



This document is scheduled to be published in the Federal Register on 02/09/2012 and available online at <http://federalregister.gov/a/2012-02930>, and on FDsys.gov

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

Docket No. FAA-2011-0012

Notice of Proposed Policy Clarification for the Registration of Aircraft to U.S.

Citizen Trustees in Situations Involving Non-U.S. Citizen Trustors and Beneficiaries.

AGENCY: Federal Aviation Administration

ACTION: Notice of Proposed FAA Policy.

SUMMARY: Notice is hereby given of the FAA's proposed policy regarding the registration of aircraft to U.S. Citizen Trustees in situations involving Non-U.S. citizen trustors and beneficiaries.

DATES: Written public comments regarding this FAA proposed policy should be submitted by March 31, 2012, via e-mail to ladeana.peden@faa.gov.

FOR FURTHER INFORMATION CONTACT: LaDeana Peden at 405-954-3296, Office of Aeronautical Center Counsel, Federal Aviation Administration.

SUPPLEMENTARY INFORMATION:

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

obtaining important operational and maintenance information concerning such aircraft from the registered owners, i.e., the owner trustees. The problems in obtaining such information in turn affected the FAA's ability to conduct fully effective oversight of such aircraft when operated outside the United States, and to provide foreign civil aviation authorities with information on those operations in support of the safety oversight activities of those authorities. The FAA also undertook the review of non-citizen trusts because of concerns that some of those arrangements may not have complied with FAA requirements for non-citizen trusts.

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

The FAA met with interested members of the public on June 1, 2011, in Oklahoma City. Representatives of trade associations, law firms, aircraft manufacturers, lenders, lessors, aircraft operators, trustees and others were present. The proceedings of that meeting were transcribed. The transcript is available for members of the public to read. Copies of the transcript (File No. A505180) may be purchased through Atkinson-Baker, Inc., Court Reporters, via e-mail at abi@depo.com or by contacting Customer Service at 800-288-3376.

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

The discussion at the public meeting and the written comments received by the FAA have helped it to better understand the practices and concerns of the aviation industry with regard to the use of non-citizen trusts to register aircraft in the United States. In addition, the FAA gained a better understanding of the perceptions that exist with regard to the regulatory obligations on a trustee with regard to it registering an aircraft in the United States using a non-citizen trust. The FAA's improved understanding has allowed it to sharpen the focus of its review of non-citizen trusts. The FAA also believes that the public meeting was useful in helping members of the public to better understand the critical safety information that the FAA needs to communicate to aircraft operators, through owner trustees, and the critical information that the FAA needs to receive from them in order for the FAA to meet its safety oversight obligations under international and U.S. law.

The FAA will discuss the issues in terms of the law and safety since the two are greatly intertwined. International law and U.S. law impose safety oversight responsibilities on the FAA, existing law restricts aircraft registration in the U.S. to “owners,” and existing law imposes certain safety requirements on aircraft owners. After the FAA discusses the legal issues, the FAA will suggest which provisions in trust agreements may need to be changed and it will suggest language that would enable the FAA to facilitate the registration of aircraft in the future that are owned in trust. The suggested language and the reasons for the suggested language, if adopted as the FAA’s final policy on this matter, will guide the FAA in the future in determining eligibility for registering non-U.S. citizen trusts. An example of a standard trust agreement with FAA-suggested changes incorporated is attached at the end of this Notice.

State of Registry Responsibilities

Whenever an aircraft is registered in a country, that country becomes the State of Registry for that aircraft. Under U.S. law, the FAA has responsibility for the oversight of civil aircraft of the United States.

Under international law, a State of Registry has numerous responsibilities with regard to each aircraft on its registry. A number of these responsibilities, which are set forth in the Convention on International Civil Aviation (the Chicago Convention) and its annexes, relate to how a State registers an aircraft and manages its aircraft registry. Included among these responsibilities is the obligation to provide information on the registration and ownership of aircraft on its registry when requested by another contracting State or by the International Civil Aviation Organization.

Other responsibilities under the Chicago Convention relate to the regulation and oversight of the safety of the aircraft and its operations. The State of Registry of an aircraft is responsible for issuing certificates of competency and licenses for the crewmembers of those aircraft and issuing a certificate of airworthiness to each aircraft on its registry. The State of Registry also is responsible for overseeing the continuing airworthiness of each aircraft on its registry. Because the Chicago Convention provides for the registration of an aircraft in only one State at any given time, there can only be a single set of requirements for the airworthiness certification of a particular aircraft or for the licensing of an individual crewmember of that aircraft. Those requirements apply regardless of where the operator is incorporated or resides or the location of the operation.

With regard to the operation of aircraft, each contracting State to the Chicago Convention must require that every aircraft on its registry, when operated outside the territory of that State, comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Over international waters, the rules for the flight and maneuver of aircraft are set forth in Annex 2 to the Chicago Convention. (The FAA has incorporated these particular international requirements in Sections 91.703(a)(2) and Section 91.703(a)(3) of Title 14, Code of Federal Regulations.) Each contracting State also has undertaken to insure the prosecution of all persons violating the applicable rules for the flight and maneuver of aircraft. In order to execute its responsibilities as to compliance with, and enforcement of, flight and maneuver rules, the State of Registry must be able to obtain information about particular aircraft and operations in a timely manner and, in some cases, provide that information to other States.

Depending on the circumstances, the State of Registry also may be the State of the Operator of an aircraft if the operator's principal place of business is located in the State of Registry or, if there is no such place of business, the operator permanently resides in the State of Registry. The State of the Operator must oversee the operators of aircraft for which it is responsible in accordance with the standards set forth in Annex 6 to the Chicago Convention. Where the State of Registry and the State of the Operator are one and the same, the execution of safety oversight responsibilities is seamless because it occurs under a single regulatory system. However, the certification and oversight responsibilities of the State of the Operator are made more complicated when an operator uses an aircraft registered in another State. In those cases, the State of the Operator must consider and act consistently with certain State of Registry requirements – particularly with regard to the performance, equipage, and maintenance of the aircraft – when certifying and overseeing the operator. The effective execution of these responsibilities requires an ongoing exchange of information between the State of Registry and the State of the Operator.

In the course of its review of the use of non-citizen trusts to register aircraft, the FAA determined that the basing and operation of such aircraft outside the United States frequently gives rise to problems in the execution of the oversight responsibilities. The FAA's ability to carry out its State of Registry responsibilities for those aircraft is hampered by the fact that it has little or no presence in most foreign locations where the operations occur, and little or no information about the identity of the operators or the nature of the operations being conducted. Moreover, the United States is not the State of the Operator in many of those situations, inasmuch as the operators for the most part do

not maintain their principal place of business or reside in the United States. The FAA's lack of information about the identity of the operators or the nature of the operations substantially diminishes the FAA's ability to provide information to the State that is either responsible for the oversight of the operator or the State where a flight operation actually occurs.

Aircraft Owner Responsibilities

1. Regulatory Obligations of the Owners of U.S.-Registered Aircraft Generally.

In the laws and regulations that establish and govern the FAA Aircraft Registry of the United States, no distinction is made between types or categories of aircraft owners for purposes of regulatory compliance. All registered owners of aircraft on the FAA Aircraft Registry, whether they are individuals, partnerships, corporations, or associations, any of which may act in the capacity of owner trustees, have the same obligations when it comes to compliance with the applicable FAA regulations. Once the FAA completes the registration process, the person to whom the aircraft is registered is the owner for all purposes under the regulations whether or not it acts as owner trustee.

The owners of U.S.-registered aircraft have a substantial role in the FAA's system for overseeing the safety of those aircraft and their operation. For example, the regulations specify that the application for an airworthiness certificate must be submitted by the owner of the aircraft. 14 CFR 21.173. The regulations also impose certain maintenance responsibilities on owners of aircraft as well as the actual operators of the aircraft. 14 CFR 91.403(a) and 91.405.

The importance of the owner's role in the FAA's safety oversight system may be best illustrated by Airworthiness Directive (AD) process. In situations involving unsafe

conditions or defects in an aircraft type, the FAA issues ADs – frequently on an emergency basis – to the registered owners of such aircraft. Sometimes in the interests of safety, those ADs, which are mandatory rules, require the grounding of the aircraft while critical airworthiness inspections are conducted or while important repairs or alterations are made to the aircraft. The FAA requires aircraft owners to comply with the requirements of an AD. All owners, including owner trustees, must be able to communicate critical safety information in an AD in a timely manner to those who can take appropriate action.

2. Treating an Owner as the Operator of an Aircraft in Certain Circumstances.

The FAA may also communicate with the registered owner of aircraft when conducting an investigation about suspected operational or maintenance violations in situations where the identity of the pilot or operator of the aircraft is not readily apparent. Where a registered owner has caused or authorized another person to operate his aircraft and where the owner has not cooperated with the FAA in providing information about such operation, the FAA has taken enforcement action against the owner as an “operator” using the broadly defined term “operate” in part 1 of the Federal Aviation Regulations.¹ In In the Matter of Fenner, FAA Order No. 96-17 (May 3, 1996) aff’d, Fenner v. FAA, 113 F.3d 1251 (11th Cir. 1997), the registered aircraft owner personally knew who had operated his aircraft dangerously, but refused to provide that person’s name to the FAA. The FAA Administrator used the long-standing, broad definition of “operate” to find that the owner, by authorizing the use of the aircraft was responsible for the operation of the aircraft. The owner was assessed a \$4000 civil penalty for the operation of the aircraft.

¹ *Operate*, with respect to aircraft, means use, cause to use or authorize to use aircraft, for the purpose (except as provided in § 91.13) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise).

In Fenner, the FAA Administrator held that: “While aircraft owners might not be held liable for all infractions committed in their aircraft, they can be held liable for infractions committed by a pilot who had permission to use their aircraft. The FAA has the statutory duty to protect the public from dangerous actions. Moreover, holding aircraft owners responsible in cases like this may help ensure that aircraft owners grant permission to use their aircraft only to persons they know to be responsible.” Fenner, at p. 3

In a letter to Edward M. Plaza from Assistant Chief Counsel for Regulations and Enforcement Carl B. Schellenberg, March 28, 1979, the FAA stated that a lessor could be considered to have operated an aircraft and be considered in violation of [now section 91.13)] when the lessee flew the aircraft in a careless or reckless manner.) (FAA Interpretation No. 1979-11)

In In the Matter of Gatewood, FAA Order No. 2001-1, (February 3, 2000), an aircraft owner was found to have “operated” an unairworthy aircraft where an inexperienced mechanic made an erroneous airworthiness finding and the mechanic/pilot flew the aircraft.

In most circumstances the FAA will prefer to focus on the actual operator of an aircraft when conducting an investigation or taking enforcement action. However, an aircraft owner is expected to cooperate fully in providing information in support of the FAA’s investigatory and enforcement efforts.

3. Owners’ Regulatory Compliance Obligations.

In reviewing the issues surrounding the use of trusts to register aircraft, the FAA has focused attention on the role of the owner trustee of a U.S.-registered aircraft in

ensuring compliance with the laws and regulations that relate to the operation of the aircraft. In particular, the FAA has considered whether the status of the trustee as the owner of the aircraft under a trust agreement affects its responsibilities for compliance issues related to the operation of the aircraft as compared to other owners of a U.S.-registered aircraft. After considering the comments submitted by the public, FAA has determined that there is nothing inherent in the status of a trustee owner of a U.S.-registered aircraft that would affect or limit its responsibilities for ensuring compliance with the laws and regulations that relate to the operation of the aircraft. The FAA is not aware of any basis for treating one type of owner – such as a trustee under a non-citizen trust – differently from any other owner of a civil aircraft on the U.S. registry when considering issues of regulatory compliance.

Several commenters indicated that a trustee could relieve itself of its regulatory compliance obligations if, in transferring the aircraft to another party for purposes of operating it, the trustee includes a contractual requirement that the operator fully comply with all applicable laws and regulations. The FAA disagrees. No commenter cited any legal authority in support of the proposition that a private party could somehow avoid a regulatory obligation imposed on it by the FAA simply by entering into a private contract with another party. The FAA in its regulations and policies does not recognize such a right.

The FAA also disagrees with the suggestion that 49 U.S.C. 44112 provides a basis for relieving owners of aircraft of their regulatory obligations. In its current form, section 44112, entitled “Limitations on Liability,” provides in part:

“A lessor, owner, or secured party is liable for personal injury, death, or property loss or damage on land or water only when a civil aircraft, aircraft engine, or propeller is in the actual possession or control of the lessor, owner, or secured party, and the personal injury, death, or property loss or damage occurs because of

- (1) the aircraft, engine, or propeller; or
- (2) the flight of, or an object falling from, the aircraft, engine, or propeller.”

The plain language of the statute makes clear that the intent is to protect lessors, owners, or secured parties from tort liability when they are not in actual possession or control of the aircraft. The legislative history indicates that the liability protection provided under section 44112 was necessary to encourage participation in the financing of aircraft purchases. H.R. Rpt. 802091, at 1-2 (Jun. 1, 1948). There is no indication, however, in either the language of the statute or the legislative history that the drafters of the provision meant to provide broader protection to lessors, owners, or secured parties by exempting them from regulatory compliance.

4. Due Diligence Reviews of Non-U.S. Citizen Trustors and Beneficiaries.

Some of the commenters stated that, presently, most U.S. citizen owner trustees exercise due diligence when investigating the background of foreign trustors and beneficiaries before those U.S. citizen trustees enter into trust relationships or any other type of relationship with such non-U.S. citizens. As those commenters explained, those U.S. citizen trustees are endeavoring “...to protect the interests of the United States...”, and do so by, among other things, exercising due diligence pursuant to the USA Patriot Act, the Department of Commerce export control regulations, and the Office of Foreign Asset Control economic sanction regulations.

The FAA acknowledges that the due-diligence reviews described by the commenters are important for purposes of protecting the interests of the U.S. as to issues of national security, export control, and economic sanctions. Those reviews do not, however, necessarily meet the needs of the FAA with regard to protecting U.S. interests concerning aviation safety inasmuch as they do not consider the technical aviation issues that drive a safety oversight system. The FAA is concerned with technical qualification and the ability to comply on an ongoing basis with technical, operating, and maintenance standards. Such issues are outside the scope of the due-diligence reviews for national security, export control, and economic sanction compliance purposes.

As indicated in the foregoing discussion, the FAA by regulation and practice imposes important safety obligations on all owners of aircraft. These obligations require that the information about the identity and whereabouts of the actual operators of aircraft and location and nature of operation be updated on an ongoing basis, thereby allowing owners to provide operators with safety critical information in a timely manner, and to obtain information responsive to FAA inquiries, including investigations of alleged violations of FAA regulations. The FAA expects this level of due diligence from owners with regard to issues concerning aviation safety oversight. Moreover, the FAA believes such obligations are not unduly burdensome or beyond the capabilities of any owner of a U.S.-registered aircraft to meet.

Some commenters have suggested however that the FAA should not expect that U.S. owner trustee be able to identify the operator or be able to insure quick contact with the operator of the aircraft. We reject these suggestions. To accept such suggestions

would result in the removal of existing obligations on U.S. citizen owner trustees that would otherwise continue to exist for all other owners.

5. FAA Policy Clarification: Information Requirements.

For the majority of the aircraft on the FAA Aircraft Registry, including some aircraft registered to non-U.S. citizens under trusts, the FAA has adequate sources of information about the aircraft and their operations to effectively and efficiently carry out its State of Registry responsibilities under international law. However, for aircraft registered to non-U.S. citizens under trusts that are primarily or exclusively used in general aviation or aerial works operations outside the United States, the FAA has been less successful in accessing information necessary to the execution of its State of Registry responsibilities. In all cases, the FAA will look to the trustee, as the registered owner of the aircraft, for information about the aircraft and its operations when needed to comply with the United States' State of Registry obligations under the Chicago Convention. In particular, the FAA expects that within 2 business days a trustee will be able to provide to the FAA the following information about the aircraft and its operation:

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

The FAA further expects that within 5 business days the trustee, as the registered owner of the aircraft, will be able to respond to FAA requests for more detailed information about the aircraft and its operations, including:

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

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

Policy Clarifications Related to Non-Citizen Trusts and the Registration Process

1. Operating Agreements Between the Trustee Owner and the Trustor or Beneficiary.

During the course of its review of non-citizen trusts, the FAA has had an opportunity to review a number of aircraft operating agreements between the trustee owners of aircraft and the trustors or beneficiaries of the trust.² The operating agreements reviewed had not been submitted to the FAA along with aircraft registration application and other required documents of the aircraft concerned.³

In its review, the FAA found that many operating agreements contained clauses that addressed issues not covered in the non-citizen trust agreement or that modified or contradicted provisions in the trust agreement, particularly as to enlarging the degree of control exercised by a non-U.S. citizen over the trustee. The ultimate impact of many operating agreements was to affect the relationship and balance established under the

² The FAA also notes that it had previously unfavorably opined on whether a trustee could enter into operating agreements that permitted custody and use of the aircraft by the non-US citizen trustor. FAA now recognizes that such transactions are not uncommon.

³ Pursuant to 14 CFR 47.7(c), in addition to the aircraft registration application and evidence of ownership, other required documents include a trust agreement and trustee affidavit of citizenship.

non-citizen trust between the trustor and/or beneficiary on one hand and the trustee on the other.

The FAA requires that a person holding legal title to an aircraft in trust must, when applying to register that aircraft in the United States, submit a “copy of each document legally affecting a relationship under the trust. . . .” 14 CFR 47.7(c)(2)(i). The fact that the operating agreements referenced above have not been routinely submitted to the FAA in conjunction with an application to register an aircraft held in trust troubles the FAA because of the effect of the operating agreements on the relationship established under the trust. The FAA concludes, contrary to the views of some commenters, that a relationship established under a trust agreement is necessarily affected by an operating agreement or similar side agreement or arrangement involving trustee and trustor which allows possession and use of the aircraft at all times to remain with the trustor. The operating agreement and the trust agreement are so intertwined that the operating agreement will always affect the relationship established under the trust.

A fundamental part of the registration process for aircraft held in trust is determining whether the underlying agreements meet the applicable requirements and therefore are sufficient to establish the trustee’s eligibility to register the aircraft. The failure to submit required documents such as an operating agreement frustrates this objective. To avoid this result in the future, the FAA will require that all operating agreements or similar side agreements involving the trustee transferring custody and use of the aircraft held in trust to the trustor be submitted to the FAA along with other documents that affect a relationship under the trust pursuant to 14 CFR 47.7(c)(2)(i).

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

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

2. Trustee Removal or Resignation.

In promulgating regulations to permit the use of a non-citizen trust to establish eligibility to register an aircraft in the U.S., the FAA imposed restrictions on the ability of non-U.S. citizens or resident aliens to remove the trustee. Such restrictions, in the FAA's view, lend more meaningful status and permanence to the trustee as the owner of the aircraft held in trust." Section 47.7(c)(3) of the regulations provides:

If persons who are neither U.S. citizens nor resident aliens have the power to direct or remove a trustee, either directly or indirectly through the control of

another person, the trust instrument must provide that those persons together may not have more than 25 percent of the aggregate power to direct or remove a trustee. Nothing in this paragraph prevents those persons from having more than 25 percent of the beneficial interest in the trust.

The limitation on the ability of non-U.S. citizens or resident aliens to remove a trustee is in addition to what limitations, if any, exist under the laws of the state in which the trust is established.

a. Removal for Cause - Specificity

The FAA is concerned that non-citizen trusts being used to establish eligibility to register an aircraft do not adequately limit the ability of non-U.S. citizens to remove a trustee. In general, the agreements allow trustees to be removed for cause without specifying what constitutes a sufficient cause. The FAA's view is that such lack of specificity appears to provide a non-U.S. citizen beneficiary with virtually unconditional power to remove a trustee, since practically any cause for removal might be interpreted as sufficient.

Therefore, the FAA believes that a non-citizen trust agreement must describe with specificity what would be a sufficient cause for removal of a trustee by a non-U.S. citizen beneficiary. Some trust agreements on file with the FAA have loosely attempted to define what constitutes cause to remove consistent with the general law of trusts. The grounds for removal listed in the Third Restatement of Trusts at Section 37 are illustrative of possible (but not always relevant) grounds for removing a trustee that might be included in a non-citizen trust agreement.

b. Removal for Cause – Aggregate Power

Section 47.7(c)(3) of the Federal Aviation Regulations provides that non-U.S. citizens or non-resident aliens may not have more than 25% of the aggregate power to direct or remove a trustee. In those cases where a non-citizen trustor appears to have 100% of such power (not just 25%), the FAA needs to be assured in writing (in the trust agreement, trust affidavit of citizenship, or elsewhere) how and why it is that such non-citizens will not be able to exercise such aggregate power in excess of 25%.⁴

In summary, the FAA believes that without a description of the causes that might justify removal, and without the power to remove by non-U.S. citizen or non-resident aliens being clearly limited to 25% of the aggregate power, that a clause that simply vests a non-U.S. citizen trustor with the power to remove a trustee for cause is insufficient.

c. Termination of the Trust and Trustee Resignation

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

Likewise, the FAA does not have any restrictions on the ability of a trustee to resign without first being replaced by a successor trustee. Contrary to the suggestion of

⁴ In a related vein, the FAA notes that some trust agreements contain a provision designating a foreign court to adjudicate disputes between the trustor and trustee. Such designations are not acceptable to the FAA.

at least one commenter, the FAA does not have any regulation or policy that requires the inclusion of a requirement in the non-citizen trust agreement that a resignation may take effect only upon the appointment of a successor trustee. The FAA allows the parties to the non-citizen trust to address that issue as they see fit. The FAA believes the consequences of a resignation by a trustee without the prior appointment of an eligible successor trustee would be the same as a termination of the trust as described above.

3. Proposed Changes to a Standard Trust Agreement

A standard non-citizen trust agreement has developed over the years. The FAA believes it is useful to offer suggestions to that document.⁵ In some instances we recommend striking language that we believe is ambiguous or perhaps contrary to law. We also suggest some new language that we believe might be included in trust agreements (*e.g.*, in paragraph 3.02, illustrative language has been added regarding for cause removal). That language reflects what the FAA might deem acceptable for aircraft registration purposes and that the owner trustee applicant is making a bona fide effort to comply with existing legal requirements imposed on all aircraft owners. Below is a discussion of significant suggested revisions to a standard trust agreement.

a. Specification of owner trustee's duties in the non-citizen trust agreement should reflect aspects of duties imposed by the FAA on owners and should reflect that the owner trustee may need to rely on the assistance of the trustor and/or beneficiary to meet those duties.

⁵ Attached as Exhibit 1 is an example of a standard trust agreement with FAA-suggested changes incorporated. The revised standard trust agreement showing the FAA's additions and deletions also is available on the FAA's website.

We propose new paragraphs (e) and (f) to Section 4.01 of the standard trust agreement. As discussed earlier in this document, foreign civil aviation authorities and others come to the FAA with information that a U.S.-registered aircraft may have conducted an unsafe operation or that it is presently in an unairworthy condition. Trustee aircraft owners, just like non-trustee aircraft owners, must be able to provide the FAA with information about who normally operates and maintains the aircraft.⁶ We feel that 2 business days is enough time for the trustee, with the cooperation of the trustor, to provide the FAA with information about those who normally operate the aircraft and about the usual location of aircraft maintenance records and other records. We also believe that it is reasonable to expect that within 5 business days of an FAA request, that a trustee, with the cooperation of the trustor should be able to provide the FAA with: (i) information about the actual operator, crew, and aircraft operations for specified dates; (ii) information about where the aircraft will be on specified dates in order for the FAA to conduct direct oversight inspections and investigations regarding the condition of the aircraft or the manner in which the aircraft is being operated; and (iii) maintenance and other records in order to identify the current airworthiness status of the aircraft, who performed maintenance on the aircraft, and the manner and methods used to perform that maintenance.

⁶ Some have suggested that the FAA impose a new requirement on the various and potentially vast number of operators of these trust aircraft. The suggestion has been made that FAA require those that actually operate the aircraft under a lease or other arrangement whereby they get possession, control and use of the aircraft, submit reports to Flight Standards District Offices (FSDO) identifying themselves as the operators of the aircraft. The suggestion is that the FAA apply the operator-reporting provisions found in a long-standing exemption issued to the NBAA in 1972. *See Exemption 1637.* Adoption of a similar exemption would have the effect of not requiring an owner trustee to be the conduit for important communications to the operator/users of the aircraft or the conduit or provider of important information and documents about the past or current condition and use of the aircraft to the FAA. In terms of conveying important safety information or in terms of gathering important safety information and evidence, FAA believes trustee owners should be treated just like any other registered aircraft owners.

We note that proposed new paragraphs (e) and (f) includes language to address emergency situations identified by the FAA. If an emergency arises, the FAA may issue an emergency order to the owner trustee requiring the production of information and documents in a shorter time frame. In an emergency situation, the nonemergency time frames specified in draft paragraphs (e) and (f) would not apply.

We are proposing a new paragraph (g) to Section 4.01 of the trust agreement in order for the parties to recognize that it is the owner trustee's duty to expeditiously communicate emergency airworthiness directives concerning the aircraft to the Trustor and/or Lessee of the aircraft. Again, the FAA through the appropriate Aircraft Certification Office uses the information about aircraft owners, which is listed in the FAA Aircraft Registry, to communicate time-critical safety requirements and restrictions to aircraft owners, who under the regulations are primarily responsible for the airworthiness of the aircraft. *See* § 91.403. Similarly, a situation could develop where the FAA may already have sufficient evidence about an aircraft's condition or misuse to warrant the issuance of a Cease and Desist Order or some other type of order immediately grounding the aircraft.

In regard to draft paragraph (h), the United States has an interest in being informed by the most expeditious means possible of the resignation of a trustee or the "for cause" removal of a trustee. Among other things, the agency needs that information in order to determine whether to de-register the aircraft.

b. Proposed Revisions to Article 9 of the Trust Agreement

Much of the language in the existing Article 9 is ambiguous or problematic. For example, subsection 9.01(a) beginning at line 2 states:

“... the Trustor will have no rights or powers to direct, influence or control the Owner Trustee in the performance of the Owner Trustee’s duties under this Agreement *in connection with matters involving the ownership and operation of the Aircraft by the Owner Trustee.*” (italicized emphasis added).

In that regard FAA is concerned that most non-citizen trusts involve situations where the U.S. Citizen Trustee never possesses or operates the aircraft which is rarely operated in U.S. airspace. Therefore the italicized language might be interpreted as only limiting a Trustor’s rights and powers do direct, limit, or influence an Owner Trustee’s duties on those rare occasions when the Owner Trustee is the actual operator.

In the proposed rewrite of subsection 9.01(a) FAA has tried to make it clear that the Trustor may not control the Owner Trustee’s duties under the Agreement including, but not limited to, matters involving ownership or the operation of the aircraft.

Request for Comments

FAA is seeking comment on the proposed policy clarifications and trust agreement revisions, and invites interested parties to visit its website for background information. The FAA will consider the comments and other information received in formulating a final notice of policy clarification, or in determining whether a new policy or rule should be developed to address FAA safety and oversight concerns with non-citizen trust registrations. The FAA also will consider whether an additional public

meeting is required to ensure an adequate airing of the public's views on the use of non-citizen trusts to register aircraft in the United States.

Issued in Washington D.C. on February 3, 2012.

KATHRYN B. THOMSON
Chief Counsel, Federal Aviation Administration

TRUST AGREEMENT

THIS TRUST AGREEMENT (XXX), dated as of XXX, (the "Agreement") by and between XXX, a [corporation organized and existing] [limited liability company formed]⁷ under the laws of XXX ("Trustor"), and XXX, a XXX organized and existing under the laws of the XXX ("Owner Trustee");

WITNESSETH:

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

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

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

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

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

ARTICLE 1

DEFINITIONS

Capitalized terms used in this Agreement shall have the respective meanings assigned thereto below, unless such terms are otherwise defined herein or the context hereof shall otherwise require. The terms "hereof", "herein", "hereunder" and comparable terms refer to this Agreement, as amended, modified or supplemented from

⁷ Choose the appropriate phrase depending on whether Trustor is an LLC or a corporation.

time to time, and not to any particular portion hereof. References in this Agreement to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Agreement unless otherwise indicated.

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

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

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

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

"FAA" means the Federal Aviation Administration of the United States or any Government Entity succeeding to the functions of such Federal Aviation Administration.

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

"Lessee" means any lessee under any Lease, or any operator under any Operating Agreement.

"Lease" means any agreement from time to time entered into with respect to the Aircraft by the Owner Trustee, as Lessor, and a third party Lessee, whether or not at the direction of the Trustor.

"Operating Agreement" means any agreement entered into between the Owner Trustee and the Trustor, or between a third party Lessee and the Trustor, transferring to the Trustor the right to possess, use, operate or manage the Aircraft.

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

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

ARTICLE 2

CREATION OF TRUST

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

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

agrees to receive and disburse all moneys constituting part of the Trust Estate, all in accordance with the terms hereof.

ARTICLE 3

THE OWNER TRUSTEE

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

Section 3.02 Removal. Owner Trustee may be removed at any time, but for cause only, by a written instrument or instruments signed by Trustor, subject to the regulatory limitation that a non-U.S. citizen not hold more than 25 percent of the aggregate power to remove a trustee. [For purposes of this Section, “for cause” shall mean willful misconduct or gross neglect so as to endanger the [Trust estate]. Mere disagreements between Owner Trustee and Trustor shall not constitute a cause warranting removal.] Such removal shall take effect immediately upon the appointment of a successor Owner Trustee pursuant to Section 3.04, whereupon all powers, rights and obligations of the removed Owner Trustee under this Agreement (except the rights set forth in Section 3.08) shall cease and terminate. Without any affirmative action by Trustor, any Owner Trustee shall cease immediately to be an Owner Trustee at such time as it ceases to be a Citizen of the United States or at such time as it for any reason is not free from control by Trustor as described in Article 9, and shall give immediate notice thereof to Trustor. Any Owner Trustee shall also give Trustor notice of a possible change of citizenship at the later of (i) 90 days prior to a change in citizenship and (ii) actual knowledge by Owner Trustee that such a change in citizenship is probable.

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

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

Section 3.05 Merger. Any corporation into which Owner Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Owner Trustee shall be a party, or any

corporation to which substantially all the corporate trust business of Owner Trustee may be transferred, shall, subject to the terms of Section 3.04, be Owner Trustee without further act.

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

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

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

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

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

Section 3.11 Owner Trustee May Rely. Owner Trustee shall not incur any liability to anyone in acting or refraining from acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. As to any fact or matter, the manner or ascertainment of which is not specifically described herein, Owner Trustee may for all purposes hereof rely on a certificate, signed by or on behalf of the party executing such

certificate, as to such fact or matter, and such certificate shall constitute full protection of Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the Trust, Owner Trustee may, at the reasonable cost and expense of Trustor, seek advice of counsel, accountants and other skilled persons to be selected and employed by them, and Owner Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the actions, advice or opinion of any such counsel, accountants or other skilled persons.

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

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

advised by counsel that such action would expose it to personal liability, is contrary to the terms hereof or is contrary to law.

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

Section 3.15 Certain Duties and Responsibilities of Owner Trustee.

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

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

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

OWNER TRUSTEE MAKES (i) NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE AIRCRAFT OR AS TO THE TITLE THERETO, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE AIRCRAFT WHATSOEVER, except that XXX, in its individual capacity warrants that on the date on which the Aircraft is transferred to the Trust contemplated by this TRUST AGREEMENT, Owner Trustee shall have received whatever title was conveyed to it, and (ii) no other representations or warranties are made by the Owner Trustee other than to the extent expressly made herein by Owner Trustee, except that Owner Trustee represents and warrants that it has full right, power and authority to enter into, execute, deliver and perform this Agreement and that this Agreement constitutes the legal, valid and binding obligation of the Owner Trustee.

ARTICLE 4

THE TRUST ESTATE

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

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

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

(b) to effect the registration of the Aircraft with the FAA by duly executing and filing or causing to be filed with the FAA (i) the Aircraft Registration Application, (ii) the Affidavit, (iii) the FAA Bill of Sale, (iv) an executed counterpart of this Agreement, and (v) any other document or instrument required therefore including any Operating Agreement;

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

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

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

(f) upon request by FAA, and with the cooperation of Trustor, to provide the FAA with the following information within 5 business days of the request (or immediately in an emergency identified by the FAA): (i) information about the operator,

crew (names and pilot certificate numbers) and aircraft operations on specific dates; (ii) information about where the aircraft will be on a specific date in the future and (iii) maintenance and other aircraft records.

(g) upon receipt of an emergency airworthiness directive from the FAA, to immediately forward the emergency airworthiness directive to the Trustor and or Lessee by the most expeditious means available.

(h) to notify the FAA Aircraft Registry by the most expeditious means available of the trustee's resignation under Article 3.03 or removal under 3.02, or of the termination of the trust under 7.01.

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

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

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

ARTICLE 5

DISTRIBUTIONS

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

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

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

ARTICLE 6

INDEMNIFICATION OF OWNER TRUSTEE BY TRUSTOR

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

to or arising out of the manufacture, purchase, acceptance, nonacceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of the Aircraft (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way relating to or arising out of the administration of the Trust Estate or the action or inaction of Owner Trustee or XXX in its individual capacity hereunder, except (a) in the case of willful misconduct or gross negligence on the part of Owner Trustee or XXX in its individual capacity in the performance or nonperformance of its duties hereunder, or (b) those resulting from the inaccuracy of any express representation or warranty of XXX in its individual capacity (or from the failure of XXX in its individual capacity to perform any of its covenants) contained in this Agreement or any Lease, or (c) in the case of the failure to use ordinary care on the part of Owner Trustee or XXX in its individual capacity in the disbursement of funds. The indemnities contained in this Article 6 extend to XXX only in its individual capacity and shall not be construed as indemnities of the Trust Estate. The Indemnities contained in this Article 6 shall survive the termination of this Agreement. In addition, and to secure the foregoing indemnities, Owner Trustee shall have a lien on the Trust Estate, which shall be prior to any interest therein of Trustor.

ARTICLE 7

TERMINATION

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

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

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

ARTICLE 8

MISCELLANEOUS

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

Section 8.02 Power of Owner Trustee to Convey. Any assignment, sale, transfer or other conveyance by Owner Trustee of the interest of Owner Trustee in the Aircraft or any part thereof made pursuant to the terms of this Agreement or any Lease shall bind Trustor and shall be effective to transfer or convey all right, title and interest of Owner Trustee and Trustor in and to the Aircraft or such part thereof. No permitted purchaser or other permitted grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such assignment, sale, transfer or conveyance or as to the application of any sale or other proceeds with respect thereto by Owner Trustee.

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

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

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

Section 8.05 Co-Trustee and Separate Trustees. If at any time it shall be necessary or prudent in order to conform to any law of any jurisdiction in which all or any part of the Trust Estate is located, or Owner Trustee being advised by counsel shall determine that it is so necessary or prudent in the interest of Trustor or Owner Trustee, or Owner Trustee shall have been directed to do so by Trustor, Owner Trustee and Trustor shall execute and deliver an agreement supplemental hereto and all other instruments and agreements necessary or proper to constitute another bank or trust company or one or more persons (any and all of which shall be a Citizen of the United States) approved by Owner Trustee and Trustor, either to act as co-trustee jointly with Owner Trustee, or to act as separate trustee hereunder (any such co-trustee or separate trustee being herein sometimes referred to as "additional trustee"). In the event Trustor shall not have joined

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

Every additional trustee hereunder shall, to the extent permitted by law, be appointed and act, and Owner Trustee and its successors shall act, subject to the following provisions and conditions:

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

(b) all other rights, powers, duties and obligations conferred or imposed upon Owner Trustee shall be conferred or imposed upon and exercised or performed by Owner Trustee and such additional trustee jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed (including the holding of title to the Trust Estate) Owner Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such additional trustee;

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

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

(e) Trustor, at any time, by an instrument in writing may remove any such additional trustee. In the event that Trustor shall not have executed any such instrument within 10 days after the receipt of a written request from Owner Trustee so to do, Owner Trustee shall have the power to remove any such additional trustee without the concurrence of Trustor; and Trustor hereby appoints Owner Trustee its agent and attorney-in-fact for it in such connection in such contingency; and

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

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

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

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

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

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

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

ARTICLE 9

CERTAIN LIMITATIONS

Section 9.01 Limitations on Control, Exceptions,

(a) Limitation on Control. Notwithstanding any other provision of this Agreement, but subject to paragraph (b) of this Section 9.01, the Trustor will have no rights or powers to direct, influence or control the Owner Trustee in the performance of the Owner Trustee's duties under this Agreement, including matters involving the ownership and operation of the Aircraft. In all matters arising under the Agreement, including the ownership and operation of the Aircraft the Owner Trustee shall have absolute and complete discretion in connection therewith and shall be free of any kind of influence or control whatsoever by the Trustor. The Owner Trustee shall exercise its duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft, as the Owner Trustee, in its discretion, shall deem necessary to protect the interests of the United States, notwithstanding any countervailing interest of any foreign power which, or whose citizens, may have a direct or indirect interest in the

Trustor and any such action by the Owner Trustee shall not be considered malfeasance or in breach of any obligation which the Owner Trustee might otherwise have to the Trustor; provided, however, that subject to the foregoing limitations, the Owner Trustee shall exercise this discretion in all matters arising under the Agreement, including the ownership and operation of the Aircraft with due regard for the interests of the Trustor. In exercising any of its rights and duties under this Agreement in connection with matters which may arise not relating to the ownership and operation of the Aircraft, the Owner Trustee shall be permitted to seek the advice of the Trustor before taking, or refraining from taking, any action with respect thereto. The Owner Trustee shall notify the Trustor of its exercise of rights and duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft.

(b) Certain Exceptions. Subject to the requirements of the preceding paragraph (a), the Owner Trustee agrees that it will not, without the prior written consent of the Trustor, sell, mortgage, pledge or otherwise dispose of the Aircraft or other assets held in the Trust Estate relating thereto except as otherwise expressly provided for herein.

(c) Purpose. The purpose of this Section 9.01 is to assure that (i) the Aircraft shall be controlled with respect to such matters by a Citizen of the United States and (ii) the Trustor shall have no power to influence or control the exercise of the Owner Trustee's authority with respect to such matters and (iii) Owner Trustee shall be able to give the affidavit required by Section 47.7(c)(2)(iii) of the Federal Aviation Regulations, 14 CFR 47.7 (c)(2)(iii). Section 9.01 shall be construed in furtherance of the foregoing purpose.

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

If persons who are neither U.S. citizens or resident aliens have the power to direct or remove the Owner Trustee, either directly or indirectly through the control of another person, those persons together shall not have more than twenty five (25%) percent of the aggregate power to direct or remove the Owner Trustee.

Section 9.03 Priority. In creating and accepting the Trust, Trustor, and Owner Trustee each acknowledges that in case of conflict, the limitations in Article 9 of this Agreement are paramount and superior to any other terms and conditions in this Agreement; or in any other document or documents to which trustor/beneficiary and trustee are a party.]

ARTICLE 10

COMPLIANCE WITH LAWS

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

Enforcement Network (FinCEN) (collectively, the “U.S. Laws”). Trustor agrees that it will comply with, and will not knowingly permit the Aircraft to be used in a manner that is contrary to, Export Restrictions and U.S. Laws applicable to (1) the Trustor; (2) the Owner Trustee; or (3) the Aircraft, including the acquisition, possession, operation, use, maintenance, leasing, subleasing, or other transfer or disposition thereof.

Section 10.2 Approval of Transfer. Trustor agrees that it will not permit the assignment of this Agreement, any transfer of the beneficial interest of the Trustor created by this Agreement, or a lease or sublease of the Aircraft (collectively, a “Transfer”) without Owner Trustee’s prior written approval of such Transfer. Owner Trustee shall not unreasonably delay its decision on a request for approval from Trustor nor shall it unreasonably withhold its approval to such request. To facilitate Owner Trustee’s evaluation of the Transfer, Trustor agrees that it will use reasonable efforts to provide Owner Trustee with any information reasonably requested by the Owner Trustee regarding the Transfer, the proposed transferee and/or the ownership of the proposed transferee. Owner Trustee’s decision to approve or disapprove the proposed Transfer shall not be deemed to have been unreasonably delayed if Owner Trustee has not obtained the information it needs to make the decision, and Owner Trustee’s approval of the proposed Transfer shall not be deemed to have been unreasonably withheld if Owner Trustee has determined that the Transfer will or may reasonably be expected to put Owner Trustee at risk of violating any laws or regulations applicable to Owner Trustee including, without limitation, the Export Restrictions and/or U.S. Laws. If Owner Trustee withholds approval of a Transfer as set forth herein, then: (i) subject to the terms of this Agreement, Owner Trustee may resign; and (ii) Owner Trustee shall have no

obligation to consent to or facilitate a Transfer while Owner Trustee's resignation is pending.

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

TRUSTOR:

By: _____

Title: _____

OWNER TRUSTEE:

By: _____

Title: _____

[FR Doc. 2012-2930 Filed 02/07/2012 at 8:45 am; Publication Date: 02/09/2012]