

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
 ) Chapter 11  
Eclipse Aviation Corporation, et al.,<sup>1</sup> )  
 ) Case No. 08- \_\_\_\_\_ ( )  
 )  
Debtors. ) (Joint Administration Requested)  
 )

**AFFIDAVIT OF J. MARK BORSETH IN SUPPORT  
OF CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

STATE OF NEW MEXICO )  
 ) ss:  
COUNTY OF BERNALILLO )

I, J. Mark Borseth, being duly sworn, hereby deposes and says:

1. I am Senior Vice President, Chief Financial Officer, and Secretary of Eclipse Aviation Corporation, f/k/a Pronto Aircraft Corporation ("Eclipse Aviation"), a Delaware corporation, in its individual capacity and as sole member of Eclipse IRB Sunport, LLC, a Delaware limited liability company, and wholly-owned subsidiary of Eclipse Aviation ("Eclipse Sunport") (collectively, the "Debtors," and each individually a "Debtor"). I have been employed by the Debtors since May 2007.

2. I submit this affidavit (the "Affidavit") in connection with the voluntary chapter 11 petitions, first-day applications and motions listed on Exhibit "A" attached hereto (collectively, the "First Day Motions").

3. Any capitalized term not expressly defined herein shall have the meaning ascribed to that term in the relevant first-day motion or application. All facts set forth in this

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<sup>1</sup> The Debtors in these proceedings are: Eclipse Aviation Corporation (Tax ID No. XX-XXX9000) and Eclipse IRB Sunport, LLC, a wholly owned subsidiary of Eclipse Aviation Corporation (Tax ID No. XX-XXX4013), each with a mailing address of 2503 Clark Carr Loop SE, Albuquerque, NM 87106.

Affidavit are based on my personal knowledge, upon information supplied to me by people who report to me or are senior officers or employees with the Debtors, upon information supplied to me by the Debtors' professionals and consultants, or upon my opinion based on my experience and knowledge with respect to the Debtors' operations, financial condition and related business issues. If I were called upon to testify, I could and would testify competently to the facts set forth herein, and I am authorized to submit this Affidavit on behalf of the Debtors.

### **GENERAL BACKGROUND**

4. On the date hereof (the "Petition Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of Title 11 of the United States Code (the "Bankruptcy Code").

5. I am advised by counsel that this Court has jurisdiction over these chapter 11 cases pursuant to 28 U.S.C. §§ 157 and 1334 and venue is proper in the United States Bankruptcy Court for the District of Delaware pursuant to 28 U.S.C. §§ 1408 and 1409.

6. No request for appointment of a chapter 11 trustee or examiner has been made and, as of the date hereof, no official committee has been appointed.

### **History and Operations**

#### **A. Background and Corporate Structure**

7. Founded in 1998, Eclipse Aviation, which currently employs approximately 945 people, has developed and manufactures twin turboprop jet aircraft, specifically known as the Eclipse 500®. As set forth in greater detail below, the Eclipse 500

seats up to six people (including the pilot) and is designed to cruise at 425 mph, fly as high as 41,000 feet and with a range of approximately 1,495 nautical miles. The Eclipse 500 has the ability to take off and land on runways of less than 2,400 feet, which enables the Eclipse 500 to serve approximately 10,000 airports in the U.S. alone.

8. Eclipse Aviation engineers, manufactures and sells the Eclipse 500 through its manufacturing and headquarters facilities in Albuquerque, New Mexico and provides full service maintenance and repair services through its three service centers located in Albuquerque, New Mexico, Albany, New York and Gainesville, Florida. Eclipse Aviation also operates a pilot training facility located in Albuquerque at which it trains pilots to operate the Eclipse 500.

9. ETIRC Aviation, S.a.r.l. ("ETIRC") is the largest shareholder of Eclipse Aviation, and its chairman, Roel Pieper, is the Chairman of the Board and acting Chief Executive Officer of Eclipse Aviation. Representatives of ETIRC, including Mr. Pieper, constitute two of the five persons on the Board of Directors of Eclipse Aviation. In addition, ETIRC is the exclusive distributor of the Eclipse 500 aircraft in Europe, Russia and countries comprising the Commonwealth of Independent States, a regional organization whose participating countries are former Soviet Republics, and has the right to receive kitted components from Eclipse Aviation and assemble Eclipse 500s in a facility to service its distribution territory.

10. Eclipse Aviation is the sole member of Eclipse Sunport, a Delaware limited liability company. Eclipse Sunport is a holding company whose sole asset is the ownership of City of Albuquerque, New Mexico Industrial Revenue Bonds (Eclipse Aviation Corporation Project), Series 2004, in the original amount not to exceed \$45,000,000 and a

single corporate bank account. Eclipse Sunport has guaranteed the bulk of the senior secured notes of Eclipse Aviation with a balance in excess of \$550 million, and has pledged its asset as security.

**B. The Very Light Jet Market and the Eclipse 500**

11. The Eclipse 500 received a Type Certificate on September 30, 2006 after meeting all Federal Aviation Administration (the “FAA”) requirements for the approval of its design (*FAR Part 23, FAA Certified Aircraft*). Manufactured aircraft conforming to the FAA-approved type design and that are in a condition for safe operation are eligible to receive a Certificate of Airworthiness.

12. On April 26, 2007, Eclipse Aviation received a production certificate from the FAA. A production certificate is an approval to manufacture aircraft with an FAA-approved type design and to obtain airworthiness certificates for the aircraft produced without a further showing. Eclipse Aviation’s production certificate authorizes it to issue standard airworthiness certificates for its production aircraft, which is currently performed with FAA approval of each aircraft. Eclipse Aviation delivered the first Eclipse 500 production aircraft to its customer in January 2007.

13. In the aircraft design and production industry, Eclipse Aviation is considered by many to have created the very light jet, or “VLJ”, market, and Eclipse Aviation continues to be the leader in the segment as measured by aircraft deliveries and orders. The ability of the Eclipse 500 to access such a large number of airports, combined with the Eclipse 500’s low acquisition price and lowest operating costs of any jet aircraft, can bring point-to-point affordable jet travel to secondary and tertiary markets that currently have declining or no

commercial airline service and will also significantly expand the existing markets for personal jets.

14. Specifically, the Eclipse 500 was designed to address the needs of, as well as expand, several existing and emerging domestic and international market segments, including, but not limited to, individual pilots, small companies new to aircraft ownership, existing corporate flight departments, traditional “for hire” charter operations, shared-owned and managed aircraft, air taxi for travel outside major commercial hubs and logistics for “same day” delivery of time-sensitive parcels. The Eclipse 500 was also designed to provide commercial airline-like reliability to support the high duty cycles expected in the air taxi and other “for hire” market segments.

15. As a testament to the innovation of the Eclipse 500, Eclipse Aviation received the 2005 Robert J. Collier trophy, one of the most prestigious awards in aerospace/aviation. This annual award given by the National Aeronautics Association is “for the greatest achievement in aeronautics or astronautics in America.” The 95 year-old trophy was presented to Eclipse Aviation in May 2006 “for leadership, innovation and the advancement of general aviation” in the production of VLJs, and specifically, the Eclipse 500.

**C. Eclipse Aviation’s Production Philosophy and Pricing Advantage**

16. To achieve its value proposition, Eclipse Aviation designed the Eclipse 500 aircraft for high-volume and low-cost production. Unlike traditional, low volume general aviation manufacturers, Eclipse Aviation has the vast majority of the aircraft structure machined from solid billets of aluminum with tight manufacturing tolerances. The result is an aircraft structure that can be easily assembled. Eclipse Aviation believes that this manufacturing strategy distinguishes it from other aircraft manufacturers and enables

achievement of the Eclipse Aviation's low price and high-volume production goals. This strategy is based on lean manufacturing practices that enable optimization of the assembly line for volume production.

### **EXISTING INDEBTEDNESS**

#### **A. The Debtors' Pre-Petition Financing**

17. The Debtors' pre-petition debt structure consists of senior secured notes, certain unsecured loans, as well as certain miscellaneous secured loans and trade debt.<sup>2</sup>

#### **B. Pre-Existing Indebtedness Paid By Old Notes Issuance**

18. In 2004, Eclipse Aviation issued secured notes payable, due June 30, 2006, in an aggregate principal amount of \$42 million, bearing interest at 10% per annum. In accordance with the terms of the notes, Eclipse Aviation issued the note holders warrants to purchase 629,325 shares of Series A common stock at \$75 per share. Approximately \$10.8 million of the proceeds was received from two members of the board of directors who are also shareholders, and approximately \$17.4 million was received from other Eclipse Aviation shareholders. The notes were paid in full on May 31, 2006, as set forth below.

19. In August 2005, Eclipse Aviation issued secured notes payable, due June 30, 2006, in an aggregate principal amount of \$17.3 million, bearing interest at 10% per annum. In accordance with the terms of the notes, Eclipse Aviation issued the note holders warrants to purchase 138,000 shares of Series A common stock at \$95 per share.

Approximately \$6.5 million of the proceeds was received from a member of the board of

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<sup>2</sup> In addition to the indebtedness set forth below, Eclipse Aviation, as borrower, is a party to that certain loan agreement with First Source Bank, dated as of July 2005 in the original principal amount of \$226,000, bearing interest at a rate of 7.4% per annum (the "Aircraft Loan"). The Aircraft Loan requires monthly principal and interest payments of approximately \$3,000 through June 2010 with a balloon payment of \$104,000 due at maturity in July 2010. The Aircraft Loan is secured by an airplane that was purchased with the loan proceeds. Eclipse Aviation leases this aircraft for \$1,500 per month to a non-profit organization dedicated to supporting and promoting general aviation for Eclipse Aviation employees and the community.

directors who is also a shareholder, and approximately \$3.3 million was received from other Eclipse Aviation shareholders. The notes were paid in full on May 31, 2006, as set forth below.

20. In February 2006, Eclipse Aviation issued a secured note payable, due June 30, 2007, in an aggregate principal amount of approximately \$5.8 million, bearing interest at 13% per annum. In accordance with the terms of the note, Eclipse Aviation issued the note holder a warrant to purchase 34,000 shares of Series A common stock at \$100 per share. The note was paid in full on May 31, 2006, as set forth below.

21. In March 2006, a \$15 million secured promissory note was issued to a member of the board of directors who is also a shareholder, bearing interest at 15% per annum. In conjunction with the note, Eclipse Aviation issued the note holder a warrant to purchase 17,500 shares of Series A common stock at \$135 per share. The note was paid in full on May 31, 2006, as set forth below.

**C. Old Notes**

22. On May 31, 2006, Eclipse Aviation issued \$225 million in aggregate principal amount of senior secured convertible notes due 2010 (the "May 2006 Notes"), payable to several institutional investors, bearing interest payable quarterly at a base rate of 6% per annum if paid in cash, or 7% if added to the principal. The May 2006 Notes were secured by substantially all of the assets of Eclipse Aviation and were guaranteed by Eclipse Sunport. Outstanding amounts due under the May 2006 Notes could be converted into series A common stock at the holder's option at any time at a conversion price (subject to adjustment) of \$154.90 (the "May 2006 Warrants").

23. Approximately \$110 million of the proceeds from the May 2006 Notes was used to repay existing note holders, as set forth above, approximately \$29.3 million was used to redeem shares of Series G preferred stock outstanding and approximately \$15 million was disbursed for fees and costs relating to the transaction. Effective March 14, 2007, the May 2006 Notes were amended and restated to, among other things, increase the base rate of interest from 6% to 8%, and reduce the price to convert into the Eclipse Aviation's series A common stock from \$154.90 to \$134.25.

24. On March 15, 2007, Eclipse Aviation issued \$50 million in aggregate principal amount of secured promissory notes, of which \$25 million was received from a member of the board of directors who is also a shareholder, and the remaining \$25 million was from other existing investors and shareholders. The notes bore interest at 8.5% per annum and the principal and interest were due in full on the earlier of September 15, 2007 or the date Eclipse Aviation received new financing of at least \$50 million. In connection with the notes, Eclipse Aviation issued warrants to purchase 744,875 shares of Series I Preferred Stock for \$134.25 per share to the note holders. The security interest associated with the notes is considered *pari-passu* with the March 2007 Notes.

25. In June and July of 2007, Eclipse Aviation issued approximately \$272 million in aggregate principal amount of senior secured convertible notes due 2010 (the "June 2007 Notes", and together with the May 2006 Notes, the "Old Notes"), payable to new and current investors and shareholders, bearing interest payable quarterly at a base rate of 8% per annum if paid in cash, or 9% if added to principal. Of the \$272 million of notes issued, approximately \$46.6 million were exchanged by holders of the May 2006 Notes, and approximately \$12.9 million were issued as payment related to debt issuance costs.



26. In addition, the holders of the May 2006 Notes modified their notes to have terms consistent with the June 2007 Notes. The June 2007 Notes were secured by substantially all of the assets of Eclipse Aviation. Eclipse Aviation also issued common stock warrants to the note holders who provided new financing to Eclipse in June 2007 with an exercise price of \$35.50 per share (the "June 2007 Warrants", and together with the May 2006 Warrants, the "Old Warrants").

27. On December 19, 2007, Eclipse Aviation entered into a restructuring agreement with holders of more than 90% in principal amount of the Old Notes (the "Consenting Old Noteholders") and Alfred E. Mann ("Mann"), a member of Eclipse Aviation's board of directors, in his capacity as a holder of Eclipse Aviation's preferred stock. Pursuant to the restructuring agreement, the Consenting Old Noteholders agreed to the amendment of the Old Notes to, among other things, authorize Eclipse Aviation to enter into a bridge loan facility with ETIRC, and to agree to tender their Old Notes and Old Warrants in connection with an exchange offer.

28. On December 28, 2007, Eclipse Aviation entered into a bridge loan agreement and related documents with ETIRC (the "ETIRC Bridge Loan") pursuant to which Eclipse Aviation issued a secured promissory note for an aggregate principal amount of \$70 million to ETIRC on a senior secured basis, ranking *pari passu* with the Old Notes. The ETIRC Bridge Loan bore interest at 9.0% per annum repayable, at Eclipse Aviation's option, in cash or shares of preferred stock representing 17.5% of Eclipse Aviation's common stock on a fully diluted basis.

29. In connection with the notes, Eclipse issued warrants to purchase 197,183 shares of Series A Common Stock for \$35.50 per share to ETIRC. In connection with

the ETIRC Bridge Loan, Eclipse Aviation received, among other things, an option to acquire 5% of the shares of ETIRC. In accordance with the terms of the ETRIC Bridge Loan, the principal amount was repaid through the issuance of shares of preferred stock representing approximately 17.5% of Eclipse's common stock on a fully diluted basis. In addition, pursuant to the terms of the ETIRC Bridge Loan agreement, on February 15, 2008, ETIRC exercised its right to purchase for \$70 million an additional amount of preferred stock representing 17.5% of Eclipse Aviation's common stock on a fully diluted basis.

**D. New Notes**

30. On January 16, 2008, Eclipse Aviation initiated an exchange offer (the "Exchange Offer") of the Old Notes for a new issuance of \$551,449,643 of 8.00% Senior Secured Notes due 2012 (the "New Notes") and warrants exercisable to purchase common stock of Eclipse at an initial exercise price of \$35.50 per share (the "New Warrants"). The New Notes bear interest at the rate of 8% per annum, or 9% if added to the principal, and are payable quarterly in arrears commencing June 30, 2008. The New Notes are guaranteed by Eclipse Sunport, and are secured by substantially all of the assets of the Debtors.

31. In connection with the Exchange Offer, the Old Notes were modified such that (i) the security for the Old Notes were secured by only a small portion of the collateral formerly securing the Old Notes, including certain letter of credit rights and commercial tort claims, (ii) were not guaranteed by Eclipse Sunport, (iii) contain very few covenants or restrictions, and (iv) contain very limited default provisions. The Old Warrants were modified such that (i) the exercise price was increased to \$10,000 per share, and (ii) certain anti-dilution provisions were removed, and (iii) the term expired one day after the closing of the exchange offer.

32. Approximately 98% of the holders of Old Notes and Old Warrants exchanged such notes and warrants for New Notes and New Warrants. As of the Petition Date, approximately \$568 million is owed under the New Notes, and \$9 million is owed under the Old Notes. In addition to the foregoing, Eclipse Aviation has approximately \$135 million in trade debt.

**E. Second Bridge Loans**

33. On July 18, 2008, the Debtors breached a covenant of the New Notes requiring a minimum cash and cash equivalent balance of \$35 million (the "Cash Balance Covenant"), triggering an Event of Default thereunder. Pursuant to the terms of the New Notes, the holders of more than 25% of the outstanding Notes (i) declared the entire principal amount of the New Notes to be immediately due and payable and (ii) froze Eclipse Aviation's bank account deposits pursuant to certain account control agreements dated June 21, 2007 and June 22, 2007.

34. Eclipse Aviation entered into negotiations with certain Noteholders (the "Consenting Noteholders"), ETIRC and Mann, to remedy the default. In connection therewith, on July 28, 2008, the Debtors along with the Consenting Noteholders, ETIRC and Mann entered into an agreement (the "July 2008 Restructuring Agreement"), pursuant to which Mann and ETIRC agreed to make unsecured loans to Eclipse Aviation in the principal amount of \$25,000,000 (the "Bridge Loans"). At the same time, the previous Chief Executive Officer of Eclipse Aviation was replaced by Roel Pieper.

35. The July 2008 Restructuring Agreement required Eclipse Aviation to commence an exchange offer (the "Second Exchange Offer") no later than September 23, 2008 for the outstanding shares of Eclipse Aviation's existing preferred stock. At the completion of

the Second Exchange Offer, the Bridge Loans were to be repaid through the issuance of additional preferred stock. The Second Exchange Offer was commenced but, as of the Petition Date, not completed. The Bridge Loans will become due and payable in full on January 31, 2009 and bear interest at eight percent (8%) per annum.

36. Also, in connection with the July 2008 Restructuring Agreement, the New Notes were amended to, among other things, authorize the Bridge Loans and reduce the Cash Balance Covenant for the period between July 28, 2008 and November 18, 2008 from \$35 million to \$17.5 million.

37. On November 1, 2008, the Debtors breached the reduced Cash Balance Covenant, and the holders of more than 25% of the outstanding New Notes (i) declared the entire principal amount of the Notes to be immediately due and payable and (ii) froze Eclipse Aviation's bank account deposits pursuant to certain account control agreements dated June 21, 2007 and June 22, 2007.

**F. Events Leading to Commencement of Chapter 11 Cases**

38. As noted above, Eclipse broke new ground in the civil aviation industry in a number of areas, including offering the first VLJ and pioneering the use of new technologies such as friction stir welding and the PhostrEx® fire suppressant system. These achievements required a substantial outlay of capital, and various production delays were caused, in part, by the new technologies that Eclipse deployed. In addition, Eclipse from the beginning offered a unique low-price, high-volume business model patterned more on industries such as the computer industry than on traditional aviation businesses. Eclipse negotiated supplier contracts which provided for volume-based discounts. This business model

required production of aircraft in unprecedented volumes to achieve the unit cost savings necessary to make the low pricing strategy successful.

39. Although Eclipse achieved manufacturing volumes in excess of most other aircraft manufacturers, Eclipse was unable to meet its targeted output needed to support its business plan, and was unable to control its costs to contemplated levels. Inventory holdings increased based on unachieved production goals, while per aircraft costs increased based in part on lower production volumes. As a result, Eclipse continued to lose larger than expected sums of money on each aircraft manufactured, and has not reached a cash flow positive in its operations.

40. Eclipse went through several rounds of financing and price increases on the Eclipse 500 aircraft, all aimed at giving Eclipse additional opportunities to meet the necessary production, revenue and cost targets and achieve its financial plan. Despite these efforts, Eclipse was unable to meet its business plan and continued to lose money. At the beginning of August 2008, Eclipse received \$50 million in bridge loan financing, but needed to raise significant additional financing within the following several months.

41. Eclipse also hired a major investment banking firm to identify and approach prospective investors about a substantial investment in Eclipse. To conserve its cash, while creating as long a window of time as possible to procure financing, Eclipse in late August 2008 reduced its workforce substantially and severely curtailed planned aircraft production in the months of September 2008 through the end of the year. Due to a variety of factors, including the current global economic uncertainties, those efforts to raise capital outside of a bankruptcy proceeding proved unsuccessful, and Eclipse's cash balance has declined to levels that jeopardize the continued operation of the company.

42. Eclipse, in consultation with its financial advisors, other professionals, and other interested parties, considered a number of potential sales and restructuring alternatives in order to develop a plan that would maximize value for its creditors and to ensure the long-term survival of its business. After considering its options and, in light of the aforementioned financial difficulties, Eclipse determined that the only viable course of action to preserve the going concern value of the company would be through an orderly sale of substantially all of their assets under section 363 of the Bankruptcy Code, subject to higher and better bids pursuant to a Bankruptcy Court approved open auction process. In order to maximize the value that could be obtained from such a sale, Eclipse sought a “stalking horse” bidder, and began negotiations with its secured creditors and ETIRC to that end. After lengthy arms-length negotiations, Eclipse entered into an agreement to sell substantially all of its assets to ETIRC pursuant to an asset purchase agreement that would serve as the “stalking horse” bid in a sale under section 363.

43. Accordingly, concurrently with the filing of Eclipse’s bankruptcy petitions, Eclipse filed a *Motion of the Debtors for Orders: (A)(I) Approving Sale Procedures for Sale of Substantially All of the Debtors' Assets; (II) Scheduling a Hearing to Consider the Sale and Approving Form and Manner of Notice Thereof; (III) Establishing Procedures for the Assumption and Assignment of Certain Contracts, Including Notice of Proposed Cure Amounts; (IV) Authorizing Payment of an Expense Reimbursement; and (V) Granting Related Relief; and (B)(I) Authorizing the Sale of Such Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (II) Authorizing and Approving Purchase Agreement Thereeto; (III) Approving the Assumption and Assignment of Certain Executory Contracts and*

*Unexpired Leases Related Thereto; (IV) Providing for Payment of Sale Proceeds to Secured Lender; and (V) Granting Related Relief (the “Sale Motion”).*

44. Had the Debtors not commenced these cases, their ability to finance, sell or restructure their business, maximize value and preserve and enhance the Debtors’ financial health would likely have been severely compromised. The commencement of these cases and implementation of an orderly sale process under the supervision of this Court, with ETIRC providing a floor against which interested parties may bid, will permit the Debtors to consummate a going-concern sale of all or substantially all of their assets and maximize value of their estates for all interested parties.

**First Day Motions**<sup>3</sup>

45. As a result of my first-hand experience, and through my review of various materials and information, discussions with other of the Debtors’ executives, and discussions with the Debtors’ outside advisors, I have formed opinions as to (a) the necessity of obtaining the relief sought by the Debtors in the First Day Motions, (b) the need for the Debtors to continue to operate effectively, (c) the deleterious effects upon the Debtors of not obtaining such relief, and (d) the immediate and irreparable harm to which the Debtors will be exposed immediately following the Petition Date unless the relief requested in the First Day Motions is granted without delay.

46. I submit this Affidavit in support of the Debtors’ petitions and First Day Motions filed with the Court in connection with the commencement of these cases and set forth on Exhibit A.

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<sup>3</sup> Capitalized terms used but not otherwise defined in the description of the various First Day Motions shall have the meanings ascribed to them in the respective First Day Motion described.

47. I reviewed each of the First Day Motions (including the exhibits and schedules attached thereto) and, to the best of my knowledge, believe that the facts set forth therein are true and correct. Such representation is based upon information and belief and through my review of various materials and information, as well as my experience and knowledge of the Debtors' operations and financial condition. If I were called upon to testify, I could and would, based on the foregoing, testify competently to the facts set forth in each of the First Day Motions.

48. The relief sought in the First Day Motions will minimize the adverse effects of the instant chapter 11 cases on the Debtors and result in maximum creditor recoveries. I believe that the relief sought in each of the First Day Motions is necessary to enable the Debtors to operate effectively in chapter 11 as debtors in possession.

49. As described more fully below, the relief requested in the First Day Motions was carefully tailored by the Debtors, in consultation with their professionals, to ensure that the Debtors' immediate operational needs are met and that the Debtors suffer no immediate and irreparable harm. I have personally reviewed the analysis that led to the creation of each of the First Day Motions. At all times, the Debtors' management and professionals remained cognizant of the limitations imposed on debtors-in-possession and, in light of those limitations, the Debtors narrowed the relief requested at the outset of these cases to those issues that require urgent relief to sustain the Debtors' immediate operability.

a. Motion for Joint Administration

50. I believe that the motions, applications, hearings and orders that will arise in these chapter 11 cases will jointly affect each Debtor. Under these circumstances, I believe that the interest of the Debtors, their estates, their creditors and other parties in interest would be best served by the joint administration of these chapter 11 cases for procedural



purposes only. The Debtors further believe that joint administration of these chapter 11 cases will ease the administrative burden on the Court and all parties in interest and will protect creditors of the respective estates against potential conflicts of interest. For these reasons, the Debtors submit, and I believe, that the relief requested in this motion is in the best interest of the Debtors, their estates and their creditors, and therefore should be approved.

b. Application to Retain Kurtzman Carson Consultants LLC

51. By this Motion, the Debtors seek entry of an order authorizing the Debtors to retain Kurtzman Carson Consultants LLC (“KCC”) as their claims, notice and balloting agent (the “Claims Agent”). Upon information and belief, KCC is an experienced Claims Agent and is frequently used by debtors in large chapter 11 cases, and I believe KCC is well qualified to serve as Claims Agent in these cases. The employment of KCC will also provide the Debtors with efficient management of the claims, noticing and balloting processes in these cases leaving the Debtors’ management and professionals to focus on the Debtors reorganization efforts.

c. Motion for Interim and Final Orders Deeming Utilities Adequately Assured

52. By this motion, and to ensure continued provision of utility services (the “Utility Services”) to the Debtors’ various locations, the Debtors seek entry of an order prohibiting utility companies (the “Utility Companies”) from terminating services on account of pre-petition invoices, deeming the Utility Companies to be adequately assured of future payment, and establishing procedures to determine additional adequate assurance. The Debtors propose to establish a segregated account into which the Debtors will deposit a sum equal to two weeks of the Debtors’ estimated monthly costs for Utility Services (collectively,

the “Utility Deposit”) and, additionally, have proposed procedures to address any request made by the Utility Companies for additional adequate assurance.

53. Any disruption of Utility Services at the Debtors’ business locations would cause irreparable harm to the Debtors’ business operations and their estates. The successful operation of the Debtors’ business requires that the Utility Services be provided on a continual and uninterrupted basis. The Debtors have several accounts with Utility Companies and have established a good payment history with virtually all of their Utility Companies. To the best of the Debtors’ knowledge, they have no defaults or arrearages of any significance with respect to the Debtors’ undisputed Utility Services invoices. However, any disruption of Utility Services could have a significant impact on the Debtors’ business operation, revenues, customers and employees.

54. For the foregoing reasons, the Debtors submit, and I believe, that the relief requested in this motion is in the best interest of the Debtors, their estates and their creditors and therefore should be approved.

d. Motion for Authority to Pay Certain Pre-Petition Taxes

55. By this motion, the Debtors request authorization, in their sole discretion, to pay certain Taxes and Fees to various U.S. state and local taxing and licensing authorities (collectively, the “Authorities”). The Debtors seek authority to pay any Taxes that were accrued prepetition but were not in fact paid or processed prepetition, or were paid prepetition in an amount less than is actually owed, or to the extent any such payments made prepetition were rejected, lost or otherwise not received in full by any Authority. Further, there may be Taxes incurred or collected from sales and services provided prepetition that will come due shortly after the filing, which the Debtors seek authority to pay pursuant to this Motion. Finally, to the extent that any checks, drafts, deposits or transfers issued or initiated

by the Debtors on account of prepetition Taxes have not cleared as of the Petition Date, the Debtors also seek an order directing banks and other financial institutions to honor and process such payments.

56. The Debtors estimate that outstanding prepetition liabilities owing to the various Authorities for Taxes and Fees will not exceed approximately \$200,000. Some, if not all, of the Authorities may initiate an audit of the Debtors if the Taxes are not paid on time. Such audits will unnecessarily divert the Debtors' attention away from the reorganization process and result in unnecessary expenses. Moreover, if the Debtors do not pay such amounts in a timely manner, the Authorities may attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay, seek payment from the Debtors' directors and officers and pursue other remedies that will materially and immediately harm the estates. Moreover, many of the outstanding tax liabilities are for trust fund taxes that the Debtors have collected and hold in trust for the benefit of the Authorities. Therefore, such funds do not constitute property of the estates and could not otherwise be used by the estates. Finally, certain of the Authorities are the governing bodies which issues certain flightworthiness certifications, licenses or permits which are necessary for the Debtors to offer their products for sale to the public and to otherwise continue their businesses in the ordinary course, without which the Debtors' value would decline precipitously.

57. I believe that the Debtors' failure to pay the Taxes and Fees could have a material adverse impact on their ability to operate in the ordinary course of business and thus harm these reorganizations to the detriment of all constituents. Additionally, any attempts to collect the Taxes from the Debtors' officer and directors has the potential to divert the attention of those individuals away from the reorganization process. Therefore, I believe it is

appropriate to pay, and the Debtors seek the authority to pay, in their sole discretion, the Taxes and Fees, including any penalties and interest thereon, if any, and any liability resulting from audits of prepetition Taxes and Fees, to the relevant Authorities in the ordinary course of business.

e. Motion to Approved Continued Use of Cash Management System

58. By this motion, the Debtors seek entry of an order (a) authorizing the continued use of their existing cash management system, (b) authorizing the continued use of their existing bank accounts and business forms, and (c) authorizing their deposit practices and waiving the requirements of section 345(b) in connection therewith on an interim basis. In connection with this relief, the Debtors respectfully request a waiver of certain of the operating guidelines established by the Office of the United States Trustee for the District of Delaware that require the Debtors to close all prepetition bank accounts, open new accounts designated as debtor-in-possession accounts, and provide new business forms and stationary.

59. As described in detail in the motion, the Debtors maintain a cash management and disbursement system in the ordinary course of their operations (the "Cash Management System"). To lessen the disruption caused by the bankruptcy filings and maximize the value of their estates in these chapter 11 proceedings, it is vital to the Debtors that they maintain their Cash Management System.

60. The Debtors maintain current and accurate accounting records of daily cash transactions and submit that maintenance of this Cash Management System is vital to prevent undue disruption to the Debtors' business operations while protecting the Debtors' cash for the benefit of the estates. It is critical that the Debtors be able to consolidate management of cash and centrally coordinate transfers of funds to efficiently and effectively

operate their large and complex business operations. Substantially disrupting their current cash management procedures would impair the Debtors' operations and ability to optimize their business performance.

f. Motion for Authority to Pay Employee Wage and Related Items

61. Pursuant to this motion, the Debtors are seeking authority to honor and pay all pre-petition employee wages, salaries and other accrued compensation, and to continue to honor certain other policies, programs and benefits the Debtors provide to their employees in the ordinary course of business.

62. The Debtors have a current workforce of approximately 945 employees nationwide. I believe that if they are unable to honor all such obligations immediately, employee morale and loyalty will be jeopardized at a time when such support is critical.

63. The uninterrupted continuation of the Debtors' business is critically dependent upon a stable work force. I believe that any significant number of employee departures or deterioration in morale at this time will immediately and substantially adversely impact the Debtors' business and result in immediate and irreparable harm to the estates and their creditors. There is a real, immediate risk that if the Debtors are not authorized to continue to honor their pre-petition employee obligations in the ordinary course, the employees would no longer support and maintain the operations of the Debtors, thereby crippling the Debtors' business operations and instantly damaging the value of the Debtors materially. Consequently, the Debtors strongly believe that it is critical that they be permitted to pay their employees their pre-petition wages and continue with their ordinary course personnel policies, programs and procedures that were in effect prior to the Petition Date.

64. Employees also incur various expenses in the discharge of their ordinary duties, such as travel, lodging, meals and incidental purchases. For many employees, these

expenses are typically charged onto corporate Wells Fargo credit cards (the “Wells Fargo Cards”), and paid directly by the Debtors’ accounts payable department. Because these expenses are incurred as part of the employees’ official duties and in furtherance of the Debtors’ business, the Debtors reimburse the Employees in full for these expenses (the “Expense Reimbursements”) in the ordinary course of business, subject to the submission of proper documentation to the appropriate accounting department. A majority of Expense Reimbursements are travel-related expenses related to sales or client development and supply chain management. The Debtors reimburse expenses on a rolling basis, with a time lag of up to thirty (30) days between submission or the request for reimbursement and payment. The failure to reimburse such expenses will negatively impact employee morale, and will present an undue hardship for employees and the Debtors’ business.

g. Motion for Authority to Pay Certain Critical Vendors and Freight Carriers

65. By this motion (the “Critical Vendor Motion”), the Debtors seek authority to pay certain vendors (the “Critical Vendors”) that supply goods and supplies that are essential to the operation of the Debtors’ business. By the Critical Vendor Motion, the Debtors also seek authority to pay the Freight Claims to ensure the reliable and efficient flow of materials and goods that are necessary for the day-to-day operations of the Debtors’ business.

66. I believe that immediate payment of the claims of the Critical Vendors is not only critical to the Debtors’ reorganization efforts, but immediately necessary in light of the industry in which the Debtors operate. The Critical Vendors generally consist of the parties that supply aircraft component parts, goods and services necessary to maintenance of the Debtors’ intellectual property and information technology systems, and specialty technical goods and services related to, other things, aircraft flight worthiness, FAA compliance and/or

European flight certification. As of the Petition Date, the Debtors own and operate several manufacturing facilities and service centers worldwide. In order to operate their businesses, the Debtors rely on regular provision of these goods and services. Any delay or disruption in the flow of critical goods to the Debtors would materially impact the Debtors' ability to maintain its reputation in the marketplace with its customers, and therefore, would cause irreparable harm thus damaging the Debtors' ability to reorganize. Moreover, such a delay or disruption would also cause an immediate erosion in creditor confidence which would be difficult, if not impossible, to restore. For these and the other reasons stated herein, I believe that the relief requested in the Critical Vendor motion is necessary to avoid immediate and irreparable harm.

67. I believe that the failure to pay the Critical Vendor Claims would, in the Debtors' business judgment, result in the Critical Vendors refusing to provide critical services and supplies to the Debtors postpetition which could have an extremely disruptive and/or immediately devastating effect on the Debtors' ability to operate their business and preserve value through the contemplated sale process. Moreover, the delay attendant to the Debtors changing from a Critical Vendor to another vendor of similar products (assuming one could be located) would very likely delay the Debtors' ability to operate their business, which would be devastating to the Debtors' operations.

68. The Debtors and their advisors have critically examined whether the payment of Critical Vendor Claims is necessary, will ameliorate immediate and irreparable harm to the Debtors' business operations and will ensure that the Debtors have access to adequate trade credit post-petition. Specifically, the Debtors have undertaken a thorough review of their accounts payable and their list of prepetition vendors to identify those vendors

who are essential to the Debtors' operations. The Debtors have further developed certain procedures (for which they seek this Court's approval) that, when implemented, will ensure that the Debtors derive value for payments to Critical Vendors such that vendors receiving payment of Critical Vendor Claims will continue to supply trade credit necessary to the Debtors' operations on a post-petition basis.

69. It is also essential to the Debtors' continued viability and the success of their reorganization that they maintain the reliable and efficient flow of materials and goods and, thus, payment of the Freight Claims is necessary and appropriate. Even a minor delay could undermine the Debtors' ability to fulfill their customers' needs.

70. Unless the Debtors continue to receive goods and materials, the Debtors' relationship with their customers would be severely, and possibly irreparably, impaired, and their ability to reorganize would be jeopardized as a result. Supply interruptions caused by the Debtors' inability to receive products and materials from their Freight Carriers or to deliver such would only exacerbate the Debtors' already tenuous position with their vendors.

71. If the Debtors fail to pay the Freight Claims, I believe that many of the Freight Carriers may stop providing their essential services to the Debtors. Given the importance of moving goods quickly through the Debtors' distribution systems, even the slightest delay in receiving goods could substantially disrupt the Debtors' operations, potentially delaying shipments to customers, damaging the Debtors' business reputation and undermining the Debtors' ability to generate revenue. Even if suitable alternative freight carriers or storage facilities were available, the time necessary to identify these replacement providers and to integrate them into the Debtors' operations likely would cause a significant disruption to the Debtors' manufacturing and distribution operations.



72. Moreover, I believe that the Freight Carriers may argue that they are entitled to possessory or similar liens for the storage and/or transport of the goods in their possession as of the Petition Date and may refuse to deliver or release such goods before their claims have been satisfied and their liens redeemed. Accordingly, it is imperative that the Debtors be authorized to pay the Freight Claims to (a) ensure that the essential services provided by the Freight Carriers are available to the Debtors without interruption and (b) preserve to the fullest extent possible the Debtors' relationships with their customers and, in turn, the value of the Debtors' business for the benefit of the Debtors, their estates and their creditors.

h. Motion for Authority to Use Cash Collateral

73. By this Motion, the Debtors seeks orders pursuant to sections 105(a), 361, 362, 363 and 552 of the Bankruptcy Code: (a) authorizing it to use Cash Collateral (as defined in the Cash Collateral Motion) pursuant to the terms of the Interim Order; (b) granting and affirming, to the extent necessary, the adequate protection given to the Noteholders, in respect of its interests in the Collateral; and (c) scheduling the Final Hearing on this Motion pursuant to and in accordance with the terms of a certain stipulation by and between the Debtors and the Ad Hoc Committee (as defined in the Cash Collateral Motion).

74. The Debtors have and will continue to need the use of Cash Collateral to pay ordinary course of business expenditures. These expenditures will enable the Debtors to continue operating the business in the ordinary course, and to maintain and safeguard the Collateral. The Debtors' use of Cash Collateral is necessary to maintain the value of the Collateral and to provide the Debtors with working capital necessary to maintain operation of the business pending the Sale Hearing (as defined in the Motion). Absent the use of Cash

Collateral, the Debtors do not have sufficient working capital to operate their business, or even to maintain the operations necessary to prevent the deterioration in value of its assets.

75. Unless the Debtors are able to meet their short-term financial obligations, the value of the Noteholders and other creditors' collateral – namely, the business as a going concern – will be seriously diminished. Simply stated, without the use of Cash Collateral as requested by this Motion, the Debtors will suffer immediate and irreparable harm, their business operations will cease, their assets and value as a going concern will be damaged, and the operational value of the business – which is significantly higher than its distressed liquidation value – will likely not be realized.

i. Motion for Debtor in Possession Postpetition Financing

76. The Debtors have determined, with the assistance of their professionals that they also require post-petition financing. More specifically, the Debtors do not have any unencumbered cash with which to operate their business and have an immediate need for additional liquidity which could only be obtained through a secured debtor in possession financing facility.

77. Without additional liquidity in the form of post-petition financing, the Debtors would be unable to continue their operations during the pendency of the Chapter 11 Cases and unable to complete the contemplated sale of substantially all of their assets. This could significantly impair the value of the Debtors' assets to the detriment of all creditor constituencies and other parties in interest. Furthermore, by obtaining post-petition financing, the Debtors will be in a better position to preserve the value of their assets for the benefit of all creditors.

78. Prior to the Petition Date, the Debtors surveyed various sources of post-petition financing. In exploring those options, the Debtors recognized that the obligations

owed to the Noteholders are secured by virtually all of the Debtors' property, such that either (i) the liens of the Noteholders would have to be primed to obtain post-petition financing; (ii) the post-petition lender would be required to refinance the obligations of the Noteholders in full and provide additional loan availability; or (iii) the Debtors would have to find a post-petition lender willing to extend credit that would be junior to the Noteholders' liens. An ad hoc committee of Noteholders was approached to provide post-petition financing, but such efforts were unsuccessful.

79. Subsequently, Alfred E. Mann Living Trust and ETIRC, as lenders (together, the "DIP Lenders"), parties whose current relationship to the Debtors is outlined above, have agreed to extend post-petition financing to the Debtors on an interim basis in an amount up to \$12 million, subject to conditions set forth in the DIP Loan Agreement (as defined in the DIP Motion) and on a final basis in the aggregate committed amount of up to \$20 million (the "DIP Facility").

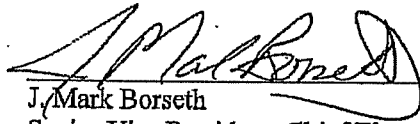
80. The Debtors and the DIP Lenders engaged in extensive, arms'-length negotiations with respect to the terms and conditions of the DIP Loan Agreement and is the best financing option available to the Debtors under the circumstances. The proposed terms the DIP Facility are fair, reasonable and adequate under the circumstances. The DIP Loan Agreement provides that the Debtors may draw immediately (on an interim basis) to meet its administrative and operational obligations during the early stages of these chapter 11 cases, a very critical period for preserving going concern value. Additionally, the Debtors and the DIP Lenders have agreed upon a budget (the "Budget"). The Debtors believe that the Budget is achievable and will allow them to operate and pay their post-petition obligations as they come due.

## CONCLUSION

81. In conclusion, for the reasons stated herein and in each of the First Day Motions filed concurrently or in connection with the commencement of these cases, I respectfully request that each of the First Day Motions be granted in its entirety, together with such other and further relief as this Court deems just and proper.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2008.

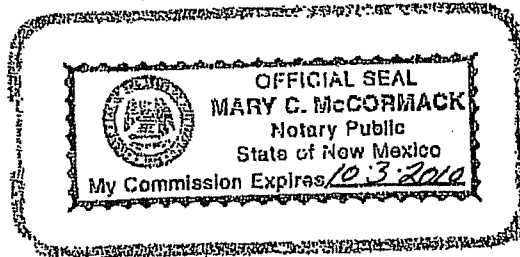


J. Mark Borseth  
Senior Vice President, Chief Financial Officer  
and Secretary  
Eclipse Aviation Corporation

Sworn to before me this 21 day  
of November, 2008

Notary Public Mary C. McCormack

My Commission Expires: 10-3-2010



## EXHIBIT A

### First Day Motions and Applications

#### **A. Administrative and Procedural Matters**

1. Debtors' Motion for Order Pursuant to Rule 1015(b) of The Federal Rules of Bankruptcy Procedures Directing Joint Administration of Cases.
2. Debtors' Application for Order Pursuant to 28 U.S.C. §156(c) and Bankruptcy Rule 2002 Authorizing Employment and Retention of the Kurtzman Carson Consultants LLC as Claims, Noticing, and Balloting Agent.

#### **B. Stabilization and Business Operations of the Debtors**

3. Debtors' Motion for Interim and Final Orders Pursuant To Sections 366 and 105 of the Bankruptcy Code (I) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Services to the Debtors; (II) Deeming Utility Providers Adequately Assured Of Future Performance; and (III) Establishing Procedures to Determine Requests for Adequate Assurance of Payment.
4. Debtors' Motion for Order Pursuant to Sections 105(a), 363(b), 541, and 507(a)(8) of the Bankruptcy Code Authorizing (I) Payment of Prepetition Sales, Use and Franchise Taxes and Certain Other Government Charges and (II) Financial Institutions to Process and Cash Related Checks and Transfers.
5. Debtors' Motion for an Order (I) Approving Cash Management System, (II) Authorizing Use of Prepetition Bank Accounts and Business Forms, and (III) Waiving the Requirements of 11 U.S.C. § 345(b) on an Interim Basis.
6. Debtors' Motion for Entry of Order Pursuant to Sections 507(a), 363(b), and 105(a) of the Bankruptcy Code Authorizing (I) Payment of Wages, Compensation, and Employee Benefits and (II) Financial Institutions to Honor and Process Checks and Transfers Related Thereto.
7. Debtors' Motion for Order Pursuant to Sections 105, 363 and 506(b) of the Bankruptcy Code For an Order Authorizing the Payment of Certain Prepetition Claims of Certain Critical Vendors and Freight Carriers.

8. Debtors' Motion Pursuant to Sections 105(a), 361, 362, 363 and 552 of the Bankruptcy Code and Bankruptcy Rule 4001(b) for Entry of Interim and Final Orders Approving the Stipulation and Agreed Order: (A) Authorizing Use of Cash Collateral; (B) Granting Adequate Protection; and (C) Scheduling a Final Hearing on the Motion.
9. Debtors' Motion for Interim and Final Orders (I) For Authorization to Obtain Postpetition Financing Pursuant to 11 U.S.C. § 364 and (II) To Grant Priming Liens and Superpriority Claims to the DIP Lender Pursuant to 11 U.S.C. § 364(c) and (d); and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001(b); and (IV) Granting Related Relief.