

[4910-13]

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Chapter I**

**Docket No. FAA-2011-0012**

**Notice of Policy Clarification for the Registration of Aircraft to U.S. Citizen  
Trustees in Situations Involving Non-U.S. Citizen Trustees and Beneficiaries**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of FAA policy clarification.

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**SUMMARY:** Notice is hereby given of the FAA's clarification of its policy regarding the registration of aircraft to U.S. Citizen Trustees in situations involving non-U.S. citizen trustees and beneficiaries.

**DATES:** *Effective Date:* The policy described herein is effective [INSERT DATE 90 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Joseph Standell at 405-954-3296, Office of Aeronautical Center Counsel, Federal Aviation Administration, 6500 S. MacArthur Blvd., Oklahoma City, Oklahoma 73169.

**SUPPLEMENTARY INFORMATION:**

**Background**

The FAA has been reviewing policies and practices regarding the registration of aircraft in the United States involving U.S. citizen trustees and non-U.S. citizen trustees and beneficiaries. Such arrangements are commonly referred to as non-citizen trusts.

The FAA began its review in part because of problems the FAA has experienced in obtaining important operational and maintenance information concerning such aircraft from the registered owners, i.e., the owner trustees. The problems in obtaining such information in turn affected the FAA's ability to conduct fully effective oversight of such aircraft when operated outside the United States, and to provide foreign civil aviation authorities with information on those operations in support of the safety oversight activities of those authorities. The FAA also undertook the review of non-citizen trusts to assure compliance with the FAA regulatory requirements for non-citizen trusts contained in 14 CFR 47.7.

As part of its review of non-citizen trusts, the FAA published a notice of public meeting inviting members of the public to discuss the use of non-citizen trusts to register aircraft in the United States (76 FR 23353, April 26, 2011). In the notice, the FAA set forth several questions in order to elicit a robust discussion of the issues. Among other things, the FAA summarized the requirements in existing U.S. law that only an "owner" may register an aircraft, and that generally speaking only citizens of the United States that are owners are eligible to register aircraft. Thus, the FAA Aircraft Registry is an "owner" registry; it is not an "operator" registry.

The FAA met with interested members of the public on June 1, 2011, in Oklahoma City, Oklahoma. Representatives of trade associations, law firms, aircraft manufacturers, lenders, lessors, aircraft operators, trustees and others were present. The proceedings of that meeting were transcribed, and the transcript was made available for purchase from the court reporter to members of the public.

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The FAA received a number of written comments from members of the public in response to the questions raised in the April 26, 2011, **Federal Register** notice. The FAA also received written comments in response to its request at the conclusion of the public meeting for additional input from the meeting participants and all others who had an interest in the issues surrounding non-citizen trusts. An organization (the Aviation Working Group, or AWG) that represents a wide range of aviation industry participants on aviation regulatory and commercial issues submitted a document on May 26, 2011, in which its members and other supporting entities shared their views concerning the various questions posed by the FAA in its April 26, 2011 Federal Register notice. The AWG also participated at the public meeting on June 1, 2011, and submitted additional written comments on June 30, 2011.

After considering the written comments submitted by the public and the information received at the June 1 public meeting, the FAA published a Notice of Proposed Policy Clarification for the Registration of Aircraft to U.S. Citizen Trustees in Situations Involving Non-U.S. Citizen Trustors and Beneficiaries in the **Federal Register** on February 9, 2012. (77 FR 6694). That notice contained a detailed discussion of the FAA safety oversight obligations under U.S. and international law, and how those obligations related to the FAA's rules and practices on the use of non-citizen trusts to register aircraft in the name of owner trustees. The FAA's proposed policy clarification in the notice was designed to help the public better understand the FAA's rules and practices on non-citizen trusts. The FAA suggested changes to provisions in trust agreements to ensure consistency of those agreements with FAA rules, policies, and practices, and to enable the FAA to facilitate the registration of aircraft in the future that

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are owned in trust. An example of a standard trust agreement with FAA-suggested changes incorporated was attached at the end of the February 9 notice. The FAA invited the public to submit written comments on the proposed policy clarification by March 31, 2012.

In response to the initial reaction to the February 9 notice, the FAA decided to hold a second public meeting to allow the public to provide views on the proposed policy clarification. The FAA published a notice of public meeting inviting members of the public to discuss the proposed policy clarification on the use of non-citizen trusts to register aircraft (77 FR 15180, March 14, 2012). The FAA also extended the deadline for written comments on the proposed policy clarifications until July 6, 2012.

The public meeting was held on June 6, 2012, in Oklahoma City, Oklahoma. As with the first public meeting, representatives of trade associations, law firms, aircraft manufacturers, lenders, lessors, aircraft operators, trustees and others were in attendance. The proceedings of the meeting were transcribed and the transcript was made available for purchase from the court reporter to members of the public.

During the meeting, several participants requested an additional extension of time to submit written comments on the proposed policy clarification given the complexity of the issues involved. The FAA agreed to the request, and published a notice extending the deadline for comments until August 17, 2012 (77 FR 40310, July 9, 2012). The FAA received a number of written comments, including those from the AWG.

The FAA considered the information provided at the two public meetings and the written comments received in response to the April 26, 2011 and February 9, 2012 notices as critical in helping it better understand the practices and concerns of the aviation

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industry regarding the use of non-citizen trusts to register aircraft in the United States. The FAA also now has a more complete understanding of how some view the regulatory obligations on an owner trustee when registering an aircraft in the United States using a non-citizen trust. Importantly, the FAA also believes that the public meetings helped members of the public to better understand the critical safety information that the FAA needs to communicate to aircraft operators, through owner trustees, and the critical information that the FAA needs to receive from them in order for the FAA to meet its safety oversight obligations under U.S. and international law.

### **Policy Clarification**

This policy clarification is consistent with the FAA's regulations. It is also in accord with the FAA's duties under applicable statutory and treaty obligations with regard to safety oversight functions, safety investigations, and safety rulemaking activities (including the expeditious communication of critical safety rulemaking, e.g. airworthiness directives).

The FAA has carefully considered the information provided during the public meetings and in written comments in developing the following policy clarification on the use of non-citizen trusts to register aircraft in the United States. The FAA believes this policy clarification will ensure that the use of non-citizen trusts to register aircraft is fully consistent with the applicable regulations and supports the FAA's safety oversight interests with regard to aircraft on the U.S. registry. The policy clarification will facilitate the FAA's ability to determine eligibility for registering aircraft to non-U.S. citizen trusts. The FAA does not expect that this policy clarification will discourage the use of non-citizen trusts to register aircraft in the appropriate circumstances.

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In presenting this policy clarification, the FAA for the most part will not repeat the detailed legal analysis that it provided in outlining its proposed policy clarification in the February 9 notice. Except as discussed in this Notice, the underlying legal reasons for the policy clarification outlined in this Notice are substantially the same as the legal analysis presented in the February 9 notice. Accompanying this policy clarification is a discussion of the comments received concerning the policy.

#### **A. Policy Concerning Trustees as Aircraft Owners**

As discussed extensively in the February 9 notice, a primary area of concern for the FAA is whether the trustees of non-citizen trusts fully understand and are prepared to comply with their regulatory obligations as owners of aircraft on the U.S. registry. The owners of U.S.-registered aircraft have a substantial role in the FAA's system for overseeing the safety of those aircraft and their operation. The owner's role includes the ability to communicate critical safety information to the actual operator of an aircraft, assuming (as is the case in most, if not all, instances) that the trustee in a non-citizen trust is not the operator of the aircraft. When requested, the owner also must be able to provide the FAA with information on the aircraft and its operation.

In the laws and regulations that establish and govern the FAA Aircraft Registry, no distinction is made between types of aircraft owners for purposes of regulatory compliance. All registered owners of aircraft on the FAA Aircraft Registry, whether they are individuals, partnerships, corporations, or associations, any of which may act in the capacity of owner trustees, have the same obligations to comply with applicable FAA regulations. Once the FAA completes the registration process, the registered owner is the owner for all purposes under the regulations.

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The FAA does not consider the status of the trustee as the owner of the aircraft under a trust agreement as having any differing effect on its responsibilities for regulatory compliance issues compared to other owners of a U.S.-registered aircraft. The FAA has determined that there is nothing inherent in the status of a trustee owner of a U.S.-registered aircraft that would affect or limit its responsibilities for ensuring compliance with applicable laws and regulations. The FAA is not aware of any basis for treating one type of owner—such as a trustee under a non-citizen trust—differently from any other owner of a civil aircraft on the U.S. registry when considering issues of regulatory compliance.

Contrary to the suggestion made by some commenters, treating an owner trustee of an aircraft the same as all other owners of aircraft on the U.S. registry does not represent a change either in the status of the owner trustee or in the relationship or responsibilities of trustee as to an aircraft registered under a non-citizen trust under FAA regulations. The regulatory obligations of an owner trustee with regard to an aircraft registered in the U.S. using a non-citizen trust are, and always have been, the same as the regulatory obligations of all owners of U.S. registered aircraft.

Some commenters have suggested that a trustee owner can relieve itself of its regulatory compliance obligations if, in transferring the aircraft to another party for purposes of operating it, the trustee includes a contractual requirement that the operator fully comply with all applicable laws and regulations. The FAA disagrees. No owner of an aircraft on the U.S. registry can avoid a regulatory obligation imposed on it by the FAA simply by entering into a private contract with another party. The FAA in its regulations and policies does not recognize such a right.

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Two commenters—the AWG and Airlines for America (A4A)—expressed concern about whether treating an owner trustee the same as all other owners under the FAA’s regulations could increase the trustee’s tort liability exposure. The FAA takes no position on this issue other than to note that in our view, the regulatory obligations of an owner trustee are not changed or expanded by virtue of this policy clarification.

Analyzing the potential tort liability of any owner of an aircraft on the U.S. registry is beyond the purview of the FAA and is not relevant to the discussion of the owner’s responsibilities.

The AWG and A4A also raised the issue of whether 49 U.S.C. § 44112<sup>1</sup> affects the regulatory responsibilities of owner trustees. As the FAA noted in the February 9 notice, the plain terms of § 44112 only addresses the tort liability of lessors, owners and secured parties under certain circumstances. Section 44112 does not distinguish between types of owners of aircraft with respect to regulatory obligations, nor does it provide a basis for relieving trustees of the obligation to comply with the applicable regulations.

Flexjet, a fractional ownership program manager, stated in its comments that “the registration of fractional ownership program aircraft to U.S. citizen trustees in situations involving non-U.S. citizens and beneficiaries should be exempted from the proposed FAA policy” because of the role of the fractional program manager in receiving notices and the joint liability of the fractional ownership program manager and owner for regulatory compliance. According to Flexjet, these considerations either substantially mitigate or eliminate the FAA’s oversight concerns as outlined in the February 9 notice.

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<sup>1</sup> In its current form, section 44112, entitled “Limitations on Liability,” provides in part that a lessor, owner, or secured party is liable for personal injury, death, or property loss or damage on land or water only when a civil aircraft, aircraft engine, or propeller is in the actual possession or control of the lessor, owner, or secured party, and the personal injury, death, or property loss or damage occurs because of the aircraft, engine, or propeller; or the flight of, or an object falling from, the aircraft, engine, or propeller.



The FAA disagrees with the Flexjet position. Without addressing in this Notice the issue of whether an owner trustee can participate as an “owner” in a fractional ownership program under 14 CFR part 91, subpart K, the FAA’s oversight of fractional ownership operations does include consideration of the role and actions of the owner in such operations. There is no basis in subpart K for the proposition that the actions of a fractional ownership program manager could somehow reduce or eliminate the FAA’s oversight concerns as to owners.

### **B. Information about the Aircraft and Its Operations**

As noted above, the FAA by law imposes important safety obligations on all owners of aircraft. To meet these obligations, an owner must maintain current information about the identity and whereabouts of the actual operators of an aircraft and location and nature of the operation on an ongoing basis, thereby allowing that owner to provide the operator with safety critical information in a timely manner, and to obtain information responsive to FAA inquiries, including investigations of alleged violations of FAA regulations. Such information is an essential element in the FAA’s ability to carry out its oversight obligations under U.S. and international law. Moreover, the FAA believes such obligations are not unduly burdensome or beyond the capabilities of any owner of a U.S.-registered aircraft to meet.

The FAA expects that an owner trustee of aircraft on the U.S. registry, in carrying out the above-described obligations, normally should be able to respond to a request by the FAA for the following information about the aircraft and its operation within two (2) business days:



- The identity of the person normally operating, or managing the operations of, the aircraft;
- Where that person currently resides or has its principal place of business;
- The location of maintenance and other aircraft records; and
- Where the aircraft is normally based and operated.

The FAA further expects that that an owner trustee of aircraft on the U.S. registry normally should be able to respond within five (5) business days to a request by the FAA for more detailed information about the aircraft and its operations, including:

- Information about the operator, crew, and aircraft operations on specific dates;
- Maintenance and other aircraft records; and
- The current airworthiness status of the aircraft.

In the event of an emergency, the FAA may request a trustee to provide information more quickly than the timelines noted above.

The timeline guidance of two and five days referenced above is intended by the FAA to be just that—guidelines. They are not mandatory timelines by which an owner trustee must, in all cases, respond to an FAA request for information or face sanctions. The timelines of two and five days merely represent what the FAA believes are reasonable and attainable goals for providing specific information to the FAA under most circumstances. The FAA understands that there may be occasions where requested information is not readily available, such that the owner trustee cannot provide it to the FAA within the timelines described. In those cases, however, the FAA would expect that an owner trustee would be in communication with the FAA about the nature of the delays

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or difficulties in obtaining requested information, including information on actions by the trustee owner to overcome the delays or difficulties. In a case where an owner trustee is unable to provide much or all of the information requested by the FAA, or does not diligently attempt to provide information in a timely manner when requested by FAA, the facts and circumstances may dictate further action by the FAA.

Several commenters, including AWG, A4A, and Flexjet, argued that in many instances timely information about an aircraft registered to an owner trustee would more readily be available from other sources, including an air carrier or other holder of an air operator certificate in actual possession of an aircraft or from a fractional ownership program manager whose program operation includes an aircraft registered in whole or in part, in the name of an owner trustee. In those cases, the commenters stated that the FAA would obtain needed information more efficiently if it went directly to those other sources.

The FAA agrees that for many aircraft on the FAA Aircraft Registry, including aircraft registered under non-citizen trusts, the FAA may be able to obtain information about the aircraft and its operations by directly contacting the operator of the aircraft when that operator is readily identifiable. Such operators include air carriers and other holders of air operator certificates. They also may include fractional ownership program managers. The FAA, which shares the commenters' interest in efficiency, will in most cases, go directly to the air carrier or similar operator through FAA personnel (e.g., principal operations or maintenance inspectors) to obtain information about the aircraft and its operation. The FAA will, however, always reserve the right to seek information from the registered owner of an aircraft on the U.S. registry.

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For aircraft registered on behalf of non-U.S. citizens under trusts that are primarily or exclusively used in general aviation or aerial works operations outside the United States, the FAA has been less successful in obtaining information about the aircraft and their operations. In those cases, the operator is frequently not identifiable by the FAA, and in any case, the FAA records would not necessarily contain contact information for those operators that can be identified. In those cases, the FAA will look to the owner trustee, as the registered owner of the aircraft, for information about the aircraft and its operations when needed to meet the FAA's safety oversight obligations under U.S. and international law.

Comments by the AWG suggest that an owner trustee could meet its obligations to provide information to the FAA by including clauses in operating agreements, leases, bailments and other arrangements requiring operators of a trust-registered aircraft to maintain current contact information with owner trustee and requiring them to provide that information to the FAA upon request. AWG further explained that under this approach, such clauses also would be required elements in any downstream operating agreement, lease, or other arrangement pertaining to the aircraft but not involving the owner trustee as a party. The clauses would address other issues related to the provision of information requested by the FAA, including: the obligation to expeditiously provide the information; liability for a failure to reply; giving the FAA access to inspect the aircraft and its records;<sup>2</sup> and required notices to the owner trustee of transfers of control of the aircraft under an operating agreement, lease, bailment, or other arrangement.

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<sup>2</sup> With regard to the inspection of the aircraft and its regulations, the FAA notes that U.S. laws and regulations provide the FAA with a right of access to U.S. registered aircraft. A foreign civil aviation authority has a right under international law to inspect a U.S.-registered aircraft and its documents when the

To the extent that these and other contractual mechanisms would be intended to somehow relieve the owner trustee of an obligation to provide the FAA with requested information, the FAA does not agree that this approach represents an acceptable means of complying with the obligations of an owner to provide information. As noted above, an owner of an aircraft on the U.S. registry cannot avoid a regulatory obligation imposed on it by the FAA simply by entering into a private contract with another party. Moreover, the approach suggested by the AWG would make the FAA's ability to obtain information subject to the implementation of contracts to which the FAA is not a party and over which the FAA would have no standing to enforce. Subordinating the oversight interests of the FAA to the interests of private parties in executing a private contract is not acceptable. The FAA needs a more reliable system of obtaining information in order to meet its safety oversight interests.

On the other hand, the FAA agrees that the contractual system described by the AWG may represent a reasonable means by which an owner trustee can ensure that it is able to satisfy FAA requests for information about an aircraft that is in the possession of the trustor, beneficiary, or other downstream operator. There may be other mechanisms that an owner trustee could utilize to achieve that same result. Although the FAA will not require an owner trustee to adopt such specific contractual mechanisms or otherwise specify how the owner trustee should structure arrangements concerning the possession

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aircraft is located in the territory of the country for which the authority oversees aviation safety.  
Convention on International Civil Aviation, Article 16.

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and use of the aircraft in order to ensure its ongoing ability to comply with its regulatory obligations, such contractual mechanisms may be considered favorably by the FAA.<sup>3</sup>

### **C. Submission of Operating Agreements with a Registration Application**

The FAA requires that a person holding legal title to an aircraft in trust must, when applying to register that aircraft in the United States, submit a “copy of each document legally affecting a relationship under the trust. . .” 14 CFR 47.7(c)(2)(i). The purpose of this requirement is to ensure the FAA has access to all documents relevant to the trust relationship when determining whether a particular non-citizen trust provides an adequate basis for registering an aircraft in accordance with FAA regulations. A fundamental part of the registration process for aircraft held in trust is determining whether the underlying agreements meet and are not in conflict with the applicable requirements and therefore are sufficient to establish the trustee’s eligibility to register the aircraft. The failure to submit required documents such as an operating agreement frustrates this objective.

During the course of its review of non-citizen trusts, the FAA reviewed a number of aircraft operating agreements between the trustee owners of aircraft and the trustors or beneficiaries of the trust.<sup>4</sup> In its review, the FAA found that many operating agreements contained clauses that addressed issues not covered in the non-citizen trust agreement or that modified or contradicted provisions in the trust agreement, particularly as to enlarging the degree of control exercised by a non-U.S. citizen over the trustee. The

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<sup>3</sup> For example, the FAA would view favorably a provision that requires the owner trustee to approve, or be provided with information on, all downstream transfers of the aircraft, such that the trustee has current information on the location and operator of the aircraft.

<sup>4</sup> The FAA notes that it had previously unfavorably opined on whether a trustee could enter into operating agreements that permitted custody and use of the aircraft by the non-US citizen trustor. FAA now recognizes that such transactions are not uncommon.

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ultimate impact of many operating agreements was to affect the relationship and balance established under the non-citizen trust between the trustor and/or beneficiary on one hand and the trustee on the other.

Based on the information considered in the course of its review of non-citizen trusts, the FAA concludes that a relationship established under a trust agreement is necessarily affected by an operating agreement or similar side agreement or arrangement involving trustee and trustor or beneficiary which allows possession and use of the aircraft at all times to remain with the trustor and/or beneficiary. The operating agreement and the trust agreement are so intertwined that the operating agreement could affect the relationship established under the trust.

To avoid the result where the FAA does not have access to all relevant information for use in determining whether a particular non-citizen trust provides an adequate basis for registering an aircraft in accordance with FAA regulations, the FAA will require that all operating agreements or similar side agreements involving the trustee transferring custody and use of the aircraft held in trust to the trustor or beneficiary be submitted to the FAA along with other documents that affect a relationship under the trust pursuant to 14 CFR 47.7(c)(2)(i).

In cases where a non-citizen trust is used to establish eligibility for registration and no operating agreement or other similar side agreement or arrangement is submitted along with a registration application, the FAA will expect the applicant to provide sufficient assurances that no such operating agreement or other side agreement or arrangement exists between the trustee and the trustor or beneficiary. An adequate assurance might take the form of a declaration by the trustee in an affidavit submitted in

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support of a non-citizen trust registration that no such operating agreement or other side agreement or arrangement has been entered into by the trustee and the trustor or beneficiary. There may be other means by which the trustee could adequately assure the FAA that no operating agreement or other side agreement or arrangement exists between the trustee and the trustor and/or beneficiary. The FAA will consider alternate approaches. In the end, however, the FAA must be certain that it has the opportunity to review all documents that affect the relationship established under a non-citizen trust in order to insure the integrity of the registration process. Silence by the trustee with regard to this important issue will not be sufficient.

The comments received by the FAA on the required submission of aircraft operating agreements expressed concern over whether the agreements would be accorded confidential treatment because of the sensitivity of the information contained therein, and whether the retention of the agreements in the Registry's files would create a cloud on the title of the aircraft that would impede its subsequent sale. The FAA agrees that those concerns are valid. After further consideration of the issue, the FAA concludes aircraft operating agreements do not have to be retained as part of a trust registration application in the files of the FAA Registry.

Accordingly, if an applicant requests the return of an aircraft operating agreement submitted as part of a trust registration application at the time the application is submitted, the FAA will return the agreement to the applicant once its review of the application package is complete. That review will focus on whether the aircraft operating agreement affects the relationship established under the trust in a way that is contrary to the regulations. If the review establishes that the aircraft operating agreement does not

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adversely affect the trust relationship, FAA registry counsel will create a brief summary of the review that will be retained in the FAA Registry's ancillary aircraft file and the aircraft operating agreement will be returned. If the review establishes that the aircraft operating agreement does adversely affect the trust relationship, the application may be rejected or the application process suspended until the problem is corrected by the applicant.

The only exception to the policy of returning operating agreements will arise in the event that the review of the operating agreement establishes that the aircraft operating agreement adversely affects the trust relationship, resulting in the rejection of the registration application. In those cases, the FAA will retain the operating agreement for inclusion in the administrative record that the FAA will need to assemble in the event of any litigation that arises out of the rejection.

In the event an applicant does not request return of an aircraft operating agreement at the time a registration application is submitted, the agreement will be retained in the FAA Registry files.<sup>5</sup>

The FAA notes that there may be circumstances where after return of an aircraft operating agreement, information contained in the aircraft operating agreement is needed by the agency. The FAA will expect the full cooperation of the registered owner in providing such information.

#### **D. Trustee Removal**

In order to insure owner trustee independence, in promulgating regulations to permit the use of a non-citizen trust to establish eligibility to register an aircraft in the

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<sup>5</sup> Upon entry of Aircraft Operating Agreements or side agreements in FAA ancillary files, they will not be removed.

U.S., the FAA has imposed restrictions on the ability of non-U.S. citizens to remove the trustee. Such restrictions, in the FAA's view, lend more meaningful status and permanence to the trustee as the owner of the aircraft held in trust, thereby ensuring better protection for U.S. interests. Section 47.7(c)(3) of the regulations provides that if persons who are neither U.S. citizens nor resident aliens have the power to direct or remove a trustee, either directly or indirectly through the control of another person, the trust instrument must provide that those persons together may not have more than 25 percent of the aggregate power to direct or remove a trustee. Nothing in § 47.7 prevents those persons from having more than 25 percent of the beneficial interest in the trust. The limitation on the ability of non-U.S. citizens to remove a trustee is in addition to what limitations, if any, exist under the laws of the state in which the trust is established.

In its review of non-citizen trusts, the FAA noted language in trust agreements and related documents suggesting that non-U.S. citizens held more than 25 percent of the power to remove or direct a trustee. To avoid issues of non-compliance with this requirement in the future, the FAA will review all registration applications that rely on non-citizen trusts for evidence of clear compliance with the § 47.7(c)(3) limits on non-U.S. citizens power to direct or remove a trustee. In those cases where a non-U.S. citizen appears to have greater than 25 percent of the power to direct or remove a trustee under a trust agreement or related document,<sup>6</sup> the FAA may request further information on how and why such non-citizens will not be able to exercise aggregate power to direct or remove a trustee in excess of the 25 percent limit. Alternatively, the FAA may simply

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<sup>6</sup> The FAA considers that any trust agreement or related document that contains a provision designating a foreign court or body to adjudicate disputes between the trustor and trustee as violating the § 47.7(c)(3) limits on non-U.S. citizens power to direct or remove a trustee. Such designations are not acceptable to the FAA.

reject an application that is based on a trust agreement or other documents that provide a non-U.S. citizen with such power.

In its comments to the February 9 notice and during the June 6 public hearing, the AWG indicated that strict compliance with the § 47.7(c)(3) limitation on the power of a non-U.S. citizen to direct or remove the trustee was not possible as a practical matter. It stated that including U.S. citizens in the process to ensure compliance with the 25 percent limitation does not address FAA issues with non-citizen trusts and “adds a layer of expense and bureaucracy that will be difficult to bear by transaction parties.” The AWG also suggested that an Aeronautical Center Counsel opinion of 2002 was inconsistent with the 25 percent limitation contained in § 47.7(c)(3) of the FAA’s regulations. The AWG concluded its comments on this issue by suggesting that the FAA use this policy clarification as a vehicle to indicate that it would not strictly enforce the plain language of the regulation moving forward.

The FAA rejects the AWG position on this issue. The language of § 47.7(c)(3) is plain and unambiguous, and has been a part of the regulation on non-citizen trusts since it was adopted in 1979. See (44 FR 61937, October 29, 1979). The FAA believes that there are adequate mechanisms to comply with the § 47.7(c)(3) limitations on non-U.S. citizen power over trustees, to integrate the costs of those mechanisms in the overall cost structure of non-citizen trusts, and to otherwise adjust their business practices to the requirement. For example, the FAA identified instances of non-citizen trusts filed with the FAA in the years immediately after the adoption of § 47.7(c)(3) where non-U.S. citizens had no power to remove a trustee and appropriately limited power to direct the trustee. Those same arrangements, however, did give the interested non-U.S. citizens full

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power to terminate the non-citizen trust. The FAA sees no reason why a similar mechanism could not be adopted today, or why other innovative approaches to the issue could not be developed by the industry.

With regard to the Aeronautical Center Counsel opinion of 2002, the FAA disagrees that it contains any indication that the FAA would not enforce the 25 percent limitation on non-U.S. citizen power under § 47.7(c)(3). It is stated in the opinion that “14 CFR 47.7(c) must restrict removal rights to situations involving “cause”.” Use of removal for cause provisions in non-citizen trust agreements does not substitute for compliance with the 25 percent limitation imposed by regulation. No change to that requirement could be effected through the 2002 opinion or in this policy clarification.<sup>7</sup>

With regard to removals for cause, the FAA believes that a non-citizen trust agreement must describe with some specificity what would be a sufficient cause for removal of a trustee by a non-U.S. citizen beneficiary. Non-citizen trust agreements reviewed by the FAA frequently allow trustees to be removed for cause without specifying what constitutes a sufficient cause. Notwithstanding any other limitation on a non-U.S. citizen’s power to remove a trustee, the FAA’s view is that such lack of specificity in the removal for cause provisions gives non-U.S. citizen trustors or beneficiaries virtually unconditional power to remove a trustee, since practically any cause for removal might be interpreted as sufficient. Greater specificity in defining what constitutes sufficient cause will address the FAA’s concerns in this regard. Some trust agreements on file with the FAA have defined what constitutes cause to remove

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<sup>7</sup> The 25% limitation is based on the language in the applicable statutes. See 49 U.S.C. 40102(A)(15) and 44102(a)(1)(A). Such a requirement cannot be altered by regulation. Moreover, at this time the FAA is not proposing to undertake any rulemaking to address this issue or any of the other issues associated with the use of non-citizen trusts to place aircraft on the U.S. registry.

consistent with the general law of trusts such as gross negligence and willful misconduct. As a minimum, FAA will expect such examples of specific causes for removal. See, e.g., para 3.02, Removal, in the attached proposed Trust Agreement.<sup>8</sup>

#### **E. Termination of the Trust and Trustee Resignation**

None of the restrictions on the power of a non-U.S. citizen to direct or remove a trustee affect the ability of a non-U.S. citizen beneficiary or trustor otherwise to terminate a trust in accordance with its terms. With regard to the registration of the aircraft, the FAA expects that the likely effect of a termination, not involving removal of the trustee, would be to end registration or render the registration ineffective under 14 CFR 47.41(a). The aircraft could be re-registered in the United States if ownership were transferred to a person eligible to register it, whether under a non-citizen trust or some other mechanism recognized under the FAA's regulations.

Likewise, there are no regulatory restrictions on the ability of a trustee to resign without first being replaced by a successor trustee. The FAA does not have any regulation or policy that requires the inclusion of a requirement in the non-citizen trust agreement that a resignation may take effect only upon the appointment of a successor trustee. The FAA allows the parties to the non-citizen trust to address that issue as they see fit. The FAA believes the consequences of a resignation by a trustee without the prior appointment of an eligible successor trustee would be the same as a termination of the trust as described above.

No comments were received on these elements of the FAA policy on non-citizen trusts.

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<sup>8</sup> The grounds for removal listed in the Third Restatement of Trusts at Section 37 are illustrative of possible (but not always relevant) grounds for removing a trustee that might be included in a non-citizen trust agreement.

## **Changes to a Standard Trust Agreement**

The FAA does not require the use of a particular template in establishing a non-citizen trust. However, the FAA recognizes that the aviation industry has developed a standard non-citizen trust agreement over the years. The FAA continues to believe, as it did when issuing the February 9 notice, that it was useful to offer suggestions to that document. The FAA attached as an exhibit to the February 9 notice an example of a standard trust agreement with FAA-suggested changes incorporated. The FAA also made the revised standard trust agreement showing the FAA's additions and deletions available on the FAA's website. For the reasons stated in the February 9 notice, the FAA believes that the revisions made to the standard trust agreement are consistent with the policy clarification set forth in this Notice.

In comments in response to the February 9 notice, the AWG suggest a number of additional changes to the revised standard trust agreement that was attached to the notice. To the extent that the changes suggested by the AWG are consistent with the policy clarification described in this Notice, the FAA has incorporated them into the revised standard trust agreement. Several changes suggested by the AWG were not consistent with the policy clarification described in this Notice, and therefore not adopted by the FAA. The revised standard trust agreement with the incorporated AWG changes is attached to this Notice as an exhibit. A version of the revised standard trust agreement that shows in detail which of the AWG changes were accepted by the FAA and which were rejected is entitled "Sample NCT Agreement 021012 redline" and located on the FAA Office of Chief Counsel's website at the "Aircraft Registration – Proposed Policy Clarification" link at [http://www.faa.gov/about/office\\_org/headquarters\\_offices/agg](http://www.faa.gov/about/office_org/headquarters_offices/agg).

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Non-citizen trusts that follow the attached standard trust agreement (which includes recommendations from the public) generally will be acceptable to the FAA as a basis for registering the aircraft in the U.S. However, applicants who wish to register an aircraft in the U.S. using a non-citizen trust are not required to use any particular version of a trust agreement. The FAA will review any non-citizen trust agreement, any aircraft operating arrangement and other documents affecting a relationship under the trust, and all other documents required to be filed along with an application for registration that is based on a non-citizen trust, to ensure that they are consistent with U.S. law, the applicable regulations, and the clarified policies set forth in this Notice.

Issued in Washington D.C. on June 13, 2013.

Marc L. Warren

Acting Chief Counsel, Federal Aviation Administration



EXHIBIT

**TRUST AGREEMENT**

THIS TRUST AGREEMENT ( ), dated as of , (the "Agreement") by and between , a [corporation organized and existing] [limited liability company formed]<sup>9</sup> under the laws of ("Trustor"), and , a organized and existing under the laws of the ("Owner Trustee");

**WITNESSETH:**

WHEREAS, Trustor desires to cause title to the Aircraft (as hereinafter defined) to be conveyed to Owner Trustee;

WHEREAS, Trustor desires to create a trust (the "Trust") and contribute the Aircraft thereto in order to ensure the eligibility of the Aircraft for United States registration with the Federal Aviation Administration (the "FAA");

WHEREAS, this Agreement is designed to create a Trust in order that the Owner Trustee may hold title to the Aircraft until such time as Trustor directs the Owner Trustee to distribute the Aircraft in accordance with Trustor's written instructions; and

WHEREAS, Owner Trustee is willing to accept the trusts as herein provided;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Trustor and Owner Trustee agree as follows:

**ARTICLE 1**

**DEFINITIONS**

Capitalized terms used in this Agreement shall have the respective meanings assigned thereto below, unless such terms are otherwise defined herein or the context hereof shall otherwise require. The terms "hereof", "herein", "hereunder" and

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<sup>9</sup> Choose the appropriate phrase depending on whether Trustor is an LLC or a corporation.



comparable terms refer to this Agreement, as amended, modified or supplemented from time to time, and not to any particular portion hereof. References in this Agreement to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Agreement unless otherwise indicated.

"Affidavit" means the Affidavit of Owner Trustee pursuant to Section 47.7(c)(2)(iii) of Part 47 of the Federal Aviation Regulations.

"Aircraft" means the Aircraft, serial number , FAA Registration Number N together with the engines, bearing manufacturer's serial numbers and , which are transferred to the Owner Trustee in trust under this Trust Agreement.

"Aircraft Registration Application" means AC Form 8050-1 Aircraft Registration Application by Owner Trustee covering the Aircraft.

"Citizen of the United States" means "citizen of the United States" as that term is defined in Section 40102(a)(15) of Title 49 of the United States Code.

"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 an AC Form 8050-2 Bill of Sale for the Aircraft from Trustor to Owner Trustee.

"Lessee" means any counterparty to the Owner Trustee under any Lease. "Lease" means any agreement (including an Operating Agreement) from time to time entered into by Owner Trustee and Lessee that transfers the right to possess, use and operate the Aircraft to such Lessee.



"Operating Agreement" means any agreement (including a lease) that transfers the right to possess, use and operate the Aircraft from Owner Trustee to Trustor. "Trust Estate" means all estate, right, title and interest of Owner Trustee in and to the Aircraft, the Lease, the Warranty Bill of Sale and the FAA Bill of Sale, including, without limitation, all amounts of the rentals under any Lease, insurance proceeds (other than insurance proceeds payable to or for the benefit of Owner Trustee, for its own account or in its individual capacity, or Trustor), and requisition, indemnity or other payments of any kind for or with respect to the Aircraft, (other than amounts owing to Owner Trustee, for its own account or in its individual capacity, Trustor or any Lessee of the Aircraft).

"Warranty Bill of Sale" means a full warranty bill of sale for the Aircraft, executed by Trustor in favor of Owner Trustee and specifically referring to each engine installed on the Aircraft.

## **ARTICLE 2**

### **CREATION OF TRUST**

Section 2.01 Transfer of Control. Trustor shall cause title to the Aircraft to be conveyed to Owner Trustee.

Section 2.02 Acceptance and Declaration of Trust. Owner Trustee accepts the Trust created hereby, and declares that it will hold the Trust Estate upon the trusts hereinafter set forth for the use and benefit of Trustor, in accordance with and subject to all of the terms and conditions contained in this Agreement, and agrees to perform the same, including without limitation the actions specified in Section 4.01 hereof, and agrees to receive and disburse all moneys constituting part of the Trust Estate, all in accordance with the terms hereof.

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## ARTICLE 3

### THE OWNER TRUSTEE

Section 3.01 Status. Owner Trustee hereby represents and warrants that it is a Citizen of the United States.

Section 3.02 Removal. Owner Trustee may be removed at any time, but for cause only, by a written instrument or instruments signed by an authorized person or persons, subject to the regulatory limitation that non-U.S. citizens not hold more than 25 percent of the aggregate power to remove a trustee. For purposes of this Section, “for cause”, may include willful misconduct or gross negligence, but “for cause” will not include the refusal of Owner Trustee to act or refrain from acting in a manner that (1) would violate the laws, regulations, court orders, or lawful directions of a government agency; (2) is outside the scope of Owner Trustee’s authority; (3) is contrary to its obligations under the Trust Agreement; or (4) is the subject of a mere disagreement between Owner Trustee and Trustor. Such removal shall take effect immediately upon the appointment of a successor Owner Trustee pursuant to Section 3.04, whereupon all powers, rights and obligations of the removed Owner Trustee under this Agreement (except the rights set forth in Section 3.08) shall cease and terminate. Without any affirmative action by Trustor, any Owner Trustee shall cease immediately to be an Owner Trustee at such time as it ceases to be a Citizen of the United States or at such time as it for any reason is not free from control by Trustor as described in Article 9, and shall give immediate notice thereof to Trustor. Any Owner Trustee shall also give Trustor notice of a possible change of citizenship at the later of (i) 90 days prior to a change in citizenship and (ii) actual knowledge by Owner Trustee that such a change in citizenship is probable.

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Section 3.03 Resignation. Owner Trustee may resign at any time upon giving 30 days prior written notice of such resignation to Trustor. Such resignation shall take effect only upon the appointment of a successor Owner Trustee pursuant to Section 3.04, Successor Owner Trustee whereupon all powers, rights and obligations of the resigning Owner Trustee under this Agreement (except the rights set forth in Section 3.08, Fees, Compensation) shall cease and terminate.

Section 3.04 Successor Owner Trustee. Promptly upon receipt of a notice of resignation from the Owner Trustee in accordance with Section 3.03, a successor trustee shall be appointed by a written instrument signed by a duly authorized officer of Trustor and the successor trustee shall execute and deliver to the predecessor Owner Trustee an instrument accepting such appointment. Such successor trustee shall be a Citizen of the United States and shall assume all powers, rights and obligations of such Owner Trustee hereunder immediately upon the resignation of such Owner Trustee becoming effective. Such successor, concurrently with such appointment, shall file an Affidavit with the FAA and all other documents then required by law to be filed in connection therewith. If the Trustor shall not have so appointed a successor Owner Trustee within 30 days after such resignation or removal, the Owner Trustee may apply to any court of competent jurisdiction to appoint a successor Owner Trustee to act until such time, if any, as a successor or successors shall have been appointed by the Trustor as above provided. Any successor Owner Trustee so appointed shall immediately and without further act be superseded by any successor Owner Trustee appointed by the Trustor as above provided.

Section 3.05 Merger. Any corporation into which Owner Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any

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merger, conversion or consolidation to which Owner Trustee shall be a party, or any corporation to which substantially all the corporate trust business of Owner Trustee may be transferred, shall, subject to the terms of Section 3.04, be Owner Trustee without further act.

Section 3.06 Tax Returns. The Owner Trustee shall keep all appropriate books and records relating to the receipt and disbursement by it of all monies under this Agreement or any agreement contemplated hereby. The Trustor will prepare all tax returns required to be filed with respect to the trust hereby and the Owner Trustee, upon request, will furnish the Trustor with all such information as may be reasonably required from the Owner Trustee in connection with the preparation of such tax returns. The Owner Trustee will execute and file the tax returns as prepared by the Trustor.

Section 3.07 Vacancies. If any vacancy shall occur in the position of Owner Trustee for any reason, including, without limitation, removal, resignation, loss of United States citizenship or the inability or refusal of such Owner Trustee to act as Owner Trustee, the vacancy shall be filled in accordance with Section 3.04.

Section 3.08 Fees; Compensation. The Owner Trustee shall receive from the Trustor as compensation for the Owner Trustee's services hereunder such fees as may heretofore and from time to time hereafter be agreed upon by the Owner Trustee and the Trustor and shall be reimbursed by the Trustor for all reasonable costs and expenses incurred or made by it in accordance with any of the provisions of this Agreement. If an event of default under any Lease shall occur, the Owner Trustee shall be entitled to receive reasonable compensation for its additional responsibilities, and payment or

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reimbursement for its expenses. Owner Trustee shall have a lien on the Trust Estate, prior to any interest therein of the Trustor, to secure payment of such fees and expenses.

Section 3.09 No Duties. Owner Trustee shall not have any duty (i) to see to any insurance on the Aircraft or maintain any such insurance, (ii) 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, assessed or levied against, the Aircraft (provided, however, that Owner Trustee shall not create, permit or suffer to exist any lien or encumbrance on any part of the Aircraft which results from claims against Owner Trustee unrelated to its capacity as Owner Trustee hereunder), (iii) to confirm or verify any notices or reports, (iv) to inspect the Aircraft at any time or ascertain the performance or observance by either of any Lessee or Trustor of its covenants under any Lease, or (v) except as set forth herein, to see to any recording or see to the maintenance of any such recording or filing with the FAA or other government agency.

Section 3.10 Status of Moneys Received. All moneys received by Owner Trustee under or pursuant to any provisions of this Agreement shall constitute trust funds for the purpose for which they are paid or held, and shall be segregated from any other moneys and deposited by Owner Trustee under such conditions as may be prescribed or permitted by law for trust funds.

Section 3.11 Owner Trustee May Rely. Owner Trustee shall not incur any liability to anyone in acting or refraining from acting upon 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. As to any fact or matter, the manner or

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ascertainment of which is not specifically described herein, Owner Trustee may for all purposes hereof rely on a certificate, signed by or on behalf of the party executing such certificate, as to such fact or matter, and such certificate shall constitute full protection of Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the Trust, Owner Trustee may, at the reasonable cost and expense of Trustor, seek advice of counsel, accountants and other skilled persons to be selected and employed by them, and Owner Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the actions, advice or opinion of any such counsel, accountants or other skilled persons.

Section 3.12 Owner Trustee Acts as Trustee. In accepting the Trust, Owner Trustee acts solely as trustee hereunder and not in any individual capacity (except as otherwise expressly provided in this Agreement or any Lease), and all persons other than Trustor having any claim against the Owner Trustee by reason of the transactions contemplated hereby shall not have any recourse to Owner Trustee in its individual capacity.

Section 3.13 No Expenses for Owner Trustee. Owner Trustee shall not have any obligation by virtue of this Agreement to expend or risk any of its own funds, or to take any action which could, in the reasonable opinion of Owner Trustee, result in any cost or expense being incurred by Owner Trustee. Owner Trustee shall not be required to take any action or refrain from taking any action under this Agreement unless it shall have been indemnified by Trustor in a manner and form satisfactory to Owner Trustee against any liability, cost or expense (including reasonable attorneys' fees) which may be incurred in connection therewith. No provisions of this Agreement shall be deemed to

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impose any duty on Owner Trustee to take any action if Owner Trustee shall have been advised by counsel that such action would expose it to personal liability, is contrary to the terms hereof or is contrary to law.

Section 3.14 Notice of Event of Default. In the event that a responsible officer in the Corporate Trust Department of the Owner Trustee shall have actual knowledge of a default or an event of default under any Lease, the Owner Trustee shall give or cause to be given prompt notice of such default or event of default to the Trustor. The Owner Trustee shall take such action with respect to such default or event of default as shall be specified in written instructions from the Trustor. For all purposes of this Agreement and any Lease, in the absence of actual knowledge of a responsible officer in the Corporate Trust Department of the Owner Trustee, the Owner Trustee shall not be deemed to have knowledge of a default or event of default unless notified in writing by the Trustor.

Section 3.15 Certain Duties and Responsibilities of Owner Trustee.

(a) Owner Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Agreement and in any Lease or Operating Agreement or as required by law and no implied duties, covenants or obligations shall be read into this Agreement or any Lease or Operating Agreement against Owner Trustee. Owner Trustee agrees that it will deal with the Aircraft or any other part of the Trust Estate in accordance with the terms of this Agreement and any Lease or Operating Agreement or as required by law.

(b) Whether or not herein expressly so provided, every provision of this Trust Agreement [relating to the conduct or] affecting the liability of or affording protection to Owner Trustee shall be subject to the provisions of this Section 3.15.

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Section 3.16 No Representations or Warranties as to the Aircraft or Documents.

OWNER TRUSTEE MAKES (i) NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE AIRCRAFT OR AS TO THE TITLE THERETO, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE AIRCRAFT WHATSOEVER, except that

, in its individual capacity warrants that on the date on which the Aircraft is transferred to the Trust contemplated by this TRUST AGREEMENT, Owner Trustee shall have received whatever title was conveyed to it, and (ii) no other representations or warranties are made by the Owner Trustee other than to the extent expressly made herein by Owner Trustee, except that Owner Trustee represents and warrants that it has full right, power and authority to enter into, execute, deliver and perform this Agreement and that this Agreement constitutes the legal, valid and binding obligation of the Owner Trustee.

**ARTICLE 4**

**THE TRUST ESTATE**

Section 4.01 Authorization and Direction to Owner Trustee. Trustor hereby authorizes and directs Owner Trustee, not individually but solely as Owner Trustee hereunder, and Owner Trustee covenants and agrees:

(a) to execute and deliver each agreement, instrument or document to which Owner Trustee is a party in the respective forms thereof in which delivered from time to time by Trustor for execution and delivery and, subject to the terms hereof, to exercise its rights and perform its duties under any Lease in accordance with the terms thereof,



including without limitation, accepting title to, and delivery of, the Aircraft and leasing the Aircraft to any Lessee or, subject to the provisions of Section 7 hereof, distributing the Aircraft to Trustor pursuant to the specific written instructions of Trustor;

(b) to effect the registration of the Aircraft with the FAA by duly executing and filing or causing to be filed with the FAA (i) the Aircraft Registration Application, (ii) the Affidavit, (iii) the FAA Bill of Sale, (iv) an executed counterpart of this Agreement, and (v) any other document or instrument required therefore including any Operating Agreement, except that the Owner Trustee may request that an Operating Agreement not be filed with the FAA, but only reviewed and returned.

(c) to execute and deliver each other document referred to in any Lease or which Owner Trustee is required to deliver pursuant to any Lease or this Agreement; and

(d) subject to the terms of this Agreement, to perform the obligations and duties and exercise the rights of Owner Trustee under any Lease.

(e) upon request by FAA, and with the cooperation of Trustor, to provide the FAA with the following information in an expeditious manner (generally within 2 business days of the request or immediately in an emergency identified by the FAA): (i) the identity and contact information (address, phone number, email) of person or entity normally operating, or maintaining the operations of the aircraft; (ii) where that person or entity resides or is incorporated and has its principal place of business; (iii) the location of the aircraft maintenance and other records; and; (iv) where the aircraft is normally based and operated.

(f) upon request by FAA, and with the cooperation of Trustor, to provide the FAA with the following information in an expeditious manner (generally within 5



business days of the request or immediately in an emergency identified by the FAA): (i) information about the operator, crew (names and pilot certificate numbers) and aircraft operations on specific dates; (ii) information about where the aircraft will be on a specific date in the future and (iii) maintenance and other aircraft records.

(g) to immediately forward all applicable FAA airworthiness directives to the Trustor, Lessee, and Operator, as applicable, by the most expeditious means available. (h)

to notify the FAA Aircraft Registry by the most expeditious means available of the trustee's resignation under Section 3.03, Resignation, or removal under Section 3.02, Removal, or of the termination of the trust under Section 7.01, Termination Date.

(i) to permit the inspection of the aircraft and/or records by the FAA or any other duly authorized representatives of the U.S. or of the government of the country where it is based or operated, when an appropriate request is made by the FAA or other governmental entity entitled to inspect the aircraft and/or records.

Section 4.02 Supplier Warranties. Trustor hereby assigns to Owner Trustee any and all warranties and indemnities of, and other claims against, any supplier relating to the Aircraft.

Section 4.03 Advances by Trustor. Trustor shall make advances to Owner Trustee in such amounts and at such times as may be necessary to permit Owner Trustee to satisfy its obligations under any Lease and this Trust Agreement.

Section 4.04 Trustor's Duties. Trustor hereby covenants and agrees:

(a) upon a request by the FAA for information related to the Aircraft and the operation of the Aircraft that the FAA is legally entitled to receive from an owner or operator of an aircraft, which is issued to Owner Trustee (and forwarded by Owner

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Trustee to Trustor), as the case may be, to provide as expeditiously as reasonably practicable to Owner Trustee or the FAA, as the case may be, with all such requested information to the extent that Trustor has such information or actually receives such information from the operator or from any other source, including, if applicable, (i) information in relation to the operation, maintenance, location or base of operation of the Aircraft, and (ii) contact information of (x) the operator of the Aircraft and (y) any other person to whom the FAA may look to gather information related to crew members for the Aircraft, the Aircraft's operations on specific dates, the location of the Aircraft, and maintenance and other aircraft records for the Aircraft; Trustor (so long as it is not also the operator of the Aircraft) shall not be liable or responsible under this Agreement for any failure by Owner Trustee, the operator or any other source to provide accurate information requested under this Agreement whether in a timely manner or at all;

(b) in connection with any transfer of Trustor's beneficial interest in the Trust (other than a collateral assignment thereof), to provide Owner Trustee the identity and contact information with respect to the new Trustor and to update the operator information provided pursuant to Section 4.04(c) and 4.04(d) to the extent Trustor has such information or actually receives such information from the operator or from any other source;

(c) to provide as expeditiously as possible to Owner Trustee, in response to a request by the Owner Trustee, the identity and contact information for the operator of the Aircraft under any Lease or Operating Agreement or bailment agreement entered into from time to time by Trustor, or any lease, bailment, or other arrangement entered into from time to time by a third party, whether or not at Trustor's direction.

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(d) to require that any Lease, Operating Agreement, bailment, or similar arrangement transferring possession and operational control of the Aircraft provide the following or similar provisions to the same effect:

(i) that all further transfers of the rights to possession and operational control of the Aircraft to a transferee must be in writing; provide the identity and contact information about the transferee; and the transferee's assurance that if and when the transferee is notified that the Owner Trustee has made a request, to promptly provide information related to crewmembers of the Aircraft and the Aircraft's operations on specific dates, the location of the Aircraft, and the maintenance and other aircraft records for the Aircraft;

(ii) that each such further transferee or operator (x) shall provide its reasonable cooperation to Owner Trustee, Trustor and the FAA in an expeditious manner with respect to any request from the FAA or other applicable governmental entity for information and access to records of the Aircraft which it is legally entitled to receive, and (y) shall authorize the FAA or any other duly authorized air authority representatives of the U.S. or the government where it is habitually based or operated, upon any request which the FAA or such other governmental entity is legally entitled to make under law applicable to such transferee or operator of the Aircraft, to inspect the Aircraft; and

(iii) that each such further transferee or operator agrees that the above-referenced information and inspection requirements would be made and



agreed in all subsequent or downstream leases, operating agreements and bailment agreements thereby requiring each such subsequent transferee or operator to provide such contact information in the event that there has been a transfer of possession and operation to another party, to update such information when any changes occur, and to promptly confirm such information at any time upon request by Owner Trustee or Trustor, to provide its reasonable cooperation to Owner Trustee, Trustor and the FAA in an expeditious manner with respect to any request from the FAA or other applicable governmental entity for information and access to records of the Aircraft which it is legally entitled to receive made pursuant to existing regulations and policies, and (z) to authorize the FAA or such other governmental entity to inspect the Aircraft to the extent that it is legally entitled to make such request under law applicable to Owner Trustee, Trustor, the relevant counterparty to any such subsequent or downstream agreement or the Aircraft.

## **ARTICLE 5**

### **DISTRIBUTIONS**

Section 5.01 Receipts. Except as otherwise provided in this Agreement, any payment received by Owner Trustee for which provision as to the application thereof is made in any Lease shall be applied promptly to the purpose for which such payment shall have been made in accordance with the terms of such Lease; and any payment received by Owner Trustee for which no provision as to the application thereof is made in any

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Lease or in this Article 5 shall, unless Trustor shall have otherwise instructed Owner Trustee in writing, be distributed promptly to Trustor.

Section 5.02 Manner of Making Distributions. Owner Trustee shall make all distributions to Trustor under this Agreement and any Lease promptly upon the receipt of proceeds available for distribution, but shall not be obligated to make any distributions until the funds therefor have been received by Owner Trustee. All distributions to Trustor hereunder shall be made to such account and in such manner as Trustor shall from time to time direct in writing.

## ARTICLE 6

### **INDEMNIFICATION OF OWNER TRUSTEE BY TRUSTOR**

Section 6.01 Indemnification Trustor hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and does hereby indemnify, protect, save and keep harmless \_\_\_\_\_, in its individual capacity and its successors, assigns, legal representatives, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, taxes (excluding any taxes payable by \_\_\_\_\_ in its individual capacity on or measured by any compensation received by \_\_\_\_\_ in its individual capacity for its services hereunder), claims, actions, suits, costs, expenses or disbursements (including, without limitation, reasonable ongoing fees of Owner Trustee and reasonable attorneys' fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against \_\_\_\_\_ in its individual capacity (whether or not also indemnified against by a Lessee under any Lease or also indemnified against by any other person) in any way relating to or arising out of this Agreement or any Lease or the enforcement of any of the terms hereof or thereof, or

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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 or \_\_\_\_\_ in its individual capacity hereunder, except (a) in the case of willful misconduct or gross negligence on the part of Owner Trustee or \_\_\_\_\_ in its individual capacity in the performance or nonperformance of its duties hereunder, or (b) those resulting from the inaccuracy of any express representation or warranty of \_\_\_\_\_ in its individual capacity (or from the failure of \_\_\_\_\_ in its individual capacity to perform any of its covenants) contained in this Agreement or any Lease, or (c) in the case of the failure to use ordinary care on the part of Owner Trustee or \_\_\_\_\_ in its individual capacity in the disbursement of funds. The indemnities contained in this Article 6 extend to \_\_\_\_\_ only in its individual capacity and shall not be construed as indemnities of the Trust Estate. The Indemnities contained in this Article 6 shall survive the termination of this Agreement. In addition, and to secure the foregoing indemnities, Owner Trustee shall have a lien on the Trust Estate, which shall be prior to any interest therein of Trustor.

## **ARTICLE 7**

### **TERMINATION**

Section 7.01 Termination Date. The Trust shall terminate without any notice or other action of Owner Trustee upon the earlier of (a) such date as may be directed by Trustor and the sale or other final disposition by the Owner Trustee of all property

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constituting the Trust Estate or (b) twenty one years less one day after the earliest execution of this Trust Agreement by any party hereto.

Section 7.02 Distribution of Trust Estate Upon Termination. Upon any termination of the Trust pursuant to the provisions of Section 7.01 hereof, Owner Trustee shall convey the Trust Estate to Trustor or its nominee.

## **ARTICLE 8**

### **MISCELLANEOUS**

Section 8.01 Nature of Title of Trustor. Trustor shall not have legal title to any part of the Trust Estate. No transfer, by operation of law or otherwise, of the right, title and interest of Trustor in and to the Trust Estate or the trusts hereunder, in accordance with the terms hereof, shall operate to terminate this Agreement or the trusts hereunder or entitle any successor or transferee of Trustor to an accounting or to the transfer of it of legal title to any part of the Trust Estate.

Section 8.02 Power of Owner Trustee to Convey. Any assignment, sale, transfer or other conveyance by Owner Trustee of the interest of Owner Trustee in the Aircraft or any part thereof made pursuant to the terms of this Agreement or any Lease shall bind Trustor and shall be effective to transfer or convey all right, title and interest of Owner Trustee and Trustor in and to the Aircraft or such part thereof. No permitted purchaser or other permitted 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.

Section 8.03 Trust Agreement for Benefit of Certain Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any person other than

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Owner Trustee and Trustor any legal or equitable right, remedy or claim under or in respect of this Agreement; but this Agreement shall be held to be for the sole and exclusive benefit of Owner Trustee and Trustor.

Section 8.04 Notices. Unless otherwise expressly provided herein, all notices, instructions, demands and other communications hereunder shall be in writing and shall be delivered personally or sent by registered or certified mail, postage prepaid and return receipt requested, or sent by facsimile transmission, with a confirming copy sent by air mail, postage prepaid, and the date of personal delivery or facsimile transmission or 7 business days after the date of mailing (other than in the case of the mailing of a confirming copy of a facsimile transmission), as the case may be, shall be the date of such notice, in each case addressed (i) if to the Owner Trustee, to \_\_\_\_\_ at its office at \_\_\_\_\_, Attention: \_\_\_\_\_ and (ii) if to the Trustor, to \_\_\_\_\_, Attention: \_\_\_\_\_.

Section 8.05 Co-Trustee and Separate Trustees. 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 Trustor or Owner Trustee, or Owner Trustee shall have been directed to do so by Trustor, Owner Trustee and Trustor 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 and all of which shall be a Citizen of the United States) approved by Owner Trustee and Trustor, either to act as co-trustee jointly with Owner Trustee, or to act as separate trustee hereunder (any such co-trustee or separate trustee being herein sometimes referred to as "additional trustee"). In the event Trustor shall not have joined

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in the execution of such agreements supplemental hereto within 10 days after the receipt of a written request from Owner Trustee so to do, or in case an event of default, as defined in any Lease, shall have occurred and be continuing, Owner Trustee may act under the foregoing provisions of this Section 8.05 without the concurrence of Trustor; and Trustor hereby appoints Owner Trustee its agent and attorney-in-fact to act for it under the foregoing provisions of this Section 8.05 in either of such contingencies.

Every additional trustee hereunder 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:

(a) all powers, duties, obligations and rights conferred upon Owner Trustee in respect of the custody, control and management of moneys, the Aircraft or documents authorized to be delivered hereunder or under any Lease shall be exercised solely by Owner Trustee;

(b) 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 (U.S. citizen) 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;

(c) no power given to, or which it is provided hereby may be exercised by, any such additional trustee shall be exercised hereunder by such additional trustee, except jointly with, or with the consent in writing of, Owner Trustee;



(d) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder;

(e) Trustor, at any time, by an instrument in writing may remove any such additional trustee. In the event that Trustor shall not have executed any such instrument within 10 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 Trustor; and Trustor hereby appoints Owner Trustee its agent and attorney-in-fact for it in such connection in such contingency; and

(f) no appointment of, or action by, any additional trustee will relieve the Owner Trustee of any of its obligations under, or otherwise affect any of the terms of, this Agreement or any Lease.

Section 8.06 Situs of Trust; Applicable Law. The Trust has been accepted by Owner Trustee and will be administered in the State of (State of United States). The validity, construction and enforcement of this Agreement shall be governed by the laws of the State of (State of United States) without giving effect to principles of conflict of law. If any provision of this Agreement shall be invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective, provided that such remaining provisions do not increase the obligations or liabilities of Owner Trustee.

Section 8.07 Amendment. This Agreement may not be amended, modified, supplemented, or otherwise altered except by an instrument in writing signed by the parties thereto.

Section 8.08 Successors and Assigns. In accordance with the terms hereof, this Agreement shall be binding upon and shall inure to the benefit of, and shall be



enforceable by, the parties hereto and their respective successors and permitted assigns, including any successive holder of all or any part of Trustor's interest in the Trust Estate.

Section 8.09 Headings. The headings of the Articles and Sections of this Agreement are inserted for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

Section 8.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute and be one and the same instrument.

## ARTICLE 9

### CERTAIN LIMITATIONS

Section 9.01 Limitations on Control, Exceptions,

(a) Limitation on Control. Notwithstanding any other provision of this Agreement, but subject to paragraph (b) of this Section 9.01, the Trustor will 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, including matters involving the ownership and operation of the Aircraft. The Owner Trustee shall exercise its duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft, as the Owner Trustee, in its discretion, shall deem necessary to protect the interests of the United States, notwithstanding any countervailing interest of any foreign power which, or whose citizens, may have a direct or indirect interest in the Trustor and any such action by the Owner Trustee shall not be considered malfeasance or in breach of any obligation which the Owner Trustee might otherwise have to the Trustor; provided, however, that subject to the foregoing limitations, the Owner Trustee shall exercise this

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discretion in all matters arising under the Agreement, including the ownership and operation of the Aircraft with due regard for the interests of the Trustor. In exercising any of its rights and duties under this Agreement in connection with matters which may arise not relating to the ownership and operation of the Aircraft, the Owner Trustee shall be permitted to seek the advice of the Trustor before taking, or refraining from taking, any action with respect thereto. The Owner Trustee shall notify the Trustor of its exercise of rights and duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft.

(b) Certain Exceptions. Subject to the requirements of the preceding paragraph (a), the Owner Trustee agrees that it will not, without the prior written consent of the Trustor, sell, mortgage, pledge or otherwise dispose of the Aircraft or other assets held in the Trust Estate relating thereto, or amend any Lease or other document (other than a document over which the Owner Trustee has the absolute and complete discretion established under Section 9.01(a) Limitation on Control of this Agreement) or give any consents thereunder except as otherwise expressly provided for herein.

(c) Purpose. The purpose of this Section 9.01 is to assure that (i) the Aircraft shall be controlled with respect to such matters as are described in Section 9.01(a) of this Agreement by a Citizen of the United States and (ii) the Trustor shall have no power to influence or control the exercise of the Owner Trustee's authority with respect to such matters and (iii) Owner Trustee shall be able to give the affidavit required by Section 47.7 (c) (2) (iii) of the Federal Aviation Regulations, Section 9.01 shall be construed in furtherance of the foregoing purpose.

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Section 9.02 General. Notwithstanding anything to the contrary in this Agreement, the Owner Trustee and the Trustor hereby agree as follows:

If persons who are neither U.S. citizens 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 shall not have more than twenty five (25%) percent of the aggregate power to direct or remove the Owner Trustee.

Section 9.03 Priority. In creating and accepting the Trust, Trustor and Owner Trustee each acknowledges that in case of conflict, the limitations in Article 9 of this Agreement are paramount and superior to any other terms and conditions in this Agreement; or in any other document or documents including without limitation, under a Lease or an Operating Agreement to which Trustor and Owner Trustee are a party in respect of the Trust.

## **ARTICLE 10**

### **COMPLIANCE WITH LAWS**

Section 10.1 Covenant to Comply with Export Restrictions and U.S. Laws. Trustor acknowledges that the Aircraft may be subject to restrictions involving the export and re-export of the same pursuant to the laws and regulations of the United States, that the laws and regulations of the United States restrict the transfer of any interest in the Aircraft to certain persons (collectively, the “Export Restrictions”) and that such Export Restrictions may apply to the Aircraft even after the Aircraft has been physically removed or transferred from the United States. Trustor also acknowledges that the Owner Trustee, as a U.S. regulated financial institution, is subject to the laws and regulations of the United States, including, without limitation, those promulgated by the U.S. Department of

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Treasury's Office of Foreign Assets Control (OFAC) and the Financial Crimes Enforcement Network (FinCEN) (collectively, the "U.S. Laws"). Trustor agrees that it will comply with, and will not knowingly permit the Aircraft to be used in a manner that is contrary to, Export Restrictions and U.S. Laws applicable to (1) the Trustor; (2) the Owner Trustee; or (3) the Aircraft, including the acquisition, possession, operation, use, maintenance, leasing, subleasing, or other transfer or disposition thereof.

Section 10.2 Approval of Transfer. Trustor agrees that it will not permit the assignment of this Agreement, any transfer of the beneficial interest of the Trustor created by this Agreement, or a lease or sublease of the Aircraft (collectively, a "Transfer") without Owner Trustee's prior written approval of such Transfer. Owner Trustee shall not unreasonably delay its decision on a request for approval from Trustor nor shall it unreasonably withhold its approval to such request. To facilitate Owner Trustee's evaluation of the Transfer, Trustor agrees that it will use reasonable efforts to provide Owner Trustee with any information reasonably requested by the Owner Trustee regarding the Transfer, the proposed transferee and/or the ownership of the proposed transferee. Owner Trustee's decision to approve or disapprove the proposed Transfer shall not be deemed to have been unreasonably delayed if Owner Trustee has not obtained the information it needs to make the decision, and Owner Trustee's approval of the proposed Transfer shall not be deemed to have been unreasonably withheld if Owner Trustee has determined that the Transfer will or may reasonably be expected to put Owner Trustee at risk of violating any laws or regulations applicable to Owner Trustee including, without limitation, the Export Restrictions and/or U.S. Laws. If Owner Trustee withholds approval of a Transfer as set forth herein, then: (i) subject to the terms

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of this Agreement, Owner Trustee may resign; and (ii) Owner Trustee shall have no obligation to consent to or facilitate a Transfer while Owner Trustee's resignation is pending.

IN WITNESS WHEREOF, Owner Trustee and Trustor have caused this Agreement to be duly executed all as of the date first above written.

TRUSTOR:

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

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

OWNER TRUSTEE:

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

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

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