continental United States.

### **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. The accounts of CHI and its subsidiaries, including CCIA and ATI, are included in the consolidated financial statements as of the date of acquisition; accordingly, the activities of CHI are not included in the consolidated statements of earnings and consolidated statements of cash flows for 2007, 2006 or 2005.

### **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.

### **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 gain or loss within stockholders' equity, net of tax. Interest on marketable securities is included in interest income. Realized gains and losses of any securities sold are based on the specific identification method.

### **Goodwill and Intangible Assets**

In accordance with Statement of Financial Accounting Standard ("SFAS") No. 142, "Accounting for Goodwill and Other Intangible Assets," the Company will assess on an annual basis whether goodwill acquired in the acquisition of CHI is impaired. Additional impairment assessments may be performed on an interim basis if the Company deems it necessary. Finite-lived intangible assets are amortized over their estimated useful economic lives and are periodically reviewed for impairment. Indefinite-lived intangible assets are not amortized.

### **Property and Equipment**

Property and equipment are stated at cost, net of any impairment recorded, in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." 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.

Depreciation of property and equipment is provided on a straight-line basis over the lesser of the asset's useful life or lease term. Depreciable lives are as follows:

Aircraft and flight equipment	5 to 20 years
Package handling and ground support equipment	5 to 10 years
Vehicles and other equipment	5 to 8 years

The Company periodically evaluates the useful lives, salvage values and fair values of property and equipment. 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 is less than the carrying value. If 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 considering quoted market values, discounted cash flows or internal and external appraisals, as applicable. Assets to be disposed of are carried at the lower of carrying value or fair value less the cost to sell.

ABX charges the costs of major airframe and engine overhauls, as well as routine maintenance and repairs to expense as incurred. ATI and CCIA capitalize the cost of major airframe and engine overhauls and amortize the cost over the useful life of the overhaul.

### **Capitalized Interest**

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 \$2.1 million for 2007 and \$1.1 million for 2006 and 2005.

### **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 net 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.

### **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.

### **Fair Value Information**

The carrying amounts for accounts receivable and current liabilities approximate fair value. The fair value of the Company's fixed rate debt obligations was approximately \$0.2 million more than the carrying value, which was \$256.6 million at December 31, 2007. The variable rate debt obligations of \$334.2 approximate fair value.

### **Revenue Recognition**

Revenues from DHL are determined based on expenses incurred during a period and recognized when the related services are performed. Revenues from DHL are determined based on the expenses incurred during a reporting period under the two commercial agreements (see Note C). 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 the promissory note due to DHL, rent and ramp and landing fees incurred under the two commercial agreements are reimbursed and included in revenues without mark-up.

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 expressly specified in each of the two agreements. At the end of each fiscal year, the Company measures the achievement of annual goals and records any incremental revenues earned by achieving the annual goals. In a similar way, the Company measures quarterly goals and records incremental revenues in the quarter in which earned.

In August 2005, DHL and the Company agreed to amend the Hub Services agreement to extend the initial term of the Hub Services agreement in exchange for temporarily placing more of the Company's revenue potential under a cost-related incentive. The amendment temporarily reduced the base mark-up under the Hub Services agreement from 1.75% to 1.25% during the last six months of 2005. The maximum incremental mark-up that the Company could earn during the third and fourth quarters of 2005 from its quarterly cost-related incentives under the Hub Services agreement was temporarily increased from approximately 0.54% to 1.04%.

Additionally, the initial term of the Hub Services agreement was extended for an additional year, expiring August 15, 2007. In 2006, the base mark-up reverted to the previous level of 1.75% and the maximum incremental mark-up from the quarterly cost-related incentive reverted to the previous level of approximately 0.54%. The amendment did not change the annual cost and service-related incremental mark-up opportunities under the Hub Services agreement. The Hub Services agreement, as amended, continues to allow DHL to terminate specific services upon providing at least sixty days notice. The amendment did not affect the mark-up or the term of the ACMI agreement, incepted on August 15, 2003, which is for seven years and automatically renews for an additional three years unless a one-year notice of non-renewal is given.

The Company derives a portion of its revenues from customers other than DHL. ACMI and 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.

### **New Accounting Pronouncements**

In September 2006, the Financial Accounting Standards Board (“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” (“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.

In December 2007, the FASB issued SFAS No. 141(R), “Business Combinations” (“SFAS 141R”). SFAS 141R amends SFAS 141 and provides guidance for recognizing and measuring identifiable assets and goodwill acquired, liabilities assumed, and any non-controlling interest in the acquiree. It also provides disclosure requirements to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS 141R will be effective for fiscal years beginning on or after December 15, 2008 and will be applied prospectively.

In December 2007, the FASB issued SFAS No. 160, “Non-Controlling Interests in Consolidated Financial Statements—an amendment of ARB No. 51” (“SFAS 160”). SFAS 160 requires that ownership interests in subsidiaries held by parties other than the parent, and the amount of consolidated net income, be clearly identified, labeled and presented in the consolidated financial statements. It also requires once a subsidiary is deconsolidated, any retained non-controlling equity investment in the former subsidiary be initially measured at fair value. Sufficient disclosures are required to clearly identify and distinguish between the interests of the parent and the interests of the non-controlling owners. SFAS 160 is effective for fiscal years beginning on or after December 15, 2008 and requires retroactive adoption of the presentation and disclosure requirements for existing minority interests. All other requirements shall be applied prospectively.

## NOTE B—ACQUISITION OF CHI

On December 31, 2007, the Company acquired all of the outstanding equity securities of CHI. Historically, CHI operations primarily consisted of two cargo airlines, CCIA and ATI. CCIA operates a fleet of fourteen Boeing 727 aircraft, while ATI operates sixteen McDonnell Douglas DC-8 aircraft. BAX Global Solutions, Inc. (“BAX”) was the largest customer of CCIA and ATI during 2007. ATI also provides passenger transportation primarily to the U.S. military using DC-8 combi aircraft that are certified to carry passengers as well as cargo. Additionally, CHI’s subsidiary, Cargo Aircraft Management, Inc. (“CAM”) is in the process of modifying four Boeing 767 aircraft and one Boeing 757 aircraft into standard freighter configuration.

The purchase price for all of CHI’s equity securities was approximately \$259 million, consisting of approximately \$215 million in cash from ABX, \$18 million in cash from CHI and four million common shares of ABX Holdings, Inc., valued at approximately \$25 million, which were issued to certain shareholders. The Company also repaid \$101 million of Cargo’s existing indebtedness under its senior credit facility and acquired \$20 million of CHI cash. The overall transaction value was approximately \$340 million. The Company obtained approximately \$270 million of these funds from a new unsubordinated term loan.

The transaction is being accounted for using the purchase method of accounting as required by SFAS No. 141, “Business Combinations.” Accordingly, the purchase price has been allocated to tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values at the date of the acquisition. The excess of the purchase price over the estimated fair value of net assets acquired was recorded as goodwill. The purchase price exceeded the fair value of the net assets acquired due to the strategic opportunities and benefits associated with complementary aircraft types and marketing capabilities. Management believes that the acquisition of CHI will result in a number of strategic benefits including:

- Increased customer diversification and revenues
- Expanded customer solution offerings and entry into aircraft leasing market
- Improved economies from a larger base of operations
- Expanded market leadership in Boeing 767 freighter airlift

The allocation of the purchase price to specific assets and liabilities is based, in part, upon internal estimates of assets and liabilities and independent appraisals for aircraft and other assets. The Company is in process of refining its internal estimates and finalizing independent valuations for certain assets and liabilities; therefore, the allocation of the purchase price is preliminary and the final allocation may differ. Based on the preliminary purchase price allocation, the following table summarizes estimated fair values of the assets acquired and liabilities assumed (in thousands):

Cash	\$ 20,495
Marketable securities	38,148
Account receivable	14,318
Other current assets	13,478
Other long term assets	1,524
Intangibles	31,700
Goodwill	178,654
Property and equipment, net	148,901
Current liabilities	(38,317)
Capital leases	(18,648)
Deferred taxes	(32,859)
Other long-term liabilities	(11,131)
Net assets acquired	<u>\$346,263</u>

Goodwill includes \$5.1 million of costs directly related to the acquisition, and none of the goodwill is expected to be deductible for tax purposes. Intangible assets consisted of \$27.7 million for customer relationships and \$4.0 million for airline certificates. The customer relationship intangibles amortize over twenty years using an accelerated method while the airline certificates have indefinite lives and therefore are not amortized. Estimated amortization of the customer relationship intangibles for the next five years (in thousands) is \$2,637 for 2008, \$2,547 for 2009, \$2,457 for 2010, \$2,357 for 2011 and \$2,100 for 2012.

### Unaudited Pro Forma Condensed Combined Financial Information

The following table provides unaudited pro forma condensed combined financial information (in thousands) for the Company after giving effect to the acquisition described above and the assumptions and adjustments described in the accompanying notes to the unaudited pro forma condensed combined financial statements. This information is based on adjustments to the historical consolidated financial statements of CHI using the purchase method of accounting for business combinations. The unaudited pro forma adjustments do not include any of the cost savings and other synergies anticipated to result from the acquisition. These unaudited pro forma results are based on assumptions considered appropriate by management and include all material adjustments as considered necessary. These unaudited pro forma results have been prepared for comparative purposes only and do not purport to be indicative of results that would have actually been reported as of the date or for the year presented had the acquisition taken place on such date or at the beginning of the year indicated, or to project the Company's financial position or results of operations which may be reported in the future (in thousands).

	December 31,	
	2007	2006
Pro forma revenues	\$1,479,049	\$1,556,486
Pro forma depreciation and amortization	94,160	68,616
Pro forma earnings before income taxes	39,045	45,922
Pro forma net earnings	23,354	94,718
Pro forma diluted earnings per share	\$ 0.37	\$ 1.52

The unaudited pro forma results above exclude non-recurring charges recorded by CHI that were directly related to the acquisition by the Company. Combined results for ABX Holdings and CHI for the years ended December 31, 2007 and 2006 were adjusted for the following in order to create the unaudited pro forma results in the table above:

- Adjustment reflecting an increase in depreciation expense of \$3.2 million the years ended December 31, 2007 and 2006, reflecting the net impact of fair value adjustments in property, plant and equipment.
- Adjustment to reflect estimated additional intangible asset amortization expense of \$2.6 million for each of the years ended December 31, 2007 and 2006, resulting from the fair value adjustments to CHI's intangible assets.
- Adjustment to reflect additional interest expense of \$20.4 million and \$23.5 for the years ended December 31, 2007 and 2006, respectively, related to the \$270 million unsubordinated term loan used to finance the acquisition.
- Pro forma diluted earnings per share reflects the issuance of four million shares of the Company.

### NOTE C—SIGNIFICANT CUSTOMERS

#### 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 contracted services provided to DHL. Revenues from contracted services performed for DHL were \$1.1 billion, \$1.2 billion and \$1.4 billion for 2007, 2006 and 2005, respectively.

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

<u>Asset (Liabilities)</u>	<u>December 31</u>	
	<u>2007</u>	<u>2006</u>
Accounts receivable	\$ 25,268	\$ 2,680
Accounts payable	(392)	(392)
Unearned revenue	(19,712)	(2,607)
Net asset (liability)	<u>\$ 5,164</u>	<u>\$ (319)</u>

As specified in the two commercial agreements with DHL, ABX is advanced funds on the first business day of each week for the costs budgeted to be incurred for the upcoming week. Unearned revenue reflects the portion of a scheduled payment from DHL that relates to revenues earned in the next year. Accounts receivable is primarily from the revenues earned under the commercial agreements. Accounts payable is interest payable on the promissory note.

#### *Agreements*

ABX has two commercial agreements with DHL, including an aircraft, crew, maintenance and insurance agreement ("ACMI agreement") and a hub services agreement ("Hub Services agreement"). Under these agreements, ABX provides DHL air cargo transportation, package handling, warehousing and maintenance services, and receives compensation generally as determined by cost plus a base mark-up percentage of 1.75%. Both agreements also allow ABX 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 achievement of cost and service goals outlined in the two commercial agreements. Certain costs under the agreements are reimbursable only, without mark-up. These costs primarily include jet fuel expense, landing and ramp rental charges, certain facility rent, and interest expense on the note payable to DHL. Income tax expense incurred by ABX, as well as direct expenses incurred to secure revenue from customers other than DHL, are not reimbursed under the terms of the two commercial agreements. The ACMI agreement has an initial term of seven years, through August 15, 2010, with an automatic renewal for an additional three years, unless an advance notice of one year is given, or if ABX is not in compliance with applicable performance standards specified in the agreement. The Hub Services agreement renewed August 15, 2007 until August 15, 2008, with one-year automatic renewals, unless ninety days advance notice is given.

The Company's future operating results, cash flows and financial condition will continue to depend on the amount of services it provides to DHL. The ACMI agreement allows DHL to reduce the air routes that ABX flies or remove aircraft from service. DHL can also change the scope of services under the Hub Services agreement by terminating specific services at one or more hub facilities after giving at least sixty days notice to ABX. Since November 2004, DHL has released 35 aircraft from service under the ACMI agreement. During 2006, DHL assumed the management of the line-haul truck network from ABX. In 2007, DHL transferred management of the following operations from ABX's management to its own management: in January, the regional hub in Allentown, Pennsylvania; in June, the regional hub in Riverside, California; and in November, the regional hub in South Bend, Indiana. In January 2008, management of the Columbus, Ohio logistics center was transferred from ABX to DHL, and in May 2008, management of the Wilmington, Ohio logistics operation will be transferred to DHL as well.

Pursuant to the terms of the ACMI agreement, the Company has certain rights to put to DHL any aircraft that is removed from service. The Company can sell such aircraft to DHL at the lesser of fair market value or net book value. The decision to put aircraft to DHL will depend on a number of factors, including the anticipated number of aircraft to be removed, the type of aircraft removed, the demand for cargo airlift and the market value

for aircraft. Management assesses the number and type of aircraft that it may want to put to DHL as the aircraft are removed from service. Provisions of the ACMI agreement stipulate that if the Company's equity is less than or equal to \$100 million at the time of the put to DHL, any amount by which fair market value is less than net book value would be applied to the promissory note owed to DHL. However, if equity is greater than \$100 million, as it is at this time, any amount by which the fair market value is less than net book value would be recorded as an impairment charge. At the Company's current level of stockholders' equity, the removal of additional aircraft from the ACMI agreement could result in impairment charges for aircraft which have fair market values less than their carrying values. For purposes of applying the \$100 million stockholders' equity threshold, stockholders' equity will be calculated after including the effect of any charges caused by the removal of aircraft.

#### *Arbitration*

In a letter dated September 19, 2007, DHL communicated to ABX's management DHL's assertions 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 ABX and DHL, ABX'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 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 ABX.

By not remitting the full payment of weekly funding to ABX, DHL was in default of the ACMI and Hub Services agreements. On November 7, 2007, ABX notified DHL that it was in default under these agreements, an assertion that DHL is disputing. ABX and DHL initiated the dispute resolution procedures, as specified in the agreements, on November 16, 2007, and DHL remitted the previously withheld amount of \$8.8 million. However, ABX will pursue its position through arbitration. In February 2008, a three judge arbitration panel was selected. ABX 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 ABX to bear overhead expenses currently in dispute, without reimbursement from DHL. Management expects the arbitration process to be completed by the end of the second quarter of 2008.

#### **BAX Global**

ATI currently operates nine DC-8 aircraft, and CCIA operates eleven Boeing 727 aircraft for BAX's U.S. network. Under its agreement with BAX, CHI has the right to be the exclusive provider of main deck freighter lift in the BAX U.S. network through December 31, 2011. Under the agreement, BAX had the option to buy CHI's exclusive rights for \$4.0 million at December 31, 2007. After December 31, 2007, the amount of the buy-out option amortizes completely through December 31, 2011.

At December 31, 2007, the Company's accounts receivable includes \$3.4 million from BAX.

**NOTE D—COMPUTATION OF EARNINGS PER SHARE**

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

	December 31		
	2007	2006	2005
Net income applicable to common stockholders	\$19,587	\$90,054	\$30,312
Weighted-average shares outstanding for basic earnings per share	58,296	58,270	58,270
Common equivalent shares:			
Effect of stock-based compensation awards	353	133	205
Weighted-average shares outstanding assuming dilution	58,649	58,403	58,475
Basic earnings per share	\$ 0.34	\$ 1.55	\$ 0.52
Diluted earnings per share	\$ 0.33	\$ 1.54	\$ 0.52

Basic weighted average shares outstanding for purposes of basic earnings per share are less than the shares outstanding due to 251,700 shares, 268,900 shares and 114,700 shares of restricted stock for 2007, 2006 and 2005, respectively, which are accounted for as part of diluted weighted average shares outstanding in diluted earnings per share.

**NOTE E—MARKETABLE SECURITIES**

The marketable securities held by the Company consist of debt securities, which are classified as available-for-sale. As of December 31, 2007, no marketable securities held by the Company have an expected life of over one year. Marketable securities of approximately \$5.4 million at December 31, 2006 had expected maturities of greater than one year and were included in other assets within the Company's consolidated balance sheets. Expected maturities may differ from contractual maturities because the issuers of certain securities may have the right to prepay the obligations without prepayment penalties. At December 31, 2007, the Company held auction-rate securities that it acquired in the CHI acquisition. These securities were redeemed in January 2008.

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

	Estimated Fair Market Value	
	December 31,	
	2007	2006
Obligations of U.S. Government Agencies	\$ 3,595	\$ 9,480
Obligations of U.S. Corporations	7,893	11,336
Student Loan Auction-Rate Securities	38,148	—
Total marketable securities	\$49,636	\$20,816

## NOTE F—PROPERTY AND EQUIPMENT

### Property and Equipment In-Service and Under Modification

Property and equipment consists of the following (in thousands):

	December 31,	
	2007	2006
Aircraft and flight equipment	\$ 926,869	\$ 685,652
Maintenance and support equipment	53,450	48,602
Vehicles and other equipment	2,668	1,725
Leasehold improvements	1,230	849
	<u>984,217</u>	<u>736,828</u>
Accumulated depreciation and amortization	(293,404)	(278,190)
Property and equipment, net	<u>\$ 690,813</u>	<u>\$ 458,638</u>

Property and equipment includes \$57.8 million and \$36.9 million of property held under capital leases at December 31, 2007 and 2006, respectively, and accumulated depreciation and amortization includes \$11.4 million and \$8.6 million for property held under capital leases as of December 31, 2007 and 2006, respectively.

During 2007, DHL removed three DC-8 and four DC-9 aircraft for services under the ACMI agreement, in addition to 21 aircraft removed in 2006 and seven aircraft removed in 2004 and 2005. DHL is continuing to fund depreciation for eight of the DC-9s that were removed from service through their remaining depreciable lives in August 2010. The Company uses the engines on these eight DC-9 aircraft to support the remaining DC-9 aircraft that the Company has in service to DHL. The removal of aircraft from service to DHL constitutes an event requiring the Company to evaluate the recoverability of the carrying value of those aircraft removed from the ACMI agreement. In accordance with SFAS 144, ABX recorded an impairment charge of \$0.3 million each year during the years ended December 31, 2007 and 2006, for the excess of the carrying value of these aircraft over their fair value less cost to sell. The charge is reflected in other operating expenses on the statement of earnings and is reflected in the DHL reportable segment.

### Aircraft Held For Sale

Under the ACMI agreement with DHL, ABX had the option to put aircraft removed from the ACMI agreement to DHL at the lower of their fair value or net book value. After having the aircraft appraised, management decided to exercise the put provision on certain aircraft while retaining others. In 2007, upon re-examination of the retained aircraft, ABX recorded an impairment charge of \$0.4 million for the excess of their carrying value over their fair value less cost to sell. ABX is marketing these remaining aircraft and engines to part dealers and private operators or using aircraft for spare parts. Gains or losses from the sale of aircraft and spare engines are recorded in other operating expenses on the statement of earnings.

## NOTE G—INCOME TAXES

The Company implemented the provisions of FASB Interpretation No. 48, “Accounting for 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 was recorded as a \$1.3 million charge to the retained earnings balance as of January 1, 2007. This amount represented the total amount of unrecognized tax benefits as of the date of adoption, and if recognized, would impact the effective tax rate for the period of recognition.

Changes in unrecognized tax benefits during 2007 are as follows (in thousands):

Balance at January 1, 2007	\$1,295
Additions based on tax positions related to the current year	—
Additions for tax positions of prior years	—
Acquisition	8,081
Reductions for tax positions of prior years	—
Settlements	—
Balance at December 31, 2007	<u>\$9,376</u>

At December 31, 2007, the total amount of unrecognized tax benefits of \$9.4 million includes \$5.8 million recorded as a non-current FIN 48 liability and a \$3.6 million charge against the net operating loss deferred tax asset. The 2007 addition to unrecognized tax benefits from the acquisition of CHI, if recognized, would not impact the effective tax rate for the period of recognition. Accrued interest on tax positions is recorded as a component of interest expense. Accrued penalties on tax positions are recorded as a component of interest expense. Total accrued interest and penalties on tax positions included in the FIN 48 liability was zero at January 1, 2007 and \$2.4 million at December 31, 2007.

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 2003, while state and local jurisdictions are generally closed through 2002. 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. In January 2008, due to amended filings required for excise tax refunds, the IRS re-opened the examination of 2003 and opened an examination of the December 2005 and 2004 federal income tax returns. The Company believes \$1.3 million of unrecognized tax benefits recorded at the time of implementation of FIN 48 will reverse as a result of the conclusion of these examinations. The Company does not foresee any other changes to unrecognized tax benefits, including the effect of statute of limitation expirations, over the next twelve months.

CHI also files income tax returns in the U.S. federal jurisdiction and various state and local jurisdictions. Corporate consolidated federal returns filed for the years 2001 through 2003 are subject to examination only to the extent of the net operating loss carryforwards from 2001 that were utilized from 2002 to 2006. Federal returns filed for 2004 through 2006 continue to be open to IRS examination. State and local returns filed for 2003 through 2006 are generally also open to examination by their respective jurisdictions.

At December 31, 2007, the Company had cumulative net operating loss carryforwards (“NOL CFs”) for federal income tax purposes of approximately \$129.9 million, which begin to expire in 2022. The deferred tax asset balance includes \$2.0 million related to state NOL CFs, which have remaining lives ranging from one to eighteen years. These NOL CFs are attributable to excess tax deductions related primarily to the accelerated tax depreciation of fixed assets.

As of December 31, 2005, the Company had a valuation allowance against its net deferred tax assets of \$67.1 million. In the fourth quarter of 2006, the Company reached certain milestones and determined that it was more likely than not that all the net deferred tax assets would be realized prior to their expiration. This determination was based upon the Company’s projection of taxable income, as well as the Company’s earnings history since 2003. Accordingly, the full valuation allowance was reversed during 2006, resulting in a net income tax benefit for the year ended December 31, 2006.

The components of the deferred income tax assets and liabilities as of December 31, 2007 and 2006 are as follows (in thousands):

	December 31,	
	2007	2006
Deferred tax assets:		
Net operating loss carryforward	\$ 44,020	\$ 52,774
Capital and operating leases	22,039	25,304
Post-retirement employee benefits	63,788	73,908
Employee benefits other than post-retirement	9,975	8,472
Other	7,031	3,612
	<u>146,853</u>	<u>164,070</u>
Deferred tax liabilities:		
Accelerated depreciation and impairment charges	(93,372)	(61,874)
Partnership items	(16,117)	—
State taxes	(2,308)	(481)
	<u>(111,797)</u>	<u>(62,355)</u>
Deferred tax liabilities	(111,797)	(62,355)
Net deferred tax asset	<u>\$ 35,056</u>	<u>\$101,715</u>

The following summarizes the components of the income tax provision (benefit) (in thousands):

	Year Ended December 31,		
	2007	2006	2005
Current taxes:			
Federal	\$ —	\$ —	\$—
State	112	—	—
	<u>112</u>	<u>—</u>	<u>—</u>
Deferred taxes:			
Federal	12,318	(52,022)	—
State	1,271	(2,019)	—
	<u>13,589</u>	<u>(54,041)</u>	<u>—</u>
Total income tax expense (benefit)	<u>\$13,701</u>	<u>\$(54,041)</u>	<u>\$—</u>

The total tax provision is different from the amount that would have been recorded by applying the U.S. statutory federal income tax rate to income from continuing operations before taxes. Reconciliation of these differences is as follows:

	Year Ended December 31,		
	2007	2006	2005
Statutory federal tax rate	(35.0)%	(35.0)%	(35.0)%
State income taxes, net of federal tax benefit	(2.7)%	(1.4)%	(1.6)%
Tax effect of non-deductible expenses	(2.4)%	(2.1)%	(4.2)%
Elimination of Ohio state NOL CF and deferred tax assets	0.0%	0.0%	(13.9)%
Change in valuation allowance	0.0%	186.0%	55.3%
Other	(1.0)%	2.6%	(0.6)%
Effective income tax rate	<u>(41.1)%</u>	<u>150.1%</u>	<u>0.0%</u>

## NOTE H—DEBT OBLIGATIONS

The Company entered into a Credit Agreement with a consortium of lenders on December 31, 2007 that provides for a \$75.0 million revolving credit facility and an unsubordinated term loan through December 2012. The unsubordinated term loan and the revolving credit facility are collateralized by substantially all the aircraft, property and equipment owned by the Company that are not collateralized under aircraft loans or capital leases. Under the Credit Agreement, interest rates are adjusted quarterly based on the Company's earnings before interest and taxes and on prevailing LIBOR or prime rates. At December 31, 2007, the unsubordinated term loan bears a variable interest rate of LIBOR (90-day) plus 3.00% (7.7025% at December 31, 2007). At December 31, 2007, the Company had drawn \$26.5 million from the revolving credit facility. The revolving credit facility at December 31, 2007 carried an interest rate of prime plus 1.75% (9.00% at December 31, 2007).

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

	December 31,	
	2007	2006
Unsubordinated term loan	\$270,000	\$ —
Revolving credit facility	26,500	—
Aircraft loans	113,543	34,704
Capital lease obligations Boeing 767	62,967	72,296
Capital lease obligations Boeing 727	24,492	—
Promissory note due to DHL	92,276	92,276
Other	1,024	1,255
Total long-term obligations	590,802	200,531
Less: current portion	(22,815)	(11,413)
Total long-term obligations, net	<u>\$567,987</u>	<u>\$189,118</u>

The unsecured promissory note due to DHL 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 aircraft loans are collateralized by seven aircraft, are due from 2016 to 2018 and bear interest at rates from 6.74% to 7.36% per annum payable monthly. The capital lease obligations for five Boeing 767 aircraft consist of two different leases, both expiring in 2011 with options to extend into 2017. The capital lease payments for three of the five aircraft include quarterly principal and variable interest of LIBOR (90-day) plus 2.50% (7.2025% at December 31, 2007). The capital lease for the other two Boeing 767 aircraft carries a fixed implicit interest rate of 8.55%. Capital lease obligations for seven Boeing 727 aircraft carry a fixed implicit rate of 6.50% and expire between 2010 and 2012. At the termination of the leases, the Company is subject to normal aircraft return provisions for maintenance of the aircraft.

The \$92.3 million unsecured promissory note includes certain events of default that would allow the note to be called by DHL. On January 14, 2008, the Company received from DHL a demand for payment in full of the unsecured promissory note. In its demand, DHL asserts that the acquisition by the Company of CHI and the related financing transaction, which closed on December 31, 2007, constituted a "change of control" under the terms of the unsecured promissory note. The Company's management and legal advisors do not believe a "change of control" occurred in connection with the CHI acquisition and, accordingly, have disputed DHL's demand. On December 31, 2007, the Company established replacement financing of \$61.0 million with certain former shareholders of CHI in the event it should become necessary to repay the note. The replacement financing agreement expires in January 2009. Additionally, the Company could use the revolving credit agreement to replace the remaining \$31.3 million of financing.

The scheduled annual principal payments on long-term debt as of December 31, 2007 for the next five years are as follows (in thousands):

	<b>Principal Payments</b>
2008	\$ 22,815
2009	51,608
2010	53,347
2011	50,855
2012	<u>227,564</u>
	<u>\$406,189</u>

The Credit Agreement provides for the issuance of letters of credit on the Company's behalf. As of December 31, 2007, the unused credit facility totaled \$35.4 million, net of outstanding letters of credit of \$13.1 million and borrowings outstanding of \$26.5 million.

Under the Credit Agreement, the Company is subject to other expenses, covenants and warranties that are usual and customary. The Credit Agreement contains covenants including, among other things, limitations on certain additional indebtedness, guarantees of indebtedness, and the level of annual capital expenditures. The Credit Agreement stipulates events of default including unspecified events that may have material adverse effects on the Company. The unsecured promissory note restricts ABX from paying dividends on its common stock in excess of \$1.0 million annually. Additionally, subject to certain terms and conditions, the Credit Agreement limits the repurchase of common stock as well as limiting the amount of dividends that the Company can grant to \$50.0 million annually.

Conditions in the credit market may affect the cost of the Company's borrowings. The Company and the lead bank for its Credit Agreement are currently marketing the \$270 million unsubordinated term loan to other banks and investors. Conditions in the credit market may result in a higher cost of borrowing to attract additional lenders.

#### **NOTE I—COMMITMENTS AND CONTINGENCIES**

##### **Leases**

The Company leases airport facilities and certain operating equipment under long-term operating lease agreements. ABX leases portions of the DHL Air Park and formalized a lease in December 2007 for certain sorting equipment from DHL. The term of such leases expire at the end of the transition period that would follow termination of the ACMI and Hub Services agreements. DHL facility lease expense was approximately \$2.0 million for each of the years ended 2007, 2006 and 2005, respectively, and was reimbursed by DHL without mark-up. Other operating lease expense was \$3.9 million, \$3.6 million and \$2.4 million for the years ended 2007, 2006 and 2005, respectively.

Lease commitments under long-term capital and operating leases at December 31, 2007, are as follows (in thousands):

	<b>Capital Leases</b>	<b>Operating Leases</b>
2008	\$ 22,737	\$18,397
2009	22,664	9,820
2010	22,448	4,406
2011	17,937	859
2012	4,812	559
2013 and beyond	<u>20,990</u>	<u>997</u>
Total minimum lease payments	\$111,588	<u>\$35,038</u>
Less: interest	<u>(23,105)</u>	
Principal obligations	<u>\$ 88,483</u>	

## **Commitments**

At December 31, 2007, the Company owned seven Boeing 767 aircraft and one Boeing 757 aircraft that were undergoing modification from passenger to standard freighter configuration. The Company has contracted with an aircraft maintenance and modification provider to convert these aircraft from passenger to freighter configuration. The Company anticipates it will spend \$61.3 million for the aircraft modification costs in 2008 to complete these projects. Additionally, the Company is committed to purchase another Boeing 767 for approximately \$23.5 million after the aircraft is completely modified to freighter configuration in 2009.

All of the Company's aircraft were manufactured prior to 1990. Manufacturer Service Bulletins and the FAA Airworthiness Directives issued under its "Aging Aircraft" program cause aircraft operators of such aged aircraft to be subject to extensive aircraft examinations and require such aircraft to undergo structural inspections and modifications to address problems of corrosion and structural fatigue at specified times. Airworthiness Directives have been issued that require inspections and both major and minor modifications to such aircraft. It is possible that additional Service Bulletins or Airworthiness Directives applicable to the types of aircraft or engines included in the Company's fleet could be issued in the future. The cost of compliance with Airworthiness Directives and of following Service Bulletins cannot currently be reasonably estimated but could be substantial.

## **Guarantees and Indemnifications**

Certain operating leases and agreements of the Company contain indemnification obligations to the lessor, or one or more other parties that are considered ordinary and customary (e.g. use, tax and environmental 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.

## **Department of Transportation ("DOT") Continuing Fitness Review**

ABX filed a notice of substantial change with the DOT arising from its separation from Airborne, Inc. In connection with the filing, which was initially made in mid-July of 2003 and updated in April of 2005 and again in September of 2007, the DOT will determine whether ABX continues to be fit, willing and able to engage in air transportation of cargo and a U.S. citizen.

Under U.S. laws and DOT precedents, non-U.S. citizens may not own more than 25% of, or have actual control of, a U.S. certificated air carrier. The DOT may determine that DHL actually controls ABX as a result of its commercial arrangements (in particular, the ACMI agreement and Hub Services agreement) with DHL. If the DOT determines that ABX is controlled by DHL, the DOT could require amendments or modifications of the ACMI and/or other agreements between ABX and DHL. If ABX were unable to modify such agreements to the satisfaction of the DOT, the DOT could seek to suspend, modify or revoke ABX's air carrier certificates and/or authorities, and this would materially and adversely affect the business.

The DOT has yet to specify the procedures it intends to use in processing ABX's filing. We believe the DOT should find that ABX is controlled by U.S. citizens and continues to be fit, willing and able to engage in air transportation of cargo.

## **ALPA Lawsuit**

On August 25, 2003, ABX intervened in a lawsuit filed in the U.S. District Court for the Southern District of New York by DHL Holdings (USA), Inc. (Now DPWN Holdings (USA), Inc.) ("DPWN Holdings") and DHL Worldwide Express, Inc. ("DHL Worldwide") against the Air Line Pilots Association ("ALPA"), seeking a declaratory judgment that neither DHL entity is required to arbitrate a grievance filed by ALPA. ALPA represents the pilot group at Astar. The grievance seeks to require DPWN Holdings to direct its subsidiary, Airborne, Inc. (Now DHL Network Operations (USA), Inc.), to cease implementing its ACMI agreement with

ABX on the grounds that DHL Worldwide is a legal successor to Astar. ALPA similarly filed a counterclaim requesting injunctive relief that includes having DHL's freight currently being flown by ABX transferred to Astar.

The proceedings were stayed on September 5, 2003, pending the National Labor Relations Board's ("NLRB") processing of several unfair labor practice charges ABX filed against ALPA on the grounds that ALPA's grievance and counterclaim to compel arbitration violates the National Labor Relations Act. In March 2004, the NLRB prosecuted ALPA on the unfair labor practice charges. On July 2, 2004, an Administrative Law Judge ("ALJ") for the NLRB issued a decision finding that ALPA's grievance and counterclaim violated the secondary boycott provisions of the National Labor Relations Act, and recommended that the NLRB order ALPA to withdraw both actions. ALPA appealed the ALJ's finding to the full NLRB, which subsequently affirmed the ALJ's decision in its own decision and order dated August 27, 2005.

On September 14, 2005, ALPA filed a petition for review with the U.S. Court of Appeals for the Ninth Circuit and that Court subsequently granted ABX's motion to intervene in the case. The parties filed briefs in the matter and oral arguments were heard on October 17, 2007. We are currently awaiting the U.S. Court of Appeals decision in this matter. The declaratory judgment matter and related counterclaim in the U.S. District Court remain stayed at this time.

We believe the NLRB's decision will be sustained on appeal and that ALPA's grievance and counterclaim will be denied.

### **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 October of 2005, the DOJ notified ABX that ABX and a few Company employees in its human resources department, in addition to Garcia, were targets of a criminal investigation. ABX cooperated fully with the investigation. In June of 2006, a non-senior management employee of the Company entered a plea to a misdemeanor related to this matter. 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 I to the consolidated financial statements of this report for additional information. While ABX believes it has adequately reserved for potential losses stemming from the investigation, it's possible that, in the event proceedings were initiated against ABX that resulted in an adverse finding, ABX 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 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 filed a motion to dismiss on June 11, 2007 and that motion is currently pending. We believe 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.

## Employees Under Collective Bargaining Agreements

As of December 31, 2007, all of the flight crewmembers of ABX, ATI, and CCIA were covered under collective bargaining agreements, which are summarized in the following table:

<u>Airline</u>	<u>Labor Agreement Unit</u>	<u>Date Contract Became Amendable</u>	<u>Percentage of Company's Employees</u>
ABX	International Brotherhood of Teamsters	7/31/2006	6.0%
ATI	International Brotherhood of Teamsters	5/1/2004	0.7%
CCIA	Airline Pilot Association	3/31/2004	0.9%

## NOTE J—PENSION AND OTHER POST-RETIREMENT BENEFIT PLANS

### Defined Benefit and Post-retirement Healthcare Plans

ABX sponsors a qualified defined benefit plan for ABX pilots and a qualified defined benefit plan for a major portion of its other ABX employees that meet minimum eligibility requirements. ABX also sponsors non-qualified defined benefit pension plans for certain employees. These non-qualified plans are unfunded. ABX also sponsors a post-retirement healthcare plan for its ABX employees, which is unfunded. All of ABX's pension and post-retirement plans are accounted for under SFAS No. 158, *Employers Accounting for Defined Benefit Pension and Other Postretirement Plans (an amendment of FASB Statements No. 87, 88, 106, and 132(R))*, effective December 31, 2006. On September 1, 2005, ABX closed its qualified defined benefit plan to newly hired, non-flight crewmember employees. Instead, new ABX non-flight crewmember employees receive an annual contribution based on a fixed percentage of eligible compensation to a defined contribution plan.

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 of our post-retirement costs. The assumptions considered most sensitive in actuarially valuing ABX's pension obligations and determining related expense amounts 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. Consideration of future medical cost trend rates is a critical assumption in valuing ABX's post-retirement healthcare obligations. Actual results and future changes in these assumptions could result in future costs significantly higher than those recorded in our results of operations.

ABX measures plan assets and benefit obligations as of December 31 of each year. Information regarding the ABX's sponsored defined benefit pension plans and post-retirement healthcare plans follow below (in thousands). The accumulated benefit obligation reflects pension benefit obligations based on the actual earnings and service to-date of current employees. The effect of the pension plan amendment in 2006 was a result of the Pension Protection Act of 2006, which removed the sunset provisions for the Economic Growth and Tax Relief Reconciliation Act, permanently extending benefit limits.

	Pension Plans		Post-retirement Healthcare Plans	
	2007	2006	2007	2006
<b>Accumulated benefit obligation</b>	<u>\$ 450,983</u>	<u>\$ 414,944</u>	<u>\$ 32,269</u>	<u>\$ 34,121</u>
<b>Change in benefit obligation</b>				
Obligation as of January 1	\$ 571,340	\$ 533,694	\$ 34,121	\$ 34,171
Service cost	35,695	38,160	2,183	2,407
Interest cost	33,405	30,023	1,980	1,920
Plan amendment	—	6,416	—	—
Plan transfers	1,351	1,278	—	—
Benefits paid	(10,121)	(7,626)	(577)	(543)
Actuarial (gain) loss	(31,824)	(30,605)	(5,438)	(3,834)
Obligation as of December 31	<u>\$ 599,846</u>	<u>\$ 571,340</u>	<u>\$ 32,269</u>	<u>\$ 34,121</u>
<b>Change in plan assets</b>				
Fair value as of January 1	\$ 381,085	\$ 297,653	\$ —	\$ —
Actual gain on plan assets	36,550	35,573	—	—
Plan transfers	1,319	1,278	—	—
Employer contributions	36,253	54,207	577	543
Benefits paid	(10,121)	(7,626)	(577)	(543)
Fair value as of December 31	<u>\$ 445,086</u>	<u>\$ 381,085</u>	<u>\$ —</u>	<u>\$ —</u>
<b>Funded status</b>				
Recorded liabilities—net underfunded	<u>\$(154,760)</u>	<u>\$(190,255)</u>	<u>\$(32,269)</u>	<u>\$(34,121)</u>

The amounts in accumulated other comprehensive income that have not yet been recognized as components of net periodic benefit expense at December 31, 2007 are as follows (in thousands):

	Pension Plans		Post-Retirement Healthcare Plans	
	2007	2006	2007	2006
Unrecognized prior service cost	\$18,859	\$ 23,678	\$ —	\$ —
Unrecognized net actuarial loss	77,774	120,310	3,925	9,997
Accumulated other comprehensive income	<u>\$96,633</u>	<u>\$143,988</u>	<u>\$3,925</u>	<u>\$9,997</u>

### Components of Net Periodic Benefit Cost

ABX's net periodic benefit costs for its defined benefit pension plans and post-retirement healthcare plans are as follows (in thousands):

	Pension Plans			Postretirement Healthcare Plans		
	2007	2006	2005	2007	2006	2005
Service cost	\$ 35,695	\$ 38,160	\$ 29,820	\$2,183	\$2,407	\$1,993
Interest cost	33,405	30,023	23,405	1,980	1,920	1,581
Expected return on plan assets	(31,801)	(25,221)	(20,482)	633	—	—
Net amortization and deferral	10,781	14,811	10,217	—	1,074	1,019
Net periodic benefit cost	<u>\$ 48,080</u>	<u>\$ 57,773</u>	<u>\$ 42,960</u>	<u>\$4,796</u>	<u>\$5,401</u>	<u>\$4,593</u>

The following table sets forth the amounts of unrecognized prior service cost and net actuarial loss recorded in accumulated other comprehensive income expected to be recognized as components of net periodic benefit expense during 2008 (in thousands):

	Pension Plans	Post- Retirement Healthcare Plans
Amortization of actuarial loss	\$1,922	\$ 72
Amortization of prior service cost	\$4,988	\$ —

### Assumptions

Assumptions used in determining ABX's pension obligations at December 31 were as follows:

	Pension Plans		
	2007	2006	2005
Discount rate (for qualified and non-qualified plans)	6.50%	5.90%	5.70%
Expected return on plan assets	8.00%	8.00%	8.00%
Rate of compensation increase (pilots)	4.50%	4.50%	4.50%
Rate of compensation increase (non-pilots)	4.00%	4.00%	4.00%

The discount rate used to determine post-retirement healthcare obligations was 6.50%, 5.90% and 5.70% at December 31, 2007, 2006 and 2005, respectively. Post-retirement healthcare plan obligations have not been funded. The healthcare cost trend rate used in measuring post-retirement healthcare benefit costs was 10% for 2007, decreasing each year by 1% until it reaches a 5% annual growth rate in 2012. The effects of a 1% increase and decrease in the healthcare cost trend rate on 2007 cost and the accumulated post-retirement benefit obligation at December 31, 2007, are shown below (in thousands):

	1% Increase	1% Decrease
Effect on service and interest cost	\$ 3,182	\$ (2,607)
Effect on accumulated post-retirement benefit obligation	\$ 469	\$ (378)

### Plan Assets

The weighted-average asset allocations by asset category are as shown below:

Asset category	Composition of Plan Assets on December 31,	
	2007	2006
Equity securities	49%	53%
Fixed income securities	46%	42%
Real estate	5%	5%
	<u>100%</u>	<u>100%</u>

ABX uses an investment management firm to advise it in developing and executing an investment policy. The portfolio is managed with consideration for diversification, quality and marketability. The targeted asset allocation is 50% equity securities, 45% fixed income securities and 5% real estate. The investment policy permits the following ranges of asset allocation: equities – 30.5% to 69.3%; fixed income securities – 38.0% to 52.0%; real estate – 3% to 7%. Except for U.S. Treasuries, no more than 10% of the fixed income portfolio and no more than 5% of the equity portfolio can be invested in securities of any single issuer. ABX's pension investments include \$191 million and \$216 million at December 31, 2007 and 2006 respectively whose fair values have been estimated in the absence of readily determinable fair values. Such investments include private equity and real estate funds. Management's estimates are based on information provided by the fund managers or general partners of those funds.

An actuarial firm advised ABX in developing the overall expected long-term rate of return on plan assets. The overall expected long-term rate of return was developed using various market assumptions in conjunction with the plans' targeted asset allocation. The assumptions were based on historical market returns.

### Cash Flows

In 2007, ABX made contributions to its defined benefit pension plans of \$36.3 million and contributions to its post-retirement healthcare plans of \$1.3 million. ABX estimates that its contributions in 2008 will be approximately \$39.9 million for its defined benefit pension plans and \$1.4 million for its post-retirement healthcare plans.

The following benefit payments, which reflect expected future service, as appropriate, are expected to be paid out of the respective plans as follows (in thousands):

	<u>Pension Benefits</u>	<u>Post- retirement Healthcare Benefits</u>
2008	\$ 14,366	\$ 1,361
2009	15,880	1,594
2010	19,067	1,817
2011	22,586	1,958
2012	25,361	2,063
Years 2013 to 2017	182,723	11,975

### Effects of SFAS No. 158

In 2006, the FASB issued SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106, and 132(R)" ("SFAS 158"). SFAS 158 required the Company to:

- recognize on its balance sheet the funded status (measured as the difference between the fair value of plan assets and the projected benefit obligation) of pension and other post-retirement benefit plans; and
- recognize, through comprehensive income, certain changes in the funded status of a defined benefit and post-retirement plan in the year in which the changes occur.

SFAS 158 requires that the balance sheet liabilities for defined benefit plans reflect projected pension benefit obligations, which include estimates of benefits from projected salary increases in future years. The Company adopted SFAS 158 effective December 31, 2006. Retrospective application was not permitted.

	<u>Before Application of Statement 158</u>	<u>Adjustments</u>	<u>After Application of Statement 158</u>
<b>Incremental Effect of FASB 158 on Statement of Financial Position</b>			
Intangible pension asset	\$ 1,951	\$ (1,951)	\$ —
Liability for pension and post-retirement health care benefits	80,294	144,082	224,376
Deferred income taxes	48,705	53,010	101,715
Total liabilities	415,506	144,082	559,588
Accumulated other comprehensive loss	(10,587)	(93,023)	(103,610)
Total stockholders' equity	213,233	(93,023)	120,210

### Crew Sick Leave Post-retirement Benefit

ATI provides a sick leave benefit for ATI crewmembers that accumulates through participant retirement dates. The accumulated benefit obligation reflected in the balance sheets at December 31, 2007 was \$2.9 million

and was unfunded. Assumptions used in determining the crew sick leave post-retirement obligations at December 31, 2007 include a discount rate of 5.75% and a rate of compensation increase of 4.00%. Expected benefit payments for the next five years (in thousands) are \$450 for 2008, \$323 for 2009, \$344 for 2010, \$354 for 2011 and \$393 for 2012.

### Defined Contribution Plans

The Company sponsors defined contribution capital accumulation plans (401k) that are funded by both voluntary employee salary deferrals and by employer matching contributions on employee salary deferrals of up to 6% of annual compensation. The Company also sponsors a defined contribution profit sharing plan, which is coordinated and used to offset obligations accrued under the qualified defined benefit plans. Contributions to this plan, except contributions for the Company's pilots, were discontinued in 2000. Expenses for these plans are as follows (in thousands):

	Year Ended December 31		
	2007	2006	2005
Capital accumulation plans	\$8,758	\$8,145	\$6,998
Profit sharing plans	1,068	1,062	1,069
Total expense	<u>\$9,826</u>	<u>\$9,207</u>	<u>\$8,067</u>

### NOTE K—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. 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. The non-vested stock units will be converted into a number of shares of Company stock depending on performance and market conditions at the end of a specified service period, lasting approximately three years. The performance condition awards will be converted into a number of shares of Company stock depending on the Company's average return on equity during the service period. Similarly, the market condition awards will be converted into a number of shares depending on the appreciation of the Company's stock compared to the NASDAQ Transportation Index. Board members were granted time-based awards with approximately a one-year vesting period, which will settle when the board member ceases to be a director of the Company. The Company expects to settle all of the stock unit awards by issuing new shares of stock. The table below summarizes award activity.

	Year Ended December 31,					
	2007		2006		2005	
	Number of Awards	Weighted average grant-date fair value	Number of Awards	Weighted average grant-date fair value	Number of Awards	Weighted average grant-date fair value
Outstanding at beginning of period	597,000	\$ 7.37	264,600	\$ 8.33	—	\$ —
Granted	319,100	8.13	332,400	6.61	264,600	8.33
Exercised	(167,400)	7.62	—	—	—	—
Cancelled	—	—	—	—	—	—
Outstanding at end of period	<u>748,700</u>	\$ 7.64	<u>597,000</u>	\$ 7.37	<u>264,600</u>	\$ 8.33
Vested	178,825	\$ 7.70	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 was \$7.83, \$6.63 and \$7.79 for 2007, 2006 and 2005, respectively, the value of the Company's stock on the date of grant. The grant-date fair value of each market condition award granted was \$9.20, \$6.55 and \$9.91 for 2007, 2006 and 2005, respectively. The market condition awards were valued using a Monte Carlo simulation technique based on volatility over three years for the awards granted in 2007 and one year for the awards granted in 2006 and 2005 using daily stock prices and using the following variables:

	<u>2007</u>	<u>2006</u>	<u>2005</u>
Risk-free interest rate	4.67%	4.71%	3.68%
Volatility	44.1%	33.6%	45.2%

The Company accounts for the awards in accordance with SFAS No. 123 (revised 2004), "Share-Based Payment." The standard requires the Company to measure the cost of services received in exchange for stock-based awards using the grant-date fair value of the award. For the years ended December 31, 2007, 2006 and 2005, the Company recorded expense of \$2.6 million, \$1.7 million and \$0.7 million for stock incentive awards, respectively. The Company has assumed no forfeitures. At December 31, 2007, there was \$1.9 million of unrecognized expense related to the stock incentive awards that is expected to be recognized over a weighted-average period of 1.5 years. As of December 31, 2007, 916,100 awards had been granted and 748,700 were outstanding. None of the awards were convertible, and none of the outstanding shares of restricted stock had vested as of December 31, 2007. These awards could result in a maximum number of 957,400 additional outstanding shares of the Company's common stock depending on service, performance and market results through December 31, 2009.

#### **NOTE L—DERIVATIVE INSTRUMENTS**

To reduce its exposure to rising interest rates on anticipated aircraft financing transactions, during the first quarter of 2006, ABX entered into five forward treasury lock agreements ("treasury locks") with settlement dates near the forecasted execution dates of the anticipated financing transactions. The Company anticipated aircraft financing under fixed interest rate loans based on the interest rates of ten-year U.S. Treasury Notes. The values 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 transactions. The final remaining treasury lock was with a major U.S. financial institution and settled in cash in July 2007. In accordance with SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," the Company accounted for the treasury locks as cash flow hedges. The treasury locks were evaluated and deemed to be highly effective as hedges at inception and upon expiration. The Company recorded unrealized gains 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.

At December 31, 2007, the Company held two interest rate swaps having a total settlement liability of \$2.8 million that it acquired in the CHI acquisition. The interest rate swaps have not been designated as hedges and settled in January 2008. The interest rate swaps had notional values totaling \$50.0 million with fixed rates of 5.375%.

To reduce the effects of fluctuating LIBOR-based interest rates on interest payments that stem from its variable rate outstanding debt, the Company entered into interest rate swaps having combined notional values of \$135.0 million in January 2008. The notional values step downward in conjunction with the underlying debt through December 31, 2012. Under the interest rate swap agreements, the Company will pay a fixed rate of 3.01% and receive a floating rate that resets quarterly based on LIBOR. For the outstanding notional value, the Company expects that the amounts received from the floating leg of the interest rate swap will offset fluctuating payments for interest expense because interest rates for its outstanding debt and the interest rate swap are both based on LIBOR and reset quarterly.

**NOTE M—OTHER COMPREHENSIVE INCOME (LOSS)**

Other comprehensive income (loss) includes the following transactions and tax effects for the years ended December 31, 2007, 2006 and 2005, respectively (in thousands):

	<u>Before Tax</u>	<u>Income Tax (Expense) or Benefit</u>	<u>Net of Tax</u>
<b>2007</b>			
Actuarial gain for pension liabilities	\$36,573	\$ (13,026)	\$23,547
Unrealized gain (loss) on marketable securities	(4)	2	(2)
Unrealized gain (loss) on derivative instruments	329	(156)	173
Reclassifications to net income:			
Hedging gain realized	(109)	42	(67)
Pension actuarial loss	5,963	(2,156)	3,807
Post-retirement actuarial loss	6,072	(2,166)	3,906
Pension prior service cost	4,818	(1,742)	3,076
Other comprehensive income (loss)	<u>\$53,642</u>	<u>\$ (19,202)</u>	<u>\$34,440</u>
<b>2006</b>			
Minimum pension liabilities	\$13,122	\$ (5,127)	\$ 7,995
Unrealized gain (loss) on marketable securities	37	(13)	24
Unrealized gain (loss) on derivative instruments	575	(207)	368
Less: Reclassification of hedging gain realized in net income	(33)	12	(21)
Other comprehensive income (loss)	<u>\$13,701</u>	<u>\$ (5,335)</u>	<u>\$ 8,366</u>
<b>2005</b>			
Minimum pension liabilities	\$ (5,829)	\$ —	\$ (5,829)
Unrealized loss on marketable securities	(55)	—	(55)
Other comprehensive loss	<u>\$ (5,884)</u>	<u>\$ —</u>	<u>\$ (5,884)</u>

During the next twelve months, the Company estimates that net gains of \$0.1 million from hedging instruments settled before December 31, 2007 will be reclassified to net income.

## NOTE N—SEGMENT INFORMATION

During 2007, the Company operated in two reportable segments. The air cargo transportation, 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 to customers other than DHL are referred to as “Charters” below. The Company’s other activities, which include contracts with the USPS and aircraft parts sales and maintenance services, do not constitute reportable segments and are combined in “All other” below. The assets purchased in the acquisition of CHI (see Note B) are reflected in All other as of December 31, 2007. The Company’s segment information for 2007, 2006 and 2005 is presented below (in thousands):

	Year Ended December 31		
	2007	2006	2005
<b>Revenues:</b>			
DHL	\$1,082,943	\$1,211,870	\$1,430,347
Charters	55,580	24,440	13,864
All other	35,992	24,051	20,179
Total	<u>\$1,174,515</u>	<u>\$1,260,361</u>	<u>\$1,464,390</u>
<b>Depreciation and amortization expense:</b>			
DHL	\$ 41,635	\$ 41,655	\$ 37,776
Charters	9,363	3,596	3,243
All other	749	409	148
Total	<u>\$ 51,747</u>	<u>\$ 45,660</u>	<u>\$ 41,167</u>
<b>Pre-tax earnings:</b>			
DHL	\$ 21,179	\$ 22,452	\$ 21,322
Charters	4,564	3,704	1,138
All other	7,545	9,857	7,852
Total	<u>\$ 33,288</u>	<u>\$ 36,013</u>	<u>\$ 30,312</u>
<b>December 31</b>			
	2007	2006	
<b>Assets:</b>			
DHL	\$ 336,345	\$ 358,211	
Charters	278,607	126,682	
All other	548,015	194,905	
Total	<u>\$1,162,967</u>	<u>\$ 679,798</u>	

During 2007, the Company had capital purchases of \$16.2 million and \$118.9 million for the DHL and Charter segments, respectively. Interest income of \$4.6 million and \$4.8 million is included in All other pre-tax earnings for 2007 and 2006, respectively. In 2004, interest earned on cash and cash equivalents reduced interest expense when calculating revenue under the DHL agreements. Beginning in 2005, interest earned on cash and cash equivalents is not included in the DHL revenue calculation. Interest expense of \$6.5 million for 2007 and \$7.3 million for 2006 and 2005 is reimbursed through the commercial agreements with DHL and included in the DHL earnings above. All other interest is included in the All other category. Cash, cash equivalents, marketable securities and deferred tax assets are reflected in Assets—All other.

For the purposes of internal reporting, 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. Beginning with the Company's issuance of stock awards in the second quarter of 2005, certain administrative costs that are not reimbursed by DHL are allocated to the DHL segment based on segment earnings.

#### Entity-Wide Disclosures

The Company's international revenues were approximately \$47.3 million, \$17.2 million and \$12.0 million for 2007, 2006 and 2005, respectively, derived primarily from international flights. All revenues for the DHL segment are attributed to U.S. operations.

#### NOTE O—QUARTERLY RESULTS (Unaudited)

The following is a summary of quarterly results of operations (in thousands except per share data):

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
<b>2007</b>				
Revenues	\$288,062	\$281,297	\$285,964	\$319,192
Net earnings	4,267	4,545	2,404	8,371
Weighted average shares:				
Basic	58,282	58,282	58,288	58,345
Diluted	58,589	58,635	58,750	58,633
Earnings per share				
Basic	\$ 0.07	\$ 0.08	\$ 0.04	\$ 0.14
Diluted	\$ 0.07	\$ 0.08	\$ 0.04	\$ 0.14
<b>2006</b>				
Revenues	\$369,165	\$303,578	\$281,348	\$306,270
Net earnings	8,093	6,459	6,574	68,928
Weighted average shares:				
Basic	58,270	58,270	58,270	58,270
Diluted	58,413	58,567	58,585	58,487
Earnings per share				
Basic	\$ 0.14	\$ 0.11	\$ 0.11	\$ 1.18
Diluted	\$ 0.14	\$ 0.11	\$ 0.11	\$ 1.18

In December 2006, the Company recorded an income tax benefit of \$54.0 million to reverse the remaining valuation allowance on deferred tax assets. During the fourth quarters of 2007 and 2006, the Company recognized revenues of \$7.0 million and \$7.3 million, respectively, for achieving annual cost-related and service goals under the ACMI and Hub Services commercial agreements with DHL.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

As of December 31, 2007, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, of the effectiveness of the design and operation of the Company'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, the Company's Chief Executive Officer, and its Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective.

**Changes in Internal Controls**

There were no changes in the Company's internal controls over financial reporting during the fourth quarter of 2007 that materially affected or are reasonably likely to materially affect the Company's internal controls over financial reporting.

**Management's Annual Report on Internal Controls over Financial Reporting**

The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's internal control system is designed 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.

All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

The Company's management assessed the effectiveness of the company's internal control over financial reporting as of December 31, 2007. In making this assessment, it used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control—Integrated Framework*.

The management of the Company excluded from its assessment the internal control over financial reporting at Cargo Holdings International, Inc. and subsidiaries, which was acquired on December 31, 2007 and whose financial statements constitute 173% and 30% of net and total assets, respectively, of the consolidated financial statement amounts as of December 31, 2007. Accordingly, the officers' certifications provided in conjunction with this Form 10-K, the forms of which are contained in Exhibits 31.1 and 31.2 hereof, exclude an assessment of the internal control over financial reporting at Cargo Holdings International, Inc., and subsidiaries.

Based on management's assessment of those criteria, management believes that, as of December 31, 2007, the Company's internal control over financial reporting was effective.

The Company's registered public accounting firm has issued an attestation report on our assessment of the Company's internal control over financial reporting. That report follows.

March 17, 2008

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of ABX Holdings, Inc.  
Wilmington, Ohio

We have audited the internal control over financial reporting of ABX Holdings, Inc. (formerly ABX Air, Inc.) and subsidiaries (the "Company") as of December 31, 2007, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. As described in Management's Annual Report on Internal Controls over Financial Reporting, management excluded from its assessment the internal control over financial reporting at Cargo Holdings International, Inc. and subsidiaries, which was acquired on December 31, 2007 and whose financial statements constitute 173% and 30% of net and total assets, respectively, of the consolidated financial statement amounts as of December 31, 2007. Accordingly, our audit did not include the internal control over financial reporting at Cargo Holdings International, Inc. and subsidiaries. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Annual Report on Internal Controls over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2007, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements and financial statement schedule as of and for the year ended December 31, 2007 of the Company and our report dated March 17, 2008 expressed an unqualified opinion on those financial statements and financial statement schedules and includes explanatory paragraphs regarding the Company's principal customer, the Company's defined benefit plans investments whose fair values have been estimated by management in the absence of readily determinable fair values, the Company's acquisition of Cargo Holdings International Inc. on December 31, 2007, and the Company's adoption of Statement of Financial Accounting Standards No. 158, *Employers Accounting for Defined Benefit Pension and Other Postretirement Plans (an amendment of FASB Statements No. 87, 88, 106, and 132(R))*.

DELOITTE & TOUCHE LLP

Dayton, Ohio  
March 17, 2008

**ITEM 9B. OTHER INFORMATION**

None.

**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The response to this Item is contained in part in the Proxy Statement for the 2008 Annual Meeting of Stockholders under the captions "Election of Directors," "Section 16(a) Beneficial Ownership Reporting Compliance," and "Corporate Governance and Board Matters." The information contained therein is incorporated herein by reference.

**Executive Officers**

The following table sets forth information about the Company's executive officers. The executive officers serve at the pleasure of the Company's Board of Directors.

<u>Name</u>	<u>Age</u>	<u>Information</u>
Joseph C. Hete	53	President and Chief Executive Officer, ABX Holdings, Inc., since September 2007 and Chief Executive Officer, ABX Air, Inc., since August 2003.  Mr. Hete was President of ABX Air, Inc. from January 2000 to February 2008. Mr. Hete was Chief Operating Officer of ABX Air, Inc. from January 2000 to August 2003. From 1997 until January 2000, Mr. Hete held the position of Senior Vice President and Chief Operating Officer of ABX Air, Inc. Mr. Hete served as Senior Vice President, Administration of ABX Air, Inc. from 1991 to 1997 and Vice President, Administration of ABX Air, Inc. from 1986 to 1991. Mr. Hete joined ABX Air, Inc. in 1980.
Peter F. Fox	58	Chief Commercial Officer, ABX Holdings, Inc., since February 2008.  Mr. Fox served as President and Chief Executive Officer of Cargo Holdings International, Inc. since he founded that company in 1999 as the parent of several related businesses, including Capital Cargo International Airlines, Inc.
John Graber	50	President, ABX Air, Inc., since February 2008.  Mr. Graber was Chief Operating Officer of ABX Air, Inc., from July 2007 to February 2008. Mr. Graber held positions as President and General Manager of Aircraft Services Indianapolis and Senior Vice President of Operations and General Manager of the military and charter businesses at ATA Airlines, and his experience includes over 10,000 hours of flight time as a pilot before joining ABX.
W. Joseph Payne	44	Senior Vice President, Corporate General Counsel and Secretary, ABX Holdings, Inc., since February 2008.  Mr. Payne was Vice President, General Counsel and Secretary, from January 2004 to February 2008, Corporate Secretary/Counsel from January 1999 to January 2004, and Assistant Corporate Secretary from July 1996 to January 1999. Mr. Payne joined ABX Air, Inc. in April 1995.

<u>Name</u>	<u>Age</u>	<u>Information</u>
Quint O. Turner	45	Chief Financial Officer, ABX Holdings, Inc., since February 2008. From December 2004 to February 2008, Mr. Turner served as Chief Financial Officer of ABX Air, Inc. Mr. Turner was Vice President of Administration of ABX Air, Inc. from February 2002 to December 2004. Mr. Turner was Corporate Director of Financial Planning and Accounting of ABX Air, Inc. from 1997 to 2002. Prior to 1997, Mr. Turner held positions of Manager of Planning and Director of Financial Planning of ABX Air, Inc. Mr. Turner joined ABX Air, Inc. in 1988 as a Staff Auditor.

The executive officers of the Company are appointed annually at the Board of Directors meeting held in conjunction with the annual meeting of stockholders. There are no family relationships between any directors or executive officers of the Company.

**ITEM 11. EXECUTIVE COMPENSATION**

The response to this Item is contained in the Proxy Statement for the 2008 Annual Meeting of Stockholders under the captions “Executive Compensation” and “Director Compensation,” and the information contained therein is incorporated herein by reference.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

Securities authorized for issuance under equity compensation plans as of December 31, 2007 are summarized below:

<u>Plan</u>	<u>Maximum number of common shares contingently issuable (a)</u>	<u>Weighted average exercise prices of outstanding options, warrants, or rights (b)</u>	<u>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column a) (c)</u>
2005 Long-Term Incentive Compensation Plan	957,400	N/A	1,875,200

The 2005 Long-Term Incentive Compensation Plan was approved by shareholders in May 2005. Performance-Based Stock Units and Time-Based Restricted Stock have been awarded to employees and Time-Based Restricted Stock Units have been awarded to non-employee directors under the Plan. The awards are described in Note K of this report, Stock-Based Compensation. ABX does not have any equity compensation plans that were not approved by its shareholders.

Other responses to this Item are contained in part in the Proxy Statement for the 2008 Annual Meeting of Stockholders under the captions “Voting at the Meeting,” “Stock Ownership of Management” and “Common Stock Ownership of Certain Beneficial Owners,” and the information contained therein is incorporated herein by reference.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The response to this Item is contained in part in the Proxy Statement for the 2008 Annual Meeting of Stockholders under the captions “Related Person Transactions” and “Independence,” and the information contained therein is incorporated herein by reference.

**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The response to this Item is contained in the Proxy Statement for the 2008 Annual Meeting of Stockholders under the caption “Fees of the Independent Registered Public Accounting Firm,” and the information contained therein is incorporated herein by reference.

**PART IV**

**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

(a) List of Documents filed as part of this report:

(1) Consolidated Financial Statements

The following are filed in Part II, item 8 of this Form 10-K Annual Report:

Report of Independent Registered Public Accounting Firm  
Consolidated Balance Sheets  
Consolidated Statements of Earnings  
Consolidated Statements of Cash Flows  
Consolidated Statements of Stockholders’ Equity  
Notes to Consolidated Financial Statements

(2) Financial Statement Schedules

**Schedule II—Valuation and Qualifying Account**

<u>Description</u>	<u>Balance at beginning of period</u>	<u>Additions charged to cost and expenses</u>	<u>Deductions</u>	<u>Balance at end of period</u>
Accounts receivable reserve:				
Year ended:				
December 31, 2007	\$516,000	\$103,948	\$256,804	\$ 363,144
December 31, 2006	872,000	27,961	383,961	516,000
December 31, 2005	244,000	692,349	64,349	872,000
December 31, 2004	268,500	8,827	33,327	244,000

All other schedules are omitted because they are not applicable or are not required, or because the required information is included in the consolidated financial statements or notes thereto.

(3) Exhibits

The following exhibits are filed with or incorporated by reference into this report.

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
	<b>Plan of acquisition, reorganization, arrangement, liquidation or succession.</b>
2.1	Agreement and Plan of Merger, dated as of March 25, 2003, by and among Airborne, Inc., DHL Worldwide Express B.V. and Atlantis Acquisition Corporation (included as Appendix A to the proxy statement/prospectus which is a part of this registration statement). (1)
2.2	Agreement and Plan of Reorganization, dated as of October 17, 2007, by and among ABX Air, Inc., ABX Holdings, Inc. and ABX Merger Sub, Inc. (19)
2.3	Preferred Stock Rights Agreement, dated October 17, 2007, by and between ABX Holdings, Inc. and National City Bank. (19)
2.4	Agreement and Plan of Reorganization and Certificate of Merger, dated December 31, 2007, between ABX Air, Inc., ABX Holdings, Inc. and ABX Merger Sub, Inc., filed herewith.
2.5	Stock Purchase Agreement dated November 1, 2007, by and among ABX Holdings, Inc., CHI Acquisition Corp., Cargo Holdings International, Inc., the Significant Shareholders Named and the Parties Subsequently Joining Hereto Pursuant to Joinder Agreements, filed herewith.
	<b>Articles of Incorporation</b>
3.1	Certificate of Incorporation of ABX Holdings, Inc. (incorporated by reference to the Form 8-A/A of ABX Holdings, Inc. filed with the Securities and Exchange on January 2, 2008). (19)
3.2	Bylaws of ABX Holdings, Inc. (incorporated by reference to the Form 8-A/A of ABX Holdings, Inc. filed with the Securities and Exchange on January 2, 2008). (19)
	<b>Instruments defining the rights of security holders</b>
4.1	Specimen of common stock of ABX Holdings, Inc. (3)
4.2	Preferred Stock Rights Agreement dated December 31, 2007 by and between ABX Holdings, Inc. and a rights agent. (19)
	<b>Material Contracts</b>
10.1	Form of Master Separation Agreement dated as of the effective date of the merger, by and among Airborne, Inc., ABX Air, Inc. and Wilmington Air Park LLC. (included as Appendix B to the proxy statement/prospectus which is a part of this registration statement) (1)
10.2	Form of ACMI Service Agreement, dated as of the effective date of the merger, by and between ABX Air, Inc. and Airborne, Inc. (Certain portions have been omitted based upon a request for confidential treatment. The nonpublic information has been filed with the Securities and Exchange Commission.) (2)
10.3	Form of Hub and Line-Haul Services Agreement dated as of the effective date of the merger, by and between ABX Air, Inc. and Airborne, Inc. (1)
10.4	Form of Performance Guaranty dated as of the effective date of the merger, by and between DHL Holdings USA, Inc. and Airborne, Inc. with respect to the Hub and Line-Haul Services Agreement. (1)
10.5	Form of Performance Guaranty dated as of the effective date of the merger, by and between DHL Holdings USA, Inc. and Airborne, Inc. with respect to the ACMI Service Agreement. (1)
10.6	First Non-Negotiable Promissory Note issued by ABX Air, Inc. in favor of Airborne Inc., (5)

- 10.7 Form of Second Non-Negotiable Promissory Note issued by ABX Air, Inc. in favor of DHL Holdings (USA), Inc. (1)
- 10.8 Form of Transition Services Agreement, dated as of the effective date of the merger, by and between ABX Air, Inc. and Airborne, Inc. (1)
- 10.9 Form of Wilmington Airpark Sublease, dated as of the effective date of the merger, by and between ABX Air, Inc. and Airborne, Inc. (1)
- 10.10 Form of Employee Matters Agreement dated as of the effective date of the merger, by and between Airborne, Inc. and ABX Air, Inc. (1)
- 10.11 Form of Tax Sharing Agreement dated as of the effective date of the merger, by and between Airborne, Inc. and ABX Air, Inc. (1)
- 10.12 Participation Agreement dated as of August 16, 2001, among ABX Air, Inc., as lessee, Mitsui & Co. Ltd., as finance lessor, Tomair LLC, as Owner Participant, and Wells Fargo Bank Northwest, National Association, as Owner Trustee. (1)
- 10.13 Lease Agreement dated as of August 21, 2001, between Owner Trustee, as lessor, and ABX Air, Inc., as lessee. (1)
- 10.14 Form of change in control agreement with CEO and each of the next four highest paid officers. (4)
- 10.15 Form of Retention Bonus Agreement with CEO and each of the next four highest paid officers. (4)
- 10.15a Form of Amendment to Retention Bonus Agreement. (15)
- 10.16 Director compensation fee summary. (6)
- 10.17 Form of Executive Incentive Compensation Plan for CEO and the next four highest paid officers. (9)
- 10.18 Credit Agreement, dated as of March 31, 2004. (7)
- 10.19 Amendment No.1-dated June 18, 2004 to the Credit Agreement dated as of March 31, 2004. (8)
- 10.20 Form of Long-Term Incentive Compensation plan for officers, dated July 12, 2005. (10)
- 10.21 Amendment to the Hub and Line-Haul Services Agreement, dated August 9, 2005. (11)
- 10.22 Form of Long-Term Incentive Compensation Plan for directors, dated October 4, 2005. (12)
- 10.23 Aircraft modification agreement with Israel Aircraft Industries, Ltd. (13)
- 10.24 Consent to Assignment of ACMI Service Agreement and Hub & Line-Haul Services Agreement. (13)
- 10.25 Agreement with DHL, dated March 15, 2006. (13)
- 10.26 Letter from DHL dated July 19, 2006, notifying ABX Air, Inc. of a change to the scope of services under the ACMI agreement. (14)
- 10.27 Aircraft Loan and Security Agreement and related promissory note, dated August 24, 2006, by and among ABX Air, Inc. and Chase Equipment Leasing, Inc. (14)
- 10.28 Aircraft Loan and Security Agreement and related promissory note, dated October 10, 2006, by and among ABX Air, Inc. and Chase Equipment Leasing, Inc. (15)
- 10.29 Aircraft Loan and Security Agreement and related promissory note, dated February 16, 2007, by and among ABX Air, Inc. and Chase Equipment Leasing, Inc. (16)
- 10.30 Aircraft Loan and Security Agreement and related promissory note, dated April 25, 2007, by and among ABX Air, Inc. and Chase Equipment Leasing, Inc. (17)
- 10.31 Aircraft Loan and Security Agreement and related promissory note, dated July 18, 2007, by and among ABX Air, Inc. and Chase Equipment Leasing, Inc. (18)

- 10.32 Credit Agreement dated December 31, 2007, among ABX Holdings, Inc., ABX Air, Inc., CHI Acquisition Corp., SunTrust Bank as Administrative Agent, Regions Bank as Syndication Agent and the other lenders from time to time a party thereto. (19)
- 10.33 Guarantee and Collateral Agreement dated December 31, 2007, executed by ABX Holdings, Inc., ABX Air, Inc., CHI Acquisition Corp. and each direct and indirect subsidiary of ABX Holdings, Inc. (19)
- 10.34 Escrow Agreement dated December 31, 2007, among ABX Holdings, Inc., ABX Air, Inc., the Significant Shareholders who are signatories thereto and Wells Fargo Bank, National Association. (19)
- 10.35 Securities Purchase Agreement dated December 31, 2007, among ABX Holdings, Inc., ABX Air, Inc. and the Significant Shareholders who are signatories thereto. (19)
- 10.36 Form of Senior Subordinated Convertible Note of ABX Holdings, Inc. (19)
- 10.37 Form of Senior Subordinated Notes of ABX Air, Inc. (19)
- 10.38 Aircraft Loan and Security Agreement and related promissory note, dated October 26, 2007, by and among ABX Air, Inc. and Chase Equipment Leasing, Inc., filed herewith.
- 10.39 Aircraft Loan and Security Agreement and related promissory note, dated December 19, 2007, by and among ABX Air, Inc. and Chase Equipment Leasing, Inc., filed herewith.
- 10.40 Employment Agreement between Cargo Holdings International, Inc. and Peter Fox, dated November 1, 2007. (19)

**Code of Ethics**

- 14.1 Code of Ethics—CEO and CFO. (6)

**List of Significant Subsidiaries**

- 21.1 List of Significant Subsidiaries of ABX Holdings, Inc., filed within.

**Consent of experts and counsel**

- 23.1 Consent of independent registered public accounting firm, filed herewith.

**Certifications**

- 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 Registration Statement Form S-4 filed on May 9, 2003 with the Securities and Exchange Commission.
  - (2) Incorporated by reference to the Company's Registration Statement Form S-4/A filed on June 18, 2003 with the Securities and Exchange Commission, as amended.
  - (3) Incorporated by reference to the Company's Registration Statement Form S-4/A filed on July 9, 2003 with the Securities and Exchange Commission, 2003, as amended.
  - (4) Incorporated by reference to the Company's Quarterly Report on Form 10-Q filed on November 14, 2003 with the Securities and Exchange Commission.
  - (5) Incorporated by reference to the Company's Annual Report of Form 10-K filed on March 25, 2004 with the Securities and Exchange Commission.

- (6) Incorporated by reference to the Company's Proxy Statement for the 2005 Annual Meeting of Stockholders.
- (7) Incorporated by reference to the Company's 8-K filed on April 7, 2004.
- (8) Incorporated by reference to the Company's Quarterly Report on Form 10-Q filed on August 11, 2004 with the Securities and Exchange Commission.
- (9) Incorporated by reference to the Company's Quarterly Report on Form 10-Q filed on May 14, 2004 with the Securities and Exchange Commission.
- (10) Incorporated by reference to the Company's 8-K filed on July 12, 2005.
- (11) Incorporated by reference to the Company's 8-K filed on August 9, 2005.
- (12) Incorporated by reference to the Company's 8-K filed on October 4, 2005.
- (13) Incorporated by reference to the Company's Annual Report of Form 10-K filed on March 16, 2006 with the Securities and Exchange Commission.
- (14) Incorporated by reference to the Company's Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on August 9, 2006.
- (15) Incorporated by reference to the Company's Annual Report of Form 10-K/A filed on August 14, 2007 with the Securities and Exchange Commission.
- (16) Incorporated by reference to the Company's Quarterly Report on Form 10-Q/A, filed with the Securities and Exchange Commission on August 14, 2007.
- (17) Incorporated by reference to the Company's Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on August 14, 2007.
- (18) Incorporated by reference to the Company's Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on November 14, 2007.
- (19) Incorporated by reference to the Company's 8-K/A, submitted for filing with the Securities and Exchange Commission on March 14, 2008.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

### ABX Holdings, Inc.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ JOSEPH C. HETE</u> Joseph C. Hete	President and Chief Executive Officer	March 17, 2008

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons in the capacities and on the date indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ JAMES H. CAREY</u> James H. Carey	Director and Chairman of the Board	March 17, 2008
<u>/s/ JAMES E. BUSHMAN</u> James E. Bushman	Director	March 17, 2008
<u>/s/ JEFFREY A. DOMINICK</u> Jeffrey A. Dominick	Director	March 17, 2008
<u>/s/ JOHN D. GEARY</u> John D. Geary	Director	March 17, 2008
<u>/s/ JOSEPH C. HETE</u> Joseph C. Hete	Director, President and Chief Executive Officer	March 17, 2008
<u>/s/ RANDY D. RADEMACHER</u> Randy D. Rademacher	Director	March 17, 2008
<u>/s/ JEFFREY J. VORHOLT</u> Jeffrey J. Vorholt	Director	March 17, 2008
<u>/s/ QUINT O. TURNER</u> Quint O. Turner	Chief Financial Officer	March 17, 2008

**AGREEMENT AND PLAN OF REORGANIZATION**

This AGREEMENT AND PLAN OF REORGANIZATION ("Agreement"), dated as of December 31, 2007, is among ABX Air, Inc., a Delaware corporation (the "Company"), ABX Holdings, Inc., a Delaware corporation and a wholly-owned subsidiary of the Company ("Holdings"), and ABX Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Holdings ("Merger Sub").

RECITALS:

WHEREAS, as of the close of business on December 29, 2007, the authorized capital stock of the Company consisted of (i) 75,000,000 shares of common stock, par value \$0.01 per share ("Company Common Stock"), of which 58,678,856 shares were issued and outstanding, and no shares were held in treasury, and (ii) 20,000,000 shares of preferred stock, par value \$0.01 per share ("Company Preferred Stock"), none of which were issued and outstanding;

WHEREAS, as of the date hereof, the authorized capital stock of Holdings consists of (i) 75,000,000 shares of common stock, par value \$0.01 per share (the "Holdings Common Stock"), of which 1,000 shares are issued and outstanding and no shares are held in treasury, and (ii) 20,000,000 shares of preferred stock, par value \$0.01 per share (the "Holdings Preferred Stock"), of which no shares are issued and outstanding;

WHEREAS, as of the date hereof, the authorized capital stock of Merger Sub consists of 1,000 shares of common stock, par value \$0.01 per share ("Merger Sub Common Stock"), all of which are issued and outstanding and no shares are held in treasury;

WHEREAS, the designations, rights, powers and preferences, and the qualifications, limitations and restrictions thereof, of the Holdings Preferred Stock and the Holdings Common Stock are the same as those of the Company Preferred Stock and the Company Common Stock, respectively;

WHEREAS, the Certificate of Incorporation and the Bylaws of Holdings immediately after the Effective Time (as hereinafter defined) will contain provisions identical to the Certificate of Incorporation and the Bylaws of the Company immediately before the Effective Time (other than with respect to matters excepted by Section 251(g) of the General Corporation Law of the State of Delaware (the "DGCL"));

WHEREAS, the directors and officers of the Company immediately prior to the Merger (as hereinafter defined) will be the directors of Holdings as of the Effective Time;

WHEREAS, Holdings and Merger Sub are newly formed Delaware corporations organized for the purpose of participating in the transactions herein contemplated;

WHEREAS, the Company desires to create a new holding company structure by merging Merger Sub with and into the Company with the Company being the surviving corporation and converting each outstanding share of Company Common Stock into one share of Holdings Common Stock in accordance with the terms of this Agreement;

WHEREAS, the Boards of Directors of Holdings, Merger Sub and the Company and Holdings, in its capacity as the sole stockholder of Merger Sub, have approved this Agreement and the merger of Merger Sub with and into the Company upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, pursuant to authority granted by the Board of Directors of the Company, the Company will, immediately prior to the Effective Time, contribute to the capital of Holdings any shares of Company Common Stock then held by the Company in its treasury; and

WHEREAS, the parties intend, by executing this Agreement, to adopt a plan of reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code"), and to cause the Merger to qualify as a reorganization under the provisions of Section 368(a) of the Code;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained in this Agreement, and intending to be legally bound hereby, the Company, Holdings and Merger Sub hereby agree as follows:

## **ARTICLE I. THE MERGER**

Section 1.1 The Merger. In accordance with Section 251(g) of the DGCL and subject to and upon the terms and conditions of this Agreement, Merger Sub shall, at the Effective Time, be merged with and into the Company (the "Merger"), the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation (the "Surviving Corporation"). At the Effective Time, the effect of the Merger shall be as provided in Section 259 of the DGCL.

Section 1.2 Effective Time. The parties shall file this Agreement with the Secretary of State of the State of Delaware and shall make all other filings or recordings required under the DGCL to effect the Merger. The Merger shall become effective on December 31, 2007 immediately after the Certificate of Merger and a copy of this Agreement are filed with the Secretary of State of the State of Delaware (the "Effective Time").

Section 1.3 Amended Certificate of Incorporation of the Surviving Corporation. From and after the Effective Time, the Certificate of Incorporation of the Company, as in effect immediately prior to the Effective Time, shall be amended as set forth below, and as so amended, shall thereafter continue in full force and effect as the certificate of incorporation of the Surviving Corporation until thereafter amended as provided by law, and as so amended, shall constitute the Amended Certificate of Incorporation of the Surviving Corporation:

(a) Article Fourth shall be amended and restated in its entirety as follows:

"The total number of shares of all classes of capital stock which the Corporation shall have the authority to issue is 1,000 shares, of which 1,000 shall be Common Stock, par value \$0.01 per share ("Common Stock"). Authority is hereby expressly granted to the Board of Directors to fix by resolution or resolutions any of the designations and the powers, preferences and rights, and the qualifications,

limitations or restrictions which are permitted by the General Corporation Law of the State of Delaware in respect of any class or classes of stock or any series of any class of stock of the corporation. No shares of the previously designated Series A Junior Participating Preferred Stock having been issued, such series is hereby terminated and all matters set forth in this Certificate of Incorporation with respect to such series are hereby eliminated from this Certificate of Incorporation.”

(b) A new Article Twenty-First shall be added and shall read in its entirety as follows:

“Any act or transaction by or involving the Corporation, other than the election or removal of directors of the Corporation, that requires for its adoption under the General Corporation Law of the State of Delaware or this Certificate of Incorporation the approval of the stockholders of the Corporation shall, pursuant to Section 251(g) of the General Corporation Law of the State of Delaware, require, in addition, the approval of the stockholders of ABX Holdings, Inc., a Delaware corporation, or any successor thereto by merger, by the same vote that is required by the General Corporation Law of the State of Delaware and/or this Certificate of Incorporation.”

Section 1.4 Bylaws. From and after the Effective Time, the Bylaws of the Company, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation until thereafter amended as provided therein or by applicable law.

Section 1.5 Directors. The directors of the Company immediately prior to the Effective Time shall be the directors of the Surviving Corporation and will hold office from the Effective Time until their successors are duly elected or appointed and qualified in the manner provided in the Certificate of Incorporation and the Bylaws of the Surviving Corporation or as otherwise provided by law.

Section 1.6 Officers. The officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation and will hold office from the Effective Time until their successors are duly elected or appointed and qualified in the manner provided in the Certificate of Incorporation and the Bylaws of the Surviving Corporation or as otherwise provided by law.

Section 1.7 Additional Actions. Subject to the terms of this Agreement, the parties hereto shall take all such reasonable and lawful action as may be necessary or appropriate in order to effectuate the Merger and to comply with the requirements of Section 251(g) of the DGCL. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either of Merger Sub or the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of each of Merger Sub and the Company, all such deeds, bills of sale,

assignments and assurances and to take and do, in the name and on behalf of each of Merger Sub and the Company or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

Section 1.8 Conversion of Securities. At the Effective Time, by virtue of the Merger and without any action on the part of Holdings, Merger Sub, the Company or the holder of any of the following securities:

(a) Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive one duly issued, fully paid and nonassessable share of Holdings Common Stock.

(b) Each share of Merger Sub Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into and thereafter represent one duly issued, fully paid and nonassessable share of common stock, par value \$0.01 per share, of the Surviving Corporation.

(c) Each share of Holdings Common Stock owned by the Company immediately prior to the Merger shall automatically be canceled and retired and shall cease to exist.

(d) From and after the Effective Time, holders of certificates formerly evidencing Company Common Stock and Company Preferred Stock shall cease to have any rights as stockholders of the Company, except as provided by law; provided, however, that such holders shall have the rights set forth in Section 1.9 herein.

Section 1.9 Preferred Share Purchase Rights.

(a) In accordance with Section 24(a) of that certain Preferred Stock Rights Agreement dated as of August 15, 2003, as amended and in effect on the Effective Date, between the Company and National City Bank, as Rights Agent (the "Company Rights Agreement"), as of the Effective Date, each outstanding preferred stock purchase right of the Company ("Company Right") shall be converted into one preferred stock purchase right of Holdings issued under the Holdings Rights Agreement (as defined below).

(b) Holdings shall, prior to the Effective Time, adopt a preferred stock rights agreement (the "Holdings Rights Agreement") substantially similar in form and substance to the Company Rights Agreement, with such changes and adjustments thereto as may be necessary to reflect that, at the Effective Date, each Company Right will be converted into one preferred stock purchase right of Holdings issued pursuant to the Holdings Rights Agreement, and, in accordance therewith, Holdings shall, at the Effective Date but without duplication of Holdings' obligations under the Holdings Rights Agreement, issue to each holder of Holdings Common Stock issued pursuant hereto one preferred stock purchase right ("Holdings Right") for each share of Holdings Common Stock issued by it pursuant to Section 1.8(a) herein.

Section 1.10 No Surrender of Certificates; Stock Transfer Books. At the Effective Time, the designations, rights, powers and preferences, and qualifications, limitations and restrictions thereof, of the capital stock of Holdings will, in each case, be identical with those of the Company immediately prior to the Effective Time. Accordingly, until thereafter surrendered for transfer or exchange in the ordinary course, each outstanding certificate that, immediately prior to the Effective Time, evidenced Company Common Stock shall, from the Effective Time, be deemed and treated for all corporate purposes to evidence the ownership of the same number of shares of Holdings Common Stock.

Section 1.11 Plan of Reorganization. This Agreement is intended to constitute a “plan of reorganization” within the meaning of Treasury Regulation Section 1.368-2(g). Each party hereto shall use its commercially reasonable efforts to cause the Merger to qualify, and will not knowingly take any actions or cause any actions to be taken which could reasonably be expected to prevent the Merger from qualifying, as a reorganization within the meaning of Section 368(a) of the Code.

## **ARTICLE II. ACTIONS TO BE TAKEN IN CONNECTION WITH THE MERGER**

Section 2.1 Assumption of Stock Units. At the Effective Time, all restricted stock units and performance based stock units (collectively, the “Stock Units”) convertible into Company Common Stock then outstanding under the ABX Air, Inc. 2005 Long-Term Incentive Plan (“Incentive Plan”), will be assumed by Holdings. Each Stock Unit so assumed by Holdings under this Agreement will continue to have, and be subject to, the same terms and conditions as set forth in the Incentive Plan and any agreements thereunder immediately prior to the Effective Time (including, without limitation, the vesting schedule (without acceleration thereof by virtue of the Merger and the transactions contemplated hereby)) except that each Stock Unit will be convertible for that number of shares of Holdings Common Stock equal to the number of shares of Company Common Stock that were subject to such Stock Unit immediately prior to the Effective Time.

Section 2.2 Assumption of Incentive Plan and Other Agreements. Holdings and the Company hereby agree that they will, at or promptly following the Effective Time, execute, acknowledge and deliver an assignment and assumption agreement (the “Assignment and Assumption Agreement”) pursuant to which, from and after the Effective Time, the Company will assign to Holdings, and Holdings will assume and agree to perform, all obligations of the Company pursuant to (a) the Incentive Plan, and (b) each restricted stock award agreement, restricted stock unit award agreement and performance-based stock unit award agreement or similar agreement entered into pursuant to the Incentive Plan. At the Effective Time, the Incentive Plan shall be automatically amended as necessary to provide that references to the Company in the Incentive Plan shall be read to refer to Holdings.

Section 2.3 Reservation of Shares. On or prior to the Effective Time, Holdings will reserve sufficient shares of Holdings Common Stock to provide for the issuance of Holdings Common Stock under the Incentive Plan, including upon vesting of the Stock Units, and will reserve the Holdings Series A Preferred Stock sufficient to provide for the issuance thereof upon exercise of Holdings Rights.

**ARTICLE III.  
CONDITIONS OF MERGER**

Section 3.1 Conditions Precedent. The obligations of the parties to this Agreement to consummate the Merger and the transactions contemplated by this Agreement shall be subject to fulfillment or waiver by the parties hereto at or prior to the Effective Time of each of the following conditions:

(a) No order, statute, rule, regulation, executive order, injunction, stay, decree, judgment or restraining order that is in effect shall have been enacted, entered, promulgated or enforced by any court or governmental or regulatory authority or instrumentality which prohibits or makes illegal the consummation of the Merger or the transactions contemplated hereby.

(b) The Board of Directors of the Company shall have received evidence in form and substance reasonably satisfactory to it indicating that holders of Company Common Stock and Company Preferred Stock will not recognize gain or loss for United States federal income tax purposes as a result of the merger.

(c) All third party consents and approvals required, or deemed by the Board of Directors of the Company advisable, to be obtained under any note, bond, mortgage, deed of trust, security interest, indenture, lease, license, contract, agreement, exchange membership, exchange allocation, plan or instrument or obligation to which the Company or any subsidiary or affiliate of the Company is a party, or by which the Company or any subsidiary or affiliate of the Company, or any property of the Company or any subsidiary or affiliate of the Company may be bound, in connection with the Merger and the transactions contemplated thereby, shall have been obtained by the Company or its subsidiary or affiliate, as the case may be.

**ARTICLE IV.  
COVENANTS**

Section 4.1 Election of Directors. Effective as of the Effective Time, the Company, in its capacity as the sole stockholder of Holdings, will, if necessary to comply with Section 251(g) of the DGCL, cause the board of directors of Holdings to effect such amendments to the Bylaws of Holdings as are necessary to increase the number of directors of Holdings to equal the number of directors of the Company immediately prior to the Effective Time, remove each of the then directors of Holdings, and elect each person who is then a member of the board of directors of the Company as a director of Holdings, each of whom shall serve until his successor shall have been elected and qualified in accordance with the Certificate of Incorporation of Holdings.

Section 4.2 Contribution of Treasury Stock. Immediately prior to the Effective Time, the Company will contribute to the capital of Holdings any shares of Company Common Stock then held in the treasury of the Company.

**ARTICLE V.  
TERMINATION AND AMENDMENT**

Section 5.1 Termination. This Agreement may be terminated and the Merger contemplated hereby may be abandoned at any time prior to the Effective Time by action of the Board of Directors of the Company or the Board of Directors of Merger Sub if such Board of Directors should determine that for any reason the completion of the transactions provided for herein would be inadvisable or not in the best interest of such corporation or its stockholders. In the event of such termination and abandonment, this Agreement shall become void and neither the Company nor Merger Sub nor their respective stockholders, directors or officers shall have any liability with respect to such termination and abandonment.

Section 5.2 Amendment. At any time prior to the Effective Time, this Agreement may, to the extent permitted by the DGCL, be supplemented, amended or modified by the mutual consent of the Boards of Directors of the parties to this Agreement.

**ARTICLE VI.  
MISCELLANEOUS PROVISIONS**

Section 6.1 Governing Law. This Agreement shall be governed by and construed and enforced under the laws of the State of Delaware.

Section 6.2 Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which shall constitute one and the same agreement.

Section 6.3 Entire Agreement. This Agreement, including the Schedules attached hereto, together with the Assignment and Assumption Agreement constitute the entire agreement and supersede all other agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof. This Agreement may not be amended or supplemented except by a written document executed by the parties to this Agreement.

Section 6.4 Severability. The provisions of this Agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the Company, Holdings and Merger Sub have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ABX AIR, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ABX HOLDINGS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ABX MERGER SUB, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CERTIFICATE OF THE SECRETARY  
OF  
ABX MERGER SUB, INC.

I, W. Joseph Payne, the Secretary of ABX Merger Sub, Inc., a Delaware corporation (the "Corporation"), hereby certify that the Agreement and Plan of Reorganization (the "Agreement") to which this certificate is attached, after having been duly approved by the Board of Directors of the Corporation, was then submitted to the sole stockholder of the Corporation, which stockholder adopted and approved the Agreement by its written consent thereto given in accordance with Section 228 of the General Corporation Law of the State of Delaware.

The undersigned executes this certificate as of December 31, 2007.

ABX MERGER SUB, INC.

By: \_\_\_\_\_  
W. Joseph Payne

CERTIFICATE OF THE SECRETARY  
OF  
ABX AIR, INC.

I, W. Joseph Payne, the Secretary of ABX Air, Inc., a Delaware corporation (the "Corporation"), hereby certify that the Agreement and Plan of Reorganization to which this certificate is attached has been adopted by the Board of Directors of the Corporation pursuant to Section 251(g) of the General Corporation Law of the State of Delaware and that the conditions specified in the first sentence of such subsection have been satisfied.

The undersigned executes this certificate as of December 31, 2007.

ABX AIR, INC.

By: \_\_\_\_\_  
W. Joseph Payne

STATE OF DELAWARE  
CERTIFICATE OF MERGER OF  
DOMESTIC CORPORATIONS

Pursuant to Title 8, Section 251(g) of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

**FIRST:** The name of the surviving corporation is ABX Air, Inc., and the name of the corporation being merged into this surviving corporation is ABX Merger Sub, Inc.

**SECOND:** The Agreement and Plan of Reorganization has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations.

**THIRD:** The name of the surviving corporation is ABX Air, Inc., a Delaware corporation.

**FOURTH:** The Certificate of Incorporation of the surviving corporation shall be the Amended and Restated Certificate of Incorporation being filed with the Department of State of Delaware simultaneously with this Certificate of Merger, and shall thereafter continue in full force and effect as the certificate of incorporation of the surviving corporation.

**FIFTH:** The merger is to become effective upon filing of this Certificate and a copy of the Agreement and Plan of Reorganization with the Delaware Secretary of State on December 31, 2007.

**SIXTH:** The Agreement and Plan of Reorganization is on file at 145 Hunter Drive, Wilmington, Ohio 45177, the place of business of the surviving corporation.

**SEVENTH:** A Copy of the Agreement and Plan of Reorganization will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

**IN WITNESS WHEREOF**, said surviving corporation has caused this certificate to be signed by an authorized officer as of December 31, 2007.

By: \_\_\_\_\_  
Name: W. Joseph Payne  
Title: Vice President, General Counsel and Secretary

**STOCK PURCHASE AGREEMENT**

**dated November 1, 2007**

**by and among**

**ABX HOLDINGS, INC.,**

**CHI ACQUISITION CORP.**

**CARGO HOLDINGS INTERNATIONAL, INC.**

**THE SIGNIFICANT SHAREHOLDERS NAMED HEREIN**

**and**

**THE PARTIES SUBSEQUENTLY JOINING HERETO  
PURSUANT TO JOINDER AGREEMENTS**

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**EXHIBITS**

- A. Form of Escrow Agreement
- B. Net Asset Value Accounting Principles and Practices
- C. Form of FIRPTA Certificate
- D. Examples of Operation of Section 9.10(a)

**ANNEXES**

- I. Significant Shareholder Relative Consideration Percentage

## **STOCK PURCHASE AGREEMENT**

**THIS STOCK PURCHASE AGREEMENT** (this "Agreement"), is dated November 1, 2007, by and among ABX HOLDINGS, INC., a Delaware corporation ("ABX"), CHI ACQUISITION CORP., a Florida corporation and a wholly-owned subsidiary of ABX ("Acquisition"), CARGO HOLDINGS INTERNATIONAL, INC., a Florida corporation ("Cargo"), the Significant Shareholders who are signatories hereto and the Persons who hereafter become a party hereto pursuant to the execution and delivery of Joinder Agreements.

### WITNESSETH:

**WHEREAS**, the respective Boards of Directors of ABX, Acquisition and Cargo have each determined that the transactions contemplated by this Agreement are advisable and in the best interests of their respective shareholders and have adopted and approved this Agreement.

**NOW, THEREFORE**, in consideration of the mutual representations, warranties, covenants, agreements and conditions contained herein, and in order to set forth the terms and conditions of this Agreement, the parties hereto agree as follows:

### **ARTICLE I DEFINITIONS**

#### **1.1 Definition of Certain Terms.**

When used in this Agreement, the following terms shall have the following meanings:

ABX: as defined in the preamble to this Agreement.

ABX Air: means ABX Air, Inc., a Delaware corporation.

ABX Common Stock: means the common stock of ABX, par value \$0.01 per share.

ABX Common Stock Value: means \$6.49.

ABX Disclosure Schedule: means the disclosure schedule of even date with this Agreement delivered by ABX and Acquisition to Cargo and the Significant Shareholders concurrently with the execution and delivery of this Agreement.

ABX Financial Statements: as defined in Section 6.6(b).

ABX Holding Company Reorganization: means that certain reorganization that is to occur prior to the Closing of the transactions contemplated by this Agreement, pursuant to which ABX shall become the parent of ABX Air.

ABX Indemnification Cap: means \$10,000,000.

ABX Indemnified Parties: as defined in Section 9.3.

ABX Material Adverse Effect: means a Material Adverse Effect with respect to ABX and its Affiliates taken as a whole.

ABX SEC Reports: as defined in Section 6.6(a).

Accounting Firm: as defined in Section 7.5(c).

Acquired Companies: means Cargo and each of its Subsidiaries.

Acquired Company: means any one of the Acquired Companies.

Acquisition: as defined in the preamble to this Agreement.

Acquisition Proposal: as defined in Section 7.1(c)(i)(A).

Action: means any civil, criminal, administrative, arbitration or mediation claim, demand, complaint, protest, charge, proceeding, suit, action, hearing or investigation (and appeals therefrom) before any Governmental Authority or any arbitrator or mediator.

Adjustment Amount: means \$14,000,000.

Affiliate: with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

Agreement: as defined in the preamble to this Agreement.

Applicable Law: means, with respect to any Person, any domestic or foreign, federal, state or local statute, law, ordinance, rule, regulation or Order of any Governmental Authority applicable to such Person or any of its Affiliates or any of their respective properties, assets, officers, directors or employees (in connection with such officer’s, director’s or employee’s activities on behalf of such Person or any of its Affiliates).

Audit Distribution Date: as defined in Section 9.11(b).

Basket: means \$2,500,000.

Benefit Arrangements: as defined in Section 5.18(c).

Business Day: means any day other than a Saturday, Sunday, federal holiday, or a day on which banks are required or authorized to close in the City of New York or in the State of Ohio.

Cargo: as defined in the preamble to this Agreement.

Cargo Aircraft: as defined in Section 5.22(a).

Cargo Aircraft Acquisition Contracts: as defined in Section 5.22(b).

Cargo Aircraft Fuel Contracts: as defined in Section 5.13(a).

Cargo Aircraft Maintenance Contracts: as defined in Section 5.13(a).

Cargo Aircraft Modification Contracts: as defined in Section 5.13(a).

Cargo Certificates: a certificate or certificates that immediately prior to the Closing represent outstanding Cargo Common Shares.

Cargo Common Share: shall mean a share of Class A Common Stock or Class X Common Stock, par value \$.001 per share, of Cargo.

Cargo Collective Bargaining Agreements: as defined in Section 5.17(a).

Cargo Disclosure Schedule: means the disclosure schedule of even date with this Agreement delivered by Cargo and the Significant Shareholders to ABX and Acquisition concurrently with the execution and delivery of this Agreement.

Cargo Engines: as defined in Section 5.22(a).

Cargo Leased Aircraft Contracts: as defined in Section 5.13(a).

Cargo Leased Engine Contracts: as defined in Section 5.13(a).

Cargo Material Adverse Effect: means a Material Adverse Effect with respect to Cargo and its Subsidiaries taken as a whole.

Cargo Options: as defined in Section 3.1(b).

Cargo Permits: as defined in Section 5.20(b).

Cargo Warrants: as defined in Section 3.1(c).

Closing: as defined in Section 2.1.

Closing Balance Sheet: as defined in Section 7.5(d).

Closing Date: as defined in Section 2.1.

Closing Date Numerator for Per Share Cash Amount Calculation: means \$251,000,000 plus (a) the aggregate exercise price of all of the outstanding Cargo Options immediately prior to the Closing, plus (b) the aggregate exercise price of all of the outstanding Cargo Warrants immediately prior to the Closing, minus (c) the Indemnity Escrow Amount, minus (d) the amount, if any, by which the Target Net Asset Value exceeds the Estimated Net Asset Value, plus (e) the amount, if any, by which the Estimated Net Asset Value exceeds the Target Net Asset Value, plus (f) the Adjustment Amount.

Closing Date Option Consideration: as defined in Section 3.1(b).

Closing Date Warrant Consideration: as defined in Section 3.1(c).

Closing Net Asset Adjustment: as defined in Section 7.5(e).

Closing Statement: as defined in Section 3.2(a).

Code: the Internal Revenue Code of 1986, as amended.

Commitment Letter: as defined in Section 6.9.

Confidentiality Agreement: as defined in Section 7.2(c).

Contract: means each written or oral contract, lease, license, note, mortgage, indenture, arrangement and other agreement (including any amendments or other modifications thereto) to which any Acquired Company is a party or by which any Acquired Company or any of their respective assets are bound.

Current Premium: as defined in Section 7.10(c).

Determination Date: as defined in Section 7.5(e).

D&O Insurance: as defined in Section 7.10(c).

DOD: means the United State Department of Defense.

DOJ: means the United States Department of Justice.

DOT: means the United States Department of Transportation.

Downward Closing Net Asset Adjustment: as defined in Section 7.5(e).

Environmental Action: refers to any Action or summons, citation, notice, directive, order, claim, or other communication from any Governmental Authority or other Person involving a Hazardous Discharge or any violation of any Permit or Environmental Laws.

Environmental Law: each and every Applicable Law pertaining to the protection of human health and safety or the environment, including, without limitation,

the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq., the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq., the Water Pollution Control Act (FWPCA), 33 U.S.C. 1251 et seq., and the Occupational Safety and Health Act (OSHA), 42 U.S.C. 655.

Environmental Permits: as defined in Section 5.21(e).

ERISA: the Employee Retirement Income Security Act of 1974, as amended.

ERISA Affiliate: as defined in Section 5.18(b).

Escrow Agent: means Wells Fargo Bank, National Association.

Escrow Agreement: means the Escrow Agreement among the Escrow Agent, ABX and the Sellers Representative substantially in the form attached hereto as Exhibit A.

Escrow Distribution Date: as defined in Section 9.11(c).

Escrow Fund: shall mean the Indemnity Escrow Amount deposited by ABX with the Escrow Agent under the Escrow Agreement, as such amount is thereafter reduced from time to time as a result of distribution made by the Escrow Agent in accordance with the terms and condition of the Escrow Agreement.

Estimated Net Asset Value: as defined in Section 3.2(a).

Exchange Act: means the Securities Exchange Act of 1934, as amended.

Excluded Representations: as defined in Section 9.1.

Expenditures: as defined in the Indemnification Agreement.

FAA: means the Federal Aviation Administration.

FARs: as defined in Section 5.20(a).

FAS 109: as defined in Section 9.10(a).

FCC: means the Federal Communications Commission.

Final Net Asset Value: as defined in Section 7.5(e).

Final Net Asset Value Determination: as defined in Section 7.5(d).

Financial Statements: the audited consolidated financial statements of Cargo, as at and for the years ended December 31, 2004, 2005 and 2006 and the unaudited consolidated financial statements of Cargo, as at and for the nine months ended

September 30, 2007, which financial statements include, in each case, a balance sheet, a statement of operations, a statement of shareholders' equity and a statement of cash flows.

Financing Documents: as defined in Section 6.9.

Fully Diluted Shares: means the aggregate number of Cargo Common Shares outstanding immediately prior to the Closing assuming the exercise of all Cargo Options and Cargo Warrants.

GAAP: means accounting principles generally accepted in the United States of America as in effect from time to time set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, which are applicable to the circumstances as of the date of determination.

General Indemnification Cap: means \$25,000,000.

Government Contract: means any current Contract between an Acquired Company and a Governmental Authority pursuant to which such Governmental Authority is obligated to pay such Acquired Company an amount equal to \$1,000,000 or more per annum.

Governmental Authority: means any federal, state, local or foreign governmental authority, quasi governmental authority, court, regulatory or administrative organization or agency, commission and tribunal or a department, branch or division of any of the foregoing.

Hazardous Discharge: means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of Hazardous Substances that violates any Environmental Law.

Hazardous Substance: means any substance, compound, chemical or element that is (i) defined or classified as a hazardous substance, hazardous material, toxic substance, hazardous waste, pollutant or contaminant under any Environmental Law, or (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof, (iii) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic or a reproductive toxicant, or (iv) regulated pursuant to any Environmental Law. The term "Hazardous Substance" shall also include asbestos-containing materials and manufactured products containing Hazardous Substances.

HSR Act: means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

Indemnification Agreement: means that certain Indemnification Agreement, dated the date hereof, between ABX and the Significant Shareholders.

Indemnified Party: a party hereto or other Person designated herein entitled to indemnification (other than pursuant to Section 7.10) under this Agreement.

Indemnified Persons: as defined in Section 7.10(a).

Indemnifying Party: shall mean, as the case may be, (a) ABX or (b) any one or more of the Sellers, acting through the Sellers Representative, where either is required to provide indemnification under this Agreement.

Indemnity Escrow Amount: means \$25,000,000.

Intellectual Property: means the intellectual property owned, used or licensed (as licensor or licensee) by any Acquired Company that is used in its business, or in any products, service, technology or process currently offered or sold by an Acquired Company or in its business, or currently under development by an Acquired Company for use in connection with its business, including: (a) patents and patent applications, (b) registered trademarks and service marks, pending trademark and service mark registration applications, and intent-to-use registrations or similar reservations of marks, (c) registered copyrights, and applications for registration thereof, (d) internet domain names and (e) trade secrets.

Joinder Agreement: means a Joinder Agreement, in a form reasonably satisfactory to ABX and Cargo, that may be executed and delivered to Cargo and ABX (a) at any time between the date of this Agreement and the Closing Date by any Shareholder who is not a Significant Shareholder, (b) at any time between the date of this Agreement and the Closing Date by any holder of a Cargo Warrant who is not a Significant Shareholder and (c) at any time between the date of this Agreement and a date that is thirty days after the Closing Date by any holder of a Cargo Option who is not a Significant Shareholder.

Key Employees: shall mean the following Cargo employees: Chris Chorley, Peter Fox, George Golder, Jim Hobson, Todd Hunter, Bill Tarpley and Frank Visconti.

Knowledge: means (a) with respect to Cargo, the actual knowledge of any of the Key Employees, and (b) with respect to ABX or Acquisition, the actual knowledge of any of Joseph Hete, Quint Turner, John Graber, Joseph Payne, Dennis Manibusan and Robert Morgenfeld.

Latest Balance Sheet: means the unaudited consolidated Balance Sheet of Cargo as at August 31, 2007.

Latest Balance Sheet Date: means August 31, 2007.

Liability: means with respect to any Person, any liability or obligation of such Person of any kind, character, or description, whether known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise.

License: as defined in Section 5.15(b).

Lien: means any mortgage, title defect, encumbrance, pledge, charge, security interest, hypothecation or other lien.

Loss(es): as defined in Section 9.3.

Material Adverse Effect: with respect to any Person means any material adverse change in the business, properties, results of operations or financial condition of such Person, taken as a whole; provided, however, that none of the following shall, in each case, be deemed to constitute a “Material Adverse Effect” or be considered in determining whether a “Material Adverse Effect” has occurred: (a) changes in the economic conditions applicable to businesses in the United States generally or to air cargo or passenger transportation companies in the market(s) in which products and services are offered by Cargo or ABX that do not have a disproportionate adverse impact on either Cargo or ABX, as the case may be, taken as a whole, (b) changes in any Applicable Law or Order or interpretations thereof by a Governmental Authority or changes in GAAP that, in each case, do not have a disproportionate adverse impact on either Cargo or ABX, as the case may be, taken as a whole, (c) changes in general political conditions or the financing or capital markets in general or changes in currency exchange rates that, in each case, do not have a disproportionate adverse impact on either Cargo or ABX, as the case may be, taken as a whole, (d) the announcement by ABX, Acquisition or Cargo, or the pendency, of the transactions contemplated by this Agreement, or any communication by ABX or Acquisition of its plans or intentions (including in respect of employees) with respect to any of the businesses of the Acquired Companies, (e) the consummation of the transactions contemplated hereby or any actions taken by the Significant Shareholders, Cargo or ABX pursuant to, and in accordance with, this Agreement or in connection with the transactions contemplated hereby, (f) any natural disaster or any acts of terrorism, sabotage, military action or war (whether or not declared) or any escalation or worsening thereof, that, in each case, do not have a disproportionate adverse impact on either Cargo or ABX, as the case may be, taken as a whole, (g) any action required to be taken under (i) any Applicable Law arising out of facts or circumstances occurring on or after the date of this Agreement (it being understood that actions required to be taken under any Applicable Law arising out of facts or circumstances occurring prior to the date of this Agreement, but which actions may not have previously been taken by Cargo or ABX, may be considered in determining whether a “Material Adverse Effect” has occurred), (ii) any Order in effect on the date hereof or (iii) any existing Contract by which any of the Acquired Companies or ABX or its Subsidiaries (or any of their respective properties) is bound, (h) any failure by Cargo, in and of itself, to meet any internal projections or forecasts (it being understood that any facts underlying any such failure resulting from or arising out of any event, occurrence, circumstance or development that is not covered by the immediately preceding clauses (a) through (g) may be taken into account in determining whether a “Material Adverse Effect has occurred) or (i) any decline, in and of itself, in the trading price of ABX Air

common stock. The terms “material”, “materially”, or “materiality” as used in this Agreement with an initial lower case “m” shall have their respective customary and ordinary meanings, without regard to the meaning of “Material Adverse Effect”.

Material Agreements: as defined in Section 5.13(a).

Material Contracts: mean (i) the leases referenced in Sections 5.11(b) and 5.11(c) of the Cargo Disclosure Schedule, (ii) the Scheduled Contracts (including the Cargo Leased Aircraft Contracts, Cargo Leased Engine Contracts, the Cargo Aircraft Maintenance Contracts, the Cargo Aircraft Fuel Contracts, the Cargo Aircraft Modification Agreements and the other Material Agreements), (iii) the Licenses set forth in Section 5.15(b) of the Cargo Disclosure Schedule, (iv) the Cargo Collective Bargaining Agreements set forth in Section 5.17(a) of the Cargo Disclosure Schedule and (v) the Cargo Aircraft Acquisition Contracts set forth in Section 5.22(b) of the Cargo Disclosure Schedule.

Minimum Standard: as defined in Section 9.10(g).

Net Asset Value Accounting Principles and Practices: mean the accounting principles and practices (a) mutually agreed to by Cargo, ABX and, as of the Closing Date, the Sellers Representative, on behalf of the Sellers, as are set forth in Exhibit B attached hereto and (b) that have been, and shall be, used in connection with the determination of the Target Net Asset Value, the Estimated Net Asset Value and the Final Net Asset Value. Exhibit B attached hereto sets forth an example of the calculation of the net asset value of the Acquired Companies as if the transactions contemplated by this Agreement were consummated on August 31, 2007, it being understood that (a) unless otherwise specifically agreed, the numbers utilized in such example shall not be binding on either Cargo or ABX in determining the Estimated Net Asset Value or ABX in preparing the Proposed Net Asset Value Statement and (b) in connection with the determination of the Estimated Net Asset Value or the Proposed Net Asset Value, such example shall in no way restrict the right of ABX to challenge accounting principles and practices that are not consistent with the Net Asset Value Accounting Principles and Practices.

Notice of Disagreement: as defined in Section 7.5(b)(ii).

Order: means any order, writ, injunction, directive, judgment, determination, decree, ruling, assessment or award of any Governmental Authority or arbitrator.

Ordinary Course of Business: means the ordinary course of business consistent with past custom and practice; provided, however, that (i) the actions set forth in Section 1.1 of the Cargo Disclosure Schedules and (ii) after February 1, 2008, any acquisition, disposition, conversion, leasing or other transfer or transformation of aircraft, airframes and/or aircraft engines, whether such action is taken by Cargo independently or jointly together with any other Person, shall in each case at all times be deemed to be in the Ordinary Course of Business of Cargo; provided, further that in no event shall such transactions after February 1, 2008 have an aggregate transaction value in excess of \$35,000,000.

Option Amount: for any Cargo Option, means the Per Share Cash Amount minus the exercise price per share of such option.

Overlap Period: as defined in Section 9.10(g).

Past Practice: means practices and procedures generally used by Cargo during the three-year period ended May 31, 2007.

Payments: as defined in Section 7.1(f).

Payment Agent: means Wells Fargo Bank, National Association.

Payment Fund: as defined in Section 3.2(b).

Pension Benefit Plans: as defined in Section 5.18(b).

Permit: means any license, permit, authorization, certificate of authority, qualifications or similar document or authority that has been issued or granted by any Governmental Authority.

Per Share Adjustment Amount: means the quotient of (a) the Adjustment Amount divided by (b) the sum of (i) the aggregate number of Cargo Common Shares held by the Significant Shareholders immediately prior to the Closing, plus (ii) the aggregate number of Cargo Common Shares subject to Cargo Options held by the Significant Shareholders immediately prior to the Closing, plus (iii) the aggregate number of Cargo Common Shares subject to Cargo Warrants held by the Significant Shareholders immediately prior to the Closing.

Per Share Cash Amount: means the quotient of (a) the amount of the Closing Date Numerator for Per Share Cash Amount Calculation divided by (b) the number of Fully Diluted Shares.

Per Share Stock Amount: means the number of ABX Common Shares resulting from the quotient of (a) 4,000,000 divided by (b) the aggregate number of Cargo Common Shares held of record by Significant Shareholders immediately prior to the Closing.

Per Share Stock Amount Value: means the product of (a) the Per Share Stock Amount and (b) the ABX Common Stock Value.

Permitted Lien: means with respect to the Acquired Companies:

(a) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings diligently pursued, provided that reserves for the full payment of all such Taxes have been maintained on the Financial Statements in accordance with and as required by GAAP;

(b) mechanics', materialmen's, banker's, carriers', warehousemen's and similar Liens arising in the Ordinary Course of Business and securing obligations of such Person that are not overdue or are being contested in good faith by appropriate proceedings diligently pursued, provided that in the case of any such contest, reserves for the full payment of such Liens have been maintained on the Financial Statements in accordance with and as required by GAAP;

(c) Liens arising in connection with worker's compensation, unemployment insurance, old age pensions and social security benefits and similar statutory obligations which are not overdue or are being contested in good faith by appropriate proceedings diligently pursued, provided that in the case of any such contest reserves for the full payment of such Liens have been maintained on the Financial Statements in accordance with and as required by GAAP;

(d) (i) Liens incurred in the Ordinary Course of Business to secure the performance of obligations under Applicable Law arising in connection with progress payments or advance payments due under Contracts entered into in the Ordinary Course of Business and (ii) Liens incurred or deposits made in the Ordinary Course of Business to secure the performance of obligations under Applicable Law, bids, leases, fee and expense arrangements with trustees and fiscal agents and other similar obligations (exclusive of obligations incurred in connection with the borrowing of money, any lease-purchase arrangements or the payment of the deferred purchase price of property), provided that reserves for the full payment of all such obligations set forth in clauses (i) and (ii) have been maintained on the Financial Statements in accordance with and as required by GAAP;

(e) survey exceptions, easements, zoning or planning restrictions or regulations, restrictive covenants, reservations or rights-of-way for utilities and other similar purposes which do not either (i) materially interfere with the business of the Acquired Companies as it is currently conducted or (ii) materially adversely affect the value of any Real Property;

(f) interests of lessors in leased property, including filings for notification purposes; and

(g) Liens securing executory obligations under leases of any Real Property.

Person: any natural person, partnership, limited liability company, joint venture, association, corporation, trust, unincorporated society or association or other legal entity or Governmental Authority.

Post-Closing Period: as defined in Section 9.10(h).

Pre-Closing Period: as defined in Section 9.10(g).

Proposed Closing Balance Sheet: as defined in Section 7.5(a).

Proposed Net Asset Value: as defined in Section 7.5(a).

Proposed Net Asset Value Statement: as defined in Section 7.5(a).

Pro Rata Share: means, with respect to a Seller, the quotient, in percentage form, of (a) the aggregate number of (i) Cargo Common Shares held by such Seller immediately prior to the Closing, (ii) Cargo Common Shares that are the subject of Cargo Options held by such Seller immediately prior to the Closing and (iii) Cargo Common Shares that are the subject of Cargo Warrants held by such Seller immediately prior to the Closing, divided by (b) the aggregate number of Fully-Diluted Shares.

Purchase Price Indemnification Cap: means \$251,000,000 plus (a) the amount, if any, by which the Estimated Net Asset Value exceeds the Target Net Asset Value, minus (b) the amount, if any, by which the Target Net Asset Value exceeds the Estimated Net Asset Value, plus (c) the amount, if any, of the Upward Closing Net Asset Adjustment, minus (d) the amount, if any, of the Downward Closing Net Asset Adjustment, and plus (e) any amounts actually paid to the Significant Shareholders in accordance with the terms and conditions of the Indemnification Agreement less the Expenditures.

Real Property: means any real property owned or leased by any Acquired Company.

Related Party: means (a) each Person who owns beneficially or of record at least 5% of the outstanding Cargo Common Shares; (b) each individual who is an officer or director of any Acquired Company; and (c) each Affiliate of any of the Persons referred to in clauses (a) or (b) above.

Release: means any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching, or migration on or into the indoor or outdoor environment or in, on, under, into or out of any property including any property currently or at any time previously owned, leased or operated by any Acquired Company.

Remedial Action: means those response actions, including any investigation, testing or monitoring activities required by Environmental Law or by any Governmental Authority to clean up, remove, contain, treat, investigate or abate any Hazardous Substance or in connection with any property (including, without limitation, actions to address Releases of Hazardous Substances to the environment).

Representation: as defined in Section 1.2(b).

Representative: means, with respect to any Person, any officer, director, employee, Affiliate, agent, representative or advisor, including any investment banker, financing source, attorney or accountant retained by such Person or any of its subsidiaries, and with respect to Cargo, includes the Significant Shareholders.

Required Governmental Approvals: means filings, notices, permits, authorizations, consents and approvals or exemptions from approvals as may be required from, with or to (a) the FAA, (b) the DOT, (c) the FCC, (d) the DOD, (e) the Department of Homeland Security, (f) the TSA, (g) the DOJ, (h) the Federal Trade Commission or any other Governmental Authority, in order to consummate that transactions contemplated by this Agreement in accordance with Applicable Law.

Resolution Period: as defined in Section 7.5(b)(iv).

Review Period: as defined in Section 7.5(b)(i).

Scheduled Contract(s): as defined in Section 5.13(b).

SEC: means the United States Securities and Exchange Commission.

Securities Act: means the Securities Act of 1933, as amended.

Sellers: unless the context otherwise requires, shall mean, collectively, (a) the Significant Shareholders, (b) all other Shareholders who execute and deliver a Joinder Agreement in accordance with the terms of this Agreement, (c) all holders of Cargo Options who are not Significant Shareholders who execute and deliver a Joinder Agreement in accordance with the terms of this Agreement and (d) all holders of Cargo Warrant who are not Significant Shareholders who execute and deliver a Joinder Agreement in accordance with the terms of this Agreement.

Seller Indemnified Parties: as defined in Section 9.4.

Sellers Representative: means Massachusetts Mutual Life Insurance Company.

Shareholders: unless the context otherwise requires, shall mean the record holders of the Cargo Common Shares.

Significant Shareholder: shall mean (a) the following Shareholders: ACI International, Inc., Massachusetts Mutual Life Insurance Company, MassMutual Corporate Value Partners Limited, MassMutual High Yield Partners II, LLC, Aviation Capital Group Corp., ACG Acquisition XX LLC, ACG Acquisition XXVIII LLC and Minnesota Fox II, LLC and (b) solely for purposes of determining the amount of Transaction Consideration to be received in connection with the purchase by Acquisition of Cargo Options, Peter Fox shall be deemed to be a Significant Shareholder in respect of Cargo Options held by him.

Significant Shareholder Relative Consideration Percentage: means, for each Significant Shareholder, the percentage set forth next to such Significant Shareholder's name on Annex I attached hereto.

Specific Representation: as defined in Section 1.2(b).

Subsidiary: means any corporation, trust, partnership, limited liability company or other Person in which Cargo directly or indirectly owns stock or other ownership interests representing (a) more than 50% of the voting power of all outstanding stock or ownership interest of such entity or (b) the right to receive more than 50% of the net assets of such entity available for distribution to the holders of stock or ownership interests upon a liquidation or dissolution of such entity.

S-X Financial Statements: as defined in Section 7.1(d).

Target Net Asset Value: means \$53,552,757.00.

Target Net Asset Value Balance Sheet: means the unaudited Balance Sheet of Cargo and its Subsidiaries as at May 31, 2007.

Target Net Asset Value Balance Sheet Date: means May 31, 2007.

Tax(es): shall mean any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

Tax Law: as defined in Section 3.6.

Tax Return: shall mean any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

Transaction Consideration: means the consideration paid by Acquisition under this Agreement to the Sellers in connection with the purchase of the Cargo Common Shares, the Cargo Options and the Cargo Warrants.

TSA: means the Federal Transportation Security Administration.

Update Notice: as defined in Section 7.3(d)

Upward Closing Net Asset Adjustment: as defined in Section 7.5(e).

Warrant Amount: for any Cargo Warrant, means the Per Share Cash Amount minus the exercise price per share of such warrant.

Welfare Benefit Plans: as defined in Section 5.18(a).

767, LLC Spin-Off: as defined in Section 7.1(b).

## **1.2 Construction.**

(a) In this Agreement, unless the context otherwise requires:

(i) any reference to “writing” or comparable expressions includes a reference to facsimile transmission or comparable means of communication;

(ii) the phrases “provided”, “delivered” or “made available” shall mean that the information or document referred to has been physically or electronically made available for inspection by the relevant party;

(iii) words expressed in the singular number shall include the plural and vice versa; words expressed in the masculine shall include the feminine and neuter gender and vice versa;

(iv) references to Articles, Sections, Exhibits, the Preamble and Recitals are references to articles, sections, exhibits, the preamble and recitals of this Agreement, and the descriptive headings of the several Articles and Sections of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement;

(v) references to “day” or “days” are to calendar days;

(vi) references to “the date hereof” shall mean the date of this Agreement;

(vii) the words “hereof”, “herein”, “hereto” and “hereunder”, and words of similar import, shall refer to this Agreement as a whole and not to any provision of this Agreement;

(viii) this “Agreement” or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented;

(ix) “include”, “includes” and “including” are deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of similar import; and

(x) references to “Dollars” or “\$” are to United States of America dollars.

(b) To the extent that any representation or warranty of Cargo or the Significant Shareholders contained in Article IV or Article V of this Agreement (each, a “Representation”) addresses a particular issue with specificity (a “Specific Representation”), and no breach by Cargo or the Significant Shareholders, as applicable, exists under such Specific Representation, Cargo and/or the Significant Shareholders, as applicable, shall not be deemed to be in breach of any other Representation (with respect to such issue) that addresses such issue with less specificity than the Specific

Representation and if such Specific Representation is qualified or limited by the Knowledge of Cargo, or in any other manner, no other Representation shall supersede or limit such qualification in any manner.

(c) The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

### **1.3 Exhibits, Annexes and Disclosure Schedules.**

(a) The Exhibits, Annexes, the Cargo Disclosure Schedule and the ABX Disclosure Schedule are incorporated into and form an integral part of this Agreement. If an Exhibit is a form of agreement, such agreement, when executed and delivered by the parties thereto, shall constitute a document independent of this Agreement; provided, however, that any Joinder Agreement shall not constitute a document independent of this Agreement, but shall constitute an integral part of this Agreement.

(b) Any matter set forth in any section of either the Cargo Disclosure Schedule or the ABX Disclosure Schedule shall be deemed set forth in all other sections of such Disclosure Schedule to the extent, but only to the extent, that the relevance or applicability of such matter to such other sections of such Disclosure Schedule is reasonably apparent on the face of such disclosure, whether or not a specific cross-reference appears. The inclusion of any information (including dollar amounts) in any section of either the Cargo Disclosure Schedule or the ABX Disclosure Schedule shall not be deemed to be an admission or acknowledgment that such information is required to be listed in such section or is material to or outside the Ordinary Course of Business of either Cargo or any of its Subsidiaries or ABX or any of its Affiliates, nor shall such information be deemed to establish a standard of materiality (and the actual standard of materiality may be higher or lower than the matters disclosed by such information). In addition, matters reflected in the Cargo Disclosure Schedule or ABX Disclosure Schedule are not necessarily limited to matters required by this Agreement to be reflected in such Disclosure Schedule. The information contained in this Agreement, the Cargo Disclosure Schedule, the ABX Disclosure Schedule and the Exhibits and Annexes hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein shall be deemed to be an admission by any party to any third party of any matter whatsoever (including any violation of Applicable Law or breach of, or conflict with, any contract).

## **ARTICLE II SALE AND PURCHASE**

### **2.1 Closing.**

The closing of the transactions provided for in this Agreement (the “Closing”) shall take place in the offices of Vorys, Sater, Seymour and Pease LLP, 221 East Fourth Street, Suite 2000, Atrium Two, Cincinnati, Ohio 45201, at 10:00 a.m., local time, on the third Business Day following the satisfaction or waiver of all the conditions set forth in Article VIII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at the Closing) or at such other date, place and time as may be agreed to in writing by the parties hereto (the “Closing Date”).

### **2.2 Sale and Purchase of Cargo Common Shares, Cargo Options and Cargo Warrants.**

At the Closing, (a) each Significant Shareholder shall sell, assign and transfer to Acquisition all of its Cargo Common Shares, free and clear of all Liens, (b) each Significant Shareholder shall sell, assign and transfer to Acquisition all of its Cargo Warrants, free and clear of all Liens, (c) each Significant Shareholder shall sell, assign and transfer to Acquisition all of its Cargo Options, free and clear of all Liens, (d) each Shareholder who is not a Significant Shareholder and who has executed a Joinder Agreement shall sell, assign and transfer to Acquisition all of its Cargo Common Shares, free and clear of all Liens, (e) each holder of a Cargo Warrant who is not a Significant Shareholder and who has executed a Joinder Agreement shall sell, assign and transfer to Acquisition all of its Cargo Warrant, free and clear of all Liens, and (f) each holder of a Cargo Option who is not a Significant Shareholder and who has executed a Joinder Agreement shall sell, assign and transfer to Acquisition all of its Cargo Common Shares, free and clear of all Liens.

### **2.3 Further Assurances.**

Each party hereto will, either prior to or after the Closing, execute such further documents and instruments and take such further actions as may reasonably be requested by one or more of the other parties to consummate the transactions contemplated by this Agreement.

## **ARTICLE III PAYMENT OF TRANSACTION CONSIDERATION**

### **3.1 Transaction Consideration.**

In consideration of the sale, assignment and transfer by a Seller of Cargo Common Shares, Cargo Options and Cargo Warrants, the Seller thereof shall be entitled to receive, as applicable, the following Transaction Consideration:

(a) Cargo Common Shares. (i) Each then issued and outstanding Cargo Common Share at the Closing held of record by a Shareholder who is not a Significant Shareholder and who has executed a Joinder Agreement shall be transferred

to Acquisition, and, in consideration for each Cargo Common Share held by such Shareholder, such Shareholder shall have the right to receive total consideration in cash equal to (A) the Per Share Cash Amount, plus (B) the right to receive payment of a Pro Rata Share of an Upward Closing Net Asset Adjustment, if any, pursuant to Section 7.5(e), plus (C) the right to receive payment of a Pro Rata Share of the Escrow Fund, if any, in accordance with the provisions set forth herein and the Escrow Agreement.

(ii) Each then issued and outstanding Cargo Common Share at the Closing held of record by a Significant Shareholder shall be transferred to Acquisition, and, in consideration for each Cargo Common Share held by such Significant Shareholder, such Significant Shareholder shall have the right to receive total consideration in stock and cash as follows: (A) the Per Share Stock Amount, plus (B) cash per share in an amount equal to the difference between the Per Share Cash Amount minus the Per Share Stock Amount Value, minus the Per Share Adjustment Amount, plus (C) the right to receive payment of a Pro Rata Share of an Upward Closing Net Asset Adjustment, if any, pursuant to Section 7.5(e), plus (D) the right to receive payment of a Pro Rata Share of the Escrow Fund, if any, in accordance with the provisions set forth herein and the Escrow Agreement. No fraction of a share of ABX Common Stock will be issued by virtue of the transactions contemplated by this Agreement, but, in lieu thereof, each holder of Cargo Common Shares who would otherwise be entitled to a fraction of a share of ABX Common Stock (after aggregating all fractional shares to be received by such holder) shall receive from ABX a number of shares of ABX Common Stock rounded up or down to the nearest whole share. If between the date of this Agreement and the Closing, ABX Air shall split, combine or otherwise reclassify the ABX Air common stock, or pay a stock dividend or other stock distribution in any shares of the ABX Air common stock, or otherwise change the ABX Air common stock into other securities, or make any other such stock dividend or distribution in respect of the ABX Air common stock, the Per Share Stock Amount shall be correspondingly adjusted to reflect such action; provided, that no such adjustment shall be made upon (1) the issuance of ABX Air common stock in connection with an offering of such securities at not less than the then fair market value of such securities, (2) the issuance of any stock options, warrants or other securities convertible into ABX Air common stock with exercise prices at not less than the then fair market value of the ABX Air common stock or upon the issuance of ABX Air common stock upon the exercise of such, option, warrants or convertible securities or (3) the issuance or exchange of ABX Air common stock in connection with the ABX Holding Company Reorganization.

(b) Cargo Options. In respect of each outstanding option to acquire Cargo Common Shares granted under any agreement with Cargo as identified in Section 5.4(b) of the Cargo Disclosure Schedule ("Cargo Options"), whether or not then exercisable, for which the holder of such Cargo Option is either a Significant Shareholder or, if not a Significant Shareholder, has executed and delivered a Joinder Agreement, at the Closing (or at such later date within 30 days from the Closing Date upon which such holder of Cargo Options who is not a Significant Shareholders executes and delivers a

Joinder Agreement), upon the terms and conditions set forth in this Agreement and in accordance with applicable stock option agreements, each such Cargo Option shall be transferred to Acquisition, and, in consideration for such Cargo Option, such holder shall have the right to receive in respect of each Cargo Common Share that is the subject of such Cargo Option, in each case without interest and subject to applicable withholding tax, (i) an amount in cash equal to the Option Amount (in case of Cargo Options held by the Significant Shareholders, less the Per Share Adjustment Amount multiplied by the number of Cargo Common Shares subject to such Cargo Options) (the “Closing Date Option Consideration”), plus (ii) the right to receive payment of a Pro Rata Share of an Upward Closing Net Asset Adjustment, if any, pursuant to Section 7.5(e), plus (iii) the right to receive payment of a Pro Rata Share of the Escrow Fund, if any, in accordance with the provisions set forth herein and the Escrow Agreement.

(c) Cargo Warrants. In respect of each outstanding warrant to acquire Cargo Common Shares granted under any agreement with Cargo as identified in Section 5.4(b) of the Cargo Disclosure Schedule (“Cargo Warrants”), whether or not then exercisable, for which the holder of such Cargo Warrant is either a Significant Shareholder or, if not a Significant Shareholder, has executed and delivered a Joinder Agreement, at the Closing, upon the terms and conditions set forth in this Agreement and in accordance with applicable warrant agreements, each such Cargo Warrant shall be transferred to Acquisition, and, in consideration for such Cargo Warrant, such holder shall have the right to receive in respect of each Cargo Common Share that is the subject of such Cargo Warrant, in each case without interest and subject to applicable withholding tax, (i) an amount in cash equal to the Warrant Amount (in case of Cargo Warrants held by the Significant Shareholders, less the Per Share Adjustment Amount multiplied by the number of Cargo Common Shares subject to such Cargo Warrants) (the “Closing Date Warrant Consideration”), plus (ii) the right to receive payment of a Pro Rata Share of an Upward Closing Net Asset Adjustment, if any, pursuant to Section 7.5(e), plus (iii) the right to receive payment of a Pro Rata Share of the Escrow Fund, if any, in accordance with the provisions set forth herein and the Escrow Agreement.

### **3.2 Delivery of Estimated Net Asset Statement; Delivery of Funds.**

(a) Delivery of Estimated Net Asset Statement. At least two Business Days, but not more than five Business Days, prior to the Closing Date, Cargo and ABX shall mutually agree on a statement (the “Closing Statement”), setting forth (i) a good faith estimate of the net asset value of the Acquired Companies as of the Closing Date (the “Estimated Net Asset Value”) and (ii) the amount, if any, by which the Target Net Asset Value differs from the Estimated Net Asset Value. The Closing Statement shall quantify in reasonable detail the items constituting such Estimated Net Asset Value, which shall be calculated in accordance with the Net Asset Value Accounting Principles and Practices, as set forth in Exhibit B attached hereto. In the event Cargo and ABX cannot mutually agree on the Closing Statement and the calculation set forth therein, Cargo and ABX shall cause Ernst & Young to prepare the Closing Statement in accordance with the terms of this Agreement for delivery to the parties hereto at least two Business Days prior to the Closing Date. Such Closing Statement shall be binding on the parties hereto for purposes of this Section 3.2 only. Ernst & Young shall allocate its costs

associated with such determination equally between ABX and the Sellers' Representative. Neither party shall terminate this Agreement pursuant to Section 10.1(b) during the period Ernst & Young is preparing the Closing Statement.

(b) Delivery of Funds. At the Closing, ABX and/or Acquisition shall:

(i) deposit with the Payment Agent a cash amount equal to the product of (A) the aggregate number of the issued and outstanding Cargo Common Shares held of record as of the Closing by Shareholders who are not Significant Shareholders and entitled to receive Transaction Consideration by virtue of the execution and delivery of Joinder Agreements and the delivery of other documents required to be delivered by such Shareholders under this Agreement and (B) the Per Share Cash Amount;

(ii) deliver to each Significant Shareholder a cash amount equal to the product of (A) the aggregate number of Cargo Common Shares held of record as of the Closing by such Significant Shareholder and (B) an amount equal to the difference between the Per Share Cash Amount minus the Per Share Stock Amount Value minus the Per Share Adjustment Amount;

(iii) deliver to each Significant Shareholder that number of shares of ABX Common Stock equal to the product of (A) the aggregate number of the issued and outstanding Cargo Common Shares held of record as of the Closing by such Significant Shareholder and (B) the Per Share Stock Amount, rounded up or down to the nearest whole share;

(iv) deposit with the Payment Agent a cash amount equal to the aggregate sum of the Closing Date Option Consideration in respect of all Cargo Options for which the holders thereof are entitled to receive Transaction Consideration by virtue of such holder either being a Significant Shareholder or, if not a Significant Shareholder, by virtue of such holder executing and delivering a Joinder Agreement and delivering such other documents required to be delivered by such Sellers under this Agreement on or prior to the Closing Date; and

(v) deposit with the Payment Agent a cash amount equal to the aggregate sum of the Closing Date Warrant Consideration in respect of all Cargo Warrants for which the holders thereof are entitled to receive Transaction Consideration by virtue of such holder either being a Significant Shareholder or, if not a Significant Shareholder, by virtue of such holder executing and delivering a Joinder Agreement and delivering such other documents required to be delivered by such Sellers under this Agreement on or prior to the Closing Date.

The Payment Agent shall agree to hold all funds deposited with it pursuant to this Section 3.2(b) (such funds, together with any earnings thereon, being referred to herein as the "Payment Fund") for delivery as contemplated by this Article III and upon such additional terms as may be agreed upon by the Payment Agent, Cargo and ABX. If the

Payment Fund is invested at the direction of ABX then, if for any reason (including losses) the Payment Fund is inadequate to pay the amounts to which Sellers shall be entitled, ABX and Acquisition shall in any event remain liable and shall make available to the Payment Agent additional funds for the payment thereof. The Payment Fund shall not be used for any purpose except as expressly provided in this Agreement.

(c) Closing Procedures. (i) As soon as reasonably practicable after the Closing Date, but in any event not later than three Business Days after the Closing Date, each Shareholder who is not a Significant Shareholder who is entitled to receive Transaction Consideration by virtue of such Shareholder executing and delivering a Joinder Agreement and delivering such other documents required to be delivered by such Shareholder under this Agreement on or prior to the Closing Date shall receive from the Payment Fund the amount due to such Shareholder pursuant to Section 3.1(a)(i)(A). Upon deposit by ABX or Acquisition with the Payment Agent of an amount equal to the Upward Closing Net Asset Adjustment, each Shareholder entitled to receive Transaction Consideration under this Agreement shall receive from the Payment Fund the cash due to such Shareholder pursuant to Section 3.1(a)(i)(B) or 3.1(a)(ii)(C), as applicable.

(ii) As soon as reasonably practicable after the Closing Date, but in any event not later than the later of three Business Days after the Closing Date and three Business Days following execution and delivery of the requisite Joinder Agreement, provided that the delivery of the requisite Joinder Agreement is made within 30 days from the Closing Date, each holder of Cargo Options who has executed and delivered a Joinder Agreement pursuant to the provisions of this Agreement shall receive from the Payment Fund in respect of each Cargo Share that is the subject of such Cargo Option the amount due to such holder of Cargo Options pursuant to Section 3.1(b)(i). In addition, upon deposit by ABX or Acquisition with the Payment Agent of an amount equal to the Upward Closing Net Asset Adjustment, such holder shall have the right to receive from the Payment Fund in respect of each Cargo Share that is the subject of such Cargo Option the amount due to such holder of Cargo Options pursuant to Section 3.1(b)(ii).

(iii) On the Closing Date, each holder of Cargo Warrants who is either a Significant Shareholder or, if not a Significant Shareholder, has executed and delivered a Joinder Agreement pursuant to the provisions of this Agreement shall receive from the Payment Fund in respect of each Cargo Share that is the subject of such Cargo Warrant the amount due to such holder of Cargo Warrants pursuant to Section 3.1(c)(i). In addition, upon deposit by ABX or Acquisition with the Payment Agent of an amount equal to the Upward Closing Net Asset Adjustment, such holder shall have the right to receive from the Payment Fund in respect of each Cargo Share that is the subject of such Cargo Warrant the amount due to such holder of Cargo Warrants pursuant to Section 3.1(c)(ii).

(c) Termination of Payment Fund. Any portion of the Payment Fund which remains undistributed to the Sellers nine months after the Closing shall be delivered to Acquisition, upon demand, and any Sellers who have not theretofore complied with this Article III shall thereafter look only to Acquisition (subject to abandoned property, escheat and other similar laws) as general creditors for payment of their claim for those portions of the Transaction Consideration that were deposited with the Payment Agent.

(d) Payment Agent Fees. All fees and expenses of the Payment Agent shall be paid by one-half by ABX and one-half by the Sellers.

### **3.3 Transfers of Ownership.**

If any certificate for shares of ABX Common Stock is to be issued in a name other than that in which the Cargo Certificate surrendered in exchange therefor is registered, it will be a condition of the issuance thereof that the Cargo Certificate so surrendered will be properly endorsed and otherwise in proper form for transfer and that the Person requesting such exchange will have paid to the Payment Agent any transfer or any other taxes required by reason of the issuance of a certificate for shares of ABX Common Stock in any name other than that of the registered holder of the Cargo Certificate surrendered, or established to the satisfaction of the Payment Agent that such tax has been paid or is not payable.

### **3.4 No Further Ownership Rights in Cargo Common Shares.**

All Transaction Consideration paid and to be paid in connection with the purchase of the Cargo Common Shares, Cargo Options and Cargo Warrants in accordance with the terms of this Agreement shall be deemed to have been paid in full satisfaction of all rights pertaining to such Cargo Common Shares, Cargo Options and Cargo Warrants.

### **3.5 No Liability.**

Neither ABX nor any other party hereto shall be liable to any Seller for any amount or property properly paid or delivered to a public official pursuant to any Applicable Law relating to abandoned property, escheat or similar subject.

### **3.6 Withholding Rights.**

Each of ABX and any Affiliate thereof shall be entitled to deduct and withhold from the Transaction Consideration otherwise payable pursuant to this Agreement to any Sellers such amounts as ABX or the Affiliate are required to deduct and withhold under the Code, or any Applicable Law related to Taxes (a "Tax Law"), with respect to the making of such payment; provided, however, that no such amounts shall be deducted and withheld for U.S. federal Tax purposes from the Transaction Consideration payable to a Seller if such Seller timely provides the appropriate Internal Revenue Service Form W-8 or W-9 to ABX; and, provided further, that any portion of the Transaction Consideration payable with respect to the purchase and sale of the Cargo Options in any event shall be subject to applicable withholding. To the extent that amounts are so withheld by ABX or any Affiliate thereof, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such Seller in respect of whom such deduction and withholding was made by ABX, Cargo or any Affiliate thereof. All amounts so deducted or withheld pursuant to the Code, or any other Tax Law, shall be paid to or deposited with the appropriate Governmental Authority at the time and place required by the Code or other Tax Law, as applicable.

**ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF  
THE SIGNIFICANT SHAREHOLDERS**

Each Significant Shareholder severally, and not jointly or jointly and severally, and solely with respect to such Significant Shareholder, represents and warrants to ABX and Acquisition on the date hereof as follows:

**4.1 Organization and Authority.**

Such Significant Shareholder (other than any Significant Shareholder that is an individual) is duly organized, validly existing and, where applicable, in good standing under the laws of the jurisdiction of its organization or incorporation, with all requisite power and authority to own, operate and lease its properties and assets and to carry on its business as now being conducted.

**4.2 Authorization.**

Such Significant Shareholder has the requisite corporate, partnership or limited liability company power and authority to execute, deliver and enter into this Agreement and all agreements contemplated hereby to be executed and delivered by such Significant Shareholders. The execution, delivery and performance by such Significant Shareholder of this Agreement and all agreements contemplated hereby to be executed and delivered by such Significant Shareholder have been duly authorized by all necessary corporate, partnership or limited liability company action on the part of such Significant Shareholder. This Agreement has been duly executed and delivered by such Significant Shareholder and, assuming that this Agreement constitutes a valid and binding obligation of the other Significant Shareholders, Cargo, ABX and Acquisition, constitutes the binding obligation such Significant Shareholder, enforceable against it in accordance with its terms, except as the enforcement thereof may be subject to or limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other Applicable Laws affecting the enforcement of creditors' rights generally now or hereafter in effect and (ii) the application of equitable principles and the availability of equitable remedies.

**4.3 No Conflicts.**

The execution and delivery by such Significant Shareholder of this Agreement, and any other agreement or certificate of such Significant Shareholder executed and delivered in accordance with the terms hereof do not, and the performance by such Significant Shareholder of its obligations under this Agreement, and such other agreements or certificates and the consummation of all of the transactions contemplated hereby and thereby will not: (a) in the case of a Significant Shareholder that is not an individual, with or without the giving of notice or the passage of time or both, violate or conflict with or result in a breach of any provision of the articles of incorporation, bylaws or other governing documents of such Significant Shareholder; (b) require such

Significant Shareholder to obtain the consent, waiver, approval, or authorization of, or such Significant Shareholder to make a registration, declaration or filing with, any Governmental Authority; and (c) violate or conflict with any Applicable Law or Order that such Significant Shareholder is subject to, except, in the case of clauses (b) and (c) above, for any such consent, waiver, approval, authorization, registration, declaration, filing, violation or conflict that would not reasonably be expected to result in a material adverse effect on the ability of such Significant Shareholder to consummate the transactions contemplated hereby.

#### **4.4 Brokers, Finders.**

Except as set forth in Section 4.4 of the Cargo Disclosure Schedule, no such Significant Shareholder has dealt with or employed any broker, finder, investment banker or financial advisor in connection with the negotiation, execution or performance of this Agreement.

#### **4.5 Investment Intent**

(a) Such Significant Shareholder, in its capacity as a holder of Cargo Common Shares, is acquiring the shares of ABX Common Stock to be issued to it pursuant to the terms of this Agreement for its own account, for investment purposes only and not with a view toward, or for sale in connection with, any distribution thereof, nor with any present intention of distributing or selling such shares of ABX Common Stock in violation of the Applicable Laws relating to securities, provided, however, that the disposition of such Significant Shareholder's property shall at all times remain within the sole control and discretion of such Significant Shareholder, so long as such disposition is in compliance with Applicable Law.

(b) Such Significant Shareholder qualifies as an "accredited investor," as such term is defined in Rule 501(a) promulgated pursuant to the Securities Act.

(c) Such Significant Shareholder understands that the shares of ABX Common Stock to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Such Significant Shareholder has experience as an investor in securities and equity interests of companies such as the ones being issued pursuant to this Agreement, and such Significant Shareholder can bear the economic risk of its investment (which may be for an indefinite period) and has such knowledge and experience in financial or business matters that such Significant Shareholder is capable of evaluating the merits and risks of its investment pursuant to the transactions contemplated hereby.

(d) Such Significant Shareholder understands that the shares of ABX Common Stock to be acquired by it pursuant to the terms of this Agreement have not been registered under the Securities Act. Such Significant Shareholder acknowledges that such securities may not be transferred, sold, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act or in accordance with an applicable exemption therefrom.

#### **4.6 Exclusivity of Representations.**

The representations and warranties made by the Significant Shareholders in this Article IV are the exclusive representations and warranties made by the Significant Shareholders. The Significant Shareholders hereby disclaim any other express or implied representations or warranties.

### **ARTICLE V REPRESENTATIONS AND WARRANTIES OF CARGO**

Except as otherwise set forth in the Cargo Disclosure Schedule, Cargo represents and warrants to ABX and Acquisition on the date hereof as follows:

#### **5.1 Organization and Authority.**

Each Acquired Company is duly organized, validly existing and in good standing under the laws of the state of its organization or incorporation, with all requisite power and authority to own, operate and lease its properties and assets and to carry on its business as now being conducted. Each Acquired Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which it is required to be so qualified or licensed, except where failure to be so qualified or licensed has not had, and would not reasonably be expected to have, a Cargo Material Adverse Effect or otherwise would not reasonably be expected to result in Losses to the Acquired Companies of more than \$25,000 in the aggregate. Each Acquired Company is in compliance with the provisions of its respective articles of incorporation, bylaws and other governing documents.

#### **5.2 Subsidiaries.**

Section 5.2 of the Cargo Disclosure Schedule lists all of the Subsidiaries of Cargo and sets forth, with respect to each Subsidiary, (i) its jurisdiction of organization, (ii) each State in which such Subsidiary is qualified to do business as a foreign corporation or other Person, (iii) its authorized and outstanding shares of capital stock or equivalent equity interests, (iv) Cargo's or other Subsidiary's ownership of such shares or equity interests, and (v) if the Subsidiary is not directly or indirectly wholly-owned by Cargo, the identity and respective ownership interests of any other Person who owns any such shares or equity interests. Except as set forth in Section 5.2 of the Cargo Disclosure Schedule, each of the outstanding shares of capital stock or other equity interests of each Subsidiary is duly authorized, validly issued, fully paid and nonassessable and owned by Cargo or by a direct or indirect wholly owned Subsidiary of Cargo, free and clear of any Lien. There are no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or rights of any kind that obligate Cargo or any Subsidiary to issue or sell any shares of capital stock or other securities of any Subsidiary or any securities or obligations convertible or exchangeable

into or exercisable for, or giving any Person a right to subscribe for or acquire, any securities of any Subsidiary, and no securities or obligations evidencing such rights are authorized, issued or outstanding. Except as set forth in Section 5.2 of the Cargo Disclosure Schedules, Cargo has no other Subsidiaries and Cargo has no direct or indirect equity ownership in any other Person.

### **5.3 Authorization.**

Cargo has the requisite corporate power and authority to execute, deliver and enter into this Agreement and all agreements contemplated hereby to be executed and delivered by Cargo. The execution, delivery and performance by Cargo of this Agreement and all agreements contemplated hereby to be executed and delivered by Cargo have been duly authorized by all necessary corporate action on the part of Cargo. This Agreement has been duly executed and delivered by Cargo and, assuming that this Agreement constitutes a valid and binding obligation of the Significant Shareholders, ABX and Acquisition, constitutes the binding obligation of Cargo, enforceable against it in accordance with its terms, except as the enforcement thereof may be subject to or limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other Applicable Laws affecting the enforcement of creditors' rights generally now or hereafter in effect and (ii) the application of equitable principles and the availability of equitable remedies.

### **5.4 Capital Stock.**

(a) The authorized capital stock of Cargo consists of (i) 40,000,000 shares of Cargo Class A Common Stock, of which 18,824,633 shares of Cargo Class A Common Stock are issued and outstanding and are duly authorized, validly issued, fully paid and nonassessable and (ii) 40,950 shares of Cargo Class X Common Stock, all of which are issued and outstanding and are duly authorized, validly issued, fully paid and nonassessable. Section 5.4(a) of the Cargo Disclosure Schedule sets forth the name of each Shareholder and the number of Cargo Common Shares (identified by class) owned by such Shareholder. There has not been any change in the authorized, issued and outstanding capital stock of Cargo from and after the Latest Balance Sheet Date. All outstanding Cargo Common Shares were issued in compliance with the Articles of Incorporation and Bylaws of Cargo and with Applicable Law. Except as set forth in Section 5.4(a) of the Cargo Disclosure Schedule, there are no accrued or unpaid dividends with respect to any issued and outstanding Cargo Common Shares.

(b) Section 5.4(b) of the Cargo Disclosure Schedule lists each outstanding Cargo Option, including the name of the holder of each Cargo Option, the expiration date of each Cargo Option, the current exercise price and the number of Cargo Common Shares (identified by class) subject thereto. Section 5.4 of the Cargo Disclosure Schedule also lists each outstanding Cargo Warrant, including the name of the holder of each Cargo Warrant, the date of warrant, the current exercise price, and the number of Cargo Common Shares (identified by class) subject thereto.

(c) Except for the Cargo Options and Cargo Warrants and except as set forth in Section 5.4(c) of the Cargo Disclosure Schedule, there are no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or rights of any kind that obligate Cargo to issue or sell any shares of capital stock or other securities of Cargo or any securities or obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or acquire, any securities of Cargo, and no securities or obligations evidencing such rights are authorized, issued or outstanding.

(d) Except as set forth in Section 5.4(d) of the Cargo Disclosure Schedule, there is no proxy, voting trust or any agreement, arrangement or understanding of any kind to which Cargo or any Shareholder is a party or by which Cargo or any Shareholder is bound with respect to the voting, transfer or other disposition of any Cargo Common Shares.

#### **5.5 No Conflicts.**

Except for the necessary approval of this Agreement by the Shareholders of Cargo and as set forth in Section 5.5 of the Cargo Disclosure Schedule, the execution and delivery by Cargo of this Agreement, and any other agreement or certificate of Cargo executed and delivered in accordance with the terms hereof do not, and the performance by Cargo of its obligations under this Agreement, and such other agreements or certificates and the consummation of all of the transactions contemplated hereby and thereby will not: (a) with or without the giving of notice or the passage of time or both, violate or conflict with or result in a breach of any provision of the articles of incorporation, bylaws or other governing documents of any Acquired Company; (b) require any Acquired Company to obtain the consent, waiver, approval, or authorization of, or any Acquired Company to make a registration, declaration or filing with, any Person or Governmental Authority; and (c) with or without the giving of notice or the passage of time or both, (i) violate or conflict with, or (ii) result in a breach or termination of, or (iii) constitute a default under, or grounds for the modification or cancellation of, or (iv) result in the imposition of any penalty or revocation or suspension of rights under, or (v) accelerate or permit the acceleration of the performance required by, or (vi) result in the creation of any Liens, except Permitted Liens, upon any of the assets of Cargo or any of its Subsidiaries, or otherwise give rise to any Liability under, any Material Contract, Permit or any Applicable Law to which any Acquired Company is a party or by which any Acquired Company or any of their respective assets may be bound or governed, except, in the case of clauses (b) and (c) above, for any such consent, waiver, approval, authorization, registration, declaration, filing, violation, conflict, breach, termination, default, modification, cancellation, imposition, revocation, suspension, acceleration or creation that has not had, and would not reasonably be expected to have, a Cargo Material Adverse Effect or otherwise would not reasonably be expected to result in Losses to the Acquired Companies of more than \$100,000 in the aggregate.

## **5.6 Financial Statements.**

Cargo has provided the Financial Statements to ABX. For the respective periods covered therein, except as set forth in Section 5.6 of the Cargo Disclosure Schedule, the Financial Statements: (a) present fairly in all material respects the consolidated financial position of Cargo and its Subsidiaries at such dates and the consolidated results of operations, shareholders equity and statements of cash flow for the respective periods ended on such dates, subject only in the case of the unaudited financial statements for the nine months ended September 30, 2007, to normal year end adjustments; and (b) were prepared in accordance with Past Practice and GAAP, consistently applied during the relevant periods (except as may be indicated therein or in the notes thereto and except that the unaudited financial statements as and for the nine months ended September 30, 2007, may not contain all of the notes thereto required by GAAP).

## **5.7 Taxes.**

Except as disclosed in Section 5.7 of the Cargo Disclosure Schedule:

(a) Cargo has delivered to, or made available for inspection by, ABX correct and complete copies of all material Tax Returns and examination reports of, and statements of deficiencies assessed against or agreed to by, Cargo and each of its Subsidiaries filed or received since January 1, 2004.

(b) All material Tax Returns of Cargo and each of its Subsidiaries have been timely filed, and each such Tax Return was true, correct and complete in all material respects when filed.

(c) All material Taxes due and owing by Cargo and each of its Subsidiaries have been paid, whether or not shown as due on such Tax Returns.

(d) Cargo and each of its Subsidiaries have withheld and paid all material Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party.

(e) No material Tax Return of Cargo or any of its Subsidiaries has been audited by any Governmental Authority during the past three years. To the Knowledge of Cargo and the Significant Shareholders, no Governmental Authority has proposed in writing any additional material Taxes with respect to Cargo or any of its Subsidiaries or for which Cargo or any of its Subsidiaries may be liable or with respect to any of the operations or business of Cargo or any of its Subsidiaries. There are no pending claims, examinations or assessments for material Taxes with respect to Cargo or any of its Subsidiaries.

(f) Neither Cargo nor any of its Subsidiaries has been granted an extension of any statute of limitations with respect to any material Taxes for any fiscal year.

(g) There are no Liens for material Taxes (other than Permitted Liens) upon the properties or assets of Cargo or any of its Subsidiaries.

(h) Neither Cargo nor any of its Subsidiaries is liable for material Taxes of any other Person and is neither currently under any contractual obligation nor a party to any tax sharing agreement or other agreement providing for payments by it with respect to material Taxes, provided, however, that this representation shall not apply to agreements with third parties, unless such third-party agreements were entered into during the four-year period ending on the Closing Date and Cargo failed to disclose such agreements in Section 5.7 of the Cargo Disclosure Schedule.

(i) To the Knowledge of Cargo, Cargo has not engaged in (i) a listed transaction within the meaning of Treasury Regulation section 1.6011-4(b)(2), (ii) a confidential transaction within the meaning of Treasury Regulation section 1.6011-4(b)(3), (iii) a transaction with contractual protection within the meaning of Treasury Regulation section 1.6011-4(b)(4) or (iv) a transaction of interest within the meaning of Treasury Regulation section 1.6011-4(b)(6), in each case, to the extent a particular transaction qualifies as one of these types on the date hereof.

(j) Neither Cargo nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting for a taxable period ending on or prior to the Closing Date, or (ii) "closing agreement" as described in Code § 7121 (or any corresponding or similar provision of state, local or foreign income Tax law) executed on or prior to the Closing Date.

(k) Section 5.7(k) of the Cargo Disclosure Schedule lists all of the jurisdictions where Cargo and its Subsidiaries currently pay Taxes. No claim has been made by a Governmental Authority in a jurisdiction where Cargo or its Subsidiaries do not currently file Tax Returns that they or any of them may be subject to material taxation by that jurisdiction.

(l) Cargo has not filed or been included in a combined, consolidated or unitary tax return (or substantial equivalent thereof) of any Person (other than a return with respect to a group the common parent of which was Cargo), and has no Liability for the Taxes of any Person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract, or otherwise.

(m) Neither Cargo nor any of its Subsidiaries has been a United States real property holding corporation within the meaning of Code § 897(c)(2) during the applicable period specified in Code § 897(c)(1)(A)(ii).

(n) Neither Cargo nor any of its Subsidiaries has distributed stock of another Person or had its stock distributed by another Person in a transaction that was purported or intended to be governed in whole or in part by Code § 355 or Code § 361 within the last two years.

### **5.8 No Adverse Changes.**

Except in the case of clause (a) hereof for conduct or changes related to the transactions contemplated by this Agreement, since the Latest Balance Sheet Date: (a) the business of each Acquired Company has been conducted only in the Ordinary Course of Business; (b) there has not been any change in the financial condition, assets, liabilities, business or operations of Cargo or any of its Subsidiaries that has had, or would reasonably be expected to have, a Cargo Material Adverse Effect; and (c) to the Knowledge of Cargo, there is no threatened occurrence or development which would reasonably be expected to have a Cargo Material Adverse Effect.

### **5.9 Conduct of Business.**

Since the Latest Balance Sheet Date, except as set forth in Section 5.9 of the Cargo Disclosure Schedule, neither Cargo nor any of its Subsidiaries has:

- (i) except for transactions contemplated by, and actions taken in connection with, this Agreement, created or incurred any material Liability other than in the Ordinary Course of Business;
- (ii) subjected to any Liens, except Permitted Liens, any of its properties, whether real or personal, or assets, tangible or intangible;
- (iii) discharged or satisfied any Lien or paid any Liability except, in each case, in the Ordinary Course of Business;
- (iv) waived, released or compromised any claims or rights of material value under, or terminated or materially modified, any Material Contract;
- (v) entered into any material settlement, compromise or consent with respect to any Action;
- (vi) sold, assigned, transferred, leased or otherwise disposed of any of its assets, tangible or intangible, or canceled any debts or claims except, in each case in the Ordinary Course of Business;
- (vii) declared or paid any dividends, or made any other distribution on or in respect of, or directly or indirectly purchased, retired, redeemed or otherwise acquired any shares of its capital stock, or paid any notes or open accounts to, or paid any amount or transferred any asset to, any Shareholder, other than compensation paid in the Ordinary Course of Business in accordance with the terms of employment of such Shareholder in effect on the Latest Balance Sheet Date;
- (viii) except for: (A) Government Contracts and Material Agreements entered into in the Ordinary Course of Business; (B) any commitments to pay compensation to any employee hired after the Latest Balance Sheet Date; and (C) contracts or commitments entered into in connection with the transaction

contemplated by this Agreement, made or become a party to, or become bound by, any contract or commitment or renewed, extended, amended, modified or terminated any contract or commitment which in any one case involved an amount in excess of \$100,000 or in the aggregate an amount in excess of \$750,000;

(ix) adopted or (except as otherwise required by Applicable Law) amended, any Employee Benefit Plan;

(x) increased the compensation, fees or other remuneration payable or to become payable to any of its independent contractors, consultants or agents;

(xi) issued or sold any Cargo Common Shares or securities convertible into Cargo Common Shares or issued or sold any securities of any Subsidiary;

(xii) announced any material change in the form or manner of distribution of any of its products or services;

(xiii) materially changed any of its accounting methods or principles used in recording transactions on its books or records or in preparing the Financial Statements;

(xiv) entered into any contract or commitment to do any of the foregoing; or

(xv) except for transactions contemplated by, and actions taken in connection with, this Agreement, entered into any other transaction or taken any other action not in the Ordinary Course of Business.

#### **5.10 Title to Assets.**

Each of Cargo and its Subsidiaries has good title to all of the assets that they purport to own and valid leasehold interests in all of the real and personal property that they purport to lease, free and clear of all Liens (other than Liens for Taxes, which are covered by Section 5.7(g)) except Permitted Liens. No condemnation, eminent domain or similar proceeding affecting all or any material portion of any such real property is pending or, to the Knowledge of Cargo, threatened. Except as set forth in Section 5.10 of the Cargo Disclosure Schedule, none of the assets of Cargo or its Subsidiaries is subject to any sublease, sublicense or other agreement granting to any other Person any right to the use or enjoyment of such assets. Other than those assets which are leased or licensed by Cargo and its Subsidiaries from other Persons, there are no assets which are owned by any third party. The assets and properties owned or leased by Cargo and its Subsidiaries (other than with respect to the Cargo Aircraft, the Cargo Aircraft engines and rotables which are covered specifically and only by Section 5.22) are in the aggregate sufficient and adequate, and in an adequate state of repair and operating condition (taken as a whole), to carry on the business of Cargo and its Subsidiaries as currently conducted.

### **5.11 Real Property.**

(a) None of the Acquired Companies own any real property.

(b) Section 5.11(b) of the Cargo Disclosure Schedule sets forth a description of each parcel of real property leased by Cargo or any of its Subsidiaries from any other Person. Cargo has made available to ABX a true and complete copy of any material lease agreement related to such parcel of real property as currently in effect and, for any material leased property without a written lease agreement, has provided a complete summary of the material terms of such lease.

(c) Section 5.11(c) of Cargo Disclosure Schedule sets forth a description of each parcel of real property leased or sublet by Cargo or any of its Subsidiaries to any Person. Cargo has made available to ABX a true and complete copy of any material lease agreement related to such parcel of real property as currently in effect and, for material leased property without a written lease agreement, has provided a complete summary of the material terms of the lease or sub-lease.

(d) Cargo or its applicable Subsidiary enjoys quiet possession under the leases referenced in Section 5.11(b) of the Cargo Disclosure Schedule.

### **5.12 Accounts Receivable.**

Except as set forth in Section 5.12(a) of the Cargo Disclosure Schedule, all accounts and notes receivable of any Acquired Company represent sales actually made or services actually performed arising from bona fide transactions in the Ordinary Course of Business and, to the Knowledge of Cargo, at the time of rendering the invoice therefor, were not subject to claims or set-off or other defenses or counterclaims. All accounts and notes payable by any Acquired Company arose in bona fide transactions in the Ordinary Course of Business.

### **5.13 Material Agreements; Other Contracts.**

(a) Exclusive of the Government Contracts listed on Section 5.14(a) of the Cargo Disclosure Schedule, the Licenses listed on Section 5.15(b) of the Cargo Disclosure Schedule, the Cargo Collective Bargaining Agreements listed on Section 5.17(a) of the Cargo Disclosure Schedule and Cargo Aircraft Acquisition Contracts listed on Section 5.22(b) of the Cargo Disclosure Schedule, Section 5.13(a) of the Cargo Disclosure Schedule sets forth a list of all Contracts for (i) the existing leases of any aircraft or engines by or to any Acquired Company ( respectively, the "Cargo Leased Aircraft Contracts" and the "Cargo Leased Engine Contracts"), (ii) each Contract to which an Acquired Company is a party for the maintenance and repair of any aircraft, airframe, engine or auxiliary power unit (the "Cargo Aircraft Maintenance Contracts"), (iii) each Contract for the supply of aircraft jet fuel to which an Acquired Company is a party (the "Cargo Aircraft Fuel Contracts"), (iv) each Contract for the modification or refurbishing of a Cargo Aircraft (including those modifying a Cargo Aircraft from a passenger aircraft to a cargo aircraft) (the "Cargo Aircraft Modification Contracts") and (v) each Contract for the provision, purchase or sale of materials, equipment, inventory or services with a valuation of \$250,000 or more (each Contract listed in Section 5.13(a) of the Cargo Disclosure Schedule are collectively referred to as the "Material Agreements").

(b) Except for the real estate leases referenced in Section 5.11(b) or 5.11(c) of the Cargo Disclosure Schedule, Material Agreements listed in Section 5.13(a) of the Cargo Disclosure Schedule, Government Contracts listed in Section 5.14(a) of the Cargo Disclosure Schedule, Licenses listed in Section 5.15(b) of the Cargo Disclosure Schedule, Cargo Collective Bargaining Agreements listed in Section 5.17(a) of the Cargo Disclosure Schedule, Cargo Aircraft Acquisition Contracts listed in Section 5.22(b) of the Cargo Disclosure Schedule and those Contracts listed in Section 5.13(b) of the Cargo Disclosure Schedule, no Acquired Company is a party to, or bound by, any of the following:

(i) a Contract that (A) requires an Acquired Company to make payments equal to or more than \$100,000 per annum and that is not terminable without penalty, premium or additional payments upon not less than 45 days prior written notice by an Acquired Company or (B) relates to capital expenditures with respect to any Acquired Company and involves future payments that exceed \$100,000 in any 12-month period and that is not terminable without penalty, premium or additional payments upon not less than 45 days prior written notice by an Acquired Company;

(ii) a Contract that either (A) requires an Acquired Company to make payments equal to or more than \$250,000 per annum or (B) generates revenue for an Acquired Company of \$250,000 per annum and that has a term of, or requiring performance, more than one year from its date and that is not terminable without penalty, premium or additional payments upon not less than 45 days prior written notice by an Acquired Company;

(iii) a Contract relating to the licensing of any material Intellectual Property, except shrink wrap and click wrap licenses to software and other packaged media;

(iv) a Contract of employment;

(v) a Contract with any independent contractor or consultant that requires an Acquired Company to make payments equal to or more than \$100,000 per annum and that is not terminable without penalty, premium or additional payments upon not less than 45 days prior written notice by an Acquired Company;

(vi) a Contract with respect to indebtedness for borrowed money or any other debt of any Acquired Company, all related security agreements and collateral documents, including any Contract for any commitment for future loans, credit or financing, and all other Contracts that create a Lien on any property or asset of any Acquired Company;

(vii) a guarantee of a payment by any Person;

- (viii) an agency (sales or otherwise), distribution, brokerage or advertising Contract;
- (ix) a Contract with investment bankers;
- (x) a Contract with any shareholder, director or officer of any Acquired Company or any Affiliate of such Persons;
- (xi) a Contract that restricts any Acquired Company from engaging or competing in any business or in any location or from soliciting clients, employees or other service providers or, except for Contracts entered into in the Ordinary Course of Business of Cargo, a Contract which requires an Acquired Company to maintain the confidentiality of any material matter;
- (xii) a partnership or joint venture Contract;
- (xiii) a Contract containing change of control, success fee, retention or similar bonus payments or benefits, or providing for benefits that will be increased, or providing for the vesting of benefits that will be accelerated, that would be triggered by the closing of the transactions contemplated by this Agreement; or
- (xiv) a Contract relating to the acquisition or disposition of any business enterprise, whether by stock purchase, asset purchase or otherwise, where such acquisition or disposition is currently pending or was consummated at any point during the preceding five years.

Cargo has made available for inspection by ABX (i) a correct and complete copy of each written Contract and (ii) a written summary of the material terms of each oral Contract that either (A) requires an Acquired Company to make payments equal to or more than \$100,000 per annum or (B) generates revenue for an Acquired Company of \$100,000 per annum, that are listed in Sections 5.13(a) or 5.13(b) of the Cargo Disclosure Schedule together with all amendments thereto and any waivers granted thereunder (collectively, the “Scheduled Contracts”).

(c) All Material Contracts are valid and binding agreements, in full force and effect and enforceable in accordance with their respective terms, except as the enforcement thereof may be subject to or limited by bankruptcy, insolvency, reorganization, moratorium or other Applicable Law affecting the enforcement of creditors’ rights generally now or hereafter in effect and subject to the application of equitable principles and the availability of equitable remedies. Except as set forth in Section 5.13(c) of the Cargo Disclosure Schedule, there is not, under any Material Contract, any existing material default or material breach by any Acquired Company, or, to the Knowledge of Cargo, by any other party or, to the Knowledge of Cargo, any event, condition or act (including the consummation of the transactions contemplated by this Agreement) which, with the giving of notice or the lapse of time (i) would constitute a material default under or a material breach by any Acquired Company of any provision of any Material Contract or (ii) would permit the acceleration of any material obligation of

any party to any Material Contract or the creation of a material Lien upon any of the assets of any Acquired Company. No Acquired Company has received written notice of the pending or threatened cancellation, revocation or termination of any of Material Contract. Except in the Ordinary Course of Business, no Acquired Company has assigned, delegated or otherwise transferred any of its rights or obligations with respect to any Material Contract.

#### **5.14 Government Contracts.**

(a) Section 5.14(a) of the Cargo Disclosure Schedule sets forth a complete and accurate list of the Government Contracts, complete and accurate copies of which have been made available to ABX.

(b) No Acquired Company is a party to any current material dispute relating to a Government Contract. No Acquired Company has received written notice that it or any of its Representatives has breached or violated any Applicable Law, certification, representation, clause, provision, or requirement with respect to any Government Contract. There are no current or, to the Knowledge of Cargo, threatened Actions arising out of or relating to any Government Contract. No Acquired Company has received a cure notice, a show cause notice, a suspension of work notice, or a stop work order with respect to any Government Contract.

(c) With respect to each Government Contract, no Acquired Company has been challenged by the Governmental Authority as to any cost incurred by it nor has any such cost been the subject of any audit or investigation by the Governmental Authority, or disallowed by the Governmental Authority. No payment due to any Acquired Company relating to any Government Contract has been withheld (except to the extent such withholding is in the Ordinary Course of Business) or set off, nor has any claim been made by the Governmental Authority to withhold (except to the extent such withholding is in the Ordinary Course of Business) or set off money due to any Acquired Company under a Government Contract.

(d) Each Acquired Company has complied in all material respects with the terms and conditions of each Government Contract. Each Acquired Company has, with respect to all Government Contracts: (x) complied in all material respects with all certifications and representations it has executed, acknowledged or set forth with respect to each such Government Contract; and (y) submitted certifications and representations with respect to each such Government Contract that were in all material respects accurate, current and complete when submitted, and were properly updated in all material respects to the extent required by Applicable Law or the Government Contract.

(e) No Acquired Company has received written notice of any unfavorable past performance assessments, evaluations, or ratings relating to any Government Contract.

### **5.15 Intellectual Property.**

(a) Section 5.15(a) of the Cargo Disclosure Schedule lists all of the patents and patent applications, registered trademarks and service marks, pending trademark and service mark registration applications, intent-to-use registrations or similar reservations of marks, registered copyrights and applications for registration thereof and internet domain names, in each case of the Acquired Companies.

(b) Section 5.15(b) of the Cargo Disclosure Schedule lists all licenses, sublicenses, agreements or instruments involving the Intellectual Property which are material to the business of the Acquired Companies, including (i) licenses by an Acquired Company to any Person of any Intellectual Property other than licenses granted to customers in the Ordinary Course of Business, and (ii) all licenses by any other Person to an Acquired Company of any Intellectual Property (except shrink wrap and click wrap licenses to software and other packaged media) which are necessary for the conduct of the business of Cargo and its Subsidiaries (each, a “License”). Each License identified in Section 5.15(b) of the Cargo Disclosure Schedule is a valid and binding agreement, in full force and effect and enforceable in accordance with its terms. With respect to each License, there is no material default (or event that with the giving of notice or passage of time would constitute a material default) by an Acquired Company or, to the Knowledge of Cargo, any other Person party thereto. There are no pending or, to the Knowledge of Cargo, threatened claims with respect to any License. True and complete copies of all Licenses have been made available to ABX.

(c) Each Acquired Company has good and valid title to, or otherwise possesses the rights to use, all Intellectual Property necessary for the conduct of its business. Each Acquired Company has taken commercially reasonable measures to protect the proprietary nature of the Intellectual Property and to maintain in confidence all trade secrets and other confidential Intellectual Property and information owned or used by them in connection with its business.

(d) No Acquired Company has received written notice that it has infringed upon, misappropriated or misused, any intellectual property or proprietary information of another Person. There are no pending or, to the Knowledge of Cargo, threatened claims or proceedings contesting or challenging the Intellectual Property, or Cargo’s use of the Intellectual Property owned by another Person. To the Knowledge of Cargo, no Person is infringing upon, misappropriating, or otherwise violating Cargo’s rights to the Intellectual Property.

(f) All registered trademarks, and pending applications for trademarks with the United States Patent and Trademark Office or any other trademark office, are currently in all material respects in compliance with all Applicable Laws (including the filing of affidavits of use and renewal applications as applicable), and are not subject to any maintenance fees or taxes or actions falling due within 90 days after the date hereof. No trademark has been or is now involved in any opposition, infringement, dilution, unfair competition or cancellation proceeding and, to the Knowledge of Cargo, no such action is threatened with respect to any of the trademarks. No trademark is alleged to infringe any trade name, trademark or service mark of any other Person and, to the Knowledge of Cargo, no trademark is infringed.

(g) Except as set forth in Section 5.15(g) of the Cargo Disclosure Schedule, the Intellectual Property is free and clear of any and all Liens, except Permitted Liens.

#### **5.16 Customer and Supplier Relationships.**

(a) Section 5.16(a) of the Cargo Disclosure Schedule sets forth a list of: (i) the 10 largest customers by dollar volume to the Acquired Companies for the twelve months ended August 31, 2007; and (ii) the 25 largest suppliers by dollar volume of the Acquired Companies for the twelve months ended August 31, 2007.

(b) Except as set forth in Section 5.16(b) of the Cargo Disclosure Schedule, there exists no actual or, to the Knowledge of Cargo, threatened termination, cancellation or limitation of, or any change in, the business relationship with any of the customers or suppliers identified in Section 5.16(a) of the Cargo Disclosure Schedule that has had, or would reasonably be expected to have, a Cargo Material Adverse Effect. There are no pending material disputes or controversies between an Acquired Company and any such customer or supplier of Cargo.

#### **5.17 Employee and Labor Relations.**

(a) Section 5.17(a) of the Cargo Disclosure Schedule contains a complete and accurate list of each collective bargaining or other labor union or foreign work council Contract (including amendments thereto) applicable to Persons employed by any Acquired Company to which an Acquired Company is a party (each a “Cargo Collective Bargaining Agreement”). Each Acquired Company has complied with the provisions of all Cargo Collective Bargaining Agreements, except as set forth in Section 5.17(a) of the Cargo Disclosure Schedule and except for any such non-compliance that has not, and would not reasonably be expected to have, a Cargo Material Adverse Effect or otherwise would not reasonably be expected to result in Losses to the Acquired Companies of more than \$100,000 in the aggregate. Cargo has made available to ABX a true and complete copy of each such Cargo Collective Bargaining Agreement. Except as set forth in Section 5.17(a) of the Cargo Disclosure Schedule, no Cargo Collective Bargaining Agreement is being negotiated by an Acquired Company or will be subject to negotiation prior to the Closing Date. No Acquired Company has committed any material unfair labor practice in connection with the operation of its respective businesses. No labor union, labor organization or group of employees of any Acquired Company has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or, to the Knowledge of Cargo, threatened to be brought or filed with any labor relations tribunal or authority, and there are no labor union organizing activities pending or, to the Knowledge of Cargo, threatened with respect to any employees of an Acquired Company. Except as set forth in Section 5.17(a) of the Cargo Disclosure Schedule, there are no arbitrations, written grievances or written

complaints pending or, to the Knowledge of Cargo, threatened against any Acquired Company under any Cargo Collective Bargaining Agreement, except for such matters as would not, individually or in the aggregate, reasonably be expected to have a Cargo Material Adverse Effect.

(b) Each Acquired Company is currently in material compliance with, and during the last six years there has been no material violation of, Applicable Law with respect to the employment of individuals by, or the employment practices or work conditions of the Acquired Companies or their respective terms and conditions of employment, wages and hours. No Acquired Company is engaged in any unfair labor practice or other unlawful employment practice (including under any immigration laws) that has had, or would reasonably be expected to have, a Cargo Material Adverse Effect or otherwise would reasonably be expected to result in Losses to the Acquired Companies of more than \$100,000 in the aggregate. Except as set forth in Section 5.17(b) of the Cargo Disclosure Schedule, there are no material unfair labor practice charges or other employee related complaints or claims against an Acquired Company pending or, to the Knowledge of Cargo, threatened before the National Labor Relations Board, the National Mediation Board, the Equal Employment Opportunity Commission, the Occupational Safety and Health Review Commission, the Department of Labor, or any other Governmental Authority. No Acquired Company has been notified in writing by any Governmental Authority of any alleged material violation of Applicable Law that remains unresolved respecting employment and employment practices, terms and conditions of employment, or wage and hours.

(c) There is no existing or, to the Knowledge of Cargo, threatened work stoppage, strike, dispute, boycott, slowdown, lockout, picketing or other labor problem involving employees of an Acquired Company or related to the business or operations of the Acquired Companies, nor have any such labor problems occurred or been threatened within the past three years.

(d) No Acquired Company has received any written notice of the intent of any Governmental Authority responsible for the enforcement of any Applicable Law relating to labor or employment to conduct an investigation of any Acquired Company, and, to the Knowledge of Cargo, no such investigation is threatened.

(e) There are no material outstanding Orders against an Acquired Company under any Applicable Law relating to occupational health or safety and, to the Knowledge of Cargo, none has been threatened. All material levies, assessments and penalties made against an Acquired Company pursuant to any Applicable Law relating to workers compensation have been paid, unless subject to a good faith challenge or dispute.

(f) As of the date hereof, Cargo has executed and delivered Contracts of employment with each of Peter Fox, George Golder and Todd Hunter, in each case dated as of the date hereof. True and correct copies of each such employment agreement have been delivered to ABX.

## **5.18 Benefit Plans.**

(a) Section 5.18(a) of the Cargo Disclosure Schedule sets forth a true and complete list of each “employee welfare benefit plan” (as defined in Section 3(1) of ERISA) maintained by Cargo or any of its Subsidiaries or to which Cargo or a Subsidiary contributes or is required to contribute, including any multiple employer welfare arrangement or any multiemployer employee welfare benefit plan, on behalf of officers or employees of Cargo or a Subsidiary (such multiple employer, multiemployer and other employee welfare benefit plans being hereinafter collectively referred to as the “Welfare Benefit Plans”). With respect to each Welfare Benefit Plan, all contributions or premiums due by, or attributable to the period ending on, the Closing Date have been paid or accrued and no such amounts are delinquent, except for any failure to so pay or accrue, or for any such delinquency, that has not exceeded, and would not reasonably be expected to exceed, \$25,000 in the aggregate. Except for continuation coverage required under Section 4980B of the Code and Part 6 of Title I of ERISA, there are no Welfare Benefit Plans or Benefit Arrangements that provide benefits to current or former employees beyond their retirement or termination of employment.

(b) Section 5.18(b) of the Cargo Disclosure Schedule sets forth a true and complete list of each “employee pension benefit plan” (as defined in Section 3(2) of ERISA) maintained by Cargo or any of its Subsidiaries or any corporation, trade or business under common control with Cargo within the meaning of Section 4001(a)(14) of ERISA (each, an “ERISA Affiliate”) or to which Cargo or an ERISA Affiliate contributes or is required to contribute, including any multiple employer or multiemployer employee pension benefit plan, on behalf of officers or employees of Cargo, a Subsidiary or an ERISA Affiliate (such multiple employer, multiemployer and other employee pension benefit plans being hereinafter collectively referred to as the “Pension Benefit Plans”). No Pension Benefit Plan is a “defined benefit plan” (as defined in Section 3(35) of ERISA) or a “multiemployer plan” (as defined in Section 3(37) of ERISA). Neither Cargo nor any of its ERISA Affiliates has incurred any liability under Title IV of ERISA. With respect to each Pension Benefit Plan, all contributions due by or attributable to the period ending on the date hereof have been made or accrued on the Latest Balance Sheet, except for any failure to so pay or accrue any such contribution that has not exceeded, and would not reasonably be expected to exceed, \$25,000 in the aggregate.

(c) Section 5.18(c) of the Cargo Disclosure Schedule lists each deferred compensation plan, bonus plan, stock option plan, incentive compensation plan, employee stock purchase plan and any other employee benefit, retirement savings, insurance, sick pay, vacation pay or severance pay plan, agreement, arrangement or commitment or other material compensatory plan or program, whether formal or informal, which is applicable to any employee of Cargo or any Subsidiary, in his or her capacity as an employee of Cargo, or a Subsidiary (collectively, the “Benefit Arrangements”).

(d) Each Pension Benefit Plan, each Welfare Benefit Plan, and each Benefit Arrangement, where applicable, complies, both as to form and, during the three year period ending on the date hereof, operation, with the applicable provisions of (i)

with respect to each Pension Benefit Plan which is intended to be a “qualified retirement plan,” the provisions of Sections 401(a) and 501(a) of the Code; (ii) ERISA; and (iii) all other Applicable Laws, except for any failure to so comply that has not had, and would not reasonably be expected to have, a Cargo Material Adverse Effect. Favorable determination letters, copies of which have been made available to ABX, as to the qualification under the Code of each of the Pension Benefit Plans intended to be a “qualified retirement plan,” as amended, have been received from the Internal Revenue Service.

(e) No Welfare Benefit Plan or Pension Benefit Plan or “party in interest” (as defined in Section 3(14) of ERISA) thereof has engaged in any transaction that would subject Cargo or any Subsidiary to a material tax or penalty under Section 4975 of the Code, liability under Part 4 of Title I of ERISA or a material penalty under Section 502 of ERISA. All reports required by the Internal Revenue Service or the Department of Labor with respect to each Welfare Benefit Plan and each Pension Benefit Plan have been timely filed, except for any failure to so comply that has not resulted, and would not reasonably be expected to result, in a liability to Cargo or its Subsidiaries in excess of \$25,000 in the aggregate.

(f) For each Welfare Benefit Plan, Pension Benefit Plan and Benefit Arrangement, Cargo has previously made available to ABX (i) true and accurate copies of each plan document, (ii) where applicable, the most recent summary plan description and the most recent annual report (Form 5500), (iii) all disclosures required by Applicable Law to be given to participants, (iv) all insurance policies purchased to provide benefits, (v) any trust or custodial agreement, and (vi) all material contracts with third party administrators, actuaries, investment managers, consultants and other independent contractors.

(g) There are no Actions (other than routine claims for benefits) pending or, to the Knowledge of Cargo, threatened against Cargo, any of its Subsidiaries or any ERISA Affiliate in connection with, or against, any Pension Benefit Plan, Welfare Benefit Plan or Benefit Arrangement and there are no civil or criminal actions pending or, to the Knowledge of Cargo, threatened against any “fiduciary” (as defined in Section 3(21) of ERISA), Pension Benefit Plan, Welfare Benefit Plan or Benefit Arrangement.

(h) Except as set forth in Section 5.18(h) of the Cargo Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will result in (i) any payment or transfer of money, property or other consideration (including, without limitation, severance, unemployment compensation or bonus payments) (whether or not such payment would constitute a “parachute payment” or “excess parachute payment” within the meaning of Section 280G of the Code) becoming due from any Acquired Company to any employee or former employee of any Acquired Company; (ii) any increase in the amount of compensation, benefits or fees payable from any Acquired Company to any such individual; (iii) the acceleration of the accrual, vesting or timing of payment of any benefits, compensation or fees payable to any such individual under any Pension Benefit Plan, Welfare Benefit Plan or Benefit Arrangement; or (iv) the acceleration or creation of any other additional rights,

under any Benefit Arrangement, severance, parachute, employment, change in control or other agreement or arrangement by or to which any Acquired Company is a party, in the cases of clauses (i), (ii), (iii) and (iv) that would reasonably be expected to have a Cargo Material Adverse Effect on Cargo or any of its Subsidiaries or otherwise would reasonably be expected to result in Losses to the Acquired Companies of more than \$50,000 in the aggregate.

(i) With respect to any Pension Benefit Plan or Benefit Arrangement that provides “nonqualified deferred compensation” (within the meaning of Section 409A of the Code), since January 1, 2005, such plan or arrangement has been administered in “good faith compliance” with the provisions of Section 409A of the Code.

#### **5.19 Litigation.**

Except as set forth in Section 5.19 of the Cargo Disclosure Schedule, there are no Actions pending or, to the Knowledge of Cargo, threatened against an Acquired Company or, to the Knowledge of Cargo, against any officer or director of an Acquired Company (in their capacity as such) except for such Actions that have not had and would not reasonably be expected to have, a Cargo Material Adverse Effect or that otherwise would not reasonably be expected to result, in the aggregate, in Losses to the Acquired Companies of more than \$100,000 (net of insurance proceeds). There are no Actions pending or, to the Knowledge of Cargo, threatened that seek to enjoin or obtain damages with respect to the consummation of the transactions contemplated hereby. No Acquired Company is subject to the provisions of any ongoing or unsatisfied Order.

#### **5.20 Compliance; Permits**

(a) The Acquired Companies are in compliance with all Applicable Laws which affect their respective businesses, properties or assets, any applicable operating certificates, common carrier obligations, Federal Aviation Regulations (“FARs”) or any other rules, regulations, directives or policies of the FAA, the DOT, the FCC, the DOD, the Department of Homeland Security, the TSA, or any other Governmental Authority, except for instances of possible noncompliance that have not had and would not reasonably be expected to have, individually or in the aggregate, a Cargo Material Adverse Effect. No notice, charge or assertion has been received by an Acquired Company or, to the Knowledge of Cargo, threatened against an Acquired Company, alleging any violation of any of the foregoing, except for instances of possible noncompliance that have not had and would not reasonably be expected to have, individually or in the aggregate, a Cargo Material Adverse Effect. Except as set forth in Section 5.20 of the Cargo Disclosure Schedule, no material investigation or review or civil penalty claims by the FAA, the TSA, any customs agency or any other Governmental Authority with respect to an Acquired Company is pending or, to the Knowledge of Cargo, threatened in writing, nor has any Governmental Authority indicated in writing an intention to conduct the same.

(b) Cargo and each of its Subsidiaries is in possession of all authorizations, licenses, consents, permits, Environmental Permits, certificates, approvals

and clearances of any Governmental Authority necessary for it to own, lease and operate its properties or to carry on their respective businesses substantially as it is being conducted as of the date hereof (the “Cargo Permits”), and all such Cargo Permits are valid, and in full force and effect, except where the failure to have, or the suspension or cancellation of, or failure to be valid or in full force and effect of, any of the Cargo Permits has not had, and would not reasonably be expected to have, individually or in the aggregate, a Cargo Material Adverse Effect. There is not pending or, to the Knowledge of Cargo, threatened before any Governmental Authority any proceeding, charge, notice of violation, order of forfeiture or complaint or investigation against an Acquired Company relating to any of the Cargo Permits, except for any of the foregoing that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Cargo Material Adverse Effect.

(c) No Acquired Company, nor, to the Knowledge of Cargo, any of their respective directors, officers, agents, employees or representatives (in each case acting in their capacities as such) has in the preceding three years (i) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii) directly or indirectly paid or delivered any fee, commission or other sum of money or item of property, however characterized, to any finder, agent or other party acting on behalf of or under the auspices of a governmental official or Governmental Authority, in the United States or any other country, that was illegal under any Applicable Law, (iii) made any payment to any customer or supplier, or to any officer, director, partner, employee or agent of any such customer or supplier, for the unlawful sharing of fees to any such customer or supplier or any such officer, director, partner, employee or agent for the unlawful rebating of charges, (iv) engaged in any other unlawful reciprocal practice, or made any other unlawful payment or given any other unlawful consideration to any such customer or supplier or any such officer, director, partner, employee or agent, or (v) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended, except, in the case of clauses (i) through (v) above, for such payments, violations, conduct or other practices that have not had and would not reasonably be expected to have, individually or in the aggregate, a Cargo Material Adverse Effect.

#### **5.21 Environmental Compliance.**

(a) All properties owned and activities conducted by the Acquired Companies, regardless of location, have been for the preceding three years, and are currently, in compliance with all Environmental Laws, except (i) as set forth on Section 5.21(a) of the Cargo Disclosure Schedule, and (ii) for such non-compliance that has not had, and would not reasonably be expected to have, a Cargo Material Adverse Effect or otherwise would not reasonably be expected to result in Losses to the Acquired Companies of more than \$100,000 in the aggregate.

(b) Except as set forth in Section 5.21(b) of the Cargo Disclosure Schedule, in the preceding three years (or, as the case may be, for such shorter period of time during which an Acquired Company has owned or leased such Real Property), there has not been any Release of Hazardous Substances or Hazardous Discharge (i) into, on,

from or under the Real Property or, to the Knowledge of Cargo, any other property that is or was owned, leased or used by an Acquired Company or (ii) to the Knowledge of Cargo, into, on, from or under any other properties, including landfills, in which wastes generated or transported by an Acquired Company have been Released. Other than with respect to ramp space and airport parking space, none of the Real Property contains or, to the Knowledge of Cargo, formerly contained any above-ground or underground storage tanks.

(c) There are no pending or, to the Knowledge of Cargo, threatened Environmental Actions against any Acquired Company or with respect to any of the Real Property. To the Knowledge of Cargo, there are no pending or threatened Environmental Actions (i) against any of the owners or operators of any facilities that received waste or Hazardous Substances generated by an Acquired Company in connection with the operation of its business, or (ii) concerning any other real property currently or previously owned, leased, operated, or occupied by an Acquired Company (other than the Real Property). Except as set forth in Section 5.21(c) of the Cargo Disclosure Schedule, to the Knowledge of Cargo, no Acquired Company has been or is now a potentially responsible party, and none of them have ever been alleged to be or is liable under CERCLA or any other Environmental Law, with respect to the Release of Hazardous Substances.

(d) None of the assets and properties which have been or are now owned, leased, operated or occupied by an Acquired Company have been for the preceding three years or are now used by an Acquired Company for the generation, storage, manufacture, use, transportation, disposal or treatment of Hazardous Substances, except in material compliance with Environmental Laws.

(e) The Acquired Companies currently maintain all environmental Permits (“Environmental Permits”) necessary for the operation of their respective businesses and, except where the failure to do so has not had, and would not reasonably be expected to have, a Cargo Material Adverse Effect, the Acquired Companies have been for the preceding three years and are in compliance with such Environmental Permits, and there are no pending nor, to the Knowledge of Cargo, threatened in writing, revocations of such Environmental Permits.

(f) Except as set forth in Section 5.21(f) of the Cargo Disclosure Schedule, no Acquired Company, nor any of the Real Property, nor, to the Knowledge of Cargo, any other property which an Acquired Company operates or occupies is subject to any outstanding Order or a party to any Contract with any Governmental Authority (i) with respect to any Environmental Law or (ii) which would require a Remedial Action.

(g) There are no Actions by any Governmental Authority, or any employee of an Acquired Company pending or, to the Knowledge of Cargo, threatened, based on (i) alleged injury to such employee’s health caused by exposure to any Hazardous Substance, (ii) alleged occupational safety or health matters, or (iii) alleged violation of any Environmental Law.

(h) Neither this Agreement nor the consummation of the transactions contemplated by this Agreement will impose any obligations for site investigation or cleanup, or to notify or obtain the consent of any Governmental Authority or third parties under any Environmental Laws (including any so-called “transaction-triggered” or “responsible property transfer” laws and regulations).

#### **5.22 Aircraft.**

(a) Section 5.22(a) of the Cargo Disclosure Schedule (a) sets forth a true and complete list of all aircraft owned or leased by an Acquired Company as of the date hereof (the “Cargo Aircraft”) and (b) sets forth a true and complete list of all aircraft engines owned or leased by an Acquired Company as of the date hereof (the “Cargo Engines”). With respect to each Cargo Aircraft and each Cargo Engine, Section 5.22(a) of the Cargo Disclosure Schedule sets forth (i) the name of the manufacturer, (ii) the model number, (iii) the manufacturer’s serial number, (iv) for each Cargo Aircraft, the aircraft registration number, (v) the Acquired Company which owns or leases the Cargo Aircraft or Cargo Engine, (vi) a statement as to whether the Cargo Aircraft or Cargo Engine is owned or leased, (vii) the operator of the Cargo Aircraft or Cargo Engine, and (viii) a statement as to whether the Cargo Aircraft or Cargo Engine is Airworthy or Unairworthy (as defined in this Section 5.22(a)) on the date of this Agreement. The Cargo Aircraft and the Cargo Engines have been, and are being, maintained according to Applicable Law (including FAA regulatory standards to the extent applicable) and the maintenance program of the aircraft operator approved by the FAA or otherwise under Applicable Law. For purposes of this Section 5.22, a Cargo Aircraft or Cargo Engine shall be considered “Airworthy” if, on the date of this Agreement, it is in a condition which enables it to be operated in revenue operations under FAR Part 121, and a Cargo Aircraft or Cargo Engine will be considered “Unairworthy” if, on the date of this Agreement, it is not Airworthy. Except as set forth in Section 5.22(a) of the Cargo Disclosure Schedule, the Acquired Companies have not materially revised, modified, altered, amended or changed their respective fleet maintenance schedules from those schedules in effect on July 9, 2007 with respect to their respective Cargo Aircraft, Cargo Engines, auxiliary power units, landing gear and major time/cycle limited components, whether owned or leased, and from July 9, 2007 through the date hereof have performed maintenance regarding such items substantially in accordance with such fleet maintenance schedules in effect on July 9, 2007.

(b) The respective Cargo Aircraft, Cargo Engines, auxiliary power units, landing gear and major time/cycle limited components owned or leased by the Acquired Companies are in the aggregate sufficient and adequate, and are, in the aggregate, in a sufficient and adequate state of repair, to enable the Acquired Companies to carry on their respective businesses as currently conducted in the Ordinary Course of Business.

(c) Section 5.22(c) of the Cargo Disclosure Schedule sets forth a true and complete list, as of the date hereof, containing all Contracts (other than existing Cargo Leased Aircraft Contracts) pursuant to which Cargo or any of its Subsidiaries may purchase or lease aircraft, including the manufacturer and model of all aircraft subject to

each such Contract (the “Cargo Aircraft Acquisition Contracts”). Cargo has made available to ABX true and complete copies of all such Cargo Aircraft Acquisition Contracts, including all amendments thereto.

(d) Each Cargo Aircraft has a validly issued, current individual aircraft FAA Certificate of Airworthiness with respect to such Cargo Aircraft which satisfies all requirements for the effectiveness of such FAA Certificate of Airworthiness.

(e) Except for maintenance items due in the Ordinary Course of Business and for maintenance items deferred in the Ordinary Course of Business, the structure, systems and components (including, without limitation, the airframes, engines, landing gear, auxiliary power units and major time/cycle limited components) of each Cargo Aircraft listed as Airworthy in Section 5.22(a) of the Cargo Disclosure Schedule are functioning in accordance with their intended use as set forth in documentation approved by the FAA or under other Applicable Law, including any applicable manuals, technical standard orders or parts manufacturing approval certificates. The Acquired Companies maintain all maintenance, technical and other business records relating to the Cargo Aircraft, or cause the same to be maintained, in accordance with Applicable Law, including, without limitation, all requirements of the FAA to the extent applicable.

(f) All deferred maintenance items and temporary repairs with respect to each Cargo Aircraft have been or are being made materially in accordance with the maintenance program of the aircraft operator, which maintenance program is approved by the FAA or otherwise under Applicable Law.

(g) Except as set forth in Section 5.22(g) of the Cargo Disclosure Schedule, each Cargo Aircraft is properly registered on the FAA aircraft registry.

(h) No Acquired Company is a party to any interchange or pooling agreements with respect to the Cargo Aircraft or their engines, auxiliary power units or other equipment.

(i) Except as set forth in Section 5.22(i) of the Cargo Disclosure Schedule, no Cargo Aircraft is leased to, subleased to or otherwise in the possession of another air carrier or another Person other than an Acquired Company, to operate such Cargo Aircraft in air transportation or otherwise.

(j) Each of Cargo and its operating Subsidiaries is a “citizen of the United States” as defined in the Federal Aviation Act (49 U.S.C § 40102(15)). Each of Cargo’s subsidiaries Capital Cargo International Airlines, Inc., and Air Transport International Limited Liability Company (A) is an “air carrier” within the meaning of the Federal Aviation Act (49 U.S.C. § 40102(2)), (B) holds a certificate of public convenience and necessity issued by the DOT and (C) operates under an Air Carrier Certificate issued pursuant to the Federal Aviation Act (49 U.S.C. §§ 41101-41112).

### **5.23 Brokers, Finders.**

Except as set forth in Section 5.23 of the Cargo Disclosure Schedule, no Acquired Company has dealt with or employed any broker, finder, investment banker or financial advisor in connection with the negotiation, execution or performance of this Agreement.

### **5.24 Insurance.**

Section 5.24 of the Cargo Disclosure Schedule sets forth a true, correct and complete list, and a description of the coverage provided thereby, of all insurance policies maintained by Cargo and its Subsidiaries on their respective assets or properties or in relation to their respective businesses. All of such policies are in full force and effect. All premiums due on such insurance policies on or prior to the date hereof have been paid. No Acquired Company has received written notice of cancellation of any such insurance policies. There are no claims pending that are reasonably likely to exceed any applicable deductible or retention under such insurance policy in which the insurer has notified an Acquired Company that the insurance carrier intends to deny coverage or liability for all or a portion of such claim under the applicable insurance policy.

### **5.25 Related Party Transactions.**

Except as set forth in Section 5.25 of the Cargo Disclosure Schedule, no Related Party (i) has any direct or indirect interest in any material asset used in or otherwise relating to the business of the Acquired Companies or (ii) has entered into any material Contract, transaction or business dealing with an Acquired Company and, to the Knowledge of Cargo, no Related Party is competing with an Acquired Company.

### **5.26 Absence of Material Undisclosed Liabilities.**

(a) Except as set forth in the Cargo Disclosure Schedule, including without limitation, Section 5.6 thereof, and except as of and as set forth on the Latest Balance Sheet, the Acquired Companies had no liabilities that were required by GAAP to be reflected or reserved against in the Latest Balance Sheet.

(b) As of the date of this Agreement, and except as set forth in the Cargo Disclosure Schedule, including without limitation, Section 5.6 thereof, there have been no liabilities incurred since the Latest Balance Sheet Date which have had a Cargo Material Adverse Effect or which would be required by GAAP to be reflected or reserved against in a balance sheet of the Acquired Companies as of the date of this Agreement.

### **5.27 Net Asset Value Accounting Principles and Practices.**

To the Knowledge of Cargo, as of the date hereof, no adjustment would be required under the Net Asset Value Accounting Principles and Practices to be made to the example calculation contained in Exhibit B.

### **5.28 Exclusivity of Representations.**

The representations and warranties made by Cargo in this Article V are the exclusive representations and warranties made by Cargo with respect to the Acquired Companies, including the assets and liabilities of each of them. Cargo hereby disclaims any other express or implied representations or warranties with respect to any of the Acquired Companies. Except as expressly set forth herein, the condition of the assets of the Acquired Companies shall be “as is” and “where is”. Cargo is not, directly or indirectly, making any representations or warranties regarding any financial projections (including any information purporting to give *pro forma* effect to the transactions contemplated hereby) or any other forward-looking statements of any of the Acquired Companies.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES OF ABX AND ACQUISITION**

Except as otherwise set forth in the ABX Disclosure Schedule, ABX and Acquisition, jointly and severally, represent and warrant to Cargo and the Significant Shareholders on the date hereof as follows:

### **6.1 Organization and Authority.**

ABX is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware with all requisite corporate power and authority to own, operate and lease its properties and assets and to carry on its business as now being conducted. Acquisition is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida with all requisite corporate power and authority to own, operate and lease its properties and assets and to carry on its business as now conducted. Acquisition was formed solely for the purpose of engaging in the transactions contemplated by this Agreement, has been engaged in no other business activities, has conducted operations only as contemplated hereby and has no material liabilities. ABX and Acquisition are duly licensed or qualified to do business and are in good standing in each jurisdiction in which they are required to be so qualified or licensed, except where failure to be so qualified or licensed has not had, and would not reasonably be expected to have, an ABX Material Adverse Effect. Each of ABX and Acquisition is in compliance with the provisions of its respective articles of incorporation, bylaws and other governing documents. As of the date of this Agreement, (a) each of the outstanding shares of capital stock and other equity interests of ABX is owned by ABX Air and (b) each of the outstanding shares of capital stock and other equity interests of Acquisition is owned by ABX. As of the Closing Date, (a) each of the outstanding shares of capital stock and other equity interests of ABX Air will be owned by ABX and (b) each of the outstanding shares of capital stock and other equity interests of Acquisition will be owned by ABX.

### **6.2 Authorization.**

(a) Each of ABX and Acquisition has the requisite corporate power and authority to execute, deliver and enter into this Agreement and all agreements contemplated hereby to be executed and delivered by ABX and Acquisition. The

execution, delivery and performance by each of ABX and Acquisition of this Agreement and all agreements contemplated hereby to be executed and delivered by ABX or Acquisition have been duly authorized by all necessary corporate action on the part of ABX and Acquisition, as the case may be. This Agreement has been duly executed and delivered by each of ABX and Acquisition and, assuming that this Agreement constitutes a valid and binding obligation of Cargo and each Significant Shareholder, constitutes the binding obligation of ABX and Acquisition, respectively, enforceable against each of them in accordance with its terms, except as the enforcement thereof may be subject to or limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other Applicable Law affecting the enforcement of creditors' rights generally now or hereafter in effect and (ii) the application of equitable principles and the availability of equitable remedies.

(b) The respective boards of directors of ABX Air, ABX and Acquisition has each unanimously approved and adopted this Agreement and approved the transactions contemplated hereby. No other corporate proceedings on the part of ABX Air, ABX or Acquisition is necessary to adopt or approve this Agreement and the other transactions contemplated by this Agreement.

### **6.3 No Conflicts.**

Except as set forth in Section 6.3 of the ABX Disclosure Schedule, the execution and delivery by each of ABX and Acquisition of this Agreement, and any other agreement or certificate of ABX or Acquisition executed and delivered in accordance with the terms hereof, do not, and the performance by each of ABX and Acquisition of its respective obligations under this Agreement, and such other agreements or certificates and the consummation of all of the transactions contemplated hereby and thereby, will not: (a) with or without the giving of notice or the passage of time or both, violate or conflict with or result in a breach of any provision of the certificate or articles of incorporation (as the case may be), bylaws or other governing documents of ABX or Acquisition; (b) require ABX or Acquisition to obtain the consent, waiver, approval, or authorization of, or ABX or Acquisition to make a registration, declaration or filing with, any Person or Governmental Authority; and (c) with or without the giving of notice or the passage of time or both, (i) violate or conflict with, or (ii) result in a material breach or termination of, or (iii) constitute a material default under, or grounds for the modification or cancellation of, or (iv) result in the imposition of any penalty or revocation or suspension of rights under, or (v) accelerate or permit the acceleration of the performance required by, or (vi) result in the creation of any Liens, except Permitted Liens, upon any of the material assets of ABX or Acquisition, or otherwise give rise to any Liability under, any material contract, Permit or any Applicable Law to which ABX or Acquisition is a party or by which any ABX or Acquisition or any of their respective assets may be bound or governed, except, in the case of clauses (b) and (c) above, for any such consent, waiver, approval, authorization, registration, declaration, filing, violation, conflict, breach, termination, default, modification, cancellation, imposition, revocation, suspension, acceleration or creation that has not had, and would not reasonably be expected to have, an ABX Material Adverse Effect.

#### **6.4 Litigation.**

Except as set forth in Section 6.4 of the ABX Disclosure Schedule, there are no Actions pending or, the Knowledge of ABX, threatened that (i) seek to enjoin or obtain damages with respect to the consummation of the transactions contemplated hereby or (ii) has had, or would reasonably be expected to have, an ABX Material Adverse Effect.

#### **6.5 Capitalization of Acquisition.**

The authorized capital stock of Acquisition consists of 40,040,950 shares of common stock, .001 par value, of which 28,816,880 shares are validly issued and outstanding, fully paid and non-assessable and are owned by ABX free and clear of all Liens.

#### **6.6 SEC Reports and Financial Statements.**

(a) Since January 1, 2004, ABX Air has filed with the SEC all forms, reports, schedules, registration statements, and other documents (together with all amendments thereof and supplements thereto, as such documents have since the time of their filing been amended or supplemented, the "ABX SEC Reports") required to be filed by ABX Air with the SEC. As of their respective dates and giving effect to any amendments or supplements thereto, the ABX SEC Reports filed since January 1, 2004, (i) complied as to form in all material respects with the requirements of the Securities Act, and the rules and regulations thereunder, or the Exchange Act, and the rules and regulations thereunder, as the case may be, and (ii) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The audited consolidated financial statements and unaudited interim consolidated financial statements (including, in each case, the notes, if any, thereto) included in the ABX SEC Reports (the "ABX Financial Statements") complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto and except with respect to unaudited statements as permitted by Form 10-Q of the SEC) and fairly present (subject, in the case of the unaudited interim financial statements, to normal, recurring year-end audit adjustments) the consolidated financial position of ABX Air and its consolidated subsidiaries at the respective dates thereof and the consolidated results of their operations and cash flows for the respective periods then ended. Each subsidiary of ABX Air is treated as a consolidated subsidiary of ABX Air in ABX Financial Statements for all periods covered thereby.

## **6.7 Brokers, Finders.**

Except as set forth in Section 6.7 of the ABX Disclosure Schedule, neither ABX, Acquisition nor ABX Air has dealt with or employed any broker, finder, investment banker or financial advisor in connection with the negotiation, execution or performance of this Agreement.

## **6.8 Investment Intent**

(a) Neither ABX nor any of its Affiliates currently own any Cargo Common Shares. Acquisition is acquiring the equity capital of Cargo for its own account, for investment purposes only and not with a view toward, or for sale in connection with, any distribution thereof, nor with any present intention of distributions or selling such equity capital, in violation of the Applicable Laws relating to securities, provided, however, that the disposition of Acquisition's property shall at all times remain within the sole control and discretion of Acquisition, so long as such disposition is in compliance with Applicable Law.

(b) Acquisition qualifies as an "accredited investor," as such term is defined in Rule 501(a) promulgated pursuant to the Securities Act.

(c) Acquisition understands that the acquisition of the equity capital of Cargo to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Acquisition and its officers have experience as an investor in securities and equity interests of companies such as the ones being transferred pursuant to this Agreement, and Acquisition can bear the economic risk of its investment (which may be for an indefinite period) and has such knowledge and experience in financial or business matters that Acquisition is capable of evaluating the merits and risks of its investment pursuant to the transactions contemplated hereby.

(d) Acquisition understands that the equity securities of Cargo have not been registered under the Securities Act. Acquisition acknowledges that such securities may not be transferred, sold, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act and any other provision of Applicable Law.

## **6.9 Financing**

ABX Air has obtained a signed copy of the debt commitment letter of SunTrust Robinson Humphrey, Inc., SunTrust Bank, Regions Bank and Regions Capital Markets (a division of Regions Bank) dated October 31, 2007 (the "Commitment Letter"). The Commitment Letter and the term sheet attached thereto as Annex I are collectively referred to herein as the "Financing Documents". True and correct copies of the Financing Documents have been delivered to Cargo. The Financing Documents are in full force and effect. There are no other conditions to the financing contemplated by the Financing Documents except as specifically set forth in the Financing Documents. All commitment and other fees required by the Financing Documents or fee letters to be paid as of the date hereof have been fully paid. The funds in the amount set forth in the

Commitment Letter are sufficient, together with other funds available to ABX Air, ABX or Acquisition, to enable Acquisition to pay all the cash amounts due under this Agreement and to consummate the transactions contemplated hereby, including the repayment of the Cargo indebtedness outstanding on the Closing Date under Cargo's senior credit facility with SunTrust as described in Section 5.13(c) of the Cargo Disclosure Schedule that becomes due and payable in connection with the transactions contemplated by this Agreement.

#### **6.10 ABX Common Stock**

As of the Closing Date, all shares of ABX Stock included in the Transaction Consideration will be duly authorized, validly issued, fully paid and nonassessable, and issued in compliance with the Articles of Incorporation and Bylaws of ABX and, assuming the accuracy of the representations of the Significant Shareholders in Section 4.5 of this Agreement, with Applicable Law.

#### **6.11 Net Asset Value Accounting Principles and Practices.**

To the Knowledge of ABX, as of the date hereof, no adjustment would be required under the Net Asset Value Accounting Principles and Practices to be made to the example calculation contained in Exhibit B.

#### **6.12 Exclusivity of Representations.**

The representations and warranties made by ABX and Acquisition in this Article VI are the exclusive representations and warranties made by ABX and Acquisition, including with respect to the assets and liabilities of each of them. ABX and Acquisition hereby disclaim any other express or implied representations or warranties with respect to either of them. ABX and Acquisition are not, directly or indirectly, making any representations or warranties regarding any financial projections (including any information purporting to give *pro forma* effect to the transactions contemplated hereby) or any other forward-looking statements of ABX and Acquisition.

### **ARTICLE VII COVENANTS AND AGREEMENTS**

#### **7.1 Covenants and Agreements of Cargo and the Significant Shareholders.**

Cargo and the Significant Shareholders covenant and agree with ABX and Acquisition as follows:

(a) [Reserved]

(b) Conduct of Business. From the date hereof and until the Closing Date, the Acquired Companies shall conduct their business in the Ordinary Course of

Business. To the extent consistent with the foregoing sentence, the Acquired Companies shall use their respective commercially reasonable efforts to preserve their business organizations intact and maintain existing relations and goodwill with each Governmental Authority, customer, supplier, distributor, creditor, lessor, employee and business associate and keep available the services of the present employees and agents of the Acquired Companies, subject to the ability to terminate relationships (and, in particular, employee relationships) in the Ordinary Course of Business. Nothing in the foregoing sentences shall prohibit or restrict the Acquired Companies from the date of this Agreement to the Closing Date from taking any of the following actions: (i) actions approved by ABX in writing (which approval shall not be unreasonably withheld by ABX (objectively determined from ABX's point of view) after consideration of its own interests related to the consummation of the transaction contemplated hereunder); (ii) any action expressly required or permitted by this Agreement (including, without limitation, the actions listed in Sections 1.1 and 7.1(b) of the Cargo Disclosure Schedule); (iii) any action required by Applicable Law; and (iv) any required or necessary action in order to effectuate the spin-off of 767 Aircraft One, LLC as described in Section 7.1(b) of the Cargo Disclosure Schedule (the "767, LLC Spin-Off"). Without limiting the generality of the foregoing and in furtherance thereof, from the date hereof until the Closing Date, except (A) as otherwise expressly required or permitted by this Agreement, (B) as ABX may approve in writing which approval shall not be unreasonably withheld, (C) as required by any Applicable Law or (D) as set forth in Section 7.1(b) of the Cargo Disclosure Schedule, each Acquired Company will:

(i) not engage in any activities or transactions which will be outside the Ordinary Course of Business;

(ii) not (A) subdivide or reclassify any shares of its capital stock, (B) issue, sell, pledge, dispose of, grant, transfer, encumber, or authorize the issuance, sale, pledge, disposition, grant, transfer, lease, license, guarantee or encumbrance of, any shares of its capital stock or securities convertible into its capital stock, other than (1) the issuance of Cargo Common Shares pursuant to the exercise of Cargo Options or Cargo Warrants outstanding on the date of this Agreement and in accordance with their present economic terms and (2) the issuance of any replacement certificates for any lost, stolen or destroyed certificates representing Cargo Common Shares outstanding as of the date hereof, (C) issue, sell, pledge, dispose of, grant, transfer, encumber, or authorize the issuance, sale, pledge, disposition, grant, transfer, lease, license, guarantee or encumbrance of, any options, warrants, or other rights of any kind to acquire any shares of its capital stock or securities convertible into its capital stock or (D) amend its Articles of Incorporation, Bylaws or other governing documents;

(iii) give the officers, attorneys, accountants and other authorized Representatives of Acquisition and ABX reasonable access to its properties, books, Tax Returns and minute books and other corporate records upon reasonable prior notice and during normal business hours in order that Acquisition and ABX may have full opportunity to make such investigation as Acquisition and ABX shall desire of the affairs of the Acquired Companies;

(iv) not take any action to institute any new severance or termination pay practices with respect to any directors, officers or employees or increase the benefits payable under its severance or termination pay practices in effect on the date hereof;

(v) not adopt or amend, in any material respect, except as may be required by Applicable Law, any collective bargaining, bonus, profit sharing, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment or other employee benefit plan, agreement, trust, fund, plan or arrangement for the benefit or welfare of any of its directors, officers or employees;

(vi) use commercially reasonable efforts to maintain its relationships with its suppliers and customers, and if requested by ABX, (A) attempt to make reasonable arrangements for representatives of ABX to meet with its suppliers and customers (but only with the participation of Cargo's management), and (B) schedule meetings of representatives of ABX with its employees;

(vii) consistent with the current operational needs of the business of the Acquired Companies, maintain, in the aggregate, its properties in customary repair, order and condition, reasonable wear and tear excepted, and maintain insurance upon all of its properties and with respect to the conduct of its business in such amounts and of such kinds comparable to that in effect on the date of this Agreement;

(vii) maintain its books, accounts and records in the usual, regular and ordinary manner, in accordance with GAAP where applicable, and on a basis consistent with Past Practice;

(viii) duly comply in all material respects with all Applicable Law pertaining to it and to the conduct of its business;

(ix) not acquire or agree to acquire (A) by merging or consolidating with, by purchasing a substantial portion of the stock or other ownership interests in, or by purchasing substantially all of the assets of, or by any other manner, any business or any corporation, partnership, limited liability company or other Person or division thereof or (B) any assets that would be material, individually or in the aggregate, to the Acquired Companies (except for purchases of assets in the Ordinary Course of Business);

(x) promptly advise Acquisition and ABX in writing of any event, transaction, circumstance or condition (A) which has had or would reasonably be expected to have a Cargo Material Adverse Effect, (B) which causes any of the representations or warranties made regarding the Acquired Companies to become untrue, incorrect or misleading in any material respect or (C) which will prevent Cargo or any Significant Shareholder from performing or cause Cargo or any Significant Shareholders not to perform their respective covenants hereunder;

(xi) not make or change any election, change an annual accounting period, adopt or change any accounting method, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment or consent to any extension or waiver of the limitation period applicable to any material Tax claim or assessment, if such election, adoption, change, amendment, agreement, settlement or consent would have the effect of materially increasing the Tax liability of the Acquired Companies for any period ending after the Closing Date or materially decreasing any Tax attribute of any Acquired Company existing at the Closing Date;

(xii) not enter into any interchange or pooling agreements with respect to the Cargo Aircraft or their engines, auxiliary power unit or other equipment;

(xiii) not, with respect to any material Contract with a Related Party, alter or amend any such Contract that would change in any material respect the current business relationship and arrangements between any Acquired Company and the Related Party, and, to the extent that a Significant Shareholder, or an Affiliate of such Significant Shareholder, is the Related Party to such Contract, such Significant Shareholder shall not, and shall not permit its Affiliate to, alter or amend any such Contract that would change in any material respect the current business relationship and arrangements between any Acquired Company and the Related Party, provided, however, that nothing herein shall restrict any Significant Shareholder or Affiliate of any Significant Shareholder from exercising any rights such Person may have under any such Contract with a Related Party;

(xiv) not enter into any commitment for any non-maintenance capital expenditure (including without limitation for the acquisition of any aircraft) in an amount exceeding two million dollars (\$2,000,000); provided, however, that nothing herein shall restrict any Acquired Company from entering into any commitment for maintenance capital expenditures; and

(xv) to the extent not set forth above, not engage in any of the transactions described in Section 5.9 of this Agreement.

(c) Exclusivity.

(i) From and after the date of this Agreement until the earlier of the Closing Date or termination of this Agreement pursuant to its terms, the Acquired Companies and the Significant Shareholders shall not, and shall cause their respective Representatives not to, directly or indirectly:

(A) knowingly initiate, solicit, encourage, facilitate (including by way of furnishing information or assistance) or otherwise entertain or consider any inquiries or expressions of interest or the making of any proposal or offer that constitutes, or could reasonably be expected to lead

to, (1) a proposal or offer with respect to a merger, reorganization, share exchange, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving, or any purchase directly or indirectly (including by way of lease, exchange, sale, mortgage, pledge, tender offer, exchange offer or otherwise, as may be applicable) of any substantial part of the assets of or equity interests (in economic or voting power) in Cargo or its Subsidiaries, in each case, other than a proposal or offer made by ABX or an Affiliate thereof, or (2) a breach of this Agreement or any interference with the completion of the transactions contemplated by this Agreement (any of the foregoing inquiries, expressions of interest, proposals or offers being hereinafter referred to as an “Acquisition Proposal”);

(B) have any discussions with or provide any nonpublic information or data to any Person relating to an Acquisition Proposal, or engage in any negotiations concerning an Acquisition Proposal, or knowingly facilitate any effort or attempt to make or implement an Acquisition Proposal;

(C) approve or recommend, or propose publicly to approve or recommend, any Acquisition Proposal;

(D) approve or recommend, or propose to approve or recommend, or execute or enter into, any letter of intent, agreement in principle, merger agreement, stock purchase, asset purchase or share exchange agreement, option agreement or other similar agreement; or

(E) agree to do any of the foregoing related to any Acquisition Proposal.

(ii) Cargo and each Significant Shareholder will immediately cease, and will cause each of their Affiliates and their Representatives to immediately cease, any and all existing activities, discussions or negotiations with any third parties conducted heretofore with respect to any Acquisition Proposal (other than those with ABX contemplated by this Agreement), and shall use its commercially reasonable efforts to cause any such third parties in possession of nonpublic information about any Acquired Company that was furnished by or on its behalf in connection with any of the foregoing to return or destroy all such information in the possession of any such third party or in the possession of any Representative of any such third party, and it will not release any third party from, or waive any provisions of, any confidentiality or standstill agreement to which it or any of its Affiliates is a party with respect to any Acquisition Proposal.

(d) Financial Statements. Cargo will deliver to ABX all regularly prepared audited and unaudited financial statements of Cargo prepared after the date hereof in the format historically used internally, promptly after same are available. Further, in connection with ABX or ABX Air making any filings with the SEC as

required by Applicable Law in connection with the transactions contemplated by this Agreement and ABX seeking to enter into one or more credit facilities in connection with the financing of the transactions contemplated by this Agreement, ABX or ABX Air may be required to include in such filings with the SEC and may be required to provide to lenders under any such credit facility financial statements of Cargo and its Subsidiaries required by and prepared in accordance with Regulation S-X of the Securities Act, which may include unqualified audited financial statements of Cargo and its Subsidiaries for periods prior to the Closing. Accordingly, after the execution of this Agreement, Cargo shall, upon the request of ABX, use its commercially reasonable efforts to cause its external auditors to provide to ABX as soon as reasonably practicable Cargo's audited consolidated financial statements for fiscal years 2006, 2005 and 2004, each prepared in accordance with GAAP and consistent with Past Practice, and each in form and substance suitable for filing by ABX or ABX Air with the SEC (the "S-X Financial Statements"). Cargo shall use commercially reasonable efforts to furnish to ABX any information or documents necessary for completion of the S-X Financial Statements, with reasonable, actual out-of-pocket expenses incurred to third parties in connection with providing such documentation being borne by ABX. Cargo agrees to execute customary management representation letters necessary to permit ABX's independent accountants to issue reports with respect to such S-X Financial Statements. Cargo shall make requests of its independent accountants to provide such reasonable assistance (and Cargo shall use commercially reasonable efforts to provide such information in connection therewith as such accountants shall reasonably request, as soon as reasonably practicable after receipt of any such request from such accountants) in order for ABX or ABX Air to (A) obtain the consent of Cargo's independent accountants to the inclusion of such independent accountants' opinion with respect to the S-X Financial Statements that are to be included in any such filing with the SEC and in documents provided to lenders and (B) obtain customary comfort letters from such accountants. ABX acknowledges that Cargo does not currently have audited financial statements for Air Transport International Limited Liability Company for periods prior to Cargo's acquisition thereof in February 2006; provided, however, Cargo shall, if requested by ABX, use commercially reasonable efforts to assist ABX, at the expense of ABX, in obtaining such audited statements for Air Transport International Limited Liability Company for any period prior to February 2006 prepared in accordance with GAAP and suitable for filing by ABX with the SEC.

(e) FIRPTA Certificate. Cargo shall, prior to or on the Closing Date, deliver to ABX a statement substantially in the form set forth on Exhibit C meeting the requirements of Treasury Regulation section 1.1445-2(c)(3) that Cargo is not, and has not been during the applicable period specified in Code section 897(c)(1)(A)(ii), a United States real property holding corporation, as defined in Code section 897(c)(2).

(f) Parachute Payments. Prior to the Closing, Cargo will duly call, give notice of, convene and hold a meeting of its Shareholders for the purpose of voting on the approval by the Shareholders, in accordance with the requirements of Code Section 280G(b)(5)(B) and the Treasury Regulations promulgated thereunder, of payments or acceleration of benefits or contractual rights that an Acquired Company or ABX have made, paid, granted or are or may be obligated to make, pay or grant that would be "parachute payments" (as defined in Code Section 280G(b)(2)) (the

“Payments”). Such vote of the Shareholders on whether to approve the Payments shall occur prior to the Closing. The Payments are identified in a separate disclosure letter which has been agreed to by Cargo and ABX (it being understood and agreed that Section 7.1 (b) of this Agreement shall not apply to the Payments).

(g) Joinder Agreement. Cargo will use its commercially reasonable efforts to obtain prior to the Closing Joinder Agreements executed and delivered by (i) each Shareholder that is not a Significant Shareholder, (ii) each holder of Cargo Options that is not a Significant Shareholder and (iii) each holder of Cargo Warrants that is not a Significant Shareholder. During the period from the date hereof until the Closing Date, Cargo agrees to keep ABX reasonably informed with respect to the status of obtaining the Joinder Agreements from the Persons described in the immediately preceding sentence.

(h) Cancellation of Agreements. On or before the Closing Date, the Significant Shareholders agree to terminate each of the agreements referenced in Section 5.4(d) of the Cargo Disclosure Schedule.

## **7.2 Covenants and Agreements of ABX .**

(a) Except (i) as expressly required or permitted by this Agreement, (ii) as may be required by Applicable Law or (iii) to the extent that the following actions shall be approved by Cargo in writing (which approval shall not be unreasonably withheld by Cargo (objectively determined from Cargo’s point of view) after consideration of its own interests related to the consummation of the transaction contemplated hereunder), from the date hereof and until the Closing Date, ABX will promptly advise Cargo in writing of any event, transaction, circumstance or condition (A) which has had or would reasonably be expected to have an ABX Material Adverse Effect, (B) which causes any of the representations or warranties made regarding ABX or Acquisition to become untrue, incorrect or misleading in any material respect or (C) which will prevent ABX or Acquisition from performing, or cause ABX or Acquisition not to perform, their respective covenants hereunder.

(b) Following the Closing Date, ABX shall use commercially reasonable efforts to cause an individual selected by the Significant Shareholders to be nominated for election as a director of ABX at its next annual meeting of stockholders. Notwithstanding the foregoing, ABX shall have no obligation to nominate the individual selected by the Significant Shareholders if the nomination would cause ABX to no longer comply with, or be contrary to, any Applicable Law (including SEC rules and regulations) or the listing requirements of the NASDAQ Stock Market.

(c) ABX shall perform in all material respects its obligations under the Financing Documents and use its commercially reasonable efforts to satisfy all conditions precedent to the funding thereunder that are within its control. Without limiting the foregoing, ABX agrees to use commercially reasonable efforts to negotiate definitive documentation with respect to the financing contemplated by the Financing Documents. ABX shall not, without the prior written consent of Cargo, amend, modify or supplement (including in the definitive documents) (i) any of the conditions or contingencies to

funding contained in the Financing Documents or (ii) any other provision of the Financing Documents, in either case to the extent such amendment, modification or supplement would have the effect of amending, modifying or supplementing the conditions or contingencies to funding in a manner which would delay the Closing. ABX agrees to notify Cargo promptly, and in any event within two Business Days, if at any time prior to the Closing Date, (i) any Financing Document shall expire or be terminated for any reason, (ii) any financing source that is party to any Financing Document notifies ABX that such source no longer intends to provide financing to ABX on the terms set forth in the Financing Documents, or (iii) for any reason ABX no longer believes in good faith that it will be able to obtain any of the financing substantially on the terms described in any Financing Document. Except as contemplated by Section 10.1(f), ABX shall not, and shall not permit any of its Subsidiaries or Affiliates to, without the prior written consent of Cargo, take any action or enter into any transaction, including without limitation, any merger, acquisition, joint venture, disposition, lease, contract or debt or equity financing that would reasonably be expected to impair, delay or prevent ABX's obtaining of the financing contemplated by any Financing Document. In the event that any portion of the funds contemplated by the Financing Documents becomes unavailable, otherwise than due to the material breach of representations and warranties or covenants of Cargo or a Significant Shareholder, or a failure of a condition set forth in Section 8.1 or 8.2 to be satisfied (unless such failure is proximately caused by ABX or Acquisition), ABX will use commercially reasonable efforts to arrange alternative debt financing from the same or other sources on terms and conditions (x) no less favorable to those contained in the Financing Documents with respect to: pricing (interest rates, fees and other charges); amount of, and time periods for, amortization of the financing; maturity date; financial covenants; and security, and (y) not materially less favorable to those contained in the Financing Documents with respect to any other terms and conditions. ABX shall keep Cargo reasonably apprised of material developments relating to the debt financing contemplated by the Financing Documents.

(d) Information obtained by ABX, Acquisition and their respective Representatives pursuant to Section 7.1(b)(iii) or otherwise pursuant to this Agreement shall be subject to the provisions of the Confidentiality Agreement by and between Cargo and ABX, dated June 11, 2007 (the "Confidentiality Agreement"). The terms of the Confidentiality Agreement shall survive the termination of this Agreement and continue in full force and effect thereafter.

(e) On or prior to the Closing Date, ABX shall cause the ABX Holding Company Reorganization to be consummated.

### **7.3 Other Covenants and Agreements.**

(a) Expenses and Fees.

(i) Except as otherwise expressly provided in this Agreement, each of Cargo, the Significant Shareholders, ABX and Acquisition shall bear their own respective fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby and in connection with all obligations required

to be performed by each of them under this Agreement, regardless of whether the transactions contemplated by this Agreement are consummated or the Closing occurs.

(ii) ABX and Cargo shall each be responsible for the payment of one-half of all filing fees under the HSR Act.

(iii) In the event ABX or an Affiliate of ABX enters into a definitive acquisition agreement with ASTAR Air Cargo Holdings LLC or an Affiliate thereof subsequent to the date of this Agreement and prior to the Closing and the Board of Directors of ABX determines to terminate this Agreement pursuant to Section 10.1(f) of this Agreement, ABX shall pay to Cargo, promptly upon such termination, as liquidated damages, the sum of \$17,500,000.

(b) Benefit Plans. As of the Closing Date, the entity or entities, whether ABX, Cargo, any other Acquired Company or Affiliate of ABX or Cargo, by which any of the employees of the Acquired Companies are employed shall have the option, but not the obligation, of continuing some or all of the Welfare Benefit Plans, Pension Benefit Plans and Benefit Arrangements for such periods as ABX shall determine or may merge any or all of such plans or arrangements with plans or arrangements already in operation at ABX. To the extent that any such Welfare Benefit Plans, Pension Benefit Plans or Benefit Arrangements are not continued on or after the Closing Date, all employee benefit plans or programs of ABX, Cargo or other Affiliate of ABX in which employees of the Acquired Companies participate after such date shall, (i) to the extent allowable by Applicable Law, including the Health Insurance Portability and Accountability Act, provide coverage for pre-existing health conditions to the extent covered under the applicable plans or programs of the applicable Acquired Company as of the Closing Date, and ensure that no similar limitations or exclusions, or waiting periods, are applicable to any such employees or their beneficiaries, (ii) provide employees of the Acquired Companies credit for their prior service with any such Acquired Company all purposes (but not for purposes of accruing benefits under any defined benefit pension plan), and (iii) to the extent that any such change in welfare benefit plan coverage for any group of employees of the Acquired Companies occurs other than at the end of the accounting period of the plan (for which deductible amounts and co-payments and like adjustments or limitations on coverage are determined), recognize expenses and claims that were incurred by employees of the Acquired Companies and their beneficiaries under the plans of Acquired Companies as of the date of change, for purposes of computing deductible amounts and co-payments and like adjustments or limitations on coverage.

(c) Employment of Cargo Employees. ABX presently intends to have Cargo or one of its Subsidiaries employ substantially all of current employees of Cargo and its Subsidiaries after the Closing Date, subject to ABX's satisfactory review of personnel files. However, nothing in this Section shall obligate ABX to cause Cargo or any of its Subsidiaries to employ such employees or keep them employed for any particular amount of time after the Closing Date. Notwithstanding anything herein contained to the contrary, ABX shall cause Cargo to offer employment to each of Frank

Visconti, Bill Tarpley, Alan Young, Allen McAnally, Jim Hobson, Chris Chorley, Cindi McConnell and Nicole Castagna on economic terms no less favorable to such Persons than their respective economic terms with Cargo or a Cargo Affiliate (as applicable) as in effect on the date hereof.

(d) **Supplemental Information.** At any time prior to the second Business Day preceding the Closing Date, Cargo may, by notice (the “**Update Notice**”) in accordance with the terms of this Agreement, supplement Sections 5.17(a) and Sections 5.17(b) of the Cargo Disclosure Schedule, as appropriate, with respect to any matter that arises or becomes known by Cargo after the date hereof with respect to (i) the second sentence of Section 5.17(a) and (ii) the third sentence of Section 5.17(b) and that would have been required to be set forth or described in the Cargo Disclosure Schedule had such matter existed or been known to Cargo as of the date of this Agreement. The Update Notice shall contain an update of the applicable supplemented sections of the Cargo Disclosure Schedule relating to the sentences described above, either by amending information currently disclosed in such sections relating to such sentences or adding new information in such sections relating to such sentences. Unless the information contained in the Update Notice, taken as a whole, has had, or would reasonably be expected to have, a Cargo Material Adverse Effect or would reasonably be expected to result in Losses to Acquired Companies of more than \$250,000 in the aggregate, the information contained in such Update Notice shall amend the Cargo Disclosure Schedule and shall be effective (i) to qualify, as applicable, the representations and warranties of Cargo contained in the second sentence of Section 5.17(a) and the third sentence of Section 5.17(b) and (ii) to cure any misrepresentation or breach of warranty that would have existed hereunder had the information contained in the Update Notice not been provided.

#### **7.4 Reserved.**

[Reserved]

#### **7.5 Closing Net Asset Adjustment.**

(a) Within 60 days following the Closing Date, ABX shall prepare and deliver to the Sellers Representative an unaudited consolidated balance sheet of Cargo as at the Closing Date (the “**Proposed Closing Balance Sheet**”), which shall include a statement of the net asset value (the “**Proposed Net Asset Value**”) of the Acquired Companies as reconciled to the Proposed Closing Balance Sheet (“**Proposed Net Asset Value Statement**”). The Proposed Closing Balance Sheet and Proposed Net Asset Value Statement shall in each case be calculated in accordance with the Net Asset Value Accounting Principles and Practices.

(b) (i) The Sellers Representative shall have 30 days after the receipt of the Proposed Closing Balance Sheet and Proposed Net Asset Value Statement (the “**Review Period**”) to review the Proposed Closing Balance Sheet, the Proposed Net Asset Value Statement and the work papers and other documents generated or reviewed by ABX in connection with, and the books and records of the Acquired Companies related to, the preparation of the Proposed Closing Balance Sheet and the Proposed Net Asset Value Statement.

(ii) If, within the Review Period, the Sellers Representative disputes any item(s) on the Proposed Closing Balance Sheet and/or the Proposed Net Asset Value Statement, the Sellers Representative shall give ABX written notice of such disagreement prior to the expiration of the Review Period specifically identifying the item(s) and amount(s) in dispute and the basis for such dispute (the “Notice of Disagreement”).

(iii) If the Sellers Representative either (A) does not deliver a Notice of Disagreement to ABX or (B) otherwise manifests in writing its agreement with such calculation prior to the expiration of the Review Period, the Proposed Closing Balance Sheet and Proposed Net Asset Value Statement shall be deemed final and binding on ABX, Cargo, the Sellers Representative and all Sellers, in which case the Proposed Closing Balance Sheet shall become, for purposes of this Agreement, the Closing Balance Sheet, and the information contained in the Proposed Net Asset Value Statement shall be conclusive and binding on all parties and be used to determine the Final Net Asset Value.

(iv) ABX and the Sellers Representative shall use their commercially reasonable efforts to reach agreement with respect to any disputed items within 30 days following the delivery of the Notice of Disagreement, or such longer period as may be agreed upon by such Persons (the “Resolution Period”). If ABX and the Sellers Representative mutually agree upon the Proposed Closing Balance Sheet and the Proposed Net Asset Value Statement, and any revisions thereto, within the Resolution Period, such agreement shall be conclusive and binding on all parties. Any item(s) on the Proposed Closing Balance Sheet or the Proposed Net Asset Value Statement not specifically identified in writing as a disputed item before the end of the Review Period shall be deemed to have been accepted by the Sellers Representative and shall not be subject to any further dispute, review or change.

(c) If ABX and the Sellers Representative fail to resolve all disputes with respect to the Proposed Closing Balance Sheet and/or Proposed Net Asset Value Statement within the Resolution Period, the unresolved dispute(s) shall be submitted for resolution within ten days after the expiration of the Resolution Period to, and finally determined by, Ernst & Young (the “Accounting Firm”), which shall act as expert and not as arbitrator and whose determination shall be final and binding. The Accounting Firm’s determination of such dispute(s) shall be made in a manner consistent with the Net Asset Value Accounting Principles and Practices in a detailed writing delivered not later than 45 days after the submission of the same to such Accounting Firm, and shall be conclusive and binding on all parties. The Accounting Firm shall allocate its costs associated with such determination equally between ABX and the Sellers Representative.

(d) The Proposed Closing Balance Sheet and the Proposed Net Asset Value Statement mutually agreed to by ABX and the Sellers Representative or otherwise as finally determined pursuant to this Section 7.5 shall be referred to as the “Closing Balance Sheet” and the “Final Net Asset Value Determination”.

(e) Subject to the provisions of Section 7.5(f), if the amount of net asset value of the Acquired Companies as finally determined pursuant to the Final Net Asset Value Determination (such event, the “Final Net Asset Value”, and the date of such determination thereof, the “Determination Date”) is different from the Estimated Net Asset Value (such difference, a “Closing Net Asset Adjustment”), then (i) if the Final Net Asset Value is greater than the Estimated Net Asset Value, ABX shall deposit within five Business Days of the Determination Date with the Payment Agent an amount equal to the amount of any such excess (the “Upward Closing Net Asset Adjustment”) for distribution to the Sellers on a Pro Rata Share basis and otherwise in accordance with the terms and conditions of this Agreement, and (ii) if the Final Net Asset Value is less than the Estimated Net Asset Value, then an amount equal to the amount of such shortfall (the “Downward Closing Net Asset Adjustment”) shall be paid to ABX as follows: (A) each Significant Shareholder shall deposit within five Business Days of the Determination Date with the Sellers Representative their Pro Rata Share of the Downward Closing Net Adjustment, which shall thereafter be promptly forwarded to ABX by the Sellers Representative and (B) ABX and the Sellers Representative shall direct the Escrow Agent to distribute to ABX in accordance with the terms and conditions of the Escrow Agreement the balance of the Downward Closing Net Asset Adjustment from the Escrow Fund. The aggregate amount of any Closing Net Asset Adjustment shall be treated for income tax purposes as an adjustment to the Transaction Consideration.

(f) Notwithstanding anything in this Section 7.5(e) to the contrary, if the Closing Net Asset Adjustment is equal to or less than \$500,000, then the parties agree that neither an Upward Closing Net Asset Adjustment nor a Downward Closing Net Asset Adjustment shall be made. If the Closing Net Asset Adjustment is greater than \$500,000, then the parties agree that the Upward Closing Net Asset Adjustment or Downward Closing Net Asset Adjustment, whichever is applicable, shall only be made to the extent such amount is in excess of \$500,000.

#### **7.6 Public Announcements.**

(a) No party to this Agreement shall issue any press release or other public announcement prior to the Closing Date relating to the subject of this Agreement or the transactions contemplated hereby without the prior written approval (which approval will not be unreasonably withheld or delayed) of ABX and Cargo; provided, however, that a press release or other public announcement relating to the subject of this Agreement or the transactions contemplated hereby may be made by any party to this Agreement (or any Affiliate of a party to this Agreement) without obtaining the prior written approval of ABX or Cargo if such press release or other public announcement is required to comply with the requirements of Applicable Law or the obligations of any party hereto (or any Affiliate of a party hereto) pursuant to any listing agreement with or rules of any national securities exchange so long as (i) the determination of such requirement or obligation is based on the good faith written advice of such party’s outside legal counsel and (ii) (A) if the disclosing party is ABX, Acquisition or an Affiliate of ABX or Acquisition, the disclosing party, before issuing any such press release or other public announcement, shall provide Cargo the opportunity for a period that is reasonable under the facts and circumstances to comment on such press release or other public

announcement and (B) if the disclosing party is Cargo, a Seller or an Affiliate of a Seller, the disclosing party, before issuing any such press release or other public announcement, shall provide ABX the opportunity for a period that is reasonable under the facts and circumstances to comment on such press release or other public announcement.

(b) In addition to the foregoing, from and after the date of this Agreement until the earlier of the Closing Date or termination of this Agreement pursuant to its terms, ABX shall not intentionally take, and shall cause ABX Air and each of its subsidiaries not to intentionally take, any action that would require public disclosure of Cargo's financial statements or other financial information with respect to Cargo; provided, however, that such action may be taken if required to comply with the requirements of Applicable Law so long as (i) the determination of such requirement is based on the good faith written advice of ABX's outside legal counsel and (ii) before taking any such action is taken, ABX shall provide Cargo the opportunity for a period that is reasonable under the facts and circumstances to comment on such whether such action is required by Applicable Law.

#### **7.7 Consents and Approvals.**

(a) Each of ABX and Cargo shall cooperate and use its respective commercially reasonable efforts to (i) take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under any Applicable Law or otherwise to consummate the transactions contemplated by this Agreement as promptly as practicable, (ii) obtain from any Governmental Authorities any consents, licenses, permits, waivers, clearances, approvals, authorizations or orders required to be obtained or made by ABX, Acquisition or Cargo or any of their respective Affiliates, (including, without limitation, those in connection with the HSR Act and any other Required Governmental Approvals), in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement, (iii) make or cause to be made the applications or filings required to be made by ABX, Acquisition and Cargo or their respective Affiliates under or with respect to the HSR Act, any Required Governmental Approvals or any other Applicable Laws in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement, and pay any fees due in connection with such applications or filings, as promptly as is reasonably practicable, (iv) comply at the earliest practicable date with any request under or with respect to the HSR Act, any Required Governmental Approvals and any such other Applicable Laws for additional information, documents or other materials received by ABX or Cargo or any of their respective Affiliates from the Federal Trade Commission or the DOJ or any other Governmental Authority in connection with such applications or filings and (v) coordinate and cooperate with, and give due consideration to all reasonable additions, deletions or changes suggested by, ABX or Cargo, as the case may be, in connection with making (A) any filing under or with respect to the HSR Act, any other Required Governmental Approvals or any such other Applicable Laws and (B) any filings, conferences or other submissions related to resolving any investigation or other inquiry by any such Governmental Authority. Each of ABX and Cargo shall promptly inform the other of any material communication with, and any proposed

understanding, undertaking or agreement with, any Governmental Authority regarding any such application or filing. Notwithstanding anything herein to the contrary, it is understood and agreed that ABX shall be responsible for preparing and filing (with the cooperation and assistance of Cargo as reasonably requested by ABX) any filing with the DOT required in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

(b) ABX and Cargo shall give (or shall cause their respective Affiliates to give) any material notices to third parties, and use, and cause their respective Subsidiaries to use, commercially reasonable efforts to obtain any material third party consents (i) necessary, proper or advisable to consummate the transactions contemplated by this Agreement, (ii) required to be disclosed in the Cargo Disclosure Schedule or (iii) required to prevent an ABX Material Adverse Effect or Cargo Material Adverse Effect from occurring prior to the Closing Date.

#### **7.8 Takeover Laws.**

Subject to the fiduciary duties of the Board of Directors of Cargo, Cargo and its Board of Directors (i) shall take all action necessary to ensure that no “fair price,” “moratorium,” “control share acquisition” or other similar anti-takeover laws or regulation is or becomes applicable to this Agreement or any transaction contemplated hereby and (ii) if any such anti-takeover law is or may become applicable to the transactions contemplated by this Agreement, shall grant such approvals and take such actions as are necessary so that such transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise act to eliminate or minimize the effects of such statute or regulation on such transactions.

#### **7.9 Cargo Collective Bargaining Agreement Notices.**

On or within two Business Days following the date of this Agreement, Cargo and its Subsidiaries, as applicable, shall provide any notices required under the Cargo Collective Bargaining Agreements as a result of the execution of this Agreement.

#### **7.10 Indemnification; Directors’ and Officers’ Insurance.**

(a) From and after the Closing Date, Cargo shall, and ABX shall cause Cargo to, indemnify, advance expenses to, and hold harmless, to the fullest extent permitted by Applicable Law, each present and former director or officer of Cargo and its Subsidiaries (collectively, the “Indemnified Persons”) who, by reason of the fact that such Indemnified Person is or was a director or officer of any Acquired Company, is named a party to any Action that arises out of or pertains to acts or omissions existing or occurring at or prior to the Closing Date, it being understood and agreed that the costs and expenses attributable to any such indemnification claim (including, without limitation, any retention and/or deductible payment) relating to any acts or omissions in connection with the 767, LLC Spin-Off shall be reimbursed by the Significant Shareholders pursuant to the indemnification obligations set forth in Section 9.3 (f).

(b) Any Indemnified Person wishing to claim indemnification under Section 7.10(a), upon learning of any such Action, shall promptly notify ABX and Cargo thereof, but the failure to so notify shall not relieve ABX or Cargo of any liability it may have to such Indemnified Person except to the extent such failure materially prejudices ABX or Cargo. In the event of any such Action (whether arising before or after the Closing Date), (i) upon the written request of the Indemnified Person, Cargo shall, to the extent permitted by, and subject to any conditions imposed by, Applicable Law or Cargo's articles of incorporation or bylaws, advance (A) the reasonable fees and expenses of counsel selected by the Indemnified Person, which counsel shall be reasonably satisfactory to ABX and Cargo, promptly after statements therefore are received and (B) other documented expenses reasonably incurred by the Indemnified Person in connection with such Action, (ii) Cargo shall reasonably cooperate with the defense of any such Action that is not brought by or in the right of Cargo or an Affiliate of Cargo and (iii) any determination required to be made with respect to whether an Indemnified Person's conduct complies with the standards set forth under Applicable Law, the articles of incorporation or bylaws shall be made in accordance with Applicable Law or such governing documents; provided, however, that the Indemnified Person may demand that such determination be made by independent counsel mutually acceptable to ABX, Cargo and the Indemnified Person. ABX and Cargo shall not be liable for any settlement effected without its written consent (which consent shall not be unreasonably withheld, delayed or conditioned).

(c) Cargo shall, and ABX shall cause Cargo to, maintain Cargo's existing directors' and officers' liability insurance ("D&O Insurance"), or ABX shall provide for reasonably equivalent directors' and officers' liability insurance covering the individuals who are covered by the D&O Insurance on the date hereof and providing benefits and levels of coverage that are not less favorable in any material respect than those provided under the D&O Insurance, with respect to acts or omissions prior to the Closing Date for a period of six years after the Closing Date so long as the annual premium therefor is not in excess of 225% of the last annual premium paid by Cargo prior to the date hereof (the "Current Premium"); provided, however, that if the existing D&O Insurance or such insurance provided by ABX expires, is terminated or cancelled or is otherwise unavailable on such terms during such six year period, ABX and Cargo will use their commercially reasonable efforts to obtain as much D&O Insurance with the best terms available as can be obtained for the remainder of such period for a premium not in excess (on an annualized basis) of 225% of the Current Premium; and provided, further, that, in the alternative, Cargo may purchase as of the Closing Date a tail policy with respect to the D&O Insurance, which tail policy shall be effective for a period from the Closing Date through and including the date six years after the Closing Date with respect to claims arising from facts or events that occurred on or before the Closing Date, and which tail policy shall contain substantially the same coverage and amounts as, and contain terms and conditions that are not less advantageous in any material respect than the coverage currently provided by the D&O Insurance.

(d) If ABX or Cargo or any of its respective successors or assigns (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any individual, corporation or other entity, then, and in each such case, proper provisions shall be made so that the successors and assigns of ABX or Cargo, as the case may be, shall assume all of the obligations set forth in this Section 7.10.

(e) The provisions of this Section 7.10 are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Persons, their heirs and their representatives and are in addition to, and not in substitution for, any other rights to indemnification that any such Person may have by contract or otherwise prior to the date hereof or as otherwise described in Section 7.10(e) of the Cargo Disclosure Schedule. If any such Person is required to bring any Action to enforce rights or to collect monies due under this Agreement and is successful in such Action, Cargo shall reimburse such Person for all of its expenses reasonably incurred in connection with bringing and pursuing such Action, including, without limitation, reasonable attorneys' fees and costs.

## **ARTICLE VIII CONDITIONS PRECEDENT**

### **8.1 Conditions to Obligations of the Parties**

The respective obligations of each party to consummate the transactions contemplated hereby are subject to the satisfaction (or waiver if permitted by Applicable Law) at or prior to the Closing, of the following conditions:

(a) [Reserved]

(b) Anti-trust. The applicable waiting period under the HSR Act shall have expired or terminated.

(c) Consents and Approvals. All Required Governmental Approvals shall have been given and obtained.

(d) Litigation; Illegality. No temporary restraining order, preliminary or permanent injunction or other Order issued by a court of competent jurisdiction, Applicable Law or other legal restraint or prohibition that prevents, or has the effect of preventing, the consummation of the transactions contemplated by this Agreement shall be in effect.

### **8.2 Conditions to Obligations of ABX and Acquisition.**

The obligations of ABX and Acquisition to consummate the transactions contemplated hereby are subject to the satisfaction (or waiver by Acquisition or ABX if permitted by Applicable Law) at or prior to the Closing, of the following conditions:

(a) Representations and Warranties. The representations and warranties of Cargo and the Significant Shareholders contained in Article IV and Article V hereof shall be true and correct in all respects (without giving effect to any materiality or Material Adverse Effect qualifications contained therein) at and as of the Closing Date with the same force and effect as if they had been made on and as of such date, except (i) for those representations and warranties which expressly address matters only as of a particular date (which shall be true and correct as of such particular date), and (ii) where the failure of the representations and warranties to be so true and correct, individually or in the aggregate, has not had, and would not reasonably be expected to have, a Cargo Material Adverse Effect or would not materially and adversely affect the ability of ABX and Acquisition to consummate the transactions contemplated by this Agreement. Cargo and the Significant Shareholders shall have delivered to ABX and Acquisition at the Closing a certificate dated the Closing Date executed on behalf of Cargo and the Significant Shareholders by an executive officer or other Person duly authorized to sign on behalf of such party to the effect that such Person has read this Section 8.2(a) and the conditions set forth in Section 8.2(a) have been satisfied.

(b) Performance of Obligations: Cargo and each Significant Shareholder shall have performed in all material respects all obligations required to be performed by it at or prior to the Closing. Cargo and each Significant Shareholder shall have delivered to ABX and Acquisition at the Closing a certificate dated the Closing Date executed by an executive officer or other Person duly authorized to sign on behalf of such party to the effect that such Person has read this Section 8.2(b) and the conditions set forth in Section 8.2(b) have been satisfied with respect to the relevant party.

(c) Escrow Agreement. The Escrow Agent and the Sellers Representative shall have executed and delivered the Escrow Agreement.

(d) Delivery of Cargo Certificates. Each Significant Shareholder shall have delivered to Acquisition Cargo Certificates representing all Cargo Common Shares owned by such Shareholder, either duly endorsed for transfer to Acquisition or with duly executed stock powers attached in proper form for such transfer.

(e) Shareholder Vote on Parachute Payments. The Shareholders of Cargo shall have voted, in accordance with the requirements of Code Section 280G(b)(5)(B) and the Treasury Regulations promulgated thereunder, to approve or disapprove the Payments (as described in Section 7.1(f) of this Agreement).

(f) Cargo Options and Cargo Warrants. Each holder of any Cargo Warrants that is not a Significant Shareholder shall have executed and delivered pursuant to this Agreement a Joinder Agreement. Holders of Cargo Options who are not Significant Shareholders and who, together with any Cargo Options held by a Significant Shareholder, collectively hold Cargo Options representing not less than 98.75% of all Cargo Common Shares subject to Cargo Options on an as converted basis immediately prior to the Closing Date shall have executed and delivered pursuant to this Agreement Joinder Agreements.

(g) **Financing.** ABX shall have received the proceeds of the financing contemplated by the Financing Documents substantially in accordance with the terms and conditions and for the amounts set forth therein or ABX shall have received the proceeds of the alternative financing referred to in Section 7.2(c) of this Agreement.

### **8.3 Conditions to Obligations of Cargo and the Significant Shareholders.**

The obligations of Cargo and the Significant Shareholders to consummate the transactions contemplated hereby are subject to the satisfaction (or waiver by Cargo and the Significant Shareholders if permitted by Applicable Law) at or prior to the Closing, of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of ABX and Acquisition contained in Article VI hereof shall be true and correct in all respects (without giving effect to any materiality or Material Adverse Effect qualifications contained therein) at and as of the Closing Date with the same force and effect as if they had been made on and as of such date, except (i) for those representations and warranties which expressly address matters only as of a particular date (which shall be true and correct as of such particular date), and (ii) where the failure of the representations and warranties to be so true and correct, individually or in the aggregate, has not had, and would not reasonably be expected to have, an ABX Material Adverse Effect or would not materially and adversely affect the ability of Cargo and Significant Shareholders to consummate the transactions contemplated by this Agreement. ABX and Acquisition shall have delivered to Cargo and the Significant Shareholders at the Closing a certificate dated the Closing Date executed on behalf of ABX and Acquisition by an executive officer or other Person duly authorized to sign on behalf of such party to the effect that such Person has read this Section 8.3(a) and the conditions set forth in Section 8.3(a) have been satisfied.

(b) **Performance of Obligations:** ABX and Acquisition shall have performed in all material respects all obligations required to be performed by it at or prior to the Closing. ABX and Acquisition shall have delivered to Cargo and the Significant Shareholders at the Closing a certificate dated the Closing Date executed on behalf of ABX and Acquisition by an executive officer or other Person duly authorized to sign on behalf of such party to the effect that such Person has read this Section 8.3(b) and the conditions set forth in Section 8.3(b) have been satisfied.

(c) **Escrow Agreement.** ABX and the Escrow Agent shall have executed and delivered the Escrow Agreement.

## **ARTICLE IX SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION; TAX MATTERS**

### **9.1 Survival of Representations and Warranties.**

Except as expressly provided in this Agreement (including Section 9.10(p)), all representations and warranties contained in this Agreement shall survive the

Closing and continue in effect until 18 months following the Closing Date; provided, however, that representations and warranties under: (a) (i) Section 4.1 (Organization and Authority), (ii) Section 4.2 (Authorization), (iii) Section 4.4 (Brokers, Finders), (iv) Section 5.1 (Organization and Authority), (v) Section 5.2 (Subsidiaries), (vi) Section 5.3 (Authorization), (vii) Section 5.4 (Capital Stock), (viii) Section 5.10 (Title to Assets) and (ix) Section 5.23 (Brokers, Finders) shall survive indefinitely and (b) Section 5.21 (Environmental) shall remain in effect until the expiration of the applicable statute of limitations for any of the matters referred to therein (such representations referenced in Sections 9.1(a) and 9.1(b) being referred to as “Excluded Representations”); and, further, provided that any such representations or warranties as to which a claim shall have been asserted during such survival period shall continue in effect as to such claim until such time as such claim shall have been resolved or settled.

### **9.2 Survival of Covenants and Agreements.**

Except as expressly provided in this Agreement, all covenants and agreements contained in this Agreement shall not terminate but shall survive the Closing in accordance with their terms.

### **9.3 Indemnification by Sellers.**

Effective upon the Closing, subject to the provisions of this Article IX, each Seller, severally and not jointly or jointly and severally, without any right of recourse or defense against Cargo or any other Acquired Company, shall indemnify and hold harmless ABX, Cargo, their Affiliates and their respective officers and directors (in their capacities as such) and their respective successors and assigns (the “ABX Indemnified Parties”) from and against any claims, Liabilities, losses, damages or expenses (any one such item being herein called a “Loss” and all such items being herein collectively called “Losses”) which are caused by or arise out of:

(a) any breach or default in the performance by (i) Cargo of any covenant or agreement of Cargo to be performed by Cargo prior to the Closing contained herein or in any certificate delivered pursuant hereto at the Closing or (ii) such Seller of any covenant or agreement of such Seller contained herein or in any certificate delivered pursuant hereto at the Closing;

(b) any breach of warranty or representation made by Cargo or such Seller contained in Article IV or Article V of this Agreement or in any certificate delivered pursuant hereto at the Closing;

(c) any claim, demand or Action with respect to the matters disclosed in Section 9.3(c) of the Cargo Disclosure Schedule;

(d) any Action by an ABX Indemnified Party to enforce its indemnification rights under this Agreement in which such Person is successful on the merits or otherwise;

(e) any Cargo Options that are set forth in Section 5.4(b) of the Cargo Disclosure Schedule and that remain outstanding after the Closing Date, provided, however, that the ABX Indemnified Parties shall not be entitled to any indemnification pursuant to this Section 9.3(e) to the extent any such Loss is caused by, arises out of or is related to any change in the capital structure of Cargo following the Closing Date; and

(f) the 767, LLC Spin-Off.

Notwithstanding the foregoing, (i) the indemnification provisions of Section 9.10 shall be the sole and exclusive remedy of the ABX Indemnified Parties relating to Taxes and (ii) the Indemnification Agreement shall be the sole and exclusive remedy of the ABX Indemnified Parties with respect to the matters set forth therein.

#### **9.4 Indemnification by ABX.**

Effective upon the Closing, subject to the provisions of this Article IX, ABX agrees to indemnify and hold harmless the Sellers and their respective successors and assigns (the "Seller Indemnified Parties") from and against any Losses which are caused by or arise out of:

(a) any breach or default in the performance by ABX or Acquisition of any covenant or agreement of ABX or Acquisition contained herein or in any certificate delivered pursuant hereto at the Closing; and

(b) any breach of warranty or representation made by ABX or Acquisition contained in Article VI of this Agreement or in any certificate delivered pursuant hereto at the Closing; and

(c) any Action by a Seller Indemnified Party to enforce its indemnification rights under this Agreement in which such Person is successful on the merits or otherwise.

Notwithstanding the foregoing, the indemnification provisions of Section 9.10 shall be the sole and exclusive remedy of the Seller Indemnified Parties relating to Taxes.

#### **9.5 Procedure for Third-Party Claims.**

Other than with respect to Taxes covered by Section 9.10(h):

(a) Promptly after receipt by an Indemnified Party of notice of the commencement of any Action against it by any Person who is not a party to this Agreement, or an Affiliate of such a Person, for which an Indemnifying Party is obligated to provide indemnification under this Agreement, such Indemnified Party will, if a claim is to be made against an Indemnifying Party, give written notice to the Indemnifying Party of the commencement of such Action, together with a copy of the claim, process or other legal pleading; provided, however, that the failure to notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that it may have to any

Indemnified Party, except to the extent that the Indemnifying Party demonstrates that the defense of such action is prejudiced by the Indemnified Party's failure to give such notice.

(b) If any Action referred to in Section 9.5(a) is brought against an Indemnified Party and it gives notice to the Indemnifying Party of the commencement of such Action, the Indemnifying Party will be entitled to participate in such Action and, to the extent that it wishes (unless (i) the Indemnifying Party is also a party to such Action and the Indemnified Party reasonably determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Party fails to provide reasonable assurance to the Indemnified Party of its financial capacity to defend such proceeding and provide indemnification with respect to such proceeding), to assume the defense of such Action with counsel reasonably satisfactory to the Indemnified Party and, after notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of such Action, the Indemnifying Party will not, so long as it diligently conducts such defense, be liable to the Indemnified Party under this Article IX for any fees of other counsel or any other expenses with respect to the defense of such Action, in each case subsequently incurred by the Indemnified Party in connection with the defense of such Action. If the Indemnifying Party assumes the defense of the Action, the Indemnified Party will cooperate in good faith with the Indemnifying Party in such defense and will have the right to participate in the defense of such Action assisted by counsel of its own choosing and at its own expense. If the Indemnifying Party assumes the defense of an Action, (i) no compromise or settlement of such claims may be effected by the Indemnifying Party without the Indemnified Party's consent (which consent will not be unreasonably withheld, conditioned or delayed) unless (A) there is no finding or admission of any violation of Applicable Law or any violation of the rights of any Person and no effect on any other claims that may be made against the Indemnified Party, and (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party; and (ii) the Indemnified Party will have no liability with respect to any compromise or settlement of such claims effected without its consent if such consent is required by this sentence. If notice is given to an Indemnifying Party of the commencement of any Action and the Indemnifying Party does not, within 30 days after the Indemnified Party's notice is given, give notice to the Indemnified Party of its election to assume the defense of such Action, the Indemnifying Party will be bound by any determination made in such Action or any compromise or settlement effected by the Indemnified Party to which the Indemnifying Party consents, which consent by the Indemnifying Party may not be unreasonably withheld, conditioned or delayed.

(c) Notwithstanding the foregoing, if an Indemnified Party determines in good faith that there is a reasonable probability that an Action for which an Indemnifying Party is obligated to provide indemnification under this Agreement is reasonably likely to have a Material Adverse Effect upon it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Party may, by notice to the Indemnifying Party, assume the exclusive right to defend, compromise, or settle such Action, but the Indemnifying Party, although still liable for the payment of all reasonable legal fees, costs and expenses incurred in connection therewith, will not be bound by any determination of an Action so defended or any compromise or settlement effected without its consent (which may not be unreasonably delayed, conditioned or withheld). ABX and the Sellers, acting through the Sellers Representative, agree to act reasonably and in good faith in determining whether to settle, compromise, defend and/or appeal any claim.

#### **9.6 Procedure for Other Claims.**

A claim for indemnification for any matter not involving a third-party claims described in Section 9.5 may be asserted by written notice to the party from whom indemnification is sought setting forth, in reasonable detail, the amount (or reasonable good faith estimate of the amount) and basis for the claim.

#### **9.7 Remedies.**

Effective upon the Closing, except as otherwise specifically provided in this Agreement or in the case of fraud, the sole and exclusive remedy of ABX, Acquisition, Cargo and the Sellers, acting through the Sellers Representative, under this Agreement shall be restricted to the indemnification rights set forth in this Article IX.

#### **9.8 Certain Limitations on Indemnification Rights of ABX Indemnified Parties.**

Notwithstanding anything in this Agreement to the contrary, the right of the ABX Indemnified Parties to indemnification under Article IX of this Agreement (other than with respect to Taxes) is limited as follows:

(a) The ABX Indemnified Parties will be entitled to indemnification pursuant to Section 9.3(b) in respect of any breach of representations and warranties and pursuant to Section 9.3(d) and Section 9.3(e) to the extent (but only to the extent) that the aggregate amount of all Losses suffered by the ABX Indemnified Parties in respect of such breaches exceeds the Basket, and then only to the extent of such excess, provided, however, that any claim for indemnification pursuant to (x) Section 9.3(b) for breach of any of the representations and warranties set forth in (i) the first and third sentences of Section 5.1, (ii) Section 5.2, (iii) Section 5.3 and (iv) Section 5.4 and (y) Section 9.3(d) (to the extent the enforcement Action referenced therein relates to any such claim under Section 9.3(b)) shall not be subject to the Basket.

(b) The ABX Indemnified Parties will be entitled to indemnification pursuant to Section 9.3(b) in respect of any breach of representations and warranties and

pursuant to Section 9.3(d) for Losses suffered by the ABX Indemnified Parties in respect of such breaches up to, but not in excess of, an aggregate amount equal to the General Indemnification Cap. Any claim for indemnification pursuant to Section 9.3(b) in respect of any breach of an Excluded Representation and Section 9.3(d) (to the extent the enforcement Action referenced therein relates to any such claim under Section 9.3(b)) shall not be subject to the General Indemnification Cap.

(c) The ABX Indemnified Parties will be entitled to indemnification pursuant to Section 9.3(a), Section 9.3(b) in respect of any breach of Excluded Representations, Section 9.3(e) and Section 9.3(d)(to the extent the enforcement Action referenced therein relates to any such indemnification claims) up to, but not in excess of, an aggregate amount equal to the Purchase Price Indemnification Cap less all amounts previously paid to the ABX Indemnified Parties pursuant to the Indemnification Agreement, provided, however, that any indemnification in accordance with this Section 9.8(c) in excess of the General Indemnification Cap will be provided only by the Significant Shareholders, on a several and not joint or joint and several basis, based on their respective Significant Shareholder Relative Consideration Percentage.

(d) The ABX Indemnified Parties will be entitled to indemnification pursuant to Section 9.3(c), Section 9.3(f) and Section 9.3(d)(to the extent the enforcement Action referenced therein relates to any such indemnification claims) from the Significant Shareholders up to, but not in excess of, an aggregate amount equal to the Purchase Price Indemnification Cap less all amounts previously paid to the ABX Indemnified Parties pursuant to the Indemnification Agreement, provided, however, that any indemnification relating to Section 9.3(c), Section 9.3(f) and Section 9.3(d)(to the extent the enforcement Action referenced therein relates to any such indemnification claims) will be provided only by the Significant Shareholders, on a several and not joint or joint and several basis, based on their respective Significant Shareholder Relative Consideration Percentage.

(e) The ABX Indemnified Parties will be entitled to indemnification from a Seller who is not a Significant Shareholder pursuant to the provisions of this Article IX only to the extent that any such indemnification is paid from the Escrow Fund in connection with a distribution by the Escrow Agent under the Escrow Agreement.

(f) The ABX Indemnified Parties will not be entitled to indemnification pursuant to Section 9.3 for consequential, punitive or exemplary damages; provided, however, that this Section 9.8(f) shall not exclude the recovery of any such damages (including reasonable investigation fees and reasonable attorneys' fees incurred in defending such damages) to the extent an ABX Indemnified Party suffers or incurs such damage (including reasonable investigation fees and reasonable attorneys' fees incurred in defending such damages) to a third party in connection with a third-party claim.

(g) Notwithstanding anything to the contrary in this Article IX, any indemnification obligations of the Sellers to the ABX Indemnified Parties under Sections 9.3(a), 9.3(b), 9.3(e) and 9.3(d) (to the extent such enforcement Action referenced therein relates to Sections 9.3(a), (b) or (e)) shall first be drawn from the Escrow Fund established under the Escrow Agreement until such time as the Escrow Fund has been reduced to zero.

(h) For purposes solely of determining the amount of indemnifiable Losses pursuant to this Article IX (and not for the purpose of determining whether such representation and warranty are breached), all representations and warranties of Cargo and the Significant Shareholders, other than the representations and warranties set forth in Section 5.7, shall be construed as if the term “material” and “Cargo Material Adverse Effect” (and variations thereof and other comparable limitations, including dollar threshold amounts) were omitted from such representations and warranties.

(i) The obligations to indemnify and hold harmless pursuant to Section 9.3(b) shall survive the Closing for the time periods set forth in Section 9.1; provided that any representations or warranties as to which an indemnification claim shall have been asserted during such survival period shall continue in effect as to such claim until such time as such claim shall have been resolved or settled.

(j) The aggregate indemnity obligations of each Significant Shareholder pursuant to this Agreement, together with such Significant Shareholder’s aggregate indemnification obligations pursuant to the Indemnification Agreement, shall be limited to the sum of (i) the gross proceeds received by such Significant Shareholder pursuant to the terms of this Agreement (it being understood and agreed that for purposes of this Section 9.8(j), (x) the Significant Shareholder’s Pro-Rata Share of the Indemnity Escrow Amount deposited by ABX pursuant to the terms of this Agreement and the Escrow Agreement shall be counted as gross proceeds received by such Significant Shareholder pursuant to the terms of this Agreement and (y) the ABX Common Stock Value shall be used to calculate gross proceeds attributable to Transaction Consideration received in ABX Common Stock pursuant to the terms of this Agreement) and (ii) the gross proceeds, if any, received by such Significant Shareholder pursuant to the terms of the Indemnification Agreement less the Expenditures.

### **9.9 Certain Limitations on Indemnification Rights of Seller Indemnified Parties.**

Notwithstanding anything in this Agreement to the contrary, the right of the Seller Indemnified Parties to indemnification under Article IX of this Agreement (other than with respect to Taxes) is limited as follows:

(a) The Seller Indemnified Parties will be entitled to indemnification pursuant to Section 9.4(b) in respect of any breach of representations and warranties and pursuant to Section 9.4(c) to the extent (but only to the extent) that the aggregate amount of all Losses suffered by the Seller Indemnified Parties in respect of such breaches exceeds the Basket, and then only to the extent of such excess, provided, however, that any claim for indemnification pursuant to Section 9.4(b) for breach of any of the representations and warranties set forth in (i) the first three sentences of Section 6.1, (ii) Section 6.2 and (iii) Section 6.5 shall not be subject to the Basket.

(b) The Seller Indemnified Parties will be entitled to indemnification pursuant to Section 9.4(b) and Section 9.4(c) (to the extent such enforcement Action referenced therein relates to Section 9.4(b)) for Losses suffered by the Seller Indemnified Parties in respect of such breaches up to, but not in excess of, the ABX Indemnification Cap.

(c) The Seller Indemnified Parties will be entitled to indemnification from ABX pursuant to the provisions of this Article IX only to the extent that any such indemnification is asserted by the Sellers Representative in accordance with the terms and conditions of this Agreement.

(d) The Seller Indemnified Parties will not be entitled to indemnification pursuant to Section 9.4 for consequential, punitive or exemplary damages; provided, however, that this Section 9.9(d) shall not exclude the recovery of any such damages (including reasonable investigation fees and reasonable attorneys' fees incurred in defending such damages) to the extent a Seller Indemnified Party suffers or incurs such damage (including reasonable investigation fees and reasonable attorneys' fees incurred in defending such damages) to a third party in connection with a third-party claim.

#### **9.10 Tax Obligations and Indemnification.**

(a) Any and all liability of Cargo or any of its Subsidiaries for Taxes for any and all periods prior to the Closing Date and from the operations of Cargo or any of its Subsidiaries prior to the Closing Date shall be the sole responsibility and obligation of the Sellers (including the Significant Shareholders) to the extent that such Tax obligations exceed the aggregate accruals for Taxes reflected on the Closing Balance Sheet (subject to the treatment of highly contingent accruals in Section 9.10(b)); provided, however, that any such excess Tax obligation shall be the responsibility of the Sellers (including the Significant Shareholders) only if, and to the extent that, assuming hypothetically that such excess Tax obligation had been included on the Closing Balance Sheet, and taking into account any other adjustment(s) to the Closing Balance Sheet that would have been required under Financial Accounting Standards Board Statement No. 109 ("FAS 109") as a result of such inclusion (without regard to any valuation allowance resulting from post-Closing actions), the Final Net Asset Value would have been reduced. Examples of the operation of this Section 9.10(a) are set forth in Exhibit D.

(b) (i) Effective upon the Closing Date, the Sellers (including the Significant Shareholders), without regard to the Basket or the disclosure of any item in the Cargo Disclosure Schedule (except that such disclosure shall be taken into account for purposes of Section 9.10(b)(i)(B)), and without any right of recourse or defense against Cargo or any of its Subsidiaries, shall indemnify and hold harmless the ABX Indemnified Parties from and against all Losses attributable to (A) all Taxes of Cargo and each of its Subsidiaries for all taxable periods ending on or before the Closing Date and the portion through the end of the Closing Date of any taxable period that includes (but does not end on) the Closing Date, (B) the failure of any representation or warranty made pursuant to Section 5.7 (disregarding any materiality qualifier) to be true and correct as of

the Closing Date, (C) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which Cargo (or any predecessor thereof) or any of its Subsidiaries (or any predecessor thereof) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation § 1.1502-6 or any analogous or similar state, local or foreign law or regulation before the Closing Date, and (D) all Taxes resulting from the 767, LLC Spin-Off; provided, however, that this Section 9.10(b) shall apply only to the extent that Losses covered by this Section 9.10(b) exceed the aggregate amount of accruals for Taxes included on the Closing Balance Sheet; and provided further, however, that any such Tax obligation included in such excess Losses shall be the responsibility of the Sellers (including the Significant Shareholders) only if, and to the extent that, assuming hypothetically that such Tax obligation had been included on the Closing Balance Sheet, and taking into account any other adjustment(s) to the Closing Balance Sheet that would have been required under FAS 109 as a result of such inclusion (without regard to any valuation allowance resulting from post-Closing actions), the Final Net Asset Value would have been reduced. Notwithstanding the foregoing, with respect to any such accruals for Taxes that are highly contingent, the Closing Balance Sheet shall include a corresponding receivable in the same amount, with the result that such highly contingent accruals shall not reduce the Final Net Asset Value. If the statute of limitations with respect to any such accrual expires without Cargo and/or any of its Subsidiaries having to pay the related Tax, the receivable will be eliminated without any impact on Sellers. If, however, Cargo and/or any of its Subsidiaries are required to pay any such related Tax, ABX shall be entitled to seek indemnification therefor from Sellers.

(ii) For the avoidance of doubt, the aggregate indemnity obligations of each Significant Shareholder pursuant to this Agreement, together with such Significant Shareholder's aggregate indemnification obligations pursuant to the Indemnification Agreement, shall be limited to (i) the gross proceeds received by such Significant Shareholder pursuant to the terms of this Agreement (it being understood and agreed that for purposes of this Section 9.10(b)(ii), (x) the Significant Shareholder's Pro-Rata Share of the Indemnity Escrow Amount deposited by ABX pursuant to the terms of this Agreement and the Escrow Agreement shall be counted as gross proceeds received by such Significant Shareholder pursuant to the terms of this Agreement and (y) the ABX Common Stock Value shall be used to calculate gross proceeds attributable to Transaction Consideration received in ABX Common Stock pursuant to the terms of this Agreement) and (ii) the gross proceeds, if any, received by such Significant Shareholder pursuant to the terms of the Indemnification Agreement less the Expenditures.

(c) In the case of any Tax that is imposed on a periodic basis and is payable for a Tax period that begins before the Closing Date and ends after the Closing Date, the portion of such Tax that relates to the portion of such Tax period ending on the Closing Date shall (i) in the case of any Tax other than a Tax based upon or related to income, sales, gross receipts, wages, capital expenditures or expenses, be deemed to be the amount of such Tax for the entire Tax period multiplied by a fraction, the numerator of which is the number of days in the portion of the Tax period ending on the Closing Date and the denominator of which is the number of days in the entire Tax period, and (ii) in the case of any Tax based upon or related to income, sales, gross receipts, wages, capital expenditures or expenses, be deemed equal to the amount of Tax which would be payable if the relevant Tax period ended on the Closing Date.

(d) From and after the Closing Date, the Sellers Representative and ABX shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns for Cargo or any of its Subsidiaries and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information that are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. ABX agrees to cause Cargo and its Subsidiaries (i) to retain all books and records with respect to Tax matters pertaining to Cargo and its Subsidiaries relating to any taxable period beginning before the Closing Date until the later of the expiration of the seven-year period following the Closing Date and the expiration of the statute of limitations (and any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority, and (ii) to give the Sellers Representative reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the Sellers Representative so requests, ABX shall allow the Sellers Representative to take possession of such books and records.

(e) All tax-sharing agreements or similar agreements with respect to or involving Cargo or any of its Subsidiaries shall be terminated as of the Closing Date and, after the Closing Date, Cargo shall not be bound thereby or have any liability thereunder; provided, however, that nothing herein shall require the termination by Cargo of agreements with third parties.

(f) The Sellers, on the one hand, and ABX, on the other hand, shall be responsible for and shall pay one-half of all transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges, and other fees and charges (including any penalties and interest) incurred in connection with consummation of the transactions contemplated by this Agreement, if any. Each of the parties hereto will, at his, her or its own expense, file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges.

(g) Tax Returns. After the Closing, ABX shall have the exclusive obligation and authority to file or cause to be filed all federal, state, local, and foreign Tax Returns that are required to be filed by or with respect to the income, assets, properties and operations of Cargo and its Subsidiaries for (i) all taxable years or other taxable periods ending on or prior to the Closing Date (the "Pre-Closing Period"), (ii) all taxable years or other taxable periods beginning on or before the Closing Date and ending after the Closing Date (the "Overlap Period") and (iii) all other taxable years or taxable periods; provided, however, with respect to Tax Returns for Pre-Closing Periods, (a) such Tax Returns shall be prepared in a manner consistent with past practices (except with respect to an item that does not meet the Minimum Standard, as defined below); (b) such Tax Returns shall be delivered to Sellers forty-five (45) days prior to the filing of any such Tax Return; (c) within thirty (30) days after receipt of any such Tax Return, Sellers

shall notify ABX of any reasonable objections Sellers may have thereto; and (d) prior to filing such Tax Returns, ABX shall make any changes to such Tax Returns so requested by the Sellers, except to the extent that such changes would be inconsistent with past practices or would not meet the Minimum Standard. With respect to Tax Returns for the Overlap Period, to the extent Sellers are (or could be) liable for amounts on such Tax Returns, (x) such Tax Returns shall be prepared in a manner consistent with past practices (except to the extent a position on such Tax Returns or the decision whether or not to file such Tax Returns does not meet the Minimum Standard), (y) such Tax Returns shall not be filed without the prior written consent of Sellers, such consent not to be unreasonably withheld, conditioned or delayed and (z) no later than forty-five (45) days prior to the due date for filing of such Tax Returns, ABX shall provide Sellers with notice, which notice shall (A) set forth ABX's calculations regarding the amount of such Taxes which ABX determines has given rise to a right of indemnification pursuant to Section 9.10(b) hereof in sufficient detail and particularity to enable Sellers to verify the amount of the required indemnification and (B) include a draft of such Tax Return. Within thirty (30) days after receipt of such Tax Return, Sellers shall notify ABX of any reasonable objections Sellers may have to ABX's calculations regarding the amount of such Taxes which ABX determined has given rise to a right of indemnification pursuant to Section 9.10(b) hereof and to any items set forth in such draft Tax Returns. ABX and Sellers agree to consult and resolve in good faith any disagreements arising pursuant to this Section 9.10(g), it being understood and agreed that in the absence of any such resolution, any and all such objections as to whether this provision has been complied with shall be determined by the Accounting Firm, which shall act as expert and not as arbitrator and whose determination shall be final and binding. The Accounting Firm shall allocate its costs associated with such determination equally between ABX and the Sellers Representative.

For purposes of this Section 9.10(g), the "Minimum Standard" shall mean that a Tax Return preparer can have a reasonable belief that the tax treatment of an item or position on the Tax Return, a change to the Tax Return or a decision not to file a Tax Return, as applicable, would more likely than not be sustained on its merits.

(h) Controversies. (i) Except as provided in (ii) below, ABX shall, at its sole cost and expense, have the exclusive authority to control any audit or examination by any taxing authority, and contest, resolve and defend against any assessment for additional Taxes, notice of Tax deficiency or other adjustment of Taxes of or relating to any liability of Cargo or its Subsidiaries for Taxes for any Pre-Closing Period, Overlap Period, or other taxable year or taxable period ending after the Closing Date (the "Post-Closing Period"); provided, however, that (A) neither ABX nor its duly appointed Representative shall, without the prior written consent of the Sellers, which consent shall not be unreasonably withheld, conditioned or delayed, enter into any settlement of any contest or otherwise compromise any issue that adversely affects or is likely to adversely affect the Tax liability of Sellers or any of its affiliates for any Pre-Closing Period or the portion of the Overlap Period ending on and including the Closing Date, (B) neither ABX nor its Representative shall, without the prior consent of Sellers, which consent shall not be unreasonably withheld, conditioned or delayed, enter into any settlement of any contest or otherwise compromise any issue that would result in a proper reduction in

liability accruals for Taxes on the Closing Balance Sheet (unless, as a result of any other adjustment(s) to the Closing Balance Sheet that would be required under FAS 109, the Final Net Asset Value would not have been reduced had such reduction in liability accruals and such other adjustment(s) been made at the time that the Final Net Asset Value was determined pursuant to Section 7.5 (e)) or require payment by Sellers of any amount under this Section 9.10 unless ABX shall have waived or caused to be waived for itself and Cargo and its Subsidiaries any right to indemnification for any such amounts from Sellers and (C) ABX shall keep Sellers fully and timely informed with respect to the commencement and status of any audit or examination that adversely affects or is likely to adversely affect the Tax liability of Sellers or any of its affiliates for any Pre-Closing Period or the portion of the Overlap Period ending on and including the Closing Date, and shall, in good faith, allow Sellers, at its sole expense, (1) to make comments to ABX, regarding the conduct of or positions taken in any such proceedings and (2) to participate in, but not control, any such proceedings.

(ii) Notwithstanding Section 9.10(h)(i), if it is (or becomes) clear in any audit or examination that the sole issues that are (or remain) the subject of the audit or examination relate to items for which Sellers are solely liable pursuant to this Agreement (a "Sellers' Audit"), with respect to such Sellers' Audit, Sellers and Sellers Representative shall, at their sole cost and expense, have the exclusive authority to control such audit or examination and contest, and resolve and defend against any assessment for additional Taxes, notice of Tax deficiency or other adjustment of Taxes; provided, however, that (A) Sellers shall keep ABX fully and timely informed with respect to the commencement and status of any such audit or examination that adversely affects or is likely to adversely affect the Tax liability of ABX or any of its Affiliates, and shall, in good faith, allow ABX, at its sole expense, (1) to make comments to Sellers, regarding the conduct of or positions taken in any such proceedings and (1) to participate in, but not control, any such proceedings and (B) neither Sellers nor Sellers Representative shall, without the prior written consent of ABX, which consent shall not be unreasonably withheld, conditioned or delayed, enter into any settlement of such Sellers Audit that adversely affects or is likely to adversely affect the Tax liability of ABX or any of its Affiliates.

(i) Notification. The ABX Indemnified Parties shall promptly forward to the Sellers Representative all written notifications and other communications from any taxing authority received by them relating to any Tax audit or other proceeding relating to the Tax liability of Cargo or any of its Subsidiaries with respect to a Pre-Closing Period; provided, however, that no delay on the part of the ABX Indemnified Parties shall relieve Sellers from any obligation hereunder unless (and then only to the extent that) Sellers are prejudiced thereby.

(j) Options and Warrants. Notwithstanding anything to the contrary herein, any Tax deduction or loss arising from the purchase and sale of the Cargo Options and the Cargo Warrants pursuant to Sections 3.1(b) and 3.1(c), respectively, shall be claimed in the Pre-Closing Period and shall be taken into account on the Closing Balance Sheet.

(k) Carrybacks. ABX, Cargo and any Subsidiary of Cargo shall be entitled to carry back any net operating loss or other item or attribute from a Post-Closing Period to a Pre-Closing Period. In each such case, ABX, Cargo and such Subsidiary of Cargo, as applicable, shall be entitled to any resulting Tax refund or other Tax benefit; provided, however, that ABX in any such case shall indemnify and hold harmless Sellers from and against any increase in Taxes resulting from such carryback that otherwise would have been the responsibility of Sellers pursuant to this Section 9.10.

(l) Refunds. Except as otherwise provided in Section 9.10(k), any Tax refund (including any interest in respect thereof) received by ABX, Cargo or any of its Subsidiaries, and any amounts of overpayments of Tax credited against Tax which ABX, Cargo or any of its Subsidiaries otherwise would be or would have been required to pay that relate to any taxable period, or portion thereof, ending on or before the Closing Date shall be for the account of Sellers, and ABX shall pay over to Sellers any such refund or the amount of any such credit within fifteen (15) days after receipt or entitlement thereto, to the extent that such Tax refund or credit exceeds the receivables for Tax refunds or credits reflected on the Closing Balance Sheet; provided, however, that any such Tax refund or credit shall be for the account of the Sellers only if, and to the extent that, assuming hypothetically that such Tax refund or credit had been included on the Closing Balance Sheet, and taking into account any other adjustment(s) to the Closing Balance Sheet that would have been required under FAS 109 as a result of such inclusion, the Final Net Asset Value would have been increased. Without limiting the generality of the foregoing, the parties anticipate that Cargo and its Subsidiaries will receive a substantial refund with respect to Taxes on their final Tax Returns for the Pre-Closing Period and that such refund will be booked as a receivable on the Closing Balance Sheet. Accordingly, when Cargo and/or any of its Subsidiaries receive such refund, such refund shall be for the account of ABX and not for Sellers.

(m) Amended Tax Returns. Except as otherwise provided in Section 9.10(k), Sellers or an Affiliate of Sellers may, in its sole and absolute discretion, amend any Tax Return filed or required to be filed for any taxable years or periods ending on or before the Closing Date; provided, however, that neither Sellers nor any Affiliate of Seller shall amend any such Tax Return that materially and adversely affects or may materially and adversely affect the Tax liability of ABX, Cargo or any Affiliate of the foregoing for any period ending after the Closing Date, including the portion of any Overlap Period that is after the Closing Date, without the prior consent of ABX, which consent shall not be unreasonably withheld, conditioned or delayed.

(n) Tax Benefit. If Sellers make any payment under Section 9.3 or this Section 9.10 or for any Pre-Closing Period or the portion of the Overlap Period ending on and including the Closing Date and the payment of such Tax liability gives rise to a United States federal, state, local or foreign Tax benefit to ABX, Cargo or their Affiliates, then ABX shall pay to Sellers the amount of such Tax benefit as such Tax benefit is actually recognized by ABX, Cargo or their Affiliates, as applicable. The determination of any such Tax benefit shall be made in good faith by ABX and, if requested by Sellers, shall be verified in writing by an independent certified public accounting firm selected by Sellers. For this purpose, the term "Tax benefit" means, with respect to a taxable year of

a Person and without duplication, the excess, if any, of (i) such Person's cumulative liability for Taxes through the end of such taxable year, calculated by excluding any Tax items attributable to the payment at issue for all taxable years, over (ii) such Person's actual cumulative liability for Taxes through the end of such taxable year, calculated by taking into account any Tax items attributable to the payment at issue for all taxable years (to the extent permitted by relevant Tax law and treating such Tax items as the last items claimed for any taxable year); provided, however, that if all or a portion of the Tax benefit associated with a payment is expected to reduce such Person's Taxes in one or more taxable years subsequent to the taxable year in which an indemnification payment is due pursuant to this Agreement, the Tax benefit for the taxable year in which such indemnification payment is due shall be equal to the portion, if any, of such Tax benefit that actually reduces such Person's Taxes as described above for such taxable year (and/or one or more prior taxable years), with the indemnifying party making the indemnification payment without reduction for any future Tax benefits, on a present-value basis or otherwise; and provided further, however, that to the extent the indemnified party recognizes Tax benefits with respect to a payment in any future taxable year(s) with respect to which the indemnified party has received one or more indemnification payments, the indemnified party shall pay the amount of such Tax benefits to the indemnifying party as such Tax benefits are actually recognized by the indemnified party (but not in excess of the indemnification payment(s) actually received from the indemnifying party with respect to the payment generating the Tax benefits).

(o) Section 338 Election. ABX shall not make an election under Section 338 of the Code with respect to the purchase of the shares of Cargo or any of its Subsidiaries or Affiliates. ABX shall indemnify and hold Sellers harmless for any increase in Sellers' liability for Taxes which results from the failure of ABX to satisfy its obligations under this Section 9.10(o).

(p) Sole Remedy. Notwithstanding anything to the contrary in this Agreement, the indemnification provisions of this Section 9.10 shall be the sole and exclusive remedy relating to Taxes and shall not be subject to the Basket. All representations and warranties contained in Section 5.7 of this Agreement relating to Taxes shall survive the Closing and continue in effect until the expiration of the applicable statute of limitations. All covenants and agreements contained in this Agreement relating to Taxes shall survive the Closing in accordance with their terms.

(q) Significant Shareholders. If, and to the extent that, the Escrow Fund is no longer available to satisfy the Sellers' indemnification obligations pursuant to this Section 9.10, the Significant Shareholders shall bear one-hundred percent (100%) of any remaining indemnification obligations pursuant to this Section 9.10 in proportion to their respective Significant Shareholder Relative Consideration Percentages, subject to Section 9.10(b)(ii).

#### **9.11 Escrow Fund.**

(a) At the Closing, the Indemnity Escrow Amount will be deposited by ABX with, and will be held by, the Escrow Agent pursuant to the terms of the Escrow

Agreement. The Indemnity Escrow Amount shall initially constitute the Escrow Fund, which fund shall be governed and distributed in accordance with the terms and conditions set forth in the Escrow Agreement.

(b) The parties agree that the Escrow Agreement shall provide that (i) if the Closing Date is on or prior to December 31, 2007, on the earlier to occur of (A) the 60th day following the receipt by ABX from its independent auditors of the consolidated financial statements of ABX for the year ended December 31, 2007 and (B) April 30, 2008 or (ii) if the Closing Date is after December 31, 2007, on the later to occur of (A) the 60th day following the receipt by ABX from its independent auditors of the consolidated financial statements of ABX for the year ended December 31, 2007, (B) April 30, 2008 and (C) the 90th day following the Closing Date (such date, the "Audit Distribution Date"), ABX and the Sellers Representative shall direct the Escrow Agent to distribute in accordance with the terms and conditions of the Escrow Agreement such amount from the Escrow Fund so that the remaining balance of the Escrow Fund following the Audit Distribution Date equals \$15,000,000 plus the aggregate amount of the value of any unresolved indemnification claims asserted by any ABX Indemnified Party in accordance with the terms and conditions of this Agreement between the Closing Date and the Audit Distribution Date.

(c) The parties agree that the Escrow Agreement shall provide that on the first Business Day following the 18 month anniversary of the Closing Date (the "Escrow Distribution Date"), ABX and the Sellers Representative shall direct the Escrow Agent to distribute in accordance with the terms and conditions of the Escrow Agreement the then remaining balance of the Escrow Fund less the aggregate amount of the value of any unresolved indemnification claims asserted by any ABX Indemnified Party in accordance with the terms and conditions of this Agreement between the Closing Date and the Escrow Distribution Date.

#### **9.12 Transaction Consideration Adjustment.**

All indemnification payments made pursuant to this Article IX shall be treated as adjustments to the Transaction Consideration.

#### **9.13 Effect of Due Diligence Examinations.**

No right of indemnification hereunder shall be limited by reason of any investigation or audit conducted before or after the Closing or the knowledge of any party or a Representative of a party of any breach of a representation, warranty, covenant or agreement under this Agreement by another party at any time, or the decision of any party to complete the Closing; provided, however, that if at the time of the execution of this Agreement any party has knowledge (or Knowledge in the case of Cargo, ABX or Acquisition) that a representation or warranty in this Agreement by another party is inaccurate (to be distinguished from having knowledge (or Knowledge in the case of Cargo, ABX or Acquisition) of underlying facts or access to underlying facts that could establish an inaccuracy but not actually recognizing that inaccuracy), such knowing party cannot subsequently make a claim for that inaccuracy, it being understood that, solely for

purposes of the proviso, the Knowledge of Cargo at the time of the execution of this Agreement shall be deemed to be the knowledge of the Sellers; provided, further, that the foregoing limitation shall not apply to any right to indemnification pursuant to Section 9.10 (with the exception of Section 9.10(b)(i)(B)) of this Agreement.

## **ARTICLE X TERMINATION, AMENDMENT AND WAIVER**

### **10.1 Termination.**

This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written agreement of ABX and Cargo by action of their respective Boards of Directors;

(b) by (i) ABX if the transactions contemplated by this Agreement shall not have been consummated by the 270th day after the date hereof or (ii) by Cargo if the transactions contemplated by this Agreement shall not have been consummated by February 1, 2008; provided, however, that the right to terminate this Agreement under this Section 10.1(b) shall not be available to any party whose breach (or (A) in the case of ABX, any breach by Acquisition or (B) in the case of Cargo, any breach by the Significant Shareholders) of any provision of this Agreement proximately causes the failure of a condition to the consummation of the transactions contemplated by this Agreement;

(c) by either Cargo or ABX if a Governmental Authority shall have issued an Order having the effect of permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, which Order is final and nonappealable; provided, however, that the right to terminate this Agreement under this Section 10.1(c) shall not be available to any party whose breach (or (A) in the case of ABX, any breach by Acquisition or (B) in the case of Cargo, any breach by the Significant Shareholders) of any provision of this Agreement proximately causes such Order;

(d) by ABX, if by reason of a breach of any representation, warranty or covenant made by Cargo or any Significant Shareholder in this Agreement such that Section 8.2(a) or 8.2(b) would not be satisfied and such breach is not curable or, if curable, has not been cured within 30 days following receipt by Cargo of notice from ABX of such breach;

(e) by Cargo if by reason of a breach of any representation, warranty or covenant made by ABX or Acquisition in this Agreement such that Section 8.3(a) or 8.3(b) would not be satisfied and such breach is not curable or, if curable, has not been cured within 30 days following receipt by ABX of notice from Cargo of such breach; or

(f) subject to ABX making the payment provided for in Section 7.3(a)(iii) simultaneously therewith, by ABX if ABX or an Affiliate of ABX enters into a definitive acquisition agreement with ASTAR Air Cargo Holdings LLC or an Affiliate thereof.

**10.2 Notice of Termination; Effect of Termination.**

Any termination of this Agreement under Section 10.1 above will be effective immediately upon the delivery of written notice of the terminating party to the other parties hereto. In the event of the termination of this Agreement as provided in Section 10.1, this Agreement shall be of no further force or effect, and there will be no liability or obligation on the part of any party hereto (or any of their respective Representatives or Affiliates); provided that (i) the provisions set forth in Section 7.1(e), Section 7.3 (a), this Section 10.2 and Article XI shall survive the termination of this Agreement, and (ii) nothing herein shall relieve any party from any liability resulting from any willful breach by such party of this Agreement.

**ARTICLE XI  
MISCELLANEOUS**

**11.1 Governing Law; Jurisdiction and Venue.**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof. For all actions, suits and proceedings arising out of or relating to this Agreement, the parties hereby irrevocably and unconditionally (i) consent to the personal jurisdiction of the United States District Court for the Southern District of New York located in the City of New York or, in absence of jurisdiction, the Supreme Court of New York located in the City of New York and (ii) waive any defense or objection to proceeding in such court, including those objections and defenses based on an alleged lack of personal jurisdiction, improper venue and forum non-conveniens.

**11.2 Waiver of Jury Trial.**

In the event that any dispute shall arise between ABX or Acquisition, on the one hand, and Cargo or any of the Significant Shareholders, on the other hand, and litigation ensues, with respect to any litigation arising out of or related to this Agreement, the parties expressly waive any right they may have to a jury trial and agree that any such litigation shall be tried by a judge without a jury.

**11.3 Severability.**

The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision

to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

**11.4 Notices.**

All notices, consents, requests, instructions, approvals and other communications provided for herein shall be validly given, made or served if in writing and delivered personally or sent by certified mail (return receipt requested), postage prepaid, or recognized national or international air courier or by facsimile transmission with delivery confirmed:

if to ABX or Acquisition:

ABX Holdings, Inc.  
145 Hunter Drive  
Wilmington, Ohio 45177  
Attn: W. Joseph Payne, Vice-President, General Counsel and Secretary  
Fax: 937-382-2452

with a copy to:

Vorys, Sater, Seymour and Pease LLP  
221 East Fourth Street, Suite 2000  
Cincinnati, Ohio 45201  
Attn: Roger E. Lautzenhiser  
Fax: (513) 852-8490

if to Cargo:

Cargo Holdings International, Inc.  
7100 TPC Drive, Suite 100  
Orlando, FL 32822  
Attn: President  
Fax: (407) 517-0301

with copies to:

White & Case LLP  
1155 Avenue of the Americas  
New York, New York 10036  
Attn: Anthony F. Kahn, Esq.  
Fax: (212) 354-8113

and

Troutman Sanders LLP  
600 Peachtree Street, Suite 5200  
Atlanta, GA 30308  
Attn: W. Brinkley Dickerson, Jr., Esq.  
Fax: (404) 962-6743

if to ACI International, Inc.:

Briggs & Morgan, P.A.  
2200 IDS Center  
80 South 8th Street Minneapolis, Minnesota 55402-2157  
Attn: Brian D. Wenger, Esq.  
Fax: (612) 977-8650

if to Mass Mutual Life Insurance Company and its Affiliates:

c/o David L. Babson & Company  
1500 Main Street, Suite 2800  
Springfield, Massachusetts 01115  
Attn: Steven J. Katz, Esq.  
Fax: (413) 226-2688

if to Aviation Capital Group Corp. and its Affiliates:

Aviation Capital Group Corp.  
610 New Port Center Drive, 14th Floor  
Newport Beach, California 92660  
Attn: Loren M. Dollett  
Fax: (949) 759-5675

with copies to:

White & Case LLP  
1155 Avenue of the Americas  
New York, New York 10036  
Attn: Anthony F. Kahn, Esq.  
Fax: (212) 354-8113

if to Minnesota Fox II, LLC:

Minnesota Fox II, LLC  
c/o Peter F. Fox  
7100 TPC Drive  
Suite 100  
Orlando, Florida 32822  
Fax: (407) 517-0302

if to the Sellers Representative:

c/o David L. Babson & Company  
1500 Main Street, Suite 2800  
Springfield, Massachusetts 01115  
Attn: Steven J. Katz, Esq.  
Fax: (413) 226-2688

or, in each case, at such other address, or facsimile as may be specified in writing to the other parties.

**11.5 Waiver.**

Any party may waive compliance by another party with any of the provisions of this Agreement. No waiver of any provisions shall be construed as a waiver of any other provision or a future waiver of any provision hereof. Any waiver cannot be implied and must be in writing to be effective.

**11.6 Assignment.**

This Agreement shall be binding upon and inures to the benefit of parties hereto and their respective successors and assigns. No party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of the other parties.

**11.7 Complete Agreement.**

This Agreement (including any schedules and exhibits hereto) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

**11.8 Amendment.**

Subject to the provisions of Applicable Law, at any time prior to the Closing Date, the parties hereto may modify or amend this Agreement, only by written agreement executed and delivered by duly authorized officers of the respective parties.

**11.9 Counterparts.**

This Agreement may be executed in several counterparts and by facsimile or electronic transmission, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument.

**11.10 No Third Party Beneficiaries.**

Except as expressly provided herein, each party hereto intends that nothing in this Agreement shall benefit, create any right, remedy or cause of action in, or be enforceable by or on behalf of, any Person other than the parties to this Agreement.

### **11.11 Obligations of ABX and Cargo.**

Whenever this Agreement requires an Affiliate of ABX to take any action, such requirement shall be deemed to include an undertaking on the part of ABX to cause such Affiliate to take such action. Whenever this Agreement requires an Affiliate of Cargo to take any action, such requirement shall be deemed to include an undertaking on the part of Cargo to cause such Affiliate to take such action and, after the Closing Date, on the part of Cargo to cause such Affiliate to take such action. In recognition of the fact that, prior to the ABX Holding Company Reorganization, neither ABX nor Acquisition has any assets or liabilities other than nominal assets or liabilities, ABX Air, as evidenced by the Guaranty appended hereto, shall be responsible for any liabilities or obligations of ABX and Acquisition under this Agreement (including, without limitation, those set forth in Section 7.3), and Cargo and the Sellers shall look to ABX Air to satisfy any such obligations and liabilities, without the necessity of pursuing ABX or Acquisition. Prior to the ABX Holding Company Reorganization, ABX Air shall be a third party beneficiary under this Agreement and shall be entitled to enforce all rights of ABX and Acquisition under this Agreement.

### **11.12 Captions.**

The table of contents and headings contained in this Agreement are for reference purposes only, do not constitute part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

### **11.13 Specific Performance.**

The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, it is agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

### **11.14 Appointment of Sellers Representative.**

Each Significant Shareholder hereby, and each Seller that is not a Significant Shareholder (i) upon execution and delivery of the Joinder Agreement in respect of such Seller's Cargo Common Shares, (ii) upon execution and delivery of the Joinder Agreement in respect of such Seller's Cargo Options and (iii) upon execution and delivery of the Joinder Agreement in respect of such Seller's Cargo Warrants, constitutes and appoints the Sellers Representative as his, her or its true and lawful attorney-in-fact to act for and on behalf of such Seller in all matters relating to or arising out of this Agreement, including specifically, but without limitation: (a) to act for such Seller with regard to matters pertaining to indemnification referred to in this Agreement, including the power to compromise any indemnity claim on behalf of Sellers and to transact matters of litigation; (b) to negotiate, execute and deliver all waivers under and amendments to this Agreement, ancillary agreements (including, without limitation, the

Escrow Agreement), certificates and documents that Sellers Representative deems necessary or appropriate in connection with the consummation of the transactions contemplated by this Agreement; (c) to receive funds, make payments of funds, give receipts for funds, including in respect of any Net Asset Value Adjustment, and execute and deliver written instructions to the Escrow Agent on behalf of Sellers; (d) to receive funds pursuant to the release from the Escrow Fund or otherwise for the payment of expenses of Sellers, and apply such funds in payment for such expenses; (e) to withhold amounts otherwise due to any Seller to compensate Sellers Representative or any other Seller for, and to the extent of, the breach by any such Seller of this Agreement, and for the payment of any claim for indemnification contemplated by this Agreement; (f) to condition the disbursement of any funds to any Seller pursuant to this Agreement or the Escrow Agreement upon receipt of an undertaking from such Seller to provide such Seller's proportionate amount of any claim for indemnification contemplated by this Agreement; and (g) to do or refrain from doing any further act or deed on behalf of Sellers that Sellers Representative deems necessary or appropriate in its sole discretion relating to the subject matter of this Agreement as fully and completely as Sellers could do if personally present. Each such Seller agrees to be fully bound by the acts, decisions, consents, instructions and agreements of Sellers Representative taken and done pursuant to the authority herein granted, and each Seller hereby confirms that (i) Sellers Representative shall do or cause to be done by virtue of his appointment as Sellers Representative of Sellers all such things and (ii) ABX, Acquisition and the Escrow Agent may rely on such acts, decisions, consents, instructions and agreements of Sellers Representative. Each Seller hereby agrees to indemnify and to save and hold harmless Sellers Representative from any Losses incurred by Sellers Representative based upon or arising out of any act, whether of omission or commission, of Sellers Representative pursuant to the authority herein granted, other than acts, whether of omission or commission, of Sellers Representative that constitute gross negligence or willful misconduct in the exercise by Sellers Representative of the authority herein granted. Sellers Representative, or any successor hereafter appointed, may resign and shall be discharged of his duties hereunder upon the appointment of a successor Sellers Representative, as hereinafter provided; provided, that in the event such proposed successor is not an Affiliate of an Significant Shareholder, such appointment shall not be effective without the written consent of ABX, which consent shall not be unreasonably withheld. In case of such resignation, or in the event of the death or inability to act of the then-acting Sellers Representative, a successor shall be named from among Sellers by Sellers holding a majority of the Cargo Common Shares immediately prior to Closing; provided, that in the event such proposed successor is not an Affiliate of an Significant Shareholder, such successor shall be subject to the approval of ABX, which approval shall not be unreasonably withheld. Each such successor Sellers Representative shall have all the power, authority, rights and privileges hereby conferred upon the original Sellers Representative, and the term "Sellers Representative" as used herein shall be deemed to include such successor Sellers Representative. The appointment of Sellers Representative shall be deemed coupled with an interest and shall be irrevocable, and ABX and any other Person (including, without limitation, the Escrow Agent) may conclusively and absolutely rely, without inquiry, upon any action of Sellers Representative in all matters referred to herein. All notices required to be made or

delivered by ABX to Sellers shall be made to Sellers Representative for the benefit of Sellers and shall discharge in full all notice requirements of ABX to Sellers with respect thereto. ABX may conclusively rely upon, without independent verification or investigation, all decisions made by Sellers Representative in connection with this Agreement as being the decisions of Sellers with respect thereto. The Sellers Representative hereby accepts appointment as the "Sellers Representative" under this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above written.

ABX HOLDINGS, INC.

By /s/ Joseph C. Hete  
Name: Joseph C. Hete  
Title: President and CEO

CHI ACQUISITION CORP.

By /s/ Joseph C. Hete  
Name: Joseph C. Hete  
Title: President and CEO

CARGO HOLDINGS INTERNATIONAL, INC.

By /s/ Peter F. Fox  
Name: Peter F. Fox  
Title: President

ACI INTERNATIONAL, INC.

By: /s/ Raymond W. Zehr, Jr.  
Name: Raymond W. Zehr, Jr.  
Title: President

MASSACHUSETTS MUTUAL LIFE INSURANCE  
COMPANY

By Basson Capital Management LLC  
As investment advisor

By: /s/ Richard E. Spencer III  
Name: Richard E. Spencer III  
Title: Managing Director

MASSMUTUAL CORPORATE VALUE  
PARTNERS LIMITED

By Massachusetts Mutual Life Insurance Co.  
As Collateral Manager

By: /s/ Steven J. Katz  
Name: Steven J. Katz  
Title: 2<sup>nd</sup> Vice Pres. & Assoc. Gen. Counsel

MASSMUTUAL HIGH YIELD PARTNERS II,  
LLC

By HYP Management LLC  
As Managing Member

By: /s/ Richard E. Spencer III  
Name: Richard E. Spencer III  
Title: Vice President

MINNESOTA FOX II, LLC

By: /s/ Peter F. Fox  
Name: Peter F. Fox  
Title: Manager

AVIATION CAPITAL GROUP CORP

By: /s/ R. Stephen Hannahs  
Name: R. Stephen Hannahs  
Title: CEO and Group Managing Director

ACG ACQUISITION XX LLC

By: /s/ R. Stephen Hannahs  
Name: R. Stephen Hannahs  
Title: Manager

ACG ACQUISITION XXVIII LLC

By: /s/ R. Stephen Hannahs  
Name: R. Stephen Hannahs  
Title: Manager

GUARANTY

From the date hereof until the consummation of the ABX Holding Company Reorganization, ABX Air, Inc. hereby unconditionally, absolutely and irrevocably guarantees, as a primary obligor and not as a surety, to Cargo and the Significant Shareholders the prompt and complete payment and performance when due of all obligations of ABX and Acquisition in this Agreement.

ABX AIR, INC.

By: /s/ W. Joseph Payne

Name: W. Joseph Payne

Title: Vice President, General Counsel & Secretary

EXHIBIT A  
Form of Escrow Agreement

EXHIBIT B  
Net Asset Value Accounting Principles and Practices

EXHIBIT C  
Form of FIRPTA Certificate

EXHIBIT D  
Examples of Operation of Section 9.10

For example, assume that upon audit the Internal Revenue Service disallows depreciation of Cargo for a period prior to the Closing Date that may be claimed for a period after the Closing Date, resulting in a tax liability of \$1,000,000 and a \$100,000 interest charge. Further assume that the unused accruals for Taxes reflected on the Closing Balance Sheet are \$399,000. Had the \$1,100,000 been included on the Closing Balance Sheet, a \$1,000,000 deferred tax asset (or a \$1,000,000 decrease in deferred tax liabilities) also would have been required under FAS 109 to be included on the Closing Balance Sheet, and the Final Net Asset Value would have been reduced by \$100,000. Because the \$399,000 of unused accruals exceeds the net \$100,000 reduction, ABX would be responsible for the entire \$1,100,000 liability, and the amount of unused accruals thereafter would be \$299,000. As another example, in contrast to the foregoing treatment of a temporary difference, if an audit results in a permanent difference (such as the disallowance of meal and entertainment expenses), there would be no offsetting adjustment to the deferred Tax balance. In that case, the Sellers would be responsible for the entire amount of the resulting Tax liability in excess of the unused accruals.

ANNEX I  
SIGNIFICANT SHAREHOLDER RELATIVE CONSIDERATION PERCENTAGE

**LOAN AND SECURITY AGREEMENT**  
(aircraft)

Loan Number: 1000131702

This Agreement is dated as of October 26, 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 Part 121 of the Federal Aviation Regulations.



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  
Title: FUNDING MANAGER

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

Acceptance Date: October 26, 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.: 1000131702

DESCRIPTION OF EQUIPMENT

Airframe Make/Model: BOEING 767-232  
Airframe Serial No.: 22226  
U.S. Identification No.: N749AX  
Engine Quantity/Make/Model: (2) GENERAL ELECTRIC CF6-80A2  
Engine Serial No(s): 580124 and 580164

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. 1000131702

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.

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\* 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: 1000131702

Amount \$14,000,000.00

Date: October 26, 2007

**This Note is executed together with the Loan and Security Agreement dated as of October 26, 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 Fourteen Million and 00/100ths Dollars (\$14,000,000.00), 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 redissembment. Interest shall be calculated on a 360-day year basis with each month consisting of 30 days.

**Interest Rate: Six and 82/1000ths percent (6.82%) 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 November 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):

120 @ \$161,256.07

(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 October 26, 2007 by and between Lender and Borrower. 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 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 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

**LOAN AND SECURITY AGREEMENT**  
(aircraft)

Loan Number: 1000131902

This Agreement is dated as of December 19, 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 Part 121 of the Federal Aviation Regulations.



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  
Title: FUNDING MANAGER

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

Acceptance Date: December 19, 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.: 1000131902

DESCRIPTION OF EQUIPMENT

Airframe Make/Model: BOEING 767-232  
Airframe Serial No.: 22218  
U.S. Identification No.: N743AX  
Engine Quantity/Make/Model: (2) GENERAL ELECTRIC CF6-80A2  
Engine Serial No(s): 580175 and 580184

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. 1000131902

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.

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\* 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: 1000131902

Amount \$15,750,000.00

Date: December 19, 2007

**This Note is executed together with the Loan and Security Agreement dated as of October 26, 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 Fifteen Million Seven Hundred Fifty Thousand and 00/100ths Dollars (\$15,750,000.00), 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 redissembment. Interest shall be calculated on a 360-day year basis with each month consisting of 30 days.

Interest Rate: **Six and 74/1000ths percent (6.74%) 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 January 1, 2008.

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 @ \$160,255.15

1 @ \$3,660,255.15

(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 December 19, 2007 by and between Lender and Borrower. 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 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 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

**ABX Holdings, Inc.  
List of Significant Subsidiaries**

**December 31, 2007**

1. ABX Air, Inc., a Delaware Corporation
2. ABX Material Services, Inc., an Ohio Corporation
3. ABX Cargo Services, Inc., an Ohio Corporation
4. Cargo Holdings International, Inc., a Florida Corporation
5. Capital Cargo International Airlines, Inc., a Florida Corporation
6. Air Transport International Limited Liability Company, a Nevada Limited Liability Company
7. Cargo Aircraft Management, Inc., a Florida Corporation
8. LGSTX Services, Inc., a Florida Corporation

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Post-Effective Amendment No. 1 to Registration Statement No. 333-125679 on Form S-8 of our reports dated March 17, 2008, relating to the financial statements and financial statement schedule of ABX Holdings, Inc. (formerly ABX Air, Inc.) and subsidiaries (the "Company") (which report expresses an unqualified opinion on those financial statements and financial statement schedule and includes explanatory paragraphs regarding the Company's principal customer, the Company's defined benefit plans investments whose fair values have been estimated by management in the absence of readily determinable fair values, the Company's acquisition of Cargo Holdings International, Inc. on December 31, 2007, and the Company's adoption of Statement of Financial Accounting Standards No. 158, *Employers Accounting for Defined Benefit Pension and Other Postretirement Plans (an amendment of FASB Statements No. 87, 88, 106, and 132(R))*, and the effectiveness of the Company's internal control over financial reporting, appearing in this Annual Report on Form 10-K of the Company for the year ended December 31, 2007.

DELOITTE & TOUCHE LLP

Dayton, Ohio  
March 17, 2008

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-K of ABX Holdings, 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: March 17, 2008

/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-K of ABX Holdings, 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: March 17, 2008

/s/ QUINT O. TURNER

Quint O. Turner

Chief Financial Officer

(Principal Financial and Accounting Officer)



