

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

CONTINENTAL AIRLINES, INC.

(Exact name of registrant as specified in its charter)

Delaware

74-2099724

(State or other jurisdiction

(I.R.S. Employer Identification No.)

of incorporation or organization)

1600 Smith Street, Dept. HQSEO

Houston, Texas 77002

(713) 324-2950

(Address of principal executive offices)

CONTINENTAL AIRLINES, INC. SUPPLEMENTAL SAVINGS

PLAN FOR MANAGEMENT PILOTS

(Full title of the plan)

Jeffery A. Smisek

Executive Vice President and General Counsel

Continental Airlines, Inc.

1600 Smith Street, Dept. HQSEO

Houston, Texas 77002

(Name and address of agent for service)

(713) 324-2950

(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered(1)	Amount to be registered(2)	Proposed maximum offering price per share	Proposed Maximum aggregate offering price (2)	Amount of registration fee
Supplemental Benefit Obligations	\$6,000,000	N/A	\$6,000,000	\$1,584
Total	\$6,000,000	N/A	\$6,000,000	\$1,584

(1) The supplemental benefit obligations of the registrant to pay supplemental benefits in the future in accordance with the terms of the Continental Airlines, Inc. Supplemental Savings Plan for Management Pilots.

(2) The amount to be registered is estimated solely for purposes of calculating the registration fee.

## **PART II**

### **INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

#### **Item 3. Incorporation of Documents by Reference.**

The following documents that have been filed with the Securities and Exchange Commission (the ACommission@ ) by Continental Airlines, Inc., a Delaware corporation (the ACompany@), are incorporated herein by reference and made a part hereof:

- (i) the Company=s Annual Report on Form 10-K for the year ended December 31, 1999, filed on February 11, 2000;
- (ii) the Company=s Quarterly Report on Form 10-Q for the quarter ended March 31, 2000, filed on April 20, 2000;
- (iii) the Company=s Quarterly Report on Form 10-Q for the quarter ended June 30, 2000, filed on July 18, 2000 and the amendment thereto on Form 10-Q/A filed July 25, 2000;
- (iv) the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2000, filed on October 17, 2000, and the amendment thereto on Form 10-Q/A filed November 13, 2000; and
- (v) the Company=s Current Reports on Form 8-K, dated January 18, 2000, February 8, 2000, March 15, 2000, March 27, 2000, June 13, 2000, September 21, 2000, November 6, 2000, November 6, 2000, and November 15, 2000.

All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the AExchange Act @), subsequent to the effective date of this registration statement, prior to the filing of a post-effective amendment to this registration statement indicating that all securities offered hereby have been sold or deregistering all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents. Any statement contained herein or in any document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed to constitute a part of this registration statement, except as so modified or superseded.

The Company will provide without charge to any person to whom a copy of this registration statement has been delivered, upon written or oral request, a copy of any or all of the foregoing documents incorporated herein by reference (other than exhibits to such documents unless such exhibits are specifically incorporated by reference into such documents). Requests should be directed to Continental Airlines, Inc., 1600 Smith Street, Dept. HQSEO, Houston, Texas 77002, Attention: Secretary, telephone (713) 324-2950.

#### **Item 4. Description of Securities.**

The supplemental benefit obligations registered hereunder (the AObligations@) are unsecured obligations of the registrant to pay supplemental benefits in the future in accordance with the terms of the Continental Airlines, Inc. Supplemental Savings Plan for Management Pilots (the APlan@), which is filed as Exhibit 4.3 to this registration statement, and the Continental Airlines, Inc. Supplemental Savings Plan for Management Pilots Trust Agreement (the ATrust Agreement@), which is filed as Exhibit 4.4 to this registration statement. Such exhibits set forth a description of the Obligations and are incorporated herein by reference in their entirety in response to this Item 4, pursuant to Rule 411(b)(3) under the Securities Act of 1933.

No participant under the Plan shall have any preferred claim to, or any beneficial ownership interest in, any assets that are subject to the Trust established by the Trust Agreement (the A Trust@). All such assets are subject to the claims of the creditors of the participant=s employer until they are paid out of the Trust to the participant in accordance with the terms of the Plan. The Plan provides that the Obligations of the registrant=s subsidiaries are separate and will be administered by separate sub-trusts for each subsidiary.

#### **Item 5. Interests of Named Experts and Counsel.**

Not applicable.

#### **Item 6. Indemnification of Directors and Officers.**

Reference is made to Section 102(b)(7) of the Delaware General Corporation Law (the ADGCL@), which enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director=s fiduciary duty, except (i) for any breach of the director=s duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit. The Amended and Restated Certificate of Incorporation and By-laws of the Company contain provisions eliminating the liability of directors to the extent permitted by Section 102(b)(7) of the DGCL.

The Company is empowered by Section 145 of the DGCL, subject to the procedures and limitations stated therein, to indemnify any person against expenses (including attorneys= fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with any threatened, pending or completed action, suit or proceeding in which such person is made a party by reason of his or her being or having been a director, officer, employee or agent of the Company. The statute provides that indemnification pursuant to its provisions is not exclusive of other rights of indemnification to which a person may be entitled under any by-law, agreement, vote of stockholders or disinterested directors, or otherwise. Article V of the By-laws of the Company provides for mandatory indemnification of each of the Company=s directors and officers to the full extent permitted by the laws of the State of Delaware, as from time to time in effect. Indemnification of non-officer employees and agents of the Company may be provided if authorized by the Company's Chief Executive Officer and at least one of the President, Chief Financial Officer or General Counsel and to the extent permitted by the laws of the State of Delaware, from time to time in effect.

The Administrative Committee appointed by the President of the Company pursuant to the provisions of the Continental Airlines, Inc. 401(k) Savings Plan shall serve as the committee (the A Committee@) to administer the Plan. The officer members of the Committee and the Company shall be fully protected with respect to any action taken or suffered by their having relied in good faith upon certain parties, including the trustee of the Trust. No officer member of the Committee

shall incur any liability for anything done or omitted by him or her except only liability for his or her gross negligence, willful misconduct or other breach of fiduciary responsibility under the provisions of the Employee Retirement Income Security Act of 1974, as amended from time to time. Any non-officer employee member of the Committee would be eligible for indemnification as described above.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

4.1 Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 4.1(a) to the Company's Registration Statement on Form S-8 (No. 333-06993)).

4.2 By-laws of the Company (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2000).

\*4.3 Continental Airlines, Inc. Supplemental Savings Plan for Management Pilots.

\*4.4 Continental Airlines, Inc. Supplemental Savings Plan for Management Pilots Trust Agreement.

\*5.1 Opinion of Executive Vice President and General Counsel.

\*23.1 Consent of Ernst & Young LLP.

\*23.2 Consent of Executive Vice President and General Counsel (included in Exhibit 5.1)

\*24.1 Powers of Attorney (Gordon M. Bethune, Lawrence W. Kellner, Chris T. Kenny, Thomas J. Barrack, Jr., David Bonderman, Gregory D. Brenneman, Kirbyjon Caldwell, Patrick Foley, Douglas H. McCorkindale, George G.C. Parker, Richard W. Pogue, William S. Price III, Donald L. Sturm, Karen Hastie Williams, Charles A. Yamarone).

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\* Filed with this registration statement.

**Item 9. Undertakings.**

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the A1933 Act@);

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filings on Form S-8 and duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly

authorized, in the City of Houston, State of Texas, on November 29, 2000.

**CONTINENTAL AIRLINES, INC.**

By: /s/ JEFFERY A. SMISEK \_\_\_\_\_

Jeffery A. Smisek

Executive Vice President and

General Counsel

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated on November 29, 2000.

Signature Title

\*\_Chief Executive Officer

Gordon M. Bethune (Principal Executive Officer)

and Director

\*\_Executive Vice President and Chief

Lawrence W. Kellner Financial Officer (Principal

Financial Officer)

\*\_Staff Vice President and Controller

Chris T. Kenny (Principal Accounting Officer)

\*\_Director

Thomas J. Barrack, Jr.

\*\_Director

David Bonderman

\*\_Director

Gregory D. Brenneman

\*\_Director

Kirbyjon H. Caldwell

\*\_Director

Patrick Foley

\*\_Director

Douglas H. McCorkindale

\*\_Director

George G.C. Parker

\*\_Director

Richard W. Pogue

\*\_Director

William S. Price III

\*\_Director

Donald L. Sturm

\*\_Director

Karen Hastie Williams

\*\_Director

Charles A. Yamarone

\*By /s/ JEFFERY A. SMISEK

Jeffery A. Smisek

Attorney in-Fact

November 29, 2000

#### EXHIBIT INDEX

Exhibit No. Description

4.1	Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 4.1(a) to the Company's Registration Statement on Form S-8 (No. 333-06993)).
4.2	By-Laws of the Company (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2000).
*4.3	Continental Airlines, Inc. Supplemental Savings Plan for Management Pilots.
*4.4	Continental Airlines, Inc. Supplemental Savings Plan for Management Pilots Trust Agreement.
*5.1	Opinion of Executive Vice President and General Counsel.
*23.1	Consent of Ernst & Young LLP.
*23.2	Consent of Executive Vice President and General Counsel (included in Exhibit 5.1).
*24.1	Powers of Attorney (Gordon M. Bethune, Lawrence W. Kellner, Chris T. Kenny, Thomas J. Barrack, Jr., David Bonderman, Gregory D. Brenneman, Kirbyjon H. Caldwell, Patrick Foley, Douglas H. McCorkindale, George G.C. Parker, Richard W. Pogue, William S. Price, Donald L. Sturm, Karen Hastie Williams, Charles A. Yamarone).

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\*Filed with this registration statement.

***CONTINENTAL AIRLINES, INC.***

***SUPPLEMENTAL SAVINGS PLAN FOR MANAGEMENT PILOTS***

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**CONTINENTAL AIRLINES, INC.**

**SUPPLEMENTAL SAVINGS PLAN FOR MANAGEMENT PILOTS**

THIS AGREEMENT by Continental Airlines, Inc., a Delaware corporation (the "Sponsor"),

WITNESSETH:

WHEREAS, certain contributions that may be made for the benefit of pilots covered by the contract between the Sponsor and the Independent Association of Continental Pilots (the "Collective Bargaining Agreement") under the Continental Airlines, Inc. 401(k) Savings Plan (the "Savings Plan") may not be made for the benefit of pilots not covered under the Collective Bargaining Agreement;

WHEREAS, the Sponsor desires to establish a program to provide additional benefits for those pilots for whom such contributions may not be made under the Savings Plan because of their performance of service not covered by the Collective Bargaining Agreement; and

WHEREAS, it is intended that the amount otherwise payable to or on behalf of a pilot under this program, shall be increased to substantially offset the effect of federal and state taxes;

NOW, THEREFORE, the Sponsor hereby adopts the plan hereinafter set forth.

**ARTICLE 1**

**DEFINITIONS**

The terms defined in this Article shall have the meanings attributed to them unless the context obviously requires another meaning:

**1.1 Account.** "Account" shall mean any of the ledger accounts pertaining to a Participant that are maintained by the Committee to reflect the Participant's interest in the Plan. The Committee shall establish the Account specifically described in the Plan and any additional Accounts that the Committee considers to be necessary in order to reflect the entire interest of the Participant in the Plan. Each of the Accounts shall reflect any Unused Vacation Credits, Spillover Credits, and Investment Gain or Loss allocable to the Account.

**1.2 Adjusted Beginning Balance.** "Adjusted Beginning Balance" shall mean the balance of an Account as of the last Valuation Date preceding the current Valuation Period, reduced by the amount of any distributions allocable to that Account made during the current Valuation Period.

**1.3 Affiliated Employer.** "Affiliated Employer" shall mean the Employer and any other business organization required to be aggregated with the Employer under Sections 414(b), 414(c), 414(m), or 414(o) of the Code.

**1.4 Allocation Date.** "Allocation Date" shall mean the last day of each Plan Year.

**1.5 Allocation Period.** "Allocation Period" shall mean the period beginning on the day following an Allocation Date (or on the first day of the first Plan Year, in the case of the first Allocation Period) and ending on the immediately succeeding Allocation Date.

**1.6 Beneficiary.** "Beneficiary" shall mean a person other than a Participant entitled to receive any payment of benefits pursuant to the terms of this Plan.

**1.7 Board of Directors.** "Board of Directors" shall mean the board of directors of the Sponsor.

**1.8 Code.** "Code" shall mean the Internal Revenue Code of 1986, as amended.

**1.9 Collective Bargaining Agreement.** "Collective Bargaining Agreement" shall mean the collective bargaining agreement between the Sponsor and the Independent Association of Continental Pilots signed June 25, 1998 (or any predecessor or successor agreement).

**1.10 Committee.** "Committee" shall mean the committee appointed by the Sponsor to administer the Plan.

**1.11 Covered Service.** "Covered Service" shall mean employment as a Pilot that is not covered by the Collective Bargaining Agreement.

**1.12 Employer.** "Employer" shall mean the Sponsor and any other business organization that has adopted this Plan.

**1.13 ERISA.** "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

**1.14 Investment Gain or Loss.** "Investment Gain or Loss" shall mean the amount determined by applying the rate of return for the applicable Investments for the Valuation Period then ending to the Adjusted Beginning Balance of such Account.

**1.15 Investments.** "Investments" shall mean the investments made pursuant to Section 4.4 for purposes of determining Investment Gain or Loss.

**1.16 Participant.** "Participant" shall mean a person who qualifies as such under the provisions of Article 2.

**1.17 Pilot.** "Pilot" shall mean a regular, active full-time or part-time employee of the Employer who is listed on an Employer's pilot system seniority list.

**1.18 Plan.** "Plan" shall mean all aspects of the program known as Continental Airlines, Inc. Supplemental Savings Plan for Management Pilots, the purpose of which is to provide retirement, death, and other severance benefits to Participants and Beneficiaries. The Plan comprehends the Plan Document under which it is maintained; and the rights, powers, duties, and obligations of the Employers, the Participants, the Beneficiaries, and all other interested parties.

**1.19 Plan Document.** "Plan Document" shall mean this agreement, as amended from time to time.

**1.20 Plan Year.** "Plan Year" shall mean the 12-consecutive-month annual accounting period of the Plan, which shall end on December 31 of each calendar year.

**1.21 Qualified Domestic Relations Order.** "Qualified Domestic Relations Order" shall mean any order determined by the Committee to be a qualified domestic relations order within the meaning of Section 414(p) of the Code.

**1.22 Savings Plan.** "Savings Plan" shall mean the Continental Airlines, Inc. 401(k) Savings Plan, as amended from time to time, or any replacement or successor plan adopted by the Sponsor. Any reference to a specific provision of the Savings Plan shall be deemed to include a reference to the corresponding provision of any amended, replacement, or successor plan.

**1.23 Separation.** "Separation" shall mean an individual's termination of employment with an Affiliated Employer without commencing or continuing employment with any other Affiliated Employer.

**1.24 Spillover Account.** "Spillover Account" shall mean the ledger account maintained by the Committee for each Participant that reflects any portion of the Spillover Credits allocated to the Participant and any Investment Gain or Loss attributable to such credits.

**1.25 Spillover Credit.** "Spillover Credit" shall mean the credit made pursuant to the provisions of Section 3.2, if any.

**1.26 Sponsor.** "Sponsor" shall mean Continental Airlines, Inc., a Delaware corporation, or any other business organization that assumes the primary responsibility for maintaining this Plan with the consent of the last preceding Sponsor.

**1.27 Tax Equalization Amount.** "Tax Equalization Amount" shall mean the gross up amount, calculated as follows: the amount which, when added to the amount determined under clause (a) of Section 4.1, results in the net amount available to the Participant or Beneficiary, after provision for federal and state income and employment taxes in the manner specified below in this Section, equalling the amount determined under clause (a) of Section 4.1. Computation of the Tax Equalization Amount shall be based on the actual amount of federal and state employment taxes payable by the Participant or Beneficiary with respect to the payment under the Plan, the maximum personal federal income tax rate (regardless of the Participant's or Beneficiary's actual personal federal income tax rate), the applicable state income tax, and an amount to offset the taxes on the gross up amount.

**1.28 Unused Vacation Account.** "Unused Vacation Account" shall mean the ledger account maintained by the Committee for each Participant that reflects any portion of the Unused Vacation Credits allocated to the Participant and any Investment Gain or Loss attributable to such credits.

**1.29 Unused Vacation Credit.** "Unused Vacation Credit" shall mean the credit made pursuant to the provisions of Section 3.1, if any.

**1.30 Valuation Date.** "Valuation Date" shall mean the last day of each Plan Year and any other day or days selected by the Committee on which the Plan (or any portion thereof) is to be valued. One or more investment funds may have different Valuation Dates from other investment funds. Valuation Dates must be announced to all Participants.

**1.31 Valuation Period.** "Valuation Period" shall mean the period beginning on the day following a Valuation Date (or on the first day of the first Plan Year, in the case of the first Valuation Period) and ending on the immediately succeeding Valuation Date.

## ARTICLE 2

### PARTICIPATION

**2.1 Commencement of Participation.** A Pilot shall become a Participant on the later of (i) the effective date of the adoption of the Plan by the Pilot's Employer, or (ii) the date on which the Pilot first performs an hour of Covered Service.

**2.2 Cessation of Participation.** A Pilot who has become a Participant shall cease to be a Participant on the first date on which no portion of his or her interest in the Plan remains to be distributed.

**2.3 Recommencement of Participation by Former Participants.** A former Participant shall again become a Participant on the date, if any, on which such individual again performs an hour of Covered Service.

## ARTICLE 3

### CREDITS AND ALLOCATIONS

**3.1 Unused Vacation Credits.** The Employer shall, for each Plan Year, make an Unused Vacation Credit on behalf of each Participant in an amount equal to the product of (i) the Participant's number of forfeited monthly bid vacation days for the calendar year (beginning with the 1999 calendar year) ending with or within such Plan Year, multiplied by (ii) three hours and forty eight minutes (3:48), multiplied by (iii) the Participant's hourly rate of pay as of the last day of such calendar year. Unused Vacation Credits shall be determined and credited as soon as possible after the end of the Plan Year, and in any event not later than the following March 15.

**3.2 Spillover Credits.** The Employer shall, for each Plan Year, make a Spillover Credit on behalf of each Participant in an amount equal to (i) the amount a Participant elected to contribute to the Savings Plan, which amount could have been contributed by the Participant under the terms of the Collective Bargaining Agreement, but which could not be contributed by the Participant due to Code provisions or Plan provisions which would not have applied had the Participant worked under the Collective Bargaining Agreement for the entire year and (ii) the amount of additional matching contributions to which the Participant would have been entitled under the Savings Plan had the Participant worked under the Collective Bargaining Agreement for the entire year. Spillover Credits shall be determined and credited as soon as possible after the end of the Plan Year.

**3.3 Information Statements from Employer.** As soon as practical after each Allocation Date, the Employer shall provide the Committee with a schedule setting forth the names of its Participants, the amount of its Unused Vacation Credit for each Participant, and the amount of its Spillover Credit for each Participant for the Allocation Period then ended. Such schedule shall be conclusive evidence of such facts.

**3.4 Allocation of Unused Vacation Credit.** The Committee shall separately allocate the Unused Vacation Credit for each Plan Year among the Employer's Participants by allocating to each such Participant an amount equal to the Unused Vacation Credit made on his behalf. Each Participant's share shall be credited to his Unused Vacation Account.

**3.5 Allocation of Spillover Credit.** The Committee shall separately allocate the Spillover Credit for each Plan Year among the Employer's Participants by allocating to each such Participant an amount equal to the Spillover Credit made on his behalf. Each Participant's share shall be credited to his Spillover Account.

**3.6 Participant Selection of Investments.** Each Participant shall specify the Investments for determining Investment Gain or Loss on his Accounts. The Investment options shall be such investments as may be designated by the Committee in its discretion from time to time. The Committee shall invest funds in such investments for purposes of determining the Investment Gain or Loss on such Investments. No Participant shall have any claim or right to any funds or property held in any investment account established by the Committee for this purpose.

**3.7 Allocation of Investment Gain or Loss.** The Committee shall determine the rate of return on the Investments of each Participant's Account as of each Valuation Date. The rate of return may be adjusted to reflect brokerage and other fees that would be charged on the Investments if they were actually purchased through the applicable investment account. The Committee shall then allocate the Investment Gain or Loss for the Valuation Period then ended to each Account based on the rate of return thus determined.

**3.8 Effective Date of Allocations and Adjustments.** The Committee shall credit to each Participant's Unused Vacation Account such Participant's portion of the Unused Vacation Credit and shall credit to each Participant's Spillover Account such Participant's

portion of the Spillover Credit so that all such Unused Vacation Credits and Spillover Credits shall become effective and be entered in each Participant's Unused Vacation Account as of the last day of the Plan Year to which they are attributable. The Committee shall credit to each Participant's Accounts such Participant's portion of the adjustments and allocations required by Section 3.7, so that all such allocations shall become effective and be entered in such Participant's Account as of the Valuation Date with respect to which they are attributable.

**3.9 No Vesting Unless Otherwise Prescribed.** No allocations, adjustments, credits, or transfers shall ever vest in any Participant any right, title, or interest in the Plan except at the times and upon the terms and conditions herein set forth.

## ARTICLE 4

### BENEFITS AND EVENTS ENTITLING PARTICIPANTS

#### TO DISTRIBUTION OF BENEFITS

**4.1 Benefit Amount.** The benefit payable to a Participant or Beneficiary who becomes entitled to receive a benefit under Section 4.2 shall be an amount equal to:

- (a) the total amount credited to the Participant's Accounts; plus
- (b) the Tax Equalization Amount.

**4.2 Time for Payment of Benefits.** A Participant or Beneficiary shall be entitled to receive payment of the Participant's benefit under this Plan at such time as the related benefit is paid or commenced under the Savings Plan, or if later, as soon as practicable after the Participant's Separation.

**4.3 Form of Payment of Benefits.** Benefits under the Plan shall be payable in a single sum payment.

**4.4 Receipt of Domestic Relations Order.** The receipt of a judicial decree or order shall constitute an event permitting distribution under the Plan, provided that such judicial decree or order constitutes a Qualified Domestic Relations Order, or would constitute a Qualified Domestic Relations Order if the requirement that such an order not require a plan to make distribution to an alternate payee prior to a Participant's earliest retirement age, as defined in Section 414(p)(4)(B) of the Code, were disregarded. Payment shall be made in accordance with the provisions of any such order.

**4.5 Distributions to Disabled.** If the Committee determines that any person to whom a payment is due is unable to care for his or her affairs because of physical or mental disability, it shall have the authority to cause the payments to be made to the spouse, brother, sister, or other person the Committee determines to have incurred, or to be expected to incur, expenses for that person unless a prior claim is made by a qualified guardian or other legal representative. The Committee shall not be responsible to oversee the application of those payments. Payments made pursuant to this power shall be a complete discharge of all liability under the Plan. Any amount payable to a minor under any provision of this Plan including the foregoing provisions of this Section may be paid directly to the minor. The receipt by the minor shall be a complete discharge of all liability under the Plan.

**4.6 Designation of Beneficiary.** Unless otherwise specified by the Participant, the Beneficiary under this Plan is the same as the Participant's Beneficiary under the Savings Plan. Each Participant has the right to designate and to revoke the designation of his or her Beneficiary to the extent, and only to the extent, that the Participant has the right to designate and to revoke the designation of his or her Beneficiary under the Savings Plan. Each designation or revocation must be evidenced by a written document in the form required by the Committee, signed by the Participant, including the signed and notarized consent of the Participant's spouse if required under the Savings Plan, and filed with the Committee. If no designation is on file at the time of a Participant's death or if the Committee determines that the designation is ineffective, the designated Beneficiary shall be the person or entity that would be the designated Beneficiary under such circumstances under the Savings Plan.

**4.7 Disqualification of Beneficiary.** Notwithstanding any other provision of the Plan, no benefit of any type that becomes payable upon the death of a Participant shall be payable to any person who, under the statutory or common law of the state of Texas or the state of the Participant's residence or domicile at the time of his or her death, is ineligible to receive pension, insurance, or other benefits attributable to the Participant because of such person's involvement in the death of the Participant. Any such person shall be deemed to have predeceased the Participant.

**4.8 No Duplication of Benefits.** There shall be no duplication of benefits under this Plan.

**4.9 Missing Distributees.** The Committee shall make reasonable efforts to locate any person entitled to a distribution. Such efforts shall include utilization of the services of the Social Security Administration and the Internal Revenue Service to attempt to ascertain the current mailing address of any such person or for the purpose of forwarding correspondence from the Plan to any such person. If the efforts to locate a person entitled to a distribution are unsuccessful, the Committee may instruct the Employer to distribute such benefits into an interest-bearing federally-insured bank account opened in such person's name or to purchase an annuity for such person. Such person shall have an unconditional right to withdraw funds from any such bank account. All ordinary and reasonable expenses incurred in connection with attempting to locate a person entitled to benefits under the Plan and in

establishing an account or purchasing an annuity for a person who cannot be located shall be deducted from the benefit payable to such person.

If a person entitled to a distribution cannot be located within one year of the date any benefits payable under the Plan should be paid or commence to be paid, the Participant's or Beneficiary's interest in the Plan may be forfeited. Notwithstanding the preceding sentence, if at any time prior to termination of the Plan, the Participant or Beneficiary files a valid claim for the forfeited benefits payable under the Plan, then (a) as soon as administratively practicable, the forfeited benefits payable to such former Participant or Beneficiary shall be reinstated effective as of the date of receipt of the claim and (b) as soon as administratively practicable following the reinstatement of such forfeited benefits, the value of the reinstated benefits shall be paid pursuant to the provisions of this Article to the Participant or Beneficiary.

In the event of the termination of the Plan, amounts payable to persons who cannot be located that have not previously been forfeited shall be forfeited.

**4.10 Claims Procedure.** Submission of a claim for benefits by the Participant or Beneficiary shall be made at the time and in the manner that a claim for benefits under the Savings Plan is made. In the event a claim for benefits under the Plan is denied, the appeal procedures applicable under the Savings Plan shall apply under the Plan.

## ARTICLE 5

### COMMITTEE

**5.1 Members of Committee.** The Administrative Committee appointed under the provisions of the Savings Plan shall serve as the Committee for the Plan.

**5.2 Powers.** The Committee shall have exclusive responsibility for the administration of the Plan, according to the terms and provisions thereof, and shall have all powers necessary to accomplish such purposes, including, but not by way of limitation, the right, power, and authority:

- (i) To make rules and regulations for the administration of the Plan which are not inconsistent with the terms and provisions thereof, provided such rules and regulations are evidenced in writing;
- (ii) To construe all terms, provisions, conditions, and limitations of the Plan; and its construction thereof made in good faith and without discrimination in favor of or against any Participant or Beneficiary shall be final and conclusive on all persons;
- (iii) To correct any defect, supply any omission, or reconcile any inconsistency which may appear in the Plan in such manner and to such extent as it shall deem expedient to carry out the intent of the Sponsor in establishing and maintaining the Plan, and its judgment in such matters shall be final and conclusive as to all persons;
- (iv) To select, employ, and compensate from time to time such consultants, actuaries, accountants, attorneys, and other agents and employees as the Committee may deem necessary or advisable for the proper and efficient administration of the Plan, and any agent, firm, or employee so selected by the Committee may be a disqualified person, but only if the requirements of Section 4975(d) of the Code have been met;
- (v) To resolve all questions relating to the eligibility of employees to become Participants, and to determine the Participant's or Beneficiary's benefits under the Plan;
- (vi) To resolve all controversies relating to the administration of the Plan, including but not limited to (a) differences of opinion arising between the Employer and a Participant or Beneficiary, and (b) any questions it deems advisable to determine in order to promote the uniform and nondiscriminatory administration of the Plan;
- (vii) To direct and instruct the Employer in all matters relating to the payment of Plan benefits and to determine a Participant's or Beneficiary's entitlement to a benefit should he or she appeal a denial of his or her claim for a benefit or any portion thereof;
- (viii) To delegate such of its clerical and recordation duties under the Plan as it may deem necessary or advisable for the proper and efficient administration of the Plan; and
- (ix) To exercise with respect to the Plan all rights, powers, and authorities it may exercise with respect to the Savings Plan.

**5.3 Disqualification of Committee Members.** A member of the Committee who is also a Participant in the Plan shall not vote or act upon any matter relating solely to himself, unless he or she is the sole member of the Committee.

**5.4 Disclosure.** The Committee shall make available to each Participant and Beneficiary for his or her examination such records, documents, and other data as are required under ERISA, but only at reasonable times during business hours. No Participant or

Beneficiary shall have the right to examine any data or records reflecting the compensation paid to any other Participant or Beneficiary, and the Committee shall be required to make no data or records available other than those required by ERISA.

**5.5 Standard of Performance.** The Committee and each of its members shall act in good faith when carrying out their responsibilities hereunder .

**5.6 Liability of Committee.** No member of the Committee shall be liable for any act or omission of any other member of the Committee, any Participant or Beneficiary, or other agent appointed by the Committee. No member of the Committee shall be liable for any act or omission on his or her own part, unless such act or omission is the result of the Committee member's gross negligence or willful misconduct. In this connection, each provision hereof is severable and if any provision is found to be void as against public policy, it shall not affect the validity of any other provision hereof.

**5.7 Indemnification of Committee Members.** The Sponsor shall indemnify each member of the Committee and his or her heirs, successors, and assigns with respect to matters involving the Plan to the same extent that the Sponsor indemnifies members of the Committee with respect to matters involving the Savings Plan.

**5.8 Bonding.** No member of the Committee shall be required to give bond for the performance of his or her duties hereunder unless required by a law which cannot be waived.

**5.9 Compensation.** The Committee shall serve without compensation for their services, but shall be reimbursed by the Employers for all expenses properly and actually incurred in the performance of their duties under the Plan.

**5.10 Persons Serving in Dual Fiduciary Roles.** Any person, group of persons, corporations, firm, or other entity may serve in more than one fiduciary capacity with respect to the Plan.

**5.11 Administrator.** For all purposes of ERISA, the Administrator of the Plan shall be the Committee. The Administrator of the Plan shall have final responsibility for compliance with all reporting and disclosure requirements imposed with respect to the Plan under any federal or state law, or any regulations promulgated thereunder.

**5.12 Standard of Judicial Review of Committee Actions.** The Committee has full and absolute discretion in the exercise of each and every aspect of its authority under the Plan, including without limitation, the authority to determine any person's right to benefits under the Plan, the correct amount and form of any such benefits, the authority to decide any appeal, the authority to review and correct the actions of any prior administrative committee, and all of the rights, powers, and authorities specified under the Plan. Notwithstanding any provision of law or any explicit or implicit provision of the Plan, any action taken, or ruling or decision made, by the Committee in the exercise of any of its powers and authorities under the Plan shall be final and conclusive as to all persons other than the Sponsor, including without limitation all Participants and Beneficiaries, regardless of whether the Committee or one or more members thereof may have an actual or potential conflict of interest with respect to the subject matter of such action, ruling, or decision. No such final action, ruling, or decision of the Committee shall be subject to de novo review in any judicial proceeding; and no such final action, ruling, or decision of the Committee may be set aside unless it is held to have been arbitrary and capricious by a final judgment of a court having jurisdiction with respect to the issue.

## ARTICLE 6

### ADOPTION OF PLAN BY OTHER EMPLOYERS

**6.1 Adoption Procedure.** Any business organization may, with the approval of the Sponsor, adopt this Plan by:

- (i) executing an authorized adoption instrument agreeing to be bound as an Employer by all the terms, conditions, and limitations of this Plan except those, if any, specifically described in the adoption instrument; and
- (ii) providing all information required by the Committee.

An adoption may be retroactive to the beginning of a Plan Year if these conditions are complied with on or before the last day of that Plan Year. Approval of the Sponsor shall be evidenced in the same manner as the Sponsor's consent to the adoption of the Savings Plan by another business organization.

**6.2 No Joint Venture Implied.** The document which evidences the adoption of the Plan by an Employer shall become a part of this Plan. However, neither the adoption of this Plan by an Employer nor any act performed by it in relation to this Plan shall ever create a joint venture or partnership relation between it and any other Employer.

## ARTICLE 7

### AMENDMENT AND TERMINATION

**7.1 Sponsor's Right to Amend.** The Sponsor shall have the right to amend, amend and restate, or merge the Plan at any time, effective retroactively or otherwise, by a written resolution of the Board of Directors, of the Executive Committee of the Board of

Directors, or of the Human Resources Committee of the Board of Directors.

**7.2 *Retroactive Amendments to Meet Labor or Tax Requirements.*** It is the intention of the Sponsor that distributions under the Plan be deductible under the applicable provisions of the Code; that the Plan meet all requirements of ERISA. The Sponsor shall make such amendments to the Plan as may be necessary to carry out this intention. All such amendments may be made retroactively as limited by the applicable federal law.

**7.3 *Sponsor's Right to Terminate.*** The Sponsor may terminate the Plan at any time by an instrument in writing signed by an authorized officer of the Sponsor delivered to the Committee. An officer of the Sponsor may be authorized for such purpose by a written resolution of the Board of Directors, of the Executive Committee of the Board of Directors, or of the Human Resources Committee of the Board of Directors.

**7.4 *Limitation on Sponsor's Right to Amend or Terminate.*** Notwithstanding any provision of the Plan other than those set forth in this Section, neither the amendment nor termination of the Plan shall reduce the benefit otherwise payable to a Participant or Beneficiary to an amount less than

(a) the total amount credited to the Participant's Accounts as of the later of the date on which the amendment or termination is adopted or the date on which the amendment or termination is effective; plus

(b) the Tax Equalization Amount.

Notwithstanding the preceding provisions of this Section, at any time after the termination of the Plan, an amount that is the actuarially equivalent to the benefit calculated under the foregoing provisions of this Section as of a final distribution date specified by the Committee shall be paid to all Participants and Beneficiaries. In such event, no additional benefits shall be payable to any Participant or Beneficiary hereunder.

## ARTICLE 8

### MISCELLANEOUS

**8.1 *Establishment of Trust Fund not Required.*** No property is required to be set aside nor is a trust fund of any kind required to be established to secure the rights of any Participant or Beneficiary hereunder. All benefits payable hereunder at any time shall be solely a charge upon the Participant's Employer and all Participants and Beneficiaries shall at all times rely solely upon the general credit of their respective Employers for the payment of any benefit which becomes payable hereunder.

**8.2 *Plan Does Not Constitute an Employment Contract.*** The adoption and maintenance of the Plan shall not be deemed to be a contract between any Employer and any Participant. Nothing contained herein shall be deemed to give any Participant the right to be retained in the employment of the Employer or to interfere with the rights of the Employer to discharge any Participant at any time, nor shall it interfere with the Participant's right to terminate his or her employment at any time.

**8.3 *Spendthrift Clause.*** Except as otherwise specifically provided, no principal or income payable or to become payable under the Plan shall be subject to anticipation or assignment by any Participant or by any Beneficiary or be subject to attachment by, or to the interference or control of, any creditor of a Participant or Beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of a Participant or Beneficiary prior to its actual receipt by such Participant or Beneficiary. The interests of the Employer in any assets, earnings and profits related to the Plan shall not be subject to garnishment, attachment, levy, or execution of any kind for debts or defaults of any person, natural or legal, having an interest in the Plan. Any attempted conveyance, transfer, assignment, mortgage, pledge, or encumbrance of an interest in the Plan by a Participant or Beneficiary, prior to distribution as herein provided, shall be absolutely and wholly void, regardless of when such conveyance, transfer, assignment, mortgage, pledge or encumbrance is intended to take place or become effective. The Employer shall never under any circumstances be required to recognize any conveyance, transfer, assignment, mortgage, or pledge by a Participant or Beneficiary hereunder, of any interest in the Plan, and the Employer shall never be required to pay any money or thing of value thereon or therefor to any creditor of a Participant or Beneficiary, nor upon any debt created by a Participant or Beneficiary for any cause whatsoever. This Section shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless (i) such order is determined to be a Qualified Domestic Relations Order, (ii) such order would constitute a Qualified Domestic Relations Order if the requirement that such an order not require a plan to make distribution to an alternate payee prior to a Participant's earliest retirement age, as defined in Section 414(p)(4)(B) of the Code, were disregarded, or (iii) such order was entered before January 1, 1985, and the Committee determines that sufficient uncontroverted information is available to permit such order to be treated in the same manner as a Qualified Domestic Relations Order.

**8.4 *Form of Elections.*** Except as otherwise specifically provided in the Plan, in order to be effective, any election by a Participant or Beneficiary that is required or permitted under the Plan shall be in writing on a form provided or approved by the Committee, signed by the person entitled to make the election, and filed with the Committee. Any election and any permitted revocation of such an election shall be irrevocable except to the extent specifically provided otherwise in the applicable provision of the Plan.

**8.5 *Governing Laws; Parties to Legal Actions.*** The provisions of the Plan shall be construed, administered and enforced according to the laws of the United States and, to the extent not preempted, the state of Texas. The Sponsor may at any time initiate

any legal action or proceeding for the determination of any questions, including questions of construction which may arise, or for instruction, and the only necessary party to such action or proceeding shall be the Sponsor, except that any other person or persons may be included as parties defendant at the election of the Sponsor.

**8.6 Plan Document Controlling.** In the event that there is a discrepancy between the terms of this document and the terms of any policy or contract issued under the Plan, the provisions of this document shall control.

**8.7 Severability of Clauses.** Each provision of the Plan Document is severable and if any provision is found to be unenforceable for any reason, it shall not affect the validity of any other provision.

**8.8 Cross References.** All Section references are to Sections of this document, unless otherwise specified.

IN WITNESS WHEREOF, the Sponsor has executed this Agreement this day of , 19\_, to be effective as of January 1, 1999, except as otherwise specified or as otherwise required to comply with applicable provisions of the Code, any statute amending the Code, or any other applicable statute, regulation, or ruling.

**CONTINENTAL AIRLINES, INC.**

By

ATTEST:

Title:

Title:

THE STATE OF TEXAS '

COUNTY OF HARRIS '

This instrument was acknowledged before me on , 19\_, by , of Continental Airlines, Inc., a Delaware corporation, on behalf of said corporation.

Notary Public in and for  
the State of Texas

**CONTINENTAL AIRLINES, INC.  
SUPPLEMENTAL SAVINGS PLAN  
FOR MANAGEMENT PILOTS  
TRUST AGREEMENT**

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**CONTINENTAL AIRLINES, INC.**

**SUPPLEMENTAL SAVINGS PLAN FOR MANAGEMENT PILOTS**

**TRUST AGREEMENT**

**THIS AGREEMENT AND DECLARATION OF TRUST**, made this day of January, 2000, by and between (i) **CONTINENTAL AIRLINES, INC.** (hereinafter referred to as the "Company") and (ii) **WILMINGTON TRUST COMPANY** (hereinafter referred to as the "Trustee").

**WHEREAS**, the Company has established the **CONTINENTAL AIRLINES, INC. SUPPLEMENTAL SAVINGS PLAN FOR MANAGEMENT PILOTS** (hereinafter referred to as the "Plan") for the benefit of certain individuals who are eligible for benefits under the terms of the Plan (such individuals being referred to herein as the "Members"), which Plan provides for the payment of certain deferred compensation benefits (the "Benefits") to the Members and the beneficiaries of the respective Members who may become entitled to any payments under the terms of the Plan in the event of the Member's death ("Beneficiaries"); and

**WHEREAS**, the Plan contemplates that the Company will pay the entire cost of the Benefits from its general assets; and

**WHEREAS**, the Company desires to adopt the **CONTINENTAL AIRLINES, INC. SUPPLEMENTAL SAVINGS PLAN FOR MANAGEMENT PILOTS TRUST AGREEMENT** (the "Trust Agreement") establishing a trust (the "Trust") to aid the Company in meeting its obligations under the Plan; and

**WHEREAS**, the Trust is intended to be a "grantor trust" and a "rabbi trust" with the corpus and income of the Trust treated as assets and income of the Company for federal income tax purposes; and

**WHEREAS**, the Company intends that the assets of the Trust shall at all times be subject to the claims of general creditors of the Company as provided in Article X; and

**WHEREAS**, the Company intends that the existence of the Trust shall not alter the characterization of the Plan as "unfunded" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and shall not be construed to provide income to any Member prior to actual payment of Benefits under the Plan; and

**WHEREAS**, other adopting entities may adopt the Plan in the future, and the Company desires to permit such entities to adopt separate subtrusts hereunder that are substantially similar to the Trust; and

**WHEREAS**, under the Trust, the Trustee covenants that it will hold all property which it may receive hereunder, **IN TRUST**, for the uses and purposes and upon the terms and conditions hereinafter stated;

**NOW, THEREFORE**, the parties hereto establish the Trust, effective January 3, 2000, and agree, as follows:

## **ARTICLE I**

### **General Trust Provisions**

**1.1 Establishment of Trust.** The Company hereby adopts this Trust Agreement. The Trust shall consist of such sums of money and other property acceptable to the Trustee as from time to time shall be paid or delivered to the Trustee by the Company. All such money and other property, all investments and reinvestments made therewith or proceeds thereof and all earnings and profits thereon, less all payments and charges as authorized herein, shall constitute the "Trust Fund." The Trust Fund shall at all times be subject to the claims of general creditors of the Company as provided in Article X. No Member or Beneficiary shall have any

preferred claim to, or any beneficial ownership interest in, any assets of the Trust Fund prior to the time such assets are paid to such Member or Beneficiary as Benefits.

**1.2 Separate Sub-Trusts.** Contrary provisions of the Trust notwithstanding, except as provided in Article XI, the provisions of the Trust shall apply separately and equally to the Company and to each adopting entity that has entered into this Trust Agreement pursuant to Article XI. The Company and each such adopting entity shall bear the cost of providing Benefits for its own Members and their Beneficiaries, and the portion of the Trust Fund attributable to the contributions of the Company and each such adopting entity shall be available to provide benefits only to the Company's or such adopting entity's (as applicable) Members and their Beneficiaries or to satisfy claims of the Company's or such adopting entity's (as applicable) Bankruptcy Creditors in the event the Company or such adopting entity (as applicable) become Insolvent (as such terms are defined in Section 10.1).

**1.3 Trust Irrevocable.** The Trust shall be irrevocable and shall be held for the exclusive purpose of providing benefits under the Plan to Members and their Beneficiaries and defraying expenses of the Trust in accordance with the provisions of this Trust Agreement. Except as provided in Sections 3.6(c) and 3.6(d) and Articles IX and X hereof, no part of the income or corpus of the Trust Fund shall be recoverable by or for the Company.

**1.4 Non-Alienation.** No right or interest to receive benefits from the Trust may be assigned, sold, anticipated, alienated or otherwise transferred by any Member or Beneficiary.

**1.5 Acceptance by Trustee.** The Trustee accepts the Trust established under this Trust Agreement on the terms and subject to the provisions set forth herein, and it agrees to discharge and perform fully and faithfully all of the duties and obligations imposed upon it under this Trust Agreement.

## ARTICLE II

### General Duties of the Parties

#### 2.1 General Duties of the Company.

(a) The Company has provided or will provide the Trustee with a copy of the Plan and shall provide the Trustee with a copy of any amendment to the Plan promptly upon its adoption. The Plan, as of the date of execution of this Trust Agreement, is hereby incorporated by reference into and shall form a part of this Trust Agreement as fully as if set forth herein verbatim. Any amendment to the Plan shall also be incorporated by reference into and form a part of this Trust Agreement, effective as of the effective date of such amendment. As soon as administratively practicable after March 15, 2000, the Company shall prepare and deliver to the Trustee a list (the "Membership List," as amended from time to time as provided herein) setting forth as of such date (1) the name and mailing address of each Member entitled to receive Benefits and (2) the Beneficiaries, if any, designated by each Member. The Company shall be responsible for notifying the Trustee of any changes in the information set forth on the Membership List, including, but not limited to, the addition of new Members and a change in the mailing address of a Member.

(b) Beginning in the year 2001, the Company shall prepare and deliver to the Trustee by April 30 of each year a completely updated Membership List as of the preceding March 15. The Company shall keep accurate books and records with respect to the eligibility of individuals to participate in the Plan and the Benefits payable under the Plan. It is intended that Benefits payable to Members shall be determined under the provisions of the Plan and shall be calculated under the provisions of the Plan as of the date of payment.

(c) As soon as administratively practicable after each date upon which an amount is credited to a Member's account under the Plan pursuant to Section 3.1 of the Plan, the Company shall contribute an equivalent amount to the Trust.

**2.2 General Duties of Trustee.** The Trustee shall manage, invest and reinvest the Trust Fund pursuant to the provisions of Article III. The Trustee shall collect the income on the Trust Fund, and make distributions therefrom, all as hereinafter provided.

## ARTICLE III

### Investment, Administration and Disbursement of Trust Fund

**3.1 Investment of Trust Fund.** The following provisions shall apply with respect to the investment of the Trust Funds:

(a) The Trustee shall invest and reinvest the assets of the Trust Fund in accordance with the written directions received from time to time by the Trustee from the administrative committee charged with the general administration of the Plan (the "Committee"); and

(b) Unless directed otherwise by the Committee, the Trustee is specifically authorized and directed to invest idle, or otherwise uninvested, cash in either the U.S. Government Portfolio of the Wilmington Funds or the Prime Money Market Portfolio of the Wilmington Funds. The Company and the Committee acknowledge that the Wilmington Funds mutual funds are entities separate from Rodney Square Management Corporation and Wilmington Trust Company; shares in these mutual funds are not obligations of Wilmington Trust Company, are not deposits and are not insured by the Federal Deposit Insurance Corporation (the "FDIC"); Wilmington Trust Company, or its subsidiary, is compensated by these mutual funds for services rendered in its capacity as investment advisor or other service provider; and such

compensation is both described in the prospectus for such Portfolios, and is in addition to the compensation paid to Wilmington Trust Company in its capacity as Trustee hereunder.

**3.2 Valuation of Trust Fund.** As soon as practicable after the last day of each calendar year and as of such other dates as may be specified by the Company or the Committee, the Trustee shall report to the Company and the Committee the assets held in the Trust Fund as of such day and shall include in such report the fair market value as of such day of each such asset. In reporting such fair market values, the Trustee shall use such market quotations and other information as are available to it and may in its discretion be appropriate. The report of any such valuation shall not constitute a representation by the Trustee that the amounts reported as fair market values would actually be realized upon the liquidation of the Trust Fund. Specifically, but without limitation, the Trustee is authorized to rely on, and shall be fully protected in relying on, valuations, including net cash surrender valuations, received from the issuer of any contract or policy of any kind, including any annuity contract, issued by an insurance company, whether or not providing for the allocation of amounts received by the insurance company to its general account or to one or more separate accounts, or a combination thereof, and whether or not any such allocation may be made in the discretion of the insurance company (an "Insurance Contract"). With respect to assets without readily ascertainable market values, the Trustee may rely for all purposes of this Trust Agreement on the latest valuation and transaction information submitted to it by the person responsible for the investment. The Committee shall cause such person to provide the Trustee with all information needed by the Trustee to discharge its obligations to value such assets and to account under this Trust Agreement. The Trustee shall not be accountable to the Company or to any other person on the basis of any such valuation, but its accountability shall be in accordance with the provisions of Article IV hereof.

**3.3 Additional Investment Powers of Trustee.** Subject to the provisions of Sections 3.1, 3.6 and 9.2 hereof, the Trustee shall have, with respect to the Trust Fund, the power in its discretion:

- (a) To retain any property at any time received by it;
- (b) To sell, exchange, convey, transfer or dispose of, and to grant options for the purchase or exchange with respect to, any property at any time held by it;
- (c) To register and carry any securities or any other property in the name of the Trustee, or in the name of the nominee of the Trustee (or to hold any such property unregistered) without increasing or decreasing the fiduciary liability of the Trustee, and to exercise any option, right or privilege to convert any convertible securities, including shares or fractional shares of the Trustee so long as the conversion privilege is offered pro rata to all shareholders;
- (d) To cause any securities to be held in book-entry or in bearer form; and
- (e) To hold property for investment that may be unproductive of income.

**3.4 Administrative Powers of Trustee.** The Trustee shall have the power in its discretion:

- (a) Subject to the direction of the Committee, to exercise all voting and other rights with respect to the shares of stock held in the Trust Fund and to grant proxies, discretionary or otherwise;
- (b) To cause any shares of stock to be registered and held in the name of one or more of its nominees, or one or more nominees of any system for the central handling of securities, without increase or decrease of liability;
- (c) To collect and receive any and all money and other property due to the Trust Fund and to give full discharge therefor;
- (d) Subject to the provisions of Section 3.6 hereof and the direction of the Committee: to settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trustee; to commence or defend suits or legal proceedings to protect any interest of the Trust; and to represent the Trust in all suits or legal proceedings in any court or before any other body or tribunal;
- (e) To organize under the laws of any state a corporation or limited liability company for the purpose of acquiring and holding title to any property which it is authorized to acquire under this Trust Agreement and to exercise with respect thereto any or all of the powers set forth in this Trust Agreement;
- (f) To determine how all receipts and disbursements shall be credited, charged or apportioned as between income and principal;
- (g) Subject to the direction of the Committee, to determine the time of Benefit payments in accordance with Section 3.6;
- (h) Subject to the direction of the Committee (except as otherwise provided herein), to employ and compensate such attorneys, counsel, brokers or other agents or employees and to delegate to them such of the duties, rights and powers of the Trustee as may be deemed advisable in handling and administering the Trust; and
- (i) Generally to do all acts, whether or not expressly authorized, which the Trustee may deem necessary or desirable for the protection of the Trust Fund.

**3.5 Dealings with Trustee.** Persons dealing with the Trustee shall be under no obligation to see to the proper application of any money paid or property delivered to the Trustee or to inquire into the Trustee's authority as to any transaction.

### **3.6 Distributions from Trust Fund.**

(a) Except as set forth in Section 3.6(c), Section 3.6(d), Section 9.2 and Article X hereof, distributions from the Trust Fund (including, without limitation, the tax equalization gross-up payments required under the Plan) shall be made by the Trustee to the Members and Beneficiaries at the times and in the amounts directed by the Committee in accordance with the provisions of the Plan and, to the maximum extent permitted by applicable law, the Trustee shall be fully protected in so doing. Any amounts so paid (including, without limitation, the tax equalization gross-up payments required under the Plan) shall be reduced by the amount of any federal, state, or local income or other taxes that may be required by law to be withheld or paid by the Trustee or the Company. To the extent required by applicable law, the Trustee shall withhold, pay, and report such amounts to the appropriate governmental authorities. To the extent the withholding and reporting obligations belong to the Company and not to the Trustee, the Trustee shall pay to the Company the appropriate withholding amount. The Company, the Committee, the Members, and the Beneficiaries shall provide the Trustee with all of the information necessary for the Trustee to determine the amount of such taxes required to be withheld or paid by the Trustee or the Company, and the Trustee shall be fully protected in relying upon such information. Notwithstanding any provision of this Trust Agreement to the contrary, the Company shall be obligated to pay the Benefits. To the extent that the Trust Fund is not sufficient to pay any Benefit when due, the Company shall pay such Benefit directly. In the event Benefits are due to more than one Member or Beneficiary on the same date and the Trust Fund is not sufficient to pay all such Benefits, the Trust Fund shall be applied pro rata among such Members and Beneficiaries on the basis of the Benefits due to be paid such individuals on such date. Nothing in this Trust Agreement shall relieve the Company of its liabilities to pay Benefits except to the extent such liabilities are met by application of Trust Fund assets.

(b) The Committee shall direct the Trustee in writing as to the time and amount of Benefits to be distributed to the Members and Beneficiaries.

(c) At any time and from time to time, the Committee may direct the Trustee in writing to distribute to the Company cash held by the Trustee as part of the Trust Fund in an amount that the Committee determines has been contributed to the Trust by the Company in error, and the Trustee shall be fully protected in relying on such directions. As soon as practicable after receipt of such a direction the Trustee shall distribute such amount to the Company.

(d) At any time and from time to time (but not more frequently than twice in any calendar year without the consent of the Trustee), the Company may apply in writing to the Trustee for a distribution by the Trustee to the Company of assets held by the Trustee as part of the Trust Fund ("Trust Assets") in an amount (the "Refund Amount") equal to or less than the difference, if any, between (i) the Net Fair Market Value of the Trust Assets (as such term is hereinafter defined) as of the last day of the month coincident with or immediately preceding the date of such application, and (ii) 100% of the aggregate account balances under the Plan ("Account Balances") for all Members and Beneficiaries as of such date. Such application shall advise the Trustee of the manner in which the Refund Amount was calculated. Upon the receipt of such an application from the Company, the Trustee shall reach its own independent determination as to the Company's entitlement to the Refund Amount, even though the Trustee may be informed from another source (including a Member) that the Company is not entitled to the Refund Amount. If the Trustee so desires, it may, in its sole discretion, make such additional inquiries and/or take such additional measures as it deems necessary in order to enable it to determine whether the Company is entitled to the Refund Amount, including, but not limited to, interviewing appropriate persons, requesting affidavits, soliciting oral or written testimony under oath, or engaging such independent third parties as the Trustee may deem necessary to assist in making such determination. In addition, the Trustee may rely conclusively upon, and shall be protected in relying upon, information received from a third party engaged by the Company as the recordkeeper for the Plan (the "Recordkeeper") with respect to the aggregate Account Balances for all Members and Beneficiaries as of the relevant date and shall be entitled to the protections set forth in Section 3.2 of this Trust Agreement. The Trustee shall determine whether the Company is entitled to all or any portion of the Refund Amount as promptly as possible. If the Trustee determines that the Company is entitled to all or any portion of the Refund Amount, then the Trustee shall distribute such amount to the Company in cash or in kind as directed by the Committee. As used herein, the term "Net Fair Market Value of the Trust Assets" shall mean the fair market value of the Trust Assets, as reported by the Trustee, reduced by all liabilities of the Trust as detailed by the Company, whether or not such liabilities are secured by any or all of the Trust Assets, other than liabilities to Members or Beneficiaries under the Plan. In determining such fair market value, the Trustee shall use such market quotations and other information as are available to it and may in its discretion be appropriate; provided, however, that the fair market value of any life insurance contract which constitutes a portion of the Trust Assets shall be its net cash surrender value. The determination of the Net Fair Market Value of the Trust Assets by the Trustee shall not constitute a representation by the Trustee that the amounts reported as fair market values would actually be realized upon the liquidation of the Trust Assets. The Trustee shall not be accountable to the Company or to any other person, including the Members or Beneficiaries, on the basis of any such valuation except as otherwise provided in this Trust Agreement.

(e) The Trustee shall not itself commence any legal action, whether in the nature of an interpleader action, request for declaratory judgment or otherwise, requesting a court to make a determination under Section 3.6(a) or (d) hereof in the Trustee's stead without first using its best efforts to make such determination.

(f) Notwithstanding any other provision of this Trust Agreement, if any amounts held in the Trust are found in a "determination" (within the meaning of Section 1313(a) of the Internal Revenue Code of 1986, as amended) to have been includible in gross income of a Member or Beneficiary prior to payment of such amounts from the Trust, the Trustee shall, as soon as practicable after receiving notice thereof, pay such amounts to such Member or Beneficiary, as applicable, (but not in excess of such Member's or Beneficiary's Account Balance at the time of such payment). For purposes of this Section 3.6, the Trustee shall be entitled to rely

on an affidavit by a Member or Beneficiary, as applicable, and a copy of the determination to the effect that a determination described in the preceding sentence has occurred.

## **ARTICLE IV**

### **Trustee's Accounts**

The Trustee shall keep full accounts of all of its receipts and disbursements. The Trustee's books and records with respect to the Trust Fund shall be open to inspection by the Company and its representatives at all times during business hours of the Trustee following reasonable written notice. Within sixty days after December 31 of each year (or such other date as may be agreed to by the Company and the Trustee), or any termination of the duties of the Trustee, the Trustee shall prepare and mail to the Company and the Committee an account statement of its acts and transactions as Trustee hereunder. Upon the expiration of one year from the date of filing of its annual or any other periodic account statement, the Trustee shall be forever released and discharged from all liability and further accountability to the Company, the Committee or any other person with respect to the accuracy of such accounting and all acts and failures to act of the Trustee reflected in such account (absent manifest error), except to the extent that the Company or the Committee shall, within such one-year period, file with the Trustee specific written objections to the account statement. Neither the Company, the Committee, any Member, Beneficiary nor any other person shall be entitled to any additional or different accounting by the Trustee and the Trustee shall not be compelled to file in any court any additional or different accounting. For purposes of regulations promulgated by the FDIC with respect to providing written confirmations of individual security transactions (12 C.F.R. Paragraph 344), the Trustee account statements shall be sufficient information concerning such individual securities transactions effected for the Trust Fund; provided that the Company or the Committee, upon written request, shall have the right to receive at no additional cost written confirmations of such securities transactions, which shall be mailed or otherwise furnished by the Trustee within the timeframe provided by regulation.

## **ARTICLE V**

### **Taxes, Expenses and Compensation of Trustee**

**5.1 Taxes.** The Company agrees that all income, deductions, and credits of the Trust Fund belong to it as owner for income tax purposes and will be included on the Company's income tax returns. The Company shall from time to time pay taxes (references in this Trust Agreement to the payment of taxes shall include interest and applicable penalties) of any and all kinds whatsoever which at any time are lawfully levied or assessed upon or become payable in respect of the Trust Fund, the income or any property forming a part thereof, or any security transaction pertaining thereto. To the extent that any taxes levied or assessed upon the Trust Fund are not paid by the Company or contested by the Company pursuant to the last sentence of this Section 5.1, the Trustee shall pay such taxes out of the Trust Fund and the Company shall upon demand by the Trustee deposit into the Trust Fund an amount equal to the amount paid from the Trust Fund to satisfy such tax liability. If requested by the Company, the Trustee shall, at Company expense, contest the validity of such taxes in any manner deemed appropriate by the Company or its counsel, but only if it has received an indemnity bond or other security satisfactory to it to pay any expenses of such contest. Alternatively, the Company may itself contest the validity of any such taxes, but any such contest shall not affect the Company's obligation to reimburse the Trust Fund for taxes paid from the Trust Fund.

**5.2 Expenses and Compensation.** The Trustee shall be paid compensation by the Company as the Company and the Trustee may from time to time agree. The Trustee shall be reimbursed by the Company for its reasonable expenses of management and administration of the Trust; provided, however, that reimbursement for any expense that is nonrecurring, unusual in nature, or significant in amount (including, without limitation, any expense associated with the engagement of legal counsel by the Trustee) shall be subject to and conditioned upon prior written approval of the Committee; and, provided further, that the Trustee shall be entitled to engage legal counsel without the prior written approval of the Committee to advise the Trustee with respect to its duties under Article X following an allegation that the Company is Insolvent. Any dispute regarding whether the amount of an expense is reasonable or whether an expense is or was subject to prior written approval of the Committee shall be resolved in accordance with Section 12.6. The obligations with respect to the Trustee's fees and reasonable expenses as provided in this Section shall be obligations of the Company, and the Trustee may satisfy such obligations out of the assets of the Trust Fund only with the prior written consent of the Committee.

## **ARTICLE VI**

### **For Protection of Trustee**

#### **6.1 Communications with the Company, the Committee and the Members.**

(a) The Company shall certify to the Trustee the name or names of any person or persons authorized to act for the Company and for the Committee. Such certification shall be signed by an officer or the Assistant Secretary of the Company. Until the Company notifies the Trustee, in a similarly signed notice, that any such person is no longer authorized to act for the Company or for the Committee, as applicable, the Trustee may continue to fully rely upon the authority of such person.

(b) The Trustee may fully rely upon any certificate, notice or direction of the Company or the Committee which the Trustee reasonably believes to have been signed by a duly authorized officer or agent of the Company or the Committee, as applicable.

(c) Communications to the Trustee shall be sent in writing to the Trustee at 1100 North Market Street, Wilmington, Delaware 19890, Attention: Employee Benefits Administration, or to such other address as the Trustee may specify. No communication shall

be binding upon the Trust Fund or the Trustee until it is received by the Trustee and unless it is in writing and signed by an authorized person.

(d) Communications to the Company shall be sent in writing to the Company at 1600 Smith Street, Mail Code HQSTY, Houston, Texas 77002, Attention: Vice President and Treasurer, or to such other address as the Company may specify in writing to the Trustee. Communications to the Committee shall be sent in writing to the Company's address, Attention: Administrative Committee for the Supplemental Savings Plan for Management Pilots. Communications to a Member or Beneficiary shall be sent in writing to the address of such person as stated on the Membership List, or to such other address as such person may specify in writing to the Trustee. No communication shall be binding upon the Company, the Committee, or a Member or Beneficiary until it is received by such person.

## **6.2 Fiduciary Responsibility.**

(a) The Trustee shall discharge its duties under this Trust Agreement in effectuating the Plan in a manner consistent with the objectives of this Trust Agreement and the Plan. The Trustee shall not be liable for any loss sustained by the Trust Fund by reason of the purchase, retention, sale or exchange of any investment in good faith and in accordance with the provisions of this Trust Agreement. The Trustee shall have no responsibility or liability for any failure of the Company to make contributions to the Trust Fund or for any insufficiency of assets in the Trust Fund to pay Benefits when due. The Trustee shall not be liable hereunder for any act taken or omitted to be taken in good faith, except for its own negligence or misconduct.

(b) No bond shall be required of the Trustee unless otherwise required by law.

(c) The Trustee's duties and obligations shall be limited to those expressly imposed upon it by this Trust Agreement.

(d) The Company at any time may employ as agent (to perform any act, keep any records or accounts, or make any computations required of the Company or the Committee by this Trust Agreement or the Plan) the individual, corporation or association serving as Trustee hereunder. Nothing done by said individual, corporation or association as such agent shall affect its responsibilities or liability as Trustee hereunder.

**6.3 Reliance on Recordkeeper.** Unless and until notified otherwise in writing by the Company or the Committee, the Trustee is hereby authorized and directed to receive and act upon instructions received from the Recordkeeper, whether in writing, by facsimile or electronic transmission, with respect to instructions received by or on behalf of the Committee, including, without limitation, all investment directions provided pursuant to Section 3.1 hereof. The initial Recordkeeper is Hewitt & Associates.

**6.4 No Responsibility for Insurance Contracts.** The Trustee shall have no obligation to pay any premium on any Insurance Contract or to take any action with respect to any Insurance Contract, except upon instructions from the Committee. The Trustee shall be entitled to rely on information furnished by the Company or the Committee as to the amount of any contribution to be applied to the purchase or carrying of Insurance Contracts, the amount and type of Insurance Contracts to be purchased, the selection of the insurance company or companies, the designation of beneficiaries, and the election of any right or option under any Insurance Contract or with respect to any Member or Beneficiary. The Trustee may rely on information furnished by the Company as to the accuracy and completeness of any information contained in any application for any Insurance Contract, or any other information given to the insurer in connection with any Insurance Contract, and shall have no responsibility to the insurer with respect to any such application or other information. The Trustee shall have no responsibility to any Member, Beneficiary, the Company or the Committee for the invalidity or unenforceability of any Insurance Contract, or for the failure of any Insurance Contract to meet any requirements of the Plan, and the Trustee shall have no responsibility with respect to the selection or monitoring of any Insurance Contract held in the Trust or the insurers issuing such Insurance Contract.

**6.5 Force Majeure.** The Trustee shall have no liability for any losses arising out of delays in performing the services which it renders under this Trust Agreement which result from events beyond its control, including without limitation, interruption of the business of the Trustee due to acts of God, acts of governmental authority, acts of war, riots, civil commotions, insurrections, labor difficulties (including, but not limited to, strikes and other work slippages due to slow-downs), any action of any courier or utility, or electronic interruption; provided, however, that the Trustee shall have no such liability under such circumstances only if it has acted reasonably and in good faith.

## **ARTICLE VII**

### **Indemnification**

**7.1 Indemnification of the Trustee.** The Company hereby indemnifies and holds the Trustee harmless from and against any and all losses, damages, costs, expenses or liabilities (herein, "Liabilities"), including reasonable attorneys' fees and other costs of litigation, to which the Trustee may become subject pursuant to, arising out of, occasioned by, incurred in connection with or in any way associated with this Trust Agreement, except to the extent such Liabilities were caused by breach of this Trust Agreement by the Trustee or by the negligence, willful misconduct, or bad faith of the Trustee.

**7.2 Survival of Indemnification.** The indemnification made in this Article shall be binding on the Company and its successors and assigns, and shall survive termination of this Trust Agreement or the resignation or removal of the Trustee.

## **ARTICLE VIII**

## **Resignation and Removal of Trustee**

**8.1 Resignation of Trustee.** The Trustee may resign upon sixty days' prior written notice to the Committee, except that any such resignation shall not be effective until the Committee has appointed in writing a successor trustee, which must be a bank, trust company, or an individual, and such successor has accepted the appointment in writing. The Committee shall make a good faith effort, following receipt of notice of resignation from the Trustee, to find and appoint a successor Trustee who will adhere to the obligations imposed on such successor under the terms of this Trust Agreement. Provisions of the Trust Agreement to the contrary notwithstanding, if the Trustee gives written notice of resignation to the Committee and no successor Trustee has been appointed within sixty days of receipt of such written notice, then the Trustee may apply to a court of competent jurisdiction for judicial appointment of a successor trustee.

**8.2 Removal of Trustee.** The Committee may remove the Trustee upon sixty days' (or such short period as may be agreed to by the Trustee) prior written notice to the Trustee, except that any such removal shall not be effective until (a) the close of such notice period, (b) the delivery by the Committee to the Trustee of an instrument in writing appointing a successor trustee meeting the requirements of Section 8.1, and (c) an acceptance of such appointment in writing executed by such successor.

**8.3 Successor Trustee.** All of the provisions set forth herein with respect to the Trustee shall relate to each successor with the same force and effect as if such successor had been originally named as the Trustee hereunder.

**8.4 Transfer of Trust Fund to Successor.** Upon the resignation or removal of the Trustee and appointment of a successor, the Trustee shall transfer and deliver the Trust Fund to such successor. Following the effective date of the appointment of the successor, the Trustee's responsibility hereunder shall be limited to managing the assets in its possession and transferring such assets to the successor, and settling its final account. Neither the Trustee nor the successor shall be liable for the acts of the other.

## **ARTICLE IX**

### **Duration and Termination of Trust and Amendment**

**9.1 Duration and Termination.** The Trust is hereby declared to be irrevocable and shall continue until (a) all payments required by Section 3.6 have been made or (b) until the Trust Fund contains no assets and retains no claims to recover assets from the Company or any other person or entity, whichever shall first occur.

**9.2 Distribution upon Termination.** If this Trust terminates under the provisions of Section 9.1, the Trustee shall liquidate the Trust Fund and, after its final account statement has been settled, shall distribute to the Company the net balance of any assets of the Trust remaining after all expenses have been paid and all Benefits, whether or not due and payable under the terms of the Plan on the date of such termination, have been paid to the Members and Beneficiaries. Upon making such distribution, the Trustee shall be relieved from all further liability. The powers of the Trustee hereunder shall continue so long as any assets of the Trust Fund remain in its hands.

**9.3 Amendment.** The Committee may from time to time amend, in whole or in part, any or all of the provisions of this Trust Agreement; provided, however, that (a) no amendment will be made to this Trust Agreement or the Plan which will cause this Trust Agreement, the Plan or the assets of the Trust Fund to be governed by or subject to Part 2, 3, or 4 of Title I of ERISA, (b) no such amendment shall adversely affect any Benefits to the date of such amendment in respect of any Member or Beneficiary or the amount of assets of the Trust Fund available to pay such Benefits, (c) no such amendment shall purport to alter the irrevocable character of the Trust established under this Trust Agreement, and (d) no such amendment shall change the rights, duties or responsibilities of the Trustee unless the Trustee consents thereto in writing. This Trust Agreement may be amended, to the extent permitted in this Section 9.3, by an instrument in writing executed on behalf of Continental Airlines, Inc. by its authorized representatives.

## **ARTICLE X**

### **Claims of Company's Creditors**

**10.1 Insolvency of Company.** As used in this Article X, the Company shall be deemed to be "Insolvent" if (a) the Company is unable to pay its debts as they come due, or (b) the Company is subject to a pending proceeding as a debtor under the United States Bankruptcy Code (or any successor federal statute). In the event that the Company shall be deemed Insolvent, the assets of the Trust Fund shall be held for the benefit of the general creditors of the Company (hereinafter referred to as "Bankruptcy Creditors").

### **10.2 Trustee's Responsibilities if Company may be Insolvent.**

(a) If at any time the Company or a person claiming to be a creditor of the Company alleges in writing to the Trustee that the Company has become Insolvent, the Trustee shall promptly and independently determine whether the Company is Insolvent and, pending such determination, the Trustee shall discontinue any payment of Benefits under the Plan and this Trust Agreement and shall hold the Trust Fund for the benefit of Bankruptcy Creditors. The Trustee shall resume payments of Benefits under the Plan and this Trust Agreement in accordance with Section 3.6 hereof only after the Trustee has determined that the Company is not Insolvent (or is no longer Insolvent, if the Trustee initially determined the Company to be Insolvent) or upon receipt of an order of a court of competent jurisdiction requiring such payments. The Company, by its chief executive officer and its Board of Directors, shall further be obligated to give the Trustee prompt notice in writing in the event that the Company becomes Insolvent, with the same consequences as provided in the preceding two sentences. In determining whether the Company is Insolvent, the Trustee may

rely conclusively upon, and shall be protected in relying upon, court records showing that the Company is Insolvent, or a current report or statement from a nationally recognized credit reporting agency or accounting firm showing that the Company is Insolvent. For purposes of this Trust Agreement, knowledge and information concerning the Company which is not in the possession of the Trustee shall not be imputed to the Trustee. The Trustee shall have no duty or obligation to ascertain whether the Company is Insolvent unless and until it receives a writing that the Company is Insolvent as described in the first or third sentence of this Section 10.2(a).

(b) If the Trustee determines that the Company is Insolvent, the Trustee shall hold the assets of the Trust Fund for the benefit of the Bankruptcy Creditors, and shall disburse the assets of the Trust Fund to satisfy such claims as a court of competent jurisdiction shall direct.

(c) If the Trustee discontinues payment of Benefits pursuant to Section 10.2(a) and subsequently resumes such payments, the first payment to a Member or Beneficiary following such discontinuance shall include an aggregate amount equal to the difference between the payments that would have been made to such Member or Beneficiary, as applicable, under this Trust Agreement but for this Section 10.2 and the aggregate payments actually made to such Member or Beneficiary, as applicable, by the Company pursuant to the Plan during any such period of discontinuance. In the event that upon resumption of payments pursuant to the preceding sentence, the assets of the Trust Fund are insufficient to pay Benefits in full, Benefit payments to the affected Members and Beneficiaries shall be prorated so as to equitably apportion the assets of the Trust Fund among all affected Members and Beneficiaries in proportion to their Benefits.

## ARTICLE XI

### Adopting Entities

It is contemplated that other corporations, associations, partnerships or proprietorships that have adopted the Plan may adopt this Trust Agreement and thereby become an adopting entity hereunder. Any such entity, whether or not presently existing, may become a party hereto by appropriate action of any authorized officer without the need for approval of its board of directors or noncorporate counterpart or of the Committee. As of the date hereof, only the Company has adopted the Plan and shall be deemed to be a party to this Trust Agreement. The provisions of the Trust Agreement shall apply separately and equally to the Company and each other adopting entity and their respective Members and their Beneficiaries in the same manner as is expressly provided for the Company and its Members and their Beneficiaries, except that the power to appoint or otherwise affect the Trustee and the power to amend the Trust Agreement shall be exercised by the Committee alone. The Company or the Committee shall promptly provide the Trustee with written notice upon the adoption of this Trust Agreement by any other entity.

## ARTICLE XII

### Miscellaneous

**12.1 Laws of Delaware to Govern.** This Trust Agreement and the Trust hereby created shall be construed and regulated by the laws of the State of Delaware.

**12.2 Titles and Headings Not to Control.** The titles to Articles and headings of Sections in this Trust Agreement are placed herein for convenience of reference only and, in the case of any conflict, the text of this Trust Agreement, rather than such titles or headings, shall control.

**12.3 Affiliates.** As used in this Trust Agreement, the term "affiliate" as applied to the Company or to the Trustee means any person or entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company or the Trustee, as the case may be. For purposes of this definition, the term "control" as used with respect to any person or entity shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of an equity interest in such entity, by contract or otherwise.

**12.4 Successors and Assigns.** This Trust Agreement may not be assigned by either party without the prior written consent of the other, and any purported assignment without such prior written consent shall be null and void. This Trust Agreement shall be binding upon the successors and permitted assigns of each party hereto.

**12.5 Controlling Document.** Should an inconsistency or conflict exist between the specific terms of this Trust Agreement and those of the Plan, then the relevant terms of this Trust Agreement shall govern and control.

### **12.6 Dispute Resolution; Mandatory Arbitration.**

(a) The Company and the Trustee are required to undertake best efforts in resolving any dispute that may arise between them under or concerning this Trust Agreement. To that end, the party claiming that the other party is in violation of this Trust Agreement shall state its concerns to such other party in writing. In the event that any such dispute cannot be resolved within thirty days from the date of the written statement referred to in the preceding sentence, either party may compel that the dispute be submitted to arbitration pursuant to the procedures set forth in this Section. In such event, the dispute shall be resolved by binding arbitration pursuant to the Federal Arbitration Act in accordance with the Commercial Arbitration Rules then in effect with the American Arbitration Association. The arbitration proceeding shall be conducted in Wilmington, Delaware. This requirement to arbitrate shall be enforceable in either federal or state court.

(b) The enforcement of this requirement to arbitrate and all procedural aspects of the arbitration, including but not limited to, the construction and interpretation of this Section, the issues subject to arbitration (*i.e.*, arbitrability), the scope of the arbitrable issues, allegations of waiver, delay or defenses to arbitrability, and the rules governing the conduct of the arbitration, shall be governed by and construed pursuant to the Federal Arbitration Act and shall be decided by the arbitrators. In deciding the substance of any such claims, the arbitrators shall apply the substantive laws of the State of Delaware (excluding Delaware choice-of-law principles that might call for the application of some other state's law); provided, however, it is expressly provided that the arbitrators shall have no authority to award treble, exemplary, or punitive damages under any circumstances regardless of whether such damages may be available under Delaware law.

(c) Within thirty days after notice by one party to the other that it desires to have the dispute resolved by arbitration, the Trustee and the Company shall each denominate one arbitrator. The two arbitrators shall select a third arbitrator failing agreement on which within sixty days of the original notice, either the Company or the Trustee shall apply to the Senior Active United States District Judge for the District of Delaware, who shall appoint a third arbitrator. While the third arbitrator shall be neutral, the two party-appointed arbitrators are not required to be neutral and it shall not be grounds for removal of either of the two party-appointed arbitrators or for vacating the arbitrators' award that either of such arbitrators has past or present minimal relationships with the party that appointed such arbitrator. Evident partiality on the part of an arbitrator exists only where the circumstances are such that a reasonable person would have to conclude there in fact existed actual bias and a mere appearance or impression of bias will not constitute evident partiality or otherwise disqualify an arbitrator.

(d) The three arbitrators shall by majority vote resolve all disputes between the parties. There shall be no transcript of the hearing before the arbitrators. The arbitrators' decision shall be in writing, but shall be as brief as possible. The arbitrators shall not assign the reasons for their decision. The arbitrators shall certify in their decision that no part of their award, if any, includes any amount for treble, exemplary or punitive damages. Judgment upon any award rendered in any such arbitration proceeding may be entered by any federal or state court having jurisdiction.

(e) The Trustee and the Company shall share equally the costs and expenses of the arbitrators. Each party to an arbitration proceeding shall be responsible for its own costs and expenses, including its own attorneys' fees. Notwithstanding the foregoing, the Trustee shall be reimbursed by the Company for such costs and expenses incurred by the Trustee to the extent that the Trustee is entitled to indemnification pursuant to Section 7.1.

**IN WITNESS WHEREOF**, the parties hereto have caused this Trust Agreement to be executed as of the day and year first above written.

**CONTINENTAL AIRLINES, INC.**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**WILMINGTON TRUST COMPANY, Trustee**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

[Letterhead of Continental Airlines, Inc.]

November 28, 2000

Continental Airlines, Inc.  
1600 Smith Street, Dept. HQSEO  
Houston, Texas 77002

Ladies and Gentlemen:

I am the Executive Vice President and General Counsel of Continental Airlines, Inc., a Delaware corporation (the "Company"). In that capacity, I am familiar with the Company's Registration Statement on Form S-8 (the "Registration Statement") relating to the offering and issuance of Supplemental Benefit Obligations (the "Obligations") of the Company pursuant to the Continental Airlines, Inc. Supplemental Savings Plan for Management Pilots (the "Plan").

This opinion is delivered in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933 (the "Act"). In arriving at the opinions expressed below, I or other members of my legal staff have reviewed certain corporate records of the Company, including its Amended and Restated Certificate of Incorporation, its Bylaws, certain resolutions of the Board of Directors of the Company, the Plan, the Continental Airlines, Inc. Supplemental Savings Plan for Management Pilots Trust Agreement (the "Trust Agreement"), the Registration Statement together with the exhibits thereto, and such certificates of officers of the Company and other documents and records as I have deemed necessary for the purposes of this opinion.

As to matters of fact relevant to the opinions expressed herein, and as to factual matters arising in connection with our examination of corporate documents, records and other documents and writings, I and members of my legal staff relied upon certificates and other communications of corporate officers of the Company, without further investigation as to the facts set forth therein. We have assumed the authenticity of all documents submitted to us as originals and the conformity to the originals of all documents submitted to us as copies. In addition, we have assumed and have not verified the accuracy as to factual matters of each document we have reviewed.

Based upon the foregoing, I am of the opinion that the Obligations issued pursuant to the Plan will be binding obligations of the Company.

The foregoing opinions are limited to the federal law of the United States of America, the General Corporation Law of the State of Delaware and the law of the State of Texas, in each case as in effect on the date hereof, except that I express no opinion with respect to (i) the laws, regulations or ordinances of any county, town or municipality or governmental subdivision or agency thereof, (ii) federal or state securities or blue sky laws, including without limitation the Securities Act of 1933 and the Investment Company Act of 1940, each as amended, (iii) any federal or state tax, antitrust or fraudulent transfer or conveyance laws or (iv) the Employee Retirement Income Securities Act of 1974, as amended. In addition, my opinions are based upon a review of those laws, statutes, rules and regulations which, in my experience, are normally applicable to transactions of the type contemplated by the Plan and Trust Agreement.

I hereby consent to the filing of this opinion as an exhibit to the Registration Statement. However, by giving such consent, I do not admit that I am within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Securities and Exchange Commission issued thereunder.

Very truly yours,

/s/ JEFFERY A. SMISEK

Jeffery A. Smisek

Executive Vice President and General Counsel



**CONSENT OF INDEPENDENT AUDITORS**

We consent to the incorporation by reference in the Registration Statement (Form S-8) of Continental Airlines, Inc. (the "Company") pertaining to the Company's Supplemental Savings Plan for Management Pilots of our reports dated January 17, 2000 with respect to the consolidated financial statements and schedule of the Company included in its Annual Report (Form 10-K) for the year ended December 31, 1999 filed with the Securities and Exchange Commission.

/s/ ERNST & YOUNG LLP

Ernst & Young LLP

Houston, Texas

November 29, 2000

**POWER OF ATTORNEY**

The undersigned officer and/or director of Continental Airlines, Inc. does hereby constitute and appoint Jeffery A. Smisek, Jennifer L. Vogel and Scott R. Peterson, or any of them, as the undersigned's true and lawful attorneys-in-fact and agents to do any and all acts and things in the undersigned's name and behalf in the undersigned's capacities as officer and/or director, and to execute any and all instruments for the undersigned and in the undersigned's name in the capacities indicated below which such person or persons may deem necessary or advisable to enable Continental Airlines, Inc. to comply with the Securities Act of 1933 and any rules, regulations and requirements of the Securities and Exchange Commission in connection with the Registration Statement on Form S-8 ("Registration Statement") relating to the Continental Airlines, Inc. Supplemental Savings Plan for Management Pilots, including specifically, but not limited to, power and authority to sign for the undersigned the Registration Statement and any and all amendments (including post-effective amendments) thereto, and the undersigned does hereby ratify and confirm all that such person or persons shall do or cause to be done by virtue hereof.

November 13, 2000 By: GORDON M. BETHUNE

Print Name: Gordon M. Bethune

**POWER OF ATTORNEY**

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November 13, 2000 By: LAWRENCE W. KELLNER

Print Name: Lawrence W. Kellner

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November 13, 2000 By: CHRIS T. KENNY

Print Name: Chris T. Kenny

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November 13, 2000 By: THOMAS J. BARRACK, JR.

Print Name: Thomas J. Barrack, Jr.

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November 13, 2000 By: DAVID BONDERMAN

Print Name: David Bonderman

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November 13, 2000 By: GREGORY D. BRENNEMAN

Print Name: Gregory D. Brenneman

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November 13, 2000 By: KIRBYJON H. CALDWELL

Print Name: Kirbyjon H. Caldwell

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November 13, 2000 By: PATRICK FOLEY

Print Name: Patrick Foley

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November 13, 2000 By: DOUGLAS H. MCCORKINDALE

Print Name: Douglas H. McCorkindale

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November 13, 2000 By: GEORGE G. C. PARKER

Print Name: George G. C. Parker

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November 13, 2000 By: RICHARD W. POGUE

Print Name: Richard W. Pogue

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November 13, 2000 By: WILLIAM S. PRICE

Print Name: William S. Price

**POWER OF ATTORNEY**

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November 13, 2000 By: DONALD L. STURM

Print Name: Donald L. Sturm

**POWER OF ATTORNEY**

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November 13, 2000 By: KAREN HASTIE WILLIAMS

Print Name: Karen Hastie Williams

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November 13, 2000 By: CHARLES A. YAMARONE

Print Name: Charles A. Yamarone