



May 23, 2012

Kathryn Thomson  
Chief Counsel  
800 Independence Avenue, SW  
Federal Aviation Administration  
Washington, DC 20591

Re: **Non-Citizen Trust / Proposed Policy Clarification for the Registration of Aircraft to U.S. Citizen Trustees in Situations Involving Non-U.S. Citizen Trustors**

Dear Ms. Thomson,

Reference is made to the above-identified proposed policy clarification, docket No. FAA-2011-0012 (the **PPC**) regarding Non-Citizen Trusts (**NCT**).

Thank you for extending the comment period and agreeing to hold a public meeting on June 6, 2012 in Oklahoma City regarding the PPC.

The Aviation Working Group submits this letter and its attachments (the **AWG Submission**) to the FAA as comments on the PPC. We are authorized to express the support of the organizations and companies listed on the Schedule to this letter (the **Supporting Entities**) for this submission. Please note that AWG may submit additional comments following the public meeting.

The AWG Submission reflects the views of a large, industry-wide group (the **AWG Industry Consultative Group**, in short, the **Industry Group**). This coordinated set of comments seeks to assist the FAA by setting out a unified view as efforts are made to finalize the PPC.

We make three preliminary but fundamental comments on approach. First, we share the FAA's goal of settling the identified NCT items through policy clarifications rather than rulemaking, which has animated our comments. To stay within that parameter, the subject points should remain true clarifications, not changes in policy, as measured against the FAA's interpretation and practice over the last 30 years. Accordingly, we have refrained from policy-changing comments and have opposed elements of the PPC that appear to reflect policy changes. A different procedure would apply to fundamental changes in policy, or any attempt to impose mandatory obligations via legislative-type rulemaking.

Secondly, we have made specific, concrete, and, we believe, constructive proposals on all points. We have resisted the urge to take maximalist, negotiating-type positions, and, instead, have laid out what we believe are practical and fair proposals that address FAA's stated concerns. Many of these proposals entail substantial changes in industry practice, but ones that we find acceptable, given the importance of the NCT structures.

Thirdly, we limit our comments to NCTs. We assume that FAA interpretation and practice regarding other trusts and leasing generally are not under review, and will remain unaffected.

Turning to the organization of the AWG Submission, the attached offers revisions to the relevant provisions of the standard NCT trust agreement, which was attached to the PPC as Exhibit 1, as well as the typical affidavit provided upon registration, makes suggestions as to the content of the final policy clarification, and explains the rationale for the changes to the text of the provisions we propose for the trust agreement. For your convenience, we also include in the submission a redline showing the changes to the relevant trust agreement provisions proposed in the PPC. Our comments reflect matters of identified substance or the need for completeness or greater clarity.

Finally, we continue to believe that the agency and parties would benefit from an informal meeting between you and your staff and the relevant program office, and a few members of our Industry Group's steering group prior to final agency action on the PPC. We fully support the FAA's desire to ensure a transparent process. We believe that nothing in the APA or Department's *ex parte* rules would prohibit or discourage such a meeting about a proposed policy statement. We support having detailed meeting notes promptly placed in the public docket.

We thank you very much for taking our views into account.

Sincerely yours,

A handwritten signature in blue ink that reads "J. Wool".

Jeffrey Wool  
Secretary General  
Aviation Working Group

CC: M. Gilligan, M. Warren, J. Standell, FAA  
CC: Each of the Supporting Entities Noted Above  
CC: S Scherer (Boeing) and C. Brandes (Airbus), AWG Co-Chairs  
CC: J. Pritchard (Holland & Knight), A. Brantner (GECAS), and K. Quinn (Pillsbury), Industry Group Representatives

**Supporting Entities**  
**(listed in alphabetical order)**

**Associations:**

Air Carrier Association of America  
Airlines for America  
Aircraft Owners and Pilots Association  
Association of Aircraft Title Lawyers  
Aviation Working Group  
Equipment Leasing and Finance Association

General Aviation Manufacturing Association  
Helicopter Association International  
National Air Transportation Association  
National Aircraft Finance Association  
National Business Aviation Association  
Pacific Northwest Business Aviation Association

**Companies / Law Firms:**

A&L Goodbody  
Adams Aviation Services, Inc.  
AerCap Holdings N.V.  
Aircastle Limited  
Aircraft Guaranty Title & Trust  
Aircraft Title Insurance Agency  
Alaska Airlines, Inc.  
Allen & Overy LLP  
Asset Finance Legal Counsel, LLP  
Avcorp Registrations  
Aviation Capital Group Corp.  
Aviation Legal Group, P.A.  
AWAS  
Bank of Utah  
Barbera & Watkins, LLC  
Bell Helicopter Textron Inc.  
Bombardier Aerospace Structured Finance  
Cadwalader, Wickersham & Taft LLP  
Cessna Finance Corporation  
Cirrus Aircraft  
Clifford Chance US LLP  
Cooling & Herbers, P.C.  
Crowe & Dunlevy  
Crowell & Moring LLP  
Dassault Falcon Jet Corp.  
Daugherty, Fowler, Peregrin, Haught & Jenson  
DeBee Gilchrist  
Embraer S.A.  
Fafinski Mark & Johnson, P.A.  
Fellers Snider Blankenship Baily & Tippens, P.C.  
Fulbright & Jaworski L.L.P.  
Garofalo Goerlich Hainbach PC  
GE Capital Aviation Services  
GE Capital Corporate Aircraft Finance  
Greenberg Traurig, P.A.

Harper Meyer Perez Hagen O'Connor Albert & Dribin LLP  
Hawker Beechcraft Corporation  
Hinckley, Allen & Snyder, LLP  
Hogan Lovells US LLP  
Holland & Knight LLP  
Horizon Air Industries, Inc.  
Husch Blackwell LLP  
International Lease Finance Corporation (ILFC)  
Jackson Adams PC  
Jet RVSM Services, LLC  
K&L Gates LLP  
Katten Muchin Rosenman LLP  
Kaye Scholer LLP  
Lane Powell PC  
Law Offices of Paul A. Lange LLC  
McAfee & Taft, P.C.  
Michael L. Dworkin and Associates  
Milbank, Tweed, Hadley & McCloy LLP  
Morris James LLP  
O'Connor, Craig, Gould, Evans & Rohr  
ORIX Aviation Systems Limited  
Pillsbury Winthrop Shaw Pittman LLP  
Pratt & Whitney  
Ray Quinney & Nebeker P.C.  
RBS Asset Finance, Inc.  
Smith, Gambrell & Russell, LLP  
Stewart H. Lapayowker, P.A.  
Textron Financial Corporation  
The Boeing Company  
Vedder Price P.C.  
Wells Fargo Bank Northwest, NA  
Wells Fargo Delaware Trust Company  
Wilmington Trust Company  
White & Case LLP  
Zuckert Scoutt & Rasenberger, L.L.P.

## **AWG Industry Consultative Group (“ICG”) on Non-Citizen Trusts**

### **I. Executive Summary.**

The ICG has reviewed the 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 (Fed. Reg. Vol. 77, No. 27, p. 6694) ( “**PPC**”), including suggested revisions to portions of the NCT Trust Agreement (an “**NCT TA**”). This submission makes suggestions as to the content of the final policy clarification to be issued by the FAA (“**Policy Clarification**”), offers further revisions to the relevant sections of the NCT TA and to the Trustee’s Affidavit, and explains the basis for such revisions. This submission is offered as a basis for further discussion and collaboration between the FAA and the various constituencies of the aviation industry, and may be supplemented after the June 6 public meeting.

### **II. Comments on the PPC.**

After the PPC introduction and explanation of the responsibilities of the State of Registry we request that the discussion about Aircraft Owner Responsibilities that starts on page 6695 with section 1 and that ends on page 6697 after the end of section 4 be deleted from the PPC. The substance of these sections are the subject of considerable disagreement on various points that are unrelated to the FAA’s analysis of registration of aircraft involving NCTs and could encourage litigation by third parties against trustees and passive owners of aircraft. In sum, these sections are not critical to the FAA’s explanation and support of its needs.

With respect to the use in the PPC of a complete “standard” form of NCT TA, we urge the FAA to include in the Policy Clarification only the pertinent provisions of an NCT TA that will be required for such NCT TA to support registration of an aircraft. These provisions are the definitions of “Lease”, “Lessee” and “Operating Agreement”, the section on removal of the trustee, certain directions to the trustee by the Trustor and the limitation on control provisions (collectively, the “**NCT TA Provisions**”). The NCT TA Provisions provide required substance to give effect to the protections and requirements necessary for an NCT registration of an aircraft. We are concerned that if an entire form of trust agreement is appended, it could be considered the final form of all NCT TAs in all respects. This would not be appropriate since trust agreements include specific facts and circumstances of the related transaction, so the final document entered into by the parties is likely to be different or more descriptive. This suggestion does not put the FAA at risk of the parties’ otherwise frustrating the intent of the NCT TA Provisions as each NCT TA submitted to the FAA with an application for aircraft registration would contain these provisions.

### III. Revisions to NCT TA Provisions.

Below we provide the basis for the ICG's revisions to the NCT TA Provisions. For convenience, the section numbers referenced below are references to the section numbers in the Standard NCT Trust Agreement included in the PPC. Note that because trust agreements are transaction-specific, section and article references will not always be the same in every trust agreement.

1. Article [1] Definitions – We believe that the revised definitions of Lease and Operating Agreement in the PPC should be further clarified. To make it clear that any agreement between the Trustee and the Trustor of an NCT TA that grants to the Trustor the right to possess, use and operate the Aircraft is considered an instrument affecting the relationship established under a trust, the definition of Operating Agreement should be revised to refer to any agreement (which may include a lease) by which the Trustee grants such rights to the Trustor and the definition of Lease should be revised to refer to any agreement (which may include an operating agreement) by which the Trustee grants such rights to a third party. Accordingly, we have revised the definitions of “Lessee”, “Lease” and “Operating Agreement” as marked in the revised NCT TA Provisions to make clear this distinction.

In addition, the revision to the definition of “Operating Agreement” (equally applied to the revised definition of “Lease”) deletes the reference to “manage” and uses the word “and” rather than “or” in references to “possession, use and operation” of the Aircraft. We delete the reference to “manage” because granting the right to manage an aircraft does not give the manager the right to possession, use and operation of the aircraft. We use the word “and” to comport with the use by the FAA of “and” in various references in the PPC to “possession and use” or “custody and use”.

2. Section [3.02] Removal – [PPC #2a and b, p. 6698]: The PPC revisions to Section [3.02] added two requirements for a non-U.S. citizen Trustor to remove a trustee – a description of specific causes that might justify removal and a limit on the aggregate power to remove of not greater than 25%. Since most NCTs have only one Trustor, the language of Section [3.02] proposed in the PPC, making the right to remove for cause “subject to the regulatory limitation that a non-U.S. citizen not hold more than 25 percent of the aggregate power to remove a trustee” renders the possibility of removal of a Trustee for specific cause unavailable for those NCTs. We do not think that was the FAA's intention and we deleted this new clause from the NCT TA Provisions on removal of trustees. Please note that we have provided an exception in Section [9.02 *Limitation on Control – General*] clarifying that, other than for cause set forth in Section [3.02 *Removal*], the right to remove is subject to the aggregate power limitation. We submit that, as specified in FAA Aeronautical Center Counsel Opinion Letter dated January 8, 2002 (Annex 4 to the May 26, 2011 ICG Response Paper), the power to remove must be limited by other means to not more than 25 percent in the aggregate and, as set forth in

that opinion letter, limiting removal to cause and, now, per the PPC, limiting it to specific cause, is a sufficient proxy for such aggregate power limitation.

With respect to the specificity of “cause”, actual causes were not clearly prescribed by the PPC, although suggestions were made in the NCT TA attached to the PPC. We suggest in our revisions to Section [3.02] that the Policy Clarification define “cause” to be willful misconduct or gross negligence or such other specific legitimate causes as the parties may wish to include. However, the Policy Clarification should also describe what would not be sufficient or permitted as causes for removal, including placing the notion of a mere disagreement within that set of prohibited removal factors. Since the standards of willful misconduct and gross negligence are well defined legal concepts and each is a high threshold to meet, we believe that the phrase “so as to endanger the Trust Estate” is unnecessary.

3. Section [3.03] Resignation – [PPC #2c, p. 6698]: We note with appreciation the FAA’s confirmation in the PPC that from the FAA’s perspective a Trustee may resign without replacement, and we ask that the Policy Clarification contain the same confirmation. We have added a related footnote to Section [3.03] of the NCT TA to remind the prospective parties of this possibility, but we have not made any revision to the pertinent provision. As currently drafted, this section continues to require a successor Trustee, which is the standard absent the parties agreeing otherwise.
4. Section [4.01(b), (e), (f), (g), (h) and (i) plus Section 4.04] - Information Inflow and Outflow under the NCT Trust – [PPC #3, p. 6698] - These are the new provisions in the NCT TA that deal with the inflow and outflow of information with the Trustee and the Trustor and, where applicable, the operator. We have studied the FAA proposals and discussed them at length with the various industry participants. Our suggested revisions reflect what the ICG considers to be a practical solution to the FAA’s concerns about obtaining information about an aircraft and its operations timely. We have also revised the wording to follow the same format as the other clauses and to improve flow and clarity. We deal with each sub-section more particularly below.
  - a) Section 4.01(b) (ii) Affidavit and (v) FAA requiring Trustee file any Operating Agreement with the FAA along with registration documents [PPC #1, p. 6697] – The PPC clarifies that the FAA will require all operating agreements or similar side agreements involving the trustee transferring custody and use of the aircraft to the Trustor be submitted to the FAA pursuant to 14 CFR 47.7(c)(2)(i). With our suggested revisions to the definition of “Operating Agreement” (the definition of which will now include any other side agreements), the ICG has no objection to submitting Operating Agreements to the FAA for review in the context of determining eligibility for registration using an NCT. Once that analysis is done, there is no need for the Operating Agreement to be retained. As such, we would like

the Policy Clarification to specify that the FAA will discard the Operating Agreements after review.

The PPC also requires on page 6697 that when no Operating Agreement accompanies the application for registration, the applicant must provide sufficient assurances that no Operating Agreement (defined as proposed by the ICG) exists. The PPC does not provide the method of such assurances, but for clarity and uniformity, we propose adding a new paragraph to the Affidavit delivered with an NCT application for registration with respect to which no Operating Agreement is also submitted to the FAA, which reads as follows: “No Operating Agreement, as defined in the Trust Agreement, has been entered into between Owner Trustee and Trustor”. This will provide clear guidance as to the assurances that will satisfy this requirement.

- b) Section 4.01 (e) & (f) (now Section 4.01(e)) - FAA requests to Trustee for information. - [PPC #3a, p. 6698] The PPC proposed new subsections of the NCT TA with time periods of 2 business days to provide contact and other information for the person or entity normally operating or maintaining the operations of the aircraft, the location of the aircraft maintenance records and the normal base and operations of the aircraft and 5 business days to provide information about the operator crew, aircraft operations on specific dates and future route schedules, and to provide the actual maintenance and other aircraft records, in each case following a request by the FAA to the Trustee. After careful consideration, we find that set time periods may be unrealistic depending on the existing circumstances and the information requested. What should be important for the FAA is to establish a policy for NCTs to seek to obtain and provide information in conformance with a responsiveness standard.

The ICG revisions eliminate the need for 2 sub-sections with different responsiveness standards, provides a uniform responsiveness standard for all requests and requirements, and tightens the responsiveness without giving precise timetables which in many instances would be impossible for the Trustee to meet, even with the cooperation of the Trustor or operator. The proposed standard is to respond as expeditiously as reasonably practicable at all times. In addition, we suggest adding a new Section [4.04] (as more particularly described below) imposing on the Trustor the same information obligations to facilitate the Trustee’s compliance with FAA requests.

- c) Section [4.01(g) and (h)] (now Sections [4.01(f) and (g)]) notification by FAA of emergency AD’s and notification to the FAA of Trustee resignation or removal – [PPC #3a, p. 6699] In new [4.01(f)], we have followed the same standard for passing along information as for providing it. In addition, to reflect objections raised by airlines and other operators that receive these notices directly from the FAA and do not wish to have the Trustees/Trustors also provide this same information, we have added language that relieves the Trustee of the obligation to pass along information if

the Trustee knows that the Trustor or operator receives such emergency AD's and notifications directly from the FAA. Revised [4.01(g)] also follows the same standard for providing information about the resignation or removal of the Trustee.

- d) Section [4.01(i)], (now Section [4.01(h)]) inspection of aircraft – [PPC#3a, p. 6698]  
The proposed revision to [4.01(h)] changing “authorize” to “not prohibit or exclude” is to reflect the reality that the Trustee is not in possession of the aircraft and, therefore, is not in a position to authorize inspection of the aircraft. As a non-possessory owner, the Trustee can and will agree not to impede any such inspection.
- e) Section [4.04] AWG - ICG Addition of Trustor obligation to provide information –  
New Section [4.04] provides the necessary corollary to the Trustee's obligations under Section [4.01], requiring the Trustor to provide or cause the operator to provide to the Owner Trustee or the FAA the information that the FAA has requested from the Owner Trustee with the same standard of responsiveness. This new provision would clearly establish a basis for the Trustee's resigning or taking other action if the Trustor fails to comply with its obligations under this section. The Section gives both the Trustee and any non-operating Trustor protection from liability in the event that it is trying to respond to the FAA's requests, but the operator or some other pertinent party fails to fully and timely cooperate or respond.

- 5. Section [9.01(a)] Limitation on Control – [PPC #3b, p. 6699]: We have made only a few more suggestions to this section than the mark-up proposed in the PPC which we believe further clarifies the section without changing the core element of U.S. citizen control. We note the explanation in item 3b of the PPC regarding concerns the FAA has with the words “in connection with matters involving the ownership and operation of the aircraft by the Owner Trustee”. We disagree because the use of the words “including, but not limited to” rather than the prior words “in connection with” broadened the scope of influence to all duties under the NCT TA, some of which are not relevant to the issues of ownership and operation of the Aircraft. We believe this is far too broad. The basic principle is that the title-holding U.S. citizen Trustee must control the ownership of the aircraft and must be able to control the operation of the aircraft if necessary to protect the interests of the United States. It is not that the FAA should want the Trustee to always control or be responsible for the Aircraft or to prevent the Trustor from any element of control or involvement in the trust as a whole. The FAA should only ask that if the Trustee had duties to perform expressly under the NCT TA in connection with the ownership or operation of the Aircraft, it would do so in a way that reflects what it deems necessary to protect the interests of the United States.

In addition, we have bracketed the second sentence of [9.01(a)] as we believe that the sentence is duplicative of the first and third sentences of [9.01(a)] and feel that the section will be clearer without this sentence.

6. Section [9.01(b)] Certain Exceptions – The revisions to this Section in the PPC deleted the obligation of the Trustee not to amend a Lease without the consent of the Trustor. Since a Lease is with a third party and not the Trustor, we do not think a commitment to not amend the Lease or give consents should be an issue to the FAA. For NCTs with 3<sup>rd</sup> party leases, this limitation would be important. We have made an exception however for an agreement that comes under the discretion requirements set forth in Section [9.01(a)] where we think that the Trustee should be able to amend without the Trustor’s consent if needed in order to meet the best interests of the United States.
7. Section [9.01(c)] Purpose and Section [9.02] General – The revisions here were for clarity.
8. Section [9.03] Priority – We have added additional language to strengthen the NCT TA language and to make void any attempt in other agreements or documents between the same parties as are parties to the NCT TA to circumvent the provisions of all of Article [9 *Certain Limitations*]. This helps to address the FAA’s concerns about unknown agreements.

Attachments:

1. ICG revisions of the NCT TA Provisions - clean
2. Blackline showing the changes in the ICG revisions of the NCT TA Provisions from the same sections in the NCT TA example included in the PPC.

**TRUST AGREEMENT**  
**[ONLY SECTIONS RELEVANT TO NCT TA PROVISIONS]**

**ARTICLE [1]<sup>1</sup>**

**DEFINITIONS**

"Lessee" means any counterparty (other than Trustor) to 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.

**ARTICLE [3]**

**THE OWNER TRUSTEE**

Section [3.02] Removal. Owner Trustee may be removed at any time, but for cause only, by a written instrument or instruments signed by Trustor. For purposes of this Section, "for cause" means willful misconduct or gross negligence [or PARTIES MAY ADD OTHER SPECIFICALLY DESCRIBED CAUSES SUBJECT TO FAA REVIEW], but "for cause" will not include the refusal by 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 Article [4, *Trust Estate*] or [9, *Limitations on Control*]<sup>1</sup> of this 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

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<sup>1</sup> References to Article Numbers are illustrative and refer to the articles on the Trust Estate and on Limitations on Control, which may bear different Article Numbers in any actual Trust Agreement.

change in citizenship and (ii) actual knowledge by Owner Trustee that such a change in citizenship is probable.

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.<sup>2</sup>

## 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:

[(b)] to effect the registration of the Aircraft with the FAA by duly executing and filing or causing to be filed with the FAA or, in the case of sub-clause (v), submitting to the FAA for review, (i) the Aircraft Registration Application, (ii) the Affidavit, (iii) the FAA Bill of Sale, (iv) an executed counterpart of this Agreement, and (v) any Operating Agreement and any other document or instrument required to so effectuate such registration;

[(e)] to respond as expeditiously as reasonably practicable to any request by the FAA for information related to or the operation of the Aircraft that the FAA is legally entitled to receive from an owner or operator of an aircraft including, if applicable, the information described in Section [4.04(i) and (ii) *Trustor's Duty to Respond to Forwarded Requests from Owner Trustee*] below, and to provide the FAA with such information to the extent that Owner Trustee has such information or actually receives such information from Trustor, the operator or from any other source;

[(f)] to forward as expeditiously as reasonably practicable any emergency airworthiness directive in connection with the Aircraft from the FAA received by Owner Trustee to Trustor and/or the operator of the Aircraft unless Owner Trustee knows that Trustor and/or operator receive such directives directly from the FAA.

[(g)] to notify the FAA Aircraft Registry as expeditiously as reasonably practicable of Owner Trustee's resignation under Section [3.03 *Resignation*] or removal under [3.02 *Removal*], or of the termination of the trust under Section [7.01 *Termination Date*].

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<sup>2</sup> Parties to a trust may choose to allow an owner trustee to resign without a successor, but any such language and conditions would be up to the parties to determine.

[(h)] to not prohibit or exclude relevant, duly authorized, air authority representatives of the U.S. or, at the request of the FAA, the government where it is habitually based or operated, from inspecting the Aircraft.

Section [4.04] Trustor's Duty to Respond to Forwarded Requests from Owner Trustee. Trustor hereby covenants and agrees that, 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, issued to Trustor or to Owner Trustee (as forwarded by Owner Trustee to Trustor), as the case may be, Trustor will 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, (ii) contact information of (a) the operator of the Aircraft and (b) 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, where the Aircraft will be located on a specific date in the future or maintenance and other aircraft records for the Aircraft. Neither Trustor (so long as it is not also the operator) nor Owner Trustee shall be liable or responsible under this Agreement for any failure by Trustor (in respect of the Owner Trustee only), the operator or any other source to provide accurate information requested hereunder whether in a timely manner or at all.

## 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], Trustor will have no rights or powers to direct, influence or control Owner Trustee in the performance of Owner Trustee's duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft. [In all matters involving the performance of Owner Trustee's duties under this Agreement in connection with the ownership and operation of the Aircraft, Owner Trustee shall have absolute and complete discretion in connection therewith and shall be free of any kind of influence or control whatsoever by Trustor.]<sup>3</sup> Owner Trustee shall exercise its duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft as 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 Trustor and any such action by the Owner Trustee shall not be considered malfeasance or in breach of any obligation

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<sup>3</sup> Proposing to FAA to delete as redundant of the provisions of the 1<sup>st</sup> and 3<sup>rd</sup> sentences.

which Owner Trustee might otherwise have to Trustor; provided, however, that subject to the foregoing limitations, Owner Trustee shall exercise this discretion in all matters arising under this Agreement involving the ownership and operation of the Aircraft with due regard for the interests of 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, Owner Trustee shall be permitted to seek the advice of Trustor before taking, or refraining from taking, any action with respect thereto. Owner Trustee shall notify 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), Owner Trustee agrees that it will not, without the prior written consent of 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) Trustor shall have no power to influence or control the exercise of 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.

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

If persons who are neither U.S. citizens or resident aliens have the power to direct or remove (other than for cause set forth in Section [3.02, *Removal*]) 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 (other than for such cause) Owner Trustee.

Section [9.03] Priority. In creating and accepting the Trust, Trustor, and Owner Trustee each acknowledges that (i) 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 an Operating Agreement) to which Trustor and Owner Trustee are a party in respect of the Trust and (ii) any such conflicting variations to the limitations in Article [9] of this Agreement (including, without limitation, if set forth within an Operating Agreement) shall be *void ab initio*, unless, in respect of both clauses (i) and (ii), such variations have been approved by the FAA.

**TRUST AGREEMENT**  
**[ONLY SECTIONS RELEVANT TO NCT TA PROVISIONS]**

**ARTICLE [1]<sup>1</sup>**

**DEFINITIONS**

"Lessee" means any ~~lessee~~ counterparty (other than Trustor) to Owner Trustee under any Lease, ~~or any operator under any Operating Agreement.~~

"Lease" means any agreement (including an operating agreement) from time to time entered into ~~with respect to the Aircraft by the~~ by Owner Trustee, ~~as Lessor, and a third party Lessee, whether or not at the direction of the Trustor~~ Lessee that transfers the right to possess, use and operate the Aircraft to such Lessee.

"Operating Agreement" means any agreement ~~entered into between the Owner Trustee and the Trustor, or between a third party Lessee and the Trustor, transferring to the Trustor~~ (including a lease) that transfers the right to possess, use, and operate ~~or manage~~ the Aircraft from Owner Trustee to Trustor.

**ARTICLE [3]**

**THE OWNER TRUSTEE**

Section [3.02] Removal. Owner Trustee may be removed at any time, but for cause only, by a written instrument or instruments signed by Trustor, ~~subject to the regulatory limitation that a non-U.S. citizen not hold more than 25 percent of the aggregate power to remove a trustee. [~~ For purposes of this Section, "for cause" shall mean ~~means~~ willful misconduct or gross ~~neglect so as to endanger the [Trust estate]. Mere disagreements~~ negligence [or PARTIES MAY ADD OTHER SPECIFICALLY DESCRIBED CAUSES SUBJECT TO FAA REVIEW], but "for cause" will not include the refusal by 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 Article [4, Trust Estate] or [9, Limitations on Control]<sup>1</sup> of this Agreement, or (4) is the subject of a mere disagreement ~~between Owner Trustee and Trustor shall not constitute a cause warranting removal.]~~ 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

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<sup>1</sup> References to Article Numbers are illustrative and refer to the articles on the Trust Estate and on Limitations on Control, which may bear different Article Numbers in any actual Trust Agreement.

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.

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~~, [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.<sup>2</sup>

## 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:

[(b)] to effect the registration of the Aircraft with the FAA by duly executing and filing or causing to be filed with the FAA or, in the case of sub-clause (v), submitting to the FAA for review, (i) the Aircraft Registration Application, (ii) the Affidavit, (iii) the FAA Bill of Sale, (iv) an executed counterpart of this Agreement, and (v) any Operating Agreement and any other document or instrument required ~~therefore including any Operating Agreement~~ to so effectuate such registration;

~~(e) — upon request by FAA, and with the cooperation of Trustor, to provide the FAA with the following information 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 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.~~

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<sup>2</sup> Parties to a trust may choose to allow an owner trustee to resign without a successor, but any such language and conditions would be up to the parties to determine.

[(e)] to respond as expeditiously as reasonably practicable to any request by the FAA for information related to or the operation of the Aircraft that the FAA is legally entitled to receive from an owner or operator of an aircraft including, if applicable, the information described in Section [4.04(i) and (ii) *Trustor's Duty to Respond to Forwarded Requests from Owner Trustee*] below, and to provide the FAA with such information to the extent that Owner Trustee has such information or actually receives such information from Trustor, the operator or from any other source;

~~[(g) — upon receipt of an emergency airworthiness directive from the FAA, to immediately]~~ f)] to forward ~~the~~as expeditiously as reasonably practicable any emergency airworthiness directive ~~to the Trustor and or Lessee by the most expeditious means available.~~in connection with the Aircraft from the FAA received by Owner Trustee to Trustor and/or the operator of the Aircraft unless Owner Trustee knows that Trustor and/or operator receive such directives directly from the FAA.

[(hg)] to notify the FAA Aircraft Registry ~~by the most expeditious means available of trustee~~as expeditiously as reasonably practicable of Owner Trustee's resignation under ~~Article—Section~~ [3.03 *Resignation*] or removal under ~~3.02;~~[3.02 *Removal*], or of the termination of the trust under ~~7.01.~~Section [7.01 *Termination Date*].

[(h)] to not prohibit or exclude relevant, duly authorized, air authority representatives of the U.S. or, at the request of the FAA, the government where it is habitually based or operated, from inspecting the Aircraft.

~~(i) — to authorize U.S. and foreign government officials to inspect the aircraft.~~

Section [4.04] *Trustor's Duty to Respond to Forwarded Requests from Owner Trustee*. Trustor hereby covenants and agrees that, 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, issued to Trustor or to Owner Trustee (as forwarded by Owner Trustee to Trustor), as the case may be, Trustor will 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, (ii) contact information of (a) the operator of the Aircraft and (b) 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**, where the Aircraft will be located **on a specific date in the future** or maintenance and other aircraft records for the Aircraft. Neither Trustor (so long as it is not also the operator) nor Owner Trustee shall be liable or responsible under this Agreement for any failure by Trustor (in respect of the Owner Trustee only), the operator or any other source to provide accurate information requested hereunder whether in a timely manner or at all.

## 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~~ [9.01], 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 in connection with~~ matters involving the ownership and operation of the Aircraft. [In all matters ~~arising involving the performance of Owner Trustee's duties~~ under ~~the~~ this Agreement, ~~including in connection with~~ the ownership and operation of the Aircraft ~~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~~ Trustor.<sup>3</sup> ~~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 discretion in all matters arising under ~~the~~ this Agreement, ~~including involving~~ 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

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<sup>3</sup> Proposing to FAA to delete as redundant of the provisions of the 1<sup>st</sup> and 3<sup>rd</sup> sentences.

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, ~~14 C.F.R. 47.7 (c) (2) (iii)~~. Section [9.01] shall be construed in furtherance of the foregoing purpose.

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~~(other than for cause set forth in Section [3.02, Removal]) 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~~(other than for such cause) Owner Trustee.

Section [9.03] Priority. In creating and accepting the Trust, Trustor, and Owner Trustee each acknowledges that (i) 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 an Operating Agreement) to which ~~trustor/beneficiary~~ Trustor and ~~trustee are a party.]~~ Owner Trustee are a party in respect of the Trust and (ii) any such conflicting variations to the limitations in Article [9] of this Agreement (including, without limitation, if set forth within an Operating Agreement) shall be void ab initio, unless, in respect of both clauses (i) and (ii), such variations have been approved by the FAA.

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