

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the

Securities Exchange Act of 1934

Date of Report (Date of earliest event reported):

September 22, 2005

CONTINENTAL AIRLINES, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

1-10323

(Commission File Number)

74-2099724

(IRS Employer Identification No.)

1600 Smith Street, Dept. HQSEO, Houston, Texas  
(Address of principal executive offices)

77002  
(Zip Code)

(713) 324-2950

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01**                      **Entry into a Material Definitive Agreement.**

On September 22, 2005, Continental Airlines, Inc. (the "Company") entered into Trust Supplement No. 2005-ERJ1, with Wilmington Trust Company, as Pass Through Trustee, providing for the issuance of \$311,010,000 aggregate principal amount of the Company's Pass Through Certificates, Series 2005-ERJ1 (the "Certificates"). The Certificates and other securities of the Company were registered for offer and sale on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), under the Company's registration statement on Form S-3 (File No. 333-67886) (the "Registration Statement"), which was declared effective by the Commission on August 23, 2001. For a more detailed description of the agreements and instruments entered into by the Company in connection with such transactions, see the disclosure under the captions "Prospectus Supplement Summary", "Description of the Certificates", "Description of the Deposit Agreement", "Description of the Escrow Agreement", "Description of the Liquidity Facility", "Description of the Intercreditor Agreement", "Description of the Equipment Notes" and "Underwriting" contained in the Company's final Prospectus Supplement, dated September 14, 2005, to the Prospectus, dated August 23, 2001, filed with the Securities and Exchange Commission on September 16, 2005 pursuant to Rule 424(b) under the Securities Act, which disclosure is hereby incorporated herein by reference.

This Current Report is also being filed for the purpose of filing as exhibits to the Registration Statement the documents listed in Item 9.01 below, which are hereby incorporated by reference in the Registration Statement.

**Item 9.01. Financial Statements and Exhibits.**

(d)Exhibits. The Exhibit Index attached to this Current Report is hereby incorporated by reference. The documents listed on the Exhibit Index are filed as Exhibits with reference to the Registration Statement. The Registration Statement and the final Prospectus Supplement, dated September 14, 2005, to the Prospectus, dated August 23, 2001, relate to the offering of the Certificates.

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, Continental Airlines, Inc. has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CONTINENTAL AIRLINES, INC.

September 28, 2005

By: /s/ Jennifer L. Vogel  
Jennifer L. Vogel  
Senior Vice President, General Counsel  
and Secretary

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## EXHIBIT INDEX

- 1.1 Underwriting Agreement, dated September 14, 2005, among Citigroup Global Markets Inc., as Underwriter, Citibank, N.A., as Depositary, Embraer-Empresa Brasileira de Aeronáutica S.A. and Continental Airlines, Inc.
  - 4.1 Trust Supplement No. 2005-ERJ1, dated as of September 22, 2005, between Wilmington Trust Company, as Trustee, and Continental Airlines, Inc. to Pass Through Trust Agreement, dated as of September 25, 1997
  - 4.2 Revolving Credit Agreement (2005-ERJ1), dated as of September 22, 2005, between Wilmington Trust Company, as Subordination Agent, as Borrower, and Landesbank Baden-Württemberg, as Liquidity Provider
  - 4.3 Intercreditor Agreement, dated as of September 22, 2005, among Wilmington Trust Company, as Trustee, Landesbank Baden-Württemberg, as Liquidity Provider, and Wilmington Trust Company, as Subordination Agent and Trustee
  - 4.4 Deposit Agreement, dated as of September 22, 2004, between Wells Fargo Bank Northwest, National Association, as Escrow Agent, and Citibank, N.A., as Depositary
  - 4.5 Escrow and Paying Agent Agreement, dated as of September 22, 2005, among Wells Fargo Bank Northwest, National Association, as Escrow Agent, Citigroup Global Markets Inc., as Underwriter, Wilmington Trust Company, as Trustee, and Wilmington Trust Company, as Paying Agent
  - 4.6 Note Purchase Agreement, dated as of September 22, 2005, among Continental Airlines, Inc., Wilmington Trust Company, as Trustee, Subordination Agent and Paying Agent, and Wells Fargo Bank Northwest, National Association, as Escrow Agent
  - 4.7 Form of Participation Agreement (Participation Agreement among Continental Airlines, Inc., as Lessee, [ \_\_\_\_\_ ], as Owner Participant, Wells Fargo Bank Northwest, National Association, as Owner Trustee and Lessor, Wilmington Trust Company, as Mortgagee, Subordination Agent and Trustee, and Embraer-Empresa Brasileira de Aeronáutica S.A.) (Exhibit A to Note Purchase Agreement)
  - 4.8 Form of Lease (Lease between Wells Fargo Bank Northwest, National Association, as Owner Trustee and Lessor, and Continental Airlines, Inc., as Lessee) (Exhibit B to Note Purchase Agreement)
  - 4.9 Form of Indenture (Trust Indenture and Mortgage between Wells Fargo Bank Northwest, National Association, as Owner Trustee, and
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Wilmington Trust Company, as Mortgagee) (Exhibit C to Note Purchase Agreement)

- 4.10 Form of Trust Agreement ([Amended and Restated] Trust Agreement between [ \_\_\_\_\_ ], as Owner Participant, and Wells Fargo Bank Northwest, National Association, as Owner Trustee) (Exhibit E to Note Purchase Agreement)
- 4.11 9.798% Continental Airlines Pass Through Certificate, Series 2005-ERJ1, Certificate No. 1
- 23.1 Consent of Aviation Specialists Group, Inc., dated September 8, 2005
- 23.2 Consent of BACK Aviation Solutions, dated September 8, 2005
- 23.3 Consent of BK Associates, Inc., dated September 8, 2005
- 23.4 Consent of Aviation Specialists Group, Inc., dated September 13, 2005
- 23.5 Consent of BACK Aviation Solutions, dated September 13, 2005
- 23.6 Consent of BK Associates, Inc., dated September 13, 2005

CONTINENTAL AIRLINES, INC.

Pass Through Certificates, Series 2005-ERJ1

**UNDERWRITING AGREEMENT**

September 14, 2005

Citigroup Global Markets Inc.  
388 Greenwich Street  
New York, New York 10013

Ladies and Gentlemen:

At the request of Embraer - Empresa Brasileira de Aeronáutica S.A., a Brazilian corporation ("Embraer"), Continental Airlines, Inc., a Delaware corporation (the "Company"), proposes that Wilmington Trust Company, as trustee under the Class A Trust (as defined below) (the "Trustee"), issue and sell to Citigroup Global Markets Inc. (the "Underwriter") its pass through certificates in the aggregate principal amount and with the interest rate and final maturity date set forth on Schedule I hereto (the "Offered Certificates") on the terms and conditions stated herein.

The Offered Certificates will be issued pursuant to a Pass Through Trust Agreement, dated as of September 25, 1997 (the "Basic Agreement"), between the Company and the Trustee, as supplemented with respect to the issuance of the Offered Certificates by a Pass Through Trust Supplement to be dated as of the Closing Date (as defined below) (the "Trust Supplement"), between the Company and the Trustee (the Basic Agreement as supplemented by such Trust Supplement being referred to herein as the "Pass Through Trust Agreement"). The Trust Supplement is related to the creation and administration of the 2005-ERJ1 Pass Through Trust (the "Class A Trust").

The cash proceeds of the offering of Offered Certificates by the Class A Trust, to the extent not used to purchase Equipment Notes (as defined in the Note Purchase Agreement (as defined below)) on the Closing Date, will be paid to Wells Fargo Bank Northwest, National Association, as escrow agent (the "Escrow Agent"), under an Escrow and Paying Agent Agreement among the Escrow Agent, the Underwriter, the Trustee and Wilmington Trust Company, as paying agent (the "Paying Agent"), for the benefit of the holders of the Offered Certificates (the "Escrow Agreement"). The Escrow Agent will deposit such cash proceeds

(each, a "Deposit") with Citibank, N.A. (the "Depository") in accordance with a Deposit Agreement relating to the Class A Trust (the "Deposit Agreement"), and, subject to the fulfillment of certain conditions, will withdraw Deposits upon request to allow the Trustee to purchase Equipment Notes from time to time pursuant to a Note Purchase Agreement to be dated as of the Closing Date (the "Note Purchase Agreement") among the Company, Wilmington Trust Company, as Trustee of the Class A Trust, as Subordination Agent (as hereinafter defined) and as Paying Agent, and the Escrow Agent. The Escrow Agent will issue receipts to be attached to each related Offered Certificate ("Escrow Receipts") representing each holder's fractional undivided interest in amounts deposited with such Escrow Agent with respect to the Offered Certificates and will pay to such holders through the Paying Agent interest accrued on the Deposits and received by such Paying Agent pursuant to the Deposit Agreement at a rate per annum equal to the interest rate applicable to the Offered Certificates.

Certain amounts of interest payable on the Offered Certificates will be entitled to the benefits of a liquidity facility. Landesbank Baden-Württemberg (the "Liquidity Provider") will enter into a revolving credit agreement with respect to the Class A Trust (the "Liquidity Facility") to be dated as of the Closing Date for the benefit of the holders of the Offered Certificates issued by such Class A Trust. The Liquidity Provider and the holders of the Offered Certificates will be entitled to the benefits of an Intercreditor Agreement to be dated as of the Closing Date (the "Intercreditor Agreement") among the Trustee, Wilmington Trust Company, as subordination agent and trustee thereunder (the "Subordination Agent"), and the Liquidity Provider.

The Company has filed with the Securities and Exchange Commission (the "Commission") a shelf registration statement on Form S-3 (File No. 333-67886) relating to pass through certificates (such registration statement (including the respective exhibits thereto and the respective documents filed by the Company with the Commission pursuant to the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Exchange Act"), that are incorporated by reference therein), as amended at the date hereof, being herein referred to as the "Registration Statement") and the offering thereof from time to time in accordance with Rule 415 of the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Securities Act"). The Registration Statement has been declared effective by the Commission. A final prospectus supplement reflecting the terms of the Offered Certificates, the terms of the offering thereof and other matters relating to the Offered Certificates, as further specified in Section 4(d) hereof, will be prepared and filed together with the Basic Prospectus referred to below pursuant to Rule 424 under the Securities Act (such prospectus supplement, in the form first filed on or after the date hereof pursuant to Rule 424, being herein referred to as the "Prospectus Supplement" and any such prospectus supplement in the form or forms filed prior to the filing of the Prospectus Supplement being herein referred to as a "Preliminary Prospectus Supplement"). The Basic Prospectus included in the Registration Statement (the "Basic Prospectus") and relating to all offerings of pass through certificates under the Registration Statement, as supplemented by the Preliminary Prospectus Supplement or the Prospectus Supplement, as the case may be, and, in either case, including the documents incorporated by reference therein, is herein called, the "Preliminary Prospectus" or the "Prospectus", as applicable, except that, if the Basic Prospectus is amended or supplemented on or prior to the date of the Preliminary Prospectus Supplement or

the date on which the Prospectus Supplement is first filed pursuant to Rule 424, the terms "Preliminary Prospectus" and "Prospectus" shall refer to the Basic Prospectus as so amended or supplemented and as supplemented by the Preliminary Prospectus Supplement or the Prospectus Supplement, as applicable. Any reference herein to the terms "amendment" or "supplement" with respect to the Prospectus or any Preliminary Prospectus shall be deemed to refer to and include any documents filed with the Commission under the Exchange Act after the date the Prospectus is filed with the Commission, or the date of such Preliminary Prospectus, as the case may be, and incorporated therein by reference pursuant to Item 12 of Form S-3 under the Securities Act.

Capitalized terms not otherwise defined in this Underwriting Agreement (the "Agreement") shall have the meanings specified therefor in the Pass Through Trust Agreement, in the Note Purchase Agreement or in the Intercreditor Agreement; provided that, as used in this Agreement, the term "Operative Agreements" shall mean the Deposit Agreement, the Escrow Agreement, the Intercreditor Agreement, the Liquidity Facility, the Pass Through Trust Agreement and the Financing Agreements (as defined in the Note Purchase Agreement).

1. Representations and Warranties. (a) The Company represents and warrants to, and agrees with the Underwriter that:

(i) The Company meets the requirements for use of Form S-3 under the Securities Act; the Registration Statement has become effective; and, on the original effective date of the Registration Statement, the Registration Statement complied in all material respects with the requirements of the Securities Act. On the original effective date of the Registration Statement, the Registration Statement did not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and on the date hereof and on the Closing Date, the Prospectus, as amended and supplemented, if the Company shall have furnished any amendment or supplement thereto, does not and will not include an untrue statement of a material fact and does not and will not omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to (x) statements in or omissions from the Registration Statement, the Preliminary Prospectus or the Prospectus based upon (A) written information furnished to the Company by the Underwriter expressly for use therein ("Underwriter Information"), (B) the Embraer Information (as defined in Annex I) or (C) the Depositary Information (as hereinafter defined) or (y) statements or omissions in that part of each Registration Statement which shall constitute the Statement of Eligibility of the Trustee under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), on Form T-1.

(ii) The documents incorporated by reference in the Prospectus pursuant to Item 12 of Form S-3 under the Securities Act, at the time they were or hereafter, during the period mentioned in Section 4(a) hereof, are filed with the Commission, complied or will comply, as the case may be, in all material respects with the requirements of the Exchange Act.



(iii) The Company has been duly incorporated and is an existing corporation in good standing under the laws of the State of Delaware, with corporate power and authority to own, lease and operate its property and to conduct its business as described in the Prospectus; and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified would not have a material adverse effect on the condition (financial or otherwise), business, properties or results of operations of the Company and its consolidated subsidiaries taken as a whole (a "Continental Material Adverse Effect").

(iv) Each of Continental Micronesia, Inc. and Air Micronesia Inc. (together, the "Subsidiaries") has been duly incorporated and is an existing corporation in good standing under the laws of the jurisdiction of its incorporation, with corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus; and each Subsidiary is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified would not have a Continental Material Adverse Effect; all of the issued and outstanding capital stock of each Subsidiary has been duly authorized and validly issued and is fully paid and nonassessable; and, except as described in the Prospectus, each Subsidiary's capital stock owned by the Company, directly or through subsidiaries, is owned free from liens, encumbrances and defects.

(v) Except as described in the Prospectus, the Company is not in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other instrument to which it is a party or by which it may be bound or to which any of its properties may be subject, except for such defaults that would not have a Continental Material Adverse Effect. The execution, delivery and performance of this Agreement and the Operative Agreements to which the Company is or will be a party and the consummation by Continental of the transactions contemplated herein and therein have been duly authorized by all necessary corporate action of the Company and will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than any lien, charge or encumbrance created under any Operative Agreement) upon any property or assets of the Company pursuant to any indenture, loan agreement, contract, mortgage, note, lease or other instrument to which the Company is a party or by which the Company may be bound or to which any of the property or assets of the Company is subject, which breach, default, lien, charge or encumbrance, individually or in the aggregate, would have a Continental Material Adverse Effect, nor will any such execution, delivery or performance result in any violation of the provisions of the charter or by-laws of the Company or any statute, any rule, regulation or order of any governmental agency or body or any court having jurisdiction over the Company.

(vi) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required for the valid authorization,

execution and delivery by the Company of this Agreement and the Operative Agreements to which it is or will be a party and for the consummation of the transactions contemplated herein and therein, except (x) such as may be required under the Securities Act, the Trust Indenture Act, the securities or "blue sky" or similar laws of the various states and of foreign jurisdictions or rules and regulations of the National Association of Securities Dealers, Inc., and (y) filings or recordings with the Federal Aviation Administration (the "FAA") and under the UCC or other laws in effect in any applicable jurisdiction governing the perfection of security interests, which filings or recordings referred to in this clause (y), with respect to any particular set of Financing Agreements, shall have been made, or duly presented for filing or recordation, or shall be in the process of being duly filed or filed for recordation, on or prior to the applicable "Closing Date", as defined in such Financing Agreements (the "Funding Date").

(vii) This Agreement has been duly executed and delivered by the Company and the Operative Agreements to which the Company will be a party will be duly executed and delivered by the Company on or prior to the Closing Date or the applicable Funding Date, as the case may be.

(viii) The Operative Agreements to which the Company is or will be a party, when duly executed and delivered by the Company, assuming that such Operative Agreements have been duly authorized, executed and delivered by, and constitute the legal, valid and binding obligations of, each other party thereto, will constitute valid and binding obligations of the Company enforceable in accordance with their terms, except (w) as enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, (x) as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), (y) that the enforceability of the Leases may also be limited by applicable laws which may affect the remedies provided therein but which do not affect the validity of the Leases or make such remedies inadequate for the practical realization of the benefits intended to be provided thereby and (z) with respect to indemnification and contribution provisions, as enforcement thereof may be limited by applicable law. The Basic Agreement as executed is substantially in the form filed as an exhibit to the Company's current report on Form 8-K dated September 25, 1997 and has been duly qualified under the Trust Indenture Act.

(ix) The consolidated financial statements of the Company incorporated by reference in the Prospectus, together with the related notes thereto, present fairly in all material respects the financial position of the Company and its consolidated subsidiaries at the dates indicated and the consolidated results of operations and cash flows of the Company and its consolidated subsidiaries for the periods specified. Such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved, except as otherwise stated therein and except that unaudited financial statements do not have all required footnotes. The financial statement schedules, if any, incorporated by reference in the Prospectus present the information required to be stated therein.

(x) The Company is a "citizen of the United States" within the meaning of Section 40102(a)(15) of Title 49 of the United States Code, as amended, and holds an air carrier operating certificate issued pursuant to Chapter 447 of Title 49 of the United States Code, as amended, for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo. All of the outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable.

(xi) Except as disclosed in the Prospectus, the Company and the Subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens, encumbrances and defects except where the failure to have such title would not have a Continental Material Adverse Effect; and except as disclosed in the Prospectus, the Company and the Subsidiaries hold any leased real or personal property under valid and enforceable leases with no exceptions that would have a Continental Material Adverse Effect.

(xii) Except as disclosed in the Prospectus, there is no action, suit or proceeding before or by any governmental agency or body or court, domestic or foreign, now pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries or any of their respective properties that individually (or in the aggregate in the case of any class of related lawsuits), could reasonably be expected to result in a Continental Material Adverse Effect or that could reasonably be expected to materially and adversely affect the consummation of the transactions contemplated by this Agreement or the Operative Agreements.

(xiii) Except as disclosed in the Prospectus, no labor dispute with the employees of the Company or any subsidiary exists or, to the knowledge of the Company, is imminent that could reasonably be expected to have a Continental Material Adverse Effect.

(xiv) Each of the Company and the Subsidiaries has all necessary consents, authorizations, approvals, orders, certificates and permits of and from, and has made all declarations and filings with, all federal, state, local and other governmental authorities, all self-regulatory organizations and all courts and other tribunals, to own, lease, license and use its properties and assets and to conduct its business in the manner described in the Prospectus, except to the extent that the failure to so obtain, declare or file would not have a Continental Material Adverse Effect.

(xv) Except as disclosed in the Prospectus, (x) neither the Company nor any of the Subsidiaries is in violation of any statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances (collectively, "environmental laws"), owns or operates any real property contaminated with any substance that is subject to any environmental laws, or is subject to any claim relating to any environmental laws, which violation, contamination, liability or claim individually or in the aggregate is reasonably expected to have a Continental Material Adverse Effect, and (y) the Company is not

aware of any pending investigation which might lead to such a claim that is reasonably expected to have a Continental Material Adverse Effect.

(xvi) The accountants that examined and issued an auditors' report with respect to the consolidated financial statements of the Company and the financial statement schedules of the Company, if any, included or incorporated by reference in the Registration Statement are independent public accountants within the meaning of the Securities Act.

(xvii) The Company is not an "investment company", or an entity "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended (the "Investment Company Act"), required to register under the Investment Company Act.

(xviii) No Appraiser is an affiliate of the Company or, to the knowledge of the Company, has a substantial interest, direct or indirect, in the Company. To the knowledge of the Company, none of the officers and directors of any of such Appraisers is connected with the Company or any of its affiliates as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

(xix) The Company (A) makes and keeps books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the material assets of the Company and its consolidated subsidiaries and (B) maintains a system of internal accounting controls sufficient to provide reasonable assurances that (1) transactions are executed in accordance with management's general or specific authorization; (2) transactions are recorded as necessary: (x) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements and (y) to maintain accountability for assets; (3) access to material assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for material assets is compared with the existing material assets at reasonable intervals and appropriate action is taken with respect to any differences.

(b) The Depositary represents and warrants to, and agrees with, the Underwriter and the Company that:

(i) The information pertaining to the Depositary set forth under the caption "Description of the Deposit Agreement -- Depositary" (the "Depositary Information") in the Prospectus, as amended and supplemented, if the Company shall have furnished any amendment or supplement thereto, does not, and will not as of the Closing Date, contain any untrue statement of a material fact.

(ii) The Depositary is duly organized and validly existing as a national banking association under the laws of the United States and is duly qualified to conduct banking business in the State of New York, with corporate power and authority to own, lease and operate its property, to conduct its business as described in the Depositary

Information and to enter into and perform its obligations under this Agreement and the Deposit Agreement.

(iii) No consent, approval, authorization, or order of, or filing with any governmental agency or body or any court is required for the valid authorization, execution and delivery by the Depositary of this Agreement and the Deposit Agreement and for the consummation by the Depositary of the transactions contemplated herein and therein, except such as may have been obtained.

(iv) The execution and delivery by the Depositary of this Agreement and the Deposit Agreement and the consummation by the Depositary of the transactions contemplated herein and therein have been duly authorized by the Depositary and will not violate any law, governmental rule or regulation or any of its organizational documents or any order, writ, injunction or decree of any court or governmental agency against it or the provisions of any indenture, loan agreement, contract or other instrument to which it is a party or is bound.

(v) This Agreement has been duly executed and delivered by the Depositary, and the Deposit Agreement will be duly executed and delivered by the Depositary on or prior to the Closing Date.

(vi) The Deposit Agreement, when duly executed and delivered by the Depositary, assuming that such Deposit Agreement has been duly authorized, executed and delivered by, and constitutes the legal, valid and binding obligations of, the Escrow Agent, will constitute the legal, valid and binding obligations of the Depositary enforceable in accordance with its terms, except (x) as enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws now or hereinafter in effect relating to creditors' rights generally and (y) as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(c) Embraer represents and warrants to, and agrees with, the Underwriter and the Company that:

(i) (x) As of the date hereof, the Registration Statement does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, (y) as of its date, the Preliminary Prospectus did not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and (z) on the date hereof and on the Closing Date, the Prospectus, as amended and supplemented, if the Company shall have furnished any amendment or supplement thereto, does not and will not include an untrue statement of a material fact and does not and will not omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from

the Registration Statement, the Preliminary Prospectus or the Prospectus based upon (A) the Continental Information (as defined in Annex I), (B) the Underwriter Information or (C) the Depositary Information.

(ii) Each of Embraer and Refine, Inc. ("Refine") has been duly organized and is a corporation validly existing in good standing under the laws of its jurisdiction of incorporation or organization, with corporate power and authority to own, lease and operate its properties, conduct its business as currently conducted and perform its obligations under this Agreement and under the Operative Agreements to which it is or will be a party.

(iii) No consent, approval, authorization, or order of, or filing with any governmental agency or body or any court is required for the valid authorization, execution and delivery by Embraer of this Agreement or by Embraer or Refine of the Operative Agreements to which either Embraer or Refine is or will be a party and for the performance of their respective obligations hereunder and thereunder, as applicable, except such as may have been obtained.

(iv) The execution and delivery by Embraer of this Agreement and by Embraer and Refine of the Operative Agreements to which either Embraer or Refine is or will be a party and the performance of their respective obligations hereunder and thereunder have been duly authorized by Embraer and Refine, as applicable, and will not violate (w) any law, governmental rule or regulation, (x) any of their respective organizational documents, (y) any order, writ, injunction or decree of any court or governmental agency against either Embraer or Refine, as applicable, or (z) except to the extent that any such violation would not have a material adverse effect on the condition (financial or otherwise), business, properties or results of operations of Embraer and its consolidated subsidiaries taken as a whole or Refine, as applicable, the provisions of any indenture, loan agreement, contract or other instrument to which either Embraer or Refine is a party or is bound.

(v) This Agreement has been duly executed and delivered by Embraer.

(vi) (1) The Operative Agreements to which Embraer is or will be a party, when duly executed and delivered by Embraer, assuming that such Operative Agreements have been duly authorized, executed and delivered by, and constitute the legal, valid and binding obligations of, each other party thereto, will constitute valid and binding obligations of Embraer enforceable in accordance with their terms and (2) the Operative Agreements to which Refine is or will be a party, when duly executed and delivered by Refine, assuming that such Operative Agreements have been duly authorized, executed and delivered by, and constitute the legal, valid and binding obligations of, each other party thereto, will constitute valid and binding obligations of Refine enforceable in accordance with their terms, except, in the case of both (1) and (2), (x) as enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, (y) as enforcement thereof is

subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law) and (z) with respect to indemnification and contribution provisions, as enforcement thereof may be limited by applicable law.

(vii) On or prior to the Closing Date, the issuance of the Offered Certificates will be duly authorized by the Trustee. When duly executed, authenticated, issued and delivered in the manner provided for in the Pass Through Trust Agreement and sold and paid for as provided in this Agreement, the Offered Certificates will be legally and validly issued and will be entitled to the benefits of the Pass Through Trust Agreement; and when executed, authenticated, issued and delivered in the manner provided for in the Escrow Agreement, the Escrow Receipts will be legally and validly issued and will be entitled to the benefits of the Escrow Agreement.

(viii) The Class A Trust is not an "investment company", or an entity "controlled" by an "investment company", within the meaning of the Investment Company Act, required to register under the Investment Company Act; and after giving effect to the offering and sale of the Offered Certificates and the application of the proceeds thereof as described in the Prospectus, the Class A Trust will not be, nor will the escrow arrangement contemplated by the Escrow Agreement result in the creation of, an "investment company", or an entity "controlled" by an "investment company", as defined in the Investment Company Act, in each case required to register under the Investment Company Act.

(ix) The Offered Certificates, this Agreement and the Operative Agreements will conform in all material respects to the descriptions thereof contained in the Prospectus (other than, in the case of the Financing Agreements, as described in the Prospectus).

(x) The information provided by Embraer to each of Aviation Specialists Group, Inc. ("ASG"), BACK Aviation Solutions ("BACK") and BK Associates, Inc. ("BK" and, together with ASG and BACK, the "Appraisers") for use by the Appraisers in preparation of their respective reports relating to the Aircraft, dated as of August 18, 2005, August 18, 2005 and August 25, 2005, respectively, taken as a whole with respect to each such report, did not contain an untrue statement of material fact or omit to state a material fact necessary to make such information not misleading.

(d) The parties agree that any certificate signed by a duly authorized officer of the Company and delivered to the Underwriter, or to counsel for the Underwriter, on the Closing Date and in connection with this Agreement or the offering of the Offered Certificates, shall be deemed a representation and warranty by (and only by) the Company to the Underwriter as to the matters covered thereby.

2. Purchase, Sale and Delivery of Offered Certificates. (a) On the basis of the representations, warranties and agreements herein contained, but subject to the terms and the conditions herein set forth, the Company agrees to cause the Trustee to sell to the Underwriter, and the Underwriter agrees to purchase from the Trustee, at a purchase price of 100% of the

principal amount thereof, the aggregate principal amount of Offered Certificates. Concurrently with the issuance of the Offered Certificates, the Escrow Agent shall issue and deliver to the Trustee the Escrow Receipts in accordance with the terms of the Escrow Agreement, which Escrow Receipts shall be attached to the related Offered Certificates.

(b) The Company is advised by the Underwriter that the Underwriter proposes to make a public offering of the Offered Certificates as set forth in the Prospectus Supplement as soon after this Agreement has been entered into as in the Underwriter's judgment is advisable. The Company is further advised by the Underwriter that the Offered Certificates are to be offered to the public initially at 100% of their principal amount -- the public offering price -- plus accrued interest, if any, and to certain dealers selected by the Underwriter at concessions not in excess of the concessions set forth in the Prospectus, and that the Underwriter may allow, and such dealers may realow, concessions not in excess of the concessions set forth in the Prospectus to certain other dealers.

(c) As underwriting commission and other compensation to the Underwriter for its commitments and obligations hereunder in respect of the Offered Certificates, including the undertakings to distribute the Offered Certificates, Embraer will pay to the Underwriter the amount set forth in Schedule II hereto. Such payment will be made on the Closing Date simultaneously with the issuance and sale of the Offered Certificates (with attached Escrow Receipts) to the Underwriter. Payment of such compensation shall be made by Federal funds check or by wire transfer of immediately available funds.

(d) Delivery of and payment for the Offered Certificates (with attached Escrow Receipts) shall be made at the offices of Hughes Hubbard & Reed LLP at One Battery Park Plaza, New York, New York 10004 at 10:00 A.M. on September 22, 2005 or such other date, time and place as may be agreed upon by the Company and the Underwriter (such date and time of delivery and payment for the Offered Certificates (with attached Escrow Receipts) being herein called the "Closing Date"). Delivery of the Offered Certificates (with attached Escrow Receipts) issued by the Class A Trust shall be made to Citigroup's account at The Depository Trust Company ("DTC") for the account of the Underwriter against payment by the Underwriter of the purchase price thereof. Payment for the Offered Certificates issued by the Class A Trust and the related Escrow Receipts attached thereto shall be made by the Underwriter by wire transfer of immediately available funds to the accounts and in the manner specified in the Escrow Agreement (provided, that if the Company notifies the Underwriter that a Funding Date is occurring on the Closing Date, a portion of such payment in the amount specified by the Company shall be paid to the accounts and in the manner specified in the related Participation Agreement). The Offered Certificates (with attached Escrow Receipts) issued by the Class A Trust shall be in the form of one or more fully registered global Offered Certificates, and shall be deposited with the Trustee as custodian for DTC and registered in the name of Cede & Co.

(e) The Company agrees to have the Offered Certificates (with attached Escrow Receipts) available for inspection and checking by the Underwriter in New York, New York not later than 1:00 P.M. on the business day prior to the Closing Date.



3. Conditions of Underwriter's Obligations. The obligations of the Underwriter to purchase and pay for the Offered Certificates pursuant to this Agreement are subject to the following conditions:

- (a) On the Closing Date, no stop order suspending the effectiveness of the Registration Statement shall have been issued under the Securities Act and no proceedings therefor shall have been instituted or threatened by the Commission.
- (b) On the Closing Date, the Underwriter shall have received an opinion of Hughes Hubbard & Reed LLP, as counsel for the Company, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriter and substantially to the effect set forth in Exhibit A hereto.
- (c) On the Closing Date, the Underwriter shall have received an opinion of the General Counsel of the Company, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriter and substantially to the effect set forth in Exhibit B hereto.
- (d) On the Closing Date, the Underwriter shall have received an opinion of Richards, Layton & Finger, P.A., counsel for Wilmington Trust Company, individually and as Trustee, Subordination Agent and Paying Agent, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriter and substantially to the effect set forth in Exhibit C hereto.
- (e) On the Closing Date, the Underwriter shall have received an opinion of Ray Quinney & Nebeker P.C., counsel for the Escrow Agent, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriter and substantially to the effect set forth in Exhibit D hereto.
- (f) On the Closing Date, the Underwriter shall have received an opinion of in-house counsel for Landesbank Baden-Württemberg, as the Liquidity Provider, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriter and substantially to the effect set forth in Exhibit E hereto.
- (g) On the Closing Date, the Underwriter shall have received an opinion of Milbank, Tweed, Hadley & McCloy LLP, special New York counsel for the Liquidity Provider, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriter and substantially to the effect set forth in Exhibit F hereto.
- (h) On the Closing Date, the Underwriter shall have received an opinion of in-house counsel for the Depositary, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriter and substantially to the effect set forth in Exhibit G hereto.
- (i) On the Closing Date, the Underwriter shall have received an opinion of Patterson, Belknap, Webb & Tyler LLP, special New York counsel for the Depositary,

dated the Closing Date, in form and substance reasonably satisfactory to the Underwriter and substantially to the effect set forth in Exhibit H hereto.

(j) On the Closing Date, the Underwriter shall have received an opinion of Katten Muchin Rosenman LLP, special New York counsel for Embraer, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriter and substantially to the effect set forth in Exhibit I hereto.

(k) On the Closing Date, the Underwriter shall have received an opinion of Flavio Rimoli, in-house counsel for Embraer, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriter and substantially to the effect set forth in Exhibit J hereto.

(l) On the Closing Date, the Underwriter shall have received an opinion of Milbank, Tweed, Hadley & McCloy LLP, counsel for the Underwriter, dated as of the Closing Date, with respect to the issuance and sale of the Offered Certificates, the Registration Statement, the Prospectus and other related matters as the Underwriter may reasonably require.

(m) Subsequent to the execution and delivery of this Agreement, there shall not have occurred any change, or any development or event involving a prospective change, in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries considered as one enterprise that, in the Underwriter's judgment, is material and adverse and that makes it, in the Underwriter's judgment, impracticable to proceed with the completion of the public offering of the Offered Certificates on the terms and in the manner contemplated by the Prospectus.

(n) The Underwriter shall have received on the Closing Date a certificate, dated the Closing Date and signed by the President or any Vice President of the Company, to the effect that the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date as if made on the Closing Date (except to the extent that they relate solely to an earlier date, in which case they shall be true and accurate as of such earlier date), that the Company has performed all its obligations to be performed hereunder on or prior to the Closing Date and that, subsequent to the execution and delivery of this Agreement, there shall not have occurred any material adverse change, or any development or event involving a prospective material adverse change, in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries considered as one enterprise, except as set forth in or contemplated by the Prospectus.

(o) The Underwriter shall have received from Ernst & Young LLP a letter, dated the date hereof, in form and substance satisfactory to the Underwriter.

(p) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date, there shall not have been any downgrading in the rating accorded any of the Company's securities (except for any pass through certificates) by any "nationally

recognized statistical rating organization", as such term is defined for purposes of Rule 436(g)(2) under the Securities Act, or any public announcement that any such organization has under surveillance or review, in each case for possible change, its ratings of any such securities other than pass through certificates (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating).

(q) Each of the Appraisers shall have furnished to the Underwriter a letter from such Appraiser, addressed to the Company and dated the Closing Date, confirming that such Appraiser and each of its directors and officers (i) is not an affiliate of the Company or any of its affiliates, (ii) does not have any substantial interest, direct or indirect, in the Company or any of its affiliates and (iii) is not connected with the Company or any of its affiliates as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

(r) At the Closing Date, each of the Operative Agreements (other than the Financing Agreements) shall have been duly executed and delivered by each of the parties thereto; and the representations and warranties of the Company contained in each of such executed Operative Agreements shall be true and correct as of the Closing Date (except to the extent that they relate solely to an earlier date, in which case they shall be true and correct as of such earlier date) and the Underwriter shall have received a certificate of the President or a Vice President of the Company, dated as of the Closing Date, to such effect.

(s) On the Closing Date, the Offered Certificates shall be rated (x) not lower than "BBB-" by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and (y) not lower than "Ba2" by Moody's Investors Service, Inc.

(t) On the Closing Date, the representations and warranties of the Depositary contained in this Agreement shall be true and correct as if made on the Closing Date (except to the extent that they relate solely to an earlier date, in which case they shall be true and correct as of such earlier date).

(u) The Underwriter shall have received from Ernst & Young LLP a letter, dated the Closing Date, which meets the requirements of subsection (o) of this Section, except that the specified date referred to in such subsection will be a date not more than three business days prior to the Closing Date for the purposes of this subsection.

(v) The Underwriter shall have received on the Closing Date a certificate, dated the Closing Date and signed by the President or any Vice President of Embraer, to the effect that the representations and warranties of Embraer contained in this Agreement are true and correct as of the Closing Date as if made on the Closing Date (except to the extent that they relate solely to an earlier date, in which case they shall be true and accurate as of such earlier date) and that Embraer has performed all its obligations to be performed hereunder on or prior to the Closing Date.

The Company or Embraer, as applicable, will furnish the Underwriter with such conformed copies of such opinions, certificates, letters and documents as the Underwriter may reasonably request.

4. Certain Covenants of the Company. The Company covenants with the Underwriter as follows:

(a) During the period described in the following sentence of this Section 4(a), the Company shall advise the Underwriter promptly of any proposal to amend or supplement the Registration Statement or the Prospectus (except by documents filed under the Exchange Act) and will not effect such amendment or supplement (except by documents filed under the Exchange Act) without the consent of the Underwriter, which consent will not be unreasonably withheld. If, at any time after the public offering of the Offered Certificates, the Prospectus is required by law to be delivered in connection with sales of the Offered Certificates by the Underwriter or a dealer, any event shall occur as a result of which it is necessary to amend the Registration Statement or amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading in any material respect, or if it is necessary to amend the Registration Statement or amend or supplement the Prospectus to comply with law, the Company shall prepare and furnish, at Embraer's expense, to the Underwriter and to the dealers (whose names and addresses the Underwriter will furnish to the Company) to which Offered Certificates may have been sold by the Underwriter and to any other dealers upon request, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading in any material respect or amendments or supplements to the Registration Statement or the Prospectus so that the Registration Statement or the Prospectus, as so amended or supplemented, will comply with law and cause such amendments or supplements to be filed promptly with the Commission.

(b) During the period mentioned in paragraph (a) above, the Company shall notify the Underwriter immediately of (i) the effectiveness of any amendment to the Registration Statement, (ii) the transmittal to the Commission for filing of any supplement to the Prospectus or any document that would as a result thereof be incorporated by reference in the Prospectus, (iii) the receipt of any comments from the Commission with respect to the Registration Statement, the Prospectus or the Prospectus Supplement, (iv) any request by the Commission to the Company for any amendment to the Registration Statement or any supplement to the Prospectus or for additional information relating thereto or to any document incorporated by reference in the Prospectus and (v) receipt by the Company of any notice of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, the suspension of the qualification of the Offered Certificates for offering or sale in any jurisdiction, or the institution or threatening of any proceeding for any of such purposes; and the Company agrees to use every reasonable effort to prevent the issuance of any such stop order and, if any such order is issued, to obtain the lifting thereof at the earliest possible moment and the Company shall (subject to the proviso to Section 4(e))

endeavor, in cooperation with the Underwriter, to prevent the issuance of any such stop order suspending such qualification and, if any such order is issued, to obtain the lifting thereof at the earliest possible moment.

(c) During the period mentioned in paragraph (a) above, the Company will furnish to the Underwriter as many conformed copies of the Registration Statement (as originally filed) and all amendments and supplements to such documents (excluding all exhibits and documents filed therewith or incorporated by reference therein) and as many conformed copies of all consents and certificates of experts, in each case as soon as available and in such quantities as the Underwriter reasonably requests.

(d) Promptly following the execution of this Agreement, the Company will prepare a Prospectus Supplement that complies with the Securities Act and that sets forth the principal amount of the Offered Certificates and their terms (including, without limitation, terms of the Escrow Receipts attached to the Offered Certificates) not otherwise specified in the Preliminary Prospectus Supplement or the Basic Prospectus included in the Registration Statement, the name of the Underwriter and the principal amount of the Offered Certificates, the price at which the Offered Certificates are to be purchased by the Underwriter from the Trustee, any initial public offering price, any selling concession and reallowance and any delayed delivery arrangements, and such other information as the Underwriter and the Company deem appropriate in connection with the offering of the Offered Certificates. The Company will timely transmit copies of the Prospectus Supplement to the Commission for filing pursuant to Rule 424 under the Securities Act.

(e) The Company shall, in cooperation with the Underwriter, endeavor to arrange for the qualification of the Offered Certificates for offer and sale under the applicable securities or "blue sky" laws of such jurisdictions in the United States as the Underwriter reasonably designates and will endeavor to maintain such qualifications in effect so long as required for the distribution of the Offered Certificates; provided that the Company shall not be required to (i) qualify as a foreign corporation or as a dealer in securities, (ii) file a general consent to service of process or (iii) subject itself to taxation in any such jurisdiction.

(f) During the period of ten years after the Closing Date, the Company will promptly furnish to the Underwriter, upon request, copies of all Annual Reports on Form 10-K and any definitive proxy statement of the Company filed with the Commission; provided that providing a website address at which such Annual Reports and any such definitive proxy statements may be accessed will satisfy this clause (f).

(g) Between the date of this Agreement and the Closing Date, the Company shall not, without the prior written consent of the Underwriter, offer, sell, or enter into any agreement to sell (as public debt securities registered under the Securities Act (other than the Offered Certificates) or as debt securities which may be resold in a transaction exempt from the registration requirements of the Securities Act in reliance on Rule 144A thereunder and which are marketed through the use of a disclosure document containing

substantially the same information as a prospectus for similar debt securities registered under the Securities Act), any equipment notes, pass through certificates, equipment trust certificates or equipment purchase certificates secured by aircraft owned or leased by the Company (or rights relating thereto).

5. Indemnification and Contribution. (a) The Company and Embraer agree that the Company (solely to the extent set forth in proviso (ii) below) and Embraer, subject to proviso (iii) below, will indemnify and hold harmless the Underwriter, and each Person, if any, who controls the Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred by the Underwriter or any such controlling person in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, the Preliminary Prospectus or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and Embraer will also indemnify and hold harmless the Underwriter, and each Person, if any, who controls the Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all any losses, claims, damages or liabilities (including, without limitation, any legal or other expenses reasonably incurred by the Underwriter or any such controlling person in connection with defending or investigating any such action or claim) caused by any statement (oral or written) with respect to the offer and sale of the Offered Certificates made by Embraer, any of its affiliates or any of their respective directors, officers, employees or agents, except to the extent expressly included in the Continental Information, in each case, except insofar as any of the aforementioned losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon the Depository Information or the Underwriter Information; provided, however, that (i) the foregoing indemnity agreement with respect to the Preliminary Prospectus shall not inure to the benefit of the Underwriter, or to the benefit of any person controlling the Underwriter, if a copy of the Prospectus (as then amended or supplemented if the Company shall have furnished any amendments or supplements thereto) was not sent or given by or on behalf of the Underwriter to such person, if required by law so to have been delivered, at or prior to the written confirmation of the sale of such Offered Certificates to such person, and if the Prospectus (as so amended or supplemented) would have cured the defect giving rise to such losses, claims, damages or liabilities unless such failure to deliver the Prospectus was a result of noncompliance by the Company with its delivery requirements set forth in Section 4(a), (ii) the Company shall be obligated under this Section 5 only with respect to the Continental Information and then only to the extent that a court of competent jurisdiction makes a Final Determination that such losses, claims, damages or liabilities arise out of or are caused by an untrue statement of a material fact contained in or omission of a material fact from the Continental Information (such Final Determination, a "Final Adverse Determination") and (iii) Embraer shall be obligated under this Section 5 to the extent that the Company is not obligated pursuant to the foregoing clause (ii). "Final Determination" shall mean a determination which has not been stayed or reversed and which has become final and non-appealable in accordance with applicable law.

The provisions of this Section 5 shall not affect any agreements between the Company, Embraer or any of their respective affiliates for the sharing of, or otherwise allocating, costs and expenses.

(b) The Underwriter agrees to indemnify and hold harmless each of Embraer and the Company, each of their respective directors, each of the officers of the Company who signed the Registration Statement and each person, if any, who controls the Company or Embraer, as the case may be, within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from each of the Company and Embraer to the Underwriter but only with reference to the Underwriter Information and without giving effect to the proviso in Section 5(a).

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to either paragraph (a) or (b) above, such person (the "indemnified party") shall promptly notify the person against whom such indemnity may be sought (the "indemnifying party"), and, if such proceeding involves any Continental Information, the Company, in writing. The indemnifying party, upon request of the indemnified party, shall, and the indemnifying party, or, if such proceeding involves any Continental Information, the Company, may elect (any election by the Company to supersede any election by Embraer) to, retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party (or the Company as the case may be) may designate in such proceeding and the indemnifying party (or, if the Company elects to designate counsel, Embraer) shall pay the fees and disbursements of such counsel related to such proceeding (provided that if the Company has elected to designate counsel in such proceeding and there is a Final Adverse Determination in such proceeding, then the Company shall reimburse Embraer for such fees and expenses of such counsel theretofore paid by it in the same proportion as the Company is responsible for any judgment in such proceeding pursuant to Section 5(a)). In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, or (iii) the indemnifying party shall have failed to retain counsel as required by the prior sentence to represent the indemnified party within a reasonable amount of time. It is understood that the indemnifying party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by the Underwriter in the case of parties indemnified pursuant to paragraph (a) above and by the Company after consultation with Embraer in the case of parties indemnified pursuant to paragraph (b) above. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such

settlement or judgment, including if such settlement is consented to prior to a Final Adverse Determination. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested in writing an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 90 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement, unless such fees and expenses are being disputed in good faith. The indemnifying party (or, if such proceeding concerns the Continental Information, the Company) at any time may, subject to the last sentence of this Section 5(c), settle or compromise any proceeding described in this paragraph at the expense of the indemnifying party (provided that the Company may not so effect any such settlement or compromise unless either (x) Embraer has consented thereto, which consent shall not be unreasonably withheld or delayed or (y) the Company agrees in its discretion that such settlement or compromise shall be at its expense). For the avoidance of doubt, the parties acknowledge and agree that, unless and until (and then only to the extent that) there is a Final Adverse Determination with respect to any proceeding described in this paragraph, the "indemnifying party" with respect to such proceeding shall be Embraer and not the Company, notwithstanding the Company's rights to designate counsel, and effect a settlement or compromise, with respect to such proceeding. No indemnifying party shall (and, if such proceeding concerns the Continental Information, the Company shall not), without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party.

(d) To the extent the indemnification provided for in paragraph (a) or (b) of this Section 5 is required to be made but is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities, then the applicable indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company or Embraer, as the case may be, on the one hand, and the Underwriter, on the other hand, from the offering of such Offered Certificates or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company or Embraer, as the case may be, on the one hand and the Underwriter on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by Embraer on the one hand and the Underwriter on the other hand in connection with the offering of such Offered Certificates shall be deemed to be in the same respective proportions as the proceeds from the offering of such Offered Certificates received by the Class A Trust (before deducting expenses) less total underwriting discounts and commissions received by the Underwriter, and the total underwriting discounts and commissions received by the Underwriter,



in each case as set forth on the cover of the Prospectus, bear to the aggregate public offering price of such Offered Certificates (it being acknowledged that the Company shall be deemed for purposes of this paragraph to have received no benefits from the offering). The relative fault of the Company or Embraer, as the case may be, on the one hand and of the Underwriter on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to the Continental Information, in the case of the Company, other information supplied by the Company or Embraer, as the case may be, in the case of Embraer, or Underwriter Information, in the case of the Underwriter, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Company, Embraer and the Underwriter agree that it would not be just or equitable if contribution pursuant to this Section 5 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 5, the Underwriter shall not be required to contribute any amount in excess of the amount by which the total price at which the Offered Certificates underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that the Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The indemnity and contribution provisions contained in this Section 5 and the representations and warranties of the Company and Embraer contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of the Underwriter or any person controlling the Underwriter or by or on behalf of either the Company or Embraer, their respective officers or directors or any person controlling the Company or Embraer, and (iii) acceptance of and payment for any of the Offered Certificates. The remedies provided for in this Section 5 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

6. Survival of Certain Representations and Obligations. The respective indemnities, agreements, representations, warranties and other statements of the Company, Embraer or their respective officers and of the Underwriter set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any termination of this Agreement, any investigation, or statement as to the results thereof, made by or on behalf of the Underwriter, the Company, Embraer or any of their respective representatives, officers or directors or any controlling person and will survive delivery of and payment for the Offered Certificates. If for any reason the purchase of the Offered Certificates by the Underwriter is not consummated, Embraer shall remain responsible for the expenses to be paid or reimbursed by it pursuant to Section 8 and the respective obligations of the Company, Embraer and the Underwriter pursuant to Section 5 shall remain in effect. If the purchase of the Offered Certificates by the Underwriter

is not consummated for any reason other than solely because of the occurrence of the termination of the Agreement pursuant to Section 7, Embraer will reimburse the Underwriter for all out-of-pocket expenses (including reasonable fees and disbursements of counsel) reasonably incurred by them in connection with the offering of such Offered Certificates and comply with its obligations under Section 8.

7. Termination. This Agreement shall be subject to termination by notice given by the Underwriter to the Company and Embraer, if (a) after the execution and delivery of this Agreement and prior to the Closing Date (i) trading generally shall have been materially suspended or materially limited on or by, as the case may be, any of the New York Stock Exchange, the American Stock Exchange or the National Association of Securities Dealers, Inc., (ii) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market, (iii) a general moratorium on commercial banking activities in New York shall have been declared by either Federal or New York State authorities, (iv) there shall have occurred any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, or any change in financial markets or any calamity or crisis that, in each case, in the Underwriter's judgment, is material and adverse or (v) any major disruption of settlements of securities or clearance services in the United States that would materially impair settlement and clearance with respect to the Offered Certificates and (b) in the case of any of the events specified in clauses (a)(i) through (v), such event singly or together with any other such event makes it, in the Underwriter's judgment, impracticable to market the Offered Certificates on the terms and in the manner contemplated in the Prospectus.

8. Payment of Expenses. As among Embraer, the Company and the Underwriter, Embraer shall pay all expenses incidental to the performance of the Company's and Embraer's obligations under this Agreement, including the following:

(i) expenses incurred in connection with (A) qualifying the Offered Certificates for offer and sale under the applicable securities or "blue sky" laws of such jurisdictions in the United States as the Underwriter reasonably designate (including filing fees and fees and disbursements of counsel for the Underwriter in connection therewith), (B) endeavoring to maintain such qualifications in effect so long as required for the distribution of such Offered Certificates, (C) the review (if any) of the offering of the Offered Certificates by the National Association of Securities Dealers, Inc., (D) the determination of the eligibility of the Offered Certificates for investment under the laws of such jurisdictions as the Underwriter may designate and (E) the preparation and distribution of any blue sky or legal investment memorandum by Underwriter's counsel;

(ii) expenses incurred in connection with the preparation and distribution to the Underwriter and the dealers (whose names and addresses the Underwriter will furnish to the Company) to which Offered Certificates may have been sold by the Underwriter on its behalf and to any other dealers upon request, either of (A) amendments to the Registration Statement or amendments or supplements to the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not materially misleading or (B) amendments or supplements to the Registration Statement or the Prospectus so that the Registration Statement or the

Prospectus, as so amended or supplemented, will comply with law and the expenses incurred in connection with causing such amendments or supplements to be filed promptly with the Commission, all as set forth in Section 4(a) hereof;

- (iii) the expenses incurred in connection with the preparation, printing and filing of the Registration Statement (including financial statements and exhibits), as originally filed and as amended, of the Preliminary Prospectus and the Prospectus and any amendments thereof and supplements thereto, and the cost of furnishing copies thereof to the Underwriter;
- (iv) expenses incurred in connection with the preparation, printing and distribution of this Agreement, the Offered Certificates and the Operative Agreements;
- (v) expenses incurred in connection with the delivery of the Offered Certificates to the Underwriter;
- (vi) reasonable fees and disbursements of the counsel and accountants for the Company;
- (vii) to the extent Embraer is so required under any Operative Agreement to which it is a party, the fees and expenses of the Loan Trustees, the Subordination Agent, the Paying Agent, the Trustee, the Escrow Agent, the Depository, the Liquidity Provider and the reasonable fees and disbursements of their respective counsel;
- (viii) fees charged by rating agencies for rating the Offered Certificates (including annual surveillance fees related to the Offered Certificates as long as they are outstanding);
- (ix) reasonable fees and disbursements of counsel for the Underwriter;
- (x) all fees and expenses relating to appraisals of the Aircraft; and
- (xi) all other reasonable out-of-pocket expenses incurred by the Underwriter in connection with the transactions contemplated by this Agreement; and
- (xii) except as otherwise provided in the foregoing clauses (i) through (xi), all other expenses incidental to the performance of the Company's obligations under this Agreement, other than pursuant to Section 5.

The provisions of this Section 8 shall not affect any agreements between the Company, Embraer and any of their respective affiliates for the sharing of, or otherwise allocating, costs and expenses.

9. Notices. All communications hereunder will be in writing and, if sent to the Underwriter, will be mailed, delivered or sent by facsimile transmission and confirmed to it at Citigroup Global Markets Inc., 390 Greenwich Street, 4<sup>th</sup> Floor, New York, New York 10013,

Attention: Greg Lee, facsimile number (212) 723-8677, if sent to the Company, will be mailed, delivered or sent by facsimile transmission and confirmed to it at 1600 Smith Street, HQSEO, Houston, TX 77002, Attention: Treasurer and General Counsel, facsimile number (713) 324-2447, and if sent to Embraer, will be mailed, delivered or sent by facsimile transmission and confirmed to it at Av. Brigadeiro Faria Lima, 2170, 12227-901 São José dos Campos, S.P., Brazil, Attention: Senior Vice President Sales Financing & Asset Management, facsimile number +55-12-3927-2815, with a copy to Katten Muchin Rosenman LLP, 1025 Thomas Jefferson Street, N.W., Suite 700, Washington, D.C. 20007, Attention: Timothy J. Lynes, facsimile number (202) 295-1118; provided, however, that any notice to the Underwriter pursuant to Section 5 will be sent by facsimile transmission or delivered and confirmed to the Underwriter.

10. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the controlling persons referred to in Section 5, and no other person will have any right or obligation hereunder.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

12. APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK OTHER THAN ANY LAW WHICH WOULD REQUIRE THE APPLICATION OF A LAW OF A DIFFERENT JURISDICTION.

13. Submission to Jurisdiction; Venue; Appointment of Agent.

(a) Each party hereto hereby irrevocably agrees, accepts and submits itself to the non-exclusive jurisdiction of the courts of the State of New York in the City and County of New York and of the United States for the Southern District of New York, in connection with any legal action, suit or proceeding with respect to any matter relating to or arising out of or in connection with this Agreement. Each of the parties to this Agreement agrees that a final action in any such suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other lawful manner.

(b) Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, and agrees not to assert, by stay of motion, as a defense, or otherwise, in any legal action or proceeding brought hereunder in any of the above-named courts, that such action or proceeding is brought in an inconvenient forum, or that venue for the action or proceeding is improper.

(c) To the fullest extent permitted by applicable law, each party hereto hereby waives its respective rights to a jury trial or any claim or cause of action in any court in any jurisdiction based upon or arising out of or relating to this Agreement.

(d) Embraer hereby irrevocably designates and appoints Corporation Services Company, 1177 Avenue of the Americas, 17<sup>th</sup> Floor, New York, NY 10036 (the "Process Agent"), as the authorized agent of Embraer upon whom process may be served in any such suit or proceeding, it being understood that the designation and appointment of the Process Agent as such authorized agent shall become effective immediately without any further action on the part of Embraer. Embraer represents to the Underwriter and the Company that it has notified the Process Agent of such designation and appointment and that the Process Agent has accepted the same in writing. Embraer hereby irrevocably authorizes and directs the Process Agent to accept such service. Embraer further agrees that service of process upon the Process Agent and written notice of said service to Embraer mailed by first-class mail or delivered to the Process Agent, shall be deemed in every respect effective service of process upon Embraer in any such suit or proceeding. Nothing herein shall affect the right of the Underwriter or the Company, or any person controlling the Underwriter or the Company, to serve process in any other manner permitted by law.

14. Sovereign Immunity. Each party hereto hereby irrevocably agrees that, to the extent that it or any of its assets now has or may hereafter acquire any right of immunity as against any other party hereto or its respective successors and assigns, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in the United States or elsewhere, arising out of this Agreement or the subject matter hereof or any of the transactions contemplated hereby brought by any of the parties hereto or their successors or assigns, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its assets from attachment in aid of execution upon a judgment, it hereby expressly and irrevocably waives and agrees not to assert any such immunity and such waiver shall be irrevocable and not subject to withdrawal in any jurisdiction, including, without limitation, under the United States Foreign Sovereign Immunities Act of 1976.

15. Currency Indemnity. In the event of a judgment, order or award being rendered by any court or tribunal for the payment of any amounts owing to any party hereto (the "Payee") under this Agreement or for the payment of damages in respect of a judgment or order of another court or tribunal for the payment of such amount or damages, such judgment, order or award being expressed in a currency (the "Judgment Currency") other than United States dollars (the "Agreed Currency"), each party hereto obligated to pay such amounts owing (each, a "Payor") agrees, to the fullest extent permitted by applicable law, (a) that its obligations in respect of any such amounts owing shall be discharged only to the extent that on the business day following the Payee's receipt of any sum adjudged in the Judgment Currency the Payee may in accordance with the normal banking procedures purchase the Agreed Currency with the Judgment Currency and (b) to indemnify and hold harmless the Payee against any deficiency in terms of the Agreed Currency in the amounts actually received by the Payee following any such purchase (after deduction of any premiums and costs of exchange payable in connection with the purchase of, or conversion into, the Agreed Currency). The indemnity set forth in the preceding sentence shall (notwithstanding any judgment referred to in the preceding sentence) constitute an obligation of each Payor separate and independent from its other obligations hereunder and shall apply irrespective of any indulgence granted by the Payee.

16. No Fiduciary Duty. Each of the Company and Embraer hereby acknowledges that (a) the Underwriter is acting as principal and not as an agent or fiduciary of the Company or Embraer and (b) their engagement of the Underwriter in connection with the transactions contemplated hereby is as an independent contractor and not in any other capacity. Furthermore, each of the Company and Embraer agrees that it is solely responsible for making its own judgments in connection with the transactions contemplated hereby (irrespective of whether the Underwriter has advised or is currently advising the Company or Embraer on related or other matters).

If the foregoing is in accordance with the Underwriter's understanding of our agreement, kindly sign and return to the Company one of the counterparts hereof, whereupon it will become a binding agreement among the Underwriter, the Depositary, Embraer and the Company in accordance with its terms.

Very truly yours,

CONTINENTAL AIRLINES, INC.

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

EMBRAER - EMPRESA BRASILEIRA DE AERONÁUTICA S.A.

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

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

The foregoing Underwriting Agreement  
is hereby confirmed and accepted  
as of the date first above written

By: CITIGROUP GLOBAL MARKETS INC.

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

CITIBANK, N.A.,  
as Depositary

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



SCHEDULE I  
(Pass Through Certificates, Series 2005-ERJ1)  
CONTINENTAL AIRLINES, INC.

Pass Through Certificate Designation	Aggregate Principal Amount	Interest Rate	Final Maturity Date
2005-ERJ1	\$311,010,000	9.798%	October 1, 2022

SCHEDULE II  
CONTINENTAL AIRLINES, INC.

Underwriting commission  
and other compensation:

\$2,021,565.00

Closing date, time and location:

September 22, 2005  
10:00 A.M.,  
New York time  
Hughes Hubbard & Reed LLP  
One Battery Park Plaza  
New York, New York 10004

## ANNEX I

For purposes of the Underwriting Agreement, "Continental Information" shall consist of the following information:

(i) with respect to the Basic Prospectus, all information included therein and all documents deemed to be incorporated by reference therein (and exhibits to such documents if so incorporated), but excluding the Basic Agreement and any documents filed with the Commission subsequent to the Closing Date in connection with the transactions contemplated by this Agreement;

(ii) with respect to the Registration Statement, all information included therein and all documents deemed to be incorporated by reference therein (and exhibits to such documents if so incorporated), but excluding the Basic Agreement and any documents filed with the Commission subsequent to the Closing Date in connection with the transactions contemplated by this Agreement; and

(iii) with respect to the Preliminary Prospectus Supplement and the Prospectus Supplement, the statements set forth in the following sections:

(a) "Summary Financial and Operating Data";

(b) "Risk Factors--Risk Factors Relating to the Company" and "Risk Factors--Risk Factors Relating to the Airline Industry";

(c) "The Company"; and

(d) "Incorporation of Certain Documents by Reference", and all documents deemed to be incorporated by reference in the Preliminary Prospectus Supplement or Prospectus Supplement, as the case may be, as specified in "Incorporation of Certain Documents by Reference" (and exhibits to such documents if so incorporated), but excluding the Basic Agreement and any documents filed with the Commission subsequent to the Closing Date in connection with the transactions contemplated by this Agreement.

For purposes of the Underwriting Agreement, "Embraer Information" shall consist of all of the information in the Registration Statement, the Basic Prospectus, the Preliminary Prospectus Supplement and the Prospectus Supplement other than the Continental Information.

TRUST SUPPLEMENT No. 2005-ERJ1

Dated as of September 22, 2005

between

WILMINGTON TRUST COMPANY,  
as Trustee,

and

CONTINENTAL AIRLINES, INC.

to

PASS THROUGH TRUST AGREEMENT  
Dated as of September 25, 1997

\$311,010,000

Continental Airlines Pass Through Trust 2005-ERJ1  
9.798% Continental Airlines  
Pass Through Certificates,  
Series 2005-ERJ1

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This Trust Supplement No. 2005-ERJ1, dated as of September 22, 2005 (herein called the "Trust Supplement"), between Continental Airlines, Inc., a Delaware corporation (the "Company"), and Wilmington Trust Company (the "Trustee"), to the Pass Through Trust Agreement, dated as of September 25, 1997, between the Company and the Trustee (the "Basic Agreement").

W I T N E S S E T H:

WHEREAS, the Basic Agreement, unlimited as to the aggregate principal amount of Certificates (unless otherwise specified herein, capitalized terms used herein without definition having the respective meanings specified in the Basic Agreement) which may be issued thereunder, has heretofore been executed and delivered;

WHEREAS, the Company wishes to lease certain Aircraft from the relevant Owner Trustees;

WHEREAS, in the case of each Aircraft, the related Owner Trustee, acting on behalf of the related Owner Participant, will issue pursuant to an Indenture, on a non-recourse basis, one series of Equipment Notes in order to finance the debt portion of the purchase price of such Aircraft;

WHEREAS, the Trustee hereby declares the creation of this Continental Airlines Pass Through Trust 2005-ERJ1 (the "Applicable Trust") for the benefit of the Applicable Certificateholders, and the initial Applicable Certificateholders as the grantors of the Applicable Trust, by their respective acceptances of the Applicable Certificates, join in the creation of the Applicable Trust with the Trustee;

WHEREAS, all Certificates to be issued by the Applicable Trust will evidence fractional undivided interests in the Applicable Trust and will convey no rights, benefits or interests in respect of any property other than the Trust Property except for those Certificates to which an Escrow Receipt has been affixed;

WHEREAS, the Escrow Agent and the Underwriter have contemporaneously herewith entered into an Escrow Agreement with the Escrow Paying Agent pursuant to which the Underwriter has delivered to the Escrow Agent the proceeds from the sale of the Applicable Certificates, to the extent not used to purchase Equipment Notes on the Issuance Date, and have irrevocably instructed the Escrow Agent to withdraw and pay funds from such proceeds upon request and proper certification by the Trustee to purchase Equipment Notes as the Aircraft are financed under the NPA (as hereinafter defined) from time to time prior to the Delivery Period Termination Date;

WHEREAS, the Escrow Agent on behalf of the Applicable Certificateholders has contemporaneously herewith entered into a Deposit Agreement with the Depository under which the Deposits referred to therein will be made and from which it will withdraw funds to allow the Trustee to purchase Equipment Notes from time to time prior to the Delivery Period Termination Date;

WHEREAS, pursuant to the terms and conditions of the Basic Agreement as supplemented by this Trust Supplement (the “Agreement”) and the NPA, upon the financing of an Aircraft, the Trustee on behalf of the Applicable Trust, using funds withdrawn under the Escrow Agreement (or, if financed on the Issuance Date, using a portion of the proceeds of the sale of the Applicable Certificates), shall purchase one or more Equipment Notes having the same interest rate as, and final maturity date not later than the final Regular Distribution Date of, the Applicable Certificates issued hereunder and shall hold such Equipment Notes in trust for the benefit of the Applicable Certificateholders;

WHEREAS, all of the conditions and requirements necessary to make this Trust Supplement, when duly executed and delivered, a valid, binding and legal instrument in accordance with its terms and for the purposes herein expressed, have been done, performed and fulfilled, and the execution and delivery of this Trust Supplement in the form and with the terms hereof have been in all respects duly authorized; and

WHEREAS, this Trust Supplement is subject to the provisions of the Trust Indenture Act of 1939, as amended, and shall, to the extent applicable, be governed by such provisions.

NOW THEREFORE, in consideration of the premises herein, it is agreed between the Company and the Trustee as follows:

#### ARTICLE I THE CERTIFICATES

Section 1.01. The Certificates. There is hereby created a series of Certificates to be issued under the Agreement to be distinguished and known as “9.798% Continental Airlines Pass Through Certificates, Series 2005-ERJ1” (hereinafter defined as the “Applicable Certificates”). Each Applicable Certificate represents a fractional undivided interest in the Applicable Trust created hereby. The Applicable Certificates shall be the only instruments evidencing a fractional undivided interest in the Applicable Trust.

The terms and conditions applicable to the Applicable Certificates are as follows:

- (a) The aggregate principal amount of the Applicable Certificates that shall be authenticated under the Agreement (except for Applicable Certificates authenticated and delivered pursuant to Sections 3.03, 3.04, 3.05 and 3.06 of the Basic Agreement) is \$311,010,000.
- (b) The Regular Distribution Dates with respect to any payment of Scheduled Payments means the 1<sup>st</sup> day of each month, commencing on October 1, 2005 until payment of all of the Scheduled Payments to be made under the Equipment Notes has been made.

(c) The Special Distribution Dates with respect to the Applicable Certificates means any Business Day on which a Special Payment is to be distributed pursuant to the Agreement.

(d) At the Escrow Agent's request under the Escrow Agreement, the Trustee shall affix the corresponding Escrow Receipt to each Applicable Certificate. In any event, any transfer or exchange of any Applicable Certificate shall also effect a transfer or exchange of the related Escrow Receipt. Prior to the Final Withdrawal Date, no transfer or exchange of any Applicable Certificate shall be permitted unless the corresponding Escrow Receipt is attached thereto and also is so transferred or exchanged. By acceptance of any Applicable Certificate to which an Escrow Receipt is attached, each Holder of such an Applicable Certificate acknowledges and accepts the restrictions on transfer of the Escrow Receipt set forth herein and in the Escrow Agreement.

(e) (i) The Applicable Certificates shall be in the form attached hereto as Exhibit A. Any Person acquiring or accepting an Applicable Certificate or an interest therein will, by such acquisition or acceptance, be deemed to represent and warrant to and for the benefit of each Owner Participant and the Company that either (i) the assets of an employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or of a plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"), have not been used to purchase Applicable Certificates or an interest therein or (ii) the purchase and holding of Applicable Certificates or an interest therein is exempt from the prohibited transaction restrictions of ERISA and the Code pursuant to one or more prohibited transaction statutory or administrative exemptions.

(ii) The Applicable Certificates shall be Book-Entry Certificates and shall be subject to the conditions set forth in the Letter of Representations between the Company and the Clearing Agency attached hereto as Exhibit B.

(f) The "Participation Agreements" as defined in this Trust Supplement are the "Note Purchase Agreements" referred to in the Basic Agreement.

(g) The Applicable Certificates are subject to the Intercreditor Agreement, the Deposit Agreement and the Escrow Agreement.

(h) The Applicable Certificates are entitled to the benefits of the Liquidity Facility.

(i) The Responsible Party is the Company.

(j) The date referred to in clause (i) of the definition of the term "PTC Event of Default" in the Basic Agreement is the Final Maturity Date.

(k) The “particular sections of the Note Purchase Agreement”, for purposes of clause (3) of Section 7.07 of the Basic Agreement, are Section 9.1 of each Participation Agreement.

(l) The Equipment Notes to be acquired and held in the Applicable Trust, and the related Aircraft and Note Documents, are described in the NPA.

## ARTICLE II DEFINITIONS

Section 2.01. Definitions. For all purposes of the Basic Agreement as supplemented by this Trust Supplement, the following capitalized terms have the following meanings (any term used herein which is defined in both this Trust Supplement and the Basic Agreement shall have the meaning assigned thereto in this Trust Supplement for purposes of the Basic Agreement as supplemented by this Trust Supplement):

Agreement: Has the meaning specified in the recitals hereto.

Aircraft: Means each of the Aircraft (as defined in the NPA) or Substitute Aircraft in respect of which a Participation Agreement is to be or is, as the case may be, entered into in accordance with the NPA (or any substitute aircraft, including engines therefor, leased to the Company and securing one or more Equipment Notes).

Aircraft Purchase Agreement: Means the “Purchase Agreement” as defined in the NPA.

Applicable Certificate: Has the meaning specified in Section 1.01 of this Trust Supplement.

Applicable Certificateholder: Means the Person in whose name an Applicable Certificate is registered on the Register for the Applicable Certificates.

Applicable Closing Date: Has the meaning specified in Section 5.01(b) of this Trust Supplement.

Applicable Participation Agreement: Has the meaning specified in Section 5.01(b) of this Trust Supplement.

Applicable Trust: Has the meaning specified in the recitals hereto.

Basic Agreement: Has the meaning specified in the first paragraph of this Trust Supplement.

Business Day: Means any day other than a Saturday, a Sunday or a day on which commercial banks are required or authorized to close in Houston, Texas, New York, New



York, Salt Lake City, Utah or, so long as any Applicable Certificate is Outstanding, the city and state in which the Trustee or any Loan Trustee maintains its Corporate Trust Office or receives and disburses funds.

Company: Has the meaning specified in the first paragraph of this Trust Supplement.

Controlling Party: Has the meaning specified in the Intercreditor Agreement.

Cut-off Date: Means the earlier of (a) the Delivery Period Termination Date and (b) the date on which a Triggering Event occurs.

Delivery Notice: Has the meaning specified in the NPA.

Delivery Period Termination Date: Means the earlier of (a) May 31, 2006, or, if the Equipment Notes relating to all of the Aircraft (or Substitute Aircraft in lieu thereof) have not been purchased by the Trustee on or prior to such date due to any reason beyond the control of the Company and not occasioned by the Company's fault or negligence, August 31, 2006 and (b) the date on which Equipment Notes issued with respect to all of the Aircraft (or Substitute Aircraft in lieu thereof) have been purchased by the Pass Through Trustee in accordance with the NPA.

Deposit Agreement: Means the Deposit Agreement dated as of September 22, 2005 relating to the Applicable Certificates between the Depository and the Escrow Agent, as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

Depository: Means Citibank, N.A., a national banking association.

Deposits: Has the meaning specified in the Deposit Agreement.

Distribution Date: Means any Regular Distribution Date or Special Distribution Date as the context requires.

Embraer: Means Embraer-Empresa Brasileira de Aeronáutica S.A.

Escrow Agent: Means, initially, Wells Fargo Bank Northwest, National Association, and any replacement or successor therefor appointed in accordance with the Escrow Agreement.

Escrow Agreement: Means the Escrow and Paying Agent Agreement dated as of September 22, 2005 relating to the Applicable Certificates, among the Escrow Agent, the Escrow Paying Agent, the Trustee and Underwriter, as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

Escrow Paying Agent: Means the Person acting as paying agent under the Escrow Agreement.

Escrow Receipt: Means the receipt substantially in the form annexed to the Escrow Agreement representing a fractional undivided interest in the funds held in escrow thereunder.

Final Maturity Date: Means October 1, 2022.

Final Withdrawal: Has the meaning specified in the Escrow Agreement.

Final Withdrawal Date: Has the meaning specified in the Escrow Agreement.

Final Withdrawal Notice: Has the meaning specified in Section 5.02 of this Trust Supplement.

Indenture: Means each of the separate trust indentures and mortgages relating to the Aircraft, each as specified or described in a Delivery Notice delivered pursuant to the NPA or the related Participation Agreement, in each case as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

Intercreditor Agreement: Means the Intercreditor Agreement (2005-ERJ1) dated as of September 22, 2005 among the Trustee, the Liquidity Provider and Wilmington Trust Company, as Subordination Agent and as trustee thereunder, as amended, supplemented or otherwise modified from time to time in accordance with its terms.

Investors: Means the Underwriter together with all subsequent beneficial owners of the Applicable Certificates.

Liquidity Facility: Means, initially, the Revolving Credit Agreement (2005-ERJ1) dated as of September 22, 2005 relating to the Applicable Certificates, between Landesbank Baden-Württemberg and Wilmington Trust Company, as Subordination Agent, as agent and trustee for the Applicable Trust and, from and after the replacement of such agreement pursuant to the Intercreditor Agreement, the replacement liquidity facility therefor, as amended, supplemented or otherwise modified from time to time in accordance with its terms.

Liquidity Provider: Means, initially, Landesbank Baden-Württemberg, a bank established in Germany as a public law institution with legal capacity (*Rechtsfähige Anstalt des Öffentlichen Rechts*), and any replacement or successor therefor appointed in accordance with the Intercreditor Agreement.

Note Documents: Means the Equipment Notes with respect to the Applicable Certificates and, with respect to any such Equipment Note, the related Indenture, Participation Agreement and Lease.

Notice of Purchase Withdrawal: Has the meaning specified in the Deposit Agreement.

NPA: Means the Note Purchase Agreement dated as of September 22, 2005 among the Trustee, the Company, the Escrow Agent, the Escrow Paying Agent and the Subordination Agent, providing for, among other things, the purchase of Equipment Notes by the Trustee on behalf of the Applicable Trust, as the same may be amended, supplemented or otherwise modified from time to time, in accordance with its terms.

Participation Agreement: Means each Participation Agreement entered into or to be entered into, as the case may be, by the Trustee pursuant to the NPA, as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

Pool Balance: Means, as of any date, (i) the original aggregate face amount of the Applicable Certificates less (ii) the aggregate amount of all payments made in respect of such Applicable Certificates or in respect of Deposits other than payments made in respect of interest or premium thereon or reimbursement of any costs or expenses incurred in connection therewith. The Pool Balance as of any Distribution Date shall be computed after giving effect to any special distribution with respect to unused Deposits, payment of principal of the Equipment Notes or payment with respect to other Trust Property and the distribution thereof to be made on that date.

Pool Factor: Means, as of any Distribution Date, the quotient (rounded to the seventh decimal place) computed by dividing (i) the Pool Balance by (ii) the original aggregate face amount of the Applicable Certificates. The Pool Factor as of any Distribution Date shall be computed after giving effect to any special distribution with respect to unused Deposits, payment of principal of the Equipment Notes or payments with respect to other Trust Property and the distribution thereof to be made on that date.

Prospectus Supplement: Means the final Prospectus Supplement dated September 14, 2005 relating to the offering of the Applicable Certificates.

Ratings Confirmation: Has the meaning specified in the Intercreditor Agreement.

Scheduled Closing Date: Has the meaning specified in the NPA.

Special Payment: Means any payment (other than a Scheduled Payment) in respect of, or any proceeds of, any Equipment Note or Trust Indenture Estate (as defined in each Indenture).

Substitute Aircraft: Has the meaning specified in the NPA.

Triggering Event: Has the meaning assigned to such term in the Intercreditor Agreement.

Trust Property: Means (i) subject to the Intercreditor Agreement, the Equipment Notes held as the property of the Applicable Trust, all monies at any time paid thereon

and all monies due and to become due thereunder, (ii) funds from time to time deposited in the Certificate Account and the Special Payments Account and, subject to the Intercreditor Agreement, any proceeds from the sale by the Trustee pursuant to Article VI of the Basic Agreement of any Equipment Note and (iii) all rights of the Applicable Trust and the Trustee, on behalf of the Applicable Trust, under the Intercreditor Agreement, the Escrow Agreement, the NPA and the Liquidity Facility, including, without limitation, all rights to receive certain payments thereunder, and all monies paid to the Trustee on behalf of the Applicable Trust pursuant to the Intercreditor Agreement or the Liquidity Facility, provided that rights with respect to the Deposits or under the Escrow Agreement, except for the right to direct withdrawals for the purchase of Equipment Notes to be held herein, will not constitute Trust Property.

Trust Supplement: Has the meaning specified in the first paragraph of this trust supplement.

Underwriter: Means Citigroup Global Markets Inc.

Underwriting Agreement: Means the Underwriting Agreement dated September 14, 2005 among the Underwriter, the Company, the Depository and Embraer, as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

### ARTICLE III DISTRIBUTIONS; STATEMENTS TO CERTIFICATEHOLDERS

Section 3.01. Statements to Applicable Certificateholders. (a) On each Distribution Date, the Trustee will include with each distribution to Applicable Certificateholders of a Scheduled Payment or Special Payment, as the case may be, a statement setting forth the information provided below (in the case of a Special Payment, reflecting in part the information provided by the Escrow Paying Agent under the Escrow Agreement). Such statement shall set forth (per \$1,000 face amount Applicable Certificate as to (ii), (iii), (iv) and (v) below) the following information:

- (i) the aggregate amount of funds distributed on such Distribution Date under the Agreement and under the Escrow Agreement, indicating the amount allocable to each source;
- (ii) the amount of such distribution under the Agreement allocable to principal and the amount allocable to premium, if any;
- (iii) the amount of such distribution under the Agreement allocable to interest;
- (iv) the amount of such distribution under the Escrow Agreement allocable to interest;

- (v) the amount of such distribution under the Escrow Agreement allocable to unused Deposits, if any; and
- (vi) the Pool Balance and the Pool Factor.

With respect to the Applicable Certificates registered in the name of a Clearing Agency, on the Record Date prior to each Distribution Date, the Trustee will request from such Clearing Agency a securities position listing setting forth the names of all Clearing Agency Participants reflected on such Clearing Agency's books as holding interests in the Applicable Certificates on such Record Date. On each Distribution Date, the Trustee will mail to each such Clearing Agency Participant the statement described above and will make available additional copies as requested by such Clearing Agency Participant for forwarding to holders of interests in the Applicable Certificates.

(b) Within a reasonable period of time after the end of each calendar year but not later than the latest date permitted by law, the Trustee shall furnish to each Person who at any time during such calendar year was an Applicable Certificateholder of record a statement containing the sum of the amounts determined pursuant to clauses (a)(i), (a)(ii), (a)(iii), (a)(iv) and (a)(v) above for such calendar year or, in the event such Person was an Applicable Certificateholder of record during a portion of such calendar year, for such portion of such calendar year, and such other items as are readily available to the Trustee and which an Applicable Certificateholder shall reasonably request as necessary for the purpose of such Applicable Certificateholder's preparation of its federal income tax returns. Such statement and such other items shall be prepared on the basis of information supplied to the Trustee by the Clearing Agency Participants and shall be delivered by the Trustee to such Clearing Agency Participants to be available for forwarding by such Clearing Agency Participants to the holders of interests in the Applicable Certificates in the manner described in Section 3.01(a) of this Trust Supplement.

(c) Promptly following (i) the Delivery Period Termination Date, if there has been any change in the information set forth in clauses (y) and (z) below from that set forth in pages S-32 through S-36 of the Prospectus Supplement, and (ii) the date of any early redemption or purchase of, or any default in the payment of principal or interest in respect of, any of the Equipment Notes held in the Applicable Trust, or any Final Withdrawal, the Trustee shall furnish to Applicable Certificateholders of record on such date a statement setting forth (x) the expected Pool Balances for each subsequent Regular Distribution Date following the Delivery Period Termination Date, (y) the related Pool Factors for such Regular Distribution Dates and (z) the expected principal distribution schedule of the Equipment Notes, in the aggregate, held as Trust Property at the date of such notice. With respect to the Applicable Certificates registered in the name of a Clearing Agency, on the Delivery Period Termination Date, the Trustee will request from such Clearing Agency a securities position listing setting forth the names of all Clearing Agency Participants reflected on such Clearing Agency's books as holding interests in the Applicable Certificates on such date. The Trustee will mail to each such Clearing Agency Participant the statement described above and will make available additional copies as requested by such Clearing Agency Participant for forwarding to holders of interests in the Applicable Certificates.

- (d) This Section 3.01 supersedes and replaces Section 4.03 of the Basic Agreement, with respect to the Applicable Trust.

Section 3.02. Special Payments Account. (a) The Trustee shall establish and maintain on behalf of the Applicable Certificateholders a Special Payments Account as one or more accounts, which shall be non-interest bearing except as provided in Section 4.04 of the Basic Agreement. The Trustee shall hold the Special Payments Account in trust for the benefit of the Applicable Certificateholders and shall make or permit withdrawals therefrom only as provided in the Agreement. On each day when one or more Special Payments are made to the Trustee under the Intercreditor Agreement, the Trustee, upon receipt thereof, shall immediately deposit the aggregate amount of such Special Payments in the Special Payments Account.

- (b) This Section 3.02 supersedes and replaces Section 4.01(b) of the Basic Agreement in its entirety, with respect to the Applicable Trust.

Section 3.03. Distributions from Special Payments Account. (a) On each Special Distribution Date with respect to any Special Payment or as soon thereafter as the Trustee has confirmed receipt of any Special Payments due on the Equipment Notes held (subject to the Intercreditor Agreement) in the Applicable Trust or realized upon the sale of such Equipment Notes, the Trustee shall distribute out of the Special Payments Account the entire amount of such Special Payment deposited therein pursuant to Section 3.02(a) of this Trust Supplement. There shall be so distributed to each Applicable Certificateholder of record on the Record Date with respect to such Special Distribution Date (other than as provided in Section 11.01 of the Basic Agreement concerning the final distribution) by check mailed to such Applicable Certificateholder, at the address appearing in the Register, such Applicable Certificateholder's pro rata share (based on the Fractional Undivided Interest in the Applicable Trust held by such Applicable Certificateholder) of the total amount in the Special Payments Account on account of such Special Payment, except that, with respect to Applicable Certificates registered on the Record Date in the name of a Clearing Agency (or its nominee), such distribution shall be made by wire transfer in immediately available funds to the account designated by such Clearing Agency (or such nominee).

(b) The Trustee shall, at the expense of the Company, cause notice of each Special Payment to be mailed to each Applicable Certificateholder at his address as it appears in the Register. In the event of redemption or purchase of Equipment Notes held in the Applicable Trust, such notice shall be mailed not less than 15 days prior to the Special Distribution Date for the Special Payment resulting from such redemption or purchase, which Special Distribution Date shall be the date of such redemption or purchase. In the case of any other Special Payments, such notice shall be mailed as soon as practicable after the Trustee has confirmed that it has received funds for such Special Payment, stating the Special Distribution Date for such Special Payment which shall occur not less than 15 days after the date of such notice and as soon as practicable thereafter. Notices mailed by the Trustee shall set forth:

- (i) the Special Distribution Date and the Record Date therefor (except as otherwise provided in Section 11.01 of the Basic Agreement),

- (ii) the amount of the Special Payment for each \$1,000 face amount Applicable Certificate and the amount thereof constituting principal, premium, if any, and interest,
- (iii) the reason for the Special Payment, and
- (iv) if the Special Distribution Date is the same date as a Regular Distribution Date, the total amount to be received on such date for each \$1,000 face amount Applicable Certificate.

If the amount of premium, if any, payable upon the redemption or purchase of an Equipment Note has not been calculated at the time that the Trustee mails notice of a Special Payment, it shall be sufficient if the notice sets forth the other amounts to be distributed and states that any premium received will also be distributed.

If any redemption of the Equipment Notes held in the Trust is canceled, the Trustee, as soon as possible after learning thereof, shall cause notice thereof to be mailed to each Applicable Certificateholder at its address as it appears on the Register.

(b) This Section 3.03 supersedes and replaces Section 4.02(b) and Section 4.02(c) of the Basic Agreement in their entirety, with respect to the Applicable Trust.

#### ARTICLE IV DEFAULT

Section 4.01. Amendment of Section 6.05 of the Basic Agreement. Section 6.05 of the Basic Agreement shall be amended, with respect to the Applicable Trust, by deleting the phrase “and thereby annul any Direction given by such Certificateholders or the Trustee to such Loan Trustee with respect thereto,” set forth in the first sentence thereof.

#### ARTICLE V THE TRUSTEE

Section 5.01. Delivery of Documents; Delivery Dates. (a) The Trustee is hereby directed (i) to execute and deliver the Intercreditor Agreement, the Escrow Agreement and the NPA on or prior to the Issuance Date, each in the form delivered to the Trustee by the Company, and (ii) subject to the respective terms thereof, to perform its obligations thereunder. Upon request of the Company and the satisfaction or waiver of the closing conditions specified in the Underwriting Agreement, the Trustee shall execute, deliver, authenticate, issue and sell Applicable Certificates in authorized denominations equaling in the aggregate the amount set forth, with respect to the Applicable Trust, in Schedule I to the Underwriting Agreement evidencing the entire ownership interest in the Applicable Trust, which amount equals the maximum aggregate principal amount of Equipment Notes which may be purchased by the Trustee pursuant to the NPA. Except as provided in Sections 3.03, 3.04, 3.05 and 3.06 of the Basic Agreement, the Trustee shall not execute, authenticate or deliver Applicable Certificates in excess of the aggregate amount specified in this paragraph. The provisions of this

Section 5.01(a) supersede and replace the first sentence of Section 3.02(a) of the Basic Agreement, with respect to the Applicable Trust.

(b) On or after the Issuance Date, the Company may deliver from time to time to the Trustee a Delivery Notice relating to one or more Equipment Notes. After receipt of a Delivery Notice and in any case no later than one Business Day prior to a Scheduled Closing Date as to which such Delivery Notice relates (the "Applicable Closing Date"), the Trustee shall (as and when specified in the Delivery Notice) instruct the Escrow Agent to provide a Notice of Purchase Withdrawal to the Depository requesting (A) the withdrawal of one or more Deposits on the Applicable Closing Date in accordance with and to the extent permitted by the terms of the Escrow Agreement and the Deposit Agreement and (B) the payment of all, or a portion, of such Deposit or Deposits in an amount equal in the aggregate to the purchase price of such Equipment Notes to or on behalf of the Owner Trustee issuing such Equipment Notes, all as shall be described in the Delivery Notice; provided that, if the Issuance Date is an Applicable Closing Date, the Trustee shall not so instruct the Escrow Agent, and the purchase price of such Equipment Notes shall be paid from a portion of the proceeds of the sale of the Applicable Certificates. The Trustee shall (as and when specified in such Delivery Notice), subject to the conditions set forth in Section 2 of the NPA, enter into and perform its obligations under the Participation Agreement specified in such Delivery Notice (the "Applicable Participation Agreement") and cause such certificates, documents and legal opinions relating to the Trustee to be duly delivered as required by the Applicable Participation Agreement. If at any time prior to the Applicable Closing Date, the Trustee receives a notice of postponement pursuant to Section 1(e) or 1(f) of the NPA, then the Trustee shall give the Depository (with a copy to the Escrow Agent) a notice of cancellation of such Notice of Purchase Withdrawal relating to such Deposit or Deposits on such Applicable Closing Date. Upon satisfaction of the conditions specified in the NPA and the Applicable Participation Agreement, the Trustee shall purchase the applicable Equipment Notes with the proceeds of the withdrawals of one or more Deposits made on the Applicable Closing Date in accordance with the terms of the Deposit Agreement and the Escrow Agreement (or, if the Issuance Date is the Applicable Closing Date with respect to such Applicable Participation Agreement, from a portion of the proceeds of the sale of the Applicable Certificates; provided, that, if any portion of such proceeds is not used to purchase Equipment Notes by 3:30 p.m., New York time, on such date, the Trustee (on behalf of the Investors) shall immediately (but in no event later than 4:00 p.m., New York time, on such date) deposit such unused proceeds with the Depository (in Federal immediately available funds by wire transfer) in accordance with the Deposit Agreement and such deposit or deposits shall constitute a "Deposit" or "Deposits" (as defined therein) for all purposes thereunder). The purchase price of such Equipment Notes shall equal the principal amount of such Equipment Notes. Amounts withdrawn from such Deposit or Deposits in excess of the purchase price of the Equipment Notes or to the extent not applied on the Applicable Closing Date to the purchase price of the Equipment Notes, shall be re-deposited by the Trustee with the Depository on the Applicable Closing Date in accordance with the terms of the Deposit Agreement. The provisions of this Section 5.01(b) supersede and replace the provisions of Section 2.02 of the Basic Agreement with respect to the Applicable Trust, and all provisions of the Basic Agreement relating to Postponed Notes and Section 2.02 of the Basic Agreement shall not apply to the Applicable Trust.



(c) The Trustee acknowledges its acceptance of all right, title and interest in and to the Trust Property to be acquired pursuant to Section 5.01(b) of this Trust Supplement, the NPA and each Applicable Participation Agreement, and declares that it holds and will hold such right, title and interest for the benefit of all present and future Applicable Certificateholders, upon the trusts set forth in the Agreement. By its acceptance of an Applicable Certificate, each initial Applicable Certificateholder, as a grantor of the Applicable Trust, joins with the Trustee in the creation of the Applicable Trust. The provisions of this Section 5.01(c) supersede and replace the provisions of Section 2.03 of the Basic Agreement, with respect to the Applicable Trust.

Section 5.02. Withdrawal of Deposits. If any Deposits remain outstanding on the Business Day next succeeding the Cut-off Date, the Trustee shall give the Escrow Agent notice that the Trustee's obligation to purchase Equipment Notes under the NPA has terminated and instruct the Escrow Agent to provide a notice of Final Withdrawal to the Depository substantially in the form of Exhibit B to the Deposit Agreement (the "Final Withdrawal Notice").

Section 5.03. The Trustee. (a) Subject to Section 5.04 of this Trust Supplement and Section 7.15 of the Basic Agreement, the Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Trust Supplement, the Deposit Agreement, the NPA or the Escrow Agreement or the due execution hereof or thereof by the Company or the other parties thereto (other than the Trustee), or for or in respect of the recitals and statements contained herein or therein, all of which recitals and statements are made solely by the Company, except that the Trustee hereby represents and warrants that each of this Trust Supplement, the Basic Agreement, each Applicable Certificate, the Intercreditor Agreement, the NPA and the Escrow Agreement has been executed and delivered by one of its officers who is duly authorized to execute and deliver such document on its behalf.

(b) Except as herein otherwise provided and except during the continuation of an Event of Default in respect of the Applicable Trust created hereby, no duties, responsibilities or liabilities are assumed, or shall be construed to be assumed, by the Trustee by reason of this Trust Supplement other than as set forth in the Agreement, and this Trust Supplement is executed and accepted on behalf of the Trustee, subject to all the terms and conditions set forth in the Agreement, as fully to all intents as if the same were herein set forth at length.

Section 5.04. Representations and Warranties of the Trustee. The Trustee hereby represents and warrants that:

(a) the Trustee has full power, authority and legal right to execute, deliver and perform this Trust Supplement, the Intercreditor Agreement, the Escrow Agreement, the NPA and the Note Documents to which it is or is to become a party and has taken all necessary action to authorize the execution, delivery and performance by it of this Trust Supplement, the Intercreditor Agreement, the Escrow Agreement, the NPA and the Note Documents to which it is or is to become a party;

(b) the execution, delivery and performance by the Trustee of this Trust Supplement, the Intercreditor Agreement, the Escrow Agreement, the NPA and the Note

Documents to which it is or is to become a party (i) will not violate any provision of any United States federal law or the law of the state of the United States where it is located governing the banking and trust powers of the Trustee or any order, writ, judgment, or decree of any court, arbitrator or governmental authority applicable to the Trustee or any of its assets, (ii) will not violate any provision of the articles of association or by-laws of the Trustee, and (iii) will not violate any provision of, or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of any lien on any properties included in the Trust Property pursuant to the provisions of any mortgage, indenture, contract, agreement or other undertaking to which it is a party, which violation, default or lien could reasonably be expected to have an adverse effect on the Trustee's performance or ability to perform its duties hereunder or thereunder or on the transactions contemplated herein or therein;

(c) the execution, delivery and performance by the Trustee of this Trust Supplement, the Intercreditor Agreement, the Escrow Agreement, the NPA and the Note Documents to which it is or is to become a party will not require the authorization, consent, or approval of, the giving of notice to, the filing or registration with, or the taking of any other action in respect of, any governmental authority or agency of the United States or the state of the United States where it is located regulating the banking and corporate trust activities of the Trustee; and

(d) this Trust Supplement, the Intercreditor Agreement, the Escrow Agreement, the NPA and the Note Documents to which it is or is to become a party have been, or will be, as applicable, duly executed and delivered by the Trustee and constitute, or will constitute, as applicable, the legal, valid and binding agreements of the Trustee, enforceable against it in accordance with their respective terms; provided, however, that enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) general principles of equity.

Section 5.05. Trustee Liens. The Trustee in its individual capacity agrees, in addition to the agreements contained in Section 7.17 of the Basic Agreement, that it will at its own cost and expense promptly take any action as may be necessary to duly discharge and satisfy in full any Trustee's Liens on or with respect to the Trust Property which is attributable to the Trustee in its individual capacity and which is unrelated to the transactions contemplated by the Intercreditor Agreement or the NPA.

ARTICLE VI  
ADDITIONAL AMENDMENT; SUPPLEMENTAL AGREEMENTS

Section 6.01. Amendment of Section 5.02 of the Basic Agreement. Section 5.02 of the Basic Agreement shall be amended, with respect to the Applicable Trust, by (i) replacing the phrase “of the Note Documents and of this Agreement” set forth in paragraph (b) thereof with the phrase “of the Note Documents, of the NPA and of this Agreement” and (ii) replacing the phrase “of this Agreement and any Note Document” set forth in the last paragraph of Section 5.02 with the phrase “of this Agreement, the NPA and any Note Document”.

Section 6.02. Supplemental Agreements Without Consent of Applicable Certificateholders. Without limitation of Section 9.01 of the Basic Agreement, under the terms of, and subject to the limitations contained in, Section 9.01 of the Basic Agreement, the Company may (but will not be required to), and the Trustee (subject to Section 9.03 of the Basic Agreement) shall, at the Company’s request, at any time and from time to time, enter into one or more agreements supplemental to the Escrow Agreement, the NPA or the Deposit Agreement, for any of the purposes set forth in clauses (1) through (9) of such Section 9.01, and (without limitation of the foregoing or Section 9.01 of the Basic Agreement) (a) clauses (2) and (3) of such Section 9.01 shall also be deemed to include the Company’s obligations under (in the case of clause (2)), and the Company’s rights and powers conferred by (in the case of clause (3)), the NPA, and (b) references in clauses (4), (6) and (7) of such Section 9.01 to “any Intercreditor Agreement or any Liquidity Facility” shall also be deemed to refer to “the Intercreditor Agreement, the Liquidity Facility, the Escrow Agreement, the NPA or the Deposit Agreement”.

Section 6.03. Supplemental Agreements with Consent of Applicable Certificateholders. Without limitation of Section 9.02 of the Basic Agreement, the provisions of Section 9.02 of the Basic Agreement shall apply to agreements or amendments for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Escrow Agreement, the Deposit Agreement or the NPA or modifying in any manner the rights and obligations of the Applicable Certificateholders under the Escrow Agreement, the Deposit Agreement or the NPA; provided that the provisions of Section 9.02(1) of the Basic Agreement shall be deemed to include reductions in any manner of, or delay in the timing of, any receipt by the Applicable Certificateholders of payments upon the Deposits.

ARTICLE VII  
MISCELLANEOUS PROVISIONS

Section 7.01. Basic Agreement Ratified. Except and so far as herein expressly provided, all of the provisions, terms and conditions of the Basic Agreement are in all respects ratified and confirmed; and the Basic Agreement and this Trust Supplement shall be taken, read and construed as one and the same instrument. All replacements of provisions of, and other modifications of the Basic Agreement set forth in this Trust Supplement are solely with respect to the Applicable Trust.

**Section 7.02. GOVERNING LAW. THE AGREEMENT AND THE APPLICABLE CERTIFICATES HAVE BEEN DELIVERED IN THE STATE OF NEW YORK AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS. THIS SECTION 7.02 SUPERSEDES AND REPLACES SECTION 12.05 OF THE BASIC AGREEMENT, WITH RESPECT TO THE APPLICABLE TRUST.**

Section 7.03. Execution in Counterparts. This Trust Supplement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 7.04. Intention of Parties. The parties hereto intend that the Applicable Trust be classified for U.S. federal income tax purposes as a grantor trust under Subpart E, Part I of Subchapter J of the Internal Revenue Code of 1986, as amended, and not as a trust or association taxable as a corporation or as a partnership. Each Applicable Certificateholder and Investor, by its acceptance of its Applicable Certificate or a beneficial interest therein, agrees to treat the Applicable Trust as a grantor trust for all U.S. federal, state and local income tax purposes. The powers granted and obligations undertaken pursuant to the Agreement shall be so construed so as to further such intent.

IN WITNESS WHEREOF, the Company and the Trustee have caused this Trust Supplement to be duly executed by their respective officers thereto duly authorized, as of the day and year first written above.

CONTINENTAL AIRLINES, INC.

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

WILMINGTON TRUST COMPANY,  
as Trustee

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

FORM OF CERTIFICATE

Certificate  
No. \_\_\_\_

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch the registered owner hereof, Cede & Co., has an interest herein.]\*

CONTINENTAL AIRLINES PASS THROUGH TRUST 2005-ERJ1

9.798% Continental Airlines Pass Through Certificate, Series 2005-ERJ1  
Issuance Date: September 22, 2005

Final Maturity Date: October 1, 2022

Evidencing A Fractional Undivided Interest In The Continental Airlines Pass Through Trust 2005-ERJ1, The Property Of Which Shall Include Certain Equipment Notes Each Secured By An Aircraft Leased To Continental Airlines, Inc.

\$(\_\_\_\_\_) Fractional Undivided Interest  
representing 0.0003215330697% of the Trust per \$1,000 face amount

THIS CERTIFIES THAT \_\_\_\_\_, for value received, is the registered owner of a \$ \_\_\_\_\_  
(\_\_\_\_\_ DOLLARS) Fractional Undivided Interest in the Continental Airlines Pass Through Trust 2005-ERJ1 (the "Trust") created by Wilmington Trust Company, as trustee (the "Trustee"), pursuant to a Pass Through Trust Agreement, dated as of September 25, 1997 (the "Basic Agreement"), between the Trustee and Continental Airlines, Inc., a Delaware corporation (the "Company"), as

\* This legend to appear on Book-Entry Certificates to be deposited with the Depository Trust Company.

supplemented by Trust Supplement No. 2005-ERJ1 thereto, dated as of September 22, 2005 (the "Trust Supplement") and, together with the Basic Agreement, the "Agreement"), between the Trustee and the Company, a summary of certain of the pertinent provisions of which is set forth below. To the extent not otherwise defined herein, the capitalized terms used herein have the meanings assigned to them in the Agreement. This Certificate is one of the duly authorized Certificates designated as "9.798% Continental Airlines Pass Through Certificates, Series 2005-ERJ1" (herein called the "Certificates"). This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement. By virtue of its acceptance hereof, the holder of this Certificate (the "Certificateholder") and, together with all other holders of Certificates issued by the Trust, the "Certificateholders") assents to and agrees to be bound by the provisions of the Agreement and the Intercreditor Agreement. The property of the Trust includes certain Equipment Notes and all rights of the Trust to receive payments under the Intercreditor Agreement and the Liquidity Facility (the "Trust Property"). Each issue of the Equipment Notes is secured by, among other things, a security interest in an Aircraft leased to the Company.

The Certificates represent Fractional Undivided Interests in the Trust and the Trust Property and have no rights, benefits or interest in respect of any other separate trust established pursuant to the terms of the Basic Agreement for any other series of certificates issued pursuant thereto.

Subject to and in accordance with the terms of the Agreement and the Intercreditor Agreement, from funds then available to the Trustee, there will be distributed on the 1<sup>st</sup> day of each month (a "Regular Distribution Date") commencing on October 1, 2005 to the Person in whose name this Certificate is registered at the close of business on the 15th day preceding the Regular Distribution Date, an amount in respect of the Scheduled Payments on the Equipment Notes due on such Regular Distribution Date, the receipt of which has been confirmed by the Trustee, equal to the product of the percentage interest in the Trust evidenced by this Certificate and an amount equal to the sum of such Scheduled Payments. Subject to and in accordance with the terms of the Agreement and the Intercreditor Agreement, in the event that Special Payments on the Equipment Notes are received by the Trustee, from funds then available to the Trustee, there shall be distributed on the applicable Special Distribution Date, to the Person in whose name this Certificate is registered at the close of business on the 15th day preceding the Special Distribution Date, an amount in respect of such Special Payments on the Equipment Notes, the receipt of which has been confirmed by the Trustee, equal to the product of the percentage interest in the Trust evidenced by this Certificate and an amount equal to the sum of such Special Payments so received. If a Regular Distribution Date or Special Distribution Date is not a Business Day, distribution shall be made on the immediately following Business Day with the same force and effect as if made on such Regular Distribution Date or Special Distribution Date and no interest shall accrue during the intervening period. The Trustee shall mail notice of each Special Payment and the Special Distribution Date therefor to the Certificateholder of this Certificate.

Distributions on this Certificate will be made by the Trustee by check mailed to the Person entitled thereto, without presentation or surrender of this Certificate or the making of any notation hereon, except that with respect to Certificates registered on the Record Date in the name of a Clearing Agency (or its nominee), such distribution shall be made by wire transfer.

Except as otherwise provided in the Agreement and notwithstanding the above, the final distribution on this Certificate will be made after notice mailed by the Trustee of the pendency of such distribution and only upon presentation and surrender of this Certificate at the office or agency of the Trustee specified in such notice.

The Certificates do not represent a direct obligation of, or an obligation guaranteed by, or an interest in, the Company or the Trustee or any affiliate thereof. The Certificates are limited in right of payment, all as more specifically set forth on the face hereof and in the Agreement. All payments or distributions made to Certificateholders under the Agreement shall be made only from the Trust Property and only to the extent that the Trustee shall have sufficient income or proceeds from the Trust Property to make such payments in accordance with the terms of the Agreement. Each Certificateholder of this Certificate, by its acceptance hereof, agrees that it will look solely to the income and proceeds from the Trust Property to the extent available for distribution to such Certificateholder as provided in the Agreement. This Certificate does not purport to summarize the Agreement and reference is made to the Agreement for information with respect to the interests, rights, benefits, obligations, privileges, and duties evidenced hereby. A copy of the Agreement may be examined during normal business hours at the principal office of the Trustee, and at such other places, if any, designated by the Trustee, by any Certificateholder upon request.

The Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Certificateholders under the Agreement at any time by the Company and the Trustee with the consent of the Certificateholders holding Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Trust. Any such consent by the Certificateholder of this Certificate shall be conclusive and binding on such Certificateholder and upon all future Certificateholders of this Certificate and of any Certificate issued upon the transfer hereof or in exchange hereof or in lieu hereof whether or not notation of such consent is made upon this Certificate. The Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the Certificateholders of any of the Certificates.

As provided in the Agreement and subject to certain limitations set forth therein, the transfer of this Certificate is registrable in the Register upon surrender of this Certificate for registration of transfer at the offices or agencies maintained by the Trustee in its capacity as Registrar, or by any successor Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Trustee and the Registrar, duly executed by the Certificateholder hereof or such Certificateholder's attorney duly authorized in writing, and thereupon one or more new Certificates of authorized denominations evidencing the same aggregate Fractional Undivided Interest in the Trust will be issued to the designated transferee or transferees.

The Certificates are issuable only as registered Certificates without coupons in minimum denominations of \$1,000 Fractional Undivided Interest and integral multiples thereof except that one Certificate may be issued in a different denomination. As provided in the Agreement and subject to certain limitations therein set forth, the Certificates are exchangeable



for new Certificates of authorized denominations evidencing the same aggregate Fractional Undivided Interest in the Trust, as requested by the Certificateholder surrendering the same.

No service charge will be made for any such registration of transfer or exchange, but the Trustee shall require payment of a sum sufficient to cover any tax or governmental charge payable in connection therewith.

Each Certificateholder and Investor, by its acceptance of this Certificate or a beneficial interest herein, agrees to treat the Trust as a grantor trust for all U.S. federal, state and local income tax purposes.

The Trustee, the Registrar, and any agent of the Trustee or the Registrar may treat the person in whose name this Certificate is registered as the owner hereof for all purposes, and neither the Trustee, the Registrar, nor any such agent shall be affected by any notice to the contrary.

The obligations and responsibilities created by the Agreement and the Trust created thereby shall terminate upon the distribution to Certificateholders of all amounts required to be distributed to them pursuant to the Agreement and the disposition of all property held as part of the Trust Property.

Any Person acquiring or accepting this Certificate or an interest herein will, by such acquisition or acceptance, be deemed to have represented and warranted to and for the benefit of each Owner Participant and the Company that either: (i) the assets of an employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or of a plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"), have not been used to purchase this Certificate or an interest herein or (ii) the purchase and holding of this Certificate or an interest herein are exempt from the prohibited transaction restrictions of ERISA and the Code pursuant to one or more prohibited transaction statutory or administrative exemptions.

THE AGREEMENT AND THIS CERTIFICATE HAVE BEEN DELIVERED IN THE STATE OF NEW YORK AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

Unless the certificate of authentication hereon has been executed by the Trustee, by manual signature, this Certificate shall not be entitled to any benefit under the Agreement or be valid for any purpose.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

CONTINENTAL AIRLINES PASS THROUGH  
TRUST 2005-ERJ1

By: WILMINGTON TRUST COMPANY,  
as Trustee

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

FORM OF THE TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Certificates referred to in the within-mentioned Agreement.

WILMINGTON TRUST COMPANY,  
as Trustee

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

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EXHIBIT B

[DTC Letter of Representations]

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REVOLVING CREDIT AGREEMENT  
(2005-ERJ1)

Dated as of September 22, 2005

between

WILMINGTON TRUST COMPANY,  
as Subordination Agent,  
as agent and trustee for the  
Continental Airlines Pass Through Trust 2005-ERJ1,  
as Borrower,

and

LANDESBANK BADEN-WÜRTTEMBERG,  
as Liquidity Provider

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Continental Airlines Pass Through Trust 2005-ERJ1  
Continental Airlines 9.798% Pass Through Certificates,  
Series 2005-ERJ1

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REVOLVING CREDIT AGREEMENT (2005-ERJ1)

This REVOLVING CREDIT AGREEMENT (2005-ERJ1), dated as of September 22, 2005, is made by and between WILMINGTON TRUST COMPANY, a Delaware corporation, not in its individual capacity but solely as Subordination Agent under the Intercreditor Agreement (each as defined below), as agent and trustee for the Trust (as defined below) (the "Borrower"), and LANDESBANK BADEN-WÜRTTEMBERG, a bank established in Germany as a public law institution with legal capacity (*Rechtsfähige Anstalt des Öffentlichen Rechts*) (the "Liquidity Provider").

WITNESSETH:

WHEREAS, pursuant to the Trust Agreement (such term and all other capitalized terms used in these recitals having the meanings set forth or referred to in Section 1.01), the Trust is issuing the Certificates; and

WHEREAS, the Borrower, in order to support the timely payment of a portion of the interest on the Certificates in accordance with their terms, has requested the Liquidity Provider to enter into this Agreement, providing in part for the Borrower to request in specified circumstances that Advances be made hereunder.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and of other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Certain Defined Terms.

(a) As used in this Agreement and unless expressly indicated, or unless the context clearly requires otherwise, the following capitalized terms shall have the following respective meanings for all purposes of this Agreement:

"Additional Costs" has the meaning assigned to such term in Section 3.01.

"Advance" means an Interest Advance, a Final Advance, a Special Termination Advance, a Provider Advance or an Applied Provider Advance, as the case may be.

"Agreement" means this Revolving Credit Agreement (2005-ERJ1), dated as of September 22, 2005, between the Borrower and the Liquidity Provider, as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

"Applicable Liquidity Rate" has the meaning assigned to such term in Section 3.07(f).



"Applicable Margin" means (i) with respect to any Unpaid Advance (other than an Unapplied Special Termination Advance) or Applied Provider Advance, 2.5% per annum, and (ii) with respect to any Unapplied Provider Advance or any Unapplied Special Termination Advance, the margin per annum specified in the Fee Letter.

"Applied Downgrade Advance" has the meaning assigned to such term in Section 2.06(a).

"Applied Early Termination Advance" has the meaning assigned to such term in Section 2.06(a).

"Applied Provider Advance" has the meaning assigned to such term in Section 2.06(a).

"Applied Special Termination Advance" has the meaning assigned to such term in Section 2.05.

"Base Rate" means, on any day, a fluctuating interest rate per annum in effect from time to time, which rate per annum shall at all times be equal to (a) the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by the Liquidity Provider from three Federal funds brokers of recognized standing selected by it, plus (b) one-quarter of one percent (1/4 of 1%).

"Base Rate Advance" means an Advance that bears interest at a rate based upon the Base Rate.

"Borrower" has the meaning assigned to such term in the recital of parties to this Agreement.

"Borrowing" means the making of Advances requested by delivery of a Notice of Borrowing.

"Business Day" means any day other than a Saturday, a Sunday or a day on which commercial banks are required or authorized to close in Houston, Texas, New York, New York or, so long as any Certificate is outstanding, the city and state in which the Trustee, the Borrower or any Loan Trustee maintains its Corporate Trust Office or receives or disburses funds, and, if the applicable Business Day relates to any Advance or other amount bearing interest based on LIBOR, on which dealings are carried on in the London interbank market.

"Deposit Agreement" means the Deposit Agreement dated as of the date hereof between Wells Fargo Bank Northwest, National Association, as Escrow Agent, and Citibank, N.A., as Depositary, pertaining to the Certificates, as the same may be amended, modified or supplemented from time to time in accordance with the terms thereof.

"Depositary" means Citibank, N.A.

"Deposits" has the meaning assigned to such term in the Deposit Agreement.

"Dollars" or "\$" means United States dollars.

"Downgrade Advance" means an Advance made pursuant to Section 2.02(d).

"Downgrade Event" means a downgrading of the Liquidity Provider's short-term unsecured debt rating or short-term issuer credit rating, as the case may be, issued by either Rating Agency below the applicable Threshold Rating unless each Rating Agency shall have confirmed in writing on or prior to the date of such downgrading that such downgrading will not result in the downgrading, withdrawal or suspension of the ratings of the Certificates.

"Early Termination Advance" means an advance made pursuant to Section 2.02(b).

"Early Termination Date" means the date specified in an Early Termination Notice delivered by the Liquidity Provider to the Borrower in accordance with Section 2.10, which date shall not be earlier than the 25<sup>th</sup> day following the receipt by the Borrower of such Early Termination Notice.

"Early Termination Notice" has the meaning assigned to such term in Section 2.10.

"Early Termination Notice Period" means the period from the 40th day to and including the 25th day prior to the anniversary of the Closing Date in each calendar year.

"Effective Date" has the meaning assigned to such term in Section 4.01. The delivery of the certificate of the Liquidity Provider contemplated by Section 4.01(e) shall be conclusive evidence that the Effective Date has occurred.

"Excluded Taxes" means (i) Taxes imposed on, based on or measured by the income of, or franchise Taxes imposed on, the Liquidity Provider or its Lending Office by the jurisdiction where such Liquidity Provider's principal office or such Lending Office is located or any other taxing jurisdiction in which such Tax is imposed as a result of the Liquidity Provider being, or having been, organized in, or conducting, or having conducted, any activities unrelated to the transactions contemplated by the Operative Agreements in, such jurisdiction or (ii) withholding taxes, whether or not indemnified under Section 3.03.

"Excluded Withholding Taxes" means (i) withholding Taxes imposed by the United States except (a) if such Liquidity Provider is, on the date hereof (or, in the case of any successor Liquidity Provider, on the date it acquires its interest herein), a "resident" of an Applicable Treaty jurisdiction entitled to claim the benefits of an Applicable Treaty in respect of amounts payable hereunder, any such withholding Tax to the extent imposed as a result of a change in applicable law or treaty (other than any addition of, or change in, any "anti-treaty shopping", "limitation on benefits", or similar provision in any treaty or other applicable law restricting the availability of treaty benefits (including, without limitation any provision similar to the Protocol Amending the Convention Between the United States of America and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal

Evasion with respect to Taxes on Income, signed at Washington on October 13, 1993)) after the date hereof (or, in the case of any successor Liquidity Provider, after the date it acquired its interest herein) and (b) any such withholding Tax to the extent the amount of such withholding Tax imposed on such successor Liquidity Provider does not exceed the amount of such withholding Tax that, in the absence of the transfer to such successor Liquidity Provider, would have been an Indemnified Tax imposed on payments to the predecessor Liquidity Provider pursuant to applicable law in effect on the date such successor Liquidity Provider acquired its interest herein, (ii) any Tax imposed or to the extent increased as a result of the Liquidity Provider failing to deliver to the Borrower any certificate or document (the delivery of which certificate or document in the good faith judgment of the Liquidity Provider will not expose the Liquidity Provider to any adverse consequence and which the Liquidity Provider is legally entitled to provide) which is reasonably requested by the Borrower to establish that payments under this Agreement are exempt from (or entitled to a reduced rate of) withholding Tax, and (iii) any Tax imposed by a jurisdiction as a result of the Liquidity Provider being, or having been, organized in, or maintaining, or having maintained, its principal office or Lending Office in, or conducting, or having conducted, any activities unrelated to the transactions contemplated by the Operative Agreements in, such jurisdiction. For purposes of this definition, "Applicable Treaty," means an income tax treaty between the United States and any of Australia, Austria, Canada, France, Germany, Ireland, Japan, Luxembourg, The Netherlands, Sweden, Switzerland or the United Kingdom.

"Expenses" means liabilities, obligations, damages, settlements, penalties, claims, actions, suits, costs, expenses, and disbursements (including, without limitation, reasonable fees and disbursements of legal counsel and costs of investigation), provided that Expenses shall not include any Taxes other than sales, use and V.A.T. taxes imposed on fees and expenses payable pursuant to Section 7.07.

"Expiry Date" means October 16, 2022.

"Final Advance" means an Advance made pursuant to Section 2.02(e).

"Indemnified Tax" has the meaning assigned to such term in Section 3.03.

"Intercreditor Agreement" means the Intercreditor Agreement dated as of the date hereof, among the Trustee, the Liquidity Provider and the Subordination Agent, as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

"Interest Advance" means an Advance made pursuant to Section 2.02(a).

"Interest Period" means, with respect to any LIBOR Advance, each of the following periods:

- (i) the period beginning on (and including) the third London/Stuttgart Business Day following either (A) the Liquidity Provider's receipt of the Notice of Borrowing for such LIBOR Advance or (B) the date on which funds are withdrawn

from the Cash Collateral Account for the purpose of paying interest on the Certificates as contemplated by Section 2.06(a) hereof and, in either case, ending on (but excluding) the next Regular Distribution Date; and

- (i) each subsequent period commencing on (and including) the last day of the immediately preceding Interest Period and ending on (but excluding) the next Regular Distribution Date;

provided, however, that if (x) the Final Advance shall have been made, or (y) other outstanding Advances shall have been converted into the Final Advance, then the Interest Periods shall be successive periods of one month beginning on the third London/Stuttgart Business Day following the Liquidity Provider's receipt of the Notice of Borrowing for such Final Advance (in the case of clause (x) above) or the Regular Distribution Date following such conversion (in the case of clause (y) above); provided further that if the last day of any Interest Period shall not be a Business Day, such Interest Period will end on the next succeeding Business Day.

"Lending Office" means the lending office of the Liquidity Provider presently located at Stuttgart, Germany, or such other lending office as the Liquidity Provider from time to time shall notify the Borrower as its Lending Office hereunder; provided that the Liquidity Provider shall not change its Lending Office to another lending office outside Germany or the United States of America except in accordance with Section 3.11 hereof.

"LIBOR" means, with respect to any Interest Period,

- (i) the rate per annum appearing on display page 3750 (British Bankers Association-LIBOR) of the Telerate Service (or any successor or substitute therefor) at approximately 11:00 a.m. (London time) two London/Stuttgart Business Days before the first day of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period; or
- (ii) if the rate calculated pursuant to clause (i) above is not available, the average (rounded upwards, if necessary, to the next 1/16 of 1%) of the rates per annum at which deposits in dollars are offered for the relevant Interest Period by three banks of recognized standing selected by the Liquidity Provider in the London interbank market at approximately 11:00 a.m. (London time) two London/Stuttgart Business Days before the first day of such Interest Period in an amount approximately equal to the principal amount of the LIBOR Advance to which such Interest Period is to apply and for a period comparable to such Interest Period; or
- (iii) if clause (ii) above is applicable but fewer than three banks in the London interbank market provide such rate, the average (rounded upwards, if necessary, to the next 1/16 of 1%) of the rates per annum quoted by three banks in New York City of recognized standing selected by the Liquidity Provider at approximately 11:00 a.m. (New York City time) two

Business Days before the first day of such Interest Period for loans in Dollars to leading European banks in an amount approximately equal to the principal amount of the LIBOR Advance to which such Interest Period is to apply and for a period comparable to such Interest Period.

"LIBOR Advance" means an Advance bearing interest at a rate based upon LIBOR.

"Liquidity Event of Default" means the occurrence of either (a) the Acceleration of all of the Equipment Notes (provided that, with respect to the period prior to the Delivery Period Expiry Date, such Equipment Notes have an aggregate outstanding principal balance in excess of \$195 million) or (b) a Continental Bankruptcy Event.

"Liquidity Indemnitee" means (i) the Liquidity Provider, (ii) the directors, officers, employees and agents of the Liquidity Provider and (iii) the successors and permitted assigns of the persons described in clauses (i) and (ii).

"Liquidity Provider" has the meaning assigned to such term in the recital of parties to this Agreement.

"London/Stuttgart Business Day." means any day on which commercial banks are open for general business in London, England and Stuttgart, Germany.

"Maximum Available Commitment" means, subject to the proviso contained in the third sentence of Section 2.02(a), at any time of determination, (a) the Maximum Commitment at such time less (b) the aggregate amount of each Interest Advance outstanding at such time; provided that following a Provider Advance, a Special Termination Advance or a Final Advance, the Maximum Available Commitment shall be zero.

"Maximum Commitment" means initially \$45,709,139.70, as the same may be reduced from time to time in accordance with Section 2.04(a).

"Notice of Borrowing" has the meaning assigned to such term in Section 2.02(g).

"Notice of Replacement Subordination Agent" has the meaning assigned to such term in Section 3.08.

"Performing Note Deficiency." means any time that less than 65% of the then aggregate outstanding principal amount of all Equipment Notes are Performing Equipment Notes.

"Prospectus Supplement" means the final Prospectus Supplement dated September 14, 2005 relating to the Certificates, as such Prospectus Supplement may be amended or supplemented.

"Provider Advance" means a Downgrade Advance or an Early Termination Advance.

"Regulatory Change" has the meaning assigned to such term in Section 3.01.

"Replenishment Amount" has the meaning assigned to such term in Section 2.06(b).

"Special Termination Advance" means an Advance made pursuant to Section 2.02(f).

"Special Termination Notice" means the Notice of Special Termination substantially in the form of Annex IX to this Agreement.

"Termination Date" means the earliest to occur of the following: (i) the Expiry Date; (ii) the date on which the Borrower delivers to the Liquidity Provider a certificate, signed by a Responsible Officer of the Borrower, certifying that all of the Certificates have been paid in full (or provision has been made for such payment in accordance with the Intercreditor Agreement and the Trust Agreement) or are otherwise no longer entitled to the benefits of this Agreement; (iii) the date on which the Borrower delivers to the Liquidity Provider a certificate, signed by a Responsible Officer of the Borrower, certifying that a Replacement Liquidity Facility has been substituted for this Agreement in full pursuant to Section 3.6(e) of the Intercreditor Agreement; (iv) the fifth Business Day following the receipt by the Borrower of a Termination Notice or Special Termination Notice from the Liquidity Provider pursuant to Section 6.01 hereof; and (v) the date on which no Advance is, or may (including by reason of reinstatement as herein provided) become available for a Borrowing hereunder.

"Termination Notice" means the Notice of Termination substantially in the form of Annex VI to this Agreement.

"Transferee" has the meaning assigned to such term in Section 7.08(b).

"Unapplied Early Termination Advance" means any portion of an Early Termination Advance which is not an Applied Early Termination Advance.

"Unapplied Provider Advance" means any portion of any Provider Advance that is not an Applied Provider Advance.

"Unapplied Special Termination Advance" means any portion of a Special Termination Advance that is not an Applied Special Termination Advance.

"Unpaid Advance" has the meaning assigned to such term in Section 2.05.

(b) For the purposes of this Agreement, the following terms shall have the respective meanings assigned to such terms in the Intercreditor Agreement:

"Acceleration", "Cash Collateral Account", "Certificate", "Certificateholder", "Closing Date", "Continental", "Continental Bankruptcy Event", "Controlling Party", "Corporate Trust Office", "Delivery Period Expiry Date", "Distribution Date", "Downgraded Facility", "Early Terminated Facility", "Equipment Notes", "Fee Letter", "Final Legal Distribution Date", "Financing Agreement", "Indenture", "Investment Earnings", "Liquidity Obligations", "Loan

Trustee", "[Moody's](#)", "[Note Purchase Agreement](#)", "[Operative Agreements](#)", "[Participation Agreement](#)", "[Performing Equipment Note](#)", "[Person](#)", "[Pool Balance](#)", "[Rating Agencies](#)", "[Ratings Confirmation](#)", "[Regular Distribution Dates](#)", "[Replacement Liquidity Facility](#)", "[Required Amount](#)", "[Responsible Officer](#)", "[Scheduled Payment](#)", "[Special Payment](#)", "[Standard & Poor's](#)", "[Stated Interest Rate](#)", "[Subordination Agent](#)", "[Taxes](#)", "[Threshold Rating](#)", "[Trust](#)", "[Trust Agreement](#)", "[Trustee](#)", "[Underwriter](#)", "[Underwriting Agreement](#)" and "[Written Notice](#)".

Section 1.02. [Interpretation](#). For purposes of this Agreement, except as expressly provided or unless the context otherwise requires:

(a) the terms used herein that are defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(b) all references in this Agreement to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement;

(c) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; and

(d) the term "including" shall mean "including without limitation".

## ARTICLE II

### AMOUNT AND TERMS OF THE COMMITMENT

Section 2.01. [The Advances](#). The Liquidity Provider hereby irrevocably agrees, on the terms and conditions hereinafter set forth, to make Advances to the Borrower from time to time on any Business Day during the period from the Effective Date until 1:00 p.m. (New York City time) on the Expiry Date (unless the obligations of the Liquidity Provider shall be earlier terminated in accordance with the terms of Section 2.04(b)) in an aggregate amount at any time outstanding not to exceed the Maximum Commitment.

Section 2.02. [Making the Advances](#).

(a) Interest Advances shall be made in one or more Borrowings by delivery to the Liquidity Provider of one or more written and completed Notices of Borrowing in substantially the form of Annex I attached hereto, signed by a Responsible Officer of the Borrower, in an amount not exceeding the Maximum Available Commitment at such time and shall be used solely for the payment when due of interest with respect to the Certificates at the Stated Interest Rate therefor in accordance with Sections 3.6(a) and 3.6(b) of the Intercreditor Agreement. Each Interest Advance made hereunder shall automatically reduce the Maximum Available Commitment and the amount available to be borrowed hereunder by subsequent Advances by the amount of such Interest Advance (subject to reinstatement as provided in the next sentence). Upon repayment to the Liquidity Provider in full or in part of the amount of any Interest

Advance made pursuant to this Section 2.02(a), together with accrued interest thereon (as provided herein), the Maximum Available Commitment shall be reinstated by an amount equal to the amount of such Interest Advance so repaid but not to exceed the Maximum Commitment; provided, however, that the Maximum Available Commitment shall not be so reinstated at any time if (x) both a Performing Note Deficiency exists and a Liquidity Event of Default shall have occurred and be continuing, or (y) a Final Advance, a Provider Advance or a Special Termination Advance has been made or an Advance has been converted into a Final Advance.

(b) Subject to Section 2.10, an Early Termination Advance shall be made in a single Borrowing if the Liquidity Provider has delivered an Early Termination Notice in accordance with Section 3.6(d) of the Intercreditor Agreement (unless a Replacement Liquidity Facility to replace this Agreement shall have been delivered to the Borrower as contemplated by said Section 3.6(d) within the time period specified in such Section 3.6(d) by delivery to the Liquidity Provider of a written and completed Notice of Borrowing in substantially the form of Annex II attached hereto, signed by a Responsible Officer of the Borrower, in an amount equal to the Maximum Available Commitment at such time, and shall be used to fund the Cash Collateral Account in accordance with Sections 3.6(d) and 3.6(f) of the Intercreditor Agreement.

(c) [reserved]

(d) A Downgrade Advance shall be made in a single Borrowing upon the occurrence of a Downgrade Event (as provided for in Section 3.6(c) of the Intercreditor Agreement) unless a Replacement Liquidity Facility to replace this Agreement shall have been previously delivered to the Borrower in accordance with such Section 3.6(c), by delivery to the Liquidity Provider of a written and completed Notice of Borrowing in substantially the form of Annex IV attached hereto, signed by a Responsible Officer of the Borrower, in an amount equal to the Maximum Available Commitment at such time, and shall be used to fund the Cash Collateral Account in accordance with Sections 3.6(c) and 3.6(f) of the Intercreditor Agreement.

(e) A Final Advance shall be made in a single Borrowing upon the receipt by the Borrower of a Termination Notice from the Liquidity Provider pursuant to Section 6.01 hereof by delivery to the Liquidity Provider of a written and completed Notice of Borrowing in substantially the form of Annex V attached hereto, signed by a Responsible Officer of the Borrower, in an amount equal to the Maximum Available Commitment at such time, and shall be used to fund the Cash Collateral Account in accordance with Sections 3.6(f) and 3.6(i) of the Intercreditor Agreement.

(f) A Special Termination Advance shall be made in a single Borrowing upon the receipt by the Borrower of a Special Termination Notice from the Liquidity Provider pursuant to Section 6.02, by delivery to the Liquidity Provider of a written and completed Notice of Borrowing in substantially the form of Annex VIII, signed by a Responsible Officer of the Borrower, in an amount equal to the Maximum Available Commitment at such time, and shall be used to fund the Cash Collateral Account in accordance with Sections 3.6(f) and 3.6(k) of the Intercreditor Agreement.

(g) Each Borrowing shall be made on notice in writing (a "Notice of Borrowing") in substantially the form required by Section 2.02(a), 2.02(b), 2.02(d), 2.02(e) or



2.02(f) as the case may be, given by the Borrower to the Liquidity Provider. Each Notice of Borrowing shall be effective upon delivery of a copy thereof to the Liquidity Provider's New York branch (with a copy to the Lending Office) at the address specified in Section 7.02. If a Notice of Borrowing is delivered by the Borrower in respect of any Borrowing no later than 1:00 p.m. (New York City time) on a Business Day, upon satisfaction of the conditions precedent set forth in Section 4.02 with respect to a requested Borrowing, the Liquidity Provider shall make available to the Borrower, in accordance with its payment instructions, the amount of such Borrowing in U.S. dollars and in immediately available funds, before 4:00 p.m. (New York City time) on such Business Day or on such later Business Day specified in such Notice of Borrowing. If a Notice of Borrowing is delivered by the Borrower in respect of any Borrowing on a day that is not a Business Day or after 1:00 p.m. (New York City time) on a Business Day, upon satisfaction of the conditions precedent set forth in Section 4.02 with respect to a requested Borrowing, the Liquidity Provider shall make available to the Borrower, in accordance with its payment instructions, the amount of such Borrowing in U.S. dollars and in immediately available funds, before 1:00 p.m. (New York City time) on the first Business Day next following the day of receipt of such Notice of Borrowing or on such later Business Day specified by the Borrower in such Notice of Borrowing. Payments of proceeds of a Borrowing shall be made by wire transfer of immediately available funds to the Borrower in accordance with such wire transfer instructions as the Borrower shall furnish from time to time to the Liquidity Provider for such purpose. Each Notice of Borrowing shall be irrevocable and binding on the Borrower.

(h) Upon the making of any Advance requested pursuant to a Notice of Borrowing in accordance with the Borrower's payment instructions, the Liquidity Provider shall be fully discharged of its obligation hereunder with respect to such Notice of Borrowing, and the Liquidity Provider shall not thereafter be obligated to make any further Advances hereunder in respect of such Notice of Borrowing to the Borrower or to any other Person. If the Liquidity Provider makes an Advance requested pursuant to a Notice of Borrowing before 1:00 p.m. (New York City time) on the second Business Day after the date of payment specified in Section 2.02(g), the Liquidity Provider shall have fully discharged its obligations hereunder with respect to such Advance and an event of default shall not have occurred hereunder. Following the making of any Advance pursuant to Section 2.02(b), 2.02(d), 2.02(e) or 2.02(f) hereof to fund the Cash Collateral Account, the Liquidity Provider shall have no interest in or rights to the Cash Collateral Account, the funds constituting such Advance or any other amounts from time to time on deposit in the Cash Collateral Account; provided that the foregoing shall not affect or impair the obligations of the Subordination Agent to make the distributions contemplated by Section 3.6(e) or 3.6(f) of the Intercreditor Agreement and provided further, that the foregoing shall not affect or impair the rights of the Liquidity Provider to provide written instructions with respect to the investment and reinvestment of amounts in the Cash Collateral Account to the extent provided in Section 2.2(b) of the Intercreditor Agreement. By paying to the Borrower proceeds of Advances requested by the Borrower in accordance with the provisions of this Agreement, the Liquidity Provider makes no representation as to, and assumes no responsibility for, the correctness or sufficiency for any purpose of the amount of the Advances so made and requested.

Section 2.03. Fees. The Borrower agrees to pay to the Liquidity Provider the fees set forth in the Fee Letter applicable to this Agreement.

Section 2.04. Reductions or Termination of the Maximum Commitment.

(a) Automatic Reduction. Promptly following each date on which the Required Amount is reduced as a result of a reduction (or deemed reduction) in the Pool Balance of the Certificates or otherwise, the Maximum Commitment shall automatically be reduced to an amount equal to such reduced Required Amount (as calculated by the Borrower); provided that on the first Regular Distribution Date, the Maximum Commitment shall automatically be reduced to the then Required Amount. The Borrower shall give notice of any such automatic reduction of the Maximum Commitment to the Liquidity Provider within two Business Days thereof. The failure by the Borrower to furnish any such notice shall not affect such automatic reduction of the Maximum Commitment.

(b) Termination. The obligation of the Liquidity Provider to make further Advances hereunder shall automatically and irrevocably terminate, and the Borrower shall not be entitled to request any further Borrowing hereunder upon:

- (i) the making of any Provider Advance;
- (ii) the making of a Special Termination Advance;
- (iii) the making of, or conversion to, a Final Advance; or
- (iv) the occurrence of the Termination Date.

Section 2.05. Repayments of Interest Advances, the Special Termination Advance or the Final Advance. Subject to Sections 2.06, 2.07 and 2.09 hereof, the Borrower hereby agrees, without notice of an Advance or demand for repayment from the Liquidity Provider (which notice and demand are hereby waived by the Borrower), to pay, or to cause to be paid, to the Liquidity Provider on each date on which the Liquidity Provider shall make an Interest Advance, the Special Termination Advance or the Final Advance, an amount equal to (a) the amount of such Advance (any such Advance, until repaid, is referred to herein as an "Unpaid Advance"), plus (b) interest on the amount of each such Unpaid Advance as provided in Section 3.07 hereof; provided that if (i) the Liquidity Provider shall make a Provider Advance at any time after making one or more Interest Advances which shall not have been repaid in accordance with this Section 2.05 or (ii) this Liquidity Facility shall become a Downgraded Facility or an Early Terminated Facility at any time when unreimbursed Interest Advances have reduced the Maximum Available Commitment to zero, then such Interest Advances shall cease to constitute Unpaid Advances and shall be deemed to have been changed into an Applied Downgrade Advance or an Applied Early Termination Advance, as the case may be, for all purposes of this Agreement (including, without limitation, for the purpose of determining when such Interest Advance is required to be repaid to the Liquidity Provider in accordance with Section 2.06 and for the purposes of Section 2.06(b)); provided, further, that amounts in respect of a Special Termination Advance withdrawn from the Cash Collateral Account for the purpose of paying interest on the Certificates in accordance with 3.6(f) of the Intercreditor Agreement (the amount of such withdrawal being an "Applied Special Termination Advance") shall thereafter be treated as an Interest Advance under this Agreement for the purposes of determining the Applicable Liquidity Rate for interest payable thereon; and provided, further,

that if, following the making of a Special Termination Advance, the Liquidity Provider delivers a Termination Notice to the Borrower pursuant to Section 6.01 hereof, such Special Termination Advance shall thereafter be treated as a Final Advance under this Agreement for purposes of determining the Applicable Liquidity Rate for interest payable thereon and the obligation of repayment thereof. The Borrower and the Liquidity Provider agree that the repayment in full of each Interest Advance, the Special Termination Advance and Final Advance on the date such Advance is made is intended to be a contemporaneous exchange for new value given to the Borrower by the Liquidity Provider.

Section 2.06. Repayments of Provider Advances.

(a) Amounts advanced hereunder in respect of a Provider Advance shall be deposited in the Cash Collateral Account and invested and withdrawn from the Cash Collateral Account as set forth in Sections 3.6(c), 3.6(d), 3.6(e) and 3.6(f) of the Intercreditor Agreement. Subject to Sections 2.07 and 2.09, the Borrower agrees to pay to the Liquidity Provider, on each Regular Distribution Date, commencing on the first Regular Distribution Date after the making of a Provider Advance, interest on the principal amount of any such Provider Advance as provided in Section 3.07 hereof; provided, however, that amounts in respect of a Provider Advance withdrawn from the Cash Collateral Account for the purpose of paying interest on the Certificates in accordance with Section 3.6(f) of the Intercreditor Agreement (the amount of any such withdrawal being (x) in the case of a Downgrade Advance, an "Applied Downgrade Advance" and (y) in the case of an Early Termination Advance, an "Applied Early Termination Advance" and, together with an Applied Downgrade Advance, an "Applied Provider Advance") shall thereafter (subject to Section 2.06(b)) be treated as an Interest Advance under this Agreement for purposes of determining the Applicable Liquidity Rate for interest payable thereon; provided further, however, that if, following the making of a Provider Advance, the Liquidity Provider delivers a Termination Notice to the Borrower pursuant to Section 6.01 hereof, such Provider Advance shall thereafter be treated as a Final Advance under this Agreement for purposes of determining the Applicable Liquidity Rate for interest payable thereon and the obligation for repayment thereof. Subject to Sections 2.07 and 2.09 hereof, immediately upon the withdrawal of any amounts from the Cash Collateral Account pursuant to Section 3.6(f) of the Intercreditor Agreement on account of a reduction (or deemed reduction) in the Required Amount, the Borrower shall repay to the Liquidity Provider a portion of the Provider Advances in a principal amount equal to such reduction, plus interest on the principal amount prepaid as provided in Section 3.07 hereof.

(b) At any time when an Applied Provider Advance (or any portion thereof) is outstanding, upon the deposit in the Cash Collateral Account of any amount pursuant to clause "third" of Section 2.4(b) of the Intercreditor Agreement, clause "third" of Section 3.2 of the Intercreditor Agreement or clause "fourth" of Section 3.3 of the Intercreditor Agreement (any such amount being a "Replenishment Amount") for the purpose of replenishing or increasing the balance thereof up to the Required Amount at such time, (i) the aggregate outstanding principal amount of all Applied Provider Advances (and of Provider Advances treated as an Interest Advance for purposes of determining the Applicable Liquidity Rate for interest payable thereon) shall be automatically reduced by the amount of such Replenishment Amount and (ii) the aggregate outstanding principal amount of all Unapplied Provider Advances shall be automatically increased by the amount of such Replenishment Amount.

(c) Upon the provision of a Replacement Liquidity Facility in replacement of this Agreement in accordance with Section 3.6(e) of the Intercreditor Agreement, amounts remaining on deposit in the Cash Collateral Account after giving effect to any Applied Provider Advance on the date of such replacement shall be reimbursed to the replaced Liquidity Provider, but only to the extent such amounts are necessary to repay in full to the replaced Liquidity Provider all amounts owing to it hereunder.

Section 2.07. Payments to the Liquidity Provider Under the Intercreditor Agreement. In order to provide for payment or repayment to the Liquidity Provider of any amounts hereunder, the Intercreditor Agreement provides that amounts available and referred to in Articles II and III of the Intercreditor Agreement, to the extent payable to the Liquidity Provider pursuant to the terms of the Intercreditor Agreement (including, without limitation, Section 3.6(f) of the Intercreditor Agreement), shall be paid to the Liquidity Provider in accordance with the terms thereof. Amounts so paid to, and not required to be returned by, the Liquidity Provider shall be applied by the Liquidity Provider to Liquidity Obligations then due and payable in accordance with the Intercreditor Agreement and shall discharge in full the corresponding obligations of the Borrower hereunder (or, if not provided for in the Intercreditor Agreement, then in such manner as the Liquidity Provider shall deem appropriate).

Section 2.08. Book Entries. The Liquidity Provider shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower resulting from Advances made from time to time and the amounts of principal and interest payable hereunder and paid from time to time in respect thereof; provided, however, that the failure by the Liquidity Provider to maintain such account or accounts shall not affect the obligations of the Borrower in respect of Advances.

Section 2.09. Payments from Available Funds Only. All payments to be made by the Borrower under this Agreement shall be made only from the amounts that constitute Scheduled Payments, Special Payments or payments under the Fee Letter, Section 9.1 of the Participation Agreements and Section 6 of the Note Purchase Agreement and only to the extent that the Borrower shall have sufficient income or proceeds therefrom to enable the Borrower to make payments in accordance with the terms hereof after giving effect to the priority of payments and other applicable provisions set forth in the Intercreditor Agreement. The Liquidity Provider agrees that it will look solely to such amounts to the extent available for distribution to it as provided in the Intercreditor Agreement and this Agreement. The Borrower, in its individual capacity, is not personally liable to the Liquidity Provider for any amounts payable or liability under this Agreement, except as expressly provided in this Agreement, the Intercreditor Agreement or any Participation Agreement. Amounts on deposit in the Cash Collateral Account shall be available to the Borrower to make payments under this Agreement only to the extent and for the purposes expressly contemplated in Section 3.6(f) of the Intercreditor Agreement.

Section 2.10. Early Termination Advance. At any time during an Early Termination Notice Period, the Liquidity Provider shall have the right in its sole discretion to elect to terminate its obligations to make Advances under this Agreement upon not less than 25 days' written notice (the "Early Termination Notice") to the Borrower. If the Liquidity Provider delivers an Early Termination Notice to the Borrower during the Early Termination Notice Period (and if the Liquidity Provider shall not have been replaced in accordance with Section

3.6(e) of the Intercreditor Agreement on or before the expiry of the Early Termination Notice Period), the Borrower shall be entitled at any time prior to the Early Termination Date to request an Early Termination Advance in accordance with Section 2.02(b) hereof and Section 3.6(d) of the Intercreditor Agreement.

### ARTICLE III

#### OBLIGATIONS OF THE BORROWER

Section 3.01. Increased Costs. The Borrower shall pay to the Liquidity Provider from time to time such amounts as may be necessary to compensate the Liquidity Provider for any increased costs incurred by the Liquidity Provider which are attributable to its making or maintaining any Advances hereunder or its obligation to make any such Advances hereunder, or any reduction in any amount receivable by the Liquidity Provider under this Agreement or the Intercreditor Agreement in respect of any such Advances or such obligation (such increases in costs and reductions in amounts receivable being herein called "Additional Costs"), resulting from any change after the date of this Agreement in U.S. federal, state, municipal, or foreign laws or regulations (including Regulation D of the Board of Governors of the Federal Reserve System), or the adoption or making after the date of this Agreement of any interpretations, directives, or requirements applying to a class of banks including the Liquidity Provider under any U.S. federal, state, municipal, or any foreign laws or regulations (whether or not having the force of law) by any court, central bank or other supervisory authority charged with the interpretation or administration thereof (a "Regulatory Change"), which: (1) changes the basis of taxation of any amounts payable to the Liquidity Provider under this Agreement in respect of any such Advances or such obligation (other than with respect to Excluded Taxes); or (2) imposes or modifies any reserve, special deposit, compulsory loan or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, the Liquidity Provider (including any such Advances or such obligation or any deposits referred to in the definition of LIBOR or related definitions).

The Liquidity Provider will notify the Borrower of any event occurring after the date of this Agreement that will entitle the Liquidity Provider to compensation pursuant to this Section 3.01 as promptly as practicable after it obtains knowledge thereof and determines to request such compensation, which notice shall describe in reasonable detail the calculation of the amounts owed under this Section. Determinations by the Liquidity Provider for purposes of this Section 3.01 of the effect of any Regulatory Change on its costs of making or maintaining Advances or on amounts receivable by it in respect of Advances, and of the additional amounts required to compensate the Liquidity Provider in respect of any Additional Costs, shall be prima facie evidence of the amount owed under this Section.

Notwithstanding the preceding two paragraphs, the Liquidity Provider and the Subordination Agent agree that any permitted assignee or participant of the initial Liquidity Provider which is not a bank shall not be entitled to the benefits of the preceding two paragraphs (but without limiting the provisions of Section 7.08 hereof).

Section 3.02. Capital Adequacy. If (1) the adoption or change, after the date hereof, of any applicable governmental law, rule or regulation regarding capital adequacy, (2)

any change, after the date hereof, in the interpretation or administration of any such law, rule or regulation by any central bank or other supervisory authority charged with the interpretation or administration thereof or (3) compliance by the Liquidity Provider or any corporation controlling the Liquidity Provider with any applicable guideline or request of general applicability, issued after the date hereof, by any central bank or other supervisory authority (whether or not having the force of law) that constitutes a change of the nature described in clause (2), has the effect of requiring an increase in the amount of capital required to be maintained by the Liquidity Provider or any corporation controlling the Liquidity Provider, and such increase is based upon the Liquidity Provider's obligations or Advances hereunder and other similar obligations or advances, the Borrower shall, subject to the provisions of Section 3.11, pay to the Liquidity Provider from time to time such additional amount or amounts as are necessary to compensate the Liquidity Provider for such portion of such increase as shall be reasonably allocable to the Liquidity Provider's obligations to the Borrower hereunder.

The Liquidity Provider will notify the Borrower of any event occurring after the date of this Agreement that will entitle the Liquidity Provider to compensation pursuant to this Section 3.02 as promptly as practicable after it obtains knowledge thereof and determines to request such compensation, which notice shall describe in reasonable detail the calculation of the amounts owed under this Section. Determinations by the Liquidity Provider for purposes of this Section 3.02 of the effect of any increase in the amount of capital required to be maintained by the Liquidity Provider and of the amount allocable to the Liquidity Provider's obligations to the Borrower hereunder shall be prima facie evidence of the amounts owed under this Section.

Notwithstanding the preceding two paragraphs, the Liquidity Provider and the Subordination Agent agree that any permitted assignee or participant of the initial Liquidity Provider which is not a bank shall not be entitled to the benefits of the preceding two paragraphs (but without limiting the provisions of Section 7.08 hereof).

Section 3.03. Payments Free of Deductions.

(a) All payments made by the Borrower under this Agreement shall be made free and clear of and without reduction or withholding for or on account of any present or future Taxes of any nature whatsoever now or hereafter imposed, levied, collected, withheld or assessed, other than Excluded Withholding Taxes (such non-excluded Taxes being referred to herein, collectively, as "Indemnified Taxes" and, individually, as an "Indemnified Tax") unless any such reduction or withholding is required by applicable law. If any Taxes are required to be withheld from any amounts payable to the Liquidity Provider under this Agreement, (i) the Borrower shall within the time prescribed therefor by applicable law pay to the appropriate governmental or taxing authority the full amount of any such Taxes (including any additional Tax required to be deducted or withheld in respect of the additional amounts payable under clause (ii) hereof) and make such reports or returns in connection therewith at the time or times and in the manner prescribed by applicable law, and (ii) in the case of Indemnified Taxes, the amounts payable to the Liquidity Provider shall be increased to the extent necessary to yield to the Liquidity Provider (after deduction or withholding for or on account of all Indemnified Taxes and any additional Taxes required to be deducted or withheld or payable by the Liquidity Provider by reason of the receipt or accrual of the additional amounts payable pursuant to this clause (ii)) interest or any other such amounts payable under this Agreement at the rates or in the

amounts which would have been due or received by it if no such reduction or withholding had been required. If the Liquidity Provider (including a successor Liquidity Provider) is not organized under the laws of the United States or any state thereof, to the extent it is eligible to do so, the Liquidity Provider agrees to provide to the Borrower, prior to the first date any amount is payable to it hereunder, two executed original copies of Internal Revenue Service Form W-8BEN or W-8ECI, as appropriate, or any successor or other form prescribed by the Internal Revenue Service, certifying that the Liquidity Provider is exempt from or entitled to a reduced rate of United States withholding Tax on payments pursuant to this Agreement. In addition, the Liquidity Provider will provide, from time to time upon the reasonable request of the Borrower, such additional forms or documentation as may be necessary to establish an available exemption from (or an entitlement to a reduced rate of) withholding Tax on payments hereunder. Within 30 days after the date of each payment hereunder, the Borrower shall furnish to the Liquidity Provider an original or certified copy of a receipt (or other documentary evidence reasonably acceptable to the Liquidity Provider) evidencing the payment of the Taxes applicable to such payment.

(b) If the Liquidity Provider (including a successor Liquidity Provider) is not organized under the laws of the United States or any state thereof, all Advances made by the Liquidity Provider under this Agreement shall be made free and clear of, and without reduction for or on account of, any Taxes that are imposed by a jurisdiction in which the Liquidity Provider is organized, has its Lending Office or maintains its principal place of business unless such reduction or withholding is required by applicable law. If any such Taxes are required to be withheld or deducted from any Advances, the Liquidity Provider shall (i) within the time prescribed therefor by applicable law pay to the appropriate governmental or taxing authority the full amount of any such Taxes (and any additional Taxes in respect of the additional amounts payable under clause (ii) hereof) and make such reports or returns in connection therewith at the time or times and in the manner prescribed by applicable law, and (ii) pay to the Borrower an additional amount which (after deduction of all such Taxes) shall be sufficient to yield to the Borrower the full amount that would have been received by it had no such withholding or deduction been required. The Borrower shall, for United States federal income tax purposes and for all purposes hereunder, treat such payments as Interest Advances, and, as such, will treat such payments as loans made by the Liquidity Provider to the Borrower, unless otherwise required by law (it being understood and agreed that the treatment of such additional amounts shall not reduce the Maximum Available Commitment hereunder). Within 30 days after the date of each payment hereunder, the Liquidity Provider shall furnish to the Borrower an original or certified copy of a receipt (or other documentary evidence reasonably acceptable to the Borrower) evidencing the payment of the Taxes applicable to such payment.

(c) If any exemption from, or reduction in the rate of, any Taxes required to be deducted or withheld from amounts payable by the Liquidity Provider hereunder is reasonably available to the Borrower to establish that payments under this Agreement are exempt from (or entitled to a reduced rate of) Tax, the Borrower shall deliver to the Liquidity Provider such form or forms and such other evidence of the eligibility of the Borrower for such exemption or reduction as the Liquidity Provider may reasonably identify to the Borrower as being required as a condition to exemption from, or reduction in the rate of, any such Taxes.

Section 3.04. Payments. The Borrower shall make or cause to be made each payment to the Liquidity Provider under this Agreement so as to cause the same to be received by the Liquidity Provider not later than 1:00 p.m. (New York City time) on the day when due. The Borrower shall make all such payments in U.S. dollars, to the Liquidity Provider in immediately available funds, by wire transfer to Deutsche Bank Trust Company Americas, New York, ABA No. 021-001-033, Swift Code: BKTRUS33, Account Holder: Landesbank Baden-Württemberg, Stuttgart, Account No. 04-095-107, Swift Code: SOLADEST, Reference: Loan Administration, Continental EETC 2005-ERJ1; or to such other bank account in the United States as the Liquidity Provider may from time to time direct the Subordination Agent.

Section 3.05. Computations. All computations of interest based on the Base Rate shall be made on the basis of a year of 365 or 366 days, as the case may be, and all computations of interest based on LIBOR shall be made on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable.

Section 3.06. Payment on Non-Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of interest payable hereunder (and if so made, shall be deemed to have been made when due).

Section 3.07. Interest.

(a) Subject to Section 2.09, the Borrower shall pay, or shall cause to be paid, without duplication, interest on (i) the unpaid principal amount of each Advance from and including the date of such Advance (or, in the case of an Applied Provider Advance or Applied Special Termination Advance, from and including the date on which the amount thereof was withdrawn from the Cash Collateral Account to pay interest on the Certificates) to but excluding the date such principal amount shall be paid in full (or, in the case of an Applied Provider Advance or Applied Special Termination Advance, the date on which the Cash Collateral Account is fully replenished in respect of such Advance) and (ii) any other amount due hereunder (whether fees, commissions, expenses or other amounts or, to the extent permitted by law, installments of interest on Advances or any such other amount) that is not paid when due (whether at stated maturity, by acceleration or otherwise) from and including the due date thereof to but excluding the date such amount is paid in full, in each such case, at a fluctuating interest rate per annum for each day equal to the Applicable Liquidity Rate (as defined below) for such Advance or such other amount, as the case may be, as in effect for such day, but in no event at a rate per annum greater than the maximum rate permitted by applicable law; provided, however, that, if at any time the otherwise applicable interest rate as set forth in this Section 3.07 shall exceed the maximum rate permitted by applicable law, then any subsequent reduction in such interest rate will not reduce the rate of interest payable pursuant to this Section 3.07 below the maximum rate permitted by applicable law until the total amount of interest accrued equals the amount of interest that would have accrued if such otherwise applicable interest rate as set forth in this Section 3.07 had at all times been in effect.



(b) Each Advance (including, without limitation, each outstanding Unapplied Provider Advance and Unapplied Special Termination Advance) will be either a Base Rate Advance or a LIBOR Advance as provided in this Section 3.07. Each such Advance will be a Base Rate Advance for the period from the date of its borrowing to (but excluding) the third London/Stuttgart Business Day following the Liquidity Provider's receipt of the Notice of Borrowing for such Advance. Thereafter, such Advance shall be a LIBOR Advance; provided that the Borrower (at the direction of the Controlling Party, so long as the Liquidity Provider is not the Controlling Party) may (x) convert the Final Advance into a Base Rate Advance on the last day of an Interest Period for such Advance by giving the Liquidity Provider no less than four Business Days' prior written notice of such election or (y) elect to maintain the Final Advance as a Base Rate Advance by not requesting a conversion of the Final Advance to a LIBOR Advance under Clause (5) of the applicable Notice of Borrowing (or, if such Final Advance is deemed to have been made, without delivery of a Notice of Borrowing pursuant to Section 2.06, by requesting, prior to 11:00 a.m. (New York City time) on the first Business Day immediately following the Borrower's receipt of the applicable Termination Notice, that such Final Advance not be converted from a Base Rate Advance to a LIBOR Advance).

(c) Each LIBOR Advance shall bear interest during each Interest Period at a rate per annum equal to LIBOR for such Interest Period plus the Applicable Margin for such LIBOR Advance, payable in arrears on the last day of such Interest Period and, in the event of the payment of principal of such LIBOR Advance on a day other than such last day, on the date of such payment (to the extent of interest accrued on the amount of principal repaid).

(d) Each Base Rate Advance shall bear interest at a rate per annum equal to the Base Rate in effect from time to time plus the Applicable Margin for such Base Rate Advance, payable in arrears on each Regular Distribution Date and, in the event of the payment of principal of such Base Rate Advance on a day other than a Regular Distribution Date, on the date of such payment (to the extent of interest accrued on the amount of principal repaid).

(e) Each amount not paid when due hereunder (whether fees, commissions, expenses or other amounts or, to the extent permitted by applicable law, installments of interest on Advances but excluding Advances) shall bear interest at a rate per annum equal to the Base Rate plus 2.00% until paid.

(f) Each change in the Base Rate shall become effective immediately. The rates of interest specified in this Section 3.07 with respect to any Advance or other amount shall be referred to as the "Applicable Liquidity Rate".

Section 3.08. Replacement of Borrower. From time to time and subject to the successor Borrower's meeting the eligibility requirements set forth in Section 6.9 of the Intercreditor Agreement applicable to the Subordination Agent, upon the effective date and time specified in a written and completed Notice of Replacement Subordination Agent in substantially the form of Annex VII attached hereto (a "Notice of Replacement Subordination Agent") delivered to the Liquidity Provider by the then Borrower, the successor Borrower designated therein shall be substituted for the Borrower for all purposes hereunder.

Section 3.09. Funding Loss Indemnification. The Borrower shall pay to the Liquidity Provider, upon the request of the Liquidity Provider, such amount or amounts as shall be sufficient (in the reasonable opinion of the Liquidity Provider) to compensate it for any loss, cost, or expense incurred by reason of the liquidation or redeployment of deposits or other funds acquired by the Liquidity Provider to fund or maintain any LIBOR Advance (but excluding loss of anticipated profits) incurred as a result of:

- (a) Any repayment of a LIBOR Advance on a date other than the last day of the Interest Period for such Advance; or
- (b) Any failure by the Borrower to borrow a LIBOR Advance on the date for borrowing specified in the relevant notice under Section 2.02.

Section 3.10. Illegality. Notwithstanding any other provision in this Agreement, if any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Liquidity Provider (or its Lending Office) with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for the Liquidity Provider (or its Lending Office) to maintain or fund its LIBOR Advances, then upon notice to the Borrower by the Liquidity Provider, the outstanding principal amount of LIBOR Advances shall be converted to Base Rate Advances (a) immediately upon demand of the Liquidity Provider, if such change or compliance with such request, in the judgment of the Liquidity Provider, requires immediate repayment; or (b) at the expiration of the last Interest Period to expire before the effective date of any such change or request.

Section 3.11. Mitigation. If a condition arises or an event occurs which would, or would upon the giving of notice, result in the payment of any additional costs or amounts pursuant to Section 3.01, 3.02 or 3.03 or require the conversion of any Advance pursuant to Section 3.10, the Liquidity Provider, promptly upon becoming aware of the same, shall notify the Borrower and shall use reasonable efforts (consistent with applicable legal and regulatory restrictions) to mitigate the effects of such condition or event, including the designation of a different Lending Office or furnishing of the proper certificates under any applicable tax laws, tax treaties and conventions to the extent that such certificates are legally available to the Liquidity Provider; provided, that the Liquidity Provider shall be under no obligation to take any step that, in its good-faith opinion would (i) result in its incurring any additional costs in performing its obligations hereunder unless the Borrower has agreed to reimburse it therefor or (ii) be otherwise disadvantageous to the Liquidity Provider in the reasonable judgment of the Liquidity Provider.

#### ARTICLE IV

#### CONDITIONS PRECEDENT

Section 4.01. Conditions Precedent to Effectiveness of Section 2.01. Section 2.01 of this Agreement shall become effective on and as of the first date (the "Effective Date") on which the following conditions precedent have been satisfied or waived:

(a) The Liquidity Provider shall have received each of the following, and in the case of each document delivered pursuant to paragraphs (i), (ii) and (iii), each in form and substance satisfactory to the Liquidity Provider:

- (i) This Agreement duly executed on behalf of the Borrower and the Fee Letter applicable to this Agreement duly executed on behalf of each of the parties thereto (other than the Liquidity Provider);
- (ii) The Intercreditor Agreement duly executed on behalf of each of the parties thereto (other than the Liquidity Provider);
- (iii) Fully executed copies of each of the Operative Agreements duly executed and delivered on or before the Closing Date (other than this Agreement, the Fee Letter applicable to this Agreement and the Intercreditor Agreement);
- (iv) A copy of the Prospectus Supplement and specimen copies of the Certificates;
- (v) An executed copy of each document, instrument, certificate and opinion delivered on or before the Closing Date pursuant to the Trust Agreement, the Intercreditor Agreement and the other Operative Agreements (in the case of each such opinion, other than the opinion of counsel for the Underwriter, either addressed to the Liquidity Provider or accompanied by a letter from the counsel rendering such opinion to the effect that the Liquidity Provider is entitled to rely on such opinion as of its date as if it were addressed to the Liquidity Provider);
- (vi) Evidence that there shall have been made and shall be in full force and effect, all filings, recordings and/or registrations, and there shall have been given or taken any notice or other similar action as may be reasonably necessary or, to the extent reasonably requested by the Liquidity Provider, reasonably advisable, in order to establish, perfect, protect and preserve the right, title and interest, remedies, powers, privileges, liens and security interests of, or for the benefit of, the Trustee, the Borrower and the Liquidity Provider created by the Operative Agreements executed and delivered on or prior to the Closing Date;
- (vii) An agreement from Continental, pursuant to which (A) Continental agrees to provide copies of quarterly financial statements and audited annual financial statements to the Liquidity Provider, and such other information as the Liquidity Provider shall reasonably request with respect to the transactions contemplated by the Operative Agreements, in each case, only to the extent that Continental is obligated to provide such information pursuant to Section 8.2.1 of the Leases to the parties thereto and (B) Continental agrees to allow the Liquidity Provider to inspect

Continental's books and records regarding such transactions, and to discuss such transactions with officers and employees of Continental; and

- (viii) Such other documents, instruments, opinions and approvals pertaining to the transactions contemplated hereby or by the other Operative Agreements as the Liquidity Provider shall have reasonably requested.

(b) The following statement shall be true on and as of the Effective Date: no event has occurred and is continuing, or would result from the entering into of this Agreement or the making of any Advance, which constitutes a Liquidity Event of Default.

(c) The Liquidity Provider shall have received payment in full of all fees and other sums required to be paid to or for the account of the Liquidity Provider on or prior to the Effective Date.

(d) All conditions precedent to the issuance of the Certificates under the Trust Agreement shall have been satisfied or waived and all conditions precedent to the purchase of the Certificates by the Underwriter under the Underwriting Agreement shall have been satisfied or waived.

(e) The Borrower shall have received a certificate, dated the date hereof, signed by a duly authorized representative of the Liquidity Provider, certifying that all conditions precedent to the effectiveness of Section 2.01 have been satisfied or waived.

Section 4.02. Conditions Precedent to Borrowing. The obligation of the Liquidity Provider to make an Advance on the occasion of each Borrowing shall be subject to the conditions precedent that the Effective Date shall have occurred and, on or prior to the date of such Borrowing, the Borrower shall have delivered a Notice of Borrowing which conforms to the terms and conditions of this Agreement and has been completed as may be required by the relevant form of the Notice of Borrowing for the type of Advance requested.

## ARTICLE V

### COVENANTS

Section 5.01. Affirmative Covenants of the Borrower. So long as any Advance shall remain unpaid or the Liquidity Provider shall have any Maximum Commitment hereunder or the Borrower shall have any obligation to pay any amount to the Liquidity Provider hereunder, the Borrower will, unless the Liquidity Provider shall otherwise consent in writing:

(a) Performance of This and Other Agreements. Punctually pay or cause to be paid all amounts payable by it under this Agreement and the other Operative Agreements and observe and perform in all material respects the conditions, covenants and requirements applicable to it contained in this Agreement and the other Operative Agreements.

(b) Reporting Requirements. Furnish to the Liquidity Provider with reasonable promptness, such other information and data with respect to the transactions

contemplated by the Operative Agreements as from time to time may be reasonably requested by the Liquidity Provider; and permit the Liquidity Provider, upon reasonable notice, to inspect the Borrower's books and records with respect to such transactions and to meet with officers and employees of the Borrower to discuss such transactions.

(c) Certain Operative Agreements. Furnish to the Liquidity Provider with reasonable promptness, such Operative Agreements entered into after the date hereof as from time to time may be reasonably requested by the Liquidity Provider.

Section 5.02. Negative Covenants of the Borrower. So long as any Advance shall remain unpaid or the Liquidity Provider shall have any Maximum Commitment hereunder or the Borrower shall have any obligation to pay any amount to the Liquidity Provider hereunder, the Borrower will not appoint or permit or suffer to be appointed any successor Borrower without the prior written consent of the Liquidity Provider, which consent shall not be unreasonably withheld or delayed.

## ARTICLE VI

### LIQUIDITY EVENTS OF DEFAULT AND SPECIAL TERMINATION

Section 6.01. Liquidity Events of Default. If (a) any Liquidity Event of Default has occurred and is continuing and (b) there is a Performing Note Deficiency, the Liquidity Provider may, in its discretion, deliver to the Borrower a Termination Notice, the effect of which shall be to cause (i) the obligation of the Liquidity Provider to make Advances hereunder to expire on the fifth Business Day after the date on which such Termination Notice is received by the Borrower, (ii) the Borrower to promptly request, and the Liquidity Provider to promptly make, a Final Advance in accordance with Section 2.02(e) hereof and Section 3.6(i) of the Intercreditor Agreement, (iii) all other outstanding Advances to be automatically converted into Final Advances for purposes of determining the Applicable Liquidity Rate for interest payable thereon, and (iv) subject to Sections 2.07 and 2.09 hereof, all Advances (including, without limitation, any Provider Advance and Applied Provider Advance), any accrued interest thereon and any other amounts outstanding hereunder to become immediately due and payable to the Liquidity Provider.

Section 6.02. Special Termination. If the aggregate Pool Balance of the Certificates is greater than the aggregate outstanding principal amount of the Equipment Notes (other than any Equipment Notes previously sold or with respect to which the collateral securing such Equipment Notes has been disposed of) at any time during the 18-month period prior to April 1, 2021, the Liquidity Provider may, in its discretion, deliver to the Borrower a Special Termination Notice, the effect of which shall be to cause (a) the obligation of the Liquidity Provider to make Advances hereunder to expire on the fifth Business Day after the date on which such Special Termination Notice is received by the Borrower, (b) the Borrower to promptly request, and the Liquidity Provider to promptly make, a Special Termination Advance in accordance with Section 2.02(f) hereof and Section 3.6(k) of the Intercreditor Agreement and (c) subject to Sections 2.07 and 2.09 hereof, all Advances (including, without limitation, any Provider Advance and Applied Provider Advance), any accrued interest thereon and any other



commercial banks are required or authorized to close in Stuttgart, Germany), and (iii) if given by other means, when delivered at the address specified above, except that notices to the Liquidity Provider pursuant to the provisions of Article II and Article III hereof shall not be effective until received by the Liquidity Provider, subject to the provisions of the second sentence of Section 2.02(g). A copy of all notices delivered hereunder to either party shall in addition be delivered to each of the parties to the Participation Agreements at their respective addresses set forth therein.

Section 7.03. No Waiver; Remedies. No failure on the part of the Liquidity Provider to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 7.04. Further Assurances. The Borrower agrees to do such further acts and things and to execute and deliver to the Liquidity Provider such additional assignments, agreements, powers and instruments as the Liquidity Provider may reasonably require or deem advisable to carry into effect the purposes of this Agreement and the other Operative Agreements or to better assure and confirm unto the Liquidity Provider its rights, powers and remedies hereunder and under the other Operative Agreements.

Section 7.05. Indemnification; Survival of Certain Provisions. The Liquidity Provider shall be indemnified hereunder to the extent and in the manner described in Section 9.1 of the Participation Agreements. In addition, the Borrower agrees to indemnify, protect, defend and hold harmless the Liquidity Provider from, against and in respect of, and shall pay on demand, all Expenses of any kind or nature whatsoever (other than any Expenses of the nature described in Section 3.01, 3.02 or 7.07 hereof or in the Fee Letter applicable to this Agreement (regardless of whether indemnified against pursuant to said Sections or in such Fee Letter)), that may be imposed on, incurred by or asserted against any Liquidity Indemnitee, in any way relating to, resulting from, or arising out of or in connection with any action, suit or proceeding by any third party against such Liquidity Indemnitee and relating to this Agreement, the Fee Letter applicable to this Agreement, the Intercreditor Agreement or any Financing Agreement; provided, however, that the Borrower shall not be required to indemnify, protect, defend and hold harmless any Liquidity Indemnitee in respect of any Expense of such Liquidity Indemnitee to the extent such Expense is (i) attributable to the gross negligence or willful misconduct of such Liquidity Indemnitee or any other Liquidity Indemnitee; (ii) ordinary and usual operating overhead expense; (iii) attributable to the failure by the Liquidity Provider to perform or observe any agreement, covenant or condition on its part to be performed or observed in this Agreement or the Intercreditor Agreement, or (iv) a Tax. The indemnities contained in Section 9.1 of the Participation Agreements, and the provisions of Sections 3.01, 3.02, 3.03, 3.09, 7.05 and 7.07 hereof, shall survive the termination of this Agreement.

Section 7.06. Liability of the Liquidity Provider.

(a) Neither the Liquidity Provider nor any of its officers, employees, directors or Affiliates shall be liable or responsible for: (i) the use which may be made of the Advances or any acts or omissions of the Borrower or any beneficiary or transferee in connection therewith; (ii) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if

such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; or (iii) the making of Advances by the Liquidity Provider against delivery of a Notice of Borrowing and other documents which do not comply with the terms hereof; provided, however, that the Borrower shall have a claim against the Liquidity Provider, and the Liquidity Provider shall be liable to the Borrower, to the extent of any damages suffered by the Borrower which were the result of (A) the Liquidity Provider's willful misconduct or gross negligence in determining whether documents presented hereunder comply with the terms hereof, or (B) any breach by the Liquidity Provider of any of the terms of this Agreement, including, but not limited to, the Liquidity Provider's failure to make lawful payment hereunder after the delivery to it by the Borrower of a Notice of Borrowing strictly complying with the terms and conditions hereof. In no event, however, shall the Liquidity Provider be liable on any theory of liability for any special, indirect, consequential or punitive damages (including, without limitation, any loss of profits, business or anticipated savings).

(b) Neither the Liquidity Provider nor any of its officers, employees, directors or Affiliates shall be liable or responsible in any respect for (i) any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with this Agreement or any Notice of Borrowing delivered hereunder, or (ii) any action, inaction or omission which may be taken by it in good faith, absent willful misconduct or gross negligence (in which event the extent of the Liquidity Provider's potential liability to the Borrower shall be limited as set forth in the immediately preceding paragraph), in connection with this Agreement or any Notice of Borrowing.

Section 7.07. Costs, Expenses and Taxes. The Borrower agrees to pay, or cause to be paid (a) on the Effective Date and on such later date or dates on which the Liquidity Provider shall make demand, all reasonable out-of-pocket costs and expenses (including, without limitation, the reasonable fees and expenses of outside counsel for the Liquidity Provider) of the Liquidity Provider in connection with the preparation, negotiation, execution, delivery, filing and recording of this Agreement, any other Operative Agreement and any other documents which may be delivered in connection with this Agreement and (b) on demand, all reasonable costs and expenses (including reasonable counsel fees and expenses) of the Liquidity Provider in connection with (i) the enforcement of this Agreement or any other Operative Agreement, (ii) the modification or amendment of, or supplement to, this Agreement or any other Operative Agreement or such other documents which may be delivered in connection herewith or therewith (whether or not the same shall become effective) or any waiver or consent thereunder (whether or not the same shall become effective) or (iii) any action or proceeding relating to any order, injunction, or other process or decree restraining or seeking to restrain the Liquidity Provider from paying any amount under this Agreement, the Intercreditor Agreement or any other Operative Agreement or otherwise affecting the application of funds in the Cash Collateral Account. In addition, the Borrower shall pay any and all recording, stamp and other similar taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement, any other Operative Agreement and such other documents, and agrees to hold the Liquidity Provider harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes or fees.

Section 7.08. Binding Effect; Participations.



(a) This Agreement shall be binding upon and inure to the benefit of the Borrower and the Liquidity Provider and their respective successors and assigns, except that neither the Liquidity Provider (except as otherwise provided in this Section 7.08) nor (except as contemplated by Section 3.08) the Borrower shall have the right to assign its rights or obligations hereunder or any interest herein without the prior written consent of the other party, subject to the requirements of Section 7.08(b) and any assignment in violation thereof shall be void *ab initio*. The Liquidity Provider may grant participations herein or in any of its rights hereunder (including, without limitation, funded participations and participations in rights to receive interest payments hereunder) and under the other Operative Agreements to such Persons (other than Continental and its Affiliates) as the Liquidity Provider may in its sole discretion select, subject to the requirements of Section 7.08(b). No such granting of participations by the Liquidity Provider, however, will relieve the Liquidity Provider of its obligations hereunder. In connection with any participation or any proposed participation, the Liquidity Provider may disclose to the participant or the proposed participant any information that the Borrower is required to deliver or to disclose to the Liquidity Provider pursuant to this Agreement. The Borrower acknowledges and agrees that the Liquidity Provider's source of funds may derive in part from its participants. Accordingly, references in this Agreement and the other Operative Agreements to determinations, reserve and capital adequacy requirements, increased costs, reduced receipts, additional amounts due pursuant to Section 3.03 and the like as they pertain to the Liquidity Provider shall be deemed also to include those of each of its participants that are banks (subject, in each case, to the maximum amount that would have been incurred by or attributable to the Liquidity Provider directly if the Liquidity Provider, rather than the participant, had held the interest participated).

(b) If, pursuant to subsection (a) above, the Liquidity Provider sells any participation in this Agreement to any bank or other entity (each, a "Transferee"), then, concurrently with the effectiveness of such participation, the Transferee shall (i) represent to the Liquidity Provider (for the benefit of the Liquidity Provider and the Borrower) either (A) that it is incorporated under the laws of the United States or a state thereof or (B) that under applicable law and treaties, no taxes will be required to be withheld with respect to any payments to be made to such Transferee in respect of this Agreement, (ii) furnish to the Liquidity Provider and the Borrower either (x) a statement that it is incorporated under the laws of the United States or a state thereof or (y) if it is not so incorporated, two copies of a properly completed United States Internal Revenue Service Form W-8ECI or Form W-8BEN, as appropriate, or other applicable form, certificate or document prescribed by the Internal Revenue Service certifying, in each case, such Transferee's entitlement to a complete exemption from United States federal withholding tax in respect to any and all payments to be made hereunder, and (iii) agree (for the benefit of the Liquidity Provider and the Borrower) to provide the Liquidity Provider and the Borrower a new Form W-8ECI or Form W-8BEN, as appropriate, or other applicable form, (A) on or before the date that any such form expires or becomes obsolete or (B) after the occurrence of any event requiring a change in the most recent form previously delivered by it and prior to the immediately following due date of any payment by the Borrower hereunder, certifying in the case of a Form W-8BEN or Form W-8ECI that such Transferee is entitled to a complete exemption from United States federal withholding tax on payments under this Agreement. Unless the Borrower has received forms or other documents reasonably satisfactory to it (and required by applicable law) indicating that payments hereunder are not subject to United States

federal withholding tax, the Borrower will withhold taxes as required by law from such payments at the applicable statutory rate.

(c) Notwithstanding the other provisions of this Section 7.08, the Liquidity Provider may assign and pledge all or any portion of the Advances owing to it to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, provided that any payment in respect of such assigned Advances made by the Borrower to the Liquidity Provider in accordance with the terms of this Agreement shall satisfy the Borrower's obligations hereunder in respect of such assigned Advance to the extent of such payment. No such assignment shall release the Liquidity Provider from its obligations hereunder.

Section 7.09. Severability. Any provision of this Agreement which is or becomes invalid, prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, prohibition, unenforceability or non-authorization without affecting or invalidating the remaining provisions hereof as to such jurisdiction or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 7.10. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Section 7.11. Submission to Jurisdiction; Waiver of Jury Trial.

(a) Each of the parties hereto hereby irrevocably and unconditionally:

(i) submits for itself and its property in any legal action or proceeding relating to this Agreement or any other Operative Agreement, or for recognition and enforcement of any judgment in respect hereof or thereof, to the nonexclusive general jurisdiction of the courts of the State of New York (sitting in the City of New York), the courts of the United States of America for the Southern District of New York, and the appellate courts from any thereof;

(ii) consents that any such action or proceeding may be brought in such courts, and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(iii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to each party hereto at its address set forth in Section 7.02 hereof, or at such other address of which the Liquidity Provider shall have been notified pursuant thereto; and

(iv) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction.

(b) THE BORROWER AND THE LIQUIDITY PROVIDER EACH HEREBY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT AND THE RELATIONSHIP THAT IS BEING ESTABLISHED, including, without limitation, contract claims, tort claims, breach of duty claims and all other common law and statutory claims. The Borrower and the Liquidity Provider each warrant and represent that it has reviewed this waiver with its legal counsel, and that it knowingly and voluntarily waives its jury trial rights following consultation with such legal counsel. THIS WAIVER IS IRREVOCABLE, AND CANNOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

(c) The Liquidity Provider hereby waives any immunity it may have from the jurisdiction of the courts of the United States or of any state thereof and waives any immunity any of its properties located in the United States may have from attachment or execution upon a judgment entered by any such court under the United States Foreign Sovereign Immunities Act of 1976 or any similar successor legislation.

Section 7.12. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

Section 7.13. Entirety. This Agreement, the Intercreditor Agreement and the other Operative Agreements to which the Liquidity Provider is a party constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior understandings and agreements of such parties.

Section 7.14. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 7.15. LIQUIDITY PROVIDER'S OBLIGATION TO MAKE ADVANCES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE OBLIGATIONS OF THE LIQUIDITY PROVIDER TO MAKE ADVANCES HEREUNDER, AND THE BORROWER'S RIGHTS TO DELIVER NOTICES OF BORROWING REQUESTING THE MAKING OF ADVANCES HEREUNDER, SHALL BE UNCONDITIONAL AND IRREVOCABLE, AND SHALL BE PAID OR PERFORMED, IN EACH CASE STRICTLY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized as of the date first set forth above.

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as  
Subordination Agent, as agent and trustee  
for the Trust, as Borrower

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

LANDESBANK BADEN-WÜRTTEMBERG,  
as Liquidity Provider

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

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

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INTEREST ADVANCE NOTICE OF BORROWING

The undersigned, a duly authorized signatory of the undersigned borrower (the "Borrower"), hereby certifies to Landesbank Baden-Württemberg (the "Liquidity Provider"), with reference to the Revolving Credit Agreement (2005-ERJ1) dated as of September 22, 2005, between the Borrower and the Liquidity Provider (the "Liquidity Agreement"); the terms defined therein and not otherwise defined herein being used herein as therein defined or referenced), that:

(1) The Borrower is the Subordination Agent under the Intercreditor Agreement.

(2) The Borrower is delivering this Notice of Borrowing for the making of an Interest Advance by the Liquidity Provider to be used, subject to clause (3)(v) below, for the payment of interest on the Certificates which was payable on \_\_\_\_\_, \_\_\_\_ (the "Distribution Date") in accordance with the terms and provisions of the Trust Agreement and the Certificates, which Advance is requested to be made on \_\_\_\_\_, \_\_\_\_\_. The Interest Advance should be transferred to [name of bank/wire instructions/ABA number] in favor of account number [ \_\_ ], reference [ \_\_ ].

(3) The amount of the Interest Advance requested hereby (i) is \$ \_\_\_\_\_, \_\_\_, to be applied in accordance with Sections 3.6(a) and 3.6(b) of the Intercreditor Agreement in respect of the payment of the interest which was due and payable on the Certificates on the Distribution Date, (ii) does not include any amount with respect to the payment of principal of, or premium on, the Certificates, (iii) was computed in accordance with the provisions of the Certificates, the Trust Agreement and the Intercreditor Agreement (a copy of which computation is attached hereto as Schedule I), (iv) does not exceed the Maximum Available Commitment on the date hereof, (v) does not include any amount of interest which was due and payable on the Certificates on such Distribution Date but which remains unpaid due to the failure of the Depository to pay any amount of accrued interest on the Deposits on such Distribution Date and (vi) has not been and is not the subject of a prior or contemporaneous Notice of Borrowing.

(4) Upon receipt by or on behalf of the Borrower of the amount requested hereby, (a) the Borrower will apply the same in accordance with the terms of Section 3.6(b) of the Intercreditor Agreement, (b) no portion of such amount shall be applied by the Borrower for any other purpose and (c) no portion of such amount until so applied shall be commingled with other funds held by the Borrower.

The Borrower hereby acknowledges that, pursuant to the Liquidity Agreement, the making of the Interest Advance as requested by this Notice of Borrowing shall automatically reduce, subject to reinstatement in accordance with the terms of the Liquidity Agreement, the Maximum Available Commitment by an amount equal to the amount of the Interest Advance requested to be made hereby as set forth in clause (i) of paragraph (3) of this Notice of

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Borrowing and such reduction shall automatically result in corresponding reductions in the amounts available to be borrowed pursuant to a subsequent Advance.

IN WITNESS WHEREOF, the Borrower has executed and delivered this Notice of Borrowing as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as  
Subordination Agent, as Borrower

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

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SCHEDULE I TO INTEREST ADVANCE NOTICE OF BORROWING

[Insert copy of computations in accordance with Interest Advance Notice of Borrowing]

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EARLY TERMINATION ADVANCE NOTICE OF BORROWING

The undersigned, a duly authorized signatory of the undersigned borrower (the "Borrower"), hereby certifies to Landesbank Baden-Württemberg (the "Liquidity Provider"), with reference to the Revolving Credit Agreement (2005-ERJ1) dated as of September 22, 2005, between the Borrower and the Liquidity Provider (the "Liquidity Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined or referenced), that:

(1) The Borrower is the Subordination Agent under the Intercreditor Agreement.

(2) The Borrower is delivering this Notice of Borrowing for the making of the Early Termination Advance by the Liquidity Provider to be used for the funding of the Cash Collateral Account in accordance with Section 3.6(d) of the Intercreditor Agreement, which Advance is requested to be made on \_\_\_\_\_, \_\_\_\_\_. The Early Termination Advance should be transferred to [name of bank/wire instructions/ABA number] in favor of account number [ \_\_\_ ], reference [ \_\_\_ ].

(3) The amount of the Early Termination Advance requested hereby (i) is \$ \_\_\_\_\_, which equals the Maximum Available Commitment on the date hereof and is to be applied in respect of the funding of the Cash Collateral Account in accordance with Sections 3.6(d) and 3.6(f) of the Intercreditor Agreement, (ii) does not include any amount with respect to the payment of the principal of, or premium on, the Certificates, (iii) was computed in accordance with the provisions of the Certificates, the Trust Agreement and the Intercreditor Agreement (a copy of which computation is attached hereto as Schedule I), and (iv) has not been and is not the subject of a prior or contemporaneous Notice of Borrowing under the Liquidity Agreement.

(4) Upon receipt by or on behalf of the Borrower of the amount requested hereby, (a) the Borrower will deposit such amount in the Cash Collateral Account and apply the same in accordance with the terms of Sections 3.6(d) and 3.6(f) of the Intercreditor Agreement, (b) no portion of such amount shall be applied by the Borrower for any other purpose and (c) no portion of such amount until so applied shall be commingled with other funds held by the Borrower.

The Borrower hereby acknowledges that, pursuant to the Liquidity Agreement, (A) the making of the Early Termination Advance as requested by this Notice of Borrowing shall automatically and irrevocably terminate the obligation of the Liquidity Provider to make further Advances under the Liquidity Agreement; and (B) following the making by the Liquidity Provider of the Early Termination Advance requested by this Notice of Borrowing, the Borrower shall not be entitled to request any further Advances under the Liquidity Agreement.

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IN WITNESS WHEREOF, the Borrower has executed and delivered this Notice of Borrowing as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as  
Subordination Agent, as Borrower

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

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SCHEDULE I TO EARLY TERMINATION ADVANCE NOTICE OF BORROWING

[Insert copy of computations in accordance with Early Termination Advance Notice of Borrowing]

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[RESERVED]

DOWNGRADE ADVANCE NOTICE OF BORROWING

The undersigned, a duly authorized signatory of the undersigned borrower (the "Borrower"), hereby certifies to Landesbank Baden-Württemberg (the "Liquidity Provider"), with reference to the Revolving Credit Agreement (2005-ERJ1) dated as of September 22, 2005, between the Borrower and the Liquidity Provider (the "Liquidity Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined or referenced), that:

(1) The Borrower is the Subordination Agent under the Intercreditor Agreement.

(2) The Borrower is delivering this Notice of Borrowing for the making of the Downgrade Advance by the Liquidity Provider to be used for the funding of the Cash Collateral Account in accordance with Section 3.6(c) of the Intercreditor Agreement by reason of the occurrence of a Downgrade Event, which Advance is requested to be made on \_\_\_\_\_, \_\_\_\_\_. The Downgrade Advance should be transferred to [name of bank/wire instructions/ABA number] in favor of account number [ \_\_ ], reference [ \_\_ ].

(3) The amount of the Downgrade Advance requested hereby (i) is \$ \_\_\_\_\_, which equals the Maximum Available Commitment on the date hereof and is to be applied in respect of the funding of the Cash Collateral Account in accordance with Sections 3.6(c) and 3.6(f) of the Intercreditor Agreement, (ii) does not include any amount with respect to the payment of the principal of, or premium on, the Certificates, (iii) was computed in accordance with the provisions of the Certificates, the Trust Agreement and the Intercreditor Agreement (a copy of which computation is attached hereto as Schedule I), and (iv) has not been and is not the subject of a prior or contemporaneous Notice of Borrowing under the Liquidity Agreement.

(4) Upon receipt by or on behalf of the Borrower of the amount requested hereby, (a) the Borrower will deposit such amount in the Cash Collateral Account and apply the same in accordance with the terms of Sections 3.6(c) and 3.6(f) of the Intercreditor Agreement, (b) no portion of such amount shall be applied by the Borrower for any other purpose and (c) no portion of such amount until so applied shall be commingled with other funds held by the Borrower.

The Borrower hereby acknowledges that, pursuant to the Liquidity Agreement, (A) the making of the Downgrade Advance as requested by this Notice of Borrowing shall automatically and irrevocably terminate the obligation of the Liquidity Provider to make further Advances under the Liquidity Agreement; and (B) following the making by the Liquidity Provider of the Downgrade Advance requested by this Notice of Borrowing, the Borrower shall not be entitled to request any further Advances under the Liquidity Agreement.

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IN WITNESS WHEREOF, the Borrower has executed and delivered this Notice of Borrowing as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as  
Subordination Agent, as Borrower

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

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SCHEDULE I TO DOWNGRADE ADVANCE NOTICE OF BORROWING

[Insert copy of computations in accordance with Downgrade Advance Notice of Borrowing]

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FINAL ADVANCE NOTICE OF BORROWING

The undersigned, a duly authorized signatory of the undersigned borrower (the "Borrower"), hereby certifies to Landesbank Baden-Württemberg (the "Liquidity Provider"), with reference to the Revolving Credit Agreement (2005-ERJ1) dated as of September 22, 2005, between the Borrower and the Liquidity Provider (the "Liquidity Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined or referenced), that:

(1) The Borrower is the Subordination Agent under the Intercreditor Agreement.

(2) The Borrower is delivering this Notice of Borrowing for the making of the Final Advance by the Liquidity Provider to be used for the funding of the Cash Collateral Account in accordance with Section 3.6(i) of the Intercreditor Agreement by reason of the receipt by the Borrower of a Termination Notice from the Liquidity Provider with respect to the Liquidity Agreement, which Advance is requested to be made on \_\_\_\_\_, \_\_\_\_\_. The Final Advance should be transferred to [name of bank/wire instructions/ABA number] in favor of account number [ \_\_ ], reference [ \_\_ ].

(3) The amount of the Final Advance requested hereby (i) is \$\_\_\_\_\_, which equals the Maximum Available Commitment on the date hereof and is to be applied in respect of the funding of the Cash Collateral Account in accordance with Sections 3.6(f) and 3.6(i) of the Intercreditor Agreement, (ii) does not include any amount with respect to the payment of principal of, or premium on, the Certificates, (iii) was computed in accordance with the provisions of the Certificates, the Trust Agreement and the Intercreditor Agreement (a copy of which computation is attached hereto as Schedule I), and (iv) has not been and is not the subject of a prior or contemporaneous Notice of Borrowing.

(4) Upon receipt by or on behalf of the Borrower of the amount requested hereby, (a) the Borrower will deposit such amount in the Cash Collateral Account and apply the same in accordance with the terms of Sections 3.6(f) and 3.6(i) of the Intercreditor Agreement, (b) no portion of such amount shall be applied by the Borrower for any other purpose and (c) no portion of such amount until so applied shall be commingled with other funds held by the Borrower.

(5) The Borrower hereby requests that the Advance requested hereby be a Base Rate Advance [and that such Base Rate Advance be converted into a LIBOR Advance on the third London/Stuttgart Business Day following your receipt of this notice.]<sup>1</sup>

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<sup>1</sup> Bracketed language may be included at Borrower's option.

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The Borrower hereby acknowledges that, pursuant to the Liquidity Agreement, (A) the making of the Final Advance as requested by this Notice of Borrowing shall automatically and irrevocably terminate the obligation of the Liquidity Provider to make further Advances under the Liquidity Agreement; and (B) following the making by the Liquidity Provider of the Final Advance requested by this Notice of Borrowing, the Borrower shall not be entitled to request any further Advances under the Liquidity Agreement.

IN WITNESS WHEREOF, the Borrower has executed and delivered this Notice of Borrowing as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as  
Subordination Agent, as Borrower

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

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SCHEDULE I TO FINAL ADVANCE NOTICE OF BORROWING

[Insert copy of computations in accordance with Final Advance Notice of Borrowing]

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NOTICE OF TERMINATION

[Date]

Wilmington Trust Company,  
as Subordination Agent, as Borrower  
[Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890-0001

Attention: Corporate Trust Administration]

Revolving Credit Agreement dated as of September 22, 2005, between Wilmington Trust Company, as Subordination Agent, as agent and trustee for the Continental Airlines Pass Through Trust 2005-ERJ1, as Borrower, and Landesbank Baden-Württemberg (the "Liquidity Agreement")

Ladies and Gentlemen:

You are hereby notified that, pursuant to Section 6.01 of the Liquidity Agreement, by reason of the occurrence of a Liquidity Event of Default and the existence of a Performing Note Deficiency (each as defined therein), we are giving this notice to you in order to cause (i) our obligations to make Advances (as defined therein) under such Liquidity Agreement to terminate on the fifth Business Day after the date on which you receive this notice and (ii) you to request a Final Advance under the Liquidity Agreement pursuant to Section 3.6(i) of the Intercreditor Agreement (as defined in the Liquidity Agreement) as a consequence of your receipt of this notice.

THIS NOTICE IS THE "NOTICE OF TERMINATION" PROVIDED FOR UNDER THE LIQUIDITY AGREEMENT. OUR OBLIGATIONS TO MAKE ADVANCES UNDER THE LIQUIDITY AGREEMENT WILL TERMINATE ON THE FIFTH BUSINESS DAY AFTER THE DATE ON WHICH YOU RECEIVE THIS NOTICE.

Very truly yours,

LANDESBANK BADEN-WÜRTTEMBERG,  
as Liquidity Provider

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

cc: Wilmington Trust Company,  
as Trustee

---

NOTICE OF REPLACEMENT SUBORDINATION AGENT

[Date]

Attention:

Revolving Credit Agreement dated as of September 22, 2005, between Wilmington Trust Company, as Subordination Agent, as agent and trustee for the Continental Airlines Pass Through Trust, 2005-ERJ1, as Borrower, and Landesbank Baden-Württemberg (the "Liquidity Agreement")

Ladies and Gentlemen:

For value received, the undersigned beneficiary hereby irrevocably transfers to:

\_\_\_\_\_  
[Name of Transferee]

\_\_\_\_\_  
[Address of Transferee]

all rights and obligations of the undersigned as Borrower under the Liquidity Agreement referred to above. The transferee has succeeded the undersigned as Subordination Agent under the Intercreditor Agreement referred to in the first paragraph of the Liquidity Agreement, pursuant to the terms of Section 8.1 of the Intercreditor Agreement.

By this transfer, all rights of the undersigned as Borrower under the Liquidity Agreement are transferred to the transferee and the transferee shall hereafter have the sole rights and obligations as Borrower thereunder. The undersigned shall pay any costs and expenses of such transfer, including, but not limited to, transfer taxes or governmental charges.

We ask that this transfer be effective as of \_\_\_\_\_, \_\_\_\_.

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as  
Subordination Agent, as Borrower

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

SPECIAL TERMINATION ADVANCE NOTICE OF BORROWING

The undersigned, a duly authorized signatory of the undersigned borrower (the "Borrower"), hereby certifies to Landesbank Baden-Württemberg (the "Liquidity Provider"), with reference to the Revolving Credit Agreement (2005-ERJ1) dated as of September 22, 2005, between the Borrower and the Liquidity Provider (the "Liquidity Agreement"); the terms defined therein and not otherwise defined herein being used herein as therein defined or referenced), that:

(1) The Borrower is the Subordination Agent under the Intercreditor Agreement.

(2) The Borrower is delivering this Notice of Borrowing for the making of the Special Termination Advance by the Liquidity Provider to be used for the funding of the Cash Collateral Account in accordance with Section 3.6(k) of the Intercreditor Agreement by reason of the receipt by the Borrower of a Special Termination Notice from the Liquidity Provider with respect to the Liquidity Agreement, which Advance is requested to be made on \_\_\_\_\_, \_\_\_\_\_. The Special Termination Advance should be transferred to [name of bank/wire instructions/ABA number] in favor of account number [ \_\_\_ ], reference [ \_\_\_ ].

(3) The amount of the Special Termination Advance requested hereby (i) is \$ \_\_\_\_\_, which equals the Maximum Available Commitment on the date hereof and is to be applied in respect of the funding of the Cash Collateral Account in accordance with Sections 3.6(f) and 3.6(k) of the Intercreditor Agreement, (ii) does not include any amount with respect to the payment of principal of, or premium on, the Certificates, (iii) was computed in accordance with the provisions of the Certificates, the Trust Agreement and the Intercreditor Agreement (a copy of which computation is attached hereto as Schedule I), and (iv) has not been and is not the subject of a prior or contemporaneous Notice of Borrowing.

(4) Upon receipt by or on behalf of the Borrower of the amount requested hereby, (a) the Borrower will deposit such amount in the Cash Collateral Account and apply the same in accordance with the terms of Sections 3.6(f) and 3.6(k) of the Intercreditor Agreement, (b) no portion of such amount shall be applied by the Borrower for any other purpose and (c) no portion of such amount until so applied shall be commingled with other funds held by the Borrower.

The Borrower hereby acknowledges that, pursuant to the Liquidity Agreement, (A) the making of the Special Termination Advance as requested by this Notice of Borrowing shall automatically and irrevocably terminate the obligation of the Liquidity Provider to make further Advances under the Liquidity Agreement; and (B) following the making by the Liquidity Provider of the Special Termination Advance requested by this Notice of Borrowing, the Borrower shall not be entitled to request any further Advances under the Liquidity Agreement.

IN WITNESS WHEREOF, the Borrower has executed and delivered this Notice of Borrowing as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as  
Subordination Agent, as Borrower

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

SCHEDULE I TO SPECIAL TERMINATION ADVANCE NOTICE OF BORROWING

[Insert copy of computations in accordance with Special Termination Advance Notice of Borrowing]

NOTICE OF SPECIAL TERMINATION

[Date]

Wilmington Trust Company,  
as Subordination Agent, as Borrower  
[Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890-0001

Attention: Corporate Trust Administration]

Revolving Credit Agreement dated as of September 22, 2005, between Wilmington Trust Company, as Subordination Agent, as agent and trustee for the Continental Airlines Pass Through Trust 2005-ERJ1, as Borrower, and Landesbank Baden-Württemberg (the "Liquidity Agreement")

Ladies and Gentlemen:

You are hereby notified that, pursuant to Section 6.02 of the Liquidity Agreement, by reason of the aggregate Pool Balance of the Certificates exceeding the aggregate outstanding principal amount of the Equipment Notes (other than any Equipment Notes previously sold or with respect to which the collateral securing such Equipment Notes has been disposed of) during the 18-month period prior to April 1, 2021, we are giving this notice to you in order to cause (i) our obligations to make Advances under such Liquidity Agreement to terminate on the fifth Business Day after the date on which you receive this notice and (ii) you to request a Special Termination Advance under the Liquidity Agreement pursuant to Section 3.6(k) of the Intercreditor Agreement as a consequence of your receipt of this notice.

Terms used but not defined herein shall have the respective meanings ascribed thereto in or pursuant to the Liquidity Agreement.



THIS NOTICE IS THE "NOTICE OF SPECIAL TERMINATION" PROVIDED FOR UNDER THE LIQUIDITY AGREEMENT. OUR OBLIGATIONS TO MAKE ADVANCES UNDER THE LIQUIDITY AGREEMENT WILL TERMINATE ON THE FIFTH BUSINESS DAY AFTER THE DATE ON WHICH YOU RECEIVE THIS NOTICE.

Very truly yours,

LANDESBANK BADEN-WÜRTTEMBERG,  
as Liquidity Provider

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

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

cc: Wilmington Trust Company,  
as Trustee

INTERCREDITOR AGREEMENT  
(2005-ERJ1)

Dated as of

September 22, 2005

AMONG

WILMINGTON TRUST COMPANY,  
not in its individual capacity  
but solely as Trustee under the  
Continental Airlines Pass Through Trust 2005-ERJ1

LANDESBANK BADEN-WÜRTTEMBERG

as Liquidity Provider

AND

WILMINGTON TRUST COMPANY,  
not in its individual capacity except  
as expressly set forth herein but  
solely as Subordination Agent and trustee

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INTERCREDITOR AGREEMENT (2005-ERJ1)

INTERCREDITOR AGREEMENT (2005-ERJ1) dated as of September 22, 2005 (this "Agreement"), among WILMINGTON TRUST COMPANY, a Delaware corporation ("WTC"), not in its individual capacity but solely as Trustee of the Trust (as defined below), LANDESBANK BADEN-WÜRTTEMBERG, a bank established in Germany as a public law institution with legal capacity (*Rechtfähige Anstalt des Öffentlichen Rechts*) ("LBBW"), as Liquidity Provider, and WILMINGTON TRUST COMPANY, not in its individual capacity except as expressly set forth herein, but solely as Subordination Agent and trustee hereunder (in such capacity, together with any successor appointed pursuant to Article VIII hereof, the "Subordination Agent").

WHEREAS, all capitalized terms used herein shall have the respective meanings referred to in Article I hereof;

WHEREAS, pursuant to each Indenture, the related Owner Trustee proposes to issue on a non-recourse basis one series of Equipment Notes to finance the debt portion of the purchase price of the Aircraft referred to in such Indenture which will be leased to Continental pursuant to the related Lease;

WHEREAS, pursuant to the Financing Agreements, the Trust will acquire the Equipment Notes;

WHEREAS, pursuant to the Trust Agreement, the Trust proposes to issue Certificates bearing the interest rate and having the final distribution date described in the Trust Agreement on the terms and subject to the conditions set forth therein;

WHEREAS, pursuant to the Underwriting Agreement, the Underwriter proposes to purchase Certificates issued by the Trust in the aggregate face amount set forth on Schedule I thereto on the terms and subject to the conditions set forth therein;

WHEREAS, the Liquidity Provider proposes to enter into a Liquidity Facility with the Subordination Agent, as agent for the Trustee, for the benefit of the Certificateholders;

WHEREAS, it is a condition precedent to the obligations of the Underwriter under the Underwriting Agreement that the Subordination Agent, the Trustee and the Liquidity Provider agree to the terms of subordination set forth in this Agreement in respect of the Certificates, and the Subordination Agent, the Trustee and the Liquidity Provider, by entering into this Agreement, hereby acknowledge and agree to such terms of subordination and the other provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (1) the terms used herein that are defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;
- (2) all references in this Agreement to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement;
- (3) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; and
- (4) the term "including" shall mean "including without limitation".

"Acceleration" means, with respect to the amounts payable in respect of the Equipment Notes issued under any Indenture, such amounts becoming immediately due and payable by declaration or otherwise. "Accelerate", "Accelerated" and "Accelerating" have meanings correlative to the foregoing.

"Advance", means any Advances as defined in the Liquidity Facility.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For the purposes of this definition, "control" means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities or by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" has the meaning assigned to such term in the first paragraph of this Agreement.

"Aircraft" means, with respect to each Indenture, the "Aircraft" referred to therein.

"Appraisal" has the meaning assigned to such term in Section 4.1(a)(iii).

"Appraisers" means Aviation Specialists Group, Inc., BACK Aviation Solutions and BK Associates, Inc. or any other nationally recognized appraiser reasonably selected by the Subordination Agent or the Controlling Party.

"Available Amount" means, on any drawing date, subject to the proviso contained in the first sentence of Section 3.6(g) hereof, an amount equal to (a) the Stated Amount at such

time, less (b) the aggregate amount of each Interest Drawing honored by the Liquidity Provider under the Liquidity Facility on or prior to such date which has not been reimbursed or reinstated as of such date; provided that, following a Downgrade Drawing, a Special Termination Drawing, an Early Termination Drawing or a Final Drawing under the Liquidity Facility, the Available Amount of the Liquidity Facility shall be zero.

"Basic Agreement" means the Pass Through Trust Agreement dated as of September 25, 1997 between Continental and WTC, not in its individual capacity, except as otherwise expressly provided therein, but solely as trustee.

"Business Day" means any day other than a Saturday or Sunday or a day on which commercial banks are required or authorized to close in Houston, Texas, New York, New York, or, so long as any Certificate is outstanding, the city and state in which the Trustee, the Subordination Agent or any Loan Trustee maintains its Corporate Trust Office or receives and disburses funds, and that, solely with respect to draws under the Liquidity Facility, also is a "Business Day" as defined in the Liquidity Facility.

"Cash Collateral Account" means an Eligible Deposit Account in the name of the Subordination Agent maintained at an Eligible Institution, which shall be the Subordination Agent if it shall so qualify, into which all amounts drawn under the Liquidity Facility pursuant to Section 3.6(c), 3.6(d), 3.6(i), or 3.6(k) shall be deposited.

"Certificates" means the certificates issued by the Trust, substantially in the form of Exhibit A to the Trust Agreement, and authenticated by the Trustee, representing fractional undivided interests in the Trust, and any certificates issued in exchange therefor or replacement thereof pursuant to the terms of the Trust Agreement.

"Certificateholder" means, at any time, any holder of one or more Certificates.

"Closing Date" means September 22, 2005.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the Treasury Regulations promulgated thereunder.

"Collection Account" means the Eligible Deposit Account established by the Subordination Agent pursuant to Section 2.2 which the Subordination Agent shall make deposits in and withdrawals from in accordance with this Agreement.

"Continental" means Continental Airlines, Inc., a Delaware corporation, and its successors and assigns.

"Continental Bankruptcy Event" means the occurrence and continuation of any of the following:

- (a) Continental shall consent to the appointment of or the taking of possession by a receiver, trustee or liquidator of itself or of a substantial part of its

property, or Continental shall admit in writing its inability to pay its debts generally as they come due, or does not pay its debts generally as they become due or shall make a general assignment for the benefit of creditors, or Continental shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization, liquidation or other relief in a case under any bankruptcy laws or other insolvency laws (as in effect at such time) or an answer admitting the material allegations of a petition filed against Continental in any such case, or Continental shall seek relief by voluntary petition, answer or consent, under the provisions of any other bankruptcy or other similar law providing for the reorganization or winding-up of corporations (as in effect at such time) or Continental shall seek an agreement, composition, extension or adjustment with its creditors under such laws, or Continental's board of directors shall adopt a resolution authorizing corporate action in furtherance of any of the foregoing; or

(b) an order, judgment or decree shall be entered by any court of competent jurisdiction appointing, without the consent of Continental, a receiver, trustee or liquidator of Continental or of any substantial part of its property, or any substantial part of the property of Continental shall be sequestered, or granting any other relief in respect of Continental as a debtor under any bankruptcy laws or other insolvency laws (as in effect at such time), and any such order, judgment or decree of appointment or sequestration shall remain in force undismitted, unstayed and unvacated for a period of 60 days after the date of entry thereof; or

(c) a petition against Continental in a case under any bankruptcy laws or other insolvency laws (as in effect at such time) is filed and not withdrawn or dismissed within 60 days thereafter, or if, under the provisions of any law providing for reorganization or winding-up of corporations which may apply to Continental, any court of competent jurisdiction assumes jurisdiction, custody or control of Continental or of any substantial part of its property and such jurisdiction, custody or control remains in force unrelinquished, unstayed and unterminated for a period of 60 days.

"Continental Provisions" has the meaning specified in Section 9.1(a).

"Controlling Party." means the Person entitled to act as such pursuant to the terms of Section 2.6.

"Corporate Trust Office" means, with respect to the Trustee, the Subordination Agent or any Loan Trustee, the office of such Person in the city at which, at any particular time, its corporate trust business shall be principally administered.

"Current Distribution Date" means a Distribution Date specified as a reference date for calculating the Expected Distributions or the Triggering Event Distributions with respect to the Certificates as of such Distribution Date.

"Delivery Period Expiry Date" means the earlier of (a) May 31, 2006, or, if the



Equipment Notes relating to all of the Aircraft (or Substitute Aircraft in lieu thereof) have not been purchased by the Trustee on or prior to such date due to any reason beyond the control of Continental and not occasioned by Continental's fault or negligence, August 31, 2006 and (b) the date on which Equipment Notes with respect to all Aircraft (or Substitute Aircraft in lieu thereof) have been purchased by the Trustee in accordance with the Note Purchase Agreement.

"Deposit Agreement" shall mean the Deposit Agreement dated as of the date hereof between the Escrow Agent and the Depository, as the same may be amended, modified or supplemented from time to time in accordance with the terms thereof.

"Depository," means Citibank, N.A.

"Deposits" has the meaning set forth in the Deposit Agreement.

Section 2.5. "Designated Representatives" means the Subordination Agent Representatives, the Trustee Representatives and the LP Representatives identified under

"Distribution Date" means a Regular Distribution Date or a Special Distribution Date.

"Dollars" or "\$" means United States dollars.

"Downgrade Drawing" has the meaning assigned to such term in Section 3.6(c).

"Downgrade Event" has the meaning assigned to such term in the Liquidity Facility.

"Downgraded Facility" has the meaning assigned to such term in Section 3.6(c).

"Drawing" means an Interest Drawing, a Final Drawing, a Special Termination Drawing, an Early Termination Drawing or a Downgrade Drawing, as the case may be.

"DTC" means the Depository Trust Company, a New York corporation.

"Early Terminated Facility" has the meaning assigned to such term in Section 3.6(d).

"Early Termination Drawing" has the meaning assigned to such term in Section 3.6(d).

"Early Termination Date" means the date specified in an Early Termination Notice delivered by the Liquidity Provider to the Subordination Agent in accordance with Section 3.6(d), which date shall not be earlier than the 25<sup>th</sup> day following the receipt by the Subordination Agent of such Early Termination Notice.

"Eligible Deposit Account" means either (a) a segregated account with an Eligible Institution or (b) a segregated trust account with the corporate trust department of a depository institution organized under the laws of the United States of America or any one of the states

thereof or the District of Columbia (or any U.S. branch of a foreign bank), having corporate trust powers and acting as trustee for funds deposited in such account, so long as any of the securities of such depository institution has a long-term unsecured debt rating of at least A3 from Moody's and an issuer credit rating of at least A- from Standard & Poor's. An Eligible Deposit Account may be maintained with the Liquidity Provider so long as the Liquidity Provider is an Eligible Institution; provided that the Liquidity Provider shall have waived all rights of set-off and counterclaim with respect to such account.

"Eligible Institution" means (a) the corporate trust department of the Subordination Agent or the Trustee, as applicable, or (b) a depository institution organized under the laws of the United States of America or any one of the states thereof or the District of Columbia (or any U.S. branch of a foreign bank), which has a long-term unsecured debt rating of at least A3 from Moody's and an issuer credit rating of at least A- from Standard & Poor's.

"Eligible Investments" means (a) investments in obligations of, or guaranteed by, the United States Government having maturities no later than 30 days following the date of such investment, (b) investments in open market commercial paper of any corporation incorporated under the laws of the United States of America or any state thereof with a short-term unsecured debt rating issued by Moody's and Standard & Poor's of at least P-1 and A-1, respectively, having maturities no later than 30 days following the date of such investment or (c) investments in negotiable certificates of deposit, time deposits, banker's acceptances, commercial paper or other direct obligations of, or obligations guaranteed by, commercial banks organized under the laws of the United States or of any political subdivision thereof (or any U.S. branch of a foreign bank) with issuer ratings of at least B/C by Thomson Bankwatch, having maturities no later than 30 days following the date of such investment; provided, however, that (x) all Eligible Investments that are bank obligations shall be denominated in U.S. dollars; and (y) the aggregate amount of Eligible Investments at any one time that are bank obligations issued by any one bank shall not be in excess of 5% of such bank's capital surplus; provided further that any investment of the types described in clauses (a), (b) and (c) above may be made through a repurchase agreement in commercially reasonable form with a bank or other financial institution qualifying as an Eligible Institution so long as such investment is held by a third party custodian also qualifying as an Eligible Institution; provided further, however, that in the case of any Eligible Investment issued by a domestic branch of a foreign bank, the income from such investment shall be from sources within the United States for purposes of the Code. Notwithstanding the foregoing, no investment of the types described in clause (b) above which is issued or guaranteed by Continental or any of its Affiliates, and no investment in the obligations of any one bank in excess of \$10,000,000 shall be an Eligible Investment, unless written confirmation shall have been received from each Rating Agency that the making of such investment will not result in a withdrawal or downgrading of the ratings of the Certificates.

"Embraer" means Embraer-Empresa Brasileira de Aeronáutica S.A., a company organized under the laws of Brazil, and its successors and assigns.

"Equipment Notes" means the 9.798% Equipment Notes issued pursuant to any Indenture by the related Owner Trustee and authenticated by the Loan Trustee thereunder, and any such Equipment Notes issued in exchange therefor or replacement thereof pursuant to the

terms of such Indenture.

"Escrow Agent" means Wells Fargo Bank Northwest, National Association, as escrow agent under each Escrow and Paying Agent Agreement, together with its successors in such capacity.

"Escrow and Paying Agent Agreement" shall mean the Escrow and Paying Agent Agreement dated as of the date hereof among the Escrow Agent, the Underwriter, the Trustee and the Paying Agent, as the same may be amended, modified or supplemented from time to time in accordance with the terms thereof.

"Expected Distributions" means, on any Current Distribution Date, the sum of (x) accrued and unpaid interest on the Certificates (excluding interest, if any, payable with respect to any Deposits) and (y) the difference between (A) the Pool Balance as of the immediately preceding Distribution Date (or, if the Current Distribution Date is the first Distribution Date, the original aggregate face amount of the Certificates), and (B) the Pool Balance as of the Current Distribution Date calculated on the basis that (i) the principal of the Equipment Notes has been paid when due (whether at stated maturity, upon redemption, prepayment, purchase, Acceleration or otherwise) and such payments have been distributed to the Certificateholders and (ii) the principal of any Equipment Notes formerly held in the Trust that have been sold pursuant to the terms hereof has been paid in full and such payments have been distributed to the Certificateholders, but without giving effect to any reduction in the Pool Balance as a result of any distribution attributable to Deposits occurring after the immediately preceding Distribution Date (or, if the Current Distribution Date is the first Distribution Date, occurring after the initial issuance of the Certificates). For purposes of calculating Expected Distributions, any premium paid on the Equipment Notes that has not been distributed to the Certificateholders (other than such premium or a portion thereof applied to the payment of interest on the Certificates or the reduction of the Pool Balance) shall be added to the amount of such Expected Distributions.

"Expiry Date" has the meaning set forth in the Liquidity Facility.

"Fee Letters" means, collectively, the Fee Letter dated the date hereof among LBBW, Embraer, Continental and the Subordination Agent with respect to the initial Liquidity Facility and any fee letter entered into between the Subordination Agent, Embraer, Continental and any Replacement Liquidity Provider in respect of the Liquidity Facility.

"Final Drawing" has the meaning assigned to such term in Section 3.6(i).

"Final Legal Distribution Date" means October 1, 2022.

"Financing Agreements" means each of the Participation Agreements and the Note Purchase Agreement.

"Indenture" means each of the Trust Indentures entered into by the Loan Trustee and the Owner Trustee pursuant to the Note Purchase Agreement, in each case as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

"Indenture Default" means, with respect to any Indenture, any Event of Default (as such term is defined in such Indenture) thereunder.

"Interest Drawing" has the meaning assigned to such term in Section 3.6(a).

"Interest Payment Date" means each date on which interest is due and payable under the Liquidity Facility on a Downgrade Drawing, a Special Termination Drawing, an Early Termination Drawing or Final Drawing thereunder, other than any such date on which interest is due and payable under the Liquidity Facility only on an Applied Provider Advance (as such term is defined in the Liquidity Facility).

"Investment Earnings" means investment earnings on funds on deposit in the Trust Accounts net of losses and investment expenses of the Subordination Agent in making such investments.

"LBBW" has the meaning assigned to such term in the recital of parties to this Agreement.

"Lease" means, with respect to each Indenture, the "Lease" referred to therein.

"Lending Office" means, with respect to the Liquidity Facility of the initial Liquidity Provider, the lending office of the Liquidity Provider presently located at Stuttgart, Germany, or such other lending office as such Liquidity Provider from time to time shall notify the Trustee as its lending office under such Liquidity Facility; provided that such Liquidity Provider shall not change its Lending Office to a Lending Office outside Germany or the United States of America except in accordance with any such Liquidity Facility.

"Lien" means any mortgage, pledge, lien, charge, claim, disposition of title, encumbrance, lease, sublease, sub-sublease or security interest of any kind, including, without limitation, any thereof arising under any conditional sales or other title retention agreement.

"Liquidity Event of Default", has the meaning assigned to such term in the Liquidity Facility.

"Liquidity Expenses" means all Liquidity Obligations other than (i) the principal amount of any Drawings under the Liquidity Facility and (ii) any interest accrued on any Liquidity Obligations.

"Liquidity Facility," means, initially, the Revolving Credit Agreement, dated as of the date hereof, between the Subordination Agent, as agent and trustee for the Trust, and the initial Liquidity Provider, and, from and after the replacement of such Revolving Credit Agreement pursuant hereto, the Replacement Liquidity Facility therefor, if any, in each case as amended, supplemented or otherwise modified from time to time in accordance with its terms.

"Liquidity Obligations" means all principal, interest, fees and other amounts owing to the Liquidity Provider under the Liquidity Facility, Section 9.1 of the Participation Agreements or the Fee Letter.

"Liquidity Provider" means LBBW, together with any Replacement Liquidity Provider which has issued a Replacement Liquidity Facility to replace the Liquidity Facility pursuant to Section 3.6(e).

"Loan Trustee" means, with respect to any Indenture, the mortgagee thereunder.

"LP Incumbency Certificate" has the meaning assigned to such term in Section 2.5(c).

"LP Representatives" has the meaning assigned to such term in Section 2.5(c).

"Moody's" means Moody's Investors Service, Inc.

"Non-Controlling Party" means, at any time, the Trustee or the Liquidity Provider, if such person is not the Controlling Party at such time.

"Non-Performing Equipment Note" means an Equipment Note issued pursuant to an Indenture that is not a Performing Equipment Note.

"Note Purchase Agreement" means the Note Purchase Agreement dated as of the date hereof, among Continental, the Trustee, the Escrow Agent, the Subordination Agent and the Paying Agent, as amended, supplemented or otherwise modified from time to time in accordance with its terms.

"Officer's Certificate" of any Person means a certification signed by a Responsible Officer of such Person.

"Operative Agreements" means this Agreement, the Liquidity Facility, the Underwriting Agreement, the Indentures, the Trust Agreement, the Leases, the Financing Agreements, the Fee Letter, the Equipment Notes and the Certificates, together with all exhibits and schedules included with any of the foregoing.

"Outstanding" means, when used with respect to the Certificates, as of the date of determination, all Certificates theretofore authenticated and delivered under the Trust Agreement, except:

(i) Certificates theretofore canceled by the Registrar (as defined in the Trust Agreement) or delivered to the Trustee or such Registrar for cancellation;

(ii) Certificates for which money in the full amount required to make the final distribution with respect to such Certificates pursuant to Section 11.01 of such Trust Agreement has been theretofore deposited with the Trustee in trust for the holders of the Certificates as provided in Section 4.01 of the Trust Agreement pending distribution of such money to the Certificateholders pursuant to such final distribution payment; and

(iii) Certificates in exchange for or in lieu of which other Certificates have been authenticated and delivered pursuant to the Trust Agreement;

provided, however, that in determining whether the holders of the requisite Outstanding amount of the Certificates have given any request, demand, authorization, direction, notice, consent or waiver hereunder, any Certificates owned by Continental or any of its Affiliates shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Certificates that the Trustee knows to be so owned shall be so disregarded. Certificates so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Certificates and that the pledgee is not Continental or any of its Affiliates.

"Overdue Scheduled Payment" means any Scheduled Payment which is not in fact received by the Subordination Agent within five days after the Scheduled Payment Date relating thereto.

"Owner Participant" means, with respect to any Participation Agreement, the owner participant thereunder.

"Owner Trustee" means, with respect to any Indenture, the Owner Trustee (as defined therein) not in its individual capacity but solely as trustee under the related owner trust agreement, together with any successor trustee appointed pursuant to such owner trust agreement.

"Participation Agreement" means, with respect to each Indenture, the "Participation Agreement" referred to therein.

"Payee" has the meaning assigned to such term in Section 2.4(e).

"Paying Agent" means Wilmington Trust Company, as paying agent under the Escrow and Paying Agent Agreement, together with its successors in such capacity.

"Performing Equipment Note" means an Equipment Note with respect to which no payment default has occurred and is continuing (without giving effect to any Acceleration); provided that in the event of a bankruptcy proceeding under Title 11 of the United States Code (the "Bankruptcy Code") in which Continental is a debtor any payment default existing during the 60-day period under Section 1110(a)(2)(A) of the Bankruptcy Code (or such longer period as may apply under Section 1110(b) of the Bankruptcy Code or as may apply for the cure of such payment default under Section 1110(a)(2)(B) of the Bankruptcy Code) shall not be taken into consideration until the expiration of the applicable period.

"Performing Note Deficiency" means any time that less than 65% of the then aggregate outstanding principal amount of all Equipment Notes are Performing Equipment Notes.

"Person" means any individual, corporation, partnership, joint venture,

association, limited liability company, joint-stock company, trust, trustee, unincorporated organization or government or any agency or political subdivision thereof.

"Pool Balance" means, as of any date, (i) the original aggregate face amount of the Certificates less (ii) the aggregate amount of all payments made in respect of the Certificates or in respect of Deposits other than payments made in respect of interest or premium thereon or reimbursement of any costs and expenses in connection therewith. The Pool Balance as of any Distribution Date shall be computed after giving effect to any special distribution with respect to unused Deposits, payment of principal of the Equipment Notes or payment with respect to other Trust Property and the distribution thereof to be made on that date.

"Proceeding" means any suit in equity, action at law or other judicial or administrative proceeding.

"PTC Event of Default" means the failure to pay within 10 Business Days of the due date thereof: (i) the outstanding Pool Balance of the Certificates on the Final Legal Distribution Date or (ii) interest due on the Certificates on any Distribution Date (unless the Subordination Agent shall have made an Interest Drawing, or a withdrawal from the Cash Collateral Account, with respect thereto in an aggregate amount sufficient to pay such interest and shall have distributed such amount to the Trustee).

"Rating Agencies" means, collectively, at any time, each nationally recognized rating agency which shall have been requested to rate the Certificates and which shall then be rating the Certificates. The initial Rating Agencies will be Moody's and Standard & Poor's.

"Ratings Confirmation" means, with respect to any action proposed to be taken, a written confirmation from each of the Rating Agencies that such action would not result in (i) a reduction of the rating for the Certificates below the then current rating for the Certificates or (ii) a withdrawal or suspension of the rating of the Certificates.

"Regular Distribution Dates" means the 1<sup>st</sup> day of each month, commencing on October 1, 2005; provided, however, that, if any such day shall not be a Business Day, the related distribution shall be made on the next succeeding Business Day.

"Replacement Liquidity Facility" means an irrevocable revolving credit agreement (or agreements) in substantially the form of the replaced Liquidity Facility, including reinstatement provisions, or in such other form or forms (which may include a letter of credit, surety bond, financial insurance policy or guaranty) as shall permit the Rating Agencies to confirm in writing their respective ratings then in effect for the Certificates (before downgrading of such ratings, if any, as a result of the downgrading of the Liquidity Provider), in a face amount (or in an aggregate face amount) equal to the amount of interest payable on the Certificates (at the Stated Interest Rate and without regard to expected future principal payments) on the 18 Regular Distribution Dates following the date of replacement of the Liquidity Facility and issued by a Person (or Persons) having an unsecured short-term debt rating and a short-term issuer credit rating, as the case may be, issued by both Rating Agencies which are equal to or higher than the Threshold Rating or such other ratings and qualifications as shall permit the Rating

Agencies to confirm in writing their respective ratings then in effect for the Certificates (before the downgrading of such ratings, if any, as a result of the downgrading of the replaced Liquidity Provider).

"Replacement Liquidity Provider" means a Person (or Persons) who issues a Replacement Liquidity Facility.

"Required Amount" means with respect to the Liquidity Facility or the Cash Collateral Account, for any day, the sum of the aggregate amount of interest, calculated at the rate per annum equal to the Stated Interest Rate, that would be payable on the Certificates on each of the eighteen successive Regular Distribution Dates immediately following such day or, if such day is a Regular Distribution Date, on such day and the succeeding seventeen Regular Distribution Dates, in each case calculated on the basis of the Pool Balance on such date and without regard to expected future payments of principal on the Certificates; provided that, for any date, the Pool Balance for determining the Required Amount shall, in the event of (A) the disposition of any Aircraft pursuant to the exercise of remedies under an Indenture on or prior to such date, be deemed to be reduced by an amount equal to the outstanding principal amount of the Equipment Note secured by such Aircraft that remains unpaid after giving effect to the application under such Indenture of proceeds from the disposition of such Aircraft and any amounts otherwise received from Continental in connection with such disposition at or prior to the time of such disposition or (B) the sale of any Equipment Note pursuant to the Intercreditor Agreement on or prior to such date, be deemed to be reduced by an amount equal to the excess of (x) the outstanding amount of principal as of the date of sale of such Equipment Note over (y) the excess of (A) the net purchase price received with respect to the sale of such Equipment Note over (B) the outstanding amount of interest accrued and payable under such Equipment Note as of the date of sale of such Equipment Note.

"Reserve Account" means the Eligible Deposit Account established by the Subordination Agent pursuant to Section 2.2(a)(iii) from which the Subordination Agent shall make withdrawals to fund the Appraisals in accordance with Section 4.1 hereof.

"Reserve Amount" means \$75,000.

"Responsible Officer" means (i) with respect to the Subordination Agent and the Trustee, any officer in the corporate trust administration department of the Subordination Agent or the Trustee or any other officer customarily performing functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with a particular subject, and (ii) with respect to the Liquidity Provider, two authorized signatories of such Liquidity Provider.

"Scheduled Payment" means, with respect to any Equipment Note, (i) any payment of principal or interest on such Equipment Note (other than an Overdue Scheduled Payment) due from the obligor thereon, which payment represents the installment of principal at the stated maturity of such installment of principal on such Equipment Note, the payment of regularly scheduled interest accrued on the unpaid principal amount of such Equipment Note, or both, or (ii) any payment of interest on the Certificates with funds drawn under the Liquidity



Facility or the Cash Collateral Account; provided that any payment of principal of, premium, if any, or interest resulting from the redemption or purchase of any Equipment Note shall not constitute a Scheduled Payment.

"Scheduled Payment Date" means, with respect to any Scheduled Payment, the date on which such Scheduled Payment is scheduled to be made.

"Section 2.4(b) Fraction" has the meaning assigned to such term in Section 2.4(b).

"Special Distribution Date" has the meaning assigned to such term in Section 2.4(a).

"Special Payment" means any payment (other than a Scheduled Payment) in respect of, or any proceeds of, any Equipment Note or Trust Indenture Estate (as defined in each Indenture).

"Special Payments Account" means the Eligible Deposit Account created pursuant to Section 2.2 as a sub-account to the Collection Account.

"Special Termination Drawing" has the meaning assigned to such term in Section 3.6(k).

"Special Termination Notice" has the meaning assigned to such term in the Liquidity Facility.

"Standard & Poor's" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"Stated Amount" means the Maximum Commitment (as defined in the Liquidity Facility) of the Liquidity Provider.

"Stated Interest Rate" means 9.798% per annum.

"Subordination Agent" has the meaning assigned to it in the preliminary statements to this Agreement.

"Subordination Agent Incumbency Certificate" has the meaning assigned to such term in Section 2.5(a).

"Subordination Agent Representatives" has the meaning assigned to such term in Section 2.5(a).

"Substitute Aircraft" has the meaning set forth in the Note Purchase Agreement.

"Tax" and "Taxes" mean any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, loss, damage, liability, expense, additions to tax and additional amounts or costs incurred or imposed with respect thereto) imposed or otherwise assessed by the United States of America or by any state, local or

foreign government (or any subdivision or agency thereof) or other taxing authority, including, without limitation: taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation or net worth and similar charges; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added, taxes on goods and services, gains taxes, license, registration and documentation fees, customs duties, tariffs and similar charges.

"Termination Notice" has the meaning assigned to such term in the Liquidity Facility.

"Threshold Rating" means the short-term unsecured debt rating of P-1 by Moody's and short-term issuer credit rating of A-1 by Standard & Poor's.

"Treasury Regulations" means regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"Triggering Event" means (x) the occurrence of an Indenture Default under all of the Indentures resulting in a PTC Event of Default, (y) the Acceleration of all of the outstanding Equipment Notes (provided that, with respect to the period prior to the Delivery Period Expiry Date, the aggregate principal balance of such Equipment Notes is in excess of \$195 million) or (z) the occurrence of a Continental Bankruptcy Event.

"Triggering Event Distributions" means, on any Current Distribution Date, the sum of (x) the aggregate amount of all accrued and unpaid interest on the Certificates (excluding interest, if any, payable with respect to the Deposits) and (y) the Pool Balance as of the immediately preceding Distribution Date (or, if the Current Distribution Date is the first Distribution Date, the original aggregate face amount of the Certificates) (less the amount of the Deposits as of such preceding Distribution Date (or, if the Current Distribution Date is the first Distribution Date, the Closing Date) other than any portion of such Deposits thereafter used to acquire Equipment Notes pursuant to the Note Purchase Agreement). For purposes of calculating the Triggering Event Distributions, any premium paid on the Equipment Notes that has not been distributed to the Certificateholders (other than such premium or a portion thereof applied to the payment of interest on the Certificates or the reduction of the Pool Balance) shall be added to the amount of the Triggering Event Distributions.

"Trust" means the Continental Airlines Pass Through Trust 2005-ERJ1 created and administered pursuant to the Trust Agreement.

"Trust Accounts" has the meaning assigned to such term in Section 2.2(a).

"Trust Agreement" means the Basic Agreement, as supplemented by the Trust Supplement No. 2005-ERJ1 thereto, dated the date hereof, governing the creation and administration of the Pass Through Trust 2005-ERJ1 and the issuance of the Certificates, as the

same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

"Trustee" means WTC, not in its individual capacity except as expressly set forth in the Trust Agreement, but solely as trustee under the Trust Agreement, together with any successor trustee appointed pursuant thereto.

"Trustee Incumbency Certificate" has the meaning assigned to such term in Section 2.5(b).

"Trustee Representatives" has the meaning assigned to such term in Section 2.5(b).

"Trust Indenture Estate" with respect to any Indenture, has the meaning assigned to such term in such Indenture.

"Trust Property" has the meaning set forth in the Trust Agreement.

"Unapplied Provider Advance" has the meaning specified in the Liquidity Facility.

"Underwriter" means Citigroup Global Markets Inc.

"Underwriting Agreement" means the Underwriting Agreement dated September 14, 2005 among the Underwriter, the Depositary, Embraer and Continental, relating to the purchase of the Certificates by the Underwriter, as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

"Written Notice" means, from the Subordination Agent, the Trustee or the Liquidity Provider, a written instrument executed by the Designated Representative of such Person. An invoice delivered by the Liquidity Provider pursuant to Section 3.1 in accordance with its normal invoicing procedures shall constitute Written Notice under such Section.

"WTC" has the meaning assigned to such term in the recital of parties to this Agreement.

## ARTICLE II

### TRUST ACCOUNTS; CONTROLLING PARTY

SECTION 2.1 Agreement to Terms of Subordination; Payments from Monies Received Only. (a) The Trustee hereby acknowledges and agrees to the terms of subordination and distribution set forth in this Agreement in respect of the Certificates and agrees to enforce such provisions and cause all payments in respect of the Equipment Notes and the Liquidity Facility to be applied in accordance with the terms of this Agreement. In addition, the Trustee hereby agrees to cause the Equipment Notes purchased by the Trust to be registered in the name of the Subordination Agent or its nominee, as agent and trustee for the Trustee, to be held in trust

by the Subordination Agent solely for the purpose of facilitating the enforcement of the subordination and other provisions of this Agreement.

(b) Except as otherwise expressly provided in the next succeeding sentence of this Section 2.1(b), all payments to be made by the Subordination Agent hereunder shall be made only from amounts received by it that constitute Scheduled Payments, Special Payments or payments under Section 9.1 of the Participation Agreements or payments under Section 6 of the Note Purchase Agreement, and only to the extent that the Subordination Agent shall have received sufficient income or proceeds therefrom to enable it to make such payments in accordance with the terms hereof. The Trustee and the Subordination Agent hereby agree and, as provided in the Trust Agreement, each Certificateholder, by its acceptance of a Certificate, and the Liquidity Provider, by entering into the Liquidity Facility to which it is a party, have agreed to look solely to such amounts to the extent available for distribution to it as provided in this Agreement and to the relevant Deposits and that none of the Owner Trustees, Loan Trustees, Owner Participants nor the Trustee or the Subordination Agent is personally liable to any of them for any amounts payable or any liability under this Agreement, the Trust Agreement, the Liquidity Facility or such Certificate, except (in the case of the Subordination Agent) as expressly provided herein or (in the case of the Trustee) as expressly provided in the Trust Agreement or (in the case of the Owner Trustees and the Loan Trustees) as expressly provided in any Operative Agreement.

SECTION 2.2 Trust Accounts. (a) Upon the execution of this Agreement, the Subordination Agent shall establish and maintain in its name (i) the Collection Account as an Eligible Deposit Account, bearing a designation clearly indicating that the funds deposited therein are held in trust for the benefit of the Trustee, the Certificateholders and the Liquidity Provider, (ii) as a sub-account in the Collection Account, the Special Payments Account as an Eligible Deposit Account, bearing a designation clearly indicating that the funds deposited therein are held in trust for the benefit of the Trustee, the Certificateholders and the Liquidity Provider and (iii) the Reserve Account as an Eligible Deposit Account, bearing a designation clearly indicating that the funds deposited therein are held in trust for the benefit of the Trustee, the Liquidity Provider and the Certificateholders. The Subordination Agent shall establish and maintain the Cash Collateral Account and shall operate such Cash Collateral Account in accordance with Section 3.6(f) hereof. Upon such establishment and maintenance, the Cash Collateral Account shall, together with the Collection Account, constitute the "Trust Accounts" hereunder.

(b) Funds on deposit in the Trust Accounts shall be invested and reinvested by the Subordination Agent in Eligible Investments selected by the Subordination Agent if such investments are reasonably available and have maturities no later than the earlier of (i) 30 days following the date of such investment and (ii) the Business Day immediately preceding the Regular Distribution Date or the date of the related distribution pursuant to Section 2.4 hereof, as the case may be, next following the date of such investment; provided, however, that following the making of a Downgrade Drawing, a Special Termination Drawing or an Early Termination Drawing under the Liquidity Facility, the Subordination Agent shall invest and reinvest such amounts in Eligible Investments at the direction of Continental; provided further, however, that upon the occurrence and during the continuation of a Triggering Event, the Subordination Agent

shall invest and reinvest such amounts in accordance with the written instructions of the Controlling Party. Unless otherwise expressly provided in this Agreement (including, without limitation, with respect to Investment Earnings on amounts on deposit in the Cash Collateral Account, Section 3.6(f) hereof), any Investment Earnings shall be deposited in the Collection Account when received by the Subordination Agent and shall be applied by the Subordination Agent in the same manner as the other amounts on deposit in the Collection Account are to be applied and any losses shall be charged against the principal amount invested, in each case net of the Subordination Agent's reasonable fees and expenses in making such investments. The Subordination Agent shall not be liable for any loss resulting from any investment, reinvestment or liquidation required to be made under this Agreement other than by reason of its willful misconduct or gross negligence. Eligible Investments and any other investment required to be made hereunder shall be held to their maturities except that any such investment may be sold (without regard to its maturity) by the Subordination Agent without instructions whenever such sale is necessary to make a distribution required under this Agreement. Uninvested funds held hereunder shall not earn or accrue interest.

(c) The Subordination Agent shall possess all right, title and interest in all funds on deposit from time to time in the Trust Accounts and in all proceeds thereof (including all income thereon, except as otherwise expressly provided in Section 3.4(b) with respect to Investment Earnings). The Trust Accounts shall be held in trust by the Subordination Agent under the sole dominion and control of the Subordination Agent for the benefit of the Trustee, the Certificateholders and the Liquidity Provider, as the case may be. If, at any time, any of the Trust Accounts or the Reserve Account ceases to be an Eligible Deposit Account, the Subordination Agent shall within 10 Business Days (or such longer period, not to exceed 30 calendar days, for which a Ratings Confirmation shall have been obtained) establish a new Collection Account, Special Payments Account, Reserve Account or Cash Collateral Account, as the case may be, as an Eligible Deposit Account and shall transfer any cash and/or any investments to such new Collection Account, Special Payments Account, Reserve Account or Cash Collateral Account, as the case may be. So long as WTC is an Eligible Institution, the Trust Accounts and the Reserve Account shall be maintained with it as Eligible Deposit Accounts.

(d) The Subordination Agent shall possess all right, title and interest in all funds on deposit from time to time in the Reserve Account. The Reserve Account shall be used by the Subordination Agent solely to fund the Appraisals when required to be obtained pursuant to Section 4.1 hereof.

**SECTION 2.3 Deposits to the Collection Account and Special Payments Account.** (a) The Subordination Agent shall, upon receipt thereof, deposit in the Collection Account all Scheduled Payments received by it.

(b) The Subordination Agent shall, on each date when one or more Special Payments are made to the Subordination Agent as holder of the Equipment Notes, deposit in the Special Payments Account the aggregate amount of such Special Payments.

SECTION 2.4 Distributions of Special Payments. (a) Notice of Special Payment. Except as provided in Section 2.4(e) below, upon receipt by the Subordination Agent, as registered holder of the Equipment Notes, of any notice of a Special Payment (or, in the absence of any such notice, upon receipt by the Subordination Agent of a Special Payment), the Subordination Agent shall promptly give notice thereof to the Trustee and the Liquidity Provider. The Subordination Agent shall promptly calculate the amount of the redemption or purchase of Equipment Notes or the amount of any Overdue Scheduled Payment, as the case may be, comprising such Special Payment under the applicable Indenture or Indentures and shall promptly send to the Trustee a Written Notice of such amount. Such Written Notice shall also set the distribution date for such Special Payment (a "Special Distribution Date"), which shall be the Business Day which immediately follows the later to occur of (x) the 15th day after the date of such Written Notice or (y) the date the Subordination Agent has received or expects to receive such Special Payment. Amounts on deposit in the Special Payments Account shall be distributed in accordance with Sections 2.4(b) and 2.4(c) hereof, as applicable.

(b) Redemptions and Purchases of Equipment Notes. (i) So long as no Triggering Event shall have occurred (whether or not continuing), the Subordination Agent shall make distributions pursuant to this Section 2.4(b) of amounts on deposit in the Special Payments Account on account of the redemption, purchase (including, without limitation, a purchase resulting from a sale of the Equipment Notes permitted by Article IV hereof) or prepayment of all of the Equipment Notes issued pursuant to an Indenture on the Special Distribution Date for such Special Payment in the following order of priority:

first, such amount as shall be required to pay (A) all accrued and unpaid Liquidity Expenses then in arrears plus (B) the product of (x) the aggregate amount of all accrued and unpaid Liquidity Expenses not in arrears to such Special Distribution Date multiplied by (y) a fraction, the numerator of which is the aggregate outstanding principal amount of Equipment Notes being redeemed, purchased or prepaid on such Special Distribution Date and the denominator of which is the aggregate outstanding principal amount of all Equipment Notes (the "Section 2.4(b) Fraction"), shall be distributed to the Liquidity Provider;

second, such amount as shall be required to pay (i) (A) all accrued and unpaid interest then in arrears on all Liquidity Obligations plus (B) the product of (x) the aggregate amount of all accrued and unpaid interest on all Liquidity Obligations not in arrears to such Special Distribution Date (at the rate provided in the Liquidity Facility) multiplied by (y) the Section 2.4(b) Fraction and (ii) if a Special Termination Drawing has been made under the Liquidity Facility and has not been converted into a Final Drawing, the outstanding amount of such Special Termination Drawing, shall be distributed to the Liquidity Provider, pro rata on the basis of all amounts described in clauses (i) and (ii) above;

third, such amount as shall be required (A) if the Cash Collateral Account had been previously funded as provided in Section 3.6(f), to fund the Cash Collateral Account up to its Required Amount shall be deposited in the Cash Collateral Account, (B) if the Liquidity Facility shall become a Downgraded Facility or an Early Terminated Facility at

a time when unreimbursed Interest Drawings under the Liquidity Facility have reduced the Available Amount thereunder to zero, to fund the Cash Collateral Account up to an amount equal to the Required Amount shall be deposited in the Cash Collateral Account, and (C) if neither subclause (A) nor subclause (B) of this clause "third" are applicable, to pay or reimburse the Liquidity Provider an amount equal to the amount of any unreimbursed Interest Drawings under the Liquidity Facility shall be distributed to the Liquidity Provider;

fourth, if any amounts are to be distributed pursuant to either subclause (A) or (B) of clause "third" above, then the Liquidity Provider shall be paid the excess of (x) the aggregate outstanding amount of unreimbursed Advances (whether or not then due) under the Liquidity Facility over (y) the Required Amount;

fifth, such amount as shall be required to pay in full Expected Distributions to the holders of the Certificates on such Special Distribution Date shall be distributed to the Trustee; and

sixth, the balance, if any, of such Special Payment shall be transferred to the Collection Account for distribution in accordance with Section 3.2 hereof.

For the purposes of this Section 2.4(b)(i), clause (x) of the definition of "Expected Distributions" shall be deemed to read as follows: "(x) accrued, due and unpaid interest on the Certificates together with (without duplication) accrued and unpaid interest on a portion of the Certificates equal to the outstanding principal amount of the Equipment Notes held in the Trust and being redeemed, purchased or prepaid (immediately prior to such redemption, purchase or prepayment), in each case excluding interest, if any, payable with respect to the Deposits".

(ii) Upon the occurrence of a Triggering Event (whether or not continuing), the Subordination Agent shall make distributions pursuant to this Section 2.4(b) of amounts on deposit in the Special Payments Account on account of the redemption or purchase of all of the Equipment Notes issued pursuant to an Indenture on the Special Distribution Date for such Special Payment in accordance with Section 3.3 hereof.

(c) Other Special Payments. Except as provided in clause (e) below, any amounts on deposit in the Special Payments Account other than amounts to be distributed pursuant to Section 2.4(b) shall be distributed on the Special Distribution Date therefor in accordance with Article III hereof.

(d) Investment of Amounts in Special Payments Account. Any amounts on deposit in the Special Payments Account prior to the distribution thereof pursuant to Section 2.4(b) or (c) shall be invested in accordance with Section 2.2(b). Investment Earnings on such investments shall be distributed in accordance with Section 2.4(b) or (c), as the case may be.

(e) Certain Payments. Except for amounts constituting Liquidity Obligations which shall be distributed as provided in Section 2.4(b), 3.2 or 3.3 (as the case may be), the Subordination Agent will distribute promptly upon receipt thereof (i) any indemnity payment

received by it from the Owner Participant, the Owner Trustee or Continental in respect of the Trustee, the Liquidity Provider, the Paying Agent, the Depository or the Escrow Agent (collectively, the "Payees") and (ii) any compensation received by it from the Owner Participant, the Owner Trustee or Continental under any Operative Agreement in respect of any Payee, directly to the Payee entitled thereto.

SECTION 2.5 Designated Representatives. (a) With the delivery of this Agreement, the Subordination Agent shall furnish to the Liquidity Provider and the Trustee, and from time to time thereafter may furnish to the Liquidity Provider and the Trustee, at the Subordination Agent's discretion, or upon the Liquidity Provider's or Trustee's request (which request shall not be made more than one time in any 12-month period), a certificate (a "Subordination Agent Incumbency Certificate") of a Responsible Officer of the Subordination Agent certifying as to the incumbency and specimen signatures of the officers of the Subordination Agent and the attorney-in-fact and agents of the Subordination Agent (the "Subordination Agent Representatives") authorized to give Written Notices on behalf of the Subordination Agent hereunder. Until each of the Liquidity Provider and the Trustee receive a subsequent Subordination Agent Incumbency Certificate, it shall be entitled to rely on the last Subordination Agent Incumbency Certificate delivered to it hereunder.

(b) With the delivery of this Agreement, the Trustee shall furnish to the Subordination Agent, and from time to time thereafter may furnish to the Subordination Agent, at the Trustee's discretion, or upon the Subordination Agent's request (which request shall not be made more than one time in any 12-month period), a certificate (a "Trustee Incumbency Certificate") of a Responsible Officer of the Trustee certifying as to the incumbency and specimen signatures of the officers of the Trustee and the attorney-in-fact and agents of the Trustee (the "Trustee Representatives") authorized to give Written Notices on behalf of the Trustee hereunder. Until the Subordination Agent receives a subsequent Trustee Incumbency Certificate, it shall be entitled to rely on the last Trustee Incumbency Certificate delivered to it hereunder.

(c) With the delivery of this Agreement, the Liquidity Provider shall furnish to the Subordination Agent, and from time to time thereafter may furnish to the Subordination Agent, at the Liquidity Provider's discretion, or upon the Subordination Agent's request (which request shall not be made more than one time in any 12-month period), a certificate (an "LP Incumbency Certificate") of any Responsible Officer of the Liquidity Provider certifying as to the incumbency and specimen signatures of any officer, attorney-in-fact, agent or other designated representative of the Liquidity Provider (the "LP Representatives" and, together with the Subordination Agent Representatives and the Trustee Representatives, the "Designated Representatives") authorized to give Written Notices on behalf of the Liquidity Provider hereunder. Until the Subordination Agent receives a subsequent LP Incumbency Certificate, it shall be entitled to rely on the last LP Incumbency Certificate delivered to it hereunder.

SECTION 2.6 Controlling Party. (a) The Trustee and the Liquidity Provider hereby agree that, with respect to any Indenture at any given time, the Loan Trustee thereunder will be directed (i) in taking, or refraining from taking, any action under such Indenture or with respect to the Equipment Notes issued thereunder, so long as no Indenture Default has occurred



and is continuing thereunder, by the holders of at least a majority of the outstanding principal amount of such Equipment Notes (provided that, for so long as the Subordination Agent is the registered holder of the Equipment Notes, the Subordination Agent shall act with respect to this clause (i) in accordance with the directions of the Trustee (with respect to the Equipment Notes issued under such Indenture and held as Trust Property of the Trust) constituting, in the aggregate, directions with respect to at least a majority of outstanding principal amount of Equipment Notes), and (ii) after the occurrence and during the continuance of an Indenture Default thereunder (which has not been cured by the applicable Owner Trustee or the applicable Owner Participant, if applicable, pursuant to Section 4.03 of such Indenture), in taking, or refraining from taking, any action under such Indenture or with respect to such Equipment Notes, including exercising remedies thereunder (including Accelerating the Equipment Notes issued thereunder or foreclosing the Lien on the Aircraft securing such Equipment Notes), by the Controlling Party.

(b) The Person who shall be the "Controlling Party," with respect to any Indenture upon the occurrence of an Indenture Default thereunder shall be the Trustee. For purposes of giving effect to the rights of the Controlling Party, the Trustee shall irrevocably agree, and the Certificateholders will be deemed to agree by virtue of their purchase of Certificates, that the Subordination Agent, as record holder of the Equipment Notes, shall exercise its voting rights in respect of the Equipment Notes as directed by the Controlling Party and any vote so exercised shall be binding upon the Trustee and all Certificateholders.

The Subordination Agent shall give Written Notice to all of the other parties to this Agreement promptly upon a change in the identity of the Controlling Party. Each of the parties hereto agrees that it shall not exercise any of the rights of the Controlling Party at such time as it is not the Controlling Party hereunder; provided, however, that nothing herein contained shall prevent or prohibit any Non-Controlling Party from exercising such rights as shall be specifically granted to such Non-Controlling Party hereunder and under the other Operative Agreements.

(c) Notwithstanding the foregoing, at any time after 18 months from the earlier to occur of (i) the date on which the entire Available Amount under the Liquidity Facility shall have been drawn (for any reason other than a Downgrade Drawing, an Early Termination Drawing or a Special Termination Drawing unless such Downgrade Drawing, Early Termination Drawing or Special Termination Drawing shall have been converted to a Final Drawing under such Liquidity Facility) and remain unreimbursed, (ii) the date on which the entire amount of any Downgrade Drawing, Early Termination Drawing or Special Termination Drawing shall have become and remain "Applied Downgrade Advances", "Applied Early Termination Advances" or "Applied Special Termination Advances", as the case may be, under and as defined in the Liquidity Facility and (iii) the date on which all Equipment Notes shall have been Accelerated (provided that, with respect to the period prior to the Delivery Period Expiry Date, such Equipment Notes have an aggregate outstanding principal balance of in excess of \$195 million), the Liquidity Provider shall have the right to elect, by Written Notice to the Subordination Agent and the Trustee, to become the Controlling Party hereunder with respect to any Indenture at any time from and including the last day of such 18-month period.

(d) The Controlling Party shall not be entitled to require or obligate any Non-Controlling Party to provide funds necessary to exercise any right or remedy hereunder.

### ARTICLE III

#### RECEIPT, DISTRIBUTION AND APPLICATION OF

#### AMOUNTS RECEIVED

SECTION 3.1 Written Notice of Distribution. (a) No later than 3:00 P.M. (New York City time) on the Business Day immediately preceding each Regular Distribution Date (or Special Distribution Date for purposes of Section 2.4(b) hereof, as the case may be), each of the following Persons shall deliver to the Subordination Agent a Written Notice setting forth the following information as at the close of business on such Business Day:

(i) With respect to the Certificates, the Trustee shall separately set forth the amounts to be paid in accordance with clause "fifth" of Section 3.2 or 2.4(b)(i), as the case may be, hereof;

(ii) With respect to the Liquidity Facility, the Liquidity Provider shall separately set forth the amounts to be paid in accordance with clauses "first", "second", "third" and "fourth" of Section 3.2 or 2.4(b)(i), as the case may be, hereof; and

(iii) The Trustee shall set forth the amounts to be paid in accordance with clause "sixth" of Section 3.2 hereof.

The notices required under this Section 3.1(a) may be in the form of a schedule or similar document provided to the Subordination Agent by the parties referenced therein or by any one of them, which schedule or similar document may state that, unless there has been a prepayment of the Certificates, such schedule or similar document is to remain in effect until any substitute notice or amendment shall be given to the Subordination Agent by the party providing such notice.

(b) Following the occurrence of a Triggering Event, the Subordination Agent shall request the following information from the following Persons, and each of the following Persons shall, upon the request of the Subordination Agent, deliver a Written Notice to the Subordination Agent setting forth for such Person the following information:

(i) With respect to the Certificates, the Trustee shall separately set forth the amounts to be paid in accordance with clause "first" (to reimburse payments made by such Trustee or the Certificateholders, as the case may be, pursuant to subclause (ii) or (iii) of clause "first" of Section 3.3 hereof), clause "sixth" (to reimburse payments made by the Certificateholders pursuant to subclause (iii) of clause "sixth" of Section 3.3 hereof) and clause "seventh" of Section 3.3 hereof;

(ii) With respect to the Liquidity Facility, the Liquidity Provider shall separately set forth the amounts to be paid to it in accordance with subclause (iii) of

clause "first" of Section 3.3 hereof and clauses "second", "third", "fourth" and "fifth" of Section 3.3 hereof; and

(iii) The Trustee shall set forth the amounts to be paid in accordance with clause "sixth" of Section 3.3 hereof.

(c) At such time as the Trustee or the Liquidity Provider shall have received all amounts owing to it (and, in the case of the Trustee, the Certificateholders for which it is acting) pursuant to Section 2.4, 3.2 or 3.3 hereof, as applicable, and, in the case of the Liquidity Provider, its commitment under the Liquidity Facility shall have terminated or expired, such Person shall, by a Written Notice, so inform the Subordination Agent and each other party to this Agreement.

(d) As provided in Section 6.5 hereof, the Subordination Agent shall be fully protected in relying on any of the information set forth in a Written Notice provided by the Trustee or the Liquidity Provider pursuant to paragraphs (a) through (c) above and shall have no independent obligation to verify, calculate or recalculate any amount set forth in any Written Notice delivered in accordance with such paragraphs.

(e) Any Written Notice delivered by the Trustee or the Liquidity Provider, as applicable, pursuant to Section 3.1(a), 3.1(b) or 3.1(c) hereof, if made prior to 10:00 A.M. (New York City time) on any Business Day shall be effective on the date delivered (or if delivered later on a Business Day or if delivered on a day which is not a Business Day shall be effective as of the next Business Day). Subject to the terms of this Agreement, the Subordination Agent shall as promptly as practicable comply with any such instructions; provided, however, that any transfer of funds pursuant to any instruction received after 10:00 A.M. (New York City time) on any Business Day may be made on the next succeeding Business Day.

(f) In the event the Subordination Agent shall not receive from any Person any information set forth in paragraph (a) or (b) above which is required to enable the Subordination Agent to make a distribution to such Person pursuant to Section 2.4(b)(i), 3.2 or 3.3 hereof, the Subordination Agent shall request such information and, failing to receive any such information, the Subordination Agent shall not make such distribution(s) to such Person. In such event, the Subordination Agent shall make distributions pursuant to clauses "first" through "sixth" of Section 2.4(b)(i), clauses "first" through "seventh" of Section 3.2 and clauses "first" through "eighth" of Section 3.3 to the extent it shall have sufficient information to enable it to make such distributions, and shall continue to hold any funds remaining, after making such distributions, until the Subordination Agent shall receive all necessary information to enable it to distribute any funds so withheld.

(g) On such dates (but not more frequently than monthly) as the Liquidity Provider or the Trustee shall request, but in any event automatically at the end of each calendar quarter, the Subordination Agent shall send to such party a written statement reflecting all amounts on deposit with the Subordination Agent pursuant to Section 3.1(f) hereof.

SECTION 3.2 Distribution of Amounts on Deposit in the Collection Account. Except as otherwise provided in Sections 2.4, 3.1(f), 3.3, 3.4 and 3.6(b), amounts on deposit in the Collection Account (or, in the case of any amount described in Section 2.4(c), on deposit in the Special Payments Account) shall be promptly distributed on each Regular Distribution Date (or, in the case of any amount described in Section 2.4(c), on the Special Distribution Date thereof) in the following order of priority and in accordance with the information provided to the Subordination Agent pursuant to Section 3.1(a) hereof:

first, such amount as shall be required to pay all accrued and unpaid Liquidity Expenses owed to the Liquidity Provider shall be distributed to the Liquidity Provider;

second, (i) such amount as shall be required to pay in full the aggregate amount of accrued and unpaid interest on all Liquidity Obligations (at the rate, or in the amount, provided in the Liquidity Facility) and (ii) if a Special Termination Drawing has been made under the Liquidity Facility and has not been converted into a Final Drawing, the outstanding amount of such Special Termination Drawing, shall be distributed to the Liquidity Provider, pro rata on the basis of all amounts described in clauses (i) and (ii) above;

third, such amount as shall be required (A) if the Cash Collateral Account had been previously funded as provided in Section 3.6(f), to fund the Cash Collateral Account up to its Required Amount shall be deposited in the Cash Collateral Account, (B) if the Liquidity Facility shall become a Downgraded Facility or an Early Terminated Facility at a time when unreimbursed Interest Drawings under the Liquidity Facility have reduced the Available Amount thereunder to zero, to fund the Cash Collateral Account up to an amount equal to the Required Amount shall be deposited in the Cash Collateral Account, and (C) if neither subclause (A) nor subclause (B) of this clause "third" is applicable, to pay or reimburse the Liquidity Provider an amount equal to the amount of all Liquidity Obligations then due under the Liquidity Facility (other than amounts payable pursuant to clause "first" or "second" of this Section 3.2) shall be distributed to the Liquidity Provider;

fourth, if any amounts are to be distributed pursuant to either subclause (A) or (B) of clause "third" above, then the Liquidity Provider shall be paid the excess of (x) the aggregate outstanding amount of unreimbursed Advances (whether or not then due) under the Liquidity Facility over (y) the Required Amount;

fifth, such amount as shall be required to pay in full Expected Distributions to the holders of the Certificates on such Distribution Date shall be distributed to the Trustee;

sixth, such amount as shall be required to pay in full the aggregate unpaid amount of fees and expenses payable as of such Distribution Date to the Subordination Agent and the Trustee pursuant to the terms of this Agreement and the Trust Agreement, as the case may be, shall be distributed to the Subordination Agent and the Trustee; and

seventh, the balance, if any, of any such amount remaining thereafter shall be held in the Collection Account for later distribution in accordance with this Article III.

SECTION 3.3 Distribution of Amounts on Deposit Following a Triggering Event. Except as otherwise provided in Sections 3.1(f) and 3.6(b) hereof, upon the occurrence of a Triggering Event and at all times thereafter, all funds in the Collection Account or the Special Payments Account shall be promptly distributed by the Subordination Agent in the following order of priority:

first, such amount as shall be required (A) to reimburse (i) the Subordination Agent for any out-of-pocket costs and expenses actually incurred by it (to the extent not previously reimbursed) in the protection of, or the realization of the value of, the Equipment Notes or Trust Indenture Estate, shall be applied by the Subordination Agent in reimbursement of such costs and expenses, (ii) the Trustee for any amounts of the nature described in clause (i) above actually incurred by it under the Trust Agreement (to the extent not previously reimbursed), shall be distributed to the Trustee, and (iii) any Liquidity Provider or any Certificateholder for payments, if any, made by it to the Subordination Agent or the Trustee in respect of amounts described in clause (i) above, shall be distributed to such Liquidity Provider or to the Trustee for the account of such Certificateholder and (B) if the Subordination Agent shall have requested the initial Appraisals and only so long as a Triggering Event shall be continuing, to fund or replenish the Reserve Account up to the Reserve Amount, but in no event (other than the initial funding of the Reserve Account) more than \$25,000 in the aggregate during any calendar year, shall be distributed to the Subordination Agent for deposit in the Reserve Account, in each such case, pro rata on the basis of all amounts described in clauses (A)(i), (A)(ii), (A)(iii) and (B) above;

second, such amount remaining as shall be required to pay all accrued and unpaid Liquidity Expenses shall be distributed to the Liquidity Provider;

third, (i) such amount remaining as shall be required to pay accrued and unpaid interest on the Liquidity Obligations as provided in the Liquidity Facility and (ii) if a Special Termination Drawing has been made under the Liquidity Facility and has not been converted into a Final Drawing, the outstanding amount of such Special Termination Drawing, shall be distributed to the Liquidity Provider, pro rata on the basis of all amounts described in clauses (i) and (ii) above;

fourth, such amount remaining as shall be required (A) if the Cash Collateral Account had been previously funded as provided in Section 3.6(f), unless (i) a Performing Note Deficiency exists and a Liquidity Event of Default shall have occurred and be continuing or (ii) a Final Drawing shall have occurred, to fund the Cash Collateral Account up to its Required Amount (less the amount of any repayments of Interest Drawings under the Liquidity Facility while subclause (A)(i) above is applicable) shall be deposited in the Cash Collateral Account, (B) if any Liquidity Facility shall become a Downgraded Facility or an Early Terminated Facility at a time when unreimbursed Interest Drawings under the Liquidity Facility have reduced the Available Amount

thereunder to zero, unless (i) a Performing Note Deficiency exists and a Liquidity Event of Default shall have occurred and be continuing or (ii) a Final Drawing shall have occurred, to fund the Cash Collateral Account up to an amount equal to the Required Amount (less the amount of any repayments of Interest Drawings under the Liquidity Facility while subclause (B)(i) above is applicable) shall be deposited in the Cash Collateral Account, and (C) if neither subclause (A) nor subclause (B) of this clause "fourth" are applicable, to pay in full the outstanding amount of all Liquidity Obligations then due under the Liquidity Facility (other than amounts payable pursuant to clause "second" or "third" of this Section 3.3) shall be distributed to the Liquidity Provider;

fifth, if any amounts are to be distributed pursuant to either subclause (A) or (B) of clause "fourth" above, then the Liquidity Provider shall be paid the excess of (x) the aggregate outstanding amount of unreimbursed Advances (whether or not then due) under the Liquidity Facility over (y) the Required Amount (less the amount of any repayments of Interest Drawings under the Liquidity Facility while subclause (A)(i) or (B)(i), as the case may be, of clause "fourth" above is applicable);

sixth, such amount as shall be required to reimburse or pay (i) the Subordination Agent for any Tax (other than Taxes imposed on compensation paid hereunder), expense, fee, charge or other loss incurred by or any other amount payable to the Subordination Agent in connection with the transactions contemplated hereby (to the extent not previously reimbursed), shall be applied by the Subordination Agent in reimbursement of such amount, (ii) the Trustee for any Tax (other than Taxes imposed on compensation paid under the Trust Agreement), expense, fee, charge, loss or any other amount payable to the Trustee under the Trust Agreement (to the extent not previously reimbursed), shall be distributed to the Trustee, and (iii) each Certificateholder for payments, if any, made by it pursuant to Section 5.2 hereof in respect of amounts described in clause (i) above, shall be distributed to the Trustee for the account of such Certificateholder, in each such case, pro rata on the basis of all amounts described in clauses (i) through (iii) above;

seventh, such amount remaining as shall be required to pay in full Triggering Event Distributions on the Certificates shall be distributed to the Trustee; and

eighth, the balance, if any, of any such amount remaining thereafter shall be held in the Collection Account for later distribution in accordance with this Article III.

SECTION 3.4 Other Payments. (a) Any payments received by the Subordination Agent for which no provision as to the application thereof is made in this Agreement shall be distributed by the Subordination Agent (i) in the order of priority specified in Section 3.3 hereof and (ii) to the extent received or realized at any time after the Triggering Event Distributions have been made in full, in the manner provided in clause "first" of Section 3.3 hereof.

(b) Notwithstanding the priority of payments specified in Sections 2.4(b)(i), 3.2 and 3.3, in the event any Investment Earnings on amounts on deposit in the Cash Collateral Account resulting from an Unapplied Provider Advance are deposited in the Collection Account

or the Special Payments Account, such Investment Earnings shall be used to pay interest payable in respect of such Unapplied Provider Advance to the extent of such Investment Earnings.

(c) Except as otherwise provided in Section 3.3 hereof, if the Subordination Agent receives any Scheduled Payment after the Scheduled Payment Date relating thereto, but prior to such payment becoming an Overdue Scheduled Payment, then the Subordination Agent shall deposit such Scheduled Payment in the Collection Account and promptly distribute such Scheduled Payment in accordance with the priority of distributions set forth in Section 3.2 hereof; provided that, for the purposes of this Section 3.4(c) only, each reference in clause "sixth" of Section 3.2 to "Distribution Date" shall be deemed to mean the actual date of payment of such Scheduled Payment and each reference in clause "fifth" of Section 3.2 to "Distribution Date" shall be deemed to refer to such Scheduled Payment Date.

(d) If the scheduled date for the distribution of any Expected Distributions under this Agreement is extended due to the proviso in the definition of "Regular Distribution Dates", no additional interest will accrue in respect of such Expected Distributions during such extension.

SECTION 3.5 Payments to the Trustee and the Liquidity Provider. Any amounts distributed hereunder to the Liquidity Provider shall be paid to the Liquidity Provider by wire transfer of funds to the address the Liquidity Provider shall provide to the Subordination Agent. The Subordination Agent shall provide a Written Notice of any such transfer to the Liquidity Provider at the time of such transfer. Any amounts distributed hereunder by the Subordination Agent to the Trustee, if the Trustee shall not be the same institution as the Subordination Agent, shall be paid to the Trustee by wire transfer of funds at the address the Trustee shall provide to the Subordination Agent.

SECTION 3.6 Liquidity Facility. (a) Interest Drawings. If on any Distribution Date, after giving effect to the subordination provisions of this Agreement, the Subordination Agent shall not have sufficient funds for the payment of any amounts due and owing in respect of accrued interest on the Certificates (at the Stated Interest Rate), then, prior to 1:00 p.m. (New York City time) on such Distribution Date, the Subordination Agent shall request a drawing (each such drawing, an "Interest Drawing") under the Liquidity Facility in an amount equal to the lesser of (i) an amount sufficient to pay the amount of such accrued interest (at the Stated Interest Rate) and (ii) the Available Amount under the Liquidity Facility, and shall pay such amount to the Trustee in payment of such accrued interest.

(b) Application of Interest Drawings. Notwithstanding anything to the contrary contained in this Agreement, all payments received by the Subordination Agent in respect of an Interest Drawing under the Liquidity Facility and all amounts withdrawn by the Subordination Agent from the Cash Collateral Account, and payable in each case to the Certificateholders or the Trustee, shall be promptly distributed to the Trustee.

(c) Downgrade Drawings. (i) With respect to the Liquidity Facility, a Downgrade Drawing shall be requested by the Subordination Agent thereunder as provided in Section 3.6(c)(iii), if at any time, a Downgrade Event shall have occurred with respect to such

Liquidity Facility (a "Downgraded Facility"), unless an event described in Section 3.6(c)(ii) occurs with respect to the Liquidity Facility.

(ii) If at any time the Liquidity Facility becomes a Downgraded Facility, the Subordination Agent shall request a Downgrade Drawing thereunder in accordance with Section 3.6(c)(iii), unless the Liquidity Provider or Continental arranges for a Replacement Liquidity Provider to issue and deliver a Replacement Liquidity Facility to the Subordination Agent within 10 days after receiving notice of a Downgrade Event (but not later than the expiration date of such Downgraded Facility).

(iii) Upon the occurrence of any Downgrade Event with respect to the Liquidity Facility, unless any event described in Section 3.6(c)(ii) occurs with respect thereto, the Subordination Agent shall, on the 10th day referred to in Section 3.6(c)(ii) (or if such 10th day is not a Business Day, on the next succeeding Business Day) (or, if earlier, the expiration date of the Downgraded Facility), request a drawing in accordance with and to the extent permitted by the Downgraded Facility (such drawing, a "Downgrade Drawing") of the Available Amount thereunder. Amounts drawn pursuant to a Downgrade Drawing shall be maintained and invested as provided in Section 3.6(f) hereof. The Liquidity Provider may also arrange for a Replacement Liquidity Provider to issue and deliver a Replacement Liquidity Facility at any time after such Downgrade Drawing so long as such Downgrade Drawing has not been reimbursed in full to the Liquidity Provider.

(d) Early Termination Drawings. LBBW shall have the right in its sole discretion to elect to terminate the Liquidity Facility at any time during the period from the 40<sup>th</sup> day to and including the 25<sup>th</sup> day prior to each anniversary of the Closing Date (the "Early Termination Notice Period") upon not less than 25 days' written notice (the "Early Termination Notice") to the Subordination Agent. If LBBW delivers an Early Termination Notice to the Subordination Agent during the Early Termination Notice Period (and, if LBBW shall not have been replaced in accordance with Section 3.6(e) on or before the last day of the Early Termination Notice Period), the Subordination Agent shall, as soon as possible after the last day of the Early Termination Notice Period but prior to the Early Termination Date, in accordance with and to the extent permitted by the terms of the terminating Liquidity Facility (an "Early Terminated Facility"), request a drawing under the Early Terminated Facility of all available and undrawn amounts thereunder (such drawing, an "Early Termination Drawing"). Amounts drawn pursuant to an Early Termination Drawing shall be maintained and invested in accordance with Section 3.6(f).

(e) Issuance of Replacement Liquidity Facility. (i) At any time, Continental may, at its option, with cause or without cause, arrange for a Replacement Liquidity Facility to replace the Liquidity Facility (including any Replacement Liquidity Facility provided pursuant to Section 3.6(e)(ii) hereof). If such Replacement Liquidity Facility is provided at any time after a Downgrade Drawing, Early Termination Drawing or Special Termination Drawing has been made, all funds on deposit in the Cash Collateral Account will be returned to the Liquidity Provider being replaced.



(ii) If LBBW shall elect to terminate its Liquidity Facility early in accordance with Section 3.6(d), then LBBW may, at its option, arrange for a Replacement Liquidity Facility to replace such Liquidity Facility on or prior to the last day of the Early Termination Period.

(iii) No Replacement Liquidity Facility arranged by Continental or the Liquidity Provider in accordance with clause (i) or (ii) above or pursuant to Section 3.6(c), respectively, shall become effective and no such Replacement Liquidity Facility shall be deemed a "Liquidity Facility" under the Operative Agreements, unless and until (A) each of the conditions referred to in sub clauses (iv)(x) and (z) below shall have been satisfied, (B) if such Replacement Liquidity Facility shall materially adversely affect the rights, remedies, interests or obligations of the Certificateholders under any of the Operative Agreements, the applicable Trustee shall have consented, in writing, to the execution and issuance of such Replacement Liquidity Facility and (C) in the case of a Replacement Liquidity Facility arranged by the Liquidity Provider under Section 3.6(e)(ii) or pursuant to Section 3.6(c), such Replacement Liquidity Facility is acceptable to Continental.

(iv) In connection with the issuance of each Replacement Liquidity Facility, the Subordination Agent shall (x) prior to the issuance of such Replacement Liquidity Facility, obtain written confirmation from each Rating Agency that such Replacement Liquidity Facility will not cause a reduction of any rating then in effect for the Certificates by such Rating Agency (without regard to any downgrading of any rating of any Liquidity Provider being replaced pursuant to Section 3.6(c) hereof), (y) pay all Liquidity Obligations then owing to the replaced Liquidity Provider (which payment shall be made first from available funds in the Cash Collateral Account as described in clause (iii) of Section 3.6(f) hereof, and thereafter from any other available source, including, without limitation, a drawing under the Replacement Liquidity Facility) and (z) cause the issuer of the Replacement Liquidity Facility to deliver the Replacement Liquidity Facility to the Subordination Agent, together with a legal opinion opining that such Replacement Liquidity Facility is an enforceable obligation of such Replacement Liquidity Provider.

(v) Upon satisfaction of the conditions set forth in clauses (iii) and (iv) of this Section 3.6(e) with respect to a Replacement Liquidity Facility, (w) the replaced Liquidity Facility shall terminate, (x) the Subordination Agent shall, if and to the extent so requested by Continental or the Liquidity Provider being replaced, execute and deliver any certificate or other instrument required in order to terminate the replaced Liquidity Facility, shall surrender the replaced Liquidity Facility to the Liquidity Provider being replaced and shall execute and deliver the Replacement Liquidity Facility and any associated Fee Letter, (y) each of the parties hereto shall enter into any amendments to this Agreement necessary to give effect to (1) the replacement of the Liquidity Provider with the Replacement Liquidity Provider and (2) the replacement of the Liquidity Facility with the applicable Replacement Liquidity Facility and (z) such Replacement Liquidity Provider shall be deemed to be the Liquidity Provider with the rights and obligations of the Liquidity Provider hereunder and under the other Operative Agreements and such Replacement Liquidity Facility shall be deemed to be the Liquidity Facility hereunder and under the other Operative Agreements.

(f) Cash Collateral Account; Withdrawals; Investments. In the event the Subordination Agent shall draw all available amounts under the Liquidity Facility pursuant to Section 3.6(c), 3.6(d), 3.6(i) or 3.6(k) hereof, or in the event amounts are to be deposited in the Cash Collateral Account pursuant to subclause (A) or (B) of clause "third" of Section 2.4(b)(i), subclause (A) or (B) of clause "third" of Section 3.2 or subclause (A) or (B) of clause "fourth" of Section 3.3, amounts so drawn or to be deposited, as the case may be, shall be deposited by the Subordination Agent in the Cash Collateral Account. All amounts on deposit in the Cash Collateral Account shall be invested and reinvested in Eligible Investments in accordance with Section 2.2(b) hereof. On each Interest Payment Date (or, in the case of any Special Distribution Date with respect to a distribution pursuant to Section 2.4(b) hereof occurring prior to the occurrence of a Triggering Event, on such Special Distribution Date), Investment Earnings on amounts on deposit in the Cash Collateral Account (or, in the case of any Special Distribution Date with respect to a distribution pursuant to Section 2.4(b) hereof occurring prior to the occurrence of a Triggering Event, a fraction of such Investment Earnings equal to the Section 2.4(b) Fraction) shall be deposited in the Collection Account (or, in the case of any Special Distribution Date with respect to a distribution pursuant to Section 2.4(b) hereof occurring prior to the occurrence of a Triggering Event, the Special Payments Account) and applied on such Interest Payment Date (or Special Distribution Date, as the case may be) in accordance with Section 2.4, 3.2, 3.3 or 3.4 (as applicable). The Subordination Agent shall deliver a written statement to Continental and the Liquidity Provider one day prior to each Interest Payment Date and Special Distribution Date setting forth the aggregate amount of Investment Earnings held in the Cash Collateral Account as of such date. In addition, from and after the date funds are so deposited, the Subordination Agent shall make withdrawals from such account as follows:

(i) on each Distribution Date, the Subordination Agent shall, to the extent it shall not have received funds to pay accrued and unpaid interest due and owing on the Certificates (at the Stated Interest Rate) from any other source, withdraw from the Cash Collateral Account, and pay to the Trustee, an amount equal to the lesser of (x) an amount necessary to pay accrued and unpaid interest (at the Stated Interest Rate) on the Certificates and (y) the amount on deposit in the Cash Collateral Account;

(ii) on each date on which the Pool Balance of the Trust shall have been reduced by payments made to the Certificateholders pursuant to Section 2.4, 3.2 or 3.3 hereof or pursuant to Section 2.03 of the Escrow and Paying Agent Agreement or deemed reduced pursuant to the proviso in the definition of "Required Amount", the Subordination Agent shall withdraw from the Cash Collateral Account such amount as is necessary so that, after giving effect to the reduction or deemed reduction of the Pool Balance on such date (and any reduction in the amounts on deposit in the Cash Collateral Account resulting from a prior withdrawal of amounts on deposit in the Cash Collateral Account on such date) and any transfer of Investment Earnings from the Cash Collateral Account to the Collection Account or the Special Payments Account on such date, an amount equal to the sum of the Required Amount (with respect to the Liquidity Facility) plus Investment Earnings on deposit in the Cash Collateral Account (after giving effect to any such transfer of Investment Earnings) will be on deposit in the Cash Collateral Account and shall first, pay such withdrawn amount to the Liquidity Provider until the

Liquidity Obligations owing to the Liquidity Provider shall have been paid in full, and second, deposit any remaining withdrawn amount in the Collection Account;

(iii) if a Replacement Liquidity Facility for the Certificates shall be delivered to the Subordination Agent following the date on which funds have been deposited into the Cash Collateral Account, the Subordination Agent shall withdraw all amounts on deposit in the Cash Collateral Account and shall pay such amounts to the replaced Liquidity Provider until all Liquidity Obligations owed to such Person shall have been paid in full, and shall deposit any remaining amount in the Collection Account; and

(iv) following the payment of Triggering Event Distributions in full, on the date on which the Subordination Agent shall have been notified by the Liquidity Provider that the Liquidity Obligations owed to the Liquidity Provider have been paid in full, the Subordination Agent shall withdraw all amounts on deposit in the Cash Collateral Account and shall deposit such amount in the Collection Account.

(g) Reinstatement. With respect to any Interest Drawing under the Liquidity Facility, upon the reimbursement of the Liquidity Provider in full or in part of the amount of such Interest Drawing, together with any accrued interest thereon, the Available Amount of the Liquidity Facility shall be reinstated by an amount equal to the amount of such Interest Drawing so reimbursed to the Liquidity Provider but not to exceed the Stated Amount for the Liquidity Facility; provided, however, that the Liquidity Facility shall not be so reinstated in part or in full at any time if (x) both a Performing Note Deficiency exists and a Liquidity Event of Default shall have occurred and be continuing or (y) a Final Drawing, Downgrade Drawing, Early Termination Drawing or Special Termination Drawing shall have occurred or a Drawing has been converted into a Final Drawing. In the event that (i) funds are withdrawn from the Cash Collateral Account pursuant to clause (i), (ii) or (iii) of Section 3.6(f) hereof or (ii) the Liquidity Facility shall become a Downgraded Facility or an Early Terminated Facility at a time when unreimbursed Interest Drawings under the Liquidity Facility have reduced the Available Amount thereunder to zero, then funds received by the Subordination Agent at any time other than (x) any time when a Liquidity Event of Default shall have occurred and be continuing and a Performing Note Deficiency exists or (y) any time after a Final Drawing shall have occurred shall be deposited in the Cash Collateral Account as and to the extent provided in clause "third" of Section 2.4(b)(i), clause "third" of Section 3.2 or clause "fourth" of Section 3.3, as applicable, and applied in accordance with Section 3.6(f) hereof.

(h) Reimbursement. The amount of each drawing under the Liquidity Facility shall be due and payable, together with interest thereon, on the dates and at the rates, respectively, provided in the Liquidity Facility.

(i) Final Drawing. Upon receipt from the Liquidity Provider of a Termination Notice, the Subordination Agent shall, not later than the date specified in such Termination Notice, in accordance with the terms of the Liquidity Facility, request a drawing under the Liquidity Facility of all available and undrawn amounts thereunder (a "Final Drawing"). Amounts drawn pursuant to a Final Drawing shall be maintained and invested in accordance with Section 3.6(f) hereof.

(j) Reduction of Stated Amount. On the first Regular Distribution Date, the Stated Amount under each Liquidity Facility shall automatically be reduced to the Required Amount then in effect with respect to such Liquidity Facility. On each date on which the Pool Balance of the Trust shall have been reduced by payments made to the Certificateholders pursuant to Section 2.4, 3.2 or 3.3 hereof or pursuant to Section 2.03 of the Escrow and Paying Agent Agreement or deemed reduced pursuant to the proviso in the definition of "Required Amount", the Stated Amount under the Liquidity Facility shall automatically be reduced to an amount equal to the Required Amount for the Liquidity Facility (as calculated by the Subordination Agent after giving effect to such payment).

(k) Special Termination Drawing. Upon receipt from the Liquidity Provider of a Special Termination Notice with respect to the Liquidity Facility, the Subordination Agent shall, not later than the date specified in such Special Termination Notice, in accordance with the terms of the Liquidity Facility, request a drawing under the Liquidity Facility of all available and undrawn amounts thereunder (a "Special Termination Drawing"). Amounts drawn pursuant to a Special Termination Drawing shall be maintained and invested in accordance with Section 3.6(f) hereof.

(l) Relation to Subordination Provisions. Interest Drawings under the Liquidity Facility and withdrawals from the Cash Collateral Account, in each case, in respect of interest on the Certificates, will be distributed to the Trustee, notwithstanding Sections 2.4, 3.2 and 3.3 hereof.

(m) Assignment of Liquidity Facility. The Subordination Agent agrees not to consent to the assignment by the Liquidity Provider of any of its rights or obligations under the Liquidity Facility or any interest therein, unless (i) Continental shall have consented to such assignment and (ii) each Rating Agency shall have provided a Ratings Confirmation in respect of such assignment; provided, that the Subordination Agent shall consent to such assignment if the conditions in the foregoing clauses (i) and (ii) are satisfied, and the foregoing is not intended to and shall not be construed to limit the rights of the Liquidity Provider under Section 3.6(e) (ii).

#### ARTICLE IV

##### EXERCISE OF REMEDIES

SECTION 4.1 Directions from the Controlling Party. (a) (i) Following the occurrence and during the continuation of an Indenture Default under any Indenture, the Controlling Party shall direct the Subordination Agent, which in turn shall direct the Loan Trustee under such Indenture, in the exercise of remedies available to the holders of the Equipment Notes issued pursuant to such Indenture, including, without limitation, the ability to vote all such Equipment Notes in favor of Accelerating such Equipment Notes in accordance with the provisions of such Indenture. Subject to the Owner Trustees' and the Owner Participants' rights, if any, set forth in the Indentures to purchase the Equipment Notes and the provisions of the next paragraph, if the Equipment Notes issued pursuant to any Indenture have been Accelerated following an Indenture Default with respect thereto, the Controlling Party may direct the Subordination Agent to sell, assign, contract to sell or otherwise dispose of and deliver

all (but not less than all) of such Equipment Notes, or sell the Aircraft subject to the Lien of such Indenture, in either case, to any Person at public or private sale, at any location at the option of the Controlling Party, all upon such terms and conditions as it may reasonably deem advisable in accordance with applicable law.

(ii) At the request of the Controlling Party, the Subordination Agent may from time to time during the continuance of an Indenture Default (and before the occurrence of a Triggering Event) commission Appraisals with respect to the Aircraft subject to such Indenture.

(iii) After a Triggering Event occurs and any Equipment Note becomes a Non-Performing Equipment Note, the Subordination Agent shall obtain a desktop appraisal from each of three Appraisers setting forth the current market value, current lease rate and immediate or distress sale value (in each case, as defined by the International Society of Transport Aircraft Trading) with respect to all of the Aircraft (the "Appraisals") as soon as practicable and thereafter during the continuance of such Triggering Event additional Appraisals on or prior to each six-month anniversary of the date of such initial Appraisals; provided, that, the Controlling Party shall have the right to obtain or cause to be obtained additional Appraisals (including any Appraisals based upon physical inspection of the Aircraft) at any time.

(iv) After the Subordination Agent has requested the Appraisers to deliver the initial Appraisals, the Reserve Account will be funded initially up to the Reserve Amount from amounts distributed under clause "first" of Section 3.3 hereof. The Subordination Agent shall have the right to withdraw funds from the Reserve Account to pay for the initial and any subsequent Appraisals. The Reserve Account will subsequently be replenished up to the Reserve Amount pursuant to clause "first" of Section 3.3 hereof; provided, that, except for the initial funding of the Reserve Account up to the Reserve Amount, no more than \$25,000 will be deposited in the Reserve Account in any calendar year and no more than \$100,000 shall be on deposit in the Reserve Account at any time. On the first Business Day following the earliest of (w) the first day after the initial funding of the Reserve Account on which no Triggering Event exists, (x) the Final Legal Distribution Date, (y) the date of the disposition of the last Aircraft or the related Equipment Note hereunder, and (z) the date on which payment of the Triggering Event Distributions is made in full, the Subordination Agent shall withdraw all amounts (if any) on deposit in the Reserve Account and deposit such amounts in the Collection Account.

(b) Following the occurrence and during the continuance of an Indenture Default under any Indenture, the Controlling Party shall take such actions as it may reasonably deem most effectual to complete the sale or other disposition of the relevant Aircraft or Equipment Notes. In addition, in lieu of any sale, assignment, contract to sell or other disposition, the Controlling Party may maintain possession of such Equipment Notes and continue to apply monies received in respect of such Equipment Notes in accordance with Articles II and III hereof. In addition, in lieu of such sale, assignment, contract to sell or other disposition, or in lieu of such maintenance of possession, the Controlling Party may, subject to the terms and conditions of the related Indenture, instruct the Loan Trustee under such Indenture to foreclose on the Lien on the related Aircraft.

SECTION 4.2 Remedies Cumulative. Each and every right, power and remedy given to the Trustee, the Liquidity Provider, the Controlling Party or the Subordination Agent specifically or otherwise in this Agreement shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may, subject always to the terms and conditions hereof, be exercised from time to time and as often and in such order as may be deemed expedient by the Trustee, the Liquidity Provider, the Controlling Party or the Subordination Agent, as appropriate, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Trustee, the Liquidity Provider, the Controlling Party or the Subordination Agent in the exercise of any right, remedy or power or in the pursuit of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default or to be an acquiescence therein.

SECTION 4.3 Discontinuance of Proceedings. In case any party to this Agreement (including the Controlling Party in such capacity) shall have instituted any Proceeding to enforce any right, power or remedy under this Agreement by foreclosure, entry or otherwise, and such Proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Person instituting such Proceeding, then and in every such case each such party shall, subject to any determination in such Proceeding, be restored to its former position and rights hereunder, and all rights, remedies and powers of such party shall continue as if no such Proceeding had been instituted.

SECTION 4.4 Right to Receive Payments Not to Be Impaired. Anything in this Agreement to the contrary notwithstanding but subject to the Trust Agreement, the right of any Certificateholder or the Liquidity Provider, respectively, to receive payments hereunder (including, without limitation, pursuant to Section 2.4, 3.2 or 3.3 hereof) when due, or to institute suit for the enforcement of any such payment on or after the applicable Distribution Date, shall not be impaired or affected without the consent of such Certificateholder or the Liquidity Provider, respectively.

SECTION 4.5 Undertaking for Costs. In any Proceeding for the enforcement of any right or remedy under this Agreement or in any Proceeding against any Controlling Party or the Subordination Agent for any action taken or omitted by it as Controlling Party or Subordination Agent, as the case may be, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. The provisions of this Section do not apply to a suit instituted by the Subordination Agent, the Liquidity Provider or the Trustee or a suit by Certificateholders holding more than 10% of the original principal amount of the Certificates.

ARTICLE V

DUTIES OF THE SUBORDINATION AGENT;

AGREEMENTS OF TRUSTEE, ETC.

SECTION 5.1 Notice of Indenture Default or Triggering Event; Other Notices; Reports. (a) In the event the Subordination Agent shall have actual knowledge of the occurrence of an Indenture Default or a Triggering Event, as promptly as practicable, and in any event within 10 days after obtaining knowledge thereof, the Subordination Agent shall transmit by mail or courier to the Rating Agencies, the Liquidity Provider and the Trustee notice of such Indenture Default or Triggering Event, unless such Indenture Default or Triggering Event shall have been cured or waived. For all purposes of this Agreement, in the absence of actual knowledge on the part of a Responsible Officer, the Subordination Agent shall not be deemed to have knowledge of any Indenture Default or Triggering Event unless notified in writing by the Trustee, one or more Liquidity Provider or one or more Certificateholders.

(b) The Subordination Agent will furnish to the Liquidity Provider and the Trustee, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments furnished to the Subordination Agent as registered holder of the Equipment Notes or otherwise in its capacity as Subordination Agent to the extent the same shall not have been otherwise directly distributed to the Liquidity Provider or Trustee, as applicable, pursuant to the express provision of any other Operative Agreement.

(c) Upon the occurrence of an Indenture Default, the Subordination Agent shall instruct the Trustee to, and the Trustee shall, request that DTC post on its internet bulletin board a securities position listing setting forth the names of all the parties reflected on DTC's books as holding interests in the certificates.

(d) Promptly after the occurrence of a Triggering Event or an Indenture Default resulting from the failure of Continental to make payments on any Equipment Note and on every sixth Regular Distribution Date while the Triggering Event or such Indenture Default shall be continuing, the Subordination Agent will provide to the Trustee, Liquidity Provider, Rating Agencies and Continental a statement setting forth the following information:

(i) after a bankruptcy of Continental, with respect to each Aircraft, whether such Aircraft is (A) subject to the 60-day period of Section 1110 of the Bankruptcy Code, (B) subject to an election by Continental under Section 1110(a) of the Bankruptcy Code, (C) covered by an agreement contemplated by Section 1110(b) of the Bankruptcy Code or (D) not subject to any of (A), (B) or (C);

(ii) to the best of the Subordination Agent's knowledge, after requesting such information from Continental, (A) whether the Aircraft are currently in service or parked in storage, (B) the maintenance status of the Aircraft and (C) the location of the Engines (as defined in the Indentures);

- (iii) the current Pool Balance of the Certificates and outstanding principal amount of all Equipment Notes;
- (iv) the expected amount of interest which will have accrued on the Equipment Notes and on the Certificates as of the next Regular Distribution Date;
- (v) the amounts paid to each person on such Distribution Date pursuant to this Agreement;
- (vi) details of the amounts paid on such Distribution Date identified by reference to the relevant provision of this Agreement and the source of payment (by Aircraft and party);
- (vii) if the Subordination Agent has made a Final Drawing under the Liquidity Facility;
- (viii) the amounts currently owed to the Liquidity Provider;
- (ix) the amounts drawn under the Liquidity Facility; and
- (x) after a bankruptcy of Continental, any operational reports filed by Continental with the bankruptcy court which are available to the Subordination Agent on a non-confidential basis.

SECTION 5.2 Indemnification. The Subordination Agent shall not be required to take any action or refrain from taking any action under Section 5.1 (other than the first sentence thereof) or Article IV hereof unless the Subordination Agent shall have been indemnified (to the extent and in the manner reasonably satisfactory to the Subordination Agent) against any liability, cost or expense (including counsel fees and expenses) which may be incurred in connection therewith. The Subordination Agent shall not be under any obligation to take any action under this Agreement and nothing contained in this Agreement shall require the Subordination Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Subordination Agent shall not be required to take any action under Section 5.1 (other than the first sentence thereof) or Article IV hereof, nor shall any other provision of this Agreement be deemed to impose a duty on the Subordination Agent to take any action, if the Subordination Agent shall have been advised by counsel that such action is contrary to the terms hereof or is otherwise contrary to law.

SECTION 5.3 No Duties Except as Specified in Intercreditor Agreement. The Subordination Agent shall not have any duty or obligation to take or refrain from taking any action under, or in connection with, this Agreement, except as expressly provided by the terms of this Agreement; and no implied duties or obligations shall be read into this Agreement against the Subordination Agent. The Subordination Agent agrees that it will, in its individual capacity and at its own cost and expense (but without any right of indemnity in respect of any such cost or expense under Section 5.2 or 7.1 hereof) promptly take such action as may be necessary to duly



discharge all Liens on any of the Trust Accounts or any monies deposited therein which result from claims against it in its individual capacity not related to its activities hereunder or any other Operative Agreement.

SECTION 5.4 Notice from the Liquidity Provider and Trustee. If the Liquidity Provider or the Trustee has received notice of an Indenture Default or a Triggering Event, such Person shall promptly give notice thereof to the Trustee or Liquidity Provider, as the case may be, and to the Subordination Agent, provided, however, that no such Person shall have any liability hereunder as a result of its failure to deliver any such notice.

## ARTICLE VI

### THE SUBORDINATION AGENT

SECTION 6.1 Authorization; Acceptance of Trusts and Duties. The Trustee hereby designates and appoints the Subordination Agent as the agent and trustee of the Trustee under the Liquidity Facility and authorizes the Subordination Agent to enter into the Liquidity Facility as agent and trustee for such Trustee. Each of the Liquidity Provider and the Trustee hereby designates and appoints the Subordination Agent as the Subordination Agent under this Agreement. WTC hereby accepts the duties hereby created and applicable to it as the Subordination Agent and agrees to perform the same but only upon the terms of this Agreement and agrees to receive and disburse all monies received by it in accordance with the terms hereof. The Subordination Agent shall not be answerable or accountable under any circumstances, except (a) for its own willful misconduct or gross negligence (or ordinary negligence in the handling of funds), (b) as provided in Sections 2.2 or 5.3 hereof and (c) for liabilities that may result from the material inaccuracy of any representation or warranty of the Subordination Agent made in its individual capacity in any Operative Agreement. The Subordination Agent shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Subordination Agent, unless it is proved that the Subordination Agent was negligent in ascertaining the pertinent facts.

SECTION 6.2 Absence of Duties. The Subordination Agent shall have no duty to see to any recording or filing of this Agreement or any other document, or to see to the maintenance of any such recording or filing.

SECTION 6.3 No Representations or Warranties as to Documents. The Subordination Agent in its individual capacity does not make nor shall be deemed to have made any representation or warranty as to the validity, legality or enforceability of this Agreement or any other Operative Agreement or as to the correctness of any statement contained in any thereof, except for the representations and warranties of the Subordination Agent, made in its individual capacity, under any Operative Agreement to which it is a party. The Certificateholders, the Trustee and the Liquidity Provider make no representation or warranty hereunder whatsoever.

SECTION 6.4 No Segregation of Monies; No Interest. Any monies paid to or retained by the Subordination Agent pursuant to any provision hereof and not then required to be distributed to the Trustee or the Liquidity Provider as provided in Articles II and III hereof or

deposited into one or more Trust Accounts need not be segregated in any manner except to the extent required by such Articles II and III and by law, and the Subordination Agent shall not (except as otherwise provided in Section 2.2 hereof) be liable for any interest thereon; provided, however, that any payments received or applied hereunder by the Subordination Agent shall be accounted for by the Subordination Agent so that any portion thereof paid or applied pursuant hereto shall be identifiable as to the source thereof.

SECTION 6.5 Reliance; Agents; Advice of Counsel. The Subordination Agent shall not incur liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. As to the Pool Balance as of any date, the Subordination Agent may for all purposes hereof rely on a certificate signed by any Responsible Officer of the Trustee, and such certificate shall constitute full protection to the Subordination Agent for any action taken or omitted to be taken by it in good faith in reliance thereon. As to any fact or matter relating to the Liquidity Provider or the Trustee the manner of ascertainment of which is not specifically described herein, the Subordination Agent may for all purposes hereof rely on a certificate, signed by any Responsible Officer of the Liquidity Provider or Trustee, as the case may be, as to such fact or matter, and such certificate shall constitute full protection to the Subordination Agent for any action taken or omitted to be taken by it in good faith in reliance thereon. The Subordination Agent shall assume, and shall be fully protected in assuming, that the Liquidity Provider and the Trustee are authorized to enter into this Agreement and to take all action to be taken by them pursuant to the provisions hereof, and shall not inquire into the authorization of the Liquidity Provider or the Trustee with respect thereto. In the administration of the trusts hereunder, the Subordination Agent may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled persons to be selected and retained by it, and the Subordination Agent shall not be liable for the acts or omissions of any agent selected with due care or for anything done, suffered or omitted in good faith by it in accordance with the advice or written opinion of any such counsel, accountants or other skilled persons.

SECTION 6.6 Capacity in Which Acting. The Subordination Agent acts hereunder solely as agent and trustee herein and not in its individual capacity, except as otherwise expressly provided in the Operative Agreements.

SECTION 6.7 Compensation. The Subordination Agent shall be entitled to reasonable compensation, including expenses and disbursements, for all services rendered hereunder and shall have a priority claim to the extent set forth in Article III hereof on all monies collected hereunder for the payment of such compensation, to the extent that such compensation shall not be paid by others. The Subordination Agent agrees that it shall have no right against the Trustee or the Liquidity Provider for any fee as compensation for its services as agent under this Agreement. The provisions of this Section 6.7 shall survive the termination of this Agreement.

SECTION 6.8 May Become Certificateholder. The institution acting as Subordination Agent hereunder may become a Certificateholder and have all rights and benefits

of a Certificateholder to the same extent as if it were not the institution acting as the Subordination Agent.

SECTION 6.9 Subordination Agent Required; Eligibility. There shall at all times be a Subordination Agent hereunder which shall be a corporation organized and doing business under the laws of the United States of America or of any State or the District of Columbia having a combined capital and surplus of at least \$100,000,000 (or the obligations of which, whether now in existence or hereafter incurred, are fully and unconditionally guaranteed by a corporation organized and doing business under the laws of the United States of America, any State thereof or of the District of Columbia and having a combined capital and surplus of at least \$100,000,000), if there is such an institution willing and able to perform the duties of the Subordination Agent hereunder upon reasonable or customary terms. Such corporation shall be a citizen of the United States and shall be authorized under the laws of the United States or any State thereof or of the District of Columbia to exercise corporate trust powers and shall be subject to supervision or examination by federal, state or District of Columbia authorities. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any of the aforesaid supervising or examining authorities, then, for the purposes of this Section 6.9, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

In case at any time the Subordination Agent shall cease to be eligible in accordance with the provisions of this Section, the Subordination Agent shall resign immediately in the manner and with the effect specified in Section 8.1.

SECTION 6.10 Money to Be Held in Trust. All Equipment Notes, monies and other property deposited with or held by the Subordination Agent pursuant to this Agreement shall be held in trust for the benefit of the parties entitled to such Equipment Notes, monies and other property. All such Equipment Notes, monies or other property shall be held in the Trust Department of the institution acting as Subordination Agent hereunder.

## ARTICLE VII

### INDEMNIFICATION OF SUBORDINATION AGENT

SECTION 7.1 Scope of Indemnification. The Subordination Agent shall be indemnified hereunder to the extent and in the manner described in Section 9.1 of the Participation Agreements and Section 6 of the Note Purchase Agreement. The indemnities contained in such Sections of such agreements shall survive the termination of this Agreement.

## ARTICLE VIII

### SUCCESSOR SUBORDINATION AGENT

SECTION 8.1 Replacement of Subordination Agent; Appointment of Successor. The Subordination Agent may resign at any time by so notifying the Trustee and the Liquidity Provider. The Controlling Party may remove the Subordination Agent for cause by so notifying

the Subordination Agent and may appoint a successor Subordination Agent. The Controlling Party shall remove the Subordination Agent if:

- (1) the Subordination Agent fails to comply with Section 6.9 hereof;
- (2) the Subordination Agent is adjudged bankrupt or insolvent;
- (3) a receiver or other public officer takes charge of the Subordination Agent or its property; or
- (4) the Subordination Agent otherwise becomes incapable of acting.

If the Subordination Agent resigns or is removed or if a vacancy exists in the office of Subordination Agent for any reason (the Subordination Agent in such event being referred to herein as the retiring Subordination Agent), the Controlling Party shall promptly appoint a successor Subordination Agent.

A successor Subordination Agent shall deliver (x) a written acceptance of its appointment as Subordination Agent hereunder to the retiring Subordination Agent and (y) a written assumption of its obligations hereunder and under the Liquidity Facility to each party hereto, upon which the resignation or removal of the retiring Subordination Agent shall become effective, and the successor Subordination Agent shall have all the rights, powers and duties of the Subordination Agent under this Agreement. The successor Subordination Agent shall mail a notice of its succession to the Liquidity Provider and the Trustee. The retiring Subordination Agent shall promptly transfer its rights under the Liquidity Facility and all of the property held by it as Subordination Agent to the successor Subordination Agent.

If a successor Subordination Agent does not take office within 60 days after the retiring Subordination Agent resigns or is removed, the retiring Subordination Agent or the Trustee may petition any court of competent jurisdiction for the appointment of a successor Subordination Agent.

If the Subordination Agent fails to comply with Section 6.9 hereof (to the extent applicable), the Trustee or the Liquidity Provider may petition any court of competent jurisdiction for the removal of the Subordination Agent and the appointment of a successor Subordination Agent.

Notwithstanding the foregoing, no resignation or removal of the Subordination Agent shall be effective unless and until a successor has been appointed. No appointment of a successor Subordination Agent shall be effective unless and until the Rating Agencies shall have delivered a Ratings Confirmation.

ARTICLE IX

SUPPLEMENTS AND AMENDMENTS

SECTION 9.1 Amendments, Waivers, etc. (a) This Agreement may not be supplemented, amended or modified without the consent of the Trustee (acting, except in the case of any amendment pursuant to Section 3.6(e)(v)(y) hereof with respect to any Replacement Liquidity Facility or any amendment contemplated by the last sentence of this Section 9.1(a), with the consent of holders of the Certificates evidencing interests in the Trust aggregating not less than a majority in interest in the Trust or as otherwise authorized pursuant to the Trust Agreement), the Subordination Agent and the Liquidity Provider; provided, however, that this Agreement may be supplemented, amended or modified without the consent of the Trustee if such supplement, amendment or modification cures an ambiguity or inconsistency or does not materially adversely affect the Trustee, the Liquidity Provider or the holders of the Certificates; provided further, however, that, if such supplement, amendment or modification (A) would (x) directly or indirectly modify or supersede, or otherwise conflict with, Section 2.2(b), Section 3.6(e), Section 3.6(f) (other than the last sentence thereof), Section 3.6(n), the last sentence of this Section 9.1(a), the second sentence of Section 10.6 or this proviso (collectively, the "Continental Provisions") or (y) otherwise adversely affect the interests of a potential Replacement Liquidity Provider or of Continental with respect to its ability to replace any Liquidity Facility or with respect to its payment obligations under any Operative Agreement or (B) is made pursuant to the last sentence of this Section 9.1(a), then such supplement, amendment or modification shall not be effective without the additional written consent of Continental. Notwithstanding the foregoing, without the consent of each Certificateholder and the Liquidity Provider, no supplement, amendment or modification of this Agreement may (i) reduce the percentage of the interest in the Trust evidenced by the Certificates issued by the Trust necessary to consent to modify or amend any provision of this Agreement or to waive compliance therewith or (ii) except as provided in the last sentence of this Section 9.1(a), modify Section 2.4, 3.2 or 3.3 hereof, relating to the distribution of monies received by the Subordination Agent hereunder from the Equipment Notes or pursuant to the Liquidity Facilities. Nothing contained in this Section shall require the consent of the Trustee at any time following the payment of Triggering Event Distributions in full. If any Replacement Liquidity Facility in accordance with Section 3.6(e) hereof is to be comprised of more than one instrument or an instrument other than a revolving credit agreement, in each case, as contemplated by the definition of the term "Replacement Liquidity Facility", then each of the parties hereto agrees to amend this Agreement to incorporate appropriate mechanics for multiple Liquidity Facilities or for such instrument, as the case may be.

(b) In the event that the Subordination Agent, as the registered holder of any Equipment Notes, receives a request for its consent to any amendment, modification, consent or waiver under such Equipment Notes, the Indenture pursuant to which such Equipment Notes were issued, or the related Lease, Participation Agreement or other related document, (i) if no Indenture Default shall have occurred and be continuing with respect to such Indenture, the Subordination Agent shall request directions with respect to such Equipment Notes from the Trustee and shall vote or consent in accordance with the directions of the Trustee and (ii) if any Indenture Default (which has not been cured by the applicable Owner Trustee or the applicable

Owner Participant, if applicable, pursuant to Section 4.03 of such Indenture) shall have occurred and be continuing with respect to such Indenture, the Subordination Agent will exercise its voting rights as directed by the Controlling Party, subject to Sections 4.1 and 4.4 hereof; provided that no such amendment, modification or waiver shall, without the consent of the Liquidity Provider, reduce the amount of rent, supplemental rent or stipulated loss values payable by Continental under any Lease.

SECTION 9.2 Subordination Agent Protected. If, in the reasonable opinion of the institution acting as the Subordination Agent hereunder, any document required to be executed pursuant to the terms of Section 9.1 affects any right, duty, immunity or indemnity with respect to it under this Agreement or the Liquidity Facility, the Subordination Agent may in its discretion decline to execute such document.

SECTION 9.3 Effect of Supplemental Agreements. Upon the execution of any amendment, consent or supplement hereto pursuant to the provisions hereof, this Agreement shall be and be deemed to be and shall be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Agreement of the parties hereto and beneficiaries hereof shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental agreement shall be and be deemed to be and shall be part of the terms and conditions of this Agreement for any and all purposes. In executing or accepting any supplemental agreement permitted by this Article IX, the Subordination Agent shall be entitled to receive, and shall be fully protected in relying upon, an opinion of counsel stating that the execution of such supplemental agreement is authorized or permitted by this Agreement.

SECTION 9.4 Notice to Rating Agencies. Promptly following its receipt of each amendment, consent, modification, supplement or waiver contemplated by this Article IX, the Subordination Agent shall send a copy thereof to each Rating Agency.

Upon the reasonable request of any Rating Agency in writing, the Subordination Agent and Trustee shall provide to such Rating Agency such information available to the Subordination Agent and the Trustee as may be relevant to maintaining such Rating Agency's rating on the Certificates. During the continuance of a Triggering Event or an Indenture Default resulting from a payment default under any Equipment Note, the Subordination Agent and Trustee shall permit each Rating Agency, upon reasonable notice and on a periodic basis, to be provided copies of documents in the possession of the Subordination Agent and Trustee in their respective capacities as such reasonably related to the transactions contemplated by the Operative Agreements and, on a reasonable periodic basis, to meet or confer with officers and employees of the Subordination Agent and Trustee in their respective capacities as such to discuss such transactions, so long as such actions are reasonably related to maintaining such Rating Agency's rating on the Certificates.

ARTICLE X

MISCELLANEOUS

SECTION 10.1 Termination of Intercreditor Agreement. Following payment in full of Triggering Event Distributions and the payment in full of all Liquidity Obligations to the Liquidity Provider and provided that there shall then be no other amounts due to the Certificateholders, the Trustee, the Liquidity Provider and the Subordination Agent hereunder or under the Trust Agreement, and that the commitment of the Liquidity Provider under the Liquidity Facility shall have expired or been terminated, this Agreement and the trusts created hereby shall terminate and this Agreement shall be of no further force or effect. Except as aforesaid or otherwise provided, this Agreement and the trusts created hereby shall continue in full force and effect in accordance with the terms hereof.

SECTION 10.2 Intercreditor Agreement for Benefit of the Trustee, the Liquidity Provider and the Subordination Agent. Subject to the second sentence of Section 10.6 and the provisions of Section 4.4, nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the Trustee, the Liquidity Provider and the Subordination Agent any legal or equitable right, remedy or claim under or in respect of this Agreement.

SECTION 10.3 Notices. Unless otherwise expressly specified or permitted by the terms hereof, all notices, requests, demands, authorizations, directions, consents, waivers or documents provided or permitted by this Agreement to be made, given, furnished or filed shall be in writing, mailed by certified mail, postage prepaid, or by confirmed telecopy and

- (i) if to the Subordination Agent, addressed to at its office at:

WILMINGTON TRUST COMPANY  
One Rodney Square  
1100 N. Market Street  
Wilmington, DE 19890-0001  
Attention: Corporate Trust Administration  
Telecopy: (302) 651-8882

- (ii) if to the Trustee, addressed to it at its office at:

WILMINGTON TRUST COMPANY  
One Rodney Square  
1100 N. Market Street  
Wilmington, DE 19890-0001  
Attention: Corporate Trust Administration  
Telecopy: (302) 651-8882

- (iii) if to the Liquidity Provider, addressed to it at its office at:

Landesbank Baden-Württemberg  
Am Hauptbahnhof 2

D-70173 Stuttgart  
Germany  
Attention: Structured Finance  
Telephone: +49 711 1244 9757  
Telecopy: +49 711 1244 9747

with a copy to:

Landesbank Baden-Württemberg  
280 Park Avenue, West Building, 31st Floor  
New York, New York 10017  
Attention: Claudia Rothe/Bette Smolen  
Telephone: (212) 584-1700  
Telecopy: (212) 584-1729

Whenever any notice in writing is required to be given by the Trustee, the Liquidity Provider or the Subordination Agent to any of the other of them, such notice shall be deemed given and such requirement satisfied when such notice is received. Any party hereto may change the address to which notices to such party will be sent by giving notice of such change to the other parties to this Agreement.

SECTION 10.4 Severability. Any provision of this Agreement which is or becomes invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, prohibition or unenforceability without invalidating the remaining provisions hereof, and any such invalidity, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.5 No Oral Modifications or Continuing Waivers. No terms or provisions of this Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party or other Person against whom enforcement of the change, waiver, discharge or termination is sought and any other party or other Person whose consent is required pursuant to this Agreement and any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.

SECTION 10.6 Successors and Assigns. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, each of the parties hereto and the successors and assigns of each, all as herein provided. In addition, the Continental Provisions shall inure to the benefit of Continental and its successors and assigns, and (without limitation of the foregoing) Continental is hereby constituted, and agreed to be, an express third party beneficiary of the Continental Provisions.

SECTION 10.7 Headings. The headings of the various Articles and Sections herein and in the table of contents hereto are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.



SECTION 10.8 Counterpart Form. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same agreement.

SECTION 10.9 Subordination. (a) As between the Liquidity Provider, on the one hand, and the Trustee and the Certificateholders, on the other hand, and as among the Trustee and the Certificateholders, this Agreement shall be a subordination agreement for purposes of Section 510 of the United States Bankruptcy Code, as amended from time to time.

(b) Notwithstanding the provisions of this Agreement, if prior to the payment in full to the Liquidity Provider of all Liquidity Obligations then due and payable, any party hereto shall have received any payment or distribution in respect of Equipment Notes or any other amount under the Indentures or other Operative Agreements which, had the subordination provisions of this Agreement been properly applied to such payment, distribution or other amount, would not have been distributed to such Person, then such payment, distribution or other amount shall be received and held in trust by such Person and paid over or delivered to the Subordination Agent for application as provided herein.

(c) If the Trustee, the Liquidity Provider or the Subordination Agent receives any payment in respect of any obligations owing hereunder (or, in the case of the Liquidity Provider, in respect of the Liquidity Obligations), which is subsequently invalidated, declared preferential, set aside and/or required to be repaid to a trustee, receiver or other party, then, to the extent of such payment, such obligations (or, in the case of the Liquidity Provider, such Liquidity Obligations) intended to be satisfied shall be revived and continue in full force and effect as if such payment had not been received.

(d) The Trustee (on behalf of itself and the holders of Certificates), the Liquidity Provider and the Subordination Agent confirm that the payment priorities specified in Sections 2.4, 3.2 and 3.3 shall apply in all circumstances, notwithstanding the fact that the obligations owed to the Trustee and the holders of Certificates are secured by certain assets and the Liquidity Obligations may not be so secured. The Trustee expressly agrees (on behalf of itself and the holders of Certificates) not to assert priority over the holders of Liquidity Obligations due to their status as secured creditors in any bankruptcy, insolvency or other legal proceeding.

(e) Each of the Trustee (on behalf of itself and the holders of the Certificates), the Liquidity Provider and the Subordination Agent may take any of the following actions without impairing its rights under this Agreement:

(i) obtain a Lien on any property to secure any amounts owing to it hereunder, including, in the case of the Liquidity Provider, the Liquidity Obligations,

(ii) obtain the primary or secondary obligation of any other obligor with respect to any amounts owing to it hereunder, including, in the case of the Liquidity Provider, any of the Liquidity Obligations,

- (iii) renew, extend, increase, alter or exchange any amounts owing to it hereunder, including, in the case of the Liquidity Provider, any of the Liquidity Obligations, or release or compromise any obligation of any obligor with respect thereto,
- (iv) refrain from exercising any right or remedy, or delay in exercising such right or remedy, which it may have, or
- (v) take any other action which might discharge a subordinated party or a surety under applicable law;

provided, however, that the taking of any such actions by the Trustee, the Liquidity Provider or the Subordination Agent shall not prejudice the rights or adversely affect the obligations of any other party under this Agreement.

SECTION 10.10 Governing Law. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

SECTION 10.11 Submission to Jurisdiction; Waiver of Jury Trial; Waiver of Immunity. (a) Each of the parties hereto hereby irrevocably and unconditionally:

- (i) submits for itself and its property in any legal action or proceeding relating to this Agreement or any other Operative Agreement, or for recognition and enforcement of any judgment in respect hereof or thereof, to the nonexclusive general jurisdiction of the courts of the State of New York (sitting in the City of New York), the courts of the United States of America for the Southern District of New York, and the appellate courts from any thereof;
- (ii) consents that any such action or proceeding may be brought in such courts, and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;
- (iii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to each party hereto at its address set forth in Section 10.3 hereof, or at such other address of which the other parties shall have been notified pursuant thereto; and
- (iv) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction.

(b) EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS

BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT AND THE RELATIONSHIP THAT IS BEING ESTABLISHED, including, without limitation, contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each of the parties warrants and represents that it has reviewed this waiver with its legal counsel, and that it knowingly and voluntarily waives its jury trial rights following consultation with such legal counsel. THIS WAIVER IS IRREVOCABLE, AND CANNOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

(c) The Liquidity Provider (and any successor Liquidity Provider not organized under the laws of the United States or any political subdivision thereof) hereby waives any immunity it may have from the jurisdiction of the courts of the United States or of any State and waives any immunity any of its properties located in the United States may have from attachment or execution upon a judgment entered by any such court under the United States Foreign Sovereign Immunities Act of 1976 or any similar successor legislation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers or representatives thereunto duly authorized, as of the day and year first above written, and acknowledge that this Agreement has been made and delivered in the City of New York, and this Agreement has become effective only upon such execution and delivery.

WILMINGTON TRUST COMPANY, not in its individual capacity but solely as Trustee

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

LANDESBANK BADEN-WÜRTTEMBERG, as Liquidity Provider

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

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

WILMINGTON TRUST COMPANY, not in its individual capacity except as expressly set forth herein but solely as Subordination Agent and trustee

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

DEPOSIT AGREEMENT

Dated as of September 22, 2005

between

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION

as Escrow Agent

and

CITIBANK, N.A.

as Depositary

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DEPOSIT AGREEMENT dated as of September 22, 2005 (as amended, modified or supplemented from time to time, this "Agreement") between WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, a national banking association, as Escrow Agent under the Escrow and Paying Agent Agreement referred to below (in such capacity, together with its successors in such capacity, the "Escrow Agent"), and CITIBANK, N.A., a national banking association, as depositary bank (the "Depositary").

WITNESSETH

WHEREAS, Continental Airlines, Inc. ("Continental") and Wilmington Trust Company, not in its individual capacity except as otherwise expressly provided therein, but solely as trustee (in such capacity, together with its successors in such capacity, the "Pass Through Trustee") have entered into a Trust Supplement, dated as of September 22, 2005, to the Pass Through Trust Agreement dated as of September 25, 1997 (together, as amended, modified or supplemented from time to time in accordance with the terms thereof, the "Pass Through Trust Agreement") relating to Continental Airlines Pass Through Trust 2005-ERJ1 pursuant to which the Continental Airlines Pass Through Trust, Series 2005-ERJ1 Certificates referred to therein (the "Certificates") are being issued (the date of such issuance, the "Issuance Date");

WHEREAS, Continental, Embraer-Empresa Brasileira de Aeronáutica S.A., Citigroup Global Markets Inc. (the "Underwriter" and, together with its transferees and assigns as registered owners of the Certificates, the "Investors") and the Depositary have entered into an Underwriting Agreement dated as of September 14, 2005, pursuant to which the Pass Through Trustee will issue and sell the Certificates to the Underwriter;

WHEREAS, Continental, the Pass Through Trustee, and certain other persons concurrently herewith are entering into the Note Purchase Agreement, dated as of the date hereof (the "Note Purchase Agreement"), pursuant to which the Pass Through Trustee has agreed to acquire from time to time on or prior to the Delivery Period Termination Date (as defined in the Note Purchase Agreement) equipment notes (the "Equipment Notes") issued to finance the acquisition of aircraft by Continental, as lessee, utilizing a portion of the proceeds from the sale of the Certificates (the "Net Proceeds");

WHEREAS, the Escrow Agent, the Underwriter, the Pass Through Trustee and Wilmington Trust Company, as paying agent for the Escrow Agent (in such capacity, together with its successors in such capacity, the "Paying Agent") concurrently herewith are entering into an Escrow and Paying Agent Agreement, dated as of the date hereof (as amended, modified or supplemented from time to time in accordance with the terms thereof, the "Escrow and Paying Agent Agreement"); and

WHEREAS, the Underwriter and the Pass Through Trustee intend that the Net Proceeds (excluding any amount used to purchase Equipment Notes on the Issuance Date) be held in escrow by the Escrow Agent on behalf of the Investors pursuant to the Escrow and Paying Agent Agreement, subject to withdrawal upon request of and proper certification by the Pass Through Trustee for the purpose of purchasing Equipment Notes, and that pending such withdrawal the Net Proceeds be deposited by the Escrow Agent with the Depositary pursuant to

this Agreement, which provides for the Depository to pay interest for distribution to the Investors and to establish accounts from which the Escrow Agent shall make withdrawals upon request of and proper certification by the Pass Through Trustee.

NOW, THEREFORE, in consideration of the obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1.1 Acceptance of Depository. The Depository hereby agrees to act as depository bank as provided herein and in connection therewith to accept all amounts to be delivered to or held by the Depository pursuant to the terms of this Agreement. The Depository further agrees to hold, maintain and safeguard the Deposits and the Accounts (as defined below) during the term of this Agreement in accordance with the provisions of this Agreement. The Escrow Agent shall not have any right to withdraw, assign or otherwise transfer moneys held in the Accounts except as permitted by this Agreement.

SECTION 1.2 Establishment of Accounts. The Escrow Agent hereby instructs the Depository, and the Depository agrees, to establish the separate deposit accounts listed on Schedule I hereto and to establish such additional separate deposit accounts as may be required, solely upon the written instruction of an Authorized Person (as defined in Section 8 hereof) of the Escrow Agent, in connection with the deposits contemplated by Section 2.4 hereof (each, an "Account" and collectively, the "Accounts"), each in the name of the Escrow Agent and all on the terms and conditions set forth in this Agreement.

SECTION 2.1 Deposits. The Escrow Agent shall direct the Underwriter to deposit with the Depository on the date of this Agreement (the "Deposit Date") in Federal (same day) funds by wire transfer to: Citibank, N.A., ABA No. 021000089, Account No. 36855852, further credit to Account No. 795733, and the Depository shall accept from the Underwriter, on behalf of the Escrow Agent, the sum of US\$311,010,000 (or such lesser amount equal to the Net Proceeds less amounts, if any, used to purchase Equipment Notes on the Issuance Date). Upon acceptance of such sum, the Depository shall (i) accept each of the deposits specified in Schedule I hereto maturing on September 28, 2006 (including any deposit made pursuant to Section 2.4 hereof, individually, a "Deposit" and, collectively, the "Deposits") and (ii) credit each Deposit to the related Account as set forth therein. No amount shall be deposited in any Account other than the related Deposit. The Depository shall have no duty to solicit the delivery of any Deposit.

SECTION 2.2 Interest. The Depository shall pay interest on each Deposit from and including the date of deposit to but excluding the date of withdrawal at the rate of 9.798% per annum (computed on the basis of a year of twelve 30 day months) payable to the Paying Agent, in accordance with the instructions set forth in Section 4 hereof, on behalf of the Escrow Agent monthly in arrears on the 1st day of each month, commencing on October 1, 2005 (each, an "Interest Payment Date"), and on the date of the Final Withdrawal (as defined below), all in accordance with the terms of this Agreement (whether or not any such Deposit is withdrawn on an Interest Payment Date). Interest accrued on any Deposit that is withdrawn pursuant to a Notice of Purchase Withdrawal (as defined below) shall be paid on the next Interest Payment Date, notwithstanding any intervening Final Withdrawal (as defined below).



SECTION 2.3 Withdrawals. (a) On and after the date seven days after the receipt and acceptance of any Deposit, the Escrow Agent may, by providing at least one Business Day's prior notice of withdrawal to the Depository (with a copy to the Pass Through Trustee) in the form of Exhibit A hereto (a "Notice of Purchase Withdrawal"), signed by an Authorized Person of the Escrow Agent, withdraw not less than the entire balance of such Deposit on a Business Day, except that at any time prior to the actual withdrawal of such Deposit, the Escrow Agent or the Pass Through Trustee may, by written notice, signed by an Authorized Person of the Escrow Agent or the Pass Through Trustee, to the Depository (provided such notice is received by the Depository prior to the distribution of such withdrawal), cancel such withdrawal (including on the scheduled date therefor), and thereafter such Deposit shall continue to be maintained by the Depository in accordance with the original terms thereof. Following such withdrawal the balance of such Deposit in the related Account shall be zero and, upon payment of interest accrued on such Deposit, the Depository shall close such Account. As used herein, "Business Day" means any day, other than a Saturday, Sunday or other day on which commercial banks are authorized or required by law to close in New York, New York, Houston, Texas or Wilmington, Delaware. The Depository may waive the foregoing requirement that any Deposit can only be withdrawn on or after seven days after the establishment thereof, and may instead reserve the right, upon at least 14 days' prior written notice to Continental, the Escrow Agent and the Pass Through Trustee, to require seven days' notice for any withdrawal.

(b) The Escrow Agent may, by providing at least 15 days' prior notice of withdrawal to the Depository in the form of Exhibit B hereto (a "Notice of Final Withdrawal"), withdraw the entire amount of all of the remaining Deposits together with the payment by the Depository of all accrued and unpaid interest on such Deposits up to but excluding the specified date of withdrawal (a "Final Withdrawal"), on such Business Day as shall be specified in such Notice of Final Withdrawal. If a Notice of Final Withdrawal has not been received by the Depository on or before September 10, 2006, and there are unwithdrawn Deposits in any of the Accounts on such date, the Depository shall pay, via wire transfer in accordance with the instructions set forth in Section 4 hereof, the amount of the Final Withdrawal to the Paying Agent on September 28, 2006.

(c) If the Depository timely receives a duly completed Notice of Purchase Withdrawal or Notice of Final Withdrawal (each, a "Withdrawal Notice") complying with the provisions of this Agreement, and provided a notice of cancellation has not been timely received by the Depository in the case of a Notice of Purchase Withdrawal, it shall make the payments specified therein in accordance with the provisions of this Agreement.

SECTION 2.4 Other Accounts. On the date of withdrawal of any Deposit (other than the date of the Final Withdrawal), the Escrow Agent, or the Pass Through Trustee on behalf of the Escrow Agent, shall re-deposit with the Depository any portion thereof not used to acquire Equipment Notes and the Depository shall accept the same for deposit hereunder into the account from which it was withdrawn. On the date the Certificates are issued, the Escrow Agent, or the Underwriter, on behalf of the Escrow Agent, shall be entitled to deposit with the Depository any portion of the Net Proceeds not theretofore deposited hereunder and not used to purchase Equipment Notes on the Issuance Date (the "Unused Proceeds") and the Depository shall accept the Unused Proceeds for deposit hereunder. Any sums so received for deposit shall be received

as a new Deposit, credited to a new Account, and Schedule I hereto shall be amended to include such Deposit, all as more fully provided in Section 2.1 hereof, and thereafter the provisions of this Agreement shall apply thereto as fully and with the same force and effect as if such Deposit had been established on the Deposit Date except that (i) such Deposit may not be withdrawn prior to the date seven days after the receipt and acceptance thereof by the Depository and (ii) such Deposit shall mature on September 28, 2006 and bear interest as provided in Section 2.2. The Depository shall promptly give notice to the Escrow Agent of receipt of each such re-deposit and the account number assigned thereto.

SECTION 3. Termination. This Agreement shall terminate on the fifth Business Day after the later of the date on which (i) all of the Deposits shall have been withdrawn and paid as provided herein without any re-deposit and (ii) all accrued and unpaid interest on the Deposits shall have been paid as provided herein.

SECTION 4. Payments. All payments (including, without limitation, those payments made in respect of Taxes (as defined and provided for below)) made by the Depository hereunder shall be paid in United States Dollars and immediately available funds by wire transfer (i) in the case of accrued interest on the Deposits payable under Section 2.2 hereof or any Final Withdrawal, directly to the Paying Agent at Wilmington Trust Company, Wilmington, DE, ABA# 031100092, Account No. 070157-000, Attention: Monica Henry, Telephone No.: (302) 636-6296, Reference: Continental Airlines PTT, Series 2005-ERJ1, or to such other account as the Paying Agent may direct from time to time in writing to the Depository and the Escrow Agent and (ii) in the case of any withdrawal of one or more Deposits pursuant to a Notice of Purchase Withdrawal, directly to or as directed by the Pass Through Trustee as specified and in the manner provided in such Notice of Purchase Withdrawal. The Depository hereby waives any and all rights of set-off, combination of accounts, right of retention or similar right (whether arising under applicable law, contract or otherwise) it may have against the Deposits howsoever arising. All payments on or in respect of each Deposit shall be made free and clear of and without reduction for or on account of any and all taxes, levies or other impositions or charges (collectively, "Taxes"). However, if the Depository shall be required by law to deduct or withhold any Taxes from or in respect of any sum payable hereunder, the Depository shall (i) make such deductions or withholding and (ii) pay the full amount deducted or withheld (including in respect of such additional amounts) to the competent taxation authority. The Depository shall not have any withholding or tax reporting obligations with respect to the Deposits, except as may be required by law. If the date on which any payment due on any Deposit would otherwise fall on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day, and no additional interest shall accrue in respect of such extension.

SECTION 5. Representation and Warranties. The Depository hereby represents and warrants to Continental, the Escrow Agent, the Pass Through Trustee and the Paying Agent that:

- (a) it is a national banking association duly organized and validly existing under the laws of the United States;

(b) it has full power, authority and legal right to conduct its business and operations as currently conducted and to enter into and perform its obligations under this Agreement;

(c) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of it and do not require any stockholder approval, or approval or consent of any trustee or holder of any indebtedness or obligations of it, and this Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding obligations enforceable against it in accordance with the terms hereof, except (x) as enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws now or hereinafter in effect relating to creditors' rights generally and (y) as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(d) no authorization, consent or approval of or other action by, and no notice to or filing with, any United States federal or state governmental authority or regulatory body is required for the execution, delivery or performance by it of this Agreement;

(e) neither the execution, delivery or performance by it of this Agreement, nor compliance with the terms and provisions hereof, conflicts or will conflict with or results or will result in a breach or violation of any of the terms, conditions or provisions of, or will require any consent or approval under, any law, governmental rule or regulation or the charter documents, as amended, or bylaws, as amended, of it or any similar instrument binding on it or any order, writ, injunction or decree of any court or governmental authority against it or by which it or any of its properties is bound or of any indenture, mortgage or contract or other agreement or instrument to which it is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or results or will result in the imposition of any lien upon any of its properties; and

(f) there are no pending or, to its knowledge, threatened actions, suits, investigations or proceedings (whether or not purportedly on behalf of it) against or affecting it or any of its property before or by any court or administrative agency which, if adversely determined, (i) would adversely affect the ability of it to perform its obligations under this Agreement or (ii) would call into question or challenge the validity of this Agreement or the enforceability hereof in accordance with the terms hereof, nor is the Depositary in default with respect to any order of any court, governmental authority, arbitration board or administrative agency so as to adversely affect its ability to perform its obligations under this Agreement.

SECTION 6. Transfer. Neither party hereto shall be entitled to assign or otherwise transfer this Agreement (or any interest herein) other than (in the case of the Escrow Agent) to a successor escrow agent under the Escrow and Paying Agent Agreement, and any purported assignment in violation thereof shall be void. This Agreement shall be binding upon

the parties hereto and their respective successors and (in the case of the Escrow Agent) permitted assigns.

SECTION 7. Amendment, Etc. This Agreement may not be amended, waived or otherwise modified except by an instrument in writing signed by each of the parties hereto.

SECTION 8. Notices. Unless otherwise expressly provided herein, any notice or other communication under this Agreement shall be in writing (including by facsimile) and shall be deemed to be given and effective upon receipt thereof. All notices shall be sent to (x) in the case of the Depository, Citibank, N.A., 388 Greenwich Street, 14th Floor, New York, NY, 10013, Attention: Barbara E. Bennett, (Telephone: (212) 816-5621, Telecopier: (212) 657-2762) or (y) in the case of the Escrow Agent, Wells Fargo Bank Northwest, National Association, 299 South Main Street, MAC: U1228-120, Salt Lake City, UT 84111, Attention: Corporate Trust Services (Telephone: (801) 246-5630, Telecopier: (801) 246-5053), in each case, with a copy to the Pass Through Trustee, Wilmington Trust Company, 1100 North Market Street, Rodney Square North, Wilmington, DE 19890-1605, Attention: Corporate Capital Market Services (Telephone: (800) 733-8485, Telecopier: (302) 636-4140) and to Continental, Continental Airlines, Inc., 1600 Smith Street, Dept. HQS-FN, Houston, TX 77002, Attention: Treasurer (Telephone: (713) 324-2544, Telecopier: (713) 324-2447) (or at such other address as any such party may specify from time to time in a written notice to the parties hereto). On or prior to the execution of this Agreement, the Escrow Agent has delivered to the Depository a certificate containing specimen signatures of the representatives of the Escrow Agent and the Pass Through Trustee who are authorized to give notices and instructions with respect to this Agreement, attached hereto as Schedule IIA and IIB, respectively ("Authorized Person"). The Depository may conclusively rely on such certificate until the Depository receives written notice from the Escrow Agent to the contrary.

In addition, the Depository may conclusively rely on and shall be protected in acting in reliance upon any certificate, instrument, opinion, notice, letter or other document or security delivered to the Depository and believed by the Depository in good faith to be genuine and to have been signed and presented by the proper person or persons and may act upon any tender, statements, request, documents, certificate, agreement or other instrument not only as to its due execution and validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which the Depository shall in good faith believe to be genuine or to have been signed or presented by the proper person or persons. The Depository shall have no duties or obligations other than those specifically set forth herein or as may be subsequently agreed to in writing between the parties hereto and by the Pass Through Trustee. The Depository may consult with counsel of its selection with respect to any questions relating to its duties and responsibilities and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by the Depository hereunder in good faith and in accordance with the advice or opinion of such counsel.

SECTION 9. Obligations Unconditional. The Depository hereby acknowledges and agrees that its obligation to repay each Deposit together with interest thereon as provided

herein is absolute, irrevocable and unconditional and constitutes a full recourse obligation of the Depository enforceable against it to the full extent of all of its assets and properties.

SECTION 10. Entire Agreement. This Agreement (including all attachments hereto) sets forth all of the promises, covenants, agreements, conditions and understandings between the Depository and the Escrow Agent with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and undertakings, inducements or conditions, express or implied, oral or written.

SECTION 11. Governing Law. This Agreement, and the rights and obligations of the Depository and the Escrow Agent with respect to the Deposits, shall be governed by, and construed in accordance with, the laws of the State of New York and subject to the provisions of Regulation D of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

SECTION 12. Waiver of Jury Trial Right. EACH OF THE DEPOSITARY AND THE ESCROW AGENT ACKNOWLEDGES AND ACCEPTS THAT IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT SUCH PARTY IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY.

SECTION 13. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Escrow Agent and the Depository have caused this Deposit Agreement to be duly executed as of the day and year first above written.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION,  
as Escrow Agent

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

CITIBANK, N.A.,  
as Depository

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

Schedule of Deposits

Registration No.	Serial No.	Deposit Amount	Account No.
N11192	14500936	11,007,469.39	795746
N11193	14500938	11,007,469.39	795747
N11194	14500940	11,007,469.37	795748
N12195	14500943	11,007,469.37	795749
N17196	14500945	11,007,469.37	795750
N21197	14500947	11,007,469.37	795751
N14198	14500951	11,007,469.37	795752
N11199	14500953	11,007,469.37	795753

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INCUMBENCY CERTIFICATES

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NOTICE OF PURCHASE WITHDRAWAL

Citibank, N.A.  
388 Greenwich Street, 14th Floor  
New York, NY, 10013  
Attention: Barbara E. Bennett  
Telecopier: (212) 657-2762

Gentlemen:

Reference is made to the Deposit Agreement dated as of September 22, 2005 (the "Deposit Agreement") between Wells Fargo Bank Northwest, National Association, as Escrow Agent, and Citibank, N.A., as Depositary (the "Depositary").

In accordance with Section 2.3(a) of the Deposit Agreement, the undersigned hereby requests the withdrawal of the entire amount of the Deposit, \$[\_\_\_\_], Account No. \_\_\_\_\_.

The undersigned hereby directs the Depositary to pay the proceeds of the Deposit to \_\_\_\_\_, Account No. \_\_\_\_\_, Reference: \_\_\_\_\_] on \_\_\_\_\_, 200\_\_, upon the telephonic request of a representative of the Pass Through Trustee.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION,  
as Escrow Agent

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

Dated: \_\_\_\_\_, 200\_

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NOTICE OF FINAL WITHDRAWAL

Citibank, N.A.  
388 Greenwich Street, 14th Floor  
New York, NY, 10013  
Attention: Barbara E. Bennett  
Telecopier: (212) 657-2762

Gentlemen:

Reference is made to the Deposit Agreement dated as of September 22, 2005 (the "Deposit Agreement") between Wells Fargo Bank Northwest, National Association, as Escrow Agent, and Citibank, N.A., as Depositary (the "Depositary").

In accordance with Section 2.3(b) of the Deposit Agreement, the undersigned hereby requests the withdrawal of the entire amount of all Deposits and all accrued interest to date on such Deposits.

The undersigned hereby directs the Depositary to pay the proceeds of the Deposits and accrued interest thereon to the Paying Agent at Wilmington Trust Company, [ABA# 031100092, Account No. \_\_\_\_\_, Reference: Continental 2005-ERJ1].

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION,  
as Escrow Agent

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

Dated: \_\_\_\_\_, 200\_

ESCROW AND PAYING AGENT AGREEMENT

Dated as of September 22, 2005

among

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION

as Escrow Agent

CITIGROUP GLOBAL MARKETS INC.

as Underwriter

WILMINGTON TRUST COMPANY,  
not in its individual capacity,  
but solely as Pass Through Trustee  
for and on behalf of  
Continental Airlines Pass Through Trust 2005-ERJ1

as Pass Through Trustee

and

WILMINGTON TRUST COMPANY

as Paying Agent

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ESCROW AND PAYING AGENT AGREEMENT dated as of September 22, 2005 (as amended, modified or supplemented from time to time, this "Agreement") among WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, a national banking association, as Escrow Agent (in such capacity, together with its successors in such capacity, the "Escrow Agent"); CITIGROUP GLOBAL MARKETS INC., as Underwriter of the Certificates referred to below (the "Underwriter" and together with its respective transferees and assigns as registered owners of the Certificates, the "Investors") under the Underwriting Agreement referred to below; WILMINGTON TRUST COMPANY, a Delaware banking corporation, not in its individual capacity except as otherwise expressly provided herein, but solely as trustee (in such capacity, together with its successors in such capacity, the "Pass Through Trustee") under the Pass Through Trust Agreement referred to below; and WILMINGTON TRUST COMPANY, a Delaware banking corporation, as paying agent hereunder (in such capacity, together with its successors in such capacity, the "Paying Agent").

WITNESSETH

WHEREAS, Continental Airlines, Inc. ("Continental") and the Pass Through Trustee have entered into a Trust Supplement, dated as of September 22, 2005 (the "Trust Supplement"), to the Pass Through Trust Agreement, dated as of September 25, 1997 (together, as amended, modified or supplemented from time to time in accordance with the terms thereof, the "Pass Through Trust Agreement") relating to Continental Airlines Pass Through Trust 2005-ERJ1 (the "Pass Through Trust") pursuant to which the Continental Airlines Pass Through Trust, Series 2005-ERJ1 Certificates referred to therein (the "Certificates") are being issued (the date of such issuance, the "Issuance Date");

WHEREAS, Continental, Embraer-Empresa Brasileira de Aeronáutica S.A., the Depository and the Underwriter have entered into an Underwriting Agreement dated as of September 14, 2005 (as amended, modified or supplemented from time to time in accordance with the terms thereof, the "Underwriting Agreement") pursuant to which the Pass Through Trustee will issue and sell the Certificates to the Underwriter;

WHEREAS, Continental, the Pass Through Trustee, and certain other persons concurrently herewith are entering into the Note Purchase Agreement, dated as of the date hereof (the "Note Purchase Agreement"), pursuant to which the Pass Through Trustee has agreed to acquire from time to time on or prior to the Delivery Period Termination Date (as defined in the Note Purchase Agreement) equipment notes (the "Equipment Notes") issued to finance the acquisition of aircraft by Continental, as lessee, utilizing a portion of the proceeds from the sale of the Certificates (the "Net Proceeds");

WHEREAS, the Underwriter and the Pass Through Trustee intend that the Net Proceeds (excluding any amount used to purchase Equipment Notes on the Issuance Date) be held in escrow by the Escrow Agent on behalf of the Investors, subject to withdrawal upon request by the Pass Through Trustee and satisfaction of the conditions set forth in the Note Purchase Agreement for the purpose of purchasing Equipment Notes, and that pending such withdrawal the Net Proceeds be deposited on behalf of the Escrow Agent with Citibank, N.A., as Depository (the "Depository") under the Deposit Agreement, dated as of the date hereof between the Depository and the Escrow Agent relating to the Pass Through Trust (as amended, modified,

supplemented or replaced from time to time in accordance with the terms thereof, the "Deposit Agreement") pursuant to which, among other things, the Depository will pay interest for distribution to the Investors and establish accounts from which the Escrow Agent shall make withdrawals upon request of and proper certification by the Pass Through Trustee;

WHEREAS, the Escrow Agent wishes to appoint the Paying Agent to pay amounts required to be distributed to the Investors in accordance with this Agreement; and

WHEREAS, capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Pass Through Trust Agreement.

NOW, THEREFORE, in consideration of the obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. Escrow Agent.

Section 1.01. Appointment of Escrow Agent. The Underwriter, for and on behalf of each of the Investors, hereby irrevocably appoints, authorizes and directs the Escrow Agent to act as escrow agent and fiduciary hereunder and under the Deposit Agreement for such specific purposes and with such powers as are specifically delegated to the Escrow Agent by the terms of this Agreement, together with such other powers as are reasonably incidental thereto. Any and all money received and held by the Escrow Agent under this Agreement or the Deposit Agreement shall be held in escrow by the Escrow Agent in accordance with the terms of this Agreement. This Agreement is irrevocable and the Investors' rights with respect to any monies received and held in escrow by the Escrow Agent under this Agreement or the Deposit Agreement shall only be as provided under the terms and conditions of this Agreement and the Deposit Agreement. The Escrow Agent (which term as used in this sentence shall include reference to its affiliates and its own and its affiliates' officers, directors, employees and agents): (a) shall have no duties or responsibilities except those expressly set forth in this Agreement; (b) shall not be responsible to the Pass Through Trustee or the Investors for any recitals, statements, representations or warranties of any person other than itself contained in this Agreement or the Deposit Agreement or for the failure by the Pass Through Trustee, the Investors or any other person or entity (other than the Escrow Agent) to perform any of its obligations hereunder (whether or not the Escrow Agent shall have any knowledge thereof); and (c) shall not be responsible for any action taken or omitted to be taken by it hereunder or provided for herein or in connection herewith, except for its own willful misconduct or gross negligence (or simple negligence in connection with the handling of funds).

Section 1.02. Instruction; Etc. The Underwriter, for and on behalf of each of the Investors, hereby irrevocably instructs the Escrow Agent, and the Escrow Agent agrees, (a) to enter into the Deposit Agreement, (b) to appoint the Paying Agent as provided in this Agreement, (c) upon receipt at any time and from time to time prior to the Termination Date (as defined below) of a certificate substantially in the form of Exhibit B hereto (a "Withdrawal Certificate") executed by the Pass Through Trustee, together with an attached Notice of Purchase Withdrawal in substantially the form of Exhibit A to the Deposit Agreement duly completed by the Pass Through Trustee (the "Applicable Notice of Purchase Withdrawal" and the withdrawal

to which it relates, a "Purchase Withdrawal"), immediately to execute the Applicable Notice of Purchase Withdrawal as Escrow Agent and transmit it to the Depository by facsimile transmission in accordance with the Deposit Agreement; provided that, upon the request of the Pass Through Trustee after such transmission, the Escrow Agent shall cancel such Applicable Notice of Purchase Withdrawal, and (d) if there are any undrawn Deposits (as defined in the Deposit Agreement) on the "Termination Date", which shall mean the earlier of (i) August 31, 2006 and (ii) the day on which the Escrow Agent receives notice from the Pass Through Trustee that the Pass Through Trustee's obligation to purchase Equipment Notes under the Note Purchase Agreement has terminated, to give notice to the Depository (with a copy to the Paying Agent) substantially in the form of Exhibit B to the Deposit Agreement requesting a withdrawal of all of the remaining Deposits, together with accrued and unpaid interest on such Deposits to the date of withdrawal, on the 25th day after the date that such notice of withdrawal is given to the Depository (or, if not a Business Day, on the next succeeding Business Day) (a "Final Withdrawal"), provided that if the day scheduled for the Final Withdrawal in accordance with the foregoing is within 10 days before or after a Regular Distribution Date, then the Escrow Agent shall request that such requested Final Withdrawal be made on such Regular Distribution Date (the date of such requested withdrawal, the "Final Withdrawal Date"). If for any reason the Escrow Agent shall have failed to give the Final Withdrawal Notice to the Depository on or before September 10, 2006, and there are unwithdrawn Deposits on such date, the Final Withdrawal Date shall be deemed to be September 28, 2006.

Section 1.03. Initial Escrow Amount; Issuance of Escrow Receipts. The Escrow Agent hereby directs the Underwriter to, and the Underwriter hereby acknowledges that on the date hereof it shall, irrevocably deliver to the Depository on behalf of the Escrow Agent, an amount in U.S. dollars ("Dollars") and immediately available funds equal to \$311,010,000 (or such lesser amount equal to the Net Proceeds less amounts, if any, used to purchase Equipment Notes on the Issuance Date) for deposit on behalf of the Escrow Agent with the Depository in accordance with Section 2.1 of the Deposit Agreement. The Underwriter hereby instructs the Escrow Agent, upon receipt of such sum from the Underwriter, to confirm such receipt by executing and delivering to the Pass Through Trustee an Escrow Receipt in the form of Exhibit A hereto (an "Escrow Receipt"), (a) to be affixed by the Pass Through Trustee to each Certificate and (b) to evidence the same percentage interest (the "Escrow Interest") in the Account Amounts (as defined below) as the Fractional Undivided Interest in the Pass Through Trust evidenced by the Certificate to which it is to be affixed. The Escrow Agent shall provide to the Pass Through Trustee for attachment to each Certificate newly issued under and in accordance with the Pass Through Trust Agreement an executed Escrow Receipt as the Pass Through Trustee may from time to time request of the Escrow Agent. Each Escrow Receipt shall be registered by the Escrow Agent in a register (the "Register") maintained by the Escrow Agent in the same name and same manner as the Certificate to which it is attached and may not thereafter be detached from such Certificate to which it is to be affixed prior to the distribution of the Final Withdrawal (the "Final Distribution"). After the Final Distribution, no additional Escrow Receipts shall be issued and the Pass Through Trustee shall request the return to the Escrow Agent for cancellation of all outstanding Escrow Receipts.

Section 1.04. Payments to Receiptholders. All payments and distributions made to holders of an Escrow Receipt (collectively "Receiptholders") in respect of the Escrow Receipt

shall be made only from amounts deposited in the Paying Agent Account (as defined below) ("Account Amounts"). Each Receiptholder, by its acceptance of an Escrow Receipt, agrees that (a) it will look solely to the Account Amounts for any payment or distribution due to such Receiptholder pursuant to the terms of the Escrow Receipt and this Agreement and (b) it will have no recourse to Continental, the Pass Through Trustee, the Paying Agent or the Escrow Agent, except as expressly provided herein or in the Pass Through Trust Agreement. No Receiptholder shall have any right to vote or in any manner otherwise control the operation and management of the Paying Agent Account or the obligations of the parties hereto, nor shall anything set forth herein, or contained in the terms of the Escrow Receipt, be construed so as to constitute the Receiptholders from time to time as partners or members of an association.

Section 1.05. Mutilated, Destroyed, Lost or Stolen Escrow Receipt. If (a) any mutilated Escrow Receipt is surrendered to the Escrow Agent or the Escrow Agent receives evidence to its satisfaction of the destruction, loss or theft of any Escrow Receipt and (b) there is delivered to the Escrow Agent and the Pass Through Trustee such security, indemnity or bond, as may be required by them to hold each of them harmless, then, absent notice to the Escrow Agent or the Pass Through Trustee that such destroyed, lost or stolen Escrow Receipt has been acquired by a bona fide purchaser, and provided that the requirements of Section 8-405 of the Uniform Commercial Code in effect in any applicable jurisdiction are met, the Escrow Agent shall execute, authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Escrow Receipt, a new Escrow Receipt or Escrow Receipts and of like Escrow Interest in the Account Amounts and bearing a number not contemporaneously outstanding.

In connection with the issuance of any new Escrow Receipt under this Section 1.05, the Escrow Agent may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Pass Through Trustee and the Escrow Agent) connected therewith.

Any duplicate Escrow Receipt issued pursuant to this Section 1.05 shall constitute conclusive evidence of the appropriate Escrow Interest in the Account Amounts, as if originally issued, whether or not the lost, stolen or destroyed Escrow Receipt shall be found at any time.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Escrow Receipts.

Section 1.06. Additional Escrow Amounts. On the date of any Purchase Withdrawal, the Pass Through Trustee may re-deposit with the Depository some or all of the amounts so withdrawn in accordance with Section 2.4 of the Deposit Agreement.

Section 1.07. Resignation or Removal of Escrow Agent. Subject to the appointment and acceptance of a successor Escrow Agent as provided below, the Escrow Agent may resign at any time by giving 30 days' prior written notice thereof to the Investors, but may not otherwise be removed except for cause by the written consent of the Investors with respect to Investors representing Escrow Interests aggregating not less than a majority in interest in the Account Amounts (an "Action of Investors"). Upon any such resignation or removal, the



Investors, by an Action of Investors, shall have the right to appoint a successor Escrow Agent. If no successor Escrow Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Escrow Agent's giving of notice of resignation or the removal of the retiring Escrow Agent, then the retiring Escrow Agent may appoint a successor Escrow Agent. Any successor Escrow Agent shall be a bank which has an office in the United States with a combined capital and surplus of at least \$100,000,000. Upon the acceptance of any appointment as Escrow Agent hereunder by a successor Escrow Agent, such successor Escrow Agent shall enter into such documents as the Pass Through Trustee shall require and shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Escrow Agent, and the retiring Escrow Agent shall be discharged from its duties and obligations hereunder. No resignation or removal of the Escrow Agent shall be effective unless a written confirmation shall have been obtained from each of Moody's Investors Service, Inc. and Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., that the replacement of the Escrow Agent with the successor Escrow Agent will not result in (a) a reduction of the rating for the Certificates below the then current rating for the Certificates or (b) a withdrawal or suspension of the rating of the Certificates.

Section 1.08. Persons Deemed Owners. Prior to due presentment of a Certificate for registration of transfer, the Escrow Agent and the Paying Agent may treat the Person in whose name any Escrow Receipt is registered (as of the day of determination) as the owner of such Escrow Receipt for the purpose of receiving distributions pursuant to this Agreement and for all other purposes whatsoever, and neither the Escrow Agent nor the Paying Agent shall be affected by any notice to the contrary.

Section 1.09. Further Assurances. The Escrow Agent agrees to take such actions, and execute such other documents, as may be reasonably requested by the Pass Through Trustee in order to effectuate the purposes of this Agreement and the performance by the Escrow Agent of its obligations hereunder.

SECTION 2. Paying Agent.

Section 2.01. Appointment of Paying Agent. The Escrow Agent hereby irrevocably appoints and authorizes the Paying Agent to act as its paying agent hereunder, for the benefit of the Investors, for such specific purposes and with such powers as are specifically delegated to the Paying Agent by the terms of this Agreement, together with such other powers as are reasonably incidental thereto. Any and all money received and held by the Paying Agent under this Agreement or the Deposit Agreement shall be held in the Paying Agent Account for the benefit of the Investors. The Paying Agent (which term as used in this sentence shall include reference to its affiliates and its own and its affiliates' officers, directors, employees and agents): (a) shall have no duties or responsibilities except those expressly set forth in this Agreement, and shall not by reason of this Agreement be a trustee for the Escrow Agent; (b) shall not be responsible to the Escrow Agent for any recitals, statements, representations or warranties of any person other than itself contained in this Agreement or for the failure by the Escrow Agent or any other person or entity (other than the Paying Agent) to perform any of its obligations hereunder (whether or not the Paying Agent shall have any knowledge thereof); and (c) shall not be responsible for any action taken or omitted to be taken by it hereunder or

provided for herein or in connection herewith, except for its own willful misconduct or gross negligence (or simple negligence in connection with the handling of funds).

Section 2.02. Establishment of Paying Agent Account. The Paying Agent shall establish a deposit account (the "Paying Agent Account") at Wilmington Trust Company in the name of the Escrow Agent. It is expressly understood by the parties hereto that the Paying Agent is acting as the paying agent of the Escrow Agent hereunder and that no amounts on deposit in the Paying Agent Account constitute part of the Trust Property.

Section 2.03. Payments from Paying Agent Account. The Escrow Agent hereby irrevocably instructs the Paying Agent, and the Paying Agent agrees to act, as follows:

(a) On each Interest Payment Date (as defined in the Deposit Agreement) or as soon thereafter as the Paying Agent has confirmed receipt in the Paying Agent Account from the Depository of any amount in respect of accrued interest on the Deposits, the Paying Agent shall distribute out of the Paying Agent Account the entire amount deposited therein by the Depository. There shall be so distributed to each Receipholder of record on the 15th day (whether or not a Business Day) preceding such Interest Payment Date by check mailed to such Receipholder, at the address appearing in the Register, such Receipholder's pro rata share (based on the Escrow Interest in the Account Amounts held by such Receipholder) of the total amount of interest deposited by the Depository in the Paying Agent Account on such date, except that, with respect to Escrow Receipts registered on the Record Date in the name of The Depository Trust Company ("DTC"), such distribution shall be made by wire transfer in immediately available funds to the account designated by DTC.

(b) Upon the confirmation by the Paying Agent of receipt in the Paying Agent Account from the Depository of any amount in respect of the Final Withdrawal, the Paying Agent shall forthwith distribute the entire amount of the Final Withdrawal deposited therein by the Depository. There shall be so distributed to each Receipholder of record on the 15th day (whether or not a Business Day) preceding the Final Withdrawal Date by check mailed to such Receipholder, at the address appearing in the Register, such Receipholder's pro rata share (based on the Escrow Interest in the Account Amounts held by such Receipholder) of the total amount in the Paying Agent Account on account of such Final Withdrawal, except that, with respect to Escrow Receipts registered on the Record Date in the name of DTC, such distribution shall be made by wire transfer in immediately available funds to the account designated by DTC.

(c) If any payment of interest or principal in respect of the Final Withdrawal is not received by the Paying Agent within five days of the applicable date when due, then it shall be distributed to Receipholders after actual receipt by the Paying Agent on the same basis as a Special Payment is distributed under the Pass Through Trust Agreement.

(d) The Paying Agent shall include with any check mailed pursuant to this Section any notice required to be distributed under the Pass Through Trust Agreement that is furnished to the Paying Agent by the Pass Through Trustee.

Section 2.04. Withholding Taxes. The Paying Agent shall exclude and withhold from each distribution of accrued interest on the Deposits (as defined in the Deposit Agreement) and any amount in respect of the Final Withdrawal any and all withholding taxes applicable thereto as required by law. The Paying Agent agrees to act as such withholding agent and, in connection therewith, whenever any present or future taxes or similar charges are required to be withheld with respect to any amounts payable in respect of the Deposits (as defined in the Deposit Agreement) or the escrow amounts, to withhold such amounts and timely pay the same to the appropriate authority in the name of and on behalf of the Receiptholders, that it will file any necessary withholding tax returns or statements when due, and that, as promptly as possible after the payment thereof, it will deliver to each such Receiptholder appropriate documentation showing the payment thereof, together with such additional documentary evidence as such Receiptholder may reasonably request from time to time. The Paying Agent agrees to file any other information reports as it may be required to file under United States law.

Section 2.05. Resignation or Removal of Paying Agent. Subject to the appointment and acceptance of a successor Paying Agent as provided below, the Paying Agent may resign at any time by giving 30 days' prior written notice thereof to the Escrow Agent, but may not otherwise be removed except for cause by the Escrow Agent. Upon any such resignation or removal, the Escrow Agent shall have the right to appoint a successor Paying Agent. If no successor Paying Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Paying Agent's giving of notice of resignation or the removal of the retiring Paying Agent, then the retiring Paying Agent may appoint a successor Paying Agent. Any Successor Paying Agent shall be a bank which has an office in the United States with a combined capital and surplus of at least \$100,000,000. Upon the acceptance of any appointment as Paying Agent hereunder by a successor Paying Agent, such successor Paying Agent shall enter into such documents as the Escrow Agent shall require and shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Paying Agent, and the retiring Paying Agent shall be discharged from its duties and obligations hereunder.

Section 2.06. Notice of Final Withdrawal. Promptly after receipt by the Paying Agent of notice that the Escrow Agent has requested a Final Withdrawal or that a Final Withdrawal will be made, the Paying Agent shall cause notice of the distribution of the Final Withdrawal to be mailed to each of the Receiptholders at its address as it appears in the Register. Such notice shall be mailed not less than 15 days prior to the Final Withdrawal Date. Such notice shall set forth:

(i) the Final Withdrawal Date and the date for determining Receiptholders of record who shall be entitled to receive distributions in respect of the Final Withdrawal,

(ii) the amount of the payment in respect of the Final Withdrawal for each \$1,000 face amount Certificate (based on information provided by the Pass Through Trustee) and the amount thereof constituting unused Deposits (as defined in the Deposit Agreement) and interest thereon, and

(iii) if the Final Withdrawal Date is the same date as a Regular Distribution Date, the total amount to be received on such date for each \$1,000 face amount Certificate (based on information provided by the Pass Through Trustee).

Such mailing may include any notice required to be given to Certificateholders in connection with such distribution pursuant to the Pass Through Trust Agreement.

SECTION 3. Payments. If, notwithstanding the instructions in Section 4 of the Deposit Agreement that all amounts payable to the Escrow Agent under the Deposit Agreement be paid by the Depository directly to the Paying Agent or the Pass Through Trustee (depending on the circumstances), the Escrow Agent receives any payment thereunder, then the Escrow Agent shall forthwith pay such amount in Dollars and in immediately available funds by wire transfer to (a) in the case of a payment of accrued interest on the Deposits (as defined in the Deposit Agreement) or any Final Withdrawal, directly to the Paying Agent Account, and (b) in the case of any Purchase Withdrawal, directly to the Pass Through Trustee or its designee as specified and in the manner provided in the Applicable Notice of Purchase Withdrawal. The Escrow Agent hereby waives any and all rights of set-off, combination of accounts, right of retention or similar right (whether arising under applicable law, contract or otherwise) it may have against amounts payable to the Paying Agent howsoever arising.

SECTION 4. Other Actions. The Escrow Agent shall take such other actions under or in respect of the Deposit Agreement (including, without limitation, the enforcement of the obligations of the Depository thereunder) as the Investors, by an Action of Investors, may from time to time request.

SECTION 5. Representations and Warranties of the Escrow Agent. The Escrow Agent represents and warrants to Continental, the Investors, the Paying Agent and the Pass Through Trustee as follows:

(i) it is a national banking association duly organized and validly existing in good standing under the laws of the United States of America;

(ii) it has full power, authority and legal right to conduct its business and operations as currently conducted and to enter into and perform its obligations under this Agreement and the Deposit Agreement;

(iii) the execution, delivery and performance of each of this Agreement and the Deposit Agreement have been duly authorized by all necessary corporate action on the part of it and do not require any stockholder approval, or approval or consent of any trustee or holder of any indebtedness or obligations of it, and each such document has been duly executed and delivered

by it and constitutes its legal, valid and binding obligations enforceable against it in accordance with the terms hereof or thereof except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws or equitable principles of general application to or affecting the enforcement of creditors' rights generally (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(iv) no authorization, consent or approval of or other action by, and no notice to or filing with, any United States federal banking or Utah state governmental authority or regulatory body is required for the execution, delivery or performance by it of this Agreement or the Deposit Agreement;

(v) neither the execution, delivery or performance by it of this Agreement or the Deposit Agreement, nor compliance with the terms and provisions hereof or thereof, conflicts or will conflict with or results or will result in a breach or violation of any of the terms, conditions or provisions of, or will require any consent or approval under, any law, governmental rule or regulation or the charter documents, as amended, or bylaws, as amended, of it or any similar instrument binding on it or any order, writ, injunction or decree of any court or governmental authority against it or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which it is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or results or will result in the imposition of any lien upon any of its properties; and

(vi) there are no pending or, to its knowledge, threatened actions, suits, investigations or proceedings (whether or not purportedly on behalf of it) against or affecting it or any of its property before or by any court or administrative agency which, if adversely determined, (A) would adversely affect the ability of it to perform its obligations under this Agreement or the Deposit Agreement or (B) would call into question or challenge the validity of this Agreement or the Deposit Agreement or the enforceability hereof or thereof in accordance with the terms hereof or thereof, nor is the Escrow Agent in default with respect to any order of any court, governmental authority, arbitration board or administrative agency so as to adversely affect its ability to perform its obligations under this Agreement or the Deposit Agreement.

SECTION 6. Representations and Warranties of the Paying Agent. The Paying Agent represents and warrants to Continental, the Investors, the Escrow Agent and the Pass Through Trustee as follows:

(i) it is a Delaware banking company duly organized and validly existing in good standing under the laws of its jurisdiction of incorporation;

(ii) it has full power, authority and legal right to conduct its business and operations as currently conducted and to enter into and perform its obligations under this Agreement;

(iii) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of it and does not require any stockholder approval, or approval or consent of any trustee or holder of any indebtedness or obligations of it, and such document has been duly executed and delivered by it and constitutes its legal, valid and binding obligations enforceable against it in accordance with the terms hereof except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws or equitable principles of general application to or affecting the enforcement of creditors' rights generally (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(iv) no authorization, consent or approval of or other action by, and no notice to or filing with, any United States federal or state governmental authority or regulatory body is required for the execution, delivery or performance by it of this Agreement;

(v) neither the execution, delivery or performance by it of this Agreement, nor compliance with the terms and provisions hereof, conflicts or will conflict with or results or will result in a breach or violation of any of the terms, conditions or provisions of, or will require any consent or approval under, any law, governmental rule or regulation or the charter documents, as amended, or bylaws, as amended, of it or any similar instrument binding on it or any order, writ, injunction or decree of any court or governmental authority against it or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which it is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or results or will result in the imposition of any lien upon any of its properties; and

(vi) there are no pending or, to its knowledge, threatened actions, suits, investigations or proceedings (whether or not purportedly on behalf of it) against or affecting it or any of its property before or by any court or administrative agency which, if adversely determined, (A) would adversely affect the ability of it to perform its obligations under this Agreement or (B) would call into question or challenge the validity of this Agreement or the enforceability hereof in accordance with the terms hereof, nor is the Paying Agent in default with respect to any order of any court, governmental authority, arbitration board or administrative agency so as to adversely affect its ability to perform its obligations under this Agreement.

SECTION 7. Indemnification. Except for actions expressly required of the Escrow Agent or the Paying Agent hereunder, each of the Escrow Agent and the Paying Agent shall in all cases be fully justified in failing or refusing to act hereunder unless it shall have been

indemnified by the party requesting such action in a manner reasonably satisfactory to it against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. In the event Continental requests any amendment to any Operative Agreement (as defined in the Note Purchase Agreement), the Pass Through Trustee agrees to pay all reasonable fees and expenses (including, without limitation, fees and disbursements of counsel) of the Escrow Agent and the Paying Agent in connection therewith.

SECTION 8. Amendment, Etc. Upon request of the Pass Through Trustee and approval by an Action of Investors, the Escrow Agent shall enter into an amendment to this Agreement, so long as such amendment does not adversely affect the rights or obligations of the Escrow Agent or the Paying Agent, provided that upon request of the Pass Through Trustee and without any consent of the Investors, the Escrow Agent shall enter into an amendment to this Agreement for any of the following purposes:

- (1) to correct or supplement any provision in this Agreement which may be defective or inconsistent with any other provision herein or to cure any ambiguity or correct any mistake or to modify any other provision with respect to matters or questions arising under this Agreement, provided that any such action shall not materially adversely affect the interests of the Investors; or
- (2) to comply with any requirement of the SEC, applicable law, rules or regulations of any exchange or quotation system on which the Certificates are listed or any regulatory body; or
- (3) to evidence and provide for the acceptance of appointment under this Agreement of a successor Escrow Agent, successor Paying Agent or successor Pass Through Trustee.

SECTION 9. Notices. Unless otherwise expressly provided herein, any notice or other communication under this Agreement shall be in writing (including by facsimile) and shall be deemed to be given and effective upon receipt thereof. All notices shall be sent to (a) in the case of the Investors, as their respective addresses shall appear in the Register, (b) in the case of the Escrow Agent, Wells Fargo Bank Northwest, National Association, 299 South Main Street, MAC: U1228-120, Salt Lake City, UT 84111, Attention: Corporate Trust Services (Telecopier: (801) 246-5053), (c) in the case of the Pass Through Trustee, Wilmington Trust Company, 1100 North Market Street, Rodney Square North, Wilmington, DE 19890-1605, Attention: Corporate Capital Market Services (Telecopier: (302) 636-4140) or (d) in the case of the Paying Agent, Wilmington Trust Company, 1100 North Market Street, Rodney Square North, Wilmington, DE 19890-1605, Attention: Corporate Capital Market Services (Telecopier: (302) 636-4140) in each case with a copy to Continental, Continental Airlines, Inc., 1600 Smith Street, Dept. HQS-FN, Houston, TX 77002, Attention: Treasurer (Telecopier: (713) 324-2447) (or at such other address as any such party may specify from time to time in a written notice to the other parties). On or prior to the execution of this Agreement, the Pass Through Trustee has delivered to the Escrow Agent a certificate containing specimen signatures of the representatives of the Pass Through Trustee who are authorized to give notices and instructions with respect to this Agreement. The

Escrow Agent may conclusively rely on such certificate until the Escrow Agent receives written notice from the Pass Through Trustee to the contrary.

SECTION 10. Transfer. No party hereto shall be entitled to assign or otherwise transfer this Agreement (or any interest herein) other than (in the case of the Escrow Agent) to a successor escrow agent under Section 1.07 hereof or (in the case of the Paying Agent) to a successor paying agent under Section 2.05 hereof, and any purported assignment in violation thereof shall be void. This Agreement shall be binding upon the parties hereto and their respective successors and (in the case of the Escrow Agent and the Paying Agent) their respective permitted assigns.

SECTION 11. Entire Agreement. This Agreement sets forth all of the promises, covenants, agreements, conditions and understandings among the Escrow Agent, the Paying Agent, the Underwriter and the Pass Through Trustee with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and undertakings, inducements or conditions, express or implied, oral or written.

SECTION 12. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

SECTION 13. Waiver of Jury Trial Right. EACH OF THE ESCROW AGENT, THE PAYING AGENT, THE INVESTORS AND THE PASS THROUGH TRUSTEE ACKNOWLEDGES AND ACCEPTS THAT IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT SUCH PARTY IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY.

SECTION 14. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

[Signature Page Follows]



IN WITNESS WHEREOF, the Escrow Agent, the Paying Agent, the Underwriter and the Pass Through Trustee have caused this Escrow and Paying Agent Agreement to be duly executed as of the day and year first above written.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION,  
as Escrow Agent

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

CITIGROUP GLOBAL MARKETS INC.,  
as Underwriter

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

WILMINGTON TRUST COMPANY, not in its  
individual capacity, but solely as Pass Through  
Trustee

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

WILMINGTON TRUST COMPANY,  
as Paying Agent

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

CONTINENTAL AIRLINES 2005-ERJ1 ESCROW RECEIPT

No. \_\_

This Escrow Receipt evidences a fractional undivided interest in amounts ("Account Amounts") from time to time deposited into a certain paying agent account (the "Paying Agent Account") described in the Escrow and Paying Agent Agreement dated as of September 22, 2005 (as amended, modified or supplemented from time to time, the "Escrow and Paying Agent Agreement") among Wells Fargo Bank Northwest, National Association, as Escrow Agent (in such capacity, together with its successors in such capacity, the "Escrow Agent"), Citigroup Global Markets Inc., as Underwriter, Wilmington Trust Company, as Pass Through Trustee (in such capacity, together with its successors in such capacity, the "Pass Through Trustee") and Wilmington Trust Company, as paying agent (in such capacity, together with its successors in such capacity, the "Paying Agent"). Capitalized terms not defined herein shall have the meanings assigned to them in the Escrow and Paying Agent Agreement.

This Escrow Receipt is issued under and is subject to the terms, provisions and conditions of the Escrow and Paying Agent Agreement. By virtue of its acceptance hereof the holder of this Escrow Receipt assents and agrees to be bound by the provisions of the Escrow and Paying Agent Agreement and this Escrow Receipt.

This Escrow Receipt represents a fractional undivided interest in amounts deposited from time to time in the Paying Agent Account, and grants or represents no rights, benefits or interests of any kind in respect of any assets or property other than such amounts. This Escrow Receipt evidences the same percentage interest in the Account Amounts as the Fractional Undivided Interest in the Pass Through Trust evidenced by the Certificate to which this Escrow Receipt is affixed.

All payments and distributions made to Receiptholders in respect of the Escrow Receipt shall be made only from Account Amounts deposited in the Paying Agent Account. The holder of this Escrow Receipt, by its acceptance of this Escrow Receipt, agrees that it will look solely to the Account Amounts for any payment or distribution due to it pursuant to this Escrow Receipt and that it will not have any recourse to Continental, the Pass Through Trustee, the Paying Agent or the Escrow Agent, except as expressly provided herein or in the Pass Through Trust Agreement. No Receiptholder of this Escrow Receipt shall have any right to vote or in any manner otherwise control the operation and management of the Paying Agent Account, nor shall anything set forth herein, or contained in the terms of this Escrow Receipt, be construed so as to constitute the Receiptholders from time to time as partners or members of an association.

This Escrow Receipt may not be assigned or transferred except in connection with the assignment or transfer of the Certificate to which this Escrow Receipt is affixed. After payment to the holder hereof of its Escrow Interest in the Final Distribution, upon the request of the Pass Through Trustee, the holder hereof will return this Escrow Receipt to the Pass Through Trustee.

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The Paying Agent may treat the person in whose name the Certificate to which this Escrow Receipt is attached as the owner hereof for all purposes, and the Paying Agent shall not be affected by any notice to the contrary.

THIS ESCROW RECEIPT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

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IN WITNESS WHEREOF, the Escrow Agent has caused this Escrow Receipt to be duly executed.

Dated: September 22, 2005

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION,  
as Escrow Agent

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

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WITHDRAWAL CERTIFICATE

Wells Fargo Bank Northwest, National Association  
as Escrow Agent

Ladies and Gentlemen:

Reference is made to the Escrow and Paying Agent Agreement, dated as of September 22, 2005 (the "Agreement"). We hereby certify to you that the conditions to the obligations of the undersigned to execute a Participation Agreement pursuant to the Note Purchase Agreement have been satisfied. Pursuant to Section 1.02(c) of the Agreement, please execute the attached Notice of Purchase Withdrawal and immediately transmit by facsimile to the Depository, at (212) 657-2762 (Attention: Barbara Bennett). Capitalized terms used herein but not defined herein shall have the meanings set forth in the Agreement.

Very truly yours,

WILMINGTON TRUST COMPANY, not in its  
individual capacity, but solely as Pass Through  
Trustee

By \_\_\_\_\_

Name:

Title:

Dated: \_\_\_\_\_, 200\_

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NOTE PURCHASE AGREEMENT

Dated as of September 22, 2005

Among

CONTINENTAL AIRLINES, INC.,

WILMINGTON TRUST COMPANY,  
as Pass Through Trustee under the  
Pass Through Trust Agreement

WILMINGTON TRUST COMPANY,  
as Subordination Agent

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION,  
as Escrow Agent

and

WILMINGTON TRUST COMPANY,  
as Paying Agent

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<a href="#">Annex A</a>	<a href="#">Definitions</a>
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#### Exhibits

<a href="#">Exhibit A</a>	<a href="#">Form of Participation Agreement</a>
<a href="#">Exhibit B</a>	<a href="#">Form of Lease</a>
<a href="#">Exhibit C</a>	<a href="#">Form of Trust Indenture</a>
<a href="#">Exhibit D-1</a>	<a href="#">Form of Purchase Agreement Assignment (Existing Aircraft)</a>
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<a href="#">Exhibit E</a>	<a href="#">Form of Trust Agreement</a>
<a href="#">Exhibit F</a>	<a href="#">Form of Delivery Notice</a>

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## NOTE PURCHASE AGREEMENT

This NOTE PURCHASE AGREEMENT, dated as of September 22, 2005, among (i) CONTINENTAL AIRLINES, INC., a Delaware corporation (the "Company"), (ii) WILMINGTON TRUST COMPANY ("WTC"), a Delaware banking corporation, not in its individual capacity except as otherwise expressly provided herein, but solely as trustee (in such capacity together with its successors in such capacity, the "Pass Through Trustee") under the Pass Through Trust Agreement (as defined below), (iii) WILMINGTON TRUST COMPANY, a Delaware banking corporation, as subordination agent and trustee (in such capacity together with its successors in such capacity, the "Subordination Agent") under the Intercreditor Agreement (as defined below), (iv) WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, a national banking association, as Escrow Agent (in such capacity together with its successors in such capacity, the "Escrow Agent"), under the Escrow and Paying Agent Agreement (as defined below) and (v) WILMINGTON TRUST COMPANY, a Delaware banking corporation, as Paying Agent (in such capacity together with its successors in such capacity, the "Paying Agent") under the Escrow and Paying Agent Agreement.

### WITNESSETH:

WHEREAS, capitalized terms used but not defined herein shall have the meanings ascribed to such terms in Annex A hereto;

WHEREAS, the Company has (i) previously taken delivery of the 21 Embraer EMB-145 XR aircraft listed in Part A of Schedule I hereto (the "Existing Aircraft"), each of which has been leased to the Company pursuant to a separate lease agreement (collectively, the "Existing Leases") and (ii) obtained commitments from the Manufacturer pursuant to the Purchase Agreement for the delivery of the eight Embraer EMB-145 XR aircraft listed in Part B of Schedule I hereto (together with any aircraft substituted therefor in accordance with the Purchase Agreement, the "New Aircraft" and, together with the Existing Aircraft, the "Aircraft");

WHEREAS, the Manufacturer, which is obligated to arrange lease financing of the Aircraft for the Company, wishes to arrange debt financing with respect to a portion of the purchase price of the Aircraft and, at the request of the Manufacturer, the Company has entered into this Agreement;

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WHEREAS, pursuant to the Basic Pass Through Trust Agreement and the Trust Supplement set forth in Schedule II hereto, and concurrently with the execution and delivery of this Agreement, a grantor trust (the "Pass Through Trust") has been created to facilitate certain of the transactions contemplated hereby, including, without limitation, the issuance and sale of pass through certificates pursuant thereto (the "Certificates") to provide for a portion of the financing of the Aircraft;

WHEREAS, the Company has entered into the Underwriting Agreement dated as of September 14, 2005 (the "Underwriting Agreement") with the underwriter (the "Underwriter") named therein, which provides that the Company will cause the Pass Through Trustee to issue and sell the Certificates to the Underwriter on the Issuance Date;

WHEREAS, concurrently with the execution and delivery of this Agreement, (i) the Escrow Agent and the Depository have entered into a Deposit Agreement, dated as of the Issuance Date, relating to the Pass Through Trust (the "Deposit Agreement") whereby the Escrow Agent agreed to direct the Underwriter to make certain deposits referred to therein on the Issuance Date (the "Initial Deposits") and to permit the Pass Through Trustee to make additional deposits from time to time thereafter (the Initial Deposits together with such additional deposits are collectively referred to as the "Deposits") and (ii) the Pass Through Trustee, the Underwriter, the Paying Agent and the Escrow Agent have entered into the Escrow and Paying Agent Agreement, dated as of the Issuance Date, relating to the Pass Through Trust (the "Escrow and Paying Agent Agreement") whereby, among other things, (a) the Underwriter agreed to deliver an amount equal to the amount of the Initial Deposits to the Depository on behalf of the Escrow Agent and (b) the Escrow Agent, upon the Depository receiving such amount, agreed to deliver escrow receipts to be affixed to each Certificate;

WHEREAS, upon receipt of a Delivery Notice with respect to an Aircraft, subject to the terms and conditions of this Agreement, the Pass Through Trustee will enter into the applicable Financing Agreements relating to such Aircraft;

WHEREAS, upon the financing of each Aircraft, the Pass Through Trustee will fund its purchase of Equipment Notes with the proceeds of one or more Deposits withdrawn by the Escrow Agent under the Deposit Agreement (or, if financed on the Issuance Date, with a portion of the proceeds from the offering of the Certificates); and

WHEREAS, concurrently with the execution and delivery of this Agreement, (i) Landesbank Baden-Württemberg (the "Liquidity Provider") has entered into a revolving credit agreement for the benefit of the Certificateholders with the Subordination Agent, as agent for the Pass Through Trustee (the "Liquidity Facility"), and (ii) the Pass Through Trustee, the Liquidity Provider and the Subordination Agent have entered into the Intercreditor Agreement, dated as of the date hereof (the "Intercreditor Agreement");

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Financing of Aircraft. (a) The Company confirms that (i) it has previously taken delivery of the Existing Aircraft under the Purchase Agreement and, as of the Issuance Date, leases as lessee the Existing Aircraft pursuant to the Existing Leases and (ii) ExpressJet Airlines, Inc. has entered into the Purchase Agreement with the Manufacturer pursuant to which ExpressJet Airlines, Inc. has agreed to acquire, and the Manufacturer has agreed to deliver, the New Aircraft in the months specified in Schedule I hereto, all on and subject to terms and conditions specified in the Purchase Agreement. The Company agrees to finance the Aircraft in the manner provided herein, all on and subject to the terms and conditions hereof and of the relevant Financing Agreements.

(b) In furtherance of the foregoing, the Company agrees to give the parties hereto, the Depository and each of the Rating Agencies not less than two Business Days' prior notice substantially in the form of Exhibit F hereto (a "Delivery Notice") of the scheduled closing date (the "Scheduled Closing Date") (or, in the case of a substitute Delivery Notice under Section 1(e) or (f) hereof, one Business Day's prior notice) in respect of the financing of each Aircraft under this Agreement, which notice shall:

(i) specify the Scheduled Closing Date of such Aircraft (which shall be a Business Day before the Cut-off Date) on which the financing therefor in the manner provided herein shall be consummated;

(ii) instruct the Pass Through Trustee to instruct the Escrow Agent to provide a Notice of Purchase Withdrawal to the Depository with respect to the Equipment Notes to be issued

in connection with the financing of such Aircraft (except in the case of any such financing on the Issuance Date);

(iii) instruct the Pass Through Trustee to enter into the Participation Agreement included in the Financing Agreements with respect to such Aircraft in such form and at such a time on or before the Scheduled Closing Date specified in such Delivery Notice and to perform its obligations thereunder; and

(iv) specify the principal amount of the Equipment Notes to be issued, and purchased by the Pass Through Trustee, in connection with the financing of such Aircraft scheduled to be financed on such Scheduled Closing Date (which shall in all respects comply with the Mandatory Economic Terms).

Notwithstanding the foregoing, in the case of any Aircraft to be financed hereunder on the Issuance Date, the Delivery Notice therefor may be delivered to the parties hereto on the Issuance Date.

(c) Upon receipt of a Delivery Notice, the Pass Through Trustee shall, and shall cause the Subordination Agent to, enter into and perform their obligations under the Participation Agreement specified in such Delivery Notice, provided that such Participation Agreement and the other Financing Agreements to be entered into pursuant to such Participation Agreement shall be in the forms thereof annexed hereto in all material respects with such changes therein as shall have been agreed upon by the related Owner Participant and the Company and, if modified in any material respect, as to which Rating Agency Confirmation shall have been obtained from each Rating Agency by the Company (to be delivered by the Company to the Pass Through Trustee on or before the relevant Closing Date, it being understood that if Rating Agency Confirmation shall have been received with respect to any Financing Agreements and such Financing Agreements are utilized for subsequent New Aircraft (or Substitute Aircraft) without material modifications, no additional Rating Agency Confirmation shall be required); provided, however, that the relevant Financing Agreements as executed and delivered shall not vary the Mandatory Economic Terms and shall contain the Mandatory Document Terms. The Company shall pay the reasonable costs and expenses of the Rating Agencies in connection with obtaining any such Rating Agency Confirmation. With respect to each Aircraft, the Company shall cause WTC (or such other person that meets the eligibility requirements to act as loan trustee under the Trust Indenture) to execute as Loan Trustee the Financing Agreements relating to such Aircraft to which such Loan Trustee is intended

to be a party, and shall concurrently therewith execute such Financing Agreements to which the Company is intended to be a party and perform its respective obligations thereunder. Upon the request of either Rating Agency, the Company shall deliver or cause to be delivered to each Rating Agency a true and complete copy of each Financing Agreement relating to the financing of each Aircraft together with a true and complete set of the closing documentation (including legal opinions) delivered to the related Loan Trustee, Subordination Agent and Pass Through Trustee under the related Participation Agreement.

(d) [Intentionally omitted.]

(e) If after giving any Delivery Notice, there shall be a delay in the delivery of the New Aircraft referred to therein, or if on the Scheduled Closing Date of an Aircraft the financing thereof in the manner contemplated hereby shall not be consummated for whatever reason, the Company shall give the parties hereto prompt notice thereof. Concurrently with the giving of such notice of postponement or subsequently, the Company shall give the parties hereto a substitute Delivery Notice specifying the date to which the financing of such Aircraft shall have been re-scheduled (which shall be a Business Day before the Cut-off Date on which the Escrow Agent shall be entitled to withdraw one or more Deposits under the Deposit Agreement to enable the Pass Through Trustee to fund its purchase of the related Equipment Notes). Upon receipt of any such notice of postponement, the Pass Through Trustee shall comply with its obligations under Section 5.01 of the Trust Supplement and thereafter the financing of such Aircraft, as specified in such substitute Delivery Notice, shall take place on the re-scheduled closing date therefor (all on and subject to the terms and conditions of the relevant Financing Agreements) unless further postponed as provided herein.

(f) Anything in this Section 1 to the contrary notwithstanding, the Company shall have the right to accept delivery of a New Aircraft under the Purchase Agreement on the Delivery Date thereof by utilization of bridge financing of such New Aircraft and promptly thereafter give the parties hereto a Delivery Notice specifying a Scheduled Closing Date not later than 90 days after the Delivery Date of such New Aircraft and no later than the Cut-off Date and otherwise complying with the provisions of Section 1(b) hereof. All other terms and conditions of this Note Purchase Agreement shall apply to the financing of any such New Aircraft on the re-scheduled closing date therefor except (i) the re-scheduled closing date shall be

deemed the Delivery Date of such New Aircraft for all purposes of this Section 1 and (ii) the related Financing Agreements shall be amended to reflect the original delivery of such New Aircraft to the Company.

(g) If the scheduled Delivery Date for any New Aircraft is delayed (a) more than 30 days beyond the last day of the month set forth opposite such New Aircraft under the heading "Scheduled Delivery Month" in Schedule I hereto or (b) beyond May 31, 2006, the Company may identify for delivery a substitute aircraft therefor meeting the following conditions (a "Substitute Aircraft"): (i) a Substitute Aircraft must be an Embraer EMB-145 XR aircraft manufactured after the date of this Agreement and (ii) the Company shall be obligated to obtain Rating Agency Confirmation in respect of the replacement of any New Aircraft by Substitute Aircraft. Upon the satisfaction of the conditions set forth above with respect to a Substitute Aircraft, the New Aircraft to be replaced shall cease to be subject to this Agreement and all rights and obligations of the parties hereto concerning such New Aircraft shall cease, and such Substitute Aircraft shall become and thereafter be subject to the terms and conditions of this Agreement to the same extent as such New Aircraft.

(h) The Company shall have no liability for the failure of the Pass Through Trustee to purchase Equipment Notes with respect to any Aircraft or Substitute Aircraft.

(i) The parties agree that if, in connection with the financing of a New Aircraft or Substitute Aircraft, any Owner Participant who is to be a party to any Financing Agreement shall be a "Citizen of the United States" within the meaning of Section 40102(a)(15) of the Act, then the applicable Financing Agreements may be modified, consistent with the Mandatory Document Terms, to eliminate the restrictions on the Owner Participant's right to control the Owner Trustee and to make other customary changes to reflect that the Owner Participant is a "Citizen of the United States".

(j) Anything herein to the contrary notwithstanding, the Company shall not have the right, and shall not be entitled, at any time to request the issuance of Equipment Notes to the Pass Through Trustee in an aggregate principal amount in excess of the amount of the Deposits then available for withdrawal by the Escrow Agent under and in accordance with the provisions of the Deposit Agreement.

SECTION 2. Conditions Precedent. The obligation of the Pass Through Trustee to enter into, and to cause the Subordination Agent to enter into, any Participation Agreement as directed pursuant to a Delivery Notice and to perform its obligations thereunder is subject to satisfaction of the following conditions:

(a) no Triggering Event shall have occurred; and

(b) the Company shall have delivered a certificate to such Pass Through Trustee and the Liquidity Provider stating that (i) such Participation Agreement and the other Financing Agreements to be entered into pursuant to such Participation Agreement do not vary the Mandatory Economic Terms and contain the Mandatory Document Terms and (ii) any substantive modification of such Financing Agreements from the forms of Financing Agreements attached to this Agreement do not materially and adversely affect the Certificateholders, and such certification shall be true and correct.

Anything herein to the contrary notwithstanding, the obligation of the Pass Through Trustee to purchase Equipment Notes shall terminate on the Cut-off Date.

SECTION 3. Representations and Warranties. (a) The Company represents and warrants that:

(i) the Company is duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is a "citizen of the United States" as defined in Section 40102(a)(15) of the Act, and has the full corporate power, authority and legal right under the laws of the State of Delaware to execute and deliver this Agreement and each Financing Agreement to which it will be a party and to carry out the obligations of the Company under this Agreement and each Financing Agreement to which it will be a party;

(ii) the execution and delivery by the Company of this Agreement and the performance by the Company of its obligations under this Agreement have been duly authorized by the Company and will not violate its Certificate of Incorporation or by-laws or the provisions of any indenture, mortgage, contract or other agreement to which it is a party or by which it is bound; and

(iii) this Agreement constitutes the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity, whether considered in a proceeding at law or in equity.

(b) WTC represents and warrants that:

(i) WTC is duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is a "citizen of the United States" as defined in Section 40102(a)(15) of the Act, and has the full corporate power, authority and legal right under the laws of the State of Delaware and the United States pertaining to its banking, trust and fiduciary powers to execute and deliver this Agreement and each Financing Agreement to which it will be a party and to carry out the obligations of WTC, in its capacity as Subordination Agent, Pass Through Trustee or Paying Agent, as the case may be, under this Agreement and each Financing Agreement to which it will be a party;

(ii) the execution and delivery by WTC, in its capacity as Subordination Agent, Pass Through Trustee or Paying Agent, as the case may be, of this Agreement and the performance by WTC, in its capacity as Subordination Agent, Pass Through Trustee or Paying Agent, as the case may be, of its obligations under this Agreement have been duly authorized by WTC, in its capacity as Subordination Agent, Pass Through Trustee or Paying Agent, as the case may be, and will not violate its articles of association or by-laws or the provisions of any indenture, mortgage, contract or other agreement to which it is a party or by which it is bound; and

(iii) this Agreement constitutes the legal, valid and binding obligations of WTC, in its capacity as Subordination Agent, Pass Through Trustee or Paying Agent, as the case may be, enforceable against it in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general

principles of equity, whether considered in a proceeding at law or in equity.

(c) The Pass Through Trustee hereby confirms to each of the other parties hereto that its representations and warranties set forth in Section 7.15 of the Basic Pass Through Trust Agreement and Section 5.04 of the Trust Supplement are true and correct as of the date hereof.

(d) The Subordination Agent represents and warrants that:

(i) the Subordination Agent is duly incorporated, validly existing and in good standing under the laws of the State of Delaware, and has the full corporate power, authority and legal right under the laws of the State of Delaware and the United States pertaining to its banking, trust and fiduciary powers to execute and deliver this Agreement and each Financing Agreement to which it is or will be a party and to perform its obligations under this Agreement and each Financing Agreement to which it is or will be a party;

(ii) this Agreement has been duly authorized, executed and delivered by the Subordination Agent; this Agreement constitutes the legal, valid and binding obligations of the Subordination Agent enforceable against it in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity, whether considered in a proceeding at law or in equity;

(iii) none of the execution, delivery and performance by the Subordination Agent of this Agreement contravenes any law, rule or regulation of the State of Delaware or any United States governmental authority or agency regulating the Subordination Agent's banking, trust or fiduciary powers or any judgment or order applicable to or binding on the Subordination Agent and do not contravene the Subordination Agent's articles of association or by-laws or result in any breach of, or constitute a default under, any agreement or instrument to which the Subordination Agent is a party or by which it or any of its properties may be bound;



(iv) neither the execution and delivery by the Subordination Agent of this Agreement nor the consummation by the Subordination Agent of any of the transactions contemplated hereby requires the consent or approval of, the giving of notice to, the registration with, or the taking of any other action with respect to, any Delaware governmental authority or agency or any federal governmental authority or agency regulating the Subordination Agent's banking, trust or fiduciary powers;

(v) there are no Taxes payable by the Subordination Agent imposed by the State of Delaware or any political subdivision or taxing authority thereof in connection with the execution, delivery and performance by the Subordination Agent of this Agreement (other than franchise or other taxes based on or measured by any fees or compensation received by the Subordination Agent for services rendered in connection with the transactions contemplated by the Intercreditor Agreement or the Liquidity Facility), and there are no Taxes payable by the Subordination Agent imposed by the State of Delaware or any political subdivision thereof in connection with the acquisition, possession or ownership by the Subordination Agent of any of the Equipment Notes (other than franchise or other taxes based on or measured by any fees or compensation received by the Subordination Agent for services rendered in connection with the transactions contemplated by the Intercreditor Agreement or the Liquidity Facility); and

(vi) there are no pending or threatened actions or proceedings against the Subordination Agent before any court or administrative agency which individually or in the aggregate, if determined adversely to it, would materially adversely affect the ability of the Subordination Agent to perform its obligations under this Agreement.

(e) The Escrow Agent represents and warrants that:

(i) the Escrow Agent is a national banking association duly incorporated, validly existing and in good standing under the laws of the United States and has the full corporate power, authority and legal right under the laws of the United States pertaining

to its banking, trust and fiduciary powers to execute and deliver this Agreement, the Deposit Agreement and the Escrow and Paying Agent Agreement (collectively, the "Escrow Agent Agreements") and to carry out the obligations of the Escrow Agent under each of the Escrow Agent Agreements;

(ii) the execution and delivery by the Escrow Agent of each of the Escrow Agent Agreements and the performance by the Escrow Agent of its obligations hereunder and thereunder have been duly authorized by the Escrow Agent and will not violate its articles of association or by-laws or the provisions of any indenture, mortgage, contract or other agreement to which it is a party or by which it is bound; and

(iii) each of the Escrow Agent Agreements constitutes the legal, valid and binding obligations of the Escrow Agent enforceable against it in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity, whether considered in a proceeding at law or in equity.

(f) The Paying Agent represents and warrants that:

(i) the Paying Agent is duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has the full corporate power, authority and legal right under the laws of the United States pertaining to its banking, trust and fiduciary powers to execute and deliver this Agreement and the Escrow and Paying Agent Agreement (collectively, the "Paying Agent Agreements") and to carry out the obligations of the Paying Agent under each of the Paying Agent Agreements;

(ii) the execution and delivery by the Paying Agent of each of the Paying Agent Agreements and the performance by the Paying Agent of its obligations hereunder and thereunder have been duly authorized by the Paying Agent and will not violate its articles of association or by-laws or the provisions of any indenture, mortgage, contract or other agreement to which it is a party or by which it is bound; and

(iii) each of the Paying Agent Agreements constitutes the legal, valid and binding obligations of the Paying Agent enforceable against it in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity, whether considered in a proceeding at law or in equity.

SECTION 4. Covenants. (a) The Company covenants with each of the other parties hereto that:

(i) [Intentionally omitted.]

(ii) subject to Section 4(a)(iv) of this Agreement, the Company shall at all times maintain its corporate existence and shall not wind up, liquidate or dissolve or take any action, or fail to take any action, that would have the effect of any of the foregoing;

(iii) the Company shall at all times remain a U.S. Air Carrier (as defined in the Financing Agreements) and shall at all times be otherwise certificated and registered to the extent necessary to entitle the Owner Trustee (and the Loan Trustee as assignee of the Owner Trustee's rights under each Lease) to the rights afforded to lessors of aircraft equipment under Section 1110;

(iv) Section 13.2.1 of each Lease is hereby incorporated by reference herein;

(v) the Company agrees to provide written notice to each of the parties hereto of the occurrence of the Cut-off Date no later than one Business Day after the date thereof.

(b) WTC, in its individual capacity, covenants with each of the other parties to this Agreement that it will, immediately upon obtaining knowledge of any facts that would cast doubt upon its continuing status as a "citizen of the United States" as defined in Section 40102(a)(15) of the Act and promptly upon public disclosure of negotiations in respect of any transaction which would or might adversely affect such status, notify in writing all parties hereto of all relevant matters in connection therewith. Upon WTC giving any such notice, WTC shall, subject to Section 8.02 of any Trust Indenture then entered into, resign as Loan Trustee in respect of such Trust Indenture.

SECTION 5. Notices. Unless otherwise specifically provided herein, all notices required or permitted by the terms of this Agreement shall be in English and in writing, and any such notice shall become effective upon being delivered personally or, if promptly confirmed by mail, when dispatched by facsimile or other written telecommunication, addressed to such party hereto at its address or facsimile number set forth below the signature of such party at the foot of this Agreement or to such other address or facsimile number as such party may hereafter specify by notice to the other parties.

SECTION 6. Expenses. (a) The Company agrees to pay to the Subordination Agent when due, to the extent not paid when due by the Manufacturer, an amount or amounts equal to the fees payable to the Liquidity Provider under Section 2.03 of the Liquidity Facility and the related Fee Letter (as defined in the Intercreditor Agreement) multiplied by a fraction the numerator of which shall be the then outstanding aggregate amount of the Deposits under the Deposit Agreement and the denominator of which shall be the sum of (x) the then outstanding aggregate principal amount of the Equipment Notes issued under all of the Trust Indentures and (y) the then outstanding aggregate amount of the Deposits under the Deposit Agreement.

(b) So long as no Equipment Notes have been issued in respect of any Aircraft, the Company agrees to pay (i) to the Subordination Agent when due, to the extent not paid when due by the Manufacturer, (A) the amount equal to interest on any Downgrade Advance (other than any Applied Downgrade Advance) payable under Section 3.07 of the Liquidity Facility minus Investment Earnings while such Downgrade Advance shall be outstanding, (B) the amount equal to interest on any Special Termination Advance (other than any Applied Special Termination Advance) payable under Section 3.07 of the Liquidity Facility minus Investment Earnings from such Special Termination Advance, (C) the amount equal to interest on any Early Termination Advance (other than any Applied Early Termination Advance) payable under Section 3.07 of the Liquidity Facility minus Investment Earnings from such Early Termination Advance; and (D) any other amounts owed to the Liquidity Provider by the Subordination Agent as borrower under the Liquidity Facilities (other than amounts due as repayment of advances thereunder or as interest on such advances, except to the extent payable pursuant to clause (A), (B) or (C), (ii) all compensation and reimbursement of expenses, disbursements and advances payable by the Company under the Pass Through Trust Agreements, (iii) all compensation and reimbursement of expenses and disbursements

payable to the Subordination Agent under the Intercreditor Agreement except with respect to any income or franchise taxes incurred by the Subordination Agent in connection with the transactions contemplated by the Intercreditor Agreement and (iv) in the event the Company requests any amendment to any Operative Agreement, all reasonable fees and expenses (including, without limitation, fees and disbursements of counsel) of the Escrow Agent and/or the Paying Agent in connection therewith. For purposes of this Section 6(b), the terms “Applied Downgrade Advance”, “Applied Early Termination Advance”, “Applied Special Termination Advance”, “Downgrade Advance”, “Early Termination Advance”, “Investment Earnings” and “Special Termination Advance” shall have the meanings specified in the Liquidity Facility.

SECTION 7. Further Assurances. Each party hereto shall duly execute, acknowledge and deliver, or shall cause to be executed, acknowledged and delivered, all such further agreements, instruments, certificates or documents, and shall do and cause to be done such further acts and things, in any case, as any other party hereto shall reasonably request in connection with its administration of, or to carry out more effectually the purposes of, or to better assure and confirm unto it the rights and benefits to be provided under, this Agreement.

SECTION 8. Miscellaneous. (a) Provided that the transactions contemplated hereby have been consummated, and except as otherwise provided for herein, the representations, warranties and agreements herein of the Company, the Subordination Agent, the Escrow Agent, the Paying Agent and the Pass Through Trustee, and the Company's, the Subordination Agent's, the Escrow Agent's, the Paying Agent's and the Pass Through Trustee's obligations under any and all thereof, shall survive the expiration or other termination of this Agreement and the other agreements referred to herein.

(b) This Agreement may be executed in any number of counterparts (and each of the parties hereto shall not be required to execute the same counterpart). Each counterpart of this Agreement, including a signature page executed by each of the parties hereto, shall be an original counterpart of this Agreement, but all of such counterparts together shall constitute one instrument. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification is

sought. The index preceding this Agreement and the headings of the various Sections of this Agreement are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the Company and its successors and permitted assigns, the Pass Through Trustee and its successors as Pass Through Trustee (and any additional trustee appointed) under any of the Pass Through Trust Agreements, the Escrow Agent and its successors as Escrow Agent under the Escrow and Paying Agent Agreement, the Paying Agent and its successors as Paying Agent under the Escrow and Paying Agent Agreement and the Subordination Agent and its successors as Subordination Agent under the Intercreditor Agreement.

(c) This Agreement is not intended to, and shall not, provide any person not a party hereto (other than the Underwriter and each of the beneficiaries of Section 6 hereof) with any rights of any nature whatsoever against any of the parties hereto, and no person not a party hereto (other than the Underwriter and each of the beneficiaries of Section 6 hereof) shall have any right, power or privilege in respect of, or have any benefit or interest arising out of, this Agreement.

SECTION 9. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. THIS AGREEMENT IS BEING DELIVERED IN THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

CONTINENTAL AIRLINES, INC.

By \_\_\_\_\_  
Name:  
Title:  
Address: 1600 Smith Street, HQSFN  
Houston, TX 77002  
Attention: Treasurer  
Facsimile: (713) 324-2447

WILMINGTON TRUST COMPANY,  
not in its individual capacity, except as otherwise  
provided herein, but solely as Pass Through Trustee

By \_\_\_\_\_  
Name:  
Title:  
Address: Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
Attention: Corporate Trust  
Administration  
Facsimile: (302) 651-8882

WILMINGTON TRUST COMPANY,

not in its individual capacity, except as otherwise provided herein, but solely as Subordination Agent

By \_\_\_\_\_

Name:

Title:

Address: Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
Attention: Corporate Trust  
Administration  
Facsimile: (302) 651-8882

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION,  
as Escrow Agent

By \_\_\_\_\_

Name:

Title:

Address: MAC: U1228-120  
299 South Main Street  
12th Floor  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Services  
Facsimile: (801) 246-5053



WILMINGTON TRUST COMPANY,  
as Paying Agent

By: \_\_\_\_\_  
Name:  
Title:  
Address: Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
Attention: Corporate Trust Administration  
Facsimile: (302) 651-8882

SCHEDULE I to  
Note Purchase Agreement

AIRCRAFT

Part A - Existing Aircraft

Registration Number	Manufacturer's Serial Number	Scheduled Delivery Month
N14171	14500859	Previously Delivered
N12172	14500864	Previously Delivered
N14173	14500872	Previously Delivered
N14174	14500876	Previously Delivered
N12175	14500878	Previously Delivered
N11176	14500881	Previously Delivered
N14177	14500888	Previously Delivered
N16178	14500889	Previously Delivered
N14179	14500896	Previously Delivered
N14180	14500900	Previously Delivered
N11181	14500904	Previously Delivered
N33182	14500909	Previously Delivered
N16183	14500914	Previously Delivered
N11184	14500917	Previously Delivered
N17185	14500922	Previously Delivered

N14186	14500924	Previously Delivered
N11187	14500927	Previously Delivered
N14188	14500929	Previously Delivered
N11189	14500931	Previously Delivered
N27190	14500934	Previously Delivered
N11191	14500935	Previously Delivered

Part B - New Aircraft

N11192	14500936	October 2005
N11193	14500938	October 2005
N11194	14500940	November 2005
N12195	14500943	December 2005
N17196	14500945	December 2005
N21197	14500947	January 2006
N14198	14500951	February 2006
N11199	14500953	February 2006

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SCHEDULE II to  
Note Purchase Agreement

TRUST SUPPLEMENT

Trust Supplement dated as of the Issuance Date between the Company and the Pass Through Trustee in respect of the Continental Airlines Class A Pass Through Trust, Series 2005-ERJ1.

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SCHEDULE III to  
Note Purchase Agreement

## MANDATORY ECONOMIC TERMS

The aggregate principal amount of the Equipment Notes issued with respect to an Aircraft shall not exceed the amounts set forth in the following table:

<b>Aircraft Registration Number</b>	<b>Manufacturer's Serial Number</b>	<b>Principal Amount of Equipment Notes</b>
N14171	14500859	\$10,037,481
N12172	14500864	9,994,443
N14173	14500872	10,164,449
N14174	14500876	10,271,406
N12175	14500878	10,225,962
N11176	14500881	10,532,173
N14177	14500888	10,485,908
N16178	14500889	10,485,908
N14179	14500896	10,775,405
N14180	14500900	10,925,153
N11181	14500904	10,880,450
N33182	14500909	10,750,417
N16183	14500914	10,725,962
N11184	14500917	10,692,171
N17185	14500922	10,795,225
N14186	14500924	10,670,184
N11187	14500927	10,771,685
N14188	14500929	10,855,667
N11189	14500931	11,060,953
N27190	14500934	10,896,010
N11191	14500935	10,953,234
N11192	14500936	11,172,581
N11193	14500938	11,172,581
N11194	14500940	11,172,581
N12195	14500943	11,172,581
N17196	14500945	11,172,581
N21197	14500947	11,172,581
N14198	14500951	11,172,581
N11199	14500953	11,172,581

The Loan to Aircraft Value for the Equipment Notes issued for each Aircraft computed on the date of issuance thereof (with value for such Aircraft for these purposes initially equal to its value set forth under "Description of the Aircraft and the Appraisals—The Appraisals" in the column "Appraised Value" in the Prospectus)

Supplement and thereafter based on such value after giving effect to the Depreciation Assumption (as defined in the Prospectus Supplement)) as of the issuance date of such Equipment Notes and any Regular Distribution Date thereafter (assuming no default in the payment of the Equipment Notes and after giving effect to scheduled payments) will not exceed 55%.

- The initial average life of the Equipment Notes for any Aircraft shall not extend beyond 10 years from the Issuance Date.
- As of the Delivery Period Termination Date, the average life of the Certificates shall not be more than 9.5 years from the Issuance Date (computed without regard to the acceleration of any Equipment Notes and after giving effect to any special distribution on the Certificates thereafter required in respect of unused Deposits).
- The final expected distribution date of the Certificates shall be as set forth on the cover page of the Prospectus Supplement.
- The original aggregate principal amount of all of the Equipment Notes shall not exceed the original aggregate face amount of the Certificates.
- The interest rate applicable to the Equipment Notes must be equal to the rate applicable to the Certificates.
- The payment dates for the Equipment Notes must be on the first day of each month, and basic rent under the Leases must be payable on such dates.
- Basic rent, stipulated loss values and termination values under the Leases must be sufficient to pay amounts due with respect to the related Equipment Notes.
- The amounts payable under the all-risk aircraft hull insurance maintained with respect to each Aircraft must be sufficient to pay the applicable stipulated loss value, subject to certain rights of self-insurance.
- (a) The past due rate in the Trust Indentures and the Leases, (b) the “Make-Whole Amount” payable under the Trust Indentures, (c) the provisions relating to the redemption and purchase of Equipment Notes in the Trust Indentures, (d) the minimum liability insurance amount on Aircraft in the Leases, and (e) the indemnification of the Loan Trustees, Subordination Agent, Liquidity Providers, Pass Through Trustee, Escrow Agent and registered holders of the Equipment Notes with respect to certain taxes and expenses, in each case shall be provided as set forth in the forms of Participation Agreements, Lease and Trust Indentures attached as exhibits to the Note Purchase Agreement.

SCHEDULE IV TO  
Note Purchase Agreement

MANDATORY DOCUMENT TERMS

The terms "Form of Participation Agreement" "Form of Lease" and "Form of Trust Indenture" correspond to Exhibits A, B and C of the Note Purchase Agreement.

1. May not modify in any material adverse respect the Granting Clause of the Form of Trust Indenture so as to deprive the Note Holders of a first priority security interest in and mortgage lien on the Aircraft and the Lease or to eliminate any of the obligations secured thereby or otherwise modify in any material adverse respect as regards the interests of the Note Holders, the Subordination Agent, the Liquidity Providers or the Mortgagee the provisions of Article II or III or Section 4.02, 4.03, 4.04, 5.02, 5.06, 9.01(b), 10.04, 10.11 or 10.12 of the Form of Trust Indenture.
  2. May not modify in any material adverse respect as regards the interests of the Note Holders, the Subordination Agent, the Liquidity Providers or the Mortgagee the provisions of Section 3.2.1(b), 3.3(c), 4.7, the final sentence of 7.1.1, 10.3.1(d)(ii), 13.3, 16, 18.3 or 18.7(a) of the Form of Lease or otherwise modify the terms of the Form of Lease so as to deprive the Mortgagee of rights expressly granted to the "Mortgagee" therein.
  3. May not modify in any material adverse respect as regards the interests of the Note Holders, the Subordination Agent, the Liquidity Providers or the Mortgagee the provisions of Section 5.1.9, 5.1.10, 5.1.11, 5.1.12, 7.5, 12, 15.8(a) or 15.9 of the Form of Participation Agreement or of the provisions of Section 5.1.2(xxv) or 10.1.1(a)(iv) of the Form of Participation Agreement so as to eliminate the requirement to deliver to the Loan Participant or the Mortgagee, as the case may be, the legal opinions to be provided to such Persons thereunder (recognizing that the lawyers rendering such opinions may be changed) or of the provisions of Section 7.6.11(a)(ii) of the Form of Participation Agreement as regards the rights of the Mortgagee thereunder or otherwise modify the terms of the Form of Participation Agreement to deprive the Note Holders, the Subordination Agent, the Liquidity Providers or the Mortgagee of any indemnity or right of reimbursement in its favor for Expenses or Taxes.
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4. May not modify, in any material adverse respect as regards the interests of the Note Holders, the Subordination Agent, the Liquidity Providers or the Mortgagee, the definition of "Make Whole Amount" in Annex A to the Participation Agreement Form.

Notwithstanding the foregoing, any such Mandatory Document Term may be modified to correct or supplement any such provision which may be defective or to cure any ambiguity or correct any mistake, provided that any such action shall not materially adversely affect the interests of the Note Holders, the Subordination Agent, the Liquidity Providers, the Mortgagee or the Certificateholders.



ANNEX A to  
Note Purchase Agreement

DEFINITIONS

"Act" means part A of subtitle VII of title 49, United States Code.

"Affiliate" means, with respect to any person, any other person directly or indirectly controlling, controlled by or under common control with such person. For purposes of this definition, "control" means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities or by contract or otherwise and "controlling," "controlled by" and "under common control with" have correlative meanings.

"Aircraft" has the meaning set forth in the second recital to the Note Purchase Agreement.

"Assumed Amortization Schedule" means the amortization schedule set forth on pages S-32 through S-36 of the Prospectus Supplement.

"Average Life Date" means, for any Equipment Note, the date which follows the time of determination by a period equal to the Remaining Weighted Average Life of such Equipment Note.

"Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*

"Basic Pass Through Trust Agreement" means the Pass Through Trust Agreement, dated September 25, 1997, between the Company and Pass Through Trustee, as such agreement may be supplemented, amended or modified, but does not include the Trust Supplement.

"Business Day" means any day, other than a Saturday, Sunday or other day on which commercial banks are authorized or required by law to close in New York, New York, Houston, Texas, Wilmington, Delaware or Salt Lake City, Utah.

"Certificates" has the meaning set forth in the fourth recital to the Note Purchase Agreement.

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"Certificateholder" means the Person in whose name a Certificate is registered in the Register.

"Company" means Continental Airlines, Inc., a Delaware corporation.

"Corporate Trust Office" with respect to the Pass Through Trustee or any Loan Trustee, means the office of such trustee in the city at which at any particular time its corporate trust business shall be principally administered.

"Cut-off Date" means the earlier of (a) the day after the Delivery Period Termination Date and (b) the date on which a Triggering Event occurs.

"Delivery Period Termination Date" means the earlier of (a) May 31, 2006, or, if the Equipment Notes relating to all of the Aircraft (or Substitute Aircraft in lieu thereof) have not been purchased by the Pass Through Trustee on or prior to such date due to any reason beyond the control of the Company and not occasioned by the Company's fault or negligence, August 31, 2006 and (b) the date on which Equipment Notes issued with respect to all of the Aircraft (or Substitute Aircraft in lieu thereof) have been purchased by the Pass Through Trustee in accordance with the Note Purchase Agreement.

"Delivery Date" means the Business Day on which a New Aircraft is delivered to and accepted by the Company.

"Delivery Notice" means a Delivery Notice substantially in the form of Exhibit F to the Note Purchase Agreement.

"Deposit" has the meaning set forth in the sixth recital to the Note Purchase Agreement.

"Deposit Agreement" has the meaning set forth in the sixth recital to the Note Purchase Agreement.

"Depository" means Citibank, N.A.

"Equipment Notes" means and includes any equipment notes issued under any Trust Indenture in the form specified in Section 2.01 thereof (as such form may be varied pursuant to the terms of such Trust Indenture) and any Equipment Note issued under any Trust Indenture in exchange for or replacement of any other Equipment Note.

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"[Escrow Agent](#)" has the meaning set forth in the first paragraph of the Note Purchase Agreement.

"[Escrow Agent Agreements](#)" has the meaning set forth in Section 3(e)(i) of the Note Purchase Agreement.

"[Escrow and Paying Agent Agreement](#)" has the meaning set forth in the fifth recital to the Note Purchase Agreement.

"[Existing Aircraft](#)" has the meaning set forth in the second recital to the Note Purchase Agreement.

"[Existing Leases](#)" has the meaning set forth in the second recital to the Note Purchase Agreement.

"[FAA](#)" means the Federal Aviation Administration of the United States.

"[Final Withdrawal](#)" with respect to the Escrow and Paying Agent Agreement, has the meaning set forth in Section 1.02 thereof.

"[Financing Agreements](#)" means, collectively, the Purchase Agreement Assignment, the Initial Purchase Agreement Assignment (if a New Aircraft), the Participation Agreement, the Lease, the Trust Indenture, the Equipment Notes issued thereunder, and the Trust Agreement relating to the financing of an Aircraft.

"[Government Entity](#)" means (a) any federal, state, provincial or similar government, and any body, board, department, commission, court, tribunal, authority, agency or other instrumentality of any such government or otherwise exercising any executive, legislative, judicial, administrative or regulatory functions of such government or (b) any other government entity having jurisdiction over any matter contemplated by the Operative Agreements or relating to the observance or performance of the obligations of any of the parties to the Operative Agreements.

"[Initial Deposits](#)" has the meaning set forth in the sixth recital to the Note Purchase Agreement.

"[Initial Purchase Agreement Assignment](#)" means a Purchase Agreement Assignment substantially in the form of Exhibit D-2 to the Note Purchase Agreement.

"[Intercreditor Agreement](#)" has the meaning set forth in the ninth recital to the Note Purchase Agreement.

"[Issuance Date](#)" means the date of the original issuance of the Certificates.

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"Law" means (a) any constitution, treaty, statute, law, decree, regulation, order, rule or directive of any Government Entity, and (b) any judicial or administrative interpretation or application of, or decision under, any of the foregoing.

"Lease" means a Lease Agreement substantially in the form of Exhibit B to the Note Purchase Agreement.

"Liquidity Facility" has the meaning set forth in the ninth recital to the Note Purchase Agreement.

"Liquidity Provider" has the meaning set forth in the ninth recital to the Note Purchase Agreement.

"Loan Trustee" means the "Mortgagee" as defined in the Financing Agreements.

"Mandatory Document Terms" means the terms set forth on Schedule IV to the Note Purchase Agreement.

"Mandatory Economic Terms" means the terms set forth on Schedule III to the Note Purchase Agreement.

"Manufacturer" means Embraer-Empresa Brasileira de Aeronáutica S.A., a Brazilian corporation, solely in its capacity as manufacturer or seller of the Aircraft.

"New Aircraft" has the meaning set forth in the second recital to the Note Purchase Agreement.

"Note Purchase Agreement" means the Note Purchase Agreement to which this Annex A is attached.

"Notice of Purchase Withdrawal" with respect to the Deposit Agreement, has the meaning set forth in Section 2.3 thereof.

"Operative Agreements" means, collectively, the Pass Through Trust Agreement, the Escrow and Paying Agent Agreement, the Deposit Agreement, the Liquidity Facility, the Intercreditor Agreement, the Certificates and the Financing Agreements.

"Owner Participant" means, with respect to any Aircraft, the Person named as the Owner Participant in the Participation Agreement with respect to such Aircraft.

"Owner Trust" means, with respect to any Aircraft, the trust created by the Trust Agreement related thereto.

"Owner Trustee" means, with respect to any Aircraft, the "Owner Trustee" party to the Trust Agreement related thereto.

"Participation Agreement" means a Participation Agreement substantially in the form of Exhibit A to the Note Purchase Agreement.

"Pass Through Trust" has the meaning set forth in the fourth recital to the Note Purchase Agreement.

"Pass Through Trust Agreement" means the Trust Supplement, together with the Basic Pass Through Trust Agreement, dated as of the Issuance Date, by and between the Company and Pass Through Trustee.

"Pass Through Trustee" has the meaning set forth in the first paragraph of the Note Purchase Agreement.

"Paying Agent" has the meaning set forth in the first paragraph of the Note Purchase Agreement.

"Paying Agent Agreements" has the meaning set forth in Section 3(f)(i) of the Note Purchase Agreement.

"Person" means any individual, firm, partnership, joint venture, trust, trustee, Government Entity, organization, association, corporation, limited liability company, government agency, committee, department, authority and other body, corporate or incorporate, whether having distinct legal status or not, or any member of any of the same.

"Prospectus Supplement" means the final Prospectus Supplement, dated September 14, 2005, to the Prospectus, dated August 23, 2001, of the Company relating to the offering of the Certificates.

"Purchase Agreement" means the Purchase Agreement GPJ-003/96 between Manufacturer and ExpressJet Airlines, Inc. (formerly Continental Express, Inc.) (including all exhibits thereto, together with all letter agreements entered into that by their terms constitute part of such Purchase Agreement), as amended.

"Purchase Agreement Assignment" means a Purchase Agreement Assignment substantially in the form of Exhibit D-1 to the Note Purchase Agreement (for an Existing Aircraft) or Exhibit D-3 to the Note Purchase Agreement (for a New Aircraft).

"Rating Agencies" means, collectively, at any time, each nationally recognized rating agency which shall have been requested to rate the Certificates and which shall then be rating the Certificates. The initial Rating Agencies will be Moody's Investors Service, Inc. and Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"Rating Agency Confirmation" means, with respect to (1) any Financing Agreement that has been modified in any material respect from the forms thereof attached to the Note Purchase Agreement or (2) a Substitute Aircraft, a written confirmation from each of the Rating Agencies that (a) the use of such Financing Agreement with such modifications or (b) the substituting of such Substitute Aircraft for a New Aircraft, respectively, would not result in (i) a reduction of the rating for the Certificates below the then current rating for the Certificates or (ii) a withdrawal or suspension of the rating of the Certificates.

"Register" means the register maintained pursuant to Sections 3.04 and 7.12 of the Basic Pass Through Trust Agreement with respect to the Pass Through Trust.

"Regular Distribution Date" shall mean the first day of each month, commencing October 1, 2005.

"Remaining Weighted Average Life" means, on a given date with respect to any Equipment Note, the number of days equal to the quotient obtained by dividing (a) the sum of each of the products obtained by multiplying (i) the amount of each then remaining scheduled payment of principal of such Equipment Note by (ii) the number of days from and including such determination date to but excluding the date on which such payment of principal is scheduled to be made, by (b) the then outstanding principal amount of such Equipment Note.

"Scheduled Closing Date" has the meaning set forth in Section 1(b) of the Note Purchase Agreement.

"Section 1110" means 11 U.S.C. § 1110 of the Bankruptcy Code or any successor or analogous Section of the federal bankruptcy Law in effect from time to time.

"Subordination Agent" has the meaning set forth in the first paragraph of the Note Purchase Agreement.

"Substitute Aircraft" has the meaning set forth in Section 1(g) of the Note Purchase Agreement.

"Taxes" means all license, recording, documentary, registration and other similar fees and all taxes, levies, imposts, duties, charges, assessments or withholdings of any nature whatsoever imposed by any Taxing Authority, together with any penalties, additions to tax, fines or interest thereon or additions thereto.

"Taxing Authority." means any federal, state or local government or other taxing authority in the United States, any foreign government or any political subdivision or taxing authority thereof, any international taxing authority or any territory or possession of the United States or any taxing authority thereof.

"Treasury Yield" means, as of any date of determination, with respect to any Equipment Note (utilizing the Assumed Amortization Schedule applicable thereto), the interest rate (expressed as a decimal and, in the case of United States Treasury bills, converted to a bond equivalent yield) determined to be the per annum rate equal to the monthly yield to maturity for United States Treasury securities maturing on the Average Life Date of such Equipment Note and trading in the public securities markets either as determined by interpolation between the most recent weekly average yield to maturity for two series of United States Treasury securities, trading in the public securities markets, (A) one maturing as close as possible to, but earlier than, the Average Life Date of such Equipment Note and (B) the other maturing as close as possible to, but later than, the Average Life Date of such Equipment Note, in each case as published in the most recent H.15(519) or, if a weekly average yield to maturity for United States Treasury securities maturing on the Average Life Date of such Equipment Note is reported on the most recent H.15(519), such weekly average yield to maturity as published in such H.15(519). The "most recent H.15(519)" means the H.15(519) most recently published prior to the close of business on the date of determination of the Deposit Make-Whole Premium.

"Triggering Event" has the meaning assigned to such term in the Intercreditor Agreement.

"Trust Agreement" means a Trust Agreement substantially in the form of Exhibit E to the Note Purchase Agreement.

"Trust Indenture" means a Trust Indenture and Mortgage substantially in the form of Exhibit C to the Note Purchase Agreement.

"Trust Supplement" means an agreement supplemental to the Basic Pass Through Trust Agreement pursuant to which (i) a trust is created for the benefit of the holders of the Certificates, (ii) the issuance of the Certificates representing fractional undivided interests in such trust is authorized and (iii) the terms of the Certificates are established.

"Underwriter" has the meaning set forth in the fifth recital to the Note Purchase Agreement.

"Underwriting Agreement" has the meaning set forth in the fifth recital to the Note Purchase Agreement.

"WTC" has the meaning set forth in the first paragraph of the Note Purchase Agreement.



EXHIBIT A to  
Note Purchase Agreement

FORM OF PARTICIPATION AGREEMENT

(Filed Separately)

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EXHIBIT B to  
Note Purchase Agreement

FORM OF LEASE

(Filed Separately)

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EXHIBIT C to  
Note Purchase Agreement

FORM OF TRUST INDENTURE

(Filed Separately)

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EXHIBIT D-1 to  
Note Purchase Agreement

FORM OF PURCHASE AGREEMENT ASSIGNMENT  
(EXISTING AIRCRAFT)

**AMENDED AND RESTATED  
PURCHASE AGREEMENT ASSIGNMENT NO. 2 - \_\_\_\_\_**

AMENDED AND RESTATED PURCHASE AGREEMENT ASSIGNMENT NO. 2 - \_\_\_\_\_, dated as of September 22, 2005 (this "Restated Assignment"), between PM Limited, a Cayman Islands company (the "Assignor" or "PM Limited"), WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity but solely as Owner Trustee (the "Assignee"), and EXPRESSJET AIRLINES, INC., a Delaware corporation ("Express"), which amends and restates in its entirety the Original PAA No. 2 (as hereinafter defined).

Recitals

WHEREAS, Express and EMBRAER-Empresa Brasileira de Aeronautica S.A., a corporation organized under the laws of Brazil ("Embraer"), have entered into the Purchase Agreement, pursuant to which, among other things, Embraer has agreed to manufacture and sell to Express, and Express has agreed to purchase from Embraer, certain aircraft, including the Aircraft (as defined in the Purchase Agreement Assignment No. 1 described below);

WHEREAS, pursuant to a Purchase Agreement Assignment No. 1 - \_\_\_\_\_, dated as of \_\_\_\_\_ ("PAA No. 1"), between Express and PM Limited, Express has, among other things, heretofore assigned to PM Limited, with the consent of the Manufacturer, certain of its right, title and interest in, to and under the Purchase Agreement including, without limitation, the right to purchase the Aircraft from Embraer upon and subject to the terms and conditions set forth in the Purchase Agreement and PAA No. 1;

WHEREAS, PM Limited has heretofore purchased the Aircraft from Embraer and, concurrently therewith, has heretofore sold the Aircraft to Wells Fargo Bank Northwest, National Association, acting not in its individual capacity but solely as Owner Trustee under the Trust Agreement \_\_\_\_\_, dated as of \_\_\_\_\_ (the "Original Trust Agreement"), between Refine, Inc., as Owner Participant (the "Owner Participant"), and Wells Fargo Bank Northwest, National Association ("Wells Fargo"), as amended and restated in its entirety by that certain Amended and Restated Trust Agreement \_\_\_\_\_, dated as of the date hereof, between the Owner Participant and Wells Fargo (the Original Trust Agreement, as so amended and restated, the "Amended and Restated Trust Agreement");

WHEREAS, in connection with the sale of the Aircraft by PM Limited to the Owner Trustee and with the consent of the Manufacturer, PM Limited has, pursuant to the Purchase Agreement Assignment No. 2-\_\_\_\_\_, dated as of \_\_\_\_\_ (the "PAA No. 2"), between PM Limited and the Owner Trustee, heretofore transferred to the Owner Trustee all of PM Limited's present and future rights, title, obligations and interests in, to and under the Purchase Agreement as assigned by PAA No. 1, except for

PM Limited's right to purchase the Aircraft from the Manufacturer pursuant to Section 2(a) of PAA No. 1;

WHEREAS, the Owner Trustee desires to (i) issue Equipment Notes (as defined in Annex A to the Lease Agreement referred to herein) for the purpose of enabling the Owner Participant to repay, in part, the indebtedness relating to the acquisition of the Aircraft by the Owner Trustee, (ii) terminate the Lease Agreement \_\_\_\_\_, dated as of the date of PAA No. 1 (the "Existing Lease"), between the Owner Trustee and Continental Airlines, Inc. ("Continental"), in connection therewith and (iii) re-lease the Aircraft to Continental pursuant to the Lease Agreement (as hereinafter defined); and

WHEREAS, to facilitate the transactions described in the immediately preceding Whereas clause, PM Limited and the Assignee desire to amend and restate in its entirety PAA No. 2 on the terms and conditions hereof, Express desires to agree to the terms and provisions hereof and to certain changes to PAA No. 1, as provided herein, and the Manufacturer is willing to execute and deliver to the Assignee a Consent and Agreement to the provisions hereof in substantially the form attached hereto as Annex 1;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Assignor and the Assignee hereby agree to amend and restate PAA No. 2 in its entirety upon the terms set forth herein, and the parties hereto further agree as follows:

Section 1. Definitions. Capitalized terms used but not defined herein shall have the respective meanings set forth or incorporated by reference, and shall be construed and interpreted in the manner described, in PAA No. 1.

Section 2. Transfer and Assumption. The Assignor does hereby sell, assign and transfer to the Assignee all of the Assignor's present and future rights, title, obligations and interest in, to and under the Purchase Agreement as assigned by PAA No. 1, excluding the right to purchase the Aircraft from the Manufacturer (the "Assignor's Interest") and the Assignee hereby accepts the Assignor's Interest from the Assignor. The Assignee agrees that it shall be bound by all the terms of, and shall assume and undertake to perform all the obligations of, the Assignor with respect to the Assignor's Interest. For all purposes of PAA No. 1 and this Restated Assignment, Express, the Assignor and the Assignee hereby agree that:

(i) the "Lease" or "Lease Agreement" referred to in PAA No. 1 shall be deemed to refer to the Lease Agreement \_\_\_\_\_, dated as of the date hereof (as the same may be amended, modified or supplemented, the "Lease Agreement"), between the Owner Trustee and Continental, providing for the lease of the Aircraft;

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(ii) the Participation Agreement referred to in Paragraph 4 of PAA No. 1 shall be deemed to refer to the Participation Agreement defined in Annex A to the Existing Lease;

(iii) Continental, in lieu of Express, shall have the rights referred to in clause (iii)(B) of the first paragraph of Section 2 of PAA No. 1 after notice by Continental to the Manufacturer that Continental is entitled to possession of the Aircraft;

(iv) Continental, in lieu of Express, shall be entitled to exercise the rights of Express under the second paragraph of Section 2 of PAA No. 1 after notice by Continental to the Manufacturer that Continental is entitled to possession of the Aircraft; and

(v) the Manufacturer shall not be deemed to have knowledge of, and need not recognize nor take any action with respect to, the termination of Express's rights under PAA No. 1 by Continental to the extent permitted hereunder or thereunder unless and until the Manufacturer shall have received from Continental, as required by the terms of this Restated Assignment, written notice (including notice by fax) thereof and, in acting in accordance with the terms and conditions of the Purchase Agreement and this Restated Assignment and PAA No. 1, the Manufacturer may act in accordance with and conclusively rely upon any such notice.

Section 3. Confidential Treatment. The Assignee and the Assignor agree that the provisions of Paragraph 8 of PAA No. 1 are hereby terminated and superseded by the provisions of this Section 3 and, in furtherance thereof, agree that they will not disclose to any third party (other than their direct and indirect parent companies) the terms of the Purchase Agreement (whether or not related to the Aircraft) or PAA No. 1 or this Restated Assignment, except (a) as required by applicable law, judicial proceeding or governmental regulation, (b) in the case of the Assignee, as required for the assignment of its rights under this Restated Assignment in accordance with the provisions of Article 16 of the Purchase Agreement, (c) with the prior written consent of Express, the Assignor and the Manufacturer, which consent shall not be unreasonably withheld with respect to a prospective bona fide purchaser of the Aircraft, (d) to prospective and permitted transferees of Owner Participant's interest or their or Owner Participant's respective counsel or special counsel, independent insurance brokers, auditors, or other agents, (e) as otherwise permitted by the Operative Agreements (as defined in Annex A to the Lease), or (f) to such other Persons as are reasonably deemed necessary by the disclosing party for the purposes of enforcing such documents by such party; provided that any such disclosure under this sentence shall be made only to the extent necessary to meet the specific requirements or needs of the Assignee or PM Limited, as the case may be. Any disclosure as contemplated in (b), (c) or (d) above shall include a requirement that the entity to which the information is disclosed shall be subject to obligations of nondisclosure with respect to such information substantially the same as those contained herein.

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Section 4. Assignment to Mortgagee. The right, title and interest of the Assignee in and to this Restated Assignment has, contemporaneously with the execution and delivery hereof, been assigned to and is subject to a security interest in favor of the Mortgagee (as such terms and the other capitalized terms used hereinafter in this sentence are defined in Appendix A to the Lease) under the Trust Indenture, for the benefit of the Loan Participants and the Note Holders referred to the Trust Indenture, all to the extent provided in such Trust Indenture. The Assignor hereby consents to such assignment and to the creation of such security interest in and to this Restated Assignment.

Section 5. Notices. Any notices provided for in PAA No. 1 shall be delivered to the Assignee at the following address or such other place as the Assignee may designate in accordance with PAA No. 1:

Wells Fargo Bank Northwest,  
National Association  
MAC: U1228-120  
Attn: Corporate Trust Dept.  
299 S. Main Street, 12th Floor  
Salt Lake City, UT 84111  
Facsimile: 801-246-5053

Section 6. Headings. The headings of the Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 7. GOVERNING LAW. THIS RESTATED ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REGARD TO CONFLICT OF LAWS RULES OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

Section 8. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts (or upon separate signature pages bound together into one or more counterparts), each of which when so executed shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

Section 9. Purchase Agreement. The rights and obligations of the parties hereto are subject to the terms and conditions of the Purchase Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Restated Assignment to be duly executed as of the day and year first written above.

PM LIMITED, as Assignor

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

Name:

Title:

WELLS FARGO BANK  
NORTHWEST, NATIONAL  
ASSOCIATION, not in its  
individual capacity but solely as  
Owner Trustee, as Assignee

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

Name:

Title:

EXPRESSJET AIRLINES, INC.

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

Name:

Title:

Annex 1 to Amended  
and Restated Purchase  
Agreement Assignment No. 2 - \_\_\_\_\_

**CONSENT AND AGREEMENT No. 2 - \_\_\_\_\_**

The undersigned, EMBRAER-EMPRESA BRASILEIRA DE AERONAUTICA S.A., a corporation organized and existing under the laws of Brazil, hereby acknowledges notice of and consents to all of the terms of the foregoing Amended and Restated Purchase Agreement Assignment No. 2 - \_\_\_\_\_, dated as of September 22, 2005, by and among PM Limited, WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity but solely as Owner Trustee, and EXPRESSJET AIRLINES, INC., to the extent they relate to the Manufacturer (herein called the "Assignment No. 2", the defined terms therein being hereinafter used with the same meaning) and hereby confirms to the Assignee that: (i) all representations, warranties, indemnities and agreements of the Manufacturer under the Purchase Agreement with respect to the Aircraft shall inure to the benefit of the Assignee to the same extent as if originally named the "Buyer" therein, subject to the terms and conditions of the Assignment No. 2, the Purchase Agreement and PAA No. 1; (ii) the Assignee shall not be liable for any of the obligations or duties of Express under the Purchase Agreement, nor shall the Assignment No. 2 give rise to any duties or obligations whatsoever on the part of the Assignee owing to the Manufacturer except for the Assignee's agreement to the effect that in exercising any rights under the Purchase Agreement, or in making any claim with respect to the Aircraft or other things (including without limitation data, documents and services) delivered or to be delivered pursuant to the Purchase Agreement, the terms and conditions of the Purchase Agreement shall apply to and be binding upon the Assignee to the same extent as if the Assignee had been the original "Buyer" thereunder, and with respect to such agreement the Manufacturer agrees that, anything contained in the Purchase Agreement or the Assignment No. 2 to the contrary notwithstanding, so long as the Manufacturer shall not have received notice that a Lease Event of Default has occurred and is continuing, the Assignee shall not have any responsibility to the Manufacturer for failure to comply with any of the terms of the Purchase Agreement with respect to the Aircraft while under lease to Continental so long as the Assignee acts upon the written instructions of Express (or, if Continental shall have specified in a written notice to the Assignee and the Manufacturer that Continental is entitled to possession of the Aircraft, Continental) (to which instructions the Manufacturer understands it shall have access on request); provided that no person other than the Manufacturer shall have any rights against the Assignee with respect to the undertaking and agreement set forth in this clause (ii); (iii) the Manufacturer will continue to pay to Express (or, if Continental shall have specified in a written notice to the Assignee and the Manufacturer that Continental is entitled to possession of the Aircraft, Continental) all payments which the Manufacturer may be required to make in respect of the Aircraft under the Purchase Agreement unless and until the Manufacturer shall have received written notice addressed to its Contracts Administrator, by mail to EMBRAER-Empresa Brasileira de Aeronautica S.A., Av. Brigadeiro Faria Lima, 2170, 12.227-901 Sao Jose dos Campos-SP, Brazil, or by fax to fax no: 55 12-3927-1257, that a



Lease Event of Default has occurred and is continuing (which such notice from the Assignee shall be conclusive proof thereof to the Manufacturer and as to which the Manufacturer shall have no obligation to inquire), whereupon the Manufacturer will, until the Manufacturer shall have received notice in writing sent or addressed as aforesaid that no Lease Event of Default exists, make any and all payments and take any and all actions which it may be required thereafter to make or take in respect of the Aircraft under the Purchase Agreement and the right to receive which has been assigned under the Assignment No. 2 directly to the Assignee at its address at MAC: U1228-120, 299 S. Main Street, 12th Floor, Salt Lake City, Utah 84111 , telecopy no. 801-246-5053; (iv) from and after the delivery of the Aircraft on the Delivery Date, the Manufacturer will not assert any lien or claim against the Aircraft or any part thereof arising with respect to or in connection with any work or other services performed before the delivery and acceptance of the Aircraft; and (v) the Manufacturer consents to the grant of a security interest in the Purchase Agreement pursuant to the Trust Indenture (as defined in Appendix A to the Lease).

The Manufacturer hereby represents and warrants that (A) the Manufacturer is a corporation duly organized and existing in good standing under the laws of Brazil, (B) the making and performance of the Purchase Agreement have been duly authorized by all necessary corporate action on the part of the Manufacturer, do not require any stockholder approval, do not contravene the Manufacturer's By-Laws or any indenture, credit agreement or other contractual agreement to which the Manufacturer is a party or by which it is bound, and the making of the Purchase Agreement does not contravene any law binding on the Manufacturer, (C) the making and performance of this Consent and Agreement have been duly authorized by all necessary corporate action on the part of the Manufacturer, do not require any stockholder approval and do not contravene any law binding on the Manufacturer or contravene the Manufacturer's By-laws or any indenture, credit agreement or other contractual agreement to which the Manufacturer is a party or by which it is bound, (D) the Purchase Agreement constituted as of the date thereof and at all times thereafter to and including the date of this Consent and Agreement constitutes a binding obligation of the Manufacturer enforceable against the Manufacturer in accordance with its terms subject to: (i) the limitations of applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and (E) this Consent and Agreement is a binding obligation of the Manufacturer enforceable against the Manufacturer in accordance with its terms subject to: (a) the limitations of applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally; and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). It is understood that the execution by the Manufacturer of this Consent and Agreement is subject to the condition that concurrently with execution and delivery hereof the Aircraft will be leased to Continental under the Lease Agreement.

[The remainder of this page has been left blank intentionally.]

This Consent and Agreement shall be governed by the laws of the State of New York, including all matters of construction, validity and performance, as applicable to contracts between citizens of the state to be performed wholly within that state, and without regard to conflicts of law rules other than Section 5-1401 of the New York General Obligations Law.

Dated as of September 22, 2005.

EMBRAER-EMPRESA BRASILEIRA  
DE AERONAUTICA S.A.

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

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

EXHIBIT D-2 to  
Note Purchase Agreement

FORM OF INITIAL PURCHASE AGREEMENT ASSIGNMENT  
(NEW AIRCRAFT)

**PURCHASE AGREEMENT ASSIGNMENT NO. 1 - \_\_\_\_**

This PURCHASE AGREEMENT ASSIGNMENT NO. 1- \_\_\_\_ (the "Assignment"), dated as of \_\_\_\_\_, 200\_\_, is between EXPRESSJET AIRLINES, INC., a Delaware corporation (the "Assignor"), and PM Limited, a Cayman Islands company (the "Assignee").

WHEREAS, the Assignor and the Manufacturer (as hereinafter defined) are parties to the Purchase Agreement (as hereinafter defined) providing, among other things, for the manufacture and sale by the Manufacturer to the Assignor of certain aircraft, engines and related equipment, including the Aircraft (as hereinafter defined), and the Aircraft is covered by the Lease Agreement (as hereinafter defined).

WHEREAS, the Assignee wishes to acquire the Aircraft from the Manufacturer, and the Assignor, on the terms and conditions hereinafter set forth, is willing to assign to the Assignee certain of the Assignor's rights and interests under the Purchase Agreement, and the Assignee is willing to accept such assignment, as hereinafter set forth.

WHEREAS, the Manufacturer is willing to execute and deliver to Assignee a Consent and Agreement to the provisions hereof in substantially the form attached hereto as Annex 1.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. For all purposes of this Assignment, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

Aircraft. The Embraer Model EMB-145 XR aircraft to be delivered under the Purchase Agreement bearing Manufacturer's Serial No. \_\_\_\_\_ and U.S. Registration Mark N \_\_\_\_\_ (as hereinafter defined), with two Allison AE3007A1E engines installed on such aircraft on the date of delivery therefor, together with the equipment, components and accessories installed thereon pursuant to the Purchase Agreement.

Lease or Lease Agreement. The Lease Agreement dated as of the date hereof as the same may be amended, modified or supplemented, between Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Trustee, as lessor, and Continental Airlines, Inc. ("CAL"), as lessee, providing for the lease of the Aircraft.

Manufacturer. EMBRAER-Empresa Brasileira de Aeronautica S.A., a corporation organized and existing under the laws of Brazil, and its successors and assigns.

Purchase Agreement. Purchase Agreement No. GPJ-003/96, dated August 5, 1996 as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms, between the Manufacturer and the Assignor (formerly known as

Continental Express, Inc.) solely with respect to Articles 1, 2(a), 3(a), 4(a), 5(a), 6, 7(a) and (c), 12(a), 15, 17, 19, 20, 21, 24, 25, 26, 27, 28, 29 and 30 thereof, and Attachment C thereto providing, among other things, for the manufacture and sale by the Manufacturer to the Assignor (or its designee) of the airframe, Allison AE3007A1E engines and parts installed thereon.

All terms used herein in capitalized form which are defined in the Lease and not otherwise defined herein shall, when used herein, have the meanings specified in Annex A to the Lease.

2. Subject to the terms and conditions of this Assignment, Assignor does hereby sell, assign, transfer and set over unto the Assignee all the Assignor's rights and interest in and to the Purchase Agreement as and to the extent that the same relate to the Aircraft and the purchase and operation thereof, except to the extent reserved below, including, without limitation, (a) the right upon valid tender by the Manufacturer to purchase the Aircraft pursuant to the Purchase Agreement (including the right to accept delivery of such Aircraft, such right of acceptance to be exercised by a representative of the Assignor authorized by the Assignee and designated by the Assignor pursuant to Section 2.2(b) of the Lease), and the right to take title to the Aircraft and to be named the buyer in the bill of sale to be delivered by the Manufacturer for the Aircraft pursuant to Article 7(c) of the Purchase Agreement, (b) all claims for damages in respect of the Aircraft arising as a result of any default by the Manufacturer under the Purchase Agreement or any supplier of parts or equipment installed on or in the Aircraft, including, without limitation, all warranty and indemnity provisions contained in the Purchase Agreement, and all claims arising thereunder, in respect of the Aircraft, and (c) any and all rights of the Assignor to compel performance of the terms of the Purchase Agreement in respect of the Aircraft; reserving to the Assignor however, (i) all the Assignor's rights and interests in and to the Purchase Agreement to the extent the same relates to aircraft other than the Aircraft and the purchase and operation of such aircraft and to the extent it pertains to any other matters not directly pertaining to the Aircraft, and (ii) all the Assignor's rights and obligations with respect to any post-delivery adjustment of the purchase price of the Aircraft (and any other payments made or to be made by the Assignor in respect of such Aircraft under the Purchase Agreement or amounts credited or to be credited by the Manufacturer to the Assignor, provided that Assignor shall obtain no additional rights in or to the Aircraft or any part thereof by reason of making any such payment), and (iii) with respect to the Aircraft so long as the Aircraft is subject to the Lease (A) the rights to demand, accept and retain all rights in and to all property (other than the Aircraft), data and service related to the Aircraft which the Manufacturer is obligated to provide or does provide pursuant to the Purchase Agreement, and (B) the right to obtain services, training, data and demonstration and test flights related to the Aircraft pursuant to the Purchase Agreement (provided that after reasonable prior notice by CAL to Manufacturer, CAL shall be entitled to the rights referred to in this clause (iii) in lieu of the Assignor), and (iv) the right to maintain plant representatives at the Manufacturer's plant pursuant to the Purchase Agreement. The Assignee hereby accepts such assignment subject to the terms hereof.

Notwithstanding the foregoing, so long as no Lease Event of Default as defined in Section 14 of the Lease has occurred and is continuing, the Assignee shall and it does hereby authorize the Assignor during the term of the Lease, as sublessee under the Express Sublease, to the exclusion of the Assignee, to exercise in Assignor's own name all rights and powers of the "Buyer" under the Purchase Agreement including the right to retain any recovery or benefit resulting from the enforcement of any warranty or indemnity under the Purchase Agreement in respect of the Aircraft except that the Assignor may not enter into any amendment, modification or supplement to the Purchase Agreement without the written consent or countersignature of the Assignee if such amendment, modification or supplement would result in any rescission,

cancellation or termination of the Purchase Agreement with respect to the Aircraft, except as permitted by Article 9 or 22 of the Purchase Agreement provided that after reasonable prior notice by CAL to Manufacturer, CAL shall be entitled to exercise the rights of the Assignor referred to in this paragraph.

Until such time as written notice of a Lease Event of Default or termination of the Lease shall have been given by the Lessor to the Manufacturer, to its Director of Contracts, by mail to EMBRAER-Empresa Brasileira de Aeronautica S.A., Av. Brigadeiro Faria Lima, 2170, 12.227-901 Sao Jose dos Campos-SP, Brazil, or by fax to fax no.: 55 12-3927-1257, the Manufacturer shall deal solely and exclusively with the Assignor. After such notice has been given to the Manufacturer, and until the Lessor shall have notified the Manufacturer that a Lease Event of Default is no longer continuing, the Manufacturer shall deal solely and exclusively with the Lessor. Assignee shall cause Lessor to promptly after all Lease Events of Default have been remedied to the satisfaction of Lessor, give written notice that such remedy has occurred to the Manufacturer with a copy to the Assignor, and upon the Manufacturer's receipt of such notice, the Assignor and the Manufacturer shall have all of the respective rights which they have hereunder and under the Consent and Agreement annexed hereto in the absence of notice from the Lessor of a Lease Event of Default.

For all purposes of this Assignment, the Manufacturer shall not be deemed to have knowledge of, and need not recognize nor take any action with respect to, the occurrence of a Lease Event of Default, or the discontinuance of a Lease Event of Default, or the Aircraft's becoming no longer subject to the Lease, or the termination of the Assignor's rights hereunder by CAL to the extent permitted herewith, unless and until the Manufacturer shall have received from the Lessor or CAL, as required by the terms of this Assignment, written notice (including notice by fax) thereof and, in acting in accordance with the terms and conditions of the Purchase Agreement and this Assignment, the Manufacturer may act in accordance with and conclusively rely upon any such notice.

3. It is expressly agreed that, anything herein contained to the contrary notwithstanding: (a) the Assignor shall at all times remain liable to the Manufacturer under the Purchase Agreement to perform all duties and obligations of the "Buyer" thereunder to the same extent as if this Assignment had not been executed; (b) the exercise by the Assignee of any of the rights assigned hereunder shall not release the Assignor from any of its duties or obligations to the Manufacturer under the Purchase Agreement except to the extent that such exercise by the Assignee shall constitute performance of such duties and obligations; (c) subject to the provisions of the penultimate paragraph of this Section 3, the Assignee shall not have any obligation or liability under the Purchase Agreement (including in particular, but without limitation, any liability for the payment of any taxes and customs duties under the Purchase Agreement, the obligation for payment of which shall remain with the Assignor as provided in clause (d) below) by reason of, or arising out of, this Assignment or be obligated to perform any of the obligations or duties of the Assignor under the Purchase Agreement or to make any payment (other than to pay the purchase price for the Aircraft as invoiced on the delivery date for such Aircraft to the extent and upon the terms and conditions set forth in the Purchase Agreement and the Lease Agreement) or to make any inquiry as to the sufficiency of any payment received by it or to present or file any claim or to take any other action to collect or enforce any claim for any payment assigned hereunder; (d) after the delivery date for the Aircraft

under the Purchase Agreement, the Assignor will exercise its rights and perform its obligations under the Purchase Agreement to the extent that such rights and obligations have not been assigned hereunder or performed by the Assignee. Nothing contained in this Section 3 shall impose upon the Assignee any liability for post-delivery adjustments in price, which adjustments it is understood and agreed will be the sole right and responsibility of the Assignor.

Nothing contained herein shall subject the Manufacturer to any liability to which it would not otherwise be subject under the Purchase Agreement or modify in any respect the Manufacturer's contract rights thereunder or require the Manufacturer to divest itself of title to or possession of the Aircraft therefor until delivery thereof and payment therefor on the delivery date as provided therein.

Without in any way releasing the Assignor from any of its duties or obligations under the Purchase Agreement, the Assignee hereby agrees, expressly for the benefit of the Manufacturer, that notwithstanding anything contained herein to the contrary, insofar as the provisions of the Purchase Agreement relate to the Aircraft accepted by Assignee under the Purchase Agreement, in exercising any rights under the Purchase Agreement, or in making any claim with respect to the Aircraft or other things (including without limitation data, documents and services) delivered or to be delivered pursuant to the Purchase Agreement, the terms and conditions of the Purchase Agreement, shall apply to and be binding upon Assignee to the same extent as if Assignee had been the original "Buyer" thereunder. Assignee further agrees, expressly for the benefit of the Manufacturer, that at any time and from time to time upon the written request of the Manufacturer, Assignee shall promptly and duly execute and deliver any and all such further assurances, instruments and documents and take all such further action as the Manufacturer may reasonably request in order to obtain the full benefits of Assignee's agreements set forth in this paragraph.

The Assignee hereby confirms that it shall be deemed for all purposes to have read and be familiar with the Purchase Agreement and to thoroughly understand the terms and conditions thereof.

4. On the delivery date for the Aircraft, the Assignee agrees, subject to satisfaction or waiver of the conditions set forth in Section 4 of the Participation Agreement to purchase the Aircraft from the Manufacturer and, subject to the provisions of clause (c) of the first paragraph of Section 3 hereof, to pay (or agree to pay) the Manufacturer an amount equal to the unpaid balance of the purchase price payable to the Manufacturer on such Delivery Date for such Aircraft pursuant to the Purchase Agreement, as such unpaid balance may be adjusted in accordance with the terms of the Purchase Agreement and invoiced by the Manufacturer to the Assignee on or before the delivery date for such Aircraft.

5. The Assignor agrees that at any time and from time to time upon the written request of the Assignee, the Assignor will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Assignee may reasonably request in order to obtain the full benefits of this Assignment and of the rights and powers herein granted.

6. The Assignor does hereby represent and warrant (a) that the Purchase Agreement is in full force and effect and is a legal, valid and binding obligation of Assignor, enforceable in accordance with its terms and that Assignor is not in default thereunder; and (b) that Assignor has not assigned, mortgaged, charged or pledged, and hereby covenants that it will not assign, mortgage, charge or pledge, so long as this Assignment shall remain in effect, the whole or any part of the rights hereby assigned or any of its rights with respect to the Aircraft under the Purchase Agreement not assigned hereby, to anyone other than the Assignee.

7. The Assignee agrees that, so long as the Lease has not been terminated and the Assignor remains in possession, it will not enter into any agreement with the Manufacturer that would amend, modify, rescind, cancel or terminate the Purchase Agreement in respect of the Aircraft without the prior written consent of the Assignor.

8. The Assignee agrees that it will not disclose to any third party (other than their direct and indirect parent companies) the terms of the Purchase Agreement (whether or not related to the Aircraft) or this Assignment, except (a) as required by applicable law, judicial proceeding or governmental regulation, or (b) as required for the assignment of its rights under this Assignment in accordance with the provisions of Article 16 of the Purchase Agreement, or (c) with the prior written consent of the Assignor and the Manufacturer, which consent shall not be unreasonably withheld with respect to a prospective bona fide purchaser of the Aircraft. Any disclosure as contemplated in (b) above shall include a requirement that the entity to which the information is disclosed shall be subject to obligations of nondisclosure with respect to such information substantially the same as those contained herein.

9. This Assignment is executed by the Assignor and the Assignee concurrently with the execution and delivery of the Lease.

10. This Assignment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11. THIS PURCHASE AGREEMENT ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REGARD TO CONFLICT OF LAWS RULES OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

[The remainder of this page has been left blank intentionally.]

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

EXPRESSJET AIRLINES, INC.

By \_\_\_\_\_

PM LIMITED

By \_\_\_\_\_

[Partial Assignment]



CONSENT AND AGREEMENT No. 1- \_\_\_\_

The undersigned, EMBRAER-EMPRESA BRASILEIRA DE AERONAUTICA S.A., a corporation organized and existing under the laws of Brazil, hereby acknowledges notice of and consents to all of the terms of the foregoing Purchase Agreement Assignment - No. 1- \_\_\_\_, dated as of \_\_\_\_\_, 200\_\_, between EXPRESSJET AIRLINES, INC. and PM LIMITED, to the extent they relate to the Manufacturer (herein called the "Assignment", the defined terms therein being hereinafter used with the same meaning) and hereby confirms to the Assignee that: (i) all representations, warranties, indemnities and agreements of the Manufacturer under the Purchase Agreement with respect to the Aircraft shall inure to the benefit of the Assignee to the same extent as if originally named the "Buyer" therein, subject to the terms and conditions of the Assignment and the Purchase Agreement, except as provided in paragraph 2 of the Assignment, (ii) the Assignee shall not be liable for any of the obligations or duties of the Assignor under the Purchase Agreement, nor shall the Assignment give rise to any duties or obligations whatsoever on the part of the Assignee owing to the Manufacturer except for the Assignee's agreement in the Assignment to the effect that in exercising any rights under the Purchase Agreement, or in making any claim with respect to the Aircraft or other things (including without limitation data, documents and services) delivered or to be delivered pursuant to the Purchase Agreement, the terms and conditions of the Purchase Agreement, shall apply to and be binding upon Assignee to the same extent as if Assignee had been the original "Buyer" thereunder, and with respect to such agreement the Manufacturer agrees that, anything contained in the Purchase Agreement or the Assignment to the contrary notwithstanding, so long as the Manufacturer shall not have received notice from Lessor that a Lease Event of Default has occurred and is continuing, the Assignee shall not have any responsibility to the Manufacturer for failure to comply with any of the terms of the Purchase Agreement with respect to the Aircraft while under lease to CAL so long as the Assignee acts upon the written instructions of the Assignor (or if CAL shall have specified in a written notice to Assignee and Manufacturer, CAL) (to which instructions the Manufacturer understands it shall have access on request); provided that no person other than the Manufacturer shall have any rights against the Assignee with respect to the undertaking and agreement set forth in this clause (ii); (iii) the Manufacturer will continue to pay to the Assignor (or if CAL shall have specified in a written notice to Assignee and Manufacturer, CAL) all payments which the Manufacturer may be required to make in respect of the Aircraft under the Purchase Agreement unless and until the Manufacturer shall have received written notice addressed to its Director of Contracts, by mail to EMBRAER-Empresa Brasileira de Aeronautica S.A., Av. Brigadeiro Faria Lima, 2170, 12.227-901 Sao Jose dos Campos-SP, Brazil, or by fax to fax no: 55 12-3927-1257, that a Lease Event of Default has occurred and is continuing (which such notice from the Assignee shall be conclusive proof thereof to the Manufacturer and as to which the Manufacturer shall have no obligation to inquire), whereupon the Manufacturer will, until the Manufacturer shall have received notice in writing sent or addressed as aforesaid that no Lease Event of Default exists, make any and all payments and take any and all actions which it may be required thereafter to make or take in respect of the Aircraft under the Purchase Agreement and the right to receive which has been assigned under the Assignment to the Assignee (which has its registered office at the offices of

Caledonian Bank & Trust Limited, Caledonian House, P.O. Box 1043, Dr Roy's Drive, George Town, Grand Cayman, Cayman Islands); and (iv) from and after the delivery of the Aircraft and payment in full therefor pursuant to Article 4 of the Purchase Agreement as invoiced on the Delivery Date the Manufacturer will not assert any lien or claim against the Aircraft or any part thereof arising with respect to or in connection with any work or other services performed before the delivery and acceptance of the Aircraft.

The Manufacturer hereby represents and warrants that (A) the Manufacturer is a corporation duly organized and existing in good standing under the laws of Brazil, (B) the making and performance of the Purchase Agreement have been duly authorized by all necessary corporate action on the part of the Manufacturer, do not require any stockholder approval, do not contravene the Manufacturer's By-Laws or any indenture, credit agreement or other contractual agreement to which the Manufacturer is a party or by which it is bound, and the making of the Purchase Agreement does not contravene any law binding on the Manufacturer, (C) the making and performance of this Consent and Agreement have been duly authorized by all necessary corporate action on the part of the Manufacturer, do not require any stockholder approval and do not contravene any law binding on the Manufacturer or contravene the Manufacturer's By-laws or any indenture, credit agreement or other contractual agreement to which the Manufacturer is a party or by which it is bound and (D) the Purchase Agreement constituted as of the date thereof and at all times thereafter to and including the date of this Consent and Agreement constitutes a binding obligation of the Manufacturer enforceable against the Manufacturer in accordance with its terms subject to: (i) the limitations of applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally; and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), which principles do not make the remedies available at law or in equity with respect to the Purchase Agreement inadequate for the practical realization of the benefits intended to be provided thereby and this Consent and Agreement is a binding obligation of the Manufacturer enforceable against the Manufacturer in accordance with its terms subject to: (a) the limitations of applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally; and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), which principles do not make the remedies available at law or in equity which respect to this Consent and Agreement inadequate for the practical realization of the benefits intended to be provided thereby. It is understood that the execution by the Manufacturer of this Consent and Agreement is subject to the condition that concurrently with the delivery of the Aircraft the Aircraft will be leased to Lessee under the Lease Agreement.

[The remainder of this page has been left blank intentionally.]

This Consent and Agreement shall be governed by the laws of the State of New York, including all matters of construction, validity and performance, as applicable to contracts between citizens of the state to be performed wholly within that state, and without regard to conflicts of law rules other than Section 5-1401 of the New York General Obligations Law.

Dated as of \_\_\_\_\_, 200\_\_

EMBRAER-EMPRESA BRASILEIRA  
DE AERONAUTICA S.A.

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

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

[Consent and Agreement]

EXHIBIT D-3 to  
Note Purchase Agreement

FORM OF PURCHASE AGREEMENT ASSIGNMENT  
(NEW AIRCRAFT)

**PURCHASE AGREEMENT ASSIGNMENT NO. 2 - \_\_\_\_\_**

PURCHASE AGREEMENT ASSIGNMENT NO. 2 - \_\_\_\_\_, dated as of \_\_\_\_\_, 200\_\_ (this "Assignment"), between PM LIMITED, a Cayman Islands company (the "Assignor" or "PM Limited"), and WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity but solely as Owner Trustee (the "Assignee").

Recitals

WHEREAS, EXPRESSJET AIRLINES, INC., a Delaware corporation ("Express") and EMBRAER-Empresa Brasileira de Aeronautica S.A., a corporation organized under the laws of Brazil ("Embraer"), have entered into the Purchase Agreement, pursuant to which, among other things, Embraer has agreed to manufacture and sell to Express, and Express has agreed to purchase from Embraer, certain aircraft, including the Aircraft (as defined in the Purchase Agreement Assignment No. 1 described below);

WHEREAS, pursuant to a Purchase Agreement Assignment No. 1 - \_\_\_\_\_, dated as of the date hereof ("PAA No. 1"), between Express and PM Limited, Express has, among other things, assigned to PM Limited, with the consent of the Manufacturer, certain of its right, title and interest in, to and under the Purchase Agreement including, without limitation, the right to purchase the Aircraft from Embraer upon and subject to the terms and conditions set forth in the Purchase Agreement and PAA No. 1;

WHEREAS, PM Limited has purchased the Aircraft from Embraer and, concurrently therewith, has sold the Aircraft to Wells Fargo Bank Northwest, National Association, acting not in its individual capacity but solely as Owner Trustee under the Trust Agreement \_\_\_\_\_ dated as of the date hereof (the "Original Trust Agreement"), between Refine, Inc., as Owner Participant (the "Owner Participant"), and Wells Fargo Bank Northwest, National Association ("Wells Fargo");

WHEREAS, in connection with the sale of the Aircraft by PM Limited to the Owner Trustee and with the consent of the Manufacturer, PM Limited shall, pursuant to this Assignment, transfer to the Owner Trustee all of PM Limited's present and future rights, title, obligations and interests in, to and under the Purchase Agreement as assigned by PAA No. 1, except for PM Limited's right to purchase the Aircraft from the Manufacturer pursuant to Section 2(a) of PAA No. 1;

WHEREAS, the Owner Trustee desires to (i) issue Equipment Notes (as defined in Annex A to the Lease Agreement referred to herein) for the purpose of enabling the Owner Participant to repay, in part, the indebtedness relating to the acquisition of the Aircraft by the Owner Trustee, and (ii) lease the Aircraft to Continental Airlines, Inc. ("Continental") pursuant to the Lease Agreement (as hereinafter defined); and

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WHEREAS, to facilitate the transactions described in the immediately preceding Whereas clause, the Manufacturer is willing to execute and deliver to the Assignee a Consent and Agreement to the provisions hereof in substantially the form attached hereto as Annex 1;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged the parties hereto agree as follows:

Section 1. Definitions. Capitalized terms used but not defined herein shall have the respective meanings set forth or incorporated by reference, and shall be construed and interpreted in the manner described, in PAA No. 1.

Section 2. Transfer and Assumption. The Assignor does hereby sell, assign and transfer to the Assignee all of the Assignor's present and future rights, title, obligations and interest in, to and under the Purchase Agreement as assigned by PAA No. 1, excluding the right to purchase the Aircraft from the Manufacturer (the "Assignor's Interest") and the Assignee hereby accepts the Assignor's Interest from the Assignor. The Assignee agrees that it shall be bound by all the terms of, and shall assume and undertake to perform all the obligations of, the Assignor with respect to the Assignor's Interest.

Section 3. Confidential Treatment. The Assignee and the Assignor agree that the provisions of Paragraph 8 of PAA No. 1 are hereby terminated and superseded by the provisions of this Section 3 and, in furtherance thereof, agree that they will not disclose to any third party (other than their direct and indirect parent companies) the terms of the Purchase Agreement (whether or not related to the Aircraft) or PAA No. 1 or this Assignment, except (a) as required by applicable law, judicial proceeding or governmental regulation, (b) in the case of the Assignee, as required for the assignment of its rights under this Assignment in accordance with the provisions of Article 16 of the Purchase Agreement, (c) with the prior written consent of Express, the Assignor and the Manufacturer, which consent shall not be unreasonably withheld with respect to a prospective bona fide purchaser of the Aircraft, (d) to prospective and permitted transferees of Owner Participant's interest or their or Owner Participant's respective counsel or special counsel, independent insurance brokers, auditors, or other agents, (e) as otherwise permitted by the Operative Agreements (as defined in Annex A to the Lease), or (f) to such other Persons as are reasonably deemed necessary by the disclosing party for the purposes of enforcing such documents by such party; provided that any such disclosure under this sentence shall be made only to the extent necessary to meet the specific requirements or needs of the Assignee or PM Limited, as the case may be. Any disclosure as contemplated in (b), (c) or (d) above shall include a requirement that the entity to which the information is disclosed shall be subject to obligations of nondisclosure with respect to such information substantially the same as those contained herein.

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Section 4. Assignment to Mortgagee. The right, title and interest of the Assignee in and to this Assignment has, contemporaneously with the execution and delivery hereof, been assigned to and is subject to a security interest in favor of the Mortgagee (as such terms and the other capitalized terms used hereinafter in this sentence are defined in Appendix A to the Lease) under the Trust Indenture, for the benefit of the Loan Participants and the Note Holders referred to the Trust Indenture, all to the extent provided in such Trust Indenture. The Assignor hereby consents to such assignment and to the creation of such security interest in and to this Assignment.

Section 5. Notices. Any notices provided for in PAA No. 1 shall be delivered to the Assignee at the following address or such other place as the Assignee may designate in accordance with PAA No. 1:

Wells Fargo Bank Northwest,  
National Association  
MAC: U1228-120  
Attn: Corporate Trust Dept.  
299 S. Main Street, 12th Floor  
Salt Lake City, UT 84111  
Facsimile: 801-246-5053

Section 6. Headings. The headings of the Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 7. GOVERNING LAW. THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT REGARD TO CONFLICT OF LAWS RULES OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

Section 8. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts (or upon separate signature pages bound together into one or more counterparts), each of which when so executed shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

Section 9. Purchase Agreement. The rights and obligations of the parties hereto are subject to the terms and conditions of the Purchase Agreement.

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

PM LIMITED, as Assignor

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

Name:

Title:

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, not in its individual  
capacity but solely as Owner Trustee, as Assignee

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

Name:

Title:

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**CONSENT AND AGREEMENT No. 2 - \_\_\_\_\_**

The undersigned, EMBRAER-EMPRESA BRASILEIRA DE AERONAUTICA S.A., a corporation organized and existing under the laws of Brazil, hereby acknowledges notice of and consents to all of the terms of the foregoing Purchase Agreement Assignment No. 2 - \_\_\_\_\_, dated as of \_\_\_\_\_, 200\_\_, by and among PM LIMITED and WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity but solely as Owner Trustee, to the extent they relate to the Manufacturer (herein called the "Assignment No. 2", the defined terms therein being hereinafter used with the same meaning) and hereby confirms to the Assignee that: (i) all representations, warranties, indemnities and agreements of the Manufacturer under the Purchase Agreement with respect to the Aircraft shall inure to the benefit of the Assignee to the same extent as if originally named the "Buyer" therein, subject to the terms and conditions of the Assignment No. 2, the Purchase Agreement and PAA No. 1; (ii) the Assignee shall not be liable for any of the obligations or duties of Express under the Purchase Agreement, nor shall the Assignment No. 2 give rise to any duties or obligations whatsoever on the part of the Assignee owing to the Manufacturer except for the Assignee's agreement to the effect that in exercising any rights under the Purchase Agreement, or in making any claim with respect to the Aircraft or other things (including without limitation data, documents and services) delivered or to be delivered pursuant to the Purchase Agreement, the terms and conditions of the Purchase Agreement shall apply to and be binding upon the Assignee to the same extent as if the Assignee had been the original "Buyer" thereunder, and with respect to such agreement the Manufacturer agrees that, anything contained in the Purchase Agreement or the Assignment No. 2 to the contrary notwithstanding, so long as the Manufacturer shall not have received notice that a Lease Event of Default has occurred and is continuing, the Assignee shall not have any responsibility to the Manufacturer for failure to comply with any of the terms of the Purchase Agreement with respect to the Aircraft while under lease to Continental so long as the Assignee acts upon the written instructions of Express (or, if Continental shall have specified in a written notice to the Assignee and the Manufacturer that Continental is entitled to possession of the Aircraft, Continental) (to which instructions the Manufacturer understands it shall have access on request); provided that no person other than the Manufacturer shall have any rights against the Assignee with respect to the undertaking and agreement set forth in this clause (ii); (iii) the Manufacturer will continue to pay to Express (or, if Continental shall have specified in a written notice to the Assignee and the Manufacturer that Continental is entitled to possession of the Aircraft, Continental) all payments which the Manufacturer may be required to make in respect of the Aircraft under the Purchase Agreement unless and until the Manufacturer shall have received written notice addressed to its Contracts Administrator, by mail to EMBRAER-Empresa Brasileira de Aeronautica S.A., Av. Brigadeiro Faria Lima, 2170, 12.227-901 Sao Jose dos Campos-SP, Brazil, or by fax to fax no: 55 12-3927-1257, that a Lease Event of Default has occurred and is continuing (which such notice from the Assignee shall be conclusive proof thereof to the

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Manufacturer and as to which the Manufacturer shall have no obligation to inquire), whereupon the Manufacturer will, until the Manufacturer shall have received notice in writing sent or addressed as aforesaid that no Lease Event of Default exists, make any and all payments and take any and all actions which it may be required thereafter to make or take in respect of the Aircraft under the Purchase Agreement and the right to receive which has been assigned under the Assignment No. 2 directly to the Assignee at its address at MAC: U1228-120, 299 S. Main Street, 12th Floor, Salt Lake City, Utah 84111, telecopy no. 801-246-5053; (iv) from and after the delivery of the Aircraft on the Delivery Date, the Manufacturer will not assert any lien or claim against the Aircraft or any part thereof arising with respect to or in connection with any work or other services performed before the delivery and acceptance of the Aircraft; and (v) the Manufacturer consents to the grant of a security interest in the Purchase Agreement pursuant to the Trust Indenture (as defined in Appendix A to the Lease).

The Manufacturer hereby represents and warrants that (A) the Manufacturer is a corporation duly organized and existing in good standing under the laws of Brazil, (B) the making and performance of the Purchase Agreement have been duly authorized by all necessary corporate action on the part of the Manufacturer, do not require any stockholder approval, do not contravene the Manufacturer's By-Laws or any indenture, credit agreement or other contractual agreement to which the Manufacturer is a party or by which it is bound, and the making of the Purchase Agreement does not contravene any law binding on the Manufacturer, (C) the making and performance of this Consent and Agreement have been duly authorized by all necessary corporate action on the part of the Manufacturer, do not require any stockholder approval and do not contravene any law binding on the Manufacturer or contravene the Manufacturer's By-laws or any indenture, credit agreement or other contractual agreement to which the Manufacturer is a party or by which it is bound, (D) the Purchase Agreement constituted as of the date thereof and at all times thereafter to and including the date of this Consent and Agreement constitutes a binding obligation of the Manufacturer enforceable against the Manufacturer in accordance with its terms subject to: (i) the limitations of applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally) and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and (E) this Consent and Agreement is a binding obligation of the Manufacturer enforceable against the Manufacturer in accordance with its terms subject to: (a) the limitations of applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally; and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). It is understood that the execution by the Manufacturer of this Consent and Agreement is subject to the condition that concurrently with execution and delivery hereof the Aircraft will be leased to Continental under the Lease Agreement.

[The remainder of this page has been left blank intentionally.]

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This Consent and Agreement shall be governed by the laws of the State of New York, including all matters of construction, validity and performance, as applicable to contracts between citizens of the state to be performed wholly within that state, and without regard to conflicts of law rules other than Section 5-1401 of the New York General Obligations Law.

Dated as of \_\_\_\_\_, 200\_\_.

EMBRAER-EMPRESA BRASILEIRA  
DE AERONAUTICA S.A.

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

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

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EXHIBIT E to  
Note Purchase Agreement

FORM OF TRUST AGREEMENT

(Filed Separately)

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EXHIBIT F  
TO  
NOTE PURCHASE AGREEMENT

DELIVERY NOTICE

Dated as of [\_\_]

To each of the addressees listed  
in Schedule A hereto

*Re: Delivery Notice in accordance with Note Purchase Agreement referred to below*

Ladies and Gentlemen:

Reference is made to the Note Purchase Agreement, dated as of September 22, 2005, among Continental Airlines, Inc. (the "Company"), Wilmington Trust Company, as Pass Through Trustee under the Pass Through Trust Agreement (as defined therein) (the "Pass Through Trustee"), Wilmington Trust Company, as Subordination Agent (the "Subordination Agent"), Wells Fargo Bank Northwest, National Association, as Escrow Agent (the "Escrow Agent") and Wilmington Trust Company, as Paying Agent (the "Paying Agent") (as in effect from time to time, the "Note Purchase Agreement"). Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth in the Note Purchase Agreement or, to the extent not defined therein, the Intercreditor Agreement.

Pursuant to Section 1(b) of the Note Purchase Agreement, the undersigned hereby notifies you, in respect of the Embraer Model EMB-145 XR aircraft with manufacturer's serial number [MSN] (the "Aircraft"), of the following:

- (1) The Scheduled Closing Date of the Aircraft is [\_\_\_\_\_]; and
- (2) The principal amount of the Equipment Notes to be issued, and purchased by the Pass Through Trustee on such Scheduled Closing Date, in connection with the financing of such Aircraft is \$[\_\_\_\_\_].

The Company hereby instructs the Pass Through Trustee to (i) execute a Withdrawal Certificate in the form of Annex A hereto dated as of [\_\_\_\_\_] and attach

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thereto a Notice of Purchase Withdrawal dated such date completed as set forth on Exhibit A hereto and (ii) deliver such Withdrawal Certificate and Notice of Purchase Withdrawal to the Escrow Agent.<sup>1</sup>

The Company hereby instructs the Pass Through Trustee to (i) purchase Equipment Notes in an amount set forth in clause (2) above with a portion of the proceeds [of the withdrawals of Deposits referred to in the Notice of Purchase Withdrawal referred to above]<sup>2</sup> [received on the Scheduled Closing Date from the Underwriter]<sup>3</sup> and (ii) re-deposit with the Depositary any amount not used on the Scheduled Closing Date to purchase Equipment Notes.

The Company hereby instructs the Pass Through Trustee to (a) enter into the Participation Agreement [TN] dated as of [\_\_\_\_\_] among the Company, as Lessee, Wilmington Trust Company, as Mortgagee and Loan Participant, Wells Fargo Bank Northwest, National Association, as Owner Trustee and Lessor, [\_\_\_\_], as Owner Participant, and Embraer-Empresa Brasileira de Aeronáutica, (b) perform its obligations thereunder and (c) deliver such certificates, documents and legal opinions relating to the Pass Through Trustee as required thereby.

Yours faithfully,

Continental Airlines, Inc.

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

Name:

Title:

\_\_\_\_\_

1. Eliminate if the Scheduled Closing Date is the Issuance Date.
2. Eliminate if the Scheduled Closing Date is the Issuance Date.
3. Insert if the Scheduled Closing Date is the Issuance Date.

SCHEDULE A

Wilmington Trust Company, as  
Pass Through Trustee, Subordination  
Agent and Paying Agent  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
Attention: Corporate Trust Administration  
Facsimile: (302) 651-8882

Wells Fargo Bank Northwest, National Association,  
MAC:U1228-120 as Escrow Agent  
299 South Main Street, 12th Floor  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Services  
Facsimile: (801) 246-5053

Citibank, N.A.  
388 Greenwich Street, 14<sup>th</sup> Floor  
New York, New York 10013  
Attention: Barbara Bennett  
Facsimile: (212) 657-2762

Standard & Poor's Ratings Services  
55 Water Street, 35th Floor  
New York, New York 10004  
Attention: Michael K. Vernier  
Facsimile: (212) 438-6632

Moody's Investors Service, Inc.  
99 Church Street  
New York, New York 10007  
Attention: Gregory Clifton  
Facsimile: (212) 298-7499

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WITHDRAWAL CERTIFICATE

Wells Fargo Bank Northwest, National Association  
as Escrow Agent

Ladies and Gentlemen:

Reference is made to the Escrow and Paying Agent Agreement, dated as of August [ ], 2005 (the "Agreement"). We hereby certify to you that the conditions to the obligations of the undersigned to execute a Participation Agreement pursuant to the Note Purchase Agreement have been satisfied. Pursuant to Section 1.02(c) of the Agreement, please execute the attached Notice of Purchase Withdrawal and immediately transmit by facsimile to the Depository, at (212) 657-2762 (Attention: Barbara Bennett). Capitalized terms used herein but not defined herein shall have the meanings set forth in the Agreement.

Very truly yours,

WILMINGTON TRUST COMPANY,  
not in its individual capacity but  
solely as Pass Through Trustee

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

Dated: As of \_\_\_\_\_, 200\_

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NOTICE OF PURCHASE WITHDRAWAL

Citibank, N.A.  
388 Greenwich Street, 14<sup>th</sup> Floor  
New York, New York 10013  
Attention: Barbara Bennett  
Telecopier: (212) 657-2762

Ladies and Gentlemen:

Reference is made to the Deposit Agreement dated as of August [ ], 2005 (the "Deposit Agreement") between Wells Fargo Bank Northwest, National Association, as Escrow Agent, and Citibank, N.A., as Depository (the "Depository").

In accordance with Section 2.3(a) of the Deposit Agreement, the undersigned hereby requests the withdrawal of the entire amount of the Deposit, \$[ ], Account No. [ ].

The undersigned hereby directs the Depository to pay the proceeds of the Deposit to [ ], Account No. [ ], Reference: [ ] on [ ], 200 [ ], upon the telephonic request of a representative of the Pass Through Trustee.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION,  
as Escrow Agent

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

Dated: As of \_\_\_\_\_, 200\_



**PARTICIPATION AGREEMENT [TN]**

Dated as of [DD]

Among

**CONTINENTAL AIRLINES, INC.,**  
Lessee,

**[OP],**  
Owner Participant,

**WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION,**  
Not in its individual capacity  
except as expressly provided herein,  
but solely as owner trustee,  
Owner Trustee and Lessor

**WILMINGTON TRUST COMPANY,**  
Not in its individual capacity  
except as expressly provided herein,  
but solely as Mortgagee, Subordination Agent  
under the Intercreditor Agreement, and Pass Through  
Trustee under the Pass Through Trust Agreement,  
Mortgagee and Loan Participant,

and

**EMBRAER-EMPRESA BRASILEIRA DE AERONÁUTICA S.A.**

Airframe Manufacturer

\_\_\_\_\_  
One Embraer Model EMB-145 XR Aircraft  
Bearing Manufacturer's Serial No. [MSN]  
and U.S. Registration No. N[REG]  
with Two Allison Model AE3007A1E Engines

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## PARTICIPATION AGREEMENT [TN]

PARTICIPATION AGREEMENT [TN], dated as of [DD] (this "Agreement"), among (a) CONTINENTAL AIRLINES, INC., a Delaware corporation ("Lessee"), (b) [OP], a corporation organized under the laws of the OP Jurisdiction ("Owner Participant"), (c) WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity, except as expressly provided herein, but solely as Owner Trustee (this and all other capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in Section 1) (in its capacity as Owner Trustee, "Owner Trustee" or "Lessor", and in its individual capacity, "Wells Fargo"), (d) WILMINGTON TRUST COMPANY, a Delaware banking corporation, not in its individual capacity, except as expressly provided herein, but solely as Mortgagee (in its capacity as Mortgagee, "Mortgagee" and in its individual capacity, "WTC"), (e) WILMINGTON TRUST COMPANY, not in its individual capacity, except as expressly provided herein, but solely as Pass Through Trustee under the Pass Through Trust Agreement ("Pass Through Trustee"), (f) WILMINGTON TRUST COMPANY, not in its individual capacity, except as expressly provided herein, but solely as Subordination Agent under the Intercreditor Agreement ("Subordination Agent"), and (g) EMBRAER-EMPRESA BRASILEIRA DE AERONÁUTICA S.A., a company organized under the laws of Brazil ("Airframe Manufacturer").

### RECITALS

A. Express and Airframe Manufacturer have entered into the Purchase Agreement, pursuant to which, among other things, Airframe Manufacturer has agreed to manufacture and sell to Express and Express has agreed to purchase from Airframe Manufacturer certain aircraft, including the Aircraft.

[B. Prior to the date hereof, in connection with the interim financing of the Aircraft, (i) certain of Express' rights under the Purchase Agreement with respect to the Aircraft were assigned to Lessor and (ii) the Aircraft was purchased by Lessor, leased to Lessee pursuant to the Existing Lease and subleased to Express pursuant to the Existing Sublease.]<sup>1</sup>

[B. On the Delivery Date, Express and Seller will enter into the Initial Purchase Agreement Assignment and Seller and Owner Trustee will enter into the Purchase Agreement Assignment, pursuant to which, among other things, Express' right to purchase the Aircraft from Airframe Manufacturer will be assigned to Seller and reassigned to the Owner Trustee upon and subject to the terms and conditions set forth in the Purchase Agreement, the Initial Purchase Agreement Assignment and the Purchase Agreement Assignment.]<sup>2</sup>

C. In order to effectuate the long-term financing of the Aircraft, the parties hereto intend that (i) the Owner Trustee issue, on a non-recourse basis, pursuant to the Trust Indenture the Equipment Notes to the Pass Through Trustee, [(ii) the Existing Lease be terminated and

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1. Delete for New Aircraft.  
2. Insert for New Aircraft.

replaced with the Lease, and the Aircraft continue to be leased to Lessee and subleased to Express]<sup>3</sup> [(ii) the Owner Trustee will purchase the Aircraft from the Airframe Manufacturer utilizing the Commitments and lease it to Lessee pursuant to the Lease and the Lessee will sublease the Aircraft to Express]<sup>4</sup> and (iii) Owner Trustee grant a security interest to Mortgagee in the Aircraft and the Lease for the benefit of the Note Holders.

D. The parties hereto wish to set forth in this Agreement the terms and conditions upon and subject to which the aforesaid transactions shall be effected.

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **SECTION 1. DEFINITIONS AND CONSTRUCTION**

Capitalized terms used but not defined herein shall have the respective meanings set forth or incorporated by reference, and shall be construed and interpreted in the manner described, in Annex A.

## **SECTION 2. ISSUANCE OF EQUIPMENT NOTES; TERMINATION OF OBLIGATION TO PARTICIPATE**

### **2.1 Issuance of Equipment Notes**

Subject to the terms and conditions of this Agreement, on the Closing Date, the Pass Through Trustee shall make a non-recourse secured loan to Owner Trustee to finance, in part, the Owner Trustee's payment of Lessor's Cost in the amount in Dollars equal to the Pass Through Trustee's PTT Percentage multiplied by Lessor's Cost, such loan to be evidenced by one or more Equipment Notes, dated the Closing Date, issued to the Subordination Agent as the registered holder on behalf of the Pass Through Trustee for the Pass Through Trust by Owner Trustee in accordance with this Agreement and the Trust Indenture, in an aggregate principal amount equal to the Commitment of the Pass Through Trustee.

### **2.2 Termination of Obligation to Participate**

Notwithstanding any other provision of this Agreement, if the Closing does not occur on or before the Commitment Termination Date, the Commitment of the Loan Participant and its obligation to participate in the payment of Lessor's Cost shall expire and be of no further force and effect; provided, that the liability of the Loan Participant that has defaulted in the payment of its Commitment shall not be released.]<sup>5</sup>

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3. Delete for New Aircraft.

4. Insert for New Aircraft.

5. Delete for New Aircraft.

**[SECTION 3. TERMINATION OF EXISTING FINANCING AGREEMENTS; COMMITMENT TO LEASE AIRCRAFT**

**3.1 Termination of Existing Financing Agreements**

(a) The Existing Lease and Existing Sublease for the Aircraft shall be terminated in order to be replaced by the Lease and the Express Sublease, and each of Lessor and Lessee shall take such action to evidence such termination as Owner Trustee or Mortgagee shall reasonably request, including execution and delivery of a termination agreement for the Existing Lease and Existing Sublease in form and substance reasonably acceptable to Owner Trustee and satisfactory for filing with the FAA, and UCC-3 termination statements with respect to the termination of the Existing Lease and Existing Sublease.

(b) The Existing Participation Agreement shall be terminated, effective as of the Closing, and the parties thereto shall have no further obligation thereunder except for Sections 7, 10 and 11 thereof and for any breach of such Agreement arising prior to the Closing.

(c) Lessor shall refund to Lessee "Basic Rent" (as defined in the Existing Lease) paid in advance by Lessee attributable to periods on and after the Closing Date determined by multiplying such Basic Rent by a fraction, the numerator of which shall be the number of days remaining in the month in which the Closing Date occurs (from and including the Closing Date) and the denominator of which shall be the total number of days in such month.

(d) Airframe Manufacturer shall pay and discharge all applicable sales, use or similar Taxes, duties or fees assessed or levied by any federal, state, provincial or local taxing authority as a result of the replacement of the existing financing agreements with the Operative Agreements and the Express Sublease or issuance of the Equipment Notes contemplated by this Agreement. Owner Trustee and Lessee will cooperate in order to minimize Taxes applicable to the termination of the existing financing agreements or issuance of the Equipment Notes contemplated by this Agreement.

**3.2 Commitment to Lease**

Subject to the terms and conditions of this Agreement, concurrently with the issuance of the Equipment Notes, Owner Trustee shall continue the lease of the Aircraft to Lessee, and Lessee shall continue the lease of the Aircraft from Owner Trustee, under the Lease.]<sup>6</sup>

**[SECTION 4. CLOSING; PROCEDURE FOR PAYMENT; POSTPONEMENT OF SCHEDULED CLOSING DATE**

**4.1 Closing**

The Closing shall occur at the offices of Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York 10004, or such other place as the parties shall agree, at the time specified pursuant to notice given in accordance with Section 1 of the Note Purchase Agreement.

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6. Delete for New Aircraft.

## 4.2 Payment of Proceeds

(a) The Loan Participant agrees, subject to the terms and conditions of this Agreement, to make the Dollar amount of its Commitment available, by wire transfer of immediately available funds to the account of WTC, ABA No. 031100092, Account No. [\_\_\_\_], reference Continental Lease [TN], at or before 12:00 Noon, New York City time, on the Scheduled Closing Date. All such funds made available by the Loan Participant to WTC shall, until payment thereof to Owner Trustee as provided in Section 4.2(c) or return thereof to the Loan Participant as provided in Section 4.3, be held by WTC in trust for the benefit of the Loan Participant, as the sole and exclusive property of the Loan Participant and not as part of the Trust Estate or the Trust Indenture Estate.

(b) Subject to the satisfaction or waiver by the applicable party of the conditions precedent set forth in Section 5, and simultaneously with the receipt by the parties hereto of all amounts to be paid to them on the Closing Date pursuant to this Section 4.2, Owner Trustee shall:

- (i) execute the Trust Indenture and the initial Trust Indenture Supplement and issue the Equipment Notes to the Subordination Agent in accordance with Section 2.1(b);
- (ii) lease the Aircraft to Lessee pursuant to the Lease; and
- (iii) take such other action as may be required to be taken by the Owner Trustee on the Closing Date by the terms of any Operative Agreement.

(c) Subject to the satisfaction or waiver by the applicable party of the conditions precedent set forth in Section 5, WTC shall pay to the Owner Trustee the amounts received from the Loan Participants pursuant to Section 4.2(a).

## 4.3 Postponement of Scheduled Closing Date

If for any reason whatsoever the Closing is not consummated on the Scheduled Closing Date, Airframe Manufacturer may by telephonic notice, given by 5:00 p.m., New York City time (such telephonic notice to be promptly confirmed in writing by personal delivery or facsimile), on the Scheduled Closing Date to Lessee, the Loan Participant, Owner Trustee and Mortgagee, designate a Delayed Closing Date, in which case any funds made available by the Loan Participant shall be returned on such Scheduled Closing Date and the Loan Participant shall comply with its obligations under Section 2.02(b) of the Trust Supplement.<sup>7</sup>

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7. Delete for New Aircraft.



**[SECTION 2. PARTICIPATION IN LESSOR'S COST; ISSUANCE OF EQUIPMENT NOTES; TERMINATION OF OBLIGATION TO PARTICIPATE**

**2.1 Participation in Lessor's Cost**

Subject to the terms and conditions of this Agreement, on the Closing Date, Owner Participant and the Pass Through Trustee shall participate in the payment of Lessor's Cost as follows:

(a) Owner Participant shall participate in the payment of Lessor's Cost for the Aircraft by making an equity investment in the beneficial ownership of the Aircraft in the amount in Dollars equal to Owner Participant's Percentage multiplied by Lessor's Cost; and

(b) The Pass Through Trustee shall make a non-recourse secured loan to Owner Trustee to finance, in part, the Owner Trustee's payment of Lessor's Cost in the amount in Dollars equal to the Pass Through Trustee's PTT Percentage multiplied by Lessor's Cost, such loan to be evidenced by one or more Equipment Notes, dated the Closing Date, issued to the Subordination Agent as the registered holder on behalf of each Pass Through Trustee for the Pass Through Trust by Owner Trustee in accordance with this Agreement and the Trust Indenture, in an aggregate principal amount equal to the Commitment of the Pass Through Trustee.

**2.2 Nature of Obligations of Participants**

The obligations hereunder of each Participant are several, and not joint, and a Participant shall have no obligation to make available to Owner Trustee any portion of any amount not paid hereunder by any other Participant. The failure by either Participant to perform its obligations hereunder shall not affect the obligations of Lessee toward the other Participant, except to the extent provided in Section 5.4.

**2.3 Termination of Obligation to Participate**

Notwithstanding any other provision of this Agreement, if the Closing does not occur on or before the Commitment Termination Date, the Commitment of each Participant and its obligation to participate in the payment of Lessor's Cost shall expire and be of no further force and effect; provided, that the liability of any Participant that has defaulted in the payment of its Commitment shall not be released.]<sup>8</sup>

**[SECTION 3. COMMITMENT TO LEASE AIRCRAFT**

Subject to the terms and conditions of this Agreement, concurrently with the issuance of the Equipment Notes, Owner Trustee shall purchase and accept delivery of the Aircraft under and pursuant to the Purchase Agreement and the Purchase Agreement Assignment, and

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8. Insert for New Aircraft.

thereupon Owner Trustee shall lease the Aircraft to Lessee, and Lessee shall lease the Aircraft from Owner Trustee, under the Lease.]<sup>9</sup>

**SECTION 4. PROCEDURE FOR PARTICIPATION IN PAYMENT OF LESSOR'S COST; POSTPONEMENT OF SCHEDULED DELIVERY DATE**

**4.1 Closing**

The Closing shall occur at the offices of Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York 10004, or such other place as the parties shall agree at the time specified pursuant to notice given in accordance with Section 1 of the Note Purchase Agreement.

**4.2 Payment of Lessor's Cost**

(a) Each Participant agrees, subject to the terms and conditions of this Agreement, to make the Dollar amount of its respective Commitment available, by wire transfer of immediately available funds to the account of WTC, ABA No. 031100092, Account No. [\_\_\_\_], reference Continental Lease [TN], at or before 12:00 Noon, New York City time, on the Scheduled Closing Date. All such funds made available by each Participant to WTC shall, until payment thereof to Airframe Manufacturer as provided in Section 4.2(b)(ii) or return thereof to the respective Participant as provided in Section 4.3.2, be held by WTC in trust for the benefit of the respective Participant, as the sole and exclusive property of the respective Participant and not as part of the Trust Estate or the Trust Indenture Estate.

(b) Subject to the satisfaction or waiver by the applicable party of the conditions precedent set forth in Section 5, and simultaneously with the receipt by the parties hereto of all amounts to be paid to them on the Closing Date pursuant to this Section 4.2, Owner Trustee shall:

(i) purchase, take title to, and accept delivery of, the Aircraft;

(ii) in consideration of the transfer of title to the Aircraft to Owner Trustee, direct WTC to pay Lessor's Cost, from the funds made available to WTC hereunder by the Participants, to Airframe Manufacturer, by wire transfer of immediately available funds to Airframe Manufacturer's account set forth in Schedule 1;

(iii) execute an application for registration of the Aircraft with the FAA and Lease Supplement No. 1, in each case with respect to the Aircraft;

(iv) execute the Trust Indenture and the initial Trust Indenture Supplement and issue the Equipment Notes to the Subordination Agent in accordance with Section 2.1(b);

(v) lease the Aircraft to Lessee, pursuant to the Lease; and

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9. Insert for New Aircraft.

(vi) take such other action as may be required to be taken by the Owner Trustee on the Closing Date by the terms of any Operative Agreement.

### 4.3 Postponement of Scheduled Closing Date

#### 4.3.1 Postponement

If for any reason whatsoever the Closing is not consummated on the Scheduled Closing Date, Airframe Manufacturer may, by telephonic notice, given by 5:00 p.m., New York City time (such telephonic notice to be promptly confirmed in writing by personal delivery or facsimile), on the Scheduled Closing Date to Lessee, each Participant, Owner Trustee and Mortgagee, designate a Delayed Closing Date, in which case the Owner Participant will make its funds available to WTC on the Delayed Closing Date in accordance with Section 4.2(a), and the Loan Participant shall comply with its obligations under Section [2.02(b)] of the Trust Supplement.

#### 4.3.2 Return of Funds

WTC shall promptly return to each Participant that makes funds available to it in accordance with Section 4.2(a) such funds, if the Closing fails to occur on the Scheduled Delivery Date.<sup>10</sup>

## SECTION 5. CONDITIONS PRECEDENT

### 5.1 Conditions Precedent to Obligations of Participants

The obligation of [each]<sup>11</sup> [the Loan]<sup>12</sup> Participant to make the Dollar amount of its Commitment available for payment as directed by the Owner Trustee on the Closing Date and of each Participant to take the other actions required by this Agreement to be taken by it at the Closing is subject to satisfaction or waiver by each such Participant, at or prior to the Closing, of the conditions precedent set forth below in this Section 5.1; provided, that it shall not be a condition precedent to the obligation of any Participant that any document be produced or action taken that is to be produced or taken by such Participant or by a Person within such Participant's control; provided, further, that Section 5.1.2(iii) [and (xv)]<sup>13</sup> shall not be conditions precedent to the obligation of Loan Participant, and Section 5.1.5 shall not be a condition precedent to the obligation of Owner Participant.

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10. Insert for New Aircraft.

11. Insert for New Aircraft.

12. Delete for New Aircraft.

13. Delete for New Aircraft.

### 5.1.1 Notice

Such Participant shall have received the notice described in Section 4.1 or, in the case of a Delayed Closing Date, 4.3, when and as required thereby, or shall have waived such notice.

### 5.1.2 Delivery of Documents

Such Participant shall, except as noted below, have received executed counterparts of the following agreements, instruments, certificates or documents, and each of such counterparts (a) shall have been duly authorized, executed and delivered by the respective party or parties thereto, (b) shall be reasonably satisfactory in form and substance to such Participant and (c) shall be in full force and effect:

- (i) the Lease; provided, that only Mortgagee shall receive the sole executed chattel paper original thereof;
- (ii) Lease Supplement No. 1; provided, that only Mortgagee shall receive the sole executed chattel paper original thereof;
- (iii) the Tax Indemnity Agreement; provided, that only Owner Participant and Lessee shall receive copies of the Tax Indemnity Agreement;
- (iv) the Trust Agreement;
- (v) the Trust Indenture;
- (vi) the initial Trust Indenture Supplement;
- (vii) [the Initial Purchase Agreement Assignment and]<sup>14</sup> the Purchase Agreement Assignment;
- (viii) the Consent and Agreement;
- (ix) the Equipment Notes dated the Closing Date; provided, that only the Subordination Agent shall receive the authenticated Equipment Notes;
- (x) an excerpted copy of the Purchase Agreement to the extent relating to Airframe Manufacturer's warranties or related obligations or any right in the Purchase Agreement assigned to Owner Trustee pursuant to the Purchase Agreement Assignment; provided, that only Owner Trustee and Mortgagee shall receive copies of such agreements (copies of which may be inspected by Participants and their respective special counsel on the Closing Date, but after the Closing Date such copies shall be retained by Owner Trustee and Mortgagee and may be inspected and reviewed by Owner Participant or Loan Participant or their respective counsel if and only if there shall have occurred and be continuing a Lease Default or Lease Event of Default);

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14. Insert for New Aircraft.

- [(xi) the OP Guaranty;]<sup>15</sup>
- (xii) the Express Sublease;
- (xiii) the broker's report and insurance certificates required by Section 11 of the Lease;
- [(xiv) termination agreements with respect to the Existing Lease and the Existing Sublease and, in the case of Owner Participant and Lessee, the Existing Participation Agreement and the "Tax Indemnity Agreement" as defined in the Existing Lease;]<sup>16</sup>
- [(xv) the Satisfaction and Discharge Agreement, dated as of the date of the Participation Agreement, among the Airframe Manufacturer, Seller, Owner Participant and Owner Trustee;]<sup>17</sup>
- [(xiv) the Bills of Sale;]<sup>18</sup>
- [(xv) an invoice from Seller to Owner Trustee in respect of the Aircraft;]<sup>19</sup>
- (xvi) (A) a copy of the Certificate of Incorporation and By-Laws of Lessee and resolutions of the board of directors of Lessee and/or the executive committee thereof, in each case certified as of the Closing Date, by the Secretary or an Assistant Secretary of Lessee, duly authorizing the execution, delivery and performance by Lessee of the Lessee Operative Agreements required to be executed and delivered by Lessee on or prior to the Closing Date in accordance with the provisions hereof and thereof; (B) an incumbency certificate of Lessee, Airframe Manufacturer, Owner Participant, Wells Fargo and WTC as to the person or persons authorized to execute and deliver the relevant Operative Agreements on behalf of such party; and (C) a copy of the Certificate of Incorporation or Articles of Incorporation and By-Laws and general authorizing resolutions of the boards of directors (or executive committees) or other satisfactory evidence of authorization of Airframe Manufacturer, Owner Participant, Wells Fargo and WTC, certified as of the Closing Date by the Secretary or an Assistant or Attesting Secretary of Airframe Manufacturer, Owner Participant, Wells Fargo and WTC, respectively, which authorize the execution, delivery and performance by Airframe Manufacturer, Owner Participant, Wells Fargo and WTC, respectively, of each of the Operative Agreements to which it is a party, together with such other documents and evidence with respect to it as Lessee or any Participant may reasonably request in order to establish the consummation of the

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15. Include if the OP is an Affiliate of Airframe Manufacturer.

16. Delete for New Aircraft.

17. Delete for New Aircraft.

18. Insert for New Aircraft.

19. Insert for New Aircraft.

transactions contemplated by this Agreement and the taking of all corporate proceedings in connection therewith;

(xvii) an Officer's Certificate of Lessee, dated as of the Closing Date, stating that its representations and warranties set forth in this Agreement are true and correct as of the Closing Date (or, to the extent that any such representation and warranty expressly relates to an earlier date, true and correct as of such earlier date);

(xviii) an Officer's Certificate of Wells Fargo, dated as of the Closing Date, stating that its representations and warranties, in its individual capacity and as Owner Trustee, set forth in this Agreement are true and correct as of the Closing Date (or, to the extent that any such representation and warranty expressly relates to an earlier date, true and correct as of such earlier date);

(xix) an Officer's Certificate of Owner Participant, dated as of the Closing Date, stating that its representations and warranties set forth in this Agreement are true and correct as of the Closing Date (or, to the extent that any such representation and warranty expressly relates to an earlier date, true and correct as of such earlier date);

(xx) an Officer's Certificate of WTC, dated as of the Closing Date, stating that its representations and warranties in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, as the case may be, set forth in this Agreement are true and correct as of the Closing Date (or, to the extent that any such representation and warranty expressly relates to an earlier date, true and correct as of such earlier date);

(xxi) an Officer's Certificate of Airframe Manufacturer, dated as of the Closing Date, stating that its representations and warranties set forth in this Agreement are true and correct as of the Closing Date (or, to the extent that any such representation and warranty expressly relates to an earlier date, true and correct as of such earlier date);

[(xxii) an appointment of authorized representatives by Owner Trustee, and an acceptance thereof by such representatives;]<sup>20</sup>

(xxiii) a copy of the application for registration of the Aircraft with the FAA in the name of Owner Trustee;

(xxiv) the Financing Statements;

(xxv) the following opinions of counsel, in each case dated the Closing Date:

(A) an opinion of Hughes Hubbard & Reed LLP, special counsel to Lessee, substantially in the form of Exhibit A;

(B) an opinion of Lessee's Legal Department, substantially in the form of Exhibit B;

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20. Insert for New Lease.

(C) an opinion of (x) corporate counsel to Airframe Manufacturer, substantially in the form of Exhibit C-1, and (y) Katten Muchin Rosenman, special counsel to Airframe Manufacturer, substantially in the form of Exhibit C-2;

(D) an opinion of Ray, Quinney & Nebeker, special counsel to Owner Trustee, substantially in the form of Exhibit D;

(E) an opinion of Richards, Layton & Finger, special counsel to Mortgagee and Loan Participant, substantially in the form of Exhibit E;

(F) an opinion of special counsel to Owner Participant, substantially in the form of Exhibit F;

(G) an opinion of Lytle Soulé; & Curlee, special counsel in Oklahoma City, Oklahoma, substantially in the form of Exhibit G;

(H) an opinion of Walkers, special counsel to Seller, substantially in the form of Exhibit H;

(xxvi) a copy of a current, valid Standard Certificate of Airworthiness for the Aircraft duly issued by the FAA;

(xxvii) the Participants and their respective counsel shall have received copies of such documents and papers as such Participants may reasonably request, other than (A) in the case of Loan Participant, copies of the Purchase Agreement, provided that special counsel for Loan Participant may inspect the Purchase Agreement in connection with the transactions contemplated hereby or as a basis for such counsel's closing opinion, and (B) in the case of parties other than Owner Participant and its special counsel, the Tax Indemnity Agreement.

### **5.1.3 Other Commitments**

[Each other]<sup>21</sup> [The Loan]<sup>22</sup> Participant shall have made available the Dollar amount of its Commitment in accordance with Section 4.

### **5.1.4 Violation of Law**

No change shall have occurred after the date of this Agreement in any applicable Law that makes it a violation of Law for (a) Lessee, any Participant, Subordination Agent, Owner Trustee or Mortgagee to execute, deliver and perform the Operative Agreements to which any of them is a party or (b) [any]<sup>23</sup> [the Loan]<sup>24</sup> Participant to make the Dollar amount of its

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21. Insert for New Aircraft.

22. Delete for New Aircraft.

23. Insert for New Aircraft.

Commitment available or to acquire an Equipment Note or to realize the benefits of the security afforded by the Trust Indenture.

#### **5.1.5 Perfected Security Interest**

On the Closing Date, after giving effect to the filing of the FAA Filed Documents and the Financing Statements, Mortgagee shall have received a duly perfected first priority security interest in all of Owner Trustee's right, title and interest in the Aircraft and the Lease, subject only to Permitted Liens.

#### **5.1.6 Representations, Warranties and Covenants**

The representations and warranties of each other party to this Agreement made, in each case, in this Agreement and in any other Operative Agreement to which it is a party, shall be true and accurate in all material respects as of the Closing Date (unless any such representation and warranty shall have been made with reference to a specified date, in which case such representation and warranty shall be true and accurate as of such specified date) and each other party to this Agreement shall have performed and observed, in all material respects, all of its covenants, obligations and agreements in this Agreement and in any other Operative Agreement to which it is a party to be observed or performed by it as of the Closing Date.

#### **5.1.7 No Event of Default**

On the Closing Date, no event shall have occurred and be continuing, or would result from the mortgage or lease of the Aircraft, which constitutes a Lease Default or Lease Event of Default, or an Indenture Default or Indenture Event of Default.

#### **5.1.8 No Event of Loss**

On the Closing Date, no Event of Loss with respect to the Airframe or any Engine shall have occurred and no circumstance, condition, act or event that, with the giving of notice or lapse of time or both, would give rise to or constitute an Event of Loss with respect to the Airframe or any Engine shall have occurred.

#### **5.1.9 Title**

Owner Trustee shall have good title to the Aircraft [(subject to filing and recordation of the FAA Bill of Sale with the FAA)]<sup>25</sup>, free and clear of Liens, except (a) the rights of Lessee under the Lease and Lease Supplement No. 1, (b) the Lien created by the Trust Indenture and the initial Trust Indenture Supplement and (c) other Permitted Liens.

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24. Delete for New Aircraft.

25. Insert for New Aircraft.



#### **5.1.10 Certification**

The Aircraft shall have been duly certificated by the FAA as to type, and an export certificate of airworthiness shall have been issued by the Brazilian aviation authority.

#### **5.1.11 Section 1110**

Owner Trustee, as lessor under the Lease (and Mortgagee, as assignee of Owner Trustee under the Trust Indenture), shall be entitled to the benefits of Section 1110 (as currently in effect) with respect to the right to take possession of the Airframe and Engines and to enforce any of its other rights or remedies as provided in the Lease in the event of a case under Chapter 11 of the Bankruptcy Code in which Lessee is a debtor.

#### **5.1.12 Filing**

On the Closing Date (a) the FAA Filed Documents shall have been duly filed for recordation (or shall be in the process of being so duly filed for recordation) with the FAA in accordance with the Act and (b) each Financing Statement shall have been duly filed (or shall be in the process of being so duly filed) in the appropriate jurisdiction.

#### **5.1.13 No Proceedings**

No action or proceeding shall have been instituted, nor shall any action be threatened in writing, before any Government Entity, nor shall any order, judgment or decree have been issued or proposed to be issued by any Government Entity, to set aside, restrain, enjoin or prevent the completion and consummation of this Agreement or any other Operative Agreement or the transactions contemplated hereby or thereby.

#### **5.1.14 Governmental Action**

All appropriate action required to have been taken prior to the Closing Date by the FAA, or any governmental or political agency, subdivision or instrumentality of the United States, in connection with the transactions contemplated by this Agreement shall have been taken, and all orders, permits, waivers, authorizations, exemptions and approvals of such entities required to be in effect on the Closing Date in connection with the transactions contemplated by this Agreement shall have been issued.

### **5.2 Conditions Precedent to Obligations of Owner Trustee**

The obligation of Owner Trustee to execute and deliver the Equipment Notes on the Closing Date is subject to satisfaction or waiver by Owner Trustee, at or prior to the Closing, of the conditions precedent set forth below in this Section 5.2.

#### **5.2.1 Notice**

Owner Trustee shall have received the notice described in Section 4.1 or, in the case of a Delayed Closing Date, 4.3, when and as required thereby, or shall have waived such notice.

### **5.2.2 Documents**

Executed originals of the agreements, instruments, certificates or documents described in Section 5.1.2 shall have been received by Owner Trustee, except as specifically provided therein, unless the failure to receive any such agreement, instrument, certificate or document is the result of any action or inaction by Owner Trustee.

### **5.2.3 Other Conditions Precedent**

Each of the conditions set forth in Sections 5.1.4, 5.1.6, 5.1.7 and 5.1.11 shall have been satisfied unless the failure of any such condition to be satisfied is the result of any action or inaction by Owner Trustee.

## **5.3 Conditions Precedent to Obligations of Mortgagee**

The obligation of Mortgagee to authenticate the Equipment Notes on the Closing Date is subject to the satisfaction or waiver by Mortgagee, at or prior to the Closing, of the conditions precedent set forth below in this Section 5.3.

### **5.3.1 Notice**

Mortgagee shall have received the notice described in Section 4.1 or, in the case of a Delayed Closing Date, 4.3, when and as required thereby, or shall have waived such notice.

### **5.3.2 Documents**

Executed originals of the agreements, instruments, certificates or documents described in Section 5.1.2 shall have been received by Mortgagee, except as specifically provided therein, unless the failure to receive any such agreement, instrument, certificate or document is the result of any action or inaction by Mortgagee.

### **5.3.3 Other Conditions Precedent**

Each of the conditions set forth in Sections 5.1.4, 5.1.6, 5.1.7 and 5.1.11 shall have been satisfied unless the failure of any such condition to be satisfied is the result of any action or inaction by Mortgagee.

## **5.4 Conditions Precedent to Obligations of Lessee**

The obligation of Lessee to lease the Aircraft on the Closing Date and to take the other actions required by this Agreement to be taken by it at the Closing is subject to the satisfaction or waiver by Lessee, at or prior to the Closing, of the conditions precedent set forth below in this Section 5.4.

### **5.4.1 Documents**

Executed originals of the agreements, instruments, certificates or documents described in Section 5.1.2 shall have been received by Lessee, except as specifically provided therein, and

shall be satisfactory to Lessee, unless the failure to receive any such agreement, instrument, certificate or document is the result of any action or inaction by Lessee.

#### **5.4.2 Sales Tax**

Lessee shall be satisfied that no sales, use, value added, goods and services or like tax, and no stamp tax duty, is payable with respect to the transactions to occur at the Closing pursuant to this Agreement to the extent that Lessee has liability therefor under Section 9.3.

#### **5.4.3 Other Conditions Precedent**

Each of the conditions set forth in Sections 5.1.3, 5.1.4, 5.1.6, 5.1.7 (as to Indenture Defaults or Indenture Events of Default not constituting Lease Defaults or Lease Events of Default, respectively), 5.1.8, 5.1.9, 5.1.10, 5.1.11, 5.1.12, 5.1.13 and 5.1.14 shall have been satisfied or waived by Lessee, unless the failure of any such condition to be satisfied is the result of any action or inaction by Lessee.

#### **5.5 Post-Registration Opinion**

Promptly upon the registration of the Aircraft and the recordation of the FAA Filed Documents pursuant to the Act, Airframe Manufacturer will cause Lytle Soulé; & Curlee, special counsel in Oklahoma City, Oklahoma, to deliver to Lessee, each Participant, Owner Trustee and Mortgagee a favorable opinion or opinions addressed to each of them with respect to such registration and recordation.

### **SECTION 6. REPRESENTATIONS AND WARRANTIES**

#### **6.1 Lessee's Representations and Warranties**

Lessee represents and warrants to each Participant, Airframe Manufacturer, Subordination Agent, Owner Trustee and Mortgagee that:

##### **6.1.1 Organization; Qualification**

Lessee is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware and has the corporate power and authority to conduct the business in which it is currently engaged and to own or hold under lease its properties and to enter into and perform its obligations under the Lessee Operative Agreements. Lessee is duly qualified to do business as a foreign corporation in good standing in each jurisdiction in which the nature and extent of the business conducted by it, or the ownership of its properties, requires such qualification, except where the failure to be so qualified would not give rise to a Material Adverse Change to Lessee.

##### **6.1.2 Corporate Authorization**

Lessee has taken, or caused to be taken, all necessary corporate action (including, without limitation, the obtaining of any consent or approval of stockholders required by its Certificate of

Incorporation or By-Laws) to authorize the execution and delivery of each of the Lessee Operative Agreements, and the performance of its obligations thereunder.

### **6.1.3 No Violation**

The execution and delivery by Lessee of the Lessee Operative Agreements, the performance by Lessee of its obligations thereunder and the consummation by Lessee on the Closing Date of the transactions contemplated thereby, do not and will not (a) violate any provision of the Certificate of Incorporation or By-Laws of Lessee, (b) violate any Law applicable to or binding on Lessee or (c) violate or constitute any default under (other than any violation or default that would not result in a Material Adverse Change to Lessee), or result in the creation of any Lien (other than as permitted under the Lease) upon the Aircraft under, any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, lease, loan or other material agreement, instrument or document to which Lessee is a party or by which Lessee or any of its properties is bound.

### **6.1.4 Approvals**

The execution and delivery by Lessee of the Lessee Operative Agreements, the performance by Lessee of its obligations thereunder and the consummation by Lessee on the Closing Date of the transactions contemplated thereby do not and will not require the consent or approval of, or the giving of notice to, or the registration with, or the recording or filing of any documents with, or the taking of any other action in respect of, (a) any trustee or other holder of any Debt of Lessee and (b) any Government Entity, other than the filing of (x) the FAA Filed Documents and the Financing Statements (and continuation statements periodically) and (y) filings, recordings, notices or other ministerial actions pursuant to any routine recording, contractual or regulatory requirements applicable to it.

### **6.1.5 Valid and Binding Agreements**

The Lessee Operative Agreements have been duly authorized, executed and delivered by Lessee and, assuming the due authorization, execution and delivery thereof by the other party or parties thereto, constitute the legal, valid and binding obligations of Lessee and are enforceable against Lessee in accordance with the respective terms thereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium and other similar Laws affecting the rights of creditors generally and general principles of equity, whether considered in a proceeding at law or in equity.

### **6.1.6 Litigation**

Except as set forth in Lessee's most recent Annual Report on Form 10-K, as amended, filed by Lessee with the SEC on or prior to the Closing Date, or in any Quarterly Report on Form 10-Q or Current Report on Form 8-K (or any amendment thereof) filed by Lessee with the SEC subsequent to such Form 10-K and on or prior to the Closing Date, no action, claim or proceeding is now pending or, to the Actual Knowledge of Lessee, threatened, against Lessee, before any court, governmental body, arbitration board, tribunal or administrative agency, which is reasonably likely to be determined adversely to Lessee and if determined adversely to Lessee would result in a Material Adverse Change.

### **6.1.7 Financial Condition**

The audited consolidated balance sheet of Lessee with respect to Lessee's most recent fiscal year included in Lessee's most recent Annual Report on Form 10-K, as amended, filed by Lessee with the SEC, and the related consolidated statements of operations and cash flows for the period then ended have been prepared in accordance with GAAP and fairly present in all material respects the financial condition of Lessee and its consolidated subsidiaries as of such date and the results of its operations and cash flows for such period, and since the date of such balance sheet, there has been no material adverse change in such financial condition or operations of Lessee, except for matters disclosed in (a) the financial statements referred to above or (b) any subsequent Quarterly Report on Form 10-Q or Current Report on Form 8-K (or any amendment thereof) filed by Lessee with the SEC on or prior to the date hereof.

### **6.1.8 Registration and Recordation**

Except for (a) the registration of the Aircraft with the FAA pursuant to the Act in the name of Owner Trustee, (b) the filing for recordation (and recordation) of the FAA Filed Documents, (c) the filing of the Financing Statements (and continuation statements relating thereto at periodic intervals), (d) the taking of possession and retention by Mortgagee of the original counterparts of the Lease and Lease Supplement No. 1 and (e) the affixation of the nameplates referred to in Section 7.1.3 of the Lease, no further action, including any filing or recording of any document (including any financing statement in respect thereof under Article 9 of the UCC) is necessary in order to establish and perfect the right, title or interest of Owner Trustee, and the Mortgagee's security interest, in the Aircraft and the Lease, as against Lessee and any other Person, in each case, in any applicable jurisdiction in the United States.

### **6.1.9 Location**

Lessee's location (as such term is used in Section 9-307 of the UCC) is Delaware.

### **6.1.10 No Default**

No event which, if the Aircraft were subject to the Lease, constitutes a Lease Event of Default has occurred and is continuing.

### **6.1.11 No Event of Loss**

No Event of Loss has occurred with respect to the Airframe or any Engine, and, to the Actual Knowledge of Lessee, no circumstance, condition, act or event has occurred that, with the giving of notice or lapse of time or both gives rise to or constitutes an Event of Loss with respect to the Airframe or any Engine.

### **6.1.12 Compliance With Laws**

(a) Lessee is a Citizen of the United States and a U.S. Air Carrier.

(b) Lessee holds all licenses, permits and franchises from the appropriate Government Entities necessary to authorize Lessee to lawfully engage in air transportation and to

carry on scheduled commercial passenger service as currently conducted, except where the failure to so hold any such license, permit or franchise would not give rise to a Material Adverse Change to Lessee.

(c) Lessee is not an “investment company” or a company controlled by an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

#### **6.1.13 Securities Laws**

Neither Lessee nor any person authorized to act on its behalf has directly or indirectly offered any beneficial interest or Security relating to the ownership of the Aircraft or the Lease or any interest in the Trust Estate and Trust Agreement, or any of the Equipment Notes or any other interest in or Security under the Trust Indenture, for sale to, or solicited any offer to acquire any such interest or Security from, or has sold any such interest or Security to, any person in violation of the Securities Act.

#### **6.1.14 Broker’s Fees**

No Person acting on behalf of Lessee is or will be entitled to any broker’s fee, commission or finder’s fee in connection with the Transactions.

#### **6.1.15 Section 1110**

Owner Trustee, as lessor under the Lease (and Mortgagee, as assignee under the Trust Indenture), is entitled to the benefits of Section 1110 (as currently in effect) with respect to the right to take possession of the Airframe and Engines and to enforce any of its other rights or remedies as provided in the Lease in the event of a case under Chapter 11 of the Bankruptcy Code in which Lessee is a debtor.

### **6.2 Owner Participant’s Representations and Warranties**

Owner Participant represents and warrants to Lessee, Loan Participant, Airframe Manufacturer, Subordination Agent, Owner Trustee and Mortgagee that:

#### **6.2.1 Organization, Etc.**

Owner Participant is a corporation duly incorporated, validly existing and in good standing under the Laws of the OP Jurisdiction and has the corporate power and authority to conduct the business in which it is currently engaged and to own or hold under lease its properties and to enter into, and perform its obligations under the Owner Participant Agreements.

#### **6.2.2 Corporate Authorization**

Owner Participant has taken, or caused to be taken, all necessary corporate action (including, without limitation, the obtaining of any consent or approval of stockholders required by its Certificate of Incorporation or By-Laws) to authorize the execution and delivery of each of the Owner Participant Agreements, and the performance of its obligations thereunder.

### **6.2.3 No Violation**

The execution and delivery by Owner Participant of the Owner Participant Agreements, the performance by Owner Participant of its obligations thereunder and the consummation by Owner Participant on the Closing Date of the transactions contemplated thereby, do not and will not (a) violate any provision of the Certificate of Incorporation or By-Laws of Owner Participant, (b) violate any Law applicable to or binding on Owner Participant or (c) violate or constitute any default under (other than any violation or default that would not result in a Material Adverse Change to Owner Participant), or result in the creation of any Lien (other than as provided for or otherwise permitted in the Operative Agreements) upon the Trust Estate under, any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, lease, loan or other material agreement, instrument or document to which Owner Participant is a party or by which Owner Participant or any of its properties is bound.

### **6.2.4 Approvals**

The execution and delivery by Owner Participant of the Owner Participant Agreements, the performance by Owner Participant of its obligations thereunder and the consummation by Owner Participant on the Closing Date of the transactions contemplated thereby do not and will not require the consent or approval of, or the giving of notice to, or the registration with, or the recording or filing of any documents with, or the taking of any other action in respect of, (a) any trustee or other holder of any Debt of Owner Participant and (b) any Government Entity, other than the filing of the FAA Filed Documents and the Financing Statements.

### **6.2.5 Valid and Binding Agreements**

The Owner Participant Agreements have been duly authorized, executed and delivered by Owner Participant and, assuming the due authorization, execution and delivery by the other party or parties thereto, constitute the legal, valid and binding obligations of Owner Participant and are enforceable against Owner Participant in accordance with the respective terms thereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium and other similar Laws affecting the rights of creditors generally and general principles of equity, whether considered in a proceeding at law or in equity.

### **6.2.6 Citizenship**

On the Closing Date, Owner Participant is not a Citizen of the United States, but holds an interest in the Trust Estate such that the Aircraft can be registered in the United States (without giving consideration to Section 47.9 of the FAA Regulations or any other provision that could restrict Lessee's use or operation of the Aircraft).

### **6.2.7 No Liens**

On the Closing Date, there are no Lessor Liens attributable to Owner Participant in respect of all or any part of the Trust Estate.

### **6.2.8 Investment by Owner Participant**

Owner Participant's beneficial interest in the Trust Estate has been acquired by it for its own account, for investment and not with a view to any resale or distribution thereof, except that, subject to the restrictions on transfer set forth in Section 10, the disposition by Owner Participant of its beneficial interest in the Trust Estate shall at all times be within its control.

### **6.2.9 ERISA**

No part of the funds used by Owner Participant to acquire or hold its interests in the Trust Estate directly or indirectly constitutes assets of a Plan.

### **6.2.10 Litigation**

There are no pending or, to the Actual Knowledge of Owner Participant, threatened actions or proceedings against Owner Participant before any court, governmental body, arbitration board, administrative agency or tribunal which, if determined adversely to Owner Participant, would materially adversely affect the ability of Owner Participant to perform its obligations under, or affect the validity or enforceability of, the Owner Participant Agreements.

### **6.2.11 Securities Laws**

Neither Owner Participant nor any person Owner Participant has authorized to act on its behalf has directly or indirectly offered any beneficial interest in or Security relating to the ownership of the Aircraft or any interest in the Trust Estate, or any of the Equipment Notes or any other interest in or Security under the Trust Indenture for sale to, or solicited any offer to acquire any of the same from, any Person in violation of the registration provisions of the Securities Act or applicable state securities Laws.

### **6.2.12 Broker's Fees**

No Person acting on behalf of Owner Participant is or will be entitled to any broker's fee, commission or finder's fee in connection with the Transactions.

## **6.3 Wells Fargo's Representations and Warranties**

Wells Fargo represents and warrants (in the case of Section 6.3.13, solely in its capacity as Owner Trustee) to Lessee, Owner Participant, Airframe Manufacturer, Loan Participants, Subordination Agent and Mortgagee that:

### **6.3.1 Organization, Etc.**

Wells Fargo is a national banking association duly organized, validly existing and in good standing under the Laws of the United States, holding a valid certificate to do business as a national banking association with banking authority to execute and deliver, and perform its obligations under, the Owner Trustee Agreements.



### **6.3.2 Corporate Authorization**

Wells Fargo has taken, or caused to be taken, all necessary corporate action (including, without limitation, the obtaining of any consent or approval of stockholders required by Law or by its Articles of Association or By-Laws) to authorize the execution and delivery by Wells Fargo, in its individual capacity and as Owner Trustee, of each of the Owner Trustee Agreements, and the performance of its obligations thereunder.

### **6.3.3 No Violation**

The execution and delivery by Wells Fargo, in its individual capacity and as Owner Trustee, of the Owner Trustee Agreements, the performance by Wells Fargo, in its individual capacity and as Owner Trustee, of its obligations thereunder and the consummation by Wells Fargo in its individual capacity and as Owner Trustee on the Closing Date of the transactions contemplated thereby, do not and will not (a) violate any provision of the Articles of Association or By-Laws of Wells Fargo, (b) violate any Law of the State of Utah or federal banking Law applicable to or binding on Owner Trustee or Wells Fargo or (c) violate or constitute any default under (other than any violation or default that would not result in a Material Adverse Change to Wells Fargo, in its individual capacity or as Owner Trustee), or result in the creation of any Lien (other than the lien of the Trust Indenture) upon any property of Wells Fargo, in its individual capacity and as Owner Trustee, or any of its subsidiaries under, any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, lease, loan or other material agreement, instrument or document to which Wells Fargo, in its individual capacity or as Owner Trustee, is a party or by which Wells Fargo, in its individual capacity or as Owner Trustee, or any of its properties is or may be bound or affected.

### **6.3.4 Approvals**

The execution and delivery by Wells Fargo, in its individual capacity and as Owner Trustee, of the Owner Trustee Agreements, the performance by Wells Fargo, in its individual capacity and as Owner Trustee, of its obligations thereunder and the consummation by Wells Fargo, in its individual capacity and as Owner Trustee, on the Closing Date of the transactions contemplated thereby do not and will not require the consent, approval or authorization of, or the giving of notice to, or the registration with, or the recording or filing of any documents with, or the taking of any other action in respect of, (a) any trustee or other holder of any Debt of Wells Fargo or (b) any Government Entity governing banking and trust powers, other than the filing of the FAA Filed Documents and the Financing Statements.

### **6.3.5 Valid and Binding Agreements**

The Owner Trustee Agreements have been duly authorized, executed and delivered by Wells Fargo, in its individual capacity or as Owner Trustee, as the case may be, and constitute the legal, valid and binding obligations of Wells Fargo, in its individual capacity and as Owner Trustee, and, assuming the due authorization, execution and delivery thereof by the other party or parties thereto, are enforceable against Wells Fargo, in its individual capacity and as Owner Trustee, in accordance with the respective terms thereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium and other similar

Laws affecting the rights of creditors generally and general principles of equity, whether considered in a proceeding at law or in equity.

### **6.3.6 Citizenship**

On the Closing Date, Wells Fargo is a Citizen of the United States.

### **6.3.7 Location**

The Owner Trustee's location (as such term is used in Section 9-307 of the UCC) is Utah.

### **6.3.8 Title**

On the Delivery Date, Owner Trustee received whatever title to the Aircraft as was conveyed to it by Seller.

### **6.3.9 No Liens; Financing Statements**

On the Closing Date, there are no Lessor Liens attributable to Wells Fargo or Owner Trustee in respect of all or any part of the Aircraft, Trust Estate or the Trust Indenture Estate. Except for the Financing Statements and the one or more UCC-1 financing statements covering the Aircraft and filed for precautionary purposes by the Owner Trustee in connection with the delivery of the Aircraft to Lessee under the Existing Lease on the Delivery Date, it has not, either in its individual capacity or as Owner Trustee, executed any UCC financing statements relating to the Aircraft or the Lease.

### **6.3.10 Litigation**

There are no pending or, to the Actual Knowledge of Wells Fargo, threatened actions or proceedings against Wells Fargo or Owner Trustee before any court, governmental body, arbitration board, administrative agency or tribunal which, if determined adversely to Wells Fargo or Owner Trustee, would materially adversely affect the ability of Wells Fargo or Owner Trustee to perform its obligations under, or affect the validity or enforceability of, the Owner Trustee Agreements.

### **6.3.11 Securities Laws**

Neither Wells Fargo, nor any person authorized to act on its behalf, has directly or indirectly offered any beneficial interest or Security relating to the ownership of the Aircraft or any interest in the Trust Estate or any of the Equipment Notes or any other interest in or Security under the Trust Indenture for sale to, or solicited any offer to acquire any such interest or Security from, or has sold any such interest or Security to, any person other than the Participants, except for the offering and sale of the Pass Through Certificates.

### **6.3.12 Expenses and Taxes**

There are no Expenses or Taxes that may be imposed on or asserted against the Trust, the Trust Estate or any part thereof or any interest therein, the Trust Indenture Estate, Lessee, Owner

Participant, Pass Through Trustee, Subordination Agent, Owner Trustee or Mortgagee (except as to Owner Trustee, Taxes imposed on the fees payable to Owner Trustee) under the laws of Utah in connection with the execution, delivery or performance of any Operative Agreement by Owner Trustee or in connection with the issuance of the Equipment Notes, which Expenses or Taxes would not have been imposed if Owner Trustee had not (x) had its principal place of business in, (y) performed (in its individual capacity or as Owner Trustee) any or all of its duties under the Operative Agreements in or (z) engaged in any activities unrelated to the transactions contemplated by the Operative Agreements in, the State of Utah.

#### **6.3.13 Prior Activities**

Owner Trustee has not engaged in any activities except holding title to the Aircraft and leasing the Aircraft pursuant to the terms of the “Trust Agreement” (as defined in the Existing Lease) and the Existing Lease, respectively, and Owner Trustee has not incurred any debt or other financial obligation, except as expressly provided in the “Trust Agreement” (as defined in the Existing Lease) and the Existing Lease or such other debt that shall have been satisfied or discharged in full contemporaneously with the Closing.]<sup>26</sup>

### **6.4 WTC’s Representations and Warranties**

WTC represents and warrants (with respect to Section 6.4.10, solely in its capacity as Subordination Agent) to Lessee, Owner Participant, Airframe Manufacturer, and Owner Trustee that:

#### **6.4.1 Organization, Etc.**

WTC is a Delaware banking corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, holding a valid certificate to do business as a Delaware banking corporation with banking authority to execute and deliver, and perform its obligations under, the Mortgage Agreements, the Pass Through Trustee Agreements and the Subordination Agent Agreements.

#### **6.4.2 Corporate Authorization**

WTC has taken, or caused to be taken, all necessary corporate action (including, without limitation, the obtaining of any consent or approval of stockholders required by Law or by its Certificate of Incorporation or By-Laws) to authorize the execution and delivery by WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, as the case may be, of the Mortgagee Agreements, the Pass Through Trustee Agreements and the Subordination Agent Agreements and the performance of its obligations thereunder.

#### **6.4.3 No Violation**

The execution and delivery by WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, as the case may be, of the Mortgagee Agreements, the

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26. Delete for New Aircraft.

Pass Through Trustee Agreements and the Subordination Agent Agreements, the performance by WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, as the case may be, of its obligations thereunder and the consummation on the Closing Date of the transactions contemplated thereby, do not and will not (a) violate any provision of the Certificate of Incorporation or By-Laws of WTC, (b) violate any Law applicable to or binding on WTC, in its individual capacity or (except in the case of any Law relating to any Plan) as Mortgagee, Pass Through Trustee or Subordination Agent, or (c) violate or constitute any default under (other than any violation or default that would not result in a Material Adverse Change to WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent), or result in the creation of any Lien (other than the lien of the Trust Indenture) upon any property of WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, or any of WTC's subsidiaries under, any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, lease, loan or other agreement, instrument or document to which WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, is a party or by which WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, or any of their respective properties is bound.

#### **6.4.4 Approvals**

The execution and delivery by WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, as the case may be, of the Mortgagee Agreements, the Pass Through Trustee Agreements and the Subordination Agent Agreements, the performance by WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, as the case may be, of its obligations thereunder and the consummation on the Closing Date by WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, as the case may be, of the transactions contemplated thereby do not and will not require the consent, approval or authorization of, or the giving of notice to, or the registration with, or the recording or filing of any documents with, or the taking of any other action in respect of, (a) any trustee or other holder of any Debt of WTC or (b) any Government Entity, other than the filing of the FAA Filed Documents and the Financing Statements.

#### **6.4.5 Valid and Binding Agreements**

The Mortgagee Agreements, the Pass Through Trustee Agreements and the Subordination Agent Agreements have been duly authorized, executed and delivered by WTC and, assuming the due authorization, execution and delivery by the other party or parties thereto, constitute the legal, valid and binding obligations of WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, as the case may be, and are enforceable against WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, as the case may be, in accordance with the respective terms thereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other similar Laws affecting the rights of creditors generally and general principles of equity, whether considered in a proceeding at law or in equity.

#### **6.4.6 Citizenship**

WTC is a Citizen of the United States.

#### **6.4.7 No Liens**

On the Closing Date, there are no Lessor Liens attributable to WTC in respect of all or any part of the Trust Estate or the Trust Indenture Estate.

#### **6.4.8 Litigation**

There are no pending or, to the Actual Knowledge of WTC, threatened actions or proceedings against WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, before any court, administrative agency or tribunal which, if determined adversely to WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, as the case may be, would materially adversely affect the ability of WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, as the case may be, to perform its obligations under, or affect the validity or enforceability of, any of the Mortgagee Agreements, the Pass Through Trustee Agreements or the Subordination Agent Agreements.

#### **6.4.9 Securities Laws**

Neither WTC nor any person authorized to act on its behalf has directly or indirectly offered any beneficial interest or Security relating to the ownership of the Aircraft or any interest in the Trust Indenture Estate or any of the Equipment Notes or any other interest in or Security under the Trust Indenture for sale to, or solicited any offer to acquire any such interest or Security from, or has sold any such interest or Security to, any Person other than the Participants, except for the offering and sale of the Pass Through Certificates.

#### **6.4.10 Investment**

The Equipment Notes to be acquired by the Subordination Agent are being acquired by it for the account of the Pass Through Trustee, for investment and not with a view to any resale or distribution thereof, except that, subject to the restrictions on transfer set forth in Section 10.1.3, the disposition by it of its Equipment Notes shall at all times be within its control.

#### **6.4.11 Taxes**

There are no Taxes payable by the Pass Through Trustee or WTC, as the case may be, imposed by the State of Delaware or any political subdivision or taxing authority thereof in connection with the execution, delivery and performance by the Pass Through Trustee or WTC, as the case may be, of this Agreement or any of the Pass Through Trustee Agreements (other than franchise or other taxes based on or measured by any fees or compensation received by any the Pass Through Trustee or WTC, as the case may be, for services rendered in connection with the transactions contemplated by the Pass Through Trust Agreement), and there are no Taxes payable by the Pass Through Trustee or WTC, as the case may be, imposed by the State of Delaware or any political subdivision thereof in connection with the acquisition, possession or ownership by the Pass Through Trustee of any of the Equipment Notes (other than franchise or other taxes based on or measured by any fees or compensation received by the Pass Through Trustee or WTC, as the case may be, for services rendered in connection with the transactions contemplated by the Pass Through Trust Agreement), and, assuming that the trust created by the

Pass Through Trust Agreement will not be taxable as a corporation, but, rather, will be characterized as a grantor trust under subpart E, Part I of Subchapter J of the Code or as a partnership under Subchapter K of the Code, such trust will not be subject to any Taxes imposed by the State of Delaware or any political subdivision thereof.

#### **6.4.12 Control**

WTC is not an Affiliate of the Owner Participant or the Owner Trustee.

#### **6.4.13 Broker's Fees**

No Person acting on behalf of WTC, in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, is or will be entitled to any broker's fee, commission or finder's fee in connection with the Transactions.

### **6.5 Airframe Manufacturer's Representations and Warranties**

Airframe Manufacturer represents and warrants to Lessee, each Participant, Subordination Agent, Owner Trustee and Mortgagee that:

#### **6.5.1 Organization, Etc.**

Airframe Manufacturer is a corporation duly incorporated, validly existing and in good standing under the Laws of Brazil, and has the corporate power and authority to conduct the business in which it is currently engaged and to own or hold under lease its properties and to enter into, and perform its obligations under the Airframe Manufacturer Agreements. [OP Guarantor has a tangible net worth (exclusive of goodwill) greater than \$25,000,000.]<sup>27</sup>

#### **6.5.2 Corporate Authorization**

Airframe Manufacturer has taken, or caused to be taken, all necessary corporate action (including, without limitation, the obtaining of any consent or approval of stockholders required by its constitutional documents) to authorize the execution and delivery of each of the Airframe Manufacturer Agreements, and the performance of its obligations thereunder.

#### **6.5.3 No Violation**

The execution and delivery by Airframe Manufacturer of the Airframe Manufacturer Agreements, the performance by Airframe Manufacturer of its obligations thereunder and the consummation by Airframe Manufacturer on the Closing Date of the transactions contemplated thereby, do not and will not (a) violate any provision of the constitutional documents of Airframe Manufacturer, (b) violate any Law applicable to or binding on Airframe Manufacturer or (c) violate or constitute any default under (other than any violation or default that would not result in a Material Adverse Change to Airframe Manufacturer), or result in the creation of any Lien (other than as provided for or otherwise permitted in the Operative Agreements) upon the

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27. Insert if OP is an Affiliate of Airframe Manufacturer.

Trust Estate under, any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, lease, loan or other material agreement, instrument or document to which Airframe Manufacturer is a party or by which Airframe Manufacturer or any of its properties is bound.

#### **6.5.4 Approvals**

The execution and delivery by Airframe Manufacturer of the Airframe Manufacturer Agreements, the performance by Airframe Manufacturer of its obligations thereunder and the consummation by Airframe Manufacturer on the Closing Date of the transactions contemplated thereby do not and will not require the consent or approval of, or the giving of notice to, or the registration with, or the recording or filing of any documents with, or the taking of any other action in respect of, (a) any trustee or other holder of any Debt of Airframe Manufacturer and (b) any Government Entity, other than the filing of the FAA Filed Documents and the Financing Statements.

#### **6.5.5 Valid and Binding Agreements**

The Airframe Manufacturer Agreements have been duly authorized, executed and delivered by Airframe Manufacturer and, assuming the due authorization, execution and delivery by the other party or parties thereto, constitute the legal, valid and binding obligations of Airframe Manufacturer and are enforceable against Airframe Manufacturer in accordance with the respective terms thereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium and other similar Laws affecting the rights of creditors generally and general principles of equity, whether considered in a proceeding at law or in equity.

#### **6.5.6 Title**

On the Closing Date, Lessor shall have good and marketable title to the Aircraft, free and clear of all claims, Liens and encumbrances of any nature, except Permitted Liens.

#### **6.5.7 Taxes**

Lessor has filed or will cause to be filed all Federal and all material state, local and foreign tax returns which are required to be filed by it and have paid or will cause to be paid all Taxes which are due and payable in connection with the Aircraft.

#### **6.5.8 Litigation**

There are no pending or, to the Actual Knowledge of Airframe Manufacturer, threatened actions or proceedings against Airframe Manufacturer before any court, governmental body, arbitration board, administrative agency or tribunal which, if determined adversely to Airframe Manufacturer, would materially adversely affect the ability of Airframe Manufacturer to perform its obligations under, or affect the validity or enforceability of, the Airframe Manufacturer Agreements.

### **6.5.9 Securities Laws**

Neither Airframe Manufacturer nor any person Airframe Manufacturer has authorized to act on its behalf has directly or indirectly offered any beneficial interest in or Security relating to the ownership of the Aircraft or any interest in the Trust Estate, or any of the Equipment Notes or any other interest in or Security under the Trust Indenture for sale to, or solicited any offer to acquire any of the same from, any Person in violation of the Securities Act or applicable state securities Laws.

### **6.5.10 Broker's Fees**

No Person acting on behalf of Airframe Manufacturer is or will be entitled to any broker's fee, commission or finder's fee in connection with the Transactions, except for the placement agent's fees and commissions payable with respect to the offering of the Pass Through Certificates and the fees and expenses of Equity Advisor, which are the sole responsibility of Airframe Manufacturer.

## **SECTION 7. COVENANTS, UNDERTAKINGS AND AGREEMENTS**

### **7.1 Covenants of Lessee**

Lessee covenants and agrees with Owner Participant, Loan Participant, Owner Trustee and Mortgagee as follows:

#### **7.1.1 Corporate Existence; U.S. Air Carrier**

Lessee shall at all times maintain its corporate existence, except as permitted by Section 13.2 of the Lease, and shall at all times remain a U.S. Air Carrier.

#### **7.1.2 Notice of Change of Chief Executive Office**

Lessee will give Owner Participant, Owner Trustee and Mortgagee timely written notice (but in any event within 30 days prior to the expiration of the period of time specified under applicable Law to prevent lapse of perfection) of any change of its location (as such term is used in Section 9-307 of the UCC) from its then present location and will promptly take any action required by Section 7.1.3(c) as a result of such relocation.

#### **7.1.3 Certain Assurances**

(a) Lessee shall duly execute, acknowledge and deliver, or shall cause to be executed, acknowledged and delivered, all such further agreements, instruments, certificates or documents, and shall do and cause to be done such further acts and things, in any case, as Owner Participant, Owner Trustee or Mortgagee shall reasonably request for accomplishing the purposes of this Agreement and the other Operative Agreements, provided that any instrument or other document so executed by Lessee will not expand any obligations or limit any rights of Lessee in respect of the transactions contemplated by any Operative Agreement.



(b) Lessee shall promptly take such action with respect to the recording, filing, re-recording and re-filing of the Lease, the Trust Agreement and the Trust Indenture and the respective supplements thereto, including, without limitation, Lease Supplement No. 1 and the initial Trust Indenture Supplement, as shall be necessary to establish, perfect and protect the interests and rights of Owner Trustee in and to the Aircraft and under the Lease and the perfection and priority of the Lien created by the Trust Indenture, and Lessee shall pay all out-of-pocket costs and expenses thereof to the extent not paid by another party as Transaction Expenses. Lessee shall furnish to Owner Participant or Owner Trustee such information (other than with respect to the citizenship of Owner Participant and Owner Trustee) in Lessee's possession or otherwise reasonably available to Lessee as may be required to enable Owner Participant or Owner Trustee to make application for registration of the Aircraft under the Act (subject to Lessee's rights under Section 7.1.2 of the Lease).

(c) Lessee will cause the FAA Filed Documents, the Financing Statements and all continuation statements (and any amendments necessitated by any combination, consolidation or merger pursuant to Section 13.2 of the Lease, or any change of its location (as such term is used in Section 9-307 of the UCC)) in respect of the Financing Statements to be prepared and, subject only to the execution and delivery thereof by Owner Trustee and Mortgagee, as applicable, duly and timely filed and recorded, or filed for recordation, to the extent permitted under the Act (with respect to the FAA Filed Documents) or the UCC or similar law of any other applicable jurisdiction (with respect to such other documents). Lessee hereby authorizes Owner Trustee and/or Mortgagee to prepare and file any UCC financing statements (including any amendments thereto) and continuation statements referred to in this Section 7.1.3(c).

(d) If the Aircraft has been registered in a country other than the United States pursuant to Section 7.1.2 of the Lease, Lessee will furnish to Owner Trustee, Mortgagee and each Participant annually after such registration, commencing with the calendar year after such registration is effected, an opinion of special counsel reasonably satisfactory to Owner Trustee and Mortgagee stating that, in the opinion of such counsel, either that (i) such action has been taken with respect to the recording, filing, re-recording and re-filing of the Operative Agreements and any supplements and amendments thereto as is necessary to establish, perfect and protect Owner Trustee's and Mortgagee's respective right, title and interest in and to the Aircraft and the Operative Agreements, reciting the details of such actions, or (ii) no such action is necessary to maintain the perfection of such right, title and interest.

#### **7.1.4 Securities Laws**

Neither Lessee nor any person authorized to act on its behalf will directly or indirectly offer any beneficial interest or Security relating to the ownership of the Aircraft or the Lease or any interest in the Trust Estate and Trust Agreement or any of the Equipment Notes or any other interest in or Security under the Trust Indenture, for sale to, or solicit any offer to acquire any such interest or Security from, or sell any such interest or Security to, any person in violation of the Securities Act or applicable state or foreign securities Laws.

## **7.2 Covenants of Owner Participant**

Owner Participant covenants and agrees with Lessee, and except with respect to Section 7.2.4, Loan Participant, Owner Trustee and Mortgagee as follows:

### **7.2.1 Liens**

Owner Participant (a) will not directly or indirectly create, incur, assume or suffer to exist any Lessor Lien attributable to it on or with respect to all or any part of the Trust Estate, the Trust Indenture Estate or the Aircraft, (b) will, at its own cost and expense, take such action as may be necessary to discharge any Lessor Lien attributable to Owner Participant on all or any part of the Trust Estate, the Trust Indenture Estate or the Aircraft. Owner Participant will hold harmless and indemnify Lessee, Owner Trustee, each Note Holder, Mortgagee, each of their respective Affiliates, successors and permitted assigns, the Trust Estate and the Trust Indenture Estate from and against (i) any and all Expenses, (ii) any reduction in the amount payable out of the Trust Estate or the Trust Indenture Estate and (iii) any interference with the possession, operation or other use of all or any part of the Aircraft, in each case imposed on, incurred by or asserted against any of the foregoing as a consequence of any such Lessor Lien.

### **7.2.2 Revocation of Trust Agreement**

(a) Owner Participant will comply with the provisions of the Trust Agreement applicable to it, and will not terminate or revoke the Trust Agreement or the trusts created thereunder without the prior written consent of Lessee and Mortgagee and will not amend, modify or supplement the Trust Agreement, or waive any of the provisions thereof, if such amendment, modification, supplement or waiver would have a material adverse effect on Lessee, without the consent of Lessee, or on Mortgagee or any Note Holder, without the consent of Mortgagee.

(b) Notwithstanding Section 7.2.2(a), Owner Participant may at any time remove Owner Trustee pursuant to Section 9.1 of the Trust Agreement or terminate the Trust Agreement pursuant to Section 11.2 of the Trust Agreement.

### **7.2.3 Change of Situs of Owner Trust**

If, at any time, any Tax Indemnitee or the Trust Estate becomes subject to any Taxes for which it is indemnified pursuant to Section 9.3 of this Agreement and if, as a consequence thereof, Lessee should request that the situs of the Trust be moved to another state in the United States from the state in which it is then located, the situs of the Trust may be moved with the written consent of Owner Participant (which consent shall not be unreasonably withheld) and Owner Participant will take whatever action may be reasonably necessary to accomplish such removal; provided, that, in any event, (a) Lessee shall provide such additional tax indemnification as Owner Participant and the Note Holders or the Pass Through Trustee may reasonably request to cover any additional unindemnified Taxes or loss of Tax benefits described in the assumptions in the Tax Indemnity Agreement resulting from such change in the situs of the Trust (it being agreed that if a Lease Event of Default shall have occurred and is then continuing, it shall not be unreasonable for Owner Participant to withhold its consent to moving the situs of the Trust, notwithstanding the provision by Lessee of such additional tax

indemnification, unless a Section 1110 Event shall have occurred and is then continuing), (b) the rights and obligations under the Operative Agreements of Owner Participant, the Note Holders, Pass Through Trustee and Mortgagee shall not be adversely affected as a result of the taking of such action, (c) the Lien of the Trust Indenture on the Trust Indenture Estate shall not be adversely affected by such action, and Lessee and Owner Trustee shall execute and deliver such documents as may be necessary or as may reasonably be requested by Mortgagee to protect and maintain the perfection and priority of such Lien, (d) Owner Participant, Pass Through Trustee and Mortgagee shall have received an opinion or opinions of counsel (which counsel is reasonably satisfactory to Owner Participant, Pass Through Trustee and Mortgagee) in scope, form and substance reasonably satisfactory to Owner Participant, Pass Through Trustee and Mortgagee to the effect that (i) the Trust, as thus removed, shall remain a validly established trust, (ii) any amendments to the Trust Agreement necessitated by such removal shall have been duly authorized, executed and delivered by the parties thereto and shall constitute the valid and binding obligations of such parties, enforceable in accordance with their terms, (iii) covering such other matters as Owner Participant, Pass Through Trustee or Mortgagee may reasonably request, (e) if such removal involves the replacement of Owner Trustee, then Owner Participant, Pass Through Trustee and Mortgagee shall have received an opinion of counsel to such successor Owner Trustee in form and substance reasonably satisfactory to Owner Participant, Pass Through Trustee and Mortgagee covering the matters described in the opinion delivered pursuant to Section 5.1.2(xxv)(D) and (f) Lessee shall indemnify and hold harmless Owner Participant, Note Holders, Pass Through Trustee and Wells Fargo, in its individual capacity and as Owner Trustee, on a net after-tax basis against any and all reasonable out-of-pocket costs and expenses including attorneys' fees and disbursements, fees and expenses of any new owner trustee, registration, recording or filing fees and taxes incurred by Owner Participant, Note Holders, Pass Through Trustee or Owner Trustee in connection with such change of situs. Owner Participant agrees with Lessee that it will not consent to or direct a change in the situs of the Trust Estate without the prior written consent of Lessee, except that if a Lease Event of Default shall have occurred and is then continuing, except during a Section 1110 Period, such consent shall not be required.

#### **7.2.4 Compliance with Lease Provisions**

Owner Participant will, solely for the benefit of Lessee, comply with the express provisions applicable to it contained in the Lease.

#### **7.2.5 Securities Act**

Owner Participant will not directly or indirectly offer any beneficial interest or Security relating to the ownership of the Aircraft or any interest in the Trust Estate or any of the Equipment Notes or any other interest in or Security under the Trust Indenture for sale to, or solicit any offer to acquire any such interest or Security from, or sell any such interest or Security to, any Person in violation of the registration provisions of the Securities Act or applicable state or foreign Securities Laws, provided that the foregoing shall not be deemed to impose on Owner Participant any responsibility with respect to any such offer, sale or solicitation by any other party hereto.

### **7.2.6 Regarding the Owner Trustee**

Owner Participant will instruct Owner Trustee to perform its obligations under each Owner Trustee Agreement.

### **7.3 Covenants of Wells Fargo and Owner Trustee**

Wells Fargo, in its individual capacity and/or as Owner Trustee, as provided below, covenants and agrees with Lessee, Owner Participant, each Note Holder and Mortgagee as follows:

#### **7.3.1 Liens**

Wells Fargo (a) will not directly or indirectly create, incur, assume or suffer to exist any Lessor Lien attributable to it or Owner Trustee with respect to all or any part of the Trust Estate, the Trust Indenture Estate or the Aircraft, (b) will, at its own cost and expense, take such action as may be necessary to discharge any Lessor Lien attributable to Wells Fargo or Owner Trustee on all or any part of the Trust Estate, the Trust Indenture Estate or the Aircraft. Wells Fargo will in its individual capacity hold harmless and indemnify Lessee, Owner Participant, each Note Holder, Mortgagee, each of their respective Affiliates, successors and permitted assigns, the Trust Estate and the Trust Indenture Estate from and against (i) any and all Expenses, (ii) any reduction in the amount payable out of the Trust Estate or the Trust Indenture Estate and (iii) any interference with the possession, operation or other use of all or any part of the Aircraft, in each case imposed on, incurred by or asserted against any of the foregoing as a consequence of any such Lessor Lien.

#### **7.3.2 Other Business**

Owner Trustee will not enter into any business or other activity except as contemplated by the Operative Agreements.

#### **7.3.3 Notice of Change of Location**

Wells Fargo, in its individual capacity and as Owner Trustee, will give Lessee, each Participant and Mortgagee 30 days' prior written notice of any change of its location (as such term is used in Section 9-307 of the UCC) from its then present location and will promptly take any action required by Section 7.3.8 as a result of such relocation.

#### **7.3.4 Securities Act**

Wells Fargo, in its individual capacity and as Owner Trustee, will not directly or indirectly offer any beneficial interest or Security relating to the ownership of the Aircraft or any interest in the Trust Estate or any of the Equipment Notes or any other interest in or Security under the Trust Indenture for sale to, or solicit any offer to acquire any such interest or Security from, or sell any such interest or Security to, any Person in violation of the registration provisions of the Securities Act or applicable state or foreign securities Laws, provided that the foregoing shall not be deemed to impose on Wells Fargo in its individual capacity or as Owner

Trustee, any responsibility with respect to any such offer, sale or solicitation by any other party hereto.

### **7.3.5 Performance of Agreements**

Owner Trustee shall perform its obligations under the Owner Trustee Agreements in accordance with the terms thereof.

### **7.3.6 Release of Lien of Trust Indenture**

Owner Trustee, in each instance referred to in the Lease in which a transfer of any property is required to be made by Owner Trustee to Lessee or any other Person (other than Mortgagee or Owner Participant), shall, at Lessee's request and expense, use its reasonable efforts to procure from Mortgagee the prompt release of the Lien of the Trust Indenture with respect to such property.

### **7.3.7 Notices; Documents**

In the event any claim with respect to any liabilities is filed against the Owner Trustee in its capacity as such and Owner Trustee shall have Actual Knowledge thereof, the Owner Trustee shall promptly notify Lessee and Mortgagee in writing thereof. Owner Trustee further agrees to provide to Lessee promptly any documents (including the certificate of aircraft registration) that it receives from the FAA with respect to the Aircraft.

### **7.3.8 Filings**

After the Closing Date, Owner Trustee shall duly execute and deliver to Lessee all filings and recordings (including, without limitation, all filings and UCC financing statements under the Act and the UCC and any amendments to UCC financing statements necessitated by any change of its location (as such term is used in Section 9-307 of the UCC)), prepared and delivered to it by Lessee required to perfect Owner Trustee's title to the Aircraft and the liens of and security interests granted by the Trust Indenture (or to maintain such perfection) and to make such title, liens and security interests valid and enforceable. Owner Trustee hereby authorizes the Mortgagee to prepare and file any UCC financing statements (including any amendments thereto) and continuation statements referred to in this Section 7.3.8.

### **7.3.9 Trust Agreement**

Each of Wells Fargo and Owner Trustee hereby (i) agrees with Lessee, Loan Participant and Mortgagee not to amend, supplement, terminate or otherwise modify any provision of the Trust Agreement in such a manner as to adversely affect the rights of any such party without the prior written consent of such party and (ii) agrees with Lessee, Loan Participant and Mortgagee not to revoke the trust created by the Trust Agreement so long as the Trust Indenture remains undischarged or if such revocation would have an adverse effect on the Lessee. Nothing contained in this Agreement shall impair any right under the Trust Agreement of Wells Fargo to resign as Owner Trustee in accordance with the provisions of the Trust Agreement.

## **7.4 Covenants of WTC**

WTC in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, as the case may be, covenants and agrees with Lessee, Owner Participant and Owner Trustee as follows:

### **7.4.1 Liens**

WTC (a) will not directly or indirectly create, incur, assume or suffer to exist any Lessor Lien attributable to it on or with respect to all or any part of the Trust Estate, the Trust Indenture Estate or the Aircraft, (b) will, at its own cost and expense, promptly take such action as may be necessary to discharge any Lessor Lien attributable to WTC on all or any part of the Trust Estate, the Trust Indenture Estate or the Aircraft and (c) will in its individual capacity hold harmless and indemnify Lessee, Owner Participant, each Note Holder, Owner Trustee, each of their respective Affiliates, successors and permitted assigns, the Trust Estate and the Trust Indenture Estate from and against (i) any and all Expenses, (ii) any reduction in the amount payable out of the Trust Estate or the Trust Indenture Estate and (iii) any interference with the possession, operation or other use of all or any part of the Aircraft, in each case imposed on, incurred by or asserted against any of the foregoing as a consequence of any such Lessor Lien.

### **7.4.2 Securities Act**

WTC in its individual capacity or as Mortgagee, Pass Through Trustee or Subordination Agent, will not offer any beneficial interest or Security relating to the ownership of the Aircraft or any interest in the Trust Indenture Estate, or any of the Equipment Notes or any other interest in or Security under the Trust Indenture for sale to, or solicit any offer to acquire any such interest or Security from, or sell any such interest or Security to, any Person in violation of the Securities Act or applicable state or foreign securities Laws, provided that the foregoing shall not be deemed to impose on WTC any responsibility with respect to any such offer, sale or solicitation by any other party hereto.

### **7.4.3 Performance of Agreements**

WTC, in its individual capacity and as Mortgagee, Pass Through Trustee or Subordination Agent, as the case may be, shall perform its obligations under the Mortgagee Agreements, the Pass Through Trustee Agreements and the Subordination Agent Agreements in accordance with the terms thereof.

### **7.4.4 Withholding Taxes**

WTC shall indemnify (on an after-tax basis) and hold harmless Lessee, Lessor and Owner Participant against any United States withholding taxes (and related interest, penalties and additions to tax) as a result of the failure by WTC to withhold on payments to any Note Holder if such Note Holder failed to provide to Mortgagee necessary certificates or forms to substantiate the right to exemption from such withholding tax.

## 7.5 Covenants of Note Holders

Each Note Holder (including Subordination Agent) as to itself only covenants and agrees with Lessee, Owner Participant, Owner Trustee and Mortgagee as follows:

### 7.5.1 Withholding Taxes

Such Note Holder (if it is a Non-U.S. Person) agrees to indemnify (on an after-tax basis) and hold harmless Lessee, Lessor, Owner Participant and Mortgagee against any United States withholding taxes (and related interest, penalties and additions to tax) as a result of the inaccuracy or invalidity of any certificate or form provided by such Note Holder to Mortgagee in connection with such withholding taxes. Any amount payable hereunder shall be paid within 30 days after receipt by a Note Holder of a written demand therefor.

### 7.5.2 Transfer; Compliance

(a) Such Note Holder will (i) not transfer any Equipment Note or interest therein in violation of the Securities Act or applicable state or foreign securities Law; provided, that the foregoing provisions of this section shall not be deemed to impose on such Note Holder any responsibility with respect to any such offer, sale or solicitation by any other party hereto, and (ii) perform and comply with the obligations specified to be imposed on it (as a Note Holder) under each of the Trust Indenture and the form of Equipment Note set forth in the Trust Indenture.

(b) Except as otherwise required by the terms of Section 2.13 of the Trust Indenture, each Note Holder will not sell, assign, convey, exchange or otherwise transfer any Equipment Note or any interest in, or represented by, any Equipment Note (it being understood that this provision is not applicable to the Pass Through Certificates) unless the proposed transferee thereof first provides Lessee and Owner Participant with both of the following:

(i) a written representation and covenant that either (a) no portion of the funds it uses to purchase, acquire and hold such Equipment Note or interest directly or indirectly constitutes, or may be deemed under the Code or ERISA or any rulings, regulations or court decisions thereunder to constitute, the assets of any Plan or (b) the transfer, and subsequent holding, of such Equipment Note or interest shall not involve or give rise to a transaction that constitutes a prohibited transaction within the meaning of Section 406 of ERISA or Section 4975(c)(1) of the Code involving Lessee, Owner Participant, Pass Through Trustee, the Subordination Agent or the proposed transferee (other than a transaction that is exempted from the prohibitions of such sections by applicable provisions of ERISA or the Code or administrative exemptions or regulations issued thereunder); and

(ii) a written covenant that it will not transfer any Equipment Note or any interest in, or represented by, any Equipment Note unless the subsequent transferee also makes the representation described in clause (i) above and agrees to comply with this clause (ii) and the other covenants of the Note Holders contained in the Operative Agreements.

## **7.6 Agreements**

### **7.6.1 Owner Trustee Is Owner for All Purposes**

Lessee, the Owner Participant and Owner Trustee agree that for all purposes, after the Closing, Owner Trustee will be the owner of the Aircraft (except that Owner Participant will be the owner for income tax purposes) and Lessee will be the lessee thereof. No transfer, by operation of Law or otherwise, of the beneficial interest of Owner Participant in and to the Trust Estate shall operate to transfer legal title to any part of the Trust Estate to any transferee thereof.

### **7.6.2 Commencement of Bankruptcy Proceedings**

Lessee, each Participant, each Note Holder, Wells Fargo, Owner Trustee, WTC and Mortgagee agree for the benefit of each of the others that it will not commence or join in any proceeding under the Bankruptcy Code to commence a case under Section 303 of the Bankruptcy Code against the Trust Estate. Nothing contained herein shall be deemed to preclude any Participant, any Note Holder, Wells Fargo, Owner Trustee, WTC or Mortgagee from filing any claim against the Trust Estate in any case commenced against the Trust Estate or preclude the exercise of remedies pursuant to, or limit the rights of Mortgagee under, the Trust Indenture.

### **7.6.3 Certain Bankruptcy Matters**

If (a) all or any part of the Trust Estate becomes the property of, or Owner Trustee or Owner Participant becomes, a debtor subject to the reorganization provisions of the Bankruptcy Code, (b) pursuant to such reorganization provisions, including Section 1111(b) of the Bankruptcy Code, Wells Fargo or Owner Participant is required, by reason of Wells Fargo or Owner Participant being held to have recourse liability to any Note Holder or Mortgagee directly or indirectly (other than the recourse liability of Wells Fargo or Owner Participant under this Agreement, the Trust Indenture or by separate agreement), to make payment on account of any amount payable as principal, Make-Whole Amount, if any, interest or other amounts on the Equipment Notes, and (c) any Note Holder or Mortgagee actually receives any Excess Amount, as defined below, which reflects any payment by Wells Fargo or Owner Participant on account of (b) above, then such Note Holder or Mortgagee, as the case may be, shall promptly refund to Wells Fargo or Owner Participant (whichever shall have made such payment) such Excess Amount.

For purposes of this Section 7.6.3, "Excess Amount" means the amount by which such payment exceeds the amount that would have been received by a Note Holder or Mortgagee if Wells Fargo or Owner Participant had not become subject to the recourse liability referred to in clause (b) above, and such Note Holder or Mortgagee receives written notice that such amount is an Excess Amount prior to its distribution thereof. Nothing contained in this Section 7.6.3 shall prevent a Note Holder or Mortgagee from enforcing any personal recourse obligation (and retaining the proceeds thereof) of Wells Fargo or Owner Participant under this Agreement (other than as referred to in clause (b) above) or the Trust Indenture (and any exhibits or annexes thereto) or from retaining any amount paid by Owner Participant under Sections 2.13 or 4.03 of the Trust Indenture.



#### **7.6.4 Quiet Enjoyment; Sale by Owner Trustee Binding**

(a) Owner Participant, Pass Through Trustee, Subordination Agent, each Note Holder, Owner Trustee and Mortgagee agrees as to itself with Lessee that, so long as no Lease Event of Default shall have occurred and be continuing, such Person shall not (and shall not permit any Affiliate or other Person claiming by, through or under it to) interfere with Lessee's rights in accordance with the Lease to the quiet enjoyment, possession and use of the Aircraft during the Term.

(b) Any assignment, sale, transfer or other conveyance of the Aircraft by Owner Trustee made pursuant to the terms of this Agreement or the Lease shall bind Owner Participant and shall be effective to transfer or convey all right, title and interest of Owner Trustee and Owner Participant in and to the Aircraft. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such assignment, sale, transfer or conveyance, or as to the application of any sale or other proceeds with respect thereto by Owner Trustee, as regards Owner Participant.

#### **7.6.5 Release of Lien of Trust Indenture**

Each of Lessee, Lessor and Mortgagee agrees that in each instance referred to in the Lease in which a transfer of any property is required to be made by Lessor to Lessee or any other Person (other than Mortgagee), Mortgagee shall, upon request of Lessor and compliance with the applicable provisions of the Lease and Trust Indenture, promptly execute (at Lessee's cost and expense) such instruments as Lessor or Lessee may reasonably request to evidence the release of the Lien of the Trust Indenture with respect to such property.

#### **7.6.6 Non-Recourse**

Loan Participant and Mortgagee agree that (a) obligations of Owner Trustee under the Trust Indenture or any other Operative Agreement and with respect to the Equipment Notes shall be non-recourse to Owner Participant and to Wells Fargo and (b) they will look solely to the income and proceeds from the Trust Estate and the Trust Indenture Estate to the extent available for distribution to Note Holder or Mortgagee as provided in the Trust Indenture and that neither Owner Participant nor Wells Fargo will be personally liable to Loan Participant or Mortgagee for any amounts payable by Owner Trustee under the Trust Indenture or any other Operative Agreement; provided, however, that the foregoing is not intended nor shall it be construed to limit any recourse liability of Owner Participant or Wells Fargo to the extent that such liability is expressly set forth in this Agreement or in any of the Operative Agreements or arises by reason of the breach of any representation or warranty or covenant given by such Person (in the case of Wells Fargo, in its individual capacity).

#### **7.6.7 Other Documents; Amendment**

(a) Each of the Owner Participant and the Owner Trustee hereby agrees with Lessee, the Loan Participant, and the Mortgagee not to amend, supplement or otherwise modify any provision of the Trust Agreement in a manner that could materially adversely affect such party without the prior written consent of such party (including without limitation in the case of such agreement with Lessee, Section 4.2.5 of the Trust Agreement). Notwithstanding the foregoing,

so long as the Lease has not been terminated or expired, each Participant, the Mortgagee and the Owner Trustee hereby agree for the benefit of Lessee that without the consent of Lessee they will not amend, supplement or otherwise modify (i) Article III, Article IX or Sections 2.02 (third paragraph), 2.05 or 3.06 (second sentence) of the Trust Indenture, (ii) any provision of any Operative Agreement that will affect the stated principal amount of or premium or interest on the Equipment Notes or (iii) any other provision of the Trust Indenture or Equipment Notes in a manner that could materially adversely affect Lessee. Mortgagee and Owner Trustee agree promptly to furnish to Lessee copies of any supplement, amendment, waiver or modification of any of the Operative Agreements to which Lessee is not a party. Loan Participant agrees that it will not take any action in respect of the Trust Indenture Estate except through the Mortgagee pursuant to the Trust Indenture or as otherwise permitted by the Trust Indenture.

(b) Owner Trustee agrees to join with Lessee to the extent that action on its part is necessary or appropriate (i) to cause the following to be duly accomplished in accordance with applicable United States federal Law by the time the Aircraft is delivered under this Agreement and the Lease: (A) the application for registration of the Aircraft in the name of Owner Trustee and (B) all related action necessary in order for Lessee to have temporary or permanent authority to operate the Aircraft as contemplated by the Lease and (ii) forthwith upon delivery of the Aircraft under this Agreement and the Lease, to cause all necessary documents to be duly filed for recording in accordance with applicable United States federal Law.

#### **7.6.8 Consents**

Owner Participant, Pass Through Trustee, Subordination Agent, Owner Trustee and Mortgagee each covenants and agrees, for the benefit of Lessee, that it shall not unreasonably withhold its consent to any consent or approval requested of it or of Owner Trustee or Mortgagee under the terms of any of the Operative Agreements which by its terms is not to be unreasonably withheld.

#### **7.6.9 Insurance**

Each of Owner Participant, the Pass Through Trustee, the Subordination Agent and the Owner Trustee agrees not to obtain or maintain insurance for its own account as permitted by Section 11.2 of the Lease if such insurance would limit or otherwise materially adversely affect the coverage of any insurance required to be obtained or maintained by Lessee pursuant to Section 11 and Annex D of the Lease.

#### **7.6.10 Extent of Interest of Note Holders**

A Note Holder shall not, as such, have any further interest in, or other right with respect to, the Trust Estate or the Trust Indenture Estate when and if the principal and Make-Whole Amount, if any, of and interest on the Equipment Note held by such Holder, and all other sums, then due and payable to such Holder hereunder and under any other Operative Agreement, shall have been paid in full.

### 7.6.11 Foreign Registration

Each Participant, Owner Trustee and Mortgagee hereby agree, for the benefit of Lessee but subject to the provisions of Section 7.1.2 of the Lease:

(a) that Lessee shall be entitled to register the Aircraft or cause the Aircraft to be registered in a country other than the United States subject to compliance with the following:

(i) each of the following requirements is satisfied:

- (A) such registration shall be made only after the Tax Attribute Period, unless Lessee prepays on a lump sum basis calculated pursuant to Section 5(f) of the Tax Indemnity Agreement any liability due under the Tax Indemnity Agreement as a result of such registration based upon the assumption that such registration would continue for the remainder of the term of the Permitted Sublease described in clause (C) below, provided, that notwithstanding the foregoing, such registration may be made during the taxable year in which the seventh anniversary of the Delivery Date occurs so long as the Aircraft is not “used predominantly outside the United States” within the meaning of Section 168(g) of the Code during such taxable year;
- (B) no Lease Event of Default shall have occurred and be continuing at the time of such registration;
- (C) such proposed change of registration is made in connection with a Permitted Sublease to a Permitted Air Carrier; and
- (D) such country is a Permitted Country with which the United States then maintains normal diplomatic relations.

(ii) the Owner Trustee, Owner Participant and Mortgagee shall have received an opinion, in form and substance reasonably satisfactory to the Owner Participant (subject to customary exceptions), of counsel reasonably satisfactory to the Owner Participant and Mortgagee addressed to each such party to the effect that:

- (A) such country would recognize the Owner Trustee’s title to, ownership interest in and right to possession of, the Aircraft;
- (B) the obligations of Lessee, and the rights and remedies of Owner Trustee, under the Lease are valid, binding and enforceable under the laws of such country (or the laws of the country to which the laws of such country would refer as the applicable governing law);
- (C) after giving effect to such change in registration, the Lien of the Trust Indenture on the Owner Trustee’s right, title and interest in and to the Aircraft and the Lease shall continue as a valid and duly

perfected first priority security interest and all filing, recording or other action necessary to protect the same shall have been accomplished (or, if such opinion cannot be given at the time of such proposed change in registration because such change in registration is not yet effective, (1) the opinion shall detail what filing, recording or other action is necessary and (2) Owner Trustee and the Mortgagee shall have received a certificate from Lessee that all possible preparations to accomplish such filing, recording and other action shall have been done, and such filing, recording and other action shall be accomplished and a supplemental opinion to that effect shall be delivered to Owner Trustee and the Mortgagee on or prior to the effective date of such change in registration;

- (D) it is not necessary, solely as a consequence of such change in registration and without giving effect to any other activity of Owner Trustee, the Owner Participant or the Mortgagee (or any Affiliate thereof), as the case may be, for Owner Trustee, the Owner Participant or the Mortgagee to qualify to do business in such country as a result of such reregistration;
- (E) there is no tort liability of the owner or lessor or mortgagee of an aircraft not in possession thereof under the laws of such country (it being agreed that, in the event such latter opinion cannot be given in a form satisfactory to the Owner Participant and Mortgagee, such opinion shall be waived if insurance reasonably satisfactory to the Owner Participant and Mortgagee is provided to cover such risk); and
- (F) unless Lessee shall have agreed to provide insurance reasonably satisfactory to Owner Participant and Mortgagee covering the risk of requisition of use of the Aircraft by the government of such country (so long as the Aircraft is registered under the laws of such country), the laws of such country require fair compensation by the government of such country payable in currency freely convertible into Dollars and freely removable from such country (without license or permit, unless Lessee prior to such proposed reregistration has obtained such license or permit) for the taking or requisition by such government of such use.

(b) In addition, as a condition precedent to any change in registration Lessee shall have given to Lessor and Mortgagee assurances reasonably satisfactory to each of them:

- (i) to the effect that the provisions of Section 11 of the Lease have been complied with after giving effect to such change of registration; and

- (ii) of the payment by Lessee of all reasonable out-of-pocket expenses at no after-tax cost to any Participant of Lessor, each Participant and Mortgagee in connection with such change of registry, including, without limitation (1) the reasonable fees and disbursements of counsel to Lessee, Lessor and Mortgagee, (2) any filing or recording fees, Taxes or similar payments incurred in connection with the change of registration of the Aircraft and the creation and perfection of the security interest therein in favor of Mortgagee for the benefit of Note Holders, (3) all costs and expenses incurred in connection with any filings necessary to continue in the United States the perfection of the security interest in the Aircraft and the Lease in favor of Mortgagee for the benefit of Note Holders and (4) costs in connection with the calculation of the lump sum payment described in clause (i)(A) of this Section 7.6.11.

#### **7.6.12 Other Commercial Relations Unaffected**

Notwithstanding anything to the contrary set forth in any Operative Agreement:

(a) Except as set forth in the Purchase Agreement Assignment, nothing contained in the Operative Agreements shall constitute or be deemed to be a waiver by Lessee of any rights, remedies or claims it may have against Airframe Manufacturer or Engine Manufacturer or any subcontractor or supplier of either; and the Operative Agreements do not and shall not be construed or deemed to create any rights, waivers, immunities or indemnities in favor of Airframe Manufacturer, Engine Manufacturer or any subcontractor or supplier of either with respect to any such rights, remedies or claims of Lessee; and

(b) The Airframe Manufacturer, by its execution and delivery of the Consent and Agreement, shall not be deemed to have waived any rights, remedies or claims which Airframe Manufacturer (or any subcontractor or supplier of Airframe Manufacturer) may have against Lessee; and the Operative Agreements do not and shall not be construed or deemed to create any rights, waivers, immunities or indemnities in favor of Lessee with respect to any such rights, remedies or claims of Airframe Manufacturer (or any subcontractor or supplier of Airframe Manufacturer).

#### **7.6.13 Interest in Certain Engines**

Each Participant, Owner Trustee, and Mortgagee agree, for the benefit of each of the lessor, conditional seller, mortgagee or secured party of any airframe or engine leased to, or purchased by, Lessee or any Permitted Sublessee subject to a lease, conditional sale, trust indenture or other security agreement that it will not acquire or claim, as against such lessor, conditional seller, mortgagee or secured party, any right, title or interest in any engine as the result of such engine being installed on the Airframe at any time while such engine is subject to such lease, conditional sale, trust indenture or other security agreement and owned by such lessor or conditional seller or subject to a trust indenture or security interest in favor of such mortgagee or secured party.

## **SECTION 8. CONFIDENTIALITY**

Lessee, Owner Participant, Note Holders, Owner Trustee, Mortgagee and Airframe Manufacturer shall keep Annexes B, C and D and Schedules 1, 2, 3 and 4 to the Lease, the Purchase Agreement Assignment and the Tax Indemnity Agreement confidential and shall not disclose, or cause to be disclosed, the same to any other Person, except (A) to prospective and permitted transferees of Lessee's, Owner Participant's, a Note Holder's, a Liquidity Provider's, Owner Trustee's, Mortgagee's or other Indenture Indemnitee's interest or their respective counsel or special counsel, independent insurance brokers, auditors, or other agents who agree to hold such information confidential, (B) to Lessee's, Owner Participant's, a Note Holder's, a Liquidity Provider's, Pass Through Trustee's, Owner Trustee's, Mortgagee's or other Indenture Indemnitee's counsel or special counsel, independent insurance brokers, auditors, or other agents, Affiliates or investors who agree to hold such information confidential, (C) as may be required by any statute, court or administrative order or decree, legal process or governmental ruling or regulation, including those of any applicable insurance regulatory bodies (including, without limitation, the National Association of Insurance Commissioners), federal or state banking examiners, Internal Revenue Service and state and local income tax auditors or any stock exchange, (D) with respect to Lessee and Owner Participant, by mutual agreement of such parties, (E) with respect to a Note Holder or Pass Through Trustee, to a nationally recognized rating agency for the purpose of obtaining a rating on the Equipment Notes or the Pass Through Certificates or to support an NAIC rating for the Equipment Notes or the Pass Through Certificates or (F) such other Persons as are reasonably deemed necessary by the disclosing party in order to protect the interests of such party or for the purposes of enforcing such documents by such party; provided, that any and all disclosures permitted by clauses (C), (D), (E) or (F) above shall be made only to the extent necessary to meet the specific requirements or needs of the Persons making such disclosures.

## **SECTION 9. INDEMNIFICATION AND EXPENSES**

### **9.1 General Indemnity**

#### **9.1.1 Indemnity**

If the Closing occurs, Lessee shall indemnify, protect, defend and hold harmless each Indemnitee from, against and in respect of, and shall pay on a net after-tax basis, any and all Expenses of any kind or nature whatsoever that may be imposed on, incurred by or asserted against any Indemnitee, relating to, resulting from, or arising out of or in connection with, any one or more of the following:

(a) The Operative Agreements, the Pass Through Agreements, or the enforcement of any of the terms of any of the Operative Agreements or the Pass Through Agreements;

(b) The Aircraft, the Airframe, any Engine or any Part, including, without limitation, with respect thereto, (i) the manufacture, design, purchase, acceptance, nonacceptance or rejection, ownership, registration, reregistration, deregistration, delivery, nondelivery, lease, sublease, assignment, possession, use or non-use, operation, maintenance, testing, repair, overhaul, condition, alteration, modification, addition, improvement, storage, airworthiness,

replacement, repair, sale, substitution, return, abandonment, redelivery or other disposition of the Aircraft, any Engine or any Part, (ii) any claim or penalty arising out of violations of applicable Laws by Lessee (or any Permitted Sublessee), (iii) tort liability, whether or not arising out of the negligence of any Indemnitee (whether active, passive or imputed), (iv) death or property damage of passengers, shippers or others, (v) environmental control, noise or pollution and (vi) any Liens in respect of the Aircraft, any Engine or any Part;

(c) The offer, sale, or delivery of any Equipment Notes, Pass Through Certificates or any interest therein or represented thereby; and

(d) Any breach of or failure to perform or observe, or any other noncompliance with, any covenant or agreement or other obligation to be performed by Lessee under any Lessee Operative Agreement or any Pass Through Agreement or the falsity of any representation or warranty of Lessee in any Lessee Operative Agreement or any Pass Through Agreement other than in the Tax Indemnity Agreement.

### 9.1.2 Exceptions

Notwithstanding anything contained in Section 9.1.1, Lessee shall not be required to indemnify, protect, defend and hold harmless any Indemnitee pursuant to Section 9.1.1 in respect of any Expense of such Indemnitee:

(a) For any Taxes or a loss of Tax benefit, whether or not Lessee is required to indemnify therefor pursuant to Section 9.3 or the Tax Indemnity Agreement; provided, however, this Section 9.1.1(a) shall not apply to any taxes taken into account in making any payment on a net after tax basis;

(b) Except to the extent attributable to acts or events occurring prior thereto, acts or events (other than acts or events related to the performance or failure to perform by Lessee of its obligations pursuant to the terms of the Lessee Operative Agreements) that occur after the earlier of: (i) with respect to the Airframe, any Engine or any Part, the return of possession (it being understood that the date of the placement of the Aircraft in storage as provided in Section 5 of the Lease constitutes the date of return of the Aircraft under the Lease) of such Airframe, Engine or Part pursuant to the terms of and in compliance with the Lease (other than pursuant to Section 15 thereof, in which case Lessee's liability under this Section 9.1 shall survive for so long as Lessor or Mortgagee shall be entitled to exercise remedies under such Section 15) or (ii) the termination of the Term in accordance with the Lease;

(c) To the extent attributable to any Transfer (voluntary or involuntary) by or on behalf of such Indemnitee of any Equipment Note or interest therein, except (i) for out-of-pocket costs and expenses incurred as a result of any such Transfer pursuant to the exercise of remedies under any Operative Agreement resulting from a Lease Event of Default and (ii) as otherwise required by the terms of Section 2.13 of the Trust Indenture;

(d) To the extent attributable to any Transfer (voluntary or involuntary) by or on behalf of Owner Participant of any interest in the Aircraft, or the Trust Estate except for costs and expenses incurred as a result of such Transfer, if such Transfer arises directly from a Lease Event of Default that shall have occurred and be continuing;

- (e) To the extent attributable to the gross negligence or willful misconduct of such Indemnitee or any related Indemnitee (as defined below) (other than gross negligence or willful misconduct imputed to such person by reason of its interest in the Aircraft or any Operative Agreement);
- (f) In the case of Wells Fargo, to the extent attributable to matters enumerated in the proviso to Section 14;
- (g) To the extent attributable to the incorrectness or breach of any representation or warranty of such Indemnitee or any related Indemnitee contained in or made pursuant to any Operative Agreement or any Pass Through Agreement;
- (h) To the extent attributable to the failure by such Indemnitee or any related Indemnitee to perform or observe any agreement, covenant or condition on its part to be performed or observed in any Operative Agreement or any Pass Through Agreement;
- (i) To the extent attributable to the offer or sale by such Indemnitee or any related Indemnitee of any interest in the Aircraft, the Equipment Notes, the Pass Through Certificates, the Trust Estate or the Trust Agreement or any similar interest, in violation of the Securities Act or other applicable federal, state or foreign securities Laws (other than any offer or sale thereof caused by the acts or omissions of Lessee);
- (j) (i) With respect to any Indemnitee (other than Mortgagee), to the extent attributable to the failure of the Mortgagee to distribute funds received and distributable by it in accordance with the Trust Indenture, (ii) with respect to any Indemnitee (other than the Owner Trustee), to the extent attributable to the failure of the Owner Trustee to distribute funds received and distributable by it in accordance with the Trust Agreement, (iii) with respect to any Indemnitee (other than the Subordination Agent), to the extent attributable to the failure of the Subordination Agent to distribute funds received and distributable by it in accordance with the Intercreditor Agreement, (iv) with respect to any Indemnitee (other than the Pass Through Trustee), to the extent attributable to the failure of the Pass Through Trustee to distribute funds received and distributable by it in accordance with the Pass Through Trust Agreement, (v) with respect to any Indemnitee (other than the Escrow Agent), to the extent attributable to the failure of the Escrow Agent to pay funds received and payable by it in accordance with any Escrow Agreement, (vi) with respect to any Indemnitee (other than the Paying Agent), to the extent attributable to the failure of the Paying Agent to distribute funds received and distributable by it in accordance with any Escrow Agreement, (vii) to the extent attributable to the failure of the Depositary to pay funds payable by it in accordance with any Deposit Agreement, (viii) with respect to Mortgagee, to the extent attributable to the negligence or willful misconduct of Mortgagee in the distribution of funds received and distributable by it in accordance with the Trust Indenture, (ix) with respect to Owner Trustee, to the extent attributable to the negligence or willful misconduct of Owner Trustee in the distribution of funds received and distributable by it in accordance with the Trust Agreement, (x) with respect to the Subordination Agent, to the extent attributable to the negligence or willful misconduct of the Subordination Agent in the distribution of funds received and distributable by it in accordance with the Intercreditor Agreement, (xi) with respect to the Pass Through Trustee, to the extent attributable to the negligence or willful misconduct of the Pass Through Trustee in the distribution of funds



received and distributable by it in accordance with the Pass Through Trust Agreement, (xii) with respect to the Escrow Agent, to the extent attributable to the negligence or willful misconduct of the Escrow Agent in the payment of funds received and payable by it in accordance with any Escrow Agreement, and (xiii) with respect to the Paying Agent, to the extent attributable to the negligence or willful misconduct of the Paying Agent in the distribution of funds received and distributable by it in accordance with any Escrow Agreement.

(k) Other than during the continuation of a Lease Event of Default, to the extent attributable to the authorization or giving or withholding of any future amendments, supplements, waivers or consents with respect to any Operative Agreement or Pass Through Agreement other than such as have been requested by Lessee or as are required by or made pursuant to the terms of the Operative Agreements or Pass Through Agreements (unless such requirement results from the actions of an Indemnitee not required by or made pursuant to the Operative Agreements or the Pass Through Agreements);

(l) To the extent attributable to any amount which any Indemnitee expressly agrees to pay or such Indemnitee expressly agrees shall not be paid by or be reimbursed by Lessee;

(m) To the extent that it is an ordinary and usual operating or overhead expense;

(n) With respect to the Owner Participant or the Owner Trustee, or any related Indemnitee, to the extent attributable to the deregistration of the Aircraft under the Act as a result of Owner Participant's or Owner Trustee's (or any related Indemnitee of either) not being a Citizen of the United States as a result of any act (other than reregistration of the Aircraft pursuant to Section 7.1.2 of the Lease) of Owner Participant or Owner Trustee, or any related Indemnitee of either of the foregoing (not taken at the request of the Lessee);

(o) For any Lessor Lien attributable to such Indemnitee or any related Indemnitee;

(p) If another provision of an Operative Agreement or a Pass Through Agreement specifies the extent of Lessee's responsibility or obligation with respect to such Expense, to the extent arising from other than failure of Lessee to comply with such specified responsibility or obligation;

(q) To the extent it is a Transaction Expense;

(r) To the extent constituting principal, Make-Whole Amount or interest on the Equipment Notes attributable solely to an Event of Default not constituting a Lease Event of Default; or

(s) To the extent incurred by or asserted against an Indemnitee as a result of any "prohibited transaction", within the meaning of Section 406 of ERISA or Section 4975(c)(1) of the Code; or

(t) To the extent not included in the definition of Supplemental Rent as a result of the provisions of clause (e) of such definition.

For purposes of this Section 9.1, a Person shall be considered a “related” Indemnitee with respect to an Indemnitee if such Person is an Affiliate or employer of such Indemnitee, a director, officer, employee, agent, or servant of such Indemnitee or any such Affiliate or a successor or permitted assignee of any of the foregoing.

### **9.1.3 Separate Agreement**

This Agreement constitutes a separate agreement with respect to each Indemnitee and is enforceable directly by each such Indemnitee.

### **9.1.4 Notice**

If a claim for any Expense that an Indemnitee shall be indemnified against under this Section 9.1 is made, such Indemnitee shall give prompt written notice thereof to Lessee. Notwithstanding the foregoing, the failure of any Indemnitee to notify Lessee as provided in this Section 9.1.4, or in Section 9.1.5, shall not release Lessee from any of its obligations to indemnify such Indemnitee hereunder, except to the extent that such failure results in an additional Expense to Lessee (in which event Lessee shall not be responsible for such additional Expense) or materially impairs Lessee’s ability to contest such claim.

### **9.1.5 Notice of Proceedings; Defense of Claims; Limitations**

(a) In case any action, suit or proceeding shall be brought against any Indemnitee for which Lessee is responsible under this Section 9.1, such Indemnitee shall notify Lessee of the commencement thereof and Lessee may, at its expense, participate in and to the extent that it shall wish (subject to the provisions of the following paragraph), assume and control the defense thereof and, subject to Section 9.1.5(c), settle or compromise the same.

(b) Lessee or its insurer(s) shall have the right, at its or their expense, to investigate or, if Lessee or its insurer(s) shall agree in writing not to dispute liability to the Indemnitee giving notice of such action, suit or proceeding under this Section 9.1.5 for indemnification hereunder or under any insurance policies pursuant to which coverage is sought, control the defense of, any action, suit or proceeding, relating to any Expense for which indemnification is sought pursuant to this Section 9.1, and each Indemnitee shall cooperate with Lessee or its insurer(s) with respect thereto; provided, that Lessee shall not be entitled to control the defense of any such action, suit, or proceeding or compromise any such Expense (i) during the continuance of any Lease Event of Default arising under Section 14.1 of the Lease, (ii) if such proceedings would entail a material risk of the sale, forfeiture or loss of the Aircraft or (iii) if such proceedings would entail a risk of criminal liability or greater than de minimis risk of material civil penalties being imposed on such Indemnitee. In connection with any such action, suit or proceeding being controlled by Lessee, such Indemnitee shall have the right to participate therein, at its sole cost and expense, with counsel reasonably satisfactory to Lessee; provided, that such Indemnitee’s participation does not, in the reasonable opinion of the independent counsel appointed by the Lessee or its insurers to conduct such proceedings, interfere with the defense of such case.

(c) In no event shall any Indemnitee enter into a settlement or other compromise with respect to any Expense without the prior written consent of Lessee, which consent shall not be

unreasonably withheld or delayed, unless such Indemnitee waives its right to be indemnified with respect to such Expense under this Section 9.1.

(d) In the case of any Expense indemnified by the Lessee hereunder which is covered by a policy of insurance maintained by Lessee pursuant to Section 11 of the Lease, at Lessee's expense, each Indemnitee agrees to cooperate with the insurers in the exercise of their rights to investigate, defend or compromise such Expense as may be required to retain the benefits of such insurance with respect to such Expense.

(e) If an Indemnitee is not a party to this Agreement, Lessee may require such Indemnitee to agree in writing to the terms of this Section 9 and Section 15.8 prior to making any payment to such Indemnitee under this Section 9.

(f) Nothing herein shall be deemed to be an assumption by Lessee of obligations of Owner Trustee with respect to, or a guarantee by Lessee of, any amounts payable by Owner Trustee upon Equipment Notes or a guarantee of any residual value of the Aircraft.

(g) Nothing contained in this Section 9.1.5 shall be deemed to require an Indemnitee to contest any Expense or to assume responsibility for or control of any judicial proceeding with respect thereto.

#### **9.1.6 Information**

Lessee will provide the relevant Indemnitee with such information not within the control of such Indemnitee, as is in Lessee's control or is reasonably available to Lessee, which such Indemnitee may reasonably request and will otherwise cooperate with such Indemnitee so as to enable such Indemnitee to fulfill its obligations under Section 9.1.5. The Indemnitee shall supply Lessee with such information not within the control of Lessee, as is in such Indemnitee's control or is reasonably available to such Indemnitee, which Lessee may reasonably request to control or participate in any proceeding to the extent permitted by Section 9.1.5.

#### **9.1.7 Effect of Other Indemnities; Subrogation; Further Assurances**

Upon the payment in full by Lessee of any indemnity provided for under this Agreement, Lessee, without any further action and to the full extent permitted by Law, will be subrogated to all rights and remedies of the person indemnified (other than with respect to any of such Indemnitee's insurance policies or in connection with any indemnity claim such Indemnitee may have under Section 5.03 or 7.01 of the Trust Indenture or Section 5.3 or 7 of the Trust Agreement) in respect of the matter as to which such indemnity was paid. Each Indemnitee will give such further assurances or agreements and cooperate with Lessee to permit Lessee to pursue such claims, if any, to the extent reasonably requested by Lessee and at Lessee's expense.

#### **9.1.8 Refunds**

If an Indemnitee receives any refund, in whole or in part, with respect to any Expense paid by Lessee hereunder, it will promptly pay the amount refunded (but not an amount in excess of the amount Lessee or any of its insurers has paid in respect of such Expense) over to Lessee

unless a Lease Event of Default shall have occurred and be continuing, in which case such amounts shall be paid over to Owner Trustee (or, so long as the Trust Indenture shall not have been discharged, to Mortgagee) to hold as security for Lessee's obligations under the Lessee Operative Agreements or, if requested by Lessee, applied to satisfy such obligations.

## **9.2 Expenses**

### **9.2.1 Transaction Expenses**

Owner Participant shall pay all Transaction Expenses (which shall exclude the ongoing fees, disbursements and expenses of Mortgagee and the Owner Trustee), up to an aggregate amount equal to the Expense Limit. Airframe Manufacturer shall pay all Transaction Expenses in excess of the Expense Limit and the ongoing fees, disbursements and expenses of Mortgagee and the Owner Trustee, provided that if Airframe Manufacturer shall fail to make any payment when due of the ongoing fees, disbursements and expenses of Mortgagee or Owner Trustee, Lessee shall make such payment if so requested by Mortgagee or Owner Trustee, as applicable, in which case Airframe Manufacturer shall be obligated to immediately reimburse Lessee for any payment made by Lessee pursuant to this sentence. Lessee shall have no liability or obligation with respect to Transaction Expenses, except as provided in the preceding sentence.

### **9.2.2 Payment of Other Expenses**

Lessee will be responsible for the fees and charges of its counsel incurred in connection with the preparation, execution and delivery of the Operative Agreements. All out-of-pocket costs and expenses of Lessee (including, without limitation, reasonable attorney's fees and charges) incurred in performance of Sections 7.1.3(a), (b) and (c) (other than with respect to the first parenthetical of Section 7.1.3(c)) to the extent constituting Transaction Expenses, shall be paid pursuant to Section 9.2.1 and, otherwise, shall be paid by Airframe Manufacturer. Airframe Manufacturer shall pay all costs and expenses incurred by it in connection with the Operative Agreements.

## **9.3 General Tax Indemnity**

### **9.3.1 General**

Except as provided in Section 9.3.2, Lessee agrees that each payment of Rent paid by Lessee pursuant to the Lease, and any other payment or indemnity paid by Lessee to a Tax Indemnitee under any Operative Agreement, shall be free of all withholdings or deductions with respect to Taxes of any nature (other than U.S. federal withholding taxes on, based on or measured by gross or net income), and in the event that Lessee shall be required by applicable law to make any such withholding or deduction for any such payment (x) Lessee shall make all such withholdings or deductions, (y) the amount payable by Lessee shall be increased so that after making all required withholdings or deductions such Tax Indemnitee receives (at no after-Tax cost to the Tax Indemnitee) the same amount that it would have received had no such withholdings or deductions been made, and (z) Lessee shall pay the full amount withheld or deducted to the relevant Taxing Authority in accordance with applicable law. Lessee further agrees that, in the event it is required to withhold from any payment of Basic Rent, Termination Value, Stipulated Loss Value (and amounts determined by reference thereto), or amounts

payable upon exercise of Lessee's purchase option pursuant to Section 17.3 of the Lease, any Tax imposed upon Owner Participant or Owner Trustee (including any withholding Tax based on income or receipts of Owner Participant or Owner Trustee) and such Tax is excluded from indemnification pursuant to Section 9.3.2, Lessee shall pay such additional amount, if any, required so that the total amount paid by Lessee (after making all required withholdings) is equal to (assuming timely payment of the Equipment Notes prior to the relevant Payment Date) the aggregate principal amount of scheduled installments due on the Equipment Notes outstanding on the relevant Payment Date, together with accrued and unpaid interest, due on the Equipment Notes; Owner Participant or Owner Trustee, as the case may be, shall reimburse Lessee for any such additional amounts within two Business Days after demand therefor. Except as provided in Section 9.3.2 and whether or not any of the transactions contemplated hereby are consummated, Lessee shall pay, indemnify, protect, defend and hold each Tax Indemnitee harmless from all Taxes imposed by any Taxing Authority that may from time to time be imposed on or asserted against any Tax Indemnitee or the Aircraft, the Airframe, any Engine or any Part or any interest in any of the foregoing (whether or not indemnified against by any other Person), upon or with respect to the Operative Agreements or the transactions or payments contemplated thereby, including but not limited to any Tax imposed upon or with respect to (x) the Aircraft, the Airframe, any Engine, any Part, any Operative Agreement (including without limitation any Equipment Notes) or any data or any other thing delivered or to be delivered under an Operative Agreement, (y) the purchase, manufacture, acceptance, rejection, sale, transfer of title, return, ownership, mortgaging, delivery, transport, charter, rental, lease, re-lease, sublease, assignment, possession, repossession, presence, use, condition, storage, preparation, maintenance, modification, alteration, improvement, operation, registration, transfer or change of registration, reregistration, repair, replacement, overhaul, location, control, the imposition of any Lien (other than a Lessor Lien), financing, refinancing requested by the Lessee, abandonment or other disposition of the Aircraft, the Airframe, any Engine, any Part, any data or any other thing delivered or to be delivered under an Operative Agreement, or (z) rent, interest, fees or any other income, proceeds, receipts or earnings, whether actual or deemed, arising upon, in connection with, or in respect of, any of the Operative Agreements (including the property or income or other proceeds with respect to property held as part of the Trust Estate) or the transactions contemplated thereby.

### **9.3.2 Certain Exceptions**

The provisions of Section 9.3.1 shall not apply to, and Lessee shall have no liability hereunder for, Taxes:

(a) imposed on a Tax Indemnitee by the federal government of the United States or any Taxing Authority of any jurisdiction within the United States in which such Tax Indemnitee is incorporated or maintains its principal place of business or is otherwise subject to Taxes of such type as a result of transactions or activities by such Tax Indemnitee or its Affiliates that are independent of the transactions and activities contemplated by the Operative Agreements (i) on, based on, or measured by, gross or net income or gross or net receipts, including capital gains taxes, excess profits taxes, minimum taxes from tax preferences, alternative minimum taxes, branch profits taxes, accumulated earnings taxes, personal holding company taxes, succession taxes and estate taxes, and any withholding taxes on, based on or measured by gross or net income or receipts or (ii) on, or with respect to, or measured by, capital or net worth or in the

nature of a franchise tax or a tax for the privilege of doing business (other than, in the case of clause (i) or (ii), sales, use, license or property Taxes, Taxes in the nature of sales or use taxes, value added taxes imposed in lieu of any of the foregoing, airport excise taxes or any excise taxes imposed in the nature of or in lieu of any of the foregoing and other than, in the case of clause (ii), any doing business taxes imposed by a taxing authority in any jurisdiction (other than the jurisdiction within which such Tax Indemnitee is incorporated or maintains its principal place of business) if such doing business taxes attributable to the transactions contemplated by the Operative Agreements were subject to indemnity pursuant to the provisions of this clause 9.3.2(a) (without regard to this parenthetical) solely as a result of the usage or location of the Aircraft in such jurisdiction by a Lessee Person when such Tax Indemnitee was not incorporated or doing business or otherwise subject to Taxes of such type in such jurisdiction, if in a subsequent taxable period such Indemnitee becomes subject to Taxes of such type as a result of activities or transactions other than those contemplated by the Operative Agreements, to the extent that such taxes (and in an amount no more than the amount of such Taxes that) would have continued to be imposed solely as a result of the usage or location of the Aircraft by a Lessee Person in such jurisdiction in the absence of any additional nexus between such Tax Indemnitee and such jurisdiction);

(b) imposed as a result of the replacement of the existing financing agreements with the Operative Agreements and the Express Sublease or the issuance of the Equipment Notes;

(c) on, or with respect to, or measured by, any trustee fees, commissions or compensation received by Owner Trustee, Pass Through Trustee, Subordination Agent or Mortgagee;

(d) on the Trust or the Trust Estate that result from treatment of the Trust or the Trust Estate as an entity, such as a corporation, separate and apart from the Owner Participant;

(e) that are being contested as provided in Section 9.3.4 hereof, for so long as such contest is continuing;

(f) imposed on any Tax Indemnitee to the extent that such Taxes result from the gross negligence or willful misconduct of such Tax Indemnitee, a related Tax Indemnitee or any Affiliate thereof;

(g) imposed on or with respect to a Tax Indemnitee (including the transferee in those cases in which the Tax on transfer is imposed on, or is collected from, the transferee) as a result of a transfer or other disposition (including a deemed transfer or disposition) by such Tax Indemnitee or a related Tax Indemnitee (or, in the case of the Owner Participant, by Owner Trustee (unless requested by the Lessee), or, in the case of Taxes imposed on a transferee, by the transferor) of any interest in the Aircraft, the Airframe, any Engine or any Part, the Rent (other than the assignment of Rent to the Mortgagee pursuant to the Trust Indenture), the Trust, the Trust Estate, the Trust Indenture Estate, the Lease or any interest arising under the Operative Agreements or any Equipment Note or a transfer or disposition (including a deemed transfer or disposition) of any interest in a Tax Indemnitee (other than (A) a substitution or replacement of the Aircraft, the Airframe, any Engine or any Part by a Lessee Person that is treated for Tax purposes as a transfer or disposition, (B) a transfer pursuant to an exercise of remedies upon a

Lease Event of Default that shall have occurred and have been continuing, or (C) a transfer to Lessee pursuant to Section 17.3 of the Lease);

(h) except with respect to gross-ups, imposed subsequent to (and not in respect of) a transfer or other disposition described in paragraph (g) above and not described in the last parenthetical of such paragraph (g) and in excess of those that would have been imposed had there not been a transfer or other disposition by or to such Tax Indemnitee or a related Tax Indemnitee described in paragraph (g) above;

(i) imposed on the Owner Participant and indemnified by Lessee pursuant to the Tax Indemnity Agreement;

(j) imposed with respect to any period after the expiration or earlier termination of the Term and, if required pursuant to the terms of the Lease, the return of possession of the Aircraft to Lessor or placement in storage at the request of Lessor in accordance with the Lease (provided that this exclusion (j) shall not apply to Taxes imposed after such period arising as a result of events occurring prior to such expiration or earlier termination);

(k) consisting of any interest, penalties or additions to tax imposed on a Tax Indemnitee resulting from a failure of such Tax Indemnitee or a related Tax Indemnitee to file any return properly and timely, unless such failure shall be caused by the failure of Lessee to fulfill its obligations, if any, under Section 9.3.6 with respect to such return, provided that if any such return is required to be filed in a jurisdiction outside the United States, which return would not have been required to be filed in the absence of the transactions contemplated under the Operative Agreements or Lessee's transactions or activities in such jurisdiction, this exclusion shall not apply if (A) Lessee has not informed the Tax Indemnitee in writing of the need to file such return at least 30 days prior to the due date thereof (or such shorter period as would reasonably allow the Tax Indemnitee to file such return if, under the circumstances, the Lessee could not have reasonably informed the Tax Indemnitee of the need to file at least 30 days prior to the due date thereof), or (B) the Tax Indemnitee had determined in good faith that such filing would subject it or any Affiliate to adverse consequences in such jurisdiction for which it had not been (and would not have been) indemnified;

(l) resulting from, or that would not have been imposed but for, any Lessor Liens arising as a result of claims against, or acts or omissions of, or otherwise attributable to such Tax Indemnitee or a related Tax Indemnitee;

(m) imposed on any Tax Indemnitee as a result of the breach by such Tax Indemnitee or a related Tax Indemnitee of any covenant of such Tax Indemnitee or any Affiliate thereof contained in any Operative Agreement or the inaccuracy of any representation or warranty by such Tax Indemnitee or any Affiliate thereof in any Operative Agreement;

(n) in the nature of an intangible or similar Tax (i) upon or with respect to the value or principal amount of the interest of Loan Participant or any Note Holder in any Equipment Note or the loan evidenced thereby or (ii) upon or with respect to the value of the interest of the Owner Participant in the Trust Estate or the Trust, in each case only if such Taxes are in the nature of franchise Taxes or result from the Tax Indemnitee doing business in the taxing

jurisdiction and are imposed because of the place of incorporation or the activities unrelated to the transactions contemplated by the Operative Agreements in the taxing jurisdiction of such Tax Indemnitee;

- (o) that are included in Lessor's Cost and paid to the appropriate Taxing Authority;
- (p) imposed on a Tax Indemnitee by a Taxing Authority of a jurisdiction outside the United States within which such Tax Indemnitee is incorporated or maintains its principal place of business or to the extent that such Taxes would not have been imposed but for a connection between the Tax Indemnitee or a related Tax Indemnitee and such jurisdiction imposing such Tax unrelated to the transactions contemplated by the Operative Agreements; or
- (q) Taxes relating to ERISA or Section 4975 of the Code.

For purposes hereof, a Tax Indemnitee and any other Tax Indemnitees that are successors, assigns, agents, servants or Affiliates of such Tax Indemnitee shall be related Tax Indemnitees.

### **9.3.3 Payment**

(a) Lessee's indemnity obligation to a Tax Indemnitee under this Section 9.3 shall equal the amount which, after taking into account any Tax imposed upon the receipt or accrual of the amounts payable under this Section 9.3 and any tax benefits actually recognized by such Tax Indemnitee as a result of the indemnifiable Tax (including, without limitation, any benefits recognized as a result of an indemnifiable Tax being utilized by such Tax Indemnitee as a credit against Taxes not indemnifiable under this Section 9.3), shall equal the amount of the Tax indemnifiable under this Section 9.3. The loss, disallowance or recapture of such tax benefits taken into account by such Tax Indemnitee shall be treated as a Tax subject to indemnity under this Section 9.3.1 without regard to the provisions of Section 9.3.2 (other than Section 9.3.2(f)).

(b) At Lessee's request, the computation of the amount of any indemnity payment owed by Lessee or any amount owed by a Tax Indemnitee to Lessee pursuant to this Section 9.3 shall be verified and certified by an independent public accounting firm selected by such Tax Indemnitee and reasonably satisfactory to Lessee. Such verification shall be binding. The costs of such verification (including the fee of such public accounting firm) shall be borne by Lessee unless such verification shall result in an adjustment in Lessee's favor of 5% or more of the net present value (computed using a discount rate equal to the Debt Rate, compounded monthly) of the payment as computed by such Tax Indemnitee, in which case the costs shall be paid by such Tax Indemnitee.

(c) Each Tax Indemnitee shall provide Lessee with such certifications, information and documentation as shall be in such Tax Indemnitee's possession and as shall be reasonably requested by Lessee to minimize any indemnity payment pursuant to this Section 9.3; provided, that notwithstanding anything to the contrary contained herein, no Tax Indemnitee shall be required to provide Lessee with any Tax returns.

(d) Each Tax Indemnitee shall promptly forward to Lessee any written notice, bill or advice received by it from any Taxing Authority concerning any Tax for which it seeks



indemnification under this Section 9.3. Lessee shall pay any amount for which it is liable pursuant to this Section 9.3 directly to the appropriate Taxing Authority if legally permissible or upon demand of a Tax Indemnitee, to such Tax Indemnitee within 30 days of such demand (or, if a contest occurs in accordance with Section 9.3.4, within 30 days after a Final Determination (as defined below)), but in no event more than two Business Days prior to the date the Tax to which such amount payable hereunder relates is due. If requested by a Tax Indemnitee in writing, Lessee shall furnish to the appropriate Tax Indemnitee the original or a certified copy of a receipt for Lessee's payment of any Tax paid by Lessee or such other evidence of payment of such Tax as is acceptable to such Tax Indemnitee. Lessee shall also furnish promptly upon written request such data as any Tax Indemnitee may reasonably require to enable such Tax Indemnitee to comply with the requirements of any taxing jurisdiction unless such data is not reasonably available to Lessee or, unless such data is specifically requested by a Taxing Authority, is not customarily furnished by domestic air carriers under similar circumstances. For purposes of this Section 9.3, a "Final Determination" shall mean (i) a decision, judgment, decree or other order by any court of competent jurisdiction that occurs pursuant to the provisions of Section 9.3.4, which decision, judgment, decree or other order has become final and unappealable (by law or by Lessee hereunder), (ii) a closing agreement or settlement agreement entered into in accordance with Section 9.3.4 that has become binding and is not subject to further review or appeal (absent fraud, misrepresentation, etc.), or (iii) the termination of administrative proceedings and the expiration of the time for instituting a claim in a court proceeding.

(e) If any Tax Indemnitee shall actually realize a tax savings by reason of any Tax paid or indemnified by Lessee pursuant to this Section 9.3 (whether such tax savings shall be by means of a foreign tax credit, depreciation or cost recovery deduction or otherwise) and such savings is not otherwise taken into account in computing such payment or indemnity, such Tax Indemnitee shall pay to Lessee (within 30 days after the realization of such tax savings) an amount equal to the lesser of (i) the amount of such tax savings, plus any additional tax savings recognized as the result of any payment made pursuant to this sentence, when, as, if, and to the extent, realized or (ii) the amount of all payments (other than in respect of contest costs) pursuant to this Section 9.3 by Lessee to such Tax Indemnitee (less any payments previously made by such Tax Indemnitee to Lessee pursuant to this Section 9.3.3 (e)) (and the excess, if any, of the amount described in clause (i) over the amount described in clause (ii) shall be carried forward and applied to reduce pro tanto any subsequent obligations of Lessee to make payments to such Tax Indemnitee pursuant to this Section 9.3); provided, that such Tax Indemnitee shall not be required to make any payment pursuant to this sentence so long as a Lease Event of Default of a monetary nature has occurred and is continuing. If a tax benefit is later disallowed or denied, the disallowance or denial shall be treated as a Tax indemnifiable under Section 9.3.1 without regard to the provisions of Section 9.3.2 (other than Section 9.3.2 (f)). Each such Tax Indemnitee shall in good faith use reasonable efforts in filing its tax returns and in dealing with Taxing Authorities to seek and claim any such tax benefit.

(f) For purposes of this Section 9.3, items of foreign Tax of any Tax Indemnitee shall be deemed to be utilized by such Tax Indemnitee as credits or deductions for any taxable year in accordance with the following priorities:

(x) First, all utilizable foreign Taxes (taking into account the limitations of Section 904(d) of the Code) other than those described in clause (y) below;

(y) Second, all utilizable foreign Taxes (taking into account the limitations of Section 904(d) of the Code) arising out of the transactions contemplated by the Operative Agreements and other equipment leasing transactions to the extent such Tax Indemnitee is indemnified or held harmless for such Taxes by the Lessee or a lessee on a pari passu basis.

#### **9.3.4 Contest**

(a) If a written claim is made against a Tax Indemnitee for Taxes with respect to which Lessee could be liable for payment or indemnity hereunder, or if a Tax Indemnitee makes a determination that a Tax is due for which Lessee could have an indemnity obligation hereunder, such Tax Indemnitee shall promptly give Lessee notice in writing of such claim (provided, that failure to so notify Lessee shall not relieve Lessee of its indemnity obligations hereunder unless such failure to notify forecloses Lessee's rights to require a contest of such claim) and shall take no action with respect to such claim without the prior written consent of Lessee for 30 days following the receipt of such notice by Lessee; provided, that, in the case of a claim made against a Tax Indemnitee, if such Tax Indemnitee shall be required by law to take action prior to the end of such 30-day period, such Tax Indemnitee shall, in such notice to Lessee, so inform Lessee, and such Tax Indemnitee shall take no action for as long as it is legally able to do so (it being understood that a Tax Indemnitee shall be entitled to pay the Tax claimed and sue for a refund if (i)(A) the failure to so pay the Tax would result in substantial penalties (unless immediately reimbursed by Lessee) and the act of paying the Tax would not materially prejudice the right to contest or (B) the failure to so pay would result in criminal penalties and (ii) such Tax Indemnitee shall take any action so required in connection with so paying the Tax in a manner that, in its good faith opinion, is the least prejudicial to the pursuit of the contest). In addition, such Tax Indemnitee shall (provided, that Lessee shall have agreed to keep such information confidential other than to the extent necessary in order to contest the claim) furnish Lessee with copies of any requests for information from any Taxing Authority relating to such Taxes with respect to which Lessee may be required to indemnify hereunder. If requested by Lessee in writing within 30 days after its receipt of such notice, such Tax Indemnitee shall, at the expense of Lessee (including, without limitation, all reasonable costs, expenses and reasonable attorneys' and accountants' fees and disbursements), in good faith contest (or, if permitted by applicable law to be contested by the Lessee in its own name, allow Lessee to contest) through appropriate administrative and judicial proceedings the validity, applicability or amount of such Taxes by (I) resisting payment thereof, (II) not paying the same except under protest if protest is necessary and proper or (III) if the payment is made, using reasonable efforts to obtain a refund thereof in an appropriate administrative and/or judicial proceeding. If requested to do so by Lessee, the Tax Indemnitee shall appeal any adverse administrative or judicial decision, except that the Tax Indemnitee shall not be required to pursue any appeals to the United States Supreme Court. If and to the extent the Tax Indemnitee is able to separate the contested issue or issues from other issues arising in the same administrative or judicial proceeding that are unrelated to the transactions contemplated by the Operative Agreements without, in the good faith judgment of such Tax Indemnitee, adversely affecting such Tax Indemnitee, such Tax Indemnitee shall permit Lessee to contest such matter in its own name, if permitted by applicable law, and shall provide to Lessee (at Lessee's cost and expense) such information or data that is in such Tax Indemnitee's control or possession that is reasonably necessary to conduct such contest (other than such Tax Indemnitee's federal income tax returns), and Lessee shall keep such Tax Indemnitee reasonably informed concerning the progress of such contest and shall provide such

Tax Indemnitee with copies of all submissions and judicial and administrative proceedings. In the case of a contest controlled by a Tax Indemnitee, such Tax Indemnitee shall consult with Lessee in good faith regarding the manner of contesting such claim and shall keep Lessee reasonably informed regarding the progress of such contest. A Tax Indemnitee shall not fail to take any action expressly required by this Section 9.3.4 (including, without limitation, any action regarding any appeal of an adverse determination with respect to any claim) or settle or compromise any claim without the prior written consent of the Lessee (except as contemplated by Section 9.3.4(b) or (c)).

(b) Notwithstanding the foregoing, in no event shall a Tax Indemnitee be required to pursue any contest (or to permit Lessee to pursue any contest) unless (i) Lessee shall have agreed to pay such Tax Indemnitee on demand all reasonable costs and expenses incurred by such Tax Indemnitee in connection with contesting such Taxes, including, without limitation, all reasonable out of pocket costs and expenses and reasonable attorneys' and accountants' fees and disbursements, (ii) if such contest shall involve the payment of the claim, Lessee shall advance the amount thereof (to the extent indemnified hereunder) plus interest, penalties and additions to tax with respect thereto that are required to be paid prior to the commencement of such contest on an interest-free and after-Tax basis to such Tax Indemnitee (and such Tax Indemnitee shall promptly pay to the Lessee any net realized tax benefits resulting from such advance including any tax benefits resulting from making such payment), (iii) such Tax Indemnitee shall have reasonably determined that the action to be taken will not result in any material risk of forfeiture, sale or loss of the Aircraft (unless Lessee shall have made provisions to protect the interests of any such Tax Indemnitee and the Owner Participant in a manner reasonably satisfactory to such Tax Indemnitee and the Owner Participant) (provided, that such Tax Indemnitee agrees to notify Lessee in writing promptly after it becomes aware of any such risk), (iv) no Lease Event of Default shall have occurred and be continuing unless Lessee has provided adequate security for its obligations hereunder by advancing to such Tax Indemnitee before proceeding or continuing with such contest, the amount of the Tax being contested, plus any interest and penalties and an amount estimated in good faith by such Tax Indemnitee for expenses, and (v) prior to commencing any judicial action controlled by Lessee, Lessee shall have acknowledged its liability for such claim hereunder, provided that Lessee shall not be bound by its acknowledgment if the Final Determination articulates conclusions of law and fact that demonstrate that Lessee has no liability for the contested amounts hereunder. Notwithstanding the foregoing, if any Tax Indemnitee shall release, waive, compromise or settle any claim which may be indemnifiable by Lessee pursuant to this Section 9.3 without the written permission of Lessee, Lessee's obligation to indemnify such Tax Indemnitee with respect to such claim (and all directly related claims and claims based on the outcome of such claim) shall terminate, subject to Section 9.3.4(c), and subject to Section 9.3.4(c), such Tax Indemnitee shall repay to Lessee any amount previously paid or advanced to such Tax Indemnitee with respect to such claim (other than contest costs), plus interest at the rate that would have been payable by the relevant Taxing Authority with respect to a refund of such Tax.

(c) Notwithstanding anything contained in this Section 9.3, a Tax Indemnitee will not be required to contest the imposition of any Tax and shall be permitted to settle or compromise any claim without Lessee's consent if such Tax Indemnitee (i) shall waive its right to indemnity under this Section 9.3 with respect to such Tax (and any directly related claim and any claim the outcome of which is determined based upon the outcome of such claim), (ii) shall pay to Lessee

any amount previously paid or advanced by Lessee pursuant to this Section 9.3 (other than contest costs) with respect to such Tax, plus interest at the rate that would have been payable by the relevant Taxing Authority with respect to a refund of such Tax, and (iii) shall agree to discuss with Lessee the views or positions of any relevant Taxing Authority with respect to the imposition of such Tax.

### **9.3.5 Refund**

If any Tax Indemnitee shall receive a refund of, or be entitled to a credit against other liability for, all or any part of any Taxes paid, reimbursed or advanced by Lessee, such Tax Indemnitee shall pay to Lessee within 30 days of such receipt an amount equal to the lesser of (a) the amount of such refund or credit plus any net tax benefit (taking into account any Taxes incurred by such Tax Indemnitee by reason of the receipt of such refund or realization of such credit) actually realized by such Tax Indemnitee as a result of any payment by such Tax Indemnitee made pursuant to this sentence (including this clause (a)) and (b) such tax payment, reimbursement or advance by Lessee to such Tax Indemnitee theretofore made pursuant to this Section 9.3 (and the excess, if any, of the amount described in clause (a) over the amount described in clause (b) shall be carried forward and applied to reduce pro tanto any subsequent obligation of Lessee to make payments to such Tax Indemnitee pursuant to this Section 9.3). If, in addition to such refund or credit, such Tax Indemnitee shall receive (or be credited with) an amount representing interest on the amount of such refund or credit, such Tax Indemnitee shall pay to Lessee within 30 days of such receipt or realization of such credit that proportion of such interest that shall be fairly attributable to Taxes paid, reimbursed or advanced by Lessee prior to the receipt of such refund or realization of such credit. If any such refund or credit or any interest thereon for which a Tax Indemnitee shall have paid Lessee is later recaptured, denied, disallowed or reduced, such recapture, denial, disallowance or reduction shall be treated as a Tax indemnifiable under Section 9.3.1 without regard to the provisions of Section 9.3.2 (other than Section 9.3.2(f)).

### **9.3.6 Tax Filing**

If any report, return or statement is required to be filed with respect to any Tax which is subject to indemnification under this Section 9.3, Lessee shall timely file the same (except for any such report, return or statement which a Tax Indemnitee has timely notified the Lessee in writing that such Tax Indemnitee intends to file or which a Tax Indemnitee is required by law to file in its own name); provided, that the relevant Tax Indemnitee shall furnish Lessee with any information in such Tax Indemnitee's possession or control that is reasonably necessary to file any such return, report or statement and is reasonably requested in writing by Lessee (it being understood that the Tax Indemnitee shall not be required to furnish copies of its actual tax returns, although it may be required to furnish relevant information contained therein). Lessee shall either file such report, return or statement and send a copy of such report, return or statement to such Tax Indemnitee, and Owner Trustee if the Tax Indemnitee is not Owner Trustee, or, where Lessee is not permitted to file such report, return or statement, or if the same is required by law to be filed in the Tax Indemnitee's own name, it shall notify such Tax Indemnitee in writing of such requirement and prepare and deliver such report, return or statement to such Tax Indemnitee in a manner satisfactory to such Tax Indemnitee within a reasonable time prior to the time such report, return or statement is to be filed.

### **9.3.7 Forms**

Each Tax Indemnitee agrees to furnish from time to time to Lessee or Mortgagee or to such other person as Lessee or Mortgagee may designate, at Lessee's or Mortgagee's request, such duly executed and properly completed forms as may be necessary or appropriate in order to claim any reduction of or exemption from any withholding or other Tax imposed by any Taxing Authority, if (x) such reduction or exemption is available to such Tax Indemnitee, (y) Lessee has provided such Tax Indemnitee with any information necessary to complete such form not otherwise reasonably available to such Tax Indemnitee, and (z) if such return is required to be filed in a jurisdiction outside the United States, the Tax Indemnitee has not made a good faith determination that such filing would subject it or any Affiliate to any adverse consequences in such jurisdiction for which it has not been (and would not have been) indemnified.

### **9.3.8 Non-Parties**

If a Tax Indemnitee is not a party to this Agreement, Lessee may require the Tax Indemnitee to agree in writing, in a form reasonably acceptable to Lessee, to the terms of this Section 9.3 and Section 15.8 prior to making any payment to such Tax Indemnitee under this Section 9.3.

### **9.3.9 Subrogation**

Upon payment of any Tax by Lessee pursuant to this Section 9.3 to or on behalf of a Tax Indemnitee, Lessee, without any further action, shall be subrogated to any claims that such Tax Indemnitee may have relating thereto. Such Tax Indemnitee shall cooperate with Lessee (to the extent such cooperation does not result in any unreimbursed cost, expense or liability to such Tax Indemnitee) to permit Lessee to pursue such claims.

### **9.3.10 Foreign Tax On Loan Payments**

If an Owner Participant is incorporated or organized, or maintains a place of business or conducts activities (other than any activities of the Owner Participant resulting from its participation in the transactions contemplated by the Operative Agreements or resulting from any activities of Lessee in such jurisdiction) in a country other than the United States or in a territory, possession or commonwealth of the United States (within the meaning of the tax law of that foreign jurisdiction) and if as a result thereof any foreign Taxes (including withholding Taxes) are imposed on Pass Through Trustee, Pass Through Trust, or any Note Holder, then Owner Participant shall reimburse Lessee for any payments Lessee is required to make to or on behalf of Pass Through Trustee, Pass Through Trust, or any Note Holder under this Section 9.3 as a result of the imposition of such Taxes. The amount payable by Owner Participant to Lessee shall be an amount which, after taking into account any such Taxes, any Tax imposed upon the receipt or accrual by Lessee of such payment by Owner Participant and any tax benefits or tax savings realized by Lessee with respect to the payment of such withholding Tax or the payment hereunder, shall equal the amount of Lessee's payment to or on behalf of such Pass Through Trustee, Pass Through Trust or Note Holder.

#### **9.4 Payments**

Any payments made pursuant to Section 9.1 and Section 9.3 shall be due on the 60th day after demand is made to the indemnifying party therefor (other than any payments for which a different time is provided under Section 9.3.3 hereof) and shall be made directly to the relevant Indemnitee or Tax Indemnitee or to Lessee, in immediately available funds at such bank or to such account as specified by such Indemnitee or Tax Indemnitee or Lessee, as the case may be, in written directives to the payor, or, if no such direction shall have been given, by check of the payor payable to the order of, and mailed to, such Indemnitee or Tax Indemnitee or Lessee, as the case may be, by certified mail, postage prepaid, at its address as set forth in this Agreement.

#### **9.5 Interest**

If any amount, payable by Lessee, any Indemnitee or any Tax Indemnitee under Section 9.1 or 9.3 is not paid when due, the person obligated to make such payment shall pay on demand, to the extent permitted by Law, to the person entitled thereto, interest on any such amount for the period from and including the due date for such amount to but excluding the date the same is paid, at the Payment Due Rate. Such interest shall be paid in the same manner as the unpaid amount in respect of which such interest is due.

#### **9.6 Benefit of Indemnities**

The obligations of Lessee in respect of all indemnities, obligations, adjustments and payments in Section 9.1 or 9.3 are expressly made for the benefit of, and shall be enforceable by, the Indemnitee or Tax Indemnitee entitled thereto, without declaring the Lease to be in default or taking other action thereunder, and notwithstanding any provision of the Trust Indenture.

### **SECTION 10. ASSIGNMENT OR TRANSFER OF INTERESTS**

#### **10.1 Participants, Owner Trustee and Note Holders**

##### **10.1.1 Owner Participant**

- (a) Owner Participant shall not Transfer any or all of its right, title or interest in the Trust Estate or the Trust Agreement and to this Agreement unless:
- (i) The Transferee shall have full power, authority and legal right to execute and deliver and to perform the obligations of Owner Participant under this Agreement and the other Owner Participant Agreements and shall provide reasonably satisfactory evidence of such power and authority to Lessee, Owner Trustee and Mortgagee;
  - (ii) The Transferee shall enter into one or more legal, valid, binding and enforceable agreements effective to confirm that such Transferee agrees to be bound by all the terms of, and to undertake all of the obligations arising after such transfer of, the transferring Owner Participant contained in the Owner Participant Agreements and in which it makes representations and warranties substantially the same as those contained in Section 6.2 of this Participation Agreement;

(iii) Lessee shall not be obligated to pay any greater amount or incur any greater obligation than that which it would have been obliged to pay or incur under the Lease or other Lessee Operative Agreement if no transfer or assignment had taken place, and the terms and conditions of the Lease and the other Lessee Operative Agreements insofar as they relate to the rights and obligations of Lessee or the Loan Participants shall not be altered;

(iv) Owner Participant shall deliver to Lessee, Owner Trustee and Mortgagee an opinion of counsel reasonably satisfactory to each of them (which, if the Transferee is an Affiliate of the Owner Participant, may be in-house counsel to such Owner Participant) to the effect that such agreement or agreements referred to in Section 10.1.1(a)(ii) and, if applicable, 10.1.1(a)(vi) are legal, binding and enforceable in accordance with its or their terms and that such transfer will not violate applicable securities laws, the Act or any other applicable Law and is in accordance with this Section 10.1.1;

(v) The Transferee is a Citizen of the United States (it being understood that the existence of any such requirement is to be determined without giving consideration to Section 47.9 of the FAA Regulations or any other provision that would restrict Lessee's use or operation of the Aircraft), or shall use a voting powers trust or similar arrangement in order to hold an interest in the Trust Estate such that the Aircraft can be registered in the United States (without giving consideration to Section 47.9 of the FAA Regulations or any other provision that would restrict Lessee's use or operation of the Aircraft);

(vi) The Transferee shall be one person and shall be either (A) a Permitted Institution or (B) any other person (other than, without Lessee's consent, a commercial air carrier, a commercial aircraft operator, a freight forwarder or an Affiliate of any of the foregoing) the obligations of which under the Owner Participant Agreements are guaranteed by a Permitted Institution in any case, pursuant to a written guaranty, in form and substance reasonably satisfactory to Lessee, Owner Trustee and Mortgagee; and

(vii) The Transferee shall be a "U.S. Person" as defined in Section 7701(a)(30) of the Code (or any successor provision thereto).

(b) Owner Participant shall give written notice to Lessee, Mortgagee and Owner Trustee at least 10 days prior to any such Transfer, specifying the name and address of the proposed Transferee, and providing financial statements of the proposed Transferee evidencing satisfaction of the requirements described in Section 10.1.1(a)(vi)(A) or (B) above.

(c) Any fees, charges and expenses, including the reasonable legal fees, charges and expenses incurred by Lessee, Owner Participant, Mortgagee, any Note Holder or Owner Trustee in connection with any Transfer by Owner Participant permitted by this Section 10.1.1, or by the Transferee in any such case, will be paid for by Owner Participant.

#### **10.1.2 Owner Trustee**

Owner Trustee may transfer its interests in the Trust Agreement pursuant to Section 9 thereof.

### 10.1.3 Note Holders

Subject to Section 7.5.2 hereof and Section 2.07 of the Trust Indenture, any Note Holder may, at any time and from time to time, Transfer or grant participations in all or any portion of the Equipment Notes and/or all or any portion of its beneficial interest in its Equipment Notes and the Trust Indenture Estate to any person (it being understood that the sale or issuance of Pass Through Certificates by the Pass Through Trustee shall not be considered a Transfer or participation); provided, that any participant in any such participations shall not have any direct rights under the Operative Agreements or any Lien on all or any part of the Aircraft or Trust Indenture Estate and neither Lessee, Lessor, nor Owner Participant shall have any increased liability or obligations as a result of any such participation. In the case of any such Transfer, the Transferee, by acceptance of Equipment Notes in connection with such Transfer, shall be deemed to be bound by all of the covenants of Note Holders contained in the Operative Agreements.

### 10.2 Effect of Transfer

Upon any Transfer in accordance with Section 10.1.1, 10.1.2 or 10.1.3 (other than any Transfer by any Note Holder, to the extent it only grants participations in Equipment Notes or in its beneficial interest therein), Transferee shall be deemed an "Owner Participant," "Owner Trustee" or a "Note Holder," respectively, for all purposes of this Agreement and the other Operative Agreements and, in the case of a Transferee of any Participant or Note Holder, shall be deemed to have paid its ratable portion of Lessor's Cost previously made by Owner Participant or Loan Participant, respectively, making such conveyance and represented by the interest being conveyed, and each reference herein to Owner Participant, Owner Trustee or Note Holder, respectively, shall thereafter be deemed a reference to such Transferee for all purposes, and the transferring Owner Participant, Owner Trustee, Loan Participant or Note Holder shall be released (except, in the case of Owner Participant, to the extent of any guaranty provided by it under Section 10.1.1(a)(vi)) from all of its liabilities and obligations under this Agreement and any other Operative Agreements to the extent such liabilities and obligations arise after such Transfer and, in each case, to the extent such liabilities and obligations are assumed by the Transferee; provided, that such transferring Owner Participant, Owner Trustee or Note Holder (and its respective Affiliates, successors, assigns, agents, servants, representatives, directors and officers) will continue to have the benefit of any rights or indemnities under any Operative Agreement vested or relating to circumstances, conditions, acts or events prior to such Transfer.

**SECTION 11. [RESERVED]**

**SECTION 12. SECTION 1110**

It is the intention of each of Lessee, Owner Participant, Loan Participant, the Note Holders (such intention being evidenced by each of their acceptance of an Equipment Note), Owner Trustee and Mortgagee that Owner Trustee, as lessor under the Lease (and Mortgagee as assignee of Owner Trustee under the Trust Indenture), shall be entitled to the benefits of Section 1110 in the event of a case under Chapter 11 of the Bankruptcy Code in which Lessee is a debtor. Lessee shall at all times be certificated and registered to the extent necessary to entitle



Owner Trustee to the rights afforded to lessors of aircraft equipment under Section 1110 of the Bankruptcy Code.

## **SECTION 13. CHANGE OF CITIZENSHIP**

### **13.1 Generally**

Without prejudice to the representations, warranties or covenants regarding the status of any party hereto as a Citizen of the United States:

(a) Each of Lessee, Wells Fargo and WTC agrees that it will, immediately upon obtaining knowledge of any facts that would cast doubt upon its continuing status as a Citizen of the United States and promptly upon public disclosure of negotiations in respect of any transaction which would or might adversely affect such status, notify in writing all parties hereto of all relevant matters in connection therewith; and

(b) Owner Participant agrees that, in the event its status is to change or has changed as a Citizen of the United States, or it makes public disclosure of circumstances as a result of which it believes that such status is likely to change, it will notify all the other parties to this Participation Agreement of (i) such change in status promptly after obtaining Actual Knowledge thereof or (ii) such belief as soon as practicable after such public disclosure but in any event within ten Business Days after such public disclosure.

### **13.2 Owner Participant**

Owner Participant agrees, solely for the benefit of Lessee and the Note Holders that if, during such time as the Aircraft is registered in the United States, (a) it shall not be a Citizen of the United States and (b) the Aircraft shall be, or would therefore become, ineligible for registration in the name of Owner Trustee under the Act and regulations then applicable thereunder (without giving consideration to Section 47.9 of the FAA Regulations or any other provision that may restrict Lessee's use or operation of the Aircraft), then Owner Participant shall as soon as is reasonably practicable, but in any event within 30 days after obtaining Actual Knowledge of such ineligibility and of such loss of citizenship, (y) effect voting trust or other similar arrangements (in which case any provisions contained in the Operative Agreements restricting Owner Participant's or Owner Trustee's ability to amend the Trust Agreement shall not apply to the extent necessary to permit the use of such a voting trust or other similar arrangement) or take any other action as may be necessary to prevent any deregistration or maintain the United States registration of the Aircraft or (z) transfer in accordance with the terms of this Agreement all its right, title and interest in and to this Agreement, the Trust Estate and the Trust Agreement in accordance with Section 10.1.

### **13.3 Owner Trustee**

Upon Wells Fargo giving any notice in accordance with Section 13.1(a), Owner Trustee shall, subject to Section 9.1.1 of the Trust Agreement, resign as Owner Trustee. Upon its receipt of such notice, Owner Participant shall as promptly as practicable appoint a Citizen of the United States as successor Owner Trustee pursuant to Section 9.1 of the Trust Agreement.

### **13.4 Mortgagee**

Upon WTC giving any notice in accordance with Section 13.1(a), Mortgagee shall (if and so long as such citizenship is necessary under the Act as in effect at such time or, if it is not necessary, if and so long as Mortgagee's citizenship could have any adverse effect on Lessee, any Participant or any Note Holder), subject to Section 8.02 of the Trust Indenture, resign as Mortgagee promptly upon its ceasing to be such a citizen.

## **SECTION 14. CONCERNING OWNER TRUSTEE**

It is understood and agreed that, except as otherwise expressly provided herein or in the Trust Agreement or the Trust Indenture, Owner Trustee is entering into this Agreement solely in its capacity as trustee as provided in the Trust Agreement and not in its individual capacity and in no case whatsoever will it be liable or accountable in its individual capacity for any of the statements, representations, warranties, agreements or obligations of Owner Trustee hereunder, or for any loss in respect thereof, as to all of which the parties agree to look solely to the Trust Estate; provided, that nothing in this Section 14 shall be deemed to limit in scope or substance the personal liability of Wells Fargo (a) to Owner Participant as expressly set forth in the Trust Agreement, (b) in respect of the representations, warranties and agreements of Wells Fargo expressly made as such herein or in any other Operative Agreement to which it is a party, and (c) for the consequences of its own gross negligence, willful misconduct, and, in receiving, handling or remitting of funds only, its willful misconduct or simple negligence as a trustee.

## **SECTION 15. MISCELLANEOUS**

### **15.1 Amendments**

No provision of this Agreement may be amended, supplemented, waived, modified, discharged, terminated or otherwise varied orally, but only by an instrument in writing that specifically identifies the provision of this Agreement that it purports to amend, supplement, waive, modify, discharge, terminate or otherwise vary and is signed by the party against which the enforcement of the amendment, supplement, waiver, modification, discharge, termination or variance is sought. Each such amendment, supplement, waiver, modification, discharge, termination or variance shall be effective only in the specific instance and for the specific purpose for which it is given. No provision of this Agreement shall be varied or contradicted by oral communication, course of dealing or performance or other manner not set forth in an agreement, document or instrument in writing and signed by the party against which enforcement of the same is sought.

### **15.2 Severability**

If any provision hereof shall be held invalid, illegal or unenforceable in any respect in any jurisdiction, then, to the extent permitted by Law, (a) all other provisions hereof shall remain in full force and effect in such jurisdiction and (b) such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction. If, however, any Law pursuant to which such provisions are held invalid, illegal or unenforceable may be waived, such Law is hereby waived by the parties hereto to the full extent permitted, to

the end that this Agreement shall be deemed to be a valid and binding agreement in all respects, enforceable in accordance with its terms.

### **15.3 Survival**

The indemnities set forth herein shall survive the delivery or return of the Aircraft, the Transfer of any interest of Owner Participant in this Agreement, the Trust Estate and the Trust Agreement, the Transfer of any interest by any Note Holder of its Equipment Note and the expiration or other termination of this Agreement or any other Operative Agreement.

### **15.4 Reproduction of Documents**

This Agreement, all annexes, schedules and exhibits hereto and all agreements, instruments and documents relating hereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed and (b) financial statements, certificates and other information previously or hereafter furnished to any party hereto, may be reproduced by such party by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process, and such party may destroy any original documents so reproduced. Any such reproduction shall be as admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such party in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction likewise is admissible in evidence.

### **15.5 Counterparts**

This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts (or upon separate signature pages bound together into one or more counterparts), each of which when so executed shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

### **15.6 No Waiver**

No failure on the part of any party hereto to exercise, and no delay by any party hereto in exercising, any of its respective rights, powers, remedies or privileges under this Agreement or provided at Law, in equity or otherwise shall impair, prejudice or constitute a waiver of any such right, power, remedy or privilege or be construed as a waiver of any breach hereof or default hereunder or as an acquiescence therein nor shall any single or partial exercise of any such right, power, remedy or privilege preclude any other or further exercise thereof by it or the exercise of any other right, power, remedy or privilege by it. No notice to or demand on any party hereto in any case shall, unless otherwise required under this Agreement, entitle such party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any party hereto to any other or further action in any circumstances without notice or demand.

### **15.7 Notices**

Unless otherwise expressly permitted by the terms hereof, all notices, requests, demands, authorizations, directions, consents, waivers and other communications required or permitted to be made, given, furnished or filed hereunder shall be in writing (it being understood that the

specification of a writing in certain instances and not in others does not imply an intention that a writing is not required as to the latter), shall refer specifically to this Agreement or other applicable Operative Agreement, and shall be personally delivered, sent by facsimile or telecommunication transmission (which in either case provides written confirmation to the sender of its delivery), sent by registered mail or certified mail, return receipt requested, postage prepaid, or sent by overnight courier service, in each case to the respective address, or facsimile number set forth for such party in Schedule 1, or to such other address, facsimile or other number as each party hereto may hereafter specify by notice to the other parties hereto. Each such notice, request, demand, authorization, direction, consent, waiver or other communication shall be effective when received or, if made, given, furnished or filed (a) by facsimile or telecommunication transmission, when confirmed, or (b) by registered or certified mail, three Business Days after being deposited, properly addressed, with the U.S. Postal Service.

**15.8 GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE**

(a) **THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS AGREEMENT IS BEING DELIVERED IN THE STATE OF NEW YORK.**

(b) **EACH PARTY HERETO HEREBY IRREVOCABLY AGREES, ACCEPTS AND SUBMITS ITSELF TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK IN THE CITY AND COUNTY OF NEW YORK AND OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN CONNECTION WITH ANY LEGAL ACTION, SUIT OR PROCEEDING WITH RESPECT TO ANY MATTER RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.**

(c) **EACH PARTY HERETO HEREBY IRREVOCABLY CONSENTS AND AGREES TO THE SERVICE OF ANY AND ALL LEGAL PROCESS, SUMMONS, NOTICES AND DOCUMENTS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE MADE BY MAILING COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, AT THE ADDRESS SET FORTH PURSUANT TO SECTION 15.7. EACH PARTY HERETO HEREBY AGREES THAT SERVICE UPON IT, OR ANY OF ITS AGENTS, IN EACH CASE IN ACCORDANCE WITH THIS SECTION 15.8(c), SHALL CONSTITUTE VALID AND EFFECTIVE PERSONAL SERVICE UPON SUCH PARTY, AND EACH PARTY HERETO HEREBY AGREES THAT THE FAILURE OF ANY OF ITS AGENTS TO GIVE ANY NOTICE OF SUCH SERVICE TO ANY SUCH PARTY SHALL NOT IMPAIR OR AFFECT IN ANY WAY THE VALIDITY OF SUCH SERVICE ON SUCH PARTY OR ANY JUDGMENT RENDERED IN ANY ACTION OR PROCEEDING BASED THEREON.**

(d) **TO THE EXTENT THAT ANY PARTY HERETO HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY OF THE ABOVE-NAMED COURTS OR FROM ANY LEGAL PROCESS THEREIN, SUCH PARTY HEREBY IRREVOCABLY WAIVES, TO THE EXTENT PERMITTED BY**

**APPLICABLE LAW, SUCH IMMUNITY, AND EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, OR OTHERWISE, IN ANY LEGAL ACTION OR PROCEEDING BROUGHT HEREUNDER IN ANY OF THE ABOVE-NAMED COURTS, (i) THE DEFENSE OF SOVEREIGN IMMUNITY, (ii) THAT IT OR ANY OF ITS PROPERTY IS IMMUNE FROM THE ABOVE DESCRIBED LEGAL PROCESS AND (iii) THAT SUCH ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT VENUE FOR THE ACTION OR PROCEEDING IS IMPROPER OR THAT THIS AGREEMENT OR ANY OTHER OPERATIVE AGREEMENT MAY NOT BE ENFORCED IN OR BY SUCH COURTS.**

**(e) EACH PARTY HERETO HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN ANY COURT IN ANY JURISDICTION BASED UPON OR ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

**15.9 Third-Party Beneficiary**

This Agreement is not intended to, and shall not, provide any person not a party hereto (other than each Indemnitee, which is an intended third party beneficiary with respect to the provisions of Section 9.1 as provided in Section 9.1.3, and the other persons referred to in Section 7.6.13, who are intended third party beneficiaries of such Section) with any rights of any nature whatsoever against any of the parties hereto and no person not a party hereto (other than each Indemnitee, with respect to the provisions of Section 9.1 as provided in Section 9.1.3, and the other persons referred to in Section 7.6.13, with respect to such Section) shall have any right, power or privilege in respect of any party hereto, or have any benefit or interest, arising out of this Agreement.

**15.10 Entire Agreement**

This Agreement, together with the other Operative Agreements, on and as of the date hereof, constitutes the entire agreement of the parties hereto with respect to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, among any of the parties hereto with respect to such subject matter are hereby superseded in their entirety (except that the Indemnity Agreement shall not be superseded).

**15.11 Further Assurances**

Each party hereto shall execute, acknowledge and deliver or shall cause to be executed, acknowledged and delivered, all such further agreements, instruments, certificates or documents, and shall do and cause to be done such further acts and things, in any case, as any other party hereto shall reasonably request in connection with the administration of, or to carry out more effectively the purposes of, or to better assure and confirm into such other party the rights and benefits to be provided under this Agreement and the other Operative Agreements.

[This space intentionally left blank]

IN WITNESS WHEREOF, each of the parties has caused this Participation Agreement to be duly executed and delivered as of the day and year first above written.

CONTINENTAL AIRLINES, INC.,  
Lessee

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

[OP],  
Owner Participant

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

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION,  
not in its individual capacity, except as expressly  
provided herein, but solely as Owner Trustee

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

WILMINGTON TRUST COMPANY,  
not in its individual capacity, except as expressly  
provided herein, but solely as Mortgagee

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

WILMINGTON TRUST COMPANY,  
not in its individual capacity, except as expressly  
provided herein, but solely as Pass Through  
Trustee under the Pass Through Trust Agreement  
for the Continental Airlines Pass Through Trust,  
2005-ERJ1

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

WILMINGTON TRUST COMPANY,  
not in its individual capacity, except as expressly  
provided herein, but solely as Subordination  
Agent

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

EMBRAER-EMPRESA BRASILEIRA DE  
AERONÁUTICA S.A.,  
Airframe Manufacturer

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

## ANNEX A

## DEFINITIONS

## GENERAL PROVISIONS

- (a) In each Operative Agreement, unless otherwise expressly provided, a reference to:
- (i) each of “Lessee,” “Lessor,” “Loan Participant,” “Owner Trustee,” “Owner Participant,” “Mortgagee,” “Note Holder” or any other person includes, without prejudice to the provisions of any Operative Agreement, any successor in interest to it and any permitted transferee, permitted purchaser or permitted assignee of it;
  - (ii) words importing the plural include the singular and words importing the singular include the plural;
  - (iii) any agreement, instrument or document, or any annex, schedule or exhibit thereto, or any other part thereof, includes, without prejudice to the provisions of any Operative Agreement, that agreement, instrument or document, or annex, schedule or exhibit, or part, respectively, as amended, modified or supplemented from time to time in accordance with its terms and in accordance with the Operative Agreements, and any agreement, instrument or document entered into in substitution or replacement therefor;
  - (iv) any provision of any Law includes any such provision as amended, modified, supplemented, substituted, reissued or reenacted prior to the Closing Date, and thereafter from time to time;
  - (v) the words “Agreement,” “this Agreement,” “hereby,” “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Operative Agreement refer to such Operative Agreement as a whole and not to any particular provision of such Operative Agreement;
  - (vi) the words “including,” “including, without limitation,” “including, but not limited to,” and terms or phrases of similar import when used in any Operative Agreement, with respect to any matter or thing, mean including, without limitation, such matter or thing; and
  - (vii) a “Section,” an “Exhibit,” an “Annex” or a “Schedule” in any Operative Agreement, or in any annex thereto, is a reference to a section of, or an exhibit, an annex or a schedule to, such Operative Agreement or such annex, respectively.
- (b) Each exhibit, annex and schedule to each Operative Agreement is incorporated in, and shall be deemed to be a part of, such Operative Agreement.
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(c) Unless otherwise defined or specified in any Operative Agreement, all accounting terms therein shall be construed and all accounting determinations thereunder shall be made in accordance with GAAP.

(d) Headings used in any Operative Agreement are for convenience only and shall not in any way affect the construction of, or be taken into consideration in interpreting, such Operative Agreement.

(e) For purposes of each Operative Agreement, the occurrence and continuance of a Lease Default or Lease Event of Default referred to in Section 14.5 of the Lease shall not be deemed to prohibit the Lessee from taking any action or exercising any right that is conditioned on no Lease Event of Default, Bankruptcy Default or Lease Default having occurred and be continuing if a Section 1110 Event shall have occurred and is then continuing.

## **DEFINED TERMS**

“Act” means part A of subtitle VII of title 49, United States Code.

“Actual Knowledge” means (a) as it applies to Owner Trustee or Mortgagee, as the case may be, actual knowledge of a responsible officer in the Corporate Trust Department (in the case of Owner Trustee) or the Corporate Trust Office (in the case of Mortgagee) and (b) as it applies to Owner Participant, Airframe Manufacturer or Lessee, actual knowledge of a Vice President or more senior officer of Owner Participant, Airframe Manufacturer or Lessee, respectively, or any other officer of Owner Participant, Airframe Manufacturer or Lessee, respectively, having responsibility for the transactions contemplated by the Operative Agreements; provided that each of Lessee, Owner Participant, Owner Trustee, Mortgagee and Airframe Manufacturer shall be deemed to have “Actual Knowledge” of any matter as to which it has received notice from Lessee, Owner Participant, any Note Holder, Owner Trustee or Mortgagee, such notice having been given pursuant to Section 15.7 of the Participation Agreement.

“Additional Insured” is defined in Section D of Annex D to the Lease.

“Affiliate” means, with respect to any person, any other person directly or indirectly controlling, controlled by or under common control with such person. For purposes of this definition, “control” means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities or by contract or otherwise and “controlling,” “controlled by” and “under common control with” have correlative meanings.

“Aircraft” means, collectively, the Airframe and Engines.

“Aircraft Bill of Sale” means the full warranty bill of sale covering the Aircraft delivered by Seller to Owner Trustee on the Delivery Date.

“Aircraft Documents” means all technical data, manuals and log books, and all inspection, modification and overhaul records and other service, repair, maintenance and technical records that are required by the FAA (or the relevant Aviation Authority) to be maintained with respect to the Aircraft, Airframe, Engines or Parts; and such term shall include

all additions, renewals, revisions and replacements of any such materials from time to time made, or required to be made, by the FAA (or other Aviation Authority) regulations, and in each case in whatever form and by whatever means or medium (including, without limitation, microfiche, microfilm, paper or computer disk) such materials may be maintained or retained by or on behalf of Lessee (provided, that all such materials shall be maintained in the English language).

“Airframe” means (a) the aircraft (excluding Engines or engines from time to time installed thereon) manufactured by Airframe Manufacturer and identified by Airframe Manufacturer’s model number, United States registration number and Airframe Manufacturer’s serial number set forth in Lease Supplement No. 1 and any Replacement Airframe and (b) any and all Parts incorporated or installed in or attached or appurtenant to such airframe, and any and all Parts removed from such airframe, unless title to such Parts shall not be vested in Lessor in accordance with Section 8.1 and Annex C of the Lease. Upon substitution of a Replacement Airframe under and in accordance with the Lease, such Replacement Airframe shall become subject to the Lease and shall be the “Airframe” for all purposes of the Lease and the other Operative Agreements and thereupon the Airframe for which the substitution is made shall no longer be subject to the Lease, and such replaced Airframe shall cease to be the “Airframe.”

“Airframe Manufacturer” means Embraer-Empresa Brasileira de Aeronáutica S.A., a Brazilian corporation.

“Airframe Manufacturer Agreements” means, collectively, the Participation Agreement, [the OP Guaranty,]<sup>1</sup> the Purchase Agreement and the Consent and Agreement.

“Amortization Amount” means, with respect to any Equipment Note, as of any Payment Date, the amount determined by multiplying the percentage set forth opposite such Date on the Amortization Schedule by the Original Amount of such Equipment Note.

“Amortization Schedule” means, with respect to each Equipment Note, the amortization schedule for such Equipment Note delivered pursuant to Section 2.02 of the Trust Indenture.

“Appraiser” means a firm of internationally recognized, independent aircraft appraisers.

“Average Life Date” for any Equipment Note shall be the date which follows the time of determination by a period equal to the Remaining Weighted Average Life of such Equipment Note. “Remaining Weighted Average Life” on a given date with respect to any Equipment Note shall be the number of days equal to the quotient obtained by dividing (a) the sum of each of the products obtained by multiplying (i) the amount of each then remaining scheduled payment of principal of such Equipment Note by (ii) the number of days from and including such

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1. Delete if OP is not an Affiliate of Airframe Manufacturer.

determination date to but excluding the date on which such payment of principal is scheduled to be made, by (b) the then outstanding principal amount of such Equipment Note.

“Aviation Authority” means the FAA or, if the Aircraft is permitted to be, and is, registered with any other Government Entity under and in accordance with Section 7.1.2 of the Lease, such other Government Entity.

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*

“Bankruptcy Default” means a Lease Event of Default under Section 14.5 of the Lease.

“Base Lease Term” means the period beginning on and including the Closing Date and ending on the Scheduled Expiration Date, or such earlier date on which the Term terminates in accordance with the provisions of the Lease.

“Basic Pass Through Trust Agreement” means the Pass Through Trust Agreement, dated September 25, 1997, between Lessee and Pass Through Trustee, but does not include any Trust Supplement.

“Basic Rent” means the rent payable for the Aircraft pursuant to Section 3.2.1 of the Lease.

“Beneficial Owner” when used in relation to an Equipment Note means a Person that, by reason of direct ownership, contract, share ownership or otherwise, has the right to receive or participate in receiving, directly or indirectly, payments of principal, interest or Make-Whole Amount in respect of such Equipment Note; provided that a Person shall not be deemed to be a Beneficial Owner of an Equipment Note solely because another Person in which such a Person owns common stock or other equity securities is a registered holder or Beneficial Owner of such Equipment Note unless such Person is an Affiliate of such other Person.

“Bills of Sale” means the FAA Bill of Sale and the Aircraft Bill of Sale.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by law to close in New York, New York, Houston, Texas, Wilmington, Delaware, or Salt Lake City, Utah.

“Cash Equivalents” means the following securities (which shall mature within 90 days of the date of purchase thereof): (a) direct obligations of the U.S. Government; (b) obligations fully guaranteed by the U.S. Government; (c) certificates of deposit issued by, or bankers’ acceptances of, or time deposits or a deposit account with, Owner Trustee, Mortgagee or any bank, trust company or national banking association incorporated or doing business under the laws of the United States or any state thereof having a combined capital and surplus and retained earnings of at least \$500,000,000 and having a rate of “C” or better from the Thomson BankWatch Service; or (d) commercial paper of any issuer doing business under the Laws of the United States or one of the states thereof and in each case having a rating assigned to such commercial paper by Standard & Poor’s Rating Services or Moody’s Investors Service, Inc. equal to A1 or higher.

“Change in Tax Law” means any change or proposed change in the Code or the regulations promulgated thereunder or any change in the interpretation of the Code or such regulations in a decision by the United States Supreme Court, the United States Tax Court, the United States Claims Court or any of the United States Courts of Appeal or District Courts, or any issuance of an Internal Revenue Ruling, Revenue Procedure or administrative pronouncement by the Internal Revenue Service or the Department of the Treasury.

“Citizen of the United States” is defined in Section 40102(a)(15) of the Act and in the FAA Regulations.

“Closing” means the occurrence of the following concurrent events: (i) execution, authentication and delivery of the Equipment Notes in accordance with the Participation Agreement; (ii) [payment of the Commitments of the Loan Participants to Owner Trustee]<sup>2</sup> [purchase of the Aircraft by the Owner Trustee]<sup>3</sup>; (iii) lease of the Aircraft by Owner Trustee to Lessee pursuant to the Lease; and (iv) completion of the other events contemplated by the Participation Agreement to occur at the Closing.

“Closing Date” means the Business Day specified in Lease Supplement No. 1 as the Closing Date, which shall be the date on which the Closing occurs.

“Code” means the Internal Revenue Code of 1986, as amended; provided, that when used in relation to a Plan, “Code” shall mean the Internal Revenue Code of 1986 and any regulations and rulings issued thereunder, all as amended and in effect from time to time.

“Commitment” means, for any [Loan]<sup>4</sup> Participant, the amount of its commitment set forth in Schedule 2 to the Participation Agreement.

“Commitment Termination Date” is defined in Schedule 3 to the Participation Agreement.

“Consent and Agreement” means the Manufacturer Consent and Agreement [TN], dated as of even date with the Participation Agreement, of Airframe Manufacturer.

“Continuous Stay Period” is defined in Section 4.04(a) of the Trust Indenture.

“Corporate Trust Department” or “Trust Office” means the principal corporate trust office of Owner Trustee located from time to time at Owner Trustee’s address for notices under the Participation Agreement or such other office at which Owner Trustee’s corporate trust

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2. Delete for New Aircraft.
  3. Insert for New Aircraft.
  4. Delete for New Aircraft.

business shall be administered which Owner Trustee shall have specified by notice in writing to Lessee, Mortgagee and each Note Holder.

“Corporate Trust Office” means the principal office of Mortgagee located at Mortgagee’s address for notices under the Participation Agreement or such other office at which Mortgagee’s corporate trust business shall be administered which Mortgagee shall have specified by notice in writing to Lessee, Owner Trustee and each Note Holder.

“CRAF” means the Civil Reserve Air Fleet Program established pursuant to 10 U.S.C. § 9511-13 or any similar substitute program.

“Debt” means any liability for borrowed money, or any liability for the payment of money in connection with any letter of credit transaction or any other liabilities evidenced or to be evidenced by bonds, debentures, notes or other similar instruments.

“Debt Rate” means the rate per annum specified under the heading “Interest Rate” in Schedule I to the Trust Indenture.

“Default” means any event or condition that with the giving of notice or the lapse of time or both would become an Event of Default.

“Delayed Closing Date” means a delayed Closing Date notified to Lessee, each Participant, Owner Trustee and Mortgagee by Airframe Manufacturer pursuant to Section 4.3 of the Participation Agreement, which delayed Closing Date shall be a Business Day not later than the Commitment Termination Date.

“Delivery Date” means the date on which the Aircraft was leased to Lessee by Lessor, as lessor, under the [Existing]<sup>5</sup> Lease.

“Deposit Agreement” means the Deposit Agreement between the Depository and the Escrow Agent, dated as of the Issuance Date, which relates to the Pass Through Trust, provided that, for purposes of any obligation of Lessee, no amendment, modification or supplement to, or substitution or replacement of, such Deposit Agreement shall be effective unless consented to by Lessee.

“Depository” means Citibank, N.A., as Depository under the Deposit Agreement.

“Dollars,” “United States Dollars” or “\$” means the lawful currency of the United States.

“DOT” means the Department of Transportation of the United States or any Government Entity succeeding to the functions of such Department of Transportation.

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5. Delete for New Aircraft.

“Eligible Account” means an account established by and with an Eligible Institution at the request of the Mortgagee, which institution agrees, for all purposes of the UCC including Article 8 thereof, that (a) such account shall be a “securities account” (as defined in Section 8-501 of the UCC), (b) all property (other than cash) credited to such account shall be treated as a “financial asset” (as defined in Section 8-102(9) of the UCC), (c) the Mortgagee shall be the “entitlement holder” (as defined in Section 8-102(7) of the UCC) in respect of such account, (d) it will comply with all entitlement orders issued by the Mortgagee to the exclusion of the Lessee and the Owner Trustee, and (e) the “securities intermediary jurisdiction” (under Section 8-110(e) of the UCC) shall be the State of New York.

“Eligible Institution” means the corporate trust department of (a) Wilmington Trust Company, acting solely in its capacity as a “securities intermediary” (as defined in Section 8-102(14) of the UCC), or (b) a depository institution organized under the laws of the United States of America or any one of the states thereof or the District of Columbia (or any U.S. branch of a foreign bank), which has a long-term unsecured debt rating from Moody’s and Standard & Poor’s of at least A-3 or its equivalent.

“Enforcement Date” is defined in Section 4.03 of the Trust Indenture.

“Engine” means (a) each of the engines manufactured by Engine Manufacturer and identified by Engine Manufacturer’s model number and Engine Manufacturer’s serial number set forth in Lease Supplement No. 1, and any Replacement Engine, in any case whether or not from time to time installed on such Airframe or installed on any other airframe or aircraft, and (b) any and all Parts incorporated or installed in or attached or appurtenant to such engine, and any and all Parts removed from such engine, unless title to such Parts shall not be vested in Lessor in accordance with Section 8.1 and Annex C of the Lease. Upon substitution of a Replacement Engine under and in accordance with the Lease, such Replacement Engine shall become subject to the Lease and shall be an “Engine” for all purposes of the Lease and the other Operative Agreements and thereupon the Engine for which the substitution is made shall no longer be subject to the Lease, and such replaced Engine shall cease to be an “Engine.”

“Engine Manufacturer” means Rolls-Royce Company, formerly known as Allison Engine Company, Inc., a Delaware corporation.

“Equipment Note Register” is defined in Section 2.07 of the Trust Indenture.

“Equipment Notes” means and includes any equipment notes issued under the Trust Indenture in the form specified in Section 2.01 thereof (as such form may be varied pursuant to the terms of the Trust Indenture) and any Equipment Note issued under the Trust Indenture in exchange for or replacement of any Equipment Note.

“Equity Advisor” has the meaning provided in Schedule 3 to the Participation Agreement.

“ERISA” means the Employee Retirement Income Security Act of 1974 and any regulations and rulings issued thereunder all as amended and in effect from time to time.

“Escrow Agent” means Wells Fargo Bank Northwest, National Association, as Escrow Agent under the Escrow Agreement.

“Escrow Agreement” means the Escrow and Paying Agent Agreement, among the Escrow Agent, the Paying Agent, certain initial purchasers of the Pass Through Certificates named therein and the Pass Through Trustee, dated as of the Issuance Date, which relates to the Pass Through Trust, provided that, for purposes of any obligation of Lessee, no amendment, modification or supplement to, or substitution or replacement of, such Escrow Agreement shall be effective unless consented to by Lessee.

“Event of Default” is defined in Section 4.02 of the Trust Indenture.

“Event of Loss” means, with respect to the Aircraft, Airframe or any Engine, any of the following circumstances, conditions or events with respect to such property, for any reason whatsoever:

- (a) the destruction of such property, damage to such property beyond economic repair or rendition of such property permanently unfit for normal use by Lessee;
- (b) the actual or constructive total loss of such property or any damage to such property, or requisition of title or use of such property, which results in an insurance settlement with respect to such property on the basis of a total loss or constructive or compromised total loss;
- (c) any theft, hijacking or disappearance of such property for a period of 180 consecutive days or more or, if earlier, the end of the Term;
- (d) any seizure, condemnation, confiscation, taking or requisition (including loss of title) of such property by any Government Entity or purported Government Entity (other than a requisition of use by the U.S. Government) for a period exceeding 180 consecutive days or, if earlier, at the end of the Term;
- (e) any seizure, condemnation, confiscation, taking or requisition of use of such property by the U.S. Government that continues until the last day of the Term, provided that no such Event of Loss shall exist if Lessor shall have elected not to treat such event as an Event of Loss pursuant to Section 10.6 of the Lease; and
- (f) as a result of any law, rule, regulation, order or other action by the Aviation Authority or by any Government Entity of the government of registry of the Aircraft or by any Government Entity otherwise having jurisdiction over the operation or use of the Aircraft, the use of such property in the normal course of Lessee’s business of passenger air transportation is prohibited for a period of 180 consecutive days, unless Lessee, prior to the expiration of such 180 day period, shall have undertaken and shall be diligently carrying forward such steps as may be necessary or desirable to permit the normal use of such property by Lessee, but in any event if such use shall have been prohibited for a period of 720 days, provided that no Event of Loss shall be deemed to have occurred if such prohibition has been applicable to Lessee’s (or a Permitted Sublessee’s) entire

U.S. fleet of such property and Lessee (or a Permitted Sublessee), prior to the expiration of such 720-day period, shall have conformed at least one unit of such property in its fleet to the requirements of any such law, rule, regulation, order or other action and commenced regular commercial use of the same in such jurisdiction and shall be diligently carrying forward, in a manner which does not discriminate against such property in so conforming such property, steps which are necessary or desirable to permit the normal use of such property by Lessee, but in any event if such use shall have been prohibited for a period of three years or such use shall be prohibited at the expiration of the Term.

“Excluded Payments” means (i) indemnity payments paid or payable by Lessee to or in respect of Owner Participant, or Owner Trustee in its individual capacity, their respective Affiliates, successors and permitted assigns and their directors, officers, employees, servants and agents pursuant to Section 9 of the Participation Agreement or any corresponding payments under the Lease, (ii) proceeds of public liability insurance paid or payable as a result of insurance claims made, or losses suffered, by Owner Trustee in its individual capacity or by Owner Participant, that are payable directly to Owner Trustee in its individual capacity, or Owner Participant, respectively, for their own account, (iii) proceeds of insurance maintained with respect to the Aircraft by Owner Participant or any Affiliate thereof for its or their own account or benefit (whether directly or through Owner Trustee) and permitted under Section 11.2 of the Lease, (iv) all payments required to be made under the Tax Indemnity Agreement by Lessee whether or not denominated as Supplemental Rent, (v) any amount payable to the Owner Participant by any transferee as the purchase price of the Owner Participant’s interest in the Trust Estate, (vi) any interest that pursuant to the Operative Agreements may from time to time accrue in respect of any of the amounts described in clauses (i) through (v) above, (vii) proceeds of any right to enforce the payment of any amount described in clauses (i) through (vi) above (provided, that the rights referred to in this clause (vii) shall not be deemed to include the exercise of any remedies provided for in the Lease other than the right to sue for specific performance of any covenant to make such payment or to sue for damages in respect of the breach of any such covenant) and (viii) any right to exercise any election or option or make any decision or determination, or to give or receive any notice, consent, waiver or approval, or to take any other action in respect of, but in each case, only to the extent relating to, any Excluded Payments.

[“Existing Lease” has the meaning provided in Schedule 3 to the Participation Agreement.]<sup>6</sup>

[“Existing Participation Agreement” has the meaning provided in Schedule 3 to the Participation Agreement.]<sup>7</sup>

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6. Delete for New Aircraft.

7. Delete for New Aircraft.



[“Existing Sublease” means the Aircraft Sublease Agreement, dated the date of the Existing Participation Agreement, between Lessee and Express relating to the Aircraft.]<sup>8</sup>

“Expense Limit” has the meaning provided in Schedule 3 to the Participation Agreement.

“Expenses” means any and all liabilities, obligations, losses, damages, settlements, penalties, claims, actions, suits, costs, expenses and disbursements (including, without limitation, reasonable fees and disbursements of legal counsel, accountants, appraisers, inspectors or other professionals, and costs of investigation).

“Express” means ExpressJet Airlines, Inc., a Delaware corporation.

“Express Sublease” means the Permitted Sublease, dated as of the date of the Participation Agreement, between Lessee and Express relating to the Aircraft.

“FAA” means the Federal Aviation Administration of the United States or any Government Entity succeeding to the functions of such Federal Aviation Administration.

“FAA Bill of Sale” means a bill of sale for the Aircraft on AC Form 8050-2 (or such other form as may be approved by the FAA) delivered to Owner Trustee on the Delivery Date by Seller.

“FAA Filed Documents” means the Lease, Lease Supplement No. 1, the Express Sublease, the Trust Indenture, the Trust Agreement, the initial Trust Indenture Supplement, the FAA Bill of Sale, [the Termination Agreements]<sup>9</sup> and an application for registration of the Aircraft with the FAA in the name of Owner Trustee.

“FAA Regulations” means the Federal Aviation Regulations issued or promulgated pursuant to the Act from time to time.

“Fair Market Rental Value” means the fair market rental value in Dollars for the Aircraft that would apply in an arm’s-length transaction between an informed and willing lessee under no compulsion to lease, and an informed and willing lessor under no compulsion to lease, the Aircraft, for the applicable Renewal Lease Term, assuming that (a) the Aircraft has been maintained in accordance with, and is in the condition required by, the Lease, (b) payments of rent would be made monthly, and (c) the Aircraft would be leased during any such Renewal Term on the same terms and conditions as are set forth in the Lease with respect to the Base Lease Term.

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8. Delete for New Aircraft.

9. Delete for New Aircraft.

“Fair Market Sales Value” means the fair market sales value in Dollars for the Aircraft that would apply in an arm’s-length transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller under no compulsion to sell, the Aircraft, in a transaction that would close on or about the relevant time of determination, assuming (except as otherwise provided in Section 15.4 of the Lease) that (a) the Aircraft has been maintained in accordance with, and is in the condition required by, the Lease and (b) the Aircraft would be delivered to such informed and willing buyer in the return condition required by the Lease.

“Financing Statements” means, collectively, [(a)]<sup>10</sup> UCC-1 financing statements (i) covering the Trust Indenture Estate, by Owner Trustee, as debtor, showing Mortgagee as secured party, for filing in Utah and each other jurisdiction that, in the opinion of Mortgagee, is necessary to perfect its Lien on the Trust Indenture Estate and (ii) covering the Lease and the Aircraft, as a precautionary matter, by Lessee, as lessee, showing Owner Trustee as lessor and Mortgagee as assignee of Owner Trustee, for filing in Delaware and each other jurisdiction that, in the opinion of Owner Trustee and Mortgagee, is reasonably desirable [and (b) UCC-3 financing statements evidencing the termination of the Existing Lease and the Existing Sublease, for filing in Delaware and each other jurisdiction that, in the opinion of Owner Trustee and Mortgagee, is reasonably desirable].<sup>11</sup>

“GAAP” means generally accepted accounting principles as set forth in the statements of financial accounting standards issued by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants, as such principles may at any time or from time to time be varied by any applicable financial accounting rules or regulations issued by the SEC and, with respect to any person, shall mean such principles applied on a basis consistent with prior periods except as may be disclosed in such person’s financial statements.

“Government Entity” means (a) any federal, state, provincial or similar government, and any body, board, department, commission, court, tribunal, authority, agency or other instrumentality of any such government or otherwise exercising any executive, legislative, judicial, administrative or regulatory functions of such government or (b) any other government entity having jurisdiction over any matter contemplated by the Operative Agreements or relating to the observance or performance of the obligations of any of the parties to the Operative Agreements.

“Indemnatee” means (i) Wells Fargo and Owner Trustee, (ii) WTC and Mortgagee, (iii) each separate or additional trustee appointed pursuant to the Trust Agreement or the Trust Indenture, (iv) each Participant, (v) the Trust Estate and the Trust Indenture Estate, (vi) each Affiliate of the persons described in clauses (i) through (iv), inclusive, (vii) the respective directors, officers, employees, agents and servants of each of the persons described in clauses (i)

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10. Delete for New Aircraft.

11. Delete for New Aircraft.

through (iv) inclusive and in clause (vi), (viii) the successors and permitted assigns of the persons described in clauses (i) through (iv), inclusive, and in clauses (vi) and (vii) and (ix) the Pass Through Indemnitees; provided that the Pass Through Indemnitees are Indemnitees only for purposes of Section 9.1 of the Participation Agreement. If any Indemnitee is Airframe Manufacturer or Engine Manufacturer or any subcontractor or supplier of either thereof, such Person shall be an Indemnitee only in its capacity as Owner Participant, Loan Participant or Note Holder.

“Indemnity Agreement” means the agreement, dated as of September 14, 2005, between Lessee and Airframe Manufacturer, which states that it is the Indemnity Agreement for purposes of the Pass Through Certificates.

“Indenture Agreements” means the Participation Agreement, the Lease, the Purchase Agreement, the Purchase Agreement Assignment, the Consent and Agreement, the Bills of Sale and any other contract, agreement or instrument from time to time assigned or pledged under the Trust Indenture.

“Indenture Default” means any condition, circumstance, act or event that, with the giving of notice, the lapse of time or both, would constitute an Indenture Event of Default.

“Indenture Event of Default” means any one or more of the conditions, circumstances, acts or events set forth in Section 4.02 of the Trust Indenture.

“Indenture Indemnitee” means (i) WTC and the Mortgagee, (ii) each separate or additional trustee appointed pursuant to the Trust Indenture, (iii) the Subordination Agent, (iv) the Liquidity Provider, (v) the Pass Through Trustee, (vi) the Paying Agent, (vii) the Escrow Agent and (viii) each of the respective directors, officers, employees, agents and servants of each of the persons described in clauses (i) through (vii) inclusive above.

[“Initial Purchase Agreement Assignment” means the Purchase Agreement Assignment [TN], dated as of even date with the Participation Agreement, between Express and Seller.]<sup>12</sup>

“Intercreditor Agreement” means that certain Intercreditor Agreement among the Pass Through Trustee, the Liquidity Provider and the Subordination Agent, dated as of the Issuance Date, provided that, for purposes of any obligation of Lessee, no amendment, modification or supplement to, or substitution or replacement of, such Intercreditor Agreement shall be effective unless consented to by Lessee.

“IRS” means the Internal Revenue Service of the United States or any Government Entity succeeding to the functions of such Internal Revenue Service.

“Issuance Date” means September 22, 2005.

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12. Insert for New Aircraft.

“Law” means (a) any constitution, treaty, statute, law, decree, regulation, order, rule or directive of any Government Entity, and (b) any judicial or administrative interpretation or application of, or decision under, any of the foregoing.

“Lease” or “Lease Agreement” means the Lease Agreement [TN], dated as of even date with the Participation Agreement, between Owner Trustee and Lessee.

“Lease Default” means any condition, circumstance, act or event that, with the giving of notice, the lapse of time or both, would constitute a Lease Event of Default.

“Lease Event of Default” means any one or more of the conditions, circumstances, acts or events set forth in Section 14 of the Lease.

“Lease Supplement” means a supplement to the Lease, in the form of Exhibit A to the Lease.

“Lease Supplement No. 1” means the initial Lease Supplement, dated the Closing Date.

“Lessee” means Continental Airlines, Inc., a Delaware corporation.

“Lessee Operative Agreements” means the Participation Agreement, the Lease, Lease Supplement No. 1, the Express Sublease[, the Termination Agreement with respect to the Existing Sublease]<sup>13</sup> and the Tax Indemnity Agreement.

“Lessee Person” means Lessee, any sublessee, assignee, successor or other user or person in possession of the Aircraft, Airframe or an Engine during the Term with or without color of right, or any Affiliate of any of the foregoing (excluding any Tax Indemnitee or any related Tax Indemnitee with respect thereto, or any person using or claiming any rights with respect to the Aircraft, Airframe or an Engine directly by or through any of the persons in this parenthetical, but not excluding any Person claiming directly or indirectly through or under the Lease).

“Lessor” means Owner Trustee in its capacity as lessor under the Lease.

“Lessor Lien” means, with respect to any person and in respect of any property (including, without limitation, the Trust Estate, the Trust Indenture Estate, the Aircraft, Airframe, Engines, Parts or Aircraft Documents) or any payments, any Lien on such property or payments which (a) arises from claims against such person (if such person is a trustee, whether in its individual capacity or in its capacity as a trustee) not related to any of the transactions contemplated by the Operative Agreements, (b) results from acts or omissions of such person (if such person is a trustee, whether in its individual capacity or in its capacity as a trustee) in violation of such person’s obligations under any of the terms of the Operative Agreements, or not related to the transactions contemplated by the Operative Agreements, (c) is imposed as a result

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13. Delete for New Aircraft.

of Taxes against such person (if such person is a trustee, whether in its individual capacity or in its capacity as a trustee) or any of its Affiliates not required to be indemnified by Lessee under the Participation Agreement, or (d) claims against such person arising out of any transfer by such person of its interest in the Aircraft, the Trust Estate or the Operative Agreements, other than a Transfer permitted by the terms of the Operative Agreements or pursuant to the exercise of remedies set forth in Section 15 of the Lease.

“Lessor’s Cost” means the amount paid by Owner Trustee to Airframe Manufacturer to purchase the Aircraft pursuant to the Purchase Agreement, and is designated by Dollar amount in Schedule 3 to the Participation Agreement.

“Lien” means any mortgage, pledge, lien, charge, claim, encumbrance, lease or security interest affecting the title to or any interest in property.

“Liquidity Facility” means the Revolving Credit Agreement between the Subordination Agent, as borrower, and the Liquidity Provider, dated as of the Issuance Date, provided that, for the purposes of any obligation of Lessee, no amendment, modification or supplement to, or substitution or replacement of, such Liquidity Facility shall be effective unless consented to by Lessee.

“Liquidity Provider” means Landesbank Baden-Württemberg, as Liquidity Provider under the Liquidity Facility, or any successor thereto.

“Loan Participant” means, until the Closing shall have been consummated, the Pass Through Trustee, and after the Closing shall have been consummated, each Note Holder.

“Loss Payment Date” means the date on which payment is due pursuant to Section 10.1.2(a)(i) of the Lease.

“Maintenance Program” is defined in Annex C to the Lease.

“Majority in Interest of Note Holders” means as of a particular date of determination, the holders of a majority in aggregate unpaid Original Amount of all Equipment Notes outstanding as of such date (excluding any Equipment Notes held by Owner Trustee, Lessee, or Owner Participant or any Affiliate of any such party or any interests of Owner Trustee or Owner Participant therein by reason of subrogation pursuant to Section 4.03 of the Trust Indenture (unless all Equipment Notes then outstanding shall be held by Owner Trustee, Lessee, Owner Participant or any Affiliate of any thereof)); provided that for the purposes of directing any action or casting any vote or giving any consent, waiver or instruction hereunder any Note Holder of an Equipment Note or Equipment Notes may allocate, in such Note Holder’s sole discretion, any fractional portion of the principal amount of such Equipment Note or Equipment Notes in favor of or in opposition to any such action, vote, consent, waiver or instruction.

“Make-Whole Amount” means, with respect to any Equipment Note, an amount (as determined by an independent investment banker of national standing) equal to the excess, if any, of (a) the present value of the remaining scheduled payments of principal and interest to maturity of such Equipment Note computed by discounting such payments on a monthly basis on each Payment Date (assuming a 360-day year of twelve 30-day months) using a discount rate

equal to the Treasury Yield over (b) the outstanding principal amount of such Equipment Note plus accrued interest to the date of determination. For purposes of determining the Make-Whole Amount, “Treasury Yield” means, at the date of determination with respect to any Equipment Note, the sum of (i) 50 basis points and (ii) the interest rate (expressed as a decimal and, in the case of United States Treasury bills, converted to a bond equivalent yield) determined to be the per annum rate equal to the monthly yield to maturity for United States Treasury securities maturing on the Average Life Date of such Equipment Note and trading in the public securities markets either as determined by interpolation between the most recent weekly average yield to maturity for two series of United States Treasury securities, trading in the public securities markets, (A) one maturing as close as possible to, but earlier than, the Average Life Date of such Equipment Note and (B) the other maturing as close as possible to, but later than, the Average Life Date of such Equipment Note, in each case as published in the most recent H.15(519) or, if a weekly average yield to maturity for United States Treasury securities maturing on the Average Life Date of such Equipment Note is reported on the most recent H.15(519), such weekly average yield to maturity as published in such H.15(519). “H.15(519)” means the weekly statistical release designated as such, or any successor publication, published by the Board of Governors of the Federal Reserve System. The date of determination of a Make-Whole Amount shall be the third Business Day prior to the applicable payment or redemption date and the “most recent H.15(519)” means the H.15(519) published prior to the close of business on the third Business Day prior to the applicable payment or redemption date.

“Material Adverse Change” means, with respect to any person, any event, condition or circumstance that materially and adversely affects such person’s business or consolidated financial condition, or its ability to observe or perform its obligations, liabilities and agreements under, or affect the validity or enforceability of the Operative Agreements.

“Mortgaged Property” is defined in Section 3.03 of the Trust Indenture.

“Mortgagee” means Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity but solely as loan trustee under the Trust Indenture.

“Mortgagee Agreements” means, collectively, the Participation Agreement, the Trust Indenture and any Trust Indenture Supplement.

“Mortgagee Event” means (i) in the event of a reorganization proceeding involving the Lessee under Chapter 11 of the Bankruptcy Code, (A) the trustee in such proceeding or the Lessee not assuming or agreeing to perform its obligations under the Lease, as contemplated under Section 1110, during the 60-day period under Section 1110(a)(2)(A) of the Bankruptcy Code (or such longer period as may apply under Section 1110(b) of the Bankruptcy Code) or (B) at any time after agreeing to perform such obligations, such trustee or the Lessee ceasing to perform such obligations with the result that the Continuous Stay Period comes to an end or (ii) either the Equipment Notes shall have become due and payable pursuant to Section 4.04(b) of the Trust Indenture or Mortgagee has taken action or notified Owner Trustee that it intends to take action to foreclose the Lien of the Trust Indenture or otherwise commence the exercise of any significant remedy in accordance with Section 4.04(a) of the Trust Indenture.

“Net Economic Return” means the Owner Participant’s net after-tax yield utilizing the multiple investment sinking fund method of analysis and aggregate net after-tax cash flow, computed on the basis of the same methodology and assumptions as were utilized by the initial Owner Participant in determining Stipulated Loss Value percentages and Termination Value percentages, as of the Closing Date.

“Net Worth” means, for any person, the excess of its total assets over its total liabilities in accordance with GAAP.

“Non-U.S. Person” means any Person other than a United States person, as defined in Section 7701(a)(30) of the Code.

“Note Holder” means at any time each registered holder of one or more Equipment Notes.

“Note Purchase Agreement” means the Note Purchase Agreement, dated as of the Issuance Date, among Continental Airlines, Inc., the Subordination Agent, the Escrow Agent, the Paying Agent and the Pass Through Trustee under the Pass Through Trust Agreement providing for, among other things, the issuance and sale of certain equipment notes, provided that, for purposes of any obligation of Lessee, no amendment, modification or supplement to, or substitution or replacement of, such Agreement shall be effective unless consented to by Lessee.

“Obsolete Part” is defined in Section D of Annex C to the Lease.

“Officer’s Certificate” means, in respect of any party to the Participation Agreement, a certificate signed by the Chairman, the President, any Vice President (including those with varying ranks such as Executive, Senior, Assistant or Staff Vice President), the Treasurer or the Secretary of such party.

“Operative Agreements” means, collectively, the Participation Agreement, the Trust Agreement, the Purchase Agreement Assignment, the Consent and Agreement, the Lease, Lease Supplement No. 1, the Trust Indenture, the initial Trust Indenture Supplement, the Bills of Sale, the Tax Indemnity Agreement[, the Termination Agreements]<sup>14</sup> and the Equipment Notes.

“Operative Indentures” means each of the indentures under which notes have been issued and purchased by the Pass Through Trustee.

[“OP Guarantor” means the Airframe Manufacturer.]<sup>15</sup>

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14. Delete for New Aircraft.

15. Insert if OP is an Affiliate of Airframe Manufacturer.

["OP Guaranty," means the Guaranty, dated as of the date of the Participation Agreement, providing, among other things, for the guaranty by the OP Guarantor of Owner Participant's obligations under the Operative Agreements.]<sup>16</sup>

"OP Jurisdiction" is defined in Schedule 3 to the Participation Agreement.

"Original Amount," with respect to an Equipment Note, means the stated original principal amount of such Equipment Note and, with respect to all Equipment Notes, means the aggregate stated original principal amounts of all Equipment Notes.

"Owner Participant" means the person executing the Participation Agreement as "Owner Participant" or, if a second person becomes an "Owner Participant" pursuant to Section 10.1.1 of the Participation Agreement, both of such persons; provided that if an Owner Participant Transfers 100% of its interest to a successor Owner Participant, such transferring Owner Participant shall thereafter no longer be considered an "Owner Participant."

"Owner Participant Agreements" means, collectively, the Participation Agreement, the Tax Indemnity Agreement and the Trust Agreement.

"Owner Participant's Percentage" means the percentage of Lessor's Cost allocated to the Owner Participant in Schedule 2 to the Participation Agreement.

"Owner Trustee" means Wells Fargo Bank Northwest, National Association, a national banking association, not in its individual capacity, except as expressly provided in any Operative Agreement, but solely as Owner Trustee under the Trust Agreement.

"Owner Trustee Agreements" means, collectively, the Participation Agreement, the Lease, Lease Supplement No. 1, the Trust Agreement, the Trust Indenture, the initial Trust Indenture Supplement, the Equipment Notes and the Purchase Agreement Assignment.

"Participants" means, collectively, Owner Participant and each Loan Participant and "Participant" means Owner Participant or a Loan Participant, individually.

"Participation Agreement" means the Participation Agreement [TN] dated as of [DD] among Lessee, Owner Participant, Owner Trustee, the Pass Through Trustee, Subordination Agent, Mortgagee and Airframe Manufacturer.

"Parts" means all appliances, parts, components, avionics, landing gear, instruments, appurtenances, accessories, furnishings, seats and other equipment of whatever nature (other than (a) Engines or engines, and (b) any items leased by Lessee from a third party other than Lessor), that may from time to time be installed or incorporated in or attached or appurtenant to the Airframe or any Engine.

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16. Insert if OP is an Affiliate of Airframe Manufacturer.



“Pass Through Agreements” means the Pass Through Trust Agreement, the Note Purchase Agreement, the Deposit Agreement, the Escrow Agreement, the Intercreditor Agreement, the Liquidity Facility and the Fee Letter (as defined in the Intercreditor Agreement), provided, that no amendment, modification or supplement to, or substitution or replacement of, any such Fee Letter shall be effective for purposes of any obligation of Lessee, unless consented to by Lessee.

“Pass Through Certificates” means the pass through certificates issued by the Pass Through Trust (and any other pass through certificates for which such pass through certificates may be exchanged).

“Pass Through Indemnitees” means (i) the Subordination Agent, the Paying Agent, the Escrow Agent, the Liquidity Provider and the Pass Through Trustee, (ii) each Affiliate of a person described in the preceding clause (i), (iii) the respective directors, trustees, officers, employees, agents and servants of each of the persons described in the preceding clauses (i) and (ii) and (iv) the successors and permitted assigns of the persons described in the preceding clauses (i), (ii) and (iii).

“Pass Through Trust” means the pass through trust created under the Pass Through Trust Agreement.

“Pass Through Trust Agreement” means the Trust Supplement, dated as of the Issuance Date, by and between the Lessee and Pass Through Trustee, together with the Basic Pass Through Trust Agreement.

“Pass Through Trustee” means Wilmington Trust Company, a Delaware banking corporation, in its capacity as trustee under the Pass Through Trust Agreement.

“Pass Through Trustee Agreements” means the Participation Agreement, the Pass Through Trust Agreement, the Note Purchase Agreement, the Deposit Agreement, the Escrow Agreement and the Intercreditor Agreement.

“Paying Agent” means Wilmington Trust Company, as Paying Agent under the Escrow Agreement.

“Payment Date” means the first day of each month during the Term, commencing with [\_\_\_\_\_].

“Payment Default” means the failure by Lessee to pay any amount of Basic Rent, Renewal Rent, Stipulated Loss Value or Termination Value when due.

“Payment Due Rate” is defined in Schedule 1 to the Lease.

“Payment Period” means each of the consecutive monthly periods during the Term ending on a Payment Date, the first such period commencing on and including the Closing Date and being other than monthly.

“Permitted Air Carrier” means (i) any Permitted Foreign Air Carrier, (ii) any person approved in writing by Lessor or (iii) any U.S. Air Carrier.

“Permitted Country” means any country listed on Schedule 5 to the Lease.

“Permitted Foreign Air Carrier” means any air carrier with its principal executive offices in any Permitted Country and which is authorized to conduct commercial airline operations and to operate jet aircraft similar to the Aircraft under the applicable Laws of such Permitted Country.

“Permitted Government Entity” means (i) the U.S. Government or (ii) any Government Entity if the Aircraft is then registered under the Laws of the country of such Government Entity.

“Permitted Institution” means any bank, trust company, insurance company, financial institution, partnership, limited liability company or corporation (other than, without Lessee’s consent, a commercial air carrier, a commercial aircraft operator, a freight forwarder or Affiliate of any of the foregoing), in each case with a combined capital and surplus or net worth of at least \$25,000,000.

“Permitted Lien” means any Lien described in clauses (a) through (f), inclusive, of Section 6 of the Lease.

“Permitted Sublease” means a sublease or sub-sublease permitted under Section 7.2.7 of the Lease.

“Permitted Sublessee” means the sublessee under a Permitted Sublease.

“Persons” or “persons” means individuals, firms, partnerships, joint ventures, trusts, trustees, Government Entities, organizations, associations, corporations, limited liability companies, government agencies, committees, departments, authorities and other bodies, corporate or incorporate, whether having distinct legal status or not, or any member of any of the same.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA, or any plan within the meaning of Section 4975(e)(1) of the Code.

“Preliminary Notice” is defined in Section 17.1 of the Lease.

“Premium Termination Date” means October 22, 2014.

“PTT Percentage” means, with respect to the Pass Through Trustee, the percentage of Lessor’s Cost allocated to such Pass Through Trustee in Schedule 2 to the Participation Agreement.

“Purchase Agreement” means the Purchase Agreement GPJ-003/96 between Airframe Manufacturer and Express (including all exhibits thereto, together with all letter agreements entered into that by their terms constitute part of such Purchase Agreement), to the extent assigned pursuant to the Purchase Agreement Assignment.

“Purchase Agreement Assignment” means the [Amended and Restated]<sup>17</sup> Purchase Agreement Assignment [TN], dated as of even date with the Participation Agreement, among Seller [, Express]<sup>18</sup> and Owner Trustee.

“Purchase Date” means the last Business Day of the Base Lease Term or any Renewal Lease Term, as specified in any Purchase Notice.

“Purchase Notice” is defined in Section 17.3.1 of the Lease.

“QIB” is defined in Section 2.08 of the Trust Indenture.

“Removable Parts” is defined in Section D of Annex C to the Lease.

“Renewal Lease Term” means each two year term for which the Lease is extended by Lessee, if any, pursuant to the first or second such extensions in accordance with Section 17 of the Lease.

“Renewal Notice” is defined in Section 17.2.1 of the Lease.

“Renewal Rent” for the Aircraft means the rent payable therefor in respect of a Renewal Lease Term determined pursuant to Section 17.2.2 of the Lease.

“Rent” means, collectively, Basic Rent, Renewal Rent and Supplemental Rent.

“Replacement Airframe” means any airframe substituted for the Airframe pursuant to Section 10 of the Lease.

“Replacement Engine” means an engine substituted for an Engine pursuant to the Lease.

“Return Acceptance Supplement” means a Return Acceptance Supplement, dated as of the date the Aircraft is returned to Lessor pursuant to Section 5 of the Lease, by Lessor and Lessee substantially in the form of Exhibit B to the Lease.

“Scheduled Closing Date” means the expected Closing Date notified to Lessee, each Participant, Owner Trustee and Mortgagee by Airframe Manufacturer pursuant to Section 4.1 of the Participation Agreement, which expected Closing Date shall be a Business Day not later than the Commitment Termination Date.

“Scheduled Expiration Date” is defined in Schedule 1 to the Lease.

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17. Delete for New Aircraft.

18. Delete for New Aircraft.

“Scheduled Renewal Term Expiration Date” means, in the case of the first Renewal Lease Term, the second anniversary of the Scheduled Expiration Date, and in the case of the second Renewal Lease Term, the fourth anniversary of the Scheduled Expiration Date.

“SEC” means the Securities and Exchange Commission of the United States, or any Government Entity succeeding to the functions of such Securities and Exchange Commission.

“Section 1110” means 11 U.S.C. § 1110 of the Bankruptcy Code or any successor or analogous section of the federal bankruptcy Law in effect from time to time.

“Section 1110 Event” means the institution of reorganization proceedings with respect to Lessee under Chapter 11 of the Bankruptcy Code and thereafter so long as the Section 1110 Period continues.

“Section 1110 Period” means the continuous period of 60 days specified in Section 1110(a)(2)(A) of the Bankruptcy Code (or such longer period, if any, agreed to under Section 1110(b) of the Bankruptcy Code), plus an additional period, if any, commencing with the trustee or debtor-in-possession in such proceeding agreeing to perform its obligations under the Lease with the approval of the applicable court and continuing until such time as such trustee or debtor-in-possession ceases to fully perform its obligations thereunder with the result that the period during which the Owner Trustee is prohibited from repossessing the Aircraft under the Lease comes to an end.

“Secured Obligations” is defined in Section 2.06 of the Trust Indenture.

“Securities Act” means the Securities Act of 1933, as amended.

“Security” means a “security” as defined in Section 2(1) of the Securities Act.

“Seller” is defined in Schedule 3 to the Participation Agreement.

“Similar Aircraft” is defined in Schedule 1 to the Lease.

“SLV Rate” is defined in Schedule 1 to the Lease.

“Stipulated Loss Value” means, with respect to the Aircraft, (a) during the Base Lease Term, the amount determined by multiplying (i) the percentage set forth in Schedule 3 to the Lease (as adjusted from time to time in accordance with Section 3.2.3 of the Lease) opposite the Stipulated Loss Value Date by (ii) Lessor’s Cost, (b) during any Renewal Lease Term, the amount determined pursuant to Section 17.2.3 of the Lease and (c) during any extension of the Term pursuant to the proviso to the definition of “Term”, the Stipulated Loss Value immediately prior to the commencement of such extension. Notwithstanding anything to the contrary in any Operative Agreement, Stipulated Loss Value shall always be sufficient to pay in full, as of the date of payment thereof (assuming timely payment of the Equipment Notes prior to such date), the aggregate unpaid principal amount of all Equipment Notes outstanding as of such date, together with accrued and unpaid interest on all such Equipment Notes as of such date.

“Stipulated Loss Value Date” means, for any month, the day in such month specified in Schedule 3 to the Lease or, if such day is not a Business Day, the immediately succeeding Business Day.

“Subordination Agent” means Wilmington Trust Company, as subordination agent under the Intercreditor Agreement.

“Subordination Agent Agreements” means the Participation Agreement, the Liquidity Facility and the Intercreditor Agreement.

“Supplemental Rent” means, without duplication (a) all amounts, liabilities, indemnities and obligations (other than Basic Rent or Renewal Rent but including Make-Whole Amount, if any) that Lessee assumes or becomes obligated to or agrees to pay under any Lessee Operative Agreement to or on behalf of Lessor or any other person, including, without limitation, payments of Stipulated Loss Value, Termination Value and payments of indemnities under Section 9 of the Participation Agreement, but excluding any amount as to which Lessee is obligated to pay a pro rata share pursuant to clause (e) of this definition, (b) (i) to the extent not payable (whether or not in fact paid) under Section 6(a) of the Note Purchase Agreement (as originally in effect or amended with the consent of the Owner Participant), an amount or amounts equal to the fees payable to the Liquidity Provider under Section 2.03 of the Liquidity Facility and the related Fee Letter (as defined in the Intercreditor Agreement) multiplied by a fraction the numerator of which shall be the then outstanding aggregate principal amount of the Equipment Notes and the denominator of which shall be the then outstanding aggregate principal amount of all “Equipment Notes” (as defined in the Intercreditor Agreement); (ii) (x) the amount equal to interest on any Downgrade Advance (other than any Applied Downgrade Advance) payable under Section 3.07 of the Liquidity Facility minus Investment Earnings from such Downgrade Advance multiplied by (y) the fraction specified in the foregoing clause (i); (iii) (x) the amount equal to interest on any Special Termination Advance (other than any Applied Special Termination Advance) payable under Section 3.07 of the Liquidity Facility minus Investment Earnings from such Special Termination Advance multiplied by (y) the fraction specified in the foregoing clause (i); (iv) (x) the amount equal to interest on any Early Termination Advance (other than any Applied Early Termination Advance) payable under Section 3.07 of the Liquidity Facility minus Investment Earnings from such Early Termination Advance multiplied by (y) the fraction specified in the foregoing clause (i); (v) if any payment default shall have occurred and be continuing with respect to interest on any Equipment Notes, (x) the excess, if any, of (1) an amount equal to interest on any Unpaid Advance, Applied Downgrade Advance, Applied Special Termination Advance or Applied Early Termination Advance payable under Section 3.07 of the Liquidity Facility over (2) the sum of Investment Earnings from any Final Advance plus any amount of interest at the Payment Due Rate actually payable (whether or not in fact paid) by Owner Trustee on the overdue scheduled interest on the Equipment Notes in respect of which such Unpaid Advance, Applied Downgrade Advance, Applied Special Termination Advance or Applied Early Termination Advance was made multiplied by (y) a fraction the numerator of which shall be the then aggregate overdue amounts of interest on the Equipment Notes (other than interest becoming due and payable solely as a result of acceleration of any such Equipment Notes) and the denominator of which shall be the then aggregate overdue amounts of interest on all “Equipment Notes” (as defined in the Intercreditor Agreement) (other than interest becoming due and payable solely as a result of acceleration of any such “Equipment Notes”); and

(vi) Lessee's pro rata share of any other amounts owed to the Liquidity Provider by the Subordination Agent as borrower under the Liquidity Facility (other than amounts due as repayment of advances thereunder or as interest on such advances, except to the extent payable pursuant to clause (i), (ii), (iii), (iv) or (v) above), in each case, to the extent not paid when due by the Airframe Manufacturer pursuant to the Fee Letter (as defined in the Intercreditor Agreement), (c) Lessee's pro rata share of all compensation and reimbursement of expenses, disbursements and advances payable by Lessee under the Pass Through Trust Agreement, (d) Lessee's pro rata share of all compensation and reimbursement of expenses and disbursements payable to the Subordination Agent under the Intercreditor Agreement except with respect to any income or franchise taxes incurred by the Subordination Agent in connection with the transactions contemplated by the Intercreditor Agreement, (e) Lessee's pro rata share of any amount payable under Section 9.1 (and, if attributable thereto, Section 9.5) of the Participation Agreement to any Pass Through Indemnitee to the extent such amount relates to, results from or arises out of or in connection with (i) the Pass Through Agreements or the enforcement of any of the terms of any of the Pass Through Agreements, (ii) the offer, sale or delivery of the Pass Through Certificates or any interest therein or represented thereby or (iii) any breach of or failure to perform or observe, or any other noncompliance with, any covenant or agreement or other obligation to be performed by Lessee under any Pass Through Agreement or the falsity of any representation or warranty of Lessee in any Pass Through Agreement and (f) in the event Lessee requests any amendment to any Operative Agreement or Pass Through Agreement, Lessee's pro rata share of all reasonable fees and expenses (including, without limitation, fees and disbursements of counsel) of the Escrow Agents and the Paying Agents in connection therewith payable by the Pass Through Trustee under the Escrow Agreement. As used herein, "Lessee's pro rata share" means as of any time a fraction, the numerator of which is the principal balance then outstanding of Equipment Notes and the denominator of which is the aggregate principal balance then outstanding of all "Equipment Notes" (as such term is defined in each of the Operative Indentures). For purposes of this definition, (i) the terms "Applied Downgrade Advance", "Applied Early Termination Advance", "Applied Special Termination Advance", "Downgrade Advance", "Early Termination Advance", "Final Advance", "Investment Earnings", "Special Termination Advance" and "Unpaid Advance" shall have the meanings specified in the Liquidity Facility.

"Tax Attribute Period" is defined in Section 1(e) of the Tax Indemnity Agreement.

"Tax Indemnitee" means (a) Wells Fargo and Owner Trustee, (b) WTC and Mortgagee, (c) each separate or additional trustee appointed pursuant to the Trust Agreement or the Trust Indenture, (d) each Participant, (e) the Trust Estate and the Trust Indenture Estate and (f) the respective successors, assigns, agents and servants of the foregoing. For purposes of this definition, the term "Owner Participant" shall include any member of an affiliated group (within the meaning of Section 1504 of the Code) of which Owner Participant is, or may become, a member if consolidated, joint or combined returns are filed for such affiliated group for federal, state or local income tax purposes.

"Tax Indemnity Agreement" means the Tax Indemnity Agreement [TN], dated as of even date with the Participation Agreement, between Lessee and Owner Participant.

“Taxes” means all license, recording, documentary, registration and other similar fees and all taxes, levies, imposts, duties, charges, assessments or withholdings of any nature whatsoever imposed by any Taxing Authority, together with any penalties, additions to tax, fines or interest thereon or additions thereto.

“Taxing Authority” means any federal, state or local government or other taxing authority in the United States, any foreign government or any political subdivision or taxing authority thereof, any international taxing authority or any territory or possession of the United States or any taxing authority thereof.

“Term” means the term, commencing on the Closing Date, for which the Aircraft is leased pursuant to Section 3 of the Lease, and shall include the Base Lease Term and, if applicable, any Renewal Lease Term; provided that if at the scheduled end of the Term the Aircraft or Airframe is being used, or was within six (6) months prior thereto being used, by the U.S. Government pursuant to CRAF, the Term shall be deemed extended for the period necessary to accommodate usage of the Aircraft or Airframe pursuant to CRAF plus six months thereafter, and Lessee shall be obligated to pay Basic Rent with respect to any such period of extension at a rate equal to the Basic Rent paid during the Base Lease Term or the applicable Renewal Lease Term, whichever shall have ended immediately prior to such extension.

[“Termination Agreements” means, collectively, the termination agreement with respect to the Existing Lease and the termination agreement with respect to the Existing Sublease, in each case delivered pursuant to Section 5.1.2(xiv) of the Participation Agreement.]<sup>19</sup>

“Termination Date” means any Payment Date on which the Lease shall terminate in accordance with Section 9 of the Lease.

“Termination Value” means, with respect to the Aircraft, the amount determined by multiplying (a) the percentage set forth in Schedule 4 to the Lease (as adjusted from time to time in accordance with Section 3.2.3 of the Lease) opposite the applicable Payment Date by (b) Lessor’s Cost. Notwithstanding anything to the contrary in any Operative Agreement, Termination Value shall always be sufficient to pay in full, as of the date of payment thereof (assuming timely payment of the Equipment Notes prior to such date), the aggregate unpaid principal amount of all Equipment Notes outstanding as of such date, together with accrued and unpaid interest on all such Equipment Notes as of such date.

“Threshold Amount” is defined in Schedule 1 to the Lease.

“Transactions” means the transactions contemplated by the Participation Agreement and the other Operative Agreements to occur on the Closing Date.

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19. Delete for New Aircraft.

“Transaction Expenses” means (a) all costs and expenses incurred by Owner Participant, the Pass Through Trustee, the Subordination Agent, Owner Trustee and Mortgagee in connection with the preparation, execution and delivery of the Operative Agreements (including, without limitation, the reasonable fees and expenses of counsel for such parties), (b) all costs and expenses for the recording or filing of any documents, certificates or instruments in accordance with any Operative Agreement, including, without limitation, the FAA Filed Documents and the Financing Statements, (c) the OP Pro Rata Share of (i) the placement fees and expenses attributable to the offering and sale of the Pass Through Certificates and (ii) all costs and expenses incurred by the Pass Through Trustee, the Subordination Agent, Owner Trustee and Mortgagee in connection with the preparation, execution and delivery of the Pass Through Agreements (including, without limitation, the reasonable fees and expenses of counsel for such parties), (d) the reasonable fees and disbursements of special counsel in Oklahoma City, Oklahoma, in connection with the Closing, and (e) all initial and ongoing fees, disbursements and expenses of Owner Trustee and Mortgagee. For purposes of the foregoing, “OP Pro Rata Share” shall mean a fraction, the numerator of which shall be one and the denominator of which shall be the number of aircraft financed under the Note Purchase Agreement.

“Transfer” means the transfer, sale, assignment or other conveyance of all or any interest in any property, right or interest.

“Transferee” means a person to which any Owner Participant, Owner Trustee or any Loan Participant or Note Holder purports or intends to Transfer any or all of its right, title or interest in the Trust Estate or in its Equipment Note and the Trust Indenture Estate, respectively, as described in Section 10.1.1(a), 10.1.2 or 10.1.3 (but excluding participants in any participation referred to in Section 10.1.3), respectively, of the Participation Agreement.

“Trust” means the trust created by the Trust Agreement.

“Trust Agreement” means the [Amended and Restated]<sup>20</sup> Trust Agreement [TN], dated as of even date with the Participation Agreement, between Owner Participant and Owner Trustee.

“Trust Estate” means all estate, right, title and interest of Owner Trustee in and to the Aircraft, the Lease, any Lease Supplement and the Purchase Agreement including, without limitation, all amounts of Basic Rent and Supplemental Rent including, without limitation, insurance proceeds (other than insurance proceeds payable to or for the benefit of Owner Participant, Note Holders or WTC) and requisition, indemnity or other payments of any kind for or with respect to the Aircraft (except amounts owing to Owner Participant, Note Holders or WTC, or to any of their respective directors, officers, employees, servants and agents, pursuant to Section 9 of the Participation Agreement). Notwithstanding the foregoing, “Trust Estate” shall not include any Excluded Payment.

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20. Delete for New Aircraft.



“Trust Indenture” means the Trust Indenture and Mortgage [TN], dated as of even date with the Participation Agreement, between Owner Trustee and Mortgagee.

“Trust Indenture Estate” is defined in the “Granting Clause” of the Trust Indenture.

“Trust Indenture Supplement” means a Trust Indenture and Mortgage [TN] Supplement, substantially in the form of Exhibit A to the Trust Indenture, with appropriate modifications to reflect the purpose for which it is being used.

“Trust Supplement” means an agreement supplemental to the Basic Pass Through Trust Agreement pursuant to which (i) a separate trust is created for the benefit of the holders of the Pass Through Certificates, (ii) the issuance of the Pass Through Certificates representing fractional undivided interests in such trust is authorized and (iii) the terms of the Pass Through Certificates are established.

“UCC” means the Uniform Commercial Code as in effect in any applicable jurisdiction.

“United States” or “U.S.” means the United States of America; provided, that for geographic purposes, “United States” means, in aggregate, the 50 states and the District of Columbia of the United States of America.

“U.S. Air Carrier” means any Person holding an air carrier operating certificate issued by the Secretary of Transportation pursuant to chapter 447 of title 49 of the United States Code for aircraft capable of carrying 10 or more individuals or 6000 pounds or more of cargo, and as to which there is in force an air carrier operating certificate issued pursuant to Part 121 of the FAA Regulations, or which may operate as an air carrier by certification or otherwise under any successor or substitute provisions therefor or in the absence thereof.

“U.S. Person” means any Person described in Section 7701(a)(30) of the Code.

“U.S. Government” means the federal government of the United States, or any instrumentality or agency thereof the obligations of which are guaranteed by the full faith and credit of the federal government of the United States.

“Weighted Average Life to Maturity” means, with respect to any specified Debt, at the time of the determination thereof the number of years obtained by dividing the then Remaining Dollar-years of such Debt by the then outstanding principal amount of such Debt. The term “Remaining Dollar-years” shall mean the amount obtained by (1) multiplying the amount of each then-remaining principal payment on such Debt by the number of years (calculated at the nearest one-twelfth) that will elapse between the date of determination of the Weighted Average Life to Maturity of such Debt and the date of that required payment and (2) totaling all the products obtained in clause (1) above.

“Wells Fargo” means Wells Fargo Bank Northwest, National Association, a national banking association, not in its capacity as Owner Trustee under the Trust Agreement, but in its individual capacity.

“Wet Lease” means any arrangement whereby Lessee or a Permitted Sublessee agrees to furnish the Aircraft, Airframe or any Engine to a third party pursuant to which the Aircraft, Airframe or Engine shall at all times be in the operational control of Lessee or a Permitted Sublessee, provided that Lessee’s obligations under this Lease shall continue in full force and effect notwithstanding any such arrangement.

“WTC” means Wilmington Trust Company, a Delaware banking corporation, not in its capacity as Mortgagee under the Trust Indenture, but in its individual capacity.

ACCOUNTS; ADDRESSES

Account for Payments

Address for Notices

**Continental Airlines, Inc.**

JPMorgan Chase  
New York, New York 10081  
Account No.: 910-2-499291  
ABA#: 021-000021  
Attention: Darlene Cafferata  
Voice: 312-807-4084  
Facsimile: 312-807-4501  
Reference: Continental  
Lease [TN]

Continental Airlines, Inc.  
1600 Smith Street  
Dept. HQS-FN  
Houston, Texas 77002  
Attention: Treasurer  
Facsimile: (713) 324-2447

**Owner Participant**

[Banco do Brasil S.A.  
New York Branch  
ABA# 026003557  
Account No.: 75592-011  
Reference: Continental Lease [TN]]

[Refine, Inc.  
c/o CT Corporation  
1209 Orange St.  
Wilmington, DE 19801  
Facsimile: 202-298-7570]

**Wells Fargo Bank Northwest,  
National Association**

Wells Fargo Bank Northwest,  
National Association  
ABA: 121000248  
Cr: Corporate Trust Services  
A/C: 051-09221-15  
Ref: Continental Lease [TN]

Wells Fargo Bank Northwest,  
National Association  
MAC: U1228-120  
299 South Main Street, 12th Floor  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Services  
Facsimile: (801) 246-5053

**Wilmington Trust Company, as  
Mortgagee**

Wilmington Trust Company  
Wilmington, Delaware 19890  
Account No.: [AC]  
ABA #: 031-100092  
Attention: Corporate Capital Market  
Services/Monica M. Henry  
Reference: Continental  
Lease [TN]

Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
Attention: Corporate Trust  
Administration  
Facsimile: (302) 636-4141

**Wilmington Trust Company, as  
Subordination Agent**

Wilmington Trust Company  
Wilmington, Delaware 19890  
Account No.: 64060-0  
ABA #: 031-100092  
Attention: Corporate Capital Market  
Services/Monica M. Henry  
Reference: Continental  
Lease [TN]

Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
Attention: Corporate Trust  
Administration  
Facsimile: (302) 636-4141

**Wilmington Trust  
Company, as Pass  
Through Trustee  
for the 2005-ERJ1  
Pass Through  
Trust**

Wilmington Trust Company  
Wilmington, Delaware 19890  
Account No.: 64021-0  
ABA #: 031-100092  
Attention: Corporate Capital Market  
Services/Monica M. Henry  
Reference: Continental  
Lease [TN]

Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
Attention: Corporate Trust  
Administration  
Facsimile: (302) 636-4141

**EMBRAER-  
Empresa Brasileira  
de Aeronáutica S.A.**

Banco do Brasil S.A.  
Av. Nelson D'Avila, 149  
12245-030, São José dos  
Campos-SP  
Brazil  
Swift Code: BRASBRRJSJC  
Account No.: 9405-6  
Reference: COEX Lease [TN]

EMBRAER-Empresa Brasileira de Aeronáutica S.A.  
Av. Brigadeiro Faria Lima, 2170  
12227-901 São José dos Campos-SP  
Brazil  
Attention: General Counsel  
Facsimile: (55-123) 927-1257

**COMMITMENTS**

<u>Participant</u>	<u>Percentage of Lessor's Cost</u>	<u>Dollar Amount</u>
<b>Pass Through Trustee</b>	<b>Loan Participant's PTT Percentage</b>	
2005-ERJ1	[PTT]%	\$(DA)
<b>Owner Participant</b>	<b>Owner Participant's Percentage</b>	
	[OPP]%	\$(OPDA)
<b>Total</b>		\$(TDA)

**CERTAIN TERMS**

<b>Defined Term</b>	<b>Definition</b>
Commitment Termination Date	[_____, 200_]
[Existing Lease	Lease Agreement-[TN], dated as of [ELD], between Lessor and Lessee] <sup>28</sup>
[Existing Participation Agreement	Participation Agreement-[TN], dated as of [EPD], among Lessee, Refine, Inc., Owner Trustee, Express and Airframe Manufacturer] <sup>29</sup>
Equity Advisor	[_____]
Expense Limit	[\$_____]
Lessor's Cost	[\$[LC]]
OP Jurisdiction	[Delaware]
Seller	PM Limited, a Cayman Islands company
Special Counsel to the Owner Participant	[_____]

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28. Delete for New Aircraft.

29. Delete for New Aircraft.



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**LEASE AGREEMENT [TN]**

Dated as of [DD]

Between

**WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION,**

Not in its Individual Capacity,  
except as expressly provided herein,  
but solely as Owner Trustee,

Lessor

and

**CONTINENTAL AIRLINES, INC.,**

Lessee

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One Embraer Model EMB-145 XR Aircraft  
Bearing United States Registration No. N[REG] and  
Bearing Manufacturer's Serial No. [MSN] with two  
Allison AE3007A1E Engines  
Bearing Engine Manufacturer's Serial Nos. CAE[E1] and CAE[E2]

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The right, title and interest of Lessor in and to, among other things, this Lease Agreement has been assigned to and is subject to a security interest in favor of Wilmington Trust Company, a Delaware banking corporation, as Mortgagee, under the Trust Indenture and Mortgage [TN], dated as of [DD], for the benefit of the holders of the Equipment Notes referred to in such Trust Indenture, all to the extent provided in such Trust Indenture. This Lease Agreement has been executed in multiple counterparts; to the extent, if any, that this Lease Agreement constitutes chattel paper (as defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in Lessor's right, title and interest in and to this Lease Agreement may be perfected through the delivery or possession of any counterpart of this Lease Agreement other than the counterpart of this Lease Agreement that contains the original receipt executed by Wilmington Trust Company, as Mortgagee.



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## LEASE AGREEMENT [TN]

LEASE AGREEMENT [TN], dated as of [DD] (this “Agreement” or “Lease”), between (a) WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity, except as expressly provided herein, but solely as Owner Trustee (this and all other capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in Section 1 below) (“Lessor” or “Owner Trustee”), and (b) CONTINENTAL AIRLINES, INC., a Delaware corporation (“Lessee”).

### RECITALS

- A. Lessor and Lessee are parties to the Participation Agreement, pursuant to which, among other things, Lessor and Lessee have agreed to enter into this Agreement.
- B. Pursuant to the Trust Agreement, Owner Participant has authorized Lessor to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual agreements contained herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

### SECTION 1. DEFINITIONS AND CONSTRUCTION

Capitalized terms used but not defined herein shall have the respective meanings set forth or incorporated by reference, and shall be construed and interpreted in the manner described, in Annex A.

### SECTION 2. DELIVERY AND ACCEPTANCE

#### 2.1 Delivery and Lease of Aircraft

Lessor hereby agrees (subject to the satisfaction or waiver of the conditions set forth in Section 5 of the Participation Agreement) to lease to Lessee for the Term and Lessee hereby agrees (subject to the satisfaction or waiver of the conditions set forth in Section 5 of the Participation Agreement) to lease from Lessor for the Term, the Aircraft, commencing immediately upon acquisition of the Aircraft by Lessor pursuant to the Participation Agreement.

#### 2.2 Acceptance by Lessee

By executing and delivering Lease Supplement No. 1, Lessee confirms to Lessor that Lessee has duly and irrevocably accepted delivery of the Aircraft for all purposes of this Agreement.

**SECTION 3. TERM AND RENT**

**3.1 Term**

The Aircraft shall be leased hereunder for the Term, unless this Agreement or the leasing of the Aircraft is earlier terminated in accordance with any provision of this Agreement. Lessee shall have the option to renew the leasing of the Aircraft hereunder pursuant to, and subject to the terms and conditions of, Section 17, for the Renewal Lease Term.

**3.2 Rent**

**3.2.1 Basic Rent**

(a) During the Base Lease Term, Lessee shall pay to Lessor, on each Payment Date, in the manner and in the funds of the type specified in Section 3.3, Basic Rent in the amount specified in the column with the heading "Total Basic Rent" in Schedule 2 for such Payment Date, which shall be rent paid in advance for the Payment Period ending on the next Payment Date (except that the first payment shall include rent in arrears since the Closing Date).

(b) Notwithstanding anything to the contrary in any Operative Agreement, the amount of the payment of Basic Rent due and payable on each Payment Date shall be at least sufficient to pay in full, as of such Payment Date (assuming timely payment of the Equipment Notes prior to such Date), the aggregate principal amount of scheduled installments due on the Equipment Notes outstanding on such Payment Date, together with the accrued and unpaid interest thereon, due on such Payment Date in respect of the Equipment Notes; provided, however, that no installment of Basic Rent shall be increased to the extent such increase would be based upon (i) any attachment or diversion of Basic Rent on account of Lessor Liens attributable to Lessor or Owner Participant, (ii) any modification of the payment terms of the Equipment Notes, or (iii) the acceleration of any Equipment Note or Equipment Notes due solely to the occurrence of an Indenture Event of Default that does not constitute a Lease Event of Default.

**3.2.2 Supplemental Rent**

Lessee shall pay to Lessor, or to whomever shall be entitled thereto, any and all Supplemental Rent when and as the same shall become due and owing. Lessee will also pay to Lessor, or to whomever shall be entitled thereto as Supplemental Rent, to the extent permitted by applicable Law, interest at the Payment Due Rate on any part of any amount of Rent (including, without limitation, Supplemental Rent) not paid by 12:30 p.m., New York time, on the date when due (so long as, in the case of any Person not a party to the Participation Agreement, Lessee had received timely notice of the account to which such payment was required to be made), for the period from and including the date on which the same was due to, but excluding, the date of payment in full.

### 3.2.3 Adjustments to Stipulated Loss Values and Termination Values

(a) In the event that Lessee is required to indemnify the Owner Participant under the Tax Indemnity Agreement, the Stipulated Loss Value percentages set forth in Schedule 3 and the Termination Value percentages set forth in Schedule 4 shall be recalculated (upwards or downwards) by Owner Participant, using the same methods and assumptions (except to the extent such assumptions shall be varied to take into account the Loss or Foreign Tax Credit Loss (as each such term is defined in the Tax Indemnity Agreement) that is the subject of such indemnification and any prior or contemporaneous Loss or Foreign Tax Credit Loss) used to calculate the Stipulated Loss Value percentages and the Termination Value percentages on the Closing Date, in order to maintain the Owner Participant's Net Economic Return.

(b) All adjustments pursuant to Section 3.2.3(a) shall be made as promptly as practicable after either Owner Participant or Lessee gives notice to the other that an event has occurred that requires an adjustment. Owner Participant and Lessee shall give prompt notice to the other of any event requiring an adjustment. Any recalculation of the percentages of Stipulated Loss Value and Termination Value shall be prepared by Owner Participant, subject to verification at the request of Lessee in accordance with Section 3.2.3(c), on the basis of the same methodology and assumptions used by Owner Participant in determining the percentages of Stipulated Loss Value and Termination Value as of the Closing Date, except as such assumptions have been modified to reflect the events giving rise to adjustments hereunder. Promptly after an adjustment is made hereunder, Owner Participant shall deliver to Lessee a description of such adjustment, setting forth in reasonable detail the calculation thereof. All adjustments required pursuant to Section 3.2.3(a) shall be set forth in a Lease Supplement or in an amendment to this Lease, and, promptly after execution thereof by Lessor and Lessee, Lessee shall give a copy thereof to Mortgagee.

(c) If Lessee believes that any calculations by Owner Participant pursuant to Section 3.2.3(b) are in error, and if, after consultation, Lessee and Owner Participant are unable to agree on an adjustment, then a nationally recognized firm of accountants selected by Lessee and reasonably satisfactory to Owner Participant shall verify such calculations. Owner Participant will make available to such firm, but not, in any circumstances, to Lessee or any representative of Lessee, the methodology and assumptions referred to in Section 3.2.3(b) and any modifications thereto made to reflect the events giving rise to adjustments hereunder (subject to the execution by such firm of a confidentiality agreement, reasonably acceptable to Owner Participant, prohibiting disclosure of such methodology and assumptions to any third party). The determination by such firm of accountants shall be final absent manifest error. Lessee will pay the reasonable costs and expenses of such further verification by such accountants, provided that if it results in a decrease in the present value (discounted at the Debt Rate) of any Stipulated Loss Value or Termination Value by ten or more basis points from such Stipulated Loss Value or Termination Value as recalculated by the Owner Participant, then the Owner Participant will pay such costs and expenses.

### **3.3 Payments**

(a) Payments of Rent by Lessee shall be paid by wire transfer of immediately available Dollars, not later than 12:30 p.m., New York time, on the date when due, to the account of Lessor specified in Schedule 1 to the Participation Agreement or to such other account in the United States as directed by Lessor to Lessee in writing at least 10 Business Days prior to the date such payment of Rent is due or, in the case of any payment of Supplemental Rent expressly payable to a person other than Lessor, to the person that shall be entitled thereto to such account in the United States as such person may specify from time to time to Lessee at least 10 Business Days prior to the date such payment of Rent is due.

(b) Except as otherwise expressly provided herein, whenever any payment of Rent shall be due on a day that is not a Business Day, such payment shall be made on the next day that is a Business Day, and, if such payment is made on such next Business Day, no interest shall accrue on the amount of such payment during such extension.

(c) So long as Lessee has not received written notice from the Mortgagee that the Trust Indenture has been discharged, and notwithstanding Section 3.3(a), Lessor hereby irrevocably directs, and Lessee agrees, that all payments of Rent and all other amounts payable by Lessee hereunder, other than Excluded Payments, shall be paid directly to Mortgagee on behalf of Lessor by wire transfer of immediately available Dollars to the account of Mortgagee specified in Schedule 1 to the Participation Agreement, or to such other account in the United States as Mortgagee may specify by written notice to Lessor and Lessee at least 10 Business Days prior to the date such payment of Rent is due.

(d) Excluded Payments shall be paid by wire transfer of immediately available Dollars to the account of the person specified in the Participation Agreement or, if not so specified, to such account in the United States as may be specified by such person by written notice to Lessor and Lessee from time to time at least 10 Business Days prior to the date such payment is required to be made.

(e) All computations of interest under this Agreement shall be made on the basis of a year of 360 days comprised of twelve 30-day months.

## **SECTION 4. DISCLAIMER; CERTAIN AGREEMENTS OF LESSOR; SECTION 1110 MATTERS**

### **4.1 Disclaimer**

LESSOR LEASES AND LESSEE TAKES THE AIRCRAFT "AS-IS, WHERE-IS." LESSEE ACKNOWLEDGES AND AGREES THAT AS BETWEEN LESSEE AND EACH OF LESSOR, MORTGAGEE AND ANY PARTICIPANT (i) LESSEE HAS SELECTED THE AIRCRAFT AND MANUFACTURER THEREOF AND (ii) NONE OF LESSOR, MORTGAGEE AND ANY PARTICIPANT MAKES, HAS MADE OR SHALL BE DEEMED TO HAVE MADE, AND EACH WILL BE DEEMED TO HAVE EXPRESSLY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO:

- (v) THE AIRWORTHINESS, VALUE, CONDITION, DESIGN, OPERATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE OR FOR ANY PARTICULAR PURPOSE OF THE AIRFRAME, ANY ENGINE OR ANY PART THEREOF;
- (w) THE QUALITY OF THE MATERIAL OR WORKMANSHIP WITH RESPECT TO THE AIRFRAME, ANY ENGINE OR ANY PART THEREOF;
- (x) THE ABSENCE OF LATENT OR ANY OTHER DEFECT IN THE AIRFRAME, ANY ENGINE OR ANY PART THEREOF, WHETHER OR NOT DISCOVERABLE;
- (y) THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT OR THE LIKE; OR
- (z) THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE AIRFRAME, ANY ENGINE OR ANY PART THEREOF.

#### **4.2 Certain Agreements of Lessor**

Unless a Lease Event of Default shall have occurred and be continuing, Lessor agrees to make available to Lessee such rights as Lessor may have under any warranty with respect to the Aircraft made, or made available, by Airframe Manufacturer or any of its subcontractors or suppliers, as the case may be, pursuant to and in accordance with the terms of the Purchase Agreement Assignment.

#### **4.3 Quiet Enjoyment**

So long as no Lease Event of Default shall have occurred and be continuing, Lessor shall not interfere with Lessee's rights hereunder to continued possession, use and operation of, and quiet enjoyment of, the Aircraft during the Term. The foregoing, however, shall not be construed or deemed to modify or condition in any respect the obligations of the Lessee pursuant to Section 16, which obligations are absolute and unconditional.

#### **4.4 Investment of Funds Held as Security**

##### **4.4.1 Investment**

Any moneys required to be paid to or retained by Lessor that are required to be paid to Lessee or applied as provided herein shall, until paid to Lessee as provided herein or applied as provided herein, be invested by Lessor from time to time as directed in writing by Lessee (or, if Lessee fails to so direct, by or as directed by Lessor in its sole discretion) and at the expense and risk of Lessee in Cash Equivalents so long as such Cash Equivalents specified by Lessee or Lessor, as the case may be, can be acquired by Lessor using its best efforts; provided, that so long as the Lien of the Trust Indenture shall not have been discharged, such moneys shall be invested and held by Mortgagee, as assignee of Lessor, in accordance with this Lease and



upon discharge of such Lien, Mortgagee shall pay any such money held by it to Lessor to be held and invested in accordance with this Section.

#### **4.4.2 Payment of Gain or Loss**

Any net gain (including interest received) realized as the result of investments pursuant to Section 4.4.1 (net of any fees, commissions and other reasonable expenses, if any, incurred in connection with such investment) shall be held and applied in the same manner as the principal amount is to be held and applied hereunder. Lessee will promptly pay to Lessor, on demand, the amount of any loss realized as the result of any such investment (together with any fees, commissions and other reasonable expenses, if any, incurred in connection with such investment), such amount so paid to be held and applied by Lessor as contemplated in Section 4.4.1 above.

#### **4.4.3 Limitation of Liability**

All investments under this Section 4.4 shall be at the expense and risk of Lessee, and Lessor and Mortgagee shall not be liable for any loss resulting from any investment made under this Section 4.4 other than by reason of its willful misconduct or gross negligence. Any such investment may be sold (without regard to its maturity) by Lessor without instructions whenever such sale is necessary to make a distribution required by this Lease.

#### **4.5 Title Transfers by Lessor**

If Lessor shall be required to transfer title to the Aircraft, Airframe or any Engine to Lessee or any other person pursuant to this Lease, then (a) Lessor shall (1) transfer to Lessee or such other person, as the case may be, all of Lessor's right, title and interest in and to the Aircraft, Airframe or such Engine, as the case may be, free and clear of all Lessor Liens but otherwise on an "as-is", "where is" basis, (2) so long as the Lien of the Trust Indenture has not been discharged, comply with the Trust Indenture relating to the release of the Aircraft, Airframe or such Engine, (3) assign to Lessee or such other person, as the case may be, if and to the extent permitted under the Purchase Agreement, all warranties of Airframe Manufacturer with respect to the Aircraft, Airframe or such Engine, and (4) assign to Lessee or such other person, as the case may be, if and to the extent permitted, all claims, if any, for damage to the Aircraft, Airframe or such Engine, in each case free of Lessor Liens, and without recourse or warranty of any kind whatsoever (except as to the transfer described in clause (1) above and as to the absence of such Lessor Liens, as aforesaid), and (b) Lessor shall promptly deliver to Lessee or such other person, as the case may be, a bill of sale and agreements of assignment, evidencing such transfer and assignment, and such other instruments of transfer, all in form and substance reasonably satisfactory to Lessee (or such other person, as the case may be), as Lessee (or such other person, as the case may be) may reasonably request.

#### **4.6 Lessor's Interest in Certain Engines**

Lessor hereby agrees for the benefit of each lessor, conditional seller, indenture trustee or secured party of any engine leased to, or purchased by, Lessee or any Permitted Sublessee subject to a lease, conditional sale, trust indenture or other security agreement that Lessor, its successors and assigns will not acquire or claim, as against such lessor, conditional

seller, indenture trustee or secured party, any right, title or interest in any engine as the result of such engine being installed on the Airframe at any time while such engine is subject to such lease, conditional sale, trust indenture or other security agreement and owned by such lessor or conditional seller or subject to a trust indenture or security interest in favor of such indenture trustee or secured party.

**4.7 Lease For U.S. Federal Income Tax Law Purposes; Section 1110 of Bankruptcy Code**

(a) Lessee and Lessor agree that this Lease is, and shall be treated as, a lease for U.S. federal income tax purposes of the Aircraft, Airframe, Engines and Parts.

(b) It is the intention of each of Lessee and Lessor that Lessor (and Mortgagee as assignee of Lessor under the Trust Indenture) shall be entitled to the benefits of Section 1110 with respect to the right to take possession of the Aircraft, Airframe, Engines and Parts and to enforce any of its other rights or remedies as provided in this Lease.

**SECTION 5. RETURN OF AIRCRAFT**

**5.1 Compliance with Annex B**

Lessee shall comply with each of the provisions of Annex B hereto, which provisions are hereby incorporated by this reference as if set forth in full herein.

**5.2 Storage and Related Matters**

If Lessor gives written notice to Lessee not less than 60 days nor more than 120 days prior to the end of the Term requesting storage of the Aircraft upon its return hereunder, Lessee will provide Lessor, or cause Lessor to be provided, with outdoor parking facilities for the Aircraft for a period up to 30 days, commencing on the date of such return, and upon request of Lessor to Lessee made at least 10 days prior to the end of such initial 30 day period, for an additional 120 day period commencing upon expiration of such initial period, at such storage facility in the 48 contiguous states of the United States on Lessee's route system for Similar Aircraft as Lessor may select as the site for such return of the Aircraft. Such storage shall be at Lessor's risk, and Lessor shall pay all applicable storage fees, except that Lessee shall pay the parking fees for the initial 30 day storage period; provided that Lessee's obligation to provide parking shall be subject to Lessor entering into an agreement prior to the commencement of the storage period with the storage facility providing, among other things, that Lessor shall bear all maintenance charges and other costs (other than parking fees for the initial 30 day period) incurred.

**5.3 Return of Other Engines**

In the event that any Engine owned by Lessor shall not be installed on the Airframe at the time of return hereunder, Lessee shall be required to return the Airframe hereunder with a Replacement Engine meeting the requirements of, and in accordance with, Section 10 hereof and Annex B hereto. Thereupon, Lessor will transfer to Lessee the Engine

constituting part of such Aircraft but not installed on such Airframe at the time of the return of the Airframe.

## **SECTION 6. LIENS**

Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any Lien on or with respect to the Aircraft, the Airframe, any Engine or any Part, title to any of the foregoing or any interest of Lessee therein, or the Lessee's rights in and to this Lease or any Permitted Sublease, except (a) the respective rights of Lessor, Mortgagee, the Participants or Lessee under the Operative Agreements, or of any Permitted Sublessee under any Permitted Sublease; (b) Lessor Liens with respect to any Participant, Lessor or Mortgagee; (c) the rights of others under agreements or arrangements to the extent permitted by the terms of Sections 7.2 and 7.3 or Annex C; (d) Liens for Taxes of Lessee (and its U.S. federal tax law consolidated group), or Liens for Taxes of any Tax Indemnatee (and its U.S. federal tax law consolidated group) for which Lessee is obligated to indemnify such Tax Indemnatee under any of the Lessee Operative Agreements, in any such case either not yet due or being contested in good faith by appropriate proceedings so long as such Liens and such proceedings do not involve any material danger of the sale, forfeiture or loss of the Aircraft, the Airframe, any Engine or any Part thereof; (e) materialmen's, mechanics', workers', repairers', employees' or other like Liens arising in the ordinary course of business for amounts the payment of which is either not yet delinquent for more than 35 days or is being contested in good faith by appropriate proceedings, so long as such Liens and such proceedings do not involve any material danger of the sale, forfeiture or loss of the Aircraft, the Airframe, any Engine or any Part thereof; and (f) Liens arising out of any judgment or award against Lessee (or against any Permitted Sublessee), so long as such judgment shall, within 30 days after the entry thereof, have been discharged or vacated, or execution thereof stayed pending appeal or shall have been discharged, vacated or reversed within 30 days after the expiration of such stay, and so long as during any such 30-day period there is not, or any such judgment or award does not involve, any material risk of the sale, forfeiture or loss of the Aircraft, the Airframe or any Engine. Lessee shall promptly (and in any case, by the end of the Term), at its own expense, take (or cause to be taken) such action as may be necessary to duly discharge (by bonding or otherwise) any Lien not excepted above if the same shall at any time arise in respect of the Aircraft, the Airframe, any Engine or any Part during the Term.

## **SECTION 7. REGISTRATION, OPERATION, POSSESSION, SUBLEASING AND RECORDS**

### **7.1 Registration and Operation**

#### **7.1.1 Registration and Recordation**

Subject to the compliance by Lessor and Owner Participant with their respective obligations under Section 13 of the Participation Agreement, Lessee shall cause the Aircraft to be, and at all times during the Term to remain, duly registered with the FAA under the Act or with such other country of registry as shall be permitted under Section 7.1.2 below, in the name of Lessor as owner and lessor (except to the extent that such registration under the Act cannot be effected with the FAA because of Lessor's or Owner Participant's failure to comply with the

citizenship requirements for registration of the Aircraft under the Act). Lessor shall execute any and all such documents as Lessee (or any Permitted Sublessee) may reasonably request for the purpose of effecting and continuing such registration. Unless Mortgagee has given Lessee notice that the Trust Indenture has been discharged, Lessee shall also cause the Trust Indenture to be duly recorded and at all times maintained of record as a first-priority perfected mortgage (subject to Permitted Liens) on the Aircraft, the Airframe and each of the Engines (except to the extent that such perfection or priority cannot be maintained as a result of the failure by Lessor or Mortgagee to execute and deliver any necessary documents).

### **7.1.2 Reregistration**

So long as no Lease Event of Default shall have occurred and be continuing, Lessee may, by written notice to Lessor, request to change the country of registration of the Aircraft. Any such change in registration shall be effected only in compliance with, and subject to all of the conditions set forth in, Section 7.6.11 of the Participation Agreement.

### **7.1.3 Markings**

If permitted by applicable Law, on or reasonably promptly after the Closing, Lessee will cause to be affixed to, and maintained in, the cockpit of the Airframe and on each Engine, in each case, in a clearly visible location (it being understood that the location of such placards, as identified to the Owner Participant prior to the Closing, shall be deemed to be in compliance with this requirement), a placard of a reasonable size and shape bearing the legend, in English, set forth in Schedule 6. Such placards may be removed temporarily, if necessary, in the course of maintenance of the Airframe or Engines. If any such placard is damaged or becomes illegible, Lessee shall promptly replace it with a placard complying with the requirements of this Section 7.1.3.

### **7.1.4 Compliance With Laws**

Lessee shall not, and shall not allow any other person to, operate, use, maintain, service, repair or overhaul the Aircraft (a) in violation of any Law binding on or applicable to the Aircraft, the Airframe or any Engine, or (b) in violation of any airworthiness certificate, license or registration of any Government Entity relating to Lessee or the Aircraft, the Airframe or any Engine, except (1) immaterial or non-recurring violations with respect to which corrective measures are taken promptly by Lessee or a Permitted Sublessee, as the case may be, upon discovery thereof, and (2) to the extent Lessee or any Permitted Sublessee is contesting the validity or application of any such Law or requirement relating to any such certificate, license or registration in good faith in any reasonable manner that does not involve a material danger of the sale, forfeiture or loss of the Aircraft, the Airframe, or any Engine, any risk of criminal liability or a greater than de minimis risk of material civil penalties being imposed against Lessor, Mortgagee or any Participant or impair the Lien of the Trust Indenture.

### **7.1.5 Operation**

Lessee agrees not to operate, use or locate the Aircraft, the Airframe or any Engine, or allow the Aircraft, the Airframe or any Engine to be operated, used or located (a) in any area excluded from coverage by any insurance required by the terms of Section 11, except in

the case of a requisition by the U.S. Government where Lessee obtains an indemnity in lieu of such insurance from the U.S. Government, or insurance from the U.S. Government, covering such area, in accordance with Section 11.3 or (b) in any recognized area of hostilities unless fully covered in accordance with Annex D by war-risk insurance as required by the terms of Section 11 (including, without limitation, Section 11.3), unless in any case referred to in this Section 7.1.5 the Aircraft is only temporarily operated, used or located in such area as a result of an emergency, equipment malfunction, navigational error, hijacking, weather condition or other similar unforeseen circumstances, so long as Lessee diligently and in good faith proceeds to remove the Aircraft from such area.

## **7.2 Possession**

Lessee will not, without the prior written consent of Lessor and Owner Participant (which consent shall not be unreasonably withheld), sublease or otherwise in any manner deliver, transfer or relinquish possession of the Aircraft, the Airframe or any Engine or install any Engine, or permit any Engine to be installed, on any airframe other than the Airframe; provided, however, subject to the provisions of Section 7.3, Lessee may, without such prior written consent:

### **7.2.1 Interchange and Pooling**

Subject or permit any Permitted Sublessee to subject any Engine to normal interchange agreements or pooling agreements or arrangements, in each case customary in the commercial airline industry and entered into by Lessee or such Permitted Sublessee, as the case may be, in the ordinary course of business; provided, however, that if Lessor's title to any such Engine is divested under any such agreement or arrangement, then such Engine shall be deemed to have suffered an Event of Loss as of the date of such divestiture, with the effect that Lessee shall be required to replace such Engine with a Replacement Engine meeting the requirements of, and in accordance with, Section 10.

### **7.2.2 Testing and Service**

Deliver or permit any Permitted Sublessee to deliver possession of the Aircraft, Airframe, any Engine or any Part (i) to the manufacturer thereof or to any third-party maintenance provider, for testing, service, repair, maintenance or overhaul work on the Aircraft, Airframe, any Engine or any Part, or, to the extent required or permitted by the terms of Annex C, for alterations or modifications in or additions to the Aircraft, Airframe or any Engine or (ii) to any Person for the purpose of transport to a Person referred to in the preceding clause (i).

### **7.2.3 Transfer to U.S. Government**

Transfer or permit any Permitted Sublessee to transfer possession of the Aircraft, Airframe or any Engine to the U.S. Government, in which event Lessee shall promptly notify Lessor and Mortgagee in writing of any such transfer of possession and, in the case of any transfer pursuant to CRAF, in such notification shall identify by name, address and telephone numbers the Contracting Office Representative or Representatives for the Military Airlift

#### **7.2.4 Installation of Engines on Owned Aircraft**

Install or permit any Permitted Sublessee to install an Engine on an airframe owned by Lessee or such Permitted Sublessee, as the case may be, free and clear of all Liens, except (a) Permitted Liens and those that do not apply to the Engines and (b) the rights of third parties under normal interchange or pooling agreements and arrangements of the type that would be permitted under Section 7.2.1.

#### **7.2.5 Installation of Engines on Other Airframes**

Install or permit any Permitted Sublessee to install an Engine on an airframe leased to Lessee or such Permitted Sublessee, or purchased by Lessee or such Permitted Sublessee subject to a mortgage, security agreement, conditional sale or other secured financing arrangement, but only if (a) such airframe is free and clear of all Liens, except (i) the rights of the parties to such lease, or any such secured financing arrangement, covering such airframe and (ii) Liens of the type permitted by clauses (a) and (b) of Section 7.2.4 and (b) Lessee or Permitted Sublessee, as the case may be, shall have received from the lessor, mortgagee, secured party or conditional seller, in respect of such airframe, a written agreement (which may be a copy of the lease, mortgage, security agreement, conditional sale or other agreement covering such airframe), whereby such Person agrees that it will not acquire or claim any right, title or interest in, or Lien on, such Engine by reason of such Engine being installed on such airframe at any time while such Engine is subject to this Lease or is owned by Lessor.

#### **7.2.6 Installations of Engines on Financed Aircraft**

So long as no Payment Default, Bankruptcy Default or Lease Event of Default shall have occurred and be continuing, install or permit any Permitted Sublessee to install an Engine on an airframe owned by Lessee or such Permitted Sublessee, leased to Lessee or such Permitted Sublessee, or purchased by Lessee or such Permitted Sublessee subject to a conditional sale or other security agreement under circumstances where neither Section 7.2.4 or 7.2.5 is applicable; provided, however, that any such installation shall be deemed an Event of Loss with respect to such Engine, and Lessee shall comply with Section 10.2 hereof in respect thereof.

#### **7.2.7 Subleasing**

With respect to the Aircraft, Airframe or any Engine, so long as no Payment Default, Bankruptcy Default or Lease Event of Default has occurred and is continuing, enter into a sublease with any Permitted Air Carrier, but only if:

- (a) Lessee shall provide written notice to Lessor of Lessee's intent to enter into a Permitted Sublease (except if the Permitted Sublessee is Express) and of any permitted sub-sublease, such notice in the event of a sublease to a U.S. Air Carrier to be given promptly after entering into any such sublease or, in the case of a sublease to any other Permitted Air Carrier, 20 days in advance of entering into such sublease;

(b) At the time that Lessee enters into such Permitted Sublease or a sublessee enters into a permitted sub-sublease, such Permitted Sublessee shall not be subject to any bankruptcy, insolvency, liquidation, reorganization, dissolution or similar proceeding, shall not be seeking any reorganization or any readjustment of its debts and shall not be, or shall not have substantially all of its property, in the possession of any liquidator, trustee, receiver or similar person and, if such Permitted Sublessee is a Permitted Foreign Air Carrier, the United States then maintains normal diplomatic relations with the country in which such Permitted Sublessee has its principal executive offices;

(c) Any such Permitted Sublease (including any permitted sub-sublease) (i) shall include provisions for the maintenance, operation, possession, inspection and insurance of the Aircraft that are the same in all material respects as the applicable provisions of this Lease, (ii) shall provide that, except if Express or any subsidiary of Lessee is the Permitted Sublessee, such Permitted Sublessee may not further sublease or transfer its interests (except transfers of the type permitted in Sections 7.2.1 through 7.2.6, inclusive) in the Aircraft, Airframe or Engines, (iii) shall not extend beyond the end of the Term and (iv) shall be expressly subject and subordinate to all the terms of this Agreement and to the rights, powers and remedies of Lessor hereunder;

(d) In connection with a sublease (including any permitted sub-sublease) to a Permitted Foreign Air Carrier, Lessee shall have furnished Lessor and Mortgagee an opinion of counsel, reasonably satisfactory to Lessor and Mortgagee, in the country of domicile of such Permitted Foreign Air Carrier, that (i) the terms of such sublease are the legal, valid and binding obligations of the parties thereto enforceable under the Laws of such jurisdiction, (ii) it is not necessary for Owner Participant, Lessor or Mortgagee to register or qualify to do business in such jurisdiction, if not already so registered or qualified, as a result, in whole or in part, of the proposed sublease, (iii) Lessor's title to, and Mortgagee's Lien in respect of, the Aircraft, Airframe and Engines will be recognized in such jurisdiction, (iv) the Laws of such jurisdiction of domicile require fair compensation by the government of such jurisdiction, payable in a currency freely convertible into Dollars, for the loss of title to the Aircraft, Airframe or Engines in the event of the requisition by such government of such title (unless Lessee shall provide insurance in the amounts required with respect to hull insurance under Section 11 covering the requisition of title to the Aircraft, Airframe or Engines by the government of such jurisdiction so long as the Aircraft, Airframe or Engines are subject to such sublease), (v) the agreement of such Permitted Foreign Air Carrier that its rights under the sublease are subject and subordinate to all the terms of this Lease is enforceable against such Permitted Foreign Air Carrier under applicable Law, and (vi) there is no tort liability of the owner or Lessor of an aircraft not in possession thereof under the Laws of such country (it being agreed that, in the event such latter opinion cannot be given in a form satisfactory to the Owner Participant and Mortgagee, such opinion shall be waived if insurance reasonably satisfactory to the Owner Participant and Mortgagee is provided to cover such risk);

(e) No such sublease shall be made to a "tax exempt entity" as defined in Section 168(h)(2) of the Code (including any Permitted Foreign Air Carrier) prior to the close of the Tax Attribute Period, unless Lessee prepays on a lump-sum basis any liability due under the Tax Indemnity Agreement as a result of such sublease based upon the assumption that such sublease were to continue for the remainder of the term of such sublease, provided, that

notwithstanding the foregoing, such sublease may be made without requiring such prepayment during the taxable year in which the seventh anniversary of the Closing Date occurs so long as the Aircraft is not “used predominantly outside the United States” within the meaning of Section 168(g) of the Code during such taxable year;

(f) Lessee shall furnish to Lessor and Mortgagee evidence reasonably satisfactory to Lessor and Mortgagee that the insurance required by Section 11 remains in effect at the time such sublease (including any permitted sub-sublease) is entered into;

(g) All necessary documents shall have been duly filed, registered or recorded in such public offices as may be required fully to preserve the title of Lessor, and the first priority perfected security interest (subject to Permitted Liens) of Mortgagee, in the Aircraft, Airframe and Engines;

(h) Except for the initial sublease to Express, Lessee shall reimburse Lessor and Mortgagee for all of its reasonable out-of-pocket fees and expenses, including, without limitation, reasonable fees and disbursements of counsel, incurred by Lessor and Mortgagee in connection with any such sublease; and

(i) For all purposes of this Section 7.2.7, the term “sublease” shall be deemed to include interchange agreements with respect to the Aircraft or Airframe.

### **7.3 Certain Limitations on Subleasing or Other Relinquishment of Possession**

Notwithstanding anything to the contrary in Section 7.2:

(a) The rights of any person that receives possession of the Aircraft in accordance with Section 7.2 shall be subject and subordinate to all the terms of this Lease, and to Lessor’s rights, powers and remedies hereunder, including, without limitation (i) Lessor’s right to repossess the Aircraft pursuant to Section 15, (ii) Lessor’s right to terminate and avoid such sublease, delivery, transfer or relinquishment of possession upon the occurrence of a Lease Event of Default and (iii) the right to require such person to forthwith deliver the Aircraft, the Airframe and Engines subject to such transfer upon the occurrence of a Lease Event of Default;

(b) Lessee shall remain primarily liable hereunder for the performance of all the terms of this Lease to the same extent as if such transfer had not occurred, and no transfer of possession of the Aircraft, the Airframe, any Engine or any Part shall in any way discharge or diminish any of Lessee’s obligations to Lessor hereunder or under any Operative Agreement;

(c) Lessee shall ensure that no sublease, delivery, transfer or relinquishment permitted under Section 7.2 shall affect the United States registration of the Aircraft, unless also made in accordance with the provisions of Section 7.1.2;

(d) Any event that constitutes or would, with the passage of time, constitute an Event of Loss under paragraph (c), (d), or (e) of the definition of such term (as set forth in Annex A) shall not be deemed to violate the provisions of Section 7.2; and



(e) Any Wet Lease shall not constitute a delivery, transfer or relinquishment of possession for purposes of Section 7.2 and shall not be prohibited by the terms hereof.

**SECTION 8. MAINTENANCE; REPLACEMENT AND POOLING OF PARTS; ALTERATIONS, MODIFICATIONS AND ADDITIONS; OTHER LESSEE COVENANTS**

**8.1 Maintenance; Replacement and Pooling of Parts; Alterations, Modifications and Additions**

At all times during the Term, Lessee shall comply with, or cause to be complied with, each of the provisions of Annex C, which provisions are hereby incorporated by this reference as if set forth in full herein.

**8.2 Information, Certificates, Notices and Reports**

**8.2.1 Financial Information**

Lessee will furnish to Lessor and Mortgagee:

(a) Within 90 days after the end of each of the first three fiscal quarters in each fiscal year of Lessee, a consolidated balance sheet of Lessee as of the end of such quarter and related statements of income and cash flows for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, setting forth in each case in comparative form the corresponding figures for the corresponding period in the preceding fiscal year, prepared in accordance with GAAP; provided that so long as Lessee is subject to the reporting requirements of the Securities Exchange Act of 1934, a copy of Lessee's report on Form 10-Q for such fiscal quarter (excluding exhibits) or an e-mail notice that such report has been filed with the SEC and providing a website address at which such report may be accessed will satisfy this paragraph (a).

(b) Within 120 days after the end of each fiscal year of Lessee, a consolidated balance sheet of Lessee as of the end of such fiscal year and related statements of income and cash flows of Lessee for such fiscal year, in comparative form with the preceding fiscal year, prepared in accordance with GAAP, together with a report of Lessee's independent certified public accountants with respect to their audit of such financial statements; provided that so long as Lessee is subject to the reporting requirements of the Securities Exchange Act of 1934, a copy of Lessee's report on Form 10-K for such fiscal year (excluding exhibits) or an e-mail notice that such report has been filed with the SEC and providing a website address at which such report may be accessed will satisfy this paragraph (b).

**8.2.2 Annual Certificate**

Within 120 days after the close of each fiscal year of Lessee, Lessee shall deliver to Lessor and Mortgagee an Officer's Certificate of Lessee (which, in lieu of delivery pursuant to Section 18.6, may be delivered by e-mail and, in such case, need not include a manual signature of a required officer but instead shall set forth a typed signature of such officer) to the effect that such officer is familiar with or has reviewed or caused to be reviewed the relevant terms of this

Lease and the other Lessee Operative Agreements and that such officer does not have knowledge of the existence as at the date of such certificate of any Lease Event of Default or if there is knowledge of a Lease Event of Default, the steps that are being taken with respect thereto.

### **8.2.3 Information for Filings**

Lessee shall promptly furnish to Owner Participant, Mortgagee or Lessor such information (other than with respect to the citizenship of Owner Participant and Lessor) within Lessee's or any Permitted Sublessee's possession, or reasonably available to or obtainable by Lessee or such Permitted Sublessee, as may be required to enable Lessor timely to file any reports required to be filed by it as lessor under the Lease, to enable Mortgagee timely to file any reports required to be filed by it as Mortgagee under the Trust Indenture or to enable Owner Participant to timely file any reports required to be filed by it, as the beneficiary of the Trust Estate, in any such case, with any Government Entity because of, or in connection with, the interest of Owner Participant, Mortgagee or Lessor in the Aircraft, Airframe or Engines, this Lease or any other part of the Trust Estate; provided, however, that with respect to any such information which Lessee reasonably deems commercially sensitive or confidential, Owner Participant, Mortgagee or Lessor, as the case may be, shall afford Lessee a reasonable opportunity to seek from any such Government Entity a waiver of the obligation of Owner Participant, Mortgagee or Lessor to file any such information, or shall consent to the filing of such information directly by Lessee in lieu of filing by Owner Participant, Mortgagee or Lessor, and if any such waiver or consent is evidenced to the reasonable satisfaction of Owner Participant, Mortgagee or Lessor, as the case may be, then Lessee shall not be required to furnish such information to Owner Participant, Mortgagee or Lessor.

## **SECTION 9. VOLUNTARY TERMINATION UPON OBSOLESCENCE**

### **9.1 Right of Termination**

(a) Unless a Lease Event of Default, Payment Default or Bankruptcy Default shall have occurred and be continuing, Lessee shall have the right at its option to terminate this Lease during the Base Lease Term, effective only on a Termination Date occurring after the end of the Tax Attribute Period, if:

(i) Lessee makes a good faith determination that the Aircraft either has become economically obsolete or is surplus to Lessee's requirements and the Chief Financial Officer or Treasurer of Lessee so certifies in writing to Lessor; and

(ii) written notice of Lessee's exercise of its option to terminate this Agreement shall be given to Lessor not less than 90 days prior to the proposed Termination Date specified in such notice.

(b) Lessor shall notify Lessee and Mortgagee of Lessor's intention to sell or retain the Aircraft, as provided in this Section 9, no later than 45 days after Lessee gives Lessor written notice pursuant to Section 9.1(a)(ii). Any failure by Lessor to give such notice of its election shall be deemed to be an election to sell the Aircraft, as provided in this Section 9.

(c) Any termination pursuant to this Section 9 shall become effective on the date of the sale, if any, pursuant to Section 9.2 or upon the date of termination and payment by Lessee and Lessor in accordance with Section 9.3 if Lessor elects to retain the Aircraft.

## **9.2 Election by Lessor to Sell**

### **9.2.1 Bids; Closing of Sale**

Unless Lessor has given Lessee notice of Lessor's election to retain the Aircraft, Lessee, as agent for Lessor, shall, until the date ten Business Days prior to the proposed Termination Date, use commercially reasonable efforts to obtain bids for a cash purchase of the Aircraft and Lessor may, if it desires to do so, also seek to obtain such bids. In the event Lessee receives any bid, Lessee shall promptly, and in any event at least ten Business Days prior to the proposed date of sale, certify to Lessor in writing the amount and terms of such bid, the proposed date of such sale and the name and address of the person (who shall not be Lessee or any Affiliate of Lessee or any person with whom Lessee or any such Affiliate has an arrangement for the future use of the Aircraft by Lessee or any such Affiliate) submitting such bid. In the event Lessor receives any bid on or prior to the date ten Business Days prior to the proposed Termination Date, Lessor shall, at least ten Business Days prior to the proposed date of sale, certify to Lessee in writing the amount and terms of such bid, the proposed date of such sale and the name and address of the person submitting such bid.

### **9.2.2 Closing of Sale**

(a) On the proposed Termination Date (i) Lessee shall deliver the Airframe and Engines or engines constituting part of the Aircraft to the bidder, if any, which shall have submitted the highest cash bid (net of applicable brokerage commissions) on or before the date ten Business Days prior to such Termination Date, in the same manner as if delivery were made to Lessor pursuant to Section 5 and Annex B and in full compliance with the terms thereof, and shall duly transfer to Lessor title to any such engines not owned by Lessor, all in accordance with the terms of Section 5 and Annex B, and (ii) Lessor shall simultaneously therewith transfer the Airframe and Engines or engines to such bidder, in the manner described in Section 4.5, against cash paid to Lessor in the amount of such highest bid (net of applicable brokerage commissions and all reasonable out-of-pocket fees and expenses incurred by Lessor, Mortgagee and Owner Participant in connection with such sale and the related termination of this Lease (collectively, the "Expenses of Sale") and in the manner and in funds of the type specified in Section 3.3.

(b) All proceeds of any sale described in Section 9.2.2(a), net of Expenses of Sale, shall be paid to and retained by Lessor and, on such Termination Date, and as a condition precedent to such sale and the delivery of the Aircraft and Engines or engines to such bidder, Lessee shall pay to Lessor, in the manner and in funds of the type specified in Section 3.3:

- (i) all unpaid Basic Rent due at any time prior to such Termination Date, but excluding Basic Rent due on such Termination Date; plus
- (ii) an amount equal to the excess, if any, of the Termination Value for the Aircraft, computed as of such Termination Date, over the proceeds of such sale, net of Expenses of Sale; plus

(iii) as provided in Section 3.2.2, interest on the amounts specified in the foregoing clause (i) at the Payment Due Rate from and including the date on which any such amount was due to the date of payment of such amount in full.

As a further condition precedent to such sale and delivery, Lessee shall pay all Supplemental Rent due by Lessee to Lessor, Mortgagee or the Participants under this Lease (including, without limitation, (A) Supplemental Rent in respect of Make-Whole Amount, if any, payable pursuant to Section 2.10(b) of the Trust Indenture in connection with a prepayment of the Equipment Notes upon such sale, (B) all interest charges provided for hereunder or under any other Lessee Operative Agreement with respect to the late payment of any amounts so payable, (C) the Expenses of Sale).

(c) Upon and subject to any such sale and receipt of proceeds by Lessor, and full and final payment of all amounts described in Section 9.2.2(b), and compliance by Lessee with all the other provisions of this Section 9.2,

(i) Lessor will transfer to Lessee, in accordance with Section 4.5, any Engines constituting part of the Aircraft but which were not then installed on the Airframe and sold therewith; and

(ii) the obligation of Lessee to pay Basic Rent, on or after the Payment Date with reference to which Termination Value is computed, shall cease, and the Term for the Aircraft shall end effective as of the date of such sale.

(d) A sale of the Aircraft pursuant to this Section 9.2.2 shall take place only on a Termination Date. Subject to Section 9.3, if no sale shall have occurred on or as of the proposed Termination Date, this Agreement shall continue in full force and effect, and all of Lessee's obligations shall continue, including, without limitation, its obligation to pay Rent, in each case, as if the notice under Section 9.1 shall not have been given and, subject to Section 9.2.3, Lessee may give another notice pursuant to Section 9.1.

### **9.2.3 Withdrawal of Notice of Termination**

(a) Lessee may withdraw any notice given pursuant to Section 9.1 at any time on or before the date 20 days prior to the proposed Termination Date, whereupon this Agreement shall continue in full force and effect and all of Lessee's obligations shall continue, including, without limitation, its obligation to pay Rent, in each case, as if the notice under Section 9.1 shall not have been given and Lessee may give another notice pursuant to Section 9.1; provided that Lessee shall not be entitled to give more than three notices pursuant to Section 9.1.

(b) Lessee shall pay all reasonable out-of-pocket fees and expenses of Lessor, Mortgagee and Owner Participant in connection with any notice of termination withdrawn by Lessee or in connection with any notice of termination pursuant to which a sale of the Aircraft fails to occur.

**9.3 Retention of Aircraft by Lessor**

- (a) If Lessor shall elect to retain the Aircraft in accordance with Section 9.1, on the proposed Termination Date:
  - (i) Lessor shall pay, or cause to be paid, in the manner and in funds of the type specified in Section 3.3, to the Mortgagee an amount sufficient to prepay all outstanding Equipment Notes pursuant to Section 2.10(b) of the Trust Indenture;
  - (ii) subject to receipt by Mortgagee of the funds described in paragraph (i) above, Lessee shall deliver the Airframe and Engines or engines constituting part of the Aircraft to Lessor pursuant to Section 5 and Annex B and in full compliance with the terms thereof, and shall duly transfer to Lessor title to any such engines not owned by Lessor, all in accordance with the terms of Section 5 and Annex B;
  - (iii) Lessee shall pay to Lessor, in the manner and in funds of the type specified in Section 3.3:
    - (1) all unpaid Basic Rent due at any time prior to such Termination Date, but excluding Basic Rent due on such Termination date; plus
    - (2) as provided in Section 3.2.2, interest on the amounts specified in the foregoing clause (1) at the Payment Due Rate from and including the date on which any such amount was due to the date of payment of such amount in full; and
  - (iv) Lessee shall also pay all Supplemental Rent due and payable by Lessee to Lessor, Mortgagee or the Participants under this Lease (including without limitation (A) Supplemental Rent in respect of Make-Whole Amount, if any, payable pursuant to Section 2.10(b) of the Trust Indenture in connection with a prepayment of the Equipment Notes, (B) all interest charges provided for hereunder or under any other Lessee Operative Agreement with respect to the late payment of any amounts so payable, and (C) the reasonable out-of-pocket fees and expenses incurred by Lessor and Owner Participant in connection with such termination and sale).
- (b) Upon full and final payment to Lessor, Mortgagee and the Participants of the amounts described in Section 9.3(a), and compliance by Lessee with all the other applicable provisions of this Section 9.3,
  - (i) Lessor will transfer to Lessee, in accordance with Section 4.5, any Engines constituting part of the Aircraft but which were not then installed on the Airframe and returned therewith; and
  - (ii) The obligation of Lessee to pay Basic Rent otherwise due on or after the Termination Date shall cease, and the Term for the Aircraft shall end effective as of such Termination Date.

**SECTION 10. LOSS, DESTRUCTION, REQUISITION, ETC.**

**10.1 Event of Loss With Respect to Aircraft**

**10.1.1 Notice and Election**

(a) Upon the occurrence of an Event of Loss with respect to the Airframe, and any Engine or Engines installed thereon at the time of such Event of Loss, Lessee shall promptly (and in any event within 10 Business Days after such occurrence) give Lessor and Mortgagee written notice of such Event of Loss. Within 45 days after such occurrence, Lessee shall give Lessor and Mortgagee written notice of Lessee's election to make payment in respect of such Event of Loss, as provided in Section 10.1.2, or to replace the Airframe, and any such Engines, as provided in Section 10.1.3.

(b) Any failure by Lessee to give such notice of its election shall be deemed to be an election of the option set forth in Section 10.1.2. In addition, Lessee shall not be entitled to elect the option set forth in Section 10.1.3 if, at the time Lessor receives such notice from Lessee, there shall have occurred and be continuing a Payment Default, a Bankruptcy Default or a Lease Event of Default.

(c) For purposes of Section 10.1.2, an Event of Loss with respect to the Airframe shall be deemed to constitute an Event of Loss with respect to the Aircraft. For purposes of Section 10.1.3, any Engine not actually suffering an Event of Loss shall not be required to be replaced.

**10.1.2 Payment of Loss and Termination of Lease**

(a) If Lessee elects, in accordance with Section 10.1.1, to make payment in respect of any such Event of Loss, then Lessee shall pay, in the manner and in funds of the type specified in Section 3.3, the following amounts:

(i) on the Stipulated Loss Value Date next following the earlier of (x) the 120th day following the date of the occurrence of such Event of Loss, and (y) the twentieth day following the receipt of insurance proceeds with respect to such occurrence (but in any event not earlier than the date of Lessee's election under Section 10.1.1 to make payment under this Section 10.1.2), Lessee shall pay to Lessor:

- (1) all unpaid Basic Rent or Renewal Rent, as the case may be, due at any time prior to such Stipulated Loss Value Date; plus
- (2) the Stipulated Loss Value of the Aircraft computed as of such Stipulated Loss Value Date; plus
- (3) as provided in Section 3.2.2, interest on the amount specified in the foregoing clause (1) at the Payment Due Rate from and including the date on which any such amount was due to the date of payment of such amount in full;

provided, that if such Stipulated Loss Value Date is a Payment Date, Lessee shall not be obligated to pay the Basic Rent or Renewal Rent otherwise required to be paid on such date; and

(ii) on or before the date required for payment of the amounts specified in paragraph (i) above, Lessee shall also pay to Lessor, Mortgagee and the Participants all other amounts due and payable by Lessee to Lessor, Mortgagee and the Participants under this Lease, the Participation Agreement or any other Lessee Operative Agreement.

(b) Upon payment in full of all amounts described in the foregoing paragraph (a),(i) the obligation of Lessee to pay Basic Rent or Renewal Rent hereunder with respect to the Aircraft shall terminate, (ii) the Term for the Aircraft shall end and (iii) Lessor will transfer the Aircraft to Lessee, as-is and where-is, and subject to any insurer's salvage rights, but otherwise in the manner described in Section 4.5.

### **10.1.3 Replacement of Airframe and Engines**

(a) If Lessee elects, in accordance with Section 10.1.1, to replace the Airframe, and any Engine actually suffering the Event of Loss, then Lessee shall, as promptly as possible and in any event within 120 days after the occurrence of such Event of Loss, convey or cause to be conveyed to Lessor, in compliance with Section 10.3 and as replacement for the Airframe, and any such Engine, title to a Replacement Airframe (which shall comply with paragraph (b) below), and for each such Engine a Replacement Engine, in each case free and clear of all Liens other than Permitted Liens. If Lessee makes such election, but for any reason fails or is unable to effect such replacement within such time period and in compliance with the requirements set forth in Section 10.3, then Lessee shall be deemed to have initially made the election set forth in Section 10.1.2 with the effect that Lessee shall immediately pay, in the manner and in funds of the type specified in Section 3.3, the amounts required under, and in accordance with, Section 10.1.2.

(b) Any such Replacement Airframe shall be an airframe that is the same model as the Airframe to be replaced thereby, or an improved model, and that has a value, utility and remaining useful life (without regard to hours or cycles remaining until the next regular maintenance check), at least equal to the Airframe to be replaced thereby (assuming that such Airframe had been maintained in accordance with the Lease). Any such Replacement Engine shall meet the requirements of, and be conveyed by Lessee to Lessor in accordance with, Section 10.2 (other than the notice requirement set forth in Section 10.2.1).

## **10.2 Event of Loss With Respect to an Engine**

### **10.2.1 Notice**

Upon the occurrence of an Event of Loss with respect to an Engine under circumstances in which an Event of Loss with respect to the Airframe has not occurred, Lessee shall promptly (and in any event within 10 Business Days after such occurrence) give Lessor written notice of such Event of Loss.

### **10.2.2 Replacement of Engine**

Lessee shall, promptly and in any event within 90 days after the occurrence of such Event of Loss, convey or cause to be conveyed to Lessor, in compliance with Section 10.3 and as replacement for the Engine with respect to which any Event of Loss occurred, title to a Replacement Engine free and clear of all Liens other than Permitted Liens. Such Replacement Engine shall be an engine manufactured by Engine Manufacturer that is the same model as the Engine to be replaced thereby, or an improved model, and that is suitable for installation and use on the Airframe, and that has a value, utility and remaining useful life (without regard to hours and cycles remaining until overhaul) at least equal to the Engine to be replaced thereby (assuming that such Engine had been maintained in accordance with the Lease).

### **10.2.3 Engine Exchange**

Unless a Payment Default, Bankruptcy Default or Lease Event of Default shall have occurred and be continuing, upon not less than five (5) Business Days' prior written notice to Lessor, Lessee may replace any Engine leased hereunder with another engine (the "Exchanged Engine") meeting the requirements of Section 10.2.2. Such Exchanged Engine shall be deemed to be a "Replacement Engine" and Lessor and Lessee shall comply with the provisions of Section 10.3 with regard to the Exchanged Engine and the Engine so replaced.

## **10.3 Conditions to any Replacement**

### **10.3.1 Documents**

Prior to or at the time of conveyance of title to any Replacement Airframe or Replacement Engine to Lessor, Lessee shall take each of the following actions:

- (a) furnish Lessor with a full warranty bill of sale duly conveying to Lessor such Replacement Airframe or Replacement Engine, in form and substance reasonably satisfactory to Lessor and cause such Replacement Airframe to be duly registered in the name of Lessor pursuant to the Act;
- (b) cause (i) a Lease Supplement subjecting such Replacement Airframe or Replacement Engine to this Lease, duly executed by Lessee, to be delivered to Lessor for execution and, upon such execution, to be filed for recordation with the FAA pursuant to the Act, (ii) a Trust Indenture Supplement, subjecting such Replacement Airframe or Replacement Engine to the Trust Indenture, to be delivered to Lessor for execution and, upon execution, to be filed for recordation with the FAA pursuant to the Act and (iii) such Financing Statements and other filings, as Lessor or Mortgagee may reasonably request, duly executed by Lessee and, to the extent applicable, Lessor and Mortgagee (and Lessor and Mortgagee shall execute and deliver the same), to be filed in such locations as any such party may reasonably request;
- (c) furnish such evidence of compliance with the insurance provisions of Section 11 with respect to such Replacement Airframe or Replacement Engine as Lessor may reasonably request;



(d) furnish an opinion or opinions of Lessee's counsel (which may be Lessee's legal department) reasonably satisfactory to Lessor and Mortgagee and addressed to Lessor and Mortgagee to the effect that (i) such full warranty bill of sale referred to in Section 10.3.1(a) constitutes an effective instrument for the conveyance of title to the Replacement Airframe or Replacement Engine and (ii) in the case of a Replacement Airframe, Lessor and Mortgagee, as assignee of Lessor, will be entitled to the benefits of Section 1110 with respect to the Replacement Airframe, provided that such opinion referred to in this clause (ii) need not be delivered to the extent that immediately prior to such replacement the benefits of Section 1110 were not, solely by reason of a change in law or court interpretation thereof, available to Lessor or Mortgagee, as assignee of Lessor;

(e) furnish an opinion of Lessee's aviation law counsel reasonably satisfactory to Lessor and Mortgagee and addressed to Lessor and Mortgagee as to the due registration of any such Replacement Airframe, the ownership of title to such Replacement Airframe by Owner Trustee and the absence of Liens of record with respect to such Replacement Airframe (other than Permitted Liens) and the due filing for recordation of each Lease Supplement and Trust Indenture Supplement with respect to such Replacement Airframe or Replacement Engine under the Act;

(f) with respect to the replacement of the Airframe, and any Engine installed thereon at the time of the subject Event of Loss, if requested by Lessor and at Lessee's expense, furnish a certified report of a qualified independent aircraft appraiser, reasonably satisfactory to Lessor, certifying that such Replacement Airframe and any such Replacement Engine complies with the value, utility and remaining useful life requirements set forth in Section 10.1.3(b); and

(g) furnish a certificate of a qualified aircraft engineer (who may be an employee of Lessee) certifying that such Replacement Engine complies with the value, utility and remaining useful life requirements set forth in Section 10.2.2.

Lessor and Lessee understand and agree that if at the time of any replacement of the Airframe or any Engine, as contemplated in this Section 10, the Airframe was registered in a jurisdiction other than the United States, then the requirements set forth above in this Section 10.3.1 relating to compliance with the requirements of the Act or the FAA, shall be deemed to refer to the comparable applicable Law of, and the Aviation Authority of, such other jurisdiction.

### **10.3.2 Other Obligations**

(a) Lessor and Lessee agree that, upon any Replacement Airframe becoming the Airframe hereunder, and upon any Replacement Engine becoming an Engine hereunder, this Lease shall continue to be, and shall be treated as, a lease for U.S. federal income tax purposes of, among other things, such Replacement Airframe and such Replacement Engine. Without limiting the foregoing, Lessee and Lessor intend that Lessor shall, in all events, be entitled to the benefits of Section 1110 with respect to any Replacement Airframe or Replacement Engine and Lessee and Lessor shall cooperate and take such action as the other may reasonably request so as to ensure that Lessor shall be entitled to such benefits.

(b) No Event of Loss with respect to an Engine, or with respect to an Airframe, shall result in, or otherwise allow or permit (other than as provided in Section 10.1.2(b)), any reduction, deferral, discharge or other change in the timing or amount of any Rent payable by Lessee hereunder, and (subject to such Section 10.1.2(b)) Lessee shall pay all such Rent and other amounts as though such Event of Loss had not occurred.

#### **10.4 Conveyance to Lessee**

Upon compliance by Lessee with the applicable terms of Sections 10.1.3, 10.2 and 10.3.1, Lessor will transfer to Lessee the Airframe or Engine, as the case may be, with respect to which such Event of Loss occurred, in accordance with Section 4.5.

#### **10.5 Application of Payments**

Any amounts, other than insurance proceeds in respect of damage or loss not constituting an Event of Loss (the application of which is provided for in Section 11), received at any time by Lessor, Lessee or any Permitted Sublessee from any Government Entity or any other Person in respect of any Event of Loss will be applied as follows:

##### **10.5.1 Replacement of Airframe and Engines**

If such amounts are received with respect to the Airframe, and any Engine installed thereon at the time of such Event of Loss, upon compliance by Lessee with the applicable terms of Section 10.1.3 with respect to the Event of Loss for which such amounts are received, such amounts shall be paid over to, or retained by, Lessee.

##### **10.5.2 Loss of Engine**

If such amounts are received with respect to an Engine (other than an Engine installed on the Airframe at the time such Airframe suffers an Event of Loss), upon compliance by Lessee with the applicable terms of Section 10.2.2 with respect to the Event of Loss for which such amounts are received, such amounts shall be paid over to, or retained by, Lessee.

##### **10.5.3 Payment of Loss**

If such amounts are received, in whole or in part, with respect to the Airframe, and Lessee makes, has made or is deemed to have made the election set forth in Section 10.1.2, such amounts shall be applied as follows:

(a) first, if the sum described in Section 10.1.2 has not then been paid in full by Lessee, such amounts shall be paid to Lessor (or to Mortgagee so long as Mortgagee has not given notice to Lessee that the Lien of the Trust Indenture has been duly discharged, except with respect to Excluded Payments) to the extent necessary to pay in full such sum;

(b) second, the remainder, if any, shall be paid to Lessee.

#### **10.6 Requisition of Aircraft for Use**

If any Government Entity shall requisition for use the Airframe and the Engines or engines installed thereon, and if the same does not constitute an Event of Loss, Lessee shall promptly notify Lessor and Mortgagee of such requisition and all of Lessee's obligations under this Agreement shall continue to the same extent as if such requisition had not occurred; provided, however, that if the Airframe and Engines or engines installed thereon are not returned to Lessor by Lessee at the end of the Term, unless Lessor shall have elected, upon notice given not less than 30 days nor more than 120 days before the end of the Term, not to treat such event as constituting an Event of Loss with respect to the Aircraft, Lessee shall be obligated to pay the Stipulated Loss Value and all other amounts payable pursuant to Section 10.1.2 with respect to the Aircraft. If Lessor shall have elected not to treat such event as an Event of Loss, Lessee shall be obligated to return the Airframe and Engines or engines to Lessor pursuant to, and in all other respects to comply with the provisions of, Section 5 promptly upon their return by such Government Entity, and Lessee shall pay to Lessor upon such return an amount equal to the average daily Basic Rent payable by Lessee during the Term for each day after the end of the Term to but excluding the day of such return, up to a maximum of 30 days.

#### **10.7 Requisition of an Engine for Use**

If any Government Entity shall requisition for use any Engine but not the Airframe, Lessee will replace such Engine by complying with the applicable terms of Sections 10.2 and 10.3 to the same extent as if an Event of Loss had occurred with respect to such Engine, and any payments received by Lessor or Lessee from such Government Entity with respect to such requisition shall be paid or retained in accordance with Section 10.5.2.

#### **10.8 Application of Payments**

All payments received by Lessor or Lessee, or any Permitted Sublessee, from any Government Entity for the use of the Airframe and Engines or engines installed thereon during the Term shall be paid over to, or retained by, Lessee and all payments received by Lessor or Lessee from any Government Entity for the use of the Airframe and Engines or engines installed thereon after the Term shall be paid over to, or retained by, Lessor; provided that, if such requisition constitutes an Event of Loss, then all such payments shall be paid over to Lessor (or to Mortgagee so long as Mortgagee has not given notice to Lessee that the Trust Indenture has been duly discharged), and held as provided in Section 10.5.

#### **10.9 Application of Payments During Existence of a Lease Event of Default**

Any amount described in this Section 10 that is payable or creditable to, or retainable by, Lessee shall not be paid or credited to, or retained by, Lessee if at the time such payment, credit or retention would otherwise occur a Lease Event of Default, Payment Default or Bankruptcy Default shall have occurred and be continuing, but shall instead be held by or paid over to Lessor (or to Mortgagee so long as Mortgagee has not given notice to Lessee that the Trust Indenture has been duly discharged) as security for the obligations of Lessee under this Lease and the other Lessee Operative Agreements and shall be invested pursuant to Section 4.4 hereof unless and until Lessor shall have demanded liquidated damages pursuant to Section

15.1.3 or 15.1.4 and such amount is applied, at the option of Lessor, or upon the written request of Lessee to Lessor, from time to time during the continuance of a Lease Event of Default, to Lessee's obligations under this Lease as and when due, it being understood that any such application shall be made to such obligations of Lessee as Lessor may determine in its sole discretion. At such time as there shall not be continuing any Lease Event of Default, Payment Default or Bankruptcy Default, such amount shall be paid to Lessee to the extent not previously applied in accordance with this Section 10.9.

## **SECTION 11. INSURANCE**

### **11.1 Lessee's Obligation to Insure**

Lessee shall comply with, or cause to be complied with, each of the provisions of Annex D, which provisions are hereby incorporated by this reference as if set forth in full herein.

### **11.2 Insurance for Own Account**

Nothing in Section 11 shall limit or prohibit (a) Lessee from maintaining the policies of insurance required under Annex D with higher limits than those specified in Annex D, or (b) Lessor, Mortgagee or Owner Participant from obtaining insurance for its own account (and any proceeds payable under such separate insurance shall be payable as provided in the policy relating thereto); provided, however, that no insurance may be obtained or maintained that would limit or otherwise adversely affect the coverage of any insurance required to be obtained or maintained by Lessee pursuant to this Section 11 and Annex D.

### **11.3 Indemnification by Government in Lieu of Insurance**

Lessor agrees to accept, in lieu of insurance against any risk with respect to the Aircraft described in Annex D, indemnification from, or insurance provided by, the U.S. Government, or upon the written consent of Lessor and Mortgagee, other Government Entity, against such risk in an amount that, when added to the amount of insurance (including permitted self-insurance), if any, against such risk that Lessee (or any Permitted Sublessee) may continue to maintain, in accordance with this Section 11, during the period of such requisition or transfer, shall be at least equal to the amount of insurance against such risk otherwise required by this Section 11.

### **11.4 Application of Insurance Proceeds**

As between Lessor and Lessee, all insurance proceeds received as a result of the occurrence of an Event of Loss with respect to the Aircraft or any Engine under policies required to be maintained by Lessee pursuant to this Section 11 will be applied in accordance with Section 10.5. All proceeds of insurance required to be maintained by Lessee, in accordance with Section 11 and Section B of Annex D, in respect of any property damage or loss not constituting an Event of Loss with respect to the Aircraft, Airframe or any Engine will be applied in payment (or to reimburse Lessee) for repairs or for replacement property, and any balance remaining after such repairs or replacement with respect to such damage or loss shall be paid over to, or retained by, Lessee.

## 11.5 Application of Payments During Existence of Default

Any amount described in this Section 11 that is payable or creditable to, or retainable by, Lessee shall not be paid or credited to, or retained by, Lessee if at the time such payment, credit or retention would otherwise occur a Lease Event of Default shall have occurred and be continuing, but shall instead be held by or paid over to Lessor (or to Mortgagee so long as Mortgagee has not given notice to Lessee that the Trust Indenture has been duly discharged) as security for the obligations of Lessee under this Lease and shall be invested pursuant to Section 4.4 hereof unless and until Lessor shall have demanded liquidated damages pursuant to Section 15.1.3 or 15.1.4 and such amount is applied, at the option of Lessor, or upon the written request of Lessee to Lessor, from time to time during the continuance of a Lease Event of Default, to Lessee's obligations under this Lease and the other Lessee Operative Agreements as and when due, it being understood that any such application shall be made to such obligations of Lessee as Lessor may determine in its sole discretion. At such time as there shall not be continuing any Lease Event of Default, such amount shall be paid to Lessee to the extent not previously applied in accordance with this Section 11.5.

## SECTION 12. INSPECTION

(a) Lessor, Mortgagee or their respective authorized representatives (the "Inspecting Parties") may, upon reasonable notice to Lessee, inspect the Aircraft, Airframe and Engines (including, without limitation, the Aircraft Documents) and Lessee shall cooperate, and shall cause any Permitted Sublessee to cooperate, with the Inspecting Parties in connection with any such inspection (including, without limitation, permitting any such Inspecting Party to make copies of such Aircraft Documents not reasonably deemed confidential by Lessee or such Permitted Sublessee).

(b) Except during the continuance of any Lease Event of Default while the Section 1110 Period shall not be in effect, any inspection of the Aircraft hereunder shall be limited to a visual, walk-around inspection and shall not include the opening of any panels, bays or other components of the Aircraft, Airframe or Engines. Any inspection permitted hereunder, including any inspection conducted during the continuance of a Lease Event of Default, shall be conducted in a manner which does not interfere with Lessee's or a Permitted Sublessee's operation, use and maintenance of such Aircraft, which determination of interference shall be made by Lessee in its reasonable sole discretion.

(c) With respect to such rights of inspection, neither Lessor nor Mortgagee shall have any duty or liability to make, or any duty or liability by reason of not making, any such visit, inspection or survey.

(d) Each Inspecting Party shall bear its own expenses in connection with any such inspection (including the cost of any copies made in accordance with Section 12(a)); provided, that if a Lease Event of Default shall have occurred and be continuing, Lessee shall bear all such reasonable expenses, except, in the case of a Chapter 11 reorganization, during the Section 1110 Period.

(e) If requested by Lessor or Mortgagee, Lessee shall promptly advise, or shall cause any Permitted Sublessee to advise, Lessor of the date upon which the Aircraft, Airframe or any Engine undergoes its next scheduled maintenance visit or next major check, and with respect to any Engine, the next off-the-wing maintenance, and shall advise Lessor of the name and location of the relevant maintenance performer. An Inspecting Party shall have the opportunity to attend such scheduled maintenance visit or major check, subject to the other provisions of this Section 12.

**SECTION 13. ASSIGNMENT; MERGER; SUCCESSOR OWNER TRUSTEE**

**13.1 In General**

This Lease and the other Lessee Operative Agreements shall be binding upon and inure to the benefit of Lessor and Lessee and their respective successors and permitted assigns. Except as otherwise expressly permitted by the terms of the Lease or any other Lessee Operative Agreement, Lessee will not, without the prior written consent of Lessor and Mortgagee, assign any of its rights under this Lease. Except as otherwise provided herein (including, without limitation, under the provisions of Section 15 hereof) or in the Trust Indenture, Lessor and Mortgagee may not assign or convey any of its right, title and interest in and to this Lease or the Aircraft without the prior written consent of Lessee, such consent not to be unreasonably withheld.

**13.2 Merger of Lessee**

**13.2.1 In General**

Lessee shall not consolidate with or merge into any other person under circumstances in which Lessee is not the surviving corporation, or convey, transfer or lease in one or more transactions all or substantially all of its assets to any other person, unless:

- (a) such person is organized, existing and in good standing under the Laws of the United States, any State of the United States or the District Columbia and, upon consummation of such transaction, such person will be a U.S. Air Carrier;
- (b) such person executes and delivers to Lessor and Mortgagee a duly authorized, legal, valid, binding and enforceable agreement, reasonably satisfactory in form and substance to Lessor and Mortgagee, containing an effective assumption by such person of the due and punctual performance and observance of each covenant, agreement and condition in the Lessee Operative Agreements to be performed or observed by Lessee;
- (c) such person makes such filings and recordings with the FAA pursuant to the Act as shall be necessary to evidence such consolidation or merger; and
- (d) immediately after giving effect to such consolidation or merger no Lease Event of Default shall have occurred and be continuing.

### **13.2.2 Effect of Merger**

Upon any such consolidation or merger of Lessee with or into, or the conveyance, transfer or lease by Lessee of all or substantially all of its assets to, any Person in accordance with this Section 13.2, such Person will succeed to, and be substituted for, and may exercise every right and power of, Lessee under the Lessee Operative Agreements with the same effect as if such person had been named as "Lessee" therein. No such consolidation or merger, or conveyance, transfer or lease, shall have the effect of releasing Lessee or such Person from any of the obligations, liabilities, covenants or undertakings of Lessee under the Lease.

### **13.3 Assignment Security for Lessor's Obligations**

In order to secure the indebtedness evidenced by the Equipment Notes, Lessor has agreed in the Trust Indenture, among other things, to assign to Mortgagee this Lease and to mortgage the Aircraft, Airframe and Engines in favor of Mortgagee, subject to the reservations and conditions therein set forth. Lessee hereby accepts and consents to the assignment of all Lessor's right, title and interest in and to this Lease pursuant to the terms of the Trust Indenture. In accordance with Section 3.3(c), Lessee agrees to pay directly to Mortgagee (or, after receipt by Lessee of notice from Mortgagee of the discharge of the Trust Indenture, to Lessor), all amounts of Rent (other than Excluded Payments) due or to become due hereunder and assigned to Mortgagee and Lessee agrees that Mortgagee's right to such payments hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, the circumstances set forth in Section 16 hereof. Notwithstanding the foregoing assignment of this Lease, the obligations of Lessee to Lessor to perform the terms and conditions of this Lease shall remain in full force and effect.

### **13.4 Successor Owner Trustee**

Lessee agrees that in the case of the appointment of any successor Owner Trustee pursuant to the terms of the Participation Agreement and the Trust Agreement, such successor Owner Trustee shall, upon written notice by such successor Owner Trustee to Lessee, succeed to all the rights, powers and title of Lessor hereunder and shall be deemed to be Lessor and the owner of the Aircraft and the other assets of the Trust Estate for all purposes hereof without the necessity of any consent or approval by Lessee and without in any way altering the terms of this Lease or Lessee's obligations hereunder. An appointment and designation of a successor Owner Trustee shall not exhaust the right to appoint and designate further successor or additional Owner Trustees pursuant to the Participation Agreement and the Trust Agreement, and such right may be exercised repeatedly as long as this Lease shall be in effect.

## **SECTION 14. LEASE EVENTS OF DEFAULT**

The occurrence of any one or more of the following circumstances, conditions, acts or events, for any reason whatsoever and whether any such circumstance, condition, act or event shall be voluntary or involuntary or come about or be effected by operation of Law or pursuant to or in compliance with any judgment, decree, order, rule or regulation of any Government Entity, shall constitute a Lease Event of Default so long as it shall not have been remedied:

#### **14.1 Payments**

Lessee shall fail to pay any amount of Basic Rent, Renewal Rent, Stipulated Loss Value or Termination Value within five (5) Business Days after the same shall have become due; or Lessee shall fail to pay any Supplemental Rent (other than Stipulated Loss Value or Termination Value) when due and such failure shall continue for a period in excess of ten (10) Business Days from and after the date of any written notice to Lessee from Lessor, Mortgagee or Owner Participant of the failure to make such payment when due; provided that any such failure to pay any Excluded Payment shall not constitute a Lease Event of Default until written notice is given by the Owner Participant to Lessee and Mortgagee that such failure constitutes a Lease Event of Default and such failure shall have continued for a period in excess of ten (10) Business Days after such notice.

#### **14.2 Insurance**

Lessee shall fail to carry and maintain, or cause to be carried and maintained, insurance on and in respect of the Aircraft, Airframe and Engines in accordance with the provisions of Section 11.

#### **14.3 Other Covenants**

Lessee shall fail to observe or perform (or cause to be observed and performed) in any material respect any other covenant, agreement or obligation set forth herein or in any other Lessee Operative Agreement (other than the covenants, agreements and obligations set forth in the Tax Indemnity Agreement), and such failure shall continue unremedied for a period of 30 days from and after the date of written notice thereof to Lessee from Lessor, Owner Participant or Mortgagee, unless such failure is capable of being corrected and Lessee shall be diligently proceeding to correct such failure, in which case there shall be no Lease Event of Default unless and until such failure shall continue unremedied for a period of 90 days after receipt of such notice.

#### **14.4 Representations and Warranties**

Any representation or warranty made by Lessee herein, in the Participation Agreement or in any other Lessee Operative Agreement (other than the representations and warranties of Lessee in the Tax Indemnity Agreement) (a) shall prove to have been untrue or inaccurate in any material respect as of the date made, (b) such untrue or inaccurate representation or warranty is material at the time in question, (c) and the same shall remain uncured (to the extent of the adverse impact of such incorrectness on the interest of the Participants or Lessor) for a period in excess of 30 days from and after the date of written notice thereof from Lessor, Owner Participant or Mortgagee to Lessee (except that this clause (c) shall be inapplicable in the case of Section 6.1.7 of the Participation Agreement).

#### **14.5 Bankruptcy and Insolvency**

(a) Lessee shall consent to the appointment of or the taking of possession by a receiver, trustee or liquidator of itself or of substantially all of its property, or Lessee shall admit in writing its inability to pay its debts generally as they come due, or does not pay its debts



generally as they become due or shall make a general assignment for the benefit of creditors, or Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization, liquidation or other relief in a case under any bankruptcy Laws or other insolvency Laws (as in effect at such time), or Lessee shall seek relief by voluntary petition, answer or consent, under the provisions of any other bankruptcy or other similar Law providing for the reorganization or winding-up of corporations (as in effect at such time) or Lessee's board of directors shall adopt a resolution authorizing any of the foregoing; or

(b) an order, judgment or decree shall be entered by any court of competent jurisdiction appointing, without the consent of Lessee, a receiver, trustee or liquidator of Lessee or of substantially all of its property, or substantially all of the property of Lessee shall be sequestered, and any such order, judgment or decree of appointment or sequestration shall remain in force undismitted, unstayed and unvacated for a period of 90 days after the date of entry thereof; or

(c) a petition against Lessee in a case under any bankruptcy Laws or other insolvency Laws (as in effect at such time) is filed and not withdrawn or dismissed within 90 days thereafter, or if, under the provisions of any Law providing for reorganization or winding-up of corporations which may apply to Lessee, any court of competent jurisdiction assumes jurisdiction, custody or control of Lessee or of substantially all of its property and such jurisdiction, custody or control remains in force unrelinquished, unstayed and untermiated for a period of 90 days.

## **SECTION 15. REMEDIES AND WAIVERS**

### **15.1 Remedies**

If any Lease Event of Default shall occur and be continuing, Lessor may, at its option and at any time and from time to time, exercise any one or more of the following remedies as Lessor in its sole discretion shall elect:

#### **15.1.1 Return and Repossession**

Lessor may cause Lessee, upon giving written notice to Lessee, to return promptly, and Lessee shall return promptly, the Airframe and Engines as Lessor may so demand, to Lessor or its order in the manner and condition required by, and otherwise in accordance with, all the provisions of Section 5 as if the Airframe or Engine were being returned at the end of the Base Lease Term or any Renewal Lease Term or Lessor, at its option, may enter upon the premises where the Airframe or any Engine, or any Part thereof, are located and take immediate possession of and remove the same by summary proceedings or otherwise, all without liability accruing to Lessor for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise, and Lessee expressly waives any right it may have to a hearing prior to repossession of the Aircraft.

#### **15.1.2 Sale and Use**

Lessor may sell the Airframe and/or any Engine at public or private sale, at such times and places, and to such Persons (including Lessor, Mortgagee or any Participant), as

Lessor may determine; or Lessor may otherwise dispose of, hold, use, operate, lease to others or keep idle the Airframe and/or any Engine, as Lessor, in its sole discretion, may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto, except as hereinafter set forth in this Section 15, and except to the extent that such proceeds would constitute, under applicable Law, a mitigation of Lessor's damages suffered or incurred as a result of the subject Lease Event of Default. Lessor shall give Lessee at least 15 days prior written notice of the date fixed for any public sale of the Airframe and/or any Engine or of the date on or after which will occur the execution of any contract providing for any private sale.

### **15.1.3 Certain Liquidated Damages**

Whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under Section 15.1.1 or 15.1.2 with respect to the Airframe and/or any Engine, or any Part thereof, Lessor, by written notice to Lessee specifying a payment date (which shall be the Stipulated Loss Value Date next occurring not less than 10 days after the date of such notice), may demand Lessee to pay to Lessor, and Lessee shall pay to Lessor, on the payment date so specified and in the manner and in funds of the type specified in Section 3.3, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent or Renewal Rent, as the case may be, for the Aircraft in respect of all periods commencing on or after the date specified for payment in such notice), the following amounts:

- (a) all unpaid Basic Rent or Renewal Rent, as the case may be, due at any time prior to the Stipulated Loss Value Date specified in such notice, but excluding Basic Rent or Renewal Rent due on such Stipulated Loss Value Date; plus
- (b) an amount equal to the excess, if any, of the Stipulated Loss Value for the Aircraft, computed as of the Stipulated Loss Value Date specified in such notice, over the Fair Market Sales Value of the Aircraft, as of the Stipulated Loss Value Date specified in such notice; plus
- (c) interest on the amounts specified in the foregoing clause (a) at the Payment Due Rate from and including the date on which any such amount was due to the date of payment of such amount; plus
- (d) interest on the amount specified in the foregoing clause (b) at the Payment Due Rate from and including the Stipulated Loss Value Date specified in such notice to the date of payment of such amount.

### **15.1.4 Liquidated Damages Upon Sale**

If Lessor, pursuant to Section 15.1.2 or applicable Law, shall have sold the Aircraft, Lessor, in lieu of exercising its rights under Section 15.1.3 with respect to the Aircraft, may, if Lessor shall so elect, upon giving written notice to Lessee, demand Lessee to pay Lessor, and Lessee shall pay to Lessor, on the date of such sale and in the manner and in funds of the type specified in Section 3.3, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent or Renewal Rent, as the case may be, for the Aircraft in respect of all periods commencing on or after the date of such sale), the following amounts:

- (a) all unpaid Basic Rent or Renewal Rent, as the case may be, due at any time prior to the Stipulated Loss Value Date on or immediately preceding the date of such sale, but excluding Basic Rent or Renewal Rent due on such Stipulated Loss Value Date; plus
- (b) an amount equal to the excess, if any, of (i) the Stipulated Loss Value of the Aircraft, computed as of the Stipulated Loss Value Date used in the foregoing clause (a) for the computation of unpaid Rent, over (ii) the proceeds of such sale, minus all reasonable costs of Lessor in connection with the sale; plus
- (c) if the date of such sale is not a Stipulated Loss Value Date, an amount equal to interest on the outstanding principal amount of the Equipment Notes at the rate per annum borne thereby from and including the Stipulated Loss Value Date used in the foregoing clause (a) for the computation of unpaid Rent to the date of such sale; plus
- (d) interest on the amounts specified in the foregoing clause (a) at the Payment Due Rate from and including the date on which any such amount was due to the date of payment of such amount; plus
- (e) interest on the sum of the amounts specified in the foregoing clause (b) at the Payment Due Rate from and including the date of such sale to the date of payment of such amounts.

#### **15.1.5 Rescission**

Lessor may (i) at its option, rescind or terminate this Lease as to the Aircraft, Airframe or any Engine, or any Part thereof, or (ii) exercise any other right or remedy that may be available to it under applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof, including without limitation Lessee's agreement to lease the Aircraft for the Term and to pay Rent.

#### **15.1.6 Other Remedies**

In addition to the foregoing remedies (but without duplication of amounts otherwise paid under this Section 15), Lessee shall be liable for any and all unpaid Rent due hereunder before, during or after (except as otherwise provided herein) the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses of Lessor, including, without limitation, interest on overdue Rent at the rate as herein provided, incurred by reason of the occurrence of any Lease Event of Default or the exercise of Lessor's remedies with respect thereto, including all reasonable costs and expenses of Lessor incurred in connection with the return of the Airframe or any Engine, in accordance with the terms of Section 5 or in placing the Airframe or any Engine, in the condition and airworthiness required by Section 5.

#### **15.2 Limitations Under CRAF**

Notwithstanding the provisions of Section 15.1, during any period that the Aircraft, Airframe or any Engine is subject to CRAF in accordance with the provisions of Section 7.2.3 and in the possession of the U.S. Government, Lessor shall not, as a result of any Lease Event of Default, exercise its remedies hereunder in such manner as to limit Lessee's

control under this Lease (or any Permitted Sublessee's control under any Permitted Sublease) of the Aircraft, Airframe or such Engine, unless at least 30 days' (or such other period as may then be applicable under CRAF) written notice of default hereunder shall have been given by Lessor or Mortgagee by registered or certified mail to Lessee (and any Permitted Sublessee) with a copy to the Contracting Officer Representative or Representatives for the Military Airlift Command of the United States Air Force to whom notices must be given under the contract governing Lessee's (or any Permitted Sublessee's) participation in CRAF with respect to the Aircraft, Airframe or any Engine.

### **15.3 Right to Perform for Lessee**

If Lessee (i) fails to make any payment of Rent required to be made by it hereunder or (ii) fails to perform or comply with any of its agreements contained herein and such failure continues for a period of thirty days after written notice thereof is given by Lessor, Mortgagee or Owner Participant to Lessee, Lessor may (but shall not be obligated to) make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the expenses of Lessor or Mortgagee incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Payment Due Rate, shall be deemed Supplemental Rent, payable by Lessee upon demand by Lessor or Mortgagee, whichever is entitled thereto. No such payment, performance or compliance shall be deemed to cure any Lease Default or Lease Event of Default or otherwise relieve Lessee of its obligations with respect thereto.

### **15.4 Determination of Fair Market Sales Value**

For the purpose of this Section 15, the "Fair Market Sales Value" of the Aircraft shall be determined on an "as is, where is" basis and shall take into account customary brokerage and other out-of-pocket fees and expenses which typically would be incurred in connection with a sale of the Aircraft. Any such determination shall be made by an Appraiser selected by Lessor and the costs and expenses associated therewith shall be borne by Lessee, unless Lessor does not obtain possession of the Aircraft, Airframe and Engines pursuant to this Section 15, in which case an Appraiser shall not be appointed and Fair Market Sales Value for purposes of this Section 15 shall be zero.

### **15.5 Remedies Cumulative**

Nothing contained in this Lease shall be construed to limit in any way any right, power, remedy or privilege of Lessor hereunder or under any other Operative Agreement or now or hereafter existing at law or in equity. Each and every right, power, remedy and privilege hereby given to, or retained by, Lessor in this Lease shall be in addition to and not in limitation of every other right, power, remedy and privilege given under the Operative Agreements or now or hereafter existing at law or in equity. Each and every right, power, remedy and privilege of Lessor under this Lease and any other Operative Agreement may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by Lessor. All such rights, powers, remedies and privileges shall be cumulative and not mutually exclusive, and the exercise of one shall not be deemed a waiver of the right to exercise any other. Lessee

hereby waives to the extent permitted by applicable Law any right which it may have to require Lessor to choose or elect remedies.

**SECTION 16. LESSEE'S OBLIGATIONS; NO SETOFF, COUNTERCLAIM, ETC.**

(a) Lessee's obligation to pay Rent hereunder shall be absolute and unconditional, and shall not be affected by any event or circumstance, including, without limitation: (i) any setoff, counterclaim, recoupment, defense or other right that Lessee may have against Lessor, Mortgagee, any Participant, any Note Holder, or any other Person for any reason whatsoever; (ii) any defect in the title, airworthiness, condition, design, operation or fitness for use of, or any damage to or loss or destruction of, the Aircraft, Airframe or any Engine, or any interruption or cessation in the use or possession thereof by Lessee for any reason whatsoever; (iii) any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee or any other Person; or (iv) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(b) If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of Law or otherwise except as specifically provided herein, Lessee nonetheless agrees to pay an amount equal to each Rent payment at the time such payment would have become due and payable in accordance with the terms hereof had this Agreement not been terminated in whole or in part. Lessee hereby waives, to the extent permitted by applicable Law, any and all rights that it may now have or that at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Agreement, except in accordance with the express terms hereof.

(c) Nothing set forth in this Section 16 shall be construed to prohibit Lessee from separately pursuing any claim that it may have from time to time against Lessor or any other Person with respect to any matter (other than the absolute and unconditional nature of Lessee's obligations hereunder to pay Rent, and other than the matters specified in paragraphs (a) and (b) above). Without limiting the foregoing, nothing in this Section 16 shall be construed as a waiver by Lessee, or otherwise limit Lessee in pursuing any claim by Lessee, of any breach by Lessor, Owner Participant or any other Person of any covenant or obligation contained in any Operative Agreement.

**SECTION 17. RENEWAL AND PURCHASE OPTIONS**

**17.1 Notices Generally**

(a) At least 225 days but not more than 375 days prior to the Scheduled Expiration Date or, if a Renewal Lease Term is then in effect, prior to the Scheduled Renewal Term Expiration Date of such Renewal Lease Term, Lessee may provide notice to Lessor that Lessee may exercise either the option to extend the leasing of the Aircraft for a Renewal Lease Term pursuant to Section 17.2 or the option to purchase the Aircraft on the Scheduled Expiration Date or Scheduled Renewal Term Expiration Date of such Renewal Lease Term, as the case may be, pursuant to Section 17.3 (a "Preliminary Notice").

(b) If any such Preliminary Notice is given by Lessee, then Lessee may provide a further notice specifying which option it intends to elect, with respect to the relevant period, pursuant to Section 17.2.1 or 17.3.1, as the case may be.

## **17.2 Renewal Options**

### **17.2.1 Renewal Notice**

(a) If Lessee has given a Preliminary Notice, as specified in Section 17.1, and subject to the terms and conditions of this Section 17.2, Lessee may exercise its option to extend the leasing of the Aircraft hereunder on two occasions, in each case until the next Scheduled Renewal Term Expiration Date, on the same terms, provisions and conditions (except as contemplated by this Section 17) set forth herein and in the other Lessee Operative Agreements with respect to the Base Lease Term, by delivery of a notice (a "Renewal Notice") to Lessor not less than 180 days but not more than 375 days prior to (i) if the Base Lease Term is then in effect, the Scheduled Expiration Date, or (ii) if a Renewal Lease Term is then in effect, the Scheduled Renewal Term Expiration Date for such Renewal Lease Term.

(b) Notwithstanding anything to the contrary in this Agreement or any other Operative Agreement:

(i) No Preliminary Notice or Renewal Notice shall be binding on Lessor or oblige Lessor to extend the leasing of the Aircraft hereunder for a Renewal Lease Term if any Payment Default, Bankruptcy Default or Lease Event of Default shall have occurred and be continuing on and as of the date that such Renewal Lease Term would otherwise commence.

(ii) Any Renewal Notice shall be revocable by Lessee until 10 Business Days after the Renewal Rent is determined in accordance with Sections 17.2.2 and unless revoked by written notice by Lessee to Lessor shall thereafter become irrevocable and shall constitute an unconditional obligation of Lessee to extend the leasing of the Aircraft hereunder for the Renewal Lease Term to which such Renewal Notice relates.

(iii) Lessee shall not be entitled to give any Renewal Notice if it has (x) not delivered a Preliminary Notice or (y) delivered a Purchase Notice to Lessor.

### **17.2.2 Renewal Rent**

(a) During the Renewal Lease Term, Lessee shall pay to Lessor on each Payment Date, in the manner and in the funds of the type specified in Section 3.3, Renewal Rent in advance.

(b) The Renewal Rent payable by Lessee on each Payment Date during any Renewal Lease Term shall be the Fair Market Rental Value of the Aircraft for such Renewal Lease Term. Any such Fair Market Rental Value shall be determined not more than 10 Business Days after Lessee gives a Preliminary Notice by mutual agreement of Lessor and Lessee or, if they shall be unable to agree, by an appraisal in accordance with Section 17.4.

### 17.2.3 Stipulated Loss and Termination Values

- (a) For any Renewal Lease Term, Stipulated Loss Value dates and Termination Value dates shall be extended throughout such Renewal Lease Term on the same days and for the same months as during the Base Lease Term.
- (b) Stipulated Loss Value and Termination Value amounts that are payable during any such Renewal Lease Term shall be determined at the same time that the Renewal Rent for such Renewal Lease Term is determined under Section 17.2.2. Stipulated Loss Values and Termination Values for any such Renewal Lease Term shall, commencing on the first day of such Renewal Lease Term, be equal to the Fair Market Sales Value of the Aircraft, computed as of the first day of such Renewal Lease Term, and shall decline ratably on a monthly basis to the Fair Market Sales Value of the Aircraft as of the last day of such Renewal Lease Term, but shall be adjusted to credit Lessee for any Renewal Rent paid in advance attributable to any subsequent period.
- (c) Any Fair Market Sales Value of the Aircraft, for purposes of calculating Stipulated Loss Value and Termination Value amounts applicable during any such Renewal Lease Term, shall be determined by mutual agreement of Lessor and Lessee or, if they shall be unable to agree, by an appraisal in accordance with Section 17.4.

## 17.3 Purchase Option

### 17.3.1 Purchase Notice

- (a) Subject to Section 17.1 and the terms and conditions of this Section 17.3, Lessee may elect to purchase the Aircraft, on any Purchase Date, at a purchase price equal to the lesser of (i) the Purchase Price Cap (as defined in Schedule 1 to the Lease) and (ii) the Fair Market Sales Value of the Aircraft computed as of the Purchase Date.
- (b) Lessee may exercise such option to purchase the Aircraft, by delivery of a notice (a "Purchase Notice") to Lessor not less than 180 and not more than 375 days prior to the Purchase Date specified in such Purchase Notice.
- (c) Notwithstanding anything to the contrary in this Agreement or any other Operative Agreement:
  - (i) Any Purchase Notice (whether delivered or deemed to have been delivered) shall be revocable until 10 Business Days after the determination of the Fair Market Sales Value in accordance with Section 17.3.2 and unless revoked by written notice by Lessee to Lessor shall thereafter become irrevocable and shall constitute an unconditional obligation of Lessee to purchase the Aircraft under this Section 17.3.
  - (ii) No Preliminary Notice or Purchase Notice shall be binding on Lessor or oblige Lessor to sell the Aircraft hereunder if any Payment Default, Bankruptcy Default or Lease Event of Default shall have occurred and be continuing on and as of such Purchase Date.

(iii) Lessee shall not be entitled to give any Purchase Notice in respect of any Purchase Date if it has (x) not delivered a Preliminary Notice or (y) delivered a Renewal Notice for a Renewal Lease Term that would commence immediately following such Purchase Date.

### **17.3.2 Determination of Fair Market Sales Value**

The Fair Market Sales Value of the Aircraft shall be determined not more than 10 Business Days after Lessee gives a Preliminary Notice by mutual agreement of Lessor and Lessee or, if they shall be unable to agree, by an appraisal in accordance with Section 17.4.

### **17.3.3 Title**

Upon full and final payment by Lessee of (a) the applicable purchase price of the Aircraft, (b) all unpaid Rent due and payable through and including the Purchase Date and (c) all other amounts due and payable by Lessee under this Agreement, Lessor will transfer to Lessee title to the Aircraft in accordance with Section 4.5.

## **17.4 Appraisals**

Whenever Fair Market Rental Value or Fair Market Sales Value of the Aircraft is required to be determined by an appraisal under this Section 17, Lessee and Lessor shall appoint a mutually satisfactory Appraiser to conduct such appraisal. If Lessee and Lessor fail to agree upon a satisfactory Appraiser then each shall promptly appoint a separate Appraiser and such Appraisers shall jointly determine such amount. If either Lessee or Lessor fails to so appoint an Appraiser, the determination of the single Appraiser appointed shall be final. If two Appraisers are appointed and within 7 days after the appointment of the latter of such two Appraisers, they cannot agree upon such amount, such two Appraisers shall, within 8 days after such latter appointment, appoint a third Appraiser and such amount shall be determined by such three Appraisers, who shall make their separate appraisals within 7 days following the appointment of the third Appraiser, and any determination so made shall be conclusive and binding upon Lessor and Lessee. If no such third Appraiser is appointed within such 8-day period, either Lessor or Lessee may apply to the American Arbitration Association to make such appointment, and both parties shall be bound by such appointment. The foregoing appraisal procedure shall in any event be completed no less than 190 days before the end of the Base Lease Term or the current Renewal Lease Term, as the case may be. If three Appraisers are appointed and the difference between the determination which is farther from the middle determination and the middle determination is more than 125% of the difference between the middle determination and the third determination, then such farther determination shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon Lessor and Lessee. Otherwise, the average of all three determinations shall be final and binding upon Lessor and Lessee. The fees and expenses of all such Appraisers and such appraisal procedure shall be borne equally by Lessee and Lessor, provided that if Lessee elects not to renew this Lease or purchase the Aircraft following the conclusion of such appraisal, Lessee shall pay all expenses of such appraisal.



**SECTION 18. MISCELLANEOUS**

**18.1 Amendments**

No provision of this Agreement may be amended, supplemented, waived, modified, discharged, terminated or otherwise varied orally, but only by an instrument in writing that specifically identifies the provision of this Agreement that it purports to amend, supplement, waive, modify, discharge, terminate or otherwise vary and is signed by Lessor and Lessee with the written consent of the Mortgagee if required by the Trust Indenture. Each such amendment, supplement, waiver, modification, discharge, termination or variance shall be effective only in the specific instance and for the specific purpose for which it is given. No provision of this Agreement shall be varied or contradicted by oral communication, course of dealing or performance or other manner not set forth in an agreement, document or instrument in writing and signed by Lessor and Lessee.

**18.2 Severability**

If any provision hereof shall be held invalid, illegal or unenforceable in any respect in any jurisdiction, then, to the extent permitted by Law (a) all other provisions hereof shall remain in full force and effect in such jurisdiction and (b) such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction. If, however, any Law pursuant to which such provisions are held invalid, illegal or unenforceable may be waived, such Law is hereby waived by the parties hereto to the full extent permitted, to the end that this Agreement shall be deemed to be a valid and binding agreement in all respects, enforceable in accordance with its terms.

**18.3 Third-Party Beneficiary**

This Agreement is not intended to, and shall not, provide any person not a party hereto (other than Mortgagee, the Participants, the Indenture Indemnitees and the Persons referred to in Section 4.6, with respect to matters expressly for their benefit in this Lease) with any rights of any nature whatsoever against either of the parties hereto, and no person not a party hereto (other than Mortgagee, the Participants, the Indenture Indemnitees and the Persons referred to in Section 4.6, with respect to matters expressly for their benefit in this Lease) shall have any right, power or privilege in respect of, or have any benefit or interest arising out of, this Agreement.

**18.4 Reproduction of Documents**

This Agreement, all annexes, schedules and exhibits hereto and all agreements, instruments and documents relating hereto, including, without limitation (a) consents, waivers and modifications that may hereafter be executed and (b) financial statements, certificates and other information previously or hereafter furnished to any party hereto, may be reproduced by such party by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process, and such party may destroy any original documents so reproduced. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such

reproduction was made by such party in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction likewise is admissible in evidence.

## **18.5 Counterparts**

This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts (or upon separate signature pages bound together into one or more counterparts), each of which when so executed shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

## **18.6 Notices**

Unless otherwise expressly permitted by the terms hereof, all notices, requests, demands, authorizations, directions, consents, waivers and other communications required or permitted to be made, given, furnished or filed hereunder shall be in writing (it being understood that the specification of a writing in certain instances and not in others does not imply an intention that a writing is not required as to the latter), shall refer specifically to this Agreement and shall be personally delivered, sent by facsimile or telecommunication transmission (which in either case provides written confirmation to the sender of its delivery), sent by registered mail or certified mail, return receipt requested, postage prepaid, or sent by overnight courier service, in each case to the respective address or facsimile number set forth for such party in Schedule 1 to the Participation Agreement, or to such other address or number as either party hereto may hereafter specify by notice to the other party hereto. Each such notice, request, demand, authorization, direction, consent, waiver or other communication shall be effective when received or, if made, given, furnished or filed (a) by facsimile or telecommunication transmission, when confirmed, or (b) by registered or certified mail, three Business Days after being deposited, properly addressed, with the U.S. Postal Service.

## **18.7 GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE**

**(a) THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS AGREEMENT IS BEING DELIVERED IN THE STATE OF NEW YORK.**

**(b) EACH PARTY HERETO HEREBY IRREVOCABLY AGREES, ACCEPTS AND SUBMITS ITSELF TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK IN THE CITY AND COUNTY OF NEW YORK AND OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN CONNECTION WITH ANY LEGAL ACTION, SUIT OR PROCEEDING WITH RESPECT TO ANY MATTER RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.**

**(c) EACH PARTY HERETO HEREBY IRREVOCABLY CONSENTS AND AGREES TO THE SERVICE OF ANY AND ALL LEGAL PROCESS, SUMMONS, NOTICES AND DOCUMENTS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE MADE BY MAILING**

**COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, AT THE ADDRESS SET FORTH PURSUANT TO SECTION 18.6. EACH PARTY HERETO HEREBY AGREES THAT SERVICE UPON IT, OR ANY OF ITS AGENTS, IN EACH CASE IN ACCORDANCE WITH THIS SECTION 18.7(c), SHALL CONSTITUTE VALID AND EFFECTIVE PERSONAL SERVICE UPON SUCH PARTY, AND EACH PARTY HERETO HEREBY AGREES THAT THE FAILURE OF ANY OF ITS AGENTS TO GIVE ANY NOTICE OF SUCH SERVICE TO ANY SUCH PARTY SHALL NOT IMPAIR OR AFFECT IN ANY WAY THE VALIDITY OF SUCH SERVICE ON SUCH PARTY OR ANY JUDGMENT RENDERED IN ANY ACTION OR PROCEEDING BASED THEREON.**

**(d) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, OR OTHERWISE, IN ANY LEGAL ACTION OR PROCEEDING BROUGHT HEREUNDER IN ANY OF THE ABOVE-NAMED COURTS, THAT SUCH ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT VENUE FOR THE ACTION OR PROCEEDING IS IMPROPER OR THAT THIS AGREEMENT OR ANY OTHER OPERATIVE AGREEMENT MAY NOT BE ENFORCED IN OR BY SUCH COURTS.**

**(e) EACH PARTY HERETO HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN ANY COURT IN ANY JURISDICTION BASED UPON OR ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

**18.8 No Waiver**

No failure on the part of Lessor to exercise, and no delay by Lessor in exercising, any of its rights, powers, remedies or privileges under this Agreement or provided at Law, in equity or otherwise shall impair, prejudice or constitute a waiver of any such right, power, remedy or privilege or be construed as a waiver of any breach hereof or default hereunder or as an acquiescence therein, nor shall any single or partial exercise of any such right, power, remedy or privilege preclude any other or further exercise thereof by Lessor or the exercise of any other right, power, remedy or privilege by Lessor. No notice to or demand on Lessee in any case shall, unless otherwise required under this Agreement, entitle Lessee to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Lessor to any other further action in any circumstances without notice or demand.

**18.9 Entire Agreement**

This Agreement, together with the other Operative Agreements, on and as of the date hereof constitutes the entire agreement of the parties hereto with respect to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, between the parties hereto with respect to such subject matter are hereby superseded in their entireties.

[This space intentionally left blank.]

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Lease Agreement to be duly executed as of the day and year first above written.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, not in its  
individual capacity, except as expressly provided  
herein, but solely as Owner Trustee under the  
Trust Agreement, as Lessor

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

CONTINENTAL AIRLINES, INC.,  
as Lessee

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

Receipt of this original counterpart of the foregoing Lease Agreement is hereby acknowledged on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
WILMINGTON TRUST COMPANY,  
as Mortgagee

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

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Lease Agreement to be duly executed as of the day and year first above written.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, not in its  
individual capacity, except as expressly provided  
herein, but solely as Owner Trustee under the  
Trust Agreement, as Lessor

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

CONTINENTAL AIRLINES, INC.,  
as Lessee

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

**ANNEX A**

**DEFINITIONS**

[SEE PARTICIPATION AGREEMENT ANNEX A]

**ANNEX B**

**RETURN CONDITIONS**

[OMITTED AS CONTAINING CONFIDENTIAL FINANCIAL INFORMATION]

**ANNEX C**

**MAINTENANCE**

[OMITTED AS CONTAINING CONFIDENTIAL FINANCIAL INFORMATION]



**ANNEX D**

**INSURANCE**

[OMITTED AS CONTAINING CONFIDENTIAL FINANCIAL INFORMATION]

**LEASE SUPPLEMENT NO. \_\_**

LEASE SUPPLEMENT No. \_\_, dated \_\_\_\_\_, 200\_\_, between WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity, but solely as Owner Trustee under the [Amended and Restated]<sup>1</sup> Trust Agreement [TN], dated as of [DD], with the Owner Participant named therein (such Owner Trustee, in its capacity as such Owner Trustee being herein called "Lessor"), and CONTINENTAL AIRLINES, INC., a Delaware corporation, as Lessee ("Lessee").

Lessor and Lessee have heretofore entered into that certain Lease Agreement [TN], dated as of [DD], relating to one Embraer Model EMB-145 XR aircraft (herein called the "Lease" and the defined terms therein being hereinafter used with the same meanings). The Lease provides for the execution and delivery of this Lease Supplement for the purpose of leasing the Airframe and Engines under the Lease as and when delivered by Lessor to Lessee in accordance with the terms thereof.

The Lease relates to the Airframe and Engines described below, and a counterpart of the Lease to which this Lease Supplement is attached and of which this Lease Supplement is a part, is being filed for recordation on the date hereof with the Federal Aviation Administration as one document.

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, Lessor and Lessee hereby agree as follows:

1. Lessee has been duly authorized by Lessor to accept, and does hereby irrevocably accept on behalf of Lessor delivery of the Aircraft under, and for all purposes of, the Aircraft Bill of Sale, the Participation Agreement and the Purchase Agreement Assignment.

2. Lessor hereby delivers and leases to Lessee under the Lease and Lessee hereby accepts and leases from Lessor under the Lease the following described Embraer EMB-145 XR aircraft (the "Aircraft"), which Aircraft as of the date hereof consists of the following components:

(i) Airframe: U.S. Registration No. \_\_\_\_\_; manufacturer's serial no. \_\_\_\_\_; and

(ii) Engines: two (2) Allison AE3007A1E engines bearing, respectively, manufacturer's serial nos. \_\_\_\_\_ and \_\_\_\_\_ (each of which engines has 750 or more rated takeoff horsepower or the equivalent of such horsepower).

3. The Closing Date for the Aircraft is the date of this Lease Supplement set forth in the opening paragraph hereof.

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1. Delete for New Aircraft.

4. Lessee hereby confirms to Lessor that Lessee has duly and irrevocably accepted the Aircraft under and for all purposes hereof, of the Lease and of the other Lessee Operative Agreements.

5. All of the terms and provisions of this Lease Supplement are hereby incorporated by reference in the Lease to the same extent as if fully set forth therein.

6. This Lease Supplement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

7. To the extent, if any, that this Lease Supplement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease Supplement may be created through the transfer or possession of any counterpart other than the original executed counterpart, which shall be identified as the counterpart containing the receipt therefor executed by the Mortgagee on the signature page thereof.

[This space intentionally left blank.]

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Lease Supplement to be duly executed as of the day and year first above written.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, not in its  
individual capacity, except as expressly  
provided herein, but solely as Owner  
Trustee under the Trust Agreement, as  
Lessor

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

CONTINENTAL AIRLINES, INC.,  
as Lessee

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

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Return Acceptance Supplement to be duly executed as of the day and year first above written.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, not in its  
individual capacity, except as expressly  
provided herein, but solely as Owner  
Trustee under the Trust Agreement, as  
Lessor

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

CONTINENTAL AIRLINES, INC.,  
as Lessee

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

Receipt of this original counterpart of the foregoing Lease Supplement is hereby acknowledged on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WILMINGTON TRUST COMPANY,  
as Mortgagee

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

**RETURN ACCEPTANCE SUPPLEMENT**

RETURN ACCEPTANCE SUPPLEMENT dated \_\_\_\_\_, between WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity, but solely as Owner Trustee under the [Amended and Restated]<sup>2</sup> Trust Agreement [TN], dated as of [DD], with the Owner Participant named therein (such Owner Trustee, in its capacity as such Owner Trustee being herein called "Lessor"), and CONTINENTAL AIRLINES, INC., a Delaware corporation, as Lessee ("Lessee").

Lessor and Lessee have heretofore entered into that certain Lease Agreement [TN], dated as of [DD], relating to one Embraer Model EMB-145 XR aircraft (herein called the "Lease" and the defined terms therein being hereinafter used with the same meanings). The Lease relates to the Airframe and Engines described below.

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, Lessor and Lessee hereby agree as follows:

1. This Return Acceptance Supplement is executed by Lessor and Lessee to confirm that on the date hereof the following described Airframe and Engines were returned by Lessee to Lessor:

(i) Airframe: U.S. Registration No. \_\_\_\_\_; manufacturer's serial no. \_\_\_\_\_; and

(ii) Engines: two (2) Allison AE3007A1E engines bearing, respectively, manufacturer's serial nos. \_\_\_\_\_ and \_\_\_\_\_.

2. This Return Acceptance Supplement is intended to be delivered in \_\_\_\_\_.

3. Lessor and Lessee agree that the return of the Aircraft is in compliance with Section 5 and Annex B of the Lease, except as set forth below:

4. Lessor and Lessee agree that the Lease is terminated, except for the provisions thereof that expressly survive termination.

---

2. Delete for New Aircraft.

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Return Acceptance Supplement to be duly executed as of the day and year first above written.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, not in its  
individual capacity, except as expressly  
provided herein, but solely as Owner  
Trustee under the Trust Agreement, as  
Lessor

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

CONTINENTAL AIRLINES, INC.,  
as Lessee

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

**CERTAIN TERMS**

[OMITTED AS CONTAINING CONFIDENTIAL FINANCIAL INFORMATION]



**BASIC RENT**

[OMITTED AS CONTAINING CONFIDENTIAL FINANCIAL INFORMATION]

**STIPULATED LOSS VALUE**

[OMITTED AS CONTAINING CONFIDENTIAL FINANCIAL INFORMATION]

**TERMINATION VALUE**

[OMITTED AS CONTAINING CONFIDENTIAL FINANCIAL INFORMATION]

**PERMITTED COUNTRIES**

Argentina	Luxembourg
Australia	Malaysia
Austria	Malta
Bahamas	Mexico
Belgium	Netherlands
Brazil	New Zealand
Canada	Norway
Chile	Philippines
Denmark	Portugal
Ecuador	Republic of China (Taiwan)
Egypt	Singapore
Finland	South Africa
France	South Korea
Germany	Spain
Greece	Sweden
Hungary	Switzerland
Iceland	Thailand
India	Tobago
Indonesia	Trinidad
Ireland	United Kingdom
Italy	Venezuela
Japan	

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**PLACARDS**

Leased from

Wells Fargo Bank Northwest, National Association,  
not in its individual capacity but solely as  
Owner Trustee, Owner and Lessor

and

Mortgaged to  
Wilmington Trust Company,  
not in its individual capacity but solely as Mortgagee

---

TRUST INDENTURE AND MORTGAGE [TN]

Dated as of [DD]

Between

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION,  
not in its individual capacity,  
except as expressly stated herein,  
but solely as Owner Trustee,

Owner Trustee

and

WILMINGTON TRUST COMPANY,  
not in its individual capacity,  
except as expressly stated herein,  
but solely as Mortgagee,

Mortgagee

---

EQUIPMENT NOTES COVERING  
ONE EMBRAER EMB-145 XR AIRCRAFT  
BEARING U.S. REGISTRATION MARK N[REG]  
LEASED BY CONTINENTAL AIRLINES, INC.

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GRANTING CLAUSE

1

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**TRUST INDENTURE AND MORTGAGE [TN]**

TRUST INDENTURE AND MORTGAGE [TN], dated as of [DD] (“Trust Indenture”), between WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity, except as expressly stated herein, but solely as Owner Trustee under the Trust Agreement referred to below (together with its successors under the Trust Agreement, the “Owner Trustee”), and WILMINGTON TRUST COMPANY, a Delaware banking corporation, not in its individual capacity, except as expressly stated herein, but solely as Mortgagee hereunder (together with its successors hereunder, the “Mortgagee”).

WITNESSETH

WHEREAS, all capitalized terms used herein shall have the respective meanings set forth or referred to in Article I hereof;

WHEREAS, the Owner Participant and the Owner Trustee in its individual capacity have entered into the Trust Agreement whereby, among other things, (i) the Owner Trustee has established a certain trust for the use and benefit of the Owner Participant subject, however, to the Trust Indenture Estate created pursuant hereto for the use and benefit of, and with the priority of payment to, the holders of Equipment Notes issued hereunder, and (ii) the Owner Trustee has been authorized and directed to execute and deliver this Trust Indenture;

WHEREAS, the parties hereto desire by this Trust Indenture, among other things, (i) to provide for the issuance by the Owner Trustee of the Equipment Notes and (ii) to provide for the assignment, mortgage and pledge by the Owner Trustee to the Mortgagee, as part of the Trust Indenture Estate hereunder, among other things, of all of the Owner Trustee’s right, title and interest in and to the Aircraft and, except as hereinafter expressly provided, all of the Owner Trustee’s right, title and interest in, to and under the Lease and the Participation Agreement and all payments and other amounts received hereunder or thereunder in accordance with the terms hereof or thereof, as security for, among other things, the Owner Trustee’s and the Lessee’s obligations to the Note Holders and the Indenture Indemnitees;

WHEREAS, all things have been done to make the Equipment Notes, when executed by the Owner Trustee and authenticated and delivered by the Mortgagee hereunder, the valid, binding and enforceable obligations of the Owner Trustee; and

WHEREAS, all things necessary to make this Trust Indenture the valid, binding and legal obligation of the Owner Trustee for the uses and purposes herein set forth, in accordance with its terms, have been done and performed and have happened;

**GRANTING CLAUSE**

NOW, THEREFORE, THIS TRUST INDENTURE AND MORTGAGE WITNESSETH, that, to secure the prompt payment of the Original Amount of, interest on, Make-Whole Amount, if any, and all other amounts due with respect to, all Equipment Notes from time to time outstanding hereunder according to their tenor and effect and to secure the

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performance and observance by the Owner Trustee of all the agreements, covenants and provisions contained herein and in the Participation Agreement and the Equipment Notes, for the benefit of the Note Holders, the Loan Participant and each of the Indenture Indemnitees and the prompt payment of all amounts from time to time owing hereunder, under the Participation Agreement and the Lease to the Loan Participant, the Note Holders or any Indenture Indemnitee by the Owner Trustee or the Lessee and for the uses and purposes and subject to the terms and provisions hereof, and in consideration of the premises and of the covenants herein contained, and of the acceptance of the Equipment Notes by the holders thereof, and for other good and valuable consideration the receipt and adequacy whereof are hereby acknowledged, the Owner Trustee has granted, bargained, sold, assigned, transferred, conveyed, mortgaged, pledged and confirmed, and does hereby grant, bargain, sell, assign, transfer, convey, mortgage, pledge and confirm, unto the Mortgagee, its successors in trust and assigns, for the security and benefit of the Loan Participant, the Note Holders and each of the Indenture Indemnitees, a first priority security interest in and mortgage lien on all right, title and interest of the Owner Trustee in, to and under the following described property, rights and privileges, whether now or hereafter acquired, other than Excluded Payments (which, collectively, excluding Excluded Payments but including all property hereafter specifically subject to the Lien of this Trust Indenture by the terms hereof or any supplement hereto, are included within, and are referred to as, the "Trust Indenture Estate"), to wit:

(1) The Airframe which is one EMBRAER EMB-145 XR aircraft with the FAA Registration number of N[REG] and the manufacturer's serial number of [MSN] and two Engines, with the manufacturer's serial numbers of CAE[E1] and CAE[E2], each of which is an Allison engine and is of 750 or more rated takeoff horsepower or the equivalent of such horsepower (such Airframe and Engines more particularly described in the Trust Indenture Supplement executed and delivered as provided herein) as the same is now and will hereafter be constituted, whether now owned by the Owner Trustee or hereafter acquired, leased or intended to be leased under the Lease, and in the case of such Engines, whether or not any such Engine shall be installed in or attached to the Airframe or any other airframe, together with (a) all Parts of whatever nature, which are from time to time included within the definitions of "Airframe" or "Engines", whether now owned or hereafter acquired, including all substitutions, renewals and replacements of and additions, improvements, accessions and accumulations to the Airframe and Engines (other than additions, improvements, accessions and accumulations which constitute appliances, parts, instruments, appurtenances, accessories, furnishings or other equipment excluded from the definition of Parts) and (b) all Aircraft Documents;

(2) All right, title, interest, claims and demands of the Owner Trustee, as Lessor, in, to and under the Lease, together with all rights, powers, privileges, options and other benefits of the Owner Trustee as lessor under the Lease, including the immediate and continuing right to receive and collect all Rent, income, revenues, issues, profits, insurance proceeds, condemnation awards and other payments, tenders and security now or hereafter payable to or receivable by the Lessor under the Lease pursuant thereto, and, subject to Section 5.02 hereof, the right to make all waivers and agreements, to give and receive copies of all notices and other instruments or communications, to accept surrender or redelivery of the Aircraft or any part thereof, as well as all the rights, powers and remedies on the part of the Owner Trustee as Lessor under the Lease, to take such action upon the occurrence of a Lease Event of Default thereunder, including the commencement, conduct and consummation of legal, administrative or other

proceedings, as shall be permitted by the Lease or by Law, and to do any and all other things whatsoever which the Owner Trustee or any lessor is or may be entitled to do under or in respect of the Lease and any right to restitution from the Lessee or any other Person in respect of any determination of invalidity of the Lease;

(3) All right, title, interest, claims and demands of the Owner Trustee in, to and under:

(a) the Purchase Agreement;

(b) the Purchase Agreement Assignment, with the Consent and Agreement attached thereto;

(c) the Bills of Sale; and

(d) any and all other contracts, agreements and instruments relating to the Airframe and Engines or any rights or interests therein to which the Owner Trustee is now or may hereafter be a party;

together with all rights, powers, privileges, licenses, easements, options and other benefits of the Owner Trustee under each contract, agreement and instrument referred to in this clause (3), including the right to receive and collect all payments to the Owner Trustee thereunder now or hereafter payable to or receivable by the Owner Trustee pursuant thereto and, subject to Section 5.02 hereof, the right to make all waivers and agreements, to give and receive notices and other instruments or communications, or to take any other action under or in respect of any thereof or to take such action upon the occurrence of a default thereunder, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted thereby or by Law, and to do any and all other things which the Owner Trustee is or may be entitled to do thereunder and any right to restitution from the Lessee, the Owner Participant or any other Person in respect of any determination of invalidity of any thereof;

(4) All rents, issues, profits, revenues and other income of the property subjected or required to be subjected to the Lien of this Trust Indenture, including all payments or proceeds payable to the Owner Trustee after termination of the Lease with respect to the Aircraft as the result of the sale, lease or other disposition thereof, and all estate, right, title and interest of every nature whatsoever of the Owner Trustee in and to the same;

(5) Without limiting the generality of the foregoing, all insurance and requisition proceeds with respect to the Aircraft or any part thereof, including the insurance required under Section 11 of the Lease;

(6) Without limiting the generality of the foregoing, all rights of the Owner Trustee to amounts paid or payable by Lessee to the Owner Trustee under the Participation Agreement and all rights of the Owner Trustee to enforce payments of any such amounts thereunder;

(7) Without limiting the generality of the foregoing, all monies and securities from time to time deposited or required to be deposited with the Mortgagee pursuant to any

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terms of this Trust Indenture or the Lease or required hereby or by the Lease to be held by the Mortgagee hereunder as security for the obligations of the Lessee under the Lease or of the Owner Trustee hereunder; and

(8) All proceeds of the foregoing;

excluding, however, in all events from each of foregoing clauses (1) through (8) inclusive all Excluded Payments and the right to specifically enforce the same or to sue for damages for the breach thereof as provided in Section 5.02 hereof.

Concurrently with the delivery of this Trust Indenture, the Owner Trustee will deliver to the Mortgagee the original executed counterpart of the Lease and the Lease Supplement No. 1 (to each of which a chattel paper receipt is attached), and executed copies of the Participation Agreement and the Purchase Agreement (to the extent assigned by the Purchase Agreement Assignment), the Purchase Agreement Assignment, with the Consent and Agreement attached thereto.

TO HAVE AND TO HOLD all and singular the aforesaid property unto the Mortgagee, and its successors and assigns, in trust for the equal and proportionate benefit and security of the Loan Participant, the Note Holders and the Indenture Indemnitees, except as provided in Section 2.14 and Article III hereof without any preference, distinction or priority of any one Equipment Note over any other by reason of priority of time of issue, sale, negotiation, date of maturity thereof or otherwise for any reason whatsoever, and for the uses and purposes and in all cases and as to all property specified in paragraphs (1) through (8) inclusive above, subject to the terms and provisions set forth in this Trust Indenture.

It is expressly agreed that anything herein contained to the contrary notwithstanding, the Owner Trustee shall remain liable under the Indenture Agreements, to perform all of the obligations assumed by it thereunder, except to the extent prohibited or excluded from doing so pursuant to the terms and provisions thereof, and the Mortgagee, the Loan Participant, the Note Holders and the Indenture Indemnitees shall have no obligation or liability under the Indenture Agreements, by reason of or arising out of the assignment hereunder, nor shall the Mortgagee, the Loan Participant, the Note Holders or the Indenture Indemnitees be required or obligated in any manner to perform or fulfill any obligations of the Owner Trustee under or pursuant to the Indenture Agreements, or, except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

The Owner Trustee does hereby constitute the Mortgagee the true and lawful attorney of the Owner Trustee, irrevocably, granted for good and valuable consideration and coupled with an interest and with full power of substitution, and with full power (in the name of the Owner Trustee or otherwise) to ask for, require, demand, receive, compound and give acquittance for any and all monies and claims for monies (in each case including insurance and requisition proceeds but in all cases excluding Excluded Payments) due and to become due under or arising out of the Indenture Agreements, and all other property which now or hereafter

constitutes part of the Trust Indenture Estate, to endorse any checks or other instruments or orders in connection therewith and to file any claims or to take any action or to institute any proceedings which the Mortgagee may deem to be necessary or advisable in the premises. Without limiting the generality of the foregoing, but subject to the rights of the Owner Trustee and the Owner Participant under Sections 2.13, 4.03 and 4.04(a) hereof, during the continuance of any Event of Default under this Trust Indenture, the Mortgagee shall have the right under such power of attorney to accept any offer in connection with the exercise of remedies as set forth herein of any purchaser to purchase the Airframe and Engines and upon such purchase to execute and deliver in the name of and on behalf of the Owner Trustee an appropriate bill of sale and other instruments of transfer relating to the Airframe and Engines, when purchased by such purchaser, and to perform all other necessary or appropriate acts with respect to any such purchase, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Owner Trustee or otherwise, which the Mortgagee may deem necessary or appropriate to protect and preserve the right, title and interest of the Mortgagee in and to such Rents and other sums and the security intended to be afforded hereby; provided, however, that no action of the Mortgagee pursuant to this paragraph shall increase the obligations or liabilities of the Owner Trustee to any Person beyond those obligations and liabilities specifically set forth in this Trust Indenture and in the other Operative Agreements. Under the Lease, Lessee is directed, so long as this Trust Indenture shall not have been fully discharged, to make all payments of Rent (other than Excluded Payments) and all other amounts which are required to be paid to or deposited with the Owner Trustee pursuant to the Lease (other than Excluded Payments) directly to, or as directed by, the Mortgagee at such address or addresses as the Mortgagee shall specify, for application as provided in this Trust Indenture. The Owner Trustee agrees that promptly upon receipt thereof, it will transfer to the Mortgagee any and all monies from time to time received by it constituting part of the Trust Indenture Estate, for distribution by the Mortgagee pursuant to this Trust Indenture, except that the Owner Trustee shall accept for distribution pursuant to the Trust Agreement any amounts distributed to it by the Mortgagee under this Trust Indenture.

The Owner Trustee agrees that at any time and from time to time, upon the written request of the Mortgagee, the Owner Trustee will promptly and duly execute and deliver or cause to be duly executed and delivered any and all such further instruments and documents as the Mortgagee may reasonably deem necessary or desirable to perfect, preserve or protect the mortgage, security interests and assignments created or intended to be created hereby or to obtain for the Mortgagee the full benefits of the assignment hereunder and of the rights and powers herein granted.

The Owner Trustee does hereby warrant and represent that it has not assigned or pledged, and hereby covenants and agrees that it will not assign or pledge, so long as the assignment hereunder shall remain in effect, and the Lien hereof shall not have been released pursuant to Section 10.01 hereof, any of its right, title or interest hereby assigned, to anyone other than the Mortgagee, and that it will not, except as otherwise provided in this Trust Indenture and except with respect to Excluded Payments to which it is entitled, (i) accept any payment from Lessee under any Indenture Agreement, (ii) enter into any agreement amending or supplementing any Indenture Agreement, (iii) execute any waiver or modification of, or consent under, the terms of, or exercise any rights, powers or privileges under, any Indenture Agreement, (iv) settle or compromise any claim arising under any Indenture Agreement or (v) submit or

consent to the submission of any dispute, difference or other matter arising under or in respect of any Indenture Agreement to arbitration thereunder.

The Owner Trustee does hereby agree that it will not without the written consent of the Mortgagee:

(a) receive or collect or agree to the receipt or collection of any payment (other than Excluded Payments) of Rent, including Basic Rent, Stipulated Loss Value, Termination Value or any other payment to be made pursuant to Section 9 or 10 of the Lease prior to the date for the payment thereof provided for by the Lease or assign, transfer or hypothecate (other than to the Mortgagee hereunder) any payment of Rent, including Basic Rent, Stipulated Loss Value, Termination Value or any other payment to be made pursuant to Section 9 or 10 of the Lease, then due or to accrue in the future under the Lease in respect of the Airframe and Engines; or

(b) except as contemplated by the Trust Agreement in connection with the appointment of a successor owner trustee, sell, mortgage, transfer, assign or hypothecate (other than to the Mortgagee hereunder) its interest in the Airframe and Engines or any part thereof or in any amount to be received by it from the use or disposition of the Airframe and Engines, other than amounts distributed to it pursuant to Article III hereof.

It is hereby further agreed that any and all property described or referred to in the granting clauses hereof which is hereafter acquired by the Owner Trustee shall *ipso facto*, and without any other conveyance, assignment or act on the part of the Owner Trustee or the Mortgagee, become and be subject to the Lien herein granted as fully and completely as though specifically described herein, but nothing contained in this paragraph shall be deemed to modify or change the obligations of the Owner Trustee contained in the foregoing paragraphs.

The Owner Trustee does hereby ratify and confirm the Lease and does hereby agree that it will not violate any covenant or agreement made by it therein, herein or in any other Owner Trustee Agreement.

Notwithstanding the Granting Clause or any of the preceding paragraphs, all Excluded Payments are hereby excluded from the foregoing sale, transfer, assignment, grant, pledge and security interest. Further, nothing in the Granting Clause or the preceding paragraphs shall impair any of the rights of the Owner Trustee or the Owner Participant under Section 2.13, 4.03, 4.04, 4.08, 5.02 or 5.03 hereof.

IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto as follows:



**ARTICLE I**

**DEFINITIONS**

Capitalized terms used but not defined herein shall have the respective meanings set forth or incorporated by reference, and shall be construed in the manner described, in Annex A to the Lease.

**ARTICLE II**

**THE EQUIPMENT NOTES**

SECTION 2.01. Form of Equipment Notes.

The Equipment Notes shall be substantially in the form set forth below:

THIS EQUIPMENT NOTE HAS NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR PURSUANT TO THE SECURITIES LAWS OF ANY STATE. ACCORDINGLY, THIS EQUIPMENT NOTE MAY NOT BE SOLD UNLESS EITHER REGISTERED UNDER THE ACT AND SUCH APPLICABLE STATE LAWS OR AN EXEMPTION FROM SUCH REGISTRATIONS IS AVAILABLE.

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION,

AS OWNER TRUSTEE UNDER [AMENDED AND RESTATED]<sup>1</sup> TRUST AGREEMENT [TN]

DATED AS OF [DDC].

LIMITED RECOURSE EQUIPMENT NOTE DUE [\_\_\_\_] ISSUED IN CONNECTION WITH THE EMBRAER MODEL EMB-145 XR AIRCRAFT BEARING UNITED STATES REGISTRATION NUMBER N[REG].

No. \_\_\_\_

Date: [\_\_\_\_\_, \_\_\_\_]

\$ \_\_\_\_\_

INTEREST RATE

MATURITY DATE

[\_\_\_\_\_]

[\_\_\_\_\_]

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity but solely as Owner Trustee (herein in such capacity called the "Owner

\_\_\_\_\_

1. Delete for New Aircraft.

Trustee”) under that certain [Amended and Restated]<sup>2</sup> Trust Agreement [TN], dated as of [DD], between the Owner Participant named therein and Wells Fargo Bank Northwest, National Association (herein as such Trust Agreement may be supplemented or amended from time to time called the “Trust Agreement”), hereby promises to pay to WILMINGTON TRUST COMPANY, or the registered assignee thereof, the principal sum of \$ \_\_\_\_\_ (the “Original Amount”), together with interest on the amount of the Original Amount remaining unpaid from time to time (calculated on the basis of a year of 360 days comprised of twelve 30-day months) from the date hereof until paid in full at a rate per annum equal to the Debt Rate. The Original Amount of this Equipment Note shall be payable in installments on the dates set forth in Schedule I hereto equal to the corresponding percentage of the Original Amount of this Equipment Note set forth in Schedule I hereto. Accrued but unpaid interest shall be due and payable in monthly installments commencing on [\_\_\_\_\_, 200\_], and thereafter on the first day of each month, to and including [\_\_\_\_\_]. Notwithstanding the foregoing, the final payment made on this Equipment Note shall be in an amount sufficient to discharge in full the unpaid Original Amount and all accrued and unpaid interest on, and any other amounts due under, this Equipment Note. Notwithstanding anything to the contrary contained herein, if any date on which a payment under this Equipment Note becomes due and payable is not a Business Day, then such payment shall not be made on such scheduled date but shall be made on the next succeeding Business Day and if such payment is made on such next succeeding Business Day, no interest shall accrue on the amount of such payment during such extension.

For purposes hereof, the term “Trust Indenture” means the Trust Indenture and Mortgage [TN], dated as of [DD], between the Owner Trustee and Wilmington Trust Company (the “Mortgagee”), as the same may be amended or supplemented from time to time. All other capitalized terms used in this Equipment Note and not defined herein shall have the respective meanings assigned in the Trust Indenture.

This Equipment Note shall bear interest, payable on demand, at the Payment Due Rate (calculated on the basis of a year of 360 days comprised of twelve 30-day months) on any overdue Original Amount, any overdue Make-Whole Amount, if any, and (to the extent permitted by applicable Law) any overdue interest and any other amounts payable hereunder which are overdue, in each case for the period the same is overdue. Amounts shall be overdue if not paid when due (whether at stated maturity, by acceleration or otherwise).

All payments of Original Amount, interest, Make-Whole Amount, if any, and other amounts, if any, to be made by the Owner Trustee hereunder and under the Trust Indenture or the Participation Agreement shall be payable only from the income and proceeds from the Trust Estate to the extent included in the Trust Indenture Estate and only to the extent that the Owner Trustee shall have sufficient income or proceeds from the Trust Estate to the extent included in the Trust Indenture Estate to enable the Mortgagee to make such payments in accordance with the terms of Section 2.03 and Article III of the Trust Indenture, and each holder hereof, by its acceptance of this Equipment Note, agrees that it will look solely to the income and proceeds from the Trust Indenture Estate to the extent available for distribution to the holder hereof as above provided and that none of the Owner Participant, the Owner Trustee and the

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2. Delete for New Aircraft.

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Mortgagee is personally liable or liable in any manner extending to any assets other than the Trust Indenture Estate to the holder hereof for any amounts payable or any liability under this Equipment Note or, except as provided in the Trust Indenture or in the Participation Agreement, for any liability under the Trust Indenture or the Participation Agreement; provided, however, that nothing herein contained shall limit, restrict or impair the right of the Mortgagee, subject always to the terms and provisions of the Trust Indenture, to accelerate the maturity of this Equipment Note upon occurrence of an Event of Default under the Trust Indenture in accordance with Section 4.04(b) of the Trust Indenture, to bring suit and obtain a judgment against the Owner Trustee on this Equipment Note for purposes of realizing upon the Trust Indenture Estate and to exercise all rights and remedies provided under the Trust Indenture or otherwise realize upon the Trust Indenture Estate as provided under the Trust Indenture.

There shall be maintained an Equipment Note Register for the purpose of registering transfers and exchanges of Equipment Notes at the Corporate Trust Office of the Mortgagee or at the office of any successor in the manner provided in Section 2.07 of the Trust Indenture.

The Original Amount and interest and other amounts due hereunder shall be payable in Dollars in immediately available funds at the Corporate Trust Office of the Mortgagee, or as otherwise provided in the Trust Indenture. Each such payment shall be made on the date such payment is due and without any presentment or surrender of this Equipment Note, except that in the case of any final payment with respect to this Equipment Note, the Equipment Note shall be surrendered promptly thereafter to the Mortgagee for cancellation.

The holder hereof, by its acceptance of this Equipment Note, agrees that, except as provided in the Trust Indenture, each payment of the Original Amount, Make-Whole Amount, if any, and interest received by it hereunder shall be applied, first, to the payment of accrued interest on this Equipment Note (as well as any interest on any overdue Original Amount, any overdue Make-Whole Amount, if any, or, to the extent permitted by Law, any overdue interest and other amounts hereunder) to the date of such payment, second, to the payment of the Original Amount of this Equipment Note then due, third, to the payment of Make-Whole Amount, if any, and any other amount due hereunder or under the Trust Indenture, and fourth, the balance, if any, remaining thereafter, to the payment of installments of the Original Amount of this Equipment Note remaining unpaid in the inverse order of their maturity.

This Equipment Note is one of the Equipment Notes referred to in the Trust Indenture which have been or are to be issued by the Owner Trustee pursuant to the terms of the Trust Indenture. The Trust Indenture Estate is held by the Mortgagee as security, in part, for the Equipment Notes. The provisions of this Equipment Note are subject to the Trust Indenture. Reference is hereby made to the Trust Indenture for a complete statement of the rights and obligations of the holder of, and the nature and extent of the security for, this Equipment Note and the rights and obligations of the holders of, and the nature and extent of the security for, any other Equipment Notes executed and delivered under the Trust Indenture, as well as for a statement of the terms and conditions of the Trust created by the Trust Indenture, to all of which terms and conditions in the Trust Indenture each holder hereof agrees by its acceptance of this Equipment Note.

As provided in the Trust Indenture and subject to certain limitations therein set forth, this Equipment Note is exchangeable for a like aggregate Original Amount of Equipment Notes of different authorized denominations, as requested by the holder surrendering the same.

Prior to due presentment for registration of transfer of this Equipment Note, the Owner Trustee and the Mortgagee shall treat the person in whose name this Equipment Note is registered as the owner hereof for all purposes, whether or not this Equipment Note be overdue, and neither the Owner Trustee nor the Mortgagee shall be affected by notice to the contrary.

This Equipment Note is subject to redemption as provided in Sections 2.10 and 2.12 of the Trust Indenture but not otherwise. This Equipment Note is also subject to exchange and to purchase by the Owner Participant or the Owner Trustee as provided in Section 2.13 of the Trust Indenture but not otherwise. In addition, this Equipment Note may be accelerated as provided in Section 4.04 of the Trust Indenture.

Unless the certificate of authentication hereon has been executed by or on behalf of the Mortgagee by manual signature, this Equipment Note shall not be entitled to any benefit under the Trust Indenture or be valid or obligatory for any purpose.

THIS EQUIPMENT NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK.

\* \* \*

IN WITNESS WHEREOF, the Owner Trustee has caused this Equipment Note to be executed in its corporate name by its officer thereunto duly authorized on the date hereof.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, not in its individual  
capacity but solely as Owner Trustee

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

MORTGAGEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Equipment Notes referred to in the within-mentioned Trust Indenture.

WILMINGTON TRUST COMPANY, as Mortgagee

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

SCHEDULE I

EQUIPMENT NOTE AMORTIZATION

Payment Date	Percentage of Original Amount to Be Paid
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[SEE SCHEDULE I TO TRUST INDENTURE  
WHICH IS INSERTED UPON ISSUANCE]

\* \* \*

SECTION 2.02. Issuance and Terms of Equipment Notes.

The Equipment Notes shall be dated the date of issuance thereof and shall have the maturity date and shall bear interest as specified in Schedule I hereto. On the date of the consummation of the Transactions, the initial Equipment Note shall be issued in the initial Original Amount set forth in Schedule I hereto to the Subordination Agent on behalf of the Pass Through Trustee under the Pass Through Trust Agreement. The Equipment Notes shall be issued in registered form only. The Equipment Notes shall be issued in denominations of \$1,000 and integral multiples thereof, except that one Equipment Note may be in an amount that is not an integral multiple of \$1,000.

Each Equipment Note shall bear interest at the Debt Rate (calculated on the basis of a year of 360 days comprised of twelve 30-day months) on the unpaid Original Amount thereof from time to time outstanding, payable in arrears on [\_\_\_\_\_, 200\_], and on the first day of each month thereafter until maturity. The Original Amount of each Equipment Note shall be payable on the dates and in the installments equal to the corresponding percentage of the Original Amount as set forth in Schedule I hereto which shall be attached as Schedule I to the Equipment Notes. Notwithstanding the foregoing, the final payment made under each Equipment Note shall be in an amount sufficient to discharge in full the unpaid Original Amount and all accrued and unpaid interest on, and any other amounts due under, such Equipment Note. Each Equipment Note shall bear interest at the Payment Due Rate (calculated on the basis of a year of 360 days comprised of twelve 30-day months) on any part of the Original Amount, Make-Whole Amount, if any, and, to the extent permitted by applicable Law, interest and any other amounts payable thereunder not paid when due for any period during which the same shall be overdue, in each case for the period the same is overdue. Amounts shall be overdue if not paid when due (whether at stated maturity, by acceleration or otherwise). Notwithstanding anything to the contrary contained herein, if any date on which a payment under any Equipment Note becomes due and payable is not a Business Day then such payment shall not be made on such scheduled date but shall be made on the next succeeding Business Day and if such payment is made on such next succeeding Business Day, no interest shall accrue on the amount of such payment during such extension.

The Owner Trustee agrees to pay to the Mortgagee for distribution in accordance with Section 3.04 hereof: (i) to the extent not payable (whether or not in fact paid) under Section 6(a) of the Note Purchase Agreement (as originally in effect or amended with the consent of the Owner Participant), an amount or amounts equal to the fees payable to the Liquidity Provider under Section 2.03 of the Liquidity Facility and the related Fee Letter (as defined in the Intercreditor Agreement) multiplied by a fraction the numerator of which shall be the then outstanding aggregate principal amount of the Equipment Notes and the denominator of which shall be the then outstanding aggregate principal amount of all "Equipment Notes" (as defined in the Intercreditor Agreement); (ii) (x) the amount equal to interest on any Downgrade Advance (other than any Applied Downgrade Advance) payable under Section 3.07 of the Liquidity Facility minus Investment Earnings from such Downgrade Advance multiplied by (y) the fraction specified in the foregoing clause (i); (iii) (x) the amount equal to interest on any Special Termination Advance (other than any Applied Special Termination Advance) payable under Section 3.07 of the Liquidity Facility minus Investment Earnings from such Special Termination Advance multiplied by (y) the fraction specified in the foregoing clause (i); (iv) (x) the amount equal to interest on any Early Termination Advance (other than any Applied Early Termination Advance) payable under Section 3.07 of the Liquidity Facility minus Investment Earnings from such Early Termination Advance multiplied by (y) the fraction specified in the foregoing clause (i); and (v) if any payment default shall have occurred and be continuing with respect to interest on any Equipment Notes, (x) the excess, if any, of (1) an amount equal to interest on any Unpaid Advance, Applied Downgrade Advance, Applied Special Termination Advance or Applied Early Termination Advance payable under Section 3.07 of the Liquidity Facility over (2) the sum of Investment Earnings from any Final Advance plus any amount of interest at the Payment Due Rate actually payable (whether or not in fact paid) by Owner Trustee on the overdue scheduled interest on the Equipment Notes in respect of which such Unpaid Advance, Applied Downgrade Advance, Applied Special Termination Advance or Applied Early Termination Advance was made multiplied by (y) a fraction the numerator of which shall be the then aggregate overdue amounts of interest on the Equipment Notes (other than interest becoming due and payable solely as a result of acceleration of any such Equipment Notes) and the denominator of which shall be the then aggregate overdue amounts of interest on all "Equipment Notes" (as defined in the Intercreditor Agreement) (other than interest becoming due and payable solely as a result of acceleration of any such "Equipment Notes"). For purposes of this paragraph, (i) the terms "Applied Downgrade Advance", "Applied Early Termination Advance", "Applied Special Termination Advance", "Downgrade Advance", "Early Termination Advance", "Final Advance", "Investment Earnings", "Special Termination Advance" and "Unpaid Advance" shall have the meanings specified in the Liquidity Facility.

The Equipment Notes shall be executed on behalf of the Owner Trustee by its President or one of its Vice Presidents, Assistant Vice Presidents or Assistant Secretaries or other authorized officer. Equipment Notes bearing the signatures of individuals who were at any time the proper officers of the Owner Trustee shall bind the Owner Trustee, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Equipment Notes or did not hold such offices at the respective dates of such Equipment Notes. The Owner Trustee may from time to time execute and deliver Equipment Notes with respect to the Aircraft to the Mortgagee for authentication upon original issue and such Equipment Notes shall thereupon be authenticated and delivered by the Mortgagee upon the written request of the Owner Trustee signed by a Vice President or Assistant Vice President or

other authorized officer of the Owner Trustee; provided, however, that each such request shall specify the aggregate Original Amount of all Equipment Notes to be authenticated hereunder on original issue with respect to the Aircraft. No Equipment Note shall be secured by or entitled to any benefit under this Trust Indenture or be valid or obligatory for any purposes, unless there appears on such Equipment Note a certificate of authentication in the form provided for herein executed by the Mortgagee by the manual signature of one of its authorized officers and such certificate upon any Equipment Notes shall be conclusive evidence, and the only evidence, that such Equipment Note has been duly authenticated and delivered hereunder.

SECTION 2.03. Payments from Trust Indenture Estate Only.

(a) Without impairing any of the other rights, powers, remedies, privileges, liens or security interests of the Note Holders under this Trust Indenture, each Note Holder, by its acceptance of an Equipment Note, agrees that as between it and the Owner Trustee, except as expressly provided in this Trust Indenture, the Participation Agreement or any other Operative Agreement, (i) the obligation to make all payments of the Original Amount of, interest on, Make-Whole Amount, if any, and all other amounts due with respect to the Equipment Notes, and the performance by the Owner Trustee of every obligation or covenant contained in this Trust Indenture and in the Participation Agreement or any of the other Operative Agreements, shall be payable only from the income and proceeds from the Trust Estate to the extent included in the Trust Indenture Estate and only to the extent that the Owner Trustee shall have sufficient income or proceeds from the Trust Estate to the extent included in the Trust Indenture Estate to enable the Mortgagee to make such payments in accordance with the terms of Article III hereof, and all of the statements, representations, covenants and agreements made by the Owner Trustee (when made in such capacity) contained in this Trust Indenture and any agreement referred to herein other than the Trust Agreement, unless expressly otherwise stated, are made and intended only for the purpose of binding the Trust Estate and establishing the existence of rights and remedies which can be exercised and enforced against the Trust Estate; therefore, anything contained in this Trust Indenture or such other agreements to the contrary notwithstanding (except for any express provisions or representations that the Owner Trustee is responsible for, or is making, in its individual capacity, for which there would be personal liability of the Owner Trustee), no recourse shall be had with respect to this Trust Indenture or such other agreements against the Owner Trustee in its individual capacity or against any institution or person which becomes a successor trustee or co-trustee or any officer, director, trustee, servant or direct or indirect parent or controlling Person or Persons of any of them, and (ii) none of the Owner Trustee, in its individual capacity, the Owner Participant, the Mortgagee and any officer, director, trustee, servant, employee, agent or direct or indirect parent or controlling Person or Persons of any of them shall have any personal liability for any amounts payable hereunder, under the Participation Agreement or any of the other Operative Agreements or under the Equipment Notes except as expressly provided herein, in the Lease or in the Participation Agreement; provided, however, that nothing contained in this Section 2.03(a) shall be construed to limit the exercise and enforcement in accordance with the terms of this Trust Indenture or such other agreements of rights and remedies against the Trust Indenture Estate.

(b) If (i) all or any part of the Trust Estate becomes the property of, or the Owner Trustee or Owner Participant becomes, a debtor subject to the reorganization provisions of the Bankruptcy Code, (ii) pursuant to such reorganization provisions, including Section 1111(b) of the Bankruptcy Code, the Owner Trustee (in its individual capacity) or the Owner Participant is required, by reason of the Owner Trustee (in its individual capacity) or the Owner Participant being held to have recourse liability to any Note Holder or the Mortgagee, directly or indirectly (other than the recourse liability of the Owner Trustee (in its individual capacity) or the Owner Participant under the Participation Agreement, the Lease or this Trust Indenture or by separate agreement), to make payment on account of any amount payable as Original Amount, Make-Whole Amount, if any, interest or other amounts on the Equipment Notes and (iii) any Note Holder or the Mortgagee actually receives any Excess Amount (as hereinafter defined) which reflects any payment by the Owner Trustee (in its individual capacity) or the Owner Participant on account of clause (ii) above, then such Note Holder or the Mortgagee, as the case may be, shall promptly refund to the Owner Trustee (in its individual capacity) or the Owner Participant (whichever shall have made such payment) such Excess Amount.

For purposes of this Section 2.03(b), "Excess Amount" means the amount by which such payment exceeds the amount that would have been received by a Note Holder or the Mortgagee if the Owner Trustee (in its individual capacity) or the Owner Participant had not become subject to the recourse liability referred to in clause (ii) above. Nothing contained in this Section 2.03(b) shall prevent a Note Holder or the Mortgagee from enforcing any personal recourse obligation (and retaining the proceeds thereof) of the Owner Trustee (in its individual capacity) or the Owner Participant under the Participation Agreement, the Lease or this Trust Indenture (and any exhibits or annexes hereto or thereto) or from retaining any amount paid by Owner Participant under Section 2.13 or 4.03 hereof.

SECTION 2.04. Method of Payment.

(a) The Original Amount of, interest on, Make-Whole Amount, if any, and other amounts due under each Equipment Note or hereunder will be payable in Dollars by wire transfer of immediately available funds not later than 12:30 p.m., New York City time, on the due date of payment to the Mortgagee at the Corporate Trust Office for distribution among the Note Holders in the manner provided herein. The Owner Trustee shall not have any responsibility for the distribution of such payment to any Note Holder. Notwithstanding the foregoing or any provision in any Equipment Note to the contrary, the Mortgagee will use reasonable efforts to pay or cause to be paid, if so directed in writing by any Note Holder (with a copy to the Owner Trustee), all amounts paid by the Owner Trustee hereunder and under such holder's Equipment Note or Equipment Notes to such holder or a nominee therefor (including all amounts distributed pursuant to Article III of this Trust Indenture) by transferring, or causing to be transferred, by wire transfer of immediately available funds in Dollars, prior to 2:00 p.m., New York City time, on the due date of payment, to an account maintained by such holder with a bank located in the continental United States the amount to be distributed to such holder, for credit to the account of such holder maintained at such bank. If the Mortgagee shall fail to make any such payment as provided in the immediately foregoing sentence after its



receipt of funds at the place and prior to the time specified above, the Mortgagee, in its individual capacity and not as trustee, agrees to compensate such holders for loss of use of funds at the Debt Rate until such payment is made and the Mortgagee shall be entitled to any interest earned on such funds until such payment is made. Any payment made hereunder shall be made without any presentment or surrender of any Equipment Note, except that, in the case of the final payment in respect of any Equipment Note, such Equipment Note shall be surrendered to the Mortgagee for cancellation promptly after such payment. Notwithstanding any other provision of this Trust Indenture to the contrary, the Mortgagee shall not be required to make, or cause to be made, wire transfers as aforesaid prior to the first Business Day on which it is practicable for the Mortgagee to do so in view of the time of day when the funds to be so transferred were received by it if such funds were received after 12:30 p.m., New York City time, at the place of payment. Prior to the due presentment for registration of transfer of any Equipment Note, the Owner Trustee and the Mortgagee shall deem and treat the Person in whose name any Equipment Note is registered on the Equipment Note Register as the absolute owner and holder of such Equipment Note for the purpose of receiving payment of all amounts payable with respect to such Equipment Note and for all other purposes, and none of the Owner Trustee or the Mortgagee shall be affected by any notice to the contrary. So long as any signatory to the Participation Agreement or nominee thereof shall be a registered Note Holder, all payments to it shall be made to the account of such Note Holder specified in Schedule I thereto and otherwise in the manner provided in or pursuant to the Participation Agreement unless it shall have specified some other account or manner of payment by notice to the Mortgagee consistent with this Section 2.04.

(b) The Mortgagee, as agent for the Owner Trustee, shall exclude and withhold at the appropriate rate from each payment of Original Amount of, interest on, Make-Whole Amount, if any, and other amounts due hereunder or under each Equipment Note (and such exclusion and withholding shall constitute payment in respect of such Equipment Note) any and all United States withholding taxes applicable thereto as required by Law. The Mortgagee agrees to act as such withholding agent and, in connection therewith, whenever any present or future United States taxes or similar charges are required to be withheld with respect to any amounts payable hereunder or in respect of the Equipment Notes, to withhold such amounts and timely pay the same to the appropriate authority in the name of and on behalf of the Note Holders, that it will file any necessary United States withholding tax returns or statements when due, and that as promptly as possible after the payment thereof it will deliver to each Note Holder (with a copy to the Owner Trustee and the Lessee) appropriate receipts showing the payment thereof, together with such additional documentary evidence as any such Note Holder may reasonably request from time to time.

If a Note Holder which is a Non-U.S. Person has furnished to the Mortgagee a properly completed, accurate and currently effective U.S. Internal Revenue Service Form W-8BEN (or such successor form or forms as may be required by the United States Treasury Department) for each calendar year in which a payment is made hereunder or under the Equipment Note(s) held by such holder is made (but prior to the making of such payment), or in either of the two preceding calendar years, and has not notified the Mortgagee of the withdrawal or inaccuracy of such form prior to the date of such payment (and the Mortgagee has no reason

to believe that any information set forth in such form is inaccurate), the Mortgagee shall withhold only the amount, if any, required by Law (after taking into account any applicable exemptions properly claimed by the Note Holder) to be withheld from payments hereunder or under the Equipment Notes held by such holder in respect of United States federal income tax. If a Note Holder (x) which is a Non-U.S. Person has furnished to the Mortgagee a properly completed, accurate and currently effective U.S. Internal Revenue Service Form W-8ECI in duplicate (or such successor certificate, form or forms as may be required by the United States Treasury Department as necessary in order to properly avoid withholding of United States federal income tax), for each calendar year in which a payment is made hereunder or under any Equipment Note (but prior to the making of any payment for such year), and has not notified the Mortgagee of the withdrawal or inaccuracy of such certificate or form prior to the date of such payment (and the Mortgagee has no reason to believe that any information set forth in such form is inaccurate) or (y) which is a U.S. Person has furnished to the Mortgagee a properly completed, accurate and currently effective U.S. Internal Revenue Service Form W-9, if applicable, prior to a payment hereunder or under the Equipment Notes held by such holder, no amount shall be withheld from payments in respect of United States federal income tax. If any Note Holder has notified the Mortgagee that any of the foregoing forms or certificates is withdrawn or inaccurate, or if such holder has not filed a form claiming an exemption or reduced withholding from United States withholding tax or if the Code or the regulations thereunder or the administrative interpretation thereof is at any time after the date hereof amended to require such withholding of United States federal income taxes from payments hereunder or under the Equipment Notes held by such holder, the Mortgagee agrees to withhold from each payment due to the relevant Note Holder withholding taxes at the appropriate rate under Law and will, on a timely basis as more fully provided above, deposit such amounts with an authorized depository and make such returns, statements, receipts and other documentary evidence in connection therewith as required by Law.

Neither the Owner Trustee nor the Owner Participant shall have any liability for the failure of the Mortgagee to withhold taxes in the manner provided for herein or for any false, inaccurate or untrue evidence provided by any Note Holder hereunder.

SECTION 2.05. Application of Payments.

In the case of each Equipment Note, each payment of Original Amount, Make-Whole Amount, if any, and interest due thereon shall be applied:

First: to the payment of accrued interest on such Equipment Note (as well as any interest on any overdue Original Amount, any overdue Make-Whole Amount, if any, and to the extent permitted by Law, any overdue interest and any other overdue amounts thereunder) to the date of such payment;

Second: to the payment of the Original Amount of such Equipment Note (or a portion thereof) then due thereunder;

Third: to the payment of Make-Whole Amount, if any, and any other amount due hereunder or under such Equipment Note;  
and

Fourth: the balance, if any, remaining thereafter, to the payment of the Original Amount of such Equipment Note remaining unpaid (provided that such Equipment Note shall not be subject to redemption except as provided in Sections 2.10 and 2.12 hereof).

The amounts paid pursuant to clause “Fourth” above shall be applied to the installments of Original Amount of such Equipment Note in the inverse order of their normal maturity.

SECTION 2.06. Termination of Interest in Trust Indenture Estate.

No Note Holder nor any other Indenture Indemnitee shall, as such, have any further interest in, or other right with respect to, the Trust Indenture Estate when and if the Original Amount of, Make-Whole Amount, if any, and interest on and other amounts due under all Equipment Notes held by such Note Holder and all other sums then due and payable to such Note Holder, such Indenture Indemnitee or the Mortgagee hereunder (including, without limitation, under the third paragraph of Section 2.02 hereof) and under the other Operative Agreements by the Owner Trustee and the Lessee (collectively, the “Secured Obligations”) shall have been paid in full.

SECTION 2.07. Registration Transfer and Exchange of Equipment Notes.

The Mortgagee shall keep a register (the “Equipment Note Register”) in which the Mortgagee shall provide for the registration of Equipment Notes and the registration of transfers of Equipment Notes. No such transfer shall be given effect unless and until registration hereunder shall have occurred. The Equipment Note Register shall be kept at the Corporate Trust Office of the Mortgagee. The Mortgagee is hereby appointed “Equipment Note Registrar” for the purpose of registering Equipment Notes and transfers of Equipment Notes as herein provided. A holder of any Equipment Note intending to exchange such Equipment Note shall surrender such Equipment Note to the Mortgagee at the Corporate Trust Office, together with a written request from the registered holder thereof for the issuance of a new Equipment Note, specifying, in the case of a surrender for transfer, the name and address of the new holder or holders. Upon surrender for registration of transfer of any Equipment Note, the Owner Trustee shall execute, and the Mortgagee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Equipment Notes of a like aggregate Original Amount. At the option of the Note Holder, Equipment Notes may be exchanged for other Equipment Notes of any authorized denominations of a like aggregate Original Amount, upon surrender of the Equipment Notes to be exchanged to the Mortgagee at the Corporate Trust Office. Whenever any Equipment Notes are so surrendered for exchange, the Owner Trustee shall execute, and the Mortgagee shall authenticate and deliver, the Equipment Notes which the Note Holder making the exchange is entitled to receive. All Equipment Notes issued upon any registration of transfer or exchange of Equipment Notes (whether under this Section 2.07 or under Section 2.08 hereof or otherwise under this Trust Indenture) shall be the valid obligations of the Owner Trustee evidencing the same respective obligations, and entitled to the same security and benefits under this Trust Indenture, as the Equipment Notes surrendered upon such registration of transfer or exchange. Every Equipment Note presented or surrendered for registration of transfer, shall (if so required by the Mortgagee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Mortgagee duly

executed by the Note Holder or such holder's attorney duly authorized in writing, and the Mortgagee shall require evidence satisfactory to it as to the compliance of any such transfer with the Securities Act, and the securities Laws of any applicable state. The Mortgagee shall make a notation on each new Equipment Note of the amount of all payments of Original Amount previously made on the old Equipment Note or Equipment Notes with respect to which such new Equipment Note is issued and the date to which interest on such old Equipment Note or Equipment Notes has been paid. Interest shall be deemed to have been paid on such new Equipment Note to the date on which interest shall have been paid on such old Equipment Note, and all payments of the Original Amount marked on such new Equipment Note, as provided above, shall be deemed to have been made thereon. The Owner Trustee shall not be required to exchange any surrendered Equipment Notes as provided above during the ten-day period preceding the due date of any payment on such Equipment Note. The Owner Trustee shall in all cases deem the Person in whose name any Equipment Note shall have been issued and registered as the absolute owner and holder of such Equipment Note for the purpose of receiving payment of all amounts payable by the Owner Trustee with respect to such Equipment Note and for all purposes until a notice stating otherwise is received from the Mortgagee and such change is reflected on the Equipment Note Register. The Mortgagee will promptly notify the Owner Trustee and the Lessee of each registration of a transfer of an Equipment Note. Any such transferee of an Equipment Note, by its acceptance of an Equipment Note, agrees to the provisions of the Participation Agreement applicable to Note Holders, and shall be deemed to have covenanted to the parties to the Participation Agreement as to the matters covenanted by the original Loan Participant in the Participation Agreement. Subject to compliance by the Note Holder and its transferee (if any) of the requirements set forth in this Section 2.07, Mortgagee and Owner Trustee shall use all reasonable efforts to issue new Equipment Notes upon transfer or exchange within 10 Business Days of the date an Equipment Note is surrendered for transfer or exchange.

SECTION 2.08. Mutilated, Destroyed, Lost or Stolen Equipment Notes.

If any Equipment Note shall become mutilated, destroyed, lost or stolen, the Owner Trustee shall, upon the written request of the holder of such Equipment Note, execute and the Mortgagee shall authenticate and deliver in replacement thereof a new Equipment Note, payable in the same Original Amount dated the same date and captioned as issued in connection with the Aircraft. If the Equipment Note being replaced has become mutilated, such Equipment Note shall be surrendered to the Mortgagee and a photocopy thereof shall be furnished to the Owner Trustee. If the Equipment Note being replaced has been destroyed, lost or stolen, the holder of such Equipment Note shall furnish to the Owner Trustee and the Mortgagee such security or indemnity as may be required by them to save the Owner Trustee and the Mortgagee harmless and evidence satisfactory to the Owner Trustee and the Mortgagee of the destruction, loss or theft of such Equipment Note and of the ownership thereof. If a "qualified institutional buyer" of the type referred to in paragraph (a)(1)(i)(A), (B), (D) or (E) of Rule 144A under the Securities Act (a "QIB") or the Subordination Agent is the holder of any such destroyed, lost or stolen Equipment Note, then the written indemnity of such QIB or the Subordination Agent, signed by an authorized officer thereof, in favor of, delivered to and in form reasonably satisfactory to Lessee, Owner Trustee and Mortgagee shall be accepted as satisfactory indemnity and security and no further indemnity or security shall be required as a condition to the execution and delivery of such new Equipment Note. Subject to compliance by the Note Holder with the

requirements set forth in this Section 2.08, Mortgagee and Owner Trustee shall use all reasonable efforts to issue new Equipment Notes within 10 Business Days of the date of the written request therefor from the Note Holder.

SECTION 2.09. Payment of Expenses on Transfer; Cancellation.

(a) No service charge shall be made to a Note Holder for any registration of transfer or exchange of Equipment Notes, but the Mortgagee, as Equipment Note Registrar, may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Equipment Notes.

(b) The Mortgagee shall cancel all Equipment Notes surrendered for replacement, redemption, transfer, exchange, payment or cancellation and shall destroy the canceled Equipment Notes.

SECTION 2.10. Mandatory Redemptions of Equipment Notes.

(a) On the date on which Lessee is required pursuant to Section 10.1.2 of the Lease to make payment for an Event of Loss with respect to the Aircraft, all of the Equipment Notes shall be redeemed in whole at a redemption price equal to 100% of the unpaid Original Amount thereof, together with all accrued interest thereon to the date of redemption and all other Secured Obligations owed or then due and payable to the Note Holders but without Make-Whole Amount.

(b) If the Lease is terminated with respect to the Aircraft by Lessee pursuant to Section 9 thereof, on the date the Lease is so terminated, all the Equipment Notes shall be redeemed in whole at a redemption price equal to 100% of the unpaid Original Amount thereof, together with accrued interest thereon to the date of redemption and all other amounts then due and payable hereunder and under the Participation Agreement and all other Operative Agreements to the Note Holders plus, if such redemption is made prior to the Premium Termination Date, Make-Whole Amount, if any.

SECTION 2.11. [Reserved.]

SECTION 2.12. Redemptions; Notice of Redemption.

(a) Neither any redemption of any Equipment Note nor any purchase by the Owner Trustee of any Equipment Note may be made except to the extent and in the manner expressly permitted by this Trust Indenture. No purchase of any Equipment Note may be made by the Mortgagee.

(b) Notice of redemption with respect to the Equipment Notes shall be given by the Mortgagee by first-class mail, postage prepaid, mailed not less than 15 nor more than 60 days prior to the applicable redemption date, to each Note Holder of such Equipment Notes to be redeemed, at such Note Holder's address appearing in the Equipment Note Register; provided, however, that, in the case of a redemption to be made pursuant to Section 2.10(b), such notice shall be revocable and shall be deemed

revoked in the event that the Lease does not in fact terminate on the specified termination date. All notices of redemption shall state: (1) the redemption date, (2) the applicable basis for determining the redemption price, (3) that on the redemption date, the redemption price will become due and payable upon each such Equipment Note, and that, if any such Equipment Notes are then outstanding, interest on such Equipment Notes shall cease to accrue on and after such redemption date, and (4) the place or places where such Equipment Notes are to be surrendered for payment of the redemption price.

(c) On or before the redemption date, the Owner Trustee (or any person on behalf of the Owner Trustee) shall, to the extent an amount equal to the redemption price for the Equipment Notes to be redeemed on the redemption date shall not then be held in the Trust Indenture Estate, deposit or cause to be deposited with the Mortgagee by 12:00 noon on the redemption date in immediately available funds the redemption price of the Equipment Notes to be redeemed.

(d) Notice of redemption having been given as aforesaid (and not deemed revoked as contemplated in the proviso to Section 2.12(b)), the Equipment Notes to be redeemed shall, on the redemption date, become due and payable at the Corporate Trust Office of the Mortgagee or at any office or agency maintained for such purposes pursuant to Section 2.07, and from and after such redemption date (unless there shall be a default in the payment of the redemption price) any such Equipment Notes then outstanding shall cease to bear interest. Upon surrender of any such Equipment Note for redemption in accordance with said notice, such Equipment Note shall be redeemed at the redemption price. If any Equipment Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal amount thereof shall, until paid, continue to bear interest from the applicable redemption date at the interest rate in effect for such Equipment Note as of such redemption date.

SECTION 2.13. Option to Purchase Equipment Notes.

The Owner Trustee and the Owner Participant may, upon the events and subject to the terms and conditions and for the price set forth in this Section 2.13, purchase all but not less than all of the Equipment Notes outstanding hereunder, and each Note Holder agrees that it will, upon such events and subject to such terms and conditions and upon receipt of such price, sell, assign, transfer and convey to such purchaser or its nominee (without recourse or warranty of any kind except against Liens on such Equipment Notes arising by, through or under such holder), all of the right, title and interest of such Note Holder in and to the Equipment Notes held by it, and such purchaser or its nominee shall assume all of such holder's obligations under the Participation Agreement and hereunder.

Such option to purchase the Equipment Notes may be exercised by the Owner Trustee or the Owner Participant at any time following the occurrence of any of the following events, and in any such event the purchase price thereof shall equal for each Equipment Note, the aggregate unpaid Original Amount thereof, plus accrued and unpaid interest thereon to, but not including, the date of purchase and all other Secured Obligations owed, or then due and payable hereunder, to the holder thereof (including under the third paragraph of Section 2.02 hereof). Such option to purchase the Equipment Notes may be exercised (x) upon a Mortgagee Event or

(y) in the event there shall have occurred and be continuing a Lease Event of Default, provided, however, that if such option is exercised prior to the Premium Termination Date pursuant to clause (y) at a time when there shall have occurred and be continuing for less than 120 days a Lease Event of Default, the purchase price thereof shall equal the price provided in the preceding sentence plus the Make-Whole Amount, if any.

Such option to purchase the Equipment Notes may be exercised by the Owner Trustee or the Owner Participant giving irrevocable written notice of its election of such option to the Mortgagee, which notice shall specify a date for such purchase at least 15 days but not more than 20 days from the date of such notice. The Mortgagee shall not exercise any of the remedies hereunder and, without the consent of the Owner Trustee or the Owner Participant, under the Lease, during the period from the date of the giving of such notice until the date on which such purchase is required to occur pursuant to the terms of the preceding sentence.

If the Owner Trustee or the Owner Participant on or before the date of such purchase shall so request, the Note Holders will comply with all the provisions of Section 2.07 to enable new Equipment Notes to be issued to the Owner Trustee or the Owner Participant or its nominee in such denominations as the Owner Trustee or the Owner Participant shall request. All taxes, charges and expenses required pursuant to Section 2.09 in connection with the issuance of such new Equipment Note shall be borne by the Owner Participant.

SECTION 2.14. Priority of Distributions.

The Owner Trustee and, by acceptance of its Equipment Notes, each Note Holder, hereby agree that no payment or distribution shall be made on or in respect of the Secured Obligations owed to such Note Holder, including any payment or distribution of cash, property or securities after the commencement of a proceeding of the type referred to in Section 4.02(g) hereof, except as expressly provided in Article III hereof.

**ARTICLE III**

**RECEIPT, DISTRIBUTION AND APPLICATION OF  
INCOME FROM THE TRUST INDENTURE ESTATE**

SECTION 3.01. Basic Rent Distribution.

Except as otherwise provided in Sections 3.02 and 3.03 hereof, each installment of Basic Rent, any payment of interest on overdue installments of Basic Rent and any payment received by the Mortgagee pursuant to Section 4.03 hereof shall be promptly distributed in the following order of priority:

First, so much of such installment or payment as shall be required to pay in full the aggregate amount of the payment or payments of Original Amount and interest (as well as any interest on any overdue Original Amount and, to the extent permitted by Law, on any overdue interest) then due under all Equipment Notes shall be distributed to the Note Holders ratably, without priority of one over the other, in the proportion that the amount of such payment or payments then due

under each Equipment Note bears to the aggregate amount of the payments then due under all Equipment Notes;

Second, the balance, if any, of such installment remaining thereafter shall be distributed to the Owner Trustee; provided, however, that if an Event of Default shall have occurred and be continuing, then such balance shall not be distributed as provided in this clause "Second" but shall be held by the Mortgagee as part of the Trust Indenture Estate and invested in accordance with Section 5.09 hereof until whichever of the following shall first occur: (i) all Events of Default shall have been cured or waived, in which event such balance shall be distributed as provided in this clause "Second", (ii) Section 3.03 hereof shall be applicable, in which event such balance shall be distributed in accordance with the provisions of such Section 3.03, or (iii) the 120th day after the receipt of such payment in which case such payment shall be distributed as provided in this clause "Second".

SECTION 3.02. Event of Loss; Replacement; Voluntary Termination; Optional Redemption.

Except as otherwise provided in Section 3.03 hereof, any payments received by the Mortgagee (i) with respect to the Airframe or the Airframe and one or more Engines as the result of an Event of Loss, or (ii) pursuant to a voluntary termination of the Lease pursuant to Section 9 thereof shall be applied to redemption of the Equipment Notes and to all other Secured Obligations by applying such funds in the following order of priority:

First, (a) to reimburse the Mortgagee and the Note Holders for any reasonable costs or expenses incurred in connection with such redemption for which they are entitled to reimbursement, or indemnity by Lessee, under the Operative Agreements and then (b) to pay any other Secured Obligations then due to the Mortgagee, the Note Holders and the other Indenture Indemnitees under this Trust Indenture, the Participation Agreement or the Equipment Notes (other than amounts specified in clause Second below);

Second, to pay the amounts specified in clause "Third" of Section 3.03 hereof plus Make-Whole Amount, if any, then due and payable in respect of the Equipment Notes;

Third, as provided in clause "Fourth" of Section 3.03 hereof;

provided, however, that if a Replacement Airframe or Replacement Engine shall be substituted for the Airframe or Engine subject to such Event of Loss as provided in Section 10 of the Lease and in accordance with Section 5.06 hereof, any insurance, condemnation or similar proceeds which result from such Event of Loss and are paid over to the Mortgagee shall be held by the Mortgagee as permitted by Section 6.04 hereof (provided that such moneys shall be invested as provided in Section 5.09 hereof) as additional security for the obligations of Lessee under the Lessee Operative Agreements and, unless otherwise applied pursuant to the Lease, such proceeds (and such investment earnings) shall be released to the Lessee at the Lessee's written request upon the release of such damaged Airframe or Engine and the replacement thereof as provided in the Lease.



SECTION 3.03. Payments After Event of Default.

Except as otherwise provided in Section 3.04 hereof, all payments received and amounts held or realized by the Mortgagee (including any amounts realized by the Mortgagee from the exercise of any remedies pursuant to Section 15 of the Lease or Article IV hereof) after an Event of Default shall have occurred and be continuing and after the declaration or other acceleration of the Equipment Notes specified in Section 4.04(b) hereof, as well as all payments or amounts then held by the Mortgagee as part of the Trust Indenture Estate, shall be promptly distributed by the Mortgagee in the following order of priority:

- First, so much of such payments or amounts as shall be required to (i) reimburse the Mortgagee or WTC for any tax (except to the extent resulting from a failure of the Mortgagee to withhold taxes pursuant to Section 2.04(b) hereof), expense or other loss (including, without limitation, all amounts to be expended at the expense of, or charged upon the rents, revenues, issues, products and profits of, the property included in the Trust Indenture Estate (all such property being herein called the “Mortgaged Property”) pursuant to Section 4.05(b) hereof) incurred by the Mortgagee or WTC (to the extent not previously reimbursed), the expenses of any sale, or other proceeding, reasonable attorneys’ fees and expenses, court costs, and any other expenditures incurred or expenditures or advances made by the Mortgagee, WTC or the Note Holders in the protection, exercise or enforcement of any right, power or remedy or any damages sustained by the Mortgagee, WTC or any Note Holder, liquidated or otherwise, upon such Event of Default shall be applied by the Mortgagee as between itself, WTC and the Note Holders in reimbursement of such expenses and any other expenses for which the Mortgagee, WTC or the Note Holders are entitled to reimbursement under any Operative Agreement and (ii) pay all Secured Obligations payable to the other Indenture Indemnitees hereunder and under the Participation Agreement and the Lease (other than amounts specified in clauses Second and Third below); and in the case the aggregate amount to be so distributed is insufficient to pay as aforesaid in clauses (i) and (ii), then ratably, without priority of one over the other, in proportion to the amounts owed each hereunder;
- Second, so much of such payments or amounts remaining as shall be required to reimburse the then existing or prior Note Holders for payments made pursuant to Section 5.03 hereof (to the extent not previously reimbursed) shall be distributed to such then existing or prior Note Holders ratably, without priority of one over the other, in accordance with the amount of the payment or payments made by each such then existing or prior Note Holder pursuant to said Section 5.03 hereof;
- Third, so much of such payments or amounts remaining as shall be required to pay in full the aggregate unpaid Original Amount of all Equipment Notes, and the accrued but unpaid interest and other amounts due thereon (other than Make-Whole Amount which shall not be due and payable) and all other Secured Obligations in respect of the Equipment Notes (other than Make-Whole Amount) to the date of distribution, shall be distributed to the Note Holders, and in case the aggregate amount so to be distributed shall be insufficient to pay in full as

aforesaid, then ratably, without priority of one over the other, in the proportion that the aggregate unpaid Original Amount of all Equipment Notes held by each holder plus the accrued but unpaid interest and other amounts due hereunder or thereunder (other than Make-Whole Amount, if any) to the date of distribution, bears to the aggregate unpaid Original Amount of all Equipment Notes held by all such holders plus the accrued but unpaid interest and other amounts due thereon (other than Make-Whole Amount) to the date of distribution; and

Fourth, the balance, if any, of such payments or amounts remaining thereafter shall be distributed to the Owner Trustee.

No Make-Whole Amount shall be due and payable on the Equipment Notes as a consequence of the acceleration of the Equipment Notes as a result of an Event of Default.

SECTION 3.04. Certain Payments.

(a) Any payments received by the Mortgagee for which no provision as to the application thereof is made in this Trust Indenture and for which such provision is made in the Lease or the Participation Agreement shall be applied forthwith to the purpose for which such payment was made in accordance with the terms of the Lease or the Participation Agreement, as the case may be.

(b) Notwithstanding anything to the contrary contained in this Article III, the Mortgagee will distribute promptly upon receipt any indemnity payment received by it from the Owner Trustee or Lessee in respect of the Mortgagee in its individual capacity, any Note Holder or any other Indenture Indemnitee, in each case whether pursuant to Section 9 of the Participation Agreement or as Supplemental Rent, directly to the Person entitled thereto. Any payment received by the Mortgagee under the third paragraph of Section 2.02 shall be distributed to the Subordination Agent to be distributed in accordance with the terms of the Intercreditor Agreement.

(c) Notwithstanding anything to the contrary contained in this Article III, any payments received by the Mortgagee which constitute Excluded Payments shall be distributed promptly upon receipt by the Mortgagee directly to the Person or Persons entitled thereto.

(d) Notwithstanding any provision of this Trust Indenture to the contrary, any amounts held by Mortgagee pursuant to the terms of the Lease shall be held by the Mortgagee as security for the obligations of Lessee under the Lessee Operative Agreements and, if and when required by the Lease, paid and/or applied in accordance with the applicable provisions of the Lease.

SECTION 3.05. Other Payments.

Any payments received by the Mortgagee for which no provision as to the application thereof is made in the Lease, the Participation Agreement, elsewhere in this Trust Indenture or in any other Operative Agreement shall be distributed by the Mortgagee to the extent received or realized at any time (i) prior to the payment in full of all Secured Obligations

due the Note Holders, in the order of priority specified in Section 3.01 hereof subject to the proviso thereto, and (ii) after payment in full of all Secured Obligations, in the following order of priority:

First, to the extent payments or amounts described in clause “First” of Section 3.03 hereof are otherwise obligations of Lessee under the Operative Agreements or for which the Lessee is obligated to indemnify against thereunder, in the manner provided in clause “First” of Section 3.03 hereof, and

Second, in the manner provided in clause “Fourth” of Section 3.03 hereof.

Further, and except as otherwise provided in Sections 3.02, 3.03 and 3.04 hereof, all payments received and amounts realized by the Mortgagee under the Lease or otherwise with respect to the Aircraft (including, without limitation, all amounts realized upon the sale or release of the Aircraft after the termination of the Lease with respect thereto), to the extent received or realized at any time after payment in full of all Secured Obligations due the Note Holders, shall be distributed by the Mortgagee in the order of priority specified in clause (ii) of the immediately preceding sentence of this Section 3.05.

SECTION 3.06. Payments to Owner Trustee.

Any amounts distributed hereunder by the Mortgagee to the Owner Trustee shall be paid to the Owner Trustee (within the time limits contemplated by Section 2.04(a)) by wire transfer of funds of the type received by the Mortgagee at such office and to such account or accounts of such entity or entities as shall be designated by notice from the Owner Trustee to the Mortgagee from time to time. The Mortgagee shall not pay an amount due to Owner Trustee hereunder to any Person other than Owner Trustee, unless the Lessee shall have given its written consent thereto.

**ARTICLE IV**

**COVENANTS OF OWNER TRUSTEE; EVENTS OF  
DEFAULT; REMEDIES OF MORTGAGEE**

SECTION 4.01. Covenants of Owner Trustee.

The Owner Trustee hereby covenants and agrees (the covenants and agreements only in clause (b) below being made by the Owner Trustee in its individual capacity) as follows:

(a) the Owner Trustee will duly and punctually pay the Original Amount of, Make-Whole Amount, if any, and interest on and other amounts due under the Equipment Notes and hereunder in accordance with the terms of the Equipment Notes and this Trust Indenture and all amounts, if any, payable by it to the Note Holders under the Participation Agreement or Section 9 of the Lease;

(b) the Owner Trustee in its individual capacity covenants and agrees that it shall not, directly or indirectly, cause or permit to exist a Lessor Lien attributable to it in

its individual capacity with respect to the Aircraft or any other portion of the Trust Estate; that, subject to the proviso in Section 7.3.1 of the Participation Agreement, it will promptly, at its own expense, take such action as may be necessary to duly discharge such Lessor Lien attributable to it in its individual capacity; and that it will make restitution to the Trust Indenture Estate for any actual diminution of the assets of the Trust Estate resulting from such Lessor Liens attributable to it in its individual capacity;

(c) in the event the Owner Trustee shall have Actual Knowledge of an Event of Default, a Default or an Event of Loss, the Owner Trustee will give prompt written notice of such Event of Default, Default or Event of Loss to the Mortgagee, each Note Holder, Lessee and the Owner Participant;

(d) the Owner Trustee will furnish to the Note Holders and the Mortgagee, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates and other instruments furnished to the Owner Trustee under the Lease, including, without limitation, a copy of each report or notice received pursuant to Section 9 or 8.2 or Annex D, Paragraph E of the Lease to the extent that the same shall not have been furnished or is not required to be furnished by the Lessee to the Note Holders or the Mortgagee pursuant to the Lease;

(e) except with the consent of the Mortgagee (acting pursuant to instructions given in accordance with Section 9.01 hereof) or as provided in Section 2 of the Participation Agreement, the Owner Trustee will not contract for, create, incur, assume or suffer to exist any Debt, and will not guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing, or otherwise), endorse or otherwise be or become contingently liable, directly or indirectly, in connection with the Debt of any other person; and

(f) the Owner Trustee will not enter into any business or other activity other than the business of owning the Aircraft, the leasing thereof to Lessee and the carrying out of the transactions contemplated hereby and by the Lease, the Participation Agreement and the Trust Agreement and the other Operative Agreements.

#### SECTION 4.02. Event of Default.

“Event of Default” means any of the following events (whatever the reason for such Event of Default and whether such event shall be voluntary or involuntary or come about or be effected by operation of Law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) any Lease Event of Default (provided that any such Lease Event of Default caused solely by a failure of Lessee to pay to the Owner Trustee or the Owner Participant when due any amount that is included in the definition of Excluded Payments shall not constitute an Event of Default unless notice is given by the Owner Trustee to the Mortgagee that such failure shall constitute an Event of Default); or

(b) the failure of the Owner Trustee to pay when due any payment of Original Amount of, interest on, Make-Whole Amount, if any, or other amount due and payable

under any Equipment Note or hereunder (other than as a result of a Lease Event of Default or a Lease Default) and such failure shall have continued unremedied for ten Business Days in the case of any payment of Original Amount or interest or Make-Whole Amount, if any, thereon and, in the case of any other amount, for ten Business Days after the Owner Trustee or the Owner Participant receives written demand from the Mortgagee or any Note Holder; or

(c) any Lien required to be discharged by the Owner Trustee, in its individual capacity pursuant to Section 4.01(b) hereof or in its individual or trust capacity pursuant to Section 7.3.1 of the Participation Agreement, or by the Owner Participant pursuant to Section 7.2.1 of the Participation Agreement shall remain undischarged for a period of 30 days after the Owner Trustee or the Owner Participant, as the case may be, shall have received written notice from the Mortgagee or any Note Holder of such Lien; or

(d) any representation or warranty made by the Owner Participant or the Owner Trustee in the Participation Agreement or this Trust Indenture or in any certificate furnished by the Owner Participant or the Owner Trustee to the Mortgagee or any Note Holder in connection with the transactions contemplated by the Operative Agreements shall prove to have been false or incorrect when made in any material respect and continues to be material and adverse to the interests of the Mortgagee or the Note Holders; and if such misrepresentation is capable of being corrected and if such correction is being sought diligently, such misrepresentation shall not have been corrected within 60 days (or, without affecting Section 4.02(f) hereof, in the case of the representation made in Section 6.3.6 or 6.2.6 of the Participation Agreement as to citizenship of the Owner Trustee in its individual capacity or of the Owner Participant, respectively, as soon as is reasonably practicable but in any event within 60 days) following notice thereof from the Mortgagee or any Note Holder to the Owner Trustee or the Owner Participant, as the case may be; or

(e) other than as provided in (c) above or (f) below, any failure by the Owner Trustee or Owner Participant to observe or perform any other covenant or obligation of the Owner Trustee or Owner Participant, as the case may be, for the benefit of the Mortgagee or the Note Holders contained in the Participation Agreement, Section 4.2.1 of the Trust Agreement, the Equipment Notes or this Trust Indenture which is not remedied within a period of 60 days after notice thereof has been given to the Owner Trustee and the Owner Participant; or

(f) if at any time when the Aircraft is registered under the Laws of the United States, the Owner Participant shall not be a "citizen of the United States" within the meaning of Section 40102(a)(15) of Part A of Subtitle VII of Title 49, United States Code, and as the result thereof the registration of the Aircraft under the Act, and regulations then applicable thereunder, shall cease to be effective; provided that no Event of Default shall be deemed to have occurred under this paragraph (f) unless such circumstances continue unremedied for more than 30 days after the Owner Participant has Actual Knowledge of the state of facts that resulted in such ineffectiveness and of such loss of citizenship; or

(g) at any time either (i) the commencement of an involuntary case or other proceeding in respect of the Owner Participant, the Owner Trustee, the Trust or the Trust Estate under the federal bankruptcy Laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar Law in the United States or seeking the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Owner Participant, the Owner Trustee, the Trust or the Trust Estate or for all or substantially all of its property, or seeking the winding-up or liquidation of its affairs and the continuation of any such case or other proceeding undismissed and unstayed for a period of 60 consecutive days; or (ii) the commencement by the Owner Participant, the Owner Trustee, the Trust or the Trust Estate of a voluntary case or proceeding under the federal bankruptcy Laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar Law in the United States, or the consent by the Owner Participant, the Owner Trustee, the Trust or the Trust Estate to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Owner Participant, the Owner Trustee, the Trust or the Trust Estate or for all or substantially all of its property, or the making by the Owner Participant, the Owner Trustee, the Trust or the Trust Estate of any assignment for the benefit of creditors or the Owner Participant or the Owner Trustee shall take any action to authorize any of the foregoing; provided, however, that an event referred to in this Section 4.02(g) with respect to the Owner Participant shall not constitute an Event of Default if within 30 days of the commencement of the case or proceeding a final non-appealable order, judgment or decree shall be entered in such case or proceeding by a court or a trustee, custodian, receiver or liquidator, to the effect that, no part of the Trust Estate (except for the Owner Participant's beneficial interest therein) and no right, title or interest under the Trust Indenture Estate shall be included in, or be subject to, any declaration or adjudication of, or proceedings with respect to, the bankruptcy, insolvency or liquidation of the Owner Participant referred to in this Section 4.02(g).

SECTION 4.03. Certain Rights.

The Mortgagee shall give the Note Holders, the Owner Trustee and the Owner Participant prompt written notice of any Event of Default of which the Mortgagee has Actual Knowledge and shall give the Note Holders, the Owner Trustee and the Owner Participant not less than ten Business Days' prior written notice of the date (the "Enforcement Date") on or after which the Mortgagee may, subject to the limitation set forth in Section 4.04(a), commence and consummate the exercise of any remedy or remedies described in Section 4.04, 4.05 or 4.06 hereof. Without limiting the generality of the foregoing, the Mortgagee shall give the Owner Trustee, the Owner Participant and the Lessee at least ten Business Days' prior written notice (which may be given concurrently with notice of the Enforcement Date) of any declaration of the Lease to be in default pursuant to Sections 14 and 15 of the Lease or any termination of the Lease or of the exercise of any remedy or remedies pursuant to Section 15 of the Lease. If an Event of Default shall have occurred and be continuing, the Owner Trustee shall have the rights set forth below, any of which may be exercised directly by the Owner Participant.

If as a result of the occurrence of an Event of Default in respect of the nonpayment by Lessee of Basic Rent due under the Lease, the Mortgagee shall have insufficient

funds to make any payment of Original Amount and interest on any Equipment Note on the day it becomes due and payable, the Owner Trustee may, but shall not be obligated to pay the Mortgagee prior to the Enforcement Date, in the manner provided in Section 2.04 hereof, for application in accordance with Section 3.01 hereof, an amount equal to the portion of the Original Amount and interest (including interest, if any, on any overdue payments of such portion of Original Amount and interest) then due and payable on the Equipment Notes, and, unless the Owner Trustee has cured Events of Default in respect of payments of Basic Rent on each of the 18 immediately preceding Basic Rent payment dates, or the Owner Trustee has cured 36 previous Events of Default in respect of payments of Basic Rent, such payment by the Owner Trustee shall, solely for purposes of this Trust Indenture be deemed to cure any Event of Default which would otherwise have arisen on account of the nonpayment by Lessee of such installment of Basic Rent (but not any other Default or Event of Default which shall have occurred and be continuing).

If any Event of Default (other than in respect of the nonpayment of Basic Rent by the Lessee) which can be cured by the payment of money has occurred, the Owner Trustee may, but shall not be obligated to, cure such Event of Default by making such payment prior to the Enforcement Date as is necessary to accomplish the observance or performance of the defaulted covenant, condition or agreement to the party entitled to the same.

Except as hereinafter in this Section 4.03 provided, the Owner Trustee shall not, as a result of exercising the right to cure any such Event of Default, obtain any Lien on any of the Mortgaged Property or any Rent payable under the Lease for or on account of costs or expenses incurred in connection with the exercise of such right, nor shall any claim of the Owner Trustee against Lessee or any other party for the repayment of such costs or expenses impair the prior right and security interest of the Mortgagee in and to the Mortgaged Property. Upon any payment by the Owner Trustee pursuant to the first or second preceding paragraphs of this Section 4.03, the Owner Trustee shall be subrogated to the rights of the Mortgagee and the Note Holders in respect of the Basic Rent which was overdue at the time of such payment and interest payable by the Lessee on account of its being overdue and any Supplemental Rent in respect of the reimbursement of amounts paid by Owner Trustee pursuant to the immediately preceding paragraph (but in either case shall have no rights as a secured party hereunder), and thereafter, the Owner Trustee shall be entitled (so long as the application thereof shall not give rise to an Event of Default hereunder) to receive such overdue Basic Rent or Supplemental Rent, as the case may be, and interest thereon upon receipt thereof by the Mortgagee; provided, however, that (i) if the Original Amount and interest on the Equipment Notes shall have become due and payable pursuant to Section 4.04(b) hereof, such subrogation shall, until the Secured Obligations shall have been paid in full, be subordinate to the rights of the Mortgagee, the Note Holders and the Indenture Indemnities in respect of such payment of overdue Basic Rent, Supplemental Rent and such interest and (ii) the Owner Trustee shall not otherwise attempt to recover any such amount paid by it on behalf of the Lessee pursuant to this Section 4.03 except by demanding of the Lessee payment of such amount, or by commencing an action at law against the Lessee and obtaining and enforcing a judgment against the Lessee for the payment of such amount or taking appropriate action in a pending action at law against the Lessee (provided, however, that at no time while an Event of Default shall have occurred and be continuing shall any such demand be made or shall any such action be commenced (or continued) and any amounts nevertheless

received by the Owner Trustee in respect thereof shall be held in trust for the benefit of, and promptly paid to, the Mortgagee for distribution as provided in Section 3.03 hereof).

Neither the Owner Trustee nor the Owner Participant shall have the right to cure any Lease Event of Default or Lease Default except as specified in this Section 4.03.

SECTION 4.04. Remedies.

(a) If an Event of Default shall have occurred and be continuing and so long as the same shall continue unremedied, then and in every such case the Mortgagee may, subject to the second and third paragraphs of this Section 4.04(a), exercise any or all of the rights and powers and pursue any and all of the remedies pursuant to this Article IV and shall have and may exercise all of the rights and remedies of a secured party under the Uniform Commercial Code and, in the event such Event of Default is also a Lease Event of Default, any and all of the remedies pursuant to Section 15 of the Lease and may take possession of all or any part of the properties covered or intended to be covered by the Lien created hereby or pursuant hereto and may exclude the Owner Participant, the Owner Trustee and Lessee and all persons claiming under any of them wholly or partly therefrom; provided, however, that the Mortgagee shall give the Owner Trustee and the Owner Participant twenty days' prior written notice of its intention to sell the Aircraft. Unless an Event of Default not resulting from or relating to a Lease Event of Default has occurred and is continuing, the Owner Participant may bid at the sale and become the purchaser. Without limiting any of the foregoing, it is understood and agreed that the Mortgagee may exercise any right of sale of the Aircraft available to it, even though it shall not have taken possession of the Aircraft and shall not have possession thereof at the time of such sale.

Anything in this Trust Indenture to the contrary notwithstanding, the Mortgagee shall not be entitled to exercise any remedy hereunder as a result of an Event of Default which arises solely by reason of one or more events or circumstances which constitute a Lease Event of Default unless the Mortgagee as security assignee of the Owner Trustee shall have exercised or concurrently be exercising one or more of the dispossessory remedies provided for in Section 15 of the Lease with respect to the Aircraft; provided, however, that such requirement to exercise one or more of such remedies under the Lease shall not apply in circumstances where the Mortgagee is, and has been, involuntarily stayed or prohibited by applicable law or court order for a continuous period (a "Continuous Stay Period") in excess of 60 days subsequent to an entry of an order for relief pursuant to Chapter 11 of the Bankruptcy Code (such 60 day period, the "Section 1110 Period"); provided further, however that the requirement to exercise one or more of such remedies under the Lease shall nonetheless be applicable during a Continuous Stay Period subsequent to the expiration of the Section 1110 Period to the extent that the continuation of such Continuous Stay Period subsequent to the expiration of the Section 1110 Period (A) results from an agreement by the trustee or the debtor-in-possession in such proceeding during the Section 1110 Period with the approval of the relevant court to perform the Lease in accordance with Section 1110(a)(2)(A) of the Bankruptcy Code and continues to perform as required by Section 1110(a)(2) of the Bankruptcy Code and cures any default (other than a default of the kind specified in Section 365(b)(2) of the Bankruptcy Code) within the applicable time period specified in Section 1110(a)(2)(B) of the Bankruptcy Code or (B) is an extension of



the Section 1110 Period with the consent of the Mortgagee pursuant to Section 1110(b) of the Bankruptcy Code or (C) is the consequence of the Mortgagee's own failure to give any requisite notice or demand to any person. In the event that the applicability of Section 1110 of the Bankruptcy Code to the Aircraft is being contested by Lessee in judicial proceedings, both of the Mortgagee and the Owner Trustee shall have the right to participate in such proceedings; provided, however, that any such participation by the Owner Trustee shall not affect in any way any rights or remedy of the Mortgagee hereunder.

It is expressly understood and agreed that, subject only to the two preceding paragraphs, the inability, described in such paragraphs, of the Mortgagee to exercise any right or remedy under the Lease shall in no event and under no circumstances prevent the Mortgagee from exercising any or all of its rights, powers and remedies under this Trust Indenture, including, without limitation, this Article IV.

(b) If an Event of Default shall have occurred and be continuing, then and in every such case the Mortgagee may (and shall, upon receipt of a written demand therefor from a Majority in Interest of Note Holders), subject to Section 4.03 hereof, at any time, by delivery of written notice or notices to the Owner Trustee and the Owner Participant, declare all the Equipment Notes to be due and payable, whereupon the unpaid Original Amount of all Equipment Notes then outstanding, together with accrued but unpaid interest thereon (without Make-Whole Amount) and other amounts due thereunder, shall immediately become due and payable without presentment, demand, protest or notice, all of which are hereby waived; provided, however, that if an Event of Default referred to in clause (g) of Section 4.02 hereof shall have occurred or a Lease Event of Default under Section 14.5 of the Lease shall have occurred, then and in every such case the unpaid Original Amount then outstanding, together with accrued but unpaid interest and all other amounts due thereunder and hereunder shall immediately and without further act become due and payable without presentment, demand, protest or notice, all of which are hereby waived; provided further that in the event of a reorganization proceeding involving the Lessee instituted under Chapter 11 of the Bankruptcy Code, if no Lease Event of Default (including any Lease Event of Default set forth in Section 14.3 of the Lease) and no other Event of Default (other than the failure to pay the Original Amount of the Equipment Notes which by such declaration shall have become payable) exists at any time after the consummation of such proceeding, such declaration shall be automatically rescinded without any further action on the part of any Note Holder.

This Section 4.04(b), however, is subject to the condition that, if at any time after the Original Amount of the Equipment Notes shall have become so due and payable, and before any judgment or decree for the payment of the money so due, or any thereof, shall be entered, all overdue payments of interest upon the Equipment Notes and all other amounts payable under the Equipment Notes (except the Original Amount of the Equipment Notes which by such declaration shall have become payable) shall have been duly paid, and every other Default and Event of Default with respect to any covenant or provision of this Trust Indenture shall have been cured, then and in every such case a Majority in Interest of Note Holders may (but shall not be obligated to), by written instrument filed with the Mortgagee, rescind and annul the Mortgagee's declaration (or such automatic acceleration) and its consequences; but no such

rescission or annulment shall extend to or affect any subsequent Default or Event of Default or impair any right consequent thereon.

Any acceleration pursuant to this Section 4.04(b) shall be automatically rescinded and any related declaration of an Event of Default annulled in the event that the Owner Trustee shall have cured, in accordance with Section 4.03 hereof, the Event of Default that resulted in such acceleration or declaration.

(c) The Note Holders shall be entitled, at any sale pursuant to Section 15 of the Lease or this Section 4.04, to credit against any purchase price bid at such sale by such holder all or any part of the unpaid obligations owing to such Note Holder and secured by the Lien of this Trust Indenture (only to the extent that such purchase price would have been paid to such Note Holder pursuant to Article III hereof if such purchase price were paid in cash and the foregoing provisions of this subsection (c) were not given effect).

(d) In the event of any sale of the Trust Indenture Estate, or any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Trust Indenture, the unpaid Original Amount of all Equipment Notes then outstanding, together with accrued interest thereon (without Make-Whole Amount), and other amounts due thereunder, shall immediately become due and payable without presentment, demand, protest or notice, all of which are hereby waived.

(e) Notwithstanding anything contained herein, so long as the Pass Through Trustee under the Pass Through Trust Agreement (or its designee) is a Note Holder, the Mortgagee will not be authorized or empowered to acquire title to any Mortgaged Property or take any action with respect to any Mortgaged Property so acquired by it if such acquisition or action would cause any Trust to fail to qualify as a "grantor trust" for federal income tax purposes.

SECTION 4.05. Return of Aircraft, Etc.

(a) If an Event of Default shall have occurred and be continuing and the Equipment Notes have been accelerated, subject to Section 4.03 hereof and unless the Owner Trustee or the Owner Participant shall have elected to purchase the Equipment Notes, at the request of the Mortgagee, the Owner Trustee shall promptly execute and deliver to the Mortgagee such instruments of title and other documents as the Mortgagee may deem necessary or advisable to enable the Mortgagee or an agent or representative designated by the Mortgagee, at such time or times and place or places as the Mortgagee may specify, to obtain possession of all or any part of the Mortgaged Property included in the Trust Indenture Estate to which the Mortgagee shall at the time be entitled hereunder. If the Owner Trustee shall for any reason fail to execute and deliver such instruments and documents after such request by the Mortgagee, the Mortgagee may (i) obtain a judgment conferring on the Mortgagee the right to immediate possession and requiring the Owner Trustee to execute and deliver such instruments and documents to the Mortgagee, to the entry of which judgment the Owner Trustee hereby specifically consents to the fullest

extent permitted by Law, and (ii) pursue all or part of such Mortgaged Property wherever it may be found and, in the event that a Lease Event of Default has occurred and is continuing, may enter any of the premises of Lessee wherever such Mortgaged Property may be or be supposed to be and search for such Mortgaged Property and take possession of and remove such Mortgaged Property. All expenses of obtaining such judgment or of pursuing, searching for and taking such property shall, until paid, be secured by the Lien of this Trust Indenture.

(b) Upon every such taking of possession, the Mortgagee may, from time to time, at the expense of the Mortgaged Property, make all such expenditures for maintenance, use, operation, storage, insurance, leasing, control, management, disposition, modifications or alterations to and of the Mortgaged Property, as it may deem proper. In each such case, the Mortgagee shall have the right to maintain, use, operate, store, insure, lease, control, manage, dispose of, modify or alter the Mortgaged Property and to carry on the business and to exercise all rights and powers of the Owner Participant and the Owner Trustee relating to the Mortgaged Property, as the Mortgagee shall deem best, including the right to enter into any and all such agreements with respect to the maintenance, use, operation, storage, insurance, leasing, control, management, disposition, modification or alteration of the Mortgaged Property or any part thereof as the Mortgagee may determine, and the Mortgagee shall be entitled to collect and receive directly all tolls, rents (including Rent), revenues, issues, income, products and profits of the Mortgaged Property and every part thereof, except Excluded Payments, without prejudice, however, to the right of the Mortgagee under any provision of this Trust Indenture to collect and receive all cash held by, or required to be deposited with, the Mortgagee hereunder other than Excluded Payments. Such tolls, rents (including Rent), revenues, issues, income, products and profits shall be applied to pay the expenses of the maintenance, use, operation, storage, insurance, leasing, control, management, disposition, improvement, modification or alteration of the Mortgaged Property and of conducting the business thereof, and to make all payments which the Mortgagee may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Mortgaged Property or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Owner Trustee), and all other payments which the Mortgagee may be required or authorized to make under any provision of this Trust Indenture, as well as just and reasonable compensation for the services of the Mortgagee, and of all persons properly engaged and employed by the Mortgagee with respect hereto.

SECTION 4.06. Remedies Cumulative.

Each and every right, power and remedy given to the Mortgagee specifically or otherwise in this Trust Indenture shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at Law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Mortgagee in the

exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Owner Trustee or Lessee or to be an acquiescence therein.

SECTION 4.07. Discontinuance of Proceedings.

In case the Mortgagee shall have instituted any proceeding to enforce any right, power or remedy under this Trust Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Mortgagee, then and in every such case the Owner Trustee, the Mortgagee and Lessee shall, subject to any determination in such proceedings, be restored to their former positions and rights hereunder with respect to the Mortgaged Property, and all rights, remedies and powers of the Owner Trustee, the Mortgagee or Lessee shall continue as if no such proceedings had been instituted.

SECTION 4.08. Waiver of Past Defaults.

Upon written instruction from a Majority in Interest of Note Holders, the Mortgagee shall waive any past Default hereunder and its consequences and upon any such waiver such Default shall cease to exist and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Trust Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon; provided, however, that in the absence of written instructions from all the Note Holders, the Mortgagee shall not waive any Default (i) in the payment of the Original Amount, Make-Whole Amount, if any, and interest and other amounts due under any Equipment Note then outstanding, or (ii) in respect of a covenant or provision hereof which, under Article IX hereof, cannot be modified or amended without the consent of each Note Holder.

SECTION 4.09. Appointment of Receiver.

The Mortgagee shall, as a matter of right, be entitled to the appointment of a receiver (who may be the Mortgagee or any successor or nominee thereof) for all or any part of the Mortgaged Property, whether such receivership be incidental to a proposed sale of the Mortgaged Property or the taking of possession thereof or otherwise, and the Owner Trustee hereby consents to the appointment of such a receiver and will not oppose any such appointment. Any receiver appointed for all or any part of the Mortgaged Property shall be entitled to exercise all the rights and powers of the Mortgagee with respect to the Mortgaged Property.

SECTION 4.10. Mortgagee Authorized to Execute Bills of Sale, Etc.

Subject to the provisions of this Trust Indenture, the Owner Trustee irrevocably appoints the Mortgagee the true and lawful attorney-in-fact of the Owner Trustee (which appointment is coupled with an interest) in its name and stead and on its behalf, for the purpose of effectuating any sale, assignment, transfer or delivery for the enforcement of the Lien of this Trust Indenture, whether pursuant to foreclosure or power of sale, assignments and other instruments as may be necessary or appropriate, with full power of substitution, the Owner Trustee hereby ratifying and confirming all that such attorney or any substitute shall do by virtue hereof in accordance with applicable law. Nevertheless, if so requested by the Mortgagee or any

purchaser, the Owner Trustee shall ratify and confirm any such sale, assignment, transfer or delivery, by executing and delivering to the Mortgagee or such purchaser all bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

SECTION 4.11. Rights of Note Holders to Receive Payment.

Notwithstanding any other provision of this Trust Indenture, the right of any Note Holder to receive payment of principal of, and premium (including, without limitation, Make-Whole Amount), if any, and interest on an Equipment Note on or after the respective due dates expressed in such Equipment Note, or to bring suit for the enforcement of any such payment on or after such respective dates in accordance with the terms hereof, shall not be impaired or affected without the consent of such Note Holder.

**ARTICLE V**

**DUTIES OF THE MORTGAGEE**

SECTION 5.01. Notice of Event of Default.

If the Mortgagee shall have Actual Knowledge of an Event of Default or of a Default arising from a failure to pay Rent, the Mortgagee shall give prompt written notice thereof to the Owner Trustee, the Owner Participant, Lessee, and each Note Holder. Subject to the terms of Sections 2.13, 4.03, 4.04, 4.08, 5.02 and 5.03 hereof, the Mortgagee shall take such action, or refrain from taking such action, with respect to such Event of Default or Default (including with respect to the exercise of any rights or remedies hereunder) as the Mortgagee shall be instructed in writing by a Majority in Interest of Note Holders. Subject to the provisions of Section 5.03, if the Mortgagee shall not have received instructions as above provided within 20 days after mailing notice of such Event of Default to the Note Holders, the Mortgagee may, subject to instructions thereafter received pursuant to the preceding provisions of this Section 5.01, take such action, or refrain from taking such action, but shall be under no duty to take or refrain from taking any action, with respect to such Event of Default or Default as it shall determine advisable in the best interests of the Note Holders; provided, however, that the Mortgagee may not sell the Aircraft or any Engine without the consent of a Majority in Interest of Note Holders. For all purposes of this Trust Indenture, in the absence of Actual Knowledge on the part of the Mortgagee, the Owner Trustee or the Owner Participant, the Mortgagee, the Owner Trustee or the Owner Participant, as the case may be, shall not be deemed to have knowledge of a Default or an Event of Default (except, in the case of the Mortgagee, the failure of Lessee to pay any installment of Basic Rent within one Business Day after the same shall become due, if any portion of such installment was then required to be paid to the Mortgagee, which failure shall constitute knowledge of a Default) unless notified in writing by Lessee, the Owner Trustee, the Owner Participant or one or more Note Holders.

SECTION 5.02. Action upon Instructions; Certain Rights and Limitations.

(a) Subject to the terms of Sections 2.13, 4.03, 4.04(a) and (b), 4.08, 5.01 and 5.03 hereof, upon the written instructions at any time and from time to time of a Majority

in Interest of Note Holders, the Mortgagee shall, subject to the terms of this Section 5.02, take such of the following actions as may be specified in such instructions: (i) give such notice or direction or exercise such right, remedy or power hereunder as shall be specified in such instructions; (ii) give such notice or direction or exercise such right, remedy or power under the Lease, the Participation Agreement, the Purchase Agreement, the Purchase Agreement Assignment, or any other part of the Trust Indenture Estate as shall be specified in such instructions; and (iii) approve as satisfactory to the Mortgagee all matters required by the terms of the Lease to be satisfactory to the Owner Trustee, it being understood that without the written instructions of a Majority in Interest of Note Holders, the Mortgagee shall not approve any such matter as satisfactory to the Mortgagee; provided, however, that anything contained in this Trust Indenture, the Lease or the other Operative Agreements to the contrary notwithstanding, but subject to the next paragraph hereof:

(1) the Owner Trustee or the Owner Participant, may, without the consent of the Mortgagee, demand, collect, sue for or otherwise obtain all amounts included in Excluded Payments from Lessee and seek legal or equitable remedies to require Lessee to maintain the insurance coverage referred to in Section 11 of the Lease; provided, however, that the rights referred to in this clause (1) shall not be deemed to include the exercise of any remedies provided for in Section 15 of the Lease other than the right to proceed by appropriate court action, either at Law or in equity, to enforce payment by Lessee of such amounts included in Excluded Payments or performance by Lessee of such insurance covenant or to recover damages for the breach thereof or for specific performance of any other term of the Lease;

(2) (A) so long as the Mortgagee has not foreclosed the Lien of the Trust Indenture, the Mortgagee shall not, without the consent of the Owner Trustee, enter into, execute or deliver amendments or modifications in respect of any of the provisions of the Lease, and (B) unless a Mortgagee Event shall have occurred and be continuing, the Mortgagee shall not, without the consent of the Owner Trustee, which consent shall not be withheld if no right or interest of the Owner Trustee or the Owner Participant shall be diminished or impaired thereby, (i) enter into, execute or deliver waivers or consents in respect of any of the provisions of the Lease, or (ii) approve any accountants, engineers, appraisers or counsel as satisfactory to render services for or issue opinions to the Owner Trustee pursuant to the Operative Agreements, provided that whether or not any Mortgagee Event has occurred and is continuing, the Owner Trustee's consent shall be required with respect to any waivers or consents in respect of any of the provisions of Section 5, 7 or 11 of the Lease, or of any other Section of the Lease to the extent such action shall affect (y) the amount or timing of, or the right to enforce payment of any Excluded Payment or (z) the amount or timing of any amounts payable by the Lessee under the Lease as originally executed (or as subsequently modified with the consent of the Owner Trustee) which, absent the occurrence and continuance of an Event of Default hereunder, would be distributable to the Owner Trustee under Article III hereof;

(3) whether or not a Default or Event of Default under the Trust Indenture has occurred and is continuing, the Owner Trustee and the Owner Participant shall have the right, together with the Mortgagee, (i) to receive from Lessee certificates and other

documents and information which Lessee is required to give or furnish to the Owner Trustee or the Lessor pursuant to any Operative Agreement and (ii) to inspect in accordance with the Lease the Airframe and Engines and all Aircraft Documents;

(4) so long as no Mortgagee Event has occurred and is continuing, the Owner Trustee shall have the right, to the exclusion of the Mortgagee, to adjust Stipulated Loss Values and Termination Values as provided in Section 3.2 of the Lease or to adjust any installment or amount of Basic Rent, Stipulated Loss Value or Termination Value, as such installments and amounts are set forth in Schedules 2, 3 and 4, respectively, to the Lease, to the extent of the portion of such installment or amount that would, under Section 3.01, 3.02 or 3.03 hereof, as the case may be, be distributable to the Owner Trustee or the Owner Participant;

(5) whether or not a Default or Event of Default under the Trust Indenture has occurred and is continuing, the Owner Trustee may, without the consent of the Mortgagee, (i) solicit and make bids with respect to the Aircraft under Section 9 of the Lease in respect of a termination of the Lease by Lessee pursuant to Section 9 thereof, (ii) determine Fair Market Sales Value and Fair Market Rental Value under Section 17 of the Lease for all purposes except following a Mortgagee Event pursuant to Section 15 of the Lease, (iii) make an election pursuant to and in accordance with the provisions of Sections 9.1(b), 9.2 and 9.3 of the Lease, and (iv) obtain insurance for its own account in accordance with Section 11.2 of the Lease; and

(6) so long as no Mortgagee Event shall have occurred and be continuing, all other rights of the "Lessor" under the Lease shall be exercised by the Owner Trustee to the exclusion of the Mortgagee including, without limitation, the right to (i) exercise all rights with respect to Lessee's use and operation, modification or maintenance of the Aircraft and any Engine which the Lease specifically confers on the Lessor, and (ii) consent to and approve any assignment pursuant to Section 13 of the Lease; provided, however, that the foregoing shall not (x) limit (A) any rights separately granted to the Mortgagee under the Operative Agreements or (B) the right of the Mortgagee to receive any funds to be delivered to the "Lessor" under the Lease (except with respect to Excluded Payments) and under the Purchase Agreement or (y) confer upon the Owner Trustee the right to adversely affect the validity or enforceability of the lien of this Trust Indenture.

Notwithstanding anything to the contrary contained herein (including this Section 5.02), the Mortgagee shall have the right, to the exclusion of the Owner Trustee and the Owner Participant, to (A) declare the Lease to be in default under Section 15 thereof and (B) subject only to the provisions of Sections 4.03, 4.04(a) and (b) and 2.13 hereof, exercise the remedies set forth in such Section 15 (other than in connection with Excluded Payments and provided that each of the Owner Trustee, Owner Participant and Mortgagee shall independently retain the rights set forth in clause (ii) of Section 15.1.5 of the Lease) at any time that a Lease Event of Default shall have occurred and be continuing. Further and for the avoidance of doubt, and anything to the contrary contained herein (including this Section 5.02), in no event may the Owner Trustee amend or otherwise modify the provisions of Section 3.2.1(b) of the Lease or of



the final sentence of the definition of Stipulated Loss Value or Termination Value, in any such case, without the prior written consent of the Mortgagee.

The Mortgagee will execute and the Owner Trustee will file or cause to be filed such continuation statements with respect to financing statements relating to the security interest created hereunder in the Trust Indenture Estate as may be specified from time to time in written instructions of a Majority in Interest of Note Holders (which instructions shall be accompanied by the form of such continuation statement so to be filed). The Mortgagee will furnish to each Note Holder (and, during the continuation of a Mortgagee Event, to the Owner Trustee and Owner Participant), promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates and other instruments furnished to the Mortgagee under the Lease, under the Participation Agreement or hereunder, including, without limitation, a copy of each report or notice received pursuant to Section 9 and Paragraph E of Annex D of the Lease, respectively, to the extent that the same shall not have been furnished to such holder pursuant hereto or the Lease.

(b) If any Lease Event of Default shall have occurred and be continuing and the Owner Trustee shall not have cured fully such Lease Event of Default under and in accordance with Section 4.03 hereof, on request of a Majority in Interest of Note Holders, the Mortgagee shall declare the Lease to be in default pursuant to Section 15 thereof and exercise those remedies specified by such Note Holders. The Mortgagee agrees to provide to the Note Holders, the Owner Trustee and the Owner Participant concurrently with such declaration by the Mortgagee, notice of such declaration by the Mortgagee.

SECTION 5.03. Indemnification.

The Mortgagee shall not be required to take any action or refrain from taking any action under Section 5.01 (other than the first sentence thereof), 5.02 or Article IV hereof unless the Mortgagee shall have been indemnified to its reasonable satisfaction against any liability, cost or expense (including counsel fees) which may be incurred in connection therewith pursuant to a written agreement with one or more Note Holders. The Mortgagee agrees that it shall look solely to the Note Holders for the satisfaction of any indemnity (except expenses for foreclosure of the type referred to in clause "First" of Section 3.03 hereof) owed to it pursuant to this Section 5.03. The Mortgagee shall not be under any obligation to take any action under this Trust Indenture or any other Operative Agreement and nothing herein or therein shall require the Mortgagee to expend or risk its own funds or otherwise incur the risk of any financial liability in the performance of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it (the written indemnity of any Note Holder who is a QIB, signed by an authorized officer thereof, in favor of, delivered to and in form reasonably satisfactory to the Mortgagee shall be accepted as reasonable assurance of adequate indemnity). The Mortgagee shall not be required to take any action under Section 5.01 (other than the first sentence thereof) or 5.02 or Article IV hereof, nor shall any other provision of this Trust Indenture or any other Operative Agreement be deemed to impose a duty on the Mortgagee to take any action, if the Mortgagee shall have been advised by counsel that such action is contrary to the terms hereof or of the Lease or is otherwise contrary to Law.



SECTION 5.04. No Duties Except as Specified in Trust Indenture or Instructions.

The Mortgagee shall not have any duty or obligation to use, operate, store, lease, control, manage, sell, dispose of or otherwise deal with the Aircraft or any other part of the Trust Indenture Estate, or to otherwise take or refrain from taking any action under, or in connection with, this Trust Indenture or any part of the Trust Indenture Estate, except as expressly provided by the terms of this Trust Indenture or as expressly provided in written instructions from Note Holders as provided in this Trust Indenture; and no implied duties or obligations shall be read into this Trust Indenture against the Mortgagee. The Mortgagee agrees that it will in its individual capacity and at its own cost and expense (but without any right of indemnity in respect of any such cost or expense under Section 7.01 hereof), promptly take such action as may be necessary duly to discharge all liens and encumbrances on any part of the Trust Indenture Estate which result from claims against it in its individual capacity not related to the ownership of the Aircraft or the administration of the Trust Indenture Estate or any other transaction pursuant to this Trust Indenture or any document included in the Trust Indenture Estate.

SECTION 5.05. No Action Except Under Lease, Trust Indenture or Instructions.

The Owner Trustee and the Mortgagee agree that they will not use, operate, store, lease, control, manage, sell, dispose of or otherwise deal with the Aircraft or any other part of the Trust Indenture Estate except (i) as required by the terms of the Lease or (ii) in accordance with the powers granted to, or the authority conferred upon, the Owner Trustee and the Mortgagee pursuant to this Trust Indenture and in accordance with the express terms hereof.

SECTION 5.06. Replacement Airframes and Replacement Engines.

At any time an Airframe or Engine is to be replaced under or pursuant to Section 10 of the Lease by a Replacement Airframe or Replacement Engine, if no Lease Event of Default is continuing, the Owner Trustee shall direct the Mortgagee to execute and deliver to the Owner Trustee an appropriate instrument releasing such Airframe and/or Engine as appropriate from the Lien of this Trust Indenture and the Mortgagee shall execute and deliver such instrument as aforesaid, but only upon compliance by Lessee with the applicable provisions of Section 10 of the Lease.

SECTION 5.07. Indenture Supplements for Replacements.

If a Replacement Airframe or Replacement Engine is being substituted as contemplated by Section 10 of the Lease, the Owner Trustee and the Mortgagee agree for the benefit of the Note Holders and Lessee, subject to fulfillment of the conditions precedent and compliance by Lessee with its obligations set forth in Section 10 of the Lease and the requirements of Section 5.06 hereof with respect to such Replacement Airframe or Replacement Engine, to execute and deliver a Lease Supplement and a Trust Indenture Supplement, as applicable, as contemplated by Section 10 of the Lease.

SECTION 5.08. Effect of Replacement.

In the event of the substitution of a Replacement Airframe or of a Replacement Engine pursuant to Section 10 of the Lease, all provisions of this Trust Indenture relating to the Airframe or Engine or Engines being replaced shall be applicable to such Replacement Airframe or Replacement Engine or Engines with the same force and effect as if such Replacement Airframe or Replacement Engine or Engines were the same airframe or engine or engines, as the case may be, as the Airframe or Engine or Engines being replaced but for the Event of Loss with respect to the Airframe or Engine or Engines being replaced.

SECTION 5.09. Investment of Amounts Held by Mortgagee.

Any amounts held by the Mortgagee as assignee of the Owner Trustee's rights to hold monies for security pursuant to Section 4.4 of the Lease shall be held in accordance with the terms of such Section and the Mortgagee agrees, for the benefit of Lessee, to perform the duties of the Owner Trustee under such Section. Any amounts held by the Mortgagee pursuant to the proviso in Clause "Second" of the first sentence of Section 3.01, pursuant to Section 3.02, or pursuant to any provision of any other Operative Agreement providing for amounts to be held by the Mortgagee which are not distributed pursuant to the other provisions of Article III hereof shall be invested by the Mortgagee from time to time in Cash Equivalents as directed by the Owner Trustee so long as the Mortgagee may acquire the same using its best efforts. All Cash Equivalents held by the Mortgagee pursuant to Section 4.4 of the Lease or this Section 5.09 shall either be (a) registered in the name of, payable to the order of, or specially endorsed to, the Mortgagee, or (b) held in an Eligible Account. Unless otherwise expressly provided in this Trust Indenture, any income realized as a result of any such investment, net of the Mortgagee's reasonable fees and expenses in making such investment, shall be held and applied by the Mortgagee in the same manner as the principal amount of such investment is to be applied and any losses, net of earnings and such reasonable fees and expenses, shall be charged against the principal amount invested. The Mortgagee shall not be liable for any loss resulting from any investment required to be made by it under this Trust Indenture other than by reason of its willful misconduct or gross negligence, and any such investment may be sold (without regard to its maturity) by the Mortgagee without instructions whenever such sale is necessary to make a distribution required by this Trust Indenture.

**ARTICLE VI**

**THE OWNER TRUSTEE AND THE MORTGAGEE**

SECTION 6.01. Acceptance of Trusts and Duties.

The Mortgagee accepts the duties hereby created and applicable to it and agrees to perform the same but only upon the terms of this Trust Indenture and agrees to receive and disburse all monies constituting part of the Trust Indenture Estate in accordance with the terms hereof. The Owner Trustee, in its individual capacity, and the Mortgagee, in its individual capacity, shall not be answerable or accountable under any circumstances, except (i) for their own willful misconduct or gross negligence (other than for the handling of funds, for which the standard of accountability shall be willful misconduct or negligence), (ii) in the case of the

Mortgagee, as provided in the third sentence of Section 2.04(a) hereof and the last sentence of Section 5.04 hereof, and (iii) for liabilities that may result, in the case of the Owner Trustee, from the inaccuracy of any representation or warranty of the Owner Trustee expressly made in its individual capacity in the Participation Agreement or in Section 4.01(b) or 6.03 hereof (or in any certificate furnished to the Mortgagee or any Note Holder in connection with the transactions contemplated by the Operative Agreements) or, in the case of the Mortgagee (in its individual capacity), from the inaccuracy of any representation or warranty of the Mortgagee (in its individual capacity) in the Participation Agreement or expressly made hereunder. Neither the Owner Trustee nor the Mortgagee shall be liable for any action or inaction of the other or of the Owner Participant.

SECTION 6.02. Absence of Duties.

In the case of the Mortgagee, except in accordance with written instructions furnished pursuant to Section 5.01 or 5.02 hereof, and except as provided in, and without limiting the generality of, Sections 5.03, 5.04 and 6.08 hereof and, in the case of the Owner Trustee, except as provided in Section 4.01(b) hereof, the Owner Trustee and the Mortgagee shall have no duty (i) to see to any registration of the Aircraft or any recording or filing of the Lease or of this Trust Indenture or any other document, or to see to the maintenance of any such registration, recording or filing, (ii) to see to any insurance on the Aircraft or to effect or maintain any such insurance, whether or not Lessee shall be in default with respect thereto, (iii) to see to the payment or discharge of any lien or encumbrance of any kind against any part of the Trust Estate or the Trust Indenture Estate, (iv) to confirm, verify or inquire into the failure to receive any financial statements from Lessee, or (v) to inspect the Aircraft at any time or ascertain or inquire as to the performance or observance of any of Lessee's covenants under the Lease with respect to the Aircraft. The Owner Participant shall not have any duty or responsibility hereunder, including, without limitation, any of the duties mentioned in clauses (i) through (v) above; provided, however, that nothing contained in this sentence shall limit any obligations of the Owner Participant under the Participation Agreement or relieve the Owner Participant from any restriction under Section 4.03 hereof.

SECTION 6.03. No Representations or Warranties as to Aircraft or Documents.

NEITHER THE MORTGAGEE IN ITS INDIVIDUAL OR TRUST CAPACITY NOR THE OWNER TRUSTEE IN ITS INDIVIDUAL CAPACITY OR AS OWNER TRUSTEE UNDER THE TRUST AGREEMENT, MAKES OR SHALL BE DEEMED TO HAVE MADE AND EACH HEREBY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, AIRWORTHINESS, VALUE, COMPLIANCE WITH SPECIFICATIONS, CONDITION, DESIGN, QUALITY, DURABILITY, OPERATION, MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE OF THE AIRCRAFT OR ANY ENGINE, AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, AS TO THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, except the Owner Trustee in its individual capacity warrants that (i) the Owner Trustee has received on the

Delivery Date whatever title was conveyed to it, and (ii) the Aircraft is free and clear of Lessor Liens attributable to the Owner Trustee in its individual capacity. Neither the Owner Trustee, in its individual capacity or as Owner Trustee under the Trust Agreement, nor the Mortgagee, in its individual or trust capacities, makes or shall be deemed to have made any representation or warranty as to the validity, legality or enforceability of this Trust Indenture, the Trust Agreement, the Participation Agreement, the Equipment Notes, the Lease, the Purchase Agreement or the Purchase Agreement Assignment with the Consent and Agreement attached thereto, or as to the correctness of any statement contained in any thereof, except for the representations and warranties of the Owner Trustee made in its individual capacity and the representations and warranties of the Mortgagee in its individual capacity, in each case expressly made in this Trust Indenture or in the Participation Agreement. The Loan Participant, the Note Holders and the Owner Participant make no representation or warranty hereunder whatsoever.

SECTION 6.04. No Segregation of Monies; No Interest.

Any monies paid to or retained by the Mortgagee pursuant to any provision hereof and not then required to be distributed to the Note Holders, Lessee or the Owner Trustee as provided in Article III hereof need not be segregated in any manner except to the extent required by Law or Section 4.4 of the Lease and Section 5.09 hereof, and may be deposited under such general conditions as may be prescribed by Law, and the Mortgagee shall not be liable for any interest thereon (except that the Mortgagee shall invest all monies held as directed by Lessee so long as no Lease Event of Default or Lease Default has occurred and is continuing (or in the absence of such direction, by the Majority in Interest of Note Holders) in Cash Equivalents; provided, however, that any payments received, or applied hereunder, by the Mortgagee shall be accounted for by the Mortgagee so that any portion thereof paid or applied pursuant hereto shall be identifiable as to the source thereof.

SECTION 6.05. Reliance; Agreements; Advice of Counsel.

Neither the Owner Trustee nor the Mortgagee shall incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Owner Trustee and the Mortgagee may accept a copy of a resolution of the Board of Directors (or Executive Committee thereof) of any party to the Participation Agreement, certified by the Secretary or an Assistant Secretary thereof as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted and that the same is in full force and effect. As to the aggregate unpaid Original Amount of Equipment Notes outstanding as of any date, the Owner Trustee may for all purposes hereof rely on a certificate signed by any Vice President or other authorized corporate trust officer of the Mortgagee. As to any fact or matter relating to Lessee the manner of ascertainment of which is not specifically described herein, the Owner Trustee and the Mortgagee may for all purposes hereof rely on a certificate, signed by a duly authorized officer of Lessee, as to such fact or matter, and such certificate shall constitute full protection to the Owner Trustee and the Mortgagee for any action taken or omitted to be taken by them in good faith in reliance thereon. The Mortgagee shall assume, and shall be fully protected in assuming, that the Owner Trustee is authorized by the Trust Agreement to enter into this Trust Indenture and to take all action to be taken by it pursuant to the provisions hereof, and shall not inquire into the authorization of the

Owner Trustee with respect thereto. In the administration of the trusts hereunder, the Owner Trustee and the Mortgagee each may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may, at the expense of the Trust Indenture Estate, advise with counsel, accountants and other skilled persons to be selected and retained by it, and the Owner Trustee and the Mortgagee shall not be liable for anything done, suffered or omitted in good faith by them in accordance with the written advice or written opinion of any such counsel, accountants or other skilled persons.

SECTION 6.06. Capacity in Which Acting.

The Owner Trustee acts hereunder solely as trustee as herein and in the Trust Agreement provided, and not in its individual capacity, except as otherwise expressly provided herein, in the Trust Agreement and in the Participation Agreement.

SECTION 6.07. Compensation.

The Mortgagee shall be entitled to reasonable compensation, including expenses and disbursements (including the reasonable fees and expenses of counsel), for all services rendered hereunder and shall, on and subsequent to an Event of Default hereunder, have a priority claim on the Trust Indenture Estate for the payment of such compensation, to the extent that such compensation shall not be paid by Lessee, and shall have the right, on and subsequent to an Event of Default hereunder, to use or apply any monies held by it hereunder in the Trust Indenture Estate toward such payments. The Mortgagee agrees that it shall have no right against the Loan Participant, the Note Holders, the Owner Trustee or the Owner Participant for any fee as compensation for its services as trustee under this Trust Indenture.

SECTION 6.08. Instructions from Note Holders.

In the administration of the trusts created hereunder, the Mortgagee shall have the right to seek instructions from a Majority in Interest of Note Holders should any provision of this Trust Indenture appear to conflict with any other provision herein or should the Mortgagee's duties or obligations hereunder be unclear, and the Mortgagee shall incur no liability in refraining from acting until it receives such instructions. The Mortgagee shall be fully protected for acting in accordance with any instructions received under this Section 6.08.

**ARTICLE VII**

**INDEMNIFICATION OF MORTGAGEE BY OWNER TRUSTEE**

SECTION 7.01. Scope of Indemnification.

The Owner Trustee, not in its individual capacity, but solely as Owner Trustee, hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, except as to matters covered by any indemnity furnished as contemplated by Section 5.03 hereof and except as otherwise provided in Section 2.03 or 2.04(b) hereof, to assume liability for, and does hereby indemnify, protect, save and keep harmless the Mortgagee (in its individual and trust capacities), and its successors, assigns, agents and servants, from and

against any and all liabilities, obligations, losses, damages, penalties, taxes (excluding any taxes payable by the Mortgagee on or measured by any compensation received by the Mortgagee for its services under this Trust Indenture), claims, actions, suits, costs, expenses or disbursements (including legal fees and expenses) of any kind and nature whatsoever, which may be imposed on, incurred by or asserted against the Mortgagee (whether or not also indemnified against by any other person under any other document) in any way relating to or arising out of this Trust Indenture or any other Operative Agreement to which it is a party or the enforcement of any of the terms of any thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, non-acceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of the Aircraft or any Engine (including, without limitation, latent or other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way relating to or arising out of the administration of the Trust Indenture Estate or the action or inaction of the Mortgagee hereunder except only in the case of willful misconduct or gross negligence (or negligence in the case of handling funds) of the Mortgagee in the performance of its duties hereunder or resulting from the inaccuracy of any representation or warranty of the Mortgagee (in its individual capacity) referred to in Section 6.03 hereof, or as provided in Section 6.01 hereof or in the last sentence of Section 5.04 hereof, or as otherwise excluded by the terms of Section 9.1 or 9.3 of the Participation Agreement from Lessee's indemnities under such Sections. In addition, if necessary, the Mortgagee shall be entitled to indemnification from the Trust Indenture Estate for any liability, obligation, loss, damage, penalty, claim, action, suit, cost, expense or disbursement indemnified against pursuant to this Section 7.01 to the extent not reimbursed by Lessee or others, but without releasing any of them from their respective agreements of reimbursement; and to secure the same the Mortgagee shall have a prior Lien on the Trust Indenture Estate. Without limiting the foregoing, the Mortgagee agrees that, prior to seeking indemnification from the Trust Indenture Estate, it will demand, and diligently pursue in good faith (but with no duty to exhaust all legal remedies therefor), indemnification available to the Mortgagee from Lessee under the Lease or the Participation Agreement.

## ARTICLE VIII

### SUCCESSOR AND SEPARATE TRUSTEES

#### SECTION 8.01. Notice of Successor Owner Trustee.

In the case of any appointment of a successor to the Owner Trustee pursuant to the Trust Agreement including upon any merger, conversion, consolidation or sale of substantially all of the corporate trust business of the Owner Trustee pursuant to the Trust Agreement, the successor Owner Trustee shall give prompt written notice thereof to the Mortgagee, Lessee and the Note Holders.

#### SECTION 8.02. Resignation of Mortgagee; Appointment of Successor.

(a) The Mortgagee or any successor thereto may resign at any time without cause by giving at least 30 days' prior written notice to Lessee, the Owner Trustee, the Owner Participant and each Note Holder, such resignation to be effective upon the

acceptance of the trusteeship by a successor Mortgagee. In addition, a Majority in Interest of Note Holders may at any time (but only with the consent of the Lessee, which consent shall not be unreasonably withheld, except that such consent shall not be necessary if a Lease Event of Default is continuing) remove the Mortgagee without cause by an instrument in writing delivered to the Owner Trustee, Lessee, the Owner Participant and the Mortgagee, and the Mortgagee shall promptly notify each Note Holder thereof in writing, such removal to be effective upon the acceptance of the trusteeship by a successor Mortgagee. In the case of the resignation or removal of the Mortgagee, a Majority in Interest of Note Holders may appoint a successor Mortgagee by an instrument signed by such holders, which successor, so long as no Lease Event of Default shall have occurred and be continuing, shall be subject to Lessee's reasonable approval. If a successor Mortgagee shall not have been appointed within 30 days after such notice of resignation or removal, the Mortgagee, the Owner Trustee, the Owner Participant or any Note Holder may apply to any court of competent jurisdiction to appoint a successor Mortgagee to act until such time, if any, as a successor shall have been appointed as above provided. The successor Mortgagee so appointed by such court shall immediately and without further act be superseded by any successor Mortgagee appointed as above provided.

(b) Any successor Mortgagee, however appointed, shall execute and deliver to the Owner Trustee, the predecessor Mortgagee and the Lessee an instrument accepting such appointment and assuming the obligations of the Mortgagee under this Trust Indenture and the Participation Agreement arising from and after the time of such appointment, and thereupon such successor Mortgagee, without further act, shall become vested with all the estates, properties, rights, powers and duties of the predecessor Mortgagee hereunder in the trust hereunder applicable to it with like effect as if originally named the Mortgagee herein; but nevertheless upon the written request of such successor Mortgagee, such predecessor Mortgagee shall execute and deliver an instrument transferring to such successor Mortgagee, upon the trusts herein expressed applicable to it, all the estates, properties, rights and powers of such predecessor Mortgagee, and such predecessor Mortgagee shall duly assign, transfer, deliver and pay over to such successor Mortgagee all monies or other property then held by such predecessor Mortgagee hereunder.

(c) Any successor Mortgagee, however appointed, shall be a bank or trust company having its principal place of business in the Borough of Manhattan, City and State of New York; Chicago, Illinois; Hartford, Connecticut; Wilmington, Delaware; or Boston, Massachusetts and having (or whose obligations under the Operative Agreements are guaranteed by an affiliated entity having) a combined capital and surplus of at least \$100,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Mortgagee hereunder upon reasonable or customary terms.

(d) Any corporation into which the Mortgagee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Mortgagee shall be a party, or any corporation to which substantially all the corporate trust business of the Mortgagee may be

transferred, shall, subject to the terms of paragraph (c) of this Section 8.02, be a successor Mortgagee and the Mortgagee under this Trust Indenture without further act.

SECTION 8.03. Appointment of Additional and Separate Trustees.

(a) Whenever (i) the Mortgagee shall deem it necessary or desirable in order to conform to any Law of any jurisdiction in which all or any part of the Trust Indenture Estate shall be situated or to make any claim or bring any suit with respect to or in connection with the Trust Indenture Estate, this Trust Indenture, any other Indenture Agreement, the Equipment Notes or any of the transactions contemplated by the Participation Agreement, (ii) the Mortgagee shall be advised by counsel satisfactory to it that it is so necessary or prudent in the interests of the Note Holders (and the Mortgagee shall so advise the Owner Trustee and Lessee), or (iii) the Mortgagee shall have been requested to do so by a Majority in Interest of Note Holders, then in any such case, the Mortgagee and, upon the written request of the Mortgagee, the Owner Trustee, shall execute and deliver an indenture supplemental hereto and such other instruments as may from time to time be necessary or advisable either (1) to constitute one or more bank or trust companies or one or more persons approved by the Mortgagee, either to act jointly with the Mortgagee as additional trustee or trustees of all or any part of the Trust Indenture Estate, or to act as separate trustee or trustees of all or any part of the Trust Indenture Estate, in each case with such rights, powers, duties and obligations consistent with this Trust Indenture as may be provided in such supplemental indenture or other instruments as the Mortgagee or a Majority in Interest of Note Holders may deem necessary or advisable, or (2) to clarify, add to or subtract from the rights, powers, duties and obligations theretofore granted any such additional or separate trustee, subject in each case to the remaining provisions of this Section 8.03. If the Owner Trustee shall not have taken any action requested of it under this Section 8.03(a) that is permitted or required by its terms within 15 days after the receipt of a written request from the Mortgagee so to do, or if an Event of Default shall have occurred and be continuing, the Mortgagee may act under the foregoing provisions of this Section 8.03(a) without the concurrence of the Owner Trustee, and the Owner Trustee hereby irrevocably appoints (which appointment is coupled with an interest) the Mortgagee, its agent and attorney-in-fact to act for it under the foregoing provisions of this Section 8.03(a) in either of such contingencies. The Mortgagee may, in such capacity, execute, deliver and perform any such supplemental indenture, or any such instrument, as may be required for the appointment of any such additional or separate trustee or for the clarification of, addition to or subtraction from the rights, powers, duties or obligations theretofore granted to any such additional or separate trustee. In case any additional or separate trustee appointed under this Section 8.03(a) shall die, become incapable of acting, resign or be moved, all the assets, property, rights, powers, trusts, duties and obligations of such additional or separate trustee shall revert to the Mortgagee until a successor additional or separate trustee is appointed as provided in this Section 8.03(a).

(b) No additional or separate trustee shall be entitled to exercise any of the rights, powers, duties and obligations conferred upon the Mortgagee in respect of the custody, investment and payment of monies and all monies received by any such additional or separate trustee from or constituting part of the Trust Indenture Estate or



otherwise payable under any Operative Agreement to the Mortgagee shall be promptly paid over by it to the Mortgagee. All other rights, powers, duties and obligations conferred or imposed upon any additional or separate trustee shall be exercised or performed by the Mortgagee and such additional or separate trustee jointly except to the extent that applicable Law of any jurisdiction in which any particular act is to be performed renders the Mortgagee incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations (including the holding of title to all or part of the Trust Indenture Estate in any such jurisdiction) shall be exercised and performed by such additional or separate trustee. No additional or separate trustee shall take any discretionary action except on the instructions of the Mortgagee or a Majority in Interest of Note Holders. No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder, except that the Mortgagee shall be liable for the consequences of its lack of reasonable care in selecting, and the Mortgagee's own actions in acting with, any additional or separate trustee. Each additional or separate trustee appointed pursuant to this Section 8.03 shall be subject to, and shall have the benefit of Articles IV through VIII and Article X hereof insofar as they apply to the Mortgagee. The powers of any additional or separate trustee appointed pursuant to this Section 8.03 shall not in any case exceed those of the Mortgagee hereunder.

(c) If at any time the Mortgagee shall deem it no longer necessary or in order to conform to any such Law or take any such action or shall be advised by such counsel that it is no longer so necessary or desirable in the interest of the Note Holders, or in the event that the Mortgagee shall have been requested to do so in writing by a Majority in Interest of Note Holders, the Mortgagee and, upon the written request of the Mortgagee, the Owner Trustee, shall execute and deliver an indenture supplemental hereto and all other instruments and agreements necessary or proper to remove any additional or separate trustee. The Mortgagee may act on behalf of the Owner Trustee under this Section 8.03(c) when and to the extent it could so act under Section 8.03(a) hereof.

## ARTICLE IX

### SUPPLEMENTS AND AMENDMENTS TO TRUST INDENTURE AND OTHER DOCUMENTS

#### SECTION 9.01. Instructions of Majority; Limitations.

(a) Except as provided in Section 5.02 hereof, the Owner Trustee agrees it shall not enter into any amendment of or supplement to the Lease, the Purchase Agreement, the Purchase Agreement Assignment or the Consent and Agreement, or execute and deliver any written waiver or modification of, or consent under, the terms of the Lease, the Purchase Agreement, the Purchase Agreement Assignment or the Consent and Agreement, unless such supplement, amendment, waiver, modification or consent is consented to in writing by the Mortgagee and a Majority in Interest of Note Holders. Anything to the contrary contained herein notwithstanding, without the necessity of the consent of any of the Note Holders or the Mortgagee, (i) any Excluded Payments payable to the Owner Participant may be modified, amended, changed or waived in such manner

as shall be agreed to by the Owner Participant and Lessee, (ii) the Owner Trustee and Lessee may enter into amendments of or additions to the Lease to modify Section 5 (except to the extent that such amendment would affect the rights or exercise of remedies under Section 15 of the Lease) or Section 17 of the Lease so long as such amendments, modifications and changes do not and would not affect the time of, or reduce the amount of, Rent payments (except to the extent expressly permitted by Section 5.02 hereof) until after the payment in full of all Secured Obligations or otherwise adversely affect the Note Holders and (iii) the Owner Trustee may enter into a Lease Supplement (x) to evidence the succession of another party as the Owner Trustee in accordance with the terms of the Trust Agreement or (y) to provide for subjecting any Replacement Airframe or Replacement Engine to the Lease in accordance with the terms of the Lease.

(b) Without limiting the provisions of Section 9.01 hereof, the Mortgagee agrees with the Note Holders that it shall not consent to or enter into any amendment, waiver or modification of or supplement or consent to this Trust Indenture, the Lease, the Purchase Agreement, the Purchase Agreement Assignment, the Consent and Agreement or the Participation Agreement, or any other agreement included in the Trust Indenture Estate, unless such supplement, amendment, waiver, modification or consent is consented to in writing by a Majority in Interest of Note Holders, but upon the written request of a Majority in Interest of Note Holders, the Mortgagee shall from time to time enter into any such supplement or amendment, or execute and deliver any such waiver, modification or consent, as may be specified in such request and as may be (in the case of any such amendment, supplement or modification), to the extent such agreement is required, agreed to by the Owner Trustee and Lessee or, as may be appropriate, the Airframe Manufacturer or the Engine Manufacturer; provided, however, that, without the consent of each holder of an affected Equipment Note then outstanding and of the Liquidity Provider, no such amendment of or supplement to this Trust Indenture, the Lease, the Purchase Agreement, the Purchase Agreement Assignment, the Consent and Agreement or the Participation Agreement or waiver or modification of the terms of, or consent under, any thereof, shall (i) modify any of the provisions of this Section 9.01, or of Article II or III or Section 4.02, 4.04(c), 4.04(d), 5.02 or 5.06 hereof, Section 13.3, 14 (except to add an Event of Default) or 16 of the Lease, Section 15.1 of the Participation Agreement, the definitions of "Event of Default," "Default," "Lease Event of Default," "Lease Default," "Majority in Interest of Note Holders," "Make-Whole Amount" or "Note Holder," or the percentage of Note Holders required to take or approve any action hereunder, (ii) reduce the amount, or change the time of payment or method of calculation of any amount, of Original Amount, Make-Whole Amount, if any, or interest with respect to any Equipment Note, or alter or modify the provisions of Article III hereof with respect to the order of priorities in which distribution thereunder shall be made as among the Note Holders, the Owner Trustee and Lessee, (iii) reduce, modify or amend any indemnities in favor of the Owner Trustee, the Mortgagee or the Note Holders (except that the Owner Trustee (in its individual capacity) or the Mortgagee, as the case may be, may consent to any waiver or reduction of an indemnity payable to it) or the other Indenture Indemnitees, (iv) consent to any change in the Trust Indenture or the Lease which would permit redemption of Equipment Notes earlier than permitted under Section 2.10 hereof or the purchase or exchange of the Equipment Notes other than as permitted by Section 2.13 hereof, (v) except as contemplated by the Lease or the

Participation Agreement, reduce the amount or extend the time of payment of Basic Rent, Stipulated Loss Value, or Termination Value for the Aircraft in each case as set forth in the Lease, or modify, amend or supplement the Lease or consent to any assignment of the Lease, in either case releasing Lessee from its obligations in respect of the payment of Basic Rent, Stipulated Loss Value or Termination Value for the Aircraft or altering the absolute and unconditional character of the obligations of Lessee to pay Rent as set forth in Sections 3 and 16 of the Lease or (vi) permit the creation of any Lien on the Trust Indenture Estate or any part thereof other than Permitted Liens or deprive any Note Holder of the benefit of the Lien of this Trust Indenture on the Trust Indenture Estate, except as provided in connection with the exercise of remedies under Article IV hereof.

(c) At any time after the date hereof, the Owner Trustee and the Mortgagee may enter into one or more agreements supplemental hereto without the consent of any Note Holder for any of the following purposes: (i) (a) to cure any defect or inconsistency herein or in the Equipment Notes, or to make any change not inconsistent with the provisions hereof (provided that such change does not adversely affect the interests of any Note Holder in its capacity solely as Note Holder) or (b) to cure any ambiguity or correct any mistake; (ii) to evidence the succession of another party as the Owner Trustee in accordance with the terms of the Trust Agreement or to evidence the succession of a new trustee hereunder pursuant hereto, the removal of the trustee hereunder or the appointment of any co-trustee or co-trustees or any separate or additional trustee or trustees; (iii) to convey, transfer, assign, mortgage or pledge any property to or with the Mortgagee or to make any other provisions with respect to matters or questions arising hereunder so long as such action shall not adversely affect the interests of the Note Holders in its capacity solely as Note Holder; (iv) to correct or amplify the description of any property at any time subject to the Lien of this Trust Indenture or better to assure, convey and confirm unto the Mortgagee any property subject or required to be subject to the Lien of this Trust Indenture, the Airframe or Engines or any Replacement Airframe or Replacement Engine; (v) to add to the covenants of the Owner Trustee for the benefit of the Note Holders, or to surrender any rights or power herein conferred upon the Owner Trustee, the Owner Participant or the Lessee; (vi) to add to the rights of the Note Holders; and (vii) to include on the Equipment Notes any legend as may be required by Law.

SECTION 9.02. Trustees Protected.

If, in the opinion of the institution acting as Owner Trustee under the Trust Agreement or the institution acting as Mortgagee hereunder, any document required to be executed by it pursuant to the terms of Section 9.01 hereof affects any right, duty, immunity or indemnity with respect to such institution under this Trust Indenture or the Lease, such institution may in its discretion decline to execute such document.

SECTION 9.03. Documents Mailed to Note Holders.

Promptly after the execution by the Owner Trustee or the Mortgagee of any document entered into pursuant to Section 9.01 hereof, the Mortgagee shall mail, by first class mail, postage prepaid, a copy thereof to Lessee and to each Note Holder at its address last set

forth in the Equipment Note Register, but the failure of the Mortgagee to mail such copies shall not impair or affect the validity of such document.

SECTION 9.04. No Request Necessary for Lease Supplement or Trust Indenture Supplement.

No written request or consent of the Mortgagee, the Note Holders or the Owner Participant pursuant to Section 9.01 hereof shall be required to enable the Owner Trustee to enter into any Lease Supplement specifically required by the terms of the Lease or to execute and deliver a Trust Indenture Supplement specifically required by the terms hereof.

**ARTICLE X**

**MISCELLANEOUS**

SECTION 10.01. Termination of Trust Indenture.

Upon (or at any time after) payment in full of the Original Amount of, Make-Whole Amount, if any, and interest on and all other amounts due under all Equipment Notes and provided that there shall then be no other Secured Obligations due to the Indenture Indemnitees, the Note Holders and the Mortgagee hereunder or under the Participation Agreement or other Operative Agreement, the Owner Trustee shall direct the Mortgagee to execute and deliver to or as directed in writing by the Owner Trustee an appropriate instrument releasing the Aircraft and the Engines from the Lien of this Trust Indenture and releasing the Lease, the Purchase Agreement, the Purchase Agreement Assignment with the Consent and Agreement attached thereto from the assignment and pledge thereof hereunder and the Mortgagee shall execute and deliver such instrument as aforesaid and give written notice thereof to Lessee; provided, however, that this Trust Indenture and the trusts created hereby shall earlier terminate and this Trust Indenture shall be of no further force or effect upon any sale or other final disposition by the Mortgagee of all property constituting part of the Trust Indenture Estate and the final distribution by the Mortgagee of all monies or other property or proceeds constituting part of the Trust Indenture Estate in accordance with the terms hereof. Except as aforesaid otherwise provided, this Trust Indenture and the trusts created hereby shall continue in full force and effect in accordance with the terms hereof.

SECTION 10.02. No Legal Title to Trust Indenture Estate in Note Holders.

No holder of an Equipment Note shall have legal title to any part of the Trust Indenture Estate. No transfer, by operation of law or otherwise, of any Equipment Note or other right, title and interest of any Note Holder in and to the Trust Indenture Estate or hereunder shall operate to terminate this Trust Indenture or entitle such holder or any successor or transferee of such holder to an accounting or to the transfer to it of any legal title to any part of the Trust Indenture Estate.

SECTION 10.03. Sale of Aircraft by Mortgagee Is Binding.

Any sale or other conveyance of the Trust Indenture Estate, or any part thereof (including any part thereof or interest therein), by the Mortgagee made pursuant to the terms of this Trust Indenture shall bind the Note Holders and shall be effective to transfer or convey all right, title and interest of the Trustee, the Owner Trustee, the Owner Participant and such holders in and to such Trust Indenture Estate or part thereof. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Mortgagee.

SECTION 10.04. Trust Indenture for Benefit of Owner Trustee, Mortgagee, Owner Participant, Note Holders and the Other Indenture Indemnitees.

Nothing in this Trust Indenture, whether express or implied, shall be construed to give any person other than the Owner Trustee, the Mortgagee, the Owner Participant, the Note Holders and the other Indenture Indemnitees, any legal or equitable right, remedy or claim under or in respect of this Trust Indenture.

SECTION 10.05. Notices.

Unless otherwise expressly specified or permitted by the terms hereof, all notices, requests, demands, authorizations, directions, consents, waivers or documents provided or permitted by this Trust Indenture to be made, given, furnished or filed shall be in writing, personally delivered or mailed by certified mail, postage prepaid, or by facsimile or confirmed telex, and (i) if to the Owner Trustee, addressed to it at MAC: U1228-120, 299 South Main Street, 12th Floor, Salt Lake City, Utah 84111 with a copy to the Owner Participant addressed as provided in clause (iii) below, (ii) if to Mortgagee, addressed to it at its office at Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890, Attention: Corporate Trust Administration, facsimile number (302) 651-8882, (iii) if to any Participant, Lessee, any Note Holder or any other Indenture Indemnitee, addressed to such party at such address as such party shall have furnished by notice to the Owner Trustee and the Mortgagee, or, until an address is so furnished, addressed to the address of such party (if any) set forth on Schedule 1 to the Participation Agreement or in the Equipment Note Register. Whenever any notice in writing is required to be given by the Owner Trustee, any Participant or the Mortgagee or any Note Holder to any of the other of them, such notice shall be deemed given and such requirement satisfied when such notice is received, or if such notice is mailed by certified mail, postage prepaid, three Business Days after being mailed, addressed as provided above. Any party hereto may change the address to which notices to such party will be sent by giving notice of such change to the other parties to this Trust Indenture.

SECTION 10.06. Severability.

Any provision of this Trust Indenture which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any such prohibition or

unenforceability in any particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.07. No Oral Modification or Continuing Waivers.

No term or provision of this Trust Indenture or the Equipment Notes may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Owner Trustee and the Mortgagee, in compliance with Section 9.01 hereof. Any waiver of the terms hereof or of any Equipment Note shall be effective only in the specific instance and for the specific purpose given.

SECTION 10.08. Successors and Assigns.

All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, each of the parties hereto and the permitted successors and assigns of each, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by any Note Holder shall bind the successors and assigns of such holder. This Trust Indenture and the Trust Indenture Estate shall not be affected by any amendment or supplement to the Trust Agreement or by any other action taken under or in respect of the Trust Agreement, except that each reference in this Trust Indenture to the Trust Agreement shall mean the Trust Agreement as amended and supplemented from time to time to the extent permitted hereby, thereby and by the Participation Agreement. Each Note Holder by its acceptance of an Equipment Note agrees to be bound by this Trust Indenture and all provisions of the Participation Agreement applicable to a Loan Participant or a Note Holder.

SECTION 10.09. Headings.

The headings of the various Articles and sections herein and in the table of contents hereto are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 10.10. Normal Commercial Relations.

Anything contained in this Trust Indenture to the contrary notwithstanding, Owner Trustee, Mortgagee, any Participant or any bank or other Affiliate of such Participant may conduct any banking or other financial transactions, and have banking or other commercial relationships, with Lessee, fully to the same extent as if this Trust Indenture were not in effect, including without limitation the making of loans or other extensions of credit to Lessee for any purpose whatsoever, whether related to any of the transactions contemplated hereby or otherwise.

SECTION 10.11. Governing Law; Counterpart Form.

THIS TRUST INDENTURE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS TRUST INDENTURE IS BEING DELIVERED IN THE STATE OF NEW YORK. This Trust Indenture may be executed by the parties hereto in separate

counterparts (or upon separate signature pages bound together into one or more counterparts), each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 10.12. Voting by Note Holders.

All votes of the Note Holders shall be governed by a vote of a Majority in Interest of Note Holders, except as otherwise provided herein.

SECTION 10.13. Bankruptcy.

It is the intention of the parties that the Owner Trustee, as lessor under the Lease (and the Mortgagee as assignee of the Owner Trustee hereunder), shall be entitled to the benefits of Section 1110 with respect to the right to take possession of the Aircraft, Airframe, Engines and Parts and to enforce any of its other rights or remedies as provided in the Lease in the event of a case under Chapter 11 of the Bankruptcy Code in which Lessee is a debtor, and in any instance where more than one construction is possible of the terms and conditions hereof or any other pertinent Operative Agreement, each such party agrees that a construction which would preserve such benefits shall control over any construction which would not preserve such benefits.

[This space intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Trust Indenture and Mortgage to be duly executed by their respective officers thereof duly authorized as of the day and year first above written.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, not in its individual  
capacity, except as expressly provided herein, but  
solely as Owner Trustee, as Owner Trustee

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

WILMINGTON TRUST COMPANY, as Mortgagee

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



**TRUST INDENTURE AND MORTGAGE [TN] SUPPLEMENT**

This TRUST INDENTURE AND MORTGAGE [TN] SUPPLEMENT NO. 1, dated \_\_\_\_\_ (herein called this “Trust Indenture Supplement”) of WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Owner Trustee (herein called the “Owner Trustee”) under that certain [Amended and Restated]<sup>3</sup> Trust Agreement [TN] dated as of [DD] (the “Trust Agreement”), between the Owner Trustee and the Owner Participant named therein.

**WITNESSETH:**

WHEREAS, the Trust Indenture and Mortgage [TN], dated as of [DD] (as amended and supplemented to the date hereof, the “Trust Indenture”) between the Owner Trustee and Wilmington Trust Company, as Mortgagee (the “Mortgagee”), provides for the execution and delivery of a supplement thereto substantially in the form hereof, which shall particularly describe the Aircraft, and shall specifically mortgage such Aircraft to the Mortgagee; and

WHEREAS, each of the Trust Agreement and Trust Indenture relates to the Airframe and Engines described below, and a counterpart of the Trust Indenture is attached hereto and made a part hereof and this Trust Indenture Supplement, together with such counterpart of the Trust Indenture, is being filed for recordation on the date hereof with the FAA as one document;

NOW, THEREFORE, this Trust Indenture Supplement witnesseth that the Owner Trustee hereby confirms that the Lien of the Trust Indenture on the Trust Indenture Estate covers all of Owner Trustee’s right, title and interest in and to the following described property:

**AIRFRAME**

One airframe identified as follows:

Manufacturer	Model	FAA Registration Number	Manufacturer’s Serial Number
Embraer-Empresa Brasileira de Aeronáutica S.A.	EMB-145 XR		

together with all of the Owner Trustee’s right, title and interest in and to all Parts of whatever nature, whether now owned or hereinafter acquired and which are from time to time incorporated or installed in or attached to said airframe.

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3. Delete for New Aircraft.

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**AIRCRAFT ENGINES**

Two aircraft engines, each such engine having 750 or more rated take-off horsepower or the equivalent thereof, identified as follows:

<u>Manufacturer</u>	<u>Manufacturer's Model</u>	<u>Serial Number</u>
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together with all of Owner Trustee's right, title and interest in and to all Parts of whatever nature, whether now owned or hereafter acquired and which are from time to time incorporated or installed in or attached to either of such engines.

Together with all of Owner Trustee's right, title and interest in and to (a) all Parts of whatever nature, which from time to time are included within the definition of "Airframe" or "Engine", whether now owned or hereafter acquired, including all substitutions, renewals and replacements of and additions, improvements, accessions and accumulations to the Airframe and Engines (other than additions, improvements, accessions and accumulations which constitute appliances, parts, instruments, appurtenances, accessories, furnishings or other equipment excluded from the definition of Parts) and (b) all Aircraft Documents.

As further security for the obligations referred to above and secured by the Trust Indenture and hereby, the Owner Trustee has granted, bargained, sold, assigned, transferred, conveyed, mortgaged, pledged and confirmed, and does hereby grant, bargain, sell, assign, transfer, convey, mortgage, pledge and confirm, unto the Mortgagee, its successors and assigns, for the security and benefit of the Loan Participant, the Note Holders and the Indenture Indemnitees, in the trust created by the Trust Indenture, all of the right, title and interest of the Owner Trustee in, to and under the Lease Supplement of even date herewith covering the property described above.

Notwithstanding any provision hereof, no Excluded Payment shall constitute security for any of the aforementioned obligations.

TO HAVE AND TO HOLD all and singular the aforesaid property unto the Mortgagee, its successors and assigns, in trust for the equal and proportionate benefit and security of the Loan Participant, the Note Holders and the Indenture Indemnitees, except as provided in Section 2.14 and Article III of the Trust Indenture without any preference, distinction or priority of any one Equipment Note over any other by reason of priority of time of issue, sale, negotiation, date of maturity thereof or otherwise for any reason whatsoever, and for the uses and purposes and subject to the terms and provisions set forth in the Trust Indenture.

This Trust Indenture Supplement shall be construed as supplemental to the Trust Indenture and shall form a part thereof. The Trust Indenture is each hereby incorporated by reference herein and is hereby ratified, approved and confirmed.

AND, FURTHER, the Owner Trustee hereby acknowledges that the Aircraft referred to in this Trust Indenture Supplement and the aforesaid Lease Supplement has been delivered to the Owner Trustee and is included in the property of the Owner Trustee covered by all the terms and conditions of the Trust Agreement, subject to the pledge and mortgage thereof under the Trust Indenture.

\* \* \*

IN WITNESS WHEREOF, the Owner Trustee has caused this Trust Indenture Supplement to be duly executed by one of its officers, thereunto duly authorized, on the day and year first above written.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, not in its individual  
capacity, but solely as Owner Trustee, Owner  
Trustee

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

Name:

Title:

TRUST INDENTURE AND MORTGAGE

**SCHEDULE I**

**Original Amount**

**Interest Rate**



TRUST INDENTURE AND MORTGAGE

EQUIPMENT NOTE AMORTIZATION

Payment Date

Percentage of  
Original Amount  
to Be Paid

[AMENDED AND RESTATED]<sup>1</sup>

TRUST AGREEMENT [TN]

Dated as of [DD]

Between

[OP]

and

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION

One Embraer Model EMB-145 XR Aircraft  
Bearing Manufacturer's Serial No. [MSN]  
and U.S. Registration No. N[REG]  
with Two Allison Model AE3007A1E Engines  
Bearing Engine Manufacturer's Serial Nos. CAE[E1] and CAE[E2]

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1. Delete for New Aircraft.

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[AMENDED AND RESTATED]<sup>2</sup> TRUST AGREEMENT [TN]

This [AMENDED AND RESTATED]<sup>3</sup> TRUST AGREEMENT [TN], dated as of [DD], between [OP], a corporation organized under the laws of the OP Jurisdiction (“Owner Participant”), and WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, a national banking association (in its individual capacity, “Wells Fargo” and otherwise not in its individual capacity but solely as trustee hereunder, “Owner Trustee”)[, which amends and restates in its entirety the Trust Agreement [TN], dated as of [EPD], between the Owner Participant and Wells Fargo (the “Original Trust Agreement”).]<sup>4</sup>

In connection with the issuance of the Equipment Notes on a non-recourse basis by the Owner Trustee in accordance with the Participation Agreement [TN], dated as of the date hereof, among Continental Airlines, Inc., Owner Participant, Owner Trustee, Wilmington Trust Company and Embraer-Empresa Brasileira de Aeronáutica S.A., Owner Participant and Wells Fargo wish to [amend and restate the Original Trust Agreement in its entirety as]<sup>5</sup> [enter into this agreement on the terms]<sup>6</sup> set forth below.

Accordingly, the parties hereto agree as follows:

WITNESSETH:

SECTION 1. DEFINITIONS

Capitalized terms used but not defined herein shall have the respective meanings set forth or incorporated by reference, and shall be construed and interpreted in the manner described, in Annex A to the Lease Agreement [TN], dated as of the date hereof, between Owner Trustee and Continental Airlines, Inc, as Lessee.

SECTION 2. DECLARATION OF TRUST

Wells Fargo hereby declares that it will hold the Trust Estate as Owner Trustee upon the trusts hereinafter set forth for the use and benefit of Owner Participant, subject, however, to the provisions of and the Lien created by the Trust Indenture and to the provisions of the Lease and the Participation Agreement.

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2. Delete for New Aircraft.
  3. Delete for New Aircraft.
  4. Delete for New Aircraft.
  5. Delete for New Aircraft.
  6. Insert for New Aircraft.

SECTION 3. AUTHORIZATION; CONDITIONS PRECEDENT

3.1 Authorization

In respect of the Aircraft, Owner Participant hereby authorizes and directs Owner Trustee to, and Owner Trustee agrees for the benefit of Owner Participant that it will, on and after the Closing Date, subject (except with respect to Section 3.1(a)) to due compliance with the terms of Section 3.2:

- (a) execute and deliver the Participation Agreement, the Trust Indenture, the Lease and the other Owner Trustee Agreements (in the respective forms in which they are delivered from time to time by Owner Participant to Owner Trustee);
- (b) subject to the terms of this Trust Agreement, exercise (i) its rights and perform its duties under the Participation Agreement, (ii) the rights and perform the duties of Lessor under the Lease and (iii) its rights and perform its duties under the Trust Indenture and the other Owner Trustee Agreements;
- (c) execute, issue and deliver to Mortgagee for authentication and further delivery to the Subordination Agent the Equipment Notes in the amount and as provided in Section 2 of the Participation Agreement;
- [(d) purchase the Aircraft pursuant to the Purchase Agreement as assigned to Owner Trustee pursuant to the Purchase Agreement Assignment;]<sup>7</sup>
- [(e) accept from Seller the delivery of the Aircraft Bill of Sale, the FAA Bill of Sale and the invoice with respect to such Aircraft;]<sup>8</sup>
- [(f) effect the registration of the Aircraft with the FAA in the name of Owner Trustee by filing or causing to be filed with the FAA: (i) the FAA Bill of Sale; (ii) an Aircraft Registration Application in the name of Owner Trustee (including, without limitation, an affidavit from Owner Trustee in compliance with the provisions of Section 47.7(c)(2) of the FAA Regulations); and (iii) this Trust Agreement;]<sup>9</sup>
- (g) execute and deliver all agreements, documents and instruments referred to in Section 5 of the Participation Agreement to which Owner Trustee is to be a party;
- (h) execute and deliver Lease Supplement No. 1 covering the Aircraft;
- (i) execute and deliver a Trust Indenture Supplement covering the Aircraft;

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7. Insert for New Aircraft.

8. Insert for New Aircraft.

9. Insert for New Aircraft.

(j) [make payment to the Owner Participant of the proceeds from the sale of the Equipment Notes received by it,]<sup>10</sup> [make payment of Lessor's Cost for the Aircraft from the aggregate amount of the Commitments for the Aircraft of Owner Participant and Loan Participant, to the extent available to Owner Trustee, in the manner provided in the Participation Agreement;]<sup>11</sup> and

(k) execute and deliver all such other instruments, documents or certificates and take all such other actions in accordance with the direction of Owner Participant, as Owner Participant may deem necessary or advisable in connection with the transactions contemplated by this Trust Agreement and the other Operative Agreements.

### 3.2 Conditions Precedent

The rights and obligations of Owner Trustee to take the actions required by Section 3.1 shall be subject to the following conditions precedent:

(a) Owner Trustee shall have received the notice described in Section 5.1.1 of the Participation Agreement, when and as required thereby, or shall have been deemed to have waived such notice in accordance with Section 5.1.1 of the Participation Agreement;

(b) Each Participant shall have made the full amount of its Commitment specified in Section 2.1 of the Participation Agreement available to Owner Trustee, in immediately available funds, in accordance with Sections 2 and 4 of the Participation Agreement; and]<sup>12</sup>

(c) Owner Participant shall have notified Owner Trustee that the terms and conditions of Section 5 of the Participation Agreement, insofar as they relate to conditions precedent to performance by Owner Participant of its obligations thereunder, have been either fulfilled to the satisfaction of, or waived by, Owner Participant. Owner Participant shall, by instructing Owner Trustee to release for filing with the FAA the FAA Filed Documents be deemed to have found satisfactory to it, or waived, all such conditions precedent.

## SECTION 4. RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME FROM THE TRUST ESTATE

### 4.1 Payments from Trust Estate Only

Except as provided in Section 7, all payments to be made by Owner Trustee under this Trust Agreement shall be made only from [(a) in the case of funds made available in accordance with Section 4 of the Participation Agreement, the Commitments (except as otherwise provided in Section 14 of the Participation Agreement) and (b) in the case of all other

---

10. Delete for New Aircraft.

11. Insert for New Aircraft.

12. Insert for New Aircraft.

payments,]<sup>13</sup> the income from and proceeds of the Trust Estate to the extent that Owner Trustee shall have received sufficient income or proceeds from the Trust Estate to make such payments. Owner Participant agrees that it will look solely to the income from and proceeds of the Trust Estate (except as otherwise provided in Section 14 of the Participation Agreement) to the extent available for distribution to Owner Participant as provided in this Trust Agreement. Except as provided in Section 7, Owner Participant agrees that Wells Fargo is neither personally liable to Owner Participant for any amounts payable nor subject to any other liability under this Trust Agreement.

## 4.2 Distribution of Payments

### 4.2.1 Payments to Mortgagee

Until the Trust Indenture shall have been discharged pursuant to Section 10.01 thereof, all Rent, insurance proceeds and requisition or other payments of any kind included in the Trust Estate (other than Excluded Payments) payable to Owner Trustee shall be payable directly to Mortgagee (and, if any of the same are received by Owner Trustee, shall upon receipt be paid over to Mortgagee without deduction, set-off or adjustment of any kind) for distribution in accordance with the provisions of Article III of the Trust Indenture; provided, that any payments received by Owner Trustee from (a) Airframe Manufacturer with respect to Owner Trustee's fees and disbursements or (b) Owner Participant pursuant to Section 7 shall not be paid over to Mortgagee but shall be retained by Owner Trustee and applied toward the purpose for which such payments were made.

### 4.2.2 Payments to Owner Trustee, Other Parties

After the Trust Indenture shall have been discharged pursuant to Section 10.01 thereof, any payment of the type referred to in Section 4.2.1 (other than Excluded Payments) received by Owner Trustee, any payment received from Mortgagee (other than Excluded Payments) and any other amount received as part of the Trust Estate and for the application or distribution of which no provision is made in this Trust Agreement shall be distributed forthwith upon receipt by Owner Trustee in the following order of priority: first, so much of such payment as shall be required to reimburse Owner Trustee for any expenses not otherwise reimbursed as to which Owner Trustee is entitled to be so reimbursed pursuant to the provisions hereof shall be retained by Owner Trustee; second, the balance, if any, shall be paid to Owner Participant.

### 4.2.3 Certain Distributions to Owner Participant

All amounts from time to time distributable by Mortgagee to Owner Participant pursuant to the Trust Indenture shall, if paid to Owner Trustee, be distributed by Owner Trustee to Owner Participant in accordance with the provisions of Article III of the Trust Indenture; provided, that any payments received by Owner Trustee from (a) Lessee with respect to Owner Trustee's fees and disbursements or (b) Owner Participant pursuant to Section 7 shall not be paid over to Owner Participant but shall be retained by Owner Trustee and applied toward the purpose for which such payments were made.

---

13. Insert for New Aircraft.

#### 4.2.4 Excluded Payments

Any Excluded Payments received by Owner Trustee shall be paid by Owner Trustee to the Person to whom such Excluded Payments are payable under the provisions of the Participation Agreement, the Tax Indemnity Agreement or the Lease.

#### 4.2.5 Payments to the Lessee

Notwithstanding any other provision of any Operative Agreement to the contrary, if Lessee shall have given to Owner Trustee written notice that an amount is due to Lessee and unpaid under the Indemnity Agreement, all amounts that would otherwise be paid to Owner Participant under this Agreement shall instead be paid to Lessee until such amount owed to Lessee shall have been paid in full, provided that Lessee shall not be entitled to payment of a Primary Amount (as defined in the Indemnity Agreement) under this Section 4.2.5 if at the time Lessee gives such notice to Owner Trustee the Owner Participant is not the Airframe Manufacturer or an Affiliate of Airframe Manufacturer.

#### 4.3 Method of Payments

Owner Trustee shall make distributions or cause distributions to be made to Owner Participant pursuant to this Section 4 by transferring the amount to be distributed by wire transfer in immediately available funds on the day received (or on the next succeeding Business Day if the funds to be so distributed shall not have been received by Owner Trustee by 12:00 noon, New York City time, and which funds Owner Trustee shall not have been reasonably able to distribute to Owner Participant on the day received) to Owner Participant's account set forth in Schedule 1 to the Participation Agreement or to such other account or accounts of Owner Participant as Owner Participant may designate from time to time in writing to Owner Trustee; provided, that Owner Trustee shall use reasonable efforts to invest overnight, in investments that would be permitted under Section 4.4 of the Lease, all funds received by it at or later than 12:00 noon, New York City time, and which funds Owner Trustee shall not have been reasonably able to distribute to Owner Participant on the day received).

### SECTION 5. DUTIES OF OWNER TRUSTEE

#### 5.1 Notice of Event of Default

(a) If Owner Trustee shall have knowledge of a Lease Default or a Lease Event of Default or an Indenture Default or an Indenture Event of Default, Owner Trustee shall give to Owner Participant, Mortgagee and Lessee prompt telephonic or telex notice thereof followed by prompt confirmation thereof by certified mail, postage prepaid, provided, that (i) in the case of an event which with the passage of time would constitute an Indenture Event of Default of the type referred to in paragraph (c) or (e) of Section 4.02 of the Trust Indenture, such notice shall in no event be furnished later than ten days after Owner Trustee shall first have knowledge of such event and (ii) in the case of a misrepresentation by Owner Trustee which with the passage of time would constitute an Indenture Event of Default of the type referred to in paragraph (d) of Section 4.02 of the Trust Indenture, such notice shall in no event be furnished later than ten days after Owner Trustee shall first have knowledge of such event.

(b) Subject to the terms of Section 5.3, Owner Trustee shall take such action or shall refrain from taking such action, not inconsistent with the provisions of the Trust Indenture, with respect to such Lease Default, Lease Event of Default, Indenture Default or Indenture Event of Default or other event as Owner Trustee shall be directed in writing by Owner Participant. For all purposes of this Trust Agreement, the Lease and the other Operative Agreements, in the absence of Actual Knowledge of Owner Trustee, Owner Trustee shall not be deemed to have knowledge of a Lease Default, Lease Event of Default, Indenture Default or Indenture Event of Default unless notified in writing by Mortgagee, Owner Participant or Lessee.

### 5.2 Action upon Instructions

Subject to the terms of Sections 5.1 and 5.3, upon the written instructions at any time and from time to time of Owner Participant, Owner Trustee will take such of the following actions, not inconsistent with the provisions of the Lease and the Trust Indenture, as may be specified in such instructions: (a) give such notice or direction or exercise such right, remedy or power under this Trust Agreement or any of the other Owner Trustee Agreements or in respect of all or any part of the Trust Estate, or take such other action, as shall be specified in such instructions (including entering into such agreements and instruments as shall be necessary under Section 10); (b) take such action to preserve or protect the Trust Estate (including the discharge of Liens) as may be specified in such instructions; (c) approve as satisfactory to it all matters required by the terms of the Lease or the other Operative Agreements to be satisfactory to Owner Trustee, it being understood that without written instructions of Owner Participant, Owner Trustee shall not approve any such matter as satisfactory to it; (d) subject to the rights of Lessee under the Operative Agreements, after the expiration or earlier termination of the Lease, convey all of Owner Trustee's right, title and interest in and to the Aircraft for such amount, on such terms and to such purchaser or purchasers as shall be designated in such instructions, or retain, lease or otherwise dispose of, or from time to time take such other action with respect to, the Aircraft on such terms as shall be designated in such instructions; and (e) take or refrain from taking such other action or actions as may be specified in such instructions.

### 5.3 Limitations on Duties

Owner Trustee shall not be required to take any action under Section 5.1 (other than the giving of the notices referred to therein) or 5.2 if Owner Trustee shall reasonably believe such action is not adequately indemnified by Owner Participant under Section 7, unless Lessee or Owner Participant agrees to furnish such additional indemnity as shall reasonably be required, in manner and form satisfactory to Owner Trustee, and, in addition to the extent not otherwise paid pursuant to the provisions of the Lease or of the Participation Agreement, to pay the reasonable compensation of Owner Trustee for the services performed or to be performed by it pursuant to such direction and any reasonable fees and disbursements of counsel or agents employed by Owner Trustee in connection therewith. Owner Trustee shall not be required to take any action under Section 5.1 or 5.2 (other than the giving of the notices referred to therein) if Owner Trustee shall have been advised by counsel that such action is contrary to the terms of any of the Owner Trustee Agreements or is otherwise contrary to Law and Owner Trustee has delivered to Owner Participant written notice of the basis for its refusal to act.

#### 5.4 No Duties except as Specified; No Action except as Specified

##### 5.4.1 No Duties except as Specified

Owner Trustee shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Aircraft or any other part of the Trust Estate or to otherwise take or refrain from taking any action under, or in connection with, any of the Owner Trustee Agreements, except as expressly required by the terms of any of the Owner Trustee Agreements, or (to the extent not inconsistent with the provisions of the Trust Indenture) as expressly provided by the terms hereof or in a written instruction from Owner Participant received pursuant to the terms of Section 5.1 or 5.2, and no implied duties or obligations shall be read into this Trust Agreement against Owner Trustee. Wells Fargo agrees that it will, in its individual capacity and at its own cost or expense (but without any right of indemnity in respect of any such cost or expense hereunder or under the Participation Agreement), promptly take such action as may be necessary to duly discharge and satisfy in full all Lessor Liens attributable to it in its individual capacity which it is required to discharge pursuant to Section 7.3.1 of the Participation Agreement and otherwise comply with the terms of said Section binding upon it.

##### 5.4.2 No Action except as Specified

Owner Trustee shall have no power, right or authority to, and agrees that it will not, manage, control, use, sell, dispose of or otherwise deal with the Aircraft or any other part of the Trust Estate except (a) as expressly required by the terms of any of the Owner Trustee Agreements, (b) as expressly provided by the terms hereof or (c) as expressly provided in written instructions from Owner Participant pursuant to Section 5.1 or 5.2.

#### 5.5 Satisfaction of Conditions Precedent

Anything in this Trust Agreement to the contrary notwithstanding, Owner Trustee shall, subject to the satisfaction of special counsel for Owner Trustee of the occurrence of all the applicable conditions precedent specified in Section 3.2, comply with the provisions of Section 3.1.

#### 5.6 Fixed Investment Trust

Notwithstanding anything in this Trust Agreement to the contrary, Owner Trustee shall not be authorized and shall have no power to “vary the investment” of Owner Participant within the meaning of Treasury Regulations Section 301.7701-4(c)(1), it being understood that Owner Trustee shall have the power and authority to fulfill its obligations under Section 4.3 hereof, Section 4.3.3 of the Participation Agreement and Section 4.4 of the Lease.

### SECTION 6. OWNER TRUSTEE

#### 6.1 Acceptance of Trusts and Duties

Wells Fargo accepts the trusts hereby created and agrees to perform the same as Owner Trustee but only upon the terms hereof and the Trust Indenture applicable to it. Owner Trustee also agrees to receive and disburse all monies received by it constituting part of the Trust



Estate pursuant to the terms hereof. Wells Fargo shall not be answerable or accountable under any circumstances, except for (a) its own willful misconduct or gross negligence (including, without limitation, in connection with any activities of Owner Trustee in violation of Section 5.4.2), (b) its failure (in its individual capacity) to perform its obligations under Section 5.4.1, (c) its or Owner Trustee's failure to use ordinary care to receive or disburse funds or to comply with the first sentence of Section 6.8, (d) liabilities that may result from the inaccuracy of any representation or breach of warranty of it in its individual capacity (or from the failure by it in its individual capacity to perform any covenant) in this Trust Agreement, the Trust Indenture, the Lease or the Participation Agreement or elsewhere in any of the other Operative Agreements, (e) taxes, fees or other charges on, based on or measured by any fees, commissions or compensation received by Wells Fargo in connection with the transactions contemplated by this Trust Agreement and the other Operative Agreements to which it (in its individual capacity or as Owner Trustee) is a party, (f) its or Owner Trustee's failure to use ordinary care in receiving or disbursing funds or in connection with its obligation to invest funds pursuant to Section 4 of the Participation Agreement, Section 4.4 of the Lease or Section 4.3 hereof, (g) any liability on the part of Owner Trustee arising out of its negligence or willful or negligent misconduct in connection with its obligations under Section 5.1 (other than the first sentence thereof), 6.8 or 9.2 hereof or Section 4.01 of the Trust Indenture. Wells Fargo shall have no obligation to advance its individual funds for any purpose, and Owner Trustee shall have no obligation to distribute to Owner Participant, Lessee or any third party any amounts to be paid to Owner Trustee until such amounts are collected by Owner Trustee.

## 6.2 Absence of Certain Duties

(a) Except in accordance with written instructions furnished pursuant to Section 5.1 or 5.2 and except as provided in, and without limiting the generality of, Sections 3.1 and 5.4.1 and the last sentence of Section 9.1.2, and subject to Section 4.01 of the Trust Indenture, neither Owner Trustee nor Wells Fargo shall have any duty (i) to see to any recording or filing of any Operative Agreement or of any supplement to any thereof or to see to the maintenance of any such recording or filing or any other filing of reports with the FAA or other governmental agencies, except that of Wells Fargo to comply with the FAA reporting requirements set forth in 14 C.F.R. § 47.45 and 14 C.F.R. § 47.51, and Owner Trustee shall, to the extent that information for that purpose is timely supplied by Lessee pursuant to any of the Operative Agreements, complete and timely submit (and furnish Owner Participant with a copy of) any and all reports relating to the Aircraft that may from time to time be required by the FAA or any government or governmental authority having jurisdiction, (ii) to see to any insurance on the Aircraft or to effect or maintain any such insurance, whether or not Lessee shall be in default with respect thereto, other than to forward to Owner Participant copies of all reports and other written information which Owner Trustee receives from Lessee pursuant to Section 11 of the Lease, (iii) except as provided in Section 7.3.1 or 7.3.2 of the Participation Agreement, Section 4.01 of the Trust Indenture or Section 5.4 or 6.1 hereof, to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to or assessed or levied against any part of the Trust Indenture Estate or the Trust Estate, except as provided in Section 6.3.9 of the Participation Agreement or (iv) to inspect Lessee's books and records with respect to the Aircraft at any time permitted pursuant to the Lease.

(b) Notwithstanding clause (a), Owner Trustee will furnish to Mortgagee and Owner Participant, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments furnished to Owner Trustee under the Lease or any other Operative Agreement except to the extent to which a responsible officer of Owner Trustee reasonably believes (and confirms by telephone call with Owner Participant) that duplicates or copies thereof have already been furnished to Owner Participant by some other person.

### 6.3 No Representations or Warranties as to Certain Matters

NEITHER WELLS FARGO NOR OWNER TRUSTEE MAKES OR SHALL BE DEEMED TO HAVE MADE (a) ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, AIRWORTHINESS, VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE OF THE AIRCRAFT OR ANY PART THEREOF, AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, THE ABSENCE OF ANY STRICT LIABILITY OBLIGATION OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE AIRCRAFT OR ANY PART THEREOF WHATSOEVER, except that Wells Fargo warrants to Owner Participant that on the Delivery Date Owner Trustee shall have received whatever title to the Aircraft that was conveyed to it and that the Aircraft shall, on the Closing Date and during the Term, be free of Lessor Liens attributable to Wells Fargo or (b) any representation or warranty as to the validity, legality or enforceability of this Trust Agreement or any other Operative Agreement to which Wells Fargo, in its individual capacity or as Owner Trustee, is a party, or any other document or instrument, or as to the correctness of any statement contained in any thereof except to the extent that any such statement is expressly made herein or therein by such party as a representation by Wells Fargo, in its individual capacity or as Owner Trustee, as the case may be, and except that Wells Fargo hereby represents and warrants that it has all corporate power and authority to execute, deliver and perform this Trust Agreement and that this Trust Agreement has been, and (assuming due authorization, execution and delivery by Owner Participant of this Trust Agreement) the other Operative Agreements to which it or Owner Trustee is a party have been (or at the time of execution and delivery of any such instrument by it or Owner Trustee under this Trust Agreement or pursuant to the terms of the Participation Agreement that such an instrument will be) duly executed and delivered by one of its officers who is or will be, as the case may be, duly authorized to execute and deliver such instruments on behalf of itself or Owner Trustee, as the case may be, and that this Trust Agreement constitutes the legal, valid and binding obligation of Wells Fargo or Owner Trustee, as the case may be, enforceable against Wells Fargo or Owner Trustee, as the case may be, in accordance with its terms.

### 6.4 No Segregation of Monies; Interest

Monies received by Owner Trustee under this Trust Agreement need not be segregated in any manner except to the extent required by Law, or except as provided in written instructions from Owner Participant, and shall be invested as provided in Section 4.3 hereof or Section 4.4 of the Lease.

## 6.5 Reliance upon Certificates, Counsel and Agents

Owner Trustee shall incur no liability to anyone in acting in good faith in reliance upon and in accordance with any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. Unless other evidence in respect thereof is specifically prescribed in this Trust Agreement, any request, direction, order or demand of Owner Participant or Lessee mentioned in this Trust Agreement or in any of the other Owner Trustee Agreements shall be sufficiently evidenced by written instruments signed by the Chairman of the Board, the President, any Vice President or any other officer and in the name of Owner Participant or Lessee, as the case may be. Owner Trustee may accept a copy of a resolution of the Board of Directors or Executive Committee of Lessee, certified by the Secretary or an Assistant Secretary of Lessee as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by said Board of Directors or Executive Committee and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically described in this Trust Agreement, Owner Trustee may, absent Actual Knowledge to the contrary, for all purposes rely on a certificate signed by the Chairman of the Board, the President, any Vice President or any other officer of Lessee, and the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of Lessee, as to such fact or matter, and such certificate shall constitute full protection to Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon and in accordance therewith. In the administration of trusts under this Trust Agreement, Owner Trustee may execute any of the trusts or powers and perform its powers and duties under this Trust Agreement directly or through agents or attorneys and may, at the expense of the Trust Estate, consult with counsel, accountants and other skilled persons to be selected and employed by it. Owner Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

## 6.6 Not Acting in Individual Capacity

In acting under this Trust Agreement, Wells Fargo acts solely as Owner Trustee and not in its individual capacity except as otherwise expressly provided in this Trust Agreement or in the other Operative Agreements to which it is a party; and, except as may be otherwise expressly provided in this Trust Agreement, the Lease, the Participation Agreement and the Trust Indenture, all persons, other than the Owner Participant as provided in this Trust Agreement or the Trust Indenture, having any claim against Owner Trustee by reason of the transactions contemplated hereby shall look only to the Trust Estate for payment or satisfaction thereof except to the extent provided in Section 6.1 or otherwise as Owner Trustee shall expressly agree otherwise in writing.

## 6.7 Fees; Compensation

Airframe Manufacturer shall pay the Transaction Expenses and ongoing fees of Owner Trustee throughout the Term pursuant to Section 9.2 of the Participation Agreement. The Trust Estate shall not have any liability for any such fees and expenses; provided, that the foregoing shall not limit the obligations of Owner Participant under Sections 5.3 and 7; provided,

that Owner Trustee shall have a Lien upon the Trust Estate for any such fee not paid by Airframe Manufacturer as contemplated by Section 9.2 of the Participation Agreement and such Lien shall entitle Owner Trustee to priority as to payment thereof over payment to any other Person under this Trust Agreement; provided, that such Lien shall be subject and subordinate in all events to the Lien of the Trust Indenture; and provided, further, that Owner Trustee shall have no right to exercise, and shall not exercise, any rights or remedies Owner Trustee may have with respect to such Lien unless and until the Secured Obligations have been paid and performed in full.

#### 6.8 Tax Returns

Owner Trustee shall be responsible for the keeping of all appropriate books and records relating to the receipt and disbursement of all monies under this Trust Agreement or any agreement contemplated hereby. Owner Participant shall be responsible for causing to be prepared and filed all income tax returns required to be filed by Owner Participant. Owner Trustee shall be responsible for causing to be prepared, at the expense of Airframe Manufacturer, all income tax returns required to be filed with respect to the trust created hereby and shall execute and file such returns; provided, that Owner Trustee shall send promptly a completed copy of such return to Owner Participant not more than sixty nor less than fifteen days prior to the due date of the return, provided, that Owner Trustee shall have timely received all necessary information to complete and deliver to Owner Participant such return. Owner Participant, upon request, will furnish Owner Trustee with all such information as may be reasonably required from Owner Participant in connection with the preparation of such income tax returns. Owner Trustee shall keep copies of all returns delivered to or filed by it.

#### SECTION 7. INDEMNIFICATION OF WELLS FARGO BY OWNER PARTICIPANT

Owner Participant hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and hereby indemnifies, protects, saves and keeps harmless, Wells Fargo and its successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, taxes (excluding any Taxes which are not required to be indemnified by Lessee pursuant to Section 9.1 or 9.3 of the Participation Agreement and excluding any taxes payable by Wells Fargo on or measured by any compensation received by Wells Fargo for its services under this Trust Agreement), claims, actions, suits, costs, expenses or disbursements (including, without limitation, reasonable legal fees and expenses, but excluding internal costs and expenses such as salaries and overhead, and including, without limitation, any liability of an owner, any strict liability and any liability without fault) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against Wells Fargo (whether or not also indemnified against by Lessee under the Lease or under the Participation Agreement or also indemnified against by any other Person; provided, that Owner Participant shall be subrogated to the rights of Owner Trustee against Lessee or any other indemnitor) in any way relating to or arising out of this Trust Agreement or any of the other Operative Agreements or the enforcement of any of the terms of any thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, nonacceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of the Aircraft (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way

relating to or arising out of the administration of the Trust Estate or the action or inaction of Owner Trustee, under this Trust Agreement, except (a) in the case of gross negligence or willful misconduct on the part of Wells Fargo, in its individual capacity or as Owner Trustee, in the performance or nonperformance of its duties under this Trust Agreement or under any of the other Owner Trustee Agreements or (b) those Claims resulting from the inaccuracy of any representation or warranty of Wells Fargo (or from the failure of Wells Fargo to perform any of its covenants) in Section 6.3 of this Trust Agreement, in Section 6.03 of the Trust Indenture, in Section 4 of the Lease, in Section 6.3 and Section 7.3 of the Participation Agreement or elsewhere in any of the other Operative Agreements or (c) as may result from a breach by Wells Fargo of its covenant in the last sentence of Section 5.4.1 or (d) in the case of the failure to use ordinary care on the part of Wells Fargo, in its individual capacity or as Owner Trustee, in the receipt or disbursement of funds or in connection with its obligation to invest funds pursuant to Section 4 of the Participation Agreement, Section 4.4 of the Lease or Section 4.3 hereof or in compliance with the provisions of the first sentence of Section 6.8 or (e) any liability on the part of Owner Trustee arising out of its negligence or willful or negligent misconduct in connection with its obligations under Section 5.1, 6.8 or 9.2 hereof or Section 4.01 of the Trust Indenture, or (f) those claims arising under any circumstances or upon any terms where Lessee would not have been required to indemnify Wells Fargo pursuant to Section 9.1 or 9.3 of the Participation Agreement (disregarding for purposes of this paragraph Sections 9.1.2(b) and 9.3.2(j)); provided, that before asserting its right to indemnification, if any, pursuant to this Section 7, Wells Fargo shall first demand its corresponding right to indemnification pursuant to Section 9 of the Participation Agreement (but need not exhaust any or all remedies available thereunder). The indemnities contained in this Section 7 extend to Wells Fargo only in its individual capacity and shall not be construed as indemnities of the Trust Indenture Estate or the Trust Estate (except to the extent, if any, that Wells Fargo has been reimbursed by the Trust Indenture Estate or the Trust Estate for amounts covered by the indemnities contained in this Section 7). The indemnities contained in this Section 7 shall survive the termination of this Trust Agreement. In addition, if necessary, Wells Fargo shall be entitled to indemnification from the Trust Estate, subject to the Lien of the Trust Indenture, for any liability, obligation, loss, damage, penalty, tax, claim, action, suit, cost, expense or disbursement indemnified against pursuant to this Section 7 to the extent not reimbursed by Lessee, Owner Participant or others, but without releasing any of them from their respective agreements of reimbursement; and, to secure the same Wells Fargo shall have a lien on the Trust Estate, subject to the lien of the Trust Indenture and subject further to the provisions of Section 6.7, which shall be prior to any interest therein of Owner Participant. The payor of any indemnity under this Section 7 shall be subrogated to any right of the person indemnified in respect of the matter as to which such indemnity was paid.

## SECTION 8. TRANSFER OF OWNER PARTICIPANT'S INTEREST

### 8.1 Transfer of Interest

All provisions of Section 10 of the Participation Agreement shall (with the same force and effect as if set forth in full in this Section 8.1) be applicable to any assignment, conveyance or other transfer by Owner Participant of any of its right, title or interest in and to the Participation Agreement, the Trust Estate or this Trust Agreement.

SECTION 9. SUCCESSOR OWNER TRUSTEES; CO-TRUSTEES

9.1 Resignation of Owner Trustee; Appointment of Successor

9.1.1 Resignation or Removal

Owner Trustee or any successor Owner Trustee (a) shall resign if required to do so pursuant to Section 13.3 of the Participation Agreement or upon obtaining Actual Knowledge of any facts that would cast doubt upon its continuing status as a Citizen of the United States and (b) may resign at any time without cause by giving at least 60 days' prior written notice to Owner Participant, Mortgagee and Lessee, such resignation to be effective upon the assumption of the trusts hereunder by the successor Owner Trustee under Section 9.1.2. In addition, [subject to Section 12.1(b), Owner Participant may at any time remove Owner Trustee, but only with]<sup>14</sup>[Owner Participant may at any time remove Owner Trustee with or without]<sup>15</sup> cause by a notice in writing delivered to Owner Trustee, Mortgagee and Lessee, such removal to be effective upon the assumption of the trusts hereunder by the successor Owner Trustee under Section 9.1.2 [, provided, that, in the case of a removal without cause, unless a Lease Event of Default shall have occurred and be continuing, such removal shall be subject to the consent of Lessee (which consent shall not be unreasonably withheld)]<sup>16</sup>. In the case of the resignation or removal of Owner Trustee, Owner Participant may appoint a successor Owner Trustee by an instrument signed by Owner Participant, with, unless a Lease Event of Default shall have occurred and be continuing, the consent of Lessee (which consent shall not be unreasonably withheld). If a successor Owner Trustee shall not have been appointed within 30 days after such notice of resignation or removal, Owner Trustee, Owner Participant, Lessee or Mortgagee may apply to any court of competent jurisdiction to appoint a successor Owner Trustee to act until such time, if any, as a successor shall have been appointed as above provided. Any successor Owner Trustee so appointed by such court shall immediately and without further act be superseded by any successor Owner Trustee appointed as above provided within one year from the date of the appointment by such court.

9.1.2 Execution and Delivery of Documents, Etc.

Any successor Owner Trustee, however appointed, shall execute and deliver to the predecessor Owner Trustee, with a copy to Owner Participant, Lessee and Mortgagee, an instrument accepting such appointment and assuming the obligations of Owner Trustee, in its individual capacity and as Owner Trustee, under the Owner Trustee Agreements, and thereupon such successor Owner Trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Owner Trustee in the trusts under this Trust Agreement with like effect as if originally named Owner Trustee in this Trust Agreement; but nevertheless, upon the written request of such successor Owner Trustee, such predecessor Owner Trustee shall execute and deliver an instrument transferring to such successor

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- 14. Include if OP not a Citizen of the U.S.
  - 15. Delete if OP not a Citizen of the U.S.
  - 16. Delete if OP not a Citizen of the U.S.

Owner Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of such predecessor Owner Trustee, and such predecessor Owner Trustee shall duly assign, transfer, deliver and pay over to such successor Owner Trustee all monies or other property then held by such predecessor Owner Trustee upon the trusts herein expressed. Upon the appointment of any successor Owner Trustee under this Section 9.1, the predecessor Owner Trustee will execute such documents as are provided to it by such successor Owner Trustee and will take such further actions as are requested of it by such successor Owner Trustee as are required to cause registration of the Aircraft included in the Trust Estate to be transferred upon the records of the FAA, or other governmental authority having jurisdiction, into the name of the successor Owner Trustee.

### 9.1.3 Qualifications

Any successor Owner Trustee, however appointed, shall be a Citizen of the United States and shall also be a bank or trust company organized under the Laws of the United States or any state thereof having a combined capital and surplus of at least \$100,000,000, if there be such an institution willing, able and legally qualified to perform the duties of Owner Trustee under this Trust Agreement upon reasonable or customary terms. No such successor Owner Trustee shall be located in a jurisdiction which creates material adverse consequences for Lessee (unless such material adverse consequences would be created by substantially all jurisdictions where major banking or trust institutions are located).

### 9.1.4 Merger, Etc.

Any corporation into which Wells Fargo may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Wells Fargo shall be a party, or any corporation to which substantially all the corporate trust business of Wells Fargo may be transferred, shall, subject to the terms of Section 9.1.3, be Owner Trustee under this Trust Agreement without further act, provided, that such corporation shall not also be the Mortgagee.

## 9.2 Co-Trustees and Separate Trustees

(a) If at any time it shall be necessary or prudent in order to conform to any Law of any jurisdiction in which all or any part of the Trust Estate is located, or Owner Trustee being advised by counsel shall determine that it is so necessary or prudent in the interest of Owner Participant or Owner Trustee, or Owner Trustee shall have been directed to do so by Owner Participant, Owner Trustee and Owner Participant shall execute and deliver an agreement supplemental hereto and all other instruments and agreements necessary or proper to constitute another bank or trust company or one or more persons (any or all of which shall be a Citizen of the United States) approved by Owner Trustee and Owner Participant, either to act as co-trustee, jointly with Owner Trustee, or to act as separate trustee under this Trust Agreement (any such co-trustee or separate trustee being herein sometimes referred to as an "additional trustee"). In the event Owner Participant shall not have joined in the execution of such agreements' supplemental hereto within ten days after the receipt of a written request from Owner Trustee so to do, or in case a Lease Event of Default or Indenture Event of Default shall occur and be continuing, Owner Trustee may act under the foregoing provisions of this Section 9.2 without the

concurrence of Owner Participant; and Owner Participant hereby appoints Owner Trustee its agent and attorney-in-fact to act for it under the foregoing provisions of this Section 9.2 in either of such contingencies.

(b) Every additional trustee under this Trust Agreement shall, to the extent permitted by Law, be appointed and act, and Owner Trustee and its successors shall act, subject to the following provisions and conditions:

(i) All powers, duties, obligations and rights conferred upon Owner Trustee in respect of the custody, control and management of monies, the Aircraft or documents authorized to be delivered under this Trust Agreement or under the Participation Agreement shall be exercised solely by Owner Trustee;

(ii) All other rights, powers, duties and obligations conferred or imposed upon Owner Trustee shall be conferred or imposed upon and exercised or performed by Owner Trustee and such additional trustee jointly, except to the extent that under any Law of any jurisdiction in which any particular act or acts are to be performed (including the holding of title to the Trust Estate) Owner Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such additional trustee;

(iii) No power given to, or which it is provided hereby may be exercised by, any such additional trustee shall be exercised under this Trust Agreement by such additional trustee, except jointly with, or with the consent in writing of, Owner Trustee;

(iv) No trustee under this Trust Agreement shall be personally liable by reason of any action or omission of any other trustee under this Trust Agreement;

(v) Owner Participant, at any time, by an instrument in writing may remove any such additional trustee. In the event that Owner Participant shall not have joined in the execution of any such instrument within ten days after the receipt of a written request from Owner Trustee so to do, Owner Trustee shall have the power to remove any such additional trustee without the concurrence of Owner Participant; and Owner Participant hereby appoints Owner Trustee its agent and attorney-in-fact to act for it in such connection in such contingency; and

(vi) No appointment of, or action by, any additional trustee will relieve Owner Trustee of any of its obligations under, or otherwise affect any of the terms of, the Trust Indenture or affect the interests of Mortgagee or the Note Holders in the Trust Indenture Estate.

(c) In case any separate trustee under this Section 9.2 shall die, become incapable of acting, resign or be removed, the title to the Trust Estate and all rights and duties of such separate trustee shall, so far as permitted by Law, vest in and be exercised by Owner Trustee, without the appointment of a successor to such separate trustee.



SECTION 10. SUPPLEMENTS AND AMENDMENTS TO TRUST AGREEMENT AND OTHER DOCUMENTS

10.1 Supplements and Amendments and Delivery Thereof

10.1.1 Supplements and Amendments

Subject to Section 7.2.2 of the Participation Agreement, this Trust Agreement may not be amended, supplemented or otherwise modified except by an instrument in writing signed by Owner Trustee and Owner Participant. Subject to Section 10.2, Section 9.01 of the Trust Indenture and Section 7.6.7 of the Participation Agreement, Owner Trustee will execute any amendment, supplement or other modification of this Trust Agreement or of any other Owner Trustee Agreement which it is requested in writing to execute by Owner Participant, except that Owner Trustee shall not execute any such amendment, supplement or other modification which, by the express provisions of any of the above documents, requires the consent of any other party unless such consent shall have been obtained; and provided, that, without the prior written consent of Owner Participant, (a) no such supplement, amendment or modification shall (i) modify any of the provisions of Section 4 or this Section 10.1, (ii) reduce, modify or amend any indemnities in favor of Owner Participant as set forth in Section 9 of the Participation Agreement or in the Tax Indemnity Agreement, (iii) reduce the amount or extend the time of payment of Basic Rent, Supplemental Rent, Stipulated Loss Value or Termination Value as set forth in the Lease (except in accordance with Section 3 of the Lease) or (iv) modify any of the rights of Owner Participant under the Trust Indenture and (b) no such supplement, amendment or modification shall require Owner Participant to invest or advance funds or shall entail any additional personal liability or the surrender of any indemnification, claim or individual right on the part of Owner Participant with respect to any agreement or obligation.

10.1.2 Delivery of Amendments and Supplements to Certain Parties

A signed copy of each amendment or supplement referred to in Section 10.1.1 to which Lessee is not a party shall be delivered promptly by Owner Trustee to Lessee, and a signed copy of each amendment or supplement referred to in Section 10.1.1 shall be delivered promptly by Owner Trustee to Mortgagee.

10.2 Discretion as to Execution of Documents

Prior to executing any document required to be executed by it pursuant to the terms of Section 10.1, Owner Trustee shall be entitled to receive an opinion of its counsel to the effect that the execution of such document is authorized under this Trust Agreement. If in the opinion of Owner Trustee any such document adversely affects any right, duty, immunity or indemnity in favor of Owner Trustee under this Trust Agreement or under any other Owner Trustee Agreement, Owner Trustee may in its discretion decline to execute such document unless Owner Trustee is furnished with indemnification from Lessee or any other party upon terms and in amounts reasonably satisfactory to Owner Trustee to protect the Trust Estate and the Owner Trustee against any and all liabilities, costs and expenses arising out of the execution of such documents.

### 10.3 Absence of Requirements as to Form

It shall not be necessary for any written request furnished pursuant to Section 10.1 to specify the particular form of the proposed documents to be executed pursuant to such Section 10.1, but it shall be sufficient if such request shall indicate the substance thereof.

### 10.4 Distribution of Documents

Promptly after the execution by Owner Trustee of any document entered into pursuant to Section 10.1, Owner Trustee shall mail, by certified mail, postage prepaid, a conformed copy thereof to Owner Participant, but the failure of Owner Trustee to mail such conformed copy shall not impair or affect the validity of such document.

### 10.5 No Request Needed as to Lease Supplement and Trust Indenture Supplement

No written request pursuant to Section 10.1 shall be required to enable Owner Trustee to enter into, pursuant to Section 3.1 and the Lease or the Trust Indenture, as the case may be, the Lease Supplement with Lessee and the Trust Indenture Supplement.

## SECTION 11. MISCELLANEOUS

### 11.1 Termination of Trust Agreement

This Trust Agreement and the trusts created hereby shall be of no further force or effect upon the earlier of (a) both the final discharge of the Trust Indenture pursuant to Section 10.01 thereof and the sale or other final disposition by Owner Trustee of all property constituting part of the Trust Estate and the final distribution by Owner Trustee of all monies or other property or proceeds constituting part of the Trust Estate in accordance with Section 4, provided, that at such time Lessee shall have fully complied with all of the terms of the Lease and the Participation Agreement or (b) 21 years less one day after the death of the last survivor of all of the descendants of the grandparents of David C. Rockefeller living on the date of the earliest execution of this Trust Agreement by any party hereto, but if this Trust Agreement and the trusts created hereby shall be or become authorized under applicable Law to be valid for a period commencing on the 21st anniversary of the death of such last survivor (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity of this Trust Agreement and the trusts created hereby for a period in gross exceeding the period for which this Trust Agreement and the trusts created hereby are hereinabove stated to extend and be valid), then this Trust Agreement and the trusts created hereby shall not terminate under this clause (b) but shall extend to and continue in effect, but only if such nontermination and extension shall then be valid under applicable Law, until the day preceding such date as the same shall, under applicable Law, cease to be valid; otherwise this Trust Agreement and the trusts created hereby shall continue in full force and effect in accordance with the terms hereof. Except as expressly set forth in Section 11.2, this Trust Agreement and the trusts created hereby may not be revoked by Owner Participant.

## 11.2 Termination at Option of the Owner Participant

Notwithstanding Section 11.1 hereof, this Agreement and trust created hereby shall terminate and the Trust Estate shall be distributed to the Owner Participant, and this Agreement shall be of no further force and effect, upon the election of the Owner Participant by notice to the Owner Trustee, if such notice shall be accompanied by the written agreement (in form and substance satisfactory to the Owner Trustee) of the Owner Participant assuming all obligations of the Owner Trustee under or contemplated by the Operative Agreements or incurred by it as trustee hereunder and releasing the Owner Trustee therefrom; provided, however, that such notice may be given only after the time the Lien of the Trust Indenture is discharged under Section 10.01 of the Trust Indenture and after the Lease shall no longer be in effect.

## 11.3 Owner Participant Has No Legal Title in Trust Estate

Owner Participant shall not have legal title to any part of the Trust Estate. No transfer, by operation of Law or otherwise, of any right, title and interest of Owner Participant in and to the Trust Estate under this Trust Agreement shall operate to terminate this Trust Agreement or the trusts under this Trust Agreement or entitle any successors or transferees of Owner Participant to an accounting or to the transfer of legal title to any part of the Trust Estate.

## 11.4 Assignment, Sale, etc. of Aircraft

Any assignment, sale, transfer or other conveyance of the Aircraft by Owner Trustee made pursuant to the terms of this Trust Agreement or of the Lease or the Participation Agreement shall bind Owner Participant and shall be effective to transfer or convey all right, title and interest of Owner Trustee and Owner Participant in and to the Aircraft. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such assignment, sale, transfer or conveyance or as to the application of any sale or other proceeds with respect thereto by Owner Trustee.

## 11.5 Trust Agreement for Benefit of Certain Parties Only

Except for the terms of Section 10 of the Participation Agreement incorporated in Section 8 and except as otherwise provided in Sections 4.2.5, 5.1, 6.7, 9, 10.1, 11.1 and 11.2, nothing in this Trust Agreement, whether express or implied, shall be construed to give any person other than Owner Trustee and Owner Participant any legal or equitable right, remedy or claim under or in respect of this Trust Agreement; and this Trust Agreement shall be held to be for the sole and exclusive benefit of Owner Trustee and Owner Participant.

## 11.6 Citizenship of Owner Participant

If at any time there shall be more than one Owner Participant, then any Owner Participant who shall cease to be a Citizen of the United States shall have no voting or similar rights under this Trust Agreement and shall have no right to direct, influence or limit the exercise of, or to prevent the direction or influence of, or place any limitation on the exercise of, Owner Trustee's authority or to remove Owner Trustee.

#### 11.7 Notices

Unless otherwise expressly permitted by the terms of this Trust Agreement, all notices, requests, demands, authorizations, directions, consents, waivers and other communications required or permitted to be made, given, furnished or filed under this Trust Agreement shall be in writing, shall refer specifically to this Trust Agreement and shall be personally delivered, sent by telecopy, telex or other means of electronic facsimile or telecommunication transmission, sent by registered mail or certified mail, return receipt requested, postage prepaid, or sent by overnight courier service, in each case to the respective telex, telecopy or other number or address set forth for such party in Schedule 1 to the Participation Agreement, or to such other telex, telecopy or other number or address as each party hereto may hereafter specify by notice to the other parties hereto. Each such notice, request, demand, authorization, direction, consent, waiver or other communication shall be effective when received or, if made, given, furnished or filed (a) by telecopy or other means of electronic facsimile or telecommunication transmission, when confirmed, or (b) by registered or certified mail, three Business Days after being deposited, properly addressed, in the U.S. mail.

#### 11.8 Severability

If any provision of this Trust Agreement shall be held invalid, illegal or unenforceable in any respect in any jurisdiction, then, to the extent permitted by Law, (a) all other provisions hereof shall remain in full force and effect in such jurisdiction and (b) such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction. If, however, any Law pursuant to which such provisions are held invalid, illegal or unenforceable may be waived, such Law is hereby waived by the parties hereto to the full extent permitted, to the end that this Trust Agreement shall be deemed to be a valid and binding agreement in all respects, enforceable in accordance with its terms.

#### 11.9 Waivers, Etc.

No term or provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing entered into in compliance with the terms of Section 10; and any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.

#### 11.10 Counterparts

This Trust Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

#### 11.11 Binding Effect, Etc.

All covenants and agreements contained in this Trust Agreement shall be binding upon, and inure to the benefit of, Owner Trustee and its successors and assigns, and Owner Participant and its successors and, to the extent permitted by Section 8, assigns. Any request,

notice, direction, consent, waiver or other instrument or action by Owner Participant shall bind its successors and assigns.

#### 11.12 Headings; References

The headings and the table of contents used in this Trust Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof and shall not in any way affect the construction of, or be taken into consideration in interpreting, this Trust Agreement.

#### 11.13 Name of the Trust

The name of the trust created hereby shall be "XJT Owner Trust [TN]" and such name may (but need not) be used in any correspondence and filings made with respect to the security interest granted under the Trust Indenture or otherwise by the Owner Trustee in connection with the trust created hereby.

#### 11.14 Governing Law

THIS TRUST AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY THE LAWS OF THE STATE OF UTAH, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.

### [SECTION 12. CERTAIN LIMITATIONS

#### 12.1 Limitations on Control; Exceptions

(a) Notwithstanding any other provision of this Agreement, at any time that the Owner Participant is not a citizen of the United States as defined in 49 U.S.C. Section 40102(a)(15) (a "Citizen"), the Owner Participant shall have no rights or powers to direct, influence, or control the Owner Trustee in the performance of the Owner Trustee's duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft by the Owner Trustee. In all matters involving the ownership and operation of the Aircraft by the Owner Trustee, the Owner Trustee shall have absolute and complete discretion in connection therewith and shall be free of any kind of influence or control whatsoever by the Owner Participant at any time that the Owner Participant is not a Citizen, and the Owner Trustee shall exercise its duties under this Agreement in connection with all matters involving the ownership and operation of the Aircraft by the Owner Trustee as it, in its discretion, shall deem necessary to protect the interests of the United States, notwithstanding any countervailing interest of any foreign power that, or whose citizens, may have a direct or indirect interest in the Owner Participant and any such action by the Owner Trustee shall not be considered malfeasance or in breach of any obligation that the Owner Trustee might otherwise have to the Owner Participant; *provided, however*, that subject to the foregoing limitations, the Owner Trustee shall exercise its discretion in all matters involving the ownership and operation of the Aircraft by the Owner Trustee with due regard for the interests of the Owner Participant. In exercising any of its rights and duties under this Agreement in connection with matters that may arise not relating to the ownership and operation of the Aircraft, the Owner Trustee shall be permitted to seek the advice

of the Owner Participant before taking, or refraining from taking, any action with respect thereto. The Owner Trustee shall notify the Owner Participant of its exercise of rights and duties under the Trust Agreement in connection with matters involving the ownership and operation of the Aircraft by the Owner Trustee.

(b) At any time the Owner Participant is not a Citizen of the United States, the Owner Participant shall have no rights or powers to remove the Owner Trustee except with cause, including without limitation for gross negligence, willful misconduct, misfeasance, malfeasance, or nonfeasance in, or material breach of, its duties under the Trust Agreement or applicable law.

(c) Subject to the requirements of subsection (a) above, the Owner Trustee will not, without the prior written consent of the Owner Participant, (a) sell, mortgage, pledge, or otherwise dispose of the Aircraft or other assets held in the trust estate relating thereto, except as otherwise provided for in this Agreement, or (b) amend the Lease or other Operative Documents or give any consents thereunder.

(d) Notwithstanding any other provision of this Section 12.1, the Owner Participant shall be entitled to receive from the Owner Trustee, or otherwise, and the Owner Trustee shall not be entitled to retain, all rent, payment, and insurance proceeds, and other payments of any kind or nature whatsoever payable to the Owner Participant pursuant to the Trust Agreement or any other Operative Agreements in the same manner as if the power of management and control had not been transferred to the Owner Trustee as provided in this Section 12.1.

(e) The purpose of this Section 12.1 is to give the Owner Trustee the power to manage and control the Aircraft with respect to matters involving the ownership and operation of the Aircraft by the Owner Trustee so as to assure that (a) the Aircraft shall be controlled with respect to such matters by a Citizen of the United States, (b) if the Owner Participant is not a Citizen of the United States, the Owner Participant shall have no power to influence or control the exercise of the Owner Trustee's authority with respect to such matters, and (c) the Owner Trustee shall be able to give the affidavit required by Section 47.7(c)(2)(iii) of the Federal Aviation Regulations, 14 C.F.R. 47.7(c)(2)(iii). The restrictions and requirements of this Section 12.1 shall be construed in furtherance of such purpose.

(f) If persons who are not "citizens of the United States" as defined in 49 U.S.C. section 40102(a)(15) or resident aliens have the power to direct or remove the Owner Trustee, either directly or indirectly through the control of another person, those persons together may not have more than 25% of the aggregate power to direct or remove the Owner Trustee. Nothing in this paragraph prevents those Persons from having more than 25% of the beneficial interest in the Trust Estate.]<sup>17</sup>

[This space intentionally left blank.]

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17. Include Section 12 if OP not a Citizen of the U.S.

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

[OP]

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

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION

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

Certificate  
No. 1

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch the registered owner hereof, Cede & Co., has an interest herein.

CONTINENTAL AIRLINES PASS THROUGH TRUST 2005-ERJ1

9.798% Continental Airlines Pass Through Certificate, Series 2005-ERJ1  
Issuance Date: September 22, 2005

Final Maturity Date: October 1, 2022

Evidencing A Fractional Undivided Interest In The Continental Airlines Pass Through Trust 2005-ERJ1, The Property Of Which Shall Include Certain Equipment Notes Each Secured By An Aircraft Leased To Continental Airlines, Inc.

\$311,010,000 Fractional Undivided Interest  
representing 0.0003215330697% of the Trust per \$1,000 face amount

THIS CERTIFIES THAT CEDE & CO., for value received, is the registered owner of a \$311,010,000 (THREE HUNDRED ELEVEN MILLION, TEN THOUSAND DOLLARS) Fractional Undivided Interest in the Continental Airlines Pass Through Trust 2005-ERJ1 (the “Trust”) created by Wilmington Trust Company, as trustee (the “Trustee”), pursuant to a Pass Through Trust Agreement, dated as of September 25, 1997 (the “Basic Agreement”), between the Trustee and Continental Airlines, Inc., a Delaware corporation (the “Company”), as supplemented by Trust Supplement No. 2005-ERJ1 thereto, dated as of September 22, 2005 (the “Trust Supplement” and, together with the Basic Agreement, the “Agreement”), between the Trustee and the Company, a summary of certain of the pertinent provisions of which is set forth below. To the extent not otherwise defined herein, the capitalized terms used herein have the meanings assigned to them in the Agreement. This Certificate is one of the duly authorized Certificates designated as “9.798% Continental Airlines Pass Through Certificates, Series 2005-ERJ1” (herein called the “Certificates”). This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement. By virtue of its acceptance hereof, the holder of this Certificate (the “Certificateholder” and, together with all other holders of Certificates issued by the Trust, the “Certificateholders”) assents to and agrees to be bound by the provisions

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of the Agreement and the Intercreditor Agreement. The property of the Trust includes certain Equipment Notes and all rights of the Trust to receive payments under the Intercreditor Agreement and the Liquidity Facility (the "Trust Property"). Each issue of the Equipment Notes is secured by, among other things, a security interest in an Aircraft leased to the Company.

The Certificates represent Fractional Undivided Interests in the Trust and the Trust Property and have no rights, benefits or interest in respect of any other separate trust established pursuant to the terms of the Basic Agreement for any other series of certificates issued pursuant thereto.

Subject to and in accordance with the terms of the Agreement and the Intercreditor Agreement, from funds then available to the Trustee, there will be distributed on the 1<sup>st</sup> day of each month (a "Regular Distribution Date") commencing on October 1, 2005 to the Person in whose name this Certificate is registered at the close of business on the 15th day preceding the Regular Distribution Date, an amount in respect of the Scheduled Payments on the Equipment Notes due on such Regular Distribution Date, the receipt of which has been confirmed by the Trustee, equal to the product of the percentage interest in the Trust evidenced by this Certificate and an amount equal to the sum of such Scheduled Payments. Subject to and in accordance with the terms of the Agreement and the Intercreditor Agreement, in the event that Special Payments on the Equipment Notes are received by the Trustee, from funds then available to the Trustee, there shall be distributed on the applicable Special Distribution Date, to the Person in whose name this Certificate is registered at the close of business on the 15th day preceding the Special Distribution Date, an amount in respect of such Special Payments on the Equipment Notes, the receipt of which has been confirmed by the Trustee, equal to the product of the percentage interest in the Trust evidenced by this Certificate and an amount equal to the sum of such Special Payments so received. If a Regular Distribution Date or Special Distribution Date is not a Business Day, distribution shall be made on the immediately following Business Day with the same force and effect as if made on such Regular Distribution Date or Special Distribution Date and no interest shall accrue during the intervening period. The Trustee shall mail notice of each Special Payment and the Special Distribution Date therefor to the Certificateholder of this Certificate.

Distributions on this Certificate will be made by the Trustee by check mailed to the Person entitled thereto, without presentation or surrender of this Certificate or the making of any notation hereon, except that with respect to Certificates registered on the Record Date in the name of a Clearing Agency (or its nominee), such distribution shall be made by wire transfer. Except as otherwise provided in the Agreement and notwithstanding the above, the final distribution on this Certificate will be made after notice mailed by the Trustee of the pendency of such distribution and only upon presentation and surrender of this Certificate at the office or agency of the Trustee specified in such notice.

The Certificates do not represent a direct obligation of, or an obligation guaranteed by, or an interest in, the Company or the Trustee or any affiliate thereof. The Certificates are limited in right of payment, all as more specifically set forth on the face hereof and in the Agreement. All payments or distributions made to Certificateholders under the Agreement shall be made only from the Trust Property and only to the extent that the Trustee

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shall have sufficient income or proceeds from the Trust Property to make such payments in accordance with the terms of the Agreement. Each Certificateholder of this Certificate, by its acceptance hereof, agrees that it will look solely to the income and proceeds from the Trust Property to the extent available for distribution to such Certificateholder as provided in the Agreement. This Certificate does not purport to summarize the Agreement and reference is made to the Agreement for information with respect to the interests, rights, benefits, obligations, privileges, and duties evidenced hereby. A copy of the Agreement may be examined during normal business hours at the principal office of the Trustee, and at such other places, if any, designated by the Trustee, by any Certificateholder upon request.

The Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Certificateholders under the Agreement at any time by the Company and the Trustee with the consent of the Certificateholders holding Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Trust. Any such consent by the Certificateholder of this Certificate shall be conclusive and binding on such Certificateholder and upon all future Certificateholders of this Certificate and of any Certificate issued upon the transfer hereof or in exchange hereof or in lieu hereof whether or not notation of such consent is made upon this Certificate. The Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the Certificateholders of any of the Certificates.

As provided in the Agreement and subject to certain limitations set forth therein, the transfer of this Certificate is registrable in the Register upon surrender of this Certificate for registration of transfer at the offices or agencies maintained by the Trustee in its capacity as Registrar, or by any successor Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Trustee and the Registrar, duly executed by the Certificateholder hereof or such Certificateholder's attorney duly authorized in writing, and thereupon one or more new Certificates of authorized denominations evidencing the same aggregate Fractional Undivided Interest in the Trust will be issued to the designated transferee or transferees.

The Certificates are issuable only as registered Certificates without coupons in minimum denominations of \$1,000 Fractional Undivided Interest and integral multiples thereof except that one Certificate may be issued in a different denomination. As provided in the Agreement and subject to certain limitations therein set forth, the Certificates are exchangeable for new Certificates of authorized denominations evidencing the same aggregate Fractional Undivided Interest in the Trust, as requested by the Certificateholder surrendering the same.

No service charge will be made for any such registration of transfer or exchange, but the Trustee shall require payment of a sum sufficient to cover any tax or governmental charge payable in connection therewith.

Each Certificateholder and Investor, by its acceptance of this Certificate or a beneficial interest herein, agrees to treat the Trust as a grantor trust for all U.S. federal, state and local income tax purposes.

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The Trustee, the Registrar, and any agent of the Trustee or the Registrar may treat the person in whose name this Certificate is registered as the owner hereof for all purposes, and neither the Trustee, the Registrar, nor any such agent shall be affected by any notice to the contrary.

The obligations and responsibilities created by the Agreement and the Trust created thereby shall terminate upon the distribution to Certificateholders of all amounts required to be distributed to them pursuant to the Agreement and the disposition of all property held as part of the Trust Property.

Any Person acquiring or accepting this Certificate or an interest herein will, by such acquisition or acceptance, be deemed to have represented and warranted to and for the benefit of each Owner Participant and the Company that either: (i) the assets of an employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or of a plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"), have not been used to purchase this Certificate or an interest herein or (ii) the purchase and holding of this Certificate or an interest herein are exempt from the prohibited transaction restrictions of ERISA and the Code pursuant to one or more prohibited transaction statutory or administrative exemptions.

THE AGREEMENT AND THIS CERTIFICATE HAVE BEEN DELIVERED IN THE STATE OF NEW YORK AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

Unless the certificate of authentication hereon has been executed by the Trustee, by manual signature, this Certificate shall not be entitled to any benefit under the Agreement or be valid for any purpose.

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IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

CONTINENTAL AIRLINES PASS THROUGH  
TRUST 2005-ERJ1

By: WILMINGTON TRUST COMPANY,  
as Trustee

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

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TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Certificates referred to in the within-mentioned Agreement.

WILMINGTON TRUST COMPANY,  
as Trustee

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



September 8, 2005

CONTINENTAL AIRLINES, INC.  
1600 Smith Street  
Houston, TX 77002

Re: Preliminary Prospectus Supplement, dated September 12, 2005, to the Prospectus dated August 23, 2001, included in Registration Statement No. 333-67886 of Continental Airlines, Inc.

Ladies and Gentlemen:

We consent to the use of the report prepared by us with respect to the aircraft referred to therein, to the summary of such report in the text under the headings "Prospectus Supplement Summary—Equipment Notes and the Aircraft," "Risk Factors—Risk Factors Relating to the Certificates and the Offering—Appraisals and Realizable Value of Aircraft," "Description of the Aircraft and the Appraisals—The Appraisals" and "Experts" in the above-captioned Preliminary Prospectus Supplement and to the references to our name under the headings "Description of the Aircraft and the Appraisals—The Appraisals" and "Experts" in such Preliminary Prospectus Supplement. We also consent to such use, summary and references in the Final Prospectus Supplement relating to the offering described in such Preliminary Prospectus Supplement, to the extent such use, summary and references are unchanged.

Sincerely,

For Aviation Specialists Group, Inc.

/s/ Fred J. Klein

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Fred J. Klein  
President



September 8, 2005

CONTINENTAL AIRLINES, INC.  
1600 Smith Street  
Houston, TX 77002

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Sincerely,

BACK Aviation Solutions

/s/ Scott E. Daniels

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Name: Scott E. Daniels  
Title: VP - Asset Management

BK Associates, Inc.

1295 Northern Boulevard  
Manhasset, New York 11030  
(516) 365-6275 - Fax (516) 365-6287

September 8, 2005

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1600 Smith Street  
Houston, TX 77002

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Sincerely,

BK Associates, Inc.

/s/ R. L. Britton

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R.L. Britton  
Vice President  
ISTAT Senior Certified Appraiser

RLB/kf





September 13, 2005

CONTINENTAL AIRLINES, INC.  
1600 Smith Street  
Houston, TX 77002

Re: Final Prospectus Supplement, dated September 14, 2005, to the Prospectus dated August 23, 2001, included in Registration Statement No. 333-67886 of Continental Airlines, Inc.

Ladies and Gentlemen:

We consent to the use of the report prepared by us with respect to the aircraft referred to therein, to the summary of such report in the text under the headings "Prospectus Supplement Summary—Equipment Notes and the Aircraft," "Risk Factors—Risk Factors Relating to the Certificates and the Offering—Appraisals and Realizable Value of Aircraft," "Description of the Aircraft and the Appraisals—The Appraisals" and "Experts" in the above-captioned Final Prospectus Supplement and to the references to our name under the headings "Description of the Aircraft and the Appraisals—The Appraisals" and "Experts" in such Final Prospectus Supplement.

Sincerely,

Aviation Specialists Group, Inc.

/s/ Fred J. Klein

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Fred J. Klein  
President

*Aviation Specialists Group, Inc. w 1037 Sterling Road w Herndon, Virginia w USA  
Telephone: 703 736-9700 w Fax: 703 736-0505 w avspecgroup@aol.com w www.aviation specialistsgroup.com*



September 13, 2005

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1600 Smith Street  
Houston, TX 77002

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Sincerely,

BACK Aviation Solutions

/s/ Scott E. Daniels

-----  
Name: Scott E. Daniels  
Title: VP - Asset Management

BK Associates, Inc.

1295 Northern Boulevard  
Manhasset, New York 11030  
(516) 365-6272 - Fax (516) 365-6287

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Re: Final Prospectus Supplement, dated September 14, 2005, to the Prospectus dated August 23, 2001, included in Registration Statement No. 333-67886 of Continental Airlines, Inc.

Ladies and Gentlemen:

We consent to the use of the report prepared by us with respect to the aircraft referred to therein, to the summary of such report in the text under the headings "Prospectus Supplement Summary—Equipment Notes and the Aircraft," "Risk Factors—Risk Factors Relating to the Certificates and the Offering—Appraisals and Realizable Value of Aircraft," "Description of the Aircraft and the Appraisals—The Appraisals" and "Experts" in the above-captioned Final Prospectus Supplement and to the references to our name under the headings "Description of the Aircraft and the Appraisals—The Appraisals" and "Experts" in such Final Prospectus Supplement.

Sincerely,

BK Associates, Inc.

/s/ R. L. Britton

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R.L. Britton  
Vice President  
ISTAT Senior Certified Appraiser

RLB/kf