

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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***In re*** : **Chapter 11**
  
:
  
**SOUTHERN AIR** : **Case No. 12-12690 (CSS)**
  
**HOLDINGS, INC., et al.,** :
  
: **Jointly Administered**
  
**Debtors.**<sup>1</sup> :
  
: **Re: Docket Nos. 470 & 573**
  
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**NOTICE OF FILING FIRST AMENDMENT TO PLAN SUPPLEMENT  
IN SUPPORT OF SECOND AMENDED JOINT PLAN OF AFFILIATED DEBTORS  
PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

**PLEASE TAKE NOTICE** that, on February 19, 2013, Southern Air Holdings, Inc. and its affiliated debtors, as debtors and debtors in possession (collectively, the “Debtors”), filed that certain *Plan Supplement in Support of Second Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated February 19, 2013 [Docket No. 573] (as may be amended, modified, or supplemented from time to time, the “Plan Supplement”).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Section 27.1 of that certain *Second Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated January 18, 2013 (as further amended, modified, or supplemented from time to time, the “Plan”), the Debtors hereby amend the Plan Supplement as follows:

1. Exhibit 4 of the Plan Supplement, Form of Reorganized Southern Air Parent Stockholders Agreement, is amended in its entirety to read as set forth on Exhibit A-1 attached hereto (incorporating the changes identified in the blackline attached as Exhibit A-2 hereto).
2. Exhibit 7 of the Plan Supplement, Form of Litigation Trust Agreement, is amended in its entirety to read as set forth on Exhibit B-1 attached hereto (incorporating the changes identified in the blackline attached as Exhibit B-2 hereto).

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: (i) Southern Air Holdings, Inc., 6605; (ii) Cargo 360, Inc., 4233; (iii) Southern Air Inc., 2187; (iv) Air Mobility Inc., 3824; (v) 21110 LLC, 3761; (vi) 21111 LLC, 8100; (vii) 21221 LLC, 1567; (viii) 21550 LLC, 8103; (ix) 21576 LLC, 6341; (x) 21590 LLC, 8105; (xi) 21787 LLC, 0617; (xii) 21832 LLC, 7893; (xiii) 23138 LLC, 7192; (xiv) 24067 LLC, 6360; (xv) 46914 LLC, 0322; (xvi) Aircraft 21255, LLC, 5500; (xvii) Aircraft 21380, LLC, 1753; and (xviii) CF6-50, LLC, 9733. The address for all Debtors is 117 Glover Avenue, Norwalk, Connecticut 06850.



**PLEASE TAKE FURTHER NOTICE** that the documents contained in the Plan Supplement are not final and remain subject to approval in accordance with the Plan. The Debtors reserve the right to alter, amend, modify or supplement any of the documents contained in the Plan Supplement.

**PLEASE TAKE FURTHER NOTICE** that the Plan Supplement can be viewed for free at the website for the Debtors' claims agent, Kurtzman Carson Consultants LLC ("KCC"): [www.kccllc.net/southernair](http://www.kccllc.net/southernair). Additionally, copies of the Plan Supplement are available upon request by contacting KCC at Southern Air Ballot Processing Center, c/o KCC, 2335 Alaska Avenue, El Segundo, CA 90245 or by telephone at (877) 634-7163 (Attention: Southern Air Holdings, Inc.) or by accessing the Bankruptcy Court's website: <https://ecf.deb.uscourts.gov/cgi-bin/login.pl>. A PACER password and login are needed to access documents on the Bankruptcy Court's website. A PACER password can be obtained at <http://www.pacer.psc.uscourts.gov>.

Dated: February 26, 2013  
Wilmington, Delaware

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*Attorneys for the Debtors and  
Debtors in Possession*

**Exhibit A-1**

**Form of Reorganized Southern Air Parent Stockholders Agreement**

STOCKHOLDERS AGREEMENT

by and among

SOUTHERN AIR HOLDINGS, INC.

and

EACH OF THE STOCKHOLDERS

of

SOUTHERN AIR HOLDINGS, INC.

Dated as of [●], 2013

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## STOCKHOLDERS AGREEMENT

This STOCKHOLDERS AGREEMENT, dated as of [●], 2013 (this “Agreement”), is entered into by and among SOUTHERN AIR HOLDINGS, INC., a Delaware corporation (the “Company”), and the Stockholders and each person that hereafter becomes a Stockholder and is required by this Agreement to become a Party hereto. Capitalized terms not otherwise defined herein have the meanings set forth in Article I.

### WITNESSETH:

WHEREAS, on September 28, 2012, the Company filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, (the “Bankruptcy Code”), thereby initiating Case No. 12-12690 (CSS) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) and continued to operate its business as a debtor and debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Second Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code of Southern Air Holdings, Inc. and its affiliated debtors, dated January 18, 2013 (the “Plan”), as confirmed on [●], 2013 by an order of the Bankruptcy Court entered on [●], 2013 (the “Confirmation Order”), provides that the Company shall issue to the Stockholders shares of Common Stock and, as applicable, Warrants;

WHEREAS, in connection with the consummation of the transactions contemplated by the Plan, and as required pursuant to the Plan as a condition to the receipt of such shares and Warrants, the Company and the Stockholders are entering into this Agreement to provide certain rights and obligations among them; and

NOW, THEREFORE, in consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.1 Certain Definitions. The following terms shall have the meanings set forth below:

“Acceptance Notice” has the meaning set forth in Section 6.1(c).

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any

specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. Notwithstanding the foregoing, for purposes of this Agreement, no Stockholder shall be deemed to be an Affiliate of any other Stockholder solely by virtue of this Agreement.

“Affiliate Transaction” means any transaction or arrangement (other than employment or compensation arrangements in the ordinary course consistent with past practice approved in accordance with this Agreement) between or among the Company or any of its subsidiaries, on the one hand, and, on the other hand, (i) any director, executive officer or employee of the Company or any of its subsidiaries (or any of their respective partners or family members), (ii) any Affiliate of the Company or any of its subsidiaries, (iii) any Stockholder, or (iv) any Affiliate of the foregoing Persons described in clauses (i)-(iv). For the avoidance of doubt, transactions between the Company and its directly or indirectly wholly owned subsidiaries shall not be considered an “Affiliate Transaction.”

“Agreement” has the meaning set forth in the preamble of this Agreement.

“Annual Consideration” means, cash, Indebtedness or other remuneration paid by the Company and its subsidiaries in the aggregate during any calendar year.

“Bankruptcy Code” has the meaning set forth in the recitals of this Agreement.

“Bankruptcy Court” has the meaning set forth in the recitals of this Agreement.

“Board” means the Board of Directors of the Company.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banks in New York, New York are authorized or obligated by Law or executive order to close.

“Capitalized Lease Obligation” means any obligation to pay rent or other amounts under a lease of (or other agreement conveying the right to use) any property (whether real, personal or mixed, immovable or movable) that is required under GAAP, and, for the purposes of this Agreement, the amount of such obligation at any date shall be the capitalized amount thereof at such date, determined in accordance with GAAP.

“Chief Executive Officer” means the individual then serving as the President or chief executive officer of the Company.

“Citizen of the United States” or “U.S. Citizen” shall mean a citizen of the United States as that term is as that term is defined in 49 U.S.C. § 40102(a)(15), as may be amended from time to time, and as interpreted by the U.S. Department of Transportation.

“Class A-1 Common Stock” means the Class A-1 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.



“Class A-1 Director” has the meaning set forth in Section 2.1(a).

“Class A-2 Common Stock” means the Class A-2 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Class A-2 Director” has the meaning set forth in Section 2.1(a).

“Class A-3 Common Stock” means the Class A-3 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Class A-4 Common Stock” means the Class A-4 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Class B Common Stock” means the Class B Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Class C-1 Common Stock” means the Class C-1 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Class C-1 Director” has the meaning set forth in Section 2.1(a).

“Class C-2 Common Stock” means the Class C-2 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Class C-3 Common Stock” means the Class C-3 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Common Stock” means, collectively: (a) the Class A-1 Common Stock, (b) the Class A-2 Common Stock, (c) the Class A-3 Common Stock, (d) the Class A-4 Common Stock, (e) the Class B Common Stock, (f) the Class C-1 Common Stock, (g) the Class C-2 Common Stock and (h) the Class C-3 Common Stock.

“Common Stock Equivalents” means securities (including options or warrants) exercisable, exchangeable or convertible into Common Stock, whether immediately, upon the happening of any event or the passage of time, or otherwise, and whether issued by the Company, any subsidiary of the Company or any other Person.

“Company” has the meaning set forth in the preamble of this Agreement.

“Confidential Information” means any confidential or proprietary information concerning the organization, business, technology, trade secrets, know-how, finance, transactions or affairs of the Company or its subsidiaries (in each case, whether conveyed in written, oral or any other

form and whether such information has been furnished before, on or after the date of this Agreement).

“Confirmation Order” has the meaning set forth in the recitals of this Agreement.

“Current Market Price” means, in respect of any share of Common Stock on any date herein specified, (i) if the Common Stock is publicly traded at such time, the average of the closing or last sales price on the primary national or regional stock exchange on which the Common Stock is listed as displayed by Bloomberg (or any successor service), for the 20 consecutive Business Days ending on the Business Day immediately prior to such date, (ii) if the Common Stock is not so listed or quoted but is traded in the over-the-counter market, the average of the closing bid and asked prices of a share of Common Stock for the 20 consecutive Business Days ending on the Business Day immediately prior to such date or (iii) if the Company is not publicly traded at such time or if no such sales price or bid and asked prices have been quoted during such 20 Business Day period, the fair market value thereof.

“Debt Issuance” has the meaning set forth in Section 6.2(a).

“Debt Issuer” has the meaning set forth in Section 6.2(a).

“DGCL” means the Delaware General Corporation Law, as amended.

“Dilutive Securities” has the meaning set forth in Section 6.1(a).

“Disinterested Director” means, with respect to any transaction, any director other than a director that has, directly or indirectly, any pecuniary or other interest in such transaction (other than any interest arising solely as a result of the ownership of Common Stock).

“Drag-Along Buyer” has the meaning set forth in Section 5.3(a).

“Drag-Along Right” has the meaning set forth in Section 5.3(a).

“Dragging Stockholders” has the meaning set forth in Section 5.3(a).

“Equity Incentive Plan” means the equity incentive plan adopted by the Board as of the date hereof under which an aggregate amount of up to 10% of the outstanding shares of Common Stock as of the date hereof may be issued from time to time by the Company to management, directors, employees or consultants of the Company.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Exit Facility” means the [●], dated as of [●], 2013, by and among Cargo 360, LLC, as borrower, [●] as agent, and the lenders party thereto, in connection with the consummation of the Plan, as it may be amended, restated, modified or supplemented from time to time (including by means of the extension, renewal, replacement or refinancing of the indebtedness thereunder, in whole or part).

“First Offer” has the meaning set forth in Section 5.2(b).

“First Offer Price” has the meaning set forth in Section 5.2(a).

“GAAP” means, at any date of determination, generally accepted accounting principles in effect in the United States of America and which are applicable as of the date of determination and which are consistently applied for all applicable periods.

“Governmental Authority” means any federal, state or local government, any court, tribunal, arbitrator, authority, agency, commission, official or any non-governmental self-regulatory agency or other instrumentality of the United States of America or other applicable jurisdictions or any state, county, city or other political subdivision thereof.

“Indebtedness” means, with respect to any Person, without duplication, (i) all indebtedness (including principal, interest, fees and charges) of such Person, whether or not contingent, for borrowed money or for the deferred purchase price of property or services, (ii) all Indebtedness of the types described in clauses (i), (iii), (iv), (v) or (vi) of this definition secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person (provided that, if the Person has not assumed or otherwise become liable in respect of such Indebtedness, such Indebtedness shall be deemed to be in an amount equal to the fair market value of the property to which such Lien relates as determined in good faith by such Person), (iii) the aggregate amount of all Capitalized Lease Obligations of such Person, (iv) all obligations under any Interest Rate Protection Agreement, or any Other Hedging Agreement or similar obligations, and (v) all Off-Balance Sheet Liabilities of such Person. Notwithstanding the foregoing, Indebtedness shall not include trade payables and accrued expenses incurred by any Person in accordance with customary practices and in the ordinary course of business of such Person.

“Insolvency Law” means the Bankruptcy Code, and all other insolvency, bankruptcy, receivership, liquidation, conservatorship, assignment for the benefit of creditors, moratorium, rearrangement, reorganization, or similar Laws of the United States of America or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Interest Rate Protection Agreement” means any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement or similar agreement or arrangement.

“Law” means any law, statute, rule, regulation, ordinance or other pronouncement having the effect of law in the United States of America or other applicable jurisdictions or any state, county, city or other political subdivision thereof or of any Governmental Authority.

“Lien” means any mortgage, charge, pledge, lien (statutory or other), security interest, hypothecation, assignment for security, claim, or preference or priority or other encumbrance upon which or with respect to any property of any kind. A Person shall be deemed to own subject to a Lien any property which such Person has acquired or holds subject to the interests of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement.

“Majority Approved Sale” has the meaning set forth in Section 5.3(a).

“Majority Approved Sale Closing Date” has the meaning set forth in Section 5.3(b).

“Majority Approved Sale Notice” has the meaning set forth in Section 5.3(b).

“Non-Initiating Stockholders” has the meaning set forth in Section 5.3(a).

“Notice of Participation Rights” has the meaning set forth in Section 6.2(b).

“Notice of Preemptive Rights” has the meaning set forth in Section 6.1(b).

“Off-Balance Sheet Liabilities” of any Person means (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable or sold by such Person, (ii) all liabilities of such Person under any sale and leaseback transactions except to the extent such liabilities are reflected on the balance sheet of such Person, or (iii) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

“Offered Shares” has the meaning set forth in Section 5.2(a).

“Offeree Stockholders” has the meaning set forth in Section 5.2(a).

“OHAA” means OH Aircraft Acquisition Sub, LLC, any fund or partnership that is managed or controlled by an entity that is majority owned or controlled by OH Aircraft Acquisition Sub, LLC or its Affiliates, or any of its Affiliates.

“Other Hedging Agreement” means any foreign exchange contracts, currency swap agreements, commodity agreements or other similar arrangements, or arrangements designed to protect against fluctuations in currency values or commodity prices.

“Other Purchasers” has the meaning set forth in Section 6.1(d).

“Participation Right Acceptance Notice” has the meaning set forth in Section 6.2(c).

“Participation Right Acceptance Period” has the meaning set forth in Section 6.2(c).

“Parties” means collectively the Company and any Person who is or becomes a party to this Agreement. Each of the Parties is referred to individually as a “Party.”

“Permitted Transferee” has the meaning set forth in Section 5.1(e).

“Person” means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or any other entity, or government or any agency or political subdivision thereof.

“Piggyback Registration” has the meaning set forth in Section 5.7.

“Plan” has the meaning set forth in the recitals of this Agreement.

“Pro Rata Portion” means:

(a) for purposes of Section 5.2 (with respect to shares of Common Stock to be transferred pursuant to the right of first offer), with respect to each Offeree Stockholder, a number of shares of Common Stock determined by multiplying (i) the total number of such shares of Common Stock proposed to be Transferred by the Proposing Stockholder, by (ii) a fraction, the numerator of which is the number of shares of Common Stock held by such Offeree Stockholder and the denominator of which is the aggregate number of shares of Common Stock held by all Offeree Stockholders.

(b) for purposes of Section 5.3, (i) with respect to shares of Common Stock to be Transferred pursuant to the Drag-Along Rights, a number of shares of Common Stock determined by multiplying (A) the aggregate number of shares of Common Stock held by the Non-Initiating Stockholder by (B) a fraction, the numerator of which is the aggregate number of shares of Common Stock proposed to be Transferred by the Dragging Stockholders to the Drag-Along Buyer and the denominator of which is the aggregate number of shares of Common Stock held by the Dragging Stockholders, and (ii) with respect to each class of Common Stock Equivalents to be Transferred pursuant to the Drag-Along Rights, a number of such class of Common Stock Equivalents determined by multiplying (A) the aggregate number of Common Stock Equivalents held by the Non-Initiating Stockholder by (B) the fraction determined in clause (B) of the preceding clause (i).

(c) for purposes of Section 5.4 (with respect to shares of Common Stock and Series A-1 Warrants to be transferred pursuant to the Tag-Along Rights), (x) with respect to each Tagging Stockholder, a number of shares of Common Stock (and/or Series A-1 Warrants) determined by multiplying (A) the aggregate number of shares of Common Stock and Series A-1 Warrants proposed to be Transferred by the Selling Stockholders to the Proposed Transferee, by (B) a fraction, the numerator of which is the number of shares of Common Stock and Series A-1 Warrants held by the Tagging Stockholder and the denominator of which is the aggregate number of shares of Common Stock and Series A-1 Warrants held by all Tagging Stockholders and the Selling Stockholders, and (y) with respect to the Selling Stockholders, the total number of shares of Common Stock and Series A-1 Warrants proposed to be Transferred by the Selling Stockholders minus the aggregate number of shares of Common Stock and Series A-1 Warrants over which the Tagging Stockholders have exercised their Tag-Along Rights pursuant to Section 5.3.

(d) for purposes of Section 6.1 (with respect to preemptive rights), a number of Dilutive Securities determined by multiplying (i) the aggregate number of Dilutive Securities the Company proposes to issue on the relevant issuance date by (ii) a fraction, the numerator of which is the number of shares of Common Stock held by the relevant Stockholder immediately prior to such date and the denominator of which is the aggregate number of shares of Common Stock held by all Stockholders.

(e) for purposes of Section 6.2 (with respect to Debt Issuances), the portion of the aggregate principal amount of a Debt Issuance determined by multiplying (i) the aggregate

principal amount of the proposed Debt Issuance by (ii) a fraction, the numerator of which is the number of shares of Common Stock held by the relevant Stockholder immediately prior to such date and the denominator of which is the aggregate number of shares of Common Stock held by all Stockholders.

“Proposed Transferee” has the meaning set forth in Section 5.4(a).

“Proposing Stockholder” has the meaning set forth in Section 5.2(a).

“Proposing Stockholder’s Notice” has the meaning set forth in Section 5.2(a).

“Public Offering” means any offer for sale of Common Stock pursuant to an effective Registration Statement, other than on Form S-8 or any successor forms thereto.

“Qualified Advisor” means, with respect to the evaluation of any Affiliate Transaction for purposes of obtaining the written opinion described in Section 2.5, an advisor selected by the Board who is regularly engaged in the evaluation and analysis of transactions similar to such Affiliate Transaction; provided, that if Stockholders other than any Stockholder which is an Affiliate of a Person who is participating in such Affiliate Transaction holding a majority of the Common Stock held by such Stockholders object to such Qualified Advisor by written notice to the Company within five (5) Business Days of receipt of notice from the Company of the identity of such Qualified Advisor, then the Board, after consultation with such objecting Stockholders, shall select a replacement Qualified Advisor to evaluate such Affiliate Transaction within five (5) Business Days of such notice.

“Qualified Pledge” means a bona fide pledge of Common Stock in connection with a secured borrowing transaction, the pledgee with respect to which is a financial institution in the business of engaging in secured lending and similar transactions which has entered into such transaction in the ordinary course of such business.

“Qualified Public Offering” means a Public Offering of shares of Common Stock by a nationally recognized investment banking firm that is effectively registered under the Securities Act and (i) that results in net proceeds to the Company and any selling stockholders, when aggregated with the net proceeds received by the Company and any selling stockholders in connection with previous such public offerings, of not less than \$25 million; and (ii) results in an implied equity market value of the Common Stock (based on the price per share of Common Stock to the public in such Public Offering) immediately after such Public Offering of at least \$80 million and (iii) following which such shares of Common Stock are listed on a United States national securities exchange (as defined in the Exchange Act).

“Registrable Securities” has the meaning set forth in Section 5.7.

“Reoffer” has the meaning set forth in Section 5.2(d).

“Reoffer Notice” has the meaning set forth in Section 5.2(d).

“Reoffer Price” has the meaning set forth in Section 5.2(d).

“Representative” means, with respect to any Person, such Person’s employees, officers, directors, legal counsel, accountants, financial advisors, consultants and other representatives.

“Requested Action” has the meaning set forth in Section 2.4.

“Required Drag-Along Amount” means, with respect to a Majority Approved Sale, (i) 75% of the outstanding Common Stock, for such a transaction that would imply a total enterprise value of the Company of less than \$160 million, (ii) 66 2/3% of the outstanding Common Stock, for such a transaction that would imply a total enterprise value of the Company of at least \$160 million but not greater than \$185 million, or (iii) a majority of the outstanding Common Stock, for such a transaction that would imply a total enterprise value of the Company of greater than \$185 million, in each case, calculated on the basis of one vote per each share of Common Stock (which calculation shall reflect any adjustments to the voting power of Class A-2 Common Stock then in effect pursuant to Section 5.01(a)(ii) of the Certificate of Incorporation).

“Requisite Approval” has the meaning set forth in Section 2.4.

“SEC” means the United States Securities and Exchange Commission, or any other federal agency at the time administering the Securities Act or the Exchange Act.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Selling Stockholders” has the meaning set forth in Section 5.4(a).

“Stockholders” means each Person (other than the Company) named on the signature pages to this Agreement or otherwise deemed to be a Party to this Agreement pursuant to the Confirmation Order and any other Person who is issued shares of Common Stock or is a Transferee or a Permitted Transferee of shares of Common Stock, whether from another Stockholder or from the Company, who is required by this Agreement to agree to be bound by the terms and conditions of this Agreement. The term “Stockholder” means any one of the Stockholders and, in the case of a Stockholder who is a natural person, the term “Stockholder” also includes such Stockholder’s legal representatives, executors or administrators when the context so requires.

“Supermajority of the Outstanding Common Stock” means 75% of the outstanding Common Stock, voting together as one class, calculated on the basis of one vote per each share of such Common Stock (which calculation shall reflect any adjustments to the voting power of Class A-2 Common Stock then in effect pursuant to Section 5.01(a)(ii) of the Certificate of Incorporation).

“Tag-Along Notice” has the meaning set forth in Section 5.4(b).

“Tag-Along Rights” has the meaning set forth in Section 5.4(a).

“Tag-Along Rights Holder” has the meaning set forth in Section 5.4(a).

“Tag-Along Transfer” has the meaning set forth in Section 5.4(a).

“Tagging Stockholder” has the meaning set forth in Section 5.4(a).

“Transfer” means, when used as a verb, to sell, transfer, assign, convey or otherwise dispose, and when used as a noun, any direct or indirect sale, transfer, assignment, conveyance or other disposition, including by merger, operation of law, bequest or pursuant to any domestic relations order, whether voluntarily or involuntarily, provided, that no Transfer of shares of Common Stock shall be deemed to have occurred as a result of the entry into, modification of or existence of any Qualified Pledge until such time as the pledgee commences any action to foreclose upon such shares of Common Stock or any shares of Common Stock are delivered upon settlement or termination of such Qualified Pledge (whichever occurs first).

“Transferee” means any Person acquiring shares of Common Stock, regardless of the method of transfer.

“Warrants” means the Tranche 1 Warrants, Tranche 2 Warrants and the Series A-1 Warrants contemplated by the Plan to be entered into by and between the Company [and the warrant agent signatory thereto.]

“Warrant Shares” means the shares of Common Stock issued in connection with the exercise of Warrants.

SECTION 1.2 Rules of Interpretation. Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(a) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(b) Dollars. Any reference in this Agreement to “\$” shall mean U.S. dollars. The specification of any dollar amount in the representations and warranties or otherwise in this Agreement is not intended and shall not be deemed to be an admission or acknowledgment of the materiality of such amounts or items, nor shall the same be used in any dispute or controversy between the parties to determine whether any obligation, item or matter (whether or not described herein or included in any schedule) is or is not material for purposes of this Agreement.

(c) Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(d) Herein. The words such as “herein,” “hereinafter,” “hereof,” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. All references herein to Articles,



Sections and Exhibits shall be deemed to be references to Articles and Sections of, and Exhibits to, this Agreement unless the context shall otherwise require.

(e) Including. The word “including” or any variation thereof means (unless the context of its usage otherwise requires) “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(f) Statutes and Agreements. Unless otherwise expressly provided herein, any Law defined or referred to herein means such Law as from time to time amended, modified, supplemented or restated, including by succession of comparable successor statutes and also any rules and regulations promulgated thereunder. Unless otherwise expressly provided herein, any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified, supplemented or restated, including by waiver or consent, and references to all attachments thereto and instruments incorporated therein, but in the case of each of the foregoing, only to the extent that such amendment, modification, supplement, restatement, waiver or consent is effected in accordance with this Agreement.

## ARTICLE II

### BOARD OF DIRECTORS AND GOVERNANCE

#### SECTION 2.1 Election of Directors; Number and Composition; Removal and Replacement of Directors; Termination of Certain Rights.

(a) Each Stockholder shall vote, or cause to be voted, all shares of Common Stock beneficially owned by such Stockholder to ensure that the number of directors constituting the entire Board shall be five (5) and that the following individuals be elected or appointed to serve as directors of the Company:

(i) two (2) individuals who shall be U.S. Citizens designated by Stockholders holding a majority of the Class A-1 Common Stock (each a “Class A-1 Director” and, collectively, the “Class A-1 Directors”), who shall initially be [●];

(ii) one (1) individual designated by Stockholders holding a majority of the Class C-1 Common Stock (the “Class C-1 Director”), who shall initially be [●];

(iii) one (1) individual who shall be a U.S. Citizen designated by Stockholders holding a majority of the Class A-2 Common Stock (the “Class A-2 Director”), who shall initially be [●]; and

(iv) the Chief Executive Officer, who shall be a U.S. Citizen.

(b) Should any individual designated or elected as a director be unwilling or unable to serve, or otherwise cease to serve (including by means of removal in accordance with

the following sentence), vacancies on the Board may be filled by the Stockholders or the remaining directors in accordance with the Company's Certificate of Incorporation and Bylaws, provided, that (i) only Class A-1 Stockholders may designate a replacement director to fill a vacancy caused by the departure or removal of a Class A-1 Director, (ii) only Class C-1 Stockholders may designate a replacement director to fill a vacancy caused by the departure or removal of the Class C-1 Director and (iii) only Class A-2 Stockholders may designate a replacement director to fill a vacancy caused by the departure or removal of the Class A-2 Director.

(c) The Board shall have the right to establish any committee of directors as the Board shall deem appropriate from time to time. Subject to this Agreement and applicable Law, committees of the Board (i) shall, subject to the Company's Certificate of Incorporation and Bylaws, have the rights, powers and privileges granted to such committees by the Board from time to time and (ii) shall consist of at least (A) the Class A-2 Director and (B) one of the Class A-1 Directors or the Class C-1 Director. Any delegation of authority to a committee of directors to take any action must be approved in the same manner as would be required for the Board to approve such action directly. The Company shall also cause each board of directors (or similar governing body) of Cargo 360, LLC and each of the Company's other material subsidiaries to include at least (A) the Class A-2 Director and (B) one of the Class A-1 Directors or the Class C-1 Director.

(d) Each Stockholder shall vote all of the shares of Common Stock beneficially owned by such Stockholder, or cause such shares of Common Stock to be voted, in furtherance of, and take all other actions within such Stockholder's control necessary to further, the provisions of this Section 2.1. The provisions of this Section 2.1 shall terminate upon a Qualified Public Offering.

**SECTION 2.2** Action by the Board. Except as otherwise set forth in this Agreement, all actions taken by the Board shall be taken by a majority vote of the directors present at any meeting at which a quorum is present.

**SECTION 2.3** D&O Indemnification and Insurance. The Company shall enter into an indemnification agreement with each director upon his or her election or appointment in such form as is adopted by the Board and reasonably acceptable to such director. The Company shall maintain continuously in effect directors' and officers' liability insurance and each director shall be covered under such insurance.

**SECTION 2.4** Actions Requiring Stockholder Approval. Notwithstanding that no vote may be required, or that a lesser percentage vote may be specified by law, by the Certificate of Incorporation or Bylaws, or otherwise, until the earlier of (x) a Qualified Public Offering and (y) seven (7) years from the date of this Agreement, the Company and the Stockholders agree that the Company shall not take, and shall not cause or permit any subsidiary of the Company to take, directly or indirectly, any of the following actions (a "Requested Action"), in a single transaction or a series of related transactions (other than, in each case, Affiliate Transactions, which shall be approved in accordance with Section 2.5), without the prior approval (or deemed approval pursuant to the last sentence of this Section 2.4) of the holders of not less than a Supermajority of the Outstanding Common Stock (the "Requisite Approval"):

(a) merge, consolidate with or into, engage in a share exchange with, or otherwise consummate any business combination transaction with, any other Person (other than transactions solely involving the merger or consolidation of a wholly owned subsidiary with or into, or a share exchange by a wholly owned subsidiary with, the Company or another wholly owned subsidiary of the Company), or sell, transfer, lease or otherwise dispose of all or substantially all of the assets of the Company and its subsidiaries, considered on a consolidated basis, to any other Person, other than (i) any such transaction solely involving sales, leases or transfers between the Company and one or more wholly owned subsidiaries or between one or more wholly owned subsidiaries or (ii) any such transaction which is for aggregate consideration implying a total enterprise value of (A) at least \$160 million but not greater than \$185 million, in which case the Requisite Approval shall instead be the prior approval of the holders of not less than 66 <sup>2</sup>/<sub>3</sub>% of the outstanding Common Stock, voting together as one class or (B) greater than \$185 million, in which case the Requisite Approval shall instead be the prior approval of the holders of not less than a majority of the outstanding Common Stock, voting together as one class (in each such case of clause (A) or clause (B), the Requisite Approval being calculated on the basis of one vote per each share of Common Stock (which calculation shall reflect any adjustments to the voting power of Class A-2 Common Stock then in effect pursuant to Section 5.01(a)(ii) of the Certificate of Incorporation));

(b) (i) purchase, exchange or otherwise acquire securities or assets of any other Person (other than a wholly owned subsidiary), in a transaction involving aggregate consideration in excess of \$5 million, (ii) lease assets of any other Person (other than a wholly owned subsidiary) in transactions involving Annual Consideration in aggregate in excess of \$5 million, other than pursuant to (A) any lease for aircraft replacing similar aircraft in the Company's fleet, provided such lease is on terms reasonably equivalent or superior (to the benefit of the Company) to the terms of the lease of the aircraft being replaced or (B) any lease for aircraft having a term no greater than the term of a legally binding customer commitment for such aircraft;

(c) except with respect to Civil Reserve Air Fleet (CRAF) agreements, enter into any joint venture or partnership with any other Person that has aggregate payments by the Company and its subsidiaries in excess of \$5 million;

(d) (i) commence any proceeding or file any petition seeking relief under any Insolvency Law, or consent to the institution of or fail to contest in a timely and appropriate manner any such proceeding or filing under any Insolvency Law, (ii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any of its subsidiaries or assets, (iii) initiate or take any action for the liquidation, dissolution or winding up of the Company or any of its subsidiaries, or (iv) make a general assignment for the benefit of creditors;

(e) make capital expenditures in excess of \$5 million annually, except (i) as required by Law, (ii) to repair any damage or maintain the Company's fleet of aircraft or (iii) for amounts recoverable under policies of insurance;

(f) (i) issue or sell any equity securities of the Company that are senior or preferred to the Common Stock, or issue or sell any rights to acquire such securities or

securities convertible into or exchangeable for such securities, (ii) issue or sell any equity securities of any subsidiary of the Company, or issue or sell any rights to acquire such securities or securities convertible into or exchangeable for such securities, except for sales or issuances of shares of capital stock of a wholly owned subsidiary of the Company to the Company or to another wholly owned subsidiary of the Company, or (iii) reclassify, modify or amend the terms of any existing equity securities or rights to acquire such securities or securities convertible into or exchangeable for such securities of the Company or any subsidiary of the Company, other than any securities of a wholly owned subsidiary of the Company;

(g) issue or sell any shares of capital stock of the Company or any subsidiary of the Company (or any Common Stock Equivalents or other rights to acquire shares of such capital stock or securities convertible into or exchangeable for shares of such capital stock) at a price per share that is less than the Current Market Price of one share of Common Stock then in effect as of the record date or the date of the relevant issuance;

(h) declare, set aside or pay any dividend or other distribution in respect of any capital stock of the Company or any subsidiary (other than a wholly owned subsidiary) other than dividends or distributions on the Common Stock in accordance with the provisions of the Certificate of Incorporation and any corresponding dividends or distributions with respect to the Warrants pursuant to the Warrant Agreements;

(i) redeem, repurchase or otherwise acquire, or offer to purchase or otherwise acquire, any capital stock of the Company (or any Common Stock Equivalents or other rights to acquire shares of such capital stock or securities convertible into or exchangeable for shares of such capital stock), except for (i) repurchases of equity securities from employees upon termination of employment made in the ordinary course of business in accordance with the Equity Incentive Plan, (ii) exchanges of securities pursuant to Section 5.03 of the Certificate of Incorporation and (iii) any cashless exercise of the Warrants pursuant to the Warrant Agreement;

(j) (i) adopt, enter into or become bound by, or amend, modify or terminate (partially or completely), any other employee benefit or incentive plan, program or arrangement, or any collective bargaining agreement outside the ordinary course of business or (ii) adopt, enter into or become bound by, or amend, modify or terminate (partially or completely), any employee benefit or incentive plan, program or arrangement (A) for the benefit of senior management and not generally and equally available to all full time employees, (B) providing for any issuances of equity securities, other than pursuant to the Equity Incentive Plan or the Plan, or (C) providing for or establishing a defined benefit plan or multiemployer plan (whether or not as part of a collective bargaining agreement);

(k) amend, modify or repeal any provision of the Certificate of Incorporation or Bylaws;

(l) other than with respect to leases permitted under clause (b) of this Section 2.4, incur or guarantee any Indebtedness in an aggregate amount in excess of \$5 million, other than (i) any Indebtedness under the Exit Facility, (ii) Indebtedness between the Company and

a wholly owned subsidiary of the Company or between two wholly owned subsidiaries of the Company (iii) trade payables incurred in the ordinary course of business and which are not more than 90 days overdue or (iv) any Indebtedness (other than trade payables) incurred to refinance any Indebtedness existing as of, or permitted or approved pursuant to this Section 2.4 following, the date of this Agreement;

(m) make any fundamental change in the Company's or its subsidiaries' existing lines of business or enter into a new significant line of business;

(n) create any committees of the Board (other than a special committee established by the Board in accordance with the exercise of its fiduciary duties) or change the scope of authority of any committee of the Board;

(o) appoint as the independent auditor for the Company or any of its subsidiaries, or change the independent auditor for the Company or any of its subsidiaries to, an auditor that is not (i) one of the four largest nationally recognized public accounting firms (measured by total revenues) or (ii) a nationally recognized mid-market public accounting firm;

(p) create any non-wholly owned subsidiary;

(q) agree to a settlement of any litigation, arbitration or administrative proceeding for an amount in excess of \$2 million or that provides for any material limitation on the conduct of the business by the Company or any of its subsidiaries, other than a settlement only for monetary damages that is, after payment of the Company's applicable deductible and policy premiums, fully covered by the Company's insurance policies;

(r) apply the provisions of section 382(l)(5) of the Internal Revenue Code of 1986, as amended, to the Company (for the avoidance of doubt, if the required vote is not obtained, the Company will timely elect not to apply the provisions of section 382(l)(5) to the Company); or

(s) enter into any contract, agreement, arrangement or commitment to do or engage in any of the foregoing.

The Company shall provide to the Stockholders reasonable prior written notice of any Requested Action (as determined by the Board, but not less than three (3) Business Days), together with a request that each Stockholder provide its consent to such Requested Action within a specified reasonable time period (which in no event shall be less than three (3) Business Days) from the date of delivery of such notice (the "Notice Period") and a reasonable description of the Requested Action (including material terms and conditions and sufficient other information to enable the Stockholder to make an informed decision regarding the Requested Action); provided that notwithstanding Section 7.5, written notice of any Requested Action shall only be deemed to have been effectively delivered to a Stockholder if delivered to such Stockholder pursuant to Section 7.5(c) or (d); provided further that the Company shall be permitted to take the Requested Action at such time that the Requisite Approval for such Requested Action has been obtained, whether or not the Notice Period has fully elapsed; and

provided further that any Stockholder that does not affirmatively respond to such request on or before the expiration of the Notice Period shall be deemed to have given its consent to such Requested Action for purposes of this Section 2.4.

SECTION 2.5 Affiliate Transactions. The Company shall not, and shall not cause or permit any of its subsidiaries to, enter into or amend or materially modify the terms of, any Affiliate Transaction involving aggregate liability or obligation of the Company or any subsidiary (a) of \$3 million or less per year without the approval of at least a majority of the Disinterested Directors (and the quorum requirements set forth in the Bylaws shall be reduced to exclude any Director other than the Disinterested Directors), and (b) of more than \$3 million per year without the prior approval of the holders of not less than a Supermajority of the Outstanding Common Stock; provided that such approval of the holders of not less than a Supermajority of the Outstanding Common Stock shall not be required for any Affiliate Transaction for which the Board has obtained the written opinion of a Qualified Advisor that such Affiliate Transaction is on arm's length, market terms; provided, further, that this Section 2.5 shall not apply to any rights expressly granted to any Stockholder or any Stockholder's Affiliates (including any Director appointed by such Stockholder) under this Agreement without reference to such approval. The Company shall be responsible for all costs and expenses of any Qualified Advisor engaged pursuant to this Section 2.5.

### ARTICLE III

#### ACCESS TO INFORMATION

SECTION 3.1 Information to be Provided by the Company. During any period of time that the Company is not subject to, or not in compliance with, the reporting requirements under the Exchange Act, the Company shall provide to the Stockholders, subject to reasonable confidentiality obligations, the following information:

(a) within forty-five (45) days after the end of each of the first three fiscal quarters for the Company each fiscal year, unaudited quarterly financial statements for the Company and its consolidated subsidiaries for the quarterly period then ended and the comparable period in the prior year (including a narrative comparing the results of operations and financial position of the Company in the most recent period to the corresponding period in the prior fiscal year (which narrative need not contain all of the information that would be required in a "Management's Discussion and Analysis" pursuant to Regulation S-K under the Exchange Act));

(b) within one hundred twenty (120) days after the end of each fiscal year, audited financial statements for the Company and its consolidated subsidiaries for such year (including a narrative comparing the results of operations and financial position of the Company in the most recent period to the corresponding period in the prior fiscal year (which narrative need not contain all of the information that would be required in a "Management's Discussion and Analysis" pursuant to Regulation S-K under the Exchange Act), together with a copy of the audit report of the Company's independent public accountants;

(c) as soon as practicable after the end of each month, but in any event within thirty (30) days thereafter, an unaudited consolidated balance sheet of the Company and its subsidiaries, as of the end of each such monthly period, and unaudited statements of income, retained earnings and cash flows of the Company and its subsidiaries for such period and for the current fiscal year to date, setting forth in each case in comparative form the figures for the corresponding periods for the previous fiscal year, all in reasonable detail and prepared in accordance with the Company's normal financial reporting practices; and

(d) as soon as practicable prior to the end of each fiscal year, a budget for the next fiscal year and, as soon as prepared, any other budgets or revised budgets prepared by the Company.

SECTION 3.2 Right to Access. OHAA and each Stockholder holding at least three percent (3%) of the issued and outstanding shares of Common Stock shall have the right, upon reasonable notice and at reasonable times, to meet with the management of the Company and to have access to the auditors and other representatives of the Company, provided, however, that the Company shall have a right to limit such meetings and access if the Company determines that it is necessary to do so in order for the Company to preserve any privilege that the Company is entitled to claim; provided, further, that the Company shall use commercially reasonable efforts to permit the sharing of any information so withheld in a manner consistent with the obligations of such privilege.

## ARTICLE IV

### CERTIFICATE OF INCORPORATION AND BYLAWS

The Stockholders acknowledge and agree that in connection with the execution of this Agreement, the Company's Certificate of Incorporation and Bylaws shall be as set forth in Exhibit A and Exhibit B hereto, respectively. The Company's Certificate of Incorporation shall, at all times during the term of this Agreement, provide that the Company elects (i) to include the provision described in Section 102(b)(7) of the DGCL and (ii) to not be governed by Section 203 of the DGCL.

## ARTICLE V

### TRANSFERS OF SHARES

#### SECTION 5.1 Restrictions on Transfers; Permitted Transferees.

(a) Each Stockholder, severally and not jointly, agrees and acknowledges that such Stockholder will not Transfer any shares of Common Stock unless (i) such Transfer complies with this Article V and the other provisions of this Agreement and the Certificate of Incorporation, (ii) if the Transferring Stockholder is (x) an "affiliate" (as such term is defined in the Securities Act) or (y) relying on Rule 144 promulgated under the Securities Act, such Stockholder has delivered, upon request of the Company, an opinion of counsel (or such other

evidence as is satisfactory to the Company), in a form reasonably satisfactory to the Company, to the effect that the proposed Transfer is in compliance with the Securities Act and all applicable state securities or “blue sky” laws, (iii) such Transfer is made in accordance with all applicable United States Department of Transportation and other airline regulatory laws and regulations restricting ownership and control of U.S. airlines by foreign persons or, solely to the extent so advised to the Stockholders by the Company in writing, other airline regulatory laws and regulations affecting the ownership of Common Stock, and (iv) such Stockholder provides written notice to the Company no less than five (5) Business Days prior to any Transfer of its intention to Transfer shares of Common Stock, which notice shall state the name and address of the proposed Transferee, the number of shares Common Stock proposed to be Transferred to the proposed Transferee and the proposed closing date of such Transfer.

(b) Without the prior written consent of the Board, no Stockholder may Transfer any shares of Common Stock if, as a result of such Transfer, any class of equity securities of the Company would be held of record by more than three hundred (300) Persons who are not “accredited investors” as defined in Rule 501 promulgated under the Securities Act or by more than one thousand seven hundred (1,700) stockholders of record, or otherwise in circumstances that the Board determines could require the Company to file reports under the Exchange Act, if it is not otherwise then subject to such requirements. In the event either of the thresholds described in the preceding sentence have been reached, the Company shall so inform the Stockholders promptly following receipt of notice thereof.

(c) A Transferee of shares of Common Stock pursuant to this Article V must (i) execute and deliver to the Company a joinder substantially in the form attached hereto as Exhibit C-1, or in such other form and substance satisfactory to the Company agreeing to be bound by the terms and provisions of this Agreement and assuming all of the Transferring Stockholder’s then existing and future liabilities arising under or relating to this Agreement and (ii) satisfy the requirements of, and represent that the Transfer was made in accordance with, Section 5.1(a). Unless agreed to in writing by all Stockholders, the joinder by a Stockholder to this Agreement shall not result in the release of the Transferring Stockholder from any liability arising prior to such Transfer that the Transferring Stockholder may have to each remaining Stockholder or to the Company under this Agreement. Any attempted or purported Transfer of all or a portion of the shares of Common Stock held by such Stockholder in violation of this Article V shall be null and void *ab initio* and of no force or effect whatsoever, such Stockholder will not be treated as an owner of shares of Common Stock for purposes of this Agreement or otherwise, and the Company will not register such Transfer of shares of Common Stock.

(d) Except as specifically contemplated hereby, or in connection with a Qualified Pledge, no Stockholder shall grant any proxy or enter into or agree to be bound by any voting trust with respect to any shares of Common Stock, nor enter into any stockholder agreements or arrangements of any kind with any person with respect to any shares of Common Stock inconsistent with the provisions of this Agreement (whether or not such agreements and arrangements are with other Stockholders or holders of shares of Common Stock who are not Parties to this Agreement), including but not limited to, agreements or arrangements with respect to the acquisition, disposition or voting of shares of Common Stock, nor shall any Stockholder act, for any reason, as a member of a group or in concert with any other Persons in connection



with the acquisition, disposition or voting of shares of Common Stock in any manner which is inconsistent with the provisions of this Agreement.

(e) None of the restrictions contained in this Article V (other than Sections 5.1(a), 5.1(b), 5.1(c) and 5.6) shall apply: (i) with respect to a Stockholder who is an individual, to (A) any Transfer or assignment for consideration or as a gift (including by will or the laws of descent) by any Stockholder to any spouse, child, parent, sibling or grandchild of a Stockholder, or by any of such relatives to such Stockholder or to any one or more of such relatives, or by any Stockholder or any such relatives to a trust of which there are no principal beneficiaries other than such Stockholder and/or one or more of such relatives; or (B) any Transfer to a legal representative of a Stockholder in the event any Stockholder becomes mentally incompetent; and (ii) with respect to a Stockholder which is not an individual, to any Transfer by such Stockholder to any Affiliate thereof (in each of cases (i) and (ii) a "Permitted Transferee").

## SECTION 5.2 Right of First Offer

(a) Except as otherwise provided in Section 5.1(e) and Section 5.3, but subject to Section 5.4, any Stockholder who desires to Transfer any shares of Common Stock to a third party (a "Proposing Stockholder"), and upon the consummation of such Transfer, the third party would hold shares of Common Stock representing more than twenty percent (20%) of the outstanding shares of Common Stock, shall first give written notice (a "Proposing Stockholder's Notice") to the Company and all other Stockholders who hold shares of Common Stock representing at least three percent (3%) of the outstanding shares of Common Stock (the "Offeree Stockholders") stating the Proposing Stockholder's desire to make such Transfer, the number of shares of Common Stock to be Transferred (collectively, the "Offered Shares"), the per share cash price which the Proposing Stockholder proposes to be paid for the Offered Shares by the other Stockholders (the "First Offer Price") and the other material terms and conditions of the proposed Transfer.

(b) Upon receipt of the Proposing Stockholder's Notice (the "First Offer"), each of the Offeree Stockholders shall have the irrevocable and exclusive option (but not the obligation) to purchase its Pro Rata Portion of the Offered Shares. To the extent that any Stockholder does not subscribe for its Pro Rata Portion of the Offered Shares, each other fully participating Stockholder shall have an option to purchase that percentage of the Offered Shares not purchased determined by dividing the number of shares of Common Stock owned by such fully participating Stockholder by the total number of shares of Common Stock owned by all fully participating Stockholders, which process shall continue until such time as either all of the Offered Shares have been subscribed for or no Stockholders elect to participate for additional Offered Shares. If the participating Offeree Stockholders have elected to purchase all (but not less than all) of the Offered Shares pursuant to this Section 5.2, then the Proposing Stockholder shall sell the Offered Shares to such Offeree Stockholders in accordance with Section 5.2(f). The option of each of the Offeree Stockholders participating in the purchase under this Section 5.2(b) shall be exercisable by written notice to the Proposing Stockholder and shall include reasonable evidence of financial capacity and ability to purchase such Offered Shares promptly, with copies to the Company, given within fifteen (15) Business Days from the date of the Proposing Stockholder's Notice.

(c) If the Proposing Stockholder's Notice shall be duly given, and if the Offeree Stockholders shall not exercise their options to purchase all of the Offered Shares at the First Offer Price, then the Selling Stockholder shall be free, for a period of [sixty (60)] days from the earlier of (i) the fifteenth (15<sup>th</sup>) Business Day following the date of the Proposing Stockholder's Notice or (ii) the date the Proposing Stockholder shall have received written notice from all of the Offeree Stockholders stating their intention not to exercise the options granted under Section 5.2(b), or such later date on which all necessary regulatory approvals have been obtained, to sell any Offered Shares not so purchased by the Offeree Stockholders to any third party transferee at a cash price equal to or greater than the First Offer Price and on other terms and conditions no less favorable in the aggregate to the Proposing Stockholder than those contained in the Proposing Stockholder's Notice; provided that such sale complies with the provisions of Section 5.1(a), 5.1(b) and 5.1(c).

(d) If the proposed purchase price of a transferee for the Offered Shares is less than the First Offer Price, the Proposing Stockholder shall not sell or otherwise transfer any of the Offered Shares unless the Proposing Stockholder shall first reoffer (the "Reoffer") the Offered Shares at such lesser price to the Company and each of the Offeree Stockholders by giving written notice (the "Reoffer Notice") thereof, stating the Proposing Stockholder's intention to make such Transfer at such lower price (the "Reoffer Price") and the other material terms and conditions of the proposed Transfer. Each of the Offeree Stockholders shall then have the irrevocable and exclusive option to purchase all of the Offered Shares at the Reoffer Price, exercisable in the same proportions and manner as provided in Section 5.2(b). If the Offeree Stockholders do not then purchase all the Offered Shares, then such Offered Shares may be sold by the Proposing Stockholder within sixty (60) days following the earlier of (i) the fifteenth (15<sup>th</sup>) day from the date of the Reoffer Notice and (ii) the date on which the Proposing Stockholder shall have received written notice from the Company and each of the Offeree Stockholders stating their intention not to exercise the option granted in this Section 5.2(d), or such later date on which all necessary regulatory approvals have been obtained, at a cash price equal to or greater than the Reoffer Price and on other terms and conditions no less favorable to the Proposing Stockholder than those contained in the Reoffer Notice; provided that such sale complies with the provisions of Section 5.1(a), 5.1(b) and 5.1(c).

(e) If the Offeree Stockholders do not exercise their option to purchase the Offered Shares at the First Offer Price or at the Reoffer Price, and the Proposing Stockholder shall not have sold the Offered Shares to any transferee for any reason before the expiration of the 60-day period described in Section 5.2(d) in the event of a Reoffer or, if no Reoffer Notice is given, the 60-day period described in Section 5.2(c), then the Proposing Stockholder shall not sell or otherwise Transfer any such shares of Common Stock unless it shall once again comply with this Section 5.2 with respect to any such sale or Transfer.

(f) The closing of all purchases pursuant to the first offer rights granted under this Section 5.2 shall take place at the principal offices of the Company at 10 a.m., prevailing local time, on a date determined by the Proposing Stockholder and the Offeree Stockholders who have elected to purchase Offered Shares; provided that, without the consent of the Offeree Stockholder, such closing shall not occur later than the fifteenth (15<sup>th</sup>) day following the delivery to the Proposing Stockholder of all notices exercising such first offer rights with respect to the

Offered Shares to be sold by the Proposing Stockholder at such closing, or at such later date on which all necessary regulatory approvals have been obtained. At such closing, (i) the Proposing Stockholder shall assign and Transfer to each Stockholder purchasing Offered Shares good and valid title to the Offered Shares being purchased by them, by delivery of the certificates (if any) representing the Offered Shares to be sold and transferred, duly endorsed in blank, with the requisite stock transfer tax stamps attached, together with such stock powers, certificates, legal opinions and other instruments of transfer as the Company or the purchasing Stockholder(s) shall reasonably request; (ii) the Proposing Stockholder shall be required to include only customary representations and warranties regarding its title to the Offered Shares, and its power, authority and legal right to Transfer such Offered Shares and (iii) the purchasing Stockholder(s) shall pay to the Proposing Stockholder the purchase price for the Offered Shares being purchased by it in cash, by delivery of a certified or bank check or by wire transfer of immediately available funds to such account as the Proposing Stockholder shall direct by written notice delivered to the Company and each such Stockholder not later than two (2) Business Days before such closing. If any Offeree Stockholder fails to close at the date set for such closing, then the Proposing Stockholder shall be free to sell any Offered Shares that were to be purchased by such defaulting Offeree Stockholder in the same manner as set forth in Section 5.2(c) or (d) as if no such notice had been given by such defaulting Offeree Stockholder, provided, that the period of time for the sale of such Offered Shares shall be thirty (30) days from the proposed closing date of the sale to the defaulting Offeree Stockholder or such later date on which all necessary regulatory or other required approvals, if any, have been obtained. Notwithstanding the foregoing, there shall be no liability on the part of any Proposing Stockholder to any Offeree Stockholders arising from the failure of such Proposing Stockholder to consummate the purchase and sale of the Offered Shares for any reason, and the decision to consummate such purchase and sale shall be in the sole discretion of such Proposing Stockholder.

### SECTION 5.3 Drag Along Right.

(a) In the event that one or more Stockholders representing the Required Drag-Along Amount (“Dragging Stockholders”) proposes to sell, or otherwise dispose of, in one transaction or a series of related transactions, to a Person or a group of Persons, other than an Affiliate of any of such Stockholders (a “Drag-Along Buyer”), either (i) at least such amount of shares of Common Stock held by such Dragging Stockholders or (ii) all or substantially all of the assets of the Company on a consolidated basis (a “Majority Approved Sale”), such Dragging Stockholder(s) shall have the right (the “Drag-Along Right”) to require each of the other Stockholders (the “Non-Initiating Stockholders”) to facilitate the consummation of such Majority Approved Sale, including by Transferring to the Drag-Along Buyer its Pro Rata Portion of shares Common Stock it holds (and, for purposes of this Section 5.3, its Pro Rata Portion of each class of Common Stock Equivalents, to the extent such Stockholder holds any such Common Stock Equivalents) in such Majority Approved Sale in accordance with Sections 5.3(b) and 5.3(c), and voting in favor of and taking such other actions required under Section 5.3(d), upon the same terms and subject to the same conditions as are applicable to the Dragging Stockholders (subject to the limitations set forth in this Section 5.3).

(b) The Company or Dragging Stockholders shall provide written notice of such Majority Approved Sale to the Non-Initiating Stockholders (a “Majority Approved Sale”

Notice”) specifying the number and class(es) of shares of Common Stock and Common Stock Equivalents proposed to be Transferred by the Dragging Stockholders and the other material terms and conditions of the proposed Transfer, including the purchase price payable for the shares of Common Stock and Common Stock Equivalents, the identity of the Drag-Along Buyer and the date of closing of the purchase and sale contemplated by the Majority Approved Sale Notice (the “Majority Approved Sale Closing Date”), which Majority Approved Sale Closing Date shall be not less than ten (10) Business Days following the delivery of the Majority Approved Sale Notice to the Non-Initiating Stockholders. In determining the proposed purchase price referred to in the immediately preceding sentence, there shall be taken into account (and the Non-Initiating Stockholders shall receive their pro rata share of) any other consideration or value to be received from the Drag-Along Buyer, directly or indirectly, by the Dragging Stockholders in connection with or relating to the Majority Approved Sale, including by way of any “non-compete,” consulting, management or other payments in connection with the Majority Approved Sale. The Majority Approved Sale Notice shall also specify each Non-Initiating Stockholder’s Pro Rata Portion of the shares of Common Stock (and, if applicable, Common Stock Equivalents) to be Transferred and the estimated amount of the proceeds to be distributed to such Non-Initiating Stockholder upon completion of the Majority Approved Sale (which amount, for the avoidance of doubt, shall take into account the exercise price of any applicable Common Stock Equivalents and the applicable provisions of the Certificate of Incorporation regarding distributions relating to the shares of Common Stock to be Transferred). Notwithstanding the foregoing, (i) no Non-Initiating Stockholder shall be required to make any representation or warranty, or provide any indemnity to any person, in connection with any Majority Approved Sale other than with respect to the unencumbered title to its shares of Common Stock (and, if applicable, Common Stock Equivalents), and its power, authority and legal right to Transfer such shares of Common Stock (and, if applicable, Common Stock Equivalents), (ii) the aggregate liability or loss as a result of such representations, warranties, indemnities or other agreements shall not exceed the proceeds such Non-Initiating Stockholder received in connection with such Transfer, and (iii) no Non-Initiating Stockholder shall be required in connection with such Majority Approved Sale to agree to (A) any non-solicit, no hire or other similar provision, (B) any non-compete or similar restrictive covenant or (C) any term that purports to bind any portfolio company of any investment fund or other investment entity that is under common control or management with any such Dragging Stockholder or its Affiliate.

(c) At the closing of the Majority Approved Sale, the Dragging Stockholders and the Non-Initiating Stockholders shall deliver to the Drag-Along Buyer certificates or other instruments representing their shares of Common Stock (and, if applicable, Common Stock Equivalents), duly endorsed in blank for Transfer or accompanied by stock powers duly endorsed in blank, and the Drag-Along Buyer shall pay to each such Stockholder the consideration payable at the closing pursuant to such transaction. If any Stockholder fails to deliver such certificates or other instruments to the Drag-Along Buyer, then the Drag-Along Buyer shall provide written notice of such failure to the Company and such Transfer shall not be effective until such time as such certificates or other instruments are delivered. Upon receipt of such notice, the Company agrees that it shall not record the Transfer of such shares of Common Stock or Common Stock Equivalents on the books and records of the Company and shall promptly direct the Company’s transfer agent, if any, that the transfer agent shall also not record the

Transfer of such shares of Common Stock or Common Stock Equivalents on the books and records of the Company.

(d) If any Majority Approved Sale is structured as a merger, consolidation, amalgamation, sale of assets or similar transaction each Non-Initiating Stockholder agrees, as applicable, solely in its capacity as a Stockholder of the Company, to (i) vote its shares of Common Stock in favor of, or consent to, such transactions; (ii) waive or refrain from exercising any appraisal, dissenters' or similar rights with respect to such transaction; and (iii) take such other action, consistent with this Section 5.3, as may reasonably be required to complete the transaction.

(e) If the Majority Approved Sale shall not have been consummated within ninety (90) days of the date the Majority Approved Sale Notice was provided (which 90-day period may be extended by notice from the Dragging Stockholders to the Non-Initiating Stockholders for up to two-hundred and seventy (270) days in the event any required approval of such sales from any Governmental Authority, including termination or expiration of the applicable waiting period under the applicable antitrust and competition Laws, has not then been obtained), the Dragging Stockholders shall return to the Non-Initiating Stockholders all applicable instruments representing shares of Common Stock (including, if applicable, Common Stock Equivalents) that the Non-Initiating Stockholders delivered for Transfer, together with any other documents in the possession of the Dragging Stockholders executed by the Non-Initiating Stockholders in connection with such proposed Majority Approved Sale, if any, and all the restrictions on Transfer contained in this Agreement shall again be in effect. Notwithstanding the foregoing, there shall be no liability on the part of any Dragging Stockholder to any Non-Initiating Stockholders arising from the failure of the Dragging Stockholders to consummate the Majority Approved Sale for any reason, and the decision to consummate such Majority Approved Sale shall be in the sole discretion of the Dragging Stockholders.

(f) No Majority Approved Sale pursuant to this Section 5.3 shall be subject to Section 5.2.

#### SECTION 5.4 Tag-Along Rights.

(a) In the event one or more Stockholders (each, a "Selling Stockholder") proposes to Transfer, in one transaction or a series of related transactions, to a third party that is not an Affiliate of any Selling Stockholders (the "Proposed Transferee") shares of Common Stock representing at least fifty and one-tenth percent (50.1%) of the then outstanding shares of Common Stock, and Drag-Along Rights are not exercised pursuant to Section 5.3 (a "Tag-Along Transfer"), each Stockholder that is not a Selling Stockholder (a "Tag-Along Right Holder") shall have the right (the "Tag-Along Rights") to participate in the Tag-Along Transfer by Transferring up to its Pro Rata Portion of its shares of Common Stock and Series A-1 Warrants it holds to the Proposed Transferee on the same terms and conditions as those proposed by the Selling Stockholders (each such participating Tag-Along Right Holder, other than the Selling Stockholders, the "Tagging Stockholder").

(b) The Selling Stockholders shall give written notice (a "Tag-Along Notice") to each Tag-Along Right Holder of a Tag-Along Transfer, setting forth the number and

class(es) of shares of Common Stock and Series A-1 Warrants proposed to be so Transferred, the name and address of the Proposed Transferee, the proposed amount and form of consideration and other terms and conditions of payment offered by the Proposed Transferee. The Selling Stockholders shall deliver or cause to be delivered to each Tag-Along Right Holder copies of all transaction documents relating to the Tag-Along Transfer promptly as the same become available. The Tag-Along Rights provided by this Section 5.4 must be exercised by a Tag-Along Right Holder by delivery of an irrevocable written notice to the Selling Stockholders, within a period of fifteen (15) Business Days from the Tag-Along Notice, specifying the portion of its Pro Rata Portion of its shares of Common Stock and, if applicable, Series A-1 Warrants it holds which it wishes to include in the Tag-Along Transfer. With respect to shares of Common Stock and Series A-1 Warrants proposed to be Transferred, if the Proposed Transferee fails to purchase all the shares of Common Stock (or Series A-1 Warrants) proposed to be Transferred by the Selling Stockholders and the Tagging Stockholders, then the number of shares of Common Stock and Series A-1 Warrants) that each such Stockholder is permitted to sell in such Tag-Along Transfer shall be reduced pro rata based on the number of shares of Common Stock and Series A-1 Warrants proposed to be Transferred by such Stockholder relative to the aggregate number of shares of Common Stock and Series A-1 Warrants proposed to be Transferred by all Stockholders participating in such Tag-Along Transfer. The Selling Stockholders shall have a period of ninety (90) days following the expiration of the fifteen (15) Business Day notice period mentioned above (which 90-day period may be extended by notice from the Selling Stockholders to the participating Tagging Stockholders for up to two-hundred and seventy (270) days in the event any required approval of such sales from any Governmental Authority, including termination or expiration of the applicable waiting period under the applicable antitrust and competition Laws, has not then been obtained) to sell all the shares of Common Stock [and Series A-1 Warrants] agreed to be purchased by the Proposed Transferee on the terms specified in the notice required by the first sentence of this Section 5.4(b). With respect to shares of Common Stock and Series A-1 Warrants proposed to be Transferred, if the Proposed Transferee agrees to purchase more shares of Common Stock and Series A-1 Warrants than specified in the Tag-Along Notice in the proposed Transfer, the Tag-Along Right Holder shall also have the same right to participate in the Transfer of such shares of Common Stock and Series A-1 Warrants that are in excess of the amount set forth on the Tag-Along Notice on a pro rata basis based on the number of shares of Common Stock and Series A-1 Warrants to be Transferred by such Stockholder relative to the aggregate number of shares of Common Stock and Series A-1 Warrants of such class proposed to be Transferred by all Stockholders participating in such Tag-Along Transfer.

(c) Any Transfer of shares of Common Stock and Series A-1 Warrants by a Tagging Stockholder to a Proposed Transferee pursuant to this Section 5.4 shall be on the same terms and conditions (including price, time of payment and form of consideration; provided, that such consideration take into account the applicable provisions of the Certificate of Incorporation regarding distributions relating to the shares of Common Stock to be Transferred) as to be paid to the Selling Stockholders in respect of its shares of Common Stock or Series A-1 Warrants. In determining the proposed purchase price referred to in the immediately preceding sentence, there shall be taken into account (and the Tagging Stockholders shall receive their pro rata share of) any other consideration or value to be received from the Proposed Transferee or its Affiliates,

directly or indirectly, by any Selling Stockholder in connection with or relating to the Tag-Along Transfer, including by way of any “non-compete,” consulting, management or other payments in connection with the Tag-Along Transfer. Notwithstanding the foregoing, (i) no Tagging Stockholder shall be required to make any representation or warranty, or provide any indemnity to any person, in connection with any Tag-Along Transfer other than with respect to the unencumbered title to its shares of Common Stock and Series A-1 Warrants, and its power, authority and legal right to Transfer such shares of Common Stock and Series A-1 Warrants, (ii) the aggregate liability or loss as a result of such representations, warranties, indemnities or other agreements shall not exceed the proceeds such Tagging Stockholder received in connection with such Transfer, and (iii) no Tagging Stockholder shall be required in connection with such Tag-Along Transfer to agree to (A) any non-solicit, no hire or other similar provision, (B) any non-compete or similar restrictive covenant or (C) any term that purports to bind any portfolio company of any investment fund or other investment entity that is under common control or management with any such Tagging Stockholder or its Affiliate. Each Tagging Stockholder shall be responsible for its proportionate share of the costs of the proposed Transfer to the extent not paid or reimbursed by the Proposed Transferee or the Company.

SECTION 5.5 Legend on Certificates. Each outstanding certificate representing shares of Common Stock that are subject to this Agreement shall bear an endorsement reading substantially as follows:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE (THESE “SECURITIES”) WERE ORIGINALLY ISSUED IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENT OF SECTION 5 OF THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), PROVIDED BY SECTION 1145 OF THE BANKRUPTCY CODE, 11 U.S.C. § 1145. THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE ACT OR ANY STATE SECURITIES LAW, AND TO THE EXTENT THE HOLDER OF THE SECURITIES IS AN “UNDERWRITER,” AS DEFINED IN SECTION 1145(B)(1) OF THE BANKRUPTCY CODE, THESE SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE (THESE “SECURITIES”) ARE SUBJECT TO VARIOUS CONDITIONS, INCLUDING CERTAIN RESTRICTIONS RELATING TO COMPLIANCE WITH U.S. AIRLINE FOREIGN OWNERSHIP RESTRICTIONS AND TO SALE, DISPOSITION OR TRANSFER AS SET FORTH IN THE CORPORATION’S CERTIFICATE OF INCORPORATION, AS AMENDED (THE “CERTIFICATE OF INCORPORATION”), AND THE STOCKHOLDERS AGREEMENT DATED AS OF [\_\_\_\_], 2013 AMONG THE CORPORATION AND THE STOCKHOLDERS NAMED THEREIN, AS IT MAY BE AMENDED FROM TIME TO TIME (THE “STOCKHOLDERS AGREEMENT”). NO REGISTRATION OR TRANSFER OF THESE SECURITIES WILL BE MADE ON THE BOOKS OF THE CORPORATION UNLESS AND UNTIL SUCH

RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH. THE CORPORATION WILL FURNISH WITHOUT CHARGE TO EACH HOLDER OF RECORD OF THESE SECURITIES A COPY OF THE CERTIFICATE OF INCORPORATION AND STOCKHOLDERS AGREEMENT, CONTAINING THE ABOVE-REFERENCED RESTRICTIONS ON TRANSFERS OF STOCK, UPON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.

SECTION 5.6 No Circumvention of Stock Transfer Restrictions. Each Party agrees that the Transfer restrictions in this Agreement may not be avoided by the holding of shares of Common Stock directly or indirectly through a Person that can itself be sold in order to dispose of an interest in shares of Common Stock free of such restrictions. Any Transfer of any shares of Common Stock (or other interest) resulting in any change in the control, directly or indirectly, of a Stockholder or of any other Person having control, directly or indirectly, over that Stockholder shall be treated as being a Transfer of the shares of Common Stock held by that Stockholder, and the provisions of this Agreement that apply in respect of the Transfer of shares of Common Stock shall thereupon apply in respect of the shares of Common Stock so held; provided that this Section 5.6 shall not apply in respect of (i) a bona fide Transfer of equity securities of a Person having a direct or indirect interest in any shares of Common Stock, where that interest does not represent more than ten percent (10%) of the assets of that Person, or (ii) any Transfer to a Permitted Transferee.

SECTION 5.7 Registration Rights. Whenever the Company proposes to register any shares of its Common Stock under the Securities Act (other than a registration effected solely to implement an employee benefit plan or a transaction to which Rule 145 of the Securities Act is applicable, or pursuant to a Registration Statement on Form S-4, S-8 or any successor form thereto or another form not available for registering the Common Stock held by the Stockholders (“Registrable Securities”) for sale to the public), whether for its own account or for the account of one or more stockholders of the Company (a “Piggyback Registration”), the Company shall give prompt (but no less than thirty (30) days) written notice to the Stockholders of its intention to effect such Piggyback Registration and shall include in such Piggyback Registration all Registrable Securities held by the Stockholders with respect to which the Company has received written requests for inclusion from the holders of Registrable Securities within fifteen (15) days after the Company’s notice has been given to each such Stockholder; provided that if a Piggyback Registration is initiated as an underwritten offering and the managing underwriter advises the Company and the holders of Registrable Securities (if any holders of Registrable Securities have elected to include Registrable Securities in such Piggyback Registration) in writing that in its reasonable opinion the number of shares of Common Stock proposed to be included in such registration, including all Registrable Securities and all other shares of Common Stock proposed to be included in such underwritten offering, exceeds the number of shares of Common Stock which can be sold in such offering without adversely affecting the marketability of the offering (including an adverse effect on the per share offering price), the Company shall include in such registration (i) first, solely in the case of a Piggyback Registration relating to a primary offering on behalf of the Company, the number of shares of Common Stock that the Company proposes to sell; (ii) second, the number of shares of Common Stock requested to be included therein by holders of Registrable Securities, allocated



pro rata among all such holders on the basis of the number of Registrable Securities owned by each such holder or in such manner as they may otherwise agree; and (iii) third, the number of shares of Common Stock requested to be included therein by holders of Common Stock (other than holders of Registrable Securities), allocated among such holders in such manner as they may agree. The registration expenses in connection with a Piggyback Registration and the Stockholders' exercise of the rights provided herein (excluding stock transfer taxes, underwriting discounts and commissions) shall be borne by the Company, and the Company shall also pay the reasonable fees and expenses of one special counsel to represent all of the participating Stockholders. The Company shall not grant registration rights to any other Person without the consent of Stockholders holding a majority of the outstanding Common Stock held by the Stockholders unless such registration rights are subordinate to the Stockholders' rights herein. In connection with any Public Offering, the Company and the Stockholders shall enter into a customary registration rights agreement with provisions consistent with this Section 5.7.

## ARTICLE VI

### ADDITIONAL AGREEMENTS

#### SECTION 6.1 Preemptive Rights.

(a) In the event that the Company or its subsidiaries proposes to sell or otherwise issue shares of Common Stock or Common Stock Equivalents or any other equity securities, or any options, rights or warrants to purchase equity securities of the Company or its subsidiaries (collectively, "Dilutive Securities"), each Stockholder shall have the right to acquire Dilutive Securities, in accordance with the provisions of this Section 6.1.

(b) Not later than ten (10) Business Days prior to the anticipated issuance date of Dilutive Securities, the Company shall give written notice (the "Notice of Preemptive Rights") to each Stockholder which shall state the Company's intention to issue Dilutive Securities, the type and amount of Dilutive Securities to be issued, the purchase price therefor, a summary of the other material terms of the proposed issuance and the Pro Rata Portion of such Dilutive Securities which the Stockholder to which the notice is directed may purchase in connection with such issuance.

(c) Each Stockholder that is an "accredited investor" as defined in Rule 501 promulgated under the Securities Act shall have the right to purchase all (but not less than all) of its Pro Rata Portion of such Dilutive Securities at the price and on the terms and conditions specified in the Notice of Preemptive Rights by delivering an irrevocable written notice (the "Acceptance Notice") to the Company no later than ten (10) Business Days from the date the Notice of Preemptive Rights is delivered to such Stockholder at the price and upon the terms specified in the Notice of Preemptive Rights, setting out the number of Dilutive Securities with respect to which such right is being exercised. Such Acceptance Notice shall also include the maximum number of Dilutive Securities the Stockholder would be willing to purchase in the event any other Stockholder elects to purchase less than its Pro Rata Portion of such Dilutive Securities. If any Stockholder fails to elect to purchase its Pro Rata Portion of such Dilutive Securities, the Company shall allocate any remaining amount among those Stockholders (pro

rata in accordance with the shares of Common Stock then held by each such Stockholders relative to the aggregate number of shares of Common Stock held by all Stockholders participating in issuance of Dilutive Securities) who have indicated in their Acceptance Notice a desire to purchase Dilutive Securities in excess of their respective Pro Rata Portions (it being understood that if Stockholders elect to purchase more Dilutive Securities than remain available for sale, such allocation shall be made pro rata in accordance with the shares of Common Stock then held by each such Stockholder relative to the aggregate number of shares of Common Stock held by all Stockholders participating in issuance of Dilutive Securities); provided that no Stockholder shall be required to purchase more Dilutive Securities than the maximum number set forth in such Stockholder's Acceptance Notice.

(d) The Company may sell or issue any Dilutive Securities not covered by an Acceptance Notice to any other Person or Persons, but only at the price and upon terms and conditions that are in all respects no more favorable to such other Person or Persons than those set forth in the Notice of Preemptive Rights. If the Company does not consummate the sale or issuance of all or part of such remaining Dilutive Securities to such other Person or Persons within sixty (60) days after the end of the 10-Business Day period specified in Section 6.1(b), the right provided hereunder shall be deemed to be revived and such Dilutive Securities shall not be issued unless first reoffered to the Stockholders in accordance with this Section 6.1. Concurrently with the closing of the sale or issuance to such other Person or Persons (the "Other Purchasers") of all or part of such Dilutive Securities, each Stockholder shall purchase from the Company, and the Company shall sell or issue to such Stockholder, the securities covered by the Acceptance Notice delivered to the Company by such Stockholder on the terms specified in the Notice of Preemptive Rights. The purchase by a Stockholder of any such securities is subject in all cases to the execution and delivery by the Company and the Stockholder of (a) a customary purchase agreement or subscription agreement relating to such securities, which shall provide representations and warranties by the Company that the Dilutive Securities are issued free and clear of all Liens, and duly authorized, validly issued, fully paid and nonassable and (b) all other documents in form and substance similar in all material respects, to the extent applicable, to those executed and delivered by the Company and the Other Purchasers.

(e) If any Stockholder does not deliver an Acceptance Notice within such ten (10) Business Day period, such Stockholder shall be deemed to have irrevocably waived any and all rights under this Section 6.1 with respect to the purchase of such Dilutive Securities (but not with respect to future issuances in accordance with this Section 6.1). Any sale of Dilutive Securities by the Company without first giving the Stockholders the rights described in this Section 6.1 shall be void and of no force and effect.

(f) The Company shall not issue any Dilutive Securities to any Person not a party to this Agreement, unless such Person has agreed in writing to be bound by the terms and conditions of this Agreement pursuant to an instrument substantially in the form attached hereto as Exhibit C-2. Any issuance of Dilutive Securities by the Company in violation of this Section 6.1 shall be null and void.

(g) This Section 6.1 shall not apply to (i) the sale or issuance of Dilutive Securities pursuant to the Equity Incentive Plan or any other equity incentive plans approved as

required under Section 2.4(j); (ii) the issuance of equity securities to a third party that is not an Affiliate of the Company pursuant to any merger or business combination transaction involving the Company or any of its subsidiaries or as consideration for the acquisition by the Company or any of its subsidiaries of assets or another business entity in each case, approved as required under Section 2.4(a) or Section 2.4(b); (iii) the issuance of the Warrant Shares; (iv) any equity securities registered in connection with a Public Offering; (v) the issuance of equity securities by any of the Company's direct or indirectly wholly owned subsidiaries to the Company or any of the Company's other wholly owned subsidiaries or (v) the issuance of securities for purposes of compliance with applicable airline regulatory laws and regulations pursuant to Section 5.02 of the Certificate of Incorporation.

## SECTION 6.2 Right to Participate in Debt Issuances.

(a) In the event that the Company or its subsidiaries proposes to issue debt securities (such issuing entity, the "Debt Issuer"), obtain a loan or other debt financing (a "Debt Issuance"), each Stockholder shall have the right to participate in such Debt Issuance, in accordance with the provisions of this Section 6.2.

(b) Not later than ten (10) days prior to the anticipated effective date of the Debt Issuance, the Company shall give written notice (the "Notice of Participation Rights") to each Stockholder which shall state the Debt Issuer's intention to enter into the proposed Debt Issuance, provide the material terms of the proposed Debt Issuance, including the form of such debt financing, the principal amount, maturity date and interest rate, and provide the Pro Rata Portion of such Debt Issuance which the Stockholder to which the Notice of Participation Rights is directed may participate.

(c) Each such Stockholder shall have the right to participate for all (but not less than all) of its Pro Rata Portion of such Debt Issuance on the terms and conditions specified in the Notice of Participation Rights by delivering an irrevocable written notice (the "Participation Right Acceptance Notice") to the Company no later than ten (10) days from the date the Notice of Participation Rights is delivered to such Stockholder on the terms specified in the Notice of Participation Rights (the "Participation Right Acceptance Period"), indicating the portion of such Debt Issuance with respect to which such right is being exercised. Such Participation Right Acceptance Notice shall also include the maximum portion of such Debt Issuance in which the Stockholder would be willing to participate in the event any other Stockholder elects not to participate in such Debt Issuance. If any Stockholder fails to participate in its Pro Rata Portion of such Debt Issuance, the Company shall allocate any remaining amount among those Stockholders (pro rata in accordance with the shares of Common Stock then held by each such Stockholders relative to the aggregate number of shares of Common Stock held by all Stockholders participating in the Debt Issuance) who have indicated in their Participation Right Acceptance Notice a desire to participate in the Debt Issuance in excess of their respective Pro Rata Portions (it being understood that if Stockholders elect to participate in the Debt Issuance in an aggregate principal amount that is greater than the Debt Issuer's proposed aggregate principal amount of the Debt Issuance, such allocation shall be made pro rata in accordance with the shares of Common Stock then held by each such Stockholder relative to the aggregate number of shares of Common Stock held by all Stockholders

participating in the Debt Issuance); provided that no Stockholder shall be required to participate in the Debt Issuance at more than the maximum participation amount set forth in such Stockholder's Participation Right Acceptance Notice.

(d) After the expiration of the Participation Right Acceptance Period, the participating Stockholders and the Debt Issuer may enter into such Debt Issuance, but only upon terms and conditions that are in all respects no more favorable than those set forth in the Notice of Participation Rights. If such Debt Issuance is not consummated within forty-five (45) days from the anticipated closing date set forth in the Notice of Participation Rights, the right provided hereunder shall be deemed to be revived and such Debt Issuance shall not be consummated unless first reoffered to the Stockholders in accordance with this Section 6.2.

(e) If any Stockholder does not deliver a Participation Right Acceptance Notice within the Participation Right Acceptance Period, such Stockholder shall be deemed to have irrevocably waived any and all rights under this Section 6.2, with respect to the participation in such Debt Issuance (but not with respect to any future Debt Issuances entered into pursuant to this Section 6.2). The Company shall not permit the entrance by the Debt Issuer into a Debt Issuance without first giving the Stockholders the rights described in this Section 6.2, and any such attempted Debt Issuance shall be void and of no force and effect.

(f) This Section 6.2 shall not apply to Debt Issuances described in clauses (i), (ii), (iii) and (iv) of the parenthetical in Section 2.4(1).

**SECTION 6.3** Confidentiality. Each Stockholder who has received Confidential Information from the Company or its Representatives agrees that it shall not, and shall cause its Affiliates and Representatives not to, reveal to any other Person other than such Stockholder's Affiliates and Representatives having a need to know in connection with any permitted purpose hereunder, any such Confidential Information without the prior written consent of the Company; provided that such undertaking shall not apply to:

(a) disclosure of Confidential Information that (i) is or has become generally available to the public other than as a result of disclosure by or at the direction of a Party or a Party's Representatives or the Representatives of any Affiliate of any Party in violation of this Agreement, (ii) is or was available to such Stockholder on a non-confidential basis prior to its disclosure to such Stockholder, or (iii) was or becomes available to such Stockholder on a non-confidential basis from a source other than the Company, which source is or was (at the time of receipt of the relevant information) not bound by a confidentiality agreement with the Company or another person;

(b) disclosures of Confidential Information to the extent necessary or required under any (i) applicable Law, (ii) accounting standard, or (iii) in connection with any judicial process regarding any legal action, suit or proceeding arising out of or relating to this Agreement, in each case after giving prior written notice to the other Parties to the extent practicable under the circumstances, and subject to having undertaken any reasonably available arrangements to protect confidentiality (for example, seeking a protective order in relation to such Confidential Information);

(c) in the case of OHAA and any Stockholder that is a private equity fund, such disclosure is of financial and other information of the type typically disclosed to limited partners and prospective investors in private equity funds affiliated with OHAA (or such Stockholder) and is made to the partners of, and/or prospective investors in, private equity Affiliates of OHAA or such other Stockholder and such partner or prospective investor is bound by the confidentiality provisions of a customary confidentiality agreement entered into with the disclosing party that covers the Confidential Information so disclosed; or

(d) disclosures of Confidential Information with respect to the Company by any Stockholder to a third party who is not a competitor to the Company in connection with potential Transfers of Common Stock or Common Stock Equivalents and who has executed a confidentiality agreement whereby such party is bound by the confidentiality provisions of this Agreement.

## ARTICLE VII MISCELLANEOUS

SECTION 7.1 Term. This Agreement shall terminate on earlier to occur of (a) the completion of a Qualified Public Offering or (b) the date that is the ten (10) year anniversary of the date hereof; provided that the provisions of Section 6.3 shall survive the termination of this Agreement.

SECTION 7.2 Modifications. This Agreement may be modified or amended only by a writing signed by the Company and Stockholders holding a majority of the outstanding shares of Common Stock; provided that (a) any modification or amendment that would adversely affect one or more Stockholders in a way that is disproportionate to its effect on the other Stockholders shall require the consent of such disproportionately affected Stockholders holding a majority of the outstanding shares of Common Stock held by all such disproportionately affected Stockholders; (b) any modification or amendment that would make the transfer restrictions set forth in Article V or the confidentiality obligations set forth in Section 6.2 more burdensome on one or more Stockholders, or remove or otherwise adversely amend the preemptive rights set forth in Section 6.1, the drag-along or tag-along rights set forth in Sections 5.3 and 5.4, respectively, held by one or more Stockholders, shall require the consent of Stockholders holding a majority of the outstanding shares of each class of Common Stock held by the affected Stockholders; and (c) any specific director designation or board observer rights provided to a Stockholder may only be amended by the Stockholders entitled to such rights. For the avoidance of doubt, the addition of Parties to this Agreement pursuant to the terms hereof shall not be deemed a modification or amendment of this Agreement.

SECTION 7.3 Action by Stockholders. Any action required or contemplated by this Agreement to be taken by holders holding at least a majority of the shares of Common Stock held by the Stockholders may be taken by delivery of a written consent executed on behalf of one or more of such holders holding at least a majority of the shares of Common Stock held by the Stockholders, and the Company shall be entitled to rely upon any such written consent without prior notice to or consultation with any Person.

SECTION 7.4 Applicability. This Agreement shall apply to all shares of Common Stock beneficially owned by a Stockholder at all times (including upon the exercise of any Common Stock Equivalents), whether such shares of Common Stock are acquired prior to or after the date hereof.

SECTION 7.5 Notices. All notices, requests, waivers and other communications made pursuant to this Agreement shall be in writing and shall be deemed to have been effectively given (a) when personally delivered to the Party to be notified; (b) when sent by confirmed facsimile to the Party to be notified at the number set forth below; (c) three (3) Business Days after deposit in the United States mail postage prepaid by certified or registered mail return receipt requested and addressed to the Party to be notified as set forth below; or (d) one (1) Business Day after deposit with a national overnight delivery service, postage prepaid, addressed to the Party to be notified as set forth below with next-business-day delivery guaranteed, in each case as follows:

In the case of the Company, to:

Southern Air Holdings, Inc.

Attention:  
Telephone:  
Facsimile:

With a copy (which shall not constitute notice) to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention:  
Telephone:  
Facsimile:

In the case of [CIBC]:

[•]

With a copy (which copy shall not constitute notice) to:

Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
New York, New York 10005  
Attention: Thomas C. Janson  
Telephone: (212) 530-5000  
Facsimile: (212) 530-5219

In the case of OHAA:

[•]

With a copy (which copy shall not constitute notice) to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Attention: Angelo Bonvino  
Telephone: (212) 373-3570  
Facsimile: (212) 757-3990

In the case of any other Stockholder, to such Stockholder at its address set forth in the stock ledger of the Company.

A Party may change its address for purposes of notice hereunder by giving ten (10) days' notice of such change to all other Parties in the manner provided in this Section 7.5.

SECTION 7.6 Binding Effect; Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties hereto or their respective successors and permitted assignees any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

SECTION 7.7 Entire Agreement. This Agreement (together with the documents attached as exhibits hereto and any documents or agreements specifically contemplated hereby) supersedes all prior discussions and agreements among any of the Parties hereto (and their Affiliates) with respect to the subject matter hereof and contains the entire understanding of the Parties with respect to the subject matter hereof.

SECTION 7.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be signed by the Company and one or more Stockholders, and all of which are deemed to be one and the same agreement binding upon the Company and each of the Stockholders. Delivery of an executed counterpart of this Agreement by facsimile or other electronic communications shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 7.9 Headings. The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.

SECTION 7.10 Bylaws. If and to the extent that any provision of this Agreement conflicts with or is inconsistent with any provision of the Bylaws of the Company, such provision of this Agreement shall be controlling and, to the extent practicable, the conflicting or inconsistent provision of the Bylaws shall be construed in a manner consistent with such

provision of this Agreement. It is hereby agreed that the Bylaws shall not be amended to be inconsistent with this Agreement.

SECTION 7.11 Further Acts and Assurances. Each Party shall give such further assurance, provide such further information, take such further actions and execute and deliver such further documents and instruments as are, in each case, reasonably necessary to give full force and effect to the provisions of this Agreement.

SECTION 7.12 Governing Law; Consent to Jurisdiction and Service of Process. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of law doctrine. Each Party hereby submits to the exclusive jurisdiction of the Chancery Court of the State of Delaware or the United States District Court for the District of Delaware and any judicial proceeding brought against any of the Parties on any dispute arising out of this Agreement or any matter related hereto shall be brought in such courts. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any objection it may have or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Each Party hereby consents to process being served in any such proceeding by the mailing of a copy thereof by registered or certified mail, postage prepaid, to the address specified in Section 7.5, or in any other manner permitted by law. EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUCH ACTION OR PROCEEDING.

SECTION 7.13 Injunctive Relief. It is hereby agreed and acknowledged that it will be impossible to measure in money the damages that would be suffered if the Parties fail to comply with any of the obligations imposed on them by this Agreement and that in the event of any such failure, an aggrieved person will be irreparably damaged and will not have an adequate remedy at law. Any such person shall, therefore, be entitled to seek injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the Parties shall raise the defense that there is an adequate remedy at law.

SECTION 7.14 Severability. The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of any provision of this Agreement in any other jurisdiction, it being intended that all rights and obligations of the Parties shall be enforceable to the fullest extent permitted by law.

SECTION 7.15 Recapitalization, Etc. In the event that any capital stock or other securities are issued in respect of, in exchange for, or in substitution of, shares of capital stock of the Company by reason of any reorganization, recapitalization, reclassification, merger, consolidation, spin-off, partial or complete liquidation, stock dividend, split-up, sale of assets, distribution to stockholders or combination of shares or any other change in the Company's capital structure, appropriate adjustments shall be made to the provisions of this Agreement so as to fairly and equitably preserve, as far as practicable, the original rights and obligations of the Parties hereto under this Agreement.



*[Signature Pages Follow]*

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed and delivered by its duly authorized officer as of the date first above written.

SOUTHERN AIR HOLDINGS, INC.

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

EXHIBIT A  
CERTIFICATE OF INCORPORATION

EXHIBIT B  
BYLAWS

Exhibit C-1<sup>1</sup>

ACKNOWLEDGMENT AND AGREEMENT

The undersigned wishes to receive from \_\_\_\_\_ (“Transferor”) [\_\_\_\_\_] shares, par value \$0.01 per share, of Class [\_\_\_\_\_] Common Stock (the “Common Shares”) of Southern Air Holdings, Inc., a Delaware corporation (the “Company”);

The Common Shares are subject to that certain Stockholders Agreement, dated as of [\_\_\_\_], 2013, and as further amended from time to time (the “Agreement”), by and among the Company and the stockholders of the Company party thereto;

The undersigned has been given a copy of the Agreement and afforded ample opportunity to read it, and the undersigned is thoroughly familiar with its terms;

Pursuant to terms of the Agreement, the Transferor is prohibited from transferring such Common Shares and the Company is prohibited from registering the transfer of the Common Shares unless and until the recipient of such Common Shares acknowledges the terms and conditions of the Agreement and agrees to be bound thereby; and

The undersigned wishes to receive such Common Shares and have the Company register the transfer of such Common Shares;

NOW, THEREFORE, in consideration of the mutual premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Transferor to transfer such Common Shares to the undersigned and the Company to register such transfer, the undersigned does hereby acknowledge and agree that (i) the undersigned has been given a copy of the Agreement and ample opportunity to read it, and the undersigned is thoroughly familiar with its terms and (ii) the Common Shares are subject to the terms and conditions set forth in the Agreement.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

\_\_\_\_\_

<sup>1</sup> For transfers of previously issued stock.

Exhibit C-2<sup>2</sup>

ACKNOWLEDGMENT AND AGREEMENT

The undersigned wishes to receive from Southern Air Holdings, Inc., a Delaware corporation (the "Company"), [\_\_\_\_\_] shares, par value \$0.01 per share, of Class [\_\_\_\_\_] Common Stock or certain newly issued options, warrants or other rights to purchase shares of Common Stock (the "Common Shares"), of the Company;

The Common Shares are subject to that certain Stockholders Agreement, dated as of \_\_\_, 2013 and as further amended from time to time (the "Agreement"), by and among the Company and the stockholders of the Company party thereto;

The undersigned has been given a copy of the Agreement and afforded ample opportunity to read it, and the undersigned is thoroughly familiar with its terms;

Pursuant to terms of the Agreement, the Company is prohibited from issuing the Common Shares unless and until the recipient of such Common Shares acknowledges the terms and conditions of the Agreement and agrees to be bound thereby; and

The undersigned wishes to receive such Common Shares;

NOW, THEREFORE, in consideration of the mutual premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Company to issue such Common Shares, the undersigned does hereby acknowledge and agree that (i) the undersigned has been given a copy of the Agreement and ample opportunity to read it, and the undersigned is thoroughly familiar with its terms and (ii) the Common Shares are subject to terms and conditions set forth in the Agreement.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

\_\_\_\_\_

<sup>2</sup> For transfers of newly issued stock.

**Exhibit A-2**

**Blackline of Amendment to Form of Reorganized  
Southern Air Parent Stockholders Agreement**

STOCKHOLDERS AGREEMENT

by and among

SOUTHERN AIR HOLDINGS, INC.

and

EACH OF THE STOCKHOLDERS

of

SOUTHERN AIR HOLDINGS, INC.

Dated as of [●], 2013

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EXHIBIT A ..... CERTIFICATE OF INCORPORATION

Exhibit B            Bylaws  
Exhibit C            Form of Joinder

## STOCKHOLDERS AGREEMENT

This STOCKHOLDERS AGREEMENT, dated as of [●], 2013 (this “Agreement”), is entered into by and among SOUTHERN AIR HOLDINGS, INC., a Delaware corporation (the “Company”), and the Stockholders and each person that hereafter becomes a Stockholder and is required by this Agreement to become a Party hereto. Capitalized terms not otherwise defined herein have the meanings set forth in Article I.

### WITNESSETH:

WHEREAS, on September 28, 2012, the Company filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, (the “Bankruptcy Code”), thereby initiating Case No. 12-12690 (CSS) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) and continued to operate its business as a debtor and debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Second Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code of Southern Air Holdings, Inc. and its affiliated debtors, dated January 18, 2013 (the “Plan”), as confirmed on [●], 2013 by an order of the Bankruptcy Court entered on [●], 2013 (the “Confirmation Order”), provides that the Company shall issue to the Stockholders shares of Common Stock and, as applicable, Warrants;

WHEREAS, in connection with the consummation of the transactions contemplated by the Plan, and as required pursuant to the Plan as a condition to the receipt of such shares and Warrants, the Company and the Stockholders are entering into this Agreement to provide certain rights and obligations among them; and

NOW, THEREFORE, in consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.1 Certain Definitions. The following terms shall have the meanings set forth below:

“Acceptance Notice” has the meaning set forth in Section 6.1(c).

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any

specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. Notwithstanding the foregoing, for purposes of this Agreement, no Stockholder shall be deemed to be an Affiliate of any other Stockholder solely by virtue of this Agreement.

“Affiliate Transaction” means any transaction or arrangement (other than employment or compensation arrangements in the ordinary course consistent with past practice approved in accordance with this Agreement) between or among the Company or any of its subsidiaries, on the one hand, and, on the other hand, (i) any director, executive officer or employee of the Company or any of its subsidiaries (or any of their respective partners or family members), (ii) any Affiliate of the Company or any of its subsidiaries, (iii) any Stockholder, or (iv) any Affiliate of the foregoing Persons described in clauses (i)-(iv). For the avoidance of doubt, transactions between the Company and its directly or indirectly wholly owned subsidiaries shall not be considered an “Affiliate Transaction.”

“Agreement” has the meaning set forth in the preamble of this Agreement.

“Annual Consideration” means, cash, Indebtedness or other remuneration paid by the Company and its subsidiaries in the aggregate during any calendar year.

“Bankruptcy Code” has the meaning set forth in the recitals of this Agreement.

“Bankruptcy Court” has the meaning set forth in the recitals of this Agreement.

“Board” means the Board of Directors of the Company.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banks in New York, New York are authorized or obligated by Law or executive order to close.

“Capitalized Lease Obligation” means any obligation to pay rent or other amounts under a lease of (or other agreement conveying the right to use) any property (whether real, personal or mixed, immovable or movable) that is required under GAAP, and, for the purposes of this Agreement, the amount of such obligation at any date shall be the capitalized amount thereof at such date, determined in accordance with GAAP.

“Chief Executive Officer” means the individual then serving as the President or chief executive officer of the Company.

“Citizen of the United States” or “U.S. Citizen” shall mean a citizen of the United States as that term is as that term is defined in 49 U.S.C. § 40102(a)(15), as may be amended from time to time, and as interpreted by the U.S. Department of Transportation.

“Class A-1 Common Stock” means the Class A-1 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Class A-1 Director” has the meaning set forth in Section 2.1(a).

“Class A-2 Common Stock” means the Class A-2 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Class A-2 Director” has the meaning set forth in Section 2.1(a).

“Class A-3 Common Stock” means the Class A-3 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Class A-4 Common Stock” means the Class A-4 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Class B Common Stock” means the Class B Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Class C-1 Common Stock” means the Class C-1 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Class C-1 Director” has the meaning set forth in Section 2.1(a).

“Class C-2 Common Stock” means the Class C-2 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Class C-3 Common Stock” means the Class C-3 Common Stock, par value \$0.01 per share, of the Company, including any subdivisions, combinations, splits or reclassifications thereof.

“Common Stock” means, collectively: (a) the Class A-1 Common Stock, (b) the Class A-2 Common Stock, (c) the Class A-3 Common Stock, (d) the Class A-4 Common Stock, (e) the Class B Common Stock, (f) the Class C-1 Common Stock, (g) the Class C-2 Common Stock and (h) the Class C-3 Common Stock.

“Common Stock Equivalents” means securities (including options or warrants) exercisable, exchangeable or convertible into Common Stock, whether immediately, upon the happening of any event or the passage of time, or otherwise, and whether issued by the Company, any subsidiary of the Company or any other Person.

“Company” has the meaning set forth in the preamble of this Agreement.

“Confidential Information” means any confidential or proprietary information concerning the organization, business, technology, trade secrets, know-how, finance, transactions or affairs of the Company or its subsidiaries (in each case, whether conveyed in written, oral or any other

form and whether such information has been furnished before, on or after the date of this Agreement).

“Confirmation Order” has the meaning set forth in the recitals of this Agreement.

“Current Market Price” means, in respect of any share of Common Stock on any date herein specified, (i) if the Common Stock is publicly traded at such time, the average of the closing or last sales price on the primary national or regional stock exchange on which the Common Stock is listed as displayed by Bloomberg (or any successor service), for the 20 consecutive Business Days ending on the Business Day immediately prior to such date, (ii) if the Common Stock is not so listed or quoted but is traded in the over-the-counter market, the average of the closing bid and asked prices of a share of Common Stock for the 20 consecutive Business Days ending on the Business Day immediately prior to such date or (iii) if the Company is not publicly traded at such time or if no such sales price or bid and asked prices have been quoted during such 20 Business Day period, the fair market value thereof.

“Debt Issuance” has the meaning set forth in Section 6.2(a).

“Debt Issuer” has the meaning set forth in Section 6.2(a).

“DGCL” means the Delaware General Corporation Law, as amended.

“Dilutive Securities” has the meaning set forth in Section 6.1(a).

“Disinterested Director” means, with respect to any transaction, any director other than a director that has, directly or indirectly, any pecuniary or other interest in such transaction (other than any interest arising solely as a result of the ownership of Common Stock).

“Drag-Along Buyer” has the meaning set forth in Section 5.3(a).

“Drag-Along Right” has the meaning set forth in Section 5.3(a).

“Dragging Stockholders” has the meaning set forth in Section 5.3(a).

“Equity Incentive Plan” means the equity incentive plan adopted by the Board as of the date hereof under which an aggregate amount of up to 10% of the outstanding shares of Common Stock as of the date hereof may be issued from time to time by the Company to management, directors, employees or consultants of the Company.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Exit Facility” means the [●], dated as of [●], 2013, by and among Cargo 360, LLC, as borrower, [●] as agent, and the lenders party thereto, in connection with the consummation of the Plan, as it may be amended, restated, modified or supplemented from time to time (including by means of the extension, renewal, replacement or refinancing of the indebtedness thereunder, in whole or part).

“First Offer” has the meaning set forth in Section 5.2(b).

“First Offer Price” has the meaning set forth in Section 5.2(a).

“GAAP” means, at any date of determination, generally accepted accounting principles in effect in the United States of America and which are applicable as of the date of determination and which are consistently applied for all applicable periods.

“Governmental Authority” means any federal, state or local government, any court, tribunal, arbitrator, authority, agency, commission, official or any non-governmental self-regulatory agency or other instrumentality of the United States of America or other applicable jurisdictions or any state, county, city or other political subdivision thereof.

“Indebtedness” means, with respect to any Person, without duplication, (i) all indebtedness (including principal, interest, fees and charges) of such Person, whether or not contingent, for borrowed money or for the deferred purchase price of property or services, (ii) all Indebtedness of the types described in clauses (i), (iii), (iv), (v) or (vi) of this definition secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person (provided that, if the Person has not assumed or otherwise become liable in respect of such Indebtedness, such Indebtedness shall be deemed to be in an amount equal to the fair market value of the property to which such Lien relates as determined in good faith by such Person), (iii) the aggregate amount of all Capitalized Lease Obligations of such Person, (iv) all obligations under any Interest Rate Protection Agreement, or any Other Hedging Agreement or similar obligations, and (v) all Off-Balance Sheet Liabilities of such Person. Notwithstanding the foregoing, Indebtedness shall not include trade payables and accrued expenses incurred by any Person in accordance with customary practices and in the ordinary course of business of such Person.

“Insolvency Law” means the Bankruptcy Code, and all other insolvency, bankruptcy, receivership, liquidation, conservatorship, assignment for the benefit of creditors, moratorium, rearrangement, reorganization, or similar Laws of the United States of America or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Interest Rate Protection Agreement” means any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement or similar agreement or arrangement.

“Law” means any law, statute, rule, regulation, ordinance or other pronouncement having the effect of law in the United States of America or other applicable jurisdictions or any state, county, city or other political subdivision thereof or of any Governmental Authority.

“Lien” means any mortgage, charge, pledge, lien (statutory or other), security interest, hypothecation, assignment for security, claim, or preference or priority or other encumbrance upon which or with respect to any property of any kind. A Person shall be deemed to own subject to a Lien any property which such Person has acquired or holds subject to the interests of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement.

“Majority Approved Sale” has the meaning set forth in Section 5.3(a).

“Majority Approved Sale Closing Date” has the meaning set forth in Section 5.3(b).

“Majority Approved Sale Notice” has the meaning set forth in Section 5.3(b).

“Non-Initiating Stockholders” has the meaning set forth in Section 5.3(a).

“Notice of Participation Rights” has the meaning set forth in Section 6.2(b).

“Notice of Preemptive Rights” has the meaning set forth in Section 6.1(b).

“Off-Balance Sheet Liabilities” of any Person means (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable or sold by such Person, (ii) all liabilities of such Person under any sale and leaseback transactions except to the extent such liabilities are reflected on the balance sheet of such Person, or (iii) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

“Offered Shares” has the meaning set forth in Section 5.2(a).

“Offeree Stockholders” has the meaning set forth in Section 5.2(a).

“OHAA” means OH Aircraft Acquisition Sub, LLC, any fund or partnership that is managed or controlled by an entity that is majority owned or controlled by OH Aircraft Acquisition Sub, LLC or its Affiliates, or any of its Affiliates.

“Other Hedging Agreement” means any foreign exchange contracts, currency swap agreements, commodity agreements or other similar arrangements, or arrangements designed to protect against fluctuations in currency values or commodity prices.

“Other Purchasers” has the meaning set forth in Section 6.1(d).

“Participation Right Acceptance Notice” has the meaning set forth in Section 6.2(c).

“Participation Right Acceptance Period” has the meaning set forth in Section 6.2(c).

“Parties” means collectively the Company and any Person who is or becomes a party to this Agreement. Each of the Parties is referred to individually as a “Party.”

“Permitted Transferee” has the meaning set forth in Section 5.1(e).

“Person” means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or any other entity, or government or any agency or political subdivision thereof.

“Piggyback Registration” has the meaning set forth in Section 5.7.



“Plan” has the meaning set forth in the recitals of this Agreement.

“Pro Rata Portion” means:

(a) for purposes of Section 5.2 (with respect to shares of Common Stock to be transferred pursuant to the right of first offer), with respect to each Offeree Stockholder, a number of shares of Common Stock determined by multiplying (i) the total number of such shares of Common Stock proposed to be Transferred by the Proposing Stockholder, by (ii) a fraction, the numerator of which is the number of shares of Common Stock held by such Offeree Stockholder and the denominator of which is the aggregate number of shares of Common Stock held by all Offeree Stockholders.

(b) for purposes of Section 5.3, (i) with respect to shares of Common Stock to be Transferred pursuant to the Drag-Along Rights, a number of shares of Common Stock determined by multiplying (A) the aggregate number of shares of Common Stock held by the Non-Initiating Stockholder by (B) a fraction, the numerator of which is the aggregate number of shares of Common Stock proposed to be Transferred by the Dragging Stockholders to the Drag-Along Buyer and the denominator of which is the aggregate number of shares of Common Stock held by the Dragging Stockholders, and (ii) with respect to each class of Common Stock Equivalents to be Transferred pursuant to the Drag-Along Rights, a number of such class of Common Stock Equivalents determined by multiplying (A) the aggregate number of Common Stock Equivalents held by the Non-Initiating Stockholder by (B) the fraction determined in clause (B) of the preceding clause (i).

(c) for purposes of Section 5.4 (with respect to shares of Common Stock and Series A-1 Warrants to be transferred pursuant to the Tag-Along Rights), (x) with respect to each Tagging Stockholder, a number of shares of Common Stock (and/or Series A-1 Warrants) determined by multiplying (A) the aggregate number of shares of Common Stock and Series A-1 Warrants proposed to be Transferred by the Selling Stockholders to the Proposed Transferee, by (B) a fraction, the numerator of which is the number of shares of Common Stock and Series A-1 Warrants held by the Tagging Stockholder and the denominator of which is the aggregate number of shares of Common Stock and Series A-1 Warrants held by all Tagging Stockholders and the Selling Stockholders, and (y) with respect to the Selling Stockholders, the total number of shares of Common Stock and Series A-1 Warrants proposed to be Transferred by the Selling Stockholders minus the aggregate number of shares of Common Stock and Series A-1 Warrants over which the Tagging Stockholders have exercised their Tag-Along Rights pursuant to Section 5.3.

(d) for purposes of Section 6.1 (with respect to preemptive rights), a number of Dilutive Securities determined by multiplying (i) the aggregate number of Dilutive Securities the Company proposes to issue on the relevant issuance date by (ii) a fraction, the numerator of which is the number of shares of Common Stock held by the relevant Stockholder immediately prior to such date and the denominator of which is the aggregate number of shares of Common Stock held by all Stockholders.

(e) for purposes of Section 6.2 (with respect to Debt Issuances), the portion of the aggregate principal amount of a Debt Issuance determined by multiplying (i) the aggregate

principal amount of the proposed Debt Issuance by (ii) a fraction, the numerator of which is the number of shares of Common Stock held by the relevant Stockholder immediately prior to such date and the denominator of which is the aggregate number of shares of Common Stock held by all Stockholders.

“Proposed Transferee” has the meaning set forth in Section 5.4(a).

“Proposing Stockholder” has the meaning set forth in Section 5.2(a).

“Proposing Stockholder’s Notice” has the meaning set forth in Section 5.2(a).

“Public Offering” means any offer for sale of Common Stock pursuant to an effective Registration Statement, other than on Form S-8 or any successor forms thereto.

“Qualified Advisor” means, with respect to the evaluation of any Affiliate Transaction for purposes of obtaining the written opinion described in Section 2.5, an advisor selected by the Board who is regularly engaged in the evaluation and analysis of transactions similar to such Affiliate Transaction; provided, that if Stockholders other than any Stockholder which is an Affiliate of a Person who is participating in such Affiliate Transaction holding a majority of the Common Stock held by such Stockholders object to such Qualified Advisor by written notice to the Company within five (5) Business Days of receipt of notice from the Company of the identity of such Qualified Advisor, then the Board, after consultation with such objecting Stockholders, shall select a replacement Qualified Advisor to evaluate such Affiliate Transaction within five (5) Business Days of such notice.

“Qualified Pledge” means a bona fide pledge of Common Stock in connection with a secured borrowing transaction, the pledgee with respect to which is a financial institution in the business of engaging in secured lending and similar transactions which has entered into such transaction in the ordinary course of such business.

“Qualified Public Offering” means a Public Offering of shares of Common Stock by a nationally recognized investment banking firm that is effectively registered under the Securities Act and (i) that results in net proceeds to the Company and any selling stockholders, when aggregated with the net proceeds received by the Company and any selling stockholders in connection with previous such public offerings, of not less than \$25 million; and (ii) results in an implied equity market value of the Common Stock (based on the price per share of Common Stock to the public in such Public Offering) immediately after such Public Offering of at least \$80 million and (iii) following which such shares of Common Stock are listed on a United States national securities exchange (as defined in the Exchange Act).

“Registrable Securities” has the meaning set forth in Section 5.7.

“Reoffer” has the meaning set forth in Section 5.2(d).

“Reoffer Notice” has the meaning set forth in Section 5.2(d).

“Reoffer Price” has the meaning set forth in Section 5.2(d).

“Representative” means, with respect to any Person, such Person’s employees, officers, directors, legal counsel, accountants, financial advisors, consultants and other representatives.

“Requested Action” has the meaning set forth in Section 2.4.

“Required Drag-Along Amount” means, with respect to a Majority Approved Sale, (i) 75% of the outstanding Common Stock, for such a transaction that would imply a total enterprise value of the Company of less than \$160 million, (ii) 66 2/3% of the outstanding Common Stock, for such a transaction that would imply a total enterprise value of the Company of at least \$160 million but not greater than \$185 million, or (iii) a majority of the outstanding Common Stock, for such a transaction that would imply a total enterprise value of the Company of greater than \$185 million, in each case, calculated on the basis of one vote per each share of Common Stock (which calculation shall reflect any adjustments to the voting power of Class A-2 Common Stock then in effect pursuant to Section 5.01(a)(ii) of the Certificate of Incorporation).

“Requisite Approval” has the meaning set forth in Section 2.4.

“SEC” means the United States Securities and Exchange Commission, or any other federal agency at the time administering the Securities Act or the Exchange Act.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Selling Stockholders” has the meaning set forth in Section 5.4(a).

“Stockholders” means each Person (other than the Company) named on the signature pages to this Agreement or otherwise deemed to be a Party to this Agreement pursuant to the Confirmation Order and any other Person who is issued shares of Common Stock or is a Transferee or a Permitted Transferee of shares of Common Stock, whether from another Stockholder or from the Company, who is required by this Agreement to agree to be bound by the terms and conditions of this Agreement. The term “Stockholder” means any one of the Stockholders and, in the case of a Stockholder who is a natural person, the term “Stockholder” also includes such Stockholder’s legal representatives, executors or administrators when the context so requires.

“Supermajority of the Outstanding Common Stock” means 75% of the outstanding Common Stock, voting together as one class, calculated on the basis of one vote per each share of such Common Stock (which calculation shall reflect any adjustments to the voting power of Class A-2 Common Stock then in effect pursuant to Section 5.01(a)(ii) of the Certificate of Incorporation).

“Tag-Along Notice” has the meaning set forth in Section 5.4(b).

“Tag-Along Rights” has the meaning set forth in Section 5.4(a).

“Tag-Along Rights Holder” has the meaning set forth in Section 5.4(a).

“Tag-Along Transfer” has the meaning set forth in Section 5.4(a).

“Tagging Stockholder” has the meaning set forth in Section 5.4(a).

“Transfer” means, when used as a verb, to sell, transfer, assign, convey or otherwise dispose, and when used as a noun, any direct or indirect sale, transfer, assignment, conveyance or other disposition, including by merger, operation of law, bequest or pursuant to any domestic relations order, whether voluntarily or involuntarily, provided, that no Transfer of shares of Common Stock shall be deemed to have occurred as a result of the entry into, modification of or existence of any Qualified Pledge until such time as the pledgee commences any action to foreclose upon such shares of Common Stock or any shares of Common Stock are delivered upon settlement or termination of such Qualified Pledge (whichever occurs first).

“Transferee” means any Person acquiring shares of Common Stock, regardless of the method of transfer.

“Warrants” means the Tranche 1 Warrants, Tranche 2 Warrants and the Series A-1 Warrants contemplated by the Plan to be entered into by and between the Company [and the warrant agent signatory thereto.]

“Warrant Shares” means the shares of Common Stock issued in connection with the exercise of Warrants.

SECTION 1.2 Rules of Interpretation. Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(a) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(b) Dollars. Any reference in this Agreement to “\$” shall mean U.S. dollars. The specification of any dollar amount in the representations and warranties or otherwise in this Agreement is not intended and shall not be deemed to be an admission or acknowledgment of the materiality of such amounts or items, nor shall the same be used in any dispute or controversy between the parties to determine whether any obligation, item or matter (whether or not described herein or included in any schedule) is or is not material for purposes of this Agreement.

(c) Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(d) Herein. The words such as “herein,” “hereinafter,” “hereof,” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. All references herein to Articles,

Sections and Exhibits shall be deemed to be references to Articles and Sections of, and Exhibits to, this Agreement unless the context shall otherwise require.

(e) Including. The word “including” or any variation thereof means (unless the context of its usage otherwise requires) “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(f) Statutes and Agreements. Unless otherwise expressly provided herein, any Law defined or referred to herein means such Law as from time to time amended, modified, supplemented or restated, including by succession of comparable successor statutes and also any rules and regulations promulgated thereunder. Unless otherwise expressly provided herein, any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified, supplemented or restated, including by waiver or consent, and references to all attachments thereto and instruments incorporated therein, but in the case of each of the foregoing, only to the extent that such amendment, modification, supplement, restatement, waiver or consent is effected in accordance with this Agreement.

## ARTICLE II

### BOARD OF DIRECTORS AND GOVERNANCE

#### SECTION 2.1 Election of Directors; Number and Composition; Removal and Replacement of Directors; Termination of Certain Rights.

(a) Each Stockholder shall vote, or cause to be voted, all shares of Common Stock beneficially owned by such Stockholder to ensure that the number of directors constituting the entire Board shall be five (5) and that the following individuals be elected or appointed to serve as directors of the Company:

(i) two (2) individuals who shall be U.S. Citizens designated by Stockholders holding a majority of the Class A-1 Common Stock (each a “Class A-1 Director” and, collectively, the “Class A-1 Directors”), who shall initially be [●];

(ii) one (1) individual designated by Stockholders holding a majority of the Class C-1 Common Stock (the “Class C-1 Director”), who shall initially be [●];

(iii) one (1) individual who shall be a U.S. Citizen designated by Stockholders holding a majority of the Class A-2 Common Stock (the “Class A-2 Director”), who shall initially be [●]; and

(iv) the Chief Executive Officer, who shall be a U.S. Citizen.

(b) Should any individual designated or elected as a director be unwilling or unable to serve, or otherwise cease to serve (including by means of removal in accordance with

the following sentence), vacancies on the Board may be filled by the Stockholders or the remaining directors in accordance with the Company's Certificate of Incorporation and Bylaws, provided, that (i) only Class A-1 Stockholders may designate a replacement director to fill a vacancy caused by the departure or removal of a Class A-1 Director, (ii) only Class C-1 Stockholders may designate a replacement director to fill a vacancy caused by the departure or removal of the Class C-1 Director and (iii) only Class A-2 Stockholders may designate a replacement director to fill a vacancy caused by the departure or removal of the Class A-2 Director.

(c) The Board shall have the right to establish any committee of directors as the Board shall deem appropriate from time to time. Subject to this Agreement and applicable Law, committees of the Board (i) shall, subject to the Company's Certificate of Incorporation and Bylaws, have the rights, powers and privileges granted to such committees by the Board from time to time and (ii) shall consist of at least (A) the Class A-2 Director and (B) one of the Class A-1 Directors or the Class C-1 Director. Any delegation of authority to a committee of directors to take any action must be approved in the same manner as would be required for the Board to approve such action directly. The Company shall also cause each board of directors (or similar governing body) of Cargo 360, LLC and each of the Company's other material subsidiaries to include at least (A) the Class A-2 Director and (B) one of the Class A-1 Directors or the Class C-1 Director.

(d) Each Stockholder shall vote all of the shares of Common Stock beneficially owned by such Stockholder, or cause such shares of Common Stock to be voted, in furtherance of, and take all other actions within such Stockholder's control necessary to further, the provisions of this Section 2.1. The provisions of this Section 2.1 shall terminate upon a Qualified Public Offering.

**SECTION 2.2** Action by the Board. Except as otherwise set forth in this Agreement, all actions taken by the Board shall be taken by a majority vote of the directors present at any meeting at which a quorum is present.

**SECTION 2.3** D&O Indemnification and Insurance. The Company shall enter into an indemnification agreement with each director upon his or her election or appointment in such form as is adopted by the Board and reasonably acceptable to such director. The Company shall maintain continuously in effect directors' and officers' liability insurance and each director shall be covered under such insurance.

**SECTION 2.4** Actions Requiring Stockholder Approval. Notwithstanding that no vote may be required, or that a lesser percentage vote may be specified by law, by the Certificate of Incorporation or Bylaws, or otherwise, until the earlier of (x) a Qualified Public Offering and (y) seven (7) years from the date of this Agreement, the Company and the Stockholders agree that the Company shall not take, and shall not cause or permit any subsidiary of the Company to take, directly or indirectly, any of the following actions (a "Requested Action"), in a single transaction or a series of related transactions (other than, in each case, Affiliate Transactions, which shall be approved in accordance with Section 2.5), without the prior approval (or deemed approval pursuant to the last sentence of this Section 2.4) of the holders of not less than a Supermajority of the Outstanding Common Stock (the "Requisite Approval"):

(a) merge, consolidate with or into, engage in a share exchange with, or otherwise consummate any business combination transaction with, any other Person (other than transactions solely involving the merger or consolidation of a wholly owned subsidiary with or into, or a share exchange by a wholly owned subsidiary with, the Company or another wholly owned subsidiary of the Company), or sell, transfer, lease or otherwise dispose of all or substantially all of the assets of the Company and its subsidiaries, considered on a consolidated basis, to any other Person, other than (i) any such transaction solely involving sales, leases or transfers between the Company and one or more wholly owned subsidiaries or between one or more wholly owned subsidiaries or (ii) any such transaction which is for aggregate consideration implying a total enterprise value of (A) at least \$160 million and for but not greater than \$185 million, in which case the Company has obtained Requisite Approval shall instead be the opinion prior approval of a nationally recognized independent qualified investment bank as to the fairness ~~holders~~ of not less than 66 2/3% of the outstanding Common Stock, voting together as one class or (B) greater than \$185 million, in which case the Requisite Approval shall instead be the prior approval of the holders of not less than a majority of the outstanding Common Stock, voting together as one class (in each such consideration case of clause (A) or clause (B), the Requisite Approval being calculated on the basis of one vote per each share of Common Stock (which calculation shall reflect any adjustments to the voting power of Class A-2 Common Stock then in effect pursuant to Section 5.01(a)(ii) of the Certificate of Incorporation));

(b) (i) purchase, exchange or otherwise acquire securities or assets of any other Person (other than a wholly owned subsidiary), in a transaction involving aggregate consideration in excess of \$5 million, (ii) lease assets of any other Person (other than a wholly owned subsidiary) in transactions involving Annual Consideration in aggregate in excess of \$5 million, other than pursuant to (A) any lease for aircraft replacing similar aircraft in the Company's fleet, provided such lease is on terms reasonably equivalent or superior (to the benefit of the Company) to the terms of the lease of the aircraft being replaced or (B) any lease for aircraft having a term no greater than the term of a legally binding customer commitment for such aircraft;

(c) except with respect to Civil Reserve Air Fleet (CRAF) agreements, enter into any joint venture or partnership with any other Person that has aggregate payments by the Company and its subsidiaries in excess of \$5 million;

(d) (i) commence any proceeding or file any petition seeking relief under any Insolvency Law, or consent to the institution of or fail to contest in a timely and appropriate manner any such proceeding or filing under any Insolvency Law, (ii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any of its subsidiaries or assets, (iii) initiate or take any action for the liquidation, dissolution or winding up of the Company or any of its subsidiaries, or (iv) make a general assignment for the benefit of creditors;

(e) make capital expenditures in excess of \$5 million annually, except (i) as required by Law, (ii) to repair any damage or maintain the Company's fleet of aircraft or (iii) for amounts recoverable under policies of insurance;

(f) (i) issue or sell any equity securities of the Company that are senior or preferred to the Common Stock, or issue or sell any rights to acquire such securities or securities convertible into or exchangeable for such securities, (ii) issue or sell any equity securities of any subsidiary of the Company, or issue or sell any rights to acquire such securities or securities convertible into or exchangeable for such securities, except for sales or issuances of shares of capital stock of a wholly owned subsidiary of the Company to the Company or to another wholly owned subsidiary of the Company, or (iii) reclassify, modify or amend the terms of any existing equity securities or rights to acquire such securities or securities convertible into or exchangeable for such securities of the Company or any subsidiary of the Company, other than any securities of a wholly owned subsidiary of the Company;

(g) issue or sell any shares of capital stock of the Company or any subsidiary of the Company (or any Common Stock Equivalents or other rights to acquire shares of such capital stock or securities convertible into or exchangeable for shares of such capital stock) at a price per share that is less than the Current Market Price of one share of Common Stock then in effect as of the record date or the date of the relevant issuance;

(h) declare, set aside or pay any dividend or other distribution in respect of any capital stock of the Company or any subsidiary (other than a wholly owned subsidiary) other than dividends or distributions on the Common Stock in accordance with the provisions of the Certificate of Incorporation and any corresponding dividends or distributions with respect to the Warrants pursuant to the Warrant Agreements;

(i) redeem, repurchase or otherwise acquire, or offer to purchase or otherwise acquire, any capital stock of the Company (or any Common Stock Equivalents or other rights to acquire shares of such capital stock or securities convertible into or exchangeable for shares of such capital stock), except for (i) repurchases of equity securities from employees upon termination of employment made in the ordinary course of business in accordance with the Equity Incentive Plan, (ii) exchanges of securities pursuant to Section 5.03 of the Certificate of Incorporation and (iii) any cashless exercise of the Warrants pursuant to the Warrant Agreement;

(j) (i) adopt, enter into or become bound by, or amend, modify or terminate (partially or completely), any other employee benefit or incentive plan, program or arrangement, or any collective bargaining agreement outside the ordinary course of business or (ii) adopt, enter into or become bound by, or amend, modify or terminate (partially or completely), any employee benefit or incentive plan, program or arrangement (A) for the benefit of senior management and not generally and equally available to all full time employees, (B) providing for any issuances of equity securities, other than pursuant to the Equity Incentive Plan or the Plan, or (C) providing for or establishing a defined benefit plan or multiemployer plan (whether or not as part of a collective bargaining agreement);

(k) amend, modify or repeal any provision of the Certificate of Incorporation or Bylaws;



(l) other than with respect to leases permitted under clause (b) of this Section 2.4, incur or guarantee any Indebtedness in an aggregate amount in excess of \$5 million, other than (i) any Indebtedness under the Exit Facility, (ii) Indebtedness between the Company and a wholly owned subsidiary of the Company or between two wholly owned subsidiaries of the Company (iii) trade payables incurred in the ordinary course of business and which are not more than 90 days overdue or (iv) any Indebtedness (other than trade payables) incurred to refinance any Indebtedness existing as of, or permitted or approved pursuant to this Section 2.4 following, the date of this Agreement;

(m) make any fundamental change in the Company's or its subsidiaries' existing lines of business or enter into a new significant line of business;

(n) create any committees of the Board (other than a special committee established by the Board in accordance with the exercise of its fiduciary duties) or change the scope of authority of any committee of the Board;

(o) appoint as the independent auditor for the Company or any of its subsidiaries, or change the independent auditor for the Company or any of its subsidiaries to, an auditor that is not (i) one of the four largest nationally recognized public accounting firms (measured by total revenues) or (ii) a nationally recognized mid-market public accounting firm;

(p) create any non-wholly owned subsidiary;

(q) agree to a settlement of any litigation, arbitration or administrative proceeding for an amount in excess of \$2 million or that provides for any material limitation on the conduct of the business by the Company or any of its subsidiaries, other than a settlement only for monetary damages that is, after payment of the Company's applicable deductible and policy premiums, fully covered by the Company's insurance policies;

(r) apply the provisions of section 382(l)(5) of the Internal Revenue Code of 1986, as amended, to the Company (for the avoidance of doubt, if the required vote is not obtained, the Company will timely elect not to apply the provisions of section 382(l)(5) to the Company); or

(s) enter into any contract, agreement, arrangement or commitment to do or engage in any of the foregoing.

The Company shall provide to the Stockholders reasonable prior written notice of any Requested Action (as determined by the Board, but not less than three (3) Business Days), together with a request that each Stockholder provide its consent to such Requested Action within a specified reasonable time period (which in no event shall be less than three (3) Business Days) from the date of delivery of such notice (the "Notice Period") and a reasonable description of the Requested Action (including material terms and conditions and sufficient other information to enable the Stockholder to make an informed decision regarding the Requested Action); provided that notwithstanding Section 7.5, written notice of any Requested Action shall only be deemed to have been effectively delivered to a Stockholder if delivered to such

Stockholder pursuant to Section 7.5(c) or (d); provided further that the Company shall be permitted to take the Requested Action at such time that the Requisite Approval for such Requested Action has been obtained, whether or not the Notice Period has fully elapsed; and provided further that any Stockholder that does not affirmatively respond to such request on or before the expiration of the Notice Period shall be deemed to have given its consent to such Requested Action for purposes of this Section 2.4.

**SECTION 2.5** Affiliate Transactions. The Company shall not, and shall not cause or permit any of its subsidiaries to, enter into or amend or materially modify the terms of, any Affiliate Transaction involving aggregate liability or obligation of the Company or any subsidiary (a) of \$3 million or less per year without the approval of at least a majority of the Disinterested Directors (and the quorum requirements set forth in the Bylaws shall be reduced to exclude any Director other than the Disinterested Directors), and (b) of more than \$3 million per year without the prior approval of the holders of not less than a Supermajority of the Outstanding Common Stock; provided that such approval of the holders of not less than a Supermajority of the Outstanding Common Stock shall not be required for any Affiliate Transaction for which the Board has obtained the written opinion of a Qualified Advisor that such Affiliate Transaction is on arm's length, market terms; provided, further, that this Section 2.5 shall not apply to any rights expressly granted to any Stockholder or any Stockholder's Affiliates (including any Director appointed by such Stockholder) under this Agreement without reference to such approval. The Company shall be responsible for all costs and expenses of any Qualified Advisor engaged pursuant to this Section 2.5.

### ARTICLE III

#### ACCESS TO INFORMATION

**SECTION 3.1** Information to be Provided by the Company. During any period of time that the Company is not subject to, or not in compliance with, the reporting requirements under the Exchange Act, the Company shall provide to the Stockholders, subject to reasonable confidentiality obligations, the following information:

(a) within forty-five (45) days after the end of each of the first three fiscal quarters for the Company each fiscal year, unaudited quarterly financial statements for the Company and its consolidated subsidiaries for the quarterly period then ended and the comparable period in the prior year (including a narrative comparing the results of operations and financial position of the Company in the most recent period to the corresponding period in the prior fiscal year (which narrative need not contain all of the information that would be required in a "Management's Discussion and Analysis" pursuant to Regulation S-K under the Exchange Act);

(b) within one hundred twenty (120) days after the end of each fiscal year, audited financial statements for the Company and its consolidated subsidiaries for such year (including a narrative comparing the results of operations and financial position of the Company in the most recent period to the corresponding period in the prior fiscal year (which narrative need not contain all of the information that would be required in a "Management's Discussion

and Analysis” pursuant to Regulation S-K under the Exchange Act), together with a copy of the audit report of the Company’s independent public accountants;

(c) as soon as practicable after the end of each month, but in any event within thirty (30) days thereafter, an unaudited consolidated balance sheet of the Company and its subsidiaries, as of the end of each such monthly period, and unaudited statements of income, retained earnings and cash flows of the Company and its subsidiaries for such period and for the current fiscal year to date, setting forth in each case in comparative form the figures for the corresponding periods for the previous fiscal year, all in reasonable detail and prepared in accordance with the Company’s normal financial reporting practices; and

(d) as soon as practicable prior to the end of each fiscal year, a budget for the next fiscal year and, as soon as prepared, any other budgets or revised budgets prepared by the Company.

SECTION 3.2 Right to Access. OHAA and each Stockholder holding at least ~~five~~three percent (~~53~~3%) of the issued and outstanding shares of Common Stock shall have the right, upon reasonable notice and at reasonable times, to meet with the management of the Company and to have access to the auditors and other representatives of the Company, provided, however, that the Company shall have a right to limit such meetings and access if the Company determines that it is necessary to do so in order for the Company to preserve any privilege that the Company is entitled to claim; provided, further, that the Company shall use commercially reasonable efforts to permit the sharing of any information so withheld in a manner consistent with the obligations of such privilege.

## ARTICLE IV

### CERTIFICATE OF INCORPORATION AND BYLAWS

The Stockholders acknowledge and agree that in connection with the execution of this Agreement, the Company’s Certificate of Incorporation and Bylaws shall be as set forth in Exhibit A and Exhibit B hereto, respectively. The Company’s Certificate of Incorporation shall, at all times during the term of this Agreement, provide that the Company elects (i) to include the provision described in Section 102(b)(7) of the DGCL and (ii) to not be governed by Section 203 of the DGCL.

## ARTICLE V

### TRANSFERS OF SHARES

#### SECTION 5.1 Restrictions on Transfers; Permitted Transferees.

(a) Each Stockholder, severally and not jointly, agrees and acknowledges that such Stockholder will not Transfer any shares of Common Stock unless (i) such Transfer complies with this Article V and the other provisions of this Agreement and the Certificate of

Incorporation, (ii) if the Transferring Stockholder is (x) an “affiliate” (as such term is defined in the Securities Act) or (y) relying on Rule 144 promulgated under the Securities Act, such Stockholder has delivered, upon request of the Company, an opinion of counsel (or such other evidence as is satisfactory to the Company), in a form reasonably satisfactory to the Company, to the effect that the proposed Transfer is in compliance with the Securities Act and all applicable state securities or “blue sky” laws, (iii) such Transfer is made in accordance with all applicable United States Department of Transportation and other airline regulatory laws and regulations restricting ownership and control of U.S. airlines by foreign persons or, solely to the extent so advised to the Stockholders by the Company in writing, other airline regulatory laws and regulations affecting the ownership of Common Stock, and (iv) such Stockholder provides written notice to the Company no less than five (5) Business Days prior to any Transfer of its intention to Transfer shares of Common Stock, which notice shall state the name and address of the proposed Transferee, the number of shares Common Stock proposed to be Transferred to the proposed Transferee and the proposed closing date of such Transfer.

(b) Without the prior written consent of the Board, no Stockholder may Transfer any shares of Common Stock if, as a result of such Transfer, any class of equity securities of the Company would be held of record by more than three hundred (300) Persons who are not “accredited investors” as defined in Rule 501 promulgated under the Securities Act or by more than one thousand seven hundred (1,700) stockholders of record, or otherwise in circumstances that the Board determines could require the Company to file reports under the Exchange Act, if it is not otherwise then subject to such requirements. In the event either of the thresholds described in the preceding sentence have been reached, the Company shall so inform the Stockholders promptly following receipt of notice thereof.

(c) A Transferee of shares of Common Stock pursuant to this Article V must (i) execute and deliver to the Company a joinder substantially in the form attached hereto as Exhibit C-1, or in such other form and substance satisfactory to the Company agreeing to be bound by the terms and provisions of this Agreement and assuming all of the Transferring Stockholder’s then existing and future liabilities arising under or relating to this Agreement and (ii) satisfy the requirements of, and represent that the Transfer was made in accordance with, Section 5.1(a). Unless agreed to in writing by all Stockholders, the joinder by a Stockholder to this Agreement shall not result in the release of the Transferring Stockholder from any liability arising prior to such Transfer that the Transferring Stockholder may have to each remaining Stockholder or to the Company under this Agreement. Any attempted or purported Transfer of all or a portion of the shares of Common Stock held by such Stockholder in violation of this Article V shall be null and void *ab initio* and of no force or effect whatsoever, such Stockholder will not be treated as an owner of shares of Common Stock for purposes of this Agreement or otherwise, and the Company will not register such Transfer of shares of Common Stock.

(d) Except as specifically contemplated hereby, or in connection with a Qualified Pledge, no Stockholder shall grant any proxy or enter into or agree to be bound by any voting trust with respect to any shares of Common Stock, nor enter into any stockholder agreements or arrangements of any kind with any person with respect to any shares of Common Stock inconsistent with the provisions of this Agreement (whether or not such agreements and arrangements are with other Stockholders or holders of shares of Common Stock who are not

Parties to this Agreement), including but not limited to, agreements or arrangements with respect to the acquisition, disposition or voting of shares of Common Stock, nor shall any Stockholder act, for any reason, as a member of a group or in concert with any other Persons in connection with the acquisition, disposition or voting of shares of Common Stock in any manner which is inconsistent with the provisions of this Agreement.

(e) None of the restrictions contained in this Article V (other than Sections 5.1(a), 5.1(b), 5.1(c) and 5.6) shall apply: (i) with respect to a Stockholder who is an individual, to (A) any Transfer or assignment for consideration or as a gift (including by will or the laws of descent) by any Stockholder to any spouse, child, parent, sibling or grandchild of a Stockholder, or by any of such relatives to such Stockholder or to any one or more of such relatives, or by any Stockholder or any such relatives to a trust of which there are no principal beneficiaries other than such Stockholder and/or one or more of such relatives; or (B) any Transfer to a legal representative of a Stockholder in the event any Stockholder becomes mentally incompetent; and (ii) with respect to a Stockholder which is not an individual, to any Transfer by such Stockholder to any Affiliate thereof (in each of cases (i) and (ii) a “Permitted Transferee”).

## SECTION 5.2 Right of First Offer

(a) Except as otherwise provided in Section 5.1(e) and Section 5.3, but subject to Section 5.4, any Stockholder who desires to Transfer any shares of Common Stock to a third party (a “Proposing Stockholder”), and upon the consummation of such Transfer, the third party would hold shares of Common Stock representing more than twenty percent (20%) of the outstanding shares of Common Stock, shall first give written notice (a “Proposing Stockholder's Notice”) to the Company and all other Stockholders who hold shares of Common Stock representing at least three percent (3%) of the outstanding shares of Common Stock (the “Offeree Stockholders”) stating the Proposing Stockholder’s desire to make such Transfer, the number of shares of Common Stock to be Transferred (collectively, the “Offered Shares”), the per share cash price which the Proposing Stockholder proposes to be paid for the Offered Shares by the other Stockholders (the “First Offer Price”) and the other material terms and conditions of the proposed Transfer.

(b) Upon receipt of the Proposing Stockholder's Notice (the “First Offer”), each of the Offeree Stockholders shall have the irrevocable and exclusive option (but not the obligation) to purchase its Pro Rata Portion of the Offered Shares. To the extent that any Stockholder does not subscribe for its Pro Rata Portion of the Offered Shares, each other fully participating Stockholder shall have an option to purchase that percentage of the Offered Shares not purchased determined by dividing the number of shares of Common Stock owned by such fully participating Stockholder by the total number of shares of Common Stock owned by all fully participating Stockholders, which process shall continue until such time as either all of the Offered Shares have been subscribed for or no Stockholders elect to participate for additional Offered Shares. If the participating Offeree Stockholders have elected to purchase all (but not less than all) of the Offered Shares pursuant to this Section 5.2, then the Proposing Stockholder shall sell the Offered Shares to such Offeree Stockholders in accordance with Section 5.2(f). The option of each of the Offeree Stockholders participating in the purchase under this Section 5.2(b) shall be exercisable by written notice to the Proposing Stockholder and shall

include reasonable evidence of financial capacity and ability to purchase such Offered Shares promptly, with copies to the Company, given within fifteen (15) Business Days from the date of the Proposing Stockholder's Notice.

(c) If the Proposing Stockholder's Notice shall be duly given, and if the Offeree Stockholders shall not exercise their options to purchase all of the Offered Shares at the First Offer Price, then the Selling Stockholder shall be free, for a period of [sixty (60)] days from the earlier of (i) the fifteenth (15<sup>th</sup>) Business Day following the date of the Proposing Stockholder's Notice or (ii) the date the Proposing Stockholder shall have received written notice from all of the Offeree Stockholders stating their intention not to exercise the options granted under Section 5.2(b), or such later date on which all necessary regulatory approvals have been obtained, to sell any Offered Shares not so purchased by the Offeree Stockholders to any third party transferee at a cash price equal to or greater than the First Offer Price and on other terms and conditions no less favorable in the aggregate to the Proposing Stockholder than those contained in the Proposing Stockholder's Notice; provided that such sale complies with the provisions of Section 5.1(a), 5.1(b) and 5.1(c).

(d) If the proposed purchase price of a transferee for the Offered Shares is less than the First Offer Price, the Proposing Stockholder shall not sell or otherwise transfer any of the Offered Shares unless the Proposing Stockholder shall first reoffer (the "Reoffer") the Offered Shares at such lesser price to the Company and each of the Offeree Stockholders by giving written notice (the "Reoffer Notice") thereof, stating the Proposing Stockholder's intention to make such Transfer at such lower price (the "Reoffer Price") and the other material terms and conditions of the proposed Transfer. Each of the Offeree Stockholders shall then have the irrevocable and exclusive option to purchase all of the Offered Shares at the Reoffer Price, exercisable in the same proportions and manner as provided in Section 5.2(b). If the Offeree Stockholders do not then purchase all the Offered Shares, then such Offered Shares may be sold by the Proposing Stockholder within sixty (60) days following the earlier of (i) the fifteenth (15<sup>th</sup>) day from the date of the Reoffer Notice and (ii) the date on which the Proposing Stockholder shall have received written notice from the Company and each of the Offeree Stockholders stating their intention not to exercise the option granted in this Section 5.2(d), or such later date on which all necessary regulatory approvals have been obtained, at a cash price equal to or greater than the Reoffer Price and on other terms and conditions no less favorable to the Proposing Stockholder than those contained in the Reoffer Notice; provided that such sale complies with the provisions of Section 5.1(a), 5.1(b) and 5.1(c).

(e) If the Offeree Stockholders do not exercise their option to purchase the Offered Shares at the First Offer Price or at the Reoffer Price, and the Proposing Stockholder shall not have sold the Offered Shares to any transferee for any reason before the expiration of the 60-day period described in Section 5.2(d) in the event of a Reoffer or, if no Reoffer Notice is given, the 60-day period described in Section 5.2(c), then the Proposing Stockholder shall not sell or otherwise Transfer any such shares of Common Stock unless it shall once again comply with this Section 5.2 with respect to any such sale or Transfer.

(f) The closing of all purchases pursuant to the first offer rights granted under this Section 5.2 shall take place at the principal offices of the Company at 10 a.m., prevailing

local time, on a date determined by the Proposing Stockholder and the Offeree Stockholders who have elected to purchase Offered Shares; provided that, without the consent of the Offeree Stockholder, such closing shall not occur later than the fifteenth (15<sup>th</sup>) day following the delivery to the Proposing Stockholder of all notices exercising such first offer rights with respect to the Offered Shares to be sold by the Proposing Stockholder at such closing, or at such later date on which all necessary regulatory approvals have been obtained. At such closing, (i) the Proposing Stockholder shall assign and Transfer to each Stockholder purchasing Offered Shares good and valid title to the Offered Shares being purchased by them, by delivery of the certificates (if any) representing the Offered Shares to be sold and transferred, duly endorsed in blank, with the requisite stock transfer tax stamps attached, together with such stock powers, certificates, legal opinions and other instruments of transfer as the Company or the purchasing Stockholder(s) shall reasonably request; (ii) the Proposing Stockholder shall be required to include only customary representations and warranties regarding its title to the Offered Shares, and its power, authority and legal right to Transfer such Offered Shares and (iii) the purchasing Stockholder(s) shall pay to the Proposing Stockholder the purchase price for the Offered Shares being purchased by it in cash, by delivery of a certified or bank check or by wire transfer of immediately available funds to such account as the Proposing Stockholder shall direct by written notice delivered to the Company and each such Stockholder not later than two (2) Business Days before such closing. If any Offeree Stockholder fails to close at the date set for such closing, then the Proposing Stockholder shall be free to sell any Offered Shares that were to be purchased by such defaulting Offeree Stockholder in the same manner as set forth in Section 5.2(c) or (d) as if no such notice had been given by such defaulting Offeree Stockholder, provided, that the period of time for the sale of such Offered Shares shall be thirty (30) days from the proposed closing date of the sale to the defaulting Offeree Stockholder or such later date on which all necessary regulatory or other required approvals, if any, have been obtained. Notwithstanding the foregoing, there shall be no liability on the part of any Proposing Stockholder to any Offeree Stockholders arising from the failure of such Proposing Stockholder to consummate the purchase and sale of the Offered Shares for any reason, and the decision to consummate such purchase and sale shall be in the sole discretion of such Proposing Stockholder.

### SECTION 5.3 Drag Along Right.

(a) In the event that one or more Stockholders representing ~~at least fifty and one-tenth percent (50.1%) of the then-outstanding shares of Common Stock~~ Required Drag-Along Amount (“Dragging Stockholders”) proposes to sell, or otherwise dispose of, in one transaction or a series of related transactions, to a Person or a group of Persons, other than an Affiliate of any of such Stockholders (a “Drag-Along Buyer”), either (i) at least such amount of ~~such Stockholders’~~ shares of Common Stock ~~representing at least fifty and one-tenth percent (50.1%) of the then-outstanding shares of Common Stock~~ held by such Dragging Stockholders or (ii) all or substantially all of the assets of the Company on a consolidated basis (a “Majority Approved Sale”), such Dragging Stockholder(s) shall have the right (the “Drag-Along Right”) to require each of the other Stockholders (the “Non-Initiating Stockholders”) to facilitate the consummation of such Majority Approved Sale, including by Transferring to the Drag-Along Buyer its Pro Rata Portion of shares Common Stock it holds (and, for purposes of this Section 5.3, its Pro Rata Portion of each class of Common Stock Equivalents, to the extent such Stockholder holds any such Common Stock Equivalents) in such Majority Approved Sale in

accordance with Sections 5.3(b) and 5.3(c), and voting in favor of and taking such other actions required under Section 5.3(d), upon the same terms and subject to the same conditions as are applicable to the Dragging Stockholders (subject to the limitations set forth in this Section 5.3).

(b) The Company or Dragging Stockholders shall provide written notice of such Majority Approved Sale to the Non-Initiating Stockholders (a “Majority Approved Sale Notice”) specifying the number and class(es) of shares of Common Stock and Common Stock Equivalents proposed to be Transferred by the Dragging Stockholders and the other material terms and conditions of the proposed Transfer, including the purchase price payable for the shares of Common Stock and Common Stock Equivalents, the identity of the Drag-Along Buyer and the date of closing of the purchase and sale contemplated by the Majority Approved Sale Notice (the “Majority Approved Sale Closing Date”), which Majority Approved Sale Closing Date shall be not less than ten (10) Business Days following the delivery of the Majority Approved Sale Notice to the Non-Initiating Stockholders. In determining the proposed purchase price referred to in the immediately preceding sentence, there shall be taken into account (and the Non-Initiating Stockholders shall receive their pro rata share of) any other consideration or value to be received from the Drag-Along Buyer, directly or indirectly, by the Dragging Stockholders in connection with or relating to the Majority Approved Sale, including by way of any “non-compete,” consulting, management or other payments in connection with the Majority Approved Sale. The Majority Approved Sale Notice shall also specify each Non-Initiating Stockholder’s Pro Rata Portion of the shares of Common Stock (and, if applicable, Common Stock Equivalents) to be Transferred and the estimated amount of the proceeds to be distributed to such Non-Initiating Stockholder upon completion of the Majority Approved Sale (which amount, for the avoidance of doubt, shall take into account the exercise price of any applicable Common Stock Equivalents and the applicable provisions of the Certificate of Incorporation regarding distributions relating to the shares of Common Stock to be Transferred). Notwithstanding the foregoing, (i) no Non-Initiating Stockholder shall be required to make any representation or warranty, or provide any indemnity to any person, in connection with any Majority Approved Sale other than with respect to the unencumbered title to its shares of Common Stock (and, if applicable, Common Stock Equivalents), and its power, authority and legal right to Transfer such shares of Common Stock (and, if applicable, Common Stock Equivalents), (ii) the aggregate liability or loss as a result of such representations, warranties, indemnities or other agreements shall not exceed the proceeds such Non-Initiating Stockholder received in connection with such Transfer, and (iii) no Non-Initiating Stockholder shall be required in connection with such Majority Approved Sale to agree to (A) any non-solicit, no hire or other similar provision, (B) any non-compete or similar restrictive covenant or (C) any term that purports to bind any portfolio company of any investment fund or other investment entity that is under common control or management with any such Dragging Stockholder or its Affiliate.

(c) At the closing of the Majority Approved Sale, the Dragging Stockholders and the Non-Initiating Stockholders shall deliver to the Drag-Along Buyer certificates or other instruments representing their shares of Common Stock (and, if applicable, Common Stock Equivalents), duly endorsed in blank for Transfer or accompanied by stock powers duly endorsed in blank, and the Drag-Along Buyer shall pay to each such Stockholder the consideration payable at the closing pursuant to such transaction. If any Stockholder fails to deliver such certificates or other instruments to the Drag-Along Buyer, then the Drag-Along Buyer shall



provide written notice of such failure to the Company and such Transfer shall not be effective until such time as such certificates or other instruments are delivered. Upon receipt of such notice, the Company agrees that it shall not record the Transfer of such shares of Common Stock or Common Stock Equivalents on the books and records of the Company and shall promptly direct the Company's transfer agent, if any, that the transfer agent shall also not record the Transfer of such shares of Common Stock or Common Stock Equivalents on the books and records of the Company.

(d) If any Majority Approved Sale is structured as a merger, consolidation, amalgamation, sale of assets or similar transaction each Non-Initiating Stockholder agrees, as applicable, solely in its capacity as a Stockholder of the Company, to (i) vote its shares of Common Stock in favor of, or consent to, such transactions; (ii) waive or refrain from exercising any appraisal, dissenters' or similar rights with respect to such transaction; and (iii) take such other action, consistent with this Section 5.3, as may reasonably be required to complete the transaction.

(e) If the Majority Approved Sale shall not have been consummated within ninety (90) days of the date the Majority Approved Sale Notice was provided (which 90-day period may be extended by notice from the Dragging Stockholders to the Non-Initiating Stockholders for up to two-hundred and seventy (270) days in the event any required approval of such sales from any Governmental Authority, including termination or expiration of the applicable waiting period under the applicable antitrust and competition Laws, has not then been obtained), the Dragging Stockholders shall return to the Non-Initiating Stockholders all applicable instruments representing shares of Common Stock (including, if applicable, Common Stock Equivalents) that the Non-Initiating Stockholders delivered for Transfer, together with any other documents in the possession of the Dragging Stockholders executed by the Non-Initiating Stockholders in connection with such proposed Majority Approved Sale, if any, and all the restrictions on Transfer contained in this Agreement shall again be in effect. Notwithstanding the foregoing, there shall be no liability on the part of any Dragging Stockholder to any Non-Initiating Stockholders arising from the failure of the Dragging Stockholders to consummate the Majority Approved Sale for any reason, and the decision to consummate such Majority Approved Sale shall be in the sole discretion of the Dragging Stockholders.

(f) No Majority Approved Sale pursuant to this Section 5.3 shall be subject to Section 5.2.

#### SECTION 5.4 Tag-Along Rights.

(a) In the event one or more Stockholders (each, a "Selling Stockholder") proposes to Transfer, in one transaction or a series of related transactions, to a third party that is not an Affiliate of any Selling Stockholders (the "Proposed Transferee") shares of Common Stock representing at least fifty and one-tenth percent (50.1%) of the then outstanding shares of Common Stock, and Drag-Along Rights are not exercised pursuant to Section 5.3 (a "Tag-Along Transfer"), each Stockholder that is not a Selling Stockholder (a "Tag-Along Right Holder") shall have the right (the "Tag-Along Rights") to participate in the Tag-Along Transfer by Transferring up to its Pro Rata Portion of its shares of Common Stock and Series A-1 Warrants it holds to the Proposed Transferee on the same terms and conditions as those proposed by the

Selling Stockholders (each such participating Tag-Along Right Holder, other than the Selling Stockholders, the “Tagging Stockholder”).

(b) The Selling Stockholders shall give written notice (a “Tag-Along Notice”) to each Tag-Along Right Holder of a Tag-Along Transfer, setting forth the number and class(es) of shares of Common Stock and Series A-1 Warrants proposed to be so Transferred, the name and address of the Proposed Transferee, the proposed amount and form of consideration and other terms and conditions of payment offered by the Proposed Transferee. The Selling Stockholders shall deliver or cause to be delivered to each Tag-Along Right Holder copies of all transaction documents relating to the Tag-Along Transfer promptly as the same become available. The Tag-Along Rights provided by this Section 5.4 must be exercised by a Tag-Along Right Holder by delivery of an irrevocable written notice to the Selling Stockholders, within a period of fifteen (15) Business Days from the Tag-Along Notice, specifying the portion of its Pro Rata Portion of its shares of Common Stock and, if applicable, Series A-1 Warrants it holds which it wishes to include in the Tag-Along Transfer. With respect to shares of Common Stock and Series A-1 Warrants proposed to be Transferred, if the Proposed Transferee fails to purchase all the shares of Common Stock (or Series A-1 Warrants) proposed to be Transferred by the Selling Stockholders and the Tagging Stockholders, then the number of shares of Common Stock and Series A-1 Warrants) that each such Stockholder is permitted to sell in such Tag-Along Transfer shall be reduced pro rata based on the number of shares of Common Stock and Series A-1 Warrants proposed to be Transferred by such Stockholder relative to the aggregate number of shares of Common Stock and Series A-1 Warrants proposed to be Transferred by all Stockholders participating in such Tag-Along Transfer. The Selling Stockholders shall have a period of ninety (90) days following the expiration of the fifteen (15) Business Day notice period mentioned above (which 90-day period may be extended by notice from the Selling Stockholders to the participating Tagging Stockholders for up to two-hundred and seventy (270) days in the event any required approval of such sales from any Governmental Authority, including termination or expiration of the applicable waiting period under the applicable antitrust and competition Laws, has not then been obtained) to sell all the shares of Common Stock [and Series A-1 Warrants] agreed to be purchased by the Proposed Transferee on the terms specified in the notice required by the first sentence of this Section 5.4(b). With respect to shares of Common Stock and Series A-1 Warrants proposed to be Transferred, if the Proposed Transferee agrees to purchase more shares of Common Stock and Series A-1 Warrants than specified in the Tag-Along Notice in the proposed Transfer, the Tag-Along Right Holder shall also have the same right to participate in the Transfer of such shares of Common Stock and Series A-1 Warrants that are in excess of the amount set forth on the Tag-Along Notice on a pro rata basis based on the number of shares of Common Stock and Series A-1 Warrants to be Transferred by such Stockholder relative to the aggregate number of shares of Common Stock and Series A-1 Warrants of such class proposed to be Transferred by all Stockholders participating in such Tag-Along Transfer.

(c) Any Transfer of shares of Common Stock and Series A-1 Warrants by a Tagging Stockholder to a Proposed Transferee pursuant to this Section 5.4 shall be on the same terms and conditions (including price, time of payment and form of consideration; provided, that such consideration take into account the applicable provisions of the Certificate of Incorporation

regarding distributions relating to the shares of Common Stock to be Transferred) as to be paid to the Selling Stockholders in respect of its shares of Common Stock or Series A-1 Warrants. In determining the proposed purchase price referred to in the immediately preceding sentence, there shall be taken into account (and the Tagging Stockholders shall receive their pro rata share of) any other consideration or value to be received from the Proposed Transferee or its Affiliates, directly or indirectly, by any Selling Stockholder in connection with or relating to the Tag-Along Transfer, including by way of any “non-compete,” consulting, management or other payments in connection with the Tag-Along Transfer. Notwithstanding the foregoing, (i) no Tagging Stockholder shall be required to make any representation or warranty, or provide any indemnity to any person, in connection with any Tag-Along Transfer other than with respect to the unencumbered title to its shares of Common Stock and Series A-1 Warrants, and its power, authority and legal right to Transfer such shares of Common Stock and Series A-1 Warrants, (ii) the aggregate liability or loss as a result of such representations, warranties, indemnities or other agreements shall not exceed the proceeds such Tagging Stockholder received in connection with such Transfer, and (iii) no Tagging Stockholder shall be required in connection with such Tag-Along Transfer to agree to (A) any non-solicit, no hire or other similar provision, (B) any non-compete or similar restrictive covenant or (C) any term that purports to bind any portfolio company of any investment fund or other investment entity that is under common control or management with any such Tagging Stockholder or its Affiliate. Each Tagging Stockholder shall be responsible for its proportionate share of the costs of the proposed Transfer to the extent not paid or reimbursed by the Proposed Transferee or the Company.

SECTION 5.5 Legend on Certificates. Each outstanding certificate representing shares of Common Stock that are subject to this Agreement shall bear an endorsement reading substantially as follows:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE (THESE “SECURITIES”) WERE ORIGINALLY ISSUED IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENT OF SECTION 5 OF THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), PROVIDED BY SECTION 1145 OF THE BANKRUPTCY CODE, 11 U.S.C. § 1145. THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE ACT OR ANY STATE SECURITIES LAW, AND TO THE EXTENT THE HOLDER OF THE SECURITIES IS AN “UNDERWRITER,” AS DEFINED IN SECTION 1145(B)(1) OF THE BANKRUPTCY CODE, THESE SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE (THESE “SECURITIES”) ARE SUBJECT TO VARIOUS CONDITIONS, INCLUDING CERTAIN RESTRICTIONS RELATING TO COMPLIANCE WITH U.S. AIRLINE FOREIGN OWNERSHIP RESTRICTIONS AND TO SALE, DISPOSITION OR TRANSFER AS SET FORTH IN THE CORPORATION’S CERTIFICATE OF INCORPORATION, AS AMENDED (THE “CERTIFICATE OF INCORPORATION”), AND THE STOCKHOLDERS AGREEMENT

DATED AS OF [\_\_\_\_\_] , 2013 AMONG THE CORPORATION AND THE STOCKHOLDERS NAMED THEREIN, AS IT MAY BE AMENDED FROM TIME TO TIME (THE “STOCKHOLDERS AGREEMENT”). NO REGISTRATION OR TRANSFER OF THESE SECURITIES WILL BE MADE ON THE BOOKS OF THE CORPORATION UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH. THE CORPORATION WILL FURNISH WITHOUT CHARGE TO EACH HOLDER OF RECORD OF THESE SECURITIES A COPY OF THE CERTIFICATE OF INCORPORATION AND STOCKHOLDERS AGREEMENT, CONTAINING THE ABOVE-REFERENCED RESTRICTIONS ON TRANSFERS OF STOCK, UPON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.

SECTION 5.6 No Circumvention of Stock Transfer Restrictions. Each Party agrees that the Transfer restrictions in this Agreement may not be avoided by the holding of shares of Common Stock directly or indirectly through a Person that can itself be sold in order to dispose of an interest in shares of Common Stock free of such restrictions. Any Transfer of any shares of Common Stock (or other interest) resulting in any change in the control, directly or indirectly, of a Stockholder or of any other Person having control, directly or indirectly, over that Stockholder shall be treated as being a Transfer of the shares of Common Stock held by that Stockholder, and the provisions of this Agreement that apply in respect of the Transfer of shares of Common Stock shall thereupon apply in respect of the shares of Common Stock so held; provided that this Section 5.6 shall not apply in respect of (i) a bona fide Transfer of equity securities of a Person having a direct or indirect interest in any shares of Common Stock, where that interest does not represent more than ten percent (10%) of the assets of that Person, or (ii) any Transfer to a Permitted Transferee.

SECTION 5.7 Registration Rights. Whenever the Company proposes to register any shares of its Common Stock under the Securities Act (other than a registration effected solely to implement an employee benefit plan or a transaction to which Rule 145 of the Securities Act is applicable, or pursuant to a Registration Statement on Form S-4, S-8 or any successor form thereto or another form not available for registering the Common Stock held by the Stockholders (“Registrable Securities”) for sale to the public), whether for its own account or for the account of one or more stockholders of the Company (a “Piggyback Registration”), the Company shall give prompt (but no less than thirty (30) days) written notice to the Stockholders of its intention to effect such Piggyback Registration and shall include in such Piggyback Registration all Registrable Securities held by the Stockholders with respect to which the Company has received written requests for inclusion from the holders of Registrable Securities within fifteen (15) days after the Company’s notice has been given to each such Stockholder; provided that if a Piggyback Registration is initiated as an underwritten offering and the managing underwriter advises the Company and the holders of Registrable Securities (if any holders of Registrable Securities have elected to include Registrable Securities in such Piggyback Registration) in writing that in its reasonable opinion the number of shares of Common Stock proposed to be included in such registration, including all Registrable Securities and all other shares of Common Stock proposed to be included in such underwritten offering, exceeds the number of shares of Common Stock which can be sold in such offering without

adversely affecting the marketability of the offering (including an adverse effect on the per share offering price), the Company shall include in such registration (i) first, solely in the case of a Piggyback Registration relating to a primary offering on behalf of the Company, the number of shares of Common Stock that the Company proposes to sell; (ii) second, the number of shares of Common Stock requested to be included therein by holders of Registrable Securities, allocated pro rata among all such holders on the basis of the number of Registrable Securities owned by each such holder or in such manner as they may otherwise agree; and (iii) third, the number of shares of Common Stock requested to be included therein by holders of Common Stock (other than holders of Registrable Securities), allocated among such holders in such manner as they may agree. The registration expenses in connection with a Piggyback Registration and the Stockholders' exercise of the rights provided herein (excluding stock transfer taxes, underwriting discounts and commissions) shall be borne by the Company, and the Company shall also pay the reasonable fees and expenses of one special counsel to represent all of the participating Stockholders. The Company shall not grant registration rights to any other Person without the consent of Stockholders holding a majority of the outstanding Common Stock held by the Stockholders unless such registration rights are subordinate to the Stockholders' rights herein. In connection with any Public Offering, the Company and the Stockholders shall enter into a customary registration rights agreement with provisions consistent with this Section 5.7.

## ARTICLE VI

### ADDITIONAL AGREEMENTS

#### SECTION 6.1 Preemptive Rights.

(a) In the event that the Company or its subsidiaries proposes to sell or otherwise issue shares of Common Stock or Common Stock Equivalents or any other equity securities, or any options, rights or warrants to purchase equity securities of the Company or its subsidiaries (collectively, "Dilutive Securities"), each Stockholder shall have the right to acquire Dilutive Securities, in accordance with the provisions of this Section 6.1.

(b) Not later than ten (10) Business Days prior to the anticipated issuance date of Dilutive Securities, the Company shall give written notice (the "Notice of Preemptive Rights") to each Stockholder which shall state the Company's intention to issue Dilutive Securities, the type and amount of Dilutive Securities to be issued, the purchase price therefor, a summary of the other material terms of the proposed issuance and the Pro Rata Portion of such Dilutive Securities which the Stockholder to which the notice is directed may purchase in connection with such issuance.

(c) Each Stockholder that is an "accredited investor" as defined in Rule 501 promulgated under the Securities Act shall have the right to purchase all (but not less than all) of its Pro Rata Portion of such Dilutive Securities at the price and on the terms and conditions specified in the Notice of Preemptive Rights by delivering an irrevocable written notice (the "Acceptance Notice") to the Company no later than ten (10) Business Days from the date the Notice of Preemptive Rights is delivered to such Stockholder at the price and upon the terms specified in the Notice of Preemptive Rights, setting out the number of Dilutive Securities with

respect to which such right is being exercised. Such Acceptance Notice shall also include the maximum number of Dilutive Securities the Stockholder would be willing to purchase in the event any other Stockholder elects to purchase less than its Pro Rata Portion of such Dilutive Securities. If any Stockholder fails to elect to purchase its Pro Rata Portion of such Dilutive Securities, the Company shall allocate any remaining amount among those Stockholders (pro rata in accordance with the shares of Common Stock then held by each such Stockholders relative to the aggregate number of shares of Common Stock held by all Stockholders participating in issuance of Dilutive Securities) who have indicated in their Acceptance Notice a desire to purchase Dilutive Securities in excess of their respective Pro Rata Portions (it being understood that if Stockholders elect to purchase more Dilutive Securities than remain available for sale, such allocation shall be made pro rata in accordance with the shares of Common Stock then held by each such Stockholder relative to the aggregate number of shares of Common Stock held by all Stockholders participating in issuance of Dilutive Securities); provided that no Stockholder shall be required to purchase more Dilutive Securities than the maximum number set forth in such Stockholder's Acceptance Notice.

(d) The Company may sell or issue any Dilutive Securities not covered by an Acceptance Notice to any other Person or Persons, but only at the price and upon terms and conditions that are in all respects no more favorable to such other Person or Persons than those set forth in the Notice of Preemptive Rights. If the Company does not consummate the sale or issuance of all or part of such remaining Dilutive Securities to such other Person or Persons within sixty (60) days after the end of the 10-Business Day period specified in Section 6.1(b), the right provided hereunder shall be deemed to be revived and such Dilutive Securities shall not be issued unless first reoffered to the Stockholders in accordance with this Section 6.1. Concurrently with the closing of the sale or issuance to such other Person or Persons (the "Other Purchasers") of all or part of such Dilutive Securities, each Stockholder shall purchase from the Company, and the Company shall sell or issue to such Stockholder, the securities covered by the Acceptance Notice delivered to the Company by such Stockholder on the terms specified in the Notice of Preemptive Rights. The purchase by a Stockholder of any such securities is subject in all cases to the execution and delivery by the Company and the Stockholder of (a) a customary purchase agreement or subscription agreement relating to such securities, which shall provide representations and warranties by the Company that the Dilutive Securities are issued free and clear of all Liens, and duly authorized, validly issued, fully paid and nonassable and (b) all other documents in form and substance similar in all material respects, to the extent applicable, to those executed and delivered by the Company and the Other Purchasers.

(e) If any Stockholder does not deliver an Acceptance Notice within such ten (10) Business Day period, such Stockholder shall be deemed to have irrevocably waived any and all rights under this Section 6.1 with respect to the purchase of such Dilutive Securities (but not with respect to future issuances in accordance with this Section 6.1). Any sale of Dilutive Securities by the Company without first giving the Stockholders the rights described in this Section 6.1 shall be void and of no force and effect.

(f) The Company shall not issue any Dilutive Securities to any Person not a party to this Agreement, unless such Person has agreed in writing to be bound by the terms and conditions of this Agreement pursuant to an instrument substantially in the form attached hereto

as Exhibit C-2. Any issuance of Dilutive Securities by the Company in violation of this Section 6.1 shall be null and void.

(g) This Section 6.1 shall not apply to (i) the sale or issuance of Dilutive Securities pursuant to the Equity Incentive Plan or any other equity incentive plans approved as required under Section 2.4(j); (ii) the issuance of equity securities to a third party that is not an Affiliate of the Company pursuant to any merger or business combination transaction involving the Company or any of its subsidiaries or as consideration for the acquisition by the Company or any of its subsidiaries of assets or another business entity in each case, approved as required under Section 2.4(a) or Section 2.4(b); (iii) the issuance of the Warrant Shares; (iv) any equity securities registered in connection with a Public Offering; (v) the issuance of equity securities by any of the Company's direct or indirectly wholly owned subsidiaries to the Company or any of the Company's other wholly owned subsidiaries or (v) the issuance of securities for purposes of compliance with applicable airline regulatory laws and regulations pursuant to Section 5.02 of the Certificate of Incorporation.

#### SECTION 6.2 Right to Participate in Debt Issuances.

(a) In the event that the Company or its subsidiaries proposes to issue debt securities (such issuing entity, the "Debt Issuer"), obtain a loan or other debt financing (a "Debt Issuance"), each Stockholder shall have the right to participate in such Debt Issuance, in accordance with the provisions of this Section 6.2.

(b) Not later than ten (10) days prior to the anticipated effective date of the Debt Issuance, the Company shall give written notice (the "Notice of Participation Rights") to each Stockholder which shall state the Debt Issuer's intention to enter into the proposed Debt Issuance, provide the material terms of the proposed Debt Issuance, including the form of such debt financing, the principal amount, maturity date and interest rate, and provide the Pro Rata Portion of such Debt Issuance which the Stockholder to which the Notice of Participation Rights is directed may participate.

(c) Each such Stockholder shall have the right to participate for all (but not less than all) of its Pro Rata Portion of such Debt Issuance on the terms and conditions specified in the Notice of Participation Rights by delivering an irrevocable written notice (the "Participation Right Acceptance Notice") to the Company no later than ten (10) days from the date the Notice of Participation Rights is delivered to such Stockholder on the terms specified in the Notice of Participation Rights (the "Participation Right Acceptance Period"), indicating the portion of such Debt Issuance with respect to which such right is being exercised. Such Participation Right Acceptance Notice shall also include the maximum portion of such Debt Issuance in which the Stockholder would be willing to participate in the event any other Stockholder elects not to participate in such Debt Issuance. If any Stockholder fails to participate in its Pro Rata Portion of such Debt Issuance, the Company shall allocate any remaining amount among those Stockholders (pro rata in accordance with the shares of Common Stock then held by each such Stockholders relative to the aggregate number of shares of Common Stock held by all Stockholders participating in the Debt Issuance) who have indicated in their Participation Right Acceptance Notice a desire to participate in the Debt Issuance in excess of their respective Pro Rata Portions (it being understood that if Stockholders elect to

participate in the Debt Issuance in an aggregate principal amount that is greater than the Debt Issuer's proposed aggregate principal amount of the Debt Issuance, such allocation shall be made pro rata in accordance with the shares of Common Stock then held by each such Stockholder relative to the aggregate number of shares of Common Stock held by all Stockholders participating in the Debt Issuance); provided that no Stockholder shall be required to participate in the Debt Issuance at more than the maximum participation amount set forth in such Stockholder's Participation Right Acceptance Notice.

(d) After the expiration of the Participation Right Acceptance Period, the participating Stockholders and the Debt Issuer may enter into such Debt Issuance, but only upon terms and conditions that are in all respects no more favorable than those set forth in the Notice of Participation Rights. If such Debt Issuance is not consummated within forty-five (45) days from the anticipated closing date set forth in the Notice of Participation Rights, the right provided hereunder shall be deemed to be revived and such Debt Issuance shall not be consummated unless first reoffered to the Stockholders in accordance with this Section 6.2.

(e) If any Stockholder does not deliver a Participation Right Acceptance Notice within the Participation Right Acceptance Period, such Stockholder shall be deemed to have irrevocably waived any and all rights under this Section 6.2, with respect to the participation in such Debt Issuance (but not with respect to any future Debt Issuances entered into pursuant to this Section 6.2). The Company shall not permit the entrance by the Debt Issuer into a Debt Issuance without first giving the Stockholders the rights described in this Section 6.2, and any such attempted Debt Issuance shall be void and of no force and effect.

(f) This Section 6.2 shall not apply to Debt Issuances described in clauses (i), (ii), (iii) and (iv) of the parenthetical in Section 2.4(l).

**SECTION 6.3** Confidentiality. Each Stockholder who has received Confidential Information from the Company or its Representatives agrees that it shall not, and shall cause its Affiliates and Representatives not to, reveal to any other Person other than such Stockholder's Affiliates and Representatives having a need to know in connection with any permitted purpose hereunder, any such Confidential Information without the prior written consent of the Company; provided that such undertaking shall not apply to:

(a) disclosure of Confidential Information that (i) is or has become generally available to the public other than as a result of disclosure by or at the direction of a Party or a Party's Representatives or the Representatives of any Affiliate of any Party in violation of this Agreement, (ii) is or was available to such Stockholder on a non-confidential basis prior to its disclosure to such Stockholder, or (iii) was or becomes available to such Stockholder on a non-confidential basis from a source other than the Company, which source is or was (at the time of receipt of the relevant information) not bound by a confidentiality agreement with the Company or another person;

(b) disclosures of Confidential Information to the extent necessary or required under any (i) applicable Law, (ii) accounting standard, or (iii) in connection with any judicial process regarding any legal action, suit or proceeding arising out of or relating to this Agreement, in each case after giving prior written notice to the other Parties to the extent



practicable under the circumstances, and subject to having undertaken any reasonably available arrangements to protect confidentiality (for example, seeking a protective order in relation to such Confidential Information);

(c) in the case of OHAA and any Stockholder that is a private equity fund, such disclosure is of financial and other information of the type typically disclosed to limited partners and prospective investors in private equity funds affiliated with OHAA (or such Stockholder) and is made to the partners of, and/or prospective investors in, private equity Affiliates of OHAA or such other Stockholder and such partner or prospective investor is bound by the confidentiality provisions of a customary confidentiality agreement entered into with the disclosing party that covers the Confidential Information so disclosed; or

(d) disclosures of Confidential Information with respect to the Company by any Stockholder to a third party who is not a competitor to the Company in connection with potential Transfers of Common Stock or Common Stock Equivalents and who has executed a confidentiality agreement whereby such party is bound by the confidentiality provisions of this Agreement.

## ARTICLE VII MISCELLANEOUS

SECTION 7.1 Term. This Agreement shall terminate on earlier to occur of (a) the completion of a Qualified Public Offering or (b) the date that is the ten (10) year anniversary of the date hereof; provided that the provisions of Section 6.3 shall survive the termination of this Agreement.

SECTION 7.2 Modifications. This Agreement may be modified or amended only by a writing signed by the Company and Stockholders holding a majority of the outstanding shares of Common Stock; provided that (a) any modification or amendment that would adversely affect one or more Stockholders in a way that is disproportionate to its effect on the other Stockholders shall require the consent of such disproportionately affected Stockholders holding a majority of the outstanding shares of Common Stock held by all such disproportionately affected Stockholders; (b) any modification or amendment that would make the transfer restrictions set forth in Article V or the confidentiality obligations set forth in Section 6.2 more burdensome on one or more Stockholders, or remove or otherwise adversely amend the preemptive rights set forth in Section 6.1, the drag-along or tag-along rights set forth in Sections 5.3 and 5.4, respectively, held by one or more Stockholders, shall require the consent of Stockholders holding a majority of the outstanding shares of each class of Common Stock held by the affected Stockholders; and (c) any specific director designation or board observer rights provided to a Stockholder may only be amended by the Stockholders entitled to such rights. For the avoidance of doubt, the addition of Parties to this Agreement pursuant to the terms hereof shall not be deemed a modification or amendment of this Agreement.

SECTION 7.3 Action by Stockholders. Any action required or contemplated by this Agreement to be taken by holders holding at least a majority of the shares of Common Stock held by the Stockholders may be taken by delivery of a written consent executed on behalf of

one or more of such holders holding at least a majority of the shares of Common Stock held by the Stockholders, and the Company shall be entitled to rely upon any such written consent without prior notice to or consultation with any Person.

SECTION 7.4 Applicability. This Agreement shall apply to all shares of Common Stock beneficially owned by a Stockholder at all times (including upon the exercise of any Common Stock Equivalents), whether such shares of Common Stock are acquired prior to or after the date hereof.

SECTION 7.5 Notices. All notices, requests, waivers and other communications made pursuant to this Agreement shall be in writing and shall be deemed to have been effectively given (a) when personally delivered to the Party to be notified; (b) when sent by confirmed facsimile to the Party to be notified at the number set forth below; (c) three (3) Business Days after deposit in the United States mail postage prepaid by certified or registered mail return receipt requested and addressed to the Party to be notified as set forth below; or (d) one (1) Business Day after deposit with a national overnight delivery service, postage prepaid, addressed to the Party to be notified as set forth below with next-business-day delivery guaranteed, in each case as follows:

In the case of the Company, to:

Southern Air Holdings, Inc.

Attention:

Telephone:

Facsimile:

With a copy (which shall not constitute notice) to:

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, New York 10153

Attention:

Telephone:

Facsimile:

In the case of [CIBC]:

[•]

With a copy (which copy shall not constitute notice) to:

Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
New York, New York 10005  
Attention: Thomas C. Janson  
Telephone: (212) 530-5000  
Facsimile: (212) 530-5219

In the case of OHAA:

[•]

With a copy (which copy shall not constitute notice) to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Attention: Angelo Bonvino  
Telephone: (212) 373-3570  
Facsimile: (212) 757-3990

In the case of any other Stockholder, to such Stockholder at its address set forth in the stock ledger of the Company.

A Party may change its address for purposes of notice hereunder by giving ten (10) days' notice of such change to all other Parties in the manner provided in this Section 7.5.

SECTION 7.6 Binding Effect; Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties hereto or their respective successors and permitted assignees any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

SECTION 7.7 Entire Agreement. This Agreement (together with the documents attached as exhibits hereto and any documents or agreements specifically contemplated hereby) supersedes all prior discussions and agreements among any of the Parties hereto (and their Affiliates) with respect to the subject matter hereof and contains the entire understanding of the Parties with respect to the subject matter hereof.

SECTION 7.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be signed by the Company and one or more Stockholders, and all of which are deemed to be one and the same agreement binding upon the Company and each of the Stockholders. Delivery of an executed counterpart of this Agreement by facsimile or other

electronic communications shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 7.9 Headings. The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.

SECTION 7.10 Bylaws. If and to the extent that any provision of this Agreement conflicts with or is inconsistent with any provision of the Bylaws of the Company, such provision of this Agreement shall be controlling and, to the extent practicable, the conflicting or inconsistent provision of the Bylaws shall be construed in a manner consistent with such provision of this Agreement. It is hereby agreed that the Bylaws shall not be amended to be inconsistent with this Agreement.

SECTION 7.11 Further Acts and Assurances. Each Party shall give such further assurance, provide such further information, take such further actions and execute and deliver such further documents and instruments as are, in each case, reasonably necessary to give full force and effect to the provisions of this Agreement.

SECTION 7.12 Governing Law; Consent to Jurisdiction and Service of Process. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of law doctrine. Each Party hereby submits to the exclusive jurisdiction of the Chancery Court of the State of Delaware or the United States District Court for the District of Delaware and any judicial proceeding brought against any of the Parties on any dispute arising out of this Agreement or any matter related hereto shall be brought in such courts. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any objection it may have or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Each Party hereby consents to process being served in any such proceeding by the mailing of a copy thereof by registered or certified mail, postage prepaid, to the address specified in Section 7.5, or in any other manner permitted by law. EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUCH ACTION OR PROCEEDING.

SECTION 7.13 Injunctive Relief. It is hereby agreed and acknowledged that it will be impossible to measure in money the damages that would be suffered if the Parties fail to comply with any of the obligations imposed on them by this Agreement and that in the event of any such failure, an aggrieved person will be irreparably damaged and will not have an adequate remedy at law. Any such person shall, therefore, be entitled to seek injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the Parties shall raise the defense that there is an adequate remedy at law.

SECTION 7.14 Severability. The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of any

provision of this Agreement in any other jurisdiction, it being intended that all rights and obligations of the Parties shall be enforceable to the fullest extent permitted by law.

SECTION 7.15 Recapitalization, Etc. In the event that any capital stock or other securities are issued in respect of, in exchange for, or in substitution of, shares of capital stock of the Company by reason of any reorganization, recapitalization, reclassification, merger, consolidation, spin-off, partial or complete liquidation, stock dividend, split-up, sale of assets, distribution to stockholders or combination of shares or any other change in the Company's capital structure, appropriate adjustments shall be made to the provisions of this Agreement so as to fairly and equitably preserve, as far as practicable, the original rights and obligations of the Parties hereto under this Agreement.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed and delivered by its duly authorized officer as of the date first above written.

SOUTHERN AIR HOLDINGS, INC. <sup>+</sup>-

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

~~<sup>+</sup> Note to Draft: Signature blocks for the initial Stockholders to be added.~~

EXHIBIT A  
CERTIFICATE OF INCORPORATION

EXHIBIT B  
BYLAWS



Exhibit C-1 <sup>21</sup>

ACKNOWLEDGMENT AND AGREEMENT

The undersigned wishes to receive from \_\_\_\_\_ (“Transferor”) [\_\_\_\_\_] shares, par value \$0.01 per share, of Class [\_\_\_\_\_] Common Stock (the “Common Shares”) of Southern Air Holdings, Inc., a Delaware corporation (the “Company”);

The Common Shares are subject to that certain Stockholders Agreement, dated as of [\_\_\_\_], 2013, and as further amended from time to time (the “Agreement”), by and among the Company and the stockholders of the Company party thereto;

The undersigned has been given a copy of the Agreement and afforded ample opportunity to read it, and the undersigned is thoroughly familiar with its terms;

Pursuant to terms of the Agreement, the Transferor is prohibited from transferring such Common Shares and the Company is prohibited from registering the transfer of the Common Shares unless and until the recipient of such Common Shares acknowledges the terms and conditions of the Agreement and agrees to be bound thereby; and

The undersigned wishes to receive such Common Shares and have the Company register the transfer of such Common Shares;

NOW, THEREFORE, in consideration of the mutual premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Transferor to transfer such Common Shares to the undersigned and the Company to register such transfer, the undersigned does hereby acknowledge and agree that (i) the undersigned has been given a copy of the Agreement and ample opportunity to read it, and the undersigned is thoroughly familiar with its terms and (ii) the Common Shares are subject to the terms and conditions set forth in the Agreement.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

<sup>21</sup> For transfers of previously issued stock.

Exhibit C-2<sup>32</sup>

ACKNOWLEDGMENT AND AGREEMENT

The undersigned wishes to receive from Southern Air Holdings, Inc., a Delaware corporation (the "Company"), [\_\_\_\_\_] shares, par value \$0.01 per share, of Class [\_\_\_\_\_] Common Stock or certain newly issued options, warrants or other rights to purchase shares of Common Stock (the "Common Shares"), of the Company;

The Common Shares are subject to that certain Stockholders Agreement, dated as of \_\_\_, 2013 and as further amended from time to time (the "Agreement"), by and among the Company and the stockholders of the Company party thereto;

The undersigned has been given a copy of the Agreement and afforded ample opportunity to read it, and the undersigned is thoroughly familiar with its terms;

Pursuant to terms of the Agreement, the Company is prohibited from issuing the Common Shares unless and until the recipient of such Common Shares acknowledges the terms and conditions of the Agreement and agrees to be bound thereby; and

The undersigned wishes to receive such Common Shares;

NOW, THEREFORE, in consideration of the mutual premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Company to issue such Common Shares, the undersigned does hereby acknowledge and agree that (i) the undersigned has been given a copy of the Agreement and ample opportunity to read it, and the undersigned is thoroughly familiar with its terms and (ii) the Common Shares are subject to terms and conditions set forth in the Agreement.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

<sup>32</sup> For transfers of newly issued stock.

**Exhibit B-1**

**Form of Litigation Trust Agreement**

**SOUTHERN AIR HOLDINGS, INC.  
LITIGATION TRUST AGREEMENT**

Litigation Trust Agreement, dated as of March \_\_\_\_, 2013 (the "Trust Agreement"), is entered into by and among Southern Air Holdings, Inc., Cargo 360, Inc., Southern Air Inc., Air Mobility Inc., 21110 LLC, 21111 LLC, 21221 LLC, 21550 LLC, 21576 LLC, 21590 LLC, 21787 LLC, 21832 LLC, 23138 LLC, 24067 LLC, 46914 LLC, CF6-50 LLC, Aircraft 21380 LLC and Aircraft 21255 LLC (each as a debtor and debtor-in-possession, and collectively, the "Debtors"), [Barry E. Mukamal as Litigation Trustee (the "Litigation Trustee")], and CSC Trust Company of Delaware, or its successors, as Delaware Trustee.

**RECITALS**

- A. On September 28, 2012, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.
- B. On or about January 18, 2013, the Debtors filed the Second Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code (as amended and supplemented and as confirmed, the "Plan") and the related disclosure statement (the "Disclosure Statement").
- C. The Plan provides for the creation of a litigation trust to liquidate and distribute the Litigation Trust Assets to the Litigation Trust Beneficiaries.
- D. By order, dated March \_\_\_\_, 2013, the Bankruptcy Court confirmed the Plan and authorized the consummation of the transactions contemplated therein.
- E. This Trust Agreement is being executed to establish and provide for the administration of the Litigation Trust and the liquidation and distribution of Litigation Trust Assets, and to otherwise facilitate the implementation of the Plan.
- F. The Litigation Trust (other than with respect to the Disputed Claims Reserve) is intended to qualify as a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d), to be treated as a "grantor trust" for federal income tax purposes, and to be exempt from the requirements of the Investment Company Act of 1940 pursuant to Sections 7(a) and 7(b) thereof.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein, the parties hereto agree as follows:

**ARTICLE I**  
**DEFINITIONS.**

1.1 Definitions Incorporated from the Plan. Other than the terms defined below or elsewhere in this Trust Agreement, capitalized terms shall have the meaning assigned to them in the Plan.

1.2 Other Definitions.

“**Assigned Claims**” means any Disputed Claim (or portion thereof) against the Debtors identified on Exhibit A hereto that, as of the Effective Date, is not an Allowed Claim and which the Litigation Trustee shall be responsible for resolving, in accordance with the provisions of this Trust Agreement, but, for the avoidance of doubt, shall not include any Claim against the Debtors that is not identified on Exhibit A.

“**Avoidance Actions**” means, any actions commenced, or that may be commenced before or after the Effective Date, pursuant to section 547 of the Bankruptcy Code and solely to the extent such action is commenced against a party identified on Exhibit A hereto.

“**Books and Privileges**” means, subject to Section 2.3(c) hereof, with respect to a particular Debtor or group of Debtors, all books and records of such Debtor(s), including, without limitation, all documents and communications of any kind, whether physical or electronic, rights to direct current or former agents, attorneys, advisors and other professionals of such Debtor(s) to deliver such documents or communications, and, to the fullest extent permissible by law, the right to assert or waive any privilege, including, but not limited to, any attorney-client privilege, work-product protection, or other privilege or immunity attaching to any documents or communications (whether written, electronic or oral).

“**Cause**” means, with respect to the Litigation Trustee or any member of the Litigation Trust Board,

- (i) such member’s conviction of a felony or any other crime involving moral turpitude;
- (ii) any act or failure to act by such member involving actual dishonesty, fraud, misrepresentation, theft or embezzlement with respect to the Litigation Trust Assets; or
- (iii) such member’s willful and repeated failure to substantially perform his/her duties under this Trust Agreement.

“**Causes of Action**” means, any and all Claims (as defined in section 101(5) of the Bankruptcy Code), Avoidance Actions, demands, rights, actions, rights of action, causes of action, judgments, proceedings, damages, accounts, defenses, affirmative defenses, rights of setoff, offsets, powers, privileges, licenses, franchises, third-party claims, counterclaims, cross-claims, actions for declaratory or injunctive relief, suits and other rights of recovery of the Debtors, the Debtors in Possession, and the estates, against or with respect to any Person,

including, without limitation, Claims of a Debtor or the Debtors' estates against an Affiliate, current or former officer, director or employee of any Debtor or any Affiliate or property, wherever located, of any nature whatsoever, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, asserted or unasserted or pending as of the Effective Date, whether direct, indirect, derivative or on any other basis, whether existing or hereafter arising, whether arising in whole or in part prior to, on or after the Petition Date, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases or thereafter, in contract or in tort, at law or in equity, whether pursuant to any federal or state statute or common law or under any theory of law or equity, including without limitation any available: (a) rights of setoff, counterclaim, recoupment, replevin or reclamation, and Claims on contracts or for breaches of duties imposed by law, (b) rights to object to or seek estimation of Claims or Equity Interests, (c) Claims pursuant to section 362 of the Bankruptcy Code, (d) Claims, causes of action and defenses against any Person, including without limitation, for intentional or negligent misrepresentation, fraud, mistake, duress and usury, breach of fiduciary duty, malpractice, negligence, breach of contract, wrongful distribution, aiding and abetting, or inducement, and (e) rights and remedies under sections 502(d), 506, 509, 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552, and 553 of the Bankruptcy Code.

**"Certificate of Trust"** means the certificate of trust of the Litigation Trust as required by Section 3810 of the Delaware Act, substantially in the form of Exhibit C attached.

**"Creditor Cash"** means, on any date, all Cash held by the Litigation Trust (including any Cash received from the Debtors on the Effective Date pursuant to Section 8.1 of the Plan, and any permissible investments), except Cash retained by the Litigation Trust on account of the Litigation Trust Administrative Reserves and Cash previously deposited into, and then being held in, the Disputed Claims Reserve.

**"Delaware Trustee"** means CSC Trust Company of Delaware, or its successors, which is appointed in accordance with this Trust Agreement to comply with the requirement of Section 3807 of the Trust Act.

**"Disbursing Agent"** means the Litigation Trustee, or its successors, which shall make distributions under the Plan and pursuant to this Trust Agreement.

**"Disputed Claims Reserve"** means Cash that is allocated and retained by the Litigation Trust from time to time on account of Disputed Claims in an amount that would be necessary to fund from the proceeds of the Litigation Trust Assets the Pro Rata Share of distributions to holders of Disputed Claims if such Claims were Allowed in the Estimated Amount of such Claims as of any such time.

**"Distribution Date"** means a date or dates, including the Initial Distribution Date, as determined by the Litigation Trustee on a quarterly basis in accordance with this Trust Agreement, on which the Disbursing Agent makes a distribution to the holders of Allowed General Unsecured Claims, including Litigation Trust Beneficiaries.

**“Distribution Determination Date”** means a date selected by the Litigation Trustee preceding each Distribution Date, as of which the amount of distribution to be made on such Distribution Date on account of Allowed General Unsecured Claims is to be determined. The Distribution Determination Date for the Initial Distribution shall be the Confirmation Date.

**“Estimated Amount”** means, with respect to a Disputed Claim, as of any relevant time, an amount equal to the lesser of (i) the Disputed Claim Amount, (ii) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code for purposes of allowance, which amount, unless otherwise ordered by the Bankruptcy Court, shall constitute and represent the maximum amount in which such Claim may ultimately become an Allowed Claim or (iii) such other amount as may be agreed upon by the holder of such Disputed Claim and the Reorganized Debtors Plan Administrator.

**“Fiscal Year”** means any fiscal year of the Litigation Trust, as provided in Section 2.9 hereof.

**“Initial Distribution”** means the first distribution that the Disbursing Agent makes to holders of Allowed General Unsecured Claims.

**“Initial Distribution Date”** means the date on which the Disbursing Agent makes the Initial Distribution to holders of Allowed General Unsecured Claims, including the Litigation Trust Beneficial Interests from the Litigation Trust.

**“Litigation Trust Administrative Reserves”** means Cash that is allocated and retained by the Litigation Trust, which, for the avoidance of doubt, may only be supplemented from the Litigation Trust Assets, from time to time in an amount necessary to satisfy reasonable costs and expenses of the Litigation Trust and other obligations and liabilities incurred, assumed or reasonably anticipated by the Litigation Trust (or to which the Litigation Trust Assets are otherwise subject) in accordance with the Plan Documents, including without limitation (a) fees and costs incurred in connection with the protection, preservation, liquidation and distribution of the Litigation Trust Assets; (b) the fees and costs incurred in connection with investigating, prosecuting and resolving the Assigned Claims and Avoidance Actions; (c) fees payable under 28 U.S.C. § 1930 in connection with keeping the Bankruptcy Cases open from and after the Effective Date; provided, that to the extent any disbursements of the Reorganized Debtors are included in the monthly operating reports of the Debtors from and after the Effective Date, the Litigation Trust shall not be responsible for the fees payable under 28 U.S.C. § 1930 in respect of such disbursements; (d) such other fees and expenses incurred by the Debtors, the Reorganized Debtors or the Litigation Trustee Parties in connection with maintaining the Bankruptcy Cases from and after the Effective Date, it being understood that such fees and expenses shall not include any professional fees (including legal) other than those solely related to maintaining the Bankruptcy Cases from and after the Effective Date; (e) fees and expenses incurred by the Litigation Trust in connection with any information it requests from the Debtors’ claims agent; (f) fees and expenses (including, without limitation, any Taxes imposed on the Litigation Trust or in respect of the Litigation Trust Assets and fees of the United States Trustee) of the Litigation Trustee Parties, the non-member Litigation Trust Board Parties, the Disbursing Agent, and the Delaware Trustee; and (g) the expenses incurred by the Litigation Trust Board, all of which ((a)-(g)) for the avoidance of doubt shall be solely the responsibility of and payable by the Litigation

Trust, provided, however, that with respect to clause (d) above, the Debtors, the Reorganized Debtors and the Litigation Trustee shall confer with respect to any such fees and shall work in good faith to resolve any disputes over whether such fees or expenses were incurred in connection with the Litigation Trust, failing which, the parties shall seek resolution with the Bankruptcy Court

**“Litigation Trust Assets”** means, from and after the Effective Date, Creditor Cash, the Assigned Claims and Avoidance Actions, solely to the extent set forth on Exhibit A hereto; provided, however, that notwithstanding the foregoing, and for the avoidance of doubt, “Litigation Trust Assets” shall not include Claims, Causes of Action or objections against any Released Parties or their Related Persons.

**“Litigation Trust Board”** means the board appointed to review and supervise the activities of the Litigation Trustee and to oversee the administration of the Litigation Trust and the disposition of the Litigation Trust Assets in accordance with Article V hereof.

**“Litigation Trust Board Parties”** means the members of the Litigation Trust Board, and the advisors, professionals and other agents of the Litigation Trust Board, appointed or engaged in accordance with the provisions of this Trust Agreement.

**“Litigation Trust Beneficial Interest”** means a non-transferable and non-assignable beneficial interest in the Litigation Trust to be issued to each Litigation Trust Beneficiary, which entitles its holder to receive distributions from the Litigation Trust as set forth in this Trust Agreement.

**“Litigation Trustee”** means, Barry E. Mukamal, or his successor(s), as appointed in accordance with this Trust Agreement.

**“Litigation Trustee Parties”** means the Litigation Trustee, and the advisors, professionals and other agents of the Litigation Trust or the Litigation Trustee appointed or engaged in accordance with the provisions of this Trust Agreement.

**“Majority Consent”** means the affirmative consent of a majority of the members of the Litigation Trust Board, given at a meeting called for that purpose, or by a written consent in lieu of a meeting in accordance with this Trust Agreement.

**“Miscellaneous Account”** means a segregated interest-bearing account with a United States FDIC insured financial institution holding Cash that is allocated and retained by the Litigation Trust on account of (a) conflicting claims subject to a Dispute Resolution and (b) Litigation Trust Beneficial Interests of such Litigation Trust Beneficiaries that have not provided the Litigation Trustee with requisite information required under Sections 3.3 and 4.8.

**“Plan Documents”** means, collectively, the Plan, the Confirmation Order and this Trust Agreement.

**“Pro Rata Share”** means, with respect to a Claim in a particular class, as of a particular date, the ratio (expressed as a percentage) of the amount of that particular Claim to the sum of



the aggregate amount of all Allowed Claims and Disputed Claims in the same class that are accounted for in the Disputed Claims Reserve.

“**Trust Act**” means, the Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq., as the same may from time to time be amended, or any successor statute.

“**Trustees**” means, collectively, the Litigation Trustee and the Delaware Trustee.

“**Unanimous Consent**” means the affirmative consent of all of the members of the Litigation Trust Board, given at a meeting called for that purpose or by written consent in lieu of a meeting in accordance with this Trust Agreement; provided, that for purposes of the removal of a member of the Litigation Trust Board in accordance with Section 5.1(a) hereof, Unanimous Consent means the affirmative consent as aforesaid of the remaining members of the Litigation Trust Board.

## **ARTICLE II** **CREATION OF LITIGATION TRUST**

2.1 Creation of Trust. The Litigation Trust shall be deemed to have been created by the Debtors and the Trustees effective as of the time of filing of the Certificate of Trust which shall be the Effective Date or as soon thereafter as reasonably practicable. The Litigation Trust shall bear the name “SAI Litigation Trust” and the Litigation Trustee may, in connection with the exercise of its powers and duties hereunder, either use this name or such variation thereof as the Litigation Trustee sees fit. In connection with the exercise of the Litigation Trustee’s power hereunder, the Litigation Trustee may use this name or such variation thereof as the Litigation Trustee sees fit; provided, however, that in no circumstance shall the Litigation Trustee be the representative of any Reorganized Debtor and the Litigation Trustee shall use its best efforts to conspicuously show that the Litigation Trustee represents the Litigation Trust, which should not be confused with the Reorganized Debtors.

### 2.2 Purpose of Litigation Trust.

(a) The Litigation Trust shall be established for the sole purpose of liquidating and distributing the Litigation Trust Assets in accordance with Treasury Regulations Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

(b) This Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Litigation Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Litigation Trustee or the Litigation Trust Beneficiaries, for any purpose be, or be deemed to be or be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Litigation Trust Beneficiaries to the Litigation Trustee shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Trust Agreement.

(c) Under no circumstance shall the Litigation Trustee be authorized or contend it is authorized to incur liability on behalf of the Debtors’ Estates or the Reorganized

Debtors, and any and all liability incurred by the Litigation Trustee, whether for expenses of prosecution, payment of sanctions, or otherwise (including, without limitation, any fees and expenses in connection with keeping the Bankruptcy Cases open from and after the Effective Date, including those payable under 28 U.S.C. § 1930), shall be the exclusive liability of the Litigation Trust and not the liability of the Debtors' Estates or the Reorganized Debtors. For the avoidance of doubt, in no event shall the Litigation Trust be entitled to additional Cash, assets or other rights from the Debtors or the Reorganized Debtors beyond the Litigation Trust Assets.

### 2.3 Transfer of Litigation Trust Assets.

(a) On the Effective Date or as soon as practicable thereafter, the Debtors shall transfer all of the Litigation Trust Assets, in the form thereof existing on such date, to the Litigation Trust for the benefit of the Litigation Trust Beneficiaries and, subject to payment of all Allowed Convenience Claims, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other persons and entities to the maximum extent contemplated by and permissible under section 1141 of the Bankruptcy Code. Such transfers shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax pursuant to section 1146 of the Bankruptcy Code.

(b) To the extent any Litigation Trust Assets cannot be transferred to the Litigation Trust for any reason, including because of a restriction on transferability under applicable non-bankruptcy law that is not superseded by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such assets shall be retained by the Debtors (or any successor thereto); provided, however, that the proceeds of the sale of any such assets retained by the Debtors (or any successor thereto) shall nevertheless constitute Litigation Trust Assets and be turned over to the Litigation Trust pursuant to this Trust Agreement as if such transfer had not been restricted under applicable non-bankruptcy law. The Litigation Trustee may commence an action in the Bankruptcy Court to resolve any dispute regarding the allocation of the proceeds of any Litigation Trust Assets retained by the Debtors (or any successor thereto).

(c) On or prior to the Effective Date, the Debtors shall deliver or cause to be delivered to the Litigation Trust any and all Books and Privileges that relate primarily to or that may be reasonably required in connection with the Litigation Trust Assets whether held by the Debtors, their agents, representatives, advisors, attorneys, accountants and any other professional hired by the Debtors and provide access to such employees, agents, advisors, attorneys, accountants or any other Debtor professionals with knowledge of matters relevant to the Litigation Trust Assets. Notwithstanding anything herein to the contrary:

(i) The Debtors and the Reorganized Debtors shall be entitled to appropriate confidentiality protections for any and all proprietary data requested by the Litigation Trustee, as applicable.

(ii) To the extent, if any, that the Litigation Trustee requests data consisting of privileged material or attorneys' work product, such data will be produced to the Litigation Trustee, as applicable, unless the Debtors or Reorganized Debtors (i) assert that production of such data would impair an applicable privilege or (ii) disagree as to whether the privilege or work product

protection may be waived by the Litigation Trustee, taking into account the policies underlying the privileges and work product doctrine.

(iii) The Litigation Trustee shall have no power over the books and records of the Debtors or Reorganized Debtors beyond the rights granted herein.

(d) On or prior to the Effective Date, the Debtors shall also deliver, or cause to be delivered, to the Litigation Trust a complete list of all Assigned Claims, including the names and addresses of all holders of such Assigned Claims, and the details of all objections (whether asserted or not) in respect of any of the Assigned Claims.

(e) The Debtors and the Litigation Trustee (on behalf of the Litigation Trust), as successor in interest to the Debtors' Estates, may (i) execute and deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) take, or cause to be taken, all such further action in order to evidence, vest, perfect or effectuate the transfer of the Litigation Trust Assets to the Litigation Trust and consummate transactions contemplated by and to otherwise carry out the intent of the Plan Documents.

2.4 Title to Litigation Trust Assets. Upon the transfer of the Litigation Trust Assets, the Litigation Trust shall succeed to all of the Debtors' right, title and interest in the Litigation Trust Assets, and the Debtors will have no further rights or interest in or with respect to the Litigation Trust Assets or the Litigation Trust.

2.5 Agents and Professionals; Employees. Upon express approval of the Litigation Trust Board, the Litigation Trust may, subject to Section 5.3(b) hereof, employ such counsel (which may be the same counsel employed by the Debtors, Creditors' Committee or any member thereof), advisors (which may be the same advisors formerly employed by the Debtors, the Creditors' Committee or any member thereof) and other professionals selected by the Litigation Trustee that the Litigation Trust reasonably requires to perform its responsibilities under the Plan without further order from the Bankruptcy Court. The Litigation Trust's professionals and advisors shall be compensated on such basis as agreed to by the Litigation Trustee, and paid upon five (5) Business Days' notice to the Litigation Trust Board, without further motion, application, notice or other order of the Bankruptcy Court. The permitted fees and expenses of the Litigation Trust's professionals shall be satisfied solely out of the Litigation Trust Administrative Reserve. In the event of any dispute concerning the entitlement to, or the reasonableness of, any compensation and/or expenses of any professional for the Litigation Trust, either the Litigation Trustee or the affected party may ask the Bankruptcy Court to resolve the dispute.

2.6 Insurance. The Litigation Trust shall maintain customary insurance coverage for the protection of the Trustees, the Litigation Trust Board and any such other persons serving as administrators and overseers of the Litigation Trust on and after the Effective Date, in all cases as determined by the Litigation Trustee.

2.7 Status of Litigation Trust and Litigation Trustee. The Litigation Trust will be the successor-in-interest to the Debtors with respect to any Assigned Claim or Avoidance Action constituting Litigation Trust Assets (but excluding all Claims and Causes of Action released under the Plan) that was or could have been commenced by the Debtors prior to the Effective Date and shall be deemed substituted for the same as the party in any such litigation or objection. The Litigation Trustee (on behalf of the Litigation Trust) will be the representative of the Estates as that term is used in Section 1123(b)(3)(B) of the Bankruptcy Code and will have the rights and powers provided in the Bankruptcy Code in addition to any rights and powers granted in the Plan Documents. All Avoidance Actions constituting Litigation Trust Assets are preserved and retained and may be enforced by the Litigation Trustee on behalf of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

2.8 No Reversion to Debtors; Distribution of Remaining Assets.

(a) In no event shall any part of the Litigation Trust Assets revert to or be distributed to or for the benefit of any Debtor.

(b) To the extent that after satisfaction in full of all of the costs and expenses of the administration of the Litigation Trust, after all Claims have been either Allowed or disallowed, after all Allowed General Unsecured Claims and Allowed Prepetition Lender Claims have been paid pursuant to the Plan and this Trust Agreement, after satisfaction of all other obligations or liabilities of the Litigation Trust incurred or assumed in accordance with the Plan Documents, and after the affairs of the Litigation Trust have been finally wound up and concluded in accordance with the provisions of Section 11.1 hereof and section 3808 of the Trust Act, there shall remain any Litigation Trust Assets, the Litigation Trustee shall distribute such remaining Litigation Trust Assets to an organization, selected by the Litigation Trustee,

described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code that is unrelated to the Debtors, the Litigation Trustee or any member of the Litigation Trust Board.

2.9 Fiscal Year. Except for the first and last years of the Litigation Trust, the Fiscal Year of the Litigation Trust shall be the calendar year. For the first and last years of the Litigation Trust, the Fiscal Year of the Litigation Trust shall be such portion of the calendar year that the Litigation Trust is in existence.

2.10 Costs and Expenses of the Litigation Trust. The costs and expenses of the Litigation Trust and the Litigation Trust Board, including, without limitation, the reasonable fees and expenses of the Trustees, and each of their retained professionals, the fees and expenses of the Disbursing Agent, the costs of maintaining the Disputed Claims Reserve, the fees and expenses incurred in connection with the objection, prosecution or settlement of any Assigned Claims or Avoidance Actions constituting Litigation Trust Assets and the expenses incurred in connection with the administration of the Litigation Trust, including, without limitation, any and all costs, expenses, adverse judgments, sanctions and other financial obligations imposed against the Litigation Trust, shall be paid out of the Litigation Trust Administrative Reserve and shall be solely the liabilities of the Litigation Trust and not the Reorganized Debtors or any other entity. None of the Reorganized Debtors shall have any liability to the Litigation Trust Beneficiaries, the Trustees, the Litigation Trust Parties, the Litigation Trust Board Parties or any other person or entity for any expenses or liabilities of the Litigation Trust.

2.11 Books and Records.

(a) The Litigation Trustee shall maintain in respect of the Litigation Trust, the Litigation Trust Assets and the Litigation Trust Beneficial Interests books and records for the period commencing on the date hereof through the termination of the Litigation Trust, containing such information and in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof and to comply with applicable provisions of law. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Litigation Trust.

(b) The Litigation Trustee is authorized without further application to the Bankruptcy Court or notice to any party, to destroy books and records (whether in electronic or paper format) in accordance with Section 11.3.

**ARTICLE III**  
**LITIGATION TRUST BENEFICIARIES**

3.1 Receipt of Litigation Trust Beneficial Interests; Incidents of Ownership. On the Effective Date, each holder of an Allowed General Unsecured Claim as of the Effective Date shall receive a Litigation Trust Beneficial Interest in the Litigation Trust. The holders of Disputed Claims on the Effective Date that subsequently become Allowed General Unsecured Claims, in whole or in part, shall receive a Litigation Trust Beneficial Interest in the Litigation

Trust at such time as, and to the extent, such Disputed Claims become Allowed. Upon such time as the holders of Allowed General Unsecured Claims have received, pursuant to this Agreement and Section 8.1 of the Plan, total distributions in an amount equal to 10% of such holders' Allowed General Unsecured Claims including Cash distributed pursuant to Section 8.1 of the Plan (the "**Satisfaction Date**") holders of Allowed Prepetition Lender Claims shall receive a Litigation Trust Beneficial Interest. The Litigation Trust Beneficiaries shall be the sole beneficiaries of the Litigation Trust and the Litigation Trust Assets, and the Litigation Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized in the Plan Documents, including, but not limited to, those powers set forth in Section 6.4 hereof.

3.2 Evidence of Litigation Trust Beneficial Interest. Ownership of a Litigation Trust Beneficial Interest shall be evidenced by appropriate notation on the books and records maintained for that purpose by the Litigation Trust or an agent of the Litigation Trust, but shall otherwise be uncertificated. Such notation shall be conclusive absent manifest error, and the Litigation Trust and the Litigation Trustee shall treat each person whose name is recorded on the books and records of the Litigation Trust as aforesaid as the owner of the Litigation Trust Beneficial Interest indicated therein for all purposes of this Trust Agreement, notwithstanding notice to the contrary. The notation shall be in such form as the Litigation Trustee shall determine, but shall be commensurate with the amount of the Allowed General Unsecured Claim (or Allowed Prepetition Lender Claim) of the respective Litigation Trust Beneficiaries and shall readily permit calculation of the Pro Rata Share of each such Litigation Trust Beneficiary. A Litigation Trust Beneficiary shall be deemed the "holder of record" of such beneficiary's Litigation Trust Beneficial Interest(s) for purposes of all applicable laws, rules and regulations. The Litigation Trustee shall, upon the written request of a Litigation Trust Beneficiary, provide reasonably adequate documentary evidence of such beneficiary's Litigation Trust Beneficial Interest. The expense of providing such documentation shall be borne by the requesting Litigation Trust Beneficiary.

3.3 Nontransferability of the Litigation Trust Beneficial Interests. Litigation Trust Beneficial Interests shall not be transferable or assignable except by will, intestate succession or operation of law; provided, that any transfer or assignment of a Litigation Trust Beneficial Interest by will, intestate succession or operation of law shall not be effective unless and until such transfer or assignment is recorded on the books and records of the Litigation Trust maintained for that purpose, as provided in Section 3.2 hereof. Notwithstanding any other provision to the contrary, the Litigation Trustee may disregard any purported transfer or assignment of Litigation Trust Beneficial Interests by will, intestate succession or operation of law if necessary information (as reasonably determined by the Litigation Trustee), including applicable Tax-related information, is not provided by such purported transferee or assignee to the Litigation Trustee. Until such information is provided, any amounts that would have been distributed to the previous Litigation Trust Beneficiaries shall be contributed to the Miscellaneous Account pending the Litigation Trustee's receipt of the requisite information from the transferee; provided that, if the transferee fails to comply with such a request within ninety (90) days, such distribution shall be deemed an undelivered distribution under Section 20.7 of the Plan; and provided further that, if the Litigation Trustee fails to withhold in respect of amounts received or distributable with respect to any such holder-transferee and the Litigation Trustee is

later held liable for the amount of such withholding, such holder-transferee shall reimburse the Litigation Trustee for such liability.

3.4 Litigation Trust Beneficial Interests Not Securities. The Litigation Trust Beneficial Interests shall not constitute “securities” and shall not be registered pursuant to the Securities Act of 1933, as amended, or any state securities law. However, if it should be determined that the Litigation Trust Beneficial Interests constitute “securities,” the exemption provisions of section 1145 of the Bankruptcy Code shall apply to the Litigation Trust Beneficial Interests.

3.5 Rights of Litigation Trust Beneficiaries. Each Litigation Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Litigation Trust Beneficiary hereunder on account of its Litigation Trust Beneficial Interest. Each Litigation Trust Beneficiary shall take and hold the same, subject to all the terms and conditions of the Plan Documents. The interest of a Litigation Trust Beneficiary is hereby declared and shall be, in all respects, personal property.

3.6 Interest Beneficial Only. Except as expressly provided hereunder, a Litigation Trust Beneficiary shall have no title to, right to, possession of, management of or control of the Litigation Trust or the Litigation Trust Assets. The ownership of a Litigation Trust Beneficial Interest in the Litigation Trust shall not entitle any Litigation Trust Beneficiary to any title in or to the Litigation Trust Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein.

3.7 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to a Litigation Trust Beneficial Interest, the Litigation Trustee shall be entitled, at its sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Litigation Trustee may elect to make no payment or distribution with respect to the Litigation Trust Beneficial Interest at issue, or any part thereof, until such conflict is resolved in accordance with this Section 3.7, and the Litigation Trustee shall refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands or its refusal to make a payment or distribution with respect to the Litigation Trust Beneficial Interest at issue. The Litigation Trustee shall not be or become liable to any party for its refusal to comply with any of such conflicting claims or demands. The Litigation Trustee shall be entitled to refuse to act until either (a) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court (or such other court of proper jurisdiction) or (b) all differences have been resolved by a written agreement among all of such parties and the Litigation Trustee, which agreement shall include a complete release of the Litigation Trust and the Litigation Trustee (the occurrence of either (a) or (b) being referred to as a “Dispute Resolution” in this Section 3.7). Until a Dispute Resolution is reached with respect to such conflicting claims or demands, the Litigation Trustee shall hold in the Miscellaneous Account any payments or distributions from the Litigation Trust to be made with respect to the Litigation Trust Beneficial Interest at issue. Promptly after a Dispute Resolution is reached, the Litigation Trustee shall transfer the payments and distributions, if any, held in the Miscellaneous Account, together with any interest and income generated thereon, in accordance with the terms of such Dispute Resolution.

3.8 Liability to Third Persons. No Litigation Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Litigation Trust Assets or the affairs of the Litigation Trustee.

**ARTICLE IV**  
**DISTRIBUTIONS OF LITIGATION TRUST ASSETS**

4.1 Distributions.

(a) The Litigation Trustee shall distribute to the Litigation Trust Beneficiaries on account of their Litigation Trust Beneficial Interests, on the Initial Distribution Date and on each Distribution Date thereafter, such holders' Pro Rata Share of unrestricted Cash on hand (including any Cash received from the Debtors on the Effective Date pursuant to Section 8.1 of the Plan, and treating any permissible investment as Cash for purposes of this Section 4.1), except (i) the Litigation Trust Administrative Reserve and (ii) such amounts as are allocable to or retained on account of Disputed General Unsecured Claims in accordance with this Section 4.1.

(b) From and after the Effective Date, and until such time as all Disputed Claims have been compromised and settled or determined by order of the Bankruptcy Court, the Litigation Trustee shall retain for the benefit of each holder of a Disputed Claim, Litigation Trust Beneficial Interests (and the Cash attributable thereto), in an amount equal to the Estimated Amount. Any Cash retained and held for the benefit of a holder of a Disputed Claim shall be treated as a payment and reduction on account of such Disputed Claim for purposes of computing any additional amounts to be paid in Cash in the event the Disputed Claim ultimately becomes an Allowed Claim. The Disputed Claims Reserve shall be either (x) held by the Litigation Trustee, in an interest-bearing account with a United States FDIC insured financial institution or (y) invested in interest-bearing obligations issued by the United States Government, or by an agency of the United States Government and guaranteed by the United States Government, and having (in either case) a maturity of not more than thirty (30) days, for the benefit of such holders pending determination of their entitlement thereto under the terms of the Plan. No payments or distributions shall be made with respect to all or any portion of any Disputed Claim pending the entire resolution thereof by Final Order.

(c) At such time as a Disputed Claim becomes, in whole or in part, an Allowed Claim, the Litigation Trustee shall distribute to the holder thereof the distributions, if any, to which such holder is then entitled under the Plan together, with any interest that has accrued on the amount of Cash, but only to the extent that such interest is attributable to the amount of the Allowed Claim. Such distribution, if any, shall be made as soon as practicable after an order or judgment of the Bankruptcy Court is entered allowing such Disputed Claim becomes a Final Order but in no event more than sixty (60) days thereafter (net of any expenses, including any taxes imposed on or with respect to the Disputed Claims Reserve relating to such Claim).

4.2 Minimum Cash Distributions. The Disbursing Agent shall not be required to make any Distribution (other than the final) of Cash less than \$100 to any holder of an Allowed



Claim; provided, however, that if any distribution is not made pursuant to this Section 4.2, such distribution shall be added to any subsequent distribution to be made on behalf of the holder's Allowed Claim. The Disbursing Agent shall not be required to make any final distribution of Cash less than \$50 to any holder of an Allowed Claim. If either (a) all Allowed General Unsecured Claims (or Allowed Prepetition Lender Claims, as applicable) (other than those whose distributions are deemed undeliverable under Section 20.7) have been paid in full or (b) the amount of any final distribution to any holder of Allowed General Unsecured Claims (or Allowed Prepetition Lender Claims, as applicable) would be \$50 or less, then no further distribution shall be made by the Disbursing Agent and any surplus Cash remaining in the Litigation Trust shall be donated and distributed to an organization, selected by the Litigation Trustee, described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code that is unrelated to the Debtors, the Litigation Trustee or any member of the Litigation Trust Board.

4.3 Delivery of Distributions. Subject to Bankruptcy Rule 9010, and except as provided in this Section 4.3, all distributions to any holder of an Allowed Claim shall be made at the address of such holder (a) as set forth on the Schedules filed with the Bankruptcy Court, or (b) on the books and records of the Debtors or their agents, as applicable, unless the Debtors or the Litigation Trustee has been notified in writing of a change of address, including, without limitation, by the filing of a proof of Claim by such holder that contains an address for such holder different than the address of such holder as set forth on the Schedules.

4.4 Undeliverable and Unclaimed Distributions. In the event that any distribution to any holder of an Allowed Claim is returned as undeliverable, the Disbursing Agent shall use commercially reasonable efforts to determine the current address of each holder, but no distribution to such holder shall be made unless and until the Disbursing Agent has taken reasonable steps to determine the then current address of such holder; provided, however, that all distributions made pursuant to this Trust Agreement that are unclaimed for a period of ninety (90) days after distribution thereof shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and revested in the Litigation Trust and any entitlement of any holder of any Claims to such distributions shall be extinguished and forever barred. The Litigation Trustee shall have no further obligation to make any distribution to the holder of such Claim on account of such Claim, and any entitlement of any holder of such Claim to any such distributions shall be extinguished and forever barred; provided, however, that the holder of such Claim may receive future distributions on account of such Claim by contacting the Litigation Trustee at some point prior to the final distribution from the Litigation Trust. For the avoidance of doubt, the Disbursing Agent shall not be required to retain an outside investigator to determine the current address of any holders of an Allowed Claim whose distribution is returned as undeliverable.

4.5 Withholding and Reporting Requirements. The Litigation Trustee may, but is not directed to, withhold and pay to the appropriate Tax Authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or distribution to the Litigation Trust Beneficiaries. All such amounts withheld and paid to the appropriate Tax Authority (or placed in escrow pending resolution of the need to withhold) shall be treated as amounts distributed to such holders for all purposes of this Trust Agreement. The Litigation Trustee shall be authorized to collect such tax information from the Litigation Trust Beneficiaries (including social security numbers or other tax

identification numbers) as it in its sole discretion deems necessary to effectuate the Plan and this Trust Agreement. To receive distributions under the Plan, all Litigation Trust Beneficiaries shall be required to identify themselves to the Litigation Trustee and provide tax information and the specifics of their holdings, to the extent the Litigation Trustee deems appropriate (including completing the appropriate Form W-8 or Form W-9, as applicable to each holder). The Litigation Trustee may refuse to make a distribution to any Litigation Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; provided, however, that, upon the delivery of such information by a Litigation Trust Beneficiary, the Litigation Trustee shall make such distribution to which the Litigation Trust Beneficiary is entitled, without interest; and provided further that, if the holder fails to comply with such a request within one (1) year, such distribution shall be deemed an undeliverable distribution under Section 20.7 of the Plan; and provided further that, if the Litigation Trustee fails to withhold in respect of amounts received or distributable with respect to any such holder and the Litigation Trustee is later held liable for the amount of such withholding, such holder shall reimburse the Litigation Trustee for such liability. Notwithstanding the foregoing, each holder of an Allowed Claim that receives a distribution under the Plan shall have the sole and exclusive responsibility for any taxes imposed by any governmental unit, including income, withholding and other taxes, on account of such distribution.

## **ARTICLE V**

### **LITIGATION TRUST BOARD**

#### 5.1 Membership.

(a) There shall at all times be a Litigation Trust Board, with such powers of oversight and authority as are provided in this Article V and as elsewhere set forth in this Trust Agreement. The Litigation Trust Board shall consist of three (3) members. The initial members of the Litigation Trust Board are set forth on Exhibit B attached hereto, provided, however, that no subsequent member of the Litigation Trust Board shall be a vendor, customer, or competitor of the Reorganized Debtors (or an affiliate, representative or agent of a competitor). The parties agree that no member of the Litigation Trust Board shall be entitled to receive any proprietary information concerning the Debtors or the Reorganized Debtors and such information shall be viewed solely by the Litigation Trustee. Once the holders of Allowed General Unsecured Claims receive total Distributions from the Liquidating Trust, including such Cash transferred to the Litigation Trust in accordance with Section 8.1 of the Plan, totaling 10% of such holder's Allowed Claim, the then existing members of the Litigation Trust Board shall be automatically removed without any act of the Litigation Trustee or the Litigation Trust Board, and the members of the Litigation Trust Board, shall thereafter consist of the three (3) members set forth on Exhibit D. Other than with respect to expenses to be paid pursuant to Section 2.5(a), no member of the Litigation Trust Board shall be entitled to any compensation whatsoever for service on the Litigation Trust Board.

(b) Each member of the Litigation Trust Board shall hold office until the termination of the Litigation Trust or the earlier resignation, death or disability of such member or the removal of such member in accordance with this Trust Agreement. Any member of the Litigation Trust Board may resign upon thirty (30) days' prior written notice to the Litigation Trustee and the other members of the Litigation Trust Board. Any member of the Litigation

Trust Board may be removed for Cause by the Unanimous Consent of the remaining two members, in consultation with the Litigation Trustee. Notice of such removal, including the reasons therefor, shall be promptly filed with the Bankruptcy Court. In the event of a vacancy on the Litigation Trust Board, either as a result of the resignation, death, disability or removal of a member (any such resignation, death, disability or removal of a member, a “Replacement Event”), a replacement member shall be appointed by the Unanimous Consent of the remaining two members, in consultation with the Litigation Trustee; provided, however, that in the event such remaining two members of the Litigation Trust Board are unable to agree on the appointment of a replacement member within ten (10) days after the occurrence of a Replacement Event, the Litigation Trustee shall be entitled to vote on such appointment and effect such appointment with the vote of one of the two remaining members of the Litigation Trust Board. Notice of the appointment of any replacement member of the Litigation Trust Board shall be filed with the Bankruptcy Court.

## 5.2 Authority.

(a) The Litigation Trust Board shall (i) review and supervise the activities of the Litigation Trustee, (ii) oversee the administration of the Litigation Trust and the Litigation Trust Assets, (iii) have authority to remove and replace the Litigation Trustee in accordance with Article VII hereof and (iv) perform all other actions specified to be performed by the Litigation Trust Board in this Trust Agreement.

(b) In all circumstances, the Litigation Trustee shall comply with all applicable laws and shall otherwise act in the best interests of all Litigation Trust Beneficiaries and in furtherance of the purpose of this Litigation Trust.

## 5.3 Actions Requiring Consent of Litigation Trust Board.

(a) Subject to Section 5.4(d) hereof, the Litigation Trustee shall not undertake any of the following actions except with the Majority Consent of the Litigation Trust Board:

(i) decreasing the amount of the Disputed Claims Reserve, except in connection with the resolution of Disputed Claims, as provided in Section 4 hereof;

(ii) the abandonment of any Litigation Trust Assets where the amount of the proposed transaction exceeds \$100,000 (or such other amount as determined by Majority Consent of the Litigation Trust Board);

(iii) the initiation, prosecution, pursuit or settlement of any Avoidance Actions, where the estimated value is less than \$10,000.00;

(iv) the resolution or settlement of any Assigned Claim for which the disputed portion of such Claim is in excess of \$1,000,000;

(v) the timing of distributions to the holders of Allowed Unsecured Claims, other than as expressly provided in this Trust Agreement;

(vi) any action that would have a material effect on the treatment of the Litigation Trust or distributions to the Litigation Trust Beneficiaries, for federal tax purposes;

(vii) any material change to the contents of the reports required to be prepared by the Litigation Trustee, as provided in Section 6.9 hereof;

(viii) the dissolution of the Litigation Trust, except as provided in this Trust Agreement;

(ix) the removal or replacement of the Delaware Trustee;

(x) any material change to the Trust Agreement;

(xi) any other action for which any of the Plan Documents require the consent of the Litigation Trust Board and which does not specify the manner of such consent; and

(xii) any other action prescribed by Majority Consent of the Litigation Trust Board as requiring Majority Consent.

(b) The Litigation Trustee shall not undertake any of the following actions except with the Unanimous Consent of the Litigation Trust Board: (i) file any objection to any Assigned Claim; (ii) commence any adversary proceeding or other proceeding with respect to any Avoidance Action; (iii) retain or employ any professional, including attorneys and accountants; and (iv) any action prescribed by the Unanimous Consent of the Litigation Trust Board as requiring Unanimous Consent, which shall be considered during the first meeting of the Litigation Trust Board.

#### 5.4 Governance.

(a) Meetings of the Litigation Trust Board may be called by a chairman elected by the other two members or by any two members.

(b) Two of the three Litigation Trust Board members must be present to constitute a quorum to conduct Litigation Trust Board business; provided, however that all three members must be present if taking an action requiring Unanimous Consent. Except as otherwise provided in this Trust Agreement, any action or determination taken by the Litigation Trust Board at a duly convened meeting, including adoption of governance rules and procedures applicable to the conduct of the affairs of the Litigation Trust Board, shall require Majority Consent.

(c) Meetings may be held in person, telephonically or electronically, and upon such notice as may be determined from time to time in accordance with the rules and procedures adopted by the Litigation Trust Board and any member of the Litigation Trust Board who participates by such means shall be deemed to be present for purposes of quorum under Section

5.4(b). Members of the Litigation Trust Board may also act by unanimous written consent in lieu of a meeting.

(d) Notwithstanding anything to the contrary herein, in respect of any action that is subject to Majority Consent of the Litigation Trust Board hereunder, the Litigation Trustee shall be expressly authorized, and be deemed authorized, to undertake such action after (i) providing three (3) Business Days' written notice of such proposed action to all of the members of the Litigation Trust Board and (ii) receiving no written objection to such proposed action from any of the members of the Litigation Trust Board.

5.5 Advisors and Professionals. The Litigation Trust Board may employ such counsel (which may be the same counsel employed by the Debtors or the Creditors' Committee), advisors (which may be the same advisors formerly employed by the Debtors or the Creditors' Committee) and other professionals selected by the Litigation Trust Board, which it deems necessary or desirable to assist it in performing its responsibilities under this Trust Agreement without further order from the Bankruptcy Court. The Litigation Trust Board's professionals shall be compensated at their respective standard hourly rates as agreed to by the Litigation Trust Board and paid upon five (5) Business Days' notice to the Litigation Trustee, without further motion, application, notice or other order of the Bankruptcy Court. Subject to the limitation set forth in Section 2.10 hereof, the fees and expenses of the Litigation Trust Board's professionals shall be satisfied solely out of the Litigation Trust Administrative Reserve. In the event of any dispute concerning the entitlement to, or the reasonableness of, any compensation and/or expenses of any professional for the Litigation Trust Board, either the Litigation Trust Board, the Litigation Trustee or the affected professional may ask the Bankruptcy Court to resolve the dispute.

5.6 Liability to Third Persons. The Litigation Trust Board Parties shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Litigation Trust Assets or the affairs of the Litigation Trust, and all persons claiming against members of the Litigation Trust Board Parties, or otherwise asserting claims of any nature in connection with affairs of the Litigation Trust, shall look solely to the Litigation Trust Assets for satisfaction of any such claims, except where any Litigation Trust Board Party is found pursuant to a Final Order to have acted with gross negligence, fraud or reckless or willful misconduct.

5.7 Nonliability of Litigation Trust Board for Acts of Others. Nothing contained in the Plan Documents shall be deemed to be an assumption by the members of the Litigation Trust Board of any of the liabilities, obligations or duties of the Debtors or shall be deemed to be or contain a covenant or agreement by the members of the Litigation Trust Board to assume or accept any such liability, obligation or duty.

## **ARTICLE VI**

### **THE LITIGATION TRUSTEE**

6.1 Appointment and Acceptance of Litigation Trustee. The Litigation Trustee is hereby appointed a trustee of the Litigation Trust under the Trust Act and, as necessary or applicable, shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy

Code. The Litigation Trustee hereby accepts such appointment, including the trusteeship of the Litigation Trust created by this Trust Agreement, and the grant, assignment, transfer, conveyance and delivery to the Litigation Trustee, on behalf, and for the benefit, of the Litigation Trust Beneficiaries, by the Debtors and their Estates of all of their respective right, title and interest in the Litigation Trust Assets, upon and subject to the terms and conditions set forth in the Plan Documents. The Litigation Trustee may resign and shall be subject to removal and replacement in accordance with Article VII.

6.2 Fiduciary Duty and Standard of Care.

(a) The Litigation Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Litigation Trust, and in accordance with applicable law, including the Trust Act. The Litigation Trustee shall have the authority to bind the Litigation Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity as Litigation Trustee, and not individually.

(b) The Litigation Trustee shall exercise such rights and powers vested in it by the Plan Documents and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of its own affairs, in accordance with the applicable law. No provision of any Plan Document shall be construed to relieve the Litigation Trustee from liability for its own gross negligence, fraud or reckless or willful misconduct, except that the Litigation Trustee shall not be liable for any action taken in good faith in reliance upon the advice of professionals retained by the Litigation Trustee in accordance with this Trust Agreement.

6.3 Bond. The Litigation Trustee shall serve without a bond, unless such bond is otherwise required to be purchased by Majority Consent of the Litigation Trust Board, in which case the cost of purchasing such bond shall be an expense of the Litigation Trust (paid for solely out of the Litigation Trust Assets).

6.4 Powers of the Litigation Trustee.

(a) As more specifically provided below, the Litigation Trustee shall (i) have the responsibility for administering the Litigation Trust, maintaining the Litigation Trust Administrative Reserve and the Disputed Claims Reserve, objecting to, settling or otherwise resolving the Assigned Claims, liquidating the Litigation Trust Assets and making distributions under the Plan and this Trust Agreement and (ii) report to the Litigation Trust Board in accordance with the terms hereof.

(b) The Litigation Trustee shall have only such rights, powers and privileges expressly set forth in the Plan Documents, and as otherwise provided by applicable law or as incidental to the powers conferred on the Litigation Trustee herein and therein. Subject to the other provisions herein, including, without limitation, the provisions relating to the Litigation Trust Board in Section 5.3, the Litigation Trustee shall be expressly authorized and required to undertake the following actions, in the Litigation Trustee's good faith judgment, in the best interests of the Litigation Trust Beneficiaries and to maximize net recoveries therefor:

(i) to dispose of the Litigation Trust Assets, including the Avoidance Actions included therein;

(ii) to hold, manage and distribute the Litigation Trust Assets for the benefit of the Litigation Trust Beneficiaries, whether such beneficiaries' Claims are Allowed on or after the Effective Date;

(iii) to establish and maintain the Litigation Trust Administrative Reserve;

(iv) to administer the Disputed Claims Reserve, including the issuance of Litigation Trust Beneficial Interests and distribution of Cash to holders of Disputed Claims that become Allowed Claims after the Effective Date;

(v) to settle or otherwise resolve Assigned Claims in accordance with the terms of the Plan Documents;

(vi) in the Litigation Trustee's reasonable business judgment and to the extent consistent with the terms of the Plan, to investigate, prosecute, settle, liquidate, dispose of, and/or abandon the Litigation Trust Assets, including the Avoidance Actions held by the Debtors or their Estates;

(vii) to monitor and enforce the implementation of the Plan insofar as relating to the Litigation Trust Assets;

(viii) to file all tax and regulatory forms, returns, reports and other documents and financial information required with respect to the Litigation Trust;

(ix) in the Litigation Trustee's reasonable business judgment, to reconcile, object to, and resolve the Assigned Claims or other Claims against the Litigation Trust, and manage, control, prosecute and/or settle on behalf of the Estates or the Litigation Trust objections to the Assigned Claims;

(x) to hold, manage, and distribute Cash or non-Cash Litigation Trust Assets obtained through the exercise of its power and authority;

(xi) to maintain and dispose of the books and records transferred to the Litigation Trustee in a manner deemed appropriate by the Litigation Trustee, as provided in Section 2.11 and Section 11.3;

(xii) to enter into and exercise rights under contracts that are necessary or desirable to the administration of the Litigation Trust and execute any documents or pleadings related to the liquidation of the Litigation Trust Assets or other matters related to the Litigation Trust;

(xiii) to establish and maintain bank accounts and terminate such accounts;

(xiv) to obtain and maintain insurance coverage with respect to the liabilities and obligations of the Litigation Trustee and the Litigation Trust Board and its members in accordance with the Trust Agreement;

(xv) to take all actions necessary and appropriate to minimize any adverse tax consequences to the Litigation Trust Beneficiaries; provided, that such actions do not result in an adverse tax consequence to the Litigation Trust and are consistent with and are not contrary to the treatment of the Litigation Trust as a “grantor trust” for United States federal income tax purposes;

(xvi) to remove and replace the Delaware Trustee;

(xvii) to bring suits or defend itself against such suits, if any, as the Litigation Trustee determines in connection with any matter solely to the extent arising from the rights, powers or obligations granted to the Litigation Trust or Litigation Trustee under this Trust Agreement and otherwise consistent with the Plan;

(xviii) to file monthly operating reports on behalf of the Debtors, from and after the Effective Date; and

(xix) to take such other and further actions in furtherance of the purposes of the Plan Documents in respect of the Debtors and their Estates as are not inconsistent this Trust Agreement.

(c) For the avoidance of doubt, the Litigation Trustee, Litigation Trust and any successor Litigation Trustee shall only investigate, prosecute or commence any Claim or Cause of Action against a person to the extent such Claim or Cause of Action is identified in Exhibit A or such Claim or Cause of Action relates solely to the administration of the Litigation Trust (such as, but not limited to, Claims and Causes of Action involving contracts entered into by the Trustee in furtherance of the purposes of this Trust Agreement and Claims and Causes of Action relating to employees and consultants retained by the Trustee and other similar administrative matters). Notwithstanding the prior sentence or any other provision in this Trust Agreement, the Litigation Trustee, Litigation Trust and any successor Litigation Trustee shall not have the right, power or authority to investigate, prosecute or commence any Claim or Causes of Action against a Released Party or their Related Persons.

6.5 Investment of Litigation Trust Assets. The Litigation Trustee may invest Litigation Trust Assets (including any earnings thereon or proceeds therefrom) in any manner permitted to be made by a Litigation Trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable Internal Revenue Service guidelines, rulings, or other controlling authorities.

6.6 Limitations on Actions of Litigation Trustee. No part of the Litigation Trust Assets shall be used or disposed of by the Litigation Trustee in furtherance of any trade or business. The Litigation Trustee shall, on behalf of the Litigation Trust, hold the Litigation Trust out as a trust in the process of liquidation and not as an investment company. The Litigation Trustee shall not engage in any investments or activities inconsistent with the treatment of the



Litigation Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d). The Litigation Trustee shall be restricted to the liquidation of the Litigation Trust Assets on behalf, and for the benefit, of the Litigation Trust Beneficiaries; the distribution and application of Litigation Trust Assets for the purposes set forth in this Trust Agreement; and the conservation and protection of the Litigation Trust Assets and the administration thereof in accordance with the provisions of the Plan Documents.

6.7 Settlement of Assigned Claims. The Litigation Trustee shall have the authority, with the Majority Consent of the Litigation Trust Board to the extent provided in Section 5.3, to settle all Assigned Claims that are Disputed Claims without further Bankruptcy Court order. If the Litigation Trustee and the holder of an Assigned Claim are unable to reach a settlement on such Disputed Claim, such Disputed Claim shall be submitted to the Bankruptcy Court for resolution. If it is determined that the Bankruptcy Court does not have jurisdiction to resolve any Assigned Claim that is a Disputed Claim, then such Disputed Claim shall be submitted to the District Court for resolution. The Litigation Trustee shall file with the Bankruptcy Court a quarterly notice of Disputed Claims resolved and/or settled during the prior quarter, starting with the first quarter after the Effective Date.

6.8 Establishment of Reserves.

(a) Disputed Claims Reserves. On the Effective Date, the Litigation Trustee shall establish the Disputed Claims Reserve, which shall be maintained in an interest-bearing account with a United States FDIC insured financial institution. On the Effective Date and from time to time thereafter, the Litigation Trustee shall deposit a Pro Rata Share of Available Cash to be retained by the Litigation Trust in respect of the Pro Rata Share of the Estimated Amount of Disputed Claims. For the avoidance of doubt, Cash held in the Disputed Claims Reserve may be held in a single account with the unreserved Cash portion of the Litigation Trust Assets; provided, however, that the Litigation Trustee reserves the appropriate amounts for the Disputed Claims Reserve (as provided in this Trust Agreement) within such account. Cash in the Disputed Claims Reserve shall be distributed in accordance with Section 4.2.

(b) Litigation Trust Administrative Reserves. The Litigation Trustee shall have the authority to establish, fund, and maintain the Litigation Trust Administrative Reserves in amounts necessary to satisfy the obligations for which the Litigation Trust Administrative Reserves are maintained. The Litigation Trust Administrative Reserves shall be maintained in an interest-bearing account with a United States FDIC insured financial institution.

6.9 Reporting Requirements.

(a) As soon as practicable after the Effective Date, the Litigation Trustee shall deliver to the Litigation Trust Board a report of the Litigation Trustee's recommendations with respect to objections to Assigned Claims, the pursuit of specific Avoidance Actions, and the retention and employment of professionals, including attorneys (the "**Initial Report**"). The Litigation Trust Trustee shall take no action in connection with the recommendations contained in the Initial Report until it is approved by the Litigation Trust Board pursuant to Section 5.3(b) hereof.

(b) The Litigation Trustee shall deliver quarterly reports to members of the Litigation Trust Board, which shall specify in reasonable detail:

(i) the status of the Avoidance Actions, including any settlements entered into by the Litigation Trust during the most recent quarter;

(ii) the status of the Assigned Claims, including any settlements or resolutions of such Assigned Claims during the most recent quarter;

(iii) the fees and expenses of the Litigation Trust and the Litigation Trustee, including any professional fees, incurred and/or earned during the most recent quarter;

(iv) a description of the Litigation Trust Assets received and/or disposed of by the Litigation Trust during the most recent quarter;

(v) the available Cash, as of the end of the most recent quarter, including the Disputed Claims Reserve as of such time;

(vi) the aggregate amount of distributions from the Litigation Trust to Litigation Trust Beneficiaries during the most recent quarter; and

(vii) such other information as the Litigation Trust Board may reasonably request from time to time.

The Litigation Trustee shall file a copy of items (iii) through (vii) of such quarterly reports with the Bankruptcy Court. The Reorganized Debtors, each Prepetition Lender entitled to receive a Litigation Trust Beneficial Interest and the Oakhill Entities shall be entitled, at their sole cost and expense, to raise objections with respect to the reasonableness of the fees and expenses of the Litigation Trust and the Litigation Trustee with the Bankruptcy Court, provided, that the Reorganized Debtors, the Prepetition Lenders entitled to receive a Litigation Trust Beneficial Interest and the Oakhill Entities shall not object with respect to any contingency fee arrangement agreed to by the Litigation Trust or the Litigation Trustee solely on the basis of the fee percentage, so long as it does not exceed thirty-five percent (35%) of the proceeds of any one judgment, settlement or other disposition of an Avoidance Action.

The Litigation Trustee shall also timely prepare, file and distribute such additional statements, reports and submissions (A) as may be necessary to cause the Litigation Trust and the Litigation Trustee to be in compliance with applicable law or (B) as may be otherwise requested from time to time by the Litigation Trust Board or the Bankruptcy Court or as set forth in this Trust Agreement.

(c) The Litigation Trustee shall make itself available for monthly telephonic conference calls with the Litigation Trust Board, as requested by the Litigation Trust Board upon reasonable notice to the Litigation Trustee, to provide interim updates on the matters set forth in Section 6.9(a) above.

(d) The Litigation Trustee shall make available to the Litigation Trust Beneficiaries on a quarterly basis, by such means, which may include filing with the Bankruptcy Court, as the Litigation Trustee may select, such information regarding the affairs of the Litigation Trust during the most recent quarter, as the Litigation Trustee in consultation with the Litigation Trust Board shall deem appropriate.

(e) On the Satisfaction Date, the Litigation Trustee shall file a notice with the Bankruptcy Court and provide notice to the Reorganized Debtors and each party entitled to receive a Litigation Trust Beneficial interest of the occurrence of the Satisfaction Date.

6.10 No Further Approvals Required. In performance of its duties hereunder, the Litigation Trustee shall have the rights and powers of a debtor in possession under section 1107 of the Bankruptcy Code, and such other rights, powers, and duties necessary, appropriate, advisable or convenient to effectuate the provisions of the Plan Documents. Subject to the prior consent of the Litigation Trust Board to the extent set forth in this Trust Agreement, on and after the Effective Date, the Litigation Trustee shall not be required to obtain any approvals from the Bankruptcy Court, any court or governmental body and/or provide any notices under any applicable laws to implement the terms of the Plan Documents, including, without limitation, the sale, transfer, disposal or contribution of any Litigation Trust Assets retained by the Litigation Trust; the prosecution, settlement or abandonment of any Avoidance Action that is a Litigation Trust Assets; and the negotiation, resolution or settlement of any Assigned Claims, in each case, other than as expressly required under this Trust Agreement.

6.11 Reliance by Litigation Trustee. Except as otherwise provided in the Plan Documents, the Litigation Trustee may rely, and shall be protected in acting, upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the Litigation Trustee to be genuine and to have been signed or presented by the proper party or parties.

6.12 Liability to Third Persons. The Litigation Trustee Parties shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Litigation Trust Assets or the affairs of the Litigation Trust, and all persons claiming against the Litigation Trustee Parties, or otherwise asserting claims of any nature in connection with affairs of the Litigation Trust, shall look solely to the Litigation Trust Assets for satisfaction of any such claims, except where a Litigation Trustee Party is found pursuant to a Final Order to have acted with gross negligence, fraud or reckless or willful misconduct.

6.13 Nonliability of Litigation Trustee for Acts of Others. Nothing contained in the Plan Documents shall be deemed to be an assumption by the Litigation Trustee of any of the liabilities, obligations or duties of the Debtors and shall not be deemed to be or contain a covenant or agreement by the Litigation Trustee to assume or accept any such liability, obligation or duty.

6.14 Compensation and Expenses. The Litigation Trustee shall be compensated in accordance with 11 U.S.C. § 326(a), or as shall otherwise be agreed between the Litigation Trustee and the Litigation Trust Board in accordance with this Trust Agreement, and shall be reimbursed for its out-of-pocket expenses incident to the performance of its duties under this

Trust Agreement. The fees and expenses of the Litigation Trustee shall be satisfied out of the Litigation Trust Assets and shall be in accordance with the Litigation Trust Reserve.

6.15 Reliance on Professionals. Subject to approval of the Bankruptcy Court, the Litigation Trustee shall be entitled to rely, in good faith, on the advice of its retained advisors and professionals regardless of whether such advice is provided in writing. Notwithstanding the foregoing, the Litigation Trustee shall not be under any obligation to consult with their retained professionals, and its determination not to do so shall not result in the imposition of liability on the Litigation Trustee, unless such determination is based on gross negligence, fraud or reckless or willful misconduct.

## **ARTICLE VII**

### **SUCCESSOR LITIGATION TRUSTEES**

7.1 Resignation. The Litigation Trustee may resign at any time upon not less than sixty (60) days' written notice to the Litigation Trust Board; provided, that the Litigation Trust Board may waive such notice requirement; and provided, further that such resignation shall not be effective until such time as a successor Litigation Trustee has been appointed.

7.2 Removal. Prior to the Satisfaction Date, the Litigation Trustee may be removed for Cause by the Litigation Trust Board by thirty (30) days' prior written notice of such removal; provided that such removal shall not be effective until such time as a successor Litigation Trustee has been appointed in accordance with Section 7.4. From and after the Satisfaction Date, the Litigation Trustee may be removed the Litigation Trust Board by thirty (30) days' prior written notice of such removal; provided that such removal shall not be effective until such time as a successor Litigation Trustee has been appointed in accordance with Section 7.4.

7.3 Effect of Resignation or Removal.

(a) The resignation, removal, incompetency, bankruptcy or insolvency of the Litigation Trustee shall not operate to terminate the Litigation Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement, or invalidate any action theretofore taken by the Litigation Trustee. All fees and expenses incurred by the Litigation Trustee prior to the resignation, incompetency or removal of the Litigation Trustee shall be paid from the Litigation Trust Administrative Reserve, unless such fees and expenses are disputed by (i) the Litigation Trust Board or (ii) the successor Litigation Trustee, in which case the Bankruptcy Court shall resolve the dispute, and any disputed fees and expenses of the predecessor Litigation Trustee that are subsequently allowed by the Bankruptcy Court shall be paid from the Litigation Trust Administrative Reserve.

(b) In the event of the resignation or removal of the Litigation Trustee, such Litigation Trustee shall (i) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the successor Litigation Trustee or directed by the Bankruptcy Court to effect the termination of such Litigation Trustee's capacity under this Trust Agreement; (ii) promptly deliver to the successor Litigation Trustee all documents, instruments, records and other writings related to the Litigation Trust as may be in the possession of such

Litigation Trustee; and (iii) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Litigation Trustee.

(c) Notice of the resignation or removal of the Litigation Trustee shall be promptly filed with the Bankruptcy Court.

7.4 Replacement. In the event that the Litigation Trustee resigns or is duly removed, or in the event of the death of the Litigation Trustee or other occurrence rendering the Litigation Trustee incapacitated or unavailable for an extended period of thirty (30) consecutive days, a successor Litigation Trustee shall be designated by Majority Consent of the Litigation Trust Board. Notice of the appointment of a successor Litigation Trustee shall be filed with the Bankruptcy Court promptly following such appointment.

7.5 Successor Litigation Trustee. Any successor Litigation Trustee appointed hereunder shall execute an instrument accepting its appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing and, in the case of the Litigation Trustee's resignation, to the resigning Litigation Trustee. Thereupon, such successor Litigation Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges of its predecessor in the Litigation Trust with like effect as if originally named Litigation Trustee and shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The resigning or removed Litigation Trustee shall duly assign, transfer and deliver to such successor Litigation Trustee all property and money held by such resigning or removed Litigation Trustee hereunder and shall, as directed by the Bankruptcy Court or reasonably requested by such successor Litigation Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Litigation Trustee upon the trusts herein expressed all the liabilities, duties, powers, rights, title, discretion and privileges of such resigning or removed Litigation Trustee.

7.6 Reliance Upon Representations of Predecessor Litigation Trustee. Any successor Litigation Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Litigation Trustee hereunder, and any statement or representation made as to the assets comprising the Litigation Trust Assets or as to any other fact bearing upon the prior administration of the Litigation Trust, so long as it has a good-faith basis to do so. The Litigation Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement or representation if it is later proved to be incomplete, inaccurate or untrue. Any successor Litigation Trustee shall not be liable for any act or omission of any predecessor Litigation Trustee, nor have a duty to enforce any claims against any predecessor Litigation Trustee on account of any such act or omission, unless directed to do so by the Litigation Trust Board.

## **ARTICLE VIII** **DELAWARE TRUSTEE**

8.1 Appointment. The Delaware Trustee, shall act solely for the purpose of complying with the requirement of section 3807 of the Trust Act. The Delaware Trustee may be the Disbursing Agent.

8.2 Powers.

(a) The duties and responsibilities of the Delaware Trustee shall be limited solely to (i) accepting legal process served on the Litigation Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Delaware Trustee is required to execute under section 3811 of the Trust Act (including without limitation the Certificate of Trust), and (iii) any other duties specifically allocated to the Delaware Trustee in this Trust Agreement. Except as provided in the foregoing sentence, the Delaware Trustee shall have no management responsibilities or owe any fiduciary duties to the Litigation Trust, the Litigation Trustee, the Litigation Trust Board or the Litigation Trust Beneficiaries. The Delaware Trustee is hereby authorized and directed to file a Certificate of Trust with the Secretary of State of the State of Delaware as provided under the Trust Act if not previously filed, and if previously filed, such filing is hereby ratified.

(b) By its execution hereof, the Delaware Trustee accepts the trusteeship of the Litigation Trust on the terms set forth herein. Except as otherwise expressly set forth in Section 8.2(a), the Delaware Trustee shall not have any duty or liability with respect to the administration of the Litigation Trust, the investment of the Litigation Trust Assets or the distribution of the Litigation Trust Assets to the Litigation Trust Beneficiaries, and no such duties shall be implied. The Delaware Trustee shall not be liable for the acts or omissions of the Litigation Trustee or the Litigation Trust Board, nor shall the Delaware Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Litigation Trustee or the Litigation Trust Board under this Trust Agreement, except as may be expressly required by Section 8.2(a) hereof. The Delaware Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The Delaware Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, bad faith or gross negligence. Without limiting the foregoing:

(i) the Delaware Trustee shall not be personally liable for any error of judgment made in good faith, except to the extent such error of judgment constitutes willful misconduct, bad faith or gross negligence;

(ii) no provision of this Trust Agreement shall require the Delaware Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder if the Delaware Trustee has reasonable grounds to believe that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it;

(iii) the Delaware Trustee shall not be personally liable for the validity or sufficiency of this Trust Agreement or for the due execution hereof by the other parties hereto;

(iv) the Delaware Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect;

(v) the Delaware Trustee may request the Litigation Trustee to provide a certificate with regard to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vi) in the exercise or administration of the Litigation Trust hereunder, the Delaware Trustee (I) may act directly or through agents or attorneys pursuant to agreements entered into with any of them, and (II) may consult with nationally recognized counsel selected by it in good faith and with due care and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel; and

(vii) the Delaware Trustee acts solely as Delaware Trustee hereunder and not in its individual capacity, and all persons having any claim against the Delaware Trustee by reason of the transactions contemplated by this Trust Agreement shall look only to the Litigation Trust Assets for payment or satisfaction thereof.

8.3 Compensation. The Delaware Trustee shall be entitled to receive compensation out of the Litigation Trust Administrative Reserve for the services that the Delaware Trustee performs in accordance with this Trust Agreement in accordance with such fee schedules as shall be agreed from time to time by the Delaware Trustee, the Litigation Trustee and the Litigation Trust Board, and if so required by the Plan, the Confirmation Order or applicable law, as approved by the Bankruptcy Court. The Delaware Trustee may also consult with counsel (who may be counsel for the Litigation Trustee or for the Litigation Trust Board) with respect to those matters that relate to the Delaware Trustee's role as the Delaware Trustee of the Litigation Trust, and the reasonable legal fees incurred in connection with such consultation shall be reimbursed out of the Litigation Trust Administrative Reserve.

8.4 Duration and Replacement. The Delaware Trustee shall serve for the duration of the Litigation Trust or until the earlier of (i) the effective date of the Delaware Trustee's resignation, or (ii) the effective date of the removal of the Delaware Trustee. The Delaware Trustee may resign at any time by giving thirty (30) days' written notice to the Litigation Trustee and the Litigation Trust Board; provided, however, that such resignation shall not be effective until such time as a successor Delaware Trustee has accepted appointment. The Delaware Trustee may be removed at any time by the Litigation Trustee, with the Majority Consent of the Litigation Trust Board, by providing thirty (30) days' written notice to the Delaware Trustee; provided, however, that such removal shall not be effective until such time as a successor Delaware Trustee has accepted appointment. Upon the resignation or removal of the Delaware Trustee, the Litigation Trustee, with the Majority Consent of the Litigation Trust Board, shall appoint a successor Delaware Trustee. If no successor Delaware Trustee shall have been appointed and shall have accepted such appointment within forty-five (45) days after the giving of such notice of resignation or removal, the Delaware Trustee may petition the Bankruptcy Court for the appointment of a successor Delaware Trustee. Any successor Delaware Trustee appointed pursuant to this Section shall be eligible to act in such capacity in accordance with this Trust Agreement and, following compliance with this Section, shall become fully vested with the

rights, powers, duties and obligations of its predecessor under this Trust Agreement, with like effect as if originally named as Delaware Trustee. Any such successor Delaware Trustee shall notify the Delaware Trustee of its appointment by providing written notice to the Delaware Trustee and upon receipt of such notice, the Delaware Trustee shall be discharged of its duties herein. Any such successor Delaware Trustee shall also file an amendment to the Certificate of Trust as required by the Trust Act.

**ARTICLE IX**  
**TAX MATTERS**

9.1 Tax Treatment.

(a) For all U.S. federal income tax purposes, all parties (including, without limitation, the Debtors, the Litigation Trustee and the Litigation Trust Beneficiaries) shall treat the transfer of the Litigation Trust Assets to the Litigation Trust as:

(i) a transfer of the Litigation Trust Assets (subject to any obligations relating to those assets) directly to Litigation Trust Beneficiaries and, to the extent the Litigation Trust Assets are allocable to Disputed Claims (based on such Claims' Pro Rata Share of such Litigation Trust Assets) to the Disputed Claims Reserve, followed by

(ii) the transfer by such Litigation Trust Beneficiaries to the Litigation Trust of the Litigation Trust Assets (other than the Litigation Trust Assets allocable to the Disputed Claims Reserve) in exchange for the Litigation Trust Beneficial Interests.

(b) Accordingly, those holders of Allowed General Unsecured Claims receiving Litigation Trust Beneficial Interests shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Litigation Trust Assets (other than such Litigation Trust Assets as are allocable to the Disputed Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9.2 Tax Reporting.

(a)

(i) The Litigation Trustee shall file Tax Returns (including U.S. federal returns) for the Litigation Trust treating the Litigation Trust (other than with respect to the Litigation Trust Assets allocable to the Disputed Claims Reserve) as a grantor trust pursuant to Treasury Regulations section 1.671-4(a) and in accordance with this Article IX. The Litigation Trustee shall also annually send to (or otherwise make available) each holder of a Litigation Trust Beneficial Interest a statement setting forth the holder's share of items of income, gain, loss, deduction or credit and will instruct all such holders to report such items on their U.S. federal income tax returns or to forward the appropriate information to their



respective beneficial holders with instructions to report such items on their U.S. federal income tax returns. The Litigation Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Litigation Trust as required by any governmental unit.

(ii) As soon as practicable following the Effective Date, the Litigation Trustee will in good faith value Litigation Trust Assets, and shall make all such values available from time to time, to the extent relevant, and such values shall be used consistently by all parties to the Litigation Trust (including, without limitation, the Debtors, the Litigation Trustee, and Litigation Trust Beneficiaries) for all United States federal income tax purposes.

(b) Allocations of the Litigation Trust's taxable income among the Litigation Trust Beneficiaries (other than taxable income allocable to the Disputed Claims Reserve) shall be determined in good faith by the Litigation Trustee by reference to the manner in which an amount of Cash representing such taxable income would be distributed (were such Cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Litigation Trust had distributed all its assets (valued at their tax book value, and other than assets allocable to the Disputed Claims Reserve) to the holders of the Litigation Trust Beneficial Interests, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Litigation Trust. Similarly, taxable loss of the Litigation Trust (other than taxable loss allocable to the Disputed Claims Reserve) shall be allocated in good faith by the Litigation Trustee by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Litigation Trust Assets. The tax book value of the Litigation Trust Assets for this purpose shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements, as determined in good faith by the Litigation Trustee.

(c) Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Litigation Trustee), the Litigation Trustee shall (A) timely elect to treat any Litigation Trust Assets allocable to the Disputed Claims Reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9, and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Litigation Trustee and the Litigation Trust Beneficiaries) shall report for U.S. federal, state and local income tax purposes consistently with the foregoing.

(d) The Litigation Trustee may request an expedited determination of Taxes of the Litigation Trust, including the Disputed Claims Reserve.

9.3 Tax Payment. The Litigation Trustee shall be responsible for the payment, out of the Litigation Trust Assets, of any taxes imposed on the Litigation Trust or its assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on

account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay any portion of such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims (including any income that may arise upon the distribution of the assets of the Disputed Claims Reserve), such taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims or (b) to the extent such Disputed Claims subsequently have been resolved, deducted from any amounts distributable by the Litigation Trustee as a result of the resolutions of such Disputed Claims.

**ARTICLE X**  
**LIMITATION OF LIABILITY AND INDEMNIFICATION**

10.1 Limitation of Liability. The Trustees, the members of the Litigation Trust Board, and their respective advisors and professionals will not be liable for punitive, exemplary, consequential, special or other damages for a breach of this Trust Agreement under any circumstances.

10.2 Indemnification.

(a) The Litigation Trustee Parties, the Delaware Trustee, the Litigation Trust Board Parties and the employees, agents and professionals of each of the foregoing, as the case may be, shall be indemnified and held harmless and shall not be liable for actions taken or omitted in their capacity as the Litigation Trustee, the Delaware Trustee or a member of the Litigation Trust Board of, or on behalf of, or in fulfillment of their duties with respect to, the Litigation Trust, except those acts that are determined by Final Order to have arisen out of their own gross negligence, fraud or reckless or willful misconduct, and each shall be entitled to be indemnified, held harmless, and reimbursed for fees and expenses including, without limitation, reasonable attorney's fees, which such persons and entities may incur or may become subject to or in connection with any action, suit, proceeding or investigation that is brought or threatened against such persons or entities regarding the implementation or administration of the Plan Documents or the discharge of their respective duties hereunder or thereunder or in respect thereof, except for any actions or inactions that have arisen out of their own gross negligence, fraud, recklessness or willful misconduct.

(b) Any claim of the Litigation Trustee Parties, the Delaware Trustee or the Litigation Trust Board Parties (and the other parties entitled to indemnification under this Section) to be indemnified, held harmless, or reimbursed shall be satisfied solely from the Litigation Trust Assets, bonds (if any) or any applicable insurance that the Litigation Trust has purchased, as provided in Section 2.6.

**ARTICLE XI**  
**DURATION OF LITIGATION TRUST**

11.1 Duration. The Litigation Trustee and the Litigation Trust shall be discharged or dissolved, as the case may be, upon the earlier to occur of (i) all of the Litigation Trust Assets have been distributed pursuant to the Plan and the Trust Agreement, (ii) the Litigation Trustee determines, with the consent of the Litigation Trust Board, that the administration of any

remaining Litigation Trust Assets is not likely to yield sufficient additional Litigation Trust proceeds to justify further pursuit, and (iii) all distributions required to be made by the Litigation Trustee under the Plan and the Trust Agreement have been made; provided, however, in no event shall the Litigation Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the third (3rd) anniversary (or within the six-month period prior to the end of an extension period), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable private letter ruling from the IRS or an opinion of counsel satisfactory to the Litigation Trustee and the Litigation Trust Board that any further extension would not adversely affect the status of the trust as a liquidating trust for United States federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Litigation Trust Assets. If at any time the Litigation Trustee determines, in reliance upon such professionals as the Litigation Trustee may retain, that the expense of administering the Litigation Trust so as to make a final distribution to its beneficiaries is likely to exceed the value of the assets remaining in the Litigation Trust, the Litigation Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Litigation Trust, (ii) donate any balance to a charitable organization (A) described in section 501(c)(3) of the IRC, (B) exempt from United States federal income tax under section 501(a) of the IRC, (C) not a “private foundation”, as defined in section 509(a) of the IRC, and (D) that is unrelated to the Debtors, the Reorganized Debtors, the Litigation Trust, and any insider of the Litigation Trustee, and (iii) dissolve the Litigation Trust.

11.2 Post-Termination. After the termination of the Litigation Trust and solely for the purpose of liquidating and winding up the affairs of the Litigation Trust, the Litigation Trustee shall continue to act as such until its duties have been fully performed. Upon distribution of all the Litigation Trust Assets, the Litigation Trustee shall retain all books and records pertaining to the Debtors or the Litigation Trust that have been delivered to or created by the Litigation Trustee, subject to the provisions of Section 11.3.

11.3 Destruction of Books and Records. At the Litigation Trustee’s discretion, all books and records pertaining to the Debtors or the Litigation Trust that have been delivered to or created by the Litigation Trustee may be destroyed at any time following the date that is six (6) years after the final distribution of Litigation Trust Assets (unless such records and documents are necessary to fulfill the Litigation Trustee’s remaining obligations) subject to the terms of any joint prosecution and common interests agreement(s) to which the Litigation Trustee may be a party; provided, however, that the Litigation Trustee shall obtain an order of the Bankruptcy Court before disposing of any books and records that are reasonably likely to pertain to pending litigation in which the Debtors or their current or former officers or directors are a party.

11.4 Discharge. Except as otherwise specifically provided herein, upon the final distribution of Litigation Trust Assets, the Litigation Trustee shall be deemed discharged and have no further duties or obligations hereunder, the Litigation Trust Beneficial Interests shall be cancelled and the Litigation Trust will be deemed to have been dissolved. In the event that there are Litigation Trust Assets at the termination of the Litigation Trust, the Litigation Trustee shall donate such Litigation Trust Assets to a charitable organization of the Litigation Trustee’s choice described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code, as provided in Section 2.8(b).

**ARTICLE XII**  
**MISCELLANEOUS PROVISIONS**

12.1 Governing Law. This Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (without reference to conflicts of law).

12.2 Jurisdiction. Subject to the proviso below, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Litigation Trust and the Litigation Trustee, including, without limitation, the administration and activities of the Litigation Trust and the Litigation Trustee, provided, however, that notwithstanding the foregoing or anything to the contrary set forth in the Plan, the Litigation Trustee shall have power and authority to bring any action in any court of competent jurisdiction to prosecute any Avoidance Action or Assigned Claims that is assigned to the Litigation Trust.

12.3 Severability. In the event that any provision of this Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Trust Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Trust Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.4 Notices. Any notice or other communication required or permitted to be made under this Trust Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by telex, facsimile or other telegraphic means, sent by nationally recognized overnight delivery service, or mailed by first-class mail:

(i) if to the Litigation Trustee, to:

Barry E. Mukamal  
One SE Third Avenue, Tenth Floor  
Miami, FL 33131  
F: (305) 995-9601  
[Barry.Mukamal@marcumllp.com](mailto:Barry.Mukamal@marcumllp.com)

(ii) if to the Delaware Trustee, to:

CSC Trust Company of Delaware  
Little Falls Centre One  
2711 Centerville Road  
Wilmington, DE 19808  
Attention: [Sandra Horowitz]

- (iii) if to a member of the Litigation Trust Board, to each of the following:

Tom Mercaldo  
154 Herbert St.  
Milford, CT 06461  
(203) 876-7822 (phone)  
(203) 876-9804 (fax)  
tmercald@aquinasconsulting.com

Mark Walenczyk  
5050 Poplar Ave., Suite 1734  
Memphis, TN 38154  
(901) 255-2623  
(901) 302-9278 (fax)  
markw@williamsaerollc.com

Barry Mukamal  
One Southeast Third Avenue, 10th Floor  
Miami, FL 33131  
(305) 995-9770 (phone)  
(305) 377-8331 (fax)  
barry.mukamal@marcumllp.com

- (iv) if to any Litigation Trust Beneficiary, to the last known address of such Litigation Trust Beneficiary according to the Litigation Trustee's records

12.5 Headings. The headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or of any term or provision hereof.

12.6 Plan. Nothing contained herein shall modify the terms of the Plan or the Confirmation Order; instead, the terms of this Trust Agreement are intended to supplement them. To the extent that the terms of the Plan are inconsistent with the terms set forth in this Trust Agreement with respect to the Litigation Trust, then the terms of this Trust Agreement shall govern; provided, however, that the release, injunction, and exculpation provisions contained in Article XXXI of the Plan (and the defined terms related thereto) shall be controlling notwithstanding any other provision of this Trust Agreement. The Litigation Trust, the Litigation Trustee and any successor Litigation Trustee shall at all times be bound by the terms of the Plan, including without limitation the release, injunction and exculpation provisions contained therein. For the avoidance of doubt, the Litigation Trust, the Litigation Trustee, any successor Litigation Trustee and any defendant in any action commenced in connection with this Trust Agreement shall at all times be enjoined from pursuing any Claims or Causes of Action against the Released Parties and their Related Persons.

12.7 Cooperation. The Debtors shall turn over or otherwise make available to the Litigation Trustee at no cost to the Litigation Trust or the Litigation Trustee, all books and records reasonably required by the Litigation Trustee to carry out its duties hereunder, and shall agree to otherwise reasonably cooperate with the Litigation Trustee in carrying out its duties hereunder; provided, that the Litigation Trust will reimburse the Reorganized Debtors for reasonable out-of-pocket fees, costs and expenses incurred in connection with the provision of information, documents and/or assistance requested by the Litigation Trustee, including, but not limited to, the Reorganized Debtors' costs and expenses incurred in providing copies of its books and records to the Litigation Trustee, legal fees and travel expenses attendant thereto; provided, further, that any objections the Litigation Trustee wishes to assert with respect to the reasonableness of the fees incurred by the Reorganized Debtors in connection herewith shall be referred to the Bankruptcy Court for resolution; provided, further, that if the Bankruptcy Court finds such fees incurred by the Reorganized Debtors to be reasonable (or finds the Reorganized Debtors' position more reasonable than that of the Litigation Trustee), the Litigation Trustee shall also reimburse the Reorganized Debtors for the fees and expenses incurred in connection with such challenge.

12.8 Confidentiality. The Litigation Trustee Parties and the Litigation Trust Advisory Parties, and their respective officers, directors, partners, managers, members and employees (the "Confidential Parties"), shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidential Party of or pertaining to the Debtors, the Litigation Trust, the Litigation Trust Beneficiaries or the Litigation Trust Assets; provided, however, that such information may be disclosed if—

- (i) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties; or
- (ii) such disclosure is required of the Confidential Parties pursuant to legal process, including subpoena or other court order or other applicable laws or regulations; or
- (iii) the Litigation Trust Board determines that such disclosure is in the interests of the Litigation Trust or the Litigation Trust Beneficiaries.

12.9 Entire Trust Agreement. This Trust Agreement and the Exhibits attached hereto contain the entire agreement between the parties and supersede all prior and contemporaneous agreements or understandings between the parties with respect to the subject matter hereof.

12.10 Named Party. In pursuing any Avoidance Actions, objecting to any Assigned Claim, or in disposing of any Litigation Trust Assets, or otherwise administering the Litigation Trust or any Litigation Trust Assets, including, without limitation, the execution of documents, such as releases, and agreements, the Litigation Trustee may pursue such matters and/or execute any such documents in the name of "Litigation Trust" and/or in its own name as Litigation Trustee or in such other names or such representative capacities as necessary or appropriate in the Litigation Trustee's discretion.

12.11 Amendment.

(a) This Trust Agreement and its Exhibits may not amended, modified, or supplemented without the prior written consent of the Litigation Trustee, the Reorganized Debtors, the Prepetition Agent and the Oak Hill Entities.

(b) Bankruptcy Court approval shall be required for any changes or amendments to this Trust Agreement that are inconsistent with the terms of the Plan or the Confirmation Order. Notwithstanding this Section no amendments to this Trust Agreement shall be inconsistent with the purpose and intention of the Litigation Trust to liquidate in an orderly manner the Litigation Trust Assets (which will maximize the value of such assets) in accordance with Treasury Regulations Section 301.7701-4(d) or, in the alternative, as allowed under Delaware law applicable to limited liability companies or limited liability partnerships. In the event that the Litigation Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), this Trust Agreement may be amended by the Litigation Trustee, with the Majority Consent of the Litigation Trust Board, to the extent necessary for the Litigation Trustee to take such action as it shall deem appropriate to have the Litigation Trust classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership under section 7704 of the Tax Code, including, if necessary, creating or converting it into a Delaware limited liability partnership or limited liability company that is so classified.

12.12 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code; the Bankruptcy Rules; or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Trust Agreement, and the word "herein" and words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision of this Trust Agreement. The term "including" shall mean "including, without limitation."

12.13 Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed original, but such counterparts shall together

constitute one and the same instrument. A facsimile or portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

**[REMAINDER OF PAGE BLANK]**



**IN WITNESS WHEREOF**, the parties hereto have executed this Trust Agreement or caused this Trust Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

Southern Air Holdings, Inc., Cargo 360, Inc.,  
Southern Air Inc., Air Mobility Inc., 21110 LLC,  
21111 LLC, 21221 LLC, 21550 LLC, 21576 LLC,  
21590 LLC, 21787 LLC, 21832 LLC, 23138 LLC,  
24067 LLC, 46914 LLC, CF6-50 LLC, Aircraft  
21380 LLC and Aircraft 21255 LLC

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

Barry E. Mukamal, as Litigation Trustee

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

CSC Trust Company of Delaware, as Delaware  
Trustee

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

**EXHIBIT A**

**ASSIGNED CLAIMS  
AND AVOIDANCE ACTIONS**

## Assigned Claims

Claim Number	Name	Claim Amount	Schedule Amount	Nature	Debtor Name
213	109-111 Glover LLC	UNLIQUIDATED	\$49,655.57	General Unsecured	Southern Air Inc.
216	117 Glover LLC	UNLIQUIDATED	\$41,057.07	General Unsecured	Southern Air Inc.
69	3M Company	\$176.76		General Unsecured	Southern Air Holdings, Inc.
214	79 Glover LLC	UNLIQUIDATED	\$37,753.85	General Unsecured	Southern Air Inc.
215	87 Glover LLC	UNLIQUIDATED	\$51,244.72	General Unsecured	CF6-50, LLC
97	AEON INTERNATIONAL TECHNOLOGIES INC	\$4,900.00		General Unsecured	Southern Air Inc.
218	AERSALE INC	\$162,000.00	\$162,000.00	General Unsecured	Southern Air Inc.
134	AIR ATLANTA ICELANDIA	\$800.00	\$800.00	General Unsecured	Southern Air Inc.
93	Air France Industries	\$246,766.58	\$221,843.58	General Unsecured	Southern Air Inc.
302	AIR-PRO LLC	\$9,400.00	\$9,400.00	General Unsecured	Southern Air Inc.
66	ALBERTO FONT	\$1,859.00		General Unsecured	Southern Air Holdings, Inc.
65	ALLIANCE GROUND INTERNATIONAL	\$4,427.50		General Unsecured	Southern Air Holdings, Inc.
67	ALLIANCE TRANSPORT SERVICES LLC	\$95.00	\$95.00	General Unsecured	Southern Air Inc.
9	Alpha Graphics #273	\$3,249.10		General Unsecured	Southern Air Holdings, Inc.
116	American InfoSource LP as Agent for T Mobile/T-Mobile USA Inc	\$1,126.66		General Unsecured	Southern Air Inc.
80	Ametek Ameron, LLC	\$920.00	\$400.00	General Unsecured	Southern Air Inc.
14	Ametek HSA	\$18,600.00	\$18,600.00	General Unsecured	Southern Air Inc.
306	ANA Trading Corp, USA	\$58,000.00	\$58,000.00	General Unsecured	Southern Air Inc.
48	Aquinas Consulting, LLC.	\$9,124.93		General Unsecured	Southern Air Holdings, Inc.
48	Aquinas Consulting, LLC.	\$68,503.17		General Unsecured	Southern Air Holdings, Inc.
225	ARINC Incorporated	\$54,453.01	\$30,927.39	General Unsecured	Southern Air Inc.
106	Astar USA, LLC	\$6,993.80	\$6,993.80	General Unsecured	Southern Air Inc.
257	Atlantic Aviation	\$11,018.57		General Unsecured	Southern Air Holdings, Inc.
263	Auto Alig Verkehrsbetrieb GmbH	FOREIGN		General Unsecured	Southern Air Inc.
100	AV-AIR, Inc.	\$150,733.00		General Unsecured	Southern Air Holdings, Inc.
152	AVI FOODSYSTEMS INC	\$31,538.47	\$20,604.55	General Unsecured	Southern Air Inc.
49	Aviall Inc	\$77,328.72		General Unsecured	Southern Air Holdings, Inc.
142	Avianor Inc.	\$6,000.00		General Unsecured	Southern Air Holdings, Inc.
172	AVIAPARTNER Belgium NV	FOREIGN	\$4,701.58	General Unsecured	Southern Air Inc.
120	Avtrade Limited	\$21,392.73	\$6,576.50	General Unsecured	Southern Air Inc.
58	Barry E. Mukamal, Liquidating Trustee, on Behalf of the Arrow Unsecured CreditorTrust	\$811,739.63		General Unsecured	Southern Air Inc.
127	C.A.L. - Cargo Air Lines, Ltd	\$49,368.33	\$0.00	General Unsecured	Southern Air Inc.
38	C.S.C. Force Measurement, Inc.	\$6,614.00		General Unsecured	Southern Air Holdings, Inc.
147	CARGO AIR TRANSPORT INC	\$3,635.00	\$1,885.00	General Unsecured	Southern Air Inc.
64	CARGO FORCE	\$428.00	\$428.00	General Unsecured	Southern Air Inc.

## Assigned Claims

Claim Number	Name	Claim Amount	Schedule Amount	Nature	Debtor Name
241	CAROL A. ROSS	UNLIQUIDATED		General Unsecured	Southern Air Inc.
229	Citrix Online, LLC	\$3,787.50	\$3,787.50	General Unsecured	Southern Air Inc.
34	City Carting Inc. and Related Companies	\$1,047.55		General Unsecured	Southern Air Holdings, Inc.
223	CLW REAL ESTATE SERVICE GROUP	\$53,918.00		General Unsecured	Southern Air Holdings, Inc.
112	Connecticut Business Systems	\$12,150.42		General Unsecured	Southern Air Inc.
26	Connecticut Light and Power Company	\$4,678.90	\$3,087.46	General Unsecured	Southern Air Inc.
27	Connecticut Light and Power Company	\$1,871.86	\$1,306.09	General Unsecured	Southern Air Inc.
227	Connecticut Light and Power Company	\$1,808.93	\$1,119.60	General Unsecured	Southern Air Inc.
33	Connecticut Light and Power Company	\$1,544.20	\$998.96	General Unsecured	Southern Air Inc.
32	Connecticut Light and Power Company	\$1,297.65	\$39.06	General Unsecured	Southern Air Inc.
25	Connecticut Light and Power Company	\$764.45	\$492.14	General Unsecured	Southern Air Inc.
28	Connecticut Light and Power Company	\$627.50	\$404.41	General Unsecured	Southern Air Inc.
140	Continental/United Airlines	\$6,940.35		General Unsecured	Southern Air Inc.
103	CT LIEN SOLUTIONS	\$475.00	\$375.00	General Unsecured	Southern Air Inc.
57	DAE INDUSTRIES	\$2,184.36		General Unsecured	Southern Air Holdings, Inc.
121	DIRECT ENERGY	\$1,572.97		General Unsecured	Southern Air Holdings, Inc.
122	DIRECT ENERGY	\$2.24		General Unsecured	Southern Air Holdings, Inc.
104	DIRECT ENERGY	\$1,437.30		General Unsecured	Southern Air Holdings, Inc.
123	DIRECT ENERGY	\$1,836.04		General Unsecured	Southern Air Holdings, Inc.
124	DIRECT ENERGY	\$6,104.44		General Unsecured	Southern Air Holdings, Inc.
125	DIRECT ENERGY	\$342.46		General Unsecured	Southern Air Holdings, Inc.
126	DIRECT ENERGY	\$466.30		General Unsecured	Southern Air Holdings, Inc.
136	EMPLOYMENT CONTRACTOR SERVICES	\$13,781.25	\$12,571.90	General Unsecured	Southern Air Inc.
262	EPCOR	\$113,404.80	\$30,000.00	General Unsecured	Southern Air Inc.
298	European Aviation Limited	\$17,970.00		General Unsecured	Southern Air Inc.
206	F & E AIRCRAFT MAINTENANCE LAX	\$173,470.50		General Unsecured	Southern Air Holdings, Inc.
92	FFC Services, Inc.	\$24,353.11		General Unsecured	Southern Air Inc.
52	First Class Air Repair	\$559,800.00	\$461,450.00	General Unsecured	Southern Air Inc.
137	FLITE COMPONENTS, LLC	\$229,500.00	\$187,500.00	General Unsecured	Southern Air Inc.
105	G4S COMPLIANCE & INVESTIGATION	\$5,128.48	\$3,823.67	General Unsecured	Southern Air Inc.
307	GE Inspection Technologies/ GE Capital	\$3,282.00		General Unsecured	Southern Air Holdings, Inc.
129	General Electric Company, acting through its GE Aviation Business	\$24,570.00	\$23,970.00	General Unsecured	Southern Air Inc.
35	Genesis Aviation, Inc.	\$83,383.62		General Unsecured	Southern Air Holdings, Inc.
71	GEORGE S. HOENIG LLC	\$3,250.00	\$3,000.00	General Unsecured	Southern Air Inc.
310	Global Aviation Resources, Inc.	\$118,808.58	\$106,471.50	General Unsecured	Southern Air Inc.
245	Global Parts Support, Inc.	\$62,953.00	\$53,443.00	General Unsecured	Southern Air Inc.
212	Goodrich Corporation, a UTC Aerospace Systems Company	UNLIQUIDATED	\$2,990.00	General Unsecured	Southern Air Inc.

## Assigned Claims

Claim Number	Name	Claim Amount	Schedule Amount	Nature	Debtor Name
168	Gregory Knize	\$343,288.00		General Unsecured	Southern Air Inc.
21	GRG Aircraft & Leasing, Inc.	\$4,000.00		General Unsecured	Southern Air Holdings, Inc.
117	HASHIM ZAKI	\$988,051.50	\$0.00	General Unsecured	Southern Air Inc.
68	Hinckley Allen Snyder LLP	\$95,026.47	\$56,754.97	General Unsecured	Southern Air Inc.
244	Inertial Airline Services Inc. DBA Inertial Aerospace Services, Inc.	\$23,137.50	\$22,837.50	General Unsecured	Southern Air Inc.
91	INFINITY AIR INC.	\$51.41		General Unsecured	Southern Air Inc.
148	Jan Pro Cleaning Systems Inc	\$7,893.30	\$7,893.30	General Unsecured	Southern Air Inc.
249	Jones Day	\$14,567.99	\$14,567.99	General Unsecured	Southern Air Inc.
51	Kellstrom Commercial Aerospace, Inc.	\$5,186.88	\$5,186.88	General Unsecured	Southern Air Inc.
132	KIMBALL ELECTRONIC LABORATORY INC	\$9,284.88	\$7,695.00	General Unsecured	Southern Air Inc.
175	KLM ROYAL DUTCH AIRLINES	\$1,363,470.98	\$0.00	General Unsecured	Southern Air Inc.
296	Kroll Ontrack	\$7,216.11	\$41.70	General Unsecured	Southern Air Inc.
113	L2 CONSULTING SERVICES INC.	\$4,715.20	\$4,715.20	General Unsecured	Southern Air Inc.
297	LIEGE AIRPORT	\$7,281.97	\$423.93	General Unsecured	Southern Air Inc.
221	LISA M. GILLEN	UNLIQUIDATED		General Unsecured	Southern Air Inc.
334	Littler Mendelson, P.C.	\$46,323.18		General Unsecured	Southern Air Holdings, Inc.
72	Lufthansa Systems Americas Inc.	\$85,588.08		General Unsecured	Southern Air Holdings, Inc.
222	MainFreight Inc (US)	\$1,063.74		General Unsecured	Southern Air Holdings, Inc.
109	Malaysian Airline System Berhad	\$976,476.38		General Unsecured	Southern Air Holdings, Inc.
74	McClellan Jet Services, LLC	\$17,382.45		General Unsecured	Southern Air Holdings, Inc.
75	McClellan Jet Services, LLC	\$400.00		General Unsecured	Southern Air Holdings, Inc.
17	Menzies Aviation Australia PTY LTD.	FOREIGN		General Unsecured	Southern Air Holdings, Inc.
79	Mitchell Aircraft Spares	\$27,746.84		General Unsecured	Southern Air Inc.
332	Neff Rental LLC	\$489.92		General Unsecured	Southern Air Inc.
45	Nevada Department of Taxation	\$870.05		General Unsecured	Southern Air Inc.
42	O.M. Management, Inc.	\$999.60		General Unsecured	Southern Air Holdings, Inc.
251	Pan Am International Flight Academy	\$42,718.75		General Unsecured	Southern Air Holdings, Inc.
63	PC Connection Sales Corp.	\$62,866.13		General Unsecured	Southern Air Inc.
54	PEGASUS AIRCRAFT MAINTENANCE	\$57,679.33	\$49,549.05	General Unsecured	Southern Air Inc.
43	Physicians Health Center	\$10,515.00		General Unsecured	Southern Air Holdings, Inc.
238	Prime Air, LLC	\$26,595.00	\$16,225.00	General Unsecured	Southern Air Inc.
98	Quality Air Services Inc	\$7,398.17		General Unsecured	Southern Air Holdings, Inc.
8	RICOH USA	\$246.51		General Unsecured	Southern Air Holdings, Inc.
44	ROBERT ELMDANAT	\$7,598.00		General Unsecured	Southern Air Holdings, Inc.
253	SABENA TECHNICS	\$32,078.78	\$20,882.47	General Unsecured	Southern Air Inc.
1	Sargent Aerospace & Defense	\$229,808.31		General Unsecured	Southern Air Holdings, Inc.
111	SATAIR USA INC.	\$3,841.83	\$3,841.83	General Unsecured	Southern Air Inc.

## Assigned Claims

Claim Number	Name	Claim Amount	Schedule Amount	Nature	Debtor Name
141	SEALED AIR	\$3,985.82	\$3,985.82	General Unsecured	Southern Air Inc.
130	SeaTac Venture 2010 LLC	\$244,905.76	\$21,533.93	General Unsecured	Southern Air Inc.
118	SHAOXI XU-THOMSON	UNLIQUIDATED		General Unsecured	Southern Air Inc.
327	SHELTAIR AVIATION JFK LLC	\$8,271.19	\$8,271.19	General Unsecured	Southern Air Inc.
62	Southern Pride Trucking, Inc.	\$750.00		General Unsecured	Southern Air Holdings, Inc.
145	SR Technics Switzerland Ltd.	\$542,559.81	\$503,149.42	General Unsecured	Southern Air Inc.
224	Swissport USA, Inc.	\$26,495.70	\$10,605.26	General Unsecured	Southern Air Inc.
177	TAXIS MELKIOR S.A.	FOREIGN	\$48.90	General Unsecured	Southern Air Inc.
15	Teledyne Controls	\$22,613.00		General Unsecured	Southern Air Holdings, Inc.
115	TELX-CLIFTON, LLC	\$5,260.00	\$2,630.00	General Unsecured	Southern Air Inc.
50	The Goodyear Tire & Rubber Company	\$3,412.25		General Unsecured	Southern Air Inc.
154	TNT Airways S.A.	\$4,250.46		General Unsecured	Southern Air Inc.
295	Total Aviation Handling Resources Ltd	\$58,372.20		General Unsecured	Southern Air Inc.
36	Total Quality Logistics	\$33,316.15	\$17,475.00	General Unsecured	Southern Air Inc.
250	Touchdown Aviation	\$42,849.45		General Unsecured	Southern Air Holdings, Inc.
149	TRAVELFOCUS	\$5,636.00		General Unsecured	Southern Air Holdings, Inc.
150	TROY LYGHT	\$5,028,500.00	\$0.00	General Unsecured	Southern Air Inc.
220	United Parcel Service, Inc.	\$324,235.29		General Unsecured	Southern Air Holdings, Inc.
151	UNIVERSAL ASSET MANAGEMENT	\$151,550.00	\$151,300.00	General Unsecured	Southern Air Inc.
254	V21 DC-10 LLC	\$3,724,834.70		General Unsecured	Southern Air Inc.
114	VAS Aero Services, Inc.	\$72,750.00	\$72,750.00	General Unsecured	Southern Air Inc.
23	W W Grainger Inc	\$13,425.31		General Unsecured	Southern Air Holdings, Inc.
96	WB MASON CO INC.	\$5,870.13	\$5,058.90	General Unsecured	Southern Air Inc.
231	Williams Aerospace, LLC	\$131,000.00	\$131,000.00	General Unsecured	Southern Air Inc.
61	Worldwide Express	\$28,539.13		General Unsecured	Southern Air Holdings, Inc.
146	X-airservices	\$4,854.35	\$4,228.39	General Unsecured	Southern Air Inc.
29	Yankee Gas Company	\$1,959.49	\$977.18	General Unsecured	Southern Air Inc.
31	Yankee Gas Company	\$875.60	\$415.98	General Unsecured	Southern Air Inc.
30	Yankee Gas Company	\$182.86	\$116.74	General Unsecured	Southern Air Inc.

Vendor	Transfer Date(s)	Total Disbursements
109-111 Glover LLC	7/16/2012, 8/15/2012	\$356,391.27
2 Oakwood LLC	7/16/2012, 8/1/2012	\$12,963.55
AAXICO	7/13/2012, 8/17/2012	\$17,794.00
Access America Transport	7/2/2012, 7/13/2012, 7/19/2012, 8/1/2012, 8/10/2012, 9/14/2012	\$61,939.60
ACL Airshop LTD	8/9/2012, 9/6/2012, 9/14/2012, 7/2/2012,	\$19,129.00
Aero Instruments and Avionics Inc.	7/13/2012, 9/26/2012	\$17,259.32
AerSale Inc	7/13/2012, 7/23/2012	\$46,500.00
Air Dispatch	7/13/2012, 9/25/2012	\$13,927.83
Air Support Group Inc.	7/2/2012, 7/13/2012, 7/19/2012, 8/10/2012, 9/14/2012	\$63,243.98
Airline Support Inc.	7/19/2012, 9/13/2012	\$15,584.65
Airmark Components	7/10/2012	\$12,320.00
Air-Pro LLC	7/2/2012, 8/1/2012	\$29,491.00
Alex Dazin	7/13/2012, 7/31/2012, 8/15/2012, 8/31/2012, 9/14/2012	\$29,115.15
Alliance Ground International	8/10/2012, 8/24/2012	\$14,935.00
AMB Partners II Local LP	7/5/2012, 8/2/2012, 9/6/2012	\$14,415.51
American Airlines Inc.	7/13/2012, 8/1/2012, 8/23/2012, 9/25/2012	\$31,566.58
ANA Trading Corp, USA	7/19/2012	\$10,000.00
Aquinas Consulting	8/1/2012, 8/10/2012, 8/22/2012	\$62,552.38
Astar USA LLC	8/1/2012, 8/16/2012	\$35,900.00
Atlas Air, Inc.	8/1/2012	\$25,778.50
Av-Air Inc.	7/19/2012, 8/10/2012	\$39,000.00
Avborne Accessories Sargent Aerospace & Defense	7/10/2012, 7/17/2012, 7/19/2012, 8/1/2012	\$120,998.73
Aviall, Inc.	7/10/12, 7/17/2012, 7/19/2012, 8/1/2012, 8/13/2012, 9/4/2012, 9/14/2012	\$363,655.72
BAE Systems Aircraft Controls Inc.	7/19/2012	\$11,626.00
BKD Technologies LLP	7/10/2012, 9/21/2012	\$10,109.96
Broward Aviation Services Inc.	7/2/2012, 7/19/2012	\$14,512.94
C L & P Northeast Utilities	7/2/2012, 8/10/2012, 9/5/2012, 7/2/2012, 8/1/2012	\$27,452.25
CBS - CT Business Systems	7/2/2012, 7/13/2012, 8/10/2012	\$11,768.60
CG Miami NDT LLC	8/10/2012, 9/17/2012	\$19,054.42
ColumbusJack-Regent	7/13/2012	\$15,300.00
Continental Airlines Inc.	7/5/2012, 8/2/2012, 8/15/2012	\$10,373.60
Corporate Air Parts Inc	8/8/2012, 9/18/2012	\$16,002.00

Vendor	Transfer Date(s)	Total Disbursements
Danbee Aerospace	8/1/2012	\$12,318.40
Diversified Aero Service	8/30/2012	\$10,500.00
Douglas Brooks Advanced Welding Tech LLC	7/31/2012, 8/15/2012, 8/31/2012, 9/14/2012	\$13,500.00
ESA P Portfolio LLC	7/6/2012, 7/17/2012, 8/21/2012	\$163,349.13
Federal Express	7/19/2012, 8/1/2012, 8/10/2012	\$25,307.64
Flite Components, LLC	7/2/2012, 7/19/2012, 8/1/2012	\$50,965.30
Forensic Risk Alliance LP	7/3/2012	\$13,743.75
G A Telesis CR Group SE LLC	7/13/2012, 7/19/2012, 8/1/2012, 8/10/2012	\$55,799.19
GE Inspection Technologies LP	7/2/2012	\$16,100.00
Genesis Aviation, Inc.	7/19/2012, 8/10/2012	\$59,863.10
George S. Hoenig LLC	7/10/2012, 9/7/2012	\$11,125.00
Global Aviation Resources	7/2/2012, 7/13/2012, 8/1/2012	\$45,000.00
Global Parts Support	7/13/2012, 8/1/2012	\$29,580.00
Hacor Inc.	8/22/2012	\$13,839.16
Inertial Aerospace Services Inc.	7/19/2012, 8/10/2012	\$31,375.00
Intertrade	7/26/2012, 9/11/2012	\$32,500.00
Java Express	7/13/2012, 7/19/2012, 8/1/2012, 8/10/2012, 9/6/2012	\$16,014.69
Jet-Away Aviation Services Inc.	7/24/2012, 8/27/2012	\$17,265.00
Joe Ferreira	7/31/2012, 8/31/2012	\$30,424.37
Kathryn A Schindelar	8/10/2012	\$25,000.00
Kemko Aerospace LLC	7/2/2012, 7/19/2012, 8/1/2012	\$13,354.59
Kimball Electronic Laboratory Inc	7/13/2012, 8/10/2012	\$11,055.00
Mach 2 Corp	7/5/2012, 7/11/2012, 7/12/2012, 7/17/2012, 7/17/2012, 7/18/2012, 7/20/2012, 7/24/2012, 8/10/2012, 9/11/2012	\$127,600.00
Mcintyre Group	7/2/2012, 7/13/2012, 7/19/2012, 8/1/2012, 8/10/2012, 8/23/2012, 8/30/2012, 9/6/2012, 9/17/2012, 9/26/2012	\$125,824.15
Midnite Air Corp dba Midnite Express	7/2/2012, 7/13/2012, 7/19/2012, 8/1/2012, 8/10/2012	\$46,125.22
Modern Machine Co.	7/2/2012, 8/10/2012	\$29,040.00
Nordam Repair Division	7/13/2012, 7/19/2012	\$62,456.30
North American Aircraft Services Inc.	7/19/2012, 8/1/2012	\$21,714.09
PLS Aviation Services Inc.	8/10/2012, 9/18/2012	\$20,675.00
Pratt & Whitney	7/17/2012, 9/7/2012	\$193,120.00
Prime Air Inc.	7/2/2012, 7/12/2012, 8/10/2012	\$83,200.00



Vendor	Transfer Date(s)	Total Disbursements
Quality Air Services Inc.	7/13/2012, 8/1/2012	\$12,990.70
Quality Aircraft Parts Inc.	7/2/2012, 8/10/2012	\$59,837.04
Robert Half International	7/2/2012, 7/13/2012, 8/10/2012	\$15,563.66
Saywell International Inc	8/1/2012	\$49,938.29
SeaTac Venture 2010 LLC	7/5/2012, 8/2/2012	\$43,067.86
Sentry Aerospace Corporation	7/6/2012, 8/10/2012	\$14,650.00
Servisair LLC	7/2/2012, 7/3/2012, 7/5/2012, 7/6/2012, 7/9/2012, 7/10/2012, 7/11/2012, 7/12/2012, 7/13/2012, 7/16/2012, 7/17/2012, 7/18/2012, 7/19/2012, 7/20/2012, 7/23/2012, 7/24/2012, 7/24/2012, 7/26/2012, 7/27/2012, 7/30/2012, 7/31/2012, 8/1/2012, 8/3/2012, 8/7/2012, 8/8/2012, 8/9/2012, 8/10/2012, 8/13/2012, 8/14/2012, 8/15/2012, 8/16/2012, 8/17/2012, 8/20/2012, 8/21/2012, 8/22/2012, 8/23/2012, 8/24/2012, 8/30/2012, 9/5/2012	\$8,296,777.28
Singapore Airlines Cargo	7/23/2012, 9/13/2012	\$39,157.00
Stewart Aviation Data, Inc.	7/10/2012	\$32,622.56
Tanja's Catering	8/23/2012, 8/24/2012	\$11,041.94
Technical Support R & M Aircraft	7/9/2012, 7/24/2012	\$33,739.62
TFV Aircraftsupport	7/2/2012	\$11,386.94
Travel Inn	7/13/2012, 8/1/2012, 8/24/2012	\$29,556.91
TravelFocus	7/2/2012, 9/12/2012	\$18,477.00
Turbo Resources	7/19/2012, 7/20/2012	\$41,650.00
Unical Aviation Inc.	7/18/2012, 7/20/2012, 7/23/2012, 7/24/2012, 8/7/2012, 8/10/2012, 8/16/2012, 8/29/2012, 8/31/2012, 9/11/2012, 9/19/2012, 9/21/2012,	\$79,225.00
United Airlines	7/10/2012, 7/27/2012, 8/16/2012, 8/30/2012, 9/7/2012	\$122,292.50
UPS Consolidated	7/2/2012, 7/13/2012, 8/1/2012, 8/10/2012	\$38,363.36

Vendor	Transfer Date(s)	Total Disbursements
V21A Dc-10 LLC c/o VX Holding Inc.	7/2/2012, 7/31/2012, 8/29/2012	\$582,500.00
VAS Aero Services Inc.	7/13/2012, 8/30/2012	\$55,732.00
WB Mason Co Inc.	7/2/2012, 8/1/2012, 8/7/2012, 8/10/2012	\$20,848.63
William E. Brooks	7/5/2012, 8/2/2012	\$32,904.23
Williams Aerospace	7/10/2012	\$19,000.00
World Fuel Services	8/27/2012, 8/28/2012, 8/29/2012, 8/30/2012, 8/31/2012, 9/4/2012, 9/6/2012, 9/7/2012, 9/10/2012, 9/11/2012, 9/12/2012, 9/13/2012, 9/14/2012, 9/17/2012, 9/18/2012, 9/19/2012, 9/20/2012, 9/21/2012, 9/24/2012, 9/25/2012, 9/26/2012, 9/27/2012	\$4,872,468.14
WWE Westchester	7/2/2012, 7/19/2012, 8/1/2012, 8/16/2012, 9/17/2012	\$25,087.58

**EXHIBIT B**

**Initial Members of the Trust Advisory Board**

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**EXHIBIT C**

**FORM OF  
CERTIFICATE OF TRUST**

**Exhibit B-2**

**Blackline of Amendment to Form of Litigation Trust Agreement**

**SOUTHERN AIR HOLDINGS, INC.  
LITIGATION TRUST AGREEMENT**

Litigation Trust Agreement, dated as of March \_\_\_\_, 2013 (the “Trust Agreement”), is entered into by and among Southern Air Holdings, Inc., Cargo 360, Inc., Southern Air Inc., Air Mobility Inc., 21110 LLC, 21111 LLC, 21221 LLC, 21550 LLC, 21576 LLC, 21590 LLC, 21787 LLC, 21832 LLC, 23138 LLC, 24067 LLC, 46914 LLC, CF6-50 LLC, Aircraft 21380 LLC and Aircraft 21255 LLC (each as a debtor and debtor-in-possession, and collectively, the “Debtors”), [Barry E. Mukamal as Litigation Trustee (the “Litigation Trustee”)], and CSC Trust Company of Delaware, or its successors, as Delaware Trustee.

**RECITALS**

- A. On September 28, 2012, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.
- B. On or about January 18, 2013, the Debtors filed the Second Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code (as amended and supplemented and as confirmed, the “Plan”) and the related disclosure statement (the “Disclosure Statement”).
- C. The Plan provides for the creation of a litigation trust to liquidate and distribute the Litigation Trust Assets to the Litigation Trust Beneficiaries.
- D. By order, dated March \_\_\_\_, 2013, the Bankruptcy Court confirmed the Plan and authorized the consummation of the transactions contemplated therein.
- E. This Trust Agreement is being executed to establish and provide for the administration of the Litigation Trust and the liquidation and distribution of Litigation Trust Assets, and to otherwise facilitate the implementation of the Plan.
- F. The Litigation Trust (other than with respect to the Disputed Claims Reserve) is intended to qualify as a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d), to be treated as a “grantor trust” for federal income tax purposes, and to be exempt from the requirements of the Investment Company Act of 1940 pursuant to Sections 7(a) and 7(b) thereof.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein, the parties hereto agree as follows:

**ARTICLE I**  
**DEFINITIONS.**

1.1 Definitions Incorporated from the Plan. Other than the terms defined below or elsewhere in this Trust Agreement, capitalized terms shall have the meaning assigned to them in the Plan.

1.2 Other Definitions.

“**Assigned Claims**” means any Disputed Claim (or portion thereof) against the Debtors identified on Exhibit A hereto that, as of the Effective Date, is not an Allowed Claim and which the Litigation Trustee shall be responsible for resolving, in accordance with the provisions of this Trust Agreement, but, for the avoidance of doubt, shall not include any Claim against the Debtors that is not identified on Exhibit A.

“**Avoidance Actions**” means, any actions commenced, or that may be commenced before or after the Effective Date, pursuant to section 547 of the Bankruptcy Code and solely to the extent such action is commenced against a party identified on Exhibit A hereto.

“**Books and Privileges**” means, subject to Section 2.3(c) hereof, with respect to a particular Debtor or group of Debtors, all books and records of such Debtor(s), including, without limitation, all documents and communications of any kind, whether physical or electronic, rights to direct current or former agents, attorneys, advisors and other professionals of such Debtor(s) to deliver such documents or communications, and, to the fullest extent permissible by law, the right to assert or waive any privilege, including, but not limited to, any attorney-client privilege, work-product protection, or other privilege or immunity attaching to any documents or communications (whether written, electronic or oral).

“**Cause**” means, with respect to the Litigation Trustee or any member of the Litigation Trust Board,

- (i) such member’s conviction of a felony or any other crime involving moral turpitude;
- (ii) any act or failure to act by such member involving actual dishonesty, fraud, misrepresentation, theft or embezzlement with respect to the Litigation Trust Assets; or
- (iii) such member’s willful and repeated failure to substantially perform his/her duties under this Trust Agreement.

“**Causes of Action**” means, any and all Claims (as defined in section 101(5) of the Bankruptcy Code), Avoidance Actions, demands, rights, actions, rights of action, causes of action, judgments, proceedings, damages, accounts, defenses, affirmative defenses, rights of setoff, offsets, powers, privileges, licenses, franchises, third-party claims, counterclaims, cross-claims, actions for declaratory or injunctive relief, suits and other rights of recovery of the Debtors, the Debtors in Possession, and the estates, against or with respect to any Person,

including, without limitation, Claims of a Debtor or the Debtors' estates against an Affiliate, current or former officer, director or employee of any Debtor or any Affiliate or property, wherever located, of any nature whatsoever, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, asserted or unasserted or pending as of the Effective Date, whether direct, indirect, derivative or on any other basis, whether existing or hereafter arising, whether arising in whole or in part prior to, on or after the Petition Date, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases or thereafter, in contract or in tort, at law or in equity, whether pursuant to any federal or state statute or common law or under any theory of law or equity, including without limitation any available: (a) rights of setoff, counterclaim, recoupment, replevin or reclamation, and Claims on contracts or for breaches of duties imposed by law, (b) rights to object to or seek estimation of Claims or Equity Interests, (c) Claims pursuant to section 362 of the Bankruptcy Code, (d) Claims, causes of action and defenses against any Person, including without limitation, for intentional or negligent misrepresentation, fraud, mistake, duress and usury, breach of fiduciary duty, malpractice, negligence, breach of contract, wrongful distribution, aiding and abetting, or inducement, and (e) rights and remedies under sections 502(d), 506, 509, 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552, and 553 of the Bankruptcy Code.

**"Certificate of Trust"** means the certificate of trust of the Litigation Trust as required by Section 3810 of the Delaware Act, substantially in the form of Exhibit C attached.

**"Creditor Cash"** means, on any date, all Cash held by the Litigation Trust (including any Cash received from the Debtors on the Effective Date pursuant to Section 8.1 of the Plan, and any permissible investments), except Cash retained by the Litigation Trust on account of the Litigation Trust Administrative Reserves and Cash previously deposited into, and then being held in, the Disputed Claims Reserve.

**"Delaware Trustee"** means CSC Trust Company of Delaware, or its successors, which is appointed in accordance with this Trust Agreement to comply with the requirement of Section 3807 of the Trust Act.

**"Disbursing Agent"** means the Litigation Trustee, or its successors, which shall make distributions under the Plan and pursuant to this Trust Agreement.

**"Disputed Claims Reserve"** means Cash that is allocated and retained by the Litigation Trust from time to time on account of Disputed Claims in an amount that would be necessary to fund from the proceeds of the Litigation Trust Assets the Pro Rata Share of distributions to holders of Disputed Claims if such Claims were Allowed in the Estimated Amount of such Claims as of any such time.

**"Distribution Date"** means a date or dates, including the Initial Distribution Date, as determined by the Litigation Trustee on a quarterly basis in accordance with this Trust Agreement, on which the Disbursing Agent makes a distribution to the holders of Allowed General Unsecured Claims, including Litigation Trust Beneficiaries.



**“Distribution Determination Date”** means a date selected by the Litigation Trustee preceding each Distribution Date, as of which the amount of distribution to be made on such Distribution Date on account of Allowed General Unsecured Claims is to be determined. The Distribution Determination Date for the Initial Distribution shall be the Confirmation Date.

**“Estimated Amount”** means, with respect to a Disputed Claim, as of any relevant time, an amount equal to the lesser of (i) the Disputed Claim Amount, (ii) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code for purposes of allowance, which amount, unless otherwise ordered by the Bankruptcy Court, shall constitute and represent the maximum amount in which such Claim may ultimately become an Allowed Claim or (iii) such other amount as may be agreed upon by the holder of such Disputed Claim and the Reorganized Debtors Plan Administrator.

**“Fiscal Year”** means any fiscal year of the Litigation Trust, as provided in Section 2.9 hereof.

**“Initial Distribution”** means the first distribution that the Disbursing Agent makes to holders of Allowed General Unsecured Claims.

**“Initial Distribution Date”** means the date on which the Disbursing Agent makes the Initial Distribution to holders of Allowed General Unsecured Claims, including the Litigation Trust Beneficial Interests from the Litigation Trust.

**“Litigation Trust Administrative Reserves”** means Cash that is allocated and retained by the Litigation Trust, which, for the avoidance of doubt, may only be supplemented from the Litigation Trust Assets, from time to time in an amount necessary to satisfy reasonable costs and expenses of the Litigation Trust and other obligations and liabilities incurred, assumed or reasonably anticipated by the Litigation Trust (or to which the Litigation Trust Assets are otherwise subject) in accordance with the Plan Documents, including without limitation (a) fees and costs incurred in connection with the protection, preservation, liquidation and distribution of the Litigation Trust Assets; (b) the fees and costs incurred in connection with investigating, prosecuting and resolving the Assigned Claims and Avoidance Actions; (c) fees payable under 28 U.S.C. § 1930 in connection with keeping the Bankruptcy Cases open from and after the Effective Date; provided, that to the extent any disbursements of the Reorganized Debtors are included in the monthly operating reports of the Debtors from and after the Effective Date, the Litigation Trust shall not be responsible for the fees payable under 28 U.S.C. § 1930 in respect of such disbursements; (d) such other fees and expenses incurred by the Debtors, the Reorganized Debtors or the Litigation Trustee Parties in connection with maintaining the Bankruptcy Cases from and after the Effective Date, it being understood that such fees and expenses shall not include any professional fees (including legal) other than those solely related to maintaining the Bankruptcy Cases from and after the Effective Date; (e) fees and expenses incurred by the Litigation Trust in connection with any information it requests from the Debtors’ claims agent; (f) fees and expenses (including, without limitation, any Taxes imposed on the Litigation Trust or in respect of the Litigation Trust Assets and fees of the United States Trustee) of the Litigation Trustee Parties, the non-member Litigation Trust Board Parties, the Disbursing Agent, and the Delaware Trustee; and (g) the expenses incurred by the Litigation Trust Board, all of which ((a)-(g)) for the avoidance of doubt shall be solely the responsibility of and payable by the Litigation

Trust, provided, however, that with respect to clause (d) above, the Debtors, the Reorganized Debtors and the Litigation Trustee shall confer with respect to any such fees and shall work in good faith to resolve any disputes over whether such fees or expenses were incurred in connection with the Litigation Trust, failing which, the parties shall seek resolution with the Bankruptcy Court

“**Litigation Trust Assets**” means, from and after the Effective Date, Creditor Cash, the Assigned Claims and Avoidance Actions, solely to the extent set forth on Exhibit A hereto; provided, however, that notwithstanding the foregoing, and for the avoidance of doubt, “Litigation Trust Assets” shall not include Claims, Causes of Action or objections against any Released Parties or their Related Persons.

“**Litigation Trust Board**” means the board appointed to review and supervise the activities of the Litigation Trustee and to oversee the administration of the Litigation Trust and the disposition of the Litigation Trust Assets in accordance with Article V hereof.

“**Litigation Trust Board Parties**” means the members of the Litigation Trust Board, and the advisors, professionals and other agents of the Litigation Trust Board, appointed or engaged in accordance with the provisions of this Trust Agreement.

“**Litigation Trust Beneficial Interest**” means a non-transferable and non-assignable beneficial interest in the Litigation Trust to be issued to each Litigation Trust Beneficiary, which entitles its holder to receive distributions from the Litigation Trust as set forth in this Trust Agreement.

“**Litigation Trustee**” means, Barry E. Mukamal, or his successor(s), as appointed in accordance with this Trust Agreement.

“**Litigation Trustee Parties**” means the Litigation Trustee, and the advisors, professionals and other agents of the Litigation Trust or the Litigation Trustee appointed or engaged in accordance with the provisions of this Trust Agreement.

“**Majority Consent**” means the affirmative consent of a majority of the members of the Litigation Trust Board, given at a meeting called for that purpose, or by a written consent in lieu of a meeting in accordance with this Trust Agreement.

“**Miscellaneous Account**” means a segregated interest-bearing account with a United States FDIC insured financial institution holding Cash that is allocated and retained by the Litigation Trust on account of (a) conflicting claims subject to a Dispute Resolution and (b) Litigation Trust Beneficial Interests of such Litigation Trust Beneficiaries that have not provided the Litigation Trustee with requisite information required under Sections 3.3 and 4.8.

“**Plan Documents**” means, collectively, the Plan, the Confirmation Order and this Trust Agreement.

“**Pro Rata Share**” means, with respect to a Claim in a particular class, as of a particular date, the ratio (expressed as a percentage) of the amount of that particular Claim to the sum of

the aggregate amount of all Allowed Claims and Disputed Claims in the same class that are accounted for in the Disputed Claims Reserve.

“**Trust Act**” means, the Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq., as the same may from time to time be amended, or any successor statute.

“**Trustees**” means, collectively, the Litigation Trustee and the Delaware Trustee.

“**Unanimous Consent**” means the affirmative consent of all of the members of the Litigation Trust Board, given at a meeting called for that purpose or by written consent in lieu of a meeting in accordance with this Trust Agreement; provided, that for purposes of the removal of a member of the Litigation Trust Board in accordance with Section 5.1(a) hereof, Unanimous Consent means the affirmative consent as aforesaid of the remaining members of the Litigation Trust Board.

## **ARTICLE II** **CREATION OF LITIGATION TRUST**

2.1 Creation of Trust. The Litigation Trust shall be deemed to have been created by the Debtors and the Trustees effective as of the time of filing of the Certificate of Trust which shall be the Effective Date or as soon thereafter as reasonably practicable. The Litigation Trust shall bear the name “SAI Litigation Trust” and the Litigation Trustee may, in connection with the exercise of its powers and duties hereunder, either use this name or such variation thereof as the Litigation Trustee sees fit. In connection with the exercise of the Litigation Trustee’s power hereunder, the Litigation Trustee may use this name or such variation thereof as the Litigation Trustee sees fit; provided, however, that in no circumstance shall the Litigation Trustee be the representative of any Reorganized Debtor and the Litigation Trustee shall use its best efforts to conspicuously show that the Litigation Trustee represents the Litigation Trust, which should not be confused with the Reorganized Debtors.

### 2.2 Purpose of Litigation Trust.

(a) The Litigation Trust shall be established for the sole purpose of liquidating and distributing the Litigation Trust Assets in accordance with Treasury Regulations Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

(b) This Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Litigation Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Litigation Trustee or the Litigation Trust Beneficiaries, for any purpose be, or be deemed to be or be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Litigation Trust Beneficiaries to the Litigation Trustee shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Trust Agreement.

(c) Under no circumstance shall the Litigation Trustee be authorized or contend it is authorized to incur liability on behalf of the Debtors’ Estates or the Reorganized

Debtors, and any and all liability incurred by the Litigation Trustee, whether for expenses of prosecution, payment of sanctions, or otherwise (including, without limitation, any fees and expenses in connection with keeping the Bankruptcy Cases open from and after the Effective Date, including those payable under 28 U.S.C. § 1930), shall be the exclusive liability of the Litigation Trust and not the liability of the Debtors' Estates or the Reorganized Debtors. For the avoidance of doubt, in no event shall the Litigation Trust be entitled to additional Cash, assets or other rights from the Debtors or the Reorganized Debtors beyond the Litigation Trust Assets.

### 2.3 Transfer of Litigation Trust Assets.

(a) On the Effective Date or as soon as practicable thereafter, the Debtors shall transfer all of the Litigation Trust Assets, in the form thereof existing on such date, to the Litigation Trust for the benefit of the Litigation Trust Beneficiaries and, subject to payment of all Allowed Convenience Claims, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other persons and entities to the maximum extent contemplated by and permissible under section 1141 of the Bankruptcy Code. Such transfers shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax pursuant to section 1146 of the Bankruptcy Code.

(b) To the extent any Litigation Trust Assets cannot be transferred to the Litigation Trust for any reason, including because of a restriction on transferability under applicable non-bankruptcy law that is not superseded by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such assets shall be retained by the Debtors (or any successor thereto); provided, however, that the proceeds of the sale of any such assets retained by the Debtors (or any successor thereto) shall nevertheless constitute Litigation Trust Assets and be turned over to the Litigation Trust pursuant to this Trust Agreement as if such transfer had not been restricted under applicable non-bankruptcy law. The Litigation Trustee may commence an action in the Bankruptcy Court to resolve any dispute regarding the allocation of the proceeds of any Litigation Trust Assets retained by the Debtors (or any successor thereto).

(c) On or prior to the Effective Date, the Debtors shall deliver or cause to be delivered to the Litigation Trust any and all Books and Privileges that relate primarily to or that may be reasonably required in connection with the Litigation Trust Assets whether held by the Debtors, their agents, representatives, advisors, attorneys, accountants and any other professional hired by the Debtors and provide access to such employees, agents, advisors, attorneys, accountants or any other Debtor professionals with knowledge of matters relevant to the Litigation Trust Assets. Notwithstanding anything herein to the contrary:

(i) The Debtors and the Reorganized Debtors shall be entitled to appropriate confidentiality protections for any and all proprietary data requested by the Litigation Trustee, as applicable.

(ii) To the extent, if any, that the Litigation Trustee requests data consisting of privileged material or attorneys' work product, such data will be produced to the Litigation Trustee, as applicable, unless the Debtors or Reorganized Debtors (i) assert that production of such data would impair an applicable privilege or (ii) disagree as to whether the privilege or work product

protection may be waived by the Litigation Trustee, taking into account the policies underlying the privileges and work product doctrine.

(iii) The Litigation Trustee shall have no power over the books and records of the Debtors or Reorganized Debtors beyond the rights granted herein.

(d) On or prior to the Effective Date, the Debtors shall also deliver, or cause to be delivered, to the Litigation Trust a complete list of all Assigned Claims, including the names and addresses of all holders of such Assigned Claims, and the details of all objections (whether asserted or not) in respect of any of the Assigned Claims.

(e) The Debtors and the Litigation Trustee (on behalf of the Litigation Trust), as successor in interest to the Debtors' Estates, may (i) execute and deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) take, or cause to be taken, all such further action in order to evidence, vest, perfect or effectuate the transfer of the Litigation Trust Assets to the Litigation Trust and consummate transactions contemplated by and to otherwise carry out the intent of the Plan Documents.

2.4 Title to Litigation Trust Assets. Upon the transfer of the Litigation Trust Assets, the Litigation Trust shall succeed to all of the Debtors' right, title and interest in the Litigation Trust Assets, and the Debtors will have no further rights or interest in or with respect to the Litigation Trust Assets or the Litigation Trust.

2.5 Agents and Professionals; Employees. ~~The~~Upon express approval of the Litigation Trust Board, the Litigation Trust may, subject to Section 5.3(b) hereof, employ such counsel (which may be the same counsel employed by the Debtors, Creditors' Committee or any member thereof), advisors (which may be the same advisors formerly employed by the Debtors, the Creditors' Committee or any member thereof) and other professionals selected by the Litigation Trustee that the Litigation Trust reasonably requires to perform its responsibilities under the Plan without further order from the Bankruptcy Court. The Litigation Trust's professionals and advisors shall be compensated on such basis as agreed to by the Litigation Trustee, and paid upon five (5) Business Days' notice to the Litigation Trust Board, without further motion, application, notice or other order of the Bankruptcy Court. The permitted fees and expenses of the Litigation Trust's professionals shall be satisfied solely out of the Litigation Trust Administrative Reserve. In the event of any dispute concerning the entitlement to, or the reasonableness of, any compensation and/or expenses of any professional for the Litigation Trust, either the Litigation Trustee or the affected party may ask the Bankruptcy Court to resolve the dispute.

2.6 Insurance. The Litigation Trust shall maintain customary insurance coverage for the protection of the Trustees, the Litigation Trust Board and any such other persons serving as administrators and overseers of the Litigation Trust on and after the Effective Date, in all cases as determined by the Litigation Trustee.

2.7 Status of Litigation Trust and Litigation Trustee. The Litigation Trust will be the successor-in-interest to the Debtors with respect to any Assigned Claim or Avoidance Action constituting Litigation Trust Assets (but excluding all Claims and Causes of Action released under the Plan) that was or could have been commenced by the Debtors prior to the Effective Date and shall be deemed substituted for the same as the party in any such litigation or objection. The Litigation Trustee (on behalf of the Litigation Trust) will be the representative of the Estates as that term is used in Section 1123(b)(3)(B) of the Bankruptcy Code and will have the rights and powers provided in the Bankruptcy Code in addition to any rights and powers granted in the Plan Documents. All Avoidance Actions constituting Litigation Trust Assets are preserved and retained and may be enforced by the Litigation Trustee on behalf of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

2.8 No Reversion to Debtors; Distribution of Remaining Assets.

(a) In no event shall any part of the Litigation Trust Assets revert to or be distributed to or for the benefit of any Debtor.

(b) To the extent that after satisfaction in full of all of the costs and expenses of the administration of the Litigation Trust, after all Claims have been either Allowed or disallowed, after all Allowed General Unsecured Claims and Allowed Prepetition Lender Claims have been paid pursuant to the Plan and this Trust Agreement, after satisfaction of all other obligations or liabilities of the Litigation Trust incurred or assumed in accordance with the Plan Documents, and after the affairs of the Litigation Trust have been finally wound up and concluded in accordance with the provisions of Section 11.1 hereof and section 3808 of the Trust Act, there shall remain any Litigation Trust Assets, the Litigation Trustee shall distribute such remaining Litigation Trust Assets to an organization, selected by the Litigation Trustee,

described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code that is unrelated to the Debtors, the Litigation Trustee or any member of the Litigation Trust Board.

2.9 Fiscal Year. Except for the first and last years of the Litigation Trust, the Fiscal Year of the Litigation Trust shall be the calendar year. For the first and last years of the Litigation Trust, the Fiscal Year of the Litigation Trust shall be such portion of the calendar year that the Litigation Trust is in existence.

2.10 Costs and Expenses of the Litigation Trust. The costs and expenses of the Litigation Trust and the Litigation Trust Board, including, without limitation, the reasonable fees and expenses of the Trustees, and each of their retained professionals, the fees and expenses of the Disbursing Agent, the costs of maintaining the Disputed Claims Reserve, the fees and expenses incurred in connection with the objection, prosecution or settlement of any Assigned Claims or Avoidance Actions constituting Litigation Trust Assets and the expenses incurred in connection with the administration of the Litigation Trust, including, without limitation, any and all costs, expenses, adverse judgments, sanctions and other financial obligations imposed against the Litigation Trust, shall be paid out of the Litigation Trust Administrative Reserve and shall be solely the liabilities of the Litigation Trust and not the Reorganized Debtors or any other entity. None of the Reorganized Debtors shall have any liability to the Litigation Trust Beneficiaries, the Trustees, the Litigation Trust Parties, the Litigation Trust Board Parties or any other person or entity for any expenses or liabilities of the Litigation Trust.

2.11 Books and Records.

(a) The Litigation Trustee shall maintain in respect of the Litigation Trust, the Litigation Trust Assets and the Litigation Trust Beneficial Interests books and records for the period commencing on the date hereof through the termination of the Litigation Trust, containing such information and in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof and to comply with applicable provisions of law. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Litigation Trust.

(b) The Litigation Trustee is authorized without further application to the Bankruptcy Court or notice to any party, to destroy books and records (whether in electronic or paper format) in accordance with Section 11.3.

**ARTICLE III**  
**LITIGATION TRUST BENEFICIARIES**

3.1 Receipt of Litigation Trust Beneficial Interests; Incidents of Ownership. On the Effective Date, each holder of an Allowed General Unsecured Claim as of the Effective Date shall receive a Litigation Trust Beneficial Interest in the Litigation Trust. The holders of Disputed Claims on the Effective Date that subsequently become Allowed General Unsecured Claims, in whole or in part, shall receive a Litigation Trust Beneficial Interest in the Litigation

Trust at such time as, and to the extent, such Disputed Claims become Allowed. Upon such time as the holders of Allowed General Unsecured Claims have received, pursuant to this Agreement and Section 8.1 of the Plan, total distributions in an amount equal to 10% of such holders' Allowed General Unsecured Claims including Cash distributed pursuant to Section 8.1 of the Plan (the "**Satisfaction Date**") holders of Allowed Prepetition Lender Claims shall receive a Litigation Trust Beneficial Interest. The Litigation Trust Beneficiaries shall be the sole beneficiaries of the Litigation Trust and the Litigation Trust Assets, and the Litigation Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized in the Plan Documents, including, but not limited to, those powers set forth in Section 6.4 hereof.

3.2 Evidence of Litigation Trust Beneficial Interest. Ownership of a Litigation Trust Beneficial Interest shall be evidenced by appropriate notation on the books and records maintained for that purpose by the Litigation Trust or an agent of the Litigation Trust, but shall otherwise be uncertificated. Such notation shall be conclusive absent manifest error, and the Litigation Trust and the Litigation Trustee shall treat each person whose name is recorded on the books and records of the Litigation Trust as aforesaid as the owner of the Litigation Trust Beneficial Interest indicated therein for all purposes of this Trust Agreement, notwithstanding notice to the contrary. The notation shall be in such form as the Litigation Trustee shall determine, but shall be commensurate with the amount of the Allowed General Unsecured Claim (or Allowed Prepetition Lender Claim) of the respective Litigation Trust Beneficiaries and shall readily permit calculation of the Pro Rata Share of each such Litigation Trust Beneficiary. A Litigation Trust Beneficiary shall be deemed the "holder of record" of such beneficiary's Litigation Trust Beneficial Interest(s) for purposes of all applicable laws, rules and regulations. The Litigation Trustee shall, upon the written request of a Litigation Trust Beneficiary, provide reasonably adequate documentary evidence of such beneficiary's Litigation Trust Beneficial Interest. The expense of providing such documentation shall be borne by the requesting Litigation Trust Beneficiary.

3.3 Nontransferability of the Litigation Trust Beneficial Interests. Litigation Trust Beneficial Interests shall not be transferable or assignable except by will, intestate succession or operation of law; provided, that any transfer or assignment of a Litigation Trust Beneficial Interest by will, intestate succession or operation of law shall not be effective unless and until such transfer or assignment is recorded on the books and records of the Litigation Trust maintained for that purpose, as provided in Section 3.2 hereof. Notwithstanding any other provision to the contrary, the Litigation Trustee may disregard any purported transfer or assignment of Litigation Trust Beneficial Interests by will, intestate succession or operation of law if necessary information (as reasonably determined by the Litigation Trustee), including applicable Tax-related information, is not provided by such purported transferee or assignee to the Litigation Trustee. Until such information is provided, any amounts that would have been distributed to the previous Litigation Trust Beneficiaries shall be contributed to the Miscellaneous Account pending the Litigation Trustee's receipt of the requisite information from the transferee; provided that, if the transferee fails to comply with such a request within ninety (90) days, such distribution shall be deemed an undelivered distribution under Section 20.7 of the Plan; and provided further that, if the Litigation Trustee fails to withhold in respect of amounts received or distributable with respect to any such holder-transferee and the Litigation Trustee is



later held liable for the amount of such withholding, such holder-transferee shall reimburse the Litigation Trustee for such liability.

3.4 Litigation Trust Beneficial Interests Not Securities. The Litigation Trust Beneficial Interests shall not constitute “securities” and shall not be registered pursuant to the Securities Act of 1933, as amended, or any state securities law. However, if it should be determined that the Litigation Trust Beneficial Interests constitute “securities,” the exemption provisions of section 1145 of the Bankruptcy Code shall apply to the Litigation Trust Beneficial Interests.

3.5 Rights of Litigation Trust Beneficiaries. Each Litigation Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Litigation Trust Beneficiary hereunder on account of its Litigation Trust Beneficial Interest. Each Litigation Trust Beneficiary shall take and hold the same, subject to all the terms and conditions of the Plan Documents. The interest of a Litigation Trust Beneficiary is hereby declared and shall be, in all respects, personal property.

3.6 Interest Beneficial Only. Except as expressly provided hereunder, a Litigation Trust Beneficiary shall have no title to, right to, possession of, management of or control of the Litigation Trust or the Litigation Trust Assets. The ownership of a Litigation Trust Beneficial Interest in the Litigation Trust shall not entitle any Litigation Trust Beneficiary to any title in or to the Litigation Trust Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein.

3.7 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to a Litigation Trust Beneficial Interest, the Litigation Trustee shall be entitled, at its sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Litigation Trustee may elect to make no payment or distribution with respect to the Litigation Trust Beneficial Interest at issue, or any part thereof, until such conflict is resolved in accordance with this Section 3.7, and the Litigation Trustee shall refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands or its refusal to make a payment or distribution with respect to the Litigation Trust Beneficial Interest at issue. The Litigation Trustee shall not be or become liable to any party for its refusal to comply with any of such conflicting claims or demands. The Litigation Trustee shall be entitled to refuse to act until either (a) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court (or such other court of proper jurisdiction) or (b) all differences have been resolved by a written agreement among all of such parties and the Litigation Trustee, which agreement shall include a complete release of the Litigation Trust and the Litigation Trustee (the occurrence of either (a) or (b) being referred to as a “Dispute Resolution” in this Section 3.7). Until a Dispute Resolution is reached with respect to such conflicting claims or demands, the Litigation Trustee shall hold in the Miscellaneous Account any payments or distributions from the Litigation Trust to be made with respect to the Litigation Trust Beneficial Interest at issue. Promptly after a Dispute Resolution is reached, the Litigation Trustee shall transfer the payments and distributions, if any, held in the Miscellaneous Account, together with any interest and income generated thereon, in accordance with the terms of such Dispute Resolution.

3.8 Liability to Third Persons. No Litigation Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Litigation Trust Assets or the affairs of the Litigation Trustee.

**ARTICLE IV**  
**DISTRIBUTIONS OF LITIGATION TRUST ASSETS**

4.1 Distributions.

(a) The Litigation Trustee shall distribute to the Litigation Trust Beneficiaries on account of their Litigation Trust Beneficial Interests, on the Initial Distribution Date and on each Distribution Date thereafter, such holders' Pro Rata Share of unrestricted Cash on hand (including any Cash received from the Debtors on the Effective Date pursuant to Section 8.1 of the Plan, and treating any permissible investment as Cash for purposes of this Section 4.1), except (i) the Litigation Trust Administrative Reserve and (ii) such amounts as are allocable to or retained on account of Disputed General Unsecured Claims in accordance with this Section 4.1.

(b) From and after the Effective Date, and until such time as all Disputed Claims have been compromised and settled or determined by order of the Bankruptcy Court, the Litigation Trustee shall retain for the benefit of each holder of a Disputed Claim, Litigation Trust Beneficial Interests (and the Cash attributable thereto), in an amount equal to the Estimated Amount. Any Cash retained and held for the benefit of a holder of a Disputed Claim shall be treated as a payment and reduction on account of such Disputed Claim for purposes of computing any additional amounts to be paid in Cash in the event the Disputed Claim ultimately becomes an Allowed Claim. The Disputed Claims Reserve shall be either (x) held by the Litigation Trustee, in an interest-bearing account with a United States FDIC insured financial institution or (y) invested in interest-bearing obligations issued by the United States Government, or by an agency of the United States Government and guaranteed by the United States Government, and having (in either case) a maturity of not more than thirty (30) days, for the benefit of such holders pending determination of their entitlement thereto under the terms of the Plan. No payments or distributions shall be made with respect to all or any portion of any Disputed Claim pending the entire resolution thereof by Final Order.

(c) At such time as a Disputed Claim becomes, in whole or in part, an Allowed Claim, the Litigation Trustee shall distribute to the holder thereof the distributions, if any, to which such holder is then entitled under the Plan together, with any interest that has accrued on the amount of Cash, but only to the extent that such interest is attributable to the amount of the Allowed Claim. Such distribution, if any, shall be made as soon as practicable after an order or judgment of the Bankruptcy Court is entered allowing such Disputed Claim becomes a Final Order but in no event more than sixty (60) days thereafter (net of any expenses, including any taxes imposed on or with respect to the Disputed Claims Reserve relating to such Claim).

4.2 Minimum Cash Distributions. The Disbursing Agent shall not be required to make any Distribution (other than the final) of Cash less than \$100 to any holder of an Allowed

Claim; provided, however, that if any distribution is not made pursuant to this Section 4.2, such distribution shall be added to any subsequent distribution to be made on behalf of the holder's Allowed Claim. The Disbursing Agent shall not be required to make any final distribution of Cash less than \$50 to any holder of an Allowed Claim. If either (a) all Allowed General Unsecured Claims (or Allowed Prepetition Lender Claims, as applicable) (other than those whose distributions are deemed undeliverable under Section 20.7) have been paid in full or (b) the amount of any final distribution to any holder of Allowed General Unsecured Claims (or Allowed Prepetition Lender Claims, as applicable) would be \$50 or less, then no further distribution shall be made by the Disbursing Agent and any surplus Cash remaining in the Litigation Trust shall be donated and distributed to an organization, selected by the Litigation Trustee, described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code that is unrelated to the Debtors, the Litigation Trustee or any member of the Litigation Trust Board.

4.3 Delivery of Distributions. Subject to Bankruptcy Rule 9010, and except as provided in this Section 4.3, all distributions to any holder of an Allowed Claim shall be made at the address of such holder (a) as set forth on the Schedules filed with the Bankruptcy Court, or (b) on the books and records of the Debtors or their agents, as applicable, unless the Debtors or the Litigation Trustee has been notified in writing of a change of address, including, without limitation, by the filing of a proof of Claim by such holder that contains an address for such holder different than the address of such holder as set forth on the Schedules.

4.4 Undeliverable and Unclaimed Distributions. In the event that any distribution to any holder of an Allowed Claim is returned as undeliverable, the Disbursing Agent shall use commercially reasonable efforts to determine the current address of each holder, but no distribution to such holder shall be made unless and until the Disbursing Agent has taken reasonable steps to determine the then current address of such holder; provided, however, that all distributions made pursuant to this Trust Agreement that are unclaimed for a period of ninety (90) days after distribution thereof shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and revested in the Litigation Trust and any entitlement of any holder of any Claims to such distributions shall be extinguished and forever barred. The Litigation Trustee shall have no further obligation to make any distribution to the holder of such Claim on account of such Claim, and any entitlement of any holder of such Claim to any such distributions shall be extinguished and forever barred; provided, however, that the holder of such Claim may receive future distributions on account of such Claim by contacting the Litigation Trustee at some point prior to the final distribution from the Litigation Trust. For the avoidance of doubt, the Disbursing Agent shall not be required to retain an outside investigator to determine the current address of any holders of an Allowed Claim whose distribution is returned as undeliverable.

4.5 Withholding and Reporting Requirements. The Litigation Trustee may, but is not directed to, withhold and pay to the appropriate Tax Authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or distribution to the Litigation Trust Beneficiaries. All such amounts withheld and paid to the appropriate Tax Authority (or placed in escrow pending resolution of the need to withhold) shall be treated as amounts distributed to such holders for all purposes of this Trust Agreement. The Litigation Trustee shall be authorized to collect such tax information from the Litigation Trust Beneficiaries (including social security numbers or other tax

identification numbers) as it in its sole discretion deems necessary to effectuate the Plan and this Trust Agreement. To receive distributions under the Plan, all Litigation Trust Beneficiaries shall be required to identify themselves to the Litigation Trustee and provide tax information and the specifics of their holdings, to the extent the Litigation Trustee deems appropriate (including completing the appropriate Form W-8 or Form W-9, as applicable to each holder). The Litigation Trustee may refuse to make a distribution to any Litigation Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; provided, however, that, upon the delivery of such information by a Litigation Trust Beneficiary, the Litigation Trustee shall make such distribution to which the Litigation Trust Beneficiary is entitled, without interest; and provided further that, if the holder fails to comply with such a request within one (1) year, such distribution shall be deemed an undeliverable distribution under Section 20.7 of the Plan; and provided further that, if the Litigation Trustee fails to withhold in respect of amounts received or distributable with respect to any such holder and the Litigation Trustee is later held liable for the amount of such withholding, such holder shall reimburse the Litigation Trustee for such liability. Notwithstanding the foregoing, each holder of an Allowed Claim that receives a distribution under the Plan shall have the sole and exclusive responsibility for any taxes imposed by any governmental unit, including income, withholding and other taxes, on account of such distribution.

## **ARTICLE V**

### **LITIGATION TRUST BOARD**

#### 5.1 Membership.

(a) There shall at all times be a Litigation Trust Board, with such powers of oversight and authority as are provided in this Article V and as elsewhere set forth in this Trust Agreement. The Litigation Trust Board shall consist of three (3) members. The initial members of the Litigation Trust Board are set forth on Exhibit B attached hereto, provided, however, that no subsequent member of the Litigation Trust Board shall be a vendor, customer, or competitor of the Reorganized Debtors (or an affiliate, representative or agent of a competitor). The parties agree that no member of the Litigation Trust Board shall be entitled to receive any proprietary information concerning the Debtors or the Reorganized Debtors and such information shall be viewed solely by the Litigation Trustee. Once the holders of Allowed General Unsecured Claims receive total Distributions from the Liquidating Trust, including such Cash transferred to the Litigation Trust in accordance with Section 8.1 of the Plan, totaling 10% of such holder's Allowed Claim, the then existing members of the Litigation Trust Board shall be automatically removed without any act of the Litigation Trustee or the Litigation Trust Board, and the members of the Litigation Trust Board, shall thereafter consist of the three (3) members set forth on Exhibit D. Other than with respect to expenses to be paid pursuant to Section 2.5(a), no member of the Litigation Trust Board shall be entitled to any compensation whatsoever for service on the Litigation Trust Board.

(b) Each member of the Litigation Trust Board shall hold office until the termination of the Litigation Trust or the earlier resignation, death or disability of such member or the removal of such member in accordance with this Trust Agreement. Any member of the Litigation Trust Board may resign upon thirty (30) days' prior written notice to the Litigation Trustee and the other members of the Litigation Trust Board. Any member of the Litigation

Trust Board may be removed for Cause by the Unanimous Consent of the remaining two members, in consultation with the Litigation Trustee. Notice of such removal, including the reasons therefor, shall be promptly filed with the Bankruptcy Court. In the event of a vacancy on the Litigation Trust Board, either as a result of the resignation, death, disability or removal of a member (any such resignation, death, disability or removal of a member, a “Replacement Event”), a replacement member shall be appointed by the Unanimous Consent of the remaining two members, in consultation with the Litigation Trustee; provided, however, that in the event such remaining two members of the Litigation Trust Board are unable to agree on the appointment of a replacement member within ten (10) days after the occurrence of a Replacement Event, the Litigation Trustee shall be entitled to vote on such appointment and effect such appointment with the vote of one of the two remaining members of the Litigation Trust Board. Notice of the appointment of any replacement member of the Litigation Trust Board shall be filed with the Bankruptcy Court.

## 5.2 Authority.

(a) The Litigation Trust Board shall (i) review and supervise the activities of the Litigation Trustee, (ii) oversee the administration of the Litigation Trust and the Litigation Trust Assets, (iii) have authority to remove and replace the Litigation Trustee in accordance with Article VII hereof and (iv) perform all other actions specified to be performed by the Litigation Trust Board in this Trust Agreement.

(b) In all circumstances, the Litigation Trustee shall comply with all applicable laws and shall otherwise act in the best interests of all Litigation Trust Beneficiaries and in furtherance of the purpose of this Litigation Trust.

## 5.3 Actions Requiring Consent of Litigation Trust Board.

(a) Subject to Section 5.4(d) hereof, the Litigation Trustee shall not undertake any of the following actions except with the Majority Consent of the Litigation Trust Board:

(i) decreasing the amount of the Disputed Claims Reserve, except in connection with the resolution of Disputed Claims, as provided in Section 4 hereof;

(ii) the abandonment of any Litigation Trust Assets where the amount of the proposed transaction exceeds \$100,000 (or such other amount as determined by Majority Consent of the Litigation Trust Board);

(iii) the initiation, prosecution, pursuit or settlement of any Avoidance Actions, where the estimated value is less than \$10,000.00;

(iv) the resolution or settlement of any Assigned Claim for which the disputed portion of such Claim is in excess of \$1,000,000;

(v) the timing of distributions to the holders of Allowed Unsecured Claims, other than as expressly provided in this Trust Agreement;

(vi) any action that would have a material effect on the treatment of the Litigation Trust or distributions to the Litigation Trust Beneficiaries, for federal tax purposes;

(vii) any material change to the contents of the reports required to be prepared by the Litigation Trustee, as provided in Section 6.9 hereof;

(viii) the dissolution of the Litigation Trust, except as provided in this Trust Agreement;

(ix) the removal or replacement of the Delaware Trustee;

(x) any material change to the Trust Agreement;

(xi) any other action for which any of the Plan Documents require the consent of the Litigation Trust Board and which does not specify the manner of such consent; and

(xii) any other action prescribed by Majority Consent of the Litigation Trust Board as requiring Majority Consent.

(b) The Litigation Trustee shall not undertake any of the following actions except with the Unanimous Consent of the Litigation Trust Board: (i) file any objection to any Assigned Claim; (ii) commence any adversary proceeding or other proceeding with respect to any Avoidance Action; (iii) retain or employ any professional, including attorneys and accountants; and (iv) any action prescribed by the Unanimous Consent of the Litigation Trust Board as requiring Unanimous Consent, which shall be considered during the first meeting of the Litigation Trust Board.

#### 5.4 Governance.

(a) Meetings of the Litigation Trust Board may be called by a chairman elected by the other two members or by any two members.

(b) Two of the three Litigation Trust Board members must be present to constitute a quorum to conduct Litigation Trust Board business; provided, however that all three members must be present if taking an action requiring Unanimous Consent. Except as otherwise provided in this Trust Agreement, any action or determination taken by the Litigation Trust Board at a duly convened meeting, including adoption of governance rules and procedures applicable to the conduct of the affairs of the Litigation Trust Board, shall require Majority Consent.

(c) Meetings may be held in person, telephonically or electronically, and upon such notice as may be determined from time to time in accordance with the rules and procedures adopted by the Litigation Trust Board and any member of the Litigation Trust Board who participates by such means shall be deemed to be present for purposes of quorum under Section

5.4(b). Members of the Litigation Trust Board may also act by unanimous written consent in lieu of a meeting.

(d) Notwithstanding anything to the contrary herein, in respect of any action that is subject to Majority Consent of the Litigation Trust Board hereunder, the Litigation Trustee shall be expressly authorized, and be deemed authorized, to undertake such action after (i) providing three (3) Business Days' written notice of such proposed action to all of the members of the Litigation Trust Board and (ii) receiving no written objection to such proposed action from any of the members of the Litigation Trust Board.

5.5 Advisors and Professionals. The Litigation Trust Board may employ such counsel (which may be the same counsel employed by the Debtors or the Creditors' Committee), advisors (which may be the same advisors formerly employed by the Debtors or the Creditors' Committee) and other professionals selected by the Litigation Trust Board, which it deems necessary or desirable to assist it in performing its responsibilities under this Trust Agreement without further order from the Bankruptcy Court. The Litigation Trust Board's professionals shall be compensated at their respective standard hourly rates as agreed to by the Litigation Trust Board and paid upon five (5) Business Days' notice to the Litigation Trustee, without further motion, application, notice or other order of the Bankruptcy Court. Subject to the limitation set forth in Section 2.10 hereof, the fees and expenses of the Litigation Trust Board's professionals shall be satisfied solely out of the Litigation Trust Administrative Reserve. In the event of any dispute concerning the entitlement to, or the reasonableness of, any compensation and/or expenses of any professional for the Litigation Trust Board, either the Litigation Trust Board, the Litigation Trustee or the affected professional may ask the Bankruptcy Court to resolve the dispute.

5.6 Liability to Third Persons. The Litigation Trust Board Parties shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Litigation Trust Assets or the affairs of the Litigation Trust, and all persons claiming against members of the Litigation Trust Board Parties, or otherwise asserting claims of any nature in connection with affairs of the Litigation Trust, shall look solely to the Litigation Trust Assets for satisfaction of any such claims, except where any Litigation Trust Board Party is found pursuant to a Final Order to have acted with gross negligence, fraud or reckless or willful misconduct.

5.7 Nonliability of Litigation Trust Board for Acts of Others. Nothing contained in the Plan Documents shall be deemed to be an assumption by the members of the Litigation Trust Board of any of the liabilities, obligations or duties of the Debtors or shall be deemed to be or contain a covenant or agreement by the members of the Litigation Trust Board to assume or accept any such liability, obligation or duty.

## **ARTICLE VI**

### **THE LITIGATION TRUSTEE**

6.1 Appointment and Acceptance of Litigation Trustee. The Litigation Trustee is hereby appointed a trustee of the Litigation Trust under the Trust Act and, as necessary or applicable, shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy

Code. The Litigation Trustee hereby accepts such appointment, including the trusteeship of the Litigation Trust created by this Trust Agreement, and the grant, assignment, transfer, conveyance and delivery to the Litigation Trustee, on behalf, and for the benefit, of the Litigation Trust Beneficiaries, by the Debtors and their Estates of all of their respective right, title and interest in the Litigation Trust Assets, upon and subject to the terms and conditions set forth in the Plan Documents. The Litigation Trustee may resign and shall be subject to removal and replacement in accordance with Article VII.

6.2 Fiduciary Duty and Standard of Care.

(a) The Litigation Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Litigation Trust, and in accordance with applicable law, including the Trust Act. The Litigation Trustee shall have the authority to bind the Litigation Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity as Litigation Trustee, and not individually.

(b) The Litigation Trustee shall exercise such rights and powers vested in it by the Plan Documents and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of its own affairs, in accordance with the applicable law. No provision of any Plan Document shall be construed to relieve the Litigation Trustee from liability for its own gross negligence, fraud or reckless or willful misconduct, except that the Litigation Trustee shall not be liable for any action taken in good faith in reliance upon the advice of professionals retained by the Litigation Trustee in accordance with this Trust Agreement.

6.3 Bond. The Litigation Trustee shall serve without a bond, unless such bond is otherwise required to be purchased by Majority Consent of the Litigation Trust Board, in which case the cost of purchasing such bond shall be an expense of the Litigation Trust (paid for solely out of the Litigation Trust Assets).

6.4 Powers of the Litigation Trustee.

(a) As more specifically provided below, the Litigation Trustee shall (i) have the responsibility for administering the Litigation Trust, maintaining the Litigation Trust Administrative Reserve and the Disputed Claims Reserve, objecting to, settling or otherwise resolving the Assigned Claims, liquidating the Litigation Trust Assets and making distributions under the Plan and this Trust Agreement and (ii) report to the Litigation Trust Board in accordance with the terms hereof.

(b) The Litigation Trustee shall have only such rights, powers and privileges expressly set forth in the Plan Documents, and as otherwise provided by applicable law or as incidental to the powers conferred on the Litigation Trustee herein and therein. Subject to the other provisions herein, including, without limitation, the provisions relating to the Litigation Trust Board in Section 5.3, the Litigation Trustee shall be expressly authorized and required to undertake the following actions, in the Litigation Trustee's good faith judgment, in the best interests of the Litigation Trust Beneficiaries and to maximize net recoveries therefor:



(i) to dispose of the Litigation Trust Assets, including the Avoidance Actions included therein;

(ii) to hold, manage and distribute the Litigation Trust Assets for the benefit of the Litigation Trust Beneficiaries, whether such beneficiaries' Claims are Allowed on or after the Effective Date;

(iii) to establish and maintain the Litigation Trust Administrative Reserve;

(iv) to administer the Disputed Claims Reserve, including the issuance of Litigation Trust Beneficial Interests and distribution of Cash to holders of Disputed Claims that become Allowed Claims after the Effective Date;

(v) to settle or otherwise resolve Assigned Claims in accordance with the terms of the Plan Documents;

(vi) in the Litigation Trustee's reasonable business judgment and to the extent consistent with the terms of the Plan, to investigate, prosecute, settle, liquidate, dispose of, and/or abandon the Litigation Trust Assets, including the Avoidance Actions held by the Debtors or their Estates;

(vii) to monitor and enforce the implementation of the Plan insofar as relating to the Litigation Trust Assets;

(viii) to file all tax and regulatory forms, returns, reports and other documents and financial information required with respect to the Litigation Trust;

(ix) in the Litigation Trustee's reasonable business judgment, to reconcile, object to, and resolve the Assigned Claims or other Claims against the Litigation Trust, and manage, control, prosecute and/or settle on behalf of the Estates or the Litigation Trust objections to the Assigned Claims;

(x) to hold, manage, and distribute Cash or non-Cash Litigation Trust Assets obtained through the exercise of its power and authority;

(xi) to maintain and dispose of the books and records transferred to the Litigation Trustee in a manner deemed appropriate by the Litigation Trustee, as provided in Section 2.11 and Section 11.3;

(xii) to enter into and exercise rights under contracts that are necessary or desirable to the administration of the Litigation Trust and execute any documents or pleadings related to the liquidation of the Litigation Trust Assets or other matters related to the Litigation Trust;

(xiii) to establish and maintain bank accounts and terminate such accounts;

(xiv) to obtain and maintain insurance coverage with respect to the liabilities and obligations of the Litigation Trustee and the Litigation Trust Board and its members in accordance with the Trust Agreement;

(xv) to take all actions necessary and appropriate to minimize any adverse tax consequences to the Litigation Trust Beneficiaries; provided, that such actions do not result in an adverse tax consequence to the Litigation Trust and are consistent with and are not contrary to the treatment of the Litigation Trust as a “grantor trust” for United States federal income tax purposes;

(xvi) to remove and replace the Delaware Trustee; ~~and~~

(xvii) to bring suits or defend itself against such suits, if any, as the Litigation Trustee determines in connection with any matter solely to the extent arising from the rights, powers or obligations granted to the Litigation Trust or Litigation Trustee under this Trust Agreement and otherwise consistent with the Plan;

(xviii) to file monthly operating reports on behalf of the Debtors, from and after the Effective Date; and

(xix) ~~(xviii)~~ to take such other and further actions in furtherance of the purposes of the Plan Documents in respect of the Debtors and their Estates as are not inconsistent this Trust Agreement.

(c) For the avoidance of doubt, the Litigation Trustee, Litigation Trust and any successor Litigation Trustee shall only investigate, prosecute or commence any Claim or Cause of Action against a person to the extent such Claim or Cause of Action is identified in Exhibit A or such Claim or Cause of Action relates solely to the administration of the Litigation Trust (such as, but not limited to, Claims and Causes of Action involving contracts entered into by the Trustee in furtherance of the purposes of this Trust Agreement and Claims and Causes of Action relating to employees and consultants retained by the Trustee and other similar administrative matters). Notwithstanding the prior sentence or any other provision in this Trust Agreement, the Litigation Trustee, Litigation Trust and any successor Litigation Trustee shall not have the right, power or authority to investigate, prosecute or commence any Claim or Causes of Action against a Released Party or their Related Persons.

6.5 Investment of Litigation Trust Assets. The Litigation Trustee may invest Litigation Trust Assets (including any earnings thereon or proceeds therefrom) in any manner permitted to be made by a Litigation Trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable Internal Revenue Service guidelines, rulings, or other controlling authorities.

6.6 Limitations on Actions of Litigation Trustee. No part of the Litigation Trust Assets shall be used or disposed of by the Litigation Trustee in furtherance of any trade or business. The Litigation Trustee shall, on behalf of the Litigation Trust, hold the Litigation Trust out as a trust in the process of liquidation and not as an investment company. The Litigation Trustee shall not engage in any investments or activities inconsistent with the treatment of the

Litigation Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d). The Litigation Trustee shall be restricted to the liquidation of the Litigation Trust Assets on behalf, and for the benefit, of the Litigation Trust Beneficiaries; the distribution and application of Litigation Trust Assets for the purposes set forth in this Trust Agreement; and the conservation and protection of the Litigation Trust Assets and the administration thereof in accordance with the provisions of the Plan Documents.

6.7 Settlement of Assigned Claims. The Litigation Trustee shall have the authority, with the Majority Consent of the Litigation Trust Board to the extent provided in Section 5.3, to settle all Assigned Claims that are Disputed Claims without further Bankruptcy Court order. If the Litigation Trustee and the holder of an Assigned Claim are unable to reach a settlement on such Disputed Claim, such Disputed Claim shall be submitted to the Bankruptcy Court for resolution. If it is determined that the Bankruptcy Court does not have jurisdiction to resolve any Assigned Claim that is a Disputed Claim, then such Disputed Claim shall be submitted to the District Court for resolution. The Litigation Trustee shall file with the Bankruptcy Court a quarterly notice of Disputed Claims resolved and/or settled during the prior quarter, starting with the first quarter after the Effective Date.

6.8 Establishment of Reserves.

(a) Disputed Claims Reserves. On the Effective Date, the Litigation Trustee shall establish the Disputed Claims Reserve, which shall be maintained in an interest-bearing account with a United States FDIC insured financial institution. On the Effective Date and from time to time thereafter, the Litigation Trustee shall deposit a Pro Rata Share of Available Cash to be retained by the Litigation Trust in respect of the Pro Rata Share of the Estimated Amount of Disputed Claims. For the avoidance of doubt, Cash held in the Disputed Claims Reserve may be held in a single account with the unreserved Cash portion of the Litigation Trust Assets; provided, however, that the Litigation Trustee reserves the appropriate amounts for the Disputed Claims Reserve (as provided in this Trust Agreement) within such account. Cash in the Disputed Claims Reserve shall be distributed in accordance with Section 4.2.

(b) Litigation Trust Administrative Reserves. The Litigation Trustee shall have the authority to establish, fund, and maintain the Litigation Trust Administrative Reserves in amounts necessary to satisfy the obligations for which the Litigation Trust Administrative Reserves are maintained. The Litigation Trust Administrative Reserves shall be maintained in an interest-bearing account with a United States FDIC insured financial institution.

6.9 Reporting Requirements.

(a) As soon as practicable after the Effective Date, the Litigation Trustee shall deliver to the Litigation Trust Board a report of the Litigation Trustee's recommendations with respect to objections to Assigned Claims, the pursuit of specific Avoidance Actions, and the retention and employment of professionals, including attorneys (the "Initial Report"). The Litigation Trust Trustee shall take no action in connection with the recommendations contained in the Initial Report until it is approved by the Litigation Trust Board pursuant to Section 5.3(b) hereof.

(b) ~~(a)~~ The Litigation Trustee shall deliver quarterly reports to members of the Litigation Trust Board, which shall specify in reasonable detail:

- (i) the status of the Avoidance Actions, including any settlements entered into by the Litigation Trust during the most recent quarter;
- (ii) the status of the Assigned Claims, including any settlements or resolutions of such Assigned Claims during the most recent quarter;
- (iii) the fees and expenses of the Litigation Trust and the Litigation Trustee, including any professional fees, incurred and/or earned during the most recent quarter;
- (iv) a description of the Litigation Trust Assets received and/or disposed of by the Litigation Trust during the most recent quarter;
- (v) the available Cash, as of the end of the most recent quarter, including the Disputed Claims Reserve as of such time;
- (vi) the aggregate amount of distributions from the Litigation Trust to Litigation Trust Beneficiaries during the most recent quarter; and
- (vii) such other information as the Litigation Trust Board may reasonably request from time to time.

The Litigation Trustee shall file a copy of items (iii) through (vii) of such quarterly reports with the Bankruptcy Court. The Reorganized Debtors, each Prepetition Lender entitled to receive a Litigation Trust Beneficial Interest and the Oakhill Entities shall be entitled, at their sole cost and expense, to raise objections with respect to the reasonableness of the fees and expenses of the Litigation Trust and the Litigation Trustee with the Bankruptcy Court, provided, that the Reorganized Debtors, the Prepetition Lenders entitled to receive a Litigation Trust Beneficial Interest and the Oakhill Entities shall not object with respect to any contingency fee arrangement agreed to by the Litigation Trust or the Litigation Trustee solely on the basis of the fee percentage, so long as it does not exceed thirty-five percent (35%) of the proceeds of any one judgment, settlement or other disposition of an Avoidance Action.

The Litigation Trustee shall also timely prepare, file and distribute such additional statements, reports and submissions (A) as may be necessary to cause the Litigation Trust and the Litigation Trustee to be in compliance with applicable law or (B) as may be otherwise requested from time to time by the Litigation Trust Board or the Bankruptcy Court or as set forth in this Trust Agreement.

(c) ~~(b)~~ The Litigation Trustee shall make itself available for monthly telephonic conference calls with the Litigation Trust Board, as requested by the Litigation Trust Board upon reasonable notice to the Litigation Trustee, to provide interim updates on the matters set forth in Section ~~6.9(a)~~ 6.9(a) above.

(d) ~~(e)~~ The Litigation Trustee shall make available to the Litigation Trust Beneficiaries on a quarterly basis, by such means, which may include filing with the Bankruptcy Court, as the Litigation Trustee may select, such information regarding the affairs of the Litigation Trust during the most recent quarter, as the Litigation Trustee in consultation with the Litigation Trust Board shall deem appropriate.

(e) ~~(d)~~ On the Satisfaction Date, the Litigation Trustee shall file a notice with the Bankruptcy Court and provide notice to the Reorganized Debtors and each party entitled to receive a Litigation Trust Beneficial interest of the occurrence of the Satisfaction Date.

6.10 No Further Approvals Required. In performance of its duties hereunder, the Litigation Trustee shall have the rights and powers of a debtor in possession under section 1107 of the Bankruptcy Code, and such other rights, powers, and duties necessary, appropriate, advisable or convenient to effectuate the provisions of the Plan Documents. Subject to the prior consent of the Litigation Trust Board to the extent set forth in this Trust Agreement, on and after the Effective Date, the Litigation Trustee shall not be required to obtain any approvals from the Bankruptcy Court, any court or governmental body and/or provide any notices under any applicable laws to implement the terms of the Plan Documents, including, without limitation, the sale, transfer, disposal or contribution of any Litigation Trust Assets retained by the Litigation Trust; the prosecution, settlement or abandonment of any Avoidance Action that is a Litigation Trust Assets; and the negotiation, resolution or settlement of any Assigned Claims, in each case, other than as expressly required under this Trust Agreement.

6.11 Reliance by Litigation Trustee. Except as otherwise provided in the Plan Documents, the Litigation Trustee may rely, and shall be protected in acting, upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the Litigation Trustee to be genuine and to have been signed or presented by the proper party or parties.

6.12 Liability to Third Persons. The Litigation Trustee Parties shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Litigation Trust Assets or the affairs of the Litigation Trust, and all persons claiming against the Litigation Trustee Parties, or otherwise asserting claims of any nature in connection with affairs of the Litigation Trust, shall look solely to the Litigation Trust Assets for satisfaction of any such claims, except where a Litigation Trustee Party is found pursuant to a Final Order to have acted with gross negligence, fraud or reckless or willful misconduct.

6.13 Nonliability of Litigation Trustee for Acts of Others. Nothing contained in the Plan Documents shall be deemed to be an assumption by the Litigation Trustee of any of the liabilities, obligations or duties of the Debtors and shall not be deemed to be or contain a covenant or agreement by the Litigation Trustee to assume or accept any such liability, obligation or duty.

6.14 Compensation and Expenses. The Litigation Trustee shall be compensated in accordance with 11 U.S.C. § 326(a), or as shall otherwise be agreed between the Litigation Trustee and the Litigation Trust Board in accordance with this Trust Agreement, and shall be reimbursed for its out-of-pocket expenses incident to the performance of its duties under this

Trust Agreement. The fees and expenses of the Litigation Trustee shall be satisfied out of the Litigation Trust Assets and shall be in accordance with the Litigation Trust Reserve.

6.15 Reliance on Professionals. Subject to approval of the Bankruptcy Court, the Litigation Trustee shall be entitled to rely, in good faith, on the advice of its retained advisors and professionals regardless of whether such advice is provided in writing. Notwithstanding the foregoing, the Litigation Trustee shall not be under any obligation to consult with their retained professionals, and its determination not to do so shall not result in the imposition of liability on the Litigation Trustee, unless such determination is based on gross negligence, fraud or reckless or willful misconduct.

## **ARTICLE VII**

### **SUCCESSOR LITIGATION TRUSTEES**

7.1 Resignation. The Litigation Trustee may resign at any time upon not less than sixty (60) days' written notice to the Litigation Trust Board; provided, that the Litigation Trust Board may waive such notice requirement; and provided, further that such resignation shall not be effective until such time as a successor Litigation Trustee has been appointed.

7.2 Removal. Prior to the Satisfaction Date, the Litigation Trustee may be removed for Cause by the Litigation Trust Board by thirty (30) days' prior written notice of such removal; provided that such removal shall not be effective until such time as a successor Litigation Trustee has been appointed in accordance with Section 7.4. From and after the Satisfaction Date, the Litigation Trustee may be removed the Litigation Trust Board by thirty (30) days' prior written notice of such removal; provided that such removal shall not be effective until such time as a successor Litigation Trustee has been appointed in accordance with Section 7.4.

#### 7.3 Effect of Resignation or Removal.

(a) The resignation, removal, incompetency, bankruptcy or insolvency of the Litigation Trustee shall not operate to terminate the Litigation Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement, or invalidate any action theretofore taken by the Litigation Trustee. All fees and expenses incurred by the Litigation Trustee prior to the resignation, incompetency or removal of the Litigation Trustee shall be paid from the Litigation Trust Administrative Reserve, unless such fees and expenses are disputed by (i) the Litigation Trust Board or (ii) the successor Litigation Trustee, in which case the Bankruptcy Court shall resolve the dispute, and any disputed fees and expenses of the predecessor Litigation Trustee that are subsequently allowed by the Bankruptcy Court shall be paid from the Litigation Trust Administrative Reserve.

(b) In the event of the resignation or removal of the Litigation Trustee, such Litigation Trustee shall (i) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the successor Litigation Trustee or directed by the Bankruptcy Court to effect the termination of such Litigation Trustee's capacity under this Trust Agreement; (ii) promptly deliver to the successor Litigation Trustee all documents, instruments, records and other writings related to the Litigation Trust as may be in the possession of such

Litigation Trustee; and (iii) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Litigation Trustee.

(c) Notice of the resignation or removal of the Litigation Trustee shall be promptly filed with the Bankruptcy Court.

7.4 Replacement. In the event that the Litigation Trustee resigns or is duly removed, or in the event of the death of the Litigation Trustee or other occurrence rendering the Litigation Trustee incapacitated or unavailable for an extended period of thirty (30) consecutive days, a successor Litigation Trustee shall be designated by Majority Consent of the Litigation Trust Board. Notice of the appointment of a successor Litigation Trustee shall be filed with the Bankruptcy Court promptly following such appointment.

7.5 Successor Litigation Trustee. Any successor Litigation Trustee appointed hereunder shall execute an instrument accepting its appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing and, in the case of the Litigation Trustee's resignation, to the resigning Litigation Trustee. Thereupon, such successor Litigation Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges of its predecessor in the Litigation Trust with like effect as if originally named Litigation Trustee and shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The resigning or removed Litigation Trustee shall duly assign, transfer and deliver to such successor Litigation Trustee all property and money held by such resigning or removed Litigation Trustee hereunder and shall, as directed by the Bankruptcy Court or reasonably requested by such successor Litigation Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Litigation Trustee upon the trusts herein expressed all the liabilities, duties, powers, rights, title, discretion and privileges of such resigning or removed Litigation Trustee.

7.6 Reliance Upon Representations of Predecessor Litigation Trustee. Any successor Litigation Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Litigation Trustee hereunder, and any statement or representation made as to the assets comprising the Litigation Trust Assets or as to any other fact bearing upon the prior administration of the Litigation Trust, so long as it has a good-faith basis to do so. The Litigation Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement or representation if it is later proved to be incomplete, inaccurate or untrue. Any successor Litigation Trustee shall not be liable for any act or omission of any predecessor Litigation Trustee, nor have a duty to enforce any claims against any predecessor Litigation Trustee on account of any such act or omission, unless directed to do so by the Litigation Trust Board.

## **ARTICLE VIII** **DELAWARE TRUSTEE**

8.1 Appointment. The Delaware Trustee, shall act solely for the purpose of complying with the requirement of section 3807 of the Trust Act. The Delaware Trustee may be the Disbursing Agent.

8.2 Powers.

(a) The duties and responsibilities of the Delaware Trustee shall be limited solely to (i) accepting legal process served on the Litigation Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Delaware Trustee is required to execute under section 3811 of the Trust Act (including without limitation the Certificate of Trust), and (iii) any other duties specifically allocated to the Delaware Trustee in this Trust Agreement. Except as provided in the foregoing sentence, the Delaware Trustee shall have no management responsibilities or owe any fiduciary duties to the Litigation Trust, the Litigation Trustee, the Litigation Trust Board or the Litigation Trust Beneficiaries. The Delaware Trustee is hereby authorized and directed to file a Certificate of Trust with the Secretary of State of the State of Delaware as provided under the Trust Act if not previously filed, and if previously filed, such filing is hereby ratified.

(b) By its execution hereof, the Delaware Trustee accepts the trusteeship of the Litigation Trust on the terms set forth herein. Except as otherwise expressly set forth in Section 8.2(a), the Delaware Trustee shall not have any duty or liability with respect to the administration of the Litigation Trust, the investment of the Litigation Trust Assets or the distribution of the Litigation Trust Assets to the Litigation Trust Beneficiaries, and no such duties shall be implied. The Delaware Trustee shall not be liable for the acts or omissions of the Litigation Trustee or the Litigation Trust Board, nor shall the Delaware Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Litigation Trustee or the Litigation Trust Board under this Trust Agreement, except as may be expressly required by Section 8.2(a) hereof. The Delaware Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The Delaware Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, bad faith or gross negligence. Without limiting the foregoing:

(i) the Delaware Trustee shall not be personally liable for any error of judgment made in good faith, except to the extent such error of judgment constitutes willful misconduct, bad faith or gross negligence;

(ii) no provision of this Trust Agreement shall require the Delaware Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder if the Delaware Trustee has reasonable grounds to believe that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it;

(iii) the Delaware Trustee shall not be personally liable for the validity or sufficiency of this Trust Agreement or for the due execution hereof by the other parties hereto;

(iv) the Delaware Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect;



(v) the Delaware Trustee may request the Litigation Trustee to provide a certificate with regard to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vi) in the exercise or administration of the Litigation Trust hereunder, the Delaware Trustee (I) may act directly or through agents or attorneys pursuant to agreements entered into with any of them, and (II) may consult with nationally recognized counsel selected by it in good faith and with due care and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel; and

(vii) the Delaware Trustee acts solely as Delaware Trustee hereunder and not in its individual capacity, and all persons having any claim against the Delaware Trustee by reason of the transactions contemplated by this Trust Agreement shall look only to the Litigation Trust Assets for payment or satisfaction thereof.

8.3 Compensation. The Delaware Trustee shall be entitled to receive compensation out of the Litigation Trust Administrative Reserve for the services that the Delaware Trustee performs in accordance with this Trust Agreement in accordance with such fee schedules as shall be agreed from time to time by the Delaware Trustee, the Litigation Trustee and the Litigation Trust Board, and if so required by the Plan, the Confirmation Order or applicable law, as approved by the Bankruptcy Court. The Delaware Trustee may also consult with counsel (who may be counsel for the Litigation Trustee or for the Litigation Trust Board) with respect to those matters that relate to the Delaware Trustee's role as the Delaware Trustee of the Litigation Trust, and the reasonable legal fees incurred in connection with such consultation shall be reimbursed out of the Litigation Trust Administrative Reserve.

8.4 Duration and Replacement. The Delaware Trustee shall serve for the duration of the Litigation Trust or until the earlier of (i) the effective date of the Delaware Trustee's resignation, or (ii) the effective date of the removal of the Delaware Trustee. The Delaware Trustee may resign at any time by giving thirty (30) days' written notice to the Litigation Trustee and the Litigation Trust Board; provided, however, that such resignation shall not be effective until such time as a successor Delaware Trustee has accepted appointment. The Delaware Trustee may be removed at any time by the Litigation Trustee, with the Majority Consent of the Litigation Trust Board, by providing thirty (30) days' written notice to the Delaware Trustee; provided, however, that such removal shall not be effective until such time as a successor Delaware Trustee has accepted appointment. Upon the resignation or removal of the Delaware Trustee, the Litigation Trustee, with the Majority Consent of the Litigation Trust Board, shall appoint a successor Delaware Trustee. If no successor Delaware Trustee shall have been appointed and shall have accepted such appointment within forty-five (45) days after the giving of such notice of resignation or removal, the Delaware Trustee may petition the Bankruptcy Court for the appointment of a successor Delaware Trustee. Any successor Delaware Trustee appointed pursuant to this Section shall be eligible to act in such capacity in accordance with this Trust Agreement and, following compliance with this Section, shall become fully vested with the

rights, powers, duties and obligations of its predecessor under this Trust Agreement, with like effect as if originally named as Delaware Trustee. Any such successor Delaware Trustee shall notify the Delaware Trustee of its appointment by providing written notice to the Delaware Trustee and upon receipt of such notice, the Delaware Trustee shall be discharged of its duties herein. Any such successor Delaware Trustee shall also file an amendment to the Certificate of Trust as required by the Trust Act.

## **ARTICLE IX** **TAX MATTERS**

### 9.1 Tax Treatment.

(a) For all U.S. federal income tax purposes, all parties (including, without limitation, the Debtors, the Litigation Trustee and the Litigation Trust Beneficiaries) shall treat the transfer of the Litigation Trust Assets to the Litigation Trust as:

(i) a transfer of the Litigation Trust Assets (subject to any obligations relating to those assets) directly to Litigation Trust Beneficiaries and, to the extent the Litigation Trust Assets are allocable to Disputed Claims (based on such Claims' Pro Rata Share of such Litigation Trust Assets) to the Disputed Claims Reserve, followed by

(ii) the transfer by such Litigation Trust Beneficiaries to the Litigation Trust of the Litigation Trust Assets (other than the Litigation Trust Assets allocable to the Disputed Claims Reserve) in exchange for the Litigation Trust Beneficial Interests.

(b) Accordingly, those holders of Allowed General Unsecured Claims receiving Litigation Trust Beneficial Interests shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Litigation Trust Assets (other than such Litigation Trust Assets as are allocable to the Disputed Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

### 9.2 Tax Reporting.

(a)

(i) The Litigation Trustee shall file Tax Returns (including U.S. federal returns) for the Litigation Trust treating the Litigation Trust (other than with respect to the Litigation Trust Assets allocable to the Disputed Claims Reserve) as a grantor trust pursuant to Treasury Regulations section 1.671-4(a) and in accordance with this Article IX. The Litigation Trustee shall also annually send to (or otherwise make available) each holder of a Litigation Trust Beneficial Interest a statement setting forth the holder's share of items of income, gain, loss, deduction or credit and will instruct all such holders to report such items on their U.S. federal income tax returns or to forward the appropriate information to their

respective beneficial holders with instructions to report such items on their U.S. federal income tax returns. The Litigation Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Litigation Trust as required by any governmental unit.

(ii) As soon as practicable following the Effective Date, the Litigation Trustee will in good faith value Litigation Trust Assets, and shall make all such values available from time to time, to the extent relevant, and such values shall be used consistently by all parties to the Litigation Trust (including, without limitation, the Debtors, the Litigation Trustee, and Litigation Trust Beneficiaries) for all United States federal income tax purposes.

(b) Allocations of the Litigation Trust's taxable income among the Litigation Trust Beneficiaries (other than taxable income allocable to the Disputed Claims Reserve) shall be determined in good faith by the Litigation Trustee by reference to the manner in which an amount of Cash representing such taxable income would be distributed (were such Cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Litigation Trust had distributed all its assets (valued at their tax book value, and other than assets allocable to the Disputed Claims Reserve) to the holders of the Litigation Trust Beneficial Interests, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Litigation Trust. Similarly, taxable loss of the Litigation Trust (other than taxable loss allocable to the Disputed Claims Reserve) shall be allocated in good faith by the Litigation Trustee by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Litigation Trust Assets. The tax book value of the Litigation Trust Assets for this purpose shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements, as determined in good faith by the Litigation Trustee.

(c) Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Litigation Trustee), the Litigation Trustee shall (A) timely elect to treat any Litigation Trust Assets allocable to the Disputed Claims Reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9, and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Litigation Trustee and the Litigation Trust Beneficiaries) shall report for U.S. federal, state and local income tax purposes consistently with the foregoing.

(d) The Litigation Trustee may request an expedited determination of Taxes of the Litigation Trust, including the Disputed Claims Reserve.

9.3 Tax Payment. The Litigation Trustee shall be responsible for the payment, out of the Litigation Trust Assets, of any taxes imposed on the Litigation Trust or its assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on

account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay any portion of such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims (including any income that may arise upon the distribution of the assets of the Disputed Claims Reserve), such taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims or (b) to the extent such Disputed Claims subsequently have been resolved, deducted from any amounts distributable by the Litigation Trustee as a result of the resolutions of such Disputed Claims.

**ARTICLE X**  
**LIMITATION OF LIABILITY AND INDEMNIFICATION**

10.1 Limitation of Liability. The Trustees, the members of the Litigation Trust Board, and their respective advisors and professionals will not be liable for punitive, exemplary, consequential, special or other damages for a breach of this Trust Agreement under any circumstances.

10.2 Indemnification.

(a) The Litigation Trustee Parties, the Delaware Trustee, the Litigation Trust Board Parties and the employees, agents and professionals of each of the foregoing, as the case may be, shall be indemnified and held harmless and shall not be liable for actions taken or omitted in their capacity as the Litigation Trustee, the Delaware Trustee or a member of the Litigation Trust Board of, or on behalf of, or in fulfillment of their duties with respect to, the Litigation Trust, except those acts that are determined by Final Order to have arisen out of their own gross negligence, fraud or reckless or willful misconduct, and each shall be entitled to be indemnified, held harmless, and reimbursed for fees and expenses including, without limitation, reasonable attorney's fees, which such persons and entities may incur or may become subject to or in connection with any action, suit, proceeding or investigation that is brought or threatened against such persons or entities regarding the implementation or administration of the Plan Documents or the discharge of their respective duties hereunder or thereunder or in respect thereof, except for any actions or inactions that have arisen out of their own gross negligence, fraud, recklessness or willful misconduct.

(b) Any claim of the Litigation Trustee Parties, the Delaware Trustee or the Litigation Trust Board Parties (and the other parties entitled to indemnification under this Section) to be indemnified, held harmless, or reimbursed shall be satisfied solely from the Litigation Trust Assets, bonds (if any) or any applicable insurance that the Litigation Trust has purchased, as provided in Section 2.6.

**ARTICLE XI**  
**DURATION OF LITIGATION TRUST**

11.1 Duration. The Litigation Trustee and the Litigation Trust shall be discharged or dissolved, as the case may be, upon the earlier to occur of (i) all of the Litigation Trust Assets have been distributed pursuant to the Plan and the Trust Agreement, (ii) the Litigation Trustee determines, with the consent of the Litigation Trust Board, that the administration of any

remaining Litigation Trust Assets is not likely to yield sufficient additional Litigation Trust proceeds to justify further pursuit, and (iii) all distributions required to be made by the Litigation Trustee under the Plan and the Trust Agreement have been made; provided, however, in no event shall the Litigation Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the third (3rd) anniversary (or within the six-month period prior to the end of an extension period), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable private letter ruling from the IRS or an opinion of counsel satisfactory to the Litigation Trustee and the Litigation Trust Board that any further extension would not adversely affect the status of the trust as a liquidating trust for United States federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Litigation Trust Assets. If at any time the Litigation Trustee determines, in reliance upon such professionals as the Litigation Trustee may retain, that the expense of administering the Litigation Trust so as to make a final distribution to its beneficiaries is likely to exceed the value of the assets remaining in the Litigation Trust, the Litigation Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Litigation Trust, (ii) donate any balance to a charitable organization (A) described in section 501(c)(3) of the IRC, (B) exempt from United States federal income tax under section 501(a) of the IRC, (C) not a “private foundation”, as defined in section 509(a) of the IRC, and (D) that is unrelated to the Debtors, the Reorganized Debtors, the Litigation Trust, and any insider of the Litigation Trustee, and (iii) dissolve the Litigation Trust.

11.2 Post-Termination. After the termination of the Litigation Trust and solely for the purpose of liquidating and winding up the affairs of the Litigation Trust, the Litigation Trustee shall continue to act as such until its duties have been fully performed. Upon distribution of all the Litigation Trust Assets, the Litigation Trustee shall retain all books and records pertaining to the Debtors or the Litigation Trust that have been delivered to or created by the Litigation Trustee, subject to the provisions of Section 11.3.

11.3 Destruction of Books and Records. At the Litigation Trustee’s discretion, all books and records pertaining to the Debtors or the Litigation Trust that have been delivered to or created by the Litigation Trustee may be destroyed at any time following the date that is six (6) years after the final distribution of Litigation Trust Assets (unless such records and documents are necessary to fulfill the Litigation Trustee’s remaining obligations) subject to the terms of any joint prosecution and common interests agreement(s) to which the Litigation Trustee may be a party; provided, however, that the Litigation Trustee shall obtain an order of the Bankruptcy Court before disposing of any books and records that are reasonably likely to pertain to pending litigation in which the Debtors or their current or former officers or directors are a party.

11.4 Discharge. Except as otherwise specifically provided herein, upon the final distribution of Litigation Trust Assets, the Litigation Trustee shall be deemed discharged and have no further duties or obligations hereunder, the Litigation Trust Beneficial Interests shall be cancelled and the Litigation Trust will be deemed to have been dissolved. In the event that there are Litigation Trust Assets at the termination of the Litigation Trust, the Litigation Trustee shall donate such Litigation Trust Assets to a charitable organization of the Litigation Trustee’s choice described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code, as provided in Section 2.8(b).

**ARTICLE XII**  
**MISCELLANEOUS PROVISIONS**

12.1 Governing Law. This Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (without reference to conflicts of law).

12.2 Jurisdiction. Subject to the proviso below, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Litigation Trust and the Litigation Trustee, including, without limitation, the administration and activities of the Litigation Trust and the Litigation Trustee, provided, however, that notwithstanding the foregoing or anything to the contrary set forth in the Plan, the Litigation Trustee shall have power and authority to bring any action in any court of competent jurisdiction to prosecute any Avoidance Action or Assigned Claims that is assigned to the Litigation Trust.

12.3 Severability. In the event that any provision of this Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Trust Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Trust Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.4 Notices. Any notice or other communication required or permitted to be made under this Trust Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by telex, facsimile or other telegraphic means, sent by nationally recognized overnight delivery service, or mailed by first-class mail:

(i) if to the Litigation Trustee, to:

Barry E. Mukamal  
One SE Third Avenue, Tenth Floor  
Miami, FL 33131  
F: (305) 995-9601  
Barry.Mukamal@marcumllp.com

(ii) if to the Delaware Trustee, to:

CSC Trust Company of Delaware  
Little Falls Centre One  
2711 Centerville Road  
Wilmington, DE 19808  
Attention: [Sandra Horowitz]

- (iii) if to a member of the Litigation Trust Board, to each of the following:

Tom Mercaldo  
154 Herbert St.  
Milford, CT 06461  
(203) 876-7822 (phone)  
(203) 876-9804 (fax)  
tmercald@aquinasconsulting.com

Mark Walenczyk  
5050 Poplar Ave., Suite 1734  
Memphis, TN 38154  
(901) 255-2623  
(901) 302-9278 (fax)  
markw@williamsaerollc.com

Barry Mukamal  
One Southeast Third Avenue, 10th Floor  
Miami, FL 33131  
(305) 995-9770 (phone)  
(305) 377-8331 (fax)  
barry.mukamal@marcumllp.com

- (iv) if to any Litigation Trust Beneficiary, to the last known address of such Litigation Trust Beneficiary according to the Litigation Trustee's records

12.5 Headings. The headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or of any term or provision hereof.

12.6 Plan. Nothing contained herein shall modify the terms of the Plan or the Confirmation Order; instead, the terms of this Trust Agreement are intended to supplement them. To the extent that the terms of the Plan are inconsistent with the terms set forth in this Trust Agreement with respect to the Litigation Trust, then the terms of this Trust Agreement shall govern; provided, however, that the release, injunction, and exculpation provisions contained in Article XXXI of the Plan (and the defined terms related thereto) shall be controlling notwithstanding any other provision of this Trust Agreement. The Litigation Trust, the Litigation Trustee and any successor Litigation Trustee shall at all times be bound by the terms of the Plan, including without limitation the release, injunction and exculpation provisions contained therein. For the avoidance of doubt, the Litigation Trust, the Litigation Trustee, any successor Litigation Trustee and any defendant in any action commenced in connection with this Trust Agreement shall at all times be enjoined from pursuing any Claims or Causes of Action against the Released Parties and their Related Persons.

12.7 Cooperation. The Debtors shall turn over or otherwise make available to the Litigation Trustee at no cost to the Litigation Trust or the Litigation Trustee, all books and records reasonably required by the Litigation Trustee to carry out its duties hereunder, and shall agree to otherwise reasonably cooperate with the Litigation Trustee in carrying out its duties hereunder; provided, that the Litigation Trust will reimburse the Reorganized Debtors for reasonable out-of-pocket fees, costs and expenses incurred in connection with the provision of information, documents and/or assistance requested by the Litigation Trustee, including, but not limited to, the Reorganized Debtors' costs and expenses incurred in providing copies of its books and records to the Litigation Trustee, legal fees and travel expenses attendant thereto; provided, further, that any objections the Litigation Trustee wishes to assert with respect to the reasonableness of the fees incurred by the Reorganized Debtors in connection herewith shall be referred to the Bankruptcy Court for resolution; provided, further, that if the Bankruptcy Court finds such fees incurred by the Reorganized Debtors to be reasonable (or finds the Reorganized Debtors' position more reasonable than that of the Litigation Trustee), the Litigation Trustee shall also reimburse the Reorganized Debtors for the fees and expenses incurred in connection with such challenge.

12.8 Confidentiality. The Litigation Trustee Parties and the Litigation Trust Advisory Parties, and their respective officers, directors, partners, managers, members and employees (the "Confidential Parties"), shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidential Party of or pertaining to the Debtors, the Litigation Trust, the Litigation Trust Beneficiaries or the Litigation Trust Assets; provided, however, that such information may be disclosed if—

- (i) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties; or
- (ii) such disclosure is required of the Confidential Parties pursuant to legal process, including subpoena or other court order or other applicable laws or regulations; or
- (iii) the Litigation Trust Board determines that such disclosure is in the interests of the Litigation Trust or the Litigation Trust Beneficiaries.



12.9 Entire Trust Agreement. This Trust Agreement and the ~~Annexes~~Exhibits attached hereto contain the entire agreement between the parties and supersede all prior and contemporaneous agreements or understandings between the parties with respect to the subject matter hereof.

12.10 Named Party. In pursuing any Avoidance Actions, objecting to any Assigned Claim, or in disposing of any Litigation Trust Assets, or otherwise administering the Litigation Trust or any Litigation Trust Assets, including, without limitation, the execution of documents, such as releases, and agreements, the Litigation Trustee may pursue such matters and/or execute any such documents in the name of “Litigation Trust” and/or in its own name as Litigation Trustee or in such other names or such representative capacities as necessary or appropriate in the Litigation Trustee’s discretion.

12.11 Amendment.

(a) This Trust Agreement and its Exhibits may not amended, modified, or supplemented without the prior written consent of the Litigation Trustee, the Reorganized Debtors, the Prepetition Agent and the Oak Hill Entities.

(b) Bankruptcy Court approval shall be required for any changes or amendments to this Trust Agreement that are inconsistent with the terms of the Plan or the Confirmation Order. Notwithstanding this Section no amendments to this Trust Agreement shall be inconsistent with the purpose and intention of the Litigation Trust to liquidate in an orderly manner the Litigation Trust Assets (which will maximize the value of such assets) in accordance with Treasury Regulations Section 301.7701-4(d) or, in the alternative, as allowed under Delaware law applicable to limited liability companies or limited liability partnerships. In the event that the Litigation Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), this Trust Agreement may be amended by the Litigation Trustee, with the Majority Consent of the Litigation Trust Board, to the extent necessary for the Litigation Trustee to take such action as it shall deem appropriate to have the Litigation Trust classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership under section 7704 of the Tax Code, including, if necessary, creating or converting it into a Delaware limited liability partnership or limited liability company that is so classified.

12.12 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code; the Bankruptcy Rules; or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Trust Agreement, and the word “herein” and words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision of this Trust Agreement. The term “including” shall mean “including, without limitation.”

12.13 Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed original, but such counterparts shall together constitute one and the same instrument. A facsimile or portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

**[REMAINDER OF PAGE BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Trust Agreement or caused this Trust Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

Southern Air Holdings, Inc., Cargo 360, Inc.,  
Southern Air Inc., Air Mobility Inc., 21110 LLC,  
21111 LLC, 21221 LLC, 21550 LLC, 21576 LLC,  
21590 LLC, 21787 LLC, 21832 LLC, 23138 LLC,  
24067 LLC, 46914 LLC, CF6-50 LLC, Aircraft  
21380 LLC and Aircraft 21255 LLC

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

Barry E. Mukamal, as Litigation Trustee

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

CSC Trust Company of Delaware, as Delaware  
Trustee

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

**EXHIBIT A**

**ASSIGNED CLAIMS  
AND AVOIDANCE ACTIONS**

**EXHIBIT B**

**Initial Members of the Trust Advisory Board**

Tom Mercaldo  
154 Herbert St.  
Milford, CT 06461  
(203) 876-7822 (phone)  
(203) 876-9804 (fax)  
tmercald@aquinasconsulting.com

Mark Walenczyk  
5050 Poplar Ave., Suite 1734  
Memphis, TN 38154  
(901) 255-2623  
(901) 302-9278 (fax)  
markw@williamsaerollc.com

Barry Mukamal  
One Southeast Third Avenue, 10th Floor  
Miami, FL 33131  
(305) 995-9770 (phone)  
(305) 377-8331 (fax)  
barry.mukamal@marcumllp.com

**EXHIBIT C**

**FORM OF  
CERTIFICATE OF TRUST**