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Proposed Counsel for Debtor
and Debtor in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re

HAWAIIAN AIRLINES, INC.,
a Hawaii corporation,

Debtor.

Case No. 03 - _____
(Chapter 11)

**MOTION FOR ENTRY OF AN ORDER
PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE AUTHORIZING
THE DEBTOR TO PAY CERTAIN**

**OUTSIDE MAINTENANCE PROVIDERS,
SHIPPERS, AND CONTRACTORS IN
SATISFACTION OF PERFECTED OR
POTENTIAL MECHANICS’,
MATERIALMEN’S OR SIMILAR LIENS
OR INTERESTS IN THE ORDINARY
COURSE OF BUSINESS; EXHIBIT A;
PROPOSED ORDER**

Date: March 21, 2003

Time:

Judge: Hon. Robert J. Faris

Hawaiian Airlines, Inc., a debtor and debtor in possession, (the “Debtor”), by and through its undersigned proposed co-counsel, hereby moves the Court (the “Motion”) for an order, pursuant to section § 105(a) of title 11 of chapter 11 of the United States Code authorizing the Debtor to pay certain outside maintenance providers, shippers, and contractors in satisfaction of perfected or potential mechanics’, materialmen’s or similar liens or interests, whether possessory or otherwise (collectively, the “Liens and/or Interests”) in the ordinary course of business. In support of this Motion, the Debtor respectfully states as follows.

I JURISDICTION

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue of this proceeding and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The basis for the relief requested herein is section 105(a) of title 11 of the United States Code.

II BACKGROUND

4. On March 21, 2003 (the “Petition Date”), the Debtor filed a petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Hawaii (the “Bankruptcy Court”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its businesses and managing its properties as a debtor in possession. No trustee, examiner or committee of creditors has been appointed in the Debtor’s chapter 11 case.

5. The Debtor was incorporated in January of 1929 under the laws of the Territory of Hawaii and is currently a subsidiary of Hawaiian Holdings, Inc. (“Hawaiian Holdings”),¹ a Delaware corporation whose common stock is traded on the American Stock Exchange and Pacific Exchange under the ticker symbol “HA.” As part of the regular Securities and Exchange Commission filings of

¹ Hawaiian Holdings holds 49.1% of the outstanding common stock of the Debtor directly. The remaining 50.9% of the outstanding common stock of the Debtor is held by AIP, Inc. (“AIP”), a wholly-owned subsidiary of Hawaiian Holdings.

Hawaiian Holdings, Hawaiian Holdings reports its financial and operating results with those of the Debtor on a consolidated basis.

The Debtor's Business

6. The Debtor is engaged primarily in the scheduled transportation of passengers, cargo and mail. The Debtor's passenger airline business is its chief source of revenue. Principally all of the Debtor's flights either originate or end in the state of Hawaii. The Debtor provides passenger and cargo service from Hawaii, predominately Honolulu, to the cities of Los Angeles, Ontario, Sacramento, San Diego and San Francisco, California; Seattle, Washington; Portland, Oregon; Phoenix, Arizona; and Las Vegas, Nevada (the "Transpacific Routes"). The Debtor also provides non-stop service between and among the six major islands of the state of Hawaii (the "Interisland Routes") and weekly service to each of Pago Pago, American Samoa and Pepeeete, Tahiti in the South Pacific (the "South Pacific Routes"). Charter service is provided from Honolulu to Anchorage, Alaska (the "Charter Routes"). Based upon the Debtor's operating revenues, the Debtor is the largest airline headquartered in Hawaii.

7. Based on its unaudited results, the Debtor had a net loss of approximately \$58 million for the twelve months ended December 31, 2002 ("Year 2002") on operating revenue of approximately \$632 million for the same period. In comparison, for the twelve months ended December 31, 2001 ("Year 2001"), the

Debtor reported net income of approximately \$5 million on operating revenue of approximately \$612 million for the same period. The Debtor's assets and liabilities, as of December 31, 2002, were approximately \$256 million and \$399 million, respectively. The Debtor's reported assets and liabilities, as of December 31, 2001, were approximately \$305 million and \$327 million, respectively.

8. The Debtor is party to a network of agreements among airlines. Because of the interdependent nature of airline operations, coordination among airlines, provision of airline services, and efficient service by the airline industry to the traveling public, in general, would be virtually impossible without such agreements. Among other things, these agreements facilitate cooperation among airlines with respect to such critical activities as making reservations and transferring passengers, packages, baggage and mail among airlines.

The Debtor's Fleet

9. Beginning in the fourth quarter of 1999, the Debtor initiated a plan to replace its entire fleet of McDonnell Douglas DC-9 aircraft used to service its Interisland Routes. This effort was completed in the first quarter of 2002, with the Debtor taking delivery of thirteen Boeing 717-200 aircraft (the "717 Aircraft").

10. Similarly, in the fourth quarter of 2001, the Debtor initiated a plan to replace, by June 2003, its entire fleet of McDonnell Douglas DC-10 aircraft (the "DC-10 Aircraft") used to service the Transpacific Routes, South Pacific Routes

and Charter Routes (the “Overseas Routes”) with sixteen Boeing 767-300ER aircraft (the “767 Aircraft”). To date, the Debtor has taken delivery of ten new and four used Boeing 767-300ER aircraft and has returned eleven DC-10 Aircraft leased from Continental Airlines, Inc. and a subsidiary of American Airlines, Inc (“American”). The Overseas Routes are currently serviced by fourteen Boeing 767-300ER aircraft.

11. All of the Debtor’s aircraft are leased from various lessors under either financing or operating leases. Three of the Debtor’s 767 Aircraft are leased under fifteen-year operating leases with a subsidiary of Ansett Worldwide Aviation Services, Inc. (“Ansett”) and were delivered to the Debtor in the fourth quarter of 2001. Four 767 Aircraft were delivered in 2002 under seven-year operating leases with International Lease Finance Corporation. Seven of the Debtor’s 767 Aircraft are leased under eighteen-year operating leases from Ansett and a subsidiary of Boeing Capital Corporation (“Boeing”). Each of the 717 Aircraft is leased under an eighteen-year leveraged financing lease with Boeing. The Debtor’s four remaining DC-10 Aircraft are leased under operating leases with American and B.C.I. Leasing.

Employees

12. The Debtor has approximately 3,200 active employees, approximately 2,600 of which are employed on a full time basis. The majority of the Debtor’s

employees are covered by labor agreements with the International Association of Machinists and Aerospace Workers (AFL-CIO) (“IAM”); the Airline Pilots Association, International (“ALPA”); the Association of Flight Attendants (“AFA”); the Transport Workers Union (“TWU”); or the Employees of the Communications Section (“Communications Section”). Each of these labor agreements, other than the contract with the seven-member Communications Section, was renegotiated in 2000 or 2001, and will be subject to renegotiation again in 2004 or 2005.

Previous Restructurings

13. On September 21, 1993, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court (the “1993 Bankruptcy”).² Following confirmation of the Debtor’s plan of reorganization in the 1993 Bankruptcy on August 30, 1994, the Debtor successfully emerged from the 1993 Bankruptcy. Thereafter, on August 29, 2002, the Debtor was restructured from a public company into a wholly-owned subsidiary of Hawaiian Holdings and AIP (the “Restructuring”). As part of the Restructuring, the stockholders of the Debtor became stockholders of Hawaiian Holdings and Hawaiian Holdings assumed sponsorship of the Debtor’s existing stock agreements. Prior to the

² United States Bankruptcy Court, District of Hawaii, Case No. 93-01074.

Restructuring, the common stock of the Debtor was publicly traded on the American Stock Exchange and Pacific Exchange under Hawaiian Holdings' ticker symbol of "HA."

The Debtor's Current Financial Crisis

14. The Debtor's current financial crisis was precipitated by a confluence of factors relating, in large part, to the depressed economic conditions of both the United States and Japan. These factors include: (a) decreased fare revenue, (b) high aircraft lease costs, (c) high labor costs and (d) increased insurance, security and fuel costs. Although the terrorist attacks of September 11, 2001 are one of the most obvious and publicized reasons for the Debtor's current financial crisis, it is the significant, though related, decline in the economies of the United States and Japan that has most contributed to the necessity of the Debtor's chapter 11 filing.

15. Following the events of September 11, 2001, the Debtor has seen a marked and dramatic reduction in the demand for travel to and within the islands of Hawaii. This reduced demand has been exacerbated by the flagging economies of the United States and Japan since that time. The demand for vacation travel, which historically has been the Debtor's greatest source of income, has been most affected by the economic decline. In order to attract passengers, airlines, including the Debtor, have been forced to lower their fares. The introduction of "low cost carriers," such as Jet Blue, has led to a further reduction in fare structure, as

national airlines have been forced to reduce ticket prices to remain competitive. The combination of fewer ticket sales made at reduced fares continues to impact the Debtor's revenue and earnings negatively.

16. Beginning in late 1999, as discussed above, the Debtor began a refueling process under which its aging fleet of McDonnell Douglas DC-9 aircraft and DC-10 Aircraft would be completely replaced by the end of 2003. By July of 2001, the Debtor had entered into the last of its agreements with lessors that would provide the aircraft for this refueling. Although the terms of these agreements were considered to be fair and at market rates when agreed to, the subsequent and unforeseen decline in economic conditions in the United States and abroad have caused the terms of such leases to be highly unfavorable. Because its aircraft lease costs are grounded in economic assumptions that have failed to materialize, the Debtor has been forced to shoulder the crippling costs of over-market leases. For the Year 2002, expenses associated with the Debtor's aircraft leases made up 12% of its total operating expenses.

17. Similarly, because the Debtor's union agreements were renegotiated in 2000 and 2001, the Debtor's labor costs have not been in line with current economic conditions. Based upon market assumptions made in 2000 and pre-September 11, 2001, the Debtor's labor costs have exceeded what the Debtor could realistically maintain based upon its revenues. This relative increase in labor costs,

as compared to revenue, has negatively impacted the Debtor's ability to remain a viable enterprise. For the Year 2002, the Debtor's labor costs made up 30% of its total operating expenses.

18. As a direct result of the events of September 11, 2001 and the long-standing international crises in the Middle East, the Debtor has seen increases in several of its cost centers. For instance, insurance rates associated with airline operations have increased substantially as compared to pre-September 11, 2001 rates. Because of increased airline security requirements, the Debtor also has been faced with increased security expenditures. Moreover, fuel costs, which made up approximately 14% of the Debtor's operating expenses for Year 2002, also have steadily increased during this period. These increased costs, in the face of declining revenues, have further weakened the Debtor's ability to succeed as a going-concern.

Prepetition Activities

19. The two largest controllable components of the Debtor's cost structure are labor and aircraft costs. These are, therefore, the two areas upon which the Debtor had focused prior to the Petition Date in trying to accomplish a successful out-of-court financial and operational restructuring. To that end, the Debtor has, particularly within the past year, been actively negotiating with both its aircraft lessors and labor unions to reduce its aircraft and labor costs, respectively. These

negotiations have continued up until the Debtor's bankruptcy filing. On February 20, 2003, the Debtor's employees represented by IAM agreed to \$3.8 million in concessions. On March 6, 2003, the Debtor's employees represented by ALPA reached an agreement with the Debtor with respect to approximately \$8 million in concessions. Similarly, on March 11, 2003, the Debtor's employees represented by AFA agreed to approximately \$3.5 million in concessions. Although the Debtor and its labor unions have made great progress in these negotiations, it now appears that the only practicable way for the Debtor to reorganize is under the protection afforded to it under the Bankruptcy Code, as the Debtor has not been successful in its attempts to negotiate significant concessions from its aircraft lessors.

III. RELIEF REQUESTED

20. By this Motion, the Debtor requests authorization, but not direction, to pay, on the conditions set forth below and in the proposed order granting this Motion, the prepetition claims of certain Outside Maintenance Providers, Shippers and Contractors (each as defined herein) for certain prepetition services provided to the Debtor in full satisfaction of any Liens and/or Interests of such Outside Maintenance Providers, Shippers or Contractors. The Debtor estimates that, as of the Petition Date, the current dollar value of outstanding prepetition services provided by such parties to the Debtor is approximately \$8.4 million (the "Lien Claims Amount"). The Debtor anticipates that only a portion of the Lien Claims

Amount will give rise to valid Liens and/or Interests. The Debtor arrived at the Lien Claims Amount by adding the current dollar values of the estimate outstanding prepetition services provided by the Outside Maintenance Providers (approximately \$8 million), Shippers (approximately \$0.1 million), and Contractors (approximately \$0.3 million).

21. The Debtor also requests that all applicable banks and other financial institutions be authorized and directed to receive, process, honor and pay all checks presented for payment of, and to honor and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtor related to, the claims that the Debtor requests authority to pay in this Motion, regardless of whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date; provided, however, that: (a) funds are available in the Debtor's accounts to cover such checks and fund transfers; and (b) all such banks and other financial institutions are authorized to rely on the Debtor's designation of any particular check as approved by the attached proposed Order.

IV. BASIS FOR RELIEF REQUESTED

A. Outside Maintenance Providers

22. The Debtor is required to perform significant maintenance and overhaul work to maintain its aircraft fleet in accordance with the regulations of the Federal Aviation Administration. *See, e.g.*, 14 C.F.R. §§ 125.241 to 125.251

(setting forth regular and extensive maintenance requirements for certain types of aircraft). Although the Debtor utilizes its own employees to perform some of its aircraft maintenance and repair work, the Debtor relies, to a large degree, on outside mechanics and repairmen (the “Outside Maintenance Providers”) to perform a significant portion of its aircraft, engine, and other equipment maintenance and repair work as well as provide a significant amount of equipment and materials with respect to such maintenance and repair work.

23. The Debtor’s Outside Maintenance Providers perform maintenance and repair work pursuant to ongoing maintenance and service contracts (primarily, engine repair contracts) or pursuant to purchase orders (primarily, for the repair of component parts). In addition, Outside Maintenance Providers provide “on-call” and routine maintenance and repair services at various destinations, enabling the Debtor to avoid maintaining complete repair facilities and employee mechanics at every destination city. As part of their maintenance and repair work, the Outside Maintenance Providers supply and/or sell certain aircraft component parts, most of which are replacement parts, to the Debtor.

24. Generally speaking, the Debtor has well-developed relationships with its Outside Maintenance Providers, which enables the Debtor to negotiate favorable pricing and trade credit terms. The Debtor fears that a failure to honor its prepetition obligations to its Outside Maintenance Providers would jeopardize

these relationships, resulting in higher costs to the Debtor for the hiring of replacement services. Because the market for Outside Maintenance Providers with the size and expertise to service the Debtor is very limited, the Debtor believes that it would be extremely difficult to replace the majority of these providers with new providers on economically viable terms. Additionally, many of the Outside Maintenance Providers are currently in the possession of aircraft, engines and other equipment that are vital to the Debtor's operations and such Outside Maintenance Providers may be able to assert possessory liens in such equipment under applicable state law. *See, e.g.*, Haw. Rev. Stat. § 507-18 (lien on personalty for work done and materials furnished); Haw. Rev. Stat. Chapter 507, Part II (mechanic's and materialman's liens). As a result of such Liens and/or Interests, the Outside Maintenance Providers may refuse to redeliver such equipment to the Debtor unless they are paid prepetition amounts owed to them. The Debtor estimates that its outstanding prepetition obligations owed to the Outside Maintenance Providers total approximately \$8 million in the aggregate.

25. The repair and maintenance services furnished by the Outside Maintenance Providers also could give rise to a right to payment secured by mechanics' liens, materialmen's or other similar liens, or any other nonpossessory lien on equipment, supplies and/or goods of the Debtor. Such Liens and/or Interests may be perfected notwithstanding the automatic stay established by

section 362 of the Bankruptcy Code. Indeed, pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such Liens and/or Interests, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay otherwise established by section 362(a). Under section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection" 11 U.S.C. § 546(b)(1)(A)

B. Shippers

26. Another integral part of the Debtor's maintenance and repair operations is the use of domestic and foreign commercial common carriers, movers, shippers, freight forwarders/consolidators, delivery services, customs brokers, shipping auditing services, and certain other third-party services providers (collectively, the "Shippers") to ship, transport, store, move through customs, and deliver goods and packages through established national and international distribution networks (payments to such Shippers, including, but not limited to, any related taxes and custom duties, the "Shipping Charges").

27. The Debtor relies extensively on the Shippers to transport parts, goods, and packages to and from third parties including, without limitation, its Outside Maintenance Providers. The services provided by the Shippers, therefore,

are critical to the Debtor's day-to-day operations. In particular, at any given time, there are numerous shipments en route to or from Outside Maintenance Providers and, therefore, certain Shippers are currently in possession of engines and other equipment that are vital to the Debtor's operations. Absent payment, such Shippers might be capable of asserting possessory liens against property that they hold in their possession. *See, e.g.*, Haw. Rev. Stat. §§ 271-28.5 (motor carrier lien) and 490:7-307 (lien of carrier). They might then refuse to deliver or release such property to the Debtor until they are paid the prepetition amounts owed to them. Without being able to recover its equipment and parts, the Debtor could suffer a dramatic business disruption that could greatly impede its reorganization.

28. In addition, the Debtor depends on the Shippers to transport certain goods and packages that the Debtor ships on behalf of third parties (collectively, the "Revenue Cargo"). If the Debtor were not allowed to pay Shippers for prepetition claims, the Shippers may assert and/or perfect Liens and/or Interests against Revenue Cargo, and refuse to deliver Revenue Cargo that is in transit to its destination. Even if the Revenue Cargo were merely delayed in reaching its destination, the Debtor would fall short of meeting the needs of those third parties on whose behalf the Debtor ships Revenue Cargo. As a result, the Debtor could be subjected to claims by the third parties, who would likely stop using the Debtor's shipping services, causing a substantial loss of revenue for the Debtor. Moreover,

because the value of the Revenue Cargo in transit would greatly exceed the prepetition shipping claims upon which a Shipper's Lien and/or Interest might arise, if the Debtor were not given the authority to satisfy Shippers' Liens and/or Interests, the Debtor's losses caused by withheld Revenue Cargo would far outweigh the amount of the claim secured by Shippers' Liens and/or Interests. The Debtor estimates that its outstanding prepetition obligations owed to the Shippers totals approximately \$0.1 million in the aggregate.

C. Contractors

29. The Debtor also relies on contactors, subcontractors and professional service firms ("Contractors") to perform construction, maintenance and repairs at its various facilities including administrative offices, hangars, terminals, and gates. If not paid for their prepetition services, certain Contractors may refuse to perform ongoing construction, maintenance, or repair obligations. Some of the projects for which the Contractors are currently providing their services may be near completion. As a result, replacing such Contractors and bringing the replacements up to speed would likely cost more than an existing Contractor's prepetition claim. In addition, without such Contractors' services, the physical condition of certain of the Debtor's facilities might deteriorate. Moreover, the Debtor's failure to pay such Contractors for prepetition goods and/or services may result in the Contractors having a right to assert a valid statutory, mechanic's, or possessory lien

on certain of the Debtor's facilities. *See, e.g.*, Haw. Rev. Stat. § 507-18 (lien on personalty for work done and materials furnished); Haw. Rev. Stat. Chapter 507, Part II (mechanic's and materialman's liens). To the extent these or other similar parties could have a valid statutory or possessory lien on assets of the Debtor, the Debtor requests authority to pay these parties. The Debtor estimates that its outstanding prepetition obligations owed to the Contractors totals approximately \$0.3 million in the aggregate.

D. Proposed Conditions to Receiving Payment

30. To avoid undue delay and to facilitate the continued operation of the Debtor's businesses, the maintenance and repair of its aircraft and other equipment, gates, terminals, and hangars, and the completion of ongoing construction projects, the Debtor seeks immediate authority to pay and discharge, on a case-by-case basis and in its sole discretion, the claims of all Outside Maintenance Providers, Shippers, and Contractors that have given or could give rise to Liens and/or Interests against the Debtor's property, regardless of whether such Outside Maintenance Providers, Shippers, or Contractors already have perfected such Liens and/or Interests (collectively, the "Claims"). However, with respect to each Claim: (a) the Debtor shall not pay a Claim unless the Outside Maintenance Provider, Shipper, or Contractor has perfected or, in the Debtor's judgment, is presently capable of perfecting, or will be capable of perfecting in the future, one or more

Liens and/or Interests (that is/are not subject to avoidance) giving rise to such Claim; (b) the payment of such Claim shall be made with a full reservation of rights regarding the extent, validity, perfection or possible avoidance of any Liens and/or Interests; and (c) the Outside Maintenance Provider, Shipper, or Contractor agrees to promptly release any Liens and/or Interests upon payment of such Claim.

31. Although it is difficult for the Debtor to estimate the amount of prepetition Liens and/or Interests that may arise from the Debtor's prepetition repair, maintenance, construction, and shipping needs, the Debtor believes, based upon prepetition activities and needs, that payment of a majority of the Claims may be necessary to resolve the Liens and/or Interests.

32. The Debtor proposes that, in exchange for the Debtor's payment of a Claim, an Outside Maintenance Provider, Shipper, or Contractor must agree to continue to provide goods and/or services to the Debtor postpetition on ordinary and customary terms (the "Customary Terms") and to promptly release any Liens and/or Interests upon payment of such Claim. Additionally, if any Outside Maintenance Provider, Shipper, or Contractor accepts payment pursuant to the order granting this Motion and thereafter does not continue to provide goods and/or services on Customary Terms during the pendency of the Debtor's chapter 11 case or does not promptly release its Liens and/or Interests, then (a) any payment on a prepetition claim received by such Outside Maintenance Provider,

Shipper, or Contractor shall be deemed to be an improper postpetition transfer and, therefore, recoverable by the Debtor in cash upon written request; and (b) upon recovery by the Debtor, any prepetition claim of such Outside Maintenance Provider, Shipper, or Contractor shall be reinstated as if the payment had not been made; provided, however, that nothing in this paragraph shall preclude an Outside Maintenance Provider, Shipper, or Contractor from contesting such treatment, and nothing shall preclude the Debtor from responding to any such contest.

33. To ensure that any Outside Maintenance Provider, Shipper, or Contractor holding a Lien(s) and/or Interest(s) will transact business with the Debtor on Customary Terms, the Debtor proposes that in exchange for the Debtor's satisfaction of any such party's Lien(s) and/or Interest(s), such party whose Lien and/or Interest is satisfied will be required, in the Debtor's discretion, to sign a letter substantially in the form of the letter attached hereto as Exhibit A (the "Customary Terms Agreement"). Pursuant to the Customary Terms Agreement, Outside Maintenance Providers, Shippers, and Contractors shall agree, inter alia, to continue to provide goods and/or services to the Debtor based on Customary Terms (as defined in the proposed order granting this Motion).

V. APPLICABLE AUTHORITY

34. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the

provisions of this Title.” A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the Debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). “Under Section 105, a court can permit pre-plan payment of pre-petition obligations when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177).

35. Numerous courts have used their section 105(a) powers under the “doctrine of necessity” to authorize payment of a debtor in possession’s prepetition obligations where, as here, such payment is an essential element of the preservation of the debtor in possession’s potential for rehabilitation. In further support of the Motion, the Debtor has filed with the Court a Consolidated Memorandum of Law in Support of Motions of Debtor for Orders Authorizing Payment of Certain Prepetition Claims.

36. In this case, it is essential that the Debtor pay prepetition claims of the Outside Maintenance Providers to ensure that they will provide the required maintenance and overhauls for the Debtor’s fleet of aircraft and aircraft components, which will enable the Debtor to satisfy its paramount concern – the safety of its passengers. Only by maintaining the highest levels of safety can the

Debtor provide a high level of service and retain the confidence, support, and goodwill of the flying public.

37. Moreover, it is essential that the Debtor pay the prepetition claims of the Outside Maintenance Providers to ensure that the Debtor's fleet is maintained and serviced in a timely fashion. Planned maintenance for aircraft is scheduled months ahead of time both internally at the Debtor's facilities and with certain of the Outside Maintenance Providers. It is important to the Debtor's successful operations that this planned maintenance schedule is not seriously disrupted. Any disruption could impair the Debtor's operation and lower confidence in the Debtor's safety record. Furthermore, any disruption could also impair the Debtor's ability to comply with FAA maintenance and applicable state regulations, with which the Debtor is required to comply as a debtor in possession. *See, e.g.*, 28 U.S.C. § 959(b) (requiring debtor in possession to comply with all state laws).

38. Because a valid Lien and/or Interest would make an Outside Maintenance Provider, Shipper, or Contractor a secured creditor in the Debtor's chapter 11 case, such parties would be entitled to adequate protection of their Liens and/or Interests. Given that the value of the aircraft, parts and Revenue Cargo in the possession of the Outside Maintenance Providers and Shippers, as well as the value of the projects for which the Contractors are providing services, will generally far exceed the value of any Liens and/or Interests asserted by such

parties, creditors will not be harmed by the satisfaction of such parties' Liens and/or Interests. Additionally, to the extent that portions of the Shipping Charges are related to the payment of custom duties, such claims would be entitled to priority under section 507(a)(8)(F) of the Bankruptcy Code.

39. Unless the Outside Maintenance Providers and Shippers are paid promptly, they may refuse to redeliver the Debtor's aircraft, engines, and other equipment vital to its operations. In addition, if the Contractors prepetition claims are not paid, then they may refuse to continue their maintenance of the Debtor's facilities or complete work on ongoing projects. Moreover, "on-call" and routine Outside Maintenance Providers who provide services at the Debtor's destination cities also must be paid to avoid a disruption in repair and maintenance services needed to continue the Debtor's operations safely and successfully.

40. As a result, it is in the best interests of the Debtor's estate, creditors and other parties in interest for the Debtor to be authorized, but not directed, to pay the prepetition claims of the Outside Maintenance Providers, Shippers, and Contractors in satisfaction of any Liens and/or Interests in the ordinary course of the Debtor's business. Absent such payment, the value of the Debtor's estates will likely suffer drastic diminution.

41. Similar relief has been granted by this Court and others. *See In re Liberty House, Inc.*, Case No. 98-01039 (Bankr. D. Haw. March 20, 1998) (order

authorizing payment of prepetition claims of certain service providers including shipping service providers); *In re UAL Corporation, Inc., et al.*, Case No. 02-B-48191 (Bankr. N.D. Ill. December 11, 2002) (interim order authorizing payment of prepetition claims of certain outside maintenance providers, shippers, and construction contractors of approximately \$36 million); *In re US Airways Group, Inc.*, Case No. 02-02-83984 (Bankr. E.D. Va. August 12, 2002) (order authorizing payment of prepetition claims of certain outside maintenance providers, shippers, and construction contractors of approximately \$13 million); *In re Trans World Airlines, Inc.*, Case No. 01-0056 (Bankr. D. Del. Jan. 10, 2001) (order authorizing payment or honoring of certain prepetition claims of outside mechanics and repairmen of approximately \$19.1 million); *In re America West Airlines, Inc.*, Case No. 91075OPHXRGM (Bankr. D. Ariz. June 27, 1991) (interim order authorizing payment or honoring of approximately \$18 million of prepetition claims of outside mechanics and repairmen); *In re Continental Airlines, Inc.*, Case Nos. 90-932 through 984 (Bankr. D. Del. Dec. 5, 1990) (order authorizing or honoring of certain pre-petition claims of mechanics and repairmen); *In re Lehigh & N.E. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176-77 (Bankr. S.D.N.Y. 1989) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984)).

42. Nothing in this Motion shall be construed as a request for authority to assume any executory contract or unexpired lease under section 365 of the Bankruptcy Code.

VI. NOTICE

43. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for District of Hawaii; (ii) parties appearing on the Debtor's list of creditors holding the twenty largest unsecured claims; (iii) the Securities and Exchange Commission; and (iv) the Internal Revenue Service. Given the circumstances, the Debtor submits that no other or further notice need be given.

VII. NO PRIOR REQUEST

55. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order, substantially in the form filed contemporaneously herewith, (a) authorizing, but not directing the Debtor, in its sole discretion, to pay Outside Maintenance Providers, Shippers, and Contractors in satisfaction Liens and/or Interests subject to the conditions described herein; (b) authorizing and directing all applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn on the Debtor's accounts and to honor all fund transfer requests made by the Debtor to pay Claims of Outside Maintenance Providers, Shippers, or

Contractors whether such checks or fund transfer requests were submitted prior to or after the Petition Date, except to the extent that the Debtor and the applicable financial institution have agreed otherwise prior to the Petition Date; and (c) granting such other and further relief as is just and proper.

Dated: Honolulu, Hawaii, March 21, 2003

By: Lisa Beckerman
NICHOLAS C. DREHER, ESQ.
THEODORE D.C. YOUNG, ESQ.
CADES SCHUTTE LLC

and

LISA G. BECKERMAN, ESQ.
DAVID SIMONDS, ESQ.
AKIN GUMP STRAUSS HAUER & FELD LLP

Proposed Counsel for Debtor and Debtor in
Possession

EXHIBIT A

HAWAIIAN AIRLINES, INC.

_____, 2003

TO: [Lien Holder]
[Name]
[Address]

Dear Outside Maintenance Provider/Shipper/Contractor:

As you are no doubt aware, Hawaiian Airlines, Inc. (the "Company") filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Hawaii (the "Bankruptcy Case" and the "Bankruptcy Court," respectively) on _____ (the "Petition Date"). On the Petition Date, the Company requested the Bankruptcy Court's authority to pay certain outside maintenance providers, shippers and contractors (collectively, "the Lienholders") in satisfaction of perfected or potential mechanics', materialmen's or similar liens or interests, whether possessory or otherwise (collectively, the "Liens and/or Interests").

On _____, the Bankruptcy Court entered an order (the "Order") authorizing the Company, under certain conditions, to satisfy the Liens and/or Interests of certain Lienholders that agree to the terms set forth below and to be bound by the terms of the Order. A copy of the Order is enclosed.

In order to have their Lien(s) and/or Interest(s) satisfied, each selected Lienholder must agree to continue to provide goods and/or services to the Company based on "Customary Terms." In the Order, Customary Terms are defined as the normal and customary terms, practices and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), that were most favorable to the Debtor and in effect between such Lienholders and the Debtor on a historical basis within one-hundred twenty (120) days of the Petition Date or such other terms as agreed to by the Debtor and such Lienholders or such other terms, practices and programs that are at least as favorable as those that were in effect prepetition.

For purposes of administration of this program as authorized by the Bankruptcy Court, the Company and you agree as follows:

- (i) The estimated balance of the Lien and/or Interest (net of any setoffs, credits or discounts) (the "Claim") that the Company will provisionally pay you is \$_____.

- (ii) You will provide open credit terms as follows (if more space is required, attach continuation pages) _____
-
- (iii) You agree that you shall not require a lump sum payment upon confirmation of a plan in the Bankruptcy Case on account of any administrative expense priority claim that you may assert, but instead agree that such claims will be paid in the ordinary course of business after confirmation of a plan under applicable Customary Terms, if the plan provides for the ongoing operations of the Company.
- (iv) You will hereafter extend to the Company all Customary Terms (as defined in the Order).

Payment of your Claim in the manner set forth in the Order may only occur upon execution of this letter by a duly authorized representative of your company and the return of this letter to the Company. Your execution of this letter agreement and return of the same to the Company constitutes an agreement by you and the Company:

1. to the Customary Terms and, subject to the reservations contained in the Order, to the amount of the Claim set forth above;
2. that during the pendency of the Bankruptcy Case, you will continue to provide the Company with goods and/or services pursuant to the Customary Terms and that the Company will pay for such goods and/or services in accordance with Customary Terms;
3. that you have reviewed the terms and provisions of the Order and that you consent to be bound by such terms;
4. in consideration for the payment described herein, you agree not to file or otherwise assert against the Debtor, its estate or any other person or entity or any of their respective assets or property (real or personal) any lien (regardless of the statute or other legal authority upon which such lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to you by the Debtor arising from agreements entered into prior to the Petition Date. Furthermore, if you have taken steps to file or assert such a lien prior to entering into this letter agreement, you agree to take all necessary steps to remove such lien as soon as possible; and
5. that if either the program or your participation therein terminates as provided in the Order, or you later refuse to continue to provide services to the Debtor on Customary Terms during the pendency of the Bankruptcy Case or you fail to comply with paragraph "4" herein, any payments received by you on account of your Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to you and that you will immediately repay to the Company any payments made to you on account of your Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provision for payment of trust fund claims or otherwise.

The Company and you also hereby agree that any dispute with respect to this letter agreement, the Order and/or your participation in the program shall be determined by the Bankruptcy Court.

Sincerely,

Hawaiian Airlines, Inc.

By: _____

Its: _____

Agreed and Accepted by:

[Name of Outside Maintenance Provider/Shipper/Contractor]

By: _____

Its: _____

Dated: _____, 2003

possessory or otherwise, that the Debtor believes could be validly perfected notwithstanding the filing of this chapter 11 case (collectively the “Unperfected Liens and/or Interests” and collectively with the Perfected Liens and/or Interests, the “Liens and/or Interests”) in the ordinary course of business; and it appearing that the relief requested is essential to the continued operation of the Debtor’s businesses and in the best interest of the Debtor’s estate, creditors and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion having been given; and it appearing that no other notice need be given; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED THAT:

1. The Motion is granted in its entirety.

2. The Debtor is authorized, but not directed, to pay, in its sole discretion, the Claims in the ordinary course of its business; provided, however, that with respect to each Claim, the Debtor is not authorized to pay a Claim unless the Outside Maintenance Provider, Shipper or Contractor (collectively, the “Outside Service Providers”) has perfected, or, in the Debtor’s judgment, is capable of perfecting or may be capable of perfecting in the future, one or more

Lien and/or Interest in respect of such Claim, or the Debtor believes such payment would be in the best interests of its estate.

3. By accepting payment pursuant to this Order, the Outside Service Provider agrees to continue to provide goods and/or services to the Debtor postpetition on ordinary and customary trade terms (the “Customary Terms”), and to promptly release any Liens and/or Interests upon payment of such Claim.

4. If any Outside Service Provider accepts payment pursuant to this Order and thereafter does not continue to provide goods and/or services on Customary Terms during the pendency of the Debtor’s chapter 11 case or fails to promptly release its Liens and/or Interests upon such payment, then (i) any payment on a prepetition claim received by such Outside Service Provider shall be deemed to be a postpetition transfer and, therefore, recoverable by the Debtor in cash upon written request, and (ii) upon recovery by the Debtor, any such prepetition claim shall be reinstated as if the payment had not been made; provided, however, that nothing in this paragraph shall preclude an Outside Service Provider from contesting such treatment by making a written request to the Debtor to schedule a hearing before this Court, which hearing the Debtor shall promptly schedule.

5. Neither this Order, nor the Debtor's actions, shall be deemed to be an assumption or adoption of an agreement, contract or policy.

6. Any payment pursuant to this Order is not, and shall not be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtor may have to dispute such obligation.

7. In accordance with this Order and any other order of this Court, each of the banks and financial institutions at which the Debtor maintains its accounts relating to the payment of the claims that the Debtor requests authority to pay in the Motion are authorized and directed to honor checks presented for payment, to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in such accounts, and to rely on the Debtor's statements with respect to the foregoing.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

9. Notwithstanding the possible applicability of Bankruptcy Rules 6004(g), 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: Honolulu, Hawaii, _____, 2003.

UNITED STATES BANKRUPTCY JUDGE

In re Hawaiian Airlines, Inc., Chapter 11, Case No. 03-_____;
ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE
AUTHORIZING THE DEBTORS TO PAY CERTAIN CONTRACTORS IN
SATISFACTION OF PERFECTED OR POTENTIAL MECHANICS',
MATERIALMEN'S OR SIMILAR LIENS OR INTERESTS IN THE
ORDINARY COURSE OF BUSINESS