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Counsel for Debtors and Debtors-In-Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
AVIANCA HOLDINGS S.A., *et al.*,[1]	:	Case No. 20-11133 (MG)
Debtors.	:	(Jointly Administered)

NOTICE OF FILING OF DEBTORS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATING TO OBJECTIONS TO CONFIRMATION OF THE JOINT CHAPTER 11 PLAN OF AVIANCA HOLDINGS S.A. AND ITS AFFILIATED DEBTORS

[1] The Debtors in these chapter 11 cases (the "Chapter 11 Cases"), and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Loyalty Bermuda Ltd. (N/A); AV Taca International Holdco S.A. (N/A); Aviacorp Enterprises S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaragüense de Aviación, Sociedad Anónima (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aéreo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

PLEASE TAKE NOTICE that a hearing (the "Confirmation Hearing") to consider confirmation of the *Further Modified Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors* [Docket No. 2259] (the "Plan") was held on October 26, 2021 at 10:00 a.m. (prevailing Eastern Time) before the Honorable Martin Glenn, United States Bankruptcy Judge, in the Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that, at the conclusion of the Confirmation Hearing, the Bankruptcy Court ordered the above-captioned debtors and debtors in possession (collectively, the "Debtors") and certain parties that filed objections to confirmation of the Plan (the "Objecting Parties") to submit proposed findings of fact and conclusions of law with respect to the issues raised in the objections filed by the Objecting Parties ("Findings of Fact and Conclusions of Law") by October 28, 2021, at 5:00 p.m. (prevailing Eastern Time).

PLEASE TAKE FURTHER NOTICE that the Debtors' proposed Findings of Fact and Conclusions of Law (the "Debtors' Proposed Findings of Fact and Conclusions of Law") are annexed hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that, for the convenience of the Bankruptcy Court and parties in interest, a compendium of unpublished materials that are referenced and/or cited in the Debtors' Proposed Findings of Fact and Conclusions of Law (the "Compendium of Unpublished Materials") is annexed hereto as **Exhibit B**.

PLEASE TAKE FURTHER NOTICE that all filed versions of the Plan and other documents filed in the Chapter 11 Cases may be viewed for free at the website of the Debtors' claims and solicitation agent, at http://www.kccllc.net/avianca. You may also obtain copies of any pleadings by visiting http://www.nysb.uscourts.gov in accordance with the procedures and fees set forth therein.

New York, New York
Dated: October 28, 2021

/s/ Evan R. Fleck

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Exhibit A to Notice of Filing

Debtors' Proposed Findings of Fact and Conclusions of Law

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
AVIANCA HOLDINGS S.A., *et al.*,[1]	:	Case No. 20-11133 (MG)
Debtors.	:	(Jointly Administered)

DEBTORS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATING TO OBJECTIONS TO CONFIRMATION OF THE JOINT CHAPTER 11 PLAN OF AVIANCA HOLDINGS S.A. AND ITS AFFILIATED DEBTORS

Dated: October 28, 2021
New York, NY

[1] The Debtors in these Chapter 11 Cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Loyalty Bermuda Ltd. (N/A); AV Taca International Holdco S.A. (N/A); Aviacorp Enterprises S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaragüense de Aviación, Sociedad Anónima (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aéreo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

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I. BACKGROUND—FINDINGS OF FACT[2]

1. Avianca is the second-largest airline group in Latin America and the most important carrier in the Republic of Colombia and the Republic of El Salvador. Decl. of Adrian Neuhauser in Supp. of Chap. 11 Pets. and First Day Pleadings ("First-Day Decl.") ¶ 3.[3] Despite an effective debt re-profiling executed in the second half of 2019, a significant improvement in Avianca's liquidity position in early 2020, and the successful 2019 launch of the "Avianca 2021" transformation plan, the Debtors were compelled to file these Chapter 11 Cases on May 10, 2020,[4] for one principal reason: the COVID-19 pandemic. First-Day Decl. ¶ 6. At the time, the Debtors had suspended all passenger flights for over six weeks, with no known date for resumption. First-Day Decl. ¶ 7.

2. During the early stages of these cases, the Debtors' greatest challenge was to raise the postpetition financing they needed to survive their restructuring process. That challenge was intensified by the absence of material unencumbered assets following the 2019 out-of-court restructuring. In order to partially address this challenge, the creditors negotiated with an ad hoc group of 2023 holders, who offered to allow a DIP facility to prime their prepetition collateral and to backstop at least $200 million of Tranche A DIP loans. *See* Decl. of John E. Luth [ECF No. 966] ¶ 19.

3. Despite the many serious hurdles, the Debtors succeeded in obtaining postpetition financing. *See generally* 10/26/21 Hr'g Tr. (hereinafter, "Tr.") at 118:21-120:18 (testimony of Mr. Neuhauser).

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[2] Capitalized terms used but not otherwise defined herein bear the meanings ascribed to them in the *Further Modified Joint Chapter 11 Plan of Avianca Holdings S.A. and its Affiliated Debtors* [ECF No. 2259] (the "Plan").

[3] The First-Day Declaration was incorporated into the *Declaration of Adrian Neuhauser in Support of Confirmation of Joint Chapter 11 Plan of Avianca Holdings S.A. and its Affiliated Debtors* [ECF No. 2263] (the "Neuhauser Decl.") ¶ 4.

[4] Two Debtors (Aviacorp Enterprises S.A. and AV Loyalty Bermuda Ltd.) subsequently filed petitions on September 21, 2020.

4. The Debtors filed a motion to approve their postpetition financing on September 21, 2020. *See Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Grant Liens and Superpriority Administrative Expense Claims, (II) Modifying the Automatic Stay, and (III) Granting Related Relief* [ECF No. 964] (the "DIP Motion"). The motion was heard on regular notice, on October 5, 2020. *See id.* One formal objection was filed, on behalf of certain sureties, *see* ECF No. 987, and it was resolved prior to the hearing. *See* ECF Nos. 995, 996 (withdrawing objection); ECF No. 1001 (revised form of order). On October 5, 2020, the Court entered the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, and (B) Grant Liens and Superpriority Administrative Expense Claims, (II) Modifying the Automatic Stay, and (III) Granting Related Relief* [ECF No. 1031] (the "Final DIP Order"), which became effective immediately. *See* Final DIP Order ¶ 54. No appeals of the Final DIP Order or motions for relief from the Final DIP Order have been filed. *See* ECF Docket. Following entry of the Final DIP Order, all holders (the "2023 Noteholders") of 9.00% Senior Secured Notes due 2023 (the "2023 Notes") were given an opportunity to participate in the roll-up that had been approved pursuant to the Final DIP Order, through a notice disseminated by the ad hoc group. *See* Burlingame Objection (as defined herein) at Ex. A (the "Bondholder Roll-Up Notice"). Ultimately, holders of approximately 75% of the 2023 Notes participated in the roll-up on the terms set forth by the ad hoc group's Bondholder Roll-Up Notice. *See* Disc. Stmt. § II.D.1.d.

5. The Debtors subsequently filed a motion to approve their refinanced and expanded postpetition financing on August 5, 2021. *See* ECF No. 1972. The motion was heard on regular notice, on August 18, 2021. *See id.* (noting date and time of hearing). No formal objections were filed, and all informal comments were resolved prior to the hearing. *See* ECF Nos. 1998, 2024 (revised forms of order). Among other things, the refinanced and expanded postpetition financing

increased the Tranche A DIP Obligations by approximately $170 million. *See Debtors' Motion for Entry of a Final Order (I) Authorizing the Debtors to Enter into Amendments to their Postpetition DIP Credit Documents and Enter Into Additional Documents in Furtherance Thereof, (II) Granting and Reaffirming Liens, (III) Granting Superpriority Administrative Expense Claims, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [ECF No. 1972] at 10; *Declaration of John E. Luth in Support of Debtors' Motion for Entry of a Final Order (I) Authorizing the Debtors to Enter into Amendments to their Postpetition DIP Credit Documents and Enter Into Additional Documents in Furtherance Thereof, (II) Granting and Reaffirming Liens, (III) Granting Superpriority Administrative Expense Claims, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [ECF No. 1971] at 11. Tranche B was not modified pursuant to Final DIP Amendment Order. *See Final Order (I) Authorizing the Debtors to Enter into Amendments to Their Postpetition DIP Credit Documents and Enter into Additional Documents in Furtherance Thereof, (II) Granting and Reaffirming Liens, (III) Granting Superpriority Administrative Expense Claims, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [ECF No. 2032] (the "Final DIP Amendment Order") ¶ 44 (providing that the Final DIP Order survives except as expressly set forth in or as inconsistent with the Final DIP Amendment Order). On August 18, 2021, the Court entered the Final DIP Amendment Order, which became effective immediately. *See* Final DIP Amendment Order ¶ 48. No appeals of the Final DIP Amendment Order or motions for relief from the Final DIP Amendment Order have been filed. *See* ECF Docket.

6. The Debtors filed the initial version of the Plan on August 10, 2021. *See* ECF No. 1981. The Plan included, *inter alia*, the following terms, which have not been modified in subsequent versions of the proposed Plan:

a. The Plan proposes to substantively consolidate (the "Avianca Debtors") all of the Debtors other than Aero Transporte de Carga Unión, S.A. de C.V. ("Aerounión"), Avifreight Holding México, S.A.P.I. de C.V. ("Avifreight"), and Servicios Aeroportuarios Integrados SAI S.A.S. ("SAI").[5]

b. The 2023 Notes were issued by Avianca Holdings S.A. and guaranteed by eleven of the Avianca Debtors. *See Declaration of Ginger Hughes in Support of Confirmation of Joint Chapter 11 Plan of Avianca Holdings S.A. and its Affiliated Debtors* [ECF No. 2262] (the "Hughes Decl.") ¶ 19. No holder of a 2023 Notes Claim has asserted that the 2023 Notes Claims are guaranteed by, or have recourse to the assets of, any Debtor other than the Avianca Debtors. In particular, no 2023 Notes Claim is guaranteed by, or has recourse to the assets of, Aerounión, Avifreight, or SAI. (As a general matter, the holders of 2023 Notes Claims benefit—along with all other holders of General Unsecured Avianca Claims—from the Avianca Debtors' equity interests in those entities.).

c. The Class of General Unsecured Avianca Claims includes all General Unsecured Claims against the Avianca Debtors, except for those claims that are instead classified as General Unsecured Convenience Claims. The General Unsecured

[5] Specifically, the Plan proposes to substantively consolidate: Avianca Holdings S.A.; Aeroinversiones de Honduras, S.A.; Aerovías del Continente Americano S.A. Avianca; Airlease Holdings One Ltd.; America Central (Canada) Corp.; America Central Corp.; AV International Holdco S.A.; AV International Holdings S.A.; AV International Investments S.A.; AV International Ventures S.A.; AV Investments One Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AV Loyalty Bermuda Ltd.; AV Taca International Holdco S.A.; Aviacorp Enterprises S.A.; Avianca Costa Rica S.A.; Avianca Leasing, LLC; Avianca, Inc.; Avianca-Ecuador S.A.; Aviaservicios, S.A.; Aviateca, S.A.; C.R. Int'l Enterprises, Inc.; Grupo Taca Holdings Limited; International Trade Marks Agency Inc.; Inversiones del Caribe, S.A.; Isleña de Inversiones, S.A. de C.V.; Latin Airways Corp.; Latin Logistics, LLC; Nicaragüense de Aviación, Sociedad Anónima; Regional Express Américas S.A.S.; Ronair N.V.; Servicio Terrestre, Aéreo y Rampa S.A.; Taca de Honduras, S.A. de C.V.; Taca de México, S.A.; Taca International Airlines S.A.; Taca S.A.; Tampa Cargo S.A.S.; and Technical and Training Services, S.A. de C.V.

Avianca Claims include all 2023 Notes Claims and all 2020 Notes Claims. *See* Plan § I.A.118.

d. Holders of General Unsecured Avianca Claims (including holders of 2023 Notes Claims) will receive Pro Rata Shares of either (a) the Unsecured Claimholder Cash Pool or (b) if such holder is an Eligible Holder and makes a valid election, the Unsecured Claimholder Equity Pool and the Warrants. *See* Plan §§ I.A.230–234, III.B.11; Disc. Stmt. at 32.

e. Holders of Tranche B DIP Facility Claims will receive Pro Rata Shares of 97.5% of pre-new-money equity in Reorganized AVH. *See* Plan § II.B; Disc. Stmt. at 32. As part of the Global Plan Settlement, the holders of Tranche B DIP Facility Claims also consented to a carve-out of the value of their collateral in order to provide the foregoing recoveries to holders of General Unsecured Avianca Claims. *See* Disc. Stmt. at 32.

7. The Court entered an order approving the Disclosure Statement[6] and solicitation procedures on September 15, 2021. *See* ECF No. 2136. The Debtors commenced solicitation of the Plan on September 22, 2021, and the voting deadline was October 15, 2021. *See Certification of P. Joseph Morrow IV with Respect to the Tabulation of Votes* [ECF No. 2239] (the "Voting Certification") ¶¶ 5, 13.

8. The following objections to confirmation of the Plan, among others, were filed:

a. Substantially identical objections (collectively, the "Burlingame Objection"), variously filed on a counseled or *pro se* basis, by Burlingame Investment Partners

[6] *See Third Amended Disclosure Statement for Joint Chapter 11 Plan of Avianca Holdings S.A. and its Affiliated Debtors [Solicitation Version]* [ECF No. 2131] (the "Disclosure Statement").

LP, William B Meier IRA, David M Kang SEP IRA, Blake W Kim Rollover IRA,[7] and Im Jo Degerman Rollover IRA (collectively, the "Burlingame Objectors"). *See* ECF Nos. 2214, 2215, 2218, 2222, 2227.

b. One objection (the "Baruch Objection") filed by Udi Baruch Guindi, David Baruch, Soshana Baruch, Habib Mann, Golan LP, and Isaak Baruch (collectively, the "Baruch Objectors" and, together with the Burlingame Objectors, the "Objectors"). *See* ECF No. 2231.

9. The U.S. Trustee did not interpose an objection to Confirmation but instead filed a Statement. *See* Stmt. of U.S. Trustee, ECF No. 2240. The U.S. Trustee's Statement reserved his right to object to non-consensual third-party releases, which are not a component of the Plan. *See* Stmt. of U.S. Trustee at 5-6 ("Although it does not appear that there will be any holders of claims who have not been afforded the opportunity to opt-out of the Third-Party Releases, to the extent that there are any such non-consensual releases, the United States Trustee reserves his right to object.").

10. The hearing on Confirmation was held on October 26, 2021. Except for the objections of the Objectors, all objections were either resolved prior to the conclusion of the hearing or, with respect to certain objections related to the assumption and cure of particular executory contracts, deferred to a future date. The U.S. Trustee was present but did not speak at the Confirmation hearing. At the conclusion of the hearing, the Court directed the Debtors and the

[7] Mr. Kim previously objected to the Debtors' Disclosure Statement. The Court overruled those objections because Mr. Kim "failed to file a timely objection to the Disclosure Statement" and noted that some of "Mr. Kim's objections actually deal with prior orders entered by the Court, particularly with respect to the approval of debtor-in-possession financing, and adequate protection and security provided to the DIP lenders." *See Memorandum Opinion Approving Third Amended Disclosure Statement, Solicitation Procedures and other Relief* [ECF No. 2135] at 16.

Objectors to file their respective proposed findings of fact and conclusions of law related to the issues raised by the Objectors.[8]

II. THE 2023 NOTEHOLDERS ARE WHOLLY UNSECURED AND MAY NOT RECEIVE VALUE ON ACCOUNT OF SHARED COLLATERAL

a. Findings of Fact

i The 2023 Noteholders Have Junior Interests in the Shared Collateral.

11. In connection with the original issuance of the 2023 Notes, and to secure the 2023 Notes Claims, certain of the Debtors granted to the 2023 Notes Indenture Trustee (in its capacity as a collateral trustee) liens, mortgages and security interests in the Collateral (as defined in the 2023 Notes Indenture), including in certain intellectual property, equity interests in specific subsidiaries, aircraft residual value and certain aircraft (collectively, the "Shared Collateral"). *See* Final DIP Order ¶ E(iii); DIP Motion ¶ 18.

12. All parties with prepetition security interests in the Shared Collateral are party to the Collateral Sharing Agreement, dated as of November 1, 2019 (as amended, supplemented, or otherwise modified from time to time, the "Collateral Sharing Agreement"), which governs the relative rights and remedies of the holders of 2023 Notes Claims, on the one hand, and the other parties with prepetition security interests in the Shared Collateral, on the other hand, as they relate to the Shared Collateral. *See* Final DIP Order ¶ E(iv). Pursuant to the Collateral Sharing Agreement, the 2023 Notes Indenture Trustee is the Applicable Authorized Representative (as defined therein) and has sole authority to act or refrain from acting with respect to the Shared Collateral, including sole authority to consent to the incurrence of priming liens on the Shared Collateral. *See id*.

[8] A compendium of unreported decisions and filings entered in other proceedings cited herein is attached hereto as an exhibit.

13. The 2023 Notes Indenture Trustee, in its capacity as Applicable Authorized Representative, on behalf of all First Lien Secured Parties (as defined in the Collateral Sharing Agreement), and at the direction of holders of more than the requisite majority of the then-existing obligations under the 2023 Notes,[9] consented to the priming of all liens on the Shared Collateral, as provided by and subject to the terms of the Final DIP Order and the DIP credit documents. No other consent was required. *See* Final DIP Order ¶ F(iii).

14. The Final DIP Order granted liens to the DIP Credit Parties on all of the "DIP Collateral" (as defined therein), which includes but is not limited to all of the Shared Collateral. *See* Final DIP Order ¶ 5(b). Those liens ranked senior in priority to the liens held by the 2023 Notes Indenture Trustee in favor of the holders of 2023 Notes Claims. *See* Final DIP Order ¶ 6(a)(iii).

15. The Final DIP Order requires DIP Facility Claims to "be satisfied first from proceeds of the Shared Collateral and second from proceeds of other DIP Collateral (whether or not an event of default or exercise of remedies has occurred)." Final DIP Order ¶ 28.

16. The Final DIP Order also extinguishes any claim or right of the holders of the 2023 Notes Claims "against any Debtor for, arising out of, or related to adequate protection (including for the avoidance of doubt, on account of the priming of any liens in respect of the Shared Collateral"). Final DIP Order ¶ 34.

17. Consistent with the foregoing, all holders of 2023 Notes received the Bondholder Roll-Up Notice that informed them that "[t]he priming of the existing liens on the 2023 Notes Collateral [i.e., the Shared Collateral] will entitle Tranche A and Tranche B [i.e., the DIP Facility Claims] to be repaid from proceeds of the 2023 Notes Collateral in full prior to any distribution

[9] Approximately 75% of the outstanding principal amount of the 2023 Notes provided consent. *See* Disc. Stmt. § II.D.1.d.

from the proceeds of the 2023 Notes Collateral on account of any other claims that are secured by the 2023 Notes Collateral, including the [2023] Notes." *See* Bondholder Roll-Up Notice at 3.

18. The Debtors subsequently obtained a refinancing of Tranche A of the DIP Facility, which expanded the size of Tranche A to $1,600,000,000 in principal without modifying the amount or structure of Tranche B DIP Obligations. *See* Final DIP Amendment Order at Preamble(a), ¶ 44. The Final DIP Amendment Order re-affirmed the grant of priming liens and the marshalling of the DIP Liens toward the Shared Collateral. *See* Final DIP Amendment Order ¶¶ E(iii), 6(a)(iii), 30. No holders of 2023 Notes objected to entry of the Final DIP Amendment Order. *See* ECF Docket.

19. As a result of the Final DIP Order and the Final DIP Amendment Order, the interests of holders of 2023 Notes in the Shared Collateral are junior to over $2,510,000,000 of DIP Facility Claims, consisting of over $1,600,000,000 of Tranche A-1 DIP Obligations and Tranche A-2 DIP Obligations[10] and Tranche B DIP Obligations that will exceed $910,000,000 upon any conversion or refinancing.[11] *Cf.* Disc. Stmt., Ex. C, at C-4 (scheduling $2,455,300,000 of DIP Facility Claims as of March 31, 2021). As noted above, those DIP Facility Claims must be satisfied from the Shared Collateral before the DIP Facility Claims may look to any other collateral.

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[10] *See* Final DIP Amendment Order at Preamble(a), (c), ¶ 2(a) (authorizing borrowing of an aggregate of $1,600,000,000 in principal of Tranche A-1 DIP Obligations and Tranche A-2 DIP Obligations). Some interest and fees have accrued since closing.

[11] The Tranche B DIP Facility was originally a $722,691,000 facility. *See* Final DIP Order at Preamble(c). Because the Debtors have not paid cash interest during the Chapter 11 Cases, interest has accrued at a rate of 14.50% *per annum*. *See* Mot. for Final DIP Order [ECF No. 1972] at 19 (summarizing terms of facility). Additionally, a 10% exit fee would be payable upon any refinancing or conversion into equity of the Tranche B DIP Claims. *See id.* at 21. It follows that, more than one year after the facility was approved, over $910,000,000 of Tranche B DIP Obligations would require repayment if the Debtors were to refinance those obligations with alternative capital. *Cf.* Decl. of John Luth ¶ 20 [ECF No. 1971] (estimating Tranche B DIP Claims to be at least $935,000,000 upon emergence).

20. The Bondholder Roll-Up Notice provided all 2023 Noteholders the opportunity to convert their 2023 Notes into Tranche A DIP Loans (as defined in the Final DIP Order) at a ratio of $100:$20 ***without investing any new money*** or at a ratio of $100:$32 if they elected to invest new money. *See* Bondholder Roll-Up Notice at 3. The Bondholder Roll-Up Notice provided a deadline of September 8, 2020 to elect to participate in the DIP. *Id* at 2. The notes held by the Objectors did not participate in the DIP, and therefore the Objectors remain holders of 2023 Notes. The Objectors do not dispute any fact set forth in paragraphs 10-18 *supra*.

21. The Plan does not challenge the validity or perfection of the liens securing the 2023 Notes Claims. The Plan treats the 2023 Notes Claims consistent with the priority of the liens securing those claims, as primed by the DIP Facility Claims pursuant to the Final DIP Order and the Final DIP Amendment Order.

ii The Debtors Conducted a Comprehensive Marketing Process.

22. Under the DIP Credit Agreement (as defined herein), the Debtors enjoyed an option, subject to certain conditions, to convert the Tranche B DIP Obligations into equity in Reorganized AVH. *See* DIP Credit Agreement (filed at Ex. G to DIP Motion), Ex. B at B-3; *cf.* DIP Order ¶ 36; Disc. Stmt. at 31. The Tranche B lenders were not obligated to provide any additional new capital to the Debtors in connection with emergence from chapter 11.

23. The Debtors conducted a process in April through June of 2021 (the "Solicitation Process") to solicit debt or equity investments to refinance either or both tranches of the DIP Facility and to provide additional capital for emergence. *See* Neuhauser Decl. ¶ 11; Tr. at 120:7-18 (testimony of Mr. Neuhauser); *cf.* Final DIP Amendment Order (approving result of debt solicitation process).

24. The Solicitation Process was rigorous and comprehensive. It was led by the Debtors' management and the Debtors' investment banker and financial advisor, Seabury

Securities ("Seabury"), under the supervision of the Independent Equity Committee of the board of directors of Avianca Holdings S.A. and in consultation with Jefferies LLC, the investment banker retained by the Official Committee of Unsecured Creditors in these cases. *See* Neuhauser Decl. ¶ 11; *see also* Tr. at 179:16-25. Seabury initially contacted over 125 potentially interested parties on behalf of the Debtors. *See* Neuhauser Decl. ¶ 11. Many were already familiar with the Debtors' business, and over 35 accessed a virtual data room containing comprehensive information on the Debtors' business plan, cash flow projections, and other pertinent materials. *See* Neuhauser Decl. ¶ 11. Many of these potential investors also participated in focused diligence sessions with the Debtors' management team and professional advisors. *See* Neuhauser Decl. ¶ 11.

25. The Solicitation Process did not result in a workable alternative to conversion of the Tranche B DIP Facility Claims into equity in Reorganized AVH on terms negotiated with the holders of the Tranche B DIP Facility Claims. *See* Neuhauser Decl. ¶ 11. In particular, ***the Solicitation Process did not result in an offer to fund debt and/or equity investments in amounts sufficient to repay the Tranche A and Tranche B DIP Facility Claims***. *See* Neuhauser Decl. ¶ 11; Tr. at 111:16-25; 119:10-17; 121:8-24 (testimony of Mr. Neuhauser).

iii The Results of the Solicitation Process Demonstrate That the DIP Facility Claims are Underwater and There Is No Residual Value in the Shared Collateral.

26. To emerge from chapter 11, the Debtors must either (i) pay the Tranche B DIP Facility Claims in full in cash on the Plan's Effective Date, or (ii) equitize the Tranche B DIP Facility Claims pursuant to the terms set forth in the Final DIP Order. Here, the Tranche B DIP Facility Claims must be equitized; although the Solicitation Process succeeded in refinancing Tranche A and raising $170 million of incremental liquidity, it did not result in an alternative that would give the Debtors the ability to repay the Tranche B DIP Facility Claims in cash on the Plan's Effective Date. Each of the holders of Tranche B DIP Facility Claims consented to that

equitization by executing the Tranche B Equity Conversion Agreement. *See* Plan § II.D.; Equity Conversion & Commitment Agr., Ex. B to ECF No. 2070. Certain holders of the Tranche B DIP Facility Claims also agreed to dilute themselves (and the other holders of the Tranche B DIP Facility Claims) by providing an additional $200 million equity financing to the Debtors upon emergence because the Debtors were unable to source that financing elsewhere, including in the debt markets. *See* Tr. at 124:15-17 ("We were able to raise a little bit more senior debt, and we were unable to raise equity or an alternative to equity on better terms than what we had.").

27. The results of the Solicitation Process demonstrate that the aggregate value of *all* of the Debtors' assets (as encumbered by interests that are senior to both the DIP Facility Claims and the 2023 Notes Claims) is less than the amount of outstanding DIP Facility Claims. *See* Neuhauser Decl. ¶ 11; Tr. at 111:16-25; 119:10-17; 121:8-24 (testimony of Mr. Neuhauser); *see also supra* note 10 (explaining calculation of over $910,000,000 in Tranche B DIP Facility Claims). In fact, the Plan's valuation of $800 million[12] for pre-new-money equity that is encumbered by at least $1,600,000,000 in Tranche A DIP Facility Claims reflects that the value of equitizing Tranche B DIP Facility Claims (at least $910,000,000) substantially exceeds the value of all of the Debtors' assets.

28. The Shared Collateral represents only a limited portion of the Debtors' overall asset base. In other words, the value of the Shared Collateral is less than the value of all of the Debtors' assets. Since the value of all of the Debtors' assets is, in turn, less than the value of the DIP Facility Claims, it necessarily follows that the value of the Shared Collateral, measured in light of its use

[12] This valuation is implied by the Tranche B DIP Lenders' new-money investment, as they have committed to invest $200 million in exchange for approximately 20% of *post*-new money Reorganized AVH Equity. *See* Plan § I.A.222; *Notice of Filing of Plan Supplement* [ECF No. 2276] (the "Plan Supplement"), at Ex. N, Sch. I. It is also implied by the terms of the cash/equity election that was available to holders of General Unsecured Avianca Claims. *See* Plan § I.A.135(a) (definition of "Implied Equity/Warrant Value").

pursuant to the Plan within the Reorganized Debtors' business, is also worth less than the amount of outstanding DIP Facility Claims. Tr. at 116:8-12; 118:2 (testimony of Mr. Neuhauser); Neuhauser Decl. ¶ 11. Accordingly, no residual value of the Shared Collateral remains for the 2023 Notes Claims.

29. Thus, the value of the interest of the holders of 2023 Notes Claims in the Shared Collateral is zero.

b. Conclusions of Law

i The Objectors Cannot Collaterally Attack the Final DIP Order.

30. The Final DIP Order provides that the DIP Facility Claims are senior to the 2023 Notes Claims, and that the DIP Facility Claims must be satisfied first from the Shared Collateral.

31. The Objectors cannot collaterally attack the Final DIP Order[13] (or the more recent Final DIP Amendment Order) through a confirmation objection because final orders constitute *res judicata* and the law of the case. The Objectors did not file motions for reconsideration pursuant to Rule 9023 of the Federal Rules of Bankruptcy Procedure and did not appeal from the Final DIP Order or the Final DIP Amendment Order. Nor have the Objectors filed separate motions for relief from the Final DIP Order or the Final DIP Amendment Order under Rule 9024 of the Federal Rules of Bankruptcy Procedure, and in any event do not come remotely close to showing cause for relief. *Cf.* Fed. R. Bankr. P. 9024 (incorporating Rule 60 of the Federal Rules of Civil Procedure); Fed. R. Civ. P. 60 (permitting relief "within a reasonable time" for, among other things, "mistake, inadvertence, surprise, [] excusable neglect," "newly discovered evidence," "fraud . . ., misrepresentation, [] misconduct," or a "void" "judgment"). Accordingly, the Final

[13] As noted *supra*, the Court earlier in these cases overruled the objections of Mr. Kim, one of the Burlingame Objectors, to the Debtors' Disclosure Statement in part because "Mr. Kim's objections actually deal with prior orders entered by the Court, particularly with respect to the approval of debtor-in-possession financing . . . and security provided to the DIP lenders." *See Memorandum Opinion Approving Third Amended Disclosure Statement, Solicitation Procedures and other Relief* [ECF No. 2135] at 16.

DIP Order and the Final DIP Amendment Order are binding as to all factual and legal matters decided therein. *See* Final DIP Order ¶ 39 ("Immediately upon, and effective as of, entry by the Court, the provisions of this Final Order . . . shall become valid and binding upon the Debtors and the DIP Secured Parties and any and all other creditors of the Debtors, . . . any and all other parties in interest and their respective successors and assigns . . . ."). Moreover, pursuant to the Collateral Sharing Agreement, "the Existing Notes Trustee has sole authority to act or refrain from acting with respect to the Shared Collateral, including sole authority to consent to the incurrence of priming liens on the Shared Collateral, and the Non-Applicable Authorized Representatives and the Non-Controlling Secured Parties may not contest or object to such actions." *See* Final DIP Order ¶ E(iv).

ii The 2023 Notes Claims Are Wholly Unsecured.

32. An allowed claim of a creditor secured by a lien on estate property is a secured claim only to the extent of the value of the creditor's interest in the estate's interest in the property. The allowed claim is an unsecured claim to the extent that the value of the creditor's interest is less than the amount of its allowed claim. 11 U.S.C. § 506(a)(1).

33. The value of a creditor's interest in property is determined in light of the purpose of the valuation and of the proposed disposition or use of such property. 11 U.S.C. § 506(a)(1).

34. A creditor bears the burden of proof to show the existence and value of its interest, if any, in collateral. *See In re Sneijder*, 407 B.R. 46, 55 (Bankr. S.D.N.Y. 2009) (Glenn, J.) (collecting cases); *cf. In re Heritage Highgate, Inc.*, 679 F.3d 132, 139-140 (3d Cir. 2012) (adopting a burden-shifting approach, under which the secured creditor bears the ultimate burden of persuasion once the debtor has produced "sufficient evidence" that "the collateral is of insufficient value"). Even under the framework of *In re Heritage Highgate*, the Debtors have produced sufficient evidence—namely the declaration and testimony of Mr. Neuhauser regarding

the Solicitation Process—that the burden of proof has shifted to the Objectors to prove that the value of the Shared Collateral exceeds the value of the DIP Facility Claims.

35. A robust market test is normally the best indicator of the value of a business or its assets. *See, e.g.*, *In re Boston Generating, LLC*, 440 B.R. 302, 324 (Bankr. S.D.N.Y. 2010) ("Because the Debtors' sale process was heavily marketed and potential buyers were presented with abundant information, the sale process reflects a true test of value."); *In re Chemtura Corp.*, 439 B.R. 561, 586–87 (Bankr. S.D.N.Y. 2010).

36. As set forth in the findings of fact above, the Solicitation Process demonstrated that the Tranche B DIP Facility Claims are underwater. The value of the Tranche B DIP Lenders' interest in the DIP Collateral is less than the value of their claims, and the Tranche B DIP Lenders must recover first from the Shared Collateral, which is a subset of the DIP Collateral. Since the 2023 Notes Claims are junior to those Tranche B DIP Facility Claims, it follows that the interest of the 2023 Notes Claims in the Shared Collateral is zero. In other words, the 2023 Notes Claims are wholly unsecured.

37. The Objectors have failed to meet their burden of proof that their interest in the Shared Collateral has any value. In fact, they have not adduced ***any*** evidence to suggest that the value of the Shared Collateral exceeds the amount of the Tranche A DIP Facility Claims, much less the Tranche A DIP Facility Claims and the Tranche B DIP Facility Claims combined. Furthermore, even if it were the case that the Debtors bore the burden of proof on this question, the Debtors have proven by a preponderance of the evidence that the interest of the holders of 2023 Notes Claims in the Shared Collateral has no value.

iii The 2023 Notes Claims Cannot Receive a Recovery Except on Terms Consistent with the Tranche B Equity Conversion Agreement.

38. The Objectors would like to receive a recovery on account of their junior interests in the Shared Collateral, even while the senior Tranche B DIP Facility Claims are economically impaired and being equitized completely. The Bankruptcy Code does not permit such a result, except with the consent of each Tranche B DIP Lender.

39. The Tranche B DIP Facility Claims are superpriority administrative claims. *See* Final DIP Order ¶ 7; *cf.* 11 U.S.C. §§ 364(d), 503(a), 507(a)(2). The holders of Tranche B DIP Facility Claims are thus entitled to payment in full in cash on the Effective Date, unless they consent to different treatment. *See* 11 U.S.C. § 1129(a)(9)(A).[14]

40. Because the equitization of the Tranche B DIP Facility Claims depends entirely on the consent of the holders of those claims, no recovery can be provided to any creditor with a junior interest in the DIP Facility's collateral except on terms that are consistent with that consent. Those terms are exactly the terms set forth in the Tranche B Equity Conversion Agreement and the Plan. *Cf.* Plan § X.A.1. (requiring "all transactions and other documents to effectuate the Restructuring [to] contain terms and conditions consistent in all material respects with the Tranche B Equity Conversion Agreement"). In short, the Plan's treatment of the 2023 Notes Claims is the only permissible treatment of those claims, so long as the Tranche B DIP Facility Claims are not paid in full in cash. Since the Solicitation Process did not provide a viable path to refinance the Tranche

[14] The Tranche B DIP Facility Claims were technically "Unimpaired" for purposes of classification. Those Claims were Unimpaired only because each holder had already consented to its treatment by executing the Tranche B Equity Conversion Agreement, which permits a recovery to unsecured creditors. Economically, however, the Plan's treatment—a complete equitization at a valuation below the amount that the Debtors would be required to pay to settle the Tranche B DIP Facility Claims in cash—severely impairs the Tranche B DIP Facility Claims. Therefore, without the Tranche B DIP Lenders' consent, the Plan's treatment of their claims would flout the mandate of section 1129(a)(9)(A) and would make the Plan patently unconfirmable.

A DIP Facility Claims and pay the Tranche B DIP Facility Claims in full in cash, the 2023 Notes Claims must be treated as entirely unsecured.

iv The 2023 Notes Claims Are Properly Classified as General Unsecured Avianca Claims.

41. Except as provided in section 1122(b) of the Bankruptcy Code, a chapter 11 plan may place a claim in a particular class only if the claim is substantially similar to the other claims that are placed in the same class. See 11 U.S.C. § 1122(a).

42. Because the 2023 Notes Claims are wholly unsecured claims, they are classified appropriately with other such claims as General Unsecured Avianca Claims.

III. SECTION 1129(B) DOES NOT APPLY, AND, IN ANY EVENT, THE PLAN IS "FAIR AND EQUITABLE"

a. Findings of Fact: Class 11 (General Unsecured Avianca Claims) Voted to Accept the Plan.

43. The Burlingame Objectors claim that "[t]he Debtors did not exercise 'fair and equitable' judgement [sic] to the holders of the 2023 Notes." *See* Burlingame Objection at 10-11.

44. The Baruch Objectors claim that the Plan: (i) "violates the absolute priority rule and is unfair and inequitable" and (ii) "unfairly discriminates against the Creditors and other 2023 Noteholders." *See* Baruch Objection ¶¶ 35,43.

45. Under the Plan, 2023 Notes Claims are classified in Class 11 (General Unsecured Avianca Claims). *See* Plan, Art. I.A.112.

46. As set forth in the Voting Certification, holders of Claims in Class 11 (General Unsecured Avianca Claims) holding approximately 98.96% in amount and approximately 92.09% in number of General Unsecured Avianca Claims that cast votes on the Plan, voted to accept the Plan. *See* Voting Certification, Ex. A.

47. As further set forth in the Voting Certification, holders of 2023 Notes Claims holding approximately 77.49% in amount and approximately 83.73% in number of 2023 Notes Claims that cast votes on the Plan, voted to accept the Plan.

b. Conclusions of Law: The "Fair and Equitable" and "Unfair Discrimination" Tests Under Section 1129(b) Do Not Apply.

48. Class 11 (General Unsecured Avianca Claims) voted to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code because the Plan was accepted by holders of at least two-thirds in amount and more than one-half in number of the Claims in Class 11 that cast votes on the Plan. See 11 U.S.C. § 1126(c).

49. The "fair and equitable" and "unfair discrimination" tests under section 1129(b) must only be satisfied "with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." Id. § 1129(b)(1) (emphasis added).

50. Because Class 11 (General Unsecured Avianca Claims) voted to accept the Plan, the Debtors are not required to satisfy the requirements of section 1129(b), including the "fair and equitable" and "unfair discrimination" tests, with respect to Class 11, which includes 2023 Notes Claims. *See In re Aegerion Pharm., Inc.*, 605 B.R. 22, 33 (Bankr. S.D.N.Y. 2019) (Glenn, J.) (finding that an "impaired class . . . has accepted the plan, so section 1129(b)(1) does not apply" with respect to such class); *In re Breitburn Energy Partners LP*, 582 B.R. 321, 357 (Bankr. S.D.N.Y. 2018) (finding that a creditor cannot raise an objection to a plan under the "fair and equitable" and "unfair discrimination" tests under section 1129(b) if such creditor's class "accepted the [p]lan" because "the cram down provisions under 11 U.S.C. § 1129(b) do not apply to his class"); *see also In re Tribune Co.*, 972 F.3d 228, 242 (3d Cir. 2020) (holding that "a disapproving creditor within a class that approves a plan cannot claim unfair discrimination"); *In re W.R. Grace & Co.*, 475 B.R. 34, 175 (Bankr. D. Del. 2012) ("[T]he fair and equitable

requirements of § 1129(b) do not apply here because the impaired classes and interests in this case all voted to accept the Plan.").

51. Because the Debtors are not required to satisfy the "fair and equitable" test under section 1129(b) with respect to Class 11, holders of Claims in Class 11 (including 2023 Notes Claims) may not raise arguments with respect to the "absolute priority rule." *See Motorola Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 462–63 (2d Cir. 2007) (holding that the "fair and equitable" test under section 1129(b) "codifies the judge-made 'absolute priority rule'); *In re Armstrong World Indus., Inc.*, 432 F.3d 507, 512 (3d Cir. 2005) ("[T]he "fair and equitable" requirement for a cram down . . . invokes the absolute priority rule. . . . The absolute priority rule was later codified as part of the 'fair and equitable' requirement of 11 U.S.C. § 1129(b)."); *see also Official Comm. of Equity Sec. Holders v. Official Comm. of Unsecured Creditors (In re Adelphia Commc'ns Corp.)*, 544 F.3d 420, 426 (2d Cir. 2008) (Sotomayor, J.) ("[A] plan need not satisfy the Absolute Priority Rule so long as any class adversely affected by the variation accepts the plan.").

52. Even if 2023 Notes Claims had been separately classified under the Plan, holders of 2023 Notes Claims nevertheless are prohibited from objecting on the basis that the Plan does not satisfy the "fair and equitable" and "unfair discrimination" tests under section 1129(b) because the Plan was accepted by holders of at least two-thirds in amount and more than one-half in number of 2023 Notes Claims that cast votes on the Plan pursuant to section 1126(c), *see* 11 U.S.C. § 1126(c). Thus, the Debtors would not be required to satisfy the requirements of section 1129(b) with respect to such accepting class of 2023 Notes Claims, *see Aegerion*, 605 B.R. at 33; *Breitburn*, 582 B.R. at 357.

c. Findings of Fact: The Plan Does Not Allow Classes Junior to the 2023 Notes Claims to Receive or Retain Value.

53. The Plan does not allow any holders of Subordinated Claims, Existing AVH Non-Voting Equity Interests, Existing AVH Common Equity Interests, or Other Existing Equity Interests to receive or retain any property of value. *See* Plan §§ III.B.16, .18, .19, .22.[15]

d. Conclusions of Law: The Plan is Fair and Equitable as to the 2023 Notes Claims.

54. A chapter 11 plan is "fair and equitable" as to an impaired rejecting class of unsecured claims when, among other things, the plan does not allow any holder of a junior claim or interest to receive or retain any property. *See* 11 U.S.C. § 1129(b)(1), (2)(B)(ii).

55. As set forth above, the Plan does not impermissibly allow any holders of Subordinated Claims, Existing AVH Non-Voting Equity Interests, Existing AVH Common Equity Interests, or Other Existing Equity Interests to receive or retain any property of more than *de minimis* value. Accordingly, the treatment of those Classes is fair and equitable as to the holders of 2023 Notes Claims.

56. The Plan does allow holders of Existing Avifreight Equity Interests or Existing SAI Equity Interests to retain their Interests, and Aerounión has no direct third-party equity holders. 2023 Noteholders have no claims against Avifreight, SAI, or Aerounión, however, aside from the indirect interest that every other unsecured creditor holds through the Avianca Debtors' equity stakes in those entities. Accordingly, the "fair and equitable" standard is not applicable as to those Classes relative to the holders of 2023 Notes Claims.

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[15] Pursuant to the transaction steps set forth in the Plan Supplement, holders of interests in Classes 18 and 19 will retain their formal interests in Avianca Holdings S.A. *See* Exhibit A to Plan Supplement (ECF Nos. 2185, 2276). However, these interests will no longer have any value whatsoever because all of the Avianca operating subsidiaries and the separate property of Avianca Holdings S.A. (such as separate contract rights and intellectual property) will be transferred to Reorganized AVH. Furthermore, no Objector has asserted that the treatment of these Classes, which is economically equivalent to complete extinguishment, is contrary to the absolute priority rule.

IV. THE PLAN IS IN THE BEST INTERESTS OF HOLDERS OF THE 2023 NOTES CLAIMS

a. Findings of Fact: Each Holder of 2023 Notes Claims Will Receive Greater Value under the Plan than in a Hypothetical Liquidation.

57. In a hypothetical liquidation under chapter 7, the DIP Facility Claims would receive approximately 71% recovery while the 2023 Notes Claims would receive zero recovery. *See* Hughes Decl. ¶ 15; Disc. Stmt., Ex. C, at C-4 (note 17 and chart).

58. The 2023 Notes Claims will receive greater than zero recovery under the Plan. *See* Plan ¶ III.B.11.

b. Conclusions of Law: The Plan Is In the Best Interests of Holders of the 2023 Notes Claims.

59. Section 1129(a)(7) sets forth the "best interests" test: with respect to each impaired class of claims, each non-accepting holder of a claim in that class must receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on the effective date. 11 U.S.C. § 1129(a)(7).

60. Holders of 2023 Notes Claims would receive zero recovery in a hypothetical liquidation under chapter 7 of the Bankruptcy Code, but receive some recovery under the Plan. Accordingly, the Plan satisfies the "best interests" test of section 1129(a)(7).

V. THE PLAN PROVIDES FOR APPROPRIATE SUBSTANTIVE CONSOLIDATION OF THE AVIANCA DEBTORS

a. Findings of Fact

61. The Plan proposes to substantively consolidate all of the Debtor entities except for Aerounión, Avifreight, and SAI.

62. The Baruch Objectors argue that substantive consolidation is not appropriate. *See* Baruch Objection ¶ 28.

63. Both the Burlingame Objectors and the Baruch Objectors assert that partial substantive consolidation of the Debtors is unfair to certain creditors. *See* Burlingame Objection at 13-16; Baruch Objection ¶¶ 32-33.

64. Substantive consolidation of the Debtors with one another—except for Aerounión, Avifreight, and SAI—for the purposes of the Plan is appropriate because (a) the Avianca Debtors operate in a consolidated manner such that the operations of the Avianca Debtors are hopelessly entangled and (b) creditors deal with the Avianca Debtors as one network. *See* Hughes Decl. ¶¶ 17-18.

i The Avianca Debtors are Hopelessly Entangled.

65. The Avianca Debtors' operations are tightly integrated, such that untangling each Avianca Debtor's separate operations would be difficult, time-consuming, and expensive. *See* Hughes Decl. ¶ 18; *see also* Tr. at 140:12-141:3; 148:1-3; 153:11-154:8; 155:6-10; 157:10-158:2; 158:18-25; 160:17-20; 161:9-21; 161:21-162:7 (testimony of Ms. Hughes).

66. The Avianca Debtors utilize a centralized cash management system, whereby Avianca Holdings S.A. (an Avianca Debtor) manages cash for the other Avianca Debtors. *See* Hughes Decl. ¶ 18.

67. Avianca Holdings S.A. and other Avianca Debtors provide intercompany loans and other advanced capitalization to the other Avianca Debtors as necessary. *See* Hughes Decl. ¶ 18.

68. Employees across the Avianca Debtors perform work for all of the Avianca Debtors, regardless of which country or Debtor in which the employees sit. *See* Hughes Decl. ¶ 18.

69. In many cases and except as limited by local regulation, the Avianca Debtors share many of the same officers, directors, and shareholders, including Chief Executive Officer, Chief

Operating Officer, Chief People Officer, Chief Planning Officer, General Counsel, Chief Information Officer, and Chief Commercial Officer. *See* Hughes Decl. ¶ 18.

70. The Avianca Debtors share the same legal, marketing, and HR resources, all of which are provided by Avianca Holdings S.A. *See* Hughes Decl. ¶ 18.

71. All Avianca Debtors share a headquarters. *See* Hughes Decl. ¶ 18.

72. It is common for the Avianca Debtors to give cross-entity guarantees when requested by another Avianca Debtor, further linking the Avianca Debtors. *See* Hughes Decl. ¶ 19.

73. Untangling the operations of the Avianca Debtors would be an extremely time-consuming process. *See* Tr. at 158:18-25 (testimony of Ms. Hughes) (". . . I mean, I can't even fathom how long it would take, with my -- you know, based on my experience and knowing the way the -- the airlines operate."). Separating out the books and records of the different entities would take years and would cost millions of dollars. *See* Tr. at 160:17-20 (testimony of Ms. Hughes) (". . . I've been doing this for a very long time, and I can't imagine how [untangling the Avianca Debtors] would be done, and it would take millions of dollars and 20 years to accomplish. . . .").

74. Ms. Hughes, the Debtors' financial advisor, testified that the accounting processes and entanglement thereof at the Avianca Debtors are the most complex she has seen in her 30-year career. Tr. at 143:13-24 (testimony of Ms. Hughes) (". . . I'll tell you I've never seen [financial statements and general ledgers of airlines] this complex as Avianca Holdings by a longshot. . . .").

75. Even assuming the operations of the Avianca Debtors could be untangled, any such process would provide little, if any, benefit to any stakeholder. *See* Hughes Decl. ¶ 20. No holder of a general unsecured claim against the Debtors would receive materially superior recoveries if the Avianca Debtors were each required to propose separate plans of reorganization or liquidation.

See Hughes Decl. ¶ 20. This is because the value of the Avianca Debtors is maximized by the sum of the parts of the Avianca Debtors; as separate entities, the Avianca Debtors have materially less value. *See* Hughes Decl. ¶ 20.

76. The Avianca Debtors run a single network across all of their airline operations. *See* Hughes Decl. ¶ 20. Airline values are heavily correlated to the breadth of the network, as the customer proposition that drives loyalty and higher yield traffic is increased with the breadth and quality of the network offering. *Id*.

77. The Supporting Tranche B DIP Lenders may be unwilling to convert their existing loans to equity or contribute additional capital as set forth in the Plan if the Plan does not incorporate the Global Plan Settlement, including the substantive consolidation of the Avianca Debtors. *See* Hughes Decl. ¶ 20. Indeed, the Global Plan Settlement is predicated on substantive consolidation of the Avianca Debtors. *Id*. ¶ 17. Without the conversion and those additional capital contributions, the value of distributions (if any) to holders of general unsecured claims against the Debtors would likely be significantly less than the value of the distributions set forth in the Plan. *Id*. Liquidation would also be a genuine risk. The DIP Facility's maturity date is approaching on March 31, 2022, *see* Mot. for Entry of Final DIP Amendment Order [ECF No. 1972] at 12, and there is no reason to believe that the Debtors could negotiate, propose, solicit, obtain confirmation of, and implement a superior plan of reorganization by that date.

78. The Official Committee of Unsecured Creditors in these cases also supports the proposed substantive consolidation of the Avianca Debtors. *See Joinder and Statement of the Official Committee of Unsecured Creditors in Support of the Joint Chapter 11 Plan of Avianca Holdings S.A. and its Affiliated Debtors* [ECF No. 2265] ¶¶ 3, 8-11; Tr. at 82:4-20.

ii Creditors View the Avianca Debtors as One-Integrated Entity.

79. The Avianca Debtors hold themselves out to customers and creditors as one "Avianca." *See* Hughes Decl. ¶ 18. And the creditors of the Avianca Debtors dealt and continue to deal with the Avianca Debtors on a single, consolidated basis. *See generally* Tr. at 144:5-19, 153:16-154:8, 155:6-10, 157:18-158:2, 158:3-6 (testimony of Ms. Hughes) (verifying that the Avianca Debtors hold themselves out as all part of the Avianca network).

80. Creditors generally view the Avianca Debtors as one "Avianca" brand. *See* Hughes Decl. ¶ 18.

81. Most of the Avianca Debtors' funded debt is subject to guarantees by many of the Avianca Debtors, such that many of the Avianca Debtors are jointly and severally liable for the debt of other Avianca Debtors. *See generally* Tr. at 158:7-159:23 (testimony of Ms. Hughes).

82. The 2023 Notes, which were issued by Avianca Holdings S.A., are guaranteed by major operating subsidiaries of Avianca Holdings S.A., including, among others, Aerovías del Continente Americano S.A. Avianca, Avianca Costa Rica S.A., Taca International Airlines S.A., Avianca Ecuador S.A., Tampa Cargo S.A.S., and Aviateca S.A. *See* Hughes Decl. ¶ 19.

83. Substantive consolidation of the Avianca Debtors will also therefore eliminate a significant number of general unsecured claims against the Debtors based on guarantees provided by an Avianca Debtor.

iii Aerounión, SAI, and Avifreight Do Not Meet the Standard for Substantive Consolidation with the Avianca Debtors.

84. The Objectors claim that, to the extent substantive consolidation is appropriate at all, it should include the three entities currently excluded from the substantive consolidation that is part of the Global Plan Settlement. *See* Baruch Objection ¶ 32; Burlingame Objection at 13-16.

85. SAI, Aerounión, and Avifreight are not hopelessly entangled with the Avianca Debtors, and instead maintain operations separate from the Avianca Debtors. *See* Hughes Decl. ¶ 23.

86. Unlike the Avianca Debtors, SAI, Aerounión, and Avifreight are not marketed by the Debtors as falling under the "Avianca" brand. *See* Hughes Decl. ¶ 23.

87. SAI is a ground-handling services provider in Colombian airports for Avianca, as well as for other airline customers. *See* Hughes Decl. ¶ 24.

88. SAI maintains separate accounting and treasury systems from the Avianca Debtors, and the Avianca Debtors cannot access those systems. *See* Hughes Decl. ¶ 24; Tr. at 138:3-10 (testimony of Ms. Hughes) (explaining that the centralized cash management system "excludes" SAI, Aerounión, and Avifreight).

89. SAI has a distinct management team and maintains separate operational and financial systems from those of the Avianca Debtors. *See* Hughes Decl. ¶ 24.

90. Because the Avianca Debtors are SAI's largest customer, it is "not marketing [itself] to Avianca as Avianca-controlled because Avianca [i]s [its] customer" and thus "from a customer proposition perspective, [SAI is] quite separate." Tr. at 155:11-25 (testimony of Ms. Hughes).

91. SAI also has a separate headquarters than that of the Avianca Debtors. *See* Hughes Decl. ¶ 24.

92. Because SAI is distinct and operationally separate from the Avianca Debtors, it is not entangled with the Avianca Debtors. Tr. at 155:1-5 (testimony of Ms. Hughes) ("And in SAI, again, you know, it was an acquired entity. It is run and maintained completely separate and has a management team that's separate and books and records that are separate. It's actually quite easy -- I mean, it's already separate. It's not hard to separate. It already is separate.").

93. Aerounión is an airline in Mexico and runs independently from the Avianca Debtors under Mexican foreign investment regulations. *See* Hughes Decl. ¶ 25; Tr. at 144:7-8 (testimony of Ms. Hughes) ("Aerounión, its business is run completely separate.").

94. Aerounión maintains separate accounting and treasury systems from the Avianca Debtors, which the Avianca Debtors cannot access. *See* Hughes Decl. ¶ 25.

95. Aerounión has a distinct management team and maintains separate operational and financial systems from those of the Avianca Debtors. *See* Hughes Decl. ¶ 25; Tr. at 154:18-20 (testimony of Ms. Hughes) ("Aerounión runs its own business, has its own set of books and records, has its own set of customers. They -- they -- they run an independent business.").

96. Aerounión has a headquarters separate from that of the Avianca Debtors. *See* Hughes Decl. ¶ 25. Indeed, Aerounión does not use or fall under the "Avianca" brand. *See* Hughes Decl. ¶ 23.

97. These separate operations also manifest in creditors a perception that that Aerounión is not part of the Avianca brand. For example, at one point during these Chapter 11 Cases, the financial advisor to the Debtors contacted a creditor of Aerounión to discuss Aerounión issues. The creditor initially refused to speak with Avianca's financial advisor, citing a belief that Avianca and Aerounión were not related entities. Tr. at 156:7-18 (testimony of Ms. Hughes).

98. Because Aerounión is distinct and operationally separate from the Avianca Debtors, its books and records are not entangled with the Avianca Debtors. Tr. at 154:12-13 (testimony of Ms. Hughes).

99. Avifreight was established with the sole purpose of complying with Mexican foreign investment regulations for foreign ownership of Aerounión. *See* Hughes Decl. ¶ 26; Tr. at 133:19-23; 136:13-18 (testimony of Ms. Hughes).

100. Avifreight is a holding company separately controlled and operated from the Avianca Debtors. *See* Hughes Decl. ¶ 26; Tr. at 133:15-18 (testimony of Ms. Hughes).

101. Avifreight maintains separate books and records. *See* Tr. at 142:14-17 (testimony of Ms. Hughes).

102. Because Avifreight is only a holding company for Aerounión, and has no creditors and no operations, it is not entangled with the Avianca Debtors. Tr. at 154:12-13, 154:21-25, 156:19-23 (testimony of Ms. Hughes).

iv <u>The 2023 Noteholders are Not Impacted by the Exclusion of SAI, Aerounión, and/or Avifreight from Substantive Consolidation.</u>

103. Creditors of the Avianca Debtors, including the 2023 Noteholders, are not materially impacted by the exclusion of SAI, Aerounión, and/or Avifreight from the Avianca Debtors. *See* Hughes Decl. ¶ 27.

104. None of SAI, Aerounión, or Avifreight are guarantors of the 2023 Notes. *See* Hughes Decl. ¶ 27.

105. Nor have the Burlingame Objectors or the Baruch Objectors asserted that the 2023 Notes have a lien on the assets or equity of SAI, Aerounión, or Avifreight.

106. Indeed, the Shared Collateral does not have liens on the equity of SAI, Aerounión, or Avifreight.

107. Nevertheless, the residual equity value of SAI, Aerounión, and Avifreight are augmenting the recoveries of the Avianca Debtors' creditors, including the holders of the 2023 Notes. *See* Hughes Decl. ¶ 27.

108. This is because one of the Avianca Debtors is a 90% shareholder in SAI, and thus the residual equity value of SAI flows to the Avianca Debtors as a benefit to the Debtors' estate and its creditors. *See* Hughes Decl. ¶ 27.

109. Similarly, 92% of the economic benefit in Aerounión flows to the Avianca Debtors for a benefit to the Debtors' estates and creditors, through the Avianca Debtors' interest in Avifreight. *See* Hughes Decl. ¶ 27; Tr. at 136:19-25, 137:1-3 (testimony of Ms. Hughes).

b. Conclusions of Law

i Substantive Consolidation of the Avianca Debtors is Appropriate.

110. Courts may exercise their equitable powers to substantively consolidate the assets and liabilities of two or more debtors for the purpose of creating a single common pool of assets from which creditors may seek recovery on their claims. *See Union Sav. Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.)*, 860 F.2d 515, 518 (2d Cir. 1988) ("Augie/Restivo") ("Substantive consolidation has no express statutory basis but is a product of judicial gloss."); *In re Drexel Burnham Lambert Grp.*, Inc., 138 B.R. 723, 764 (Bankr. S.D.N.Y. 1992); *see also In re Donut Queen, Ltd.*, 41 B.R. 706, 708–09 (Bankr. E.D.N.Y. 1984) (holding that the power of the court to substantively consolidate separate corporate debtors arises from section 105(a) of the Bankruptcy Code).

111. In the Second Circuit, courts apply the so-called *Augie/Restivo* test when assessing the propriety of substantive consolidation. Under this test, a court may order substantive

consolidation over the objection of a party in interest only when the proponent of substantive consolidation establishes one of the following two independent bases:[16]

> (i) the affairs of the debtor entities proposed to be consolidated are so entangled that substantive consolidation will benefit all creditors of the consolidated estate ("Hopeless Entanglement"); ***or***
>
> (ii) creditors dealt with the debtor entities proposed to be substantively consolidated as a single economic unit and did not rely on their separate identities in extending credit ("Creditor Reliance").

Augie/Restivo, 860 F.2d at 518.

112. Courts have significant discretion to consider various factors, which can be used for both the Creditor Reliance and Hopeless Entanglement prongs of the test,[17] when determining whether substantive consolidation is appropriate. Those factors include (but are not limited to):

- the existence of operational entanglement;[18]
- the existence of guarantees and intercompany loans;[19]
- public perception of the debtors;[20]

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[16] "Conceivably, substantive consolidation could be warranted on either ground; the Second Circuit's use of the conjunction 'or' suggests that the two cited factors are alternatively sufficient criteria." *In re 599 Consumer Elecs., Inc.*, 195 B.R. 244, 248 (S.D.N.Y. 1996).

[17] *See, e.g.*, *In re Republic Airways Holdings Inc.*, 565 B.R. 710, 719-22 (Bankr. S.D.N.Y. 2017), *aff'd,* 582 B.R. 278 (S.D.N.Y. 2018).

[18] *See, e.g.*, *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R 723, 741 (Bankr. S.D.N.Y. 1992) (approving substantive consolidation where all support functions, including finance, legal, administrative, operations clearing systems, communications, mailroom, internal audit and external audit were provided by one debtor entity); *In re Republic Airways Holdings, Inc.*, 565 B.R. at 717; *In re WorldCom, Inc.*, 2003 WL 23861928, at *37 (Bankr. S.D.N.Y. Oct. 31, 2003) (noting debtors "operate a single business under a single business plan" and finding that the debtors demonstrated operational and financial entanglement of their business affairs, warranting substantive consolidation).

[19] *See, e.g.*, *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. at 741-45, 761-767 (approving substantive consolidation and noting it was "customary for customers, creditors, and counterparties to seek guarantees of DBL Group."); *In re Republic Airways Holdings, Inc.*, 565 B.R. at 719 (finding significant overlap in creditor pools due to intercompany guarantees to be a factor in favor of consolidation).

[20] *See, e.g.*, *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R at 744 (noting that debtor entities to be consolidated "did not advertise in their own names and did not hold themselves out to the public as independent entities"); *In re Republic Airways Holdings Inc.*, 565 B.R. 710, 720 (approving substantive consolidation and pointing to testimony of debtor's CEO stating: "We don't hold ourselves out as Shuttle America or Chautauqua or Republic, the airline, or Republic Holdings on our website. We just hold ourselves out as Republic.").

- shared cash management systems and intercompany transfers;[21]
- shared decision-making and control processes;[22] and
- whether substantive consolidation would facilitate a timely confirmation of the debtors' plan and aid the debtors' rehabilitation.[23]

113. In airline-bankruptcy cases, requests for substantive consolidation have been granted when sought. Indeed, in the six airline bankruptcy cases in the Second Circuit where debtors sought substantive consolidation, the relevant court awarded the remedy each time. *See e.g., In re Republic Airways Holdings Inc*, 565 B.R. at 732 (Bankr. S.D.N.Y. 2017); Transcript of Evidentiary Hearing Motion by Debtor for Substantive Consolidation of Consolidated Debtors Before the Honorable Allan L. Gropper at 99:18-24, *In re Nw. Airlines Corp.*, No. 05-17930, ECF No. 6927 (the "Northwest Airlines Hearing Transcript").[24]

114. In two of these airline-bankruptcy cases, the United States Bankruptcy Court for the Southern District of New York permitted substantive consolidation over the objection of

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[21] *See, e.g., In re Republic Airways Holdings, Inc.*, 565 B.R. at 719 (noting debtors use of the same cash management system in approving substantive consolidation).

[22] *See, e.g., In re Republic Airways Holdings, Inc.*, 565 B.R. at 716-17 (citing *In re WorldCom, Inc.*, 2003 WL 23861928, at *35) (noting that a factor favoring substantive consolidation is the "common management and control of the Debtors"); *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R at 764 (noting "the directors of the subsidiary not acting independently in the interest of the subsidiary, but taking direction from the parent" as a factor in considering whether consolidation is warranted).

[23] *See, e.g., In re Republic Airways Holdings Inc*, 565 B.R. at 721 (finding substantive consolidation appropriate where a delayed confirmation would adversely affect pilot hiring and lead to underperformance, which would lead to diminished unsecured creditor recoveries); *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. at 767 ("Without the consolidation, no reorganized entity will emerge, thus thwarting a primary goal of the Bankruptcy Code—rehabilitation and reorganization.").

[24] *See also* Findings of Fact, Conclusions of Law, and Order Pursuant to Sections 1129(a) and (b) of the Bankruptcy Code and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Debtors' Fourth Amended Joint Chapter 11 Plan at 17, *In re: AMR Corp.*, No. 11-15463 (Bankr. S.D.N.Y. Oct. 22, 2013), ECF No. 10367 (confirming a chapter 11 plan premised on limited and separate substantive consolidation of (i) the AMR Debtors with one another, (ii) the American Debtors with one another, and (iii) the Eagle Debtors with one another); Order Confirming Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code at 18, *In re: Delta Air Lines, Inc.*, No. 05-17923 (Bankr. S.D.N.Y. Apr. 25, 2007), ECF No. 5998 (confirming a chapter 11 plan premised on the limited and separate consolidation of (i) the estates of the Delta debtors with one another and (ii) the estates of the Comair debtors with one another, for voting, confirmation, and distribution purposes); Order Confirming Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code at 13, 17, *In re: Pinnacle Airlines Corp.*, No. 12-11343 (Bankr. S.D.N.Y. Apr. 17, 2013), ECF No. 1157 (confirming a chapter 11 plan where the debtors' estates were substantively consolidated for voting, confirmation, and distribution purposes); Order Confirming Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code at 13, 17, *In re: Frontier Airlines Holdings, Inc.*, No. 08-11298 (Bankr. S.D.N.Y. Sept. 10, 2009), ECF No. 1069 (same).

creditors. *See In re Republic Airways Holdings, Inc.*, 565 B.R. at 732 ("For the reasons stated above, the Court finds that the Debtors have satisfied the standard for substantive consolidation and overrules the Residco Objection."); Northwest Airlines Hearing Transcript at 95:4-7; 100:15-20 ("Only one creditor has objected, the same creditor that is a leader of a group of shareholders who are trying to derail the plan on the ground that it fails to provide any value to shareholders. . . . As the debtors argue, it is not sufficient to deny substantive consolidation in light of the debtors' adequate showing that consolidation is appropriate within the meaning of *Augie/Restivo*, in that the affairs of the debtors are entangled and consolidation will benefit all creditors.").

115. In *Republic Airways*, the debtor requested that the Court substantively consolidate three companies—Republic Airways Holdings Inc., Republic Airline, and Republic Airways Services, Inc.—out of a total of six debtor entities. *See* Debtors' Memorandum of Law in Support of Confirmation of Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code and in Reply to Reponses to the Plan at 16, *In re: Republic Airways Holdings Inc.*, No. 16-10429 (Bankr. S.D.N.Y. Mar. 1, 2017), ECF No. 1557. The debtors' plan of reorganization sought to consolidate these three entities for all purposes and actions associated with consummation of the plan, voting, and confirmation. *Id.* at 17; *In re Republic Airways Holdings, Inc.*, 565 B.R. at 715.

116. The objectors to the proposed substantive consolidation were the owner-trustee and owner-participant (together, "Residco") for seven aircraft leases with the Debtors. *See In re Republic Airways Holdings, Inc.*, 565 B.R. at 712. Residco objected to many aspects of substantive consolidation under the Republic-debtors' plan, including that Residco relied on the corporate

separateness of the debtor entities when entering its transactions, and that the debtor entities were able to separate their assets and liabilities. *Id.* at 713, 715, 723.

117. Judge Sean H. Lane issued a written decision, ultimately overruling Residco's objections and approving the debtors' proposed substantive consolidation. *Id.* at 732. In analyzing myriad factors, the Court found that both *Augie/Restivo* prongs were satisfied by the Republic-debtors. *Id.* at 718-19. The court highlighted the following facts as supporting the proposed consolidation: the consolidated debtors operate as a single economic unit; the consolidated debtors operate under a single business plan; none of the consolidated debtors ever received a credit rating independently from another consolidated debtor; analyst reports routinely discussed the debtors as a unified enterprise; the consolidated debtors share the same overhead, management, accounting, and other back-office functions; there were significant intercompany obligations, there were significant overlaps in the creditor pools due to guarantees; the consolidated debtors issue consolidated financial statements; the consolidated debtors were jointly controlled from a shared headquarters; the consolidated debtors did not have separate budgets and use the same cash management system; the consolidated debtors filed a consolidated tax return; the debtors were concerned about the cost of conducting an intercompany reconciliation and audit; significant additional time and expense would be necessary to untangle the assets of the consolidated debtors; and there were potential business risks arising out of a longer stay in Chapter 11. *Id*. Further, the court rejected Residco's argument that it would be harmed by substantive consolidation because the debtors proposed a "carve-out," under which Residco could be treated under the plan as if substantive consolidation had not occurred. *Id*. at 726-29.

118. In *Northwest Airlines*, the debtors requested that the Court substantively consolidate three passive holding companies with the operating airline, separately from 10 other

Northwest-debtor entities. *See* Debtors' Motion for Substantive Consolidation of Consolidated Debtors at 2, *In re Nw. Airlines Corp.*, No. 05-17930 (Bankr. S.D.N.Y. April 27, 2007), ECF No. 6477. In support of the *Augie/Restivo* factors, the Northwest-debtors explained that the proposed consolidation would not cause substantial injury to any creditor. *Id.* Particularly, holders of guaranty claims against a consolidated entity would receive an additional distribution that equaled the distribution it would have received under separate plans, and if there would be any dilution for holders of general unsecured claims, that dilution would be both *de minimis* and offset by the benefits of consolidation. *Id.* at 2-3.

119. The sole objector to the proposed substantive consolidation, Owl Creek Asset Management, L.P. ("Owl Creek"), was a shareholder and a creditor of the debtors, holding $54,200,000 in face amount of senior notes issued by Northwest Airlines Inc. and guaranteed by Northwest Airlines Corporation, and in some instances also by Northwest Holdings Corporation (all of which were proposed to be consolidated). *See* Objection of Owl Creek Asset Management, L.P. to Debtors' Motion for Substantive Consolidation of Consolidated Debtors at 2, *In re Nw. Airlines Corp.*, No. 05-17930 (Bankr. S.D.N.Y. May 5, 2007), ECF No. 6596. Owl Creek objected to many aspects of the debtors' proposed substantive consolidation, including noting that the debtors were able to file separate statements of financial affairs for each debtor entity (*id.* at 18), that the debtors were able to trace their assets and track the amounts paid to and from each affiliated participant in the centralized cash management system (*id.*), and that the issuer of the notes and guarantors were separate entities (*id.* at 15).

120. At an evidentiary hearing, Judge Gropper overruled Owl Creeks' objections and approved the debtors' proposed substantive consolidation.[25] *See* Northwest Airlines Hearing Transcript at 101:17-21. In his oral decision, Judge Gropper stated:

> There is no dispute that substantive consolidation would benefit shareholders because it would admittedly eliminate the need to deal with thousands of duplicate claims, to disentangle records and accounts of the debtors; that it would reduce administrative expenses, provide material tax benefits to the group, and other produce more value for the entire creditor body and, if there is anything left, for the shareholders.

Id. at 95:8-15. Judge Gropper further ruled that, contrary to Owl Creek's suggestion, the existence of cross-entity guarantees pointed to the existence of one single economic unit. *Id.* at 96:15-23. Judge Gropper recognized that "[t]he great majority of creditors and shareholders relied on the four debtors as a group, and the affairs of the holdings companies and the airline are inextricably intertwined. It would do no party any good to require that they be untangled." *Id.* at 100:21-25.

121. The Avianca Debtors easily satisfy the standards of substantive consolidation. The Avianca Debtors have established that they are hopelessly entangled, among other reasons, because the Avianca Debtors: operate as a single economic unit; share the same back-office functions (such as legal, marketing, and HR resources); share numerous employees, officers, directors, and shareholders; share significant overlaps in the creditors pools due to various cross-entity guarantees; share a headquarters; and utilize a centralized cash management system. *Compare In re Republic Airways Holdings, Inc.*, 565 B.R. at 18-19. Further, the Avianca Debtors have tightly integrated operations such that untangling them would be extremely difficult, expensive, and time-consuming. *Compare In re Worldcom, Inc.*, 2003 WL 23861928 (Bankr. S.D.N.Y. Oct. 31, 2003) ("To prevail on substantive consolidation, the Debtors are not required to

[25] Judge Gropper then directed the parties to "settle an order providing for substantive consolidation." Northwest Airlines Hearing Transcript at 101:20-21.

prove that an allocation of assets and liabilities to the various legal entities cannot be achieved under any circumstances. Rather, it is sufficient to demonstrate that it would be so costly and difficult to untangle the Debtors' financial affairs, such that doing so is a 'practical impossibility,' making substantive consolidation appropriate."); *Chem. Bank New York Trust Co. v. Kheel (In re Seatrade Corp.)*, 369 F.2d 845, 848 (2d Cir.1966) (ordering substantive consolidation because of "expense and difficulty amounting to *practical impossibility* of reconstructing the financial records of the debtors to determine intercorporate claims, liabilities and ownership of assets") (emphasis added).

122. Further, the Debtors have established that creditors relied on the Avianca Debtors as one corporate enterprise because they hold themselves out to customers and creditors as one "Avianca," most of the Avianca Debtors' funded debt is subject to guarantees by many of the Avianca Debtors, and creditors of the Avianca Debtors dealt and continue to deal with the Avianca Debtors on a single, consolidated basis. Like the majority creditors of the consolidated debtors in *Northwest Airways*, the majority of creditors of the Avianca Debtors rely on the fact that the Avianca Debtors are "inextricably intertwined" such that "[i]t would do no party any good to require that they be untangled." *See, e.g.*, Northwest Airlines Hearing Transcript at 101:21-25.

123. Further, the Debtors have established that Avifreight, Aerounión, and SAI are not properly subject to substantive consolidation. Unlike the Avianca Debtors, Aerounión and SAI are not hopelessly entangled. Indeed, they maintain their own operations and their own treasury systems and management teams. Because their operations are already separate, there is no difficulty in disentangling them from the Avianca Debtors. Further, Avifreight is not difficult to disentangle because it has no creditors and exists only as a holding company for Aerounión. Thus,

Avifreight, Aerounión, and SAI do not meet either justification of Hopeless Entanglement or Creditor Reliance for purposes of substantive consolidation.

VI. THE ALLEGED VIOLATION OF SECTION 548 IS IRRELEVANT AND MERITLESS

a. Findings of Fact

124. The Burlingame Objectors argue that the Debtors violated section 548 of the Bankruptcy Code by making "certain payments and transfers to affiliates less than one year prior to filing of its chapter 11." Burlingame Objection at 13. The allegation cites, without detail, the *Amended Statement of Financial Affairs of Avianca Holdings S.A.* [ECF No. 1668], filed by the Debtors on May 11, 2021.

125. The Burlingame Objectors refer to certain prepetition "insurance payments" but otherwise do not identify each of the transfers (including the individual recipients, dates, and/or amounts involved) that form the basis of their claim.

126. No evidence has been presented that any Debtor received less than reasonably equivalent value for any transfers made, to affiliates or otherwise, during the prepetition period.

127. No evidence has been presented that any Debtor intended to hinder, delay, or defraud any creditors with respect to any transfers made to affiliates or otherwise, during the prepetition period.

128. No evidence has been offered to suggest that at any time during these Chapter 11 Cases, either the Burlingame Objectors or any other party-in-interest requested that the Debtors pursue an action under section 548 of the Bankruptcy Code. Indeed, the Official Committee of Unsecured Creditors in these cases reviewed the prepetition insurance payments and other prepetition transactions, *see* 10/14/20 Hr'g Tr. at 40, and has taken no action regarding the prepetition transactions.

129. Moreover, as disclosed to the Court earlier in these Chapter 11 Cases, the referenced prepetition insurance payments were made to a captive insurance entity as a means of self-insurance, to secure insurance coverage that was not available in the market. *See generally* 10/14/2020 Hr'g Tr. at 32-34. As such, it is manifest that there was reasonably equivalent value for constructive fraudulent transfer purposes.

130. At no time during these Chapter 11 Cases did the Burlingame Objectors file a motion with the Court seeking derivative standing, presenting a colorable claim for relief, and demonstrating that the Debtors unjustifiably failed to assert such a claim for relief.

131. At no time during these Chapter 11 Cases did the Burlingame Objectors initiate an adversary proceeding alleging a violation of section 548 of the Bankruptcy Code.

b. Conclusions of Law

132. Section 548 of the Bankruptcy Code provides that a trustee or debtor-in-possession "may avoid any transfer . . . of an interest of the debtor in property, or any obligation . . . incurred by the debtor" within two years before a bankruptcy filing if the transaction was actually or constructively fraudulent. 11 U.S.C. § 548.

133. Under section 548 of the Bankruptcy Code, a transfer is actually fraudulent where it was made "with actual intent to hinder, delay, or defraud" any entity to which the debtor was or became indebted. 11 U.S.C. § 548(a)(1)(A).

134. Under section 548 of the Bankruptcy Code, a transfer is constructively fraudulent where the debtor "received less than a reasonably equivalent value in exchange" and was insolvent on the date of such transfer or became insolvent soon thereafter. 11 U.S.C. § 548(a)(1)(B).

135. Upon commencement of these Chapter 11 Cases, standing to assert claims pursuant to section 548 of the Bankruptcy Code vested in the Debtors' estates.

136. Creditors in Chapter 11 Cases may only assert claims pursuant to section 548 of the Bankruptcy Code on behalf of the Debtors' estates if they have derivative standing to do so. Derivative standing must be sought and granted by the Court, and may only be granted upon the creditors' satisfaction of a two-part test: first, creditors must present colorable claims for relief that on appropriate proof would support a recovery; and second, creditors must demonstrate that the debtor-in-possession "unjustifiably failed to bring suit." *See In re Sabine Oil & Gas Corp.*, 547 B.R. 503, 515 (Bankr. S.D.N.Y. 2016).

137. An action under section 548 is "a proceeding to recover money or property" and, as such, is an adversary proceeding. Fed. R. Bankr. P. 7001(a). Adversary proceedings must be commenced by the filing of a complaint, Fed. R. Bankr. P. 7003, and plaintiffs must comply with the rules and requirements governing adversary proceedings in Part VII of the Bankruptcy Rules, including the service and process requirements of Rule 7004.

138. The Burlingame Objectors have not suggested that there are colorable claims under section 548. The Burlingame Objectors make no suggestion and offer no evidence that any transfers were made by the Debtors with actual intent to hinder, delay, or defraud entities to which the Debtors became indebted. The Burlingame Objectors also make no suggestion and offer no evidence that any transfers were made by the Debtors in exchange for less than reasonably equivalent value.

139. The Burlingame Objectors have not demonstrated, or even alleged, that the Debtors unjustifiably failed to bring claims pursuant to section 548 of the Bankruptcy Code.

140. The Burlingame Objectors have not initiated an adversary proceeding in these Chapter 11 Cases nor have they complied with the requirements of Part VII of the Bankruptcy Rules.

141. Accordingly, the Burlingame Objectors have no standing to assert a claim under section 548 and have put forward no facts suggesting that the Debtors have a claim under section 548.

VII. THE ALLEGATIONS THAT THE DEBTORS HAVE BREACHED AGREEMENTS OR FIDUCIARY DUTIES ARE MERITLESS

a. Findings of Fact

i The RSA.

142. On August 28, 2020, the Debtors entered into a Restructuring Support Agreement (the "RSA") with an ad hoc group of noteholders representing a majority of Avianca's 9.00% Senior Secured Notes due 2023.

143. The Burlingame Objectors assert that "[t]he Debtors have breached their agreements and/or have submitted contracts in bad faith." *See* Burlingame Objection at 8.

144. All 2023 Noteholders were given an opportunity to execute the RSA on terms that the Debtors and the ad hoc group negotiated and supported. *See* Bondholder Roll-Up Notice. The many 2023 Noteholders who chose to do so were deemed "Consenting Noteholders," and became parties to the RSA with a right to enforce its terms and seek remedies for breach thereof.[26]

145. As 2023 Noteholders, the Burlingame Objectors or their predecessors were given the opportunity to join and execute the RSA. *See* Bondholder Roll-Up Notice. They chose not to do so. Accordingly, the Burlingame Objectors are not parties to the RSA.

146. No party to the RSA has raised a claim for breach of contract thereunder.

[26] Notwithstanding the allegations made in the Burlingame Objection, the Burlingame Objectors have not submitted nor entered the RSA into evidence in these cases.

147. The Burlingame Objectors specifically argue that the Debtors have breached contracts by "using their 'DIP Loan Proceeds . . . to 'object, contest or raise' defense to 'the validity, perfection, priority' of the . . . (2023 Notes)." *See* Burlingame Objection at 9.

148. The Debtors, however, have not objected, contested, or raised a defense to the validity, perfection or priority of the 2023 Notes. Indeed, the Plan treats the 2023 Notes as valid and proposes to pay distributions to holders of 2023 Notes. Although the 2023 Notes are treated as general unsecured claims, as discussed further herein, that is on account of there being no residual value in the Shared Collateral after satisfaction of the DIP Facility Claims.

149. The Burlingame Objectors also assert that "[t]he Debtors breached their fiduciary duty to the 2023 Noteholders by executing the RSA that exploited one set of similarly situated creditors over another." *See* Burlingame Objection, Ex. B [ECF No. 2281]. This is so, the Burlingame Objectors argue, because the Ad Hoc Group was permitted to contribute new money to the Debtors as part of the RSA (the "2023 Notes New Money") and to backstop a portion of the 2023 Notes New Money. *Id*.

150. However, all 2023 Noteholders—and not just the Ad Hoc Group—were invited to participate in the 2023 Notes New Money, so there was no disparate treatment of 2023 Noteholders with respect to this issue. *See* Bondholder Roll-Up Notice.

151. Further, the compensation provided to the Ad Hoc Group for backstopping the 2023 Notes New Money was approved by the Court pursuant to the Final DIP Order. *See* Final DIP Order, Preamble(a), (b) (defining "DIP Documents" to include backstop commitment letters), § 2(a) (authorizing entry into DIP Documents); *see also* Mot. for Entry of Final DIP Order at 17 (describing Ad Hoc Group's backstop commitment letter), Ex. F (backstop commitment letter).

152. In any event, the Burlingame Objectors have not sought standing to initiate a derivative breach of fiduciary duty claim related to the RSA.

ii The DIP Credit Agreement.

153. In October 2020, the Debtors entered into that certain Super-Priority Debtor-in-Possession Term Loan Agreement among the Debtors, DIP Lenders, and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (the "DIP Credit Agreement").

154. As noted, the Burlingame Objectors assert that "[t]he Debtors have breached their agreements and/or have submitted contracts in bad faith." *See* Burlingame Objection at 8.

155. Under the DIP Credit Agreement, DIP Lenders are granted rights to enforce remedies under the DIP Credit Agreement. *See* DIP Credit Agreement § 4.18(b).

156. The Burlingame Objectors are not parties to the DIP Credit Agreement.

157. No party to the DIP Credit Agreement has raised a claim for breach of contract thereunder.

158. The Burlingame Objectors have submitted no evidence that they are parties to the DIP Credit Agreement and/or that they have any rights to bring claims for breach thereof.

159. The DIP Credit Agreement does not evidence any intent to grant the Burlingame Objectors or any other non-signatory thereto any enforcement rights.

160. Additionally, the Burlingame Objectors have submitted no evidence to support a claim that the DIP Credit Agreement has been breached.

b. Conclusions of Law

i The Burlingame Objectors Cannot Allege, and Have Not Alleged, Breach of Contract Claims.

161. According to New York law, a person or entity not party to a contract cannot sue for breach unless, pursuant to the contract, the plaintiff is an intended beneficiary. *Dormitory*

Auth. of the State of N.Y. v. Samson Constr. Co., 94 N.E.3d 456, 459 (N.Y. 2018) (an intent to benefit the third party must be shown, and, absent such intent, the third party is merely an incidental beneficiary with no right to enforce the particular contracts) (internal citations omitted); *CWCapital Invs. LLC v. CWCapital Cobalt VR Ltd.*, 122 N.Y.S.3d 595, 600 (App. Div. 2020) ("A nonparty can assert a breach of contract claim only if it is an intended, and not a mere incidental, beneficiary, and even then . . . the parties' intent to benefit the third party must be apparent from the face of the contract.") (internal citations omitted).

162. New York courts have sanctioned a third party's right to enforce a contract in two situations: when the third party is the only one who could recover for the breach of contract, or when it is otherwise clear from the language of the contract that there was an "intent to permit enforcement by the third party." *Dormitory Auth. of the State of N.Y.*, 94 N.E.3d at 459 (finding plaintiff did not qualify as a third-party beneficiary under either ground, thus plaintiff had no right to enforce the contract); *Levy v. Zimmerman*, 150 N.Y.S.3d 233, at *23-24 (N.Y. 2021) (dismissing action for breach of contract for lack of standing because plaintiffs did not qualify as third-party beneficiaries under either ground); *CWCapital Invs. LLC*, 122 N.Y.S.3d at 600 (dismissing plaintiff's cause of action for breach of contract because plaintiff was not a third-party beneficiary of the sued-upon contract section, even where plaintiff was a third-party beneficiary of a different section of the contract).

163. The RSA is governed by New York law.

164. The Burlingame Objectors are not intended beneficiaries of the RSA.

165. Because the Burlingame Objectors are not party to nor intended beneficiaries of the RSA, the Burlingame Objectors lack standing to bring a breach of contract claim under the RSA.

166. The DIP Credit Agreement is governed by New York law. *See* DIP Credit Agreement § 11.05(a).

167. The Burlingame Objectors are not intended beneficiaries of the DIP Credit Agreement because the DIP Credit Agreement makes no mention of the Burlingame Objectors, nor does it indicate that the Burlingame Objectors are an intended beneficiary permitted to enforce the DIP Credit Agreement.

168. Because the Burlingame Objectors are not party to nor intended beneficiaries of the DIP Credit Agreement, the Burlingame Objectors lack standing to bring a breach of contract claim under the DIP Credit Agreement.

169. Further, to state a claim for breach of contract, a plaintiff must allege: 1) the parties entered into a valid agreement; 2) plaintiff performed; 3) defendant failed to perform under the agreement; and 4) this breach resulted in damages to the plaintiff. *See Dee v. Rakower*, 976 N.Y.S.2d 470, 474 (App. Div. 2013).

170. Even if the Burlingame Objectors had standing to bring a breach of contract claim under the RSA or the DIP Credit Agreement, the Burlingame Objectors have not sufficiently alleged a breach. Specifically, the Burlingame Objectors have not alleged how the Debtors have failed to perform under the RSA or the DIP Credit Agreement.

ii The Burlingame Objectors Have Not Alleged Cognizable Breach of Fiduciary Duty Claims.

171. Under New York law, claims based upon breach of fiduciary duty belong to the corporation; upon commencement of these Chapter 11 Cases, standing to assert a claim of breach of fiduciary duty resided with the Debtors' estates. *See In re Ampal-Am. Isr. Corp.*, 502 B.R. 361, 374 (Bankr. S.D.N.Y. 2013) ("Under New York law, claims for waste, mismanagement and breach of fiduciary duty belong to the corporation . . . and once bankruptcy ensues, become property of

the estate that the trustee alone has standing to assert.") (internal citations omitted); *Keene Corp. v. Coleman (In re Keene Corp.)*, 164 B.R. 844, 853 (Bankr. S.D.N.Y. 1994) ("Claims based upon breach of a fiduciary duty belong to a corporation, but once bankruptcy ensues, they are enforceable by the trustee."); *see also In re Gen. Growth Props., Inc.*, 426 B.R. 71, 75 (Bankr. S.D.N.Y. 2010) (finding that "[t]he [*Barton*] doctrine protects any fiduciary of the estate, including a debtor-in-possession, as '[i]t is well settled that such fiduciary cannot be sued in state court without leave of the bankruptcy court for acts done in his official capacity and within his authority as an officer of the court.'") (citation omitted).

172. While creditors of an insolvent corporate debtor may seek derivative standing to assert that the debtors were injured as a result of a breach of fiduciary duty, creditors do not have standing to bring a direct claim for breach of fiduciary duty. *See Goldin v. Primavera Familienstiftung Tag Assocs. (In re Granite Partners, L.P.)*, 194 B.R. 318, 327 (Bankr. S.D.N.Y. 1996) ("Such [breach of fiduciary duty] claims ordinarily belong to and can only be enforced by the corporation or through a shareholder's derivative action."); *Associated Hardwoods, Inc. v. Lail*, No. 18 CVS 329, 2018 WL 3747439, at *7 (N.C. Super. Aug. 6, 2018) ("Accordingly, the Court concludes that Plaintiff's breach of fiduciary duty and constructive fraud claims are property of the bankruptcy estate and Plaintiff, therefore, lacks standing.").

173. The Burlingame Objectors never sought standing to bring a claim for breach of fiduciary duty and thus lack standing to bring a claim for breach of fiduciary duty.

174. Even assuming *arguendo* that the Burlingame Objectors did have standing to bring a breach of fiduciary duty claim, the Burlingame Objectors have not demonstrated, let alone alleged, a legally cognizable breach of fiduciary duty claim.

175. Under New York law, a claim for breach of fiduciary duty has three elements: "(1) the existence of a duty on defendant's part as to plaintiff; (2) a breach of this duty; and (3) injury to the plaintiff as a result thereof." *Welch v. TD Ameritrade Holding Corp.*, No. 07 CIV. 6904 (RJS), 2009 WL 2356131, at *40 (S.D.N.Y. July 27, 2009) (quoting *Alfaro v. Wal-Mart Stores, Inc.*, 210 F.3d 111, 114 (2d Cir. 2000)).

176. The Burlingame Objectors have the burden of "pleading and proving the existence of a fiduciary relationship." *Official Comm. of Unsecured Creditors of Lois/USA, Inc. v. Conseco Fin. Servicing Corp. (In re Lois/USA, Inc.)*, 264 B.R. 69, 130 (Bankr. S.D.N.Y. 2001). The existence of such a fiduciary relationship must be shown with particularity, as "mere assertions of 'trust and confidence' are insufficient to support a claim of a fiduciary relationship." *DeBlasio v. Merrill Lynch & Co.*, No. 07CIV318RJS, 2009 WL 2242605, at *28 (S.D.N.Y. July 27, 2009) (quoting *Abercrombie v. Andrew Coll.*, 438 F. Supp. 2d 243, 274 (S.D.N.Y. 2006); *see also In re Lois/USA, Inc.*, 264 B.R. at 130 (citing *Carey Elec. Contracting, Inc. v. First Nat'l Bank*, 74 Ill. App. 3d 233, 237-38 (1979)) ("The existence of such a fiduciary relationship must be shown by proof "so clear and convincing, so strong, unequivocal and unmistaken that it leads to only one conclusion.").

177. The Burlingame Objectors have not demonstrated the existence of a duty, nor a breach of such duty, nor any injury as a result thereof. Even if, *arguendo*, the Debtors did owe fiduciary duties to the 2023 Noteholders, any allegation by the Burlingame Objectors that they breached such duties would border on frivolous. The Burlingame Objectors, or their predecessors in interest, simply chose not to participate in the conversion of their 2023 Notes into the former Tranche A of the DIP Facility and cannot hold the Debtors responsible for that investment decision.

In short, the Burlingame Objectors have no legal standing to assert, and no factual basis to allege, that any Debtor breached a fiduciary duty.

Dated: October 28, 2021
New York, New York

/s/ *Evan R. Fleck*

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Exhibit B to Notice of Filing

Compendium of Unpublished Materials

COMPENDIUM OF UNPUBLISHED MATERIALS

Tab

Tab 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
AMR CORPORATION, *et al.*,	:	**11-15463 (SHL)**
Debtors.	:	**(Jointly Administered)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER PURSUANT TO SECTIONS 1129(a) AND (b) OF THE BANKRUPTCY CODE AND RULE 3020 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE CONFIRMING DEBTORS' FOURTH AMENDED JOINT CHAPTER 11 PLAN

WHEREAS AMR Corporation and its related debtors (collectively, the "**Debtors**"), as "proponents of the plan" within the meaning of section 1129 of title 11, United States Code (the "**Bankruptcy Code**"), filed the Debtors' Second Amended Joint Chapter 11 Plan, dated June 5, 2013 (ECF No. 8590) (such plan, as transmitted to parties in interest being the "**Second Amended Plan**," and as subsequently modified, the "**Plan**")[1] and the Disclosure Statement for Debtors' Second Amended Joint Chapter 11 Plan, dated June 5, 2013 (ECF No. 8591) (as transmitted to parties in interest, the "**Disclosure Statement**"); and

WHEREAS on June 7, 2013, the Court entered an order (the "**Solicitation Order**") (ECF No. 8614), which, among other things, (i) approved the Disclosure Statement under section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017, (ii) established August 15, 2013 as the date for the commencement of the hearing to consider confirmation of the Plan

[1] Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the Plan, a copy of which is annexed hereto as **Exhibit "A."** Any term used in the Plan or this Confirmation Order that is not defined in the Plan or this Confirmation Order, but that is used in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") shall have the meaning ascribed to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

(the "**Confirmation Hearing**"), (iii) approved the form and method of notice of the Confirmation Hearing (the "**Confirmation Hearing Notice**"), and (iv) established certain procedures for soliciting and tabulating votes with respect to the Second Amended Plan; and

WHEREAS the Confirmation Hearing Notice and (i) as to holders of Claims or Equity Interests, as applicable, in AMR Class 3 (AMR General Unsecured Guaranteed Claims), AMR Class 4 (AMR Other General Unsecured Claims), AMR Class 5 (AMR Equity Interests), American Class 4 (American General Unsecured Guaranteed Claims), American Class 5 (American Other General Unsecured Claims), American Class 6 (American Union Claims), American Class 7 (American Convenience Class Claims), Eagle Class 3 (Eagle General Unsecured Claims), and Eagle Class 4 (Eagle Convenience Class Claims) entitled to vote, the Disclosure Statement (with the Second Amended Plan annexed thereto), the Solicitation Order (without exhibits), the letter recommending acceptance of the Second Amended Plan from the Creditors' Committee, and an appropriate form of ballot and return envelope (such ballot and return envelope being referred to as a "**Ballot**"), (ii) as to holders of Claims or Equity Interests, as applicable, in AMR Class 1 (AMR Secured Claims), AMR Class 2 (AMR Priority Non-Tax Claims), AMR Class 6 (AMR Other Equity Interests), American Class 1 (American Secured Aircraft Claims), American Class 2 (American Other Secured Claims), American Class 3 (American Priority Non-Tax Claims), American Class 8 (American Equity Interests), Eagle Class 1 (Eagle Secured Claims), Eagle Class 2 (Eagle Priority Non-Tax Claims), and Eagle Class 5 (Eagle Equity Interests), a Notice of Non-Voting Status – Unimpaired Classes, and (iii) as to the Master Service List (as defined in the Amended Order Pursuant to 11 U.S.C. §§ 105(a) and (d) and Bankruptcy Rules 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case Management Procedures, dated August 8, 2012 (ECF No. 3952) (the "**Case Management**

Order")), the Disclosure Statement (with the Second Amended Plan annexed thereto), were transmitted as set forth in the Affidavit of Craig Johnson, sworn to on July 2, 2013 (the "**GCG Affidavit**") (ECF No. 9013), evidencing the timely service of the Disclosure Statement (with the Second Amended Plan annexed thereto), related solicitation materials, and Notices of Non-Voting Status, and such service is adequate as provided by Bankruptcy Rule 3017(d); and

WHEREAS the Certificate of Publication of Debra Wolther, sworn to on July 12, 2013 (the "**Certificate of Publication**") (ECF No. 9110) was filed evidencing publication of the Confirmation Hearing Notice on July 1, 2013 in *The Wall Street Journal*, Global and *USA Today*, National in accordance with the Solicitation Order; and

WHEREAS on July 19, 2013, the Debtors filed the Plan Supplement with respect to the Plan (ECF No. 9231), as modified by the First Addendum to the Plan Supplement (ECF No. 9671), as further modified by the Second Addendum to the Plan Supplement (ECF No. 9675), and as further modified by the Third Addendum to the Plan Supplement (ECF No. 9699) (as the documents contained therein may have been or may be further amended or supplemented, the "**Plan Supplement**"); and

WHEREAS certain objections to confirmation of the Plan (collectively, the "**Objections**") were filed; and

WHEREAS on August 8, 2013, the Debtors filed (i) a memorandum of law in support of confirmation and an omnibus response to the Objections (the "**Confirmation Brief and Response**") (ECF No. 9516), (ii) the Declaration of Armando M. Codina in Support of Confirmation of Debtors' Second Amended Joint Chapter 11 Plan (ECF No. 9518) (the "**Codina Declaration**"), (iii) the Declaration of Douglas J. Friske in Support of Confirmation of Debtors' Second Amended Joint Chapter 11 Plan (ECF No. 9519) (the "**Friske Declaration**"), (iv)

Declaration of Beverly K. Goulet in Support of Confirmation of Debtors' Second Amended Joint Chapter 11 Plan (ECF No. 9520) (the "**Goulet Declaration**"), (v) the Declaration of Homer Parkhill in Support of Confirmation of Debtors' Second Amended Joint Chapter 11 Plan (ECF No. 9521) (the "**Parkhill Declaration**"), and (vi) the Declaration of Kevin Carmody in Support of Confirmation of Debtors' Second Amended Joint Chapter 11 Plan (ECF No. 9522) (the "**Carmody Declaration**," and together with the Codina Declaration, the Friske Declaration, the Goulet Declaration, and the Parkhill Declaration, the "**Declarations**"); and

WHEREAS on August 8, 2013, the Creditors' Committee filed (i) a statement in support of the Plan and in response to Objections (ECF No. 9508) (the "**Creditors' Committee Statement**") and (ii) the Declaration of Irv Becker in support of the Creditors' Committee Statement (ECF No. 9513) and certain Declarations in support of reimbursement of fees and expenses (ECF Nos. 9506, 9509, 9510, 9511, and 9512) (collectively, the "**Creditors' Committee Declarations**"); and

WHEREAS on August 8, 2013, the Ad Hoc Committee of AMR Corporation Creditors filed a statement in support of confirmation of the Plan and joinder to the Debtors' Confirmation Brief and Response and the Creditors' Committee Statement (ECF No. 9253) (the "**Ad Hoc Committee Statement**"); and

WHEREAS on August 8, 2013, (i) Hewlett-Packard Enterprise Services, LLC filed a response to the U.S. Trustee's Objection (ECF No. 9505), (ii) the Bank of New York Mellon filed a limited response and joinder to the Debtors' Confirmation Brief and Response and the Creditors' Committee Statement (ECF No. 9526), (iii) Boeing Capital Corporation filed a statement and joinder in response to Objections (ECF No. 9527), (iv) Manufacturers and Traders Trust Company, as Indenture Trustee, filed a joinder to the Creditors' Committee Statement

(ECF No. 9530), (v) Wilmington Trust Company, as Indenture Trustee, filed a limited joinder to the Debtors' Confirmation Brief and Response and the Creditors' Committee Statement (ECF No. 9531), and (vi) The Bank of New York Mellon Trust Company, N.A., The Bank of New York Mellon, and Law Debenture Trust Company of New York, as Indenture Trustee filed a response to the U.S. Trustee's Objection (ECF No. 9539) (collectively, the "**Additional Responses**"); and

WHEREAS the Declaration of Craig E. Johnson of The Garden City Group, Inc. Certifying the Methodology for the Tabulation of Votes on and Results of Voting with Respect to the Debtors' Second Amended Joint Chapter 11 Plan, sworn to on August 8, 2013 (ECF No. 9504) (the "**Voting Report**"), was filed attesting and certifying the method and results of the tabulation for the Classes of Claims or Equity Interests, as applicable (AMR Class 3 (AMR General Unsecured Guaranteed Claims), AMR Class 4 (AMR Other General Unsecured Claims), AMR Class 5 (AMR Equity Interests), American Class 4 (American General Unsecured Guaranteed Claims), American Class 5 (American Other General Unsecured Claims), American Class 6 (American Union Claims), American Class 7 (American Convenience Class Claims), Eagle Class 3 (Eagle General Unsecured Claims), and Eagle Class 4 (Eagle Convenience Class Claims)), entitled to vote to accept or reject the Plan; and

WHEREAS on August 14, 2013, the Debtors filed the Technical Amendments to the Plan (ECF No. 9749) (the "**Technical Amendments**"); and

WHEREAS the Confirmation Hearing was held on August 15, 2013, and the record was closed except solely with respect to the supplemental submissions requested by the Bankruptcy Court with respect to the DOJ Action (as hereinafter defined); and

WHEREAS on September 12, 2013, the Court rendered a Bench Decision regarding confirmation of the Plan (the "**Bench Decision**"); and

WHEREAS on September 13, 2013, the Court rendered a memorandum decision on the Objection of the U.S. Trustee to the Plan (ECF No. 10108), reported at 2013 WL 5193099 (Bankr. S.D.N.Y. Sept. 13, 2013) (the "**Memorandum Decision**," and together with the Bench Decision, the "**Decision**").

NOW, THEREFORE, based on the Voting Report, the Declarations, the Creditors' Committee's Declarations, the Debtors' Confirmation Brief and Response, the GCG Affidavit, the Certificate of Publication, the Creditors' Committee Statement, the Ad Hoc Committee Statement, and the Additional Responses; and upon (i) the record of the Confirmation Hearing, including all the evidence proffered or adduced at, the Objections filed in connection with, and the arguments of counsel made at the Confirmation Hearing and (ii) the entire record of the Chapter 11 Cases, including the Decision; and after due deliberation thereon and sufficient cause appearing therefor:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Findings of Fact and Conclusions of Law. The findings and conclusions set forth herein and in the Decision constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2), 1334(a)). The Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and the Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

C. Judicial Notice. The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court and/or its duly-appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered, and the evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of the Chapter 11 Cases, including, but not limited to, the hearing to consider the adequacy of the Disclosure Statement and the hearing to consider approval of, among other things, the Merger Agreement and the Order entered in connection therewith.

D. Burden of Proof. The Debtors have the burden of proving the elements of section 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence.

E. Transmittal and Mailing of Materials; Notice. The Disclosure Statement, the Second Amended Plan, the Ballots, the Solicitation Order, and the Confirmation Hearing Notice, which were transmitted and served as set forth in the Affidavit of Service, have been transmitted and served in compliance with the Solicitation Order, the Bankruptcy Rules, and the Local Bankruptcy Rules for the Southern District of New York (the "**Local Rules**"), such transmittal and service were adequate and sufficient, and no other or further notice is or shall be required. The Debtors' publication of the Confirmation Hearing Notice as set forth in the Certificate of Publication complied with the Solicitation Order.

F. Voting. Votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, the Solicitation Order, and industry practice.

G. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

1. Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)). In addition to Administrative Expenses and Priority Tax Claims, which need not be designated, the Plan designates nineteen Classes of Claims and Equity Interests. Each AMR Secured Claim, American Secured Aircraft Claim, American Other Secured Claim, and Eagle Secured Claim shall be deemed to be separately classified in a subclass of AMR Class 1, American Class 1, American Class 2, and Eagle Class 1, respectively, and shall have all rights associated with separate classification under the Bankruptcy Code. The Claims or Equity Interests placed in each Class are substantially similar to other Claims or Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims or Equity Interests created under the Plan, and such Classes do not unfairly discriminate between holders of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

2. Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Article III of the Plan specifies that AMR Class 1 (AMR Secured Claims), AMR Class 2 (AMR Priority Non-Tax Claims), AMR Class 6 (AMR Other Equity Interests), American Class 1 (American Secured Aircraft Claims), American Class 2 (American Other Secured Claims), American Class 3 (American Priority Non-Tax Claims), American Class 8 (American Equity Interests), Eagle

Class 1 (Eagle Secured Claims), Eagle Class 2 (Eagle Priority Non-Tax Claims), and Eagle Class 5 (Eagle Equity Interests) are unimpaired under the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

3. Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Article III of the Plan designates AMR Class 3 (AMR General Unsecured Guaranteed Claims), AMR Class 4 (AMR Other General Unsecured Claims), AMR Class 5 (AMR Equity Interests), American Class 4 (American General Unsecured Guaranteed Claims), American Class 5 (American Other General Unsecured Claims), American Class 6 (American Union Claims), American Class 7 (American Convenience Class Claims), Eagle Class 3 (Eagle General Unsecured Claims), and Eagle Class 4 (Eagle Convenience Class Claims) as impaired, and Article IV of the Plan specifies the treatment of Claims and Equity Interests in such Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

4. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each Claim or Equity Interest in each respective Class unless the holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

5. Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan and the various documents and agreements set forth in the Plan Supplement as well as the Exhibits and the Schedules to the Plan provide adequate and proper means for the Plan's implementation, including (i) the Merger in accordance with the Merger Agreement, (ii) the 9019 Settlement, and (iii) the deemed consolidation of the AMR Debtors, the deemed consolidation of the American Debtors, and the deemed consolidation of the Eagle Debtors, thereby satisfying section 1123(a)(5) of the Bankruptcy Code.

6. Nonvoting Equity Securities (11 U.S.C. § 1123(a)(6)). The New AAG Certificate of Incorporation shall prohibit the issuance of nonvoting equity securities prohibited by section 1123(a)(6), subject to further amendment of such New AAG Certificate of Incorporation as permitted by applicable law, thereby satisfying section 1123(a)(6) of the Bankruptcy Code. The Amended Certificates of Incorporation for each of the Reorganized Debtors (other than New AAG) that are corporations shall similarly prohibit the issuance of nonvoting equity securities prohibited by section 1123(a)(6), subject to further amendment of such Amended Certificates of Incorporation as permitted by applicable law. With respect to any Debtor that is a limited liability company or partnership, the respective limited liability company agreement or partnership agreement by which such Debtor is governed shall be similarly amended to prohibit the issuance of nonvoting equity securities prohibited by section 1123(a)(6).

7. Selection of Officers, Directors, or Trustees (11 U.S.C. § 1123(a)(7)). The initial Board of Directors of New AAG shall consist of twelve (12) members and shall be composed of (i) five (5) directors designated by the Search Committee, (A) each of whom shall be an independent director and (B) one of whom shall serve as the initial Lead Independent Director of New AAG in accordance with the New AAG Bylaws and shall be designated to serve in such role by the Search Committee, (ii) two (2) directors designated by AMR, each of whom shall be independent directors reasonably acceptable to the Search Committee, (iii) three (3) directors designated by US Airways, each of whom shall be independent directors, (iv) one (1) director who shall be Mr. Thomas W. Horton, the current Chairman of the Board, President, and Chief Executive Officer of AMR, who shall serve as the initial Chairman of the Board of Directors of New AAG in accordance with the New AAG Bylaws, and (v) one (1) director who shall be Mr. W. Douglas Parker, the current Chairman of the Board and Chief Executive Officer

of US Airways, thereby satisfying section 1123(a)(7) of the Bankruptcy Code. The identity of the persons proposed to serve as members of the initial Board of Directors of New AAG and of the members of the initial Boards of Directors of the other Reorganized Debtors were disclosed in the Plan Supplement or at the Confirmation Hearing. After selection of the initial Board of Directors of New AAG, the holders of the New Mandatorily Convertible Preferred Stock and the New Common Stock shall elect members of the Board of Directors of New AAG in accordance with the New AAG Certificate of Incorporation, the New AAG Bylaws, the Certificate Designations, and applicable nonbankruptcy law, thereby satisfying section 1123(a)(7) of the Bankruptcy Code.

8. Additional Plan Provisions (11 U.S.C. § 1123(b)). The provisions of the Plan are appropriate and not inconsistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b) of the Bankruptcy Code. The failure to specifically address a provision of the Bankruptcy Code in this Confirmation Order shall not diminish or impair the effectiveness of this Confirmation Order.

9. Bankruptcy Rule 3016(a). The Plan is dated and identifies the entities submitting the Plan as proponents, thereby satisfying Bankruptcy Rule 3016(a).

H. Debtors' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically:

(i) The Debtors are proper debtors under section 109 of the Bankruptcy Code.

(ii) The Debtors have complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court.

(iii) The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Order in transmitting the Disclosure Statement, the Second Amended Plan, the Ballots, and related documents and notices and in soliciting and tabulating votes on the Second Amended Plan.

I. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. The Debtors' good faith is evident from the facts and record of these Chapter 11 Cases, the Disclosure Statement and the hearings thereon, and the record of the Confirmation Hearing and other proceedings held in these Chapter 11 Cases. The Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtors' estates and effectuating a successful reorganization of the Debtors.

J. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any payment made or to be made by any of the Debtors for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases has been approved by, or is subject to the approval of, the Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

K. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the persons proposed to serve as members of the initial Board of Directors of New AAG and as members of the initial Boards of Directors of the other Reorganized Debtors were disclosed in the Plan Supplement, and the appointment to, or continuance in, such positions of such persons is consistent with the interests of holders of Claims against, and Equity Interests in, the Debtors and with public policy. The identity of any insider that will be employed or retained by the Reorganized Debtors and the nature of such insider's compensation have also been fully disclosed. The nature of the compensation payable to Thomas W. Horton, who shall serve as the initial Chairman of the Board of Directors of New AAG, was disclosed in connection with the

Debtors' motion to approve the Merger Agreement, which was filed with the Court on February 22, 2013 (ECF No. 6800), and in the Disclosure Statement.

L. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not provide for any changes in any regulated rates, and therefore, section 1129(a)(6) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

M. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The Disclosure Statement, the Plan Supplement, the Carmody Declaration, and the other evidence proffered or adduced at the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other evidence, and (iii) establish that each holder of an impaired Claim or Equity Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

N. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). AMR Class 1 (AMR Secured Claims), AMR Class 2 (AMR Priority Non-Tax Claims), AMR Class 6 (AMR Other Equity Interests), American Class 1 (American Secured Aircraft Claims), American Class 2 (American Other Secured Claims), American Class 3 (American Priority Non-Tax Claims), American Class 8 (American Equity Interests), Eagle Class 1 (Eagle Secured Claims), Eagle Class 2 (Eagle Priority Non-Tax Claims), and Eagle Class 5 (Eagle Equity Interests) are unimpaired under the Plan and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. AMR Class 3 (AMR General Unsecured Guaranteed Claims), AMR Class 4 (AMR Other General Unsecured Claims), AMR Class 5 (AMR Equity Interests), American Class 4 (American General Unsecured Guaranteed Claims), American Class 5

(American Other General Unsecured Claims), American Class 6 (American Union Claims), American Class 7 (American Convenience Class Claims), Eagle Class 3 (Eagle General Unsecured Claims), and Eagle Class 4 (Eagle Convenience Class Claims) have voted to accept the Plan in accordance with sections 1126(c) and (d) of the Bankruptcy Code.

O. Treatment of Administrative Expenses, Priority Non-Tax Claims, and Priority Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Expenses and Priority Non-Tax Claims pursuant to Sections 2.1, 4.2, 4.9, and 4.16 of the Plan, respectively, satisfies the requirements of sections 1129(a)(9)(A) and (B) of the Bankruptcy Code, and the treatment of Priority Tax Claims pursuant to Section 2.3 of the Plan satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code. The Debtors have sufficient Cash to pay Allowed Administrative Expenses, Allowed Priority Non-Tax Claims, and Allowed Priority Tax Claims.

P. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). At least one Class of Claims against the Debtors that is impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider, thus satisfying the requirements of section 1129(a)(10) of the Bankruptcy Code.

Q. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence proffered or adduced at the Confirmation Hearing (i) is persuasive and credible, (ii) has not been controverted by other evidence, and (iii) establishes that the Plan, subject to the occurrence of the Effective Date and consummation of the Merger, is feasible and that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or the Reorganized Debtors, thus satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code.

R. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees payable under section 1930 of title 28, United States Code, as determined by the Court, have been paid or will be paid pursuant to Section 12.7 of the Plan. Pursuant to Section 12.7 of the Plan, on the Effective Date, and thereafter as may be required, such fees, together with interest, if any, pursuant to section 3717 of title 31 of the United States Code, shall be paid by each of the Debtors. Thus, Section 12.7 of the Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

S. Benefit Plans (11 U.S.C. § 1129(a)(13)). The Plan complies with section 1129(a)(13) of the Bankruptcy Code by reason of the provisions of Section 8.4 of the Plan:

T. Domestic Support Obligations (11 U.S.C. § 1129(a)(14)). The Debtors are not required by a judicial or administrative order, or by statute, to pay any domestic support obligations, and therefore, section 1129(a)(14) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

U. The Debtors Are Not Individuals (11 U.S.C. § 1129(a)(15)). The Debtors are not individuals, and therefore, section 1129(a)(15) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

V. No Applicable Nonbankruptcy Law Regarding Transfers (11 U.S.C. § 1129(a)(16)). Each of the Debtors is a moneyed, business, or commercial corporation or trust, and therefore, section 1129(a)(16) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

W. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan filed in these Chapter 11 Cases, and therefore, section 1129(c) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

X. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933, thereby satisfying section 1129(d) of the Bankruptcy Code.

Y. Modifications to the Plan. The Technical Amendments constitute technical changes and do not materially adversely affect or change the treatment of any Claims or Equity Interests. Accordingly, pursuant to Bankruptcy Rule 3019, the Technical Amendments do not require additional disclosure under section 1125 of the Bankruptcy Code or re-solicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan, thereby satisfying section 1127 of the Bankruptcy Code.

Z. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before the Court in these Chapter 11 Cases, the Debtors and their directors, officers, employees, members, agents, advisors, and professionals have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all their respective activities relating to the solicitation of acceptance or rejection of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Section 10.7 of the Plan.

AA. Assumption and Rejection. Article VIII of the Plan governing the assumption and rejection of executory contracts and unexpired leases satisfies the requirements of section 365(b) of the Bankruptcy Code.

BB. Substantive Consolidation. No creditor of any of the Debtors will be prejudiced by the substantive consolidation of the AMR Debtors, the substantive consolidation of the American Debtors, and the substantive consolidation of the Eagle Debtors, which will benefit all creditors of the Debtors. No objections have been filed raising any objection to substantive consolidation as provided in the Plan.

CC. 9019 Settlement. The 9019 Settlement was negotiated in good faith and at arm's length and is an essential element of the Plan. It is fair, equitable, and in the best interests of the Debtors, the Debtors' estates, the Debtors' creditors, and all parties in interest, and satisfies the standards for approval under Bankruptcy Rule 9019.

DD. Merger Agreement Order. By order dated May 10, 2013 (ECF No. 8096) (the "**Merger Order**"), the Court, among other things, approved (i) the Merger Agreement and (ii) the Employee Arrangements (as defined in the Merger Order), including all matters set forth in Section 4.10 of the Merger Agreement and Section 4.1(o) of the American Disclosure Letter (excluding Paragraph 1 of such Section 4.1(o)).

EE. Disputed Claims Reserve. By order dated August 9, 2013 (ECF No. 9560), the Court found that the aggregate amount of estimated Allowed Single-Dip General Unsecured Claims plus the amount of Disputed Single-Dip General Unsecured Claims utilized for determining the Disputed Claims Reserve to be established pursuant to Section 7.3 of the Plan does not exceed $3.2 billion, thereby satisfying the condition set forth in Section 9.2(h) of the Plan.

FF. Satisfaction of Confirmation Requirements. The Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

GG. Objections. All parties have had a full and fair opportunity to litigate all issues raised in the Objections, or which might have been raised, and the Objections have been fully considered by the Court.

HH. Retention of Jurisdiction. The Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

DECREES

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Confirmation. The Plan is approved and confirmed under section 1129 of the Bankruptcy Code. The terms of the Plan, all Exhibits thereto, and the Plan Supplement are incorporated by reference into and are an integral part of the Plan and this Confirmation Order.

2. Modifications to the Plan. The Technical Amendments, which are incorporated in the Plan, meet the requirements of sections 1127(a) and (c) of the Bankruptcy Code and do not adversely change the treatment of the Claim of any creditor or the Equity Interest of any equity security holder within the meaning of Bankruptcy Rule 3019, and therefore, no further solicitation or voting is required.

3. Objections. All Objections that have not been withdrawn, waived, or settled, and all reservations of rights pertaining to confirmation of the Plan, are overruled on the merits for the reasons stated on the record of the Confirmation Hearing.

4. Plan Classification Controlling. The classification of Claims and Equity Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots tendered to or returned by the Debtors' creditors and equity security holders in connection with voting on the Plan (a) were set forth on the Ballots for purposes of voting to accept or reject the Plan, (b) do not necessarily

represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Equity Interests under the Plan for distribution purposes, and (c) shall not be binding on the Debtors.

5. Binding Effect. The Plan and its provisions shall be binding on the Debtors, any entity acquiring or receiving property or a distribution under the Plan, and any holder of a Claim against or Equity Interest in the Debtors, including all governmental entities, whether or not the Claim or Equity Interest of such holder (a) is impaired under the Plan or (b) has accepted the Plan.

6. Vesting of Assets. Pursuant to Section 10.1 of the Plan, upon the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of the Debtors shall vest in the Reorganized Debtors free and clear of all Claims, liens, encumbrances, charges, and other interests, except as otherwise provided in the Plan. The Reorganized Debtors may operate their businesses and use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provisions of the Bankruptcy Code, except as otherwise provided in the Plan or this Confirmation Order.

7. Continued Corporate Existence**.** Pursuant to Section 6.1 of the Plan, subject to the Merger and the terms of the Merger Agreement, each Debtor shall, as a Reorganized Debtor, continue to exist after the Effective Date as a separate corporate Entity, with all the powers of a corporation, partnership, or limited liability company, as applicable, under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable state law. Immediately following the Merger

Effective Time, the New AAG Certificate of Incorporation shall be amended to change the name of AMR to American Airlines Group Inc.

8. Merger. Pursuant to Section 6.2(a) of the Plan, subject to and in connection with the occurrence of the Effective Date, AMR and US Airways shall take all such actions as may be necessary or appropriate to effect the Merger on the terms and subject to the conditions set forth in the Merger Agreement, ***including but not limited to the actions set forth below in this paragraph.*** ~~Without limiting the generality of the immediately preceding sentence,~~ Upon the satisfaction or waiver of each of the conditions set forth in Section 9.2 of the Plan and the applicable conditions of the Merger Agreement, on the Effective Date AMR and US Airways shall cause the Certificate of Merger to be filed with the Secretary of State of the State of Delaware in accordance with the Delaware General Corporation Law and take or cause to be taken all other actions, including making appropriate filings or recordings, that may be required by the Delaware General Corporation Law or other applicable law in connection with the Merger. Pursuant to Section 6.2(b) of the Plan, New AAG shall issue the shares of New Common Stock in accordance with the Merger Agreement to be distributed under the Plan and the other transactions contemplated by the Merger Agreement shall occur. Upon and after the occurrence of the Effective Date, New AAG shall perform all of its obligations under the Merger Agreement. Pursuant to Section 6.2(c) of the Plan, in the event of any conflict whatsoever between the terms of the Plan and the Merger Agreement, the terms of the Merger Agreement shall control, and the Plan shall be deemed to incorporate in their entirety the terms, provisions, and conditions of the Merger Agreement.

9. Approval of 9019 Settlement. The 9019 Settlement is authorized and approved as fair and reasonable and shall become effective on the Effective Date, and the

Debtors' obligations thereunder are legal, valid, binding, and enforceable. Pursuant to Section 6.3(b) of the Plan, if the Effective Date does not occur, the 9019 Settlement shall be deemed to have been withdrawn without prejudice to the respective positions of the parties.

10. Assumption or Rejection of Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)). Pursuant to Section 8.1 of the Plan, all executory contracts and unexpired leases to which any of the Debtors are parties automatically shall be deemed rejected as of the Effective Date, except for executory contracts or unexpired leases (a) that have been assumed or rejected pursuant to an order of the Court entered prior to the Effective Date, (b) that are the subject of a separate motion to assume or reject pending on the Confirmation Date, (c) that are assumed, rejected, or otherwise treated pursuant to Sections 8.3, 8.4, or 8.5 of the Plan, (d) that are listed on Schedule 8.1 of the Plan Supplement, or (e) as to which a Treatment Objection has been filed and served by the Treatment Objection Deadline. If an executory contract or unexpired lease (i) has been assumed or rejected pursuant to an order of the Court entered prior to the Effective Date or (ii) is the subject of a separate motion to assume or reject pending on the Confirmation Date, then the listing of any such executory contract or unexpired lease on Schedule 8.1 of the Plan Supplement shall be of no effect.

11. Schedules of Executory Contracts and Unexpired Leases. Pursuant to Section 8.2(b) of the Plan and sections 365 and 1123 of the Bankruptcy Code, and except with respect to executory contracts and unexpired leases as to which a Treatment Objection is filed and served by the Treatment Objection Deadline, (a) each executory contract and unexpired lease listed on Schedule 8.1 of the Plan Supplement as an executory contract or unexpired lease to be assumed (and assigned, if applicable) shall be deemed assumed (and assigned, if applicable) effective as of the Assumption Effective Date specified thereon, the Proposed Cure specified in

the Notice of Intent to Assume mailed to each Assumption Counterparty shall be the Cure Amount and shall be deemed to satisfy fully any obligations the Debtors might have with respect to such executory contract or unexpired lease under section 365(b) of the Bankruptcy Code, and all proofs of Claim on account of or in respect of any such assumed executory contract and unexpired lease shall be deemed withdrawn on the Effective Date without any further notice to or action by any party or order of the Court; (b) each executory contract and unexpired lease listed on Schedule 8.1 of the Plan Supplement as an executory contract or unexpired lease to be rejected shall be deemed rejected effective as of the Rejection Effective Date specified thereon; and (c) the Reorganized Debtors may assume, assume and assign, or reject any executory contract or unexpired lease relating to Aircraft Equipment that is listed on Schedule 8.1(c)(3) of the Plan Supplement by filing with the Court and serving upon the applicable Deferred Counterparty a Notice of Intent to Assume or a Notice of Intent to Reject at any time before the Deferred Agreement Deadline; *provided, however*, that if the Reorganized Debtors do not file a Notice of Intent to Assume or a Notice of Intent to Reject by the Deferred Agreement Deadline with respect to any executory contract or unexpired lease relating to Aircraft Equipment listed on Schedule 8.1(c)(3) of the Plan Supplement, such executory contract or unexpired lease shall be deemed rejected effective as of the one hundred eighty-first (181st) calendar day after the Effective Date; *provided, further*, that each agreement listed on Schedule 8.1(c)(1) of the Plan Supplement shall be deemed, as appropriate, reinstated or assumed as of the Effective Date.

12. Pursuant to Section 8.2(d) of the Plan, the listing of any contract or lease on Schedule 8.1 of the Plan Supplement is not an admission that such contract or lease is an executory contract or unexpired lease. The Debtors and the Assumption Counterparties, the Rejection Counterparties, or the Deferred Counterparties, as applicable (together with the

Debtors, the "**Recharacterization Parties**") reserve the right to assert that any contract or lease listed on Schedule 8.1 of the Plan Supplement is not an executory contract or unexpired lease; *provided, however,* that except with respect to any contract or lease for which a Recharacterization Party (a) expressly reserves such right in a notice filed with the Court and served on any parties listed thereon no later than ten (10) calendar days prior to the Voting Deadline and (b) files an action based on such right prior to the date that is sixty (60) calendar days after the Effective Date (unless required under the Plan to file such action at an earlier date), each Recharacterization Party shall be deemed to have waived, as of the Effective Date, any rights it may have to seek to recharacterize any contract or lease as a financing agreement.

13. Categories of Executory Contracts and Unexpired Leases to Be Assumed. Pursuant to Section 8.3 of the Plan and sections 365 and 1123 of the Bankruptcy Code, each executory contract and unexpired lease in the following categories shall be deemed assumed as of the Effective Date (and the Proposed Cure with respect to each shall be zero dollars ($0)), except for any executory contract or unexpired lease (a) that has been assumed or rejected pursuant to an order of the Court entered prior to the Effective Date, (b) that is the subject of a separate motion to assume or reject pending on the Confirmation Date, (c) that is listed on Schedule 8.1 of the Plan Supplement, (d) that is otherwise expressly assumed or rejected under the Plan, or (e) as to which a Treatment Objection has been filed and served by the Treatment Objection Deadline:

(a) Cash Management Agreements, Confidentiality and Non-Disclosure Agreements, Customer Programs, Debtor Ownership Agreements, Foreign Agreements, Fuel Consortia Agreements, Insurance Plans, Intercompany Contracts, Interline Agreements, Letters of Credit, Revenue Generating Agreements, Surety Bonds, and Workers' Compensation Plans.

Subject to the terms of the first paragraph of Section 8.3 of the Plan, each Cash Management Agreement, Confidentiality and Non-Disclosure Agreement, Customer Program, Debtor Ownership Agreement, Foreign Agreement, Fuel Consortia Agreement, Insurance Plan, Intercompany Contract, Interline Agreement, Letter of Credit, Revenue Generating Agreement, Surety Bond, and Workers' Compensation Plan shall be deemed assumed as of the Effective Date. Nothing in Section 8.3 of the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors may hold against any Entity, including, without limitation, the insurer under any of the Debtors' Insurance Plans. Except as otherwise provided in the immediately preceding sentence, all proofs of Claim on account of or in respect of any Cash Management Agreement, Confidentiality and Non-Disclosure Agreement, Customer Program, Debtor Ownership Agreement, Foreign Agreement, Fuel Consortia Agreement, Insurance Plan, Intercompany Contract, Interline Agreement, Letter of Credit, Revenue Generating Agreement, Surety Bond, or Workers' Compensation Plan automatically shall be deemed withdrawn on the Effective Date without any further notice to or action by any party or order of the Court. Unless otherwise agreed to by the applicable Debtor or Reorganized Debtor and the applicable Assumption Counterparty, an Assumption Counterparty to an executory contract or unexpired lease assumed pursuant to Section 8.3(a) of the Plan shall, on or before ten (10) Business Days after the Effective Date, return to the applicable Reorganized Debtor any deposit of Cash or other credit enhancement made by a Debtor to such Assumption Counterparty on or after the Commencement Date, including, without limitation, that certain Cash deposit held by Airlines Reporting Corporation pursuant to the Addendum to Carrier Services Agreement between Airlines Reporting Corporation and American, dated November 29, 2011, and that certain Cash deposit held by the International Air Transport Association pursuant to the Agreement in

Connection with Proposed Assumption of Executory Contracts Regarding the International Air Transport Association, including the IATA Clearinghouse, and Related Agreements between the International Air Transport Association and American, dated as of November 29, 2011. Each Insurance Plan issued by the insurance or insurance service company affiliates of American International Group, Inc. ("**AIG**") to the Debtors shall be deemed to be an executory contract assumed by the Debtors pursuant to Section 8.3 of the Plan or in accordance with the Order Pursuant to 11 U.S.C. §§ 105(a) and 365(a) Approving Assumption of Chartis Insurance Program Agreements, dated March 5, 2012 (ECF No. 1595) and as provided in the Order Pursuant to 11 U.S.C. §§ 105(a), 363(b), and 364(c) Authorizing, But Not Directing, and (Where Applicable) Ratifying (i) Renewal of Insurance Program with Chartis and (ii) Grant of Security Interest in Connection Therewith, dated September 21, 2012 (ECF No. 4655), and AIG shall not be required to return to the applicable Reorganized Debtor any deposit of Cash or other credit enhancement made by a Debtor to AIG on or after the Commencement Date in connection with an Insurance Plan and any insurance policies and related agreements, documents, or instruments entered into between one or more of the Debtors and AIG on or after the Commencement Date. Nothing in the Plan shall prejudice AIG's rights to setoff, recoupment, and subrogation with respect to an Insurance Plan between one or more of the Debtors and AIG and any insurance policies and related agreements, documents, or instruments entered into between one or more of the Debtors and AIG after the Commencement Date. Each and every insurance policy issued by ACE American Insurance Company or any of its affiliates to the Debtors or any of their affiliates or predecessors and each and every agreement (including, but not limited to, claims servicing agreements), document, and instrument related thereto shall be deemed assumed by the Debtors pursuant to Section 8.3 of the Plan as more particularly set forth in the Stipulation and Agreed

Order Between the Debtors, AMR Corporation, and ACE American Insurance Company Providing the Terms of Assumption of Certain Insurance Policies and Agreements Pursuant to a Plan of Reorganization, entered on August 9, 2013 (ECF No. 9562).

(b) Certain Indemnification Obligations. Each Indemnification Obligation shall be deemed assumed by New AAG as of the Merger Effective Time in accordance with the Merger Agreement. Each Indemnification Obligation that is deemed assumed under the Plan shall continue in full force and effect in accordance with its terms. From and after the Merger Effective Time, New AAG shall honor and perform the Indemnification Obligations, including under all indemnification Contracts (as defined in the Merger Agreement) and organizational documents of the Debtors. New AAG shall not, directly or indirectly, amend, modify, limit, or terminate, in any manner adverse to the Debtors' current or former directors or officers, with respect to the Indemnification Obligations for acts or omissions occurring prior to the Merger Effective Time, any indemnification Contracts with the Debtors or any provisions regarding the Indemnification Obligations contained in any organizational documents of the Debtors. Each Indemnification Obligation that is deemed assumed under the Plan shall be deemed and treated as an executory contract pursuant to sections 365 and 1123 of the Bankruptcy Code regardless of whether or not a proof of Claim has been filed with respect to such Indemnification Obligation. With respect to current or former employees of any of the Debtors not covered by Section 8.3(b)(i) of the Plan and who were employed by any of the Debtors prior to, on, or after the Commencement Date, each obligation of any Debtor to indemnify such employees with respect to or based upon any act or omission taken or omitted in any such capacity, or for or on behalf of any Debtor, whether pursuant to agreement, the Debtors' respective articles or certificates of incorporation, corporate charters, bylaws, operating agreements or similar corporate documents,

or applicable law in effect as of the Effective Date, shall be deemed assumed by New AAG as of the Effective Date. Each such indemnification obligation that is deemed assumed hereunder and/or under the Plan shall continue in full force and effect in accordance with its terms. From and after the Merger Effective Time, New AAG shall honor and perform all such indemnification obligations. New AAG shall not, directly or indirectly, amend, modify, limit, or terminate, in any manner adverse to such employees, with respect to such indemnification obligations for acts or omissions occurring prior to the Merger Effective Time, any indemnification contracts with the Debtors or any provisions regarding the indemnification obligations contained in any organizational documents of the Debtors. Each such indemnification obligation that is deemed assumed hereunder and/or under the Plan shall be deemed and treated as an executory contract pursuant to sections 365 and 1123 of the Bankruptcy Code regardless of whether or not a proof of Claim has been filed with respect to such indemnification obligation. Additionally, New AAG shall honor all of its indemnification obligations pursuant to Section 4.12 of the Merger Agreement.

(c) Collective Bargaining Agreements. Each of the Collective Bargaining Agreements with the respective Unions shall remain in full force and effect on and after the Effective Date, subject to the respective terms thereof. The consideration provided for in each of the Section 1113 Agreements shall be in complete settlement and satisfaction of all Claims as provided therein, and each Union shall promptly take all action necessary to withdraw all proofs of Claim with respect to the Claims resolved pursuant to the respective Section 1113 Agreements. Notwithstanding the foregoing, New AAG and the Reorganized Debtors reserve the right to seek adjudication of any Collective Bargaining Agreement-related disputes between

the Debtors and any Union that concerns distributions, claims, restructuring transactions, or other aspects of the Plan in the Court.

(d) Covered Special Facility Revenue Bonds. Unless otherwise provided in the Plan, in a Special Facility Revenue Bond Agreement, or in an order of the Court, the Special Facility Revenue Bond Agreements, the respective Special Facility Revenue Bond Indentures, and the respective Special Facility Revenue Bond Documents, in each case relating solely to Covered Special Facility Revenue Bonds, shall remain in full force and effect in accordance with their original terms and conditions (or as amended by an order of the Court) and shall not otherwise be altered, amended, modified, surrendered, or cancelled under the Plan, and holders of such Covered Special Facility Revenue Bonds shall continue to receive payments in accordance with the terms and conditions of the Special Facility Revenue Bond Documents relating to the respective Covered Special Facility Revenue Bonds (as such Special Facility Revenue Bond Documents may have been amended by an order of the Court). As a result of the assumption of executory contracts and/or leases relating to the Covered Special Facility Revenue Bonds and the prior payment of the related cure amounts by the Debtors, all proofs of Claim on account of or in respect of any Covered Special Facility Revenue Bonds shall be deemed Disallowed and expunged without any further notice to or action by any party or order of the Court. To the extent any of the foregoing conflicts with the terms of a separate order of the Court relating to a Covered Special Facility Revenue Bond, the ***separate*** order of the Court shall govern.

14. Other Categories of Agreements and Policies

(a) Employee Benefits. Pursuant to Section 8.4(a) of the Plan, as of the Effective Date, unless specifically rejected by order of the Court or otherwise specifically

provided for in the Plan, each American Compensation and Benefit Plan (as defined in the Merger Agreement) (including all matters set forth in Section 4.10 of the Merger Agreement and Section 4.1(o) of the American Disclosure Letter, but excluding (i) the matter set forth as item 1 in Section 4.1(o) of the American Disclosure Letter and (ii) any prepetition equity or equity-equivalent plan or agreement of the Debtors) shall be deemed assumed and shall be fully effective, and New AAG and the Reorganized Debtors shall maintain and perform under such plans and agreements. To the extent that the American Compensation and Benefit Plans are executory contracts, pursuant to sections 365 and 1123 of the Bankruptcy Code, they shall be deemed assumed; *provided, however*, that the foregoing shall not constitute the assumption of any benefits that are the subject of the Retiree Adversary Proceeding. To the extent the Retiree Adversary Proceeding has not been finally resolved by the Effective Date, New AAG shall continue to prosecute the Retiree Adversary Proceeding subsequent to the Effective Date. To the extent that the Debtors or New AAG, as applicable, are unsuccessful in whole or in part in obtaining the relief requested in the Retiree Adversary Proceeding, any remaining vested benefits shall be treated in accordance with the provisions of section 1129(a)(13) of the Bankruptcy Code.

(b) Employee Protection Arrangements. Pursuant to Section 8.4(b) of the Plan, as of the Effective Date, the Employee Protection Arrangements (as defined in and set forth in Section 4.1(o) of the American Disclosure Letter) shall be fully effective.

(c) Postpetition Aircraft Agreements. Pursuant to Section 8.4(c) of the Plan, subject to the Debtors' right to terminate or reject any Postpetition Aircraft Agreement prior to the Effective Date pursuant to the terms of such Postpetition Aircraft Agreement, (i) each Postpetition Aircraft Agreement shall remain in place after the Effective Date, (ii) the

Reorganized Debtors shall continue to honor each Postpetition Aircraft Agreement according to its terms, and (iii) to the extent any Postpetition Aircraft Agreement requires the assumption by the Debtors of such Postpetition Aircraft Agreement and the Postpetition Aircraft Obligations arising thereunder, such Postpetition Aircraft Agreement and Postpetition Aircraft Obligations shall be deemed assumed as of the Effective Date; *provided, however*, that this clause (iii) shall not be deemed or otherwise interpreted as an assumption by the Debtors of any agreement or obligation that is not a Postpetition Aircraft Agreement or Postpetition Aircraft Obligation; and *provided further*, that nothing in the Plan shall limit the Debtors' right to terminate such Postpetition Aircraft Agreement or Postpetition Aircraft Obligations in accordance with the terms thereof. To the extent that, subsequent to the date of the Second Amended Plan and on or prior to the Effective Date, the Debtors, with the approval of the Court, enter into new Postpetition Aircraft Agreements for Aircraft Equipment not currently subject to a Postpetition Aircraft Agreement, any Claims or obligations arising thereunder shall be treated as Postpetition Aircraft Obligations under the Plan and such Postpetition Aircraft Agreements shall be deemed assumed as of the Effective Date.

15. Retiree Claims. Notwithstanding anything in this Confirmation Order to the contrary, if the Court determines that all or any portion of any benefit claimed in the proofs of claim filed by the Retiree Committee against AMR (Proof of Claim No. 12239) and against American (Proof of Claim No. 12893) (together, the "**Retiree Claims**"), if modified, would give rise to an Allowed Claim (the "**Allowed Retiree Claim**"), then the Debtors shall continue such retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code) under the Plan for the group of affected retired employees covered by the Allowed Retiree Claim in accordance with the provisions of section 1129(a)(13) of the Bankruptcy Code except as may be otherwise

agreed to in writing by the Debtors, the Creditors' Committee, and the Retiree Committee; *provided, however*, that the foregoing shall not give rise to any implication that any Retiree Claim is allowable, and all of the rights of the Debtors, the Reorganized Debtors, and the Creditors' Committee to object to or otherwise oppose the Retiree Claims and the Retiree Committee's rights to oppose any such objection or opposition or to assert such Retiree Claims are reserved, including all appeals. Additionally, no reserve shall be required to be maintained in the Disputed Claims Reserve or otherwise with respect to the Retiree Claims.

16. Pension Plans

(a) Pension Plan Required Contributions. Pursuant to Section 8.5(a) of the Plan, on the Effective Date, the Reorganized Debtors shall assume and continue the Pension Plans and shall pay in Cash any aggregate unpaid (i) minimum required funding contributions under 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1082 and 1083 and (ii) all delinquent PBGC premiums under 29 U.S.C. §§ 1306 and 1307, in each case with interest, for the Pension Plans under ERISA or the Internal Revenue Code. Upon such payment, the lien notices perfecting all liens and security interests held by, or in favor of, the PBGC on any assets of the Debtors or their affiliates shall be, and shall be deemed to be, withdrawn.

(b) Pension Plan Continuation. Pursuant to Section 8.5(b) of the Plan, after the Effective Date, the Reorganized Debtors shall (i) satisfy the minimum funding requirements under 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1082 and 1083, (ii) pay all required PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307, and (iii) administer the Pension Plans in accordance with the applicable provisions of ERISA and the Internal Revenue Code.

(c) Liabilities Preserved. Pursuant to Section 8.5(c) of the Plan, no provision of the Plan, this Confirmation Order, or section 1141 of the Bankruptcy Code shall be construed

to discharge, release, or relieve the Debtors, or their successors, including the Reorganized Debtors, or any other party, in any capacity, from liabilities or requirements imposed under any law or regulatory provision with respect to the Pension Plans or the PBGC. The PBGC and the Pension Plans shall not be enjoined or precluded from enforcing such liability as a result of any provision of the Plan, this Confirmation Order, or section 1141 of the Bankruptcy Code.

17. Assumption and Rejection Procedures and Resolution of Treatment Objections.

(a) Proposed Assumptions. Pursuant to Section 8.6(a) of the Plan, with respect to any executory contract or unexpired lease to be assumed under the Plan or pursuant to a Notice of Intent to Assume, unless an Assumption Counterparty files and properly serves a Treatment Objection by the Treatment Objection Deadline, such executory contract or unexpired lease shall be deemed assumed and, if applicable, assigned as of the Assumption Effective Date proposed by the Debtors or the Reorganized Debtors, as applicable, without any further notice to or action by any party or order of the Court, and any obligation the Debtors or the Reorganized Debtors, as applicable, may have to such Assumption Counterparty with respect to such executory contract or unexpired lease under section 365(b) of the Bankruptcy Code shall be deemed to be fully satisfied by the Proposed Cure, if any, which shall be the Cure Amount. Any Treatment Objection that is not timely filed and properly served shall be denied automatically and with prejudice (without the need for any objection by the Debtors or the Reorganized Debtors, as applicable, and without any further notice to, or action by, any party or order of the Court). Any Claim relating to such assumption or assignment shall be forever barred from assertion and shall not be enforceable against any Debtor or Reorganized Debtor or their respective estates or property, without the need for any objection by the Debtors or the

Reorganized Debtors, as applicable, and without any further notice to or action by any party or order of the Court, and any obligation the Debtors or the Reorganized Debtors may have under section 365(b) of the Bankruptcy Code (over and above any Proposed Cure) shall be deemed fully satisfied, released, and discharged, notwithstanding any amount or information included in the Schedules or any proof of Claim.

(b) Proposed Rejections. Pursuant to Section 8.6(b) of the Plan, with respect to any executory contract or unexpired lease to be rejected under the Plan or pursuant to a Notice of Intent to Reject, unless a Rejection Counterparty files and serves a Treatment Objection by the Treatment Objection Deadline, such executory contract or unexpired lease shall be deemed rejected as of the Rejection Effective Date proposed by the Debtors or the Reorganized Debtors, as applicable, without any further notice to or action by any party or order of the Court. Any objection to the rejection of an executory contract or unexpired lease that is not timely filed and served shall be deemed denied automatically and with prejudice (without the need for any objection by the Debtors or the Reorganized Debtors, as applicable, and without any further notice to or action by any party or order of the Court).

(c) Resolution of Treatment Objections. Pursuant to Section 8.6(c) of the Plan, on and after the Effective Date, the Reorganized Debtors may, in their sole discretion, settle Treatment Objections without any further notice to or action by any party or order of the Court (including by paying any agreed Cure Amount). With respect to each executory contract or unexpired lease as to which a Treatment Objection is timely filed and served and is not otherwise resolved by the parties after a reasonable period of time, the Debtors or the Reorganized Debtors, as applicable, shall schedule a hearing with the Court with respect to such Treatment Objection and provide at least fourteen (14) calendar days' notice of such hearing to

the Assumption Counterparty, the Rejection Counterparty, or the Deferred Counterparty, as applicable; *provided, however,* that if such Treatment Objection is not resolved by the parties after a reasonable period of time, the respective Assumption Counterparty, Rejection Counterparty, or Deferred Counterparty may, with prior notice to the Debtors, request that the Court schedule such a hearing. Unless otherwise ordered by the Court or agreed to by the parties, any assumption or rejection approved by the Court notwithstanding a Treatment Objection shall be effective as of the Assumption Effective Date or Rejection Effective Date, as applicable, that was originally proposed by the Debtors or specified in the Plan. Any Cure Amount shall be paid as soon as reasonably practicable following entry of a Final Order resolving an assumption dispute and/or approving an assumption (and assignment, if applicable), unless the Debtors or the Reorganized Debtors, as applicable, seek to reject such executory contract or unexpired lease and file a Notice of Intent to Reject under Section 8.2(b) of the Plan (which, with respect to a Special Facility Revenue Bond Agreement, must be served upon the Indenture Trustee of the applicable Special Facility Revenue Bond Indenture). No Cure Amount shall be allowed for a penalty rate or default rate of interest to the extent not proper under the Bankruptcy Code or applicable law.

(d) Reservation of Rights. Pursuant to Section 8.6(d) of the Plan, if a Treatment Objection is filed with respect to any executory contract or unexpired lease sought to be assumed or rejected by any of the Debtors or the Reorganized Debtors, the Debtors and the Reorganized Debtors reserve the right (i) to seek to assume or reject such executory contract or unexpired lease at any time before the assumption, rejection, assignment, or Cure Amount with respect to such executory contract or unexpired lease is determined by a Final Order and (ii) to the extent a Final Order is entered resolving a Treatment Objection as to a Cure Amount in an

amount different from the Proposed Cure, to seek to reject such executory contract or unexpired lease within fourteen (14) calendar days after the date of entry of such Final Order by filing with the Court and serving upon the Assumption Counterparty or Rejection Counterparty, as applicable, a Notice of Intent to Assume or a Notice of Intent to Reject, as applicable (which, with respect to a Special Facility Revenue Bond Agreement, must be served upon the Indenture Trustee of the applicable Special Facility Revenue Bond Indenture).

18. Rejection Claims. Pursuant to Section 8.7 of the Plan, any Rejection Claim must be filed with the Court by the Rejection Bar Date, i.e., thirty (30) calendar days after entry of an order of the Court approving the rejection of an executory contract or unexpired lease. Any Rejection Claim for which a proof of Claim is not properly filed and served by the Rejection Bar Date shall be forever barred and shall not be enforceable against the Debtors, the Reorganized Debtors, or their respective estates or property. The Debtors or the Reorganized Debtors, as applicable, may contest Rejection Claims in accordance with Section 7.1 of the Plan.

19. Assignment. Pursuant to Section 8.8 of the Plan, to the extent provided under the Bankruptcy Code or other applicable law, any executory contract or unexpired lease transferred and assigned under the Plan shall remain in full force and effect for the benefit of the transferee or assignee in accordance with its terms, notwithstanding any provision in such executory contract or unexpired lease (including those of the type set forth in section 365(b)(2) of the Bankruptcy Code) that prohibits, restricts, or conditions such transfer or assignment. To the extent provided under the Bankruptcy Code or other applicable law, any provision that prohibits, restricts, or conditions the assignment or transfer of any such executory contract or unexpired lease or that terminates or modifies such executory contract or unexpired lease or allows the counterparty to such executory contract or unexpired lease to terminate, modify,

recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon any such transfer and assignment, constitutes an unenforceable antiassignment provision and is void and of no force or effect. The rights of the Alliance Parties (as defined in the Limited Objection and/or Reservation of Rights of City of Fort Worth and AllianceAirport Authority, Inc. to Debtors' Second Amended Joint Chapter 11 Plan (ECF No. 9353) (the "**Alliance Parties Objection**") to object to and/or contest any (i) assumption and/or assignment of one or both of the Leases (as defined in the Alliance Parties Objection) or any related agreements; (ii) purchase of related equipment by the Debtors; or (iii) any other term of any proposed assumption, including proposed cure amounts, shall be reserved pursuant to any applicable provisions of the Bankruptcy Code, including section 365 of the Bankruptcy Code. Furthermore, the Debtors' obligations, if any, under the Consent Order (as defined in the Alliance Parties' Objection) shall constitute an Allowed Administrative Expense pursuant to Section 2.1 of the Plan and shall not be discharged by the Plan or this Confirmation Order.

20. Approval of Assumption, Rejection, Retention, or Assignment of Executory Contracts and Unexpired Leases. Pursuant to Section 8.9 of the Plan, subject to the occurrence of the Effective Date, entry of this Confirmation Order shall constitute approval of the rejections, retentions, assumptions, and/or assignments contemplated under the Plan pursuant to sections 365 and 1123 of the Bankruptcy Code. Each executory contract and unexpired lease that is assumed under the Plan shall vest in and be fully enforceable by the applicable Reorganized Debtor in accordance with its terms as of the applicable Assumption Effective Date, except as modified by the provisions of the Plan or any order of the Court authorizing or providing for its assumption. The provisions of each executory contract or unexpired lease assumed and/or assigned under the Plan that are or may be in default shall be deemed satisfied in

full by the Cure Amount or by an agreed-upon waiver of the Cure Amount. Upon payment in full of the Cure Amount, any and all proofs of Claim based upon an executory contract or unexpired lease that has been assumed in the Chapter 11 Cases or under the Plan shall be deemed Disallowed and expunged without any further notice to or action by any party or order of the Court.

21. Modifications, Amendments, Supplements, Restatements, or Other Agreements. Pursuant to Section 8.10 of the Plan, unless otherwise provided in the Plan or by separate order of the Court, each executory contract and unexpired lease that is assumed, whether or not such executory contract or unexpired lease relates to the use, acquisition, or occupancy of real property, shall include (i) all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease and (ii) all executory contracts or unexpired leases appurtenant to the premises, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, reciprocal easement agreements, and any other interests in real estate or rights in remedy related to such premises, unless any of the foregoing agreements are rejected under the Plan or pursuant to an order of the Court.

22. General Authorizations. Each of the officers of each of the Debtors is (and each of the officers of each of the Reorganized Debtors shall be) authorized and directed to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and provisions of the Plan and the Merger Agreement. The Debtors and their directors, officers, members, agents, and attorneys are authorized and

empowered to issue, execute, deliver, file, or record any agreement, document, or security, including, without limitation, the documents contained in the Plan Supplement and the Exhibits and Schedules to the Plan, as modified, amended, and supplemented, in substantially the form included therein, and to take any action necessary or appropriate to implement, effectuate, and consummate the Plan and the Merger Agreement in accordance with their terms, or take any or all corporate actions authorized to be taken pursuant to the Plan and the Merger Agreement, including merger of any of the Debtors and the dissolution of each of the Debtors, and any release, amendment, or restatement of any bylaws, certificates of incorporation, or other organizational documents of the Debtors, whether or not specifically referred to in the Plan, the Merger Agreement, or the Plan Supplement, without further order of the Court, and any or all such documents shall be accepted by each of the respective state filing offices and recorded in accordance with applicable state law and shall become effective in accordance with their terms and the provisions of state law.

23. New AAG 2013 Incentive Award Plan. Pursuant to Section 6.20 of the Plan, the New AAG 2013 Incentive Award Plan, the Alignment Awards, and the LTIP 2013 Awards shall become effective immediately upon the occurrence of the Merger Effective Time without any further corporate or other action.

24. Issuance of Plan Shares. Pursuant to Section 6.8 of the Plan, New AAG shall issue the Plan Shares, or have sufficient authorized shares available for issuance, as applicable, in accordance with the Plan and with the Merger Agreement.

25. Issuance of Securities; Execution of Related Documents. Pursuant to Section 6.10 of the Plan, on the Effective Date, or as soon thereafter as reasonably practicable, except as otherwise provided in the Plan or in the Merger Agreement, the Reorganized Debtors

shall issue all securities, instruments, certificates, and other documents that they are required to issue under the Plan or under any Postpetition Aircraft Agreement, which shall be distributed as provided in the Plan and therein; *provided, however*, that New AAG shall be authorized to issue the New Mandatorily Convertible Preferred Stock and the New Common Stock in accordance with Sections 6.8 and 6.19 of the Plan, the Merger Agreement, and any such Postpetition Aircraft Agreement, as applicable, without the need for any further corporate action by any Debtor or Reorganized Debtor or their stockholders. New AAG and the Reorganized Debtors, as applicable, shall execute and deliver such other agreements, documents, and instruments in accordance with the Plan, the Merger Agreement, and any such Postpetition Aircraft Agreement, as applicable.

26. Corporate Action.

(a) New AAG. Pursuant to Section 6.19(a) of the Plan, the New AAG Certificate of Incorporation and the New AAG Bylaws shall be consistent with the terms and provisions of the Merger Agreement. New AAG shall file the New AAG Certificate of Incorporation and the Certificate of Designations with the Secretary of State of the State of Delaware on the Effective Date immediately prior to the Merger Effective Time. The New AAG Certificate of Incorporation shall prohibit the issuance of nonvoting equity securities, subject to further amendment of such New AAG Certificate of Incorporation as permitted by applicable law. The New AAG Bylaws shall be deemed adopted by the New AAG Board as of the Effective Date.

(b) The Reorganized Debtors. Pursuant to Section 6.19(b) of the Plan, the Reorganized Debtors (other than New AAG) shall file the Amended Certificates of Incorporation with the Secretary of State of the State of the applicable state of formation on the Effective Date. The Amended Certificates of Incorporation for each of the Reorganized Debtors (other than New AAG) that are corporations shall prohibit the issuance of nonvoting equity securities, subject to further amendment of such Amended Certificates of Incorporation as permitted by applicable law. With respect to any Debtor that is a limited liability company or partnership, the respective limited liability company agreement or partnership agreement by which such Debtor is governed shall be similarly amended to prohibit the issuance of nonvoting equity securities.

Pursuant to Section 6.19(c) of the Plan, on the Effective Date, the adoption, filing, approval, and ratification, as necessary, of all corporate or related actions contemplated in the Plan and the Merger Agreement with respect to each of the Reorganized Debtors shall be

deemed authorized and approved by each of the Reorganized Debtors, its board of directors, managers, stockholders, members, or partners, as applicable, in all respects, in each case to the extent required by applicable nonbankruptcy law. Without limiting the foregoing, such actions include (i) the adoption and filing of the New AAG Certificate of Incorporation, the Certificate of Designations, and the Amended Certificates of Incorporation for each of the other Reorganized Debtors, (ii) the approval of the New AAG Bylaws and the Amended Bylaws for each of the other Reorganized Debtors, (iii) the election or appointment, as applicable, of directors and officers for the Reorganized Debtors, (iv) the issuance of the Plan Shares, (v) the Merger to be effectuated pursuant to the Plan, (vi) the adoption and implementation of the employee matters set forth in Section 4.10 of the Merger Agreement and Section 4.1(o) of the American Disclosure Letter, including, but not limited to, the New AAG 2013 Incentive Award Plan, the Alignment Awards, and the LTIP 2013 Awards, (vii) the qualification of any of the Reorganized Debtors as foreign corporations, partnerships, or limited liability companies wherever the conduct of business by such Entities requires such qualification, and (viii) the execution, delivery, and performance of each Postpetition Aircraft Agreement and any agreement or instrument provided for in a Postpetition Aircraft Agreement and the issuance of any security to be issued by a Reorganized Debtor pursuant to or in connection with a Postpetition Aircraft Agreement. Pursuant to Section 6.19(d) of the Plan, all matters provided for in the Plan involving the corporate structure of any Debtor or Reorganized Debtor, or any corporate or related action required by any Debtor or Reorganized Debtor in connection with the Plan, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders or directors of such Debtor or Reorganized Debtor or by any other stakeholder, and with like effect as though such action had been taken unanimously by the

security holders and directors, managers, members, or partners, as applicable, of the applicable Debtor or Reorganized Debtor.

27. Anti-Dilution Adjustments. Pursuant to Section 6.21 of the Plan, in the event that that any transaction or event of the type contemplated by Sections 6.1, 6.2, or 6.3 of the Certificate of Designations occurs with respect to the New Common Stock, in addition to the actions required under the Certificate of Designations, the Board of Directors of New AAG shall take appropriate action as may be necessary or appropriate, as determined in its reasonable good faith judgment, to protect the rights of holders of New Common Stock consistent with the Plan.

28. Securities Laws Exemption. The offer, issuance, and distribution of all of the shares of New Mandatorily Convertible Preferred Stock and New Common Stock under the Plan to holders of Allowed Claims against and Allowed AMR Equity Interests in the Debtors, as applicable, and the issuance of all shares of New Common Stock issued pursuant to the conversion of the New Mandatorily Convertible Preferred Stock, and any securities issued or to be issued pursuant to or in connection with a Postpetition Aircraft Agreement, shall be exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under (i) the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder and (ii) any state or local law requiring registration for the offer, issuance, or distribution of securities.

29. Listing. Pursuant to Section 6.12 of the Plan, in accordance with the Merger Agreement, the shares of New Common Stock shall be authorized for listing on the New York Stock Exchange or the NASDAQ Stock Market, upon official notice of issuance, on or prior to the Closing Date.

30. Cancellation of AMR Common Stock. Pursuant to Section 6.13 of the Plan, at the Merger Effective Time, all outstanding shares of AMR Common Stock or preferred

stock of AMR, all options to purchase shares of AMR Common Stock or preferred stock of AMR, and all awards of any kind consisting of shares of AMR Common Stock or preferred stock of AMR, that have been or may be granted, held, awarded, outstanding, payable, or reserved for issuance, and all other AMR Equity Interests, including all securities or obligations convertible or exchangeable into or exercisable for shares of AMR Common Stock, preferred stock of AMR, or other AMR Equity Interests, and each other right of any kind, contingent or accrued, to acquire or receive shares of AMR Common Stock, preferred stock of AMR, or other AMR Equity Interests, whether upon exercise, conversion, or otherwise, whether vested or unvested, shall, without any action on the part of the holder thereof, be cancelled and retired and shall cease to exist. Such cancellation and retirement shall not affect the right to receive any distributions provided for under the Plan. In addition, Section 6.13 of the Plan does not apply with respect to any New Common Stock, New Mandatorily Convertible Preferred Stock, or any other equity securities or rights to acquire or receive equity securities or any other awards of any kind relating to New AAG that are issued in accordance with or pursuant to the Plan or the Merger Agreement.

31. Cancellation of Existing Notes and Aircraft Securities. Pursuant to Section 6.14 of the Plan, except as otherwise provided in the Plan, on the Effective Date, all notes, instruments, certificates, and other documents evidencing the Notes, the Special Facility Revenue Bonds (excluding the Covered Special Facility Revenue Bonds), and the Aircraft Securities shall be cancelled, and the obligations of the Debtors thereunder and in any way related thereto shall be deemed fully satisfied, released, and discharged; *provided, however*, that (i) with respect to Special Facility Revenue Bonds (excluding the Covered Special Facility Revenue Bonds), the obligations of the Debtors thereunder and in any way related thereto shall

be fully terminated, satisfied, released, and discharged in exchange for the treatment provided in the Plan for Allowed Claims and any other treatment provided for by Final Order, if any, (ii) the cancellations set forth in Section 6.14 of the Plan and the termination, satisfaction, release, and discharge of the Debtors' obligations with respect to the Special Facility Revenue Bonds (excluding the Covered Special Facility Revenue Bonds) and the Aircraft Securities shall not alter the obligations or rights of any non-Debtor third parties applicable after the Effective Date vis-à-vis one another with respect to such notes, instruments, certificates, or other documents, (iii) the cancellations set forth in Section 6.14 of the Plan and the termination, satisfaction, release, and discharge of the Debtors' obligations with respect to the Special Facility Revenue Bonds (excluding the Covered Special Facility Revenue Bonds) shall not be deemed to cause a default, termination, waiver, or other forfeiture of the Debtors in any document, instrument, lease, or other agreement (including, but not limited to, that certain Amended and Restated Airport Use Agreement – Terminal Facilities Lease, dated as of January 1, 1985, by and between the City of Chicago and American, as amended from time to time (the "**Chicago Lease**")) pursuant to which the Debtors lease or use land, facilities, improvements, or equipment financed, in whole or in part, with the proceeds of any Special Facility Revenue Bonds that have been deemed to be satisfied or cancelled under the Plan or otherwise, and (iv) any provision in any document, instrument, lease, or other agreement (including, but not limited to, the Chicago Lease) that causes or effectuates, or purports to cause or effectuate, a default, termination, waiver, or other forfeiture of, or by, the Debtors or their interests, as a result of the cancellations, terminations, satisfaction, releases, or discharges provided for in Section 6.14 of the Plan shall be deemed null and void and shall be of no force and effect, and the Debtors shall be entitled to continue to use (in accordance with the remaining provisions of such document, instrument,

lease, or other agreement) any land, facilities, improvements, or equipment financed with the proceeds of Special Facility Revenue Bonds (including, but not limited to, the premises leased pursuant to the Chicago Lease), notwithstanding such cancellations, terminations, satisfactions, releases, or discharges provided in Section 6.14 of the Plan. Except as otherwise provided in the Plan, on the Effective Date, any indentures or similar agreements relating to any of the foregoing, including, without limitation, the Indentures, the Special Facility Revenue Bond Indentures, and any related notes, guarantees, or similar instruments of the Debtors or otherwise (excluding the Special Facility Revenue Bond Indentures, and any related notes, guarantees, or similar instruments of the Debtors or otherwise, associated with the Covered Special Facility Revenue Bonds) shall be deemed cancelled, as permitted by section 1123(a)(5)(F) of the Bankruptcy Code, and discharged (a) with respect to all rights of and obligations owed by any Debtor under any such indentures or similar agreements and (b) except as provided below, with respect to the rights and obligations of the Indenture Trustees under any such indentures or similar agreements against (or to) the holders of Note Claims, the holders of Special Facility Revenue Bond Claims, or any other Person. Solely for the purpose of clause (b) in the immediately preceding sentence, only the following rights of each such Indenture Trustee shall remain in effect after the Effective Date: (1) rights as trustee, co-trustee, agent, paying agent, distribution agent, authentication agent, guarantee trustee, remarketing agent, bond registrar, and registrar, including, but not limited to, any rights to payment of fees, expenses, and indemnification obligations, including, but not limited to, from property distributed under the Plan to such Indenture Trustee (but excluding any other property of the Debtors, the Reorganized Debtors, or their respective estates), whether pursuant to the exercise of a charging lien or otherwise, (2) rights relating to distributions to be made to holders of Allowed Note Claims or

Allowed Special Facility Revenue Bond Claims by such Indenture Trustee from any source, including, but not limited to, distributions under the Plan (but excluding any other property of the Debtors, the Reorganized Debtors, or their respective estates), (3) rights relating to representation of the interests of the holders of Note Claims or Special Facility Revenue Bond Claims by such Indenture Trustee in the Chapter 11 Cases to the extent not discharged or released under the Plan or under any order of the Court, and (4) rights relating to participation by such Indenture Trustee in any proceedings or appeals related to the Plan. Notwithstanding the continued effectiveness of such rights after the Effective Date, such Indenture Trustees shall have no obligation to object to Claims against the Debtors or to locate certificated holders of Notes, Special Facility Revenue Bonds, or Aircraft Securities who fail to surrender their respective Notes, Special Facility Revenue Bonds, or Aircraft Securities in accordance with Section 5.13 of the Plan. Nothing contained in the Plan shall be deemed to cancel, terminate, release, or discharge the obligation of the Debtors or any of their counterparties under any executory contract or lease (including, but not limited to, executory contracts or leases pursuant to which a Debtor leases any land, facilities, improvements, and/or equipment financed, in whole or in part, with proceeds of Special Facility Revenue Bonds) to the extent such executory contract or lease has been assumed by the Debtors pursuant to a Final Order of the Court or under the Plan. Notwithstanding any other provisions set forth in Section 6.14 of the Plan, with respect to any aircraft identified in the Plan Supplement, and any Aircraft Securities issued in respect of such aircraft, until (I) the execution of Postpetition Aircraft Agreements with respect to such aircraft, (II) the payment in full of distributions as provided in the Plan in respect of the Claims addressed by such Postpetition Aircraft Agreements with respect to such aircraft, (III) any monies, other consideration, or other value to be passed through such Aircraft Securities at

any time pursuant to the Postpetition Agreements in respect of such aircraft or otherwise arising from the sale, lease, or other disposition of such aircraft have been finally and indefeasibly paid and/or conveyed to the holders of such Aircraft Securities (including, without limitation, any equipment trust certificates), and (IV) in the case of any pass-through trust certificates, all of the matters described in the foregoing clauses (I) through (III) shall be completed with respect to each related aircraft and equipment trust certificate, any such Aircraft Securities shall not be cancelled; *provided, however*, on the Effective Date or the applicable Rejection Effective Date (as set forth in the Plan Supplement), as applicable, all obligations of the Debtors (to the extent the Debtors had any obligations) with respect to the Aircraft Securities (but, for the avoidance of doubt, not the obligations of the Debtors with respect to Postpetition Aircraft Agreements) shall be deemed satisfied, released, and discharged. For the avoidance of doubt, the release, satisfaction, or discharge of any of the Debtors' obligations under the Aircraft Securities shall not affect the rights and obligations of any non-Debtor third parties after the Effective Date or the applicable Rejection Effective Date, as applicable, vis-à-vis one another with respect to such Aircraft Securities.

32. Equity Interests in Subsidiaries Held by the Debtors. Pursuant to Section 6.17 of the Plan, subject to the terms and conditions set forth in the Merger Agreement, on the Effective Date, each respective Equity Interest in a direct or indirect subsidiary of AMR that is not a Debtor shall be unaffected by the Plan, and the Reorganized Debtor holding such Equity Interest shall continue to hold such Equity Interest; *provided, however*, that on or after the Effective Date, New AAG may cause US Airways to merge with and into New AAG or a business entity disregarded as an entity separate from New AAG for U.S. federal income tax purposes.

33. Substantive Consolidation.

(a) AMR Plan Consolidation. Subject to the occurrence of the Effective Date, pursuant to Section 6.5(b) of the Plan, solely for voting, confirmation, and distribution purposes under the Plan, and subject to the following sentence, (i) all assets and all liabilities of the AMR Debtors shall be treated as though they were merged, (ii) all guarantees of any AMR Debtor of the payment, performance, or collection of obligations of another AMR Debtor shall be eliminated and cancelled, (iii) any obligation of any AMR Debtor and all guarantees thereof executed by one or more of the other AMR Debtors shall be treated as a single obligation, and such guarantees shall be deemed a single Claim against the consolidated AMR Debtors, (iv) all joint obligations of two or more AMR Debtors and all multiple Claims against such Entities on account of such joint obligations shall be treated and allowed as a single Claim against the consolidated AMR Debtors, (v) all Claims between the AMR Debtors shall be deemed cancelled, and (vi) each Claim filed in the Chapter 11 Case of any AMR Debtor shall be deemed filed against the consolidated AMR Debtors and a single obligation of the consolidated AMR Debtors. The substantive consolidation and deemed merger effected pursuant to Section 6.5(b) of the Plan shall not affect (other than for purposes related to funding distributions under the Plan and as set forth in Section 6.5(b) of the Plan) (A) the legal and organizational structure of the AMR Debtors, except as provided in the Merger Agreement, (B) defenses to any Causes of Action or requirements for any third party to establish mutuality to assert a right of setoff, and (C) distributions out of any insurance policies or proceeds of such policies. Notwithstanding the foregoing, prepetition intercompany Claims between and among the AMR Debtors, the American Debtors, and the Eagle Debtors shall be dealt with in accordance with Section 6.15 of the Plan.

(b) American Plan Consolidation. Subject to the occurrence of the Effective Date, pursuant to Section 6.5(c) of the Plan, solely for voting, confirmation, and distribution purposes under the Plan, and subject to the following sentence, (i) all assets and all liabilities of the American Debtors shall be treated as though they were merged, (ii) all guarantees of any American Debtor of the payment, performance, or collection of obligations of another American Debtor shall be eliminated and cancelled, (iii) any obligation of any American Debtor and all guarantees thereof executed by one or more of the other American Debtors shall be treated as a single obligation, and such guarantees shall be deemed a single Claim against the consolidated American Debtors, (iv) all joint obligations of two or more American Debtors and all multiple Claims against such Entities on account of such joint obligations shall be treated and allowed as a single Claim against the consolidated American Debtors, (v) all Claims between the American Debtors shall be deemed cancelled, and (vi) each Claim filed in the Chapter 11 Case of any American Debtor shall be deemed filed against the consolidated American Debtors and a single obligation of the consolidated American Debtors. The substantive consolidation and deemed merger effected pursuant to Section 6.5(c) of the Plan shall not affect (other than for purposes related to funding distributions under the Plan and as set forth in Section 6.5(c) of the Plan) (A) the legal and organizational structure of the American Debtors, except as provided in the Merger Agreement, (B) defenses to any Causes of Action or requirements for any third party to establish mutuality to assert a right of setoff, and (C) distributions out of any insurance policies or proceeds of such policies. Notwithstanding the foregoing, prepetition intercompany Claims between and among the AMR Debtors, the American Debtors, and the Eagle Debtors shall be dealt with in accordance with Section 6.15 of the Plan.

(c) Eagle Plan Consolidation. Subject to the occurrence of the Effective Date, pursuant to Section 6.5(d) of the Plan, solely for voting, confirmation, and distribution purposes under the Plan, and subject to the following sentence, (i) all assets and all liabilities of the Eagle Debtors shall be treated as though they were merged, (ii) all guarantees of any Eagle Debtor of the payment, performance, or collection of obligations of another Eagle Debtor shall be eliminated and cancelled, (iii) any obligation of any Eagle Debtor and all guarantees thereof executed by one or more of the other Eagle Debtors shall be treated as a single obligation, and such guarantees shall be deemed a single Claim against the consolidated Eagle Debtors, (iv) all joint obligations of two or more Eagle Debtors and all multiple Claims against such Entities on account of such joint obligations shall be treated and allowed as a single Claim against the consolidated Eagle Debtors, (v) all Claims between the Eagle Debtors shall be deemed cancelled, and (vi) each Claim filed in the Chapter 11 Case of any Eagle Debtor shall be deemed filed against the consolidated Eagle Debtors and a single obligation of the consolidated Eagle Debtors. The substantive consolidation and deemed merger effected pursuant to Section 6.5(d) of the Plan shall not affect (other than for purposes related to funding distributions under the Plan and as set forth in Section 6.5(d) of the Plan) (A) the legal and organizational structure of the Eagle Debtors, except as provided in the Merger Agreement, (B) defenses to any Causes of Action or requirements for any third party to establish mutuality to assert a right of setoff, and (C) distributions out of any insurance policies or proceeds of such policies. Notwithstanding the foregoing, prepetition intercompany Claims between and among the AMR Debtors, the American Debtors, and the Eagle Debtors shall be dealt with in accordance with Section 6.15 of the Plan.

34. Plan Supplement and Exhibits and Schedules to the Plan. The documents substantially in the form contained in the Plan Supplement, the Exhibits and Schedules to the Plan, and any amendments, modifications, and supplements thereto, and the execution, delivery, and performance thereof by the Debtors or the Reorganized Debtors, as applicable, are authorized and approved.

35. ***Approvals or Consents*** ~~Governmental Approvals Not Required~~. Except as otherwise expressly provided in the Merger Agreement or this Confirmation Order, ***to the extent authorized by section 1123(a) of the Bankruptcy Code,*** this Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state or any other governmental authority (***subject to applicable police powers and applicable laws, rules, or regulations relating to public health and safety)*** with respect to the implementation or consummation of the Plan and the Merger Agreement and any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement, and any documents, instruments, or agreements, and any amendments or modifications thereto. ***This Court retains jurisdiction to interpret the scope of this Paragraph.***

36. The Court takes judicial notice of the civil action filed by the United States and several plaintiff states to enjoin the Merger under federal antitrust law on August 13, 2013 in the United States District Court for the District of Columbia as Case No. 13-cv-01236 (the "**DOJ Action**"). Nothing in this Confirmation Order shall be construed as an adjudication of any causes of action asserted in the DOJ Action or as otherwise expressing the Court's position with respect to the DOJ Action. In the event that the Debtors and US Airways reach a settlement of the DOJ Action, the Debtors shall file a motion with the Court seeking approval of

the Debtors' execution of and entry into such settlement. In addition to determining whether to approve any such settlement under Bankruptcy Rule 9019(a), the Court shall determine whether the settlement would materially and adversely affect the treatment of holders of Claims and AMR Equity Interests under the Plan such that the Court should require the re-solicitation of such holders' previous acceptances or rejections of the Plan.

37. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, Transfer, or exchange of notes or equity securities under the Plan or in connection with the transactions contemplated by the Plan, the creation, filing, or recording of any mortgage, deed of trust, or other security interest, the making, assignment, filing, or recording of any lease or sublease, the transfer of title to or ownership of any of the Debtors' interests in any Aircraft Equipment, or the making or delivery of any deed, bill of sale, or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, the New Mandatorily Convertible Preferred Stock, the New Common Stock, any Postpetition Aircraft Agreement, any distribution from the Disputed Claims Reserve, or any agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated in the Plan or in any Postpetition Aircraft Agreement, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, Cape Town filing or recording fee, FAA filing or recording fee, or other similar tax or governmental assessment in the United States. To the maximum extent provided by section 1146(a) of the Bankruptcy Code and applicable nonbankruptcy law, the transactions pursuant to the Merger Agreement shall not be taxed under any law imposing a stamp tax or similar tax. Each federal, state, commonwealth, local, foreign, or other

governmental agency is directed and authorized to accept the validity of any and all documents, trust agreements, mortgages, and instruments that are necessary or appropriate to effectuate, implement, or consummate the transactions contemplated by the Plan, the Merger Agreement, this Confirmation Order, and any agreements created or contemplated by the Plan, without payment of any ***tax covered by section 1146(a).*** ~~recording tax, stamp tax, transfer tax, or similar tax imposed by state or local law.~~

38. Expedited Tax Determination. Pursuant to Section 12.5 of the Plan, New AAG or the Reorganized Debtors may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for all returns filed for or on behalf of the Debtors or the Reorganized Debtors for all taxable periods through the Effective Date.

39. Disbursing Agent. Pursuant to Section 5.2(a) of the Plan, the Disbursing Agent shall make all distributions required under the Plan, except with respect to a holder of a Claim whose distribution is governed by an agreement and is administered by an Indenture Trustee or Servicer, which distribution shall be deposited by the Disbursing Agent with the appropriate Indenture Trustee or Servicer for distribution to holders of Claims in accordance with the provisions of the Plan and the terms of the governing agreement (except with respect to distributions on Claims where the Indenture Trustee or Servicer, the Debtors, and the holder of a Claim may have agreed otherwise). Distributions on account of such Claims shall be deemed complete upon delivery to the appropriate Indenture Trustee or Servicer; *provided, however*, that if any such Indenture Trustee or Servicer is unable to make such distributions, the Disbursing Agent, with the cooperation of such Indenture Trustee or Servicer, shall make such distributions to the extent reasonably practicable. With respect to holders of American Union Claims in American Class 6, the Disbursing Agent shall make the distributions required under the Plan to

the APA, the APFA, and the TWU, as applicable, and distributions on account of such American Union Claims shall be deemed complete upon delivery to the APA, the APFA, and the TWU, as applicable.

40. Distributions of New Mandatorily Convertible Preferred Stock. Except with respect to owners of securities that are held directly or indirectly through The Depository Trust Company ("**DTC**") or its nominee, distributions of New Mandatorily Convertible Preferred Stock shall be made as follows: The Debtors or the Disbursing Agent shall arrange for the establishment of accounts at a broker (the "**Holding Broker**") that, directly or indirectly, may temporarily hold securities as or through an entity that is a bank, broker or other nominee that holds securities through DTC in "street name" on behalf of underlying beneficial owners of the securities (a "**DTC Participant**"). Such accounts shall be established for the benefit of each creditor entitled to receive such a distribution of New Mandatorily Convertible Preferred Stock and shall be established in the name of and for the benefit of the creditor as reflected on the claims register maintained in the Chapter 11 Cases, but creditors shall not be permitted to access their New Mandatorily Convertible Preferred Stock until they retain a broker of their own choice (the "**Creditor's Broker**") and initiate a transfer of the New Mandatorily Convertible Preferred Stock from the Holding Broker's account to the Creditor's Broker account. The Holding Broker is authorized to make a "free delivery" of shares from such accounts in accordance with delivery instructions received from the creditor. The Debtors, the Disbursing Agent, and the Holding Broker are authorized to establish such accounts for the benefit of such creditors and to take such other acts that are necessary or appropriate in connection with such distributions, notwithstanding the absence of an agreement by the creditor. The Disbursing Agent is

authorized to establish one or more accounts (including securities accounts or brokerage accounts) with respect to the Disputed Claims Reserve.

41. Pursuant to Section 5.2(b) of the Plan, the Debtors shall be authorized, without further Court approval, to reimburse any Servicer for its reasonable and customary servicing fees and expenses incurred in providing postpetition services directly related to distributions under the Plan. Such reimbursement shall be made on terms agreed to with the Debtors and shall not be deducted from distributions to be made under the Plan to holders of Allowed Claims receiving distributions from such Servicer.

42. Timing of Distributions. Pursuant to Section 5.3 of the Plan, subject to any reserves or holdbacks established under the Plan, on the appropriate Distribution Date, or as soon thereafter as is practicable, holders of Allowed Claims and Allowed AMR Equity Interests shall receive the distributions provided for in the Plan. Distributions on account of General Unsecured Claims that are Allowed as of the Effective Date, including delivery to The Depository Trust Company of the global certificate(s) representing the shares of Mandatorily Convertible Preferred Stock to be issued under the Plan, shall be made on the Initial Distribution Date or, other than with respect to distribution of Plan Shares, as soon thereafter as reasonably practicable (and shall receive the additional true-up distributions provided for in Section 7.4 of the Plan at the times provided for therein). Distributions on account of any Disputed Claim as of the Effective Date that subsequently becomes Allowed shall be made on the next Distribution Date that is at least twenty (20) calendar days after the date such Claim becomes Allowed, or as soon thereafter as reasonably practicable; *provided, however*, that distributions on account of Administrative Expenses and Priority Tax Claims shall be made as set forth in Article II of the Plan. Upon making distributions under the Plan, in no event shall any of the Debtors, the

Reorganized Debtors, or the Disbursing Agent be liable for the subsequent acts of third parties regarding such distributions.

43. Transferees of Claims. Except as otherwise provided in a Final Order of the Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date (provided that an evidence of such transfer has been filed with the Court on or prior to the Distribution Record Date) shall be treated as the respective holders of such Claims for all Plan purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date.

44. Setoff and Recoupment. Pursuant to Section 5.11 of the Plan, the Debtors and the Reorganized Debtors, as applicable, may, but shall not be required to, set off or recoup against any Claim, and any distribution to be made on account of such Claim, any and all claims, rights, and Causes of Action of any nature that the Debtors may have against the holder of such Claim pursuant to the Bankruptcy Code or applicable nonbankruptcy law; *provided, however*, that neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver, abandonment, or release by the Debtors or the Reorganized Debtors, as applicable, of any such claims, rights, and Causes of Action that the Debtors or the Reorganized Debtors, as applicable, may have against the holder of such Claim.

45. No Reserve for Disallowed or Expunged Claims. No reserves shall be required to be established for Claims (or any portion thereof) that have been disallowed or expunged by order of the Court notwithstanding any appeal, motion for reconsideration, or similar motion or request for relief that may be filed, absent an order of the Court expressly directing the establishment of such a reserve.

46. Final Fee Applications. Pursuant to Section 2.2 of the Plan, all Entities seeking an award by the Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 327, 328, 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code shall (i) file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is sixty (60) days after the Effective Date and (ii) be paid in full in such amounts as are allowed by the Court (A) on the date on which the order of the Court relating to any such Administrative Expense is entered, or as soon thereafter as reasonably practicable, or (B) upon such other terms as may be mutually agreed upon between the holder of such an Administrative Expense and the Debtors, or, if on or after the Effective Date, New AAG. The Debtors and the Reorganized Debtors, as applicable, are authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Confirmation Date in the ordinary course and without the need for Court approval.

47. The Debtors are authorized to pay, in the ordinary course of business and without the need for Court approval, the reasonable fees and expenses, incurred after the Confirmation Date, of the professional persons employed by the Debtors, the Creditors' Committee, and the Retiree Committee in connection with the implementation and consummation of the Plan, the claims reconciliation process, and any other matters as to which such professionals may be engaged.

48. Creditors' Committee Member Fees. Pursuant to Section 6.23 of the Plan, subject to the occurrence of the Effective Date and notwithstanding Section 2.2 of the Plan, the reasonable fees and out-of-pocket expenses (including professionals fees in an amount to be agreed upon by the Debtors and the Creditors' Committee) of the individual members of the

Creditors' Committee, in each case, incurred in their capacities as members of the Creditors' Committee, shall, to the extent incurred and unpaid by the Debtors prior to the Effective Date, be Allowed as Administrative Expenses and paid by the Reorganized Debtors without further Court approval upon the submission of invoices to the Reorganized Debtors. The foregoing shall not include any such fees and out-of-pocket expenses paid pursuant to Section 2.4 of the Plan.

49. Dissolution of Committees. Pursuant to Section 12.1 of the Plan, following the Effective Date, the Retiree Committee shall continue to have standing and a right to be heard solely with respect to (i) applications for compensation by professionals and requests for allowance of Administrative Expenses for substantial contribution pursuant to section 503(b)(3)(D) of the Bankruptcy Code, (ii) any adversary proceedings and any appeals (including appeals of this Confirmation Order, if any, that remain pending as of the Effective Date) to which the Retiree Committee is a party, (iii) any proofs of Claim filed by the Retiree Committee until such time as the allowance or disallowance of such proofs of Claim have been finally determined, including any appeals from an order allowing or disallowing such proofs of Claim, and (iv) any other matter related to the foregoing or involving the Retiree Committee's rights or duties under section 1114 of the Bankruptcy Code. The Retiree Committee shall remain in existence after the Effective Date and shall not dissolve until the completion of the foregoing post-Effective Date activities. The Reorganized Debtors shall continue to compensate the Retiree Committee's professional advisors for reasonable services and expenses provided in connection with any of the foregoing post-Effective Date activities and reimburse the Retiree Committee members for their reasonable expenses incurred in connection therewith. On the date that is one hundred eighty (180) days following the Effective Date, the Creditors' Committee shall dissolve (unless such date is extended with the written consent of the Reorganized Debtors

or by the Court for good cause shown); *provided, however*, that, following the Effective Date, the Creditors' Committee's standing and right to be heard shall be limited to (a) applications for compensation by professionals and requests for allowance of Administrative Expenses for substantial contribution pursuant to section 503(b)(3)(D) of the Bankruptcy Code, (b) participating in court hearings with respect to motions, adversary proceedings, or other actions (I) seeking enforcement or implementation of the provisions of the Plan or of this Confirmation Order, (II) relating to objections to Claims as set forth in Section 7.1 of the Plan, and (III) as otherwise consented to by the Reorganized Debtors or so ordered by the Court for good cause shown; and (c) any litigation or contested matter to which the Creditors' Committee is a party as of the Effective Date. Notwithstanding the foregoing, following the Effective Date, the Creditors' Committee's membership shall consist of the Allied Pilots Association, the Association of Professional Flight Attendants, Hewlett-Packard Enterprise Services, LLC, Manufacturers and Traders Trust Company, and the Transportation Workers Union of America, and its duties shall be limited to (u) participating in court hearings as provided in Section 12.1 of the Plan; (v) consulting with the Reorganized Debtors with respect to the General Unsecured Claims reconciliation and settlement process conducted by or on behalf of the Reorganized Debtors; (w) consulting with the Reorganized Debtors with respect to appropriate procedures for the settlement of Claims; (x) consulting with the Reorganized Debtors with respect to the maintenance of the Disputed Claims Reserve; (y) monitoring the distributions to the holders of Allowed Claims by the Disbursing Agent under the Plan; and (z) the matters set forth in Section 7.1 of the Plan. For so long as the General Unsecured Claims reconciliation process shall continue and the Creditors' Committee has not been dissolved, the Reorganized Debtors shall make regular reports to the Creditors' Committee as and when the Reorganized Debtors and the

Creditors' Committee may reasonably agree upon. Following the Effective Date, the Creditors' Committee may retain professionals to assist it in carrying out its duties as limited above on terms that are reasonably acceptable to the Reorganized Debtors or authorized to be retained by further order of the Court; *provided further*, that the Creditors' Committee's professional advisors and experts that have been retained by an order of the Court prior to the Effective Date shall be deemed reasonably acceptable to the Reorganized Debtors. The Reorganized Debtors shall continue to compensate the Creditors' Committee's professional advisors for reasonable services provided in connection with any of the foregoing post-Effective Date activities. In addition, with respect to each member of the Post-Effective Date Creditors' Committee, the Reorganized Debtors shall (a) reimburse one (1) representative of each such member for its respective reasonable out-of-pocket expenses in connection with attending meetings of the Post-Effective Date Creditors' Committee and (b) compensate its respective professional advisors for fees not to exceed $100,000 for reasonable services provided in connection with any of the foregoing post-Effective Date activities that were incurred during the six (6) month period after the Effective Date, which shall be the sole source of payment from the Debtors or the Reorganized Debtors for such fees. On the Effective Date, the current and former members of the Creditors' Committee and the Retiree Committee, and their respective officers, employees, counsel, advisors, and agents, shall be released and discharged of and from all further authority, duties, responsibilities, and obligations related to and arising from and in connection with the Chapter 11 Cases, and the retention or employment of the Creditors' Committee's and the Retiree Committee's respective attorneys, accountants, and other agents shall terminate, except to the extent provided above in Section 12.1 of the Plan.

50. Fees and Expenses of Indenture Trustees. The reasonable fees and expenses of the Indenture Trustees shall be paid in accordance with the procedures established in Section 2.4 of the Plan, which, pursuant to the arguments and statements made by the parties and the Court at the Confirmation Hearing and the subsequent agreement of the parties, is hereby amended to provide: "Except as may be otherwise provided in a Final Order of the Court previously entered in the Chapter 11 Cases or as set forth in Schedule "2" hereto, the reasonable prepetition and postpetition fees and expenses of each of the Indenture Trustees, to the extent payable by any of the Debtors pursuant to the terms of the applicable Bond Documents (which includes the reasonable fees and expenses of any counsel and/or other professionals retained by the Indenture Trustees in connection with such duties) shall be paid in Cash on the Effective Date, or as soon thereafter as reasonably practicable, upon submission of documented invoices (in customary form) to the Debtors, the Creditors' Committee, and the U.S. Trustee, subject to a review for reasonableness by the Debtors, the Creditors' Committee, and the U.S. Trustee, without the necessity of making application to the Court. The Indenture Trustees shall provide the Debtors and the Creditors' Committee with an estimate of such fees and expenses no later than thirty (30) days prior to the Confirmation Hearing. Notwithstanding the foregoing, under no circumstances shall any such fees and expenses (including counsel and/or other professionals) include fees and expenses associated with Avoidance Actions. Subject to Section 6.14 hereof, each Indenture Trustee's charging lien, if any, shall be discharged solely upon payment in full of the respective fees and expenses of the Indenture Trustees and termination of the respective Indenture Trustee's duties. Nothing herein shall be deemed to impair, waive, or discharge the Indenture Trustees' respective charging liens, if any, for any fees and expenses not paid by the Debtors or the Reorganized Debtors, as applicable. In addition, upon submission of documented

invoices (in customary form) to New AAG and without the necessity of making application to the Court, New AAG shall pay the reasonable fees and expenses of the Indenture Trustees in connection with making distributions hereunder. Any fees and expenses owing under the Support and Settlement Agreement shall be deemed Allowed Administrative Expenses and shall be paid in Cash on the Effective Date or as otherwise provided in the Support and Settlement Agreement to the extent provided in any order of the Bankruptcy Court."

51. Special Provision for Governmental Units. Pursuant to Section 10.11 of the Plan, solely with respect to "governmental units" (as defined in the Bankruptcy Code), nothing in the Plan or in this Confirmation Order shall limit or expand the scope of discharge, release, or injunction to which the Debtors or the Reorganized Debtors are entitled under the Bankruptcy Code. Further, nothing in the Plan or in this Confirmation Order, including Sections 10.7 and 10.8 of the Plan, shall discharge, release, enjoin, or otherwise bar (i) any liability of the Debtors or the Reorganized Debtors to a "governmental unit" arising on or after the Confirmation Date with respect to events occurring on or after the Confirmation Date, (ii) any liability to a "governmental unit" that is not a Claim, (iii) any valid right of setoff or recoupment of a "governmental unit," (iv) any police or regulatory action by a "governmental unit," (v) any environmental liability to a "governmental unit" that the Debtors, the Reorganized Debtors, any successors thereto, or any other Person or Entity may have as an owner or operator of real property after the Effective Date, and (vi) any liability to a "governmental unit" on the part of any Persons or Entities other than the Debtors or the Reorganized Debtors; *provided, however,* that nothing in Section 10.11 of the Plan shall affect the Debtors' releases in Section 10.8 of the Plan, nor shall anything in the Plan or in this Confirmation Order enjoin or otherwise bar any "governmental unit" from asserting or enforcing, outside the Court, any of the matters described

in clauses (i) through (vi) in this Paragraph. ***Neither Agencia Especial de Financiamento Industrial – FINAME, nor Banco Nacional de Desenvolvimento Economico e Social shall be considered 'governmental units' for purposes of this paragraph or Section 10.11 of the Plan.***

52. Releases, Exculpations, and Injunctions. The release, exculpation, and injunction provisions contained in the Plan are fair and equitable, are given for valuable consideration, and are in the best interests of the Debtors and their chapter 11 estates, and such provisions shall be effective and binding on all persons and entities.

53. Releases. As of the Effective Date and subject to the occurrence of the Merger Effective Time, the Debtors release (a) all present and former directors and officers of the Debtors and any other Persons who serve or served as members of management of the Debtors, (b) all post-Commencement Date advisors, consultants, agents, counsel, or other professionals of or to the Debtors, US Airways, the Creditors' Committee, the Retiree Committee, the Indenture Trustees, the Unions, the Search Committee, and the Ad Hoc Committee, and (c) US Airways, the Indenture Trustees, the Unions, all current and former members (in their capacity as members of such committees) of the Creditors' Committee, the Retiree Committee, the Ad Hoc Committee, the Search Committee, Nuveen Asset Management, LLC (and each of its managed funds and accounts on behalf of which it executed the Support and Settlement Agreement) (in its capacity in negotiating the Support and Settlement Agreement and the Plan), and OppenheimerFunds, Inc. (and each of its managed funds and accounts that executed the Support and Settlement Agreement) (in its capacity in negotiating the Support and Settlement Agreement and the Plan), and their respective officers, directors, agents, and employees (including attorneys and other professionals retained by individual members of such committees) (collectively, the "**Released Parties**"), from any and all Causes of Action held by,

assertable on behalf of, or derivative from the Debtors, in any way relating to the Debtors, the Chapter 11 Cases, the Plan, negotiations regarding or concerning the Plan, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, and the ownership, management, and operation of the Debtors, except for actions found by Final Order to be willful misconduct (including, but not limited to, conduct that results in a personal profit at the expense of the Debtors' estates), gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, breach of fiduciary duty (to the extent applicable), and *ultra vires* acts, which Causes of Action are based on any act, event, or omission taking place before the Effective Date; *provided, however*, that the foregoing (i) shall not operate as a waiver of or release from any Causes of Action arising out of any express contractual obligation owing by any former director, officer, or employee of the Debtors or any reimbursement obligation of any former director, officer, or employee with respect to a loan or advance made by the Debtors to such former director, officer, or employee, and (ii) shall not limit the liability of any counsel to their respective clients contrary to Rule 1.8(h)(1) of the New York Rules of Professional Conduct. The Reorganized Debtors and any newly-formed Entities that will be continuing the Debtors' business after the Effective Date shall be bound by all the releases set forth above to the same extent that the Debtors are bound.

54. Exculpation. Notwithstanding anything in the Plan to the contrary, and to the maximum extent permitted by applicable law, neither the Debtors, US Airways, the Creditors' Committee, the Retiree Committee, the Indenture Trustees, Servicers, the Unions, the Search Committee, the Ad Hoc Committee, The Garden City Group, Inc. (including as claims and noticing agent, administrative agent, and as a Disbursing Agent), Nuveen Asset Management, LLC (and each of its managed funds and accounts on behalf of which it executed

the Support and Settlement Agreement), and OppenheimerFunds, Inc. (and each of its managed funds and accounts that executed the Support and Settlement Agreement), nor any of their respective members (current and former, including counsel and other professionals employed by such members in connection with the Chapter 11 Cases), officers, directors, employees, counsel, advisors, professionals, or agents (collectively, the "**Exculpated Parties**"), shall have or incur any liability to any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of the Chapter 11 Cases; negotiations regarding or concerning the Plan, the Merger Agreement, the Merger, and any settlement or agreement in the Chapter 11 Cases; the pursuit of confirmation of the Plan and consummation of the Merger; the consummation of the Plan and of the Merger; the offer, issuance, and distribution of any securities issued or to be issued pursuant to the Plan (including pursuant to or in connection with any Postpetition Aircraft Agreement), whether or not such distribution occurs following the Effective Date; or the administration of the Plan or property to be distributed under the Plan, except for actions found by Final Order to be willful misconduct, gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, breach of fiduciary duty (to the extent applicable), and *ultra vires* acts, and, in all respects, the Exculpated Parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Following entry of this Confirmation Order, the Bankruptcy Court shall retain exclusive jurisdiction to consider any and all claims against any of the Exculpated Parties involving or relating to the administration of the Chapter 11 Cases, any rulings, orders, or decisions in the Chapter 11 Cases or any aspects of the Debtors' Chapter 11 Cases, including the decision to commence the Chapter 11 Cases, the development and implementation of the Plan and the Merger Agreement, the decisions and actions taken during

the Chapter 11 Cases, and any asserted claims based upon or related to prepetition obligations or equity interests administered in the Chapter 11 Cases, for the purpose of determining whether such claims belong to the Debtors' estates or third parties. In the event it is determined that any such claims belong to third parties, then, subject to any applicable subject matter jurisdiction limitations, the Court shall have exclusive jurisdiction with respect to any such litigation, subject to any determination by the Court to abstain and consider whether such litigation should more appropriately proceed in another forum.

55. Term of Injunctions or Stays. Pursuant to Section 10.4 of the Plan, unless otherwise expressly provided in the Plan or in a Final Order of the Court, all injunctions or stays arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay. For the avoidance of doubt, the Revised Final Order Pursuant to 11 U.S.C. §§ 105(a) and 362 Establishing Notification Procedures for Substantial Claimholders and Equity Security Holders and Approving Restrictions on Certain Transfers of Interests in the Debtors' Estates, entered by the Court on April 11, 2013 (ECF No. 7591), shall remain in full force and effect beyond the Effective Date.

56. Injunctions.

(a) Pursuant to Section 10.6 of the Plan, except as otherwise expressly provided in the Plan, all Persons or Entities who have held, hold, or may hold Claims or Equity Interests and all other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other

proceeding of any kind with respect to any such Claim or Equity Interest against the Debtors or the Reorganized Debtors other than actions to enforce the Plan or with respect to the allowance of Claims and Equity Interests, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtors or the Reorganized Debtors or property of any of the Debtors or the Reorganized Debtors, (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors or the Reorganized Debtors or against property or interests in property of the Debtors or the Reorganized Debtors, or (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from the Debtors or the Reorganized Debtors or against property or interests in property of the Debtors or the Reorganized Debtors, with respect to any such Claim or Equity Interest. Such injunction shall extend to any successors of the Debtors and the Reorganized Debtors and their respective property and interests in property.

(b) Pursuant to Section 10.5 of the Plan, upon entry of this Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

57. Clayton Plaintiffs. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, (a) Sections 10.2 and 10.3 of the Plan shall not apply to the claims asserted by the plaintiffs (the "**Clayton Plaintiffs**") in the Complaint (~~without any amendments or modifications thereto~~) (Adv. Pro. No. 13-01392(SHL), Adv. Pro. ECF No. 1) (the "**Complaint**") in the adversary proceeding in the Court styled *Carolyn Fjord et al. v. AMR Corporation et al.*, Adv. Pro. No. 13-01392(SHL) (the "**Clayton Adversary Proceeding**"), it

being understood that Sections 10.2 and 10.3 of the Plan shall apply to any other claims asserted by the Clayton Plaintiffs, and (b) Sections 10.5 and 10.6 of the Plan shall not apply to the Clayton Plaintiffs solely with respect to their pursuit of the Complaint ~~in the Bankruptcy Court~~, and any appeal from any order of the Court entered in the Clayton Adversary Proceeding, but shall apply ***to any other action.*** ~~in any other court or forum~~. The Debtors, the Creditors' Committee, the other defendants in the Clayton Adversary Proceeding, and all other parties in interest reserve all of their rights to oppose the Clayton Adversary Proceeding, including all of the claims asserted and relief sought therein. ***The exemption and immunity in favor of the Clayton Plaintiffs from the discharge, injunction, and release provisions (carve-out) as cited in this paragraph pertains to all proceedings in the Clayton Adversary Proceeding, wherever they might occur, including, but not limited to, any proceeding in the district court by virtue of a motion filed in that court that relates to the Clayton Adversary Proceeding, including any appeals therefrom. This Court retains jurisdiction to interpret the scope of this paragraph.***

58. Automatic Stay Stipulations Still in Effect. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, (a)(i) the Stipulation and Agreed Order Resolving Motion of Cantor Fitzgerald & Co., *et al*., for Order Granting Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1), entered on January 30, 2012 (ECF No. 920) (the "**Cantor Fitzgerald Stipulation and Order**"), (ii) the Agreement Between the Debtors and Cedar & Washington Associates, LLC to Modify the Automatic Stay for a Limited Purpose, entered into February 1, 2012 (ECF No. 990) (the "**Cedar & Washington Agreement**"), and (iii) the Agreement between the Debtors and WTCP Plaintiffs to Modify the Automatic Stay for a Limited Purpose, entered into February 2, 2012 (ECF No. 991) (the "**WTCP Plaintiffs Agreement**"), shall remain in full force and effect notwithstanding confirmation of the Plan

and/or the occurrence of the Effective Date, and the rights and remedies of all parties to the Cantor Fitzgerald Stipulation and Order, the Cedar & Washington Agreement, and the WTCP Plaintiffs Agreement are preserved and retained and shall be unaffected by confirmation of the Plan and/or occurrence of the Effective Date and (b) the Stipulation Resolving Motion of Aeritas, LLC for Entry of Order Pursuant to 11 U.S.C. § 362(d) to Modify the Automatic Stay, entered on July 22, 2013 (ECF No. 9252) (the "**Aeritas Stipulation**") shall remain in full force and effect notwithstanding confirmation of the Plan and/or the occurrence of the Effective Date, and the rights and remedies of all parties to the Aeritas Stipulation are preserved and retained and shall be unaffected by confirmation of the Plan and/or occurrence of the Effective Date.

59. Hargrove Claim. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, the tolling provisions set forth in section 108(c) of the Bankruptcy Code shall continue to apply to Hargrove Electrical Company, Inc. ("**Hargrove**") with respect to its lien claim (Proof of Claim No. 9814, the "**Hargrove Claim**") until the later of thirty (30) days after (i) notice of the Effective Date of the Plan and (ii) entry of a Final Order granting or denying the relief sought in its Motion for Relief from Stay (ECF No. 9452). Nothing in this Confirmation Order shall operate to impair the Debtors' right to review and challenge the Hargrove Claim.

60. Los Angeles County Treasurer and Tax Collector. Notwithstanding Section 7.7 of the Plan, any Allowed Administrative Expense or Allowed Secured Claim of the Los Angeles County Treasurer and Tax Collector in respect of unpaid taxes shall, if not timely paid, bear interest accrued and at the rate as determined under applicable nonbankruptcy law.

61. Discharge of Claims and Termination of Equity Interests. Except as otherwise provided in the Plan or this Confirmation Order, the rights afforded in the Plan and the

payments and distributions to be made under the Plan shall discharge all existing debts and Claims and terminate all Equity Interests of any kind, nature, or description whatsoever against or in the Debtors or any of their assets or property to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as otherwise provided in the Plan ***or this confirmation order***, upon the Effective Date, all existing Claims against the Debtors and Equity Interests in the Debtors shall be, and shall be deemed to be, discharged and terminated, and all holders of Claims and Equity Interests (and all representatives, trustees, or agents on behalf of each holder) shall be precluded and enjoined from asserting against the Reorganized Debtors, or any of their assets or property, any other or further Claim or Equity Interest based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of Claim or proof of Equity Interest and whether or not the facts or legal bases therefor were known or existed prior to the Effective Date.

62. Release and Discharge of Debtors. Upon the Effective Date and in consideration of the distributions to be made under the Plan, except as otherwise expressly provided in the Plan, each holder (as well as any representatives, trustees, or agents on behalf of each holder) of a Claim or Equity Interest and any affiliate of such holder shall be deemed to have forever waived, released, and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Equity Interests, rights, and liabilities that arose prior to the Effective Date. Upon the Effective Date, all such Persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Equity Interest in the Debtors.

63. Avoidance Actions. From and after the Effective Date, the Reorganized Debtors waive the right to prosecute any avoidance, equitable subordination, or recovery actions under sections 105, 502(d), 510, 542 through 551, and 553 of the Bankruptcy Code that belong to the Debtors.

64. Retention of Causes of Action/Reservation of Rights. Except as otherwise provided in Section 10.8 of the Plan, nothing in the Plan or in this Confirmation Order shall be deemed to be a waiver of the relinquishment of any rights or Causes of Action that the Debtors or the Reorganized Debtors may have or which the Reorganized Debtors may choose to assert on behalf of their respective estates under any provision of the Bankruptcy Code or any applicable nonbankruptcy law, including, without limitation, (a) any and all Claims against any Person or Entity, to the extent such Person or Entity asserts a crossclaim, counterclaim, and/or Claim for setoff which seeks affirmative relief against the Debtors, the Reorganized Debtors, or their officers, directors, or representatives and (b) for the turnover of any property of the Debtors' estates. Nothing in the Plan or this Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or Causes of Action, right of setoff, or other legal or equitable defense that the Debtors had immediately prior to the Commencement Date, against or with respect to any Claim left unimpaired by the Plan. The Reorganized Debtors shall have, retain, reserve, and be entitled to assert all such claims, Causes of Action, rights of setoff, and other legal or equitable defenses that they had immediately prior to the Commencement Date fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights with respect to any Claim left unimpaired by the Plan may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Cases had not been commenced.

65. Removal of Actions. The time provided by Bankruptcy Rule 9027 within which the Debtors may file notices of removal of civil actions and proceedings in state and federal courts to which the Debtors are parties is extended until the date that is one (1) year after the date of entry of this Confirmation Order, subject to the rights of the Debtors to seek further extensions of such period.

66. USAPA Clarification. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, nothing in the Plan or this Confirmation Order shall release, enjoin, discharge, or waive any rights or obligations of any party (i) under the Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement Among American, US Airways, Inc., APA, and the US Airline Pilots Association ("**USAPA**") (a copy of which is annexed as **Exhibit "A"** to Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. § 363(b) Approving (I) Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement Among American, US Airways, APA, and USAPA, and (II) Memorandum of Understanding Among American, US Airways, and TWU (ECF No. 8095), which was approved by Order of the Court, dated May 31, 2013 (ECF No. 8509)), or (ii) in connection with any unresolved grievance against US Airways arising under USAPA's collective bargaining agreements.

67. 2009-1, 2009-2, and 2011-2 EETC Transactions. If U.S. Bank, as Trustee and Security Agent under the Indenture and Aircraft Security Agreement for the American Airlines, Inc. 2009-2 Secured Notes Due 2016, and U.S. Bank, as Trustee with respect to the 2009-1 EETC and 2011-2 EETC Transactions (together, "**U.S. Bank**"), prevails on its appeals (the "**Appeals**") from the order entered on February 1, 2013 by the Court (ECF No. 6521) (the "**Repayment Order**") and the related judgments entered in Adversary Proceeding No. 12-01932

(Adv. Pro. ECF No. 19) and Adversary Proceeding No. 12-01946 (Adv. Pro. ECF No. 16), and if, thereafter, the Court (or a court of higher jurisdiction) enters a Final Order determining that the Make-Whole Amount (as defined in the Repayment Order) is owed in connection with the repayment of the 2009-1 EETC Transaction, the 2009-2 Secured Notes Due 2016, and the 2011-2 EETC Transaction, then either the Debtors (if such Final Order becomes a Final Order prior to the Effective Date), or New AAG (if such Final Order becomes a Final Order subsequent to the Effective Date), shall be liable for, and obligated to pay, the Make-Whole Amount in Cash to U.S. Bank.

68. Nonoccurrence of Effective Date. In the event the Debtors determine that any of the conditions to the Effective Date set forth in Section 9.2 of the Plan cannot be satisfied or duly waived, then effective immediately upon the Debtors' filing of a notice of failure of the Effective Date in accordance with Section 9.3 of the Plan, (a) the Confirmation Order shall be vacated by the Court, (b) the Plan shall be null and void in all respects, and (c) the administration of the Chapter 11 Cases shall continue. In the event that the Effective Date does not occur, nothing contained in this Confirmation Order, any order in aid of consummation of the Plan, or the Plan, and no acts taken in preparation for consummation of the Plan shall be (i) deemed to constitute a waiver or release of any Claims or Equity Interests by or against the Debtors or any other person or entities, to prejudice in any manner the rights of the Debtors or any person or entity in any further proceedings involving the Debtors or otherwise, or to constitute an admission of any sort by the Debtors or any other persons or entities as to any issue, or (ii) construed as a finding of fact or conclusion of law in respect thereof.

69. Notice of Entry of Confirmation Order. On or before the thirtieth (30th) Business Day following the date of entry of this Confirmation Order, the Debtors shall serve

notice of entry of this Confirmation Order (which, in the Debtors' discretion, may be combined with the Notice of the Effective Date) pursuant to Bankruptcy Rules 2002(f)(7), 2002(k), and 3020(c) on all creditors and equity interest holders, the United States Trustee, and other parties in interest, by causing notice of entry of the Confirmation Order (the "**Notice of Confirmation**"), to be delivered to such parties by first-class mail, postage prepaid; *provided*, *however*, that the Rule 2002 Parties (as defined in the Case Management Order) may be served with the Notice of Confirmation by e-mail. The notice described herein is adequate under the particular circumstances, and no other or further notice is necessary. The Debtors also shall cause the Notice of Confirmation to be published as promptly as practicable after the entry of this Confirmation Order once in each of *The Wall Street Journal* (Global Edition – North America, Europe, and Asia) and *USA Today* (Monday through Thursday National).

70. Notice of Effective Date. Within five (5) Business Days following the occurrence of the Effective Date, the Reorganized Debtors shall file the notice of the occurrence of the Effective Date and shall serve a copy of same on parties in interest in accordance with the Amended Order Pursuant to 11 U.S.C. §§ 105(a) and (d) and Bankruptcy Rules 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case Management Procedures, dated August 8, 2012 (ECF No. 3952).

71. Binding Effect. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan and the Plan Supplement shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

72. Immediate Effectiveness. Notwithstanding the possible applicability of Bankruptcy Rules 3020(e), 6004(h), 6006(d), 7062, and 9014, the terms and provisions of this Confirmation Order shall be immediately effective and enforceable upon its entry.

73. Jurisdiction. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Confirmation Order; *provided, however*, that with respect to matters arising out of or relating to Insurance Plans and any insurance policies and related agreements, documents, or instruments entered into between one or more of the Debtors and AIG on or after the Commencement Date, the Court shall have the maximum legally permitted jurisdiction, but not the exclusive jurisdiction, over such matters.

74. Severability. Each term and provision of the Plan, as it may have been altered or interpreted by the Bankruptcy Code in accordance with Section 12.11 of the Plan, is valid and enforceable pursuant to its terms.

75. Reference. The failure specifically to include or reference any particular provision of the Plan, the Merger Agreement, or any related agreement in this Confirmation Order shall not diminish or impair the efficacy of such provision or related agreement, it being the intent of the Court that the Plan is confirmed in its entirety, the Plan and such related agreements are approved in their entirety, and the Plan Supplement is incorporated herein by reference.

76. Retention of Jurisdiction. The Court may properly, and upon the Effective Date shall, to the extent authorized by law, retain jurisdiction over the matters arising in and under, and related to, the Chapter 11 Cases, as set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

77. Conflicts Between Order and Plan. To the extent of any inconsistency between the provisions of the Plan and this Confirmation Order, the terms and provisions contained in this Confirmation Order shall govern. The provisions of this Confirmation Order are integrated with each other and are nonseverable and mutually dependent unless expressly stated by further order of the Court.

Dated: New York, New York
October 21, 2013

/s/ Sean H. Lane
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT “A”

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
AMR CORPORATION, *et al.*,	:	**11-15463 (SHL)**
Debtors.	:	**(Jointly Administered)**

DEBTORS' FOURTH AMENDED JOINT CHAPTER 11 PLAN

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Attorneys for Debtors and
Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
AMR CORPORATION, *et al.*,	:	**11-15463 (SHL)**
Debtors.	:	**(Jointly Administered)**

DEBTORS' FOURTH AMENDED JOINT CHAPTER 11 PLAN

AMR Corporation; American Airlines, Inc.; AMR Eagle Holding Corporation; American Airlines Realty (NYC) Holdings, Inc.; Americas Ground Services, Inc.; PMA Investment Subsidiary, Inc.; SC Investment, Inc.; American Eagle Airlines, Inc.; Executive Airlines, Inc.; Executive Ground Services, Inc.; Eagle Aviation Services, Inc.; Admirals Club, Inc.; Business Express Airlines, Inc.; Reno Air, Inc.; AA Real Estate Holding GP LLC; AA Real Estate Holding L.P.; American Airlines Marketing Services LLC; American Airlines Vacations LLC; American Aviation Supply LLC; and American Airlines IP Licensing Holding, LLC, the above-captioned debtors, propose the following chapter 11 plan pursuant to section 1121(a) of title 11 of the United States Code:

ARTICLE I.

DEFINITIONS AND INTERPRETATION

DEFINITIONS. The following terms used herein shall have the respective meanings defined below (such meanings to be equally applicable to both the singular and plural):

1.1 Ad Hoc Committee means that certain Ad Hoc Committee of AMR Corporation Creditors consisting of certain holders of substantial General Unsecured Claims against the Debtors that was formed in connection with the Chapter 11 Cases, as referenced in the Order Approving Motion for Approval of "Fee Letter" to Pay Certain Work Fees and Expenses of Professionals Employed by the Ad Hoc Group of AMR Corporation Creditors, entered by the Bankruptcy Court on September 21, 2012 (ECF No 4652).

1.2 Administrative Expenses means costs or expenses of administration of any of the Chapter 11 Cases arising on or prior to the Effective Date and allowed under section 503(b) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(2) of the Bankruptcy Code that have not already been paid by the Debtors, including, without limitation, any actual and

necessary costs and expenses of preserving the Debtors' estates, any actual and necessary costs and expenses of operating the Debtors' businesses, any indebtedness or obligations incurred or assumed by the Debtors, as debtors in possession, during the Chapter 11 Cases, including, without limitation, for the acquisition or lease of property or an interest in property or the performance of services, any compensation and reimbursement of expenses to the extent allowed by Final Order under sections 330 or 503 of the Bankruptcy Code, and any fees or charges assessed against the estates of the Debtors under section 1930 of chapter 123 of title 28 of the United States Code.

1.3 **AFA** means the Association of Flight Attendants-CWA, AFL-CIO.

1.4 **AFA Claim** means the American Other General Unsecured Claim held by the AFA against American in the amount of $4.6 million that was Allowed pursuant to the order of the Bankruptcy Court entered on December 21, 2012 (ECF No. 5845), which Claim is not subject to reconsideration under section 502 of the Bankruptcy Code or otherwise.

1.5 **AFA Section 1113 Agreement** means (i) that certain tentative agreement ratified by the membership of the AFA on September 7, 2012, (ii) that certain Letter Agreement on Settlement Consideration and Bankruptcy Protections, and (iii) those certain Letters of Agreement on certain additional provisions, in each case as approved pursuant to the order of the Bankruptcy Court entered on December 21, 2012 (ECF No. 5845).

1.6 **Aircraft Equipment** means an aircraft, aircraft engine, propeller, appliance, or spare part (each as defined in section 40102 of title 49 of the United States Code) that is subject to a security interest granted by, leased to, or conditionally sold to any of the Debtors, including all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, to be surrendered or returned by any of the Debtors in connection with the surrender or return of such equipment.

1.7 **Aircraft Securities** means the securities listed in the Plan Supplement.

1.8 **Alignment Awards** means those certain long-term incentive program awards for certain managers of New AAG granted under the New AAG 2013 Incentive Award Plan, described in Section 4.1(o) of the American Disclosure Letter, to be effective on the Effective Date, the terms of which shall be set forth in the Plan Supplement.

1.9 **Allowed** means, (i) with reference to any Claim, (a) any Claim against any Debtor that has been listed by such Debtor in the Schedules, as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent

and for which no contrary proof of Claim has been filed, (b) any Claim listed on the Schedules or timely filed proof of Claim, as to which no objection to allowance has been, or subsequently is, interposed in accordance with Section 7.1 hereof or prior to the expiration of such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or as to which any objection has been determined by a Final Order to the extent such Final Order is in favor of the respective holder, or (c) any Claim expressly allowed by a Final Order, pursuant to the Claim Settlement Procedures, pursuant to Sections 4.3(c), 4.10(c), 4.10(d), 4.11(b), 4.11(c), and 4.11(d) hereof, or otherwise and (ii) with reference to any Equity Interest, such Equity Interest is reflected as outstanding (other than any such Equity Interest held by any Debtor or any Subsidiary of a Debtor) in the stock transfer ledger or similar register of the applicable Debtor on the Distribution Record Date.

1.10 **ALPA** means the Air Line Pilots Association, International.

1.11 **ALPA Claim** means the American Other General Unsecured Claim held by the ALPA against American in the amount of $21.6 million that was Allowed pursuant to the order of the Bankruptcy Court entered on December 21, 2012 (ECF No. 5844), which Claim is not subject to reconsideration under section 502 of the Bankruptcy Code or otherwise.

1.12 **ALPA Section 1113 Agreement** means that certain (i) tentative agreement ratified by the membership of ALPA on October 8, 2012, (ii) Letter Agreement on Administrative Expense Claim and Bankruptcy Protections, dated September 16, 2012, and (iii) Supplemental Bankruptcy Protections Letter on the Alternative Dispute Resolution for ALPA Grievances, dated December 14, 2012, in each case as approved pursuant to the order of the Bankruptcy Court entered on December 21, 2012 (ECF No. 5844).

1.13 **Amended Bylaws** means the Bylaws (or equivalent organizational document) of each of the Reorganized Debtors (other than New AAG), in each case as amended and/or restated, if applicable.

1.14 **Amended Certificate of Incorporation** means the Certificate of Incorporation (or equivalent organizational document) of each of the Reorganized Debtors (other than New AAG), in each case as amended and/or restated.

1.15 **American** means American Airlines, Inc., a Delaware corporation, as debtor or debtor in possession, as the context requires.

1.16 **American Debtors** means American; American Airlines Realty (NYC) Holdings, Inc.; Admirals Club, Inc.; Reno Air, Inc.; AA Real Estate Holding GP LLC; AA Real Estate Holding L.P.; American Airlines Marketing Services LLC; American Airlines Vacations LLC; American Aviation Supply

LLC; and American Airlines IP Licensing Holding, LLC, whether prior to or on and after the Effective Date.

1.17 American Disclosure Letter means that certain disclosure letter by AMR that was delivered to US Airways pursuant to, and forming part of, the Merger Agreement.

1.18 American Equity Interest means the interest of any holder of an equity security of any of the American Debtors, or any direct or indirect subsidiaries of the American Debtors, including any issued and outstanding shares of common or preferred stock or other present ownership interest in any of the American Debtors, or any direct or indirect subsidiaries of the American Debtors, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest, but excluding any such shares that are held as treasury stock.

1.19 American General Unsecured Claim means any Claim against any of the American Debtors that is (i) not an Administrative Expense, Priority Tax Claim, Secured Claim, Priority Non-Tax Claim, or American Union Claim or (ii) otherwise determined by the Bankruptcy Court to be an American General Unsecured Claim.

1.20 American General Unsecured Guaranteed Claim means any American General Unsecured Claim that is also an AMR General Unsecured Claim, as set forth on Schedule "2" hereto, because the General Unsecured Claim against American is guaranteed by AMR, excluding any such Claim for which a Single-Dip Treatment Election to have such Claim treated as an American Other General Unsecured Claim in American Class 5 has been made in accordance with the procedures set forth in Section 4.10(b) hereof. Each holder of an Allowed American General Unsecured Guaranteed Claim shall receive distributions hereunder only on account of its General Unsecured Claim against American in American Class 4 (American General Unsecured Guaranteed Claims).

1.21 American Labor Allocation means 23.6% of the Creditor New Common Stock Allocation, of which 13.5% of the Creditor New Common Stock Allocation shall be allocated to the APA, 3% of the Creditor New Common Stock Allocation shall be allocated to the APFA, 4.8% of the Creditor New Common Stock Allocation shall be allocated to the TWU, and 2.3% of the Creditor New Common Stock Allocation shall be allocated to the Non-Union Employees, and which shall be comprised of the Initial Labor Common Stock Allocation and the Incremental Labor Common Stock Allocation.

1.22 American Note Claim means any Claim against any of the American Debtors arising under or in connection with any Indenture and the respective notes, bonds, or debentures issued thereunder, excluding the fees and

expenses of the Indenture Trustees, which reasonable fees and expenses shall be paid pursuant to Section 2.4 hereof.

1.23 **American Other General Unsecured Claim** means any American General Unsecured Claim that is not an American General Unsecured Guaranteed Claim. Each of the Eagle Union Claims shall be an American Other General Unsecured Claim in American Class 5.

1.24 **American Plan Consolidation** means the deemed consolidation of the estates of the American Debtors with one another, solely for purposes of confirmation of the Plan and the occurrence of the Effective Date, including all voting, confirmation, and claims distribution purposes.

1.25 **American Priority Non-Tax Claim** means any Claim against any of the American Debtors, other than an Administrative Expense or a Priority Tax Claim, entitled to priority in payment as specified in section 507(a)(4), (5), (6), or (7) of the Bankruptcy Code.

1.26 **American Union Claims** means the APA Claim, the APFA Claim, and the TWU American Claim.

1.27 **American Unions** means the APA, the APFA, and the TWU.

1.28 **AMR** means AMR Corporation, a Delaware corporation, as debtor or debtor in possession, as the context requires.

1.29 **AMR Common Stock** means the shares of common stock, par value $1.00 per share, of AMR.

1.30 **AMR Debtors** means AMR; Americas Ground Services, Inc.; PMA Investment Subsidiary, Inc.; and SC Investment, Inc., whether prior to or on and after the Effective Date.

1.31 **AMR Equity Interest** means (i) the interest of any holder of an equity security of AMR, including any issued and outstanding shares of common or preferred stock or other present ownership interest in AMR, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest (including any right to receive any such shares issued or issuable under any plans for the benefit of employees or directors of any of the Debtors in effect on the Commencement Date), but excluding any such shares that are held as treasury stock and any debt obligation relating to a Note that has not been converted into an AMR Equity Interest prior to or as of the Effective Date, and (ii) any Claim or Cause of Action against AMR (a) arising from rescission of a purchase or sale of shares of AMR Common Stock, (b) for damages arising from the purchase or sale of any such shares, (c) for violation of the securities laws, misrepresentations, or any similar Claims related to the foregoing, or otherwise

subject to subordination under section 510(b) of the Bankruptcy Code, (d) for reimbursement, contribution, or indemnification allowed under section 502 of the Bankruptcy Code on account of any such Claim, including Claims based upon allegations that the Debtors made false and misleading statements or engaged in other deceptive acts in connection with the offer or sale of securities, or (e) for attorneys' fees, other charges, or costs incurred on account of any of the foregoing Claims or Causes of Action.

1.32 AMR General Unsecured Claim means any Claim against any of the AMR Debtors that is (i) not an Administrative Expense, Priority Tax Claim, Secured Claim, Priority Non-Tax Claim, or AMR Equity Interest or (ii) otherwise determined by the Bankruptcy Court to be an AMR General Unsecured Claim.

1.33 AMR General Unsecured Guaranteed Claim means any AMR General Unsecured Claim that is also an American General Unsecured Claim, as set forth on Schedule "1" hereto, because the General Unsecured Claim against AMR is guaranteed by American, excluding any such Claim for which a Single-Dip Treatment Election to have such Claim treated as an AMR Other General Unsecured Claim in AMR Class 4 has been made in accordance with the procedures set forth in Section 4.3(b) hereof. Each holder of an Allowed AMR General Unsecured Guaranteed Claim shall receive distributions hereunder only on account of its General Unsecured Claim against AMR in AMR Class 3 (AMR General Unsecured Guaranteed Claims).

1.34 AMR Intercompany Claim means the net intercompany receivable purportedly owed to AMR by American as of the Commencement Date.

1.35 AMR Note Claim means any Claim against any of the AMR Debtors arising under or in connection with any Indenture and the respective notes, bonds, or debentures issued thereunder, excluding the fees and expenses of the Indenture Trustees, which reasonable fees and expenses shall be paid pursuant to Section 2.4 hereof.

1.36 AMR Other Equity Interest means the interest of any holder of an equity security of any of the AMR Debtors other than AMR, including any issued and outstanding shares of common or preferred stock or other present ownership interest in any of the AMR Debtors other than AMR, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest, but excluding any such shares that are held as treasury stock.

1.37 AMR Other General Unsecured Claim means any AMR General Unsecured Claim that is not an AMR General Unsecured Guaranteed Claim.

1.38 AMR Plan Consolidation means the deemed consolidation of the estates of the AMR Debtors with one another, solely for purposes of confirmation

of the Plan and the occurrence of the Effective Date, including voting, confirmation, and distribution.

1.39 **AMR Priority Non-Tax Claim** means any Claim against any of the AMR Debtors, other than an Administrative Expense or a Priority Tax Claim, entitled to priority in payment as specified in section 507(a)(4), (5), (6), or (7) of the Bankruptcy Code.

1.40 **APA** means the Allied Pilots Association.

1.41 **APA Claim** means the right to receive 13.5% of the Creditor New Common Stock Allocation granted to the APA on behalf of the pilots represented by the APA pursuant to the order of the Bankruptcy Court entered on December 19, 2012 (ECF No. 5800), in satisfaction and full extinguishment of any and all claims, interests, causes, or demands that the APA has or might arguably have, on behalf of itself or the pilots represented by the APA, pursuant to the Railway Labor Act or under or with respect to the abrogated collective bargaining agreement between American and the APA or the existing pilot terms and conditions of employment ("**Green Book**") against the Debtors as provided in that certain Letter Agreement on Settlement Consideration and Bankruptcy Protections, dated November 16, 2012 (the "**Bankruptcy Settlement Letter of Agreement**"); *provided*, *however*, that the APA Claim shall not include the claims and grievances or lawsuits (i) set forth in Sections 1, 3, and/or Exhibit 1 of the Bankruptcy Settlement Letter of Agreement and (ii) under that Letter Agreement, dated January 4, 2013 (the "**January 4 Letter**") between American and the APA (collectively, the "**APA Reserved Claims**"). The APA Reserved Claims referred to in clause (i) of the immediately preceding sentence, if Allowed, shall be classified and treated hereunder in accordance with any such allowance; the APA Reserved Claims referred to in clause (ii) of the immediately preceding sentence shall be subject to the terms and provisions of the January 4 Letter. For purposes of voting hereunder, the entire APA Claim shall be voted by the APA on behalf of the pilots represented by the APA.

1.42 **APA Section 1113 Agreement** means that certain Tentative Agreement with the APA ratified on December 7, 2012, including that certain Letter Agreement on Settlement Consideration and Bankruptcy Protections, dated November 16, 2012, as approved pursuant to the order of the Bankruptcy Court entered on December 19, 2012 (ECF No. 5800).

1.43 **APFA** means the Association of Professional Flight Attendants.

1.44 **APFA Claim** means the right to receive 3% of the Creditor New Common Stock Allocation granted to the APFA on behalf of the flight attendants represented by the APFA pursuant to the order of the Bankruptcy Court entered on September 12, 2012 (ECF No. 4414), in satisfaction and full extinguishment of any and all claims, interests, causes, or demands that the APFA has or might

arguably have, on behalf of itself or the flight attendants represented by the APFA, as provided by such order. For purposes of voting hereunder, the entire APFA Claim shall be voted by the APFA on behalf of the flight attendants represented by the APFA.

1.45 **APFA Section 1113 Agreement** means that certain (i) Last Best and Final Offer to the Association of Professional Flight Attendants, dated July 19, 2012, (ii) letter agreement on settlement consideration and bankruptcy protection, dated August 22, 2012, between American and the APFA, and (iii) letter agreement on certain additional provisions, dated August 10, 2012, between American and the APFA, each as approved pursuant to the order of the Bankruptcy Court entered on September 12, 2012 (ECF No. 4414).

1.46 **Assumption Counterparty** means a counterparty to an executory contract or unexpired lease to be assumed, or assumed and assigned, by the Debtors hereunder.

1.47 **Assumption Effective Date** means the date on which the assumption of an executory contract or unexpired lease hereunder is deemed effective, which date shall not be later than sixty (60) calendar days after the Effective Date, unless otherwise agreed to by the applicable Debtor or Reorganized Debtor and the applicable Assumption Counterparty.

1.48 **Avoidance Action** means any action commenced, or that may be commenced, before or after the Effective Date pursuant to section 544, 545, 547, 548, 549, 550, or 551 of the Bankruptcy Code.

1.49 **Ballot** means the form(s) distributed to holders of impaired Claims and AMR Equity Interests on which is to be indicated the acceptance or rejection of the Plan.

1.50 **Bankruptcy Code** means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

1.51 **Bankruptcy Court** means the United States District Court for the Southern District of New York, having jurisdiction over the Chapter 11 Cases and, to the extent of any reference made under section 157 of title 28 of the United States Code, the unit of such District Court having jurisdiction over the Chapter 11 Cases under section 151 of title 28 of the United States Code.

1.52 **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time, applicable to the Chapter 11 Cases, and any Local Rules of the Bankruptcy Court.

1.53 **Bond Documents** means, collectively, the DFW 1.5x Special Facility Revenue Bond Agreements, the DFW 1.5x Special Facility Revenue Bond Documents, the Indentures, the Special Facility Revenue Bond Indentures, and the Special Facility Revenue Bond Documents.

1.54 **Business Day** means any day other than a Saturday, a Sunday, or any other day on which banking institutions in New York, New York are required or authorized to close by law or executive order.

1.55 **Cash** means legal tender of the United States of America.

1.56 **Cash Management Agreements** means the Debtors' agreements related to the Debtors' cash management system which the Debtors were authorized to continue in the ordinary course of business pursuant to the Final Order Pursuant to 11 U.S.C. §§ 105(a), 345(b), 363(b), 363(c), and 364(a) and Fed. R. Bankr. P. 6003 and 6004 (A) Authorizing Debtors to (i) Continue Using Existing Cash Management System, (ii) Honor Certain Prepetition Obligations Related to the Use Thereof, and (iii) Maintain Existing Bank Accounts and Business Forms; and (B) Extending Time to Comply with 11 U.S.C. § 345(b), dated February 7, 2012 (ECF No. 1052).

1.57 **Cause of Action** means, without limitation, any and all actions, proceedings, causes of action, controversies, liabilities, obligations, rights, rights of setoff, recoupment rights, suits, damages, judgments, accounts, defenses, offsets, powers, privileges, licenses, franchises, Claims, counterclaims, cross-claims, affirmative defenses, and demands of any kind or character whatsoever, whether known or unknown, asserted or unasserted, reduced to judgment or otherwise, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, existing or hereafter arising, in contract or in tort, in law, in equity, or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Commencement Date or during the course of the Chapter 11 Cases, including through the Effective Date. Without limiting the generality of the foregoing, when referring to Causes of Action of the Debtors or their estates, Causes of Action shall include (i) all rights of setoff, counterclaim, or recoupment and Claims on contracts or for breaches of duties imposed by law or equity, (ii) Claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code, and (iii) Claims and defenses such as fraud, mistake, duress, usury, and any other defenses set forth in section 558 of the Bankruptcy Code. A nonexclusive list of Causes of Action shall be set forth in the Plan Supplement.

1.58 **Certificate of Designations** means the Certificate of Designations, Powers, Preferences and Rights of the Series A Convertible Preferred Stock of American Airlines Group Inc., in substantially the form annexed hereto as Exhibit "B."

1.59 **Certificate of Merger** means the certificate of merger to be executed, acknowledged, and filed with the Secretary of State of the State of Delaware in accordance with the Delaware General Corporation Law pursuant to the Merger Agreement.

1.60 **Chairman Letter Agreement** means that certain Letter Agreement, dated February 13, 2013, a copy of which is annexed as Exhibit "G" to the Merger Agreement, which provides, among other things, for certain payments to Thomas W. Horton, the current Chairman of the Board and Chief Executive Officer of AMR, subject to the occurrence of the Merger Closing.

1.61 **Chapter 11 Cases** means the jointly administered cases under chapter 11 of the Bankruptcy Code commenced by the Debtors on the Commencement Date in the Bankruptcy Court and currently styled *In re AMR Corporation, et al.,* Ch. 11 Case No. 11-15463 (SHL) (Jointly Administered).

1.62 **Claim** has the meaning set forth in section 101(5) of the Bankruptcy Code.

1.63 **Claim Settlement Procedures** means the procedures for settling certain Claims, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(b), which were approved pursuant to the order of the Bankruptcy Court entered on March 23, 2012 (ECF No. 1984).

1.64 **Class** means any group of Claims or Equity Interests classified herein pursuant to section 1123(a)(1) of the Bankruptcy Code.

1.65 **Closing Date** means the date on which the Merger Closing takes place.

1.66 **Collateral** means any property or interest in property of the estate of any Debtor subject to a lien, charge, or other encumbrance to secure the payment or performance of a Claim, which lien, charge, or other encumbrance is not subject to avoidance under the Bankruptcy Code.

1.67 **Collective Bargaining Agreements** means the respective collective bargaining agreements between (i) American and each of the American Unions and (ii) American Eagle Airlines, Inc. and Executive Airlines, Inc. and each of the Eagle Unions, each as in effect on the Effective Date, including, for the avoidance of doubt, the Section 1113 Agreements and the Merger Collective Bargaining Agreements.

1.68 **Commencement Date** means November 29, 2011, the date on which the Debtors commenced the Chapter 11 Cases.

1.69 **Confidentiality and Non-Disclosure Agreements** means (i) agreements for the nondisclosure or nonuse of the Debtors' confidential, proprietary, or sensitive confidential information and trade secrets and (ii) agreements for the protection of personally identifiable information.

1.70 **Confirmation Date** means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order.

1.71 **Confirmation Hearing** means the hearing to be held by the Bankruptcy Court regarding confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.72 **Confirmation Order** means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code and approving the transactions contemplated thereby, including, without limitation, the Merger.

1.73 **Convenience Class Claim** means any Claim, other than a Note Claim, a Special Facility Revenue Bond Claim, an American Union Claim, or an Eagle Union Claim, against any of the Debtors that would otherwise be a General Unsecured Claim and that is (i) greater than $0 and less than or equal to $10,000 in Allowed amount or (ii) irrevocably reduced to $10,000 at the election of the holder of the Claim evidenced on the Ballot submitted by such holder; *provided, however*, that a General Unsecured Claim may not be subdivided into multiple Claims of $10,000 or less for purposes of receiving treatment as a Convenience Class Claim. The aggregate amount of Cash payable to satisfy Allowed Convenience Class Claims hereunder shall not exceed $25 million.

1.74 **Conversion Period** has the meaning given to such term in the Certificate of Designations.

1.75 **Convertible Note** means a Note to which a Convertible Note Claim relates.

1.76 **Convertible Note Claim** means any AMR Fixed Allowed Guaranteed Note Claim, American Fixed Allowed Guaranteed Note Claim, or American Fixed Allowed Other Note Claim, in each case with respect to a Note that is convertible into an existing AMR Equity Interest.

1.77 **Covered Special Facility Revenue Bonds** means the Special Facility Revenue Bonds issued pursuant to (i) the Amended and Restated Master Indenture of Trust, dated as of November 1, 2005, between New York City Industrial Development Agency, as issuer, and The Bank of New York Mellon, as successor-in-interest Trustee to The Bank of New York, as such Indenture may have been amended, supplemented, or modified, pursuant to which up to approximately $3 billion of New York City Industrial Development Agency

Special Facility Revenue Bonds, Series 2002A, 2002B, and 2005 (American Airlines, Inc. John F. Kennedy International Airport Project), due on varying dates but no later than August 1, 2031, were authorized to be issued; (ii) the Trust Indenture, dated as of January 1, 2002, between Regional Airports Improvement Corporation, as issuer, and The Bank of New York Mellon Trust Company, N.A., as successor-in-interest Trustee to BNY Western Trust Company, as such Indenture may have been amended, supplemented, or modified, pursuant to which $297,075,000 of Regional Airports Improvement Corporation Facilities Sublease Revenue Bonds, American Airlines, Inc. Terminal 4 Project (Los Angeles International Airport), Series 2002, due on varying dates but no later than December 1, 2024, were issued; and (iii) the Bond Indenture, dated as of May 1, 1963, between the Trustees of the Tulsa Municipal Airport Trust, as issuer, and The Bank of New York Mellon, as successor-in-interest Trustee to Morgan Guarantee Trust Company of New York, as such Indenture may have been amended, supplemented, or modified, including by (A) the Eighth Supplemental Bond Indenture, dated as of November 1, 1992, between Trustees of the Tulsa Municipal Airport Trust, as issuer, and The Bank of New York Mellon, as successor-in-interest Trustee to The Bank of New York, as such Indenture may have been amended, supplemented, or modified, pursuant to which $27,500,000 of Trustees of the Tulsa Municipal Airport Trust Revenue Bonds, Series 1992, due December 1, 2011, were issued; (B) the Ninth Supplemental Bond Indenture, dated as of November 1, 1995, between Trustees of the Tulsa Municipal Airport Trust, as issuer, and The Bank of New York Mellon, as successor-in-interest Trustee to The Bank of New York, as such Indenture may have been amended, supplemented, or modified, pursuant to which $97,710,000 of Trustees of the Tulsa Municipal Airport Trust Revenue Bonds, Series 1995, due June 1, 2020, were issued; (C) the Tenth Supplemental Bond Indenture, dated as of October 1, 2000, between Trustees of the Tulsa Municipal Airport Trust, as issuer, and The Bank of New York Mellon, as successor-in-interest Trustee to The Bank of New York, as such Indenture may have been amended, supplemented, or modified, pursuant to which $175,355,000 of Trustees of the Tulsa Municipal Airport Trust Revenue Bonds, Refunding Series 2000A and Refunding Series 2000B, due June 1, 2035, were issued; and (D) the Eleventh Supplemental Bond Indenture, dated as of April 1, 2001, between Trustees of the Tulsa Municipal Airport Trust, as issuer, and The Bank of New York Mellon Trust Company, N.A., as successor-in-interest Trustee to The Bank of New York, as such Indenture may have been amended, supplemented, or modified, pursuant to which $152,705,000 of Tulsa Municipal Airport Trust Revenue Bonds, Refunding Series 2001A and Refunding Series 2001B, due December 1, 2035, were issued; and for the avoidance of doubt, the Tripartite Agreement, dated as of November 1, 1995, among the Trustees of the Tulsa Municipal Airport Trust, The Bank of New York Mellon, as successor-in-interest to The Bank of New York, and BOKF N.A., as successor-in-interest to Bank of Oklahoma, N.A.

1.78 **Creditor New Common Stock Allocation** means the New Common Stock Allocation, less the Initial Old Equity Allocation, less the Market-Based Old Equity Allocation.

1.79 **Creditors' Committee** means the statutory committee of unsecured creditors appointed by the U.S. Trustee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

1.80 **Cure Amount** means a distribution made in the ordinary course of business following the Effective Date pursuant to an executory contract or unexpired lease assumed under section 365 or 1123 of the Bankruptcy Code (i) in an amount equal to the Proposed Cure (including if the Proposed Cure is zero) or (ii) if a Treatment Objection has been filed with respect to a Proposed Cure, then in an amount equal to the unpaid monetary obligations owing by the Debtors and required to be paid pursuant to section 365(b) of the Bankruptcy Code, as may be determined by Final Order or otherwise agreed upon by the parties.

1.81 **Customer Programs** means the Debtors' customer programs and practices as to which the Debtors were authorized to honor prepetition obligations and otherwise continue in the ordinary course of business pursuant to the Final Order Pursuant to 11 U.S.C. §§ 105(a) and 363(c) (I) Authorizing the Debtors to Pay and Honor Prepetition Obligations to Customers and to Otherwise Continue Customer Programs and Practices in the Ordinary Course of Business and (II) Authorizing and Directing the Disbursement Banks to Honor and Process Related Checks and Transfers, entered by the Bankruptcy Court on December 22, 2011 (ECF No. 426).

1.82 **Debtor Ownership Agreements** means warrants, debentures, stock purchase agreements, options, and other similar commitments entitling the Debtors to obtain an ownership, voting, or similar interest in a third party.

1.83 **Debtors** means AMR; American; Eagle Holding; American Airlines Realty (NYC) Holdings, Inc.; Americas Ground Services, Inc.; PMA Investment Subsidiary, Inc.; SC Investment, Inc.; American Eagle Airlines, Inc.; Executive Airlines, Inc.; Executive Ground Services, Inc.; Eagle Aviation Services, Inc.; Admirals Club, Inc.; Business Express Airlines, Inc.; Reno Air, Inc.; AA Real Estate Holding GP LLC; AA Real Estate Holding L.P.; American Airlines Marketing Services LLC; American Airlines Vacations LLC; American Aviation Supply LLC; and American Airlines IP Licensing Holding, LLC, whether prior to or on and after the Effective Date.

1.84 **Deferred Agreement Deadline** means 11:59 p.m. (Eastern Time) on the one hundred eightieth (180th) calendar day after the Effective Date, subject to further extensions or exceptions as may be ordered by the Bankruptcy Court.

1.85 **Deferred Counterparty** means a counterparty to an executory contract or unexpired lease relating to Aircraft Equipment that is designated as "Deferred" on Schedule 8.1(c) of the Plan Supplement.

1.86 **DFW 1.5x Special Facility Revenue Bond Agreements** means the agreements governing the Debtors' obligations to make payments on DFW 1.5x Special Facility Revenue Bonds issued to finance or refinance the acquisition or construction of airport and related facilities, improvements, and/or equipment used by the Debtors, as such agreements may have been amended, supplemented, or modified.

1.87 **DFW 1.5x Special Facility Revenue Bond Documents** means all documents associated with a DFW 1.5x Special Facility Revenue Bond Agreement (including such DFW 1.5x Special Facility Revenue Bond Agreement) and the corresponding DFW 1.5x Special Facility Revenue Bonds, as such documents may have been amended, supplemented, or modified.

1.88 **DFW 1.5x Special Facility Revenue Bond Indentures** means (i) the Trust Indenture, dated as of September 1, 1999, between Dallas-Fort Worth International Airport Facility Improvement Corporation, as issuer, and Manufacturers and Traders Trust Company, as successor-in-interest Trustee to Chase Bank of Texas, N.A., as such Indenture may have been amended, supplemented, or modified, pursuant to which $209,090,000 of Dallas-Fort Worth International Airport Facility Improvement Corporation American Airlines, Inc. Revenue Bonds, Series 1999, due May 1, 2035, were issued and (ii) the Trust Indenture, dated as of August 1, 2000, between Dallas-Fort Worth International Airport Facility Improvement Corporation, as issuer, and Manufacturers and Traders Trust Company, as successor-in-interest Trustee to The Chase Manhattan Bank, as such Indenture may have been amended, supplemented, or modified, pursuant to which $198,000,000 of Dallas-Fort Worth International Airport Facility Improvement Corporation American Airlines, Inc. Revenue Refunding Bonds, Series 2000A1, 2000A2, and 2000A3, due May 1, 2029, were issued.

1.89 **DFW 1.5x Special Facility Revenue Bonds** means the respective notes, bonds, or debentures issued under the DFW 1.5x Special Facility Revenue Bond Indentures.

1.90 **DFW 1.5x Unsecured Special Facility Revenue Bond Claim** means any Claim against any of the Debtors arising under or in connection with any DFW 1.5x Special Facility Revenue Bond Agreement and the respective notes, bonds, or debentures issued thereunder, excluding the fees and expenses of the Indenture Trustees to the extent that such fees and expenses have been paid pursuant to the terms of Section 2.4 hereof; *provided, however*, that the DFW 1.5x Unsecured Special Facility Revenue Bond Claims shall not include any such Claims held by any of the Debtors (including any Claims held by the Debtors

under the DFW 1.5x Special Facility Revenue Bond Documents), which Claims shall be Disallowed hereunder.

1.91 **Disallowed** means, with reference to any Claim or a portion of a Claim, any Claim against any Debtor that (i) has been disallowed by a Final Order of the Bankruptcy Court, (ii) has been listed by such Debtor in the Schedules, as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as $0, contingent, disputed, or unliquidated and as to which no proof of Claim has been filed by the applicable deadline or deemed timely filed pursuant to any Final Order of the Bankruptcy Court, (iii) has been agreed to by the holder of such Claim and the applicable Debtor to be equal to $0 or to be expunged, or (iv) has not been listed by such Debtor on the Schedules and as to which no proof of Claim has been filed by the applicable deadline or deemed timely filed pursuant to any Final Order of the Bankruptcy Court.

1.92 **Disbursing Agent** means New AAG (or such other Entity designated by AMR in its sole discretion and without the need for any further order of the Bankruptcy Court) in its capacity as a disbursing agent pursuant to Section 5.2 hereof.

1.93 **Disclosure Statement** means the disclosure statement relating to the Plan, including, without limitation, all exhibits thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

1.94 **Disputed** means, with respect to any Claim that has not been Allowed or Disallowed,

(a) if no proof of Claim has been filed by the applicable deadline: a Claim that has been or hereafter is listed on the Schedules as other than disputed, contingent, or unliquidated, but as to which the Debtors or any other party in interest has interposed an objection or request for estimation which has not been withdrawn or determined by a Final Order;

(b) if a proof of Claim or request for payment of an Administrative Expense has been filed by the applicable deadline: (i) a Claim for which no corresponding Claim has been or hereafter is listed on the Schedules, (ii) a Claim for which a corresponding Claim has been or hereafter is listed on the Schedules as other than disputed, contingent, or unliquidated, but the nature or amount of the Claim as asserted in the proof of Claim varies from the nature and amount of such Claim as listed on the Schedules, (iii) a Claim for which a corresponding Claim has been or hereafter is listed on the Schedules as disputed, contingent, or unliquidated, or (iv) a Claim for which a timely objection or request for estimation is interposed by the Debtors or other authorized Entity which has not been withdrawn or determined by a Final Order. Any Claim expressly allowed by a Final Order, pursuant to the Claim Settlement Procedures,

or hereunder, or that otherwise falls within the definition of Allowed, shall be an Allowed Claim, not a Disputed Claim; or

(c) a Claim that is subject to disallowance under section 502(d) of the Bankruptcy Code.

For the avoidance of doubt, if no proof of Claim has been filed by the applicable deadline and the Claim is not listed on the Schedules or has been or hereafter is listed on the Schedules as $0, disputed, contingent, or unliquidated, such Claim shall be Disallowed and shall be disregarded for all purposes.

1.95 Disputed Claims Reserve has the meaning set forth in Section 7.3(b) hereof.

1.96 Distribution Date means any of (i) the Initial Distribution Date, (ii) each Interim Distribution Date, and (iii) the Final Distribution Date.

1.97 Distribution Record Date means (i) a date following the Confirmation Date as the Debtors shall designate by filing a notice with the Bankruptcy Court or (ii) with respect to securities held by The Depository Trust Company, the Initial Distribution Date.

1.98 District Court means the United States District Court for the Southern District of New York having jurisdiction over the Chapter 11 Cases.

1.99 Double-Dip Full Recovery Amount means an amount equal to the full amount of all Allowed Double-Dip General Unsecured Claims as of the Commencement Date, plus interest at the non-default rate thereon (including interest on overdue interest, to the extent provided for in the underlying documents) on all such Claims from the Commencement Date through the Effective Date. The Allowed amount of each Double-Dip General Unsecured Claim as of the Commencement Date and the postpetition interest rate applicable to each such Claim are set forth on Schedules "1" and "2" hereto.

1.100 Double-Dip General Unsecured Claims means the AMR General Unsecured Guaranteed Claims in AMR Class 3 and the American General Unsecured Guaranteed Claims in American Class 4 and are set forth on Schedules "1" and "2" hereto. Each holder of a Double-Dip General Unsecured Claim shall receive distributions hereunder only on account of one of its Double-Dip General Unsecured Claims as set forth herein.

1.101 Double-Dip Hurdle Value means an amount equal to (i) the sum of (a) the per share Initial Stated Value multiplied by the total number of shares of New Mandatorily Convertible Preferred Stock issued to holders of Allowed Double-Dip General Unsecured Claims, plus (b) the aggregate amount of the increase in Stated Value that will automatically accrue on such shares through the

Final Mandatory Conversion Date, assuming no Optional Conversion, all as divided by (ii) 0.965.

1.102 **Eagle Debtors** means Eagle Holding; American Eagle Airlines, Inc.; Executive Airlines, Inc.; Eagle Aviation Services, Inc.; Business Express Airlines, Inc.; and Executive Ground Services, Inc., whether prior to or on and after the Effective Date.

1.103 **Eagle Equity Interest** means the interest of any holder of an equity security of any of the Eagle Debtors, or any direct or indirect subsidiaries of the Eagle Debtors, including any issued and outstanding shares of common or preferred stock or other present ownership interest in any of the Eagle Debtors, or any direct or indirect subsidiaries of the Eagle Debtors, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest.

1.104 **Eagle General Unsecured Claim** means any Claim against any of the Eagle Debtors that is (i) not an Administrative Expense, Priority Tax Claim, Secured Claim, Priority Non-Tax Claim, or Eagle Union Claim or (ii) otherwise determined by the Bankruptcy Court to be an Eagle General Unsecured Claim.

1.105 **Eagle Holding** means AMR Eagle Holding Corporation, a Delaware corporation, as debtor or debtor in possession, as the context requires.

1.106 **Eagle Holding Intercompany Claim** means the aggregate intercompany indebtedness owing between Eagle Holding and American as of the Commencement Date.

1.107 **Eagle Plan Consolidation** means the deemed consolidation of the estates of the Eagle Debtors with one another, solely for purposes of confirmation of the Plan and the occurrence of the Effective Date, including all voting, confirmation, and claims distribution purposes.

1.108 **Eagle Priority Non-Tax Claim** means any Claim against any of the Eagle Debtors, other than an Administrative Expense or a Priority Tax Claim, entitled to priority in payment as specified in section 507(a)(4), (5), (6), or (7) of the Bankruptcy Code.

1.109 **Eagle Union Claims** means the ALPA Claim, the AFA Claim, and the TWU Eagle Claim.

1.110 **Eagle Unions** means the ALPA, the AFA, and the TWU.

1.111 **Effective Date** means a Business Day on or after the Confirmation Date specified by the Debtors on which the conditions to the effectiveness of the Plan specified in Section 9.2 hereof have been satisfied or otherwise effectively

waived, which date shall occur contemporaneously with the Closing Date. The Debtors shall file a notice of the Effective Date with the Bankruptcy Court and with the Securities and Exchange Commission.

1.112 Encumbrance means, with respect to any asset, any mortgage, lien, pledge, charge, security interest, assignment, or encumbrance of any kind or nature in respect of such asset (including, without limitation, any conditional sale or other title retention agreement, any security agreement, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

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

1.114 Equity Interest means the interest of any holder of an AMR Equity Interest, or of any other equity security of any of the Debtors, or any direct or indirect subsidiaries of the Debtors, represented by any issued and outstanding shares of common or preferred stock or other instrument evidencing a present ownership interest in any of the Debtors, or any direct or indirect subsidiaries of the Debtors, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest, but excluding any such shares that are held as treasury stock.

1.115 ERISA means the Employee Retirement Income Security Act of 1974, as amended.

1.116 Final Distribution Date means a date selected by the Reorganized Debtors in their sole discretion that is after the Initial Distribution Date and is no later than twenty (20) calendar days after the date on which all Disputed Claims in AMR Class 4 (AMR Other General Unsecured Claims), American Class 5 (American Other General Unsecured Claims), and Eagle Class 3 (Eagle General Unsecured Claims) have become either Allowed Claims or Disallowed Claims.

1.117 Final Mandatory Conversion Date means the one hundred twentieth (120th) day following the Effective Date.

1.118 Final Order means an order or judgment of the Bankruptcy Court entered by the Clerk of the Bankruptcy Court on the docket in the Chapter 11 Cases which has not been reversed, vacated, or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceeding for a new trial, reargument, or rehearing shall then be pending or (ii) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court shall have been affirmed by the

highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, reargument, or rehearing shall have expired; *provided, however*, that no order or judgment shall fail to be a Final Order solely because of the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure has been or may be filed with respect to such order or judgment. The susceptibility of a Claim to a challenge under section 502(j) of the Bankruptcy Code shall not render a Final Order not a Final Order.

1.119 Final Pro Rata Share means, with respect to any Allowed Single-Dip General Unsecured Claim, the ratio (expressed as a percentage rounded to four (4) decimals) of the amount of such Allowed Single-Dip General Unsecured Claim to the aggregate amount of all Single-Dip General Unsecured Claims that are Allowed as of the Final Distribution Date.

1.120 Final True-Up Distribution means the final distribution of New Common Stock in accordance with Section 7.4(b) hereof.

1.121 Foreign Agreements means all executory contracts and unexpired leases as to which the Debtors were authorized to pay their prepetition debts in the ordinary course of business pursuant to the Final Order Pursuant to 11 U.S.C. §§ 363(b) and 105(a) (I) Authorizing Debtors to Pay Prepetition Obligations Owed to Foreign Creditors, and (II) Authorizing and Directing Financial Institutions to Honor and Process Related Checks, entered by the Bankruptcy Court on December 22, 2011 (ECF No. 425).

1.122 Fuel Consortia Agreements means any agreement entered into to become a member, contracting airline, or similar status in a fuel or into-plane consortium, including, without limitation, interline agreements and limited liability company agreements among airlines; agreements for maintenance, operation, and management among consortia member airlines and third-party operators; agreements for fuel system access to engage in into-plane fueling; and agreements with noncontracting users to obtain storage rights.

1.123 GAAP means U.S. generally accepted accounting principles.

1.124 General Unsecured Claim means any Claim against any of the Debtors that is (i) not an Administrative Expense, Priority Tax Claim, Secured Claim, Priority Non-Tax Claim, or American Union Claim or (ii) otherwise determined by the Bankruptcy Court to be a General Unsecured Claim.

1.125 Incremental Labor Common Stock Allocation means, with respect to each Mandatory Conversion Date, a number of shares of New Common Stock equal to the difference between (i) 23.6% of the aggregate number of shares of New Common Stock issued (including upon conversion of the New

Mandatorily Convertible Preferred Stock) during the period from the Effective Date up to and including the current Mandatory Conversion Date, to holders of Allowed Single-Dip General Unsecured Claims and holders of Allowed Double-Dip General Unsecured Claims, all as divided by 0.764 and (ii) the sum of (a) the Initial Labor Common Stock Allocation, plus (b) the total Incremental Labor Common Stock Allocations from all prior periods; *provided*, *however*, that in no event shall the number of shares in the Incremental Labor Common Stock Allocation with respect to any Mandatory Conversion Date be less than zero.

1.126 Indemnification Obligation means (i) any obligation of any Debtor to indemnify directors and officers of any of the Debtors who served in such capacity at any time on or after November 29, 2005, with respect to or based upon any act or failure to act in any of such capacities, or for or on behalf of any Debtor, against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages, or liabilities incurred in connection with any claim, action, suit, proceeding, or investigation, whether civil, criminal, administrative, or investigative, arising out of matters existing or occurring at or prior to the Merger Effective Time, whether asserted or claimed prior to, at, or after the Merger Effective Time (including any matters arising in connection with the transactions contemplated by the Merger Agreement), to the fullest extent permitted by applicable law and (ii) any obligation of any Debtor to indemnify current or former directors or officers of any of the Debtors pursuant to Contracts (as defined in the Merger Agreement) with any of the Debtors, their respective organizational documents, or applicable law.

1.127 Indentures means (i) the Indenture, dated as of December 1, 1998, between AMR, as issuer, and Wilmington Trust Company, as successor Trustee, as such Indenture may have been amended, supplemented, or modified, pursuant to which $150,000,000 of 7.875% Public Income Notes, due July 13, 2039, were issued on July 13, 1999; (ii) the Indenture, dated as of February 1, 2004, between AMR, as issuer, and Wilmington Trust Company, as Trustee, as such Indenture may have been amended, supplemented, or modified, pursuant to which (a) $323,500,000 of 4.5% Senior Convertible Notes, due February 15, 2024, were issued on February 13, 2004, and (b) $460,000,000 of 6.25% Senior Convertible Notes, due October 15, 2014, were issued on September 28, 2009; (iii) the Indenture, dated as of May 1, 1986, between AMR, as issuer, and The Bank of New York Mellon, as successor-in-interest to Commerce Union Bank, as Trustee, as such Indenture may have been amended, supplemented, or modified, pursuant to which (a) $100,000,000 of 9.0% Debentures, due September 15, 2016, were issued on September 19, 1986; (b) $125,000,000 of 10.2% Debentures, due March 15, 2020, were issued on March 15, 1990; (c) $100,000,000 of 9.88% Debentures, due June 15, 2020, were issued on June 25, 1990; (d) $4,250,000 of 10.29% Series B Medium Term Notes, due March 8, 2021, were issued on March 8, 1991; and (e) $4,100,000 of 10.55% Series B Medium Term Notes, due March 12, 2021, were issued on March 12, 1991; (iv) the Indenture, dated as of March 1,

1991, between AMR, as issuer, and Wilmington Trust Company, as successor-in-interest to Citibank, N.A., as Trustee, as such Indenture may have been amended, supplemented, or modified, pursuant to which (a) $350,000,000 of 10.0% Debentures due April 15, 2021, were issued on April 15, 1991; (b) $200,000,000 of 9.75% Debentures, due August 15, 2021, were issued on August 19, 1991; (c) $100,000,000 of 9.8% Debentures, due October 1, 2021, were issued on October 10, 1991; (d) $40,000,000 of 10.125% Series C Medium Term Notes, due June 1, 2021, were issued on June 6, 1991; (e) $8,000,000 of 10.15% Series C Medium Term Notes, due May 15, 2020, were issued on June 11, 1991; (f) $21,000,000 of 9.2% Series C Medium Term Notes, due January 30, 2012, were issued on January 15, 1992; and (g) $15,000,000 of 9.14% Series D Medium Term Notes, due February 21, 2012, were issued on February 21, 1992; and (v) the Indenture, dated as of March 1, 1992, between AMR, as issuer, and Wilmington Trust Company, as successor-in-interest to Morgan Guaranty Trust Company of New York, as Trustee, as such Indenture may have been amended, supplemented, or modified, pursuant to which $350,000,000 of 9.0% Debentures, due August 1, 2012, were issued on July 29, 1992.

1.128 Indenture Trustees means the trustees, co-trustees, agents, paying agents, distribution agents, authenticating agents, registrars, guarantee trustees, remarketing agents, collateral agents, and bond registrars under the respective Indentures or Special Facility Revenue Bond Indentures, as applicable, and any and all successors or predecessors thereto.

1.129 Initial Distribution Date means the Effective Date; *provided, however*, that with respect to distributions to be made hereunder in respect of each of the American Union Claims in American Class 6, the Initial Distribution Date may be a date other than the Effective Date to the extent that (i) New AAG and the holders of the APA Claim agree to a different Initial Distribution Date solely with respect to the APA Claim, (ii) New AAG and the holders of the APFA Claim agree to a different Initial Distribution Date solely with respect to the APFA Claim, or (iii) New AAG and the holders of the TWU Claim agree to a different Initial Distribution Date solely with respect to the TWU Claim.

1.130 Initial Labor Common Stock Allocation means, with respect to the American Labor Allocation, a number of shares of New Common Stock equal to (i) 23.6% of the Total Preferred Amount divided by the Preferred Conversion Cap, all as divided by (ii) 0.764.

1.131 Initial Old Equity Allocation means the number of shares of New Common Stock equal to 3.5% of the product of (i) 3.5714 and (ii) the number of US Airways Fully Diluted Shares, subject to any dilution arising from the number of shares of New Common Stock represented by equity-based awards to be issued to employees of AMR and its subsidiaries (other than US Airways and its subsidiaries) contemplated herein and in the Merger Agreement, determined in accordance with the Merger Agreement.

1.132 **Initial Pro Rata Share** means, with respect to any Allowed Single-Dip General Unsecured Claim, the ratio (expressed as a percentage rounded to four (4) decimals) of the amount of an Allowed Single-Dip General Unsecured Claim to the sum of the aggregate amounts of (i) all Single-Dip General Unsecured Claims that are Allowed as of the Effective Date and (ii) all Disputed Single-Dip General Unsecured Claims that, at the Reorganized Debtors' option, either (a) the Reorganized Debtors, with the consent of the Creditors' Committee and US Airways, on the Effective Date, reasonably estimate will be Allowed when the allowance or disallowance of each Disputed Claim is ultimately determined or (b) are estimated based on an order of the Bankruptcy Court prior to the Effective Date.

1.133 **Initial Stated Value** means, with respect to any share of New Mandatorily Convertible Preferred Stock, an amount equal to $25 per share.

1.134 **Insurance Plans** means the Debtors' insurance policies and any agreements, documents, or instruments relating thereto entered into prior to the Commencement Date.

1.135 **Intercompany Contract** means a contract entered into prior to the Commencement Date solely between (i) two or more Debtors or (ii) one or more Debtors and one or more direct or indirect subsidiaries or affiliates of the Debtors that is not a Debtor.

1.136 **Interim Distribution Date** means the last day of each calendar quarter commencing with the second full calendar quarter after the Initial Distribution Date; *provided, however*, that no distribution shall be required to be made on any Interim Distribution Date unless, by the date that is twenty (20) days preceding such date, the amount of New Common Stock that would be distributable from the reserve pursuant to Section 7.4(a) hereof (calculated as of such date) is attributable to the disallowance of Disputed Single-Dip General Unsecured Claims in the aggregate amount of at least $100 million. If no distribution is made on an Interim Distribution Date because of the failure to meet such $100 million threshold, the amount of Disallowed Disputed Single-Dip General Unsecured Claims shall be carried over and used in calculating the threshold for the next ensuing Interim Distribution Date.

1.137 **Interim Pro Rata Share** means, with respect to any Allowed Single-Dip General Unsecured Claim, the ratio (expressed as a percentage) of the amount of such Allowed Single-Dip General Unsecured Claim to the sum of the aggregate amounts of (i) all Single-Dip General Unsecured Claims that are Allowed as of the applicable Interim Distribution Date and (ii) all Disputed Single-Dip General Unsecured Claims that, at the Reorganized Debtors' option, either (a) the Reorganized Debtors, with the consent of the Creditors' Committee and US Airways, on such Interim Distribution Date, reasonably estimate will be Allowed when the allowance or disallowance of each Disputed Claim is

ultimately determined or (b) are estimated based on an order of the Bankruptcy Court prior to the applicable Interim Distribution Date.

1.138 Interim True-Up Distribution means the distribution of New Common Stock in accordance with Section 7.4(a) hereof.

1.139 Interline Agreements means the agreements of the kind described in the Motion of Debtors for Entry of Order (I) Pursuant to 11 U.S.C. §§ 105(a) and 365(a) Approving Assumption of Interline Agreements, Clearinghouse Agreements, ARC Agreements, Billing and Settlement Plan Contracts, Cargo Agreements, **one**world Agreements, and Alliance Agreements, (II) Pursuant to 11 U.S.C. §§ 105(a) and 363(b) Authorizing Debtors to Honor Prepetition Obligations Related to Carrier Services Agreements, Connection Carrier Agreement, GDS Participation Carrier Agreements, Travel Agency Agreements, Booking and Online Fulfillment Agreements, Cargo Agency Agreements, ATPCO Agreement, Deeds of Undertaking and Related Agreements, and (III) Pursuant to 11 U.S.C. § 362 Modifying the Automatic Stay to the Extent Necessary to Effectuate the Requested Relief, dated November 29, 2011 (ECF No. 25).

1.140 Labor Claims Hurdle Value means an amount equal to (i) 0.236 multiplied by the sum of the Double-Dip Hurdle Value and the Single-Dip Hurdle Value, all as divided by (ii) 0.764.

1.141 Labor Common Stock Allocation means, as of any date of determination, the sum of (i) the Initial Labor Common Stock Allocation and (ii) the total Incremental Labor Common Stock Allocations issued on all prior Mandatory Conversion Dates.

1.142 Letter of Credit means a documentary or standby letter of credit issued for the account of any of the Debtors and any reimbursement agreement or similar agreement entered into prior to the Commencement Date in connection therewith.

1.143 LTIP 2013 Awards means those certain long-term incentive program awards for certain managers of New AAG granted under the New AAG 2013 Incentive Award Plan, described in Section 4.1(o) of the American Disclosure Letter, to be effective on the Effective Date, the terms of which shall be set forth in the Plan Supplement.

1.144 Majority of the Requisite Consenting Creditors has the meaning given to such term in the Support and Settlement Agreement.

1.145 Mandatory Conversion Amount means, with respect to any Mandatory Conversion Date, a number of shares of New Mandatorily Convertible Preferred Stock equal to the lesser of (i) 25% of the total number of shares of New

Mandatorily Convertible Preferred Stock issued hereunder and (ii) the number of shares of New Mandatorily Convertible Preferred Stock outstanding on such Mandatory Conversion Date.

1.146 Mandatory Conversion Date means, with respect to the New Mandatorily Convertible Preferred Stock, each of the thirtieth (30th), sixtieth (60th), ninetieth (90th), and one hundred twentieth (120th) days following the Effective Date.

1.147 Mandatory Shares in Excess of Cap means, with respect to any Mandatory Conversion Date with respect to which 96.5% of the VWAP calculated with respect to such Mandatory Conversion Date exceeds the Preferred Conversion Cap, a number of shares of New Common Stock equal to (i) the number of shares of New Common Stock issued upon the conversion of all shares of New Mandatorily Convertible Preferred Stock that are converted on the Mandatory Conversion Date, less (ii) the number of shares of New Common Stock that would have been issued pursuant to the conversion of all shares of New Mandatorily Convertible Preferred Stock that are converted on the Mandatory Conversion Date if the Conversion Price (as defined in the Certificate of Designations) was not subject to the Preferred Conversion Cap, which, for purposes of this clause (ii) shall be a number of shares of New Common Stock equal to the quotient of (x) the aggregate Stated Value of all shares of New Mandatorily Convertible Preferred Stock that are converted with respect to such Mandatory Conversion Date, divided by (y) 96.5% of the VWAP with respect to such Mandatory Conversion Date. In no event shall the Mandatory Shares in Excess of Cap for any Mandatory Conversion Date be less than zero.

1.148 Market-Based Old Equity Allocation means, with respect to any Mandatory Conversion Date, the aggregate number of shares of New Common Stock that New AAG shall ratably distribute (or reserve for distribution) to the holders of Allowed AMR Equity Interests on such Mandatory Conversion Date, or as soon thereafter as reasonably practicable, in an aggregate amount equal to (i) the product of (a) 25% of the difference between the New Common Stock Allocation and the Initial Old Equity Allocation, multiplied by (b) the amount (if any) by which the VWAP for such Mandatory Conversion Date exceeds the Value Hurdle Price, all as multiplied by (c) the reciprocal of such VWAP, less (ii) the Shares in Excess of Cap for such Mandatory Conversion Date; *provided, however*, that in no event shall the number of shares distributed and/or reserved as described in this Section 1.148 with respect to any Mandatory Conversion Date (x) be less than zero or (y) be equal to or greater than the number of shares that result in the aggregate number of shares of New Common Stock that are issuable pursuant to the Plan, including those that are or may become issuable upon conversion of shares of New Mandatorily Convertible Preferred Stock issued under the Plan, exceeding the Maximum Plan Shares.

1.149 **Maximum Plan Shares** means an aggregate number of shares of New Common Stock equal to (i) (a) the number of US Airways Fully Diluted Shares as of the Share Determination Date, multiplied by (b) the quotient (rounded to four (4) decimals) of seventy-two (72) divided by twenty-eight (28) (rounded to the nearest whole share), less (ii) the number of shares of New Common Stock represented by equity-based awards to be issued to employees of AMR and its subsidiaries (other than US Airways and its subsidiaries) contemplated herein and in the Merger Agreement, determined in accordance with the terms of the Merger Agreement.

1.150 **Merger** means the "Merger" as defined in the Merger Agreement.

1.151 **Merger Agreement** means the Agreement and Plan of Merger among AMR, Merger Sub, and US Airways, dated February 13, 2013, a copy of which (without exhibits) is annexed hereto as Exhibit "A," as may be amended from time to time.

1.152 **Merger Closing** means the "Closing" of the Merger as defined in the Merger Agreement.

1.153 **Merger Collective Bargaining Agreements** means (i) the following collective bargaining agreements set forth on section 3.1(o)(i) of the American Disclosure Letter: American Airlines CBAs APA (2)-(5) and TWU (8); and (ii) the following collective bargaining agreements set forth on section 3.2(o)(i) of the US Airways Disclosure Letter: Mainline Collective Bargaining Agreements, Pilots East and West – USAPA (126) – (129), TWU (1), and Other (relating to the APFA) (1) – (3).

1.154 **Merger Effective Time** means the "Effective Time" of the Merger as defined in the Merger Agreement.

1.155 **Merger Sub** means AMR Merger Sub, Inc., a Delaware corporation formed as a wholly-owned subsidiary of AMR for the purpose of effecting the Merger and the other transactions contemplated thereby on the terms and subject to the conditions set forth in the Merger Agreement.

1.156 **Merger Sub Certificate of Incorporation** means the Certificate of Incorporation of Merger Sub, which shall be substantially in the form set forth in the Plan Supplement.

1.157 **New AAG** means AMR, as reorganized, on and after the Merger Effective Time, which shall be renamed American Airlines Group Inc. immediately following the Merger Effective Time pursuant to Section 6.1 hereof.

1.158 **New AAG Board** means the Board of Directors of New AAG on the Effective Date and as of the Merger Effective Time, which shall consist of twelve (12) members and shall be selected as provided in the Merger Agreement.

1.159 **New AAG Bylaws** means the Bylaws of AMR, as amended and restated in accordance with the Merger Agreement, which shall be substantially in the form of Exhibit "C" to the Merger Agreement and included in the Plan Supplement.

1.160 **New AAG Certificate of Incorporation** means the Certificate of Incorporation of AMR, as amended and restated in accordance with the Merger Agreement and as further amended in accordance with the Merger Agreement, which shall be substantially in the form of Exhibit "A" to the Merger Agreement and included in the Plan Supplement.

1.161 **New AAG 2013 Incentive Award Plan** means that certain New AAG incentive award plan to be effective on the Effective Date, which shall be substantially in the form of the US Airways Group, Inc. 2011 Incentive Award Plan, except that references to US Airways shall be revised to reflect New AAG and the aggregate number of shares of New Common Stock reserved for issuance thereunder shall be 40,000,000. The terms of the New AAG 2013 Incentive Award Plan shall be set forth in the Plan Supplement.

1.162 **New Common Stock** means the shares of common stock, par value $0.01 per share, of New AAG authorized and issued hereunder and in connection with the Merger Agreement.

1.163 **New Common Stock Allocation** means a number of shares of New Common Stock equal to the Maximum Plan Shares.

1.164 **New Mandatorily Convertible Preferred Stock** means a series of preferred stock, par value $0.01 per share, of New AAG, designated as "Series A Convertible Preferred Stock," authorized and issued hereunder and in connection with the Merger Agreement. The rights, provisions, powers, preferences, and privileges of the New Mandatorily Convertible Preferred Stock are set forth in the Certificate of Designations.

1.165 **Non-Union Employees** means the employees of American who are not represented by a labor union and/or whose employment are not covered by a Collective Bargaining Agreement.

1.166 **Note Claim** means a Claim against any of the Debtors arising under or in connection with any Indenture and the respective Notes issued thereunder, excluding the fees and expenses of the Indenture Trustees, which reasonable fees and expenses shall be paid pursuant to Section 2.4 hereof.

1.167 **Notes** means the respective notes, bonds, or debentures issued under the Indentures.

1.168 **Notice of Intent to Assume** means a notice delivered by the Debtors or the Reorganized Debtors, as applicable, pursuant to Article 8 hereof, stating an intent to assume an executory contract or unexpired lease and setting forth a proposed Assumption Effective Date and a Proposed Cure and/or proposed assignment, if applicable.

1.169 **Notice of Intent to Reject** means a notice delivered by the Debtors or the Reorganized Debtors, as applicable, pursuant to Article 8 hereof, stating an intent to reject an executory contract or unexpired lease and setting forth a proposed Rejection Effective Date.

1.170 **Optional Conversion** has the meaning given to such term in the Certificate of Designations.

1.171 **Optional Conversion Date** means, with respect to the New Mandatorily Convertible Preferred Stock, each date on which an Optional Conversion becomes effective as provided in the Certificate of Designations.

1.172 **Optional Shares in Excess of Cap** means, with respect to any Mandatory Conversion Date, a number of shares of New Common Stock equal to (i) the number of shares of New Common Stock issued upon the conversion of all shares of New Mandatorily Convertible Preferred Stock that are converted pursuant to Optional Conversion on each Optional Conversion Date subsequent to the immediately preceding Mandatory Conversion Date, at the Preferred Conversion Cap, less (ii) the number of shares of New Common Stock that would have been issued pursuant to such Optional Conversion of such shares of New Mandatorily Convertible Preferred Stock if the Conversion Price (as defined in the Certificate of Designations) was not subject to the Preferred Conversion Cap, which, for purposes of this clause (ii) shall be a number of shares of New Common Stock equal to the quotient of (x) the aggregate Stated Value of such shares of New Mandatorily Convertible Preferred Stock, divided by (y) 96.5% of the VWAP. In no event shall the Optional Shares in Excess of Cap for any Mandatory Conversion Date be less than zero.

1.173 **Other Secured Claim** means any Secured Claim other than a Secured Aircraft Claim.

1.174 **Pension Plans** means (i) the Retirement Benefit Plan of American Airlines, Inc. for Agent, Management, Specialists, Support Personnel and Officers, (ii) American Airlines, Inc. Pilot Retirement Benefit Program – Fixed Income Plan, (iii) The Retirement Benefit Plan of American Airlines, Inc. for Employees Represented by the Transport Workers Union of America, AFL-CIO,

and (iv) The Retirement Benefit Plan of American Airlines, Inc. for Flight Attendants.

1.175 Person has the meaning set forth in section 101(41) of the Bankruptcy Code.

1.176 Plan means this chapter 11 plan, as the same may be amended, supplemented, or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms hereof.

1.177 Plan Consolidation means, collectively, the AMR Plan Consolidation, the American Plan Consolidation, and the Eagle Plan Consolidation.

1.178 Plan Shares means (i) shares of New Mandatorily Convertible Preferred Stock and (ii) shares of New Common Stock, including for the avoidance of doubt, shares of New Common Stock that are or may become issuable upon conversion of shares of New Mandatorily Convertible Preferred Stock, each as issued pursuant to the terms hereof; *provided, however*, that the aggregate number of shares of New Common Stock constituting Plan Shares, when taken together with all shares of New Common Stock that are or may become issuable upon conversion or exchange of shares of New Mandatorily Convertible Preferred Stock constituting Plan Shares, shall not exceed the Maximum Plan Shares.

1.179 Plan Supplement means the forms of certain documents effectuating the transactions contemplated herein, which documents shall be filed with the Clerk of the Bankruptcy Court no later than ten (10) days prior to the Voting Deadline. Upon its filing with the Bankruptcy Court, the Plan Supplement may be inspected at the Office of the Clerk of the Bankruptcy Court during normal Bankruptcy Court hours. Holders of Claims and Equity Interests may obtain a copy of the Plan Supplement upon written request to the undersigned counsel. Copies of the Plan Supplement also will be available on the Voting Agent's website, www.amrcaseinfo.com.

1.180 Post-Effective Date Creditors' Committee means the committee established pursuant to Section 12.1 hereof.

1.181 Postpetition Aircraft Agreement means an agreement (including leases, subleases, security agreements, and mortgages and any amendments, modifications, or supplements of or to any lease, sublease, security agreement, or mortgage, and such leases, subleases, security agreements, guarantee agreements, or mortgages as so amended, modified, or supplemented, and any agreement settling or providing for any Claims or otherwise addressing any matters relating to any lease, sublease, security agreement, or mortgage or any amendment, modification, or supplement of or to any lease, sublease, security agreement, or

mortgage) entered into by the Debtors relating to Aircraft Equipment and either (i) set forth in the Plan Supplement or (ii) entered into subsequent to the filing of such Schedule and identified by the Debtors as a Postpetition Aircraft Agreement in a filing with the Bankruptcy Court.

1.182 Postpetition Aircraft Obligation means any obligation arising pursuant to a Postpetition Aircraft Agreement; *provided, however*, that an obligation under a Postpetition Aircraft Agreement only shall be deemed a Postpetition Aircraft Obligation to the extent specifically provided in such Postpetition Aircraft Agreement.

1.183 Preferred Conversion Cap means, with respect to the New Mandatorily Convertible Preferred Stock, the greater of (i) $19.00 and (ii) the VWAP calculated as of the day immediately prior to the Effective Date, less the Preferred Conversion Floor, plus such VWAP.

1.184 Preferred Conversion Floor means, with respect to the New Mandatorily Convertible Preferred Stock, a floor of $10.875 per share.

1.185 Priority Non-Tax Claim means any Claim, other than an Administrative Expense or a Priority Tax Claim, entitled to priority in payment as specified in section 507(a)(3), (4), (5), (6), (7), or (9) of the Bankruptcy Code.

1.186 Priority Tax Claim means any Claim of a governmental unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.187 Proposed Cure means, with respect to a particular executory contract or unexpired lease, the consideration, if any, that the Debtors propose on (i) the notice sent to the Assumption Counterparties listed on Schedule "8.1(a)" or "8.1(d)" of the Plan Supplement or (ii) a Notice of Intent to Assume, in each case as full satisfaction of the Debtors' obligations with respect to such executory contract or unexpired lease pursuant to section 365(b) of the Bankruptcy Code.

1.188 Registered Holder means the registered holders (or bearers, if applicable) of the securities issued pursuant to the Indentures or the Special Facility Revenue Bond Indentures.

1.189 Rejection Bar Date means the deadline for filing proofs of Claim arising from the rejection of an executory contract or unexpired lease, which shall be thirty (30) calendar days after entry of an order of the Bankruptcy Court approving the rejection of such executory contract or unexpired lease.

1.190 Rejection Claim means a Claim under section 502(g) of the Bankruptcy Code.

1.191 **Rejection Counterparty** means a counterparty to an executory contract or unexpired lease to be rejected by the Debtors hereunder.

1.192 **Rejection Effective Date** means the date on which the rejection of an executory contract or unexpired lease hereunder is deemed effective, which date shall not be later than sixty (60) calendar days after the Effective Date, unless otherwise agreed by the applicable Debtor or Reorganized Debtor and the applicable Rejection Counterparty.

1.193 **Reorganized Debtors** means, collectively, each of the Debtors as reorganized as of the Effective Date in accordance herewith and with the Merger Agreement.

1.194 **Retiree Committee** means the official committee of retired employees appointed by the U.S. Trustee in the Chapter 11 Cases pursuant to section 1114 of the Bankruptcy Code.

1.195 **Revenue Generating Agreements** means agreements entered into by the Debtors with other airlines and third-party entities, pursuant to which the Debtors provide services to the other airlines or third-party entities on a fee-for-service basis, including, without limitation, passenger handling, ground handling, aircraft maintenance, engine maintenance, repairs, baggage handling, cargo handling, security, deicing, passenger assistance, skycap, wheelchair, staffing services, call transfer, and ticketing services.

1.196 **Roll-Up Transaction** means (i) a dissolution or winding-up of the corporate existence of a Debtor or a Reorganized Debtor, as applicable, under applicable state law, or a consolidation, merger, contribution of assets, or other transaction in which a Debtor or a Reorganized Debtor, as applicable, merges with or transfers substantially all of its assets and liabilities to another Debtor or Reorganized Debtor or one or more of their Affiliates or (ii) a change in form of a Debtor or a Reorganized Debtor.

1.197 **Schedules** means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtors under section 521 of the Bankruptcy Code, Bankruptcy Rule 1007, and the Official Bankruptcy Forms of the Bankruptcy Rules as such schedules and statements have been or may be supplemented or amended through the Confirmation Date.

1.198 **Search Committee** means the committee established by the Creditors' Committee to identify and designate the directors pursuant to and as provided in Section 1.8(a)(i) of the Merger Agreement, including, for the avoidance of doubt, the members of such committee (and their designated representatives), each member's professionals, and the professionals assisting such committee, in each case as provided in Section 1.8(b) of the Merger Agreement.

1.199 **Section 1113 Agreements** means the AFA Section 1113 Agreement, the ALPA Section 1113 Agreement, the APA Section 1113 Agreement, the APFA Section 1113 Agreement, the TWU American Section 1113 Agreement, and the TWU Eagle Section 1113 Agreement.

1.200 **Secured Aircraft Claim** means a Claim that is secured by a security interest in, or a lien on, any Aircraft Equipment (to the extent the Debtors have not abandoned such Aircraft Equipment with no agreement to re-lease or repurchase such Aircraft Equipment) in which a Debtor's estate has an interest to the extent of the value of the holder of such Claim's interest in the applicable Debtor's estate's interest in such Aircraft Equipment, as agreed to by the holder of such Claim and the Debtors, or as determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code.

1.201 **Secured Claim** means a Claim (i) secured by Collateral, to the extent of the value of such Collateral (A) as set forth in the Plan, (B) as agreed to by the holder of such Claim and the Debtors, or (C) as determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code or (ii) secured by the amount of any valid rights of setoff of the holder thereof under section 553 of the Bankruptcy Code.

1.202 **Servicers** mean the trustees, co-trustees, owner trustees, pass-through trustees, agents, paying agents, distribution agents, subordination agents, registrars, and bond registrars under (i) an agreement relating to the lease or financing of Aircraft Equipment and any and all successors or predecessors thereto and (ii) the $1 billion 7.5% Senior Secured Notes, due March 15, 2016, issued on March 15, 2011.

1.203 **Share Determination Date** means 11:59 p.m. (Eastern Time) on the sixth (6th) trading day prior to the Merger Closing.

1.204 **Shares in Excess of Cap** means, with respect to any Mandatory Conversion Date, a number of shares of New Common Stock equal to the sum of the Mandatory Shares in Excess of Cap and the Optional Shares in Excess of Cap.

1.205 **Single-Dip Full Recovery Amount** means an amount equal to the full amount of all Allowed Single-Dip General Unsecured Claims as of the Commencement Date, plus accrued interest thereon (i) with respect to all Notes and Special Facility Revenue Bonds that constitute Allowed Single-Dip General Unsecured Claims, at the nondefault contract rate from the Commencement Date through the Effective Date (including interest on overdue interest, to the extent provided for in the underlying documents) and (ii) with respect to all other Allowed Single-Dip General Unsecured Claims, at the federal judgment rate as of March 25, 2013 from the Commencement Date through the Effective Date; *provided, however*, that for purposes of this Section only, "Allowed" shall include the amount of Disputed Single-Dip General Unsecured Claims that are estimated

prior to the Effective Date in accordance with Section 7.6 hereof. The Allowed amount of each Single-Dip General Unsecured Claim as of the Commencement Date in clause (i) in the immediately preceding sentence and the postpetition interest rate applicable to each such Claim are set forth on Schedule "3" hereto.

1.206 Single-Dip General Unsecured Claims means all General Unsecured Claims that are not Double-Dip General Unsecured Claims. The AMR Other General Unsecured Claims in AMR Class 4 (including all Claims that would otherwise constitute AMR General Unsecured Guaranteed Claims in AMR Class 3 as to which a Single-Dip Treatment Election has been made in accordance with the procedures set forth in Section 4.3(b) hereof), the American Other General Unsecured Claims in American Class 5 (including all Claims that would otherwise constitute American General Unsecured Guaranteed Claims in American Class 4 as to which a Single-Dip Treatment Election has been made in accordance with the procedures set forth in Section 4.10(b) hereof), and the Eagle General Unsecured Claims in Eagle Class 3 constitute Single-Dip General Unsecured Claims.

1.207 Single-Dip Hurdle Value means an amount equal to (i) the sum of (x) the aggregate Initial Stated Value of the Single-Dip Preferred Allocation, plus (y) the aggregate amount of the increase in Stated Value that will automatically accrue thereon through the Final Mandatory Conversion Date, assuming no Optional Conversion, plus (z) the Single-Dip Non-Preferred Amount (as increased by a hypothetical dividend calculated thereon, through the Final Mandatory Conversion Date, at an annual rate of 12%), all as divided by (ii) 0.965.

1.208 Single-Dip Non-Preferred Amount means an amount equal to the Single-Dip Full Recovery Amount, less the aggregate Initial Stated Value of the Single-Dip Preferred Allocation.

1.209 Single-Dip Preferred Allocation means a number of shares (rounded down to the nearest whole share) of New Mandatorily Convertible Preferred Stock equal to the quotient of (i) the Total Initial Stated Value, less the Double-Dip Full Recovery Amount, divided by (ii) the per share Initial Stated Value.

1.210 Single-Dip Treatment Election means any election by the holder of an Allowed Claim that would otherwise constitute (i) an Allowed AMR General Unsecured Guaranteed Claim in AMR Class 3 to have all or any portion of such Claim treated as a Single-Dip General Unsecured Claim in AMR Class 4 (AMR Other General Unsecured Claims), in accordance with the procedures set forth in Section 4.3(b) hereof or (ii) an Allowed American General Unsecured Guaranteed Claim in American Class 4 to have all or any portion of such Claim treated as a Single-Dip General Unsecured Claim in American Class 5 (American Other General Unsecured Claims), in accordance with the procedures set forth in Section 4.10(b) hereof.

1.211 **Solicitation Procedures** means the procedures relating to the solicitation and tabulation of votes with respect to the Plan.

1.212 **Special Facility Revenue Bond Agreements** means the agreements governing the Debtors' obligations to make payments on Special Facility Revenue Bonds issued to finance or refinance the acquisition or construction of airport and related facilities, improvements, and/or equipment used by the Debtors, as such agreements may have been amended, supplemented, or modified.

1.213 **Special Facility Revenue Bonds** means the respective notes, bonds, or debentures issued under the Special Facility Revenue Bond Indentures.

1.214 **Special Facility Revenue Bond Claim** means any Claim against any of the Debtors arising under or in connection with any Special Facility Revenue Bond Agreement and the respective notes, bonds, or debentures issued thereunder, excluding the fees and expenses of the Indenture Trustees, which reasonable fees and expenses shall be paid pursuant to Section 2.4 hereof; *provided, however*, that the Special Facility Revenue Bond Claims (i) shall not include any such Claims held by any of the Debtors (including any Claims held by the Debtors under the Special Facility Revenue Bond Documents), which Claims shall be Disallowed hereunder, but (ii) shall include the reasonable fees and expenses of the Indenture Trustees for the Special Facility Revenue Bond Indentures listed in Section 1.216(ix) and (x) hereof in the amounts and to the extent such Indenture Trustees were granted Allowed General Unsecured Claims for such fees and expenditures pursuant to that certain order of the Bankruptcy Court, dated April 3, 2013 (ECF No. 7377), as specified in footnote 3 in Schedule "2" hereto.

1.215 **Special Facility Revenue Bond Documents** means all documents associated with a Special Facility Revenue Bond Agreement (including such Special Facility Revenue Bond Agreement) and the corresponding Special Facility Revenue Bonds and Special Facility Revenue Bond Indentures, as such documents may have been amended, supplemented, or modified.

1.216 **Special Facility Revenue Bond Indentures** means (i) the Trust Indenture, dated as of October 1, 1991, between AllianceAirport Authority, Inc., as issuer, and Manufacturers and Traders Trust Company, as successor-in-interest Trustee to Team Bank, as such Indenture may have been amended, supplemented, or modified, pursuant to which $125,745,000 of AllianceAirport Authority Inc. Special Facilities Revenue Bonds, Series 1991, (American Airlines, Inc. Project), due December 1, 2011,were issued; (ii) the Trust Indenture, dated as of March 1, 2007, between AllianceAirport Authority, Inc., as issuer, and Manufacturers and Traders Trust Company, as Trustee, as such Indenture may have been amended, supplemented, or modified, pursuant to which $357,130,000 of AllianceAirport Authority Inc. Special Facilities Revenue Refunding Bonds, Series 2007

(American Airlines, Inc. Project), due December 1, 2029, were issued; (iii) the Trust Indenture, dated as of November 1, 1995, between Dallas-Fort Worth International Airport Facility Improvement Corporation, as issuer, and Manufacturers and Traders Trust Company, as successor-in-interest Trustee to Texas Commerce Bank National Association, as such Indenture may have been amended, supplemented, or modified, pursuant to which $126,240,000 of Dallas-Fort Worth International Airport Facility Improvement Corporation American Airlines, Inc. Revenue Bonds, Series 1995, due November 1, 2014, were issued; (iv) the Trust Indenture, dated as of August 1, 2000, between Dallas-Fort Worth International Airport Facility Improvement Corporation, as issuer, and Manufacturers and Traders Trust Company, as successor-in-interest Trustee to The Chase Manhattan Bank, as such Trust Indenture may have been amended, supplemented, or modified, pursuant to which $104,715,000 of Dallas-Fort Worth International Airport Facility Improvement Corporation American Airlines, Inc. Revenue Refunding Bonds, Series 2000B, due May 1, 2029, were issued; (v) the Trust Indenture, dated as of August 1, 2000, between Dallas-Fort Worth International Airport Facility Improvement Corporation, as issuer, and Manufacturers and Traders Trust Company, as successor-in-interest Trustee to The Chase Manhattan Bank, as such Indenture may have been amended, supplemented, or modified, pursuant to which $100,000,000 of Dallas-Fort Worth International Airport Facility Improvement Corporation American Airlines, Inc. Revenue Refunding Bonds, Series 2000C, due May 1, 2029, were issued; (vi) the Trust Indenture, dated as of April 1, 2002, between Dallas/Fort Worth International Airport Facility Improvement Corporation, as issuer, and Manufacturers and Traders Trust Company, as successor-in-interest Trustee to JPMorgan Chase Bank, as such Indenture may have been amended, supplemented, or modified, pursuant to which $15,100,000 of Dallas-Fort Worth International Airport Facility Improvement Corporation American Airlines, Inc. Revenue Bonds, Series 2002, due November 1, 2036, were issued; (vii) the Trust Indenture, dated as of June 1, 2007, between Dallas/Fort Worth International Airport Facility Improvement Corporation, as issuer, and Manufacturers and Traders Trust Company, as Trustee, as such Indenture may have been amended, supplemented, or modified, pursuant to which $131,735,000 of Dallas/Fort Worth International Airport Facility Improvement Corporation American Airlines, Inc. Revenue Refunding Bonds, Series 2007, due November 1, 2030, were issued; (viii) the Indenture of Trust, dated as of November 1, 1991, between the New Jersey Economic Development Authority, as issuer, and The Bank of New York, as successor-in-interest Trustee to The Bank of New York, as such Indenture may have been amended, supplemented, or modified, pursuant to which $17,855,000 of New Jersey Economic Development Authority Economic Development Bonds (American Airlines, Inc. Project), due November 1, 2031, were issued; (ix) the Indenture of Trust, dated as of August 1, 1990, between New York City Industrial Development Agency, as issuer, and The Bank of New York Mellon, as successor-in-interest Trustee to the United States Trust Company of New York, as such Indenture may have been amended, supplemented, or modified, pursuant to

which $83,930,000 of New York City Industrial Development Agency Special Facility Revenue Bonds, Series 1990 (1990 American Airlines, Inc. Project), due July 1, 2019 and July 1, 2020, were issued; (x) the Indenture of Trust, dated as of August 1, 1994, between New York City Industrial Development Agency, as issuer, and The Bank of New York Mellon, as successor-in-interest Trustee to United States Trust Company of New York, as such Indenture may have been amended, supplemented, or modified, pursuant to which $83,085,000 of New York City Industrial Development Agency Special Facility Revenue Bonds, Series 1994 (1994 American Airlines, Inc. Project), due August 1, 2024, were issued; (xi) the Amended and Restated Master Indenture of Trust, dated as of November 1, 2005, between New York City Industrial Development Agency, as issuer, and The Bank of New York Mellon, as successor-in-interest Trustee to The Bank of New York, as such Indenture may have been amended, supplemented, or modified, pursuant to which up to approximately $3 billion of New York City Industrial Development Agency Special Facility Revenue Bonds, Series 2002A, 2002B, and 2005 (American Airlines, Inc. John F. Kennedy International Airport Project), due on varying dates but no later than August 1, 2031, were authorized to be issued; (xii) the Trust Indenture, dated as of January 1, 2002, between Regional Airports Improvement Corporation, as issuer, and The Bank of New York Mellon Trust Company, N.A., as successor-in-interest Trustee to BNY Western Trust Company, as such Indenture may have been amended, supplemented, or modified, pursuant to which $297,075,000 of Regional Airports Improvement Corporation Facilities Sublease Revenue Bonds, American Airlines, Inc. Terminal 4 Project (Los Angeles International Airport), Series 2002, due on varying dates but no later than December 1, 2024, were issued; (xiii) the Indenture of Trust, dated as of June 1, 2007, between City of Chicago, as issuer, and The Bank of New York Mellon Trust Company, N.A., as successor-in-interest Trustee to The Bank of New York Trust Company, N.A., as such Indenture may have been amended, supplemented, or modified, pursuant to which $108,675,000 of Chicago O'Hare International Airport Special Facility Revenue Refunding Bonds, Series 2007 (American Airlines, Inc. Project), due on December 1, 2030, were issued; (xiv) the Trust Agreement, dated as of December 1, 1985, between Puerto Rico Industrial, Medical, Higher Education and Environmental Pollution Control Facilities Financing Authority, as issuer, and U.S. Bank National Association, as successor-in-interest Trustee to National Westminster Bank USA, as such Trust Agreement may have been amended, supplemented, or modified, pursuant to which $36,160,000 of Special Facility Revenue Bonds, 1985 Series A (American Airlines, Inc. Project), due December 1, 2025, were issued; (xv) the Trust Agreement, dated as of June 1, 1993, between Puerto Rico Ports Authority, as issuer, and Law Debenture Trust Company of New York, as successor-in-interest Trustee to The Chase Manhattan Bank (National Association), as such Trust Agreement may have been amended, supplemented, or modified, pursuant to which $39,810,000 of Special Facilities Revenue Bonds, 1993 Series A (American Airlines, Inc. Project), due June 1, 2023, were issued; (xvi) the Trust Agreement, dated as of May 1, 1996, between

Puerto Rico Ports Authority, as issuer, and Law Debenture Trust Company of New York, as successor-in-interest Trustee to The Chase Manhattan Bank (National Association), as such Trust Agreement may have been amended, supplemented, or modified, pursuant to which $115,600,000 of Special Facilities Revenue Bonds, 1996 Series A (American Airlines, Inc. Project), due June 1, 2026, were issued; (xvii) the Bond Indenture, dated as of May 1, 1963, between the Trustees of the Tulsa Municipal Airport Trust, as issuer, and The Bank of New York Mellon, as successor-in-interest Trustee to Morgan Guarantee Trust Company of New York, as such Indenture may have been amended, supplemented, or modified, including by (A) the Eighth Supplemental Bond Indenture, dated as of November 1, 1992, between Trustees of the Tulsa Municipal Airport Trust, as issuer, and The Bank of New York Mellon Trust Company, N.A., as successor-in-interest Trustee to The Bank of New York, as such Indenture may have been amended, supplemented, or modified, pursuant to which $27,500,000 of Trustees of the Tulsa Municipal Airport Trust Revenue Bonds, Series 1992, due December 1, 2011, were issued; (B) the Ninth Supplemental Bond Indenture, dated as of November 1, 1995, between Trustees of the Tulsa Municipal Airport Trust, as issuer, and The Bank of New York Mellon, as successor-in-interest Trustee to The Bank of New York, as such Indenture may have been amended, supplemented, or modified, pursuant to which $97,710,000 of Trustees of the Tulsa Municipal Airport Trust Revenue Bonds, Series 1995, due June 1, 2020, were issued; (C) the Tenth Supplemental Bond Indenture, dated as of October 1, 2000, between Trustees of the Tulsa Municipal Airport Trust, as issuer, and The Bank of New York Mellon, as successor-in-interest Trustee to The Bank of New York, as such Indenture may have been amended, supplemented, or modified, pursuant to which $175,355,000 of Trustees of the Tulsa Municipal Airport Trust Revenue Bonds, Refunding Series 2000A and Refunding Series 2000B, due June 1, 2035, were issued; and (D) the Eleventh Supplemental Bond Indenture, dated as of April 1, 2001, between Trustees of the Tulsa Municipal Airport Trust, as issuer, and The Bank of New York Mellon Trust Company, N.A., as successor-in-interest Trustee to The Bank of New York, as such Indenture may have been amended, supplemented, or modified, pursuant to which $152,705,000 of Tulsa Municipal Airport Trust Revenue Bonds, Refunding Series 2001A and Refunding Series 2001B, due December 1, 2035, were issued; and for the avoidance of doubt, the Tripartite Agreement, dated as of November 1, 1995, among the Trustees of the Tulsa Municipal Airport Trust, The Bank of New York Mellon, as successor-in-interest to The Bank of New York, and BOKF N.A., as successor-in-interest to Bank of Oklahoma, N.A.; and (xviii) the DFW 1.5X Special Facility Revenue Bond Indentures.

1.217 Stated Value has the meaning given to such term in the Certificate of Designations.

1.218 Sub-Plan means one or more sub-plans of reorganization described in Article VI hereof with respect to any individual Debtor.

1.219 **Support and Settlement Agreement** means that certain Support and Settlement Agreement, as amended, dated February 13, 2013, by and between the Debtors and certain creditors of the Debtors, including certain members of the Ad Hoc Committee.

1.220 **Surety Bond** means a surety bond issued for the benefit of any of the Debtors prior to the Commencement Date, in each case including any agreement between any of the Debtors and the relevant issuer that requires the Debtors to indemnify the issuer with respect to such surety bond.

1.221 **Tax Code** means title 26 of the United States Code, as amended from time to time.

1.222 **Total Initial Stated Value** means an amount equal to the Total Preferred Amount divided by 1.01302.

1.223 **Total Preferred Amount** means an amount equal to (i) the New Common Stock Allocation, less the Initial Old Equity Allocation, less (ii) the number of shares of New Common Stock that would be issued pursuant to the Labor Common Stock Allocation if no shares of New Common Stock were issued pursuant to the Market-Based Old Equity Allocation (which number of shares shall be equal to 23.6% of the amount of clause (i)), all as multiplied by (iii) the Preferred Conversion Floor.

1.224 **Transfer/Transferable** means, with respect to any security, or the right to receive a security or participate in any offering of any security, the sale, transfer, pledge, hypothecation, encumbrance, assignment, constructive sale, participation in, or other disposition of such security or the Beneficial Ownership (as defined in this Section 1.224) thereof, the offer to make such a sale, transfer, constructive sale, or other disposition, and each option (including any option within the meaning of Section 382 of the Tax Code), agreement, arrangement, or understanding, whether or not in writing and whether or not directly or indirectly, to effect any of the foregoing; *provided, however*, that, for the avoidance of doubt, a Transfer shall not include the establishment or settlement of any derivative or similar position or security that does not constitute tax ownership or an option to acquire tax ownership, for purposes of Section 382 of the Tax Code, of the claim, equity interest, or the New Common Stock that may be received thereon. The term "constructive sale" for purposes of this definition means a short sale with respect to such security, entering into or acquiring an offsetting derivative contract with respect to such security, or entering into any transaction that has substantially the same effect as any of the foregoing. The term "Beneficially Owned" or "Beneficial Ownership" as used in this definition shall include, with respect to any security, the beneficial ownership of such security by a Person and any direct or indirect subsidiary of such Person and the ownership of such security as determined for U.S. federal income tax purposes.

1.225 **Treatment Objection** means an objection to the Debtors' proposed assumption or rejection of an executory contract or unexpired lease hereunder (including an objection to the proposed Assumption Effective Date or Rejection Effective Date, the Proposed Cure, and/or any proposed assignment, but not including an objection to any Rejection Claim) that is filed with the Bankruptcy Court and served by the applicable Treatment Objection Deadline.

1.226 **Treatment Objection Deadline** means the deadline for filing and serving a Treatment Objection, which shall be 4:00 p.m. (Eastern Time) on (i) with respect to an executory contract or unexpired lease listed on Schedule "8.1" of the Plan Supplement, the fifteenth (15th) calendar day after such Schedule is filed with the Bankruptcy Court and notice thereof is mailed; (ii) with respect to an executory contract or unexpired lease the proposed treatment of which has been altered by an amendment or supplement to Schedule "8.1" of the Plan Supplement, the fifteenth (15th) calendar day after such amended or supplemental Schedule is filed with the Bankruptcy Court and notice thereof is served; (iii) with respect to an executory contract or unexpired lease for which a Notice of Intent to Assume or a Notice of Intent to Reject is filed, the fifteenth (15th) calendar day after such Notice of Intent to Assume or Notice of Intent to Reject is filed with the Bankruptcy Court and notice thereof is served; (iv) with respect to any executory contract or unexpired lease that is listed on Schedule "8.1"of the Plan Supplement but for which no Notice of Intent to Assume or Notice of Intent to Reject is filed by the Deferred Agreement Deadline, the fifteenth (15th) calendar day after the Deferred Agreement Deadline; and (v) with respect to any other executory contract or unexpired lease, including any executory contract or unexpired lease to be assumed or rejected by category pursuant to Sections 8.3, 8.4, or 8.5 hereof (without being listed on Schedule "8.1" of the Plan Supplement), the deadline for objections to confirmation of the Plan. Notwithstanding the foregoing, with respect to any Special Facility Revenue Bond Agreement to be assumed or rejected pursuant to Article VIII hereof, the deadline for filing and serving a Treatment Objection shall be 4:00 p.m. (Eastern Time) on (a) the twenty-first (21st) calendar day after the applicable Schedule is filed with the Bankruptcy Court and notice thereof is served; (b) the twenty-first (21st) calendar day after the applicable amended or supplemental Schedule is filed with the Bankruptcy Court and notice thereof is served; or (c) the sixth (6th) calendar day after the deadline for objections to confirmation of the Plan, as applicable.

1.227 **Triple-Dip General Unsecured Claims** means General Unsecured Claims based on obligations of American to guarantee guaranteed obligations of AMR.

1.228 **TWU** means the Transport Workers Union of America.

1.229 **TWU American Claim** means the right to receive 4.8% of the Creditor New Common Stock Allocation granted to the TWU on behalf of the transport workers represented by the TWU pursuant to the order of the

Bankruptcy Court entered on September 12, 2012 (ECF No. 4413), in satisfaction and full extinguishment of any and all claims, interests, causes, or demands that the TWU has or might arguably have, on behalf of itself and the transport workers represented by the TWU, as provided by such order; *provided, however*, that the TWU American Claim shall not include Claims asserted in any proofs of Claim filed in the Chapter 11 Cases by or on behalf of TWU-represented employees, which Claims, if Allowed, shall be classified and treated hereunder in accordance with any such allowance. For purposes of voting hereunder, the entire TWU American Claim shall be voted by the TWU on behalf of the transport workers represented by the TWU.

1.230 TWU American Section 1113 Agreement means that certain (i) American Airlines Settlement Proposal to the Transport Workers Union re: Mechanic & Related, dated July 10, 2012, (ii) American Airlines Settlement Proposal to the Transport Workers Union re: Stores, dated July 10, 2012, (iii) Letter Agreement on Settlement Consideration and Bankruptcy Protections, dated August 22, 2012, between American and the TWU; and (iv) Letters of Memorandum on certain additional provisions between American and the TWU, each as approved pursuant to the order of the Bankruptcy Court entered on September 12, 2012 (ECF No. 4413).

1.231 TWU Eagle Claim means the American Other General Unsecured Claim in the aggregate amount of $6.105 million held by the Transport Workers Union of America that was Allowed pursuant to the (i) order of the Bankruptcy Court entered on December 21, 2012 (Dispatchers) (ECF No. 5841) and (ii) order of the Bankruptcy Court entered on December 21, 2012 (Fleet Service Clerks, Aircraft Maintenance and Related, and Ground School Instructors) (ECF No. 5847), which Claim is not subject to reconsideration under section 502 of the Bankruptcy Code or otherwise.

1.232 TWU Eagle Section 1113 Agreements means (i) that certain (a) tentative agreement with the TWU Operations Coordinators and Flight Dispatchers ratified by the Dispatchers on December 17, 2012, (b) Letter of Agreement on Settlement Consideration and Bankruptcy Protections, (c) Me-Too Provision Letter, and (d) Profit Sharing Plan Letter, as approved pursuant to the order of the Bankruptcy Court entered on December 21, 2012 (ECF No. 5841) and (ii) that certain (a) tentative agreement with the TWU Fleet Service Clerks ratified by the Fleet Service Clerks on August 24, 2012, (b) tentative agreement with the TWU Aircraft Maintenance Technicians, Inspectors, Ground Support Technicians, Aircraft Cleaners and Inventory Control Specialists ratified by the Aircraft Maintenance and Related on October 2, 2012, (c) tentative agreement with the TWU Ground School Instructors ratified by the Ground School Instructors on October 19, 2012, (d) Letter of Agreement on Settlement Consideration and Bankruptcy Protections, and (e) Me-Too Provision Letters, as approved pursuant to the order of the Bankruptcy Court entered on December 21, 2012 (ECF No. 5847).

1.233 **Union** means each of the APA, the ALPA, the APFA, the AFA, or the TWU.

1.234 **Unsecured Special Facility Revenue Bond Claim** means a Special Facility Revenue Bond Claim that is a General Unsecured Claim.

1.235 **US Airways** means US Airways Group, Inc., a Delaware corporation.

1.236 **US Airways 7% Convertible Notes** means the outstanding US Airways 7% Senior Convertible Notes due 2020.

1.237 **US Airways 7.25% Convertible Notes** means the outstanding US Airways 7.25% Convertible Senior Notes due 2014.

1.238 **US Airways Common Stock** means the shares of common stock, par value $0.01 per share, of US Airways.

1.239 **US Airways Disclosure Letter** means that certain disclosure letter by US Airways that was delivered to AMR pursuant to, and forming part of, the Merger Agreement.

1.240 **US Airways Equity Awards** means the US Airways Stock-Settled RSUs and the US Airways Stock-Settled SARs.

1.241 **US Airways Fully Diluted Shares** means, as of a given time, a number of shares of US Airways Common Stock equal to the aggregate number of shares of US Airways Common Stock that would be deemed to be outstanding as of such time for purposes of calculating "diluted earnings per share" under GAAP using the treasury stock method (calculated for the purposes hereof as though all US Airways Options and US Airways Equity Awards were vested notwithstanding the vesting requirements of any agreements related thereto and using the as-if converted method with respect to outstanding convertible securities), except that the average market price used in such calculation shall equal the average of the daily closing price of US Airways Common Stock on the New York Stock Exchange for each of the twenty (20) trading days ended on (and including) the Share Determination Date. Solely for illustrative purposes, if the Share Determination Date were February 11, 2013, the US Airways Fully Diluted Shares would equal 208,570,577 shares of New Common Stock. US Airways shall deliver to AMR on the Business Day immediately following the Share Determination Date a schedule that sets forth, as of the Share Determination Date, (i) the number of outstanding shares of US Airways Common Stock, (ii) a ledger of the outstanding US Airways Options and US Airways Equity Awards, which ledger includes the applicable exercise price, (iii) the principal amount of the outstanding US Airways 7.25% Convertible Notes and outstanding US Airways 7% Convertible Notes, including the applicable conversion price, (iv) a ledger of

any outstanding securities or obligations convertible or exchangeable into or exercisable for US Airways Common Stock, which ledger includes the applicable exercise price or conversion price, and (v) US Airways's determination of US Airways Fully Diluted Shares (for the avoidance of doubt, each of the foregoing items in clauses (i) through (iv) in this Section 1.241 shall be included in the determination of US Airways Fully Diluted Shares).

1.242 US Airways Options means stock options to purchase shares of US Airways Common Stock.

1.243 US Airways Stock-Settled RSUs means stock-settled restricted stock units that are settled in shares of US Airways Common Stock.

1.244 US Airways Stock-Settled SARs means stock-settled stock appreciation rights that are settled in shares of US Airways Common Stock.

1.245 U.S. Trustee means the United States Trustee for the Southern District of New York.

1.246 Value Hurdle means an amount equal to the sum of the Double-Dip Hurdle Value, the Single-Dip Hurdle Value, and the Labor Claims Hurdle Value.

1.247 Value Hurdle Price means an amount equal to (i) the Value Hurdle divided by (ii) the difference between the New Common Stock Allocation and the Initial Old Equity Allocation.

1.248 Voting Agent means GCG, Inc., the Debtors' voting agent.

1.249 Voting Deadline means the date set by the Bankruptcy Court by which all completed Ballots must be received.

1.250 VWAP means, with respect to any date, the volume weighted average price of New Common Stock for the five (5) trading days ending on the last trading day immediately prior to such date; *provided*, *however*, VWAP (i) as of the day immediately prior to the Effective Date shall be calculated as the volume weighted average price of US Airways Common Stock for the five (5) trading days ending on the last trading day that is at least two (2) days immediately prior to the Effective Date and (ii) as of the Effective Date and until the New Common Stock is trading on a nationally recognized stock exchange shall be calculated as the volume weighted average price of US Airways Common Stock for the five (5) trading days ending on the last trading day immediately prior to the Effective Date. The VWAP shall be calculated by using the "VWAP" function on a Bloomberg terminal by typing either "LCC" or the stock symbol for New Common Stock, as applicable, and then pressing the "EQUITY" key, typing "VWAP," and then pressing the "GO" key. Once directed to the VWAP screen,

the beginning time and date shall be entered as 9:30 a.m. (Eastern Time) on the date five (5) trading days prior to the previous trading day and the ending time and date shall be entered as of 4:30 p.m.(Eastern Time) on the last trading date, and then pressing the "GO" key. For the avoidance of doubt, the "Bloomberg" calculation shall be used for purposes of calculating VWAP.

1.251 Workers' Compensation Plan means each of the Debtors' written contracts, agreements, agreements of indemnity, qualified self-insurance workers' compensation bonds, policies, programs, and plans for workers' compensation and workers' compensation insurance entered into prior to the Commencement Date.

INTERPRETATION; APPLICATION OF DEFINITIONS AND RULES OF CONSTRUCTION.

The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained therein. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof.

It is the intention of the Plan that (i) all Allowed General Unsecured Claims, Allowed American Union Claims, and Allowed AMR Equity Interests shall be fully settled and satisfied only with shares of New Mandatorily Convertible Preferred Stock and shares of New Common Stock, as applicable; *provided, however*, that Convenience Class Claims may be satisfied with up to $25 million in Cash, and (ii) the aggregate number of shares of New Common Stock that are issuable pursuant to the Plan, including those that are or may become issuable upon conversion of shares of the New Mandatorily Convertible Preferred Stock issued hereunder, shall not exceed the Maximum Plan Shares. The Plan shall be interpreted and administered consistent with this intention.

ARTICLE II.

ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

2.1 Administrative Expenses

(a) ***AMR Debtors.*** Except to the extent that New AAG and a holder of an Allowed Administrative Expense against any of the AMR Debtors agree to a different treatment of such Administrative Expense, on the Effective Date, or as soon thereafter as reasonably practicable, each holder of an Allowed Administrative Expense shall receive, in full satisfaction of such Allowed Administrative Expense, an amount in Cash equal to the Allowed amount of such Administrative Expense; *provided, however*, that Allowed Administrative Expenses against any of the AMR Debtors representing liabilities

incurred in the ordinary course by the AMR Debtors, as debtors in possession, or liabilities arising under loans or advances to or other obligations incurred by any of the AMR Debtors, as debtors in possession, whether or not incurred in the ordinary course, shall be paid by New AAG in the ordinary course, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

(b) ***American Debtors.*** Except to the extent that New AAG and a holder of an Allowed Administrative Expense against any of the American Debtors agree to a different treatment of such Administrative Expense, on the Effective Date, or as soon thereafter as reasonably practicable, each holder of an Allowed Administrative Expense shall receive, in full satisfaction of such Allowed Administrative Expense, an amount in Cash equal to the Allowed amount of such Administrative Expense; *provided, however*, that Allowed Administrative Expenses against any of the American Debtors representing liabilities incurred in the ordinary course by any of the American Debtors, as debtors in possession, or liabilities arising under loans or advances to or other obligations incurred by any of the American Debtors, as debtors in possession, whether or not incurred in the ordinary course, shall be paid by New AAG in the ordinary course, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

(c) ***Eagle Debtors.*** Except to the extent that New AAG and a holder of an Allowed Administrative Expense against any of the Eagle Debtors agree to a different treatment of such Administrative Expense, on the Effective Date, or as soon thereafter as reasonably practicable, each holder of an Allowed Administrative Expense shall receive, in full satisfaction of such Allowed Administrative Expense, an amount in Cash equal to the Allowed amount of such Administrative Expense; *provided, however*, that Allowed Administrative Expenses against any of the Eagle Debtors representing liabilities incurred in the ordinary course by any of the Eagle Debtors, as debtors in possession, or liabilities arising under loans or advances to or other obligations incurred by any of the Eagle Debtors, as debtors in possession, whether or not incurred in the ordinary course, shall be paid by New AAG in the ordinary course, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

2.2 **Compensation and Reimbursement Claims.** All Entities seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 327, 328, 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code shall (i) file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is sixty (60) days after the Confirmation Date or as may be otherwise provided in the Confirmation Order and (ii) be paid in full in such amounts as are allowed by the Bankruptcy Court (A) on the date on which the order of the Bankruptcy Court relating to any such Administrative Expense is entered, or as soon thereafter as reasonably practicable, or (B) upon such other terms as may be

mutually agreed upon between the holder of such an Administrative Expense and the Debtors, or, if on or after the Effective Date, New AAG. The Debtors and the Reorganized Debtors, as applicable, are authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Confirmation Date and until the Effective Date in the ordinary course and without the need for Bankruptcy Court approval.

2.3 Priority Tax Claims

(a) ***AMR Debtors.*** Except to the extent that New AAG and a holder of an Allowed Priority Tax Claim against any of the AMR Debtors agree to a different treatment of such Claim, each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the AMR Debtors, (i) Cash in an amount equal to such Allowed Priority Tax Claim on the Effective Date, or as soon thereafter as reasonably practicable, as to any Allowed Priority Tax Claim or (ii) Cash, in equal semi-annual installments commencing on the first (1st) Business Day following the Effective Date (or if later, the first (1st) Distribution Date after such Claim becomes an Allowed Priority Tax Claim) and continuing over a period not exceeding five (5) years from and after the Commencement Date, together with interest accrued thereon at the applicable nonbankruptcy rate, which as to any Allowed Priority Tax Claim of the Internal Revenue Service on behalf of the United States shall be the applicable rate specified by the Tax Code, as of the Confirmation Date, applied pursuant to section 511 of the Bankruptcy Code, subject to the sole option of the Reorganized Debtors to prepay the entire amount of the Allowed Priority Tax Claim. All Allowed Priority Tax Claims against any of the AMR Debtors that are not due and payable on or before the Effective Date shall be paid in the ordinary course as such obligations become due.

(b) ***American Debtors.*** Except to the extent that New AAG and a holder of an Allowed Priority Tax Claim against any of the American Debtors agree to a different treatment of such Claim, each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the American Debtors, (i) Cash in an amount equal to such Allowed Priority Tax Claim on the Effective Date, or as soon thereafter as reasonably practicable, as to any Allowed Priority Tax Claim or (ii) Cash, in equal semi-annual installments commencing on the first (1st) Business Day following the Effective Date (or if later, the first (1st) Distribution Date after such Claim becomes an Allowed Priority Tax Claim) and continuing over a period not exceeding five (5) years from and after the Commencement Date, together with interest accrued thereon at the applicable nonbankruptcy rate, which as to any Allowed Priority Tax Claim of the Internal Revenue Service on behalf of the United States shall be the applicable rate specified by the Tax Code, as of the Confirmation Date, applied pursuant to section 511 of the Bankruptcy Code, subject to the sole option of the Reorganized Debtors to prepay the entire amount of the Allowed Priority Tax Claim. All Allowed Priority Tax Claims against any of the American Debtors that are not due and payable on or before the Effective Date shall be paid in the ordinary course as such obligations become due.

(c) ***Eagle Debtors.*** Except to the extent that New AAG and a holder of an Allowed Priority Tax Claim against any of the Eagle Debtors agree to a different treatment of such Claim, each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the Eagle Debtors, (i) Cash in an amount equal to such Allowed Priority Tax Claim on the Effective Date, or as soon thereafter as reasonably practicable, as to any Allowed Priority Tax Claim or (ii) Cash, in equal semi-annual installments commencing on the first (1st) Business Day following the Effective Date (or if later, the first (1st) Distribution Date after such Claim becomes an Allowed Priority Tax Claim) and continuing over a period not exceeding five (5) years from and after the Commencement Date, together with interest accrued thereon at the applicable nonbankruptcy rate, which as to any Allowed Priority Tax Claim of the Internal Revenue Service on behalf of the United States shall be the applicable rate specified by the Tax Code, as of the Confirmation Date, applied pursuant to section 511 of the Bankruptcy Code, subject to the sole option of the Reorganized Debtors to prepay the entire amount of the Allowed Priority Tax Claim. All Allowed Priority Tax Claims against any of the Eagle Debtors that are not due and payable on or before the Effective Date shall be paid in the ordinary course as such obligations become due.

2.4 Special Provisions Regarding Fees and Expenses of Indenture Trustees. Except as may be otherwise provided in a Final Order of the Bankruptcy Court previously entered in the Chapter 11 Cases or as set forth in Schedule "2" hereto, the reasonable prepetition and postpetition fees and expenses of each of the Indenture Trustees, to the extent payable by any of the Debtors pursuant to the terms of the applicable Bond Documents (which includes the reasonable fees and expenses of any counsel and/or other professionals retained by the Indenture Trustees in connection with such duties) shall be deemed Allowed Administrative Expenses and shall be paid in Cash on the Effective Date, or as soon thereafter as reasonably practicable, upon submission of documented invoices (in customary form) to the Debtors and the Creditors' Committee, subject to a review for reasonableness by the Debtors and the Creditors' Committee, without the necessity of making application to the Bankruptcy Court. The Indenture Trustees shall provide the Debtors and the Creditors' Committee with an estimate of such fees and expenses no later than thirty (30) days prior to the Confirmation Hearing. Notwithstanding the foregoing, under no circumstances shall any such fees and expenses (including counsel and/or other professionals) include fees and expenses associated with Avoidance Actions. Subject to Section 6.14 hereof, each Indenture Trustee's charging lien, if any, shall be discharged solely upon payment in full of the respective fees and expenses of the Indenture Trustees and termination of the respective Indenture Trustee's duties. Nothing herein shall be deemed to impair, waive, or discharge the Indenture Trustees' respective charging liens, if any, for any fees and expenses not paid by the Debtors or the Reorganized Debtors, as applicable. In addition, upon submission of documented invoices (in customary form) to New AAG and without the necessity of making application to the Bankruptcy Court, New AAG shall pay the reasonable fees and expenses of the Indenture Trustees in connection with making distributions hereunder. Any fees and expenses owing under the Support and Settlement

Agreement shall be deemed Allowed Administrative Expenses and shall be paid in Cash on the Effective Date or as otherwise provided in the Support and Settlement Agreement to the extent provided in any order of the Bankruptcy Court.

ARTICLE III.

CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

The following table designates the Classes of Claims against and Equity Interests in the Debtors and specifies which of those Classes are (i) impaired or unimpaired by the Plan, (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, and (iii) deemed to reject the Plan:

Class	Designation	Impairment	Entitled to Vote
AMR Class 1	AMR Secured Claims	Unimpaired	No (deemed to accept)
AMR Class 2	AMR Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
AMR Class 3	AMR General Unsecured Guaranteed Claims	Impaired	Yes
AMR Class 4	AMR Other General Unsecured Claims	Impaired	Yes
AMR Class 5	AMR Equity Interests	Impaired	Yes
AMR Class 6	AMR Other Equity Interests	Unimpaired	No (deemed to accept)
American Class 1	American Secured Aircraft Claims	Unimpaired	No (deemed to accept)
American Class 2	American Other Secured Claims	Unimpaired	No (deemed to accept)
American Class 3	American Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
American Class 4	American General Unsecured Guaranteed Claims	Impaired	Yes
American Class 5	American Other General Unsecured Claims	Impaired	Yes
American Class 6	American Union Claims	Impaired	Yes
American Class 7	American Convenience Class Claims	Impaired	Yes
American Class 8	American Equity Interests	Unimpaired	No (deemed to accept)
Eagle Class 1	Eagle Secured Claims	Unimpaired	No (deemed to accept)
Eagle Class 2	Eagle Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
Eagle Class 3	Eagle General Unsecured Claims	Impaired	Yes
Eagle Class 4	Eagle Convenience Class Claims	Impaired	Yes
Eagle Class 5	Eagle Equity Interests	Unimpaired	No (deemed to accept)

For convenience of identification, the Plan classifies the Allowed Claims in AMR Class 1, American Class 1, American Class 2, and Eagle Class 1 as single Classes. These Classes are actually a group of subclasses, depending on the underlying property securing such Allowed Claims, and each subclass is treated hereunder as a distinct Class for voting and distribution purposes.

ARTICLE IV.

TREATMENT OF CLAIMS AND EQUITY INTERESTS

4.1 AMR Class 1 – AMR Secured Claims. Except to the extent that a holder of an Allowed Secured Claim against any of the AMR Debtors agrees to a different treatment of such Claim, each holder of an Allowed Secured Claim against any of the AMR Debtors shall receive, at the option of the AMR Debtors, and in full satisfaction of such Claim, either (i) Cash in an amount equal to one hundred percent (100%) of the unpaid amount of such Allowed Secured Claim, (ii) the proceeds of the sale or disposition of the Collateral securing such Allowed Secured Claim, net of the costs of disposition of such Collateral, (iii) the Collateral securing such Allowed Secured Claim, (iv) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the holder of such Allowed Secured Claim is entitled, or (v) such other distribution as necessary to satisfy the requirements of section 1124 of the Bankruptcy Code. In the event a Secured Claim against any of the AMR Debtors is treated under clause (i) or (ii) of this Section, the liens securing such Secured Claim shall be deemed released immediately upon payment of the Cash or proceeds as provided in such clauses. Any distributions made pursuant to this Section shall be made on or as soon as reasonably practicable after the first (1st) Distribution Date occurring after the latest of (i) the Effective Date, (ii) at least twenty (20) calendar days after the date such Secured Claim becomes Allowed, and (iii) the date for payment provided by any agreement between the applicable AMR Debtor(s) and the holder of such Secured Claim.

4.2 AMR Class 2 – AMR Priority Non-Tax Claims. Except to the extent that a holder of an Allowed Priority Non-Tax Claim against any of the AMR Debtors agrees to a different treatment of such Claim, each holder of an Allowed Priority Non-Tax Claim against any of the AMR Debtors shall receive, in full satisfaction of such Claim, an amount in Cash equal to the Allowed amount of such Claim on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date such Priority Non-Tax Claim becomes Allowed, and (iii) the date for payment provided by any agreement between the applicable AMR Debtor(s) and the holder of such Priority Non-Tax Claim.

4.3 AMR Class 3 – AMR General Unsecured Guaranteed Claims

(a) Each holder of an Allowed AMR General Unsecured Guaranteed Claim shall receive on the Initial Distribution Date (for AMR General Unsecured Guaranteed Claims that are Allowed as of the Effective Date), a number of shares of New Mandatorily Convertible Preferred Stock equal to the quotient of such Claim's pro rata share of the Double-Dip Full Recovery Amount divided by the per share Initial Stated Value. Each holder of an Allowed AMR General Unsecured Guaranteed Claim shall receive a distribution hereunder only on account of its Allowed AMR General Unsecured Guaranteed Claim as set forth in this Section 4.3 and shall not receive any distribution

hereunder on account of such holder's Claim against American for American's guarantee of such AMR General Unsecured Guaranteed Claim.

(b) At any time prior to the fifth (5th) Business Day before the Effective Date, a holder of an Allowed AMR General Unsecured Guaranteed Claim may irrevocably elect to have all or any portion of its Allowed AMR General Unsecured Guaranteed Claim treated as an Allowed AMR Other General Unsecured Claim in AMR Class 4. Such election shall be made on the form included in the Plan Supplement and, to be effective, must be actually received by the attorneys for the Debtors prior to such fifth (5th) Business Day. Any election not complying with the foregoing shall have no force or effect.

(c) The AMR Note Claims shall be Allowed as AMR General Unsecured Guaranteed Claims in amounts equal to (i) the respective prepetition amounts listed next to each Indenture set forth on Schedule "1" hereto plus (ii) interest (including interest on overdue interest) at the respective rates set forth on Schedule "1" hereto from the Commencement Date through the Effective Date (the "**AMR Fixed Allowed Guaranteed Note Claims**"). The AMR Fixed Allowed Guaranteed Note Claims shall override and supersede any individual Claims filed by Registered Holders or beneficial owners of debt securities with respect to the AMR Note Claims. Distributions to holders of AMR Fixed Allowed Guaranteed Note Claims shall be made in accordance with Section 5.2 hereof. As provided in Section 5.15 hereof, any holder of an AMR Fixed Allowed Guaranteed Note Claim with respect to a Note that is a Convertible Note may irrevocably elect to have such AMR Fixed Allowed Guaranteed Note Claim treated as an Allowed AMR Equity Interest in AMR Class 5 (subject to the terms and provisions of the Revised Final Order Pursuant to 11 U.S.C. §§ 105(a) and 362 Establishing Notification Procedures for Substantial Claimholders and Equity Security Holders and Approving Restrictions on Certain Transfers of Interests in the Debtors' Estates, entered by the Bankruptcy Court on April 11, 2013 (ECF No. 7591)).

4.4 <u>AMR Class 4 – AMR Other General Unsecured Claims</u>. Each holder of an Allowed AMR Other General Unsecured Claim as of the Effective Date shall receive (i) on or as soon as reasonably practicable after the Initial Distribution Date, its Initial Pro Rata Share of a number of shares of New Mandatorily Convertible Preferred Stock equal to the quotient of (x) the Total Initial Stated Value, less the Double-Dip Full Recovery Amount, divided by (y) the per share Initial Stated Value, and (ii) as soon as reasonably practicable after the Final Mandatory Conversion Date, its Initial Pro Rata Share of a number of shares of New Common Stock equal to (I) the Creditor New Common Stock Allocation, less (II) the number of shares of New Common Stock issued upon conversion of all of the shares of New Mandatorily Convertible Preferred Stock, less (III) the Labor Common Stock Allocation. In connection with each Interim True-Up Distribution, each holder of an Allowed AMR Other General Unsecured Claim shall receive its Interim Pro Rata Share of the distribution allocated to Allowed Single-Dip General Unsecured Claims pursuant to Section 7.4(a) hereof. In connection with the Final True-Up Distribution, each holder of an Allowed AMR Other General Unsecured

Claim shall receive its Final Pro Rata Share of the distribution allocated to Allowed Single-Dip General Unsecured Claims pursuant to Section 7.4(b) hereof. The right of a holder of an Allowed AMR Other General Unsecured Claim to receive any distribution on a Final Mandatory Conversion Date, an Interim Distribution Date, or a Final Distribution Date shall not be Transferable; *provided*, *however*, that this sentence shall not apply to any shares of New Mandatorily Convertible Preferred Stock or the right to receive shares of New Common Stock pursuant to the conversion thereof.

4.5 AMR Class 5 – AMR Equity Interests. Each holder of an Allowed AMR Equity Interest shall receive its pro rata share (i) on the Effective Date, or as soon as thereafter as reasonably practicable, of the Initial Old Equity Allocation and (ii) on each Mandatory Conversion Date, or as soon thereafter as reasonably practicable, of the Market-Based Old Equity Allocation. In connection with each Interim True-Up Distribution, each holder of an Allowed AMR Equity Interest shall receive its pro rata share of the Market-Based Old Equity Allocation pursuant to Section 7.4(a) hereof. In connection with the Final True-Up Distribution, each holder of an Allowed AMR Equity Interest shall receive its pro rata share of the Market-Based Old Equity Allocation pursuant to Section 7.4(b) hereof. The right of a holder of an Allowed AMR Equity Interest to receive any distribution on a Mandatory Conversion Date, an Interim Distribution Date, or a Final Distribution Date shall not be Transferable.

4.6 AMR Class 6 – AMR Other Equity Interests. Subject to the Roll-Up Transactions, if any, the AMR Other Equity Interests shall not be cancelled, but shall be reinstated for the benefit of the respective Reorganized Debtor that is the holder thereof.

4.7 American Class 1 – American Secured Aircraft Claims. Except to the extent that a holder of an Allowed Secured Aircraft Claim against any of the American Debtors agrees to a different treatment of such Claim (including, without limitation, pursuant to a Postpetition Aircraft Agreement), each holder of an Allowed Secured Aircraft Claim against any of the American Debtors shall receive, at the option of the American Debtors, and in full satisfaction of such Claim, either (i) Cash in an amount equal to one hundred percent (100%) of the unpaid amount of such Allowed Secured Aircraft Claim, (ii) the proceeds of the sale or disposition of the Collateral securing such Allowed Secured Aircraft Claim, net of the costs of disposition of such Collateral, (iii) the Collateral securing such Allowed Secured Aircraft Claim, (iv) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the holder of such Allowed Secured Aircraft Claim is entitled, or (v) such other distribution as necessary to satisfy the requirements of section 1124 of the Bankruptcy Code. In the event a Secured Aircraft Claim against any of the American Debtors is treated under clause (i) or (ii) of this Section, the liens securing such Secured Aircraft Claim shall be deemed released immediately upon payment of the Cash or proceeds as provided in such clauses. Any distributions made pursuant to this Section shall be made on or as soon as reasonably

practicable after the first (1st) Distribution Date occurring after the latest of (i) the Effective Date, (ii) at least twenty (20) calendar days after the date such Secured Aircraft Claim becomes Allowed, and (iii) the date for payment provided by any agreement between the applicable American Debtor(s) and the holder of such Secured Aircraft Claim.

4.8 American Class 2 – American Other Secured Claims. Except to the extent that a holder of an Allowed Other Secured Claim against any of the American Debtors agrees to a different treatment of such Claim, each holder of an Allowed Other Secured Claim against any of the American Debtors shall receive, at the option of the American Debtors, and in full satisfaction of such Claim, either (i) Cash in an amount equal to one hundred percent (100%) of the unpaid amount of such Allowed Other Secured Claim, (ii) the proceeds of the sale or disposition of the Collateral securing such Allowed Other Secured Claim, net of the costs of disposition of such Collateral, (iii) the Collateral securing such Allowed Other Secured Claim, (iv) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the holder of such Allowed Other Secured Claim is entitled, or (v) such other distribution as necessary to satisfy the requirements of section 1124 of the Bankruptcy Code. In the event an Other Secured Claim against any of the American Debtors is treated under clause (i) or (ii) of this Section, the liens securing such Other Secured Claim shall be deemed released immediately upon payment of the Cash or proceeds as provided in such clauses. Any distributions made pursuant to this Section shall be made on or as soon as reasonably practicable after the first (1st) Distribution Date occurring after the latest of (i) the Effective Date, (ii) at least twenty (20) calendar days after the date such Other Secured Claim becomes Allowed, and (iii) the date for payment provided by any agreement between the applicable American Debtor(s) and the holder of such Other Secured Claim.

4.9 American Class 3 – American Priority Non-Tax Claims. Except to the extent that a holder of an Allowed Priority Non-Tax Claim against any of the American Debtors agrees to a different treatment of such Claim, each holder of an Allowed Priority Non-Tax Claim against any of the American Debtors shall receive, in full satisfaction of such Claim, an amount in Cash equal to the Allowed amount of such Claim on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date such Priority Non-Tax Claim becomes Allowed, and (iii) the date for payment provided by any agreement between the applicable American Debtor(s) and the holder of such Priority Non-Tax Claim.

4.10 American Class 4 – American General Unsecured Guaranteed Claims

(a) Each holder of an Allowed American General Unsecured Guaranteed Claim shall receive on the Initial Distribution Date (for American General Unsecured Guaranteed Claims that are Allowed as of the Effective Date), a number of shares of New Mandatorily Convertible Preferred Stock equal to the quotient of such

Claim's pro rata share of the Double-Dip Full Recovery Amount divided by the per share Initial Stated Value. Each holder of an Allowed American General Unsecured Guaranteed Claim shall receive a distribution hereunder only on account of its Allowed American General Unsecured Guaranteed Claim as set forth in this Section 4.10 and shall not receive any distribution on account of such holder's Claim against AMR for AMR's guarantee of such American General Unsecured Guaranteed Claim.

(b) At any time prior to the fifth (5th) Business Day before the Effective Date, a holder of an Allowed American General Unsecured Guaranteed Claim may irrevocably elect to have all or any portion of its Allowed American General Unsecured Guaranteed Claim treated as an Allowed American Other General Unsecured Claim in American Class 5. Such election shall be made on the form included in the Plan Supplement and, to be effective, must be actually received by the attorneys for the Debtors prior to such fifth (5th) Business Day. Any election not complying with the foregoing shall have no force or effect.

(c) The American Note Claims that are Double-Dip General Unsecured Claims shall be Allowed as American General Unsecured Guaranteed Claims in amounts equal to (i) the respective prepetition amounts listed next to each Indenture set forth on Schedule "2" hereto plus (ii) interest (including interest on overdue interest) at the respective rates set forth on Schedule "2" hereto from the Commencement Date through the Effective Date (the "**American Fixed Allowed Guaranteed Note Claims**"). The American Fixed Allowed Guaranteed Note Claims shall override and supersede any individual Claims filed by Registered Holders or beneficial owners of debt securities with respect to the American Note Claims. Distributions to holders of American Fixed Allowed Guaranteed Note Claims shall be made in accordance with Section 5.2 hereof.

(d) The Unsecured Special Facility Revenue Bond Claims that are Double-Dip General Unsecured Claims against the American Debtors shall be Allowed as American General Unsecured Guaranteed Claims in amounts equal to (i) the respective prepetition amounts listed next to each Special Facility Revenue Bond Agreement set forth on Schedule "2" hereto plus (ii) interest (including interest on overdue interest) at the respective rates set forth on Schedule "2" hereto from the Commencement Date through the Effective Date (the "**American Fixed Allowed Guaranteed Unsecured Special Facility Revenue Bond Claims**"). The American Fixed Allowed Guaranteed Unsecured Special Facility Revenue Bond Claims shall override and supersede any individual Claims filed by Registered Holders or beneficial owners of debt securities with respect to the Unsecured Special Facility Revenue Bond Claims against the American Debtors. Distributions to holders of Unsecured Special Facility Revenue Bond Claims against the American Debtors shall be made in accordance with Section 5.2 hereof.

(e) Each holder of a Triple-Dip General Unsecured Claim shall receive distributions hereunder only on account of its Allowed Double-Dip General Unsecured Claim.

4.11 American Class 5 – American Other General Unsecured Claims

(a) Each holder of an Allowed American Other General Unsecured Claim as of the Effective Date shall receive (i) on or as soon as reasonably practicable after the Initial Distribution Date, its Initial Pro Rata Share of a number of shares of New Mandatorily Convertible Preferred Stock equal to the quotient of (x) the Total Initial Stated Value, less the Double-Dip Full Recovery Amount, divided by (y) the per share Initial Stated Value, and (ii) as soon as reasonably practicable after the Final Mandatory Conversion Date, its Initial Pro Rata Share of a number of shares of New Common Stock equal to (I) the Creditor New Common Stock Allocation, less (II) the number of shares of New Common Stock issued upon conversion of all of the shares of New Mandatorily Convertible Preferred Stock, less (III) the Labor Common Stock Allocation. In connection with each Interim True-Up Distribution, each holder of an Allowed American Other General Unsecured Claim shall receive its Interim Pro Rata Share of the distribution allocated to Allowed Single-Dip General Unsecured Claims pursuant to Section 7.4(a) hereof. In connection with the Final True-Up Distribution, each holder of an Allowed American Other General Unsecured Claim shall receive its Final Pro Rata Share of the distribution allocated to Allowed Single-Dip General Unsecured Claims pursuant to Section 7.4(b) hereof. The right of a holder of an Allowed American Other General Unsecured Claim to receive any distribution on a Mandatory Conversion Date, an Interim Distribution Date, or a Final Distribution Date shall not be Transferable; *provided, however*, that this sentence shall not apply to any shares of New Mandatorily Convertible Preferred Stock or the right to receive shares of New Common Stock pursuant to the conversion thereof.

(b) The American Note Claims that are Single-Dip General Unsecured Claims shall be Allowed as American Other General Unsecured Claims in American Class 5 in amounts equal to (i) the respective prepetition amounts listed next to each Indenture set forth on Schedule "3" hereto plus (ii) interest (including interest on overdue interest) at the respective rates set forth on Schedule "3" hereto from the Commencement Date through the Effective Date (the "**American Fixed Allowed Other Note Claims**"). The American Fixed Allowed Other Note Claims shall override and supersede any individual Claims filed by Registered Holders or beneficial owners of debt securities with respect to the American Note Claims. Distributions to holders of American Fixed Allowed Other Note Claims shall be made in accordance with Section 5.2 hereof.

(c) The Unsecured Special Facility Revenue Bond Claims that are Single-Dip General Unsecured Claims against the American Debtors shall be Allowed as American Other General Unsecured Claims in American Class 5 in amounts equal to (i) the respective prepetition amounts listed next to each Special Facility Revenue Bond Agreement set forth on Schedule "3" hereto plus (ii) interest (including interest on overdue interest) at the respective rates set forth on Schedule "3" hereto from the Commencement Date through the Effective Date (the "**American Fixed Allowed Unsecured Special Facility Revenue Bond Claims**"). The American Fixed Allowed Unsecured Special Facility Revenue Bond Claims shall override and supersede any individual Claims filed by Registered Holders or beneficial owners of debt securities with

respect to the Unsecured Special Facility Revenue Bond Claims against the American Debtors. Distributions to holders of Unsecured Special Facility Revenue Bond Claims against the American Debtors shall be made in accordance with Section 5.2 hereof.

(d) The DFW 1.5x Unsecured Special Facility Revenue Bond Claims against the American Debtors shall be Allowed as American Other General Unsecured Claims in American Class 5 in amounts equal to (i) the respective prepetition amounts listed next to each DFW 1.5x Special Facility Revenue Bond Agreement set forth on Schedule "3" hereto plus (ii) interest (including interest on overdue interest) at the respective rates set forth on Schedule "3" hereto from the Commencement Date through the Effective Date (the "**American Fixed Allowed DFW 1.5x Unsecured Special Facility Revenue Bond Claims**"). The American Fixed Allowed DFW 1.5x Unsecured Special Facility Revenue Bond Claims shall override and supersede any individual Claims filed by Registered Holders or beneficial owners of debt securities with respect to the DFW 1.5x Unsecured Special Facility Revenue Bond Claims against the American Debtors. Distributions to holders of DFW 1.5x Unsecured Special Facility Revenue Bond Claims against the American Debtors shall be made in accordance with Section 5.2 hereof; *provided*, *however*, under no circumstances shall the holders thereof receive more (in New Common Stock value based on the formulas provided herein) than a single satisfaction.

The treatment provided hereunder to holders of Allowed DFW 1.5x Unsecured Special Facility Revenue Bond Claims is the result of a compromise and settlement (the "**DFW 1.5x Settlement**"). The DFW 1.5x Settlement provides that each holder of an Allowed DFW 1.5x Unsecured Special Facility Revenue Bond Claim shall be treated hereunder as having (i) an Allowed American Other General Unsecured Claim in an amount equal to the par amount of such Claim plus all nondefault rate interest accrued through the Effective Date and (ii) an Allowed American Other General Unsecured Claim on account of the guarantee by American of such Claim in an amount equal 50% of the par amount of such Claim, plus all nondefault rate interest accrued through the Effective Date; *provided*, *however*, that (A) the amount Allowed on account of the guarantee by American shall not increase the aggregate distributions to holders of Allowed Single-Dip General Unsecured Claims hereunder or the amount of the Single-Dip Full Recovery Amount, and (B) the distributions to holders of Allowed DFW 1.5x Unsecured Special Facility Revenue Bond Claims shall be not more than a single satisfaction.

4.12 American Class 6 –American Union Claims

(a) ***APA Claim*.** The APA shall receive, in full satisfaction of the APA Claim, shares of New Common Stock constituting 13.5% of the Creditor New Common Stock Allocation in accordance with the APA Section 1113 Agreement as follows: On the Initial Distribution Date, or as soon thereafter as reasonably practicable, the APA shall receive its pro rata share of the Initial Labor Common Stock Allocation. On each Mandatory Conversion Date, or as soon thereafter as reasonably practicable, the APA shall receive its pro rata share of the applicable Incremental Labor Common Stock

Allocation. In connection with each Interim True-Up Distribution, the APA shall receive its pro rata share of the distribution made on account of the American Labor Allocation pursuant to Section 7.4(a) hereof. In connection with the Final True-Up Distribution, the APA shall receive its pro rata share of the distribution made on account of the American Labor Allocation pursuant to Section 7.4(b) hereof. The right of the APA to receive any distribution on a Mandatory Conversion Date, an Interim Distribution Date, or a Final Distribution Date shall not be Transferable.

(b) ***APFA Claim*****.** The APFA shall receive, in full satisfaction of the APFA Claim, shares of New Common Stock constituting 3% of the Creditor New Common Stock Allocation in accordance with the APFA Section 1113 Agreement as follows: On the Initial Distribution Date, or as soon thereafter as reasonably practicable, the APFA shall receive its pro rata share of the Initial Labor Common Stock Allocation. On each Mandatory Conversion Date, or as soon thereafter as reasonably practicable, the APFA shall receive its pro rata share of the applicable Incremental Labor Common Stock Allocation. In connection with each Interim True-Up Distribution, the APFA shall receive its pro rata share of the distribution made on account of the American Labor Allocation pursuant to Section 7.4(a) hereof. In connection with the Final True-Up Distribution, the APFA shall receive its pro rata share of the distribution made on account of the American Labor Allocation pursuant to Section 7.4(b) hereof. The right of the APFA to receive any distribution on a Mandatory Conversion Date, an Interim Distribution Date, or a Final Distribution Date shall not be Transferable.

(c) ***TWU American Claim*****.** The TWU shall receive, in full satisfaction of the TWU American Claim, shares of New Common Stock constituting 4.8% of the Creditor New Common Stock Allocation in accordance with the TWU American Section 1113 Agreement as follows: On the Initial Distribution Date, or as soon thereafter as reasonably practicable, the TWU shall receive its pro rata share of the Initial Labor Common Stock Allocation. On each Mandatory Conversion Date, or as soon thereafter as reasonably practicable, the TWU shall receive its pro rata share of the applicable Incremental Labor Common Stock Allocation. In connection with each Interim True-Up Distribution, the TWU shall receive its pro rata share of the distribution made on account of the American Labor Allocation pursuant to Section 7.4(a) hereof. In connection with the Final True-Up Distribution, the TWU shall receive its pro rata share of the distribution made on account of the American Labor Allocation pursuant to Section 7.4(b) hereof. The right of the TWU to receive any distribution on a Mandatory Conversion Date, an Interim Distribution Date, or a Final Distribution Date shall not be Transferable.

4.13 <u>American Class 7 – American Convenience Class Claims</u>. Each holder of an Allowed Convenience Class Claim against any of the American Debtors shall receive, on or as soon as reasonably practicable after the later of (i) the Initial Distribution Date (for Claims that are Allowed as of the Effective Date) and (ii) the Distribution Date that is at least twenty (20) calendar days after such Convenience Class Claim becomes an Allowed Convenience Class Claim, Cash in the amount of 100% of the amount of its Allowed Convenience Class Claim as of the

Commencement Date; *provided, however*, that if the aggregate amount of Allowed Convenience Class Claims in American Class 7 and Allowed Convenience Class Claims in Eagle Class 4 exceed $25 million, the percentage Cash distribution to each holder of an Allowed Convenience Class Claim against any of the American Debtors shall be reduced so that the aggregate amount of Cash distributable with respect to all Allowed Convenience Class Claims against any of the American Debtors and Allowed Convenience Class Claims against any of the Eagle Debtors does not exceed $25 million.

4.14 American Class 8 – American Equity Interests. Subject to the Roll-Up Transactions, if any, the American Equity Interests shall not be cancelled, but shall be reinstated for the benefit of the respective Reorganized Debtor that is the holder thereof.

4.15 Eagle Class 1 – Eagle Secured Claims. Except to the extent that a holder of an Allowed Secured Claim against any of the Eagle Debtors agrees to a different treatment of such Claim, each holder of an Allowed Secured Claim against any of the Eagle Debtors shall receive, at the option of the Eagle Debtors, and in full satisfaction of such Claim, either (i) Cash in an amount equal to one hundred percent (100%) of the unpaid amount of such Allowed Secured Claim, (ii) the proceeds of the sale or disposition of the Collateral securing such Allowed Secured Claim, net of the costs of disposition of such Collateral, (iii) the Collateral securing such Allowed Secured Claim, (iv) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the holder of such Allowed Secured Claim is entitled, or (v) such other distribution as necessary to satisfy the requirements of section 1124 of the Bankruptcy Code. In the event a Secured Claim against any of the Eagle Debtors is treated under clause (i) or (ii) of this Section, the liens securing such Secured Claim shall be deemed released immediately upon payment of the Cash or proceeds as provided in such clauses. Any distributions made pursuant to this Section shall be made on or as soon as reasonably practicable after the first (1st) Distribution Date occurring after the latest of (i) the Effective Date, (ii) at least twenty (20) calendar days after the date such Secured Claim becomes Allowed, and (iii) the date for payment provided by any agreement between the applicable Eagle Debtor(s) and the holder of such Secured Claim.

4.16 Eagle Class 2 – Eagle Priority Non-Tax Claims. Except to the extent that a holder of an Allowed Priority Non-Tax Claim against any of the Eagle Debtors agrees to a different treatment of such Claim, each holder of an Allowed Priority Non-Tax Claim against any of the Eagle Debtors shall receive, in full satisfaction of such Claim, an amount in Cash equal to the Allowed amount of such Claim on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date such Priority Non-Tax Claim becomes Allowed, and (iii) the date for payment provided by any agreement between the applicable Eagle Debtor(s) and the holder of such Priority Non-Tax Claim.

4.17 Eagle Class 3 – Eagle General Unsecured Claims. Each holder of an Allowed Eagle General Unsecured Claim as of the Effective Date shall receive (i) on or as soon as reasonably practicable after the Initial Distribution Date, its Initial Pro Rata Share of a number of shares of New Mandatorily Convertible Preferred Stock equal to the quotient of (x) the Total Initial Stated Value, less the Double-Dip Full Recovery Amount, divided by (y) the per share Initial Stated Value, and (ii) as soon as reasonably practicable after the Final Mandatory Conversion Date, its Initial Pro Rata Share of a number of shares of New Common Stock equal to (I) the Creditor New Common Stock Allocation, less (II) the number of shares of New Common Stock issued upon conversion of all of the shares of New Mandatorily Convertible Preferred Stock, less (III) the Labor Common Stock Allocation. In connection with each Interim True-Up Distribution, each holder of an Allowed Eagle General Unsecured Claim shall receive its Interim Pro Rata Share of the distribution allocated to Allowed Single-Dip General Unsecured Claims pursuant to Section 7.4(a) hereof. In connection with the Final True-Up Distribution, each holder of an Allowed Eagle General Unsecured Claim shall receive its Final Pro Rata Share of the distribution allocated to Allowed Single-Dip General Unsecured Claims pursuant to Section 7.4(b) hereof. The right of a holder of an Allowed Eagle General Unsecured Claim to receive any distribution on a Mandatory Conversion Date, an Interim Distribution Date, or a Final Distribution Date shall not be Transferable; *provided, however*, that this sentence shall not apply to any shares of New Mandatorily Convertible Preferred Stock or the right to receive shares of New Common Stock pursuant to the conversion thereof.

4.18 Eagle Class 4 – Eagle Convenience Class Claims. Each holder of an Allowed Convenience Class Claim against any of the Eagle Debtors shall receive, on or as soon as reasonably practicable after the later of (i) the Initial Distribution Date (for Claims that are Allowed as of the Effective Date) and (ii) the Distribution Date that is at least twenty (20) calendar days after such Convenience Class Claim becomes an Allowed Convenience Class Claim, Cash in the amount of 100% of the amount of its Allowed Convenience Class Claim as of the Commencement Date; *provided, however*, that if the aggregate amount of Allowed Convenience Class Claims in American Class 7 and Allowed Convenience Class Claims in Eagle Class 4 exceed $25 million, the percentage Cash distribution to each holder of an Allowed Convenience Class Claim against any of the Eagle Debtors shall be reduced so that the aggregate amount of Cash distributable with respect to all Allowed Convenience Class Claims against any of the American Debtors and Allowed Convenience Class Claims against any of the Eagle Debtors does not exceed $25 million.

4.19 Eagle Class 5 – Eagle Equity Interests. Subject to the Roll-Up Transactions, if any, the Eagle Equity Interests shall not be cancelled, but shall be reinstated for the benefit of the respective Reorganized Debtor that is the holder thereof.

ARTICLE V.

PROVISIONS GOVERNING DISTRIBUTIONS

5.1 Distribution Record Date. Except with respect to any publicly-traded securities as to which distributions shall be treated as set forth in Section 5.13 hereof, (i) as of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Equity Interests as maintained by the Debtors or their agents shall be deemed closed, (ii) there shall be no further changes in the record holders of any of such Claims or Equity Interests, and the Debtors shall have no obligation to recognize any transfer of such Claims or Equity Interests occurring on or after the Distribution Record Date, and (iii) the Debtors shall be entitled to recognize and deal for all purposes hereunder only with those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable.

5.2 Disbursing Agent

(a) The Disbursing Agent shall make all distributions required hereunder, except with respect to a holder of a Claim whose distribution is governed by an agreement and is administered by an Indenture Trustee or Servicer, which distribution shall be deposited by the Disbursing Agent with the appropriate Indenture Trustee or Servicer for distribution to holders of Claims in accordance with the provisions hereof and the terms of the governing agreement (except with respect to distributions on Claims where the Indenture Trustee or Servicer, the Debtors, and the holder of a Claim may have agreed otherwise). Distributions on account of such Claims shall be deemed complete upon delivery to the appropriate Indenture Trustee or Servicer; *provided*, *however*, that if any such Indenture Trustee or Servicer is unable to make such distributions, the Disbursing Agent, with the cooperation of such Indenture Trustee or Servicer, shall make such distributions to the extent reasonably practicable. With respect to holders of American Union Claims in American Class 6, the Disbursing Agent shall make the distributions required hereunder to the APA, the APFA, and the TWU, as applicable, and distributions on account of such American Union Claims shall be deemed complete upon delivery to the APA, the APFA, and the TWU, as applicable.

(b) The Debtors shall be authorized, without further Bankruptcy Court approval, to reimburse any Servicer for its reasonable and customary servicing fees and expenses incurred in providing postpetition services directly related to distributions hereunder. Such reimbursement shall be made on terms agreed to with the Debtors and shall not be deducted from distributions to be made hereunder to holders of Allowed Claims receiving distributions from such Servicer.

5.3 Timing of Distributions. Subject to any reserves or holdbacks established hereunder, on the appropriate Distribution Date, or as soon thereafter as is practicable, holders of Allowed Claims and Allowed AMR Equity Interests shall receive the distributions provided for herein. Distributions on account of General

Unsecured Claims that are Allowed as of the Effective Date, including delivery to The Depository Trust Company of the global certificate(s) representing the shares of Mandatorily Convertible Preferred Stock to be issued hereunder, shall be made on the Initial Distribution Date or, other than with respect to distribution of Plan Shares, as soon thereafter as reasonably practicable (and shall receive the additional true-up distributions provided for in Section 7.4 hereof at the times provided for therein). Distributions on account of any Disputed Claim as of the Effective Date that subsequently becomes Allowed shall be made on the next Distribution Date that is at least twenty (20) calendar days after the date such Claim becomes Allowed, or as soon thereafter as reasonably practicable; *provided, however*, that distributions on account of Administrative Expenses and Priority Tax Claims shall be made as set forth in Article II hereof. Upon making distributions hereunder, in no event shall any of the Debtors, the Reorganized Debtors, or the Disbursing Agent be liable for the subsequent acts of third parties regarding such distributions. Notwithstanding compliance by the Debtors or the Reorganized Debtors, as applicable, with their obligations hereunder, there can be no assurance that an active trading market for the New Common Stock will develop or as to the prices at which the New Common Stock will trade.

5.4 Delivery of Distributions and Undeliverable Distributions

(a) All distributions to any holder of an Allowed Claim shall be made by the Disbursing Agent at the address of such holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtors or their agents or in a letter of transmittal unless the Debtors have 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 from the address reflected on the Schedules for such holder. In the event that any distribution to any holder is returned as undeliverable, no further distributions to such holder shall be made unless and until such distributions are claimed, at which time all missed distributions shall be made to such holder, without interest; *provided, however*, that, except as otherwise provided in Article VII hereof, if any such distribution consists of New Common Stock, all dividends declared and paid in respect of such New Common Stock shall be included. The Disbursing Agent shall make reasonable efforts to locate holders of undeliverable distributions and, if located, assist such holders in complying with Section 5.5 hereof. All demands for undeliverable distributions must be made on or before the later to occur of (i) the first (1st) anniversary of the Effective Date or (ii) six (6) months after such holder's Claim becomes an Allowed Claim. Thereafter, the amount represented by such undeliverable distribution (including any dividends) shall be contributed by the Disbursing Agent to one or more charitable organizations exempt from U.S. federal income tax under section 501(c)(3) of the Tax Code to be selected by, and unrelated to, the Disbursing Agent (provided that the recipient charitable organization is not, and would not become by reason of the contribution, a "Substantial Stockholder" within the meaning of the New AAG Certificate of Incorporation), and any Claim in respect of such undeliverable distribution shall be discharged and forever barred from assertion against

the Debtors, the Reorganized Debtors, and their respective property, notwithstanding any federal or state escheat laws to the contrary.

(b) If any shares of New Mandatorily Convertible Preferred Stock or New Common Stock are to be issued in a name other than that in which the holder of an Allowed Claim is identified in the immediately preceding subparagraph, it shall be a condition of such issuance that the Person requesting such name shall pay any transfer or other taxes required by reason of the issuance of shares of New Mandatorily Convertible Preferred Stock or New Common Stock in a name other than that in which such holder is identified herein or shall establish to the satisfaction of New AAG or the Disbursing Agent, as applicable, that such taxes have either been paid or are not applicable.

(c) Any distribution on account of Allowed Claims made to any of the Indenture Trustees or Servicers in accordance herewith shall be (i) deemed a distribution to the respective registered holders thereunder, (ii) subject to the applicable Indenture Trustee's or Servicer's right to assert its charging lien against such distributions, and (iii) in accordance with Section 5.10 hereof. Each Indenture Trustee and Servicer shall make such distributions, as soon as reasonably practicable after receipt thereof and pursuant to the terms of the applicable Indenture or other governing agreement, (A) with respect to Indenture Trustees, in accordance with Section 5.2 hereof to the registered holders as of the date of surrender of the debt securities pursuant to Section 5.13 hereof and (B) with respect to Servicers, in accordance with Section 5.2 hereof to the registered holders as provided in the applicable governing agreement.

(d) All distributions to any holder of an Allowed AMR Equity Interest shall be made by the Disbursing Agent to the transfer agent for AMR Common Stock, who shall be responsible for making the appropriate distributions to the registered holders as of the Distribution Record Date. In the event that any distribution of New Common Stock to any holder of an Allowed AMR Equity Interest is returned as undeliverable, no further distributions to such holder shall be made unless and until such distributions are claimed, at which time all missed distributions shall be made to such holder without interest but together with any dividends that have been declared and paid in respect of such New Common Stock prior to the date such distributions are claimed. All demands for such undeliverable New Common Stock must be made on or before the first (1st) anniversary of the Effective Date. Thereafter, the New Common Stock constituting such undeliverable distribution (including any dividends declared thereon) shall be contributed to one or more charitable organizations exempt from U.S. federal income tax under section 501(c)(3) of the Tax Code to be selected by, and unrelated to, the Disbursing Agent (provided that the recipient charitable organization is not, and would not become by reason of the contribution, a "Substantial Stockholder" within the meaning of the New AAG Certificate of Incorporation), and any Claim or Equity Interest in respect of such undeliverable distribution shall be discharged and forever barred from assertion against the Debtors, the Reorganized Debtors, and their respective property, notwithstanding any federal or state escheat laws to the contrary.

5.5 Withholding and Reporting Requirements

(a) ***Withholding Rights.*** In connection with the Plan and all instruments issued in connection herewith and distributed hereon, any party issuing any instrument or making any distribution described herein shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions pursuant to the Plan and all related agreements shall be subject to any such withholding or reporting requirements. In the case of a non-Cash distribution that is subject to withholding, the distributing party may withhold an appropriate portion of such distributed property and either (i) sell such withheld property on behalf of the party entitled to receive such property to generate Cash necessary to pay over the withholding tax (or reimburse the distributing party for any advance payment of the withholding tax) or (ii) pay the withholding tax using its own funds and retain such withheld property. Any Cash or property withheld pursuant to this paragraph shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan. Notwithstanding the foregoing, each holder of an Allowed Claim or Allowed AMR Equity Interest or any other Person that receives a distribution pursuant to the Plan shall have responsibility for any taxes imposed by any governmental unit, including, without limitation, income, withholding, and other taxes, on account of such distribution. Any party issuing any instrument or making any distribution pursuant to the Plan has the right, but not the obligation, to not make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

(b) ***Forms.*** Any party entitled to receive any property as an issuance or distribution under the Plan shall be required to deliver to the Disbursing Agent (or such other Person designated by the Debtors, which Person shall subsequently deliver to the Disbursing Agent any applicable Form W-8 or Form W-9 received) an appropriate Form W-9 or (if the payee is a foreign Person) Form W-8, unless such Person is exempt under the Tax Code and so notifies the Disbursing Agent. If the holder has not otherwise complied with such requirement and fails to comply with such requirement within six (6) months, such distribution shall be contributed by the Disbursing Agent to one or more charitable organizations exempt from U.S. federal income tax under section 501(c)(3) of the Tax Code to be selected by, and unrelated to, the Disbursing Agent (provided that the recipient charitable organization is not, and would not become by reason of the combination, a "Substantial Stockholder" within the meaning of the New AAG Certificate of Incorporation).

5.6 Cash Payments. At the option of the Debtors, any Cash payment to be made hereunder may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

5.7 Distributions on Behalf of Subsidiaries. The Disbursing Agent shall make distributions hereunder on behalf of the applicable Reorganized Debtor. Where the applicable Reorganized Debtor is a subsidiary of New AAG, New AAG shall make a direct or indirect capital contribution (through the chain of relevant entities) to the applicable Reorganized Debtor of an amount of Plan Shares or Cash

to be distributed to holders of Allowed Claims against such Debtor or to be placed in the Disputed Claims Reserve on account of Disputed Claims against such Debtor, but only at such time as the amounts are actually distributed to holders of Allowed Claims or placed into the Disputed Claims Reserve; *provided, however*, that the preceding portion of this sentence shall not apply to any shares of New Common Stock into which the New Mandatorily Convertible Preferred Stock actually converts, which New Common Stock shall be issued and distributed directly by or on behalf of New AAG. Any distributions of Plan Shares or Cash that revert to New AAG or are otherwise cancelled shall revest solely in New AAG, and no other Reorganized Debtor shall have any ownership interest in the amounts distributed.

5.8 Allocation of Plan Distribution Between Principal and Interest. Except as otherwise required by law (as reasonably determined by the Debtors), distributions with respect to an Allowed General Unsecured Claim shall be allocated first to the principal portion of such Allowed Claim (as determined for U.S. federal income tax purposes) and, thereafter, to the remaining portion of such Allowed Claim, if any.

5.9 Time Bar to Cash Payments. Checks issued by the Debtors in respect of Allowed Claims shall be null and void if not negotiated within one hundred eighty (180) days after the date of issuance thereof. Requests for re-issuance of any check shall be made to the Debtors by the holder of the Allowed Claim to whom such check originally was issued. Any Claim in respect of such a voided check shall be made on or before thirty (30) days after the expiration of the one hundred eighty (180) day period following the date of issuance of such check. Thereafter, the amount represented by such voided check shall irrevocably revert to New AAG, and any Claim in respect of such voided check shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

5.10 Minimum Distributions and Fractional Shares

(a) No payment of Cash in an amount less than $25 shall be made to any holder of an Allowed Claim, and no fractional shares of New Mandatorily Convertible Preferred Stock or New Common Stock shall be distributed; *provided, however*, that (i) any fractional shares of New Mandatorily Convertible Preferred Stock shall be rounded down to the next whole number or zero, as applicable and (ii) any fractional shares of New Common Stock shall be rounded up or down to the next whole number or zero, as applicable (with one-half being closer to the next lower whole number for this purpose). No consideration shall be provided in lieu of fractional shares that are rounded down.

(b) In the event any New Common Stock remains in the Disputed Claims Reserve after the Final Distribution Date and the Disbursing Agent determines that the distribution thereof to holders of Allowed Claims and Allowed AMR Equity Interests is not justified (i) based on the cost of distribution or (ii) because it would contravene Section 5.10(a) hereof, the Disbursing Agent shall contribute such New

Common Stock to one or more charitable organizations exempt from U.S. federal income tax under section 501(c)(3) of the Tax Code to be selected by, and unrelated to, the Disbursing Agent (provided that the recipient charitable organization is not, and would not become by reason of the contribution, a "Substantial Stockholder" within the meaning of the New AAG Certificate of Incorporation).

5.11 Setoff and Recoupment. The Debtors and the Reorganized Debtors, as applicable, may, but shall not be required to, set off or recoup against any Claim, and any distribution to be made on account of such Claim, any and all claims, rights, and Causes of Action of any nature that the Debtors may have against the holder of such Claim pursuant to the Bankruptcy Code or applicable nonbankruptcy law; *provided, however*, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver, abandonment, or release by the Debtors or the Reorganized Debtors, as applicable, of any such claims, rights, and Causes of Action that the Debtors or the Reorganized Debtors, as applicable, may have against the holder of such Claim.

5.12 Transactions on Business Days. If the Effective Date or any other date on which a transaction may occur hereunder shall occur on a day that is not a Business Day, the transactions contemplated by the Plan to occur on such day shall instead occur on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

5.13 Surrender of Existing Publicly-Traded Debt Securities. On the Effective Date, or as soon thereafter as reasonably practicable, each Registered Holder of debt securities with respect to the Note Claims or the Unsecured Special Facility Revenue Bond Claims, as applicable, shall surrender its debt securities to the applicable Indenture Trustee or, in the event such debt securities are held in the name, or by a nominee, of The Depository Trust Company or other securities depository (each, a "**Depository**"), the Debtors shall seek the cooperation of the Depository to provide appropriate instructions to the applicable Indenture Trustee. No distributions hereunder shall be made for or on behalf of such Registered Holder unless and until (i) such debt securities are received by the applicable Indenture Trustee or appropriate instructions from the Depository are received by the applicable Indenture Trustee or (ii) the loss, theft, or destruction of such debt securities is established to the reasonable satisfaction of the applicable Indenture Trustee, which satisfaction may require such Registered Holder to submit (a) a lost instrument affidavit and (b) an indemnity bond holding the Debtors, the Reorganized Debtors, and the applicable Indenture Trustee harmless in respect of such debt securities and distributions made with respect thereto. Upon compliance with this Section 5.13 by a Registered Holder of the debt securities, for all purposes hereunder, such Registered Holder shall be deemed to have surrendered such debt securities. Any Registered Holder that fails to surrender such debt securities or satisfactorily explain the loss, theft, or destruction of such debt securities to the applicable Indenture Trustee within one (1) year of the Effective Date shall be deemed to have no further Claim against the Debtors, the Reorganized Debtors, or

the applicable Indenture Trustee in respect of such Claim and shall not participate in any distribution hereunder. All property in respect of such forfeited distributions, including interest thereon, shall be promptly returned to the Debtors or the Reorganized Debtors, as applicable, by the applicable Indenture Trustee (notwithstanding any federal or state escheat laws to the contrary), and any such debt securities shall be cancelled.

5.14 Class Proofs of Claim. If a class proof of Claim is Allowed, it shall be treated as a single Claim for purposes of Article V hereof.

5.15 Conversion of Convertible Notes

Subject to the Revised Final Order Pursuant to 11 U.S.C. §§ 105(a) and 362 Establishing Notification Procedures for Substantial Claimholders and Equity Security Holders and Approving Restrictions on Certain Transfers of Interests in the Debtors' Estates, entered by the Bankruptcy Court on April 11, 2013 (ECF No. 7591), any holder of an Allowed Convertible Note Claim may, at any time prior to the fifth (5th) Business Day before the Effective Date, irrevocably elect to have all or any portion of such Allowed Convertible Note Claim be treated as an Allowed AMR Equity Interest in AMR Class 5 in an amount that corresponds to the number of shares of AMR Common Stock that would have been issued upon conversion of Convertible Notes as determined below (subject to the penultimate sentence of this paragraph), with such number of shares determined as if such conversion became effective as of the Effective Date. Such election shall be made on the form included in the Plan Supplement (a "**Conversion Election Notice**") and, to be effective, must be actually received by the agent for the Debtors prior to such fifth (5th) Business Day. Any election not complying with the foregoing shall have no force or effect. In connection with any such election, in determining the number of shares of AMR Common Stock that would have been issued upon the conversion of such Convertible Notes, the total number of shares issuable upon conversion of such Convertible Notes shall equal the sum of (A) the number of shares of AMR Common Stock issuable based on the actual principal amount of such Convertible Notes elected to be converted by a holder thereof and the conversion rate with respect to such Convertible Notes in effect as of the Effective Date (without regard to any adjustment referred to in clause (i) or (ii) below), plus (B) fifty percent (50%) of the additional number of shares of AMR Common Stock that would have been issued upon conversion of such principal amount of Convertible Notes if both (i) with respect to the AMR 6.25% Convertible Senior Notes due 2014, in determining the number of shares of AMR Common Stock that would have been issued upon the conversion of such principal amount of Convertible Notes, the provisions of Section 8.15 of the Supplemental Indenture, dated as of September 28, 2009, related to such Convertible Notes were applied and the conversion ratio applicable to such conversion were adjusted pursuant to Section 8.15 of such Supplemental Indenture and, for purposes of computing such adjustment, the Effective Date were the "Make Whole Change of Control Effective Date" for purposes of such Supplemental Indenture; and (ii) with respect to all or

any portion of any Convertible Notes elected to be converted by a holder thereof, rather than using the actual principal amount of Convertible Notes elected to be converted, the principal amount of such Convertible Notes deemed converted were equal to the amount of the Allowed Convertible Note Claim with respect to such Convertible Notes elected to be converted (including, for the avoidance of doubt, all interest included in the Allowed amount of such Allowed Convertible Note Claim). Upon the effectiveness of any such election, the Allowed Convertible Note Claim (or portion thereof) subject to such election shall (subject to the following proviso) automatically cease to be an Allowed Claim for any purpose hereunder; *provided, however*, that in the event that the Plan is withdrawn by the Debtors, all Conversion Election Notices shall thereupon automatically be deemed to have been withdrawn and of no force or effect whatsoever, and none of the Convertible Notes with respect to which any such elections were made shall be treated as AMR Equity Interests in AMR Class 5 or as having been converted into shares of AMR Common Stock. In the event that a holder elects to treat less than one hundred percent (100%) of its Allowed Convertible Note Claim as an Allowed AMR Equity Interest in AMR Class 5 as provided herein, then the portion of such Allowed Convertible Note Claim not so treated (including all postpetition interest included therein as provided herein) shall remain an Allowed Convertible Note Claim for all purposes hereunder.

If, as a result of an election provided for in the immediately preceding paragraph, a Convertible Note is treated as an Allowed AMR Equity Interest in AMR Class 5, the determination of the Labor Common Stock Allocation shall be calculated as if such election did not take place.

ARTICLE VI.

MEANS FOR IMPLEMENTATION AND EXECUTION OF THE PLAN

6.1 Continued Corporate Existence. Subject to the Merger and the terms of the Merger Agreement, each Debtor shall, as a Reorganized Debtor, continue to exist after the Effective Date as a separate corporate Entity, with all the powers of a corporation, partnership, or limited liability company, as applicable, under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable state law. Immediately following the Merger Effective Time, the New AAG Certificate of Incorporation shall be amended to change the name of AMR to American Airlines Group Inc.

6.2 Merger

(a) Subject to and in connection with the occurrence of the Effective Date, AMR and US Airways shall take all such actions as may be necessary or appropriate to effect the Merger on the terms and subject to the conditions set forth in the Merger Agreement. Without limiting the generality of the immediately preceding sentence, upon the satisfaction or waiver of each of the conditions set forth in Section 9.2 hereof and the applicable conditions of the Merger Agreement, on the Effective Date

AMR and US Airways shall cause the Certificate of Merger to be filed with the Secretary of State of the State of Delaware in accordance with the Delaware General Corporation Law and take or cause to be taken all other actions, including making appropriate filings or recordings, that may be required by the Delaware General Corporation Law or other applicable law in connection with the Merger.

(b) New AAG shall issue the shares of New Common Stock in accordance with the Merger Agreement to be distributed hereunder, and the other transactions contemplated by the Merger Agreement shall occur.

(c) In the event of any conflict whatsoever between the terms of the Plan and the Merger Agreement, the terms of the Merger Agreement shall control, and the Plan shall be deemed to incorporate in their entirety the terms, provisions, and conditions of the Merger Agreement.

6.3 The 9019 Settlement

(a) The distributions provided for hereunder with respect to Double-Dip General Unsecured Claims, Single-Dip General Unsecured Claims, the DFW 1.5x Unsecured Special Facility Revenue Bond Claim, and AMR Equity Interests incorporate and reflect a compromise and settlement (the "**9019 Settlement**") of (i) certain intercreditor issues relating to the rights and benefits of holders of Double-Dip General Unsecured Claims, Single-Dip General Unsecured Claims, Triple-Dip General Unsecured Claims, and the DFW 1.5x Special Facility Revenue Bond Claim, (ii) the validity, enforceability, and priority of certain prepetition intercompany claims by and among AMR, American, and Eagle Holding, (iii) Claims that creditors have with respect to the marshaling of assets and liabilities of AMR, American, or Eagle Holding in determining relative entitlements to distributions under a plan, and (iv) the rights of holders of AMR Equity Interests to a distribution under a plan.

(b) The Plan shall constitute a motion to approve the 9019 Settlement. Subject to the occurrence of the Effective Date, entry of the Confirmation Order shall constitute approval of the 9019 Settlement pursuant to Bankruptcy Rule 9019 and a finding by the Bankruptcy Court that the 9019 Settlement is in the best interest of the Debtors and their estates. If the Effective Date does not occur, the 9019 Settlement shall be deemed to have been withdrawn without prejudice to the respective positions of the parties.

6.4 Distributions to Non-Union Employees. The Non-Union Employees shall receive shares of New Common Stock constituting 2.3% of the Creditor New Common Stock Allocation and which shall be distributed by New AAG as follows: On the Initial Distribution Date, or as soon thereafter as reasonably practicable, New AAG shall distribute the Non-Union Employees' pro rata share of the Initial Labor Common Stock Allocation to participating Non-Union Employees in per employee amounts as determined by the Debtors prior to the Effective Date. On each Mandatory Conversion Date, or as soon thereafter as

reasonably practicable, New AAG shall distribute the Non-Union Employees' pro rata share of the applicable Incremental Labor Common Stock Allocation to participating Non-Union Employees in per employee amounts as determined by the Debtors prior to the Effective Date. In connection with each Interim True-Up Distribution, New AAG shall distribute to participating Non-Union Employees the Non-Union Employees' pro rata share of the distribution made on account of the American Labor Allocation pursuant to Section 7.4(a) hereof in per employee amounts as determined by the Debtors prior to the Effective Date. In connection with the Final True-Up Distribution, New AAG shall distribute to participating Non-Union Employees the Non-Union Employees' pro rata share of the distribution made on account of the American Labor Allocation pursuant to Section 7.4(b) hereof in per employee amounts as determined by the Debtors prior to the Effective Date. The right of the Non-Union Employees to receive any distribution on a Mandatory Conversion Date, an Interim Distribution Date, or a Final Distribution Date shall not be Transferable. Any Non-Union Employee who is eligible to receive an Alignment Award shall not receive any distribution of New Common Stock pursuant to this Section 6.4.

6.5 Substantive Consolidation

(a) ***Order Granting Plan Consolidation*****.** The Plan serves as a motion seeking, and entry of the Confirmation Order shall constitute, the approval, pursuant to section 105(a) of the Bankruptcy Code, effective as of the Effective Date, of the AMR Plan Consolidation, the American Plan Consolidation, and the Eagle Plan Consolidation.

(b) ***AMR Plan Consolidation*****.** Solely for voting, confirmation, and distribution purposes hereunder, and subject to the following sentence, (i) all assets and all liabilities of the AMR Debtors shall be treated as though they were merged, (ii) all guarantees of any AMR Debtor of the payment, performance, or collection of obligations of another AMR Debtor shall be eliminated and cancelled, (iii) any obligation of any AMR Debtor and all guarantees thereof executed by one or more of the other AMR Debtors shall be treated as a single obligation, and such guarantees shall be deemed a single Claim against the consolidated AMR Debtors, (iv) all joint obligations of two or more AMR Debtors and all multiple Claims against such Entities on account of such joint obligations shall be treated and allowed as a single Claim against the consolidated AMR Debtors, (v) all Claims between the AMR Debtors shall be deemed cancelled, and (vi) each Claim filed in the Chapter 11 Case of any AMR Debtor shall be deemed filed against the consolidated AMR Debtors and a single obligation of the consolidated AMR Debtors. The substantive consolidation and deemed merger effected pursuant to this Section 6.5(b) shall not affect (other than for purposes related to funding distributions hereunder and as set forth in this Section 6.5(b)) (i) the legal and organizational structure of the AMR Debtors, except as provided in the Merger Agreement, (ii) defenses to any Causes of Action or requirements for any third party to establish mutuality to assert a right of setoff, and (iii) distributions out of any insurance policies or proceeds of such policies. Notwithstanding the foregoing, prepetition intercompany Claims between and

among the AMR Debtors, the American Debtors, and the Eagle Debtors shall be dealt with in accordance with Section 6.15 hereof.

(c) ***American Plan Consolidation.*** Solely for voting, confirmation, and distribution purposes hereunder, and subject to the following sentence, (i) all assets and all liabilities of the American Debtors shall be treated as though they were merged, (ii) all guarantees of any American Debtor of the payment, performance, or collection of obligations of another American Debtor shall be eliminated and cancelled, (iii) any obligation of any American Debtor and all guarantees thereof executed by one or more of the other American Debtors shall be treated as a single obligation, and such guarantees shall be deemed a single Claim against the consolidated American Debtors, (iv) all joint obligations of two or more American Debtors and all multiple Claims against such Entities on account of such joint obligations shall be treated and allowed as a single Claim against the consolidated American Debtors, (v) all Claims between the American Debtors shall be deemed cancelled, and (vi) each Claim filed in the Chapter 11 Case of any American Debtor shall be deemed filed against the consolidated American Debtors and a single obligation of the consolidated American Debtors. The substantive consolidation and deemed merger effected pursuant to this Section 6.5(c) shall not affect (other than for purposes related to funding distributions hereunder and as set forth in this Section 6.5(c)) (i) the legal and organizational structure of the American Debtors, except as provided in the Merger Agreement, (ii) defenses to any Causes of Action or requirements for any third party to establish mutuality to assert a right of setoff, and (iii) distributions out of any insurance policies or proceeds of such policies. Notwithstanding the foregoing, prepetition intercompany Claims between and among the AMR Debtors, the American Debtors, and the Eagle Debtors shall be dealt with in accordance with Section 6.15 hereof.

(d) ***Eagle Plan Consolidation.*** Solely for voting, confirmation, and distribution purposes hereunder, and subject to the following sentence, (i) all assets and all liabilities of the Eagle Debtors shall be treated as though they were merged, (ii) all guarantees of any Eagle Debtor of the payment, performance, or collection of obligations of another Eagle Debtor shall be eliminated and cancelled, (iii) any obligation of any Eagle Debtor and all guarantees thereof executed by one or more of the other Eagle Debtors shall be treated as a single obligation, and such guarantees shall be deemed a single Claim against the consolidated Eagle Debtors, (iv) all joint obligations of two or more Eagle Debtors and all multiple Claims against such Entities on account of such joint obligations shall be treated and allowed as a single Claim against the consolidated Eagle Debtors, (v) all Claims between the Eagle Debtors shall be deemed cancelled, and (vi) each Claim filed in the Chapter 11 Case of any Eagle Debtor shall be deemed filed against the consolidated Eagle Debtors and a single obligation of the consolidated Eagle Debtors. The substantive consolidation and deemed merger effected pursuant to this Section 6.5(d) shall not affect (other than for purposes related to funding distributions hereunder and as set forth in this Section 6.5(d)) (i) the legal and organizational structure of the Eagle Debtors, except as provided in the Merger Agreement, (ii) defenses to any Causes of Action or requirements for any third party to establish mutuality to assert a

right of setoff, and (iii) distributions out of any insurance policies or proceeds of such policies. Notwithstanding the foregoing, prepetition intercompany Claims between and among the AMR Debtors, the American Debtors, and the Eagle Debtors shall be dealt with in accordance with Section 6.15 hereof.

6.6 Confirmation in the Event of Partial or No Plan Consolidation

(a) In the event that the Bankruptcy Court orders partial, or does not order, AMR Plan Consolidation, American Plan Consolidation, or Eagle Plan Consolidation, the Debtors reserve the right to (i) proceed with no or partial Plan Consolidation, (ii) propose one or more Sub-Plans with respect to one or more Debtors, (iii) proceed with confirmation of one or more Sub-Plans to the exclusion of the other Sub-Plans, (iv) withdraw some or all of the Sub-Plans, or (v) withdraw the Plan. Subject to the immediately preceding sentence, the Debtors' inability to confirm any Plan Consolidation or Sub-Plan, or the Debtors' election to withdraw any Plan Consolidation or Sub-Plan, shall not impair confirmation or consummation of any other Plan Consolidation or Sub-Plan.

(b) In the event that the Bankruptcy Court does not order the AMR Plan Consolidation, the American Plan Consolidation, or the Eagle Plan Consolidation, (i) Claims against the applicable Debtors shall be treated as separate Claims with respect to the estates of such Debtors for all purposes, and such Claims shall be administered as provided in the applicable Sub-Plan and (ii) the Debtors shall not be required to resolicit votes with respect to the Plan or any applicable Sub-Plan.

6.7 Claims Against Multiple Consolidated Debtors. If one or more AMR Debtors and one or more American Debtors are obligated for a particular Claim (other than a Double-Dip General Unsecured Claim or a Double-Dip General Unsecured Claim as to which a Single-Dip Treatment Election has been made in accordance with the procedures set forth in Section 4.3(b) or 4.10(b) hereof), the holder of such Claim shall be deemed to have one Claim against the AMR Debtors and one Claim against the American Debtors for purposes of confirmation and distribution. If one or more AMR Debtors and one or more Eagle Debtors are obligated for a particular Claim, the holder of such Claim shall be deemed to have one Claim against the AMR Debtors and one Claim against the Eagle Debtors for purposes of confirmation and distribution. If one or more American Debtors and one or more Eagle Debtors are obligated for a particular Claim, the holder of such Claim shall be deemed to have one Claim against the American Debtors and one Claim against the Eagle Debtors for purposes of confirmation and distribution. If one or more AMR Debtors, American Debtors, and Eagle Debtors are obligated for a particular Claim (other than a Double-Dip General Unsecured Claim or a Double-Dip General Unsecured Claim as to which a Single-Dip Treatment Election has been made in accordance with the procedures set forth in Section 4.3(b) or 4.10(b) hereof), the holder of such Claim shall be deemed to have one Claim against the AMR Debtors, one Claim against the American Debtors, and one Claim against the Eagle Debtors for purposes of confirmation and distribution. Notwithstanding the

foregoing, if a holder of a Claim against (i) one or more AMR Debtors and one or more American Debtors, (ii) one or more AMR Debtors and one or more Eagle Debtors, (iii) one or more American Debtors and one or more Eagle Debtors, or (iv) one or more AMR Debtors, one or more American Debtors, and one or more Eagle Debtors, by receiving more than one distribution, as set forth in this Section 6.7, would receive distributions hereunder with a value in excess of one hundred percent (100%) of such Claim, including any postpetition interest or other amounts due to such holder pursuant to any provision hereof, then the Debtors shall be authorized, without the need for any notice or further order of the Bankruptcy Court, to reduce the distributions hereunder that would otherwise be made on account of such Claim pro rata based on the relative amounts of such distributions, such that the holder of such Claim shall not receive value in excess of one hundred percent (100%) of such Claim, including, for the avoidance of doubt, any postpetition interest or other amounts due to such holder pursuant to any provision hereof.

6.8 Issuance of Plan Shares. New AAG shall issue the Plan Shares, or have sufficient authorized shares available for issuance, as applicable, in accordance herewith and with the Merger Agreement.

6.9 Nonconsensual Confirmation. In the event any Impaired Class of Claims entitled to vote on the Plan does not accept the Plan by the requisite statutory majority under section 1126(c) of the Bankruptcy Code, then the Debtors reserve the right to undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code.

6.10 Issuance of Securities; Execution of Related Documents. On the Effective Date, or as soon thereafter as reasonably practicable, except as otherwise provided herein or in the Merger Agreement, the Reorganized Debtors shall issue all securities, instruments, certificates, and other documents that they are required to issue hereunder or under any Postpetition Aircraft Agreement, which shall be distributed as provided herein and therein; *provided, however*, that New AAG shall be authorized to issue the New Mandatorily Convertible Preferred Stock and the New Common Stock in accordance with Sections 6.8 and 6.19 hereof, the Merger Agreement, and any such Postpetition Aircraft Agreement, as applicable, without the need for any further corporate action by any Debtor or Reorganized Debtor or their stockholders. New AAG and the Reorganized Debtors, as applicable, shall execute and deliver such other agreements, documents, and instruments in accordance with the Plan, the Merger Agreement, and any such Postpetition Aircraft Agreement, as applicable.

6.11 Section 1145 Exemption. The offer, issuance, and distribution of all of the shares of New Mandatorily Convertible Preferred Stock and New Common Stock hereunder to holders of Allowed Claims against and Allowed AMR Equity Interests in the Debtors, as applicable, and the issuance of all shares of New Common Stock issued pursuant to the conversion of the New Mandatorily Convertible Preferred Stock, and any securities issued or to be issued pursuant to or

in connection with a Postpetition Aircraft Agreement, shall be exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under (i) the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder and (ii) any state or local law requiring registration for the offer, issuance, or distribution of securities.

6.12 Listing. In accordance with the Merger Agreement, the shares of New Common Stock shall be authorized for listing on the New York Stock Exchange or the NASDAQ Stock Market, upon official notice of issuance, on or prior to the Closing Date.

6.13 Cancellation of AMR Common Stock. At the Merger Effective Time, all outstanding shares of AMR Common Stock or preferred stock of AMR, all options to purchase shares of AMR Common Stock or preferred stock of AMR, and all awards of any kind consisting of shares of AMR Common Stock or preferred stock of AMR, that have been or may be granted, held, awarded, outstanding, payable, or reserved for issuance, and all other AMR Equity Interests, including all securities or obligations convertible or exchangeable into or exercisable for shares of AMR Common Stock, preferred stock of AMR, or other AMR Equity Interests, and each other right of any kind, contingent or accrued, to acquire or receive shares of AMR Common Stock, preferred stock of AMR, or other AMR Equity Interests, whether upon exercise, conversion, or otherwise, whether vested or unvested, shall, without any action on the part of the holder thereof, be cancelled and retired and shall cease to exist. Such cancellation and retirement shall not affect the right to receive any distributions provided for hereunder. In addition, this Section 6.13 does not apply with respect to any New Common Stock, New Mandatorily Convertible Preferred Stock, or any other equity securities or rights to acquire or receive equity securities or any other awards of any kind relating to New AAG that are issued in accordance with or pursuant to the Plan or the Merger Agreement.

6.14 Cancellation of Existing Notes and Aircraft Securities. Except as otherwise provided herein, on the Effective Date, all notes, instruments, certificates, and other documents evidencing the Notes, the Special Facility Revenue Bonds (excluding the Covered Special Facility Revenue Bonds), and the Aircraft Securities shall be cancelled, and the obligations of the Debtors thereunder and in any way related thereto shall be deemed fully satisfied, released, and discharged; *provided*, *however*, that (i) with respect to Special Facility Revenue Bonds (excluding the Covered Special Facility Revenue Bonds), the obligations of the Debtors thereunder and in any way related thereto shall be fully terminated, satisfied, released, and discharged in exchange for the treatment provided herein for Allowed Claims and any other treatment provided for by Final Order, if any, (ii) the cancellations set forth in this Section 6.14 and the termination, satisfaction, release, and discharge of the Debtors' obligations with respect to the Special Facility Revenue Bonds (excluding the Covered Special Facility Revenue Bonds) and the Aircraft Securities shall not alter the obligations or rights of any non-Debtor third parties applicable after the Effective Date vis-à-vis one another with respect to such notes, instruments,

certificates, or other documents, (iii) the cancellations set forth in this Section 6.14 and the termination, satisfaction, release, and discharge of the Debtors' obligations with respect to the Special Facility Revenue Bonds (excluding the Covered Special Facility Revenue Bonds) shall not be deemed to cause a default, termination, waiver, or other forfeiture of the Debtors in any document, instrument, lease, or other agreement (including, but not limited to, that certain Amended and Restated Airport Use Agreement – Terminal Facilities Lease, dated as of January 1, 1985, by and between the City of Chicago and American, as amended from time to time (the "**Chicago Lease**")) pursuant to which the Debtors lease or use land, facilities, improvements, or equipment financed, in whole or in part, with the proceeds of any Special Facility Revenue Bonds that have been deemed to be satisfied or cancelled hereunder or otherwise, and (iv) any provision in any document, instrument, lease, or other agreement (including, but not limited to, the Chicago Lease) that causes or effectuates, or purports to cause or effectuate, a default, termination, waiver, or other forfeiture of, or by, the Debtors or their interests, as a result of the cancellations, terminations, satisfaction, releases, or discharges provided for in this Section 6.14 shall be deemed null and void and shall be of no force and effect, and the Debtors shall be entitled to continue to use (in accordance with the remaining provisions of such document, instrument, lease, or other agreement) any land, facilities, improvements, or equipment financed with the proceeds of Special Facility Revenue Bonds (including, but not limited to, the premises leased pursuant to the Chicago Lease), notwithstanding such cancellations, terminations, satisfactions, releases, or discharges provided in this Section 6.14. Except as otherwise provided herein, on the Effective Date, any indentures or similar agreements relating to any of the foregoing, including, without limitation, the Indentures, the Special Facility Revenue Bond Indentures, and any related notes, guarantees, or similar instruments of the Debtors or otherwise (excluding the Special Facility Revenue Bond Indentures, and any related notes, guarantees, or similar instruments of the Debtors or otherwise, associated with the Covered Special Facility Revenue Bonds) shall be deemed cancelled, as permitted by section 1123(a)(5)(F) of the Bankruptcy Code, and discharged (a) with respect to all rights of and obligations owed by any Debtor under any such indentures or similar agreements and (b) except as provided below in this Section, with respect to the rights and obligations of the Indenture Trustees under any such indentures or similar agreements against (or to) the holders of Note Claims, the holders of Special Facility Revenue Bond Claims, or any other Person. Solely for the purpose of clause (b) in the immediately preceding sentence, only the following rights of each such Indenture Trustee shall remain in effect after the Effective Date: (1) rights as trustee, co-trustee, agent, paying agent, distribution agent, authentication agent, guarantee trustee, remarketing agent, bond registrar, and registrar, including, but not limited to, any rights to payment of fees, expenses, and indemnification obligations, including, but not limited to, from property distributed hereunder to such Indenture Trustee (but excluding any other property of the Debtors, the Reorganized Debtors, or their respective estates), whether pursuant to the exercise of a charging lien or otherwise, (2) rights relating to distributions to be made to holders of Allowed Note Claims or Allowed Special Facility Revenue Bond

Claims by such Indenture Trustee from any source, including, but not limited to, distributions hereunder (but excluding any other property of the Debtors, the Reorganized Debtors, or their respective estates), (3) rights relating to representation of the interests of the holders of Note Claims or Special Facility Revenue Bond Claims by such Indenture Trustee in the Chapter 11 Cases to the extent not discharged or released hereunder or under any order of the Bankruptcy Court, and (4) rights relating to participation by such Indenture Trustee in any proceedings or appeals related to the Plan. Notwithstanding the continued effectiveness of such rights after the Effective Date, such Indenture Trustees shall have no obligation to object to Claims against the Debtors or to locate certificated holders of Notes, Special Facility Revenue Bonds, or Aircraft Securities who fail to surrender their respective Notes, Special Facility Revenue Bonds, or Aircraft Securities in accordance with Section 5.13 hereof. Nothing contained herein shall be deemed to cancel, terminate, release, or discharge the obligation of the Debtors or any of their counterparties under any executory contract or lease (including, but not limited to, executory contracts or leases pursuant to which a Debtor leases any land, facilities, improvements, and/or equipment financed, in whole or in part, with proceeds of Special Facility Revenue Bonds) to the extent such executory contract or lease has been assumed by the Debtors pursuant to a Final Order of the Bankruptcy Court or hereunder. Notwithstanding any other provisions set forth in this Section 6.14, with respect to any aircraft identified in the Plan Supplement, and any Aircraft Securities issued in respect of such aircraft, until (I) the execution of Postpetition Aircraft Agreements with respect to such aircraft, (II) the payment in full of distributions as provided herein in respect of the Claims addressed by such Postpetition Aircraft Agreements with respect to such aircraft, (III) any monies, other consideration, or other value to be passed through such Aircraft Securities at any time pursuant to the Postpetition Agreements in respect of such aircraft or otherwise arising from the sale, lease, or other disposition of such aircraft have been finally and indefeasibly paid and/or conveyed to the holders of such Aircraft Securities (including, without limitation, any equipment trust certificates), and (IV) in the case of any pass-through trust certificates, all of the matters described in the foregoing clauses (I) through (III) shall be completed with respect to each related aircraft and equipment trust certificate, any such Aircraft Securities shall not be cancelled; *provided*, *however*, on the Effective Date or the applicable Rejection Effective Date (as set forth in the Plan Supplement), as applicable, all obligations of the Debtors (to the extent the Debtors had any obligations) with respect to the Aircraft Securities (but, for the avoidance of doubt, not the obligations of the Debtors with respect to Postpetition Aircraft Agreements) shall be deemed satisfied, released, and discharged. For the avoidance of doubt, the release, satisfaction, or discharge of any of the Debtors' obligations under the Aircraft Securities shall not affect the rights and obligations of any non-Debtor third parties after the Effective Date or the applicable Rejection Effective Date, as applicable, vis-à-vis one another with respect to such Aircraft Securities.

6.15 Intercompany Claims. The allocation of value based upon prepetition intercompany Claims between and among the AMR Debtors, the

American Debtors, and the Eagle Debtors is reflected in the compromise embodied herein and distributions to be made hereunder. No separate distributions shall be made hereunder on account of such prepetition intercompany Claims, including the AMR Intercompany Claim and the Eagle Holding Intercompany Claim, and such Claims may be extinguished or compromised (by distribution, contribution, or otherwise) in the discretion of the Debtors on or after the Effective Date.

6.16 Exit Facility. The Debtors are authorized to enter into new financing arrangements subject to Bankruptcy Court approval.

6.17 Equity Interests in Subsidiaries Held by the Debtors. Subject to the terms and conditions set forth in the Merger Agreement, on the Effective Date, each respective Equity Interest in a direct or indirect subsidiary of AMR that is not a Debtor shall be unaffected by the Plan, and the Reorganized Debtor holding such Equity Interest shall continue to hold such Equity Interest; *provided, however*, that on or after the Effective Date, New AAG may cause US Airways to merge with and into New AAG or a business entity disregarded as an entity separate from New AAG for U.S. federal income tax purposes.

6.18 Board of Directors

(a) The initial Board of Directors of New AAG shall consist of twelve (12) members whose names shall be disclosed at or prior to the Confirmation Hearing. The Board of Directors of New AAG shall be composed of (i) five (5) directors designated by the Search Committee, (A) each of whom shall be an independent director and (B) one of whom shall serve as the initial Lead Independent Director of New AAG in accordance with the New AAG Bylaws and whom shall be designated to serve in such role by the Search Committee, (ii) two (2) directors designated by AMR, each of whom shall be independent directors reasonably acceptable to the Search Committee, (iii) three (3) directors designated by US Airways, each of whom shall be independent directors, (iv) one (1) director who shall be Mr. Thomas W. Horton, the current Chairman of the Board, President, and Chief Executive Officer of AMR, who shall serve as the initial Chairman of the Board of Directors of New AAG in accordance with the New AAG Bylaws, and (v) one (1) director who shall be Mr. W. Douglas Parker, the current Chairman of the Board and Chief Executive Officer of US Airways. The identities of the members of the initial Boards of Directors of the other Reorganized Debtors shall be disclosed at or prior to the Confirmation Hearing.

(b) After selection of the initial Board of Directors of New AAG, the holders of the New Mandatorily Convertible Preferred Stock and the New Common Stock shall elect members of the Board of Directors of New AAG in accordance with the New AAG Certificate of Incorporation, the New AAG Bylaws, the Certificate of Designations, and applicable nonbankruptcy law.

6.19 Corporate Action

(a) ***New AAG.*** The New AAG Certificate of Incorporation and the New AAG Bylaws shall be consistent with the terms and provisions of the Merger Agreement. New AAG shall file the New AAG Certificate of Incorporation and the Certificate of Designations with the Secretary of State of the State of Delaware on the Effective Date immediately prior to the Merger Effective Time. The New AAG Certificate of Incorporation shall prohibit the issuance of nonvoting equity securities, subject to further amendment of such New AAG Certificate of Incorporation as permitted by applicable law. The New AAG Bylaws shall be deemed adopted by the New AAG Board as of the Effective Date.

(b) ***The Reorganized Debtors.*** The Reorganized Debtors (other than New AAG) shall file the Amended Certificates of Incorporation with the Secretary of State of the State of the applicable state of formation on the Effective Date. The Amended Certificates of Incorporation for each of the Reorganized Debtors (other than New AAG) that are corporations shall prohibit the issuance of nonvoting equity securities, subject to further amendment of such Amended Certificates of Incorporation as permitted by applicable law. With respect to any Debtor that is a limited liability company or partnership, the respective limited liability company agreement or partnership agreement by which such Debtor is governed shall be similarly amended to prohibit the issuance of nonvoting equity securities.

(c) On the Effective Date, the adoption, filing, approval, and ratification, as necessary, of all corporate or related actions contemplated herein with respect to each of the Reorganized Debtors shall be deemed authorized and approved by each of the Reorganized Debtors, its board of directors, managers, stockholders, members, or partners, as applicable, in all respects, in each case to the extent required by applicable nonbankruptcy law. Without limiting the foregoing, such actions include (i) the adoption and filing of the New AAG Certificate of Incorporation, the Certificate of Designations, and the Amended Certificates of Incorporation for each of the other Reorganized Debtors, (ii) the approval of the New AAG Bylaws and the Amended Bylaws for each of the other Reorganized Debtors, (iii) the election or appointment, as applicable, of directors and officers for the Reorganized Debtors, (iv) the issuance of the Plan Shares, (v) the Merger to be effectuated pursuant to the Plan, (vi) the adoption and implementation of the employee matters set forth in Section 4.10 of the Merger Agreement and Section 4.1(o) of the American Disclosure Letter, including, but not limited to, the New AAG 2013 Incentive Award Plan, the Alignment Awards, and the LTIP 2013 Awards, (vii) the qualification of any of the Reorganized Debtors as foreign corporations, partnerships, or limited liability companies wherever the conduct of business by such Entities requires such qualification, and (viii) the execution, delivery, and performance of each Postpetition Aircraft Agreement and any agreement or instrument provided for in a Postpetition Aircraft Agreement and the issuance of any security to be issued by a Reorganized Debtor pursuant to or in connection with a Postpetition Aircraft Agreement.

(d) All matters provided for herein involving the corporate structure of any Debtor or Reorganized Debtor, or any corporate or related action required by any Debtor or Reorganized Debtor in connection herewith, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders or directors of such Debtor or Reorganized Debtor or by any other stakeholder, and with like effect as though such action had been taken unanimously by the security holders and directors, managers, members, or partners, as applicable, of the applicable Debtor or Reorganized Debtor.

6.20 New AAG 2013 Incentive Award Plan. The New AAG 2013 Incentive Award Plan, the Alignment Awards, and the LTIP 2013 Awards shall become effective immediately upon the occurrence of the Merger Effective Time without any further corporate or other action.

6.21 Anti-Dilution Adjustments. In the event that any transaction or event of the type contemplated by Sections 6.1, 6.2, or 6.3 of the Certificate of Designations occurs with respect to the New Common Stock, in addition to the actions required under the Certificate of Designations, the Board of Directors of New AAG shall take appropriate action as may be necessary or appropriate, as determined in its reasonable good faith judgment, to protect the rights of holders of New Common Stock consistent herewith.

6.22 Effectuating Documents and Further Transactions. Each of the officers of each of the Debtors is (and each of the officers of each of the Reorganized Debtors shall be) authorized and directed to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

6.23 Creditors' Committee Member Fees. Subject to the occurrence of the Effective Date and notwithstanding Section 2.2 hereof, the reasonable fees and out-of-pocket expenses (including professionals fees in an amount to be agreed upon by the Debtors and the Creditors' Committee) of the individual members of the Creditors' Committee, in each case, incurred in their capacities as members of the Creditors' Committee, shall, to the extent incurred and unpaid by the Debtors prior to the Effective Date, be Allowed as Administrative Expenses and paid by the Reorganized Debtors without further Bankruptcy Court approval upon the submission of invoices to the Reorganized Debtors. The foregoing shall not include any such fees and out-of-pocket expenses paid pursuant to Section 2.4 hereof.

ARTICLE VII.

PROCEDURES FOR DISPUTED CLAIMS

7.1 Objections to Claims. The Reorganized Debtors shall be entitled to object to Claims. Any objections to Claims shall be served and filed on or before the

later of (i) one hundred eighty (180) days after the Effective Date and (ii) such date as may be fixed by the Bankruptcy Court (as the same may be extended by the Bankruptcy Court), whether fixed before or after the date specified in clause (i) above. The Post-Effective Date Creditors' Committee shall have standing to appear and be heard with respect to objections to Claims.

7.2 Resolution of Disputed Administrative Expenses and Disputed Claims. On and after the Effective Date, the Reorganized Debtors shall have the authority to compromise, settle, otherwise resolve, or withdraw any objections to Administrative Expenses or Claims and to compromise, settle, or otherwise resolve any disputed Administrative Expenses and Disputed Claims without approval of the Bankruptcy Court, other than with respect to Administrative Expenses relating to compensation of professionals. Notwithstanding the foregoing, the Debtors shall not have the authority to compromise, settle, or otherwise resolve any Claims asserted by any insider of any Debtor or Reorganized Debtor or where the settled amount of such Claim exceeds $1 million.

7.3 Payments and Distributions with Respect to Disputed Claims

(a) Notwithstanding anything herein to the contrary, if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim; *provided, however*, that no payment or distribution provided hereunder shall be made to a Disputed Claim that becomes an Allowed Claim until after the occurrence of the Final Mandatory Conversion Date.

(b) There shall be withheld from the New Mandatorily Convertible Preferred Stock and the New Common Stock to be distributed to holders of Allowed Single-Dip General Unsecured Claims (i) the number of such shares that would be distributable with respect to any Disputed Single-Dip General Unsecured Claims had such Disputed Claims been Allowed on the Effective Date and (ii) such additional shares necessary to assure that, if all such Disputed Claims become Allowed Claims in full, sufficient shares are available to satisfy the American Labor Allocation (the "**Disputed Claims Reserve**"), together with all earnings thereon (net of any expenses relating thereto, including any taxes imposed thereon or otherwise payable by the Disputed Claims Reserve). The Disbursing Agent shall hold in the Disputed Claims Reserve all dividends, payments, and other distributions made on account of, as well as any obligations arising from, property held in the Disputed Claims Reserve, to the extent that such property continues to be so held at the time such distributions are made or such obligations arise, and such dividends, payments, or other distributions shall be held for the benefit of holders of Disputed Claims against any of the Debtors whose Claims are subsequently Allowed and for the benefit of other parties entitled thereto hereunder. The Debtors intend to seek a determination by the Bankruptcy Court of the estimated amount (either on an individual or aggregate basis) of Disputed Single-Dip General Unsecured Claims for purposes of determining the amount of the Disputed Claims Reserve attributable to such Disputed Claims.

(c) Any Plan Shares held in the Disputed Claims Reserve pursuant to this Section 7.3 shall be deemed voted by the Disbursing Agent proportionally in the same manner as any outstanding shares of New Mandatorily Convertible Preferred Stock and New Common Stock are voted. The applicable portion of any New Mandatorily Convertible Preferred Stock held in the Disputed Claims Reserve shall be mandatorily converted into shares of New Common Stock as required herein on each Mandatory Conversion Date.

(d) Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the Disbursing Agent of a private letter ruling if the Disbursing Agent so requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Disbursing Agent), the Disbursing Agent shall (i) treat the Disputed Claims Reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9 (and make any appropriate elections) and (ii) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Disbursing Agent, the Reorganized Debtors, and the holders of Claims and Equity Interests) shall report for United States federal, state, and local income tax purposes consistently with the foregoing.

(e) The Disbursing Agent shall be responsible for payment, out of the assets of the Disputed Claims Reserve, of any taxes imposed on the Disputed Claims Reserve or its assets. In the event, and to the extent, any Cash in the Disputed Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets of the Disputed Claims Reserve (including any income that may arise upon the distribution of the assets in the Disputed Claims Reserve), assets of the Disputed Claims Reserve may be sold to pay such taxes.

(f) The Disbursing Agent may request an expedited determination of taxes of the Disputed Claims Reserve under section 505(b) of the Bankruptcy Code for all tax returns for all taxable periods through the termination of the Disputed Claims Reserve.

7.4 True-Ups

(a) Interim True-Ups. On each Interim Distribution Date, or as soon thereafter as reasonably practicable, all shares of New Common Stock in the Disputed Claims Reserve that have been reserved with respect to all or any portion of a Disputed Single-Dip General Unsecured Claim that has been disallowed by a Final Order, to the extent such disallowance has not been reflected in such a distribution with respect to any prior Interim Distribution Date, shall be distributed on account of the American Labor Allocation, the Market-Based Old Equity Allocation, and to holders of Allowed Single-Dip General Unsecured Claims, as applicable, based upon how such shares of New Common Stock would have been distributed on the Initial Distribution Date and each Mandatory Conversion Date (including, as applicable, the shares issued upon conversion of the shares of New Mandatorily Convertible Preferred Stock reserved with respect to

such Disallowed Disputed Single-Dip General Unsecured Claim) if on the Effective Date the aggregate estimated amount of all Disputed Single-Dip General Unsecured Claims were reduced by the amount attributable to such Disallowed Disputed Single-Dip General Unsecured Claim in the Disputed Claims Reserve.

(b) Final True-Up. On the Final Distribution Date, or as soon thereafter as reasonably practicable, all shares of New Common Stock remaining in the Disputed Claims Reserve (after making all distributions pursuant to Section 7.5(a) hereof on account of Disputed Single-Dip General Unsecured Claims that have become Allowed Single-Dip General Unsecured Claims prior to such date), shall be distributed on account of the American Labor Allocation, the Market-Based Old Equity Allocation, and to holders of Allowed Single-Dip General Unsecured Claims, as applicable, based upon how such shares of New Common Stock would have been distributed on the Initial Distribution Date and each Mandatory Conversion Date if on the Effective Date the aggregate amount of all Allowed Single-Dip General Unsecured Claims were in the amount of such Claims on the Final Distribution Date and there were no Disputed Single-Dip General Unsecured Claims on the Effective Date.

7.5 Distributions After Allowance

(a) To the extent that a Disputed Single-Dip General Unsecured Claim becomes an Allowed Claim after the Effective Date, the Disbursing Agent shall, subsequent to the Final Mandatory Conversion Date, distribute to the holder thereof the distribution, if any, of the shares of New Common Stock to which such holder is entitled hereunder out of the Disputed Claims Reserve. All distributions made under this Section 7.5 on account of Allowed Claims shall be made together with any dividends, payments, or other distributions made on account of, as well as any obligations arising from, the distributed property, then held in the Disputed Claims Reserve as if such Allowed Claims had been Allowed Claims on the dates distributions were previously made to holders of Allowed Claims in the applicable Class, but shall be made net of any expenses relating thereto, including any taxes imposed thereon or otherwise payable by the Disputed Claims Reserve. No interest shall be paid with respect to any Disputed Single-Dip General Unsecured Claim that becomes an Allowed Claim after the Effective Date.

(b) To the extent that a Convenience Class Claim becomes an Allowed Claim after the Effective Date, the Disbursing Agent shall distribute to the holder thereof the distribution, if any, to which such holder is entitled hereunder, without interest.

7.6 Estimation

(a) The Debtors and the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether any of the Debtors or the Reorganized Debtors previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection

to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim, the amount estimated shall constitute either the Allowed amount of such Claim or a maximum limitation of the amount of such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation of the amount of such Claim, the Debtors or the Reorganized Debtors, as applicable, may pursue supplementary proceedings to object to the allowance of such Claim; *provided, however*, that the foregoing is not intended to limit the rights granted by section 502(j) of the Bankruptcy Code. The objection, estimation, and resolution procedures set forth in this Section 7.6 are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

(b) For purposes of facilitating distributions hereunder, the Debtors may, prior to the Effective Date, seek an order of the Bankruptcy Court estimating the aggregate amount of Disputed Single-Dip General Unsecured Claims, which shall serve as a maximum limitation on the Allowed amount of all such Claims.

7.7 Interest and Dividends. To the extent that a Disputed Claim becomes an Allowed Claim after the Effective Date, the holder of such Claim shall not be entitled to any interest that accrued thereon from and after the Effective Date. In the event that dividend distributions have been made with respect to the New Common Stock distributable to a holder of a Disputed Claim that later becomes Allowed, such holder shall be entitled to receive such previously distributed dividends without any interest thereon (net of allocable expenses of the Disputed Claims Reserve, including taxes).

ARTICLE VIII.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 Executory Contracts and Unexpired Leases. All executory contracts and unexpired leases to which any of the Debtors are parties automatically shall be deemed rejected as of the Effective Date, except for executory contracts or unexpired leases (i) that have been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) that are the subject of a separate motion to assume or reject pending on the Confirmation Date, (iii) that are assumed, rejected, or otherwise treated pursuant to Sections 8.3, 8.4, or 8.5 hereof, (iv) that are listed on Schedule 8.1 of the Plan Supplement (which will consist of various sub-Schedules), or (v) as to which a Treatment Objection has been filed and served by the Treatment Objection Deadline. If an executory contract or unexpired lease (a) has been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date or (b) is the subject of a separate motion to assume or reject pending on the Confirmation Date, then the listing of any such executory contract or unexpired lease on Schedule 8.1 of the Plan Supplement shall be of no effect.

8.2 Schedules of Executory Contracts and Unexpired Leases

(a) Schedule 8.1 of the Plan Supplement shall represent the Debtors' then-current good faith belief regarding the intended treatment of the executory contracts and unexpired leases listed thereon; *provided, however*, that executory contracts and unexpired leases related to Aircraft Equipment shall be listed on a separate sub-Schedule of Schedule 8.1 of the Plan Supplement. Subject to the limitations set forth in Section 8.2(d) hereof, the Debtors reserve the right, on or prior to 4:00 p.m. (Eastern Time) on the Business Day immediately prior to the commencement of the Confirmation Hearing, to amend (i) Schedule 8.1 of the Plan Supplement to add, delete, or reclassify any executory contract or unexpired lease or amend a proposed assignment and (ii) the Proposed Cure with respect to any executory contract or unexpired lease listed on the applicable Schedule as an executory contract or unexpired lease to be assumed; *provided, however*, that if the Confirmation Hearing is adjourned for a period of more than two (2) consecutive calendar days, the Debtors' right to amend Schedule 8.1 of the Plan Supplement and the Proposed Cure shall be extended to 4:00 p.m. (Eastern Time) on the Business Day immediately prior to the adjourned date of the Confirmation Hearing, with such extension applying in the case of any and all subsequent adjournments of the Confirmation Hearing; and *further provided*, that with respect to Intercompany Contracts and agreements that the Debtors propose to reject as of the deadline set forth above, the Debtors reserve the right to make amendments at any time prior to entry of the Confirmation Order.

(b) Pursuant to sections 365 and 1123 of the Bankruptcy Code, and except with respect to executory contracts and unexpired leases as to which a Treatment Objection is filed and served by the Treatment Objection Deadline, (i) each executory contract and unexpired lease listed on Schedule 8.1 of the Plan Supplement as an executory contract or unexpired lease to be assumed (and assigned, if applicable) shall be deemed assumed (and assigned, if applicable) effective as of the Assumption Effective Date specified thereon, the Proposed Cure specified in the Notice of Intent to Assume mailed to each Assumption Counterparty shall be the Cure Amount and shall be deemed to satisfy fully any obligations the Debtors might have with respect to such executory contract or unexpired lease under section 365(b) of the Bankruptcy Code, and all proofs of Claim on account of or in respect of any such assumed executory contract and unexpired lease shall be deemed withdrawn on the Effective Date without any further notice to or action by any party or order of the Bankruptcy Court; (ii) each executory contract and unexpired lease listed on Schedule 8.1 of the Plan Supplement as an executory contract or unexpired lease to be rejected shall be deemed rejected effective as of the Rejection Effective Date specified thereon; and (iii) the Reorganized Debtors may assume, assume and assign, or reject any executory contract or unexpired lease relating to Aircraft Equipment that is listed on Schedule 8.1(c)(3) of the Plan Supplement by filing with the Bankruptcy Court and serving upon the applicable Deferred Counterparty a Notice of Intent to Assume or a Notice of Intent to Reject at any time before the Deferred Agreement Deadline; *provided, however*, that if the Reorganized Debtors do not file a Notice of Intent to Assume or a Notice of Intent to Reject by the Deferred Agreement

Deadline with respect to any executory contract or unexpired lease relating to Aircraft Equipment listed on Schedule 8.1(c)(3) of the Plan Supplement, such executory contract or unexpired lease shall be deemed rejected effective as of the one hundred eighty-first (181st) calendar day after the Effective Date.

(c) The Debtors shall file an initial version of Schedule 8.1 of the Plan Supplement and any amendments thereto with the Bankruptcy Court and shall serve all notices thereof only on the applicable Assumption Counterparties, Rejection Counterparties, and Deferred Counterparties. With respect to any executory contract or unexpired lease first listed on Schedule 8.1 of the Plan Supplement as an executory contract or unexpired lease to be rejected later than the date that is ten (10) calendar days prior to the Voting Deadline, (A) the Debtors shall use their best efforts to promptly notify the respective Rejection Counterparty of such proposed treatment via facsimile, electronic transmission, or telephone at any notice address or telephone number set forth in the respective executory contract or unexpired lease or as otherwise timely provided in writing to the Debtors by such Rejection Counterparty or its counsel; and (B) the applicable Rejection Counterparty shall have five (5) calendar days from the date of an amendment to Schedule 8.1 of the Plan Supplement to object to confirmation of the Plan. With respect to any executory contract or unexpired lease first listed on Schedule 8.1 of the Plan Supplement later than the date that is five (5) calendar days prior to the Confirmation Hearing, the respective Rejection Counterparty shall have until the Confirmation Hearing to object to confirmation of the Plan.

(d) The listing of any contract or lease on Schedule 8.1 of the Plan Supplement is not an admission that such contract or lease is an executory contract or unexpired lease. The Debtors and the Assumption Counterparties, the Rejection Counterparties, or the Deferred Counterparties, as applicable (together with the Debtors, the "**Recharacterization Parties**") reserve the right to assert that any contract or lease listed on Schedule 8.1 of the Plan Supplement is not an executory contract or unexpired lease; *provided, however,* that except with respect to any contract or lease for which a Recharacterization Party (i) expressly reserves such right in a notice filed with the Bankruptcy Court and served on any parties listed thereon no later than ten (10) calendar days prior to the Voting Deadline and (ii) files an action based on such right prior to the date that is sixty (60) calendar days after the Effective Date (unless required hereunder to file such action at an earlier date), each Recharacterization Party shall be deemed to have waived, as of the Effective Date, any rights it may have to seek to recharacterize any contract or lease as a financing agreement.

8.3 Categories of Executory Contracts and Unexpired Leases to Be Assumed. Pursuant to sections 365 and 1123 of the Bankruptcy Code, each executory contract and unexpired lease in the following categories shall be deemed assumed as of the Effective Date (and the Proposed Cure with respect to each shall be zero dollars ($0)), except for any executory contract or unexpired lease (i) that has been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) that is the subject of a separate motion to assume or reject pending on the Confirmation Date, (iii) that is listed on Schedule 8.1 of the Plan

Supplement, (iv) that is otherwise expressly assumed or rejected hereunder, or (v) as to which a Treatment Objection has been filed and served by the Treatment Objection Deadline.

(a) ***Cash Management Agreements, Confidentiality and Non-Disclosure Agreements, Customer Programs, Debtor Ownership Agreements, Foreign Agreements, Fuel Consortia Agreements, Insurance Plans, Intercompany Contracts, Interline Agreements, Letters of Credit, Revenue Generating Agreements, Surety Bonds, and Workers' Compensation Plans.*** Subject to the terms of the first paragraph of this Section 8.3, each Cash Management Agreement, Confidentiality and Non-Disclosure Agreement, Customer Program, Debtor Ownership Agreement, Foreign Agreement, Fuel Consortia Agreement, Insurance Plan, Intercompany Contract, Interline Agreement, Letter of Credit, Revenue Generating Agreement, Surety Bond, and Workers' Compensation Plan shall be deemed assumed as of the Effective Date. Nothing in this Section 8.3 shall constitute or be deemed a waiver of any Cause of Action that the Debtors may hold against any Entity, including, without limitation, the insurer under any of the Debtors' Insurance Plans. Except as otherwise provided in the immediately preceding sentence, all proofs of Claim on account of or in respect of any Cash Management Agreement, Confidentiality and Non-Disclosure Agreement, Customer Program, Debtor Ownership Agreement, Foreign Agreement, Fuel Consortia Agreement, Insurance Plan, Intercompany Contract, Interline Agreement, Letter of Credit, Revenue Generating Agreement, Surety Bond, or Workers' Compensation Plan automatically shall be deemed withdrawn on the Effective Date without any further notice to or action by any party or order of the Bankruptcy Court. Unless otherwise agreed to by the applicable Debtor or Reorganized Debtor and the applicable Assumption Counterparty, an Assumption Counterparty to an executory contract or unexpired lease assumed pursuant to this Section 8.3(a) shall, on or before ten (10) Business Days after the Effective Date, return to the applicable Reorganized Debtor any deposit of Cash or other credit enhancement made by a Debtor to such Assumption Counterparty on or after the Commencement Date, including, without limitation, that certain Cash deposit held by Airlines Reporting Corporation pursuant to the Addendum to Carrier Services Agreement between Airlines Reporting Corporation and American, dated November 29, 2011, and that certain Cash deposit held by the International Air Transport Association pursuant to the Agreement in Connection with Proposed Assumption of Executory Contracts Regarding the International Air Transport Association, including the IATA Clearinghouse, and Related Agreements between the International Air Transport Association and American, dated as of November 29, 2011.

(b) ***Certain Indemnification Obligations***

(i) Each Indemnification Obligation shall be deemed assumed by New AAG as of the Merger Effective Time in accordance with the Merger Agreement. Each Indemnification Obligation that is deemed assumed hereunder shall continue in full force and effect in accordance with its terms. From and after the Merger Effective Time, New AAG shall honor and perform the Indemnification Obligations,

including under all indemnification Contracts (as defined in the Merger Agreement) and organizational documents of the Debtors. New AAG shall not, directly or indirectly, amend, modify, limit, or terminate, in any manner adverse to the Debtors' current or former directors or officers, with respect to the Indemnification Obligations for acts or omissions occurring prior to the Merger Effective Time, any indemnification Contracts with the Debtors or any provisions regarding the Indemnification Obligations contained in any organizational documents of the Debtors. Each Indemnification Obligation that is deemed assumed hereunder shall be deemed and treated as an executory contract pursuant to sections 365 and 1123 of the Bankruptcy Code regardless of whether or not a proof of Claim has been filed with respect to such Indemnification Obligation.

(ii) With respect to current or former employees of any of the Debtors not covered by Section 8.3(b)(i) hereof and who were employed by any of the Debtors prior to, on, or after the Commencement Date, each obligation of any Debtor to indemnify such employees with respect to or based upon any act or omission taken or omitted in any such capacity, or for or on behalf of any Debtor, whether pursuant to agreement, the Debtors' respective articles or certificates of incorporation, corporate charters, bylaws, operating agreements or similar corporate documents, or applicable law in effect as of the Effective Date, shall be deemed assumed by New AAG as of the Effective Date. Each such indemnification obligation that is deemed assumed hereunder shall continue in full force and effect in accordance with its terms. From and after the Merger Effective Time, New AAG shall honor and perform such indemnification obligations. New AAG shall not, directly or indirectly, amend, modify, limit, or terminate, in any manner adverse to such employees, with respect to such indemnification obligations for acts or omissions occurring prior to the Merger Effective Time, any indemnification contracts with the Debtors or any provisions regarding the indemnification obligations contained in any organizational documents of the Debtors. Each such indemnification obligation that is deemed assumed hereunder shall be deemed and treated as an executory contract pursuant to sections 365 and 1123 of the Bankruptcy Code regardless of whether or not a proof of Claim has been filed with respect to such indemnification obligation.

(c) ***Collective Bargaining Agreements.*** Each of the Collective Bargaining Agreements with the respective Unions shall remain in full force and effect on and after the Effective Date, subject to the respective terms thereof. The consideration provided for in each of the Section 1113 Agreements shall be in complete settlement and satisfaction of all Claims as provided therein, and each Union shall promptly take all action necessary to withdraw all proofs of Claim with respect to the Claims resolved

pursuant to the respective Section 1113 Agreements. Notwithstanding the foregoing, New AAG and the Reorganized Debtors reserve the right to seek adjudication of any Collective Bargaining Agreement-related disputes between the Debtors and any Union that concerns distributions, claims, restructuring transactions, or other aspects of the Plan in the Bankruptcy Court.

(d) ***Covered Special Facility Revenue Bonds*****.** Unless otherwise provided herein, in a Special Facility Revenue Bond Agreement, or in an order of the Bankruptcy Court, the Special Facility Revenue Bond Agreements, the respective Special Facility Revenue Bond Indentures, and the respective Special Facility Revenue Bond Documents, in each case relating solely to Covered Special Facility Revenue Bonds, shall remain in full force and effect in accordance with their original terms and conditions (or as amended by an order of the Bankruptcy Court) and shall not otherwise be altered, amended, modified, surrendered, or cancelled hereunder, and holders of such Covered Special Facility Revenue Bonds shall continue to receive payments in accordance with the terms and conditions of the Special Facility Revenue Bond Documents relating to the respective Covered Special Facility Revenue Bonds (as such Special Facility Revenue Bond Documents may have been amended by an order of the Bankruptcy Court). As a result of the assumption of executory contracts and/or leases relating to the Covered Special Facility Revenue Bonds and the prior payment of the related cure amounts by the Debtors, all proofs of Claim on account of or in respect of any Covered Special Facility Revenue Bonds shall be deemed Disallowed and expunged without any further notice to or action by any party or order of the Bankruptcy Court. To the extent any of the foregoing conflicts with the terms of a separate order of the Bankruptcy Court relating to a Covered Special Facility Revenue Bond, the order of the Bankruptcy Court shall govern.

8.4 Other Categories of Agreements and Policies

(a) ***Employee Benefits*****.** As of the Effective Date, unless specifically rejected by order of the Bankruptcy Court or otherwise specifically provided for herein, each American Compensation and Benefit Plan (as defined in the Merger Agreement) (including all matters set forth in Section 4.10 of the Merger Agreement and Section 4.1(o) of the American Disclosure Letter, but excluding any prepetition equity or equity-equivalent plan or agreement of the Debtors) shall be deemed assumed and shall be fully effective, and New AAG and the Reorganized Debtors shall maintain and perform under such plans and agreements. To the extent that the American Compensation and Benefit Plans are executory contracts, pursuant to sections 365 and 1123 of the Bankruptcy Code, they shall be deemed assumed; *provided, however*, that the foregoing shall not constitute the assumption of any benefits that are the subject of the adversary proceeding styled *AMR Corporation and American Airlines, Inc. v. Committee of Retired Employees*, Adv. Pro. No. 12-01744 (the "**Retiree Adversary Proceeding**"). The Debtors intend to continue to prosecute the Retiree Adversary Proceeding, and to the extent the Retiree Adversary Proceeding has not been finally resolved by the Effective Date, New AAG shall continue to prosecute the Retiree Adversary Proceeding subsequent to the Effective Date. To the extent that the Debtors or New AAG, as applicable, are unsuccessful in

whole or in part in obtaining the relief requested in the Retiree Adversary Proceeding, any remaining vested benefits shall be treated in accordance with the provisions of section 1129(a)(13) of the Bankruptcy Code.

(b) ***Employee Protection Arrangements.*** As of the Effective Date, the Employee Protection Arrangements (as defined in and set forth in Section 4.1(o) of the American Disclosure Letter) shall be fully effective.

(c) ***Postpetition Aircraft Agreements.*** Subject to the Debtors' right to terminate or reject any Postpetition Aircraft Agreement prior to the Effective Date pursuant to the terms of such Postpetition Aircraft Agreement, (i) each Postpetition Aircraft Agreement shall remain in place after the Effective Date, (ii) the Reorganized Debtors shall continue to honor each Postpetition Aircraft Agreement according to its terms, and (iii) to the extent any Postpetition Aircraft Agreement requires the assumption by the Debtors of such Postpetition Aircraft Agreement and the Postpetition Aircraft Obligations arising thereunder, such Postpetition Aircraft Agreement and Postpetition Aircraft Obligations shall be deemed assumed as of the Effective Date; *provided, however*, that this clause (iii) shall not be deemed or otherwise interpreted as an assumption by the Debtors of any agreement or obligation that is not a Postpetition Aircraft Agreement or Postpetition Aircraft Obligation; and *provided further*, that nothing herein shall limit the Debtors' right to terminate such Postpetition Aircraft Agreement or Postpetition Aircraft Obligations in accordance with the terms thereof. To the extent that, subsequent to the date of the Plan and on or prior to the Effective Date, the Debtors, with the approval of the Bankruptcy Court, enter into new Postpetition Aircraft Agreements for Aircraft Equipment not currently subject to a Postpetition Aircraft Agreement, any Claims or obligations arising thereunder shall be treated as Postpetition Aircraft Obligations hereunder and such Postpetition Aircraft Agreements shall be deemed assumed as of the Effective Date.

8.5 Pension Plans

(a) ***Pension Plan Required Contributions.*** On the Effective Date, the Reorganized Debtors shall assume and continue the Pension Plans and shall pay in Cash any aggregate unpaid (i) minimum required funding contributions under 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1082 and 1083 and (ii) all delinquent PBGC premiums under 29 U.S.C. §§ 1306 and 1307, in each case with interest, for the Pension Plans under ERISA or the Internal Revenue Code. Upon such payment, the lien notices perfecting all liens and security interests held by, or in favor of, the PBGC on any assets of the Debtors or their affiliates shall be, and shall be deemed to be, withdrawn.

(b) ***Pension Plan Continuation.*** After the Effective Date, the Reorganized Debtors shall (i) satisfy the minimum funding requirements under 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1082 and 1083, (ii) pay all required PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307, and (iii) administer the Pension Plans in accordance with the applicable provisions of ERISA and the Internal Revenue Code.

(c) ***Liabilities Preserved.*** No provision of the Plan, the Confirmation Order, or section 1141 of the Bankruptcy Code shall be construed to discharge, release, or relieve the Debtors, or their successors, including the Reorganized Debtors, or any other party, in any capacity, from liabilities or requirements imposed under any law or regulatory provision with respect to the Pension Plans or the PBGC. The PBGC and the Pension Plans shall not be enjoined or precluded from enforcing such liability as a result of any provision of the Plan, the Confirmation Order, or section 1141 of the Bankruptcy Code.

8.6 Assumption and Rejection Procedures and Resolution of Treatment Objections

(a) ***Proposed Assumptions.*** With respect to any executory contract or unexpired lease to be assumed hereunder or pursuant to a Notice of Intent to Assume, unless an Assumption Counterparty files and properly serves a Treatment Objection by the Treatment Objection Deadline, such executory contract or unexpired lease shall be deemed assumed and, if applicable, assigned as of the Assumption Effective Date proposed by the Debtors or the Reorganized Debtors, as applicable, without any further notice to or action by any party or order of the Bankruptcy Court, and any obligation the Debtors or the Reorganized Debtors, as applicable, may have to such Assumption Counterparty with respect to such executory contract or unexpired lease under section 365(b) of the Bankruptcy Code shall be deemed to be fully satisfied by the Proposed Cure, if any, which shall be the Cure Amount. Any Treatment Objection that is not timely filed and properly served shall be denied automatically and with prejudice (without the need for any objection by the Debtors or the Reorganized Debtors, as applicable, and without any further notice to, or action by, any party or order of the Bankruptcy Court). Any Claim relating to such assumption or assignment shall be forever barred from assertion and shall not be enforceable against any Debtor or Reorganized Debtor or their respective estates or property, without the need for any objection by the Debtors or the Reorganized Debtors, as applicable, and without any further notice to or action by any party or order of the Bankruptcy Court, and any obligation the Debtors or the Reorganized Debtors may have under section 365(b) of the Bankruptcy Code (over and above any Proposed Cure) shall be deemed fully satisfied, released, and discharged, notwithstanding any amount or information included in the Schedules or any proof of Claim.

(b) ***Proposed Rejections.*** With respect to any executory contract or unexpired lease to be rejected hereunder or pursuant to a Notice of Intent to Reject, unless a Rejection Counterparty files and serves a Treatment Objection by the Treatment Objection Deadline, such executory contract or unexpired lease shall be deemed rejected as of the Rejection Effective Date proposed by the Debtors or the Reorganized Debtors, as applicable, without any further notice to or action by any party or order of the Bankruptcy Court. Any objection to the rejection of an executory contract or unexpired lease that is not timely filed and served shall be deemed denied automatically and with prejudice (without the need for any objection by the Debtors or the Reorganized Debtors,

as applicable, and without any further notice to or action by any party or order of the Bankruptcy Court).

(c) ***Resolution of Treatment Objections***

(i) On and after the Effective Date, the Reorganized Debtors may, in their sole discretion, settle Treatment Objections without any further notice to or action by any party or order of the Bankruptcy Court (including by paying any agreed Cure Amount).

(ii) With respect to each executory contract or unexpired lease as to which a Treatment Objection is timely filed and served and is not otherwise resolved by the parties after a reasonable period of time, the Debtors or the Reorganized Debtors, as applicable, shall schedule a hearing with the Bankruptcy Court with respect to such Treatment Objection and provide at least fourteen (14) calendar days' notice of such hearing to the Assumption Counterparty, the Rejection Counterparty, or the Deferred Counterparty, as applicable; *provided, however*, that if such Treatment Objection is not resolved by the parties after a reasonable period of time, the respective Assumption Counterparty, Rejection Counterparty, or Deferred Counterparty may, with prior notice to the Debtors, request that the Bankruptcy Court schedule such a hearing. Unless otherwise ordered by the Bankruptcy Court or agreed to by the parties, any assumption or rejection approved by the Bankruptcy Court notwithstanding a Treatment Objection shall be effective as of the Assumption Effective Date or Rejection Effective Date, as applicable, that was originally proposed by the Debtors or specified herein.

(iii) Any Cure Amount shall be paid as soon as reasonably practicable following entry of a Final Order resolving an assumption dispute and/or approving an assumption (and assignment, if applicable), unless the Debtors or the Reorganized Debtors, as applicable, seek to reject such executory contract or unexpired lease and file a Notice of Intent to Reject under Section 8.2(b) hereof (which, with respect to a Special Facility Revenue Bond Agreement, must be served upon the Indenture Trustee of the applicable Special Facility Revenue Bond Indenture).

(iv) No Cure Amount shall be allowed for a penalty rate or default rate of interest to the extent not proper under the Bankruptcy Code or applicable law.

(d) ***Reservation of Rights.*** If a Treatment Objection is filed with respect to any executory contract or unexpired lease sought to be assumed or rejected by any of the Debtors or the Reorganized Debtors, the Debtors and the Reorganized Debtors

reserve the right (i) to seek to assume or reject such executory contract or unexpired lease at any time before the assumption, rejection, assignment, or Cure Amount with respect to such executory contract or unexpired lease is determined by a Final Order and (ii) to the extent a Final Order is entered resolving a Treatment Objection as to a Cure Amount in an amount different from the Proposed Cure, to seek to reject such executory contract or unexpired lease within fourteen (14) calendar days after the date of entry of such Final Order by filing with the Bankruptcy Court and serving upon the Assumption Counterparty or Rejection Counterparty, as applicable, a Notice of Intent to Assume or a Notice of Intent to Reject, as applicable (which, with respect to a Special Facility Revenue Bond Agreement, must be served upon the Indenture Trustee of the applicable Special Facility Revenue Bond Indenture).

8.7 Rejection Claims. Any Rejection Claim must be filed with the Bankruptcy Court by the Rejection Bar Date. Any Rejection Claim for which a proof of Claim is not properly filed and served by the Rejection Bar Date shall be forever barred and shall not be enforceable against the Debtors, the Reorganized Debtors, or their respective estates or property. The Debtors or the Reorganized Debtors, as applicable, may contest Rejection Claims in accordance with Section 7.1 hereof.

8.8 Assignment. To the extent provided under the Bankruptcy Code or other applicable law, any executory contract or unexpired lease transferred and assigned hereunder shall remain in full force and effect for the benefit of the transferee or assignee in accordance with its terms, notwithstanding any provision in such executory contract or unexpired lease (including those of the type set forth in section 365(b)(2) of the Bankruptcy Code) that prohibits, restricts, or conditions such transfer or assignment. To the extent provided under the Bankruptcy Code or other applicable law, any provision that prohibits, restricts, or conditions the assignment or transfer of any such executory contract or unexpired lease or that terminates or modifies such executory contract or unexpired lease or allows the counterparty to such executory contract or unexpired lease to terminate, modify, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon any such transfer and assignment, constitutes an unenforceable antiassignment provision and is void and of no force or effect.

8.9 Approval of Assumption, Rejection, Retention, or Assignment of Executory Contracts and Unexpired Leases. Subject to the occurrence of the Effective Date, entry of the Confirmation Order shall constitute approval of the rejections, retentions, assumptions, and/or assignments contemplated hereunder pursuant to sections 365 and 1123 of the Bankruptcy Code. Each executory contract and unexpired lease that is assumed hereunder shall vest in and be fully enforceable by the applicable Reorganized Debtor in accordance with its terms as of the applicable Assumption Effective Date, except as modified by the provisions hereof or any order of the Bankruptcy Court authorizing or providing for its assumption. The provisions of each executory contract or unexpired lease assumed and/or assigned hereunder that are or may be in default shall be deemed satisfied in full by

the Cure Amount or by an agreed-upon waiver of the Cure Amount. Upon payment in full of the Cure Amount, any and all proofs of Claim based upon an executory contract or unexpired lease that has been assumed in the Chapter 11 Cases or hereunder shall be deemed Disallowed and expunged without any further notice to or action by any party or order of the Bankruptcy Court.

8.10 Modifications, Amendments, Supplements, Restatements, or Other Agreements. Unless otherwise provided herein or by separate order of the Bankruptcy Court, each executory contract and unexpired lease that is assumed, whether or not such executory contract or unexpired lease relates to the use, acquisition, or occupancy of real property, shall include (i) all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease and (ii) all executory contracts or unexpired leases appurtenant to the premises, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, reciprocal easement agreements, and any other interests in real estate or rights in remedy related to such premises, unless any of the foregoing agreements is rejected hereunder or pursuant to an order of the Bankruptcy Court.

ARTICLE IX.

EFFECTIVENESS OF THE PLAN

9.1 Conditions Precedent to Confirmation of Plan. The following are conditions precedent to confirmation of the Plan:

(a) The Bankruptcy Court shall have entered the Confirmation Order in form and substance satisfactory to the Debtors and US Airways and reasonably satisfactory to the Creditors' Committee and the Majority of the Requisite Consenting Creditors.

(b) The Plan Supplement shall have been filed by the Debtors, and the documents contained therein shall be in form and substance reasonably satisfactory to the Creditors' Committee.

9.2 Conditions Precedent to Effective Date. The following are conditions precedent to the Effective Date of the Plan:

(a) The Confirmation Order shall be in full force and effect, and no stay thereof shall be in effect;

(b) All actions, documents, and agreements necessary to implement the Plan shall have been effected or executed;

(c) The Debtors shall have received any authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions, or documents that are necessary to implement the Plan and are required by law, regulation, or order;

(d) Each of the New AAG Certificate of Incorporation, the New AAG Bylaws, the Certificate of Designations, the Amended Certificates of Incorporation, the Amended Bylaws, and the New AAG 2013 Incentive Award Plan shall be in full force and effect;

(e) All conditions precedent to consummation of the Merger, pursuant to the Merger Agreement, shall have been satisfied or waived in accordance with the Merger Agreement, and the Merger Closing shall occur contemporaneously with the Effective Date;

(f) All of the matters set forth in Section 4.10 of the Merger Agreement and Section 4.1(o) of the American Disclosure Letter, other than the Chairman Letter Agreement, shall have been approved by the Bankruptcy Court and shall be in effect;

(g) All of the Debtors' defined benefit plans shall have been frozen, and the lump sum and installment forms of optional benefit payments for the Debtors' pilots shall have been eliminated;

(h) The Bankruptcy Court shall have entered an order finding that the aggregate amount of estimated Allowed Single-Dip General Unsecured Claims plus the amount of Disputed Single-Dip General Unsecured Claims utilized for determining the Disputed Claims Reserve to be established pursuant to Section 7.3 hereof shall not exceed $3.2 billion;

(i) The Effective Date shall be no earlier than the sixth (6th) Business Day after entry of the Confirmation Order;

(j) The Debtors shall have filed with the Bankruptcy Court a notice setting forth the proposed Effective Date at least six (6) Business Days in advance of such proposed Effective Date; and

(k) The global certificate(s) representing the New Mandatorily Convertible Preferred Stock shall have been delivered to The Depository Trust Company pursuant to Section 5.3 hereof.

9.3 Satisfaction and Waiver of Conditions. Except as otherwise provided herein or in the Merger Agreement, any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If the Debtors determine that any of the conditions precedent set forth in Section 9.2 hereof cannot be satisfied and the occurrence of such conditions is not

waived or cannot be waived, then the Debtors shall file a notice of the failure of the Effective Date with the Bankruptcy Court. Notwithstanding the foregoing, the Debtors reserve the right, with the consent of the Creditors' Committee and the Majority of the Requisite Consenting Creditors, to waive the occurrence of the conditions precedent set forth in Section 9.2 hereof or to modify any of such conditions precedent. Any such written waiver of such condition precedents may be effected at any time, without notice or leave or order of the Bankruptcy Court, and without any other formal action other than proceeding to consummate the Plan.

ARTICLE X.

EFFECT OF CONFIRMATION

10.1 Vesting of Assets. Upon the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of the Debtors shall vest in the Reorganized Debtors free and clear of all Claims, liens, encumbrances, charges, and other interests, except as otherwise provided herein. The Reorganized Debtors may operate their businesses and use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code, except as otherwise provided herein.

10.2 Discharge of Claims and Termination of Equity Interests. Except as otherwise provided herein or in the Confirmation Order, the rights afforded herein and the payments and distributions to be made hereunder shall discharge all existing debts and Claims and terminate all Equity Interests of any kind, nature, or description whatsoever against or in the Debtors or any of their assets or property to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as otherwise provided herein, upon the Effective Date, all existing Claims against the Debtors and Equity Interests in the Debtors shall be, and shall be deemed to be, discharged and terminated, and all holders of Claims and Equity Interests (and all representatives, trustees, or agents on behalf of each holder) shall be precluded and enjoined from asserting against the Reorganized Debtors, or any of their assets or property, any other or further Claim or Equity Interest based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of Claim or proof of Equity Interest and whether or not the facts or legal bases therefor were known or existed prior to the Effective Date.

10.3 Release and Discharge of Debtors. Upon the Effective Date and in consideration of the distributions to be made hereunder, except as otherwise expressly provided herein, each holder (as well as any representatives, trustees, or agents on behalf of each holder) of a Claim or Equity Interest and any affiliate of such holder shall be deemed to have forever waived, released, and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Equity Interests, rights, and liabilities that arose prior

to the Effective Date. Upon the Effective Date, all such Persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Equity Interest in the Debtors.

10.4 Term of Injunctions or Stays. Unless otherwise provided herein or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay. For the avoidance of doubt, the Revised Final Order Pursuant to 11 U.S.C. §§ 105(a) and 362 Establishing Notification Procedures for Substantial Claimholders and Equity Security Holders and Approving Restrictions on Certain Transfers of Interests in the Debtors' Estates, entered by the Bankruptcy Court on April 11, 2013 (ECF No. 7591), shall remain in full force and effect beyond the Effective Date.

10.5 Injunction Against Interference with Plan. Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

10.6 Injunction. Except as otherwise expressly provided herein, all Persons or Entities who have held, hold, or may hold Claims or Equity Interests and all other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim or Equity Interest against the Debtors or the Reorganized Debtors or property of any of the Debtors or the Reorganized Debtors other than actions to enforce the Plan or with respect to the allowance of Claims and Equity Interests, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtors or the Reorganized Debtors or property of any of the Debtors or the Reorganized Debtors, (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors or the Reorganized Debtors or against property or interests in property of the Debtors or the Reorganized Debtors, or (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from the Debtors or the Reorganized Debtors or against property or interests in property of the Debtors or the Reorganized Debtors, with respect to any such Claim or Equity Interest. Such injunction shall extend to any successors of the Debtors and the Reorganized Debtors and their respective property and interests in property.

10.7 Exculpation. Notwithstanding anything herein to the contrary, and to the maximum extent permitted by applicable law, neither the Debtors, US

Airways, the Creditors' Committee, the Retiree Committee, the Indenture Trustees, Servicers, the Unions, the Search Committee, the Ad Hoc Committee, Nuveen Asset Management, LLC (and each of its managed funds and accounts on behalf of which it executed the Support and Settlement Agreement), and OppenheimerFunds, Inc. (and each of its managed funds and accounts that executed the Support and Settlement Agreement), nor any of their respective members (current and former, including counsel and other professionals employed by such members in connection with the Chapter 11 Cases), officers, directors, employees, counsel, advisors, professionals, or agents (collectively, the "**Exculpated Parties**"), shall have or incur any liability to any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of the Chapter 11 Cases; negotiations regarding or concerning the Plan, the Merger Agreement, the Merger, and any settlement or agreement in the Chapter 11 Cases; the pursuit of confirmation of the Plan and consummation of the Merger; the consummation of the Plan and of the Merger; the offer, issuance, and distribution of any securities issued or to be issued pursuant to the Plan (including pursuant to or in connection with any Postpetition Aircraft Agreement), whether or not such distribution occurs following the Effective Date; or the administration of the Plan or property to be distributed hereunder, except for actions found by Final Order to be willful misconduct, gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, breach of fiduciary duty (to the extent applicable), and *ultra vires* acts, and, in all respects, the Exculpated Parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities hereunder. Following entry of the Confirmation Order, the Bankruptcy Court shall retain exclusive jurisdiction to consider any and all claims against any of the Exculpated Parties involving or relating to the administration of the Chapter 11 Cases, any rulings, orders, or decisions in the Chapter 11 Cases or any aspects of the Debtors' Chapter 11 Cases, including the decision to commence the Chapter 11 Cases, the development and implementation of the Plan and the Merger Agreement, the decisions and actions taken during the Chapter 11 Cases, and any asserted claims based upon or related to prepetition obligations or equity interests administered in the Chapter 11 Cases, for the purpose of determining whether such claims belong to the Debtors' estates or third parties. In the event it is determined that any such claims belong to third parties, then, subject to any applicable subject matter jurisdiction limitations, the Bankruptcy Court shall have exclusive jurisdiction with respect to any such litigation, subject to any determination by the Bankruptcy Court to abstain and consider whether such litigation should more appropriately proceed in another forum.

10.8 Release. As of the Effective Date and subject to the occurrence of the Merger Effective Time, the Debtors release (i) all present and former directors and officers of the Debtors and any other Persons who serve or served as members of management of the Debtors, (ii) all post-Commencement Date advisors, consultants, agents, counsel, or other professionals of or to the Debtors, US Airways, the Creditors' Committee, the Retiree Committee, the Indenture Trustees, the

Unions, the Search Committee, and the Ad Hoc Committee, and (iii) US Airways, the Indenture Trustees, the Unions, all current and former members (in their capacity as members of such committees) of the Creditors' Committee, the Retiree Committee, the Ad Hoc Committee, the Search Committee, Nuveen Asset Management, LLC (and each of its managed funds and accounts on behalf of which it executed the Support and Settlement Agreement) (in its capacity in negotiating the Support and Settlement Agreement and the Plan), and OppenheimerFunds, Inc. (and each of its managed funds and accounts that executed the Support and Settlement Agreement) (in its capacity in negotiating the Support and Settlement Agreement and the Plan), and their respective officers, directors, agents, and employees (including attorneys and other professionals retained by individual members of such committees) (collectively, the "**Released Parties**"), from any and all Causes of Action held by, assertable on behalf of, or derivative from the Debtors, in any way relating to the Debtors, the Chapter 11 Cases, the Plan, negotiations regarding or concerning the Plan, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, and the ownership, management, and operation of the Debtors, except for actions found by Final Order to be willful misconduct (including, but not limited to, conduct that results in a personal profit at the expense of the Debtors' estates), gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, breach of fiduciary duty (to the extent applicable), and *ultra vires* acts, which Causes of Action are based on any act, event, or omission taking place before the Effective Date; *provided, however,* that the foregoing (a) shall not operate as a waiver of or release from any Causes of Action arising out of any express contractual obligation owing by any former director, officer, or employee of the Debtors or any reimbursement obligation of any former director, officer, or employee with respect to a loan or advance made by the Debtors to such former director, officer, or employee, and (b) shall not limit the liability of any counsel to their respective clients contrary to Rule 1.8(h)(1) of the New York Rules of Professional Conduct. The Reorganized Debtors and any newly-formed Entities that will be continuing the Debtors' business after the Effective Date shall be bound by all the releases set forth above to the same extent that the Debtors are bound.

10.9 Avoidance Actions. From and after the Effective Date, the Reorganized Debtors shall waive the right to prosecute any avoidance, equitable subordination, or recovery actions under sections 105, 502(d), 510, 542 through 551, and 553 of the Bankruptcy Code that belong to the Debtors.

10.10 Retention of Causes of Action/Reservation of Rights

(a) Except as otherwise provided in Section 10.8 hereof, nothing herein or in the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights or Causes of Action that the Debtors or the Reorganized Debtors may have or which the Reorganized Debtors may choose to assert on behalf of their respective estates under any provision of the Bankruptcy Code or any applicable nonbankruptcy law, including, without limitation, (i) any and all Claims against any Person or Entity, to

the extent such Person or Entity asserts a crossclaim, counterclaim, and/or Claim for setoff which seeks affirmative relief against the Debtors, the Reorganized Debtors, or their officers, directors, or representatives and (ii) for the turnover of any property of the Debtors' estates.

(b) Nothing herein or in the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or Causes of Action, right of setoff, or other legal or equitable defense that the Debtors had immediately prior to the Commencement Date, against or with respect to any Claim left unimpaired by the Plan. The Reorganized Debtors shall have, retain, reserve, and be entitled to assert all such claims, Causes of Action, rights of setoff, and other legal or equitable defenses that they had immediately prior to the Commencement Date fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights with respect to any Claim left unimpaired by the Plan may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Cases had not been commenced.

10.11 Special Provisions for Governmental Units. Solely with respect to "governmental units" (as defined in the Bankruptcy Code), nothing herein shall limit or expand the scope of discharge, release, or injunction to which the Debtors or the Reorganized Debtors are entitled under the Bankruptcy Code. Further, nothing herein, including Sections 10.7 and 10.8 hereof, shall discharge, release, enjoin, or otherwise bar (i) any liability of the Debtors or the Reorganized Debtors to a "governmental unit" arising on or after the Confirmation Date with respect to events occurring on or after the Confirmation Date, (ii) any liability to a "governmental unit" that is not a Claim, (iii) any valid right of setoff or recoupment of a "governmental unit," (iv) any police or regulatory action by a "governmental unit," (v) any environmental liability to a "governmental unit" that the Debtors, the Reorganized Debtors, any successors thereto, or any other Person or Entity may have as an owner or operator of real property after the Effective Date, and (vi) any liability to a "governmental unit" on the part of any Persons or Entities other than the Debtors or the Reorganized Debtors, *provided, however*, that nothing in this Section 10.11 shall affect the Debtors' releases in Section 10.8 hereof, nor shall anything herein enjoin or otherwise bar any "governmental unit" from asserting or enforcing, outside the Bankruptcy Court, any of the matters described in clauses (i) through (vi) above.

ARTICLE XI.

RETENTION OF JURISDICTION

11.1 Jurisdiction of Bankruptcy Court. On and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction of all matters arising under, arising out of, or related to the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(a) To hear and determine motions for the assumption, assumption and assignment, or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom;

(b) To determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced before or after the Confirmation Date, including, without limitation, any proceeding with respect to a Cause of Action or Avoidance Action;

(c) To ensure that distributions to holders of Allowed Claims and Allowed Equity Interests are accomplished as provided herein;

(d) To consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim;

(e) To enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

(f) To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

(g) To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code and to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(h) To hear and determine all applications under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Confirmation Date;

(i) To hear and determine disputes arising in connection with or related to the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, any transactions or payments contemplated herein, or any agreement, instrument, or other document governing or relating to any of the foregoing;

(j) To hear and determine disputes arising in connection with or related to the Disputed Claims Reserve;

(k) To hear and determine all matters as provided in Section 7.6 of the Merger Agreement;

(l) To take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan or to maintain the integrity of the Plan following consummation;

(m) To recover all assets of the Debtors and property of the Debtors' estates, wherever located;

(n) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(o) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including the expedited determination of taxes under section 505(b) of the Bankruptcy Code);

(p) To enforce all orders previously entered by the Bankruptcy Court;

(q) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;

(r) To determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Confirmation Order, the Plan Supplement, or any contract, instrument, release, or other agreement or document related to the Plan, the Disclosure Statement, or the Plan Supplement, including the Merger Agreement;

(s) To hear and determine all disputes involving the existence, nature, or scope of the Debtors' discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

(t) To hear and determine any rights, claims, or causes of action held by or accruing to the Debtors or the Reorganized Debtors pursuant to the Bankruptcy Code or any federal or state statute or legal theory;

(u) To enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases;

(v) To hear any other matter not inconsistent with the Bankruptcy Code;

(w) To hear and determine any disputes arising in connection with the interpretation, implementation, or enforcement of any Postpetition Aircraft Agreement; and

(x) To enter a final decree closing the Chapter 11 Cases.

To the extent that the Bankruptcy Court is not permitted under applicable law to preside over any of the forgoing matters, the reference to the "Bankruptcy Court" in this Article XI shall be deemed to be replaced by the "District Court." Nothing in this Article XI shall expand the exclusive jurisdiction of the Bankruptcy Court beyond that provided by applicable law.

ARTICLE XII.

MISCELLANEOUS PROVISIONS

12.1 Dissolution of Committees. Following the Effective Date, the Retiree Committee shall continue to have standing and a right to be heard solely with respect to (i) applications for compensation by professionals and requests for allowance of Administrative Expenses for substantial contribution pursuant to section 503(b)(3)(D) of the Bankruptcy Code, (ii) any adversary proceedings and any appeals (including appeals of the Confirmation Order that remain pending as of the Effective Date) to which the Retiree Committee is a party, (iii) any proofs of Claim filed by the Retiree Committee until such time as the allowance or disallowance of such proofs of Claim have been finally determined, including any appeals from an order allowing or disallowing such proofs of Claim, and (iv) any other matter related to the foregoing or involving the Retiree Committee's rights or duties under section 1114 of the Bankruptcy Code. The Retiree Committee shall remain in existence after the Effective Date and shall not dissolve until the completion of the foregoing post-Effective Date activities. The Reorganized Debtors shall continue to compensate the Retiree Committee's professional advisors for reasonable services and expenses provided in connection with any of the foregoing post-Effective Date activities and reimburse the Retiree Committee members for their reasonable expenses incurred in connection therewith. On the date that is one hundred eighty (180) days following the Effective Date, the Creditors Committee shall dissolve (unless such date is extended with the written consent of the Reorganized Debtors or by the Bankruptcy Court for good cause shown); *provided, however*, that, following the Effective Date, the Creditors' Committee's standing and right to be heard shall be limited to (a) applications for compensation by professionals and requests for allowance of Administrative Expenses for substantial contribution pursuant to section 503(b)(3)(D) of the Bankruptcy Code, (b) participating in court hearings with respect to motions, adversary proceedings, or other actions (I) seeking enforcement or implementation of the provisions hereof or of the Confirmation Order, (II) relating to objections to Claims as set forth in Section 7.1 hereof, and (III) as otherwise consented to by the Reorganized Debtors or so ordered by the Bankruptcy Court for good cause shown; and (c) any litigation or contested matter to which the Creditors' Committee is a party as of the Effective Date. Notwithstanding the foregoing, following the Effective Date, the Creditors' Committee's membership shall consist of the Allied Pilots Association, the Association of Professional Flight Attendants, Hewlett-

Packard Enterprise Services, LLC, Manufacturers and Traders Trust Company, and the Transportation Workers Union of America, and its duties shall be limited to (u) participating in court hearings as provided in this Section 12.1; (v) consulting with the Reorganized Debtors with respect to the General Unsecured Claims reconciliation and settlement process conducted by or on behalf of the Reorganized Debtors; (w) consulting with the Reorganized Debtors with respect to appropriate procedures for the settlement of Claims; (x) consulting with the Reorganized Debtors with respect to the maintenance of the Disputed Claims Reserve; (y) monitoring the distributions to the holders of Allowed Claims by the Disbursing Agent hereunder; and (z) the matters set forth in Section 7.1 hereof. For so long as the General Unsecured Claims reconciliation process shall continue and the Creditors' Committee has not been dissolved, the Reorganized Debtors shall make regular reports to the Creditors' Committee as and when the Reorganized Debtors and the Creditors' Committee may reasonably agree upon. Following the Effective Date, the Creditors' Committee may retain professionals to assist it in carrying out its duties as limited above on terms that are reasonably acceptable to the Reorganized Debtors or authorized to be retained by further order of the Bankruptcy Court; *provided further*, that the Creditors' Committee's professional advisors and experts that have been retained by an order of the Bankruptcy Court prior to the Effective Date shall be deemed reasonably acceptable to the Reorganized Debtors. The Reorganized Debtors shall continue to compensate the Creditors' Committee's professional advisors for reasonable services provided in connection with any of the foregoing post-Effective Date activities. In addition, with respect to each member of the Post-Effective Date Creditors' Committee, the Reorganized Debtors shall (a) reimburse one (1) representative of each such member for its respective reasonable out-of-pocket expenses in connection with attending meetings of the Post-Effective Date Creditors' Committee and (b) compensate its respective professional advisors for fees not to exceed $100,000 for reasonable services provided in connection with any of the foregoing post-Effective Date activities that were incurred during the six (6) month period after the Effective Date, which shall be the sole source of payment from the Debtors or the Reorganized Debtors for such fees. On the Effective Date, the current and former members of the Creditors' Committee and the Retiree Committee, and their respective officers, employees, counsel, advisors, and agents, shall be released and discharged of and from all further authority, duties, responsibilities, and obligations related to and arising from and in connection with the Chapter 11 Cases, and the retention or employment of the Creditors' Committee's and the Retiree Committee's respective attorneys, accountants, and other agents shall terminate, except to the extent provided above in this Section 12.1.

12.2 Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

12.3 Effectuating Documents and Further Transactions. Each of the officers of New AAG and the other Reorganized Debtors is authorized, in

accordance with his or her authority under the resolutions of the applicable Board of Directors, to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be reasonably necessary or appropriate, to effectuate and further evidence the terms and provisions of the Plan and any securities issued hereunder.

12.4 Exemption from Transfer Taxes

(a) Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, Transfer, or exchange of notes or equity securities hereunder or in connection with the transactions contemplated hereby, the creation, filing, or recording of any mortgage, deed of trust, or other security interest, the making, assignment, filing, or recording of any lease or sublease, the transfer of title to or ownership of any of the Debtors' interests in any Aircraft Equipment, or the making or delivery of any deed, bill of sale, or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, the New Mandatorily Convertible Preferred Stock, the New Common Stock, any Postpetition Aircraft Agreement, any distribution from the Disputed Claims Reserve, or any agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated herein or in any Postpetition Aircraft Agreement, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, Cape Town filing or recording fee, FAA filing or recording fee, or other similar tax or governmental assessment in the United States.

(b) To the maximum extent provided by section 1146(a) of the Bankruptcy Code and applicable nonbankruptcy law, the transactions pursuant to the Merger Agreement shall not be taxed under any law imposing a stamp tax or similar tax.

12.5 Expedited Tax Determination. New AAG or the Reorganized Debtors may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for all returns filed for or on behalf of the Debtors or the Reorganized Debtors for all taxable periods through the Effective Date.

12.6 Sell-Down Procedures. In accordance with the Revised Final Order Pursuant to 11 U.S.C.§§ 105(a) and 362 Establishing Notification Procedures for Substantial Claimholders and Equity Security Holders and Approving Restrictions on Certain Transfers of Interests in the Debtors' Estates, entered by the Bankruptcy Court on April 11, 2013 (ECF No. 7591), a copy of which (without exhibits) is annexed hereto as Exhibit "C," Paragraphs (b)(iv)(1) through (9) thereto, together with any relevant definitions, are incorporated herein as part of the Plan.

12.7 Payment of Statutory Fees. On the Effective Date, and thereafter as may be required, each of the Debtors shall (i) pay all the respective fees payable pursuant to section 1930 of chapter 123 of title 28 of the United States Code, together with interest, if any, pursuant to section 3717 of title 31 of the United States

Code, until the earliest to occur of the entry of (a) a final decree closing such Debtor's Chapter 11 Case, (b) a Final Order converting such Debtor's Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, or (c) a Final Order dismissing such Debtor's Chapter 11 Case, and (ii) be responsible for the filing of consolidated postconfirmation quarterly status reports with the Bankruptcy Court in accordance with Rule 3021-1 of the Southern District of New York Local Bankruptcy Rules, which status reports shall include reports on the disbursements made by each of the Debtors.

12.8 Plan Modifications and Amendments. The Plan may be amended, modified, or supplemented by the Debtors or the Reorganized Debtors, as applicable, in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as the Bankruptcy Court may otherwise direct. In addition, after the Confirmation Date, so long as such action does not materially adversely affect the treatment of holders of Claims or Equity Interests hereunder, the Debtors may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order with respect to such matters as may be necessary to carry out the purposes and effects of the Plan. Prior to the Effective Date, the Debtors may, upon not less than five (5) Business Days' notice to the attorneys for the Creditors' Committee and the Ad Hoc Committee, make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court; *provided*, *however*, that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Equity Interests.

12.9 Revocation or Withdrawal of Plan. Subject to the terms of the Merger Agreement, the Debtors reserve the right to revoke, withdraw, or delay consideration of the Plan prior to the Confirmation Date, either entirely or with respect to one or more of the Debtors, and to file subsequent amended plans of reorganization. If the Plan is revoked, withdrawn, or delayed with respect to fewer than all of the Debtors, such revocation, withdrawal, or delay shall not affect the enforceability of the Plan as it relates to the Debtors for which the Plan is not revoked, withdrawn, or delayed. If the Debtors revoke the Plan in its entirety, the Plan shall be deemed null and void. In such event, nothing herein shall be deemed to constitute a waiver or release of any Claim by or against the Debtors or any other Person or to prejudice in any manner the rights of the Debtors or any other Person in any further proceedings involving the Debtors.

12.10 Courts of Competent Jurisdiction. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of the Plan, such abstention, refusal, or failure of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

12.11 Severability. If, prior to entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors (with the prior written consent of US Airways, not to be unreasonably withheld), shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding the foregoing, in such case, the Plan only may be confirmed without such term or provision at the request of the Debtors with the consent of the Creditors' Committee, which consent shall not be unreasonably withheld. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and provide that each term and provision hereof, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

12.12 Governing Law. Except to the extent the Bankruptcy Code or other U.S. federal law is applicable, or to the extent an Exhibit or Schedule hereto, a schedule in the Plan Supplement, or the Merger Agreement expressly provides otherwise, the rights, duties, and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflicts of law thereof to the extent they would result in the application of the laws of any other jurisdiction.

12.13 Exhibits and Schedules. The Exhibits and Schedules to the Plan and the Plan Supplement are incorporated into, and are part of, the Plan as if set forth herein.

12.14 Successors and Assigns. All the rights, benefits, and obligations of any Person named or referred to herein shall be binding on, and inure to the benefit of, the heirs, executors, administrators, successors, and/or assigns of such Person.

12.15 Time. In computing any period of time prescribed or allowed herein, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

12.16 Notices. To be effective, all notices, requests, and demands to or upon the Debtors, US Airways, the Creditors' Committee, or the Retiree Committee shall be in writing (including by facsimile or electronic transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered, or in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtors or Merger Sub, to:

AMR Corporation
4333 Amon Carter Boulevard
MD 5675
Fort Worth, Texas 76155
Attn: Gary Kennedy, Esq.
Telephone: (817) 967-1322
Telecopier: (817) 967-2501
E-mail: gary.kennedy@aa.com

-and-

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attn: Stephen Karotkin, Esq.
Alfredo R. Pérez, Esq.
Telephone: (212) 310-8000
Telecopier: (212) 310-8007
E-mail: stephen.karotkin@weil.com
alfredo.perez@weil.com

If to US Airways, to:

US Airways Group, Inc.
111 West Rio Salado Parkway
Tempe, Arizona 85281
Attn: Steven L. Johnson, EVP-Corporate and Government Affairs
Telephone: (480) 693-0800
Telecopier: (480) 693-5155
E-mail: stephen.johnson@usairways.com

-and-

Latham & Watkins LLP
140 Scott Drive
Menlo Park, California 94025
Attn: Peter F. Kerman, Esq.
D. J. Baker, Esq.
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Dated: New York, New York
September 23, 2013

Respectfully submitted,

AMR CORPORATION
By: /s/ Gary F. Kennedy
Name: Gary F. Kennedy
Title: Senior Vice President, General Counsel & Chief Compliance Officer

AMERICAN AIRLINES, INC.
AMR EAGLE HOLDING CORPORATION
AMERICAN AIRLINES REALTY (NYC) HOLDINGS, INC.
AMERICAS GROUND SERVICES, INC.
PMA INVESTMENT SUBSIDIARY, INC.
SC INVESTMENT, INC.
AMERICAN EAGLE AIRLINES, INC.
EXECUTIVE AIRLINES, INC.
EXECUTIVE GROUND SERVICES, INC.
EAGLE AVIATION SERVICES, INC.
ADMIRALS CLUB, INC.
BUSINESS EXPRESS AIRLINES, INC.
RENO AIR, INC.
AA REAL ESTATE HOLDING GP LLC
AA REAL ESTATE HOLDING L.P.
AMERICAN AIRLINES MARKETING SERVICES LLC
AMERICAN AIRLINES VACATIONS LLC
AMERICAN AVIATION SUPPLY LLC
AMERICAN AIRLINES IP LICENSING HOLDING, LLC

BY: AMR CORPORATION, as agent for each of the foregoing Entities
By: /s/ Gary F. Kennedy
Name: Gary F. Kennedy
Title: Senior Vice President, General Counsel & Chief Compliance Officer

EXHIBIT A

Execution Version

AGREEMENT AND PLAN OF MERGER

among

AMR CORPORATION,

AMR MERGER SUB, INC.

and

US AIRWAYS GROUP, INC.

Dated as of February 13, 2013

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "*Agreement*"), dated as of February 13, 2013, among AMR Corporation, a Delaware corporation, and its successors (including, as the context may require, on or after the effective date of the Plan, as reorganized pursuant to the Bankruptcy Code) ("*American*"), US Airways Group, Inc., a Delaware corporation ("*US Airways*"), and AMR Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of American ("*Merger Sub*"). Annex A to this Agreement contains a list of defined terms that are used in this Agreement and the applicable Sections of this Agreement in which each such term is defined.

RECITALS

WHEREAS, on November 29, 2011, American and certain of its direct and indirect domestic Subsidiaries (each, a "*Debtor*", and collectively, the "*Debtors*") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. Sections 101 *et seq*. (the "*Bankruptcy Code*") in the United States Bankruptcy Court for the Southern District of New York (the "*Bankruptcy Court*"), Case No. 11-15463 (SHL) (Jointly Administered) (the "*Cases*");

WHEREAS, American and US Airways have determined to engage in a strategic business combination whereby Merger Sub will be merged with and into US Airways, with US Airways continuing as the surviving entity in such merger as a direct wholly-owned subsidiary of American (the "*Merger*");

WHEREAS, following the commencement of the Cases, American engaged in a deliberative process that explored various strategic alternatives, including a plan of reorganization in which the Debtors would emerge from the Cases without entering into a strategic business combination and without obtaining new equity investments of more than $1 billion (a "*Standalone Plan*"), and has determined, as of the date hereof, that implementation of the Merger pursuant to the Plan will maximize value for the stakeholders of the Debtors;

WHEREAS, the respective Boards of Directors of each of American, US Airways and Merger Sub have, by resolutions duly adopted, declared that the Merger, upon the terms and subject to the conditions set forth in this Agreement, and the other transactions contemplated by this Agreement are advisable, and approved and adopted this Agreement;

WHEREAS, American and the other Debtors, with the support of the Official Committee of Unsecured Creditors of American (the "*Creditors' Committee*"), intend to seek the entry of an order of the Bankruptcy Court (the "*Confirmation Order*") approving the restructuring of the Debtors pursuant to the Plan, including the approval of the Merger contemplated by this Agreement, and the authorization of American to consummate the transactions contemplated hereby and thereby;

WHEREAS, pursuant to and in accordance with the Plan, all allowed prepetition general unsecured claims against the Debtors (other than intercompany claims), all equity interests in American, and all rights of labor groups of the Debtors to receive Newco Common Stock in

connection with the Plan, will be fully settled and satisfied with Plan Shares, except as otherwise expressly permitted under this Agreement and the Plan;

WHEREAS, it is intended that, for federal income tax purposes, the Merger in conjunction with the Plan will qualify as a reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "*Code*"), and that this Agreement constitute the adoption of a plan of reorganization within the meaning of Section 368 of the Code;

WHEREAS, American, US Airways and Merger Sub desire to make certain representations, warranties, covenants and agreements in connection with this Agreement;

WHEREAS, following the execution and delivery of this Agreement by each of the parties hereto, American and the other Debtors shall seek the entry of the Merger Support Order, pursuant to which, among other things, the Bankruptcy Court will approve this Agreement and the obligations of American hereunder; and

WHEREAS, pursuant to the terms of Section 7.1 of this Agreement, prior to entry of the Merger Support Order, this Agreement is not effective and is not binding or enforceable with respect to any party hereto.

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I

The Merger; Closing; Effective Time

1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Delaware General Corporation Law (the "*DGCL*"), at the Effective Time, Merger Sub shall be merged with and into US Airways and the separate corporate existence of Merger Sub shall thereupon cease. US Airways shall be the surviving entity in the Merger (US Airways is hereinafter referred to with respect to post-Effective Time periods as the "*Surviving Corporation*") as a direct wholly-owned subsidiary of American (American, as reorganized pursuant to the Bankruptcy Code, is hereinafter referred to from time to time with respect to post-Effective Time periods as "*American*" or "*Newco*").

1.2 Closing. The closing of the Merger (the "*Closing*") shall take place (i) at the offices of Weil, Gotshal & Manges LLP, 200 Crescent Court, Suite 300, Dallas, Texas at 9:00 a.m., Dallas time, on a date to be specified by American and US Airways, which shall be no later than the fifth business day following the day on which the last to be satisfied or waived of the conditions set forth in Article V (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions) shall be satisfied or waived in accordance with this Agreement or (ii) at such other place and time or on such other date as American and US Airways may agree (the "*Closing Date*"). As used in this Agreement, "*business day*" means any day of the year on which national banking institutions in

New York are open to the public for conducting business and are not required or authorized to be closed.

1.3 Effective Time. Upon the Closing, American and US Airways will cause a Certificate of Merger (the "*Certificate of Merger*") to be executed, acknowledged and filed with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL and shall make all other filings or recordings required under the DGCL. The Merger shall become effective at such time as the Certificate of Merger shall have been duly filed with the Secretary of State of the State of Delaware or at such later date or time as may be agreed by the parties in writing and specified in the Certificate of Merger (the time at which the Merger becomes effective is referred to herein as the "*Effective Time*").

1.4 Plan of Reorganization. The Merger shall be effected as a principal component of the Plan.

1.5 Effects of the Merger. The Merger shall have the effects set forth in the DGCL.

1.6 Certificate of Incorporation.

(a) Newco. Immediately prior to the Effective Time, the certificate of incorporation of American shall be amended and restated as set forth on Exhibit A hereto, until thereafter duly amended as provided therein or by applicable Laws (the "*Newco Charter*"), with such changes thereto as may be reasonably agreed between American and US Airways prior to the date the Prospectus / Proxy Statement is initially mailed to US Airways stockholders. Immediately following the Effective Time and pursuant to the Plan, the Newco Charter shall be further amended to change the name of Newco from "AMR Corporation" to "American Airlines Group Inc.".

(b) Surviving Corporation. Immediately following the Effective Time, Newco shall cause the certificate of incorporation of US Airways to be amended and restated as set forth on Exhibit B hereto, until thereafter duly amended as provided therein or by applicable Laws.

1.7 By-Laws.

(a) Newco. At the Effective Time, the by-laws of American shall be amended and restated in their entirety to read as set forth on Exhibit C hereto until duly amended as provided therein or by applicable Laws (the "*Newco By-Laws*").

(b) Surviving Corporation. At the Effective Time, the by-laws of the Surviving Corporation shall be amended and restated in their entirety to read as set forth on Exhibit D hereto until duly amended as provided therein or by applicable Laws.

1.8 Board of Directors.

(a) The number of directors initially comprising the full Board of Directors of Newco as of the Effective Time shall be 12 directors consisting of: (i) five

(5) directors designated by the Search Committee, (A) each of whom shall be Independent Directors and (B) one of whom shall serve as the initial Lead Independent Director of Newco in accordance with the Newco By-Laws, and whom shall be designated to serve in such role by the Search Committee, (ii) two (2) directors designated by American, each of whom shall be Independent Directors and each of whom shall be reasonably acceptable to the Search Committee, (iii) three (3) directors designated by US Airways, each of whom shall be Independent Directors, (iv) one (1) director who shall be Mr. Thomas W. Horton, the current Chairman of the Board and Chief Executive Officer of American, who shall serve as the initial Chairman of the Board of Directors of Newco in accordance with the Newco By-Laws, and (v) one (1) director who shall be Mr. W. Douglas Parker, the current Chairman of the Board and Chief Executive Officer of US Airways. American shall take all necessary action to cause, effective at the Effective Time, the Board of Directors of Newco to be comprised as set forth in this Section 1.8. Following the Effective Time, all rights to designate directors set forth in Section 1.8 shall terminate. An "*Independent Director*" means a person who satisfies the requirements for independence under Rule 303A of the New York Stock Exchange ("*NYSE*") as then in effect.

(b) Promptly following the date hereof, the Creditors' Committee shall establish a committee (the "*Search Committee*") to identify and designate the directors contemplated by Section 1.8(a)(i) prior to the Effective Date, which shall be comprised of (i) four (4) members designated by the Creditors' Committee and (ii) four (4) members designated by a majority of the initial consenting creditors under that certain support and settlement agreement with American relating to the Plan entered into as of February 13, 2013. The Search Committee will be assisted by the UCC's Legal Advisor and a nationally recognized search firm retained by the UCC's Advisors. The Search Committee's mandate shall be to select director designees based on consensus, but in any event by not less than 75% of the voting members of the Search Committee.

1.9 Officers. American shall take all necessary action to cause Mr. W. Douglas Parker, the current Chairman of the Board and Chief Executive Officer of US Airways, to be the Chief Executive Officer of Newco as of the Effective Time. Mr. Parker shall designate from the management ranks of American and US Airways the individuals who will be the additional officers of Newco following the Effective Time, subject to approval of the Board of Directors of Newco, and Mr. Parker shall consult with Mr. Horton in connection with such selections.

1.10 Headquarters; Airline Name. American, US Airways and Merger Sub agree that immediately following the Effective Time the headquarters of Newco and the Surviving Corporation shall be located at 4333 Amon Carter Blvd., Fort Worth, Texas. The name of the combined airline will be "American Airlines."

ARTICLE II

Effects of the Merger

2.1 Effect on Capital Stock. At the Effective Time, as a result of the Merger and in conjunction with and pursuant to the Plan, and without any further action on the part of American, US Airways, Merger Sub or the stakeholders of the Debtors or the holders of any shares of US Airways Common Stock or any shares of Merger Sub Common Stock:

(a) Capital Stock of Merger Sub. Each share of common stock, par value $0.01 per share, of Merger Sub (the "*Merger Sub Common Stock*") issued and outstanding immediately prior to the Effective Time shall be converted into one fully paid and nonassessable share of common stock, par value $0.01 per share, of the Surviving Corporation.

(b) Cancellation of Shares. Each share of common stock, par value $0.01 per share, of US Airways (the "*US Airways Common Stock*"), issued and outstanding immediately prior to the Effective Time that is directly owned by US Airways, American or Merger Sub shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(c) Conversion of US Airways Common Stock. Each share of US Airways Common Stock issued and outstanding immediately prior to the Effective Time (other than shares described in Section 2.1(b)) shall be converted into the right to receive one (1) fully paid and nonassessable share of common stock, par value $0.01 per share, of Newco (the "*Newco Common Stock*") (such shares of Newco Common Stock into which shares of US Airways Common Stock are converted pursuant to this Section 2.1(c), the "*Merger Consideration*"). All shares of US Airways Common Stock converted pursuant to this Section 2.1(c), when so converted, shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of a certificate that immediately prior to the Effective Time represented any such shares of US Airways Common Stock (each such certificate, whether represented in certificated or non-certificated book-entry form, to the extent applicable, a "*Certificate*") shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration and any dividends or other distributions to which holders become entitled upon the surrender of such Certificate in accordance with Section 2.2(c), without interest.

(d) For purposes of this Agreement:

(i) "*Maximum Plan Shares*" means an aggregate number of shares of Newco Common Stock equal to (i)(A) the number of US Airways Fully Diluted Shares as of the Share Determination Date multiplied by (B) the quotient (rounded to four decimals) of 72 divided by 28 (rounded to the nearest whole share) less (ii) the number of shares of Newco Common Stock represented by equity-based awards to be issued to employees of American and its Subsidiaries (other than the Surviving Corporation and its Subsidiaries) as contemplated by this Agreement and the Plan, (1) including in the case of cash awards or cash-settled equity awards made pursuant to paragraph (b) of Section 4.1(o) of the American Disclosure Letter a number of shares of Newco Common Stock determined pursuant to that paragraph, (2) including for this purpose the Newco Common Stock share equivalent of cash awards or cash-settled equity awards contemplated by

paragraph (c) of Section 4.1(o) of the American Disclosure Letter that the parties agree to treat as equity-based awards for purposes of this definition, and (3) excluding for this purpose equity-based awards contemplated by paragraph (c) of Section 4.1(o) of the American Disclosure Letter that the parties agree to treat as cash awards or cash-settled equity awards for purposes of this definition.

(ii) "*Newco Mandatorily Convertible Preferred Stock*" means a series of preferred stock, par value $0.01 per share, of Newco, with respect to which the only rights, powers, preferences or privileges consist of (A) the right to convert the stated amount per share of each outstanding share of such series of preferred stock, together with any accrued dividends thereon, in full solely into shares of Newco Common Stock within 120 days following the effective date of the Plan, (B) the right to vote each such outstanding share on an as-converted to Newco Common Stock basis together with the outstanding shares of Newco Common Stock on matters presented to the stockholders of Newco generally and (C) such other rights that the Newco Common Stock into which such preferred stock is convertible is entitled to under the Newco Charter. All shares of Newco Mandatorily Convertible Preferred Stock outstanding on the date that is 120 days following the effective date of the Plan shall automatically be converted into shares of Newco Common Stock in accordance with the terms thereof (if then entitled to receive any shares of Newco Common Stock upon conversion), and shall be cancelled and retired and shall not be reissued and shall cease to exist, and all such shares shall return to the status of authorized but unissued shares of preferred stock of Newco. All shares of Newco Mandatorily Convertible Preferred Stock shall be issued pursuant to the Plan at or promptly following the Effective Time.

(iii) "*Person*" means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or nature.

(iv) "*Plan Shares*" means shares of Newco Common Stock and Newco Mandatorily Convertible Preferred Stock issued pursuant to the Plan and shares of Newco Common Stock that are or may become issuable upon conversion or exchange of shares of Newco Mandatorily Convertible Preferred Stock; provided that the aggregate number of shares of Newco Common Stock constituting Plan Shares, when taken together with all shares of Newco Common Stock that are or may become issuable upon conversion or exchange of shares of Newco Mandatorily Convertible Preferred Stock constituting Plan Shares, shall not exceed the Maximum Plan Shares.

(v) "*Share Determination Date*" means 11:59 p.m., New York time, on the sixth trading day prior to the Closing.

(vi) "*US Airways Fully Diluted Shares*" means, as of a given time, a number of shares of US Airways Common Stock equal to the aggregate number of shares of US Airways Common Stock that would be deemed to be outstanding as of such time for purposes of calculating "diluted earnings per share" under GAAP using the treasury stock method (calculated for the purposes hereof as though all US Airways Options and US Airways Equity Awards were vested notwithstanding the vesting requirements of any

agreements related thereto and using the as-if converted method with respect to outstanding convertible securities), except that the average market price used in such calculation shall equal the average of the daily closing price of US Airways Common Stock on the NYSE for each of the twenty (20) trading days ending on (and including) the Share Determination Date. Solely for illustrative purposes, if the Share Determination Date were February 11, 2013, the US Airways Fully Diluted Shares would equal 208,570,0577 shares of Newco Common Stock. US Airways shall deliver to American on the business day immediately following the Share Determination Date a schedule that sets forth, as of the Share Determination Date: (i) the number of outstanding shares of US Airways Common Stock, (ii) a ledger of the outstanding US Airways Options and US Airways Equity Awards, which ledger includes the applicable exercise price, (iii) the principal amount of the outstanding US Airways 7.25% Convertible Notes and outstanding US Airways 7% Convertible Notes, including the applicable conversion price, (iv) a ledger of any other outstanding securities or obligations convertible or exchangeable into or exercisable for US Airways Common Stock, which ledger includes the applicable exercise price or conversion price, and (v) US Airways' determination of US Airways Fully Diluted Shares (for the avoidance of doubt, each of the foregoing items in clauses (i) through (iv) shall be included in the determination of US Airways Fully Diluted Shares).

2.2 Exchange of Certificates.

(a) Exchange Agent. Prior to the Effective Time, a commercial bank, trust company or transfer agent shall be mutually selected by American and US Airways to act as exchange agent (the "*Exchange Agent*") for the delivery of the Merger Consideration. At or prior to the Effective Time, American shall deposit with the Exchange Agent, for the benefit of the holders of Certificates, for exchange in accordance with this Article II through the Exchange Agent, certificates representing the shares of Newco Common Stock to be delivered as the Merger Consideration (such certificates, whether represented in certificated or non-certificated book-entry form, to the extent applicable, the "*Newco Common Certificates*"). In addition, American shall deposit with the Exchange Agent, from time to time as needed, cash sufficient to pay any dividends or other distributions which holders of Certificates have the right to receive pursuant to Section 2.2(c). All such Newco Common Certificates and cash deposited with the Exchange Agent pursuant to this Section 2.2(a) is hereinafter referred to as the "*Exchange Fund*".

(b) Exchange Procedures. As soon as reasonably practicable after the Effective Time, Newco shall cause the Exchange Agent to mail to each holder of record of a Certificate whose shares were converted pursuant to Section 2.1(c) into the right to receive the Merger Consideration (i) a letter of transmittal in customary form as reasonably agreed by the parties which (A) shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and (B) shall have such other provisions as American and US Airways may reasonably specify and (ii) instructions for effecting the surrender of the Certificates in exchange for the Merger Consideration. Upon proper surrender of a Certificate to the Exchange Agent, together with such letter of transmittal, duly

completed and validly executed in accordance with the instructions thereto, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificate shall be entitled to receive in exchange therefor a Newco Common Certificate representing that number of whole shares of Newco Common Stock that such holder has the right to receive in respect of the aggregate number of shares of US Airways Common Stock previously represented by such Certificate pursuant to Section 2.1(c) and a check representing cash in respect of any dividends or other distributions that the holder has the right to receive pursuant to Section 2.2(c), and the Certificate so surrendered shall immediately be canceled. In the event of a transfer of ownership of US Airways Common Stock that is not registered in the transfer records of US Airways, a Newco Common Certificate representing the proper number of shares of Newco Common Stock pursuant to Section 2.1(c) and a check representing cash in respect of any dividends or other distributions that the holder has the right to receive pursuant to Section 2.2(c) may be delivered to a transferee if the Certificate representing such US Airways Common Stock is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer and by evidence that any applicable transfer Taxes have been paid. Until surrendered as contemplated by this Section 2.2, each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Merger Consideration that the holder of such Certificate has the right to receive in respect of such Certificate pursuant to Section 2.1(c) (and cash in respect of any dividends or other distributions pursuant to Section 2.2(c)). No interest shall be paid or shall accrue on the cash payable upon surrender of any Certificate.

(c) Treatment of Unexchanged Shares. No dividends or other distributions declared or made with respect to Newco Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Certificate with respect to the shares of Newco Common Stock deliverable upon surrender thereof until the surrender of such Certificate in accordance with this Article II. Subject to escheat or other applicable Law, following surrender of any such Certificate, there shall be paid to the holder of the Certificate, without interest, (i) at the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such number of whole shares of Newco Common Stock that such holder has the right to receive pursuant to Section 2.1(c), and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to such surrender and a payment date subsequent to such surrender payable with respect to such number of whole shares of Newco Common Stock that such holder has the right to receive pursuant to Section 2.1(c).

(d) No Further Ownership Rights in US Airways Common Stock. The shares of Newco Common Stock delivered and cash paid in accordance with the terms of this Article II upon conversion of any shares of US Airways Common Stock shall be deemed to have been delivered and paid in full satisfaction of all rights pertaining to such shares of US Airways Common Stock. From and after the Effective Time, (i) all holders of Certificates shall cease to have any rights as stockholders of US Airways other than the right to receive the Merger Consideration and any dividends or other distributions that holders have the right to receive upon the surrender of such Certificate in accordance

with Section 2.2(c), without interest, and (ii) the stock transfer books of US Airways shall be closed with respect to all shares of US Airways Common Stock outstanding immediately prior to the Effective Time. From and after the Effective Time, there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of shares of US Airways Common Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, any Certificates formerly representing shares of US Airways Common Stock are presented to the Surviving Corporation, Newco or the Exchange Agent for any reason, such Certificates shall be canceled and exchanged as provided in this Article II.

(e) Termination of Exchange Fund. Any portion of the Exchange Fund (including any interest or other amounts received with respect thereto) that remains unclaimed by, or otherwise undistributed to, the holders of Certificates for 180 days after the Effective Time shall be delivered to Newco, upon demand, and any holder of Certificates who has not theretofore complied with this Article II shall thereafter look only to Newco for satisfaction of its claim for Merger Consideration and any dividends and distributions which such holder has the right to receive pursuant to this Article II.

(f) No Liability. None of Newco, the Surviving Corporation or the Exchange Agent shall be liable to any Person in respect of any portion of the Exchange Fund or the Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(g) Investment of Exchange Fund. The Exchange Agent shall invest any cash in the Exchange Fund as directed by Newco on a daily basis, provided that, subject to Section 2.2(e), no such investment or losses will affect the cash payable to holders of Certificates. Any interest or other amounts received with respect to such investments shall be paid to Newco.

(h) Withholding Rights. Newco, Merger Sub, the Surviving Corporation or the Exchange Agent shall be entitled to deduct and withhold from amounts otherwise payable under this Agreement any amounts that it is required to deduct and withhold with respect to such payments under the Code, Treasury Regulations promulgated under the Code, or any provision of state, local or foreign Tax Law. Any amounts so deducted and withheld will be timely paid to the appropriate Governmental Entity and treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

(i) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Newco, the posting by such Person of a bond, in such reasonable amount as Newco may direct, as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent (or, if subsequent to the termination of the Exchange Fund and subject to Section 2.2(e), Newco) shall deliver, in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration and any dividends and distributions deliverable in respect thereof pursuant to this Agreement.

2.3 American Equity. At the Effective Time, after giving effect to the Confirmation Order and the Plan, all outstanding shares of common stock, par value $1.00 per share, of American ("*American Common Stock*") or preferred stock of American, all options to purchase shares of American Common Stock or preferred stock, all awards of any kind consisting of shares of American Common Stock or preferred stock, that have been or may be granted, held, awarded, outstanding, payable or reserved for issuance, and all other equity securities of American, including all securities or obligations convertible or exchangeable into or exercisable for shares of American Common Stock, preferred stock or other equity securities of American, and each other right of any kind, contingent or accrued, to acquire or receive shares of American Common Stock, preferred stock or other equity securities of American, whether upon exercise, conversion or otherwise, whether vested or unvested, will, pursuant to the Plan, and without any action on the part of the holder thereof, be cancelled and retired and shall cease to exist. For the avoidance of doubt, the foregoing paragraph does not apply with respect to any Newco Common Stock, Newco Mandatorily Convertible Preferred Stock or any other equity securities or rights to acquire or receive equity securities or any other awards of any kind relating to Newco that are issued in accordance with or pursuant to this Agreement and the Plan.

2.4 No Dissenters' Rights. In accordance with Section 262 of the DGCL, no appraisal rights shall be available to holders of shares of US Airways Common Stock in connection with the Merger.

ARTICLE III

Representations and Warranties

3.1 Representations and Warranties of American and Merger Sub. Except (i) as set forth in the disclosure letter (subject to Section 7.13(c) of this Agreement) delivered to US Airways by American concurrently with the execution and delivery of this Agreement (the "*American Disclosure Letter*"), or (ii) to the extent the qualifying nature of such disclosure with respect to a specific representation and warranty is readily apparent therefrom, as set forth in the American Reports filed on or after January 1, 2012 and prior to the date hereof (excluding any disclosures included in any such American Report that are predictive or forward-looking in nature or included in any "risk factor" disclosure), American and Merger Sub each hereby represents and warrants to US Airways that:

(a) Organization, Good Standing and Qualification. Each of American and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization, has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted, and is qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so organized, validly existing, qualified or in good standing, or to have such power or authority, would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect. American has made available to US Airways complete and correct copies of (i) American's certificate of incorporation and by-laws, each as amended to date, and (ii) Merger Sub's certificate

of incorporation and by-laws, each as amended to date. As used in this Agreement, the term: (i) "*Subsidiary*" means, with respect to any Person, any other Person of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such Person or by one or more of its respective Subsidiaries or by such Person and any one or more of its respective Subsidiaries; (ii) "*Material Adverse Effect*" means, with respect to American or US Airways and their respective Subsidiaries, a material adverse effect on the financial condition, assets, liabilities, business or results of operations of such party and its Subsidiaries, taken as a whole, excluding, in each case, any such effect resulting from (I) changes or conditions generally affecting the economy or financial markets, in each case in the United States or any foreign jurisdiction, (II) changes or conditions generally affecting any of the segments of the airline industry in which such party or any of its Subsidiaries operates, (III) increases in the price of fuel, (IV) changes or conditions resulting from divestiture required in order to satisfy Section 5.1(b) hereof, (V) the execution and delivery of this Agreement or the announcement or consummation of the Merger, (VI) any change in applicable Laws or GAAP (or authoritative interpretation thereof), (VII) geopolitical conditions, the outbreak of a pandemic or other widespread health crisis, the outbreak or escalation of hostilities, any acts of war, sabotage or terrorism, or any escalation or worsening of any such acts of war, sabotage or terrorism threatened or underway as of the date of this Agreement or (VIII) any hurricane, tornado, flood, earthquake, volcano eruption or natural disaster; provided, however, any such effect referred to in clauses (II), (VI) or (VIII) may be taken into account in determining whether a Material Adverse Effect has occurred or is reasonably expected to occur to the extent (but only to the extent) such effect has a materially disproportionate impact on such party or its Subsidiaries relative to other air carriers operating in the airline industry; and (iii) "*American Material Adverse Effect*" means a Material Adverse Effect as applicable to American and its Subsidiaries, taken as a whole.

(b) Capital Structure.

(i) Upon the Closing and after giving effect to the Confirmation Order and the Plan, the authorized capital stock of Newco shall consist of 1,750,000,000 shares of Newco Common Stock and 100,000,000 shares of preferred stock, par value $0.01 per share, of Newco. At the time of issuance, all shares of Newco Common Stock that may be issued pursuant to Article II of this Agreement or upon the exercise or vesting of, or pursuant to, Converted US Airways Options and Converted US Airways Equity Awards or upon the conversion of the Converted US Airways 7.25% Convertible Notes or the Converted US Airways 7% Convertible Notes, will be duly authorized and validly issued and fully paid, nonassessable, and not subject to or issued in violation of any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of the DGCL, the Newco Charter, the Newco By-Laws of Newco or any Contract to which Newco is a party or by which it is otherwise bound. At the time of issuance, all Plan Shares issued pursuant to the Plan will be issued in compliance with the registration requirements under the Securities Act and any applicable "blue sky" laws or will otherwise be exempt from such registration requirements pursuant to section 1145 of the Bankruptcy Code.

(ii) Except (A) for the awards to be issued to employees of American and its Subsidiaries as contemplated by Section 4.10(d), (B) for the shares of Newco Common Stock to be issued pursuant to Article II of this Agreement and Plan Shares to be issued pursuant to the Plan, or (C) for the shares of Newco Common Stock to be issued upon the exercise, conversion or vesting of Converted US Airways Options and Converted US Airways Equity Awards or upon the conversion of the Converted US Airways 7.25% Convertible Notes or the Converted US Airways 7% Convertible Notes, upon the Closing and after giving effect to the Confirmation Order and the Plan, (1) there will be no shares of Newco Common Stock, Newco Mandatorily Convertible Preferred Stock or any other shares of capital stock of Newco issued, reserved for issuance or outstanding or held by Newco and (2) there will be no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, deferred shares, performance shares, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or rights of any kind that obligate Newco or any of its Subsidiaries to issue or sell any shares of capital stock or other securities of Newco or any of its Subsidiaries or any securities or obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or acquire, any securities of Newco or any of its Subsidiaries, and no securities or obligations evidencing such rights will be authorized, issued or outstanding.

(iii) Except as set forth in Section 3.1(b)(iii) of the American Disclosure Letter, all of the issued and outstanding shares of capital stock or other equity ownership interests of each Subsidiary of American are owned by American, directly or indirectly, all such shares or equity ownership interests are set forth in Section 3.1(b)(iii) of the American Disclosure Letter, and all of such shares or equity ownership interests are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. Except as set forth in Section 3.1(b)(iii) of the American Disclosure Letter, and except for the capital stock or other equity ownership interests of the Subsidiaries of American, as of the date of this Agreement, American does not beneficially own directly or indirectly any capital stock, membership interest, partnership interest, joint venture interest or other equity interest in any Person.

(iv) Merger Sub. The authorized capital stock of Merger Sub consists of 1,000 shares of common stock, par value $0.01 per share, of which 1,000 shares are issued and outstanding. American is, and at the Effective Time will be, the legal and beneficial owner of all of the issued and outstanding shares of capital stock of Merger Sub. All of the issued and outstanding shares of capital stock of Merger Sub are, and at the Effective Time will be, validly issued, fully paid and non-assessable. Merger Sub was formed at the direction of American prior to the date hereof, solely for the purposes of effecting the Merger and the other transactions contemplated hereby. Merger Sub has not conducted any business prior to the date hereof and has no, and prior to the Effective Time will have no, assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to this Agreement and the Merger and the other transactions contemplated by this Agreement.

(c) Corporate Authority; Approval.

(i) Subject to the entry by the Bankruptcy Court of the Merger Support Order, (x) each of American and Merger Sub have all requisite corporate power and authority and have taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement and, subject to the entry of the Confirmation Order and the occurrence of the effective date under the Plan, to consummate the Merger, and (y) this Agreement is a valid and binding agreement of American and Merger Sub enforceable against American and Merger Sub in accordance with its terms.

(ii) The Board of Directors of American has, as of the date of this Agreement, declared that the Merger and the other transactions contemplated hereby are advisable and in the best interests of American and the stakeholders of the Debtors and has approved and adopted this Agreement, which approval and adoption have not been rescinded or modified.

(iii) The Board of Directors of Merger Sub has, as of the date of this Agreement, declared that the Merger and the other transactions contemplated hereby are advisable and the Board of Directors and sole stockholder of Merger Sub have approved and adopted this Agreement, which approval and adoption have not been rescinded or modified.

(d) Governmental Filings; No Violations; Certain Contracts.

(i) Other than the notices, reports, filings, consents, registrations, approvals, permits or authorizations (A) pursuant to Section 1.3; (B) required under the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended (the "*HSR Act*") and the European Community Council Regulation No. 139/2004 (the "*EU Merger Regulation*"), and any other applicable foreign antitrust, competition or similar Laws; (C) required under the Securities Act of 1933, as amended (the "*Securities Act*"), the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), any applicable state securities or "blue sky" laws, and the rules and regulations promulgated under any of the foregoing; (D) with, from or to the Federal Aviation Administration (the "*FAA*"), the United States Department of Transportation (the "*DOT*"), the Federal Communications Commission (the "*FCC*"), and the Department of Homeland Security (the "*DHS*"), including the U.S. Transportation Security Administration (the "*TSA*"); (E) with, from or to NYSE, The NASDAQ Stock Market ("*NASDAQ*") or the Financial Industry Regulatory Authority, Inc.; and (F) with, from or to any applicable foreign Governmental Entities regulating any aspect of the airline industry, no notices, reports or other filings are required to be made by American or any of its Subsidiaries with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by American or any of its Subsidiaries from, any domestic or foreign governmental or regulatory authority, agency, commission, body, court or other legislative, executive or judicial governmental entity (each, a "*Governmental Entity*") (subject and after giving effect to any required approvals of the Bankruptcy Court (including to the extent applicable, the Confirmation Order confirming the Plan) and the Plan), in connection with the execution, delivery and performance of this Agreement by American and the consummation by American and Merger Sub of the Merger and the other transactions

contemplated hereby, except those that the failure to make or obtain would not, individually or in the aggregate, (i) reasonably be expected to result in an American Material Adverse Effect or (ii) reasonably be expected to prevent, materially delay or materially impair the ability of American and its Subsidiaries to consummate the Merger and the other transactions contemplated hereby.

(ii) Except as set forth in Section 3.1(d)(ii) of the American Disclosure Letter, and subject to the entry by the Bankruptcy Court of the Merger Support Order and the Confirmation Order, the execution, delivery and performance of this Agreement by American and Merger Sub do not, and the consummation by American and Merger Sub of the Merger and the other transactions contemplated hereby will not, constitute or result in (A) a breach or violation of, or a default under, the certificate of incorporation or by-laws of American or Merger Sub or the comparable governing documents of any other Subsidiaries of American; (B) with or without notice, lapse of time or both, a breach or violation of, a termination (or right of termination) or a default under, or the creation, increase or acceleration of any obligations under any agreement, lease, license, contract, note, mortgage, indenture or other legally binding obligation (a "*Contract*") that (i) was entered into prior to the commencement of the Cases and has been assumed by the Debtors as of the date of this Agreement or as of the Closing Date, (ii) was entered into after the commencement of the Cases and is binding upon the Debtors, (iii) was entered into prior to the commencement of the Cases but is a type of Contract that can neither be assumed or rejected by the Debtors in connection with the Cases but will be binding upon the Debtors upon Closing after giving effect to the Confirmation Order and the occurrence of the effective date under the Plan or (iv) was entered into prior to or after the commencement of the Cases and is binding upon any non-Debtor Subsidiary of American (each of the foregoing, a "*Binding American Contract*") or, assuming (solely with respect to performance of this Agreement and consummation by American and Merger Sub of the Merger and the other transactions contemplated hereby) compliance with the matters referred to in Section 3.1(d)(i), any Law or governmental or non-governmental permit or license to which American or any of its Subsidiaries is subject; or (C) with or without notice, lapse of time or both, the creation of any lien, charge, pledge, security interest, claim or other encumbrance (each, a "*Lien*") on any of the assets of American or any of its Subsidiaries pursuant to any Binding American Contract, including any loan agreement or any other indebtedness agreement or instrument of indebtedness, except, in the case of clause (B) or (C) above, for any such breach, violation, termination, default, creation, increase, acceleration or Lien that would not, individually or in the aggregate, (i) reasonably be expected to result in an American Material Adverse Effect or (ii) reasonably be expected to prevent, materially delay or materially impair the ability of American and its Subsidiaries to consummate the Merger and the other transactions contemplated hereby.

(e) American Reports; Financial Statements.

(i) American and each Subsidiary has filed or furnished all forms, statements, schedules, reports and documents required to be filed or furnished by it with the Securities and Exchange Commission (the "*SEC*") pursuant to applicable securities statutes, regulations, policies and rules since December 31, 2011 (the "*American Audit*

Date") (the forms, statements, schedules, reports and documents filed or furnished with the SEC since the American Audit Date and those filed or furnished with the SEC subsequent to the date of this Agreement and prior to the Effective Time, if any, including any amendments thereto, the "*American Reports*"). Except as set forth in Section 3.1(e)(i) of the American Disclosure Letter, each of the American Reports, at the time of its filing, complied in all material respects with the applicable requirements of the Exchange Act and the rules and regulations thereunder and complied in all material respects with the then applicable accounting standards. As of their respective dates (or, if amended, as of the date of such amendment), the American Reports did not, and any American Reports filed with the SEC subsequent to the date hereof will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, except to the extent corrected prior to the date of this Agreement by a subsequently filed American Report. The American Reports included or will include all certificates required to be included therein pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002, as amended (the "*SOX Act*"), and the internal control report and attestation of American's outside auditors required by Section 404 of the SOX Act.

(ii) Each of the consolidated balance sheets included in or incorporated by reference into the American Reports (including the related notes and schedules) fairly presents, or, in the case of American Reports filed after the date hereof, will fairly present, in all material respects, the consolidated financial position of American and any other entity included therein and their respective Subsidiaries as of its date, and each of the consolidated statements of operations, stockholders' equity (deficit) and cash flows included in or incorporated by reference into the American Reports (including any related notes and schedules) fairly presents, or in the case of American Reports filed after the date hereof, will fairly present, in all material respects, the net income, total stockholders' equity and net increase (decrease) in cash and cash equivalents, as the case may be, of American and any other entity included therein and their respective Subsidiaries for the periods set forth therein (subject, in the case of unaudited statements, to the absence of full notes and normal year-end adjustments that are not expected to be material in amount or effect), in each case in accordance with U.S. generally accepted accounting principles ("*GAAP*") consistently applied during the periods involved, except as may be noted therein.

(iii) The management of American (x) has established and maintains disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) designed to ensure that material information relating to American, including its consolidated Subsidiaries, is made known to the management of American by others within those entities, and (y) has disclosed, based on its most recent evaluation, to American's outside auditors and the audit committee of the Board of Directors of American (A) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) which are reasonably likely to adversely affect American's ability to record, process, summarize and report financial data and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in

American's internal controls over financial reporting. Since the American Audit Date, any material change in internal control over financial reporting required to be disclosed in any American Report has been so disclosed.

(iv) Since the American Audit Date, neither American nor any of its Subsidiaries nor, to American's Knowledge, any director, officer, employee, auditor, accountant or representative of American or any of its Subsidiaries has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of American or any of its Subsidiaries or their respective internal accounting controls relating to periods after the American Audit Date, including any material complaint, allegation, assertion or claim that American or any of its Subsidiaries has engaged in questionable accounting or auditing practices (except for any of the foregoing which have no reasonable basis). "*American's Knowledge*" shall mean the knowledge of those individuals listed in Section 3.1(e)(iv) of the American Disclosure Letter, after reasonable inquiry.

(v) Except as set forth in Section 3.1(e)(v) of the American Disclosure Letter, there are no liabilities or obligations of American or any of its Subsidiaries, whether or not accrued, contingent or otherwise and whether or not required to be disclosed, or any other facts or circumstances that would reasonably be expected to result in any obligations or liabilities of, American or any of its Subsidiaries, other than: (A) liabilities or obligations to the extent (I) accrued and reflected on the consolidated balance sheet of American or (II) disclosed in the notes thereto, in accordance with GAAP, in each case included in American's quarterly report on Form 10-Q for the period ended September 30, 2012 or in American's annual report on Form 10- K for the period ended December 31, 2011; (B) liabilities or obligations incurred in the ordinary course of business since December 31, 2011; (C) performance obligations under Contracts required in accordance with their terms, or performance obligations, to the extent required under applicable Law, in each case to the extent arising after the date hereof; or (D) liabilities or obligations that would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect.

(f) Absence of Certain Changes. Except as set forth in Section 3.1(f) of the American Disclosure Letter, from the American Audit Date to the date of this Agreement, American and its Subsidiaries have conducted their respective businesses only in accordance with, and have not engaged in any material transaction other than in accordance with, the ordinary course of such businesses and the orders of the Bankruptcy Court for the operation of American. Since the American Audit Date, there has not been any American Material Adverse Effect or any event, occurrence, discovery or development which would, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect.

(g) Litigation. Other than the Cases and the proceedings therein, or as otherwise disclosed in American Reports filed prior to the date hereof or as set forth in Section 3.1(g) of the American Disclosure Letter, there are no (A) civil, criminal or administrative actions, suits, claims, hearings, arbitrations, investigations or proceedings

pending or, to American's Knowledge, threatened against American or any of its Subsidiaries (excluding any claims against the Debtors filed in the Cases) or (B) litigations, arbitrations, investigations or other proceedings, or injunctions or final judgments relating to, pending or, to American's Knowledge, threatened against American or any of its Subsidiaries before any Governmental Entity (excluding any claims against the Debtors filed in the Cases), including the FAA, except in the case of either clause (A) or (B), for those that would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect. None of American or any of its Subsidiaries is a party to or subject to the provisions of any judgment, order, writ, injunction, decree or award of any Governmental Entity which would, individually or in the aggregate, (i) reasonably be expected to result in an American Material Adverse Effect or (ii) reasonably be expected to prevent, materially delay or materially impair the ability of American and its Subsidiaries to consummate the Merger and the other transactions contemplated hereby.

(h) Employee Benefits.

(i) Section 3.1(h)(i) of the American Disclosure Letter contains, as of the date of this Agreement, a true and complete list of each material American Compensation and Benefit Plan, except with respect to that certain letter agreement, which is attached hereto as Exhibit G. "*American Compensation and Benefit Plan*" means each employment agreement, and each bonus, deferred compensation, incentive compensation, equity compensation, severance pay, change in control, medical, life insurance, profit-sharing, pension, retirement, retiree medical, fringe benefit and each other material employee benefit plan, program or agreement as to which American or any of its Subsidiaries has any liability, contingent or otherwise, for the benefit of, with or relating to any current or former employee, officer or director of American or any of its Subsidiaries, excluding any governmental plan or program or any statutory obligation.

(ii) With respect to each of the material American Compensation and Benefit Plans, American has heretofore delivered or made available to US Airways true and complete copies of each of the following documents: (A) the American Compensation and Benefit Plan and most recent trust agreement and insurance contract (including all amendments thereto), if any; (B) the most recent annual report, actuarial report, and financial statement, if any; (C) the most recent Summary Plan Description, together with each Summary of Material Modifications, required under the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*") with respect to such American Compensation and Benefit Plan, if any; and (D) the most recent determination letter received from the Internal Revenue Service (the "*IRS*") with respect to each American Compensation and Benefit Plan that is intended to be qualified under Section 401(a) of the Code.

(iii) Except to the extent covered by the Plan or as would not, individually or in the aggregate, have an American Material Adverse Effect, and except as set forth in Section 3.1(h)(iii) of the American Disclosure Letter, all obligations in respect of each American Compensation and Benefit Plan have been properly accrued and reflected on the most recent consolidated statement of operations and consolidated

balance sheet filed or incorporated by reference in the American Reports as of the respective dates of such balance sheet or report to the extent required by GAAP.

(iv) None of the American Compensation and Benefit Plans is a "multiple employer welfare arrangement," as such term is defined in Section 3(40) of ERISA, or single employer plan that has two or more contributing sponsors, at least two of whom are not under common control, within the meaning of Section 4063(a) of ERISA or a "multiemployer plan," as such term is defined in Section 4001(a)(3) of ERISA. Except as set forth in Section 3.1(h)(iv) of the American Disclosure Letter, the IRS has issued a favorable determination letter in respect of each of the American Compensation and Benefit Plans that is intended to be "qualified" within the meaning of Section 401(a) of the Code and neither American nor any of its Subsidiaries is aware of any circumstances that could reasonably be expected to result in the revocation of such letter. Each of the American Compensation and Benefit Plans that is intended to satisfy the requirements of Section 125 or 501(c)(9) of the Code satisfies such requirements, except as would not, either individually or in the aggregate, reasonably be expected to have an American Material Adverse Effect. Each of the American Compensation and Benefit Plans has been operated and administered in accordance with its terms and applicable Laws, including but not limited to ERISA and the Code, except as would not, either individually or in the aggregate, reasonably be expected to have an American Material Adverse Effect.

(v) As of the date of this Agreement no participants are accruing or will accrue any benefits for service after the date hereof, other than accruing service for purposes of vesting into retirement benefits accrued prior to the date hereof, and eligibility for early retirement subsidies on benefits accrued prior to the date hereof, under any American Compensation and Benefit Plan which is subject to Title IV of ERISA (an "*American DB Plan*"). Each participant in an American DB Plan was provided notice in a timely manner under Section 204(h) of ERISA regarding the cessation of benefit accruals under the American DB Plan. Except as set forth in Section 3.1(h)(v) of the American Disclosure Letter, the plan assets of each American DB Plan equals or exceeds the benefit liabilities of such American DB Plan assuming each American DB Plan was terminated in a standard termination under Section 4041 of ERISA as of the date of this Agreement. Except as set forth in Section 3.1(h)(v) of the American Disclosure Letter, neither American nor any of its Subsidiaries has any outstanding liability for any minimum required contributions under Sections 412 or 430 of the Code or Sections 302 and 303 of ERISA or any premiums due but unpaid to the Pension Benefit Guaranty Corporation. Except as set forth in Section 3.1(h)(v) of the American Disclosure Letter, all defined benefit pension plans of the Debtors have been frozen and the pilot pension plan lump sum distribution right has been terminated.

(vi) Except for claims filed or expunged in connection with the Cases, or as set forth in Section 3.1(h)(vi) of the American Disclosure Letter, there are no claims pending, or, to American's Knowledge, threatened or anticipated (other than routine claims for benefits) against any American Compensation and Benefit Plan, the assets of any American Compensation and Benefit Plan or against American or any of its Subsidiaries with respect to any American Compensation and Benefit Plan. Except in

connection with the Cases, there is no judgment, decree, injunction, rule or order of any court, governmental body, commission, agency or arbitrator outstanding against or in favor of any American Compensation and Benefit Plan or any fiduciary thereof (other than rules of general applicability). There are no pending or, to American's Knowledge, threatened audits or investigations by any governmental body, commission or agency involving any American Compensation and Benefit Plan, that would, individually or in the aggregate, reasonably be expected to have an American Material Adverse Effect.

(vii) Except as set forth in Section 3.1(h)(vii) of the American Disclosure Letter, the transactions contemplated under this Agreement shall not, by themselves or in coordination with any other event or condition, result in (A) any increase in the amount of any payment to any current or former employee, consultant or director of American or any of its Subsidiaries, or (B) accelerate the vesting, time of payment or funding of any compensation or benefits, or right to any compensation or benefits, of any current or former employee, consultant or director of American or any of its Subsidiaries.

(viii) With respect to each American Compensation and Benefit Plan that primarily provides benefits or compensation to non-U.S. employees and is maintained subject to the Laws of any jurisdiction outside of the United States (the "*American Foreign Plans*"): (A) such American Foreign Plan complies in all material respects in form and operation in accordance with all applicable Laws; (B) except as could not reasonably be expected to result in a material liability, if an American Foreign Plan is intended to qualify for special Tax treatment, such plan meets all requirements for such treatment; (C) if required under applicable Laws to be funded and/or book-reserved, such American Foreign Plan is funded and/or book reserved, as appropriate, to the extent so required by applicable Laws; and (D) there are no going-concern unfunded actuarial liabilities, past service unfunded liabilities, solvency deficiencies or contribution holidays with respect to any of the American Foreign Plans.

(i) Compliance with Laws; Licenses.

(i) The businesses of each of American and its Subsidiaries have not been conducted in violation of any material federal, state, local or foreign law, statute or ordinance, common law, or any rule, regulation, standard, judgment, order, writ, injunction, decree, arbitration award, agency requirement, license or permit, of any Governmental Entity (collectively, "*Laws*") or any applicable operating certificates, common carrier obligations, airworthiness directives ("*ADs*"), Federal Aviation Regulations ("*FARs*") or any other rules, regulations, directives or policies of the FAA, DOT, FCC, DHS or any other Governmental Entity, except for such violations that would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect. Except as set forth in Section 3.1(i)(i) of the American Disclosure Letter, no investigation or review by any Governmental Entity with respect to American or any of its Subsidiaries is pending or, to American's Knowledge, threatened, nor has any Governmental Entity indicated an intention to conduct the same, except for any such investigations or reviews that would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect. Except as set

forth in Section 3.1(i)(i) of the American Disclosure Letter, each of American and its Subsidiaries has obtained and is in substantial compliance with all permits, licenses, certifications, approvals, registrations, consents, authorizations, franchises, variances, exemptions and orders required, issued or granted by the FAA, DOT or any other Governmental Entity applicable to it ("*Licenses*") necessary to conduct its business as presently conducted, except for any failures to have or to be in compliance with such Licenses which would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect. The representations and warranties contained in this Section 3.1(i) shall not apply to the following applicable Laws to the extent applicable to American and its Subsidiaries (or Licenses required under such applicable Laws): (i) ERISA and other applicable Laws regarding employee benefit matters, which are exclusively governed by Section 3.1(h), (ii) applicable Laws regarding Taxes, which are exclusively governed by Section 3.1(h) and Section 3.1(n), (iii) Environmental Laws, which are exclusively governed by Section 3.1(m), and (iv) applicable Laws regarding labor matters, which are exclusively governed by Section 3.1(o).

(ii) Each of American and its Subsidiaries is in compliance with the rules and regulations of the Governmental Entity issuing such Licenses, except in each instance for any failures to be in compliance which would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect. There is not pending or, to American's Knowledge, threatened before the FAA, DOT or any other Governmental Entity any material proceeding, notice of violation, order of forfeiture or complaint or investigation against American or any of its Subsidiaries relating to any of the Licenses, except for any of the foregoing that would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect. The actions of the applicable Governmental Entities granting all Licenses have not been reversed, stayed, enjoined, annulled or suspended, and there is not pending or, to American's Knowledge, threatened, any material application, petition, objection or other pleading with the FAA, DOT or any other Governmental Entity which challenges or questions the validity of or any rights of the holder under any License, except as set forth in Section 3.1(i)(ii) of the American Disclosure Letter and except, for any of the foregoing, that would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect.

(j) Material Contracts. Except, in each case, as listed in Section 3.1(j) of the American Disclosure Letter:

(i) As of the date of this Agreement, neither American nor any of its Subsidiaries is a party to or bound by any Contract (other than Contracts rejected in connection with the Cases as of the date of this Agreement) required pursuant to Item 601 of Regulation S-K under the Securities Act to be filed as an exhibit to American's Annual Report on Form 10-K for the year ended December 31, 2011, or on any Quarterly Report on Form 10-Q or Current Report on Form 8-K filed by American since December 31, 2011, which has not been so filed.

(ii) As of the date of this Agreement, neither American nor any of its Subsidiaries is a party to or is bound by any Contract (other than Contracts rejected in connection with the Cases as of the date of this Agreement) that is: (A) a non-competition Contract or other Contract (other than the American CBAs) that (I) purports to limit in any material respect (including pursuant to an exclusivity provision that is material to the operation of the business of American and its Subsidiaries, taken as a whole) either the type of business in which American or its Subsidiaries may engage or the manner or locations in which any of them may so engage in any business, or (II) could require the disposition of any material assets or line of business of American or any of its Subsidiaries; (B) a material joint venture, partnership or business alliance Contract; (C) a capacity purchase, regional carrier or similar Contract; (D) a material co-branded credit card or credit card processing Contract; or (E) a Contract pursuant to which any indebtedness is outstanding or may be incurred (except for any Contract pursuant to which the aggregate principal amount of such indebtedness cannot exceed $200,000,000).

(iii) All Contracts (other than Contracts rejected in connection with the Cases as of the date of this Agreement or rejected in connection with the Cases after the date hereof in accordance with this Agreement) that have been filed as an exhibit to American's Annual Report on Form 10-K for the year ended December 31, 2011, or on any Quarterly Report on Form 10-Q or Current Report on Form 8-K filed by American since December 31, 2011, and all Contracts listed in Section 3.1(j)(ii) of the American Disclosure Letter, together with all amendments, exhibits and schedules to such Contracts, shall constitute the "*American Material Contracts*."

(iv) A true and complete copy of each American Material Contract has previously been delivered or made available to US Airways (subject to applicable confidentiality restrictions) and each American Material Contract that is a Binding American Contract is a valid and binding agreement of American or one of its Subsidiaries, as the case may be, and is, or will be, in full force and effect, except to the extent it has previously expired in accordance with its terms or if the failure to be in full force and effect would not, individually or in the aggregate, reasonably be expected to have an American Material Adverse Effect. Neither American nor any of its Subsidiaries is in default or breach under the terms of any American Material Contract that is a Binding American Contract, which default or breach would, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect.

(k) Real Property.

(i) Section 3.1(k)(i) of the American Disclosure Letter sets forth, as of the date hereof, the fee owner and address of all material real property owned by American and its Subsidiaries (the "*American Owned Real Property*"). Except as set forth in Section 3.1(k)(i) of the American Disclosure Letter, with respect to such American Owned Real Property, (A) each identified owner thereof has good, marketable, indefeasible fee simple title to such American Owned Real Property, free and clear of any Encumbrance; (B) there are no outstanding options, rights of first offer or rights of first refusal to purchase such American Owned Real Property or any material portion thereof or interest therein; (C) neither American nor any of its Subsidiaries is a party to any

Contract or option to purchase any material real property or interest therein; and (D) there does not exist any actual, pending or, to American's Knowledge, threatened condemnation or eminent domain proceedings that affect any American Owned Real Property, and neither American nor any of its Subsidiaries has received any written notice of the intention of any Governmental Entity or other Person to take or use any American Owned Real Property.

(ii) Section 3.1(k)(ii) of the American Disclosure Letter sets forth, as of the date hereof, the address of each lease, sublease, license, concession and other agreement (written or oral) pursuant to which American or any of its Subsidiaries hold a leasehold or subleasehold estate in real property which requires payments by American or any Subsidiary of American in excess of $25,000,000 per annum (collectively, the "*American Leased Real Property*" and, together with American Owned Real Property, the "*American Real Property*"). True and complete copies of all Contracts (other than Contracts rejected in connection with the Cases as of the date of this Agreement) pertaining to the American Leased Real Property (each, an "*American Lease*") have been made available to US Airways prior to the date hereof. With respect to American Leased Real Property and each American Lease that is a Binding American Contract, (A) each such American Lease is in full force and effect and is valid and enforceable in accordance with its terms; (B) there is no default under any such American Lease either by American, any of its Subsidiaries or, to American's Knowledge, by any other party thereto; (C) neither American nor any of its Subsidiaries has received or delivered a written notice of default or objection to any party to any such American Lease to pay and perform its obligations, and, to American's Knowledge, no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute a material breach or default, or permit the termination, modification or acceleration of rent under such American Lease; and (D) American or one of its Subsidiaries, as applicable, holds a good and valid leasehold interest in all American Leased Real Property free and clear of all Encumbrances.

(iii) For purposes of this Section 3.1(k) only, "*Encumbrance*" means any mortgage, lien, pledge, charge, security interest, easement, covenant, or other restriction or title matter or encumbrance of any kind in respect of such asset except for (A) specified encumbrances described in Section 3.1(k)(iii) of the American Disclosure Letter; (B) encumbrances that arise under zoning, land use and other similar Laws and other similar imperfections of title; (C) Liens for Taxes excluded from the Lien representation in Section 3.1(n) or other governmental charges not yet due and payable or not yet delinquent; (D) mechanics', carriers', workmen's, repairmen's or other like encumbrances arising or incurred in the ordinary course of business consistent with past practice relating to obligations as to which there is no default on the part of American, or the validity or amount of which is being contested in good faith by appropriate proceedings; and (E) other encumbrances that do not, individually or in the aggregate, materially impair the continued use, operation, value or marketability of the specific parcel of American Owned Real Property or American Leased Real Property to which they relate or the conduct of the business of American and its Subsidiaries as presently conducted.

(l) Takeover Statutes. The Board of Directors of each of American and Merger Sub has approved this Agreement and the transactions contemplated hereby as required to render inapplicable to such agreements and transactions DGCL Section 203, to the extent applicable. To American's Knowledge, no other state takeover or similar statute or regulation (each, a "*Takeover Statute*") is applicable to the Merger or the other transactions contemplated by this Agreement.

(m) Environmental Matters.

(i) Except as set forth in Section 3.1(m) of the American Disclosure Letter, and except for such matters as would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect: (A) American and its Subsidiaries have complied at all times with all applicable Environmental Laws; (B) no property currently owned, leased or operated by American or any of its Subsidiaries (including soils, groundwater, surface water, buildings or other structures) is contaminated with any Hazardous Substance in a manner that is or could reasonably be expected to require Removal, Remedial or Response Action, that is in violation of any Environmental Law, or that is reasonably likely to give rise to any Environmental Liability; (C) American and its Subsidiaries have no information that any property formerly owned, leased or operated by American or any of its Subsidiaries was contaminated with any Hazardous Substance during or prior to such period of ownership, leasehold, or operation, in a manner that is or could reasonably be expected to require Removal, Remedial or Response Action, that is in violation of any Environmental Law, or that is reasonably likely to give rise to any Environmental Liability; (D) neither American or any of its Subsidiaries, nor, to American's Knowledge, any other Person whose Environmental Liabilities American or its Subsidiaries have retained or assumed, either contractually or by operation of law, has incurred in the past or is now subject to any Environmental Liabilities; (E) in the past five (5) years neither American nor any of its Subsidiaries has received any notice, demand, letter, claim or request for information alleging that American or any of its Subsidiaries may be in violation of or subject to any Environmental Liability; (F) neither American nor any of its Subsidiaries is subject to any order, decree, injunction or agreement with any Governmental Entity, or any indemnity or other agreement with any third party, concerning any Environmental Liability or otherwise relating to any Hazardous Substance or any environmental matter; (G) there is no Removal, Remedial or Response Action being undertaken on any property currently owned, leased or operated by American or any of its Subsidiaries; and (H) there are no other circumstances or conditions involving American or any of its Subsidiaries that could reasonably be expected to result in any Environmental Liability.

(ii) As used in this Agreement, the term "*Environmental Laws*" means all Laws relating to: (A) the protection, investigation or restoration of the environment, health, safety, or natural resources, (B) the handling, use, presence, disposal, Release or threatened release of any Hazardous Substance or (C) noise, odor, indoor air, employee exposure, electromagnetic fields, wetlands, pollution, contamination or any injury or threat of injury to persons or property relating to any Hazardous Substance.

(iii) As used in this Agreement, the term "*Environmental Liability*" means any obligations or liabilities (including any notices, claims, complaints, suits or other assertions of obligations or liabilities) that are: (A) related to environment, health or safety issues (including on-site or off-site contamination by Hazardous Substances of surface or subsurface soil or water, natural resource damages and occupational safety and health); and (B) based upon (I) any provision of Environmental Laws or (II) any order, consent, decree, writ, injunction or judgment issued or otherwise imposed by any Governmental Entity. The term "Environmental Liability" includes any: (A) fines, penalties, judgments, awards, settlements, losses, damages (including consequential damages), costs, fees (including attorneys' and consultants' fees), expenses and disbursements relating to environmental, health or safety matters; (B) defense and other responses to any administrative or judicial action (including notices, claims, complaints, suits and other assertions of liability) relating to environmental, health or safety matters; and (C) financial responsibility for (x) cleanup costs and injunctive relief, including any Removal, Remedial or Response Actions, and natural resource damages, and (y) other Environmental Laws compliance or remedial measures.

(iv) As used in this Agreement, the term "*Hazardous Substance*" means any "hazardous substance" and any "pollutant or contaminant" as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("*CERCLA*"); any "hazardous waste" as that term is defined in the Resource Conservation and Recovery Act ("*RCRA*"); and any "hazardous material" as that term is defined in the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), as amended (including as those terms are further defined, construed, or otherwise used in rules, regulations, standards, orders, guidelines, directives, and publications issued pursuant to, or otherwise in implementation of, said Laws); and including, without limitation, any petroleum product or byproduct, solvent, flammable or explosive material, radioactive material, asbestos, lead paint, polychlorinated biphenyls (or PCBs), dioxins, dibenzofurans, heavy metals, radon gas, mold, mold spores, and mycotoxins.

(v) As used in this Agreement, the term "*Release*" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, placing, discarding, abandonment, or disposing into the environment (including the placing, discarding or abandonment of any barrel, container or other receptacle containing any Hazardous Substance or other material).

(vi) As used in this Agreement, the term "*Removal, Remedial or Response Actions*" means all actions required to: (1) cleanup, remove, treat or remediate Hazardous Substances in the indoor or outdoor environment; (2) prevent the Release of Hazardous Substances so that they do not migrate, endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (3) perform pre-remedial studies and investigations and post-remedial monitoring and care; or (4) respond to any government requests for information or documents in any way relating to cleanup, removal, treatment or remediation or potential cleanup, removal, treatment or remediation of Hazardous Substances in the indoor or outdoor environment.

(n) Taxes. Except as would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect, American and each of its Subsidiaries (i) have prepared in good faith and duly and timely filed (taking into account any extension of time within which to file) all Tax Returns required to be filed by any of them and all such filed Tax Returns are complete and accurate; and (ii) have paid all Taxes that are required to be paid or that American or any of its Subsidiaries are obligated to withhold from amounts owing to any employee, creditor or third party, except with respect to matters contested in good faith for which adequate reserves have been established on the most recent consolidated balance sheet included in or incorporated into the American Reports. As of the date hereof, except as would not, individually or in the aggregate, reasonably be expected to result in an increase in Taxes that is material to American, there are no audits, examinations, investigations or other proceedings, in each case, pending or threatened in writing, in respect of Taxes or Tax matters. American has made available to US Airways true and correct copies of the United States federal income Tax Returns filed by American and its Subsidiaries for each of the fiscal years ended December 31, 2011 and 2010. None of American or its Subsidiaries has been a "distributing corporation" or "controlled corporation" in any distribution occurring during the last 30 months that was purported or intended to be governed by Section 355 of the Code (or any similar provision of state, local or foreign Law). Neither American nor any of its Subsidiaries has taken any action or knows of any fact, agreement, plan or other circumstance that is reasonably likely to prevent the Merger from qualifying as a "reorganization" with the meaning of Section 368(a) of the Code. There are no Liens for Taxes on any asset of American or any of its Subsidiaries, except for Liens for Taxes not yet due and payable or not yet delinquent, Liens for Taxes being contested in good faith for which appropriate reserves have been established on the most recent consolidated balance sheet included in or incorporated into the American Reports, and Liens for Taxes that would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect.

As used in this Agreement, (i) the term "*Tax*" (including, with correlative meaning, the term "*Taxes*") includes all federal, state, local and foreign income, profits, franchise, gross receipts, customs duty, capital stock, severances, stamp, payroll, sales, employment, unemployment, disability, use, property, withholding, excise, escheat, production, value added, occupancy and other taxes, duties or assessments of any nature whatsoever, together with all interest, penalties and additions imposed with respect to such amounts and any interest in respect of such penalties and additions, and (ii) the term "*Tax Return*" includes all returns, reports and other documents (including elections, declarations, disclosures, schedules, estimates and information returns) required or permitted to be supplied to a Tax authority relating to Taxes.

(o) Labor Matters.

(i) American has made available to US Airways true and complete copies of all collective bargaining agreements, works council agreements, work rules and practices and other labor union Contracts, terms sheets, memoranda of understanding or similar agreements (including all amendments thereto) applicable to any employees of American or any of its Subsidiaries as of the date of this Agreement with respect to their

employment with American or any of its Subsidiaries (the "*American CBAs*"), each of which is set forth in Section 3.1(o)(i) of the American Disclosure Letter. Except as set forth in Section 3.1(o)(i) of the American Disclosure Letter, as of the date of this Agreement, none of American or any of its Subsidiaries has breached or otherwise failed to comply with any provision of any American CBA that is a Binding American Contract, except for any breaches or failures to comply that, individually or in the aggregate, have not had and would not reasonably be expected to result in an American Material Adverse Effect.

(ii) Except as set forth in Section 3.1(o)(ii) of the American Disclosure Letter:

(A) No labor union, labor organization or group of employees of American or any of its Subsidiaries has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened in writing to be brought or filed with any labor relations tribunal or authority. To American's Knowledge, there are no labor union organizing activities pending or threatened with respect to any employees of American or any of its Subsidiaries.

(B) There is no material labor dispute, strike, slowdown, work stoppage or lockout, or to American's Knowledge, threat thereof by or with respect to any employee of American or any of its Subsidiaries.

(C) There are no arbitrations, written grievances or written complaints outstanding or, to American's Knowledge, threatened against American or any of its Subsidiaries under any American CBAs, except for such matters as would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect. Neither American nor any of its Subsidiaries is in receipt of written notice of any material statutory disputes or unfair labor practice charges.

(iii) The execution, delivery and performance of this Agreement by American and Merger Sub do not, and the consummation by American and Merger Sub of the Merger and the other transactions contemplated hereby will not, constitute or result in a breach or violation of, a termination (or right of termination) or a default under, or the creation, increase, triggering or acceleration of any obligations or rights of any kind (including under any change of control type provisions) or result in any material changes under, or increase in compensation paid under, the American CBAs.

(p) Intellectual Property and IT Assets. Except for such matters as would not, individually or in the aggregate, reasonably be expected to result in an American Material Adverse Effect:

(i) All Patents, patent applications, Trademark and Copyright registrations and applications for registration, and Internet domain name registrations

claimed to be owned by American or its Subsidiaries are owned exclusively by American or such Subsidiaries and are subsisting and, to American's Knowledge, valid and enforceable.

(ii) Except as set forth in Section 3.1(p)(ii) of the American Disclosure Letter, American and/or each of its Subsidiaries owns, or is licensed or otherwise possesses legally enforceable rights to use, all Intellectual Property necessary to conduct the business of American and its Subsidiaries as currently conducted, all of which rights shall in all material respects survive unchanged the execution and delivery of this Agreement and the consummation of the Merger and the other transactions contemplated hereunder.

(iii) Except as set forth in Section 3.1(p)(iii) of the American Disclosure Letter, the conduct of the business as currently conducted by American and its Subsidiaries does not infringe, misappropriate or otherwise violate the Intellectual Property rights of any third Person and in the three (3) year period immediately preceding the date of this Agreement, there has been no such claim, action or proceeding asserted, or to American's Knowledge threatened against American or its Subsidiaries or any indemnitees thereof. Except as set forth in Section 3.1(p)(iii) of the American Disclosure Letter, there is no claim, action or proceeding asserted, or to American's Knowledge threatened, against American or its Subsidiaries or any indemnitees thereof concerning the ownership, validity, registerability, enforceability, infringement, use or licensed right to use any Intellectual Property claimed to be owned or held by American or its Subsidiaries or used or alleged to be used in the business of American or its Subsidiaries.

(iv) Except as set forth in Section 3.1(p)(iv) of the American Disclosure Letter, to American's Knowledge, no third Person has, in the three (3) year period immediately preceding the date of this Agreement, infringed, misappropriated or otherwise violated the Intellectual Property rights of American or its Subsidiaries. Except as set forth in Section 3.1(p)(iv) of the American Disclosure Letter, there are no claims, actions or proceedings asserted or threatened by American, or decided by American to be asserted or threatened, that (A) a third Person infringes, misappropriates or otherwise violates, or in the three (3) year period immediately preceding the date of this Agreement, infringed, misappropriated or otherwise violated, the Intellectual Property rights of American or its Subsidiaries; or (B) a third Person's owned or claimed Intellectual Property interferes with, infringes, dilutes or otherwise harms the Intellectual Property rights of American or its Subsidiaries.

(v) American and its Subsidiaries have taken reasonable measures to protect the confidentiality of all material Trade Secrets that are owned, used or held by American and its Subsidiaries and, to American's Knowledge, such material Trade Secrets have not been used, disclosed to or discovered by any Person except pursuant to valid and appropriate non-disclosure and/or license agreements which have not been breached.

(vi) Except as set forth in Section 3.1(p)(vi) of the American Disclosure Letter, the IT Assets of American and its Subsidiaries operate and perform in

all material respects in accordance with their documentation and functional specifications and otherwise as required by American and its Subsidiaries for the operation of their respective businesses, and have not malfunctioned or failed within the three (3) year period immediately preceding the date of this Agreement. To American's Knowledge, no Person has gained unauthorized access to such IT Assets. Except as set forth in Section 3.1(p)(vi) of the American Disclosure Letter, American and its Subsidiaries have implemented and maintained for the three (3) year period immediately preceding the date of this Agreement reasonable and sufficient backup and disaster recovery technology consistent with industry practices.

As used in this Agreement:

(1) "*Computer Software*" means all computer software and databases (including, without limitation, source code, object code, and all related documentation).

(2) "*Intellectual Property*" means, collectively, all United States and foreign (i) trademarks, service marks, brand names, certification marks, collective marks, d/b/a's, internet domain names, logos, symbols, trade dress, assumed names, fictitious names, trade names, and other indicia of origin, all applications and registrations for the foregoing, and all goodwill associated therewith and symbolized thereby, including all renewals of same (collectively, "*Trademarks*"); (ii) inventions and discoveries, whether patentable or not, and all patents, registrations, invention disclosures and applications therefor, including divisions, continuations, continuations-in-part and renewal applications, and including renewals, extensions and reissues (collectively, "*Patents*"); (iii) trade secrets and confidential information and know-how, including confidential processes, schematics, business methods, formulae, drawings, prototypes, models, designs, customer lists and supplier lists (collectively, "*Trade Secrets*"); (iv) all rights in published and unpublished works of authorship, whether copyrightable or not (including without limitation Computer Software and other compilations of information), copyrights therein and thereto, and registrations and applications therefor, and all renewals, extensions, restorations and reversions thereof (collectively, "*Copyrights*"); (v) moral rights, rights of publicity and rights of privacy; and (vi) all other intellectual property or proprietary rights.

(3) "*IT Assets*" means computers, Computer Software, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines, and all other information technology equipment and elements, and all associated documentation.

(q) Foreign Corrupt Practices Act; UK Bribery Act. Except for such matters as would not, individually or in the aggregate, reasonably be expected to result in a material adverse impact on the ability of American and its Subsidiaries to conduct their operations in the ordinary course of business:

(i) American and its Subsidiaries have developed and implemented a compliance program which includes corporate policies and procedures to ensure compliance with the Foreign Corrupt Practices Act, as amended (the "*Foreign Corrupt Practices Act*") and the U.K. Bribery Act 2010, as amended (the "*UK Bribery Act*").

(ii) In connection with its compliance with the Foreign Corrupt Practices Act and the UK Bribery Act, there are no adverse or negative past performance evaluations or ratings by the U.S. or U.K. governments, or any voluntary disclosures under the Foreign Corrupt Practices Act and/or the UK Bribery Act, any enforcement actions or threats of enforcement actions, or any facts that, in each case, could result in any adverse or negative performance evaluation related to the Foreign Corrupt Practices Act and/or the UK Bribery Act.

(iii) American and its Subsidiaries have not been notified in writing of any actual or alleged violation or breach of the Foreign Corrupt Practices Act and/or the UK Bribery Act.

(iv) None of American or its Subsidiaries has undergone and is undergoing any audit, review, inspection, investigation, survey or examination of records relating to American's or any of its Subsidiaries' compliance with the Foreign Corrupt Practices Act and/or the UK Bribery Act, and, to American's Knowledge, there is no basis for any such audit, review, inspection, investigation, survey or examination of records.

(v) American and its Subsidiaries have not been and are not now under any administrative, civil or criminal investigation, charge or indictment involving alleged false statements, false claims or other improprieties relating to American's or any of its Subsidiaries' compliance with the Foreign Corrupt Practices Act and/or the UK Bribery Act, nor, to American's Knowledge, is there any basis for any such investigation or indictment.

(vi) American and its Subsidiaries have not been and are not now a party to any administrative or civil litigation involving alleged false statements, false claims or other improprieties relating to American's or any of its Subsidiaries' compliance with the Foreign Corrupt Practices Act and/or the UK Bribery Act, nor, to American's Knowledge, is there any basis for any such proceeding.

(r) Aircraft.

(i) Section 3.1(r)(i) of the American Disclosure Letter sets forth a true and complete list of all aircraft owned or leased by American or any of its Subsidiaries as of January 31, 2013 (the "*American Aircraft*"), including a description of the type and registration number of each such American Aircraft and the delivery date, manufacture date or age of such American Aircraft, as the case may be. All American Aircraft owned or leased by American or any of its Subsidiaries are being maintained according to applicable FAA regulatory standards and the FAA-approved maintenance program of American and its Subsidiaries and, except with respect to American Aircraft in storage or

undergoing maintenance, are in airworthy condition. American and its Subsidiaries have implemented maintenance schedules with respect to their respective American Aircraft and engines that, if complied with, would result in the satisfaction of all requirements under all applicable ADs and FARs required to be complied with in accordance with the FAA-approved maintenance program of American and its Subsidiaries, and American and its Subsidiaries are in compliance with such maintenance schedules in all material respects (except with respect to American Aircraft in storage) and currently have no reason to believe that they will not satisfy any component of such maintenance schedules on or prior to the dates specified in such maintenance schedules (except with respect to American Aircraft in storage).

(ii) Section 3.1(r)(ii) of the American Disclosure Letter sets forth a true and complete list, as of the date hereof, of all Contracts (other than (x) existing aircraft leases, (y) Contracts that may be terminated by American or its Subsidiaries without penalty or material liability and (z) Contracts rejected in connection with the Cases as of the date of this Agreement) pursuant to which American or any of its Subsidiaries has an obligation to purchase or lease aircraft, including the manufacturer and model of all aircraft subject to such Contract, the nature of the purchase or lease obligation (*i.e.*, firm commitment, subject to reconfirmation or otherwise) and the anticipated year of delivery of the aircraft subject to such Contract. American has delivered or made available to US Airways true and complete copies (except as may have been redacted for pricing and other commercially sensitive information and subject to applicable confidentiality restrictions) of all Contracts listed in Section 3.1(r)(ii) of the American Disclosure Letter, including all material amendments, modifications and side letters thereto.

(iii) Except as would not, individually or in the aggregate, reasonably be expected to have an American Material Adverse Effect:

(A) each American Aircraft has a validly issued, current individual aircraft FAA Certificate of Airworthiness with respect to such American Aircraft which satisfies all requirements for the effectiveness of such FAA Certificate of Airworthiness;

(B) each American Aircraft's structure, systems and components are functioning in accordance with its intended use, except for American Aircraft that are undergoing maintenance and temporarily deferred maintenance items that are permitted by American's maintenance programs;

(C) except with respect to American Aircraft in storage, all deferred maintenance items and temporary repairs with respect to each such American Aircraft have been or will be made in accordance with American's maintenance programs;

(D) each American Aircraft is registered on the FAA aircraft registry;

(E) except as set forth in Section 3.1(r)(iii)(E) of the American Disclosure Letter, neither American nor its Subsidiaries is a party to any interchange or pooling agreements with respect to the American Aircraft, other than pooling agreements in the ordinary course of business; and

(F) no American Aircraft is subleased to or otherwise in the possession of another air carrier or other Person other than American or any of its Subsidiaries, to operate such American Aircraft in air transportation or otherwise.

(s) Slots. Section 3.1(s) of the American Disclosure Letter sets forth a true, correct and complete list of all held or owned takeoff and landing slots, operating authorizations from the FAA or any other Governmental Entity and other similar designated takeoff and landing rights held or owned by American or any of its Subsidiaries ("*American Slots*") on the date hereof at any domestic or international airport, and such list shall indicate and identify (i) any held or owned American Slots that have been allocated to another air carrier beyond the end-of-the current International Air Transport Association ("*IATA*") traffic season and in which American and its Subsidiaries hold only temporary use rights, (ii) any American Slots that have been allocated to American and its Subsidiaries from another air carrier beyond the end-of-the current IATA traffic season and in which such other air carrier holds only temporary use rights and (iii) any Contracts, agreements or temporary government orders or decisions concerning specific American Slots or operating authorities. Except as would not, individually or in the aggregate, reasonably be expected to have an American Material Adverse Effect, (i) American and its Subsidiaries will have complied in all material respects with the requirements of the regulations issued under the Federal Aviation Act and any other Laws, rules or regulations promulgated in the United States or in any country in which American operates by either a civil aviation authority, airport authority or slot coordinator with respect to the American Slots, (ii) neither American nor any of its Subsidiaries has received, as of the date hereof, any notice of any proposed withdrawal of the American Slots by the FAA, the DOT or any other Governmental Entity, (iii)(A) the American Slots have not been designated for the provision of essential air services under the regulations of the FAA, were not acquired pursuant to 14 C.F.R. § 93.219 and have not been designated for international operations, as more fully detailed in 14 C.F.R. § 93.217 and (B) to the extent covered by 14 C.F.R. § 93.227, American and its Subsidiaries have used the American Slots (or the American Slots have been used by other air carriers) either at least 80% of the maximum amount that each American Slot could have been used during each full and partial reporting period (as described in 14 C.F.R. § 93.227(i)) or such greater or lesser amount of minimum usage as may have been required to protect such American Slot's authorization from termination or withdrawal under regulations established by any Governmental Entity or airport authority, (iv) all reports required by the FAA or any other Governmental Entity relating to the American Slots have been filed in a timely manner and (v) except as set forth in Section 3.1(s)(v) of the American Disclosure Letter, as of the date hereof, neither American nor any of its Subsidiaries has agreed to any future American Slot slide, American Slot trade, American Slot purchase, American Slot sale or other transfer of any of the American Slots outside the ordinary course of business consistent with past practice.

(t) Major Airports. As of the date hereof, no civil aviation authority, airport authority, or slot coordinator at Dallas/Fort Worth International Airport (DFW), John F. Kennedy International Airport (JFK), Los Angeles International Airport (LAX), Miami International Airport (MIA), O'Hare International Airport (ORD), London Heathrow Airport (LHR), Tokyo Narita Airport (NRT), or São Paulo/Guarulhos–Governador André Franco Montoro International Airport (GRU) (each such airport, a "*Major American Airport*") has taken or, to American's Knowledge, threatened to take any action that would reasonably be expected to materially interfere with the ability of American and its Subsidiaries to conduct their respective operations at any Major American Airport in the same manner as currently conducted in all material respects.

(u) U.S. Citizen; Air Carrier. American's primary subsidiary, American Airlines, Inc., is a "citizen of the United States" as defined in the Federal Aviation Act and is an "air carrier" within the meaning of such Act operating under certificates issued pursuant to such Act (49 U.S.C. §§ 41101-41112).

(v) Insurance. Section 3.1(v) of the American Disclosure Letter lists and briefly describes (including name of insurer, agent or broker, coverage and expiration date), as of the date of this Agreement, each insurance policy maintained by, at the expense of or for the benefit of American or any of the Subsidiaries with respect to its properties, assets and liabilities and describes any material claims made thereunder. All such insurance policies are in full force and effect and neither American nor any Subsidiary is in default with respect to its obligations under any such insurance policy. The insurance coverage of American and the Subsidiaries is customary for corporations of similar size engaged in similar lines of businesses. American has not received any notice or other communication regarding any actual or possible (a) cancellation or invalidation of any insurance policy, (b) refusal of any coverage or rejection of any material claim under any insurance policy or (c) material adjustment in the amount of premiums payable with respect to any insurance policy.

(w) Brokers and Finders. Neither American nor any of its officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fees, commissions, finder's fees or financial advisory fees that may be payable in connection with the Merger or the other transactions contemplated in this Agreement, except that American has employed, and is solely responsible for the fees and expenses of, Rothschild Inc., or one of its affiliates, as its financial advisor, and a copy of the engagement letter with such financial advisor has been provided to US Airways prior to the date hereof. As used in this Agreement, "*affiliate*" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person.

3.2 Representations and Warranties of US Airways. Except (i) as set forth in the disclosure letter (subject to Section 7.13(c) of this Agreement) delivered to American by US Airways concurrently with the execution and delivery of this Agreement (the "*US Airways Disclosure Letter*"), or (ii) to the extent the qualifying nature of such disclosure with respect to a specific representation and warranty is readily apparent therefrom, as set forth in the US Airways Reports filed on or after January 1, 2012 and prior to the date hereof (excluding any disclosures

included in any such US Airways Report that are predictive or forward-looking in nature or included in any "risk factor" disclosure), US Airways hereby represents and warrants to American and Merger Sub that:

(a) Organization, Good Standing and Qualification. Each of US Airways and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization, has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted, and is qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so organized, validly existing, qualified or in good standing, or to have such power or authority, would not, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect. As used in this Agreement, the term "*US Airways Material Adverse Effect*" means a Material Adverse Effect as applicable to US Airways and its Subsidiaries, taken as a whole. US Airways has made available to American complete and correct copies of US Airways' certificate of incorporation and by-laws, each as amended to date.

(b) Capital Structure.

(i) US Airways. As of the date of this Agreement, the authorized capital stock of US Airways consists of 400,000,000 shares of US Airways Common Stock, of which 162,897,835 shares of US Airways Common Stock were issued and outstanding as of the close of business on February 11, 2013, and zero (0) shares of US Airways Common Stock were held by US Airways as treasury shares as of the close of business on February 11, 2013. The Subsidiaries of US Airways hold no shares of capital stock of US Airways, or securities or obligations convertible or exchangeable into or exercisable for such capital stock. As of the close of business on February 11, 2013, there were (A) an aggregate of 512,872 shares of US Airways Common Stock issuable with respect to outstanding stock options to purchase shares of US Airways Common Stock (the "*US Airways Options*"), (B) an aggregate of 5,451,228 shares of US Airways Common Stock issuable with respect to outstanding stock-settled stock appreciation rights (the "*US Airways Stock-Settled SARs*"), as if US Airways Stock-Settled SARs such were settled as of such date at a stock price per share for US Airways Common Stock of $14.46, and (C) an aggregate of 2,227,957 shares of US Airways Common Stock issuable with respect to outstanding stock-settled restricted stock units ("*US Airways Stock-Settled RSUs*"), granted pursuant to the US Airways Group, Inc. 2011 Incentive Award Plan, US Airways Group, Inc. 2008 Equity Incentive Plan, US Airways Group, Inc. 2005 Equity Incentive Plan and America West 2002 Incentive Equity Plan (collectively, the "*US Airways Equity Plans*"), an aggregate of 10,286,076 shares of US Airways Common Stock reserved for issuance pursuant to the US Airways Equity Plans, 37,746,174 shares of US Airways Common Stock issuable upon the conversion of outstanding US Airways' 7.25% Convertible Senior Notes due 2014 (the "*US Airways 7.25% Convertible Notes*") and 199,379 shares of US Airways Common Stock issuable upon the conversion of outstanding US Airways' 7% Senior Convertible Notes due 2020 (the "*US Airways 7% Convertible Notes*"). As of the close of business on February 11, 2013, outstanding cash-

settled stock appreciation rights (the "*US Airways Cash-Settled SARs*" and, collectively with the US Airways Stock-Settled SARs the "*US Airways SARs*") and outstanding cash-settled restricted stock units (the "*US Airways Cash-Settled RSUs*" and, collectively with the US Airways Stock-Settled RSUs, the "*US Airways RSUs*") granted pursuant to the US Airways Equity Plans had an aggregate cash value of approximately $53,856,417 calculated as if such US Airways Cash-Settled SARs and such US Airways Cash-Settled RSUs were settled as of such date at a stock price per share for US Airways Common Stock of $14.46, net of any applicable exercise price. For purposes of this Agreement, the phrase "*US Airways Equity Awards*" shall refer to, collectively, the US Airways Stock-Settled RSUs and the US Airways Stock-Settled SARs. As of the Closing Date, between the Share Determination Date and the Effective Time, other than the issuance of shares of US Airways Common Stock upon the exercise or vesting of US Airways Options, US Airways Stock-Settled SARs or US Airways Stock-Settled RSUs or the conversion of the US Airways 7.25% Convertible Notes or the US Airways 7% Convertible Notes, US Airways has not issued, sold, granted or authorized the issuance, sale, or grant of, any shares of capital stock of US Airways, or securities convertible or exchangeable into or exercisable for any shares of such capital stock, or any options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or other rights of any kind to acquire any shares of such capital stock or such convertible or exchangeable securities.

(ii) Except as set forth in Section 3.2(b)(i) above, as of the date of this Agreement, (i) there are no shares of capital stock or other securities of US Airways issued, reserved for issuance or outstanding and (ii) there are no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, deferred shares, performance shares, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or rights of any kind that obligate US Airways or any of its Subsidiaries to issue or sell any shares of capital stock or other securities of US Airways or any of its Subsidiaries or any securities or obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or acquire, any securities of US Airways or any of its Subsidiaries, and no securities or obligations evidencing such rights are authorized, issued or outstanding. All of the issued and outstanding shares of US Airways Common Stock are and, at the time of issuance, all such shares that may be issued upon the exercise or vesting of, or pursuant to, US Airways Options and US Airways Equity Awards or upon the conversion of the US Airways 7.25% Convertible Notes or the US Airways 7% Convertible Notes, will be, duly authorized and validly issued and fully paid, nonassessable, and not subject to or issued in violation of any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of the DGCL, the certificate of incorporation of US Airways, the by-laws of US Airways or any Contract to which US Airways is a party or by which it is otherwise bound. Neither US Airways nor any of its Subsidiaries is party to any voting agreement with respect to the voting of any capital stock or voting securities of, or other equity interests in, US Airways.

(iii) Except as set forth in Section 3.2(b)(iii) of the US Airways Disclosure Letter, all of the issued and outstanding shares of capital stock or other equity ownership interests of each Subsidiary of US Airways are owned by US Airways,

directly or indirectly, all such shares or equity ownership interests are set forth in Section 3.2(b)(iii) of the US Airways Disclosure Letter, and all of such shares or equity ownership interests are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. Except as set forth in Section 3.2(b)(iii) of the US Airways Disclosure Letter, and except for the capital stock or other equity ownership interests of the Subsidiaries of US Airways, as of the date of this Agreement, US Airways does not beneficially own directly or indirectly any capital stock, membership interest, partnership interest, joint venture interest or other equity interest in any Person.

(c) Corporate Authority; Approval and Fairness.

(i) US Airways has all requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement and to consummate the Merger, subject only to the receipt of the Stockholder Approval. Subject to Section 7.1, this Agreement is a valid and binding agreement of US Airways enforceable against US Airways in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(ii) The Board of Directors of US Airways has, as of the date of this Agreement, (A) declared that the Merger and the other transactions contemplated hereby are advisable and in the best interests of US Airways and its stockholders and has approved and adopted this Agreement, which approval and adoption have not been rescinded or modified; (B) received an opinion of its financial advisor, Barclays Capital Inc., to the effect that, from a financial point of view, the Merger Consideration in the Merger is fair to the stockholders of US Airways, which opinion has not been amended or rescinded as of the date of this Agreement; (C) resolved to recommend that the holders of US Airways Common Stock vote to adopt this Agreement (such recommendation being the "*US Airways Directors' Recommendation*"); and (D) directed that the adoption of this Agreement be submitted to the holders of US Airways Common Stock entitled to vote for their approval.

(iii) The matters contemplated by Section 4.6, including the Stockholder Approval, are the only votes of the holders of any class or series of US Airways capital stock necessary to consummate the Merger and the other transactions contemplated hereby.

(d) Governmental Filings; No Violations; Certain Contracts.

(i) Other than the notices, reports, filings, consents, registrations, approvals, permits or authorizations (A) pursuant to Section 1.3; (B) required under the HSR Act, the EU Merger Regulation and any other applicable foreign antitrust, competition or similar Laws; (C) required under the Securities Act, the Exchange Act, any applicable state securities or "blue sky" laws, and the rules and regulations promulgated under any of the foregoing; (D) with, from or to the FAA, the DOT, the

FCC, and the DHS, including the TSA; (E) with, from or to the NYSE or the principal securities market on which the shares of US Airways Common Stock are then listed or quoted; and (F) with, from or to any applicable foreign Governmental Entities regulating any aspect of the airline industry, no notices, reports or other filings are required to be made by US Airways or any of its Subsidiaries with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by US Airways or any of its Subsidiaries from any Governmental Entity (subject and after giving effect to any required approvals of the Bankruptcy Court (including to the extent applicable, the Confirmation Order confirming the Plan) and the Plan) in connection with the execution, delivery and performance of this Agreement by US Airways and the consummation by US Airways of the Merger and the other transactions contemplated hereby, except those that the failure to make or obtain would not, individually or in the aggregate, (i) reasonably be expected to result in a US Airways Material Adverse Effect or (ii) reasonably be expected to prevent, materially delay or materially impair the ability of US Airways and its Subsidiaries to consummate the Merger and the other transactions contemplated hereby.

(ii) Except as set forth in Section 3.2(d)(ii) of the US Airways Disclosure Letter, the execution, delivery and performance of this Agreement by US Airways does not, and the consummation by US Airways of the Merger and the other transactions contemplated hereby will not, constitute or result in (A) a breach or violation of, or a default under, the certificate of incorporation or by-laws of US Airways or the comparable governing documents of any of its Subsidiaries; (B) with or without notice, lapse of time or both, a breach or violation of, a termination (or right of termination) or a default under, or the creation, increase or acceleration of any obligations under any Contract binding upon US Airways or any of its Subsidiaries or, assuming (solely with respect to performance of this Agreement and consummation by US Airways of the Merger and the other transactions contemplated hereby) compliance with the matters referred to in Section 3.2(d)(i), any Law or governmental or non-governmental permit or license to which US Airways or any of its Subsidiaries is subject; or (C) with or without notice, lapse of time or both, the creation of a Lien on any of the assets of US Airways or any of its Subsidiaries pursuant to any Contract, including any loan agreement or any other indebtedness agreement or instrument of indebtedness that is binding upon US Airways or any of its Subsidiaries or binding upon its assets, except, in the case of clause (B) or (C) above, for any such breach, violation, termination, default, creation, increase, acceleration or Lien that would not, individually or in the aggregate, (i) reasonably be expected to result in a US Airways Material Adverse Effect or (ii) reasonably be expected to prevent, materially delay or materially impair the ability of US Airways and its Subsidiaries to consummate the Merger and the other transactions contemplated hereby.

(e) US Airways Reports; Financial Statements.

(i) US Airways and each Subsidiary has filed or furnished all forms, statements, schedules, reports and documents required to be filed or furnished by it with the SEC pursuant to applicable securities statutes, regulations, policies and rules since December 31, 2011 (the "*US Airways Audit Date*") (the forms, statements, schedules, reports and documents filed or furnished with the SEC since the US Airways Audit Date

and those filed or furnished with the SEC subsequent to the date of this Agreement and prior to the Effective Time, if any, including any amendments thereto, the "*US Airways Reports*"). Each of the US Airways Reports, at the time of its filing, complied in all material respects with the applicable requirements of the Exchange Act and the rules and regulations thereunder and complied in all material respects with the then applicable accounting standards. As of their respective dates (or, if amended, as of the date of such amendment), the US Airways Reports did not, and any US Airways Reports filed with the SEC subsequent to the date hereof will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, except to the extent corrected prior to the date of this Agreement by a subsequently filed US Airways Report. The US Airways Reports included or will include all certificates required to be included therein pursuant to Sections 302 and 906 of the SOX Act, and the internal control report and attestation of US Airways' outside auditors required by Section 404 of the SOX Act.

(ii) Each of the consolidated balance sheets included in or incorporated by reference into the US Airways Reports (including the related notes and schedules) fairly presents, or, in the case of US Airways Reports filed after the date hereof, will fairly present, in all material respects, the consolidated financial position of US Airways and any other entity included therein and their respective Subsidiaries as of its date, and each of the consolidated statements of operations, stockholders' equity (deficit) and cash flows included in or incorporated by reference into the US Airways Reports (including any related notes and schedules) fairly presents, or in the case of US Airways Reports filed after the date hereof, will fairly present, in all material respects, the net income, total stockholders' equity and net increase (decrease) in cash and cash equivalents, as the case may be, of US Airways and any other entity included therein and their respective Subsidiaries for the periods set forth therein (subject, in the case of unaudited statements, to the absence of full notes and normal year-end adjustments that are not expected to be material in amount or effect), in each case in accordance with GAAP consistently applied during the periods involved, except as may be noted therein.

(iii) The management of US Airways (x) has established and maintains disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) designed to ensure that material information relating to US Airways, including its consolidated Subsidiaries, is made known to the management of US Airways by others within those entities, and (y) has disclosed, based on its most recent evaluation, to US Airways' outside auditors and the audit committee of the Board of Directors of US Airways (A) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) which are reasonably likely to adversely affect US Airways' ability to record, process, summarize and report financial data and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in US Airways' internal controls over financial reporting. Since the US Airways Audit Date, any material change in internal control over financial reporting required to be disclosed in any US Airways Report has been so disclosed.

(iv) Since the US Airways Audit Date, neither US Airways nor any of its Subsidiaries nor, to US Airways' Knowledge, any director, officer, employee, auditor, accountant or representative of US Airways or any of its Subsidiaries has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of US Airways or any of its Subsidiaries or their respective internal accounting controls relating to periods after the US Airways Audit Date, including any material complaint, allegation, assertion or claim that US Airways or any of its Subsidiaries has engaged in questionable accounting or auditing practices (except for any of the foregoing which have no reasonable basis). "*US Airways' Knowledge*" shall mean the knowledge of those individuals listed in Section 3.2(e)(iv) of the US Airways Disclosure Letter, after reasonable inquiry.

(v) Except as set forth in Section 3.2(e)(v) of the US Airways Disclosure Letter, there are no liabilities or obligations of US Airways or any of its Subsidiaries, whether or not accrued, contingent or otherwise and whether or not required to be disclosed, or any other facts or circumstances that would reasonably be expected to result in any obligations or liabilities of, US Airways or any of its Subsidiaries, other than: (A) liabilities or obligations to the extent (I) accrued and reflected on the consolidated balance sheet of US Airways or (II) disclosed in the notes thereto, in accordance with GAAP, in each case included in US Airways' quarterly report on Form 10-Q for the period ended September 30, 2012 or in US Airways' annual report on Form 10- K for the period ended December 31, 2011; (B) liabilities or obligations incurred in the ordinary course of business since December 31, 2011; (C) performance obligations under Contracts required in accordance with their terms, or performance obligations, to the extent required under applicable Law, in each case to the extent arising after the date hereof; or (D) liabilities or obligations that would not, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect.

(f) Absence of Certain Changes. Except as set forth in Section 3.2(f) of the US Airways Disclosure Letter, from the US Airways Audit Date to the date of this Agreement, US Airways and its Subsidiaries have conducted their respective businesses only in accordance with, and have not engaged in any material transaction other than in accordance with, the ordinary course of such businesses. Since the US Airways Audit Date, there has not been any US Airways Material Adverse Effect or any event, occurrence, discovery or development which would, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect.

(g) Litigation. Except as otherwise disclosed in US Airways Reports filed prior to the date hereof, or as set forth in Section 3.2(g) of the US Airways Disclosure Letter, there are no (A) civil, criminal or administrative actions, suits, claims, hearings, arbitrations, investigations or proceedings pending or, to US Airways' Knowledge, threatened against US Airways or any of its Subsidiaries or (B) litigations, arbitrations, investigations or other proceedings, or injunctions or final judgments relating to, pending or, to US Airways' Knowledge, threatened against US Airways or any of its Subsidiaries before any Governmental Entity, including the FAA, except in the case of either clause (A) or (B), for those that would not, individually or in the aggregate,

reasonably be expected to result in a US Airways Material Adverse Effect. None of US Airways or any of its Subsidiaries is a party to or subject to the provisions of any judgment, order, writ, injunction, decree or award of any Governmental Entity which would, individually or in the aggregate, (i) reasonably be expected to result in a US Airways Material Adverse Effect or (ii) reasonably be expected to prevent, materially delay or materially impair the ability of US Airways and its Subsidiaries to consummate the Merger and the other transactions contemplated hereby.

(h) Employee Benefits.

(i) Section 3.2(h)(i) of the US Airways Disclosure Letter contains, as of the date of this Agreement, a true and complete list of each material US Airways Compensation and Benefit Plan. "*US Airways Compensation and Benefit Plan*" means each employment agreement, and each bonus, deferred compensation, incentive compensation, equity compensation, severance pay, change in control, medical, life insurance, profit-sharing, pension, retirement, retiree medical, fringe benefit and each other material employee benefit plan, program or agreement as to which US Airways or any of its Subsidiaries has any liability, contingent or otherwise, for the benefit of, with or relating to any current or former employee, officer or director of US Airways or any of its Subsidiaries, excluding any governmental plan or program or any statutory obligation.

(ii) With respect to each of the material US Airways Compensation and Benefit Plans, US Airways has heretofore delivered or made available to American true and complete copies of each of the following documents: (A) the US Airways Compensation and Benefit Plan and most recent trust agreement and insurance contract (including all amendments thereto), if any; (B) the most recent annual report, actuarial report, and financial statement, if any; (C) the most recent Summary Plan Description, together with each Summary of Material Modifications, required under ERISA with respect to such US Airways Compensation and Benefit Plan, if any; and (D) the most recent determination letter received from the IRS with respect to each US Airways Compensation and Benefit Plan that is intended to be qualified under Section 401(a) of the Code.

(iii) Except as would not, individually or in the aggregate, have a US Airways Material Adverse Effect, and except as set forth in Section 3.2(h)(iii) of the US Airways Disclosure Letter, all obligations in respect of each US Airways Compensation and Benefit Plan have been properly accrued and reflected on the most recent consolidated statement of operations and consolidated balance sheet filed or incorporated by reference in the US Airways Reports as of the respective dates of such balance sheet or report to the extent required by GAAP.

(iv) Except as set forth in Section 3.2(h)(iv) of the US Airways Disclosure Letter, none of the US Airways Compensation and Benefit Plans is a "multiple employer welfare arrangement," as such term is defined in Section 3(40) of ERISA, or single employer plan that has two or more contributing sponsors, at least two of whom are not under common control, within the meaning of Section 4063(a) of ERISA or a "multiemployer plan," as such term is defined in Section 4001(a)(3) of

ERISA. Except as set forth in Section 3.2(h)(iv) of the US Airways Disclosure Letter, the IRS has issued a favorable determination letter in respect of each of the US Airways Compensation and Benefit Plans that is intended to be "qualified" within the meaning of Section 401(a) of the Code and neither US Airways nor any of its Subsidiaries is aware of any circumstances that could reasonably be expected to result in the revocation of such letter. Each of the US Airways Compensation and Benefit Plans that is intended to satisfy the requirements of Section 125 or 501(c)(9) of the Code satisfies such requirements, except as would not, either individually or in the aggregate, reasonably be expected to have a US Airways Material Adverse Effect. Each of the US Airways Compensation and Benefit Plans has been operated and administered in accordance with its terms and applicable Laws, including but not limited to ERISA and the Code, except as would not, either individually or in the aggregate, reasonably be expected to have a US Airways Material Adverse Effect.

(v) Except as set forth in Section 3.2(h)(v) of the US Disclosure Letter, none of the US Airways Compensation and Benefit Plans are subject to Title IV of ERISA.

(vi) Except as set forth in Section 3.2(h)(vi) of the US Airways Disclosure Letter, there are no claims pending, or, to US Airways' Knowledge, threatened or anticipated (other than routine claims for benefits) against any US Airways Compensation and Benefit Plan, the assets of any US Airways Compensation and Benefit Plan or against US Airways or any of its Subsidiaries with respect to any US Airways Compensation and Benefit Plan. There is no judgment, decree, injunction, rule or order of any court, governmental body, commission, agency or arbitrator outstanding against or in favor of any US Airways Compensation and Benefit Plan or any fiduciary thereof (other than rules of general applicability). There are no pending or, to US Airways' Knowledge, threatened audits or investigations by any governmental body, commission or agency involving any US Airways Compensation and Benefit Plan, that would, individually or in the aggregate, reasonably be expected to have a US Airways Material Adverse Effect.

(vii) Except as set forth in Section 3.2(h)(vii) of the US Airways Disclosure Letter, the transactions contemplated under this Agreement shall not, by themselves or in coordination with any other event or condition, result in (A) any increase in the amount of any payment to any current or former employee, consultant or director of US Airways or any of its Subsidiaries, or (B) accelerate the vesting, time of payment or funding of any compensation or benefits, or right to any compensation or benefits, of any current or former employee, consultant or director of US Airways or any of its Subsidiaries.

(viii) With respect to each US Airways Compensation and Benefit Plan that primarily provides benefits or compensation to non-U.S. employees and is maintained subject to the Laws of any jurisdiction outside of the United States (the "*US Airways Foreign Plans*"): (A) such US Airways Foreign Plan complies in all material respects in form and operation in accordance with all applicable Laws; (B) except as could not reasonably be expected to result in a material liability, if a US Airways Foreign

Plan is intended to qualify for special Tax treatment, such plan meets all requirements for such treatment; (C) if required under applicable Laws to be funded and/or book-reserved, such US Airways Foreign Plan is funded and/or book reserved, as appropriate, to the extent so required by applicable Laws, and (D) there are no going-concern unfunded actuarial liabilities, past service unfunded liabilities, solvency deficiencies or contribution holidays with respect to any of the US Airways Foreign Plans.

(i) Compliance with Laws; Licenses.

(i) The businesses of each of US Airways and its Subsidiaries have not been conducted in violation of any material federal, state, local or foreign Laws or any applicable operating certificates, common carrier obligations, ADs, FARs or any other rules, regulations, directives or policies of the FAA, DOT, FCC, DHS or any other Governmental Entity, except for such violations that would not, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect. Except as set forth in Section 3.2(i)(i) of the US Airways Disclosure Letter, no investigation or review by any Governmental Entity with respect to US Airways or any of its Subsidiaries is pending or, to US Airways' Knowledge, threatened, nor has any Governmental Entity indicated an intention to conduct the same, except for any such investigations or reviews that would not, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect. Except as set forth in Section 3.2(i)(i) of the US Airways Disclosure Letter, each of US Airways and its Subsidiaries has obtained and is in substantial compliance with all Licenses necessary to conduct its business as presently conducted, except for any failures to have or to be in compliance with such Licenses which would not, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect. The representations and warranties contained in this Section 3.2(i) shall not apply to the following applicable Laws to the extent applicable to US Airways and its Subsidiaries (or Licenses required under such applicable Laws): (i) ERISA and other applicable Laws regarding employee benefit matters, which are exclusively governed by Section 3.2(h), (ii) applicable Laws regarding Taxes, which are exclusively governed by Section 3.2(h) and Section 3.2(n), (iii) Environmental Laws, which are exclusively governed by Section 3.2(m), and (iv) applicable Laws regarding labor matters, which are exclusively governed by Section 3.2(o).

(ii) Each of US Airways and its Subsidiaries is in compliance with the rules and regulations of the Governmental Entity issuing such Licenses, except in each instance for any failures to be in compliance which would not, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect. There is not pending or, to US Airways' Knowledge, threatened before the FAA, DOT or any other Governmental Entity any material proceeding, notice of violation, order of forfeiture or complaint or investigation against US Airways or any of its Subsidiaries relating to any of the Licenses, except for any of the foregoing that would not, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect. The actions of the applicable Governmental Entities granting all Licenses have not been reversed, stayed, enjoined, annulled or suspended, and there is not pending or, to US Airways' Knowledge, threatened, any material application,

petition, objection or other pleading with the FAA, DOT or any other Governmental Entity which challenges or questions the validity of or any rights of the holder under any License, except as set forth in Section 3.2(i)(ii) of the US Airways Disclosure Letter and except, for any of the foregoing, that would not, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect.

(j) Material Contracts. Except, in each case, as listed in Section 3.2(j) of the US Airways Disclosure Letter:

(i) As of the date of this Agreement, neither US Airways nor any of its Subsidiaries is a party to or bound by any Contract required pursuant to Item 601 of Regulation S-K under the Securities Act to be filed as an exhibit to US Airways' Annual Report on Form 10-K for the year ended December 31, 2011, or on any Quarterly Report on Form 10-Q or Current Report on Form 8-K filed by US Airways since December 31, 2011, which has not been so filed.

(ii) As of the date of this Agreement, neither US Airways nor any of its Subsidiaries is a party to or is bound by any Contract that is (A) a non-competition Contract or other Contract (other than the US Airways CBAs) that (I) purports to limit in any material respect (including pursuant to an exclusivity provision that is material to the operation of the business of US Airways and its Subsidiaries, taken as a whole) either the type of business in which US Airways or its Subsidiaries may engage or the manner or locations in which any of them may so engage in any business, or (II) could require the disposition of any material assets or line of business of US Airways or any of its Subsidiaries; (B) a material joint venture, partnership or business alliance Contract; (C) a capacity purchase, regional carrier or similar Contract; (D) a material co-branded credit card or credit card processing Contract; or (E) a Contract pursuant to which any indebtedness is outstanding or may be incurred (except for any Contract pursuant to which the aggregate principal amount of such indebtedness cannot exceed $200,000,000).

(iii) All Contracts that have been filed as an exhibit to US Airways' Annual Report on Form 10-K for the year ended December 31, 2011, or on any Quarterly Report on Form 10-Q or Current Report on Form 8-K filed by US Airways since December 31, 2011, and all Contracts listed in Section 3.2(j)(ii) of the US Airways Disclosure Letter, together with all amendments, exhibits and schedules to such Contracts, shall constitute the "*US Airways Material Contracts*."

(iv) A true and complete copy of each US Airways Material Contract has previously been delivered or made available to American (subject to applicable confidentiality restrictions) and each US Airways Material Contract is a valid and binding agreement of US Airways or one of its Subsidiaries, as the case may be, and is in full force and effect, except to the extent it has previously expired in accordance with its terms or if the failure to be in full force and effect would not, individually or in the aggregate, reasonably be expected to have a US Airways Material Adverse Effect. Neither US Airways nor any of its Subsidiaries is in default or breach under the terms of any such US Airways Material Contract which default or breach would, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect.

(k) Real Property.

(i) Section 3.2(k)(i) of the US Airways Disclosure Letter sets forth, as of the date hereof, the fee owner and address of all material real property owned by US Airways and its Subsidiaries (the "*US Airways Owned Real Property*"). Except as set forth in Section 3.2(k)(i) of the US Airways Disclosure Letter, with respect to such US Airways Owned Real Property, (A) each identified owner thereof has good, marketable, indefeasible fee simple title to such US Airways Owned Real Property, free and clear of any Encumbrance; (B) there are no outstanding options, rights of first offer or rights of first refusal to purchase such US Airways Owned Real Property or any material portion thereof or interest therein; (C) neither US Airways nor any of its Subsidiaries is a party to any Contract or option to purchase any material real property or interest therein; and (D) there does not exist any actual, pending or, to US Airways' Knowledge, threatened condemnation or eminent domain proceedings that affect any US Airways Owned Real Property, and neither US Airways nor any of its Subsidiaries has received any written notice of the intention of any Governmental Entity or other Person to take or use any US Airways Owned Real Property.

(ii) Section 3.2(k)(ii) of the US Airways Disclosure Letter sets forth, as of the date hereof, the address of each lease, sublease, license, concession and other agreement (written or oral) pursuant to which US Airways or any of its Subsidiaries hold a leasehold or subleasehold estate in real property which requires payments by US Airways or any Subsidiary of US Airways in excess of $25,000,000 per annum (collectively, the "*US Airways Leased Real Property*" and, together with US Airways Owned Real Property, the "*US Airways Real Property*"). True and complete copies of all Contracts pertaining to the US Airways Leased Real Property (each, an "*US Airways Lease*") have been made available to American prior to the date hereof. With respect to such US Airways Leased Real Property, (A) each US Airways Lease is in full force and effect and is valid and enforceable in accordance with its terms; (B) there is no default under any US Airways Lease either by US Airways, any of its Subsidiaries or, to US Airways' Knowledge, by any other party thereto; (C) neither US Airways nor any of its Subsidiaries has received or delivered a written notice of default or objection to any party to any US Airways Lease to pay and perform its obligations, and, to US Airways' Knowledge, no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute a material breach or default, or permit the termination, modification or acceleration of rent under such US Airways Lease; and (D) US Airways or one of its Subsidiaries, as applicable, holds a good and valid leasehold interest in all US Airways Leased Real Property free and clear of all Encumbrances.

(iii) For purposes of this Section 3.2(k) only, "*Encumbrance*" means any mortgage, lien, pledge, charge, security interest, easement, covenant, or other restriction or title matter or encumbrance of any kind in respect of such asset except for (A) specified encumbrances described in Section 3.2(k)(iii) of the US Airways Disclosure Letter; (B) encumbrances that arise under zoning, land use and other similar Laws and other similar imperfections of title; (C) Liens for Taxes excluded from the Lien representation in Section 3.2(n) or other governmental charges not yet due and payable or

not yet delinquent; (D) mechanics', carriers', workmen's, repairmen's or other like encumbrances arising or incurred in the ordinary course of business consistent with past practice relating to obligations as to which there is no default on the part of US Airways, or the validity or amount of which is being contested in good faith by appropriate proceedings; and (E) other encumbrances that do not, individually or in the aggregate, materially impair the continued use, operation, value or marketability of the specific parcel of US Airways Owned Real Property or US Airways Leased Real Property to which they relate or the conduct of the business of US Airways and its Subsidiaries as presently conducted.

(l) Takeover Statutes. The Board of Directors of US Airways has approved this Agreement and the transactions contemplated hereby as required to render inapplicable to such agreements and transactions DGCL Section 203, to the extent applicable. To US Airways' Knowledge, no other Takeover Statute is applicable to the Merger or the other transactions contemplated by this Agreement. Except as contemplated by Section 4.15(c), US Airways does not have any stockholder rights plan or similar agreement.

(m) Environmental Matters. Except as set forth in Section 3.2(m) of the US Airways Disclosure Letter, and except for such matters as would not, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect: (A) US Airways and its Subsidiaries have complied at all times with all applicable Environmental Laws; (B) no property currently owned, leased or operated by US Airways or any of its Subsidiaries (including soils, groundwater, surface water, buildings or other structures) is contaminated with any Hazardous Substance in a manner that is or could reasonably be expected to require Removal, Remedial or Response Action, that is in violation of any Environmental Law, or that is reasonably likely to give rise to any Environmental Liability; (C) US Airways and its Subsidiaries have no information that any property formerly owned, leased or operated by US Airways or any of its Subsidiaries was contaminated with any Hazardous Substance during or prior to such period of ownership, leasehold, or operation, in a manner that is or could reasonably be expected to require Removal, Remedial or Response Action, that is in violation of any Environmental Law, or that is reasonably likely to give rise to any Environmental Liability; (D) neither US Airways or any of its Subsidiaries, nor, to US Airways' Knowledge, any other Person whose Environmental Liabilities US Airways or its Subsidiaries have retained or assumed, either contractually or by operation of law, has incurred in the past or is now subject to any Environmental Liabilities; (E) in the past five (5) years neither US Airways nor any of its Subsidiaries has received any notice, demand, letter, claim or request for information alleging that US Airways or any of its Subsidiaries may be in violation of or subject to any Environmental Liability; (F) neither US Airways nor any of its Subsidiaries is subject to any order, decree, injunction or agreement with any Governmental Entity, or any indemnity or other agreement with any third party, concerning any Environmental Liability or otherwise relating to any Hazardous Substance or any environmental matter; (G) there is no Removal, Remedial or Response Action being undertaken on any property currently owned, leased or operated by US Airways or any of its Subsidiaries; and (H) there are no other circumstances or conditions

involving US Airways or any of its Subsidiaries that could reasonably be expected to result in any Environmental Liability.

(n) Taxes. Except as would not, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect, US Airways and each of its Subsidiaries (i) have prepared in good faith and duly and timely filed (taking into account any extension of time within which to file) all Tax Returns required to be filed by any of them and all such filed Tax Returns are complete and accurate; and (ii) have paid all Taxes that are required to be paid or that US Airways or any of its Subsidiaries are obligated to withhold from amounts owing to any employee, creditor or third party, except with respect to matters contested in good faith for which adequate reserves have been established on the most recent consolidated balance sheet included in or incorporated into the US Airways Reports. As of the date hereof, except as would not, individually or in the aggregate, reasonably be expected to result in an increase in Taxes that is material to US Airways, there are no audits, examinations, investigations or other proceedings, in each case, pending or threatened in writing, in respect of Taxes or Tax matters. US Airways has made available to American true and correct copies of the United States federal income Tax Returns filed by US Airways and its Subsidiaries for each of the fiscal years ended December 31, 2011 and 2010. None of US Airways or its Subsidiaries has been a "distributing corporation" or "controlled corporation" in any distribution occurring during the last 30 months that was purported or intended to be governed by Section 355 of the Code (or any similar provision of state, local or foreign Law). Neither US Airways nor any of its Subsidiaries has taken any action or knows of any fact, agreement, plan or other circumstance that is reasonably likely to prevent the Merger from qualifying as a "reorganization" with the meaning of Section 368(a) of the Code. There are no Liens for Taxes on any asset of US Airways or any of its Subsidiaries, except for Liens for Taxes not yet due and payable or not yet delinquent, Liens for Taxes being contested in good faith for which appropriate reserves have been established on the most recent consolidated balance sheet included in or incorporated into the US Airways Reports, and Liens for Taxes that would not, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect.

(o) Labor Matters.

(i) US Airways has made available to American true and complete copies of all collective bargaining agreements, works council agreements, work rules and practices and other labor union Contracts, terms sheets, memoranda of understanding or similar agreements (including all amendments thereto) applicable to any employees of US Airways or any of its Subsidiaries as of the date of this Agreement with respect to their employment with US Airways or any of its Subsidiaries (the "*US Airways CBAs*"), each of which is set forth in Section 3.2(o)(i) of the US Airways Disclosure Letter. Except as set forth in Section 3.2(o)(i) of the US Airways Disclosure Letter, as of the date of this Agreement, none of US Airways or any of its Subsidiaries has breached or otherwise failed to comply with any provision of any US Airways CBA, except for any breaches or failures to comply that, individually or in the aggregate, have not had and would not reasonably be expected to result in a US Airways Material Adverse Effect.

(ii) Except as set forth in Section 3.2(o)(ii) of the US Airways Disclosure Letter:

(A) No labor union, labor organization or group of employees of US Airways or any of its Subsidiaries has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened in writing to be brought or filed with any labor relations tribunal or authority. To US Airways' Knowledge, there are no labor union organizing activities pending or threatened with respect to any employees of US Airways or any of its Subsidiaries.

(B) There is no material labor dispute, strike, slowdown, work stoppage or lockout, or to US Airways' Knowledge, threat thereof by or with respect to any employee of US Airways or any of its Subsidiaries.

(C) There are no arbitrations, written grievances or written complaints outstanding or, to US Airways' Knowledge, threatened against US Airways or any of its Subsidiaries under any US Airways CBAs, except for such matters as would not, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect. Neither US Airways nor any of its Subsidiaries is in receipt of written notice of any material statutory disputes or unfair labor practice charges.

(iii) The execution, delivery and performance of this Agreement by US Airways do not, and the consummation by US Airways of the Merger and the other transactions contemplated hereby will not, constitute or result in a breach or violation of, a termination (or right of termination) or a default under, or the creation, increase, triggering or acceleration of any obligations or rights of any kind (including under any change of control type provisions) or result in any material changes under, or increase in compensation paid under, the US Airways CBAs (including any "snap-back" provisions therein). That certain Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement among American Airlines, Inc., US Airways, Inc., Allied Pilots Association and US Airline Pilots Association ("*USAPA*") was ratified by the membership of USAPA on February 8, 2013.

(p) Intellectual Property and IT Assets. Except for such matters as would not, individually or in the aggregate, reasonably be expected to result in a US Airways Material Adverse Effect:

(i) All Patents, patent applications, Trademark and Copyright registrations and applications for registration, and internet domain name registrations claimed to be owned by US Airways or its Subsidiaries are owned exclusively by US Airways or such Subsidiaries and are subsisting and, to US Airways' Knowledge, valid and enforceable.

(ii) Except as set forth in Section 3.2(p)(ii) of the US Airways Disclosure Letter, US Airways and/or each of its Subsidiaries owns, or is licensed or otherwise possesses legally enforceable rights to use, all Intellectual Property necessary to conduct the business of US Airways and its Subsidiaries as currently conducted, all of which rights shall in all material respects survive unchanged the execution and delivery of this Agreement and the consummation of the Merger and the other transactions contemplated hereunder.

(iii) Except as set forth in Section 3.2(p)(iii) of the US Airways Disclosure Letter, the conduct of the business as currently conducted by US Airways and its Subsidiaries does not infringe, misappropriate or otherwise violate the Intellectual Property rights of any third Person and in the three (3) year period immediately preceding the date of this Agreement, there has been no such claim, action or proceeding asserted, or to US Airways' Knowledge threatened against US Airways or its Subsidiaries or any indemnitees thereof. Except as set forth in Section 3.2(p)(iii) of the US Airways Disclosure Letter, there is no claim, action or proceeding asserted, or to US Airways' Knowledge threatened, against US Airways or its Subsidiaries or any indemnitees thereof concerning the ownership, validity, registerability, enforceability, infringement, use or licensed right to use any Intellectual Property claimed to be owned or held by US Airways or its Subsidiaries or used or alleged to be used in the business of US Airways or its Subsidiaries.

(iv) Except as set forth in Section 3.2(p)(iv) of the US Airways Disclosure Letter, to US Airways' Knowledge, no third Person has, in the three (3) year period immediately preceding the date of this Agreement, infringed, misappropriated or otherwise violated the Intellectual Property rights of US Airways or its Subsidiaries. Except as set forth in Section 3.2(p)(iv) of the US Airways Disclosure Letter, there are no claims, actions or proceedings asserted or threatened by US Airways, or decided by US Airways to be asserted or threatened, that (A) a third Person infringes, misappropriates or otherwise violates, or in the three (3) year period immediately preceding the date of this Agreement, infringed, misappropriated or otherwise violated, the Intellectual Property rights of US Airways or its Subsidiaries; or (B) a third Person's owned or claimed Intellectual Property interferes with, infringes, dilutes or otherwise harms the Intellectual Property rights of US Airways or its Subsidiaries.

(v) US Airways and its Subsidiaries have taken reasonable measures to protect the confidentiality of all material Trade Secrets that are owned, used or held by US Airways and its Subsidiaries and, to US Airways' Knowledge, such material Trade Secrets have not been used, disclosed to or discovered by any Person except pursuant to valid and appropriate non-disclosure and/or license agreements which have not been breached.

(vi) Except as set forth in Section 3.2(p)(vi) of the US Airways Disclosure Letter, the IT Assets of US Airways and its Subsidiaries operate and perform in all material respects in accordance with their documentation and functional specifications and otherwise as required by US Airways and its Subsidiaries for the operation of their respective businesses, and have not malfunctioned or failed within the

three (3) year period immediately preceding the date of this Agreement. To US Airways' Knowledge, no Person has gained unauthorized access to such IT Assets. Except as set forth in Section 3.2(p)(vi) of the US Airways Disclosure Letter, US Airways and its Subsidiaries have implemented and maintained for the three (3) year period immediately preceding the date of this Agreement reasonable and sufficient backup and disaster recovery technology consistent with industry practices.

(q) Foreign Corrupt Practices Act; UK Bribery Act. Except for such matters as would not, individually or in the aggregate, reasonably be expected to result in a material adverse impact on the ability of US Airways and its Subsidiaries to conduct their operations in the ordinary course of business:

(i) US Airways and its Subsidiaries have developed and implemented a compliance program which includes corporate policies and procedures to ensure compliance with the Foreign Corrupt Practices Act and the UK Bribery Act.

(ii) In connection with its compliance with the Foreign Corrupt Practices Act and the UK Bribery Act, there are no adverse or negative past performance evaluations or ratings by the U.S. or U.K. governments, or any voluntary disclosures under the Foreign Corrupt Practices Act and/or the UK Bribery Act, any enforcement actions or threats of enforcement actions, or any facts that, in each case, could result in any adverse or negative performance evaluation related to the Foreign Corrupt Practices Act and/or the UK Bribery Act.

(iii) US Airways and its Subsidiaries have not been notified in writing of any actual or alleged violation or breach of the Foreign Corrupt Practices Act and/or the UK Bribery Act.

(iv) None of US Airways or its Subsidiaries has undergone and is undergoing any audit, review, inspection, investigation, survey or examination of records relating to US Airways' or any of its Subsidiaries' compliance with the Foreign Corrupt Practices Act and/or the UK Bribery Act, and, to US Airways' Knowledge, there is no basis for any such audit, review, inspection, investigation, survey or examination of records.

(v) US Airways and its Subsidiaries have not been and are not now under any administrative, civil or criminal investigation, charge or indictment involving alleged false statements, false claims or other improprieties relating to US Airways' or any of its Subsidiaries' compliance with the Foreign Corrupt Practices Act and/or the UK Bribery Act, nor, to US Airways' Knowledge, is there any basis for any such investigation or indictment.

(vi) US Airways and its Subsidiaries have not been and are not now a party to any administrative or civil litigation involving alleged false statements, false claims or other improprieties relating to US Airways' or any of its Subsidiaries' compliance with the Foreign Corrupt Practices Act and/or the UK Bribery Act, nor, to US Airways' Knowledge, is there any basis for any such proceeding.

(r) Aircraft.

(i) Section 3.2(r)(i) of the US Airways Disclosure Letter sets forth a true and complete list of all aircraft owned or leased by US Airways or any of its Subsidiaries as of January 31, 2013 (the "*US Airways Aircraft*"), including a description of the type and registration number of each such US Airways Aircraft and the delivery date, manufacture date or age of such US Airways Aircraft, as the case may be. All US Airways Aircraft owned or leased by US Airways or any of its Subsidiaries are being maintained according to applicable FAA regulatory standards and the FAA-approved maintenance program of US Airways and its Subsidiaries and, except with respect to US Airways Aircraft in storage or undergoing maintenance, are in airworthy condition. US Airways and its Subsidiaries have implemented maintenance schedules with respect to their respective US Airways Aircraft and engines that, if complied with, would result in the satisfaction of all requirements under all applicable ADs and FARs required to be complied with in accordance with the FAA-approved maintenance program of US Airways and its Subsidiaries, and US Airways and its Subsidiaries are in compliance with such maintenance schedules in all material respects (except with respect to US Airways Aircraft in storage) and currently have no reason to believe that they will not satisfy any component of such maintenance schedules on or prior to the dates specified in such maintenance schedules (except with respect to US Airways Aircraft in storage).

(ii) Section 3.2(r)(ii) of the US Airways Disclosure Letter sets forth a true and complete list, as of the date hereof, of all Contracts (other than (x) existing aircraft leases and (y) Contracts that may be terminated by US Airways or its Subsidiaries without penalty or material liability) pursuant to which US Airways or any of its Subsidiaries has an obligation to purchase or lease aircraft, including the manufacturer and model of all aircraft subject to such Contract, the nature of the purchase or lease obligation (*i.e.*, firm commitment, subject to reconfirmation or otherwise) and the anticipated year of delivery of the aircraft subject to such Contract. US Airways has delivered or made available to American true and complete copies (except as may have been redacted for pricing and other commercially sensitive information and subject to applicable confidentiality restrictions) of all Contracts listed in Section 3.2(r)(ii) of the US Airways Disclosure Letter, including all material amendments, modifications and side letters thereto.

(iii) Except as would not, individually or in the aggregate, reasonably be expected to have a US Airways Material Adverse Effect:

(A) each US Airways Aircraft has a validly issued, current individual aircraft FAA Certificate of Airworthiness with respect to such US Airways Aircraft which satisfies all requirements for the effectiveness of such FAA Certificate of Airworthiness;

(B) each US Airways Aircraft's structure, systems and components are functioning in accordance with its intended use, except for US Airways Aircraft that are undergoing maintenance and temporarily deferred maintenance items that are permitted by US Airways' maintenance programs;

(C) except with respect to US Airways Aircraft in storage, all deferred maintenance items and temporary repairs with respect to each such US Airways Aircraft have been or will be made in accordance with US Airways' maintenance programs;

(D) each US Airways Aircraft is registered on the FAA aircraft registry;

(E) except as set forth in Section 3.2(r)(iii)(E) of the US Airways Disclosure Letter, neither US Airways nor its Subsidiaries is a party to any interchange or pooling agreements with respect to the US Airways Aircraft, other than pooling agreements in the ordinary course of business; and

(F) no US Airways Aircraft is subleased to or otherwise in the possession of another air carrier or other Person other than US Airways or any of its Subsidiaries, to operate such US Airways Aircraft in air transportation or otherwise.

(s) Slots. Section 3.2(s) of the US Airways Disclosure Letter sets forth a true, correct and complete list of all held or owned takeoff and landing slots, operating authorizations from the FAA or any other Governmental Entity and other similar designated takeoff and landing rights held or owned by US Airways or any of its Subsidiaries ("*US Airways Slots*") on the date hereof at any domestic or international airport, and such list shall indicate and identify (i) any held or owned US Airways Slots that have been allocated to another air carrier beyond the end-of-the current IATA traffic season and in which US Airways and its Subsidiaries hold only temporary use rights, (ii) any US Airways Slots that have been allocated to US Airways and its Subsidiaries from another air carrier beyond the end-of-the current IATA traffic season and in which such other air carrier holds only temporary use rights and (iii) any Contracts, agreements or temporary government orders or decisions concerning specific US Airways Slots or operating authorities. Except as would not, individually or in the aggregate, reasonably be expected to have a US Airways Material Adverse Effect, (i) US Airways and its Subsidiaries will have complied in all material respects with the requirements of the regulations issued under the Federal Aviation Act and any other Laws, rules or regulations promulgated in the United States or in any country in which US Airways operates by either a civil aviation authority, airport authority or slot coordinator with respect to the US Airways Slots, (ii) neither US Airways nor any of its Subsidiaries has received, as of the date hereof, any notice of any proposed withdrawal of the US Airways Slots by the FAA, the DOT or any other Governmental Entity, (iii)(A) the US Airways Slots have not been designated for the provision of essential air services under the regulations of the FAA, were not acquired pursuant to 14 C.F.R. § 93.219 and have not been designated for international operations, as more fully detailed in 14 C.F.R. § 93.217 and (B) to the extent covered by 14 C.F.R. § 93.227, US Airways and its Subsidiaries have used the US Airways Slots (or the US Airways Slots have been used by other air carriers) either at least 80% of the maximum amount that each US Airways Slot could have been used during each full and partial reporting period (as described in 14 C.F.R. § 93.227(i)) or such greater or lesser amount of minimum usage as may have been required

to protect such US Airways Slot's authorization from termination or withdrawal under regulations established by any Governmental Entity or airport authority, (iv) all reports required by the FAA or any other Governmental Entity relating to the US Airways Slots have been filed in a timely manner and (v) except as set forth in Section 3.2(s)(v) of the US Airways Disclosure Letter, as of the date hereof, neither US Airways nor any of its Subsidiaries has agreed to any future US Airways Slot slide, US Airways Slot trade, US Airways Slot purchase, US Airways Slot sale or other transfer of any of the US Airways Slots outside the ordinary course of business consistent with past practice.

(t) Major Airports. As of the date hereof, no civil aviation authority, airport authority, or slot coordinator at Charlotte/Douglas International Airport (CLT), Philadelphia International Airport (PHL), Phoenix Sky Harbor International Airport (PHX) or Ronald Reagan Washington National Airport (DCA) (each such airport, a "*Major US Airways Airport*") has taken or, to US Airways' Knowledge, threatened to take any action that would reasonably be expected to materially interfere with the ability of US Airways and its Subsidiaries to conduct their respective operations at any Major US Airways Airport in the same manner as currently conducted in all material respects.

(u) U.S. Citizen; Air Carrier. US Airways' primary subsidiary, US Airways, Inc., is a "citizen of the United States" as defined in the Federal Aviation Act and is an "air carrier" within the meaning of such Act operating under certificates issued pursuant to such Act (49 U.S.C. §§ 41101-41112).

(v) Insurance. Section 3.2(v) of the US Airways Disclosure Letter lists and briefly describes (including name of insurer, agent or broker, coverage and expiration date), as of the date of this Agreement, each insurance policy maintained by, at the expense of or for the benefit of US Airways or any of the Subsidiaries with respect to its properties, assets and liabilities and describes any material claims made thereunder. All such insurance policies are in full force and effect and neither US Airways nor any Subsidiary is in default with respect to its obligations under any such insurance policy. The insurance coverage of US Airways and the Subsidiaries is customary for corporations of similar size engaged in similar lines of businesses. US Airways has not received any notice or other communication regarding any actual or possible (a) cancellation or invalidation of any insurance policy, (b) refusal of any coverage or rejection of any material claim under any insurance policy or (c) material adjustment in the amount of premiums payable with respect to any insurance policy.

(w) Brokers and Finders. Neither US Airways nor any of its officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fees, commissions, finder's fees or financial advisory fees that may be payable in connection with the Merger or the other transactions contemplated in this Agreement, except that US Airways has employed, and is solely responsible for the fees and expenses of, Barclays Capital Inc. and Millstein & Co., LLC, or one of their affiliates, as its financial advisors, and a copy of the engagement letter with each such financial advisor has been provided to American prior to the date hereof.

ARTICLE IV

Covenants

4.1 American Forbearances. American covenants and agrees as to itself and its Subsidiaries that, after the date hereof and prior to the Effective Time, except (A) as otherwise expressly required by this Agreement or applicable Laws, (B) as US Airways may approve in writing (such approval not to be unreasonably withheld, conditioned or delayed) or (C) as set forth in Section 4.1 of the American Disclosure Letter, (I) its business and that of its Subsidiaries shall be conducted in the ordinary and usual course as such businesses were conducted prior to the commencement of the Cases (it being understood that the fact that the Debtors may seek Bankruptcy Court approval of any matter shall not, in and of itself, constitute a determination that such matter is not in the ordinary and usual course for purposes of this Agreement) and, to the extent consistent therewith, it shall, and shall cause its Subsidiaries to, use their respective reasonable best efforts to preserve their business organizations intact and maintain existing relations and goodwill with Governmental Entities, customers, suppliers, distributors, creditors, lessors, employees and business associates and keep available the services of the present employees and agents of American and its Subsidiaries, provided, that, subject to the limitations on the Debtors set forth in Section 4.20(b)(i), nothing contained in this Section 4.1(I) shall restrict the Debtors from carrying out their fiduciary and statutory responsibilities in the administration of the Cases, including without limitation the assumption and rejection of Contracts, and (II) without limiting the generality of the foregoing clause (I), and in furtherance thereof, American will not and will not permit its Subsidiaries to:

(a) adopt or propose any change in its certificate of incorporation or by-laws or other applicable governing instruments or amend any term of the shares of American Common Stock;

(b) merge or consolidate American or any of its Subsidiaries with any other Person, except for any such transactions among wholly-owned Subsidiaries of American that are not obligors or guarantors of third-party indebtedness, or adopt a plan of liquidation;

(c) acquire or dispose of (including by way of sale-leaseback transactions, operating or capital leases or other similar transactions) any assets, properties, operations or businesses (including the purchase or sale of capital stock of any Person other than American), or make any capital expenditures, except for (i) capital expenditures made pursuant to American's capital expenditure budget (excluding capital expenditures for aircraft, engines and pre-delivery deposits for aircraft and engines) for calendar year 2013 as set forth in Section 4.1(c)(i) of the American Disclosure Letter, (ii) sale-leaseback transactions, operating or capital leases or similar transactions permitted under Section 4.1(i), (iii) acquisitions, dispositions or capital expenditures set forth in Section 4.1(c)(iii) of the American Disclosure Letter, (iv) capital expenditures (including pre-delivery deposits) with respect to any aircraft and engines listed in Section 4.1(c)(iii) of the American Disclosure Letter, (v)(A) acquisitions or dispositions of inventory, intangible assets (including Intellectual Property) and other assets (other than aircraft, engines, American Slots and American Routes), (B) acquisitions of American Slots or

American Routes and (C) dispositions of aircraft or engines (excluding sale-leaseback transactions or similar transactions not permitted under Section 4.1(i)), in each case, in the ordinary course of business consistent with past practice, (vi) other acquisitions and dispositions of assets up to $150,000,000 in the aggregate (measured by the value of such assets), and (vii) other dispositions of assets, operations or businesses (including the sale of capital stock of any Person) undertaken in compliance with American's obligations under Section 4.7;

(d) other than the grant of any awards permitted under Section 4.1(o) and contemplated by Section 4.10(d), and except for the disposition of capital stock of any Person (other than American) as permitted by Section 4.1(c), issue, sell, pledge, dispose of, grant, transfer, lease, license, guarantee, encumber, or authorize the issuance, sale, pledge, disposition, grant, transfer, lease, license, guarantee or encumbrance of, any shares of capital stock of American or any of its Subsidiaries (other than the issuance of shares by a wholly-owned Subsidiary of American to American or another wholly-owned Subsidiary) or of any successor or parent company thereof, or securities convertible or exchangeable into or exercisable for any shares of such capital stock, or any options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or other rights of any kind to acquire any shares of such capital stock or such convertible or exchangeable securities;

(e) create or incur any Lien material to American or any of its Subsidiaries on any assets of American or any of its Subsidiaries having a value in excess of $120,000,000, in the aggregate, other than (A) Liens for current Taxes or other governmental charges not yet due and payable or not yet delinquent or that are being contested in good faith for which appropriate reserves have been made under GAAP; (B) mechanics', carriers', workmen's, repairmen's or other like Liens arising or incurred in the ordinary course of business consistent with past practice relating to obligations as to which there is no default on the part of American, or the validity or amount of which is being contested in good faith by appropriate proceedings; (C) Liens securing indebtedness or guarantees incurred in accordance with Section 4.1(i); and (D) other Liens that do not, individually or in the aggregate, materially impair the continued use, operation, value or marketability of any American Aircraft, American Slots, American Routes, or American Real Property or the conduct of the business of American and its Subsidiaries as presently conducted;

(f) except for the acquisition of capital stock of any Person (other than American) as permitted by Section 4.1(c), make any loans, advances or capital contributions to or investments in any Person (other than American or any direct or indirect wholly-owned Subsidiary of American) in excess of $140,000,000 in the aggregate;

(g) declare, set aside or pay any dividend or distribution (whether in cash, stock or property or any combination thereof) on (i) any shares of American Common Stock, or (ii) any shares of capital stock of any Subsidiary (other than wholly-owned Subsidiaries and pro rata dividends payable to holders of interests in non wholly-owned Subsidiaries);

(h) reclassify, split, combine, subdivide or repurchase, redeem or otherwise acquire, directly or indirectly, any of its capital stock or securities convertible or exchangeable into or exercisable for any shares of its capital stock;

(i) incur any indebtedness or guarantee such indebtedness of another Person, or issue or sell any debt securities or warrants or other rights to acquire any debt security of American or any of its Subsidiaries, except for (i) indebtedness incurred in the ordinary course of business not to exceed $420,000,000 in the aggregate, (ii) guarantees by American of indebtedness of wholly-owned Subsidiaries of American or guarantees by Subsidiaries of indebtedness of American, (iii) purchase or acquisition financing (including sale-leaseback transactions, operating or capital leases or similar transactions) with respect to any aircraft or engines listed in Section 4.1(c)(iii) of the American Disclosure Letter, or (iv) interest rate swaps on customary commercial terms consistent with past practice and not to exceed $420,000,000 of notional debt in the aggregate in addition to notional debt currently under swap or similar arrangements;

(j) (i) other than in the ordinary course of business, enter into any Contract that would have been an American Material Contract, an American Lease or an American CBA had it been entered into prior to the date of this Agreement (other than as permitted by Section 4.1(c), (d), (e) or (i)) or (ii) enter into any Contract that (A) is a material co-branded credit card agreement or credit card processing agreement, (B) is a capacity purchase, regional carrier or similar agreement, (C) is any aircraft or engine purchase agreement (including related sale-leaseback transactions, operating or capital leases or similar transactions not otherwise permitted by Section 4.1(i)), (D) relates to or provides for a new, replacement or material enhancement of any reservation system, flight operating system, crew or maintenance system, frequent flyer system or other system, or materially increases American's financial or term commitment to any such system, or (E) is an information technology agreement, other than as described in Section 4.1(j)(ii)(D), with a term of over five years or that would reasonably be expected to require expenditures greater than $25,000,000 over its term;

(k) make any changes with respect to material accounting policies, except as required by changes in GAAP or by applicable Law or except as American, after consultation with US Airways and with American's independent auditors, determines in good faith is preferable;

(l) other than with respect to claims that would be exchanged for Plan Shares, settle any litigation or other proceedings before or threatened to be brought before a Governmental Entity except for an amount to be paid by American or any of its Subsidiaries (that is not reimbursed by a third-Person insurer) not in excess of $120,000,000 and which would not be reasonably likely to have a material adverse impact on the operations of American or any of its Subsidiaries;

(m) (i) other than in connection with indebtedness incurred under Section 4.1(i) or other than in the ordinary course of business, amend or modify in any material respect, or terminate or waive any material right or benefit under, any American Material Contract, American Lease or American CBA or any Contract entered into in

accordance with Section 4.1(j), (ii) amend or modify in any material respect, or terminate or waive any material right or benefit under, any Contract that (A) is a material co-branded credit card or credit card processing agreement, (B) is a capacity purchase, regional carrier or similar agreement, (C) is any aircraft or engine purchase agreement (including related sale-leaseback transactions, operating or capital leases or similar transactions not otherwise permitted by Section 4.1(i)), (D) relates to any existing reservation system, flight operating system, crew or maintenance system, frequent flyer system or other system, which amendment or modification would replace or materially enhance such system or materially increase American's financial or term commitment to such system, or (E) is an information technology agreement, other than as described in Section 4.1(m)(ii)(D), with a term of over five years or that is reasonably expected to require expenditures greater than $25,000,000 over its term, or (iii) cancel, modify or waive any debts or claims held by it or waive any rights having in the aggregate a value in excess of $70,000,000;

(n) except as required by Law or by any currently effective Tax sharing agreement listed in Section 4.1(n) of the American Disclosure Letter, amend any material Tax Return, make any material Tax election or take any material position on any material Tax Return filed on or after the date of this Agreement or adopt any method therefor that is inconsistent with elections made, positions taken or methods used in preparing or filing similar Tax Returns in prior periods;

(o) except (A) in connection with the replacement or promotion of any existing employee (including any officer) on compensation terms that are consistent with past practice for the applicable position, (B) as required pursuant to existing written, binding agreements executed and delivered prior to the date of this Agreement that have been provided to US Airways, (C) as contemplated by any American Compensation and Benefit Plan as in effect as of the date of this Agreement or any American CBA, or (D) as otherwise required by applicable Law, (i) other than with respect to any newly-hired employees on terms that are consistent with past practice for the applicable position, enter into any commitment to provide any severance, termination or change in control benefits to (or amend any existing arrangement with) any director, officer or employee of American or any of its Subsidiaries, other than the payment of benefits in the ordinary course of business consistent with past practice for officers or employees of similar seniority, (ii) materially increase the benefits payable under any existing severance, termination or change in control benefit policy or employment agreement, (iii) except with respect to any newly-hired employees on terms that are consistent with past practice for the applicable position, enter into any employment, severance, change in control, termination, deferred compensation or other similar agreement (or materially amend any such existing agreement) with any director, officer or employee of American or any of its Subsidiaries, (iv) establish, adopt, materially amend or terminate any material American Compensation and Benefit Plan, (v) materially increase the compensation, bonus or other benefits of, make any new awards under any American Compensation and Benefit Plan to, or pay any bonus to any director, officer, or employee of American or any of its Subsidiaries, except for increases, new awards or payments in the ordinary course of business consistent with past practice, (vi) take any action to accelerate the vesting or payment of any compensation or benefits under any American Compensation and Benefit

Plans, to the extent not already required in any such American Compensation and Benefit Plan, (vii) materially change any actuarial or other assumptions used to calculate funding obligations with respect to any American Compensation and Benefit Plan or materially change the manner in which contributions to such plans are made (notwithstanding any failure to make contributions during the pendency of the Cases and other than with respect to making all minimum required contributions (within the meaning of Section 303 of ERISA) as required under Section 4.10(a)) or the basis on which such contributions are determined, except as may be required by GAAP, or (viii) materially amend the terms of any outstanding equity-based award;

(p) decrease or defer in any material respect the level of training provided to the employees of American or any of its Subsidiaries or the level of costs expended in connection therewith;

(q) fail to keep in effect any governmental route authority in effect and used by any Subsidiary of American (the "*American Routes*") as of the date of this Agreement, provided that the restrictions set forth in this Section 4.1(q) shall not apply to any such failure if such failure occurs in the ordinary course of business consistent with past practice;

(r) fail to maintain insurance at levels at least comparable to current levels or otherwise in a manner inconsistent with past practice;

(s) take any action, or fail to take action, which action or failure could result in the loss of American Slots with an aggregate value in excess of $60,000,000;

(t) fail to notify US Airways in writing of any incidents or accidents occurring on or after the date hereof involving any property owned or operated by American that resulted or could reasonably be expected to result in damages or losses in excess of $140,000,000;

(u) fail to continue, in respect of all American Aircraft, all material maintenance programs consistent with past practice (except as required or permitted by applicable Law), including using reasonable best efforts to keep all such American Aircraft (except with respect to American Aircraft in storage) in such condition as may be necessary to enable the airworthiness certification of such American Aircraft under the Federal Aviation Act to be maintained in good standing at all times;

(v) knowingly take or permit any of its Subsidiaries to take any action or refrain from taking any action the result of which would be reasonably expected to result in any of the closing conditions set forth in Sections 5.1 and 5.2 not being satisfied; or

(w) agree, commit or seek Bankruptcy Court approval to do any of the foregoing.

4.2 US Airways Forbearances. US Airways covenants and agrees as to itself and its Subsidiaries that, after the date hereof and prior to the Effective Time, except (A) as

otherwise expressly required by this Agreement or applicable Laws, (B) as American may approve in writing (such approval not to be unreasonably withheld, conditioned or delayed) or (C) as set forth in Section 4.2 of the US Airways Disclosure Letter, (I) its business and that of its Subsidiaries shall be conducted in the ordinary and usual course and, to the extent consistent therewith, it shall, and shall cause its Subsidiaries to, use their respective reasonable best efforts to preserve their business organizations intact and maintain existing relations and goodwill with Governmental Entities, customers, suppliers, distributors, creditors, lessors, employees and business associates and keep available the services of the present employees and agents of US Airways and its Subsidiaries and (II) without limiting the generality of the foregoing clause (I), and in furtherance thereof, US Airways will not and will not permit its Subsidiaries to:

(a) adopt or propose any change in its certificate of incorporation or by-laws or other applicable governing instruments or amend any term of the shares of US Airways Common Stock;

(b) merge or consolidate US Airways or any of its Subsidiaries with any other Person, except for any such transactions among wholly-owned Subsidiaries of US Airways that are not obligors or guarantors of third-party indebtedness, or adopt a plan of liquidation;

(c) acquire or dispose of (including by way of sale-leaseback transactions, operating or capital leases or other similar transactions) any assets, properties, operations or businesses (including the purchase or sale of capital stock of any Person other than US Airways), or make any capital expenditures, except for (i) capital expenditures made pursuant to US Airways' capital expenditure budget (excluding capital expenditures for aircraft, engines and pre-delivery deposits for aircraft and engines) for calendar year 2013 as set forth in Section 4.2(c)(i) of the US Airways Disclosure Letter, (ii) sale-leaseback transactions, operating or capital leases or similar transactions permitted under Section 4.2(i), (iii) acquisitions, dispositions or capital expenditures set forth in Section 4.2(c)(iii) of the US Airways Disclosure Letter, (iv) capital expenditures (including pre-delivery deposits) with respect to any aircraft and engines listed in Section 4.2(c)(iii) of the US Airways Disclosure Letter, (v)(A) acquisitions or dispositions of inventory, intangible assets (including Intellectual Property) and other assets (other than aircraft, engines, US Airways Slots and US Airways Routes), (B) acquisitions of US Airways Slots or US Airways Routes and (C) dispositions of aircraft or engines (excluding sale-leaseback transactions or similar transactions not permitted under Section 4.2(i)), in each case, in the ordinary course of business consistent with past practice, (vi) other acquisitions and dispositions of assets up to $65,000,000 in the aggregate (measured by the value of such assets), and (vii) other dispositions of assets, operations or businesses (including the sale of capital stock of any Person) undertaken in compliance with US Airways' obligations under Section 4.7;

(d) other than (i) the issuance of shares of US Airways Common Stock prior to but not after the Share Determination Date, (ii) the grant of any US Airways Stock-Settled RSUs permitted under Section 4.2(o) prior to but not after the Share Determination Date, or (iii) the issuance of shares of US Airways Common Stock upon the exercise or vesting of US Airways Options, US Airways Stock-Settled SARs or US

Airways Stock-Settled RSUs or the conversion of the US Airways 7.25% Convertible Notes or the US Airways 7% Convertible Notes, all of which will be included in the calculation of US Airways Fully Diluted Shares, and except for the disposition of capital stock of any Person (other than US Airways) as permitted by Section 4.2(c), issue, sell, pledge, dispose of, grant, transfer, lease, license, guarantee, encumber, or authorize the issuance, sale, pledge, disposition, grant, transfer, lease, license, guarantee or encumbrance of, any shares of capital stock of US Airways or any its Subsidiaries (other than the issuance of shares by a wholly-owned Subsidiary of US Airways to US Airways or another wholly-owned Subsidiary), or securities convertible or exchangeable into or exercisable for any shares of such capital stock, or any options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or other rights of any kind to acquire any shares of such capital stock or such convertible or exchangeable securities;

(e) create or incur any Lien material to US Airways or any of its Subsidiaries on any assets of US Airways or any of its Subsidiaries having a value in excess of $50,000,000, in the aggregate, other than (A) Liens for current Taxes or other governmental charges not yet due and payable or not yet delinquent or that are being contested in good faith for which appropriate reserves have been made under GAAP; (B) mechanics', carriers', workmen's, repairmen's or other like Liens arising or incurred in the ordinary course of business consistent with past practice relating to obligations as to which there is no default on the part of US Airways, or the validity or amount of which is being contested in good faith by appropriate proceedings; (C) Liens securing indebtedness or guarantees incurred in accordance with Section 4.2(i); and (D) other Liens that do not, individually or in the aggregate, materially impair the continued use, operation, value or marketability of any US Airways Aircraft, US Airways Slots, US Airways Routes, or US Airways Real Property or the conduct of the business of US Airways and its Subsidiaries as presently conducted;

(f) except for the acquisition of capital stock of any Person (other than US Airways) as permitted by Section 4.2(c), make any loans, advances or capital contributions to or investments in any Person (other than US Airways or any direct or indirect wholly-owned Subsidiary of US Airways) in excess of $60,000,000 in the aggregate;

(g) declare, set aside or pay any dividend or distribution (whether in cash, stock or property or any combination thereof) on (i) any shares of US Airways Common Stock, or (ii) any shares of capital stock of any Subsidiary (other than wholly-owned Subsidiaries and pro rata dividends payable to holders of interests in non wholly-owned Subsidiaries);

(h) reclassify, split, combine, subdivide or repurchase, redeem or otherwise acquire, directly or indirectly, any of its capital stock or securities convertible or exchangeable into or exercisable for any shares of its capital stock;

(i) incur any indebtedness or guarantee such indebtedness of another Person, or issue or sell any debt securities or warrants or other rights to acquire any debt

security of US Airways or any of its Subsidiaries, except for (i) indebtedness incurred in the ordinary course of business not to exceed $180,000,000 in the aggregate, (ii) guarantees by US Airways of indebtedness of wholly-owned Subsidiaries of US Airways or guarantees by Subsidiaries of indebtedness of US Airways, (iii) purchase or acquisition financing (including sale-leaseback transactions, operating or capital leases or similar transactions) with respect to any aircraft or engines listed in Section 4.2(c)(iii) of the US Airways Disclosure Letter, or (iv) interest rate swaps on customary commercial terms consistent with past practice and not to exceed $180,000,000 of notional debt in the aggregate in addition to notional debt currently under swap or similar arrangements;

(j) (i) other than in the ordinary course of business, enter into any Contract that would have been a US Airways Material Contract, a US Airways Lease or a US Airways CBA had it been entered into prior to the date of this Agreement (other than as permitted by Section 4.2(c), (d), (e) or (i)) or (ii) enter into any Contract that (A) is a material co-branded credit card agreement or credit card processing agreement, (B) is a capacity purchase, regional carrier or similar agreement, (C) is any aircraft or engine purchase agreement (including related sale-leaseback transactions, operating or capital leases or similar transactions not otherwise permitted by Section 4.2(i)), (D) relates to or provides for a new, replacement or material enhancement of any reservation system, flight operating system, crew or maintenance system, frequent flyer system or other system, or materially increases US Airway's financial or term commitment to any such system, or (E) is an information technology agreement, other than as described in Section 4.2(j)(ii)(D), with a term of over five years or that would reasonably be expected to require expenditures greater than $25,000,000 over its term;

(k) make any changes with respect to material accounting policies, except as required by changes in GAAP or by applicable Law or except as US Airways, after consultation with American and with US Airways' independent auditors, determines in good faith is preferable;

(l) settle any litigation or other proceedings before or threatened to be brought before a Governmental Entity except for an amount to be paid by US Airways or any of its Subsidiaries (that is not reimbursed by a third-Person insurer) not in excess of $50,000,000 and which would not be reasonably likely to have a material adverse impact on the operations of US Airways or any of its Subsidiaries;

(m) (i) other than in connection with indebtedness incurred under Section 4.2(i) or other than in the ordinary course of business, amend or modify in any material respect, or terminate or waive any material right or benefit under, any US Airways Material Contract, US Airways Lease or US Airways CBA or any Contract entered into in accordance with Section 4.2(j), (ii) amend or modify in any material respect, or terminate or waive any material right or benefit under, any Contract that (A) is a material co-branded credit card or credit card processing agreement, (B) is a capacity purchase, regional carrier or similar agreement, (C) is any aircraft or engine purchase agreement (including related sale-leaseback transactions, operating or capital leases or similar transactions not otherwise permitted by Section 4.2(i)), (D) relates to any existing reservation system, flight operating system, crew or maintenance system, frequent flyer

system or other system, which amendment or modification would replace or materially enhance such system or materially increase US Airway's financial or term commitment to such system, or (E) is an information technology agreement, other than as described in Section 4.2(m)(ii)(D), with a term of over five years or that is reasonably expected to require expenditures greater than $25,000,000 over its term, or (iii) cancel, modify or waive any debts or claims held by it or waive any rights having in the aggregate a value in excess of $30,000,000;

(n) except as required by Law or by any currently effective Tax sharing agreement listed in Section 4.2(n) of the US Airways Disclosure Letter, amend any material Tax Return, make any material Tax election or take any material position on any material Tax Return filed on or after the date of this Agreement or adopt any method therefor that is inconsistent with elections made, positions taken or methods used in preparing or filing similar Tax Returns in prior periods;

(o) except (A) in connection with the replacement or promotion of any existing employee (including any officer) on compensation terms that are consistent with past practice for the applicable position, (B) as required pursuant to existing written, binding agreements executed and delivered prior to the date of this Agreement that have been provided to American, (C) as contemplated by any US Airways Compensation and Benefit Plan as in effect as of the date of this Agreement or any US Airways CBA, or (D) as otherwise required by applicable Law, (i) other than with respect to any newly-hired employees on terms that are consistent with past practice for the applicable position, enter into any commitment to provide any severance, termination or change in control benefits to (or amend any existing arrangement with) any director, officer or employee of US Airways or any of its Subsidiaries, other than the payment of benefits in the ordinary course of business consistent with past practice for officers or employees of similar seniority, (ii) materially increase the benefits payable under any existing severance, termination or change in control benefit policy or employment agreement, (iii) except with respect to any newly-hired employees on terms that are consistent with past practice for the applicable position, enter into any employment, severance, change in control, termination, deferred compensation or other similar agreement (or materially amend any such existing agreement) with any director, officer or employee of US Airways or any of its Subsidiaries, (iv) establish, adopt, materially amend or terminate any material US Airways Compensation and Benefit Plan, (v) materially increase the compensation, bonus or other benefits of, make any new awards under any US Airways Compensation and Benefit Plan to, or pay any bonus to any director, officer, or employee of US Airways or any of its Subsidiaries, except for increases, new awards or payments in the ordinary course of business consistent with past practice, (vi) take any action to accelerate the vesting or payment of any compensation or benefits under any US Airways Compensation and Benefit Plans, to the extent not already required in any such US Airways Compensation and Benefit Plan, (vii) materially change any actuarial or other assumptions used to calculate funding obligations with respect to any US Airways Compensation and Benefit Plan or materially change the manner in which contributions to such plans are made or the basis on which such contributions are determined, except as may be required by GAAP, or (viii) materially amend the terms of any outstanding equity-based award;

(p) decrease or defer in any material respect the level of training provided to the employees of US Airways or any of its Subsidiaries or the level of costs expended in connection therewith;

(q) fail to keep in effect any governmental route authority in effect and used by any Subsidiary of US Airways (the "*US Airways Routes*") as of the date of this Agreement, provided that the restrictions set forth in this Section 4.2(q) shall not apply to any such failure if such failure occurs in the ordinary course of business consistent with past practice;

(r) fail to maintain insurance at levels at least comparable to current levels or otherwise in a manner inconsistent with past practice;

(s) take any action, or fail to take action, which action or failure could result in the loss of US Airways Slots with an aggregate value in excess of $25,000,000;

(t) fail to notify American in writing of any incidents or accidents occurring on or after the date hereof involving any property owned or operated by US Airways that resulted or could reasonably be expected to result in damages or losses in excess of $60,000,000;

(u) fail to continue, in respect of all US Airways Aircraft, all material maintenance programs consistent with past practice (except as required or permitted by applicable Law), including using reasonable best efforts to keep all such US Airways Aircraft (except with respect to US Airways Aircraft in storage) in such condition as may be necessary to enable the airworthiness certification of such US Airways Aircraft under the Federal Aviation Act to be maintained in good standing at all times;

(v) knowingly take or permit any of its Subsidiaries to take any action or refrain from taking any action the result of which would be reasonably expected to result in any of the closing conditions set forth in Sections 5.1 and 5.3 not being satisfied; or

(w) agree or commit to do any of the foregoing.

4.3 American Acquisition Proposals.

(a) American agrees that, except for the sale of any assets, operations, business or capital stock of any Person permitted by Section 4.1, neither it nor any of its Subsidiaries nor any of the officers and directors of it or any of its Subsidiaries shall, and that it shall not authorize or permit its and its Subsidiaries' directors, officers, employees, agents and representatives, including any investment bankers, attorneys or accountants (collectively, "*Representatives*") retained by it or any of its Subsidiaries, to, directly or indirectly, initiate, solicit or knowingly encourage or facilitate any inquiries or the making of any proposal or offer with respect to (1) any merger, consolidation or similar transaction (other than the Merger) pursuant to which any third Person or group of Persons party thereto, or the stockholders of such third Person or Persons, would become the beneficial owner of 10% or more of the outstanding shares of common stock or the

outstanding voting power of American, American Airlines, Inc., AMR Eagle Holding Corporation or American Eagle Airlines, Inc. (as reorganized pursuant to the Bankruptcy Code or prior to such reorganization if acquired to influence acceptance or rejection of the Plan, the management or control of American and its Subsidiaries or the reorganization of the Debtors), or, if applicable, any surviving entity or the parent entity resulting from any such transaction, immediately upon consummation thereof, (2) any purchase of 10% or more of the equity securities or other ownership interests in American, American Airlines, Inc., AMR Eagle Holding Corporation or American Eagle Airlines, Inc. (as reorganized pursuant to the Bankruptcy Code or prior to such reorganization if acquired to influence acceptance or rejection of the Plan, the management or control of American and its Subsidiaries or the reorganization of the Debtors), (3) any purchase of 10% or more of the consolidated assets of American and its Subsidiaries taken as a whole, (4) any purchase of outstanding claims in an amount that would entitle the purchaser of such claims to 10% or more of the equity securities or other ownership interests in American or American Airlines, Inc. (as reorganized pursuant to the Bankruptcy Code), or (5) any plan of reorganization of any Debtor other than the Plan (any such inquiry, proposal or offer being hereinafter referred to as an "*American Acquisition Proposal*"). For the avoidance of doubt, except as provided above, any inquiry, proposal or offer to purchase outstanding American Common Stock during the Cases shall not constitute an American Acquisition Proposal. American further agrees that, except as permitted by this Section 4.3(a), neither it nor any of its Subsidiaries nor any of the officers and directors of it or any of its Subsidiaries shall, and that it shall cause its and its Subsidiaries' Representatives not to, directly or indirectly, (i) provide any confidential information or data to, or engage in any discussions or negotiations with, any Person relating to an American Acquisition Proposal, (ii) seek authority from the Bankruptcy Court to enter into (or not prosecute in good faith an objection to efforts by any other Person to have American enter into), or enter into, a letter of intent or other agreement or arrangement with respect to any American Acquisition Proposal, or (iii) otherwise knowingly encourage or facilitate any effort or attempt by any Person other than US Airways to make or implement an American Acquisition Proposal. In addition, except as permitted by this Section 4.3(a), from the date hereof to the earlier to occur of the termination of this Agreement in accordance with its terms or the Effective Time, neither American nor the Board of Directors of American nor any committee thereof shall: (i) withdraw or modify in a manner adverse to US Airways the American Directors' Recommendation; (ii) recommend any American Acquisition Proposal; (iii) fail to include the American Directors' Recommendation in the approved Disclosure Statement; or (iv) take, resolve to take, or permit American or any of its Subsidiaries or Representatives to take, any action described in clauses (i), (ii) or (iii) of this sentence (each of the foregoing actions described in clauses (i) through (iv) being referred to as an "*American Change in Recommendation*").

Notwithstanding the foregoing provisions of this Section 4.3(a), nothing contained in this Agreement shall prevent American or any of its Subsidiaries or Representatives, or its Board of Directors or any committee thereof from:

(i) complying with its disclosure obligations under applicable Law (including under Sections 14d-9 and 14e-2 of the Exchange Act) with regard to an

American Acquisition Proposal; provided that any such disclosure (other than a "stop, look and listen" communication or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act) shall be deemed to be an American Change in Recommendation unless the American Board of Directors publicly reaffirms the American Directors' Recommendation in such disclosure;

(ii) at any time prior to, but not after, the entry of the Confirmation Order by the Bankruptcy Court:

(A) providing information in response to a request therefor by the Person who has made an unsolicited bona fide written American Acquisition Proposal;

(B) engaging in any discussions or negotiations with any Person who has made an unsolicited bona fide written American Acquisition Proposal (provided, that representatives of the legal and financial advisors retained by the Creditors' Committee in the Cases (the "*UCC's Advisors*") shall have the right to participate in any such discussions and negotiations to the same extent permitted under the Joint Exploration Protocol Agreement, dated May 1, 2012, as amended, and the Joint Exploration Protocol Side Letter Agreement, dated July 19, 2012, as amended, between American and the Creditors' Committee (to the extent such agreements are then in effect)); or

(C) making an American Change in Recommendation (provided, that prior to making any such American Change in Recommendation, American shall have consulted with the UCC's Advisors);

provided, that (w) in each such case referred to in clause (A) or (B) above, (1) American has not breached its obligations under this Section 4.3(a) in connection with the receipt of an unsolicited bona fide written American Acquisition Proposal, (2) American receives from such Person an executed confidentiality agreement (excluding standstill provisions) containing customary terms that are no less favorable in any material respect to American than those contained in the US Airways NDA, (3) the Board of Directors of American reasonably determines that such American Acquisition Proposal constitutes or is reasonably likely to lead to an American Superior Proposal (without having to take the actions referred to in clause (z) below) and (4) the Board of Directors of American reasonably determines, after consultation with its outside legal counsel, that, in light of such American Acquisition Proposal, a failure to take such action is reasonably likely to be inconsistent with its fiduciary duties to the stakeholders of the Debtors under applicable Law; (x) in the case referred to in clause (C) above, if such American Change in Recommendation does not relate to an American Acquisition Proposal, the Board of Directors of American determines in good faith, after consultation with its outside legal counsel, that a failure to take such action is reasonably likely to be inconsistent with its fiduciary duties to the stakeholders of the Debtors under applicable Law, taking into account any revisions to the terms of the transactions contemplated by this Agreement pursuant to Section 4.3(c); (y) in the case referred to in clause (C) above, if such American Change in Recommendation relates to an American Acquisition Proposal,

(1) American has not breached its obligations under this Section 4.3(a) in connection with the receipt of an unsolicited bona fide written American Acquisition Proposal, (2) the Board of Directors of American determines in good faith, after consultation with its financial advisor and outside counsel, taking into account all relevant factors, including legal, financial and regulatory aspects of the proposal, the likelihood of obtaining financing, the likelihood of consummation and the Person making the proposal, that such American Acquisition Proposal is the highest or otherwise best offer available to the stakeholders of the Debtors (to whom fiduciary duties are owed by the Board of Directors of American) as compared to the transactions contemplated by this Agreement and the Plan and (3) the Board of Directors of American determines in good faith, after consultation with its outside legal counsel, that a failure to take such action is reasonably likely to be inconsistent with its fiduciary duties to the stakeholders of the Debtors under applicable Law, taking into account any revisions to the terms of the transactions contemplated by this Agreement pursuant to Section 4.3(c); and (z) in the case referred to in clause (C) above, US Airways shall have had written notice of American's intention to take the action referred to in clause (C) (a "*Notice of American Change in Recommendation*") at least five (5) business days prior to the taking of such action by American and American shall have complied with the provisions of Section 4.3(c);

provided, further, that any American Acquisition Proposal referred to in clause (y) above must involve (A) a merger, consolidation or similar transaction pursuant to which any Person or the stockholders of such Person would become the beneficial owners of at least 30% of the outstanding shares of common stock or the outstanding voting power of American or American Airlines, Inc. (as reorganized pursuant to the Bankruptcy Code) or, if applicable, any surviving entity (if neither American or American Airlines, Inc. is the surviving entity) resulting from any such transaction, immediately upon consummation thereof, (B) the acquisition of at least 30% of the equity securities or other ownership interests in American or American Airlines, Inc. (as reorganized pursuant to the Bankruptcy Code) by any Person or group of Persons, or (C) the acquisition of at least 30% of the consolidated assets of American and its Subsidiaries, taken as a whole, in each case, by a Person other than (1) US Airways or its Subsidiaries or (2) the Debtors or their Subsidiaries (any such American Acquisition Proposal being referred to in this Agreement as an "*American Superior Proposal*").

Notwithstanding the foregoing, in no event shall a Standalone Plan or any plan of reorganization that is substantially equivalent to a Standalone Plan be deemed an American Superior Proposal.

(b) American agrees that it will immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Person other than US Airways with respect to any American Acquisition Proposal. American will promptly request each Person that has heretofore executed a confidentiality agreement in connection with its consideration of an American Acquisition Proposal to return or destroy all confidential information furnished prior to the execution of this Agreement to or for the benefit of such Person by or on behalf of American or any of its Subsidiaries. American agrees that it will take the necessary steps to promptly inform its Representatives of the obligations undertaken in this Section 4.3. American agrees that

any action inconsistent with the restrictions set forth in this Section 4.3 taken by any Representative of American or any of its Subsidiaries will be deemed to be a breach of this Section 4.3 by American (and any willful action or failure to take an action by any of American's Subsidiaries or any of American's or its Subsidiaries' respective Representatives at the direction or request of, or with the consent or approval of, American and with the actual knowledge of an officer of American (who is a knowledge party within the meaning of "American's Knowledge") that the action so taken or omitted to be taken would constitute a material breach of this Section 4.3 will be deemed to be a Deliberate Material Breach of this Section 4.3 by American).

(c) American agrees that it will notify US Airways (and the UCC's Legal Advisor) as promptly as practicable (and, in any event, within 24 hours) if any inquiries, proposals or offers with respect to any American Acquisition Proposal or potential American Acquisition Proposal are received by, any such information is requested from, or any such discussions or negotiations are sought to be initiated or continued with, it or any of its Representatives, indicating, in connection with such notice, the name of such Person and the material terms and conditions of any proposal or offer and thereafter shall keep US Airways (and the UCC's Advisors) informed, on a current basis, on the status and terms of any such proposal or offer and the status of any such discussions or negotiations. American agrees that (i) during the five (5) business day period following a Notice of American Change in Recommendation and prior to making an American Change in Recommendation, if requested by US Airways, American and its Representatives (in consultation with the UCC's Advisors) shall negotiate in good faith with US Airways and its Representatives regarding any revisions to the terms of the transaction contemplated by this Agreement proposed by US Airways and (ii) American may make an American Change in Recommendation only if the facts and circumstances that are the basis for such American Change in Recommendation continue to necessitate an American Change in Recommendation in light of any revisions to the terms of the transaction contemplated by this Agreement to which US Airways shall have agreed in writing prior to the expiration of such five (5) business day period. American agrees that it will deliver to US Airways (and the UCC's Legal Advisor) a new Notice of American Change in Recommendation with respect to each American Acquisition Proposal that has been materially revised or modified prior to taking any action to recommend or agreeing to recommend such American Acquisition Proposal to the stakeholders of the Debtors and that a new five (5) business day period shall commence, for purposes of this Section 4.3(c), with respect to each such materially revised or modified American Acquisition Proposal from the time US Airways receives a Notice of American Change in Recommendation with respect thereto. American also agrees to provide any information to US Airways (and the UCC's Advisors) that it is providing to another Person pursuant to this Section 4.3 prior to or substantially contemporaneous with the time it provides it to such other Person unless American has already provided such information to US Airways or it is advised by outside legal counsel that doing so would violate applicable Law.

(d) Subject to the termination of this Agreement in accordance with its terms, American agrees that its obligations pursuant to Sections 4.7(a) and 4.20 shall not be affected by the commencement, public proposal, public disclosure or communication

to American or the other Debtors or their stakeholders of any American Acquisition Proposal, by any consideration of or agreement with respect to an American Acquisition Proposal or by any change or proposed change to the American Directors' Recommendation (whether or not permitted by the terms of this Agreement).

4.4 US Airways Acquisition Proposals.

(a) US Airways agrees that, except for the sale of any assets, operations, business or capital stock of any Person permitted by Section 4.2, neither it nor any of its Subsidiaries nor any of the officers and directors of it or any of its Subsidiaries shall, and that it shall not authorize or permit its and its Subsidiaries' Representatives retained by it or any of its Subsidiaries, to, directly or indirectly, initiate, solicit or knowingly encourage or facilitate any inquiries or the making of any proposal or offer with respect to (1) any merger, consolidation or similar transaction (other than the Merger) pursuant to which any third Person or group of Persons party thereto, or the stockholders of such third Person or Persons, would become the beneficial owner of 10% or more of the outstanding shares of common stock or the outstanding voting power of US Airways or US Airways, Inc., or, if applicable, any surviving entity or the parent entity resulting from any such transaction, immediately upon consummation thereof, (2) any purchase of 10% or more of the equity securities or other ownership interests in US Airways or US Airways, Inc. (other than a public offering of equity securities registered pursuant to the Securities Act) or (3) any purchase of 10% or more of the consolidated assets of US Airways and its Subsidiaries taken as a whole (any such inquiry, proposal or offer being hereinafter referred to as a "*US Airways Acquisition Proposal*"). US Airways further agrees that, except as permitted by this Section 4.4(a), neither it nor any of its Subsidiaries nor any of the officers and directors of it or any of its Subsidiaries shall, and that it shall cause its and its Subsidiaries' Representatives not to, directly or indirectly, (i) provide any confidential information or data to, or engage in any discussions or negotiations with, any Person relating to a US Airways Acquisition Proposal, (ii) enter into a letter of intent or other agreement or arrangement with respect to any US Airways Acquisition Proposal, or (iii) otherwise knowingly encourage or facilitate any effort or attempt by any Person other than American to make or implement a US Airways Acquisition Proposal. In addition, except as permitted by this Section 4.4(a), from the date hereof to the earlier to occur of the termination of this Agreement in accordance with its terms or the Effective Time, neither US Airways nor the Board of Directors of US Airways nor any committee thereof shall: (i) withdraw or modify in any manner adverse to American or Merger Sub the US Airways Directors' Recommendation; (ii) recommend any US Airways Acquisition Proposal; (iii) fail to include the US Airways Directors' Recommendation in the Prospectus / Proxy Statement; or (iv) take, resolve to take, or permit US Airways or any of its Subsidiaries or Representatives to take, any action described in clauses (i), (ii) or (iii) of this sentence (each of the foregoing actions described in clauses (i) through (iv) being referred to as a "*US Airways Change in Recommendation*").

Notwithstanding the foregoing provisions of this Section 4.4(a), nothing contained in this Agreement shall prevent US Airways or any of its Subsidiaries or Representatives, or its Board of Directors or any committee thereof from:

(i) complying with its disclosure obligations under applicable Law (including under Sections 14d-9 and 14e-2 of the Exchange Act) with regard to a US Airways Acquisition Proposal; provided that any such disclosure (other than a "stop, look and listen" communication or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act) shall be deemed to be US Airways Change in Recommendation unless the US Airways Board of Directors publicly reaffirms the US Airways Directors' Recommendation in such disclosure;

(ii) at any time prior to, but not after, the receipt of the Stockholder Approval:

(A) providing information in response to a request therefor by the Person who has made an unsolicited bona fide written US Airways Acquisition Proposal;

(B) engaging in any discussions or negotiations with any Person who has made an unsolicited bona fide written US Airways Acquisition Proposal; or

(C) making a US Airways Change in Recommendation;

provided that, (w) in each such case referred to in clause (A) or (B) above, (1) US Airways has not breached its obligations under this Section 4.4(a) in connection with the receipt of an unsolicited bona fide written US Airways Acquisition Proposal, (2) US Airways receives from such Person an executed confidentiality agreement (excluding standstill provisions) containing customary terms that are no less favorable in any material respect to US Airways than those contained in the American NDA, (3) the Board of Directors of US Airways reasonably determines that such US Airways Acquisition Proposal constitutes or is reasonably likely to lead to a US Airways Superior Proposal (without having to take the actions referred to in clause (z) below) and (4) the Board of Directors of US Airways reasonably determines, after consultation with its outside legal counsel, that, in light of such US Airways Acquisition Proposal, a failure to take such action is reasonably likely to be inconsistent with its fiduciary duties to the stockholders of US Airways under applicable Law; (x) in the case referred to in clause (C) above, if such US Airways Change in Recommendation does not relate to a US Airways Acquisition Proposal, the Board of Directors of US Airways determines in good faith, after consultation with its outside legal counsel, that a failure to take such action is reasonably likely to be inconsistent with its fiduciary duties to the stockholders of US Airways under applicable Law, taking into account any revisions to the terms of the transactions contemplated by this Agreement pursuant to Section 4.4(c); (y) in the case referred to in clause (C) above, if such US Airways Change in Recommendation relates to a US Airways Acquisition Proposal, (1) US Airways has not breached its obligations under this Section 4.4(a) in connection with the receipt of an unsolicited bona fide written US Airways Acquisition Proposal, (2) the Board of Directors of US Airways determines in good faith, after consultation with its financial advisor and outside counsel, taking into account all relevant factors, including legal, financial and regulatory aspects of the proposal, the likelihood of obtaining financing, the likelihood of consummation and the

Person making the proposal, that such US Airways Acquisition Proposal is more favorable, from a financial point of view, to US Airways' stockholders than the transactions contemplated by this Agreement and (3) the Board of Directors of US Airways determines in good faith, after consultation with its outside legal counsel, that a failure to take such action is reasonably likely to be inconsistent with its fiduciary duties to the stockholders of US Airways under applicable Law, taking into account any revisions to the terms of the transactions contemplated by this Agreement pursuant to Section 4.4(c); and (z) in the case referred to in clause (C) above, American shall have had written notice of US Airways' intention to take the action referred to in clause (C) (a "*Notice of US Airways Change in Recommendation*") at least five (5) business days prior to the taking of such action by US Airways and US Airways shall have complied with the provisions of Section 4.4(c);

provided, further, that any US Airways Acquisition Proposal referred to in clause (y) above must involve (A) a merger, consolidation or similar transaction pursuant to which any Person or the stockholders of such Person would become the beneficial owner of at least 30% of the outstanding shares of common stock or the outstanding voting power of US Airways or US Airways, Inc., or, if applicable, any surviving entity (if neither US Airways or US Airways, Inc. is the surviving entity) resulting from any such transaction, immediately upon consummation thereof, (B) the acquisition of at least 30% of the equity securities or other ownership interests in US Airways or US Airways, Inc., or (C) the acquisition of at least 30% of the consolidated assets of US Airways and its Subsidiaries, taken as a whole, in each case, by a Person other than (1) American or its Subsidiaries or (2) US Airways or its Subsidiaries (any such US Airways Acquisition Proposal being referred to in this Agreement as a "*US Airways Superior Proposal*").

(b) US Airways agrees that it will immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Person other than American with respect to any US Airways Acquisition Proposal. US Airways will promptly request each Person that has heretofore executed a confidentiality agreement in connection with its consideration of a US Airways Acquisition Proposal to return or destroy all confidential information furnished prior to the execution of this Agreement to or for the benefit of such Person by or on behalf of US Airways or any of its Subsidiaries. US Airways agrees that it will take the necessary steps to promptly inform its Representatives of the obligations undertaken in this Section 4.4. US Airways agrees that any action inconsistent with the restrictions set forth in this Section 4.4 taken by any Representative of US Airways or any of its Subsidiaries will be deemed to be a breach of this Section 4.4 by US Airways (and any willful action or failure to take an action by any of US Airways' Subsidiaries or any of US Airways' or its Subsidiaries' respective Representatives at the direction or request of, or with the consent or approval of, US Airways and with the actual knowledge of an officer of US Airways (who is a knowledge party within the meaning of "US Airways' Knowledge") that the action so taken or omitted to be taken would constitute a material breach of this Section 4.4 will be deemed to be a Deliberate Material Breach of this Section 4.4 by US Airways).

(c) US Airways agrees that it will notify American as promptly as practicable (and, in any event, within 24 hours) if any inquiries, proposals or offers with

respect to any US Airways Acquisition Proposal or potential US Airways Acquisition Proposal are received by, any such information is requested from, or any such discussions or negotiations are sought to be initiated or continued with, it or any of its Representatives, indicating, in connection with such notice, the name of such Person and the material terms and conditions of any proposal or offer and thereafter shall keep American informed, on a current basis, on the status and terms of any such proposal or offer and the status of any such discussions or negotiations. US Airways agrees that (i) during the five (5) business day period following a Notice of US Airways Change in Recommendation and prior to making a US Airways Change in Recommendation, if requested by American, US Airways and its Representatives shall negotiate in good faith with American and its Representatives regarding any revisions to the terms of the transaction contemplated by this Agreement proposed by American and (ii) US Airways may make a US Airways Change in Recommendation only if the facts and circumstances that are the basis for such US Airways Change in Recommendation continue to necessitate a US Airways Change in Recommendation in light of any revisions to the terms of the transaction contemplated by this Agreement to which American shall have agreed in writing prior to the expiration of such five (5) business day period. US Airways agrees that it will deliver to American a new Notice of US Airways Change in Recommendation with respect to each US Airways Acquisition Proposal that has been materially revised or modified prior to taking any action to recommend or agreeing to recommend such US Airways Acquisition Proposal to the stockholders of US Airways and that a new five (5) business day period shall commence, for purposes of this Section 4.4(c), with respect to each such materially revised or modified US Airways Acquisition Proposal from the time American receives a Notice of US Airways Change in Recommendation with respect thereto. US Airways also agrees to provide any information to American that it is providing to another Person pursuant to this Section 4.4 prior to or substantially contemporaneous with the time it provides it to such other Person unless US Airways has already provided such information to American or it is advised by outside legal counsel that doing so would violate applicable Law.

(d) Subject to the termination of this Agreement in accordance with its terms, US Airways agrees that its obligations pursuant to Sections 4.6 and 4.7(a) shall not be affected by the commencement, public proposal, public disclosure or communication to US Airways or its stockholders of any US Airways Acquisition Proposal, by any consideration of or agreement with respect to a US Airways Acquisition Proposal, or by any change or proposed change to the US Airways Directors' Recommendation (whether or not permitted by the terms of this Agreement).

4.5 Information Supplied. Each of American and US Airways agrees that the information supplied or to be supplied by it or any of its Subsidiaries for inclusion or incorporation by reference in (i) the Form S-4, and any amendment or supplement thereto, will not, at the time the Form S-4 becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading and (ii) the Prospectus / Proxy Statement, and any amendment or supplement thereto, will not, at the date of mailing to stockholders of US Airways and at the time of the Stockholders Meeting, contain any untrue statement of a material fact or omit to state any

material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. American and US Airways will cause the Form S-4 and the Prospectus / Proxy Statement to comply as to form in all material respects with the applicable provisions of the Securities Act and the Exchange Act and the rules and regulations thereunder.

4.6 Stockholders Meeting. US Airways shall take, in accordance with applicable Law and its certificate of incorporation and by-laws, all lawful and reasonable action necessary to call, give notice of, convene and hold a meeting of holders of shares of US Airways Common Stock (the "*Stockholders Meeting*"), which may be the US Airways annual meeting of stockholders, as promptly as practicable after the date of this Agreement, and in any event will use its reasonable best efforts to convene the Stockholders Meeting not more than 45 days after the later of (x) the date the Form S-4 is declared effective or (y) the date on which the Disclosure Statement Order is entered by the Bankruptcy Court, to (a) consider and approve the adoption of this Agreement by the affirmative vote of the holders of a majority of the outstanding shares of US Airways Common Stock at the Stockholders Meeting (the "*Stockholder Approval*") and (b) consider and approve a non-binding, advisory vote on the compensation payable, in connection with the Merger, to each US Airways "named executive officer" (as determined in accordance with Item 402(t) of Regulation S-K) pursuant to arrangements entered into with US Airways. Subject to Section 4.4, the Board of Directors of US Airways shall make the US Airways Directors' Recommendation, the US Airways Directors' Recommendation shall be included in the Prospectus / Proxy Statement and the Board of Directors of US Airways shall take all lawful and reasonable action to obtain the Stockholder Approval.

4.7 Filings; Other Actions; Notification.

(a) American and US Airways shall promptly after the date of this Agreement prepare, and American shall use its reasonable best efforts to file with the SEC as promptly as practicable thereafter, a registration statement on Form S-4 in connection with the issuance of shares of Newco Common Stock to stockholders of US Airways (the "*Form S-4*"), which Form S-4 will include a prospectus and a proxy statement in connection with the Stockholders Meeting (the "*Prospectus / Proxy Statement*"). Each of American and US Airways, in consultation with the other and, in the case of American, in consultation with the UCC's Advisors, shall use its reasonable best efforts to (i) respond to any comments on the Form S-4 or the Prospectus / Proxy Statement or requests for additional information from the SEC as soon as reasonably practicable after receipt of any such comments or requests and (ii) have the Form S-4 declared effective under the Securities Act by the date that is 120 days after the date of this Agreement, and US Airways shall use its reasonable best efforts to promptly thereafter mail the Prospectus / Proxy Statement to the holders of shares of US Airways Common Stock. The Form S-4, and any proposed modifications, amendments, supplements, exhibits and other similar documents (collectively, the "*Form S-4 Documents*"), shall be provided to US Airways and the UCC's Advisors prior to being filed with the SEC and shall be in form and substance reasonably acceptable to US Airways (such acceptance not to be unreasonably delayed, conditioned or withheld). The Prospectus / Proxy Statement, and any proposed modifications, amendments, supplements, exhibits and other similar documents (collectively, the "*Proxy Statement*

Documents"), shall be provided to American prior to being mailed to the stockholders of US Airways and shall be in form and substance reasonably acceptable to American (such acceptance not to be unreasonably delayed, conditioned or withheld). Prior to the date the Prospectus / Proxy Statement is initially mailed to US Airways stockholders, American, US Airways and Merger Sub shall cooperate in good faith to approve a certificate or certificates of designation to the Newco Charter as reasonably necessary to create the Newco Mandatorily Convertible Preferred Stock, which certificate or certificates of designation shall be reasonably acceptable to each of American and US Airways.

(b) American and US Airways shall cooperate with each other and use (and shall cause their respective Subsidiaries to use) their respective reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, necessary, proper or advisable on its part under this Agreement and applicable Laws (i) to consummate and make effective the Merger and the other transactions contemplated by this Agreement as soon as practicable, including preparing and filing as soon as practicable all documentation to effect all necessary notices, reports and other filings (including any required filings under the EU Merger Regulation) and (ii) to obtain as promptly as practicable all material consents, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the Merger or any of the other transactions contemplated by this Agreement. For the avoidance of doubt, American and US Airways agree that obligations relating to "reasonable best efforts" and "as soon as practicable" in the preceding sentence shall, among other things, mean, with respect to filing of the notification and required form under the HSR Act made by the parties prior to the date of this Agreement, using reasonable best efforts to be prepared to complete a certification of compliance with any request for additional information issued by the Department of Justice or Federal Trade Commission in connection with the transactions contemplated by this Agreement ("*Second Request*") no later than 60 days following the issuance of such Second Request. Subject to applicable Laws relating to the exchange of information, American and US Airways shall permit the other party to review, in advance, any written communication given by it to, and to the extent practicable consult with each other in advance of any meeting or conference with, any Governmental Entity in connection with the Merger and other transactions contemplated by this Agreement. To the extent permitted by Law, each party shall provide the other with copies of all correspondence between it (or its advisors) and any Governmental Entity relating to the transactions contemplated by this Agreement and, to the extent reasonably practicable, all telephone calls and meetings with a Governmental Entity regarding the transactions contemplated by this Agreement shall include Representatives of American and US Airways. In exercising the foregoing rights, each of American and US Airways shall act reasonably and as promptly as practicable.

(c) To the extent permitted by applicable Laws, American and US Airways each shall, upon request by the other, furnish the other with all information concerning itself, its Subsidiaries, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with the Form S-4, the Prospectus / Proxy Statement or any other statement, filing, notice or application made by

or on behalf of American, US Airways or any of their respective Subsidiaries to any third party and/or any Governmental Entity in connection with the Merger and the transactions contemplated by this Agreement.

(d) Subject to applicable Laws and the instructions of any Governmental Entity, American and US Airways each shall keep the other apprised of the status of matters relating to completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by American or US Airways, as the case may be, or any of its Subsidiaries, from any third party and/or any Governmental Entity with respect to the Merger and the other transactions contemplated by this Agreement. American shall give prompt notice to US Airways of any change, fact or condition which, to American's Knowledge, is reasonably expected to result in an American Material Adverse Effect or of any failure of any condition to US Airways' obligations to effect the Merger. US Airways shall give prompt notice to American of any change, fact or condition which, to US Airways' Knowledge, is reasonably expected to result in a US Airways Material Adverse Effect or of any failure of any condition to American's obligations to effect the Merger. Notwithstanding the above, the delivery of any notice pursuant to this Section 4.7(d) will not limit or otherwise affect the remedies available hereunder to the party receiving such notice or the conditions to such party's obligation to consummate the Merger.

(e) American's and US Airways' obligations under this Section 4.7 shall include the obligation to cooperate with each other and use (and cause their respective Subsidiaries to use) their respective reasonable best efforts to defend any lawsuits or legal proceedings, whether judicial or administrative, or any actions by a Governmental Entity, challenging the consummation of the Merger or the other transactions contemplated hereby, including using reasonable best efforts to seek to have any stay or other injunctive relief which would prevent or materially delay or impair the consummation of the transactions contemplated by this Agreement entered by any court or other Governmental Entity reversed on appeal or vacated. For purposes of this Section 4.7, "*reasonable best efforts*" shall include each of American's and US Airways' agreement to, (i) sell, hold separate or otherwise dispose of its assets or the assets of its Subsidiaries or conduct its business in a specified manner or (ii) permit its assets or the assets of its Subsidiaries to be sold, held separate or disposed of or permit its business to be conducted in a specified manner; provided, however, that nothing in this Agreement will require, or be deemed to require, American or US Airways to agree to or effect any divestiture or take any other action (x) if doing so would, individually or in the aggregate, reasonably be expected to result in a Newco Material Adverse Effect, (y) if any such sale, holding separate or other disposition of assets or conduct of business in a specified manner would be required to be effected prior to the occurrence of the Effective Time or (z) in the case of American, that is not permitted by the Bankruptcy Court; provided that American has used its reasonable best efforts to, and taken all action reasonably necessary to, promptly obtain permission to take such action from the Bankruptcy Court. "*Newco Material Adverse Effect*" means a material adverse effect on the financial condition, assets, liabilities, business, prospects, consolidated business plan or results of operations of Newco and its Subsidiaries taken as a whole.

(f) Each party shall give the other party the opportunity to participate in the defense or settlement of any stockholder litigation against such party and/or its directors relating to the Merger and the other transactions contemplated by this Agreement. For purposes of this paragraph, "participate" means that the non-litigating party will be kept apprised of proposed strategy and other significant decisions with respect to the litigation by the litigating party (to the extent the attorney-client privilege between the litigating party and its counsel is not undermined or otherwise affected), and the non-litigating party may offer comments or suggestions with respect to the litigation but will not be afforded any decision making power or other authority over the litigation of any settlement thereof.

(g) The provisions contained in this Section 4.7 shall not apply with respect to any filings, motions, orders, authorizations, notices, communications or other interactions of the Debtors with the Bankruptcy Court, which matters are exclusively governed by Section 4.20.

4.8 Access and Reports. Subject to applicable Law and that certain Agreed Information Exchange Protocol, dated October 25, 2012, among American and certain of its Representatives, US Airways and certain of its Representatives and certain advisors to the Creditors' Committee, upon reasonable notice, each party shall (and shall cause its Subsidiaries and Representatives to) afford the other party and its officers and other authorized Representatives (including environmental consultants) reasonable access, during normal business hours throughout the period prior to the Effective Time, to (a) such party's properties, books, contracts and records and, during such period, such party shall (and shall cause its Subsidiaries and Representatives to) furnish promptly to the other party and its authorized Representatives all information concerning its business, properties and personnel as may reasonably be requested (subject to applicable confidentiality restrictions and provided that neither party shall be required to furnish any information that would be materially harmful to such party's competitive position) and (b) such party's and its Subsidiaries' Representatives to discuss any information furnished by or on behalf of such party and to discuss such party's and its Subsidiaries' businesses, affairs, finances and accounts.

4.9 Publicity. The initial press release disclosing this Agreement shall be a joint press release and thereafter American and US Airways each shall consult with the other prior to issuing any press releases or otherwise making public announcements with respect to the Merger, the Plan and the other transactions contemplated by this Agreement and prior to making any substantive filings with any third party or any Governmental Entity (including any national securities exchange) with respect thereto, except as may be required by applicable Law or by obligations pursuant to any listing agreement with or rules of any national securities exchange or by the request of any Governmental Entity (and, subject to Sections 4.3 and 4.4, respectively, other than such party's actions in respect of an American Acquisition Proposal or a US Airways Acquisition Proposal, as applicable).

4.10 Employee Matters.

(a) Prior to the Closing, US Airways shall use best efforts to cause each employee of US Airways that is party to an Executive Change in Control Agreement

to waive his or her rights under such agreement to accelerated vesting of US Airways Options, US Airways Equity Awards, US Airways Cash-Settled RSUs and/or US Airways Cash-Settled SARs, in each case, solely as a result of the consummation of the Merger.

(b) Prior to the Closing, American and/or its Subsidiaries shall make all minimum required contributions (within the meaning of Section 303 of ERISA) to each American Compensation and Benefit Plan that are required to have been made and were not made prior to the effective time of the Plan.

(c) Prior to the Closing, American shall adopt and approve, to be effective as of the Effective Time, a Newco 2013 Incentive Award Plan, which shall be substantially in the form of the US Airways Group, Inc. 2011 Incentive Award Plan except that references to US Airways Group, Inc. shall be revised to reflect Newco and the aggregate number of shares of Newco Common Stock reserved for issuance pursuant to the Newco 2013 Incentive Award Plan shall be equal to 40,000,000 shares of Newco Common Stock (the "*Newco 2013 Incentive Award Plan*").

(d) American shall, or shall cause its Subsidiaries to, adopt or otherwise put into effect (i) prior to the Closing, the Ordinary Course Changes as defined in and set forth in Section 4.1(o) of the American Disclosure Letter and (ii) promptly after the Merger Support Order is entered by the Bankruptcy Court, the Employee Protection Arrangements as defined in and set forth in Section 4.1(o) of the American Disclosure Letter (including but not limited to granting under the Newco 2013 Incentive Award Plan, the alignment equity and long term incentive awards in the amounts and upon the terms and conditions set forth in Section 4.1(o) of the American Disclosure Letter, which awards shall be effective as of the Effective Time).

(e) Each employee of US Airways, American or any of their respective Subsidiaries as of the Closing (including any employee who is full-time, part-time, temporary, on vacation or on a medical or disability or any other paid or unpaid approved leave of absence) who continues employment with Newco or the Surviving Corporation following the Closing Date (each, a "*Continuing Employee*") who is not represented by a labor union and/or whose employment is not covered by a collective bargaining agreement (collectively, the "*Non-Union Continuing Employees*") shall continue to receive, during the one (1)-year period beginning on the Closing Date, base salary or wages that are no less favorable than the base salary or wages received by such Non-Union Continuing Employee immediately prior to the Closing Date. During the two (2)-year period beginning on the Closing Date, each Non-Union Continuing Employee shall be entitled to receive severance pay and benefits that are not less favorable than the severance pay and benefits such Non-Union Continuing Employee would have received under the applicable American Compensation and Benefit Plans in effect immediately prior to the Closing Date, including as amended or supplemented in accordance with Section 4.1(o) of the American Disclosure Letter, or any US Airways Compensation and Benefit Plans in effect immediately prior to the Closing Date, including as amended or supplemented in accordance with Section 4.2(o) of the US Airways Disclosure Letter. The employment terms and conditions of each Continuing Employee who is not a Non-

Union Continuing Employee shall be governed by the applicable labor union agreement and/or collective bargaining agreement.

(f) To the extent permitted by applicable Laws, Newco shall credit, or shall cause the Surviving Corporation and its Subsidiaries to credit, each Non-Union Continuing Employee with his or her years of service with US Airways, American, or any of their respective Subsidiaries and predecessor entities, under any employee benefit plans, programs and arrangements in which such Non-Union Continuing Employee participates following the Closing (the "*Post-Closing Plans*"), to the same extent as such Non-Union Continuing Employee was entitled immediately prior to the Closing to credit for such service under any similar US Airways Compensation and Benefit Plan or American Compensation and Benefit Plan, for purposes of eligibility, vesting and, to the extent applicable, calculation of the amount of vacation, travel and/or severance benefits. Notwithstanding the foregoing, no service prior to the Closing Date shall be credited for the purpose of benefit accrual or eligibility for any defined benefit pension plan, early retirement benefits or subsidies under any defined benefit pension plan, nor for purposes of eligibility under any retiree medical plan, except to the extent required by applicable Laws (and then only to the extent crediting such service would not result in the duplication of benefits).

(g) In addition, and without limiting the generality of Section 4.10(f), this Section 4.10(g) or any other provisions herein, (i) for purposes of each Post-Closing Plan providing medical, dental, pharmaceutical, vision and/or other health benefits to any Non-Union Continuing Employee and his or her dependents, Newco shall, or shall cause the Surviving Corporation and its Subsidiaries to, cause all pre-existing condition exclusions and actively-at-work requirements of such Post-Closing Plan to be waived for such Non-Union Continuing Employee and his or her covered dependents, to the extent any such pre-existing condition exclusions or actively-at-work requirements were waived or were inapplicable under the comparable US Airways Compensation and Benefit Plan or American Compensation and Benefit Plan and (ii) the Post-Closing Plans shall not deny Non-Union Continuing Employees coverage on the basis of pre-existing conditions and shall credit such Non-Union Continuing Employees for any deductibles and out-of-pocket expenses paid in the year of initial participation in the Post-Closing Plans.

(h) On the date the employment of any Non-Union Continuing Employee is transferred to Newco or a different Subsidiary of Newco, the accrued and unused vacation and any positive account balance under any medical or dependent care expense reimbursement account of such Non-Union Continuing Employee shall be transferred to such new employer, and such new employer shall be responsible for such obligations at or after the date of such transfer, except in the case of a transfer of such expense reimbursement account balances to a new employer that does not maintain any dependent care or medical expense reimbursement account plan. Each Non-Union Continuing Employee also shall be permitted to continue to have payroll deductions made as most recently elected by him or her under the applicable FSA Plan.

(i) Notwithstanding anything in Section 4.10(e) to the contrary, Newco shall, or shall cause the Surviving Corporation and its Subsidiaries to, explicitly

assume and hereby agree to perform, or to cause to be performed, the obligations of US Airways or its Subsidiaries under those plans and agreements set forth on Section 4.10(i) of the US Airways Disclosure Letter (which provide severance payments and/or benefits applicable to Non-Union Continuing Employees).

(j) Without limiting the generality of the foregoing, each Non-Union Continuing Employee who satisfies the eligibility requirements of a US Airways Compensation and Benefit Plan or an American Compensation and Benefit Plan that is a 401(k) plan shall be eligible to participate in a 401(k) plan maintained by Newco or the Surviving Corporation following the Closing (each, a "*Post-Closing 401(k) Plan*") and shall be credited with eligibility service and vesting service for all periods of service with US Airways and American, and their respective Subsidiaries to the extent so credited with such service under the applicable 401(k) plan as of the Closing Date. Additionally, in the event Newco or any of its Subsidiaries terminates a 401(k) plan after the Closing Date, each Non-Union Continuing Employee who participates in such plan shall, following such termination, become eligible to participate in a Post-Closing 401(k) Plan for purposes of making rollover contributions and, at his or her election, be entitled to roll over his or her outstanding participant loan and related promissory note under the terminated 401(k) plan. During the period commencing on the date of such termination and ending at the time of the rollover of such loan and related promissory notes and related account balances, such loans shall continue to be maintained under the applicable 401(k) plan, and Newco shall, or shall cause the Surviving Corporation to, make payroll deductions in respect of required payments under any such loan and timely remit such amounts to the applicable 401(k) plan as payments on such loan. During such period, provided that the participant continues to make all required installment payments with respect to such loan, such loan shall not be placed in default, and Newco (or the Surviving Corporation) and the US Airways or one of its Subsidiaries shall take all necessary action to cause such loan not to be placed in default.

(k) Except as otherwise required under applicable Laws or to the extent expressly set forth in a binding written agreement with Newco, the Surviving Corporation or any of their respective Subsidiaries, Non-Union Continuing Employees shall be considered to be employed "at will" and nothing shall be construed to limit the ability of Newco, the Surviving Corporation or any of their respective Subsidiaries to terminate the employment of any such employee at any time, subject to any applicable severance and related benefits (including any governmental or statutory severance).

(l) Notwithstanding the foregoing, with respect to any Continuing Employee who is located in a jurisdiction where local employment Laws provide for an automatic transfer of employees upon transfer of a business as a going concern and such transfer occurs by operation of Law (the "*Automatic Transferred Employees*"), in the event that the applicable Laws of any country require Newco, the Surviving Corporation or any of its Subsidiaries (i) to maintain Terms and Conditions of Employment with respect to any Automatic Transferred Employee following the Closing or (ii) to continue or cause to be continued any employment contract of any Automatic Transferred Employee, Newco shall cause the entity that employs such Automatic Transferred Employee following the Closing to comply with such requirements to the extent required

by such applicable Laws; provided, however, that nothing in this Section 4.10(l) shall prevent Newco or the Surviving Corporation from terminating the employment of any Automatic Transferred Employee after the Closing (for which Newco and its Subsidiaries shall be responsible for any costs or liabilities) or otherwise modifying the Terms and Conditions of Employment of any Automatic Transferred Employee to the extent permitted by Law or otherwise agreed with applicable employee(s) or representative(s) thereof. "*Terms and Conditions of Employment*" shall mean the rights of Automatic Transferred Employees according to their individual terms and conditions of employment with US Airways or its Subsidiaries immediately prior to the Closing and, where applicable, under company or shop agreements, and any arrangements based on works customs and unilateral undertakings, if and to the extent they provide to an Automatic Transferred Employee direct and enforceable causes of action against the employer.

(m) Newco shall take, and may cause any of its Subsidiaries to take, any and all actions necessary or appropriate (including to the extent necessary under the plan) to, as of the Effective Time, (i) assume and adopt each US Airways Compensation and Benefit Plan and each American Compensation and Benefit Plan (including all matters set forth in this Section 4.10 and Section 4.1(o) of the American Disclosure Letter, but excluding any prepetition equity or equity-equivalent plan or agreement of American and its Subsidiaries) and to maintain and to perform under such plans and agreements to the same extent as US Airways or American or their respective subsidiaries would be required to perform under such plans and agreements if the Merger did not take place, and (ii) to the extent applicable, become, or cause the Surviving Corporation to become, a "participating employer" (as applicable) under such US Airways Compensation and Benefit Plans and American Compensation and Benefit Plans. Without limiting the generality of the foregoing, Newco shall assume, as of the Effective Time, all of the American Compensation and Benefit Plans which constitute retirement plans, including all such plans subject to Title IV of ERISA and the supplemental employee retirement plan. US Airways shall cooperate with American and Newco and shall take or cause to be taken any and all actions reasonably necessary or appropriate in order to effect the provisions of this Section 4.10(m).

(n) This Agreement shall not be interpreted as an amendment to any American Compensation and Benefit Plan or any US Airways Compensation and Benefit Plan or any other compensation and benefits plans maintained for or provided to directors, officers, employees or consultants of American, US Airways, Newco or the Surviving Corporation prior to or following the Effective Time, and nothing in this Agreement shall interfere with or limit Newco's or the Surviving Corporation's right to amend or terminate any individual plan, program, policy or arrangement of US Airways or any of its Subsidiaries, and nothing contained herein shall obligate Newco, the Surviving Corporation or any of their respective Subsidiaries to maintain or continue any individual plan, program, policy or arrangement.

(o) It is expressly agreed that the provisions of this Section 4.10 are not intended to be for the benefit of or otherwise enforceable by any third Person, including any employee of American or US Airways, or any collective bargaining unit or employee organization. Without limiting the foregoing, nothing contained in this

Agreement shall create or imply any obligation on the part of US Airways, American, Newco, the Surviving Corporation or any of their respective Subsidiaries, to provide any continuing employment right to any individual on or after the Closing.

4.11 Expenses. Except as otherwise provided in Section 6.5, whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement and the Merger and the other transactions contemplated by this Agreement shall be paid by the party incurring such expense; provided, however, that American and US Airways shall each be responsible for half of the filing or similar fees incurred in connection with any filings required to be made under the HSR Act, the EU Merger Regulation and any other applicable foreign antitrust, competition or similar Laws, as contemplated by Sections 3.1(d)(i)(B) and 3.2(d)(i)(B).

4.12 Indemnification; Directors' and Officers' Insurance.

(a) From and after the Effective Time, Newco agrees that it will jointly and severally indemnify and hold harmless each director and officer of American and its Subsidiaries and each director and officer of US Airways and its Subsidiaries, in each case who was a director or officer at any time on or after November 29, 2005 (in each case, for acts or failures to act in such capacity) (the "*Indemnified Parties*"), against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of matters existing or occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time (including any matters arising in connection with the transactions contemplated by this Agreement), to the fullest extent permitted by applicable Law, and Newco shall also advance expenses as incurred to the fullest extent permitted under applicable Law; provided that the Person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such Person is not entitled to indemnification; and provided, further, that any determination as to whether a Person is entitled to indemnification or advancement of expenses hereunder shall be made by independent counsel selected by Newco and such Person.

(b) Any Indemnified Party wishing to claim indemnification under Section 4.12(a), upon learning of any such claim, action, suit, proceeding or investigation, shall promptly notify Newco thereof, but the failure to so notify shall not relieve Newco of any liability it may have to such Indemnified Party except to the extent such failure materially and actually prejudices the indemnifying party. In the event of any such claim, action, suit, proceeding or investigation (whether arising before or after the Effective Time), (i) Newco shall have the right to assume the defense thereof and Newco shall not be liable to such Indemnified Parties for any legal expenses of other counsel or any other expenses subsequently incurred by such Indemnified Parties in connection with the defense thereof, except that if Newco does not elect to assume such defense or counsel for the Indemnified Parties advises that there are issues which raise conflicts of interest between Newco and the Indemnified Parties, the Indemnified Parties may retain counsel satisfactory to them, and Newco shall be obligated to pay all reasonable fees and expenses of such counsel for the Indemnified Parties promptly as

statements therefor are received; provided, however, that Newco shall be obligated pursuant to this Section 4.12(b) to pay for only one firm of counsel for all Indemnified Parties in any jurisdiction unless the use of one counsel for such Indemnified Parties would present such counsel with a conflict of interest; (ii) the Indemnified Parties will use their reasonable efforts to cooperate in the defense of any such matter, and (iii) Newco shall not be liable for any settlement effected without their prior written consent (such consent not to be unreasonably withheld or delayed); and provided, further, that Newco shall not have any obligation under this Agreement to any Indemnified Party if and when a court of competent jurisdiction shall ultimately determine, and such determination shall have become final, that the indemnification of such Indemnified Party in the manner contemplated hereby is prohibited by applicable Law.

(c) Unless otherwise agreed by American and US Airways, at or prior to the Effective Time, American shall, and if American is unable to, Newco shall, purchase the six-year "tail" officers' and directors' liability and fiduciary insurance policies described in Section 4.12(c) of the American Disclosure Letter (the "*Preferred American D&O Tail Policy*") or comparable policies from other reputable insurance providers; provided, that the amount paid by American or Newco for such Preferred American D&O Tail Policy shall not exceed 200% of the annual premium for American's then current officers' and directors' liability and fiduciary insurance policies (such premium, the "*American Maximum Premium*"). If the Preferred American D&O Tail Policy has been obtained by American or Newco, Newco shall maintain such policy in full force and effect, for its full term, and continue to honor the obligations thereunder. If American or Newco are unable to obtain the Preferred American D&O Tail Policy, Newco shall maintain officers' and directors' liability insurance covering the same Persons covered or to be covered by the Preferred American D&O Tail Policy (including for acts or omissions occurring in connection with this Agreement and the consummation of the transactions contemplated hereby) issued by insurance carriers with the same or higher financial strength ratings as, and on terms with respect to coverage and amount no less favorable than, those of the Preferred American D&O Tail Policy, for a period of six (6) years from and after the Effective Time; provided, however, that in no event shall Newco be required to expend annually an amount in excess of the American Maximum Premium for such insurance; provided, further, that if the premiums of such insurance coverage exceed such amount, Newco shall be obligated to obtain a policy with the greatest coverage available for a premium not exceeding the American Maximum Premium.

(d) Unless otherwise agreed by American and US Airways, at or prior to the Effective Time, US Airways shall, and if US Airways is unable to, Newco shall cause the Surviving Corporation to, purchase the six-year "tail" officers' and directors' liability and fiduciary insurance policies described in Section 4.12(d) of the US Airways Disclosure Letter (the "*Preferred US Airways D&O Tail Policy*") or comparable policies from other reputable insurance providers; provided, that the amount paid by US Airways or the Surviving Corporation for such Preferred US Airways D&O Tail Policy shall not exceed 200% of the annual premium for US Airway's then current officers' and directors' liability and fiduciary insurance policies (such premium, the "*US Airways Maximum Premium*"). If the Preferred US Airways D&O Tail Policy has been obtained

by US Airways or the Surviving Corporation, the Surviving Corporation shall, and Newco shall cause the Surviving Corporation to, maintain such policy in full force and effect, for its full term, and continue to honor their respective obligations thereunder. If US Airways or the Surviving Corporation are unable to obtain the Preferred US Airways D&O Tail Policy, the Surviving Corporation shall, and Newco shall cause the Surviving Corporation to, maintain officers' and directors' liability insurance covering the same Persons covered or to be covered by the Preferred US Airways D&O Tail Policy (including for acts or omissions occurring in connection with this Agreement and the consummation of the transactions contemplated hereby) issued by insurance carriers with the same or higher financial strength ratings as, and on terms with respect to coverage and amount no less favorable than, those of the Preferred US Airways D&O Tail Policy, for a period of six (6) years from and after the Effective Time; provided, however, that in no event shall the Surviving Corporation be required to expend annually an amount in excess of the US Airways Maximum Premium for such insurance; provided, further, that if the premiums of such insurance coverage exceed such amount, the Surviving Corporation shall be obligated to obtain a policy with the greatest coverage available for a premium not exceeding the US Airways Maximum Premium.

(e) In addition to the rights provided under Section 4.12(a), all rights to indemnification, advancement of expenses and exculpation from liabilities now existing in favor of the current or former directors or officers of American and its Subsidiaries pursuant to Contracts with American or such Subsidiaries or US Airways and its Subsidiaries pursuant to Contracts with US Airways or such Subsidiaries, their respective organizational documents or applicable Law shall survive the Merger and shall be deemed assumed by Newco as of the Effective Time and shall continue in full force and effect in accordance with their terms. From and after the Effective Time, Newco shall honor and perform under all indemnification Contracts and organizational documents of American and its Subsidiaries and US Airways and its Subsidiaries. Newco shall not, directly or indirectly, amend, modify, limit or terminate, in any manner adverse to the current or former directors or officers of American and its Subsidiaries or US Airways and its Subsidiaries, with respect to their respective rights to indemnification, advancement of expenses and exculpation from liabilities for acts or omissions occurring prior to the Effective Time, any such Contracts with American or its Subsidiaries or US Airways or its Subsidiaries, or any such provisions contained in any of their respective organizational documents.

(f) The obligations of Newco and the Surviving Corporation under this Section 4.12 shall not be terminated or modified by such parties in a manner so as to adversely affect any Indemnified Party or other Person to whom this Section 4.12 applies without the consent of such affected Indemnified Party or other Person. If Newco or the Surviving Corporation or any of their respective successors or assigns (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of Newco or the Surviving Corporation, as the case may be, shall assume all of the obligations set forth in this Section 4.12.

(g) From and after the Effective Time, Newco shall, or shall cause its Subsidiaries to, provide: (i) positive space, first class flight privileges to each Person (and such Person's spouse, life partner and dependent children) who as of the date of this Agreement is a non-employee member of the Board of Directors of American or US Airways for personal non-business related travel on substantially the same terms as such flight privileges are provided as of the date of this Agreement to the fully vested members of the Board of Directors of US Airways, and such flight privileges shall continue until the later of the death of such Person or such Person's spouse or life partner, (ii) to each Person who as of the date of this Agreement is a non-employee member of the Board of Directors of American or US Airways, participation in Newco's flight benefit program for directors, as the same may be amended or modified from time to time, with the exception that only Persons then serving as members of the Board of Directors of Newco shall be entitled to a tax gross-up with respect to their flight privileges or any flight benefit plan benefits, and (iii) flight privileges to each Person (and such Person's spouse, life partner and dependent children) who as of the date of this Agreement is a former member of the Board of Directors of American or US Airways on substantially the same terms as such flight privileges are provided to such Person as of the date of this Agreement.

(h) The provisions of this Section 4.12 are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Parties and the other Persons contemplated by Section 4.12(e) and Section 4.12(g) and their heirs and legal representatives.

4.13 Takeover Statutes. If any Takeover Statute becomes applicable to the Merger or the other transactions contemplated by this Agreement, each of American and US Airways and their respective Board of Directors shall grant such approvals and take such actions as are necessary so that such transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and by the Merger and otherwise act to eliminate or minimize the effects of such statute or regulation on such transactions.

4.14 Transfer Taxes. Except as provided in Section 2.2(b), each of American, US Airways and Merger Sub shall pay any sales, use, ad valorem, property, transfer (including real property transfer) and similar Taxes imposed on such Person as a result of or in connection with the Merger and the other transactions contemplated hereby (any such Taxes, "*Transfer Taxes*"), except to the extent such Transfer Taxes may not be assessed pursuant to section 1146(a) of the Bankruptcy Code. In addition, the parties shall cooperate in good faith to prepare and timely deliver any certificate or instrument necessary for a party hereto to claim a bulk sale or other exemption from Transfer Taxes otherwise payable.

4.15 Taxation.

(a) The parties intend that the Merger in conjunction with the Plan will qualify as a reorganization within the meaning of Section 368(a) of the Code and shall use their reasonable best efforts (and shall cause their respective Subsidiaries to use their reasonable best efforts) to cause the Merger (together with the Plan) to so qualify. Neither American nor US Airways shall take, cause or permit to be taken, or fail to take,

any action, whether before or after the Effective Time, which action or failure to act would disqualify the Merger (together with the Plan) as a reorganization within the meaning of Section 368(a) of the Code.

(b) Each of American, US Airways and Merger Sub shall cooperate with each other in obtaining opinions of Latham & Watkins LLP, counsel to US Airways, and Weil, Gotshal & Manges LLP, counsel to American and Merger Sub, to satisfy the conditions set forth in Sections 5.2(d) and 5.3(d). US Airways and American (on its behalf and on behalf of Merger Sub) shall execute and deliver to each of Latham & Watkins LLP, counsel to US Airways, and Weil, Gotshal & Manges LLP, counsel to American and Merger Sub, certificates substantially in the forms attached hereto as Exhibits E and F at such time or times as reasonably requested by each such law firm in connection with its delivery of the opinion referred to in Section 5.2(d) or Section 5.3(d), as the case may be. Prior to the Effective Time, none of American, US Airways or Merger Sub shall take or cause to be taken any action that would cause to be untrue any of the representations in such certificates. The parties will take the position for all Tax purposes that the Merger (together with the Plan) qualifies as a reorganization within the meaning of Section 368(a) of the Code, unless a contrary position is required by a final determination within the meaning of Section 1313 of the Code.

(c) The parties intend that the "ownership change" of American within the meaning of Section 382 of the Code resulting from the consummation of the Merger and the implementation of the Plan qualify for relief under Section 382(l)(5) of the Code, and shall use their reasonable best efforts to so qualify. Accordingly, the parties shall utilize the procedures in that certain Bankruptcy Court order establishing notification procedures for substantial claimholders, dated January 27, 2012, as amended or revised prior to or, with the reasonable approval of US Airways, after the date hereof (the "*Notification Procedures Order*"), to obtain Notices of Substantial Claimholder Status (as defined in the Notification Procedures Order) and, if the parties so determine in accordance with such Notification Procedures Order, to seek Bankruptcy Court approval of appropriate Sell Down Notices (as defined in the Notification Procedures Order). In furtherance of the foregoing and to protect against multiple "ownership changes" of US Airways, US Airways shall adopt, effective upon the execution of this Agreement, a rights plan, in form and substance reasonably satisfactory to American, to minimize the likelihood that any additional Persons or group of Persons acting together become "5% shareholders" of US Airways within the meaning of Section 382 of the Code and that any existing such "5% shareholders" increase their ownership, other than pursuant to the Plan.

4.16 Stock Exchange Listing and De-listing. American shall use its reasonable best efforts to cause the shares of Newco Common Stock to be authorized for listing on the NYSE or NASDAQ upon official notice of issuance, prior to the Closing Date, and American shall use its reasonable best efforts to have Newco's trading symbol reflect the American Airlines brand after the Closing Date. The Surviving Corporation shall cause the shares of US Airways Common Stock to be no longer listed on the NYSE or the principal securities market on which the shares of US Airways Common Stock are then listed or quoted and de-registered under the Exchange Act as soon as practicable following the Effective Time.

4.17 Reservation of Newco Common Stock. Effective at such time as the Newco Charter shall have been duly filed with the Secretary of State of the State of Delaware pursuant to Section 1.6(a), Newco shall reserve (free from preemptive rights) out of its authorized but unissued or treasury shares of Newco Common Stock, sufficient shares of Newco Common Stock to effect the issuance of shares of Newco Common Stock under Section 2.1 and upon the exercise of Converted US Airways Options and Converted US Airways Equity Awards or the conversion of the Converted US Airways 7.25% Convertible Notes and Converted US Airways 7% Convertible Notes.

4.18 Transition Planning. In order to facilitate the integration of the operations of American and US Airways and their respective Subsidiaries and to permit the coordination of their related operations on a timely basis, and in an effort to accelerate to the earliest time practicable following the Effective Time the realization of synergies, operating efficiencies and other benefits expected to be realized by the parties as a result of the transactions contemplated by this Agreement, prior to the Effective Time, American and US Airways shall establish a committee (the "*Transition Committee*") to be managed by the chief executive officers of each of American and US Airways and with such other members as they shall mutually agree, which Transition Committee shall have responsibility for coordinating and directing the efforts of the parties with respect to (a) the integration of operations and fleet plan of American and US Airways and their respective Subsidiaries, (b) obtaining the required consents and approvals from Governmental Entities as contemplated by Section 4.7, (c) communications, public relations and investor relations strategy and approach of the parties regarding the Plan, the Merger and the other transactions contemplated hereby (other than any party's actions in respect of an American Acquisition Proposal or a US Airways Acquisition Proposal, respectively) and (d) other business and operational matters, including the financing needs of Newco and its Subsidiaries following the Effective Time, to the extent not in violation of applicable Laws, including Laws regarding the exchange of information and other laws regarding competition. The Creditors' Committee shall have the right to have up to two designees from the UCC's Advisors attend meetings of the Transition Committee.

4.19 Section 16(b). American and US Airways shall take all steps reasonably necessary to cause the transactions contemplated hereby and any other dispositions of shares of US Airways Common Stock or acquisitions of Newco Common Stock in connection with this Agreement by each individual who is a director or officer of US Airways to be exempt under Rule 16b-3 under the Exchange Act.

4.20 Approval of Plan; Confirmation Order.

(a) Plan and Disclosure Statement. Unless otherwise consented to in writing by US Airways (such consent not to be unreasonably withheld, conditioned or delayed), American (in consultation with the UCC's Advisors) shall and shall cause each of the other Debtors to:

(i) (A) by the date that is the seventh (7th) business day following the execution of this Agreement, file a motion (the "*Merger Support Motion*") with the Bankruptcy Court, in form and substance reasonably acceptable to American, US Airways and the UCC's Advisors, seeking approval pursuant to an order of the

Bankruptcy Court in form and substance reasonably acceptable to American and US Airways (the "*Merger Support Order*") of (1) this Agreement and (2) the execution and delivery hereof by American and the performance by American of all of its obligations hereunder (which Merger Support Order shall include authorization and approval of the matters set forth in Section 4.10 and Section 4.1(o) of the American Disclosure Schedule); (B) use reasonable best efforts to include in the Merger Support Order a provision ordering (1) a waiver of Bankruptcy Rule 6004(h) and (2) that the Merger Support Order be effective immediately upon its entry by the Bankruptcy Court; (C) fully support the Merger Support Motion; (D) in the Merger Support Motion, expressly acknowledge that, to American's Knowledge, US Airways has acted in good faith and expended, and will likely continue to expend, considerable time and expense in connection with this Agreement and the negotiation hereof, and that this Agreement provides value to and is beneficial to the Debtors' estates; and (E) use reasonable best efforts to obtain the entry of the Merger Support Order by the date that is the thirtieth (30th) day following the filing of the Merger Support Motion with the Bankruptcy Court and to defend against any appeal, motion to stay or similar action with respect thereto;

(ii) prepare, as soon as reasonably practicable after the date of this Agreement a draft plan of reorganization under chapter 11 of the Bankruptcy Code proposed by American and the other Debtors pursuant to which, among other things, the Merger shall be consummated (the "*Plan*"; it is understood and agreed that a condition precedent to the effectiveness of the Plan shall be that the matters set forth in Section 4.10 and Section 4.1(o) of the American Disclosure Schedule shall be in effect) and an accompanying disclosure statement under section 1125 of the Bankruptcy Code (the "*Disclosure Statement*"), and after such preparation promptly provide such Plan and Disclosure Statement, in draft form, to US Airways and its legal and financial advisors and the UCC's Advisors for review and comment a reasonable period of time in advance of any filing thereof;

(iii) (A) subject to Section 4.3, include in the approved Disclosure Statement a statement that the Board of Directors of American has recommended the acceptance of the Plan by the stakeholders of the Debtors who are entitled to vote on the Plan (such recommendation, the "*American Directors' Recommendation*") and (B) include in the approved Disclosure Statement a statement provided by the Creditors' Committee that the Creditors' Committee recommends the acceptance of the Plan by the unsecured creditors holding claims against the Debtors who are entitled to vote on the Plan ("*Creditors' Committee Recommendation*");

(iv) use reasonable best efforts to file with the Bankruptcy Court the Plan and the Disclosure Statement, in each case, in form and substance reasonably acceptable to US Airways (such acceptance, not to be unreasonably delayed, conditioned or withheld; it being agreed that it would not be reasonable for US Airways to object to any proposed Plan or Disclosure Statement that is consistent with the terms of this Agreement, including the requirements of a Conforming Plan (except that financial projections relating to Newco shall be reasonably acceptable to US Airways without such limitation)), by the date that is the thirtieth (30th) day following the later of (1) the date on which US Airways has provided initial comments pursuant to clause (ii) above and (2)

entry of the Merger Support Order, and thereafter, in consultation with US Airways, use reasonable best efforts to (A) obtain approval of the Disclosure Statement by the Bankruptcy Court pursuant to an order, in form and substance reasonably acceptable to American and US Airways (the "*Disclosure Statement Order*"), by the date that is the seventy-fifth (75th) day following the date on which the Plan and Disclosure Statement are filed with the Bankruptcy Court (the "*Disclosure Statement Approval Date*"); and (B) commence solicitation of the Plan as soon as reasonably practicable after the Disclosure Statement Approval Date and as provided in the Disclosure Statement Order;

(v) prepare and provide the proposed Confirmation Order, in draft form, to US Airways and its legal and financial advisors and the UCC's Advisors for review and comment a reasonable period of time in advance of any filing thereof and, subject to the prior written consent of US Airways (such consent not to be unreasonably withheld, conditioned or delayed) to the form and substance of the Confirmation Order, and consultation with US Airways, use reasonable best efforts to file with the Bankruptcy Court the proposed Confirmation Order promptly following the end of the period to solicit acceptances of the Plan;

(vi) subject to the terms and provisions of this Agreement, diligently pursue confirmation and consummation of the Plan;

(vii) reasonably cooperate with US Airways and its counsel in connection with any discovery and hearings in connection with this Agreement, the Disclosure Statement or the Plan and any transactions contemplated by such documents;

(viii) use reasonable best efforts to provide US Airways and its counsel with copies of any notices, motions, pleadings, filings or other documents filed by the Debtors or third-parties with the Bankruptcy Court reasonably requested by US Airways;

(ix) without duplication or limitation of the foregoing, use its reasonable best efforts to provide drafts of any proposed modifications, amendments, supplements, schedules, exhibits and other similar documents related to the Plan or the Disclosure Statement or their terms and conditions (collectively, the "*Plan Related Documents*") to US Airways and its counsel and the UCC's Advisors a reasonable period of time prior to the date on which the Debtors intend to file such documents with the Bankruptcy Court, and any such Plan Related Documents shall be reasonably acceptable to US Airways (such acceptance not to be unreasonably delayed, conditioned or withheld; it being agreed that it would not be reasonable for US Airways to object to any Plan, Plan Related Document or Confirmation Order that is consistent with the terms of this Agreement, including the requirements of a Conforming Plan (except that financial projections relating to Newco shall be reasonably acceptable to US Airways without such limitation)); and

(x) timely file a formal objection and prosecute in good faith such objection to any motion filed with the Bankruptcy Court seeking the entry of an order (A) modifying or terminating the Debtors' exclusive right to file and/or solicit acceptances of a plan of reorganization, (B) directing the appointment of an examiner with expanded

powers or a trustee, (C) converting the Cases to cases under chapter 7 of the Bankruptcy Code, or (D) dismissing the Cases.

(b) Cooperation from American. Unless US Airways has otherwise consented in writing (such consent not to be unreasonably withheld, conditioned or delayed), American shall, and shall cause each of the other Debtors to, after the date hereof and prior to the Effective Time:

(i) not move for or support any order authorizing or directing, or provide in the Plan for, the assumption or rejection of any American Material Contract, American Lease or American CBA (and object to efforts by any other Person to have such an order entered), unless the consent of US Airways was previously obtained for any amendment, modification or termination of such American Material Contract, American Lease or American CBA in accordance with the applicable requirements of Section 4.1;

(ii) not (A) settle, compromise or otherwise agree to resolve any prepetition general unsecured claims against the Debtors or equity interests in American by providing the creditor, equity interest holder or other claimant with any payment of cash or other assets or with any other right or benefit, other than in each case (1) the right to receive Plan Shares pursuant to the Plan, or (2) payments of cash not to exceed $25,000,000 in the aggregate; (B) settle, compromise, amend or otherwise agree to resolve the other post-employment benefits accounted for under ASC 715-60 Defined Benefit Plans- Other Postretirement ("*OPEB*") of the Debtors other than any settlement, compromise or other agreement that satisfies all such OPEB obligations solely in exchange for a right to receive Plan Shares pursuant to the Plan or (C) prepay any prepetition secured indebtedness of any Debtor with any payment of cash or other assets, except (1) as may be required by the existing terms of any Contract governing such indebtedness (excluding a prepayment as a result of any breach of, or default under, the terms of any such Contract), (2) in connection with a refinancing permitted under Section 4.1 or (3) payments of cash not to exceed $25,000,000 in the aggregate;

(iii) not assert any objection to (and if requested by US Airways, consent in writing to) the standing of US Airways to appear and object before the Bankruptcy Court to any action that would be subject to US Airways' consent pursuant to this Section 4.20, whether individually or in the aggregate, but to which US Airways has not provided such consent; and

(iv) use reasonable best efforts to include in any release and exculpation provisions of the Plan, that US Airways and (to the extent included for American) its agents, directors, officers, employees, representatives, advisors, attorneys, Subsidiaries and affiliates shall be beneficiaries of such provisions.

(c) Cooperation from US Airways. Upon request of American, US Airways agrees to use reasonable best efforts to (x) assist and cooperate with the Debtors in the Plan solicitation process and/or (y) assist the Debtors in obtaining entry of the Confirmation Order.

4.21 US Airways Equity Plans.

(a) Prior to the Effective Time, the Boards of Directors of US Airways (or, if appropriate, any committee thereof administering the US Airways Equity Plans) and American shall adopt such resolutions or take such other actions as may be required to effect the following as of the Effective Time:

(i) US Airways Options and US Airways SARs.

(A) (i) Each US Airways Option and each US Airways Stock-Settled SAR outstanding immediately prior to the Effective Time, whether vested or unvested, shall be converted into an option (each, a "*Converted US Airways Option*") or stock-settled stock appreciation right (each, a "*Converted US Airways Stock-Settled SAR*"), as applicable, to acquire, on the same terms and conditions as were applicable to such US Airways Option or US Airways Stock-Settled SAR immediately prior to the Effective Time, a number of shares of Newco Common Stock equal to the number of shares of US Airways Common Stock subject to such US Airways Option or US Airways Stock-Settled SAR, at an exercise price per share of Newco Common Stock equal to the exercise price per share of US Airways Common Stock under such US Airways Option or US Airway Stock-Settled SAR; provided, however, in the case of any US Airways Option to which Section 421 of the Code applies by reason of its qualification (as an "incentive stock option") under either Section 422 or 424 of the Code, the option price, the number of shares purchasable pursuant to such option and the terms and conditions of exercise of such option shall be determined in a manner that complies with Section 424(a) of the Code.

(B) Each US Airways Cash-Settled SAR outstanding immediately prior to the Effective Time, whether vested or unvested, shall be converted into a cash-settled stock appreciation right (each, a "*Converted US Airways Cash-Settled SAR*") to acquire, on the same terms and conditions as were applicable to such US Airways Cash-Settled SAR immediately prior to the Effective Time, an amount of cash determined by reference to the number of shares of Newco Common Stock equal to the number of shares of US Airways Common Stock referenced by such US Airways Cash-Settled SAR, at an exercise price per share of Newco Common Stock equal to the exercise price per share of US Airways Common Stock under such US Airways Cash-Settled SAR.

(C) In each of Sections 4.21(a)(i)(A) and (B) above, each US Airways Option and each US Airways SAR shall be adjusted in a manner which complies with Section 409A of the Code and that causes the resulting Converted US Airways Option, Converted US Airways Cash-Settled SAR or Converted US Airways Stock-Settled SAR not to constitute the grant of a new option or stock appreciation right or a change in the form of payment of an option or stock appreciation right, as provided under Treasury Regulation section 1.409A-1(b)(5)(v)(D).

(ii) US Airways RSUs.

(A) Each award of US Airways Stock-Settled RSUs outstanding immediately prior to the Effective Time shall be converted into a number of stock-settled restricted stock units corresponding to shares of Newco Common Stock equal to the number of shares of US Airways Common Stock subject to such US Airways Stock-Settled RSU award, with the same terms and conditions as were applicable to such US Airways Stock-Settled RSU award immediately prior to the Effective Time (each, a "*Converted Stock-Settled US Airways RSU*").

(B) Each award of US Airways Cash-Settled RSUs outstanding immediately prior to the Effective Time shall be converted into the right to receive an amount in cash, on the same terms and conditions as were applicable to such US Airways RSU award immediately prior to the Effective Time, based on a number of shares of Newco Common Stock equal to the number of shares of US Airways Common Stock referenced under such US Airways Cash-Settled RSU award immediately prior to the Effective Time (each, a "*Converted Cash-Settled US Airways RSU*").

(C) In each of Sections 4.21(a)(ii)(A) and (B) above, all adjustments made to the US Airways RSUs shall be made in compliance with Section 409A of the Code.

(iii) ensure that, after the Effective Time, awards under the US Airways Equity Plans shall be granted with respect to Newco Common Stock and make such other changes to the US Airways Equity Plans as it deems appropriate to give effect to the Merger (subject to the approval of American, which shall not be unreasonably withheld, conditioned or delayed).

The Converted US Airways Stock-Settled SARs and the Converted US Airways Stock-Settled RSUs are referred to, collectively, as the "*Converted US Airways Equity Awards*".

(b) At the Effective Time, Newco shall assume all the obligations of US Airways under the US Airways Equity Plans, each outstanding US Airways Option, each outstanding US Airways Equity Award, each outstanding US Airways Cash-Settled SAR, each outstanding US Airways Cash-Settled RSU and the agreements evidencing the grants thereof. As soon as practicable after the Effective Time, Newco shall deliver to the holders of US Airways Options, US Airways Equity Awards, US Airways Cash-Settled SAR and US Airways Cash-Settled RSU appropriate notices setting forth such holders' rights pursuant to the respective US Airways Equity Plans, and the agreements evidencing the grants of such US Airways Options, US Airways Equity Awards, US Airways Cash-Settled SARs and US Airways Cash-Settled RSUs shall continue in effect on the same terms and conditions (subject to the adjustments required by this Section 4.21 after giving effect to the Merger).

(c) American shall, or shall cause Newco to, prepare and file with the SEC a registration statement on Form S-8 with respect to the shares of Newco Common Stock issuable upon exercise or vesting of the assumed Converted US Airways Equity Awards on or before the Effective Time and shall maintain the effectiveness of such registration statement thereafter for so long as any such Converted US Airways Equity Awards remain outstanding.

4.22 US Airways Convertible Debt.

(a) At the Effective Time, American and US Airways and, if necessary or advisable, Merger Sub shall enter into a supplemental indenture in respect of the US Airways 7.25% Convertible Notes containing such provisions as may be required or are advisable as a result of the Merger pursuant to the terms of that certain Indenture, dated as of May 13, 2009, between US Airways and The Bank of New York Mellon Trust Company, N.A., as trustee (the "*7.25% Base Indenture*"), as supplemented by the First Supplemental Indenture, dated as of May 13, 2009, between US Airways and The Bank of New York Mellon Trust Company, N.A., as trustee (the "*7.25% Supplemental Indenture*" and, together with the 7.25% Base Indenture, the "*7.25% Indenture*"). Such supplemental indenture will (i) include the provisions required by Section 5.06 of the 7.25% Supplemental Indenture as a result of the Merger, which may include a provision that requires each outstanding US Airways 7.25% Convertible Note to be convertible solely into the number of shares of Newco Common Stock that the holder of such US Airways 7.25% Convertible Note would have received pursuant to the Merger if such holder had converted such US Airways 7.25% Convertible Note into shares of US Airways Common Stock immediately prior to the Effective Time (each, a "*Converted US Airways 7.25% Convertible Note*") and (ii) provide for the guarantee by Newco of US Airways' obligations under the 7.25% Indenture and the 7.25% Convertible Notes following the Effective Time.

(b) At the Effective Time, American and US Airways and, if necessary or advisable, Merger Sub shall enter into a supplemental indenture in respect of the US Airways 7% Convertible Notes containing such provisions as may be required or are advisable as a result of the Merger pursuant to the terms of the Indenture, dated as of September 30, 2005, by and between US Airways and U.S. Bank National Association, as trustee (the "*7% Indenture*"). Such supplemental indenture will (i) include the provisions required by Section 4.8 of the 7% Indenture, which may include a provision that requires each outstanding US Airways 7% Convertible Note to be convertible solely into the number of shares of Newco Common Stock that the holder of such US Airways 7% Convertible Note would have received pursuant to the Merger if such holder had converted such US Airways 7% Convertible Note into shares of US Airways Common Stock immediately prior to the Effective Time (each, a "*Converted US Airways 7% Convertible Note*") and (ii) provide for the guarantee by Newco of US Airways' obligations under the 7% Indenture and the US Airways 7% Convertible Notes following the Effective Time.

(c) Prior to the Effective Time, the Board of Directors of each of American, on the one hand, and Merger Sub and US Airways, on the other hand, will

adopt resolutions approving each of the directors who are elected to the Board of Directors of Newco and the Surviving Corporation, respectively, at the Effective Time in accordance with Section 1.8 so that such directors will be "continuing directors" of Newco and the Surviving Corporation, respectively.

4.23 Rights of the Creditors' Committee. Subject to the Protective Order entered by the Bankruptcy Court on January 27, 2012 and amended on March 23, 2012 in connection with the Cases, and the terms of any applicable confidentiality agreement, from the date hereof to the Closing Date, American and US Airways shall (a) keep the UCC's Advisors reasonably apprised of the status of matters relating to completion of the transactions contemplated hereby, (b) furnish the UCC's Legal Advisor with all notices, correspondence and other communications provided to another party pursuant to Section 7.7 of this Agreement, and (c) promptly provide the UCC's Advisors with any information reasonably requested by the UCC's Advisors relating to completion of the transactions contemplated hereby. Without limiting the foregoing, American and US Airways shall give prompt notice to the UCC's Legal Advisor of any change, fact or condition of which, to its knowledge, is reasonably expected to result in any failure of any condition to effect the Merger. American and US Airways (as applicable) each agrees to negotiate in good faith with the UCC's Advisors with respect to any consent rights requested by the Creditors' Committee under the Plan.

ARTICLE V

Conditions

5.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver at or prior to the Effective Time of each of the following conditions:

(a) US Airways Stockholder Approval. The Stockholder Approval shall have been obtained.

(b) Regulatory Approvals. (i) The waiting period applicable to the consummation of the Merger under the HSR Act shall have expired or been earlier terminated, and any approval or authorization required to be obtained under the EU Merger Regulation in connection with the consummation of the Merger shall have been obtained, (ii) any approval or authorization required to be obtained from the FAA and DOT in connection with the consummation of the Merger shall have been obtained, (iii) any approval or authorization required to be obtained from any other Governmental Entity for the consummation of the Merger shall have been obtained, and (iv) any approval or authorization required under any other foreign antitrust, competition or similar Laws, in each case in connection with the consummation of the Merger and the transactions contemplated by this Agreement, shall have been obtained, except for those, in the case of clauses (iii) and (iv), the failure of which to obtain would not, individually or in the aggregate, (x) reasonably be expected to result in an American Material Adverse Effect, a US Airways Material Adverse Effect or a Newco Material Adverse Effect or (y) provide a reasonable basis to conclude that American, US Airways or any of their respective directors or officers would be subject to the risk of criminal liability.

(c) No Orders or Restraints; Illegality. No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law (whether temporary, preliminary or permanent) that is in effect and restrains, enjoins, makes illegal or otherwise prohibits consummation of the Merger or the other transactions contemplated by this Agreement (each, an "*Order*"), and no Governmental Entity of competent jurisdiction has proposed (and not withdrawn) an Order that (x) could have a Newco Material Adverse Effect or (y) would provide a reasonable basis to conclude that American, US Airways or any of their respective directors or officers would be subject to the risk of criminal liability.

(d) Listing. The shares of Newco Common Stock to be issued in the Merger and under the Plan shall have been authorized for listing on the NYSE or NASDAQ upon official notice of issuance.

(e) Form S-4. The Form S-4 shall have become effective under the Securities Act, and no stop order suspending the effectiveness of the Form S-4 shall have been issued and no proceedings for that purpose shall have been initiated or be threatened by the SEC.

5.2 Conditions to Obligation of American and Merger Sub. The obligation of American and Merger Sub to effect the Merger is also subject to the satisfaction or waiver by American at or prior to the Effective Time of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of US Airways set forth in this Agreement (without giving effect to any materiality or US Airways Material Adverse Effect qualifications contained therein) shall be true and correct in all respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except to the extent any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date), except (i) where the failure of such representations and warranties to be true and correct (other than with respect to the representations and warranties contained in Section 3.2(b)(i)) would not, individually or in the aggregate, reasonably be expected to have a US Airways Material Adverse Effect and (ii) where the failure of the representations and warranties contained in Section 3.2(b)(i) to be true and correct is not material.

(b) Performance of Obligations of US Airways. US Airways shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(c) Officer's Certificate. American shall have received a certificate signed on behalf of US Airways by the Chief Executive Officer or Chief Financial Officer of US Airways to the effect that the conditions set forth in Sections 5.2(a) and 5.2(b) have been satisfied.

(d) Tax Opinion. American shall have received the opinion of Weil, Gotshal & Manges LLP, counsel to American, in form and substance reasonably

satisfactory to American, dated the Closing Date, substantially to the effect that, on the basis of facts, representations and assumptions set forth or referred to in such opinion that are consistent with the state of facts existing at the Effective Time, the Merger in conjunction with the Plan will be treated for United States federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code. In rendering the opinion described in this Section 5.2(d), Weil, Gotshal & Manges LLP may require and rely upon representations contained in certificates of officers of US Airways and American (on behalf of itself and on behalf of Merger Sub) substantially in the forms attached hereto as Exhibits E and F.

(e) Plan and Confirmation Order. (i) Any modifications, amendments or supplements to the Plan, the Plan Related Documents or the Confirmation Order that were not filed with the Bankruptcy Court by the Debtors shall be in form and substance reasonably acceptable to American, (ii) the Plan shall have been confirmed by the Bankruptcy Court pursuant to the Confirmation Order, (iii) the Confirmation Order shall be in full force and effect and shall not have been stayed, modified or vacated and (iv) the effective date of the Plan shall occur contemporaneously with the Closing Date.

5.3 Conditions to Obligation of US Airways . The obligation of US Airways to effect the Merger is also subject to the satisfaction or waiver by US Airways at or prior to the Effective Time of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of American and Merger Sub set forth in this Agreement (without giving effect to any materiality or American Material Adverse Effect qualifications contained therein) shall be true and correct in all respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except to the extent any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date), except (i) where the failure of such representations and warranties to be true and correct (other than with respect to the representations and warranties in Section 3.1(b)(ii)) would not, individually or in the aggregate, reasonably be expected to have an American Material Adverse Effect and (ii) for failures to be to true and correct with respect to the representations and warranties contained in Section 3.1(b)(ii) by less than 500,000 shares of Newco Common Stock in the aggregate (including shares of Newco Common Stock issuable upon exercise, conversion or exchange).

(b) Performance of Obligations of American and Merger Sub. Each of American and Merger Sub shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(c) Officer's Certificate. US Airways shall have received a certificate signed on behalf of American and Merger Sub by the Chief Executive Officer or Chief Financial Officer of American to the effect that the conditions set forth in Sections 5.3(a), 5.3(b), 5.3(f) and 5.3(g) have been satisfied.

(d) Tax Opinion. US Airways shall have received the opinion of Latham & Watkins LLP, counsel to US Airways, in form and substance reasonably satisfactory to US Airways, dated the Closing Date, substantially to the effect that, on the basis of facts, representations and assumptions set forth or referred to in such opinion that are consistent with the state of facts existing at the Effective Time, the Merger in conjunction with the Plan will be treated for United States federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code. In rendering the opinion described in this Section 5.3(d), Latham & Watkins LLP may require and rely upon representations contained in certificates of officers of US Airways and American (on behalf of itself and on behalf of Merger Sub) substantially in the forms attached hereto as Exhibits E and F.

(e) Plan and Confirmation Order. (i) The Plan, the Plan Related Documents and the Confirmation Order shall be in form and substance reasonably acceptable to US Airways (such acceptance not to be unreasonably delayed, conditioned or withheld; it being agreed that it would not be reasonable for US Airways to object to any Plan, Plan Related Document or Confirmation Order that is consistent with the terms of this Agreement, including the requirements of a Conforming Plan), (ii) the Plan shall have been confirmed by the Bankruptcy Court pursuant to the Confirmation Order, (iii) the Confirmation Order shall be in full force and effect and shall not have been stayed, modified or vacated and (iv) the effective date of the Plan shall occur contemporaneously with the Closing Date.

(f) Conforming Plan. The Plan shall include each of the following components (and any Plan that contains the following components, a "*Conforming Plan*"):

(i) (A) a condition precedent to the occurrence of the effective date under the Plan shall be the occurrence of the Closing under this Agreement and (B) any material conditions in the Plan that are not also conditions to the obligations of American under this Agreement shall be reasonably acceptable to US Airways (provided that US Airways may not object to the inclusion in the Plan of a condition precedent to the occurrence of the effective date under the Plan that the aggregate estimated allowed prepetition general unsecured claims (excluding intercompany claims) against the Debtors shall not exceed $8 billion);

(ii) all allowed prepetition general unsecured claims against the Debtors (other than allowed "convenience claims" satisfied in cash as provided in clause (iii) below, and other than intercompany claims which shall be extinguished or reinstated), all equity interests in American, and all rights of labor groups of the Debtors to receive shares of Newco Common Stock in connection with the Plan, will be fully settled and satisfied only with Plan Shares;

(iii) the aggregate amount of cash payable to satisfy allowed convenience claims shall not exceed $25 million; and

(iv) all equity held by any Debtor in any other Debtor (other than American) shall not be cancelled and shall continue to be owned by or for the benefit of the respective Debtor, as reorganized.

(g) Other Conditions.

(i) Immediately prior to the effectiveness of the Plan, secured indebtedness against the Debtors shall not exceed $6.8 billion in aggregate principal amount; provided that such amount shall exclude (A) any secured indebtedness with respect to municipal bonds that are subject to the immediately succeeding clause (ii); and (B) any additional indebtedness incurred in accordance with Section 4.1 (including, for the avoidance of doubt, indebtedness set forth in Section 4.1(i) of the American Disclosure Letter); and (C) any secured indebtedness the issuance of which is approved by US Airways pursuant to Section 4.1 (but excluding, in the case of clauses (B) and (C), the principal amount of any secured indebtedness refinanced in accordance with Section 4.1, as set forth in Section 4.1(i) of the American Disclosure Letter or with the approval of US Airways, which refinanced principal amount shall be included in determining the aggregate principal amount of secured indebtedness set forth in the first clause of this subparagraph (i));

(ii) Immediately prior to the effectiveness of the Plan, secured indebtedness against the Debtors with respect to municipal bonds (whether on-balance sheet or off-balance sheet) shall not exceed $1.7 billion in aggregate principal amount; provided that such amount shall exclude any additional indebtedness with respect to municipal bonds incurred in accordance with Section 4.1 (including, for the avoidance of doubt, indebtedness set forth in Section 4.1(i) of the American Disclosure Letter, but excluding the principal amount of any secured indebtedness with respect to municipal bonds refinanced in accordance with Section 4.1, as set forth in Section 4.1(i) of the American Disclosure Letter or with the approval of US Airways, which refinanced principal amount shall be included in determining the aggregate principal amount of secured indebtedness with respect to municipal bonds set forth in the first clause of this subparagraph (ii)); and

(iii) Immediately prior to the effectiveness of the Plan, unpaid (A) administrative expense claims against the Debtors (1) under section 503(b)(9) of the Bankruptcy Code, (2) for professional fees and expenses of retained professionals under the Bankruptcy Code, and (3) for cure amounts payable pursuant to section 365 of the Bankruptcy Code, and (B) claims entitled to priority status under the Bankruptcy Code (other than priority claims related to pensions) shall not exceed $400 million in aggregate principal amount.

ARTICLE VI

Termination

6.1 Termination by Mutual Consent. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after

receipt of the Stockholder Approval or the entry of the Confirmation Order, by mutual written consent of American and US Airways by duly authorized action.

6.2 Termination by Either American or US Airways. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by duly authorized action of either American or US Airways if: (a) the Merger shall not have been consummated by October 14, 2013, whether such date is before or after receipt of the Stockholder Approval or the entry of the Confirmation Order, provided, that in the event that, (i) as of October 14, 2013, the condition set forth in Section 5.1(b) has not been satisfied (or waived), the termination date may be extended from time to time by American or US Airways one or more times to a date not beyond December 13, 2013; provided further that in the event that a party fails to certify compliance with any Second Request prior to the 60th day following the issuance of such Second Request, such termination date may be extended by the other party one or more times for an additional number of days beyond December 13, 2013 equal to the number of days that elapsed between such 60th day and the day on which the first party actually certifies compliance with such Second Request, or (ii) as of October 14, 2013, the condition set forth in either Section 5.2(e) or Section 5.3(e) has not been satisfied (or waived), the termination date may be extended from time to time by American or US Airways one or more times to a date not beyond December 13, 2013 (such date, including any such extensions thereof, the "*Termination Date*"); (b) the Stockholder Approval shall not have been obtained at the Stockholders Meeting or at any adjournment or postponement thereof at which the vote was taken; (c) twenty (20) days have elapsed after the Bankruptcy Court enters an order denying confirmation of the Plan; (d) the Merger Support Order shall not have been entered by the Bankruptcy Court on or prior to the date that is the ninetieth (90th) day following the date of this Agreement (provided that if this Agreement has become terminable pursuant to this Section 6.2(d) but has not been terminated, and the Bankruptcy Court enters the Merger Support Order, then this Agreement shall no longer be terminable pursuant to this Section 6.2(d)); or (e) any Order permanently restraining, enjoining or otherwise prohibiting consummation of the Merger shall become final and non-appealable, except for Orders the existence of which would not result in the failure of the condition set forth in Section 5.1(c); provided, however, that the right to terminate this Agreement pursuant to this Section 6.2 shall not be available to any party that has breached its obligations under this Agreement in any manner that shall have been the principal contributing factor to the occurrence of the events giving rise to the right to terminate this Agreement.

6.3 Termination by US Airways. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after receipt of the Stockholder Approval, by duly authorized action of US Airways if: (a) there has been a breach of any representation, warranty, covenant or agreement made by American or Merger Sub in this Agreement, or any such representation or warranty shall have become untrue or incorrect after the execution of this Agreement, such that Section 5.3(a) or 5.3(b), as the case may be, would not then be satisfied and such breach or failure to be true and correct is not cured (if curable) within forty-five (45) days of US Airways providing written notice of such breach or failure to American; (b) US Airways is authorized, by duly authorized action of its Board of Directors, to enter into a binding written agreement concerning a transaction that constitutes a US Airways Superior Proposal, subject to complying with the terms of this Agreement; (c) American shall have knowingly, willfully and materially and not inadvertently breached any of

its obligations under Section 4.3 of this Agreement; (d) an American Change in Recommendation shall have occurred; or (e) a Creditors' Committee Change in Recommendation shall have occurred. For purposes of this Agreement, a "*Creditors' Committee Change in Recommendation*" shall mean that the Creditors' Committee has: (i) failed to provide to American for inclusion in the approved Disclosure Statement the Creditors' Committee Recommendation; (ii) withdrawn or modified in a manner materially adverse to US Airways the Creditors' Committee Recommendation; (iii) recommended any American Acquisition Proposal; or (iv) taken, resolved to take, or permitted any of its Representatives to take, any action described in clauses (i), (ii) or (iii) of this sentence; provided that any action taken by the Creditors' Committee in order to comply with its disclosure obligations under applicable Law shall not be a Creditors' Committee Change in Recommendation if concurrently with such action the Creditors' Committee publicly reaffirms the Creditors' Committee Recommendation; provided further that a Creditors' Committee Change in Recommendation shall not be deemed to have occurred in any event if prior to the earlier of (i) ten (10) business days after such Creditors' Committee Change in Recommendation or (ii) two (2) business days prior to the end of the solicitation period for acceptances of the Plan, the American Board of Directors publicly reaffirms the American Directors' Recommendation.

6.4 Termination by American. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after receipt of the Stockholder Approval, by duly authorized action of American if: (a) there has been a breach of any representation, warranty, covenant or agreement made by US Airways in this Agreement, or any such representation or warranty shall have become untrue or incorrect after the execution of this Agreement, such that Section 5.2(a) or 5.2(b), as the case may be, would not then be satisfied and such breach or failure to be true and correct is not cured (if curable) within forty-five (45) days of American providing written notice of such breach or failure to US Airways; (b) American is authorized, by duly authorized action of its Board of Directors or by order of the Bankruptcy Court, to enter into a binding written agreement concerning a transaction that constitutes an American Superior Proposal, subject to complying with the terms of this Agreement; (c) US Airways shall have knowingly, willfully and materially and not inadvertently breached any of its obligations under Section 4.4 of this Agreement; or (d) a US Airways Change in Recommendation shall have occurred; provided that prior to any such termination of this Agreement pursuant to this Article VI by American, American shall have consulted with the UCC's Advisors.

6.5 Effect of Termination and Abandonment. In the event of termination of this Agreement and the abandonment of the Merger pursuant to this Article VI, this Agreement (other than as set forth in Section 7.2) shall become void and of no effect with no liability on the part of any party hereto (or of any of its Subsidiaries or affiliates or any of their respective Representatives) under this Agreement or in connection with the transactions contemplated by this Agreement, except for, if applicable, the obligations of US Airways under Section 6.6 and the obligations of American under Section 6.7.

6.6 US Airways Termination Fees.

(a) In the event this Agreement is terminated by US Airways or American pursuant to Section 6.2(b), if (A) prior to such termination of this Agreement

pursuant to Section 6.2(b), a bona fide US Airways Acquisition Proposal that satisfies the last proviso of Section 4.4(a)(ii) (a "*Covered US Airways Proposal*") shall have been made to US Airways or any of its Subsidiaries or its stockholders and shall have become publicly known or any Person shall have publicly announced an intention (whether or not conditional) to make a Covered US Airways Proposal with respect to US Airways or any of its Subsidiaries (and such Covered US Airways Proposal or publicly announced intention shall not have been withdrawn prior to the time of the Stockholders Meeting), and (B) following such termination of this Agreement pursuant to Section 6.2(b), any Person (other than American) consummates, in one transaction or any series of related transactions within 18 months of such termination, or enters into an agreement with US Airways within 18 months of such termination for, a transaction that is a Covered US Airways Proposal, then US Airways shall promptly, but in no event later than two business days after the date such Covered US Airways Proposal is consummated or such Covered US Airways Proposal is entered into, pay to American a termination fee of $55,000,000 (the "*US Airways No Vote Transaction Fee*"), payable by wire transfer of same day funds.

(b) US Airways shall, promptly, but in no event later than two business days after the date of termination, pay to American a termination fee of $55,000,000 (the "*US Airways Alternative Transaction Fee*"), payable by wire transfer of same day funds, in the event that:

(i) this Agreement is terminated by American pursuant to Section 6.4(c) or (d); or

(ii) this Agreement is terminated by US Airways in accordance with Section 6.3(b).

(c) US Airways shall, promptly, but in no event later than two business days after the date of termination, pay to American a termination fee of $195,000,000 (the "*US Airways Termination Fee*"), payable by wire transfer of same day funds, in the event that this Agreement is terminated by American pursuant to Section 6.4(a) with respect to any Knowing Material Breach of any representation or warranty made by US Airways or any Deliberate Material Breach of any covenant or agreement by US Airways.

(d) US Airways and American acknowledge and agree that the agreements contained in this Section 6.6 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, American and US Airways would not enter into this Agreement. Notwithstanding anything to the contrary in this Agreement, each of US Airways and American acknowledge and agree that (i) the US Airways No Vote Transaction Fee, the US Airways Alternative Transaction Fee or the US Airways Termination Fee, if paid, shall not constitute either a penalty or liquidated damages, (ii) prior to the termination of this Agreement in accordance with its terms, American's right to specific performance under Section 7.15 or its right to terminate this Agreement and receive payment, if payable, of the US Airways No Vote Transaction Fee, the US Airways Alternative Transaction Fee or the US Airways

Termination Fee, as applicable, in accordance with this Section 6.6 shall be the sole and exclusive remedy of American and its Subsidiaries, the Debtors or their estates, or any of their respective affiliates or Representatives against US Airways and its Subsidiaries, and their respective affiliates and Representatives, under this Agreement or arising out of or related to this Agreement (or the termination hereof or thereof) or the Plan or the transactions contemplated hereby or thereby (or the abandonment thereof) or any matter related thereto or forming the basis therefor and (iii) from and after the termination of this Agreement in accordance with its terms, American's right to receive payment, if payable, of the US Airways No Vote Transaction Fee, the US Airways Alternative Transaction Fee or the US Airways Termination Fee, as applicable, in accordance with this Section 6.6 shall be the sole and exclusive remedy of American and its Subsidiaries, the Debtors or their estates, or any of their respective affiliates or Representatives against US Airways and its Subsidiaries, and their respective affiliates and Representatives, under this Agreement or arising out of or related to this Agreement (or the termination hereof or thereof) or the Plan or the transactions contemplated hereby or thereby (or the abandonment thereof) or any matter related thereto or forming the basis therefor. Upon payment of the US Airways No Vote Transaction Fee, the US Airways Alternative Transaction Fee or the US Airways Termination Fee to American in accordance with this Agreement, (x) none of US Airways or its Subsidiaries, or their respective affiliates or Representatives shall have any liability or obligation relating to or arising out of this Agreement (or the termination hereof or thereof) or the Plan or the transactions contemplated hereby or thereby (or the abandonment thereof) or any matter related thereto or forming the basis therefor, in each case whether based on contract, tort or strict liability, by the enforcement of any assessment, by any legal or equitable proceeding, by virtue of any statute, regulation or applicable Laws or otherwise, and (y) none of American or its Subsidiaries, the Debtors or their estates, or any of their respective affiliates or Representatives shall be entitled to bring or maintain any claim, action or proceeding against US Airways or its Subsidiaries, or their respective affiliates or Representatives arising out of or in connection with any of the foregoing. For the avoidance of doubt, American's election to terminate this Agreement and receive payment, if payable, of the US Airways No Vote Transaction Fee, the US Airways Alternative Transaction Fee or the US Airways Termination Fee, as applicable, in accordance with this Section 6.6, shall be in lieu of its right to specific performance under Section 7.15.

(e) If US Airways fails to promptly pay any amount due pursuant to this Section 6.6, and, in order to obtain such payment, American commences a suit which results in a judgment against US Airways for the payment of any such amount due pursuant to this Section 6.6, US Airways shall pay to American the costs and expenses (including attorneys' fees) of American in connection with such suit, together with interest on such amount, and any such costs and expenses, at the prime rate of Citibank, N.A. in effect on the date such payment was required to be made. In no event shall American be entitled to receive more than one of (i) the US Airways No Vote Transaction Fee, (ii) the US Airways Alternative Transaction Fee or (iii) the US Airways Termination Fee, and in no event shall American be entitled to receive any of the US Airways No Vote Transaction Fee, the US Airways Alternative Transaction Fee or the US Airways Termination Fee on more than one occasion.

(f) For purposes of this Agreement, (i) a "*Knowing Material Breach*" of a representation and warranty shall be deemed to have occurred only if an officer of US Airways or American, as applicable (who is a knowledge party within the meaning of "US Airways' Knowledge" or "American's Knowledge", respectively), had actual knowledge of such material breach as of the date hereof (without any independent duty of investigation or verification other than an actual reading of the representations and warranties as they appear in this Agreement on subjects relevant to the areas as to which they have direct managerial oversight responsibility) and willfully failed to disclose such breach to the other party and (ii) a "*Deliberate Material Breach*" of any covenant shall be deemed to have occurred only if US Airways or American, as applicable, willfully took or failed to take action with actual knowledge of an officer of US Airways or American, respectively (who is a knowledge party within the meaning of "US Airways' Knowledge" or "American's Knowledge", respectively), that the action so taken or omitted to be taken constituted a material breach of such covenant.

6.7 American Termination Fees.

(a) In the event that this Agreement is terminated by either American or US Airways pursuant to Section 6.2(c), if (A) prior to such termination of this Agreement pursuant to Section 6.2(c), a bona fide American Acquisition Proposal that satisfies the last proviso of Section 4.3(a)(ii) (a "*Covered American Proposal*") shall have been made to American or any of its Subsidiaries or its creditors and shall have become publicly known or any Person shall have publicly announced an intention (whether or not conditional) to make a Covered American Proposal with respect to American or any of its Subsidiaries (and such Covered American Proposal or publicly announced intention shall not have been withdrawn prior to the time of the solicitation of the votes on the Plan contemplated by Section 4.20), and (B) following such termination of this Agreement pursuant to Section 6.2(c), any Person (other than US Airways) consummates, in one transaction or any series of related transactions within 18 months of such termination, or enters into an agreement with American within 18 months of such termination for, a transaction that is a Covered American Proposal, then American shall promptly, but in no event later than two business days after the date such Covered American Proposal is consummated or such Covered American Proposal is entered into, pay to US Airways a termination fee of $135,000,000 (the "*American No Vote Transaction Fee*"), payable by wire transfer of same day funds.

(b) American shall, promptly, but in no event later than two business days after the date of termination, pay to US Airways a termination fee of $135,000,000 (the "*American Alternative Transaction Fee*"), payable by wire transfer of same day funds, in the event that:

(i) this Agreement is terminated by US Airways pursuant to Section 6.3(c) or (d);

(ii) this Agreement is terminated by American in accordance with Section 6.4(b); or

(iii) this Agreement is terminated by US Airways pursuant to Section 6.3(e).

(c) American shall, promptly, but in no event later than two business days after the date of termination, pay to US Airways a termination fee of $195,000,000 (the "*American Termination Fee*"), payable by wire transfer of same day funds, in the event that this Agreement is terminated by US Airways pursuant to Section 6.3(a) with respect to any Knowing Material Breach of any representation or warranty made by American or any Deliberate Material Breach of any covenant or agreement by American.

(d) American and US Airways acknowledge and agree that the agreements contained in this Section 6.7 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, US Airways and American would not enter into this Agreement. Notwithstanding anything to the contrary in this Agreement, each of American and US Airways acknowledge and agree that (i) the American No Vote Transaction Fee, the American Alternative Transaction Fee or the American Termination Fee, if paid, shall not constitute either a penalty or liquidated damages, (ii) prior to the termination of this Agreement in accordance with its terms, US Airways' right to specific performance under Section 7.15 or its right to terminate this Agreement and receive payment, if payable, of the American No Vote Transaction Fee, the American Alternative Transaction Fee or the American Termination Fee, as applicable, in accordance with this Section 6.7 shall be the sole and exclusive remedy of US Airways and its Subsidiaries, or any of their respective affiliates or Representatives against American and its Subsidiaries, the Debtors or their estates, and their respective affiliates and Representatives, under this Agreement or arising out of or related to this Agreement (or the termination hereof or thereof) or the Plan or the transactions contemplated hereby or thereby (or the abandonment thereof) or any matter related thereto or forming the basis therefor and (iii) from and after the termination of this Agreement in accordance with its terms, US Airways' right to receive payment, if payable, of the American No Vote Transaction Fee, the American Alternative Transaction Fee or the American Termination Fee, as applicable, in accordance with this Section 6.7 shall be the sole and exclusive remedy of US Airways and its Subsidiaries, or any of their respective affiliates or Representatives against American and its Subsidiaries, the Debtors or their estates, and their respective affiliates and Representatives, under this Agreement or arising out of or related to this Agreement (or the termination hereof or thereof) or the Plan or the transactions contemplated hereby or thereby (or the abandonment thereof) or any matter related thereto or forming the basis therefor. Upon payment of the American No Vote Transaction Fee, the American Alternative Transaction Fee or the American Termination Fee to US Airways in accordance with this Agreement, (x) none of American or its Subsidiaries, the Debtors or their estates, or their respective affiliates or Representatives shall have any liability or obligation relating to or arising out of this Agreement (or the termination hereof or thereof) or the Plan or the transactions contemplated hereby or thereby (or the abandonment thereof) or any matter related thereto or forming the basis therefor, in each case whether based on contract, tort or strict liability, by the enforcement of any assessment, by any legal or equitable proceeding, by virtue of any statute, regulation or applicable Laws or otherwise, and (y) none of US Airways or its Subsidiaries, or any of their respective affiliates or

Representatives shall be entitled to bring or maintain any claim, action or proceeding against American or its Subsidiaries, the Debtors or their estates, or their respective affiliates or Representatives arising out of or in connection with any of the foregoing. For the avoidance of doubt, US Airways' election to terminate this Agreement and receive payment, if payable, of the American No Vote Transaction Fee, the American Alternative Transaction Fee or the American Termination Fee, as applicable, in accordance with this Section 6.7, shall be in lieu of its right to specific performance under Section 7.15.

(e) If American fails to promptly pay any amount due pursuant to this Section 6.7, and, in order to obtain such payment, US Airways commences a suit which results in a judgment against American for the payment of any such amount due pursuant to this Section 6.7, American shall pay to US Airways the costs and expenses (including attorneys' fees) of US Airways in connection with such suit, together with interest on such amount, and any such costs and expenses, at the prime rate of Citibank, N.A. in effect on the date such payment was required to be made. In no event shall US Airways be entitled to receive more than one of (x) the American No Vote Transaction Fee, (y) the American Alternative Transaction Fee or (z) the American Termination Fee, and in no event shall US Airways be entitled to receive any of the American No Vote Transaction Fee, the American Alternative Transaction Fee or the American Termination Fee on more than one occasion.

(f) American's obligations pursuant to this Section 6.7, including American's obligations to pay the American No Vote Transaction Fee, the American Alternative Transaction Fee and the American Termination Fee, as applicable, shall constitute an allowed administrative expense of American.

ARTICLE VII

Miscellaneous and General

7.1 Effectiveness. Prior to the entry of the Merger Support Order by the Bankruptcy Court, this Agreement shall not be binding or enforceable against American, US Airways or Merger Sub. Upon (i) execution and delivery by American, US Airways and Merger Sub of counterpart signature pages hereto, and (ii) entry of the Merger Support Order by the Bankruptcy Court, this Agreement shall become effective and binding on, and enforceable against, each of American, US Airways or Merger Sub retroactive to the date hereof as if this Agreement had been in full force and effect from the date hereof; provided that if this Agreement is validly terminated in accordance with Article VI at any time prior to the time of such effectiveness, this Agreement shall not become effective, binding or enforceable against any of American, US Airways or Merger Sub.

7.2 Survival. This Article VII and the agreements of American, US Airways and Merger Sub contained in Article II and Sections 4.10 (Employee Matters), 4.12 (Indemnification; Directors' and Officers' Insurance) and 4.17 (Reservation of Newco Common Stock) shall survive the consummation of the Merger. This Article VII and the agreements of American, US Airways and Merger Sub contained in Section 4.11 (Expenses), Section 6.5

(Effect of Termination and Abandonment), Section 6.6 (US Airways Termination Fees) and Section 6.7 (American Termination Fees) and the Non-Disclosure Agreements shall survive the termination of this Agreement. Except as set forth in this Section 7.2, (a) no representations, warranties, covenants or agreements in this Agreement shall survive the consummation of the Merger or the termination of this Agreement and (b) other than claims made with respect to any such surviving representation, warranty, covenant or agreement by an intended beneficiary thereof under Section 7.9, from and after the earlier of the Effective Time or the termination of this Agreement, no claim shall be brought or maintained by any party hereto, including the Debtors, their successors or their estates, or any other Person, including third-party beneficiaries, with respect to any breach hereof.

7.3 Modification or Amendment. Subject to the provisions of the applicable Laws, at any time prior to the Effective Time, the parties hereto (with respect to American, after consultation with the UCC's Advisors) may modify or amend this Agreement, by written agreement executed and delivered by duly authorized officers of the respective parties; provided, however, that any material modification of this Agreement prior to the Effective Time shall be subject to the approval of the Bankruptcy Court; provided, further that (i) any material amendment or modification to Section 1.8 or Section 4.23 of this Agreement or (ii) any amendment or modification to any other provision of this Agreement that materially adversely affects the notice, consent, consultation or participation rights expressly granted to the Creditors' Committee or the UCC's Advisors under this Agreement, shall require the prior approval of the UCC's Legal Advisor.

7.4 Waiver of Conditions. The conditions to each of the parties' obligations to consummate the Merger are for the sole benefit of such party and (with respect to American, after consultation with the UCC's Advisors) may be waived by such party in whole or in part; provided, however, that the condition in Section 5.3(d) shall not be waivable after receipt of Stockholder Approval unless further stockholder approval is obtained with appropriate disclosure.

7.5 Counterparts. This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

7.6 Governing Law and Venue; Waiver of Jury Trial.

(a) **THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICTS OF LAW PRINCIPLES THEREOF.** The parties hereby irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court, or if such court will not hear any such suit, the courts of the State of New York and the federal courts of the United States of America located in the State of New York, to interpret and enforce the terms of this Agreement and the documents referred to in this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and any and all proceedings

related to the foregoing shall be filed and maintained only in the Bankruptcy Court or such other court. The parties hereby irrevocably waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such courts. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and consent to the jurisdiction of any such court over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 7.7 or in such other manner as may be permitted by Law shall be valid and sufficient service thereof.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.6.

7.7 Notices. Any notice, request, instruction or other document to be given hereunder by any party to the others shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, by facsimile, by electronic mail or by overnight courier:

If to American or Merger Sub:

AMR Corporation
4333 Amon Carter Blvd., Mail Drop 5618HDQ
Ft. Worth, Texas 76155
Attention: Gary Kennedy, Senior Vice President and General Counsel
Facsimile: 817- 967-2501
E-mail: gary.kennedy@aa.com

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

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Thomas A. Roberts, Stephen Karotkin
Facsimile: 212-310-8007
E-mail: thomas.roberts@weil.com, stephen.karotkin@weil.com

and

Weil, Gotshal & Manges LLP
200 Crescent Court, Suite 300
Dallas, TX 75201-6950
Attention: Glenn D. West
Facsimile: 214-746-7777
E-mail: gdwest@weil.com

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

Financial advisor to American:

Rothschild Inc.
1251 Avenue of the Americas, 51st Floor,
New York, NY 10020
Attention: Christopher Lawrence
Facsimile: 212-403-3625
E-mail Christopher.lawrence@rothschild.com

If to the Creditors' Committee:

Counsel to the Creditors' Committee (the "*UCC's Legal Advisor*"), the UCC's Advisors or the UCC's Legal Advisor:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
Attention: Eric Cochran, Sean Doyle
Facsimile: 212−735−2000
Email: Eric.Cochran@skadden.com, Sean.Doyle@skadden.com

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

Financial advisor to the Creditors' Committee:

Moelis & Company
399 Park Avenue, 5th floor
New York, NY 10022
Attention: William Q. Derrough

Facsimile: 212-880- 4260
Email: William.Derrough@moelis.com

If to US Airways:

US Airways Group, Inc.
111 West Rio Salado Parkway
Tempe, Arizona 85281
Attention: Stephen L. Johnson, EVP—Corporate and Government Affairs
Facsimile: 480-693-5155
E-mail: stephen.johnson@usairways.com

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

Millstein & Co., L.P.
1717 Pennsylvania Avenue, N.W., Suite 333
Washington, D.C. 20006
Attention: Jim Millstein
Facsimile: 202-974-6119
E-mail: jim@millsteinandco.com

and

Latham & Watkins LLP
140 Scott Drive
Menlo Park, CA 94025
Attention: Peter F. Kerman
Facsimile: 650-463-2600
E-mail: peter.kerman@lw.com

or to such other persons or addresses as may be designated in writing by the party to receive such notice as provided above. Any notice, request, instruction or other document given as provided above shall be deemed given to the receiving party upon actual receipt, if delivered personally; three business days after deposit in the mail, if sent by registered or certified mail; upon confirmation of successful transmission if sent by facsimile (provided that if given by facsimile such notice, request, instruction or other document shall be followed up within one business day by dispatch pursuant to one of the other methods described herein); upon confirmation of successful transmission if sent by electronic mail; or on the next business day after deposit with an overnight courier, if sent by an overnight courier.

7.8 Entire Agreement. This Agreement (including any exhibits hereto), the American Disclosure Letter, the US Airways Disclosure Letter, the Amended and Restated Non-Disclosure Agreement, dated as of the date of this Agreement, between US Airways and American, relating to the information to be provided by American to US Airways (the "*US Airways NDA*") and the Amended and Restated Non-Disclosure Agreement, dated as of the date of this Agreement, between US Airways and American, relating to the information to be provided by US Airways to American (the "*American NDA*" and together with the US Airways NDA, as they may be amended, amended and restated, modified or provisions thereof waived,

the "*Non-Disclosure Agreements*") constitute the entire agreement, and supersede all other prior agreements, understandings, representations and warranties both written and oral, among the parties, with respect to the subject matter hereof.

7.9 Third Party Beneficiaries. Except as provided in Section 4.12 (Indemnification; Directors' and Officers' Insurance), this Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies whatsoever; provided, however, the Creditors' Committee is explicitly named as a third party beneficiary solely as to the provisions of this Agreement expressly granted to the Creditors' Committee or the UCC's Advisors hereunder, with the right to enforce such provisions subject to the terms hereof.

7.10 Obligations of American and of US Airways. Whenever this Agreement requires a Subsidiary of American to take any action, such requirement shall be deemed to include an undertaking on the part of American to cause such Subsidiary to take such action and, after the Effective Time, on the part of the Surviving Corporation to cause such Subsidiary to take such action. Whenever this Agreement requires a Subsidiary of US Airways to take any action, such requirement shall be deemed to include an undertaking on the part of US Airways to cause such Subsidiary to take such action.

7.11 Definitions. Each of the terms set forth in Annex A is defined in the Section of this Agreement set forth opposite such term.

7.12 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

7.13 Interpretation; Construction.

(a) The table of contents and headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof. Where a reference in this Agreement is made to a Section, Annex or Exhibit, such reference shall be to a Section of, or Annex or Exhibit to, this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The term "made available" and words of similar import means that the relevant documents, instruments or materials were either (A) posted and made available to the other party or its designated Representatives on the Intralinks due diligence data site, with respect to American, or on the RR Donnelley due diligence data site, with respect to US Airways, as applicable, maintained by either

company for the purpose of the transactions contemplated by this Agreement, or (B) publicly available by virtue of the relevant party's filing of a publicly available final registration statement, prospectus, report, form, schedule or definitive proxy statement filed with the SEC pursuant to the Securities Act or the Exchange Act, in each case, prior to the date such documents, instruments or materials were represented by a party to have been made available to the other party.

(b) The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

(c) Each of American and US Airways has or may have set forth information in its respective disclosure letter in a section thereof that corresponds to the section of this Agreement to which it relates. A matter set forth in one section of a disclosure letter need not be set forth in any other section of the disclosure letter so long as its relevance to the latter section of the disclosure letter or section of the Agreement is readily apparent on the face of the information disclosed in the disclosure letter to the Person to which such disclosure is being made. The fact that any item of information is disclosed in a disclosure letter to this Agreement shall not be construed to mean that such information is required to be disclosed by this Agreement. Such information and the dollar thresholds set forth herein shall not be used as a basis for interpreting the terms "material," "American Material Adverse Effect," "US Airways Material Adverse Effect" or other similar terms in this Agreement.

(d) The phrase "ordinary course of business" and words of similar import shall mean, when used with respect to American or its Subsidiaries, the ordinary course of business of American or its Subsidiaries as conducted prior to the commencement of the Cases (it being understood that the fact that the Debtors may seek Bankruptcy Court approval of any matter shall not, in and of itself, constitute a determination that such matter is not in the ordinary course of business for purposes of this Agreement).

7.14 Assignment. This Agreement shall not be assignable by operation of law or otherwise. Any purported assignment in violation of this Agreement will be void ab initio.

7.15 Specific Performance. American, US Airways and Merger Sub agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto fail to perform the provisions of this Agreement in accordance with their specified terms or to take such actions as are required of them hereunder to consummate the Closing in accordance with the terms of this Agreement or otherwise breach such provisions. American, US Airways and Merger Sub agree that the parties hereto shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, including specific performance in connection with enforcing a party's obligation to consummate the Closing in accordance with the terms of this Agreement. Each of American, US Airways and

Merger Sub agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief consistent with this Section 7.15 on the basis that the other parties have an adequate remedy at law. A party seeking an injunction to prevent breaches of this Agreement or to enforce specifically the terms and provisions of this Agreement in accordance with this Section 7.15 shall not be required to provide any bond or other security in connection with any such order or injunction.

[*Remainder of Page Intentionally Left Blank.****]***

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

AMR CORPORATION

By: _____
Name: Thomas W. Horton
Title: Chairman, President and Chief Executive Officer

AMR MERGER SUB, INC.

By: _____
Name: Thomas W. Horton
Title: President

US AIRWAYS GROUP, INC.

By: _____
Name: W. Douglas Parker
Title: Chairman and Chief Executive Officer

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

AMR CORPORATION

By: _____
Name: Thomas W. Horton
Title: Chairman, President and Chief Executive Officer

AMR MERGER SUB, INC.

By: _____
Name: Thomas W. Horton
Title: President

US AIRWAYS GROUP, INC.

By: _____
Name: W. Douglas Parker
Title: Chairman and Chief Executive Officer

ANNEX A

DEFINED TERMS

AMENDMENT TO

AGREEMENT AND PLAN OF MERGER

THIS AMENDMENT TO AGREEMENT AND PLAN OF MERGER (this "*Amendment*") is made and entered into as of May 15, 2013, by and among AMR Corporation, a Delaware corporation ("*American*"); AMR Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of American ("*Merger Sub*"); and US Airways Group, Inc., a Delaware corporation ("*US Airways*"); and this Amendment amends that certain Agreement and Plan of Merger (the "*Merger Agreement*"), dated as of February 13, 2013, by and among American, Merger Sub, and US Airways. Capitalized terms used in this Amendment and not defined herein shall have the meanings given to such terms in the Merger Agreement.

WHEREAS, in accordance with Section 7.3 of the Merger Agreement, the parties hereto wish to amend the Merger Agreement as specified herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Merger Support Order. Notwithstanding any other provision of the Merger Agreement, the term "Merger Support Order" as used in the Merger Agreement, including for purposes of Section 6.2(d) and Section 7.1 of the Merger Agreement, shall mean that certain order entered by the Bankruptcy Court on May 10, 2013 entitled Order Authorizing and Approving (i) Merger Agreement Among AMR Corporation, AMR Merger Sub, Inc., and US Airways Group, Inc., (ii) Debtors' Execution of and Performance under Merger Agreement, (iii) Certain Employee Compensation and Benefit Arrangements, (iv) Termination Fees, and (v) Related Relief, which shall be deemed to be in form and substance reasonably acceptable to American and US Airways (ECF No. 8096).

2. Exhibit A. Section 1(a) of Article IV of Exhibit A of the Merger Agreement is amended by replacing the existing provision in its entirety with the following:

"The total number of shares of all classes of stock which the Corporation shall have authority to issue is 1,950,000,000 shares of capital stock, consisting of 1,750,000,000 shares of common stock having a par value of $0.01 per share (the "Common Stock") and 200,000,000 shares of preferred stock having a par value of $0.01 per share (the "Preferred Stock")."

3. Effectiveness. All of the provisions of this Amendment shall be effective as of the date hereof. Except as specifically provided for in this Amendment, all of the terms of the Merger Agreement shall remain unchanged and are hereby confirmed and remain in full force and effect, and, to the extent applicable, such terms shall apply to this Amendment as if it formed part of the Merger Agreement.

4. Effect of Amendment. Whenever the Merger Agreement is referred to in the Merger Agreement or in any other agreements, documents or instruments, such reference shall be deemed to be to the Merger Agreement as amended by this Amendment.

5. Counterparts. This Amendment may be executed and delivered (including by facsimile or electronic transmission) in any number of counterparts, and by the different

parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute a single instrument.

6. Governing Law. This Amendment shall deemed to be made in and in all respects shall be interpreted, construed, and governed by and in accordance with the law of the State of Delaware without regard to the conflicts of law principles thereof.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first above written.

AMR CORPORATION

By: _____
Name: Thomas W. Horton
Title: Chairman, President & CEO

AMR MERGER SUB, INC.

By: _____
Name: Thomas W. Horton
Title: President

US AIRWAYS GROUP, INC.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first above written.

AMR CORPORATION

By: _____
Name: _____
Title: _____

AMR MERGER SUB, INC.

By: _____
Name: _____
Title: _____

US AIRWAYS GROUP, INC.

By: _____
Name: _____
Title: _____

EXECUTION VERSION

SECOND AMENDMENT TO
AGREEMENT AND PLAN OF MERGER

THIS SECOND AMENDMENT TO AGREEMENT AND PLAN OF MERGER (this "*Amendment*") is made and entered into as of June 7, 2013, by and among AMR Corporation, a Delaware corporation ("*American*"), AMR Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of American ("*Merger Sub*"), and US Airways Group, Inc., a Delaware corporation ("*US Airways*"), and this Amendment amends that certain Agreement and Plan of Merger, dated as of February 13, 2013, by and among American, Merger Sub, and US Airways (as such has previously been amended, the "*Merger Agreement*"). Capitalized terms used in this Amendment and not defined herein shall have the meanings given to such terms in the Merger Agreement.

WHEREAS, in accordance with Section 7.3 of the Merger Agreement, the parties hereto wish to amend the Merger Agreement as specified herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Amendment to Section 1.6(a). Section 1.6(a) is deleted and replaced in its entirety with the following:

> (a) Newco. Immediately prior to the Effective Time, the certificate of incorporation of American shall be amended and restated substantially in the form set forth on Exhibit A hereto, until thereafter duly amended as provided therein or by applicable Laws (the "*Newco Charter*"). Immediately following the Effective Time and pursuant to the Plan, the Newco Charter shall be further amended to change the name of Newco from "AMR Corporation" to "American Airlines Group Inc.".

2. Amendment to Section 1.7(a). Section 1.7(a) is deleted and replaced in its entirety with the following:

> (a) Newco. At the Effective Time, the by-laws of American shall be amended and restated substantially in the form set forth on Exhibit C hereto until duly amended as provided therein or by applicable Laws (the "*Newco By-Laws*").

3. Effectiveness. All of the provisions of this Amendment shall be effective as of the date hereof. Except as specifically provided for in this Amendment, all of the terms of the Merger Agreement shall remain unchanged and are hereby confirmed and remain in full force and effect, and, to the extent applicable, such terms shall apply to this Amendment as if it formed part of the Merger Agreement.

4. Effect of Amendment. Whenever the Merger Agreement is referred to in the Merger Agreement or in any other agreements, documents or instruments, such reference shall be deemed to be to the Merger Agreement as amended by this Amendment.

5. Counterparts. This Amendment may be executed and delivered (including by facsimile or electronic transmission) in any number of counterparts, and by the different

parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute a single instrument.

6. Governing Law. This Amendment shall deemed to be made in and in all respects shall be interpreted, construed, and governed by and in accordance with the law of the State of Delaware without regard to the conflicts of law principles thereof.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first above written.

AMR CORPORATION

By: _____
Name: Gary F. Kennedy
Title: Sr. VP and General Counsel

AMR MERGER SUB, INC.

By: _____
Name: _____
Title: Sr. VP and General Counsel

US AIRWAYS GROUP, INC.

By: _____
Name: JOHNSON
Title: EXECUTIVE VICE PRESIDENT

Execution Version

THIRD AMENDMENT TO
AGREEMENT AND PLAN OF MERGER

THIS THIRD AMENDMENT TO AGREEMENT AND PLAN OF MERGER (this "*Amendment*") is made and entered into as of September 20, 2013, by and among AMR Corporation, a Delaware corporation ("*American*"), AMR Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of American ("*Merger Sub*"), and US Airways Group, Inc., a Delaware corporation ("*US Airways*"), and this Amendment amends that certain Agreement and Plan of Merger, dated as of February 13, 2013, by and among American, Merger Sub, and US Airways (as such has previously been amended, the "*Merger Agreement*") and the American Disclosure Letter referred to therein. Capitalized terms used in this Amendment and not defined herein shall have the meanings given to such terms in the Merger Agreement.

WHEREAS, in accordance with Section 7.3 of the Merger Agreement, the parties hereto wish to amend the Merger Agreement and the American Disclosure Letter as specified herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Amendment to Section 6.2(a) of the Merger Agreement. Section 6.2(a) of the Merger Agreement is deleted and replaced in its entirety with the following:

> (a) either (i) the Merger shall not have been consummated by the later of (A) January 17, 2014 and (B) fourteen (14) days after the District Court (as defined below) enters an Order in the Trial (as defined below) in favor of American and US Airways, provided that such Order is entered on or prior to January 17, 2014, or (ii) five (5) days shall have elapsed after the United States District Court for the District of Columbia (the "*District Court*") enters a final, but appealable, Order permanently restraining, enjoining or otherwise prohibiting consummation of the Merger following the trial in the proceeding captioned United States of America, et al. v. US Airways Group, Inc. and AMR Corporation (the "*Trial*");

2. Amendment to Section 4.20. The definition of "Plan" in Section 4.20(a)(ii) is deleted and replaced in its entirety with the following:

> (the "Plan"; it is understood and agreed that a condition precedent to the effectiveness of the Plan shall be that the matters set forth in Section 4.10 and Section 4.1(o) of the American Disclosure Schedule shall be in effect, other than the matter set forth as item 1 in Section 4.1(o) of the American Disclosure Letter, "Letter Agreement, dated February 13, 2013, among Thomas W. Horton, American Airlines, Inc. and AMR Corporation")

3. Effectiveness. All of the provisions of this Amendment shall be effective as of the date hereof. Except as specifically provided for in this Amendment, all of the terms of the Merger Agreement and the American Disclosure Letter shall remain unchanged and are hereby confirmed and remain in full force and effect, and, to the extent applicable, such terms shall apply to this Amendment as if it formed part of the Merger Agreement and the American Disclosure Letter.

4. Effect of Amendment. Whenever the Merger Agreement or the American Disclosure Letter is referred to in the Merger Agreement or in any other agreements, documents or instruments, such reference shall be deemed to be to the Merger Agreement and the American Disclosure Letter as amended by this Amendment.

5. Counterparts. This Amendment may be executed and delivered (including by facsimile or electronic transmission) in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute a single instrument.

6. Governing Law. This Amendment shall deemed to be made in and in all respects shall be interpreted, construed, and governed by and in accordance with the law of the State of Delaware without regard to the conflicts of law principles thereof.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first above written.

AMR CORPORATION

By: _____
Name: Gary F. Kennedy
Title: Senior Vice President & General Counsel

AMR MERGER SUB, INC.

By: _____
Name: Gary F. Kennedy
Title: Secretary

US AIRWAYS GROUP, INC.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first above written.

AMR CORPORATION

By: _____
Name: _____
Title: _____

AMR MERGER SUB, INC.

By: _____
Name: _____
Title: _____

US AIRWAYS GROUP, INC.

By:
Name: Stephen L. Johnson
Title: Executive Vice President, Corporate and Government Affairs

EXHIBIT B

CERTIFICATE OF DESIGNATIONS, POWERS, PREFERENCES AND RIGHTS

OF THE

SERIES A CONVERTIBLE PREFERRED STOCK

OF

AMERICAN AIRLINES GROUP INC.

Pursuant to Sections 151(g) and 303 of the
General Corporation Law of the State of Delaware

American Airlines Group Inc., a Delaware corporation (the "Corporation"), hereby certifies that pursuant to the Joint Chapter 11 Plan of Reorganization of AMR Corporation, dated [_____, 2013] (the "Plan"), which Plan was confirmed by order of the United States Bankruptcy Court for the Southern District of New York pursuant to Chapter 11 of the United States Bankruptcy Code and provides for the authorization and issuance of the Series A Preferred Stock (as defined below), and pursuant to the provisions of Sections 151(g) and 303 of the General Corporation Law of the State of Delaware (the "DGCL"), a series of preferred stock, par value $0.01 per share, of the Corporation, herein designated as "*Series A Convertible Preferred Stock*," is hereby issued, designated, created, authorized and provided for on the terms and with the voting powers, designations, preferences and relative, participating, optional, or other special rights and the qualifications, limitations or restrictions set forth herein and (to the extent applicable to preferred stock of the Corporation) in the Corporation's Amended and Restated Certificate of Incorporation as in effect on the date hereof (the "Certificate of Incorporation"):

Capitalized terms that are used but are not otherwise defined in this Certificate of Designations, Preferences and Rights (this "Certificate") shall have the meanings ascribed to them in Section 8 below.

Section 1. Designation; Stated Value; Form.

1.1 Designation. There is hereby created out of the authorized and unissued shares of Preferred Stock a series of Preferred Stock designated as "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"), and the number of shares of Series A Preferred Stock (each a "Share" and, collectively, the "Shares") constituting such series shall be [_____ (_____)].[1] The voting powers, designations, preferences and relative, participating, optional or other special rights, and such qualifications, limitations or restrictions of the Series A Preferred Stock shall be as set forth herein.

[1] Note to Draft: Number of shares will be equal to the quotient of the Total Initial Stated Value (as defined in the term sheet attached as Exhibit A to the Support and Settlement Agreement dated February 13, 2013) divided by the Initial Stated Value per Share.

1.2 Stated Value. The stated value of any Share, as of any date of determination, shall be equal to the sum of (i) $25 (the "Initial Stated Value") and (ii) the amount of the Accrued Stated Value (as defined below) with respect to such Share, calculated as of such date (the "Stated Value").

1.3 Form. The Corporation shall issue the Shares of Series A Preferred Stock in the form of one or more global certificates (each, a "Global Certificate") to be deposited in the facilities of DTC, and the beneficial interests in the Series A Preferred Stock will be reflected as electronic book-entry interests through the facilities of DTC and will transfer only via electronic book-entry interests through the facilities of DTC, and the procedures to be followed with respect to any Mandatory Conversion or Optional Conversion and any required increases or decreases to the number of Shares represented by the Global Certificate(s) will be in accordance with the applicable procedures of DTC; provided, that no such procedures shall adversely affect any of the rights of any Holder of the Shares as set forth in this Certificate.

Section 2. Dividends.

2.1 Accrual of Stated Value. From and after the Plan Effective Date, the Stated Value of each Share of Series A Preferred Stock will automatically increase, without any action to be taken by the Corporation or its Board of Directors (the "Board of Directors") and whether or not there are funds legally available for the payment of dividends, in arrears on a daily basis at the rate of 6.25% per annum, using the actual number of days elapsed and a 360-day year, without compounding, on the Initial Stated Value of such Share to and excluding the applicable Conversion Date of such Share (the cumulative amount of such increase, as of any date or time of determination, the "Accrued Stated Value"). A schedule of the Stated Value of each Share on each day (the first through the 120th) following the Plan Effective Date, after giving effect to the amount of the Accrued Stated Value as of such day, is set forth as Exhibit A hereto.

2.2 Participating Dividends. In the event that, on or after the Plan Effective Date, the Corporation declares or pays any dividends or distributions with respect to the Common Stock (excluding any dividends or distributions paid in the form of additional shares of Common Stock), each Holder shall be entitled to receive, in addition to the Accrued Stated Value accrued pursuant to Section 2.1, a dividend or distribution per Share of Series A Preferred Stock equal to the dividend or distribution that such Holder would have received with respect to the Common Stock Equivalent Number of shares of Common Stock as of immediately prior to the record date for determining the stockholders of the Corporation eligible to receive such dividend or distribution (or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends is determined).

Section 3. Liquidation.

3.1 Liquidation Event. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (a "Liquidation Event"), each Holder shall be entitled to receive, with respect to each Share of Series A Preferred Stock, on a *pro rata* basis with the Common Stock and without preference with respect to the Common Stock, the distribution(s) that such Holder would have been entitled to receive as a result of such

Liquidation Event with respect to the Common Stock Equivalent Number of shares of Common Stock as of immediately prior to such Liquidation Event. For the avoidance of doubt, the merger or consolidation of the Corporation with any other Person, including a merger or consolidation in which the Holders receive cash, securities or other property for their Shares of Series A Preferred Stock, or the sale, lease or exchange for cash, securities or other property of all or substantially all of the assets of the Corporation, in each case, shall not, in and of itself, constitute a Liquidation Event.

3.2 Notice Requirement. The Corporation shall, within five (5) Business Days following the date the Board of Directors approves any Liquidation Event or within five (5) Business Days following the commencement of any involuntary bankruptcy or similar proceeding, whichever is earlier, give each Holder written notice of the event. Such written notice shall describe, to the extent known to the Corporation, the material terms and conditions of such event relating to the treatment of the Series A Preferred Stock and the Common Stock, including, to the extent known to the Corporation, a description of the stock, cash and property to be received by the Holders with respect to their Shares of Series A Preferred Stock and the Common Stock as a result of the event and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the Corporation shall promptly give written notice to each Holder of such material change.

Section 4. Voting Rights.

(i) Each Share of Series A Preferred Stock shall entitle the Holder thereof to vote with the holders of Common Stock, voting together as a single class, with respect to any and all matters presented to the holders of Common Stock for their action, consideration or consent, whether at any special or annual meeting of stockholders, by written action of stockholders in lieu of a meeting (to the extent permitted by the Certificate of Incorporation and the DGCL), or otherwise. With respect to any such vote, each Share of Series A Preferred Stock held on the record date for determining the stockholders of the Corporation eligible to participate in such vote shall entitle the Holder thereof to cast 2.2989 votes, subject to adjustment pursuant to Section 6.1 (such number of votes, the "Preferred Stock Voting Ratio").

(ii) For so long as any Shares of Series A Preferred Stock remain outstanding, the Corporation shall not, without the written consent or affirmative vote at a meeting called for such purpose, given in person or by proxy, by Holders holding, in the aggregate, at least a majority of the outstanding Shares of Series A Preferred Stock (excluding any Shares beneficially owned directly or indirectly by the Corporation or any of its Subsidiaries), voting as a separate class, amend, alter or repeal (including by means of a merger, consolidation or otherwise) any provision of the Certificate of Incorporation or this Certificate that would alter or change the rights, preferences or privileges of the Series A Preferred Stock in a manner adverse to the holders of Shares of Series A Preferred Stock. In any case in which the Holders of Series A Preferred Stock shall be entitled to vote as a separate class pursuant to this Certificate, the Certificate of Incorporation or Delaware law, each Holder shall be entitled to one vote for each Share of Series A Preferred Stock held on the record date for determining the stockholders of the Corporation eligible to vote thereon.

Section 5. Conversion.

5.1 Mandatory Conversion. All Shares of Series A Preferred Stock, except to the extent previously converted pursuant to an Optional Conversion, shall automatically be converted into shares of Common Stock on the following terms and conditions (each such conversion, a "Mandatory Conversion").

(i) On each Mandatory Conversion Date, a number of Shares of Series A Preferred Stock equal to the lesser of (a) [___][2] and (b) the number of Shares outstanding on such Mandatory Conversion Date shall automatically be converted into that number of shares of Common Stock for each Share of Series A Preferred Stock equal to the quotient of (A) the Stated Value of such Share on such Mandatory Conversion Date, divided by (B) the Conversion Price in effect on such Mandatory Conversion Date, with fractional shares of Common Stock rounded up or down as provided herein. Each such Mandatory Conversion of Shares shall occur automatically without any further action by the relevant Holder or the Corporation. Prior to 9:00 a.m. New York City time on the first Business Day after each Mandatory Conversion Date, the Corporation shall publish the Conversion Price in effect with respect to such Mandatory Conversion Date and the number of shares of Common Stock issuable per $1,000 in Stated Value of Shares that are converted pursuant to Mandatory Conversion on such Mandatory Conversion Date, by posting such information on the Corporation's website and issuing a press release that contains such information.

(ii) Within three (3) Business Days following a Mandatory Conversion Date, the Corporation or Transfer Agent shall deliver by book-entry delivery via DTC to the accounts specified by DTC, a number of shares of Common Stock equal to the aggregate number of shares to be issued pursuant to the Mandatory Conversion of all Shares of Series A Preferred Stock converted by Mandatory Conversion with respect to such Mandatory Conversion Date.

(iii) With respect to each Mandatory Conversion Date, the conversion of Shares of Series A Preferred Stock pursuant to Mandatory Conversion shall be effectuated by the Corporation *pro rata* among all Holders (or such other method, including by lot, as may be required by DTC), based on the number of Shares outstanding as of 5:00 p.m., New York City time, on such Mandatory Conversion Date, after giving effect to any Optional Conversion for which the Optional Conversion Date occurs before such Mandatory Conversion Date.

(iv) For the avoidance of doubt, following the 120th day following the Plan Effective Date, Holders shall have no rights under the Series A Preferred Stock other than the right to receive the shares of Common Stock into which their Shares of Series A Preferred Stock were converted pursuant to any Mandatory Conversion or Optional Conversion hereunder and the rights that a holder of shares of Common Stock would have corresponding thereto.

5.2 Optional Conversion. At any time following the fifth (5th) trading day after the Plan Effective Date, and from time to time prior to the final Mandatory Conversion Date, each Holder shall have the right, but not the obligation, to elect to convert all or any

[2] Note to Draft: Insert amount equal to 25% of the total number of Shares of Series A Preferred Stock issued pursuant to the Plan.

portion of such Holder's Shares into shares of Common Stock, on the following terms and conditions (any such conversion, an "Optional Conversion"); provided that no Optional Conversion may be exercised during the three (3) Business Days prior to a Mandatory Conversion Date or the three (3) Business Dates following a Mandatory Conversion Date.

(i) Any Holder may elect to convert all or any portion of its Shares of Series A Preferred Stock into that number of shares of Common Stock for each Share of Series A Preferred Stock equal to the quotient of (a) the Stated Value of such Share on the Optional Conversion Date (as defined below), divided by (b) the Conversion Price in effect on such Optional Conversion Date, with fractional shares of Common Stock rounded up or down as provided herein; provided, however, that the aggregate number of Shares actually converted by all Holders pursuant to Optional Conversion during any Conversion Period shall not exceed 10,000,000 Shares (the "Optional Conversion Cap").

(ii) In order to effectuate an Optional Conversion of Shares of Series A Preferred Stock, the Holder of such Shares shall submit a written notice to the Corporation, duly executed by such Holder and in the form attached hereto as Exhibit B, or otherwise provide such notice as may be required by the applicable procedures of DTC, stating that such Holder irrevocably elects to convert the number of Shares specified in such notice to the Corporation of the Shares of Series A Preferred Stock being converted (a "Conversion Notice"). An election to convert Shares of Series A Preferred Stock pursuant to an Optional Conversion shall be deemed to have been made as of the following dates (the "Conversion Election Effective Date"): (a) on the date of receipt, with respect to any Conversion Notice received by the Corporation at or prior to 5:00 p.m., New York City time, on any Business Day and (b) on the next Business Day following such receipt, with respect to any Conversion Notice received by the Corporation on a non-Business Day or after 5:00 p.m., New York City time, on any Business Day. The conversion of all Shares of Series A Preferred Stock with respect to which an Optional Conversion election is made, and the issuance of all shares of Common Stock to be issued pursuant to such conversion, shall become effective as of the Conversion Election Effective Date for such election, subject to the Optional Conversion Cap and the provisions of Section 5.2(iv). As used herein, "Optional Conversion Date" means, with respect to any Share of Series A Preferred Stock for which a valid Optional Conversion election is made, the date on which the conversion of such Share becomes effective pursuant to the immediately preceding sentence. As promptly as practicable (and in no event more than three (3) Business Days) following each Optional Conversion Date, the Corporation or the Transfer Agent shall deliver to the applicable Holder (or, if applicable, the name of such Holder's designee as stated in the Conversion Notice), by book-entry delivery via DTC to the account(s) specified by DTC, a number of shares of Common Stock equal to the number of shares to which such Holder is entitled pursuant to the Optional Conversion of the Shares of such Holder's Series A Preferred Stock that were converted as of such Optional Conversion Date.

(iii) The Transfer Agent, if applicable, or the Corporation shall maintain a written record that lists each Optional Conversion election that is made from and after the Plan Effective Date and, with respect to each such election, (a) the electing Holder, (b) the number of Shares with respect which such election was made, (c) the Conversion Election Effective Date and (d) the extent applicable, the Optional Conversion Date(s) for the Shares of Series A

Preferred Stock converted pursuant to such election and the number of shares of Common Stock issued pursuant to such Optional Conversion on each such Optional Conversion Date.

(iv) During each Conversion Period, the Shares of Series A Preferred Stock that Holders elect to convert pursuant to Optional Conversion and for which the Conversion Election Effective Date occurs during such Conversion Period shall be converted on a "first come first serve" basis based on their respective Conversion Election Effective Dates, in each case subject to the Optional Conversion Cap and the terms and conditions of this Section 5.2(iv). Promptly (and in no event more than three (3) Business Days thereafter) after the Optional Conversion Cutoff Date with respect to a Conversion Period, the Corporation shall publish the fact that an Optional Conversion Cutoff Date has occurred and the date thereof by posting such information on the Corporation's website and issuing a press release that contains such information. If, at any time during any Conversion Period, the aggregate number of Shares with respect to which Optional Conversion elections are made and for which the Conversion Election Effective Date occurs during such Conversion Period exceeds the Optional Conversion Cap, then:

(a) any Optional Conversion election with a Conversion Election Effective Date that is after the Optional Conversion Cutoff Date shall not be given any effect;

(b) (A) all such Shares for which the Conversion Election Effective Date occurs prior to the Optional Conversion Cutoff Date shall be converted pursuant to Optional Conversion as of the Optional Conversion Date and (B) with respect to all such Optional Conversion elections for which the Optional Election Effective Date is the Optional Conversion Cutoff Date, the number of Shares converted pursuant to such Optional Conversions shall be cut back *pro rata* among all such elections, to the extent necessary to result in the aggregate number of Shares converted pursuant to Optional Conversion during such Conversion Period being not greater than the Optional Conversion Cap and such Shares which are not converted shall no longer be deemed to have submitted a Conversion Notice; and

(c) promptly (and in no event later than the second (2nd) Business Day thereafter) after the Optional Conversion Cutoff Date with respect to such Conversion Period, the Corporation or Transfer Agent shall provide written notice to each Holder of Shares of Series A Preferred Stock that are the subject of an Optional Conversion election for which the Conversion Election Effective Date occurred during such Conversion Period and were not converted pursuant to Optional Conversion during such Conversion Period, as follows (each, an "Optional Conversion Cutoff Notice"): (x) if none of such Holder's Shares are converted pursuant to Optional Conversion during such Conversion Period, the Optional Conversion Cutoff Notice shall include a statement to such effect and (y) if any of such Holder's Shares are cut back pursuant to clause (b) of this Section 5.2(iv), the Optional Conversion Cutoff Notice shall include a statement describing how such cutbacks were calculated and that to the extent such Holder's Shares that were not converted, such Holder must submit a new Conversion Notice with respect to such shares in a subsequent Conversion Period, if any, in order to effectuate an Optional Conversion with respect to such Shares.

5.3 General Conversion Provisions.

(i) Effect of Conversion on Series A Preferred Stock. All Shares of Series A Preferred Stock that are converted pursuant to Mandatory Conversion or Optional Conversion shall automatically, upon such conversion, be cancelled and retired and cease to exist, and shall not thereafter be reissued or sold and shall return to the status of authorized but unissued shares of Preferred Stock undesignated as to series. Upon the conversion of Shares of Series A Preferred Stock pursuant to Mandatory Conversion or Optional Conversion, all such Shares shall thereupon cease to confer upon the Holder thereof any rights (other than the right to receive the shares of Common Stock that such Holder is entitled to receive pursuant to such Mandatory Conversion or Optional Conversion) of a holder of Shares of Series A Preferred Stock, and the Person(s) in whose name the shares of Common Stock are to be issued upon such Mandatory Conversion or Optional Conversion shall be deemed to have become the holder(s) of record of such shares of Common Stock.

(ii) Status of Common Stock. All shares of Common Stock delivered upon any Mandatory Conversion or Optional Conversion of Shares will, upon such conversion, be duly and validly authorized and issued, fully paid and nonassessable, free from all preemptive rights, free from all taxes, liens, security interests, charges and encumbrances (other than liens, security interests, charges or encumbrances created by or imposed upon the Holder or taxes in respect of any transfer occurring contemporaneously therewith) and shall not be subject to any legend restricting trading thereof other than as provided for in the Certificate of Incorporation or Section 7 hereof.

(iii) No Charge or Payment. The issuance of shares of Common Stock upon conversion of Shares of Series A Preferred Stock pursuant to any Mandatory Conversion or Optional Conversion shall be made without payment of additional consideration by, or other charge, cost or tax to, the Holder in respect thereof; provided, however, that the Corporation shall not be required to pay any tax or other governmental charge that may be payable with respect to the issuance or delivery of any shares of Common Stock in the name of any Person other than the Holder of the converted Shares, and no such delivery shall be made unless and until the Person requesting such issuance has paid to the Corporation the amount of any such tax or charge, or has established to the satisfaction of the Corporation that such tax or charge has been paid or that no such tax or charge is due.

(iv) Reservation of Common Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of issuance upon conversion of the Shares of Series A Preferred Stock, such number of shares of Common Stock issuable upon the conversion of all outstanding Shares of Series A Preferred Stock pursuant to Mandatory Conversion and/or Optional Conversion at a Conversion Price equal to the Conversion Price Floor. The Corporation shall take all such actions as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation applicable to the Corporation or any requirements of any securities exchange upon which shares of Common Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not take any action which would cause the number of authorized but unissued shares of Common Stock to be less than the number of such shares

required to be reserved hereunder for issuance upon conversion of the Shares of Series A Preferred Stock.

(v) No Fractional Shares of Common Stock. No fractional shares of Common Stock shall be issued upon any Mandatory Conversion or Optional Conversion of Shares of Series A Preferred Stock. In lieu of delivering a fractional share of Common Stock to any Holder in connection with any such conversion, the number of full shares of Common Stock that shall be issued upon conversion of Shares held by the same Holder (including any Holder of a Global Certificate) shall be computed on the basis of the aggregate Stated Value of all Shares (or specified portion thereof) held by such Holder that is being converted and any fractional share of Common Stock shall be rounded up or down to the next whole number or zero, as applicable (with one-half being closer to the next lower whole number for this purpose).

Section 6. Adjustments for Stock Splits, Business Combinations, etc.

6.1 Stock Splits, Subdivisions, Reclassifications or Combinations. In the event that the Corporation, at any time from and after the Plan Effective Date, (i) pays any dividends or distributions with respect to the Common Stock, in the form of additional shares of Common Stock or (ii) subdivides (by stock split, recapitalization or otherwise) the outstanding shares of Common Stock into a greater number of shares, the Conversion Price Cap, the Conversion Price Floor and the Preferred Stock Voting Ratio in effect immediately prior to any such event, shall be proportionally increased. In the event that the Corporation, at any time from and after the Plan Effective Date, combines (by reverse stock split, recapitalization or otherwise) the outstanding Common Stock into a smaller number of shares, the Conversion Price Cap, the Conversion Price Floor and the Preferred Stock Voting Ratio in effect immediately prior to any such event shall be proportionally decreased. Any adjustment under this Section 6.1 shall become effective at the close of business on the date the dividend, subdivision or combination becomes effective, and successive adjustments shall be made, without duplication, whenever any such dividend, subdivision or combination shall occur.

6.2 Business Combinations. In case of any Business Combination, at any time from and after the Plan Effective Date, lawful provision shall be made as part of the terms of such Business Combination whereby each Holder shall have the right thereafter to convert each Share held by it only into the kind and amount of securities, cash and other property receivable upon the Business Combination by a holder of a Common Stock Equivalent Number of shares of Common Stock as of immediately prior to such Business Combination. The Corporation or the Person formed by the consolidation or resulting from the merger or which acquires such assets or which acquires the Corporation's shares, as the case may be, shall make provisions in its certificate or articles of incorporation or other constituent documents (each, a "Constituent Document") to establish such rights and to ensure that the dividend, voting, conversion and other rights of the Holders established herein are unchanged. Such Constituent Documents or any amendment thereof in accordance with this paragraph shall contain terms as nearly equivalent as may be practicable to the terms provided for in this Certificate, including adjustments, which, for events subsequent to the effective date of such Constituent Documents, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 6.

6.3 Other Adjustments. In the event that any transaction or event of the type contemplated by Sections 6.1 or 6.2 but not explicitly provided for in this Section 6 occurs with respect to the Common Stock, the Board of Directors shall take appropriate action as may be necessary or appropriate as determined in its reasonable good faith judgment to protect the rights of the Holders of Shares of Series A Preferred Stock in a manner consistent with the provisions of this Section 6.

6.4 Statement Regarding Adjustments. Promptly following any adjustment to the Conversion Price Cap, the Conversion Price Floor and/or the Preferred Stock Voting Ratio as provided in Section 6.1, or any other adjustment as provided in Section 6.2 or Section 6.3, the Corporation shall (i) file, at the principal office of the Corporation, a statement showing in reasonable detail the facts requiring such adjustment, and, as applicable, the Conversion Price Cap, the Conversion Price Floor and the Preferred Stock Voting Ratio that shall be in effect after such adjustment and (ii) deliver a copy of such statement to each Holder.

Section 7. Registration of Transfer.

The Shares of Series A Preferred Stock shall be freely tradable and any Holder may, at any time, transfer, sell or otherwise dispose of all or any portion of its Shares, subject to applicable securities laws and the restrictions set forth in Article IV of the Certificate of Incorporation with respect to "Equity Securities" and "Corporation Securities." The Corporation shall maintain and keep at its principal office a register or appoint a Transfer Agent to maintain a register for the registration and transfer of Shares of Series A Preferred Stock. The Corporation may place such legend on any Global Certificate and/or provide such notices as may be required by applicable law, the Certificate of Incorporation or the applicable requirements of DTC.

Section 8. Definitions. As used in this Certificate, the following terms shall have the following meanings:

"Business Combination" means any (i) reorganization, consolidation, merger, share exchange or similar business combination transaction involving the Corporation with any third party other than the merger contemplated by the Merger Agreement or (ii) any sale, assignment, conveyance, transfer, lease or other disposition by the Corporation and/or any of its subsidiaries to a third party of all or substantially all of the Corporation's assets, or assets constituting all or substantially all of the assets of the Corporation and its subsidiaries on a consolidated basis.

"Business Day" means any day other than a Saturday, a Sunday, or any other day on which banking institutions in New York, New York are required or authorized to close by law or executive order.

"Common Stock" means the common stock, par value $0.01 per share, of the Corporation.

"Common Stock Equivalent Number" means, as of any date of determination, the number of shares of Common Stock that a Holder of a Share of Series A Preferred Stock would have received assuming such Share was converted pursuant to an Optional Conversion, without regard to the Optional Conversion Cap, as of such date of determination.

"Conversion Date" means each Mandatory Conversion Date and each date on which Shares of Series A Preferred Stock are converted pursuant to an Optional Conversion.

"Conversion Period" means, with respect to any Mandatory Conversion Date, the period of time ending on such date and beginning on (i) the day following the immediately preceding Mandatory Conversion Date or (ii) the Plan Effective Date, in the case of the first Conversion Period.

"Conversion Price" means, with respect to any Conversion Date, an amount equal to 96.5% of the VWAP calculated with respect to such Conversion Date; provided, however, that such amount shall not be less than the Conversion Price Floor nor greater than the Conversion Price Cap.

"Conversion Price Cap" means the greater of (i) $19.00 and (ii) the Initial VWAP less the Conversion Price Floor plus the Initial VWAP, subject to adjustment as set forth in Section 6.1.[3]

"Conversion Price Floor" means $10.875 per share of Common Stock, subject to adjustment as set forth in Section 6.1.

"DTC" means The Depository Trust Company.

"Holder" means a holder of record of one or more Shares, as reflected in the stock records of the Corporation or the Transfer Agent, which may be treated by the Corporation and the Transfer Agent as the absolute owner of the Shares for all purposes.

"Initial VWAP" means the VWAP calculated as of the Plan Effective Date.

"Mandatory Conversion Date" means each of the 30th, 60th, 90th and 120th days following the Plan Effective Date.

"Merger Agreement" means that certain Agreement and Plan of Merger, dated as of February 13, 2013, by and among AMR Corporation ("AMR"), AMR Merger Sub, Inc., and US Airways Group, Inc.

"Optional Conversion Cutoff Date" means, with respect to any Conversion Period, the first date during such Conversion Period on which the aggregate number of Shares of Series A Preferred Stock with respect to which Optional Conversion elections were made and for which the Conversion Election Effective Date has occurred during such Conversion Period exceeds the Optional Conversion Cap.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

[3] Note to Draft: To be replaced with actual dollar amount (and Initial VWAP definition deleted), if amount can be calculated prior to filing this Certificate with the Delaware Secretary of State.

"Plan Effective Date" means the effective date of the Plan in accordance with the provisions of chapter 11 of the U.S. Bankruptcy Code.

"Total Initial Stated Value" means $[___],[4] the aggregate Initial Stated Value of all of the Shares issued by the Corporation pursuant to the Plan.

"trading day" means a trading day on the principal stock exchange on which the Common Stock is listed.

"Transfer Agent" means the transfer agent that may be appointed from time to time by the Corporation to maintain a register and record transfers of record ownership of the Shares.

"VWAP" means, with respect to any Conversion Date or any other date of determination, the volume weighted average price of Common Stock for the five (5) trading days ending on the last trading day immediately prior to such date; provided, however, that VWAP as of the Plan Effective Date and until the Common Stock is trading on a nationally recognized stock exchange shall be calculated as the volume weighted average price of the common stock of US Airways Group, Inc. for the five (5) trading days ending on the last trading day immediately prior to such date. The VWAP shall be calculated by using the "VWAP" function on a Bloomberg terminal by typing either "LCC" or the stock symbol for Common Stock, as applicable, and then pressing the "EQUITY" key, typing "VWAP," and then pressing the "GO" key. Once directed to the VWAP screen, the beginning time and date shall be entered as 9:30 a.m. EST on the date five (5) trading days prior to the previous trading day and the ending time and date shall be entered as of 4:00 p.m. EST on the last trading day, and then pressing the "GO" key.

Section 9. Amendment and Waiver.

Subject to any vote and approval of the Holders that may be required by Section 4(ii), this Certificate may be amended, modified, altered, repealed or waived, in full or in part, by the Corporation at any time, by a resolution duly adopted by the Board of Directors or a duly authorized committee of the Board of Directors.

Section 10. Notices.

Except as otherwise expressly provided hereunder, all notices and other communications referred to herein shall be in writing and delivered personally or sent by first class mail, postage prepaid, or by reputable overnight courier service, charges prepaid:

(i) If to the Corporation as follows, or as otherwise specified in a written notice given to each of the Holders in accordance with this Section 10:

[4] Note to Draft: Amount to be calculated in accordance with the term sheet attached as Exhibit A to the Support and Settlement Agreement dated February 13, 2013.

American Airlines Group Inc.
4333 Amon Carter Blvd., Mail Drop 5618HDQ
Ft. Worth, Texas 76155
Attention: Gary Kennedy, Senior Vice President and General Counsel
Facsimile: 817- 967-2501
E-mail: gary.kennedy@aa.com

(ii) If to any Holder, at such Holder's address as it appears in the stock records of the Corporation or as otherwise specified in a written notice given by such Holder to the Corporation or, at the Corporation's option with respect to any notice from the Corporation to a Holder, in accordance with customary DTC practice.

Any such notice or communication given as provided above shall be deemed received by the receiving party upon: actual receipt, if delivered personally; actual delivery, if delivered in accordance with customary DTC practice; five (5) Business Days after deposit in the mail, if sent by first class mail; or on the next Business Day after deposit with an overnight courier, if sent by an overnight courier.

Section 11. Severability.

Whenever possible, each provision hereof shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision hereof is held to be prohibited by or invalid under applicable law, then such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions hereof. If a court of competent jurisdiction should determine that a provision hereof would be valid or enforceable if a period of time were extended or shortened or a particular percentage were increased or decreased, then such court may make such change as shall be necessary to render the provision in question effective and valid under applicable law.

Section 12. Headings.

The headings of the various sections and subsections hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

[Signature page follows]

IN WITNESS WHEREOF, American Airlines Group Inc. has caused this Certificate of Designations of the Series A Convertible Preferred Stock to be signed by [_____], its authorized officer, this [__] day of [_____], 2013.

AMERICAN AIRLINES GROUP INC.

By: _____
Name:
Title:

[Signature Page to Certificate Designations]

Exhibit A

Accrued Stated Value

Day	Accrued Value	Day	Accrued Value	Day	Accrued Value	Day	Accrued Value
1	$25.004	31	$25.135	61	$25.265	91	$25.395
2	25.009	32	25.139	62	25.269	92	25.399
3	25.013	33	25.143	63	25.273	93	25.404
4	25.017	34	25.148	64	25.278	94	25.408
5	25.022	35	25.152	65	25.282	95	25.412
6	25.026	36	25.156	66	25.286	96	25.417
7	25.030	37	25.161	67	25.291	97	25.421
8	25.035	38	25.165	68	25.295	98	25.425
9	25.039	39	25.169	69	25.299	99	25.430
10	25.043	40	25.174	70	25.304	100	25.434
11	25.048	41	25.178	71	25.308	101	25.438
12	25.052	42	25.182	72	25.313	102	25.443
13	25.056	43	25.187	73	25.317	103	25.447
14	25.061	44	25.191	74	25.321	104	25.451
15	25.065	45	25.195	75	25.326	105	25.456
16	25.069	46	25.200	76	25.330	106	25.460
17	25.074	47	25.204	77	25.334	107	25.464
18	25.078	48	25.208	78	25.339	108	25.469
19	25.082	49	25.213	79	25.343	109	25.473
20	25.087	50	25.217	80	25.347	110	25.477
21	25.091	51	25.221	81	25.352	111	25.482
22	25.095	52	25.226	82	25.356	112	25.486
23	25.100	53	25.230	83	25.360	113	25.490
24	25.104	54	25.234	84	25.365	114	25.495
25	25.109	55	25.239	85	25.369	115	25.499
26	25.113	56	25.243	86	25.373	116	25.503
27	25.117	57	25.247	87	25.378	117	25.508
28	25.122	58	25.252	88	25.382	118	25.512
29	25.126	59	25.256	89	25.386	119	25.516
30	25.130	60	25.260	90	25.391	120	25.521

Exhibit B

AMERICAN AIRLINES GROUP INC.

CONVERSION NOTICE

Reference is made to the Certificate of Designations, Powers, Preferences and Rights of the Series A Convertible Preferred Stock of American Airlines Group Inc. (the "Certificate of Designations"). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of shares of Series A Convertible Preferred Stock, par value $0.01 per share (the "Series A Preferred Stock") of American Airlines Group Inc., a Delaware corporation (the "Corporation"), indicated below into shares of Common Stock, par value $0.01 per share (the "Common Stock") of the Corporation, as of the date specified below.

Date: _____

Number of Series A Preferred Stock to be converted: _____

Signature: _____

Printed Name: _____

Address: _____

_____

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
AMR CORPORATION, *et al.*,	:	**11-15463 (SHL)**
Debtors.	:	**(Jointly Administered)**

REVISED FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 362 ESTABLISHING NOTIFICATION PROCEDURES FOR SUBSTANTIAL CLAIMHOLDERS AND EQUITY SECURITY HOLDERS AND APPROVING RESTRICTIONS ON CERTAIN TRANSFERS OF INTERESTS IN THE DEBTORS' ESTATES

Upon the Motion, dated February 22, 2013 (the "**Motion**"),[1] of AMR Corporation and its related debtors, as debtors and debtors in possession (collectively, the "**Debtors**"), pursuant to sections 105(a) and 362 of title 11, United States Code (the "**Bankruptcy Code**"), for entry of a revised order establishing notification procedures and approving restrictions on certain transfers of Claims (as hereinafter defined) against and interests in the Debtors' estates, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided; and upon the statement in support of the Motion filed by the UCC (ECF No. 7232); and a hearing having been held to consider the relief requested in the Motion (the "**Hearing**"); upon the record of the

[1] Capitalized terms used herein and not initially defined shall have the meaning ascribed to such terms (i) in Paragraph (a)(v) in the case of provisions relating to AMR Stock, (ii) in Paragraph (b)(vi) in the case of provisions relating to Claims and Owned Interests, and (iii) if not otherwise defined herein, in the Motion.

Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

FOUND that the Debtors' net operating loss carryforwards ("**NOLs**") and certain other tax attributes (together with the NOLs, the "**Tax Attributes**") are property of the Debtors' respective estates and are protected by section 362(a) of the Bankruptcy Code; and it is further

FOUND that to protect the potential value of the Debtors' Tax Attributes, this Court entered an order on January 27, 2012 (ECF No. 890) (the "**Original Order**") imposing certain procedures with respect to substantial equity holders of the Debtors, which procedures are not being altered by this Revised Order, and certain other procedures with respect to the trading and accumulation of Claims against the Debtors; and it is further

FOUND that the revised procedures under this revised order (the "**Revised Order**") are necessary and proper to allow further flexibility of certain Claimholders while at the same time preserving the potential value of the Debtors' Tax Attributes and are therefore in the best interests of the Debtors, their estates, and their creditors; and it is further

FOUND that the relief requested in the Motion is authorized under sections 105(a) and 362 of the Bankruptcy Code.

THEREFORE, IT IS:

ORDERED that the Motion is granted as provided herein on a final basis; and it is further

ORDERED that the Original Order is hereby superseded and replaced by the terms of this Revised Order, and the provisions of this Revised Order shall be effective, nunc pro tunc, to November 29, 2011 (the "**Commencement Date**"); and it is further

ORDERED that any acquisitions, dispositions, or trading of AMR Stock in violation of the Procedures set forth in Paragraph (a) below shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code and pursuant to this Court's equitable powers under section 105(a) of the Bankruptcy Code; and it is further

ORDERED that any acquisitions, dispositions, or trading of Claims against the Debtors in violation of the Procedures set forth in Paragraph (b)(iii) below shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code and pursuant to this Court's equitable powers under section 105(a) of the Bankruptcy Code, and that any actions or inactions in violation of the other Procedures set forth in Paragraph (b) shall be subject to sanctions as provided herein, as applicable; and it is further

ORDERED that the following revised procedures (the "**Procedures**") shall apply to trading in AMR Stock and Claims and are approved:

(a) AMR Stock Ownership and Acquisition.

(i) Notice of Substantial Stock Ownership. Any person or Entity (as such term is defined in section 1.382-3(a) of the U.S. Department of Treasury Regulations promulgated under the Tax Code (the "**Treasury Regulations**"), including persons acting pursuant to a formal or informal understanding among themselves to make a coordinated acquisition) that beneficially owns, at any time on or after the Commencement Date, AMR Stock in an amount sufficient to qualify such person or Entity as a Substantial Equityholder (as hereinafter defined) shall file with this Court, and serve upon the Debtors, the attorneys for the Debtors, and the attorneys for any statutory committee of unsecured creditors appointed in these cases (the "**Creditors' Committee**"), a Notice of Substantial Stock Ownership (a "**Substantial Ownership Notice**"), in the form annexed hereto as **Exhibit** "**B**," which describes in detail the AMR Stock ownership of such person or Entity, on or before the date that is the later of: (a) ten (10) business days after the entry of this Revised Order and (b)

ten (10) business days after that person or Entity qualifies as a Substantial Equityholder. At the election of the Substantial Equityholder, the Substantial Ownership Notice to be filed with this Court (but not the Substantial Ownership Notice that is served upon the Debtors, the attorneys for the Debtors, and the attorneys for the Creditors' Committee) may be redacted to exclude the Substantial Equityholder's taxpayer identification number and the number of shares of AMR Stock that the Substantial Equityholder beneficially owns.

(ii) Acquisition of AMR Stock or Options. At least twenty (20) business days prior to the proposed date of any transfer of equity securities (including Options (as hereinafter defined) to acquire such securities) that would result in an increase in the amount of AMR Stock beneficially owned by any person or Entity that currently is a Substantial Equityholder or that would result in a person or Entity becoming a Substantial Equityholder (a "**Proposed Equity Acquisition Transaction**"), such person, Entity, or Substantial Equityholder (a "**Proposed Equity Transferee**") shall file with this Court, and serve upon the Debtors, the attorneys for the Debtors, and the attorneys for the Creditors' Committee, a Notice of Intent to Purchase, Acquire, or Otherwise Accumulate AMR Stock (an "**Equity Acquisition Notice**"), in the form annexed hereto as **Exhibit** "**C**," which describes in detail the proposed transaction in which AMR Stock is to be acquired. At the election of the Proposed Equity Transferee, the Equity Acquisition Notice that is filed with this Court (but not the Equity Acquisition Notice that is served upon the Debtors, the attorneys for the Debtors, and the attorneys for the Creditors' Committee) may be redacted to exclude the Proposed Equity Transferee's taxpayer identification number and the number of shares of AMR Stock that the Proposed Equity Transferee beneficially owns and proposes to purchase or otherwise acquire.

(iii) Approval Procedures. The Debtors may determine, in furtherance of the purposes of the Procedures and in consultation with the attorneys for the Creditors' Committee, whether or not to approve a Proposed Equity Acquisition Transaction. If the Debtors do not approve an Equity Acquisition Notice in writing within fifteen (15) business days after the Equity Acquisition Notice is filed with the Court, the Equity Acquisition Notice shall be deemed rejected and the related Proposed Equity Acquisition Transaction shall not be effective, unless the Proposed Equity Transferee files a motion with this Court for approval of the Proposed Equity Acquisition Transaction, which motion is approved by a final and nonappealable order of this Court. If the Proposed Equity Acquisition Transaction is approved by the Debtors, then such Proposed Equity Acquisition Transaction may proceed solely as specifically described in the Equity Acquisition Notice. Any further Proposed Equity Acquisition Transaction must be the subject of additional Equity Acquisition Notices and approval procedures set forth in the Procedures.

(iv) Unauthorized Transactions in AMR Stock or Options. Effective as of the Commencement Date and until further order of this Court to the contrary, any acquisition, disposition or other transfer of AMR Stock (including Options to acquire AMR Stock) of the Debtors in violation of the Procedures shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.

(v) Definitions. For purposes of this Revised Order, the following terms have the following meanings:

(1) AMR Stock. "AMR Stock" means AMR's Common Stock. For the avoidance of doubt, by operation of the definition of beneficial ownership (as hereinafter defined), an owner of an Option to acquire AMR Stock may be treated as the owner of such AMR Stock under certain circumstances.

(2) Beneficial Ownership. "Beneficial ownership" (or any variation thereof) of AMR Stock (including constructive ownership by virtue of holding Options to acquire AMR Stock) shall be determined in accordance with applicable rules under section 382 of the Tax Code, Treasury Regulations, and rulings issued by the Internal Revenue Service (the "**IRS**"), and, thus, to the extent provided in those rules, from time to time shall include, without limitation, (A) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all stock owned or acquired by its subsidiaries), (B) ownership by a holder's family members and any group of persons acting pursuant to a formal or informal understanding to make a coordinated acquisition of stock, and (C) to the extent set forth in Treasury Regulations section 1.382-4, the ownership of an Option to acquire AMR Stock.

(3) Option. An "Option" includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest regardless of whether it is contingent or otherwise not currently exercisable.

(4) Substantial Equityholder. A "Substantial Equityholder" means any person or Entity that beneficially owns at least 14,964,345 shares of AMR Stock (representing approximately 4.5% of all AMR Stock issued and outstanding).

(b) Trading in Claims.

(i) Disclosure of 382(l)(5) Plan.

If the proponent of a plan and disclosure statement (a "**Plan Proponent**") determines that the reorganized Debtors likely will benefit from the application of section 382(l)(5) of the Tax Code and reasonably anticipates that the reorganized

Debtors will invoke such section (a "**382(l)(5) Plan**"), then the Plan Proponent shall disclose in its proposed disclosure statement (the "**Proposed 382(l)(5) Disclosure Statement**"):

(1) Adequate information about the incremental tax benefits anticipated from the use of section 382(l)(5) of the Tax Code that would not otherwise be available (taking into account the Debtors' anticipated net unrealized built-in gains or net unrealized built-in losses);

(2) A summary of any restrictions expected to be imposed on the transferability of securities issued under the plan in order to preserve such incremental tax benefits;

(3) (A) The dollar amount of Claims (by class or other applicable breakdown) expected to result in a one-percent interest in the equity of Post-Emergence AMR, and (B) the number of any of the specified interests ("**Owned Interests**") in AMR or other entities (such as, for example, equity interests in US Airways) expected to result in a one-percent interest in the equity of Post-Emergence AMR, in each case based upon then available information;

(4) A specified date that is not less than ten (10) calendar days after the service of the notice of disclosure statement hearing with respect to the Proposed 382(l)(5) Disclosure Statement (the "**Initial Determination Date**");

(5) A specified date (that is not less than five (5) calendar days after the Initial Determination Date) for the initial notice required under Paragraph (b)(ii) (the "**Initial Reporting Deadline**"); and

(6) The relevant provisions of this Revised Order requiring Substantial Claimholders to file notices and to sell Claims, all as set forth below.

The disclosure statement as finally approved (the "**Final 382(l)(5) Disclosure Statement**") shall, in addition to the information set forth above, specify a date that is not less than ten (10) calendar days after the service thereof as the "**Final Determination Date**" and specify the date five (5) calendar days thereafter for the final notice required under Paragraph (b)(ii) (the "**Final Reporting Deadline**").

(ii) Notice of Substantial Claim Ownership.

(1) Any person or Entity (as such term is defined in Treasury Regulations section 1.382-3(a), including persons acting pursuant to a formal or informal understanding among themselves to make a coordinated acquisition) that beneficially owns either (1) more than

$190 million of Claims or (2) a lower amount of Claims which (based on the applicable information set forth in the Proposed 382(l)(5) Disclosure Statement or the Final 382(l)(5) Disclosure Statement, as applicable), when added to any Owned Interests beneficially owned by a holder of Claims (including under the aggregation rules described in the definition of "Substantial Claimholder" below), would result in such holder of Claims holding the Applicable Percentage of Post-Emergence AMR, in each case as of the Initial Determination Date or the Final Determination Date, shall serve upon the Plan Proponent, its attorneys, and the attorneys for the Creditors' Committee, a notice of such status (a "**Notice of Substantial Claim Ownership**"), in substantially the form annexed hereto as **Exhibit** "**D**" (or as adjusted and attached to the Proposed 382(l)(5) Disclosure Statement or the Final 382(l)(5) Disclosure Statement), with respect to each such determination date on which it beneficially owns such amounts, on or before the Initial Reporting Deadline and the Final Reporting Deadline, respectively. Such beneficial owner shall also set forth in the Notice of Substantial Claim Ownership its beneficial ownership, if any, of any Owned Interests and whether it agrees to refrain from acquiring beneficial ownership of additional Owned Interests (and Options to acquire the same) until after the effective date of the 382(l)(5) Plan.

(2) In order to assist in determining their eligibility for section 382(l)(5) of the Tax Code, the Debtors may, if after consultation with their attorneys and advisors and the attorneys and advisors for the Creditors' Committee, the Debtors determine that the application of section 382(l)(5) of the Tax Code is likely to be beneficial to one or more of the reorganized Debtors (or any successors thereto), request, from any person or Entity that beneficially owns either (1) more than $190 million of Claims or (2) a lower amount of Claims which, when added to the Owned Interests beneficially owned by a holder of Claims (including under the aggregation rules described in the definition of "Substantial Claimholder" below), would result in such holder of Claims holding the Applicable Percentage of Post-Emergence AMR (for purposes of making this determination, such request shall include information comparable to the information that would be required in a Proposed 382(l)(5) Disclosure Statement pursuant to Paragraph (b)(i)(3)), in each case as of the date specified in such request, information regarding its beneficial ownership of Claims and Owned Interests (and Options to acquire the same) prior to the filing of the Proposed 382(l)(5) Disclosure Statement in a manner consistent with Paragraphs (b)(i)(3)-(5) (including identifying the applicable information described in Paragraph (b)(i)(3)) based on then available information and substituting "**twenty (20)**" for "**ten**

(10)" in Paragraph (b)(i)(4)). In addition, the Debtors shall disclose such request in a separate filing with the SEC on Form 8-K.

(3) Any person or Entity that fails to comply with its notification obligations set forth in this Paragraph (b)(ii) shall, in addition to the consequences set forth in Paragraph (b)(iv)(8) below, be subject to such remedy as this Court may find appropriate upon motion by the Debtors after service upon such person or Entity and a hearing on notice in accordance with the Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rules**"), including, without limitation, ordering such noncompliant person or Entity to divest itself promptly of any beneficial ownership of Claims to the extent of the ownership by such person or Entity of an Excess Amount (as defined in Paragraph (b)(iv)(2)) and monetary damages for any costs reasonably incurred by the Debtors caused by the violation and enforcement of this Paragraph (b)(ii).

(iii) Claims Trading Before and After Final Determination Date.

(1) Any person or Entity generally may trade freely and make a market in Claims until the Final Determination Date.

(2) After the Final Determination Date, any acquisition of Claims by a Substantial Claimholder (or a person or Entity who would become a Substantial Claimholder as a result of the consummation of the contemplated transaction) shall not be effective unless consummated in compliance with Paragraphs (b)(iii)(3) and (4).

(3) At least ten (10) business days prior to the proposed date of any transfer of Claims that would result in (A) an increase in the dollar amount of Claims beneficially owned by a Substantial Claimholder or (B) any person or Entity becoming a Substantial Claimholder (a "**Proposed Claims Acquisition Transaction**"), such person, Entity, or Substantial Claimholder (a "**Proposed Claims Transferee**") shall serve upon the Plan Proponent, its attorneys, and the attorneys for the Creditors' Committee, a Notice of Request to Purchase, Acquire, or Otherwise Accumulate a Claim (a "**Claims Acquisition Request**"), in the form annexed hereto as **Exhibit** "**E,**" which describes in detail the intended acquisition of Claims, regardless of whether such transfer would be subject to the filing, notice, and hearing requirements set forth in Bankruptcy Rule 3001.

(4) The Plan Proponent may determine, in consultation with the attorneys for the Creditors' Committee, whether or not to approve a Claims Acquisition Request. If the Plan Proponent does not

approve a Claims Acquisition Request in writing within eight (8) business days after the Claims Acquisition Request is filed with the Court, the Claims Acquisition Request shall be deemed rejected.

(iv) Creditor Conduct and Sell-Down.

(1) To permit reliance by the Debtors on Treasury Regulations section 1.382-9(d)(3), upon the entry of this Revised Order, any Substantial Claimholder that participates in formulating any chapter 11 plan of reorganization of or on behalf of the Debtors (which shall include, without limitation, making any suggestions or proposals to the Debtors or their advisors with regard to such a plan) shall not disclose or otherwise make evident to the Debtors that any Claims in which such holder has a beneficial ownership are Newly Traded Claims, unless compelled to do so by an order of a court of competent jurisdiction or some other applicable legal requirement; *provided, however*, that the following activities shall not constitute participation in formulating a plan of reorganization *if*, in pursuing such activities, the Substantial Claimholder does not disclose or otherwise make evident (unless compelled to do so by an order of a court of competent jurisdiction or some other applicable legal requirement) to the Debtors that such Substantial Claimholder has beneficial ownership of Newly Traded Claims: filing an objection to a proposed disclosure statement or to confirmation of a proposed plan of reorganization; voting to accept or reject a proposed plan of reorganization; reviewing or commenting on a proposed business plan; providing information on a confidential basis to the attorneys for the Debtors; general membership on an official committee or an *ad hoc* committee; or taking any action required by the order of this Court.

(2) Following the Final Determination Date, if the Plan Proponent determines Substantial Claimholders must sell or transfer all or a portion of their beneficial ownership of Claims in order to reasonably ensure that the requirements of section 382(l)(5) of the Tax Code will be satisfied, the Plan Proponent may request, after notice to the Creditors' Committee and the relevant Substantial Claimholder(s) and a hearing, that this Court enter an order approving the issuance of a notice (each, a "**Sell-Down Notice**") that such Substantial Claimholder must sell, cause to sell, or otherwise transfer a specified amount of its beneficial ownership of Claims (by class or other applicable breakdown) equal to the excess of (x) the amount of Claims beneficially owned by such Substantial Claimholder over (y) the Maximum Amount for such Substantial Claimholder (such excess amount, an "**Excess Amount**"). The motion shall be heard on expedited notice such that this Court can render a decision at or before the hearing on

confirmation of the 382(l)(5) Plan. If this Court approves the Debtors' issuance of a Sell-Down Notice, the Debtors shall provide the Sell-Down Notice to the relevant Substantial Claimholder.

(3) Notwithstanding anything to the contrary in this Revised Order, no Substantial Claimholder shall be required to sell, cause to sell, or otherwise transfer any beneficial ownership of Claims if such sale would result in the Substantial Claimholder having beneficial ownership of an aggregate amount of Claims (by class or other applicable breakdown) that is less than such Substantial Claimholder's Protected Amount.

(4) Each Sell-Down Notice shall direct the Substantial Claimholder to sell, cause to sell, or otherwise transfer its beneficial ownership of the amount of Claims specified in the Sell-Down Notice to Permitted Transferees (the "**Sell-Down**"); *provided, however*, that such Substantial Claimholder shall not have a reasonable basis to believe that any such Permitted Transferee would own, immediately after the contemplated transfer, an Excess Amount of Claims; and *provided, further*, that a Substantial Claimholder that has properly notified the transferee of its Claims under Paragraph (b)(iv)(9) shall not be treated as having such reasonable basis in the absence of notification or actual knowledge that such transferee would own, after the transfer, an Excess Amount of Claims.

(5) The "**Sell-Down Date**" shall be the later of (i) five (5) business days after the entry of an order approving the 382(l)(5) Plan and (ii) such other date specified in the Sell-Down Notice, as applicable, but before the effective date of the 382(l)(5) Plan. Each Substantial Claimholder subject to the Sell-Down shall, as a condition to receiving Affected Securities (as hereinafter defined), on or before the Sell-Down Date serve upon the Plan Proponent, its attorneys, and the attorneys for the Creditors' Committee, a notice substantially in the form annexed hereto as **Exhibit** "**F**" that such Substantial Claimholder has complied with the terms and conditions set forth in this Paragraph (b)(iv) and that such Substantial Claimholder does not and will not hold an Excess Amount of Claims as of the Sell-Down Date and at all times through the effective date of the 382(l)(5) Plan (the "**Notice of Compliance**"). Any Substantial Claimholder who fails to comply with this provision shall not receive Affected Securities with respect to any Excess Amount of Claims.

(6) Provisions substantially identical to the sell-down procedures set forth in this Revised Order shall also be contained in the confirmed 382(l)(5) Plan and may be contained in the order confirming such plan.

(7) Other than information that is public or in connection with an audit or other investigation by the IRS or other taxing authority, the Plan Proponent shall keep all Notices of Compliance and any additional information provided by a Substantial Claimholder pursuant to this Revised Order ("**Confidential Information**") strictly confidential and shall not disclose the Confidential Information to any other person or Entity; *provided, however*, that the Plan Proponent may disclose the identity of the Substantial Claimholder to its counsel and professional financial advisors and/or the counsel and professional financial advisors of the Creditors' Committee and of any other person(s) that are subject to a nondisclosure agreement with the Plan Proponent, each of whom shall keep all Confidential Information strictly confidential, subject to further order of this Court; and *provided, further*, that to the extent the Plan Proponent reasonably determines such Confidential Information is necessary to demonstrate to this Court the need for the issuance of a Sell-Down Notice, such Confidential Information (determined by, among other things, whether such information was redacted in any public filing) shall be filed under seal.

(8) Any person or Entity that violates its obligations under Paragraph (b) or, if applicable, its agreement not to acquire beneficial ownership of Owned Interests (and Options to acquire the same) in its Notice of Substantial Claim Ownership shall, pursuant to this Revised Order, be precluded from receiving, directly or indirectly, any consideration consisting of a beneficial ownership of equity (including Options to acquire the same) of the Debtors (or any successor to the Debtors, including as determined for U.S. federal income tax purposes, and including Post-Emergence AMR) that is attributable to the Excess Amount of Claims for such person or Entity and, if applicable, to the Owned Interests (or Options to acquire the same) acquired in violation of such agreement by such person or Entity (or if the Owned Interests or Options acquired in violation of such agreement become beneficial ownership in the equity of the reorganized Debtors or any successor to the Debtors without the need to receive new equity interests, shall be precluded as a result of such violation (and, thus, in addition to any other amounts otherwise precluded hereunder) from receiving, directly or indirectly, any consideration consisting of a beneficial ownership of equity in the reorganized Debtor or any successor to the Debtor attributable to such person or Entity's Claims up to and including an amount equivalent to that represented by such Owned Interests and Options), in each case including any consideration in lieu thereof; *provided, however*, that such person or Entity may be entitled to receive any other consideration to which such person or Entity may be entitled by virtue of holding Claims (the "**Equity Forfeiture Provision**"). Any purported acquisition of, or other

increase in the beneficial ownership of, equity of the Debtors (or any successor) that is precluded by the Equity Forfeiture Provision will be an acquisition of "**Forfeited Equity.**" Any acquirer of Forfeited Equity shall, promptly upon becoming aware of such fact, return or cause to return the Forfeited Equity to the Debtors (or any successor to the Debtors, including Post-Emergence AMR) or, if all of the equity consideration properly issued to such acquirer and all or any portion of such Forfeited Equity shall have been sold prior to the time such acquirer becomes aware of such fact, such acquirer shall return or cause to return to the Debtors (or any successor to the Debtors, including Post-Emergence AMR) (A) any Forfeited Equity still held by such acquirer and (B) the proceeds attributable to the sale of Forfeited Equity, calculated by treating the most recently sold equity as Forfeited Equity. Any acquirer that receives Forfeited Equity and deliberately fails to comply with the preceding sentence shall be subject to such additional sanctions as this Court may determine. Any Forfeited Equity returned to the Debtors, including Post-Emergence AMR, shall be distributed (including a transfer to charity) or extinguished, in the Debtors' sole discretion, in furtherance of the 382(l)(5) Plan.

(9) In effecting any sale or other transfer of Claims pursuant to a Sell-Down Notice, a Substantial Claimholder shall, to the extent that it is reasonably feasible to do so within the normal constraints of the market in which such sale takes place, notify the acquirer of such Claims of the existence of this Revised Order and the Equity Forfeiture Provision (it being understood that, in all cases in which there is direct communication between a salesperson and a customer, including, without limitation, communication via telephone, e-mail, and instant messaging, the existence of this Revised Order and the Equity Forfeiture Provision shall be included in such salesperson's summary of the transaction).

(v) Exception.

(1) No person or Entity shall be subject to the advance approval of acquisition provisions of Paragraphs (b)(iii)(2) to (4) herein or, in the case of Claims that are part of the transferor's Protected Amount, the sell down provisions of Paragraph (b)(iv) herein with respect to any transfer described in Treasury Regulations section 1.382-9(d)(5)(ii); *provided, however*, that such transfer is not for a principal purpose of obtaining stock in the reorganized Debtors (or any successor, including Post-Emergence AMR) or permitting the transferee to benefit from the losses of the Debtors within the meaning of Treasury Regulations section 1.382-9(d)(5)(iii); and *provided, further*, that any such transferee who becomes a

Substantial Claimholder following the filing of a Proposed 382(l)(5) Disclosure Statement shall serve upon the Plan Proponent, its attorneys, and the attorneys for the Creditors' Committee, a notice of such status, in the form annexed hereto as **Exhibit** "**D,**" as provided in Paragraph (b)(i) and (ii).

(2) For the avoidance of doubt, the trustee of any trust, any indenture trustee, owner trustee, passthrough trustee, subordination agent, registrar, paying agent, transfer agent, loan or collateral agent, or any other entity serving in a similar capacity however designated (collectively, an "**Indenture Trustee**"), in each case for any Claim for any ownership interests, notes, bonds, debentures, PTCs, ETCs, EETCs (each as hereinafter defined), enhanced pass-through trust certificates, property or other debt securities or obligations (collectively, "**Debt Securities**") (A) issued by any of the Debtors, (B) issued by any governmental or quasi-governmental authority for the benefit of any of the Debtors, (C) secured by assets of any of the Debtors or agreements with respect to such assets or (D) secured by assets leased to any of the Debtors, shall not be treated as a "**Substantial Claimholder**" solely to the extent acting in the capacity described above; *provided, however*, that neither any transferee of Claims nor any equity or beneficial owner of a trust shall be excluded from this Revised Order solely by reason of this provision.

(3) Without limiting the application of Paragraph (b)(v)(2), no Indenture Trustee shall be subject to the provisions hereof that are applicable to beneficial owners of Claims or have or incur any liability for noncompliance with this Revised Order (including to any third party in connection with a transfer voided in accordance with the terms of this Revised Order), to the extent such Indenture Trustee follows its standard practices or acts in accordance with its respective prepetition governing documents with respect to (i) any transfer of Debt Securities or ownership interests in assets leased to the Debtors, (ii) any payments relating thereto (including any payments made to a holder of a Debt Security involved in a transfer which is voided under the terms of this Revised Order), or (iii) any actions taken in accordance with the instructions of holders of Debt Securities or ownership interests for which such Indenture Trustee acts; provided, however, that an Indenture Trustee shall be subject to this Revised Order to the extent such Indenture Trustee at any time is treated as the owner for U.S. federal income tax purposes of Debt Securities; provided, further, however, that neither any transferee of Claims nor any equity or beneficial owner of a trust shall be excluded from this Revised Order solely by reason of this provision.

(vi) Definitions. For purposes of this Revised Order, the following terms have the following meanings:

(1) Applicable Percentage. "**Applicable Percentage**" means, if only one class of Affected Securities is to be issued pursuant to the terms of the 382(l)(5) Plan and holders within any class of Claims will receive a pro rata distribution of the Affected Securities, 4.5% of the number of such shares that the Debtors reasonably estimate will be outstanding immediately after the effective date of such 382(l)(5) Plan, as determined for U.S. federal income tax purposes. If more than one class of the common stock or any other equity securities (including securities that are treated as equity securities for U.S. federal income tax purposes) of Post-Emergence AMR, including Options (as hereinafter defined) to acquire the same (the "**Affected Securities**"), is to be distributed pursuant to the terms of the 382(l)(5) Plan or holders within a class of Claims may receive a disproportionate distribution of such securities relative to other holders in the same class, the Applicable Percentage shall be determined by the Debtors in their reasonable judgment in a manner consistent with the estimated range of values for the equity to be distributed reflected in the valuation analysis set forth in the 382(l)(5) Plan and disclosure statement, and shall be expressed in a manner that makes clear the number of shares or other interests in each class of Affected Securities that would constitute the Applicable Percentage.

(2) Beneficial Ownership. "Beneficial ownership" of a Claim or Owned Interest means:

(A) the beneficial ownership of a Claim or Owned Interest as determined in accordance with applicable rules under section 382 of the Tax Code, the Treasury Regulations promulgated thereunder, and rulings issued by the IRS (for such purpose, treating a Claim as if it is stock), and, to the extent provided in those rules from time to time, shall include (A) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all Claims or Owned Interests owned or acquired by its subsidiaries), and (B) ownership by a holder's family members and any group of persons acting pursuant to a formal or informal understanding to make a coordinated acquisition of Claims, Owned Interests, and/or stock; and

(B) the beneficial ownership of an Option (irrespective of the purpose for which such Option was issued, created, or acquired) with respect to a Claim or Owned Interest.

For the avoidance of doubt, beneficial ownership of a Claim or Owned Interests also includes the beneficial ownership of any right to receive any equity consideration to be distributed in respect of a Claim or Owned Interests pursuant to a plan of reorganization or applicable Bankruptcy Court order.

(3) Claim. A "Claim" means any unsecured claim under which any of the Debtors is the obligor, which for this purpose shall include (i) the unsecured portion of the Tax-Exempt Bonds, and (ii) all ETCs, PTCs, and EETCs to the extent of their interest in any unsecured claims against the Debtors (other than as provided in Paragraph (b)(vi)(3)(C) below involving Leveraged Lease Structures). In the case of a secured claim, that portion of the claim (including such portion attributable to accrued and unpaid interest) that exceeds the current fair market value of the security shall be considered an unsecured Claim.

For purposes of this Revised Order, (i) a "**Leveraged Lease Structure**" means a leveraged lease transaction involving the lease of aircraft to any of the Debtors; and (ii) "**PTCs,**" "**ETCs,**" and "**EETCs**" mean ownership interests, bonds, debentures, pass-through certificates ("**PTCs**"), equipment trust certificates ("**ETCs**"), or enhanced equipment trust certificates ("**EETCs**"), in each case (w) issued by any of the Debtors, (x) issued by any governmental or quasi-governmental authority for the benefit of any of the Debtors, (y) secured by assets of any of the Debtors or agreements with respect to such assets, or (z) secured by assets leased to any of the Debtors.

If a holder of Claims is uncertain as to whether it is a holder of ETCs, PTCs, and/or EETCs issued solely in a Leveraged Lease Structure or issued in a non-Leveraged Lease Structure, or as to the amount of Claims represented by any ETCs, PTCs, and/or EETCs that it holds, such holder may serve upon the Debtors and Debtors' counsel written notice of the holder's uncertainty along with a description of the underlying Claim; and within five (5) business days after actual receipt of such notice, the Debtors shall inform the holder whether the ETCs, PTCs, and/or EETCs were issued in a Leveraged Lease Structure or in a non-Leveraged Lease Structure, or of the amount of Claims represented by the ETCs, PTCs, and/or EETCs, as applicable, subject to the right of such holder to file an objection with this Court to seek a review of such determination.

In calculating the amount or determining the status of any Claims under the Procedures, the following rules shall apply:

(A) Any applicable intercreditor agreements, including subordination agreements, shall be given effect in accordance with their terms.

(B) The amount of any Claims arising from any lease of aircraft that is treated as a lease for U.S. federal income tax purposes (including any lease that is part of a Leveraged Lease Structure in which PTCs, ETCs, or EETCs were issued) shall, solely for purposes of this Revised Order and subject to the succeeding paragraph, be considered equal to (i) the net present value of all future rent payments under such lease after November 29, 2011, discounted at a rate of 8%, minus (ii) the net present value of all future rent payments under a hypothetical lease of the same term discounted at a rate of 8%, with hypothetical lease payments determined by multiplying the current market value for the type (and age) of aircraft and engines that are the subject of the lease as reported in the most recent paper or online edition of AVITAS as of the date of the proposed transfer by 0.67% (.0067) for monthly payments, by 2% (.02) for quarterly payments and by 4% (.04) for semi-annual payments.

In connection with determining whether to adjust the Threshold Amount, the Debtors may also adjust the hypothetical lease payment percentages with respect to any aircraft lease if the Debtors determine (in consultation with the Creditors' Committee) that the percentages do not fairly reflect the useful life of the leased aircraft. Any such adjustment shall be disclosed in the same manner as would any change in the Threshold Amount (with specific notice being provided to the lessor of record and the Indenture Trustee to which rent is payable by the Debtors), and shall be effective in determining whether a person or Entity is a Substantial Claimholder from and after such time.

(C) All debt instruments issued by an obligor (other than any of the Debtors) in a Leveraged Lease Structure, and all ETCs, PTCs, and/or EETCs issued solely in respect of a Leveraged Lease Structure (collectively, the "**Leveraged Lease Obligations**"), shall not be treated as Claims against the Debtors; *provided, however*, that Leveraged Lease Obligations shall be treated as Claims against the Debtors if and when the holder or the indenture trustee or agent acting on behalf of the holder of such Leveraged Lease Obligations, as the case may be, has acquired Claims against the Debtors from the equity participant or lessor pursuant to a foreclosure, a voluntary or involuntary transfer, or any other acquisition of collateral (but only to the extent of their interest in the acquired Claims). After the occurrence of any such event following the filing of a Proposed 382(l)(5) Disclosure Statement,

any holder of Claims who becomes a Substantial Claimholder shall file a Notice of Substantial Claim Ownership as provided in Paragraph (b)(i) and (ii); *provided, however*, that the initial grant (or subsequent transfer) of a security interest in such Claims shall not be treated as a foreclosure, a voluntary or involuntary transfer, or any other acquisition for the above purpose.

(D) The amount of any Claims secured by a mortgage (including any lease that is not treated as a lease for U.S. federal income tax purposes) on an aircraft owned by a Debtor shall, solely for purposes of this Revised Order, be considered equal to the amount of outstanding principal and accrued interest under such mortgage (or lease), minus the current market value reported for the specific type (and age) of the aircraft and engines that are the subject of the mortgage (or lease) in the most recent paper or online edition of AVITAS as of the date of the proposed transfer.

(E) In the case of all Claims other than those Claims that are subject to the preceding clauses (B) and (D) above, the amount of the applicable Claim shall be the unsecured portion of such Claim, if any.

If a holder of a Claim is uncertain as to the extent to which such Claim is unsecured, such holder may serve upon the Debtors and Debtors' counsel written notice of the requesting holder's uncertainty along with a description of the underlying Claim; and within five (5) business days after actual receipt of such notice, the Debtors shall, in consultation with the requesting holder and the Creditors' Committee, reasonably determine the unsecured portion of the applicable Claim, subject to the right of such requesting holder to file an objection with this Court in order to seek a review of such determination; *provided, however*, that if the Claim to which the notice relates is a bond offering, PTC, ETC or EETC, the holder shall also serve such notice upon the applicable Indenture Trustee. Thereafter, upon written request of the Indenture Trustee, the Debtors shall inform such trustee of the determination.

No such determination nor anything else contained in this Paragraph (b)(vi)(3) shall be deemed an admission of a party or be used by any party for any purpose (including with respect to establishing the amount or character of a Claim) other than compliance with this Revised Order and shall not constitute an admission or evidence by any party with respect to Claims made or to be made against the Debtors.

(4) Entity. "Entity" has the meaning set forth in Paragraph (b)(ii)(1) above.

(5) Final Holdings Report. "Final Holdings Report" means a Notice of Substantial Claim Ownership served in connection with a Final Determination Date.

(6) Initial Holdings Report. "Initial Holdings Report" means a Notice of Substantial Claim Ownership received with respect to the Initial Determination Date.

(7) Maximum Amount. The Debtors shall calculate the maximum amount of Claims (by class or other applicable breakdown of Claims) that may be held, as of the effective date of the 382(l)(5) Plan, by a Substantial Claimholder that was a Substantial Claimholder as of the Final Determination Date (the "**Maximum Amount**") as follows:

(A) Based upon the information provided by the Substantial Claimholders in the Final Holdings Reports, the Debtors shall calculate the aggregate amount of Claims that all such Substantial Claimholders must sell as a group to effectuate the 382(l)(5) Plan (the "**Sell-Down Amount**");

(B) If the Sell-Down Amount is less than or equal to the Total Incremental Holdings, the Debtors shall calculate the amount of each Substantial Claimholder's *pro rata* share of the Sell-Down Amount (i.e., the Sell-Down Amount multiplied by a fraction, the numerator of which is such Substantial Claimholder's Incremental Holdings (as defined below) and the denominator of which is the Total Incremental Holdings (as defined below));

(C) If the Sell-Down Amount exceeds the Total Incremental Holdings, the Debtors shall calculate for each Substantial Claimholder the amount of such Substantial Claimholder's *pro rata* share of such excess (i.e., the total amount of such excess multiplied by a fraction, (x) the numerator of which is such Substantial Claimholder's Initial Holdings (as defined below) (if any) minus the greater of (A) the applicable Threshold Amount and (B) the Protected Amount for such Substantial Claimholder and (y) the denominator of which is the Total Initial Holdings (as defined below) in excess of the greater of (A) the aggregate applicable Threshold Amount for all Substantial Claimholders and (B) the aggregate Protected Amount of all Substantial Claimholders) and add to that the amount of such Substantial Claimholder's Incremental Holdings; and

(D) For each such Substantial Claimholder, the Debtors shall subtract from the total Claims held by such Substantial Claimholder (as reported in the Final Holdings Report) such Substantial Claimholder's share of the Sell-Down Amount calculated in accordance with clause (B) or (C) above, as applicable. The difference shall be the Maximum Amount.

With respect to a Substantial Claimholder (determined as of the Final Determination Date), "**Incremental Holdings**" means the amount, if any, of Claims identified in such Substantial Claimholder's Final Holdings Report in excess of the greatest of (x) the amount contained in such Substantial Claimholder's Initial Holdings Report, (y) the applicable Threshold Amount and (z) the Protected Amount of such Substantial Claimholder, and "**Initial Holdings**" means the amount, if any, of Claims identified in such Substantial Claimholder's Initial Holdings Report.

With respect to all Substantial Claimholders (determined as of the Final Determination Date), "**Total Incremental Holdings**" means the aggregate amount of all of the Substantial Claimholders' Incremental Holdings and "**Total Initial Holdings**" means the aggregate amount of all of the Substantial Claimholders' Initial Holdings.

(8) Newly Traded Claims. "**Newly Traded Claims**" means Claims (i) with respect to which a person or Entity acquired beneficial ownership after the date that was eighteen (18) months before the Commencement Date; and (ii) that are not "**ordinary course**" claims, within the meaning of Treasury Regulations section 1.382-9(d)(2)(iv), of which the same person or Entity has always had beneficial ownership.

(9) Option. An "**Option**" includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest regardless of whether it is contingent or otherwise not currently exercisable.

(10) Permitted Transferee. A "**Permitted Transferee**" with respect to a Substantial Claimholder is a person or Entity whose holding of a Claim would not result in such Substantial Claimholder having beneficial ownership of such Claim.

(11) Post-Emergence AMR. "**Post-Emergence AMR**" means the reorganized Debtors or any successor thereto, including, in the case of a possible combination with US Airways in connection with emergence from bankruptcy protection, equity securities of US Airways.

(12) Protected Amount. "**Protected Amount**" means the amount of Claims (by class or other applicable breakdown) of which a holder had beneficial ownership on the Commencement Date, increased by the amount of Claims of which such holder acquires, directly or indirectly, beneficial ownership pursuant to trades entered into before the Commencement Date that had not yet closed as of the Commencement Date minus the amount of Claims of which such holder sells, directly or indirectly, beneficial ownership pursuant to trades entered into before the Commencement Date that had not yet closed as of the Commencement Date.

(13) Substantial Claimholder. A "**Substantial Claimholder**" means any person or Entity that beneficially owns an aggregate dollar amount of Claims against the Debtors, or any Entity controlled by such person or Entity through which such person or Entity beneficially owns Claims against the Debtors, of more than the Threshold Amount.

For the avoidance of doubt, section 382 of the Tax Code, the Treasury Regulations promulgated thereunder, and all relevant IRS and judicial authority shall apply in determining whether the Claims of several persons and/or Entities must be aggregated when testing for Substantial Claimholder status, treating Claims as if they were stock.

(14) Tax-Exempt Bonds. The "**Tax-Exempt Bonds**" means those securities set forth on **Schedule** "**A**" annexed hereto.

(15) Threshold Amount. "**Threshold Amount**" means the greater of (x) the Minimum Threshold Amount, and (y) an amount of Claims which, when added to the Owned Interests beneficially owned by a holder of Claims (including under the aggregation rules described in the definition of "Substantial Claimholder" above), would result in such holder of Claims holding the Applicable Percentage of Post-Emergence AMR. For this purpose, any Option to purchase Owned Interests shall also be counted as stock owned.

Notwithstanding the foregoing, if a beneficial owner of Claims does not agree to refrain from acquiring beneficial ownership of any Owned Interests (and Options to acquire the same) from and after the date of the Motion in its Notice of Substantial Claim Ownership as set forth in Paragraph (b)(ii)(1) above, or immediately disposing of any such Owned Interests or Options (if acquired prior to submitting its Notice of Substantial Claim Ownership and so agreeing), the Threshold Amount for such beneficial owner of Claims shall be the Minimum Threshold Amount.

For this purpose, "**Minimum Threshold Amount**" shall be the lower of (x) $190 million and (y) the amount of Claims beneficially owned by a holder of Claims as of the date of the Motion.

(16) US Airways. "US Airways" means US Airways Group, Inc., or any successor thereto.

(c) Noncompliance with the Trading Procedures.

Any purchase, sale, or other transfer of equity securities in the Debtors in violation of the Procedures, or of Claims against the Debtors in violation of Paragraph (b)(iii), shall be null and void *ab initio* and shall confer no rights on the transferee. Any purchase, sale, or other transfer of Claims against the Debtors in violation of the other Procedures of Paragraph (b) shall be subject to sanctions set forth in Paragraphs (b)(ii)(3) and (b)(iv)(8), as applicable.

(d) Debtors' Right to Waive.

The Debtors may waive, in writing, any and all restrictions, stays, and notification procedures contained in this Revised Order; *provided*, *however*, that after a 382(l)(5) Plan has been properly filed by a Plan Proponent other than by (or jointly with) the Debtors, and is still actively being pursued before this Court, the consent of such Plan Proponent shall also be necessary for any subsequent waiver to be effective.

and it is further

ORDERED that, with respect to equipment described in section 1110 of the Bankruptcy Code, except as provided in such section, nothing contained in this Revised Order shall prohibit or in any manner limit or otherwise affect the rights of a secured party or a lessor or a conditional vendor under the Bankruptcy Code, including, but not limited to, section 1110 of the Bankruptcy Code; and it is further

ORDERED that any person or Entity acquiring and/or disposing of AMR Stock and/or Claims in violation of the restrictions set forth in the Procedures, or failing to comply with the "Notice of Substantial Stock Ownership," "Notice of Intent to Purchase, Acquire, or Otherwise Accumulate AMR Stock," "Notice of Substantial Claim Ownership," "Notice of Request to Purchase, Acquire, or Otherwise Accumulate a Claim Against the Debtors," and

"Notice of Compliance with Sell-Down Notice" requirements, as may be the case, shall be subject to such sanctions as this Court may consider appropriate pursuant to this Court's equitable power prescribed in section 105(a) of the Bankruptcy Code; and it is further

ORDERED, that the notices substantially in the form annexed hereto as Exhibit "A," Exhibit "B," Exhibit "C," Exhibit "D," Exhibit "E," Exhibit "F," and Exhibit "G" are approved; and it is further

ORDERED that nothing in this Revised Order shall preclude any party in interest from seeking appropriate relief from the provisions of this Revised Order; and it is further

ORDERED that the Debtors (or their agent) shall (i) serve the notice of the Revised Order, substantially in the form annexed hereto as Exhibit "G" (the "**Short-Form Notice**") on all creditors and equity security holders concurrently with the Notice of Hearing to Consider Approval of the Debtors' Proposed Disclosure Statement for the Debtors' Joint Chapter 11 Plan and (ii) publish the Short-Form Notice once in the national editions of *The Wall Street Journal* and *USA Today* contemporaneously therewith; and it is further

ORDERED that the Debtors (or their agent) shall make available the notice of Procedures, substantially in the form annexed hereto as Exhibit "A," on the website of the Debtors' claims and noticing agent, the Garden City Group, Inc., at http://amrcaseinfo.com; and it is further

ORDERED that nothing herein shall preclude any person or Entity desirous of purchasing or transferring any Claim or interest from requesting relief from this Revised Order in this Court subject to the Debtors' rights to oppose such relief; and it is further

ORDERED that notice of the Motion as provided therein shall be deemed good and sufficient notice of the Motion; and it is further

ORDERED that the requirements set forth in this Revised Order are in addition to the requirements of Bankruptcy Rule 3001(e), applicable securities, corporate, and other laws, and do not excuse compliance therewith; and it is further

ORDERED that the relief granted in this Revised Order is intended solely to allow further flexibility of certain Claimholders while at the same time permitting the Debtors to protect, preserve, and maximize the value of their Tax Attributes. Accordingly, to the extent that the Revised Order expressly conditions or restricts trading in Claims against and interests in the Debtors, nothing in this Revised Order or in the Motion shall or shall be deemed to prejudice, impair, or otherwise alter or affect rights of any holders of Claims against or interests in the Debtors, including in connection with the treatment of any such interests under any plan of reorganization or any applicable Bankruptcy Court order; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Revised Order.

Dated: New York, New York
April 11, 2013

/s/ Sean H. Lane
United States Bankruptcy Judge

SCHEDULE 1

AMR - Double-Dip General Unsecured Claims ($)	Applicable postpetition rate	Principal [1]	Prepetition accrued interest at Commencement Date	Postpetition accrued interest [2]	Interest on overdue interest [2]	Total Allowed General Unsecured Claim [3]
6.25% Senior Convertible Notes, due October 15, 2014	6.250%	$460,000,000	$3,513,889	$50,696,832	$2,099,254	$516,309,975
7.875% Public Income Notes due July 13, 2039	7.875%	150,000,000	918,750	20,798,490	1,284,133	173,001,373
9.0% Debentures, due August 1, 2012	9.000%	75,759,000	2,234,890	12,284,038	559,889	90,837,817
9.0% Debentures, due September 15, 2016	9.000%	60,943,156	1,127,448	9,776,120	587,512	72,434,236
10.0% Debentures due April 15, 2021	10.000%	32,162,000	393,091	5,697,141	381,505	38,633,737
10.2% Debentures, due March 15, 2020	10.200%	17,525,500	367,451	3,193,892	218,278	21,305,121
9.75% Debentures, due August 15, 2021	9.750%	15,700,000	442,217	2,754,266	177,355	19,073,837
9.88% Debentures, due June 15, 2020	9.880%	7,889,000	355,075	1,425,401	94,334	9,763,810
9.2% Series C Medium Term Notes, due January 30, 2012	9.200%	7,701,000	27,552	1,280,476	70,728	9,079,756
9.8% Debentures, due October 1, 2021	9.800%	5,065,000	79,971	882,362	57,872	6,085,205
10.55% Series B Medium Term Notes, due March 12, 2021	10.550%	3,725,000	15,283	690,550	48,221	4,479,054
10.29% Series B Medium Term Notes, due March 8, 2021	10.290%	2,365,000	9,464	427,582	29,101	2,831,147
9.14% Series D Medium Term Notes, due February 21, 2012	9.140%	1,090,000	3,874	177,826	9,617	1,281,317
10.15% Series C Medium Term Notes, due May 15, 2020	10.150%	913,000	3,604	162,812	10,926	1,090,342
10.125% Series C Medium Term Notes, due June 1, 2021	10.125%	591,000	2,327	105,130	7,037	705,494
4.5% Senior Convertible Notes, due February 15, 2024	4.500%	198,000	2,574	15,795	463	216,832
Total		**$841,626,656**	**$9,497,461**	**$110,368,712**	**$5,636,225**	**$967,129,054**

Notes

(1) Excludes OID

(2) At applicable postpetition rate

(3) Allowed amount of each Double-Dip General Unsecured Claim as of the Commencement Date, plus interest thereon (including interest on overdue interest, to the extent provided for in the underlying documents) from the Commencement Date through the Effective Date (assumed August 31, 2013)

SCHEDULE 2

American - Double-Dip General Unsecured Claims ($)	Applicable postpetition rate	Principal[1]	Prepetition accrued interest at Commencement Date	Postpetition accrued interest[2]	Interest on overdue interest[2]	Total Allowed General Unsecured Claim[3]
BNDES [4]	0.150%	$650,938,804	–	$1,795,845	–	$652,734,649
AllianceAirport - Series 2007	5.250%	207,130,000	5,376,750	19,524,058	677,390	232,708,197
AllianceAirport - Series 2007	5.750%	150,000,000	4,264,583	15,522,874	590,722	170,378,179
Dallas / Fort Worth - Series 2007	5.500%	131,735,000	563,533	12,733,734	457,145	145,489,412
Dallas / Fort Worth - Series 1995	6.000%	126,240,000	589,120	13,317,058	522,270	140,668,448
Puerto Rico - 1996 Series A	6.250%	115,600,000	3,572,361	13,034,477	539,946	132,746,785
Chicago - Series 2007	5.500%	108,675,000	2,955,357	10,744,422	390,816	122,765,594
JFK - 1994	6.900%	83,085,000	1,879,106	10,259,416	463,861	95,687,383
JFK - 1990	5.400%	71,150,000	1,579,530	4,581,960	88,844	77,400,334
NAC [4]	0.150%	74,000,000	–	204,155	–	74,204,155
AllianceAirport - Series 1991	7.000%	49,525,000	1,714,115	6,276,792	291,852	57,807,759
Puerto Rico - 1993 Series A	6.300%	39,705,000	1,236,811	4,513,835	188,507	45,644,152
JFK - 1990	5.400%	12,780,000	283,716	823,014	15,958	13,902,688
Dallas / Fort Worth - Series 2002	8.250%	7,110,000	45,623	1,033,093	56,057	8,244,772
Total		**$1,827,673,804**	**$24,060,605**	**$114,364,731**	**$4,283,367**	**$1,970,382,507**

Notes

(1) Excludes OID

(2) At applicable postpetition rate

(3) Allowed amount of each Double-Dip General Unsecured Claim as of the Commencement Date, plus interest thereon (including interest on overdue interest, to the extent provided for in the underlying documents) from the Commencement Date through the Effective Date (assumed August 31, 2013), plus an additional aggregate amount of $1,099,807.48 (not reflected in the numbers in the above table) for the reimbursement of the reasonable fees and expenses of the Indenture Trustees for the Indentures listed in Sections 1.216(ix) and 1.216(x) of the Plan through the fifteenth (15th) day prior to the Confirmation Hearing. Reasonable fees and expenses (if any) of such Indenture Trustees that are incurred after the twentieth (20th) day prior to the Confirmation Hearing shall be paid in Cash consistent with the manner provided in Section 2.4 of the Plan

(4) Postpetition interest and interest on overdue interest estimated assuming federal judgment rate for 1 year Treasury as of March 25, 2013 as listed by uscourts.gov; assumes all postpetition interest and interest on overdue interest is included in "Postpetition accrued interest"

SCHEDULE 3

American - Single-Dip General Unsecured Claims - Funded debt only ($)	Applicable postpetition rate	Principal [1]	Prepetition accrued interest at Commencement Date	Postpetition accrued interest [2]	Interest on overdue interest [2]	Total Allowed General Unsecured Claim [3]
Dallas / Fort Worth - Series 1999	6.375%	$199,160,000	$987,502	$22,328,956	$931,396	$223,407,854
Dallas / Fort Worth - Series 2000A3	9.125%	103,000,000	731,014	16,564,546	996,542	121,292,103
A300 N3075A	9.597%	4,431,539	–	727,210	46,072	5,204,821
A300 N7076A	9.597%	7,460,400	–	1,226,746	78,795	8,765,941
A300 N34078	9.597%	11,930,905	–	1,986,631	127,523	14,045,060
A300 N70079	9.165%	15,135,663	–	2,379,523	145,776	17,660,962
A300 N77080	9.165%	14,704,843	–	2,310,425	141,459	17,156,727
A300 N59081	8.202%	16,655,018	–	2,342,865	128,091	19,125,974
A300 N7082A	7.674%	11,544,818	–	1,518,523	77,519	13,140,861
A300 N7083A	7.748%	11,725,277	–	1,557,033	80,269	13,362,579
A300 N80084	4.250%	13,166,544	–	977,105	27,356	14,171,005
Dallas / Fort Worth - Series 2000A2	9.000%	65,000,000	455,000	10,309,163	611,504	76,375,667
Puerto Rico - 1985 Series A	6.450%	36,160,000	1,153,203	4,211,728	180,157	41,705,087
New Jersey - Economic Development	7.100%	17,855,000	98,599	2,230,735	103,839	20,288,173
Total		**$527,930,008**	**$3,425,318**	**$70,671,189**	**$3,676,300**	**$605,702,814**

Notes
(1) Excludes OID; includes charges related to underlying documents
(2) At applicable postpetition rate
(3) Allowed amount of each Single-Dip General Unsecured Claim as of the Commencement Date, plus interest thereon (including interest on overdue interest, to the extent provided for in the underlying documents) from the Commencement Date through the Effective Date (assumed August 31, 2013)

Tab 2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	
DELTA AIR LINES, INC., et al.,	**Chapter 11 Case No.** **05-17923 (ASH)**
Debtors.	**(Jointly Administered)**

ORDER CONFIRMING DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

The Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated April 25, 2007 (attached hereto as Exhibit A, the "**Plan**"),[1] having been filed with this Court (the "**Court**") by Delta Air Lines, Inc. ("**Delta**") and those of its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the "**Debtors**")[2]; and the Court having entered, after due notice and a hearing, an order dated February 7, 2007 (the "**Approval Order**"), pursuant to sections 105, 502, 1125, 1126 and 1128 of title 11 of the United States Code (the "**Bankruptcy Code**") and rules 2002, 3003, 3017 and 3018 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") (i) approving the Debtors' Disclosure Statement, including all Appendices attached thereto (as amended, the "**Disclosure Statement**"), (ii) approving solicitation packages and procedures for distribution thereof, (iii) allowing and estimating certain claims for voting purposes, (iv) approving forms of ballots and establishing voting procedures and (v) scheduling a hearing (the "**Confirmation Hearing**") and establishing notice and objection procedures in respect of confirmation of the Plan; and the Disclosure

[1] Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to such terms in the Plan.

[2] The Debtors are the following entities: ASA Holdings, Inc.; Comair Holdings, LLC; Comair, Inc.; Comair Services, Inc.; Crown Rooms, Inc.; DAL Aircraft Trading, Inc.; DAL Global Services, LLC; DAL Moscow, Inc.; Delta AirElite Business Jets, Inc.; Delta Air Lines, Inc.; Delta Benefits Management, Inc.; Delta Connection Academy, Inc.; Delta Corporate Identity, Inc.; Delta Loyalty Management Services, LLC; Delta Technology, LLC; Delta Ventures III, LLC; Epsilon Trading, LLC; Kappa Capital Management, Inc.; and Song, LLC.

Statement having been transmitted to all holders of Claims in Delta Class 4, Delta Class 5, Delta Class 6, Comair Class 4 and Comair Class 5 (collectively, the "**Voting Classes**") as provided for by the Approval Order; and the various Plan schedules and Plan Supplements (collectively, the "**Plan Supplements**") having been filed and served as required by the Plan; and the Confirmation Hearing having been held before the Court on April 25, 2007 after due notice to holders of Claims and Interests and other parties in interest in accordance with the Approval Order, the Bankruptcy Code and the Bankruptcy Rules; and upon all of the proceedings had before the Court, and after full consideration of: (i) each of the objections to confirmation of the Plan (the "**Objections**"); (ii) the memoranda in support of confirmation of the Plan and replies to the Objections filed by (a) the Debtors, dated April 23, 2007 and (b) the Creditors' Committee, dated April 23, 2007, (iii) the declarations and/or affidavits filed with the Court, including (a) the Declaration of Edward H. Bastian in Support of the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "**Bastian Affidavit**"), (b) the Declaration of Timothy R. Coleman in Support of the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "**Coleman Affidavit**"), (c) the Affidavit of James Katchadurian of Bankruptcy Services LLC Regarding the Methodology of the Tabulation of and Results of Voting with Respect to the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, and (d) the Certification of Jane Sullivan of Financial Balloting Group LLC with Respect to the Tabulation of Votes on the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "**Vote Certification**"), (collectively, the "**Affidavits**") and the testimony contained therein and any additional testimony presented to the Court and (iv) all other evidence proffered or adduced at, memoranda and objections filed in connection with and arguments of counsel made at the Confirmation Hearing; and after due deliberation and sufficient cause appearing therefor,

It hereby is DETERMINED, FOUND, ADJUDGED, DECREED AND ORDERED THAT:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2), 1334(a)). The Court has jurisdiction over the Chapter 11 Cases pursuant to sections 157 and 1334 of title 28 of the United States Code. Venue is proper pursuant to sections 1408 and 1409 of title 28 of the United States Code. Confirmation of the Plan is a core proceeding pursuant to section 157(b)(2)(L) of title 28 of the United States Code, and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

2. Commencement and Joint Administration of the Chapter 11 Cases. On the Petition Date, each of the above-captioned Debtors commenced a case under chapter 11 of the Bankruptcy Code. By prior order of the Court, the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. The Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

3. Judicial Notice. The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court, including, without limitation, all pleadings and other documents filed and orders entered thereon. The Court also takes judicial notice of all evidence proffered or adduced and all arguments made at the hearings held before the Court during the pendency of these Chapter 11 Cases.

4. Burden of Proof. The Debtors have the burden of proving the elements of section 1129 of the Bankruptcy Code by a preponderance of the evidence, and they have met that burden as further found and determined herein.

5. Notice; Transmittal and Mailing of Materials.

(a) Due, adequate and sufficient notice of the Disclosure Statement, the Plan and the Confirmation Hearing, along with the deadlines for voting on and filing objections to the Plan, has been given to all known holders of Claims and Interests substantially in accordance with the procedures set forth in the Approval Order, and no other or further notice is or shall be required;

(b) The Disclosure Statement, Plan, Ballots and Approval Order were transmitted and served in compliance with the Approval Order and the Bankruptcy Rules, and such transmittal and service were adequate and sufficient, and no further notice is or shall be required. All procedures used to distribute the solicitation packages to the Voting Classes were fair, and conducted in accordance with the Bankruptcy Code and the Bankruptcy Rules and all other applicable rules, laws and regulations;

(c) Adequate and sufficient notice of the Confirmation Hearing and other bar dates described in the Approval Order and the Plan have been given in compliance with the Bankruptcy Rules and the Approval Order, and no other or further notice is or shall be required; and

(d) The filing with the Court and service of the version of the Plan attached as Appendix A to the Disclosure Statement, and the filing of the Plan on April 23, 2007 and the disclosure of any further modifications on the record of the Confirmation Hearing, constitute due and sufficient notice of the Plan and all later modifications thereto.

6. Voting. Votes on the Plan were solicited after disclosure of "adequate information" as defined in section 1125 of the Bankruptcy Code. As evidenced by the Vote Certification, votes to accept the Plan have been solicited and tabulated fairly, in good faith and in a manner consistent with the Approval Order, the Bankruptcy Code and the Bankruptcy Rules.

7. Plan Supplements. On March 20, 2007, the Debtors filed certain Plan Supplements, as described in Section 17.6 of the Plan. Additional Plan Supplements were filed on March 30, 2007. In addition, the Debtors filed schedules to the Plan on several different dates. All such Plan Supplements

comply with the terms of the Plan, and the filing and notice of such documents was good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Approval Order, and no other or further notice is or shall be required.

8. Plan Modifications (11 U.S.C. § 1127). Subsequent to solicitation, the Debtors made certain non-material modifications to the Plan (the "**Plan Modifications**"). Among these modifications, the Debtors modified the Plan to describe (a) the agreement dated as of June 22, 2001 (and as modified by Letter of Agreement 1-07, executed as of March 2, 2007) between Comair and the Air Line Pilots in the service of Comair, as represented by ALPA (the "**ALPA Comair CBA**"), (b) the agreements to monetize a portion of the ALPA Claim and the ALPA Comair Claim (collectively, the "**ALPA Monetization Agreements**"), (c) the CVG Settlement Agreement and (d) the Amendment dated April 23, 2007 (the "**PBGC Settlement Agreement Amendment**") by and among Delta and certain affiliated entities, the Benefit Funds Investment Committee of Delta, the Administrative Committee of Delta and PBGC to the PBGC Settlement Agreement. The ALPA Comair CBA, the ALPA Monetization Agreements, the CVG Settlement Agreement and the PBGC Settlement Agreement Amendment were not executed until after solicitation had commenced. In addition, the Debtors made certain other non-material modifications to the Plan, as also reflected in the version attached hereto. Except as provided for by law, contract or prior order of this Court, none of the modifications made since the commencement of solicitation adversely affects the treatment of any Claim against or Interest in any of the Debtors under the Plan. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, none of these modifications require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code (especially in light of previously provided disclosures), nor do they require that holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan as modified shall constitute the Plan submitted for confirmation by the Court.

9. Notice of Plan Modifications. Prior notice regarding the substance of the modifications, coupled with the filing with the Court of the Plan as modified by the Plan Modifications and the disclosure of the Plan Modifications on the record at the Confirmation Hearing constitute due and sufficient notice thereof.

10. Deemed Acceptance of Plan as Modified. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all holders of Claims who voted to accept the Plan or who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim or Interest shall be permitted to change its vote as a consequence of the Plan Modifications.

11. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

12. Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). In addition to Administrative Claims and Priority Tax Claims that need not be classified, the Plan classifies 16 Classes of Claims and Interests. The Claims and Interests placed in each Class are substantially similar to other Claims or Interests, as the case may be, in each such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, the classifications were not done for any improper purpose and such Classes do not unfairly discriminate between or among holders of Claims or Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

13. Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Section 4.2 of the Plan specifies that Delta Class 1 (Other Priority Claims against the Delta Debtors), Delta Class 2 (Secured Aircraft Claims against the Delta Debtors), Delta Class 3 (Other Secured Claims against the Delta Debtors), Delta Class 7b (Interests in the Delta Subsidiary Debtors), Comair Class 1 (Other Priority Claims against

the Comair Debtors), Comair Class 2 (Secured Aircraft Claims against the Comair Debtors), Comair Class 3 (Other Secured Claims against the Comair Debtors) and Comair Class 6 (Interests in the Comair Debtors) are Unimpaired by the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

14. Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Section 4.2 of the Plan designates Delta Class 4 (General Unsecured Claims against the Delta Debtors), Delta Class 5 (Non-Convenience Class Retiree Claims against Delta), Delta Class 6 (Convenience Class Claims against the Delta Debtors), Delta Class 7a (Interests in Delta), Delta Class 8 (Securities Litigation Claims against the Delta Debtors), Comair Class 4 (General Unsecured Claims against the Comair Debtors), Comair Class 5 (Convenience Class Claims against the Comair Debtors) and Comair Class 7 (Securities Litigation Claims against the Comair Debtors) as Impaired, and Article 4 of the Plan specifies treatment of all of these Classes of Claims and Interests under the Plan, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

15. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class, unless the holder of a Claim or Interest has agreed to a less favorable treatment, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

16. Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan and the various documents and agreements set forth in the Plan Supplements and described in the Plan provide adequate and proper means for the Plan's implementation, including, without limitation, the Plan Consolidations described below, thereby satisfying section 1123(a)(5) of the Bankruptcy Code.

17. Nonvoting Equity Securities (11 U.S.C. § 1123(a)(6)). Article 10 of the version of the New Delta Certificate of Incorporation filed with this Court on March 20, 2007 complies with section 1123(a)(6) of the Bankruptcy Code. Section 12.2(a) of the Plan provides that each of the Reorganized Subsidiary Debtors' Certificates of Incorporation shall be deemed, without further action, to be amended to include a provision prohibiting the issuance of nonvoting equity securities to the extent required by

section 1123(a)(6) of the Bankruptcy Code. Thus, the requirements of section 1123(a)(6) of the Bankruptcy Code are satisfied with respect to the New Delta Certificate of Incorporation and with respect to the Reorganized Subsidiary Debtors' Certificates of Incorporation.

18. Designation of Directors and Officers (11 U.S.C. § 1123(a)(7)). Section 12.3 of the Plan contains provisions with respect to the manner of appointment of the directors and officers of the Reorganized Debtors that are consistent with the interests of creditors, equity security holders and public policy in accordance with section 1123(a)(7) of the Bankruptcy Code.

19. Additional Plan Provisions (11 U.S.C. § 1123(b)(6)). The Plan's provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code.

20. Bankruptcy Rule 3016(a). The Plan reflects the date it was filed with the Court and identifies the entities submitting it as Plan proponents, thereby satisfying Bankruptcy Rule 3016(a).

21. Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors, as the proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code.

Specifically, *inter alia*:

(a) The Debtors are proper debtors under section 109(d) of the Bankruptcy Code;

(b) The Debtors have complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by order of the Court; and

(c) The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Approval Order in transmitting the Disclosure Statement, the Plan and related documents and notices in soliciting and tabulating votes on the Plan.

22. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. The Debtors' good faith is evident from the facts and records of these Chapter 11 Cases, the Disclosure Statement and the hearing thereon, and the record of the Confirmation Hearing and other proceedings held in these Chapter 11 Cases. The Plan was proposed with the legitimate and

honest purpose of maximizing the value of the Debtors' estates and to effectuate a successful reorganization of the Debtors.

23. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Subject to the provisions of Section 8.1(a) of the Plan, any payment made or to be made by any of the Debtors for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been approved by, or is subject to the approval of, the Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

24. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the persons proposed to serve as members of the New Delta Board were disclosed in a Plan Supplement filed on March 30, 2007, and the appointment to, or continuance in, such positions of such persons is consistent with the interests of holders of Claims against, and Interests in, the Debtors and with public policy. The Debtors have further disclosed that (a) the existing boards of directors or board of managers or equivalent bodies of each of the Debtors other than Delta shall continue to serve in their current capacities after the Effective Date and (b) the principal officers of each Debtor immediately prior to the Effective Date will be the officers of such Reorganized Debtor as of the Effective Date. The identity of any insider that will be employed or retained by the Reorganized Debtors and the nature of such insider's compensation have also been fully disclosed.[3] The nature of the compensation payable to the members of the New Delta Board, as well as Reorganized Delta's chief executive officer, chief financial officer and three other most highly-compensated officers was disclosed in a filing with the Bankruptcy Court on March 20, 2007.

[3] As disclosed in the March 30, 2007 Plan Supplement, Gerald Grinstein is not independent because he is Delta's Chief Executive Officer.

25. No Rate Changes (11 U.S.C. § 1129(a)(6)). Section 1129(a)(6) of the Bankruptcy Code requires that any regulatory commission having jurisdiction over the rates charged by a reorganized debtor in the operation of its business approve any rate change provided for in a plan of reorganization. The Plan does not provide for any changes in any regulated rates, so the Plan satisfies section 1129(a)(6) of the Bankruptcy Code.

26. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The liquidation analyses set forth or referenced in Appendix C of the Disclosure Statement, the Bastian Affidavit and the Coleman Affidavit (a) are persuasive and credible, (b) have not been controverted by other evidence and (c) establish that each holder of an Impaired Claim or Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

27. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Delta Class 1 (Other Priority Claims against the Delta Debtors), Delta Class 2 (Secured Aircraft Claims against the Delta Debtors), Delta Class 3 (Other Secured Claims against the Delta Debtors), Delta Class 7b (Interests in the Delta Subsidiary Debtors), Comair Class 1 (Other Priority Claims against the Comair Debtors), Comair Class 2 (Secured Aircraft Claims against the Comair Debtors), Comair Class 3 (Other Secured Claims against the Comair Debtors) and Comair Class 6 (Interests in the Comair Debtors) are each Classes of Unimpaired Claims or Interests that are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Delta Class 4 (General Unsecured Claims against the Delta Debtors), Delta Class 5 (Non-Convenience Class Retiree Claims against Delta), Delta Class 6 (Convenience Class Claims against the Delta Debtors), Comair Class 4 (General Unsecured Claims against the Comair Debtors) and Comair Class 5 (Convenience Class Claims against the Comair Debtors) have each voted

to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code. No classes voted against the Plan; however Delta Class 7a (Interests in Delta), Delta Class 8 (Securities Litigation Claims against the Delta Debtors) and Comair Class 7 (Securities Litigation Claims against the Comair Debtors) are not entitled to receive or retain any property under the Plan and, therefore, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code (such Classes, collectively, the "**Rejecting Classes**"). Although section 1129(a)(8) of the Bankruptcy Code has not been satisfied with respect to the Rejecting Classes, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable, with respect to the Rejecting Classes and thus satisfies section 1129(b) of the Bankruptcy Code with respect to such Classes.

28. Treatment of Administrative, Priority Tax and Priority Non-Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Claims and Other Priority Claims pursuant to Article 3 and Section 4.2 of the Plan satisfies the requirements of sections 1129(a)(9)(A) and (B) of the Bankruptcy Code, and the treatment of Priority Tax Claims pursuant to Section 3.2 of the Plan satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code.

29. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). Delta Class 4 (General Unsecured Claims against the Delta Debtors), Delta Class 5 (Non-Convenience Class Retiree Claims against Delta), Delta Class 6 (Convenience Class Claims against the Delta Debtors), Comair Class 4 (General Unsecured Claims against the Comair Debtors) and Comair Class 5 (Convenience Class Claims against the Comair Debtors) are all Impaired Classes and have voted to accept the Plan, without including any acceptance of the Plan by any insider. As such, there is at least one Class of Claims against the Debtors that is Impaired under the Plan and has accepted the Plan, determined without including any acceptance of the Plan by any insider, thus satisfying the requirements of section 1129(a)(10) of the Bankruptcy Code.

30. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence submitted regarding feasibility through the Affidavits (a) is persuasive and credible, (b) has not been controverted by other evidence and (c) establishes that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtors, thus satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code.

31. Payment of Fees (11 U.S.C. § 1129(a)(12)). As provided in Section 17.3 of the Plan, all fees payable pursuant to section 1930(a) of title 28 of the United States Code, as determined by the Court, have been paid or shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed or closed, whichever occurs first, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

32. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code. On and after the Effective Date, pursuant to section 1129(a)(13) of the Bankruptcy Code, Reorganized Delta shall continue to pay those retiree health and welfare benefits of the Debtors specifically addressed by and as set forth in the Retiree Term Sheets at the level and for the duration of the period for which Delta has obligated itself to provide such benefits. Solely to the extent provided therein, the terms and conditions of the Stipulation and Consent Order under Bankruptcy Rule 9019 between Delta Air Lines, Inc. and the Section 1114 Pilot Committee dated May 31, 2006 shall apply to any amendment to the Pilot Working Agreement, including, without limitation, Letter of Agreement #51, that became effective during the Chapter 11 Cases and prior to the Effective Date. Except as expressly set forth in the Retiree Term Sheets, the Reorganized Debtors may unilaterally modify or terminate any retiree benefits (including health and welfare benefits) in accordance with the terms of the plan, program, policy or document under which such benefits are established or maintained; *provided, however*, that nothing herein shall be construed to enlarge the Reorganized Debtors' rights to

modify such retiree benefits (including such retiree benefits that are vested, if any) under applicable non-bankruptcy law. Accordingly, the requirements of section 1129(a)(13) of the Bankruptcy Code have been satisfied.

33. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). Based upon the Affidavits and all other evidence before the Court, the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Classes, as required by section 1129(b)(1) and (2) of the Bankruptcy Code. Thus, the Plan may be confirmed notwithstanding the Debtors' failure to satisfy section 1129(a)(8) of the Bankruptcy Code. Upon confirmation and the occurrence of the Effective Date, the Plan shall be binding upon the members of the Rejecting Classes.

(a) The Plan Does Not Unfairly Discriminate Against the Rejecting Classes.

(1) Delta Debtors. The Plan does not unfairly discriminate against Delta Class 7a (Interests in Delta) and Delta Class 8 (Securities Litigation Claims against the Delta Debtors). The Interests classified in Delta Class 7b (the Interests in each Delta Subsidiary Debtor) shall be Reinstated for the ultimate benefit of Reorganized Delta, in exchange for the agreement of Reorganized Delta to make distributions under the Plan to Creditors of the Delta Subsidiary Debtors and to use certain funds and assets, to the extent authorized in the Plan, to satisfy certain obligations of the Delta Subsidiary Debtors, including, without limitation, those owed to PBGC. As a result, there is a reasonable basis for any disparate treatment between and among Delta Class 7a, Delta Class 7b and Delta Class 8. Therefore, the Plan satisfies section 1129(b)(1) of the Bankruptcy Code.

(2) Comair Debtors. The Plan does not unfairly discriminate against Comair Class 7 (Securities Litigation Claims against the Comair Debtors). Based upon the Affidavits and all other evidence before the Court, there appear to be no Claims or Interests classified in Comair Class 7. However, even if there were any such Claims or Interests, the Plan would not unfairly discriminate against them. The Interests classified in Comair Class 6 (Interests in the Comair Debtors) shall be

Reinstated for the ultimate benefit of Reorganized Delta, in exchange for the agreement of Reorganized Delta to make distributions under the Plan to Creditors of the Comair Debtors and to use certain funds and assets, to the extent authorized in the Plan, to satisfy certain obligations of the Comair Debtors, including, without limitation, those owed to PBGC. As a result, there is a reasonable basis for any disparate treatment between Comair Class 6 and Comair Class 7. Therefore, the Plan satisfies section 1129(b)(1) of the Bankruptcy Code.

(b) The Plan is Fair and Equitable. The Plan is fair and equitable, in that no holder that is junior to the Interests classified in the Rejecting Classes will receive or retain under the Plan on account of such junior interest any property. Therefore, the Plan satisfies section 1129(b)(2)(C)(ii) of the Bankruptcy Code.

34. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan of reorganization filed in these cases. Accordingly, section 1129(c) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

35. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan, as evidenced by its terms, is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act.

36. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before this Court in these Chapter 11 Cases, the Debtors, the Creditors' Committee, the Non-Pilot Retiree Committee, the Pilot Retiree Committee and each of their members, directors, officers, employees, shareholders, agents, advisors, accountants, investment bankers, consultants, attorneys and other representatives have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances to the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code and such parties listed in Section 13.5 of the

Plan are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Section 13.5 of the Plan.

37. Satisfaction of Confirmation Requirements. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

38. Plan Consolidations. A preponderance of the evidence presented to this Court demonstrates that no Creditor will be harmed by the proposed Plan Consolidations and that the Plan Consolidations are appropriate. Furthermore, no holder of a Claim or Interest has objected to or opposed the Plan Consolidations.

39. Implementation. All documents and agreements necessary to implement the Plan, including, without limitation, those contained in the Plan Supplements, and all other relevant and necessary documents (including the documentation of the New Credit Facility (the credit agreements, notes, documents and other agreements entered into in connection therewith, the "**New Credit Facility Documentation**")), have been negotiated in good faith at arm's length and are in the best interests of the Debtors and the Reorganized Debtors and shall, upon completion of documentation and execution be valid, binding and enforceable documents and agreements not in conflict with any federal or state law.

40. Good Faith. The Debtors, the Creditors' Committee, the DIP Agent, the Indenture Trustees, the agents, arrangers and lenders under the New Credit Facility and all other parties (and all of their respective members, officers, directors, agents, financial advisers, attorneys, employees, equity holders, partners, affiliates and representatives) will be acting in good faith if they proceed to (i) consummate the Plan and the agreements, settlements, transactions and transfers contemplated thereby (including, without limitation, the entry into and performance under the New Credit Facility) and (ii) take the actions authorized and directed by this Confirmation Order.

41. Assumption of Executory Contracts and Unexpired Leases. The Debtors have satisfied the provisions of section 365 of the Bankruptcy Code and Article 10 of the Plan with respect to the assumption of executory contracts and unexpired leases pursuant to the Plan.

42. Transfers by Debtors; Vesting of Assets. All transfers of property of the Debtors' estates, including, without limitation, the transfer of the New Delta Common Stock and the New Delta Debt Securities, shall be free and clear of all Liens, charges, Claims, encumbrances and other interests, except as expressly provided in the Plan or this Confirmation Order. Pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of each of the Debtors (excluding property that has been abandoned pursuant to the Plan or an order of the Bankruptcy Court) shall vest in each of the respective Reorganized Debtor or its successors or assigns, as the case may be, free and clear of all Liens, charges, Claims, encumbrances and other interests, except as expressly provided in the Plan or this Confirmation Order. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or applicable nonbankruptcy law.

43. Valuation. Pursuant to the Valuation Analyses set forth in the Disclosure Statement, (a) the enterprise value of the Delta Debtors is insufficient to support a distribution to holders of Interests in Delta (Delta Class 7a) or Securities Litigation Claims against the Delta Debtors (Delta Class 8) and (b) the enterprise value of the Comair Debtors is insufficient to support a distribution to any holders of Securities Litigation Claims against the Comair Debtors (Comair Class 7).

44. New Credit Facility. The incurrence of indebtedness, provision of guarantees and granting of collateral under the New Credit Facility and the New Credit Facility Documentation are in the best interests of the Reorganized Debtors, and are necessary and appropriate for the consummation of the Plan and the operations of the Reorganized Debtors. The terms and conditions of the New Credit Facility described in the Commitment Letter (as defined below) and the Fee Letters (as that term is defined in the *Debtors' Motion Seeking Authorization to (a) Perform Obligations Under Exit Facility*

Commitment Letter and Fee Letters, (b) Pay the Fees and Expenses Associated Therewith and (c) Furnish Related Indemnities), each as approved by the Court by order dated April 17, 2007 [Docket No.5764], are fair and reasonable and are approved.

45. The Debtors have made an overwhelming and uncontroverted showing of the very substantial cost, harm, risk and prejudice to these Estates and their Creditors that would result if the Plan is not consummated on Monday, April 30, 2007 and distributions to holders of General Unsecured Claims do not commence on or about Thursday, May 3, 2007.

DECREES

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

46. Confirmation. The Plan is approved and confirmed under section 1129 of the Bankruptcy Code. The terms of the Plan Supplements are incorporated by reference into and are an integral part of the Plan.

47. Objections. All objections that have not been withdrawn, waived or settled, and all reservations of rights pertaining to Confirmation of the Plan, are overruled on the merits.

48. Plan Supplements. The documents contained in the Plan Supplements, and any amendments, modifications, and supplements thereto, and all documents and agreements related thereto (including all exhibits and attachments thereto and documents referred to therein), and the execution, delivery and performance thereof by the Reorganized Debtors, are authorized and approved as finalized, executed and delivered. Without further order or authorization of this Court, the Debtors, Reorganized Debtors and their successors are authorized and empowered to make all modifications to all documents included as part of the Plan Supplements that are consistent with the Plan. Once finalized and executed, the documents comprising the Plan Supplements and all other documents contemplated by the Plan shall constitute legal, valid, binding and authorized obligations of the respective parties thereto, enforceable in

accordance with their terms and, to the extent applicable, shall create, as of the Effective Date, all Liens and other security interests purported to be created thereby.

49. Solicitation and Notice. Notice of the Confirmation Hearing complied with the terms of the Approval Order, was appropriate and satisfactory based on the circumstances of the Chapter 11 Cases and was in compliance with the provisions of the Bankruptcy Code and the Bankruptcy Rules. The solicitation of votes on the Plan complied with the solicitation procedures in the Approval Order, was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases and was in compliance with the provisions of the Bankruptcy Code and the Bankruptcy Rules. Notice of the Plan Supplements and all related documents, was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases and was in compliance with the provisions of the Plan, Bankruptcy Code and the Bankruptcy Rules.

50. Plan Classifications Controlling. The classification of Claims and Interests for purposes of distributions made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots tendered to or returned by the Creditors in connection with voting on the Plan (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan, (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for distribution purposes and (c) shall not be binding on the Debtors or Reorganized Debtors.

51. Plan Consolidations. The Delta Plan Consolidation and the Comair Plan Consolidation, as described in Sections 2.2 and 2.3 of the Plan, respectively, are approved.

52. Continued Corporate Existence. Except as otherwise provided in the Plan, each Debtor shall, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, each with all of the powers of a corporation, limited liability company or partnership, as applicable, under the

laws of its respective jurisdiction of organization and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable state law.

53. Cancellation of Old Notes and Old Stock. On the Effective Date, except to the extent otherwise provided in this Confirmation Order or the Plan, all notes, instruments, certificates and other documents evidencing (a) the Old Notes (excluding the Covered Municipal Bonds) and (b) the Old Stock shall be cancelled, and the obligations of the Debtors thereunder and in any way related thereto shall be fully satisfied, released and discharged; *provided, however,* that (i) with respect to Municipal Bonds not associated with either the Assumed Municipal Bond Agreements or the Clayton County Loan Agreements, the obligations of the Debtors thereunder and in any way related thereto shall be fully satisfied, released and discharged in exchange for the treatment provided under the Plan for Allowed Claims, if any, arising thereunder and (ii) the cancellations set forth in clauses (a), (b) and (c) of Section 6.6 of the Plan and the satisfaction, release and discharge of the Debtors' obligations with respect to Municipal Bonds not associated with either the Assumed Municipal Bond Agreements or the Clayton County Loan Agreements above shall not alter the obligations or rights of any non-Debtor third parties vis-à-vis one another with respect to such notes, instruments, certificates or other documents. On the Effective Date, except to the extent otherwise provided in this Confirmation Order or the Plan, any indenture or similar agreement relating to any of the foregoing, including, without limitation, the Indentures, and any related note, guaranty or similar instrument of the Debtors (excluding the Municipal Bond Indentures associated with the Covered Municipal Bonds and any related note, guaranty or similar instrument of the Debtors associated with the Covered Municipal Bonds) shall be deemed to be cancelled, as permitted by section 1123(a)(5)(F) of the Bankruptcy Code and discharged (A) with respect to all obligations owed by any Debtor under any such agreement and (B) except to the extent provided herein below, with respect to the respective rights and obligations of the Indenture Trustees under any Indenture against the holders of Old Notes Claims; *provided, however,* that, with respect to

Municipal Bond Indentures associated with the Covered Municipal Bonds and any related note, guaranty or similar instrument of the Debtors associated with the Covered Municipal Bonds, the obligations of the Debtors thereunder and in any way related thereto shall be fully satisfied, released and discharged in exchange for the treatment provided under the Plan for Allowed Claims, if any, arising thereunder. Solely for the purpose of clause (B) in the immediately preceding sentence, only the following rights of each such Indenture Trustee shall remain in effect after the Effective Date: (1) rights as trustee, paying agent and registrar, including, but not limited to, any rights to payment of fees, expenses and indemnification obligations, including, but not limited to, from property distributed under the Plan to such Indenture Trustee (but excluding any other property of the Debtors, the Reorganized Debtors or their respective estates), (2) rights relating to distributions to be made to the holders of the Old Notes by such Indenture Trustee from any source, including, but not limited to, distributions under the Plan (but excluding any other property of the Debtors, the Reorganized Debtors or their respective estates), (3) rights relating to representation of the interests of the holders of the Old Notes by such Indenture Trustee in the Chapter 11 Cases to the extent not discharged or released by the Plan or any order of the Court and (4) rights relating to participation by such Indenture Trustee in proceedings and appeals related to the Plan. Notwithstanding the continued effectiveness of such rights after the Effective Date, such Indenture Trustee shall have no obligation to object to Claims against the Debtors or to locate certificated holders of Old Notes who fail to surrender their Old Notes in accordance with Section 7.2(d) of the Plan.

54. Cancellation of Old Aircraft Securities.

(a) Notwithstanding the first paragraph of Section 6.6 of the Plan, with respect to any aircraft (a) subject to and addressed by that certain term sheet negotiated by Delta with a group of Creditors regarding 88 mainline aircraft approved by order of the Bankruptcy Court dated February 15, 2006 (as amended, modified or supplemented from time to time, the "**88 Plane Term Sheet**") or

(b) otherwise identified on Schedule A attached hereto, and any Old Aircraft Securities issued in respect of such aircraft, until (i) execution of definitive agreements contemplated by the 88 Plane Term Sheet or any other Post-Petition Aircraft Agreement with respect to such aircraft, (ii) payment in full of distributions provided for under the Plan in respect of the Claims addressed by the 88 Plane Term Sheet or such other Post-Petition Aircraft Agreement with respect to such aircraft, (iii) any monies, other consideration or any other value to be passed at any time through such Old Aircraft Securities pursuant to the restructured transactions consummated in connection with the 88 Plane Term Sheet or such other Post-Petition Aircraft Agreement in respect of such aircraft or otherwise arising from the sale, lease or other disposition of such aircraft have been finally and indefeasibly paid and/or conveyed to the holders of such Old Aircraft Securities (including, without limitation, any equipment trust certificates) and (iv) in the case of any pass through trust certificates, all of the matters described in the foregoing clauses (i) through (iii) shall have been completed with respect to each related aircraft and equipment trust certificate, any such Old Aircraft Securities shall not be cancelled provided, however, on the Effective Date (as to the 88 Plane Term Sheet) or the applicable Rejection Effective Date (as to the Aircraft on Schedule A), as the case may be, all obligations of the Debtors (to the extent the Debtors had any obligations) with respect to all securities described in Schedule 6.6(a) shall be deemed satisfied, released and discharged. For the avoidance of doubt, the release, satisfaction or discharge of any of the Debtors' obligations under the Old Aircraft Securities set forth on Schedule 6.6(a) shall not affect the rights and obligations as between non-Debtors (and solely to the extent of such rights and obligations between non-Debtors, such Old Aircraft Securities shall survive).

(b) Notwithstanding anything to the contrary contained in the Plan, any equipment notes as to which U.S. Bank National Association, as successor in interest to Shawmut Bank Connecticut, National Association, is loan trustee and any pass through trust certificates as to which U.S. Bank National Association, as successor in interest to Shawmut Bank Connecticut, National

Association, is pass through trustee, issued in respect of the aircraft identified on Schedule B attached hereto (the "**RJ Finco Securities**") shall not be Old Aircraft Securities and will not be cancelled pursuant to Section 6.6 of the Plan; *provided* that on the applicable Rejection Effective Date, all obligations of the Debtors (to the extent that the Debtors had any obligations) with respect to the RJ Finco Securities shall be deemed satisfied, released and discharged.

55. New Credit Facility; Incurrence of New Indebtedness.

(a) The Reorganized Debtors' entry on the Effective Date into the New Credit Facility and the New Credit Facility Documentation and the incurrence of the indebtedness thereunder, the provision of guarantees and the granting of collateral in accordance therewith shall be authorized and approved in all respects by virtue of entry of this Confirmation Order, in accordance with the Bankruptcy Code and applicable state law (including, but not limited to, section 303 of the Delaware General Corporations Law, to the extent applicable, and any analogous provision of the applicable business organizations law or code of each other state in which the Reorganized Debtors are incorporated or organized) and without the need for any further corporate action or any further action by holders of Claims or Interests in the Debtors or the Reorganized Debtors or stockholders, directors, members or partners of the Debtors or the Reorganized Debtors, and with like effect as if such actions had been taken by unanimous actions thereof.

(b) The Reorganized Debtors are hereby authorized and directed to enter into, and take such actions as necessary to perform under, the New Credit Facility and the New Credit Facility Documents, the terms and conditions of which shall be substantially consistent with the terms and conditions of the Commitment Letter and Fee Letters, as well as any notes, documents or agreements in connection therewith, including, without limitation, any documents reasonably required in connection with the creation or perfection of Liens in connection therewith.

(c) Upon consummation of the New Credit Facility, the lenders thereunder shall have valid, binding and enforceable Liens on the collateral specified in the New Credit Facility Documentation. The guarantees, mortgages, pledges, Liens and other security interests granted pursuant to or in connection with the New Credit Facility are granted in good faith, for good and valuable consideration and for legitimate business purposes as an inducement to the lenders to extend credit thereunder and shall be, and hereby are, deemed not to constitute a fraudulent conveyance or fraudulent transfer and shall not otherwise be subject to avoidance or recharacterization. The priorities of such Liens and security interests shall be as set forth in and subject to the intercreditor agreement, the other New Credit Facility Documentation and applicable law.

(d) Notwithstanding anything to the contrary in this Confirmation Order or the Plan, the Court's retention of jurisdiction shall not govern the enforcement of the loan documentation executed in connection with the New Credit Facility or any Liens, rights or remedies related thereto.

56. Issuance of New Delta Plan Securities. The issuance by Reorganized Delta of the New Delta Plan Securities and any security to be issued by a Reorganized Debtor pursuant to or in connection with a Post-Petition Aircraft Agreement (including, without limitation, the New Ad Hoc Committee Aircraft Notes (as defined below)) is authorized without the need for any further corporate action and without any further action by holders of Claims or Interests.

57. Corporate Action

(a) On the Effective Date, the adoption, filing, approval and ratification, as necessary, of all corporate or related actions contemplated hereby with respect to each of the Reorganized Debtors shall be deemed authorized and approved in all respects. Without limiting the foregoing, such actions may include: (i) the adoption and filing of the New Delta Certificate of Incorporation, (ii) the adoption and filing of the Reorganized Subsidiary Debtors' Certificates of Incorporation, (iii) the approval of the New Delta Bylaws, (iv) the approval of the Reorganized Subsidiary Debtors' Bylaws, (v) the election or

appointment, as the case may be, of directors and officers for the Reorganized Debtors, (vi) the issuance of the New Delta Plan Securities, (vii) the Restructuring Transactions to be effectuated pursuant to the Plan, (viii) the adoption and/or implementation of the Compensation Programs, (ix) the execution and delivery of the New Credit Facility Documentation and the performance of all obligations under the New Credit Facility, (x) the qualification of any of the Reorganized Debtors as foreign corporations or limited liability companies wherever the conduct of business by such entities requires such qualification and (xi) the execution, delivery and performance of each Post-Petition Aircraft Agreement and any agreement or instrument provided for in a Post-Petition Aircraft Agreement (including, without limitation, releases granted by the Debtors and the Creditors' Committee with respect to pre-petition claims against existing indenture trustees, owner trustees, pass-through trustees or other similar persons, extensions of the period to assume or reject executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code and any deferral of the effectiveness of any such assumption or rejection) and the issuance of any security to be issued by a Reorganized Debtor pursuant to or in connection with a Post-Petition Aircraft Agreement (including, without limitation, the New Ad Hoc Committee Aircraft Notes (as defined below)).

(b) All matters provided for in the Plan involving the corporate structure of any Debtor or any Reorganized Debtor, or any corporate action required by any Debtor or any Reorganized Debtor in connection with the Plan, is deemed to have occurred and shall be in effect, without any requirement of further action by the security holders or directors of such Debtor or Reorganized Debtor or by any other stakeholder.

(c) On or after the Effective Date, the appropriate officers of each Reorganized Debtor and members of the board of directors, board of managers or equivalent body of each Reorganized Debtor are authorized and directed to issue, execute, deliver, file and record any and all agreements, documents, securities, deeds, bills of sale, conveyances, releases and instruments

contemplated by the Plan or the transactions contemplated thereby in the name of and on behalf of such Reorganized Debtor and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and the transactions contemplated thereby.

58. New Delta Board. Upon the occurrence of the Effective Date, the Persons proposed to serve as members of the New Delta Board, as identified in the Plan Supplement filed on March 30, 2007, shall automatically constitute the New Delta Board.

59. Restructuring Transactions. As further described in Section 6.2 of the Plan, on or prior to the Effective Date, the Reorganized Debtors may engage in or continue to enter into Roll-Up Transactions and may take such actions as may be necessary or appropriate to effect further corporate restructurings of their respective businesses, including actions necessary to simplify, reorganize and rationalize the overall reorganized corporate structure of the Reorganized Debtors.

60. Post-Petition Agreements Related to Aircraft. Notwithstanding anything to the contrary contained in the Plan, to the extent that subsequent to the date of the Plan, the Debtors enter into new Post-Petition Aircraft Agreements for Aircraft Equipment not currently subject to a Post-Petition Aircraft Agreement and file a notice of such with the Bankruptcy Court as provided in Section 1.1(199) of the Plan, the Claims or obligations arising thereunder shall be treated as Post-Petition Aircraft Obligations. Prior to the Effective Date, the Debtors will consult with the Creditors' Committee, and after the Effective Date, the Reorganized Debtors will consult with the Post-Effective Date Committee, with respect to such Post-Petition Aircraft Agreements in the same manner and to the same extent as the Debtors have consulted with the Creditors' Committee with respect to such agreements prior to the date of the Plan. Each (i) post-petition aircraft equipment purchase agreement entered into by the Debtors and not terminated or rejected prior to the Effective Date pursuant to the terms thereof and (ii) Post-Petition Aircraft Agreement not terminated or rejected prior to the Effective Date pursuant to the terms thereof, will remain in place after the Effective Date. The Reorganized Debtors or their successors, if

applicable, shall continue to honor each such agreement according to its terms and to the extent any such agreement requires the assumption by the Debtors of such agreement and the obligations arising thereunder (to the extent specifically provided in such agreement and to the extent such agreement or obligation was not previously assumed), each such agreement and the obligations arising thereunder (to the extent specifically provided in such agreement and to the extent such agreement or obligation was not previously assumed) shall be deemed assumed as of the Effective Date. The preceding sentence is specifically limited with respect to each such agreement by the express terms of such agreement, and nothing in the Plan, Disclosure Statement or this Confirmation Order will be deemed to limit or effect the terms thereof. The post-petition aircraft equipment purchase agreements and the Post-Petition Aircraft Agreements have been negotiated in good faith and at arm's length and constitute legal, valid and binding obligations of the respective parties enforceable in accordance with their terms. All transactions contemplated by such agreements (including, without limitation, any extension of the period to assume or reject such agreements under section 365 of the Bankruptcy Code, any deferral of the effectiveness of any such assumption or rejection and any releases granted by the Debtors and the Creditors' Committee with respect to pre-petition claims against existing indenture trustees, owner trustees, pass-through trustees or other similar persons) and obligations to be incurred by the Reorganized Debtors pursuant to such agreements are hereby approved, and the Reorganized Debtors shall have full power and authority to execute, deliver and perform each such agreement and are authorized and directed to take all necessary steps and to perform all necessary and appropriate acts to consummate the terms and conditions of each such agreement.

61. Post-Petition Aircraft Agreements with Ad Hoc Committee of Senior Secured Holders of Aircraft Debt. In connection with the Plan and to the extent provided in the Post-Petition Aircraft Agreements entered into with the Debtors with respect to aircraft with FAA registration numbers N131DN, N140LL, N178DN, N660DL, N681DA, N682DA, N952DL, N962DL, N963DL, N964DL,

N965DL, N968DL, N969DL, N970DL, N972DL, N973DL, N974DL, N977DL, N979DL, N981DL, N180DN and N181DN, the indenture trustee with respect to certain pre-petition aircraft indebtedness, having foreclosed or otherwise obtained ownership of aircraft, subject to the existing lease (to the extent such lease has not previously been rejected), may transfer ownership of such aircraft, subject to such lease and any term sheet or restructuring agreement with respect to the use of such aircraft by the Debtor, to a new owner trust. Such indenture trustee may cause such new owner trust to issue loan certificates under a new indenture of which Reorganized Delta will be treated as the issuer for purposes of section 2(a)(4) of the Securities Act (such notes, the "**New Ad Hoc Committee Aircraft Notes**"), and which will be issued pursuant to the term sheets or restructuring agreements, which provide for the settlement of Claims against the Debtor. The New Ad Hoc Committee Aircraft Notes are hereby approved, and Reorganized Delta shall have full power and authority to deliver the New Ad Hoc Committee Aircraft Notes and is authorized to take all necessary steps and to perform all necessary and appropriate acts with respect thereto.

62. Securities Laws Exemption. The offering, issuance and distribution to the holder of a Claim under the Plan of (i) the New Delta Plan Securities, (ii) the New Ad Hoc Committee Aircraft Notes and (iii) any other securities to be issued pursuant to or in connection with a Post-Petition Aircraft Agreement will be exempt from registration under the Securities Act and all rules and regulations promulgated thereunder and any state or local law requiring registration prior to the offering, issuance, distribution or sale of securities. The issuance to the holder of a Claim of the New Delta Plan Securities, the New Ad Hoc Committee Aircraft Notes and any other securities to be issued pursuant to or in connection with a Post-Petition Aircraft Agreement are or were in exchange for Claims against the Debtors, or are or were principally in such exchange and partly for Cash or property within the meaning of section 1145(a)(1) of the Bankruptcy Code. Pursuant to section 1145(c) of the Bankruptcy Code, the resale of any New Delta Plan Securities, any New Ad Hoc Committee Aircraft Notes or any other

securities to be issued pursuant to or in connection with a Post-Petition Aircraft Agreement shall be exempt from registration under the Securities Act and all rules and regulations promulgated thereunder and from any state or local law requiring registration prior to the offering, issuance, distribution or sale of securities, except for any restrictions set forth in section 1145(b) of the Bankruptcy Code and any restrictions contained in the Plan or Disclosure Statement. Without in any way limiting the general application of any of the foregoing, the Court makes the following conclusions of law:

(a) ALPA Delta Covered Securities. The offering, issuance and distribution by Reorganized Delta to ALPA in respect of its claims against Delta of the New Delta Common Stock and the New Delta ALPA Notes (collectively, the "**ALPA Delta Covered Securities**") under and as provided in the Plan are, pursuant to section 1145(a) of the Bankruptcy Code, exempt from the registration requirements of the Securities Act and any state or local law requiring registration for the offer, issuance, distribution or sale of a security. The ALPA Delta Covered Securities are deemed to have been issued in a public offering under the Securities Act and are freely tradable by the recipients thereof without registration under the Securities Act pursuant to the exemption provided by section 4(1) of the Securities Act, unless any such recipient is an "underwriter" with respect to such securities, as that term is defined in section 1145(b)(1) of the Bankruptcy Code.

(b) ALPA Comair Covered Securities. The offering, issuance and distribution by Reorganized Comair to ALPA in respect of its claims against Comair of the New Delta Common Stock (the "**ALPA Comair Covered Securities**") under and as provided in the Plan, are, pursuant to section 1145(a) of the Bankruptcy Code, exempt from the registration requirements of the Securities Act and any state or local law requiring registration for the offer, issuance, distribution or sale of a security. The ALPA Comair Covered Securities are deemed to have been issued in a public offering under the Securities Act and are freely tradable by the recipients thereof without registration under the Securities Act pursuant to the exemption provided by section 4(1) of the Securities Act, unless any such recipient

is an "underwriter" with respect to such securities, as that term is defined in section 1145(b)(1) of the Bankruptcy Code.

(c) PBGC. The offering, issuance and distribution by Reorganized Delta to PBGC in respect of its claims against Delta of the New Delta Common Stock (the "**PBGC Covered Securities**") under and as provided in the Plan are, pursuant to section 1145(a) of the Bankruptcy Code, exempt from the registration requirements of the Securities Act and any state or local law requiring registration for the offer, issuance, distribution or sale of a security. The PBGC Covered Securities are deemed to have been issued in a public offering under the Securities Act and are freely tradable by the recipients thereof without registration under the Securities Act pursuant to the exemption provided by section 4(1) of the Securities Act, unless any such recipient is an "underwriter" with respect to such securities, as that term is defined in section 1145(b)(1) of the Bankruptcy Code. For purposes of the Securities Act and the rules and regulations thereunder and section 1145 of the Bankruptcy Code, PBGC shall be deemed not to be, and any transferee or assignee of PBGC of any PBGC Covered Securities or all or any portion of the PBGC Claim shall not be deemed to be, solely as a result of any such transfer or assignment, an affiliate of any of the Reorganized Debtors or any of the subsidiaries of any thereof or an issuer or underwriter of any of the New Delta Plan Securities.

(d) New Delta Common Stock. The offering, issuance and distribution by Reorganized Delta of the New Delta Common Stock (including, without limitation, the issuance and transfer of New Delta Common Stock to (a) the ALPA Claim Purchaser(s) and/or the ALPA Claim Transferee(s) in respect of the Monetized ALPA Claim pursuant to and as contemplated by the ALPA Claim Purchase Agreements and (b) the ALPA Comair Claim Purchaser and/or the ALPA Comair Claim Transferee(s) in respect of the Monetized ALPA Comair Claim pursuant to and as contemplated by the ALPA Comair Claim Purchase Agreement (collectively, the "**Monetized New Delta Common Stock**")) are, pursuant to section 1145(a) of the Bankruptcy Code, exempt from the registration

requirements of the Securities Act and any state or local law requiring registration for the offer, issuance, distribution or sale of a security. The New Delta Common Stock (including, without limitation, the Monetized New Delta Common Stock) is deemed to have been issued in a public offering under the Securities Act and is freely tradable by the recipients thereof without registration under the Securities Act pursuant to the exemption provided by section 4(1) of the Securities Act, unless any such recipient is an "underwriter" with respect to such securities, as that term is defined in section 1145(b)(1) of the Bankruptcy Code.

(e) New Delta CVG Note. The offering, issuance and distribution of the New Delta CVG Note by Reorganized Delta to the CVG Bond Trustee (which issuance, offering and distribution would and may occur only if the order approving the CVG Settlement Agreement, entered by this Court on April 24, 2007, is not stayed, or is no longer stayed, pending appeal) shall be, pursuant to section 1145(a) of the Bankruptcy Code, exempt from the registration requirements of the Securities Act and any state or local law requiring registration for the offer, issuance, distribution or sale of a security. If issued, the New Delta CVG Note shall be deemed to have been issued in a public offering under the Securities Act and shall be freely tradable by the recipients thereof without registration under the Securities Act pursuant to the exemption provided by section 4(1) of the Securities Act, unless any such recipient is an "underwriter" with respect to such securities, as that term is defined in section 1145(b)(1) of the Bankruptcy Code.

(f) Post-Petition Aircraft Agreements. The offering, issuance and distribution by the Reorganized Debtors of the New Ad Hoc Committee Aircraft Notes and any other securities to be issued pursuant to or in connection with a Post-Petition Aircraft Agreement (the "**Post-Petition Aircraft Securities**") are, pursuant to section 1145(a) of the Bankruptcy Code, exempt from the registration requirements of the Securities Act and any state or local law requiring registration for the offer, issuance, distribution or sale of a security. The Post-Petition Aircraft Securities are deemed to have

been issued in a public offering under the Securities Act and are freely tradable by the recipients thereof without registration under the Securities Act pursuant to the exemption provided by section 4(1) of the Securities Act, unless any such recipient is an "underwriter" with respect to such securities, as that term is defined in section 1145(b)(1) of the Bankruptcy Code. The indenture trustees, owner trustees, pass-through trustees and other similar persons with respect to pre-petition aircraft indebtedness, the New Ad Hoc Committee Aircraft Notes or any other Post-Petition Aircraft Securities are not underwriters within the meaning of section 1145 of the Bankruptcy Code.

63. Distributions Under the Plan. All distributions under the Plan shall be made in accordance with Article 7 of the Plan.

64. Unclaimed Distributions. All distributions under the Plan that remain unclaimed for one year after the relevant Distribution Date shall indefeasibly revert to Reorganized Delta. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically discharged and forever barred, notwithstanding any federal or state escheat laws or regulations to the contrary.

65. Amounts Held in Trust. All claims of the United States (which term shall include for all purposes in this Confirmation Order, all agencies and agents of the United States but not PBGC), including but not limited to the United States Department of Agriculture, the Transportation Security Administration and United States Customs and Border Protection, for the recovery of amounts collected and required to be held in trust by the Debtors or Reorganized Debtors or their agents, either before or after the Petition Date, for the benefit of the United States pursuant to federal law, shall be paid in full in cash in the ordinary course of business (but solely to the extent that, and at such time as, such amounts are actually due and owing pursuant to federal law governing the timing of the remittance of such amounts to the United States or the terms of any federal audit closing letter).

66. Disputed Claims. The provisions of Article 9 of the Plan, including, without limitation, the provisions governing procedures for resolving Disputed Claims, are fair and reasonable and are approved. The procedures described in the *Notice of Procedures for Determining Disputed Claims Reserves* [Docket No. 5570], filed by the Debtors on April 5, 2007, are also fair and reasonable and are approved. The Debtors are hereby ordered to comply with those procedures in setting the Disputed Claims Reserves called for by the Plan. The substance of those procedures are as follows:

> (a) In consultation with the Creditors' Committee, the Debtors have determined that, with respect to all Disputed Delta Unsecured Claims (other than any Disputed Delta Convenience Class Claims) filed in a liquidated amount, the allocation of New Delta Common Stock to the Delta Disputed Claims Reserve on account of such Claims shall be equal to the amount potentially distributable if all such Claims were Allowed in full, unless otherwise agreed by the Debtors and the relevant holder of a Disputed Delta Unsecured Claim. With respect to all Disputed Delta Unsecured Claims filed in unliquidated amounts, unless otherwise agreed by the Debtors and the relevant holder of a Disputed Delta Unsecured Claim, the Debtors will set, solely for purposes of this allocation to the Delta Disputed Claims Reserve, a dollar amount for each of such Claims based (i) in the case of Claims related to Aircraft Equipment, on similar Claims filed in a liquidated amount and (ii) in the case of Claims not related to Aircraft Equipment, on the Debtors' good faith analysis of such unliquidated Claims after consultation with the Creditors' Committee.
>
> (b) In consultation with the Creditors' Committee, the Debtors have determined that, with respect to all Disputed Comair Unsecured Claims (other than any Disputed Comair Convenience Class Claims) filed in a liquidated amount, the allocation of New Delta Common Stock to the Comair Disputed Claims Reserve on account of such Claims shall be equal to the amount potentially distributable if all such Claims were Allowed in full, unless otherwise agreed by the Debtors and the relevant holder of a Disputed Comair Unsecured Claim. With respect to all Disputed Comair Unsecured Claims filed in unliquidated amounts, unless otherwise agreed by the Debtors and the relevant holder of a Disputed Comair Unsecured Claim, the Debtors will set, solely for purposes of this allocation to the Comair Disputed Claims Reserve, a dollar amount for each of such Claims based (i) in the case of Claims related to Aircraft Equipment, on similar Claims filed in a liquidated amount and (ii) in the case of Claims not related to Aircraft Equipment, on the Debtors' good faith analysis of such unliquidated Claims after consultation with the Creditors' Committee.

(c) For purposes of the two immediately preceding paragraphs, only Unsecured Claims filed as of March 30, 2007 that are Disputed Claims at the time such calculations are made shall be considered. Such calculations shall be made without offset or reduction based upon any legal theory or otherwise, including in the event that the Bankruptcy Court grants any request by the Debtors to have any Disputed Claim deemed to be a Contingent or an Unliquidated Claim.

(d) Notwithstanding the foregoing, the Debtors retain all rights with respect to all claims, including, without limitation, (i) the right to request estimation of any Disputed Claim and the right to request authority from the Bankruptcy Court to allocate to the appropriate Disputed Claims Reserve less than 100% of the amount potentially distributable on account of a Disputed Claim and (ii) the right to agree with the holder of a Disputed Claim to allocate to the appropriate Disputed Claims Reserve less than 100% of the amount potentially distributable on account of a Disputed Claim.

(e) To the extent a Disputed Claim ceases to be Disputed after the initial calculation of the Disputed Claims Reserves is made, the Debtors will adjust the amount of New Delta Common Stock to be allocated to the appropriate Disputed Claims Reserve accordingly.

The Debtors shall not amend this methodology with respect to the Delta Disputed Claims Reserve and the Comair Disputed Claims Reserve without consultation with the Creditors' Committee or Post-Effective Date Committee, as applicable, and approval of this Court upon proper notice under the Case Management Order.

67. Other Administrative Claim Bar Date. All requests for payment of Other Administrative Claims that accrued on or before the Effective Date (other than Professional Fee Claims) must be filed with the Claims Agent and served on counsel for the Debtors by the Other Administrative Claim Bar Date. Any requests for payment of Other Administrative Claims that are not properly filed and served by the Other Administrative Claim Bar Date shall not appear on the register of claims maintained by the Claims Agent and shall be disallowed automatically without the need for any objection from the Debtors or the Reorganized Debtors or any action by the Bankruptcy Court. Notwithstanding the foregoing or any provision to the contrary in the Plan, requests for payment of Other Administrative Claims need not be filed with respect to Other Administrative Claims that (a) are for obligations incurred in the ordinary

course of business by the Debtors or the Reorganized Debtors (and are not past due), (b) previously have been Allowed by Final Order of the Bankruptcy Court (including, but not limited to, PBGC's out-of-pocket costs and expenses, as defined and limited by section 14 of the PBGC Settlement Agreement, and the Administrative Claims arising under the Pre-Termination Stipulation and the Pre-Termination Order), (c) arise under the DIP Facility or the Amex Post-Petition Facility, (d) are for personal injury or wrongful death, (e) are required to be paid pursuant to Section 10.4(e) of the Plan, (f) are for amounts owed by any of the Debtors or the Reorganized Debtors under any of their assumed or post-petition insurance policies or related agreements with ACE American Insurance Company or its affiliates, (g) are for Cure amounts, (h) are on account of post-petition taxes (including any related penalties or interest) owed by the Debtors or the Reorganized Debtors to any governmental unit (as defined in section 101(27) of the Bankruptcy Code) or (i) the Debtors or the Reorganized Debtors have otherwise agreed in writing do not require such a filing.

68. Approval of Assumption or Rejection of Executory Contracts. Entry of this Confirmation Order shall, subject only to the occurrence of the Effective Date, constitute the approval, (a) pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption of the executory contracts and unexpired leases assumed pursuant to Article 10 of the Plan, (b) pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption and assignment of the executory contracts and unexpired leases assumed and assigned pursuant to Article 10 of the Plan and (c) pursuant to section 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Article 10 of the Plan.

69. Inclusiveness. Unless otherwise specified on a schedule to the Plan or a notice sent to a given party, each executory contract and unexpired lease listed or to be listed thereon shall include any and all modifications, amendments, supplements, restatements and other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affects such executory

contract or unexpired lease, without regard to whether such agreement, instrument or other document is listed thereon.

70. Notice of Assumption and Rejection of Executory Contracts and Unexpired Leases Assumed Under the Plan. The filing of the Plan and the schedules thereto and the publication of notice of the entry of this Confirmation Order provide adequate notice of the assumption, assumption and assignment and rejection of executory contracts and unexpired leases pursuant to Article 10 of the Plan (both for contracts and leases that appear on any of those schedules and for contracts and leases assumed or rejected by category or default).

71. Cure of Defaults. The parties to each executory contract and unexpired lease to be assumed or assumed and assigned pursuant to the Plan were afforded with good and sufficient notice of such assumption or assumption and assignment and an opportunity to object and be heard. Treatment Objections shall be resolved consistent with Section 10.5(c) of the Plan. Consistent with Section 10.5(d) of the Plan, if a Treatment Objection is filed with respect to any executory contract or unexpired lease sought to be assumed or rejected by any of the Debtors or Reorganized Debtors, the Debtors and the Reorganized Debtors reserve the right (a) to seek to assume or reject such agreement at any time before the assumption, rejection, assignment or Cure with respect to such agreement is determined by Final Order and (b) to the extent a Final Order is entered resolving a dispute as to Cure or the permissibility of assignment (but not approving the assumption of the executory contract or unexpired lease sought to be assumed), to seek to reject such agreement within 14 calendar days after the date of such Final Order, in each case by filing with the Bankruptcy Court and serving upon the applicable Assumption Party or Rejection Party, as the case may be, a Notice of Intent to Assume or Reject.

72. Treatment Objection Deadline. With respect to an executory contract or unexpired lease sought to be assumed, rejected or deferred pursuant to the Plan, the Treatment Objection Deadline shall be the deadline for filing and serving a Treatment Objection, which deadline shall be 4:00 p.m.

(prevailing Eastern Time) on, (a) with respect to an executory contract or unexpired lease listed on Schedule 10.2(a), 10.2(b) or 10.2(c), the 15th calendar day after the relevant schedule is filed and notice thereof is mailed, (b) with respect to an executory contract or unexpired lease the proposed treatment of which has been altered by an amended or supplemental Schedule 10.2(a), 10.2(b) or 10.2(c), the 15th calendar day after such amended or supplemental schedule is filed and notice thereof is mailed, (c) with respect to an executory contract or unexpired lease for which a Notice of Intent to Assume or Reject is filed, the 15th calendar day after such notice is filed and notice thereof is mailed, (d) with respect to any executory contract or unexpired lease that is listed on Schedule 10.2(c) but for which no Notice of Intent to Assume or Reject is filed by the Deferred Agreement Deadline, the 15th calendar day after the Deferred Agreement Deadline and (e) with respect to any other executory contract or unexpired lease, including any to be assumed or rejected by category pursuant to Sections 10.1, 10.3 or 10.4 of the Plan (without being listed on Schedule 10.2(a) or 10.2(b)), the deadline for objections to Confirmation of the Plan established pursuant to the Approval Order or other order of the Bankruptcy Court. Notwithstanding the foregoing, with respect to any Municipal Bond Agreement to be assumed or rejected pursuant to Article 10 of the Plan, the deadline for filing and serving a Treatment Objection shall be 4:00 p.m. (prevailing Eastern Time) on (i) the 21st calendar day after the relevant schedule is filed and notice thereof is mailed, (ii) the 21st calendar day after the relevant amended or supplemental schedule is filed and notice thereof is mailed or (iii) the 6th calendar day after the deadline for objections to confirmation of the Plan, as the case may be.

73. Rejection Claims and Rejection Bar Date. Any Rejection Claim must be filed with the Claims Agent by the Rejection Bar Date; *provided* that, with respect to any rejected executory contract or unexpired lease that was included on Schedule 10.2(c), the deadline to file a Proof of Claim shall be 30 calendar days after notice of rejection of such executory contract or unexpired lease is provided to the parties to such executory contract or unexpired lease. Any Rejection Claim for which a Proof of Claim

is not properly filed and served by the such deadline shall be forever barred and shall not be enforceable against the Debtors, the Reorganized Debtors or their respective Estates or properties. The Debtors or Reorganized Debtors and the Post-Effective Date Committee may contest Rejection Claims in accordance with, and to the extent provided by, Section 9.1 of the Plan.

74. Extension of Section 365(d)(4) Deadline. The time pursuant to section 365(d)(4) of the Bankruptcy Code within which the Debtors may assume, assume and assign or reject each executory contract and unexpired lease that is rejected, retained, assumed and/or assigned pursuant to the Plan, this Confirmation Order or any other Order of the Court is hereby extended through the date of entry of an order approving the assumption, assumption and assignment or rejection of such executory contract or unexpired lease.

75. Extension of Period to Reject, Assume or Assume and Assign Executory Contracts and Unexpired Leases Related to Aircraft Equipment. The entry of this Confirmation Order constitutes authorization and approval (a) to extend the time within which the Debtors and the Reorganized Debtors may reject, assume or assume and assign executory contracts and unexpired leases that are listed on Schedule 10.2(c) of the Plan or as provided in any Post-Petition Aircraft Agreement or (b) in the alternative, to defer the effectiveness of any such rejection or assumption as provided in any Post-Petition Aircraft Agreement. Such an extension or deferral contained in any Post-Petition Aircraft Agreement shall be effective notwithstanding anything to the contrary contained in the Plan or any schedule thereto. Any such rejection, assumption or assumption and assignment will be legal, valid and binding upon the parties to the same extent and with the same effect as if such rejection, assumption or assumption and assignment had been effectuated pursuant to an appropriate authorizing order of this Court entered prior to confirmation of the Plan under section 365 of the Bankruptcy Code.

76. Adequate Assurance For Counterparties to Executory Contracts Assumed Under the Plan. Subject only to the occurrence of the Effective Date, all counterparties to all executory contracts and

unexpired leases of the Debtors assumed and assigned in accordance with Article 10 of the Plan are deemed to have been provided with adequate assurance of future performance pursuant to section 365(f) of the Bankruptcy Code.

77. Operation as of the Effective Date. As of the Effective Date, unless otherwise provided in the Plan or this Confirmation Order, the Reorganized Debtors may operate their businesses and may use, acquire and dispose of property and settle and compromise Claims and Interests without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code.

78. Discharge of Claims and Termination of Interests. Except as otherwise specifically provided herein or in the Plan, the rights afforded in the Plan and the payments and distributions to be made hereunder shall discharge all existing debts and Claims, and shall terminate all Interests of any kind, nature or description whatsoever against or in the Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as otherwise specifically provided herein or in the Plan, upon the Effective Date, all existing Claims against the Debtors and Interests in the Debtors shall be, and shall be deemed to be, discharged and terminated, and all holders of Claims and Interests (and all representatives, trustees or agents on behalf of each holder) shall be precluded and enjoined from asserting against the Reorganized Debtors, their successors or assignees, or any of their assets or properties, any other or further Claim or Interest based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a Proof of Claim and whether or not the facts or legal bases therefore were known or existed prior to the Effective Date.

79. Discharge of Debtors. Upon the Effective Date and in consideration of the distributions to be made under the Plan, except as otherwise provided herein or in the Plan, each holder (as well as

any representatives, trustees or agents on behalf of each holder) of a Claim or Interest and any Affiliate of such holder is deemed to have forever waived, released and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights and liabilities that arose prior to the Effective Date. Upon the Effective Date, all such persons are forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in the Debtors.

80. Injunction. Except as otherwise expressly provided herein or in the Plan, all persons or entities who have held, hold or may hold Claims or Interests and all other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, representatives and Affiliates, are permanently enjoined, from and after the Effective Date, from (a) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim (including, without limitation, a Securities Litigation Claim) or Interest against the Debtors, the Reorganized Debtors or property of any Debtors or Reorganized Debtors, other than to enforce any right to a distribution pursuant to the Plan, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtors, the Reorganized Debtors or property of any Debtors or Reorganized Debtors, other than to enforce any right to a distribution pursuant to the Plan, (c) creating, perfecting or enforcing any Lien or encumbrance of any kind against the Debtors or Reorganized Debtors or against the property or interests in property of the Debtors or Reorganized Debtors, other than to enforce any right to a distribution pursuant to the Plan or (d) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtors or Reorganized Debtors or against the property or interests in property of the Debtors or Reorganized Debtors, with respect to any such Claim or Interest; *provided* that this provision shall have no effect on any right of setoff, subrogation or recoupment of the Indenture Trustees associated with the Municipal Bond Indentures to the extent provided under section 553 of the Bankruptcy Code; *provided,*

further, that this injunction shall have no effect on the rights of each of (i) the California Franchise Tax Board, (ii) the Oregon Department of Revenue, (iii) the Texas Comptroller of Public Accounts or (iv) the Texas Workforce Commission to setoff defensively against any pre-petition refund or similar Claim that the Debtors might raise for the first time after the Effective Date. The injunction set forth in this paragraph extends to any successors or assignees of the Debtors and Reorganized Debtors and their respective properties and interest in properties. Nothing in this paragraph, paragraphs 78 or 79 above or anything else in this Confirmation Order shall be read to discharge any claim, enjoin or preclude any action by or on behalf of George F. Pickett, John W. Beiser, Elizabeth H. Pickett or Maureen W. Beiser against Atlantic Southeast Airlines, Inc. or SkyWest, Inc. related to the Supplemental Executive Retirement Plan (as subsequently amended), originally effective as of May 24, 1995, and originally established by Atlantic Southeast Airlines, Inc.

81. Discharge and Injunction: United States. Solely with regard to the United States, the provisions of Section 13.3 of the Plan and paragraph 79 through 80 hereof shall be effective as of the Confirmation Date, but subject to the occurrence of the Effective Date. The discharge and injunction provisions set forth in Section 13.3 of the Plan and any similar provisions in the Plan or Confirmation Order are not intended and shall not be construed to bar the United States from, subsequent to the Confirmation Date, (a) exercising otherwise valid and enforceable set-off rights to the extent permissible under section 553 of the Bankruptcy Code, (b) exercising otherwise valid and enforceable recoupment rights to the extent permissible under applicable law or (c) pursuing any police or regulatory action against the Debtors or Reorganized Debtors to the extent excepted from the automatic stay provisions of section 362 of the Bankruptcy Code; *provided, however*, that (i) nothing in clauses (a), (b) or (c) above is intended to limit or expand the discharge and injunction to which the Debtors or Reorganized Debtors are entitled under the Bankruptcy Code or other applicable law, including with regard to the set-off, recoupment and police or regulatory rights of the United States described in these clauses, (ii) nothing in

clause (a) above is intended to bar the United States from offsetting mutual obligations arising after the Petition Date between the United States and the Debtors or Reorganized Debtors (to the extent such offsets are permissible under applicable law) and (iii) nothing in clause (c) above is intended to permit the United States to assert any claim for the payment of money for acts or omissions occurring prior to the Confirmation Date.

82. Term of Injunction or Stays. Unless otherwise provided in the Plan, any injunction or stay arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise that is in existence on the Confirmation Date shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

83. Exculpation. As provided for in Section 13.5 of the Plan, as of the Effective Date, none of the Debtors, Reorganized Debtors, the Creditors' Committee, the DIP Agent, the Amex Entities, the Indenture Trustees, the Retiree Committees, the ALPA Released Parties, PBGC, DP3, Inc. or any of their respective Affiliates, members, officers, directors, employees, advisors, actuaries, accountants, attorneys, financial advisors, investment bankers, consultants, professionals or agents, shall have or incur any liability to any holder of a Claim or Interest for any act or omission in connection with, related to or arising out of, the Chapter 11 Cases, the negotiation of any settlement or agreement in the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the preparation and distribution of the Disclosure Statement, the offer, issuance and distribution of any securities issued or to be issued pursuant to the Plan (including pursuant to or in connection with any Post-Petition Aircraft Agreement) or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct, ultra vires acts or gross negligence.

84. Exculpation: United States. Neither Section 13.5 of the Plan nor paragraph 83 above shall release, enjoin or otherwise bar any claims of the United States against any non-debtors that (a) arise under the criminal, environmental or internal revenue laws of the United States, or (b) do

not otherwise arise from any conduct in connection with the disposition of the Chapter 11 Cases, negotiation of any settlement or agreement in the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the preparation and distribution of the Disclosure Statement, the offer, issuance and distribution of any securities issued or to be issued pursuant to the Plan (including pursuant to or in connection with any Post-Petition Aircraft Agreement) or the administration of the Plan or the property to be distributed.

85. Release by the Debtors. As provided for in Section 13.6 of the Plan, as of the Effective Date, the Debtors, their Estates and the Reorganized Debtors release all of the Released Parties from any and all Causes of Action (other than the rights of the Debtors or the Reorganized Debtors to enforce applicable post-petition agreements (including, without limitation, settlement agreements), any order entered in the Chapter 11 Cases, the Plan and the Plan Documents including contracts, instruments, releases, indentures and other agreements or documents delivered thereunder) held, assertable on behalf of or derivative from the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based on or relating to or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor, any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan and Disclosure Statement, or related agreements, instruments or other documents, which Causes of Action are based in whole or in part on any act, omission, transaction, event or other occurrence (except for willful misconduct, ultra vires acts, or gross negligence) taking place before the Effective Date. Notwithstanding the foregoing, if any Released Party directly or indirectly brings or asserts any Claim or Cause of Action in any way arising out of or related to any document or transaction that was in existence

prior to the Effective Date against the Debtors, the Reorganized Debtors or any of their respective Affiliates, officers, directors, members, employees, advisors, actuaries, attorneys, financial advisors, investment bankers, professionals or agents, then the release set forth in Section 13.6 of the Plan (but not any release or indemnification or any other rights or claims granted under any other section of the Plan or under any other document or agreement) shall automatically and retroactively be null and void *ab initio* with respect to such Released Party; *provided, however,* that the immediately preceding clause shall not apply to the prosecution in this Court (or any appeal therefrom) of the amount, priority or secured status of any pre-petition Claim against the Debtors.

86. Indemnity. As provided for in Section 13.7 of the Plan:

(a) The Debtors and Reorganized Debtors (collectively, and solely, for the purpose of Section 13.7 of the Plan, the "Debtors"), shall indemnify and hold harmless the Creditors' Committee and its individual members and, as to the individual members, their respective advisors, officers, directors and employees, and each of their respective successors and assigns (collectively, the "**Indemnified Persons**"), to the full extent lawful, from and against all losses, claims, damages, and liabilities incurred by them that are related to or arise out of (i) the formulation, negotiation and pursuit of the confirmation or consummation of the Plan or (ii) the Indemnified Persons' consideration of other proposals for the reorganization of the Debtors under chapter 11 of the Bankruptcy Code. The Debtors will not be responsible, however, for any losses, claims, damages, liabilities or expenses that resulted from the bad faith, gross negligence, willful misconduct or ultra vires conduct of any Indemnified Person;

(b) Promptly after receipt by an Indemnified Person of notice of any complaint or the commencement or written threat of any action or proceeding with respect to which indemnification is being sought hereunder, such person will notify the Debtors in writing of such event, but failure to so notify the Debtors will not relieve the Debtors of any liability the Debtors may have hereunder, except to

the extent that such failure materially prejudices the Debtors' rights, defenses or liability. If the Debtors so elect or are requested to do so by such Indemnified Person, the Debtors will assume the defense of such action or proceeding, including the employment of counsel reasonably satisfactory to the Indemnified Person and the payment of the fees and disbursements of such counsel. In the event, however, such Indemnified Person reasonably determines in its judgment that having common counsel would present such counsel with a conflict of interest, or if the Debtors fail to assume the defense of the action or proceeding, in either case in a timely manner, then such Indemnified Person may, upon written notice to the Debtors, employ separate counsel reasonably satisfactory to the Debtors to represent or defend it in any such action or proceeding, and the Debtors will pay the reasonable fees and disbursements of such counsel; *provided, however*, that the Debtors will not be required to pay the fees and disbursements of more than one separate counsel (in addition to local counsel) for all Indemnified Persons in any jurisdiction in any single action or proceeding. In any action or proceeding the defense of which the Debtors assume, the Indemnified Person will have the right to participate in such litigation and to retain its own counsel at such Indemnified Person's own expense. Each Indemnified Person will cooperate with all reasonable requests of the Debtors with respect to the defense of any such matters.

(c) The Debtors further agree that they will not, without the prior written consent of an Indemnified Person (which consent shall not unreasonably be withheld), settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification has been requested hereunder by such person (whether or not the Indemnified Person is an actual party to such claim, action, suit or proceeding) unless such settlement, compromise or consent includes an unconditional release of such Indemnified Person from all liability arising out of such claim, action, suit or proceeding. In no event shall the Debtors be liable for the settlement of any claim, action, suit or proceeding effected by an Indemnified Person without the Debtors' written consent.

87. Voluntary Releases by the Holders of Claims and Interests. As provided for in Section 13.8 of the Plan, for good and valuable consideration, on and after the Effective Date, holders of Claims that (a) voted to accept or reject the Plan and (b) did not elect (as permitted on the Ballots) to opt out of the releases described in this paragraph, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all Causes of Action whatsoever, including derivative Claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor, any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan and Disclosure Statement, or related agreements, instruments or other documents, which Causes of Action are based in whole or in part on any act, omission, transaction, event or other occurrence (except for willful misconduct, ultra vires acts, or gross negligence) taking place before the Effective Date. The vote or election of a trustee or other agent under this paragraph acting on behalf of or at the direction of a holder of a Claim shall bind such holder to the same extent as if such holder had itself voted or made such election. A holder of a Claim who did not cast a Ballot or who was not entitled to cast a Ballot will be deemed to have opted out of the releases set forth in this paragraph.

88. Preservations of Causes of Action.

(a) Except as expressly provided in Article 13 of the Plan, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or Causes of Action that the Debtors or the Reorganized Debtors may have, or that the Reorganized Debtors may

choose to assert on behalf of their respective Estates, under any provision of the Bankruptcy Code or any applicable non-bankruptcy law, including, without limitation, (i) any and all Causes of Action or Claims against any person or entity, to the extent such person or entity asserts a crossclaim, counterclaim and/or claim for setoff that seeks affirmative relief against the Debtors, the Reorganized Debtors, their officers, directors or representatives or (ii) the turnover of any property of the Debtors' Estates. A non-exclusive list of retained Causes of Action is attached to the Plan as Schedule 13.11.

(b) Except as set forth in Article 13 of the Plan, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or Causes of Action that the Debtors had immediately prior to the Petition Date or the Effective Date against or with respect to any Claim left Unimpaired by the Plan. The Reorganized Debtors shall have, retain, reserve and be entitled to assert all such rights and Causes of Action as fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights respecting any Claim left Unimpaired by the Plan may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Cases had not been commenced.

89. Pension Matters. In accordance with, and subject to the terms of, the PBGC Settlement Agreement, Reorganized Delta shall continue the Delta Retirement Plan and not discharge any liabilities with respect thereto; *provided, however*, that nothing in the Plan, this Confirmation Order or the PBGC Settlement Agreement shall be construed to (a) create or continue any funding liability or other obligation with respect to the Delta Retirement Plan not otherwise required or created under the Pension Protection Act upon the election of the alternative funding schedule provided for in section 402(a)(1) of such Act or (b) change or modify the rules of section 402(e) or (f) of such Act. On or prior to the Effective Date, PBGC and Reorganized Delta will enter into a Registration Rights Agreement, in accordance with, and subject to the terms of, the PBGC Settlement Agreement. The PBGC Settlement

Agreement, and not the terms of this Confirmation Order or the Plan, governs the terms and conditions agreed to by the parties thereto.

90. PBGC Settlement Agreement Amendment. Pursuant to sections 363(b) and 1123(b)(3) of the Bankruptcy Code, the Debtors' entry into the PBGC Settlement Agreement Amendment is hereby authorized and approved.

91. Delta Air Lines Rabbi Trust. The trustee of that certain Grantor Trust between Delta and the Trust Company Bank dated as of October 16, 1986 (the "**Delta Air Lines Rabbi Trust**") is hereby authorized and directed to transfer to Delta all of the assets of the Delta Air Lines Rabbi Trust within 3 Business Days following the Effective Date.

92. Retention of Jurisdiction. In accordance with (and as limited by) Article 16 of the Plan and section 1142 of the Bankruptcy Code, this Court shall have exclusive jurisdiction of all matters arising out of and related to the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(a) To hear and determine all matters with respect to the assumption or rejection of executory contracts or unexpired leases and the allowance of Cure amounts and Claims resulting therefrom;

(b) To hear and determine any motion, adversary proceeding, application, contested matter or other litigated matter pending on or commenced after the Confirmation Date;

(c) To hear and determine all matters with respect to the allowance, disallowance, liquidation, classification, priority or estimation of any Claim;

(d) To ensure that distributions to holders of Allowed Claims are accomplished as provided in the Plan;

(e) To hear and determine all applications for compensation and reimbursement of Professional Fee Claims;

(f) To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement or any order of the Bankruptcy Court, including this Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(g) To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan, this Confirmation Order, any transactions or payments contemplated hereby or any agreement, instrument or other document governing or relating to any of the foregoing;

(h) To issue injunctions, enter and implement other orders and take such other actions as may be necessary or appropriate to restrain interference by any person with the consummation, implementation or enforcement of the Plan, this Confirmation Order or any other order of the Bankruptcy Court;

(i) To issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan;

(j) To enter, implement or enforce such orders as may be appropriate in the event this Confirmation Order is for any reason stayed, reversed, revoked, modified or vacated;

(k) To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including the expedited determination of tax under section 505(b) of the Bankruptcy Code);

(l) To hear and determine any other matters related to the Plan and not inconsistent with the Bankruptcy Code;

(m) To determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Approval Order, this Confirmation Order, any of the Plan

Documents or any other contract, instrument, release or other agreement or document related to the Plan, the Disclosure Statement or the Plan Supplements;

(n) To recover all assets of the Debtors and property of the Debtors' Estates, wherever located;

(o) To hear and determine all disputes involving the existence, nature or scope of the Debtors' discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

(p) To hear and determine any rights, Claims or Causes of Action held by or accruing to the Debtors or the Reorganized Debtors pursuant to the Bankruptcy Code or pursuant to any federal or state statute or legal theory;

(q) To enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases with respect to any Person;

(r) To hear and determine any disputes arising in connection with the interpretation, implementation or enforcement of any Post-Petition Aircraft Agreement;

(s) To hear any other matter not inconsistent with the Bankruptcy Code; and

(t) To enter a final decree closing the Chapter 11 Cases.

Notwithstanding the foregoing, and except for all matters with respect to (i) the assumption, assumption and assignment or rejection of executory contracts and unexpired leases, (ii) Adversary Proceeding 07-01561 entitled Delta Air Lines, Inc. v. City of Los Angeles et al. and (iii) the allowance, disallowance, liquidation, classification, priority or estimation of any Claim, the Bankruptcy Court shall have no jurisdiction over (x) the post-Effective Date ordinary-course conduct of any party in connection with the operation of the LAX and/or Ontario airports unrelated to (i), (ii) or (iii)

above or (y) claims or causes of action unrelated to (i), (ii) or (iii) above and to the extent arising after the Effective Date in connection with the operation of the LAX and/or Ontario airports.

93. Post-Effective Date Committee. As provided in Section 17.5 of the Plan, as of the Effective Date, there shall be created the Post-Effective Date Committee, which shall be subject to the jurisdiction of the Court. The Post-Effective Date Committee's rights and powers shall be strictly limited as set forth in Section 17.5 of the Plan. Unless the Post-Effective Date Committee votes to disband earlier, the existence of the Post-Effective Date Committee, and all powers associated therewith, shall terminate when there remains (a) less than $875 million of Disputed Unsecured Claims relating to the lease or financing of Aircraft Equipment and (b) less than $500 million of Disputed Claims relating to tax indemnity agreements for Aircraft Equipment.

94. Enforceability of Plan Documents. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan and all Plan-related documents shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

95. Ownership and Control. The consummation of the Plan shall not, unless the Debtors expressly agree in writing, constitute a change of ownership or change in control, as such terms are used in any statute, regulation, contract or agreement (including, but not limited to, any agreements assumed by the Debtors pursuant to the Plan or otherwise and any agreements related to Aircraft Equipment, employment, severance or termination agreements or insurance agreements) in effect on the Effective Date and to which the Debtors are a party.

96. DIP Facility Matters.

(a) All DIP Facility Claims shall be Allowed as provided in the DIP Order. On or prior to the Effective Date, in complete satisfaction of such Claims, each DIP Facility Claim shall be paid in full in Cash; provided, however, that to the extent that, as of the Effective Date, any Excluded DIP Obligation remains contingent and has not been paid in full in Cash, then any such obligation shall

survive the occurrence of the Effective Date, and the payment on such date of the DIP Facility Claims shall in no way affect or impair the obligations, duties and liabilities of the Debtors or the rights of the Administrative Agent and the Lenders (as defined in the DIP Facility) relating to any Excluded DIP Obligations, the performance of which is required after the Effective Date.

(b) Contemporaneously with all amounts owing in respect of principal included in the DIP Facility Claims, interest accrued thereon to the date of payment and fees, expenses and non-contingent indemnification obligations as required by the DIP Facility and arising prior to the Effective Date being paid in full in Cash (or, in the case of the outstanding letters of credit under the DIP Facility, being guaranteed by back-to-back letters of credit, or collateralized by Cash, in each case in an amount equal to 105% of the face amount of such outstanding letters of credit): (i) the DIP Facility and the "Loan Documents" referred to therein shall (subject to the proviso in the immediately preceding paragraph) automatically terminate, in each case without further action by the DIP Agent or DIP Lenders, (ii) all Liens on property of the Debtors and the Reorganized Debtors arising out of or related to the DIP Facility shall automatically terminate, and all Collateral subject to such Liens shall be automatically released, in each case without further action by the DIP Agent or DIP Lenders and (iii) all guarantees of the Debtors and Reorganized Debtors arising out of or related to the DIP Facility Claims shall be automatically discharged and released, in each case without further action by the DIP Agent or DIP Lenders. The DIP Agent and DIP Lenders shall take all reasonable actions to effectuate and confirm such termination, release and discharge as requested by the Debtors or the Reorganized Debtors.

97. Amex Post-Petition Facility Matters

(a) All Amex Post-Petition Facility Claims shall be Allowed as provided in the DIP Order. In complete satisfaction of the Amex Post-Petition Facility Claims, on or prior to the Effective Date, but in no event later than the date of payment of the DIP Facility Claim, (i) all amounts owing in respect of principal included in the Amex Post-Petition Facility Claims, interest accrued thereon,

professional fees and expenses and non-contingent indemnification obligations as required by the Amex Post-Petition Facility and arising prior to the Effective Date shall be paid in full and in Cash and (ii) any Remaining Pre-Paid Excise Taxes shall be paid in full in Cash. From and after the Effective Date, the Amex Agreements, each in such form and substance as in effect immediately prior to the Effective Date, shall continue to be in effect, except to the extent set forth in the paragraph immediately below; *provided* that the Debtors agree not to make any amendments to the Amex Agreements prior to the Effective Date that are outside of the ordinary course of business without Bankruptcy Court approval.

(b) Without limiting the foregoing, upon the later of (x) the Effective Date and (y) the date on which all principal of the Amex Post-Petition Facility Claims, interest accrued thereon, professional fees and expenses and non-contingent indemnification obligations as required by the Amex Post-Petition Facility and arising prior to the Effective Date and any Remaining Pre-Paid Excise Taxes are paid in full in Cash: (i) the Amex Post-Petition Facility and the "Other Documents" referred to therein shall automatically terminate, except that any obligation under any provision that, pursuant to Section 14.7 of each Amex Post-Petition Facility, survives the termination of such Amex Post-Petition Facility and has not been satisfied in full on or prior to the Effective Date shall survive the occurrence of the Effective Date, (ii) all Liens on property of the Debtors and the Reorganized Debtors in favor of the Amex Entities (including, without limitation, any Liens arising out of, related to or securing the Amex Post-Petition Facility Claims and any Liens arising out of, related to or securing the Card Service Agreement, the Co-Branded Card Agreement and the MR Agreement) shall automatically terminate, and all collateral subject to such Liens shall be automatically released (*provided, however,* that nothing in this clause (ii) shall affect the rights, if any, of Amex under any Amex Agreement to offset, recoup or create a reserve or assert similar rights to the extent more particularly set forth in such agreements) and (iii) all guarantees of the Debtors and Reorganized Debtors in favor of the Amex Entities set forth in the Amex Post-Petition Facility shall be automatically discharged and released, in each case without further

action by the Amex Entities. The Amex Entities shall take all reasonable actions requested by the Debtors or the Reorganized Debtors to effectuate and confirm such termination, discharge and release.

98. Compensation Programs. The entry of this Confirmation Order constitutes authorization and approval of the Compensation Programs in all respects, including as follows:

(a) The Compensation Programs, which include, without limitation, the 2007 Performance Compensation Plan,[4] are hereby approved as necessary for purposes of compliance with (i) Rule 16b-3, issued under the Securities Exchange Act of 1934, as amended, (ii) Section 162(m) of the Internal Revenue Code and (iii) applicable New York Stock Exchange rules;

(b) The solicitation of votes on the Plan pursuant to the Disclosure Statement and the Plan Supplements constitute a solicitation of the holders of New Delta Common Stock for approval of the Compensation Programs; and

(c) All consideration provided under the Compensation Programs is hereby deemed to be "equity or other consideration" for "non-pilot employees" that is made "in respect of the sacrifices made by them in furtherance of the Company's effort to restructure or as incentive for the non-pilot employees future service to the Company" within the meaning of the Bankruptcy Protection Covenant Between Delta Air Lines, Inc. and Air Line Pilots Association, International, effective as of June 1, 2006.

99. Exemption from Transfer Taxes and Recording Fees. Pursuant to section 1146(a) of the Bankruptcy Code, none of the issuance, Transfer or exchange of notes or equity securities under the Plan, the creation, filing or recording of any mortgage, deed of trust or other security interest, the making, assignment, filing or recording of any lease or sublease, the transfer of title to or ownership of any of the Debtors' interests in any Aircraft Equipment or the making or delivery of any deed, bill of

[4] A summary of which is included as Exhibit 1 to the Plan Supplement entitled "Summary of Emergence Compensation Programs for Delta Air Lines, Inc." filed on March 20, 2007.

sale or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, the New Credit Facility, the New Delta Plan Securities, any Post-Petition Aircraft Agreement or any merger agreements or agreements of consolidation, deeds, bills of sale or assignments executed in connection with any of the transactions contemplated under the Plan, shall be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, Cape Town filing or recording fee, FAA filing or recording fee or other similar tax or governmental assessment in the United States. All sale transactions consummated by the Debtors and approved by the Court including, without limitation, the transfers effectuated under the Plan, the sale by the Debtors of owned property or assets pursuant to section 363(b) of the Bankruptcy Code or pursuant to any Post-Petition Aircraft Agreement, and the assumption, assignment and sale by the Debtors of unexpired leases of non-residential real property pursuant to section 365(a) of the Bankruptcy Code, are deemed to have been made under, in furtherance of, or in connection with the Plan and, therefore, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, Cape Town filing or recording fee, FAA filing or recording fee or other similar tax or governmental assessment in the United States. The appropriate federal, state and local governmental officials and agents are hereby directed to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

100. Authorization to Modify Plan Supplements. Without need for further order or authorization of the Court, the Debtors or the Reorganized Debtors are authorized and empowered to make any and all modifications to any and all documents included as part of the Plan Supplements or otherwise contemplated by the Plan that are consistent with the Plan.

101. Effectiveness of All Actions. All actions authorized to be taken pursuant to the Plan shall be effective on, prior to or after the Effective Date pursuant to this Confirmation Order, without further application to, or order of the Court, or further action by the respective officers, directors, members or stockholders of Reorganized Delta or the other Reorganized Debtors and with the effect that such actions had been taken by unanimous action of such officers, directors, members or stockholders.

102. Approval of Consents. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules and regulations of all states and any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts and transactions referred to in or contemplated by the Plan, the Plan Supplements, the Disclosure Statement, the Plan Supplements, and any documents, instruments or agreements, and any amendments or modifications thereto.

103. Withholding and Reporting Procedures. The withholding procedures described below are hereby approved as necessary in order to avoid unreasonable delay in distributions of payments to retirees and former employees of the Debtors and will fulfill the Debtors' obligations as withholding agents with respect to such payments.

> (a) Retirees and former employees with a bankruptcy claim amount (i) of $2,000 or less (Delta Class 6) will be subject to flat-rate federal income tax withholding at a 10% rate; (ii) greater than $2,000 but less than $100,000 (Delta Class 5 and retirees and former employees with such claims in Comair Class 4) will be subject to flat-rate federal income tax withholding at a 15% rate; and (iii) greater than $100,000 (Delta Class 4 and retirees and former employees with such claims in Comair Class 4) will be subject to 25% flat-rate federal income tax withholding. To effect income tax withholding in the case of retirees and former employees who receive shares, the Reorganized Debtors will withhold a number of shares equal to the applicable income-tax withholding rate noted above for each retiree and former employee multiplied by the total shares received. As an example, if a retiree or former employee was otherwise entitled to receive 1,000 shares and was subject to a 25% withholding rate, the Reorganized Debtors will withhold 250 shares. All retirees and former employees will

also be subject to withholding for any state and local taxes and, if applicable, FICA.

(b) The shares withheld by the Reorganized Debtors will be sold on behalf of the retiree or former employee over a period of not more than thirty days (and perhaps fewer than thirty days) following the Debtors' emergence from bankruptcy. When the withheld shares have been sold, the balance of the shares will be distributed directly to a brokerage account established for the retiree or former employee. Within seven days thereafter, the Reorganized Debtors will deposit with the IRS an amount equal to the net cash proceeds from the sale of the shares withheld for federal income tax, plus any interest earned thereon. For reporting purposes, the Reorganized Debtors will report taxable income to the retiree or former employee equal to the sum of (i) the fair market value of the shares distributed to the retiree or former employee on the date of distribution to the retiree or former employee's brokerage account and (ii) the net proceeds realized upon the sale of the withheld shares (including any interest income earned thereon). The Reorganized Debtors will remit to the IRS and report the net proceeds (including any interest income earned) of the sales of the shares withheld for federal tax purposes over the 30-day period. The retiree or former employee's tax basis in the shares received will equal the fair market value of the shares distributed to the retiree or former employee on the date of distribution.

(c) Under the Debtors' Plan of Reorganization, retirees and former employees with a bankruptcy claim of less than $100,000 may request to have their claim satisfied in cash, and retirees and former employees in Delta Class 6 will receive only cash with respect to their claims. To the extent a retiree or former employee receives a cash payment, the Reorganized Debtors will simply withhold a portion of this cash and will use that cash to pay withholding based on a flat-rate method.

(d) Retirees and former employees have been notified, by the *Notice of Supplemental Procedures Regarding Tax Withholding Obligations Relevant to Retirees and Former Employees of the Debtors* [Docket No. 5637], filed by the Debtors on April 11, 2007, that if they do not wish to have the Reorganized Debtors withhold and sell shares in order to satisfy the withholding requirements, they will need to make an election to provide the Reorganized Debtors with cash in satisfaction of flat-rate withholding.

104. Payment of Professionals. Upon entry of this Confirmation Order, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after the date hereof shall terminate, and the Debtors and Reorganized Debtors may employ and pay all Professionals in the ordinary course of business (including

with respect to the month in which the Confirmation Date occurred) without any further notice to, action by or order or approval of this Court or any other party. Professionals shall be paid pursuant to the "Monthly Statement" process set forth in the Interim Compensation Order with respect to all calendar months ending prior to the Confirmation Date.

105. Dissolution of Statutory Committees. Upon the Effective Date, the Creditors' Committee and all other statutory committees appointed in the Chapter 11 Cases shall dissolve automatically, and their members shall be released and discharged from all rights, duties, responsibilities and liabilities arising from, or related to, the Chapter 11 Cases and under the Bankruptcy Code.

106. Notice of Reinstatement. The Debtors have filed a Notice of Reinstatement [Docket No. 5513], which reinstatements shall be effective upon the Effective Date.

107. Disclosure: Agreements and Other Documents. The Debtors have disclosed all material facts regarding: (a) the New Delta Certificate of Incorporation, New Delta Bylaws or similar constituent documents, (b) the selection of directors and officers for the Reorganized Debtors, (c) the New Credit Facility, (d) the distribution of Cash, (e) the New Delta Plan Securities, (f) the New Ad Hoc Committee Aircraft Notes, (g) the Post-Petition Aircraft Agreements, (h) the employment, retirement and indemnification agreements, incentive compensation programs, retirement income plans, welfare benefit plans and other employee plans and related agreements, (i) the other matters provided for under the Plan involving corporate action to be taken by or required of the Reorganized Debtors, and (j) all contracts, leases, instruments, releases, indentures and other agreements related to any of the foregoing.

108. Binding Effect. The Plan shall be binding upon and inure to the benefit of the Debtors, the Reorganized Debtors, all present and former holders of Claims or Interests, all entities that are parties to or are subject to Post-Petition Aircraft Agreements and their respective heirs, executors, administrators, successors and assigns.

109. Governing Law. Except to the extent that the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit to the Plan or a schedule or Plan Documents provides otherwise, the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflict of laws thereof.

110. Notice of Entry of Confirmation Order and Effective Date. Pursuant to Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c), the Reorganized Debtors shall file and serve notice of entry of this Confirmation Order and Effective Date in substantially the form annexed hereto as Exhibit B (the "**Notice of Confirmation**") on all holders of Claims and Interests, the United States Trustee for the Southern District of New York, the attorneys for the Creditors' Committee and other parties in interest by causing the Notice of Confirmation to be delivered to such parties by first-Class mail, postage prepaid, within 10 business days after the Effective Date. The Notice of Confirmation shall also be published in *The Atlanta Journal Constitution, The Wall Street Journal* (National Edition), *The Salt Lake Tribune* and *The Cincinnati Enquirer* and posted on the website of the Debtors' Case Information website at www.deltadocket.com. Such notice is adequate under the particular circumstances and no other or further notice is necessary. The form of Notice of Confirmation substantially in the form annexed hereto as Exhibit A is approved. The Notice of Confirmation shall also serve as the notice setting forth the Other Administrative Claim Bar Date required by section 8.2 of the Plan and as the notice of the Effective Date.

111. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

112. References to Plan Provisions. The failure to include or specifically describe or reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the

effectiveness of such provision, it being the intent of the Court that the Plan be approved and confirmed in its entirety.

113. Findings of Fact. The determinations, findings, judgments, decrees and orders set forth and incorporated herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. Each finding of fact set forth or incorporated herein, to the extent it is or may be deemed a conclusion of law, shall also constitute a conclusion of law. Each conclusion of law set forth or incorporated herein, to the extent it is or may be deemed a finding of fact, shall also constitute a finding of fact.

114. Conflicts Between Confirmation Order and Plan. The provisions of the Plan and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; *provided*, *however*, that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence.

115. Final Order. This Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

116. Effectiveness of Order. In accordance with Bankruptcy Rules 3020(e), 6004(h) and 6006(d) (and notwithstanding any other provision of the Bankruptcy Code or the Bankruptcy Rules), this Confirmation Order shall be stayed until 9 a.m. (prevailing Eastern time) on Monday, April 30, 2007 and shall be effective at that time without further order of this Court; *provided, however*, that nothing herein or therein shall affect or supersede the provisions of the approval order related to the CVG Settlement Agreement providing that no distributions pursuant to the CVG Settlement Agreement shall be made prior to 10 a.m. (prevailing Eastern time) on May 3, 2007. This Confirmation Order is and shall be deemed to be a separate order with respect to each Debtor for all purposes.

Dated: April 25, 2007
New York, New York

/s/ Adlai S. Hardin, Jr.
UNITED STATES BANKRUPTCY JUDGE

Tab 3

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
FRONTIER AIRLINES HOLDINGS, INC., et al.,	:	**Chapter 11 Case No.** **08-11298 (RDD)**
Debtors.	:	**(Jointly Administered)**

ORDER CONFIRMING DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

The Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated September 8, 2009 (attached hereto as Exhibit A, the "**Plan**"),[1] having been filed with this Court (the "**Court**") by Frontier Airlines Holdings, Inc. ("**Frontier Holdings**") and its two subsidiaries that are debtors and debtors in possession in these cases (collectively, the "**Debtors**")[2]; and the Court having entered, after due notice and a hearing, pursuant to sections 105, 502, 1125, 1126 and 1128 of title 11 of the United States Code (the "**Bankruptcy Code**") and rules 2002, 3003, 3017 and 3018 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), an order dated July 22, 2009 (the "**Approval Order**") (i) approving the Debtors' Disclosure Statement, including all Appendices attached thereto (as amended, the "**Disclosure Statement**"), (ii) approving solicitation and notice materials, (iii) approving forms of ballots, (iv) establishing solicitation and voting procedures, (v) allowing and estimating certain claims for voting purposes, (vi) scheduling a confirmation hearing (the "**Confirmation Hearing**") and (vii) establishing notice and objection procedures; and the Debtors

[1] Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to such terms in the Plan.

[2] The Debtors are the following entities: Frontier Holdings; Frontier Airlines, Inc. ("**Frontier**"); and Lynx Aviation, Inc. ("**Lynx**").

having provided a copy of the Disclosure Statement to all holders of Claims in Class 3 (General Unsecured Claims) (the "**Voting Class**") as provided for by the Approval Order; and the various Plan schedules and Plan Supplements (collectively, the "**Plan Supplements**") having been filed and served as required by the Plan; and the Confirmation Hearing having been held before the Court on September 10, 2009 after due notice to holders of Claims and Interests and other parties-in-interest in accordance with the Approval Order, the Bankruptcy Code and the Bankruptcy Rules; and upon all of the proceedings had before the Court and after full consideration of: (i) each of the objections to confirmation of the Plan (the "**Objections**"); (ii) the memorandum of law in support of confirmation of the Plan filed by the Debtors, dated September 8, 2009; (iii) the declarations filed in connection with confirmation of the Plan, including (a) the Declaration of Edward M. Christie, III in Support of Confirmation of the Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code (the "**Christie Declaration**"), (b) the Declaration of Michael B. Cox in Support of Confirmation of the Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code (the "**Cox Declaration**") and (c) the Declaration of James Katchadurian of Epiq Bankruptcy Solutions, LLC Regarding the Tabulation of and Results of Voting with Respect to the Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code [ECF No. 1050] (the "**Vote Certification**" and, collectively with the Christie Declaration and the Cox Declaration, the "**Declarations**") and the testimony contained therein and any additional testimony presented to the Court and (iv) all other evidence proffered or adduced during, memoranda and objections filed in connection with and arguments of counsel made at the Confirmation Hearing; and after due deliberation and sufficient cause appearing therefor,

It hereby is DETERMINED, FOUND, ADJUDGED, DECREED AND ORDERED THAT:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2) and 1334(a)). The Court has jurisdiction over the Chapter 11 Cases pursuant to sections 157 and 1334 of title 28 of the

United States Code. Venue is proper pursuant to sections 1408 and 1409 of title 28 of the United States Code. Confirmation of the Plan is a core proceeding pursuant to section 157(b)(2)(L) of title 28 of the United States Code, and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

2. Commencement and Joint Administration of the Chapter 11 Cases. On the Petition Date, each of the above-captioned Debtors commenced a case under Chapter 11 of the Bankruptcy Code. By prior order of the Court, the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. The Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

3. Judicial Notice. The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court and/or its duly appointed agent, including, without limitation, all pleadings and other documents filed and orders entered thereon. The Court also takes judicial notice of all evidence proffered or adduced and all arguments made at the hearings held before the Court during the pendency of these Chapter 11 Cases.

4. Burden of Proof. The Debtors, as the Plan proponents, have the burden of proving the elements of section 1129 of the Bankruptcy Code by a preponderance of the evidence, and they have met that burden as further found and determined herein.

5. Notice; Transmittal and Mailing of Materials.

(a) Due, adequate and sufficient notice of the Disclosure Statement, the Plan and the Confirmation Hearing, along with adequate notice of the respective deadlines for voting on and filing objections to the Plan, has been given to all known holders of Claims and Interests substantially in accordance with the procedures set forth in the Approval Order, and no other or further notice is or shall be required;

(b) The Debtors have transmitted to members of the Voting Class solicitation packages (the "**Solicitation Packages**"), each containing (i) a cover letter describing the contents of the Solicitation Package, the contents of the enclosed CD-ROM and instructions for obtaining printed copies of any materials provided on the CD-ROM at no charge, (ii) a CD-ROM containing (x) the Disclosure Statement (with the Plan annexed thereto and other exhibits) and (y) the Approval Order (without exhibits), (iii) the Confirmation Hearing Notice, (iv) a Ballot or Beneficial Ballot, as appropriate, together with a pre-addressed postage paid envelope and (v) a letter from the Creditors' Committee regarding acceptance of the Plan substantially in accordance with the procedures set forth in the Approval Order. All procedures used to distribute the Solicitation Packages to the Voting Class were fair and were conducted in accordance with the Bankruptcy Code and the Bankruptcy Rules and all other applicable rules, laws and regulations;

(c) The Debtors have transmitted to members of the non-voting classes (Class 1 (Other Priority Claims), Class 2 (Secured Claims), Class 4a (Interests in Frontier Holdings), Class 4b (Interests in Frontier and Lynx) and Class 4c (Securities Litigations Claims)), to the extent knowable, a notice describing such recipient's non-voting status and the deadline for filing objections to the Plan (the "**Non-Voting Notices**") substantially in accordance with the procedures set forth in the Approval Order;

(d) The Debtors have served all parties-in-interest with, at a minimum, the Confirmation Hearing Notice;

(e) Adequate and sufficient notice of the Confirmation Hearing and all other bar dates described in the Approval Order and the Plan has been given in accordance with the Bankruptcy Rules and the Approval Order, and no other or further notice is or shall be required; and

(f) The filing with the Court and service of the version of the Plan attached as Appendix A to the Disclosure Statement, the filing of the Plan on September 8, 2009 and the disclosure of any further modifications on the record at the Confirmation Hearing constitute due and sufficient notice of the Plan and all modifications thereto.

6. Voting. Votes on the Plan were solicited after disclosure of "adequate information" as defined in section 1125 of the Bankruptcy Code. As evidenced by the Vote Certification, votes to accept the Plan have been solicited and tabulated fairly, in good faith and in a manner consistent with the Approval Order, the Bankruptcy Code and the Bankruptcy Rules.

7. Plan Supplements. On August 18, 2009, the Debtors filed Plan Supplements, as described in Section 16.5 of the Plan. In addition, the Debtors filed Schedules to the Plan on various dates. All such Plan Supplements and Schedules comply with the terms of the Plan, and the filing and notice of such documents was good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Approval Order, and no other or further notice is or shall be required.

8. Plan Modifications (11 U.S.C. § 1127). Subsequent to solicitation, the Debtors made certain non-material modifications to the Plan (the "**Plan Modifications**"). Prior notice regarding the substance of the Plan Modifications, coupled with the filing with the Court of the Plan as modified by the Plan Modifications and, in certain circumstances, the disclosure of the Plan Modifications on the record at the Confirmation Hearing, constitute due and sufficient notice thereof.

9. Deemed Acceptance of Plan as Modified. All Plan Modifications are consistent with all of the provisions of the Bankruptcy Code, including, without limitation, sections 1122, 1123, 1125 and 1127 and Bankruptcy Rule 3019, and all holders of Claims who voted to accept the Plan and who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim or Interest shall be permitted to change its vote as a consequence of the Plan Modifications.

10. Bankruptcy Rule 3016(a). The Plan reflects the date it was filed with the Court and identifies the entities submitting it as Plan proponents, thereby satisfying Bankruptcy Rule 3016(a).

11. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

(a) Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). In addition to Administrative Claims and Priority Tax Claims that need not be classified, the Plan classifies six Classes of Claims and Interests. The Claims and Interests placed in each Class are substantially similar to other Claims or Interests, as the case may be, in each such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, the classifications were not done for any improper purpose and such Classes do not unfairly discriminate between or among holders of Claims or Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(b) Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Section 4.2 of the Plan specifies that Class 1 (Other Priority Claims), Class 2 (Secured Claims) and Class 4b (Interests in Frontier and Lynx) are Unimpaired by the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

(c) Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Section 4.2 of the Plan designates Class 3 (General Unsecured Claims), Class 4a (Interests in Frontier Holdings) and Class 4c (Securities Litigation Claims) as Impaired, and Article 4 of the Plan specifies the treatment of each of these Classes of Claims and Interests under the Plan, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

(d) No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class, unless the holder of

a Claim or Interest has agreed to a less favorable treatment, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

(e) Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan and the various documents and agreements set forth in the Plan Supplements and described in the Plan provide adequate and proper means for the Plan's implementation, including, without limitation, the Plan Consolidation described below, thereby satisfying section 1123(a)(5) of the Bankruptcy Code.

(f) Nonvoting Equity Securities (11 U.S.C. § 1123(a)(6)). The certificate of incorporation of Reorganized Frontier Holdings and the certificates of incorporation of the Reorganized Subsidiary Debtors, filed as Plan Supplements on August 18, 2009 (collectively, the "**New Certificates of Incorporation**"), each prohibit the issuance of non-voting equity securities. Thus, the requirements of section 1123(a)(6) of the Bankruptcy Code are satisfied with respect to the New Certificates of Incorporation.

(g) Designation of Directors and Officers (11 U.S.C. § 1123(a)(7)). Section 11.3 of the Plan contains provisions with respect to the manner of appointment of the directors and officers of the Reorganized Debtors that are consistent with the interests of creditors, equity security holders and public policy in accordance with section 1123(a)(7) of the Bankruptcy Code.

(h) Additional Plan Provisions (11 U.S.C. § 1123(b)(6)). The Plan's provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code.

12. Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors, as the proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically, *inter alia*:

(a) The Debtors are proper debtors under section 109(d) of the Bankruptcy Code;

(b) The Debtors have complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by order of the Court; and

(c) The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Approval Order in transmitting the Disclosure Statement, the Plan and related documents and notices in soliciting and tabulating votes on the Plan.

(d) Good Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before this Court in these Chapter 11 Cases, the Debtors, the Creditors' Committee and each of their members, directors, officers, employees, shareholders, agents, advisors, accountants, investment bankers, consultants, attorneys and other representatives have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances to the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code and such parties listed in Section 12.5 of the Plan are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Section 12.5 of the Plan.

13. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. The Debtors' good faith is evident from the facts and records of these Chapter 11 Cases, the Disclosure Statement and the hearing thereon, and the record of the Confirmation Hearing and other proceedings held in these Chapter 11 Cases. The Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtors' Estates and effectuating a successful reorganization of the Debtors.

14. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Subject to the provisions of Section 8.1(a) of the Plan, any payment made or to be made by any of the Debtors for

services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been approved by, or is subject to the approval of, the Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

15. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the persons proposed to serve as members of the New Board and as members of the respective boards of directors of the Subsidiary Debtors were disclosed in Plan Supplements filed on August 18, 2009, and the appointment to, or continuance in, such positions of such persons is consistent with the interests of holders of Claims against, and Interests in, the Debtors and with public policy. The Debtors have further disclosed that the principal officers of each Debtor immediately prior to the Effective Date will be the officers of such Reorganized Debtor as of the Effective Date. The nature of the compensation payable to the members of the New Board, as well as the current compensation of the chief executive officer, chief financial officer and the three other most highly-compensated officers of Frontier Holdings was disclosed in a Plan Supplement filed with the Bankruptcy Court on August 18, 2009.

16. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission and does not require approval by any governmental regulator. Therefore, the Plan satisfies section 1129(a)(6) of the Bankruptcy Code.

17. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis set forth in Appendix B to the Disclosure Statement and supported in the Christie Declaration and the Cox Declaration (a) is persuasive and credible, (b) has not been controverted by other evidence, (c) is based on sound methodology and (d) establishes that each holder of an Impaired Claim or Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective

Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

18. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Class 1 (Other Priority Claims), Class 2 (Secured Claims) and Class 4b (Interests in Frontier and Lynx) are each Classes of Unimpaired Claims or Interests that are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. The Voting Class has voted to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code. No Classes voted against the Plan; however Class 4a (Interests in Frontier Holdings) and Class 4c (Securities Litigation Claims) (collectively, the "**Deemed Rejecting Classes**") are not entitled to receive or retain any property under the Plan and, therefore, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Although section 1129(a)(8) of the Bankruptcy Code has not been satisfied with respect to the Deemed Rejecting Classes, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to the Deemed Rejecting Classes and thus satisfies section 1129(b) of the Bankruptcy Code with respect to such Classes.

19. Treatment of Administrative, Priority Tax and Priority Non-Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Claims and Other Priority Claims pursuant to Article 3 and Section 4.2 of the Plan, respectively, satisfies the requirements of sections 1129(a)(9)(A) and (B) of the Bankruptcy Code, and the treatment of Priority Tax Claims pursuant to Section 3.2 of the Plan satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code.

20. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). The Voting Class is an Impaired Class and has voted to accept the Plan, without including any acceptance of the Plan by any insider. As such, without including any acceptance of the Plan by any insider, there is at least one Class of Claims against the Debtors that is Impaired under the Plan and has accepted the Plan. Thus the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

21. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence submitted regarding feasibility through the Declarations together with all evidence proffered or advanced at or prior to the Confirmation Hearing (a) is persuasive and credible, (b) has not been controverted by other evidence and (c) establishes that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtors, thus satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code.

22. Payment of Fees (11 U.S.C. § 1129(a)(12)). As provided in Section 16.3 of the Plan, all fees payable pursuant to section 1930(a) of title 28 of the United States Code, as determined by the Court, have been paid or shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed or closed, whichever occurs first, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

23. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code. On and after the Effective Date, pursuant to section 1129(a)(13) of the Bankruptcy Code, the Reorganized Debtors shall continue to pay any retiree health and welfare benefits of the Debtors covered by section 1114 of the Bankruptcy Code at the levels established pursuant to subsection (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code at any time prior to confirmation of the Plan, and for the duration of the period for which the Debtors have obligated themselves to provide such benefits. The Reorganized Debtors may unilaterally modify or terminate any retiree benefits (including health and welfare benefits) in accordance with the terms of the plan, program, policy or document under which such benefits are established or maintained; *provided, however*, that nothing herein shall be construed to enlarge the Reorganized Debtors' rights to modify such retiree benefits (including such retiree benefits that are vested, if any) under applicable non-bankruptcy law.

24. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). Based upon the Declarations and all other evidence before the Court, the Plan does not discriminate unfairly and is fair and equitable with respect to the Deemed Rejecting Classes, as required by sections 1129(b)(1) and (2) of the Bankruptcy Code. Thus, the Plan may be confirmed notwithstanding the Debtors' failure to satisfy section 1129(a)(8) of the Bankruptcy Code. Upon confirmation and the occurrence of the Effective Date, the Plan shall be binding upon the members of the Deemed Rejecting Classes.

(a) The Plan Does Not Unfairly Discriminate Against the Deemed Rejecting Classes. The Plan does not unfairly discriminate against the Deemed Rejecting Classes. The Interests classified in Class 4b (Interests in Frontier and Lynx) shall be Reinstated for the ultimate benefit of Reorganized Frontier Holdings in exchange for the agreement of Reorganized Frontier Holdings to make distributions under the Plan to Creditors of Frontier and Lynx and to use certain funds and assets, to the extent authorized in the Plan, to satisfy certain obligations of Frontier and Lynx. As a result, there is a reasonable basis for any disparate treatment between and among Class 4a (Interests in Frontier Holdings), Class 4b (Interests in Frontier and Lynx) and Class 4c (Securities Litigation Claims). Therefore, the Plan satisfies section 1129(b)(1) of the Bankruptcy Code.

(b) The Plan is Fair and Equitable. The Plan is fair and equitable, in that no holder that is junior to the Interests classified in the Deemed Rejecting Classes will receive or retain under the Plan any property on account of such junior interest. Therefore, the Plan satisfies section 1129(b)(2)(C)(ii) of the Bankruptcy Code.

25. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan of reorganization filed in these cases. Accordingly, section 1129(c) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

26. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan, as evidenced by its terms, is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act.

27. Satisfaction of Confirmation Requirements. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

28. Plan Consolidation. A preponderance of the evidence presented to this Court demonstrates that no Creditor will be harmed by the proposed Plan Consolidation and that the Plan Consolidation is appropriate. Furthermore, no Creditor or Interest holder has objected to or opposed the Plan Consolidation; *provided, however,* that the Debtors have entered into an agreement with MetLife Capital, Limited Partnership ("**MetLife**") regarding the assumption of the lease agreements and other operative documents for aircraft bearing tail nos. N501LX and N503LX through N506LX, inclusive (the "**Lease Agreements**"), and pursuant to which MetLife, Export Development Canada, as loan participant, and their respective trustees reserve certain rights as set forth on the record at the Confirmation Hearing in connection with the Plan Consolidation in the event that the Lease Agreements are ultimately rejected, which reservation of rights are expressly included as part of this Order.

29. Implementation. All documents and agreements necessary to implement the Plan, including, without limitation, those contained in the Plan Supplements, and all other relevant and necessary documents have been negotiated in good faith at arm's-length and are in the best interests of the Debtors and the Reorganized Debtors and shall, upon completion of such documentation and execution, be valid, binding and enforceable documents and agreements not in conflict with any federal or state law.

30. Good Faith. The Debtors, the Creditors' Committee, the DIP Agent, the Indenture Trustee, the Plan Sponsor and all other parties (and all of their respective members, officers, directors, agents, financial advisers, attorneys, employees, equity holders, partners, affiliates and representatives)

will be acting in good faith if they proceed to (i) consummate the Plan and the agreements, settlements, transactions and transfers contemplated thereby (including, without limitation, the Restructuring Transactions) and (ii) take the actions authorized and directed by this Confirmation Order.

31. Assumption or Rejection of Executory Contracts and Unexpired Leases. The Debtors have exercised their reasonable business judgment prior to the Confirmation Hearing in determining whether to assume or reject each of their executory contracts and unexpired leases as set forth in Article 10 of the Plan, the Plan Supplements, the Confirmation Order or otherwise. Notwithstanding any provision of this Confirmation Order or the Plan to the contrary, the Debtors may amend Schedules 10.2(a) and 10.2(b) to reject and/or otherwise modify the treatment of certain executory contracts and/or unexpired leases, as and to the extent noted in the versions of Schedules 10.2(a) and 10.2(b) filed on September 9, 2009, after the date hereof. Each assumption or rejection of an executory contract or unexpired lease pursuant to the Confirmation Order and in accordance with Article 10 of the Plan or otherwise shall be legal, valid and binding upon the applicable Reorganized Debtor and all non-Debtor entities party to such executory contract or unexpired lease (subject to the rights of the non-debtor entities party to such agreements to object to such assumption or rejection and the rights of the Reorganized Debtor in response to any such objection); *provided*, *however*, that nothing herein shall be construed as an Order of this Court compelling performance under any assumed contract or lease.

32. Adequate Assurance. The Debtors have provided adequate assurance of future performance for each of the executory contracts and unexpired leases that are being assumed by the Debtors pursuant to the Plan. The Debtors have cured or provided adequate assurance that the Reorganized Debtors will cure defaults (if any) under or relating to each of the executory contracts and unexpired leases that are being assumed by the Debtors pursuant to the Plan. The Plan and such assumptions, therefore, satisfy the requirements of Section 365 of the Bankruptcy Code.

33. Valuation. In accordance with the estimated recoveries set forth in the Disclosure Statement, the enterprise value of the Debtors is insufficient to support a distribution to holders of Interests in Frontier Holdings (Class 4a) or Securities Litigation Claims (Class 4c).

34. Transfers by Debtors; Vesting of Assets. All transfers of property of the Debtors' Estates, including, without limitation, the transfer of the New Common Stock, shall be free and clear of all Liens, charges, Claims, encumbrances and other interests, except as expressly provided in the Plan or this Confirmation Order. Pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of each of the Debtors (excluding property that has been abandoned pursuant to the Plan or an order of the Bankruptcy Court) shall vest in each of the respective Reorganized Debtors or their successors or assigns, as the case may be, free and clear of all Liens, charges, Claims, encumbrances and other interests, except as expressly provided in the Plan or this Confirmation Order. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or applicable nonbankruptcy law.

35. The Debtors have made an overwhelming and uncontroverted showing of the very substantial cost, harm, risk and prejudice to these Estates and their Creditors that would result if the Plan is not consummated.

DECREES

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

36. Confirmation. The Plan is approved and confirmed under section 1129 of the Bankruptcy Code. The terms of the Plan Supplements are incorporated by reference into and are an integral part of the Plan.

37. Objections. All objections that have not been withdrawn, waived or settled, and all reservations of rights pertaining to Confirmation of the Plan, are overruled on the merits.

38. Plan Supplements. The documents contained in the Plan Supplements, and any amendments, modifications, and supplements thereto, and all documents and agreements related thereto

(including all exhibits and attachments thereto and documents referred to therein), and the execution, delivery and performance thereof by the Reorganized Debtors, are authorized and approved as finalized, executed and delivered. Without further order or authorization of this Court, the Debtors, Reorganized Debtors and their successors are authorized and empowered to make any and all modifications to all documents included as part of the Plan Supplements or otherwise contemplated by the Plan that are consistent with the Plan. Once finalized and executed, the documents comprising the Plan Supplements and all other documents contemplated by the Plan shall constitute legal, valid, binding and authorized obligations of the respective parties thereto, enforceable in accordance with their terms and, to the extent applicable, shall create, as of the Effective Date, all Liens and other security interests purported to be created thereby.

39. Provisions of Plan and Confirmation Order Non-severable and Mutually Dependent. The provisions of the Plan and the Confirmation Order, including the findings of fact and conclusions of law set forth herein, are each non-severable and mutually dependent.

40. Preparation, Delivery and Execution of Additional Documents by Third Parties. Each holder of a Claim receiving a distribution pursuant to the Plan and all other parties-in-interest shall, from time to time, take any reasonable actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

41. Solicitation and Notice. Notice of the Confirmation Hearing complied with the terms of the Approval Order, was appropriate and satisfactory based on the circumstances of the Chapter 11 Cases and was in compliance with the provisions of the Bankruptcy Code and the Bankruptcy Rules. The solicitation of votes on the Plan complied with the solicitation procedures in the Approval Order, was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases and was in compliance with the provisions of the Bankruptcy Code and the Bankruptcy Rules. Notice of the Plan Supplements and all related documents was appropriate and satisfactory based upon the circumstances

of the Chapter 11 Cases and was in compliance with the provisions of the Plan, Bankruptcy Code and the Bankruptcy Rules.

42. Plan Classifications Controlling. The classification of Claims and Interests for purposes of distributions made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots tendered to or returned by the Creditors in connection with voting on the Plan (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan, (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for distribution purposes and (c) shall not be binding on the Debtors or Reorganized Debtors.

43. Treatment in Full Satisfaction. The treatment of Claims and Interests set forth in the Plan (including the relinquishment of Claims by the Plan Sponsor as contemplated in the Investment Agreement) is in full and complete satisfaction of the legal, contractual and equitable rights that each holder of a Claim or Interest may have against the Debtors, the Debtors' Estates or their respective property, on account of such Claim or Interest.

44. Plan Consolidation. The Plan is predicated upon the consolidation of the Debtors' Estates for the purposes specified in the Plan (including voting, confirmation and distributions), as set forth more fully in Section 2.1 of the Plan. Consolidation of the Debtors' Estates for the purposes set forth in the Plan is in the best interest of all holders of Claims and Interests, is necessary for the implementation of the Plan and is appropriate in these Chapter 11 Cases; for these reasons, the Plan Consolidation is approved.

45. The Plan Consolidation shall not affect the (i) legal or organizational structure of the Debtors, (ii) pre or post-Petition Date Liens or security interests, (iii) pre or post-Petition Date guarantees that are required to be maintained (a) in connection with executory contracts or unexpired leases that were entered into during these Chapter 11 Cases or that have been or will be assumed or

(b) pursuant to the Plan, (iv) defenses to any cause of action or (v) distribution out of any insurance policies or proceeds of such policies.

46. Continued Corporate Existence. Except as otherwise provided in the Plan, each Debtor shall, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, each with all of the powers of a corporation, under the laws of its jurisdiction of organization and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable state law.

47. Cancellation of Old Notes and Old Stock. On the Effective Date, except to the extent otherwise provided in this Confirmation Order or the Plan, all notes, instruments, certificates and other documents evidencing (a) the Old Notes and (b) the Old Stock shall be cancelled, and the obligations of the Debtors thereunder and in any way related thereto shall be fully satisfied, released and discharged; *provided, however*, that such cancellation shall not itself alter the obligations or rights of any non-Debtor third parties vis-à-vis one another with respect to such notes, instruments, certificates or other documents. On the Effective Date, except to the extent otherwise provided in this Confirmation Order or the Plan, any indenture or similar agreement relating to any of the foregoing, including, without limitation, the Indenture, and any related note, guaranty or similar instrument of the Debtors shall be deemed to be cancelled, as permitted by section 1123(a)(5)(F) of the Bankruptcy Code and discharged (A) with respect to all obligations owed by any Debtor under any such agreement and (B) except to the extent provided herein below, with respect to the respective rights and obligations of the Indenture Trustee under the Indenture against the holders of Old Note Claims. Solely for the purpose of clause (B) in the immediately preceding sentence, only the following rights of the Indenture Trustee shall remain in effect after the Effective Date: (1) rights as trustee, paying agent and registrar, including, but not limited to, any rights to payment of fees, expenses and indemnification obligations, including, but not limited to, payment from property distributed under the Plan to the Indenture Trustee (but excluding any other

property of the Debtors, the Reorganized Debtors or their respective Estates), (2) rights relating to distributions to be made to the holders of the Old Notes by the Indenture Trustee from any source, including, but not limited to, distributions under the Plan (but excluding any other property of the Debtors, the Reorganized Debtors or their respective Estates), (3) rights relating to representation of the interests of the holders of the Old Notes by the Indenture Trustee in the Chapter 11 Cases to the extent not discharged or released by the Plan or any order of the Court and (4) rights relating to participation by the Indenture Trustee in proceedings and appeals related to the Plan. Notwithstanding the continued effectiveness of such rights after the Effective Date, the Indenture Trustee shall have no obligation to object to Claims against the Debtors or to locate certificated holders of Old Notes who fail to surrender their Old Notes in accordance with Section 7.2(d) of the Plan.

48. Issuance of New Common Stock. Upon the terms and subject to the conditions set forth in the Investment Agreement and Section 6.4 of the Plan, Reorganized Frontier Holdings is authorized to issue 1,000 shares of New Common Stock (representing 100% of the issued and outstanding stock of Reorganized Frontier Holdings) for distribution to the Plan Sponsor.

49. Continuing Restructuring Transactions. On or after the Effective Date, the Reorganized Debtors may engage in or take such actions as may be necessary or appropriate to effect Restructuring Transactions, including, without limitation, (i) dissolving companies, (ii) filing appropriate certificates or articles of merger, consolidation or dissolution pursuant to applicable state law and (iii) any other action reasonably necessary or appropriate in connection with such corporate restructurings. In each case in which the surviving, resulting or acquiring Entity in any of the Restructuring Transactions is a successor to a Reorganized Debtor, such surviving, resulting or acquiring Entity will perform the obligations of the applicable Reorganized Debtor pursuant to the Plan, including paying or otherwise satisfying the Allowed Claims to be paid by such Reorganized Debtor. Implementation of any

Restructuring Transactions shall not affect any distributions, discharges, exculpations, releases or injunctions set forth in the Plan.

50. Plan Sponsor. Upon the terms and conditions set forth in the Investment Agreement and the Plan, at the closing under the Investment Agreement, Reorganized Frontier Holdings is authorized to issue, sell and deliver to the Plan Sponsor, and the Plan Sponsor is authorized to purchase from Reorganized Frontier Holdings, the New Common Stock free and clear of all Liens, for the Share Purchase Price. For the avoidance of doubt, the Share Purchase Price shall be deemed to include the relinquishment by the Plan Sponsor and any of its Affiliates (as such term is defined in the Investment Agreement) of all rights under the Plan to any distribution on account of the Plan Sponsor's or any of its Affiliates' (as such term is defined in the Investment Agreement) Allowed General Unsecured Claims (the "**Republic Distribution**"), it being understand that the Republic Distribution shall be payable to the holders of Allowed General Unsecured Claims, other than the Plan Sponsor and any of its Affiliates (as such term is defined in the Investment Agreement), on a pro rata basis.

51. Corporate Action

(a) On the Effective Date, the adoption, filing, approval and ratification, as necessary, of all corporate or related actions contemplated hereby with respect to each of the Reorganized Debtors shall be deemed authorized and approved in all respects. Without limiting the foregoing, such actions may include: (i) the adoption and filing of the New Certificate of Incorporation, (ii) the adoption and filing of the Reorganized Subsidiary Debtors' Certificates of Incorporation, (iii) the approval of the New Bylaws, (iv) the approval of the Reorganized Subsidiary Debtors' Bylaws, (v) the election or appointment, as the case may be, of directors and officers for the Reorganized Debtors, (vi) the issuance of the New Common Stock and (vii) the Restructuring Transactions to be effectuated pursuant to the Plan.

(b) As of the Effective Date, all matters provided for in the Plan involving the corporate structure of any Debtor or any Reorganized Debtor, or corporate actions required by any Debtor or any Reorganized Debtor in connection with the Plan, are deemed to have occurred and shall be in effect, without any requirement of further action by the security holders or directors of such Debtor or Reorganized Debtor or by any other stakeholder.

(c) On or after the Effective Date, the appropriate officers of each Reorganized Debtor and members of the board of directors, board of managers or equivalent body of each Reorganized Debtor are authorized and directed to issue, execute, deliver, file and record any and all agreements, documents, securities, deeds, bills of sale, conveyances, releases and instruments contemplated by the Plan or the transactions contemplated thereby in the name of and on behalf of such Reorganized Debtor and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and the transactions contemplated thereby.

52. New Board. Upon the occurrence of the Effective Date, the Persons proposed to serve as members of the New Board, as identified in the Plan Supplement filed on August 18, 2009, shall automatically constitute the New Board.

53. Compensation Programs. The entry of this Confirmation Order constitutes authorization and approval to retain employees, officers, and directors in accordance with the Plan Supplement detailing post-emergence employee, officer and director compensation, filed on August 18, 2009.

54. Securities Laws Exemption. To the maximum extent provided by Section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, including Section 4(2) of the Securities Act, the offering, issuance and distribution under the Plan of the New Common Stock to the Plan Sponsor will be exempt from registration under the Securities Act and all rules and regulations promulgated thereunder and any state or local law requiring registration prior to the offering, issuance, distribution or sale of

securities, except for any restrictions set forth in section 1145(b) of the Bankruptcy Code and any restrictions contained in the Plan. To the maximum extent provided by Section 1145 of the Bankruptcy Code, the New Common Stock is deemed to have been issued in a public offering under the Securities Act and is freely tradable by the recipient thereof without registration under the Securities Act pursuant to the exemption provided by section 4(1) of the Securities Act.

55. Distributions Under the Plan. All distributions under the Plan shall be made in accordance with Article 7 of the Plan.

56. Unclaimed Distributions. All distributions under the Plan that remain unclaimed for one year after the relevant Distribution Date shall indefeasibly revert to Reorganized Frontier Holdings. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically discharged and forever barred, notwithstanding any federal or state escheat laws or regulations to the contrary.

57. Disputed Claims. The provisions of Article 9 of the Plan, including, without limitation, the provisions governing procedures for resolving Disputed Claims, are fair and reasonable and are approved. The Debtors are hereby ordered to comply with those procedures in establishing the Disputed Claims Reserve called for by the Plan, including the establishment of an escrow account (the "**Escrow Account**") in connection therewith. The Escrow Account shall be bonded as requested by the U.S. Trustee and such bond shall not be withdrawn prior to the date 30 calendar days after written notice of termination has been given to the U.S. Trustee. The Debtors have developed procedures for determining the amount of the Disputed Claims Reserve. In substance, those procedures provide:

(a) With respect to all Disputed General Unsecured Claims filed in a liquidated amount, the portion of the Class 3 Allocation to be initially allocated to the Disputed Claims Reserve on account of such Claims shall be equal to the amount potentially distributable if all

such Claims were Allowed in full, unless otherwise agreed by the Debtors and the relevant holder of a Disputed General Unsecured Claim.

(b) With respect to all Disputed General Unsecured Claims filed in unliquidated amounts, unless otherwise agreed by the Debtors and the relevant holder of a Disputed General Unsecured Claim, the Debtors will, solely for purposes of this initial allocation to the Disputed Claims Reserve, reasonably estimate the amount (including a reasonable reserve amount), if any, for such Claims based on the Debtors' good faith analysis of the amount that may be Allowed when the allowance or disallowance of each such Claim is ultimately determined.

(c) For purposes of the immediately preceding two paragraphs, only General Unsecured Claims filed as of September 1, 2009 that are Disputed Claims at the time such estimations are made shall be considered.

(d) The Debtors will consult with the Creditors' Committee in connection with determinations to be made regarding allocations to the Disputed Claims Reserve.

(e) Notwithstanding the foregoing, but subject to the immediately preceding paragraph, the Debtors shall retain all rights with respect to all claims, including, without limitation, (i) the right to request estimation of any Disputed Claim and the right to request authority from the Bankruptcy Court to allocate to the Disputed Claims Reserve less than 100% of the amount potentially distributable on account of a Disputed Claim and (ii) the right to agree with the holder of a Disputed Claim to allocate to the Disputed Claims Reserve less than 100% of the amount potentially distributable on account of a Disputed Claim.

(f) To the extent a Disputed Claim ceases to be Disputed after the initial calculation of the Disputed Claims Reserve is made, the Debtors will adjust the portion of the Class 3 Allocation to be allocated to the Disputed Claims Reserve accordingly.

(g) The procedures set forth herein may be revised by the Debtors after consultation with the Creditors' Committee or the Post-Effective Date Committee, if then in existence.

58. Other Administrative Claim Bar Date. All requests for payment of Other Administrative Claims that accrued on or before the Effective Date (other than Professional Fee Claims) must be filed with the Claims Agent and served on counsel for the Debtors by the Other Administrative Claim Bar Date. Any requests for payment of Other Administrative Claims that are not properly filed and served by the Other Administrative Claim Bar Date shall not appear on the register of claims maintained by the Claims Agent and shall be disallowed automatically without the need for any objection from the Debtors or the Reorganized Debtors or any action by the Bankruptcy Court. Notwithstanding the foregoing, requests for payment of Other Administrative Claims need not be filed with respect to Other Administrative Claims that (a) are for goods and services provided to the Debtors in the ordinary course of the Debtors' businesses (and are not past due), (b) previously have been Allowed by Final Order of the Bankruptcy Court (including the DIP Order), (c) are for personal injury or wrongful death, (d) are for Cure amounts, (e) are on account of post-petition taxes (including any related penalties or interest) owed by the Debtors or the Reorganized Debtors to any governmental unit (as defined in section 101(27) of the Bankruptcy Code) or (f) the Debtors or the Reorganized Debtors have otherwise agreed in writing do not require such a filing.

59. Approval of Assumption or Rejection of Executory Contracts. Entry of this Confirmation Order shall, subject only to the occurrence of the Effective Date, constitute the approval, (a) pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption of the executory contracts and unexpired leases assumed pursuant to Article 10 of the Plan, (b) pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption and assignment of the executory contracts and unexpired leases assumed and assigned pursuant to Article 10 of the Plan and

(c) pursuant to section 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Article 10 of the Plan.

60. Inclusiveness. Unless otherwise specified on a schedule to the Plan or a notice sent to a given party, each executory contract and unexpired lease listed or to be listed thereon shall include any and all modifications, amendments, supplements, restatements and other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument or other document is listed thereon.

61. Notice of Assumption and Rejection of Executory Contracts and Unexpired Leases Assumed Under the Plan. The filing of the Plan and the schedules thereto and the publication of notice of the entry of this Confirmation Order provide adequate notice of the assumption, assumption and assignment and rejection of executory contracts and unexpired leases pursuant to Article 10 of the Plan (both for contracts and leases that appear on any of those schedules and for contracts and leases assumed or rejected by category or default).

62. Cure of Defaults. The parties to each executory contract and unexpired lease to be assumed or assumed and assigned pursuant to the Plan were afforded good and sufficient notice of such assumption or assumption and assignment and an opportunity to object and be heard. Treatment Objections shall be resolved consistent with Section 10.5(c) of the Plan. Consistent with Section 10.5(d) of the Plan, if a Treatment Objection is filed with respect to any executory contract or unexpired lease sought to be assumed or rejected by any of the Debtors or Reorganized Debtors, the Debtors and the Reorganized Debtors reserve the right (a) to seek to assume or reject such agreement at any time before the assumption, rejection, assignment or Cure with respect to such agreement is determined by Final Order and (b) to the extent a Final Order is entered resolving a dispute as to Cure or the permissibility of assignment (but not approving the assumption of the executory contract or unexpired lease sought to be

assumed), to seek to reject such agreement within 14 calendar days after the date of such Final Order, in each case by filing with the Bankruptcy Court and serving upon the applicable Assumption Party or Rejection Party, as the case may be, a Notice of Intent to Assume or Reject.

63. Treatment Objection Deadline. With respect to an executory contract or unexpired lease sought to be assumed, rejected or deferred pursuant to the Plan, the Treatment Objection Deadline shall be the deadline for filing and serving a Treatment Objection, which deadline shall be 4:00 p.m. (prevailing Eastern Time) on, (a) with respect to an executory contract or unexpired lease listed on Schedule 10.2(a) or 10.2(b), the 15th calendar day after the relevant schedule is filed and notice thereof is mailed, (b) with respect to an executory contract or unexpired lease the proposed treatment of which has been altered by an amended or supplemental Schedule 10.2(a) or 10.2(b), the 15th calendar day after such amended or supplemental schedule is filed and notice thereof is mailed, (c) with respect to an executory contract or unexpired lease for which a Notice of Intent to Assume or Reject is filed, the 15th calendar day after such notice is filed and notice thereof is mailed and (d) with respect to any other executory contract or unexpired lease, including any to be assumed or rejected by category pursuant to Sections 10.1, 10.3 or 10.4 of the Plan (without being listed on Schedule 10.2(a) or 10.2(b)), the deadline for objections to Confirmation of the Plan established pursuant to the Approval Order or other order of the Bankruptcy Court.

64. Rejection Claims and Rejection Bar Date. Any Rejection Claim must be filed with the Claims Agent by the Rejection Bar Date. Any Rejection Claim for which a Proof of Claim is not properly filed and served by such deadline shall be forever barred and shall not be enforceable against the Debtors, the Reorganized Debtors or their respective Estates or properties. The Debtors or Reorganized Debtors and the Post-Effective Date Committee may contest Rejection Claims in accordance with, and to the extent provided by, Section 9.1 of the Plan.

65. Adequate Assurance for Counterparties to Executory Contracts Assumed Under the Plan. Subject only to the occurrence of the Effective Date, all counterparties to all executory contracts and unexpired leases of the Debtors assumed and assigned in accordance with Article 10 of the Plan are deemed to have been provided with adequate assurance of future performance pursuant to section 365(f) of the Bankruptcy Code.

66. Secured Aircraft Financing. Nothing in the Plan or in this Confirmation Order shall affect the enforceability of any security interests or liens granted pursuant to (i) the post-petition aircraft option agreements entered into between the Debtors and Bombardier Inc. pursuant to the August 21, 2008 order of the Bankruptcy Court or (ii) the secured aircraft financing arrangement entered into by the Debtors pursuant to the July 13, 2009 order of the Bankruptcy Court.

67. Operation as of the Effective Date. As of the Effective Date, unless otherwise provided in the Plan or this Confirmation Order, the Reorganized Debtors may operate their businesses and may use, acquire and dispose of property and settle and compromise Claims and Interests without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code.

68. Discharge of Claims and Termination of Interests. Except as otherwise specifically provided herein or in the Plan, the rights afforded in the Plan and the payments and distributions to be made hereunder shall discharge all existing debts and Claims, and shall terminate all Interests of any kind, nature or description whatsoever against or in the Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as otherwise specifically provided herein or in the Plan, upon the Effective Date, all existing Claims against the Debtors and Interests in the Debtors shall be, and shall be deemed to be, discharged and terminated, and all holders of Claims and Interests (and all representatives, trustees or agents on behalf of each holder) shall be

precluded and enjoined from asserting against the Reorganized Debtors, their successors or assignees, or any of their assets or properties, any other or further Claim or Interest based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a Proof of Claim and whether or not the facts or legal bases therefor were known or existed prior to the Effective Date.

69. Discharge of Debtors. Upon the Effective Date and in consideration of the distributions to be made under the Plan, except as otherwise provided herein or in the Plan, each holder (as well as any representatives, trustees or agents on behalf of each holder) of a Claim or Interest and any Affiliate of such holder is deemed to have forever waived, released and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights and liabilities that arose prior to the Effective Date. Upon the Effective Date, all such persons are forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in the Debtors.

70. Injunction. Except as otherwise expressly provided herein or in the Plan, all persons or entities who have held, hold or may hold Claims or Interests and all other parties-in-interest, along with their respective present or former employees, agents, members, partners, officers, directors, principals, representatives and Affiliates, are permanently enjoined, from and after the Effective Date, from (a) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim (including, without limitation, a Securities Litigation Claim) or Interest against the Debtors, the Reorganized Debtors or property or interest in property of any Debtor or Reorganized Debtor, other than to enforce any right to a distribution pursuant to the Plan, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtors, the Reorganized Debtors or property or interest in property of any Debtor or Reorganized Debtor, other than to enforce any right to a distribution pursuant to the Plan, (c) creating, perfecting or

enforcing any Lien or encumbrance of any kind against the Debtors or Reorganized Debtors or against the property or interests in property of any Debtor or Reorganized Debtor, other than to enforce any right to a distribution pursuant to the Plan or (d) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtors or Reorganized Debtors or against the property or interests in property of any Debtor or Reorganized Debtor, with respect to any such Claim or Interest.

71. Term of Injunction or Stay. Unless otherwise provided in the Plan, any injunction or stay arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise that is in existence on the Confirmation Date shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

72. Exculpation. As provided for in Section 12.5 of the Plan, as of the Effective Date, none of the Debtors, the Reorganized Debtors, the Creditors' Committee, the DIP Agent, the DIP Lenders, the Plan Sponsor, the Indenture Trustee, the FAPA Released Parties, the TWU Released Parties, the IBT Released Parties or any of their respective Affiliates, members, officers, directors, employees, advisors, actuaries, accountants, attorneys, financial advisors, investment bankers, consultants, professionals or agents, shall have or incur any liability to any holder of a Claim or Interest for any act or omission in connection with, related to or arising out of, the Chapter 11 Cases, the negotiation of any settlement or agreement in the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the preparation and distribution of the Disclosure Statement, the offer, issuance and distribution of any securities issued or to be issued pursuant to the Plan or the administration of the Plan or the property to be distributed under the Plan. Nothing in this Confirmation Order or the Plan shall (i) be construed to exculpate any Released Party from intentional fraud, gross negligence, willful misconduct, intentional criminal conduct, intentional misuse of confidential information that causes damages, or ultra vires acts or (ii) limit the liability of the professionals of the Debtors, the Reorganized Debtors, the Creditors'

Committee, and the Indenture Trustee, to their respective clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).

73. Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States or any of its agencies arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States against the Released Parties, nor shall anything in the Confirmation Order or the Plan enjoin the United States from bringing any claim, suit, action or other proceedings against the Released Parties for any liability for any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States, nor shall anything in the Confirmation Order or the Plan exculpate any such party from any liability to the United States or any of its agencies, arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States.

74. Release by the Debtors. As provided for in Section 12.6 of the Plan, as of the Effective Date, the Debtors, their Estates and the Reorganized Debtors release all of the Released Parties from any and all Causes of Action (other than the rights of the Debtors or the Reorganized Debtors to enforce applicable post-petition agreements (including, without limitation, settlement agreements), any order entered in the Chapter 11 Cases, the Plan and the Plan Documents including contracts, instruments, releases, indentures and other agreements or documents delivered thereunder) held by or assertable on behalf of or derivative from the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based on or relating to or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor, any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan and Disclosure

Statement, or related agreements, instruments or other documents, which Causes of Action are based in whole or in part on any act, omission, transaction, event or other occurrence (except for willful misconduct, ultra vires acts, or gross negligence) taking place before the Effective Date. Notwithstanding the foregoing, if any Released Party directly or indirectly brings or asserts any Claim or Cause of Action in any way arising out of or related to any document or transaction that was in existence prior to the Effective Date against the Debtors, the Reorganized Debtors or any of their respective Affiliates, officers, directors, members, employees, advisors, actuaries, attorneys, financial advisors, investment bankers, professionals or agents, then the release set forth in Section 12.6 of the Plan (but not any release or indemnification or any other rights or claims granted under any other section of the Plan or under any other document or agreement) shall automatically and retroactively be null and void *ab initio* with respect to such Released Party; *provided, however,* that the immediately preceding clause shall not apply to the prosecution in this Court (or any appeal therefrom) of the amount, priority or secured status of any pre-petition Claim against the Debtors.

75. Voluntary Releases by the Holders of Claims and Interests. As provided for in Section 12.7 of the Plan, for good and valuable consideration, on and after the Effective Date, holders of Claims that (a) voted to accept or reject the Plan and (b) did not elect (as permitted on the Ballots) to opt out of the releases described in this paragraph, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all Causes of Action whatsoever, including derivative Claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any

Released Party relating to the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan and Disclosure Statement, or related agreements, instruments or other documents, which Causes of Action are based in whole or in part on any act, omission, transaction, event or other occurrence (except for willful misconduct, ultra vires acts, or gross negligence) taking place before the Effective Date. The vote or election of a trustee or other agent under this paragraph acting on behalf of or at the direction of a holder of a Claim shall bind such holder to the same extent as if such holder had itself voted or made such election. A holder of a Claim who did not cast a Ballot or who was not entitled to cast a Ballot will be deemed to have opted out of the releases set forth in this paragraph.

76. Preservations of Causes of Action.

(a) Except as expressly provided in Article 12 of the Plan, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or Causes of Action that the Debtors or the Reorganized Debtors may have, or that the Reorganized Debtors may choose to assert on behalf of their respective Estates, under any provision of the Bankruptcy Code or any applicable non-bankruptcy law, including, without limitation, (i) any and all Causes of Action or Claims against any person or entity, to the extent such person or entity asserts a crossclaim, counterclaim and/or claim for setoff that seeks affirmative relief against the Debtors, the Reorganized Debtors, their officers, directors or representatives or (ii) the turnover of any property of the Debtors' Estates. A non-exclusive list of retained Causes of Action is attached to the Plan as Schedule 12.10, which was filed on August 18, 2009.

(b) Except as set forth in Article 12 of the Plan, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or Causes of Action that the Debtors had immediately prior to the Petition Date or the Effective Date against or with respect to any Claim left Unimpaired by the Plan. The Reorganized Debtors shall have,

retain, reserve and be entitled to assert all such rights and Causes of Action as fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights respecting any Claim left Unimpaired by the Plan may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Cases had not been commenced.

77. Retention of Jurisdiction. In accordance with (and as limited by) Article 15 of the Plan and section 1142 of the Bankruptcy Code, this Court shall have exclusive jurisdiction of all matters arising out of and related to the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(a) To hear and determine all matters with respect to the assumption or rejection of executory contracts or unexpired leases and the allowance of Cure amounts and Claims resulting therefrom;

(b) To hear and determine any motion, adversary proceeding, application, contested matter or other litigated matter pending on or commenced after the Confirmation Date;

(c) To hear and determine all matters with respect to the allowance, disallowance, liquidation, classification, priority or estimation of any Claim;

(d) To ensure that distributions to holders of Allowed Claims are accomplished as provided in the Plan;

(e) To hear and determine all applications for compensation and reimbursement of Professional Fee Claims;

(f) To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement or any order of the Bankruptcy Court, including this Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(g) To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan, this Confirmation Order, any transactions or payments contemplated hereby or any agreement, instrument or other document governing or relating to any of the foregoing;

(h) To issue injunctions, enter and implement other orders and take such other actions as may be necessary or appropriate to restrain interference by any person with the consummation, implementation or enforcement of the Plan, this Confirmation Order or any other order of the Bankruptcy Court;

(i) To issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan;

(j) To enter, implement or enforce such orders as may be appropriate in the event that this Confirmation Order is for any reason stayed, reversed, revoked, modified or vacated;

(k) To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including the expedited determination of tax under section 505(b) of the Bankruptcy Code);

(l) To hear and determine any other matters related to the Plan and not inconsistent with the Bankruptcy Code;

(m) To determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Approval Order, this Confirmation Order, any of the Plan Documents or any other contract, instrument, release or other agreement or document related to the Plan, the Disclosure Statement or the Plan Supplements;

(n) To recover all assets of the Debtors and property of the Debtors' Estates, wherever located;

(o) To hear and determine all disputes involving the existence, nature or scope of the Debtors' discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

(p) To hear and determine any rights, Claims or Causes of Action held by or accruing to the Debtors or the Reorganized Debtors pursuant to the Bankruptcy Code or pursuant to any federal or state statute or legal theory;

(q) To enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases with respect to any Person;

(r) To hear and determine any disputes arising in connection with the interpretation, implementation or enforcement of any new or renegotiated agreement (including leases, subleases, security agreements and mortgages and any amendments, modifications or supplements of or to any lease, sublease, security agreement or mortgage and such leases, subleases, security agreements or mortgages as so amended, modified or supplemented, and any agreement settling or providing for any claims or otherwise addressing any matters relating to any lease, sublease security agreement or mortgage or any amendment modification or supplement of or to any lease, sublease, security agreement or mortgage) entered into after the Petition Date by the Debtors relating to an aircraft, aircraft engine, propeller, appliance or spare part (as each of these terms is defined in section 40102 of title 49 of the United States Code), including all records and documents relating to such equipment that are required under the terms of any applicable security agreement, lease or conditional sale contract to be surrendered or returned in connection with the surrender or return of such equipment, that is leased to, subject to a security interest granted by or conditionally sold to one of the Debtors;

(s) To hear any other matter not inconsistent with the Bankruptcy Code; and

(t) To enter a final decree closing the Chapter 11 Cases.

78. Post-Effective Date Committee. As provided in Section 16.4 of the Plan, as of the Effective Date, there shall be created the Post-Effective Date Committee, which shall be subject to the jurisdiction of the Court. The Post-Effective Date Committee's rights and powers shall be strictly limited as set forth in Section 9.2 of the Plan. Unless the Post-Effective Date Committee votes to disband earlier, the existence of the Post-Effective Date Committee, and all powers associated therewith, shall terminate on the earlier of (i) the date on which the Reorganized Debtors reasonably estimate that there are no remaining Disputed General Unsecured Claims that will ultimately be Allowed in an amount exceeding $500,000 and (ii) the date on which the Reorganized Debtors shall have paid or reimbursed the Post-Effective Date Committee, its members and its professionals in an aggregate amount equal to the Post-Effective Date Committee Expense Cap.

79. Enforceability of Plan Documents. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan and all Plan-related documents shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

80. Ownership and Control. The consummation of the Plan shall not, unless the Debtors expressly agree in writing, constitute a change of ownership or change in control, as such terms are used in any statute, regulation, contract or agreement (including, but not limited to, any agreements assumed by the Debtors pursuant to the Plan or otherwise and any agreements related to employment, severance or termination agreements or insurance agreements) in effect on the Effective Date and to which any of the Debtors is a party.

81. Exemption from Transfer Taxes and Recording Fees. Pursuant to section 1146(a) of the Bankruptcy Code, none of the issuance, Transfer or exchange of notes or equity securities under the Plan, the creation, filing or recording of any mortgage, deed of trust or other security interest, the

making, assignment, filing or recording of any lease or sublease, the transfer of title to or ownership of any of the Debtors' interests in any property, including aircraft, aircraft equipment or spare parts, or the making or delivery of any deed, bill of sale or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, the New Common Stock or agreements of consolidation, deeds, bills of sale or assignments executed in connection with any of the transactions contemplated under the Plan, shall be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, Cape Town filing or recording fee, FAA filing or recording fee or other similar tax or governmental assessment in the United States. All sale transactions consummated by the Debtors and approved by the Court including, without limitation, the transfers effectuated under the Plan, the sale by the Debtors of owned property or assets pursuant to section 363(b) of the Bankruptcy Code or pursuant to any Post-Petition Aircraft Agreement, and the assumption, assignment and sale by the Debtors of unexpired leases of non-residential real property pursuant to section 365(a) of the Bankruptcy Code, are deemed to have been made under, in furtherance of, or in connection with the Plan and, therefore, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, Cape Town filing or recording fee, FAA filing or recording fee or other similar tax or governmental assessment in the United States. The appropriate federal, state and local governmental officials and agents are hereby directed to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

82. Effectiveness of All Actions. All actions authorized to be taken pursuant to the Plan shall be effective on, prior to or after the Effective Date pursuant to this Confirmation Order, without further

application to, or order of the Court, or further action by the respective officers, directors, members or stockholders of Reorganized Frontier Holdings or the other Reorganized Debtors and with the effect that such actions had been taken by unanimous action of such officers, directors, members or stockholders.

83. Approval of Consents. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules and regulations of all states and any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts and transactions referred to in or contemplated by the Plan, the Plan Supplements, the Disclosure Statement, the Plan Supplements, and any documents, instruments or agreements, and any amendments or modifications thereto.

84. Payment of Professionals. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay all Professionals in the ordinary course of business (including with respect to the month in which the Effective Date occurs) without any further notice to, action by or order or approval of this Court or any other party. Professionals shall be paid pursuant to the "Monthly Statement" process set forth in the Interim Compensation Order with respect to all calendar months ending prior to the Effective Date.

85. Dissolution of Statutory Committees. Upon the Effective Date, the Creditors' Committee and all other statutory committees appointed in the Chapter 11 Cases shall dissolve automatically, and their members shall be released and discharged from all rights, duties, responsibilities and liabilities arising from, or related to, the Chapter 11 Cases and under the Bankruptcy Code.

86. Insurance Neutrality. Nothing contained in the Plan, the Disclosure Statement, the Confirmation Order, any exhibit to the Plan, the Plan Supplements or any other Plan Document (including any provision that purports to be peremptory or supervening) shall in any way operate to, or

have the effect of, impairing in any respect the legal, equitable or contractual rights and defenses of the insureds and insurers with respect to any insurance policies issued to the Debtors by ACE American Insurance Company and its affiliated insurers (collectively "**ACE**") and the related agreements ("**ACE Policies and Agreements**"). The rights and obligations of the insureds and insurers under the ACE Policies and Agreements shall be determined under such policies and related agreements, including the terms, conditions, limitations, exclusions and endorsements thereof. ACE reserves all of its rights and defenses under the ACE Policies and Agreements and applicable non-bankruptcy law, including any defenses to coverage. The Reorganized Debtors shall not seek to avoid performance under the ACE Policies and Agreements based on any argument that the Reorganized Debtors are not the Debtors.

87. Disclosure: Agreements and Other Documents. The Debtors have disclosed all material facts regarding: (a) the New Certificate of Incorporation, New Bylaws or similar constituent documents, (b) the selection of directors and officers for the Reorganized Debtors, (c) the Restructuring Transactions, (d) the distribution of Cash, (e) the New Common Stock, (f) the other matters provided for under the Plan involving corporate action to be taken by or required of the Reorganized Debtors, and (g) all contracts, leases, instruments, releases, indentures and other agreements related to any of the foregoing.

88. Binding Effect. The Plan shall be binding upon and inure to the benefit of the Debtors, the Reorganized Debtors, all present and former holders of Claims or Interests and their respective heirs, executors, administrators, successors and assigns.

89. Governing Law. Except to the extent that the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit to the Plan or a schedule or Plan Document provides otherwise, the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflict of laws thereof.

90. Notice of Entry of Confirmation Order and Effective Date. Pursuant to Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c), the Reorganized Debtors shall file and serve notice of entry of this Confirmation Order and Effective Date in substantially the form annexed hereto as Exhibit B (the "**Notice of Confirmation**") on all holders of Claims and Interests, the United States Trustee for the Southern District of New York, the attorneys for the Creditors' Committee and other parties-in-interest by causing the Notice of Confirmation to be delivered to such parties by first-class mail, postage prepaid, within 10 business days after the Effective Date. The Notice of Confirmation shall also be published in *The Wall Street Journal*, *National Edition*, and posted on the Debtors' case information website (located at *www.frontier-restructuring.com*). Such notice is adequate under the particular circumstances and no other or further notice is necessary. A Notice of Confirmation substantially in the form annexed hereto as Exhibit B is approved. Such Notice of Confirmation shall also serve as the notice setting forth the Other Administrative Claim Bar Date required by section 8.2 of the Plan and as the notice of the Effective Date.

91. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

92. References to Plan Provisions. The failure to include or specifically describe or reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Plan be approved and confirmed in its entirety.

93. Findings of Fact. The determinations, findings, judgments, decrees and orders set forth and incorporated herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. Each finding of fact set forth or incorporated herein, to the extent it is or may be deemed a conclusion of law,

shall also constitute a conclusion of law. Each conclusion of law set forth or incorporated herein, to the extent it is or may be deemed a finding of fact, shall also constitute a finding of fact.

94. Conflicts Between Confirmation Order and Plan. The provisions of the Plan and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence; *provided, further*, that nothing herein shall affect the enforceability of any security interests or liens granted pursuant to (i) the post-petition option aircraft agreements entered into between the Debtors and Bombardier Inc. pursuant to the August 21, 2008 order of the Bankruptcy Court or (ii) the secured aircraft financing arrangement entered into by the Debtors pursuant to the July 13, 2009 order of the Bankruptcy Court.

95. Final Order. This Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

Dated: September 10, 2009
New York, New York

/s/Robert D. Drain
The Honorable Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE

Tab 4

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
	:	**Case No. 05-17930 (ALG)**
NORTHWEST AIRLINES CORPORATION, NWA FUEL SERVICES CORPORATION, NORTHWEST AIRLINES HOLDINGS CORPORATION, NWA INC., NORTHWEST AEROSPACE TRAINING CORPORATION, NORTHWEST AIRLINES, INC., NWA AIRCRAFT FINANCE, INC., MLT INC., COMPASS AIRLINES, INC. F/K/A NORTHWEST AIRLINES CARGO, INC., NWA RETAIL SALES INC., MONTANA ENTERPRISES, INC., AIRCRAFT FOREIGN SALES, INC., NW RED BARON LLC, AND NWA WORLDCLUB, INC.	:	**Jointly Administered**
Debtors.	:	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER UNDER 11 U.S.C. § 1129(a) AND (b) AND FED. R. BANKR. P. 3020 CONFIRMING DEBTORS' FIRST AMENDED JOINT AND CONSOLIDATED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
NORTHWEST AIRLINES CORPORATION, NWA FUEL SERVICES CORPORATION, NORTHWEST AIRLINES HOLDINGS CORPORATION, NWA INC., NORTHWEST AEROSPACE TRAINING CORPORATION, NORTHWEST AIRLINES, INC., NWA AIRCRAFT FINANCE, INC., MLT INC., COMPASS AIRLINES, INC. F/K/A NORTHWEST AIRLINES CARGO, INC., NWA RETAIL SALES INC., MONTANA ENTERPRISES, INC., AIRCRAFT FOREIGN SALES, INC., NW RED BARON LLC, AND NWA WORLDCLUB, INC.	**Case No. 05-17930 (ALG)** **Jointly Administered**
Debtors.	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER UNDER 11 U.S.C. § 1129(a) AND (b) AND FED. R. BANKR. P. 3020 CONFIRMING DEBTORS' FIRST AMENDED JOINT AND CONSOLIDATED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

INTRODUCTION

Northwest Airlines Corporation ("NWA Corp.") and certain of its direct and indirect subsidiaries, as debtors and debtors in possession ("Northwest" or the "Debtors")[1], in the

[1] In addition to NWA Corp., the Northwest Debtors consist of: NWA Fuel Services Corporation ("NFS"), Northwest Airlines Holdings Corporation ("Holdings"), NWA Inc. ("NWA Inc."), Northwest Aerospace Training Corp. ("NATCO"), Northwest Airlines, Inc. ("Northwest Airlines"), MLT Inc.

above-captioned chapter 11 cases (the "Chapter 11 Cases") have proposed the Debtors' Joint and Consolidated Plan Of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of January 12, 2007 (the "Initial Plan"), as modified by that certain Debtors' First Amended Joint and Consolidated Plan Of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of February 15, 2007, and as amended on March 30, 2007, and as further amended on May 15, a true and correct copy of which is annexed hereto as Exhibit "A" (as may be further amended, the "Plan").[2]

DISCLOSURE STATEMENT AND SOLICITATION

After hearings held on March 26, 2007 and March 27, 2007 (together, the "Disclosure Statement Hearing"), the Disclosure Statement in support of the Plan, dated as of February 15, 2007 and amended as of March 30, 2007 (as transmitted to parties in interest, the "Disclosure Statement") was approved by an order of this Court, dated March 30, 2007, as containing "adequate information" pursuant to section 1125 of the Bankruptcy Code (the "Disclosure Statement Approval Order").

On or before April 9, 2007, the Debtors mailed or caused to be mailed, by first class mail, the solicitation packages (the "Solicitation Packages") containing copies of, inter alia, (i) the Disclosure Statement Approval Order; (ii) a notice of the hearing scheduled for

("MLT"), Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc. ("Compass"), NWA Retail Sales Inc. ("NWA Retail"), Montana Enterprises, Inc. ("Montana"), NW Red Baron LLC ("Red Baron"), Aircraft Foreign Sales, Inc. ("Foreign Sales") NWA Worldclub, Inc. ("WorldClub") and NWA Aircraft Finance, Inc. ("Aircraft Finance"). The Consolidated Debtors are NWA Corp., Northwest Airlines, Holdings and NWA Inc.

[2] Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the Plan and/or the Disclosure Statement Approval Order (as defined herein). Any capitalized term not defined in the Plan, the Disclosure Statement Approval Order, or this Confirmation Order, but that is used in title 11 of the United States Code, as amended (the "Bankruptcy Code") or the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules.

confirmation of the Plan and objections thereto; (iii) the approved form of the Disclosure Statement (together with the Plan annexed thereto as Exhibit "A,") in electronic format on a CD-ROM; (iv) solely to holders of claims in Class 1D General Unsecured Claims, Class 2B General Unsecured Claims, Class 3C General Unsecured Claims, Class 4B General Unsecured Claims, Class 5B General Unsecured Claims, Class 6B General Unsecured Claims, Class 7B General Unsecured Claims, Class 8B General Unsecured Claims, Class 9B General Unsecured Claims, Class 10B General Unsecured Claims, Class 11B General Unsecured Claims and Class 1E Convenience Class Claims, which Classes were entitled to vote to accept or reject the Plan (A) an appropriate form of ballot and a ballot return envelope; and (B) letters from the Debtors and the Creditors Committee, recommending acceptance of the Plan; and (v) solely to holders of claims in Class 1D General Unsecured Claims entitled to participate in the rights offering pursuant to the procedures established for such participation in the Disclosure Statement Approval Order (A) a notice of the commencement of the rights offering; and (B) a subscription form, together with appropriate instructions for the proper completion, due execution and timely delivery of the subscription form, as well as instructions for the payment of the applicable purchase price for that portion of the subscription rights that such holder may be entitled to acquire, to (i) the parties in interest listed on the Master Service List as defined in the Notice Order; (ii) attorneys for the Creditors Committee; (iii) the U.S. Trustee; (iv) attorneys for the Retiree Committee; (v) attorneys for the Debtors' postpetition lenders; (vi) all persons or entities that filed proofs of claim in an amount greater than zero, or on whose behalf proofs of claim were filed, on or before the date of the Disclosure Statement and Confirmation Hearing Notice, except to the extent that a claim was withdrawn or paid pursuant to, or expunged by, prior order of the Bankruptcy Court; (vii) all persons or entities listed in the Debtors' schedules of assets and liabilities dated May 1, 2006, or any amendment thereof (the "Schedules"), as holding liquidated,

noncontingent, and undisputed claims, in an amount greater than zero; (viii) the transfer agent(s) and registered holders of any claims against the Debtors arising from public securities or Aircraft Claims (defined below), (ix) all other parties in interest that have filed a request for notice pursuant to Bankruptcy Rule 2002 in the Debtors' Chapter 11 Cases; (x) the SEC; (xi) the IRS; (xii) the DOJ; (xiii) the PBGC; (xiv) any entity that has filed with the Court a notice of transfer of a claim under Bankruptcy Rule 3001(e) prior to the Voting Record Date; (xv) all known parties to executory contracts; and (xvi) any other known holders of claims against the Debtors, provided that the Debtors were not required to serve the foregoing on any of the Debtors' creditors whose claims will be paid in full prior to the effective date of the Plan.[3]

The Debtors filed the Affidavits Of Publication With Respect To The Notice Of Confirmation Hearing And Objection Deadline With Respect To Debtors' Plan on May 3, 2007, attesting to the publication of the Confirmation Hearing Notice in the following newspapers on the following dates, (i) April 18, 2007, New York Times and (ii) April 5, 2007, Wall Street Journal (Exhibit B hereto), in accordance with this Court's scheduling order dated February 15, 2007.

The Debtors filed the Certification Of Jane Sullivan Of Financial Balloting Group LLC With Respect To The Tabulation Of Votes On The Debtors' Joint Plan Of Reorganization Under Chapter 11 Of The Bankruptcy Code, sworn to on May 11, 2007 and amended on May 14, 2007 (the "Voting Certification") attesting and certifying the method and results of the ballot tabulation for the Classes of Claims entitled to vote to accept or reject the Plan.

[3] The Debtors' Ballot Agent and Special Balloting Agent have filed affidavits of service at Docket Nos. 6240, 6244 and 6483(the "Solicitation Affidavits").

PLAN CONFIRMATION

The Debtors filed (i) a memorandum of law in support of confirmation of the Plan dated May 15, 2007 (the "Confirmation Memorandum") and (ii) the Plan Supplements dated April 17, 2007, April 23, 2007, April 27, 2007, May 2, 2007, May 4, 2007, May 14, 2007 and May 17, 2007 (as may be amended, the "Plan Supplements").[4]

The provisions of the Plan are amended to reflect the various amendments to the Plan all as set forth in the various modifications filed with this Court and stated by the Debtors on the record at the Confirmation Hearing.

The Plan is a separate plan for each Non-Consolidated Debtor's estate and a consolidated plan, solely for all purposes and actions associated with consummation of the Plan, including, without limitation, for purposes of voting and confirmation, for the Consolidated Debtors' estates. Accordingly, the provisions of the Plan, including without limitation the definitions and distributions to creditors and equity interest holders, shall apply to the respective assets of, claims against, and equity interests in, such Non-Consolidated-Debtor's separate estate and such Consolidated Debtors' separate estate.

Based upon the Bankruptcy Court's review of the Disclosure Statement, Plan, Plan Supplements, Voting Certification, Solicitation Affidavits, and Confirmation Memorandum; and upon (a) all the evidence proffered or adduced at, memoranda and Objections filed in connection with, and arguments of counsel made at, the Confirmation Hearing, and (b) the entire

[4] A conformed copy of the final versions of each of the Plan Supplements filed with this Court are attached hereto. Attached hereto as Exhibit "B" is the Management Equity Plan. Attached hereto as Exhibit "C" is the Amended Bylaws. Attached hereto as Exhibit "D" is the Amended Certificate of Incorporation. Attached hereto as Exhibit "E" is the stockholder rights plan. Attached hereto as Exhibit "F" is the Schedule of Rejected Contracts and Leases. Attached hereto as Exhibit "G" is the list of the new members of the board of directors.

record of these Chapter 11 Cases; and after due deliberation thereon and good cause appearing therefore,

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY FOUND AND DETERMINED THAT:[5]

(A) Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2), 1334(a)). This Bankruptcy Court has jurisdiction over these cases pursuant to sections 157 and 1334 of title 28 of the United States Code. Venue is proper pursuant to sections 1408 and 1409 of title 28 of the United States Code. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and this Bankruptcy Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

(B) Commencement and Joint Administration. On September 14, 2005, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.[6] Each Debtor is continuing to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On September 14, 2005, the Court entered an order authorizing the joint administration of the Debtors' chapter 11 cases. On September 30, 2005, the Office of the United States Trustee appointed a statutory committee of unsecured creditors. On November 17, 2005, the Office of the United States Trustee appointed a statutory committee of retired employees. On April 11, 2007, the Court appointed Richard Nevins as examiner for the limited purposes as set forth in the Court's Order dated March 30, 2007. No trustee has been appointed.

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[5] Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate.

[6] Aircraft Finance filed its petition on September 30, 2005.

(C) Judicial Notice. This Bankruptcy Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Bankruptcy Court and/or its duly-appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered, and evidence and argument made, proffered, or adduced at the hearings held before the Bankruptcy Court during the pendency of the Chapter 11 Cases, including, but not limited to, the Disclosure Statement Hearing and the hearings on confirmation of the Plan.

(D) Burden of Proof. The Debtors have the burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of evidence.

(E) Transmittal and Mailing of Materials; Notice. The Disclosure Statement, the Plan, the Ballots or Notice of Non-Voting Status, and Subscription Forms, as the case may be, the Disclosure Statement Approval Order, and the Confirmation Hearing Notice, which were transmitted and served as set forth in the Solicitation Affidavits, were transmitted and served in compliance with the Disclosure Statement Approval Order and the Bankruptcy Rules, and such transmittal and service were adequate and sufficient, and no other or further notice is or shall be required.

(F) Voting. Votes to accept and reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement Approval Order, and industry practice.

(G) Classes deemed to have accepted the Plan. Classes 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A, 10A and 11A (Priority Non-Tax Claims Class), Class 1B-1 (1110(a) Aircraft Secured Claims), Class 1B-2 (Restructured Aircraft Secured Claims), Class 1B-3 (N301US and N303US Aircraft Secured Claims), Classes 1C and 3B (Other Secured Claims) and Classes 1G, 2D, 3E, 4D, 5C, 6D, 7C, 8C, 9D, 10C and 11D (Equity Interests in Debtors Other than NWA

Corp.) are unimpaired and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

(H) Classes deemed to have rejected the Plan. Classes 1H (Preferred Stock Interests in NWA Corp.) and 1I (Common Stock Interests in NWA Corp.) will not receive any property under the Plan and therefore are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

(I) Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

(J) Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)). In addition to the Administrative Expense Claims and Priority Tax Claims listed in Section 2 of the Plan, which need not be designated, the Plan designates 11 Classes of Claims and Equity Interests. Each Other Secured Claim shall be deemed to be separately classified in a subclass of Class 1C and 3C, respectively, and shall have all rights associated with separate classification under the Bankruptcy Code. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between holders of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(K) Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Section 4 of the Plan specifies that Classes 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A, 10A and 11A (Priority Non-Tax Claims Class), Class 1B-1 (1110(a) Aircraft Secured Claims), Class 1B-2 (Restructured Aircraft Secured Claims), Class 1B-3 (N301US and N303US Aircraft Secured Claims), Classes

1C and 3B (Other Secured Claims), Classes 1G, 2D, 3E, 4D, 5C, 6D, 7C, 8C, 9D, 10C and 11D (Equity Interests in Debtors Other than NWA Corp.) are unimpaired under the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

(1) Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Section 4 of the Plan designates Class 1D General Unsecured Claims, Class 2B General Unsecured Claims, Class 3C General Unsecured Claims, Class 4B General Unsecured Claims, Class 5B General Unsecured Claims, Class 6B General Unsecured Claims, Class 7B General Unsecured Claims, Class 8B General Unsecured Claims, Class 9B General Unsecured Claims, Class 10B General Unsecured Claims, Class 11B General Unsecured Claims, Class 1E Convenience Class Claims, and Classes 1H and 1I as impaired and specifies the treatment of Claims and Equity Interests in those Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

(2) No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each Claim or Equity Interest in each respective Class unless the holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

(3) Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan and the Plan Supplements provide adequate and proper means for the Plan's implementation, including, among other things, (i) the substantive consolidation of the Consolidated Debtors; (ii) the DIP Credit and Exit Facility Agreement; (iii) the issuance of New Common Stock; (iv) the Rights Offering and Purchased Shares; (v) the listing of the New Common Stock; (vi) the restriction on the transfer of New Common Stock to protect NOLs; (vii) the adoption and implementation of the Management Equity Plan; (viii) the adoption and implementation of the Non-Contract Employee Compensation Plan; (ix) the cancellation of existing securities,

instruments, and other documentation; (x) the payment of the fees of the Indenture Trustees; (xi) the selection of directors and officers for the Reorganized Debtors, as disclosed on the Debtors' website; (xii) the amendment of the certificates of incorporation, bylaws and similar reorganizational documents; and (xiii) to effectuate the Restructuring Transactions.

(4) Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)). Section 5.16 of the Plan provides that the Amended Certificate of Incorporation and the certificate of incorporation for each of the Reorganized Debtors shall prohibit the issuance of nonvoting equity securities. Thus, the requirements of section 1123(a)(6) of the Bankruptcy Code are satisfied.

(5) Designation of Directors (11 U.S.C. § 1123(a)(7)). Section 5.12 of the Plan and the Plan Supplements contain provisions with respect to the manner of selection of directors of the Reorganized Debtors that are consistent with the interests of creditors, equity security holders, and public policy in accordance with section 1123(a)(7).

(6) Additional Plan Provisions (11 U.S.C. § 1123(b)). The Plan's provisions are appropriate and not inconsistent with the applicable provisions of the Bankruptcy Code.

(7) Bankruptcy Rule 3016(a). The Plan is dated and identifies the entities submitting it as the Debtors, thereby satisfying Bankruptcy Rule 3016(a).

(8) Debtors' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically:

(i) The Debtors are proper debtors under section 109 of the Bankruptcy Code.

(ii) The Debtors have complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Bankruptcy Court.

(iii) The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Approval Order in transmitting the Plan, the Disclosure Statement, the Ballots or Notice of Non-Voting Status, as the case may be, and related documents in soliciting and tabulating votes on the Plan.

(L) Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). For the reasons stated on the record of the hearing on May 18, 2007, the Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. The Debtors' good faith is evident from the facts and records of these Chapter 11 Cases, the Disclosure Statement and the hearings thereon, and the record of the Confirmation Hearing and other proceedings held in these Chapter 11 Cases. The Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtors' estates and to effectuate a successful reorganization of the Debtors.

(M) Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). For the reasons stated on the record of the hearing on May 18, 2007, any payment made or to be made by any of the Debtors for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

(N) Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). For the reasons stated on the record of the hearing on May 18, 2007, the Plan proponents have complied with

section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the persons proposed to serve as initial directors or officers of the Reorganized Debtors after confirmation of the Plan have been fully disclosed in the Plan Supplements, and the appointment to, or continuance in, such offices of such persons is consistent with the interests of holders of Claims against and Equity Interests in the Debtors and with public policy. The identity of any insider that will be employed or retained by the Reorganized Debtors and the nature of such insider's compensation have also been fully disclosed.

(O) No Rate Changes (11 U.S.C. § 1129(a)(6)). Section 1129(a)(6) of the Bankruptcy Code is satisfied because the Plan does not provide for any change in rates over which a governmental regulatory commission has jurisdiction.

(P) Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The liquidation analyses provided in the Disclosure Statement, the Plan Supplements and other evidence proffered or adduced at the Confirmation Hearing (a) are persuasive and credible, (b) have not been controverted by other evidence, and (c) establish that each holder of an impaired Claim or Equity Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

(Q) Acceptance of Certain Classes (11 U.S.C. § 1129(a)(8)). Classes 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A, 10A and 11A (Priority Non-Tax Claims Class), Class 1B-1 (1110(a) Aircraft Secured Claims), Class 1B-2 (Restructured Aircraft Secured Claims), Class 1B-3 (N301US and N303US Aircraft Secured Claims), Classes 1C and 3B (Other Secured Claims) and Classes 1G, 2D, 3E, 4D, 5C, 6D, 7C, 8C, 9D, 10C and 11D (Equity Interests in Debtors Other than NWA Corp.) of the Plan are Classes of unimpaired Claims that are

conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code and the accepting Classes as set forth in the Voting Certification have voted to accept the Plan in accordance with sections 1126(c) and (d) of the Bankruptcy Code (the "Accepting Classes") and therefore satisfy section 1129(a)(8) of the Bankruptcy Code. Section 1129(a)(8) has not been satisfied with respect to (i) Classes 1H (Preferred Stock Interests in NWA Corp.) and 1I (Common Stock Interests in NWA Corp.), which will not receive any property under the Plan and, therefore, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, as set forth in the Voting Certification, (the "Rejecting Classes"). The Plan is confirmable because the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to the Rejecting Classes, as described below

(R) Treatment of Administrative, Priority Tax and Priority Non-Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Expense Claims and Priority Non-Tax Claims pursuant to Sections 2.1 and 4.1 of the Plan satisfies the requirements of sections 1129(a)(9)(A) and (B) of the Bankruptcy Code, and the treatment of Priority Tax Claims pursuant to Section 2.3 of the Plan satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code. Unless otherwise agreed with a holder of an Allowed Priority Tax Claim, the Debtors, in their sole discretion, may choose whether Allowed Priority Tax Claims will be paid in cash either: (1) in an aggregate amount equal to such Allowed Priority Tax Claim, together with interest from the Effective Date at a fixed annual rate equal to five percent (5%) over a period not exceeding six (6) years after the date of assessment of such Allowed Priority Tax Claim; or (2) in full on, or as soon thereafter as is reasonably practicable, the later of the Effective Date and the first Business Day after the date that is thirty (30) calendar days after the date such Priority Tax Claim becomes an Allowed Priority Tax Claim. The Debtors reserve the right to prepay, without penalty, at any time under option (1) above.

(S) Acceptance By Impaired Classes (11 U.S.C. § 1129(a)(10)). At least one Class of Claims against each of the Debtors that is impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider, thus satisfying the requirements of section 1129(a)(10) of the Bankruptcy Code.

(T) Feasibility (11 U.S.C. § 1129(a)(11)). The Disclosure Statement, Plan, Plan Supplements, Voting Certification, Solicitation Affidavits, Confirmation Memorandum, and all evidence proffered or adduced at the Confirmation Hearing (a) is persuasive and credible, (b) has not been controverted by other evidence, and (c) establishes that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization, of the Reorganized Debtors, thus satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code.

(U) Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees payable under section 1930 of title 28, United States Code, as determined by the Bankruptcy Court on the Confirmation Date, have been paid or will be paid, on and after the Effective Date, and thereafter as may be required until entry of a final decree with respect to each of the Debtors, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

(V) Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). Section 7.4 of the Plan provides that, on and after the Effective Date, the Reorganized Debtors will continue to timely pay without modification, all retiree benefits, as defined in section 1114 of the Bankruptcy Code, except as modified by the Bankruptcy Court in its Order Pursuant To Federal Rule Of Bankruptcy Procedure 9019 For Approval Of Compromise And Settlement Of Application Pursuant To Section 1114 Of The Bankruptcy Code To Modify Retiree Benefits (Docket No. 6419). Thus, the requirements of section 1129(a)(13) of the Bankruptcy Code are satisfied.

(W) Fair and Equitable; No Unfair Discrimination (11 U.S.C. § 1129(b)). Based upon the evidence proffered, adduced, or presented by the Debtors at the Confirmation Hearing, the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Classes as required by section 1129(b)(1) of the Bankruptcy Code. Thus, the Plan may be confirmed notwithstanding the Debtors' failure to satisfy section 1129(a)(8) of the Bankruptcy Code. Accordingly, upon confirmation and the occurrence of the Effective Date, the Plan shall be binding upon the members of the Rejecting Classes.

(X) Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933.

(Y) Modifications to the Plan. The modifications to the Plan as set forth in the plan modifications filed with this Court and on the record at the Confirmation Hearing constitute technical changes and/or changes with respect to particular Claims by agreement with holders of such Claims, and do not materially adversely affect or change the treatment of any Claims or Equity Interests. Accordingly, pursuant to Bankruptcy Rule 3019, these modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

(Z) Good Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before the Bankruptcy Court in these Chapter 11 Cases, the Debtors, the Released Parties, in each case their directors, officers, employees, shareholders, members, agents, advisors, accountants, investment bankers, consultants, attorneys, and other representatives have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code in compliance with the applicable

provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all their respective activities relating to the solicitation of acceptances to the Plan and in connection with the Rights Offering and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Section 11.6 of the Plan.

(AA) Assumption and Rejection. Section 8 of the Plan governing the assumption and rejection of executory contracts and unexpired leases satisfies the requirements of section 365(b) of the Bankruptcy Code. Pursuant to Section 8.6 of the Plan, except to the extent that different treatment has been agreed to by the non-Debtor party or parties to any executory contract or unexpired lease to be assumed pursuant to Sections 8.1, 8.2, 8.3 and 8.4 of the Plan, the Debtors shall, pursuant to the provisions of sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code and consistent with the requirements of section 365 of the Bankruptcy Code, within thirty (30) days after the Confirmation Date, file and serve a pleading with the Bankruptcy Court listing the cure amounts of all executory contracts or unexpired leases to be assumed. The parties to such executory contracts or unexpired leases to be assumed by the Debtors shall have fifteen (15) days from service to object to the cure amounts listed by the Debtors. If there are any objections filed, and not otherwise resolved, the Bankruptcy Court shall hold a hearing; provide that the Reorganized Debtors, in their sole and absolute discretion, can resolve disputes in the ordinary course of business without further Bankruptcy Court approval.

(BB) Valuation. Pursuant to the Valuation set forth in the Disclosure Statement, and as set forth at the Confirmation Hearing, the Debtors are insolvent at the Class 1D level of priority, Class 1D Allowed General Unsecured Claims will not be paid in full and the enterprise value of the Debtors is insufficient to support a distribution to holders of Subordinated Claims,

Class 1H (Preferred Stock Interests in NWA Corp.) and Class 1I (Common Stock Interests in NWA Corp.).

(CC) Cramdown. The Plan is fair and equitable, in that no holder that is junior to the Equity Interests classified in the Rejecting Classes will receive or retain under the Plan on account of such junior interest any property. The Plan does not discriminate unfairly with respect to any holders of Class 1I or 1H. The legal rights of holders of Equity Interests in such Classes are treated consistently with the treatment of other classes whose legal rights are substantially similar, and such Equity Interest holders do not receive more than they legally are entitled to receive for their Equity Interests. Therefore, the Plan satisfies section 1129(b) of the Bankruptcy Code.

(DD) Satisfaction of Confirmation Requirements. The Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

(EE) Retention of Jurisdiction. The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Section 13 of the Plan and section 1142 of the Bankruptcy Code.

DECREES

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Confirmation. The Plan, as amended and supplemented by the Plan Supplements, is approved and confirmed under section 1129 of the Bankruptcy Code.

2. Amendments. The amendments of the Plan as reflected on the record at the Confirmation Hearing meet the requirements of sections 1127(a) and (c), such amendments do not adversely change the treatment of the Claim of any creditor or Equity Interest of any equity security holder within the meaning of Bankruptcy Rule 3019, and no further solicitation or voting is required.

3. Objections. All Objections that have not been withdrawn, waived, or settled, and all reservations of rights pertaining to confirmation of the Plan included therein, are overruled on the merits.

4. Plan Classification Controlling. The classifications of Claims and Equity Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots tendered to or returned by the Debtors' creditors in connection with voting on the Plan (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan, (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Equity Interests under the Plan for distribution purposes, and (c) shall not be binding on the Debtors or the Reorganized Debtors except for voting purposes.

5. Substantive Consolidation. For the reasons stated on the record of the hearing held on May 9, 2007, the Consolidated Debtors are substantively consolidated, for all purposes and actions associated with consummation of the Plan, including, without limitation, for purposes of voting and confirmation. On and after the Effective Date, (a) all assets and liabilities of the Consolidated Debtors shall be treated as though they were merged into the Northwest Airlines estate solely for purposes of the Plan, (b) no distributions shall be made under the Plan on account of Equity Interests between and among any of the Consolidated Debtors, (c) for all purposes associated with Confirmation, including, without limitation, for purposes of tallying

acceptances and rejections of the Plan, the estates of the Consolidated Debtors shall be deemed to be one consolidated estate for Northwest Airlines, and (d) each and every Claim filed or to be filed in the Chapter 11 Cases of the Consolidated Debtors, shall be deemed filed against the Consolidated Debtors, and shall be Claims against and obligations of the Consolidated Debtors. As a result of the consolidation, any guaranty by one or more Consolidated Debtors of the obligations of another Consolidated Debtor will be eliminated except as it relates to guarantees arising under the secured aircraft financings described in Section 2.2, Section 4.2, Section 4.3 and Section 4.4 of the Plan or any guarantees related to leases which are assumed, but, as prescribed in Section 4 of the Plan, each holder of an Allowed Unsecured Claim against a Consolidated Debtor who also has a guaranty from another Consolidated Debtor shall be compensated for the elimination of the guaranty, as set forth in the Plan, such that the substantive consolidation does not result in unfair treatment to creditors who relied on guarantees. Substantive consolidation shall not affect: (a) the legal and organizational structure of the Consolidated Debtors; (b) pre and post-Commencement Date guarantees, liens, and security interests that are required to be maintained (i) pursuant to any Postpetition Aircraft Purchase and Lease Obligation, (ii) under the Bankruptcy Code or in connection with contracts or leases that were entered into during the Chapter 11 Cases or executory contracts or unexpired leases that have been or will be assumed, or (iii) pursuant to the Plan; (c) Intercompany Claims and Equity Interests between and among the Consolidated Debtors; and (d) distributions from any insurance policies or proceeds of such policies.

6. Binding Effect. The Plan and its provisions shall be binding upon the Debtors, the Reorganized Debtors, the Disbursing Agent, the Committee, any entity acquiring or receiving property or a distribution under the Plan, and any holder of a Claim against or Equity Interest in the Debtors, including all governmental entities (including without limitation all

taxing authorities), whether or not the Claim or Equity Interest of such holder is impaired under the Plan, whether or not the Claim or Equity Interest is Allowed, and whether or not such holder or entity has accepted the Plan.

7. Vesting of Assets (11 U.S.C. § 1141(b) and (c)). Pursuant to Section 15.3 of the Plan, except as otherwise provided in the Plan, each Debtor will continue to exist after the Effective Date as a separate corporate entity, with all the powers of a corporation under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution, or otherwise) under applicable state law. Pursuant to Section 11.1 of the Plan, except as otherwise expressly provided in the Plan, upon the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of the Debtors' bankruptcy estates and any property acquired by a Debtor or Reorganized Debtor under the Plan shall vest in the Reorganized Debtors free and clear of all Claims, liens, encumbrances, charges and other interests. On and after the Effective Date, each Reorganized Debtor may operate its business and may use, acquire or dispose of property and compromise or settle any claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, each Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for professionals' fees, disbursements, expenses or related support services (including fees relating to the preparation of professional fee applications) without application to, or approval of, the Bankruptcy Court.

8. Merger, Dissolution, or Consolidation of Corporate Entities. In addition to the authority granted to the Debtors pursuant to Section 5.1 of the Plan with regard to substantive consolidation, pursuant to Section 5.15 of the Plan, on the Effective Date, but subsequent to the cancellation and discharge of all Claims, (i) Holdings will merge into NWA Inc., with NWA Inc.

being the surviving entity, and (ii) thereafter, NWA Inc. will merge into Northwest Airlines, with Northwest Airlines being the surviving entity (the "Downstream Mergers"). In addition to the Downstream Mergers, on or as of the Effective Date or as soon thereafter as practicable, within the discretion of the Debtors, and without further motion to or order of the Bankruptcy Court, the Debtors may, notwithstanding any other transactions described in Section 5.15 of the Plan, (i) merge, dissolve, transfer assets, or otherwise consolidate any of the Debtors in furtherance of the Plan or (ii) engage in any other transaction in furtherance of the Plan, in consultation with the Post-Effective Date Committee; provided, however that the Debtors shall have no obligation to consult with the Post-Effective Date Committee with respect to the Downstream Mergers. Any such transaction may be effected on or subsequent to the Effective Date without any further action by the stockholders or directors of any of the Debtors, or the Reorganized Debtors.

9. Objection to Claims. The Debtors and the Reorganized Debtors shall be entitled to object to Claims. Any objections to Claims shall be served and filed on or before one hundred eighty (180) days after the Effective Date (unless such day is not a Business Day, in which case such deadline shall be the next Business Day thereafter), as the same may be extended from time to time by the Bankruptcy Court, with the consent of the Post-Effective Date Committee, or as otherwise ordered by the Bankruptcy Court.

10. Disputed Claims. Notwithstanding any other provision in the Plan if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Claim becomes an Allowed Claim that is not a Disputed Claim. All prepetition Insured Claims not previously allowed by Final Order are Disputed Claims. Any Insured Claim determined and liquidated shall be deemed a Claim against the applicable Debtor in such liquidated amount and satisfied in accordance with the Plan *provided, however,* that such claim shall be paid from the insurance proceeds available to satisfy

such liquidated amount. Nothing contained in Section 7.2 of the Plan impairs the Debtors' and the Reorganized Debtors' right to seek estimation of any and all claims in a court or courts of competent jurisdiction or constitute or be deemed a waiver of any Claim, right or cause of action that any Debtor may have against any person in connection with or arising out of any Insured Claim.

11. Convenience Class Election. Notwithstanding any other provision in the Plan, the Debtors may, in their sole and absolute discretion, allow a claimant to make the Convenience Class Election after the time periods for such election set forth in the Plan.

12. Assumption or Rejection of Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)). Except as otherwise provided for in the Plan, pursuant to Section 8.1 of the Plan, on the Effective Date, all executory contracts and unexpired leases to which any of the Debtors are parties shall be deemed automatically assumed on the Effective Date except for an executory contract or unexpired lease that (i) has already been assumed or rejected pursuant to Final Order of the Bankruptcy Court, (ii) is specifically designated as a contract or lease to be rejected on the Schedule of Rejected Contracts and Leases in the Plan Supplements, (iii) is the subject of a separate motion to assume or reject filed under section 365 of the Bankruptcy Code by the Debtors prior to the Confirmation Date, or (iv) is an option or warrant to purchase common stock of any of the Debtors or right to convert any Equity Interest into common stock of any of the Debtors or to the extent such option, warrant, or conversion right is determined not to be an Equity Interest. Notwithstanding anything in the foregoing to the contrary, with respect to any contract or lease which is subject to litigation or proceeding in which the characterization of an executory contract is an issue and that is pending as of the commencement of the Confirmation Hearing, the Debtors shall have 30 days after the entry of a Final Order resolving the litigation or proceeding to assume or reject such contract or lease.

13. Cure of Defaults. Pursuant to Section 8.6 of the Plan, except to the extent that different treatment has been agreed to by the non-Debtor party or parties to any executory contract or unexpired lease to be assumed pursuant to Sections 8.1, 8.2, 8.3 and 8.4 hereof, the Debtors shall, pursuant to the provisions of sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code and consistent with the requirements of section 365 of the Bankruptcy Code, within thirty (30) days after the Confirmation Date, file and serve a pleading with the Bankruptcy Court listing the cure amounts of all executory contracts or unexpired leases to be assumed. The parties to such executory contracts or unexpired leases to be assumed by the Debtor shall have fifteen (15) days from service to object to the cure amounts listed by the Debtors. If there are any objections filed, and not otherwise resolved, the Bankruptcy Court shall hold a hearing. Notwithstanding the foregoing, the Reorganized Debtors, in their sole and absolute discretion, may settle cure disputes in the ordinary course of business without further Bankruptcy Court approval.

14. Bar Date for Rejection Damage Claims. Pursuant to Section 8.8 of the Plan, in the event that the rejection of an executory contract or unexpired lease by any of the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, a claim for such damages, if not heretofore evidenced by a filed proof of claim, shall be forever barred and shall not be enforceable against the Debtors, or their respective properties or interests in property as agents, successors or assigns, unless a proof of claim is filed with the Bankruptcy Court and served upon counsel for the Debtors on or before the first business day that is at least thirty (30) calendar days after service of notice of entry of this Confirmation Order and service of a separate notice referring to the rejection of the relevant contract or contracts and the deadline for filing proofs of claim.

15. General Authorizations. Each of the Debtors and the Reorganized Debtors are authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, including without limitation any notes or securities issued pursuant to the Plan. The Debtors and the Reorganized Debtors and their respective directors, officers, members, agents, and attorneys, are authorized and empowered to issue, execute, deliver, file, or record any agreement, document, or security, including, without limitation, the documents contained in the Plan Supplements, as modified, amended, and supplemented, in substantially the form included therein, and to take any action necessary or appropriate to implement, effectuate, and consummate the Plan in accordance with its terms, or take any or all corporate actions authorized to be taken pursuant to the Plan, and any release, amendment, or restatement of any bylaws, certificates of incorporation, or other organization documents of the Debtors, whether or not specifically referred to in the Plan or the Plan Supplements, without further order of the Court, and any or all such documents shall be accepted by each of the respective state filing offices and recorded in accordance with applicable state law and shall become effective in accordance with their terms and the provisions of state law.

16. Authorization in Connection with Exit Facility. Without limitation on the general authorizations provided for in this Order and the Plan, each of the Debtors and the Reorganized Debtors are authorized to take all actions necessary or desirable in furtherance of the consummation and implementation of the Exit Facility, including, without limitation, the granting of liens under the Exit Facility and the payment or reimbursement of any fees, expenses, losses, damages, or indemnities. Notwithstanding anything that may be contained herein to the contrary, on the Effective Date, the applicable Debtors shall convert the DIP Credit and Exit

Facility Agreement into the Exit Facility. The Reorganized Debtors will assume the DIP Claim and all of the obligations of the Debtors under the DIP Credit and Exit Facility Agreement and other related agreements, documents, or instruments executed or delivered in connection therewith and perform their obligations thereunder, including, without limitation, the payment or reimbursement of any fees, expenses, losses, damages, or indemnities. The Exit Facility may be used for any purpose permitted by the Exit Facility, including the funding of obligations under the Plan, such as the payment of Administrative Expense Claims and the satisfaction of ongoing working capital requirements. All documents related to the Exit Facility (the "Exit Facility Documents") shall constitute the legal, valid and binding obligations of the Reorganized Debtors parties thereto, enforceable in accordance with their respective terms. Notwithstanding anything in the Final Order Authorizing Debtors to Obtain Secured Post-Petition Financing on a Super-Priority Basis Pursuant to 11 U.S.C. §§ 105, 362, 363, 364 and 507(b) (the "DIP Order") to the contrary, the liens and security interests granted under the DIP Order shall not be altered, amended, or discharged by this Confirmation Order and shall be, and shall remain, legal, valid, and binding liens on, and security interests in, the property and assets of the Reorganized Debtors in which the Administrative Agent (defined below) was granted a lien or interest pursuant to the DIP Order and having the priority granted to them in the DIP Order from and after the date hereof through and including the date upon which all of the obligations under the Exit Facility Documents are paid in full in cash (other than unasserted contingent obligations, if any) and the commitments under the Exit Facility are terminated (the "Exit Facility Termination Date"). On the Exit Facility Termination Date, the liens and security interests granted under the DIP Order shall automatically terminate and be released, in each case without any further action by any of the Reorganized Debtors, the Administrative Agent or any of the Lenders (defined below) or any further order of this Court.

Citicorp USA, Inc., as Administrative Agent for the Exit Facility (the "Administrative Agent") and the several banks and other financial institutions or entities from time to time parties to the DIP Credit and Exit Facility Agreement and each of their respective affiliates, officers, directors, agents, employees, advisors, lawyers, accountants, successors and assigns (the "Lenders"), shall be released by each Debtor and Reorganized Debtor from any and all claims (as defined in section 101(5) of the Bankruptcy Code), obligations, suits, demands, actions, proceedings, sums of money, judgments, damages, rights, causes of action and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that any Debtor or Reorganized Debtor is entitled to assert in its own right or on behalf of the holder of any Claim or Equity Interest or other Person, based in whole or in part upon any act or omission, transaction, agreement, event or occurrence taking place on or prior to the Effective Date in any way relating to any Debtor, any Reorganized Debtor, the DIP Credit and Exit Facility Agreement or the other documents related thereto, the Chapter 11 Cases, the formulation, preparation, negotiation, dissemination, implementation, administration, confirmation or consummation of any of the Plan, or the property to be distributed under the Plan, the disclosure statement concerning the Plan, any contract, employee pension or other benefit plan, instrument, release or other agreement or document created, modified, amended, terminated or entered into in connection with either the Plan or any agreement between the Debtors, the Administrative Agent, the Lenders or any Released Party, or any other act taken or omitted to be taken in connection with the Debtors' bankruptcy, except for claims or causes of actions against any Administrative Agent or any of the Lenders resulting from the willful misconduct or gross negligence of the Administrative Agent or the Lenders.

17. Authorization and Assumption in Connection with Rights Offering. Without limitation on the general authorizations provided for in this Order and the Plan, each of the

Debtors and the Reorganized Debtors are authorized to take all actions necessary or desirable in furtherance of the consummation and implementation of the Rights Offering. On the Effective Date, all obligations of NWA Corp. and Northwest Airlines under the Rights Offering Sponsor Agreement and the registration rights agreement entered into in connection therewith will survive, be deemed to be assumed and will be obligations of Reorganized NWA Corp. and Reorganized Northwest Airlines (and their respective successors).

18. Corporate Action. The Reorganized Debtors shall file an Amended Certificate of Incorporation with the Office of the Secretary of State for the applicable State on the Effective Date or as soon as reasonably practicable thereafter. The Amended Certificate of Incorporation shall prohibit the issuance of nonvoting equity securities, subject to further amendment of such certificates of incorporation as permitted by applicable law; and the Plan provides that the certificates of incorporation for each of the Reorganized Debtors that are corporations shall be deemed, without further action, to be amended to include a provision prohibiting the issuance of nonvoting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code. The Amended Bylaws have been adopted by the board of directors of the Reorganized Debtors; provided that the Amended Bylaws shall only be effective as of the Effective Date. The stockholder rights plan has been adopted by the board of directors of the Reorganized Debtors; provided that the stockholder rights plan shall only be effective as of the Effective Date. Each of the Amended Certificate of Incorporation, the Amended Bylaws, and the stockholder rights plan included in the Plan Supplements are hereby approved. Consistent with its disclosure in the Plan Supplements, Reorganized NWA Corp. will hold its first annual meeting in April, 2008.

19. New Board. Upon the occurrence of the Effective Date, the Persons proposed to serve as members of the Board of Directors, as identified in the Plan Supplements filed on April 23, 2007, shall automatically constitute the new Board of Directors.

20. Issuance of New Securities. Pursuant to Section 5.3 of the Plan, based upon the record of the Chapter 11 Cases, the issuance of the New Common Stock by Reorganized NWA Corp., including the issuance of the New Common Stock pursuant to the Rights Offering and the Order of this Court dated March 30, 2007 (Docket No. 5371) is hereby authorized without the need for any further corporate action.

21. Securities Laws Exemption. The Rights Offering and the offering, issuance, and distribution by Reorganized NWA Corp. of the New Common Stock, including the New Common Stock issued in connection with the Rights Offering, is exempt from the provisions of section 5 of the Securities Act of 1933, as amended, and any state or local law requiring registration for the offer, issuance, distribution, or sale of a security by reason of and to the extent provided by section 1145 of the Bankruptcy Code.

22. Restrictions on the Transfer of New Common Stock to Protect NOLs. To reduce the risk of adverse federal income tax consequences after the Effective Date resulting from an ownership change (as defined in section 382 of the Internal Revenue Code), the Amended Certificate of Incorporation will restrict certain transfers of the New Common Stock without the consent of the Board for 2 years after the Effective Date, and such restrictions thereafter can be extended for one year periods (up to 3 times to June 2012) upon, each time, the affirmative vote of NWA Corp.'s stockholders. In the event that these restrictions are extended beyond the two year period, the Board of Directors will approve subsequent proposed transfers that, taking into account all prior transfers effected during the "testing period" under section 382, do not result in an aggregate owner shift of more than 30% for purposes of section 382 (the

"Threshold Amount"). If the aggregate owner shift as of any date after the two year period exceeds the Threshold Amount, the Board of Directors has the discretion to approve any subsequent transfers subject to the standards that would otherwise apply until the earlier of the date on which the aggregate owner shift no longer exceeds the Threshold Amount, or the Restriction Release Date (as defined in the Amended Certificate of Incorporation). These restrictions generally will provide that any attempted transfer of New Common Stock prior to the expiration of the term of the transfer restrictions will be prohibited and void if such transfer would cause the transferee's ownership interest in Reorganized NWA Corp., as determined for the purposes of section 382 of the Internal Revenue Code, to increase to 4.95% or above, including an increase in a transferee's ownership interest from 4.95% or above to a greater ownership interest, except as may be otherwise agreed to by the Board of Directors of Reorganized NWA Corp. or required by law with respect to certain qualified plans. Absent a contrary decision by the Debtors, in consultation with the Creditors Committee, the Amended Certificate of Incorporation will also contain similar provisions restricting the ability of persons who are 5% shareholders for the purposes of section 382 of the Internal Revenue Code to dispose of their shares without the consent of the Board of Directors of Reorganized NWA Corp. during the term of the transfer restrictions. The transfer restrictions will not apply (x) to certain transactions approved by the Board of Directors of Reorganized NWA Corp., including, but not limited to, a merger or consolidation, in which all holders of New Common Stock receive, or are offered the same opportunity to receive, cash or other consideration for all such New Common Stock, and upon the consummation of which the acquirer will own at least a majority of the outstanding shares of New Common Stock; and (y) to the extent set forth in the Rights Offering Sponsor Agreement, to the Rights Offering Sponsor or Ultimate Purchasers.

23. Management Equity Plan and Non-Contract Employee Compensation Program. Entry of this Confirmation Order constitutes the approval of the Management Equity Plan and Non-Contract Employee Compensation Program, each of which shall be deemed adopted by the Reorganized Debtors and effective as of the Effective Date. The Debtors are authorized to implement the Management Equity Plan and the Non-Contract Employee Compensation Program without the necessity of shareholder approval required under any applicable law, including, without limitation, Sections 162(m) and 422(b)(1) of the Internal Revenue Code. The solicitation of votes on the Plan includes and is deemed to be a solicitation of the holders of New Common Stock for approval of each of the Management Equity Plan and Non-Contract Employee Compensation Program.

24. Plan Supplements. The documents contained in the Plan Supplements and any amendments, modifications, and supplements thereto (to the extent consistent with the terms of the Plan as the Debtors may approve), and the execution, delivery, and performance thereof by the Reorganized Debtors, are authorized and approved, including, but not limited to, (i) the Management Equity Plan, (ii) the Amended Certificate of Incorporation, (iii) the Amended Bylaws, (iv) the list of the Board of Directors, (v) the stockholder rights plan; and (vi) the Schedule of Rejected Contracts and Leases. Without need for further order or authorization of the Bankruptcy Court, the Debtors and Reorganized Debtors are authorized and empowered to make any and all modifications to any and all documents included as part of the Plan Supplements that do not materially modify the terms of such documents and are consistent with the Plan (subject to the terms of such documents, applicable law, and approval of the Creditors Committee or Post-Effective Date Committee, as applicable).

25. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any

state or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement, and any documents, instruments, or agreements, and any amendments or modifications thereto.

26. Exemption From Certain Taxes. Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, any merger agreements or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax. All sale transactions consummated by the Debtors and approved by the Bankruptcy Court on and after the Commencement Date through and including the Effective Date, including, without limitation, the transfers effectuated under the Plan, the Restructuring Transactions, the sale by the Debtors of owned property pursuant to section 363(b) of the Bankruptcy Code, and the abandonment by the Debtors of owned property pursuant to section 554 of the Bankruptcy Code, shall be deemed to have been made under, in furtherance of, or in connection with the Plan and, thus, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

27. Distributions. Except as otherwise provided in Section 6.7 of the Plan, pursuant to Sections 6.4 and 6.5 of the Plan, on the Effective Date or as soon thereafter as is practicable, the Disbursing Agent will distribute to the applicable agent and/or recordholder for the individual holders of the applicable Allowed Claims the New Common Stock For Distribution to Creditors allocable to Class 1D, the New Common Stock For Distribution to

Creditors with a Guaranty allocable to Class 1D and the New Common Stock For Distribution Pursuant to Rights Offering purchased pursuant to the exercise of Subscription Rights. For the purpose of calculating the amount of New Common Stock For Distribution to Creditors and New Common Stock For Distribution to Creditors with a Guaranty to be initially distributed to holders of Allowed Claims in Class 1D all Disputed Claims (excluding Subordinated Claims) in such class will be treated as though such Claims will be Allowed Claims in the amounts asserted, or as estimated by the Bankruptcy Court, or in accordance with any cap on the aggregate amount of Allowed and Disputed Claims in Class 1D used to calculate the amount of New Common Stock in the Distribution Reserve, including as such may be set pursuant to the Debtors' Motion for an Order Establishing a Distribution Reserve Amount in Connection with Confirmation of the Debtors' First Amended Joint and Consolidated Plan of Reorganization, as applicable. If, prior to a Periodic Distribution Date, a Disputed Claim is allowed as provided for under the Plan in an amount that is less than the amount utilized by the Disbursing Agent, the excess New Common Stock for Distribution to Creditors and New Common Stock For Distribution to Creditors with a Guaranty that was reserved by the Debtors on account of such Claim will be distributed to holders of Allowed Class 1D Claims on a Pro Rata basis on a subsequent Periodic Distribution Date as described in Section 6.5 of the Plan. If a Disputed Claim is disallowed subsequent to the Effective Date, then the creditors within the class will receive Pro Rata, on a subsequent Periodic Distribution Date, the Catch-up Distribution that the holder of the Disputed Claim would have received if the claim had become an Allowed Claim. On the applicable Periodic Distribution Date, the Disbursing Agent will distribute to the applicable agent and/or recordholder for the individual holders of the applicable Allowed Claims, the New Common Stock For Distribution to Creditors allocable to Class 1D and the New Common Stock For Distribution to Creditors with a Guaranty allocable to Class 1D until such time as all Disputed Claims have been resolved;

provided, however, if the initial Effective Date distribution falls within the first 45 days of a quarter, then the first post-Effective Date Periodic Distribution Date will be on the first Business Day following the close of such quarter. On an applicable Periodic Distribution Date, as determined by the Debtors, a holder of an Allowed Claim that ceased being a Disputed Claim subsequent to the Effective Date will receive a Catch-up Distribution. The Disbursing Agent may, in its sole discretion, establish a record date prior to each Periodic Distribution Date, such that only Claims Allowed as of the record date will participate in the distribution. Notwithstanding the foregoing, the Debtors reserve the right, in consultation with the Post-Effective Date Committee, to the extent they determine a distribution on any Periodic Distribution Date is uneconomical or unfeasible, or is otherwise unadvisable, to postpone a quarterly distribution until the next appropriate Periodic Distribution Date.

28. Final Fee Applications/Administrative Expense Claims. Pursuant to Section 2.1 of the Plan, except with respect to Excluded Allowed Administrative Expense Claims (as provided in Section 2.1 of the Plan), all entities seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under section 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code and all parties seeking payment of an Administrative Expense Claim shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred and requests for payment of their Administrative Expense Claim by the date that is sixty (60) days after the Effective Date. The Reorganized Debtors, in their sole and absolute discretion, may settle Administrative Expense Claims in the ordinary course of business without further Bankruptcy Court approval. The Debtors shall have the right to object to any Administrative Expense Claim within 180 days after the Claims Objection Deadline, subject to extensions from time to time by the Bankruptcy Court, with the consent of

the Post-Effective Date Committee. Unless the Debtors or the Reorganized Debtors object to a timely-filed and properly served Administrative Expense Claim, such Administrative Expense Claim shall be deemed allowed in the amount requested. In the event that the Debtors or the Reorganized Debtors object to an Administrative Expense Claim the parties may confer to try to reach a settlement and, failing that, the Bankruptcy Court shall determine whether such Administrative Expense Claim should be allowed and, if so, in what amount.

29. Discharge of Claims and Termination of Equity Interests. Pursuant to Section 11.2 of the Plan, except as otherwise provided in the Plan or the Confirmation Order, the rights afforded in the Plan and the payments and distributions to be made under the Plan shall be in complete satisfaction of and shall discharge and terminate all Equity Interests in NWA Corp. and all existing debts and Claims, of any kind, nature or description whatsoever against or in the Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code.

30. Discharge of Debtors. Pursuant to Section 11.2 of the Plan, except as provided in the Plan, on the Effective Date, all existing Equity Interests in NWA Corp. and Claims against the Debtors, including Intercompany Claims, shall be, and shall be deemed to be, satisfied, discharged and terminated, and all holders of Equity Interests in NWA Corp. and Claims against any of the Debtors shall be precluded and enjoined from asserting against the Reorganized Debtors, or any of their assets or properties, any other or further Equity Interest in NWA Corp. or Claim against any of the Debtors based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of claim or proof of equity interest. Notwithstanding any provision of the Plan to the contrary, any valid setoff or recoupment rights held against any of the Debtors, shall not be affected by the Plan and are expressly preserved by this Confirmation Order. The

discharge and injunction provisions set forth in Section 11.2 of the Plan and any similar provisions in the Plan or Confirmation Order are not intended and shall not be construed to bar the United States from, subsequent to the Confirmation Date, pursuing any police or regulatory action to the extent excepted from the automatic stay provisions of section 362 of the Bankruptcy Code, and nothing in the Plan limits or expands the discharge and injunction to which the Debtors or Reorganized Debtors are entitled under the Bankruptcy Code or other applicable law.

31. Indenture Trustees' Fees and Expenses. Pursuant to Section 5.11 of the Plan, the Debtors shall pay the reasonable fees and expenses under the Indentures in Cash on the Effective Date, as agreed to by the parties or as otherwise ordered by the Bankruptcy Court, subject to each Indenture Trustee's reservation of their rights under applicable law to maintain any rights or liens it may have for fees, costs and expenses under the Indentures.

32. Survival of Corporate Indemnitees. Pursuant to Section 8.9 of the Plan, any obligations of the Debtors pursuant to their corporate charters and bylaws or agreements entered into any time prior to the Effective Date, to indemnify past and current directors, officers, agents, trustees of employee benefit plans and/or employees with respect to all present and future actions, suits, and proceedings against the Debtors or such directors, officers, agents, trustees of employee benefit plans, and/or employees, based upon any act or omission by such individuals shall not be discharged or impaired by confirmation of the Plan. Such obligations shall be deemed and treated as executory contracts to be assumed by the Debtors pursuant to the Plan and shall continue as obligations of the Reorganized Debtors.

33. Releases, Exculpations, and Injunctions. The release, exculpation, and injunction provisions contained in the Plan are fair and equitable, are given for valuable consideration, and are in the best interests of the Debtors and their chapter 11 estates, and such provisions shall be effective and binding upon all persons and entities; provided that the release,

exculpation and injunction provisions of the Plan and any similar provisions in the Plan or Confirmation Order are not intended and shall not be construed to bar the United States from, subsequent to the Confirmation Date, pursuing any police or regulatory action to the extent excepted from the automatic stay provisions of section 362 of the Bankruptcy Code.

34. Termination of Injunctions and Automatic Stay. Pursuant to Section 11.4 of the Plan, unless otherwise provided in the Plan, all injunctions or stays arising under section 105 or 362 of the Bankruptcy Code, any order entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in such order.

35. Injunction Against Interference with the Plan. Pursuant to Section 11.5 of the Plan, upon the entry of the Confirmation Order with respect to the Plan, all holders of Claims and Equity Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

36. Cancellation of Existing Securities and Agreements. Except as otherwise expressly provided for in the Plan and pursuant to Section 6.9 of the Plan, as a condition to receiving any distribution under the Plan, each holder of a certificated instrument or note must surrender such instrument or note held by it to the Disbursing Agent or its designee, unless such certificated instrument or note is being reinstated or is unimpaired under the Plan. Any holder of such instrument or note that fails to (i) surrender such instrument or note, or (ii) execute and deliver an affidavit of loss and/or indemnity reasonably satisfactory to the Disbursing Agent and furnish a bond in form, substance and amount reasonably satisfactory to the Disbursing Agent before the first anniversary of the Effective Date, shall be deemed to have forfeited all rights and

Claims and may not participate in any distribution under the Plan. Any distribution so forfeited shall be distributed pro rata to the members of the Class. Except as otherwise required by the terms of the applicable transaction documents, the provisions of this Section shall not apply to notes or instruments issued by parties that are not Debtors.

37. Dissolution of Committees; Post-Effective Date Committee. Effective on the Effective Date, the Creditors' Committee, the Retiree Committee and any other statutory committee appointed in the Chapter 11 Cases shall dissolve automatically, whereupon its members, professionals, and agents shall be released from any further duties and responsibilities in the Chapter 11 Cases and under the Bankruptcy Code, except with respect to applications for Professional Claims or reimbursement of expenses incurred as a member of the Creditors' Committee or the Retiree Committee, and any motions or other actions seeking enforcement or implementation of the provisions of this Plan or the Confirmation Order or pending appeals of Orders entered in the Chapter 11 Cases. On the Effective Date, there shall be formed a Post-Effective Date Committee with its duties limited to the oversight of certain actions of the Reorganized Debtors, which actions shall remain the sole responsibility of the Reorganized Debtors, including: (a) overseeing the General Unsecured Claims' reconciliation and settlement process conducted by or on behalf of the Reorganized Debtors pursuant to the Settlement Procedures Order; (b) overseeing (i) the establishment (including the determination of the amount of New Common Stock to be withheld) and (ii) the maintenance of the Distribution Reserve; (c) overseeing the distributions to the holders of General Unsecured Claims under this Plan; (d) appearing before and being heard by the Bankruptcy Court and other Courts of competent jurisdiction in connection with the above limited duties; and (e) such other matters as may be agreed upon between the Reorganized Debtors and the Post-Effective Date Committee or specified in this Plan. The Post-Effective Date Committee shall consist of not less than three nor

more than five members to be appointed by the Creditors' Committee and may adopt by-laws governing its conduct. For so long as the claims reconciliation process shall continue, the Reorganized Debtors shall make regular reports to the Post-Effective Date Committee as and when the Reorganized Debtors and the Post-Effective Date Committee may reasonably agree upon. The Post-Effective Date Committee may employ, without further order of the Court, professionals to assist it in carrying out its duties as limited above, including any professionals retained in these Reorganization Cases, and the Reorganized Debtors shall pay the reasonable costs and expenses of the Post-Effective Date Committee, including reasonable professional fees, in the ordinary course without further order of the Court. In the event that, on the Effective Date, an objection to any Claim by the Creditors Committee is pending, the Post-Effective Date Committee shall have the right to continue prosecution of such objection.

38. Government Penalty Claims. Government Claim No. 259, Claim No. 393, Claim No. 1041, Claim No. 1094, Claim No. 6210, Claim No. 6692, Claim No. 7507, Claim No. 8048-8059, Claim No. 8361, Claim Nos. 9273-9284 and Claim No. 11395 shall not be automatically deemed to be Subordinated Claims as defined in the Plan. The Debtors will seek subordination of such claims upon further application to the Bankruptcy Court or as agreed between the parties.

39. Trust Fund Claims. The rights of the United States to payments of funds collected and required to be held in trust for the benefit of the United States pursuant to federal law by the Debtors or Reorganized Debtors or their agents, either before or after the Commencement Date, shall not be affected by the Plan or this Confirmation Order. The Debtors will pay undisputed trust fund claims of the United States in full in cash in the ordinary course of business.

40. Aircraft Secured Claims. The Plan provides for the reinstatement of the Consolidated Debtors' obligations with respect to the Aircraft Secured Claims in Classes 1B-1, 1B-2, and 1B-3 and for the assumption of certain aircraft leases, such that each such Aircraft Secured Claim and each assumed aircraft lease is not impaired in accordance with the requirements of section 1124 of the Bankruptcy Code. Nothing in the Plan is intended to, nor shall it be deemed to limit, the applicable Consolidated Debtors' or Reorganized Debtors' obligations upon reinstatement in accordance with section 1124 of the Bankruptcy Code or upon assumption under section 365 of the Bankruptcy Code, as applicable, including the entitlement, if any, of such holder to the benefits of section 1110 of the Bankruptcy Code.

41. Insurance Agreements. Nothing in the Plan or this Confirmation Order shall be deemed to be, or interpreted as, an enjoinment of any of Broadspire Services, Inc., Continental Casualty Company and its American insurance affiliates, or Lumbermens Mutual Casualty Company and its American insurance affiliates (such parties, collectively, the "Insurers"), from administering their duties and obligations under the terms of the respective insurance agreements executed between the Debtors and such Insurers, all such terms being assumed consistent with Section 8.10 of the Plan and/or as agreed between the parties.

42. Multnomah County. Multnomah County, Oregon shall retain its liens upon real and personal property of Northwest Airlines, until its Allowed Claim has been paid in full.

43. Nonoccurrence of Effective Date. In the event that the Effective Date does not occur, then (i) the Plan, (ii) assumption or rejection of executory contracts or unexpired leases pursuant to the Plan, (iii) any document or agreement executed pursuant to the Plan, and (iv) any actions, releases, waivers, or injunctions authorized by this Confirmation Order or any order in aid of consummation of the Plan shall be deemed null and void. In such event, nothing contained in this Confirmation Order, any order in aid of consummation of the Plan, or the Plan,

and no acts taken in preparation for consummation of the Plan, (a) shall be deemed to constitute a waiver or release of any Claims or Equity Interests by or against the Debtors or any other persons or entities, to prejudice in any manner the rights of the Debtors or any person or entity in any further proceedings involving the Debtors or otherwise, or to constitute an admission of any sort by the Debtors or any other persons or entities as to any issue, or (b) shall be construed as a finding of fact or conclusion of law in respect thereof.

44. Notice of Entry of Confirmation Order and Effective Date. Pursuant to Bankruptcy Rules 2002(f), 2002(k) and 3020(c), on or before the tenth (10th) Business Day following the Effective Date, the Debtors shall electronically file with the Court and serve notice of entry of this Confirmation Order and occurrence of the Effective Date by causing notice of entry of the Confirmation Order and occurrence of the Effective Date in substantially the same form as attached hereto as Exhibit "H" (the "Notice of Confirmation and Effective Date"), with such changes as the Court may require, to be delivered on all holders of Claims and Equity Interests, all indenture trustees, the United States Trustee for the Southern District of New York and the attorneys for the Creditors Committee and all statutory committees by email or first-Class mail, postage prepaid, and on the parties identified in the Master Service List as defined in the Notice Order by email or first-class mail, postage prepaid. The Debtors also shall cause the Notice of Confirmation and Effective Date to be published as promptly as practicable after the Effective Date once in each of *The New York Times* (National Edition), *The Wall Street Journal* (National Edition), and *USA Today*, and shall post the Notice of Confirmation and Effective Date on the Debtors' website at www.nwa-restructuring.com/. The notice described herein is adequate under the particular circumstances and no other or further notice is necessary.

45. Authorization to File Conformed Plan. The Debtors are authorized to file a conformed Plan, dated on the date hereof, that incorporates the amendments to the Plan within thirty (30) days of the entry of this Confirmation Order.

46. Applicable Non-Bankruptcy Law. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan, the Plan Supplements, and the Plan Documents shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

47. Final Order. This Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

48. Severability. Each term and provision of the Plan, as it may have been altered or interpreted by the Bankruptcy Court in accordance with Section 13.11 of the Plan, is valid and enforceable pursuant to its terms.

49. Conflicts Between Order and Plan. To the extent of any inconsistency between the provisions of the Plan and this Confirmation Order, the terms and conditions contained in this Confirmation Order shall govern. The provisions of this Confirmation Order are integrated with each other and are nonseverable and mutually dependent unless expressly stated by further order of this Bankruptcy Court.

Dated: May 18, 2007
New York, New York

/s/ Allan L. Gropper
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
	:	**Case No. 05-17930 (ALG)**
NORTHWEST AIRLINES CORPORATION, **NWA FUEL SERVICES CORPORATION,** **NORTHWEST AIRLINES HOLDINGS CORPORATION,** **NWA INC.,** **NORTHWEST AEROSPACE TRAINING CORPORATION,** **NORTHWEST AIRLINES, INC.,** **NWA AIRCRAFT FINANCE, INC.,** **MLT INC.,** **COMPASS AIRLINES, INC. F/K/A NORTHWEST AIRLINES CARGO, INC.,** **NWA RETAIL SALES INC.,** **MONTANA ENTERPRISES, INC.,** **AIRCRAFT FOREIGN SALES, INC.,** **NW RED BARON LLC, AND** **NWA WORLDCLUB, INC.**	:	**Jointly Administered**
Debtors.	:	

DEBTORS' FIRST AMENDED JOINT AND CONSOLIDATED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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Dated: May 15, 2007

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UNITED STATES BANKRUPTCY COURT
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In re:	**Chapter 11**
	Case No. 05-17930 (ALG)
NORTHWEST AIRLINES CORPORATION, NWA FUEL SERVICES CORPORATION, NORTHWEST AIRLINES HOLDINGS CORPORATION, NWA INC., NORTHWEST AEROSPACE TRAINING CORPORATION, NORTHWEST AIRLINES, INC., NWA AIRCRAFT FINANCE, INC., MLT INC., COMPASS AIRLINES, INC. F/K/A NORTHWEST AIRLINES CARGO, INC., NWA RETAIL SALES INC., MONTANA ENTERPRISES, INC., AIRCRAFT FOREIGN SALES, INC., NW RED BARON LLC, AND NWA WORLDCLUB, INC.	**Jointly Administered**
Debtors.	

DEBTORS' FIRST AMENDED JOINT AND CONSOLIDATED PLAN
OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

Northwest Airlines Corporation, NWA Fuel Services Corporation, Northwest Airlines Holdings Corporation, NWA Inc., Northwest Airlines, Inc., Northwest Aerospace Training Corporation, MLT Inc., Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc., NWA Retail Sales Inc., Montana Enterprises, Inc., NW Red Baron LLC, Aircraft Foreign Sales, Inc., NWA Worldclub, Inc., and NWA Aircraft Finance, Inc., the debtors, propose the following joint and consolidated plan of reorganization pursuant to section 1121(a) of title 11 of the United States Code:

SECTION 1. DEFINITIONS

In this Plan, the following definitions shall apply:

1.1 1110(a) Aircraft Secured Claim means an Aircraft Secured Claim relating to Aircraft Equipment as to which the Debtors agreed under section 1110(a) of the Bankruptcy Code to perform all obligations under the applicable loan agreements.

1.2 A330 Financing Indentures means the NW 2006-1, 2006-2 and 2007-1 Trust Indentures providing for the refinancing of certain Secured Obligations relating to A330 Aircraft

Equipment, authorized by the Bankruptcy Court in Final Orders dated November 21, 2006, December 21, 2006 and May 2, 2007.

1.3 Administrative Expense Claim means any right to payment, whether secured or unsecured, constituting a cost or expense of administration of any of the Chapter 11 Cases under sections 503(b), 507(a)(1) and 1114(e) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses of preserving the Debtors' estates, any actual and necessary costs and expenses of operating the Debtors' businesses, any indebtedness or obligations incurred or assumed by the Debtors, as debtors in possession, during the Chapter 11 Cases including, without limitation, for the acquisition or lease of property or an interest in property or the rendition of services, and any allowances of compensation and reimbursement of expenses to the extent allowed by Final Order under section 330 or 503 of the Bankruptcy Code.

1.4 Administrative Expense Claim Bar Date means the date that is sixty calendar days after the Effective Date.

1.5 Aircraft Equipment means an aircraft, airframe, aircraft engine, propeller, appliance or spare part (and includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, to be surrendered or returned in connection with the surrender or return of such equipment) that is leased to, subject to a security interest granted by or conditionally sold to, one of the Debtors.

1.6 Aircraft Secured Claim means a Claim that is secured by a valid, duly perfected, non-avoidable security interest in the interest of a Debtor in Aircraft Equipment, to the extent of the value, as of the Effective Date or such other date as is established by the Bankruptcy Court, of such Claimholder's interest in the applicable Debtor's interest in such Aircraft Equipment, as determined by a Final Order of the Bankruptcy Court pursuant to section 506(a) of the Bankruptcy Code or as otherwise agreed upon in writing by the Debtors and the Claimholder.

1.7 Allocation Fraction means, with respect to a holder of an Allowed Class 1D Claim with respect to which there is a guaranty by one or more of the Consolidated Debtors of a direct or indirect obligation of another Consolidated Debtor, a fraction, the numerator of which shall be the amount of such holder's Allowed Class 1D Claim with respect to which there is a guaranty, and the denominator of which shall be the aggregate amount of all Allowed Class 1D Claims with respect to which there are guarantees by another Consolidated Debtor.

1.8 Allowed means, with respect to a Claim, (i) any Claim against any Debtor which has been listed by such Debtor in the Schedules, as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary proof of claim has been filed, (ii) any timely filed, liquidated, non-contingent Claim as to which the time for objection permitted by the Plan has expired and no objection has been interposed, or (iii) any Claim expressly allowed by a Final Order or by agreement pursuant to the Settlement Procedures Order.

1.9 Amended Bylaws means the Bylaws of Reorganized NWA Corp. as restated, substantially in the form as will be set forth in a plan supplement.

1.10 Amended Certificate of Incorporation means the Certificate of Incorporation of Reorganized NWA Corp., as restated, substantially in the form as will be set forth in a plan supplement.

1.11 Bankruptcy Code means title 11 of the United States Code, as applicable to the Chapter 11 Cases.

1.12 Bankruptcy Court means the United States Bankruptcy Court for the Southern District of New York.

1.13 Bankruptcy Rules means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, applicable to the Chapter 11 Cases, and any Local Rules of the Bankruptcy Court.

1.14 Bar Date Order means the Final Order dated May 19, 2006, as amended May 22, 2006 (Docket Nos. 2594 & 2607), and any orders supplementing such Order, establishing the last date for filing proofs of claim against the Debtors' estates.

1.15 Business Day means any day other than a Saturday, a Sunday, or any other day on which banking institutions in New York, New York are required or authorized to close by law or executive order.

1.16 Cash means legal tender of the United States of America.

1.17 Catch-up Distribution means with respect to each holder of an Allowed Claim in Class 1D that was previously a Disputed Claim, the aggregate number of shares of New Common Stock For Distribution to Creditors that such holder would have received if its Claim had been an Allowed Claim on the Effective Date and each applicable Periodic Distribution Date, together with such other consideration that would have been received as if the Claim had been Allowed as of the Effective Date and any subsequent Periodic Distribution Dates.

1.18 Chapter 11 Cases means the jointly administered cases under chapter 11 of the Bankruptcy Code commenced by the Debtors in the United States District Court for the Southern District of New York and styled In *re Northwest Airlines Corp., et al., Case No. 05-17930 (ALG)*, (Jointly Administered).

1.19 Claim has the meaning set forth in section 101 of the Bankruptcy Code.

1.20 Claims Agent means Bankruptcy Services, LLC, which is located at 757 Third Avenue, Third Floor, New York, New York 10017 and was retained as the Debtors' claims, balloting and noticing agent in the Chapter 11 Cases pursuant to Bankruptcy Court Order dated November 16, 2005.

1.21 Claims Objection Deadline has the meaning set forth in Section 7.1 of the Plan.

1.22 Class means any group of Claims or Equity Interests classified by the Plan pursuant to section 1122(a)(1) of the Bankruptcy Code.

1.23 Commencement Date means September 14, 2005, with respect to all of the Debtors other than NWA Aircraft Finance, Inc., and with respect to NWA Aircraft Finance, Inc. means September 30, 2005.

1.24 Common Stock Interests means Equity Interests in NWA Corp. represented by Old NWA Corp. Common Shares.

1.25 Confirmation Date means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order.

1.26 Confirmation Order means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.27 Consolidated Debtor means, individually, any of NWA Corp., Holdings, NWA Inc. and Northwest Airlines.

1.28 Consolidated Debtors means, collectively, NWA Corp., Holdings, NWA Inc. and Northwest Airlines.

1.29 Convenience Class Claim means a Claim, excluding a Claim for principal and interest based on a note issued under any indenture, including the Indentures, or municipal bond financing, against any of the Consolidated Debtors that otherwise would be a General Unsecured Claim that is (a) for $20,000 or less, or (b) for more than $20,000 if the holder of such Claim has agreed to reduce the amount of the Claim to $20,000 by making the Convenience Class Election on the Ballot provided for voting on this Plan within the time fixed by the Bankruptcy Court for completing and returning such Ballot.

1.30 Convenience Class Election means the election pursuant to which the holder of a General Unsecured Claim, excluding a Claim for principal and interest based on a note issued under any indenture or municipal bond financing, against any Consolidated Debtor in an amount greater than $20,000 timely elects to have its Claim reduced to $20,000 and treated as a Convenience Class Claim.

1.31 Creditors Committee means the statutory committee of unsecured creditors appointed in the Chapter 11 Cases, as constituted from time to time.

1.32 Debtor means, individually, any of NWA Corp., NWA Fuel Services Corporation, Holdings, NWA Inc., Northwest Airlines, Northwest Aerospace Training Corporation, MLT Inc., Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc., NWA Retail Sales Inc., Montana Enterprises, Inc., NW Red Baron LLC, Aircraft Foreign Sales, Inc., NWA Worldclub, Inc., and NWA Aircraft Finance, Inc.

1.33 Debtors means, collectively, each Debtor.

1.34 Deficiency Claim means that portion of a Claim secured by a lien on property in which the estate has an interest that is determined, pursuant to Section 506(a) of the Code or through agreement, to exceed the value of the claimant's interest in such property.

1.35 DIP Claim means the Administrative Expense Claim arising under the DIP Credit and Exit Facility Agreement.

1.36 DIP Credit and Exit Facility Agreement means that certain Super Priority Debtor in Possession and Exit Credit and Guarantee Agreement dated as of August 21, 2006, among Northwest Airlines as Borrower, NWA Corp, Northwest Airlines Holdings Corporation and NWA Inc., as Guarantors, and Citicorp USA Inc., as Administrative Agent, JP Morgan Chase Bank, N.A. as Syndication Agent, Deutsche Bank Trust Company Americas, as Documentation Agent, Morgan Stanley Senior Funding Inc., as Co-Syndication Agent, Calyon New York Branch, as Co-Documentation Agent, U.S. Bank National Association, as Agent, Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., as Joint Lead Arrangers and Joint Book Runners for the Exit Facilities, Morgan Stanley Senior Funding Inc., as Co-Arranger and Calyon New York Branch, as Co-Arranger and the several lenders from time to time parties thereto.

1.37 Disbursing Agent means any entity (including any applicable Debtor if it acts in such capacity) in its capacity as a disbursing agent under Section 6.7 hereof.

1.38 Disclosure Statement means the disclosure statement with respect to the Debtors' First Amended Joint and Consolidated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code.

1.39 Disputed Claim means any Claim that is not an allowed claim.

1.40 Distribution Record Date means, except with respect to securities to be cancelled under the Plan, which are governed by Section 6.9 of the Plan, the date fixed as the "Distribution Record Date" by order of the Bankruptcy Court approving the Solicitation Procedures Motion.

1.41 Distribution Reserve means the reserve created pursuant to Section 6.6 of this Plan to hold property (including New Common Stock) for distribution to holders of General Unsecured Claims pending resolution of Disputed Claims.

1.42 Downstream Mergers means the mergers provided for in Section 5.15 of the Plan.**DTC** means The Depository Trust Company.**Effective Date** means a Business Day on or after the Confirmation Date selected by the Debtors on which (i) no stay of the Confirmation Order is in effect (ii) the conditions to the effectiveness of the Plan specified in Section 10 hereof have been satisfied or waived and (iii) the Debtors commence consummation of the Plan.

1.45 Eligible Holder means a holder of an Allowed Claim in Class 1D entitled to participate in the Rights Offering pursuant to the Debtors' Solicitation Procedures Motion.

1.46 Employee-Related Agreements means those agreements between any of the Debtors and any of its employees or any entity acting on behalf of its employees.

1.47 Equity Interest means the interest of any holder of an equity security of any Debtor represented by any issued and outstanding shares of common or preferred stock or other instrument evidencing a present ownership interest in any Debtor, whether or not transferable, or any option, warrant or right, contractual or otherwise, to acquire any such interest.

1.48 Equity Interests in Debtors Other than NWA Corp. means, collectively, Equity Interests in Consolidated Debtors Other than NWA Corp., Equity Interests in NWA Fuel Services Corporation, Equity Interests in Northwest Aerospace Training Corporation, Equity Interests in MLT Inc., Equity Interests in Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc., Equity Interests in NWA Retail Sales Inc., Equity Interests in Montana Enterprises, Inc., Equity Interests in NW Red Baron LLC, Equity Interests in Aircraft Foreign Sales, Inc. and Equity Interests in NWA Worldclub, Inc.

1.49 Excess Primary Exercise means, with respect to the exercise of Subscription Rights, the occurrence of the following event: the number of shares to be purchased upon exercise of Subscription Rights that have otherwise been validly and effectively exercised pursuant to primary exercise exceeds the number of shares available for purchase pursuant to the Rights Offering.

1.50 Excluded Allowed Administrative Expense Claims means Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtors, as debtors in possession, or liabilities arising under loans or advances to or incurred by the Debtors, Postpetition Aircraft Purchase and Lease Obligations, or liabilities arising under the Rights

Offering Sponsor Agreement and the registration rights agreement being entered into in connection therewith.

1.51 Exercising Claimant means each Eligible Holder of an Allowed Claim in Class 1D that exercises its rights to subscribe to purchase shares of New Common Stock For Distribution Pursuant to Rights Offering.

1.52 Exit Facility means the credit facility that will provide liquidity to the Reorganized Debtors.

1.53 Final Distribution Date means the date which is ninety days after all Disputed Claims have been resolved by Final Order.

1.54 Final Order means an order or judgment that has not been reversed, vacated or stayed and as to which (i) the time to appeal, to petition for a writ of *certiorari* or to move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for a writ of *certiorari* or motion for a new trial, reargument or rehearing shall then be pending, or (ii) if an appeal, writ of *certiorari*, new trial, reargument or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or the petition for a writ of *certiorari* shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order or judgment, and the time to take any further appeal, to petition for a writ of *certiorari* or to move for a new trial, reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a Final Order.

1.55 General Unsecured Claim means a Claim against a Debtor that is not an Administrative Expense Claim, a Priority Tax Claim, a Priority Non-Tax Claim, an 1110(a) Aircraft Secured Claim, a Restructured Aircraft Secured Claim, an N301US and N303US Aircraft Secured Claim, an Other Secured Claim, an Insured Claim, an Intercompany Claim, or a Convenience Class Claim. For the avoidance of doubt, the term General Unsecured Claim includes Deficiency Claims.

1.56 Holdings means Northwest Airlines Holdings Corporation, a Delaware corporation.

1.57 Indentures means, individually and collectively, (A) the Indenture (as supplemented) dated as of March 1, 1997 among Northwest Airlines, Holdings and U.S. Bank National Association, N.A. as successor to State Street Bank as Trustee, under which Northwest Airlines issued the following series of notes: (i) 10% Notes due 2009 in the aggregate principal amount of $300,000,000, (ii) 9.875% Notes due 2007 in the aggregate principal amount of $300,000,000, (iii) 8.875% Notes due 2006 in the aggregate principal amount of $300,000,000, (iv) 9.5% Notes due 2039 in the aggregate principal amount of $143,000,000, (v) 7.875% Notes due 2008 in the aggregate principal amount of $200,000,000 and (vi) 8.70% Notes due 2007 in the aggregate principal amount of $100,000,000; (B) the Indenture dated as of May 20, 2003 among NWA Corp., Northwest Airlines and U.S. Bank National Association, N.A. as Trustee, under which NWA Corp. issued the 6.625% Senior Convertible Notes due 2023 in the aggregate principal amount of $150,000,000; and (C) the Indenture dated as of November 4, 2003, among NWA Corp., Northwest Airlines and U.S. Bank National Association as Trustee, under which NWA Corp. issued 7.625% Convertible Senior Notes due 2023 in the aggregate principal amount of $225,000,000, and all documents and instruments relating thereto as such may have been amended, modified, supplemented or restated from time to time prior to the Commencement Date.

1.58 Indenture Trustee means any of (A) HSBC Bank USA, National Association, as Successor Trustee, with respect to notes issued under the Indenture (as supplemented) dated as of

March 1, 1997 among Northwest Airlines, Holdings and U.S. Bank National Association, N.A. as successor to State Street Bank as Trustee; (B) U.S. Bank National Association or U.S. Bank Trust National Association (including any and all of its affiliates) as Indenture Trustee, Pass-Through Trustee, Subordination Agent, Owner Trustee, Security Trustee, Collateral Trustee or other trust capacity.; (C) Law Debenture Company of New York as Successor Trustee to U.S. Bank National Association with respect to the Indenture dated as of November 4, 2003, under which NWA Corp. issued 7.625% Convertible Senior Notes, and the Indenture dated as of May 20, 2003 under which NWA Corp. issued 6.625% Senior Convertible Notes.

1.59 Insured Claim means any Claim as to which there is valid and enforceable insurance coverage in an amount sufficient to fully satisfy and discharge such claim.

1.60 Intercompany Claim means any General Unsecured Claim held by a Debtor and/or Non-Debtor Affiliate against another Debtor and/or Non-Debtor Affiliate.

1.61 ISDA Master Agreements means those agreements entered into by the Debtors using the industry standard form of master agreement developed by the International Swaps and Derivatives Association to govern "over-the-counter" derivative transactions.

1.62 JPM ISDA Master Agreement means that certain ISDA Master Agreement made and entered into by and between JPMorgan Chase Bank, N.A. and Northwest Airlines, as amended from time to time, including by that First Amendment to 2002 ISDA Master Agreement, dated October 4, 2006.

1.63 Management Claim means Claim No. 11196 against Northwest Airlines, Inc., filed in the amount of not less than $129,096,917.00, on behalf of current salaried employees of the Debtors in order to preserve such salaried employees' rights with respect to, as applicable, (a) such salaried employees' compensation and benefit reductions agreed to as part of the 2004 Bridge Agreement reached between the Debtors and their pilots union, the Airline Pilots Association, International, and (b) such salaried employees' compensation and benefit reductions agreed to as part of the section 1113 negotiation process in these Chapter 11 Cases, calculated in the same manner as the claims granted to the unions who agreed to and ratified modified collective bargaining agreements.

1.64 Management Equity Plan means the management equity plan for certain employees of Reorganized Debtors, to be set forth in a plan supplement to be filed with the Bankruptcy Court not less than 20 days before the Voting Deadline.

1.65 N301US and N303US Aircraft Secured Claim means the respective Aircraft Secured Claim relating to either the airframe bearing FAA Registration tail number N301US and related Aircraft Equipment or the airframe bearing FAA Registration tail number N303US and related Aircraft Equipment.

1.66 New Common Stock means the new shares of common stock of Reorganized NWA Corp., having a par value of 1 cent per share, to be authorized and issued pursuant to the Plan and the Amended Certificate of Incorporation.

1.67 New Common Stock For Distribution to Creditors means the portion of the New Common Stock to be distributed to holders of Allowed Class 1D Claims against the Consolidated Debtors and which shall equal 225,788,536 shares of the New Common Stock.

1.68 New Common Stock For Distribution to Creditors with a Guaranty means the 8,622,772 shares of the New Common Stock to be distributed to holders of Allowed Class 1D Claims against the Consolidated Debtors, which holders also hold guarantees of such claims by one or more of the other Consolidated Debtors.

1.69 New Common Stock For Distribution Pursuant to Rights Offering means the 23,611,111 shares of the New Common Stock made available for purchase pursuant to the Rights Offering, as set forth in Section 9 of the Plan.

1.70 New Common Stock For Purchased Shares means the 4,166,667 shares of the New Common Stock purchased by the Rights Offering Sponsor, as set forth in Section 9.6 of the Plan.

1.71 New Common Stock Reserved for Issuance to Management means 21,333,248 shares of New Common Stock to be reserved for issuance under the Management Equity Plan.

1.72 NOLs means Net Operating Losses, as that term is used in Section 382 of the Internal Revenue Code.

1.73 Non-Consolidated Debtors means, collectively, NWA Fuel Services Corporation, Northwest Aerospace Training Corporation, MLT Inc., Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc., NWA Retail Sales Inc., Montana Enterprises, Inc., NW Red Baron LLC, Aircraft Foreign Sales, Inc., NWA Worldclub, Inc., and NWA Aircraft Finance, Inc.

1.74 Non-Contract Employee Compensation Program means the compensation program for domestic salaried and international employees.

1.75 Non-Debtor Affiliates means Northwest Airlines Charitable Foundation, Cardinal Insurance Co., Tomisato Shoji Hotel Business, Wings Finance Y.K., Win Win L.P., NWA Real Estate Holding Company LLC, Margoon Holding B.V.

1.76 Northwest Airlines means Northwest Airlines, Inc., a Minnesota corporation.

1.77 NW 2006-1, 2006-2 and 2007-1 Trust Indentures means (i) the Trust Indenture and Security Agreement [NW 2006-1 N851NW], dated as of December 22, 2006, among Northwest Airlines, Wells Fargo Bank Northwest, National Association, as Collateral Agent, Citibank, N.A., as Series A Administrative Agent, and Citibank, N.A., as Series B Administrative Agent (the "Agents"), (ii) the Trust Indenture and Security Agreement [NW 2006-1 N852NW], dated as of December 22, 2006, among Northwest Airlines and the Agents, (iii) the Trust Indenture and Security Agreement [NW 2006-1 N856NW], dated as of December 22, 2006, among Northwest and the Agents, (iv) the Trust Indenture and Security Agreement [NW 2006-1 N857NW], dated as of December 22, 2006, among Northwest Airlines and the Agents, (v) the Trust Indenture and Security Agreement [NW 2006-1 N860NW], dated as of December 22, 2006, among Northwest Airlines and the Agents, (vi) the Trust Indenture and Security Agreement [NW 2006-1 N861NW], dated as of December 22, 2006, among Northwest Airlines and the Agents, (vii) the Trust Indenture and Security Agreement [NW 2006-1 N806NW], dated as of December 22, 2006, among Northwest Airlines and the Agents, (viii) the Trust Indenture and Security Agreement [NW 2006-1 N807NW], dated as of December 22, 2006, among Northwest and the Agents, (ix) the Trust Indenture and Security Agreement [NW 2006-1 N812NW], dated as of December 22, 2006, among Northwest Airlines and the Agents, (x) the Trust Indenture and Security Agreement [NW 2006-1 N371NB], dated as of December 22, 2006, among Northwest Airlines and the Agents, (xi) the Trust Indenture and Security Agreement [NW 2006-1 N377NW], dated as of December 22, 2006, among Northwest and the Agents, (xii) the Trust Indenture and Security Agreement [NW 2006-1 N813NW],

dated as of December 22, 2006, among Northwest Airlines and the Agents, (xiii) the Trust Indenture and Security Agreement [NW 2006-2 N853NW], dated as of December 22, 2006, among Northwest Airlines and the Agents, (xiv) the Trust Indenture and Security Agreement [NW 2007-1 N814NW], dated as of May 14, 2007, among Northwest Airlines and the Agents, (xv) the Trust Indenture and Security Agreement [NW 2007-1 N815NW], dated as of May 14, 2007, among Northwest Airlines and the Agents, and (xvi) the Trust Indenture and Security Agreement [NW 2007-1 N816NW], dated as of May 14, 2007, among Northwest Airlines and the Agents, in each case as it may from time to time be supplemented or amended as provided therein, including supplementing by a Trust Indenture Supplement pursuant thereto.

1.78 NWA Corp. means Northwest Airlines Corporation, a Delaware corporation.

1.79 NWA Corp. **Preferred Shares** means any and all shares of NWA Corp. preferred stock issued and outstanding on the Commencement Date.

1.80 Old NWA Corp. Common Shares means any and all shares of NWA Corp. common stock issued and outstanding on the Commencement Date.

1.81 Other Secured Claim means a Secured Claim against a Debtor that is not a Restructured Aircraft Secured Claim, an 1110(a) Aircraft Secured Claim, an N301US and N303US Aircraft Secured Claim or a Priority Tax Claim.

1.82 Periodic Distribution Date means the first (1st) Business Day that is after the close of one (1) full calendar quarter following the date of the initial Effective Date distributions, and, thereafter, on the first (1st) Business Day following the close of each full calendar quarter thereafter; *provided, however*, if the initial Effective Date distribution falls within the first 45 days of a quarter, then the first post-Effective Date Periodic Distribution Date will be on the first Business Day following the close of such quarter.

1.83 Plan means this joint and consolidated plan of reorganization, including the exhibits and appendices hereto, as the same may be amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms hereof.

1.84 Post-Effective Date Committee means the committee formed pursuant to section 14.2 of the Plan.

1.85 Postpetition Aircraft Purchase and Lease Obligations means those certain obligations arising pursuant to (a) postpetition agreements regarding Aircraft Equipment to be purchased by a Debtor and (b) postpetition agreements to restructure prepetition agreements relating to the purchase or lease of Aircraft Equipment by a Debtor; provided, however, that obligations under such postpetition agreements shall only be Postpetition Aircraft Purchase and Lease Obligations to the extent such agreements expressly state that obligations are to be obligations of the Reorganized Debtor; and provided further that each such postpetition agreement shall have been approved by a Final Order of the Bankruptcy Court prior to the Effective Date.

1.86 Priority Non-Tax Claim means any Claim entitled to priority in payment as specified in section 507(a)(3), (4), (5), (6), (7) or (9) of the Bankruptcy Code.

1.87 Priority Tax Claim means any Claim, whether secured or unsecured, entitled to priority under sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.88 Professional Claim means a claim filed by any of the professionals retained in these Chapter 11 Cases pursuant to the Bankruptcy Code, Bankruptcy Rules, or an order of the Bankruptcy Court.

1.89 Pro Rata means, with respect to an Allowed Claim, the ratio of the amount of the Allowed Claim to the total amount of all Allowed Claims in the same Class.

1.90 Released Party means each of (a) the Debtors and the Reorganized Debtors, (b) the Creditors Committee, (c) any statutory committee, the members thereof appointed in the Chapter 11 Cases in their capacities as such, (d) the Rights Offering Sponsor, (e) the Ultimate Purchasers, (f) the Air Line Pilots Association, International and the Northwest Airlines Master Executive Council of the Air Line Pilots Association, International, (g) the International Association of Machinists and Aerospace Workers, District 143, (h) the Aircraft Technical Support Association, (i) the Northwest Airlines Meteorology Association, (j) the Transport Workers Union of America, (k) Aircraft Mechanics Fraternal Association, (l) any Indenture Trustee, (m) The Bank of New York, as successor trustee, with respect to the New York City Industrial Development Agency Special Facility Revenue Bonds (1997 Northwest Airlines, Inc. Project) and (n) trustees of employee benefit plans, and with respect to each of the above, their current or former members, officers, directors, committee members, employees, advisors, attorneys, accountants, actuaries, investment bankers, consultants, agents and other representatives.

1.91 Reorganized Debtor means each Debtor on or after the Effective Date.

1.92 Reorganized Northwest Airlines means Northwest Airlines, Inc., on and after the Effective Date.

1.93 Reorganized NWA Corp. means Northwest Airlines Corporation, on and after the Effective Date.

1.94 Restructured Aircraft Secured Claim means an Aircraft Secured Claim as to which the Debtors and the claimants have agreed to a reduced and restructured Claim and as to which the Bankruptcy Court has entered a Final Order approving such agreement.

1.95 Retiree Committee means the statutory committee of retired employees appointed in the Chapter 11 Cases, as constituted from time to time.

1.96 Rights Offering means the offering to Eligible Holders of Allowed Claims in Class 1D to subscribe to purchase shares of New Common Stock For Distribution Pursuant to Rights Offering.

1.97 Rights Offering Expiration Date means the final date by which an Eligible Holder of an Allowed Class 1D Claim may elect to subscribe to the Rights Offering, which is approximately 28 days after the Subscription Commencement Date.

1.98 Rights Offering Pro Rata Share means, with respect to an Eligible Holder, the ratio of the amount of such Eligible Holder's Allowed Claim for purposes of participating in the Rights Offering to the total amount of all Allowed Claims for purposes of participating in the Rights Offering as of the Subscription Rights Record Date (without adjustment for any Allowed Claims of those Eligible Holders who become an Eligible Holder after such date in accordance with the Solicitation Procedures Motion).

1.99 Rights Offering Sponsor means J.P. Morgan Securities Inc.

1.100 Rights Offering Sponsor Agreement means the agreement between the Rights Offering Sponsor and the Debtors under which the Rights Offering Sponsor commits to purchase all the shares of New Common Stock For Distribution Pursuant to Rights Offering that are allotted to but not purchased by holders of Claims in the Rights Offering and 4,166,667 shares of New Common Stock. The form of the Rights Offering Sponsor Agreement is attached as Exhibit A to the Plan.

1.101 Schedules means the schedules of assets and liabilities under section 521 of the Bankruptcy Code, Bankruptcy Rule 1007 and the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules have been or may be supplemented or amended from time to time.

1.102 Secured Claim means a Claim (i) that is secured by a valid, duly perfected, non-avoidable security interest in the interest of a Debtor in property that is not Aircraft Equipment, to the extent of the value, as of the Effective Date or such other date as is established by the Bankruptcy Court, of such Claimholder's interest in the applicable Debtor's interest in such property, as determined by a Final Order of the Bankruptcy Court pursuant to section 506(a) of the Bankruptcy Code or as otherwise agreed upon in writing by the Debtors and the Claimholder or (ii) that is secured by the amount of any valid, non-avoidable rights of setoff of the holder thereof under section 553 of the Bankruptcy Code.

1.103 Secured Obligations means the "Secured Obligations" as such term is defined in the applicable NW 2006-1, 2006-2 and 2007-1 Trust Indenture.

1.104 Securities Act means the Securities Act of 1933, as amended, 15 U.S.C. § 77a, *et seq*., and all rules or regulations promulgated thereunder.

1.105 Settlement Procedures Order means the Final Order dated September 13, 2006 (Docket No. 3546), establishing procedures for the Debtors to settle Claims filed against the estates.

1.106 Solicitation Procedures Motion means the Debtors' Motion For An Order Approving (I) An Ex- Parte Order (A) Scheduling Hearing To Consider Approval Of Disclosure Statement And Approving Notice Procedures; (B) Scheduling Hearing On Plan Confirmation And Approving Notice Procedures; And (C) Establishing Deadline For Motions To Estimate For Purposes Of Rights Offering Participation; (II) An Order On Notice (A) Approving Disclosure Statement; (B) Establishing Solicitation Procedures; And (C) Fixing Distribution Record Date; And (III) An Order On Notice (A) Establishing Procedures For Participation In Rights Offering; And (B) Approving Subscription Form.

1.107 Subordinated Claim means any Claim against a Debtor, whether secured or unsecured, for any fine, penalty, forfeiture, attorneys' fees (to the extent that such attorneys' fees are punitive in nature), multiple, exemplary or punitive damages, or for any other amount that does not represent compensation for actual pecuniary loss suffered by the holder of such Claim, and all claims against any of the Debtors of the type described in section 510(b) of the Bankruptcy Code.

1.108 Subscription Agent means the person engaged by the Debtors to administer the Rights Offering.

1.109 Subscription Commencement Date means a Business Day approved by the Bankruptcy Court, pursuant to the Debtors' Solicitation Procedures Motion, on which the Rights Offering will commence.

1.110 Subscription Form means the form to be used by a valid holder of Subscription Rights to exercise such Subscription Rights.

1.111 Subscription Purchase Price means the purchase price set forth in the Subscription Form that each Eligible Holder of an Allowed Claim in Class 1D must pay in order to exercise its Subscription Rights and purchase the New Common Stock For Distribution Pursuant to Rights Offering pursuant to, and in accordance with, Section 9 hereof.

1.112 Subscription Rights means the rights to purchase the shares of New Common Stock For Distribution Pursuant to Rights Offering.

1.113 Subscription Rights Record Date means a Business Day approved by the Bankruptcy Court pursuant to the Debtors' Solicitation Procedures Motion on which the Eligible Holders of Class 1D Claims entitled to subscribe to the Rights Offering shall be determined.

1.114 Ultimate Purchasers means those parties with which the Rights Offering Sponsor has entered into a syndication agreement, pursuant to which such parties have agreed to purchase from the Rights Offering Sponsor or Reorganized NWA Corp. certain unsubscribed shares purchased by the Rights Offering Sponsor and Purchased Shares purchased by the Rights Offering Sponsor.

SECTION 2. ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY TAX CLAIMS

2.1 *Administrative Expense Claims and Bar Date*.

Except to the extent that a holder of an Allowed Administrative Expense Claim agrees to a different treatment, or as otherwise provided for in the Plan, the Debtors shall pay each Allowed Administrative Expense Claim in full and in Cash on, or as soon thereafter as is reasonably practicable, the later of the Effective Date and the first Business Day after the date that is thirty (30) calendar days after the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim; provided, however, that the Excluded Allowed Administrative Expense Claims may be paid by the Debtors in the ordinary course of business and without the necessity to file a proof of claim, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

A notice setting forth the Administrative Expense Claim Bar Date will be (i) filed on the Bankruptcy Court's docket and (ii) posted on the Debtors' case information website at http://www.nwa-restructuring.com/. Further notice of the Administrative Expense Claim Bar Date will be provided as may be directed by the Bankruptcy Court. All requests for payment of an Administrative Expense Claim that accrued on or before the Effective Date other than the Excluded Allowed Administrative Expense Claims must be filed with the Claims Agent and served on counsel for the Debtors by the Administrative Claim Bar Date. Except as to Excluded Allowed Administrative Expense Claims, any requests for payment of Administrative Expense Claims that are not properly filed and served by the Administrative Expense Claim Bar Date shall not appear on the register of claims maintained by the Claims Agent and shall be disallowed automatically without the need for any objection from the Debtors or the Reorganized Debtors or any action by the Bankruptcy Court.

The Reorganized Debtors, in their sole and absolute discretion, may settle Administrative Expense Claims in the ordinary course of business without further Bankruptcy Court approval. The Debtors shall have the right to object to any Administrative Expense Claim within 180 days after the Claims Objection Deadline, subject to extensions from time to time by the Bankruptcy Court, with the consent of the Post-Effective Date Committee. Unless the Debtors or the Reorganized Debtors object to a timely-filed and properly served Administrative Expense Claim, such Administrative Expense Claim shall be deemed allowed in the amount requested. In the event that the Debtors or the Reorganized

Debtors object to an Administrative Expense Claim the parties may confer to try to reach a settlement and, failing that, the Bankruptcy Court shall determine whether such Administrative Expense Claim should be allowed and, if so, in what amount.

2.2 ***Postpetition Aircraft Purchase and Lease Obligations***.

The Postpetition Aircraft Purchase and Lease Obligations will become obligations of the Reorganized Debtors or their successors, if applicable, on the Effective Date. The foregoing sentence will be specifically limited with respect to each Postpetition Aircraft Purchase and Lease Obligation by the express terms of the agreement pursuant to which such Postpetition Aircraft Purchase and Lease Obligation arises, and nothing contained in the Plan, the Disclosure Statement for the Plan or the Confirmation Order will be deemed to limit or otherwise affect the terms thereof. The Final Orders approving Postpetition Aircraft Purchase and Lease Obligations are set forth in Schedule 2.2.

2.3 ***Priority Tax Claims***.

Unless otherwise agreed with a holder of an Allowed Priority Tax Claim, the Debtors, in their sole discretion, may choose whether Allowed Priority Tax Claims will be paid in cash either: (1) in an aggregate amount equal to such Allowed Priority Tax Claim, together with interest from the Effective Date at a fixed annual rate equal to five percent (5%) over a period not exceeding six (6) years after the date of assessment of such Allowed Priority Tax Claim; or (2) in full on, or as soon thereafter as is reasonably practicable, the later of the Effective Date and the first Business Day after the date that is thirty (30) calendar days after the date such Priority Tax Claim becomes an Allowed Priority Tax Claim. The Debtors reserve the right to prepay, without penalty, at any time under option (1) above.

2.4 ***DIP Claims***.

In the event the Debtors elect to convert the DIP Credit and Exit Facility Agreement into an Exit Facility, the Reorganized Debtors shall assume all obligations under the DIP Credit and Exit Facility Agreement, and the liens on the collateral securing the DIP Credit and Exit Facility Agreement will remain in place and survive against the Reorganized Debtors, in accordance with the terms and conditions of the DIP Credit and Exit Facility Agreement.

In the event the Debtors do not elect to convert the DIP Credit and Exit Facility Agreement into an Exit Facility, on the Effective Date, the Debtors shall pay or arrange for the payment of all amounts outstanding under the DIP Credit and Exit Facility Agreement. Once such payment has been made, these agreements and any agreements or instrument related thereto shall be deemed terminated and Citicorp USA Inc., as Administrative Agent, and the lenders thereunder shall take all reasonable action to remove promptly and confirm the removal of any liens on the collateral of the Debtors securing the DIP Credit and Exit Facility Agreement.

2.5 ***Claims Arising Under the Rights Offering Sponsor Agreement***

The Reorganized Debtors (or their successors) shall assume all obligations under the Rights Offering Sponsor Agreement and the registration rights agreement being entered into in connection therewith, and such obligations will survive against the Reorganized Debtors (or their successors), in accordance with the terms and conditions of the Rights Offering Sponsor Agreement and the registration rights agreement being entered into in connection therewith.

2.6 ***Satisfaction of Exit Conditions Under A330 Financing Indentures***.

The Secured Obligations in connection with the A330 Financing Indentures will become obligations of the Reorganized Northwest Airlines or its successor, if applicable, on the Effective Date, and the security interests in the collateral securing the respective Secured Obligations will remain in place and continue to survive against the Reorganized Northwest Airlines.

2.7 ***Satisfaction of Conditions Under ISDA Master Agreements***.The obligations under all ISDA Master Agreements entered into by the Debtors, specifically including the JPM ISDA Master Agreement, will become obligations of the Reorganized Northwest Airlines or its successor, if applicable, on the Effective Date, and Reorganized Northwest Airlines shall continue to pay all obligations thereunder in accordance with the agreements.

SECTION 3. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

This Plan constitutes a separate chapter 11 plan of reorganization for each Non-Consolidated Debtor. This Plan also constitutes a single chapter 11 plan of reorganization for the Consolidated Debtors, which will be substantively consolidated for the purposes of voting, distribution and Plan confirmation. Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of classes of Claims against and Equity Interests in the Consolidated Debtors and in each of the Non-Consolidated Debtors.

3.1 ***Consolidated Debtors Classes***: Claims against and Equity Interests in the Consolidated Debtors are classified as follows:

(a) *Class 1A Priority Non-Tax Claims*: This Class consists of Priority Non-Tax Claims against the Consolidated Debtors. Claims in this Class are unimpaired and not entitled to vote.

(b) *Class 1B-1 1110(a) Aircraft Secured Claims*: This Class includes Aircraft Secured Claims against the Consolidated Debtors relating to Aircraft Equipment as to which the Debtors agreed under section 1110(a) of the Bankruptcy Code to perform all obligations under the applicable loan agreements. Claims in this Class are unimpaired and not entitled to vote.

(c) *Class 1B-2 Restructured Aircraft Secured Claims*: The Claims in this Class consist of Restructured Aircraft Secured Claims against the Consolidated Debtors as to which the Debtors have agreed to treatment as a Postpetition Aircraft Purchase and Lease Obligation. Claims in this Class are unimpaired and not entitled to vote.

(d) *Class 1B-3 N301US and N303US Aircraft Secured Claims*: The Claims in this Class consist of Aircraft Secured Claims against the Consolidated Debtors relating to airframes bearing FAA Registration numbers N301US and N303US and related Aircraft Equipment. Claims in this Class are unimpaired and not entitled to vote.

(e) *Class 1C Other Secured Claims*: This Class consists of Secured Claims against the Consolidated Debtors other than those described in 3.1(b), (c) and (d). Claims in this Class are unimpaired and not entitled to vote.

(f) *Class 1D General Unsecured Claims*: This Class consists of General Unsecured Claims against the Consolidated Debtors. Claims in this Class are impaired and entitled to vote.

(g) *Class 1E Convenience Class Claims*: This Class consists of Convenience Class Claims against the Consolidated Debtors. Claims in this Class are impaired and entitled to vote.

(h) *Class 1F Intercompany Claims*: This Class consists of Intercompany Claims of the Non-Consolidated Debtors and the Non-Debtor Affiliates against the Consolidated Debtors. Claims in this Class are impaired and entitled to vote.

(i) *Class 1G Equity Interests in Consolidated Debtors Other than NWA Corp.*: This Class consists of Equity Interests in the Consolidated Debtors other than NWA Corp. Claims in this Class are unimpaired and not entitled to vote.

(j) *Class 1H Preferred Stock Interests in NWA Corp.*: This Class consists of Equity Interests represented by NWA Corp. Preferred Shares. Interests in this Class are impaired and deemed to reject the Plan.

(k) *Class 1I Common Stock Interests in NWA Corp.*: This Class consists of Equity Interests represented by Old NWA Corp. Common Shares. Interests in this Class are impaired and deemed to reject the Plan.

3.2 ***NWA Fuel Services Corporation Classes***: Claims against and Equity Interests in NWA Fuel Services Corporation are classified as follows:

(a) *Class 2A Priority Non-Tax Claims*: This Class consists of Priority Non-Tax Claims against NWA Fuel Services Corporation. Claims in this Class are unimpaired and not entitled to vote.

(b) *Class 2B General Unsecured Claims*: This Class consists of General Unsecured Claims against NWA Fuel Services Corporation. Claims in this Class are impaired and entitled to vote.

(c) *Class 2C Intercompany Claims*: This Class consists of Intercompany Claims against NWA Fuel Services Corporation. Claims in this Class are impaired and entitled to vote.

(d) *Class 2D Equity Interests in NWA Fuel Services Corporation*: This Class consists of all Equity Interests in NWA Fuel Services Corporation. Equity Interests in this Class are unimpaired and not entitled to vote.

3.3 ***Northwest Aerospace Training Corporation Classes***: Claims against and Equity Interests in Northwest Aerospace Training Corporation are classified as follows:

(a) *Class 3A Priority Non-Tax Claims*: This Class consists of Priority Non-Tax Claims against Northwest Aerospace Training Corporation. Claims in this Class are unimpaired and not entitled to vote.

(b) *Class 3B Other Secured Claims*: This Class consists of miscellaneous Secured Claims against Northwest Aerospace Training Corporation. Claims in this Class are unimpaired and not entitled to vote.

(c) *Class 3C General Unsecured Claims*: This Class consists of General Unsecured Claims against Northwest Aerospace Training Corporation. Claims in this Class are impaired and entitled to vote.

(d) *Class 3D Intercompany Claims*: This Class consists of Intercompany Claims against Northwest Aerospace Training Corporation. Claims in this Class are impaired and entitled to vote.

(e) *Class 3E Equity Interests in Northwest Aerospace Training Corporation:* This Class consists of all Equity Interests in Northwest Aerospace Training Corporation. Equity Interests in this Class are unimpaired and not entitled to vote.

3.4 ***MLT Inc. Classes***: Claims against and Equity Interests in MLT Inc. are classified as follows:

(a) *Class 4A Priority Non-Tax Claims*: This Class consists of Priority Non-Tax Claims against MLT Inc. Claims in this Class are unimpaired and not entitled to vote.

(b) *Class 4B General Unsecured Claims*: This Class consists of General Unsecured Claims against MLT Inc. Claims in this Class are impaired and entitled to vote.

(c) *Class 4C Intercompany Claims*: This Class consists of Intercompany Claims against MLT Inc. Claims in this Class are impaired and entitled to vote.

(d) *Class 4D Equity Interests in MLT Inc.*: This Class consists of all Equity Interests in MLT Inc. Equity Interests in this Class are unimpaired and not entitled to vote.

3.5 ***Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc. Classes***: Claims against and Equity Interests in Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc. are classified as follows:

(a) *Class 5A Priority Non-Tax Claims*: This Class consists of Priority Non-Tax Claims against Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc. Claims in this Class are unimpaired and not entitled to vote.

(b) *Class 5B General Unsecured Claims*: This Class consists of General Unsecured Claims against Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc. Claims in this Class are impaired and entitled to vote.

(c) *Class 5C Equity Interests in Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc.*: This Class consists of all Equity Interests in Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc. Equity Interests in this Class are unimpaired and not entitled to vote.

3.6 ***NWA Retail Sales Inc. Classes***: Claims against and Equity Interests in NWA Retail Sales Inc. are classified as follows:

(a) *Class 6A Priority Non-Tax Claims*: This Class consists of Priority Non-Tax Claims against NWA Retail Sales Inc. Claims in this Class are unimpaired and not entitled to vote.

(b) *Class 6B General Unsecured Claims*: This Class consists of General Unsecured Claims against NWA Retail Sales Inc. Claims in this Class are impaired and entitled to vote.

(c) *Class 6C Intercompany Claims*: This Class consists of Intercompany Claims against NWA Retail Sales Inc. Claims in this Class are impaired and entitled to vote.

(d) *Class 6D Equity Interests in NWA Retail Sales Inc.*: This Class consists of all Equity Interests in NWA Retail Sales Inc. Equity Interests in this Class are unimpaired and not entitled to vote.

3.7 ***Montana Enterprises, Inc. Classes***: Claims against and Equity Interests in Montana Enterprises, Inc. are classified as follows:

(a) *Class 7A Priority Non-Tax Claims*: This Class consists of Priority Non-Tax Claims against Montana Enterprises, Inc. Claims in this Class are unimpaired and not entitled to vote.

(b) *Class 7B General Unsecured Claims*: This Class consists of General Unsecured Claims against Montana Enterprises, Inc. Claims in this Class are impaired and entitled to vote.

(c) *Class 7C Equity Interests in Montana Enterprises, Inc.*: This Class consists of all Equity Interests in Montana Enterprises, Inc. Equity Interests in this Class are unimpaired and not entitled to vote.

3.8 ***NW Red Baron LLC Classes***: Claims against and Equity Interests in NW Red Baron LLC are classified as follows:

(a) *Class 8A Priority Non-Tax Claims*: This Class consists of Priority Non-Tax Claims against NW Red Baron LLC. Claims in this Class are unimpaired and not entitled to vote.

(b) *Class 8B General Unsecured Claims*: This Class consists of General Unsecured Claims against NW Red Baron LLC. Claims in this Class are impaired and entitled to vote.

(c) *Class 8C Equity Interests in NW Red Baron LLC*: This Class consists of all Equity Interests in NW Red Baron LLC. Equity Interests in this Class are unimpaired and not entitled to vote.

3.9 ***Aircraft Foreign Sales, Inc. Classes***: Claims against and Equity Interests in Aircraft Foreign Sales, Inc. are classified as follows:

(a) *Class 9A Priority Non-Tax Claims*: This Class consists of Priority Non-Tax Claims against Aircraft Foreign Sales, Inc. Claims in this Class are unimpaired and not entitled to vote.

(b) *Class 9B General Unsecured Claims*: This Class consists of General Unsecured Claims against Aircraft Foreign Sales, Inc. Claims in this Class are impaired and entitled to vote.

(c) *Class 9C Intercompany Claims*: This Class consists of Intercompany Claims against Aircraft Foreign Sales, Inc. Claims in this Class are impaired and entitled to vote.

(d) *Class 9D Equity Interests in Aircraft Foreign Sales, Inc.*: This Class consists of all Equity Interests in Aircraft Foreign Sales, Inc. Equity Interests in this Class are unimpaired and not entitled to vote.

3.10 ***NWA Worldclub, Inc. Classes***: Claims against and Equity Interests in NWA Worldclub, Inc. are classified as follows:

(a) *Class 10A Priority Non-Tax Claims*: This Class consists of Priority Non-Tax Claims against NWA Worldclub, Inc. Claims in this Class are unimpaired and not entitled to vote.

(b) *Class 10B General Unsecured Claims*: This Class consists of General Unsecured Claims against NWA Worldclub, Inc. Claims in this Class are impaired and entitled to vote.

(c) *Class 10C Equity Interests in NWA Worldclub, Inc.*: This Class consists of all Equity Interests in NWA Worldclub, Inc. Equity Interests in this Class are unimpaired and not entitled to vote.

3.11 ***NWA Aircraft Finance, Inc. Classes***: Claims against and Equity Interests in NWA Aircraft Finance, Inc. are classified as follows:

(a) *Class 11A Priority Non-Tax Claims*: This Class consists of Priority Non-Tax Claims against NWA Aircraft Finance, Inc. Claims in this Class are unimpaired and not entitled to vote.

(b) *Class 11B General Unsecured Claims*: This Class consists of General Unsecured Claims against NWA Aircraft Finance, Inc. Claims in this Class are impaired and entitled to vote.

(c) *Class 11C Intercompany Claims*: This Class consists of Intercompany Claims against NWA Aircraft Finance, Inc. Claims in this Class are impaired and entitled to vote.

(d) *Class 11D Equity Interests in NWA Aircraft Finance, Inc.*: This Class consists of all Equity Interests in NWA Aircraft Finance, Inc. Equity Interests in this Class are unimpaired and not entitled to vote.

SECTION 4. TREATMENT OF CLAIMS AND EQUITY INTERESTS

4.1 ***Priority Non-Tax Claims (Class 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 11A) (Unimpaired/Not Entitled to Vote)***

Except to the extent that a holder of an Allowed Priority Non-Tax Claim against any of the Debtors has agreed to a different treatment of such Claim, each such holder of an Allowed Priority Non-Tax Claim shall receive, in full settlement, satisfaction, release and discharge of such Claim, Cash in an amount equal to such Claim, on or as soon as reasonably practicable after the later of (i) the Effective

Date, (ii) the date such Claim becomes Allowed, and (iii) the date for payment provided by any agreement or understanding between the parties.

4.2 ***1110(a) Aircraft Secured Claims (Class 1B-1) (Unimpaired/Not Entitled to Vote)***

This Class includes Aircraft Secured Claims relating to Aircraft Equipment as to which the Debtors agreed under section 1110(a) of the Bankruptcy Code to perform all obligations under the applicable loan agreements. The Claims in this class are set forth in Schedule 4.2 to the Plan. In full settlement, satisfaction, release and discharge of such Claims, the maturity of such Claims will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.

Such payments as are necessary to bring the reinstated obligations current shall be made on the Effective Date, or as soon thereafter as reasonably practicable. Any dispute with respect to amounts payable under the reinstated debt, including, without limitation, disputes as to default interest, fees and expenses, will be determined by the Bankruptcy Court, and the amounts payable, if any, as so determined, shall be made promptly after the determination by the Bankruptcy Court.

4.3 ***Restructured Aircraft Secured Claims (Class 1B-2) (Unimpaired/Not Entitled to Vote)***

The Claims in this Class consist of Aircraft Secured Claims as to which the Debtors and the claimants have agreed to a reduced and restructured Claim and as to which the Bankruptcy Court has entered a Final Order approving such agreement. The Claims in this Class are set forth in Schedule 4.3 to the Plan. In full settlement, satisfaction, release and discharge of such Claims and in accordance with section 1124(2) of the Bankruptcy Code, the Claims in this Class will be treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement and are unimpaired by the Plan.

4.4 ***N301US and N303US Aircraft Secured Claims (Class 1B-3) (Unimpaired/Not Entitled to Vote)***

The Claims in this Class consist of Aircraft Secured Claims relating to airframes bearing FAA Registration numbers N301US and N303US and related Aircraft Equipment. On the Effective Date, or as soon as reasonably practicable thereafter, in accordance with section 1124(2) of the Bankruptcy Code and in full settlement, satisfaction, release and discharge of such Claims, the maturity of such Claims with respect to N301US and N303US will be reinstated as such maturity existed before default, cure any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code; and pay the balance of the Claims in accordance with the terms of the applicable loan agreements. The claimants will retain their respective security interests on the Aircraft Equipment securing the Claims.

Such payments as are necessary to bring the reinstated obligations current shall be made on the Effective Date, or as soon thereafter as reasonably practicable. Any dispute with respect to amounts payable under the reinstated debt, including, without limitation, disputes as to default interest, fees and expenses, will be determined by the Bankruptcy Court, and the amounts payable, if any, as so determined, shall be made promptly after the determination by the Bankruptcy Court.

4.5 ***Other Secured Claims (Class 1C, 3B) (Unimpaired/Not Entitled to Vote)***

The Claims in this Class and the treatment of each Claim is set forth in Schedule 4.5 to the Plan.

4.6 ***General Unsecured Claims***

(a) ***General Unsecured Claims – Consolidated Debtors (Class 1D) (Impaired/Entitled to Vote)***

On the Effective Date, or as soon as reasonably practicable thereafter, each holder of an Allowed General Unsecured Claim against the Consolidated Debtors shall receive, in full settlement, satisfaction, release and discharge of its Claim, (i) its Pro Rata share of the New Common Stock For Distribution to Creditors; and (ii) if the Eligible Holder elected to participate in the Rights Offering, the right to purchase its Rights Offering Pro Rata Share of the New Common Stock For Distribution Pursuant to Rights Offering.

Except as otherwise provided in the Plan, the substantive consolidation of the Consolidated Debtors will eliminate any guarantees by any Consolidated Debtor of the direct or indirect obligation of another Consolidated Debtor; provided, however, each holder of an Allowed Class 1D Claim who also holds a guaranty from one or more Consolidated Debtors related to such claim will receive, in addition to the distribution prescribed in the immediately preceding paragraph, as compensation for the impact of the consolidation, its share of the New Common Stock For Distribution to Creditors With a Guaranty, determined by multiplying the number of shares of New Common Stock For Distribution to Creditors With a Guaranty by the Allocation Fraction for such holder. If a direct or indirect obligation of Northwest Airlines was guaranteed by more than one of the other Consolidated Debtors, the holder will be treated as if it had only a single guaranty.

To the extent that a General Unsecured Claim against the Consolidated Debtors is a Subordinated Claim, the holder will not receive a distribution of either New Common Stock For Distributions to Creditors or New Common Stock For Distribution Pursuant to Rights Offering, unless and until each holder of an Allowed Claim in 1D that possesses a senior right to payment receives New Common Stock For Distributions to Creditors of a value equal to its Allowed Claim amount, plus any applicable interest thereon.

Pursuant to the Convenience Class Election, a holder of a General Unsecured Claim of $20,000 or more that is not a Claim for principal or interest based on a note issued under an indenture may elect to have such Claim treated as a Convenience Class Claim by making the Convenience Class Election on the Ballot provided for voting on the Plan within the time fixed by the Bankruptcy Court for completing and returning such Ballot. By making such Convenience Class Election, a holder of a General Unsecured Claim of $20,000 or more is agreeing to accept $20,000 in Cash in full satisfaction, discharge and release of such Claim.

(b) ***General Unsecured Claim – Non-Consolidated Debtors (Class 2B, 3C, 4B, 5B, 6B, 7B, 8B, 9B, 10B, 11B) (Impaired/Entitled to Vote)***

On the Effective Date, or as soon as reasonably practicable thereafter, each holder of an Allowed General Unsecured Claim in Classes 2B, 3C, 4B, 5B, 6B, 7B, 8B, 9B, 10B and 11B shall receive, in full settlement, satisfaction, release and discharge of its Claim, full payment in Cash in the amount of the Allowed Claim.

To the extent that a holder of an Allowed General Unsecured Claim in Classes 2B, 3C, 4B, 5B, 6B, 7B, 8B, 9B, 10B and 11B filed a proof of claim on the same debt against a Consolidated Debtor, the proof of Claim against the Consolidated Debtor is deemed expunged without further action by any party.

4.7 ***Convenience Class Claims (Class 1E) (Impaired/Entitled to Vote)***

On the Effective Date, or as soon as reasonably practicable thereafter, each holder of an Allowed Convenience Class Claim in Class 1E shall receive in full settlement, satisfaction, release and discharge of its Claim, full payment in Cash in the amount of the Allowed Claim.

On the Effective Date, if the holder of a General Unsecured Claim of $20,000 or more that is not a Claim for principal or interest based on a note issued under an indenture has made the Convenience Class Election on the Ballot provided for voting on the Plan within the time fixed by the Bankruptcy Court for completing and returning such Ballot, then the Holder will accept $20,000 in Cash in full satisfaction, discharge and release of such Claim.

4.8 ***Intercompany Claims (Class 1F, 2C, 3D, 4C, 6C, 9C, 11C) (Impaired/Entitled to Vote)***

Each holder of an Intercompany Claim in Classes 1F, 2C, 3D, 4C, 6C, 9C, 11C shall receive, in full settlement, satisfaction, release and discharge of each Claim, $1.00 on the Effective Date or as soon as reasonably practicable thereafter.

4.9 ***Equity Interests in Debtors Other than NWA Corp. (Class 1G, 2D, 3E, 4D, 5C, 6D, 7C, 8C, 9D, 10C, 11D) (Unimpaired/Not Entitled to Vote)***

All Equity Interests in Classes 1G, 2D, 3E, 4D, 5C, 6D, 7C, 8C, 9D, 10C and 11D shall be unimpaired under the Plan.

4.10 ***Preferred Stock Interests in NWA Corp.*** (Class 1H) (Impaired/Deemed to Reject)

All Preferred Stock Interests shall be deemed cancelled as of the Effective Date, and each holder of a Preferred Stock Interest shall neither receive nor retain any property on account of such Preferred Stock Interest under the Plan.

4.11 ***Common Stock Interests in NWA Corp (Class 1I) (Impaired/Deemed to Reject)***

All Common Stock Interests shall be deemed cancelled as of the Effective Date, and each holder of a Common Stock Interest shall neither receive nor retain any property or interest in property on account of such Common Stock Interest under the Plan.

SECTION 5. MEANS FOR IMPLEMENTATION

5.1 ***Substantive Consolidation***.

The Consolidated Debtors are substantively consolidated for all purposes and actions associated with consummation of the Plan, including, without limitation, for purposes of voting and confirmation. On and after the Effective Date, (a) all assets and liabilities of the Consolidated Debtors shall be treated as though they were merged into the Northwest Airlines estate solely for purposes of the Plan, (b) no distributions shall be made under the Plan on account of Equity Interests between and among any of the Consolidated Debtors, (c) for all purposes associated with Confirmation, including, without

limitation, for purposes of tallying acceptances and rejections of the Plan, the estates of the Consolidated Debtors shall be deemed to be one consolidated estate for Northwest Airlines, and (d) each and every Claim filed or to be filed in the Chapter 11 Cases of the Consolidated Debtors, shall be deemed filed against the Consolidated Debtors, and shall be Claims against and obligations of the Consolidated Debtors. As a result of the consolidation, any guaranty by one or more Consolidated Debtors of the obligations of another Consolidated Debtor will be eliminated except as it relates to guarantees arising under the secured aircraft financings described in Section 2.2, Section 4.2, Section 4.3 and Section 4.4 of the Plan or any guarantees related to leases which are assumed, but, as prescribed above in Section 4, each holder of an Allowed Unsecured Claim against a Consolidated Debtor who also has a guaranty from another Consolidated Debtor shall be compensated for the elimination of the guaranty, such that the substantive consolidation will not result in unfair treatment to creditors who relied on guarantees.

Substantive consolidation shall not affect: (a) the legal and organizational structure of the Consolidated Debtors; (b) pre and post-Commencement Date guarantees, liens, and security interests that are required to be maintained (i) pursuant to any Postpetition Aircraft Purchase and Lease Obligation, (ii) under the Bankruptcy Code or in connection with contracts or leases that were entered into during the Chapter 11 Cases or executory contracts or unexpired leases that have been or will be assumed, or (iii) pursuant to the Plan; (c) Intercompany Claims and Equity Interests between and among the Consolidated Debtors; and (d) distributions from any insurance policies or proceeds of such policies.

In the event that the Bankruptcy Court does not order substantive consolidation of the Consolidated Debtors, then: (a) nothing in the Plan or the Disclosure Statement shall constitute or be deemed to constitute an admission that one of the Debtors is subject to or liable for any Claim against any other Debtor; (b) Claims against multiple Debtors shall be treated as separate Claims with respect to each Debtor's estate for all purposes (including, without limitation, distributions and voting), and such Claims shall be administered as provided in the Plan; and (c) the Debtors shall not, nor shall they be required to, resolicit votes with respect to the Plan, nor will the failure of the Bankruptcy Court to approve substantive consolidation of the Consolidated Debtors materially alter the economics of the distributions set forth in the Plan. In the event that the Bankruptcy Court does not order substantive consolidation, the Plan shall be deemed to provide for fourteen subplans of reorganization. A vote to accept the Plan shall also be deemed a vote to accept a separate plan for each of the Consolidated Debtors against whom you hold your claim in the event that the Bankruptcy Court denies approval of the substantive consolidation of the Consolidated Debtors; provided that the treatment of the claim being voted would not be materially different in the absence of substantive consolidation.

5.2 ***Exit Financing***.

On the Effective Date, the Reorganized Debtors shall either convert the DIP Credit and Exit Facility Agreement into the Exit Facility or elect an alternative Exit Facility; *provided*, *however*, that the Debtors will consult with the Creditors Committee in advance of a decision to elect an alternative to the DIP Credit and Exit Facility Agreement. In the event the Debtors elect an alternative Exit Facility, confirmation of the Plan shall constitute an approval of the transactions contemplated thereby and of all actions to be taken, undertakings to be made and obligations to be incurred by the Reorganized Debtors in connection therewith, including the continued pledging of Pacific Routes as collateral, and the payment of all interest, principal amortization, fees, indemnities and expenses provided for therein. The Exit Facility may be used for any purpose permitted by the Exit Facility, including the funding of obligations under the Plan, such as the payment of Administrative Expense Claims and the satisfaction of ongoing working capital requirements.

5.3 ***Authorization of New Common Stock***.

Confirmation of the Plan shall be an authorization for the Reorganized NWA Corp. to issue the New Common Stock, without the need for any further corporate action.

5.4 ***Rights Offering and Purchased Shares***.

The Debtors shall raise additional capital through the Rights Offering, which will be conducted in accordance with Section 9 of this Plan, and the sale of the Purchased Shares.

5.5 ***Private Equity Investment***

The Debtors retain the right to raise $150 million in private equity investment upon terms and conditions to be approved by the Bankruptcy Court upon notice and a hearing.

5.6 ***Listing of New Common Stock***.

Reorganized NWA Corp. shall use commercially reasonable efforts to cause the New Common Stock to be listed on a national securities exchange or a qualifying interdealer quotation system.

5.7 ***Restrictions on the Transfer of New Common Stock to Protect NOLs***.

To reduce the risk of adverse federal income tax consequences after the Effective Date resulting from an ownership change (as defined in section 382 of the Internal Revenue Code), the Amended Certificate of Incorporation will restrict certain transfers of the New Common Stock without the consent of the Board for 2 years after the Effective Date, and such restrictions thereafter can be extended for one year periods (up to 3 times to June 2012) upon, each time, the affirmative vote of NWA Corp.'s stockholders. In the event that these restrictions are extended beyond the two year period, the Board of Directors will approve subsequent proposed transfers that, taking into account all prior transfers effected during the "testing period" under section 382, do not result in an aggregate owner shift of more than 30% for purposes of section 382 (the "Threshold Amount"). If the aggregate owner shift as of any date after the two year period exceeds the Threshold Amount, the Board of Directors has the discretion to approve any subsequent transfers subject to the standards that would otherwise apply until the earlier of the date on which the aggregate owner shift no longer exceeds the Threshold Amount, or the Restriction Release Date (as defined in the Amended Certificate of Incorporation). These restrictions generally will provide that any attempted transfer of New Common Stock prior to the expiration of the term of the transfer restrictions will be prohibited and void if such transfer would cause the transferee's ownership interest in Reorganized NWA Corp., as determined for the purposes of section 382 of the Internal Revenue Code, to increase to 4.95% or above, including an increase in a transferee's ownership interest from 4.95% or above to a greater ownership interest, except as may be otherwise agreed to by the Board of Directors of Reorganized NWA Corp. or required by law with respect to certain qualified plans. Absent a contrary decision by the Debtors, in consultation with the Creditors Committee, the Amended Certificate of Incorporation will also contain similar provisions restricting the ability of persons who are 5% shareholders for the purposes of section 382 of the Internal Revenue Code to dispose of their shares without the consent of the Board of Directors of Reorganized NWA Corp. during the term of the transfer restrictions. The transfer restrictions will not apply (x) to certain transactions approved by the Board of Directors of Reorganized NWA Corp., including, but not limited to, a merger or consolidation, in which all holders of New Common Stock receive, or are offered the same opportunity to receive, cash or other consideration for all such New Common Stock, and upon the consummation of which the acquirer will own at least a majority of the outstanding shares of New Common Stock; and (y) to the extent set forth in the Rights Offering Sponsor Agreement, to the Rights Offering Sponsor or Ultimate Purchasers.

5.8 ***Management Equity Plan***.

The Debtors shall adopt the Management Equity Plan. The solicitation of votes on the Plan shall be deemed a solicitation of the holders of New Common Stock for approval of the Management Equity Plan. Entry of the order confirming the Plan shall constitute such approval, and the order confirming the Plan shall so provide.

The Management Equity Plan will become effective as of the Effective Date and will remain in effect as long as any awards remain outstanding. No award may be granted under the Management Equity Plan after the tenth anniversary of the Effective Date, but the term of any award may extend beyond that date. The board of directors reserves the right to terminate the Management Equity Plan at any time without prejudice in any adverse way to the holders of any awards then outstanding. The aggregate number of shares of common stock of NWA Corp. reserved for issuance under the Management Equity Plan is 21,333,248, as may be adjusted for any stock dividend, stock split, recapitalization, reorganization, merger or other subdivision or combination of the common stock.

The shares to be reserved for issuance under the Management Equity Plan include 15,228,248 shares covered by awards expected to be granted in connection with NWA Corp.'s emergence from bankruptcy and additional shares to remain available for future awards granted pursuant to the Management Equity Plan. This amount includes awards covering a total of 13,598,889 shares of common stock to be granted to approximately 400 salaried employees of Northwest Airlines at the director, managing director and officer levels, of which approximately 60% will be granted in the form of restricted stock and restricted stock units and approximately 40% will be granted in the form of non-qualified stock options, and awards covering a total of 1,629,359 shares of common stock to be granted to approximately 4,800 salaried employees below the director level, which will be granted in the form of restricted stock units.

5.9 ***Non-Contract Employee Compensation Program***.

The Debtors shall adopt the Non-Contract Employee Compensation Program. The solicitation of votes on the Plan shall be deemed a solicitation of the holders of New Common Stock for approval of the Non-Contract Employee Compensation Program. Entry of the order confirming the Plan shall constitute such approval, and the order confirming the Plan shall so provide.

The Non-Contract Employee Compensation Program will consist, in total, of an award of $77.4 million of which 40% will be paid in cash and 60% in stock. With regard to the cash portion of the program, amounts are payable upon emergence to employees below the director level. Employees who leave within 12 months of emergence will be required to repay such amounts. In addition the 1,629,359 shares of New Common Stock to be issued under the Non-Contract Employee Compensation Program will in actuality be issued under the Management Equity Plan described above. These shares will be restricted stock units with one year vesting issued at emergence for domestic employee or phantom units with one year vesting for international employees.

5.10 ***Cancellation of Existing Securities and Agreements***.

Except to the extent reinstated or unimpaired under the Plan, or for purposes of evidencing a right to distribution under the Plan or as otherwise provided hereunder, on the Effective Date, all the agreements and other documents evidencing any Claims or rights of any holder of a Claim against the Debtors, including all indentures and notes evidencing such Claims and any options or warrants to purchase Equity Interests or any other capital stock of the Debtors, shall be canceled; provided, however, that the Indentures shall continue in effect solely for the purposes of allowing the

Indenture Trustees to make any distributions on account of holders of Claims in those classes pursuant to the Plan and to perform such other necessary administrative functions with respect thereto. The provisions of Section 5.10 shall not cancel any indentures, bonds, securities or instruments issued by parties that are not Debtors.

5.11 ***Indenture Trustee Fees***.

The Debtors shall pay the reasonable fees and expenses under the Indentures in Cash on the Effective Date, as agreed to by the parties or as other ordered by the Bankruptcy Court, subject to each Indenture Trustee's reservation of their rights under applicable law to maintain any rights or liens it may have for fees, costs and expenses under the Indentures.

5.12 ***Board of Directors***.

The Board of Directors of each of the Reorganized Debtors shall be chosen jointly by the Debtors and the Creditors Committee, and the members shall consist initially of the individuals to be listed in a plan supplement.

5.13 ***Officers***.

The officers of the Debtors immediately prior to the Effective Date shall serve as the officers of the Reorganized Debtors on and after the Effective Date and in accordance with any employment and severance agreements with the Reorganized Debtors and applicable non-bankruptcy law.

5.14 ***Continued Corporate Existence and Vesting of Assets in the Reorganized Debtors***.

Except as provided herein, each Debtor will, as a Reorganized Debtor, continue to exist after the Effective Date as a separate corporate entity, with all the powers of a corporation under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable state law.

5.15 ***Restructuring Transactions***.

On the Effective Date, but subsequent to the cancellation and discharge of all Claims, (i) Holdings will merge into NWA Inc., with NWA Inc. being the surviving entity, and (ii) thereafter, NWA Inc. will merge into Northwest Airlines, with Northwest Airlines being the surviving entity.

In addition to the Downstream Mergers, on or as of the Effective Date or as soon thereafter as practicable, within the discretion of the Debtors, and without further motion to or order of the Bankruptcy Court, the Debtors may, notwithstanding any other transactions described in this Section 5.15, (i) merge, dissolve, transfer assets, or otherwise consolidate any of the Debtors in furtherance of the Plan or (ii) engage in any other transaction in furtherance of the Plan, in consultation with the Post-Effective Date Committee; provided, however that the Debtors shall have no obligation to consult with the Creditors Committee or Post-Effective Date Committee with respect to the Downstream Mergers. Any such transaction may be effected on or subsequent to the Effective Date without any further action by the stockholders or directors of any of the Debtors, or the Reorganized Debtors.

5.16 ***Certificate of Incorporation***.

Reorganized NWA Corp. shall file the Amended Certificate of Incorporation and an amended certificate of incorporation for each of the other Reorganized Debtors that are corporations, with

the appropriate office of each Reorganized Debtor's state of incorporation on the Effective Date. The Amended Certificate of Incorporation shall prohibit the issuance of nonvoting equity securities, subject to further amendment of such certificates of incorporation as permitted by applicable law. The certificates of incorporation for each of the Reorganized Debtors that are corporations shall be deemed, without further action, to be amended to include a provision prohibiting the issuance of nonvoting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code. The Amended Bylaws shall be deemed adopted by the board of directors of Reorganized NWA Corp. as of the Effective Date. All partnership and limited liability company agreements to which any of the Debtors are parties shall be treated in accordance with Section 8.1 hereof.

5.17 ***Fees***.

The Debtors will reimburse the reasonable fees and expenses of Goodwin Procter LLP and the two experts (i.e., Steven Hall & Partners and the Brattle Group) employed by the Ad Hoc Committee of Certain Claimsholders (the "ACC") in connection with the Chapter 11 Cases; provided, that such fees and expenses shall be subject to allowance by the Bankruptcy Court as reasonable (without the need for proof of a substantial contribution) and the Debtors will support any application for such allowance; provided further that such fees and expenses as relate to the ACC's objection to the Series C Claims shall only be reimbursed to the extent they arise through and including May 2, 2007; provided further that the ACC shall retain the right to seek reimbursement of its fees and expenses arising after May 2, 2007 in connection with the Series C Claims pursuant to section 503(b) of the Bankruptcy Code.

SECTION 6. DISTRIBUTIONS

6.1 ***Distribution Record Date***.

Except as otherwise provided in the Plan, as of the close of business on the Distribution Record Date, the various transfer registries for each of the Classes of Claims or Equity Interests as maintained by the Debtors, or their respective agents, shall be deemed closed and there shall be no further changes in the recordholders of any of the Claims or Equity Interests, except with regard to securities cancelled under the Plan, which shall be governed by section 6.9 of the Plan. The Debtors shall have no obligation to recognize any transfer of any Claims or Equity Interest occurring on or after the Distribution Record Date. The Debtors shall be entitled to recognize and deal for all purposes hereunder only with those recordholders stated in the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable. If a Claim, other than one based on a publicly traded note, bond, or debenture, as set forth in Bankruptcy Rule 3001(e), is transferred twenty (20) or fewer days before the Distribution Record Date, the Distribution Agent shall make distributions to the transferee only if the transfer form, duly filed with the Bankruptcy Court prior to the Distribution Record Date, contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

Any and all distributions made by or at the direction of indenture trustees (including the Indenture Trustees) to holders of General Unsecured Claims shall not be made to holders of Allowed General Unsecured Claims as of the Distribution Record Date but rather shall be effectuated through a mandatory exchange of the notes for distributions under this Plan as soon as reasonably practicable after the Effective Date in accordance with the applicable Indenture and the procedures of the DTC or its nominee, Cede & Co or as otherwise provided in accordance with the applicable indenture or a Final Order. The provisions of this paragraph shall apply to distributions made by or at the direction of indenture trustees to holders of General Unsecured Claims under all other indentures and applicable municipal bond financings pursuant to which the Debtors have indirect payment obligations through special facilities leases; provided, that the record date for distributions to beneficial holders will be determined in accordance with the applicable indentures (and without regard to the Distribution Record

Date). The provisions of this paragraph shall not apply to any distribution being made on account of any of the Debtors' aircraft equipment financing transactions.

6.2 ***Date of Distributions***.

Except as otherwise provided herein, any distributions and deliveries to be made hereunder shall be made on the Effective Date or as soon thereafter as is practicable. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

6.3 ***Postpetition Interest on Claims***.

Unless expressly provided in the Plan, the Confirmation Order or any contract, instrument, release, settlement or other agreement entered into in connection with the Plan, or required by applicable bankruptcy law (including the fair and equitable rule), postpetition interest shall not accrue on or after the Commencement Date on account of any Claim. The provisions of this section shall not apply to interest on bonds or other securities or instruments issued by parties that are not Debtors.

6.4 ***Initial Distributions***.

Except as otherwise provided in the Plan, on the Effective Date, or as soon as reasonably practicable thereafter, the Disbursing Agent will distribute to the applicable agent and/or recordholder for the individual holders of the applicable Allowed Claims the New Common Stock For Distribution to Creditors allocable to Class 1D, the New Common Stock For Distribution to Creditors with a Guaranty allocable to Class 1D and the New Common Stock For Distribution Pursuant to Rights Offering purchased pursuant to the exercise of Subscription Rights. For the purpose of calculating the amount of New Common Stock For Distribution to Creditors to be distributed to holders of Allowed Claims in Class 1D all Disputed Claims (excluding Subordinated Claims) in such class will be treated as though such Claims will be Allowed Claims in the amounts asserted, or as estimated by the Bankruptcy Court, as applicable.

If, prior to a Periodic Distribution Date, a Disputed Claim is allowed as provided for under the Plan in an amount that is less than the amount utilized by the Disbursing Agent, the excess New Common Stock for Distribution to Creditors and New Common Stock For Distribution to Creditors with a Guaranty that was reserved by the Debtors on account of such Claim will be distributed to holders of Allowed Class 1D Claims on a Pro Rata basis, on a subsequent Periodic Distribution Date as described in Section 6.5 of the Plan. If a Disputed Claim is disallowed subsequent to the Effective Date, then the creditors within the class will receive Pro Rata, on a subsequent Periodic Distribution Date, the Catch-up Distribution that the holder of the Disputed Claim would have received if the claim had become an Allowed Claim.

6.5 ***Subsequent Distributions***.

On the applicable Periodic Distribution Date, the Disbursing Agent will distribute to the applicable agent and/or recordholder for the individual holders of the applicable Allowed Claims, the New Common Stock For Distribution to Creditors allocable to Class 1D and the New Common Stock For Distribution to Creditors with a Guaranty until such time as all Disputed Claims have been resolved; *provided, however*, if the initial Effective Date distribution falls within the first 45 days of a quarter, then the first post-Effective Date Periodic Distribution Date will be on the first Business Day following the

close of such quarter. On an applicable Periodic Distribution Date, as determined by the Debtors, a holder of an Allowed Claim that ceased being a Disputed Claim subsequent to the Effective Date will receive a Catch-up Distribution. The Disbursing Agent may, in its sole discretion, establish a record date prior to each Periodic Distribution Date, such that only Claims Allowed as of the record date will participate in the distribution. Notwithstanding the foregoing, the Debtors reserve the right, in consultation with the Post-Effective Date Committee, to the extent they determine a distribution on any Periodic Distribution Date is uneconomical or unfeasible, or is otherwise unadvisable, to postpone a quarterly distribution until the next appropriate Periodic Distribution Date.

6.6 ***Distribution Reserve***.

For the purpose of calculating the Distribution Reserve, all Disputed Claims (excluding Subordinated Claims) in Class 1D will be treated as though such Claims will be Allowed Claims in the amounts asserted, or as estimated by the Bankruptcy Court, as applicable. The Disbursing Agent also shall place in the Distribution Reserve any dividends, payments, or other distributions made on account of, as well as any obligations arising from, the property initially withheld in the Distribution Reserve, to the extent that such property continues to be withheld in the Distribution Reserve at the time such distributions are made or such obligations arise. The holder of a Claim shall not be entitled to receive or recover any amount in excess of the amount provided in the Distribution Reserve to pay such Claim. The Disbursing Agent shall be deemed to have voted any New Common Stock held in the Distribution Reserve in the same proportion as all shares of New Common Stock that are not held in the Distribution Reserve.

The Debtors will file a motion in the Chapter 11 Cases seeking to put a cap on any reserve of shares to be issued in respect of Disputed Claims calculated using an amount not to exceed $10.56 billion. After the Effective Date, the Debtors will publish a quarterly notice setting forth (i) the amount of Allowed Claims in each class to date; (ii) the remaining amount of Disputed Claims in each Class; (iii) the shares of New Common Stock reserved by the Debtors on account of such Disputed Claims. The Debtors will provide fifteen days' advance public notice of the number of shares to be distributed as a result of any quarterly distribution of shares.

6.7 ***Disbursing Agent***.

All distributions under the Plan (other than distributions described in the next sentences) shall be made by the applicable Debtors as Disbursing Agent or such other entity designated by the applicable Debtor as a Disbursing Agent on or after the Effective Date. Citicorp USA Inc. shall be the Disbursing Agent for all DIP Claims arising under the DIP Credit and Exit Facility Agreement.

The Indenture Trustees shall be the Disbursing Agent for all General Unsecured Claims arising under the Indentures with respect to the distribution of the New Common Stock for Distribution to Creditors. Any and all distributions made by or at the direction of indenture trustees (including the Indenture Trustees) to holders of General Unsecured Claims shall not be made to holders of Allowed General Unsecured Claims as of the Distribution Record Date but rather shall be effectuated through a mandatory exchange of the notes for distributions under this Plan as soon as reasonably practicable after the Effective Date in accordance with the applicable Indenture and the procedures of the DTC or its nominee, Cede & Co, or as otherwise provided in accordance with the applicable indenture or a Final Order. The provisions of this paragraph shall apply to distributions made by or at the direction of indenture trustees to holders of General Unsecured Claims under all other indentures and applicable municipal bond financings pursuant to which the Debtors have indirect payment obligations through special facilities leases; provided, that the record date for distributions to beneficial holders will be determined in accordance with the applicable indentures (and without regard to the Distribution Record

Date). The provisions of this paragraph shall not apply to any distribution being made on account of any of the Debtors' aircraft equipment financing transactions.

A Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court, and, in the event that a Disbursing Agent is so otherwise ordered, all cash and expenses of procuring any such bond or surety shall be borne by the applicable Debtor.

6.8 ***Rights and Powers of Disbursing Agent***.

(a) *Powers of the Disbursing Agent.* The Disbursing Agent shall be empowered to (i) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (ii) make all distributions contemplated hereby, (iii) employ professionals to represent it with respect to its responsibilities, and (iv) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

(b) *Expenses Incurred on or after the Effective Date.* Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by a Disbursing Agent on or after the Effective Date (including, without limitation, taxes) and any reasonable compensation and expense reimbursement claims (including, without limitation, reasonable attorney fees and expenses) made by a Disbursing Agent shall be paid in Cash by the Reorganized Debtors.

6.9 ***Surrender of Instruments***.

As a condition to receiving any distribution under the Plan, each holder of a certificated instrument or note must surrender such instrument or note held by it to the Disbursing Agent or its designee, unless such certificated instrument or note is being reinstated or is unimpaired under the Plan. Any holder of such instrument or note that fails to (i) surrender such instrument or note, or (ii) execute and deliver an affidavit of loss and/or indemnity reasonably satisfactory to the Disbursing Agent and furnish a bond in form, substance and amount reasonably satisfactory to the Disbursing Agent before the first anniversary of the Effective Date, shall be deemed to have forfeited all rights and Claims and may not participate in any distribution under the Plan. Any distribution so forfeited shall be distributed Pro Rata to the members of the Class. Except as otherwise required by the terms of the applicable transaction documents, the provisions of this Section shall not apply to notes or instruments issued by parties that are not Debtors.

6.10 ***Delivery of Distributions***.

Subject to Bankruptcy Rule 9010, all distributions to any holder of an Allowed Claim that is not a Disputed Claim, except the holders of DIP Claims (if applicable) and General Unsecured Claims arising under the Indentures shall be made at the address of such holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtors or their agents or in a letter of transmittal unless the Debtors have been notified in writing of a change of address, including, without limitation, by the filing of a proof of claim or interest by such holder that contains an address for such holder different from the address reflected on such Schedules for such holder. All distributions to any holder of a DIP Claim (if applicable) shall be made to Citicorp USA, Inc., as Administrative Agent under the DIP Credit and Exit Facility Agreement.

Distributions of New Common Stock for Distribution to Creditors and New Common Stock For Distribution to Creditors with a Guaranty to holders of General Unsecured Claims arising under the Indentures shall be made to the applicable Indenture Trustee who shall make distributions pursuant to the terms of the appropriate Indenture. Any distribution to an Indenture Trustee shall be deemed a distribution to the respective holder of a General Unsecured Claim arising under the Indentures. The provisions of this paragraph shall apply to distributions of New Common Stock for Distribution to Creditors and New Common Stock For Distribution to Creditors with a Guaranty made by or at the direction of indenture trustees to holders of General Unsecured Claims under all other indentures and applicable municipal bond financings pursuant to which the Debtors have indirect payment obligations through special facilities leases. All such distributions will be distributed to the applicable trustee and in no event will the Debtors make any payments directly to beneficial holders.

In the event that any distribution to any holder is returned as undeliverable, the Disbursing Agent shall use reasonable efforts to determine the current address of such holder, but no distribution to such holder shall be made unless and until the Disbursing Agent has determined the then current address of such holder, at which time such distribution shall be made to such holder without interest; provided, however, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date. After such date, all unclaimed property shall revert to the applicable Class, or, with respect to Class 2B General Unsecured Claims, Class 3C General Unsecured Claims, Class 4B General Unsecured Claims, Class 5B General Unsecured Claims, Class 6B General Unsecured Claims, Class 7B General Unsecured Claims, Class 8B General Unsecured Claims, Class 9B General Unsecured Claims, Class 10B General Unsecured Claims, Class 11B General Unsecured Claims and Class 1E Convenience Claims, the applicable Reorganized Debtor, and the claim of any other holder to such property or interest in property shall be discharged and forever barred.

6.11 ***Manner of Payment Under Plan***.

(a) All distributions of Cash and New Common Stock to the creditors of each of the Debtors under the Plan shall be made by, or on behalf of, the applicable Reorganized Debtor. Any distributions that revert to any Class or are otherwise cancelled (such as to the extent any distributions have not been claimed within one year or are cancelled pursuant to Section 6.10 hereof) shall revest solely in the applicable Class.

(b) At the option of the Debtors, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements.

6.12 ***Fractional Shares***.

No fractional shares of New Common Stock or Cash in lieu thereof, will be distributed. For purposes of all distributions other than the distribution on the Final Distribution Date, fractional shares of New Common Stock will be carried forward to the next applicable Periodic Distribution Date. On the Final Distribution Date, fractional shares of New Common Stock will be rounded up or down to the nearest whole number or zero, as applicable.

6.13 ***Setoffs***.

The Debtors may, but shall not be required to, set off against any Claim (for purposes of determining the Allowed amount of such Claim on which distribution shall be made), any claims of any nature whatsoever that the Debtors may have against the holder of such Claim, but neither the failure to

do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such Claims the Debtors may have against the holder of such Claim.

6.14 ***Distributions after the Effective Date.***

Distributions made after the Effective Date to holders of Allowed Claims that are Disputed Claims as of the Effective Date shall be deemed to have been made on the Effective Date. No interest shall accrue or be payable on such Claims or any distributions.

6.15 ***Allocation of Plan Distributions Between Principal and Interest.***

To the extent that any Allowed Claim entitled to a distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall be allocated to the principal amount (as determined for federal income tax purposes) of the Claim first, and then to accrued but unpaid interest. Except as otherwise required by the terms of the applicable transaction documents, the provisions of this Section shall not apply to bonds or other securities or instruments issued by parties that are not Debtors. This Section does not apply to obligations relating to Aircraft Equipment as to which the Debtors agreed under section 1110(a) of the Bankruptcy Code to perform all obligations under the applicable loan agreements.

6.16 ***Withholding and Reporting Requirements.***

In connection with the Plan and all instruments issued in connection therewith and distributed thereon, the applicable Debtor shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding any provision in the Plan to the contrary, each Debtor, each Reorganized Debtor and the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including, without limitation, liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes or establishing any other mechanisms the Debtors believe are reasonable and appropriate, including requiring claimholders to submit appropriate tax withholding certifications.

The Debtors reserve the right to allocate and distribute all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, liens and similar encumbrances

6.17 ***Time Bar to Cash Payments.***

Checks issued by the Reorganized Debtors in respect of Allowed Claims shall be null and void if not presented for payment within sixty (60) days after the date of issuance thereof. Requests for reissuance of any check shall be made to the applicable Reorganized Debtor by the holder of the Allowed Claim to whom such check originally was issued. Any Claim in respect of such a voided check shall be made on or before thirty (30) days after the expiration of the sixty day period following the date of issuance of such check. After such date, all funds held on account of such voided check shall, in the discretion of the applicable Reorganized Debtor, be used to satisfy the costs of administering and fully consummating the Plan or become property of the applicable Reorganized Debtor, and the holder of any such Allowed Claim shall not be entitled to any other or further distribution under the on account of such Allowed Claim.

SECTION 7. PROCEDURES FOR DISPUTED CLAIMS

7.1 ***Objection to Claims***.

The Debtors and the Reorganized Debtors shall be entitled to object to Claims. Any objections to Claims shall be served and filed on or before one hundred eighty (180) days after the Effective Date (unless such day is not a Business Day, in which case such deadline shall be the next Business Day thereafter), as the same may be extended from time to time by the Bankruptcy Court, with the consent of the Post-Effective Date Committee, or as otherwise ordered by the Bankruptcy Court.

7.2 ***Payments and Distributions with Respect to Disputed Claims***.

(a) *General*. Notwithstanding any other provision hereof, if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Claim becomes an Allowed Claim that is not a Disputed Claim.

(b) *Insured Claims*. All prepetition Insured Claims not previously allowed by Final Order are Disputed Claims. Any Insured Claim determined and liquidated shall be deemed a Claim against the applicable Debtor in such liquidated amount and satisfied in accordance with the Plan *provided, however*, that such claim shall be paid from the insurance proceeds available to satisfy such liquidated amount. Nothing contained in this Section 7.2 impairs the Debtors' and the Reorganized Debtors' right to seek estimation of any and all claims in a court or courts of competent jurisdiction or constitute or be deemed a waiver of any Claim, right or cause of action that any Debtor may have against any person in connection with or arising out of any Insured Claim.

7.3 ***Preservation of Insurance***.

Nothing in the Plan, including the discharge and release of the Debtors as provided in the Plan, shall diminish or impair the enforceability of any insurance policies that may cover Claims against any Debtor.

7.4 ***Retiree Medical Benefit Claims***.

Following the Effective Date of the Plan, the Reorganized Debtors shall timely pay, without modification, all retiree benefits, as defined in section 1114 of the Bankruptcy Code, except to the extent that the Bankruptcy Court may have ordered otherwise.

7.5 ***Estimation of Claims and Equity Interests***.

The Debtors and the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any contingent, unliquidated or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtor previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated or Disputed Claim, the amount so estimated shall constitute either the allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtors or the Reorganized Debtors may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and

subsequently compromised, settled, withdrawn or otherwise resolved by any mechanism approved by the Bankruptcy Court.

7.6 ***No Recourse***.

No holder of any Disputed Claim that becomes an Allowed Claim in any applicable Class shall have recourse against the Disbursing Agent, the Debtors, the Reorganized Debtors or any other holder of an Allowed Claim or any of their respective professional consultants, advisors, officers, directors or members or their successors or assigns, or any of their respective property, if the Cash or Plan Securities allocated to such Class and not previously distributed are insufficient to provide a distribution to such holder in the same proportion to that received by other holders of Allowed Claims in such Class. However, nothing in the Plan shall modify any right of a holder of a Claim under section 502(j) of the Bankruptcy Code.

7.7 ***Preservation of Rights to Settle Claims***.

In accordance with section 1123(b) of the Bankruptcy Code, the Debtors and the Reorganized Debtors shall retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all Claims, rights, causes of action, suits and proceedings, whether in law or in equity, whether known or unknown, that the Debtors or their estates may hold against any person or entity, without the necessity for Bankruptcy Court approval under Bankruptcy Rule 9019.

The Debtors' rights to settle Claims against the Debtors' estates shall continue to be governed by the Settlement Procedures Order.

SECTION 8. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 ***General Treatment***.

All executory contracts and unexpired leases to which any of the Debtors are parties shall be deemed automatically assumed on the Effective Date except for an executory contract or unexpired lease that (i) has already been assumed or rejected pursuant to Final Order of the Bankruptcy Court, (ii) is specifically designated as a contract or lease to be rejected on the Schedule of Rejected Contracts and Leases to be included in a plan supplement, (iii) is the subject of a separate motion to assume or reject filed under section 365 of the Bankruptcy Code by the Debtors prior to the Confirmation Date, or (iv) is an option or warrant to purchase common stock of any of the Debtors or right to convert any Equity Interest into common stock of any of the Debtors or to the extent such option, warrant, or conversion right is determined not to be an Equity Interest. The Schedule of Rejected Contracts and Leases shall be filed by the Debtors three business days prior to the Voting Deadline, subject to their right to amend such Schedule at any time prior to the Confirmation Date. Notwithstanding anything in the foregoing to the contrary, with respect to any contract or lease which is subject to litigation or proceeding in which the characterization of an executory contract is an issue and that is pending as of the commencement of the Confirmation Hearing, the Debtors shall have 30 days after the entry of a Final Order resolving the litigation or proceeding to assume or reject such contract or lease.

For purposes hereof, each executory contract and unexpired lease that relates to the use or occupancy of real property shall include all (x) modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease and (y) all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, usufructs, reciprocal easement

agreements, vault, tunnel or bridge agreements or franchises, and any other interests in real estate or rights in rem relating to such premises.

8.2 ***Restructured Collective Bargaining Agreements***.

The restructured collective bargaining agreements set forth on Schedule 8.2 to the Plan shall be deemed automatically assumed on the Effective Date.

8.3 ***Management Agreements***.

The management agreements set forth on Schedule 8.3 to the Plan shall be deemed automatically assumed on the Effective Date.

8.4 ***Employee-Related Agreements***.

To the extent any Employee-Related Agreement as to which any of the Debtors is a party is an executory contract, such Employee-Related Agreement shall be deemed automatically assumed on the Effective Date in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, subject to the Debtors' right to make future modifications under any Employee-Related Agreement, unless such Employee-Related Agreement (i) shall have been previously assumed by the Debtors by Final Order of the Bankruptcy Court, (ii) is the subject of a motion to assume pending on or before the Effective Date, or (iii) is otherwise assumed pursuant to the terms of the Plan.

8.5 ***Customer Programs***.

Except as otherwise provided in the Plan, the Debtors and the Reorganized Debtors, in their sole and absolute discretion, may honor, in the ordinary course of business, all of the Debtors' customer and loyalty programs, travel credit programs, charter sales program, leisure sales programs, barter arrangements, corporate incentive programs and cargo programs, as such programs may be amended from time to time, and all Proofs of Claim filed on account of any benefits under such programs shall be deemed withdrawn, disallowed, and forever barred from assertion automatically and without any further notice to or action, order, or approval of the Bankruptcy Court.

8.6 ***Cure of Defaults***.

Except to the extent that different treatment has been agreed to by the non-Debtor party or parties to any executory contract or unexpired lease to be assumed pursuant to Sections 8.1, 8.2, 8.3 and 8.4 hereof, the Debtors shall, pursuant to the provisions of sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code and consistent with the requirements of section 365 of the Bankruptcy Code, within thirty (30) days after the Confirmation Date, file and serve a pleading with the Bankruptcy Court listing the cure amounts of all executory contracts or unexpired leases to be assumed. The parties to such executory contracts or unexpired leases to be assumed by the Debtor shall have fifteen (15) days from service to object to the cure amounts listed by the Debtors. If there are any objections filed, and not otherwise resolved, the Bankruptcy Court shall hold a hearing.

8.7 ***Approval of Assumption and Rejection of Executory Contracts and Unexpired Leases***.

Subject to achievement of the Effective Date, entry of the Confirmation Order shall constitute the approval, pursuant to section 365(a) of the Bankruptcy Code, of the assumption or rejection of any executory contracts and unexpired leases to be assumed or rejected under the Plan.

8.8 ***Rejection Claims***.

In the event that the rejection of an executory contract or unexpired lease by any of the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, a claim for such damages, if not heretofore evidenced by a filed proof of claim, shall be forever barred and shall not be enforceable against the Debtors, or their respective properties or interests in property as agents, successors or assigns, unless a proof of claim is filed with the Bankruptcy Court and served upon counsel for the Debtors on or before the applicable date as set forth in the Bar Date Order.

8.9 ***Survival of the Debtors' Indemnification Obligations***.

Any obligations of the Debtors pursuant to their corporate charters and bylaws or agreements entered into any time prior to the Effective Date, to indemnify past and current directors, officers, agents, trustees of employee benefit plans and/or employees with respect to all present and future actions, suits, and proceedings against the Debtors or such directors, officers, agents, trustees of employee benefit plans, and/or employees, based upon any act or omission by such individuals shall not be discharged or impaired by confirmation of the Plan. Such obligations shall be deemed and treated as executory contracts to be assumed by the Debtors pursuant to the Plan and shall continue as obligations of the Reorganized Debtors.

8.10 ***Insurance Policies.***

All insurance policies pursuant to which the Debtors have any obligations in effect on the date of the Confirmation Order shall be deemed and treated as executory contracts pursuant to the Plan and are hereby automatically assumed on the Effective Date by the respective Debtors and Reorganized Debtors and shall continue in full force and effect. All insurance policies shall revest in the Reorganized Debtors.

The Debtors and the Reorganized Debtors shall continue to honor their obligations (1) under applicable worker's compensation laws in states in which the Reorganized Debtors operate; and (2) the Debtors' written contracts, agreements, agreements of indemnity, self-insurer workers' compensation bonds, policies, programs and plans for workers' compensation and insurance. All Proofs of Claim on account of workers' compensation shall be deemed satisfied and automatically expunged without any further notice to or action, order or approval of the Bankruptcy Court; provided, however, that nothing in the Plan shall limit, diminish, or otherwise deter the Debtors' or Reorganized Debtors' defenses, claims, Causes of Action or other rights under applicable non-bankruptcy law with respect to any such contracts, agreements, policies, programs and plans.

SECTION 9. THE RIGHTS OFFERING

9.1 ***Subscription Rights***.

Pursuant to the Rights Offering, each Eligible Holder of an Allowed Class 1D Claim as of the Subscription Rights Record Date and any holder of a Class 1D Claim which subsequently becomes an Eligible Holder pursuant to the Solicitation Procedures Motion will be offered Subscription Rights to purchase up to its Rights Offering Pro Rata Share of 23,611,111 shares of New Common Stock for Distribution Pursuant to Rights Offering at the Subscription Purchase Price of $27.00 per Share. The closing date of the Rights Offering shall be the Effective Date of the Plan. If the Rights Offering is not consummated by June 30, 2007, the Rights Offering Sponsor Agreement is terminable, and, if terminated, the Rights Offering Sponsor shall have no further obligations thereunder.

9.2 ***Subscription Period***.

The Rights Offering will commence on the Subscription Commencement Date and will end on the Rights Offering Expiration Date.

9.3 ***Exercise of Subscription Rights***.

In order to exercise the Subscription Rights, each Eligible Holder of an Allowed Claim in Class 1D must (a) return a duly completed Subscription Form to the Subscription Agent so that such form is received by the Subscription Agent on or before the Rights Offering Expiration Date; and (b) pay an amount equal to the full Subscription Purchase Price of the number of shares of New Common Stock elected to be purchased by such Eligible Holder by wire transfer or bank or cashier's check delivered to the Subscription Agent with the Subscription Form on or before the Rights Offering Expiration Date, or, in the case of securities held through a bank or brokerage firm, send the Subscription Form to the bank or brokerage firm (or follow such firm's directions with respect to submitting subscription instructions to the firm) with enough time for the bank or brokerage firm to effect the subscription through DTC on or before the Rights Offering Expiration Date. If the Subscription Agent for any reason does not receive from a given Eligible Holder both a timely and duly completed Subscription Form and timely payment of such holder's Subscription Purchase Price, such Eligible Holder will be deemed to have relinquished and waived its right to participate in the Rights Offering.

9.4 ***Oversubscription Rights***.

The Subscription Form will permit each Eligible Holder of an Allowed Class 1D Claim to subscribe for additional shares of New Common Stock at the Subscription Purchase Price up to an amount equal to 200% of the Eligible Holder's Rights Offering Pro Rata Share of the shares of New Common Stock for Distribution Pursuant to Rights Offering. Eligible Holders electing to subscribe for additional shares must indicate the amount of shares in the appropriate place on the Subscription Form and pay for such additional shares in the same manner as the shares purchased pursuant to the Subscription Rights. All exercises of Subscription Rights will be subject to proration in the event that the total number of shares sought to be purchased upon exercise of the Subscription Rights, including any oversubscriptions, exceeds the number of shares available for purchase pursuant to the Rights Offering, as follows:

(a) In the event of an Excess Primary Exercise, the number of Subscription Rights that shall be deemed to have been validly and effectively exercised by each exercising Eligible Holder of Subscription Rights (assuming that all other requirements for validly and effective exercise shall have been satisfied) shall be determined by (i) multiplying the total number of shares available pursuant to the Rights Offering by a fraction, the numerator of which shall be such exercising Eligible Holder's Allowed Claim for purposes of participating in the Rights Offering and the denominator of which shall be the total amount of all Allowed Claims for purposes of participating in the Rights Offering of all exercising Eligible Holders (for the denominator, with adjustment for any Allowed Claims of those Eligible Holders who become an Eligible Holder after the Subscription Rights Record Date in accordance with the Solicitation Procedures Motion), and (ii) eliminating any resulting fractions by rounding down to the next whole number, to the extent necessary;

(b) If the number of shares sought to be purchased upon exercise of Subscription Rights that have otherwise been validly and effectively exercised, including any oversubscriptions, exceeds the number of shares available for purchase pursuant to the Rights Offering other than as a result of an Excess Primary Exercise, (i) all Subscription Rights that have otherwise been validly and effectively exercised pursuant to primary exercise shall be deemed to have been validly and effectively exercised; and (ii) the

number of Subscription Rights that shall be deemed to have been validly and effectively exercised by any Eligible Holder of Subscription Rights pursuant to an oversubscription (assuming that all other requirements for valid and effective exercise shall have been satisfied) shall be determined by (1) multiplying the aggregate number of shares available for purchase under Subscription Rights that were not validly and effectively exercised pursuant to primary exercises by a fraction, the numerator of which shall be the number of Subscription Rights exercised by such Eligible Holder pursuant to an oversubscription and the denominator of which shall be the number of oversubscription Subscription Rights exercised by all Eligible Holders exercising oversubscription Subscription Rights; and (2) eliminating any resulting fractions by rounding down to the next whole number, to the extent necessary.

9.5 ***Undersubscription***.

In the event that all the New Common Stock reserved for the Rights Offering is not purchased by creditors with Subscription Rights or by creditors who have exercised their oversubscription rights, the Rights Offering Sponsor will purchase on the closing date of the Rights Offering, for the Subscription Purchase Price per share, a number of shares of New Common Stock equal to the number of shares of New Common Stock for Distribution Pursuant to Rights Offering minus the number of shares of New Common Stock for Distribution Pursuant to Rights Offering subscribed for on or before the Rights Offering Expiration Date, including shares subscribed for pursuant to oversubscription rights.

Pursuant to the Rights Offering Sponsor Agreement, the Ultimate Purchasers and the Rights Offering Sponsor have entered into a syndication agreement, pursuant to which the Ultimate Purchasers will agree to purchase from the Rights Offering Sponsor certain unsubscribed shares and Purchased Shares purchased by the Rights Offering Sponsor.

9.6 ***The Purchased Shares***.

In addition to its purchase of the shares not subscribed for in the Rights Offering pursuant to Section 9.5 hereof, the Rights Offering Sponsor will purchase on the closing date of the Rights Offering, for the Subscription Purchase Price per share, 4,166,667 additional shares of New Common Stock.

9.7 ***Transfer of Subscription Rights; Election Irrevocable***.

Except as otherwise agreed by express written consent of the Debtors, the Subscription Rights may only be sold, transferred, or assigned in connection with a sale, transfer or assignment of the underlying Allowed Class 1D Claim to the same recipient. For purposes of distribution of the New Common Stock For Distribution Pursuant to Rights Offering, the Debtors are not required to recognize any such sale, transfer or assignment occurring after the Subscription Rights Record Date. Once a holder of Subscription Rights has properly exercised its Subscription Rights, such exercise will be irrevocable. The Subscription Rights Record Date shall be that date established by order of the Bankruptcy Court approving the Solicitation Procedures Motion.

9.8 ***Distribution of New Common Stock***.

On, or as soon as practicable after the Effective Date, the Disbursing Agent shall distribute the New Common Stock For Distribution Pursuant to Rights Offering purchased by the Exercising Claimants.

9.9 ***No Interest***.

In the event the Subscription Purchase Price is returned in whole or in part to the Exercising Claimant no interest shall be paid on the returned amount.

9.10 ***Fractional Rights***.

No Fractional Subscription Rights will be issued. The number of shares of New Common Stock available for purchase by Exercising Claimants will be rounded down to the nearest share. Any shares of New Common Stock not subscribed as a result of such rounding will be pooled and made available for oversubscription, and, if necessary, purchased by the Rights Offering Sponsor.

9.11 ***Validity of Exercise of Subscription Rights***.

All questions concerning the timeliness, viability, form and eligibility of any exercise of Subscription Rights shall be determined by the Debtors, whose good faith determinations shall be final and binding. The Debtors, in their sole discretion reasonably exercised in good faith, may waive any defect or irregularity, or permit a defect or irregularity to be corrected within such times as the Debtors determine, or reject the purported exercise of any Subscription Rights. Subscription Forms shall be deemed not to have been received or accepted until all irregularities have been waived or used within such time as the Debtors determine in their sole discretion reasonably exercised in good faith. Neither the Debtors nor the Subscription Agent shall be under any duty to give notification of any defect or irregularity in connection with the submission of Subscription Forms or incur any liability for failure to give such notification.

9.12 ***Use of Proceeds***.

On the Effective Date, the proceeds received by Reorganized NWA Corp. from the Rights Offering shall be used for general corporate purposes.

9.13 ***Limitation on Acquisition of Shares***.

Unless the Debtors in consultation with the Creditors Committee agree to such acquisition, an Exercising Claimant may not acquire New Common Stock for Distribution Pursuant to Rights Offering if, and to the extent, as a result of such acquisition for the purposes of Section 382 of the Internal Revenue Code, any person or entity (i) who would not otherwise be treated as owning more than 4.95% of the New Common Stock outstanding at the time of delivery of New Common Stock for Distribution Pursuant to Rights Offering would be so treated as a result of such acquisition; or (ii) who would otherwise be treated as owning more than 4.95% of the New Common Stock outstanding at the time of delivery of New Common Stock for Distribution Pursuant to Rights Offering would be treated as owning a greater percentage of shares of New Common Stock as a result of such acquisition.

Notwithstanding the foregoing, in the event the Rights Offering Sponsor is obligated to purchase a number of shares which would cause its ownership interest in NWA Corp. (including the shares of New Common Stock, if any, received by the Rights Offering Sponsor, in any capacity, pursuant to the Plan), as determined for the purposes of Section 382 of the Internal Revenue Code, to exceed 4.95% of the total number of shares of New Common Stock to be outstanding on the Closing Date, NWA Corp. will either reduce the Rights Offering Sponsor's purchase obligation such that its ownership of New Common Stock would not exceed 4.95% or permit the Rights Offering Sponsor to purchase shares in excess of 4.95% to comply with its purchase obligation; provided that in the latter case, the board of

directors of NWA Corp. will waive all restrictions contemplated by Section 5.7 of the Plan on the Rights Offering Sponsor's ability to dispose of any unsubscribed shares owned by it.

In addition, in the event any Ultimate Purchaser is obligated under the Syndication Agreement to purchase a number of shares which could cause its ownership interest in the Company (including the shares of New Common Stock, if any, received by such Ultimate Purchaser, in any capacity, pursuant to the Amended Plan), as determined for the purposes of Section 382 of the Code, to exceed 4.95% of the total number of shares of New Common Stock to be outstanding on the Closing Date, the Board of Directors of the Company shall waive all restrictions, including those contemplated by Sections 5.7 and 9.13 of the Plan, on such Ultimate Purchaser's ability to dispose of a number of shares of New Common Stock equal to the number of ECA Shares owned by it.

The Subscription Purchase Price paid by an Exercising Claimant will be refunded, without interest, in each case as soon as reasonably practicable after the Effective Date, if and to the extent that any limitation specified in the Plan (including in this Section) or in Exhibit A to the Plan would operate to disallow acquisition of New Common Stock for Distribution Pursuant to Rights Offering by such Exercising Claimant.

SECTION 10. CONDITIONS PRECEDENT TO EFFECTIVE DATE

10.1 *Conditions to Effective Date*.

The following are conditions precedent to the Effective Date:

(a) The Bankruptcy Court shall have entered the Confirmation Order in form and substance satisfactory to the Debtors;

(b) No stay of the Confirmation Order shall then be in effect;

(c) All documents, instruments and agreements, including, without limitation, the Exit Facility, in form and substance satisfactory to the Debtors, provided for under or necessary to implement the Plan shall have been executed and delivered by the parties thereto, unless such execution or delivery has been waived by the parties benefited thereby; and

(d) The Rights Offering shall close concurrently with the occurrence of the Effective Date and the Rights Offering Sponsor shall have purchased concurrently with the occurrence of the Effective Date all remaining New Common Stock For Distribution Pursuant to Rights Offering and the Purchased Shares.

10.2 *Waiver of Conditions*.

The Debtors may waive the conditions to effectiveness of the Plan without leave of or notice to the Bankruptcy Court and without any formal action other than proceeding with confirmation of the Plan.

SECTION 11. EFFECT OF CONFIRMATION

11.1 *Vesting of Assets*.

Upon the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of the Debtor's bankruptcy estates and any property acquired by a Debtor or Reorganized Debtor under the Plan shall vest in the Reorganized Debtors free and clear of all Claims, liens, encumbrances,

charges and other interests, except as provided herein. On and after the Effective Date, each Reorganized Debtor may operate its business and may use, acquire or dispose of property and compromise or settle any claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, each Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for professionals' fees, disbursements, expenses or related support services (including fees relating to the preparation of professional fee applications) without application to, or approval of, the Bankruptcy Court

11.2 ***Discharge of Claims against the Debtors and Cancellation of Equity Interests in NWA Corp***.

Except as otherwise provided herein or in the Confirmation Order, the rights afforded in the Plan and the payments and distributions to be made hereunder shall be in complete satisfaction of and shall discharge and terminate all Equity Interests in NWA Corp and all existing debts and Claims, of any kind, nature or description whatsoever against or in the Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided in the Plan, on the Effective Date, all existing Equity Interests in NWA Corp. and Claims against the Debtors, including intercompany claims, shall be, and shall be deemed to be, satisfied, discharged and terminated, and all holders of Equity Interests in NWA Corp. and Claims against any of the Debtors shall be precluded and enjoined from asserting against the Reorganized Debtors, or any of their assets or properties, any other or further Equity Interest in NWA Corp. or Claim against any of the Debtors based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of claim or proof of equity interest. Notwithstanding any provision of the Plan to the contrary, any valid setoff or recoupment rights held against any of the Debtors, shall not be affected by the Plan and shall be expressly preserved in the Confirmation Order.

11.3 ***Binding Effect***.

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, and subject to the Effective Date, the provisions of the Plan shall bind any holder of a Claim against, or Equity Interest in, the Debtors and their respective successors and assigns, whether or not the Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

11.4 ***Term of Injunctions or Stays***.

(a) *General*. Unless otherwise provided herein, all injunctions or stays arising under section 105 or 362 of the Bankruptcy Code, any order entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in such order.

(b) *Injunction Regarding Worthless Stock Deduction.* Unless otherwise ordered by the Bankruptcy Court, on and after the Confirmation Date, any "Fifty Percent Shareholder" within the meaning of section 382(g)(4)(D) of the Internal Revenue Code of 1986, as amended, shall be enjoined from claiming a worthless stock deduction with respect to any Equity Interest held by such shareholder for any taxable year of such shareholder ending prior to the Effective Date.

11.5 ***Injunction Against Interference with Plan***.

Upon the entry of the Confirmation Order with respect to the Plan, all holders of Claims and Equity Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

11.6 ***Exculpation***.

None of the Debtors nor any Released Party shall have or incur any liability to any holder of a Claim or Equity Interest for any act or omission (and in the case of any director, officer, agent or employee of any Debtor who was employed or otherwise serving in such capacity on the Confirmation Date, any claims against such Persons) in connection with, or arising out of, the Chapter 11 Cases, the formulation, preparation, negotiation, dissemination, implementation, administration, confirmation or consummation of any of the Plan, or the property to be distributed under the Plan, the disclosure statement concerning the Plan, any contract, employee pension or other benefit plan, instrument, release or other agreement or document created, modified, amended, terminated or entered into in connection with either the Plan or any agreement between the Debtors and any Released Party, or any other act taken or omitted to be taken in connection with the Company's bankruptcy, except for willful misconduct or gross negligence.

11.7 ***Retention of Causes of Action/Reservation of Rights***.

(a) Except as set forth in Sections 11.8 and 11.9 of the Plan, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights or causes of action that the Debtors or the Reorganized Debtors may have or which the Reorganized Debtors may choose to assert on behalf of their respective estates under any provision of the Bankruptcy Code or any applicable nonbankruptcy law, including, without limitation, (i) any and all Claims against any person or entity, to the extent such person or entity asserts a cross-claim, counterclaim and/or claim for setoff which seeks affirmative relief against the Debtors, the Reorganized Debtors, their officers, directors, or representatives, and (ii) the turnover of any property of the Debtors' estate.

(b) Except as set forth in Sections 11.8 and 11.9 of the Plan, nothing in the Plan or the Confirmation Order shall be deemed a waiver or relinquishment of any Claim, cause of action, right of setoff, or other legal or equitable defense which the Debtors had immediately prior to the Commencement Date, against or with respect to any Claims left unimpaired by the Plan, except for avoidance actions pursuant to section 547 of the Bankruptcy Code (provided, however, that the Debtors' right to object to any Claim pursuant to section 502(d) of the Bankruptcy Code is fully preserved, including but not limited to the right to object to any Claim of a recipient of a transfer that is avoidable under section 547 of the Bankruptcy Code).

11.8 ***Release by Debtors***.

From and after the Effective Date, the Released Parties shall be released by each Debtor from any and all claims (as defined in section 101(5) of the Bankruptcy Code), obligations, suits, judgments, damages, rights, causes of action and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that any Debtor is entitled to assert in its own right or on behalf of the holder of any Claim or Equity Interest or other Person, based in whole or in part upon any act or omission, transaction, agreement, event or occurrence taking place on or prior to the Effective Date in any way relating to any Debtor, the Chapter 11 Cases, the

formulation, preparation, negotiation, dissemination, implementation, administration, confirmation or consummation of any of the Plan, or the property to be distributed under the Plan, the disclosure statement concerning the Plan, any contract, employee pension or other benefit plan, instrument, release or other agreement or document created, modified, amended, terminated or entered into in connection with either the Plan or any agreement between the Debtors and any Released Party, or any other act taken or omitted to be taken in connection with the Debtors' bankruptcy, except for claims or causes of actions against any Released Party resulting from the willful misconduct or gross negligence of such Released Party. Notwithstanding anything in the foregoing to the contrary, the Debtors reserve all rights and provide no release with respect to any claims or defenses relating to any litigation by or against any Indenture Trustee that remains pending as of the Effective Date.

11.9 ***Release of Released Parties by Other Released Parties***.

From and after the Effective Date, except with respect to distributions on account of Allowed Claims, if any, that any of the Released Parties may have against any of the Debtors' estates, or as otherwise provided in the Plan or Final Order of the Bankruptcy Court, the Released Parties shall release each other from any and all claims (as defined in section 101(5) of the Bankruptcy Code), obligations, suits, judgments, damages, rights, causes of action and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that any Released Party is entitled to assert against any other Released Party, based in whole or in part upon any act or omission, transaction, agreement, event or occurrence taking place on or prior to the Effective Date in any way relating to any Debtor, the Chapter 11 Cases, the formulation, preparation, negotiation, dissemination, implementation, administration, confirmation or consummation of any of the Plan, or the property to be distributed under the Plan, the disclosure statement concerning the Plan, any contract, employee pension or other benefit plan, instrument, release or other agreement or document created, modified, amended, terminated or entered into in connection with either the Plan or any agreement between the Debtors and any Released Party, or any other act taken or omitted to be taken in connection with the Debtors' bankruptcy, except for claims or causes of actions against any Released Party resulting from the willful misconduct or gross negligence of such Released Party.

As of the Effective Date, each defined benefit pension plan sponsored by Northwest Airlines shall remain in full force and effect. Notwithstanding anything to the contrary contained in the Plan or the Disclosure Statement, no Released Party shall be discharged, exculpated, or released on any claim, now existing or hereafter arising, under the Employee Retirement Income Security Act of 1974, as amended, with respect to any such plan, and there shall be no injunction against the assertion of any such claim.

SECTION 12. CLAIMS ALLOWED BY THE PLAN

12.1 ***Management Claim***.

The Management Claim will be withdrawn.

SECTION 13. RETENTION OF JURISDICTION

On and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, or related to the Chapter 11 Cases and the Plan for, among other things, the following purposes:

(a) To hear and determine motions for the assumption or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom;

(b) To determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced after the Confirmation Date;

(c) To ensure that distributions to holders of Allowed Claims are accomplished as provided herein;

(d) To hear and determine objections to Claims;

(e) To consider Claims or the allowance, classification, priority, compromise, estimation or payment of any Claim, Administrative Expense Claim, Disputed Claim or Equity Interest;

(f) To enter, implement or enforce such orders as may be appropriate in the event that the Confirmation Order is for any reason stayed, reversed, revoked, modified or vacated;

(g) To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation or enforcement of the Plan, the Confirmation Order or any other order of the Bankruptcy Court;

(h) To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the disclosure statement for the Plan, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(i) To hear and determine all applications under sections 330, 331 and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Confirmation Date;

(j) To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan, the Confirmation Order, any transactions or payments contemplated hereby, or any agreement, instrument, or other document governing or relating to any of the foregoing;

(k) To take any action and issue such orders as may be necessary to construe, enforce, implement, execute and consummate the Plan or to maintain the integrity of the Plan following consummation;

(l) To hear any disputes arising out of, and to enforce, the order approving alternative dispute resolution procedures to resolve personal injury, employment litigation and similar Claims pursuant to section 105(a) of the Bankruptcy Code;

(m) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(n) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including any requests for expedited determinations under section 505(b) of the Bankruptcy Code filed, or to be filed, with respect to tax returns for any and all taxable periods ending after the Commencement Date through, and including, the Final Distribution Date);

(o) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;

(p) To recover all assets of any of the Debtors and property of the applicable Debtor's Estate, wherever located; and

(q) To enter a final decree closing the Chapter 11 Cases.

SECTION 14. MISCELLANEOUS PROVISIONS

14.1 *Payment of Statutory Fees*.

On and after the Effective Date, and thereafter as may be required until entry of a final decree with respect to each of the Debtors, the Debtors shall pay all fees payable pursuant to section 1930 of Chapter 123 of Title 28 of the United States Code.

14.2 *Committees*.

Effective on the Effective Date, the Creditors' Committee, the Retiree Committee and any other committee appointed in the Chapter 11 Cases shall dissolve automatically, whereupon its members, professionals, and agents shall be released from any further duties and responsibilities in the Chapter 11 Cases and under the Bankruptcy Code, except with respect to applications for Professional Claims or reimbursement of expenses incurred as a member of the Creditors' Committee or the Retiree Committee, duties under the Settlement Procedures Order, and any motions or other actions seeking enforcement or implementation of the provisions of this Plan or the Confirmation Order or pending appeals of Orders entered in the Chapter 11 Cases.

On the Effective Date, there shall be formed a Post-Effective Date Committee with its duties limited to the oversight of certain actions of the Reorganized Debtors, which actions shall remain the sole responsibility of the Reorganized Debtors, including: (a) overseeing the General Unsecured Claims' reconciliation and settlement process conducted by or on behalf of the Reorganized Debtors pursuant to the Settlement Procedures Order; (b) overseeing (i) the establishment (including the determination of the amount of New Common Stock to be withheld) and (ii) the maintenance of the Distribution Reserve; (c) overseeing the distributions to the holders of General Unsecured Claims under this Plan; (d) appearing before and being heard by the Bankruptcy Court and other Courts of competent jurisdiction in connection with the above limited duties; and (e) such other matters as may be agreed upon between the Reorganized Debtors and the Post-Effective Date Committee or specified in this Plan. The Post-Effective Date Committee shall consist of not less than three nor more than five members to be appointed by the Creditors' Committee and may adopt by-laws governing its conduct. For so long as the claims reconciliation process shall continue, the Reorganized Debtors shall make regular reports to the Post-Effective Date Committee as and when the Reorganized Debtors and the Post-Effective Date Committee may reasonably agree upon. The Post-Effective Date Committee may employ, without further order of the Court, professionals to assist it in carrying out its duties as limited above, including any professionals retained in these Reorganization Cases, and the Reorganized Debtors shall pay the reasonable costs and expenses of the Post-Effective Date Committee, including reasonable professional fees, in the ordinary course without further order of the Court. In the event that, on the Effective Date, an objection to any Claim by the Creditors Committee is pending, the Post-Effective Date Committee shall have the right to continue prosecution of such objection.

14.3 ***Substantial Consummation***.

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

14.4 ***Exemption from Transfer Taxes***.

Pursuant to section 1146(c) of the Bankruptcy Code, neither (i) the issuance transfer or exchange of any security under, in furtherance of, or in connection with, the Plan, including the issuance of the Plan Securities, nor (ii) the assignment or surrender of any lease or sublease, or the delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale or assignments executed in connection with any disposition of assets contemplated by the Plan (including real and personal property), shall be subject to any stamp, real estate transfer, mortgage recording sales, use or other similar tax.

14.5 ***Section 1145 Exemption***.

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance and distribution of any securities contemplated by the Plan and any and all settlement agreements incorporated therein shall be exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any state or local law requiring registration prior to the offering, issuance, distribution or sale of securities. In addition, under section 1145 of the Bankruptcy Code, any securities contemplated by the Plan will be freely tradable by the recipients thereof, subject to (i) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in Section 2(a)(11) of the Securities Act, and compliance with any rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of any future transfer of such securities or instruments; (ii) the restrictions, if any, on the transferability of such securities and instruments; and (iii) applicable regulatory approval. Notwithstanding anything in the Plan to the contrary, in no event shall any grants of equity or options to acquire equity, under the Management Incentive Plan be made if such grant of equity or exercise of options would not qualify during any 12-month period for the "small issuance exception" in Treasury Regulation Section 1.382-3.

14.6 ***Amendments***.

(a) *Plan Modifications.* The Plan may be amended, modified, or supplemented by the Debtors or the Reorganized Debtors in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code. In addition, after the Confirmation Date, so long as such action does not materially adversely affect the treatment of holders of Claims or Equity Interests under the Plan, the Debtors may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan.

Other Amendments. Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court, provided that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Equity Interests.

14.7 ***Revocation or Withdrawal of Plan***.

The Debtors reserve the right to revoke or withdraw the Plan prior to the Effective Date. If the Debtors take such action, the Plan shall be deemed null and void.

14.8 ***Cramdown***.

The Debtors request confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Class that is deemed to have not accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Debtors reserve the right to (i) request confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Class or Subclass that does not accept the Plan pursuant to section 1126 of the Bankruptcy Code and (ii) to modify the Plan to the extent, if any, that confirmation of the Plan under section 1129(b) of the Bankruptcy Code requires modification.

14.9 ***Severability***.

If, prior to the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms of the Plan will remain in full force and effect and in no way will be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

14.10 ***Request for Expedited Determination of Taxes***.

The Debtors shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Commencement Date through the Effective Date.

14.11 ***Courts of Competent Jurisdiction***.

In the event the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of the Plan, such abstention, refusal or failure of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

14.12 ***Governing Law***.

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit hereto or a schedule to the Plan provides otherwise, the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflict of laws thereof.

14.13 ***Time***.

In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

14.14 ***Headings***.

Headings are used in the Plan for convenience and reference only and shall not constitute a part of the Plan for any other purpose.

14.15 ***Exhibits***.

All Exhibits and Schedules to the Plan are incorporated into and are a part of the Plan as if set forth in full herein.

14.16 ***Notices***.

To be effective, all notices, requests and demands to or upon the Debtors, or, as applicable, upon the Creditors Committee, shall be in writing and unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Northwest Airlines Corporation
Attn: Michael L. Miller, Esq.
2700 Lone Oak Parkway
Eagan, MN 55121

with copies to:

CADWALADER, WICKERSHAM & TAFT LLP
Attorneys for the Debtors and Debtors-In-Possession
One World Financial Center
New York, NY 10281
(212) 504-6000
Attn: Bruce R. Zirinsky, Esq.

and

OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C.
Attorneys for the Creditors Committee
230 Park Avenue
New York, NY 10169
(212) 661-9100
Attn: Scott L. Hazan, Esq.

_____

As of May 15, 2007

NORTHWEST AIRLINES CORPORATION

By: /s/ Michael L. Miller _____
Name: Michael L. Miller
Title: Authorized Officer

NWA FUEL SERVICES CORPORATION

By: /s/ Michael L. Miller _____
Name: Michael L. Miller
Title: Authorized Officer

NORTHWEST AIRLINES HOLDINGS CORPORATION

By: /s/ Michael L. Miller _____
Name: Michael L. Miller
Title: Authorized Officer

NWA INC.

By: /s/ Michael L. Miller _____
Name: Michael L. Miller
Title: Authorized Officer

NORTHWEST AEROSPACE TRAINING CORPORATION

By: /s/ Michael L. Miller _____
Name: Michael L. Miller
Title: Authorized Officer

NORTHWEST AIRLINES, INC.

By: /s/ Michael L. Miller _____
Name: Michael L. Miller
Title: Authorized Officer

NWA AIRCRAFT FINANCE, INC.

By: /s/ Michael L. Miller _____
Name: Michael L. Miller
Title: Authorized Officer

COMPASS AIRLINES, INC. f/k/a NORTHWEST AIRLINES CARGO, INC.

By: /s/ Michael L. Miller _____
Name: Michael L. Miller
Title: Authorized Officer

NWA RETAIL SALES INC.

By: /s/ Michael L. Miller _____
Name: Michael L. Miller
Title: Authorized Officer

AIRCRAFT FOREIGN SALES, INC.

By: /s/ Michael L. Miller _____
Name: Michael L. Miller
Title: Authorized Officer

MONTANA ENTERPRISES, INC.

By: /s/ Michael L. Miller _____
Name: Michael L. Miller
Title: Authorized Officer

NW RED BARON LLC

By: /s/ Michael L. Miller
Name: Michael L. Miller
Title: Authorized Officer

NWA WORLDCLUB, INC.

By: /s/ Michael L. Miller
Name: Michael L. Miller
Title: Authorized Officer

MLT INC.

By: /s/ Michael L. Miller
Name: Michael L. Miller
Title: Authorized Officer

EXHIBIT A

Exhibit A to
Syndication Agreement

CONFORMED COPY

EQUITY COMMITMENT AGREEMENT

February 12, 2007

J.P. Morgan Securities Inc.
270 Park Avenue
New York, New York 10017

Ladies and Gentlemen:

Subject to the approval of this Agreement by the Bankruptcy Court (as defined in the second paragraph of this Agreement), Northwest Airlines Corporation, a Delaware corporation (as a debtor-in-possession and a reorganized debtor, as applicable, the "Company"), proposes to offer and sell 27,777,778 shares of its new common stock, par value $0.01 per share, to be issued pursuant to the Amended Plan (as defined below in this paragraph) (together with any associated share purchase rights other than the Rights (as defined below in this paragraph), "New Common Stock"), of which 23,611,111 shares, (the "Shares"), will be offered pursuant to a rights offering (the "Rights Offering") whereby each holder of an Allowed Class 1D Claim (other than a Subordinated Claim) (each an "Eligible Holder"), as of the record date fixed by the Bankruptcy Court for the solicitation of acceptances and rejections of the Amended Plan, shall be offered the right (each, a "Right") to purchase up to its pro rata share of 23,611,111 Shares of New Common Stock, at a purchase price of $27.00 per Share (the "Purchase Price"). Each capitalized term used but not defined in this letter (this "Agreement") shall have the meaning given to it in the Debtors' Joint and Consolidated Plan of Reorganization under Chapter 11 of the Bankruptcy Code filed on January 12, 2007 (the "Existing Plan"). The Existing Plan as amended or supplemented at the time of its approval by the Bankruptcy Court is hereinafter referred to as the "Amended Plan."

The Company will conduct the Rights Offering as part of the implementation of a plan of reorganization for the Company, as a debtor-in-possession under chapter 11 of the United States Bankruptcy Code, 11 U.S.C.§§101 *et seq*. (the "Bankruptcy Code"), and its affiliates who are also debtors and debtors-in-possession in the chapter 11 cases pending and jointly administered in the Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") under Case No. 05-17930. The Amended Plan shall be the Existing Plan with only those revisions, modifications, supplements and amendments to the Existing Plan as are necessary to incorporate the terms in the term sheet attached hereto as Exhibit A (the "Term Sheet") and such other revisions, modifications, supplements and amendments that the Company and the other Debtors deem necessary or appropriate and that shall not (i) materially adversely affect the obligations or rights of the Investor hereunder or as the Rights Offering Sponsor, as a holder of New Common Stock or as the Initial Purchaser (as

defined in the Syndication Agreement, defined in the fifth paragraph of this Agreement), (ii) cause any representation or warranty contained herein to be incorrect or (iii) be inconsistent with the terms of the Term Sheet.

In order to facilitate the Rights Offering, pursuant to this Agreement, and subject to the terms, conditions and limitations set forth herein, J.P. Morgan Securities Inc. (the "Investor") agrees to purchase on the Closing Date (as defined in Section 2(e)), and the Company agrees to sell, for the Purchase Price times the number of shares so purchased, a number of shares of New Common Stock equal to the aggregate number of Shares minus the number of shares of New Common Stock offered pursuant to the Rights Offering and purchased on or before the Expiration Time (as defined in Section 1(b)), including shares purchased pursuant to oversubscription rights (such Shares to be purchased by the Investor in the aggregate, the "Unsubscribed Shares").

In addition, pursuant to this Agreement, and subject to the terms, conditions and limitations set forth herein, the Investor agrees to purchase on the Closing Date, and the Company agrees to sell, for the Purchase Price times the number of Shares so purchased, 4,166,667 additional shares of New Common Stock, (the "Purchased Shares"). The Unsubscribed Shares and the Purchased Shares are herein collectively referred to as the "ECA Shares."

Simultaneously with the delivery of this Agreement, certain persons (the "Ultimate Purchasers") and the Investor are entering into a syndication agreement (the "Syndication Agreement"), pursuant to which the Ultimate Purchasers are agreeing to purchase from the Investor certain ECA Shares purchased by the Investor. In the Syndication Agreement, each Ultimate Purchaser has represented and warranted that it is not a Competitor (as defined below) of the Company and that it will not assign its rights and obligations thereunder to such a Competitor. "Competitor" means an airline, a commercial air carrier, an air freight forwarder, an entity engaged in the business of parcel transport by air or a corporation or other entity controlling, controlled by or under common control with such an airline, commercial air carrier, air freight forwarder or entity engaged in the business of parcel transport by air. Notwithstanding the foregoing, to the extent the 4.75% limitation referred to in Section 2(a) becomes applicable, the Company may require the Ultimate Purchasers to purchase the ECA Shares they have agreed to purchase under the Syndication Agreement directly from the Company.

The Company hereby waives the restrictions contained in any confidentiality agreement between the Company and the Investor or the Company and any Ultimate Purchaser that was entered into in contemplation of an equity investment in the Company and not in contemplation of the Investor or such Ultimate Purchaser's agreement to act as a backstop provider (a "Prior Confidentiality Agreement"), but only to the extent such restrictions would otherwise restrict or impair the ability of the Investor or such Ultimate Purchaser to perform its obligations under this Agreement or the Syndication Agreement, as applicable; provided, however, that the foregoing waiver shall not apply to any provision in any Prior Confidentiality Agreement that restricts the ability of a party thereto to acquire in excess of 4.75% of any class of securities of the Company or, to the extent covered by the Investor's or such Ultimate

Purchaser's Prior Confidentiality Agreement, claims relating to the Company's and its subsidiaries' voluntary petitions for relief under the chapter 11 of the Bankruptcy Code unless and only to the extent such provision is waived by the Company pursuant to Section 2(a) of this Agreement.

In consideration of the foregoing, and the representations, warranties and covenants set forth herein, and other good and valuable consideration, the Company and the Investor agree as follows:

1. The Rights Offering. The Rights Offering will be conducted as follows:

(a) Subject to the terms and conditions of this Agreement (including Bankruptcy Court approval), the Company hereby undertakes to offer Shares for subscription by holders of Rights pursuant to the Amended Plan as set forth in this Agreement.

(b) Ballot form(s) (the "Ballots") will be distributed in connection with the solicitation of acceptance of the Amended Plan. Subscription form(s) (the "Subscription Forms") will simultaneously be delivered pursuant to which each Eligible Holder may exercise its Rights. The Rights may be exercised during a period (the "Rights Exercise Period") to be specified in the Amended Plan, which period will commence on the date the Ballots are distributed and will end at the Expiration Time. "Expiration Time" means 5:00 p.m., New York City time, on the 30th calendar day (or if such day is not a Business Day, the next Business Day) after the date the Ballots are distributed under the Amended Plan, or such later date as the Company, subject to the approval of the Investor, may specify in a notice provided to the Investor before 9:00 a.m., New York City time, on the Business Day before the then-effective Expiration Time. "Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in New York City are generally authorized or obligated by law or executive order to close. Subject to the approval of this Agreement by the Bankruptcy Court, the Amended Plan shall provide that in order to exercise a Right, each Eligible Holder shall, prior to the Expiration Time, (i) return a duly executed Subscription Form to the Subscription Agent (as defined in Section 1(d)), and (ii) pay an amount equal to the full purchase price of the number of shares of New Common Stock elected to be purchased by such Eligible Holder by wire transfer or bank or cashier's check delivered to the Subscription Agent with the Subscription Form no later than the Expiration Time.

(c) The Company will issue the Shares to the Eligible Holders with respect to which Rights were validly exercised by such holders upon the effective date of the Amended Plan (the "Effective Date"). If the exercise of a Right would result in the issuance of a fractional share of New Common Stock, then the number of shares of New Common Stock to be issued in respect of such Right will be rounded up or down to the next whole share.

(d) If the subscription agent under the Amended Plan (the "Subscription Agent") for any reason does not receive from a given holder both a timely and duly

completed Subscription Form and timely payment for the Shares being purchased by such holder, the Amended Plan shall provide that the holder shall be deemed to have relinquished and waived its right to participate in the Rights Offering.

(e) The Company hereby agrees and undertakes to give the Investor by electronic facsimile transmission the certification by an executive officer of the Company conforming to the requirements specified herein for such certification of either (i) a true and accurate calculation of the number of Unsubscribed Shares and the aggregate Purchase Price therefor (a "Purchase Notice") or (ii) in the absence of any Unsubscribed Shares, the fact that there are no Unsubscribed Shares and that the Backstop Commitment (as defined in Section 2(a)) is terminated (a "Satisfaction Notice"), as soon as practicable after the Expiration Time and, in any event, at least four (4) Business Days prior to the Effective Date (the date of transmission of confirmation of a Purchase Notice or a Satisfaction Notice, the "Determination Date").

(f) There will be over-subscription rights provided in connection with the Rights Offering, provided that the right of any creditor to oversubscribe will not exceed 200% of the number of Shares such creditor is entitled to purchase without giving effect to any oversubscription right.

(g) In the event the Expiration Time has not occurred by May 15, 2007, on May 16, 2007, the Company will pay to the Investor a nonrefundable fee of $1,875,000, and in the event the Expiration Time has not occurred by May 31, 2007, on June 1, 2007, the Company will pay to the Investor an additional nonrefundable fee of $1,875,000. The fees payable pursuant to this Section 2(g) are hereinafter referred to as the "Expiration Time Fee."

2. The Backstop Commitment and Purchased Shares.

(a) On the basis of the representations and warranties contained herein, but subject to the conditions set forth in Section 7 (including without limitation the entry of the Agreement Order (as defined in Section 5(a)) and the Agreement Order becoming a Final Agreement Order (as defined below in this Section)), the Investor agrees to purchase on the Closing Date, and the Company agrees to issue and sell, at the aggregate Purchase Price therefor, all Unsubscribed Shares (the "Backstop Commitment") and all Purchased Shares. "Final Agreement Order" shall mean the Agreement Order, which has not been reversed, stayed, modified or amended, and as to which (a) the time to appeal, seek *certiorari* or request reargument or further review or rehearing has expired, and no appeal, petition for *certiorari* or request for reargument or further review or rehearing has been timely filed, or (b) any appeal that has been or may be taken or any petition for *certiorari* or request for reargument or further review or rehearing that has been or may be filed has been resolved by the highest court to which the order or judgment was appealed, from which *certiorari* was sought or to which the request was made, and no further appeal or petition for *certiorari* has been or can be taken or granted. Notwithstanding the foregoing, in the event the Investor is obligated to purchase a number of Unsubscribed Shares and Purchased Shares which would

cause its ownership interest in the Company (including the shares of New Common Stock, if any, received by the Investor, in any capacity, pursuant to the Amended Plan), as determined for the purposes of Section 382 of the Code, to exceed 4.75% of the total number of shares of New Common Stock to be outstanding on the Closing Date, the Investor will immediately notify the Company in writing of such determination, and the Company will either (i) reduce the Investor's purchase obligation such that its ownership of New Common Stock would not exceed 4.75% or (ii) permit the Investor to purchase shares in excess of 4.75% to comply with its purchase obligations hereunder; provided that, in the latter case, the Board of Directors of the Company shall waive all restrictions, including those contemplated by Sections 5.7 and 9.12 of the Existing Plan, on the Investor's ability to dispose of a number of Shares equal to the number of Unsubscribed Shares owned by it. In addition, in the event any Ultimate Purchaser is obligated under the Syndication Agreement to purchase a number of ECA Shares which could cause its ownership interest in the Company (including the shares of New Common Stock, if any, received by such Ultimate Purchaser, in any capacity, pursuant to the Amended Plan), as determined for the purposes of Section 382 of the Code, to exceed 4.75% of the total number of shares of New Common Stock to be outstanding on the Closing Date, the Board of Directors of the Company shall waive all restrictions, including those contemplated by Sections 5.7 and 9.12 of the Existing Plan, on such Ultimate Purchaser's ability to dispose of a number of shares of New Common Stock equal to the number of ECA Shares owned by it.

(b) On the basis of the representations and warranties herein contained, but subject to the entry of the Agreement Order, the Company will pay to the Investor a backstop fee equal to $20,625,000 (the "Backstop Fee") to compensate the Investor for the risk of its undertaking herein. The Backstop Fee, as well as all other amounts payable hereunder, will be paid in U.S. dollars, and the Backstop Fee will be paid on the first Business Day after the tenth day after the entry of the Agreement Order; it being understood that in the event the Agreement Order is appealed, and the highest court to which the Agreement Order was appealed issues a final order vacating or reversing the Agreement Order and further orders disgorgement of all or a portion of the Backstop Fee, the Investor shall promptly return to the Company the portion of the Backstop Fee required to be so disgorged. Payment of the Backstop Fee will be made by wire transfer of immediately available funds to the account specified by the Investor to the Company at least 24 hours in advance; provided, that if the Investor receives the Backstop Fee, the Investor shall waive any of its rights to receive punitive damages in connection with this Agreement and the transactions contemplated hereby. Except as set forth in this subsection (b), the Backstop Fee will be nonrefundable when paid.

(c) Upon the entry of the Agreement Order, the Company will reimburse or pay, as the case may be, the out-of-pocket expenses reasonably incurred by the Investor with respect to the transactions contemplated hereby, including the filing fee, if any, required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") and expenses related thereto and all Bankruptcy Court and other judicial and regulatory proceedings related to such transactions (collectively, "Transaction Ex-

penses"), including all reasonable fees and expenses of both Cahill Gordon & Reindel LLP and Cronin & Vris, LLP, counsels to the Investor, and Stroock & Stroock & Lavan LLP, counsel for the Ultimate Purchasers, and reasonable fees and expenses of any other professionals retained by the Investor with the prior approval of the Company in connection with the transactions contemplated herein and those contemplated by the Term Sheet. Such reimbursement or payment shall be made by the Company within ten (10) days of presentation of an invoice approved by the Investor, without Bankruptcy Court review or further Bankruptcy Court order, whether or not the transactions contemplated hereby are consummated; it being understood that in the event the Agreement Order is appealed, and the highest court to which the Agreement Order was appealed issues a final order vacating or reversing the Agreement Order and further orders disgorgement of all or a portion of the Transaction Expenses, the Investor shall promptly return to the Company the portion of the Transaction Expenses required to be so disgorged. These obligations are in addition to, and do not limit, the Company's obligations under Section 8.

(d) On the Closing Date (as defined in Section 2(e)), the Investor will purchase, and the Company will sell, only such number of Unsubscribed Shares as are listed in the Purchase Notice, without prejudice to the rights of the Investor to seek later an upward or downward adjustment if the number of Unsubscribed Shares in such Purchase Notice is inaccurate.

(e) Delivery of the ECA Shares will be made by the Company to the account of the Investor (or to such other accounts as the Investor may designate) at 9:00 a.m., New York City time, on the Effective Date (the "Closing Date") against payment of the aggregate Purchase Price for the ECA Shares by wire transfer of immediately available funds to the account specified by the Company to the Investor at least 24 hours in advance.

(f) All ECA Shares will be delivered with any and all issue, stamp, transfer or similar taxes or duties payable in connection with such delivery duly paid by the Company to the extent required under the Confirmation Order or applicable law.

(g) The documents to be delivered on the Closing Date by or on behalf of the parties hereto and the ECA Shares will be delivered at the offices of Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, New York 10281 on the Closing Date.

(h) Notwithstanding anything to the contrary in this Agreement, the Investor, in its sole discretion, may designate that some or all of the ECA Shares be issued in the name of, and delivered to, one or more of its affiliates or to any other Person, including any Ultimate Purchaser, so long as such person is not a Competitor.

3. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with, the Investor as follows:

(a) Incorporation and Qualification. The Company and each of its subsidiaries has been duly incorporated and is validly existing as a corporation in good standing under the laws of their respective jurisdictions of incorporation, with the requisite power and authority to own its properties and conduct its business as currently conducted. Each of the Company and its subsidiaries has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except to the extent the failure to be so qualified or be in good standing has not had or could not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, results of operations, property or financial condition of the Company and its subsidiaries taken as a whole, as such business is proposed to be conducted as contemplated by the Term Sheet, Disclosure Statement (as defined in Section 5(b)) and the Amended Plan, or on the ability of the Company, subject to the approvals and other authorizations set forth in Section 3(g), to consummate the transactions contemplated by this Agreement or the Amended Plan (a "Material Adverse Effect").

(b) Corporate Power and Authority.

(i) The Company has the requisite corporate power and authority to enter into, execute and deliver this Agreement and, subject to entry of the Agreement Order and the Confirmation Order (together, the "Court Orders") and the expiration, or waiver by the Bankruptcy Court, of the 10-day period set forth in Rules 6004(g) and 3020(e) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), respectively, to perform its obligations hereunder and thereunder, including the issuance of the Rights and Shares and Purchased Shares. The Company has taken all necessary corporate action required for the due authorization, execution, delivery and performance by it of this Agreement, including the issuance of the Rights and Shares and Purchased Shares, other than board of directors' approval of, or other board action to be taken with respect to, the documents to implement the Rights Offering.

(ii) When executed and delivered, (A) the Company will have the requisite corporate power and authority to enter into, execute and deliver the Registration Rights Agreement (as defined in Section 5(m)); and (B) all necessary corporate action required for the due authorization, execution and delivery and, subject to the entry of the Court Orders and the expiration, or waiver by the Bankruptcy Court, of the 10-day period set forth in Bankruptcy Rules 6004 (g) and 3020(e), respectively, performance of the Registration Rights Agreement will have been taken by the Company.

(iii) The Company will have the requisite corporate power and authority to execute the Amended Plan and to file the Amended Plan with the Bankruptcy Court and, subject to entry of the Confirmation Order and the expiration, or waiver by the Bankruptcy Court, of the 10-day period set forth in Bankruptcy Rule 3020(e), to perform its obligations thereunder, and will have taken all necessary corporate action required for the due authorization, execution, delivery and performance by it of the Amended Plan.

(c) Execution and Delivery; Enforceability.

(i) This Agreement has been and the Registration Rights Agreement will be duly and validly executed and delivered by the Company, and, upon the entry of the Agreement Order and the expiration, or waiver by the Bankruptcy Court, of the 10-day period set forth in Bankruptcy Rule 6004(g), such documents will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms.

(ii) The Amended Plan will be duly and validly filed with the Bankruptcy Court by the Company and, upon the entry of the Confirmation Order and the expiration, or waiver by the Bankruptcy Court, of the 10-day period set forth in Bankruptcy Rule 3020(e), will constitute the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(d) Authorized Capital Stock. Upon the Effective Date, the authorized capital stock of the Company will conform to the authorized capital stock set forth in the Disclosure Statement, and the issued and outstanding shares of capital stock of the Company will conform to the description set forth in the Term Sheet.

(e) Issuance. Subject to the issuance of the Final Agreement Order, the distribution of the Rights and issuance of the Shares, including the Unsubscribed Shares to be issued and sold by the Company to the Investor hereunder, and issuance of the Purchased Shares to be issued and sold by the Company to the Investor hereunder, at the Closing Date will have been duly and validly authorized and, when the Shares and the Purchased Shares are issued and delivered against payment therefor will be duly and validly issued, fully paid and non-assessable, and free and clear of all taxes, liens, pre-emptive rights, rights of first refusal, subscription and similar rights.

(f) No Conflict. Subject to the entry of the Court Orders and the expiration, or waiver by the Bankruptcy Court, of the 10-day period set forth in Bankruptcy Rules 6004(g) and 3020(e), as applicable, the distribution of the Rights, the issuance, sale and delivery of Shares upon exercise of the Rights and the consummation of the Rights Offering by the Company, the issuance, sale and delivery of the Unsubscribed Shares and the Purchased Shares and the execution and delivery (or, with respect to the Amended Plan, the filing) by the Company of this Agreement and the Amended Plan and compliance by the Company with all of the provisions hereof and thereof and the consummation of the transactions contemplated herein and therein (including compliance by the Investor with its obligations hereunder and thereunder) (i) will not conflict with, or result in a breach or violation of, any of the terms or provisions of, or constitute a default under or result in the acceleration of, or the creation of any lien under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (ii) will not result in any violation of the provisions of the Certificate of Incorporation or Bylaws of the Company in-

cluded in the Amended Plan and as applicable to the Company from and after the Effective Date and (iii) will not result in any violation of, or any termination or material impairment of any rights under, any statute or any license, authorization, injunction, judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties, except in any such case described in subclause (i) or (iii) as will not have or could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(g) Consents and Approvals. No consent, approval, authorization, order, registration or qualification of or with any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties is required for the distribution of the Rights, the issuance, sale and delivery of Shares upon exercise of the Rights and to the Investor hereunder, the issuance, sale and delivery of the Purchased Shares to the Investor hereunder and the consummation of the Rights Offering by the Company and the execution and delivery by the Company of this Agreement, the Registration Rights Agreement and the Amended Plan and performance of and compliance by the Company with all of the provisions hereof and thereof, including without limitation the payment of the Backstop Fee, the Expiration Time Fee, the Termination Fee (as defined in Section 10(d)) and the Transaction Expenses as provided for herein, and the consummation of the transactions contemplated herein and therein, except (i) the entry of the Court Orders and the expiration, or waiver by the Bankruptcy Court, of the 10-day period set forth in Bankruptcy Rules 6004(g) and 3020(e), as applicable, (ii) the registration under the Securities Act (as defined in Section 3(i)) of resales of the ECA Shares, (iii) filings with respect to and the expiration or termination of the waiting period under the HSR Act relating to the sale of ECA Shares to the Investor hereunder, (iv) the filing with the Secretary of State of the State of Delaware of the Certificate of Incorporation to be applicable to the Company from and after the Effective Date and (v) such consents, approvals, authorizations, registrations or qualifications (x) as may be required under the New York Stock Exchange ("NYSE") or the Nasdaq Global Market ("Nasdaq") rules and regulations in order to consummate the transactions contemplated herein, (y) as may be required under state securities or Blue Sky laws in connection with the purchase of ECA Shares by the Investor or (z) the absence of which will not have or could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(h) Arm's Length. The Company acknowledges and agrees that the Investor is acting solely in the capacity of an arm's length contractual counterparty to the Company with respect to the transactions contemplated hereby (including in connection with determining the terms of the Rights Offering and the purchase of the ECA Shares) and not as a financial advisor or a fiduciary to, or an agent of, the Company or any other person. Additionally, the Investor is not advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction in respect of the transactions contemplated hereby. The Company shall consult with its own advisors concerning such matters and shall be responsible for making their own independent investigation and appraisal of the transactions contemplated

hereby, and the Investor shall have no responsibility or liability to the Company with respect thereto. Any review by the Investor of the Company, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Investor and shall not be on behalf of the Company.

(i) Financial Statements. The financial statements and the related notes thereto of the Company and its consolidated subsidiaries included or incorporated by reference in the Exchange Act Documents (as defined in Section 3(j)), the Registration Statement (as defined in Section 5(i)) and the Prospectus (as defined in Section 3(k)) comply or will comply, as the case may be, in all material respects with the applicable requirements of the Securities Act of 1933 and the rules and regulations of the Securities and Exchange Commission (the "Commission") thereunder (collectively, the "Securities Act") and the Securities Exchange Act of 1934 and the rules and regulation of the Commission thereunder (the "Exchange Act"), as applicable, and present fairly or will present fairly, as the case may be, in all material respects the financial position of the Company and its consolidated subsidiaries as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified; such financial statements have been or will have been, as the case may be, prepared in conformity with generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods covered thereby (except as disclosed in the Exchange Act Documents), and the supporting schedules included or incorporated by reference in the Exchange Act Documents, and to be included or incorporated by reference in the Registration Statement and the Prospectus, present fairly or will present fairly, as the case may be, in all material respects, the information required to be stated therein; and the other financial information included or incorporated by reference in the Exchange Act Documents, and to be included or incorporated by reference in the Registration Statement and the Prospectus, has been or will have been, as the case may be, derived from the accounting records of the Company and its subsidiaries and presents fairly or will present fairly, as the case may be, the information shown thereby; and any pro forma financial information and related notes thereto to be included in the Registration Statement and the Prospectus will have been prepared in accordance with the applicable requirements of the Securities Act, and will be based on assumptions that management of the Company believes are reasonable and which will be set forth in the Registration Statement when it becomes effective and the Prospectus as of its date.

(j) Exchange Act Documents. The documents filed under the Exchange Act with the Commission prior to the date of this Agreement (the "Exchange Act Documents"), when they became effective or were filed with the Commission, conformed in all material respects, to the requirements of the Securities Act or the Exchange Act, as applicable, and none of such Exchange Act Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and any further documents so filed and incorporated by reference in the Registration Statement or the Prospectus, as the case may be, when such documents become effective or are filed with the Com-

mission, will conform in all material respects to the requirements of the Exchange Act, and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(k) Preliminary Prospectus. Each Preliminary Prospectus, at the time of filing thereof, will comply in all material respects with the Securities Act and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, the Company makes no representation and warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to the Investor or the Ultimate Purchasers furnished to the Company in writing by the Investor or the Ultimate Purchasers expressly for use in any Preliminary Prospectus. The term "Preliminary Prospectus" means each prospectus included in such registration statement (and any amendments thereto) before it becomes effective, any prospectus filed with the Commission pursuant to Rule 424(a) under the Securities Act and the prospectus included in the Registration Statement, as of their date or at the time of its effectiveness, as the case may be, that omits information deemed pursuant to Rule 430A under the Securities Act to be part of such Registration Statement, and the term "Prospectus" means the prospectus in the form first used to confirm sales of the ECA Shares.

(l) Registration Statement and Prospectus. As of the effective date of the Registration Statement, the Registration Statement will comply in all material respects with the Securities Act and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading; and as of the applicable filing date of the Prospectus and any amendment or supplement thereto and as of the Closing Date, the Prospectus and any amendment or supplement thereto will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation and warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to the Investor or the Ultimate Purchasers furnished to the Company in writing by the Investor or the Ultimate Purchasers expressly for use in the Registration Statement and the Prospectus and any amendment or supplement thereto.

(m) No Material Adverse Change. Since September 30, 2006, (i) there has not been any change in the capital stock or long-term debt of the Company or any of its subsidiaries, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of its capital stock, or any material adverse change, or any development involving a material adverse change, that has had individually or in the aggregate a Material Adverse Effect; provided, however, that none of the following shall be deemed, either alone or in combination, to consti-

tute, and none of the following shall be taken into account in determining whether there has been or will be a material adverse change: (a) changes in conditions in the U.S. or global economy or capital or financial markets generally, including changes in interest or exchange rates, (b) changes in the airline industry taken as a whole, (c) changes in general legal, tax, regulatory, political or economic conditions affecting the airline industry, (d) changes in GAAP, (e) the commencement, occurrence, continuation or intensification of any war, sabotage, armed hostilities or acts of terrorism, or (f) any failure by the Company to meet internal or published projections, forecasts or revenue or earnings predictions (provided that this clause (f) shall not exclude any underlying effect, event, development, change or occurrence which gave rise to or contributed to such failure or change), provided further that, with respect to clauses (a), (b), (c) and (e), the impact on the Company is not disproportionate to the impact on other comparable entities in the airline industry; (ii) neither the Company nor any of its subsidiaries has entered into any transaction or agreement that is material to the Company and its subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company and its subsidiaries taken as a whole; and (iii) neither the Company nor any of its subsidiaries has sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority, except in each case (x) as otherwise disclosed in the Exchange Act Documents and (y) the transactions contemplated hereby or by the Term Sheet.

(n) Descriptions of the Transaction Documents. The descriptions contained in the Registration Statement and the Prospectus of this Agreement, the Registration Rights Agreement, the Syndication Agreement, the Amended Plan, the Agreement Order and the Confirmation Order (collectively, the "Transaction Documents") will conform in all material respects to the Transaction Documents.

(o) No Violation or Default. Neither the Company nor any of its subsidiaries is in violation of its charter or by-laws or similar organizational documents. Neither the Company nor any of its subsidiaries is: (i) except as a result of any Proceedings, in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject; or (ii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (i) and (ii) above, for any such default or violation that would not, individually or in the aggregate, have a Material Adverse Effect.

(p) Legal Proceedings. Except as described in the Exchange Act Documents, there are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or any of its subsidiaries is or may be a

party or to which any property of the Company or any of its subsidiaries is or may be the subject that, individually or in the aggregate, if determined adversely to the Company or any of its subsidiaries, could reasonably be expected to have a Material Adverse Effect or materially and adversely affect the ability of the Company to perform its obligations under the Transaction Documents, no such investigations, actions, suits or proceedings are threatened or, to the best knowledge of the Company, contemplated by any governmental or regulatory authority or threatened by others; and (i) there are no current or pending legal, governmental or regulatory actions, suits or proceedings that are required under the Exchange Act to be described in the Exchange Act Documents that are not so described and (ii) there are no statutes, regulations or contracts or other documents that are required under the Exchange Act to be filed as exhibits to the Exchange Act Documents or described in the Exchange Act Documents that are not so filed or described.

(q) Independent Accountants. Ernst & Young LLP ("E&Y"), who have certified certain financial statements of the Company and its consolidated subsidiaries, are an independent registered public accounting firm with respect to the Company and its consolidated subsidiaries as required by the Securities Act.

(r) Title to Intellectual Property. The Company and its subsidiaries own or possess adequate rights to use all material patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) necessary for the conduct of their respective businesses, except where the failure to own or possess any such rights could not reasonably be expected to have a Material Adverse Effect; and, except as could not reasonably be expected to have a Material Adverse Effect, the conduct of their respective businesses will not conflict in any material respect with any such rights of others, and the Company and its subsidiaries have not received any notice of any material claim of infringement or conflict with any such material rights of others.

(s) No Undisclosed Relationships. No relationship, direct or indirect, exists between or among the Company or any of its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any of its subsidiaries, on the other, that is required by the Exchange Act to be described in the Exchange Act Documents and that are not described.

(t) Investment Company Act. The Company is not and, after giving effect to the offering and sale of the Shares and the Purchased Shares and the application of the proceeds thereof as described in the Prospectus, will not be required to register as an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

(u) Licenses and Permits. The Company and its subsidiaries possess all licenses, certificates, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as described in the Disclosure Statement and the Exchange Act Documents, except where the failure to possess or make the same would not, individually or in the aggregate, have a Material Adverse Effect; and except as described in the Exchange Act Documents and except as would not reasonably be expected to have a Material Adverse Effect, neither the Company nor any of its subsidiaries has received notice of any revocation or modification of any such license, certificate, permit or authorization or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course.

(v) Compliance With Environmental Laws. The Company and its subsidiaries (i) are in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "Environmental Laws"); (ii) have received and are in compliance with all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except, in the case of each of the clauses (i), (ii) and (iii), as would not, individually or in the aggregate, have a Material Adverse Effect.

(w) Compliance With ERISA. Each employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), that is maintained, administered or contributed to by the Company or any of its affiliates for employees or former employees of the Company and its affiliates has been maintained in compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including, but not limited to, ERISA and the Internal Revenue Code of 1986, as amended (the "Code"), except where the failure to comply with such applicable statutes, orders, rules and regulations would not, individually or in the aggregate, have a Material Adverse Effect; as of the date hereof, no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any such plan, excluding transactions effected pursuant to a statutory or administrative exemption, except such transactions that would not, individually or in the aggregate, have a Material Adverse Effect; and for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, except as disclosed in Business Plan 3.1 of the Company (consisting of the following documents: Investor Presentation dated January 2007, Labor Presentation dated January 2007 and Passenger Revenue Support BP 3.0 dated January 19, 2007) (the "Business Plan"), as of the date hereof, no "accumulated funding deficiency" as defined in Section 412 of the Code and Section 402 of the Pension Protection Act of 2006 exists, and, as of December 31, 2006, the aggregate pre-

sent value of all benefits accrued under such plans determined using actuarial assumptions consistent with Section 402 of the Pension Protection Act of 2006 exceeded the aggregate fair market value of the assets of such plans (excluding for these purposes accrued but unpaid contributions) by approximately $277 million.

(x) Accounting Controls. The Company and its subsidiaries maintain systems of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(y) Insurance. The Company and its subsidiaries have insurance covering their respective properties, operations, personnel and businesses, including business interruption insurance, which insurance is in amounts and insures against such losses and risks as are customary for companies whose businesses are similar to the Company and its subsidiaries; and, as of the date hereof, neither the Company nor any of its subsidiaries has (i) received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage at reasonable cost from similar insurers as may be necessary to continue its business.

(z) No Unlawful Payments. Neither the Company nor any of its subsidiaries nor, to the best knowledge of the Company, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977 or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(aa) No Restrictions on Certain Dividends and Other Payments. Subject to the Bankruptcy Code, Northwest Airlines, Inc., which is an indirect wholly owned subsidiary of the Company, and any of its direct or indirect parent entities which are subsidiaries of the Company, are not currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party, other than any credit agreement to which it is a party or is subject, from paying any dividends to its parent, from making any other distribution on such subsidiary's capital stock, from repaying to the Company or any other subsidiary of the Company any loans or advances to such subsidiary from the Company or from any other subsidiary of the Company or from trans-

ferring any of such subsidiary's properties or assets to the Company or any other subsidiary of the Company.

(bb) No Broker's Fees. Except for Seabury Transportation Advisors LLC, neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against the Company or any of its subsidiaries or the Investor for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Rights or the Shares or the Purchased Shares.

(cc) No Registration Rights. Except for registration rights granted to a purchaser of New Common Stock as contemplated by Section 5(j)(iv), as of the Effective Date, no person (other than the Investor and the Ultimate Purchasers) will have the right to require the Company or any of its subsidiaries to register any securities for sale under the Securities Act by reason of the filing of the Registration Statement with the Commission or by reason of the issuance and sale of the Rights and the ECA Shares. Notwithstanding the foregoing, members of management of the Company who receive shares of New Common Stock or stock options pursuant to the transactions contemplated herein may have such shares of New Common Stock and the shares of New Common Stock issuable upon the exercise of such stock options registered on a Form S-8 under the Securities Act.

(dd) No Stabilization. The Company has not taken, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the New Common Stock.

(ee) Margin Rules. Neither the issuance, sale and delivery of the Rights or the Shares or the Purchased Shares nor the application of the proceeds therefrom by the Company as to be described in the Registration Statement and the Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

4. Representations and Warranties of the Investor. The Investor represents and warrants to, and agrees with, the Company as set forth below. Each representation, warranty and agreement is made as of the date hereof and as of the Closing Date:

(a) Incorporation. The Investor has been duly incorporated and is validly existing as a corporation in good standing under the laws of Delaware.

(b) Corporate Power and Authority. The Investor has the requisite corporate power and authority to enter into, execute and deliver this Agreement and to perform its obligations hereunder and has taken all necessary corporate action required for the due authorization, execution, delivery and performance by it of this Agreement.

(c) Execution and Delivery. This Agreement has been duly and validly executed and delivered by the Investor and constitutes its valid and binding obligation, enforceable against it in accordance with its terms, and the execution and delivery by

the Investor of this Agreement (i) will not conflict with, or result in a breach or violation of, any of the terms or provisions of, or constitute a default under, any agreement or instrument to which the Investor is a party or by which the Investor is bound or to which any of the Property or assets of the Investor is subject and (ii) will not result in any violation of any applicable law, except in any such case described in subclause (i) or (ii) as will not have or could not be reasonably expected to have a material adverse effect on the ability of the Investor to consummate the transactions contemplated by this Agreement.

(d) Securities Laws Compliance. The ECA Shares will not be offered for sale, sold or otherwise transferred by the Investor except pursuant to a registration statement or in a transaction exempt from or not subject to registration under the Securities Act and any applicable state securities laws.

(e) Consents and Approvals. No consent, approval, authorization, order, registration or qualification of or with any court or governmental agency or body having jurisdiction over the Investor is required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, other than (i) the registration under the Securities Act of resales of the ECA Shares, (ii) filings with respect to and the expiration or termination under the HSR Act relating to the sale of ECA Shares to the Investor hereunder and (iii) as may be required under state securities or Blue Sky laws in connection with the purchase of ECA Shares by the Investor.

(f) Information. The Investor acknowledges that it has been afforded the opportunity to ask questions and receive answers concerning the Company and to obtain additional information that it has requested to verify the accuracy of the information contained herein. Notwithstanding the foregoing, nothing contained herein will operate to modify or limit in any respect the representations and warranties of the Company or to relieve it from any obligations to the Investor for breach thereof or the making of misleading statements or the omission of material facts in connection with the transactions contemplated herein.

(g) Purchase Intent. The Investor is not acquiring the ECA Shares with a view to distributing or reselling such ECA Shares or any part thereof except pursuant to an effective registration statement under the Securities Act or an exemption from such registration. The Investor understands that the Investor must bear the economic risk of this investment indefinitely, unless the ECA Shares are registered pursuant to the Securities Act and any applicable state securities or Blue Sky laws or an exemption from such registration is available, and further understands that the Company has no present intention of registering the resale of any ECA Shares other than pursuant to the Registration Rights Agreement. Nothing contained herein shall be deemed a representation or warranty by the Investor to hold the ECA Shares for any period of time.

(h) Investor Status. The Investor is as of the date hereof, and will be as of the Closing Date, an "accredited investor" as defined in Rule 501(a) under the Securities Act.

(i) Reliance on Exemptions. The Investor understands that the ECA Shares are being offered and sold to the Investor in reliance upon specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Investor's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the ECA Shares.

(j) Experience of the Investor. The Investor, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the ECA Shares. The Investor understands and is able to bear any economic risks associated with such investment (including without limitation the necessity of holding such ECA Shares for an indefinite period of time) and is able to afford a complete loss of its investment in the ECA Shares.

(k) Access to Information. The Investor is knowledgeable, sophisticated and experienced in making, and is qualified to make, decisions with respect to investments in securities representing an investment decision like that involved in the purchase of the ECA Shares. The Investor acknowledges that it has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the ECA Shares and the merits and risks of investing in the ECA Shares; (ii) access to information about the Company and its subsidiaries and their respective financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Neither such inquiries nor any other investigation conducted by or on behalf of the Investor or its representatives or counsel shall modify, amend or affect the Investor 's right to rely on the truth, accuracy and completeness of the Exchange Act Documents and the Company's representations and warranties contained in the Transaction Documents. The Investor understands that the Investor's investment in the ECA Shares involves a high degree of risk.

5. Additional Covenants of the Company. The Company agrees with the Investor:

(a) Agreement Motion and Agreement Order. Not later than February 15, 2007, the Company will file a motion and supporting papers (the "Agreement Motion") (including an order in form and substance satisfactory to each of the Company and the Investor) seeking an order under sections 105 and 363 of the Bankruptcy Code

approving this Agreement, the Syndication Agreement, the Registration Rights Agreement, the payment, on the terms and at the time specified herein, of the Back-stop Fee, the Expiration Time Fee and the Termination Fee, the reimbursement, on the terms and at the time specified herein, of Transaction Expenses and the release and exculpation of the Investor, its affiliates, the Ultimate Purchasers, their affiliates, representatives and advisors from any liability for participation in the transactions contemplated hereby by the Registration Rights Agreement, the Amended Plan and the Syndication Agreement to the fullest extent permitted under applicable law and authorizing the Company to enter into this Agreement and the Registration Rights Agreement (the "Agreement Order"). The Company agrees that it shall use its commercially reasonable efforts, subject to any applicable fiduciary duties, to (i) fully support the Agreement Motion and any application seeking Bankruptcy Court approval and authorization to pay the fees and expenses hereunder, as an administrative expense of the estate, including, but not limited to, filing supporting affidavits on behalf of the Company and/or its financial advisor and providing the testimony of the affiants if needed and (ii) obtain approval of the Agreement Order as soon as practicable following the filing of the motion therefor.

(b) Term Sheet, Disclosure Statement and Amended Plan. As soon as practicable after the date of this Agreement, the Company and the other Debtors will file a disclosure statement (the "Initial Disclosure Statement") and seek Bankruptcy Court approval thereof under section 1125 of the Bankruptcy Code. The disclosure statement in the form approved by the Bankruptcy Court is hereinafter referred to as the "Disclosure Statement". The Company will seek confirmation of the Amended Plan as soon as practicable after the end of the solicitation period. Prior to filing or disseminating the Initial Disclosure Statement or any revisions, supplements, modifications or amendments to the Initial Disclosure Statement or the Existing Plan, the Company will provide to the Investor and its counsel a copy of such filing, revision, modification, supplement or amendment and a reasonable opportunity to review and comment on such documents prior to being filed or disseminated; provided that such review and comment shall not constitute a presumption or other determination that the documents constitute (and comply with the definition of) either an Amended Plan or a Disclosure Statement, as applicable. In addition, the Company will provide to the Investor and its counsel a copy of a draft of the Confirmation Order and a reasonable opportunity to review and comment on such draft prior to such order being filed with the Bankruptcy Court.

(c) Rights Offering. To effectuate the Rights Offering as provided herein and to use commercially reasonable efforts to seek entry of an order of the Bankruptcy Court, prior to the commencement of the Rights Offering, authorizing the Company to conduct the Rights Offering pursuant to the securities exemption provisions set forth in section 1145(a) of the Bankruptcy Code.

(d) Listing. To use commercially reasonable efforts to list and maintain the listing of the New Common Stock (and any applicable associated share purchase

rights) on the NYSE or the quotation of the New Common Stock (and any applicable associated share purchase rights) on Nasdaq.

(e) Notification. To notify, or to cause the Subscription Agent to notify, on each Friday during the Rights Exercise Period and on each Business Day during the five (5) Business Days prior to the Expiration Time (and any extensions thereto), or more frequently if reasonably requested by the Investor, the Investor of the aggregate number of Rights known by the Company or the Subscription Agent to have been exercised pursuant to the Rights Offering as of the close of business on the preceding Business Day or the most recent practicable time before such request, as the case may be.

(f) Unsubscribed Shares. To determine the number of Unsubscribed Shares, if any, in good faith, and to provide a Purchase Notice or a Satisfaction Notice that accurately reflects the number of Unsubscribed Shares as so determined and to provide to the Investor a certification by the Subscription Agent of the Unsubscribed Shares or, if such certification is not available, such written backup to the determination of the Unsubscribed Shares as Investor may reasonably request.

(g) Stock Splits, Dividends, etc. In the event of any stock split, stock dividend, stock combination or similar transaction affecting the number of issued and outstanding shares of New Common Stock, the Purchase Price and the number of ECA Shares to be purchased hereunder will be proportionally adjusted to reflect the increase or decrease in the number of issued and outstanding shares of New Common Stock.

(h) HSR. To promptly prepare and file all necessary documentation and to effect all applications that are necessary or advisable under the HSR Act so that the applicable waiting period shall have expired or been terminated thereunder with respect to the purchase of ECA Shares hereunder, and not to take any action that is intended or reasonably likely to materially impede or delay the ability of the parties to obtain any necessary approvals required for the transactions contemplated by this Agreement.

(i) Effectiveness of the Registration Statement. To prepare and file, in cooperation with the Investor, a shelf registration statement (the "Registration Statement") covering resales of New Common Stock held by the Investor and the Ultimate Purchasers as soon as practicable after the date hereof, but in no event later than April 2, 2007, and provide the Investor with a reasonable opportunity to review and propose changes to the Registration Statement before any filing with the Commission; to advise the Investor, promptly after it receives notice thereof, of the time when the Registration Statement has been filed or has become effective or any prospectus or prospectus supplement has been filed and to furnish the Investor with copies thereof; to advise the Investor promptly after it receives notice thereof of any comments or inquiries by the Commission (and to furnish the Investor with copies of any correspondence related thereto), of the issuance by the Commission of any stop order or of any order prevent-

ing or suspending the use of any prospectus, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or prospectus or for additional information. The Company shall use its commercially reasonable efforts to cause such Registration Statement to become effective not later than June 30, 2007. The foregoing provisions shall be set forth in the Registration Rights Agreement.

(j) Clear Market. For a period of 180 days after the Closing Date (the "Restricted Period"), the Company will not (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of, directly or indirectly, any shares of capital stock of the Company or any securities convertible into or exercisable or exchangeable for capital stock of the Company or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the capital stock of the Company, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of capital stock of the Company or such other securities, in cash or otherwise, without the prior written consent of the Investor, except for (i) Rights and New Common Stock issuable upon exercise of Rights, (ii) stock options, stock and restricted stock granted to members of management of the Company on or after the Effective Date and shares of New Common Stock issued upon the exercise of any such stock options and issued upon the exercise of any stock options outstanding as of the Effective Date, (iii) the issuance of New Common Stock and other equity interests as set forth in the Term Sheet and pursuant to the Amended Plan and (iv) the issuance of up to $150,000,000 of New Common Stock to one or more parties on the list provided to the Investor prior to the date hereof (hereinafter referred to collectively as the "Third Party Purchaser") at a purchase price per share not less than the Purchase Price. Notwithstanding the foregoing, if (1) during the last 17 days of the Restricted Period, the Company issues an earnings release or material news or a material event relating to the Company occurs; or (2) prior to the expiration of the Restricted Period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the Restricted Period, the restrictions imposed by this Agreement shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

(k) Use of Proceeds. The Company will apply the net proceeds from the sale of the Shares and the Purchased Shares as provided in the Term Sheet.

(l) No Stabilization. The Company will not take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the New Common Stock.

(m) Registration Rights Agreement. The Company will file with the Bankruptcy Court as soon as practicable after the date hereof, but in no event later than February 15, 2007, a form of a registration rights agreement (the "Registration Rights

Agreement") in form and substance reasonably satisfactory to the Company and the Investor and which shall include the terms set forth in Exhibit B hereto. The Company and the Investor shall use commercially reasonable efforts to negotiate and execute, and seek Bankruptcy Court approval of, the Registration Rights Agreement as promptly as practicable.

6. Additional Covenants of the Investor. The Investor agrees with the Company:

(a) Information. To provide the Company with such information as the Company reasonably requests regarding the Investor for inclusion in the Registration Statement and the Disclosure Statement.

(b) HSR Act. To use reasonable best efforts to promptly prepare and file all necessary documentation and to effect all applications that are necessary or advisable under the HSR Act so that the applicable waiting period shall have expired or been terminated thereunder with respect to the purchase of ECA Shares hereunder, and not to take any action that is intended or reasonably likely to materially impede or delay the ability of the parties to obtain any necessary approvals required for the transactions contemplated by this Agreement.

(c) Entry of the Agreement Order. To use commercially reasonable efforts to facilitate the entry of the Agreement Order.

(d) No Action in Bankruptcy Court. To not file any pleading or take any other action in the Bankruptcy Court with respect to this Agreement, the Amended Plan, the Disclosure Statement or the Confirmation Order of the consummation of the transactions contemplated hereby or thereby that is inconsistent in any material respect with this Agreement or the Company's efforts to obtain the entry of court orders consistent with this Agreement.

(e) Transfer Restrictions. The Investor covenants and agrees that ECA Shares will only be disposed of by it pursuant to an effective registration statement under the Securities Act or pursuant to an available exemption from the registration requirements of the Securities Act and in compliance with any applicable state securities or Blue Sky laws. The Investor agrees to the imprinting, so long as is required by this Section 6(e), of the following legend on any certificate evidencing the ECA Shares:

THE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER ANY STATE SECURITIES ("BLUE SKY") LAWS. THE SHARES HAVE NOT BEEN ACQUIRED WITH A VIEW TO DISTRIBUTION OR RESALE EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM SUCH REGISTRATION AND IN COMPLIANCE WITH APPLICABLE BLUE SKY LAWS. THE SHARES MAY NOT BE SOLD, ASSIGNED,

MORTGAGED, PLEDGED, ENCUMBERED, HYPOTHECATED, TRANSFERRED OR OTHERWISE DISPOSED OF (EXCEPT PURSUANT TO THE SYNDICATION AGREEMENT DATED AS OF FEBRUARY 12, 2007 BETWEEN J.P. MORGAN SECURITIES INC. AND THE BACKSTOP PURCHASERS REFERRED TO THEREIN) UNLESS EITHER (I) A REGISTRATION STATEMENT WITH RESPECT TO THE SHARES IS EFFECTIVE UNDER THE ACT OR (II) UNLESS WAIVED BY THE CORPORATION, THE CORPORATION RECEIVES AN OPINION OF LEGAL COUNSEL REASONABLY SATISFACTORY TO THE CORPORATION THAT NO VIOLATION OF THE ACT WILL BE INVOLVED IN SUCH TRANSACTION OR A NO ACTION LETTER WITH RESPECT TO SUCH TRANSACTION FROM THE STAFF OF THE COMMISSION.

Certificates evidencing ECA Shares shall not be required to contain such legend or any other legend (i) while a Registration Statement covering the resale of the ECA Shares is effective under the Securities Act, or (ii) following any sale of ECA Shares pursuant to Rule 144, or (iii) if ECA Shares are eligible for sale under Rule 144(k), or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the Staff of the Commission). Following the Effective Date or at such earlier time as a legend is no longer required for certain ECA Shares, the Company will, promptly, following the delivery by the Investor to the Company of a legended certificate representing such ECA Shares, deliver or cause to be delivered to the Investor a certificate representing such ECA Shares that is free from all restrictive and other legends.

In the event the above legend is removed from any of the ECA Shares and thereafter the effectiveness of a registration statement covering such ECA Share is suspended or the Company determines that a supplement or amendment thereto is required by applicable securities laws, then the Company may immediately place a stop-transfer order against the certificates with respect to the sale of any ECA Share pursuant to such registration statement, and upon reasonable advance notice to the Investor, the Company may require that the above legend be placed on any such ECA Share that cannot then be sold pursuant to an effective registration statement or under Rule 144 and the Investor shall cooperate in the replacement of such legend. Such legend shall thereafter be removed when such ECA Share may again be sold pursuant to an effective registration statement or under Rule 144

7. Conditions to the Obligations of the Investor. The obligation of the Investor to purchase the ECA Shares pursuant to this Agreement on the Closing Date are subject to the following conditions:

(a) Agreement Order. The Agreement Order shall have been entered by the Bankruptcy Court in the form satisfactory to each of the Company and the Investor, and the Agreement Order shall have become a Final Agreement Order.

(b) Inconsistent Transaction. Subject to the approval of this Agreement by the Bankruptcy Court, the Company and the other Debtors shall not have made a public announcement, entered into an agreement or filed any pleading or document with the Bankruptcy Court evidencing its intention to support, or otherwise supported, any transaction inconsistent with this Agreement or the Amended Plan, shall not have filed any plan that is not the Amended Plan and shall not have been agreed to, consented to, provided any support to, solicited or encouraged, participated in the formulation of, or voted for any transaction or plan of reorganization or liquidation other than the Amended Plan, or any motion or other filing seeking dismissal of the Debtors' chapter 11 cases, the appointment of a trustee or examiner in the Debtors' chapter 11 cases or the conversion of the Debtors' chapter 11 cases to cases under chapter 7 of the Bankruptcy Code (a "Competing Transaction").

(c) Confirmation Order. An order of the Bankruptcy Court confirming the Amended Plan (the "Confirmation Order") shall have been entered and such order shall be non-appealable, shall not have been appealed within ten (10) days of entry or, if such order is appealed, shall not have been stayed pending appeal, and there shall not have been entered by any court of competent jurisdiction any reversal, modification or vacatur, in whole or in part, of the Confirmation Order.

(d) Disclosure Statement, Amended Plan and Confirmation Order. (i) The Disclosure Statement and the Amended Plan shall not conflict with and shall be consistent with the Term Sheet and the representations, warranties and covenants made by the Company hereunder and (ii) the financial conditions to closing set forth in the Term Sheet shall have been satisfied.

(e) Conditions to Confirmation. The conditions to confirmation and the conditions to the Effective Date of the Amended Plan shall have been satisfied or waived by the Investor and the Company in accordance with the Amended Plan, and the Effective Date shall have occurred or will occur on the Closing Date.

(f) [Reserved]

(g) Rights Offering. The Expiration Time shall have occurred.

(h) Purchase Notice. The Investor shall have received a Purchase Notice in accordance with Section 1(e) from the Company, dated as of the Determination Date, certifying as to the number of Unsubscribed Shares to be purchased pursuant to the Backstop Commitment.

(i) Valid Issuance. The New Common Stock shall be, upon payment of the aggregate Purchase Price as provided herein, validly issued, fully paid, non-assessable and free and clear of all taxes, liens, pre-emptive rights, rights of first refusal, subscription and similar rights.

(j) No Restraint. No judgment, injunction, decree or other legal restraint shall prohibit the consummation of the Amended Plan, the Rights Offering or the transactions contemplated by this Agreement.

(k) HSR Act. If the purchase of ECA Shares by the Investor pursuant to this Agreement is subject to the terms of the HSR Act, the applicable waiting period shall have expired or been terminated thereunder with respect to such purchase.

(l) Enforceability. This Agreement shall be valid and enforceable against the Company and the Company shall not be in breach of this Agreement.

(m) NYSE/Nasdaq. The New Common Stock issuable upon exercise of the Rights shall be approved for trading on the NYSE or Nasdaq, subject to official notice of issuance.

(n) Comfort Letters. If the effective date of the Registration Statement has occurred on or prior to the Closing Date, E&Y shall have furnished to the Investor letters dated such Effective Date and the Closing Date and addressed to the Investor, in form and substance reasonably satisfactory to the Investor, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in the Registration Statement and the Prospectus; provided, that such letters shall use a "cut-off" date no more than three (3) Business Days prior to the date of delivery thereof.

(o) Opinion of Counsel for the Company. Cadwalader, Wickersham & Taft LLP, counsel for the Company, and Michael Miller, Vice President—Legal of the Company, shall have each furnished to the Investor their written opinion, dated the Closing Date and addressed to the Investor, in form and substance reasonably satisfactory to the Investor.

(p) No Legal Impediment to Issuance. No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued in each by any federal, state or foreign governmental or regulatory authority that, as of the Closing Date, prohibits the issuance or sale of the Rights or the Shares or the Purchased Shares or the resale of the ECA Shares pursuant to the Syndication Agreement; and no injunction or order of any federal, state or foreign court shall have been issued that, as of the Closing Date, prohibits the issuance or sale of the Rights or the Shares or the Purchased Shares or the resale of the ECA Shares pursuant to the Syndication Agreement.

(q) Good Standing. The Investor shall have received on and as of the Closing Date satisfactory evidence of the good standing of the Company and its significant subsidiaries (as such term is defined in Article 1, Rule 1-02 of Regulation S-X promulgated pursuant to the Securities Act) in their respective jurisdictions of organization,

in each case in writing or any standard form of telecommunication from the appropriate governmental authorities of such jurisdictions.

(r) Representations and Warranties and Covenants. The representations and warranties of the Company in paragraphs (a)-(l), (n), (q), (t), (u) and (aa)-(ee) of Section 3 shall be true and correct on the date hereof and as if made on the Closing Date, the representations and warranties of the Company in paragraphs (m), (o), (p), (r), (s) and (v)-(z) of Section 3 shall be true and correct on the date hereof (and shall not be required to be true on any subsequent date), and the Company shall have complied in all material respects with all covenants in this Agreement and in the Registration Rights Agreement.

(s) Officer's Certificate. The Investor shall have received on and as of the Closing Date a certificate of the chief financial officer or chief accounting officer of the Company and one additional senior executive officer of the Company who is satisfactory to the Investor (i) confirming that the Company has satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date, (ii) to the effect set forth in Sections 7(f) and 7(r) and (iii) if the Registration Statement has been declared effective at or prior to the Closing Date, confirming that such officers have carefully reviewed the Registration Statement and the Prospectus and, to the best knowledge of such officers, the information set forth therein is true and correct.

(t) Bankruptcy Court Approval. The Registration Rights Agreement shall have been approved by the Bankruptcy Court in a final order and shall have been executed by the parties thereto in substantially the same form as the forms thereof filed with the Bankruptcy Court.

(u) Fees, Etc. All fees and other amounts required to be paid or reimbursed to the Investor as of the Closing Date shall have been paid or reimbursed.

8. Indemnification.

(a) Subject to the approval of this Agreement by the Bankruptcy Court, whether or not the Rights Offering is consummated or this Agreement or the Backstop Commitment is terminated, the Company (in such capacity, the "Indemnifying Party") shall indemnify and hold harmless the Investor and Ultimate Purchasers, their respective affiliates and their respective officers, directors, employees, agents and controlling persons (each an "Indemnified Person") from and against any and all losses, claims, damages, liabilities and reasonable expenses, joint or several, to which any such Indemnified Person may become subject arising out of or in connection with any claim, challenge, litigation, investigation or proceeding with respect to the Rights Offering, the Backstop Commitment, the Transaction Documents, the Registration Statement or the Prospectus or the transactions contemplated thereby, including without limitation, payment of the Transaction Expenses, Backstop Fee or Termination Fee, if any, distribution of Rights, purchase and sale of Shares in the Rights Offering and purchase and sale of ECA Shares pursuant to this Agreement, or any breach of the Company of this

Agreement or the Registration Rights Agreement, regardless of whether any of such Indemnified Persons is a party thereto, and to reimburse such Indemnified Persons for any reasonable legal or other reasonable out-of-pocket expenses as they are incurred in connection with investigating, responding to or defending any of the foregoing, provided that the foregoing indemnification will not, as to any Indemnified Person, apply to losses, claims, damages, liabilities or expenses to the extent that they are finally judicially determined to have resulted from (i) bad faith, gross negligence or willful misconduct on the part of such Indemnified Person or (ii) statements or omissions in the Preliminary Prospectus, Registration Statement or Prospectus or any amendment or supplement thereto made in reliance upon or in conformity with information relating to the Investor or the Ultimate Purchaser furnished to the Company in writing by or on behalf of the Investor or the Ultimate Purchaser expressly for use in the Preliminary Prospectus, Registration Statement or Prospectus or any amendment or supplement thereto or (iii) any statement or omission in the Preliminary Prospectus, Registration Statement or Prospectus or any amendment or supplement thereto that is corrected in any subsequent prospectus that was delivered to the Investor or the Ultimate Purchaser at least two Business Days prior to the relevant sale or sales by the Investor or Ultimate Purchaser. If for any reason the foregoing indemnification is unavailable to any Indemnified Person or insufficient to hold it harmless, then the Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Person as a result of such loss, claim, damage, liability or expense in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnifying Party on the one hand and such Indemnified Person on the other hand but also the relative fault of the Indemnifying Party, on the one hand, and such Indemnified Person, on the other hand, as well as any relevant equitable considerations. It is hereby agreed that the relative benefits to the Indemnifying Party on the one hand and all Indemnified Persons on the other hand shall be deemed to be in the same proportion as (i) the total value received or proposed to be received by the Company pursuant to the sale of Shares and Purchased Shares contemplated by this Agreement bears to (ii) the fee paid or proposed to be paid to the Investor in connection with such sale plus the difference between the price paid by the Investor for the purchase of the Purchased Shares and the market value of the Purchased Shares on the Closing Date. The Indemnifying Party also agrees that no Indemnified Person shall have any liability based on their exclusive or contributory negligence or otherwise to the Indemnifying Party, any person asserting claims on behalf of or in right of any of the Indemnifying Party, or any other person in connection with or as a result of the Rights Offering, the Backstop Commitment, the Transaction Documents, the Registration Statement, the Prospectus or the transactions contemplated thereby, except as to any Indemnified Person to the extent that any losses, claims, damages, liability or expenses incurred by the Company are finally judicially determined to have resulted from (i) bad faith, gross negligence or willful misconduct of such Indemnified Person in performing the services that are the subject of this Agreement or the Registration Rights Agreement or (ii) statements or omissions in the Preliminary Prospectus, Registration Statement or Prospectus or any amendment or supplement thereto made in reliance upon or in conformity with information relating to the Investor or the Ultimate Purchaser furnished to the Company in

writing by or on behalf of the Investor or the Ultimate Purchaser expressly for use in the Preliminary Prospectus, Registration Statement or Prospectus or any amendment or supplement thereto or (iii) any statement or omission in the Preliminary Prospectus, Registration Statement or Prospectus or any amendment or supplement thereto that is corrected in any subsequent prospectus that was delivered to the Investor or the Ultimate Purchaser at least two Business Days prior to the relevant sale or sales by the Investor or Ultimate Purchaser; provided, however, that in no event shall an Indemnified Person or such other parties have any liability for any indirect, consequential or punitive damages in connection with or as a result of any of their activities related to the foregoing. The indemnity, reimbursement and contribution obligations of the Indemnifying Party under this Section 8 shall be in addition to any liability that the Indemnifying Party may otherwise have to an Indemnified Person and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Indemnifying Party and any Indemnified Person.

(b) Promptly after receipt by an Indemnified Person of notice of the commencement of any claim, litigation, investigation or proceeding relating to the Transaction Documents, the Registration Statement, the Prospectus or any of the transactions contemplated thereby ("Proceedings"), such Indemnified Person will, if a claim is to be made hereunder against the Indemnifying Party in respect thereof, notify the Indemnifying Party in writing of the commencement thereof; provided that (i) the omission so to notify the Indemnifying Party will not relieve it from any liability that it may have hereunder except to the extent it has been materially prejudiced by such failure and (ii) the omission so to notify the Indemnifying Party will not relieve it from any liability that it may have to an Indemnified Person otherwise than on account of this Section 8. In case any such Proceedings are brought against any Indemnified Person and it notifies the Indemnifying Party of the commencement thereof, the Indemnifying Party will be entitled to participate therein, and, to the extent that it may elect by written notice delivered to such Indemnified Person, to assume the defense thereof, with counsel reasonably satisfactory to such Indemnified Person, provided that if the defendants in any such Proceedings include both such Indemnified Person and the Indemnifying Party and such Indemnified Person shall have concluded that there may be legal defenses available to it that are different from or additional to those available to the Indemnifying Party, such Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such Proceedings on behalf of such Indemnified Person. Upon receipt of notice from the Indemnifying Party to such Indemnified Person of its election so to assume the defense of such Proceedings and approval by such Indemnified Person of counsel, the Indemnifying Party shall not be liable to such Indemnified Person for expenses incurred by such Indemnified Person in connection with the defense thereof (other than reasonable costs of investigation) unless (i) such Indemnified Person shall have employed separate counsel in connection with the assertion of legal defenses in accordance with the proviso to the next preceding sentence (it being understood, however, that the Indemnifying Party shall not be liable for the expenses of more than one separate counsel, approved by Investor, representing the Indemnified Persons who are parties to such Proceedings), (ii) the Indemnifying Party shall not have employed counsel

reasonably satisfactory to such Indemnified Person to represent such Indemnified Person within a reasonable time after notice of commencement of the Proceedings or (iii) the Indemnifying Party shall have authorized in writing the employment of counsel for such Indemnified Person.

(c) The Indemnifying Party shall not be liable for any settlement of any Proceedings effected without its written consent (which consent shall not be unreasonably withheld). If any settlement of any Proceeding is consummated with the written consent of the Indemnifying Party or if there is a final judgment for the plaintiff in any such Proceedings, the Indemnifying Party agrees to indemnify and hold harmless each Indemnified Person from and against any and all losses, claims, damages, liabilities and expenses by reason of such settlement or judgment in accordance with, and subject to the limitations of, the provisions of this Section 8. The Indemnifying Party shall not, without the prior written consent of an Indemnified Person (which consent shall not be unreasonably withheld), effect any settlement of any pending or threatened Proceedings in respect of which indemnity has been sought hereunder by such Indemnified Person unless (a) such settlement includes an unconditional release of such Indemnified Person in form and substance satisfactory to such Indemnified Person from all liability on the claims that are the subject matter of such Proceedings and (b) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

9. Survival of Representations and Warranties, Etc. Notwithstanding any investigation at any time made by or on behalf of any party hereto, all representations, warranties and covenants made in this Agreement will survive the execution and delivery of this Agreement and the Closing Date, except that the representations and warranties made in Sections 3(n), (o) (p), (r), (s) and (w)-(z) will only survive for a period of three (3) years after the Closing Date.

10. Termination.

(a) This Agreement shall automatically terminate:

(i) If the Company has not filed the Agreement Motion with the bankruptcy Court by February 15, 2007;

(ii) If the Bankruptcy Court has not entered the Agreement Order by March 30, 2007, but in no event later than the date the Bankruptcy Court approved the Disclosure Statement; or

(iii) If the purchase and sale contemplated by Section 2(a) have not occurred by June 30, 2007.

(b) The Investor may terminate this Agreement:

(i) If the Backstop Fee has not been paid by the first Business Day after the tenth day following the entry of the Agreement Order;

(ii) If any Expiration Time Fee has not been paid as required by Section 1(g);

(iii) Upon the failure of any of the conditions set forth in Section 7 to be satisfied, which failure is incapable of cure by June 30, 2007;

(iv) If the Company makes a public announcement, enters into an agreement or files any pleading or document with the Bankruptcy Court evidencing its intention to support, or otherwise supports, any Competing Transaction; or

(v) If there shall have occurred any act of terrorism, or a credible threat, attempt or conspiracy with respect to an act of terrorism, relating to a major commercial airport in the United States, Western Europe or on the Company's route system or with respect to a United States, Western European or Asian commercial aircraft on the Company's route system, which act, threat, attempt or conspiracy causes the Federal Aviation Administration (or other applicable non-U.S. regulatory entity) to (i) close any major United States, Western European or Asian commercial airport on the Company's route system for a period of at least 48 hours, (ii) ground United States domestic commercial flights for a period of at least 48 hours or (iii) ground Northwest Airlines commercial flights for a period of at least 48 hours, and the Investor concludes in its reasonable judgment that it is inadvisable to proceed with the purchase of the ECA Shares or the reoffer thereof.

(c) The Company may terminate this Agreement at any time prior to the entry of the Agreement Order, by giving written notice to the Investor of its determination not to proceed with the transactions contemplated hereby, whereupon this Agreement will terminate.

(d) If this Agreement is terminated by the Company pursuant to Section 10(c), or if this Agreement terminated automatically pursuant to Section 10(a)(i) or (ii) and at the time of such termination the Investor is in compliance in all material respects with its obligations under this Agreement, then, subject to the approval of the Bankruptcy Court, the Company shall pay the Investor $7,500,000 (the "Termination Fee"), and, in any event, the Company shall pay to the Investor any Transaction Expenses and any other amounts certified by the Investor to be due and payable hereunder that have not been paid theretofore. Payment of the amounts due under this Section 10(d) will be made by wire transfer of immediately available funds to the account or accounts specified by the Investor at least 24 hours in advance to the Company. The provision for the payment of the Termination Fee is an integral part of the transactions contemplated by this Agreement, and without this provision the Investor would not have entered into this Agreement and shall, subject to the approval of the Bankruptcy Court, constitute an administrative expense of the Company under section 364(c)(1) of the Bankruptcy Code. Accordingly, if payment shall become due and payable pursuant to this Section, and suit is commenced which results in a final judgment against the Company no longer subject to appeal, the Company shall pay to the

Investor its costs and expenses, including attorneys' fees, in connection with collecting or enforcing its rights and remedies hereunder.

(e) In no event will the Termination Fee, if any, be refundable upon termination of this Agreement pursuant to this Section 10.

(f) Upon termination under this Section 10, the covenants and agreements made by the parties herein under Sections 1(g), 2(b), 2(c), 8, 9, 10(d) and 11 through 19 will survive indefinitely in accordance with their terms.

11. Notices. All notices and other communications in connection with this Agreement will be in writing and will be deemed given (and will be deemed to have been duly given upon receipt) if delivered personally, sent via electronic facsimile (with confirmation), mailed by registered or certified mail (return receipt requested) or delivered by an express courier (with confirmation) to the parties at the following addresses (or at such other address for a party as will be specified by like notice):

(a) If to Investor, to:

(i) J.P. Morgan Securities Inc.

c/o JPMorgan Chase Bank, N.A.
270 Park Avenue, 17th Floor
New York, New York 10017
Attention: Neelima Veluvolu
Telephone: (212) 270-2150
Telecopy No. (646)-792-3855
neelima.veluvolu@jpmorgan.com

and

J.P. Morgan Securities Inc.
c/o JPMorgan Chase Bank, N.A.
270 Park Avenue, 17th Floor
New York, New York 10017
Attention: Karoline Kane
Telephone: (212) 270-0033
Telecopy No. (646)-792-3855
Karoline.kane2@jpmchase.com

with copies to:

Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005
Attention: Gerald S. Tanenbaum

Stephen A. Greene
Fax: (212) 269-5420

and to:

Cronin & Vris, LLP
380 Madison Avenue, 24th Floor
New York, New York 10017
Attention: Denis F. Cronin
Jane Lee Vris
Fax: (212) 883-1314

(b) If to the Company, to:

Northwest Airlines Corporation
2700 Lone Oak Parkway
Eagan, Minnesota 55121
Attention: Neal Cohen
Executive Vice President and Chief Financial Officer
Fax: (612) 72-4041

Attention: Michael Miller
Vice President—Law and Secretary
Fax: (612) 726-7123

with a copy to:

Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attention: Dennis J. Block
Fax: (212)-504-6666

12. Assignment; Third Party Beneficiaries. Neither this Agreement nor any of the rights, interests or obligations under this Agreement will be assigned by any of the parties (whether by operation of law or otherwise) without the prior written consent of the other party. Notwithstanding the previous sentence, this Agreement, or the Investor's obligations hereunder, may be assigned, delegated or transferred, in whole or in part, by the Investor to any Affiliate (as defined in Rule 12b-2 under the Exchange Act) of the Investor over which the Investor or any of its Affiliates exercises investment authority, including, without limitation, with respect to voting and dispositive rights; provided, that any such assignee assumes the obligations of the Investor hereunder and agrees in writing to be bound by the terms of this Agreement in the same manner as the Investor. Notwithstanding the foregoing or any other provisions herein, no such assignment will relieve the Investor of its obligations hereunder if such assignee fails to perform such obligations. Except as provided in the sixth paragraph of this Agreement and the last sentence of Section 2(a) with respect to Ultimate Pur-

chasers, and except as provided in Section 8 with respect to the Indemnified Parties, this Agreement (including the documents and instruments referred to in this Agreement) is not intended to and does not confer upon any person other than the parties hereto any rights or remedies under this Agreement. Notwithstanding the foregoing, the Investor may direct the Company, by notice given to the Company at least one Business Day prior to the Closing Date, to deliver the number of ECA Shares to be purchased by an Ultimate Purchaser to such Ultimate Purchaser, in which case payment for such ECA Shares will be made directly to the Company by such Ultimate Purchaser; provided that in no such case shall the Investor be relieved of its obligation to pay for such ECA Shares in the event the Ultimate Purchaser does not so pay, and no Ultimate Purchaser shall obtain any rights of the Investor under this Agreement. Notwithstanding the foregoing or any other provisions hereof, the Investor may not assign any of its rights or obligations under this Agreement to the extent such assignment would violate applicable securities laws.

13. Prior Negotiations; Entire Agreement. This Agreement (including the exhibits hereto and the documents and instruments referred to in this Agreement) constitutes the entire agreement of the parties and supersedes all prior agreements, arrangements or understandings, whether written or oral, between the parties with respect to the subject matter of this Agreement, except that the parties hereto acknowledge that any confidentiality agreements heretofore executed among the parties will continue in full force and effect.

14. GOVERNING LAW; VENUE. THIS AGREEMENT WILL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK. THE INVESTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF, AND VENUE IN, THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS.

15. Counterparts. This Agreement may be executed in any number of counterparts, all of which will be considered one and the same agreement and will become effective when counterparts have been signed by each of the parties and delivered to the other party (including via facsimile or other electronic transmission), it being understood that each party need not sign the same counterpart.

16. Waivers and Amendments. This Agreement may be amended, modified, superseded, cancelled, renewed or extended, and the terms and conditions of this Agreement may be waived, only by a written instrument signed by the parties or, in the case of a waiver, by the party waiving compliance, and subject, to the extent required, to the approval of the Bankruptcy Court. No delay on the part of any party in exercising any right, power or privilege pursuant to this Agreement will operate as a waiver thereof, nor will any waiver on the part of any party of any right, power or privilege pursuant to this Agreement, nor will any single or partial exercise of any right, power or privilege pursuant to this Agreement, preclude any other or further exercise thereof or the exercise of any other right, power or privilege pursuant to this Agreement. The rights and remedies provided pursuant to this Agreement are cumulative and are not exclusive of any rights or remedies which any party otherwise may have at law or in equity.

17. Headings. The headings in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

18. Specific Performance. The parties acknowledge and agree that any breach of the terms of this Agreement would give rise to irreparable harm for which money damages would not be an adequate remedy, and, accordingly, the parties agree that, in addition to any other remedies, each will be entitled to enforce the terms of this Agreement by a decree of specific performance without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting bond.

19. Guarantee of Company Obligations. All obligations of the Company hereunder are hereby unconditionally guaranteed by Northwest Airlines, Inc., a Minnesota corporation (the "Guarantor").

[*Signature Page Follows*]

If the foregoing is in accordance with your understanding, please sign and return to us a counterpart hereof, and upon the acceptance hereof by you, this letter and such acceptance hereof will constitute a binding agreement between you and (subject to the approval of the Bankruptcy Court) the Company and the Guarantor.

Very truly yours,

NORTHWEST AIRLINES CORPORATION

By: /s/ Neal Cohen
Name: Neal Cohen
Title: Executive Vice President and Chief Financial Officer

NORTHWEST AIRLINES, INC.,
as Guarantor

By: /s/ Neal Cohen
Name: Neal Cohen
Title: Executive Vice President and Chief Financial Officer

Accepted as of the date hereof:

J.P. MORGAN SECURITIES INC.

By: /s/ John Abate
Name: John Abate
Title: Managing Director

Exhibit A

Term Sheet

Key parameters:	**Disclosure Statement** The Disclosure Statement (as defined in Section 5(b) of the Equity Commitment Agreement (the "ECA")) shall: ■ be consistent with the Business Plan (as defined in Section 3(w) of the ECA); ■ reflect EBITDARF in excess of $5.4 billion for fiscal year 2007; ■ not be inconsistent with the conditions to confirmation, and the effectiveness of the Amended Plan and any waivers of such conditions shall not be inconsistent with the provisions of the ECA and this Term Sheet; ■ not differ in any material respect from the draft Disclosure Statement provided to the Investor on February 9, 2007. **Financial Conditions to Closing** ■ Pro forma unrestricted Cash Liquidity at emergence must be greater than $2.0 billion. ■ The sum of Company (i) Indebtedness; (ii) 1-year forward GAAP aircraft rents multiplied by 7.0; and (iii) preferred equity must not exceed $9.5 billion, on a consolidated basis, at emergence. ■ The fully diluted share count at the Closing Date after giving effect to the sale of the ECA Shares shall not exceed 271,977,778 unless the Company sells up to $150 million of shares to the Third Party Purchaser for an amount not less than the Purchase Price, which when included implies an aggregate share count that shall not exceed 277,533,333. ■ The Company will use the net proceeds from the sale of the ECA Shares for general corporate purposes. ■ The Final Agreement Order will provide for the release and exculpation of the Investor and the Ultimate Purchasers and their affiliates, representatives and advisors as set forth in Section 5(a) of the ECA.

Fully diluted share count parameters:

	Share count
■ Pre offering	244,200,000 (1)
■ Sale of ECA Shares	27,777,778
■ Pro forma total	271,977,778 (1)

(1) Both the pre-offering total share count of 244,200,000 (which is available to unsecured creditors under the Amended Plan and to employees, management and directors as stock grants) and the pro forma total share count of 271,977,778 include shares to be issued on the Effective Date pursuant to the Amended Plan plus "Calculated Option Shares" issued or issuable as of such date.

"Calculated Option Shares" means all shares issued or issuable pursuant to options (not to include options granted to employees, management and directors of the Company, which are addressed below), warrants and convertible or exchangeable securities, and the number of Calculated Option Shares shall be determined by dividing (i) the aggregate Black-Scholes Formula valuation (using the average 100 day trailing volatility for publicly traded mainline carriers including AMR Corporation, US Airways Group, Inc., Continental Airlines, Inc. and UAL Corporation, to the extent that it is publicly traded on the NYSE or NASDAQ at the time of calculation) of all of such options, warrants and convertible or exchangeable securities by (ii) $30.00.

Neither the pre-offering total share count nor the pro forma total share count includes (i) up to $150,000,000 of New Common Stock that may be issued to a Third Party Purchaser at a price not less than $27.00 per share and (ii) shares underlying options granted to employees, management and directors of the Company, which shall be issued with market strike prices.

Definitions:

- Capitalized undefined terms have the meanings set forth in the Equity Commitment Agreement.
- "Cash Liquidity" means, at any time, the sum of (a) unrestricted cash and cash equivalents of the Company and its Subsidiaries at such time and (b) unrestricted short-term investments of the Company and its Subsidiaries at such time.
- "EBITDARF" means, for any period, without duplication, the consolidated operating income of the Company and its Subsidiaries for such period (calculated in accordance with GAAP and in a manner consistent with the consolidated financial statements of the Company and its Subsidiaries) plus:
  - (i) consolidated aircraft operating rental expenses of the Company and its Subsidiaries that were deducted in arriving at the amount of such consolidated operating income for such period;
  - (ii) amortization and depreciation that were deducted in arriving at the amount of such consolidated operating income for such period;
  - (iii) interest income of the Company and its Subsidiaries during such period;
  - (iv) all government reimbursements in cash received during such period for losses incurred as a result of developments affecting the aviation industry (including, without limitation, terrorist acts and epidemic diseases);
  - (v) any non-recurring non-cash charges of the Company and its Subsidiaries recorded during such period (excluding any such charge incurred in the ordinary course of business that constitutes an accrual of or a reserve for cash charges for any future period), all as determined on a consolidated basis in accordance with GAAP; provided, however, that cash payments made in such period or in any future period in respect of such non-cash charges (excluding any such charge incurred in the ordinary course of business that constitutes an accrual of or a reserve for cash charges for any future period) shall be subtracted in calculating EBITDARF in the period when such payments are made;
  - (vi) non-cash non-recurring charges during such period resulting from the Company's fleet restructuring and professional fees and other direct bankruptcy costs related to the Proceedings; provided, however, that cash payments made in such period or in any future period in respect of such noncash charges (excluding any such charge incurred in the ordinary course of business that constitutes an accrual of or a reserve for cash charges for any future period) shall be subtracted in calculating EBITDARF in the period when such payments are made, and provided further that EBITDARF shall be calculated without giving effect to any acceleration of flight equipment rental expense after the Closing Date required as a result of the Company's decision to remove an aircraft or aircraft class from the operating fleet of the Company; and
  - (vii) mainline fuel expenses for such period, consistent with the "Aircraft, fuel and taxes" line item of the Company's regulatory filings, not to include regional carrier fuel expenses.
- "Indebtedness" means, as to any person, without duplication:
  - (i) all indebtedness (including principal, interest, fees and charges) of such person for borrowed money or for the deferred purchase price of property or services but excluding trade accounts payable and accrued expenses incurred in the ordinary course of business;
  - (ii) all indebtedness of the types described in clause (i), (iii) or (iv) 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 (to the extent of the value of the respective property);
  - (iii) capital lease obligations; and
  - (iv) all hedging obligations under any interest rate protection agreement.
- "Subsidiary" means (i) any corporation more than 50% of whose stock having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such person and/or one or more Subsidiaries of such person and (ii) any partnership, limited liability company, association, joint venture or other entity in which such person and/or one or more Subsidiaries of such person has more than a 50% equity interest at the time; provided, however, that LAX Two Corp. and its Subsidiaries shall be deemed not to be Subsidiaries of the Company or any of its Subsidiaries for purposes of this Term Sheet.

Exhibit B

Registration Rights Agreement:

(i) all shares of New Common Stock acquired pursuant to the Equity Commitment Agreement by the Investors, the Ultimate Purchasers and their successors, assigns and transferees (collectively, "Holders") on the Closing Date and all shares of New Common Stock acquired pursuant to the Amended Plan, to the extent such shares are required to be registered under the Securities Act in connection with the resale thereof, shall constitute "registrable securities";

(ii) the initial shelf registration statement shall be kept effective until two years after the later of the date on which it becomes effective and the Closing Date;

(iii) in addition to such initial shelf registration statement, the Holders shall have unlimited demand and piggyback registration rights (subject to reasonable minimum amounts to be included in any demand);

(iv) the Company shall provide reasonable cooperation and assistance of the type described in a registration rights agreement for registered offerings if any of the Holders elects to sell its shares pursuant to a private placement or similar transaction (including providing due diligence access);

(v) provide for underwritten offerings; and

(vi) representations and warranties and indemnities and contribution of the type made in a customary underwriting agreements for an underwritten public offering.

Schedule 2.2
Postpetition Aircraft Purchase and Lease Obligations

Final Order	Date Entered	Docket No.
Order Authorizing Debtor Northwest Airlines, Inc. to Obtain Postpetition Secured Bank Financing for up to Three Embraer 175 LR Aircraft and File Term Sheet Under Seal	5/15/2007	(Docket No. 6823)
Order Pursuant To Sections 107 And 363 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Amend Restructuring Agreement With Airbus, Settle Certain Claims, And File Agreement Under Seal	4/24/2007	(Docket No. 6410)
Order Approving Form Of Post-Petition Financing Documents [Airbus]	2/23/2007	(Docket No. 5013)
Order Pursuant To Sections 107 And 363 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtors Northwest Airlines Corporation And Northwest Airlines, Inc. To Implement Certain Restructuring Transactions And Agreements Relating To Northwest 2000-1 EETC Class G Equipment Notes, And Settle Certain Claims	2/20/2007	(Docket No. 4931)
Order Authorizing Debtor Northwest Airlines, Inc. To (I) Obtain Postpetition Financing And Grant Security Interests And Liens With Respect Thereto, (II) Use Cash Collateral To Repay Certain Prepetition Loans, (III) Amend And Perform Under Certain Prepetition Loans, (IV) Assume Aircraft Purchase Agreement, (V) Settle Claims, (VI) Implement All Other Aspects Of Agreement With Boeing, And (VII) File Agreements Under Seal	11/08/2006	(Docket No. 3900)
Order Authorizing Debtor Northwest Airlines, Inc. To (I) Amend And Assume Engine Agreements With Rolls-Royce, (II) Obtain Postpetition Financing For Predelivery Payments On Boeing 787 Aircraft And Grant Security Interests With Respect Thereto, (III) Implement All Other Aspects Of Agreement With Rolls-Royce, (IV) File Redacted Motion, And (V) File Agreements Under Seal	11/08/2006	(Docket No. 3898)
Order Pursuant To Sections 107, 363, 364, 365 And 1110 Of The Bankruptcy Code Authorizing Debtors Northwest Airlines Corporation And Northwest Airlines, Inc. To (I) Implement Certain Restructuring Agreements And Transactions With General Electric Capital Corporation And Certain Of Its Affiliates, Export Development Canada, Her Majesty In Right Of Canada, And Bombardier Inc. Regarding Certain Bombardier CRJ200/440 And Other Aircraft, (II) Purchase New Bombardier CRJ900 Aircraft And Obtain Secured Financing In Connection Therewith, And (III) File Agreements Under Seal	10/26/2006	(Docket No. 3799)
Order Pursuant To Sections 107, 363, And 364 Of The Bankruptcy Code Authorizing Debtors Northwest Airlines Corporation And Northwest Airlines, Inc. To Purchase New Embraer 175 Aircraft And Spare Engines, Obtain Secured Financing, And File Agreements Under Seal	10/26/2006	(Docket No. 3798)
Order Pursuant To Sections 107, 363, 364 And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Restructuring Transactions And Agreements With DVB Bank AG, HSH Nordbank AG And Ing Bank N.V. Regarding Aircraft N552NW And N555NW, And To File Redacted Term Sheet	8/28/2006	(Docket No. 3407)
Order Pursuant To Sections 107, 363, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Restructuring Transactions And	8/28/2006	(Docket No. 3406)

Final Order	Date Entered	Docket No.
Agreements With Ing Capital LLC Regarding Aircraft N556NW, And To File Redacted Term Sheet		
Order Pursuant To Sections 107, 363, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Restructuring Transactions And Agreements With Bayerische Landesbank And DVB Bank Ag Regarding Aircraft N557NW, And To File Redacted Term Sheet	8/28/2006	(Docket No. 3417)
Order Pursuant To Sections 107, 363, 364 And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Restructuring Transactions And Agreements With DVB Bank Ag Regarding Aircraft N357NB, And To File Redacted Term Sheet	8/28/2006	(Docket No. 3408)
Order Approving Form Of Post-Petition Financing Documents With Airbus Entities	8/28/2006	(Docket No. 3413)
Order Pursuant To Sections 105(A), 107, 363, 364 And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Restructuring Transactions And Agreements With Halifax Plc Regarding Aircraft N550NW, N551NW, N554NW, N583NW And N584NW, And To File Redacted Term Sheet	7/10/2006	(Docket No. 3044)
Order Pursuant To Sections 105(A) And 363(B) Of The Bankruptcy Code Approving Agreement With General Electric Capital Corporation Relating To Aircraft N665US	7/10/2006	(Docket No. 3043)
Amended Order Approving Mortgage Loan Facilities With General Electric Company And Safran (N309US, N310NW, N331NW, N332NW, N333NW, AND N334NW)	5/24/2006	(Docket No. 2623)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Transactions, Including Rejection Of An Existing Lease And Entry Into A New Lease, Regarding Boeing B757-251 Aircraft N526US	5/23/2006	(Docket No. 2608)
Order Pursuant To Sections 105(A), 363, 364, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtors Northwest Airlines Corporation And Northwest Airlines, Inc. To Implement Certain Transactions, Including Rejection Of Existing Leases And Entry Into New Leases Or Mortgage Financings, With Respect To Aircraft Subject To Northwest 1999-1 EETC Transaction	4/13/2006	(Docket No. 2405)
Order Pursuant To Sections 107, 363(B) And 365 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Enter Into And Perform Purchase Agreement For Aircraft N517US, And To File Redacted Purchase Agreement	4/13/2006	(Docket No. 2409)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Boeing B757-251 Aircraft N531US	4/12/2006	(Docket No. 2396)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Transactions, Including Rejection Of An Existing Lease And Entry Into A New Lease, Regarding Boeing B747-451 Aircraft N661US	3/23/2006	(Docket No. 2306)

Final Order	Date Entered	Docket No.
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Boeing B747-249F Aircraft N643NW	3/09/2006	(Docket No. 2248)
Order Pursuant To Sections 107, 363(B) 365, And 1110 Of The Bankruptcy Code Authorizing Debtor Northwest Airlines, Inc. To Enter Into And Perform Purchase Agreement And Reject Lease For Aircraft N630US, And To File Redacted Purchase Agreement	3/09/2006	(Docket No. 2247)
Order Pursuant To Sections 105(A), 107, 363, 364 And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Restructuring Transactions And Agreements With ABN Amro Bank N.V. Regarding Aircraft N507US, N528US, N529US And N530US, And To File Redacted Term Sheet And Financing Agreements	3/08/2006	(Docket No. 2242)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Boeing B747-251f Aircraft N640US	3/06/2006	(Docket No. 2223)
Order Pursuant To Sections 105(A), 107, 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Boeing B747-212F Aircraft N644NW, And To File Redacted Term Sheet	2/16/2006	(Docket No. 2112)
Order Pursuant To Sections 105(A), 363, 364, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtors Northwest Airlines Corporation And Northwest Airlines, Inc. To Implement Certain Transactions, Including Rejection Of Existing Leases And Entry Into New Leases Or Mortgage Financings, With Respect To Aircraft Subject To Northwest 1996-1 EETC Transaction	2/16/2006	(Docket No. 2116)
Order Pursuant To Sections 105(A), 363, 364 And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Restructuring Transactions And Agreements With General Electric Company And Safran Regarding Term Loan And Aircraft N309US, N310NW, N331NW, N332NW, N333NW, N334NW, N367NB And N378NW, And To File Redacted Term Sheet	1/31/2006	(Docket No. 1951)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Boeing B757-251 Aircraft N525US	1/31/2006	(Docket No. 1947)
Order Pursuant To Sections 105(A), 107, 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rules 9018 And 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Transactions, Including Entry Into Amended Leases, Regarding Certain Saab Aircraft, And To File Redacted Term Sheet	1/31/2006	(Docket No. 1950)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Transactions, Including Rejection Of An Existing Lease And Entry Into A New Lease, Regarding Boeing B747-251F Aircraft N639US	1/31/2006	(Docket No. 1946)
Order Pursuant To Sections 105(A), 361, 362, 363 And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing Debtor Northwest Airlines, Inc. To Enter Into Restructured Financing Agreements Regarding Four Boeing B747-200 Aircraft (N631NW, N632NW, N645NW And N646NW) And To Settle Claims And Disputes Relating Thereto	1/11/2006	(Docket No. 1751)

Final Order	Date Entered	Docket No.
Order Authorizing Debtor Northwest Airlines, Inc. To (I) Obtain Postpetition Financing And Grant Security Interests And Liens With Respect Thereto, (II) Assume Certain Amended Sublease And Purchase Agreements, (III) Use Cash Collateral To Purchase And Lease Aircraft, (IV) Implement All Other Aspects Of Term Sheet And (V) File Agreements Under Seal	12/22/2005	(Docket No. 1529)
Order Authorizing Debtor Northwest Airlines, Inc. To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Boeing B757-200 Aircraft N527US	12/22/2005	(Docket No. 1524)
Order Pursuant To 11 U.S.C. §§ 105(A), 107(B), 362, 363, 364, 365, 503, 1110 And Fed. R. Bankr. P. 9019 Authorizing Northwest Airlines, Inc. To Enter Into A Term Sheet With UT Finance Corporation, UT-N676NW (II), Inc., And United Technologies Corporation, Acting Through Its Pratt & Whitney Division Providing For Restructuring Of Existing Aircraft Financings And Debtor-In-Possession And Post-Emergence Financing Of New Aircraft And Engines And To File Agreements Under Seal	12/22/2005	(Docket No. 1523)
Order Authorizing Northwest Airlines, Inc. To Implement Certain Transactions, Including Entry Into And Assumption Of Amended Leases For Aircraft N312US, N313US, N314US, N315US, N316US, N317US, N318US, N319US & N320US	12/22/2005	(Docket No. 1526)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing The Debtors To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Boeing 757-251 Aircraft N518US	12/22/2005	(Docket No. 1527)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing The Debtors To Implement Certain Transactions, Including Entry Into Amended Leases, Regarding Boeing 757-251 Aircraft N522US & N523US	12/22/2005	(Docket No. 1528)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing The Debtors To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Airbus A320-211 Aircraft N342NW	12/15/2005	(Docket No. 1463)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing The Debtors To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Airbus A320-212 Aircraft N338NW	12/15/2005	(Docket No. 1466)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing The Debtors To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Boeing 747-251b Aircraft N638US	12/15/2005	(Docket No. 1457)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing The Debtors To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Boeing 747-451 Aircraft N663US	12/15/2005	(Docket No. 1456)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing The Debtors To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Boeing 747-451 Aircraft N666US	12/15/2005	(Docket No. 1461)
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing The Debtors To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Boeing 747-451 Aircraft N664US	12/15/2005	(Docket No. 1459)

Final Order	Date Entered	Docket No.
Order Pursuant To Sections 105(A), 363, 365, And 1110 Of The Bankruptcy Code And Bankruptcy Rule 9019 Authorizing The Debtors To Implement Certain Transactions, Including Entry Into An Amended Lease, Regarding Boeing 747-451 Aircraft N665US	12/15/2005	(Docket No. 1458)

Schedule 4.2

1110(a) Aircraft Secured Claims

Creditor Name	Projected Outstanding Amount as of April 30, 2007[1]	Treatment
Cargill Financial Services International, Inc. [N304US]	$1,769,280.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
Marubeni America Coporation [N305US]	$868,571.42	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N314NB	$17,617,263.15	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N315NB	$19,153,359.68	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N316NB	$19,141,870.44	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N317NB	$19,240,619.36	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N318NB	$19,240,619.36	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N319NB	$19,473,714.26	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N320NB	$19,532,713.50	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N321NB	$20,011,009.13	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N322NB	$19,924,110.26	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.

[1] Subject to adjustment.

Creditor Name	Projected Outstanding Amount as of April 30, 2007[1]	Treatment
U.S. Bank National Association, As Trustee with respect to aircraft N323NB	$19,953,802.65	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N324NB	$19,953,802.65	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N325NB	$19,854,921.16	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N326NB	$19,854,921.16	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N327NB	$19,819,727.21	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N328NB	$21,525,000.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N329NB	$20,253,070.18	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N330NB	$21,004,654.73	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N331NB	$20,950,412.22	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N332NB	$20,467,150.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N333NB	$20,227,188.22	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N334NB	$30,676,365.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N335NB	$30,676,365.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.

Creditor Name	Projected Outstanding Amount as of April 30, 2007[1]	Treatment
U.S. Bank National Association, As Trustee with respect to aircraft N336NB	$30,741,199.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N337NB	$30,741,199.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N338NB	$30,805,754.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N339NB	$30,805,754.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N340NB	$18,805,321.19	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N341NB	$30,887,130.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N342NB	$19,645,827.22	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N343NB	$31,018,022.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N344NB	$19,717,526.88	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N345NB	$31,083,574.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N346NB	$20,479,754.30	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N347NB	$20,479,754.30	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N348NB	$20,541,090.12	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.

Creditor Name	Projected Outstanding Amount as of April 30, 2007[1]	Treatment
U.S. Bank National Association, As Trustee with respect to aircraft N349NB	$20,541,090.16	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N350NB	$19,912,500.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N351NB	$19,912,500.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N351NW	$17,284,260.36	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N352NB	$19,801,359.91	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N352NW	$16,541,321.30	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N353NB	$20,541,090.16	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N353NW	$16,541,321.30	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N354NB	$20,580,474.82	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N354NW	$16,541,321.30	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N355NB	$20,602,426.04	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N355NW	$16,541,321.30	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N356NB	$20,700,000.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.

Creditor Name	Projected Outstanding Amount as of April 30, 2007[1]	Treatment
U.S. Bank National Association, As Trustee with respect to aircraft N356NW	$17,284,260.36	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N357NW	$17,284,260.36	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N358NB	$23,738,404.92	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N358NW	$17,284,260.36	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N359NB	$23,723,802.37	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N359NW	$17,632,627.98	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N360NB	$17,397,035.26	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N360NW	$17,632,627.98	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N361NB	$23,164,387.75	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N361NW	$17,632,627.98	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N362NB	$23,238,376.27	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N362NW	$17,632,627.98	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N363NB	$23,238,376.27	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.

Creditor Name	Projected Outstanding Amount as of April 30, 2007[1]	Treatment
U.S. Bank National Association, As Trustee with respect to aircraft N363NW	$17,632,627.98	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N364NB	$23,921,848.60	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N365NB	$24,089,822.78	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N366NB	$23,932,683.84	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N368NB	$24,028,623.59	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N369NB	$19,581,160.42	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N370NB	$20,766,416.53	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N371NW	$24,303,673.91	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
Q319-1-2369, LLC [N372NB]	$26,718,647.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N372NW	$33,510,915.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
Q-319-1-2373, LLC [N373NB]	$26,714,216.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N373NW	$33,590,068.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
Q319-1-2464, LLC [N374NB]	$27,534,378.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.

Creditor Name	Projected Outstanding Amount as of April 30, 2007[1]	Treatment
U.S. Bank National Association, As Trustee with respect to aircraft N374NW	$33,590,068.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
Q319-1-2474, LLC [N375NB]	$27,534,378.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N375NC	$35,394,566.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N376NW	$35,469,801.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N553NW	$28,541,666.63	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N581NW	$31,295,866.29	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N582NW	$28,925,505.47	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N585NW	$31,389,484.45	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N586NW	$35,003,634.37	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N587NW	$35,876,026.92	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N589NW	$35,600,944.27	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N590NW	$37,987,248.52	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N595NW	$35,518,140.20	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.

Creditor Name	Projected Outstanding Amount as of April 30, 2007[1]	Treatment
U.S. Bank National Association, As Trustee with respect to aircraft N596NW	$31,819,343.02	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N675NW	$121,738,456.99	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N801NW	$62,835,163.11	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N802NW	$61,743,011.61	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
Merrill Lynch Credit Products, LLC [N803NW]	$77,102,359.41	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
U.S. Bank National Association, As Trustee with respect to aircraft N805NW	$56,369,289.10	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.
Merrill Lynch Credit Products, LLC [N855NW]	$69,532,709.00	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The Claimants will retain their security interests on the Aircraft Equipment which secure their respective claims.

Schedule 4.3
Restructured Aircraft Secured Claims

Creditor Name	Projected Outstanding Amount as of April 30, 2007	Treatment
Airbus Financial Services [Term Loan]	$137,634,166.62	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
Q330-3-674-690, LLC [N810NW]	$85,748,687.00	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
Q330-3-674-690, LLC [N811NW]	$86,825,990.00	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
Credit Industriel Et Commercial [N367NB]	$20,706,216.00	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
Credit Industriel Et Commercial [N378NW]	$25,786,141.53	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
U.S. Bank National Association, As Trustee with respect to aircraft N357NB	$20,616,879.93	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
U.S. Bank National Association, As Trustee with respect to aircraft N552NW	$29,862,915.32	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
U.S. Bank National Association, As Trustee with respect to aircraft N555NW	$29,892,891.98	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
U.S. Bank National Association, As Trustee with respect to aircraft N556NW	$30,084,966.32	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
U.S. Bank National Association, As Trustee with respect to aircraft N557NW	$27,734,090.64	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
General Electric Company and Safran [$125 million Variable Rate Guaranteed Notes due December 22, 2009]	$75,956,911.09	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
Special Value Opportunities Fund, LLC, as Lender, Special Value Expansion Fund, LLC, as Lender, and U.S. Bank National Association, as Security Trustee with respect to aircraft N631NW	$7,416,220.29	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
Special Value Opportunities Fund, LLC, as Lender, Special Value Expansion Fund, LLC, as Lender, and U.S. Bank National Association, as Security Trustee with respect to aircraft N632NW	$20,238,411.30	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
Special Value Opportunities Fund, LLC, as Lender, Special Value Expansion Fund, LLC, as Lender, and U.S. Bank National Association, as Security Trustee with respect to aircraft N645NW	$18,972,471.69	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
Special Value Opportunities Fund, LLC, as Lender, Special Value Expansion	$18,972,471.69	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.

Creditor Name	Projected Outstanding Amount as of April 30, 2007	Treatment
Fund, LLC, as Lender, and U.S. Bank National Association, as Security Trustee with respect to aircraft N646NW		
Halifax plc, as Lender, and State Street Bank and Trust Company, as Security Trustee with respect to aircraft N550NW	$27,989,542.81	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
Halifax plc, as Lender, and State Street Bank and Trust Company, as Security Trustee with respect to aircraft N551NW	$28,169,200.00	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
Halifax plc, as Lender, and State Street Bank and Trust Company, as Security Trustee with respect to aircraft N554NW	$28,401,257.08	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
Halifax plc, as Lender, and State Street Bank and Trust Company, as Security Trustee with respect to aircraft N583NW	$35,022,573.79	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
Halifax plc, as Lender, and State Street Bank and Trust Company, as Security Trustee with respect to aircraft N584NW	$35,086,187.58	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
U.S. Bank National Association, As Trustee with respect to aircraft N804NW	$70,793,683.95	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
U.S. Bank National Association, As Trustee with respect to aircraft N591NW	$34,087,090.66	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
U.S. Bank National Association, As Trustee with respect to aircraft N592NW	$34,087,090.66	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
U.S. Bank National Association, As Trustee with respect to aircraft N593NW	$33,770,535.08	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
U.S. Bank National Association, As Trustee with respect to aircraft N667US, N668US, N670US	$81,249,999.88	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
U.S. Bank National Association, as Indenture Trustee, Kreditanstalt Fur Wiederaufbau, as Loan Participant with respect to aircraft N331NW	$15,191,155.08	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
U.S. Bank National Association, as Indenture Trustee, Kreditanstalt Fur Wiederaufbau, as Loan Participant with respect to aircraft N332NW	$15,191,155.08	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
U.S. Bank National Association, as Indenture Trustee, Kreditanstalt Fur	$15,191,155.08	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.

Creditor Name	Projected Outstanding Amount as of April 30, 2007	Treatment
Wiederaufbau, as Loan Participant with respect to aircraft N333NW		
U.S. Bank National Association, as Indenture Trustee, Kreditanstalt Fur Wiederaufbau, as Loan Participant with respect to aircraft N334NW	$14,361,567.04	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
UT Finance Corporation as Lender, and U.S. Bank National Association, as Security Trustee with respect to aircraft N588NW	$32,637,402.01	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
UT Finance Corporation as Lender, and U.S. Bank National Association, as Security Trustee with respect to aircraft N594NW	$33,649,283.19	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
UT Finance Corporation as Lender, and U.S. Bank National Association, as Security Trustee with respect to aircraft N808NW	$73,621,318.76	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
UT Finance Corporation as Lender, and U.S. Bank National Association, as Security Trustee with respect to aircraft N854NW	$64,145,185.92	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
UT Finance Corporation as Lender, and U.S. Bank National Association, as Security Trustee with respect to aircraft N809NW	$78,091,214.73	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.
Boeing Capital Loan Corporation As Administrative Agent And U.S. Bank National Association In Its Individual Capacity And As Security Trustee with respect to aircraft N508US, N509US, N511US, N512US, N513US, N514US, N515US, N521US, N311US, N8933E, and N8932E, and certain spare engines and spare aircraft parts	$34,854,000.00	Treated in accordance with the applicable restructuring agreement and the Final Order that approved such agreement.

Schedule 4.5[1]

Other Secured Claims

Consolidated Debtors Class 1C

Creditor Name	Claim Amount	Treatment
Metropolitan Airports Commission	$106,597,200[2]	The leases related to the GO 15 bonds will be assumed, as amended, and the Consolidated Debtors' obligations under such leases and applicable agreements as amended will be paid and secured in accordance with the terms of the applicable agreements, as amended. The claimant will retain its security interests on the property which secures the Consolidated Debtors' obligations and will be granted additional security interests and liens in furtherance of, and in connection with, the Plan, including pursuant to a mortgage granted under the applicable agreements, as amended, which mortgage will become effective upon the Effective Date.
U.S. Bank National Association ND	$131,370,282	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Commissioner Of Finance Of The State Of Minnesota	$37,126,650	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Goodrich Corporation	$1,323,514	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Chromalloy Gas Turbine Corporation, Et Al	$39,200	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Aerothrust Corporation	$22,888	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Office Of The Commissioner Of Iron Range Resources	$892,766	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
State Of Md, Dept Of Business & Economic	$610,856	The claim is hereby allowed in the aggregate principal amount of $610,856 plus all accrued but unpaid interest thereon and any fees, expenses, or other charges reimbursable under the terms of Northwest's agreements with the State of Maryland.
Champion Air	$401,538	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Lufthansa Technik Ag; Lufthansa Technik Tulsa, Cor	$315,202	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
City Of Philadelphia Aviation Division	$240,811	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Air Bp, A	$229,546	The maturity will be reinstated as such maturity existed before default in accordance with

[1] This schedule is subject to further amendment.

[2] This amount takes into account escrowed funds.

Creditor Name	Claim Amount	Treatment
Division Of Bp Products North America In		section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Kilroy Realty, L.P.	$169,560	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Bosfuel Corporation	$163,526	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Skies America Int'l. Publishing	$41,415	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
City Of Austin	$96,307	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Unison Industries, LLC	$925	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
SEATAC Fuel Facilities, LLC	$123,467	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Bp West Coast Products, LLC	$112,410	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Citicorp USA, Inc.	$100,000	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Teledyne Controls	$18,520	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Tucson Airport Authority	$44,830	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Equilon Enterprises Llc D/B/A Shell Oil Products U	$64,920	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Century Travel Service	$20,000	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Asig - Hookers Point	$51,878	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Perkins Coie LLP	$15,000	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Sovereign Bank Financing Agreement	$45,448	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property

Creditor Name	Claim Amount	Treatment
		which secures their respective claims.
Macquarie Aviation North American 2, Inc.	$43,647	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Laxfuel Corporation	$38,987	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Telogy Inc	$31,655	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Asig - Denver	$25,070	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Transamerica Vendor	$30,145	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Expeditors International Of Washington, Inc.	$29,588	The Claim, to the extent undisputed, will be paid by the Debtors in the ordinary course of business pursuant to the authority granted to the Debtors under the Customer Programs Order and under the Stipulated Order Authorizing Expeditors International of Washington, Inc. to Set Off Certain Obligations, dated August 7, 2006. To the extent there is a dispute regarding the proper amount of the Claim or any portion thereof, the Debtors and Expeditors will work together to resolve such dispute in accordance with applicable contracts or industry custom and, absent a consensual resolution thereof, will submit the dispute to the Bankruptcy Court for resolution.
Asig - Orlando	$27,202	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Bbc Van Service Inc	$516	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Asig - Portland	$20,750	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
GE Engine Services Distribution, LLC	$9,576	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Iad Fuels LLC	$14,004	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Asig - Pittsburgh	$13,667	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
General Electric Company	$5,156	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Nmhg Financial Services	$12,531	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Angel Travels	$2,000	The maturity will be reinstated as such maturity existed before default in accordance with

Creditor Name	Claim Amount	Treatment
		section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Asig - Ft. Lauderdale	$10,720	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Asig - Austin	$8,642	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Ge Engine Services - Mcallen, LP	$8,601	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Asig - Minn Fuel Consortium	$8,417	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Dolphin Capital Corp	$7,769	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Asig - Tampa	$7,395	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Thyssen Stearns, Inc	$6,446	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Macquarie Aviation North America 2, Inc.	$5,252	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Dolphin Capital Corp	$4,714	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Diallo, Mamadou M.	$500	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Port Of Portland, The	$3,847	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Epredix	$1,000	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Hattiesburg-Laurel Regional Airport Authority	$3,047	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Independence Air, Inc.	$2,873	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Dolphin Capital Corp	$1,709	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property

Creditor Name	Claim Amount	Treatment
		which secures their respective claims.
GE Capital	$1,456	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Dolphin Capital Corp	$1,312	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Jeter, Patricia	$500	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Bank Of The Ozarks	$651	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Island Business Systems & Supply	$258	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Pacific Machinery	$70	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Snafuel Corporation	$98	The maturity will be reinstated as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and paid in accordance with the terms of the applicable loan agreements. The claimants will retain their security interests on the property which secures their respective claims.
Disputed Claims	UNLIQUIDATED	With regard to any Disputed Claim that becomes an Allowed Other Secured Claim, at the option of the Reorganized Debtors, either (i) Cash in an amount equal to the unpaid amount of the Other Secured Claim; or (ii) the Debtors will reinstate the maturity as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and pay in accordance with the terms of the applicable loan agreements. Where the Reorganized Debtors select option (ii), the claimants will retain their security interests on the property which secures their respective Claims.

Northwest Aerospace Training Corporation Class 3B

Creditor Name	Claim Amount	Treatment
Metropolitan Airports Commission	$147,267,800[3]	The leases related to the GO 15 bonds will be assumed, as amended, and Northwest Aerospace Training Corporation's obligations under such leases and applicable agreements as amended will be paid and secured in accordance with the terms of the applicable agreements, as amended. The claimant will retain its security interests on the property which secures Northwest Aerospace Training Corporation's obligations and will be granted additional security interests and liens in furtherance of, and in connection with, the Plan, including pursuant to a mortgage granted under the applicable agreements, as amended, which mortgage will become effective upon the Effective Date.
Disputed Claims	UNLIQUIDATED	With regard to any Disputed Claim that becomes an Allowed Other Secured Claim, at the option of the Reorganized Debtors, either (i) Cash in an amount equal to the unpaid amount of the Other Secured Claim; or (ii) the Debtors will reinstate the maturity as such maturity existed before default in accordance with section 1124(2)(B) of the Bankruptcy Code and pay in accordance with the terms of the applicable loan agreements. Where the Reorganized

[3] This amount takes into account escrowed funds.

Creditor Name	Claim Amount	Treatment
		Debtors select option (ii), the claimants will retain their security interests on the property which secures their respective Claims.

Schedule 8.2
Restructured Collective Bargaining Agreements

Restructured Collective Bargaining Agreement	**Order Date**
Agreement between Northwest Airlines, Inc. and Air Line Pilots Association, International	6/13/2006
Agreement between Northwest Airlines, Inc. and the Clerical Office, Fleet and Passenger Services Employees Represented by the International Association of Machinists and Aerospace Workers, District 143	6/13/2006
Agreement between Northwest Airlines, Inc. and the Equipment Service and Stock Clerk Personnel Employees Represented by the International Association of Machinists and Aerospace Workers, District 143	6/13/2006
Agreement between Northwest Airlines, Inc. and the Plant Protection Employees Represented by the International Association of Machinists and Aerospace Workers, District 143	6/13/2006
Agreement between Northwest Airlines, Inc. and the Flight Simulator Technicians and Simulator Support Specialists Employees Represented by the International Association of Machinists and Aerospace Workers, District 143	7/26/2006
Agreement between Northwest Airlines, Inc. and Aircraft Technical Support Association	11/16/2005
Agreement between Northwest Airlines, Inc. and Transport Workers Union of America	11/16/2005
Agreement between Northwest Airlines, Inc. and Northwest Airlines Meteorology Association	11/16/2005

Schedule 8.3
Management Compensation Agreements*

Last Name	First Name	Title
CHIEF EXECUTIVE OFFICER		
STEENLAND	DOUGLAS M.	PRESIDENT & CHIEF EXECUTIVE OFFICER
EXECUTIVE VICE PRESIDENTS		
COHEN	NEAL S.	EVP & CHIEF FINANCIAL OFFICER
GRIFFIN	J. TIMOTHY	EVP MARKETING & DISTRIBUTION
HAAN	PHILIP C.	EVP INTERNATIONAL, ALLIANCES & INFORMATION TECHNOLOGY AND CHAIRMAN - NWA CARGO
ROBERTS	ANDREW C.	EVP OPERATIONS
SENIOR VICE PRESIDENTS		
BAUER	KRIS B.	SVP TECHNICAL OPERATIONS
BECKER	MICHAEL J.	SVP HUMAN RESOURCES & LABOR RELATIONS
DAVIS	DAVID M.	SVP FINANCE & CONTROLLER
FRIEDEL	JAMES M.	SVP PACIFIC & PRESIDENT NWA CARGO
KNOTEK	CRYSTAL L.	SVP GROUND OPERATIONS & CUSTOMER SERVICE
LINDER	MARY E. CARROLL	SVP CORPORATE & BRAND COMMUNICATIONS
MATTHEWS	DANIEL B.	SVP & TREASURER
NEWMAN	ANDREA FISCHER	SVP GOVERNMENT AFFAIRS
RAINEY	TIMOTHY J.	SVP FLIGHT OPERATIONS, INFLIGHT & SYSTEM OPERATIONS CONTROL
VICE PRESIDENTS		
BACH	THOMAS J.	VP NETWORK PLANNING & REVENUE MANAGEMENT
BENDORAITIS	JOHN A.	EVP & CHIEF OPERATING OFFICER, COMPASS AIRLINES, INC.
BODA	SUZANNE F.	VP INFLIGHT SERVICES
CAMPBELL	TIMOTHY P.	VP SOC / FLIGHT OPERATIONS ADMINISTRATION
CANTARUTTI	PERRY A.	VP RESERVATIONS SALES & SERVICES
CARLSON	KRISTI K.	VP TAX
COLLETTE	CHRISTOPHER L.	VP GROUND OPERATIONS - CUSTOMER SERVICE PLANNING
CRON	JAMES J.	VP PASSENGER MARKETING & SALES, CEO - MLT VACATIONS
DESCHAMPS	FREDERIC	VP PACIFIC OPERATIONS, FINANCE & ADMINISTRATION
GURNEY	MARK C.	VP CUSTOMER SERVICE - DTW
HOFER	BARRY J.	VP FINANCIAL PLANNING & ANALYSIS
HYLANDER	KENNETH J.	VP SAFETY & ENGINEERING & CHIEF SAFEY OFFICER
KENNEY JR	PETER B.	VP LAW
LENTSCH	WILLIAM P.	VP CUSTOMER SERVICE - MSP
LENZA	ADOLFO M.	VP DISTRIBUTION & E-COMMERCE
LIU	LAURA H.	VP INTERNATIONAL MARKETING & SALES
MCDONALD	DANIEL M.	VP FINANCE & FLEET PLANNING
MEGINNES	TIMOTHY J.	VP COMPENSATION & BENEFITS
MILLER	MICHAEL L.	VP LAW & SECRETARY
PIEPER	NATHANIEL J.	VP ALLIANCES
SCHAEFER	ANNA M.	VP FINANCE & CHIEF ACCOUNTING OFFICER
SEAR	STEVEN M.	VP SALES
SHOWERS	JULIE HAGEN	VP LABOR RELATIONS
TANEY	JOSEPH W.	VP STATION OPERATIONS
WILKINSON	DALE A.	VP MATERIALS MANAGEMENT
WISE	THERESA M. H.	CHIEF INFORMATION OFFICER
WROBLE	PAUL N.	VP LINE MAINTENANCE OPERATIONS

* Management compensation agreements for Knotek, Cantarutti, Carlson, Hofer and Schaefer are post-petition agreements, reflecting the promotion of these individuals after the Commencement Date.

Each other management compensation agreement is a pre-petition agreement to be assumed on the Effective Date of the Plan.

EXHIBIT B

NORTHWEST AIRLINES CORPORATION

2007 STOCK INCENTIVE PLAN

Article 1. Purpose and Duration

1.1 Purpose. The purpose of the Northwest Airlines Corporation 2007 Stock Incentive Plan (the "Plan") is to motivate, attract and retain key employees and to further the growth, development and financial success of Northwest Airlines Corporation (the "Company") and its Subsidiaries by aligning the personal interests of key employees through the ownership of Shares and through other incentives, with those of the Company and the Company's shareholders. The Plan permits the granting of Stock Options, Stock Appreciation Rights, Restricted Stock and Other Stock Based Awards.

1.2 Duration. The Plan shall become effective as of the effective date of the Company's confirmed plan of reorganization under Chapter 11 of the U.S. Bankruptcy Code (the "Effective Date"), and shall remain in effect until the earlier of the date the Plan is terminated pursuant to Article 7 hereof, or the 10th anniversary of the Effective Date (the "Termination Date"). No Award may be granted under the Plan on or after the Termination Date, but Awards made prior to the Termination Date may be exercised, vested or otherwise effectuated beyond that date unless otherwise limited.

Article 2. Definitions

2.1 Definitions. Whenever used in the Plan, the following terms shall have the meanings set forth below:

(a) *"Allocation"* means the grant of the following Awards pursuant to the Plan in connection with the Company's emergence from bankruptcy pursuant to the First Amended Joint and Consolidated Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code (as amended or supplemented, the "First Amended Plan of Reorganization") filed by the Company and thirteen of its direct and indirect subsidiaries (collectively, the "Debtors") with the Bankruptcy Court on March 30, 2007:

(i) Awards covering a total of 1,629,359 Shares (subject to adjustment as provided in Section 13.1 hereof) to employees of the Company or a Subsidiary below the director level;

(ii) Awards covering a total of 8,159,333 Shares (subject to adjustment as provided in Section 13.1 hereof) to employees of the Company or a Subsidiary at the director, managing director and officer levels and other key employees in the form of restricted stock units; and

(iii) Awards covering a total of 5,439,556 Shares (subject to adjustment as provided in Section 13.1 hereof) to employees of the Company or a Subsidiary at the director, managing director and officer levels and other key employees in the form of stock options.

(b) *"Award"* means a grant under this Plan of Stock Options, Restricted Stock, Stock Appreciation Rights or Other Stock Based Awards.

(c) *"Award Agreement"* means the document which evidences an Award and which sets forth the terms, conditions and limitations relating to such Award.

(d) *"Board"* means the Board of Directors of the Company.

(e) *"Change of Control"* means any one of the following:

(i) Individuals who, as of the Effective Date, constitute the Board of Directors of the Company (the "Incumbent Board"), cease for any reason to constitute at least a majority of such Board; provided, however, that any individual becoming a director subsequent to the Effective Date, whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a "person" (as such term is defined in Section 13(d) or 14(d) of the Exchange Act) other than the Incumbent Board; or

(ii) Consummation by the Company of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a "Business Combination"), in each case, unless, following such Business Combination, (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the then outstanding Shares of the Company (or its successor by merger, consolidation or purchase of all or substantially all of its assets) (the "Outstanding Common Stock") and the combined voting power of the then outstanding voting securities of the Company (or its successor by merger, consolidation or purchase of all or substantially all of its assets) entitled to vote generally in the election of directors (the "Outstanding Voting Securities") immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then Outstanding Common Stock and the combined voting power of the then Outstanding Voting Securities, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Common Stock and Outstanding Voting Securities, as the case may be, and (B) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement or of the action of such Incumbent Board providing for such Business Combination;

(iii) Any Person or "group" (as defined in Section 14(d)(2) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities representing 50% or more of the total voting power of the voting stock of the Company (or any entity which controls the Company), including by way of merger, consolidation, tender or exchange offer or otherwise; or

(iv) Approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

(f) "*Code*" means the Internal Revenue Code of 1986, as amended from time to time.

(g) "*Committee*" means the Compensation Committee of the Board (or a subcommittee thereof), or such other committee of the Board (including, without limitation, the full Board) to which the Board has delegated power to act under or pursuant to the provisions of the Plan.

(h) "*Company*" means Northwest Airlines Corporation, a Delaware corporation.

(i) "*Disability*" means "disability" within the meaning of Section 22(e)(3) of the Code, as determined by the Committee.

(j) "*Effective Date*" means the effective date of the Company's confirmed plan of reorganization under Chapter 11 of the U.S. Bankruptcy Code.

(k) "*Eligible Employee*" means any executive or employee of the Company or any Subsidiary.

(l) "*Exchange Act*" means the Securities Exchange Act of 1934, as amended from time to time.

(m) "*Fair Market Value*" means, with respect to any particular date, the closing price of a Share as reported on the consolidated tape of the principal national securities exchange or reporting system on which such Shares are listed or admitted to trading.

(n) "*Incentive Stock Option*" or "*ISO*" means an option to purchase Shares, granted pursuant to Section 6.1, which is designated as an Incentive Stock Option and is intended to meet the requirements of Section 422 of the Code.

(o) "*Nonqualified Stock Option*" or "*NQSO*" means an option to purchase Shares, granted pursuant to Section 6.1, which is not designated as an Incentive Stock Option.

(p) "*Other Stock Based Award*" means an Award, granted pursuant to Section 6.4, other than a Stock Option, Restricted Stock or SAR, that is paid with, valued in whole or in part by reference to, or is otherwise based on, Shares.

(q) "*Participant*" means an Eligible Employee selected by the Committee to receive an Award under the Plan.

(r) "*Performance-Based Award*" means an Award granted to a Participant pursuant to Section 6.4(b).

(s) "*Person*" means any person, firm, partnership, corporation or other entity.

(t) "*Plan*" means the Northwest Airlines Corporation 2007 Stock Incentive Plan.

(u) "*Restricted Stock*" means an Award granted to a Participant pursuant to Section 6.3.

(v) "*Reserve*" means 6,105,000 of the Shares (subject to adjustment as provided in Section 13.1 hereof) that are available for grant under the Plan.

(w) "*Retirement*" means a separation from service with the Company or a Subsidiary based on a normal or early retirement as defined in the Northwest Airlines Pension Plan for Salaried Employees.

(x) "*Shares*" means the issued or unissued shares of the common stock, par value $.01 per share, of the Company.

(y) "*Stock Appreciation Right*" or "*SAR*" means the grant, pursuant to Section 6.2, of a right to receive a payment from the Company, in the form of stock, cash or a combination of both, equal to the excess of the Fair Market Value of one or more Shares over the exercise price of such Shares.

(z) "*Stock Option*" means the grant, pursuant to Section 6.1, of a right to purchase a specified number of Shares during a specified period at a designated price, which may be an Incentive Stock Option or a Nonqualified Stock Option.

(aa) "*Subsidiary*" means a subsidiary of the Company, as defined in Section 424(f) of the Code.

Article 3. Administration

3.1 Authority. The Plan shall be administered by the Committee, which may delegate its duties and powers in whole or in part to any subcommittee thereof consisting solely of at least two individuals who are intended to qualify as "Non-Employee Directors" within the meaning of Rule 16b-3 under the Act (or any successor rule thereto), independent directors within the meaning of any applicable stock exchange listing requirements and "outside directors" within the meaning of Section 162(m) of the Code (or any successor section thereto). Additionally, the Committee may delegate the authority to grant Awards under the Plan to any employee or group of employees of the Company or a Subsidiary; provided that such delegation and grants are consistent with applicable law and guidelines established by the Board from time to time. The Committee shall have full and exclusive power, subject to the provisions hereof, to make all determinations which may be necessary or advisable for the administration of the Plan, including:

(a) selecting Eligible Employees to whom Awards are granted;

(b) determining the size and types of Awards;

(c) determining the terms and conditions of such Awards in a manner consistent with the Plan;

(d) determining whether, to what extent and under what circumstances, Awards may be settled, paid or exercised in cash, Shares, or other Awards, or other property, or canceled, forfeited or suspended;

(e) construing and interpreting the Plan and any agreement or instrument entered into under the Plan;

(f) establishing, amending or waiving rules and regulations for the Plan's administration; and

(g) amending (subject to the provisions of Article 7) the terms and conditions of any outstanding Award to the extent such terms and conditions are within its discretion.

3.2 Decisions Binding. All determinations made by the Committee arising out of or in connection with the interpretation and administration of the Plan and all related orders or resolutions of the Board shall be final, conclusive and binding on all persons, including the Company, its Subsidiaries, its shareholders, Participants, and their estates and beneficiaries.

Article 4. Shares Subject to the Plan

4.1 Number of Shares. Subject to adjustment as provided in Section 13.1, no more than 21,333,248 Shares may be issued under the Plan, of which 15,228,248 Shares shall be issued pursuant to Awards granted in accordance with the Allocation. The number of Shares subject to Stock Options or Stock Appreciation Rights granted under the Plan to any one individual in any fiscal year of the Company shall not be more than 2 million Shares. These Shares may consist in whole or in part of authorized and unissued Shares, or of treasury Shares. No fractional Shares shall be issued under the Plan; however, cash may be paid in lieu of any fractional Shares in settlement of Awards under the Plan. For purposes of determining the number of Shares remaining available for issuance under the Plan:

(a) The grant of an Award that is payable in Shares shall reduce the authorized pool of Shares by the number of Shares subject to such Award while such Award is outstanding, except to the extent that such an Award is in tandem with another Award covering the same or fewer Shares which has already been taken into account in determining the authorized pool of Shares.

(b) To the extent that an Award described under Section 4.1(a) is settled in cash or any form other than in Shares, the authorized pool of Shares shall be increased by the appropriate number of Shares represented by such settlement of the Award, as determined at the sole discretion of the Committee (subject to the limitation set forth in Section 4.2).

4.2 Lapsed Awards. If any Award (other than an Award of Shares) granted under the Plan is canceled, terminates, expires or lapses for any reason, any Shares subject to such Award shall increase the authorized pool of Shares; provided, however, that to the extent such

Award was granted in tandem with another Award, any Shares issued pursuant to the exercise or settlement of such other Award shall not increase the authorized pool of Shares.

4.3 Effect of Acquisition. Any Awards granted by the Company in substitution for awards or rights issued by a company whose shares or assets are acquired by the Company or a Subsidiary shall not reduce the number of Shares available for grant under the Plan.

Article 5. Participation

5.1 Selection of Participants. Subject to the provisions of the Plan, the Committee may from time to time select, from all Eligible Employees, those to whom Awards shall be granted and shall determine the nature and amount of each Award. No Eligible Employee shall have the right to receive an Award under the Plan, or, if selected to receive an Award, the right to continue to receive Awards. Further, no Participant shall have any rights, by reason of the grant of any Award under the Plan, to continued employment by or services with the Company or any Subsidiary. There is no obligation for uniformity of treatment of Participants under the Plan.

5.2 Award Agreement. Each Award granted under the Plan shall be evidenced by an Award Agreement that shall specify the terms, conditions, limitations and such other provisions applicable to the Award as the Committee shall determine.

Article 6. Awards. Awards may be granted by the Committee to Eligible Employees at any time, and from time to time, prior to the Termination Date, as the Committee shall determine. The Committee shall have complete discretion in determining the number of Awards to grant (subject to the Share limitations set forth in Section 4.1) and, consistent with the provisions of the Plan, the terms, conditions and limitations pertaining to such Awards. Notwithstanding the foregoing, any Participant who receives an Award in connection with the Company's emergence from bankruptcy pursuant to the Company's First Amended Plan of Reorganization shall not be eligible to receive any Awards covering Shares subject to the Reserve for a period of four (4) years after the Effective Date, provided that the foregoing limitation shall not apply with respect to the grant of Awards (i) in connection with a Participant's promotion or a material increase in the Participant's job responsibilities, or (ii) the Committee has determined, based on special circumstances, to be in the best interests of the Company.

6.1 Stock Options.

(a) Option Price. The option price for a Stock Option (the "Option Price") shall be determined by the Committee; provided that the Option Price may not be less than one hundred percent (100%) of the Fair Market Value of a Share on the date the Stock Option is granted.

(b) Period of Exercise. A Stock Option may be exercised at such times as may be specified in an Award Agreement, in whole or in installments, which may be cumulative and shall expire at such time as the Committee shall determine at the time of grant; provided that no Stock Option shall be exercisable later than ten (10) years after the date granted. The Committee may make provision for exercisability in the event of death, Disability, Retirement or

other termination of employment or services. The Committee may also amend any Stock Option to accelerate the dates after which the Stock Option may be exercised in whole or in part.

(c) Additional Provisions for ISOs. No ISO shall be granted to any Eligible Employee who, at the time the ISO is granted, owns (directly, or within the meaning of Section 424(d) of the Code) more than ten percent of the total combined voting power of all classes of stock of the Company or of any Subsidiary, unless (i) the Option Price under such ISO is at least 110 percent of the Fair Market Value of a Share on the date the ISO is granted and (ii) the expiration date of such ISO is a date not later than the day preceding the fifth anniversary of the date on which the ISO is granted. Any Participant who disposes of Shares acquired upon the exercise of an ISO either (i) within two years after the date of grant of such ISO or (ii) within one year after the transfer of such Shares to the Participant, shall notify the Company of such disposition and of the amount realized upon such disposition. All Stock Options granted under the Plan are intended to be NQSOs, unless the applicable Award Agreement expressly states that the Stock Option is intended to be an ISO. If a Stock Option is intended to be an ISO, and if for any reason such Stock Option (or portion thereof) shall not qualify as an ISO, then, to the extent of such nonqualification, such Stock Option (or portion thereof) shall be regarded as a NQSO granted under the Plan; provided that such Stock Option (or portion thereof) otherwise complies with the Plan's requirements relating to NQSOs. In no event shall any member of the Committee, the Company or any of its Subsidiaries (or their respective employees, officers or directors) have any liability to any Participant (or any other Person) due to the failure of a Stock Option to qualify for any reason as an ISO.

(d) Method of Exercise. A Stock Option, or portion thereof, shall be exercised by delivery of a written or electronic notice of exercise to the Company (or any stock plan administrative agent appointed by the Company) and payment of the full price of the Shares being purchased pursuant to such Stock Option. A Participant may exercise a Stock Option with respect to less than the full number of Shares for which such Stock Option may then be exercised, but a Participant must exercise the Stock Option in full Shares. The Option Price, or portion thereof, may be paid:

(i) in United States dollars in cash or by check, bank draft or money order payable to the order of the Company;

(ii) to the extent authorized by the Committee, through the delivery of Shares with an aggregate Fair Market Value on the date of exercise equal to the Option Price; provided that such Shares have been held by the Participant for at least six months (or such other period as established from time to time by the Committee in order to avoid adverse accounting treatment applying generally accepted accounting principles);

(iii) to the extent authorized by the Committee, by delivery of irrevocable instructions to a financial institution to deliver promptly to the Company the portion of sale or loan proceeds sufficient to pay the Option Price;

(iv) to the extent authorized by the Committee, by the withholding of Shares otherwise issuable on exercise with an aggregate Fair Market Value on the date of exercise equal to the Option Price; or

(v) by any combination of the above methods of payment or by any other means which the Committee determines to be consistent with the Plan's purpose and applicable law.

(e) Attestation. Wherever in this Plan or any Award Agreement that a Participant is permitted to pay the Option Price of a Stock Option or taxes relating to the exercise of a Stock Option by delivering Shares, the Participant may, subject to procedures satisfactory to the Committee, satisfy such delivery requirement by presenting proof of beneficial ownership of such Shares, in which case the Company shall treat the Stock Option as exercised without further payment and shall withhold such number of Shares from the Shares acquired by the exercise of the Stock Option.

6.2 Stock Appreciation Rights.

(a) SARs may be granted at an exercise price determined by the Committee (which exercise price shall not be less than one hundred percent (100%) of the Fair Market Value of a Share on the date the SAR is granted) and may be granted in tandem with a Stock Option, such that the exercise of the SAR or related Stock Option will result in a forfeiture of the right to exercise the related Stock Option for an equivalent number of Shares, or independently of any Stock Option.

(b) SARs may be exercised at such times as may be specified in an Award Agreement, in whole or in installments, which may be cumulative and shall expire at such time as the Committee shall determine at the time of grant; provided that no SARs shall be exercisable later than ten (10) years after the date granted. The Committee may amend any SAR to accelerate the dates after which the SAR may be executed in whole or in part.

(c) A SAR shall be exercised by the delivery of a written or electronic notice of exercise to the Company (or any stock plan administrative agent appointed by the Company) setting forth the number of Shares with respect to which the SAR is to be exercised.

6.3 Restricted Stock. Restricted Stock may be granted alone or in conjunction with other Awards under the Plan and may be conditioned upon continued employment or services for a specified period, the attainment of specific performance goals or such other factors as the Committee may determine. In making an Award of Restricted Stock, the Committee will determine the restrictions that will apply, the period during which the Stock is subject to such restrictions, and the price, if any, payable by a Participant. The Committee may amend any Award of Restricted Stock to accelerate the dates after which such Award may be executed in whole or in part.

6.4 Other Stock Based Awards.

(a) Generally. The Committee shall have complete discretion in determining the number of Shares subject to Other Stock Based Awards, the consideration for such Awards, and the terms, conditions and limitations pertaining to such Awards including, without limitation, restrictions based upon the achievement of specific business objectives, tenure, and other measurements of individual or business performance, and/or restrictions under applicable federal or state securities laws, and conditions under which such Awards will lapse. Payment of

Other Stock Based Awards may be in the form of cash, Shares, other Awards, or in such combinations thereof as the Committee shall determine at the time of grant, and with such restrictions as it may impose. Payment may be made in a lump sum or in installments as prescribed by the Committee. The Committee may also require or permit Participants to elect to defer the issuance of Shares or the settlement of Awards in cash under such rules and procedures as it may establish under the Plan. The Committee may also provide that deferred settlements include the payment or crediting of interest on the deferred amounts or the payment or crediting of dividend equivalents on deferred amounts denominated in Shares. The Committee may, at its sole discretion, direct the Company to issue Shares subject to such restrictive legends and/or stop transfer instructions as the Committee deems appropriate.

(b) Performance-Based Awards. Notwithstanding anything to the contrary herein, certain Other Stock Based Awards granted under this Section 6.4 may be granted in a manner which is intended to be deductible by the Company under Section 162(m) of the Code ("Performance-Based Awards"). A Participant's Performance-Based Award shall be determined based on the attainment of written performance goals approved by the Committee for a performance period established by the Committee (i) while the outcome for that performance period is substantially uncertain and (ii) no more than 90 days after the commencement of the performance period to which the performance goal relates or, if less, the number of days which is equal to 25% of the relevant performance period. The performance goals, which must be objective, shall be based upon one or more of the following criteria: (i) consolidated earnings before or after taxes (including earnings before interest, taxes, depreciation and amortization); (ii) net income; (iii) operating income; (iv) earnings per Share; (v) book value per Share; (vi) return on shareholders' equity; (vii) expense management; (viii) return on investment; (ix) improvements in capital structure; (x) profitability of an identifiable business unit or product; (xi) maintenance or improvement of profit margins; (xii) stock price; (xiii) market share; (xiv) revenues or sales; (xv) costs; (xvi) cash flow; (xvii) working capital; (xviii) return on assets and (xix) total shareholder return. The foregoing criteria may relate to the Company, one or more of its Subsidiaries or one or more of its divisions or units, or any combination of the foregoing, and may be applied on an absolute basis and/or be relative to one or more peer group companies or indices, or any combination thereof, all as the Committee shall determine. In addition, to the degree consistent with Section 162(m) of the Code, the performance goals may be calculated without regard to extraordinary items. The maximum amount of a Performance-Based Award during a calendar year to any Participant shall be: (x) with respect to Performance-Based Awards that are denominated in Shares, 2 million Shares and (y) with respect to Performance-Based Awards that are not denominated in Shares, $10,000,000. The Committee shall determine whether, with respect to a performance period, the applicable performance goals have been met with respect to a given Participant and, if they have, the Committee shall so certify and ascertain the amount of the applicable Performance-Based Award. No Performance-Based Awards will be paid for such performance period until such certification is made by the Committee. The amount of the Performance-Based Award actually paid to a given Participant may be less (but not more) than the amount determined by the applicable performance goal formula, at the discretion of the Committee. The amount of the Performance-Based Award determined by the Committee for a performance period shall be paid to the Participant at such time as determined by the Committee in its sole discretion after the end of such performance period.

Article 7. Amendment, Modification and Termination.

7.1 The Board may at any time, or from time to time, suspend or terminate the Plan in whole or in part or amend it in such respects as the Board may deem appropriate; provided, however, that no such amendment shall be made without approval of the Company's shareholders if such action would increase the total number of Shares which may be issued pursuant to Awards, change the Allocation, change the last sentence of Article 6 hereof, or change the maximum number of Shares for which Awards may be granted to any Participant, except as is provided for in accordance with Article 4 of the Plan.

7.2 No amendment, suspension or termination of this Plan or any Award shall, without the Participant's consent, alter or impair any of the rights or obligations under any Award theretofore granted to a Participant under the Plan.

7.3 The Board may amend this Plan, subject to the limitations cited above, in such manner as it deems necessary to permit the granting of Awards meeting the requirements of future amendments to the Code or regulations promulgated thereunder.

7.4 Without limiting the generality of the foregoing, to the extent applicable, notwithstanding anything herein to the contrary, this Plan and Awards issued hereunder shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretative guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date. Notwithstanding any provision of the Plan to the contrary, in the event that the Committee determines that any amounts payable hereunder will be taxable to a Participant under Section 409A of the Code and related Department of Treasury guidance prior to payment to such Participant of such amount, the Company may (a) adopt such amendments to the Plan and Awards and appropriate policies and procedures, including amendments and policies with retroactive effect, that the Committee determines necessary or appropriate to preserve the intended tax treatment of the benefits provided by the Plan and Awards hereunder and/or (b) take such other actions as the Committee determines necessary or appropriate to avoid the imposition of an additional tax under Section 409A of the Code.

Article 8. Withholding

8.1 Tax Withholding. The Company shall have the power and the right to deduct or withhold, or require a Participant to remit to the Company, an amount in cash sufficient to satisfy federal, state and local taxes required by law to be withheld in connection with a grant, exercise or payment made under or as a result of the Plan.

8.2 Share Withholding. The Committee may require one or more classes of Participants to satisfy the withholding requirement, in whole or in part, by having the Company withhold Shares having a Fair Market Value, on the date the tax is to be determined, equal to the amount of withholding which is required by law. Alternatively, the Committee may allow a Participant to elect Share withholding for tax purposes subject to such terms and conditions as the Committee shall establish.

Article 9. Transferability. Except as otherwise provided by the Committee, no Award granted under the Plan may be sold, transferred, pledged, assigned or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution. Further, all Awards granted to a Participant under the Plan shall be exercisable during the Participant's lifetime only by the Participant. Notwithstanding the foregoing, the designation of a beneficiary by a Participant does not constitute a transfer.

Article 10. Unfunded Plan. The Plan shall be unfunded and the Company shall not be required to segregate any assets that may at any time be represented by Awards under the Plan. Any liability of the Company to any Person with respect to any Award under the Plan shall be based solely upon any contractual obligations that may be effected pursuant to the Plan. No such obligation of the Company shall be deemed to be secured by any pledge of, or other encumbrance on, any property or assets of the Company.

Article 11. Successors. All obligations of the Company under the Plan with respect to Awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation or otherwise, of all or substantially all of the business and/or assets of the Company.

Article 12. Securities Law Compliance. The Plan is intended to comply with all applicable conditions of Rule 16b-3 or any successor rule thereto under the Exchange Act. To the extent any provision of the Plan or action by the Committee fails to so comply, it shall be deemed null and void, to the extent permitted by law and deemed advisable by the Committee. Further, each Award shall be subject to the requirement that, if at any time the Committee shall determine, in its sole discretion, that the listing, registration or qualification of any Award under the Plan upon any securities exchange or under any state or federal law, or the consent or approval of any government regulatory body, is necessary or desirable as a condition of, or in connection with, the granting of such Award or the grant or settlement thereof, such Award may not be exercised or settled in whole or in part unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Committee.

Article 13. Adjustments Upon Certain Events. Notwithstanding any other provision of the Plan or any Award Agreement to the contrary, the following provisions shall apply to all Awards granted under the Plan:

13.1 Generally. In the event of any change in the outstanding Shares after the Effective Date by reason of any Share dividend or split, reorganization, recapitalization, merger, consolidation, spin-off, combination, combination or transaction or exchange of Shares or other corporate exchange, or any distribution to shareholders of Shares other than regular cash dividends or any transaction similar to the foregoing, the Committee shall, without liability to any person and in a manner determined in its reasonable discretion, make an equitable substitution or adjustment (to the extent necessary to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan) as to (i) the number or kind of Shares or other securities issued or reserved for issuance pursuant to the Plan or pursuant to outstanding Awards, (ii) the maximum number of Shares for which Stock Options or Stock Appreciation Rights may be granted during a calendar year to any Participant, (iii) the

maximum amount of a Performance-Based Award that may be granted during a calendar year to any Participant, (iv) the Option Price or exercise price of any Stock Appreciation Right and/or (v) any other affected terms of such Awards.

13.2 Change of Control.

(a) In the event of a Change of Control (other than a Change of Control occurring by virtue of an event described in Section 2.1(e)(i) hereof), the Committee may, but shall not be obligated to, (A) accelerate, vest or cause the restrictions to lapse with respect to, all or any portion of an Award, (B) cancel Awards for fair value (as determined in the sole discretion of the Committee) which, in the case of Stock Options and Stock Appreciation Rights, may equal the excess, if any, of value of the consideration to be paid in the Change of Control transaction to holders of the same number of Shares subject to such Stock Options or Stock Appreciation Rights (or, if no consideration is paid in any such transaction, the Fair Market Value of the Shares subject to such Stock Options or Stock Appreciation Rights) over the aggregate exercise price of such Stock Options or Stock Appreciation Rights, (C) provide for the issuance of substitute Awards that will substantially preserve the otherwise applicable terms of any affected Awards previously granted hereunder as determined by the Committee in its sole discretion or (D) provide that for a period of at least 30 days prior to the Change of Control, such Stock Options or Stock Appreciation Rights shall be exercisable as to all shares subject thereto and that upon the occurrence of the Change of Control, such Stock Options or Stock Appreciation Rights shall terminate and be of no further force and effect.

(b) Notwithstanding any provision to the contrary in this Plan, on or after a Change of Control, upon (A) the involuntary termination of a Participant's employment within six months after a Change of Control for any reason other than a termination for cause (as defined in the applicable Award Agreement) or (B) a termination of employment within six months after a Change of Control by the Participant for "Good Reason," as defined below, all Awards not previously vested under the terms of the applicable Award Agreement shall immediately vest in full. The term "Good Reason" means, on or after a Change of Control, (i) any reduction in a Participant's base salary or target bonus below the level of the Participant's base salary or target bonus immediately prior to the Change of Control, (ii) any material diminution in a Participant's duties or responsibilities or (iii) if such Participant's place of work is located at the Company's principal executive offices, the relocation of such offices to a location outside the Minneapolis-St. Paul Metropolitan Area; provided, however, that the foregoing events shall constitute Good Reason only if the Company fails to cure such event within thirty (30) days after receipt from the Participant of written notice of the event which constitutes Good Reason; and provided, further, that "Good Reason" shall cease to exist for an event on the 60th day following the later of its occurrence or the Participant's knowledge thereof, unless the Participant has given the Company written notice thereof prior to such date.

Article 14. Requirements of Law

14.1 Requirements of Law. The granting of Awards and the issuance of Shares under the Plan shall be subject to all applicable laws, rules and regulations and to such approvals by any governmental agencies or national securities exchanges as may be required.

14.2 Severability. In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

14.3 Governing Law. To the extent not preempted by federal law, the Plan and all Award Agreements shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the conflicts of laws provisions thereof.

Article 15. Miscellaneous Provisions

15.1 Plan Does not Confer Employment or Stockholder Rights. The right of the Company to terminate (whether by dismissal, discharge, Retirement or otherwise) the Participant's employment with it at any time at will, or as otherwise provided by any agreement between the Company and the Participant, is specifically reserved. Neither the Participant nor any person entitled to exercise the Participant's rights in the event of the Participant's death shall have any of the rights of a stockholder with respect to the Shares subject to each Stock Option, except to the extent that, and until, such Shares shall have been issued upon the exercise of each Stock Option.

15.2 Plan Expenses. Any expenses of administering this Plan shall be borne by the Company.

15.3 Use of Exercise Proceeds. Payments received from Participants upon the exercise of Stock Options shall be used for the general corporate purposes of the Company, except that any Shares received or withheld in payment may be retired, or retained in the Company's treasury and reissued.

15.4 Section 409A. Notwithstanding other provisions of the Plan or any Award Agreements thereunder, no Award shall be granted, deferred, accelerated, extended, paid out or modified under this Plan in a manner that would result in the imposition of an additional tax under Section 409A of the Code upon a Participant. In the event that it is reasonably determined by the Committee that, as a result of Section 409A of the Code, payments in respect of any Award under the Plan may not be made at the time contemplated by the terms of the Plan or the relevant Award Agreement, as the case may be, without causing the Participant holding such Award to be subject to taxation under Section 409A of the Code, the Company will make such payment on the first day that would not result in the Participant incurring any tax liability under Section 409A of the Code. The Company shall use commercially reasonable efforts to implement the provisions of this Section 15.4 in good faith; provided that neither the Company, the Committee nor any of the Company's employees, directors or representatives shall have any liability to Participants with respect to this Section 15.4.

EXHIBIT C

AMENDED AND RESTATED BYLAWS
OF
NORTHWEST AIRLINES CORPORATION
(hereinafter called the "Corporation")

As Amended as of [ ], 2007

ARTICLE I.

OFFICES

Section 1. *Registered Office.* The registered office of the office of the Corporation shall be in Wilmington, New Castle County, State of Delaware or such other location as determined by the Board of Directors of the Corporation (the "Board") consistent with applicable law.

Section 2. *Other Offices.* The Corporation may also have offices at such other places both within and without the State of Delaware as the Board may from time to time determine.

ARTICLE II.

MEETING OF STOCKHOLDERS

Section 1. *Annual Meetings.* The annual meeting of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other business as may properly be brought before the meeting shall be held on such date, and at such time and place, if any, within or without the State of Delaware as may be designated from time to time by the Board.

Section 2. *Special Meetings.* Subject to the rights of the holders of any class or series of preferred stock of the Corporation, special meetings of the stockholders of the Corporation may be called only by the Chairman of the Board and shall be called by the Chairman of the Board at the request in writing (i) of a majority of the Board of Directors or (ii) following the earlier of (a) the Company's 2008 Annual Meeting or (b) April 30, 2008, of stockholders holding the Corporation's common stock, par value $0.01 per share (the "Common Stock") constituting more than 30% of the outstanding shares of Common Stock. Upon receipt of a valid and complete written request by stockholders pursuant to the previous sentence and Section 12(b) of this Article II, the Corporation shall promptly, subject to applicable legal, regulatory and listing requirements, scheduled such special meeting to consider such matter which meeting will occur on a date not later than 90 days after receipt of such written request.

Section 3. *Notice of Meetings.* Except as otherwise provided by law, the certificate of incorporation of the Corporation or these Bylaws, notice of the date, hour, place (if any) and, in the case of a special meeting, the purpose or purposes of the meeting of stockholders shall be given not more than sixty (60), nor less than ten (10), days previous thereto, to each stockholder of record entitled to vote at the meeting at such address as appears on the records of the Corporation.

Section 4. *Quorum.* The holders of a majority in voting power of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided herein, by statute or by the certificate of incorporation of the Corporation; but if at any meeting of stockholders there shall be less than a quorum present, the chairman of the meeting or the stockholders present may, to the extent permitted by law, adjourn the meeting from time to time without further notice other than announcement at the meeting of the date, time and place, if any, of the adjourned meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if, after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter.

Section 5. *Conduct of Meeting.* The Chairman of the Board, or in the Chairman's absence or at the Chairman's direction, the President, or in the President's absence or at the President's direction, any officer of the Corporation shall call all meetings of the stockholders to order and shall act as chairman of any such meetings. The Secretary of the Corporation or, in such officer's absence, an Assistant Secretary shall act as secretary of the meeting. If neither the Secretary nor an Assistant Secretary is present, the chairman of the meeting shall appoint a secretary of the meeting. Unless otherwise determined by the Board prior to the meeting, the chairman of the meeting shall determine the order of business and shall have the authority in his or her discretion to regulate the conduct of any such meeting, including, without limitation, convening the meeting and adjourning the meeting (whether or not a quorum is present), imposing restrictions on the persons (other than stockholders of record of the Corporation or their duly appointed proxies) who may attend any such meeting, whether any stockholder or stockholder's proxy may be excluded from any meeting of stockholders based upon any determination by the chairman of the meeting, in his or her sole discretion, that any such person has unduly disrupted or is likely to disrupt the proceedings thereat, and the circumstances in which any person may make a statement or ask questions at any meeting of stockholders.

Section 6. *Voting.* When a quorum is present at any meeting, the vote of the holders of a majority of the votes cast shall decide any question brought before such meeting, unless the question is one upon which by express provision of the certificate of incorporation of the Corporation, these Bylaws or the General Corporation Law of the State of Delaware (the "DGCL") a different vote is required, in which case such express provision shall govern and control the decision of such question. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required and a quorum is present, the affirmative vote of a majority of the votes cast by shares of such class or series or classes or series shall be the act of such class or series or classes or series, unless the question is one upon which by express provision of the certificate of incorporation of the Corporation, these Bylaws or the DGCL a different vote is required, in which case such express provision shall govern and control the decision of such question. The Board, in its discretion, or the officer of the Corporation presiding

at a meeting of stockholders, in the officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 7. *Proxies.*

(a) At all meetings of stockholders, any stockholder entitled to vote thereat shall be entitled to vote in person or by proxy, but no proxy shall be voted after three years from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for the stockholder as proxy pursuant to the DGCL, the following shall constitute a valid means by which a stockholder may grant such authority: (1) a stockholder may execute a writing authorizing another person or persons to act for the stockholder as proxy, and execution of the writing may be accomplished by the stockholder or the stockholder's authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature; or (2) a stockholder may authorize another person or persons to act for the stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspector or inspectors of stockholder votes or, if there are no such inspectors, such other persons making that determination shall specify the information upon which they relied.

(b) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to the preceding paragraph of this Section 7 may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(c) Proxies shall be filed with the secretary of the meeting prior to or at the commencement of the meeting to which they relate.

Section 8. *Record Date.* In order that the Corporation may determine the stockholders (a) entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof or (b) entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date (i) in the case of clause (a) above, shall not be more than sixty nor less than ten (10) days before the date of such meeting and (ii) in the case of clause (b) above, shall not be more than sixty days prior to such action. If for any reason the Board shall not have fixed a record date for any such purpose, the record date for such purpose shall be determined as provided by law.

Only those stockholders of record on the date so fixed or determined shall be entitled to any of the foregoing rights, notwithstanding the transfer of any such stock on the books of the Corporation after any such record date so fixed or determined.

Section 9. *Written Consent.* At any time when the certificate of incorporation of the Corporation permits action by one or more classes or series of stockholders of the Corporation to be taken by written consent, the provisions of this Section 9 shall apply. All consents properly delivered in accordance with the certificate of incorporation of the Corporation, this Section 9 and the DGCL shall be deemed to be recorded when so delivered. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the Corporation as required by this Section 9, written consents signed by the holders of a sufficient number of shares to take such corporate action are so recorded. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date of the meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof. In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. If no record date has been fixed by the Board and prior action by the Board is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

Section 10. *List of Stockholders Entitled to Vote.* The officer who has charge of the stock ledger of the Corporation shall prepare and make at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided in the certificate of incorporation of the Corporation or in these Bylaws, the stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 10 of this Article II or to vote in person or by proxy at any meeting of stockholders.

Section 11. *Stockholder Inspectors.* The Board, in advance of all meetings of the stockholders, shall appoint one or more inspectors of stockholder votes, who may be employees or agents of the Corporation or stockholders or their proxies, but not directors of the Corporation or candidates for office. In the event that the Board fails to so appoint one or more inspectors of stockholder votes or, in the event that one or more inspectors of stockholder votes previously designated by the Board fails to appear or act at the meeting of stockholders, the chairman of the meeting may appoint one or more inspectors of stockholder votes to fill such vacancy or vacancies. Inspectors of stockholder votes appointed to act at any meeting of the stockholders, before entering upon the discharge of their duties, shall take and sign an oath to faithfully execute the duties of inspector of stockholder votes with strict impartiality and according to the best of their ability and the oath so taken shall be subscribed by them. Inspectors of stockholder votes shall, subject to the power of the chairman of the meeting to open and close the polls, take charge of the polls, and, after the voting, shall make a certificate of the result of the vote taken.

Section 12. *Advance Notice of Stockholder Business.*

(a) *Annual Meetings of Stockholders.*

(1) Nominations of persons for election to the Board and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (A) pursuant to the Corporation's notice of meeting (or any supplement thereto) delivered pursuant to Article II, Section 3 of these Bylaws, (B) by or at the direction of the Board or any committee thereof or (C) by any stockholder of the Corporation who is entitled to vote on such election or such business at the meeting, who complied with the notice procedures set forth in subparagraphs (2) and (3) of this paragraph (a) of this Bylaw and who was a stockholder of record at the time such notice is delivered to the Secretary of the Corporation.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, and, in the case of business other than nominations, such other business must be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred fifty (150) days prior to the first anniversary of the preceding year's annual meeting; *provided, however,* that in the event that the date of the annual meeting is advanced by more than thirty (30) days, or delayed by more than seventy (70) days, from such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the 150th day prior to such annual meeting and not later than the close of business on the later of the

90th day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made; *and provided further*, that for purposes of the application of Rule 14a-4(c) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (or any successor provision), the date for notice specified in this paragraph (a)(2) shall be the earlier of the date calculated as hereinbefore provided or the date specified in paragraph (c)(1) of Rule 14a-4. For the purposes of the first annual meeting of stockholders of the Corporation held after 2007, the anniversary date shall be deemed April 30, 2008. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act, including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (iii) a representation that the stockholder intends to appear in person or by proxy at the meeting to propose such business or nomination, and (iv) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (B) otherwise to solicit proxies from stockholders in support of such proposal or nomination. The foregoing notice requirements of this Section 12 shall be deemed satisfied by a stockholder if the stockholder has notified the Corporation of his or her intention to present a proposal or nomination at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) promulgated under the Exchange Act and such stockholder's proposal or nomination has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

(3) Notwithstanding anything in the second sentence of paragraph (a)(2) of this Bylaw to the contrary, in the event that the number of directors to be elected to the Board is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board made by the Corporation at least eighty (80) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be

delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which a public announcement of such increase is first made by the Corporation; provided that, if no such announcement is made at least ten (10) days before the meeting, then no such notice shall be required.

(b) *Special Meetings of Stockholders.*

(1) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting pursuant to Article II, Section 3 of these Bylaws.

(2) Any stockholder(s) of the Corporation duly requesting in writing the calling of such special meeting pursuant to Article II, Section 2 of these Bylaws, must specify in such written request pursuant to Article II, Section 2 of these Bylaws: (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act, including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (iii) a representation that the stockholder intends to appear in person or by proxy at the meeting to propose such business or nomination, and (iv) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (B) otherwise to solicit proxies from stockholders in support of such proposal or nomination. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation. Any matter proposed to be conducted at a special meeting pursuant to Article II, Section 2 of these Bylaws must be a proper matter for such stockholder action.

(3) Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board or (ii) by any stockholder of the Corporation who is entitled to vote on such election at the meeting, who complies with

the notice procedures set forth in this Bylaw and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation. Nominations by stockholders of persons for election to the Board may be made at such a special meeting of stockholders if the stockholder's notice as required by paragraph (a)(2) of this Bylaw shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the 150th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting.

(c) *General.*

(1) Only persons who are nominated in accordance with the procedures set forth in this Bylaw shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Bylaw. Except as otherwise provided by law, the certificate of incorporation of the Corporation or these Bylaws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Bylaw and, if any proposed nomination or business is not in compliance with this Bylaw, to declare that such defective nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 12, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 12, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(2) For purposes of this Bylaw, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed or furnished by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) For purposes of this Bylaw, no adjournment or postponement or notice of adjournment or postponement of any meeting shall be deemed to constitute a new notice of such meeting for purposes of this Section 12, and in order for any notification required to be delivered by a stockholder pursuant to this Section 12 to be timely, such notification

must be delivered within the periods set forth above with respect to the originally scheduled meeting.

(4) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw. Nothing in this Bylaw shall (a) be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (b) apply to the right, if any, of the holders of any series of Preferred Stock (as defined in the certificate of incorporation of the Corporation) to elect directors pursuant to any applicable provisions of the certificate of incorporation of the Corporation.

ARTICLE III.

DIRECTORS

Section 1. *General.* The Board shall consist, subject to the certificate of incorporation of the Corporation, of such number of directors as shall from time to time be fixed exclusively by resolution adopted by affirmative vote of the majority of the Board. Directors shall (except as hereinafter provided for the filling of vacancies and newly created directorships) be elected by the holders of a plurality of the votes cast by the holders of shares present in person or represented by proxy at the meeting and entitled to vote on the election of such directors. A majority of the total number of directors then in office (but not less than one-third of the number of directors constituting the entire Board) shall constitute a quorum for the transaction of business. Except as otherwise provided by law, these Bylaws or by the certificate of incorporation of the Corporation, the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board. Directors need not be stockholders.

Section 2. *Vacancies.* Subject to the certificate of incorporation of the Corporation, unless otherwise required by law, (i) in the event that (a) stockholders remove any or all directors of the Corporation at a special meeting of stockholders or (b) any or all directors resign from the Board after the stockholders effectively call for a special meeting pursuant to Article II Section 2 for the purpose of removing such directors, such vacancy or vacancies may be filled at such special meeting by the affirmative vote of holders of at least a majority of votes cast at such meeting and (ii) any newly created directorship on the Board that results from an increase in the number of directors and any vacancy occurring in the Board not filled pursuant to clause (i) of this Section 2 shall be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Any director chosen to fill a vacancy shall hold office until the next annual meeting and until his successor shall be elected and qualified.

Section 3. *Meetings.* Meetings of the Board shall be held at such place, if any, within or without the State of Delaware as may from time to time be fixed by resolution of the Board or as may be specified in the notice of any meeting. Regular meetings of the Board shall be held at such times as may from time to time be fixed by resolution of the Board and special meetings may be held at any time upon the call of the Chairman of the Board or the President, by oral or written notice, including telegraph, telex or transmission of a telecopy, e-mail or other means of

electronic transmission, duly served on or sent and delivered to each director to such director's address, e-mail address or telephone or telecopy number as shown on the books of the Corporation not less than twenty-four (24) hours before the meeting. The notice of any meeting need not specify the purposes thereof. A meeting of the Board may be held without notice immediately after the annual meeting of stockholders at the same place, if any, at which such meeting is held. Notice need not be given of regular meetings of the Board held at times fixed by resolution of the Board. Notice of any meeting need not be given to any director who shall attend such meeting (except when the director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened), or who shall waive notice thereof, before or after such meeting, in writing (including by electronic transmission).

Section 4. *Election of Directors by Holders of Preferred Stock.* Notwithstanding the foregoing, whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal, and other features of such directorships shall be governed by the terms of the certificate of incorporation of the Corporation (including any certificate of designation relating to any series of Preferred Stock) applicable thereto. The number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the number fixed pursuant to the certificate of incorporation of the Corporation and these Bylaws. Except as otherwise expressly provided in the terms of such series, the number of directors that may be so elected by the holders of any such series of stock shall be elected for terms expiring at the next annual meeting of stockholders, and vacancies among directors so elected by the separate vote of the holders of any such series of Preferred Stock shall be filled by the affirmative vote of a majority of the remaining directors elected by such series, or, if there are no such remaining directors, by the holders of such series in the same manner in which such series initially elected a director.

Section 5. *Election of Directors by Holders of Multiple Classes of Stock.* If at any meeting for the election of directors, the Corporation has outstanding more than one class of stock, and one or more such classes or series thereof are entitled to vote separately as a class to elect directors, and there shall be a quorum of only one such class or series of stock, that class or series of stock shall be entitled to elect its quota of directors notwithstanding absence of a quorum of the other class or series of stock.

Section 6. *Committees.* The Board may from time to time establish one or more committees of the Board to serve at the pleasure of the Board, which shall be comprised of such members of the Board and have such duties as the Board shall from time to time determine. Any director may belong to any number of committees of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Unless otherwise provided in the certificate of incorporation of the Corporation, these Bylaws or the resolution of the Board designating the committee, a committee

may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

Section 7. *Action by Written Consent*. Unless otherwise restricted by the certificate of incorporation of the Corporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing (including by electronic transmission), and the writing or writings are filed with the minutes of proceedings of the Board.

Section 8. *Participation by Telephone Conference*. The members of the Board or any committee thereof may participate in a meeting of such Board or committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at such a meeting.

Section 9. *Compensation.* The Board may establish policies for the compensation of directors and for the reimbursement of the expenses of directors, in each case, in connection with services provided by directors to the Corporation.

Section 10. *Term Limits.* The maximum number of consecutive years that any non-executive director may be elected to serve on the Board of Directors is twelve years, commencing from the date of these Bylaws.

ARTICLE IV.

OFFICERS

Section 1. *General.* The officers of the Corporation shall be chosen by the Board and shall be a President, a Secretary and a Treasurer. The Board, in its discretion, may also choose a Chairman of the Board (who must be a director) and one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. To the fullest extent permitted by law, any two or more offices may be held by the same person, except that the offices of Chairman of the Board and Chief Executive Officer may not be held by the same person. The officers of Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman of the Board, need such officers be directors of the Corporation.

Section 2. *Election.* The Board at its first meeting held after each Annual Meeting of Stockholders shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board; and all officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier resignation or removal. Any officer may be removed from office at any time either with or without cause by the Board. Any vacancy occurring in any office of the Corporation shall be filled by the Board. The salaries of all officers of the Corporation shall be fixed by the Board.

Section 3. *Voting Securities Owned by the Corporation.* Notwithstanding anything to the contrary contained herein, powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of and such securities, if voting securities, may be voted on behalf of, the Corporation (i) by such officer or officers as are specifically delegated to do so in any particular instance by the Board of the Corporation and (ii) the President or any Vice President, in any other case, and any such officer may, in the name of and on behalf of the Corporation, take all such action as such officer may deem advisable to vote such securities in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. *Chairman of the Board.* The Chairman of the Board, if there be one, shall preside at all meetings of the stockholders and of the Board. The Chairman of the Board shall also perform such duties and may exercise such powers as from time to time may be assigned to him or her by these Bylaws or by the Board.

Section 5. *President.* The President shall be subject to the control of the Board and, if there be one, the Chairman of the Board. As provided in Article VII of these Bylaws, the President shall have authority to execute all deeds, mortgages, bonds, checks, contracts and other instruments pertaining to the business and affairs of the Corporation. In the absence or disability of the Chairman of the Board, or if there be none, the President shall preside at all meetings of the stockholders and the Board. Unless the Board establishes otherwise, the President shall be the Chief Executive Officer of the Corporation. The President shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him or her by these Bylaws or by the Board.

Section 6. *Vice Presidents.* At the request of the President or in his or her absence or in the event of his or her inability or refusal to act (and if there be no Chairman of the Board), the Vice President or the Vice Presidents if there is more than one (in the order designated by the Board) shall perform the duties of the Chief Executive Officer of the Corporation, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board from time to time may prescribe. If there be no Chairman of the Board and no Vice President, the Board shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of the President to act, shall perform the duties of the Chief Executive Officer of the Corporation, and when so acting, shall have all the powers of and be subject to all the restrictions upon such Chief Executive Officer.

Section 7. *Secretary.* The Secretary shall attend all meetings of the Board and all meetings of stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or the Chief Executive Officer of the Corporation, under whose

supervision he or she shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board, and if there be no Assistant Secretary, then either the Board or the Chief Executive Officer of the Corporation may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 8. *Treasurer.* The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the Chief Executive Officer of the Corporation and the Board, at its regular meetings, or when the Board so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation. If required by the Board, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his or her control belonging to the Corporation.

Section 9. *Assistant Secretaries.* Except as may be otherwise provided in these Bylaws, Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board, the Chairman of the Board, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of his or her disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 10. *Assistant Treasurers.* Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board, the Chairman of the Board, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of his or her disability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his or her control belonging to the Corporation.

Section 11. *Other Officers.* Such other officers as the Board may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board. The Board may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

ARTICLE V.

STOCK

Section 1. *Form of Certificates.* Every holder of stock in the Corporation represented by certificates shall be entitled to have a certificate signed, in the name of the Corporation (i) by the Chairman of the Board, the President or a Vice President and (ii) by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by him, her or it in the Corporation.

Section 2. *Signatures.* Where a certificate is countersigned by (i) a transfer agent other than the Corporation or its employee, or (ii) a registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 3. *Lost Certificates.* The Board may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to advertise the same in such manner as the Board shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4. *Transfers.* Stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by his or her attorney lawfully constituted in writing and upon the surrender of the certificate therefor, which shall be canceled before a new certificate shall be issued.

Section 5. *Beneficial owners.* The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

ARTICLE VI.

NOTICES

Section 1. *Notices.* Whenever written notice is required by law, the certificate of incorporation of the Corporation or these Bylaws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, telex, cable, telecopy (facsimile) or electronic transmission.

Section 2. *Waivers of Notice.* Whenever any notice is required by law, the certificate of incorporation of the Corporation or these Bylaws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing or electronic transmission, signed or given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written notice or waiver unless so required by the certificate of incorporation of the Corporation or these Bylaws.

ARTICLE VII.

GENERAL PROVISIONS

Section 1. *Dividends.* Dividends upon the capital stock of the Corporation, subject to the provisions of the certificate of incorporation of the Corporation, may be declared by the Board at any regular or special meeting, and may be paid in cash, in property or in shares of the capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board may modify or abolish any such reserve.

Section 2. *Disbursements.* All checks or demands for money and notes of the Corporation shall be signed by the Treasurer or such officer or officers or such other person or persons as the Board may from time to time designate.

Section 3. *Fiscal Year.* The fiscal year of the Corporation shall be fixed by resolution of the Board.

Section 4. *Corporate Seal.* The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words “Corporate Seal, Delaware”. The seal

may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 5. *Execution of Instruments.* All deeds, mortgages, bonds, checks, contracts and other instruments pertaining to the business and affairs of the Corporation shall be signed on behalf of the Corporation by the President, the President, any Vice President or other officer of the Corporation, or by such other person or persons as may be designated from time to time by the Board.

ARTICLE VIII.

OWNERSHIP BY FOREIGN PERSONS

Section 1. *Foreign Stock Record.* There shall be maintained a separate stock record, designated the "*Foreign Stock Record*," for the registration of Alien Owned Shares. The Beneficial Ownership by Persons of Alien Owned Shares shall be determined in conformity with regulations prescribed by the Board.

Section 2. *Permitted Percentage.* At no time shall ownership of shares representing more than the Permitted Percentage be registered on the Foreign Stock Record.

Section 3. *Registration of Shares.* If at any time there exist Alien Owned Shares that are not registered on the Foreign Stock Record, the Beneficial Owner thereof may request, in writing, that the Corporation register ownership of such shares on the Foreign Stock Record and the Corporation shall comply with such request, subject to the limitation set forth in Section 2. The order in which Alien Owned Shares shall be registered on the Foreign Stock Record shall be chronological, based on the date the Corporation received a written request to so register such shares of Alien Owned Shares; *provided*, that any Person who is not a United States Citizen who purchases or otherwise acquires Alien Owned Shares that are registered on the Foreign Stock Record, may register such shares in its own name within thirty days of such acquisition, in which event such Person will assume the position of the seller of such shares in the chronological order of shares registered on the Foreign Stock Record. If at any time the Corporation shall find that the combined voting power of Alien Owned Shares then registered on the Foreign Stock Record exceeds the Permitted Percentage, there shall be removed from the Foreign Stock Record the registration of such number of shares so registered as is sufficient to reduce the combined voting power of the shares so registered to an amount not in excess of the Permitted Percentage. The order in which such shares shall be removed shall be reverse chronological order based upon the date the Corporation received a written request to so register such shares of Alien Owned Shares.

Section 4. *Definitions.* Capitalized terms used in this Article VIII and not defined herein shall have the meaning ascribed to them in the certificate of incorporation of the Corporation.

ARTICLE IX.

AMENDMENTS

Section 1. These Bylaws may be made, amended, altered, changed, added to or repealed by the Board or at a meeting of the stockholders; provided, in the case of the meeting of the stockholders, notice of the proposed change was given in the notice of the meeting of the stockholders; provided, further, that, notwithstanding any other provisions of these Bylaws or any provision of law which might otherwise permit a lesser vote of the stockholders, the affirmative vote of the holders of at least a majority of the voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to make, amend, alter, change, add to or repeal any of the following provisions of these Bylaws: Sections 2 and 12 of Article II, Section 2 of Article III and this Article IX.

EXHIBIT D

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

NORTHWEST AIRLINES CORPORATION

The undersigned, Michael L. Miller, certifies that he is the Vice President – Law and Secretary of Northwest Airlines Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), and does hereby further certify as follows:

1. The present name of the corporation is Northwest Airlines Corporation. The Corporation was incorporated under the name "Newbridge Parent Corporation" by the filing of its original certificate of incorporation with the Secretary of State of the State of Delaware on January 21, 1998. The name of the Corporation was changed to "Northwest Airlines Corporation" by the filing of a restated certificate of incorporation of the Corporation with the Secretary of State of the State of Delaware on November 20, 1998.

2. This Amended and Restated Certificate of Incorporation of the Corporation has been duly adopted in accordance with the provisions of Sections 242, 245 and 303 of the General Corporation Law of the State of Delaware (the "DGCL"). Provision for the making of this Amended and Restated Certificate of Incorporation is contained in the order of the United States Bankruptcy Court for the Southern District of New York entered on [ ], confirming the First Amended Joint and Consolidated Plan of Reorganization of Northwest Airlines Corporation **[and certain of its affiliates]**, as modified, filed pursuant to Section 1121(a) of chapter 11 of title 11 of the United States Code, which confirmation order was affirmed by order of the United States District Court for the Southern District of New York entered on [ ].

3. This Amended and Restated Certificate of Incorporation has been duly executed and acknowledged by an officer of the Corporation designated in such order of the Bankruptcy Court in accordance with the provisions of Sections 242, 245 and 303 of the DGCL.

4. The text of the certificate of incorporation of the Corporation, as amended and restated, is hereby amended and restated to read in its entirety as follows:

ARTICLE I

Section 1.1. Name. The name of the Corporation is Northwest Airlines Corporation (the "Corporation").

ARTICLE II

Section 2.1. Address. The registered office of the Corporation in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of the Corporation's registered agent at such address is The Corporation Trust Company.

ARTICLE III

Section 3.1. Purpose. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

ARTICLE IV

Section 4.1. Capitalization. The total number of shares of all classes of stock that the Corporation is authorized to issue is 450,000,000 shares, consisting of 50,000,000 shares of Preferred Stock, par value $0.01 per share ("Preferred Stock") and 400,000,000 shares of Common Stock, par value $0.01 per share ("Common Stock"). The number of authorized shares of the Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of any of the Common Stock or Preferred Stock voting separately as a class shall be required therefor.

Section 4.2. Preferred Stock.

(A) The Board of Directors of the Corporation (the "Board") is hereby expressly authorized, by resolution or resolutions, to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the powers (including voting powers, if any), preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, of the shares of such series. The designations, powers, preferences and relative, participating, optional and other rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

(B) Holders of a series of Preferred Stock, as such, shall not be entitled to vote on any matter except as otherwise required by law or as shall expressly be granted thereto by this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to such series).

(C) Pursuant to the authority conferred by this Section 4.2, the following series of Preferred Stock has been designated, such series consisting of such number of shares, with such voting powers and with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations and restrictions therefor as are stated and expressed in the exhibit with respect to such series attached hereto as specified below and incorporated herein by reference:

(1) Series A Junior Participating Preferred Stock (the "Series A Junior Participating Preferred Stock") as set forth in Exhibit A hereto and incorporated herein by reference.

Section 4.3. Common Stock.

(A) Voting Rights.

(1) Except as otherwise provided herein, each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; provided, however, that, to the fullest extent permitted by law, holders of Common Stock, as such, shall have no voting power with respect to, and shall not be entitled to vote on, any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) or pursuant to the DGCL.

(2) Except as otherwise required in this Amended and Restated Certificate of Incorporation or by applicable law, the holders of Common Stock shall vote together as a single class on all matters (or, if any holders of Preferred Stock are entitled to vote together with the holders of Common Stock, as a single class with such holders of Preferred Stock).

(B) Dividends. Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Common Stock with respect to the payment of dividends, dividends may be declared and paid on the Common Stock out of the assets of the Corporation that are by law available therefor at such times and in such amounts as the Board in its discretion shall determine.

(C) Liquidation, Dissolution or Winding Up. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Common Stock with respect to payments upon the dissolution, liquidation or winding up of the Corporation shall be entitled, the holders of all outstanding shares of Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares held by each such stockholder.

Section 4.4. Non-voting Equity Securities. The Corporation shall not issue any class of non-voting equity securities unless and solely to the extent permitted by Section 1123(a)(6) of the United States Bankruptcy Code (the "Bankruptcy Code") as in effect on the date of filing this Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware; provided, however, that this Section 4.4: (A) will have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code; (B) will have

such force and effect, if any, only for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applicable to the Corporation; and (C) in all events may be amended or eliminated in accordance with applicable law from time to time in effect.

ARTICLE V

Section 5.1. Limitation of Voting Rights.

(A) Notwithstanding anything to the contrary contained in this Amended and Restated Certificate of Incorporation, at no time shall Alien Owned Shares be voted, unless such shares are registered on the Foreign Stock Record, as defined in the Bylaws, maintained by the Corporation. In any event, Alien Owned Shares shall have all of the other rights of shares of Common Stock hereunder. The Bylaws may contain provisions to implement this provision.

(B) Bylaws, Legends. Etc.

(1) The Bylaws of the Corporation may make appropriate provisions to effect the requirements of this Article V.

(2) All certificates representing Common Stock or any other voting stock of the Corporation are subject to the restrictions set forth in this Article V.

(3) A majority of the directors of the Corporation shall have the exclusive power to determine all matters necessary to determine compliance with this Article V, and the good faith determination of a majority of the directors on such matters shall be conclusive and binding for all the purposes of this Article V.

(C) Beneficial Ownership Inquiry.

(1) The Corporation may by notice in writing (which may be included in the form of proxy or ballot distributed to stockholders of the Corporation in connection with the annual meeting (or any special meeting) of the stockholders of the Corporation, or otherwise) require a Person that is a holder of record of equity securities of the Corporation or that the Corporation knows to have, or has reasonable cause to believe has, Beneficial Ownership of equity securities of the Corporation to certify in such manner as the Corporation shall deem appropriate (including by way of execution of any form of proxy or ballot by such Person) that, to the knowledge of such Person:

(i) all equity securities of the Corporation as to which such Person has record ownership or Beneficial Ownership are owned and controlled only by United States Citizens; or

(ii) the number and class or series of equity securities of the Corporation owned of record or Beneficially Owned by such Person that are owned or controlled by Persons who are not United States Citizens are as set forth in such certificate.

(2) With respect to any equity securities identified by such Person in response to Section (C)(1) of this Article V, the Corporation may require such Person to provide such further information as the Corporation may reasonably require in order to implement the provisions of this Article V.

(3) For purposes of applying the provisions of this Article V with respect to any equity securities of the Corporation, in the event of the failure of any Person to provide the certificate or other information to which the Corporation is entitled pursuant to this Section (C), the Corporation shall presume that the equity securities in question are owned or controlled by Persons who are not United States Citizens.

ARTICLE VI

Section 6.1. Bylaws. In furtherance and not in limitation of the powers conferred by the DGCL, the Board is expressly authorized to make, amend, alter, change, add to or repeal the Bylaws of the Corporation without the assent or vote of the stockholders in any manner not inconsistent with the law of the State of Delaware or this Amended and Restated Certificate of Incorporation. Notwithstanding anything to the contrary contained in this Amended and Restated Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders of the Corporation to make, amend, alter, change, add to or repeal any of the following provisions of the Bylaws: Sections 2 and 12 of Article II, Section 2 of Article III and Article IX.

ARTICLE VII

Section 7.1. Board of Directors: Composition. The business and affairs of the Corporation shall be managed by or under the direction of a Board consisting, subject to Section 7.4, of not less than three directors or more than fifteen directors, with the exact number of directors to be determined from time to time by resolution adopted by affirmative vote of a majority of the Board. In no case shall a decrease in the number of directors remove or shorten the term of any incumbent director. A director shall hold office until the next annual meeting and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

Section 7.2. Board of Directors: Vacancies. In the event that (i) stockholders remove any or all directors of the Corporation at a special meeting of stockholders pursuant to Section 7.3 or (ii) any or all directors resign after the stockholders effectively call for a special meeting pursuant to Section 8.1 for the purpose of removing such directors, such vacancy or vacancies may be filled at such special meeting by the affirmative vote of holders of at least a majority of the votes cast at such meeting. Any newly created directorship on the Board that results from an increase in the number of directors and any vacancy occurring in the Board not filled pursuant to the first sentence of this Section 7.2 shall be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Any

director chosen to fill a vacancy shall hold office until the next annual meeting and until his successor shall be elected and qualified.

Section 7.3. Removal of Directors. Any or all directors of the Corporation (other than the directors, if any, elected by the holders of any series of Preferred Stock, voting separately as one or more series) may be removed with or without cause, by the affirmative vote of holders of at least a majority of the votes cast at a special meeting of the stockholders.

Section 7.4. Election of Directors by Preferred Stock Holders. Notwithstanding the foregoing, whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal, filling of vacancies and other features of such directorships shall be governed by the terms of this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) applicable thereto. The number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the number fixed by or pursuant to Section 7.1.

Section 7.5. Written Ballot. Directors of the Corporation need not be elected by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

Section 8.1. Meetings of Stockholders. Any action required or permitted to be taken by the holders of the Common Stock of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders; provided, however, to the extent expressly permitted by the certificate of designation relating to one or more series of Preferred Stock, any action by the holders of such series of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares of the relevant class or series having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Except as otherwise required by law and subject to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation may be called only by the Chairman of the Board and shall be called by the Chairman of the Board at the request in writing (i) of a majority of the Board of Directors or (ii) following the earlier to occur of (a) the Company's 2008 Annual Meeting or (b) April 30, 2008, of stockholders holding Common Stock constituting more than 30% of the outstanding shares of Common Stock.

ARTICLE IX

Section 9.1. Limited Liability of Directors. No director of the Corporation will have any personal liability to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or hereafter may be amended. Neither the amendment nor the repeal of this Article IX shall eliminate or reduce the effect thereof in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article IX, would accrue or arise, prior to such amendment or repeal.

ARTICLE X

Section 10.1. Indemnification. To the fullest extent permitted by the law of the State of Delaware as it presently exists or may hereafter be amended, the Corporation shall indemnify any person (and such person's heirs, executors or administrators) who was or is made or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding (brought in the right of the Corporation or otherwise), whether civil, criminal, administrative or investigative, and whether formal or informal, including appeals, by reason of the fact that such person, or a person for whom such person was the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, limited liability company, nonprofit entity or other enterprise, for and against all loss and liability suffered and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement reasonably incurred by such person or such heirs, executors or administrators in connection with such action, suit or proceeding, including appeals. Notwithstanding the preceding sentence, except as otherwise provided in Section 10.3, the Corporation shall be required to indemnify a person described in such sentence in connection with any action, suit or proceeding (or part thereof) commenced by such person only if the commencement of such action, suit or proceeding (or part thereof) by such person was authorized by the Board.

Section 10.2. Advance of Expenses. To the fullest extent permitted by the law of the State of Delaware, the Corporation shall promptly pay expenses (including attorneys' fees) incurred by any person described in Section 10.1 in appearing at, participating in or defending any action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, including appeals, upon presentation of an undertaking on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified under this Article X or otherwise. Notwithstanding the preceding sentence, except as otherwise provided in Section 10.3, the Corporation shall be required to pay expenses of a person described in such sentence in connection with any action, suit or proceeding (or part thereof) commenced by such person only if the commencement of such action, suit or proceeding (or part thereof) by such person was authorized by the Board.

Section 10.3. Unpaid Claims. If a claim for indemnification (following the final disposition of such action, suit or proceeding) or advancement of expenses under this Article X is not paid in full within thirty (30) days after a written claim therefor by any person described in Section 10.1 has been received by the Corporation, such person may file suit to recover the

unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that such person is not entitled to the requested indemnification or advancement of expenses under applicable law.

Section 10.4. Insurance. To the fullest extent permitted by the law of the State of Delaware, the Corporation may purchase and maintain insurance on behalf of any person described in Section 10.1 against any liability asserted against such person, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article X or otherwise.

Section 10.5. Non-Exclusivity of Rights. The provisions of this Article X shall be applicable to all actions, claims, suits or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after its adoption. The provisions of this Article X shall be deemed to be a contract between the Corporation and each director or officer (or legal representative thereof) who serves in such capacity at any time while this Article X and the relevant provisions of the law of the State of Delaware and other applicable law, if any, are in effect, and any alteration, amendment or repeal hereof shall not affect any rights or obligations then existing with respect to any state of facts or any action, suit or proceeding then or theretofore existing, or any action, suit or proceeding thereafter brought or threatened based in whole or in part on any such state of facts. If any provision of this Article X shall be found to be invalid or limited in application by reason of any law or regulation, it shall not affect the validity of the remaining provisions hereof. The rights of indemnification provided in this Article X shall neither be exclusive of, nor be deemed in limitation of, any rights to which any person may otherwise be or become entitled or permitted by contract, this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation, vote of stockholders or directors or otherwise, or as a matter of law, both as to actions in such person's official capacity and actions in any other capacity, it being the policy of the Corporation that indemnification of any person whom the Corporation is obligated to indemnify pursuant to Section 10.1 shall be made to the fullest extent permitted by law.

Section 10.6. For purposes of this Article X, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries.

Section 10.7. This Article X shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to, and purchase and maintain insurance on behalf of, persons other than persons described in Section 10.1.

ARTICLE XI

Section 11.1. Definitions. The following terms shall have the following meaning for the purpose of this Amended and Restated Certificate of Incorporation and the Bylaws:

(A) "Alien Owned Shares" shall mean any shares of any class of outstanding voting stock of the Corporation which are owned, of record or beneficially, or otherwise controlled, by any Person or Persons who are not United States Citizens.

(B) "Beneficial Ownership," "Beneficially Owned," or "Owned Beneficially" refers to beneficial ownership as defined in Rule 13d-3 (without regard to the 60-day provision in paragraph (d) (1)(i) thereof) under the Exchange Act.

(C) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

(D) "Permitted Percentage" shall mean 25% of the voting interest in the Corporation, or such other percentage of the voting interest in the Corporation as hereafter may be owned or controlled by persons who are not United States Citizens without loss, under Section 40102(15) of Title 49 of the United States Code or any successor or other applicable law or regulation, of the United States Citizen status of the Corporation or any Subsidiary.

(E) "Person" shall mean any individual, corporation, partnership, trust or other entity of any nature whatsoever.

(F) "Subsidiary" shall mean any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the Corporation.

(G) "United States Citizen" shall mean any person who is a Citizen of the United States as defined in Section 40102(15) of Title 49 of the United States Code, as in effect on the date in question, or any successor statute or regulation.

ARTICLE XII

Section 12.1. Amendment. Notwithstanding anything to the contrary contained in this Amended and Restated Certificate of Incorporation, and in addition to any other vote required by the DGCL or this Amended and Restated Certificate of Incorporation, the affirmative vote of the holders of at least a majority in voting power of all the then outstanding shares of stock of the Corporation entitled to vote at an election of directors, voting together as a single class, shall be required to alter, amend or repeal Article VI, Article VII (other than Sections 7.1 and 7.3), Article VIII or this Article XII or to adopt any provision inconsistent therewith.

ARTICLE XIII

Section 13.1. Severability. If any provision or provisions of this Amended and Restated Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as

applied to any circumstance for any reason whatsoever, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby.

ARTICLE XIV

Section 14.1. 5% Ownership Limit.

(A) For purposes of this Article XIV, the following terms shall have the meanings indicated (and any references to any portions of Treasury Regulation section 1.382-2T shall include any successor provisions):

"*5% Transaction*" means any Transfer of Corporation Securities described in clause (i) or (ii) of Section 14.1(B), subject to the provision of such paragraph Section 14.1(B).

An "*Affiliate*" of any Person means any other Person, that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such Person; and, for the purposes of this definition only, "*control*" (including the terms "*controlling*", "*controlled by*" and "*under common control with*") means the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a Person whether through the ownership of securities, by contract or agency or otherwise.

"*Agent*" means an agent designated by the Board of Directors

"*Common Stock*" means the new shares of common stock of the Corporation authorized and issued pursuant to the Plan and this Certificate of Incorporation.

"*Corporation Securities*" means (i) shares of Common Stock, (ii) warrants, rights, or options (including options within the meaning of Treasury Regulation section 1.382-2T(h)(4)(v)) to purchase stock of the Corporation, and (iii) any other interest that would be treated as "stock" of the Corporation pursuant to Treasury Regulation section 1.382-2T(f)(18).

"*Effective Date*" means **[●]**.

"*Excess Securities*" means Corporation Securities which are the subject of the Prohibited Transfer.

"*Five-Percent Shareholder*" means a Person or group of Persons owning, for purposes of section 382 of the Tax Code, 4.95% or more of Corporation Securities, that, if such Person or group of Persons owned, for purposes of section 382 of the Tax Code, 5% or

more of Corporation Securities, would be identified as a "5-percent shareholder" of the Corporation pursuant to Treasury Regulation section 1.382-2T(g).

"*Percentage Stock Ownership*" means the percentage stock ownership interest as determined in accordance with Treasury Regulation section 1.382-2T(g), (h), (j) and (k).

"*Person*" means any individual, firm, corporation or other legal entity, and includes any successor (by merger or otherwise) of such entity.

"*Plan*" means the Debtors' Joint and Consolidated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated January 12, 2007, as amended on February 15, 2007.

"*Prohibited Distributions*" means any dividends or other distributions that were received by the Purported Transferee from the Corporation with respect to the Excess Securities.

"*Prohibited Transfer*" means any purported Transfer of Corporation Securities to the extent that such Transfer is prohibited and/or void under this Section 14.1.

"*Restriction Release Date*" means the earliest of:

(a) the day after the second anniversary of the Effective Date which date may be extended for three one year terms until the fifth anniversary of the Effective Date if each one year extension is approved by the Corporation's shareholders at a duly held meeting by the affirmative vote of a majority of the votes cast on such matter, assuming the presence of a quorum.

(b) the repeal, amendment or modification of section 382 of the Tax Code (and any comparable successor provision) in such a way as to render the restrictions imposed by section 382 of the Tax Code no longer applicable to the Corporation;

(c) the beginning of a taxable year of the Corporation (or any successor thereof) in which no Tax Benefits are available; and

(d) the date on which the Board of Directors determines, in its reasonable judgment, that the limitation amount imposed by section 382 of the Tax Code in the event of an ownership change of the Corporation, as defined in section 382 of the Tax Code, would not be materially less than the net operating loss carryforward or net unrealized built-in loss of the Corporation.

"*Tax Benefit*" means the net operating loss carryovers, capital loss carryovers, general business credit carryovers, alternative minimum tax credit carryovers and foreign tax credit carryovers, as well as any loss or deduction attributable to a "net unrealized built-in loss" within the meaning of section 382 of the Tax Code, of the Corporation or any direct or indirect subsidiary thereof.

"*Tax Code*" means the Internal Revenue Code of 1986, as amended.

"*Transfer*" means, with respect to any Person other than the Corporation, any direct or indirect sale, transfer, assignment, conveyance, pledge or other disposition, other than a sale, transfer, assignment, conveyance, pledge or other disposition to a wholly owned subsidiary of the transferor, or, if the transferor is wholly owned by a Person, to a wholly owned subsidiary of such Person. A Transfer also shall include the creation or grant of an option (including an option within the meaning of Treasury Regulation section 1.382-2T(h)(4)(v)).

(B) Any attempted Transfer of Corporation Securities prior to the Restriction Release Date, or any attempted Transfer of Corporation Securities pursuant to an agreement entered into prior to the Restriction Release Date, shall be prohibited and void ab initio insofar as it purports to transfer ownership or rights in respect of such stock to the purported transferee of a Prohibited Transfer (a "Purported Transferee") (i) if the transferor is a Five-Percent Shareholder or (ii) to the extent that, as a result of such Transfer (or any series of Transfers of which such Transfer is a part), either (1) any Person or group of Persons shall become a Five-Percent Shareholder other than by reason of Treasury Regulation section 1.382-2T(j)(3) or any successor to such regulation or (2) the Percentage Stock Ownership interest in the Corporation of any Five-Percent Shareholder shall be increased; provided, however, that this Section 14.1(B) shall not apply to, nor shall any other provision in this Restated Certificate prohibit, restrict or limit in any way, the issuance of Corporation Securities by the Corporation in accordance with the Plan. Nothing in this Article XIV shall preclude the settlement of any transaction with respect to the Corporation Securities entered into through the facilities of a national securities exchange; provided, however, that the Corporation Securities and parties involved in such transaction shall remain subject to the provisions of this Article XIV in respect of such transaction. Unless a transferor or transferee, as the case may be, that is not a Five-Percent Shareholder at the time of the Transfer, has actual knowledge that a Transfer by or to it is prohibited by Section 14.2, (i) such transferor or transferee, as the case may be, shall have no liability to the Corporation in respect of any losses or damages suffered by the Corporation as a result of such Transfer and the Corporation shall have no cause of action or rights against such transferor or transferee, as the case may be, in respect of such losses or damages, (ii) such transferor shall have no liability to the respective transferee in respect of any losses or damages suffered by such transferee by virtue of the operation of this Article XIV and (iii) such transferee shall have no cause of action or rights against the transferor in respect of such losses or damages. Notwithstanding the foregoing, the transfer restrictions described in this Section 14.1(B) shall not apply to certain qualified plans, as required by law.

(C) The restrictions set forth in Section 14.1(B) shall not apply to an attempted Transfer that is a 5% Transaction (i) if the transferor or the transferee obtains the prior written approval of the Board of Directors or a duly authorized committee thereof, (ii) if such Transfer is made as part of: (A) certain transactions approved by the Board of Directors, including, but not limited to, a merger or consolidation, in which all holders of Common Stock receive, or are offered the same opportunity to receive, cash or other consideration for all such Common Stock, and upon the consummation of which the acquirer will own at least a majority of the outstanding shares of Common Stock, (B) a tender or exchange offer by the Corporation to purchase Corporation Securities, (C) a purchase program effected by the Corporation on the open market and not the result of a privately-negotiated transaction, or (D) any optional or required redemption of a

Corporation Security pursuant to the terms of such security, or (iii) involving the Rights Offering Sponsor or Ultimate Purchasers (as these terms are defined in the Plan), to the extent set forth in the Rights Offering Sponsor Agreement. Up to the second anniversary of the Effective Date (the *"Two Year Period"*), the Board of Directors will approve any proposed Transfer pursuant to clause (i) of the immediately preceding sentence that does not increase the risk of any additional limitation on the full use of the Tax Benefits under section 382 of the Tax Code. For purposes of this determination, the Board of Directors shall consider, among other items, the following: (i) the total owner shift under section 382 of the Tax Code since the date of the Corporation's last ownership change; (ii) all other pending proposed Transfer requests; (iii) whether the proposed Transfer is structured to minimize the resulting owner shift; and (iv) any reasonably foreseeable events of which the Board of Directors has knowledge that would constitute additional owner shifts (the "*Two Year Standard*"). In the event that the restrictions set forth in Section 14.2 are extended beyond the Two Year Period, the Board of Directors will approve subsequent proposed Transfers that, taking into account all prior transfers effected during the "testing period" under section 382, do not result in an aggregate owner shift of more than 30% for purposes of section 382 (the "*Threshold Amount*"). If the aggregate owner shift as of any date after the Two Year Period exceeds the Threshold Amount, the Board of Directors must apply the Two Year Standard until the earlier of the date on which the aggregate owner shift no longer exceeds the Threshold Amount, or the Restriction Release Date. As a condition to granting its approval pursuant to this Section 14.1(C), the Board of Directors may, in its discretion (x) require (at the expense of the transferor and/or transferee) an opinion of counsel selected by the Board of Directors that the Transfer shall not result in the application of any limitation under section 382 of the Tax Code on the use of the Tax Benefits, and/or (y) require the Purported Transferee furnish the Corporation with all information reasonably requested by the Corporation and reasonably available to the Purported Transferee and its Affiliates with respect to the direct or indirect ownership interests of the Purported Transferee (and of Persons to whom ownership interests of the Purported Transferee would be attributed for purposes of section 382 of the Tax Code) in Corporation Securities, and/or (z) require the transferor and/or transferee to reimburse or agree to reimburse the Corporation, on demand, for all costs and expenses incurred by the Corporation with respect to such proposed Transfer, including, without limitation, the Corporation's costs and expenses incurred in determining whether to authorize such proposed Transfer. The Board of Directors may exercise the authority granted by this Section 14.1(C) through duly authorized officers or agents of the Corporation.

(D) Each certificate representing shares of Corporation Securities issued prior to the Restriction Release Date shall contain a conspicuous legend in substantially the following form, evidencing the restrictions set forth in this Article XIV:

The shares of Northwest Airlines Corporation Common Stock represented by this Certificate are issued pursuant to the Plan of Reorganization for Northwest Airlines Corporation, as confirmed by the United States Bankruptcy Court for the Southern District of New York. The transfer of securities represented hereby is subject to restriction pursuant to Article XIV of the Restated Certificate of Incorporation of Northwest Airlines Corporation. Northwest Airlines Corporation will furnish a copy of its Restated Certificate of Incorporation to the holder of record of this Certificate

without charge upon written request addressed to Northwest Airlines Corporation at its principal place of business.

Section 14.2. Treatment of Excess Securities.

(A) No employee or agent of the Corporation shall record any Prohibited Transfer, and the Purported Transferee shall not be recognized as a stockholder of the Corporation for any purpose whatsoever in respect of the Excess Securities. Until the Excess Securities are acquired by another Person in a Transfer that is not a Prohibited Transfer, the Purported Transferee shall not be entitled with respect to such Excess Securities to any rights of stockholders of the Corporation, including, without limitation, the right to vote such Excess Securities and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any; provided, however, that the Transferor of such Excess Securities shall not be required to disgorge, and shall be permitted to retain for its own account, any proceeds of such Transfer, and shall have no further rights, responsibilities, obligations or liabilities with respect to such Excess Securities, if such Transfer was a Prohibited Transfer pursuant to Section 14.1(B)(ii). Once the Excess Securities have been acquired in a Transfer that is not a Prohibited Transfer, the Corporation Securities shall cease to be Excess Securities. For this purpose, any transfer of Excess Securities not in accordance with the provisions of this Section 14.2 shall also be a Prohibited Transfer.

(B) If the Board of Directors determines that a Transfer of Corporation Securities constitutes a Prohibited Transfer then, upon written demand by the Corporation, the Purported Transferee shall transfer or cause to be transferred any certificate or other evidence of ownership of the Excess Securities within the Purported Transferee's possession or control, together with any Prohibited Distributions, to the Agent. The Agent shall thereupon sell to a buyer or buyers, which may include the Corporation, the Excess Securities transferred to it in one or more arm's-length transactions (over the New York Stock Exchange or other national securities exchange on which the Corporation Securities may be traded, if possible, or otherwise privately); provided, however, that the Agent shall effect such sale or sales in an orderly fashion and shall not be required to effect any such sale within any specific time frame if, in the Agent's discretion, such sale or sales would disrupt the market for the Corporation Securities or otherwise would adversely affect the value of the Corporation Securities. If the Purported Transferee has resold the Excess Securities before receiving the Corporation's demand to surrender Excess Securities to the Agent, the Purported Transferee shall be deemed to have sold the Excess Securities for the Agent, and shall be required to transfer to the Agent any Prohibited Distributions and proceeds of such sale, except to the extent that the Corporation grants written permission to the Purported Transferee to retain a portion of such sales proceeds not exceeding the amount that the Purported Transferee would have received from the Agent pursuant to Section 14.2(C) if the Agent rather than the Purported Transferee had resold the Excess Securities.

(C) The Agent shall apply any proceeds of a sale by it of Excess Securities and, if the Purported Transferee had previously resold the Excess Securities, any amounts received by it from a Purported Transferee as follows: (i) first, such amounts shall be

paid to the Agent to the extent necessary to cover its costs and expenses incurred in connection with its duties hereunder; (ii) second, any remaining amounts shall be paid to the Purported Transferee, up to the amount paid by the Purported Transferee for the Excess Securities (or the fair market value, (1) calculated on the basis of the closing market price for the Corporation Securities on the day before the Prohibited Transfer, (2) if the Corporation Securities are not listed or admitted to trading on any stock exchange but are traded in the over-the-counter market, calculated based upon the difference between the highest bid and lowest asked prices, as such prices are reported by the National Association of Securities Dealers through its NASDAQ system or any successor system on the day before the Prohibited Transfer or, if none, on the last preceding day for which such quotations exist, or (3) if the Corporation Securities are neither listed nor admitted to trading on any stock exchange nor traded in the over-the-counter market, then as determined in good faith by the Board of Directors, of the Excess Securities at the time of the Prohibited Transfer to the Purported Transferee by gift, inheritance, or similar Transfer), which amount (or fair market value) shall be determined at the discretion of the Board of Directors; and (iii) third, any remaining amounts, subject to the limitations imposed by the following proviso, shall be paid to one or more organizations qualifying under section 501(c)(3) of the Tax Code (or any comparable successor provision) selected by the Board of Directors; provided, however, that if the Excess Securities (including any Excess Securities arising from a previous Prohibited Transfer not sold by the Agent in a prior sale or sales), represent a 4.95% or greater Percentage Stock Ownership in any class of Corporation Securities, then any such remaining amounts to the extent attributable to the disposition of the portion of such Excess Securities exceeding a 4.94% Percentage Stock Ownership interest in such class shall be paid to two or more organizations qualifying under section 501(c)(3) selected by the Board of Directors. The recourse of any Purported Transferee in respect of any Prohibited Transfer shall be limited to the amount payable to the Purported Transferee pursuant to clause (ii) of the preceding sentence. In no event shall the proceeds of any sale of Excess Securities pursuant to this Section 14.2 inure to the benefit of the Corporation.

(D) If the Purported Transferee fails to surrender the Excess Securities or the proceeds of a sale thereof to the Agent within thirty days from the date on which the Corporation makes a written demand pursuant to Section 14.2(B), then the Corporation shall use its best efforts to enforce the provisions hereof, including the institution of legal proceedings to compel the surrender.

(E) The Corporation shall make the written demand described in Section 14.2(B) within thirty days of the date on which the Board of Directors determines that the attempted Transfer would result in Excess Securities; provided, however, that, if the Corporation makes such demand at a later date, the provisions of Sections 14.1 and 14.2 shall apply nonetheless.

Section 14.3. Waiver of Article XIV. The Board of Directors may, at any time prior to the Restriction Release Date, waive this Article XIV in whole or in part, provided that the Board of Directors determines that (i) such waiver is not reasonably likely to create or increase a material risk that limitations pursuant to section 382 of the Tax Code will be imposed

on the utilization of the Tax Benefits, either at the time of waiver or a reasonable time thereafter, or (ii) the benefits to the shareholders of the Corporation as a whole of waiving the provisions of this Article XIV are sufficient to outweigh any potential detriment to the shareholders as a whole of the limitations referred to in clause (i). Any waiver pursuant to this Article XIV in respect of all transfers shall be filed with the Secretary of the Corporation and mailed by the Secretary to all shareholders of the Corporation within ten days after the date of such determination.

Section 14.4. Board Authority. The Board of Directors shall have the power to determine all matters necessary for assessing compliance with Sections 14.1 and 14.2, including, without limitation, (i) the identification of Five-Percent Shareholders, (ii) whether a Transfer is a 5% Transaction or a Prohibited Transfer, (iii) the Percentage Stock Ownership in the Corporation of any Five-Percent Shareholder, (iv) whether an instrument constitutes a Corporation Security, (v) the amount (or fair market value) due to a Purported Transferee pursuant to clause (ii) of Section 14.2(C), and (vi) any other matters which the Board of Directors determines to be relevant; and the good faith determination of the Board of Directors on such matters shall be conclusive and binding for all the purposes of Sections 14.1 and 14.2.

* * *

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by Michael L. Miller, its Vice President – Law and Secretary this __ day of ____ 2007.

NORTHWEST AIRLINES CORPORATION

By:_____
Name: Michael L. Miller
Title: Vice President – Law and Secretary

EXHIBIT A

[Certificate of Designations of Series A Junior Participating Preferred Stock]

EXHIBIT E

RIGHTS AGREEMENT

NORTHWEST AIRLINES CORPORATION

and

[AGENT]

as Rights Agent

Dated as of [ ], 2007

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RIGHTS AGREEMENT

Rights Agreement, dated as of [ ], 2007 (as amended, supplemented or otherwise modified from time to time, the "Rights Agreement") between Northwest Airlines Corporation, a Delaware corporation (the "Company"), and [Agent] (the "Rights Agent").

W I T N E S S E T H

WHEREAS, the Board of Directors of the Company has on [ ], 2007, authorized and declared a dividend of one preferred share purchase right (a "Right") for each share of Common Stock (as defined below) of the Company outstanding as of the close of business (as defined below) on [ ], 2007 (the "Record Date"), each Right representing the right to purchase one one-thousandth (subject to adjustment) of a share of Preferred Stock (as defined below), upon the terms and subject to the conditions herein set forth, and the Board of Directors has further authorized and directed the issuance of one Right (subject to adjustment as provided herein) with respect to each share of Common Stock that shall become outstanding between the Record Date and the earlier of the Distribution Date and the Expiration Date (as such terms are hereinafter defined); provided, however, that Rights may be issued with respect to shares of Common Stock that shall become outstanding after the Distribution Date and prior to the Expiration Date in accordance with Section 22.

NOW THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

Section 1. Certain Definitions. For purposes of this Rights Agreement, the following terms have the meaning indicated:

(a) "Acquiring Person" shall mean any Specified Person (as defined below) who or which shall be the Beneficial Owner (as defined below) of 20% or more of the shares of Common Stock then outstanding, but shall not include an Exempt Person (as defined below); provided, however, that if the Board of Directors of the Company determines in good faith that a Person who would otherwise be an "Acquiring Person" has become such inadvertently (including, without limitation, because (A) such Person was unaware that it beneficially owned a percentage of Common Stock that would otherwise cause such Person to be an "Acquiring Person" or (B) such Person was aware of the extent of its Beneficial Ownership of Common Stock but had no actual knowledge of the consequences of such Beneficial Ownership under this Rights Agreement) and without any intention of changing or influencing control of the Company, then such Person shall not be deemed to be or to have become an "Acquiring Person" for any purposes of this Rights Agreement unless and until such Person shall have failed to divest itself, as soon as practicable, if the Company so requests, of Beneficial Ownership of a sufficient number of shares of Common Stock so that such Person would no longer otherwise qualify as an "Acquiring Person". Notwithstanding the foregoing, no Person shall be deemed an "Acquiring Person" as the result of an acquisition of shares of Common Stock by the Company which, by reducing the number of shares outstanding, increases the proportionate number of shares beneficially owned by such Person to 20% or more of the shares of Common Stock then outstanding; provided, however, that if a Person shall become the Beneficial Owner of 20% or

more of the shares of Common Stock then outstanding by reason of such share acquisitions by the Company and thereafter becomes the Beneficial Owner of any additional shares of Common Stock (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Stock or pursuant to a split or subdivision of the outstanding Common Stock), then such Person shall be deemed to be an "Acquiring Person," subject to the proviso set forth in the first sentence of this Section 1(a), unless upon the consummation of the acquisition of such additional shares of Common Stock such Person does not beneficially own 20% or more of the shares of Common Stock then outstanding. The phrase "then outstanding", when used with reference to a Person's Beneficial Ownership of securities of the Company, shall mean the number of such securities then issued and outstanding together with the number of such securities not then actually issued and outstanding which such Person would be deemed to own beneficially hereunder.

(b) "Affiliate" shall mean, as applied to a Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For purposes of this definition "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise.

(c) "Associate" shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the "Exchange Act") as in effect on the date of this Rights Agreement.

(d) A Person shall be deemed the "Beneficial Owner" of, shall be deemed to have "Beneficial Ownership" of and shall be deemed to "beneficially own" any securities:

(i) which such Person or any of such Person's Affiliates or Associates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d-3 and Rule 13d-5 of the General Rules and Regulations under the Exchange Act as in effect on the date of this Rights Agreement;

(ii) which such Person or any of such Person's Affiliates or Associates, directly or indirectly, has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), written or otherwise, or upon the exercise of conversion rights, exchange rights, rights (other than the Rights), warrants or options, or otherwise; provided, however, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, (x) securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange, (y) securities which such Person has a right to acquire on the exercise of Rights at any time prior to the time a Person becomes an Acquiring Person or (z) securities issuable upon exercise of Rights from and after the time a Person becomes an Acquiring Person if such Rights were acquired by such Person or any of such Person's

Affiliates or Associates prior to the Distribution Date or pursuant to Section 3 or Section 22 hereof (the "Original Rights") or pursuant to Section 11(i) or Section 11(n) with respect to an adjustment to the Original Rights; or (B) the right to vote or dispose of or has "beneficial ownership" of (as determined pursuant to Rule 13d-3 of the General Rules and Regulations under the Exchange Act, or any comparable or successor role), including pursuant to any agreement, arrangement or understanding, written or otherwise; provided, however, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security by reason of such agreement, arrangement or understanding if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act and (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report); or

(iii) which are beneficially owned, directly or indirectly, by any other Person (or any Affiliate or Associate thereof) with which such Person (or any of such Person's Affiliates or Associates) has any agreement, arrangement or understanding (whether or not in writing), for the purpose of acquiring, holding, voting (except to the extent contemplated by the proviso to Section 1(d)(ii)(B)) or disposing of such securities of the Company;

provided, however, that (x) that nothing in this Section 1(d) shall cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities acquired through such Person's participation in good faith in a firm commitment underwriting until the expiration of forty days after the date of such acquisition, and then only if such securities continue to be owned by such Person at such expiration of forty days; and (y) no Person who is an officer, director, or employee of an Exempt Person shall be deemed, solely by reason of such Person's status or authority as such, to be the "Beneficial Owner" of, to have "Beneficial Ownership" of or to "beneficially own" any securities that are "beneficially owned" (as defined in this Section 1(d)), including, without limitation, in a fiduciary capacity, by an Exempt Person or by any other such officer, director or employee of an Exempt Person.

For all purposes of this Rights Agreement, any calculation of the number of shares of Common Stock outstanding at any particular time, including any calculation for purposes of determining the particular percentage of such outstanding shares of Common Stock of which any Person is the Beneficial Owner, shall be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the General Rules and Regulations under the Exchange Act as in effect on the date hereof.

(e) "Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which banking institutions in the State of New York, or the State in which the principal office of the Rights Agent is located, are authorized or obligated by law or executive order to close.

(f) "close of business" on any given date shall mean 5:00 P.M., New York, New York time, on such date; provided, however, that if such date is not a Business Day it shall mean 5:00 P.M., New York, New York time, on the next succeeding Business Day.

(g) "Common Stock" when used with reference to the Company shall mean the common stock, par value $0.01, of the Company. "Common Stock" when used with reference to any Person other than the Company shall mean the capital stock (or, in the case of an unincorporated entity, the equivalent equity interest) with the greatest voting power of such other Person or, if such other Person is a subsidiary of another Person, the Person or Persons which ultimately control such first-mentioned Person.

(h) "Exempt Person" shall mean (1) the Company, (2) any Subsidiary (as defined below) of the Company (in the case of subclauses (1) and (2) including, without limitation, in its fiduciary capacity), (3) any employee benefit plan of the Company or of any Subsidiary of the Company and (4) any entity or trustee holding Common Stock for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or of any Subsidiary of the Company.

(i) "Holding Company" shall mean, as applied to a Person, any other Person of whom such person is, directly or indirectly, a Subsidiary.

(j) "Institutional Investor" shall mean an institutional or other passive investor who, with respect to the securities relating to Voting Power that are the subject of the definition of Subsidiary herein, would be entitled to file a Statement on Schedule 13G (and not required to file a Statement on Schedule 13D) with respect to such securities under the rules promulgated under the Exchange Act, as amended, but only so long as such investor would not be required to file a Statement on Schedule 13D with respect to such securities.

(k) "Major Carrier" means an air carrier, the annual passenger revenues of which (including its Subsidiaries' predecessor entities) for the most recently completed fiscal year for which audited financial statements are available are in excess of the Revenue Threshold as of the date of determination (or the U.S. dollar equivalent thereof).

(l) "Nasdaq" shall mean The Nasdaq Stock Market's National Market.

(m) "NYSE" shall mean the New York Stock Exchange, Inc.

(n) "Person" shall mean any individual, firm, corporation, business trust, joint stock company, partnership, limited liability company, trust, unassociated association or other entity of whatever nature, and shall include any successor (by merger or otherwise) of such entity.

(o) "Preferred Stock" shall mean the Series A Junior Participating Preferred Stock, par value $0.01 per share, of the Company having the rights and preferences set forth in the Certificate of Designations attached to this Rights Agreement as Exhibit A and, to the extent that there are not a sufficient number of shares of Series A Junior Participating Preferred Stock authorized to permit the full exercise of the Rights, any other series of preferred stock of the Company designated for such purpose containing terms substantially similar to the terms of the Series A Junior Participating Preferred Stock.

(p) "Revenue Threshold" means one billion dollars ($1,000,000,000), as such amount may be increased based on the amount by which, for any date of determination, the most

recently published Consumer Price Index for all−urban consumers published by the Department of Labor (the "CPI") has increased to such date above the CPI for calendar year 2000. For purposes hereof, the CPI for calendar year 2000 is the monthly average of the CPI for the 12 months ending on December 31, 2000.

(q) "Securities Act" shall mean the Securities Act of 1933, as amended.

(r) "Specified Person" shall mean a Major Carrier, a Holding Company of a Major Carrier, any of their respective Affiliates or any combination thereof.

(s) "Stock Acquisition Date" shall mean the first date of public announcement (which for purposes of this definition shall include, without limitation, a report filed pursuant to Section 13(d) of the Exchange Act) by the Company or an Acquiring Person that an Acquiring Person has become such or such earlier date as a majority of the Board of Directors shall become aware of the existence of an Acquiring Person.

(t) "Subsidiary" (i) of any Person (other than an Institutional Investor) means any corporation, association, partnership, joint venture, limited liability company or other business entity of which more than 40% of the total Voting Power thereof or the Common Stock thereof is at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person, or (3) one or more Subsidiaries of such Person and (ii) of any Institutional Investor means any corporation, association, partnership, joint venture, limited liability company or other business entity of which more than 50% of the total Voting Power thereof is at the time owned or controlled, directly, by such Institutional Investor.

Any determination required by the definitions in this Agreement shall be made by the Board of Directors in its good faith judgment, which determination shall be binding on the Rights Agent and the holders of Rights.

Section 2. Appointment of Rights Agent. The Company hereby appoints the Rights Agent to act as agent for the Company and the holders of the Rights (who, in accordance with Section 3 hereof, shall prior to the Distribution Date also be the holders of Common Stock) in accordance with the terms and conditions hereof, and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such co-Rights Agents as it may deem necessary or desirable upon ten (10) days' prior notice to the Rights Agent. The Rights Agent shall have no duty to supervise, and shall in no event be liable for the acts or omissions of any such co-Rights Agent.

Section 3. Issuance of Right Certificates. (a) Until the close of business on the earlier of (i) the tenth day after the Stock Acquisition Date (or, if the Stock Acquisition Date occurs before the Record Date, the Close of Business on the Record Date) or (ii) the tenth Business Day (or such later date as may be determined by action of the Board of Directors prior to such time as any Person becomes an Acquiring Person) after the date of the commencement by any Specified Person (other than an Exempt Person) of, or of the first public announcement of the intention of such Specified Person (other than an Exempt Person) to commence, a tender or exchange offer the consummation of which would result in any Specified Person (other than an Exempt Person) becoming the Beneficial Owner of 20% or more of the shares of Common Stock

then outstanding (irrespective of whether any shares are actually purchased pursuant to any such offer) (including, in the case of both clause (i) and (ii), any such date which is after the date of this Rights Agreement and prior to the issuance of the Rights) (the earlier of such dates being herein referred to as the "Distribution Date"), (x) the Rights will be evidenced (subject to the provisions of Section 3(b) hereof) by the certificates for Common Stock registered in the names of the holders thereof and not by separate Right Certificates (as defined below), and (y) the Rights will be transferable only in connection with the transfer of Common Stock. As soon as practicable after the Distribution Date, the Company will prepare and execute, the Rights Agent will countersign, and the Company will send or cause to be sent (and the Rights Agent will, if requested, send) by first-class, insured, postage-prepaid mail, to each record holder of Common Stock as of the close of business on the Distribution Date (other than any Acquiring Person or any Associate or Affiliate of an Acquiring Person), at the address of such holder shown on the records of the Company, a Right Certificate, in substantially the form of Exhibit B hereto (a "Right Certificate"), evidencing one Right (subject to adjustment as provided herein) for each share of Common Stock so held. In the event that an adjustment in the number of Rights per share of Common Stock has been made pursuant to Sections 11 or 13 hereof, at the time of distribution of the Rights Certificates, the Company shall make the necessary and appropriate rounding adjustments (in accordance with Section 14(a) hereof), so that Rights Certificates representing only whole numbers of Rights are distributed and cash is paid in lieu of any fractional Rights. As of and after the Distribution Date, the Rights will be evidenced solely by such Right Certificates.

(b) As promptly as practicable following the Record Date, the Company will send a copy of a Summary of Rights to Purchase Shares of Preferred Stock, in substantially the form of Exhibit C hereto (the "Summary of Rights"), by first class mail, postage prepaid, or by electronic mail, to each record holder of Common Stock as of the close of business on the Record Date (other than any Acquiring Person or any Associate or Affiliate of any Acquiring Person), at the address of such holder shown on the records of the Company; provided, however, the Company will send a copy of the Summary of Rights by first-class, postage-prepaid mail to each record holder who so requests upon receipt of the electronic mail. With respect to shares of Common Stock outstanding as of the Record Date, until the Distribution Date, the Rights associated with such shares will be evidenced by the share certificate for such shares of Common Stock registered in the names of the holders thereof together with the Summary of Rights. Until the Distribution Date (or, if earlier, the Expiration Date), the surrender for transfer of any certificate for Common Stock outstanding on the Record Date, with or without a copy of the Summary of Rights, shall also constitute the transfer of the Rights associated with the Common Stock represented thereby.

(c) Rights shall be issued in respect of all shares of Common Stock issued or disposed of (including, without limitation, upon disposition of Common Stock out of treasury stock or issuance or reissuance of Common Stock out of authorized but unissued shares) after the Record Date but prior to the earlier of the Distribution Date and the Expiration Date, or in certain circumstances provided in Section 22 hereof, after the Distribution Date. Certificates issued for Common Stock (including, without limitation, upon transfer of outstanding Common Stock, disposition of Common Stock out of treasury stock or issuance or reissuance of Common Stock out of authorized but unissued shares) after the Record Date but prior to the earlier of the

Distribution Date and the Expiration Date shall have impressed on, printed on, written on or otherwise affixed to them the following legend:

> "This certificate also evidences and entitles the holder hereof to certain rights as set forth in a Rights Agreement between Northwest Airlines Corporation and [Agent], as Rights Agent, dated as of [ ], 2007, as the same may be amended, supplemented or otherwise modified from time to time (the "Rights Agreement"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of Northwest Airlines Corporation. Under certain circumstances, as set forth in the Rights Agreement, such Rights will be evidenced by separate certificates and will no longer be evidenced by this certificate. Northwest Airlines Corporation will mail to the holder of this certificate a copy of the Rights Agreement without charge after receipt of a written request therefor. Under certain circumstances, as set forth in the Rights Agreement, Rights owned by or transferred to any Person who is or becomes an Acquiring Person (as defined in the Rights Agreement) and certain transferees thereof will become null and void and will no longer be transferable."

With respect to such certificates containing the foregoing legend, until the Distribution Date, the Rights associated with the Common Stock represented by such certificates shall be evidenced by such certificates alone, and the surrender for transfer of any such certificate, except as otherwise provided herein, shall also constitute the transfer of the Rights associated with the Common Stock represented thereby. In the event that the Company purchases or otherwise acquires any Common Stock after the Record Date but prior to the Distribution Date, any Rights associated with such Common Stock shall be deemed cancelled and retired so that the Company shall not be entitled to exercise any Rights associated with the shares of Common Stock which are no longer outstanding.

Notwithstanding this paragraph (c), the omission of a legend shall not affect the enforceability of any part of this Rights Agreement or the rights of any holder of the Rights.

Section 4. Form of Right Certificates. The Right Certificates (and the forms of election to purchase shares and of assignment to be printed on the reverse thereof) shall be substantially in the form set forth in Exhibit B hereto and may have such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Rights Agreement, or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of NYSE or of any other stock exchange or automated quotation system on which the Rights may from time to time be listed, or to conform to usage. Subject to the provisions of Sections 11, 13 and 22 hereof, the Right Certificates shall entitle the holders thereof to purchase such number of one one-thousandths of a share of Preferred Stock as shall be set forth therein at the Purchase Price (as determined pursuant to

Section 7), but the amount and type of securities purchasable upon the exercise of each Right and the Purchase Price thereof shall be subject to adjustment as provided herein.

Section 5. Countersignature and Registration. (a) The Right Certificates shall be executed on behalf of the Company by the President, any of the Vice Presidents or the Treasurer or an Assistant Treasurer of the Company, either manually or by facsimile signature, shall have affixed thereto the Company's seal or a facsimile thereof and shall be attested by the Secretary or an Assistant Secretary of the Company, either manually or by facsimile signature. The Right Certificates shall be countersigned by the Rights Agent, either manually or by facsimile signature, and shall not be valid for any purpose unless countersigned. In case any officer of the Company who shall have signed any of the Right Certificates shall cease to be such officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Right Certificates, nevertheless, may be countersigned by the Rights Agent and issued and delivered by the Company with the same force and effect as though the Person who signed such Right Certificates had not ceased to be such officer of the Company; and any Right Certificate may be signed on behalf of the Company by any Person who, at the actual date of the execution of such Right Certificate, shall be a proper officer of the Company to sign such Right Certificate, although at the date of the execution of this Rights Agreement any such Person was not such an officer.

(b) Following the Distribution Date, the Rights Agent will keep or cause to be kept, at an office or agency designated for such purpose, books for registration and transfer of the Right Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Right Certificates, the number of Rights evidenced on its face by each of the Right Certificates and the date of each of the Right Certificates.

Section 6. Transfer, Split Up, Combination and Exchange of Right Certificates; Mutilated, Destroyed, Lost or Stolen Right Certificates. (a) Subject to the provisions of this Rights Agreement, at any time after the close of business on the Distribution Date, and prior to the close of business on the Expiration Date, any Right Certificate or Right Certificates may be transferred, split up, combined or exchanged for another Right Certificate or Right Certificates, entitling the registered holder to purchase a like number of one one-thousandths of a share of Preferred Stock (or, following such time, other securities, cash or assets as the case may be) as the Right Certificate or Right Certificates surrendered then entitled such holder to purchase. Any registered holder desiring to transfer, split up, combine or exchange any Right Certificate or Right Certificates shall make such request in writing delivered to the Rights Agent, and shall surrender the Right Certificate or Right Certificates to be transferred, split up, combined or exchanged at the office or agency of the Rights Agent designated for such purpose. Thereupon the Rights Agent, subject to the provisions of this Rights Agreement, shall countersign and deliver to the Person entitled thereto a Right Certificate or Right Certificates, as the case may be, as so requested. The Company may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up, combination or exchange of Right Certificates.

(b) Subject to the provisions of this Rights Agreement, at any time after the Distribution Date and prior to the Expiration Date, upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a

Right Certificate, and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to them, and, at the Company's request, reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Right Certificate if mutilated, the Company will make and deliver a new Right Certificate of like tenor to the Rights Agent for delivery to the registered holder in lieu of the Right Certificate so lost, stolen, destroyed or mutilated.

Section 7. Exercise of Rights, Purchase Price; Expiration Date of Rights. (a) Except as otherwise provided herein, the Rights shall become exercisable on the Distribution Date, and thereafter the registered holder of any Right Certificate may, subject to Section 11(a)(ii) hereof and except as otherwise provided herein, exercise the Rights evidenced thereby in whole or in part upon surrender of the Right Certificate, with the form of election to purchase on the reverse side thereof duly executed, to the Rights Agent at the office or agency of the Rights Agent designated for such purpose, together with payment of the Purchase Price for each one one-thousandth of a share of Preferred Stock (or other securities, cash or assets, as the case may be) as to which the Rights are exercised, at any time which is both after the Distribution Date and prior to the time (the "Expiration Date") that is the earliest of (i) the close of business on [ ], 2017 (the "Final Expiration Date"), (ii) the time at which the Rights are redeemed as provided in Section 23 hereof (the "Redemption Date") or (iii) the time at which such Rights are exchanged as provided in Section 24 hereof. Except for those provisions herein which expressly survive the termination of this Rights Agreement, this Rights Agreement shall terminate at such time as the Rights are no longer exercisable hereunder.

(b) The purchase price (the "Purchase Price") shall be initially $[_____.00] for each one one-thousandth of a share of Preferred Stock purchasable upon the exercise of a Right. The Purchase Price and the number of one one-thousandths of a share of Preferred Stock or other securities or property to be acquired upon exercise of a Right shall be subject to adjustment from time to time as provided in Sections 11 and 13 hereof and shall be payable in lawful money of the United States of America in accordance with paragraph (c) of this Section 7.

(c) Except as otherwise provided herein, upon receipt of a Right Certificate representing exercisable Rights, with the form of election to purchase duly executed, accompanied by payment of the aggregate Purchase Price for the number of shares of Preferred Stock to be purchased and an amount equal to any applicable transfer tax required to be paid by the holder of such Right Certificate in accordance with Section 6 hereof, in cash or by certified check, cashier's check or money order payable to the order of the Company, the Rights Agent shall thereupon promptly (i) (A) requisition from any transfer agent of the Preferred Stock, or make available if the Rights Agent is the transfer agent for the Preferred Stock, certificates for the number of shares of Preferred Stock to be purchased (and the Company hereby irrevocably authorizes its transfer agent to comply with all such requests), or (B) requisition from the depositary agent appointed by the Company depositary receipts representing interests in such number of one one-thousandths of a share of Preferred Stock as are to be purchased, in which case certificates for the Preferred Stock represented by such receipts shall be deposited by the transfer agent with the depositary agent (and the Company hereby directs the depositary agent to comply with such request), (ii) when appropriate, requisition from the Company the amount of cash to be paid in lieu of issuance of fractional shares in accordance with Section 14 hereof, (iii) promptly after receipt of such certificates or depositary receipts, cause the same to be delivered

to or upon the order of the registered holder of such Right Certificate, registered in such name or names as may be designated by such holder and (iv) when appropriate, after receipt of the cash requisitioned from the Company, promptly deliver such cash to or upon the order of the registered holder of such Right Certificate.

(d) Except as otherwise provided herein, in case the registered holder of any Right Certificate shall exercise less than all the Rights evidenced thereby, a new Right Certificate evidencing Rights equivalent to the exercisable Rights remaining unexercised shall be issued by the Rights Agent to the registered holder of such Right Certificate or to his duly authorized assigns, subject to the provisions of Section 6 and Section 14 hereof.

(e) Notwithstanding anything in this Rights Agreement to the contrary, neither the Rights Agent nor the Company shall be obligated to undertake any action with respect to a registered holder of Rights upon the occurrence of any purported transfer or exercise of Rights pursuant to Section 6 hereof or this Section 7 unless such registered holder shall have (i) completed and signed the certificate contained in the form of assignment or election to purchase set forth on the reverse side of the Right Certificate surrendered for such transfer or exercise and (ii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company shall reasonably request.

Section 8. Cancellation and Destruction of Right Certificates. All Right Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or to any of its agents, be delivered to the Rights Agent for cancellation or in cancelled form, or, if surrendered to the Rights Agent, shall be cancelled by it, and no Right Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Rights Agreement. The Company shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall so cancel and retire, any other Right Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Rights Agent shall deliver all cancelled Right Certificates to the Company, or shall, at the written request of the Company, destroy or cause to be destroyed such cancelled Right Certificates, and in such case shall deliver a certificate of destruction thereof to the Company.

Section 9. Availability of Shares of Preferred Stock. (a) The Company covenants and agrees that it will cause to be reserved and kept available out of its authorized and unissued shares of Preferred Stock or any shares of Preferred Stock held in its treasury, the number of shares of Preferred Stock that will be sufficient to permit the exercise in full of all outstanding Rights; provided, however, that the Company shall be required to reserve and keep available shares of Preferred Stock or other securities sufficient to permit the exercise in full of all outstanding Rights pursuant to the adjustments set forth in Section 11(a)(ii), Section 11(a)(iii) or Section 13 hereof only if, and to the extent that, the Rights become exercisable pursuant to such adjustments.

(b) So long as the shares of Preferred Stock (and, following the time that a Person becomes an Acquiring Person, shares of Common Stock and other securities) issuable upon the exercise of Rights may be listed or admitted to trading on the NYSE or listed on any other national securities exchange or quotation system, the Company shall use its best efforts to

cause, from and after such time as the Rights become exercisable, all shares reserved for such issuance to be listed or admitted to trading on the NYSE or listed on any other exchange or quotation system upon official notice of issuance upon such exercise.

(c) From and after such time as the Rights become exercisable, the Company shall use its best efforts, if then necessary to permit the issuance of shares of Preferred Stock (and following the time that a Person first becomes an Acquiring Person, shares of Common Stock and other securities) upon the exercise of Rights, to register and qualify such shares of Preferred Stock (and following the time that a Person first becomes an Acquiring Person, shares of Common Stock and other securities) under the Securities Act and any applicable state securities or "Blue Sky" laws (to the extent exemptions therefrom are not available), cause such registration statement and qualifications to become effective as soon as possible after such filing and keep such registration and qualifications effective until the earlier of (x) the date as of which the Rights are no longer exercisable for such securities and (y) the Expiration Date. The Company may temporarily suspend, for a period of time not to exceed ninety (90) days, the exercisability of the Rights in order to prepare and file a registration statement under the Securities Act and permit it to become effective. Upon any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension is no longer in effect. Notwithstanding any provision of this Rights Agreement to the contrary, the Rights shall not be exercisable in any jurisdiction unless the requisite qualification or exemption in such jurisdiction shall have been obtained and until a registration statement under the Securities Act (if required) shall have been declared effective.

(d) The Company covenants and agrees that it will take all such action as may be necessary to ensure that all shares of Preferred Stock (and, following the time that a Person becomes an Acquiring Person, shares of Common Stock and other securities) delivered upon exercise of Rights shall, at the time of delivery of the certificates therefor (subject to payment of the Purchase Price), be duly and validly authorized and issued and fully paid and nonassessable shares.

(e) The Company further covenants and agrees that it will pay when due and payable any and all federal and state transfer taxes and charges which may be payable in respect of the issuance or delivery of the Right Certificates or of any shares of Preferred Stock (or shares of Common Stock or other securities) upon the exercise of Rights. The Company shall not, however, be required to pay any transfer tax or charge which may be payable in respect of any transfer or delivery of Right Certificates to a Person other than, or the issuance or delivery of certificates or depositary receipts for the Preferred Stock (or shares of Common Stock or other securities) in a name other than that of, the registered holder of the Right Certificate evidencing Rights surrendered for exercise or to issue or deliver any certificates or depositary receipts for Preferred Stock (or shares of Common Stock or other securities) upon the exercise of any Rights until any such tax or charge shall have been paid (any such tax or charge being payable by that holder of such Right Certificate at the time of surrender) or until it has been established to the Company's reasonable satisfaction that no such tax or charge is due.

Section 10. Preferred Stock Record Date. Each Person in whose name any certificate for Preferred Stock is issued upon the exercise of Rights shall for all purposes be

deemed to have become the holder of record of the shares of Preferred Stock represented thereby on, and such certificate shall be dated, the date upon which the Right Certificate evidencing such Rights was duly surrendered and payment of the Purchase Price (and any applicable transfer taxes or charges) was made; provided, however, that if the date of such surrender and payment is a date upon which the Preferred Stock transfer books of the Company are closed, such Person shall be deemed to have become the record holder of such shares on, and such certificate shall be dated, the next succeeding Business Day on which such transfer books are open. Prior to the exercise of the Rights evidenced thereby, the holder of a Right Certificate shall not be entitled to any rights of a holder of Preferred Stock for which the Rights shall be exercisable, including, without limitation, the right to vote or to receive dividends or other distributions, and shall not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

Section 11. Adjustment of Purchase Price, Number and Kind of Shares and Number of Rights. The Purchase Price, the number of shares of Preferred Stock or other securities or property purchasable upon exercise of each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.

(a) (i) In the event the Company shall at any time after the date of this Agreement (A) declare a dividend on the Preferred Stock payable in shares of Preferred Stock, (B) subdivide the outstanding shares of Preferred Stock, (C) combine the outstanding shares of Preferred Stock into a smaller number of shares of Preferred Stock or (D) issue any shares of its capital stock in a reclassification of the shares of Preferred Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11(a), the Purchase Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification, as the case may be, and the number and kind of shares of capital stock issuable on such date, shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive the aggregate number and kind of shares of capital stock which, if such Right had been exercised immediately prior to such date and at a time when the Preferred Stock transfer books of the Company were open, the holder would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, combination or reclassification; provided, however, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right. If an event occurs which would require an adjustment under both this Section 11(a)(i) and Section 11(a)(ii) hereof, the adjustment provided for in this Section 11(a)(i) shall be in addition to, and shall be made prior to, any adjustment required pursuant to Section 11(a)(ii).

(ii) Subject to Section 24 of this Rights Agreement and except as otherwise provided in this Section 11(a)(ii) and Section 11(a)(iii), in the event that any Person becomes an Acquiring Person, each holder of a Right shall thereafter have the right to receive, upon exercise thereof at a price equal to the then-current Purchase Price, in accordance with the terms of this Rights Agreement and in lieu of shares of Preferred Stock, such number of shares of Common Stock (or at the option of the Company, such number of one one-thousandths of a share of Preferred Stock) as shall equal the result obtained by (x) multiplying the then-current Purchase Price by the number of one one-thousandths of a share of Preferred Stock for which a Right is then exercisable and

dividing that product by (y) 50% of the then-current per share market price of the Company's Common Stock (determined pursuant to Section 11(d) hereof) on the date of the occurrence of such event; provided, however, that the Purchase Price (as so adjusted) and the number of shares of Common Stock so receivable upon exercise of a Right shall thereafter be subject to further adjustment as appropriate in accordance with Section 11(f) hereof. Notwithstanding anything in this Rights Agreement to the contrary, however, from and after the time (the "invalidation time") when any Person first becomes an Acquiring Person, any Rights that are beneficially owned by (x) any Acquiring Person (or any Affiliate or Associate of any Acquiring Person), (y) a transferee of any Acquiring Person (or any such Affiliate or Associate) who becomes a transferee after the invalidation time or (z) a transferee of any Acquiring Person (or any such Affiliate or Associate) who became a transferee prior to or concurrently with the invalidation time pursuant to either (I) a transfer from the Acquiring Person to holders of its equity securities or to any Person with whom it has any continuing agreement, arrangement or understanding, written or otherwise, regarding the transferred Rights or (II) a transfer that the Board of Directors has determined is part of a plan, arrangement or understanding, written or otherwise, which has the purpose or effect of avoiding the provisions of this paragraph, and subsequent transferees of any such Persons, shall be void without any further action and any holder of such Rights shall thereafter have no rights whatsoever with respect to such Rights under any provision of this Rights Agreement. The Company shall use all reasonable efforts to ensure that the provisions of this Section 11(a)(ii) are complied with, but shall have no liability to any holder of Right Certificates or other Person as a result of its failure to make any determinations with respect to an Acquiring Person or its Affiliates, Associates or transferees hereunder. From and after the invalidation time, no Right Certificate shall be issued pursuant to Section 3 or Section 6 hereof that represents Rights that are or have become void pursuant to the provisions of this paragraph, and any Right Certificate delivered to the Rights Agent that represents Rights that are or have become void pursuant to the provisions of this paragraph shall be cancelled. From and after the occurrence of an event specified in Section 13(a) hereof, any Rights that theretofore have not been exercised pursuant to this Section 11(a)(ii) shall thereafter be exercisable only in accordance with Section 13 and not pursuant to this Section 11(a)(ii).

(iii) The Company may at its option substitute for a share of Common Stock issuable upon the exercise of Rights in accordance with the foregoing subparagraph (ii) such number or fractions of shares of Preferred Stock having an aggregate current market value equal to the current per share market price of a share of Common Stock. In the event that there shall be an insufficient number of Common Stock authorized but unissued (and unreserved) to permit the exercise in full of the Rights in accordance with the foregoing subparagraph (ii), the Board of Directors shall, with respect to such deficiency, to the extent permitted by applicable law and any material agreements then in effect to which the Company is a party (A) determine the excess of (x) the value of the shares of Common Stock issuable upon the exercise of a Right in accordance with the foregoing subparagraph (ii) (the "Current Value") over (y) the then-current Purchase Price multiplied by the number of one one-thousandths of shares of Preferred Stock for which a Right was exercisable immediately prior to the time that the Acquiring Person became such (such excess, the "Spread"), and (B) with respect to each Right (other than

Rights which have become void pursuant to Section 11(a)(ii)), make adequate provision to substitute for the shares of Common Stock issuable in accordance with subparagraph (ii) upon exercise of the Right and payment of the applicable Purchase Price, (1) cash, (2) a reduction in such Purchase Price, (3) shares of Preferred Stock or other equity securities of the Company (including, without limitation, shares or fractions of shares of preferred stock which, by virtue of having dividend, voting and liquidation rights substantially comparable to those of the shares of Common Stock, are deemed in good faith by the Board of Directors to have substantially the same value as the shares of Common Stock (such shares of preferred stock and shares or fractions of shares of preferred stock are hereinafter referred to as "Common Stock equivalents"), (4) debt securities of the Company, (5) other assets or (6) any combination of the foregoing, having a value which, when added to the value of the shares of Common Stock actually issued upon exercise of such Right, shall have an aggregate value equal to the Current Value (less the amount of any reduction in such Purchase Price), where such aggregate value has been determined by the Board of Directors upon the advice of a nationally recognized investment banking firm selected in good faith by the Board of Directors; provided, however, if the Company shall not make adequate provision to deliver value pursuant to clause (B) above within thirty (30) days following the date that the Acquiring Person became such (the "Section 11(a)(ii) Trigger Date"), then the Company shall be obligated to deliver, to the extent permitted by applicable law and any material agreements then in effect to which the Company is a party, upon the surrender for exercise of a Right and without requiring payment of the Purchase Price, shares of Common Stock (to the extent available), and then, if necessary, such number or fractions of shares of Preferred Stock (to the extent available) and then, if necessary, cash, which shares and/or cash have an aggregate value equal to the Spread. If within the thirty (30) day period referred to above the Board of Directors shall determine in good faith that it is likely that sufficient additional shares of Common Stock could be authorized for issuance upon exercise in full of the Rights, then, if the Board of Directors so elects, such thirty (30) day period may be extended to the extent necessary, but not more than ninety (90) days after the Section 11(a)(ii) Trigger Date, in order that the Company may seek stockholder approval for the authorization of such additional shares (such thirty (30) day period, as it may be extended, is hereinafter called the "Substitution Period"). To the extent that the Company determines that some action need be taken pursuant to the second and/or third sentence of this Section 11(a)(iii), the Company (x) shall provide, subject to Section 11(a)(ii) hereof and the last sentence of this Section 11(a)(iii) hereof, that such action shall apply uniformly to all outstanding Rights and (y) may suspend the exercisability of the Rights until the expiration of the Substitution Period in order to seek any authorization of additional shares and/or to decide the appropriate form of distribution to be made pursuant to such second sentence and to determine the value thereof. In the event of any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension is no longer in effect. For purposes of this Section 11(a)(iii), the value of the shares of Common Stock shall be the current per share market price (as determined pursuant to Section 11(d)(i)) on the Section 11(a)(ii) Trigger Date and the per share or fractional value of any Common Stock equivalent shall be deemed to equal the current per share market price of the Common Stock on such date. The Board of Directors of the

Company may, but shall not be required to, establish procedures to allocate the right to receive shares of Common Stock upon the exercise of the Rights among holders of Rights pursuant to this Section 11(a)(iii).

(b) In case the Company shall fix a record date for the issuance of rights, options or warrants to all holders of Preferred Stock entitling them (for a period expiring within 45 calendar days after such record date) to subscribe for or purchase Preferred Stock (or shares having similar rights, privileges and preferences as the Preferred Stock ("equivalent preferred shares")) or securities convertible into Preferred Stock or equivalent preferred shares at a price per share of Preferred Stock or equivalent preferred shares (or having a conversion price per share, if a security convertible into shares of Preferred Stock or equivalent preferred shares) less than the then-current per share market price of the Preferred Stock (determined pursuant to Section 11(d) hereof) on such record date, the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of shares of Preferred Stock and equivalent preferred shares outstanding on such record date plus the number of shares of Preferred Stock and equivalent preferred shares which the aggregate offering price of the total number of such shares so to be offered (and/or the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such current market price, and the denominator of which shall be the number of shares of Preferred Stock and equivalent preferred shares outstanding on such record date plus the number of additional shares of Preferred Stock and/or equivalent preferred shares to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible); provided, however, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right. In case such subscription price may be paid in a consideration part or all of which shall be in a form other than cash, the value of such consideration shall be as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and which shall be binding on the Rights Agent. Shares of Preferred Stock and equivalent preferred shares owned by or held for the account of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustment shall be made successively whenever such a record date is fixed; and in the event that such rights, options or warrants are not so issued, the Purchase Price shall be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

(c) In case the Company shall fix a record date for the making of a distribution to all holders of the Preferred Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing or surviving corporation) of evidences of indebtedness or assets (other than a regular quarterly cash dividend or a dividend payable in Preferred Stock) or subscription rights or warrants (excluding those referred to in Section 11(b) hereof), the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the then-current per share market price of the Preferred Stock (determined pursuant to Section 11(d) hereof) on such record date, less the fair market value (as determined in good faith by the Board of Directors of the Company whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent) of the portion of such assets or evidences of indebtedness so to be

distributed or of such subscription rights or warrants applicable to one share of Preferred Stock, and the denominator of which shall be such current per share market price of the Preferred Stock; provided, however, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company to be issued upon exercise of one Right. Such adjustments shall be made successively whenever such a record date is fixed; and in the event that such distribution is not so made, the Purchase Price shall again be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

(d) (i) Except as otherwise provided herein, for the purpose of any computation hereunder, the "current per share market price" of any security (a "Security" for the purpose of this Section 11(d)(i)) on any date shall be deemed to be the average of the daily closing prices per share of such Security for the 30 consecutive Trading Days (as such term is hereinafter defined) immediately prior to, but not including, such date; provided, however, that in the event that the current per share market price of the Security is determined during a period following the announcement by the issuer of such Security of (A) a dividend or distribution on such Security payable in shares of such Security or securities convertible into such shares, or (B) any subdivision, combination or reclassification of such Security, and prior to the expiration of 30 Trading Days after the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification, then, and in each such case, the current per share market price shall be appropriately adjusted to reflect the current market price per share equivalent of such Security. The closing price for each day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported by (w) the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, (x) if the Security is not listed or admitted to trading on the NYSE, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Security is listed or admitted to trading or, if (y) the Security is not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by Nasdaq or such other system then in use, or, (z) if on any such date the Security is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Security selected by the Board of Directors of the Company. If on any such date no market maker is making a market in the Common Stock, the fair value of such shares on such date as determined in good faith by the Board of Directors shall be used and shall be binding on the Rights Agent. The term "Trading Day" shall mean a day on which the principal national securities exchange on which the Security is listed or admitted to trading is open for the transaction of business or, if the Security is not listed or admitted to trading on any national securities exchange, a Business Day.

(ii) For the purpose of any computation hereunder, if the Preferred Stock is publicly traded, the "current per share market price" of the Preferred Stock shall be determined in accordance with the method set forth in Section 11(d)(i) (other than the third sentence thereof). If the Preferred Stock is not publicly traded but the Common Stock is publicly traded, the "current per share market price" of the Preferred Stock shall be conclusively deemed to be the current per share market price of the Common Stock, as determined pursuant to Section 11(d)(i), multiplied by one thousand (appropriately

adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof). If neither the Common Stock nor the Preferred Stock is publicly traded, "current per share market price" shall mean the fair value per share as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent.

(e) No adjustment in the Purchase Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Purchase Price; provided, however, that any adjustments not required to be made by reason of this Section 11(e) shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 shall be made to the nearest cent or to the nearest one ten-thousandth of a share of Preferred Stock or share of Common Stock or other share or security as the case may be. Notwithstanding the first sentence of this Section 11(e), any adjustment required by this Section 11 shall be made no later than the earlier of (i) three years from the date of the transaction which requires such adjustment or (ii) the Expiration Date.

(f) If as a result of an adjustment made pursuant to Section 11(a) hereof, the holder of any Right thereafter exercised shall become entitled to receive any shares of capital stock of the Company other than the Preferred Stock, thereafter the Purchase Price and the number of such other shares so receivable upon exercise of a Right shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Preferred Stock contained in Sections 11(a), 11(b), 11(c), 11(e), 11(h), 11(i) and 11(m) and the provisions of Sections 7, 9, 10, 13 and 14 hereof with respect to the Preferred Stock shall apply on like terms to any such other shares.

(g) All Rights originally issued by the Company subsequent to any adjustment made to the Purchase Price hereunder shall evidence the right to purchase, at the adjusted Purchase Price, the number of one one-thousandths of a share of Preferred Stock purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

(h) Unless the Company shall have exercised its election as provided in Section 11(i), upon each adjustment of the Purchase Price as a result of the calculations made in Section 11(b) and (c), each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to purchase, at the adjusted Purchase Price, that number of one one-thousandths of a share of Preferred Stock (calculated to the nearest one ten-thousandth of a share of Preferred Stock) obtained by (i) multiplying (x) the number of one one-thousandths of a share of Preferred Stock purchasable upon the exercise of a Right immediately prior to such adjustment by (y) the Purchase Price in effect immediately prior to such adjustment of the Purchase Price and (ii) dividing the product so obtained by the Purchase Price in effect immediately after such adjustment of the Purchase Price.

(i) The Company may elect on or after the date of any adjustment of the Purchase Price or any adjustment to the number of shares of Preferred Stock for which a Right may be exercised made pursuant to Sections 11(a)(i), 11(b) or 11(c) hereof to adjust the number of Rights, in substitution for any adjustment in the number of one one-thousandths of a share of Preferred Stock purchasable upon the exercise of a Right. Each of the Rights outstanding after

such adjustment of the number of Rights shall be exercisable for the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest one ten-thousandth) obtained by dividing the Purchase Price in effect immediately prior to adjustment of the Purchase Price by the Purchase Price in effect immediately after adjustment of the Purchase Price. The Company shall make a public announcement of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Purchase Price is adjusted or any day thereafter, but, if the Right Certificates have been issued, shall be at least 10 days later than the date of the public announcement. If Right Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 11(i), the Company may, as promptly as practicable, cause to be distributed to holders of record of Right Certificates on such record date Right Certificates evidencing, subject to Section 14 hereof, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the Right Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Right Certificates evidencing all the Rights to which such holders shall be entitled as a result of such adjustment. Right Certificates so to be distributed shall be issued, executed and countersigned in the manner provided for herein and shall be registered in the names of the holders of record of Right Certificates on the record date specified in the public announcement.

(j) Irrespective of any adjustment or change in the Purchase Price or the number of one one-thousandths of a share of Preferred Stock issuable upon the exercise of the Rights, the Right Certificates theretofore and thereafter issued may continue to express the Purchase Price and the number of one one-thousandths of a share of Preferred Stock which were expressed in the initial Right Certificates issued hereunder.

(k) Before taking any action that would cause an adjustment reducing the Purchase Price below the then par value, if any, of the shares of Preferred Stock or other shares of capital stock issuable upon exercise of the Rights, the Company shall take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Preferred Stock or other such shares at such adjusted Purchase Price.

(l) In any case in which this Section 11 shall require that an adjustment in the Purchase Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such event the issuance to the holder of any Right exercised after such record date the Preferred Stock, Common Stock or other capital stock or securities of the Company, if any, issuable upon such exercise over and above the Preferred Stock, Common Stock or other capital stock or securities of the Company, if any, issuable upon such exercise on the basis of the Purchase Price in effect prior to such adjustment; provided, however, that the Company shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares upon the occurrence of the event requiring such adjustment.

(m) Notwithstanding anything in this Section 11 to the contrary, the Company shall be entitled to make such adjustments in the Purchase Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that the Board of Directors it in its sole discretion shall determine to be advisable in order that any consolidation or subdivision of the Preferred Stock, issuance (wholly for cash) of any shares of Preferred Stock at less than the current market price, issuance (wholly for cash) of Preferred Stock or securities which by their terms are convertible into or exchangeable for Preferred Stock, dividends on Preferred Stock payable in shares of Preferred Stock or issuance of rights, options or warrants referred to hereinabove in Section 11(b), hereafter made by the Company to holders of its Preferred Stock shall not be taxable to such stockholders.

(n) Notwithstanding anything in this Rights Agreement to the contrary, in the event that at any time after the date of this Rights Agreement and prior to the Distribution Date, the Company shall (i) declare or pay any dividend on the Common Stock payable in Common Stock or (ii) effect a subdivision, combination or consolidation of the Common Stock (by reclassification or otherwise than by payment of a dividend payable in Common Stock) into a greater or lesser number of shares of Common Stock, then in any such case, the number of Rights associated with each share of Common Stock then outstanding, or issued or delivered thereafter, shall be proportionately adjusted so that the number of Rights thereafter associated with each share of Common Stock following any such event shall equal the result obtained by multiplying the number of Rights associated with each share of Common Stock immediately prior to such event by a fraction the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to the occurrence of the event and the denominator of which shall be the total number of shares of Common Stock outstanding immediately following the occurrence of such event.

(o) The Company agrees that, after the earlier of the Distribution Date or the Stock Acquisition Date, it will not, except as permitted by Sections 23, 24 or 27 hereof, take (or permit any Subsidiary to take) any action if at the time such action is taken it is reasonably foreseeable that such action will diminish substantially or eliminate the benefits intended to be afforded by the Rights.

Section 12. Certificate of Adjusted Purchase Price or Number of Shares. Whenever an adjustment is made as provided in Section 11 or 13 hereof, the Company shall promptly (a) prepare a certificate setting forth such adjustment, and a brief statement of the facts accounting for such adjustment, (b) file with the Rights Agent and with each transfer agent for the Common Stock or the Preferred Stock a copy of such certificate and (c) mail a brief summary thereof to each holder of a Right Certificate (or if prior to the Distribution Date, to each holder of a certificate representing shares of Common Stock) in accordance with Section 26 hereof. Notwithstanding the foregoing sentence, the failure of the Company to give such notice shall not affect the validity of or the force or effect of or the requirement for such adjustment. The Rights Agent shall be fully protected in relying on any such certificate and on any adjustment therein contained and shall not be deemed to have knowledge of any such adjustment unless and until it shall have received such certificate. Any adjustment to be made pursuant to Sections 11 or 13 hereof shall be effective as of the date of the event giving rise to such adjustment.

Section 13. Consolidation, Merger or Sale or Transfer of Assets or Earnings Power. (a) In the event, directly or indirectly, at any time after any Person has become an Acquiring Person, (i) the Company shall merge with and into any other Person, (ii) any Person, shall consolidate with the Company, or any Person, shall merge with and into the Company and the Company shall be the continuing or surviving corporation of such merger and, in connection with such merger, all or part of the Common Stock shall be changed into or exchanged for stock or other securities of any other Person (or of the Company) or cash or any other property, or (iii) the Company shall sell or otherwise transfer (or one or more of its Subsidiaries shall sell or otherwise transfer), in one or more transactions, assets or earning power aggregating to 50% or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person, then, and in each such case, proper provision shall be made so that:

(A) each holder of record of a Right (other than Rights which have become void pursuant to Section 11(a)(ii)) shall thereafter have the right to receive, upon the exercise thereof at a price equal to the then-current Purchase Price multiplied by the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable (whether or not such Right was then exercisable) immediately prior to the time that any Person first became an Acquiring Person (each as subsequently adjusted thereafter pursuant to Section 11(a)(i), 11(b), 11(c), 11(f), 11(h), 11(i) and 11(m)), in accordance with the terms of this Rights Agreement and in lieu of Preferred Stock, such number of validly issued, fully paid and non-assessable and freely tradeable shares of Common Stock of the Principal Party (as defined below) not subject to any liens, encumbrances, rights of first refusal or other adverse claims, as shall be equal to the result obtained by (1) multiplying the then-current Purchase Price by the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to the time that any Person first became an Acquiring Person (as subsequently adjusted thereafter pursuant to Section 11(a)(i), 11(b), 11(c), 11(f), 11(h), 11(i) and 11(m)) and (2) dividing that product by 50% of the then-current per share market price of the Common Stock of such Principal Party (determined pursuant to Section 11(d)(i) hereof) on the date of consummation of such consolidation, merger, sale or transfer; provided that the Purchase Price and the number of shares of Common Stock of such Principal Party issuable upon exercise of each Right shall be further adjusted as provided in Section 11(f) of this Rights Agreement to reflect any events occurring in respect of such Principal Party after the date of such consolidation, merger, sale or transfer;

(B) such Principal Party shall thereafter be liable for, and shall assume, by virtue of such consolidation, merger, sale or transfer, all the obligations and duties of the Company pursuant to this Rights Agreement;

(C) the term "Company" as used herein shall thereafter be deemed to refer to such Principal Party; and

(D) such Principal Party shall take such steps (including, but not limited to, the reservation of a sufficient number of shares of Common Stock) in connection with such consummation of any such transaction as may be necessary to assure that the provisions hereof shall thereafter be applicable, as nearly as reasonably may be, in relation to the shares of its Common Stock thereafter deliverable upon the exercise of the Rights; provided that, upon the subsequent occurrence of any consolidation, merger, sale or transfer of assets or other

extraordinary transaction in respect of such Principal Party, each holder of a Right shall thereupon be entitled to receive, upon exercise of a Right and payment of the Purchase Price as provided in this Section 13(a), such cash, shares, rights, warrants and other property which such holder would have been entitled to receive had such holder, at the time of such transaction, owned the Common Stock of the Principal Party receivable upon the exercise of a Right pursuant to this Section 13(a), and such Principal Party shall take such steps (including, but not limited to, reservation of shares of stock) as may be necessary to permit the subsequent exercise of the Rights in accordance with the terms hereof for such cash, shares, rights, warrants and other property.

(b) "Principal Party" shall mean:

(i) in the case of any transaction described in clauses (i) or (ii) of the first sentence of Section 13(a) hereof: (A) the Person that is the issuer of the securities into which the shares of Common Stock are converted in such merger or consolidation, or, if there is more than one such issuer, the issuer of the shares of Common Stock of which have the greatest aggregate market value of shares outstanding, or (B) if no securities are so issued, (x) the Person that is the other party to the merger, if such Person survives said merger, or, if there is more than one such Person, the Person the shares of Common Stock of which have the greatest aggregate market value of shares outstanding or (y) if the Person that is the other party to the merger does not survive the merger, the Person that does survive the merger (including the Company if it survives) or (z) the Person resulting from the consolidation; and

(ii) in the case of any transaction described in clause (iii) of the first sentence in Section 13(a) hereof, the Person that is the party receiving the greatest portion of the assets or earning power transferred pursuant to such transaction or transactions, or, if each Person that is a party to such transaction or transactions receives the same portion of the assets or earning power so transferred or if the Person receiving the greatest portion of the assets or earning power cannot be determined, whichever of such Persons is the issuer of Common Stock having the greatest aggregate market value of shares outstanding;

provided, however, that in any such case described in the foregoing clause (b)(i) or (b)(ii), if the Common Stock of such Person is not at such time or has not been continuously over the preceding 12-month period registered under Section 12 of the Exchange Act, then (1) if such Person is a direct or indirect Subsidiary of another Person the Common Stock of which is and has been so registered, the term "Principal Party" shall refer to such other Person, or (2) if such Person is a Subsidiary, directly or indirectly, of more than one Person, and the Common Stock of all of such Persons have been so registered, the term "Principal Party" shall refer to whichever of such Persons is the issuer of Common Stock having the greatest aggregate market value of shares outstanding, or (3) if such Person is owned, directly or indirectly, by a joint venture formed by two or more Persons that are not owned, directly or indirectly, by the same Person, the rules set forth in clauses (1) and (2) above shall apply to each of the owners having an interest in the venture as if the Person owned by the joint venture was a Subsidiary of both or all of such joint venturers, and the Principal Party in each such case shall bear the obligations set forth in this Section 13 in the same ratio as its interest in such Person bears to the total of such interests.

(c) The Company shall not consummate any consolidation, merger, sale or transfer referred to in Section 13(a) hereof unless prior thereto the Company and the Principal Party involved therein shall have executed and delivered to the Rights Agent an agreement confirming that the requirements of Sections 13(a) and (b) hereof shall promptly be performed in accordance with their terms and that such consolidation, merger, sale or transfer of assets shall not result in a default by the Principal Party under this Rights Agreement as the same shall have been assumed by the Principal Party pursuant to Sections 13(a) and (b) hereof and providing that, as soon as practicable after executing such agreement pursuant to this Section 13, the Principal Party will:

(i) prepare and file a registration statement under the Securities Act, if necessary, with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate form, use its best efforts to cause such registration statement to become effective as soon as practicable after such filing and use its best efforts to cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Securities Act) until the Expiration Date, and similarly comply with applicable state securities laws;

(ii) use its best efforts, if the Common Stock of the Principal Party shall be listed or admitted to trading on the NYSE or on another national securities exchange, to list or admit to trading (or continue the listing of) the Rights and the securities purchasable upon exercise of the Rights on the NYSE or such securities exchange, or, if the Common Stock of the Principal Party shall not be listed or admitted to trading on the NYSE or a national securities exchange, to cause the Rights and the securities receivable upon exercise of the Rights to be reported by such other system then in use;

(iii) deliver to holders of the Rights historical financial statements for the Principal Party which comply in all respects with the requirements for registration on Form 10 (or any successor form) under the Exchange Act; and

(iv) obtain waivers of any rights of first refusal or preemptive rights in respect of the Common Stock of the Principal Party subject to purchase upon exercise of outstanding Rights.

In the event that any of the transactions described in Section 13(a) hereof shall occur at any time after the occurrence of a transaction described in Section 11(a)(ii) hereof, the Rights which have not theretofore been exercised shall thereafter be exercisable in the manner described in Section 13(a).

(d) In case the Principal Party has a provision in any of its authorized securities or in its certificate of incorporation or by-laws or other instrument governing its affairs, which provision would have the effect of (i) causing such Principal Party to issue (other than to holders of Rights pursuant to this Section 13), in connection with, or as a consequence of, the consummation of a transaction referred to in this Section 13, shares of Common Stock or Common Stock equivalents of such Principal Party at less than the then-current market price per share thereof (determined pursuant to Section 11(d) hereof) or securities exercisable for, or convertible into, Common Stock or Common Stock equivalents of such Principal Party at less

than such then-current market price, or (ii) providing for any special payment, tax or similar provision in connection with the issuance of the Common Stock of such Principal Party pursuant to the provisions of Section 13, then, in such event, the Company hereby agrees with each holder of Rights that it shall not consummate any such transaction unless prior thereto the Company and such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement providing that the provision in question of such Principal Party shall have been canceled, waived or amended, or that the authorized securities shall be redeemed, so that the applicable provision will have no effect in connection with, or as a consequence of, the consummation of the proposed transaction.

(e) The Company covenants and agrees that it shall not, at any time after a Person first becomes an Acquiring Person enter into any transaction of the type contemplated by clauses (i)-(iii) of Section 13(a) hereof if (x) at the time of or immediately after such consolidation, merger, sale, transfer or other transaction there are any rights, warrants or other instruments or securities outstanding or agreements in effect which would substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights, (y) prior to, simultaneously with or immediately after such consolidation, merger, sale, transfer or other transaction, the stockholders of the Person who constitutes, or would constitute, the Principal Party for purposes of Section 13(b) hereof shall have received a distribution of Rights previously owned by such Person or any of its Affiliates or Associates or (z) the form or nature of organization of the Principal Party would preclude or limit the exercisability of the Rights.

Section 14. Fractional Rights and Fractional Shares. (a) The Company shall not be required to issue fractions of Rights (except prior to the Distribution Date in accordance with Section 11(n) hereof) or to distribute Right Certificates which evidence fractional Rights. In lieu of such fractional Rights, there shall be paid to the registered holders of the Right Certificates with regard to which such fractional Rights would otherwise be issuable, an amount in cash equal to the same fraction of the current market value of a whole Right. For the purposes of this Section 14(a), the current market value of a whole Right shall be the closing price of the Rights for the Trading Day immediately prior to the date on which such fractional Rights would have been otherwise issuable. The closing price for any day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported by (w) the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, (x) if the Rights are not listed or admitted to trading on the NYSE, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Rights are listed or admitted to trading or, (y) if the Rights are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by Nasdaq or such other system then in use or, (z) if on any such date the Rights are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Rights selected by the Board of Directors of the Company. If on any such date no such market maker is making a market in the Rights, the fair value of the Rights on such date as determined in good faith by the Board of Directors of the Company shall be used.

(b) The Company shall not be required to issue fractions of shares of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock) upon exercise of the Rights or to distribute certificates which evidence fractional shares of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock). Interests in fractions of Preferred Stock in integral multiples of one one-thousandth of a share of Preferred Stock may, at the election of the Company, be evidenced by depositary receipts, pursuant to an appropriate agreement between the Company and a depositary selected by it; provided, that such agreement shall provide that the holders of such depositary receipts shall have all the rights, privileges and preferences to which they are entitled as beneficial owners of the Preferred Stock represented by such depositary receipts. In lieu of fractional shares of Preferred Stock that are not integral multiples of one one-thousandth of a share of Preferred Stock, the Company shall pay to the registered holders of Right Certificates at the time such Rights are exercised for shares of Preferred Stock as herein provided an amount in cash equal to the same fraction of the current market value of one share of Preferred Stock. For the purposes of this Section 14(b), the current market value of a share of Preferred Stock shall be the closing price of a share of Preferred Stock (as determined pursuant to Section 11(d)(ii) hereof) for the Trading Day immediately prior to the date of such exercise.

(c) The Company shall not be required to issue fractions of shares of Common Stock or to distribute certificates which evidence fractional shares of Common Stock upon the exercise or exchange of Rights. In lieu of such fractional shares of Common Stock, the Company shall pay to the registered holders of the Right Certificates at the time such Rights are exercised or exchanged for shares of Common Stock as herein provided an amount in cash equal to the same fraction of the current market value of a whole share of Common Stock (as determined in accordance with Section 11(d)(i) hereof) for the Trading Day immediately prior to the date of such exercise or exchange.

(d) The holder of a Right by the acceptance of the Right expressly waives the right to receive any fractional Rights or any fractional shares upon exercise or exchange of a Right (except as provided above).

Section 15. Rights of Action. All rights of action in respect of this Rights Agreement, excepting the rights of action given to the Rights Agent under Section 18 hereof, are vested in the respective registered holders of the Right Certificates (and, prior to the Distribution Date, the registered holders of the Common Stock); and any registered holder of any Right Certificate (or, prior to the Distribution Date, of the Common Stock), without the consent of the Rights Agent or of the holder of any other Right Certificate (or, prior to the Distribution Date, of the Common Stock), on such holder's own behalf and for such holder's own benefit, may enforce, and may institute and maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of, such holder's right to exercise the Rights evidenced by such Right Certificate (or, prior to the Distribution Date, such Common Stock) in the manner provided in such Right Certificate and in this Rights Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Rights Agreement and will be entitled to specific performance of the obligations under, and injunctive relief against actual or threatened violations of the obligations of any Person subject to, this Rights Agreement. Holders of Rights shall be entitled to recover from the Company the

reasonable costs and expenses, including attorneys' fees, incurred by them in any action to enforce the provisions of this Rights Agreement.

Section 16. Agreement of Right Holders. Every holder of a Right, by accepting the same, consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(i) prior to the Distribution Date, the Rights will not be evidenced by a Right Certificate and will be transferable only in connection with the transfer of the Common Stock;

(ii) after the Distribution Date, the Right Certificates are transferable only on the registry books of the Rights Agent if surrendered at the office or agency of the Rights Agent designated for such purpose, duly endorsed or accompanied by a proper instrument of transfer;

(iii) the Company and the Rights Agent may deem and treat the Person in whose name the Right Certificate (or, prior to the Distribution Date, the Common Stock certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Right Certificates or the Common Stock certificate made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent, subject to Section 7(e) hereof, shall be affected by any notice to the contrary; and

(iv) notwithstanding anything in this Rights Agreement to the contrary, neither the Company nor the Rights Agent shall have any liability to any holder of a Right or other Person as a result of its inability to perform any of its obligations under this Rights Agreement by reason of any preliminary or permanent injunction or other order, judgment, decree or ruling (whether interlocutory or final) issued by a court or by a governmental, regulatory, self-regulatory or administrative agency or commission, or any statute, rule, regulation or executive order promulgated or enacted by any governmental authority, prohibiting or otherwise restraining performance of such obligation; provided, however, that the Company must use its best efforts to have any such injunction, order, judgment, decree or ruling lifted or otherwise overturned as soon as possible.

Section 17. Right Certificate Holder Not Deemed a Stockholder. No holder, as such, of any Right Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of the Preferred Stock or any other securities of the Company which may at any time be issuable on the exercise or exchange of the Rights represented thereby, nor shall anything contained herein or in any Right Certificate be construed to confer upon the holder of any Right Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in this Rights Agreement), or to receive dividends or subscription rights, or otherwise, until the Rights evidenced by such Right Certificate shall have been exercised or exchanged in accordance with the provisions hereof.

Section 18. Concerning the Rights Agent. (a) The Company agrees to pay to the Rights Agent reasonable compensation for all services rendered by it hereunder and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and other disbursements incurred in the administration and execution of this Rights Agreement and the exercise and performance of its duties hereunder. The Company also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability or expense, incurred without negligence, bad faith or willful misconduct on the part of the Rights Agent, for anything done or omitted by the Rights Agent in connection with the acceptance and administration of this Rights Agreement, including the costs and expenses of defending against any claim of liability arising therefrom, directly or indirectly.

(b) The Rights Agent shall be protected and shall incur no liability for, or in respect of any action taken, suffered or omitted by it in connection with, its administration of this Rights Agreement in reliance upon any Right Certificate or certificate for the Preferred Stock or Common Stock or for other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement, or other paper or document reasonably believed by it to be genuine and to be signed, executed and, where necessary, verified or acknowledged, by the proper Person or Persons, or otherwise upon the advice of counsel as set forth in Section 20 hereof.

Section 19. Merger or Consolidation or Change of Rights Agent. (a) Any corporation into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any corporation succeeding to the stock transfer or corporate trust powers of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Rights Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided, that such corporation would be eligible for appointment as a successor Rights Agent under the provisions of Section 21 hereof. In case at the time such successor Rights Agent shall succeed to the agency created by this Rights Agreement, any of the Right Certificates shall have been countersigned but not delivered, such successor Rights Agent may adopt the countersignature of the predecessor Rights Agent and deliver such Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, any successor Rights Agent may countersign such Right Certificates either in the name of the predecessor Rights Agent or in the name of such successor Rights Agent; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Rights Agreement.

(b) In case at any time the name of the Rights Agent shall be changed and at such time any of the Right Certificates shall have been countersigned but not delivered the Rights Agent may adopt the countersignature under its prior name and deliver Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, the Rights Agent may countersign such Right Certificates either in its prior name or in its changed name and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Rights Agreement.

Section 20. Duties of Rights Agent. The Rights Agent undertakes the duties and obligations imposed by this Rights Agreement upon the following terms and conditions, by all of which the Company and the holders of Right Certificates, by their acceptance thereof, shall be bound:

(a) The Rights Agent may consult with legal counsel (who may be legal counsel for the Company), and the opinion of such counsel shall be full and complete authorization and protection to the Rights Agent as to any action taken or omitted by it in good faith and in accordance with such opinion.

(b) Whenever in the performance of its duties under this Rights Agreement the Rights Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by any one of the President, any Vice President, the Treasurer or the Secretary of the Company (each, an "Authorized Officer") and delivered to the Rights Agent; and such certificate shall be full authorization to the Rights Agent for any action taken or suffered in good faith by it under the provisions of this Rights Agreement in reliance upon such certificate.

(c) The Rights Agent shall be liable hereunder to the Company and any other Person only for its own negligence, bad faith or willful misconduct.

(d) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Rights Agreement or in the Right Certificates (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

(e) The Rights Agent shall not be under any responsibility in respect of the validity of this Rights Agreement or the execution and delivery hereof (except the due execution hereof by the Rights Agent) or in respect of the validity or execution of any Right Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Rights Agreement or in any Right Certificate; nor shall it be responsible for any change in the exercisability of the Rights (including the Rights becoming void pursuant to Section 11(a)(ii) hereof) or any adjustment in the terms of the Rights (including the manner, method or amount thereof) provided for in Sections 3, 11, 13, 23 and 24, or the ascertaining of the existence of facts that would require any such change or adjustment (except with respect to the exercise of Rights evidenced by Right Certificates after receipt of a certificate furnished pursuant to Section 12, describing such change or adjustment); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Preferred Stock or other securities to be issued pursuant to this Rights Agreement or any Right Certificate or as to whether any shares of Preferred Stock or other securities will, when issued, be validly authorized and issued, fully paid and nonassessable.

(f) The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and

other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Rights Agreement.

(g) The Rights Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from any person reasonably believed by the Rights Agent to be one of the Authorized Officers, and to apply to such Authorized Officers for advice or instructions in connection with its duties, and it shall not be liable for any action taken or suffered by it in good faith in accordance with instructions of any such Authorized Officer or for any delay in acting while waiting for those instructions. Any application by the Rights Agent for written instructions from the Company may, at the option of the Rights Agent, set forth in writing any action proposed to be taken or omitted by the Rights Agent under this Rights Agreement and the date on and/or after which such action shall be taken or such omission shall be effective. The Rights Agent shall not be liable for any action taken by, or omission of, the Rights Agent in accordance with a proposal included in any such application on or after the date specified in such application (which date shall not be less than five Business Days after the date any Authorized Officer of the Company actually receives such application, unless any such Authorized Officer shall have consented in writing to an earlier date) unless, prior to taking any such action (or the effective date in the case of an omission), the Rights Agent shall have received written instructions in response to such application specifying the action to be taken or omitted.

(h) The Rights Agent and any stockholder, director, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Rights Agent under this Rights Agreement. Nothing herein shall preclude the Rights Agent from acting in any other capacity for the Company or for any other legal entity.

(i) The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents, and the Rights Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company resulting from any such act, default, neglect or misconduct, provided reasonable care was exercised in the selection and continued employment thereof.

(j) If, with respect to any Right Certificate surrendered to the Rights Agent for exercise or transfer, the certificate contained in the form of assignment or the form of election to purchase set forth on the reverse thereof, as the case may be, has not been completed to certify the holder is not an Acquiring Person (or an Affiliate or Associate thereof) or a transferee thereof, the Rights Agent shall not take any further action with respect to such requested exercise or transfer without first consulting with the Company.

Section 21. Change of Rights Agent. The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Rights Agreement upon 30 days' notice in writing mailed to the Company and to each transfer agent of the Common Stock or the Preferred Stock by registered or certified mail, and, following the Distribution Date, to the holders of the Right Certificates by first-class mail. In the event the transfer agency relationship

in effect between the Company and the Rights Agent terminates, the Rights Agent will be deemed to resign automatically on the effective date of such termination; and any required notice will be sent by the Company. The Company may remove the Rights Agent or any successor Rights Agent upon 30 days' notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of the Common Stock or the Preferred Stock by registered or certified mail, and, following the Distribution Date, to the holders of the Right Certificates by first-class mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Rights Agent. If the Company shall fail to make such appointment within a period of 30 days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Right Certificate (who shall, with such notice, submit his Right Certificate for inspection by the Company), then the registered holder of any Right Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, shall be (A) a corporation organized and doing business under the laws of the United States or any State thereof, which is authorized under such laws to exercise corporate trust or stock transfer powers and is subject to supervision or examination by federal or state authority and which has at the time of its appointment as Rights Agent a combined capital and surplus of at least $50 million or (B) an affiliate of a corporation described in clause (A) of this sentence. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment the Company shall file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Common Stock or the Preferred Stock, and, following the Distribution Date, mail a notice thereof in writing to the registered holders of the Right Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

Section 22. Issuance of New Right Certificates. Notwithstanding any of the provisions of this Rights Agreement or of the Rights to the contrary, the Company may, at its option, issue new Right Certificates evidencing Rights in such forms as may be approved by its Board of Directors to reflect any adjustment or change in the Purchase Price and the number or kind or class of shares or other securities or property purchasable under the Right Certificates made in accordance with the provisions of this Rights Agreement. In addition, in connection with the issuance or sale of Common Stock following the Distribution Date and prior to the Expiration Date, the Company may with respect to shares of Common Stock so issued or sold pursuant to (i) the exercise of stock options, (ii) under any employee plan or arrangement, (iii) the exercise, conversion or exchange of securities, notes or debentures issued by the Company or (iv) a contractual obligation of the Company, in each case existing prior to the Distribution Date, issue Right Certificates representing the appropriate number of Rights in connection with such issuance or sale; provided, however, that (i) no such Right Certificate shall be issued if, and to the extent that, the Company shall be advised by its counsel that such issuance would create a significant risk of material adverse tax consequences to the Company or the Person to whom

such Right Certificate would be issued, and (ii) no such Right Certificate shall be issued, if, and to the extent that, appropriate adjustment shall otherwise have been made in lieu of the issuance thereof.

Section 23. Redemption. (a) The Board of Directors of the Company may, at any time prior to such time as any Person first becomes an Acquiring Person, redeem all but not less than all the then-outstanding Rights at a redemption price of $0.01 per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof (the "Redemption Price"). The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board of Directors in its sole discretion may establish. The Company may, at its option, pay the Redemption Price in cash, shares of Common Stock (based on the current market price of the Common Stock at the time of redemption as determined pursuant to Section 11(d)(i) hereof) or any other form of consideration deemed appropriate by the Board of Directors.

(b) Immediately upon the action of the Board of Directors ordering the redemption of the Rights pursuant to paragraph (a) of this Section 23 (or at such later time as the Board of Directors may establish for the effectiveness of such redemption), and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price. The Company shall promptly give public notice of any such redemption; provided, however, that the failure to give, or any defect in, any such notice shall not affect the validity of such redemption. Within 10 days after such action of the Board of Directors ordering the redemption of the Rights (or such later time as the Board of Directors may establish for the effectiveness of such redemption), the Company shall mail a notice of redemption to all the holders of the then-outstanding Rights at their last addresses as they appear upon the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the transfer agent for the Common Stock. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption shall state the method by which the payment of the Redemption Price will be made. The failure to give notice required by this Section 23(b) or any defect therein shall not affect the validity of the action taken by the Company.

(c) In the case of a redemption under Section 23(a) hereof, the Company may, at its option, discharge all of its obligations with respect to the Rights by (i) issuing a press release announcing the manner of redemption of the Rights and (ii) mailing payment of the Redemption Price to the registered holders of the Rights at their last addresses as they appear on the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the transfer agent of the Common Stock, and upon such action, all outstanding Right Certificates shall be void without any further action by the Company.

Section 24. Exchange. (a) The Board of Directors of the Company may, at its option, at any time after any Person first becomes an Acquiring Person, exchange all or part of the then-outstanding and exercisable Rights (which shall not include Rights that have not become effective or that have become void pursuant to the provisions of Section 11(a)(ii) hereof) for shares of Common Stock at an exchange ratio of one share of Common Stock per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof (such amount per Right being hereinafter referred to as the "Exchange

Ratio"). Notwithstanding the foregoing, the Board of Directors shall not be empowered to effectuate such exchange at any time (1) after an Acquiring Person becomes the Beneficial Owner of shares of Common Stock aggregating 50% or more of the shares of Common Stock then outstanding or (2) after the occurrence of an event specified in Section 13(a) hereof. The exchange of the Rights by the Board of Directors may be made effective at such time, on such basis and with such conditions as the Board of Directors in its sole discretion may establish.

(b) Immediately upon the effectiveness of the action of the Board of Directors of the Company ordering the exchange of any Rights pursuant to paragraph (a) of this Section 24 and without any further action and without any notice, the right to exercise such Rights shall terminate and the only right thereafter of a holder of such Rights shall be to receive that number of shares of Common Stock equal to the number of such Rights held by such holder multiplied by the Exchange Ratio. The Company shall promptly give public notice of any such exchange; provided, however, that the failure to give, or any defect in, such notice shall not affect the validity of such exchange. The Company shall promptly mail a notice of any such exchange to all of the holders of the Rights so exchanged at their last addresses as they appear upon the registry books of the Rights Agent. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange will state the method by which the exchange of the shares of Common Stock for Rights will be effected and, in the event of any partial exchange, the number of Rights which will be exchanged. Any partial exchange shall be effected pro rata based on the number of Rights (other than Rights which have become void pursuant to the provisions of Section 11(a)(ii) hereof) held by each holder of Rights.

(c) The Company may at its option substitute and, in the event that there shall not be sufficient shares of Common Stock issued but not outstanding or authorized but unissued (and unreserved) to permit an exchange of Rights as contemplated in accordance with this Section 24, the Company shall substitute to the extent of such insufficiency, for each share of Common Stock that would otherwise be issuable upon exchange of a Right, a number of shares of Preferred Stock or fraction thereof (or equivalent preferred shares as such term is defined in Section 11(b)) such that the current per share market price (determined pursuant to Section 11(d) hereof) of one share of Preferred Stock (or equivalent preferred share) multiplied by such number or fraction is equal to the current per share market price of one share of Common Stock (determined pursuant to Section 11(d) hereof) as of the date of such exchange.

Section 25. Notice of Certain Events. (a) In case the Company shall at any time after the earlier of the Distribution Date or the Stock Acquisition Date propose (i) to pay any dividend payable in stock of any class to the holders of its Preferred Stock or to make any other distribution to the holders of its Preferred Stock (other than a regular periodic cash dividend), (ii) to offer to the holders of its Preferred Stock rights or warrants to subscribe for or to purchase any additional shares of Preferred Stock or shares of stock of any class or any other securities, rights or options, (iii) to effect any reclassification of its Preferred Stock (other than a reclassification involving only the subdivision or combination of outstanding Preferred Stock), (iv) to effect the liquidation, dissolution or winding up of the Company, or (v) to declare or pay any dividend on the Common Stock payable in Common Stock or to effect a subdivision, combination or consolidation of the Common Stock (by reclassification or otherwise than by payment of dividends in Common Stock), then, in each such case, the Company shall give to each holder of

a Right Certificate, in accordance with Section 26 hereof, a notice of such proposed action, which shall specify the record date for the purposes of such stock dividend, or distribution or offering of rights or warrants, or the date on which such liquidation, dissolution, reclassification, subdivision, combination, consolidation or winding up is to take place and the date of participation therein by the holders of the Common Stock and/or Preferred Stock, if any such date is to be fixed, and such notice shall be so given in the case of any action covered by clause (i) or (ii) above at least 10 days prior to the record date for determining holders of the Preferred Stock for purposes of such action, and in the case of any such other action, at least 10 days prior to the date of the taking of such proposed action or the date of participation therein by the holders of the Common Stock and/or Preferred Stock, whichever shall be the earlier.

(b) In case any event described in Section 11(a)(ii) or Section 13 shall occur then the Company shall as soon as practicable thereafter give to each holder of a Right Certificate (or if occurring prior to the Distribution Date, the holders of the Common Stock) in accordance with Section 26 hereof, a notice of the occurrence of such event, which notice shall describe such event and the consequences of such event to holders of Rights under Section 11(a)(ii) and Section 13 hereof.

(c) The failure to give notice required by this Section 25 or any defect therein shall not affect the validity of the action taken by the Company or the vote upon any such action.

Section 26. Notices. Notices or demands authorized by this Rights Agreement to be given or made by the Rights Agent or by the holder of any Right Certificate to or on the Company shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Rights Agent) as follows:

Northwest Airlines Corporation
2700 Lone Oak Parkway
Eagan, Minnesota 55121
Attention: Secretary

Subject to the provisions of Section 21 hereof, any notice or demand authorized by this Rights Agreement to be given or made by the Company or by the holder of any Right Certificate to or on the Rights Agent shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Company) as follows:

[Agent]
[Address]

Notices or demands authorized by this Rights Agreement to be given or made by the Company or the Rights Agent to the holder of any Right Certificate shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Company.

Section 27. Supplements and Amendments. Except as otherwise provided in this Section 27, for so long as the Rights are then redeemable, the Company may in its sole and absolute discretion, and the Rights Agent shall if the Company so directs, supplement or amend any provision of this Rights Agreement in any respect without the approval of any holders of the

Rights. At any time when the Rights are no longer redeemable, except as otherwise provided in this Section 27, the Company may, and the Rights Agent shall, if the Company so directs, supplement or amend this Rights Agreement without the approval of any holders of Rights in order to (i) cure any ambiguity, (ii) correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions herein, (iii) shorten or lengthen any time period hereunder, or (iv) change or supplement the provisions hereunder in any manner which the Company may deem necessary or desirable; provided, however, that no such supplement or amendment shall adversely affect the interests of the holders of Rights as such (other than an Acquiring Person or an Affiliate or Associate of an Acquiring Person), and no such amendment may cause the Rights again to become redeemable or cause this Rights Agreement again to become amendable other than in accordance with this sentence. Notwithstanding anything contained in this Rights Agreement to the contrary, no supplement or amendment shall be made which decreases the Redemption Price. Upon the delivery of a certificate from an appropriate officer of the Company which states that the supplement or amendment is in compliance with the terms of this Section 27, the Rights Agent shall execute such supplement or amendment; provided that any supplement or amendment that does not amend Sections 18, 19, 20 or 21 hereof in a manner adverse to the Rights Agent shall become effective immediately upon execution by the Company, whether or not also executed by the Rights Agent.

Section 28. Successors. All the covenants and provisions of this Rights Agreement by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 29. Benefits of this Rights Agreement. Nothing in this Rights Agreement shall be construed to give to any Person other than the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Stock) any legal or equitable right, remedy or claim under this Rights Agreement; but this Rights Agreement shall be for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Stock).

Section 30. Determinations and Actions by the Board of Directors. The Board of Directors of the Company shall have the exclusive power and authority to administer this Rights Agreement and to exercise the rights and powers specifically granted to the Board of Directors of the Company or to the Company, or as may be necessary or advisable in the administration of this Rights Agreement, including, without limitation, the right and power to (i) interpret the provisions of this Rights Agreement and (ii) make all determinations deemed necessary or advisable for the administration of this Rights Agreement (including, without limitation, a determination to redeem or not redeem the Rights or to amend this Rights Agreement). All such actions, calculations, interpretations and determinations (including all omissions with respect to the foregoing) that are done or made by the Board of Directors of the Company in good faith, shall be final, conclusive and binding on the Company, the Rights Agent, the holders of the Rights, as such, and all other parties.

Section 31. Severability. If any term, provision, covenant or restriction of this Rights Agreement or applicable to this Rights Agreement is held by a court of competent

jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Rights Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated; provided, however, that notwithstanding anything in this Agreement to the contrary, if any such term, provision, covenant or restriction is held by such court or authority to be invalid, void or unenforceable and the Board determines in its good faith judgment that severing the invalid language from this Agreement would adversely affect the purpose or effect of this Agreement, the right of redemption set forth in Section 23 hereof shall be reinstated (with prompt notice to the Rights Agent) and shall not expire until the close of business on the tenth Business Day following the date of such determination by the Board. Without limiting the foregoing, if any provision requiring a specific group of Directors of the Company to act is held to by any court of competent jurisdiction or other authority to be invalid, void or unenforceable, such determination shall then be made by the Board in accordance with applicable law and the Company's Certificate of Incorporation and Bylaws.

Section 32. Governing Law. This Rights Agreement and each Right Certificate issued hereunder shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts to be made and performed entirely within such State.

Section 33. Counterparts. This Rights Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 34. Descriptive Headings. Descriptive headings of the several Sections of this Rights Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 35. Force Majeure. Notwithstanding anything to the contrary contained herein, the Rights Agent shall not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

IN WITNESS WHEREOF, the parties hereto have caused this Rights Agreement to be duly executed and attested, all as of the day and year first above written.

NORTHWEST AIRLINES CORPORATION

Attest: _____ By: _____
Name:
Title:

[AGENT]

Attest: _____ By: _____
Name:
Title:

EXHIBIT A

FORM

OF

CERTIFICATE OF DESIGNATIONS

OF

SERIES A JUNIOR PARTICIPATING PREFERRED STOCK

OF

NORTHWEST AIRLINES CORPORATION

(Pursuant to Section 151 of the
General Corporation Law of the State of Delaware)

Northwest Airlines Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Company"), hereby certifies that the following resolution was duly adopted by the Board of Directors of the Company as required by Section 151 of the General Corporation Law of the State of Delaware on [ ], 2007:

RESOLVED, that pursuant to the authority vested in the Board of Directors of the Company (hereinafter being referred to as the "Board of Directors" or the "Board") in accordance with the provisions of the Company's Amended and Restated Certificate of Incorporation, as amended to date (hereinafter being referred to as the "Certificate of Incorporation"), the Board of Directors hereby creates a series of preferred stock, par value $0.01 per share, of the Company, to be designated the "Series A Junior Participating Preferred Stock" and hereby adopts the resolution establishing the designations, number of shares, powers and preferences thereof and the restrictions and limitations thereof, of the shares of such series as set forth below:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Participating Preferred Stock" (the "Series A Preferred Stock") and the number of shares constituting the Series A Preferred Stock shall be [_____,000]. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Company convertible into Series A Preferred Stock.

Section 2. Dividends and Distributions

(A) Subject to the rights of the holders of any shares of any series of preferred stock of the Company (the "Preferred Stock") (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders

of shares of Series A Preferred Stock, in preference to the holders of common stock, par value $0.01 per share, of the Company (the "Common Stock") and of any other stock of the Company ranking junior to the Series A Preferred Stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the last day of January, April, July, and October in each year (each such date being referred to herein as a "Dividend Payment Date"), commencing on the first Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) $1 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock, declared on the Common Stock since the immediately preceding Dividend Payment Date or, with respect to the first Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Company shall at any time after [ ], 2007 (the "Rights Declaration Date") declare and pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Company shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Dividend Payment Date and the next subsequent Dividend Payment Date, a dividend of $1 per share on the Series A Preferred Stock shall nevertheless be payable, when, as and if declared, on such subsequent Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative, whether or not earned or declared, on outstanding shares of Series A Preferred Stock from the Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at

the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth and except as otherwise provided in the Certificate of Incorporation or required by law, each share of Series A Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters upon which the holders of the Common Stock of the Company are entitled to vote. In the event the Company shall at any time after the Rights Declaration Date declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in the Certificate of Incorporation or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, and except as otherwise required by law, the holders of shares of Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Company having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Company.

(C) Except as set forth herein, or as otherwise provided by law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

(D) If, at the time of any annual meeting of stockholders for the election of directors, the equivalent of six quarterly dividends (whether or not consecutive) payable on any share or shares of Series A Preferred Stock are in default, the number of directors constituting the Board of Directors of the Company shall be increased by two. In addition to voting together with the holders of Common Stock for the election of other directors of the Company, the holders of record of the Series A Preferred Stock, voting separately as a class to the exclusion of the holders of Common Stock, shall be entitled at said meeting of stockholders (and at each subsequent annual meeting of stockholders), unless all dividends in arrears on the Series A Preferred Stock have been paid or declared and set apart for payment prior thereto, to vote for the election of two directors of the Company, the holders of any Series A Preferred Stock being entitled to cast a number of votes per

share of Series A Preferred Stock as is specified in paragraph (A) of this Section 3. Each such additional director shall serve until the next annual meeting of stockholders for the election of directors, or until his successor shall be elected and shall qualify, or until his right to hold such office terminates pursuant to the provisions of this Section 3(D). Until the default in payments of all dividends which permitted the election of said directors shall cease to exist, any director who shall have been so elected pursuant to the provisions of this Section 3(D) may be removed at any time, without cause, only by the affirmative vote of the holders of the shares of Series A Preferred Stock at the time entitled to cast a majority of the votes entitled to be cast for the election of any such director at a special meeting of such holders called for that purpose, and any vacancy thereby created may be filled by the vote of such holders. If and when such default shall cease to exist, the holders of the Series A Preferred Stock shall be divested of the foregoing special voting rights, subject to revesting in the event of each and every subsequent like default in payments of dividends. Upon the termination of the foregoing special voting rights, the terms of office of all persons who may have been elected directors pursuant to said special voting rights shall forthwith terminate, and the number of directors constituting the Board of Directors shall be reduced by two. The voting rights granted by this Section 3(D) shall be in addition to any other voting rights granted to the holders of the Series A Preferred Stock in this Section 3.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not earned or declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Company shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that the Company may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Company ranking junior (as to dividends and upon dissolution, liquidation or winding up) to the Series A Preferred Stock or rights, warrants or options to acquire such junior stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Company shall not permit any subsidiary of the Company to purchase or otherwise acquire for consideration any shares of stock of the Company unless the Company could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Company in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their retirement become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to any conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the Company, no distribution shall be made (A) to the holders of the Common Stock or of shares of any other stock of the Company ranking junior, upon liquidation, dissolution or winding up, to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received $1,000 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not earned or declared, to the date of such payment, provided that the holders of shares of Series A Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (B) to the holders of shares of stock ranking on a parity upon liquidation, dissolution or winding up with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Preferred Stock liquidation preference and the liquidation preferences of all other classes and series of stock of the Company, if any, that rank on a parity with the Series A Preferred Stock in respect thereof, then the assets available for such distribution shall be distributed ratably to the holders of the Series A Preferred Stock and the holders of such parity shares in the proportion to their respective liquidation preferences. In the event the Company shall at any time after the Rights Declaration Date declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under

the proviso in clause (A) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Neither the merger or consolidation of the Company into or with another entity nor the merger or consolidation of any other entity into or with the Company (nor the sale of all or substantially all of the assets of the Company) shall be deemed to be a liquidation, dissolution or winding up of the Company within the meaning of this Section 6.

Section 7. Consolidation, Merger, etc. In case the Company shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are converted into, exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series A Preferred Stock shall at the same time be similarly converted into, exchanged for or changed into an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is converted, exchanged or converted. In the event the Company shall at any time after the Rights Declaration Date declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the conversion, exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series A Preferred Stock shall not be redeemable from any holder.

Section 9. Rank. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up of the Company, junior to all other series of Preferred Stock and senior to the Common Stock.

Section 10. Amendment. If any proposed amendment to the Certificate of Incorporation (including this Certificate of Designations) would alter, change or repeal any of the preferences, powers or special rights given to the Series A Preferred Stock so as to affect the Series A Preferred Stock adversely, then the holders of the Series A Preferred Stock shall be entitled to vote separately as a class upon such amendment, and the affirmative vote of two-thirds of the outstanding shares of the Series A Preferred Stock, voting separately as a class, shall be necessary for the adoption thereof, in addition to such other vote as may be required by the General Corporation Law of the State of Delaware.

Section 11. Fractional Shares. Series A Preferred Stock may be issued in fractions of a share that shall entitle the holder, in proportion to such holder's fractional shares,

to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Company by _____ , [Title of Signatory] of the Company on [ ], 2007.

_____
Name:
Title:

EXHIBIT B

FORM OF RIGHT CERTIFICATE

Certificate No. R- ____ ___ Rights

NOT EXERCISABLE AFTER [ ], 2017 OR EARLIER IF REDEMPTION OR EXCHANGE OCCURS. THE RIGHTS ARE SUBJECT TO REDEMPTION AT $0.01 PER RIGHT AND TO EXCHANGE ON THE TERMS SET FORTH IN THE RIGHTS AGREEMENT. UNDER CERTAIN CIRCUMSTANCES, AS SET FORTH IN THE RIGHTS AGREEMENT, RIGHTS OWNED BY OR TRANSFERRED TO ANY PERSON WHO IS OR BECOMES AN ACQUIRING PERSON (AS DEFINED IN THE RIGHTS AGREEMENT) AND CERTAIN TRANSFEREES THEREOF WILL BECOME NULL AND VOID AND WILL NO LONGER BE TRANSFERABLE.

Right Certificate

NORTHWEST AIRLINES CORPORATION

This certifies that _____ or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Rights Agreement, dated as of [ ], 2007, as the same may be amended from time to time (the "Rights Agreement"), between Northwest Airlines Corporation, a Delaware corporation (the "Company"), and [Agent] (the "Rights Agent"), to purchase from the Company at any time after the Distribution Date (as such term is defined in the Rights Agreement) and prior to 5:00 P.M., New York City time, on [ ], 2017 at the office or agency of the Rights Agent designated for such purpose, or of its successor as Rights Agent, one one-thousandth of a fully paid non-assessable share of Series A Junior Participating Preferred Stock, par value $0.01 per share (the "Preferred Stock"), of the Company, at a purchase price of $[ ] per one one-thousandth of a share of Preferred Stock (the "Purchase Price"), upon presentation and surrender of this Right Certificate with the Form of Election to Purchase duly executed. The number of Rights evidenced by this Right Certificate (and the number of one one-thousandths of a share of Preferred Stock which may be purchased upon exercise hereof) set forth above, and the Purchase Price set forth above, are the number and Purchase Price as of [ ], 2007, based on the Preferred Stock as constituted at such date. As provided in the Rights Agreement, the Purchase Price, the number of one one-thousandths of a share of Preferred Stock (or other securities or property) which may be purchased upon the exercise of the Rights and the number of Rights evidenced by this Right Certificate are subject to modification and adjustment upon the happening of certain events.

This Right Certificate is subject to all of the terms, provisions and conditions of the Rights Agreement, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Rights Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Rights Agent, the Company and the holders of the Right Certificates. Copies of the Rights

Agreement are on file at the principal executive offices of the Company. The Company will mail to the holder of this Right Certificate a copy of the Rights Agreement without charge after receipt of a written request therefor.

This Right Certificate, with or without other Right Certificates, upon surrender at the office or agency of the Rights Agent designated for such purpose, may be exchanged for another Right Certificate or Right Certificates of like tenor and date evidencing Rights entitling the holder to purchase a like aggregate number of shares of Preferred Stock as the Rights evidenced by the Right Certificate or Right Certificates surrendered shall have entitled such holder to purchase. If this Right Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender hereof another Right Certificate or Right Certificates for the number of whole Rights not exercised.

Subject to the provisions of the Rights Agreement, the Rights evidenced by this Certificate (i) may be redeemed by the Company at a redemption price of $0.01 per Right or (ii) may be exchanged in whole or in part for shares of Preferred Stock or shares of the Company's Common Stock, par value $0.01 per share.

No fractional shares of Preferred Stock or Common Stock will be issued upon the exercise or exchange of any Right or Rights evidenced hereby (other than fractions of Preferred Stock which are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depositary receipts), but in lieu thereof a cash payment will be made, as provided in the Rights Agreement.

No holder of this Right Certificate, as such, shall be entitled to vote or receive dividends or be deemed for any purpose the holder of the Preferred Stock or of any other securities of the Company which may at any time be issuable on the exercise or exchange hereof, nor shall anything contained in the Rights Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in the Rights Agreement) or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Right certificate shall have been exercised or exchanged as provided in the Rights Agreement.

This Right Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Company and its corporate seal. Dated as of _____ __, ____.

ATTEST: NORTHWEST AIRLINES CORPORATION

By: _____ By: _____

Countersigned:

[AGENT], as Rights Agent

By: _____
Authorized Signatory

Form of Reverse Side of Right Certificate

FORM OF ASSIGNMENT

(*To be executed by the registered holder if such holder desires to transfer the Right Certificate*)

FOR VALUE RECEIVED _____ hereby sells, assigns and transfer unto _____

_____

(*Please print name and address of transferee*)

_____

Rights represented by this Right Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ Attorney, to transfer said Rights on the books of the within-named Company, with full power of substitution.

Dated: _____, ____

_____
Signature

Signature Guaranteed:

Signatures must be guaranteed by a bank, trust company, broker, dealer or other eligible institution participating in a recognized signature guarantee medallion program.

The undersigned hereby certifies that the Rights evidenced by this Right Certificate are not beneficially owned by, were not acquired by the undersigned from, and are not being sold, assigned or transferred to, an Acquiring Person or an Affiliate or Associate thereof (as defined in the Rights Agreement).

_____
Signature

Form of Reverse Side of Right Certificate — *continued*

FORM OF ELECTION TO PURCHASE

(*To be executed if holder desires to exercise Rights represented by the Rights Certificate*)

To the Rights Agent:

The undersigned hereby irrevocably elects to exercise _____ Rights represented by this Right Certificate to purchase the shares of Series A Junior Participating Preferred Stock (or other securities or property) issuable upon the exercise of such Rights and requests that certificates for such shares of Series A Junior Participating Preferred Stock (or such other securities) be issued in the name of:

_____

(*Please print name and address*)

_____

If such number of Rights shall not be all the Rights evidenced by this Right Certificate, a new Right Certificate for the balance remaining of such Rights shall be registered in the name of and delivered to:

Please insert social security or other identifying number: _____

_____

(*Please print name and address*)

_____

Dated: _____, ___

_____

Signature

(*Signature must conform to holder specified on Right Certificate*)

Signature Guaranteed:

Signatures must be guaranteed by a bank, trust company, broker, dealer or other eligible institution participating in a recognized signature guarantee medallion program.

The undersigned hereby certifies that the Rights evidenced by this Right Certificate are not beneficially owned by, were not acquired by the undersigned from, and are not being sold, assigned or transferred to, an Acquiring Person or an Affiliate or Associate thereof (as defined in the Rights Agreement).

_____

Signature

Form of Reverse Side of Right Certificate — *continued*

NOTICE

The signature in the Form of Assignment or Form of Election to Purchase, as the case may be, must conform to the name as written upon the face of this Right Certificate in every particular, without alteration or enlargement or any change whatsoever.

In the event the certification set forth above in the Form of Assignment or the Form of Election to Purchase, as the case may be, is not completed, such Assignment or Election to Purchase will not be honored.

EXHIBIT C

UNDER CERTAIN CIRCUMSTANCES, AS SET FORTH IN THE RIGHTS AGREEMENT, RIGHTS OWNED BY OR TRANSFERRED TO ANY SPECIFIED PERSON WHO IS OR BECOMES AN ACQUIRING PERSON (AS DEFINED IN THE RIGHTS AGREEMENT) AND CERTAIN TRANSFEREES THEREOF WILL BECOME NULL AND VOID AND WILL NO LONGER BE TRANSFERABLE.

SUMMARY OF RIGHTS TO PURCHASE
Shares of Series A Junior Participating Preferred Stock

On [ ], 2007, the Board of Directors of Northwest Airlines Corporation, a Delaware corporation (the "Company"), declared a dividend of one preferred share purchase right (a "Right") for each outstanding share of common stock, par value $0.01 per share, of the Company (the "Common Stock"). The dividend is payable on [ ], 2007, to the stockholders of record as of the close of business on _____, 2007 (the "Record Date"). Each Right entitles the registered holder to purchase from the Company one one-thousandth of a share of Series A Junior Participating Preferred Stock, par value $0.01 per share (the "Preferred Stock"), of the Company at a price of $[ ] per one one-thousandth of a share of Preferred Stock (as the same may be adjusted, the "Purchase Price"). The description and terms of the Rights are set forth in a Rights Agreement, dated as of [ ], 2007 (as the same may be amended from time to time, the "Rights Agreement"), between the Company and [Agent], as Rights Agent (the "Rights Agent").

Until the close of business on the earlier of (i) the tenth day after the first date of a public announcement that a Specified Person (other than an Exempt Person (as defined below)) has acquired beneficial ownership (as defined in the Rights Agreement) of 20% or more of the shares of Common Stock then outstanding (an "Acquiring Person") or (ii) the tenth business day (or such later date as may be determined by action of the Board of Directors prior to such time as any Specified Person becomes an Acquiring Person) after the date of commencement of, or the first public announcement of an intention to commence, a tender offer or exchange offer the consummation of which would result in the beneficial ownership by a Specified Person (other than an Exempt Person) of 20% or more of the shares of Common Stock then outstanding (the earlier of such dates being herein referred to as the "Distribution Date"), the Rights will be evidenced by the shares of Common Stock represented by certificates for Common Stock outstanding as of the Record Date, together with a copy of the summary of rights disseminated in connection with the original dividend of Rights.

"Exempt Person" shall mean (1) the Company, (2) any subsidiary of the Company (in the case of subclauses (1) and (2) including, without limitation, in its fiduciary capacity), (3) any employee benefit plan of the Company or of any subsidiary of the Company, and (4) any entity or trustee holding Common Stock for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or of any subsidiary of the Company.

"Major Carrier" means an air carrier, the annual passenger revenues of which (including its subsidiaries' predecessor entities) for the most recently completed fiscal year for

which audited financial statements are available are in excess of the Revenue Threshold as of the date of determination (or the U.S. dollar equivalent thereof).

"Revenue Threshold" means one billion dollars ($1,000,000,000), as such amount may be increased based on the amount by which, for any date of determination, the most recently published Consumer Price Index for all−urban consumers published by the Department of Labor (the "CPI") has increased to such date above the CPI for calendar year 2000. For purposes hereof, the CPI for calendar year 2000 is the monthly average of the CPI for the 12 months ending on December 31, 2000.

"Specified Person" shall mean a Major Carrier, a holding company of a Major Carrier, any of their respective affiliates or any combination thereof.

The Rights Agreement provides that, until the Distribution Date (or earlier redemption or expiration of the Rights), the Rights will be transferable only in connection with the transfer of Common Stock. Until the Distribution Date (or earlier redemption or expiration of the Rights), the surrender for transfer of any certificates for shares of Common Stock outstanding as of the Record Date, even without a notation incorporating the Rights Agreement by reference or a copy of this Summary of Rights, will also constitute the transfer of the Rights associated with the shares of Common Stock represented by such certificate. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights ("Right Certificates") will be mailed to holders of record of the Common Stock as of the close of business on the Distribution Date and such separate Right Certificates alone will evidence the Rights.

The Rights are not exercisable until the Distribution Date. The Rights will expire on [ ], 2017 (the "Final Expiration Date"), unless the Final Expiration Date is extended or unless the Rights are earlier redeemed or exchanged by the Company, in each case as described below.

The Purchase Price payable, and the number of shares of Preferred Stock or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Preferred Stock, (ii) upon the grant to holders of the Preferred Stock of certain rights or warrants to subscribe for or purchase Preferred Stock at a price, or securities convertible into Preferred Stock with a conversion price, less than the then-current market price of the Preferred Stock or (iii) upon the distribution to holders of the Preferred Stock of evidences of indebtedness or assets (excluding regular periodic cash dividends or dividends payable in Preferred Stock) or of subscription rights or warrants (other than those referred to above).

The Rights are also subject to adjustment in the event of a stock dividend on the Common Stock payable in shares of Common Stock or subdivisions, consolidations or combinations of the Common Stock occurring, in any such case, prior to the Distribution Date.

Shares of Preferred Stock purchasable upon exercise of the Rights will not be redeemable. Each share of Preferred Stock will be entitled, when, as and if declared, to a minimum preferential quarterly dividend payment of the greater of (a) $1 per share and (b) an

amount equal to 1,000 times the dividend declared per share of Common Stock. In the event of liquidation, dissolution or winding up of the Company, the holders of the Preferred Stock will be entitled to a minimum preferential liquidation payment of $1,000 per share (plus any accrued but unpaid dividends) but will be entitled to an aggregate payment of 1,000 times the payment made per share of Common Stock. Each share of Preferred Stock will have 1,000 votes, voting together with the Common Stock. Finally, in the event of any merger, consolidation or other transaction in which shares of Common Stock are converted or exchanged, each share of Preferred Stock will be entitled to receive 1,000 times the amount received per share of Common Stock. These rights are protected by customary antidilution provisions.

Because of the nature of the Preferred Stock's dividend, liquidation and voting rights, the value of the one one-thousandth interest in a share of Preferred Stock purchasable upon exercise of each Right should approximate the value of one share of Common Stock.

In the event that any Specified Person becomes an Acquiring Person, each holder of a Right, other than Rights beneficially owned by the Acquiring Person (which will thereupon become void), will thereafter have the right to receive upon exercise of a Right and payment of the Purchase Price, that number of shares of Common Stock having a market value of two times the Purchase Price.

In the event that, after a Specified Person has become an Acquiring Person, the Company is acquired in a merger or other business combination transaction or 50% or more of its consolidated assets or earning power are sold, proper provision will be made so that each holder of a Right (other than Rights beneficially owned by an Acquiring Person which will have become void) will thereafter have the right to receive, upon the exercise thereof at the then-current exercise price of the Right, that number of shares of common stock of the person with whom the Company has engaged in the foregoing transaction (or its parent), which number of shares at the time of such transaction will have a market value of two times the Purchase Price.

At any time after any Specified Person becomes an Acquiring Person and prior to the acquisition by such Specified Person of 50% or more of the outstanding shares of Common Stock or the occurrence of an event described in the prior paragraph, the Board of Directors of the Company may exchange the Rights (other than Rights owned by such Specified Person which will have become void), in whole or in part, at an exchange ratio of one share of Common Stock, or a fractional share of Preferred Stock (or of a share of a similar class or series of the Company's preferred stock having similar rights, preferences and privileges) of equivalent value, per Right (subject to adjustment).

With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price. No fractional shares of Preferred Stock will be issued (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depositary receipts) and in lieu thereof, an adjustment in cash will be made based on the market price of the Preferred Stock on the last trading day prior to the date of exercise.

At any time prior to the time an Acquiring Person becomes such, the Board of Directors of the Company may redeem the Rights in whole, but not in part, at a price of $0.01 per Right (the "Redemption Price"). The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board of Directors in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

For so long as the Rights are then redeemable, the Company may, except with respect to the Redemption Price, amend the Rights Agreement in any manner. After the Rights are no longer redeemable, the Company may, except with respect to the Redemption Price, amend the Rights Agreement in any manner that does not adversely affect the interests of holders of the Rights.

Until a Right is exercised or exchanged, the holder thereof, as such, will have no rights as a stockholder of the Company, including, without limitation, the right to vote or to receive dividends.

A copy of the Rights Agreement has been filed with the Securities and Exchange Commission as an Exhibit to a Registration Statement on Form 8-A dated [ ], 2007. A copy of the Rights Agreement is available free of charge from the Company. This summary description of the Rights does not purport to be complete and is qualified in its entirety by reference to the Rights Agreement, as the same may be amended from time to time, which is hereby incorporated herein by reference.

EXHIBIT F

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
1	4 Tops None on File	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
2	4-FLIGHT INDUSTRIES 1945 South Grove Avenue Ontario, CA 91760 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Purchase Agreement	4359
3	AAR AIRCRAFT & ENGINE GROUP, INC 1100 N Wood Dale Road Wood Dale, IL 60191 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Engine Lease	4399
4	Adamsick, Randy The Gene Siskel Film Center 164 North State Street Chicago, IL 60601	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
5	AERO SYSTEMS ENGINEERING, INC. 358 East Fillmore Street St. Paul, MN 55107-1289 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Test Cell Upgrade	4579
6	AEROTHRUST 5300 N.W. 36TH STREET MIAMI, FL 33122 USA	Northwest Airlines, Inc.	05-17933	IS	Network Connection Agreement	3041
7	AEROTHRUST CORPORATION 5300 NW 36th Street Miami, FL 33122 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Maintenance Agreement	4528

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
8	Ahmad Rashad NBA Entertainment 450 Harmon Meadow Blvd. Secaucus, NJ 07094	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
9	Airport Group International, Inc. 330 North Brand Blvd Suite 300 Glendale, CA 91203 US	Northwest Airlines, Inc.	05-17933	Tech Ops	GSE Maintenance	3064
10	Alberts, Rod 1900 W. Big Beaver Road Troy, MI 48084	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
11	ALLIEDSIGNAL ENGINES (NOW HONEYWELL) 1944 E. Sky Harbor Circle Phoenix, AZ 85034 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Engine Maintenance	
12	ALLIEDSIGNAL ENGINES (NOW HONEYWELL) 1944 E. Sky Harbor Circle Phoenix, AZ 85034 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Customer Support Agreement	
13	AMERICAN AIRLINES PO Box 619616 DFW Airport Dallas, TX 75261 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	A/C Support Services	ANC128330208
14	Arab American Anti Discrimination 4201 Connecticut Avenue NW, Suite 300 Washington DC , 20008	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
15	Beale Street Merchants 154 Beale Street, Memphis, , TN 38103	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
16	BFI Waste Services 260 W. Dickman Street Baltimore, Md 21230 USA	Northwest Airlines, Inc.	05-17933	Airport Affairs	Waste removal service	Acct # 1-0358-0255299
17	Bill Graham Bill Graham Foundation - 121 Steuart St., San Francisco, , CA 94105	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
18	Blues Brothers Band None on File	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
19	Blues Foundation 49 Union Avenue Memphis, TN 38103	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
20	Bluestock 4685 Park Avenue Memphis, TN 38117	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
21	Brown, Doug None on File	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
22	Buckley, Cathy 49 Union Avenue Memphis, TN 38103	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
23	Carrier, Karen None on File	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
24	Cavaliere, Felix 7051 Highway 70 South Number 338 Nashville, TN 37221-2207	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
25	Chappel, Beth One Dauch Drive, Detroit, MI 48211-1198	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
26	Chiapatanatong, Somchai None on File	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
27	Children of Iran 8500 Normandale Lake Blvd, Suite 1150, Bloomington, MN 55437	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
28	CHROMALLOY GAS TURBINE CORPORATION 200 Park Avenue New York, NY 10166 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Maintenance Agreement	4529

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
29	Clark, Tony None on File	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
30	Cloud 9 Productions 2727 Fairview Avenue East Seattle, WA 98102-3154	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
31	CONTINENTAL 1600 Smith Street Houston, TX 77002 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	A/C Support Services	COR998330102
32	CONTINENTAL AIRLINES CMI Maintenance Hangar PO Box 8557 Tamuning, 96931 Guam	Northwest Airlines, Inc.	05-17933	Tech Ops	On-Call for LMO	DEN240-330-102
33	CONTINENTAL EXPRESS 3060 Williston Rd South Burlington, VT 5403 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	On-Call for LMO	BTV 179 330 103
34	Crampton, Bruce 25 Winter Crest Lane Sverna Park, MD 21146-3104	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
35	DALLAS AEROSPACE 1875 North I-35 Carrollton, TX 75006 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Aftermarket General Terms Agreement	4599

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
36	Dayton's Challenge SFX Sports Group - 4150 Olson Memorial Hwy, Suite 110, Golden Valley , MN 55422	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
37	Delta Blues Museum 1 Blues Alley P.O. Box 459, Clarksdale, MS 38614	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
38	DIVERSIFIED DISTRIBUTION SYSTEMS, INC. 2828 10th Ave South; Suite 200 Minneapolis, MN 55407 US	Northwest Airlines, Inc.	05-17934	Corp Purchasing	Master Agreement	859-0
39	DUNCAN AVIATION Kalamazoo Airport 5605 Portage Road Kalamazoo, MI 49006 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	On-Call for LMO	140-330-103
40	EAGLE SERVICES ASIA PTE. LTD & UNITED TECHNOLOGIES CORPORATION ACTING THROUGH ITS PRATT & WHITNEY DIVISION Eagle Services Asia Singapore 400 Main Street (Pratt & Whitney)	Northwest Airlines, Inc.	05-17933	Tech Ops	Maintenance Agreement	4533
41	Freed, Andy Tampa Bay Devil Rays Tropicana Field One Tropicana Drive	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
42	GEARHART AVIATION SERVICES PO Box 35078 Greensboro, NC 27425 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	On-Call for LMO	229-330-104
43	GEARHART AVIATION SERVICES PO Box 35078 Greensboro, NC 27424 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	On-Call for LMO	318-330-102
44	Graceland Jennifer Burgess 3734 Elvis Presley Blvd, Memphis, TN 38116	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
45	Grand Slam Sports 575 Kennon Road Fortson, GA 31808	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
46	Great Lakes Aquarium 353 Harbor Drive, Duluth, MN 55802	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
47	H+S Aviation, LTD Airport Service Road Portsmouth, Hampshire PO3 5PJ England	Northwest Airlines, Inc.	05-17933	IS	Network Connection Agreement	3693
48	Half Moon BaY Golf Links 2450 S. Cabrillo Hwy. #200 Half Moon Bay, CA 94019 USA	Northwest Airlines, Inc.	05-17933	Sales	Agency Sales	

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
49	Half Moon BaY Golf Links 2450 S. Cabrillo Hwy. #200 Half Moon Bay, CA 94019 USA	Northwest Airlines, Inc.	05-17933	Sales	Corporate Sales	
50	Harlem Globetrotters 400 E. Van Buren Street, Suite 300 Phoenix, AZ 85004	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
51	Herron, Tim SFX Sports Group 4150 Olson Memorial Highway Suite 110	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
52	Hill, Grant Granhco Enterprises, Inc. 4901 Vineland Road, Ste 340 Orlando, FL 32811	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
53	HILTON PORTLAND & EXECUTIVE TOWER 921 Southwest Sixth Avenue Portland , OR 97204 US	Northwest Airlines, Inc.	05-17933	Corp Purchasing	Hotel Services	6186-0
54	Historic HOTEL Bethlehem 437 Main St. Bethlehem, PA 18018 US	Northwest Airlines, Inc.	05-17933	Corp Purchasing	Hotel Services	2965
55	Independence Air 452000 Business Court Dulles, VA 20166	Northwest Airlines, Inc.	05-17933	Ground	Ground Handling	524-223-214

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
56	Interpacific Transit, Inc. G/F La Paz Centre corner Salcedo and V.A. Rufino St. Legaspi Village	Northwest Airlines, Inc.	05-17933	International	Sales Representative	
57	ISRAEL AIRCRAFT INDUSTRIES, LTD (IAI) BEDEK AVIATION GROUP AIRCRAFT DIVISION Ben Gurion International Airport, 70100 Israel	Northwest Airlines, Inc.	05-17933	Tech Ops	Aircraft Modification Services Agreement	4264
58	JaniKing Of Illinois, Inc. 1701 E. Woodfield Road Suite 680 Schaumburg, IL 60173 US	Northwest Airlines, Inc.	05-17933	Ground	Janitorial suppliers	
59	JET AVIATION 113 Charles A Lindberg Drive Teterboro, NJ 07608	Northwest Airlines, Inc.	05-17933	Tech Ops	On-Call for LMO	274-330-100
60	Jim Johnson 1001 6th Street, Suite A - 150 Denver, CO 80265	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
61	Jimmy Ishi None on File	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
62	Kalita Air, L.L.C. 818 Willow Run Airport Ypsilanti, Michigan 48198 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Engine Lease	CMOP MSP 490 137 197

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
63	Keb Mo Sony Music Online Services 550 Madison Avenue 24th Floor	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
64	Keros, Mariana 1277 Latham Street Birmingham, MI 48009-3061	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
65	KLM ROYAL DUTCH AIRLINES 11001 Aviation Blvd Suite 216 Los Angeles, CA 90045 The Netherlands	Northwest Airlines, Inc.	05-17933	Tech Ops	Engine and Component Maintenance	CMOP MSP 490 320 101
66	Kristi Jernigan 1631 Mesa Avenue, Suite A, Colorado Springs, CO 80906	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
67	Lehman, Tom SFX Sports Group 4150 Olson Memorial Highway Suite 110	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
68	Live at the Garden 750 Cherry Road Memphis , TN 38117	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
69	Mahogany, Kevin Mahogany Entertainment Group 7454 SW 48th Street Miami, FL 33155	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
70	Metropolitan Airports Commission 6040 - 28th Avenue South Minneapolis, MN 55111 USA	Northwest Airlines, Inc.	05-17933	Airport Affairs	Security Responsibilities	MSP490408301
71	MN Center for Photography MN Center for Photography 165 13th Avenue NE Minneapolis, MN 55413	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
72	Mobile Technical Services 848 Avery Valley Dr Smyrna, TN 37167 US	Northwest Airlines, Inc.	05-17933	Tech Ops	GSE Maintenance	
73	Molitor, Paul 748 Lake Point Drive Chanhassen, MN 55317-9284	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
74	Monohan, Jean Milwaukee World Festival, Inc. 200 North Harbor Drive Milwaukee, WI 53202	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
75	Moore, Sam Rock and Roll Hall of Fame and Museum One Key Plaza Cleveland, OH 44114	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
76	Moten, Wendy 11041 Hesby Street #215 North Hollywood, CA 91601-5614	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
77	Mpls. Downtown Council 81 S 9th Street, Minneapolis, MN 55402-3200	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
78	MSI Systems Integrators, Inc. 14301 First National Parkway Suite 400 Omaha, NE 68154 United States	Northwest Airlines, Inc.	05-17933	IS	General Purchase Agreement	3584
79	Octagon 1751 Pinnacle Drive Suite 1500 McLean, VA 22102	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
80	Office Depot Championship Office Depot, Inc. 2200 Old Germantown Road Delray Beach, FL 44556	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
81	Ogden Ogden IFC Regional Headquarters GPO Box 1040	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
82	Park-Central Systems, Inc 710 Park Avenue Wilmette, Illinois 60091 US	Northwest Airlines, Inc.	05-17933	IS	Software systems consulting	3650
83	Perkins, Sam Indiana Pacers 125 S. Pennsylvania Street Indianapolis, IN 46204	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
84	Perry, Chris SFX Sports Group 5335 Wisconsin Avenue NW Suite 850	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
85	Pinnacle Airlines Inc 1689 Nonconnah Blvd. Suite 111 Memphis, TN 38132	Northwest Airlines, Inc.	05-17933	Tax	Tax Indemnity Agreement	
86	Porter, David SFX Sports Group 4150 Olson Memorial Highway, Suite 110 Golden Valley, MN 55422	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
87	Puckett, John and Kim 4100 Watertown Road Maple Plain, MN 55359-9394	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
88	Puckett, Kirby 10265 Shangri La Road Scottsdale, AZ 85260-6317	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
89	RADISSON HOTEL FARGO 201 North 5th Street Fargo, ND 58102 US	Northwest Airlines, Inc.	05-17933	Corp Purchasing	Hotel Services	621-0
90	Raquet Club of Memphis Kathy Johnston - 5111 Sanderlin Avenue Memphis, TN 38117-4398	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
91	RHB Ventures Quintus Group 535 King's Road London, Great Britain, SW10 0SZ GB	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
92	Rhythm & Blues Foundation 229 Edgecombe Avenue, 3rd Floor, New York, NY 10030-1142	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
93	Ritz-Carlson Half Moon BaY One Miramontes Point Road Half Moon Bay, CA 94019 USA	Northwest Airlines, Inc.	05-17933	Sales	Corporate Sales	
94	Ritz-Carlson Half Moon BaY One Miramontes Point Road Half Moon Bay, CA 94019 USA	Northwest Airlines, Inc.	05-17933	Sales	Agency Sales	
95	ROADWAY EXPRESS INC. 1077 Gorgel Blvd Akron, OH 44309 usa	Northwest Airlines, Inc.	05-17933	Tech Ops	Freight	4459
96	Schwab, Abe The Blues Foundation 49 Union Avenue Memphis, TN 38103	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
97	Seattle Seahawks 800 Occidental Avenue South, Ste #500, Seattle, WA 98134	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
98	Shanahan, Brendan Detroit Red Wings 600 Civic Center Drive Detroit , MI 48226	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
99	SHERATON CITY CENTRE 150 West 500 South Salt Lake City, UT 84101 US	Northwest Airlines, Inc.	05-17933	Corp Purchasing	Hotel Services	1863-0
100	Shurin, Leland Shaffer Lombardo Shurin, A Professional Corporation 4141 Pennsylvania Avenue Kansas City, MO 64111	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
101	Signature Sports SFX Sports Group 5335 Wisconsin Avenue NW Suite 850	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
102	Smith, Rick Rick Smith Enterprises 545 Dalany Avenue Building #4	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
103	Sodoma, Deanna 1942 Rock Springs Road Escondido, CA 92026-2117	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
104	Sounds of Blackness 1830 Westholme Ave, Los Angeles, , CA 90025	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
105	Steinbach, Terry 6936 Oak Ridge Road Hamel, MN 55340-9389	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
106	Stinar Corporation 3255 Sibley Memorial Highway St. Paul, MN 55121 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	GSE Maintenance	2321-0
107	Stressman, Jewell None on File	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
108	Summerfest Milwaukee World Festival, Inc. 200 North Harbor Drive Milwaukee, WI 53202	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
109	SWISSPORT (BOROSCOPE) 45025 Aviation Drive, Suite 350 Dullex, VA 20166 Anchorage, AK USA	Northwest Airlines, Inc.	05-17933	Tech Ops	On-Call for LMO	ANC 128 330 101
110	Toy Tips 620 North 14th Street Milwaukee, WI	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
111	TURBINE PARTS INC. 2830 Merrell Rd. Dallas, TX 75229 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Aftermarket General Terms Agreement	CMOP-MSP490346168

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
112	TURBINE SOLUTIONS INC 21125 Cortez Blvd Brooksville, FL 34601 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Component repair	4638
113	United States Service Industries 1424 K Street NW Washington, DC 20005 USA	Northwest Airlines, Inc.	05-17933	Airport Affairs	Janitorial service	HMS214?
114	UNITED TECHNOLOGIES CORPORATION ACTING THROUGH ITS PRATT & WHITNEY DIVISION 400 Main Street East Hartford, CT 06108 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Repairs Agreement	4537
115	UNITED TECHNOLOGIES CORPORATION ACTING THROUGH ITS PRATT & WHITNEY DIVISION 400 Main Street East Hartford, CT 06108 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Engine Maintenance	4278
116	Vergos, Nick Rendezvous Charles Vergos - 52 South 2nd Street, Memphis , TN	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
117	Warg, Dana Ogden IFC Regional Headquarters GPO Box 1040	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	

Northwest Airlines Corporation, et al.
Schedule of Rejected Contracts and Leases

	Counterparty Name and Address	Debtor	Case No.	Department	Description	NWA Contract No.
118	WEST WIND AVTECH SERVICES Hanger #10, John G. Diefenbaker Airport Saskatoon, SK S7L 6S1 Canada	Northwest Airlines, Inc.	05-17933	Tech Ops	On-Call for LMO	111
119	WEST WIND AVTECH SERVICES Hanger 3 John G. Diefenbaker Airport Saskatoon, SK S7L 5X4 Canada	Northwest Airlines, Inc.	05-17933	Tech Ops	On-Call for LMO	695-330-104
120	WESTERN AIR INTERNATIONAL 2640 W. 10th Place Tempe, AZ 85281-5112 USA	Northwest Airlines, Inc.	05-17933	Tech Ops	Aftermarket General Terms Agreement	4607
121	White, Dan White & Associates 905 Broadway 4th Floor	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
122	Wilson, Charles 1775 Keenlan Drive Hernando, MS 38632	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
123	Witkowski, Dan 405 Cottonwood Lane North Plymouth, MN 55441-7736	Northwest Airlines Corp	05-17930	Sponsorships	Barter Agreement	
124	Worldspan 300 GALLERIA PKWY NW SUITE 2100 ATLANTA, GA 30339	Northwest Airlines, Inc.	05-17933	Legal	Sale of NWA Inc.'s partnership interest in Worldspan	

EXHIBIT G

NEW BOARD OF DIRECTORS

As contemplated by section 5.12 of the Plan,[1] the Debtors, in consultation with the Creditors Committee and certain independent creditors, have selected 12 individuals to serve as members of the board of directors of Reorganized NWA Corp. beginning on the Effective Date.

The members of the Board of Directors will be:

Roy Bostock
Principal of Sealedge Investments LLC.

David Brandon
Chairman and Chief Executive Officer of Domino's Pizza, Inc.

Mike Durham
President and Chief Executive Officer of Cognizant Associates, Inc.

John Engler
President and Chief Executive Officer of the National Association of Manufacturers.

Mickey Foret
President of Aviation Consultants LLP.

Robert Friedman
Senior managing director and Chief Administrative Officer and Chief Legal Officer of The Blackstone Group L.P.

Doris Kearns Goodwin
Historian and Author.

Jeffrey Katz
President and Chief Executive Officer of LeapFrog Enterprises, Inc.

James Postl
Retired President and Chief Executive Officer of Pennzoil-Quaker State.

Rodney Slater
Partner at the law firm of Patton Boggs LLP and head of the Public Policy and Transportation Practice Group.

Douglas Steenland
President and Chief Executive Officer of NWA Corp.

[1] All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Debtors' Joint and Consolidated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of March 30, 2007 (the "Plan"), as the same may be modified, supplemented or amended.

William Zoller
Northwest Pilot.

Mr. Bostock**,** Mr. Engler, Mr. Friedman**,** Mrs. Goodwin**,** Mr. Katz**,** and Mr. Zoller, as well as Mr. Steenland, are members of the current Board of Directors.

All of these individuals have expressed their willingness to serve on the Board of Directors.

EXHIBIT H

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**x**	**Chapter 11**
	:	**Case No. 05-17930 (ALG)**
NORTHWEST AIRLINES CORPORATION, **NWA FUEL SERVICES CORPORATION,** **NORTHWEST AIRLINES HOLDINGS CORPORATION,** **NWA INC.,** **NORTHWEST AEROSPACE TRAINING CORPORATION,** **NORTHWEST AIRLINES, INC.,** **NWA AIRCRAFT FINANCE, INC.,** **MLT INC.,** **COMPASS AIRLINES, INC. F/K/A NORTHWEST AIRLINES CARGO, INC.,** **NWA RETAIL SALES INC.,** **MONTANA ENTERPRISES, INC.,** **AIRCRAFT FOREIGN SALES, INC.,** **NW RED BARON LLC, AND** **NWA WORLDCLUB, INC.**	**:**	**Jointly Administered**
Debtors.	**:**	
	x	

NOTICE OF (I) ENTRY OF ORDER CONFIRMING DEBTORS' JOINT AND CONSOLIDATED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE; (II) OCCURRENCE OF EFFECTIVE DATE; AND (III) BAR DATES FOR FILING CERTAIN POST-PETITION CLAIMS

TO ALL CREDITORS, EQUITY INTEREST HOLDERS AND PARTIES IN INTEREST, PLEASE TAKE NOTICE THAT:

1. ***Confirmation of the Plan.*** On May __, 2007, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") entered an order (the "Confirmation Order") confirming the Debtors' First Amended Joint and Consolidated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated ____, 2007 (the "Plan") filed by Northwest Airlines Corporation ("NWA Corp.") and the above-captioned debtors, as debtors and debtors in possession in these chapter 11 cases (collectively, the "Debtors"). Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the Plan or the Confirmation Order, as applicable. The Plan and the Confirmation Order are available by written request to the Debtors' balloting agent, Bankruptcy Services LLC at FDR Station, PO Box 5014, New York, NY 10150-5014. Parties may also view such documents by accessing the Bankruptcy Court's Electronic Case Filing System which can be found at http://www.nysb.uscourts.gov/, the official website for the Bankruptcy Court, or the Debtors' restructuring website at http://www.nwa-restructuring.com/.

2. ***Effective Date.*** On _____, 2007, the Effective Date of the Plan occurred.

3. ***Discharge.*** Pursuant to Section 11.2 of the Plan, except as otherwise provided in the Plan or the Confirmation Order, the rights afforded in the Plan and the payments and distributions to be made under the Plan shall be in complete satisfaction of and shall discharge and terminate all Equity Interests in NWA Corp. and all existing debts and Claims, of any kind, nature or description whatsoever against or in the Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code.

4. ***Injunction.*** The Plan contains an injunction that provides, among other things, that any holder of any Claim or Equity Interest and any other parties in interest, along with their respective present or former employees, agents, officers,

directors or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

5. ***Administrative Claims Bar Date.*** If you hold any right to payment, whether secured or unsecured, constituting a cost or expense of administration of any of the chapter 11 cases under sections 503(b), 507(a)(1) and 1114(e) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses of preserving the Debtors' estates, any actual and necessary costs and expenses of operating the Debtors' businesses, any indebtedness or obligations incurred or assumed by the Debtors, as debtors in possession, during the chapter 11 cases including, without limitation, for the acquisition or lease of property or an interest in property or the rendition of services, and any allowances of compensation and reimbursement of expenses to the extent allowed by final order under section 330 or 503 of the Bankruptcy Code, you must file such claim on **_____, 2007 (the "Administrative Expense Claim Bar Date"),** which is sixty calendar days after the effective date of the Plan. Any requests for payment of Administrative Expense Claims that are not properly filed and served by the Administrative Expense Claim Bar Date will not appear on the register of claims maintained by the Claims Agent and will be disallowed automatically without the need for any objection from the Debtors or the Reorganized Debtors or any action by the Bankruptcy Court.

6. Notwithstanding the foregoing, requests for payment of Administrative Expense Claims need not be filed with respect to the following types of Administrative Expense Claims:

a. Liabilities incurred in the ordinary course of business by the Debtors, as debtors in possession;
b. Liabilities arising under loans or advances to or incurred by the Debtors,
c. Post-petition Aircraft Purchase and Lease Obligations;
d. Liabilities arising under the Rights Offering Sponsor Agreement and the registration rights agreement being entered into in connection therewith; and
e. Claims accruing post-petition under an assumed collective bargaining agreement or imposed terms, whether ordinary course claims or grievances.

4. ***Rejection Bar Date.*** Pursuant to Section 8.8 of the Plan, in the event that the rejection of an executory contract or unexpired lease by any of the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, a claim for such damages must be filed with the Bankruptcy Court and served upon counsel for the Debtors on or before the first business day that is at least thirty (30) calendar days after the entry of any order approving the rejection of the executory contract. If such a claim is not filed, or is not heretofore evidenced by a filed proof of claim, such claim shall be forever barred and shall not be enforceable against the Debtors, or their respective properties or interests in property as agents, successors or assigns.

Dated: New York, New York
_____, 2007

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Attorneys for Debtors and
Debtors In Possession

Tab 5

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	
PINNACLE AIRLINES CORP., *et al.*,	**Chapter 11** **Case No. 12-11343 (REG)**
Debtors.	**(Jointly Administered)**

ORDER CONFIRMING DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

The Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated April 17, 2013 (attached hereto as Exhibit A, the "**Plan**"),[1] having been filed with this Court (the "**Court**") by Pinnacle Airlines Corp. ("**Pinnacle Holdings**") and its four subsidiaries that are debtors and debtors in possession in these cases (collectively, the "**Debtors**"); and the Court having entered, after due notice and a hearing, pursuant to sections 105, 502, 1125, 1126 and 1128 of title 11 of the United States Code (the "**Bankruptcy Code**") and rules 2002, 3003, 3017 and 3018 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), an order dated March 7, 2013 (the "**Approval Order**") (i) approving the Debtors' Disclosure Statement, including all Appendices attached thereto (as amended, the "**Disclosure Statement**"), (ii) approving solicitation and notice materials, (iii) approving forms of ballots, (iv) establishing solicitation and voting procedures, (v) establishing procedures for allowing and estimating certain claims for voting purposes, (vi) scheduling a confirmation hearing (the "**Confirmation Hearing**") and (vii) establishing notice and objection procedures; and the Debtors having provided a copy of the Disclosure Statement to all holders of Claims in Class 3 (EDC Facilities Claims), Class 5 (Union Claims), Class 6 (Other General Unsecured Claims) and Class 7 (Punitive Damages Claims) (collectively, the "**Voting Classes**") as provided for by the Approval Order; and the

[1] Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to such terms in the Plan.

various Plan schedules and Plan Supplements (collectively, the "**Plan Supplements**") having been filed and served as required by the Plan; and the Confirmation Hearing having been held before the Court on April 17, 2013 after due notice to holders of Claims and Interests and other parties-in-interest in accordance with the Approval Order, the Bankruptcy Code and the Bankruptcy Rules; and upon all of the proceedings had before the Court and after full consideration of: (i) each of the objections to confirmation of the Plan (the "**Objections**"); (ii) the memorandum of law in support of confirmation of the Plan filed by the Debtors, dated April 14, 2013; (iii) the declarations filed in connection with confirmation of the Plan, including (a) the Declaration of Virginia L. Hughes in Support of Confirmation of the Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code (the "**Hughes Declaration**"), (b) the Declaration of John Spanjers in Support of Confirmation of the Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code (the "**Spanjers Declaration**") and (c) the Declaration of Stephenie Kjontvedt on Behalf of Epiq Bankruptcy Solutions, LLC Regarding Voting and Tabulation of Ballots Accepting and Rejecting the Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code [ECF No. 1147] (the "**Vote Certification**" and, collectively with the Hughes Declaration and the Spanjers Declaration, the "**Declarations**") and the testimony contained therein and any additional testimony presented to the Court and (iv) all other evidence proffered or adduced during, memoranda and objections filed in connection with and arguments of counsel made at the Confirmation Hearing; and after due deliberation and sufficient cause appearing therefor,

It hereby is DETERMINED, FOUND, ADJUDGED, DECREED AND ORDERED THAT:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2) and 1334(a)). The Court has jurisdiction over the Chapter 11 Cases pursuant to sections 157 and 1334 of title 28 of the United States Code. Venue is proper pursuant to sections 1408 and 1409 of title 28 of the United States

Code. Confirmation of the Plan is a core proceeding pursuant to section 157(b)(2)(L) of title 28 of the United States Code, and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

2. Commencement and Joint Administration of the Chapter 11 Cases. On the Petition Date, each of the Debtors commenced a case under Chapter 11 of the Bankruptcy Code. By prior order of the Court, the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. The Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

3. Judicial Notice. The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court and/or its duly appointed agent, including, without limitation, all pleadings and other documents filed and orders entered thereon. The Court also takes judicial notice of all evidence proffered or adduced and all arguments made at the hearings held before the Court during the pendency of these Chapter 11 Cases.

4. Burden of Proof. The Debtors, as the Plan proponents, have the burden of proving the elements of section 1129 of the Bankruptcy Code by a preponderance of the evidence, and they have met that burden as further found and determined herein.

5. Notice; Transmittal and Mailing of Materials.

(a) Due, adequate and sufficient notice of the Disclosure Statement, the Plan and the Confirmation Hearing, along with adequate notice of the respective deadlines for voting on and filing objections to the Plan, has been given to all known holders of Claims and Interests substantially in accordance with the procedures set forth in the Approval Order, and no other or further notice is or shall be required;

(b) The Debtors have transmitted to members of the Voting Classes solicitation packages (the "**Solicitation Packages**"), each containing (i) a cover letter describing the contents of the Solicitation Package and the contents of the enclosed CD-ROM, (ii) a CD-ROM containing (x) the Disclosure Statement (with the Plan annexed thereto and other exhibits) and (y) the Approval Order (without exhibits), (iii) the Confirmation Hearing Notice, (iv) a Ballot or Beneficial Ballot, as appropriate, together with a pre-addressed postage paid envelope and (v) a letter from the Creditors' Committee regarding acceptance of the Plan substantially in accordance with the procedures set forth in the Approval Order. All procedures used to distribute the Solicitation Packages to the Voting Classes were fair and were conducted in accordance with the Bankruptcy Code and the Bankruptcy Rules and all other applicable rules, laws and regulations;

(c) The Debtors have transmitted to members of the (i) non-voting unimpaired classes — Claims in Class 1 (Other Priority Claims), Class 2 (CIT Facility Claims), Class 4 (Other Secured Claims) and Class 9b (Interests in Subsidiary Debtors) — and (ii) the non-voting impaired classes — Claims in Class 8 (510(b) Claims) and Class 9a (Interests in Pinnacle Holdings) — to the extent knowable, a notice describing such recipient's non-voting status and the deadline for filing objections to the Plan (the "**Non-Voting Notices**") substantially in accordance with the procedures set forth in the Approval Order;

(d) The Debtors have served all parties-in-interest with, at a minimum, the Confirmation Hearing Notice;

(e) Adequate and sufficient notice of the Confirmation Hearing and all other bar dates described in the Approval Order and the Plan has been given in accordance with the Bankruptcy Rules and the Approval Order, and no other or further notice is or shall be required; and

(f) The filing with the Court and service of the version of the Plan attached as Appendix A to the Disclosure Statement, the filing of the Plan on April 14, 2013 and the disclosure of any further modifications on the record at the Confirmation Hearing constitute due and sufficient notice of the Plan and all modifications thereto.

6. Voting. Votes on the Plan were solicited after disclosure of "adequate information" as defined in section 1125 of the Bankruptcy Code. As evidenced by the Vote Certification, votes to accept the Plan have been solicited and tabulated fairly, in good faith and in a manner consistent with the Approval Order, the Bankruptcy Code and the Bankruptcy Rules.

7. Plan Supplements. On March 29, 2013, the Debtors filed Plan Supplements, as described in Section 16.8 of the Plan. In addition, the Debtors filed Schedules to the Plan on various dates. All such Plan Supplements and Schedules comply with the terms of the Plan, and the filing and notice of such documents was good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Approval Order, and no other or further notice is or shall be required.

8. Plan Modifications (11 U.S.C. § 1127). Subsequent to solicitation, the Debtors made certain non-material modifications to the Plan (the "**Plan Modifications**"). Prior notice regarding the substance of the Plan Modifications, coupled with the filing with the Court of the Plan as modified by the Plan Modifications and, in certain circumstances, the disclosure of the Plan Modifications on the record at the Confirmation Hearing, constitute due and sufficient notice thereof.

9. Deemed Acceptance of Plan as Modified. All Plan Modifications are consistent with all of the provisions of the Bankruptcy Code, including, without limitation, sections 1122, 1123, 1125 and 1127 and Bankruptcy Rule 3019, and all holders of Claims who voted to accept the Plan and who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim or Interest shall be permitted to change its vote as a consequence of the Plan Modifications.

10. Bankruptcy Rule 3016(a). The Plan reflects the date it was filed with the Court and identifies the entities submitting it as Plan proponents, thereby satisfying Bankruptcy Rule 3016(a).

11. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

(a) Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). In addition to Administrative Claims and Priority Tax Claims that need not be classified, the Plan classifies ten Classes of Claims and Interests. The Claims and Interests placed in each Class are substantially similar to other Claims or Interests, as the case may be, in each such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, the classifications were not done for any improper purpose and such Classes do not unfairly discriminate between or among holders of Claims or Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(b) Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Section 4.2 of the Plan specifies that Class 1 (Other Priority Claims), Class 2 (CIT Facility Claims), Class 4 (Other Secured Claims) and Class 9b (Interests in Subsidiary Debtors) are Unimpaired by the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

(c) Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Section 4.2 of the Plan designates Class 3 (EDC Facility Claims), Class 5 (Union Claims), Class 6 (Other General Unsecured Claims), Class 7 (Punitive Damages Claims), Class 8 (Section 510(b) Claims) and Class 9a (Interests in Pinnacle Holdings) as Impaired, and Article 4 of the Plan specifies the treatment of each of these Classes of Claims and Interests under the Plan, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

(d) No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class, unless the holder of a Claim or Interest has agreed to a less favorable treatment, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

(e) Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan and the various documents and agreements set forth in the Plan Supplements and described in the Plan provide adequate and proper means for the Plan's implementation, including, without limitation, the Plan Consolidation described below, thereby satisfying section 1123(a)(5) of the Bankruptcy Code.

(f) Nonvoting Equity Securities (11 U.S.C. § 1123(a)(6)). The certificate of incorporation of Reorganized Pinnacle Holdings, filed as a Plan Supplement on March 29, 2013 (the "**New Certificate of Incorporation**"), prohibits the issuance of non-voting equity securities to the extent required by the Bankruptcy Code. Thus, the requirements of section 1123(a)(6) of the Bankruptcy Code are satisfied.

(g) Designation of Directors and Officers (11 U.S.C. § 1123(a)(7)). Section 11.3 of the Plan contains provisions on the manner of appointment of the directors and officers of the Reorganized Debtors that are consistent with the interests of creditors, equity security holders and public policy in accordance with section 1123(a)(7) of the Bankruptcy Code.

(h) Additional Plan Provisions (11 U.S.C. § 1123(b)(6)). The Plan's provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code.

12. Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors, as the proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically, *inter alia*:

(a) The Debtors are proper debtors under section 109(d) of the Bankruptcy Code;

(b) The Debtors have complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by order of the Court; and

(c) The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Approval Order in transmitting the Disclosure Statement, the Plan and related documents and notices in soliciting and tabulating votes on the Plan.

(d) Good Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before this Court in these Chapter 11 Cases, the Debtors, Delta, ALPA, AFA, TWU, the Creditors' Committee and the other Exculpated Parties referred to in Section 12.6 of the Plan have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances to the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code and the Exculpated Parties referred to in Section 12.6 of the Plan are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Section 12.6 of the Plan.

13. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. The Debtors' good faith is evident from the facts and records of these Chapter 11 Cases, the Disclosure Statement and the hearing thereon, and the record of the Confirmation Hearing and other proceedings held in these Chapter 11 Cases. The Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtors' Estates and effectuating a successful reorganization of the Debtors.

14. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Subject to the provisions of Section 8.1(a) of the Plan, any payment made or to be made by any of the Debtors for

services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been approved by, or is subject to the approval of, the Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

15. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the persons proposed to serve as members of the New Board were disclosed in a Plan Supplement filed on March 29, 2013, and the appointment to, or continuance in, such positions of such persons is consistent with the interests of holders of Claims against, and Interests in, the Debtors and with public policy. The nature of the compensation payable to the members of the New Board, as well as the current compensation of the chief executive officer, chief financial officer and the chief operating officer of Pinnacle Holdings was disclosed in a Plan Supplement filed with the Bankruptcy Court on March 29, 2013.

16. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission and does not require approval by any governmental regulator. Therefore, the Plan satisfies section 1129(a)(6) of the Bankruptcy Code.

17. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis set forth in Appendix B to the Disclosure Statement and supported in the Hughes Declaration and the Spanjers Declaration (a) is persuasive and credible, (b) has not been controverted by other evidence, (c) is based on sound methodology and (d) establishes that each holder of an Impaired Claim or Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

18. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Class 1 (Other Priority Claims), Class 2 (CIT Facility Claims), Class 4 (Other Secured Claims) and Class 9b (Interests in Subsidiary

Debtors) are each Classes of Unimpaired Claims or Interests that are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Class 5 (Union Claims) and Class 6 (Other General Unsecured Claims) have voted to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code. No votes were cast in Class 3 (EDC Facilities Claims) therefore, in accordance with the Approval Order, Class 3 (EDC Facilities Claims) is deemed to have voted to accept the Plan. Class 7 (Punitive Damages Claims) voted against the Plan; and Class 8 (Section 510(b) Claims) and Class 9a (Interests in Pinnacle Holdings) (together with Class 7, the "**Rejecting Classes**") are not entitled to receive or retain any property under the Plan and, therefore, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Although section 1129(a)(8) of the Bankruptcy Code has not been satisfied with respect to the Rejecting Classes, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Classes and thus satisfies section 1129(b) of the Bankruptcy Code with respect to such Classes.

19. Treatment of Administrative, Priority Tax and Priority Non-Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Claims and Other Priority Claims pursuant to Section 3.1 and Section 4.2 of the Plan, respectively, satisfies the requirements of sections 1129(a)(9)(A) and (B) of the Bankruptcy Code, and the treatment of Priority Tax Claims pursuant to Section 3.2 of the Plan satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code.

20. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). Class 3 (EDC Facility Claims), Class 5 (Union Claims) and Class 6 (Other General Unsecured Claims) are Impaired Classes and have voted, or are deemed to have voted, to accept the Plan, without including any acceptance of the Plan by any insider. As such, without including any acceptance of the Plan by any insider, there is at least one Class of Claims against the Debtors that is Impaired under the Plan and has accepted the Plan. Thus the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

21. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence submitted regarding feasibility through the Declarations together with all evidence proffered or advanced at or prior to the Confirmation Hearing (a) is persuasive and credible, (b) has not been controverted by other evidence and (c) establishes that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtors, thus satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code.

22. Payment of Fees (11 U.S.C. § 1129(a)(12)). As provided in Section 16.6 of the Plan, all fees payable pursuant to section 1930(a) of title 28 of the United States Code, as determined by the Court, have been paid or shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed or closed, whichever occurs first, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

23. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code. On and after the Effective Date, pursuant to section 1129(a)(13) of the Bankruptcy Code, the Reorganized Debtors will continue to pay any retiree health and welfare benefits (if any) to any covered individuals of the Debtors covered by section 1114 of the Bankruptcy Code at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code at any time prior to confirmation of the Plan, and for the duration of the period for which the Debtors have obligated themselves to provide such benefits. The Reorganized Debtors may unilaterally modify or terminate any retiree benefits (including health and welfare benefits) in accordance with the terms of the plan, program, policy or document under which such benefits are established or maintained; *provided, however*, that nothing herein will be construed to restrict or enlarge the Reorganized Debtors' rights to modify such retiree benefits (including such retiree benefits that are vested, if any) under applicable non-bankruptcy law.

24. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). Based upon the Declarations and all other evidence before the Court, the Plan does not discriminate unfairly and is fair and equitable with respect to all of the Rejecting Classes, as required by sections 1129(b)(1) and (2) of the Bankruptcy Code. Thus, the Plan may be confirmed notwithstanding the Debtors' failure to satisfy section 1129(a)(8) of the Bankruptcy Code. Upon confirmation and the occurrence of the Effective Date, the Plan shall be binding upon the members of the Rejecting Classes.

(a) The Plan Does Not Unfairly Discriminate Against the Rejecting Classes. The Plan does not unfairly discriminate against the Rejecting Classes. At Delta's discretion, the Interests classified in Class 9b (Interests in Subsidiary Debtors) shall be Reinstated for the ultimate benefit of Reorganized Pinnacle Holdings in exchange for the agreement of Reorganized Pinnacle Holdings to make distributions under the Plan to Creditors of the Subsidiary Debtors and to use certain funds and assets, to the extent authorized in the Plan, to satisfy certain obligations of the Subsidiary Debtors. With respect to the difference in treatment under the Plan between Class 7 (Punitive Damages Claims) as compared to Class 5 (Union Claims) and Class 6 (Other General Unsecured Claims), (a) a reasonable basis exists for any discrimination; (b) the Plan cannot be consummated without the discrimination; (c) the discrimination was proposed in good faith; and (d) the degree of discrimination is in proportion to its rationale. As a result, there is a reasonable basis for any disparate treatment between and among (i) Class 9a (Interests in Pinnacle Holdings) and Class 8 (Section 510(b) Claims) as compared to Class 9b (Interests in Subsidiary Debtors) and (ii) Class 7 (Punitive Damages Claims) as compared to Class 5 (Union Claims) and Class 6 (Other General Unsecured Claims). Therefore, the Plan satisfies section 1129(b)(1) of the Bankruptcy Code.

(b) The Plan is Fair and Equitable. The Plan is fair and equitable, in that other than as set forth above with respect to Class 9b (Interests in Subsidiary Debtors), which serves to

preserve the corporate structure for the benefit of all creditors, no holder that is junior to the Claims and Interests classified in the Rejecting Classes will receive or retain under the Plan any property on account of such junior interest. Therefore, the Plan satisfies section 1129(b)(2)(C)(ii) of the Bankruptcy Code.

25. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan of reorganization filed in these cases. Accordingly, section 1129(c) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

26. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan, as evidenced by its terms, is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act.

27. Satisfaction of Confirmation Requirements. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

28. Plan Consolidation. A preponderance of the evidence presented to this Court demonstrates that no Creditor will be harmed by the proposed Plan Consolidation and that the Plan Consolidation is appropriate. Furthermore, no Creditor or Interest holder has objected to or opposed the Plan Consolidation.

29. Implementation. All documents and agreements necessary to implement the Plan, including, without limitation, those contained in the Plan Supplements, and all other relevant and necessary documents have been negotiated in good faith at arm's-length and are in the best interests of the Debtors and the Reorganized Debtors and shall, upon completion of such documentation and execution, be valid, binding and enforceable documents and agreements not in conflict with any federal or state law.

30. Good Faith. The Debtors, Delta, the Unsecured Claims Trustee, the Creditors' Committee and the other Released Parties will be acting in good faith if they proceed to (i) consummate

the Plan and the agreements, settlements, transactions and transfers contemplated thereby (including, without limitation, the restructuring transactions set forth in Section 6.7 of the Plan and the Plan Supplements) and (ii) take the actions authorized and directed by this Confirmation Order.

31. Assumption or Rejection of Executory Contracts and Unexpired Leases. The Debtors have exercised their reasonable business judgment prior to the Confirmation Hearing in determining whether to assume or reject each of their executory contracts and unexpired leases as set forth in Article 10 of the Plan, the Plan Supplements, this Confirmation Order or otherwise. Notwithstanding any provision of this Confirmation Order or the Plan to the contrary, the Debtors may amend Schedules 10.2(a) and 10.2(b) to reject and/or otherwise modify the treatment of certain executory contracts and/or unexpired leases, as and to the extent noted in the versions of Schedules 10.2(a) and 10.2(b) filed on April 16 2013, after the date hereof. Each assumption or rejection of an executory contract or unexpired lease pursuant to this Confirmation Order and in accordance with Article 10 of the Plan or otherwise shall be legal, valid and binding upon the applicable Reorganized Debtor and all non-Debtor entities party to such executory contract or unexpired lease (subject to the rights of the non-debtor entities party to such agreements to object to such assumption or rejection and the rights of the applicable Reorganized Debtor in response to any such objection); *provided*, *however*, that nothing herein shall be construed as an Order of this Court compelling performance under any assumed contract or lease.

32. Adequate Assurance. The Debtors have provided adequate assurance of future performance for each of the executory contracts and unexpired leases that are being assumed by the Debtors pursuant to the Plan. The Debtors have cured or provided adequate assurance that the Reorganized Debtors will cure defaults (if any) under or relating to each of the executory contracts and unexpired leases that are being assumed by the Debtors pursuant to the Plan. The Plan and such assumptions, therefore, satisfy the requirements of Section 365 of the Bankruptcy Code.

33. Valuation. In accordance with the estimated recoveries set forth in the Disclosure Statement, the enterprise value of the Debtors is insufficient to support a distribution to holders of Interests in Pinnacle Holdings (Class 9a) or Section 510(b) Claims (Class 8).

34. Transfers by Debtors; Vesting of Assets. All transfers of property of the Debtors' Estates, including, without limitation, the transfer of the New Common Stock, shall be free and clear of all Liens, charges, Claims, encumbrances and other interests, except as expressly provided in the Plan or this Confirmation Order. Pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of each of the Debtors (excluding property that has been abandoned pursuant to the Plan or an order of the Bankruptcy Court) shall vest in each of the respective Reorganized Debtors or their successors or assigns or, with respect to the Unsecured Claims Trust Assets as provided in section 6.8 of the Plan, the Unsecured Claims Trust, as the case may be, free and clear of all Liens, charges, Claims, encumbrances and other interests, except as expressly provided in the Plan or this Confirmation Order. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or applicable nonbankruptcy law.

35. The Debtors have made an overwhelming and uncontroverted showing of the very substantial cost, harm, risk and prejudice to these Estates and their Creditors that would result if the Plan is not consummated.

DECREES

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

36. Confirmation. The Plan is approved and confirmed under section 1129 of the Bankruptcy Code. The terms of the Plan Supplements are incorporated by reference into and are an integral part of the Plan.

37. Objections. All objections that have not been withdrawn, waived or settled, and all reservations of rights pertaining to Confirmation of the Plan, are overruled on the merits.

38. Plan Supplements. The documents contained or referred to in the Plan Supplements, including, *inter alia*, the Unsecured Claims Trust Agreement, the form of Exit Note and the Amended EDC Facility, and any amendments, modifications, and supplements thereto, and all documents and agreements related thereto (including all exhibits and attachments thereto and documents referred to therein), and the execution, delivery and performance thereof by the Reorganized Debtors, are authorized and approved as finalized, executed and delivered. Unless the provisions of the documents contained or referred to in the Plan Supplements, including, but not limited to, the Unsecured Claims Trust Agreement, provide otherwise, without further order or authorization of this Court, the Debtors, the Reorganized Debtors, the Unsecured Claims Trustee and their successors are authorized and empowered to make any and all modifications to all documents included as part of the Plan Supplements or otherwise contemplated by the Plan that are consistent with the Plan. Once finalized and executed, the documents comprising the Plan Supplements and all other documents contemplated by the Plan shall constitute legal, valid, binding and authorized obligations of the respective parties thereto, enforceable in accordance with their terms and, to the extent applicable, shall create, as of the Effective Date, all Liens and other security interests purported to be created thereby.

39. Provisions of Plan and Confirmation Order Non-Severable and Mutually Dependent. The provisions of the Plan and this Confirmation Order, including the findings of fact and conclusions of law set forth herein, are each non-severable and mutually dependent.

40. Preparation, Delivery and Execution of Additional Documents by Third Parties. Each holder of a Claim receiving a distribution pursuant to the Plan and all other parties-in-interest shall, from time to time, take any reasonable actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

41. Solicitation and Notice. Notice of the Confirmation Hearing complied with the terms of the Approval Order, was appropriate and satisfactory based on the circumstances of the Chapter 11

Cases and was in compliance with the provisions of the Bankruptcy Code and the Bankruptcy Rules. The solicitation of votes on the Plan complied with the solicitation procedures in the Approval Order, was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases and was in compliance with the provisions of the Bankruptcy Code and the Bankruptcy Rules. Notice of the Plan Supplements and all related documents was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases and was in compliance with the provisions of the Plan, Bankruptcy Code and the Bankruptcy Rules.

42. Plan Classifications Controlling. The classification of Claims and Interests for purposes of distributions made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots tendered to or returned by the Creditors in connection with voting on the Plan (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan, (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for distribution purposes and (c) shall not be binding on the Debtors or Reorganized Debtors.

43. Treatment in Full Satisfaction. The treatment of Claims and Interests set forth in the Plan (including the treatment of Delta Unsecured Claims, as set forth in Section 4.2(f) of the Plan), is in full and complete satisfaction of the legal, contractual and equitable rights that each holder of a Claim or Interest may have against the Debtors, the Debtors' Estates or their respective property, on account of such Claim or Interest.

44. Plan Consolidation. The Plan is predicated upon the consolidation of the Debtors' Estates for the purposes specified in the Plan (including voting, confirmation and distributions), as set forth more fully in Section 2.2 of the Plan. Consolidation of the Debtors' Estates for the purposes set forth in the Plan is in the best interest of all holders of Claims and Interests, is necessary for the

implementation of the Plan and is appropriate in these Chapter 11 Cases; for these reasons, the Plan Consolidation is approved.

45. The Plan Consolidation shall not affect the (i) legal or organizational structure of the Debtors, (ii) pre or post-Petition Date Liens or security interests, (iii) pre or post-Petition Date guarantees that are required to be maintained (a) in connection with executory contracts or unexpired leases that were entered into during these Chapter 11 Cases or that have been or will be assumed or (b) pursuant to the Plan, (iv) defenses to any Cause of Action or (v) distributions out of any insurance policies or proceeds of such policies.

46. Continued Corporate Existence. Except as otherwise provided in the Plan and subject to any restructuring transactions consummated as permitted by Section 6.7 of the Plan or described in the Plan Supplements, each Debtor shall, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, each with all of the powers of a corporation, under the laws of its jurisdiction of organization and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable state law.

47. Cancellation of Old Stock and Debtors' Obligations under Indenture Documents. On the Effective Date, all rights of any holder of Claims against, or Interest in, the Debtors, including options or warrants to purchase Interests, obligating the Debtors to issue, transfer or sell Interests or any other capital stock of the Debtors, shall be cancelled; *provided, however*, that Interests in the Subsidiary Debtors shall be, at Delta's option, Reinstated or cancelled as part of the restructuring transactions described in Section 4.2(j) of the Plan. Regarding the Indenture and any related note, guaranty, bond, certificate or similar instrument (together the "**Indenture Documents**"), the obligations of the Debtors thereunder and in any way related thereto shall be fully satisfied, released and discharged in exchange for the treatment provided under the Plan for Allowed Other General Unsecured Claims, if any, arising under the Indenture Documents; *provided* that the satisfaction, release and discharge of the Debtors'

obligations with respect to the Indenture Documents shall not alter the obligations or rights of any non-Debtor third parties vis-à-vis one another with respect to such Indenture Documents.

48. Authorization of New Common Stock. Without further act or action under applicable law, regulation, order or rule, Reorganized Pinnacle Holdings is authorized to issue the New Common Stock to Delta on the Effective Date pursuant to the terms of the Plan, free and clear of all Liens, Claims and other Interests. Each share of the New Common Stock issued and distributed pursuant to the Plan shall be duly authorized, validly issued, and fully paid and non-assessable.

49. Continuing Restructuring Transactions. On or after the Effective Date, including subsequent to the cancellation and discharge of all Claims pursuant to the Plan and prior to the issuance of the New Common Stock, the Reorganized Debtors may engage in or take such actions as may be necessary or appropriate to effect corporate restructurings of their respective businesses, including actions necessary to simplify, reorganize and rationalize the overall reorganized organizational structure of the Reorganized Debtors. The transactions may include: (a) dissolving companies or creating new companies (including limited liability companies), (b) merging, dissolving, transferring assets or otherwise consolidating any of the Debtors in furtherance of the Plan, or engaging in any other transaction in furtherance of the Plan, including, but not limited to, Pinnacle Airlines Corp. merging into Pinnacle Airlines, Inc., with Pinnacle Airlines, Inc. being the surviving entity and thereafter, Colgan Air, Inc., Mesaba Aviation, Inc. and Pinnacle East Coast Operations Inc. merging into Pinnacle Airlines, Inc., with Pinnacle Airlines, Inc. being the surviving entity, (c) filing appropriate certificates or articles of merger, consolidation or dissolution pursuant to applicable state law and (d) any other action reasonably necessary or appropriate in connection with such organizational restructurings. In each case in which the surviving, resulting or acquiring Entity in any of these transactions is a successor to a Reorganized Debtor, such surviving, resulting or acquiring Entity will perform the obligations of the applicable Reorganized Debtor pursuant to the Plan, including paying or otherwise satisfying the

Allowed Claims to be paid by such Reorganized Debtor. Implementation of any restructuring transactions shall not affect any distributions, discharges, exculpations, releases or injunctions set forth in the Plan.

50. Unsecured Claims Trust.

(a) Without further order or authorization of this Court, on the Effective Date, the Debtors or the Reorganized Debtors, as applicable, the Creditors' Committee and the Unsecured Claims Trustee are authorized to enter into and perform under the Unsecured Claims Trust Agreement.

(b) On the Effective Date, the Unsecured Claims Trust shall be established pursuant to the Plan and the Unsecured Claims Trust Agreement for the sole purposes of liquidating the Unsecured Claims Trust Assets on account of Trust Interests, resolving all Disputed General Unsecured Claims and making all distributions to holders of Allowed General Unsecured Claims, in each case in accordance with the Plan and the Unsecured Claims Trust Agreement.

(c) On the Effective Date, (i) Delta shall fund the Unsecured Claims Trust with $2.25 million minus any fees and costs incurred by the Creditors' Committee's advisors through the Effective Date in connection with any investigation conducted by the Creditors' Committee with respect to the Trustee Causes of Action and ultimately paid and (ii) the Debtors and the Creditors' Committee shall transfer to the Unsecured Claims Trust all right, title and interest to the Trustee Causes of Action and any proceeds therefrom ((i) and (ii) together, the "**Unsecured Claims Trust Assets**"). Any recoveries on account of the Unsecured Claims Trust Assets shall be distributed to holders of Trust Interests in accordance with the Plan and the Unsecured Claims Trust Agreement. Upon funding of the Unsecured Claims Trust, none of Delta, its affiliates, the Debtors or the Reorganized Debtors shall have any further liability or obligation with respect to Unsecured Claims. In no event shall Delta, its affiliates, the Debtors or the Reorganized Debtors

be deemed to have any fiduciary or other duty to the Unsecured Claims Trust, nor any responsibilities for administering the Unsecured Claims Trust Assets, reconciling, objecting to or resolving Unsecured Claims, or distributing any funds or other assets to holders of Allowed Unsecured Claims.

(d) The appointment of the Unsecured Claims Trust Board in accordance with the terms of the Plan and the Unsecured Claims Trust Agreement is hereby approved. Effective on the Effective Date, the initial members of the Unsecured Claims Trust Board shall serve as members of the Unsecured Claims Trust Board in accordance with the terms of the Plan and the Unsecured Claims Trust Agreement. The appointment of the Unsecured Claims Trustee by the Unsecured Claims Trust Board in accordance with the terms of the Plan and the Unsecured Claims Trust Agreement is hereby approved.

51. Corporate Action

(a) On and after the Effective Date, the adoption, filing, approval and ratification, as necessary, of all corporate or related actions contemplated hereby with respect to each of the Reorganized Debtors shall be deemed authorized and approved in all respects. Without limiting the foregoing, such actions may include: (i) the adoption and filing of the New Certificate of Incorporation, (ii) the adoption and filing of certificates of incorporation and other organizational documents of the Reorganized Debtors and (iii) the restructuring transactions authorized by Section 6.7 of the Plan, including those described in the Plan Supplements.

(b) All matters provided for in the Plan involving the corporate structure of any Debtor or any Reorganized Debtor, or any corporate action required by any Debtor or any Reorganized Debtor in connection with the Plan, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders or directors of such Debtor or Reorganized Debtor or by any other stakeholder.

(c) On or after the Effective Date, the appropriate officers of each Reorganized Debtor and members of the board of directors, board of managers or equivalent body of each Reorganized Debtor are authorized and directed to issue, execute, deliver, file and record any and all agreements, documents, securities, deeds, bills of sale, conveyances, releases and instruments contemplated by the Plan or the transactions contemplated thereby in the name of and on behalf of such Reorganized Debtor and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and the transactions contemplated thereby.

52. New Board. Upon the occurrence of the Effective Date, the Persons proposed to serve as members of the New Board, as identified in the Plan Supplement filed on March 29, 2013, shall automatically constitute the New Board.

53. Compensation Programs. The entry of this Confirmation Order constitutes authorization and approval to retain employees, officers, and directors in accordance with the Plan Supplement detailing post-emergence employee, officer and director compensation, filed on March 29, 2013.

54. Securities Laws Exemption. To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the offering, issuance and distribution of the New Common Stock shall be exempt from, among other things, the registration and prospectus delivery requirements of Section 5 of the Securities Act and any other applicable state and federal law requiring registration and/or delivery of a prospectus prior to the offering, issuance, distribution or sale of securities. In addition, to the maximum extent provided by section 1145 of the Bankruptcy Code, any securities contemplated by the Plan and any and all agreements incorporated therein, including the New Common Stock, shall be subject to (i) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act; (ii) compliance with any rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of

any future transfer of such securities or instruments; (iii) the restrictions, if any, on the transferability of such securities and instruments, including those set forth in the New Certificate of Incorporation; and (iv) applicable regulatory approval, if any.

55. Distributions Under the Plan. All distributions under the Plan shall be made in accordance with Article 7 of the Plan.

56. Unclaimed Distributions. All distributions under the Plan that remain unclaimed for one year after distribution shall indefeasibly revert to Reorganized Pinnacle Holdings or the Unsecured Claims Trust, as applicable. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

57. Disputed Claims. On and after the Effective Date, the Unsecured Claims Trustee shall have the sole authority to litigate, compromise, settle, otherwise resolve or withdraw any objections to Unsecured Claims and to compromise, settle or otherwise resolve any Disputed Unsecured Claims without notice to or approval by the Bankruptcy Court or any other party, and the Reorganized Debtors shall have the sole authority to litigate, compromise, settle, otherwise resolve or withdraw any objections to all Administrative Claims, Priority Claims and Secured Claims and to compromise, settle or otherwise resolve any Disputed Administrative Claims, Disputed Priority Claims or Disputed Secured Claims without notice to or approval by the Bankruptcy Court or any other party. Notwithstanding any other provision in the Plan, no payments or distributions shall be made with respect to a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by a Final Order, and the Disputed Claim has become an Allowed Claim.

58. Other Administrative Claim Bar Date. All requests for payment of Other Administrative Claims that accrued on or before the Effective Date (other than Professional Fee Claims, which are subject to the provisions of Section 8.1 of the Plan) must be filed with the Claims Agent and served on

counsel for the Debtors and Reorganized Debtors by the Other Administrative Claim Bar Date. Any requests for payment of Other Administrative Claims pursuant to Section 8.2 of the Plan that are not properly filed and served by the Other Administrative Claim Bar Date shall not appear on the register of claims maintained by the Claims Agent and shall be disallowed automatically without the need for any objection from the Debtors or the Reorganized Debtors or any action by the Bankruptcy Court. Notwithstanding the foregoing, requests for payment of Other Administrative Claims need not be filed with respect to Other Administrative Claims that (i) are for goods or services provided to the Debtors in the ordinary course of business, (ii) previously have been Allowed by Final Order of the Bankruptcy Court, including the DIP Orders, (iii) are for Cure amounts, (iv) are on account of post-petition taxes (including any related penalties or interest) owed by the Debtors or the Reorganized Debtors to any governmental unit (as defined in section 101(27) of the Bankruptcy Code) or (v) the (a) Debtors and Delta, or (b) Reorganized Debtors have otherwise agreed in writing do not require such a filing.

59. Approval of Assumption or Rejection of Executory Contracts. Entry of this Confirmation Order shall, subject only to the occurrence of the Effective Date, constitute the approval, (a) pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption of the executory contracts and unexpired leases assumed pursuant to Article 10 of the Plan, (b) pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption and assignment of the executory contracts and unexpired leases assumed and assigned pursuant to Article 10 of the Plan, and (c) pursuant to section 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Article 10 of the Plan. In the event that the mergers of some or all of the Debtors—as contemplated in Section 6.7 of the Plan, including as described in the Plan Supplements—are consummated, any executory contracts or unexpired leases assumed by the Debtors hereunder, under the Plan or by prior order of the Court, shall be assumed and assigned (and be deemed to be assumed and assigned) to the surviving entity of the applicable merger, and any provision

in any executory contract or unexpired lease so assumed and assigned that purports to declare a breach or default as a result of a change of control, an assignment of such contract, the Debtors' or the Reorganized Debtors' financial condition, bankruptcy, or failure to perform any of its obligations under such contract is unenforceable, and no counterparty to any such executory contract or unexpired lease so assumed and assigned shall be permitted to declare a default by or against the Debtors or the Reorganized Debtors under such contract or otherwise take any action against the Debtors or the Reorganized Debtors in connection with any of the foregoing.

60. Inclusiveness. Unless otherwise specified on a schedule to the Plan or a notice sent to a given party, each executory contract and unexpired lease listed or to be listed thereon shall include any and all modifications, amendments, supplements, restatements and other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument or other document is listed thereon.

61. Notice of Assumption and Rejection of Executory Contracts and Unexpired Leases Assumed Under the Plan. The filing of the Plan and the schedules thereto and the publication of notice of the entry of this Confirmation Order provide adequate notice of the assumption, assumption and assignment and rejection of executory contracts and unexpired leases pursuant to Article 10 of the Plan (both for contracts and leases that appear on any of those schedules and for contracts and leases assumed or rejected by category or default).

62. Cure of Defaults. The parties to each executory contract and unexpired lease to be assumed or assumed and assigned pursuant to the Plan were afforded good and sufficient notice of such assumption or assumption and assignment and an opportunity to object and be heard. Treatment Objections shall be resolved consistent with Section 10.5(c) of the Plan. Consistent with Section 10.5(d) of the Plan, if a Treatment Objection is filed with respect to any executory contract or unexpired lease

sought to be assumed or rejected by any of the Debtors or Reorganized Debtors, Delta and the Reorganized Debtors reserve the right (a) to seek to assume or reject such agreement at any time before the assumption, rejection, assignment or Cure with respect to such agreement is determined by Final Order and (b) to the extent a Final Order is entered resolving a dispute as to Cure or the permissibility of assignment (but not approving the assumption of the executory contract or unexpired lease sought to be assumed), to seek to reject such agreement within 14 calendar days after the date of such Final Order, in each case by filing with the Bankruptcy Court and serving upon the applicable Assumption Party or Rejection Party, as the case may be, a Notice of Intent to Assume or Reject.

63. Treatment Objection Deadline. With respect to an executory contract or unexpired lease sought to be assumed, rejected or deferred pursuant to the Plan, the Treatment Objection Deadline shall be the deadline for filing and serving a Treatment Objection, which deadline shall be 4:00 p.m. (prevailing Eastern Time) on, (a) with respect to an executory contract or unexpired lease listed on Schedule 10.2(a) or 10.2(b), the 15th calendar day after the relevant schedule is filed and notice thereof is mailed, (b) with respect to an executory contract or unexpired lease the proposed treatment of which has been altered by an amended or supplemental Schedule 10.2(a) or 10.2(b), the 15th calendar day after such amended or supplemental schedule is filed and notice thereof is mailed, (c) with respect to an executory contract or unexpired lease for which a Notice of Intent to Assume or Reject is filed, the 15th calendar day after such notice is filed and notice thereof is mailed and (d) with respect to any other executory contract or unexpired lease, including any to be assumed or rejected by category pursuant to Sections 10.1, 10.3 or 10.4 of the Plan (without being listed on Schedule 10.2(a) or 10.2(b)), the deadline for objections to Confirmation of the Plan established pursuant to the Approval Order or other order of the Bankruptcy Court.

64. Rejection Claims and Rejection Bar Date. Any Rejection Claim must be filed with the Claims Agent by the earlier of the Rejection Bar Date and 30 days after the entry of this Confirmation

Order (the "**Confirmation Bar Date**"). Any Rejection Claim for which a Proof of Claim is not properly filed and served by the Confirmation Bar Date shall be forever barred and shall not be enforceable against the Debtors, the Reorganized Debtors or their respective Estates or properties. The Debtors, the Reorganized Debtors or the Unsecured Claims Trustee, as applicable, may contest any Rejection Claim in accordance with, and to the extent provided by, Section 9.1 of the Plan.

65. Adequate Assurance for Counterparties to Executory Contracts Assumed Under the Plan. Subject only to the occurrence of the Effective Date, all counterparties to all executory contracts and unexpired leases of the Debtors assumed and assigned in accordance with Article 10 of the Plan are deemed to have been provided with adequate assurance of future performance pursuant to section 365(f) of the Bankruptcy Code.

66. Operation as of the Effective Date. As of the Effective Date, unless otherwise provided in the Plan or this Confirmation Order, the Reorganized Debtors may operate their businesses and may use, acquire and dispose of property and settle and compromise Claims and Interests without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code.

67. Discharge of Claims and Termination of Interests. Except as otherwise specifically provided herein or in the Plan, the rights afforded in the Plan and the payments and distributions to be made hereunder shall discharge all existing debts, Causes of Action and Claims, and shall terminate all Interests of any kind, nature or description whatsoever against or in the Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as otherwise specifically provided herein or in the Plan, upon the Effective Date, all existing Claims and Causes of Action against the Debtors and Interests in the Debtors shall be, and shall be deemed to be, discharged and terminated, and all holders of Claims, Causes of Action and Interests (and all representatives,

trustees or agents on behalf of each holder) shall be precluded and enjoined from asserting against the Reorganized Debtors, their successors or assignees, or any of their assets or properties, any other or further Claim, Cause of Action or Interest based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a Proof of Claim and whether or not the facts or legal bases therefor were known or existed prior to the Effective Date. This Confirmation Order shall be a judicial determination of the discharge of all Claims and Causes of Action against, liabilities of and Interests in the Debtors, subject to the occurrence of the Effective Date.

68. Discharge of Debtors. Upon the Effective Date and in consideration of the distributions to be made under the Plan, except as otherwise provided herein or in the Plan, each holder (as well as any representatives, trustees or agents on behalf of each holder) of a Claim, Cause of Action or Interest and any Affiliate of such holder shall be deemed to have forever waived, released and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Causes of Action, Interests, rights and liabilities that arose prior to the Effective Date. Upon the Effective Date, all such persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim or Cause of Action against, or terminated Interest in, the Debtors.

69. Injunction. Except as otherwise expressly provided herein or in the Plan, all persons or entities who have held, hold or may hold Claims, Causes of Action or Interests and all other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, representatives and Affiliates, are permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim (including, without limitation, a Section 510(b) Claim), Cause of Action or Interest against the Debtors, the Reorganized Debtors or property of any Debtors or Reorganized Debtors, other than to

enforce any right to a distribution pursuant to the Plan, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtors, the Reorganized Debtors or property of any Debtors or Reorganized Debtors, other than to enforce any right to a distribution pursuant to the Plan, (iii) creating, perfecting or enforcing any Lien or encumbrance of any kind against the Debtors or Reorganized Debtors or against the property or interests in property of the Debtors or Reorganized Debtors other than to enforce any right to a distribution pursuant to the Plan or (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtors or Reorganized Debtors or against the property or interests in property of the Debtors or Reorganized Debtors, with respect to any such Claim, Cause of Action or Interest. Such injunction shall extend to any successors or assignees of the Debtors and Reorganized Debtors and their respective properties and interest in properties.

70. Term of Injunction or Stay. Unless otherwise provided in the Plan or herein, any injunction or stay arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code or otherwise that is in existence on the Confirmation Date shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

71. Exculpation. As provided for in Section 12.6 of the Plan, to the maximum extent permitted by applicable law, none of the Exculpated Parties shall have or incur any liability to any holder of a Claim, Cause of Action or Interest for any act or omission in connection with, related to or arising out of, the Chapter 11 Cases, the negotiation of any settlement or, agreement, contract, instrument, release or document created or entered into in connection with the Plan or in the Chapter 11 Cases (including the Restructuring Support Agreement, the DIP Facility and documents related thereto), the pursuit of confirmation of the Plan, the consummation of the Plan, the preparation and distribution of the Disclosure Statement, the offer, issuance and distribution of any securities issued or to be issued

pursuant to the Plan, any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors or the administration of the Plan or the property to be distributed under the Plan, except for any act or omission that is determined in a final order to have constituted willful misconduct or gross negligence. Each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its duties pursuant to, or in connection with, the Plan.

72. Release by the Debtors. As provided for in Section 12.7 of the Plan, pursuant to section 1123(b) of the Bankruptcy Code, to the maximum extent permitted by applicable law, and except as otherwise specifically provided in the Plan (including Section 12.12(c) thereof), on and after the Effective Date, in exchange for their cooperation, the Released Parties shall be deemed released and discharged by the Debtors, the Reorganized Debtors and their Estates from any and all Claims, obligations, debts, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims asserted on behalf of the Debtors, their Estates and/or the Reorganized Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtors, the Reorganized Debtors, their estates or their affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other entity or that any holder of a Claim or Interest or other entity would have been legally entitled to assert for or on behalf of the Debtors, their estates or the Reorganized Debtors, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Reorganized Debtors, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party excluding any assumed executory contract or lease, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the

negotiation, formulation or preparation of the Plan, the Disclosure Statement, the related Plan Supplements, or related agreements, instruments or other documents, or upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct or gross negligence; *provided*, however, that if any Released Party directly or indirectly brings or asserts any Claim or Cause of Action in any way arising out of or related to any document or transaction that was in existence prior to the Effective Date against the Debtors, the Reorganized Debtors or any of their respective Affiliates, officers, directors, members, employees, advisors, actuaries, attorneys, financial advisors, investment bankers, professionals or agents, then the release set forth in Section 12.7 of the Plan (but not any release or indemnification or any other rights or claims granted under any other section of the Plan or under any other document or agreement) shall automatically and retroactively be null and void *ab initio* with respect to such Released Party bringing or asserting such Claim or Cause of Action; *provided further* that the immediately preceding clause shall not apply to any action by a Released Party in the Bankruptcy Court (or any other court determined to have competent jurisdiction), including any appeal therefrom, to (i) enforce such Released Party's rights against the Debtors and/or the Reorganized Debtors under the Plan, this Confirmation Order, any postpetition or assumed contract, including, but not limited to, the Insurance Policies (to the extent provided for in Section 10.3(a) of the Plan), or (ii) prosecute the amount, priority or secured status of any prepetition or ordinary course administrative Claim against the Debtors, in each case, however, the Debtors shall retain all defenses related to such action.

73. Voluntary Releases by the Holders of Claims and Interests. As provided for in Section 12.8 of the Plan, except as otherwise specifically provided herein or in the Plan (including Section 12.12(c) thereof), for good and valuable consideration, on and after the Effective Date, to the maximum extent permitted by applicable law, holders of Claims that (a) voted to accept or reject the Plan and (b)

did not elect (as permitted on the Ballots) to opt out of the releases contained in this paragraph shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Debtors, the Reorganized Debtors and the Released Parties from any and all claims, equity interests, obligations, debts, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims asserted on behalf of the Debtors, their estates and/or the Reorganized Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Reorganized Debtors, the restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party excluding any assumed executory contract or lease, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the related Plan Supplements or related agreements, instruments or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that is determined in a Final Order to have constituted willful misconduct or gross negligence; *provided* that any holder of a Claim that elected to opt out of the releases contained in this paragraph shall not receive the benefit of the releases set forth in this paragraph (even if for any reason otherwise entitled).

74. Bankruptcy Court Jurisdiction to Evaluate Scope of Release and Exculpation and Related Injunction. Following entry of this Confirmation Order, this Court shall retain exclusive jurisdiction to consider any and all Claims or Causes of Action subject to the exculpations and releases in Section 12.6, Section 12.7 or Section 12.8 of the Plan for the purpose of determining whether such claims belong to

the Debtors' Estates or third parties and all parties shall be enjoined from pursuing any such Claims or Causes of Action prior to this Court making such determination. In the event it is determined that any such Claims or Causes of Action belong to third parties, then, subject to any applicable subject matter jurisdiction or other statutory limitations, this Court shall have exclusive jurisdiction with respect to any such litigation, subject to any determination by this Court to abstain and consider whether such litigation should more appropriately proceed in another forum.

75. Except as otherwise provided herein or in the Plan and to the maximum extent permitted by law, all entities who have held, hold or may hold Claims, Interests, Causes of Action or liabilities that (1) have been released pursuant to Section 12.7 of the Plan, (2) have been released pursuant to Section 12.8 of the Plan or (3) are subject to exculpation pursuant to Section 12.6 of the Plan (such Claims, Interests, Causes of Action or liabilities described in clauses (1) to (3), the "**Enjoined Causes of Action**") are permanently enjoined and precluded, from and after the Effective Date, from commencing or continuing in any manner any such Enjoined Causes of Action against, as applicable, any Released Party or Exculpated Party, including, with respect thereto, (i) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Exculpated Parties or the Released Parties (or property of any Exculpated Party or Released Party), (ii) creating, perfecting or enforcing any Lien or encumbrance of any kind against the Exculpated Parties or the Released Parties or against the property or interests in property of the Exculpated Parties or the Released Parties, or (iii) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Exculpated Parties or the Released Parties or against the property or interests in property of the Exculpated Parties or the Released Parties, with respect to any such Claim, Cause of Action or Interest. Such injunction of the Enjoined Causes of Action shall, to the maximum extent permitted by law, extend to any successors or assignees of the Exculpated Parties or the Released Parties and their respective properties and interest in properties.

76. Preservations of Causes of Action.

(a) Except as expressly provided in Article 12 of the Plan, nothing contained in the Plan or this Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or Causes of Action that the Debtors or the Reorganized Debtors may have or that the Reorganized Debtors may choose to assert on behalf of their respective Estates under any provision of the Bankruptcy Code or any applicable non-bankruptcy law, including, without limitation, (i) any and all Causes of Action or Claims against any person or entity, to the extent such person or entity asserts a crossclaim, counterclaim and/or claim for setoff that seeks affirmative relief against the Debtors, the Reorganized Debtors, their officers, directors or representatives or (ii) the turnover of any property of the Debtors' Estates.

(b) Except as set forth in Article 12 of the Plan, nothing contained in the Plan or this Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or Causes of Action that the Debtors had immediately prior to the Petition Date or the Effective Date against or with respect to any Claim left Unimpaired by the Plan. The Reorganized Debtors shall have, retain, reserve and be entitled to assert all such rights and Causes of Action as fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights respecting any Claim left Unimpaired by the Plan may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Cases had not been commenced.

(c) Nothing contained in the Plan or this Confirmation Order shall be deemed to be a waiver or relinquishment of any Causes of Action that are brought by the Creditors' Committee in this Court prior to the Effective Date against (i) management members who were not employees of the Debtors as of January 1, 2013 or (ii) current or former board members of Pinnacle Holdings (other than board members who were also employees as of January 1, 2013), in each of cases (i) and (ii) solely to the extent based on prepetition actions or omissions by those

parties, it being understood and agreed that (1) the Creditors' Committee shall have sole standing to investigate, commence, prosecute and settle any such causes of action, (2) any recovery with respect to such causes of action will be limited to available insurance proceeds, and (3) any such causes of action commenced by the Creditors' Committee in this Court prior to the Effective Date will be assigned to the Unsecured Claims Trust and the proceeds of any such causes of action will go into the Unsecured Claims Trust (collectively, the "**Trustee Causes of Action**").

(d) Except as set forth in Article 12 of the Plan, nothing contained in the Plan or this Confirmation Order shall be deemed to release any post-Effective Date obligations of any party under the Plan, or any document, instrument or agreement (including those set forth in a Plan Supplement) executed to implement the Plan.

77. Retention of Jurisdiction. In accordance with (and as limited by) Article 15 of the Plan and section 1142 of the Bankruptcy Code, and except as provided herein, this Court shall have exclusive jurisdiction of all matters arising out of and related to the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(a) To hear and determine all matters with respect to the assumption or rejection of executory contracts or unexpired leases and the allowance of Cure amounts and Claims resulting therefrom;

(b) To hear and determine any motion, adversary proceeding, application, contested matter or other litigated matter pending on or commenced after the Confirmation Date;

(c) To hear and determine all matters with respect to the allowance, disallowance, liquidation, classification, priority or estimation of any Claim;

(d) To ensure that distributions to holders of Allowed Claims are accomplished as provided in the Plan;

(e) To hear and determine all applications for compensation and reimbursement of Professional Fee Claims;

(f) To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement or any order of the this Court, including this Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(g) To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan, this Confirmation Order, any transactions or payments contemplated hereby or any agreement, instrument or other document governing or relating to any of the foregoing;

(h) To hear and determine disputes arising in connection with Section 12.9 of the Plan;

(i) To issue injunctions, enter and implement other orders and take such other actions as may be necessary or appropriate to restrain interference by any person with the consummation, implementation or enforcement of the Plan, this Confirmation Order or any other order of this Court;

(j) To issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan;

(k) To enter, implement or enforce such orders as may be appropriate in the event that this Confirmation Order is for any reason stayed, reversed, revoked, modified or vacated;

(l) To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including the expedited determination of tax under section 505(b) of the Bankruptcy Code);

(m) To hear and determine any other matters related to the Plan and not inconsistent with the Bankruptcy Code;

(n) To determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Approval Order, this Confirmation Order, any of the Plan Documents or any other contract, instrument, release or other agreement or document related to the Plan, the Disclosure Statement or the Plan Supplements;

(o) To recover all assets of the Debtors and property of the Debtors' Estates, which, except for the Trustee Causes of Action, shall be for the benefit of the Reorganized Debtors, wherever located;

(p) To hear and determine all disputes involving the existence, nature or scope of the Debtors' discharge;

(q) To hear and determine any rights, Claims or Causes of Action held by or accruing to the Debtors or the Reorganized Debtors pursuant to the Bankruptcy Code or pursuant to any federal or state statute or legal theory, which, except for the Trustee Causes of Action, shall be for the benefit of the Reorganized Debtors;

(r) To enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases with respect to any Person;

(s) To hear and determine any disputes arising in connection with the interpretation, implementation or enforcement of any new or renegotiated agreement (including leases, subleases, security agreements and mortgages and any amendments, modifications or supplements of or to any lease, sublease, security agreement or mortgage and such leases, subleases, security agreements or mortgages as so amended, modified or supplemented, and any agreement settling or providing for any claims or otherwise addressing any matters relating to

any lease, sublease security agreement or mortgage or any amendment modification or supplement of or to any lease, sublease, security agreement or mortgage) entered into after the Petition Date by the Debtors relating to an aircraft, aircraft engine, propeller, appliance or spare part (as each of these terms is defined in section 40102 of title 49 of the United States Code), including all records and documents relating to such equipment that are required under the terms of any applicable security agreement, lease or conditional sale contract to be surrendered or returned in connection with the surrender or return of such equipment, that is leased to, subject to a security interest granted by or conditionally sold to one of the Debtors;

(t) To hear any other matter not inconsistent with the Bankruptcy Code; and

(u) To enter a final decree closing the Chapter 11 Cases.

78. Enforceability of Plan Documents. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan and all Plan-related documents shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

79. Ownership and Control. The consummation of the Plan shall not, unless the Debtors expressly agree in writing, constitute a change of ownership or change in control, as such terms are used in any statute, regulation, contract or agreement (including, but not limited to, any agreements assumed by the Debtors pursuant to the Plan or otherwise and any agreements related to employment, severance or termination agreements or insurance agreements) in effect on the Effective Date and to which any of the Debtors is a party.

80. Exemption from Transfer Taxes and Recording Fees. Pursuant to section 1146(a) of the Bankruptcy Code, none of the issuance, Transfer or exchange of notes or equity securities under the Plan, the creation, the filing or recording of any mortgage, deed of trust or other security interest, the making, assignment, filing or recording of any lease or sublease, the transfer of title to or ownership of any of the Debtors' interests in any property, including aircraft, aircraft equipment or spare parts, or the

making or delivery of any deed, bill of sale or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, the New Common Stock or agreements of consolidation, deeds, bills of sale or assignments executed in connection with any of the transactions contemplated under the Plan, shall be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, Cape Town Filing or recording fee, FAA filing or recording fee or other similar tax or governmental assessment in the United States. All sale transactions consummated by the Debtors and approved by the Court including, without limitation, the transfers effectuated under the Plan, the sale by the Debtors of owned property or assets pursuant to section 363(b) of the Bankruptcy Code, and the assumption, assignment and sale by the Debtors of unexpired leases of non-residential real property pursuant to section 365(a) of the Bankruptcy Code, are deemed to have been made under, in furtherance of, or in connection with the Plan and, therefore, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, Cape Town filing or recording fee, FAA filing or recording fee or other similar tax or governmental assessment in the United States. The appropriate federal, state and/or local governmental officials or agents are hereby directed to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

81. Effectiveness of All Actions. All actions authorized to be taken pursuant to the Plan shall be effective on, prior to or after the Effective Date pursuant to this Confirmation Order, without further application to, or order of the Court, or further action by the respective officers, directors, members or stockholders of Reorganized Pinnacle Holdings or the other Reorganized Debtors and with the effect

that such actions had been taken by unanimous action of such officers, directors, members or stockholders.

82. Approval of Consents. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules and regulations of all states and any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts and transactions referred to in or contemplated by the Plan, the Plan Supplements, the Disclosure Statement, the Plan Supplements, and any documents, instruments or agreements, and any amendments or modifications thereto.

83. Payment of Professionals. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay all Professionals in the ordinary course of business (including with respect to the month in which the Effective Date occurs) without any further notice to, action by or order or approval of this Court or any other party. Professionals shall be paid pursuant to the "Monthly Statement" process set forth in the Interim Compensation Order with respect to all calendar months ending prior to the Effective Date.

84. Dissolution of Creditors' Committee. Upon the Effective Date, the Creditors' Committee shall dissolve automatically, and their members shall be released and discharged from all rights, duties, responsibilities and liabilities arising from, or related to, the Chapter 11 Cases and under the Bankruptcy Code.

85. Resolution of Informal Objection from Texas. The injunction in Section 12.4 of the Plan and any similar injunction in this Confirmation Order or sections 524 or 1141 of the Bankruptcy Code shall not impair any defensive right of setoff of the Texas Comptroller of Public Accounts or the Texas

Workforce Commission (collectively, "**State of Texas**"), to the extent the State of Texas otherwise has a valid right of setoff.

86. Notwithstanding any provision in the Plan or this Confirmation Order to the contrary, in full and final satisfaction of Proofs of Claim number 1516, 1520 and 1606, the State of Texas shall have an Allowed Priority Tax Claim against the Debtors in the amount of $224,831.53, which shall be paid on or within 30 days after the Effective Date.

87. Resolution of Objection from Tennessee. Notwithstanding anything contained in the Plan or this Confirmation Order to the contrary, nothing in the Plan or this Confirmation Order shall impair or otherwise preclude any valid and enforceable right of setoff or recoupment of the Tennessee Department of Revenue against the Debtors or the Reorganized Debtors.

88. Resolution of Flight 3407 Plaintiffs' Informal Objection. Neither the treatment or classification of the Punitive Damages Claims in the Plan, nor any failure by any creditor holding a Punitive Damages Claim to object to the same, shall affect in any way: (i) the pursuit of such claim(s) on the merits in any jurisdiction; (ii) the availability of any insurance coverage in respect of such Punitive Damages Claims; or (iii) the treatment of any Punitive Damages Claim(s) in any other forum. For the avoidance of doubt, neither this Confirmation Order nor the Plan shall constitute a determination as to whether an award or judgment in any forum in connection with a Punitive Damages Claim against the Debtors is appropriate or necessary.

89. Nothing in the Plan or this Confirmation Order shall enjoin or impair the rights of those certain plaintiffs (the "**Flight 3407 Plaintiffs**") in litigation pending in various state and federal courts and relating to Continental Connection Flight 3407 operated by Colgan on February 12, 2009 (the "**Flight 3407 Litigation**") to (i) proceed to final judgment or settlement with respect to their claims relating to the Flight 3407 Litigation or (ii) attempt to recover any liquidated final judgment or settlement; *provided* that such claims shall only be entitled to (x) recover from any available insurance

proceeds and (y) be treated as Other General Unsecured Claims and Punitive Damage Claims, as applicable, under the Plan, and in no event shall such Flight 3407 Plaintiffs be entitled to any other type of payment from the Debtors, the Reorganized Debtors or, solely to the extent released under the Plan, any Released Parties on account of such claims; *provided further* that this provision shall not limit the rights, if any, of the Unsecured Claims Trustee to seek to estimate such claims in accordance with the Plan and applicable law.

90. The Debtors agree:

(a) While the Debtors deny responsibility for and liability on account of the claims asserted by the Flight 3407 Plaintiffs, the Debtors believe that such claims, including any Punitive Damages Claims, if awarded by a Final Order, are covered by, and payable under, the available insurance coverage, which has a $1,750,000,000 aggregate limit, although the Debtors acknowledge that the insurers believe that a judicial decision will be required to determine whether state or federal law will limit their ability to indemnify Pinnacle for any punitive damages portion of a Final Order thereon. The Debtors have not received any disclaimer or denial of coverage notice from their relevant insurance carriers concerning any claims, including but not limited to Punitive Damages Claims, asserted by the Flight 3407 Plaintiffs. However, the Debtors have received letters from the lead insurer stating that it may be "constrained in its ability to indemnify punitive damages by reason of incorporated state and/or federal law, policy and/or regulation," and until there has been a determination on the applicable law they are "not able to determine or anticipate the availability of [the policy's] insurance benefits, if any, regarding the punitive damages aspect of claimants' claims and lawsuits." The Debtors' insurance policy states:

> The Policy shall be construed and governed by the laws of the State of Georgia. Terms of this Policy which are in conflict with the statutes of any State wherein this Policy has application are hereby amended to conform to such statutes.

> All disputes arising under this Policy, including without limitation any dispute involving the coverage available hereunder, shall be governed by the Law of the State of Georgia and determined exclusively in the Georgia courts.

The Debtors represent that their lead insurer has stated that the applicable insurance policy "does not expressly exclude or otherwise prevent indemnification of punitive damages.

(b) In the event that the Flight 3407 Plaintiffs, or any of them, obtain a Final Order in any forum entitling them to recover on their claims, including but not limited to any Punitive Damages Claims, and the relevant insurer refuses to pay any part of such final judgment, or in the event that a declaratory judgment action or other proceeding designed to confirm the payability for the claims of the Flight 3407 Plaintiffs, including but not limited to any Punitive Damages Claims, is commenced in any forum, the Debtors confirm that they will neither prevent, object to, nor otherwise take any action to impair the Flight 3407 Plaintiffs, or any of them, from obtaining a determination (A) regarding the payability under the Debtors' relevant insurance policies for such claims and/or (B) requiring the relevant insurers to cover such claims.

(c) Furthermore, in the event that any insurer, through the commencement of a declaratory judgment action or other proceeding against any of the Debtors or otherwise, seeks to confirm or deny coverage for, or payability of, the claims of the Flight 3407 Plaintiffs, including but not limited to any Punitive Damage Claims, then the Debtors agree (A) not to object to or contest any intervention by any Flight 3407 Plaintiffs in any such declaratory judgment or other proceeding and (B) upon written request of any Flight 3407 Plaintiff, to take such actions (at the sole reasonable expense of the requesting Flight 3407 Plaintiffs) as may be reasonably necessary to allow any such Flight 3407 Plaintiff to participate in such declaratory judgment or other proceeding; *provided*, that the Debtors shall not be required to (1) take any action they in good faith determine would constitute a breach of any applicable insurance agreement or compromise the availability of the applicable insurance coverage or (2) assign any of their rights under any

insurance agreement without the consent of the applicable insurers unless otherwise ordered by a court of competent jurisdiction.

91. Resolution of Informal Objection from the United States. As to the United States of America, its agencies, departments, or agents (collectively, the "**United States**"), nothing in the Plan or this Confirmation Order shall limit or expand the scope of discharge, release or injunction to which the Debtors or Reorganized Debtors are entitled to under the Bankruptcy Code, if any. The discharge, release and injunction provisions contained in the Plan and this Confirmation Order are not intended and shall not be construed to bar the United States from, subsequent to this Confirmation Order, pursuing any police or regulatory action to the extent such police or regulatory action does not seek payment of a Claim that has been discharged in this bankruptcy.

92. Accordingly, notwithstanding anything contained in the Plan or this Confirmation Order to the contrary, nothing in the Plan or this Confirmation Order shall discharge, release, impair or otherwise preclude (except as such discharge, release, impairment or preclusion is otherwise permitted by applicable law): (1) any liability to the United States that is not a "claim" within the meaning of section 101(5) of the Bankruptcy Code; (2) any Claim of the United States arising on or after the Confirmation Date; (3) any valid and enforceable right of setoff or recoupment of the United States against any of the Debtors; or (4) any liability of the Debtors or Reorganized Debtors, respectively, under environmental law to any Governmental Unit (as defined by section 101(27) of the Bankruptcy Code) because of such entity's ownership or operation of property, in the case of the Debtors, beginning after the Confirmation Date and through and including the Effective Date, and in the case of the Reorganized Debtors, on and after the Effective Date. Except as otherwise permitted by applicable law, nothing in this Confirmation Order or the Plan shall: (i) enjoin or otherwise bar the United States or any Governmental Unit from asserting or enforcing, outside the Bankruptcy Court, any liability described in the preceding sentence; or (ii) divest any court, commission, or tribunal of jurisdiction to determine

whether any liabilities asserted by the United States or any Governmental Unit are discharged or otherwise barred by this Confirmation Order, the Plan, or the Bankruptcy Code.

93. Moreover, nothing in this Confirmation Order or the Plan shall release or exculpate any non-debtor, including any Released Parties, from any liability to the United States, including but not limited to any liabilities arising under the Internal Revenue Code, the environmental laws, or the criminal laws against the Released Parties, nor shall anything in this Confirmation Order or the Plan enjoin the United States from bringing any claim, suit, action or other proceeding against the Released Parties for any liability such entity may have; provided, however, that the foregoing sentence shall not (a) limit the scope of discharge granted to the Debtors under sections 524 and 1141 of the Bankruptcy Code; (b) diminish the scope of any exculpation, solely to the extent that any party is entitled to such exculpation in under section 1125(e) of the Bankruptcy Code; or (c) affect the releases provided by the Debtors under the Plan.

94. Nothing contained in the Plan or this Confirmation Order shall be deemed to determine the tax liability of any person or entity, including but not limited to the Debtors and the Reorganized Debtors, nor shall the Plan or this Confirmation Order be deemed to have determined the federal tax treatment of any item, distribution, or entity, including the federal tax consequences of the Plan, nor shall anything in the Plan or this Confirmation Order be deemed to have conferred jurisdiction upon the Bankruptcy Court to make determinations as to federal tax liability and federal tax treatment except as provided under 11 U.S.C. § 505.

95. Nothing in the preceding four paragraphs shall (i) be construed to create for any governmental unit any substantive right that does not already exist under applicable law or (ii) limit in any respect the substantive rights of any party, including the Debtors, under the Bankruptcy Code or applicable law. No failure by the United States to object to any particular provision of the Plan or this Confirmation Order shall estop or otherwise prejudice the United States from later asserting that such

provision of the Plan or this Confirmation Order violates applicable law. To the extent the United States asserts that a provision violates applicable law, the Debtors shall not argue or assert in response that any such provision of the Plan or this Confirmation Order is enforceable against the United States by virtue of any failure of the United States to file an objection prior to confirmation of the Plan.

96. Disclosure: Agreements and Other Documents. The Debtors have disclosed all material facts regarding: (a) the New Certificate of Incorporation and similar constituent documents, (b) the selection of directors and officers for the Reorganized Debtors, (c) the restructuring transactions described in section 6.7 of the Plan and the Plan Supplements, (d) the distribution of Cash, (e) the New Common Stock, (f) the other matters provided for under the Plan involving corporate action to be taken by or required of the Reorganized Debtors, and (g) all contracts, leases, instruments, releases, indentures and other agreements related to any of the foregoing.

97. Binding Effect. The Plan shall be binding upon and inure to the benefit of the Debtors, the Reorganized Debtors, the Unsecured Claims Trustee, all present and former holders of Claims or Interests and their respective heirs, executors, administrators, successors and assigns.

98. Governing Law. Except to the extent that the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit to the Plan or a schedule or Plan Document provides otherwise, the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflict of laws thereof.

99. Notice of Entry of Confirmation Order and Effective Date. Pursuant to Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c), the Reorganized Debtors shall file and serve notice of entry of this Confirmation Order and Effective Date in substantially the form annexed hereto as Exhibit B (the "**Notice of Confirmation**") on all holders of Claims and Interests, the United States Trustee for the Southern District of New York, the Unsecured Claims Trustee, Delta, the attorneys for the Creditors'

Committee and other parties-in-interest by causing the Notice of Confirmation to be delivered to such parties by first-class mail, postage prepaid, within 10 business days after the Effective Date. The Notice of Confirmation shall also be published in *The Wall Street Journal*, *National Edition*, and posted on the Debtors' case information website (located at http://dm.epiq11.com/Pinnacle). Such notice is adequate under the particular circumstances and is approved and no other or further notice is necessary. Such Notice of Confirmation shall also serve as the notice setting forth the Other Administrative Claim Bar Date required by section 8.2 of the Plan and as the notice of the Effective Date.

100. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

101. Post-Confirmation Order. Unless otherwise ordered by the Court, on and after the Effective Date, the requirements of Local Bankruptcy Rule 3021-1 are hereby waived with respect to the Reorganized Debtors.

102. References to Plan Provisions. The failure to include or specifically describe or reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Plan be approved and confirmed in its entirety.

103. Findings of Fact. The determinations, findings, judgments, decrees and orders set forth and incorporated herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. Each finding of fact set forth or incorporated herein, to the extent it is or may be deemed a conclusion of law, shall also constitute a conclusion of law. Each conclusion of law set forth or incorporated herein, to the extent it is or may be deemed a finding of fact, shall also constitute a finding of fact.

104. Conflicts Between Confirmation Order, Plan and Unsecured Claims Trust Agreement. The provisions of the Plan, the Unsecured Claims Trust Agreement and of this Confirmation Order shall

be construed in a manner consistent with each other so as to effect the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of the Plan, any provision of the Unsecured Claims Trust Agreement and/or any provision of this Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, (i) the provisions of this Confirmation Order shall govern over the provisions of the Plan and the Unsecured Claims Trust Agreement and any such provision of this Confirmation Order shall be deemed a modification of the Plan or the Unsecured Claims Trust Agreement and shall control and take precedence and (ii) the provisions of the Plan shall govern over the provisions of the Unsecured Claims Trust Agreement and any such provision of the Plan shall be deemed a modification of the Unsecured Claims Trust Agreement and shall control and take precedence.

105. Final Order. This Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof. Notwithstanding Bankruptcy Rule 3020(e) or any other Bankruptcy Rule, this Order shall be immediately effective and enforceable upon its entry.

Dated: ***April 17, 2013***
New York, New York

s/ Robert E. Gerber
The Honorable Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

Tab 6

Hearing Date & Time: March 8, 2017 at 11:00 a.m. (Eastern Time)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**:**	**Chapter 11 Case No.**
REPUBLIC AIRWAYS HOLDINGS INC., *et al.*,	**:**	**16-10429 (SHL)**
Debtors.[1]	**:**	**(Jointly Administered)**

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AND IN REPLY TO RESPONSES TO THE PLAN

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1. The Debtors in these chapter 11 cases are the following entities: Republic Airways Services, Inc.; Shuttle America Corporation; Republic Airline Inc.; Republic Airways Holdings Inc.; Midwest Air Group, Inc.; Midwest Airlines, Inc.; and Skyway Airlines, Inc. The Debtors' employer tax identification numbers and addresses are set forth in their respective chapter 11 petitions.

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TO THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE:

PRELIMINARY STATEMENT

Republic Airways Holdings Inc. ("RAH"), and certain of its wholly-owned direct and indirect subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively with RAH, "Republic" or the "Debtors"), submit this Memorandum of Law in support of confirmation of the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated December 19, 2016 (as the same has been or may be amended, modified, supplemented, or restated, the "Plan")[1] (ECF No. 1360).

On December 23, 2016, this Court entered an order (the "Original Solicitation Order") (ECF No. 1358) approving the Disclosure Statement and solicitation procedures, which was supplemented by supplemental orders dated January 24, 2017 (ECF No. 1432) and February 10, 2017 (ECF No. 1472) (the "Supplemental Solicitation Orders," and together with the Original Solicitation Order, the "Solicitation Order"), scheduling the hearing on confirmation of the Plan (the "Confirmation Hearing") for March 8, 2017, at 11:00 a.m. Prevailing Eastern Time.

This Memorandum, the Declaration of Bryan K. Bedford in Support of Confirmation of the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Bedford Declaration"), the Declaration of Joseph P. Allman in Support of Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Allman Declaration"), the Declaration of Ginger Hughes in Support of Confirmation of the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Hughes Declaration"), the Declaration of John E. Luth in Support of Confirmation of the Debtors' Second Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy

1. Capitalized terms not defined herein have the meanings ascribed to them in the Plan.

Code (the "Luth Declaration"), and the Certification of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Tabulation Certification") present a comprehensive analysis of the grounds supporting confirmation of the Plan. These documents demonstrate that the Plan complies with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Bankruptcy Rules, and provide the legal and evidentiary basis necessary for this Court to confirm the Plan. The Debtors therefore respectfully request that the Court confirm the Plan.

The Plan is designed to effectuate the objectives and purposes of the Bankruptcy Code by maximizing recoveries to parties in interest. The Plan has been proposed by the Debtors in good faith and in the belief that it will maximize the value of the ultimate recoveries to creditors on a fair and equitable basis. The Plan is the product of extensive, good-faith negotiations among the Debtors and the official committee of unsecured creditors (the "Committee") regarding the treatment of general unsecured claims under the Plan, among other things. As a result of these negotiations, the Plan is supported by the Committee.

The Plan effectuates the reorganization and continued operation of the Consolidated Debtors and the liquidation of the Liquidating Debtors. All priority claims will be paid in full, secured claims will be unimpaired, general unsecured claims against the Consolidated Debtors will receive distributions of cash or stock at their election, and holders of General Unsecured Claims against the non-operating, Liquidating Debtors and holders of Interests in RAH will receive no distributions. Republic Airline and Shuttle America have been merged and will operate under Republic Airline's air carrier certificate. The Plan will preserve more than 5,200

jobs and ensure the safe and reliable operation of nearly 900 flights per day in the Midwest, mid-Atlantic, and northern United States.

FACTS

The pertinent facts are set forth in the Disclosure Statement, the Plan, and any testimony and declarations that may be adduced or submitted at or prior to the Confirmation Hearing. Such facts are incorporated herein as if fully set forth herein.

ARGUMENT

I. THE UNRESOLVED RESPONSES TO CONFIRMATION OF THE PLAN SHOULD BE OVERRULED.

As has been the practice throughout these cases, the Debtors have worked with the parties that have filed formal objections and those that presented informal requests for clarifications to certain provisions of the Plan (collectively, the "Responses") and, as set forth in the Responses Summary attached hereto as Exhibit A, have resolved many of the Reponses. The Debtors have summarized the Responses and related resolutions on the Responses Summary.

The remaining Responses consist of Responses filed by individual *pro se* litigants (the "Pro Se Responses"),[2] the response filed by Safran Nacelles f/k/a Aircelle and Safran Europe Services ("Safran") (ECF No. 1518, the "Safran Objection"), and the objection filed by Wells Fargo Bank Northwest, N.A., as owner trustee, and ALF VI, Inc. (together, "Residco") (ECF No. 1534, the "Residco Objection"). Contemporaneously herewith, the Debtors filed their reply to the Residco Objection (the "Residco Response"). As demonstrated below and in the Residco Response, any objections, including any contained in the Responses and the Residco Objection should be overruled and the Plan should be confirmed.

2. By order dated January 5, 2017 (ECF No. 1391), the court stated that it would treat certain letters submitted to the Court as objections to the Plan. The Pro Se Responses include the letters that were the subject of the Court's order and similar letters that were filed subsequently.

A. The Pro Se Responses

Several individual *pro se* litigants have filed letters objecting to the Plan's treatment of RAH's shareholders (ECF Nos. 1241, 1380, 1384, 1403, 1519). In general, these Pro Se Responses dispute the lack of value available to the holders of RAH's stock. However, as described below, the Debtors have performed a liquidation analysis showing that each member of an impaired Class will receive under the Plan at least, if not more, than that member would otherwise receive in a chapter 7 liquidation. *See infra* Section II.A.6. The Debtors have also performed and submitted a valuation analysis, annexed as Exhibit "E" to the Disclosure Statement, showing that holders of Allowed General Unsecured Claims against the Consolidated Debtors are estimated to recover only a fraction of their Allowed Claims. The Pro Se Responses have not offered evidence to the contrary, and their arguments do not change the unfortunate reality that the Plan leaves even holders of Allowed General Unsecured Claims of the Consolidated Debtors significantly impaired.

One Pro Se Response further asserts that the Plan gives control of the Debtors to an "oligopoly of Delta, American and United [A]irlines" (ECF No. 1403). This Pro Se Response provides no legal basis for an objection to the Plan. The corporate governance documents set forth in the Plan Supplement provide for a governance structure with checks and balances that distribute control of the Debtors in accordance with Delaware state law and in compliance with the Bankruptcy Code. Moreover, on February 9, 2017, the Debtors filed a Notification and Report Form required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with the Premerger Notification Office of the Federal Trade Commission (the "FTC") and the Antitrust Division of the Department of Justice (the "DOJ"). The FTC and the DOJ are independently reviewing the transactions contemplated under the Plan. Effectiveness of the Plan is conditioned

on the Debtors' receipt of "any authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions, or documents that are necessary to implement the Plan and that are required by law, regulation, or order." (*See* Plan § 12.1(c).)

Accordingly, the Debtors respectfully request that the Pro Se Responses be overruled.

B. The Safran Objection.

Safran objected to the Plan on the basis that "it fails to account for the Post-Petition Amounts due and owing to Safran that should be paid by the Debtors in the ordinary course of business." Section 3.3 of the Plan provides:

> Allowed Other Administrative Claims with respect to . . . liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases . . . shall be paid in full and performed by the Post-Effective Date Debtors in the ordinary course of business (or as otherwise approved by the Bankruptcy Court) in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

Accordingly, Safran's objection should be overruled as the Plan provides for payment of post-petition liabilities in the ordinary course of business.

II. NON-MATERIAL PLAN MODIFICATIONS SATISFY SECTION 1127(A) OF THE BANKRUPTCY CODE.

The Debtors will seek prior to confirmation, pursuant to section 1127(a) of the Bankruptcy Code, approval of certain non-material modifications (the "Modifications") to the Plan to reflect the removal of Residco from the definition of "Released Parties" and "Exculpated Parties." Non-debtor releases and exculpations are permissible "when the provisions are important to a debtor's plan; where the claims are 'channeled' to a settlement fund, rather than extinguished; where the enjoined claims would indirectly impact the debtor's reorganization by way of indemnity or contribution; where the released party otherwise provides substantial consideration; where the plan otherwise provides for the full payment of the enjoined claims; or where the creditors consent." *In re Genco Shipping & Trading Ltd.*, 513 B.R. 233, 269 (Bankr. S.D.N.Y. 2014). As

further detailed in the Residco Response, the Plan currently provides for the release and exculpation of all the members of the Committee premised on each of their substantial contribution to the Plan process, including confirmation of the Plan. However, by the Residco Objection, Residco is not contributing to the process; to the contrary, Residco is attempting to hinder and delay the Plan process solely to further its own economic interests and extract preferential treatment at the expense of all other creditors. Accordingly, Residco does not qualify for release or exculpation under the Plan.

Section 1127(a) of the Bankruptcy Code provides as follows:

> The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.

11 U.S.C. § 1127(a). Courts recognize that section 1127(a) of the Bankruptcy Code authorizes nonmaterial modifications to a chapter 11 plan by its proponent at any time before confirmation, as long as the plan, as modified, satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code. *See In re Cellular Info. Sys., Inc.*, 171 B.R. 926, 929 n.6 (Bankr. S.D.N.Y. 1994) (holding that "nonmaterial modifications [to a plan] . . . do not require resolicitation of the respective impaired classes of creditors and equity security holders").

The proposed Modifications do not alter the classification of claims and therefore do not implicate the classification requirements of section 1122 of the Bankruptcy Code. In addition, as described above, the proposed Modifications do not affect compliance with the requirements of section 1123. Accordingly, the Modifications satisfy the requirements of section 1127(a) of the Bankruptcy Code.

Section 1127(c) of the Bankruptcy Code requires the proponent of a plan modification to comply with section 1125 of the Bankruptcy Code "with respect to the plan as modified." 11

U.S.C. § 1127(c). In addition, Rule 3019 provides as follows:

> In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

Fed. R. Bankr. P. 3019(a).[3]

Only modifications that are "material" require solicitation. *In re Am. Solar King Corp.*, 90 B.R. 808, 823 (Bankr. W.D. Tex. 1988). As discussed in *American Solar King*, modifications to a plan do "not necessarily mandate the preparation of a new disclosure statement and resolicitation of the plan . . . ." 90 B.R. at 823. Instead, "[f]urther disclosure occurs only when and to the extent that the debtor intends to solicit votes from previously dissenting creditors or when the modification materially and adversely impacts parties who previously voted for the plan." *Id.* In order to determine whether a modification is material, "[t]he severity of the modification need not be such as would motivate a claimant to *change* their vote—only that they would be apt to *reconsider* acceptance. A modification which is not likely to trigger such reconsideration *de facto* satisfies section 1125 disclosure requirements." *Id.* at 824 (emphasis in original). With respect to determining whether a modification should be deemed accepted, "if a modification does not 'materially' impact a claimant's treatment, the change is not adverse and the court may deem that prior acceptances apply to the amended plan as well." *Id.* at 826; *see also In re Simplot*, No. 06-

3. The Debtors respectfully submit that they have provided appropriate notice and opportunity to be heard under the circumstances pursuant to Rule 3019 and section 102(1)(A) of the Bankruptcy Code as any response to the Modifications may be addressed at the Confirmation Hearing. Such modifications may be proposed in a shortened time period in advance of confirmation, and a hearing on the proposed modifications may be combined with a confirmation hearing. *See In re Kmart Corp.*, No. 02-02474, 2006 WL 952042, at *28 (Bankr. N.D. Ill. Apr. 11, 2006); 9 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 3019.01 (16th ed. 2016); *see also* 7 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 1127.03[1][b] (16th ed. 2016).

00002-TLM, 2007 WL 2479664, at *11 (Bankr. D. Idaho 2007) ("Plan modifications do not require a new disclosure statement and court approval unless the modifications are material." (citing *In re Downtown Inv. Club III*, 89 B.R. 59, 65 (9th Cir. BAP 1988))); 7 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 1127.03[1][b] (16th ed. 2016)); *In re E. Sys., Inc.*, 118 B.R. 223, 226 (Bankr. S.D.N.Y. 1990) ("Rule 3019 provides for no new vote on an immaterial modification or a modification accepted by those adversely affected by it.").

In addition, allowing the Debtors to promptly confirm the Plan and emerge from chapter 11 without resoliciting votes conforms with a fundamental policy behind the Bankruptcy Code "'to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period . . . .'" *In re First Cent. Fin. Corp.*, 377 F.3d 209, 217 (2d Cir. 2006) (quoting *Katchen v. Landy*, 382 U.S. 323, 328-29 (1966)); *see also* Fed R. Bankr. P. 1001 ("These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding.").

Accordingly, the Debtors respectfully submit that additional disclosure or solicitation of votes is not required, the Modifications should be approved, and the Plan with such Modifications should be deemed accepted.

III. THE PLAN SATISFIES SECTION 1129 OF THE BANKRUPTCY CODE.

To achieve confirmation of the Plan, the Debtors must demonstrate that the Plan satisfies section 1129 of the Bankruptcy Code by a preponderance of the evidence. As the United States Court of Appeals for the Fifth Circuit stated in *Heartland Federal Savings & Loan Association v. Briscoe Enterprises, Ltd., II (In re Briscoe Enterprises, Ltd., II)*, "[t]he combination of legislative silence, Supreme Court holdings, and the structure of the [Bankruptcy] Code leads this Court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof under

both § 1129(a) and in a cramdown." 994 F.2d 1160, 1165 (5th Cir. 1993); *see In re Chemtura Corp.*, 439 B.R. 561, 608 (Bankr. S.D.N.Y. 2010); *In re Young Broad. Inc.*, 430 B.R. 99, 128 (Bankr. S.D.N.Y. 2010); *JPMorgan Chase Bank, N.A. v. Charter Commc'ns Operating, LLC (In re Charter Commc'ns)*, 419 B.R. 221, 244 (Bankr. S.D.N.Y. 2009); *see also In re Kent Terminal Corp.*, 166 B.R. 555, 561 (Bankr. S.D.N.Y. 1994) (holding that "the final burden of proof at . . . confirmation hearings remains a preponderance of the evidence").

Through the Declarations submitted in connection with the Confirmation Hearing and the evidence to be presented at the Confirmation Hearing, the Debtors will demonstrate, by a preponderance of the evidence, that all the applicable subsections of section 1129[4] of the Bankruptcy Code have been satisfied with respect to the Plan.

A. The Plan Satisfies the Requirements of Section 1129(a) of the Bankruptcy Code

1. The Plan Complies with All Applicable Provisions of the Bankruptcy Code

Under section 1129(a)(1) of the Bankruptcy Code, a plan must comply with the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(l). The legislative history of section 1129(a)(1) explains that this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code governing classification of claims and contents of the plan, respectively. *See* H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978); *see also Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 648-49 (2d Cir. 1988); *In re Drexel Burnham Lambert Grp. Inc.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992). As demonstrated below, the Plan complies fully with the requirements of both of these sections as

4. The confirmation requirements set forth in subsections (a)(6), (14), (15), and (16) of section 1129 are not applicable to the Plan. Section 1129(a)(6) concerns the need for government approval of rate changes subject to government regulatory jurisdiction; section 1129(a)(14) concerns debtors required by order or statute to pay domestic support obligations; section 1129(a)(15) applies to individual debtors; and section 1129(a)(16) is only relevant to the mechanism by which certain property is transferred under circumstances not applicable here.

well as with all other applicable provisions of the Bankruptcy Code. *Aetna Cas. & Sur. Co. v. Clerk, U.S. Bankr. Court, N.Y., N.Y. (In re Chateaugay Corp.)*, 89 F.3d 942, 949 (2d Cir. 1996); *see also In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 246-47 (Bankr. S.D.N.Y. 2007) (explaining law on classification of claims as interpreted within the Second Circuit).

(a) The Plan Complies with All Applicable Provisions of the Bankruptcy Code

Section 1122(a) of the Bankruptcy Code provides: "Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). Under this section, a plan may provide for multiple classes of claims or interests as long as each claim or interest within a class is substantially similar to other claims or interests in that class.

The Plan provides for separate classification of Claims and Interests in thirteen Classes based upon differences in the legal nature and/or priority of such Claims and Interests:[5]

- **Class 1(a)** provides for the separate classification of all Other Priority Claims (Consolidated Debtors) identified in section 507(a) of the Bankruptcy Code that are entitled to priority in payment (other than Administrative Claims and Priority Tax Claims);
- **Class 1(b)** provides for the separate classification of all Other Priority Claims (MAGI) identified in section 507(a) of the Bankruptcy Code that are entitled to priority in payment (other than Administrative Claims and Priority Tax Claims);
- **Class 1(c)** provides for the separate classification of all Other Priority Claims (Midwest) identified in section 507(a) of the Bankruptcy Code that are entitled to priority in payment (other than Administrative Claims and Priority Tax Claims);
- **Class 1(d)** provides for the separate classification of all Other Priority Claims (Skyway) identified in section 507(a) of the Bankruptcy Code that are entitled to priority in payment (other than Administrative Claims and Priority Tax Claims);
- **Class 2(a)** provides for the separate classification of Reinstated Aircraft Secured Claims (Consolidated Debtors);

5. Administrative Claims and Priority Tax Claims are treated separately and not classified.

- **Class 2(b)** provides for the separate classification of Other Secured Claims (Consolidated Debtors)
- **Class 3(a)** provides for the separate classification of General Unsecured Claims (Consolidated Debtors);
- **Class 3(b)** provides for the separate classification of General Unsecured Claims (MAGI);
- **Class 3(c)** provides for the separate classification of General Unsecured Claims (Midwest);
- **Class 3(d)** provides for the separate classification of General Unsecured Claims (Skyway);
- **Class 4** provides for the separate classification of Section 510(b) Claims;
- **Class 5** provides for the separate classification of Interests in RAH; and
- **Class 6** provides for the separate classification of Subsidiary Interests.

Each of the Claims or Interests in each particular Class is substantially similar to the other Claims or Interests in such Class. Accordingly, the classification of Claims and Interests in the Plan complies with section 1122 of the Bankruptcy Code. *See In re Charter Commc'ns*, 419 B.R. at 264 n.35 (explaining that debtors "enjoy considerable discretion when classifying similar claims in different classes").

(b) Contents of the Plan

Section 1123(a) of the Bankruptcy Code sets forth certain requirements with which the proponent of every chapter 11 plan, other than individual debtors, must comply.[6] 11 U.S.C. § 1123(a). As demonstrated herein, the Plan fully complies with each such requirement.

Article 4 of the Plan designates Classes of Claims and Interests as required by section 1123(a)(1). In addition to Administrative Claims and Priority Tax Claims, which are described in Article 3 and need not be designated, Article 4 of the Plan designates thirteen Classes of Claims and Interests. Valid business, factual, and legal reasons exist for the various Classes of

6. An eighth requirement, set forth in 11 U.S.C. § 1123(a)(8), only applies in a case in which the debtor is an individual.

Claims and Interests provided for under the Plan. Article 4 of the Plan specifies that Class 1(a) (Other Priority Claims (Consolidated Debtors)), Class 1(b) (Other Priority Claims (MAGI)), Class 1(c) (Other Priority Claims (Midwest)), Class 1(d) (Other Priority Claims (Skyway)), Class 2(a) (Reinstated Aircraft Secured Claims (Consolidated Debtors)), and Class 2(b) (Other Secured Claims (Consolidated Debtors)) (collectively, the "Unimpaired Classes") are unimpaired under the Plan, as required by section 1123(a)(2) of the Bankruptcy Code. Article 4 of the Plan also designates Class 3(a) (General Unsecured Claims (Consolidated Debtors)), Class 3(b) (General Unsecured Claims (MAGI)), Class 3(c) (General Unsecured Claims (Midwest)), Class 3(d) (General Unsecured Claims (Skyway)), Class 4 (Section 510(b) Claims), Class 5 (Interests in RAH), and Class 6 (Subsidiary Interests) (collectively, the "Impaired Classes") as impaired and specifies the treatment of Claims and Interests in such Classes, as required by section 1123(a)(3) of the Bankruptcy Code. The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest, as required by section 1123(a)(4) of the Bankruptcy Code.

Under the Plan, each holder of one or more Allowed Class 3(a) General Unsecured Claims in an aggregate amount equal to or less than $500,000.00 shall receive, in respect of all of its Allowed Class 3(a) General Unsecured Claims, distribution(s) of Cash in an amount equal to 45% of the Allowed amount of its Class 3(a) General Unsecured Claim(s), up to a maximum distribution of $225,000 unless such Creditor elects on its Ballot to receive its Pro Rata Share of the New Common Stock. Each holder of one or more Allowed Class 3(a) General Unsecured Claims in an aggregate amount greater than $500,000.00 shall receive its Pro Rata Share of the New Common Stock on account of the allowed amount of such claim(s), unless it elects on its

Ballot to reduce the Allowed amount of its Class 3(a) General Unsecured Claim(s) to $500,000.00 and to receive Cash in lieu of its Pro Rata Share of the New Common Stock, in which case such Creditor shall receive cash in an amount equal to $225,000 in respect of all of its Allowed Class 3(a) General Unsecured Claims. The proposed treatment of Holders of Class 3(a) General Unsecured Claims is reasonable and necessary for administrative convenience and not discriminatory because this treatment may reduce the number of unsecured creditors who may otherwise receive New Common Stock under the Plan and thus will minimize or avoid governmental agency registration, reporting, and regulation costs. Unsecured creditors may elect to receive New Common Stock or cash.

Articles 6, 7, 8, 9, 10, and 11 and various other provisions of the Plan, as well as the various documents and agreements set forth in the Plan Supplement and the Schedules to the Plan, set forth the means for implementation of the Plan as required by section 1123(a)(5), including (i) the deemed substantive consolidation of RAH, Republic Airline,[7] and RASI, (ii) the liquidation and dissolution of nonoperating subsidiaries MAGI, Midwest, and Skyway, and (iii) the reorganization and continued operation of RAH, Republic Airline, and RASI, as described more fully below.

The Amended Certificate of Incorporation, the Amended Bylaws, and the amended certificates of incorporation for each of the other Reorganized Debtors conform to section 1123(a)(6) of the Bankruptcy Code's prohibition on the issuance of nonvoting equity securities, to the extent required, thereby satisfying section 1123(a)(6) of the Bankruptcy Code.

7. Pursuant to and in accordance with the Order Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 6004 for Approval of (I) Merger of Shuttle America Corporation Into Republic Airline Inc., and (II) Surrender of the Shuttle America Corporation Air Carrier Certificate, entered on November 28, 2016 (ECF No. 1236), on January 31, 2017, Shuttle was merged with and into Republic Airline. In connection with approval of the Merger, the Court found that the Debtors met the substantive consolidation standard with respect to Shuttle and Republic Airline. (Nov. 28, 2016 Hr'g Tr. 49:1-4, ECF No. 1252.)

The initial board of directors of Reorganized RAH will consist of seven (7) directors, including six (6) selected by the Committee in consultation with the Debtors and disclosed in the Plan Supplement and one (1) director who shall be Mr. Bryan Bedford, the current Chairman of the Board, President, and Chief Executive Officer of RAH. The identity of the persons proposed to serve as members of the initial board of directors of Reorganized RAH are set forth in the Plan Supplement filed on February 8, 2017 (ECF No. 1468). The replacement of members of the Reorganized Board will be governed by the Stockholders Agreement or the Amended Bylaws, as applicable. The boards of directors of each of the Consolidated Debtors other than Reorganized RAH will be the same as the members of the Reorganized Board. With respect to officers of the Consolidated Debtors, the existing officers of each of the Consolidated Debtors will remain in office on and after the effective date. The Plan Documents contain provisions regarding the manner of selection of the initial Reorganized Board and officers of the Consolidated Debtors and any successors to such directors that are consistent with the interests of creditors, equity security holders, and public policy in accordance with section 1123(a)(7) of the Bankruptcy Code.

Section 9.6 of the Plan provides that, on the Effective Date, Reorganized Midwest will assume and assign the Midwest Airlines, Inc. Pilots' Supplemental Pension Plan (the "Pension Plan") to RAH. RAH will continue to fund the Pension Plan in accordance with the minimum funding standards under the Internal Revenue Code and ERISA, pay all required PBGC insurance premiums, and administer and operate the Pension Plan in accordance with its terms and the provisions of ERISA.

Section 1123(b) of the Bankruptcy Code sets forth the permissive provisions that may be incorporated into a chapter 11 plan. Each provision of the Plan is consistent with section

1123(b). Specifically, Article 4 of the Plan describes the treatment (i) for the Unimpaired Classes and (ii) for the Impaired Classes, as contemplated by section 1123(b)(1).

Article 9 of the Plan provides for the deemed rejection of the executory contracts and unexpired leases of the Debtors under section 365 of the Bankruptcy Code, except for executory contracts or unexpired leases that have (i) been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) been the subject of a motion to assume or reject pending on the Effective Date, (iii) been listed on Schedule 9.1 to the Plan Supplement, or (iv) been the subject of a Treatment Objection that has been filed and properly served by the Treatment Objection Deadline, as contemplated by section 1123(b)(2).

In accordance with section 1123(b)(3) of the Bankruptcy Code, Article 11 of the Plan provides that, from and after the Effective Date, the Post-Effective Date Debtors waive and release all Avoidance Actions pursuant to section 547 of the Bankruptcy Code unless such Avoidance Action is listed on Schedule 11.12 to the Plan Supplement; provided that, except as expressly provided in Article 11 of the Plan or the Confirmation Order, the Post-Effective Date Debtors will retain the right to assert any Claims assertable in any Avoidance Action as defenses or counterclaims in any Cause of Action brought by any Creditor. The Post-Effective Date Debtors will retain the right, after the Effective Date, to prosecute any of the Avoidance Actions listed on Schedule 11.12 to the Plan Supplement.

Based upon the foregoing, the Plan complies fully with the requirements of sections 1122 and 1123, as well as with all other provisions of the Bankruptcy Code, and thus satisfies the requirement of section 1129(a)(1) of the Bankruptcy Code.

(c) Substantive Consolidation

The Plan is premised on the limited substantive consolidation, solely for the purposes specified in the Plan, of RAH, Republic Airline, and RASI. Article 2 of the Plan provides that, subject to Section 2.2(b) of the Plan, (i) all assets and liabilities of the Consolidated Debtors will be consolidated and treated as though they were merged, (ii) all guarantees of any Consolidated Debtor of the obligations of any other Consolidated Debtor will be eliminated so that any Claim against any Consolidated Debtor, any guarantee thereof executed by any other Consolidated Debtor and any joint or several liability of any of the Consolidated Debtors will be one obligation of the Consolidated Debtors, and (iii) each and every Claim filed or to be filed in the Chapter 11 Cases against any of the Consolidated Debtors will be deemed a single Claim against the Consolidated Debtors.

The substantive consolidation of the Consolidated Debtors as proposed in the Plan has three major effects. First, it eliminates intercompany Claims among RAH, Republic Airline, Shuttle, and RASI from the treatment scheme. Second, it eliminates guarantees of the obligations of each of the Consolidated Debtors to any of the other Consolidated Debtors. Third, each Claim filed against any of the Consolidated Debtors would be considered to be a single claim against the Consolidated Debtors. The substantive consolidation of the Consolidated Debtors will eliminate multiple and duplicative Claims as well as joint and several liability claims, and will afford payment of Allowed Claims against each of the Consolidated Debtors from a common fund.

The limited substantive consolidation effectuated pursuant to the Plan will not harm creditors of any of the Consolidated Debtors and will result in substantial benefits to the estates and creditors of each of the Consolidated Debtors. The limited substantive consolidation creates

administrative ease and is cost effective. Under the circumstances of the Chapter 11 Cases, it would be inefficient to propose, vote on, and make distributions in respect of entity-specific Claims. As no creditors will be detrimentally affected by the consolidation, the Court should approve the consolidation.

The legal bases and factual premises of the limited substantive consolidation effectuated pursuant to the Plan are further addressed in the Residco Response, which is incorporated herein in full by reference. It is notable that the Plan was accepted by approximately 94% of the creditors entitled to vote on the Plan in both number and amount. Moreover, other than the Residco Objection which is addressed in the Residco Response, no creditor has objected to the substantive consolidation as provided in the Plan. For the reasons stated in the Residco Response and herein, the Court should approve the substantive consolidation.

2. The Debtors Have Complied With the Provisions of the Bankruptcy Code

Section 1129(a)(2) of the Bankruptcy Code requires that a plan proponent comply with the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(2). The legislative history to section 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code. H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978) ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); *see also In re PWS Holding Corp.*, 228 F.3d 224, 248 (3d Cir. 2000); *In re Drexel Burnham Lambert Grp. Inc.*, 138 B.R. at 759.

The Debtors have complied with the applicable provisions of title 11, including the provisions of sections 1125 and 1126 regarding disclosure and plan solicitation. By the Solicitation Order, after notice and a hearing, the Court approved the Disclosure Statement

pursuant to section 1125(b) of the Bankruptcy Code as containing "adequate information" of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtors' creditors and equity interest holders to make an informed judgment regarding whether to accept or reject the Plan. As set forth in the Tabulation Certification, each holder of a claim in Class 3(a) was sent the solicitation materials required by the Solicitation Order, including the Disclosure Statement, a copy of the Plan, the Confirmation Hearing Notice, a letter recommending acceptance of the Plan from the Committee, and a Ballot in substantially the form set forth in Exhibit 2 to the Solicitation Order with a return envelope (such ballot and return envelope being referred to as a "Ballot"). The solicitation package was transmitted in connection with the solicitation of votes to accept the Plan in compliance with section 1125 and the Solicitation Order. 11 U.S.C. §§ 1125(b), (c). The Debtors did not solicit acceptances of the Plan prior to the transmission of the Disclosure Statement.

Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of the Plan. Under section 1126, only holders of Allowed Claims and Allowed Interests in impaired classes of Claims and Interests that will receive or retain property under the Plan on account of such Claims or Interests may vote to accept or reject the Plan. In accordance with section 1126 of the Bankruptcy Code, the Debtors solicited acceptances of the Plan from the holders of all Allowed Claims in the Class of impaired Claims that is entitled to vote to accept or to reject the Plan.[8] In accordance with Articles 4 and 5 of the Plan, the Debtors did not solicit acceptances from the holders of Claims or Interests, as applicable, in each Class of Claims and Interests that are not impaired and are conclusively presumed to have accepted the Plan.[9] In accordance with

8. The impaired Class entitled to vote under the Plan is Class 3(a) General Unsecured Claims.

9. 11 U.S.C. § 1126(f). The unimpaired Classes presumed to accept the Plan are the Unimpaired Classe.

Articles 4 and 5 of the Plan, the Debtors did not solicit acceptances from the holders of Claims or Interests, as applicable, in each impaired Class of Claims and Interests that will not receive any distribution under the Plan on account of such Claims or Interests impaired and are deemed to reject the Plan.[10] Based upon the foregoing, the requirements of section 1129(a)(2) have been satisfied.

3. The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law

Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). "Good faith is 'generally interpreted to mean that there exists a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" *In re Chemtura Corp.*, 439 B.R. at 608 (quoting *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984)). "Whether a reorganization plan has been proposed in good faith must be viewed in the totality of the circumstances, and the requirement of Section 1129(a)(3) 'speaks more to the process of plan development than to the content of the plan.'" *Id.* (quoting *In re Bush Indus., Inc.*, 315 B.R. 292, 304 (Bankr. W.D.N.Y. 2004)).

In addition to achieving a result consistent with the objectives of the Bankruptcy Code, the Plan also allows the Debtors' stakeholders to realize the highest possible recoveries under the circumstances. The Plan is the result of consensual resolutions and agreements between the Debtors, the Committee, and various other stakeholders. The support of the Plan by the Committee reflects its acknowledgment that the Plan provides fundamental fairness to general unsecured creditors. *Cf. In re The Leslie Fay Cos., Inc.*, 207 B.R. 764, 781 (Bankr. S.D.N.Y.

10. 11 U.S.C. § 1126(g). The impaired Classes deemed to reject the Plan are Class 3(b) (General Unsecured Claims (MAGI)), Class 3(c) (General Unsecured Claims (Midwest)), Class 3(d) (General Unsecured Claims (Skyway)), Class 4 (Section 510(b) Claims), Class 5 (Interests in RAH), and Class 6 (Subsidiary Interests).

1997) ("The fact that the plan is proposed by the committee as well as the debtors is strong evidence that the plan is proposed in good faith.").

Accordingly, the Plan has been filed in good faith and the requirements of section 1129(a)(3) are satisfied.

4. The Plan Provides that Payments Made by the Debtors for Services or Costs and Expenses Are Subject to Court Approval

Section 1129(a)(4) of the Bankruptcy Code provides that any payment made or to be made by the plan proponent, the debtor, or a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case or the plan, be subject to approval by the court as reasonable. 11 U.S.C. § 1129(a)(4). Section 1129(a)(4) has been construed to require that all payments of professional fees which are made from estate assets be subject to review and approval as to their reasonableness by the court. *See In re River Village Assocs.*, 161 B.R. 127, 141 (Bankr. E.D. Pa. 1993), *aff'd*, 181 B.R. 795 (E.D. Pa. 1995); *In re Resorts Int'l, Inc.*, 145 B.R. 412, 476 (Bankr. D.N.J. 1990); *In re Texaco Inc.*, 84 B.R. 893, 908 (Bankr. S.D.N.Y.), *appeal dismissed*, 92 B.R. 38 (S.D.N.Y. 1988).

Pursuant to the interim application procedures established under section 331 of the Bankruptcy Code, the Court authorized and approved the payment of certain fees and expenses of professionals retained in the Chapter 11 Cases. Section 3.4 of the Plan requires that all professionals seeking an award of compensation or reimbursement through the last day of the calendar month immediately preceding the Effective Date must file their final applications for allowance of such compensation or reimbursement no later than 60 days after the Effective Date of the Plan. Such fees and expenses will be subject to final review for reasonableness by the Court under sections 327, 328, 330, 331, and 503(b) of the Bankruptcy Code.

Based upon the foregoing, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

5. The Debtors Have Satisfied the Requirement To Disclose All Necessary Information Regarding Directors, Officers, and Insiders

Section 1129(a)(5) of the Bankruptcy Code requires that a plan proponent disclose the identities and affiliations of the proposed officers and directors of the reorganized debtors, that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy, and that there be disclosure of the identity and compensation of any insiders to be retained or employed by the reorganized debtors. 11 U.S.C. § 1129(a)(5).

The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the persons proposed to serve as members of the initial boards of the Consolidated Debtors were disclosed in the Plan Supplement, and the appointment to, or continuance in, such positions of such persons is consistent with the interests of creditors and equity security holders and with public policy. With respect to officers of the Reorganized Debtors, the existing officers of each of the Reorganized Debtors will remain in office on and after the effective date. The identity of any insider that will be employed or retained by the Reorganized Debtors and the nature of such insider's compensation have also been disclosed.

6. The Plan Is in the Best Interests of All Creditors

Section 1129(a)(7) of the Bankruptcy Code requires that a plan be in the best interests of creditors and stockholders. The best interests test focuses on individual dissenting creditors rather than classes of claims. *See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441 (1999). It requires that each holder of a claim or equity interest either accepts the plan or will receive or retain under the plan property having a present value, as of the

effective date of the plan, not less than the amount such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

Under the best interests test, "the court must measure what is to be received by rejecting creditors in the impaired classes under the plan against what would be received by them in the event of liquidation under chapter 7. In doing so, the court must take into consideration the applicable rules of distribution of the estate under chapter 7, as well as the probable costs incident to such liquidation." *In re Adelphia Commc'ns Corp.*, 368 B.R. at 252. As section 1129(a)(7) makes clear, the liquidation analysis applies only to non-accepting holders of impaired claims or equity interests.

The best interests test is satisfied as to each holder of an impaired Claim or Interest, as demonstrated by the Liquidation Analysis annexed as Exhibit "D" to the Disclosure Statement and the Hughes Declaration. Each holder of an impaired claim or impaired interest that has not accepted the Plan will receive or retain under the Plan on account of such claim or interest, property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date. Furthermore, a chapter 7 liquidation would have significant negative effects on the ultimate proceeds available for distribution in the Chapter 11 Cases, including (i) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee, (ii) the claims that would arise from the rejection of executory contracts and unexpired lease that have been assumed in the chapter 11 cases including the Debtors' codeshare agreements, (iii) the erosion in value of assets in a chapter 7 case in the context of the expeditious liquidation required under chapter 7 and the forced-sale atmosphere that would prevail, (iv) the resultant adverse effects on the salability of

new common stock as a result of the departure of key employees and the impact on Republic's performance under its codeshare agreements, and (v) substantial increases in claims which would be satisfied on a priority basis or on a parity with creditors in a chapter 11 case. It is clear that confirmation of the Plan will provide each holder of an Allowed Claim with a recovery that is not less than such holder would receive or retain if the Debtors were liquidated under chapter 7.

Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(7).

7. The Plan Has Been Accepted by the Impaired Class Entitled to Vote, and the Requirements of Section 1129(a)(8) Have Been Satisfied

Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests accept the plan, as follows: "With respect to each class of claims or interests - (A) such class has accepted the plan; or (B) such class is not impaired under the plan." 11 U.S.C. § 1129(a)(8).

As evidenced by the Tabulation Certification filed with the Court, the Plan has been accepted by creditors holding well in excess of two-thirds in amount and one-half in number in Class 3(a), the only Class entitled to vote. In addition, as described above, the Unimpaired Classes are unimpaired under the Plan and thus conclusively presumed to accept the Plan. 11 U.S.C. § 1126(f). Thus, as to such Classes, the requirements of section 1129(a)(8) have been satisfied.

8. The Plan Provides for Payment in Full of All Allowed Priority Claims

Section 1129(a)(9) of the Bankruptcy Code requires that persons holding allowed claims entitled to priority under section 507(a) receive specified cash payments under the plan. Unless the holder of a particular claim agrees to a different treatment with respect to such claim, section 1129(a)(9) of the Bankruptcy Code sets forth the treatment the plan must provide. 11 U.S.C. § 1129(a)(9).

Pursuant to Articles 3 and 4 of the Plan, and in accordance with sections 1129(a)(9)(A) and (B), the Plan provides that all Allowed Administrative Claims and Allowed Other Administrative Claims under section 503(b) of the Bankruptcy Code and all Allowed Other Priority Claims under section 507(a) (excluding Priority Tax Claims under section 507(a)(8) described below) will be paid in full, in Cash, on the Effective Date or as soon thereafter as is reasonably practicable.

The Plan satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code in respect of the treatment of Priority Tax Claims under section 507(a)(8). Pursuant to Section 3.5 of the Plan and except as otherwise may be agreed, holders of Allowed Priority Tax Claims will be paid in full, in Cash, on the Effective Date or as soon thereafter as is reasonably practicable or twenty days after such Claim is Allowed, or Cash in installment payments in compliance with the requirements of section 1129(a)(9)(C).

Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

9. At Least One Class of Impaired Claims Has Accepted the Plan

Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of the Plan by at least one Class of impaired Claims, "determined without including any acceptance of the plan by any insider." 11 U.S.C. § 1129(a)(10). The Plan satisfies this requirement because the Class of Impaired Claims entitled to vote – Class 3(a) – has accepted the Plan, without including the acceptance of the Plan by any insiders in such Class.

10. The Plan Is Feasible

Section 1129(a)(11) of the Bankruptcy Code requires that the Court determine that the Plan is feasible as a condition precedent to confirmation. Specifically, it requires that confirmation is not likely to be followed by liquidation or the need for further financial

reorganization of the debtor or any successor to the debtor, unless such liquidation or reorganization is proposed in the plan. 11 U.S.C. § 1129(a)(11). As described below and further detailed in the Allman Declaration, and as will be demonstrated at the Confirmation Hearing, the Plan is feasible within the meaning of this provision. The feasibility test set forth in section 1129(a)(11) requires the Court to determine whether the Plan is workable and has a reasonable likelihood of success. *See United States v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990); *In re Johns-Manville Corp.*, 843 F.2d at 649.

The key element of feasibility is whether there is a reasonable probability that the provisions of the plan can be performed. The purpose of the feasibility test is to protect against visionary or speculative plans. As noted by the United States Court of Appeals for the Ninth Circuit: "'The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation.'" *Pizza of Haw., Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985) (quoting 5 Collier on Bankruptcy ¶ 1129.02[11] at 1129-34 (15th ed. 1984)). However, just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure cannot defeat feasibility. The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds. *See In re U.S. Truck Co.*, 47 B.R. 932, 944 (E.D. Mich. 1985), *aff'd*, 800 F.2d 581 (6th Cir. 1986).

For purposes of determining whether the Plan satisfies the above-described feasibility standards, the Debtors have analyzed their ability to fulfill their obligations under the Plan. As part of this analysis, the Debtors, with the assistance of their financial advisors, prepared projected financial information for the post-Effective Date period of January 1, 2017 through December 21, 2021 (the "Projection Period") for the Post-Effective Date Debtors. These

projections, and the assumptions on which they are based, are included in the Debtors' Financial Projections, annexed as Exhibit "C" to the Disclosure Statement. Based upon such projections and as set forth in the Allman Declaration, the Debtors submit that all payments required to be made pursuant to the Plan will be made and, therefore, that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization. Accordingly, the Debtors believe that the Plan satisfies the feasibility requirement imposed by the Bankruptcy Code.

11. All Statutory Fees Have Been or Will Be Paid

Section 1129(a)(12) requires the payment of "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan." 11 U.S.C. § 1129(a)(12). Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930] of title 28" are afforded priority as administrative expenses. 11 U.S.C. § 507(a)(2). In accordance with sections 507 and 1129(a)(12) of the Bankruptcy Code, Section 15.6 of the Plan provides that such fees, pursuant to section 3717 of title 31 of the United States Code, will be paid by the Debtors.

12. The Plan Complies with Section 1129(a)(13)

Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code. Section 9.6 of the Plan provides that Reorganized Midwest will assume and assign to RAH the Pension Plan on the Effective Date. The Plan provides for the continuation after the Effective Date of payment of all "retiree benefits" (as defined in section 1114 of the Bankruptcy Code) at the level established pursuant to sections 1114(e)(1)(B) or 1114(g) of the Bankruptcy Code at any time prior to confirmation of the Plan, for the duration of the period the Debtors have obligated themselves to

provide such benefits. Thus, the Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code.

B. The Plan Satisfies the "Cramdown" Requirements of Section 1129(b) of the Bankruptcy Code With Respect to Rejecting Classes

Section 1129(b) provides a mechanism for confirmation of a plan in circumstances where the plan is not accepted by all impaired classes of claims and equity interests. 11 U.S.C. § 1129(b). To meet this "cram down" requirement, the plan may not "discriminate unfairly" and must be "fair and equitable" with respect to each impaired nonaccepting class of claims or interests. 11 U.S.C. § 1129(b)(1).

Impaired Classes 3(b)-(d), 4, and 5 are deemed to reject the Plan (the "Deemed Rejecting Classes"). In light of the Deemed Rejecting Classes, the Debtors respectfully submit that the Plan should be confirmed notwithstanding such rejections because, as discussed below, the Plan does not discriminate unfairly and is fair and equitable with respect to all Classes.

1. The Plan Does Not Discriminate Unfairly

Section 1129(b)(1) does not prohibit discrimination between classes; it prohibits only discrimination that is *unfair. In re 11,111, Inc.*, 117 B.R. 471, 478 (Bankr. D. Minn. 1990). The weight of judicial authority holds that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if similar classes are treated differently without a reasonable basis for the disparate treatment. *See In re Buttonwood Partners, Ltd.*, 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990); *see also In re Johns-Manville Corp.*, 68 B.R. 618, 637 (Bankr. S.D.N.Y. 1986). Accordingly, as between two classes of claims or two classes of equity interests, there is no unfair discrimination if (i) the classes are composed of dissimilar claims or interests or (ii) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment. *See, e.g., In re Johns-Manville Corp.*, 68 B.R. at

636 (classes comprised of dissimilar claims and interests); *In re Buttonwood Partners, Ltd.*, 111 B.R. at 63 (providing disparate treatment but on a reasonable basis).

The impaired Classes are not unfairly discriminatory as no other holders of similarly situated Claims are receiving different treatment under the Plan. Stated otherwise, Classes 3(a)-(d) consist of all General Unsecured Claims against the respective Debtors, Class 4 consists of all Section 510(b) Claims, and Class 5 consists of all Interests in RAH. As such, there is no discrimination, let alone unfair discrimination, among holders of similarly situated claims. *See In re Extended Stay Inc.*, No. 09-13764, 2010 WL 6561113, at *10 (Bankr. S.D.N.Y. July 20, 2010) (plan did not unfairly discriminate with respect to rejecting class of equity interests where no holders of equity interests were treated differently); *In re Finlay Enters., Inc.*, No. 09-14873, 2010 WL 6580628, at *7 (Bankr. S.D.N.Y. June 29, 2010) (holding that plan did not unfairly discriminate against rejecting class of equity interests because no other class of interests existed and, therefore, rejecting class was of a different legal nature and priority than the other classes).

Moreover, Class 4 (Section 510(b) Claims) is based upon the statutory mandate of section 510(b) of the Bankruptcy Code. Indeed, in order to comply with section 1129(a)(1) of the Bankruptcy Code, which requires that the plan comply with applicable provisions of the Bankruptcy Code, section 510 of the Bankruptcy Code must be enforced. Thus, Class 4 (Section 510(b) Claims) are not similarly situated to any other Class and the disparate treatment of such Class in comparison to other Classes of Claims that are not subordinated is not unfair.

Accordingly, the Plan does not "discriminate unfairly" with respect to any impaired Classes of Claims or Interests.

2. The Plan is Fair and Equitable

Sections 1129(b)(2)(B)(ii) and (b)(2)(C)(ii) of the Bankruptcy Code provide that a plan is fair and equitable with respect to a class of impaired unsecured claims or interests if under the plan no holder of any junior claim or interest will receive or retain property under the plan on account of such junior claim or interest. *See* 11 U.S.C. §§ 1129(b)(2)(B)(ii), (C)(ii).

Distributions under the Plan are made in the order of priority prescribed by the Bankruptcy Code and in accordance with the rule of absolute priority. Pursuant to the Plan, holders of Interests or Claims in the Deemed Rejected Classes are deemed to have rejected the Plan and, therefore, the absolute priority rule must be satisfied as to such classes. The Plan is fair and equitable with respect to impaired unsecured claims against the Debtors, which are classified in Classes 3(b)-(d) (General Unsecured Claims), because the Classes that are junior to these Classes, Interests in the Liquidating Debtors, are not receiving any distribution under the Plan. The fair and equitable rule is satisfied as to holders of Claims in Class 4 (Section 510(b) Claims) because these claim holders will not realize a recovery under the Plan as a result of enforcement of section 510(b) of the Bankruptcy Code, not because consideration is being provided to junior classes.

The fair and equitable rule is satisfied as to holders of Interests in Class 5 (Interests in RAH) because no interests junior to such class will receive or retain any property under the Plan on account of such junior interests. *See In re Finlay Enters. Inc.*, 2010 WL 6580628, at *7 (holding that fair and equitable test was satisfied where no interest junior to interests of rejecting class received any property under plan).

Based on the foregoing, the Debtor requests confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code.

IV. THE RELEASES, EXCULPATIONS, AND INJUNCTIONS IN THE PLAN ARE PROPER.[11]

The Plan provides for releases of claims by the Debtors and their estates as well as releases of certain claims held by certain creditors of the Debtors' estates. The release provisions are integral components of the Plan, are consistent with the Bankruptcy Code and comply with applicable case law. As such, the releases should be approved.

A. The Releases, the Exculpation, and the Injunction

1. Release by the Debtors

Pursuant to Section 11.8 of the Plan (the "Releases"), effective as of the Effective Date, the Debtors will release the Released Parties from any and all Claims, obligations, debts, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever that the Debtors, the Post-Effective Date Debtors, their estates or their affiliates would have been legally entitled to assert in their own right relating to the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors or the Post-Effective Date Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party excluding any assumed executory contract or lease, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the related Plan Supplement, or related agreements, instruments or other documents, or upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct or gross negligence.

11. This section is a summary of these provisions and is qualified in its entirety by the language of the Plan and the Disclosure Statement.

Claims held by the debtor against third parties are property of the estate and may be released in exchange for settlement. *In re Johns-Manville Corp.*, 837 F.2d 89, 91-92 (2d Cir. 1988); *see also* 11 U.S.C. § 541(a)(1) ("estate is comprised of . . . all legal or equitable interests of the debtor in property as of the commencement of the case"). When reviewing releases in a debtors' plan, courts consider whether such releases are in the best interest of the estate. *In re Charter Commc'ns,* 419 B.R. at 257 (explaining that "[w]hen reviewing releases in a debtor's plan, courts consider whether such releases are in the best interest of the estate"); *see also In re DBSD N. Am., Inc.*, 419 B.R. 179, 217 (Bankr. S.D.N.Y. 2009) (explaining that releases and discharges of claims and causes of action pursuant to section 1123(b)(3)(A) of the Bankruptcy Code are only subject to debtors' business judgment), *aff'd.*, 2010 WL 1223109 (S.D.N.Y. Mar. 24, 2010), *aff'd in part, rev'd in part on other grounds sub nom. DISH Network Corp. v. DBSD N. Am., Inc. (In re DBSD N. Am.)*, 634 F.3d 79 (2d Cir. 2011).

The Releases provided for in Section 11.8 of the Plan are releases by the Debtors of claims or causes of actions owned by the Debtors. They do not encompass any so-called third party releases. The Committee provided substantial consideration to the Debtors and the Releases were a necessary condition to the Committee's support of the Plan. Moreover, courts in this district and others recognize that releases by debtors are often in the best interests of the estate where "the costs involved [in pursuing the released claims] likely would outweigh any potential benefit from pursuing such claims." *See In re Lear Corp.*, No. 09-14326, 2009 WL 6677955, at *7 (Bankr. S.D.N.Y. Nov. 5, 2009); *In re Calpine Corp.*, No. 05-60200, 2007 WL 4565223, at *9-*10 (Bankr. S.D.N.Y. Dec. 19, 2007). In addition to the substantial consideration provided by the Released Parties, the Debtors' Releases are also appropriate because the Debtors do not believe that the released claims or causes of action represent material

value to the Debtors and their estates. Accordingly, there is ample justification for providing the Debtors' Releases and the Releases should be approved.

2. Voluntary Releases by the Holders of Claims

Section 11.9 of the Plan contains releases by certain non-debtor holders of claims against the Released Parties for liability relating to the Debtors, their affiliates, or these chapter 11 cases (collectively, the "Non-Debtor Releases"). As discussed below, the Non-Debtor Releases were necessary to secure the Plan and the significant benefits embodied therein for the Debtors and their stakeholders.

The Debtors only seek approval of the Non-Debtor Releases with respect to those holders of Claims that (a) vote to accept the Plan or (b) vote to reject the Plan and affirmatively elect (as permitted on the Ballots) to provide the releases. Courts in the Second Circuit typically approve releases of third-party claims against non-debtors where (i) there is consent of the releasing party or (ii) other circumstances in the case justify granting the release. *Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 142 (2d Cir. 2005). Here, the Non-Debtor Releases are voluntary – Creditors entitled to vote on the Plan who rejected the Plan were permitted to opt in to the releases. Moreover, Creditors who did not submit a ballot or were not entitled to vote are deemed to opt out of the Non-Debtor Releases.

In determining whether the circumstances of a case justify the approval of third-party releases, courts will consider a host of factors, including: (i) whether the estate received substantial consideration; (ii) whether the enjoined claims were channeled to a settlement fund rather than extinguished; (iii) whether the enjoined claims would indirectly impact the debtor's reorganization by way of indemnity or contribution; and (iv) whether the plan otherwise provided for the full payment of enjoined claims. *Id.* Here, due to the voluntary nature of the

Non-Debtor Releases and the substantial consideration given by the Released Parties, the Non-Debtor Releases should be approved. *See, e.g., In re Genco Shipping & Trading Ltd.*, 513 B.R. at 271-72.

3. Exculpation

Exculpation for participating in the plan process is appropriate where plan negotiation could not have occurred without protection from liability. As recognized by the Second Circuit in *Drexel Burnham Lambert Grp.*, where a debtor's plan of reorganization requires the settlement of numerous, complex issues, protection of third parties against legal exposure may be a key component of the settlement. *See Securities and Exchange Commission v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.*), 960 F.2d 285, 293 (2d Cir. 1992); *see also In re Enron Corp.*, 326 B.R. 497, 503 (S.D.N.Y. 2005) (excising exculpation provision would "tend to unravel the entire fabric of the Plan, and would be inequitable to all those who participated in good faith to bring it into fruition"); *In re Residential Capital*, No. 12-12020 (MG), 2013 WL 12161584, at *13 (Bankr. S.D.N.Y. Dec. 11, 2013) (confirming plan that contained exculpations for parties that were "instrumental to the successful prosecution of the Chapter 11 Cases or their resolution pursuant to the Plan, and/or provided a substantial contribution to the Debtors."). Furthermore, the exculpation provided by the Plan is appropriately limited to a qualified immunity for acts of negligence, but does not relieve any party of liability for gross negligence or willful misconduct. *See In re PWS Holding Corp.*, 228 F.3d at 246-47 (exculpation provision reflecting Bankruptcy Code's limitation of liability did not violate third party release prohibition of section 524(e)); *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 717, 722 (Bankr. S.D.N.Y. 1992).

Appropriately limited exculpation provisions and releases for case fiduciaries in chapter

11 plans are standard practice and have been approved in large chapter 11 cases in this District. *See, e.g., In re Oneida Ltd.*, 351 B.R. 79, 94 n.22 (Bankr. S.D.N.Y. 2006) (approving exculpation provision releasing claims relating to any "pre-petition or post-petition act or omission in connection with, or arising out of, the Disclosure Statement, the Plan or any Plan Document . . . the solicitation of votes for and the pursuit of Confirmation of [the] Plan, the Effective Date of [the] Plan, or the administration of [the] Plan or the property to be distributed under [the] Plan," where no release was provided for "gross negligence, willful misconduct, fraud, or criminal conduct, and the release covered only conduct taken in connection with the Chapter 11 cases"); *In re Granite Broad. Corp.*, 369 B.R. 120, 139 (Bankr. S.D.N.Y. 2007) (approving exculpation provision that "provides for exculpation of the Debtors and [the Debtors' largest secured creditor] and their respective representatives for actions in connection, related to, or arising out of the Reorganization Cases" with exclusion for gross negligence and intentional misconduct). Indeed, the Court in *Oneida* found that the "language of the [exculpation] clause, which generally follows the text that has become standard in this [D]istrict, is sufficiently narrow to be unexceptionable." 351 B.R. at 94 n.22

Throughout these Chapter 11 Cases, the Exculpated Parties have contributed substantial value to the Debtors and the formulation of the Plan. The Exculpated Parties' efforts in negotiating and ultimately formulating the Plan enabled the Debtors to file the Plan, which will preserve the Debtors' business as a viable enterprise. The recoveries negotiated by the key constituencies in the chapter 11 cases are better than would likely be available if other alternatives were pursued. The Plan's exculpation provision is appropriately tailored to protect the Exculpated Parties from inappropriate litigation and does not relieve any party of liability for

gross negligence or willful misconduct. Accordingly, the Plan's exculpation provision should be approved.

4. Injunction

Section 11.5 of the Plan (the "Injunction") provides that, except as otherwise expressly provided in the Plan, all persons or entities who have held, hold or may hold Claims, Causes of Action or Interests and all other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, representatives and Affiliates, are permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim (including, without limitation, a Section 510(b) Claim), Cause of Action or Interest against the Debtors, the Post-Effective Date Debtors or property of any Debtors or Post-Effective Date Debtors, other than to enforce any right to a distribution pursuant to the Plan, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtors, the Post-Effective Date Debtors or property of any Debtors or Post-Effective Date Debtors, other than to enforce any right to a distribution pursuant to the Plan, (iii) creating, perfecting or enforcing any Lien or encumbrance of any kind against the Debtors or Post-Effective Date Debtors or against the property or interests in property of the Debtors or Post-Effective Date Debtors other than to enforce any right to a distribution pursuant to the Plan or (iv) asserting any right of set-off, subrogation or recoupment of any kind against any obligation due from the Debtors or Post-Effective Date Debtors or against the property or interests in property of the Debtors or Post-Effective Date Debtors, with respect to any such Claim, Cause of Action or Interest. Such injunction will extend to any successors or assignees of the Debtors and Post-Effective Date Debtors and their respective properties and interest in properties.

The Injunction is customary in this District and merely seeks to ensure that parties do not interfere with the consummation and implementation of the Plan and all the transactions contemplated thereby. Accordingly, the Injunction should be approved.

CONCLUSION

The Plan complies with and satisfies all the requirements of section 1129 of the Bankruptcy Code. All outstanding Responses should be overruled, and the Plan should be confirmed.

Dated: New York, New York
March 1, 2017

/s/ Bruce R. Zirinsky

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EXHIBIT A
Responses Summary

	Respondent/Objector	Nature of Response	Reply/Resolution
1.	*Pro Se* Shareholders • Gil Rohald (ECF No. 1519) • Timothy J. Campbell (ECF No. 1403); • Humberto F. Cruz Ps.D. (ECF No. 1384); • Anthony Joyce (ECF No. 1380); • David Albert (ECF No. 1241)	*See* Section I.A.	**Unresolved.** *See* Section I.A.
2.	Safran Nacelles f/k/a Aircelle and Safran Europe Services (ECF No. 1518)	*See* Section I.B.	**Unresolved.** *See* Section I.B.
3.	Wells Fargo Bank Northwest, N.A., as owner trustee, and ALF VI, Inc.	*See* Residco Response.	**Unresolved.** *See* Residco Response.
4.	New York State Department of Taxation and Finance ("NYS Department") (ECF No. 1463)	NYS Department asserted that the Plan should specifically provide (i) the date when installment payments will commence, (ii) the regular installment interval, (iii) the term or duration of the installment payments; and (iv) for the payment of interest accruing from the date of the Plan's confirmation at the non-bankruptcy interest rate (as required by section 511 of the Bankruptcy Code), which as it relates to the Department's priority tax claims is 8%.	**Resolved**. The NYS Department's objection is moot as Republic intends to pay the NYS Department's Priority Tax Claims, to the extent allowed, in full as soon as reasonably practicable after the date that such Claim is Allowed.
5.	MB Equipment Finance ("MBEF")	MBEF requested that Schedule 4.3 be modified to identify MBEF, assignee of Origin Bank f/k/a/ Community Trust Bank as the creditor for the aircraft agreements related to N133HQ.	**Resolved**. The Debtors revised Schedule 4.3 of the Plan as reflected in the *Notice of Filing of Revised Schedule 4.3 to Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, filed contemporaneously herewith.

	Respondent/Objector	Nature of Response	Reply/Resolution
6.	Dougherty Equipment Finance LLC ("Dougherty")	Dougherty requested confirmation regarding the Debtors' election with respect to its Other Secured Claims related to the engines with serial numbers GE-E902141, GE-E902231, and GE-E902366 (the "Dougherty Other Secured Claims").	**Resolved**. The Debtors have advised Dougherty that the Dougherty Other Secured Claims will, to the extent Allowed, be reinstated.
7.	Agência Especial de Financiamento Industrial – FINAME ("FINAME") (ECF No. 1515)	FINAME reserved its right to object to the extent clarifying language was not added to the Confirmation Order.	**Resolved**. The Debtors agreed to add the following language to the proposed Confirmation Order, filed contemporaneously herewith: Any guarantee by RAH of obligations arising under the secured aircraft financings in respect of the equipment (as described in section 1110(a)(3) of the Bankruptcy Code) whose F.A.A. Registration Numbers, if any, are set forth in Schedule 4.3 of the Plan will be reinstated and be an obligation of Reorganized RAH on and after the Effective Date.
8.	Deutsche Bank AG New York Branch (ECF No. 1517)	(same as above)	(same as above)

Tab 7

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	Case No. 05-17930 (ALG)
NORTHWEST AIRLINES CORPORATION, et al,	(Jointly Administered)
Debtors.	New York, New York Wednesday, May 9, 2007 2:12 p.m.

TRANSCRIPT OF EVIDENTIARY HEARING
MOTION BY DEBTOR FOR
SUBSTANTIVE CONSOLIDATION OF CONSOLIDATED DEBTORS
BEFORE THE HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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I N D E X

	DIRECT	CROSS	REDIRECT	RECROSS
WITNESSES FOR THE DEBTOR				
NEIL S. COHEN				
By Mr. Ellenberg	10		63	
By Mr. Arnason		34		67
By Mr. Hazan		65		

EXHIBITS:	Marked	Received
Debtors' Exhibits.		34
Exhibit 7		70
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Exhibit A Summary of Intercompany Claims.	37	70

(Proceedings commence at 2:12 p.m.)

THE COURT: Please be seated.

Northwest Airlines. May I have appearances, please?

MR. ELLENBERG: If the Court please, Mark Ellenberg, Cadwalader, Wickersham & Taft, on behalf of the debtors. With me today, Your Honor, are Peter Friedman and Nathan Haynes of Northwest -- I'm sorry -- of Cadwalader.

MR. HAZAN: Good afternoon, Your Honor. Scott Hazan from Otterbourg Steindler, together with my colleagues Todd Goren and Melissa Hager, for the Official Creditors' Committee.

MR. BRILLIANT: Good afternoon, Your Honor. Allan Brilliant from Goodwin Procter on behalf of the Ad Hoc Committee of Certain Claims Holders.

MR. ARNASON: Good afternoon, Your Honor. Jon Arnason of Klestadt & Winters on behalf of Owl Creek, together with my colleague Tracy Klestadt.

MS. LEVINE: Good afternoon, Your Honor. Sharon Levine, Lowenstein Sandler, for the International Association of Machinists. Thank you.

THE COURT: All right. I have a motion.

MR. ELLENBERG: Yes, Your Honor. It was my understanding that we might have a conference off the record before we proceeded.

THE COURT: I gather you -- you raised the issue of

confidentiality.

MR. ELLENBERG: Yes.

THE COURT: And wanted to close the Court for some portion of the testimony.

MR. ELLENBERG: Yes, Your Honor.

THE COURT: Is there any objection?

MR. ARNASON: Your Honor, I have no objection, so long as the following applies; one of them is that I can discuss the substance of the testimony with Owl Creek.

And there is another issue, which is Owl Creek is not restricted at this point because -- and it has not seen or not -- taken care not to see any confidential information. Clearly, if this hearing is not sealed, then the testimony of Mr. Cohen is public information and it doesn't affect their right to trade. My only concern is that the -- holding this in camera would mean that the information would be confidential; and so, in effect, I couldn't discuss it with my client.

THE COURT: Well, I don't know what you have to discuss with your client about the testimony, and I don't know that the testimony has anything to do with trading or information that would be useful in connection with trading, but I'm not necessarily in the best position to make that determination. I don't know what the testimony is; I was simply told on the -- or my clerk was told on the telephone

that it had to do with tax issues and tax information.

Now maybe it would be possible to simply gloss over the specifics on that issue, and to go as far as we can go, in terms of the testimony, without putting in any specific information. Your papers say that the debtors would benefit from the substantive consolidation for tax purposes. I don't think that's controverted by Owl Creek; all they say is that's not good enough.

MR. ARNASON: Your Honor, but it's --

THE COURT: And you show me where you controvert that as a matter of fact in your papers.

MR. ARNASON: Your Honor, until I took the testimony of Mr. Cohen yesterday, and even after that, I don't know because I need to -- they clearly are putting that into issue by saying that is an element of their case, that that's important to them. If that --

THE COURT: Do you dispute that?

MR. ARNASON: I -- I'm --

THE COURT: Do you dispute -- do you say that the tax issues have nothing whatsoever to do with substantive consolidation?

MR. ARNASON: I --

THE COURT: Do you dispute that as a factual matter?

MR. ARNASON: Your Honor --

THE COURT: That this is just simply something that

they made up and that has no bearing whatsoever on the issues in this case, is that your position?

MR. ARNASON: Your Honor, I'm not -- that's not my position at all. It's my position that I'm not going to know until I cross-examine Mr. Cohen whether there's anything -- since they're putting it into issue, whether it's something that is legitimately an issue.

THE COURT: Well, it's in their papers, sir. They make the general statement that it benefits them tax-wise.

MR. ARNASON: But, Your Honor --

THE COURT: You either controvert that or you don't controvert that.

MR. ARNASON: Your Honor, I don't know until we hear Mr. Cohen's testimony.

THE COURT: You haven't answered my question. My question is whether you can controvert it. I gather you took his deposition yesterday?

MR. ARNASON: Your Honor, I can't controvert it based on the deposition yesterday.

THE COURT: All right. That's a start. Why don't we see how far we go, and then we'll save the issues until the end of the testimony, and then we'll see what we do.

MR. ELLENBERG: Thank you, Your Honor. I would suggest that we dispense with opening statements. I would --

THE COURT: I have your papers; I have their papers.

As I understand their papers -- and I realize, Mr. Arnason, at least they say that you had a very short period of time to adopt papers that were written by somebody else. Is that correct?

MR. ARNASON: That's correct, Your Honor.

THE COURT: All right. You had about five minutes to adopt papers that some other lawyer wrote?

MR. ARNASON: We had more time than that, Your Honor, so that we could be sure that we complied with Rule 11 when we signed the papers.

THE COURT: All right. How much time did you have, Mr. Arnason?

MR. KLESTADT: Your Honor, we had one hour.

THE COURT: You had one hour. All right.

And who wrote the papers, by the way?

MR. KLESTADT: The Kasowitz firm, Your Honor.

THE COURT: The Kasowitz firm, representing a group of shareholders, or at least purporting to, in this case. Well, thank you for at least making that clear on the record.

Now as I understand the papers, they don't controvert the debtors representation that there would be tax benefits, but they say whatever the tax benefits might be, that's not good enough. That's how I read your papers.

MR. KLESTADT: Your Honor, that's correct.

THE COURT: All right. That is the record, as I

understand it, and that's what your reading of Augie/Restivo is. I don't know whether there are any facts raised in connection with this motion, frankly, but the debtors wish to put on some testimony, you took a deposition. Why don't we hear the testimony, and then you can tell me what factual issues I have to decide on this motion. All right?

Do you want to make an opening statement, Mr. Arnason?

MR. ARNASON: Your Honor, I'll dispense with an opening statement, as well.

THE COURT: All right. Very good. Well, let's continue.

MR. ELLENBERG: Thank you, Your Honor. In that case, I would call as our first and only witness Mr. Neil Cohen.

THE COURT: Please state your full name for the record.

THE WITNESS: Neil S. Cohen.

NEIL S. COHEN, WITNESS FOR THE DEBTORS, SWORN

THE COURT: Please be seated.

THE WITNESS: Thank you.

MR. ELLENBERG: Your Honor, I have a notebook of exhibits that I will be referring to.

THE COURT: Does Mr. Arnason have these?

MR. ELLENBERG: Yes, he does, Your Honor.

THE COURT: All right. Anyone else who's interested?

MR. ELLENBERG: I believe everyone has them, Your Honor.

THE COURT: All right.

MR. ELLENBERG: If I may approach.

MR. HAZAN: Your Honor, Scott Hazan of Otterbourg for the committee.

Just for the record, Your Honor only referenced two pleadings, by the debtor and by Owl Creek as a creditor objection. The committee also submitted a statement in connection with the motion. Hopefully, Your Honor had the --

THE COURT: I have your papers --

MR. HAZAN: Thank you, Your Honor.

THE COURT: -- and I've read that, as well.

MR. HAZAN: Thank you.

DIRECT EXAMINATION

BY MR. ELLENBERG:

Q Mr. Cohen, could you state your full name for the record, please?

A Yes. Neil Stuart Cohen.

Q Okay. And what is your current position, Mr. Cohen?

A I'm Executive Vice President and Chief Financial Officer of Northwest Airlines.

Q Okay. How long have you been in your current position?

A Since May 2005.

Q And just in summary form, what are the responsibilities in your current position?

A I'm responsible for the overall finance operations of the airline, including planning, accounting, tax, treasury, audit, as well as our regional operations.

Q Okay. Could you state briefly your educational experience since high school?

A Yes. I have an AB from the University of Chicago and an MBA from the University of Chicago in Finance and Accounting.

Q Okay. And what relevant work experience did you have prior to coming to Northwest?

A Prior to Northwest, I was also Chief Financial Officer of USAir. I've been chief financial officer of a few other companies, as well as prior to that I spent ten years at Northwest Airlines in a variety of marketing and finance positions, including controller and treasurer.

Q Thank you.

I'd like to show you, Mr. Cohen, what's been premarked as Exhibit No. 1.

A (Witness reviews exhibit.)

Q Mr. Cohen, do you understand Exhibit No. 1 to be the organizational chart for Northwest Airlines Corporation and its affiliates?

A Yes.

Q Okay. And to the best of your knowledge, is this chart accurate?

A Yes.

Q Okay. Certain boxes are black and certain ones are white. Do you understand the distinction?

A Yes.

Q And --

A The black boxes represent companies that have filed for Chapter 11 protection, and the white boxes represent those that have not.

Q Thank you.

Starting with the top of the chart, we have "Northwest Airlines Corporation." And is that the publicly held entity?

A Yes.

Q Okay. Below that, we have "Northwest Airlines Holdings Corporation." Does Northwest Airlines Corporation own a hundred percent of Northwest Airlines Holding Corporation?

A Yes, it does.

Q Okay. Below that, we have "NWA, Inc." Is NWA, Inc. owned a hundred percent by Northwest Airlines Holding Corporation?

A Yes, it is.

Q Okay. And one of the boxes below "NWA, Inc." is "Northwest Airlines, Inc." Is Northwest Airlines, Inc. owned a hundred percent by NWA, Inc.?

A Yes, it is.

Q Okay. For the rest of the hearing today, if we could just adopt some shorthand nomenclature, we -- I will refer to Northwest Airlines Corporation as "Corp.," I will refer to Northwest Airlines Holding Corporation as "Holdings," and NWA, Inc. as "Inc.," and Northwest Airlines, Inc. as "Airlines." So we have Corp., Holdings, Inc., and Airlines. Does that work for you?

A Yes.

Q Okay. Great.

Turning now to the chronological development of this holding company structure, which was the first holding company in time to be created?

A Northwest Airlines, Inc.

Q Okay. And when then did Holdings get created?

A Holdings got created in 1989, associated with the transaction that took Northwest Airlines private.

Q Okay. And at the time that Holdings was created, what was its name?

A Northwest Airlines Corporation.

Q Was that its original time at the time of its creation?

A Oh, at the time of its creation, I'm sorry, it was called "Wings Financial" or "Wings" -- I don't --

Q It was "Wings" something. That's fine.

A Wings Financial.

Q Okay. And did there come a time when its name was changed?
A Yes. When the company went public in 1994, it was changed to "Northwest Airlines Corporation."
Q Okay. And when did what is now called "Northwest Airlines Corporation" get created?
A In 1998.
Q Okay. And why was it created?
A Northwest Airlines Corporation, the current public company, was created in 1998, associated with the transaction whereby Northwest entered into a long-term strategic alliance with Continental, plus acquired a minority stake in Continental Airlines.
Q Okay. And how did you deal with the fact that there were now two companies named "Northwest Airlines Corporation"?
A The old Northwest Airlines Corporation was renamed Holdings, "Northwest Airlines Holdings Corporation."
Q Okay. Turning our attention to Corp., does it have any business activities?
A No.
Q Okay. Aside from the common stock that it owns in its subsidiary, does it have any material assets?
A The only other material asset it has is a receivable from Northwest Airlines, from Airlines, for $334 million.
Q Okay. Turning now to Holdings, does Holdings operate a

business?

A No.

Q Okay. Aside from the common stock that it owns, does it have any material assets?

A Only those related to intercompany payables or receivables related to the other of the holdings companies.

Q Okay. Does Inc. operate a business?

A No, it doesn't.

Q Apart from the common stock it owns in its subsidiaries, does it have any assets?

A Again, only any intercompany receivables associated with the other four companies in the consolidated group.

Q Okay. Does Airlines operate a business?

A Yes, it does.

Q Okay. And could you describe that business briefly?

A Northwest Airlines represents the entire operation of the airline, the twelve-and-a-half -- or twelve- to twelve-and-a-half-billion-dollar airline that operates the aircraft of Northwest and its entire network.

Q Okay. Approximately how many flights a day does the airline operate?

A Eighteen hundred a day.

Q And how many employees, approximately, does it have?

A Thirty thousand employees.

Q Okay. Does Corp. have any employees?

A Other than officers, no.
Q Does Holdings have any employees?
A Again, other than officers, no.
Q Does Inc. have any employees?
A Same there; other than officers, no.
Q Do you know what the 2006 consolidated operating revenues for Corp. was?
A Approximately two-and-a-half -- twelve-and-a-half billion dollars.
Q Okay. Of that twelve-and-a-half billion dollars, approximately what percent was attributable to Airlines?
A Approximately ninety-eight percent.
Q Okay. Of the remaining two percent, where was it mostly attributable?
A Mostly attributable to the MLT subsidiary.
Q Okay. I'd like now to direct your attention to Page 41 of the disclosure statement, which I'm going to hand to you.
MR. ELLENBERG: Your Honor, I'm not planning on marking this as an exhibit.
BY MR. ELLENBERG:
Q Looking at Page 41, there's a chart, and the second box down on the chart is labeled "General Unsecured Claims, Non-Consolidated Debtors." Do you see that box on the chart?
A Yes.
Q Okay. And if you refer back to Page 38, I believe we can

identify Class 2B as relating to NWA Fuel Services Corporation, Class 3C as relating to Northwest Aerospace Training Corporation, and Class 4B as relating to MLT, Inc. Is that correct?

A Yes.

Q Okay. And with respect to NWA Fuel Services Corp., how many total claims were filed in this case against them?

A Fifty-three thousand dollars.

Q Okay. And with respect to NWA Aerospace Training Corp., what were the total number of claims filed?

A Sixty-seven thousand.

Q Okay. And with respect to MLT, what was the total amount of claims filed?

A 5.6 million.

Q Okay. And do you believe those numbers to be correct?

A Yes.

Q Okay. Mr. Cohen, under the plan of reorganization, if it becomes effective, what would happen to Holdings and Inc.?

A Holdings and Inc. would be eliminated and merged into Airlines.

Q Okay. Will that affect the business of the consolidated enterprise in any way?

A No.

Q Okay. Do the consolidated debtors -- and by "consolidated debtors," I mean the four entities that are the

subject of this motion: Corp., Holdings, Inc., and Airlines -- do the consolidated debtors have directors?

A Yes.

Q Do you know to what extent the boards of directors differ?

A No, they don't. The consolidated debtors all have the same directors.

Q Okay. With respect to Corp., Holdings, and Inc., do they have officers?

A Yes.

Q And to what extent to the identity of those officers differ?

A They're the same across all.

Q Okay. Does Airlines have officers?

A Yes.

Q Okay. To what extent are the officers of Corp., Holdings, and Inc. also offers of Airlines?

A They're the same group.

Q What is the location of the headquarters for each of the consolidated debtors?

A They're all located in the same location, in Eagan, Minnesota.

Q Okay. When the consolidated debtors are being managed by their boards and officers, are they managed individually or as a single entity?

A They're managed as a unit -- a unitary entity in the performance of our key mission as an airline.
Q Are the consolidated debtors part of a consolidated tax group?
A Yes.
Q Okay. And could you explain what that means?
A That the company files a consolidated tax return. That tax -- under the IRS regulations, the various members of the consolidated group are treated all as the consolidated return, so that there is one net tax liability for the consolidated group as a whole.
Q To the extent that the business operated by the consolidated debtors and their affiliates require human resources support, at what entity or entities is that support located?
A That support all comes from the employees of Northwest Airlines.
Q Okay. To the extent that the consolidated debtors require finance and accounting support, where is that located?
A At Northwest Airlines.
Q Where is the marketing function for the business of Northwest?
A At Northwest Airlines.
Q Where is procurement managed?

A At the Airline.

Q Okay. Where is advertising managed?

A At the Airline.

Q Okay. Where is the distribution system managed?

A At the Airline.

Q From where are legal services obtained?

A From the Northwest Airlines legal staff.

Q Okay. Where are the information systems located?

A At the Airline.

Q During the Chapter 11 case, has Northwest been allocating the administrative costs to all debtors?

A No. The administrative costs have been occurring at the Airline.

Q Does the consolidated business of Northwest have a budgeting process?

A Yes, we do.

Q Okay. Are there separate -- is there a separate budget for any of the holding companies?

A No, there isn't.

Q Does the enterprise have a cash management system?

A Yes, it does.

Q And where is the cash concentrated?

A It's -- it's at Northwest Airlines, managed by the Northwest Airlines Treasury Department.

Q Thank you.

If Corp. had an expense, how would it get the money to pay it?

A It would get it from the cash at Northwest Airlines.

Q And if Holdings or Inc. had an expense, where would they get the money to pay it?

A Likewise.

Q Okay. I'd like to direct your attention, Mr. Cohen, to what's been marked as Exhibit No. 2.

A (Witness reviews exhibits.)

Q Do you recognize Exhibit No. 2, Mr. Cohen?

A Yes, I do.

Q Was it prepared by persons under your direction and control?

A Yes, it was.

Q Okay. Is it based on the business records of Northwest Airlines?

A Yes.

Q What generally does this exhibit show?

A This exhibit is a list of claims related to those claimants at Northwest Airlines who have a guarantee by Northwest Airlines Corporation, and for which those claims have been impaired and there would be a claim under a guarantee, and vice-versa; those claims under Northwest Airlines that might have a claim against Northwest Airlines -- pardon me -- vice-versa, those claims at Northwest Airlines

Corporation that may have been impaired and have a claim against Northwest Airlines for a guarantee.

Q Okay. Now is there public debt shown on this chart?

A Yes.

Q Okay. Which of the debt shown here is public debt?

A (Witness reviews exhibit.)

I believe it's all public debt.

Q Okay. Is there any public debt of Airlines on this chart that is not guaranteed by a holding company?

A No.

Q Okay. Is there any public debt on this chart of a holding company that is not guaranteed by Airlines?

A No, there isn't.

Q Okay. Does this chart include all of the public debt of Northwest Airlines?

A No, it doesn't; it doesn't include the public debt of -- for facilities or aircraft for which -- would not be impaired through this process, and for which there would be a claim.

Q Okay. For the public debt that's not on this chart, is there any that doesn't have a guarantee associated with it?

A No, there isn't.

Q When Airlines issues public debt, why is it necessary to have a Corp. guarantee?

A Because the participants in the debt-issuance recognize that all of the value emanates from the assets and cash flow

of Northwest Airlines; so, in order to be able to protect their interest, they need to have a guarantee from Northwest Airlines Corporation, the parent, so that if Northwest were to, for some business reason, distribute cash to Northwest Airlines, they would still retain -- to Northwest Airlines Corporation, they would still retain a right in that cash to support the obligation to repay their facility.

Q Mr. Cohen, do the consolidated debtors file consolidated financial statements?

A Yes, we do.

Q Okay. I said "file." I should have said issue consolidated financial statements.

A Yes.

Q Okay. Are you familiar with the rules governing the consolidation of financial statements?

A Yes, I am.

Q Okay. What is the requirement for consolidating?

A In order to consolidate companies into a consolidated group for financial purposes, you have to either own fifty percent or greater of the entity being consolidated or, in some instances, have control of that entity. So those are the key requirements in order to determine whether a company is included in the consolidated group.

Q Okay. Are you familiar with the rules on segment reporting?

A Yes.
Q Could you explain to me what "segment reporting" is?
A Well, in addition to the rules governing whether or not you consolidate a company, there are also additional rules that govern then, once those results have been consolidated, how do you report them, and it basically goes to companies that have multiple businesses. So if you manage -- if you have multiple lines of business where you perhaps manage them separately, they're in separate lines of business, and they can comprise up to ten percent or more of the revenue of the combined enterprise, the accounting standards require that you report those segments separately within your overall consolidated results. So, for example, a company like GE might report as many as five different segments in their one consolidated, overall report.
Q Okay. Now are those segment requirements found in GAAP; generally accepted accounting principles?
A Yes, they are.
Q Does the FCC also apply those rules?
A Yes, they do.
Q Okay. Does Northwest report segments?
A We report one segment because we basically have one business, the airline; that represents our segment. And under those rules, we only report one segment.
Q Okay. Now are you familiar with the rules of the SEC

concerning the requirement of companies with public debt to issue public financial statements?

A Yes, I am.

Q Okay. And what is the general rule that the SEC applies?

A The general rule applied by the SEC is there must be certified financials filed for every public registrant that issues public debt. So if -- if there were multiple companies, including holding companies, that issued public debt, the SEC would require that each one of those file their own certified financial statements.

Q Okay. Now if we turn back for a moment to Exhibit 2, it would appear that Airlines has issued public debt. Is that correct?

A Yes.

Q And does Airlines publish its own financial statement?

A No. We publish one consolidated financial statement under Northwest Airlines Corporation.

Q And how are you able to do that, given the SEC rule?

A There is an exception to the SEC rule where if one line of business comprises ninety percent or greater of your activity, under the SEC guidelines you are able to publish one set of consolidated financials and meet the requirement of the SEC disclosure.

Q Okay. Has Northwest sought guidance from the SEC on that issue?

A Yes, we have.

Q Okay. Does any of the debtors that would be consolidated today report separate profitability?

A No, they don't.

Q Okay. Mr. Cohen, are you familiar with how guarantee claims against the consolidated debtors are treated under the plan of reorganization?

A Yes, I am.

Q Okay. And what is your general understanding of the treatment?

A My general understanding of the treatment is that the company has, under the plan, made available to those claims which have guarantees an additional distribution which treats those claims and provides those claims with the same economic recovery, had not substantive consolidation been sought.

Q Thank you.

And are you familiar with the calculation that led to the specific allocation of shares to the guarantee claims?

A Yes, I am.

Q Okay. And did you participate in the development of that calculation?

A Yes, I did.

Q Okay. Mr. Cohen, I'm showing you what's been marked as Exhibit 3. Do you recognize that exhibit?

A Yes, I do.

Q Was it prepared by persons under your direction and control?
A Yes, it was.
Q And is it based on the business records of Northwest Airlines?
A Yes, it is.
Q Okay. What, generally, is shown by Exhibit 3?
A What Exhibit 3 presents are all of the intercompany receivables and payables amongst the four consolidated debtors.
Q Okay. So what does the chart indicate with respect to a claim that Corp. might have against Airlines?
A What this chart indicates is that Northwest Airlines Corp. is owed $334 million by Northwest Airlines.
Q Okay. And does the chart indicate that Airlines is owed anything by Corp.?
A No.
Q Okay. And what is indicated with respect to claims that Airlines might have against Holdings or Inc.?
A What this chart indicates is that Holdings and Inc. both owe Northwest Airlines 1.7 and $5 billion respectively.
Q Thank you.
Mr. Cohen, I've just handed you three exhibits that have marked 4, 5 and 6. Have you seen these charts before?
A Yes.

Q Okay. Were they prepared by persons under your direction and control?

A Yes.

Q And are they based, at least in part, on business records of Northwest Airlines?

A Yes.

Q Okay. Let's start with Exhibit 5. Can you tell me what Exhibit 5 shows?

A Exhibit 5 shows the method for determining the calculation of what percent of shares would be made available to claims who have guarantee claims in order to provide them a recovery on the value of those guarantees.

Q Okay. And what is under the label, Scenario 1?

A Scenario 1 was the information that the company and its financial advisor used at the time of filing the plan and the disclosure statement to determine what the amount should be for those recoveries.

Q Okay. And what does Scenario 2 represent?

A Scenario 2 takes the same exact methodology and updates it based on the most up-to-date assumptions that would be available to the company and our financial advisor if it were done today.

Q Okay. Let's go back to Scenario 1.

We see that there is a box with the number of seventy-four cents in it, .740 of a dollar. And it is labeled the

"theoretical airlines' recovery per one dollar of claim."

Can you explain to me what that number represents and how it was derived?

A Yes. The first row represents the pre-money value of the debtor based on the work done by Seabury Group, the financial advisor to the company. That number is $7 billion.

At the time that this was put together, the company believed, in its best estimate, that the range of general unsecured claims would be between 8.75 billion and 9.5 billion. The midpoint of that range is 9.125 billion.

The next number, the 334 million, represents the -- what we believe to be the only intercompany claim of value, which is as we discussed earlier, there is a three-hundred-and-thirty-four-million-dollar payable from Airlines to Corp. that would be available to the guarantee holders.

So in taking both the general unsecured claims and the one intercompany claim of 334 million, you would have total claims of nine four five nine. If you divide the 7 billion by the nine four five nine, that would say that the recovery available to that combined group is seventy-four cents.

Q Okay. Now there is another box below that which has about seven cents, .069 of a dollar, in the box. And it is labeled, "Theoretical Corp./HoldCo recovery for one dollar of claim."

What does that represent and how it was it derived?

A As I mentioned earlier, the 334 million in receivable Corp. from Airlines, if it were worth seventy-four cents on the dollar, I believe that's about $246 million, if I recall correctly.

Now that 246 million would be spread amongst all guarantee claims. And at the time of this, there were two types of -- there was an estimate of total guarantee claims of 3.577 billion. It's made up of two categories. One is claims of guarantees of Airline debt that were guaranteed by Corp., and that's 3.19 billion, and then claims of issuance by Corp. that were guaranteed by Airline, that's 3.384 million, for a total of 3.577 billion.

So if you take the 246 million that I mentioned earlier that would be the cash that would come out of Airlines based on the recovery on that 334 million payable, and you divide it by 3.577 billion in claims which have guarantees, you would then have a recovery for every dollar of claim which had a guarantee of 6.9 cents.

Q Okay. And at the time that you -- well, I'm sorry. Let's move on a little first.

The next box down is .809 of a dollar. And that's labeled, "Theoretical guarantee recovery per one dollar of claim."

What does that represent?

A That represents the combination of the first box, the

.74, and the second box, the .069.

Q So, in other words, somebody who holds a claim with a guarantee on that claim would get a combined recovery from Airlines and the guarantee of .809?

A Yes.

Q Okay. Now under the heading, "Pre-money value to management equity plan," there is a calculation. Could you explain that to the Court, please?

A Yes. What the -- the next step in the process was in order to determine what percentage of the plan should be made available to claims which have guarantees, we took the recovery of he .069 or, if you'd like, it's easier to translate it back into dollars, 246 million, divided it by the pre-money value of 7 billion. The pre-money shares which I apologize are not shown as a subtotal here, I believe are two-hundred-and-forty-some-million shares before the issuance of the rights offering. And the relationship of the 246 million are the dollars available to claims that had guarantees to the 7 billion was 3.53 percent.

So what this -- the 8.6 million shares, if you look at the second line down in the total count, the 8.6 million shares available to claims which have guarantees represents 3.53 percent of the pre-money pot, which would then have the effect of producing a recovery to the HoldCo line of .069.

Q Okay. Now let's look at Scenario 2. How does that

differ from Scenario 1?

A Scenario 2 attempts to take the same methodology used in Scenario 1, but yet update it for the best information available at this time based on the original Seabury seven-billion-dollar valuation.

Q And what is the result of the updated calculation?

A When you update the calculation for all the factors that we know today to be different, that is the company has revised its estimate of claims to 8.2 to 8.8 billion, or an 8.5 billion midpoint range, as well as the company has a new estimate of guarantee claims of 3.387 billion. That would have the effect of changing the 3.53 percent of the pre-money shares to 3.63 percent, or about a 2.8 percent difference.

Q Okay.

A Very close.

Q Okay. Mr. Cohen, could you explain to me how Exhibit 4 differs from Exhibit 5?

A Exhibit 4 conducts the same analysis, but yet instead of using the midpoint of the valuation range developed by Seabury and included in disclosure statement that uses the low end of the valuation range of 6.45 billion.

Q And how does Exhibit 6 differ from Exhibit 5?

A The same thing, except instead of using the low end of the valuation range, it now uses the high end of the valuation range prepared by Seabury.

Q Okay. And the plan allocation is based on Exhibit 5?
A I'm sorry. Could you say that again?
Q The plan allocation to guarantee claims is based on the midpoint valuation as set forth in Exhibit 5?
A I'm sorry. Say your question one more time.
Q The plan allocation to guarantee claims is based on using the median valuation as set forth on Exhibit 5?
A Yes.
Q Okay. Mr. Cohen, what are the benefits to the debtors of substantive consolidation?
A There are a variety of benefits to substantive consolidation. First is we believe substantive consolidation best tracks how the business is managed as one combined entity providing airline service.

Second, substantive consolidation dramatically improves the efficiencies and the administrative ease of completing the restructuring.

Third is that substantive consolidation will allow us to achieve tax benefits in the form of most efficiently utilizing our NOL on a go-forward basis and minimizing any costs, tax costs associated with completing the bankruptcy.

And, fourth, it allows us to complete and resolve the Series C claim and to treat the Series C claim in, frankly, an equal fashion with all the other claims in this case.
Q Okay. What is the particular issue with respect to the

treatment of the Series C claims?

A The Series C claim, as part of a consolidated entity or a consolidated debtor, will be accorded the same treatment as all the other creditors in this case. And, frankly, that would have the added benefit of helping the company and its unions avoid a potentially protracted and significant litigation with regard to the specifics of Series C and how that would be resolved.

MR. ELLENBERG: Okay. Your Honor, subject to supplementing the tax discussion, if necessary, I've concluded my direct.

THE COURT: All right. Cross-examination?

MR. ELLENBERG: Your Honor, I'm sorry. Could I move the exhibits into evidence?

THE COURT: Any objection?

MR. ARNASON: No objection.

THE COURT: All right. They're admitted.

(Debtors' exhibits admitted in evidence)

CROSS-EXAMINATION

BY MR. ARNASON:

Q Good afternoon, Mr. Cohen.

Mr. Cohen, the several debtors in this case, including the four debtors which are the subject of the consolidation and substantive consolidation motion, all filed separate schedules and separate statements of affairs. Is that

correct?

A Yes.

Q And therefore, can I conclude that as to each of the debtors, whether they're consolidated or whatever, the books and records of Northwest Airlines sets forth the claims against one of these debtors, any one of these debtors, and also sets forth the name of the claim, what Northwest believes the amount to be?

A Well, with regard to Northwest, you know, we follow best practices with regard to keeping track of all of our information. We keep very accurate ledgers in all of our operations.

As to claims, however, I think that there is -- when claims are filed by people who aren't Northwest Airlines, there can be confusion, and significant confusion, as to whether claims belong against one debtor or another.

Q I was unclear, Mr. Cohen.

Putting aside the issue of claims filed in these proceedings, Northwest has an accurate understanding, does it not, of the creditors of each of the several debtors in this case?

A Well, I don't know what you -- I'm sorry. I don't know what you mean by putting aside claims, because we, clearly, have an accurate understanding of our financials. But, as we go through the process, one of the very important elements of

that is reconciling that with what the creditors say is what they're owed.

Q I understand that.

But Northwest believes and believed when it filed the schedules and statements of affairs signed by you, Mr. Cohen, that that was an accurate statement of the assets and liabilities of each of the debtors. Isn't that correct?

A Yes.

Q And this isn't a situation, is it, where when you had to file schedules for all the debtors that you had to throw up your hands because you had no idea based on the confusion of the books of Northwest what they were on a debtor-by-debtor basis?

A No.

Q And just to repeat, you keep separate books and records, then, for each of the several companies, correct?

A We keep books and records down to the flight level by every flight that we operate every day.

Q Of course.

Now has Northwest -- let's deal with the four consolidated debtors here. Have those companies, do they hold board meetings regularly?

A The board of the four companies is the same, and they meet together as one board.

Q And are minutes kept with respect to each of these

companies?

A I don't know that answer.

MR. ARNASON: Excuse me one minute, Your Honor.

(Counsel confer.)

MR. ARNASON: Could I have this marked, Your Honor?

THE COURT: Well, why don't you read into the record what it is?

MR. ARNASON: This is a document which I received yesterday at Mr. Cohen's deposition. And it sets forth --

THE COURT: Tell us what it is.

MR. ARNASON: It sets forth a summary of the intercompany claims company-by-company indicating who owes who to what.

THE COURT: Why don't we deem that marked Exhibit A? And I assume it differs from the document marked Exhibit 3 today?

MR. ARNASON: It does.

THE COURT: All right.

(Summary of intercompany claims marked Exhibit A for identification.)

MR. ARNASON: Should I have the Court mark -- actually put an "A" on this?

THE COURT: Well, why don't you just put an "A" on it. I'm trying to save time.

MR. ARNASON: Okay.

THE COURT: We'll put an "A" on it later. Does it have a number on it already?

MR. ARNASON: It's got a number from the deposition.

THE COURT: All right. Let's identify it. What's the number?

MR. ARNASON: It's Exhibit Cohen 2.

THE COURT: Cohen 2, okay. We now know what it is and we'll put an "A" on it later.

BY MR. ARNASON:

Q Okay. Can you tell me -- could you look at this document and tell me what it is?

A Yeah. It's a summary.

MR. ARNASON: I'm sorry. Your Honor, may I approach and give you a copy?

THE COURT: All right. And I will mark Exhibit A on it for identification.

BY MR. ARNASON:

Q I'm sorry, Mr. Cohen.

The question is can you tell me what this is?

A Yes. It's a summary of intercompany payables and receivables amongst all the debtors as of 9/30/06, based on pre-petition activity.

Q Okay. So this only shows pre-petition claims or back-and-forth. Is that correct?

A Yes.

Q Now do these numbers change from time-to-time?
A Not greatly.
Q But you keep a running total, do you not, as it is appropriate to either debit or credit one of the accounts?
A Yes.
Q And do you keep the records -- or strike that.
Do you, say, have the records, let's say, for the last five years, which would support each of the underlying transactions which has resulted in the numbers set forth here?
A I don't know how far back the records go, but we keep records, very accurate records on a monthly and a quarterly basis for all this information.
Q Well, how about five years?
A I would assume we do.
Q So if there's ever an issue with respect to an intercompany claim, let us say, you could go back and look at the documents which would evidence how that claim came about. Is that correct?
A We would certainly try to.
Q I wanted to turn for a moment to the Series C claim that you testified about, Mr. Cohen.
Can you tell me what that claim is?
A Yes. It's a claim for 277 million relating to a judgment against the company under -- on agreement between Northwest

Airlines and Northwest Airlines Corporation with the IAM and I believe it was the IBT related to restructuring in 1993 associated with restructuring the labor contracts. And it governed how those savings would be returned to the employees through a Series C vehicle.

Q And that claim is evidenced by a judgment. Is that correct?

A Yes.

Q And who is that judgment against?

A I think you -- I believe it's against Northwest Airlines Corporation.

Q Which is one of the parents of Airlines. Is that correct?

A Yes, it is.

Q And, as I understand it, the machinists have also filed a claim in that amount against Airlines. Is that correct?

A I don't know that.

Q Well, let me ask that another way.

It's my understanding that the debtors believe that claim is appropriate, that it is an allowable claim against Airlines. Is that correct?

A Yes, we do.

Q And if you know, I understand that the -- indeed, a motion has been granted allowing that claim against Airlines. Is that correct?

A There was a motion heard last week. I believe that's the case. But you'd have to -- there are many more knowledgeable people in this room on that motion than me.

Q All right. Okay.

So as it now stands in this case, the machinists have been recognized as a creditor of Airlines with respect to that claim. Is that correct?

MR. ELLENBERG: Objection, Your Honor. It's argumentative, assumes facts not in evidence, and, in fact, it's wrong.

THE COURT: Well, the record will show what it shows.

BY MR. ARNASON:

Q Okay, as to that point.

But given that the debtors believe that this is a claim validly asserted against Airlines, and are prepared, as I understand it, not to contest it with respect -- and maybe have not contested it with respect to Airlines, what does substantive consolidation do with respect to that claim that isn't accomplished by simply allowing the claim against Airlines?

A Well, it, frankly, avoids the potential for very troubling litigation if someone were to come and contest that. The company believes that the claim and the judgment emanate from an agreement for which Northwest Airlines was an

original party to the agreement. And the company believes that it's very beneficial to the company for that to be resolved favorably. And the company very strongly believes that it's beneficial for that to be resolved favorably without contentious litigation.

But, certainly, without substantive consolidation, that potential for litigation could exist.

Q Well, if the claim has been allowed, or if there is no objection to the claim against Airlines, then none of that would apply. Is that correct?

A I'm not the expert on that.

Q Well, but, Mr. Cohen, you've just testified that you believe substantive consolidation is a benefit with respect to that claim. Is that correct?

A I do. But you're asking me to make a legal judgment.

Q I'm not asking you to make a legal judgment. What I'm asking you is if the claim -- excuse me.

And you also believe that it may avoid litigation, substantive consolidation, with respect to that claim. Is that correct?

A Yes.

Q But if a motion has been made with respect to the resolution of that claim and its allowance against Airlines, and if there's no objection to that motion, then there's nothing -- substantive consolidation doesn't do anything,

does it? Because the allowance against Airlines resolves the -- any dispute, doesn't it?

A Well, again, I'm not the expert on that motion.

Q Okay. Now are you familiar with the motion papers that have been filed in this case with respect to this motion?

A Yes.

Q Which I marked as Exhibit 1 at your deposition yesterday, if you remember that.

A Yes.

Q And one of the issues set forth in that motion paper as a -- or one of the factors as a benefit to substantive consolidation is that duplicate claims filed against both Airlines and one of the other companies would be eliminated; that is, you wouldn't have to move to disallow with respect to the claims?

A Yes.

Q And however, since Northwest Airlines has filed schedules for each of the debtors, certainly, at least from Northwest Airlines' perspective, you can sit down and determine whether you think that claim, which has been filed against, let's say, Holdings, is in fact a valid claim based on your books and records, can't you?

A Well, it would require a significant additional effort to go in and look at the individual claims and determine without substantive consolidation at which debtor the claim should be

appropriately asserted.

Q Well, Mr. Cohen, you know, according to your books and records, who the creditors of each of the entities are, don't you?

A Based on the information we filed with the statements and schedules, yes.

Q Which you believe to be accurate. Is that not correct?

A Yes, we do.

Q So in terms of reconciling the claims against, let's say, Holdings, at least based on your information, you can sit down and look at the name of the claimant, and then look at your schedule, and determine whether the claimant is on that schedule, can't you?

A Yes, I could.

Q And there's a claims agent in this case. Is there not?

A There is.

Q And the claims agent, among other things, is charged with reconciling claims. Is it not?

A The process of reconciling claims involves a much broader effort than just the claims agent. It involves the company, the claims agent, and other advisors to the company.

Q Does the claims agent maintain a database of the claims?

A Yes, they do.

Q And do they also have in that database a list of the creditors of each of the entities based on your books and

records?

A Yes, they do.

MR. ARNASON: Excuse me, Your Honor, for drinking here.

BY MR. ARNASON:

Q And in the motion papers, the number of 5,000 claims was set forth with respect to one of the holding companies. Do you remember that?

A I believe that's with regard to the whole case.

Q You've got 5,000 duplicate claims with respect to all of the consolidated debtors? Is that the number?

A I believe it's 5,000 either duplicate or claims where they may have been filed incorrectly at one of the debtors.

Q Okay. And in the -- do you know how many claims have been filed all together in these cases?

A I believe it's 13,000.

Q And does that include the 5,000 duplicate claims?

A Yes.

Q So, essentially, we're talking about -- strike that.

Mr. Cohen, with respect to the process of resolving the duplicate claims, recognizing that this resolution may involve a number of people, it may involve lawyers, after all, I suppose, or it will at least to some extent, do you think that process of resolving those duplicate claims is going to consume, let's say, eighty percent of the value of

this company, $5.6 billion?

A I'm not sure of your question.

Q My question is there's a --

THE COURT: Is your question whether there are going to be administrative costs of $5.6 billion in this case?

MR. ARNASON: That is correct, Your Honor.

THE COURT: Well, I think I'll represent that there are not.

MR. ARNASON: You'll accept that that's not --

THE COURT: I'll accept it.

MR. ARNASON: -- that resolving 5,000 duplicate claims --

THE COURT: I do think the parties are working in that direction, but they have a long way to go. So I think --

MR. ARNASON: At least -- as of yet, that process is not going to consume the assets of the debtors.

THE COURT: No. But if you have your way, certainly I think we can stipulate that the case is going to be more expensive than it would otherwise. But is there any issue about that?

MR. ARNASON: I'm sorry? With respect to?

THE COURT: Is there any issue that if this motion is denied there will be additional expenses?

MR. ARNASON: I don't know the answer to that, Your

Honor.

THE COURT: All right.

MR. ARNASON: Frankly.

THE COURT: Okay. But I don't think we're going to get to $5 billion.

MR. ARNASON: Okay.

BY MR. ARNASON:

Q Now, Mr. Cohen, I want to direct your attention to, let's say, Exhibit 5. Do you still have that in front of you?

A Yes.

Q This is Exhibit 5 -- okay.

And I want to direct your attention down to Note 1, which has Class 1D unsecured creditors, and Class 1D guarantees.

Now am I correct that the number of shares which goes to the creditors holding guarantees, let us say the number of additional shares, is the same regardless of how many general unsecured claims there are?

A Yes.

Q Now let's suppose that we had a -- absent substantive consolidation, that -- excuse me, Mr. Cohen. I keep on getting confused as to who's who. But that Northwest Airlines Corporation, just to be clear, is the company that is owed 334 million by Airlines. Is that correct?

A Yes.

Q I have that right, okay.

Let's suppose that we took all of the shares that are going to the creditors, which would be 225 million plus 8 million, more or less, and just gave them to the unsecured creditors, and part of those -- that class of unsecured creditors is Northwest Airlines with its three-hundred-and-thirty-four-million-dollar claim.

Do you understand where I am thus far?

A I'm sorry, I don't.

Q Again, let me restate that.

We have 234 million shares more or less that are going to the Class 1D creditors. Is that correct?

A Yes.

Q And let's now assume that there wasn't any -- there aren't any going to the holders of guarantee claims. And, so, the people who are going to share in those shares are the unsecured creditors, including Northwest Airlines.

Can you go up -- look at Airlines claims, the line under Airlines claims. See general unsecured claims, and intercompany claims?

A I see that.

Q Okay. Which is 9,459,000 or whatever the -- 9,459,000,000 is the total. Is that correct?

A Yes.

Q Okay. My hypothetical is the following:

We take the aggregate of the shares going to the

unsecured creditors and the creditors who have guarantees, and we just allocate it among that 9.459 billion in claims, as their interest may appear.

A I'm a little confused by that concept because, in that world, the $334 million is a payable by Airlines to Corp.

Q Yes. And, as such, Corp. is a creditor of Airlines. Is that correct?

A It is.

Q Okay. And I'm suggesting that we allocate all of these shares to the unsecured creditors of Airlines, which includes Corp., the 234 million, more or less.

A Okay.

Q You understand that?

A I'm trying to, yes.

Q Okay.

A I really am.

Q And allocating those shares to the creditors as their interest may appear, including the Northwest Airlines Corporation, in the example I'm giving, would -- the shares that would go to Northwest Airlines Corporation would be, assuming 9,125,000,000 is the right number for unsecured creditors -- and now, again, we're allocating all of the shares among 9.45 billion in claims. The way you determine how much went to Northwest Airlines Corporation is you divide 9.459 billion into 334 million.

A 9.45 billion --

Q That's the total universe of claims.

A And you divide it into what? I'm sorry?

Q Into 334 million because that's the amount of claims held by Northwest Airlines Corporation.

A That would -- okay. I'm following your math now.

Q You understand that?

A I'm following your math.

Q Okay. And the percentage they would be entitled to would be, again, that is Northwest Airlines Corporation would be entitled to is 334 divided by 9.459. Is that correct? And whatever it works out to, it works out to.

A In your math, yes.

Q Okay. This isn't new math, Mr. Cohen.

A Right.

Q And now move to the right there, where the assumption on unsecured claims is lower.

A Yes.

Q But the intercompany claim doesn't change.

A Yes.

Q And the shares that are allocated -- in this case, we're going to include the guarantees and the unsecured together, doesn't change either, does it?

A No.

Q And, indeed, the amount -- number of shares allocated to

those persons holding guarantees, as a group, doesn't change no matter what. Isn't that correct?

A Under the disclosure statement and plan, they were based on the calculations in this left-hand --

Q I'm not asking what they're based on. I'm asking a question. That number doesn't change regardless of any other factors, right? The number of shares that goes to the holders of guarantee claims is 8.6 million no matter what. Is that correct?

A Under the -- under -- I think I'm trying to answer your question. Under the plan and disclosure statement, it's laid out at 8.6 million shares, which represent 3.53 percent of the pre-money value.

Q I'm not interested in pre-money value, Mr. Cohen. I'm asking a very straightforward question.

Doesn't the number of shares that goes to the people holding guarantee claims stay the same under any of the assumptions you've set here -- forth here?

A I believe that you're trying to use Column 2 -- I'm not exactly sure what it is you're trying to accomplish from Column 2. Maybe you can help me --

Q I'll be happy to help you.

Let's take a look at Column 1. In that situation, the people holding guarantee claims, if that scenario came to pass, is 8.6 million shares. Is that right? More or less?

A That's right.
Q And now look at the Column 2 where an assumption has changed. In fact, two assumptions have changed. Is that correct?
A Three assumptions have changed.
Q I'm sorry. What is the third?
A The third assumption is down below in terms of now the number of shares also allocated for the management plan.
Q I understand that. I'm only looking, for the moment, at the shares that go to creditors.
A Well, it's -- to make the comparison relevant, you have to look at the pot of pre-money shares that are available for distribution to the creditors. And that's what we attempted to show here in this analysis is that if you update that analysis for everything we knew today to be with the most up-to-date information, that is the lower unsecured claims, the smaller reduction in guarantee claims, as well as, now, the claim -- or the shares being allocated to the management plan, that when you were done and did that math, if you were to take that snapshot today and we knew everything we knew today, that the percentage of the pot, so on a pure apples-to-apples basis, would have moved from 3.53 to 3.63 percent of the pot.
Q Okay. Let me restate it and see if I understand.
Under Scenario 1, the unsecured creditors get 225 million

shares, more or less, and the people holding guarantee claims get 8.6 million. Is that correct?

A I think that's not the right way to look at it.

Q I'm not asking you whether it's the right way to look at it.

A Okay.

Q I'm asking you whether that's the case.

A That's correct.

Q All right. Now go over to Scenario 2.

Under Scenario 2, and let's put aside whatever the value of this is, the number of shares that goes to unsecured creditors stays the same. Does it not?

A No.

Q Okay. What happens to the number of shares?

A The number of shares available to guarantee claims goes up 2.8 percent. I'm sorry I don't have the math here. So it goes up about 2.8 percent from the 8.6 million shown in Column 1. And then the number of shares available to unsecured creditors without guarantee claims goes down.

Q Okay. So the universe of -- well, let me ask you a question. Does the aggregate --

THE COURT: That's a good idea. Let's see where all this is going in terms of the point that you're trying to make for the record.

MR. ARNASON: Your Honor --

THE COURT: You don't have to tell me what the point is. You can ask him questions. But I'm following what he is saying and I'm following your questions as best I can, but we seem to be going in a circle.

MR. ARNASON: I don't think we are, and I only need to ask one more question on this score. And then --

THE COURT: All right.

BY MR. ARNASON:

Q Mr. Cohen, the universe of -- the number of claims that goes to the unsecured and the guarantees, does that stay the same in both Scenario 1 and Scenario 2?

A The number of shares available in the pot stays the same at 200 -- I believe it's 244 million shares. When we put together Scenario 1, at that time, we did not have the management claim -- or the management plan data.

So now we have the management data. You can see that there. So if you take the sum of the unsecured, the guarantee, and the management equity plan, those add up to 244 million shares.

Those are the number of shares available to all of the creditors, or the pre-money value of the airline of $7 billion.

Q I have to ask this again, Mr. Cohen.

In Scenario 1, is that chart put together, and are the assumptions there in the percentages based on 234 million

shares going out? I mean, are the management shares and so on included in this computation up here as well?

A They are included in this block down below, yes.

THE COURT: I think he just testified that when they did Scenario 1, they hadn't allocated shares in the management equity plan; therefore, it wasn't included.

When they did Scenario 2, they had a management equity plan that's in the plan of reorganization, and it is included, and it affected the result.

Is that correct, Mr. Cohen?

THE WITNESS: That's correct.

THE COURT: All right.

MR. ARNASON: Okay. Thank you for that clarification, Your Honor.

THE COURT: That's what I heard. But I'm listening, too.

BY MR. ARNASON:

Q Okay. Now let's go over to Scenario 2. And looking at the 8.5 billion in claims here, and the 334 million, and let's assume -- let's talk about including the management equity plan.

If the universe of unsecured creditor claims goes down to 8 billion, let's say, do the -- does the allocation of shares between the guarantees and the unsecured change?

A I'd have to run the math, but I'm sure it would change a

very small amount. And, as I mentioned to you earlier, we prepared this yesterday as of our best information at that time.

Q Okay. It changes in some amount, but we don't know precisely standing here today what that is?

A I would have to go off and calculate that for you.

Q Okay.

THE COURT: By the way, Mr. Arnason, I think the record should show that there is one scenario in which the recoveries wouldn't change a penny. And that's the scenario that your client is propounding most vigorously in other proceedings that are going to take up many days of Court time. And that proposition is that all the unsecured creditors in this case get paid in full, and that there's value for the equity.

So let the record show that the Court is fully aware that your client is taking the position in other papers, as I understand it, and correct me if I'm wrong, that all the creditors get paid in full and, therefore, there wouldn't be one whit of change because in order to get up to equity, you've got to cover all the debt, all the guarantees, and all the creditor claims.

But that's beside the point. That's just to complete the record and make a point that I wasn't sure that you were going to cover. And if I'm wrong on that,

certainly, either the debtors or you or your client can tell me that I'm wrong.

MR. ARNASON: I'm sorry. We weren't prepared to cover what the position is in the -- of the Ad Hoc Equity Committee.

THE COURT: Yes.

MR. ARNASON: Your Honor, just to be clear, I have been retained in this case, my firm --

THE COURT: Oh, I know. I know who retained you.

MR. ARNASON: -- because a conflict was alleged.

THE COURT: I know who retained you. No, I'm hearing you. We'll be here until midnight, if you want to.

MR. ARNASON: I don't think I have to go that far, Your Honor.

BY MR. ARNASON:

Q Let me return to another issue, Mr. Cohen, and that is the issue of the guarantees that were given by one or the other of the holding companies with respect to the debt issued by Airlines, which we talked about yesterday. Do you recall that?

A Yes.

Q And the terms of this debt were, I imagine, negotiated with the underwriters responsible for issuing the public debt. Is that correct?

A Yes.

Q And the underwriters and their counsel are sophisticated. Is that correct?
A Yes.
Q And those individuals certainly understood the distinction between Airlines as an operating company and a holding company?
A I would assume so, yes.
Q Yes. And, as you said yesterday, one of the reasons that you might want a guarantee from a parent is because at the time of the issuance of the guarantee, or later, it might have assets. Indeed, your example was it might -- money might get upstream from Airlines. And in the situation of getting the guarantee, a creditor is protected. Is that correct?
A The creditor can look to the general cash flow and the assets of the airline, even if they are distributed up to the corporation.
Q With a guarantee?
A With a guarantee.
Q And turning to Exhibit 1, which is the -- do you have that, Mr. Cohen? That's the list of -- it's the corporate chart.
A Yes.
Q So another advantage of getting a guarantee is that if you're a creditor of Airlines and there's value in any of

these subsidiaries above and beyond those -- the creditors of that particular subsidiary, you have access to the value of that equity, don't you? Because it's an asset of the holding company.

A You could, yes.

MR. ARNASON: May I have a moment, Your Honor?

THE COURT: Yes.

(Counsel confer.)

BY MR. ARNASON:

Q Mr. Cohen, I want to go back to your testimony about tax benefits. Am I correct that substantive consolidation gives the debtors a tax benefit they might not have absent substantive consolidation?

A Yes.

Q And can you tell me without revealing confidential information generally what that is?

MR. ELLENBERG: Your Honor, I don't believe so.

THE COURT: Are you looking for an explication of the intricacies of Section 362(l) of the Internal Revenue Code? Are you looking for a number in terms of the financial benefit? What are you looking for? I don't know what's confidential here. I know enough about Section 362(l) of the Internal Revenue Code, or at least I think I do, and I have to be very careful because people spend their lifetime in that briar patch, and don't necessarily understand it to know

that you calculate the various calculations that you need to make under the Internal Revenue Code in a certain fashion. You do it company-by-company and it is enormously complicated.

That's the law. I don't know whether you're looking for information on that score, or if you're looking for a ballpark in terms of what the financial benefit would be.

MR. ARNASON: Your Honor, this is stated as a reason for substantive consolidation, along with another -- a bunch of other reasons. I'm not interested in 362(l). I'm not even interested in the merits for or against. All I'm looking for is a ballpark estimate of what the value is.

THE COURT: Well, I guess -- is that a confidential matter, Mr. Ellenberg?

MR. ELLENBERG: I'd go with the witness's guidance on that one, Your Honor. I think Mr. Cohen believes it is confidential, yes.

THE COURT: All right. Well, can we agree that it's more than five cents? But we'll let the record stand as it is. It's more than five cents, but the debtors would like to keep the record uncertain.

As I understand your point, it's that it doesn't matter. Under Augie/Restivo, it doesn't matter whether it's five cents, five million, fifty million. It doesn't cut the mustard under applicable authority. So I don't know whether

we need to have more in the record or not. I'll clear the courtroom and your client can either stay or not if it wishes to do so, and I'll let Mr. Ellenberg decide whether he wants the record further clarified in this respect.

MR. ARNASON: I think I can ask the question in a way which doesn't --

THE COURT: All right.

MR. ARNASON: -- call for confidential information.

BY MR. ARNASON:

Q The value of the reorganized debtors in this very -- these various scenarios, which are Exhibits 5, 6 and 7, varies from six-and-a-half billion to seven-and-a-half billion dollars. Now, if we set the level of materiality at the SEC level of five percent, is the tax benefit, whatever it is, material?

A Yes.

Q Okay. That's all I need to know.

THE COURT: Well, thank you. That -- yes -- well, I think, gets our record and doesn't compromise either the company or your position because I don't want to preclude you in any way from making your position, but -- and correct me if I'm wrong, but I think your position is it can be material -- immaterial. It doesn't -- it doesn't matter. And I don't, in any way, suggest you're being flip about it, but I think that's your -- that's your view of the law, as I

understand it.

MR. ARNASON: Your Honor, it is, but I should also say that it's certainly argued by the debtors, and I think there is some support in the cases for this, that there's a sliding scale on the application of Augie/Restivo that may depend on the benefit of the substantive consolidation, so it seems to me it is relevant to that number. I've helped them, I think, Your Honor, frankly, but Your Honor, we received a -- let me ask a question.

Q Am I correct that the debtors are not arguing here, in these papers, and you're not asserting in your testimony that the assets of the various debtors are intermingled, or they can't be traced, or that corporate formalities were disregarded?

A I'm sorry. Could you ask your question again?

Q I could. Am I correct, Mr. Cohen, that you explicitly or implicitly are not asserting that assets of the various debtors were improperly intermingled?

A We believe we have one business model, where the business activities of the airline are intermingled across all of these debtors, but at the same time, we definitely follow best practice, which has us keeping very close track of all our assets throughout our companies.

Q And would it be fair to say, if I could summarize this, Mr. Cohen, that given that you seem to be a very careful

person, that Northwest is meticulous with respect to record keeping, observing legal formalities, complying with rules on, for example, consolidation, and so on?

A I believe we complied with all the rules, yes.

THE COURT: Can we have Owl Creek's stipulation to that effect, Mr. Arnason?

MR. ARNASON: That they are meticulous as to -- and that they comply with corporate formalities? We will be happy to stipulate to that, Your Honor.

THE COURT: All right. I'll remember that next week.

MR. ARNASON: Okay. Could I -- excuse me for one minute. I have no further questions, Your Honor.

THE COURT: Thank you. Anyone else?

All right. Mr. Ellenberg, anything further?

MR. ARNASON: Subject to anything coming up in redirect, Your Honor.

THE COURT: Well, I'm sure redirect will be short.

REDIRECT EXAMINATION

BY MR. ELLENBERG:

Q Just one question, Mr. Cohen. To clarify the somewhat prolonged conversation about Exhibit 5, is it your testimony that the management equity plan deluded the shares going to the general unsecured creditors, but not to the guarantee holders?

A Yes.

MR. ELLENBERG: Okay. I have no further questions, Your Honor.

THE COURT: He asked one question. And then parties can obviously ask any questions based upon that. Looking at Scenario 2 in Exhibit 5, Mr. Cohen, that's your best estimate today of the midpoint additional recovery of a creditor with a guarantee. Is that correct?

THE WITNESS: Yes. If we were to update all of the assumptions, Your Honor, to today's best knowledge, and we're to go back and recalculate this, that would be our -- the 3.63 would correspond to the 3.53.

THE COURT: Is this the final calculation that you're going to make for purposes of an actual distribution to creditors with guarantees under the plan of reorganization if it's confirmed?

THE WITNESS: Well, I believe the disclosure statement of the plan calls for the distribution to 8.62 million shares, which would correspond to the 3.53, and I believe it's our belief that the difference between the 3.53 and the 3.63 is not material.

THE COURT: All right. Mr. Hazan, is this based upon my single question?

MR. HAZAN: It happens to be, Your Honor.

THE COURT: All right.

MR. HAZAN: Thank you.

CROSS-EXAMINATION

BY MR. HAZAN:

Q Mr. Cohen, are the claims finally resolved in this case?

A Not all of the claims.

Q Do you currently know the asserted claims level, after taking into account whatever progress has been made versus the, I'll call it the midpoint levels in that exhibit the Judge referred to?

A The level of claims that have been admitted and still being disputed is well in excess of this midpoint, and this midpoint is based on management's best effort and best analysis, at this point, to anticipate where they might wind up.

Q One other question. Has the company incurred restructuring costs during the Chapter 11?

MR. HAZAN: This is will relate to the same question, Your Honor.

A Yes.

Q Not to lead you, hundreds of billions of dollars?

A A hundred million dollars.

Q Putting aside fees -- I mean, fees are only one element included in restructuring costs?

A Oh. Oh, yeah. You know, close to $2 billion.

Q Okay. Has any portion of the two billion been allocated

to, as an example, Corp., the parent company?

A No.

Q If it was allocated, would there be a reduction in the value at Corp., distributable to whoever has claims against Corp.?

A It may be. I'm not sure, but yes, it may be.

Q I'll rephrase it. If there hasn't been an allocation, if $10 were allocated to Corp. and Corp. otherwise had $20 of assets, would there be $10 of assets left to distribute to the creditors entitled to a distribution?

A Yes.

Q Thank you.

THE COURT: Well, I'm going to ask one more question, based upon that. Then I'll give you a chance, Mr. Arnason.

Have you a best judgment as to the costs that the debtors would incur if the current plan of reorganization was denied confirmation, and the debtors had to start the process all over again? Or -- strike that. Over again.

THE WITNESS: Well, that would be very significant. It's hard to estimate what that would be.

THE COURT: All right. Mr. Arnason?

MR. ARNASON: Your Honor, I must say, I have to ask a question.

THE COURT: You can move to strike any of my

questions, as well.

MR. ARNASON: Your Honor, I usually don't do that with judges.

THE COURT: Well, you may. You may.

MR. ARNASON: But I really -- and I believe Mr. Cohen's testimony on the distribution of shares was different from what he said when I was asking the questions, and so, I really have to just try to clarify something.

RECROSS-EXAMINATION

BY MR. ARNASON:

Q If we look at Scenario 2, Mr. Cohen, and am I correct that between Scenario 2 in these three exhibits, the only number that changes is the pre-equity value of the debtor?

A Between the various pages? Is that the question?

Q Yeah.

A Yes. That's the only thing that changes.

Q Okay. Correct. Thank you. I don't know if it's correct, but --

Now, let's just look at Scenario 2, and let's suppose the unsecured claims are not 8.5 billion, they're 8.25 billion. Does the allocation of shares between those holding guarantees and those -- and the unsecured creditors, and I'm holding everything constant except the size of the unsecured pool, does that change at all?

A You know, I'm not sure. I'd have to calculate that for

you.

Q Well, in any event, it's your understanding of the plan, therefore, that the allocation of shares between these two elements of Class D changes, depending on the size of the unsecured pool?

A That's not what I said.

Q Well, perhaps, if you don't mind, if you could repeat what you said.

A I think I said that in our plan and disclosure statement, that 8.6 million shares are made available to those claims who have guarantee claims.

Q And that's the same, is it not, even if the unsecured claims were 8.25 million -- billion?

A That is a fixed number.

Q Okay. Thank you, Mr. Cohen.

THE COURT: All right. Thank you very much. I have reviewed the papers. I'll take some brief closing argument. Mr. Cohen, yes, you may step down.

THE WITNESS: Thank you.

THE COURT: Thank you.

(Witness excused.)

THE COURT: Do we need to change reporters? All right.

MR. ELLENBERG: Your Honor, before closing, I wanted to offer two additional exhibits, which are Exhibits 7 and 8.

They are -- one is an affidavit from BSI, and the other is an affidavit from Financial Balloting Group. The affidavits contain the unaudited results of the balloting. Representatives of both BSI and Financial Balloting are here, if Counsel insists on --

THE COURT: I gather these are documents that are on file on the ECF system now. Is that right?

MR. ELLENBERG: Not yet, Your Honor.

THE COURT: Not yet.

MR. ELLENBERG: The voting has not been certified, and it hasn't been certified because it has not yet been audited. As I said, these are the unaudited results. The testimony would be that in their experience, the audit changes the vote less than five percent. And what these show, Your Honor, is that in excess of ninety-five percent, in both amount and number in Class 1D accepted, and we would offer it to establish that point.

THE COURT: Any objection?

MR. ARNASON: I only have one question, Your Honor, which maybe I misunderstood Mr. Ellenberg earlier, but I only have Exhibits 1 through 6 and 8. Is this 7, then?

MR. ELLENBERG: Yes.

MR. ARNASON: Okay. Thank you.

THE COURT: All right.

MR. ARNASON: No objection.

THE COURT: Mr. Arnason, do you want to admit your Exhibit A --

MR. ARNASON: Please.

THE COURT: -- into the record. Any objection?

MR. ELLENBERG: No, Your Honor.

THE COURT: All right. Then we'll admit A, 7 and 8.

(Exhibit A, Exhibit 7 and Exhibit 8 received in evidence.)

MR. ELLENBERG: Here are seven and eight, Your Honor.

THE COURT: All right.

MR. ELLENBERG: You have them. All we need is seven. Your Honor, we've lost it. I don't know if --

THE COURT: All right. Do you have any further evidence?

MR. ARNASON: We have no evidence, Your Honor.

THE COURT: All right, so you rest, Mr. Arnason?

MR. ARNASON: I rest.

THE COURT: All right.

MR. ARNASON: Except for argument.

THE COURT: All right. Anyone else? Then the record is closed.

MR. ELLENBERG: Your Honor, if he's resting, that's fine, but let me just say that he's only offered an affidavit about the claim ownership of Owl Creek, and we would like an

opportunity to cross-examine, if that's what he's relying on.

THE COURT: And the purpose of that is? What is the fact that is germane to this proceeding that needs to be in this record?

MR. ELLENBERG: What they relied on in purchasing the claim, what information.

MR. ARNASON: Your Honor, let me just respond to that. First of all, I don't believe we're obligated to have our client in court, and our client is not in court today. Our client has not been subpoenaed, and I have not heard anything which is -- prior to this moment -- that this testimony was going to be required. And if Your Honor --

THE COURT: Requested.

MR. ARNASON: I'm sorry, requested. And if Your Honor were to require it, we would have to adjourn, and I think it would be to some other day.

THE COURT: Well, I think they're ready to proceed to closing arguments.

MR. ELLENBERG: Okay, Your Honor. Well, if the Court please, Mark Ellenberg, on behalf of the debtors.

Your Honor, we're here today requesting the substantive consolidation of four of the debtor entities. We've called them Corp., Holdings, Inc., and Airlines. Corp., Holdings, and Inc. are holding companies. Holdings and Inc. are historical vestiges. They will be merged out of

existence.

The Court clearly has equitable authority to order substantive consolidation. Augie/Restivo sets two standards. One is that they are a single economic unit, and the second is that the debtors are, quote, "so entangled that consolidation will benefit all creditors." The tests are a disjunctive, Your Honor. We only need to meet one. I believe we meet both.

I don't think there can be a serious dispute that Northwest operates as a single economic unit. There's one business. There's one operating entity. All of the energies of the enterprise are devoted to that one, single line of business.

With respect to entanglement, Your Honor, we know, Your Honor, that there is a sharing of overhead management and accounting. We know that there are intercompany guarantees. No single entity can borrow on its own credit. We know that there is single ownership of the stock of each subsidiary entity. There are common directors and officers. There is one entity financing the others. There are consolidated financial statements. The entities have no business, except with each other, except for Northwest Airlines.

They are all acting from a shared business location. There is not separate profitability reported for any of the

entities. They only report on a consolidated basis. And a single entity provides human resources, finance and accounting, marketing, procurement, advertising, sourcing, distribution, legal services, and information systems. These are all factors that Courts in the past, including this Court, have used in approving substantive consolidation.

It's also clear, Your Honor, that there are clear benefits from consolidation. There are cost benefits. There are tax benefits. There's a Series C benefit. By the way, Your Honor, in that regard, the Series C judgments are only --

THE COURT: I think I understand the Series C situation. We had extensive argument last week.

MR. ELLENBERG: Okay. And most importantly, Your Honor, no one was hurt. Your Honor has said in prior occasions that the key issue on substantive consolidation is who was injured, and nobody here is injured. The only injury asserted in the objection is that the guarantee claim is not being compensated as it would be on a stand-alone basis. I think the evidence is overwhelmingly clear that Northwest did its best possible attempt at estimating what the distribution would be on guaranteed claims under a stand-alone plan.

Substantive consolidation is an equitable remedy. We are trying to be equitable with the guarantee claims. It is possible that there will be minor variations, and that we

don't have a one hundred percent precise allocation, but that allocation can turn out to be favorable or unfavorable. We think we did equity. We think we did what was fair, and that no one is damaged.

Finally, Your Honor, the class has overwhelmingly accepted this treatment under the plan. We think that certificate is significant for two respects. One, we think it disables Owl from even challenging substantive consolidation. They are clearly bound by their treatment under the plan once the class accepts whether or not they have voted for the plan. They're bound by it. This treatment clearly was viewed as acceptable by the vast majority, in fact, the overwhelming majority of other creditors in their class.

In addition, Your Honor, it goes to the equities. Again, substantive consolidation is an equitable remedy. We have a single objector here today, fighting the overwhelming majority of the vote and, I think pretty clearly, with another agenda, an ulterior motive that really has nothing to do with substantive consolidation. This is part of a campaign of guerrilla warfare to try and take down this plan on any basis. And thus, they're really not seeking equity here today.

THE COURT: Does that matter?

MR. ELLENBERG: We are. Yes, Your Honor. Again,

substantive consolidation is an equitable remedy. I think this goes to the equities and we cited in our reply brief, Your Honor, another decision where the Court relied, in part, on exactly the fact that the objector -- the objector's agenda was to take down the plan, and not -- and wasn't really concerned with the distribution on his claim, as such. Thank you.

MR. HAZAN: Good afternoon, again, Your Honor. Scott Hazan, from Otterbourg, for the Committee.

The Committee has filed a statement in support, which I mentioned earlier, and we filed it yesterday and provided a courtesy copy to chambers, and respectfully refers the Court to much of the substance that is relevant here. I won't repeat that.

The Committee certainly reviewed the facts and believed and believes the plan provides a distribution through substantive consolidation that is either exactly or substantially the same as that would occur in the event there were separate plans, with the additional compelling benefits, as described in the motion, and put in the record today, including speed, full tax benefits as illuminated in the record today, the elimination of costs addressing many thousands of claim matters. The committee believes that either of the Augie/Restivo standards that have been applied regularly by Bankruptcy Courts, and this Court, have been

established in the record.

Now the only objector, as Mr. Ellenberg pointed out, is Owl Creek, whose motivations have been questioned and certainly challenged very powerfully in the debtors' reply. I won't repeat those. The votes by all the creditors which are now reflected in the record, including the many who hold the guarantees that are partially the subject of this record and that are conceivably affected by substantive consolidation, have just spoken very loudly and clearly through their overwhelming support of the plan.

Now the alleged prejudice, as suggested by Owl Creek, and referred to by Mr. Ellenberg, is fiction, and it's not fact. For distribution purposes, only Northwest Airlines, Inc. and Northwest Airlines Corp. have significant assets, and the only asset of Northwest Airlines, Corp. appears to be the intercompany receivable against Airlines. That claim that Corp. has is, as its record is painfully clear, is getting the distribution for Airlines in the manner described in the plan and in this record. There's no mystery about it.

Now why do I even say that? At Page 3 of the objector's objection, they object to the treatment of the Corp. claims versus the airline, and they say, and I quote, that -- excuse me. And they say it was reached, quote, "through a secret negotiation with creditors, fixing the

number of shares ..." Now, I know it's not going to be a surprise to Your Honor, and it's certainly no surprise to us, that there's nothing in this record supporting that allegation, but that is an allegation, an accusation made in the objection from Owl Creek. Again, Your Honor should consider who they are, what they are, and maybe what their purposes are.

Now, there are lots of moving parts with respect to the claims and the debtor has done a fair job, in this plan, to provide fair treatment, as that claim at Corp. might be entitled to if it were separately dealt with.

The objection at Page 11, and this is kind of my last comment, Your Honor, provides several quotes that clearly demonstrate that the objection is off the mark. First, the objection states that, quote, "as a result of substantive consolidation, intercompany claims are eliminated and guarantees from co-debtors are disregarded." They cite WorldCom and Augie/Restivo.

THE COURT: I think they used some other brief, and they just marked it up without adequately changing it, but I don't think we can blame --

MR. HAZAN: That's being kind.

THE COURT: We can't blame this counsel because they only had an hour to read it.

MR. HAZAN: Well, let's -- to put the humor aside.

I happen to like these guys and they do an excellent job. They did sign the pleading, so if there's blame, they just got it.

Second, the objection states that, quote, "substantive consolidation usually results in eliminating intercompany claims," citing the Richton case. Here, the debtor, in substance, is honoring the intercompany claims and is honoring the guarantees. They're not being disregarded. They're not being eliminated. They're essentially receiving the same benefit they would otherwise receive pursuant to a plan that happens to be effectuated through substantive consolidation, an approach that is supported by something awfully close to a hundred percent in number, and awfully close to a hundred percent in amount of the creditors of the debtors' estates.

We respectfully request Your Honor grant the motion. Thank you.

THE COURT: Thank you.

MR. BRILLIANT: Good afternoon, Your Honor. Allan Brilliant, on behalf of the Ad Hoc Committee of Certain Claims Holders.

Your Honor, the debtors here are not seeking substantive consolidation in a vacuum and for all purposes, but only in connection with the plan of reorganization, which is on file. We don't believe, in this context, that, you

know, the standard for Augie/Restivo should be, you know, applied, you know, at the highest levels, but instead, you know, flexibly, especially in connection here, where the vast majority of all the creditors voted for the plan.

Substantive consolidation generally has two effects. One is it can't have the effect of taking away the ability of creditors to vote on a class-by-class basis. Although there has not been, at this point, an entire analysis of the creditor classes, it's pretty obvious that the creditors overwhelmingly, both at the Holding Company, if one were to look at the votes there, as well as at Airlines, have overwhelmingly voted for the plan.

So whether or not Your Honor, as part of -- if Your Honor were to confirm the plan and the substantive consolidation would go into effect, you would not be taking away anybody's, you know, voting rights. And, in fact, if Your Honor were to approve the plan, you would be granting a consolidation of the debtors, which the creditors have overwhelmingly, you know, support (sic).

The only effect that's been alleged here, that could be at all harmful to any creditor, is the fact that there would be distributions to the Series C creditors and to one other relatively, you know, small creditor at one of the other entities, which would be eliminated. Although, you know, it is not an insignificant amount of money that would

be distributed in the context of the whole case, it is not particularly material and it's not at all clear, at this point, depending on what ultimately happens with the allowance of those claims, as to whether or not those claims would ultimately be allowed.

But there are some things, without knowing in certainty as to what's going to happen there, some things we do know. One is that the plan is overwhelmingly supported by substantially all the creditors. It's supported by the creditors' committee, by our ad hoc committee, which also holds a significant amount of debt, and there is only one party that's objecting to it at this point, the holder of a fifty-million-dollar claim, which in the context of this case, is really not particularly material.

In addition --

THE COURT: Well, I gather that is the very same creditor that's taking the position that there's value for equity in this plan, which would mean that, by definition, all creditors get paid in full and the guarantees go away because you're not going to get paid more than 100 cents under applicable law, as I understand it, and there's value for equity.

So we'll hear from them next week as to why they've objected to substantive consolidation, or we'll hear from them today as to why they are objecting, other than to derail

the plan, cost the debtor undoubtedly tens of millions of dollars in administrative expenses, and put us back to not step one, but certainly delay the plan, kill the rights offering, and the like, all of which they may be entitled to do if the law is on their side. But I do think it's particularly noteworthy that the party making the claim here is the party who says that guarantees are worthless anyway because we're entitled to 100 cents.

MR. BRILLIANT: I think that's right, Your Honor. And I guess --

THE COURT: You don't have to agree with me if my analysis is wrong.

MR. BRILLIANT: No, no. I do agree with you, Your Honor. And, actually, you're going the same place I was going in finishing, you know, my statement, which I'd like to keep brief.

But all I was going to say is there's speculative issues as to whether or not there would be harm. In order for Owl Creek to be harmed, as Your Honor, you know, has pointed out, it would have to turn out that the debtors were insolvent. We believe the debtors aren't insolvent. They, obviously, you know, take a different position in connection with the confirmation hearing generally.

But you'd have to have that the Series C claims would ultimately have to be finally allowed, you know, and

not subordinated and, more importantly, that the savings that all of the creditors would share in terms of having lesser administrative expenses and resolving, you know, certain claims, tax issues, and various other things, would have to be less than whatever benefit, you know, they would receive on account of their claim because of the savings afforded to all the creditors generally by having the plan confirmed, which includes the substantive consolidation.

Given that as a whole, we believe that this is better for the estate and it's as part of a plan which has been overwhelmingly approved at all levels of the capital structure. We believe that in the context of this plan, substantive consolidation is appropriate.

THE COURT: Thank you.

MS. LEVINE: Good afternoon, Your Honor. Sharon Levine, Lowenstein Sandler for IAM. Hearing Your Honor's comment that you're familiar with the Series C claim from last week's hearing, we would just rely on our statement in support of the debtors' motion and ask that Your Honor grant it. Thank you.

THE COURT: Thank you.

All right, Mr. Arnason, I think it's your turn.

MR. ARNASON: Thank you, Your Honor, I think.

Your Honor, let me start by dealing with the issue of approval of the plan. If that's the standard --

THE COURT: It is not.

MR. ARNASON: Okay.

THE COURT: It is not. It may or may not go to the overall equities, but it's certainly nothing more than background as far as I am concerned.

MR. ARNASON: Okay. And let me just say one thing more on that. Because the effect of substantive consolidation and the way this plan has been drafted has been to lump the creditors with guarantees in with the overall universe of unsecured creditors, if the unsecured creditors as a group thought that this was a bad and inappropriate deal for those holding guarantees, then they might want to vote in favor of the plan because a fair plan that complied with the Bankruptcy Code might be worse for them.

THE COURT: And would you like to describe that plan to me?

MR. ARNASON: A fair plan for the -- can I defer on that and come back to that?

THE COURT: You can come back to that in a couple of weeks, if you want to.

MR. ARNASON: I don't intend to, Your Honor. I won't --

THE COURT: I may issue my decision before then, but you can certainly defer on it.

MR. ARNASON: Okay. I think there is a profound

disagreement here on what Augie/Restivo provides. I think that's -- and as I read Augie/Restivo, and I'm quoting from Augie/Restivo, if the issue is entanglement, it has to be so extensive that the cost of untangling would outweigh any benefits to creditors.

Now that's just not the case. And I don't believe that anybody has even asserting it's the case. The whole issue of determining what the assets are and what the claims are and so on, is fairly straightforward. Northwest knows what the assets are. They know what the claims are. The process of reconciling duplicate claims is not something that is in any way material in connection with a case of this size.

The other thing that I would say, and this goes to really the other element of -- the other prong of the test, which is the issue of the debtors holding themselves out as a single entity.

One of the issues that has been returned to again and again is the issue of the existence of guarantees. Your Honor, I frankly think that the issue of guarantees cuts the other way. The reason you ask for a guarantee is not because you, as a creditor, think that this is all one big mush, but, rather, because you believe there are circumstances in which there may be value at the guarantor level, at the parent level, which there aren't, as the -- at the issuing level in

this case, or where the loan is made.

And to take a more dramatic example of that, which I know you're familiar with, Your Honor, in the maritime world, it is routine for creditors to ask for cross guarantees and guarantees for the parent precisely because they want to recapture value that may exist someplace else in the corporation rather than just in the corporation to which they made the loan when their vessel turns out to be worth less than the amount of the loan.

And so I don't the guarantees do anything but support the case that substantive consolidation is -- or, rather, that the corporation is reviewed separately.

And, as was clear from the testimony, nobody on the other side of these transactions who is seeking the guarantees was somebody who I think we can conclude had any uncertainty as to who was issuing the securities and who was guaranteeing them, and the relationship between them.

THE COURT: I think the record is silent on that score, but if there is a record, it is that the holders of many of these instruments are sophisticated investors. Now what that means and what sophisticated investors do, I'm not going to hazard a guess.

MR. ARNASON: Right. Okay.

THE COURT: But let's assume that they are sophisticated investors.

MR. ARNASON: Okay. Now the other issue that I would like to address is the argument that has been raised about the motives of Owl Creek. Now Owl Creek has two interests in these cases. It exists -- it has an interest as a creditor, and a creditor with a large claim, and its got an interest as an equity holder.

Now it might well turn out that their arguments with respect to equity are denied. And, therefore, they're left only with their unsecured claim. Now, in that circumstance, surely they have standing to come before this Court and say, by the way, the way that our claim is being handled, unsecured claim is being handled, is also unfair. And everybody is quite correct that if it is determined that equity is in the money and all the creditors can be paid 100 cents on the dollar, this whole issue of substantive consolidation goes away. This, then, has been a -- for everybody has been a moot exercise because all the creditors are going to get paid 100 cents on the dollar and everybody is going to go on very happily.

THE COURT: In fact, everybody saves some money. If there's money for equity in this case, keeping down administrative expenses does nothing but help equity. If the debtor gets a better tax result, it benefits all potential equity holders.

MR. ARNASON: That's correct.

THE COURT: So let's look for a moment at the detriment to your client with a claim of I think $50 million of debt.

MR. ARNASON: The detriment --

THE COURT: How much does your client suffer by virtue of the substantive consolidation that's effected in the plan, taking into account the additional distribution that it will get in respect of its guarantee? What's the dollar amount that your client is asserting that it is short?

MR. ARNASON: Your Honor, I will come back to that, if I may.

THE COURT: Today? Or --

MR. ARNASON: Well, I'm going to come back today.

THE COURT: All right. But we're nearing -- we're getting very close to the end of the day. So --

MR. ARNASON: I understand, Your Honor. And I don't intend to take much more of your time.

There's a very important element that I think is fundamental to the bankruptcy process which is being denied to my client by virtue of the substantive consolidation, and to other similarly situated creditors. My client is a creditor of a debtor which has an asset, apparently only one asset, but we don't know -- that is, my client doesn't know that beyond what we've been told by the debtor.

THE COURT: Well, you took Mr. Cohen's deposition

yesterday. We have a record. We have testimony under oath. What am I supposed to assume with regard to the assets of this debtor?

MR. ARNASON: Your Honor, I --

THE COURT: For purposes of this hearing.

MR. ARNASON: For purposes of this hearing, you have to assume that the assets of this debtor are a claim of $334 million, which is an allowable claim against the airlines' case.

THE COURT: Right.

MR. ARNASON: That's what you have to assume.

THE COURT: And that it would get a certain distribution in the plan.

MR. ARNASON: That's correct.

THE COURT: And that there are other creditors against this same entity, including, if I understand correctly, a huge judgment on behalf of the Series C holders.

MR. ARNASON: Well, the judgment is about 200-plus million, and the total claims are 3.8 billion. So, yes, it is a large thing, that's correct. But it's not by any means the whole of the claims.

So the effect of this is that the debtors are saying, look, guarantee creditors or Owl Creek, don't worry about the fact that you didn't get to vote on a plan with respect to the assets of this separate entity because we're

taking care of you. And I submit that's just not the law. I don't think that you can deprive somebody of their right to a plan and a vote simply by using the doctrine of substantive consolidation.

And the case for substantive consolidation -- and I must say I, frankly, am not sure I understand it. I'm not sure that I've seen an articulated basis, except for this issue which I certainly don't understand, but will accept Mr. Cohen's testimony relating to the tax benefits. And, by the way, if that had all been spelled out in the disclosure statement, I don't know what the position of the Government might have been with respect to substantive consolidation, frankly. But that's not an issue here.

Now the harm, which I think is clear from the record, the harm here is that the claims that go to the secured -- to the creditors holding guarantees -- or the shares, I'm sorry, Your Honor, I misspoke, that go to the creditors holding guarantees is fixed. Whether that's a good deal or a bad deal depends on an unknown here, which is the pool of unsecured creditors.

That's why we submit substantive consolidation is inappropriate. And let me say one other thing, Your Honor, although it's not before you on this motion, which is the classification, frankly, I think the somewhat odd classification of the guarantee creditors in with the

unsecured creditors really emphasizes this because the guarantee creditors didn't even have, as it were, an option to vote with respect to a separate class, even though they're getting a separate recovery.

But we don't think we should have to bear the risk of what the appropriate number of shares is that should be distributed among the guarantee creditors without an opportunity to have a plan.

THE COURT: What do you think the difference is, Mr. Arnason? How much is your client out? Let's put it in dollars and cents. What is the harm to your client from the substantive consolidation in a dollars-and-cents sense?

MR. ARNASON: Your Honor, I haven't run the math, so I have to make a guess here.

THE COURT: Well, I don't know that I can -- if your client hasn't given you a number --

MR. ARNASON: I don't have a number

THE COURT: -- then, presumably, they don't know. They haven't bothered to figure out what the cost is.

MR. ARNASON: Well, Your Honor, I have to make a guess. But it's not a guess that I'm just pulling out of the air. I think the swing for my client is likely to be in the order of a million dollars, something like that. I mean, this is --

THE COURT: A swing between what and what?

MR. ARNASON: It would probably be between forty and $41 million, something like that.

THE COURT: And your client is -- that's your client's view of what your client will receive in the plan?

MR. ARNASON: Your Honor, the only reason that this -- it's based -- that's our view based on the information that has been set forth here. And the only way that the number would change dramatically is if somehow the universe of unsecured claims, or for that matter, the universe of guarantee claims turns out to be very dramatically different than it is.

So within the framework of the examples which the debtor has given, and even going somewhat beyond that, my best estimate is there might be a million-dollar swing. And just to emphasize, Your Honor, it is my client's view that it shouldn't have to bear the risk of that in a situation where it didn't have the opportunity to vote as it should have on a separate plan.

And I reiterate, I don't believe the test of Augie/Restivo have been met, and I don't believe that benefit to the creditors, even assuming that's the case, just overwhelms the other elements of the test.

Thank you, Your Honor.

THE COURT: All right. Any very brief response?

MR. ELLENBERG: Yes, Your Honor, and it will be

brief.

Two things. First, Your Honor, with respect to whether guarantees are helpful to consolidation or unhelpful, Mr. Arnason expressed his opinions that he thinks it suggests separateness. Courts seem to disagree. The Drexel Burnham Court, the Food Fair Court, the In Re Richton International Court, Standard Brands Paint Company, In Re Vecco Construction Industry, Inc.; we all cite them on Page 9 of our reply brief. Each of those cases held that the existence of an intercompany guarantee is a cardinal indicator of a need for substantive consolidation.

And the reason that is so, Your Honor, is because the rationale for not consolidating is that each entity can stand on its own two feet where an entity cannot borrow based on its own credit, but needs its parents credit or, if it's a parent, its subsidiaries' credit. That is a recognition that they are not truly independent, stand-alone entities, but, rather, are co-dependent and, therefore, must borrow based on each other's credit. And that is why all of these cases suggest the guarantees, intercompany guarantees, are an indicator for substantive consolidation.

Second, Your Honor, it can't possibly be the case that substantive consolidation is improper where it deprives a creditor of a standalone vote on a standalone plan. If that were true, you could never substantively consolidate

because it will always have that effect. So that can't possibly be the standard.

Now what the cases do say, Your Honor, is that you should look at who is injured and see if the injury, to the extent it exists, can be mediated. In particular, the Standard Brands Paint Company case, which we cite on Page 15 of our original motion, says that the Court as a Court of equity, providing an equitable remedy, can modify the substantive consolidation to meet the specific needs of the case. And that was our model for doing what we did here, Your Honor.

We needed to substantively consolidate. I think the record is clear as to why we needed to do that. We did not want to cause injury to the guarantee holders. We intended -- and I believe we successfully mediated against the injury by providing a compensation to the guarantee holders.

It may not be perfect, but it is certainly fair and equitable. It may turn out to be better for them; it may turn out to be worse. But what the exhibits in the record show is that the sensitivity range is really quite narrow and that there is only so far off we could be; and that, in fact, as of today, they're really sitting pretty much where we expected them to be because the slight decrease in our claims estimate was offset by the protection from dilution by the management equity plan.

So, Your Honor, we believe that we've done equity. We believe we fit within the Standard Brands test, and we ask that the motion be granted.

MR. ARNASON: Your Honor, one reply to what Mr. Ellenberg has said about it never being possible to substantively consolidate. The answer is, of course substantive consolidation has the impact of stripping creditors of one of the entities of the right to vote on a plan with respect to that entity. Of course it does.

And that's a consideration that this Court must weigh. And, of course, this Court has to reach the determination -- it doesn't reach a substantive consolidation determination by just ignoring that and saying, well, if I considered that, I'd never be able to substantively consolidate. It's done in the context of weighing the various factors.

Thank you, Your Honor.

THE COURT: All right. I'll give you a decision in a few minutes.

(Recess taken at 4:35 p.m.)

(Proceedings resume at 4:53 p.m.)

THE COURT: The debtors have moved to substantively consolidate three passive holding companies with the operating airline in connection with their pending plan of reorganization. The plan is premised such substantive

consolidation, and the debtors have brought their motion for a separate hearing on notice to affected creditors, so that the motion would receive the separate attention that it deserves under applicable law. Only one creditor has objected, the same creditor that is a leader of a group of shareholders who are trying to derail the plan on the ground that it fails to provide any value to shareholders.

There is no dispute that substantive consolidation would benefit shareholders because it would admittedly eliminate the need to deal with thousands of duplicate claims, to disentangle records and accounts of the debtors; that it would reduce administrative expenses, provide material tax benefits to the group, and other produce more value for the entire creditor body and, if there is anything left, for the shareholders.

Owl Creek, enjoying the interests of the shareholders that it purports to champion and, it would appear to this Court, its own interests, claims that this is not enough. It asserts that even the most compelling case of administrative convenience and cost-saving cannot justify an order of substantive consolidation.

Citing the Second Circuit's opinion in In Re Augie/Restivo Baking Co., 860 F.2d 515 (2d Cir. 1988), Owl Creek says that substantive consolidation depends entirely on two "critical factors." One, "Whether creditors dealt with

the entities as a single economic unit" and "did not rely on their separate identity in extending credit." Where the Second Circuit cited and quoted from Collier and from its decision in the Flora Mir case, 432 F.2d 1060, among other cites; or,

Two, whether the affairs of the debtors are so entangled that consolidation will benefit all creditors. Citing inter alia Chemical Bank v. Kheel, 369 F.2d 845 (2d Cir. 1966).

Owl Creek says that the existence of its guarantee demonstrates that creditors relied on the separateness of the entities to be consolidated and that the debtors could conceivably disentangle the affairs of the consolidated companies even if it were time-consuming, expensive, and ultimately harmful to creditors and shareholders alike. The debtors respond that courts have held that the existence of guarantees is not evidence that creditors relied on the separateness of the entities, but the opposite, and that the affairs of these four consolidated debtors are hopelessly entangled, at least to the extent that consolidation will benefit all creditors.

This certainly appears to be a case within the second of the two Augie/Restivo factors, that meets the second of the two Augie/Restivo factors, but the Court need not decide whether substantive consolidation could be ordered

based upon either ground if any creditor were substantively harmed.

The Court fully agrees that the Augie/Restivo formulation is binding authority, and this Court has followed it in other cases, most recently in In Re Veristar, Inc., 343 B.R. 444 (Bankr. S.D.N.Y. 2006). The Court follows it today.

Yet, the holding in Augie/Restivo cannot be divorced from the issue before that Court. The opinion begins with the following words:

> "This appeal concerns the substantive consolidation of two bankruptcy proceedings. We reverse because the consolidation impairs the rights of certain creditors, principally Union Savings Bank."

The Court's opinion highlights at every point the prejudice to that bank of the consolidation, and it quoted Judge Friendly in the pre-code case of Flora Mir, where he, too, said that consolidation might attain some desirable grounds, but that it couldn't be ordered at the cost of sacrificing the rights of debenture-holders. Both Courts emphasized that the power to grant substantive consolidation had to be used sparingly and with great caution because of the potential harm to certain creditors.

Similarly, in his exhaustive opinion on substantive consolidation, which Owl Creek relies on, In Re Owings Corning, 419 F.3d 195 (3d Cir. 2005), Judge Ambro adopted the

restrictive construction of substantive consolidation in Augie/Restivo, emphasizing its narrow scope and potential for harm in a case where the doctrine is being used offensively to affect the rights of a group of banks. Owens Corning rejected a more liberal approach of cases such as In Re Auto-Train, 810 F.2d at 276 (D.C. Cir.) But the Owens Corning Court specifically noted:

> "If an objecting creditor relied on the separateness of the entities, consolidation cannot be justified vis-a-vis the claims of that creditor." 419 F.3d at 210.

And it specifically noted in Note 16, "This opens the question whether a court can order partial consolidation," providing that a creditor who relied on separateness would receive a distribution equal to what it would have received absent consolidation.

The Owens Corning Court did not answer this question, which was hypothetical, in the case before it, but it cited and relied on an article that does answer this question: Kors, "Altered Egos: Deciphering Substantive Consolidation," 59 U. Pitt L. Rev. 381, 450-51 (1998) There, Professor Kors concludes:

> "In many cases courts may be able to obtain the practical benefits of consolidation while simultaneously protecting creditors' actual and

reasonable reliance on the separate status of one debtor entity through partial consolidation. The consolidation order could provide that the relying creditor would receive a distribution equal to what they would have received absent consolidation, and that the remainder of the assets and liabilities would be consolidated."

Ms. Kors cited extensive authority in support, including the Second Circuit's decision in In Re Continental Vending Machine Corp., 517 F.2d 997, 1001-02 (2d Cir. 1975), in which the Court in an act case ordered consolidation for unsecured claims and left the secured claims unconsolidated. The article also cites and see In Re Giller, 962 F.2d 796 (8th Cir. 1992); In Re Gulf Co. Investment Corp., 593 F.2d 921 (10th Cir. 1979), both circuit court cases. And the debtors cite In Re Standard Brands Paint Co., 154 B.R. 563 (Bankr. S.D. California 1993).

The above is precisely what the debtors have properly done in this case. They have provided what they assert is complete protection for the interests of creditors with guarantees, such as Owl Creek removing any damage from the fact of consolidation. They have included an enhanced distribution to all creditors with guarantees and have described how it would work.

Owl Creek in its initial objection expressed

uncertainty as to the terms of the protection and confusion. No other party-in-interest has complained or expressed any objection, despite notice.

In order to obviate any possibility of a claim of prejudice from Owl Creek, I will not exclude their right to file a request for a further distribution if they can show, when the final numbers are in, that the substantive consolidation would cause them any harm. If they can show harm, they have leave to seek an additional cash distribution that would compensate them, and the debtors of course can resist.

As for their eleventh-hour contention that their voting rights were affected, this record does not even show how they voted on the plan. They did not raise the issue in their objection, and it is entirely theoretical. As the debtors argue, it is not sufficient to deny substantive consolidation in light of the debtors' adequate showing that consolidation is appropriate within the meaning of Augie/Restivo, in that the affairs of the debtors are entangled and consolidation will benefit all creditors.

The great majority of creditors and shareholders relied on the four debtors as a group, and the affairs of the holdings companies and the airline are inextricably intertwined. It would do no party any good to require that they be untangled.

It bears noting that the doctrine of substantive consolidation derives from the Supreme Court's opinion in Sampsell v. Imperial Paper and Color Corp., 313 U.S. 215 (1941). There, the Court stated:

> "The power of the Bankruptcy Court to subordinate claims or to adjudicate equities arising out of a relationship between the several creditors is complete ... to bring himself outside of that rule an unsecured creditor carries a burden of showing by clear and convincing evidence that its application to his case, so as to deny him priority, would work an injustice." 313 U.S. at 319.

Owl Creek has not even tried to carry this burden. To quote Augie/Restivo again, "The sole purpose of substantive consolidation is to ensure the equitable treatment of all creditors."

The order in this case, by providing for consolidation, but fully protecting the interests of creditors with guarantees, does exactly that.

The debtors are directed to settle an order providing for substantive consolidation. Owl Creek has leave to file a request for any damages the plan may not fully compensate for, if the plan is confirmed. Obviously, the issue has ultimate relevance only if the plan is confirmed. So if the debtors believe that the order of substantive

consolidation should be included in any confirmation order, if and when it is entered or becomes relevant, they certainly may include that in the confirmation order.

Thank you very much.

COUNSEL: Thank you. Thank you, Your Honor.

(Proceedings concluded at 5:08 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

May 10, 2007

Coleen Rand, AAERT Cert. No. 341
Certified Court Transcriptionist
Rand Transcript Service, Inc.

Tab 8

Hearing Date and Time: May 9, 2007 at 11:00 a.m.
Response Deadline: May 5, 2007 at 5:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11
NORTHWEST AIRLINES CORPORATION, et al.,	:	
	:	Case No. 05-17930 (ALG)
Debtors.	:	
	:	(Jointly Administered)
	:	

OBJECTION OF OWL CREEK ASSET MANAGEMENT, L.P. TO DEBTORS' MOTION FOR SUBSTANTIVE CONSOLIDATION OF CONSOLIDATED DEBTORS

Owl Creek Asset Management, L.P. ("Owl Creek") hereby files this objection (the "Objection") to the *Debtors' Motion for Substantive Consolidation of Consolidated Debtors* (the "Consolidation Motion") and respectfully states as follows:

PRELIMINARY STATEMENT[1]

Owl Creek, as publicly disclosed throughout these cases, is both a shareholder and substantial creditor of the Debtors.[2] Owl Creek holds $54,200,000 in face amount of senior notes issued by NW Airlines and guarantied by NWA Corp. (and in some instances also by NW Holdings).[3]

Owl Creek, through its membership on the Ad Hoc Committee of Equity Security Holders (the "Ad Hoc Equity Committee"), has argued throughout these cases that the Debtors undervalued their estates and treat shareholders unfairly and inequitably. Owl Creek believes that the enterprise value of the Debtors is sufficiently higher than the Debtors' valuation with substantial value remaining for equity.[4]

While Owl Creek maintains this belief, it files this objection in the alternative to protect its interests as a guarantied creditor if the Court confirms, what the Ad Hoc Equity Committee

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1 Capitalized terms used in this Preliminary Statement, but not defined are as defined *infra*.

2 *See Verified Statement of Kasowitz, Benson, Torres & Friedman LLP Pursuant to Bankruptcy Rule 2019(a)* [Docket No. 4514] (listing Owl Creek as a member of the Ad Hoc Equity Committee and explaining that "[t]he members of the Ad Hoc Equity Committee own, in the aggregate, 16,195,200 shares of common stock of Northwest *and claims against the Debtors in the aggregate amount of $164.7 million*.") (emphasis added); *Verified Amended Statement of Kasowitz, Benson, Torres & Friedman LLP Pursuant to Bankruptcy Rule 2019(a)* [Docket No. 4574] (listing Owl Creek as a member of the Ad Hoc Equity Committee and explaining that "[t]he members of the Ad Hoc Equity Committee own, in the aggregate, 19,065,644 shares of common stock of Northwest *and claims against the Debtors in the aggregate amount of $264,287,500*.") (emphasis added); *Second Verified Amended Statement of the Ad Hoc Committee of Equity Security Holders Pursuant to Bankruptcy Rule 2019(a)* [Docket No. 6409] (listing Owl Creek as a member of the Ad Hoc Equity Committee and disclosing that members' holdings have not materially changed).

3 *Verified Amended Statement of the Ad Hoc Committee of Equity Security Holds Pursuant to Bankruptcy Rule 2019(a)* [Docket No. 5446], attached hereto as Exhibit A.

4 The Debtors posit that Owl Creek's interest as a creditor conflicts with its interest as a member of the Ad Hoc Equity Committee. To the contrary, many parties in bankruptcy cases have interests at different levels of a debtor's capital structure, Here, for example, that was a *selling* point in the Debtors' selection of JP Morgan to backstop its rights offering; that is, JP Morgan's interests already as the holder of various debt instruments permitted it to participate in the purchase of equity. Here, Owl Creek opposes the Debtors' errant substantive consolidation motion, individually as a creditor, and in the alternative, *should* the Court not accept the Ad Hoc Equity Committee's views on valuation. Owl Creek merely states that *if*, despite what the Ad Hoc Equity Committee contends, creditors are not already paid off in full by a lesser stock distribution (*i.e.*, the Plan undervalues the Debtors), *then*, the Debtors' motion for substantive consolidation must fail for the reasons stated herein.

submits is, the Plan's improper valuation and distribution scheme. Owl Creek believes that if the Plan is confirmed and no residual value is ascribed to equity, that substantive consolidation would prejudice creditors with guaranties. Owl Creek, as holder of substantial amounts of guarantied notes, would be directly harmed by substantive consolidation.

The Debtors' proposed substantive consolidation strips Owl Creek of its guaranties against Northwest Airlines Corporation and Northwest Airlines Holdings Corporation and sets a fixed number of shares it will receive in exchange for those guaranties. However, the Debtors apparently reached that fixed number of shares through a secret negotiation with "creditors" fixing the number of shares but failing to take into account that guarantied claimants, such as Owl Creek, are entitled to greater distributions depending upon the level and changes in the amount of guaranty claims, the assets of the guarantors, the value of Northwest Airlines, Inc., the value of any preserved NOLs, the gross inter-company claims (as *reconciled* (not merely listed)), and the claims asserted and ultimately allowed against Northwest Airlines, Inc. In other words, the fixed share "settlement" only is fair if none of these factors change. *But several have already changed or are not known to Owl Creek* (though several parties demanded further disclosure on the point, the Court overruled the objections). The amount of unsecured claims has changed. The amount of the guarantied claims may have changed. The Debtors' value has not yet been determined. The rest of these factors are unknown to Owl Creek; though it has asked the Debtors for information and, other than a single page showing arithmetic *based on,* not *justifying,* the Debtors' numbers, the Debtors have adamantly refused. Thus, Owl Creek's harm is the unfairness of the "settlement" and the coerced substantive consolidation, when no legal basis exists, and when based on stale, incorrect information that, if updated and corrected, would

yield greater distribution on guaranties. Across all guarantied entities, that amounts to tens of millions of dollars and may be more if all of the facts were known.

The Debtors have failed to articulate any basis for substantive consolidation in these cases. They failed to include any facts supporting consolidation in the Disclosure Statement, and the Consolidation Motion all but concedes that the Debtors cannot prove their case. Instead, the Debtors make an argument that is often argued and consistently rejected (by appellate courts): that "benefits" of substantive consolidation trump their lack of proof.

The Debtors acknowledge that the Second Circuit's decision in *In re Augie/Restivo Baking Co.*[5] controls. But they concede that their assets and liabilities are *not* hopelessly entangled as one prong of *Augie/Restivo* requires. They admit that:

- All assets and liabilities of all Debtors can be traced.
- All intercompany transfers are documented in their accounting systems.
- All corporate formalities have been respected.

The "hopeless entanglement" prong clearly cannot apply with these admissions.

The Debtors also argue that creditors regarded the Subject Debtors as a "single economic entity." But they do not dispute that significant creditor groups -- *substantially all outside creditors with claims against the Subject Debtors* -- obtained separate guaranties from the Subject Debtors. Under *Augie/Restivo* and other cases, these guaranties negate the argument that creditors viewed the Subject Debtors as a single economic entity. If creditors were so confused about the Debtors' corporate structure, they would not need such guaranties.

Given these insurmountable obstacles, the Debtors ask the Court to disregard *Augie/Restivo* because the purported benefit of substantive consolidation outweighs the harm.

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[5] *In re Augie/Restivo Baking Co.*, 860 F.2d 515, (2d. Cir. 1988) (hereinafter, "*Augie/Restivo*")

But the Second Circuit -- followed recently by the Third Circuit in *Owens Corning* -- has held that a court should not even consider the alleged benefits of substantive consolidation unless the debtor proves that one of the two *Augie/Restivo* factors has been satisfied. Because the Debtors have failed to do so here, the Court need not even reach the "benefit" issue. Regardless, the only concrete benefits that the Debtors cite are administrative convenience and expediency for plan confirmation, but the Second Circuit has rejected these justifications.

Accordingly, for all the reasons discussed herein, the Court should deny the Consolidation Motion.

FACTUAL BACKGROUND

On September 14, 2005 (the "Petition Date"), each of the debtors in the above-captioned case (the "Debtors") filed with this Court a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Each Debtor continues to operate its business and manage its properties as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

On March 30, 2007, the Debtors filed the *Debtors' First Amended Joint and Consolidated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 5725] (as amended and/or supplemented, the "Plan") and the *Disclosure Statement With Respect to the Debtors' First Amended Joint and Consolidated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 5726] (as amended and/or supplemented, the "Disclosure Statement").

Plan Provisions Regarding Substantive Consolidation

The Plan and the Disclosure Statement contemplate substantive consolidation of the following Debtors: Northwest Airlines Corporation ("NWA Corp."), Northwest Airlines, Inc.

("NW Airlines"), NWA, Inc. ("NWA, Inc."), and Northwest Airlines Holdings Corporation ("NW Holdings"; collectively, with NWA Corp., NW Airlines, and NWA, Inc., the "Subject Debtors").[6] The Debtors do not substantively consolidate the other Debtors, nor do they explain why some are in and some are out.

Neither the Plan nor the Disclosure Statement articulates any basis for substantive consolidation. The Debtors never explained:

- Why they selected the Subject Debtors for consolidation;
- How substantive consolidation impacts distributions under Plan;
- Which facts support substantive consolidation under the applicable legal standard;

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[6] Section 5.1 of the Plan provides as follows:

> The Consolidated Debtors are substantively consolidated for all purposes and actions associated with consummation of the Plan, including, without limitation, for purposes of voting and confirmation. On and after the Effective Date, (a) all assets and liabilities of the Consolidated Debtors shall be treated as though they were merged into the Northwest Airlines estate solely for purposes of the Plan, (b) no distributions shall be made under the Plan on account of Equity Interests between and among any of the Consolidated Debtors, (c) for all purposes associated with Confirmation, including, without limitation, for purposes of tallying acceptances and rejections of the Plan, the estates of the Consolidated Debtors shall be deemed to be one consolidated estate for Northwest Airlines, and (d) each and every Claim filed or to be filed in the Chapter 11 Cases of the Consolidated Debtors, shall be deemed filed against the Consolidated Debtors, and shall be Claims against and obligations of the Consolidated Debtors. As a result of the consolidation, any guaranty by one or more Consolidated Debtors of the obligations of another Consolidated Debtor will be eliminated except as it relates to guaranties arising under the secured aircraft financings described in Section 2.2, Section 4.2, Section 4.3 and Section 4.4 of the Plan or any guaranties related to leases which are assumed, but, as prescribed above in Section 4, each holder of an Allowed Unsecured Claim against a Consolidated Debtor who also has a guaranty from another Consolidated Debtor shall be compensated for the elimination of the guaranty, such that the substantive consolidation will not result in unfair treatment to creditors who relied on guaranties.
>
> Substantive consolidation shall not affect: (a) the legal and organizational structure of the Consolidated Debtors; (b) pre and post-Commencement Date guaranties, liens, and security interests that are required to be maintained (i) pursuant to any Postpetition Aircraft Purchase and Lease Obligation, (ii) under the Bankruptcy Code or in connection with contracts or leases that were entered into during the Chapter 11 Cases or executory contracts or unexpired leases that have been or will be assumed, or (iii) pursuant to the Plan; (c) Intercompany Claims and Equity Interests between and among the Consolidated Debtors; and (d) distributions from any insurance policies or proceeds of such policies.
>
> Plan § 5.1.

- Why the Debtors determined that substantive consolidation was required for the Plan to maximize stakeholder recovery;
- Why the Debtors may assume their own conclusions that inter-company claims are as summarized, rather than as analyzed or as reconciled; or
- Why the Debtors may assume their own conclusions that the assets held by the guarantor parent companies are as summarized, rather than as analyzed or as reconciled.

Instead, it now appears from the Consolidation Motion that the Debtors have pursued substantive consolidation only because it is convenient for them to do so. If there is another purpose, it is well hidden. And that causes the problem. Creditors cannot know what they are not told. The only information given is that creditors with guaranties are given a fixed amount of shares regardless of the amount of debt guarantied, regardless of the assets of the guarantors, regardless of the ultimate claims asserted against NW Airlines, regardless of the ultimate value of the estates, regardless of the actual, *reconciled*, amount of inter-company claims; all based on some secret settlement.

Plan Provisions Stripping Guaranties

The Plan attempts to strip value of guaranties against the Subject Debtors through a contrived and impermissible pseudo-settlement. The Plan proposes a fixed number of shares (defined in the Plan as, "New Common Stock for Distribution to Creditors With a Guaranty") to parties holding guaranties given by a Subject Debtor for the debt of another Subject Debtor.[7]

[7] Plan § 4.6(a) provides that

> The substantive consolidation of the Consolidated Debtors will eliminate any guaranties by any Consolidated Debtor of the direct or indirect obligation of another Consolidated Debtor; provided, however, each holder of an Allowed Class 1D Claim who also holds a guaranty from one or more Consolidated Debtors related to such claim will receive, in addition to the distribution prescribed

The Disclosure Statement describes the allocation to those receiving New Common Stock for Distribution to Creditors With a Guaranty as follows:

> As a means of compensating the holders of such guarantees for the impact of the substantive consolidation, the Plan provides that 8,622,772 shares of the New Common Stock of the Reorganized Debtors shall be set aside for such Allowed Claims based on a guaranty. Using the range of Allowed General Unsecured Claims discussed above, and an estimated $3.6 billion of claims based on a guaranty, the incremental distribution of New Common Stock to guaranty holders *is estimated to be approximately 6-8% per dollar of guaranty, with a midpoint estimate of 7%*, and would result in such Allowed Claims based on a guaranty receiving estimated recoveries ranging from 72%-91%, with a midpoint estimate of 81%. As with the recovery estimates above, all such estimates are prior to any dilution associated with any management equity plan.

Disclosure Statement § VII.C.4 (emphasis added). Substantive consolidation results in the elimination of all intercompany claims among the Subject Debtors without ever reconciling or showing the validity of those intercompany claims. These intercompany claims could potentially provide NW Corp. with billions of dollars in receivables. By providing a slightly "enhanced" distribution for creditors with guaranty claims, the Debtors' proposed application of substantive consolidation neatly avoids the actual factual underpinnings.

Various parties objected to the Disclosure Statement because the Disclosure Statement failed to identify the basis for substantive consolidation in these cases, and because there appeared to be no basis to apply it here.[8] At the Disclosure Statement hearing, the Court

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> in the immediately preceding paragraph, as compensation for the impact of the consolidation, its share of the New Common Stock For Distribution to Creditors With a Guaranty, determined by multiplying the number of shares of New Common Stock For Distribution to Creditors With a Guaranty by the Allocation Fraction for such holder. If a direct or indirect obligation of Northwest Airlines was guaranteed by more than one of the other Consolidated Debtors, the holder will be treated as if it had only a single guaranty. Plan § 4.6(a).

[8] Association of Flight Attendants - CWA, AFLCIO (Docket No. 5341); Certain Underwriters at Lloyd's, London, Certain London Market Companies, Global Aerospace, Inc., United States Aviation Underwriters, and Generali Assurances IARD (Docket No. 5356); Puerto Rico Ports Authority (Docket No. 5358); Manufacturers and Traders Trust Company (Docket No. 5359); St. Louis County (Docket No. 5362); Citigroup Global Markets Inc. (Docket No. 5363); Memphis-Shelby County Airport Authority (Docket No. 5367); The Bank of New York, as Successor Trustee (Docket No. 5368); Massachusetts Port Authority (Docket No. 5370); U.S. Bank National Association and U.S. Bank Trust National Association, as Trustees

deferred ruling on substantive consolidation until a later date and suggested that the Debtors conduct a separate hearing on substantive consolidation in advance of confirmation -- with which the parties agreed -- and also appropriately determined to protect Owl Creek's objections in that proceeding.

Immediately following the Disclosure Statement hearing, the Debtors amended the Plan by adding verbiage that wrongly argues that the Court can confirm the same Plan even if it denies substantive consolidation.[9] *See* Plan § 5.1 (as first reflected in March 30, 2007 version of the Plan).

The Consolidation Motion

The Consolidation Motion fails to proffer any factually or legally cognizable basis for substantive consolidation. The Debtors' baseless arguments can best be summarized as follows:

- The Court should apply the standards of *Augie/Restivo* loosely -- if not ignore them altogether -- purportedly because the benefits of substantive consolidation will outweigh its harms;
- The Consolidated Debtors' business affairs are "*substantially entangled,*" not hopelessly entangled as the law requires; and

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(Docket No. 5371); ING Bank N.V. and ING Lease (Ireland) B.V. (Docket No. 5376); Ad Hoc Equity (Docket No. 5378); Ad Hoc Creditors' Committee (Docket No. 5476); Air Line Pilots Association, International (Docket No. 5464); Pension Benefit Guaranty Corporation (Docket No. 5487).

[9] "In the event that the Bankruptcy Court does not order substantive consolidation of the Consolidated Debtors, then: (a) nothing in the Plan or the Disclosure Statement shall constitute or be deemed to constitute an admission that one of the Debtors is subject to or liable for any Claim against any other Debtor; (b) Claims against multiple Debtors shall be treated as separate Claims with respect to each Debtor's estate for all purposes (including, without limitation, distributions and voting), and such Claims shall be administered as provided in the Plan; and (c) the Debtors shall not, nor shall they be required to, resolicit votes with respect to the Plan, nor will the failure of the Bankruptcy Court to approve substantive consolidation of the Consolidated Debtors materially alter the economics of the distributions set forth in the Plan. In the event that the Bankruptcy Court does not order substantive consolidation, the Plan shall be deemed to provide for fourteen subplans of reorganization. A vote to accept the Plan shall also be deemed a vote to accept a separate plan for each of the Consolidated Debtors against whom you hold your claim in the event that the Bankruptcy Court denies approval of the substantive consolidation of the Consolidated Debtors; provided that the treatment of the claim being voted would not be materially different in the absence of substantive consolidation."

Plan § 5.1. This provision violates Sections 1125 and 1129 of the Bankruptcy Code, and Owl Creek will object to it at confirmation.

- The Consolidated Debtors operate as a single economic entity notwithstanding the existence of guaranties to outside creditors.

The Debtors flatly misstate applicable law and mischaracterize the relevant standards. Accordingly, for the reasons set forth below, the Court should deny the Consolidation Motion.

ARGUMENT

I.

THE DEBTORS MISSTATE THE STANDARD FOR SUBSTANTIVE CONSOLIDATION

A. Substantive Consolidation Must Be Used Sparingly And Cautiously.

The Second Circuit repeatedly has held that substantive consolidation must be used sparingly and cautiously. *See Fed. Deposit Ins. Corp. v. Colonial Realty Co.*, 966 F.2d 57, 61 (2d. Cir. 1992) (herein, "*FDIC*") ("Certainly this Court has insisted that substantive consolidation be invoked 'sparingly because of the possibility of unfair treatment to creditors.'"); *Augie/Restivo*, 860 F.2d at 518 (same); *Chemical Bank New York Trust Co. v. Kheel*, 369 F.2d 845, 847 (2d. Cir. 1966) (hereinafter, "*Kheel*") (same); *see also In re Verestar Inc.*, 343 B.R. 444, 462 (Bankr. S.D.N.Y. 2006) (hereinafter, "*Verestar*") (describing substantive consolidation as "a remedy that is used 'sparingly' and with caution.").[10]

"Because of the dangers in forcing creditors of one debtor to share on a parity with creditors of a less solvent debtor, we have stressed that substantive consolidation '*is no mere instrument of procedural convenience* . . . but a measure vitally affecting substantive rights,' to 'be used sparingly.'" *Augie/Restivo*, 860 F.2d at 518 (emphasis added) (citations omitted); *In re Flora Mir Candy Corp.*, 432 F.2d 1060, 1062 (2d. Cir. 1970) (same) (hereinafter, "*Flora Mir*").

[10] *See also In re Owens Corning*, 419 F.3d 195, 208-09 (3d. Cir. 2005) (herein, "*Owens*") (observing as to substantive consolidation that "there appears nearly unanimous consensus that it is a remedy to be used sparingly"). (citations omitted).

"The *sole* purpose of substantive consolidation is to ensure the equitable treatment of all creditors." *Augie/Restivo*, 860 F.2d at 518 (emphasis added); *see also Owens*, 419 F.3d at 215 ("[S]ubstantive consolidation should be used defensively to remedy identifiable harms, not offensively to achieve advantage over one group . . .").

In determining whether "equitable treatment" will result from substantive consolidation, the Second Circuit established a two-prong test. The proponent of substantive consolidation must show either that: (i) "creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit, or (ii) the affairs of the debtors are so entangled that consolidation will benefit *all creditors*." 860 F.2d at 518 (emphasis added) (citations omitted); *see also FDIC*, 966 F.2d at 61 (explaining that substantive consolidation turns on the *Augie/Restivo* factors); *In re 599 Consumer Electronics, Inc.*, 195 B.R. 244, 247-48 (S.D.N.Y. 1996) (hereinafter, "*599 Consumer*") (same); *Verestar*, 343 B.R. at 462-63 (same).

As a result of substantive consolidation "intercompany claims are eliminated and guaranties from codebtors are disregarded." *In re WorldCom, Inc.*, 2003 Bankr. LEXIS 1401, at *104 (Bankr. S.D.N.Y. Oct. 31, 2003); *see also Augie/Restivo*, 860 F.2d at 518 ("Substantive consolidation usually results in . . . eliminating inter-company claims . . ."); *In re Richton International Corp.*, 12 B.R. 555, 556 (Bankr. S.D.N.Y. 1981) (granting substantive consolidation and issuing an order "consolidating the separate proceedings into a single proceeding thereby merging all assets and liabilities, and eliminating all intercompany obligations and guarantees").

The proponent bears the burden of proving the elements for substantive consolidation. *See Owens*, 419 F.3d at 212 ("Proponents of substantive consolidation have the burden of showing one or the other rationale for consolidation."); *see also Verestar*, 343 B.R. at 462-63.

II.

THE DEBTORS HAVE FAILED TO PROVE EITHER OF THE *AUGIE/RESTIVO* PRONGS

A. The Debtors Have Not Shown And Cannot Show That Creditors Dealt With The Subject Debtors As A Single Economic Unit.

The first prong of the *Augie/Restivo* test requires the proponent to show that "creditors dealt with the entities as a single economic unit *and did not rely on their separate identity in extending credit*." *Augie/Restivo*, 860 F.2d at 518 (emphasis added). The Second Circuit has explained that:

> creditors who make loans on the basis of the financial status of a separate entity expect to be able to look to the assets of their particular borrower for satisfaction of that loan. Such lenders structure their loans according to their expectations regarding that borrower and do not anticipate either having the assets of a more sound company available in the case of insolvency or having the creditors of a less sound debtor compete for the borrower's assets. Such expectations create significant equities.

Id. at 518-19. "The inquiry is whether *creditors* treated the debtors as a single entity, *not whether the managers of the debtors themselves*, or consumers viewed [the entities] as one enterprise." *599 Consumer*, 195 B.R. at 249 (emphasis added). "A *prima facie* case . . . typically exists when, based on the parties' prepetition dealings, a proponent proves corporate disregard creating contractual expectations of creditors that they were dealing with debtors as one indistinguishable entity." *Owens Corning*, 419 F.3d at 212.

Evidence of creditor reliance on a "single economic entity" must be specifically proven by the proponent; conclusory allegations cannot suffice. *See Verestar*, 343 B.R. at 463. In *Verestar*, this Court held that:

> Although the Complaint has conclusory allegations that ATC and its officers and directors held themselves out to creditors and others "generally as indistinguishable from Verestar" there is no specific allegation of creditor confusion or that Verestar's creditors extended credit on the basis of ATC's

> financials or credit reports or even on the basis of consolidated financial statements.
>
> . . .
>
> Under the circumstances of this case, a bald allegation that "creditors" of Verestar relied on ATC's assets and liabilities in extending credit to Verestar is simply inadequate to state a claim for substantive consolidation of the separate corporations.

Id. (citations omitted). Moreover, a court must conduct a "searching review of the record, on a case-by-case basis, [to] ensure that substantive consolidation effects its sole aim: *fairness to all creditors*." *FDIC*, 96 F.2d at 61 (emphasis added); *see also 599 Consumer*, 195 B.R. at 248 (same).

Testing this prong and conducting its searching review, the Second Circuit in *Augie/Restivo* held that the "single economic entity" prong would not apply where, as here, the lender had obtained a separate loan guaranty because that was an explicit recognition by the creditors of corporate separateness. 860 F.2d at 519*; see also 599 Consumer*, 195 B.R. at 249 ("The Court in *Augie/Restivo* specifically held that a bank's insistence on separate loan guarantees by related corporations displays an understanding that related corporations are separate entities.").

In *Owens*, the Third Circuit rejected the District Court's holding that the debtors were a single economic entity. It did so primarily because of the guaranties obtained by bank creditors. The Third Circuit held that:

> Despite the Plan Proponents' pleas to the contrary, there is no evidence of the prepetition disregard of the OCD entities' separateness. To the contrary, OCD (no less than CSFB) negotiated the 1997 lending transaction premised on the separateness of all OCD affiliates. Even today no allegation exists of bad faith by anyone concerning the loan. In this context, OCD and the other Plan Proponents cannot now ignore, or have us ignore, the very ground rules OCD put in place. *Playing by these rules means that obtaining the guarantees of separate entities, made separate by OCD's choice of how to structure the affairs of its affiliate*

> *group of companies, entitles a lender, in bankruptcy or out, to look to any (or all) guarantor(s) for payment when the time comes.*
>
> . . . .
>
> As OCD concedes, these representatives "testified that the guarant[e]es were ... intended to provide 'structural seniority' to the banks," and were thus fundamentally premised on an assumption of separateness.

419 F.3d at 212-13 (emphasis added).

Accordingly, to satisfy the "single economic entity" requirement, the Debtors must proffer specific, nonconclusory facts showing actual reliance by creditors on a single entity sufficient to overcome the clear implication of separateness created by the presence of guaranties. They have failed to do so here.

B. The Debtors Have Failed To Meet Their Burden Of Proof On The "Single Economic Entity" Factor of *Augie/Restivo*.

The Debtors devote *only 151 words in the Motion* to support their single economic entity argument. Consolidation Motion ¶¶ 52, 53. But none of the Debtors' arguments includes any facts recognized by any court to support substantive consolidation based on this prong of *Augie/Restivo;* just the opposite. Despite the Second Circuit's holding in *Augie/Restivo* rejecting substantive consolidation where, as here, creditors obtain separate corporate guaranties, the Debtors argue:

> Further, creditors seek guarantees and cross-guarantees *because they perceive the Consolidated Debtors to be a single economic unit*.

Consolidation Motion ¶ 52 (emphasis added). As the Second Circuit and other courts have recognized, the very existence of guarantees proves that creditors relied on the *separate* identity of the Debtors; creditors would not even think to obtain a guaranty if they believed that they were dealing with one rather than multiple debtors. *See Owens*, 419 F.3d at 212-13; *599 Consumer*, 195 B.R. at 249; *In re Donut Queen*, 41 B.R. 706, 709 (Bankr. E.D.N.Y. 1984) (when

"creditors have treated the [entity against whom consolidation is sought] as a distinct and separate entity, consolidation would be manifestly prejudicial to such creditors").[11]

Indeed, Owl Creek purchased notes relying on the fact they were guarantied. It relied on the fact that the issuer and guarantors were separate entities. *See Declaration of Daniel Krueger In Support of Objection of Owl Creek Asset Management, L.P. to Debtors' Motion For Substantive Consolidation of Consolidated Debtors*. Thus, the Debtors cannot show that Owl Creek believed that the Subject Debtors were a single entity.

The Debtors next note that "none of the Consolidated Debtors has ever received a credit rating *different from one received by another Consolidated Debtor*." Consolidation Motion ¶ 52 (emphasis added). But the fact that each Subject Debtor is *separately* rated proves the existence of different entities. The Debtors also state that "analyst reports routinely discuss Northwest as a unified enterprise," Consolidation Motion ¶ 52, but no case has ever held that "routine discussion" is necessary or sufficient for substantive consolidation. Analysts are not creditors and, if anything, the existence of guarantees dispels any argument that creditors relied on consolidated analyst reports.

Equally flawed is the Debtors' argument that the Series C Claim proves the reliance on a "single entity" by creditors. For that argument, the Debtors state as follows:

> [t]he circumstances surrounding the Equity Letter Agreements and the creation of the Series C stock further confirms that the Debtors operate as a single economic unit, and are perceived as such. The Debtors used parent stock to pay for benefits to Airlines. Airlines agreed to fund redemption of the stock. Access to Airline's financial affairs was critical to the transaction. All this is evidence of a corporate interrelationship warranting consolidation.

[11] Nor does the fact that the Debtors filed consolidated financial statements change the result. *See Owens,*, 419 F.3d at 213 ("[W]e cannot conceive of a justification for imposing the rule that a creditor must obtain financial statements from a debtor in order to rely reasonably on the separateness of that debtor.").

Consolidation Motion ¶ 53. However, this statement examines the Debtors' actions, not the requisite creditor reliance required for this prong of *Augie/Restivo*. Other statements in the Consolidation Motion demonstrate that other creditors -- even those without guaranties -- recognized that the Subject Debtors were separate entities. The Debtors explain that:

> The IAM [International Association of Machinists and Aerospace Workers] contends that "all parties" to the Equity Letter Agreements *understood that the holding company "would rely on income up-streamed from" Airlines "to repurchase Series C stock with cash.*" . . . *The Debtors agree*. The IAM further points out that the Company was contractually obligated to use all of its available cash — including Airlines' cash — to redeem Series C stock under the Equity Letter Agreements. The Debtors agree with this, too, and acknowledge that IAM and IBT could look to repayment directly from the assets of Airlines.

Id. ¶ 23 (emphasis added). Thus, the Debtors concede that IAM entered into the agreement with the parent company understanding that *another entity* would supply up-streamed cash payments and took the risk that it could not do so. IAM, therefore, knew that the parent and NW Airlines were different companies. Moreover, as *Augie/Restivo* and other courts note, management's view of the Subject Debtors -- and by extension, employees of the company -- as a "single economic entity" is irrelevant; only the perspective of outside creditors matters. *599 Consumer*, 195 B.R. at 249

Finally, this Court previously acknowledged the separateness of Subject Debtors. In connection with certain fleet restructuring agreements, Debtors have allowed claims against NW Airlines, guaranteed by NW Corporation. *See* Disclosure Statement, § III, E. This Court approved these settlements. Explicit in this approval, is the Court's recognition of the separateness of these entities.

Thus, the facts articulated in the Consolidated Motion fail to meet the Debtors' burden of proving substantive consolidation under the "single economic entity" prong of *Augie/Restivo*.

C. The Debtors Have Failed To Show And Cannot Show That The Debtors' Assets And Liabilities Are Hopelessly Entangled.

1. The Debtors Must Prove Hopeless Entanglement.

The second *Augie/Restivo* prong requires proof that the entities are so entangled that consolidation will benefit all creditors. 860 F.2d at 518. Thus, this prong requires proof of what courts describe as "hopeless entanglement." The Second Circuit has explained this prong as follows:

> The second factor, entanglement of the debtors' affairs, involves cases in which there has been a commingling of two firms' assets and business functions. Resort to consolidation in such circumstances, however, should not be Pavlovian. Rather, substantive consolidation should be used only after it has been determined that all creditors will benefit because untangling is *either impossible or so costly as to consume the assets.*
>
> . . .
>
> Commingling, therefore, can justify substantive consolidation *only where the time and expense necessary even to attempt to unscramble them is so substantial as to threaten the realization of any net assets for all the creditors, or where no accurate identification and allocation of assets is possible*.

Augie/Restivo, 860 F.2d at 519 (citations omitted) (emphasis added); *see also Owens,* 419 F.3d at 214 ("Neither the impossibility of perfection in untangling the affairs of the entities nor the likelihood of some inaccuracies in efforts to do so is sufficient to justify consolidation."). This Court has followed *Augie/Restivo* by holding that substantive consolidation can only occur where "the operational and financial affairs of the entities to be consolidated are so entangled that *the accurate identification and allocation of assets and liabilities cannot be achieved*." *Verestar*, 343 B.R. at 462 (emphasis added).

2. The Debtors Have Failed To Prove Hopeless Entanglement.

The Debtors do not even attempt to prove hopeless entanglement here. To the contrary, they argue only that their businesses are "entangled" or "substantially entangled." Consolidation

Motion ¶ 47,49 ("The facts in these chapter 11 cases clearly demonstrate that the Consolidated Debtors' affairs are *substantially entangled*.") (emphasis added). Indeed, the Debtors have:

- Conceded that their assets are not intermingled.[12]
- Identified which Debtor entity holds the Debtors' most valuable assets.[13]
- Conceded that their assets can be traced.[14]
- Conceded that all corporate formalities were respected.
- Conceded that the Debtors have separate financial statements for the Subject Debtors.[15]
- Filed separate schedules. *See* Docket Nos. 2465, 2474, 2475, and 2477.
- Filed separate statements of financial affairs. *See* Docket Nos. 2850, 2851, 2854, and 2855.
- Have filed separate liquidation analyses.

At most, the Debtors allege that the absence of substantive consolidation would require them to "disentangle the myriad claims improperly filed against NWA Corp. that are properly classified as claims against other entities (generally against Airlines)" and to address the "[m]yriad confirmation and voting issues." Consolidation Motion ¶ 40. This is insufficient. In

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12 *See* note 15, *infra.*

13 The Debtors' schedules list NW Airlines as holding all trademarks and other valuable intellectual property. [Docket Nos. 2465, 2474, 2475, and 2477]. They also list NW Airlines as party to WorldPerks agreements with other carriers and alliance agreement with other carriers. *Id.* Additionally, filings with the Securities and Exchange Commission list NW Airlines as holder of the "Golden Share" in Continental. *See* Exhibit B.

14 *Declaration of Neal S. Cohen Pursuant to Local Bankruptcy Rule 1007-2 and in Support of the Debtors' Petitions and First Day Order* (the "Cohen Declaration") [Docket No. 10] at ¶ 34 ("Under the cash management system, *the Debtors are able to track the amounts paid to and from each affiliated participant in the system*" and that "although cash is commingled, *the Debtors can trace and identify the amounts paid to and from each affiliate*.") (emphasis added). The Consolidation Motion also contradicts Mr. Cohen's statement that "[s]eparate books and records of each of the Debtors are kept and will continue to be kept in the ordinary course of business . . . ." Cohen Decl. ¶ 12.

15 May 1, 2007 E-mail from Peter Friedman to Alan Brilliant. See Exhibit C; *see also* "[s]eparate books and records of each of the Debtors are kept and will continue to be kept in the ordinary course of business . . . ." Cohen Decl. ¶ 12.

Augie/Restivo, the Second Circuit held that "hopeless entanglement" can justify substantive consolidation *only* where "there has been a commingling of two firms' assets and business functions." *Augie/Restivo*, 860 F.2d at 519.

The Debtors' argument that there has been some commingling of certain business functions does not alter this conclusion. Consolidation Motion ¶ 50. In *Augie/Restivo*, the Court held that "[b]usiness functions may have been commingled, but that hardly weighs in favor of consolidation" because the debtors' assets and liabilities were "identifiable." 860 F.2d at 519; *see also Verestar,* 343 B.R. at 462 (holding that even if cash of one debtor was swept into the account of another, "[s]uch a course of conduct may give rise to liability, but there is no allegation that it is impossible to sort out the intercompany transfers or that the companies' respective rights to the cash cannot be traced").

The Debtors' concession that there has been no such commingling of their assets and liabilities is fatal to this prong of *Augie/Restivo*.

D. Because The Debtors Have Not Satisfied Either Prong Of *Augie/Restivo*, The Court Need Not Weigh The Purported Benefits Of Substantive Consolidation.

A court cannot order substantive consolidation merely because it may benefit some or even all creditors. To the contrary, the proponent must satisfy either prong of *Augie/Restivo* before the court can even consider the relative benefits. Because the Debtors have failed to prove either prong here, the Court need not consider the benefits that substantive consolidation purportedly will produce.

In *Augie/Restivo*, the Second Circuit dismissed the "bankruptcy judge's finding that the proposed reorganization plan and sale justified the consolidation *because consolidation would benefit the creditors of both companies*." 860 F.2d at 520 (emphasis added). The Second Circuit held: "We do not pause to scrutinize [the bankruptcy judge's] various speculations as to events

that would occur if the proceedings were to continue separately because we do not believe that a proposed reorganization plan alone can justify substantive consolidation." *Id.* The Second Circuit went on to explain that "a creditor cannot be made to sacrifice the priority of its claims against its debtor by fiat based on the bankruptcy court's speculation that it knows the creditor's interests better than does the creditor itself." *Id.*[16] The Third Circuit also has adopted this rationale. In *Owens Corning*, it held that:

> [W]e disagree that "[i]f a creditor makes [a showing of reliance on separateness], the court may order consolidation . . . if it determines that the demonstrated benefits of consolidation 'heavily' outweigh the harm."

Owens, 419 F.3d at 210.

The Debtors argue that "[w]here harm to creditors is material, the *Augie/Restivo* factors are rigorously applied. Where, as here, the harm to creditors is minimal or nonexistent, the *Augie/Restivo* factors can be applied with less rigor." Consolidation Motion ¶ 36. The Debtors cite no authority for this statement, and no such authority apparently exists. Indeed, if the issue of creditor benefit were outcome-determinative as the Debtors suggest, the other *Augie/Restivo* issues would be irrelevant.[17] The Court should not delve into the alleged benefits of substantive consolidation because the Debtors have failed to satisfy both prongs of *Augie/Restivo*.

E. Even Assuming Creditor Benefit Were Relevant Here, The Debtors Identify No Meaningful Benefit Of Substantive Consolidation.

The Debtors argue that "substantive consolidation enhances efficiency and reduces

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[16] The Debtors claim that I*n re Drexel Burnham Lambert Group, Inc*., 138 B.R. 723 (Bankr. S.D.N.Y. 1992) holds that a court may overlook some or all of the *Augie/Restivo* factors if there is a benefit to substantive consolidation. Consolidation Motion ¶ 38. This is wrong. In *Drexel*, just as in other cases cited herein, the court considered the benefits of consolidation only *after* finding that "[t]he Debtors were operated as a single enterprise." *Drexel*, 138 B.R. at 766.

[17] The Debtors' authorities also refute this argument. *See In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. at 766 (analyzing creditor benefit *after* concluding that "[t]he Debtors were operated as a single enterprise") (cited in Consolidation Motion ¶ 38).

administrative costs"[18] and "will provide certainty with respect to the distribution on the Series C claims."[19] Consolidation Motion ¶¶ 40, 41. Reduced to its essence, the Debtors argue that mere administrative convenience warrants substantive consolidation. This argument fails as a matter of law. The Second Circuit has "stressed that substantive consolidation '*is no mere instrument of procedural convenience* . . . but a measure vitally affecting substantive rights,' to 'be used sparingly.'" *Augie/Restivo*, 860 F.2d at 518 (emphasis added); *see also Flora Mir*, 432 F.2d at 1065 ("The nub of counsel's argument was that only consolidation will permit the quick consummation of an arrangement under Chapter XI. That may indeed be desirable but not at the cost of sacrificing the rights of [a creditor].").

The Debtors suggest that "substantive consolidation *aids* in preserving tax benefits in the form of net operating loss carryforwards." Consolidation Motion ¶ 39 (emphasis added). But the Debtors fail to explain why this is so, whether some estates would recover more than others from such tax benefits without substantive consolidation, and why only the Subject Debtors (and no other Debtors) must be substantively consolidated to protect the NOLs. Similarly, the Debtors claim that substantive consolidation will not alter creditor recoveries, but otherwise acknowledge that there may be significant disputes over the viability of intercompany claims. Consolidation Motion ¶¶ 40, 42 (representing that substantive consolidation will moot "potential intercreditor disputes about allocation of intercompany payables and receivables"). That is the point. When there is no hopeless entanglement or single enterprise, creditors -- guaranteed

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[18] In a similar vein, the Debtors argue that substantive consolidation "is an integral part of moving the Debtors *toward a faster, less expensive reorganization*." Consolidation Motion ¶ 40 (emphasis added).

[19] The Debtors argue that consolidation will "enhance the Debtors' rehabilitation and produce a reorganized enterprise with greater profit potential," because it would "provide certainty with respect to the distribution of the Series C claims" thus giving employees "greater incentive to create value for all future shareholders." Consolidation Motion ¶ 41. If the Debtors wish to settle with employees concerning which entity is obligated for the Series C claims, they remain free to do so, subject to Court approval. Substantive consolidation cannot be used to deliver incremental recoveries -- or even "certainty" as to distribution -- to one creditor constituency.

creditors -- are entitled to the recognition of the full amount of their intercompany claims *as reconciled*, and are not required to have substantive consolidation forced upon them.

The Debtors also allege that "the Plan compensates each guaranty claim holder by providing an additional distribution that is the *equivalent* of what each creditor would have received on the guaranty claim in the absence of consolidation." Consolidation Motion ¶ 42 (emphasis added). But the Debtors fail to adduce any evidence supporting this conclusory allegation.[20] And they cannot, because they have assumed the outcome without having done any analysis of the proper amount of assets and intercompany claims owed to the parent guarantors and the distributions that would be made thereon. The Debtors simply set a fixed number of shares through a secret negotiation with "creditors" fixing the number of shares but failing to take into account that guarantee claimants, such as Owl Creek, are entitled to greater distributions depending upon the level and changes in the amount of guaranty claims, the assets of the guarantors, the value of NW Airlines, the value of any preserved NOLs, the gross inter-company claims (as *reconciled* (not merely listed)), and the claims asserted and ultimately allowed against NW Airlines.

Without clear proof -- not the conclusory allegations in the Consolidation Motion -- that substantive consolidation does not affect creditor recoveries, the Debtors cannot sustain their argument that substantive consolidation benefits all creditors. Accordingly, the Court should deny the Consolidation Motion.

[20] The fact that the Debtors can even make this argument proves that the Debtors' assets and liabilities are not hopelessly entangled.

CONCLUSION

WHEREFORE, Owl Creek respectfully requests that the Court enter an Order denying the Consolidation Motion and grant such other and further relief in favor of Owl Creek that is deemed just and proper.

Dated: May 5, 2007
New York, New York

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Attorneys for the Ad Hoc Committee
of Equity Security Holders

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11
NORTHWEST AIRLINES CORPORATION, et al.,	:	
	:	Case No. 05-17930 (ALG)
Debtors.	:	
	:	(Jointly Administered)
	:	

VERIFIED AMENDED STATEMENT OF THE AD HOC COMMITTEE OF EQUITY SECURITY HOLDERS PURSUANT TO BANKRUPTCY RULE 2019(a)

The Ad Hoc Committee of Equity Security Holders (the "Ad Hoc Committee"), by and through its undersigned attorneys, submits this verified amended statement (the "Verified Statement") pursuant to Rule 2019(a) of the Federal Rules of Bankruptcy Procedure. This Verified Statement supersedes in their entirety earlier verified statements (referenced *infra*) filed by counsel to the Ad Hoc Committee and contains information current as of the date hereof.

1. The Ad Hoc Committee is comprised of certain institutions holding common stock issued by Northwest Airlines Corp. ("NWAC," and together with its chapter 11 debtor-affiliates, the "Debtors"). The Ad Hoc Committee was formed on December 26, 2006.

2. Kasowitz, Benson, Torres & Friedman LLP ("KBT&F") is counsel to the Ad Hoc Committee. On January 16, 2007, KBT&F filed its *Verified Statement of Kasowitz, Benson,*

Torres & Friedman LLP Pursuant to Bankruptcy Rule 2019(a) [Docket No. 4514], and on January 19, 2007, KBT&F filed its *Verified Amended Statement of Kasowitz, Benson, Torres & Friedman LLP Pursuant to Bankruptcy Rule 2019(a)* [Docket No. 4574].

3. On February 26, 2007, the Court issued its *Memorandum of Opinion and Order* [Docket No. 5032] (the "Order"). The Order requires the Ad Hoc Committee to file a verified Bankruptcy Rule 2019(a) statement disclosing the information set forth in Bankruptcy Rule 2019(a) as to the members of the Ad Hoc Committee, including "the amounts of claims or interests owned by members of the committee, the time when acquired, the amounts paid therefor, and any sales or other disposition thereof" (Order at 4) (all such information, the "Subject Information").

4. The Subject Information is disclosed in its entirety by members of the Ad Hoc Committee in the attachments forming **Exhibit A** hereto.

5. The Ad Hoc Committee was organized at the instance of its several members.

6. There is no instrument whereby the Ad Hoc Committee is empowered to act on behalf of its members or any other person.

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7. The Ad Hoc Committee reserves the right to revise, to supplement, and to amend this Verified Statement, including the filing of supplemental statements setting forth material changes, as need be. The Ad Hoc Committee reserves each of its rights in and with respect to this Verified Statement, the Order, and all other matters in these cases.

Dated: New York, New York
March 21, 2007

By: /s/ David S. Rosner
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VERIFICATION

David S. Rosner hereby declares under penalty of perjury as follows:

1. I am a member of the law firm of Kasowitz, Benson, Torres & Friedman LLP, counsel to the Ad Hoc Committee of Equity Security Holders in the above-captioned bankruptcy cases.

2. I have read the foregoing *Verified Amended Statement of the Ad Hoc Committee of Equity Security Holders Pursuant to Bankruptcy Rule 2019(a)* and know the contents thereof to be true to the best of my own knowledge. The source of my information and belief is communications with members of the Ad Hoc Committee of Equity Security Holders and the review of certain documents.

Dated: New York, New York
March 21, 2007

/s/ David S. Rosner
David S. Rosner

EXHIBIT A

Gracie Capital
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New York, NY 10022

AGGREGATE HOLDINGS

	Holdings on Date of Formation of Ad Hoc Committee (12/26/06)	Holdings on 03/09/07	Aggregate Amount of Sales or Other Disposition From 12/26/06 - 3/09/07
Shares	0	400,000 shares	300,000.00 shares
Claims			

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Shares	Times When Acquired	Amounts Paid Therefor
N/A	N/A	N/A

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Claims*	Times When Acquired	Amounts Paid Therefor
N/A	N/A	N/A

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Shares	Times When Acquired	Amounts Paid Therefor
350,000	01/16/07	$ 1,623,475.00
350,000	01/17/07	$ 1,787,520.00

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Claims*	Times When Acquired	Amounts Paid Therefor
N/A	N/A	N/A

*Note: Identify the nature of the claim (bond, trade, etc.)

Name of Ad Hoc Committee member: Greywolf Capital Management LP
Address of Ad Hoc Committee member: 4 Manhattanville Road, Suite 201
Purchase, NY 10577

AGGREGATE HOLDINGS

	Holdings on Date of Formation of Ad Hoc Committee (12/26/06)	Holdings on 03/09/07	Aggregate Amount of Sales or Other Disposition From 12/26/06 - 3/09/07
Shares	2,000,000	2,399,500	1,584,500
Claims			

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Shares	Times When Acquired	Amounts Paid Therefor
502,500	11/15/2006	$500,440.00
1,500,000	11/15/2006	$1,883,700.00
1,000,000	11/16/2006	$2,098,500.00
57,000	11/27/2006	$188,174.00
50,000	11/30/2006	$162,965.00
50,000	11/30/2006	$162,050.00
100,000	12/1/2006	$326,000.00
23,500	12/5/2006	$76,845.00

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Claims*	Times When Acquired	Amounts Paid Therefor

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Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Shares	Times When Acquired	Amounts Paid Therefor
25,000	1/5/2007	$110,375.00
471,800	1/12/2007	$2,194,814.00
200,000	1/12/2007	$979,820.00
3,200	1/12/2007	$16,040.00
1,000	1/31/2007	$3,210.00

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Claims*	Times When Acquired	Amounts Paid Therefor

*Note: Identify the nature of the claim (bond, trade, etc.)

Name of Ad Hoc Committee member: Jeremy Hosking
Address of Ad Hoc Committee member: Orion House, 5 Upper St. Martin lane, London WC2H 9EA England

AGGREGATE HOLDINGS

	Holdings on Date of Formation of Ad Hoc Committee (12/26/06)	Holdings on 03/09/07	Aggregate Amount of Sales or Other Disposition From 12/26/06 - 3/09/07
Shares	65,000	65,000	
Claims			

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Shares	Times When Acquired	Amounts Paid Therefor

Mr. Hosking did not acquire any shares during the year prior to the filing of the petition.

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Claims*	Times When Acquired	Amounts Paid Therefor

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Shares	Times When Acquired	Amounts Paid Therefor

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Claims*	Times When Acquired	Amounts Paid Therefor

*Note: Identify the nature of the claim (bond, trade, etc.)

Name of Ad Hoc Committee member: Latigo Partners, L.P.
Address of Ad Hoc Committee member: 590 Madison Ave., NY, NY 10022

AGGREGATE HOLDINGS

	Holdings on Date of Formation of Ad Hoc Committee (12/26/06)	Holdings on 03/09/07	Aggregate Amount of Sales or Other Disposition From 12/26/06 - 3/09/07
Shares	1,744,000	1,044,000	1,000,000
Claims	----	15,000,000	---

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Shares	Times When Acquired	Amounts Paid Therefor
1,250,000	11/16/2006	$2,798,500
108,500	11/17/2006	$240,848
250,000	11/20/2006	$559,275
291,500	11/22/2006	$999,408

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Claims*	Times When Acquired	Amounts Paid Therefor

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Shares	Times When Acquired	Amounts Paid Therefor
100,000	1/16/2007	$407,400
100,000	1/22/2007	$557,000
100,000	1/23/2007	$512,000

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Claims*	Times When Acquired	Amounts Paid Therefor
5,000,000	1/26/2007	$4,325,000
5,000,000	2/1/2007	$4,325,000
5,000,000	2/13/2007	$4,300,000

*Note: Claims are general unsecured claims

Name of Ad Hoc Committee member: Marathon Asset Management LLP
Address of Ad Hoc Committee member Orion House, 5 Upper St. Martin lane, London WC2H 9EA England

	Holdings on Date of Formation of Ad Hoc Committee (12/26/06)	Holdings on 03/09/07	Aggregate Amount of Sales or Other Disposition From 12/27/06 - 3/09/07
Shares	2,597,819	$ 2,604,819.00	
Claims			

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Shares	Times When Acquired	Amounts Paid Therefor
28,000	7/19/2000	$ 950,966.80
29,000	7/19/2000	$ 984,929.90
25,000	7/19/2000	$ 849,077.50
2,000	7/19/2000	$ 67,926.20
44,000	7/19/2000	$ 1,494,376.40
23,000	7/19/2000	$ 781,151.30
3,000	7/19/2000	$ 101,889.30
115,000	7/19/2000	$ 3,905,756.50
48,000	7/20/2000	$ 1,693,435.20
5,000	2/8/2001	$ 118,125.00
20,000	2/9/2001	$ 465,000.00
64,000	10/17/2001	$ 825,504.00
11,000	10/17/2001	$ 141,883.50
29,000	10/17/2001	$ 374,056.50
16,000	10/17/2001	$ 206,376.00
14,000	10/17/2001	$ 180,579.00
7,000	10/17/2001	$ 90,289.50
9,000	10/17/2001	$ 116,086.50
4,000	10/19/2001	$ 46,404.00
7,000	10/19/2001	$ 81,207.00
8,000	10/19/2001	$ 92,808.00
3,000	10/19/2001	$ 34,803.00
14,000	10/19/2001	$ 162,414.00
5,000	10/19/2001	$ 58,005.00
34,000	10/19/2001	$ 394,434.00
50,000	10/22/2001	$ 576,900.00
24,400	1/8/2002	$ 422,715.36
28,300	1/8/2002	$ 490,280.52
20,400	2/12/2002	$ 303,403.08
15,000	2/12/2002	$ 223,090.50
39,000	5/1/2002	$ 714,663.30
6,300	5/2/2002	$ 117,964.98
13,000	5/24/2002	$ 211,408.60
8,000	5/31/2002	$ 132,351.20

7,000	6/7/2002	$	100,529.10
16,000	6/20/2002	$	210,283.20
16,600	7/11/2002	$	167,349.58
18,900	7/19/2002	$	187,425.63
34,000	8/1/2002	$	313,565.00
8,500	9/3/2002	$	81,877.95
102,300	10/9/2002	$	538,271.91
23,300	10/9/2002	$	127,166.74
26,500	11/13/2002	$	189,037.75
17,900	1/21/2003	$	143,099.76
22,600	2/25/2003	$	130,284.48
7,500	2/25/2003	$	43,236.00
15,900	3/3/2003	$	98,118.90
13,500	3/7/2003	$	84,697.65
26,000	3/10/2003	$	183,960.40
8,600	3/12/2003	$	55,085.58
37,700	3/13/2003	$	257,223.33
18,500	4/1/2003	$	128,473.25
6,600	4/2/2003	$	47,322.00
32,900	4/7/2003	$	231,678.51
18,800	5/13/2003	$	191,957.40
39,400	5/22/2003	$	337,736.80
15,800	6/10/2003	$	162,433.48
16,900	6/11/2003	$	173,970.29
22,200	6/18/2003	$	245,447.64
39,700	6/30/2003	$	437,501.94
41,400	7/1/2003	$	449,976.60
23,800	7/3/2003	$	260,210.16
12,100	7/7/2003	$	134,704.46
6,800	7/7/2003	$	75,701.68
6,900	7/18/2003	$	66,930.00
18,200	8/14/2003	$	154,932.96
24,600	8/14/2003	$	209,414.88
14,600	8/22/2003	$	136,791.78
2,900	8/28/2003	$	25,598.01
21,000	9/2/2003	$	197,127.00
22,000	9/3/2003	$	231,587.40
16,000	9/10/2003	$	175,360.00
7,000	9/25/2003	$	70,416.50
18,200	10/10/2003	$	218,307.18
59,800	10/15/2003	$	758,258.02
23,000	10/16/2003	$	332,497.20
1,400	10/21/2003	$	19,802.44
82,500	10/28/2003	$	1,141,849.50
13,100	10/30/2003	$	178,714.13
4,300	10/30/2003	$	58,661.89
10,800	11/6/2003	$	143,495.28
14,000	11/13/2003	$	186,221.00
6,300	11/26/2003	$	80,703.00
3,500	11/28/2003	$	44,730.00
9,000	12/1/2003	$	119,643.30
13,100	12/3/2003	$	167,465.16

2,600	12/10/2003	$	30,298.06
6,200	12/12/2003	$	77,921.60
14,200	12/12/2003	$	178,465.60
8,800	12/22/2003	$	107,121.52
15,700	1/14/2004	$	207,641.92
14,900	1/23/2004	$	198,843.48
36,200	2/3/2004	$	377,204.00
2,900	2/17/2004	$	32,799.00
13,300	2/18/2004	$	146,964.73
3,900	2/25/2004	$	41,269.80
12,100	2/25/2004	$	128,042.20
28,000	2/25/2004	$	296,296.00
19,600	2/26/2004	$	212,234.68
3,200	2/27/2004	$	35,190.24
9,900	2/27/2004	$	108,869.81
3,900	3/22/2004	$	32,448.00
3,600	3/24/2004	$	31,104.00
1,500	3/24/2004	$	12,960.00
2,200	3/31/2004	$	21,604.00
1,900	4/1/2004	$	19,288.61
11,900	4/1/2004	$	120,807.61
7,700	4/7/2004	$	82,962.11
8,700	4/7/2004	$	93,736.41
6,300	4/7/2004	$	67,878.09
31,300	4/7/2004	$	337,235.59
8,900	4/7/2004	$	95,891.27
29,200	4/7/2004	$	314,609.56
7,800	4/7/2004	$	84,039.54
3,700	4/7/2004	$	39,864.91
68,900	4/7/2004	$	742,349.27
19,000	4/7/2004	$	204,711.70
27,600	4/7/2004	$	297,370.68
1,600	4/7/2004	$	17,238.88
3,000	4/7/2004	$	32,322.90
11,800	4/7/2004	$	127,136.74
20,100	4/7/2004	$	216,563.43
12,700	4/7/2004	$	136,833.61
8,600	4/7/2004	$	92,658.98
6,200	4/7/2004	$	66,800.66
6,800	4/7/2004	$	73,265.24
5,200	4/7/2004	$	56,026.36
10,100	4/7/2004	$	108,820.43
19,400	4/7/2004	$	209,021.42
15,200	4/7/2004	$	163,769.36
16,000	4/7/2004	$	172,388.80
28,400	4/7/2004	$	305,990.12
4,800	4/7/2004	$	51,716.64
9,900	4/7/2004	$	106,665.57
23,500	4/7/2004	$	253,196.05
4,700	4/7/2004	$	50,639.21
77,900	4/7/2004	$	839,317.97
6,200	4/7/2004	$	66,800.66

5,300	4/7/2004	$	57,103.79
19,700	4/13/2004	$	213,878.96
19,900	4/13/2004	$	216,050.32
6,200	4/13/2004	$	67,312.16
4,400	4/13/2004	$	47,769.92
3,400	4/13/2004	$	36,913.12
6,200	4/13/2004	$	67,312.16
11,400	4/13/2004	$	123,767.52
4,800	4/13/2004	$	52,112.64
1,100	4/13/2004	$	11,942.48
10,800	4/13/2004	$	117,253.44
15,600	4/13/2004	$	169,366.08
7,100	4/13/2004	$	77,083.28
16,700	4/13/2004	$	181,308.56
55,400	4/13/2004	$	601,466.72
6,300	4/13/2004	$	68,397.84
2,200	4/13/2004	$	23,884.96
9,000	4/13/2004	$	97,711.20
5,400	4/13/2004	$	58,626.72
3,700	4/13/2004	$	40,170.16
7,200	4/13/2004	$	78,168.96
3,400	4/13/2004	$	36,913.12
2,600	4/13/2004	$	28,227.68
49,000	4/13/2004	$	531,983.20
13,500	4/13/2004	$	146,566.80
4,400	4/13/2004	$	47,769.92
3,800	4/13/2004	$	41,255.84
20,200	4/13/2004	$	219,307.36
15,800	4/13/2004	$	171,537.44
13,800	4/13/2004	$	149,823.84
8,400	4/13/2004	$	91,197.12
20,700	4/13/2004	$	224,735.76
5,500	4/13/2004	$	59,712.40
4,500	4/13/2004	$	48,855.60
14,300	4/13/2004	$	155,252.24
22,200	4/13/2004	$	241,020.96
7,300	4/14/2004	$	81,342.44
5,300	4/14/2004	$	59,056.84
6,600	4/14/2004	$	73,542.48
17,100	4/14/2004	$	190,541.88
10,700	4/14/2004	$	119,227.96
2,600	4/14/2004	$	28,971.28
1,400	4/14/2004	$	15,599.92
12,900	4/14/2004	$	143,742.12
7,500	4/14/2004	$	83,571.00
6,500	4/14/2004	$	72,428.20
7,400	4/14/2004	$	82,456.72
4,100	4/14/2004	$	45,685.48
13,600	4/14/2004	$	151,542.08
5,700	4/14/2004	$	63,513.96
4,400	4/14/2004	$	49,028.32
23,500	4/14/2004	$	261,855.80

8,400	4/14/2004	$	93,599.52
8,600	4/14/2004	$	95,828.08
19,900	4/14/2004	$	221,741.72
66,100	4/14/2004	$	736,539.08
5,300	4/14/2004	$	59,056.84
4,000	4/14/2004	$	44,571.20
24,200	4/14/2004	$	269,655.76
10,100	4/14/2004	$	112,542.28
5,400	4/14/2004	$	60,171.12
24,800	4/14/2004	$	276,341.44
26,600	4/14/2004	$	296,398.48
16,500	4/14/2004	$	183,856.20
18,900	4/14/2004	$	210,598.92
23,800	4/14/2004	$	265,198.64
18,600	4/14/2004	$	207,256.08
3,100	4/14/2004	$	34,542.68
4,600	4/14/2004	$	51,256.88
58,400	4/14/2004	$	650,739.52
16,100	4/14/2004	$	179,399.08
2,100	4/15/2004	$	23,384.34
1,100	4/15/2004	$	12,248.94
16,500	4/15/2004	$	183,734.10
2,600	4/15/2004	$	28,952.04
48,700	4/15/2004	$	542,293.98
13,300	4/15/2004	$	148,100.82
55,000	4/15/2004	$	612,447.00
13,600	4/15/2004	$	151,441.44
15,700	4/15/2004	$	174,825.78
20,500	4/15/2004	$	228,275.70
5,400	4/15/2004	$	60,131.16
14,100	4/15/2004	$	157,009.14
10,700	4/15/2004	$	119,148.78
19,400	4/15/2004	$	216,026.76
3,600	4/15/2004	$	40,087.44
4,400	4/15/2004	$	48,995.76
19,700	4/15/2004	$	219,367.38
15,300	4/15/2004	$	170,371.62
3,400	4/15/2004	$	37,860.36
7,000	4/15/2004	$	77,947.80
3,700	4/15/2004	$	41,200.98
20,000	4/15/2004	$	222,708.00
8,300	4/15/2004	$	92,423.82
4,500	4/15/2004	$	50,109.30
22,000	4/15/2004	$	244,978.80
6,200	4/15/2004	$	69,039.48
5,400	4/15/2004	$	60,131.16
4,400	4/15/2004	$	48,995.76
6,100	4/15/2004	$	67,925.94
11,200	4/15/2004	$	124,716.48
4,700	4/15/2004	$	52,336.38
7,100	4/15/2004	$	79,061.34
3,300	4/15/2004	$	36,746.82

8,900	4/15/2004	$	99,105.06
6,100	4/15/2004	$	67,925.94
6,400	4/16/2004	$	70,065.28
11,700	4/16/2004	$	128,088.09
33,100	4/16/2004	$	362,368.87
1,500	4/16/2004	$	16,421.55
29,200	4/16/2004	$	319,672.84
8,100	4/16/2004	$	88,676.37
2,700	4/16/2004	$	29,558.79
700	4/16/2004	$	7,663.39
3,800	4/16/2004	$	41,601.26
3,300	4/16/2004	$	36,127.41
3,700	4/16/2004	$	40,506.49
8,200	4/16/2004	$	89,771.14
12,400	4/16/2004	$	135,751.48
3,300	4/16/2004	$	36,127.41
13,300	4/16/2004	$	145,604.41
6,800	4/16/2004	$	74,444.36
2,900	4/16/2004	$	31,748.33
2,200	4/16/2004	$	24,084.94
8,500	4/16/2004	$	93,055.45
5,400	4/16/2004	$	59,117.58
4,300	4/16/2004	$	47,075.11
2,600	4/16/2004	$	28,464.02
2,300	4/16/2004	$	25,179.71
9,500	4/16/2004	$	104,003.15
11,900	4/16/2004	$	130,277.63
2,000	4/16/2004	$	21,895.40
4,200	4/16/2004	$	45,980.34
9,900	4/16/2004	$	108,382.23
9,300	4/16/2004	$	101,813.61
12,100	4/16/2004	$	132,467.17
2,000	4/16/2004	$	21,895.40
1,300	4/16/2004	$	14,232.01
3,700	4/16/2004	$	40,506.49
2,700	4/16/2004	$	29,558.79
5,000	4/16/2004	$	54,738.50
11,200	4/22/2004	$	118,964.16
39,200	4/26/2004	$	413,904.96
34,300	4/29/2004	$	337,632.05
4,000	4/30/2004	$	39,525.20
18,500	5/4/2004	$	183,705.00
6,300	5/7/2004	$	59,896.62
4,000	5/7/2004	$	38,029.60
3,500	5/17/2004	$	30,426.90
1,400	5/19/2004	$	13,454.00
1,400	5/19/2004	$	13,454.00
10,900	5/21/2004	$	103,332.00
3,700	5/28/2004	$	37,405.89
3,200	6/4/2004	$	32,608.00
4,800	6/10/2004	$	48,720.00
4,000	6/18/2004	$	39,760.00

4,000	6/25/2004	$	43,304.00
10,300	6/30/2004	$	115,851.31
5,800	6/30/2004	$	64,294.16
8,600	7/16/2004	$	75,577.66
24,900	7/23/2004	$	217,626.00
8,500	7/30/2004	$	73,245.35
11,000	8/31/2004	$	106,294.10
7,900	9/1/2004	$	75,056.32
31,000	9/7/2004	$	294,050.50
5,400	9/20/2004	$	48,994.20
15,600	9/21/2004	$	139,261.20
6,500	9/30/2004	$	53,859.00
23,900	10/6/2004	$	207,691.00
3,800	10/21/2004	$	29,963.00
4,600	10/29/2004	$	41,610.22
8,000	11/1/2004	$	71,152.00
18,000	11/2/2004	$	170,206.20
6,700	11/9/2004	$	68,541.00
2,800	11/18/2004	$	28,000.00
25,400	11/19/2004	$	252,796.04
26,000	11/23/2004	$	250,640.00
17,500	11/24/2004	$	178,272.50
7,600	11/29/2004	$	77,231.20
3,000	11/30/2004	$	30,864.60
17,100	11/30/2004	$	175,928.22
20,100	12/1/2004	$	210,959.55
12,300	12/3/2004	$	140,174.49
18,000	12/6/2004	$	197,406.00
2,300	12/8/2004	$	25,287.12
6,100	12/8/2004	$	67,065.84
34,000	12/10/2004	$	359,091.00
12,100	12/16/2004	$	127,237.55
24,600	12/17/2004	$	256,730.52
16,600	12/17/2004	$	173,240.92
6,600	12/17/2004	$	68,878.92
6,900	12/20/2004	$	71,670.99
17,300	12/20/2004	$	179,696.83
30,300	12/20/2004	$	314,729.13
34,100	12/21/2004	$	355,056.02
2,800	12/22/2004	$	30,128.00
10,600	1/12/2005	$	91,536.30
20,800	1/12/2005	$	179,618.40

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Claims*	Times When Acquired	Amounts Paid Therefor

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Shares	Times When Acquired	Amounts Paid Therefor
7,000	1/22/2007	$ 37,909.20

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Claims*	Times When Acquired	Amounts Paid Therefor

Name of Ad Hoc Committee member: Mason Capital Management, LLC
Address of Ad Hoc Committee member: 110 East 59th Street, 30th Floor

AGGREGATE HOLDINGS

	Holdings on Date of Formation of Ad Hoc Committee (12/26/06)	Holdings on 03/09/07	Aggregate Amount of Sales or Other Disposition From 12/27/06 - 3/09/07
Shares	310,000	4,300,000	5,319,779
Claims	6,000,000	66,100,100	171,100,000

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Shares	Times When Acquired	Amounts Paid Therefor
50,000	9/7/2005	$ 172,635.00
100,000	9/8/2005	$ 342,420.00
400,000	9/8/2005	$ 1,397,360.00
20,000	11/30/2006	$ 68,280.00
20,000	12/6/2006	$ 65,714.00
20,000	12/7/2006	$ 66,208.00
300,000	12/8/2006	$ 1,146,030.00
300,000	12/8/2006	$ 1,144,140.00
10,000	12/19/2006	$ 35,450.00

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Claims*	Times When Acquired	Amounts Paid Therefor	
1,000,000	11/6/2006	$ 642,500.00	Note
1,000,000	11/6/2006	$ 652,500.00	Note
1,000,000	11/17/2006	$ 845,000.00	Note
500,000	11/29/2006	$ 430,000.00	Note
500,000	11/30/2006	$ 427,500.00	Note
500,000	12/1/2006	$ 422,500.00	Note
500,000	12/4/2006	$ 417,500.00	Note
1,000,000	12/5/2006	$ 855,000.00	Note
1,000,000	12/5/2006	$ 850,000.00	Note
2,000,000	12/14/2006	$ 1,880,000.00	Note
500,000	12/18/2006	$ 463,750.00	Note
500,000	12/18/2006	$ 466,250.00	Note

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Shares	Times When Acquired	Amounts Paid Therefor
75,000	1/5/2007	$ 329,977.50
425,000	1/12/2007	$ 2,140,937.50
583,361	1/16/2007	$ 2,715,137.10

197,283	1/16/2007	$	952,758.52
500,000	1/18/2007	$	2,673,700.00
250,000	1/24/2007	$	910,600.00
169,356	1/30/2007	$	574,320.07
23,979	2/1/2007	$	81,528.60
330,000	2/2/2007	$	1,157,970.00
100,000	2/5/2007	$	350,000.00
170,000	2/6/2007	$	585,480.00
450,000	2/28/2007	$	659,520.00
200,000	2/28/2007	$	309,100.00
300,000	2/28/2007	$	454,440.00
405,000	2/28/2007	$	581,215.50
342,500	2/28/2007	$	501,899.50
202,500	2/28/2007	$	305,795.25
245,800	3/1/2007	$	350,633.70
100,000	3/1/2007	$	134,020.00
100,000	3/1/2007	$	131,470.00
150,000	3/1/2007	$	209,430.00

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Claims*	Times When Acquired	Amounts Paid Therefor	
5,000,000	1/16/2007	$ 5,225,000.00	Note
3,000,000	1/16/2007	$ 3,135,000.00	Note
5,000,000	1/16/2007	$ 5,306,250.00	Note
2,000,000	1/17/2007	$ 2,135,000.00	Note
1,000,000	1/17/2007	$ 1,067,500.00	Note
1,000,000	1/17/2007	$ 1,067,500.00	Note
3,000,000	1/18/2007	$ 3,202,500.00	Note
3,000,000	1/18/2007	$ 3,240,000.00	Note
3,000,000	1/29/2007	$ 2,902,500.00	Note
2,000,000	1/29/2007	$ 1,935,000.00	Note
2,000,000	1/29/2007	$ 1,937,500.00	Note
2,000,000	1/29/2007	$ 1,937,500.00	Note
3,000,000	2/1/2007	$ 2,917,500.00	Note
10,000,000	2/1/2007	$ 8,650,000.00	Trade
2,000,000	2/1/2007	$ 1,730,000.00	Trade
4,000,000	2/2/2007	$ 3,500,000.00	Trade
2,000,000	2/2/2007	$ 1,740,000.00	Trade
5,500,000	2/2/2007	$ 4,785,000.00	Trade
1,000,000	2/2/2007	$ 875,000.00	Trade
4,500,000	2/6/2007	$ 4,387,500.00	Note
2,000,000	2/13/2007	$ 1,895,000.00	Note
5,000,000	2/13/2007	$ 4,800,000.00	Note
3,000,000	2/13/2007	$ 2,962,500.00	Note
4,000,000	2/14/2007	$ 3,810,000.00	Note
3,000,000	2/14/2007	$ 2,962,500.00	Note
1,000,000	2/14/2007	$ 997,500.00	Note
2,000,000	2/14/2007	$ 1,995,000.00	Note
3,000,000	2/14/2007	$ 3,000,000.00	Note
5,000,000	2/15/2007	$ 4,800,000.00	Note

2,000,000	2/15/2007	$	1,960,000.00	Note
3,000,000	2/15/2007	$	3,052,500.00	Note
3,000,000	2/15/2007	$	2,850,000.00	Note
40,000,000	2/15/2007	$	34,600,000.00	Trade
1,000,000	3/1/2007	$	920,000.00	Note
1,000,000	3/1/2007	$	925,000.00	Note
3,000,000	3/6/2007	$	2,602,500.00	Note
10,000,000	3/6/2007	$	8,000,000.00	Trade
3,600,000	3/6/2007	$	2,880,000.00	Trade
7,500,000	3/6/2007	$	6,075,000.00	Trade
5,000,000	3/6/2007	$	4,050,000.00	Trade

*Note: Identify the nature of the claim (bond, trade, etc.)

Name of Ad Hoc Committee member: Owl Creek Asset Management, L.P. FBO the funds it manages
Address of Ad Hoc Committee member: 640 Fifth Avenue, 20th Floor, New York, NY 10019

AGGREGATE HOLDINGS

	Holdings on Date of Formation of Ad Hoc Committee (12/26/06)	Holdings on 03/09/07	Aggregate Amount of Sales or Other Disposition From 12/26/06 - 3/09/07
Shares	4,400,000	4,400,000	-
Claims			
nwac 10% 02/01/09	19,000,000	19,000,000	-
nwac 8 7/8% 06/01/06	11,000,000	11,000,000	-
nwac 8.7% 03/15/07	5,000,000	5,000,000	-
nwac 9 7/8% 03/15/07	19,200,000	19,200,000	-

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Shares	Times When Acquired	Amounts Paid Therefor
4,100,000	11/15/2006	$ 6,165,820.00
300,000	11/16/2006	$ 586,440.00

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Claims*	Times When Acquired	Amounts Paid Therefor
nwac 10% 02/01/09		
9,000,000	11/16/2006	$ 7,537,500.00
10,000,000	11/17/2006	$ 8,340,000.00

Claims*	Times When Acquired	Amounts Paid Therefor
nwac 8 7/8% 06/01/06		
6,000,000	11/20/2006	$ 4,955,000.00
5,000,000	11/21/2006	$ 4,162,500.00

Claims*	Times When Acquired	Amounts Paid Therefor
nwac 8.7% 03/15/07		
5,000,000	11/21/2006	$ 4,175,000.00

Claims*	Times When Acquired	Amounts Paid Therefor
nwac 9 7/8% 03/15/07		
9,000,000	11/16/2006	$ 7,735,000.00
2,000,000	11/17/2006	$ 1,685,000.00
4,000,000	11/20/2006	$ 3,415,000.00
4,200,000	12/5/2006	$ 3,612,000.00

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Shares	Times When Acquired	Amounts Paid Therefor

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Claims*	Times When Acquired	Amounts Paid Therefor

*Note: Identify the nature of the claim (bond, trade, etc.)

Name of Ad Hoc Committee member: Sandell Asset Management
Address of Ad Hoc Committee member: 40 W. 57th Street, NY, NY 10014

AGGREGATE HOLDINGS

	Holdings on Date of Formation of Ad Hoc Committee (12/26/06)	Holdings on 03/09/07	Aggregate Amount of Sales or Other Disposition From 12/26/06 - 3/09/07
Shares	2,123,300	2,123,300	-
Claims	$ 51,173,868	57,173,868	5,000,000

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Shares	Times When Acquired	Amounts Paid Therefor
36,500	12/19/2006	$125,925.00
86,800	12/19/2006	$298,592.00
250,000	12/12/2006	$1,535,000.00
250,000	12/11/2006	$1,415,000.00
300,000	12/8/2006	$1,455,000.00
150,000	12/8/2006	$568,500.00
550,000	12/8/2006	$2,271,500.00
100,000	11/16/2006	$185,000.00
400,000	11/16/2006	$784,000.00
2,123,300		**Total**

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Claims*	Times When Acquired	Amounts Paid Therefor	Type of Claim
1,000,000	9/14/2006	$512,500.00	Note
2,196,000	10/19/2006	$1,306,620.00	Note
3,000,000	11/6/2006	$1,893,900.00	Note
1,500,000	11/7/2006	$952,500.00	Note
3,000,000	8/4/2006	$1,567,500.00	Note
1,000,000	8/4/2006	$522,500.00	Note
2,000,000	8/4/2006	$1,045,000.00	Note
200,000	9/13/2006	$103,000.00	Note
5,000,000	10/13/2006	$2,912,500.00	Note
1,718,000	10/19/2006	$1,041,537.50	Note
1,500,000	11/6/2006	$960,000.00	Note
2,500,000	9/11/2006	$1,256,250.00	Note
2,000,000	9/12/2006	$1,020,000.00	Note
2,000,000	9/13/2006	$1,037,500.00	Note
1,000,000	9/14/2006	$518,750.00	Note
2,500,000	10/18/2006	$1,462,500.00	Note
2,000,000	11/6/2006	$1,270,000.00	Note
2,000,000	9/12/2006	$1,045,000.00	Note
2,000,000	9/12/2006	$1,045,000.00	Note
1,095,000	10/19/2006	$669,318.75	Note
997,056	9/26/2005	$737,821.29	EETC
402,675	8/23/2006	$380,527.67	EETC
10,565,137	8/21/2006	$10,129,325.25	EETC
$ 51,173,868			**Total**

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Shares	Times When Acquired	Amounts Paid Therefor

Total

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Claims*	Times When Acquired	Amounts Paid Therefor	Type of Claim
2,000,000	1/3/2007	$1,865,000	Note
1,000,000	1/3/2007	$931,250	Note
3,000,000	1/3/2007	$2,827,500	Note
5,000,000	1/5/2007	$4,350,000	Trade Claim

$ 11,000,000 **Total**

Total Equity
2,123,300

Total Claims
$ 62,173,868

*Note: Identify the nature of the claim (bond, trade, etc.)

Name of Ad Hoc Committee member: Taconic Capital Advisors LP

Address of Ad Hoc Committee member: 450 Park Avenue, 9th Floor
New York, NY 10022

AGGREGATE HOLDINGS

	Holdings on Date of Formation of Ad Hoc Committee (12/26/06)	Holdings on 03/09/07	Aggregate Amount of Sales or Other Disposition From 12/27/06 - 3/09/07
Shares	1,849,248	1,997,248	793,051
Claims	3,250,000	18,250,000	

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Shares	Times When Acquired	Amounts Paid Therefor
100,000	9/14/2005	$ 86,000.00
50,000	9/15/2005	$ 46,500.00
50,000	9/16/2005	$ 48,400.00
850,000	11/15/2006	$ 1,028,500.00
250,000	11/15/2006	$ 350,000.00
1,300	11/16/2006	$ 1,599.00
129,248	11/16/2006	$ 257,203.52
150,000	11/16/2006	$ 312,000.00
21,751	11/16/2006	$ 43,502.00
500,000	11/17/2006	$ 1,150,000.00
300,000	11/27/2006	$ 1,110,000.00
50,000	12/14/2006	$ 224,000.00

Times When Acquired and Amounts Paid Therefor With Respect to Holdings on 12/26/06

Claims*	Times When Acquired	Amounts Paid Therefor	Type of Claim
3,250,000	06/27/06	$ 2,015,000.00	9.25 2012 cusip 62945CAK7

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Shares	Times When Acquired	Amounts Paid Therefor
13,000	1/5/07	$ 56,420.00
150,000	1/12/07	$ 748,500.00
125,000	1/12/07	$ 576,250.00
25,000	1/16/07	$ 101,500.00
25,000	1/24/07	$ 92,450.00

Times When Acquired and Amounts Paid Therefor With Respect to Additional Holdings on 03/09/07

Claims*	Times When Acquired	Amounts Paid Therefor	Type of Claim
$ 15,000,000.00	01/03/07	$ 12,750,000.00	NWAC UNSECURED TRADE

*Note: Identify the nature of the claim (bond, trade, etc.)

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EXHIBIT 99.4

CERTIFICATE OF DESIGNATIONS OF

SERIES B PREFERRED STOCK
(PAR VALUE $0.01)

OF

CONTINENTAL AIRLINES, INC.

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

Continental Airlines, Inc., a Delaware corporation, acting in accordance with Section 151 of the General Corporation Law of the State of Delaware, does hereby submit the following Certificate of Designations of its Series B Preferred Stock.

FIRST: The name of the corporation is Continental Airlines, Inc. (the "CORPORATION").

SECOND: On November 15, 2000, and in accordance with authority conferred upon the Board of Directors of the Corporation (the "BOARD") by the Amended and Restated Certificate of Incorporation of the Corporation (as the same may be amended or modified from time to time, the "CERTIFICATE OF INCORPORATION"), the Board adopted the following resolutions:

WHEREAS, the Certificate of Incorporation authorizes 10,000,000 shares of preferred stock, par value $.01 per share (the "PREFERRED STOCK"), issuable from time to time in one or more series;

WHEREAS, the Board is authorized, subject to certain limitations prescribed by law and certain provisions of the Certificate of Incorporation, to establish and fix the number of shares to be included in any series of Preferred Stock and the designations, rights, preferences, powers, restrictions and limitations of the shares of such series;

WHEREAS, the Board deems it advisable to establish a series of Preferred Stock, designated as Series B Preferred Stock, par value $.01 per share; and

WHEREAS, the sole share of such series is to be issued to Northwest Airlines, Inc. ("NORTHWEST"), at the closing of the transactions contemplated by, and as an inducement to the Northwest Parties (as defined below) to enter into, the Omnibus Agreement, dated as of November 15, 2000 (the "OMNIBUS AGREEMENT"), among Northwest, Northwest Airlines Holdings Corporation, Northwest Airlines Corporation, Air Partners, L.P. (together, the "NORTHWEST PARTIES") and the Corporation, and in connection with the amendment to the Master Alliance Agreement dated as of January 25, 1998 between Northwest and the Corporation (the "MASTER ALLIANCE AGREEMENT"), which amendment is being entered into pursuant to, and will be effective at the Effective Time as defined in, the

Omnibus Agreement;

NOW, THEREFORE, BE IT RESOLVED, that the series of Preferred Stock designated as Series B Preferred Stock, is hereby authorized and established; and

FURTHER, RESOLVED, that the Board does hereby fix and determine the designations, rights, preferences, powers, restrictions and limitations of the Series B Preferred Stock as follows:

SECTION 1. NUMBER OF SHARES AND DESIGNATION.

The designation of the series of Preferred Stock created by this resolution shall be "Series B Preferred Stock" (hereinafter called this "SERIES"), and the number of shares constituting this Series shall be one (the "Share"). The Share shall have a stated value of $100 and a liquidation preference of $100 (the "LIQUIDATION PREFERENCE"), as described herein. The number of authorized shares of this Series shall not be increased or reduced without the affirmative vote or written consent of the holder of the Share, voting separately as a class.

SECTION 2. DIVIDENDS.

No dividends shall be payable in respect of the Share.

SECTION 3. REDEMPTION.

(1) The Share shall not be redeemable by the Corporation except that it may be redeemed, at the option of the Corporation, for an amount equal to the Liquidation Preference upon or following the occurrence of any one of following (each, a "REDEMPTION EVENT"):

(A) the sale, transfer, assignment, pledge, option or other disposition of the Share or any of the beneficial or voting interest therein (other than a voting interest that does not constitute an Encumbrance (as defined below), including any security derivative of such interest, by any of the Northwest Parties or their respective successors to any other Person, other than to a successor in interest to Northwest by operation of law that owns directly all or substantially all of the Airline Assets owned by Northwest, or the Encumbrance of the Share by any of the Northwest Parties or their respective successors;

(B) a NW Change of Control, unless the Corporation shall have previously notified Northwest in writing that a NW Change of Control will not be deemed to occur by virtue of the relevant event;

(C) any of the Northwest Parties committing (i) an inadvertent breach of any provision of Section 1.01, Section 1.03(a) or Section 1.04 of the Standstill Agreement being entered into by the Corporation and certain of the Northwest Parties in accordance with the Omnibus Agreement that is not cured within fifteen

days of receipt by Northwest of notice from the Corporation of

such breach or (iii) any breach in any material respect of Section 1.01, 1.03(a) or 1.04 or any breach in any material respect of Section 1.02, 1.03(b), 1.03(c), 1.03(d), 1.03(e), 1.03(f) or 1.03(g) (but only to the extent that the actions covered by Section 1.03(g) relate to Section 1.03(b), 1.03(c), 1.03(d), 1.03(e) or 1.03(f)) of the Standstill Agreement;

(D) the taking of any action by any of the Northwest Parties which has the effect or result of, or any of the Northwest Parties otherwise causing, any of them to become an "Acquiring Person" under the Amended and Restated Rights Agreement (as defined in the Omnibus Agreement), as amended from time to time (the "RIGHTS AGREEMENT"), or any successor agreement; or

(E) the Master Alliance Agreement, as amended from time to time, being terminated or expiring, other than as a result of a breach or wrongful termination thereof by the Corporation or its successor thereunder.

(2) Notice of redemption of the Series B Preferred Stock shall be sent by or on behalf of the Corporation, by first class mail, postage prepaid, to Northwest at its address as it shall appear on the records of the Corporation, (i) notifying Northwest of the redemption of the Share and (ii) stating the place at which the certificate evidencing the Share shall be surrendered. The Corporation shall act as the transfer agent for the Series B Preferred Stock.

(3) From and after the notice of redemption having been duly given, and the redemption price having been paid or irrevocably set aside for payment, the Share shall no longer be, or be deemed to be, outstanding for any purpose, and all rights, preference and powers (including voting rights and powers) of the holder of the Share shall automatically cease and terminate, except the right of Northwest, upon surrender of the certificate for the Share, to receive the redemption price.

SECTION 4. VOTING.

Neither the Share nor its holder (in respect of the Share) shall have any voting rights or powers either general or special, except:

(1) As required by law;

(2) The affirmative vote or written consent of the holder of the Share, voting separately as a class, given in person or by proxy, shall be necessary for authorizing, approving, effecting or validating:

(A) the amendment, alteration or repeal of any of the provisions of the Certificate of Incorporation or any certificate amendatory thereto or supplemental thereto (including this Certificate of Designations), whether by merger,

consolidation or otherwise, that would adversely affect the powers, designations, preferences and relative, participating or other rights of the Share;

(B) any amendment, alteration or repeal of, or the adoption of any provision inconsistent with, any of the provisions of Article SEVEN of the Certificate of Incorporation, whether by merger, consolidation or otherwise;

(C) any CO Change of Control (as defined below), with respect to which the stockholders of Continental or its successor are entitled to vote, whether pursuant to applicable law or the rules of the national securities exchange or market system on which the common stock of the Corporation or its successor is principally traded;

(D) any dividend or distribution of all or substantially all of the Airline Assets (as defined below), including a dividend or distribution that includes the shares of any Subsidiary holding, directly or indirectly, all or substantially all of the Airline Assets, of the Corporation or its successor and its Subsidiaries, taken as a whole, (other than a dividend or distribution to a Holding Company the creation of which was previously subject to clause (F) below), whether as part of a single dividend or distribution or a related series thereof;

(E) any sale, transfer or other disposition, directly or indirectly, by the Corporation or its successor of all or substantially all of its Airline Assets to one or more of its Affiliates in one or a series of related transactions, provided that no such vote shall be required if (x) each such transferee of assets issues to Northwest or its successor, for a purchase price of $100, a share of preferred stock of such transferee having powers, designations, preferences and relative, participating or other rights, and restrictions and limitations thereof, with respect to such transferee that are identical to the powers, designations, preferences and relative, participating or other rights, and restrictions and limitations thereof, of this Series with respect to the Corporation, provided, that such newly issued share may differ from the Share as may be reasonably necessary and appropriate to reflect that such new entity and not the Corporation is the issuer thereof or any other non-material changes that do not adversely affect the rights of the holder thereof, (y) a rights plan with terms and conditions identical in all material respects to those provided under the Rights Agreement (except that any Person that would otherwise be an Acquiring Person (as defined in the Rights Agreement) as a result of or in connection with any transaction may be designated as an "Exempt Person" thereunder to the extent that, and only for so long as, such Acquiring Person is not a Major Carrier or an Affiliate of a Major Carrier, and other terms and conditions may be changed if such changes would be permitted under Article SEVEN of the Certificate of Incorporation) is established at each such transferee that has outstanding capital stock registered under Section 12(b) or 12(g) under the Securities Exchange Act of 1934, as amended, and provided, that the initial exercise price established therein is established at a level based upon reasonable and customary valuation practices substantially consistent with

those used in establishing the exercise price in the predecessor agreement to the Rights Agreement, and (z) the certificate of incorporation of each such entity issuing a share of preferred stock in accordance with clause (x) of this paragraph contains provisions in form and substance identical to Article SEVEN of the Certificate of Incorporation, subject to appropriate modifications, if applicable, as may be necessary to reflect that a rights plan may not yet be required to be put into effect;

(F) any reorganization or restructuring of, or any other transaction involving, the Corporation or its successor and any of its Subsidiaries the effect of which is to create a new Holding Company (as defined below) other than a transaction subject to Section 4(2)(G), provided that no such vote shall be required if (x) such Holding Company is not a Major Carrier or an Affiliate of a Major Carrier, and it and each of its Subsidiaries owning Airline Assets issue to Northwest or its successor, for a purchase price of $100, a share of a series of preferred stock of each such company having powers, designations, preferences and relative, participating or other rights, and restrictions and limitations thereof, with respect to each such company that are identical to the powers, designations, preferences and relative, participating or other rights, and restrictions and limitations thereof, of this Series with respect to the Corporation, provided, that such newly issued share may differ from the Share as may be reasonably necessary and appropriate to reflect that such new entity and not the Corporation is the issuer thereof or any other non-material changes that do not adversely affect the rights of the holder thereof, (y) a rights plan with identical terms and conditions in all material respects to those provided under the Rights Agreement (except that any Person that would otherwise be an Acquiring Person (as defined in the Rights Agreement) as a result of or in connection with any transaction may be designated as an "Exempt Person" thereunder to the extent that, and only for so long as, such Acquiring Person is not a Major Carrier or an Affiliate of a Major Carrier, and other terms and conditions may be changed if such changes would be permitted under Article SEVEN of the Certificate of Incorporation) is established at such new Holding Company and each such Subsidiary that has outstanding capital stock registered under Section 12(b) or 12(g) under the Securities Exchange Act of 1934, as amended, and provided, that the initial exercise price established therein is established at a level based upon reasonable and customary valuation practices substantially consistent with those used in establishing the exercise price in the predecessor agreement to the Rights Agreement, and (z) the certificate of incorporation of each such entity issuing a share of preferred stock in accordance with clause (x) of this paragraph contains provisions in form and substance identical to Article SEVEN of the Certificate of Incorporation, subject to appropriate modifications, if applicable, as may be necessary to reflect that a rights plan may not yet be required to be put into effect; or

(G) any transaction involving the establishment of a new Holding Company, whether as a result of a reorganization, restructuring or otherwise, which new Holding Company does not and will not upon consummation of such

transaction have any outstanding Capital Stock registered under Section 12(b) or 12(g) under the Securities Exchange Act of 1934, as amended, or any transaction involving the Corporation or its successor that has either a reasonable likelihood or a purpose of producing, either directly or indirectly, any of the effects described in paragraph (a)(3)(ii) of Rule 13e-3 (as in effect on the date of issuance of the Share) promulgated under the Securities Exchange Act of 1934, as amended (a "GOING PRIVATE TRANSACTION"), provided that no such vote shall be required if (1) no later than the

consummation of such Going Private Transaction or the consummation of the transaction resulting in such new Holding Company, as applicable, each remaining holder of the common stock of Continental or its successor upon consummation of such Going Private Transaction, or each holder of outstanding Capital Stock of such new Holding Company (other than, in the case of a Holding Company that is a limited partnership, limited partners thereof that are not Affiliates of any general partner thereof), as applicable, executes and delivers a transfer restriction agreement to Northwest or its successor in the form of Exhibit 12 to the Omnibus Agreement, and until Continental or such Holding Company, as applicable, has outstanding Capital Stock registered under Section 12(b) or 12(g) under the Securities Exchange Act of 1934, as amended, Continental or such Holding Company, as applicable, agrees to require any Person acquiring Capital Stock from Continental or such Holding Company, as applicable, subject to the preceding parenthetical, likewise to execute and deliver such agreement to Northwest, (2) each of the share certificates representing common stock of Continental or Capital Stock of such Holding Company, as applicable, bears an appropriate legend in accordance with applicable law as to the agreement described in clause (1), and (3) the certificate of incorporation of such new Holding Company contains provisions in form and substance identical to Article SEVEN of the Certificate of Incorporation, subject to appropriate modifications as may be necessary to reflect that a rights plan is not yet required to be put into effect.

(3) The voting rights and powers set forth in Sections 4(2)(B), 4(2)(C), 4(2)(D), 4(2)(E), 4(2)(F) and 4(2)(G) shall automatically terminate if the Share becomes redeemable in accordance with Section 3 hereof.

SECTION 5. LIQUIDATION RIGHTS.

(1) Upon the dissolution, liquidation or winding up of the Corporation, the holder of the Share shall be entitled to receive and to be paid out of the assets of the Corporation available for distribution to its stockholders, before any payment or distribution shall be made on the common stock of the Corporation or on any other class of stock ranking junior to the Preferred Stock upon liquidation, the amount of $100, and no more.

(2) Neither the sale of all or substantially all of the assets or capital stock of the Corporation, nor the merger or consolidation of the Corporation into or with any other corporation or the merger or consolidation of any other corporation into or with the

Corporation, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purposes of this Section 5.

(3) After the payment to the holder of the Share of the full preferential amount provided for in this Section 5, the holder of the Share as such shall have no right or claim to any of the remaining assets of the Corporation.

SECTION 6. RANKING.

For purposes of this resolution, any stock of any class or classes of the Corporation, other than the Class B Common Stock of the Corporation (as the same may be reclassified, changed or amended from

time to time), shall be deemed senior to the Share upon liquidation, dissolution or winding up.

SECTION 7. NO ADDITIONAL RIGHTS.

Except as required by law and except as provided in the Certificate of Incorporation, neither the Series B Preferred Stock nor the holder of the Share, in respect of the Share, shall be entitled to any rights, powers or preferences other than those set forth in this resolution.

SECTION 8. DEFINITIONS.

Capitalized terms not otherwise defined in this Certificate of Designation shall have the following meanings in this Certificate of Designation:

"AFFILIATE" means, as applied to a Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For purposes of this definition "CONTROL" (including, with correlative meanings, the terms "CONTROLLING", "CONTROLLED BY" and "UNDER COMMON CONTROL WITH"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise.

"AIRLINE ASSETS" means those assets used, as of the date of determination, in the relevant Person's operation as an air carrier.

"BENEFICIAL OWNERSHIP" has the meaning given such term in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, as amended.

"CAPITAL STOCK" of any Person means any and all shares, interests, rights to purchase, options, warrants, participation or other equivalents of or interests in (however designated) the equity of such Person, including any preferred stock.

"CO CHANGE OF CONTROL" means:

(i) a merger, reorganization, share exchange, consolidation, tender or exchange offer, private purchase, business combination, recapitalization or similar transaction as a result of which (A) a Major Carrier or a Holding Company of a Major Carrier and a Continental Affected Company are legally combined, (B) a Major Carrier, any of its Affiliates, or any combination thereof acquires, directly or indirectly, Beneficial Ownership of 25% or more of the Capital Stock or Voting Power of a Continental Affected Company, or (C) a Continental Affected Company acquires, directly or indirectly, Beneficial Ownership of 25% or more of the Capital Stock or Voting Power of a Major Carrier;

(ii) the liquidation or dissolution of the Corporation or its successor in connection with which the Corporation or such successor ceases operations as an air carrier;

(iii) the sale, transfer or other disposition of all

or substantially all of the Airline Assets of Continental (or its successor) and its Subsidiaries on a consolidated basis directly or indirectly to a Major Carrier, any Affiliate of a Major Carrier or any combination thereof, whether in a single transaction or a series of related transactions;

(iv) the sale, transfer or other disposition of all or substantially all of the trans-Atlantic route network or the Latin American route network of the Corporation or its successor other than to an Affiliate of the Corporation;

(v) the direct or indirect acquisition by a Major Carrier, any of its Affiliates or any combination thereof of Beneficial Ownership of 25% or more of the Capital Stock or Voting Power of a Continental Affected Company;

(vi) the direct or indirect acquisition, whether in a single transaction or a series of related transactions, by a Continental Affected Company of Airline Assets and associated employees, which Airline Assets on a stand alone basis would have pro forma annual passenger revenues for the most recently completed four fiscal quarters for which financial statements can be reasonably prepared in excess of the Revenue Threshold; or

(vii) the execution by a Continental Affected Company of bona fide definitive agreements, the consummation of the transactions contemplated by which would result in a transaction described in the immediately preceding clauses (i), (ii), (iii), (iv), (v) or (vi).

Notwithstanding the foregoing, (A) in no event shall a commercial cooperation agreement (such as the Northwest-KLM trans-Atlantic joint venture), which involves a Major Carrier or any of its Affiliates and a Continental Affected Party, which consists of code sharing, a joint venture or similar arrangement and which does not involve a sale, transfer, or acquisition of Airline Assets, be deemed to be a CO Change of Control, and (B) any such commercial cooperation agreement,

which involves a Major Carrier or any of its Affiliates and a Continental Affected Party, which consists of code sharing, a joint venture or similar arrangement but which does involve a sale, transfer, or acquisition of Airline Assets, shall be deemed to be a CO Change of Control only if such transaction is otherwise within the scope of one or more of the preceding clauses (i) through (vii).

"CONTINENTAL AFFECTED COMPANY" means (a) the Corporation and its successor, (b) any Holding Company of the Corporation, or (c) any Subsidiary of the Corporation or its successor or of any Holding Company of the Corporation, that in any such case owns, directly or indirectly, all or substantially all of the Airline Assets of the Corporation or its successor, such Holding Companies of the Corporation and such Subsidiaries, taken as a whole.

"ENCUMBRANCE" means the direct or indirect grant by any Northwest Party or its successor to any other Person of the sole or shared power or right to vote or consent, or direct the voting or consenting of, the Share in any respect, whether by proxy, voting agreement, arrangement, or understanding (written or otherwise) voting trust, or

otherwise (other than a revocable proxy granted to any director, officer or employee of a Northwest Party or the Corporation, or any counsel for any Northwest Party, or any corporate trust officer of Wilmington Trust Company or a national trust company solely for the limited purpose of voting the Share, the instructions for which are given solely by the relevant Northwest Party), or by joining a partnership, limited partnership, syndicate or other voting group or otherwise acting in concert with another Person (other than a revocable proxy referred to above) for the purpose or with the effect of voting or directing the vote of the Share.

"HOLDING COMPANY" means, as applied to a Person, any other Person of whom such Person is, directly or indirectly, a Subsidiary.

"INSTITUTIONAL INVESTOR" shall mean an institutional or other passive investor who, with respect to the securities relating to Voting Power that are the subject of the definition of Subsidiary herein, would be entitled to file a Statement on Schedule 13G (and not required to file a Statement on Schedule 13D) with respect to such securities under the rules promulgated under the Securities Exchange Act of 1934, as amended, in effect on November 15, 2000, but only so long as such investor would not be required to file a Statement on Schedule 13D with respect to such securities.

"MAJOR CARRIER" means an air carrier (other than the Corporation and its successors and any Subsidiary thereof or Northwest Airlines Corporation and its successors and any Subsidiary thereof), the annual passenger revenues of which (including its Subsidiaries' predecessor entities) for the most recently completed fiscal year for which audited financial statements are available are in excess of the Revenue Threshold as of the date of determination (or the U.S. dollar equivalent thereof).

"NORTHWEST AFFECTED COMPANY" means (a) Northwest Airlines Corporation, Northwest and their respective successors, (b) any Holding Company of Northwest Airlines Corporation or Northwest, or (c) any Subsidiary of Northwest Airlines Corporation, Northwest or their respective successors or of any Holding Company or their respective successors, that in any such case owns, directly or indirectly, all or substantially all of the Airline Assets of Northwest Airlines Corporation, Northwest or their respective successors, such Holding Companies of Northwest Airlines Corporation, Northwest and such Subsidiaries, taken as a whole.

"NW CHANGE OF CONTROL" means:

(i) a merger, reorganization, share exchange, consolidation, tender or exchange offer, private purchase, business combination, recapitalization or similar transaction as a result of which (A) a Major Carrier or a Holding Company of a Major Carrier and a Northwest Affected Company are legally combined, (B) a Major Carrier, any of its Affiliates or any combination thereof acquires, directly or indirectly, Beneficial Ownership of 25% or more of the Capital Stock or Voting Power of a Northwest Affected Company, or (C) a Northwest Affected Company acquires, directly or indirectly, Beneficial Ownership of 25% or more of the Capital Stock or Voting Power of a Major Carrier;

(ii) the liquidation or dissolution of Northwest or its successor in connection with which Northwest or such successor ceases operations as an air carrier;

(iii) the sale, transfer or other disposition of all or substantially all of the Airline Assets of Northwest Airlines Corporation (or its successor) and its Subsidiaries on a consolidated basis directly or indirectly to a Major Carrier, any Affiliate of a Major Carrier or any combination thereof, whether in a single transaction or a series of related transactions;

(iv) the sale, transfer or other disposition of all or substantially all of the transpacific route network of Northwest or its successor other than to an Affiliate of Northwest;

(v) the direct or indirect acquisition by a Major Carrier, any of its Affiliates or any combination thereof of Beneficial Ownership of 25% or more of the Capital Stock or Voting Power of a Northwest Affected Company;

(vi) the direct or indirect acquisition, whether in a single transaction or a series of related transactions, by a Northwest Affected Company of Airline Assets and associated employees, which Airline Assets on a stand alone basis would have pro forma annual passenger revenues for the most recently completed four

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fiscal quarters for which financial statements can be reasonably prepared in excess of the Revenue Threshold; or

(vii) the execution by a Northwest Affected Company of bona fide definitive agreements, the consummation of the transactions contemplated by which would result in a transaction described in the immediately preceding clauses (i), (ii), (iii) (iv), (v) or (vi).

Notwithstanding the foregoing, (A) in no event shall a commercial cooperation agreement (such as the Northwest-KLM trans-Atlantic joint venture), which involves a Major Carrier or any of its Affiliates and a Northwest Affected Party, which consists of code sharing, a joint venture or similar arrangement and which does not involve a sale, transfer, or acquisition of Airline Assets, be deemed to be a NW Change of Control, and (B) any such commercial cooperation agreement, which involves a Major Carrier or any of its Affiliates and a Northwest Affected Party, which consists of code sharing, a joint venture or similar arrangement but which does involve a sale, transfer, or acquisition of Airline Assets, shall be deemed to be a NW Change of Control only if such transaction is otherwise within the scope of one or more of the preceding clauses (i) through (vii).

"REVENUE THRESHOLD" means one billion dollars ($1,000,000,000), as such amount may be increased based on the amount by which, for any date of determination, the most recently published Consumer Price Index for all-urban consumers published by the Department of Labor (the "CPI") has increased to such date above the CPI for calendar year 2000. For purposes hereof, the CPI for calendar year 2000 is the monthly average of the CPI for the 12 months ending on December 31, 2000.

"PERSON" means an individual, partnership, corporation, business trust, joint stock company, limited liability company, unincorporated association, joint venture or other entity of whatever nature.

"SUBSIDIARY" (i) of any Person (other than an Institutional Investor) means any corporation, association, partnership, joint venture, limited liability company or other business entity of which more than 40% of the total Voting Power thereof or the Capital Stock thereof is at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person, or (3) one or more Subsidiaries of such Person and (ii) of any Institutional Investor means any corporation, association, partnership, joint venture, limited liability company or other business entity of which more than 50% of the total Voting Power thereof is at the time owned or controlled, directly, by such Institutional Investor.

"VOTING POWER" means, as of the date of determination, the voting power in the general election of directors, managers or trustees, as applicable.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be signed by its duly authorized officer this ___ day of _____, 2000.

CONTINENTAL AIRLINES, INC.

By: _____

Name:
Title:

</TEXT>
</DOCUMENT>

-----Original Message-----
From: Friedman, Peter [mailto:Peter.Friedman@cwt.com]
Sent: Tuesday, May 01, 2007 4:41 PM
To: Brilliant, Allan
Cc: Petrick, Gregory; Ellenberg, Mark
Subject: RE: Sub Con Motion

Alan-

We are in the process of gathering documents responsive to your third request. After considering your request on issue 2, we don't believe that you are entitled to those documents. As I said the other day on the phone, we are not arguing that the assets are intermingled/can't be traced or that corporate formalities were disregarded and thus, any separate financials aren't relevant. As I said, we would stipulate to the lack of intermingling, and I invited you to send a list of facts you would like us to consider stipulating to. We are awaiting any such request.

Peter

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11
NORTHWEST AIRLINES CORPORATION, et al.,	:	
	:	Case No. 05-17930 (ALG)
Debtors.	:	
	:	(Jointly Administered)
	:	

DECLARATION OF DANIEL KRUEGER IN SUPPORT OF OBJECTION OF OWL CREEK ASSET MANAGEMENT, L.P. TO DEBTORS' MOTION FOR SUBSTANTIVE CONSOLIDATION OF CONSOLIDATED DEBTORS

I, Daniel Krueger, hereby declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner of Owl Creek I, L.P., a fund managed by Owl Creek Asset Management L.P. ("Owl Creek"), which is represented by Kasowitz, Benson, Torres & Friedman LLP in the above-captioned case as a member of the Ad Hoc Committee of Equity Holders and by Klestadt & Winters, LLP in Owl Creek's individual capacity. I submit this declaration in support of Owl Creek's objection to the Debtors' motion for substantive consolidation. I have personal knowledge of the facts set forth below, except those alleged upon information and belief, and as to those facts I believe them to be true.

2. As of the date hereof, funds managed by Owl Creek hold $19,000,000 face amount of 10% Senior Notes due 2009 issued by Northwest Airlines, Inc. and guarantied by

Northwest Airlines Corporation; $11,000,000 face amount of 8.875% Senior Notes due 2008 issued by Northwest Airlines, Inc. and guarantied by Northwest Airlines Corporation; $5,000,000 face amount of Senior Notes due 2007 issued by Northwest Airlines, Inc. and guarantied by Northwest Airlines Corporation and Northwest Airlines Holdings Corporation; and $19,200,000 face amount of Senior Notes due 2007 issued by Northwest Airlines, Inc. and guarantied by Northwest Airlines Corporation (collectively, the "Guarantied Notes").

3. Owl Creek purchased the Guarantied Notes in reliance on the fact that they were issued by Northwest Airlines, Inc. and guarantied by one or more of Northwest Airlines, Inc.'s parent companies.

4. In purchasing the Guarantied Notes, Owl Creek understood and relied on the fact that Northwest Airlines, Inc., issuer of the Guarantied Notes, and the parent guarantors were different entities, with separate assets and liabilities, and therefore Owl Creek's claims were entitled to additional consideration from the guarantors' assets.

5. I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 5th day of May 2007, at New York, New York.

/s/ Daniel Krueger
DANIEL KRUEGER

Tab 9

Hearing Date and Time: May 9, 2007 at 11:00 a.m.
Response Deadline: May 4, 2007 at 4:00 p.m.

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Attorneys for Debtors and Debtors In Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
NORTHWEST AIRLINES CORPORATION, et al.,	:	**Case No. 05-17930 (ALG)**
Debtors.	:	**Jointly Administered**

DEBTORS' MOTION FOR SUBSTANTIVE CONSOLIDATION OF CONSOLIDATED DEBTORS

Northwest Airlines Corporation ("NWA Corp.") and certain of its affiliated entities, as debtors and debtors in possession (each, a "Debtor" and collectively the "Debtors" or "Northwest")[1] respectfully move under section 105(a) of the Bankruptcy Code for an order

[1] Specifically, in addition to NWA Corp., the Debtors consist of: NWA Fuel Services Corporation, Holdings, NWA Inc., Northwest Aerospace Training Corp., Airlines, MLT Inc. ("MLT"), Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc., NWA Retail Sales Inc., Montana Enterprises, Inc.,

substantively consolidating the following four Debtors: NWA Corp., Northwest Holdings Corporation ("Holdings"), NWA Inc. ("NWA Inc.") and Northwest Airlines, Inc. ("Airlines") (collectively, the "Consolidated Debtors"). NWA Corp. is the public holding company for the other Debtors and their affiliates. It has no independent business or sources of income. Holdings and NWA Inc. each were, at one time, the public holding company for Airlines and affiliates. They are now historical vestiges. The pending plan of reorganization, accordingly, provides that Holdings and NWA Inc. will be merged out of existence on the effective date. Airlines is one of the largest airlines in the United States. Of the Consolidated Debtors, only Airlines operates a business and generates revenues.

The plan substantively consolidates the Consolidated Debtors for all purposes and actions associated with consummation of the plan, including voting and confirmation. The proposed consolidation is both necessary and appropriate. First, the Consolidated Debtors share an operational identity and their financial and business affairs are entangled. The Consolidated Debtors operate a single business, publish consolidated financial statements, file a group tax return, employ a centralized cash management system, occupy a single business headquarters and have common officers and directors. In addition, substantially all the public debt issued by any of the Consolidated Debtors has guarantees from other Consolidated Debtors. Much of the debt has multiple guarantees.

Second, substantive consolidation will not cause substantial injury to any creditor. Holders of guaranty claims against a Consolidated Debtor will receive an additional distribution on account of the guaranty that equals the distribution it would have received under separate plans. The only claims that benefit from consolidation are an $11 million claim with respect to

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NW Red Baron LLC, Aircraft Foreign Sales, Inc., NWA Worldclub, Inc. and NWA Aircraft Finance, Inc.

the Duluth facility against NWA Corp. and, arguably, the Series C claims. To the extent these benefits dilute holders of general unsecured claims against Airlines, the dilution is both *de minimis* and offset by the benefits of consolidation.

The benefits of consolidation are manifold. Consolidation will facilitate timely confirmation of the Debtors' plan, saving both time and resources. Consolidation will also protect available net operating loss carry-forwards and will otherwise help Northwest protect creditor recoveries through a favorable tax outcome. In addition, substantive consolidation will avoid divisive and protracted litigation with the unions representing thousands of Northwest employees by assuring equitable distribution to the beneficial holders of Series C claims (thousands of employees who provided valuable voluntary wage and benefit concessions to Northwest Airlines for a three-year period commencing in 1993). As the Debtors seek to emerge from Chapter 11, having demanded substantial sacrifice from Northwest employees to help restore financial viability, it is critical to align the interests of employees and other shareholders in assuring the Debtors' future success.[2]

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

[2] For purposes of the substantive consolidation motion, the Debtors are assuming that each of the Consolidated Debtors is insolvent. This assumption avoids wasteful duplication, as the Debtors will establish the fact of insolvency at the hearing on confirmation of the Plan (as defined herein).

BACKGROUND

I. The Bankruptcy Cases.

2. On September 14, 2005 (the "Petition Date"), the Debtors, including the Consolidated Debtors, filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.[3] The Debtors are continuing to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On September 14, 2005, the Court entered an order authorizing the joint administration of the Debtors' Chapter 11 cases.

3. On March 30, 2007, this Court entered an Order approving the Debtors' Disclosure Statement (the "Disclosure Statement") With Respect to the Debtors' First Amended Joint and Consolidated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket No. 4902].

4. A hearing to consider confirmation of the Debtors' First Amended Joint and Consolidated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as may be further amended, the "Plan") is scheduled to be held on May 16, 2007.

II. The Debtors.

5. As noted, these Chapter 11 cases involve fourteen Debtors, each of which is organized under the parent corporation NWA Corp., as shown on the organization chart attached hereto as Exhibit 1.

6. As indicated by the organization chart, most of the entities in the affiliated group are subsidiaries of Airlines. Certain entities are subsidiaries of NWA Inc., and, thus, siblings to Airlines. However, the only one of the sibling entities with operations is MLT. MLT

[3] NWA Aircraft Finance, Inc. filed its petition on September 30, 2005.

is a captive travel agent. It principally sells tour packages to passengers of Airlines and tour packages where flights are operated by other charter airlines. Northwest will establish at the confirmation hearing that MLT has no net equity value.[4]

III. The Consolidated Debtors.

Summary of the Consolidated Debtors

7. The Debtors seek to substantively consolidate the following four entities:

- NWA Corp. NWA Corp., a Delaware corporation, is the direct or indirect parent corporation of all of the Debtors. It is a holding company with no aviation or other business operations. NWA Corp. has assets in the amount of approximately $307 million, which consist primarily of an intercompany receivable from another Consolidated Debtor. NWA Corp. has liabilities far in excess of this amount.

- Holdings. Holdings, a Delaware corporation, is a holding company whose principal direct subsidiary is NWA Inc. Holdings is wholly owned by NWA Corp. Holdings has assets of approximately $513 million, almost $500 million of which comes from an intercompany receivable from another Consolidated Debtor. Its liabilities include an intercompany payable of $1.7 billion to Airlines. NWA Corp. has liabilities far in excess of its assets.

- NWA Inc. NWA Inc., a Delaware corporation, is the direct or indirect parent of most of the Debtors, including Airlines. NWA Inc. is wholly owned by Holdings. NWA Inc. has assets in the amount of $162 million, the substantial majority of which are intercompany receivables either from the Consolidated Debtors or other Debtors. Its liabilities include an intercompany payable in the amount of $5.4 billion. NWA Inc. has liabilities far in excess of its assets.

- Airlines. Airlines, a Minnesota Corporation, is the principal indirect operating subsidiary of NWA Corp. Airlines is one of the world's largest airlines, with hubs at Detroit, Minneapolis/St. Paul, Memphis, Tokyo and Amsterdam, and approximately 1,400 daily departures. Airlines is wholly owned by NWA Inc., which is in turn owned by Holdings, which is in turn owned by NWA Corp.

[4] Even if MLT had some positive value, that value would inure to the benefit of Airlines, which holds in excess of $5 billion in claims against NWA Inc..

8. The intercompany claims among the Consolidated Debtors are as follows:

			PAYABLES (DEBTORS)			
		NWA Corp.	Holdings	NWA Inc.	Airlines	Total
RECEIVABLES (CREDITORS)	NWA Corp.				$333,154,336	$334,154,336
	Holdings	$33,744,392		$465,573,788		$499,318,180
	NWA Inc.	$1,870,828				$1,870,828
	Airlines		$1,698,753,507	$5,080,812,234		$6,779,565,742
	Total	**$35,615,220**	**$1,698,753,507**	**$5,080,812,234**		**$7,614,909,088**

Historical Evolution, Corporate Structure and Operations of the Consolidated Debtors

9. Airlines has always been the only Consolidated Debtor with business operations. It is the primary vehicle through which Northwest conducts its business.

10. There has never been a business need for more than a single holding company. The existing three-layer holding company structure is the product of historical events.

11. Originally, NWA Inc. was the publicly traded parent company of Airlines. Then, as now, Airlines was the entity responsible for operations and revenue. NWA Inc. was simply a passive holding company. In 1989, NWA Inc. was taken private through a leveraged buy-out. The LBO resulted in the creation of a new parent holding company called Wings Holdings ("Wings"). Wings was the direct parent of NWA Inc. and the indirect parent of Airlines. Like NWA Inc., Wings had no operations or revenue independent of Airlines. In 1994, Wings became a publicly traded corporation and simultaneously changed its name to Northwest Airlines Corporation (referred to as "Old Corp."). In 1998, Northwest acquired an interest in Continental Airlines, Inc. In connection with this acquisition, which was structured as a tax-free

transaction for the sellers, a new holding company was formed and named Northwest Airlines Corporation. The new Northwest Airlines Corporation became the direct parent to Old Corp. (which changed its name and became what is now Holdings).

12. Because Holdings and NWA Inc. have no continuing purpose, the Plan provides that they will be merged out of existence on the effective date.[5]

13. Substantially all of the Consolidated Debtors' operations are attributable to Airlines, which accounted for approximately 98% of the Consolidated Debtors' 2006 operating revenues and expenses. Neither NWA Corp., Holdings nor NWA Inc. earn operating revenue or income.

14. The Consolidated Debtors each currently have identical Directors, and will have identical directors once they are reorganized. NWA Corp., Holdings and NWA Inc. have identical officers, and those officers fill the same positions at Airlines.

15. The Consolidated Debtors are each headquartered at and commonly controlled and managed from the same offices, located in Eagan, Minnesota.

16. The Consolidated Debtors' publish consolidated financial statements. The separate financial statements of the individual Consolidated Debtors are not included in NWA Corp.'s public filings with the Securities and Exchange Commission. Similarly, the Consolidated Debtors do not release separate earnings reports. Rather, NWA Corp. reports earnings on a consolidated basis.

[5] Section 5.15 of the Plan provides for this corporate restructuring, stating that on the Debtors' emergence, "but subsequent to the cancellation and discharge of all Claims, (i) Holdings will merge into NWA Inc., with NWA Inc. being the surviving entity, and (ii) thereafter, NWA Inc. will merge into Northwest Airlines, with Northwest Airlines being the surviving entity."

17. The Consolidated Debtors are part of a tax group that files a single consolidated Federal tax return.

Claims Against the Consolidated Debtors

18. As detailed on Exhibit 2, claims have been filed against each of the Consolidated Debtors individually. The bulk of ultimately allowable claims against NWA Corp. are duplicative tax claims, claims arising from guarantees issued by one of these three entities, claims guaranteed by another entity (described in greater detail in paragraph 15, above) and the Series C claims (described in greater detail below). There appears to be only a single valid claim against NWA Inc., based on the guaranty of certain obligations related to the municipal financing of a maintenance hanger in Duluth, Minnesota.[6] There are two valid claims against Holdings, both of which arise from guarantees of certain notes issued by Airlines. There are no valid trade or labor claims against any of the Consolidated Debtors other than Airlines, except for a small number of insurance claims against NWA Corp. A substantial number of claims have been filed against NWA Corp., Holdings and NWA Inc. that the Debtors believe are properly classified as claims against Airlines, absent substantive consolidation. For example, approximately 5,000 claims have been filed against NWA Corp. that the Debtors believe are duplicative of claims filed against Airlines. Without substantive consolidation the Debtors would be forced to expend time and resources separating and analyzing — and potentially litigating — these claims.

IV. The Guaranty Claims.

19. When Airlines issued debt, it was generally guaranteed by the most senior existing holding company. Among the obligations of Airlines that NWA Corp. has guaranteed are special facilities lease obligations and the related municipal bonds, public aircraft financings,

[6] The claim is secured.

letters of credit, Boeing Aircraft financing obligations and unsecured notes issued by Airlines. Many of these guarantees duplicate guarantees issued by Holdings and NWA Inc.[7] That is, when NWA Corp. was created it was, as the public company in the Northwest family, required to guaranty preexisting debt issued by Airlines and guaranteed by the then-existing holding company. Accordingly, there are guaranty claims of approximately $2.9 billion against NWA Corp. NWA Corp. has also issued approximately $375 million in senior convertible notes. These notes are guaranteed by Airlines.

20. Among the obligations Holdings has guaranteed are special facilities leases and related municipal bonds, aircraft financings, letters of credit and unsecured notes issued by Airlines. Only two of these guarantees — related to unsecured notes issued by Airlines — will give rise to an allowable claim against Holdings.

21. Among the obligations NWA Inc. has guaranteed are special facilities leases and the related municipal bonds, aircraft financings, and letters of credit. Only one of these guarantees — relating to municipal bonds — will give rise to an allowable claim against NWA Inc.

V. The "Series C" Claims.

22. On August 1, 1993, Wings, which was then the top tier holding company, and Airlines entered into Equity Letter Agreements (the "Equity Letter Agreements") with each of the International Association of Machinists and Aerospace Workers (the "IAM") and the International Brotherhood of Teamsters (the "IBT"). The Equity Letter Agreements provided for the issuance of Series C Preferred Stock (the "Series C Preferred Stock") to two separate trusts

[7] A chart detailing the guarantees and the duplication among the guarantees issued by the Consolidated Debtors is attached as Exhibit 3.

for the benefit of the employees represented by each Union.[8] The Series C Preferred Stock was expressly in exchange for significant wage and benefit concessions for Airlines agreed to by the Unions at that time.

23. When the labor unions made concessions to the Company in 1993 and signed the Equity Letter Agreements, no party expected that payments under the Equity Letter Agreements would come only from a holding company such as Wings (or its corporate holding company successors). See Declaration of Thomas Roth in Support of Series C Motion, dated April 20, 2007. Indeed, the notion of repayment by Wings alone — which had little to no cash and assets almost exclusively comprising of stock in its subsidiaries — makes little sense. This is particularly true in light of the fact that the IAM and IBT expressly did not want Wings' stock as repayment for their concessions, but instead sought a cash repayment. Cash was generated by Airlines, not Wings. The IAM contends that "all parties" to the Equity Letter Agreements understood that the holding company "would rely on income up-streamed from" Airlines "to repurchase Series C stock with cash." Roth Decl. at ¶ 10. The Debtors agree. The IAM further points out that the Company was contractually obligated to use all of its available cash — including Airlines' cash — to redeem Series C stock under the Equity Letter Agreements. The Debtors agree with this, too, and acknowledge that IAM and IBT could look to repayment directly from the assets of Airlines. Indeed, in connection with the 1993 events which give rise to the Series C claims, the Debtors held themselves out to the IAM and IBT as a single economic unit.

[8] A copy of the Equity Letter Agreement among Wings Holdings Inc., Northwest Airlines, Inc. and the IAM is attached as Exhibit 4. The Equity Letter Agreement with the IBT is virtually identical.

24. The Equity Letter Agreements reflect that Wings and Airlines were both intricately involved in bargaining with the IAM and IBT with respect to the 1993 labor concessions. Airlines signed the Agreements. As noted above, repayments required by the Agreements were to come from cash of any subsidiary of Wings that could fund the payments. In addition, the Equity Letter Agreements both granted the labor unions the right to appoint members of the board of both Wings and Airlines and created a "Labor Advisory Committee" that was to have "reasonable access" to Airlines' financial materials. The Equity Letter Agreements also were conditioned on Airlines using its "best efforts" to restructure its debts and effect other non-labor financial restructuring. Section 7.8 of the Equity Letter Agreements provides for remedies in the event that Airlines breached provisions thereof.

25. On August 29, 2005, judgments were entered against NWA Corp. in favor of the IBT and the IBT Trustee, in the amount of $64,777,000 (the "IBT Series C Judgment"), and in favor of the IAM in the amount of $211,685,000 in connection with certain litigation over the Series C Preferred Stock (the "IAM Series C Judgment" and together with the IBT Series C Judgment, the "Series C Judgments"). Various claims have been filed in these cases in connection with the Series C Preferred Stock.

26. Undoubtedly believing that it could collect from Airlines as well as NWA Corp., the IAM filed its Series C claims against both debtors. The Debtors believe that Airlines, which was a party to the Agreements, and which is the entity that directly received the benefits of the labor concessions, may also be liable for the claims represented by the Series C Judgments. While the issue is not free from doubt, it represents a no-win proposition for the Debtors. The litigation will be bitter and divisive, and even if Northwest prevails, the employees will believe that the Debtors have failed to make good on their clear contractual promise to repay

the labor concessions. Substantive consolidation would resolve this issue by treating the Series C claims in the same manner as other unsecured claims.

27. In total, the Series C claims represent what the Debtors believe to be approximately 3% of the total general unsecured claims that will be allowed against the Consolidated Debtors.

28. On April 20, 2007, the Debtors filed a motion to allow the Series C claims. See Joint Motion for An Order Pursuant to Sections 105 and 502 of the Bankruptcy Code and Bankruptcy Rule 3001 Allowing Claim Number 4851 Filed by the International Brotherhood of Teamsters and Claim Number 8964 Filed by the International Association of Machinists and Aerospace Workers, AFL-CIO [Docket No. 6323] (the "Series C Motion").

VI. The Plan and Disclosure Statement.

29. On February 15, 2007 the Debtors filed the Debtors' First Amended Joint And Consolidated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code and their Disclosure Statement with Respect to the Plan. The Disclosure Statement was approved on March 30, 2007. As detailed in the Plan:

> The Consolidated Debtors are substantively consolidated for all purposes and actions associated with consummation of the Plan, including, without limitation, for purposes of voting and confirmation. On and after the Effective Date,[9] (a) all assets and liabilities of the Consolidated Debtors shall be treated as though they were merged into the Northwest Airlines estate solely for purposes of the Plan, (b) no distributions shall be made under the Plan on account of Equity Interests between and among any of the Consolidated Debtors, (c) for all purposes associated with Confirmation, including, without limitation, for purposes of tallying acceptances and rejections of the Plan, the estates of the Consolidated Debtors shall be deemed to be one consolidated estate for Northwest Airlines, and (d) each and every Claim filed or to be filed in the Chapter 11 Cases of the Consolidated Debtors, shall be deemed filed against the

[9] Capitalized terms not defined herein shall have the meaning ascribed to them in the Plan.

Consolidated Debtors, and shall be Claims against and obligations of the Consolidated Debtors.

Plan at § 5.1.

30. In hearings on approval of the Disclosure Statement, the Bankruptcy Court instructed the Debtors to address substantive consolidation in a hearing separate from a hearing on Plan confirmation. March 27, 2007 Tr. at 99.[10]

RELIEF REQUESTED

31. By this Motion, the Debtors seek entry of an order substantively consolidating the assets and liabilities of NWA Corp., Holdings, NWA Inc. and Airlines for all purposes and actions associated with consummation of the Plan, including, without limitation, for purposes of voting and confirmation.

BASIS FOR RELIEF REQUESTED

I. The Court Has the Equitable Power to Order Substantive Consolidation

32. The equitable doctrine of substantive consolidation permits a bankruptcy court "to disregard the separate identity of corporate entities, and to consolidate and pool their assets and liabilities and treat them as though held and incurred by one entity." In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 764 (Bankr. S.D.N.Y. 1992); see also, Union Sav. Bank v. Augie/Restivo Baking Co., Ltd. (In re Augie/Restivo Baking Co., Ltd.), 860 F.2d 515, 518 (2d Cir. 1988); FDIC v. Colonial Realty Co., 966 F.2d 57, 58 (2d Cir. 1992) ("substantive consolidation . . . effects the combination of the assets and the liabilities of distinct, bankrupt entities and their treatment as if they belonged to a single entity").

[10] The Plan and Disclosure Statement also provide that, in the event consolidation is denied, each vote shall be treated as a vote with respect to the debtor against which the claim is held, provided that the economic impact of separate plans on the claim holder would be substantially the same. Debtors reserve the right to seek confirmation of separate plans for each of the Consolidated Debtors in the unlikely event that this motion is not granted.

33. The power to substantively consolidate debtors' estates flows from the court's general equitable powers under § 105 of the Bankruptcy Code. See, e.g, In re Worldcom, Inc., Case No. 02-13533 (AJG) 2003 WL 23861928 at *34 (Bankr. S.D.N.Y. October 31, 2003); Colonial Realty Co., 966 F.2d at 59; In re Augie/Restivo, 860 F.2d at 518 n.1. Because substantive consolidation derives from equity, bankruptcy courts have broad discretion in deciding whether to order substantive consolidation and the decision to consolidate is decided on a case by case basis. See Worldcom, 2003 WL 23861928 at *36 (citing Moran v. Hong Kong & Shanghai Banking Corp. (In re Deltacorp, Inc.), 179 B.R. 773, 777 (Bankr. S.D.N.Y. 1995)) (finding that the court is afforded discretion in granting substantive consolidation and the appropriateness of granting such relief is determined on a case by case basis); see also, Drexel, 138 B.R. at 764 (holding that courts invoke their broad equitable power to order substantive consolidation after reviewing the facts on a case by case basis).

34. In Augie/Restivo, the Second Circuit set forth a two part inquiry focusing on: (i) whether creditors dealt with the entities as a "single economic unit" and did "not rely on their separate identity in extending credit"; or (ii) whether the affairs of the debtors are "so entangled that consolidation will benefit all creditors." Augie/Restivo, 860 F.2d at 518. (internal citations omitted); see also, In re 599 Consumer Elecs., Inc., 195 B.R. 244 (S.D.N.Y. 1996); Official Comm. of Unsecured Creditors of Verestar, Inc. v. Am. Tower Corp. (In re Verestar, Inc.), 343 B.R. 444, 462-63 (Bankr. S.D.N.Y. 2006). This test is disjunctive, and courts in this district have found that the presence of either factor can justify substantive consolidation. See Verestar, 343 B.R. at 465; see also, Worldcom, 2003 WL 23861928 at *36 (citing 599 Consumer Electronics, 195 B.R. at 250) (finding that substantive consolidation could be warranted on either ground of

the Augie/Restivo test and that the Second Circuit's use of the conjunction "or" suggests that the two factors cited therein are alternatively sufficient criteria).

35. In applying the Augie/Restivo factors, courts weigh whether the benefit obtained by substantive consolidation outweighs any harm substantive consolidation causes. Worldcom, 2003 WL 23861928 at *35 ("As an equitable remedy, substantive consolidation is to be used to afford creditors equitable treatment and thus may be ordered when the benefits to creditors therefrom exceed the harm suffered.") (citations omitted)

36. Where harm to creditors is material, the Augie/Restivo factors are rigorously applied. Where, as here, the harm to creditors is minimal or nonexistent, the Augie/Restivo factors can be applied with less rigor. Courts may also tailor the consolidation order to minimize harm. See In re Standard Brands Paint Co., 154 B.R. 563, 570 (Bankr. C.D. Cal. 1993) ("the bankruptcy court has the power to modify substantive consolidation to meet the specific needs of the case") (citation omitted). Thus, the consolidation factors discussed above "must be evaluated within the larger context of balancing the prejudice resulting from the proposed consolidation against the effect of preserving the debtor entities." Drexel, 138 B.R. at 765 (citing In re Donut Queen, Ltd. 41 B.R. 706, 709, 710 (Bankr. E.D.N.Y. 1984)); see also In re Affiliated Foods, Inc., 249 B.R. 770, 780 (Bankr. W.D. Mo. 2000) (granting substantive consolidation where the benefits of consolidation substantially outweigh the harm to creditors); White v. Creditors Serv. Corp. (In re Creditors Serv. Corp.), 195 B.R. 680, 690 (Bankr. S.D. Ohio 1996) (noting that the overarching inquiry for courts in deciding a substantive consolidation request involves a balancing of the equities based on the bankruptcy court's inherent powers under section 105 of the Bankruptcy Code); In re Murray Indus., Inc., 119 B.R. 820, 829 (Bankr. M.D. Fla. 1990)

(finding that substantive consolidation should be permitted where "consolidation yields benefits offsetting the harm it inflicts on objecting parties") (citations omitted).[11]

37. In evaluating the impact of substantive consolidation, courts have focused on: (i) potential savings in costs and time by eliminating the need to disentangle the records and accounts of the debtors; (ii) the elimination of duplicate claims and the need to adjudicate the question of which debtor is liable; (iii) the financial benefit from consolidation; and (iv) whether consolidation would enhance debtor rehabilitation and produce a reorganized enterprise with greater profit potential. Drexel, 138 B.R. at 765 (collecting authorities).

II. Substantive Consolidation of the Consolidated Debtors Is Appropriate in These Cases.

A. Substantive Consolidation Produces Benefits that Outweigh Any Harm Caused.

1. *Substantive Consolidation Provides Tax Advantages and Administrative Savings, and Will Create a Reorganized Enterprise with Greater Profit Potential.*

38. The Debtors are proposing substantive consolidation because it produces benefits for all creditors of the type endorsed in Drexel. Substantive consolidation here results in three specific types of benefit.

39. First, substantive consolidation aids in preserving tax benefits in the form of net operating loss carryforwards. In this case, the carryforwards are of substantial value. Substantive consolidation will also benefit all creditors by ensuring confirmation of a plan for every member of the consolidated tax group. This will protect creditor recoveries by ensuring that Northwest achieves the most favorable tax outcome permitted by applicable law.

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[11] Certain courts have recognized that the fact that creditors may be adversely affected by substantive consolidation "alone is not controlling and the bankruptcy court must weigh the conflicting interests which should be balanced in such way as to reach a rough approximation to some rather than to deny justice to all." Murray, 119 B.R at 832 (citing In re Commercial Envelope Mfg. Co., Inc., Cases No. 76-B-2354-2357 1977 WL 182366 (Bankr. S.D.N.Y. Aug. 22, 1977)).

40. Second, substantive consolidation enhances efficiency and reduces administrative costs, because confirming a single consolidated plan is less costly than confirming separate plans. It will shorten the length and cost of these Chapter 11 cases and eliminate the need to disentangle the myriad claims improperly filed against NWA Corp. that are properly classified as claims against other entities (generally against Airlines). The Debtors are relieved from filing multiple Chapter 11 plans that would impose baroque voting requirements on creditors that think of their claims as a single unit against a single enterprise and that would also necessitate a much longer and more complex disclosure statement. Myriad confirmation and voting issues are avoided by consolidation as well, as are potential intercreditor disputes about allocation of intercompany payables and receivables. In short, substantive consolidation is an integral part of moving the Debtors toward a faster, less expensive reorganization. A speedier, less expensive reorganization benefits all creditors.

41. Third, substantive consolidation will enhance the Debtors' rehabilitation and produce a reorganized enterprise with greater profit potential. Consolidation will provide certainty with respect to the distribution on the Series C claims. By affording union employees a greater stake in the enterprise through the new common stock distributed on account of the Series C claims, these employees — who perform critical functions necessary for a robust performance by Northwest — will have greater incentive to create value for all future shareholders. While this benefit cannot be calculated with exact precision, it is unquestionably substantial.

2. *Guaranty Claim Holders Are Not Harmed by Substantive Consolidation.*

42. The benefits substantive consolidation provides must be balanced against any harms which may result from substantive consolidation. The Debtors have purposefully designed substantive consolidation to minimize harm. For example, while substantive consolidation technically eliminates independent guaranty claims, the Plan directly protects the holders of guaranty claims against a Consolidated Debtor from the consequences of substantive consolidation. Specifically, the Plan compensates each guaranty claim holder by providing an additional distribution that is the equivalent of what each creditor would have received on the guaranty claim in the absence of consolidation.[12] Thus, each of the claim holders at NWA Inc.

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[12] Section 5.1 of the Plan provides that:

> As a result of the consolidation, any guaranty by one or more Consolidated Debtors of the obligations of another Consolidated Debtor will be eliminated except as it relates to guarantees arising under the secured aircraft financings described in Section 2.2, Section 4.2, Section 4.3 and Section 4.4 of the Plan or any guarantees related to leases which are assumed, but, as prescribed above in Section 4, each holder of an Allowed Unsecured Claim against a Consolidated Debtor who also has a guaranty from another Consolidated Debtor shall be compensated for the elimination of the guaranty, such that the substantive consolidation will not result in unfair treatment to creditors who relied on guarantees.

The Plan implements this by providing in § 4.6 that

> [E]ach holder of an Allowed Class 1D Claim who also holds a guaranty from one or more Consolidated Debtors related to such claim will receive, in addition to the distribution prescribed in the immediately preceding paragraph, as compensation for the impact of the consolidation, its share of the New Common Stock For Distribution to Creditors With a Guaranty, determined by multiplying the number of shares of New Common Stock For Distribution to Creditors With a Guaranty by the Allocation Fraction for such holder.

In turn, §1.7 of the Plan defines the "Allocation Fraction" as:

> a fraction, the numerator of which shall be the amount of such holder's Allowed Class 1D Claim with respect to which there is a guaranty, and the denominator of which shall be the aggregate amount of all Allowed Class 1D Claims with respect to which there are guarantees by another Consolidated Debtor.

and Holdings (all of whose claims arise in connection with a guaranty) suffer no harm as a result of consolidation. The same is true for holders of guaranty claims against NWA Corp — their treatment under a substantive consolidation is the same as it would otherwise be. Thus, substantive consolidation causes no harm to holders of guaranty claims.

3. *Any Dilution of Airlines Claims is De Minimis and is Outweighed by Benefits.*

43. The only potential for "harm" from substantive consolidation is minimal dilution of all general unsecured claims against Airlines. The only claim known to Debtors that clearly benefits from consolidation is a claim by the State of Minnesota against NWA Corp. related to the Duluth special facility bonds. The Duluth claim, however, is *de minimis.*[13] The only other potential source of dilution is the Series C claims. As discussed above, although the Series C Judgments were against NWA Corp., the unions have a strong basis for establishing direct liability against Airlines. Further, even if the Series C Claims were, absent consolidation, properly allowed only against NWA Corp., the dilution of Airlines creditors from consolidation would be approximately 3%.

44. This putative dilution is not only minimal, it is equitable. As noted, the Series C claim holders obtained the rights upon which the Series C Judgments are based because they made voluntary wage and benefit concessions in 1993. Airlines — then, as now, the operating entity responsible for the overwhelming majority of the Company's revenue — benefited directly from these concessions. NWA Corp., (as the successor to Wings which issued the Series C shares and against which there is now an adverse judgment on the Series C claims), received only an indirect benefit from these voluntary concessions.

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[13] The amount of the allowed claim against NWA Corp. related to Duluth is approximately $11 million.

45. Therefore, it is reasonable for Series C claim holders to receive a distribution from the assets of the entity (Airlines) for the benefit of which they willingly made sacrifices — and against which they may have a valid legal claim. The Substantive Consolidation proposed by the Debtors does that, at a minimal cost to general unsecured creditors.

46. Moreover, the three-part benefits described above — maximizing favorable tax treatment, streamlining the administrative process and enhancing the profit potential of the reorganized entity — outweigh this minimal cost.

B. Substantive Consolidation is Warranted Because the Consolidated Debtors Satisfy the Augie/Restivo Factors.

1. *The Debtors' Business Affairs are Entangled*

47. In determining whether debtors are entangled for substantive consolidation purposes, courts typically analyze whether the debtors have demonstrated either an operational or financial entanglement of their business affairs. See In re Standard Brands Paint Co., 154 B.R. at 572 (finding substantive consolidation appropriate based on the functional entanglement of the debtors' business affairs); see also, Worldcom, 2003 WL 23861928 at *37 (finding that the debtors demonstrated operational and financial entanglement of their business affairs warranting substantive consolidation). Courts in this district have considered a number of factors evidencing an interrelationship between the entities warranting consolidation, including, inter alia: (i) the sharing of overhead, management, accounting, and other related expenses among the different entities; (ii) the existence of intercompany guarantees on loans; (iii) the presence of consolidated financial statements; (iv) the ownership by an entity of all or a majority of the capital stock of an affiliate; (v) the existence of common directors or officers among the entities; (vi) the financing of entities by an affiliated entity; (vii) entities having substantially no business except with its parent or its affiliates or no assets except those conveyed to it by the parent or an

affiliate; and (viii) the entities acting from a shared business location. See Drexel, 138 B.R. at 764.

48. In In re Oneida Ltd., this court approved substantive consolidation upon a finding that, among other things, the debtors: (i) did not disclose the individual profitability of the other debtor entities, each of which is a wholly owned subsidiary of the parent, and therefore the debtors' creditors have never been provided with financial information that would have allowed them to develop an informed view as to the financial position of any particular debtor; (ii) many of the debtors shared their place of residence and personnel; (iii) one entity provided human resources, benefits, finance and accounting, global marketing, global procurement, national advertising, sourcing, distribution, design, legal services and information systems to most of the other debtors; and (iv) numerous officers of the parent debtor were also officers of the other debtors who were being substantively consolidated for purposes of the plan of reorganization. See Findings of Fact and Conclusions of Law Pursuant to § 1129(a) and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming the Debtors' First Amended Joint Prenegotiated Plan of Reorganization Under Chapter 11 and Granting Related Relief, Chapter 11 case no. 06-10489-ALG, [Docket No. 387] (Bankr. S.D.N.Y. Aug. 30, 2006) at 20 (citing Declaration of Andrew G. Church in Support of Confirmation of the Debtors' First Amended Joint Prenegotiated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Chapter 11 case no. 06-10489-ALG [Docket No. 331] (Bankr. S.D.N.Y. July 10, 2006))

49. The facts in these chapter 11 cases clearly demonstrate that the Consolidated Debtors' affairs are substantially entangled. First, and foremost, NWA Corp., Holdings and NWA Inc. have no separate identity from Airlines. Holdings and NWA Inc. are nothing but dormant layers in the corporate archeology. As previously noted, the Debtors plan to merge the

two entities out of existence upon emergence from Chapter 11. Plan treatment should reflect this reality. NWA Corp.'s current existence — with almost no assets other than intercompany receivables, virtually no outside trade creditors or vendors, a multitude of redundant interlocking guarantees and no separate business plan — confirms its entanglement and shared identity with Airlines.

50. Additionally, many of the factors discussed above as historically warranting substantive consolidation are present in this case. Most notably:

- the Consolidated Debtors share the same overhead, management, accounting and other back-office functions[14];
- the Consolidated Debtors have identical directors (and will in the future);
- there are significant inter-creditor obligations;
- there are significant overlaps in the creditor pools due to guarantees;
- NWA Corp., Holdings and NWA Inc. have identical officers and all of those officers serve in identical roles for Airlines;
- the Consolidated Debtors issued consolidated financial statements;
- the Consolidated Debtors are jointly controlled from a shared business headquarters at a common business address;
- the Consolidated Debtors have no separate business plans, and only one of the Consolidated Debtors — Airlines — has any business operations;
- the Consolidated Debtors have no separate budgets and use the same cash management system; and
- the Consolidated Debtors file a consolidated tax return.

[14] Of course, because NWA Corp., Holdings and NWA Inc. have little to no function other than as holding companies, they have almost no back-office needs or expenditures.

51. The evidence of entanglement, coupled with the benefits discussed above and the lack of injury, provide ample grounds for granting the motion.

2. *The Debtors Operate as a Single Economic Unit*

52. Similarly, it is clear that the Consolidated Debtors operate as a single economic unit, and are perceived as such. The Consolidated Debtors operate a single business, Northwest, under a single business plan. Further, creditors seek guarantees and cross-guarantees because they perceive the Consolidated Debtors to be a single economic unit. Indeed, none of the Consolidated Debtors has ever received a credit rating different from one received by another Consolidated Debtor. And analyst reports routinely discuss Northwest as a unified enterprise.

53. The circumstances surrounding the Equity Letter Agreements and the creation of the Series C stock further confirms that the Debtors operate as a single economic unit, and are perceived as such. The Debtors used parent stock to pay for benefits to Airlines. Airlines agreed to fund redemption of the stock. Access to Airline's financial affairs was critical to the transaction. All this is evidence of a corporate interrelationship warranting consolidation.

54. The existence of the Consolidated Debtors as a single economic unit, coupled with the benefits discussed above and the lack of injury, constitutes an independent ground for granting the motion.

WAIVER OF MEMORANDUM OF LAW

55. This Motion does not raise any novel issues of law and is supported by citations to authorities. Accordingly, the Debtors respectfully request that the Court waive the requirement contained in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be submitted.

NO PRIOR APPLICATION

56. No previous application for the relief sought herein has been made to this or to any other court.

WHEREFORE the Debtors respectfully request that the Court substantively consolidate the Consolidated Debtors and grant such other and further relief as is just.

Dated: Washington, DC
April 27, 2007

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EXHIBIT 1

Northwest Airlines Corporation and Affiliates
Corporate Organizational Structure

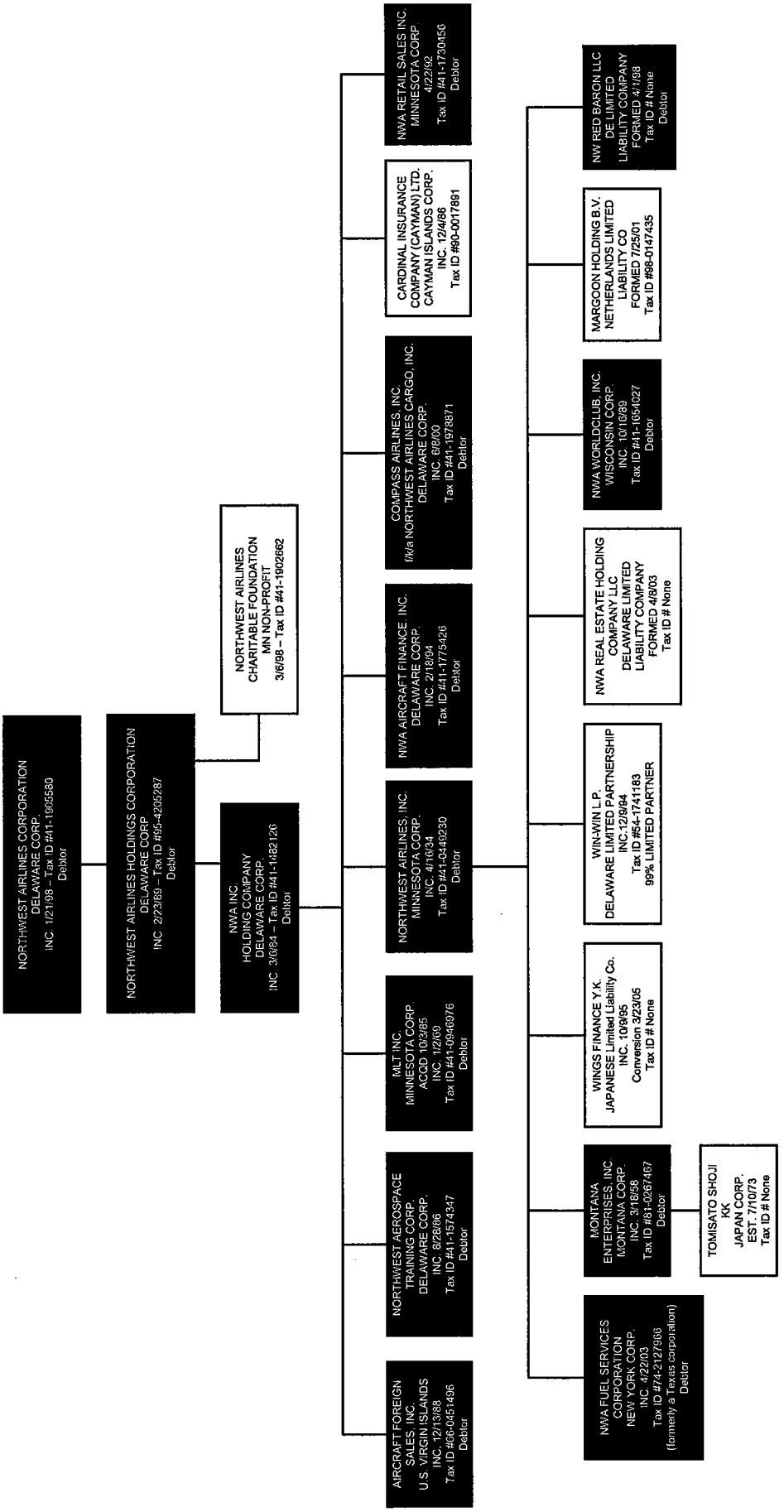

EXHIBIT 2

Northwest Airlines Corporation, et al.
Total Claims Filed Against Holding Companies
As of 4/04/07

Northwest Airlines Corporation		NWA Inc.		Northwest Airlines Holdings Corporation		Total Holdings Companies	
Count	Amount	Count	Amount	Count	Amount	Count	Amount
5,004	$ 83,845,609,974	31	$ 1,069,592,796	27	$ 1,317,647,098	5,062	$ 86,232,849,868

EXHIBIT 3

Northwest Airlines Corporation, et al.
Matrix of Guarantee Claims
As of 04/21/2007

Description of Guarantee	Northwest Airlines, Inc. 05-17933	Northwest Airlines Corporation 05-17930	Northwest Airlines Holdings Corp. 05-17938	NWA Inc. 05-17940	Northwest Aerospace Training Corp. 05-17944
NORTHWEST AIRLINES INC.					
SPECIAL FACILITIES LEASE OBLIGATIONS					
SEA 1997 Special Facilities Revenue Bonds Series 2001		x			
Duluth Airport Tax Increment Bonds, including Series 1995A/ Series 1995C/ Series 1995D		x		x	
MSP 2001A and 2005A Special Facilities Revenue Refunding Bonds: Bonds Series 2001A / Series 2005A]		x			
JFK 1997A Special Facility Revenue Bonds: Series 1997 Bonds (REJECTED)		x			
Detroit Fort Wayne (DTW) 1995 Special Airport Facilities Refunding Revenue Bonds: Series 1995 Bonds		x			
DTW 1999 Special Airport Facilities Revenue Bonds: Series 1999 Bonds		x			
TYS 2002 (Knoxville) Special Purpose Revenue Bonds Series 2002		x			
MAC GO 15 bonds ($76,105,195)			x	x	x
AIRCRAFT					
1999-2002 EETC debt					
Certain private aircraft financings (CRJ Leases)		x	x		
1999-2002 EETC debt - TIA claims		x	x		
Pre-November 1998 EETCs		x	x		
Aircraft lease with Pacific Harbor Capital				x	
LETTER OF CREDIT					
$55 Million L/C Facility between US Bank, NWA Inc. and MLT Inc.		x	x	x	
UNSECURED NOTES ISSUED BY NORTHWEST AIRLINES, INC.					
10% Notes due 2009 under 1997 Indenture ($300,000,000)		x	x		
9.875% Notes due 2007 under 1997 Indenture ($300,000,000)		x	x		
8.875% Notes due 2006 under 1997 Indenture ($300,000,000)		x	x		
9.5% Notes due 2039 under 1997 Indenture ($143,000,000)		x	x		
7.875% Notes due 2008 under 1997 Indenture ($200,000,000)		x	x		
8.70% Notes due 2007 under 1997 Indenture ($100,000,000)		x	x		
BOEING FINANCING					
- $140 million accounts receivable borrowing base revolving credit facility ("A/R facility"); - $50 million stock loan agreement secured by 2,492,000 shares of Pinnacle Airlines Corp. and 5,657,113 shares of MAIR Holdings, Inc. - $50 million equipment loan facility secured by aircraft collateral		x			
DIP		x	x	x	
MLT OBLIGATIONS					
Numerous MLT obligations, e.g. hotel block room contracts					

Northwest Airlines Corporation, et al.
Matrix of Guarantee Claims
As of 04/21/2007

Description of Guarantee	Northwest Airlines, Inc. 05-17933	Northwest Airlines Corporation 05-17930	Northwest Airlines Holdings Corp. 05-17938	NWA Inc. 05-17940	Northwest Aerospace Training Corp. 05-17944
NORTHWEST AIRLINES CORPORATION					
UNSECURED NOTES ISSUED BY NWA CORP.					
6.625% Notes due 2023 under 2003 Indenture ($150,000,000)	x				
7.625% Notes due 2023 under 2003 Indenture ($225,000,000)	x				
NWA INC.					
SPECIAL FACILITIES LEASE OBLIGATIONS					
MAC GO 15 bonds ($13,790,378)	x		x		x
NORTHWEST AEROSPACE TRAINING CORP.					
SPECIAL FACILITIES LEASE OBLIGATIONS					
MAC GO 15 bonds ($124,217,465)	x		x	x	

EXHIBIT 4

EQUITY LETTER AGREEMENT

among

WINGS HOLDINGS INC.

NORTHWEST AIRLINES, INC.

and

THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

August 1, 1993

FINAL DRAFT
7/13/93

EQUITY LETTER AGREEMENT
among
WINGS HOLDINGS INC.
NORTHWEST AIRLINES, INC.
and
THE INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS

This EQUITY LETTER AGREEMENT is made and entered into in accordance with the provisions of Title II of the Railway Labor Act, as amended, by and among Wings Holdings Inc. ("Wings"), Northwest Airlines, Inc. ("Northwest" or the "Company"), and the International Association of Machinists and Aerospace Workers (the "IAM"), representing mechanics and related personnel, clerical, office, fleet and passenger service employees, equipment service and stock clerk personnel, flight kitchen personnel, and plant protection employees in the service of the Company.

As part of an overall revised compensation plan for the Company's employees and in conjunction with the execution, simultaneously with the execution of this Letter Agreement, of letter agreements among the same parties dealing with compensation and other matters (the "Compensation Plan Letters"), the performance thereunder, and for other good and valuable consideration, Wings, the Company and the IAM agree as follows:

I. DEFINITIONS

The following terms will be defined as set forth below for purposes of this Letter Agreement:

1.1 Actual Savings. The aggregate amount of (a) the basic hourly rate of pay in gross dollars which would have been paid, but for the agreements contained in the Compensation Plan Letters, less the basic hourly rate of pay in gross dollars which was paid during the Wage Savings Period, plus (b) the vacation liability which

would have been accrued prior to use, but for the agreements contained in the Compensation Plan Letters, less the vacation rate which has been accrued prior to use during the Wage Savings Period, in each case for each employee employed at any time during the Wage Savings Period.

1.2 Available Cash. On any given date, cash held by Wings and its subsidiaries, or available under existing revolving credit agreements, which is in excess of all of their then currently anticipated needs to use such cash for operating and capital requirements, including service of debt, budgeted capital expenditures and all other obligations, within a period of one year from such date, taking into account reasonably anticipated sources of cash during such one-year period, but any of such cash held by a subsidiary of Wings will be included in the foregoing determination of Available Cash only if and to the extent that such cash may be made available to Wings pursuant to applicable law or any loan agreements or instruments to which Wings or any of its subsidiaries is a party or is subject.

1.3 Currently Outstanding Common Stock. (i) The 80,000 shares of Wings common stock held by the Existing Common Stockholders as of the date of this Letter Agreement and (ii) at such time as such shares may be issued, the shares of Wings common stock to be issued to holders of the Wings Series A and Series B preferred stock as contemplated by the third sentence of Section 3.8(c) (the "Existing Preferred Stock Common Issuance").

1.4 Dividend Year. The twelve-month period from one Dividend Date (or from the Wage Savings Date in the case of the Dividend Year commencing in 1993) to the next Dividend Date.

1.5 Employee Stock. The shares of (i) Series C Voting Preferred Stock and (following any exercise of the Special Conversion Option (as defined in Section 3.1(b)) Wings common stock to be transferred pursuant to this Letter Agreement and similar letter agreements or other arrangements between the Company and the other Unions and management/non-contract employees in connection with the overall compensation plan for the Company's employees referred to in the preamble to this Letter Agreement and (ii) Wings common stock issued upon conversion of Series C Voting Preferred Stock; in each case excluding any shares not held by a Qualified Holder.

1.6 Excess Amount. A cash amount per share of Series C Voting Preferred Stock equal to the excess of (i) the

Put Price over (ii) the Offering Price multiplied by the number of shares of Wings common stock into which one share of Series C Voting Preferred Stock may then be converted upon the exercise by a holder of the election described in Section 3.5(a)(ii)(B).

1.7 Existing Common Stockholders. The holders of Wings common stock as of the date of this Letter Agreement.

1.8 Management Trust. The Trust for the management/non-contract employees.

1.9 Offering Price. (a) In the event the Class A Voting Common Stock is Publicly Traded and holders of less than 10% of the outstanding Series C Voting Preferred Stock elect to have their shares of Class A Voting Common Stock sold pursuant to Section 3.5(a)(ii)(B), the average of the net prices received by the Sales Agent for the sale of all such shares in open market transactions at prevailing market prices during the period from the 10th through the 80th day following the Put Date (the "Sales Period"); (b) in the event that the Class A Voting Common Stock is not Publicly Traded and holders of less than 10% of the outstanding Series C Voting Preferred Stock elect to have their shares of Class A Voting Common Stock sold pursuant to Section 3.5(a)(ii)(B), the value per share determined by an investment banking firm in accordance with the procedures specified in the last three sentences of Section 1.21; and (c) whether or not the Class A Voting Common Stock is Publicly Traded, in the event that holders of greater than 10% of the then outstanding Series C Voting Preferred Stock elect to have their shares of Class A Voting Common Stock publicly sold pursuant to Section 3.5(a)(ii)(B), the net price per share received by such holders for the sale of such shares by means of a single underwritten public offering, such underwritten public offering to be conducted by the Company during the Sales Period in accordance with the terms of the Registration Rights Agreement referred to in Section 3.8(a)(iii), it being understood that the Company will use its best efforts to cause such underwritten public offering to take place no later than the 80th day following the Put Date. The Sales Agent, in the event clause (a) of the preceding sentence is applicable, or the underwriters, in the event clause (c) of the preceding sentence is applicable, will be required to (1) obtain the highest practicable price per share for all shares of Class A Common Stock sold by them, (2) use their best efforts to obtain a wide distribution of such shares, and (3) refrain from knowingly selling shares constituting more than 2% of the then outstanding voting capital stock of Wings to (A) any one person, entity or related

group of persons or entities or (B) any person, entity or related group of persons or entities which, after such sale, would own shares constituting in the aggregate more than 3% of the then outstanding voting capital stock of Wings.

1.10 Permanent Capital. Any combination of (a) new common stock, (b) new convertible preferred stock with dividend rates, conversion premiums and other terms and conditions customary for convertible preferred stock of comparable issuers ("Eligible Convertible Preferred Stock"), (c) new preferred stock with no mandatory redemption earlier than five years from the date of issuance, a final maturity of not less than nine years and other terms and conditions customary for comparable issuers and (d) new subordinated debt having no required amortization of principal earlier than five years from the date of issuance, a final maturity of not less than eight years and other terms and conditions customary for comparable issuers, in each case issued in return for cash.

1.11 Publicly Traded. With respect to a class of Wings capital stock, if such stock is listed on the New York Stock Exchange or the American Stock Exchange or quoted on the National Market System of the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ"); provided, however, that such stock will continue to be deemed to be Publicly Traded for purposes of this Letter Agreement notwithstanding any temporary suspension of trading of not more than five business days on such stock exchange or quotation on such quotation system due to general economic or market conditions, limited distribution or trading of such stock or other factors.

1.12 Put Date. The tenth anniversary of the Transfer Date.

1.13 Put Election Date. The sixtieth day prior to the Put Date.

1.14 Put Payment Date. The 90th day following the Put Date or, if later and the provisions of Section 1.9(c) are applicable, the closing date for the underwritten public offering referred to in Section 1.9(c).

1.15 Put Price. With respect to each share of Series C Voting Preferred Stock transferred hereunder to a Trust, or pursuant to a Separate Arrangement, for the benefit of employees represented by the IAM, an amount equal to (a) the quotient of (i) the Actual Savings realized by the Company pursuant to the Compensation Plan Letters during the three-year wage savings period referred to therein (the "Wage Savings Period") divided

group of persons or entities or (B) any person, entity or related group of persons or entities which, after such sale, would own shares constituting in the aggregate more than 3% of the then outstanding voting capital stock of Wings.

1.10 Permanent Capital. Any combination of (a) new common stock, (b) new convertible preferred stock with dividend rates, conversion premiums and other terms and conditions customary for convertible preferred stock of comparable issuers ("Eligible Convertible Preferred Stock"), (c) new preferred stock with no mandatory redemption earlier than five years from the date of issuance, a final maturity of not less than nine years and other terms and conditions customary for comparable issuers and (d) new subordinated debt having no required amortization of principal earlier than five years from the date of issuance, a final maturity of not less than eight years and other terms and conditions customary for comparable issuers, in each case issued in return for cash.

1.11 Publicly Traded. With respect to a class of Wings capital stock, if such stock is listed on the New York Stock Exchange or the American Stock Exchange or quoted on the National Market System of the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ"); provided, however, that such stock will continue to be deemed to be Publicly Traded for purposes of this Letter Agreement notwithstanding any temporary suspension of trading of not more than five business days on such stock exchange or quotation on such quotation system due to general economic or market conditions, limited distribution or trading of such stock or other factors.

1.12 Put Date. The tenth anniversary of the Transfer Date.

1.13 Put Election Date. The sixtieth day prior to the Put Date.

1.14 Put Payment Date. The 90th day following the Put Date or, if later and the provisions of Section 1.9(c) are applicable, the closing date for the underwritten public offering referred to in Section 1.9(c).

1.15 Put Price. With respect to each share of Series C Voting Preferred Stock transferred hereunder to a Trust, or pursuant to a Separate Arrangement, for the benefit of employees represented by the IAM, an amount equal to (a) the quotient of (i) the Actual Savings realized by the Company pursuant to the Compensation Plan Letters during the three-year wage savings period referred to therein (the "Wage Savings Period") divided

by (ii) the total number of such shares of Series C Voting Preferred Stock to be transferred to such Trusts or pursuant to such Separate Arrangements pursuant to this Letter Agreement, assuming no exercise of the Special Conversion Option, plus (b) accrued dividends, if any, per share of such stock.

1.16 Put Right. The right of a Qualified Holder to put shares of Series C Voting Preferred Stock to Wings as specified in Section 3.5(a).

1.17 Qualified Holder. A person is a "Qualified Holder" with respect to a share of Employee Stock if such person (a) is the current or former Northwest employee to whom such stock is allocated under the Plan or under any Separate Arrangements and to whom such stock is distributed from the Trusts or pursuant to the Separate Arrangements, (b) is a trustee or custodian under any Separate Arrangement, a qualified plan maintained by Northwest or an individual retirement account of a Northwest employee referred to in (a) above or such employee's death beneficiary, (c) is the spouse or child of a Northwest employee referred to in (a) above, or a trust for the benefit of such spouse or child, to whom such stock is transferred by such employee, or (d) in the event of the death of a Northwest employee referred to in (a) above, is an heir, executor, administrator, testamentary trustee or legatee of such employee by operation of such employee's will or the laws of intestacy.

1.18 Sales Agent. A member firm of the New York Stock Exchange to be selected by Wings to conduct sales of Class A Voting Common Stock on behalf of holders of Series C Voting Preferred Stock in accordance with the procedures set forth in Section 1.9(a).

1.19 Separate Arrangements. Those separate trusts or other arrangements referred to in Section 2.4.

1.20 Series C Directors. The members of Wings' board of directors nominated by the Unions as set forth in Section 5.1.

1.21 Trading Price. The average of the daily closing prices of the Wings Class A Voting Common Stock during the 30 calendar days beginning on the Put Date with respect to Section 3.5, and with respect to Section 3.8(b) beginning on December 1 of any year in which the Company has received a request from a Qualified Holder to have his or her shares repurchased pursuant to Section 3.8(b). The closing price for each day will be the reported last sales price, regular way, or, in case no sale takes place on such day, the average of the

reported closing bid and asked prices, regular way, in either case as reported on the New York Stock Exchange Composite Tape or, if the Class A Voting Common Stock is not listed or admitted to trading on the New York Stock Exchange at such time, on the principal national securities exchange on which the Class A Voting Common Stock is listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on the National Market System of the National Association of Securities Dealers, Inc. Automated Quotations System ("NASDAQ"). In the event the Class A Voting Common Stock is not Publicly Traded, the Series C Directors will select a nationally recognized investment banking firm from a list of five such firms to be provided by the chief executive officer of Wings on the Put Date, to value such stock. Any fees and expenses associated with such valuation will be borne by the Company. Such firm will deliver such valuation to Wings within 60 days after it has been retained, and the value per share so determined by such firm will constitute the Trading Price for purposes of this Letter Agreement. For purposes of its valuation in connection with Section 3.5(a)(i) or (ii), such firm will assume that the shares of Class A Voting Common Stock to be issued pursuant to Section 3.5(a)(i) or (ii) have been fully distributed.

1.22 Transfer Date. The date on which shares of Employee Stock are first transferred to the Trusts.

1.23 Unions. The IAM, the International Brotherhood of Teamsters (the "IBT"), the Air Line Pilots Association International ("ALPA") and each of the other unions referred to in Section 7.8(b)(i)(B).

II. CONTRIBUTION OF CONVERTIBLE EXCHANGEABLE PREFERRED STOCK

2.1 Stock Contribution. Subject to Sections 2.4 and 3.1(b), Wings will transfer to a trust or trusts or subtrusts (collectively, the "Trusts") formed pursuant to a qualified plan (the "Plan") established and maintained by Wings, 25,143 shares (subject to adjustment as provided below) of duly authorized, validly issued and non-assessable Series C Voting Convertible Exchangeable Preferred Stock, par value $.01 per share, of Wings (the "Series C Voting Preferred Stock"). Such number of shares of Series C Voting Preferred Stock will be increased to prevent

dilution of the percentage ownership interest represented by the Series C Voting Preferred Stock as a result of the Existing Preferred Stock Common Issuance. The Series C Voting Preferred Stock will be entitled to vote with the Wings common stock on matters submitted to a vote of the holders of such common stock to the extent set forth in Section 3.3 below. The Series C Voting Preferred Stock will be convertible into Wings common stock as provided in Section 3.1 below. Attached hereto as Exhibit F is a schedule of the number of shares of each class of Wings common stock outstanding as of the date hereof.

2.2 Transfer of Employee Stock. Subject to Section 2.4, Wings will transfer the shares of Employee Stock to the Trusts in three approximately equal annual installments, with at least 75% of the first such installment to be transferred within 60 days after the effective date of this Letter Agreement. For purposes of determining the number of outstanding shares of Series C Voting Preferred Stock entitled to receive the dividends payable on each Dividend Date, the full amount of the first, second and third such transfers of shares to the Trusts will be deemed to have taken place in equal installments prior to the record dates for the Dividend Dates occurring in 1994, 1995 and 1996, respectively, notwithstanding that the actual transfer of such shares, or a portion thereof, may take place after such respective Dividend Dates in order to permit any calculations required pursuant to Section 4.1 to be made prior to such transfer. All of the stock to be transferred in each annual installment must be transferred within 90 days after the Dividend

Date following the year to which such installment relates. Notwithstanding the foregoing, the entire first installment will be deemed to have been transferred to the Trusts on the effective date of this Letter Agreement.

2.3 Separate Trusts. Unless the Unions should otherwise agree that there will be one Trust, there will be a separate Trust for the employees of each Union and for the management/non-contract employees. The trustee of each Trust (collectively, the "Plan Trustees") will be the registered owner of the Employee Stock held by such Trust. The Company will provide standard indemnification for each Plan Trustee and will pay all reasonable fees and expenses with respect to the operation of each Trust. Each Union, and the Company acting on behalf of the Management Trust, (a) will select an individual or entity to serve as Plan Trustee for the Trust for its employees, which selections, in the case of the Trusts for the employees of the Unions, must be approved by the Company, which approval may not be unreasonably withheld, and (b) must choose either of the following two options concerning decisions to be made by the Plan Trustee for the Trust for its employees with respect to voting, tendering, selling or exchanging (other than in connection with the exercise of the Special Conversion Option) shares of Employee Stock held by such Plan Trustee:

either (i) such decisions, except to the extent set forth in the provisos below, may be made by such Plan Trustee in accordance with its fiduciary

responsibilities to the participants in its Trust, or

(ii) such decisions may be made by such Plan Trustee as it may be directed by each of the participants in its Trust;

provided, however, that regardless of which of the two foregoing options is chosen by each Union, and the Company with respect to the Management Trust, each Plan Trustee will vote the shares of Employee Stock registered in its name for Series C Directors consistent with the requirements of Section 5.1; provided, further, that any decisions to be made by each Plan Trustee with respect to voting, tendering or selling such shares in connection with a merger or other business combination transaction involving Wings or the Company, a tender offer, a proxy contest for the election of any directors or any other proposed change in control of Wings or the Company must be made by such Plan Trustee as it may be directed by each of the participants in its Trust. With respect to any Trust that provides for voting decisions to be made as specified in clause (ii) above, any shares of Employee Stock for which proxies are not returned by participants may be voted by the Plan Trustee in the same proportions as the Employee Stock for which proxies are returned by participants or may be voted by the Plan Trustee in its discretion, as the Plan Trustee may decide. Shares of Employee Stock held pursuant to any Separate Arrangements will be voted, tendered, sold or exchanged as directed by the fiduciary for such Separate Arrangements, who will make such decisions consistent with and in accordance with

the preceding provisions of this Section 2.3. The Company will extend its tax return filing date if necessary or desirable to permit Plan contributions to be appropriately allocated under the Internal Revenue Code of 1986, as amended (the "Code"), for the Plan year to which they relate.

2.4 Limits on Plan Contributions. Separate trusts will be established, or other appropriate arrangements will be made, for those employees for whom a Plan contribution is unavailable due to the provisions of the Code, including Sections 401(a)(4), 401(a)(17) and 415. The trustees or other custodians for the Separate Arrangements will be individuals or entities selected by each Union (with respect to Separate Arrangements for their respective members) and by the Company (with respect to Separate Arrangements for management/non-contract employees), which selections, in the case of the Trusts for the employees of the Unions, must be approved by the Company, which approval may not be unreasonably withheld. The terms and conditions of any Separate Arrangement for the benefit of the employees of any Union (including any related trust) will be determined by that Union, subject to the Company's approval, which approval will not be unreasonably withheld. It is intended that the Separate Arrangements not result in any tax to any employee until such employee's Separate Arrangement shares have been distributed in a form capable of being sold (or put to the Company, in accordance with this Letter Agreement).

2.5 Miscellaneous. (a) Notwithstanding the first sentence of Section 2.3, the Plan will be designed (i) to

minimize the possibility that Plan contributions will limit or be limited by contributions to other qualified plans covering employees represented by the Unions and (ii) to minimize the need for Separate Arrangements.

(b) Each of the Unions, respectively, shall determine the manner in which benefits and contributions under all qualified plans covering its respective employees are coordinated for purposes of Code Section 415. If Plan contributions result in an employee losing benefits or contributions under another qualified plan or other arrangement, the Company will directly pay to such employee the dollar amount it would have otherwise have paid to or under such qualified plan or other arrangement.

III. TERMS OF EMPLOYEE STOCK

3.1 Conversion by Holders. (a) The Series C Voting Preferred Stock will be convertible at any time into Wings common stock on the basis set forth below in this Section 3.1. Except to the extent otherwise provided in Section 3.1(b) or 3.8(c), each share of Series C Voting Preferred Stock will be convertible into 1.364 shares of common stock, which shares of common stock will initially consist of one share of Class A Voting Common Stock, par value $.01 per share, of Wings ("Class A Voting Common Stock") and .364 of a share of Class B Non-Voting Common Stock, par value $.01 per share, of Wings (the "Class B Non-Voting Common Stock"), which fraction has been calculated to be in such an amount so that the ratio of the number of then outstanding shares of Wings voting common stock to the number of then outstanding shares of Wings non-voting common stock would not be

altered by the conversion of such Series C Voting Preferred Stock.

(b) On or before the earlier of (i) April 30, 1994 (or, if later, 30 days after the audited consolidated financial statements of Wings for the fiscal year ended December 31, 1993 have been made available to the Unions) or (ii) 10 days after the filing with the Securities and Exchange Commission of a registration statement relating to an underwritten initial public offering of Wings common stock representing not less than 10% of the Wings common stock outstanding on a fully diluted basis after giving effect to such offering, the Trustee (or the trust beneficiaries) will have the right, with respect to the Trusts and Separate Arrangements established for the benefit of the employees represented by the IAM, (i) to convert each share of Series C Voting Preferred Stock held by such Trust or Separate Arrangement into 1.909 shares of common stock, which shares of common stock will initially consist of 1.4 shares of Class A Voting Common Stock and .509 of a share of Class B Non-Voting Common Stock and (ii) to elect to receive, in respect of all future contributions under Section 2.1, Wings common stock in lieu of Series C Voting Preferred Stock, at the same conversion rate specified in clause (i) above; provided, however, that such right may be exercised with respect to some or all of the shares of Series C Preferred Stock held or to be received by such Trust but may be exercised not more than once. The right set forth in this Section 3.1(b) is referred to in this Letter Agreement as the "Special Conversion Option." The Special Conversion Option

may be exercised by the trust beneficiaries with respect to stock allocated to their accounts only if Wings has previously filed a Registration Statement with the Securities and Exchange Commission with respect to the Wings common stock to be received upon exercise of such option. If the Special Conversion Option is exercised by one or more Unions, each share of Class A Voting Common Stock issued as a result of such exercise will, as of any date prior to the contribution of the final installment of Employee Stock to the Trusts and Separate Arrangements pursuant to Section 2.1, bear a number of votes equal to (i) the total number of shares of Class A Voting Common Stock issued or to be issued (including such shares to be issued in future installments pursuant to Section 2.1) as a result of such exercise divided by (ii) the total number of shares of Class A Voting Common Stock issued and outstanding as of such date as a result of such exercise.

(c) If non-voting shares of Currently Outstanding Common Stock are at any time or from time to time converted into voting shares, the number of shares of Class A Voting Common Stock and Class B Non-Voting Common Stock into which each share of Series C Voting Preferred Stock is convertible pursuant to Section 3.1(a) or 3.1(b) will be adjusted to the extent required to ensure that the ratio of shares of Wings voting common stock then outstanding to shares of Wings non-voting common stock then outstanding (the "Ratio") will not be altered by the conversion of the Series C Voting Preferred Stock; provided, that in calculating the Ratio only shares of Currently Outstanding Common

Stock (including shares issued upon conversion thereof from non-voting into voting stock) will be taken into account.

(d) The conversion right set forth in Section 3.1(a) is intended to ensure that the Wings common stock issuable upon conversion of the Series C Voting Preferred Stock will at all times constitute 30% of the voting power and 30% of the equity interest represented by the sum of (i) the common stock issuable upon such conversion and (ii) the Currently Outstanding Common Stock. The Special Conversion Option set forth in Section 3.1(b) is intended to ensure that if the Special Conversion Option were to be exercised in full, the Employee Stock would constitute 37.5% of the voting power and 37.5% of the equity interest represented by the sum of (i) and (ii) above.

(e) The Trusts and Qualified Holders may only convert Class B Non-Voting Common Stock into Class A Voting Common Stock at such time and in such amounts as is necessary to preserve the Ratio.

3.2 Automatic Conversion. Subject to adjustment in accordance with the principles set forth in Sections 3.1(c) and 3.1(d), each share of Series C Voting Preferred Stock will automatically convert into 1.364 shares of Wings Class A Voting Common Stock upon the sale, transfer, exchange or other disposition of record or beneficial ownership of such share to (or with) any person who is not a Qualified Holder (a "Non-Qualified Sale"). Each share of Class B Non-Voting Common Stock will automatically convert, on the basis set forth in Section

3.1(a), into one share of Class A Voting Common Stock upon a Non-Qualified Sale.

3.3 Voting. The Series C Voting Preferred Stock will vote in parity with all Wings voting common stock on all matters submitted to stockholders for vote, except that the rights of the Series C Voting Preferred Stock with respect to the election of directors will be as specified below in Section 5.1. The per share vote of each share of Series C Voting Preferred Stock at any time will be equal to (i) (A) the total number of shares of Series C Voting Preferred Stock transferred or to be transferred pursuant to this Letter Agreement either to the Trusts or pursuant to any Separate Arrangements (assuming no exercise of the Special Conversion Option), or if greater, the number of shares of Class A Voting Common Stock into which all such shares of Series C Voting Preferred Stock (including any shares of Series C Voting Preferred Stock (x) not yet issued, (y) already converted or (z) with respect to which the Special Conversion Option has been exercised) would be convertible at such time under Section 3.1(a), minus (B) the total number of shares of Series C Voting Preferred Stock which, prior to such time, have been converted into shares of common stock, or, if greater, the number of shares of Class A Voting Common Stock into which those shares would be convertible at such time if they had not previously been converted, divided by (ii) the total number of shares of Series C Voting Preferred Stock then outstanding.

3.4 Liquidation Preference; Ranking. The Series C Voting Preferred Stock will have a preference in liquidation and

bankruptcy equal on a per share basis to the Put Price. The Series C Voting Preferred Stock will rank, as to both its preference in liquidation and bankruptcy and the receipt of dividends and repayment, junior to both the Wings Series A and Series B preferred stock. Wings may at any time issue new series or classes of preferred stock that rank, as to both their preference in liquidation and bankruptcy and the receipt of dividends and repayment, senior to or pari passu with the Series C Voting Preferred Stock.

3.5 Put Right. (a) During the 60-day period ending on the Put Date, each Trust and each Qualified Holder of Series C Voting Preferred Stock will have the right to put such holder's Series C Voting Preferred Stock to Wings, in which event Wings will be required to elect either (i) to repurchase for either cash equal to the Put Price or shares of Class A Voting Common Stock having a Trading Price per share equal to the Put Price, each of such holder's shares of Series C Voting Preferred Stock at the Put Price, or (ii) to permit each such holder to elect either (A) to receive the number of shares of common stock into which such holder's shares of Series C Voting Preferred Stock are convertible, plus the Excess Amount multiplied by the number of such holder's shares of Series C Voting Preferred Stock which are so converted, or (B) to have a number of shares of Class A Voting Common Stock equal to the number of shares of common stock into which such holder's shares of Series C Voting Preferred Stock are convertible sold on such holder's behalf by the Sales Agent or pursuant to an underwritten public offering, as the case may be

as specified in Section 1.9, and to receive a cash amount equal to (x) the Offering Price per share of Class A Voting Common Stock sold plus (y) the Excess Amount multiplied by the number of such holder's shares of Series C Preferred Stock which have been so converted. Wings will be required to make the election between (i) and (ii) above on or before the Put Election Date, to issue a public announcement of its election no later than the Put Election Date and, if it has elected (ii) above, to deliver promptly to the holders of Series C Voting Preferred Stock an election form for them to select either (ii)(A) or (ii)(B) above (in whole or in part) with respect to their shares of Series C Voting Preferred Stock. Such election form will be returnable to the Plan Trustees by the Put Date.

(b) Payment by Wings to the holders of Series C Voting Preferred Stock of any cash due to them in respect of their exercise of the Put Right will be made on the Put Payment Date. If Wings elects to issue new shares of Class A Voting Common Stock to such holders pursuant to Section 3.5(a)(i), promptly following such election, but not later than the Put Date, Wings will commence efforts to register such new shares under the Securities Act of 1933 (the "1933 Act") and will use its best efforts to cause such registration to become effective as soon as practicable thereafter. Delivery of such shares to the holders of Series C Voting Preferred Stock will be made seven days after the effective date of such registration or, if later and the Class A Voting Common Stock is not then Publicly Traded, seven days after delivery to Wings of the investment banker's valuation

of the Class A Voting Common Stock in accordance with the last two sentences of Section 1.21. Shares of Series C Voting Preferred Stock with respect to which the Put Right is exercised will cease to be outstanding for any purpose and will be retired upon satisfaction of such Put Right.

(c) Any decision by the board of directors of Wings either (i) not to repurchase all of the Series C Voting Preferred Stock with respect to which holders have exercised the Put Right either (A) with cash pursuant to Section 3.5(a)(i) or (B) pursuant to the procedures set forth in Section 3.5(a)(ii), but instead to repurchase such Series C Voting Preferred Stock with shares of Class A Voting Common Stock pursuant to Section 3.5(a)(i), or (ii) not to repurchase any of the Series C Voting Preferred Stock in accordance with the requirements of Section 3.5(a), may only be made if a majority of the Series C Directors consent to such decision.

(d) If on the Put Date Wings' board of directors decides not to repurchase all of the Series C Voting Preferred Stock with respect to which the Put Right has been exercised either (i) for cash or for shares of Class A Voting Common Stock pursuant to Section 3.5(a)(i) or (ii) pursuant to the procedures set forth in Section 3.5(a)(ii), then on such date and at the end of each succeeding calendar quarter until all of such Series C Voting Preferred Stock shall have been repurchased (collectively, "Partial Repurchase Dates"), the board of directors of Wings will use all Available Cash on each such date to repurchase a portion of the Series C Voting Preferred Stock entirely for cash (a

"Partial Repurchase") in accordance with Section 3.5(a)(i), but only if and to the extent that Wings is not prohibited from making such repurchase under Delaware law or any loan agreement or other instrument to which it is a party or is subject. Any such partial repurchase will be made pro rata from among each Trust and Separate Arrangement and will be made from holders of the Series C Voting Preferred Stock within each Trust and Separate Arrangement in a manner to be selected by the Unions and set forth in the certificate of designation for the Series C Voting Preferred Stock. Any decision by the board of directors of Wings on any Partial Repurchase Date not to use all Available Cash to effect a Partial Repurchase may only be made if a majority of the Series C Directors consent to such decision.

(e) In the event that Wings fails to repurchase all of the Series C Voting Preferred Stock with respect to which the Put Right is exercisable pursuant to the terms of Sections 3.5(a) and 3.5(b), (i) effective as of the Put Date each outstanding share of Series C Voting Preferred Stock will start to accrue a quarterly dividend at a rate equal to the greater of (A) 12% per annum or (B) the highest dividend rate payable on any then outstanding series or class of Wings preferred stock in the event of a default by Wings in the redemption or payment of dividends on such series or class of preferred stock, until such shares are repurchased in accordance with Section 3.5(a) or 3.5(d), and (ii) the number of Series C Directors will be increased to the greater of (A) three more than the number of Series C Directors then serving on Wings' board of directors (in which case one of

such additional directors will be nominated by each of the IAM, the IBT and ALPA) or (B) the number of directors that would cause the proportion of Series C Directors to the total number of directors to be equal to the proportion of the total voting power of all shares of Series C Voting Preferred Stock then outstanding to the total voting power of all shares of all voting capital stock of Wings then outstanding (in which case one of such additional directors will be nominated by each of the IAM, the IBT and ALPA and the remainder will be nominated by the majority vote of the Series C Directors then in office).

(f) In the event that, in connection with the repurchase of Series C Voting Preferred Stock pursuant to Section 3.5(a)(i), Wings issues additional shares of Class A Voting Common Stock to the exchanging holders of Series C Voting Preferred Stock and, following such issuance, the number of shares of Class A Voting Common Stock held by Qualified Holders of Employee Stock after such repurchase is greater than 50% of the number of shares of voting capital stock of Wings then outstanding, the terms of all sitting members of the Wings board of directors, other than the Series C Directors, will thereupon terminate and the Series C Directors will appoint the successors of such directors.

(g) The Put Right may only be exercised by the holders of Series C Voting Preferred Stock. The Put Right will therefore expire as to any shares of Series C Voting Preferred Stock upon their conversion into shares of common stock prior to exercise of the Put Right.

3.6 Optional Redemption. At any time and from time to time following the end of the Wage Savings Period, Wings may elect to redeem the Series C Voting Preferred Stock in whole or in part at a per share redemption price equal to the Put Price. Wings will give no less than 60 days' prior written notice to the holders of Series C Voting Preferred Stock of any such optional redemption, and such holders will be permitted to convert shares of Series C Preferred Stock in accordance with the terms thereof during such 60 day period. Any partial optional redemption will be made in the same manner as is specified in the second sentence of Section 3.5(d). Notwithstanding the foregoing, each Trust and Separate Arrangement may retain, for purposes of exercising the rights provided under Article V, at least one share of Series C Voting Preferred Stock, which will not be subject to optional redemption pursuant to this Section 3.6 prior to the earlier of (i) the tenth anniversary of the effective date of this Letter Agreement and (ii) the date on which the number of outstanding shares of Employee Stock constitutes less than 25% of the shares of Employee Stock outstanding on the last day of the Wage Savings Period.

3.7 Dividend Accrual. (a) Each share of Series C Voting Preferred Stock will accrue an annual cumulative dividend in arrears. The accrual date (the "Dividend Date") will be the anniversary of the beginning of the Wage Savings Period (the "Wage Savings Date"), commencing on the first anniversary of the Wage Savings Date (unless the Class A Common Stock is Publicly Traded prior to such first anniversary of the Wage Savings Date)

and continuing until such time as the Class A Voting Common Stock is Publicly Traded, in which event no dividend will be accrued for the Dividend Year in which the first day on which the Class A Voting Common Stock becomes Publicly Traded occurs. If thereafter during such Dividend Year or during any succeeding Dividend Year the Class A Voting Common Stock should not be Publicly Traded on the business day immediately preceding the Dividend Date for such Dividend Year, the dividend will commence accruing in full once again, in the manner described herein, commencing on the Dividend Date occurring at the end of such Dividend Year.

(b) The dividend per share of Series C Voting Preferred Stock will be equal to 5% per annum of (i) the Actual Savings realized by the Company from the Wage Savings Date to the Dividend Date, increased by the aggregate amount of previously accrued dividends, divided by (ii) the total number of shares of Series C Voting Preferred Stock transferred (or deemed to be transferred as contemplated by Section 2.2) pursuant to this Letter Agreement, either to the Trusts or pursuant to any Separate Arrangements, assuming no exercise of the Special Conversion Option.

(c) In addition to the foregoing, dividends will cease to accrue with respect to any share of the Series C Voting Preferred Stock upon either the conversion or repurchase of such share.

3.8 Other Terms of the Employee Stock; Certificate of Designation. (a) In addition to the rights and provisions

described above, until the earlier of the Put Date or the date on which such agreements expire, the holders of the shares of Employee Stock will receive the same tag-along rights, rights of first offer and reoffer and registration rights set forth in (i) Section 9(a) of the Amended and Restated Stockholders' Agreement dated as of December 7, 1992 (the "Amended Stockholders' Agreement") by and among Wings and the Existing Common Stockholders, (ii) Sections 8 and 9 of the Investor Stockholders' Agreement dated as of July 21, 1989, and amended as of February 1, 1991, by and among such parties (the "Investor Stockholders' Agreement"), and (iii) the Registration Rights Agreement dated as of July 21, 1989 among such parties (the "Registration Rights Agreement"). At any time when Wings common stock is Publicly Traded, any shares of Employee Stock distributed to Qualified Holders pursuant to the terms of the Trusts will be registered with the Securities and Exchange Commission to permit the public sale of such stock. Prior to the Transfer Date, Wings, the Existing Common Stockholders and the Unions will enter into amendments, reasonably satisfactory in form and substance to the IAM, to the Amended Stockholders' Agreement, the Investor Stockholders' Agreement and the Registration Rights Agreement to provide the foregoing rights and the rights set forth in Article V of this Letter Agreement. In addition to the foregoing, until the date the Class A Voting Common Stock is first Publicly Traded, the Plan Trustees will not be permitted to sell, transfer, exchange or otherwise dispose of any shares of Employee Stock other than pursuant to the exercise of the rights

referred to above or the transfer to Northwest employees upon distribution of such shares from the Plan as required by ERISA or the Code.

(b) Wings or the Company will be obligated to purchase on each December 31 at the Trading Price, pursuant to the request of any Qualified Holder during the twelve months preceding such December 31, any shares of Employee Stock held by such Qualified Holder following the earliest of (i) three years after the date of separation of service with the Company of the employee to whom such shares of Employee Stock were allocated, (ii) the death or permanent disability of the employee to whom such shares of Employee Stock were allocated and (iii) the attainment of the normal retirement age (as defined in the Plan) of the employee to whom such shares of Employee Stock were allocated. The foregoing obligation will not apply at any time when (i) shares of Class A Voting Common Stock are Publicly Traded and (ii) Qualified Holders may freely sell on the public market, pursuant to an effective registration statement or an applicable exemption to the registration requirements of the Securities Act of 1933, any shares of Class A Voting Common Stock received upon conversion of Employee Stock following distribution thereof by a Trust or pursuant to any Separate Arrangements; provided, however, that, subject to any minimum requirements of ERISA or the Code, (x) the Company's ability to make such purchases will be subject to the prior approval of the Company's lenders, which approval the Company will make a good faith effort to obtain prior to the time it is first required to make such purchases, (y) the total amount

of funds expended by the Company to make purchases pursuant to this Section 3.8(b) will not exceed $10 million annually, and (z) no such purchases will be required during the first two years of the Wage Savings Period.

(c) The holders of Employee Stock will not hold any preemptive rights. The Series C Voting Preferred Stock will contain standard anti-dilution provisions of the type commonly used for the protection of holders of convertible preferred stock traded on the New York Stock Exchange. In connection with, and in consideration of, the recasting of the Wings Series A and Series B preferred stock set forth in Section 6.5, the holders of the Series A and Series B preferred stock will be issued newly issued shares of Class A Voting Common Stock and Class B Non-Voting Common Stock. Subject to the foregoing, the holders of Series C Voting Preferred Stock will be subject to dilution of the shares of common stock issuable upon conversion of the Series C Voting Preferred Stock as a result of the issuance for fair value of any additional shares of common stock of any class. The shares of Employee Stock will bear a legend referring to certain of the terms and conditions of this Letter Agreement. Wings will not issue any shares of Series C Voting Preferred Stock except as contemplated by this Letter Agreement.

(d) Prior to the Transfer Date, the powers, designations, preferences and rights of the Series C Voting Preferred Stock contained in this Letter Agreement will be set forth in a certificate of designations, reasonably satisfactory in form and substance to the IAM, to be filed with the Delaware

Secretary of State in accordance with the requirements of the Delaware General Corporation Law applicable to the issuance of preferred stock.

(e) In the event Wings or the Company is sold as an entirety (whether pursuant to a sale of stock, merger, asset sale or otherwise) prior to the end of the Wage Savings Period, either (i) the issuance of any unissued Series C Voting Preferred Stock, and any unissued Wings common stock issuable in lieu of Series C Voting Preferred Stock following exercise of the Special Conversion Option, will be accelerated to the time of such sale or (ii) other arrangements reasonably acceptable to the Unions will be made so that the Trusts and the Separate Arrangements will receive the value of such Series C Voting Preferred Stock and Wings common stock as if they had been fully issued at the time of such sale.

IV. ALLOCATION AND OTHER RULES; DISTRIBUTION OF EMPLOYEE STOCK

4.1 Allocation and Other Rules. Each Union and the management/non-contract group will receive a contribution to the Trusts or pursuant to the Separate Arrangements in accordance with Article II hereof equivalent to a pro rata share of Series C Voting Preferred Stock based on the portion of the Actual Savings contributed by the Unions and such group. The rules governing the allocation, vesting and distribution of the shares of Employee Stock held by each Trust, the other rules governing the Trusts and the terms of the Plan and Trusts will be determined by each Union, and by the Company in the case of the Management Trust, provided that (a) it is recognized that it will be a

general objective of the Unions and the Company to achieve administrative uniformity among the Plan and the Trusts with respect to all such rules and terms other than those which specify the substantive rights of employees with respect to allocation, vesting and distribution of Employee Stock, and, to the extent consistent with this Letter Agreement, the voting and exercise of other ownership rights with respect to Employee Stock and the fiduciary management of Plan assets, and (b) all such rules and terms governing the Plan and Trusts for the employees of the Unions will be subject to the approval of the Company, which approval may not be unreasonably withheld, it being understood that the Company may withhold such approval for any such rules or terms that (i) are unduly cumbersome to administer or otherwise contravene the general objective specified in clause (a) above, (ii) do not preserve Wings' ability to remain a private company prior to the fifth anniversary of the Transfer Date, subject to the obligations of Wings provided elsewhere in this Letter Agreement, (iii) violate the qualification requirements of the Code or (iv) otherwise violate applicable law.

The fact that Section 2.1 of this Letter Agreement provides for the transfer of Wings shares to one qualified plan covering all eligible Union-represented and management employees will not be construed to limit any Union's (and management's) right, set forth in Sections 4.1 and 4.2, to specify substantive and ownership rights with respect to the employees it represents which differ from the substantive and ownership rights applicable

to employees represented by other Unions or to management employees.

4.2 Distribution. To the extent required by law, Wings will register the shares of Employee Stock under the 1933 Act, and, prior to the Put Date, Wings will use its best efforts to cause the shares of Class A Voting Common Stock to be listed on the New York Stock Exchange or the American Stock Exchange or approved for quotation on NASDAQ. Such registration will permit the Employee Stock to be distributed by the Plan directly to the employees entitled thereto in accordance with rules designed and approved by each Union, and the Company in the case of the Management Trust, and will permit such employees to freely transfer the shares of Class A Voting Common Stock.

V. GOVERNANCE MATTERS

5.1 Election of Directors. (a) The Series C Voting Preferred Stock will be entitled, for so long as any shares of Series C Voting Preferred Stock are outstanding, to elect three directors, who will be elected exclusively by the holders of the Series C Voting Preferred Stock. One candidate to serve as a Series C Director will be nominated by each of the IAM, the IBT and ALPA. The three candidates will be appointed to Wings' board of directors within ten days after the effective date of this Letter Agreement. Thereafter, whenever any such Series C Director's (or successor Series C Director's) term of office ends, a successor candidate to serve as a Series C Director will be nominated by the Union that nominated such original Series C Director. An agreement or agreements reasonably acceptable to

the Unions will be entered into among the Unions to provide for the voting of shares of Series C Voting Preferred Stock in favor of the election of candidates nominated by the respective Unions as provided in this Section 5.1. The Unions and Wings agree that they will not, and Wings will agree to cause the members of its board of directors not to, take any action to oppose or otherwise seek to reduce the number of votes cast in favor of the election of any candidate so nominated. During the Wage Savings Period, the size of the Wings board may be increased only if additional Series C Directors are appointed so that Series C Directors constitute no less than 20% of the total directors. After the Wage Savings Period, the number of Series C Directors will be the greater of (i) three or (ii) 15% of the total number of directors and Wings may increase the size of the board at any time. In the event of any increase in the number of Series C Directors as a result of the foregoing provisions, such additional Series C Directors will be nominated by the unanimous vote of the existing Series C Directors. Holders of Series C Voting Preferred Stock will not be entitled to vote such stock for the election of any directors of Wings other than the Series C Directors, except that (i) the nomination or election of a director to fill the position on the Wings board currently held by Mr. Mondale will be decided by the unanimous vote of all directors, including Series C Directors, and (ii) Wings' by-laws will be amended to provide that throughout the Wage Savings Period, (x) the nomination or election of directors to fill any vacancies in the positions on the Wings board currently held by Messrs. Dasburg and Kempner,

and the position held by the successor to Mr. Mondale, and (y) the nomination or election of any director whose seat is not contractually obligated to be filled by an equity holder or creditor of Wings, will be decided by a majority vote of all directors, including the Series C Directors.

(b) The entitlement of the Series C Voting Preferred Stock to elect the Series C Directors will expire on the first date on which no shares of Series C Voting Preferred Stock are outstanding, whether as a result of conversions, exchanges, repurchases or redemptions.

(c) The Series C Directors will have the same status as other Wings directors, must be citizens of the United States and will be subject to the provisions of Wings' by-laws applicable to all directors. Each of the Wings directors (including the Series C Directors) will be entitled to cast one vote on each and every matter presented to the Board for a vote except for the nomination and election of directors, as to which the Series C Directors will have only the limited voting rights specified in Section 5.1(a). Any interim vacancy among the Series C Directors, whether such vacancy occurs as a result of resignation, death, removal or otherwise, will be filled, effective at the beginning of the next board meeting, by a designee nominated by the Union that nominated the previous holder of the vacant position.

(d) Each of the Series C Directors will serve as directors of Wings, NWA Inc. and the Company and all provisions with respect to the size and composition of the board of

directors, super-majority voting rights, blocking rights, board committees or other protections or safeguards for the Series C Directors will be equally applicable to NWA Inc. and the Company.

(e) The Wings by-laws will be amended to provide that the Wings certificate of incorporation and by-laws may not be amended to abrogate any of the terms or rights or powers of the Employee Stock or the Series C Directors specified in this Letter Agreement without the approval of a majority of the Series C Directors.

5.2 Super-Majority Vote. (a) Wings' by-laws will be amended, as of the first board of directors meeting following the effective date of this Letter Agreement, to afford the Series C Directors, for so long as the "Required Board Vote" requirements set forth in Article III, Section 6 thereof remain in effect, the ability to form a blocking coalition with respect to the items listed in items (i)-(xiv) of such Section 6 (copies of which are attached as Exhibit A hereto) and the items listed on Exhibit B hereto by voting against any proposed action referred to in such items along with any two directors of Wings, of whom not more than one may be a designee of Koninklijke Luchtvaart Maatschappij N.V. ("KLM") and not more than one may be any of Messrs. Checchi, Wilson or Malek or any person who fills a vacancy arising from the resignation, death, removal or expiration of the term of any of Messrs. Checchi, Wilson or Malek. Thus, the negative votes of the three Series C Directors along with two negative votes from among the other directors would preclude the Company from undertaking any of the actions listed (i) in items (i)-(xiv) of

Article III, Section 6 of the Wings by-laws or (ii) on Exhibit B hereto. In the event that the "Required Board Vote" requirements of the Wings by-laws expire prior to the expiration of the Wage Savings Period, the Series C Directors will retain the same blocking rights specified above with respect to the items listed in Exhibit B hereto for four years following the effective date of this Letter Agreement.

(b) During the Wage Savings Period, no current or future member of the Wings board of directors will have more favorable blocking coalition rights than those set forth above with respect to the matters set forth in items (i)-(xiv) of Article III, Section 6 of the Wings by-laws or Exhibit B or any other matters presented for the approval of the board of directors.

5.3 Labor Advisory Committee. A Labor Advisory Committee will be established as described in Exhibit C hereto. This committee will have reasonable access to Company financial materials, subject to appropriate confidentiality agreements; provided, however, that after the Wage Savings Period such access will be limited to financial materials that are reasonably related to issues then being addressed by the Labor Advisory Committee.

5.4 Board Committees. One Series C Director will be entitled to serve on each committee of the Wings board of directors.

VI. DEBT RESTRUCTURING; NEW CAPITAL AND EXISTING PREFERRED STOCK REQUIREMENTS

6.1 Restructuring. Prior to the effective date of this Letter Agreement, the Company shall have completed the elements of the debt restructuring specified in Exhibit D hereto on substantially the terms and conditions set forth therein.

6.2 Post-Effectiveness Restructuring. The Company agrees to use its best efforts to achieve the other steps to restructure its obligations that are specified in the Post-Effectiveness Restructuring Plan set forth in Exhibit E hereto.

6.3 Permanent Capital Objective. (a) Wings will obtain a minimum of $500 million of Permanent Capital no later than June 30, 1996, of which at least $250 million will consist of either common stock or Eligible Convertible Preferred Stock (the obtaining of such Permanent Capital to be known as a "Capital Event"). If Wings and its subsidiaries have not completed a Capital Event in one or more transactions by such date, the Existing Common Stockholders (and not the holder or holders of the Employee Stock) will transfer to Wings up to 26,286 shares of common stock (subject to the adjustment provided below) held by them (the "Penalty Stock") on September 1, 1996, as specified in Section 6.3(b), such shares will be retired by Wings and the same number of shares of non-voting common stock will be issued by Wings to the Trusts (and to the holders of Employee Stock transferred pursuant to any Separate Arrangements), on a pro rata basis as set forth in Section 4.1. Agreements will be made with each Union to establish Separate Arrangements (which may include a grantor trust or trusts) with

respect to any shares of Employee Stock required to be transferred pursuant to this Section 6.3 but which may not be transferred to a Trust due to the provisions of the Code, including Sections 401(a)(4), 401(a)(17) and 415. If any shares of Penalty Stock are required to be transferred pursuant to this Section 6.3, Wings and the Company will ensure, by means of arrangements reasonably satisfactory to the IAM, that (i) between June 30, 1996 and September 1, 1996, (A) such transfer is subject solely to the passage of time and no other conditions or contingencies whatsoever, (B) such shares will not be voted by the holders thereof and (C) Wings will not declare or pay any dividends or other distributions on such shares during such 60 day period, and (ii) if for any reason the transfer of such Penalty Shares will be delayed after September 1, 1996, the Trusts and the other holders to whom such shares are to be transferred (the "Penalty Stock Transferees") will for all purposes be treated as the beneficial owners thereof and will receive all of the economic benefits and other powers and privileges (other than voting rights, which will not be exercised by any person) attaching thereto.

(b) If Wings fails to complete a Capital Event by July 31, 1996, the number of shares of Penalty Stock specified below will be transferred to Wings by the Existing Common Stockholders and the same number of shares of non-voting common stock will be issued by Wings to the Trusts on September 1, 1996:

Amount of Permanent Capital Raised	Number of Penalty Shares Transferred
$350 million or less	26,286
Between $350 and $375 million	23,619
Between $375 and $400 million	20,953
Between $400 and $425 million	18,286
Between $425 and $450 million	15,620
Between $450 and $475 million	12,953
Between $475 and $500 million	10,286

; provided, however, that in any event if Wings has failed to obtain ~~$250~~ million of common stock or Eligible Convertible Preferred Stock by June 30, 1996, 26,286 shares of non-voting common stock will be transferred; and, further provided, that all share numbers set forth above will be adjusted to prevent dilution of the percentage ownership interest represented by the Penalty Stock as a result of (i) the Existing Preferred Stock Common Issuance or (ii) any exercise of the Special Conversion Option.

6.4 Restructuring Committee. The Series C Directors will have the right to designate one Series C Director to serve as a member of the Restructuring Committee of the Wings board of directors.

6.5 Preferred Stock. The Wings Series A and Series B preferred stock will be recast as follows:

(a) The liquidation preference of each issue will be its liquidation preference on the effective date of the Wage Savings Period plus, in the case of the Series A, all unpaid dividends accrued through such date.

(b) The terms of each Series will be nine years for the Series A and ten years for the Series B from the effective date of this Letter Agreement.

(c) The dividend will be 8% for the entire term of the Series A and Series B commencing on the effective date of the Wage Savings Period.

(d) Dividends will be payable in kind for the first five years after the effective date of the Wage Savings Period and payable in cash thereafter.

(e) Principal will be amortized on a straight line basis at the end of years 7, 8 and 9 for the Series A and years 8, 9 and 10 for the Series B.

(f) In the event that the Company is in default with respect to payment of the shares of either Series A or Series B preferred stock, and if the provisions of Section 3.5(e)(ii) thereafter become applicable and additional Series C Directors are added to the Wings board of directors, then the holders of each of the Series A and the Series B preferred stock, voting as a separate series, will, if such series is in default, thereupon be entitled to elect one director to the Wings board of directors as the representative of such defaulted series.

VII. <u>OTHER AGREEMENTS</u>

7.1 <u>Dividends and Distributions; Stock Split</u>.

(a) Prior to the expiration of the Wage Savings Period, unless otherwise approved by a majority vote of the Series C Directors, Wings will not declare or pay any cash dividends on or redeem any of its issued and outstanding common stock; provided, that if Wings is not then barred from honoring the repurchase obligations set forth in Section 3.8(b), Wings may redeem, retire, purchase or otherwise acquire shares of its common stock issued to employees pursuant to a duly authorized stock option plan.

(b) Wings currently anticipates that prior to the Transfer Date there will be a stock split in respect of the Wings common stock. The number of shares of Employee Stock to be

transferred to the Trusts (or pursuant to Separate Arrangements) pursuant to this Letter Agreement, and the number of shares of Wings common stock into which the Series C Voting Preferred Stock is convertible, will be adjusted to reflect such stock split or any other intervening events which would cause adjustment under standard provisions of the type commonly used for the protection of holders of convertible preferred stock traded on the New York Stock Exchange. Prior to the effective date of this Letter Agreement, neither Wings nor the Company will amend its certificate of incorporation or any certificate of designations to modify the voting rights of the holders of any class or series of outstanding capital stock. Upon the effectiveness of this Letter Agreement, (i) each share of currently outstanding Wings voting common stock (other than Class A Voting Common Stock) will be converted into one share of Class A Voting Common Stock and (ii) each share of currently outstanding Wings non-voting common stock (other than Class B Non-Voting Common Stock) will be converted into one share of Class B Non-Voting Common Stock.

7.2 Lock-Up. The Existing Common Stockholders will not sell, transfer or otherwise dispose of any of their Wings common stock during the period commencing on the date hereof and ending on June 15, 1997; provided, however, that (i) the Existing Common Stockholders may transfer shares of Wings common stock among themselves, (ii) KLM may transfer its Wings common stock among any affiliates of KLM, (iii) each of Bankers Trust New York Corporation, Richard C. Blum & Associates-NWA Partners, L.P. and Bright Star Investments Limited may transfer in one or more

public or private sales Wings common stock to third parties, of which the aggregate price of all such sales may not exceed $30 million, (iv) all shareholders may transfer their Wings common stock in a transaction involving the sale of Wings, and (v) all shareholders of Wings may transfer Wings common stock pursuant to Section 6.4(b).

7.3 Transactions with Current Stockholders. After the date of this Letter Agreement and prior to the expiration of the Wage Savings Period, except for transactions approved by a majority vote of the Series C Directors, Wings will not, and will not permit any of its subsidiaries to, enter into any transaction or series of transactions, whether or not in the ordinary course of business, with any current Wings stockholder or any "affiliate" or "associate" of any such stockholder (within the meaning of the 1933 Act) or any person having the kind of relationship subject to disclosure under Item 404 of Regulation S-K of the Securities and Exchange Commission; provided that the foregoing restrictions will not apply to any transactions and agreements approved by the majority vote of the Wings board of directors (a) with KLM or any affiliate thereof or (b) with Bankers Trust Company in its capacity as (i) agent bank or lender to Wings, the Company or any of their subsidiaries or (ii) provider of any other financing or financial services to Wings, the Company or any of their subsidiaries. This provision is intended to prohibit any transaction of the type described above prior to such time as the Series C Directors are duly elected to Wings' board of directors.

7.4 Payment of Management Fees. Prior to the expiration of the Wage Savings Period, unless otherwise approved by a majority vote of the Series C Directors, none of Wings, the Company or any of their subsidiaries will pay any management fees to any stockholder of Wings or any affiliate of any such stockholder.

7.5 Actual Savings Calculations. Within 30 days after it has calculated the Actual Savings for each employee group realized by the Company during the Dividend Years ending in each of 1994, 1995 and 1996, Wings will make such calculations available to the Series C Directors, who may retain, at the Company's expense, a nationally recognized independent accounting firm to verify such calculations, including, if necessary, the facts and assumptions on which such calculations are based.

7.6 No Options. Each of Wings and the Company represents and warrants that there are no contracts, agreements or understandings between Wings or the Company, on the one hand, and any person, on the other hand, granting such person the right to acquire capital stock of Wings or the Company, other than (i) pursuant to employee stock option plans of Wings and the Company, (ii) pursuant to the Amended Stockholders' Agreement and (iii) rights granted to the holders of Series A and Series B preferred stock, as set forth in Section 3.8(c) of this Letter Agreement. Wings hereby agrees not to issue any shares of common stock or securities convertible or exchangeable into common stock, or grant any options to acquire any common stock or any such securities, except for the Existing Preferred Stock Common

Issuance, subsequent to the date of this Letter Agreement and prior to the Transfer Date.

7.7 Consents. Wings agrees to take all action necessary, including without limitation the amendment of Wings' certificate of incorporation and by-laws and the obtaining of all waivers, consents or amendments to existing stockholder agreements, loan agreements or other instruments, to permit the execution and delivery of this Letter Agreement, the issuance of the Series C Voting Preferred Stock to be transferred pursuant to Sections 2.1 and 2.4, the election of the Series C Directors to the Wings board of directors and full implementation of this Letter Agreement with respect to the Series C Directors.

7.8 Remedies; Effectiveness and Expiration. (a) In the event of any breach of this Letter Agreement by Wings or the Company, the Unions will be entitled to all remedies available to them at law and in equity, including injunctive relief, with respect to a breach of a contractual obligation.

(b) This Letter Agreement (i) will become effective when (A) the Compensation Plan Letters have been executed, (B) each of the IBT, ALPA, the Transport Union Workers of America, the Airline Technical Support Association and the Northwest Airlines Meteorologists Association has entered into a collective bargaining agreement and compensation plan letters with the Company and an agreement with the Company relating to equity, corporate governance, and restructuring matters, in each case which is reasonably acceptable to the IAM, and the Company will have implemented compensation and benefit reductions in

respect of its management personnel providing for savings (based on the pro forma head count projection) of approximately $84 million during the Wage Savings Period, (C) the Company's senior credit facility has been restructured substantially on the terms and conditions set forth in the Third Amended and Restated Credit Agreement, substantially in the form previously provided to the IAM, among Wings, NWA Inc., the Company, Bankers Trust Company, as agent, and the other parties identified therein (the "Amended Credit Agreement") (provided, that, the Amended Credit Agreement (i) specifically includes the June 30, 1996 date set forth in Section 8.20(i) thereof for completion of the Capital Event, (ii) deletes the 60 day waiver provision in Section 8.20(ii) of the form thereof provided to the IAM and (iii) does not provide that the transfer of the Penalty Stock to the Penalty Stock Transferees pursuant to Section 6.3 hereof, nor the acquisition by the Penalty Stock Transferees of the rights to receive the Penalty Stock upon a failure by the Company to complete a Capital Event prior to June 30, 1996, whether or not such right is waived, will constitute a Default under such Amended Credit Agreement; and, further provided, that any covenant or default provisions in the Amended Credit Agreement concerning the refinancing of the Narita Loan are reasonably acceptable to the IAM), and all conditions to the effectiveness of, and closing under, the Amended Credit Agreement have been satisfied or irrevocably waived and (D) the other elements of the debt restructuring specified in Exhibit D hereto have been completed on substantially the terms and conditions set forth

therein and (ii) will terminate on the later of (A) the first date on which no shares of Series C Voting Preferred Stock are outstanding, either as a result of conversions or repurchases, and (B) the first date on which the number of outstanding shares of Employee Stock constitutes less than 25% of the shares of Employee Stock outstanding as of the last day of the Wage Savings Period; provided, however, that notwithstanding the foregoing, this Letter Agreement will terminate on the tenth anniversary of the effective date of this Letter Agreement if no shares of Series C Voting Preferred Stock are outstanding on such date. Upon such termination, all of the obligations of Wings set forth herein and all of the special rights and privileges of holders of Employee Stock set forth herein will be terminated (except for the rights of the Unions to pursue any remedies for any prior breach of this Letter Agreement and the obligation of the Company to maintain the Plan pursuant to the terms thereof, which will survive such termination), and Wings will amend its certificate of incorporation and by-laws to reflect the termination of such obligations, rights and privileges.

(c) The parties will cooperate in good faith to implement this Letter Agreement and all documentation necessary or appropriate to give full effect to provisions of this Letter Agreement will be jointly prepared and approved by the parties. Such documentation will incorporate such further and additional provisions which may be necessary or appropriate to prevent any action by Wings, the Company, NWA Inc. or any of their subsidiaries or the Existing Common Stockholders which would adversely

affect the rights of the Series C Directors or the voting power and equity ownership to be created pursuant to this Letter Agreement. Each of the parties hereto will take all appropriate actions to maintain the qualified status of the Plan.

FOR THE IAM BY:

Thomas E. Pedersen

August 4, 1993

FOR WINGS BY:

FOR THE COMPANY BY:

EXHIBIT A TO LETTER AGREEMENT

Section 6. Quorum; Board Action. (A) at all meetings of the Board of Directors, a Required Board Vote shall be required for the Corporation or any subsidiary thereof (a "Subsidiary") to undertake any one of the following actions:

(i) any merger or consolidation with or into another person in one or a series of related transactions;

(ii) any transfer or encumbrance of a substantial portion of the Corporation's assets or the assets of any Subsidiary to another person or persons in one or a series of related transactions;

(iii) the declaration and payment of any dividend by the Corporation or any Subsidiary on any of the capital stock of the Corporation or any Subsidiary (other than a dividend by any Subsidiary wholly owned by the Corporation to the Corporation or to any other Subsidiary);

(iv) the incurrence by the Corporation or any Subsidiary of any additional indebtedness or off-balance sheet financing liabilities in excess of $10 million in the aggregate during any fiscal year;

(v) any annual operating and capital budget or financing plan of the Corporation or any Subsidiary, and any medium-term business plan of the Corporation or any Subsidiary;

(vi) any material commercial or marketing agreement or joint venture entered into by the Corporation or any Subsidiary;

(vii) the appointment or dismissal of the Chief Executive Officer of Northwest Airlines, Inc. and any other member of the Executive Management Team of Northwest Airlines, Inc.;

(viii) the acquisition, sale, transfer or relinquishment by the Corporation or any Subsidiary of any route authority or operating rights granted to the Corporation or any Subsidiary by the United States Department of Transportation or any other U.S. or foreign governmental authority;

(ix) the issuance of capital stock of the Corporation or any Subsidiary other than pursuant to the terms of the securities of the Corporation or any Subsidiary outstanding as of December 7, 1992, or existing obligations with respect thereto, or as required by the Amended and Restated Investors Stockholders' Agreement dated as of December 7, 1992 (the "Stockholders' Agreement");

(x) the acquisition by the Corporation or any Subsidiary of equity securities issued by the Corporation or any Subsidiary;

(xi) any agreement between the Corporation or any Subsidiary and any union, supplier or creditor of the Corporation or any Subsidiary in contemplation of or in connection with a Restructuring as defined in the Stockholders' Agreement;

(xii) any amendment to the Restated Certificate of Incorporation of the Corporation or Bylaws of the Corporation;

(xiii) any voluntary bankruptcy filing by the Corporation or any Subsidiary; and

(xiv) the liquidation of the Corporation or any subsidiary.

(B) If any of the activities enumerated in items (i) through (xiv) of Section 6(A) should involve a transaction between the Corporation or any Subsidiary and any shareholder thereof, or in the case of any other transaction between the Corporation or any Subsidiary and any shareholder thereof, the designees of such shareholder on the Board of Directors shall not vote on such matter, and a majority of the disinterested directors voting thereon shall be required to approve such transaction pursuant to Section 144 of the General Corporation Law of the State of Delaware.

(C) The following terms shall have the following meanings for the purpose of this Article III:

"Required Board Vote" shall mean, with respect to any matter considered by the Board of Directors at a meeting of the Board of Directors at which a Quorum is present, the affirmative vote for such matter of at least a majority of all sitting members of the Board of Directors; provided, however, that a vote of the Board of Directors shall not constitute a "Required Board Vote" if

(i) the total number of negative votes cast against such matter is at least two more than the number of KLM Designees then sitting on the Board of Directors and (ii) of such negative votes cast, at least two are cast by U.S. Designees. In addition, the written consent with respect to any matter, with or without a meeting of the Board of Directors, of all sitting members of the Board of Directors shall constitute a "Required Board Vote" as to such matter.

"KLM Designee" shall mean any director of the Corporation who was designated by Koninklijke Luchtvaart Maatschappij N.V. for election to the Board of Directors pursuant to Section 2 of the Stockholders' Agreement, or Section 2 of the Investor Stockholders' Agreement dated July 21, 1989, as amended as of February 1, 1991.

"Quorum" shall mean, for the purposes of all meetings of the Board of Directors, a majority of the entire sitting Board of Directors (without regard to the actual authorized number of directors), which majority shall include at least one KLM Designee. If an attempt is made to have a meeting of the Board of Directors by means of a conference telephone pursuant to Section 8 of this Article III, and if repeated attempts for five business days to solicit the participation of a KLM Designee therefor shall remain unsuccessful, a "Quorum" shall mean, for the limited purposes of that particular meeting of the Board of Directors, a majority of the entire sitting Board of Directors.

"U.S. Designee" shall mean any director of the Corporation who (a) is a United States Citizen and (b) either was designated for election by a United States Citizen or was designated for election by a majority of the then sitting members of the Board of Directors.

"United States Citizen" shall mean any person who is a Citizen of the United States as defined in Section 1301(16) of Title 49 of the United States Code, as in effect on the date in question, or any successor statute or regulation.

EXHIBIT B TO LETTER AGREEMENT

1. Any restructuring of Wings, NWA Inc. or the Company, including the rescheduling of existing debt or the raising of new long term debt, and any agreement in connection therewith; provided, however, that the foregoing will not apply to any transaction entered into in good faith by Wings as part of a bona fide effort to complete a Capital Event as provided in Section 6.3 of this Letter Agreement.

2. Any annual operating and capital budget or financing plan of Wings or any subsidiary, and any medium term business plan of Wings or any subsidiary.

3. Any merger or consolidation of Wings, NWA Inc. or the Company with or into another person or entity in one or a series of related transactions.

4. Any sale, transfer or encumbrance of a substantial portion of the assets of Wings or any subsidiary to another person or persons in one or a series of related transactions. For purposes of this paragraph 4, (i) a "substantial portion" of the assets of Wings or any subsidiary means (A) a number of aircraft constituting 2% or more of the total number of aircraft in the fleet of the Company and its subsidiaries taken as a whole, net of any additions to such fleet during the 180 day period prior to such transfer, or (B) other assets having a fair market value of $100 million or more, and (ii) a "transfer" means, with respect to aircraft, a transfer (whether by sale, lease assignment or otherwise) for value of such aircraft, other than a sale/leaseback for financing purposes.

5. Any sale, transfer or relinquishment by Wings or any subsidiary of (i) a substantial portion of the Company's route authority or operating rights granted to the Company or any subsidiary by the United States Department of Transportation or (ii) any route or route authority granted pursuant to the 1952 bilateral agreement with Japan, as amended; and any sale or transfer of any combination of two or more international routes.

6. Any sale, transfer or relinquishment of operational control over (i) Wings or any subsidiary or (ii) any material portion of the assets or business thereof.

7. The declaration or payment of any dividend on any of the capital stock of Wings or any subsidiary (other than (i) a dividend by any subsidiary wholly owned by Wings to Wings or to any other subsidiary and (ii) dividends on the Series A, Series B or Series C preferred stock) or any redemption or repurchase of equity securities of Wings or any subsidiary (except as required pursuant to the terms of (A) the Series A, Series B, or Series C preferred stock or (B) the Wings management stock option plan).

EXHIBIT C TO LETTER AGREEMENT

Labor Advisory Committee:

Committee Formation:	A committee, consisting of one designee from each signatory Union (the "Labor Advisory Committee") will be established for the purpose of addressing areas of common interest among all employees at Northwest.
Special Meetings:	The Labor Advisory Committee will have the right to call a meeting with the Company at mutually convenient times to discuss issues of mutual concern.
Quarterly Meetings:	Until the expiration of the Wage Savings Period, the Labor Advisory Committee or its designees will meet with the Chief Executive and key senior officers of the Company at mutually convenient times on at least a quarterly basis to discuss the Company's financial and operating results and its projections, plans and strategies.
Committee Input:	Until the expiration of the Wage Savings Period, the Company will, in good faith, solicit, review and consider the input of the Labor Advisory Committee into its projections, plans and strategies.
Selection of President:	Whenever acting on the selection of a new President of Northwest Airlines, Inc., during the Wage Savings Period, the Board of Directors will consult with the Labor Advisory Committee.
Business Plan:	As part of the restructuring, the parties will consult during the Wage Savings Period about a business plan, including a fleet plan, marketing strategy, and minimum and maximum spending on non-aircraft capital expenditures and other significant items.

After Wage Savings Period:

Following expiration of the Wage Savings Period, although the provisions of the four preceding captioned paragraphs will cease to be in effect, (a) the Labor Advisory Committee will continue to have the right to call a meeting with the Company at mutually convenient times to discuss issues of mutual concern, (b) the Labor Advisory Committee or its designees will meet with the Chief Executive and key senior officers of the Company from time to time at mutually convenient times to discuss matters of common interest among all Northwest employees, and (c) the Company will, in good faith, solicit, review and consider the input of the Labor Advisory Committee with respect to such matters.

EXHIBIT D TO LETTER AGREEMENT

WINGS HOLDING INC.

RESTRUCTURING

1. Special Term Loan, Term Loan and Revolver Restructuring pursuant to attached term sheet draft of Third Amended and Restated Credit Agreement.

2. Airbus Term Loan Restructuring pursuant to attached term sheet.

3. UT Term Loan and Penalty Payment Restructuring pursuant to attached term sheet.

4. Boeing 747-400 delivery cancellations.

Major Settlement Terms

$80 NWA,

THIS TERM SHEET DOES NOT REPRESENT A BINDING AGREEMENT BETWEEN THE PARTIES CONCERNING THE MATTERS SET FORTH HEREIN. ANY SETTLEMENT OF THE MATTERS DESCRIBED HEREIN SHALL BE SUBJECT TO COMPLETION OF DEFINITIVE DOCUMENTATION PREPARED BY COUNSEL FOR UTC IN FORM AND SUBSTANCE SATISFACTORY TO UTC AND SATISFACTION OF APPROPRIATE CLOSING CONDITIONS. PENDING EXECUTION AND DELIVERY OF SUCH DEFINITIVE DOCUMENTATION, UTC RESERVES ANY AND ALL OF THE RIGHTS AND REMEDIES AVAILABLE TO IT WITH RESPECT TO THE MATTERS DESCRIBED HEREIN AND ANY OTHER MATTERS INVOLVING NWA AND ITS AFFILIATES.

- Resolve all open issues as a "package"
  - Settlement contingent on NWA accomplishing all other major elements of financial restructuring (e.g. union concessions, bank debt restructuring, vendor agreements, etc.)

- Agree to 3-year A330 deferral (per proposed revised delivery schedule - exact months to be specified)

- Agree to 1.5-year B757 deferral (per proposed revised delivery schedule - exact months to be specified)

- Agree to proposed Amendment to Special Term Loan

- Agree to proposed revised amortization schedule of $152.5 million Notes ($10 million annually in 1994-96; $20 million-1997; $34.2 million annually in 1998-2000 -- all annual payments to be prorated and paid monthly)
  - Interest to be payable monthly in arrears commencing 7/1/93
  - Interest reimbursement provision to be reinstated - reimbursement amount subject to terms of 1/12/90 letter agreement
  - NWA to waive restriction on transfer of Notes
  - Notes to accelerate should "capital event" not occur (same definition/terms as NWA Credit Agreement)
  - 5% Excess Cash Flow mandatory repayment

- Agree to allow NWA to purchase equivalent "value" (i.e. real/incremental/comparable margin) of goods and services (to be specified and agreed on) from P&W by ~~6/30/94~~ closing of "Package" in lieu of taking delivery of two contracted spare engines (or otherwise NWA shall make cash payment on 6/30/94 for amount of value shortfall)

- NWA will be obliged to pay interest at the rate of 7.8% on the $138.5 million in advance PA related to A330 aircraft commencing on 7/1/94 payable monthly in arrears and continuing for 48 months. In addition, NWA will be obliged to pay interest at the rate of 7.8% on the $67.1 million in advance PA related to B757 aircraft commencing on 7/1/94 payable monthly in arrears and continuing for 24 months.
  - Payments not reimbursable

- Full cross-default of Note Agreement and engine contract reimbursement amounts against these payments similar to 12/7/92 Settlement Agreement terms
- Unpaid amount to be accelerated if NWA takes delivery of non-P&W powered aircraft prior to first A330 delivery (exclusivity language to be mutually agreed upon – NWA to provide draft language)
- Compensation amount paid to UTC not eligible for reimbursement to NWA under any circumstance and not to be credited against NWA's reimbursement obligation should NWA cancel or further delay A330 or B757 deliveries

- UTC will consent to NWA's cancellation of 2 B747-400 aircraft scheduled for delivery in 1993 and waive right to demand any credit reimbursement or claim any other defaults as a result thereof and related credits (i.e., $5.4 million) previously advanced by P&W will be considered earned – NWA is not entitled to any credits not previously advanced that would otherwise become due (i.e., approximately $10.0 million) if NWA actually took delivery of aircraft

- NWA to reduce and limit UTC outstanding receivables balance to maximum of $5 million (effective at closing; 30-day allowable payment period to be reinstated; limit to include all business transacted by NWA with UTC, including P&W and HSD); subject to NWA meeting its 1993 Business Plan (dated May 19, 1993) for the second half of 1993, credit limit expected to be increased in UTC's discretion to $15 million. In any event, however, amount of limit will be subject to UTC's discretion based on its assessment of NWA's financial condition.

- 12/7/92 Settlement Agreement to govern reimbursement requirement in event of further aircraft deferrals/cancellations (i.e., NWA request for separate predetermined "unwind" formula unacceptable to UTC); all other terms and conditions of Settlement Agreement to apply unless otherwise agreed

AIRBUS/CFM LOAN TERM SHEET

$470 Million Note

Principal Amortization: Reamortization of the principal on the Notes per the following schedule ($ millions):

(Includes CFM)

	Current	Revised Proposal
1994	$180	$ 25
1995	90	35
1996	95	45
1997	125	65
1998	–	95
1999	–	105
2000	–	100
2001	–	
2002	–	

Interest: Payable quarterly in arrears as follows:

The first $400 million of maturities shall accrue interest at the rate of LIBOR + 2.25%

The remaining $70 million of maturities shall accrue interest at the rate of LIBOR + 2.75% and mature in 2000.

Collateral: Collateral pool same as existing agreement (min. ratio of 1.25X).

Fees: Inducement Fee of $1,333,000 be paid at closing.

Special Provisions: 10% of the annual Excess Cash Flow to be applied, in inverse order of maturity, 120 days after the end of each fiscal year beginning with fiscal year 1993.

Covenants: Same as existing.

Events of Default: Same as existing including cross-default to Special Term Loan.

EXHIBIT E TO LETTER AGREEMENT

The objective for the Post-Effectiveness Restructuring Plan referred to in Section 6.2 will be to have reached a binding agreement with respect to the refinancing of the $100 million principal amount construction agreement regarding the Narita Airport hotel.

EXHIBIT F TO LETTER AGREEMENT

Class of Common Stock	Number of Shares Outstanding
Class A Voting	36,143
Class B Non-Voting	4,016
Class C Voting	16,241
Class D Non-Voting	17,318
Class E Voting	6,282
Class F Non-Voting	0
Total	80,000

Hearing Date and Time: May 9, 2007 at 11:00 a.m.
Objection Deadline: May 4, 2007 at 4:00 p.m.

Bruce R. Zirinsky (BZ 2990)
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Attorneys for Debtors and Debtors In Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
NORTHWEST AIRLINES CORPORATION, et al.,	:	**Case No. 05-17930 (ALG)**
Debtors.	:	**Jointly Administered**

NOTICE OF HEARING ON MOTION FOR SUBSTANTIVE CONSOLIDATION OF CONSOLIDATED DEBTORS

PLEASE TAKE NOTICE that on April 27, 2007, Northwest Airlines Corporation ("NWA Corp.") and certain of its direct and indirect subsidiaries, as debtors and debtors in possession in the above cases (collectively, with NWA Corp., the "Debtors"),[1] filed

[1] In addition to NWA Corp., the other Debtors in these jointly administered cases are: Northwest Airlines, Inc., NWA Fuel Services Corporation, Northwest Airlines Holdings Corporation, NWA Inc., Northwest Aerospace Training Corp., Compass Airlines, Inc. f/k/a Northwest Airlines Cargo, Inc., NWA Retail Sales Inc., Montana Enterprises, Inc, NW Red Baron LLC, Aircraft Foreign Sales, Inc., NWA Worldclub, Inc., MLT Inc., and NWA Aircraft Finance, Inc.

the Motion for Substantive Consolidation of Consolidated Debtors pursuant to Section 105(a) of the Bankruptcy Code (the "Motion").

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion and entry of the proposed order submitted with the Motion shall be held before the Honorable Judge Allan L. Gropper, United States Bankruptcy Judge, in Room 617 of the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York, 10004, on **May 9, 2007 at 11:00 a.m.** (prevailing Eastern Time).

PLEASE TAKE FURTHER NOTICE that responses and objections, if any, to the Motion and the relief requested therein must be made in writing, conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the Bankruptcy Court and be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (General Order M-242 and the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court), by registered users of the Bankruptcy Court's case filing system and, by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and shall be served in accordance with General Order M-242 and upon: (1) Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, New York 10281, Attention: Bruce R. Zirinsky, Esq. (Facsimile: 212-504-6666), counsel to the Debtors; (2) Otterbourg, Steindler, Houston & Rosen, P.C., 230 Park Avenue, New York, New York 10169, Attention: Scott L. Hazan, Esq. (Facsimile: 212-682-6104), counsel to the Official Committee of Unsecured Creditors; (3) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York

10004, Attention: Brian Masumoto, Esq., so as to be actually received by no later than **4:00 p.m.** (prevailing Eastern time) on **May 4, 2007**.

PLEASE TAKE FURTHER NOTICE that only those responses that are timely filed, served and received will be considered at the hearing.

Dated: Washington, DC
April 27, 2007

CADWALADER, WICKERSHAM & TAFT LLP

/s/ Mark C. Ellenberg _____
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Attorneys for Debtors and
Debtors In Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
NORTHWEST AIRLINES CORPORATION, et al.,	:	**Case No. 05-17930 (ALG)**
Debtors.	:	**Jointly Administered**

ORDER GRANTING DEBTORS' MOTION FOR SUBSTANTIVE CONSOLIDATION OF CONSOLIDATED DEBTORS

Upon the Motion (the "Motion") of the above-captioned debtors (the "Debtors"), pursuant to section 105(a) of title 11, United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") seeking substantive consolidation of certain "Consolidated Debtors" (as defined in the Motion) and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and after due deliberation and good and sufficient cause appearing therefor, and it appearing that due and proper notice of the Motion and the hearing having been given, and upon the record of the hearing, the Motion and any and all other papers submitted in connection with this matter, and after due deliberation, and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the assets and liabilities of Northwest Airlines Corp., Northwest Holdings Corp., NWA Inc. and Northwest Airlines, Inc. are substantively consolidated for all purposes and actions associated with consummation of the Plan,[1] including, without limitation, for purposes of voting and confirmation; and it is further

ORDERED that on and after the Effective Date:

[1] Capitalized terms not defined herein shall be defined as in the Disclosure Statement.

(a) all assets and liabilities of the Consolidated Debtors are treated as though they were merged into the Northwest Airlines, Inc. estate solely for purposes of the Plan, (b) no distributions shall be made under the Plan on account of Equity Interests between and among any of the Consolidated Debtors, (c) for all purposes associated with Confirmation, including, without limitation, for purposes of tallying acceptances and rejections of the Plan, the estates of the Consolidated Debtors are deemed to be one consolidated estate for Northwest Airlines, and (d) each and every Claim filed or to be filed in the Chapter 11 Cases of the Consolidated Debtors are deemed filed against the Consolidated Debtors, and are Claims against and obligations of the Consolidated Debtors.

Dated: May __, 2007

_____
HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE

Tab 10

2018 WL 3747439

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of North Carolina,
Caldwell County.
Business Court.

ASSOCIATED HARDWOODS, INC., Plaintiff,

v.

Gary N. LAIL; Susan G. Lail; David C. Lail; Catherine C. Lail; Jennifer Noble, in her capacity as Administrator of the Estate of Clyde L. Lail; Edward Joseph McNeil, Jr.; and McNeil & Partners, LP, Defendants.

18 CVS 329
|
August 6, 2018

1. **THIS MATTER** is before the Court on Defendants Gary N. Lail ("Gary"), Susan G. Lail ("Susan"), David C. Lail ("David"), and Cathleen C. Lail's ("Cathleen") Motion to Dismiss (the "Lail Defendants' Motion to Dismiss"), and Defendant Jennifer Noble's ("Noble"), as Administrator of the Estate of Clyde L. Lail ("Clyde"), Motion to Dismiss ("Noble's Motion to Dismiss"). The Lail Defendants' Motion to Dismiss and Noble's Motion to Dismiss are referred to collectively herein as the "Motions." For the reasons set forth herein, the Court **GRANTS** the Lail Defendants' Motion to Dismiss, and **GRANTS in part** and **DENIES in part** as moot Noble's Motion to Dismiss.

Attorneys and Law Firms

Richard L. Robertson & Associates, P.A., by Richard L. Robertson, for Plaintiff.

Young, Morphis, Bach, and Taylor, LLP, by Jimmy R. Summerlin, Jr., for Defendants Gary N. Lail and Susan G. Lail.

Patrick, Harper & Dixon, LLP, by Michael J. Barnett, for Defendants David C. Lail and Cathleen C. Lail.

Connors Morgan, PLLC, by C. Scott Meyers, for Defendant Jennifer Noble, in her capacity as Administrator of the Estate of Clyde L. Lail.

Erwin, Bishop, Capitano & Moss, P.A., by Matthew M. Holtgrewe, for Defendants Edward Joseph McNeil, Jr. and McNeil & Partners, LP.

ORDER AND OPINION ON MOTIONS TO DISMISS

Robinson, Judge.

I. PROCEDURAL HISTORY

***1** 2. The Court sets forth here only those portions of the procedural history relevant to its determination of the Motions.

3. On March 13, 2018, Plaintiff initiated this action by filing its Verified Complaint. (ECF No. 3.)

4. This action was designated as a mandatory complex business case by order of Chief Justice Mark Martin of the Supreme Court of North Carolina dated April 26, 2018, (ECF No. 6), and was assigned to the undersigned by order of then-Chief Business Court Judge James L. Gale dated April 30, 2018, (ECF No. 2).

5. The Verified Complaint named Wayne Bach ("Bach") as a Defendant in his capacity as administrator of the estate of Clyde L. Lail ("Clyde's Estate"). (Compl. 1, ECF No. 3.) However, on March 27, 2018, Defendant Noble was appointed administrator of Clyde's Estate in lieu of Bach. (Verified Am. Compl. ¶ 4, ECF No. 8 ["Am. Compl."].) Accordingly, on May 2, 2018, Plaintiff filed its Amended Verified Complaint substituting Noble for Bach as a defendant. (*Compare* Compl. 1, *with* Am. Compl. 1.) The Amended Complaint asserts claims against the Lail Defendants for violation of the Uniform Voidable Transactions Act ("fraudulent transfer claim") and asserts claims against all Defendants for breach of fiduciary duty, constructive fraud, and unfair and deceptive trade practices ("UDTP"). (Am. Compl. 4–13.)

6. The Lail Defendants' Motion to Dismiss was filed on May 25, 2018 pursuant to Rule 12(b)(1) of the North Carolina Rules of Civil Procedure ("Rule(s)"). (ECF No. 15.)

7. On May 31, 2018, Noble filed her motion to dismiss, joining the arguments raised by the Lail Defendants pursuant to Rule 12(b)(1) and asserting additional arguments for dismissal of the claims against Clyde's Estate pursuant to Rule 12(b)(6). (ECF No. 22.) Because Noble is being sued in her capacity as administrator of Clyde's Estate and joins the Lail Defendants' Motion to Dismiss, references to the Lail Defendants' Motion to Dismiss shall include Noble.

8. Briefing on the Motions is complete and the Court held a hearing on the Motions on August 2, 2018 at which all parties were represented by counsel.

9. The Motions are ripe for resolution.

II. FACTUAL BACKGROUND

10. The Court does not make findings of fact on the Motions, but recites only those facts that are relevant and necessary to the Court's determination of the Motions.

11. Plaintiff Associated Hardwoods, Inc. ("Plaintiff") is a North Carolina corporation with its principal office in Granite Falls. (Am. Compl. ¶ 1.)

12. Gary, Susan, David, Cathleen,[1] and Clyde (who passed away before the commencement of this litigation) (collectively, the "Lail Defendants") were directors of Quaker Furniture, Inc. d/b/a Studio Q Furniture ("Quaker"), a North Carolina corporation that manufactured furniture. (Am. Compl. ¶ 10.) Gary, David, and Clyde (during his life) were also shareholders and officers of Quaker at certain times. (Am. Compl. ¶ 10.)

***2** 13. For years prior to 2016, Plaintiff supplied Quaker with dry kiln hardwood lumber to be used by Quaker in its furniture business. (Am. Compl. ¶ 9.) Plaintiff would fill Quaker's orders and later submit invoices to Quaker requesting payment for the lumber previously delivered. (Lail Defs.' Mot. Dismiss Ex. 2 to Ex. A, ECF No. 15.1.) Plaintiff did not secure the debt owed to it by Quaker. (Am. Compl. ¶ 9.)

14. By May 31, 2016, Quaker was insolvent on a balance sheet and cash flow basis and could not pay its bills as they became due in the regular course of business. (Am. Compl. ¶ 14.) Notwithstanding Quaker's financial condition, the Lail Defendants, on behalf of Quaker, continued to order lumber from Plaintiff. (Am. Compl. ¶ 15.a.)

15. Around August 22, 2016, Gary, David, and Clyde sold their shares in Quaker and the assets of Quaker for inadequate consideration to Defendant McNeil & Partners, LP ("McNeil & Partners"). (Am. Compl. ¶ 15.c.) Defendant Edward Joseph McNeil, Jr. ("McNeil," together with McNeil & Partners, the "McNeil Defendants") is the general partner of McNeil & Partners and became an officer and the sole director of Quaker following the stock transfer. (Am. Compl. ¶¶ 6, 11.) Thereafter, none of the Lail Defendants were involved with Quaker, except for Gary, who remained an officer of Quaker. (Am. Compl. ¶¶ 10–11.)

16. Plaintiff alleges that the Lail Defendants' sale of their Quaker shares and Quaker's assets was a leveraged buyout for which no consideration passed to the Lail Defendants or Quaker for the benefit of Quaker's creditors. (Am. Compl. ¶ 15.c, g–h.) In addition, Plaintiff alleges that the Lail and McNeil Defendants engaged in unwritten side agreements whereby McNeil would refinance Quaker's equipment and machinery to pay Quaker's existing secured obligations guaranteed by the Lail Defendants. (Am. Compl. ¶ 15.f.) Plaintiff further alleges that the McNeil Defendants, who had no experience in the furniture industry, stripped Quaker of its working capital and equity by paying themselves and McNeil's other businesses exorbitant fees, salaries, and cash withdrawals. (Am. Compl. ¶ 15.d–e.)

17. At the time of the sale, Quaker had assets in excess of its secured liabilities that exceeded $1 million, which could have been distributed to unsecured creditors had the Lail Defendants wound up Quaker's affairs instead of selling their shares. (Am. Compl. ¶ 15.b.) Plaintiff alleges that the Lail Defendants' conduct preferred their interest over the rights of Quaker's unsecured creditors, including Plaintiff, and was intended to prevent such creditors from recovering any of Quaker's assets. (Am. Compl. ¶¶ 15.f–h, 18–20.)

18. After McNeil & Partners purchased the Lail Defendants' shares of stock in Quaker, and McNeil became the sole director, Quaker continued to purchase lumber from Plaintiff without informing Plaintiff of Quaker's financial condition. (Am. Compl. ¶ 30.a.)

19. For purposes of the Lail Defendants' Motion to Dismiss pursuant to Rule 12(b)(1), the Court takes judicial notice of several proceedings involving Plaintiff and Quaker. First, the

Court takes judicial notice that on March 13, 2017, Plaintiff filed a complaint in the General Court of Justice, Superior Court Division, Caldwell County, asserting claims against Quaker for failing to pay for lumber that Quaker had ordered and accepted from Plaintiff. (Lail Defs.' Mot. Dismiss Ex. A.) Plaintiff's complaint in that action reveals that Plaintiff claimed that Quaker had failed to pay for lumber purchased from approximately November 23, 2016 to February 28, 2017. (Lail Defs.' Mot. Dismiss Ex. A, ¶ 9.) Attached to that complaint was a report listing Quaker's unpaid invoices, bills of lading, and invoices from the alleged three-month time period and showing that Quaker then owed Plaintiff $117,915.62. (Lail Defs.' Mot. Dismiss Exs. 1–3 to Ex. A.)

***3** 20. Next, the Court takes judicial notice that on August 28, 2017, Quaker filed a Chapter 11 voluntary petition in the U.S. Bankruptcy Court for the Western District of North Carolina (the "Bankruptcy Action"). (Lail Defs.' Mot. Dismiss Ex. C, ECF No. 15.3.) Along with twenty-nine other creditors of Quaker, Plaintiff filed a proof of claim form in the Bankruptcy Action on September 5, 2017 asserting that Quaker owed Plaintiff $129,742.06 for unpaid invoices from November 23, 2016 through February 28, 2017. (Lail Defs.' Mot. Dismiss Ex. B, ECF No. 15.2.) Finally, the Court takes judicial notice that on October 13, 2017, Quaker voluntarily converted the Bankruptcy Action to a Chapter 7 proceeding that is still pending before the bankruptcy court. (Lail Defs.' Mot. Dismiss Ex. D, ECF No. 15.4.)

III. LAIL DEFENDANTS' MOTION TO DISMISS

A. Rule 12(b)(1)

21. "Rule 12(b)(1) permits a party to contest, by motion, the jurisdiction of the trial court over the subject matter in controversy." *Swan Beach Corolla, LLC v. Cty. of Currituck*, 234 N.C. App. 617, 621, 760 S.E.2d 302, 307 (2014). When it appears that subject matter jurisdiction is lacking, a court shall dismiss the action. N.C. Gen. Stat. § 1A-1, Rule 12(h)(3).

22. "In order for a court to have subject matter jurisdiction to hear a claim, the party bringing the claim must have standing." *Newton v. Barth*, 788 S.E.2d 653, 659 (N.C. Ct. App. 2016); *see also Smith v. Forsyth Cty. Bd. of Adjust.*, 186 N.C. App. 651, 653, 652 S.E.2d 355, 357 (2007) ("Standing is a necessary prerequisite to a court's proper exercise of subject matter jurisdiction, and is a question of law ...." (citation omitted)). "[T]he party seeking to bring [its] claim before the court must include allegations which demonstrate why [it] has standing in the particular case ...." *Cherry v. Wiesner*, 245 N.C. App. 339, 346, 781 S.E.2d 871, 877 (N.C. Ct. App. 2016).

> Since [the elements of standing] are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation.

Neuse River Found. Inc. v. Smithfield Foods, Inc., 155 N.C. App. 110, 113, 574 S.E.2d 48, 51 (2002) (alteration in original) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)).

23. "Unlike a Rule 12(b)(6) motion, consideration of matters outside the pleadings does not convert the Rule 12(b)(1) motion to one for summary judgment ...." *Cunningham v. Selman*, 201 N.C. App. 270, 280, 689 S.E.2d 517, 524 (2009). Accordingly, a court may consider matters outside the pleadings in determining whether subject matter jurisdiction exists. *Keith v. Wallerich*, 201 N.C. App. 550, 554, 687 S.E.2d 299, 302 (2009); *Tart v. Walker*, 38 N.C. App. 500, 502, 248 S.E.2d 736, 737 (1978). "However, if the trial court confines its evaluation to the pleadings, the court must accept as true the plaintiff's allegations and construe them in the light most favorable to the plaintiff." *Munger v. State*, 202 N.C. App. 404, 410, 689 S.E.2d 230, 235 (2010).

B. Standing to Assert Claims Against Directors of a Bankrupt Corporation

24. The Lail Defendants move for dismissal of Plaintiff's claims pursuant to Rule 12(b)(1) arguing that Plaintiff lacks standing to assert claims against them as Quaker's former officers and directors because such claims belong to Quaker's bankruptcy estate. (Lail Defs.' Mot. Dismiss ¶ 9, ECF No. 15.)

25. "When a corporation enters bankruptcy, any legal claims that could be maintained *by the corporation* against other parties become part of the bankruptcy estate, and claims that are part of the bankruptcy estate may only be brought by the trustee in the bankruptcy proceeding." *Newton*, 788 S.E.2d at 659. The filing of a bankruptcy petition gives the trustee of the bankruptcy estate full authority over claims belonging to the bankruptcy estate such that "a creditor may not pursue such a claim unless there is a judicial determination that the trustee in bankruptcy has abandoned the claim." *Keener Lumber Co. v. Perry*, 149 N.C. App. 19, 25, 560 S.E.2d 817, 822 (2002); *see also In re Bostic Constr.,*

Inc., 435 B.R. 46, 60 (Bankr. M.D.N.C. June 25, 2012) ("When a corporation files bankruptcy, the bankruptcy estate succeeds to the corporation's rights against its directors."). A North Carolina state trial court generally lacks subject matter jurisdiction to hear claims belonging to a bankruptcy estate. *Keener Lumber Co.*, 149 N.C. App. at 26, 560 S.E.2d at 822. However, where a claim is personal to the creditor, such claim is not property of the bankruptcy estate. *Newton*, 788 S.E.2d at 659. Whether a claim is personal to a creditor depends on state law. *Id.*

1. Breach of Fiduciary Duty and Constructive Fraud

***4** 26. The Amended Complaint alleges that the Lail Defendants breached their fiduciary duties to Plaintiff by continuing to purchase lumber from Plaintiff without disclosing Quaker's poor financial condition and then selling their shares of Quaker and Quaker's assets pursuant to agreements with the McNeil Defendants that preferred the Lail Defendants' interests over the interest of Quaker's creditors in receiving a pro rata distribution of Quaker's assets. (Am. Compl. ¶ 15.) Plaintiff alleges that such breaches amounted to constructive fraud. (Am. Compl. ¶ 16.)

27. "Under North Carolina law, directors of a corporation generally owe a fiduciary duty to the corporation, and where it is alleged that directors have breached this duty, the action is properly maintained by the corporation rather than any individual creditor ...." *Spoor v. Barth*, 244 N.C. App. 670, 682, 781 S.E.2d 627, 635 (2016) (emphasis omitted). Accordingly, "creditors ... of corporations generally may not bring individual actions to recover what they consider their share of the damages suffered by the corporation[.]" *Barger v. McCoy Hillard & Parks*, 346 N.C. 650, 660, 488 S.E.2d 215, 220–21 (1997). "However, where a cause of action is founded on injuries peculiar or personal to [an individual creditor], so that any recovery would not pass to the corporation and indirectly to other creditors, the cause of action belongs to, and is properly maintained by, that particular creditor ...." *Keener Lumber Co.*, 149 N.C. App. at 26, 560 S.E.2d at 822 (quotation marks omitted); *see also Newton*, 788 S.E.2d at 659–60 ("[C]reditors of a bankruptcy estate may prosecute individual actions against a third party if they can show either (1) that the wrongdoer owed [them] a special duty, or (2) that the injury suffered by the [creditors] is personal to [them] and distinct from the injury sustained by the corporation itself." (quotation marks omitted)).

28. Notwithstanding the general rule that directors owe fiduciary duties directly to the corporation, a director's fiduciary duty to creditors arises "where there exist circumstances amounting to a 'winding-up' or dissolution of the corporation." *Keener Lumber Co.*, 149 N.C. App. at 31, 560 S.E.2d at 825 (quotation marks omitted); *see also Oberlin Capital, L.P. v. Slavin*, 147 N.C. App. 52, 61, 554 S.E.2d 840, 847 (2001) ("[A] corporate director can breach a fiduciary duty to a creditor if 'the transaction at issue [ ] occurs under circumstances amounting to a "winding-up" or dissolution of the corporation.' " (second alteration in original) (quotation marks omitted)). In determining whether circumstances amount to a "winding up" or dissolution, our courts consider various factors, which include:

> (1) whether the corporation was insolvent, or nearly insolvent, on a balance sheet basis; (2) whether the corporation was cash flow insolvent; (3) whether the corporation was making plans to cease doing business; (4) whether the corporation was liquidating its assets with a view of going out of business; and (5) whether the corporation was still prosecuting its business in good faith, with a reasonable prospect and expectation of continuing to do so.

Keener Lumber Co., 149 N.C. App. at 31, 560 S.E.2d at 825 (citing *Whitley v. Carolina Clinic, Inc.*, 118 N.C. App. 523, 528, 455 S.E.2d 896 (1995)).

29. When such circumstances are present, the director "is generally prohibited from taking advantage of his intimate knowledge of the corporate affairs and his position of trust for his own benefit and to the detriment of the creditors to whom he owes the duty" and "must treat all creditors of the same class equally by making any payments to such creditors on a pro rata basis." *Id.* at 33, 560 S.E.2d at 826–27. Accordingly, our Court of Appeals has held that

> ***5** a claim brought by a creditor against a director of a corporation, alleging that the director has committed constructive fraud by breaching his fiduciary duty owed directly to the creditor, is a claim founded on injuries peculiar or personal to the individual creditor, and, therefore, is a claim that belongs to the creditor and not the corporation.

Id. at 26–27, 560 S.E.2d at 823.

30. The Lail Defendants argue that Plaintiff lacks standing to pursue its claims against them as directors of Quaker because such claims are property of Quaker's bankruptcy estate and, therefore, must be brought by the bankruptcy

trustee. (Lail Defs.' Mot. Dismiss ¶ 9.) The Lail Defendants argue that dismissal is proper because Plaintiff has failed to allege facts indicating that the Lail Defendants owed a special duty directly to Plaintiff or that Plaintiff suffered a peculiar or personal injury distinct from the injury suffered by all other creditors of Quaker. (Lail Defs.' Br. Supp. Mot. Dismiss 3–4, ECF No. 16.)

31. Plaintiff argues that it has standing to assert claims against the Lail Defendants because the Amended Complaint adequately alleges that circumstances existed where Quaker was "winding up" or in dissolution such that the Lail Defendants, as directors of Quaker, owed fiduciary duties to Plaintiff, as a creditor of Quaker, thereby establishing a special duty owed directly to Plaintiff. (Pl.'s Resp. Br. Opp'n Lail Defs.' Mot. Dismiss 10, ECF No. 28 ["Pl.'s Br. Opp'n"].) Plaintiff argues, relying on the Court of Appeals' decision in *Keener*, that its breach of fiduciary duty and constructive fraud claims, therefore, survive. (Pl.'s Br. Opp'n 10.) Plaintiff further argues that it has standing because "Plaintiff's injuries require different compensatory relief than that of any other creditor, and such injuries were caused by the Defendants' acts of contracting with Plaintiff—no other creditor was involved in any lumber transaction between Plaintiff and Quaker[.]" (Pl.'s Br. Opp'n Lail Defs.' Mot. Dismiss 12–13.) Although not entirely clear, the Court understands Plaintiff's argument to be that its injuries are unique because it was the only creditor that supplied lumber to Quaker. Public filings in the Bankruptcy Action reveal that there are numerous unsecured creditors of Quaker who supplied various goods and services to the bankrupt company. Notice to Creditors Holding 20 Largest Unsecured Claims at 3, *In re Quaker Furniture, Inc.*, No. 17-50583 (Bankr. W.D.N.C. Aug. 30, 2017), ECF No. 6.

32. Plaintiff's standing argument ignores that the Amended Complaint neither alleges (1) that Plaintiff was directly owed a duty separate from the duty the Lail Defendants owed to Quaker's creditors to treat all creditors of the same class equally, nor (2) that Plaintiff suffered a unique injury that was not shared by all of Quaker's unsecured creditors.

33. Instead, Plaintiff's counsel argued at the hearing that the Lail Defendants, as directors of Quaker, had an obligation once the company became insolvent to have a plan in place to protect creditors' right to a pro rata distribution of company assets. The Court is unaware of any obligation on shareholders, officers, or directors who seek to exit a corporation to have a "plan in place" to protect a creditor's right to a pro rata distribution.

34. Rather, as noted above, the fiduciary duty that directors of an insolvent corporation owe to creditors is a duty to "treat all creditors of the same class equally by making any payments to such creditors on a pro rata basis" and not to "tak[e] advantage of [the director's] intimate knowledge of the corporate affairs and his position of trust for his own benefit and to the detriment of the creditors to whom he owes the duty[.]" *Keener Lumber Co.*, 149 N.C. App. at 33, 560 S.E.2d at 826–27.

***6** 35. "[W]hen all creditors of an insolvent or bankrupt corporation share an injury based on a common act, only a receiver or trustee has standing to assert the creditors' collective claim against directors on behalf of the corporation." *Angell v. Kelly*, 336 F.Supp.2d 540, 544–45 (M.D.N.C. 2004) (citing *Underwood v. Stafford*, 270 N.C. 700, 703, 155 S.E.2d 211, 213 (1967)). Indeed, a review of North Carolina cases and federal cases applying North Carolina law reveals that an individual creditor typically only has standing to sue directors of a debtor corporation where some misconduct was directed specifically at plaintiff or the directors were alleged to have misappropriated funds that were earmarked for plaintiff. *See, e.g.*, *Angell*, 336 F.Supp.2d at 547 (alleged misrepresentations that were made only to plaintiffs and which induced plaintiffs to take detrimental action were "factually unique to [p]laintiffs as among [debtor]'s other creditors" thus conferring standing on plaintiffs); *In re Midstate Mills, Inc.*, No. 13-50033, 2015 WL 5475295, 2015 Bankr. LEXIS 3105 (Bankr. W.D.N.C. Sept. 15, 2015) (unpublished) (standing existed where plaintiffs alleged that directors and officers falsely represented to plaintiffs that goods shipped would be paid for and that plaintiffs would be substantially paid when the debtor corporation was sold); *Newton*, 788 S.E.2d at 661 (customers, vendors, and suppliers had standing to sue debtor corporation's officer who falsified financial reports and directed corporate staff to fraudulently misrepresent to creditors that the corporation would receive additional funds); *Phillips & Jordan, Inc. v. Bostic,* 2012 WL 1970070, at *, 2012 NCBC LEXIS 36, at *5, *17–19 (N.C. Super. Ct. June 1, 2012) (plaintiff subcontractor had standing to assert claims against directors based on allegations that defendants made preferential payments for their personal benefit out of construction loan proceeds that plaintiff believed would be used to pay its construction costs); *see also Snyder v. Freeman*, 300 N.C. 204, 217, 266 S.E.2d 593, 601–02 (1980)

(plaintiff had individual standing to sue corporate insiders based on allegations that corporate directors failed to earmark funds that were to be held specifically for plaintiff apart from corporate assets); *Lillian Knitting Mills Co. v. Earle*, 233 N.C. 74, 75, 62 S.E.2d 492, 493 (1950) (individual creditor could maintain claim alleging that officers and directors made fraudulent misrepresentations directly to that creditor).

36. Conversely, where a plaintiff-creditor seeks to advance claims that "could also have been pursued by any of [the debtor corporation]'s creditors, the [creditor] "lack[s] standing because the claims are property of the bankruptcy estate." *Angell*, 336 F.Supp.2d at 545; *see also, e.g.*, *M-Tek Kiosk, Inc. v. Clayton*, No. 1:15CV886, 2016 WL 2997505, at *, 2016 U.S. Dist. LEXIS 67036 at *27 (M.D.N.C. May 23, 2016) (unpublished) (allegations of fraudulent transfers that could have been alleged by any of the debtor corporation's creditors were insufficient to confer standing); *Alvarez v. Ward*, No. 1:11cv03, 2012 WL 113567, 2012 U.S. Dist. LEXIS 4557 (Bankr. W.D.N.C. Jan. 13, 2012) (unpublished) (plaintiffs lacked standing where the injuries alleged were identical to other creditors' injuries and were caused by the common acts of defendants in fraudulently transferring the assets of the company); *Underwood*, 270 N.C. at 703, 155 S.E.2d at 213 (allegations that officers and directors misappropriated corporate assets to themselves were wrongs committed against the insolvent corporation).

37. Plaintiff's allegations demonstrate that none of the Lail Defendants' alleged conduct was directed specifically toward Plaintiff or treated Plaintiff in a manner different from Quaker's other unsecured creditors. (Am. Compl. ¶¶ 15, 33.) Further, Plaintiff's reliance on *Keener* is misplaced. In *Keener*, defendant-director decided to liquidate a struggling corporation's assets in order to use the money to pay the corporation's outstanding debts. *Keener Lumber Co.*, 149 N.C. App. at 23, 560 S.E.2d at 820. The director used the funds from the liquidated assets to then fully pay, or almost fully pay, existing secured debts and an unsecured debt to a company for which defendant was the chief operating officer, president, director, and majority shareholder. *Id.* at 22–23, 560 S.E.2d at 820–21. However, no payment was made to plaintiff-unsecured creditor. *Id.* at 23, 560 S.E.2d at 820–21. Thus, the *Keener* plaintiff's claim for breach of fiduciary duty was premised on allegations that defendant (1) directed the company to continue purchasing goods from plaintiff without informing plaintiff of the company's financial status and (2) made preferential payments to another unsecured creditor where a duty existed to treat all creditors of the same class equally. *Id.* at 32, 560 S.E.2d at 826. Plaintiff makes no allegation that it was treated any differently than other unsecured creditors of Quaker. Rather, Plaintiff alleges that the Lail Defendants preferentially paid off "existing secured obligations of Quaker guaranteed by the Lail Defendants[.]" (Am. Compl. ¶ 15.f.)

***7** 38. The Court further finds unavailing Plaintiff's argument that it has suffered a unique injury because it was the only creditor who entered into lumber transactions with Quaker. Plaintiff's injury is no different than any other unsatisfied creditor of Quaker in that Plaintiff seeks to be paid for the goods it rendered to Quaker just as other unsecured creditors seek to be paid for the goods or services they provided to Quaker. Plaintiff does not seek to recover the lumber sold on credit, but the money owed to Plaintiff by Quaker for the value of the lumber. (Am. Compl. 15.) In fact, the Amended Complaint repeatedly refers to unsecured creditors of Quaker as an injured group of which Plaintiff was a part. (*See, e.g.*, Am. Compl. ¶ 15.) Such allegations belie Plaintiff's argument that it suffered a unique injury different from that experienced by Quaker's other unsecured creditors.

39. Accordingly, the Court concludes that Plaintiff's breach of fiduciary duty and constructive fraud claims are property of the bankruptcy estate and Plaintiff, therefore, lacks standing.

40. Even assuming *arguendo* that Plaintiff's claims do not belong to the bankruptcy estate, Plaintiff lacks standing for another reason—because it cannot demonstrate a concrete injury caused by the Lail Defendants.

41. Apart from the standing inquiry as it relates to creditors of a bankrupt corporation, standing more generally "refers to whether a party has a sufficient stake in an otherwise justiciable controversy so as to properly seek adjudication of the matter." *Neuse River Found. Inc.*, 155 N.C. App. at 114, 574 S.E.2d at 51. To establish this more general standing, a plaintiff must demonstrate three elements: (1) an injury in fact, i.e., "an invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical;" (2) that the injury is fairly traceable to defendants' actions; and (3) that the injury will likely be redressed by a decision in plaintiff's favor. *Strates Shows, Inc. v. Amusements of Am., Inc.*, 184 N.C. App. 455, 460, 646 S.E.2d 418, 423 (2007).

42. Plaintiff alleges that it was harmed by the Lail Defendants' alleged breaches of fiduciary duty and constructive fraud

because Plaintiff did not receive its pro rata distribution of Quaker's assets as payment for lumber that Plaintiff delivered to Quaker. (Am. Compl. ¶¶ 15–16; *see also* Pl.'s Br. Opp'n 12–13 (arguing that Plaintiff's injuries are unique because each one of Plaintiff's sales of lumber is unique).) However, the record before the Court demonstrates that Plaintiff has been paid for all shipments of lumber that occurred prior to November 23, 2016 as evidenced by Plaintiff's earlier civil suit against Quaker and Plaintiff's proof of claim filed in the Bankruptcy Action. (Lail Defs.' Mot. Dismiss Ex. A ¶ 9, Ex. 1 to Ex. A, Ex. B.) The Lail Defendants sold their Quaker shares and otherwise ceased their involvement with Quaker, except for Gary remaining as an officer, around the time of the stock sale on August 22, 2016—nearly three months before the date of the first invoice for which Plaintiff claims entitlement to payment. (Am. Compl. ¶¶ 10–11, 15.)

43. Therefore, even assuming the Lail Defendants owed and breached a fiduciary duty by continuing to purchase lumber from Plaintiff without disclosing Quaker's financial status, the allegations of the Complaint do not establish that Plaintiff, as a result, suffered a particular, concrete injury.

44. Based on the foregoing, the Court concludes that Plaintiff lacks standing to assert its claims for breach of fiduciary duty and constructive fraud against the Lail Defendants.

2. Fraudulent Transfer Claim

45. Plaintiff alleges as a part of its breach of fiduciary duty claim that the Lail Defendants violated the North Carolina Uniform Voidable Transactions Act by fraudulently transferring Quaker's assets to the McNeil Defendants without receiving reasonably equivalent value in an attempt to hinder, delay, or defraud Quaker's creditors. (Am. Compl. ¶¶ 18–22.)

***8** 46. "[A]ny transfer that fraudulently or unlawfully deprives all creditors of their right to an insolvent corporation's assets necessarily gives rise to a cause of action shared by those creditors and not unique to any one of them." *Angell*, 336 F.Supp.2d at 546. Upon reviewing the allegations of the Amended Complaint, the Lail Defendants' alleged misconduct in stripping Quaker of its assets is identical as to all of Quaker's unpaid creditors who experienced the same harm—not receiving payment for goods or services rendered. Because all of Quaker's creditors share an injury based on the Lail Defendants' alleged fraudulent transfers, only Quaker's bankruptcy trustee has standing to assert the creditors' collective claim against the Lail Defendants on behalf of Quaker. *Id.*

47. Accordingly, the Court concludes that Plaintiff lacks standing to assert its fraudulent transfer claim against the Lail Defendants.

3. UDTP Claim

48. Plaintiff alleges that the Lail Defendants engaged in unfair and deceptive conduct based on the same factual allegations that Plaintiff alleged in support of its breach of fiduciary duty and constructive fraud claims. (Am. Compl. ¶ 33.) As the Court has concluded that Plaintiff lacks standing to assert its breach of fiduciary duty and constructive fraud claims because such claims are property of the bankruptcy estate, the Court similarly concludes that Plaintiff lacks a basis for standing as to its UDTP claim.

49. Therefore, the Court concludes that Plaintiff's UDTP claim should be dismissed for lack of subject matter jurisdiction.

IV. NOBLE'S MOTION TO DISMISS

50. In her motion to dismiss, Noble not only joins the Lail Defendants' Motion to Dismiss, but also asserts as a separate basis for her motion that Plaintiff's claims against Noble, as Administrator of Clyde's Estate, should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim on which relief may be granted. (Noble's Mot. Dismiss 1, ECF No. 22.)

51. Because the Court concluded that the Lail Defendants' Motion to Dismiss should be granted, the Court further concludes that Noble's Motion to Dismiss should be granted to the extent it joins the Lail Defendants' Motion to Dismiss. Having concluded that the Court lacks subject matter jurisdiction over Plaintiff's claims against the Lail Defendants, including the claims against Clyde's Estate, the Court need not, and does not, reach the merits of the additional arguments raised pursuant to Rule 12(b)(6) in Noble's Motion to Dismiss.

52. As a result, the Court grants Noble's Motion to Dismiss to the extent it is premised on Rule 12(b)(1) and, to the extent

it is premised on Rule 12(b)(6), the Court denies the motion as moot.

V. CONCLUSION

53. **THEREFORE**, based on the foregoing, the Court hereby **GRANTS** the Lail Defendants' Motion to Dismiss for lack of standing pursuant to Rule 12(b)(1). The Court further **GRANTS in part** Noble's Motion to Dismiss, to the extent it joins the Lail Defendants' Motion to Dismiss pursuant to Rule 12(b)(1), and **DENIES as moot** Noble's Motion to Dismiss pursuant to Rule 12(b)(6). Accordingly, Plaintiff's claims against the Lail Defendants and against Defendant Noble, in her capacity as Administrator of the Estate of Clyde L. Lail, are dismissed without prejudice.

SO ORDERED, this the 6th day of August, 2018.

All Citations

Not Reported in S.E. Rptr., 2018 WL 3747439, 2018 NCBC 79

Footnotes

1 Plaintiff's original and amended complaints misname Cathleen as “Catherine C. Lail.” (Compl. 1; Am. Compl. 1.) Because Cathleen has not challenged that she was properly served with process or the Court's jurisdiction over her, the Court sees no need to require the Amended Complaint to be further amended at this time.

End of Document

Tab 11

KeyCite Yellow Flag - Negative Treatment
Distinguished by Pension Committee of the University of Montreal Pension Plan v. Banc of America Securities, LLC, S.D.N.Y., March 24, 2010

2009 WL 2242605
Only the Westlaw citation is currently available.
United States District Court,
S.D. New York.

Carlo DeBLASIO, et al., on behalf of themselves and all others similarly situated, Plaintiffs,
v.
MERRILL LYNCH & CO., INC., et al., Defendants.

No. 07 Civ 318(RJS).
|
July 27, 2009.

West KeySummary

1 **Federal Civil Procedure** Fraud, mistake and condition of mind

Investors who alleged their financial advisors were able to use their uninvested cash for their own profit through a cash sweep program, did not adequately plead a claim for fraud. The investors complained the financial advisors held themselves out as fiduciaries, and took a number of well calculated steps in order induce the investors to give them their money. Because the complaint failed to identify the place and time of the alleged misrepresentations and their conclusory allegations were unsupported by factual assertions, the claim was dismissed pursuant to Rule 9(b). Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

58 Cases that cite this headnote

Attorneys and Law Firms

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Kenneth Ian Schacter and Theo J. Robins, Bingham McCutchen LLP, New York, NY, for Defendants Charles Schwab.

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opinion and order

RICHARD J. SULLIVAN, District Judge.

***1** In this putative class action, seven individual Plaintiffs bring claims under federal and state law, on behalf of themselves and all others similarly situated, alleging that five groups of banking entities engaged in "deceptive and misleading" practices relating to a series of "Cash Sweep Programs" that were offered as part of Plaintiffs' brokerage accounts. Plaintiffs bring claims for violations of the Investment Advisers Act of 1940, 15 U.S.C. § 80b–1 *et seq.* ("IAA"), the Sherman Antitrust Act, 15 U.S.C. § 1, and New York General Business Law § 349 (" § 349"), as well as common-law claims for fraud, breach of fiduciary duty, aiding andabetting a breach of fiduciary duty, negligent misrepresentation, negligence, breach of contract, and unjust enrichment.

Before the Court are Defendants' five motions to dismiss Plaintiffs' claims pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons set forth below, Defendants' motions are granted.

I. Background

The following information is derived from the Second Amended Complaint ("SAC"), the declarations and affidavits submitted by the parties in connection with Defendants' motions, and the additional materials attached as exhibits thereto.[1] Plaintiffs' factual allegations are assumed to be true and all reasonable inferences are drawn in their favor. *See In re Ades & Berg Group Investors,* 550 F.3d 240, 243 n. 4 (2d Cir.2008).

A. Overview

This action relates to a brokerage account feature known as a "Cash Sweep Program." This feature is offered to retail investors by each of the five groups of Defendant banks, which the Court refers to as the Merrill Lynch Defendants, the Morgan Stanley Defendants, the Citigroup Defendants, the Charles Schwab Defendants, and the Wachovia Defendants.[2] Through these Programs, Plaintiffs were offered the option of having the balance of uninvested funds in their brokerage accounts, known as a "free credit balance," placed in—or, "swept" into—other types of investments. (*See* SAC ¶ 1.)[3] As a result of these "sweeps," Plaintiffs earned interest on the otherwise-uninvested funds in their brokerage accounts. (*Id.*)

Plaintiffs allege that, when Defendants initially implemented the Cash Sweep Programs, their free credit balances were swept into money market mutual funds that provided interest rates of approximately five percent. (*See id.* ¶ 6.) In these original Cash Sweep Programs, "the profits obtained by Defendants ... were limited in nature" and typically did not exceed an "expense ratio" of less than one percent of the principal. (*Id.* ¶ 65.)[4] Additionally, "since money market funds are maintained in a trust, those funds were unavailable for use by a brokerage firm to lend or invest in higher-yielding activities ...." (*Id.* ¶ 65 (emphasis omitted).)

According to Plaintiffs, Defendants subsequently modified their respective Cash Sweep Programs in a deceptive manner in an attempt to capitalize on "an immense opportunity for their own profit ...." (*Id.* ¶ 7.) In these modified Cash Sweep Programs, Defendants limited certain customers' ability to have their free credit balances swept into money market mutual funds, often according to the amount of assets deposited in the customers' brokerage accounts. (*Id.* ¶ 12.) Instead of mutual funds, many customers' free credit balances were swept into standard deposit accounts. (*See id.* ¶ 6.)

***2** Plaintiffs allege that these modified Cash Sweep Programs provided between one and two percent interest on free credit balances, as opposed to the four to five percent interest that they had previously earned when their uninvested funds were swept into money market mutual funds. (*Id.*) Plaintiffs further allege that, by sweeping their free credit balances into depository accounts at affiliated banks, Defendants were able to "use their clients' uninvested cash for their own investment or commercial lending." (*Id.* ¶ 7.) Finally, Plaintiffs assert that, although Defendants significantly increased their profits through this modification to the Cash Sweep Programs, they "dramatically reduced the yields paid to their clients on the clients' uninvested cash ...." (*Id.* ¶ 9 (emphasis omitted).)

Plaintiffs contend that, in order to maintain the "massive profits" that resulted from these activities, Defendants concealedthe modifications to their Cash Sweep Programs through a series of misleading statements and omissions. (*Id.* ¶ 18.) Plaintiffs argue that, as a result of this alleged fraudulent scheme, they were induced to remain enrolled in modified Cash Sweep Programs, despite the fact that there were more lucrative investments available for their uninvested free credit balances. Based on these allegations, Plaintiffs seek an unspecified amount of "damages sustained as a result of Defendants' wrongdoing, in an amount to be determined at trial ...." (*Id.* ¶ 330(b).)

1. The Parties

Plaintiffs are seven retail investors who maintained brokerage accounts with one or more of Defendants at the time the SAC was filed; six hail from New York, and the seventh resides in North Carolina. (*Id.* ¶¶ 30–36.)[5] Plaintiffs bring claims on behalf of a putative class of "all those who maintained a brokerage account with one or more of the ... Defendants where the clients' uninvested cash was automatically swept into a Defendant controlled and affiliated bank account paying interest below prevailing money market yields." (*Id.* ¶ 54.)

Plaintiffs name as Defendants five groups of banks, each of which includes three types of entities: (1) a principal banking entity that functions as a parent firm (collectively, the "Parent Defendants"); (2) an affiliated broker-dealer subsidiary

(collectively, the "Brokerage Defendants"); and (3) a series of affiliated subsidiaries that function as depository banks (collectively, the "affiliated Sweep Bank Defendants" or "affiliated Sweep Banks").

Parent Defendant Merrill Lynch & Co., Inc. is the parent of three wholly owned subsidiaries named in this action: Brokerage Defendant Merrill Lynch, Pierce, Fenner & Smith Inc., and affiliated Sweep Bank Defendants Merrill Lynch Bank, USA and Merrill Lynch Bank & Trust Co., FSB (collectively, the "Merrill Lynch Defendants"). (*Id.* ¶¶ 38–40.)

Parent Defendant Morgan Stanley is the parent of three wholly owned subsidiaries named in this action: Brokerage Defendant Morgan Stanley & Co., Inc., and affiliated Sweep Bank Defendants Morgan Stanley Bank and Discover Bank (collectively, the "Morgan Stanley Defendants"). (*Id.* ¶¶ 41–43.)[6]

***3** Parent Defendant Citigroup, Inc. is the parent to four wholly owned subsidiaries named in this action: Brokerage Defendant Citigroup Global Markets, Inc., and affiliated Sweep Bank Defendants Citibank N.A., Citicorp Trust Bank, FSB, and Citibank (South Dakota) N.A. (collectively, the "Citigroup Defendants"). (*Id.* ¶¶ 44–46.)[7]

Parent Defendant Charles Schwab Corp. is the parent to three wholly owned subsidiaries named in this action: Brokerage Defendant Charles Schwab & Co., Inc., and affiliated Sweep Bank Defendants Charles Schwab Bank, N.A., and U.S. Trust Company, N.A. (collectively, the "Charles Schwab Defendants"). (*Id.* ¶¶ 47–49.)

Parent Defendant Wachovia Corp. is the parent to three wholly owned subsidiaries named in this action: Brokerage Defendant Wachovia Securities, LLC, and affiliated Sweep Bank Defendants Wachovia Bank N.A. and Wachovia Bank of Delaware, N.A. (collectively, the "Wachovia Defendants"). (*Id.* ¶¶ 50–52.)[8]

2. The Evolution of the Cash Sweep Programs

Plaintiffs' allegations relate to the manner in which Defendants implemented three successive phases of their respective Cash Sweep Programs, which the Court refers to as the "Original Cash Sweep Programs," the "Modified Cash Sweep Programs," and the "Tiered Cash Sweep Programs."

a. The Original Cash Sweep Programs

Beginning in 1977, Defendants began to offer retail investment accounts that included both brokerage services and "bank-like features." (*Id.* ¶ 64.) The Original Cash Sweep Programs were one of the defining features of these types of accounts. (*See id.*) Through these Programs, Defendants used customers' free credit balances to purchase shares of money market mutual funds for those customers on a periodic basis, but still allowed the customers to write checks drawing on the swept funds. (*Id.; see also id.* ¶ 7.)

Plaintiffs allege that, "[u]ntil the late 1990s," the Original Cash Sweep Programs allowed customers to "receive the benefit of money market rates while also maintaining the [free credit balances] in safe and highly liquid investments." (*Id.* ¶ 65.) However, the profits earned by Defendants in connection with the Original Cash Sweep Programs were "generally small" and limited to an " 'expense ratio' that [was] ... less than 1% of the principal." (*Id.*) Plaintiffs further allege that, because the money under the control of a money market mutual fund is held in trust for the benefit of the fund's shareholders, Defendants were not permitted to use their customers' swept funds to raise profitsthrough their other commercial activities. (*See id.*)

b. The Modified Cash Sweep Programs

Beginning in 1997, the Brokerage Defendants began to implement the Modified Cash Sweep Programs. (*Id.* ¶ 66.) In these Programs, the Brokerage Defendants offered customers an alternative to the Original Cash Sweep Programs in which they could have their free credit balances swept into FDIC-insured deposit accounts at affiliated Sweep Banks. (*Id.*) Plaintiffs allege that, although such deposit accounts traditionally pay lower interest rates than money market mutual funds, many of the Brokerage Defendants initially provided interest rates that were similar to the rates that customers had previously received in the Original Cash Sweep Programs. (*Id.*)

***4** However, Plaintiffs assert that, at some point after implementing the Modified Cash Sweep Programs, "it became irresistible to the Defendants to pay [their customers]

substantially lower rates" on funds deposited at affiliated Sweep Banks and "to *restrict* access to alternative money market sweep accounts ...." (*Id.* (emphases in original).) In response to this incentive, Defendants allegedly "dramatically reduced the yields paid to their clients on the clients' uninvested cash to well below money market yields—to even as low as less than 1%." (*Id.* ¶ 9 (emphasis omitted).)

Plaintiffs allege that, at the same time that Defendants began to pay their customers lower interest rates on their free credit balances, Defendants were seeking to enhance their own profits. (*See id.*) Specifically, as part of the Modified Cash Sweep Programs, when customers' funds were deposited at affiliated Sweep Banks, Defendants were able "to use their clients' uninvested cash for their own investment or commercial lending." (*Id.* ¶ 7.) These commercial endeavors allegedly resulted in substantially higher returns than Defendants received through the Original Cash Sweep Programs, and Plaintiffs assert that the net result of the transition to the Modified Cash Sweep Programs was that Defendants "reap[ed] massive profits at their clients' expense ...." (*Id* . ¶ 11.)

c. The Tiered Cash Sweep Programs

In approximately June 2001, Defendants began to introduce the Tiered Cash Sweep Programs. (*Id.* ¶ 67.) In the Tiered Cash Sweep Programs, Defendants classified their customers according to "tiers" based on the amount of assets held in their brokerage accounts, and offered progressively lower interest rates on free credit balances to customers in the tiers with fewer assets. (*See id.*)

Plaintiffs allege that Defendants subsequently made further changes to the structure of the Tiered Cash Sweep Programs so that customers in the bottom asset tiers were *precluded* from having their free credit balances swept into money market mutual funds. (*See id.*) In these versions of the Tiered Cash Sweep Programs, some customers were forced to choose between either depositing their free credit balances at affiliated Sweep Banks, or not earning a profit on the uninvested funds in their accounts. (*See id.*)

The Tiered Cash Sweep Programs were allegedly designed to maximize Defendants' financial benefits by taking advantage of theretail brokerage customers who held the least amount of assets in their accounts. (*See id.* ¶ 12.) Plaintiffs allege that Defendants provided their "wealthiest and presumably their most sophisticated clients—who had assets of at least $1 million—... [with] higher money market yields in their bank sweep programs" so that they would "not balk" at the Tiered Cash Sweep Programs. (*Id.*)

Relying on certain Defendants' public filings, Plaintiffs allege that the Tiered Cash Sweep Programs resulted in approximately $186 billion of customers' free credit balances being deposited at the Defendant Sweep Banks and becoming available for use in Defendants' other commercial activities. (*Id.* ¶ 70.) Plaintiffs contend that "Defendants' ability to generate massive profits arose both from the ability to lend and invest client cash at eight percent or higher and from the fact that they were essentially able to create multibillion dollar banks—filled with captive brokerage client depositors —*without* any of the costs normally associated with commercial banking." (*Id.* ¶ 69 (emphasis in original).)

***5** Plaintiffs allege that, in an "attempt to camouflage" this "egregious ... 'client cash grab,' " Defendants implemented the Tiered Cash Sweep Programs through a deceptive scheme that was intended to defraud their customers. (*Id.* ¶ 10.) First, Plaintiffs allege that Defendants issued misleading statements in their advertisements and public websites that caused investors to believe that the Brokerage Defendants would "act not merely as 'stock brokers,' but rather as 'Financial Advisors' who [would] provide a special relationship of trust and confidence wherein the financial interests of the client come first." (*Id.* ¶ 2.) Second, Plaintiffs argue that, by modifying the existing Cash Sweep Program features in their customers' brokerage accounts through "negative consent," Defendants "purposely put[ ] the burden on the client to parse through the[ir] 'Disclosures,' and affirmatively object in order for the sweep programs not to go into effect ...." (*Id.* ¶ 14 (emphasis in original).) Finally, Plaintiffs identify a series of alleged misrepresentations in the documents relating to their brokerage accounts, as well as the supplemental disclosures later issued by Defendants regarding the benefits of and alternatives to the Tiered Cash Sweep Programs. (*See id.* ¶¶ 13, 15–17.)

Based on these contentions, Plaintiffs argue that

> no reader of any of these purported "Disclosures" ... could ever glean from the words used ... that Defendants were obtaining billions of additional dollars in profit by sweeping client cash into Defendant banks as opposed to investing the cash in safe and liquid money market funds; yet were paying their clients far below money market rates for Defendants' use of client cash.

(*Id.* ¶ 14.)

3. The February 2005 NYSE Information Memo

On February 15, 2005, the Member Firm Regulation Division of the New York Stock Exchange ("NYSE") issued Information Memo 05–11 to its member firms. (SAC ¶ 75; *see also* Terry Decl. Ex. B (the "NYSE Info. Mem." or the "Memo").)[9] In the Memo, NYSE expressed concern that changes to its members' Cash Sweep Programs "may be so significant and beyond the ... reasonable expectations of the customer at the time of the prior [brokerage account opening] agreement that without effective subsequent disclosure the use of prior or negative consent is not sufficient." (N.Y.SE Info. Mem. at 2.) The Memo described a series of "best practices"—based on NYSE Rules—that were "designed to safeguard investor interests for [cash sweep] programs currently in place." (*Id.* at 1.)

NYSE suggested that its member firms make a series of disclosures accompanied by a "concise document, preferably on one or two pages, written in plain English and referring customers to places where additional and more detailed disclosure is available." (*Id.* at 3.) NYSE also recommended that its members disclose the terms, conditions, risks, and features of the Cash Sweep Programs, including "conflicts of interest, current interest rates, the manner by which future interest rates will be determined, as well as the nature and extent of ... insurance available." (*Id.*)

***6** However, the Memo stated that, "[w]ith regard to existing sweep programs, it is not intended that member organizations which secured prior consent and made effective subsequent disclosure secure affirmative consent for such programs." (*Id.* at 2 n. 2.) Rather, the Memo instructed that:

> Member organizations which have previously instituted or changed sweep arrangements without providing all of the appropriate disclosures discussed herein should effectively provide customers with those omitted disclosures promptly, but no later than three months after the date of this Information Memo. The utilization of the one or two page, plain English disclosure document discussed herein is required, and if so deemed by the member organization may be sufficient to satisfy these disclosure requirements.

(*Id.* at 5.)

B. Plaintiffs' Specific Allegations Regarding Defendants' Cash Sweep Programs

In this Part, the Court briefly describes Plaintiffs' allegations against each group of Defendants in order to provide a timeline of the events at issue. Defendants' alleged misrepresentations and omissions are discussed below in connection with the Court's analysis of Plaintiffs' common-law fraud claim. *See infra* Part II.B.3.b.

1. The Merrill Lynch Defendants

In approximately 1977, the Merrill Lynch Defendants became the first group of Defendants to make available an Original Cash Sweep Program, which was offered in connection with Merrill Lynch's "Cash Management Account," or "CMA." (SAC ¶ 64.) In March 2000, the Merrill Lynch Defendants began to provide their version of a Modified Cash Sweep Program, and, in June 2001, they introduced a Tiered Cash Sweep Program. (*Id.* ¶¶ 66, 67, 90.) The Merrill Lynch Defendants' Cash Sweep Program was described to customers in two undated documents cited and relied upon by Plaintiffs: the "Merrill Lynch Client Relationship Agreement," and the "Disclosures and Account Agreement" relating to, *inter alia,* the "CMA Financial Service Cash Management Account." (*See, e.g.,* SAC ¶¶ 107–09, 111–12; *see also* Pls.' Merrill Lynch Decl. Exs. 8, 9.)

Additionally, an "Information Statement" issued in 2001 regarding the Merrill Lynch Defendants' Tiered Cash Sweep Program stated that, "[e]ffective June 6, 2001, the interest rates paid to clients with deposits held at the Merrill Lynch Banks" would be determined by Merrill Lynch "based on economic and business conditions, and interest rates will be tiered based upon your relationship with Merrill Lynch as determined by the value of assets in your account(s)." (SAC ¶ 101; *see also* Pls.' Merrill Lynch Decl. Ex. 7.)

Plaintiffs Ronald Kassover and Jerome Silverman allege that, at the time the SAC was filed, they maintained "brokerage account[s]" with the Merrill Lynch Defendants. (SAC ¶¶ 31–32.) Kassover opened a CMA account with the Merrill Lynch Defendants in July 1985, and alleges that, as of December 31, 2006, he was earning 3.20% on the "uninvested cash awaiting investment" in his account. (*Id.* ¶ 31; Musoff Decl. Ex. 3.) Silverman opened a CMA account with the Merrill Lynch Defendants in August 1999, and he alleges that, as of January

31, 2007, he was earning 1.45% interest on his free credit balances. (SAC ¶ 32; Musoff Decl. Ex. 4.)

2. The Morgan Stanley Defendants

***7** The Morgan Stanley Defendants' Original Cash Sweep Program was offered as part of its "Active Assets Account," which was a brokerage account that provided "[p]ractical investment features," "essential cash management services," and "[u]nparalleled reporting" so that customers were "always in control of [their] money." (SAC ¶ 165; *see also* Pls.' Morgan Stanley Decl. Ex. 7.) The "practical investment features" associated with this account included an "[a]utomatic cash sweep," in which "[a]vailable cash balances [we]re automatically swept into bank deposit accounts ... or a money market fund .... " (Pls.' Morgan Stanley Decl. Ex. 8.)

Plaintiffs allege that, in "early September 2005," the Morgan Stanley Defendants provided notice to their customers that they would be implementing a Tiered Cash Sweep Program in November 2005. (*See* SAC ¶¶ 66, 162.) According to a media report regarding the revisions, the Morgan Stanley Defendants' Tiered Cash Sweep Program swept customers' free credit balances into affiliated Sweep Banks, and paid interest to those customers based on the value of the assets they had invested. (*See id.* ¶ 162 (quoting *Investment News*).)[10]

Plaintiffs further allege that, in March 2006, Morgan Stanley issued a "Bank Deposit Program Disclosure Statement." (*Id.* ¶ 168; *see also* Pls.' Morgan Stanley Decl. Ex. 9.) The Disclosure Statement stated that "[u]nder the Bank Deposit Program ..., free credit balances in your Morgan Stanley brokerage account ... will be automatically deposited into deposit accounts" at affiliated Sweep Banks. (*Id.* ¶ 169.) The Disclosure Statement further stated that "[t]he interest rates on the Deposit Accounts will be tiered based upon the value of the eligible assets in your Account ... and deposits, if any, that you have established directly in your name with a Sweep Bank .... " (Pls.' Morgan Stanley Decl. Ex. 9 at 2.)

Plaintiffs Kassover and Arthur Kornblit allege that they maintained "brokerage account[s]" with the Morgan Stanley Defendants. (SAC ¶¶ 31, 35.) Kassover opened an Active Assets Account in October 1999, and alleges that, as of December 31, 2006, he was earning 3.20% on the free credit balance in his account. (*Id.* ¶ 31; Cantor Decl. Ex. B.) Kornblit opened an Active Assets Account in July 2006, and alleges that, as of March 31, 2007, he was earning 1.25% interest. (SAC ¶ 35; Cantor Decl. Ex. C.)

3. The Citigroup Defendants

Defendant Smith Barney, which is now an affiliate of Citigroup, offered a "Financial Management Account" ("FMA") that included a "Daily Sweep" Program that it described as follows: "In an FMA account, your excess funds are never sitting idle. Cash balances of $1 or more are automatically invested into your choice of one or more FDIC-insured, interest-bearing accounts or tax-exempt money funds." (*Id.* ¶ 190.) Smith Barney began offering a Modified Cash Sweep Program in late 1997, and, after Citigroup merged with Salomon Smith Barney, Inc. in September 1998, the free credit balances of the Citigroup Defendants' retail brokerage clients were deposited at affiliated Sweep Banks. (*Id.* ¶ 185.)

***8** The SAC references an undated document authored by the Citigroup Defendants and titled "Important New Account Information," which described "[a]ccount [o]pening [p]rocedures," indicated that a "Client Agreement" was enclosed, and provided information regarding "Sweep Features" associated with the account. (Pls.' Citigroup Decl. Ex. 10.) Additionally, by letter dated August 1, 2006, the Citigroup Defendants notified their customers that they would be implementing a Tiered Cash Sweep Program. (*See* SAC ¶ 192; Pls.' Citigroup Decl. Ex. 8.) The letter was accompanied by a sixteen-page brochure titled "Q & A: Important Information about changes to the [Bank Deposit Program] and to Sweep Options." (SAC ¶ 192; *see also* Pls.' Citigroup Decl. Ex. 8.)

Plaintiffs Carlo DeBlasio and Kassover allege that they maintained "brokerage account[s]" with the Citigroup Defendants. (SAC ¶¶ 30–31.) DeBlasio alleges that, as of March 31, 2007, he was earning 1.41% on his "uninvested cash awaiting investment," and Kassover alleges that, as of December 31, 2006, he was earning 3 .24%. (*Id.* ¶¶ 30–31.)

4. The Charles Schwab Defendants

The Charles Schwab Defendants' Original Cash Sweep Program was known as "Schwab One Interest." (*See* SAC ¶ 131.) These Defendants implemented a Modified Cash

Sweep Program on October 27, 2003, and they issued a "Disclosure Statement for Schwab Cash Features" at some point in 2004 explaining the changes to the Program. (*Id.; see also* Pls.' Charles Schwab Decl. Ex. 14.) The Disclosure Statement indicated that uninvested funds would be deposited at a Charles Schwab-affiliated Sweep Bank. (SAC ¶ 145.) The Disclosure Statement also indicated that, "[g]enerally, clients with greater Household Balances will receive a higher interest rate ...." (*Id.*)

In "early 2005," the Charles Schwab Defendants implemented a Tiered Cash Sweep Program. (*Id.* ¶¶ 132–34.) During 2005, they notified their customers that " '[b]eginning [January 23, 2006], Schwab [would] stop putting uninvested cash in money market funds' even for its *current* customers whose 'household' balances were under $500,000." (*Id.* ¶ 134 (emphasis in original) (quoting the *San Francisco Chronicle*).) Finally, a document titled "Cash Features Disclosure for Individual Investors," which is dated March 2007 and referenced in the SAC, described the available cash management features for the Charles Schwab Defendants' brokerage customers. (*See* Pls.' Charles Schwab Decl. Ex. 16.)

Plaintiffs Deborah Torres and Michael R. Schirripa allege that they maintained "brokerage account[s]" with the Charles Schwab Defendants. (SAC ¶¶ 33–34.) Torres opened a "Schwab Rollover IRA" Account in November 2005, and alleges that, as of March 31, 2007, she was earning 2.55% on the free credit balance in her account. (*Id.* ¶ 33; *see also* Schachter Decl. Ex. C.) Schirripa opened a "Schwab Custodial" Account in February 1998, and a "Schwab One" Account in April 2004. (Schachter Decl. Exs. A, B.) He alleges that, as of March 31, 2007, he was earning 0.965%, and that on or about May 1, 2007 the Charles Schwab Defendants "phased out [their] Schwab One Interest feature .... " (SAC ¶ 34.)

5. The Wachovia Defendants

***9** The Wachovia Defendants offered a "Command Asset Program," which they advertised as including a "[d]aily cash sweep with [a] competitive rate." (*Id.* ¶ 216.) During the fourth quarter of 2003, they instituted a Modified Cash Sweep Program, and on January 23, 2006, the Wachovia Defendants began to offer a Tiered Cash Sweep Program. (*Id.* ¶¶ 224, 227.) The Wachovia Defendants provided information regarding their Cash Sweep Program through an undated "Cash Sweep Program Disclosure Statement," which is referenced in the SAC. (*Id.* ¶¶ 230–31; *see also* Pls.' Wachovia Decl. Exs. 12–13.)[11]

Plaintiff Carol Washburn alleges that she maintained a "brokerage account" with the Wachovia Defendants. (SAC ¶ 36.) The account was opened in August 2002, and, as of February 28, 2006, Washburn was earning 3.29% on her "uninvested cash awaiting investment." (SAC ¶ 36; *see also* Terry Decl. Ex. C.)

C. Procedural History

Plaintiffs commenced this putative class action by filing a complaint on January 12, 2007. (Doc. No. 1.) The case was originally assigned to the Honorable Victor M. Marrero, District Judge. (*Id.*) Plaintiffs filed an amended complaint on May 1, 2007 (Doc. No. 5), and the SAC was filed on June 11, 2007 (Doc. No. 8).

This matter was reassigned to the undersigned on October 1, 2007. (Doc. No. 30.) Defendants filed the instant motions on November 12, 2007, and briefing on the motions was completed on March 6, 2008. (Doc. Nos.78–85.)

II. Discussion

Plaintiffs bring claims for violations of the IAA and § 349, as well as common-law claims for fraud, negligent misrepresentation, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, negligence, breach of contract, and unjust enrichment.[12]

For the reasons set forth below, the Court concludes that: (1) with the exception of the § 349 claim, Plaintiffs have not pleaded their claims with the particularity required by Rule 9(b), and (2) all of Plaintiffs' claims are subject to dismissal pursuant to Rule 12(b)(6). Accordingly, Defendants' motions are granted, and the SAC is dismissed.

A. Rule 9(b)

Reviewing the SAC in its entirety, the Court concludes that, with the exception of the § 349 claim, each of Plaintiffs' claims sounds in fraud and therefore is subject to a heightened pleading standard. *See* Fed.R.Civ.P. 9(b). However, Plaintiffs'

allegations lack the particularity required by Rule 9(b). Therefore, the Court dismisses Plaintiffs' claims for violations of the IAA, common-law fraud, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, negligent misrepresentation, negligence, breach of contract, and unjust enrichment.

1. Applicable Law

"While the rules of pleading in federal court usually require only 'a short and plain statement' of the plaintiff's claim for relief, averments of fraud must be 'state[d] with particularity.' " *In re PXRE Group, Ltd., Sec. Litig.,* 600 F.Supp.2d 510, 524 (S.D.N.Y.2009) (quoting Fed.R.Civ.P. 8, 9(b)); *see also ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.,* 493 F.3d 87, 98–99 (2d Cir.2007). The language of Rule 9(b) "is cast in terms of the conduct alleged, and is not limited to allegations styled or denominated as fraud or expressed in terms of the constituent elements of a fraud cause of action." *Rombach v. Chang,* 355 F.3d 164, 171 (2d Cir.2004). "This pleading constraint serves to provide a defendant with fair notice of a plaintiff's claim, safeguard his reputation from improvident charges of wrongdoing, and protect him against strike suits." *ATSI Commc'ns,* 493 F.3d at 99 (citing *Rombach,* 355 F.3d at 171).

***10** In order to satisfy Rule 9(b), the plaintiff must: " '(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent.' " *Rombach,* 355 F.3d at 170 (quoting *Mills v. Polar Molecular Corp.,* 12 F.3d 1170, 1175 (2d Cir.1993)); *see also ATSI Commc'ns,* 493 F.3d at 99. "Allegations that are conclusory or unsupported by factual assertions are insufficient." *ATSI Commc'ns,* 493 F.3d at 99. Moreover, "[w]here multiple defendants are asked to respond to allegations of fraud, the complaint should inform each defendant of the nature of his alleged participation in the fraud." *DiVittorio v. Equidyne Extractive Indus., Inc.,* 822 F.2d 1242, 1247 (2d Cir.1987); *see also Mills,* 12 F.3d at 1175 ("Rule 9(b) is not satisfied where the complaint vaguely attributes the alleged fraudulent statements to 'defendants.' ").

2. Analysis

This case involves "classic fraud allegations, that is, allegations of misrepresentations and omissions made with intent to defraud ...." *In re Ultrafem Inc. Sec. Litig.,* 91 F.Supp.2d 678, 691 (S.D.N.Y.2000). The gravamen of the SAC is that

> Defendants engaged in *deceptive and misleading* "cash sweep" programs ... whereby Defendants, acting in the role and guise of Plaintiffs' "Financial Advisors" caused billions of their clients' uninvested cash to be automatically swept ... into Defendants' owned and controlled bank accounts, so that [D]efendants were able to use their clients' uninvested cash for *their own profit* ....

(SAC ¶ 1 (first emphasis added).) Specifically, Plaintiffs allege that

> [s]o egregious was Defendants' "client cash grab" that Defendants *well understood* that they needed to take a number of *well calculated steps*—including a mixture of *blatant misrepresentations* and obtuse and misleading disclosures—in order to attempt to camouflage or conceal the deceit and fraud from their own clients and the public.

(*Id.* ¶ 10 (emphasis added).) Elaborating on this theory, Plaintiffs further allege that "Defendants, by their *affirmative misrepresentations,* held themselves out as fiduciaries with their loyalties and trust to ... enhance their clients' assets and accounts, including their cash holdings." (*Id.* ¶ 6 (emphasis added).)

As these quotations from the SAC make clear, this action is based on averments of fraud. In light of this general theory of the case, there is little question that four of Plaintiffs' claims are subject to the requirements of Rule 9(b): common-law fraud; violations of the IAA (*see* Pls.' Mem. at 36 (referring to Defendants' alleged "scheme to defraud clients" under the IAA)); breach of fiduciary duty (*see* SAC ¶¶ 278, 285 (alleging that "Defendants participated in a false and deceptive scheme" and that their "conduct was willful, wanton, and reckless")); and aiding and abetting a breach of fiduciary duty (*See id.* ¶ 288 (alleging that the Parent and Sweep Bank Defendants "knowingly induced ... fiduciary breaches" by, *inter alia,* "approving or ratifying both the bank sweep programs ... and the disclosures" regarding the Programs)). *See, e.g., Frota v. Prudential–Bache Sec.,* 639 F.Supp. 1186, 1193 (S.D.N.Y.1986) ("Rule 9(b) extends to all averments of fraud or mistake, whatever may be the theory of legal duty—statutory, common law, tort, contractual, or fiduciary."). Plaintiffs offer no argument to the contrary with respect to these claims, which therefore must be pleaded with particularity pursuant to Rule 9(b).

***11** Superficially, Plaintiffs' claims for negligent misrepresentation, negligence, breach of contract, and unjust enrichment present closer questions. However, the Second Circuit has noted with approval the Ninth Circuit's rejection of a plaintiff's "effort to characterize claims by the label used in the pleading" because " '[t]hese nominal efforts are unconvincing where the gravamen of the complaint is plainly fraud and no effort is made to show any other basis for the claims ....' " *Rombach,* 355 F.3d at 172 (quoting *In re Stac Elecs. Sec. Litig .,* 89 F.3d 1399, 1405 n. 2 (9th Cir.1996)). Just so here. To the extent any of Plaintiffs' claims are "premised on fraudulent conduct, the facts alleging that conduct are subjected to the higher pleading standard of [Rule 9(b)]." *Sec. Investor Prot. Corp. v. Stratton Oakmont, Inc.,* 234 B.R. 293, 311 (Bankr.S.D.N.Y.1999); *see also Daly v. Castro Llanes,* 30 F.Supp.2d 407, 414 (S.D.N.Y.1998) (citing *O'Brien v. Nat'l Prop. Analysts Partners,* 936 F.2d 674, 676 (2d Cir.1991)). Consequently, "[t]he ultimate question is whether, at its core, the [SAC] is predicated on allegations of fraudulent conduct." *Ladmen Partners, Inc. v. Globalstar, Inc.,* No. 07 Civ. 976(LAP), 2008 WL 4449280, at *11 (S.D.N.Y. Sept.30, 2008); *see also Rombach,* 355 F.3d at 171 ("[Rule 9(b)] is cast in terms of the conduct alleged, and is not limited to allegations styled or denominated as fraud or expressed in terms of the constituent elements of a fraud cause of action."); *Matsumura v. Benihana Nat. Corp.,* 542 F.Supp.2d 245, 252 (S.D.N.Y.2008) (holding that Rule 9(b) applied to all claims in a pleading that contained a "quintessential averment of fraud" and that, "to the extent the plaintiffs have alleged a non-fraud predicate for any of their claims, they have made no effort to meaningfully distinguish the fraud allegations in the amended complaint ..."); *In re Rezulin Prods. Liab. Litig.,* 133 F.Supp.2d 272, 285 (S.D.N.Y.2001) ("[A]lthough plaintiffs have characterized their claims as being for negligence, in substance they charge fraud.").

Plaintiffs have made, at most, a half-hearted effort to articulate a non-fraudulent basis for their claims for negligent misrepresentation, negligence, breach of contract, and unjust enrichment. Each of Plaintiffs' claims incorporates by reference all of the allegations in the SAC and is predicated on their allegations of affirmative representations by Defendants regarding the nature of the Cash Sweep Programs. (SAC ¶¶ 247, 255, 261, 270, 277, 286, 292, 298, 303.) "[W]here the complaint incorporates by reference prior allegations of fraud into other claims traditionally not perceived to be grounded in fraud, those claims must then be pleaded according to [Rule 9(b)]." *Stratton Oakmont,* 234 B.R. at 311; *see also ICD Holdings S.A. v. Frankel,* 976 F.Supp. 234, 246 n. 53 (S.D.N.Y.1997); *cf. In re Alstom SA Sec. Litig.,* 406 F.Supp.2d 402, 410 (S.D.N.Y.2005) ("Plaintiffs cannot so facilely put the fraud genie back in the bottle."). Therefore, the Court looks to the gravamen of Plaintiffs' allegations, rather than the labels of their claims, to determine the applicability of Rule 9(b).

***12** With respect to Plaintiffs' claim for negligent misrepresentation, the Second Circuit has expressly left open the question of whether such a claim is subject to Rule 9(b)'s pleading requirements. *See Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y.,* 375 F.3d 168, 188 (2d Cir.2004). However, "[d]istrict court decisions in this Circuit have held that the Rule is applicable to such claims ...." *Id.* (citing *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y.,* No. 02 Civ. 1312(LMM), 2003 WL 21305355, at *4 (S.D.N.Y. June 5, 2003) (collecting cases)). Therefore, contrary to Plaintiffs' argument (Pls.' Mem. at 54), their negligent misrepresentation claim is not, as a matter of law, immune from Rule 9(b)'s particularity requirements. Moreover, this claim, as pleaded, is based on the "false and misleading" nature of Defendants' alleged "misrepresentations, concealment and omissions of material facts ...." (SAC ¶ 304.) In light of Plaintiffs' theory of this case and their contentions regarding the manner in which Defendants allegedly made misstatements and omissions, the Court concludes that the negligent misrepresentation claim must be pleaded with particularity.

This reasoning also applies to Plaintiffs' claims for negligence, breach of contract, and unjust enrichment. In their negligence claim, Plaintiffs allege that the Brokerage Defendants owed them a general duty of care as to the "deployment of 'sweep' monies," that the Brokerage Defendants violated these duties by, *inter alia,* "making the misrepresentations and omissions set forth" in the SAC, and that this conduct "was, *at minimum,* negligent." (*Id.* ¶¶ 293–95 (emphasis added).) Neither labeling the claim as one of negligence nor offering this "at minimum" caveat is sufficient to avoid the application of Rule 9(b).

In their breach of contract claim, Plaintiffs allege that, "by making the misrepresentations and omissions set forth" in the SAC, the Brokerage Defendants breached the implied covenant of good faith and fair dealing. (*See id.* ¶ 273; *see also* Pls.' Mem. at 57–58.) Finally, Plaintiff's unjust enrichment claim is based on the same predicate allegations relating to a fraudulent scheme, which purportedly "yielded enormous ill-gotten profits." (SAC ¶ 301.) Therefore, because

these claims are based on the same allegations of intentional misrepresentations and omissions by Defendants that are described throughout the SAC, they are subject to Rule 9(b).[13]

The SAC alleges that Defendants' conduct exceeded mere negligence, and rose to the level of "calculated" and intentional misdeeds. (*Id.* ¶ 10.) Rule 9(b) requires that where, as here, these types of allegations are levied, the defendants named in the plaintiff's claims be afforded notice of the bases for the plaintiff's contentions. Accordingly, with the exception of Plaintiffs' claim under § 349, Plaintiffs' claims must be pleaded with particularity under Rule 9(b).

***13** Turning to the application of Rule 9(b), the structure of the SAC is crucial to the analysis. In the SAC, Plaintiffs define five short forms that include pairings of Parent Defendants and Brokerage Defendants: "Merrill Lynch" (SAC ¶¶ 38–39); "Morgan Stanley" (*id.* ¶¶ 41–42); "Smith Barney" (*id.* ¶¶ 44–45 (collectively referring to Defendants Citigroup, Inc. and Citigroup Global Capital Markets Inc.)); "Schwab" (*id.* ¶¶ 47–48); and "Wachovia" (*id.* ¶¶ 50–51). Plaintiffs' definitions of these short forms do not include the Sweep Bank Defendants. Instead, Plaintiffs identify in separate paragraphs the Sweep Bank Defendants that are affiliated with each of the five pairings of Parent and Brokerage Defendants. (*See id.* ¶¶ 40, 43, 46, 49, 52.) However, when presenting allegations regarding misstatements and other conduct by Defendants (*see* Pls.' Mem. at 39–40), Plaintiffs attribute all such acts to the respective pairings of Parent and Brokerage Defendants. (*See, e.g., id.* ¶¶ 81, 120, 154, 176, 208.)

The SAC's presentation of allegations in this fashion is insufficient as a matter of law with respect to the claims to which Rule 9(b) is applicable. First, Plaintiffs have not adequately pleaded fraudulent misstatements or omissions by the Sweep Bank Defendants. Based on Plaintiffs' allegations, the Sweep Bank Defendants were little more than passive recipients of the free credit balances that were swept out of accounts maintained by the Brokerage Defendants. Indeed, not a single allegation in the 330–paragraph SAC directly identifies a statement or act by the Sweep Bank Defendants, and the vast majority of the references in the pleading to these Defendants appear in quotations that Plaintiffs attribute to other Defendants. (*See, e.g.,* SAC ¶¶ 99, 202.) Plaintiffs offer no explanation for this deficiency. Accordingly, with the exception of the § 349 claim, Plaintiffs' claims against the Sweep Bank Defendants are dismissed pursuant to Rule 9(b).

Second, to the extent the SAC does contain allegations regarding fraudulent misstatements, omissions, and other misconduct by Defendants, Plaintiffs attribute such events to Parent–Brokerage Defendant pairings rather than to specific parties. Such allegations do not satisfy Rule 9(b). Plaintiffs " 'may not rely upon blanket references to acts or omissions by all of the defendants, for each defendant named in the complaint is entitled to be [apprised] of the circumstances surrounding the fraudulent conduct with which he individually stands charged.' " *Am. Fin. Int'l Group–Asia, L.L.C. v. Bennett,* No. 05 Civ. 8988(GEL), 2007 WL 1732427, at *7 (S.D.N.Y. June 14, 2007) (quoting *Red Ball Interior Demolition Corp. v. Palmadessa,* 874 F.Supp. 576, 584 (S.D.N.Y.1995)); *see also Mills,* 12 F.3d at 1175; *DiVittorio,* 822 F.2d at 1247; *Filler v. Hanvit Bank,* Nos. 01 Civ. 9510, 02 Civ. 8251(MGC), 2003 WL 22110773, at *3 (S.D.N.Y. Sept. 12, 2003) (finding that the plaintiffs had failed to meet the requirements of Rule 9(b) because they failed to "make allegations with respect to each defendant, but instead refer [red] only generally to the defendants as 'the Banks' or 'the Korean Banks' "); *Ellison v. Am. Image Motor Co., Inc.,* 36 F.Supp.2d 628, 640–41 (S.D.N.Y.1999); *Silva Run Worldwide Ltd. v. Gaming Lottery Corp.,* No. 96 Civ. 3231(RPP), 1998 WL 167330, at *11 (S.D.N.Y. Apr.8, 1998); *Primavera Familienstiftung v. Askin,* 173 F.R.D. 115, 126 (S.D.N.Y.1997); *Pallickal v. Tech. Int'l Ltd.,* No. 94 Civ. 5738(DC), 1996 WL 153699, at *1 (S.D.N.Y. Apr.3, 1996); *Manela v. Gottlieb,* 784 F.Supp. 84, 87 (S.D.N.Y.1992).

***14** Lastly, Plaintiffs make almost no effort to identify the place and time that these alleged misrepresentations were made to them, and Plaintiffs' allegations regarding why the statements were materially misleading are deficient. *See, e.g., Ben Hur Moving & Storage, Inc. v. Better Bus. Bureau,* No. 08 Civ. 6572(JGK), 2008 WL 4702458, at *4 (S.D.N.Y. Oct.3, 2008) ("The plaintiff's complaint fails [the Rule 9(b)] standard because the allegations in the complaint do not specify the time, place, [or] speaker ... of the misrepresentations that were allegedly made through the mails and over the Internet."). Specifically, the Court finds unavailing Plaintiffs' assertions that Defendants' statements were "materially false and misleading" because: (1) Defendants' retail brokerage customers were offered "no alternative vehicles for uninvested cash" (*see, e.g.,* SAC ¶ 104); (2) "no *bona fide* disinterested 'Financial Advisor' would ever recommend" enrolling in the Cash Sweep Programs (*see, e.g., id.* ¶ 118); and (3) Defendants failed to disclose the amount of their profits from these Programs (*see, e.g., id.* ¶ 115). Plaintiffs have not pleaded facts suggesting

that Defendants were under an obligation to provide them with investment advice, *see infra* Part II.B.2.b (discussing Plaintiffs' IAA claim), and Defendants did not engage in a material omission by failing to disclose the precise amount of the profits they earned in connection with their respective Cash Sweep Programs, *see infra* Part II.B.3.c.(2) (concluding that this alleged omission was immaterial as a matter of law). Moreover, it is entirely unclear how these alleged omissions rendered fraudulent Defendants' disclosures regarding the mechanics of their respective Cash Sweep Programs, such as interest rates, the availability of FDIC insurance, and the manner in which Defendants earned money by providing these services. *See ATSI Commc'ns,* 493 F.3d at 99 (noting that "[a]llegations that are conclusory or unsupported by factual assertions are insufficient" to satisfy Rule 9(b)); *cf. Powe v. Cambium Learning Co.,* No. 08 Civ.1963(JGK), 2009 WL 2001440, at *7 (S.D.N.Y. June 9, 2009). Therefore, as to the Parent and Brokerage Defendants, Plaintiffs have failed to meet the requirements of Rule 9(b).

In sum, both the SAC and Plaintiffs' arguments in opposition to Defendants' motions make clear that their claims sound in fraud. As such, Plaintiffs must plead with particularity their claims for violations of the IAA, common-law fraud, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, negligent misrepresentation, negligence, breach of contract, and unjust enrichment. For the reasons stated above, Plaintiffs have not done so. Accordingly, these claims are dismissed pursuant to Rule 9(b).

B. Rule 12(b)(6)

In addition to the SAC's lack of particularized allegations against each Defendant, Plaintiffs' allegations are also subject to three general deficiencies. First, Plaintiffs have failed to offer allegations capable of supporting a plausible inference that they had anything more than a nondiscretionary broker-client relationship with any Defendant. Second, although the Brokerage Defendants owed Plaintiffs a transaction-specific duty of care, Plaintiffs have not alleged that this duty was breached through Defendants' implementation of the Cash Sweep Programs. Third, Plaintiffs have not identified any materially misleading statements, or omissions by Defendants in contravention of an existing disclosure obligation. Therefore, as discussed in more detail below, these broad defects in the SAC prevent Plaintiffs from adequately pleading claims for the relief they seek. Accordingly, Defendants' motions to dismiss all of Plaintiffs' claims pursuant to Rule 12(b)(6) are granted.

1. Legal Standard

***15** On a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court must draw all reasonable inferences in Plaintiffs' favor. *ATSI Commc'ns,* 493 F.3d at 98; *Grandon v. Merrill Lynch & Co.,* 147 F.3d 184, 188 (2d Cir.1998). Nonetheless, "[f]actual allegations must be enough to raise a right of relief above the speculative level, on the assumption that all of the allegations in the complaint are true ...." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (citation and emphasis omitted). "Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Ashcroft v. Iqbal,* 556 U.S. 662, ——, 129 S.Ct. 1937, 1950, 173 L.Ed.2d 868 (2009). Therefore, this standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* at 1949.

Ultimately, Plaintiffs must allege "enough facts to state a claim to relief that is plausible on its face." *Twombly,* 550 U .S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal,* 129 S.Ct. at 1949. On the other hand, "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.' " *Id.* (quoting *Twombly,* 550 U.S. at 557) (internal citation omitted). Applying this standard, if Plaintiffs "have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." *Twombly,* 550 U.S. at 570.

2. Investment Advisers Act

In their first cause of action, Plaintiffs assert that the Brokerage Defendants' alleged misrepresentations and omissions regarding the Modified and Tiered Cash Sweep Programs breached "fiduciary dut[ies]" owed to their customers under the IAA. (*See* SAC ¶¶ 247–251.) Plaintiffs assert that they are entitled to have their "bank sweep account

agreements" voided pursuant to 15 U.S.C. § 80b–15(b), and they seek an accounting, restitution, and disgorgement of "all monies and fees wrongfully obtained by Defendants and their affiliates pursuant to the bank sweep account program ...." (SAC ¶¶ 252, 254.)

For the reasons set forth below, the Court concludes that Plaintiffs' allegations do not support the existence of an investment advisory relationship under the IAA as to any Defendant, and that the relief Plaintiffs seek is unavailable in a private lawsuit under the statute. Therefore, Plaintiffs have failed to state a claim for alleged violations of the IAA, and this cause of action is dismissed pursuant to Rule 12(b)(6).

a. Applicable Law

"[T]here exists a limited private remedy under the Investment Advisers Act of 1940 to void an investment advisers contract, but ... the Act confers no other private causes of action, legal or equitable." *Transamerica Mortgage Advisors, Inc. v. Lewis,* 444 U.S. 11, 24, 100 S.Ct. 242, 62 L.Ed.2d 146 (1979). Section 206 of the IAA states that:

> ***16** It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly ... to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

15 U.S.C. § 80b–6(2). This provision is given "teeth" by section 215 of the Act, which "provides that any investment adviser contracts whose formation or performance would violate the provisions of the IAA 'shall be void.' " *Norman v. Salomon Smith Barney, Inc.,* 350 F.Supp.2d 382, 388 (S.D.N.Y.2004) (quoting 15 U.S.C. § 80b–15).

In order to maintain a private action under section 215 of the IAA, a plaintiff must allege that he or she entered into a contract for investment advisory services with an investment adviser. *See Kassover v. UBS AG,* No. 08 Civ. 2753(LMM), 2008 WL 5331812, at *3 (S.D.N.Y. Dec.19, 2008); *Clark v. Nevis Capital Mgmt., LLC,* No. 04 Civ. 2702(RWS), 2005 WL 488641, at *13 (S.D.N.Y. Mar.2, 2005) ("Only parties to an investment advisory contract may sue for rescission under section 215."). Moreover, the only relief available to a private litigant under the IAA is rescission and "restitution of the consideration given under the contract." *Transamerica Mortgage Advisers,* 444 U.S. at 25 n. 14. Therefore, a plaintiff may not seek "compensation for any diminution in the value of the rescinding party's investment alleged to have resulted from the adviser's action or inaction." *Id.; see also Kassover,* 2008 WL 5331812, at *5.

b. Analysis

Plaintiffs' IAA claim is deficient in at least two respects: (1) Plaintiffs do not allege that they received investment advisory services from Defendants, and they have not identified investment advisory contracts to which they were parties; and (2) in the absence of a voidable investment advisory contract, the relief sought by Plaintiffs is unavailable in a private right of action under the IAA.

Both the named Plaintiffs and the members of the putative class held nondiscretionary *brokerage* accounts with Defendants. (*See* SAC ¶¶ 30–36, 54.) That reality notwithstanding, Plaintiffs attempt to plead the existence of an investment advisory relationship with Defendants through the allegation that they entered into "express, implied or assumed cash sweep contracts" with the Brokerage Defendants. (*Id.* ¶ 248.) However, "[p]laintiffs must establish by more than conclusory allegations that the defendant was an investment adviser." *Hall v. Paine, Webber, Jackson & Curtis, Inc.,* No. 82 Civ. 2840(DNE), 1984 WL 812, at *2 (S.D.N.Y. Aug.27, 1984). The opening of brokerage accounts does not automatically give rise to an investment advisory relationship under the IAA. *See Kassover,* 2008 WL 5331812, at *4 (dismissing IAA claim where "the contracts [p]laintiffs entered into and the only ones referred to in the Amended Complaint (and therefore properly considered in a motion to dismiss) are 'brokerage' agreements"). Thus, although there may have been agreements between Plaintiffs and the Brokerage Defendants regarding the Cash Sweep Programs, it does not necessarily follow that the agreements in question provided for investment advisory services covered by the IAA.

***17** Indeed, the language of the documents provided to Plaintiffs in connection with their accounts indicates that no Defendant undertook to provide investment advisory services:

- The Merrill Lynch Defendants' "Disclosures and Account Agreement" regarding its CMA account disclaimed the existence of any right to unsolicited investment advisory services in relation to customers' free credit balances:

"[N]either your Financial Advisor nor Merrill Lynch undertakes any obligation to ensure you receive any particular rate of interest or to advise you to invest your cash or bank deposit balances in higher yielding cash alternatives." (SAC ¶ 111.)

- The Morgan Stanley Defendants issued a March 2006 "Active Assets Account Client Agreement," which stated that "[t]his Account is a brokerage account and is not regulated by the Investment Advisors [sic] Act of 1940. The services and tools we offer in connection with this Account are brokerage tools." (Cantor Decl. Ex. D at 3.)

- The Citigroup Defendants' "Important New Account Information" document, which is relied on by Plaintiffs in the SAC (*see, e.g.,* SAC ¶ 202), stated that the "Smith Barney AssetOne account is a brokerage account and not an advisory account. Smith Barney's interests may not be the same as yours." (Pls.' Citigroup Decl. Ex. 10 at 71.) The document also warned customers that, "[i]f you decide to open an investment advisory account, we will provide you with more information regarding these services ...." (*Id.* at 3.)

- The Charles Schwab Defendants' "Schwab One Brokerage Account Application" listed its Tiered Cash Sweep Program as a "Brokerage Feature[ ]," and specifically stated that: "You agree that you ... are solely responsible for investment decisions in your Account.... Unless Schwab otherwise agrees with you in writing, Schwab does not have any discretionary authority or obligation to review or make recommendations for the investment of securities or cash in your Account." (Pls.' Charles Schwab Decl. Ex. 17 at 3, 7.)

- The Wachovia Defendants' "MarketLink Investor's Account Opening Form," which was completed by Plaintiff Carol Washburn—the only named Plaintiff who alleges that she maintained an account at Wachovia—stated that "[a]ll transactions will be done only on my order or the order of my authorized delegate ...." (Terry Decl. Ex. D at 3.)

In their opposition to Defendants' motions, Plaintiffs argue that their Cash Sweep Program " 'contracts' consisted of disclosures approved—purportedly—by way of negative consent." (Pl.'s Mem. at 8 n. 7.) However, rather than providing investment advice regarding topics that would bring Defendants within the IAA's definition of "investment adviser"—such as, "the value of securities" or the "advisability of investing in ... securities," 15 U.S.C. § 80b–2(11)—the disclosure documents relating to Defendants' Modified and Tiered Cash Sweep Programs amended the terms of the features described in Plaintiffs' account agreements. These disclosure documents did not provide investment advice that brought the agreements within the purview of the IAA. *See Kassover,* 2008 WL 5331812, at *4 (finding that the plaintiffs' allegation that the defendant "recommended [that the] [p]laintiffs invest in [auction rate securities] is insufficient to infer an investment advisory agreement in the context of a non-discretionary brokerage account"). In fact, Defendants warned Plaintiffs that they should do their own research and seek additional advice if necessary:

***18** • Merrill Lynch Defendants: "You should review your account statement and speak to your Financial Advisor ... to determine current [interest] rates. You should also compare the interest rates, account charges and other features with other accounts, cash sweep programs, and alternative investments offered by Merrill Lynch or other institutions." (Pls.' Merrill Lynch Decl. Ex. 7 at 1.)

- Morgan Stanley Defendants: "You should compare the terms, interest rates, required minimum amounts, and other features of the Deposit Accounts with other deposit accounts and alternative cash investments. You may obtain information with respect to the current interest rates and interest rate tiers by contacting your Financial Advisor or accessing Morgan Stanley's public Web site ...." (Pls.' Morgan Stanley Decl. Ex. 9 at 3.)

- Citigroup Defendants: "You may obtain information about your Deposit Accounts, including balances, the current interest rate and the names and priority of the other Affiliated Program Banks at which Deposit Accounts are currently available by contacting your Financial Advisor." (Pls.' Citigroup Decl. Ex. 8 at 12.)

- Charles Schwab Defendants: "You should compare the terms, interest rates, required minimum amounts, and other features of the Bank Deposit Feature with other accounts and alternative investments ." (Pls.' Charles Schwab Decl. Ex. 14 at 9.)

- Wachovia Defendants: "You must monitor and determine the best sweep option for you under this program.... Wachovia Securities does not have any duty to monitor the Cash Sweep Option for your account or make

recommendations about, or changes to, the Sweep Program that might be beneficial to you." (SAC ¶ 237.)

Apart from the allegations relating to these disclosure documents, no Plaintiff alleges that any specific interaction with a Brokerage Defendant took place that rose to the level of advice regarding investment in securities.

In light of Plaintiffs' failure to identify an investment advisory contract or other investment advisory services that they received from Defendants, it is of no moment that, generally speaking, the Brokerage Defendants registered some of their "Financial Advisors" as "Investment Advisers" under the IAA. *See Norman,* 350 F.Supp.2d at 388 (noting that the IAA provides "no remedy for plaintiffs who are not investor-clients" or for "conduct that is not pursuant to an investor-adviser contract"); *Reserve Mgmt. Corp. v. Anchor Daily Income Fund, Inc.,* 459 F.Supp. 597, 608 (S.D.N.Y.1978) ("It is clear that an advisor/client relationship is essential to any action brought under Section 206."). Therefore, Plaintiffs cannot maintain a private cause of action under the IAA to void the agreements relating to the Cash Sweep Program features in their brokerage accounts because these contracts were not "investment advisory contracts" for purposes of the IAA.

In addition to the lack of allegations supporting an inference that an investment advisory relationship existed between Plaintiffs and Defendants, the relief Plaintiffs seek is unavailable in a private cause of action under the IAA. "The only remedy available under the Advisers Act is rescission of the investment advisory contract and restitution of consideration paid for investment advisory services." *Kassover,* 2008 WL 5331812, at *5. In their IAA claim, Plaintiffs seek: (1) "a declaratory judgment that the sweep account agreements with the Class are void"; (2) "an accounting and restitution on behalf of the Class of all monies and fees wrongfully obtained by Defendants and their affiliates pursuant to the bank sweep account program[s]"; and (3) "disgorgement of all profits made by the Brokerage Defendants ...." (SAC ¶ 254 .) Yet, because Plaintiffs have not identified an investment advisory contract in their allegations, there is no agreement to declare void or to rescind under the IAA. Moreover, as Plaintiffs have not alleged that they received investment advisory services, it is not surprising that the SAC lacks allegations regarding consideration paid *by Plaintifs* for such services. Indeed, the only fees alleged to have been paid by Plaintiffs are the general fees associated with their brokerage accounts. (*See, e.g., id.* ¶ 249.) Such fees are not recoverable in a private cause of action under the IAA. *See Transamerica Mortgage Advisers,* 444 U .S. at 24 n. 14. Similarly, Plaintiffs cannot use a private cause of action under the IAA to obtain a share of Defendants' *profits* from the Cash Sweep Programs. Even if Plaintiffs had alleged that they received investment advisory services, Defendants' profits did not constitute "consideration paid" by Plaintiffs for those services. *Kassover,* 2008 WL 5331812, at *5.

***19** Thus, Plaintiffs' allegations do not support a plausible inference that they were parties to investment advisory contracts, and the relief that they seek is unavailable under the IAA. Accordingly, Plaintiffs' claim for violations of the IAA is dismissed pursuant to Rule 12(b)(6).

3. Common-law Fraud[14]

Plaintiffs allege that Defendants committed common-law fraud by making a series of misrepresentations and omissions that "were false and misleading" because "customers' cash balances were being reinvested for [Defendants'] profits at the customers' expense." (SAC ¶ 263.) Specifically, Plaintiffs have identified five categories of alleged misrepresentations: two categories relate to Defendants' advertisements and public statements regarding the type of relationship Defendants aspired to develop with their clients, and the remaining three categories relate to the details of the Modified and Tiered Cash Sweep Programs. In addition to the alleged misrepresentations, Plaintiffs also contend that Defendants' failure to disclose the profits they earned from the Cash Sweep Programs was a material omission.

For the reasons stated below, the Court concludes that Plaintiffs have not adequately pleaded a plausible claim for common-law fraud based on the alleged misstatements and omissions identified in the SAC. First, Defendants' advertisements and other public statements regarding the nature and quality of their services constituted puffery. Second, reviewing as a whole the disclosure documents identified in the SAC, Plaintiffs have failed to identify any materially misleading statements by Defendants regarding the mechanics of the Cash Sweep Programs. Finally, with respect to Defendants' alleged failure to quantify their profits from the Cash Sweep Programs, the Court finds this omission to be immaterial as a matter of law. Accordingly, Plaintiffs' common-law fraud claim is dismissed.

a. Applicable Law

The elements of a fraud claim under New York law are: "1) a material false representation made by defendant; 2) defendant intended to defraud plaintiff thereby; 3) plaintiff's reasonable reliance; and 4) plaintiff's damages as a result of the reliance." *Randolph Equities, LLC v. Carbon Capital, Inc.,* No. 05 Civ. 10889(PAC), 2007 WL 914234, at *6 (S.D.N.Y. Mar.26, 2007) (citing *Keywell Corp. v. Weinstein,* 33 F.3d 159, 163–64 (2d Cir.1994)).

With respect to the requirement that the alleged misrepresentations and omissions be material, the Second Circuit has held that "certain information is 'so basic that any investor could be expected to know it.' " *Levitin v. Painewebber, Inc.,* 159 F.3d 698, 702 (2d Cir.1998) (quoting *Zerman v. Ball,* 735 F.2d 15, 21 (2d Cir.1984)). Specifically,

> the practice of a financial institution using money deposited with it to obtain earnings is neither unknown nor unexpected, much less nefarious. That is precisely how banks make money. Some bank accounts are not interest-bearing—*e.g.,* most checking accounts—even though the balances in such accounts are used by banks to earn money. Even interest-bearing bank accounts—and money market accounts with brokers for that matter—do not return to the investor the amount earned but rather pay a contractual rate. *None of these routine practices is regarded as deceptive or even unusual.*

***20** *Id.* at 703 (emphasis added).

b. Alleged Misrepresentations

In their opposition to Defendants' motions, Plaintiffs identify five categories of statements that they contend were misleading: (1) promises of a "Special Relationship with Clients"; (2) statements regarding customers' rights as investors and Defendants' codes of ethics (the "Investor Rights Statements"); (3) statements about the financial benefits that Defendants received from the Modified and Tiered Cash Sweep Programs; (4) statements regarding potential benefits to customers from these Programs; and (5) statements describing customers' alternatives to depositing free credit balances at affiliated Sweep Banks in the Cash Sweep Programs. (Pls .' Mem. at 39–40.) Although there is some overlap between these categories, below the Court provides examples of each type of alleged misrepresentation identified by Plaintiffs.

(1) Defendants' "Special Relationship with Clients"

Plaintiffs first allege that Defendants made a series of misrepresentations, which appeared for the most part on Defendants' websites and in their advertisements (*see, e.g.,* SAC ¶ 85), regarding the nature of the relationships that they sought to establish with clients and customers:

- "Merrill Lynch presented to its clients on its website a 'Client Commitment' statement which provide[d] in no uncertain terms that the client is Merrill Lynch's first priority ...." (*Id.* ¶ 8 1.)
- The Morgan Stanley Defendants' " 'Global Wealth Management' " website stated that " '[o]btaining your financial goals is number one ... on your Financial Advisor's list.' " (*Id.* ¶¶ 154–55 (quoting website).)
- The Citigroup Defendants maintained a "web page called 'Working with Your Financial Advisor,' " which "emphasize[d] the importance in confiding and relying on the personal relationship with the Smith Barney Financial Advisor ...." (*Id.* ¶ 176.)
- The Charles Schwab Defendants' website contained an "open Letter to Investors" from "its namesake and founder, Charles Schwab," which stated that " '[f]rom day one, I've made it our business to put the needs of the individual investors first.' " (*Id.* ¶ 120 (quoting website).)
- The Wachovia Defendants' website stated that " '[a]t Wachovia Securities, our Financial Advisors are committed to your financial welfare.' " (*Id.* ¶ 212 (quoting website).)

Plaintiffs allege that these statements were misleading because, rather than seeking to maximize their customers' earnings on free credit balances, Defendants were allegedly using their customers' uninvested funds to increase their own profits. (*See, e.g., id.* ¶¶ 86, 89, 144.) According to Plaintiffs, "the cash sweep program[s] ensured ... clients were put *'second'* after [Defendants'] profit ...." (*Id.* ¶ 86 (emphasis in original).)

(2) Defendants' Investor Rights Statements

Plaintiffs further allege that each group of Defendants issued a series of Investor Rights Statements regarding their commitments to customers. For example:

***21** • The Merrill Lynch Defendants' "Commitment to Clarity" brochure stated that "[w]e believe that the needs of the investor should always come first." (*Id.* ¶ 88.)

• The Morgan Stanley Defendants' "Code of Ethics" stated that "the firm's clients, shareholders, competitors and the public have come to expect more from us than simple obedience to the letter of the law. They expect the highest degree of ethics, honesty and fairness in all our dealings." (*Id.* ¶ 160.)

• The Citigroup Defendants' Investor Rights Statement, which was titled "Our Mutual Commitment," stated that customers have a right "[t]o be treated in a fair, ethical and respectful manner in all interactions ...." (*Id.* ¶ 183.)

• The Charles Schwab Defendants' "Code of Business Conduct and Ethics" document "state[d] that [Charles Schwab's] 'Vision' is to 'Provide clients with the most useful and ethical financial services in the world ....' " (*Id.* ¶ 129.)

• The Wachovia Defendants' website "include[d] a 'Client Commitment' web page which assure[d] clients that ... '[y]ou will be informed of any significant conflict of interest, and we will always act in your best interest.' " (*Id.* ¶ 217 (quoting website).)

Similar to the first category, Plaintiffs allege that this category of misstatements was "deceptively false and misleading" because, although these statements suggested that Defendants would seek to maximize their customers' earnings on free credit balances, Defendants used the Cash Sweep Programs to maximize their own profits and paid customers lower amounts of interest. (*See, e.g., id.* ¶¶ 184, 219.)

(3) Defendants' Benefits from the Cash Sweep Programs

In the third category of alleged misrepresentations, Plaintiffs allege that Defendants misstated the extent of the financial benefits that they derived from the Cash Sweep Programs. The alleged misstatements in this category are nearly identical as to each of the five groups of Defendants. (*See* SAC ¶ 114 (Merrill Lynch); *id.* ¶ 147 (Charles Schwab); *id.* ¶ 173 (Morgan Stanley); *id.* ¶ 197 (Citigroup); *id.* ¶ 242 (Wachovia).)

For example, Plaintiffs note that the Merrill Lynch Defendants disclosed to their customers that the modifications to the Cash Sweep Programs would "be financially beneficial" to them in an amount determined by the "difference between the interest paid and other costs incurred ... on bank deposits, and the interest or other income earned on [the Merrill Lynch Defendants'] loans, investments and other assets." (*Id.* ¶ 114.) Plaintiffs allege that such statements were false and misleading because Defendants "failed to disclose the *amount* by which Merrill Lynch and its affiliates profited from bank account sweeps and that the sweep system was rigged to pay clients less interest than money market funds for the sole purpose of increasing Merrill Lynch profits at its clients['] expense." (*Id.* ¶ 115 (emphasis in original); *see also id.* ¶ 148 (Charles Schwab); *id.* ¶ 174 (Morgan Stanley); *id.* ¶ 198 (Citigroup); *id.* ¶ 243 (Wachovia).)

(4) Customers' Benefits from the Cash Sweep Programs

***22** Plaintiffs allege that, in order to entice customers to permit their free credit balances to be used in the Modified and Tiered Cash Sweep Programs, Defendants also made a series of misrepresentations regarding the benefits and advantages to customers of the Cash Sweep Programs. Like the alleged misstatements regarding the benefits Defendants derived from the Cash Sweep Programs, Plaintiffs' allegations regarding this category of misstatements are nearly identical as to each group of Defendants.

Examples of these alleged misstatements include promises that the Cash Sweep Programs would make customers' money "work harder" (*id.* ¶¶ 189–90), allow customers to "keep [their] money working" (*id.* ¶¶ 99, 165–66), and permit customers to "make the most of [their] cash" (*id.* ¶ 139). (*See id.* ¶ 97 (Merrill Lynch); *id.* ¶ 126 (Charles Schwab); *id.* ¶ 166 (Morgan Stanley); *id.* ¶ 189 (Citigroup).) Plaintiffs further allege that Defendants emphasized that participation in their respective Cash Sweep Programs was free, that deposits at affiliated Sweep Banks were insured by the FDIC, and that purchasing shares of money market mutual funds involved more risk because those investments were not FDIC-insured. (*See, e.g., id.* ¶¶ 15, 99, 126, 145, 191, 245.)

Plaintiffs allege that these statements were misleading because Defendants failed to disclose that customers' money would be "working *harder"* in money market mutual funds, as opposed to deposit accounts at affiliated Sweep Banks. (*See id.* ¶ 189 (emphasis added).) For example, Plaintiffs assert that the Merrill Lynch Defendants "did not maximize Plaintiffs' 'short term finances' or 'keep money working' effectively but rather ensured client cash was sweep [sic] into bank accounts where defendants could use the cash to truly 'maximize' Merrill Lynch's own profit." (*Id.* ¶ 98.) Similarly, Plaintiffs allege that the Morgan Stanley Defendants' statements in this category were misleading because

> they failed to disclose that there was no reason to pay clients the bank rate [at affiliated Sweep Banks] other than to additionally enhance Morgan Stanley profits from the use of its clients' uninvested cash and that no *bona fide* disinterested 'Financial Advisor' would ever recommend ... a scheme which would place uninvested cash in bank account[s] bearing interest of less than 1% over money market funds and that in all events such a scheme did not 'keep cash working' for Plaintiffs.

(*Id.* ¶ 167; *see also id.* ¶¶ 128, 144 (Charles Schwab); *id.* ¶ 196 (Citigroup); *id.* ¶ 246 (Wachovia).)

(5) Customer Alternatives to Depositing Their Free Credit Balances at Affiliated Sweep Banks

Lastly, Plaintiffs allege that Defendants made misrepresentations regarding customers' alternatives to having their free credit balances deposited at affiliated Sweep Banks. Here, Plaintiffs identify a series of substantially similar statements made by each group of Defendants that directed customers to compare interest rates, evaluate other banks' Cash Sweep Programs, and speak with their "Financial Advisors" regarding alternatives for their free credit balances. (*See id.* ¶¶ 103, 109, 111–12 (Merrill Lynch); *id.* ¶ 152 (Charles Schwab); *id.* ¶ 171 (Morgan Stanley); *id.* ¶ 195 (Citigroup); *id.* ¶ 231 (Wachovia).)

***23** For the most part, the SAC alleges that Defendants indicated to customers that money market mutual funds were the primary investment alternative to the Modified and Tiered Cash Sweep Programs. (*Id.* ¶ 99 (Merrill Lynch); *id.* ¶¶ 150–52 (Charles Schwab); *id.* ¶ 195 (Citigroup); *id.* ¶ 231 (Wachovia).) However, Plaintiffs contend that Defendants offered a misleading comparison between making deposits at Sweep Banks and owning shares of mutual funds. (*See, e.g., id.* ¶ 62.) Specifically, Plaintiffs allege that Defendants overemphasized the utility of the FDIC insurance accompanying deposits of free credit balances through the Modified and Tiered Cash Sweep Programs, and failed to disclose that shares of money market mutual funds are "universally accepted as highly safe investments ... because of the quality and duration of the investments made ... with little risk of default ." (*Id.* ¶ 6.)

Plaintiffs allege that these statements, including the comparisons, were deceptive, false, and misleading because: (1) in reality, Defendants "provided no alternative vehicles for uninvested cash ... other than allowing [customers'] cash to sit idle earning no interest at all" (*id.* ¶ 104); (2) the Cash Sweep Programs were "rigged to ensure that uninvested cash went to [Defendants]" (*id.* ¶ 172); and (3) "no *bona fide* 'Financial Advisor' would recommend—much less implement—such an investment ... in place of money market funds" (*id.*).

c. Analysis

In addition to the above-described allegations regarding misrepresentations, *see supra* Part II.B.3.b, Plaintiffs also allege that Defendants' failure to disclose the amount of their profits from the Cash Sweep Programs was materially misleading. The Court first addresses Plaintiffs' five categories of misrepresentations, and then analyzes the alleged omission regarding Defendants' profits. For the reasons stated below, these allegations are insufficient to adequately plead a claim for common-law fraud.

(1) Defendants' Alleged Misrepresentations

Plaintiffs have failed to articulate a plausible theory under which the five categories of statements they have identified could be materially misleading to a reasonable investor. Plaintiffs' first two categories of alleged misrepresentations —those relating to Defendants' statements about their relationships with customers and Defendants' Investor Rights Statements—constituted nothing more than puffery. The remaining three categories, which relate to the benefits and alternatives for the Modified and Tiered Cash Sweep Programs, are not materially misleading.

As to the first category of alleged misrepresentations, Defendants' advertisements regarding their aspirations for customer relationships were immaterial puffery. *See, e.g.,*

Hubbard v. Gen. Motors Corp., No. 95 Civ. 4362(AGS), 1996 WL 274018, at *6 (S.D.N.Y. May 22, 1996) (" 'Puffing' has been described as making generalized or exaggerated statements such that a reasonable consumer would not interpret the statement as a factual claim upon which he or she could rely." (internal quotation omitted)). "The allegation that the customer was told that the broker's primary purpose was to make profits for the customer is nothing more than the common puff of a salesman and must be looked at from the point of view of a reasonable person.... The law does not give premiums for naivete." *Bowman v. Hartig,* 334 F.Supp. 1323, 1328 (S.D.N.Y.1971); *see also The Sample Inc. v. Pendleton Woolen Mills, Inc.,* 704 F.Supp. 498, 505–06 & n. 10 (S.D.N.Y.1989) (dismissing fraud claim because manufacturer's advertisements about "relationships that last a lifetime" constituted "puffing"); *Frota,* 639 F.Supp. at 1190 (characterizing as puffery a series of alleged misrepresentations that the "plaintiffs' account would be 'properly and prudently managed,' ... [and] that [the defendant] was not only [the] plaintiffs' broker, but their 'friend, confidant and financial advisor' and a person whom [the] plaintiffs 'could trust to look after their interests' "); *cf. ECA, Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Co.,* 553 F.3d 187, 206 (2d Cir.2009) (characterizing as puffery the defendants' statements regarding "high standards of integrity and credit-risk management" because "[n]o investor would take such statements seriously in assessing a potential investment, for the simple fact that almost every investment bank makes these statements"). Therefore, this first category of alleged misrepresentations cannot serve as the basis for Plaintiffs' fraud claim.

***24** With respect to the second category of alleged misrepresentations, Plaintiffs appear to acknowledge in the SAC that Defendants' Investor Rights Statements either quote verbatim, or mimic, the 2004 "Best Practices" recommendations of the Securities Industryand Financial Markets Association regarding "Investor Rights." (*See* SAC ¶ 88 (alleging that the Merrill Lynch Defendants' statements regarding their "Commitment to Clarity" were "based on a Securities Industry Association 2004 statement"); *id.* ¶ 183 (alleging that Smith Barney's statement titled "Our Mutual Commitment" was "modeled from a 'Statement of Investor Rights and Responsibilities' adopted by the Board of the Securities Industry Association in 2004").) Therefore, Plaintiffs have not alleged that the Investor Rights Statements were anything more than an industry-wide set of maxims that were compiled by a trade group. *Cf. ECA,* 553 F.3d at 206. As with Defendants' advertisements, these statements did not contain facts or concrete promises of future performance that were specific to the relationship between the parties. *See Nasik Breeding & Research Farm Ltd. v. Merck & Co. .,* 165 F.Supp.2d 514, 530 (S.D.N.Y.2001) ("Terms [that] ... do not set forth a concrete representation as to the company's future performance ... are in the nature of commercial puffery and cannot form the basis for a fraud claim ...."). The "vigorous promotion" of a commercial venture "without more, is not a misrepresentation." *Id.* Therefore, the Court concludes that Plaintiffs' second category of alleged misstatements is immaterial as a matter of law.[15]

With respect to Plaintiffs' remaining three categories of alleged misrepresentations, the Court concludes that Defendants' disclosures regarding the nature and mechanics of their Cash Sweep Programs were not materially misleading. As to the third category—Defendants' benefits from the Sweep Programs—Plaintiffs contend that these statements "failed to meaningfully disclose the true benefits" that Defendants derived from the Cash Sweep Programs. (SAC ¶ 243.) However, that assertion is belied by the text of the disclosures Plaintiffs have included in the SAC, which reveal that Defendants disclosed the precise manner in which they would profit from the Cash Sweep Programs. For example, the Wachovia Defendants disclosed that:

> Wachovia Bank earns net income from the difference between the interest it pays on deposit accounts, such as the Bank Deposit Sweep Option, and the income it earns on loans, investments and other assets.... As a result of the fees and benefits described above, the Bank Deposit Sweep Option may be significantly more profitable to us than other available Cash Sweep Options.

(*Id.* ¶ 242.) The remaining four groups of Defendants made substantially similar disclosures, which are also detailed in the SAC. (*See id.* ¶ 105 (Merrill Lynch); *id.* ¶ 147 (Charles Schwab); *id.* ¶ 173 (Morgan Stanley); *id.* ¶ 197 (Citigroup); *id.* ¶ 242 (Wachovia).) Each group of Defendants explicitly explained the manner in which they would profit from the Cash Sweep Programs. Therefore, the Court concludes that Defendants' statements regarding the benefits they derived from the Cash Sweep Programs were not materially misleading.

***25** Similarly, Defendants' disclosures regarding customers' potential benefits from, and alternatives to, the Cash Sweep Programs were not materially misleading. Plaintiffs do not allege that Defendants' disclosures regarding the FDIC

insurance on customer deposits at affiliated Sweep Banks contained actual misrepresentations. (*See, e.g., id.* ¶ 99.) Rather, they contend that Defendants overemphasized the advantages of FDIC insurance. However, that contention is not supported by the documents upon which Plaintiffs rely. For example, in the SAC, under the heading "Merrill Lynch Deceptive Description Of Bank Deposit FDIC Insured Option," Plaintiffs identify as misleading the Merrill Lynch Defendants' disclosure that "money market funds are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency. Although the [money market] funds seek to preserve the value of your investment at $1 per share, it is possible to lose money by investing in the funds." (*Id.* ¶ 99 .) These disclosures were specifically called for by the NYSE (*See id.* ¶ 77; NYSE Info. Mem. at 3–4, 6), and Plaintiffs do not contest their veracity. Other than the bold typeface that Plaintiffs have used in the SAC, there is no basis for their conclusory allegation that Defendants "emphasiz[ed]" the availability of FDIC insurance to customers (*see, e.g.,* SAC ¶ 99), and there is nothing misleading about the statements themselves.

Morever, Plaintiffs' argument that "no *bona fide* disinterested 'Financial Advisor' would ever recommend" enrolling in the Modified or Tiered Cash Sweep Programs misstates the nature of the Brokerage Defendants' obligations to their customers. (*Id.* ¶ 144 (Charles Schwab); *see also id.* ¶ 100 (Merrill Lynch); *id.* ¶ 167 (Morgan Stanley); *id.* ¶ 196 (Citigroup); *id.* ¶ 246 (Wachovia).) Plaintiffs have not alleged that they sought, or that Defendants promised to provide, *"bona fide* investment advisory services." Although each set of Defendants recommended that their customers either contact a "Financial Advisor" regarding the Cash Sweep Programs or examine alternatives to the Programs on their own, no Plaintiff alleges that he or she did so. *See supra* Part II.B.2.b. Therefore, Plaintiffs' broad, categorical conjecture regarding the content of investment advice that they *might* have received from Defendants' Financial Advisors, *if* they had sought such advice, does not make these disclosures materially misleading.

There are also no factual allegations in the SAC that Defendants hindered Plaintiffs' investigation of suitable alternatives to the Cash Sweep Programs. Plaintiffs do allege that it would have been "pointless" to consult Defendants' "Financial Advisors" becausethey received commissions based on the amount of funds deposited at affiliated Sweep Banks. (SAC ¶ 104.) Although the fact that the Brokerage Defendants' employees received commissions in connection with the Cash Sweep Programs was likely material, *see, e.g., Press v. Quick & Reilly, Inc.,* 218 F.3d 121, 130 (2d Cir.2000), the SAC makes clear that Defendants disclosed the commissions structure. (*See* SAC ¶ 114 (Merrill Lynch); *id.* ¶ 149 (Charles Schwab); *id.* ¶ 173 (Morgan Stanley); *id.* ¶ 197 (Citigroup); *id.* ¶ 242 (Wachovia).) Accordingly, the Court concludes that Defendants' disclosures about the alternatives and benefits available to customers from the Cash Sweep Programs were not materially misleading.

(2) Defendants' Alleged Failure to Disclose Profits

***26** Plaintiffs also allege that, notwithstanding Defendants' disclosures regarding the manner in which they profited from the Cash Sweep Programs, Defendants' failure to disclose the actual amount of their profits was misleading. (*See, e.g., id.* ¶ 243 .) The Court disagrees, and concludes that these alleged omissions were also immaterial as a matter of law.

Plaintiffs repeatedly allege, in substance, that Defendants "failed to even attempt to disclose the billions of dollars in ... profit from the use of clients' uninvested cash at their clients' expense ...." (SAC ¶ 106 (emphasis omitted).) However, because this broad contention sits in significant tension with Plaintiffs' other allegations in the SAC, the Court is not obligated to accept it as true. *See, e.g., Koulkina v. City of New York,* No. 06 Civ. 11357(SHS), 2009 WL 210727, at *6 (S.D.N.Y. Jan.29, 2009) ("[T]he 'Court [ ] is not obliged to reconcile plaintiffs' own pleadings that are contradicted by other matter asserted or relied upon or incorporated by reference by a plaintiff in drafting the complaint.' " (quoting *Fisk v. Letterman,* 401 F.Supp.2d 362, 368 (S.D.N.Y.2005)) (first alteration in original)). Specifically, Plaintiffs also allege that, rather than concealing the profits from the Cash Sweep Programs, Defendants touted these earnings to the public. According to Plaintiffs, Defendants did so in media releases and press conferences (*see, e.g.,* SAC ¶¶ 92, 225), as well as in contemporaneous SEC filings (*see, e.g.,* SAC ¶¶ 8, 68, 70). Plaintiffs further allege that Defendants' profits from the Cash Sweep Programs were the subject of both press coverage and publicly available industry analysis. (*See, e.g., id* . ¶¶ 71, 94.) Thus, in light of these allegations, Plaintiffs' argument must be construed as a challenge to Defendants' failure to specifically identify the extent of their profits in disclosures transmitted directly to their retail brokerage clients.

The Court concludes that this more narrow alleged omission is immaterial as a matter of law. In *Levitin v. Painewebber,*

Inc., the Second Circuit affirmed the dismissal of a putative class action brought by the holder of a brokerage account against a broker-dealer that had effected short-sale transactions on the plaintiff's behalf. *See* 159 F.3d at 700–01. The plaintiff alleged that the defendant had improperly used the collateral posted by customers in connection with short sales for its own financial benefit. *See id.* Specifically, the plaintiff alleged that " '[t]ypically,' " the defendant " 'will not inform its customers of ... the interest or profits ... [earned] from using the customer's property.' " *Id.* at 701 (quoting thecomplaint). Reviewing these allegations, the *Levitin* court held that "[a]n investor who is ignorant of the fact that free cash or securities may be used to earn interest or other kinds of financial returns is simply not reasonable by any measure." *Id.* at 702. The court further noted that the plaintiff "might as reasonably complain of [the defendant's] failure to disclose that the interest it pays to investors on money market accounts is less than that earned by [the defendant] on the amount in the account." *Id.*

***27** Plaintiffs seek greater disclosures than those sought by the plaintiffs in *Levitin.* There, the plaintiff argued that the defendant had failed to "disclose profits on the posted collateral." *Levitin,* 159 F.3d at 699. Here, as discussed above, *see supra* Part II.B.3.c, Defendants disclosed not only that they derived financial benefits from the Cash Sweep Programs, but also that the extent of their profits was governed by the difference between the interest rate paid to customers, and the rate of return Defendants earned by using their customers' free credit balances for other commercial purposes. (*See* SAC ¶¶ 105, 147, 173, 197, 242.) Plaintiffs argue that they were nevertheless entitled to additional disclosures regarding the precise amounts of profits that Defendants earned. Under *Levitin,* the failure to disclose such information in this context, absent a breach of some other duty to do so, is not actionable. Indeed, it would have been difficult, if not impossible, for Defendants to quantify in their disclosures to retail brokerage investors, *in advance,* the amount of profits they would earn through the Cash Sweep Programs. The law does not require such speculation. Therefore, in light of the disclosures made by Defendants, which Plaintiffs acknowledge, the Court concludes that the alleged omissions relating to the amount of Defendants' profits are immaterial as a matter of law.

In sum, the Court has carefully reviewed the disclosures by Defendants regarding the Cash Sweep Programs. This review has included both the specific statements identified by Plaintiffs, and, because the documents are integral to the pleading, the full-length disclosure documents referenced in the SAC. Having done so, the Court concludes that: (1) Plaintiffs have failed to identify a materially false or misleading statement regarding Defendants' Modified and Tiered Cash Sweep Programs; (2) Defendants' disclosures regarding their respective Cash Sweep Programs would not have misled reasonable investors; and (3) the alleged omission of Defendants' exact amount of profits from these Programs was immaterial as a matter of law in light of the other disclosures. Accordingly, for these reasons, Plaintiffs' common-law fraud claim is dismissed pursuant to Rule 12(b)(6).

4. Breach of Fiduciary Duty and Aiding and Abetting a Breach of Fiduciary Duty

Plaintiffs bring a claim for breach of fiduciary duty against all Defendants (SAC ¶¶ 277–85), as well as a claim for aiding and abetting a breach of fiduciary duty against the Parent and Sweep Bank Defendants (*id.* ¶¶ 286–91). In support of these claims, Plaintiffs argue that the SAC "clearly pleads a breach of the duty of loyalty through the implementation of the" Modified and Tiered Cash Sweep Programs. (Pls.' Mem. at 26.)

However, Plaintiffs have offered no allegations that, if proven, would establish the existence of a fiduciary duty owed by the Parent and Sweep Bank Defendants to Plaintiffs. Moreover, as to the Brokerage Defendants, although the law recognizes a limited duty owed by brokers to the holders of brokerage accounts, that duty was not breached through the actions that these Defendants are alleged to have taken in connection with the Cash Sweep Programs. Thus, Plaintiffs have not stated a claim for a breach of fiduciary duty, and in the absence of sufficient allegations of a primary breach, the claim for aiding and abetting a breach of fiduciary duty must also fail. Accordingly, for the reasons stated below, Plaintiffs' claims for breach of fiduciary duty and aiding and abetting a breach of fiduciary duty are dismissed.

a. Applicable Law

***28** Under New York law, a claim for breach of fiduciary duty has three elements: " '(1) the existence of a duty on defendant's part as to plaintiff; (2) a breach of this duty; and (3) injury to the plaintiff as a result thereof.' " *Alfaro v. Wal–Mart Stores, Inc. .,* 210 F.3d 111, 114 (2d Cir.2000) (quoting

Akins v. Glens Falls City Sch. Dist., 53 N.Y.2d 325, 333, 441 N.Y.S.2d 644, 424 N.E.2d 531 (N.Y.1981)).

"A fiduciary relationship exists ... 'when one [person] is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation.' " *Flickinger v. Harold C. Brown & Co.,* 947 F.2d 595, 599 (2d Cir.1991) (quoting *Mandelblatt v. Devon Stores, Inc.,* 132 A.D.2d 162, 521 N.Y.S.2d 672, 676 (1st Dep't 1987)) (alteration in original). However, "when parties deal at arms length in a commercial transaction, no relation of confidence or trust sufficient to find the existence of a fiduciary relationship will arise absent extraordinary circumstances." *Pan Am. Corp. v. Delta Air Lines, Inc.,* 175 B.R. 438, 511 (S.D.N.Y.1994) (internal quotation omitted). In this case, the relationship between a brokerage customer and a broker as to free credit balances is that of a debtor and creditor. *See Bissell v. Merrill Lynch & Co.,* 937 F.Supp. 237, 246 (S.D.N.Y.1996). Such a relationship "is not by itself a fiduciary relationship although the addition of 'a relationship of confidence, trust, or superior knowledge or control' may indicate that such a relationship exists." *In re Mid–Island Hosp., Inc.,* 276 F.3d 123, 130 (2d Cir.2002) (quoting *Delta Air Lines,* 175 B.R. at 511).

b. Breach of Fiduciary Duty

With respect to the Parent and Sweep Bank Defendants, Plaintiffs have not sufficiently alleged the existence of a fiduciary duty. Instead, Plaintiffs offer only the conclusory assertion that the "Defendants," collectively, "through their agents and representatives, held themselves out as financial advisors to Plaintiffs and other Class members, and as such owed fiduciary duties to Plaintiffs and the other Class members." (SAC ¶ 278.) Similarly, in their opposition to Defendants' motions, Plaintiffs present no independent arguments in support of this claim against the Parent and Sweep Bank Defendants, and instead refer to "Defendants" *en masse.* (*See* Pls.' Mem. at 23–32.) However, Plaintiffs cannot maintain a claim for breach of fiduciary duty against these Defendants simply by levying a series of general allegations regarding their brokerage accounts.

"[A]bsent an allegation of a special relationship, mere assertions of 'trust and confidence' are insufficient to support a claim of a fiduciary relationship." *Abercrombie v. Andrew Coll.,* 438 F.Supp.2d 243, 274 (S.D.N.Y.2006). "Thus, for example, 'the fact that one party trusts the other is insufficient to create a fiduciary relationship.' " *Id.* (quoting *Cumis Ins. Soc'y, Inc. v. Peters,* 983 F.Supp. 787, 797 (N.D.Ill.1997)). Other than the fact that Plaintiffs' free credit balances were deposited *by the Brokerage Defendants* at affiliated Sweep Banks, there are no allegations in the SAC regarding interactions—indirect or otherwise—between Plaintiffs and either the Parent or Sweep Bank Defendants. Therefore, Plaintiffs' breach of fiduciary claim as to these Defendants is dismissed.

***29** Nor are Plaintiffs' allegations sufficient to state a claim for breach of fiduciary duty against the Brokerage Defendants. As noted, under New York law, the " 'mere existence of a broker-customer relationship is not proof of its fiduciary character .' " *Bissell,* 937 F.Supp. at 246 (quoting *Rush v. Oppenheimer & Co.,* 681 F.Supp. 1045, 1055 (S.D.N.Y.1988)). As discussed in relation to Plaintiffs' IAA claims, *see supra* Part II.B.2.b, there are no allegations in the SAC, or in the documents that have been deemed integral to the pleading, tending to suggest that there was anything but a nondiscretionary brokerage relationship between Plaintiffs and the Brokerage Defendants. Indeed, each Plaintiff specifically alleges that he or she maintained one or more "brokerage" accounts (SAC ¶¶ 30–36), and Plaintiffs affirmatively argue in their opposition to Defendants' motions that "in fact, they had nothing more than an '[arms]-length' relationship—the same as with any commercial vendor ." (Pls.' Mem. at 40.)

The Second Circuit has offered cogent guidance on the legal obligations that arise out of such a relationship:

> [A] broker ordinarily has no duty to monitor a nondiscretionary account, or to give advice to such a customer on an ongoing basis. The broker's duties ordinarily end after each transaction is done, and thus do not include a duty to offer unsolicited information, advice, or warnings concerning the customer's investments.... The client may enjoy the broker's advice and recommendations with respect to a given trade, but has no legal claim on the broker's ongoing attention.

de Kwiatkowski v. Bear, Stearns & Co., Inc., 306 F.3d 1293, 1302 (2d Cir.2002); *see also Press v. Chem. Inv. Servs. Corp.,* 166 F.3d 529, 536 (2d Cir.1999); *Indep. Order of Foresters v. Donald, Lufkin & Jenrette, Inc.,* 157 F.3d 933, 940–41 (2d Cir.1998); *In re Refco Capital Mkts., Ltd. Brokerage Customer Sec. Litig.,* 586 F.Supp.2d 172, 193 (S.D.N.Y.2008); *Crigger v. Fahnestock & Co., Inc.,* No. 01 Civ. 7819(JFK), 2003 WL 22170607, at *10 (S.D.N.Y. Sept.18, 2003) ("Where the broker is not recommending investments to the client, but rather acting primarily as a

banker ..., a fiduciary duty is not created."); *Bissell,* 937 F.Supp. at 246 ("In the absence of discretionary trading authority delegated by the customer to the broker—and none is alleged in the case at bar—a broker does not owe a general fiduciary duty to his client.").

Thus, "absent an express advisory contract, there is no fiduciary duty on [the] part of [the] broker-dealer unless thecustomer is infirm or ignorant of business affairs." *Kwiatkowski,* 306 F.3d at 1308–09 (internal quotation omitted). A fiduciary duty owed by the Brokerage Defendants "could arise only if the law, under the circumstances of this case, imposes on [them] some special duty as a result of the relationship between the parties—that is, if [Plaintiffs'] account[s] deviated from the usual nondiscretionary account in a way that create[d] a special duty beyond that ordinary duty of reasonable care that applies to a broker's actions in nondiscretionary accounts." *Id.* at 1308. Such "transformative 'special circumstances' " include situations that "render the client dependent," such as "a client who has impaired faculties, or one who has a closer than arms-length relationship with the broker, or one who is so lacking in sophistication that *de facto* control of the account is deemed to rest in the broker." *Id.* The SAC lacks any such allegations.

***30** Notwithstanding this fact, Plaintiffs argue that the language of Defendants' advertisements was sufficient to create a fiduciary relationship as to *all* Defendants. (Pls.' Mem. at 28.) This argument is unavailing for a number of reasons. First, the advertisements quoted in the SAC promote the full range of services offered by Defendants, which included, but was not limited to, retail brokerage accounts. (*See* SAC ¶ 97 (Merrill Lynch); *id.* ¶¶ 123, 126–27 (Charles Schwab); *id.* ¶ 155 (Morgan Stanley); *id.* ¶ 178 (Citigroup); *id.* ¶ 214 (Wachovia).) The fact that Defendants made known to the public that they offered discretionary brokerage accounts and other types of investment advice is only relevant here to the extent that Plaintiffs enrolled in or otherwise sought those services. *See Brinsights, LLC v. Charming Shoppes of Delaware, Inc.,* No. 06 Civ. 1745(CM), 2008 WL 216969, at *8 (S.D.N.Y. Jan.16, 2008) ("Where the parties do not create their own relationship of higher trust, courts should not fashion the stricter duty for them."). No Plaintiff alleges that he or she sought such services.

Second, fiduciary relationships—like investment advisory relationships under the IAA—are personal and context-specific. *See, e.g., Abercrombie,* 438 F.Supp.2d at 274 ("[I]n order to survive a motion to dismiss a claim for breach of fiduciary duty, the plaintiff must set forth specific facts constituting the alleged relationship with sufficient particularity to enable the court to determine whether, if true, such facts could give rise to a fiduciary relationship." (internal quotation omitted)); *Europacific Asset Mgmt. Corp. v. Tradescape Corp.,* No. 03 Civ. 4556(PKL), 2005 WL 497787, at *9 (S.D.N.Y. Mar.2, 2005) ("[F]inding a breach of fiduciary duty requires finding that a fiduciary relationship existed *between the parties."* (emphasis added)). However, no Plaintiff alleges that he or she read the advertisements and promotional materials cited in the SAC, and there are almost no specific allegations regarding any of Plaintiffs' relationships with the Brokerage Defendants.

Finally, "the fact that the broker ... represents, as part of his sales pitch, that he is particularly well qualified to [offer investment advice] does not alter the limited scope of the broker's legally enforceable obligations." *Stewart v. J.P. Morgan Chase & Co.,* No. 02 Civ.1936(MHD), 2004 WL 1823902, at *12 (S.D.N.Y. Aug.16, 2004); *see also Renner v. Chase Manhattan Bank,* No. 98 Civ. 926(CSH), 2000 WL 781081, at *20 (S.D.N.Y. June 16, 2000) ("Thatplaintiffs may have regarded defendants as their fiduciaries is not enough to establish a fiduciary duty when that duty otherwise would not exist." (internal quotation omitted)). As discussed in more detail in relation to Plaintiffs' common-law fraud claim, *see supra* Part II.B.3.c.(1), no reasonable investor would expect that these vague and general advertisements created any sort of extra-contractual relationship extending beyond the terms specified in Plaintiffs' account agreements.

***31** Plaintiffs' claim fares no better if the analysis is narrowed to focus on the Brokerage Defendants' use of their customers' free credit balances. "Federal regulation of ... broker utilization of customer funds is extensive." *Levitin,* 159 F.3d at 705. However, "[t]he SEC has ... recognized that the relationship of brokers to customers with respect to credit and debit balances in their accounts is that of debtor and creditor." *Bissell,* 937 F.Supp. at 246 (citing Adoption of Rule 15c3–2 under the Securities Exchange Act of 1934, Exchange Act Release No. 34–7325 (May 27, 1964)); *cf. Newbro v. Freed,* 409 F.Supp.2d 386, 396 (S.D.N.Y.2006) ("[A] claim against a broker for converting funds in a free credit balance fails for the same reason as a customer's claim against a bank—the funds at issue arise from a debtor-creditor relationship and are not segregated vis-à-vis other accounts at the brokerage firm.").[16] Plaintiffs have not alleged that this debtor-creditor relationship resulted from anything more than

an arms-length transaction relating to the investments that they initiated.

By definition, free credit balances existed in Plaintiffs' brokerage accounts because Plaintiffs chose not to invest these funds and instead left them idle in their accounts. *See* 17 C.F.R. § 240.15c3–3(a)(8); *see also* Amendments to Financial Responsibility Rules for Broker–Dealers, 72 Fed.Reg. 12,862, 12,866 (proposed Mar. 19, 2007). Nevertheless, Plaintiffs acknowledge that they earned positive rates of interest on these funds. (*See* SAC ¶¶ 30–36.) However, Plaintiffs suggest that they were entitled to an additional service from the Brokerage Defendants—namely, ongoing advice regarding how to *maximize* returns on free credit balances. Plaintiffs present this argument notwithstanding the fact that the specific Cash Sweep Programs at issue were governed by the terms of their account agreements and the amendments thereto. No such service was included in Plaintiffs' brokerage accounts, and the Brokerage Defendants had no fiduciary obligation to provide it. *See, e.g., Kwiatkowski,* 306 F.3d at 1311 ("The general rule ... is that ... brokers do not owe nondiscretionary clients ongoing advisory or account-monitoring duties, such as the duty to warn of changes in market conditions or other information that can impact the client's investments."); *Hoffman v. UBS–AG,* 591 F.Supp.2d 522, 535 (S.D.N.Y.2008) ("[I]t is well-established Second Circuit law that the fiduciary duty in the broker/customer relationship is only to 'the narrow task of consummating the transaction requested.' " (quoting *Press,* 166 F.3d at 536)). Thus, the Brokerage Defendants were not required to notify Plaintiffs of opportunities to improve their earnings on uninvested funds.

Nevertheless, Plaintiffs are correct that they were owed—to some extent—a duty of reasonable care. *See Kwiatkowski,* 306 F.3d at 1305 ("[A] duty of reasonable care applies to the broker's performance of its obligations to customers with nondiscretionary accounts."). "[T]he scope of affairs entrusted to a broker is generally limited to the completion of a transaction." *Bissell,* 937 F.Supp. at 246 (internal quotation omitted). Specifically, "[o]n a transaction-by-transaction basis, the broker owes duties of diligence and competence in executing the client's trade orders, and is obliged to give honest and complete information when recommending a purchase or sale." *Kwiatkowski,* 306 F.3d at 1302. The SAC does not identify a breach of this transaction-specific duty. Although it is possible that the "failure to give information material to a particular transaction" may support a claim against a broker by a client with a nondiscretionary account, *id.* at 1306, the Court has already concluded that Plaintiffs have not identified a false or materially misleading statement or omission by any Defendant relating to enrollment in the Cash Sweep Programs. *See supra* Part II.B.3.c. Moreover, Plaintiffs do not allege that any of the transactions that were conducted in connection with Defendants' Cash Sweep Programs were erroneously or negligently executed. Nor do Plaintiffs contend that they either received unsound investment recommendations from the Brokerage Defendants, or sought the investment advice that was one of the available services offered by them.

***32** Therefore, although the Court agrees with Plaintiffs that cases such as *Kwiatkowski* do not demonstrate as a matter of law that every brokerage relationship lacks fiduciary characteristics, Plaintiffs have not alleged facts or circumstances that, if proven, would establish that the Brokerage Defendants breached the limited duties that they owed to Plaintiffs in regard to their brokerage accounts. Accordingly, Plaintiffs' claim for breach of fiduciary duty is dismissed.

c. Aiding and Abetting

"Under New York law, '[a] plaintiff seeking to establish a cause of action for aiding and abetting a breach of fiduciary duty must show ... the existence of a ... violation by the primary (as opposed to the aiding and abetting) party ....' " *Design Strategy, Inc. v. Davis,* 469 F.3d 284, 303 (2d Cir.2006) (quoting *Samuel M. Feinberg Testamentary Trust v. Carter,* 652 F.Supp. 1066, 1082 (S.D.N.Y.1987)); *see also Lerner v. Fleet Bank, N.A.,* 459 F.3d 273, 294 (2d Cir.2006) (" '[A] person knowingly participates in a breach of fiduciary duty only when he or she provides substantial assistance to the primary violator.' " (quoting *Kaufman v. Cohen,* 307 A.D.2d 113, 760 N.Y.S.2d 157, 165 (1st Dep't 2003)); *Kottler v. Deutsche Bank AG,* 607 F.Supp.2d 447, 466 (S.D.N.Y.2009). "Aiding and abetting liability arises only when [the] plaintiffs'injury was 'a direct or reasonably foreseeable result' of the complained-of conduct." *Kolbeck v. LIT Am., Inc.,* 939 F.Supp. 240, 249 (S.D.N.Y.1996) (quoting *Morin v. Trupin,* 711 F.Supp. 97, 112 (S.D.N.Y.1989)).

Plaintiffs have not identified a "primary violator" because they have not adequately pleaded a claim for breach of fiduciary duty. Such allegations are a predicate to their claims against the Parent and Sweep Bank Defendants for aiding and

abetting a breach of fiduciary duty. *See Kottler,* 607 F.Supp.2d at 466. Accordingly, this claim is likewise dismissed.

5. Negligent Misrepresentation

Plaintiffs' negligent misrepresentation claim is nearly identical to their fraud claim. In addition to the Court's above-stated conclusions regarding the alleged misrepresentations and omissions identified in the SAC, Plaintiffs have not sufficiently alleged the "reasonable reliance" element of this claim. Accordingly, for the reasons set forth below, Plaintiffs' negligent misrepresentation claim is dismissed.

a. Applicable Law

"Negligent misrepresentation 'involves most of the same elements as fraud, with a negligence standard substituted for the scienter requirement.' " *Carroll v. Leboeuf, Lamb, Greene & MacRae, LLP,* —— F.Supp.2d ——, No. 05 Civ. 391(LAK), 2009 WL 1575213, at *3 (S.D.N.Y. June 5, 2009) (quoting *Mia Shoes, Inc. v. Republic Factors, Corp.,* No. 96 Civ. 7974(TPG), 1997 WL 525401, at *3 (S.D.N.Y. Aug.21, 1997)). Specifically, to state a claim for negligent misrepresentation under New York law, a plaintiff must adequately plead five elements:

> ***33** (1) the defendant had a duty, as a result of a special relationship, to give correct information; (2) the defendant made a false representation that he or she should have known was incorrect; (3) the information supplied in the representation was known by the defendant to be desired by the plaintiff for a serious purpose; (4) the plaintiff intended to rely and act upon it; and (5) the plaintiff reasonably relied on it to his or her detriment.

Hydro Investors, Inc. v. Trafalgar Power Inc., 227 F.3d 8, 20 (2d Cir.2000); *see also Eternity Global Master Fund,* 375 F.3d at 188; *Kimmell v. Schaeffer,* 89 N.Y.2d 257, 263–64, 652 N.Y.S.2d 715, 675 N.E.2d 450 (N.Y.1996)

b. Analysis

Plaintiffs have not adequately pleaded a claim for negligent misrepresentation. First, as discussed above in relation to their fraud claim, *see supra* Part II.B.3.c, the statements and omissions identified by Plaintiffs were neither false nor materially misleading. Absent such allegations, Plaintiffs cannot meet the elements of a negligent misrepresentation claim. *See Hampshire Equity Partners II, L.P. v. Teradyne, Inc.,* No. 04 Civ. 3318(LAP), 2005 WL 736217, at *6 (S.D.N.Y. Mar.30, 2005) (dismissing a fraud claim because the "[d]efendants' allegedly fraudulent statements [we]re not actionable" and dismissing an accompanying negligent misrepresentation claim because it "suffer[ed] from the same weakness"). Therefore, this pleading deficiency alone requires dismissal of Plaintiffs' negligent misrepresentation claim.

Second, Plaintiffs' allegations are insufficient to support an inference of reasonable reliance. The New York Court of Appeals has held that three factors are relevant to this element of a negligent misrepresentation claim: (1) whether the defendant "held or appeared to hold unique or special expertise"; (2) whether there was "a special relationship of trust or confidence" between the parties; and (3) "whether the speaker was aware of the use to which the information would be put and supplied it for that purpose." *Kimmell,* 89 N.Y.2d at 264, 652 N.Y.S.2d 715, 675 N.E.2d 450. "[W]here ... a 'special relationship' is nowhere pled, and the allegations with respect to the other *Kimmell* factors are soft, a claim for negligent misrepresentation is dismissible under Rule 12(b)(6).' " *Eternity Global Master Fund,* 375 F.3d at 188.

While Plaintiffs have sufficiently alleged that the Brokerage Defendants possessed special expertise in the area of retail brokerage investment services, the latter two *Kimmell* factors are not adequately supported by the SAC. "Although a broker-client relationship can evolve into a special relationship, the mere fact that [the defendant] and the plaintiffs had a broker-client relationship does not in and of itself create a special or fiduciary relationship." *Crigger,* 2003 WL 22170607, at *10 (internal citation omitted). The Court has already discussed at length the SAC's allegations regarding the relationship between Plaintiffs and Defendants in regard to Plaintiffs' IAA and breach of fiduciary duty claims. *See supra* Parts II.B.2, II.B.4. As stated above, Plaintiffs' allegations do not support an inference that there existed anything more than a broker-client relationship. Thus, Plaintiffs have not alleged that they had a "special relationship" with the Brokerage Defendants that is sufficient to serve as the basis for a negligent misrepresentation claim.

***34** Moreover, Plaintiffs have not alleged that the Brokerage Defendants were aware of the uses to which their statements were allegedly being put. Plaintiffs' allegations do not support an inference that Defendants either intended—or

could have reasonably anticipated—that their advertisements and Investor Rights Statements would be construed by reasonable investors as containing investment advice. *See Eternity Global Master Fund,* 375 F.3d at 187–88 ("As in the case of fraud, an alleged misrepresentation must be factual and not 'promissory or related to future events.' " (quoting *Hydro Investors,* 227 F.3d at 20)). Similarly flawed are Plaintiffs' allegations regarding the Brokerage Defendants' representations in their account agreements and the disclosure statements regarding the Cash Sweep Programs. As Plaintiffs acknowledge in the SAC, each Brokerage Defendant encouraged customers to investigate the Cash Sweep Programs and indicated that, if customers wished to seek advice regarding cash management strategies, their "Financial Advisors" were available to discuss additional options. (*See* Pls.' Merrill Lynch Decl. Ex. 7 at 1; Pls.' Morgan Stanley Decl. Ex. 9 at 3; Pls.' Citigroup Decl. Ex. 8 at 12; Pls.' Charles Schwab Decl. Ex. 14 at 9; SAC ¶ 237 (Wachovia).) Therefore, Plaintiffs have not alleged that the Brokerage Defendants were aware that these statements and disclosures would be relied on by brokerage customers as investment advice regarding the merits of the respective Cash Sweep Programs. In light of this conclusion, and because the allegations in the SAC do not support an inference that a "special relationship" existed between the Brokerage Defendants and Plaintiffs, Plaintiffs have not adequately pleaded justifiable reliance on Defendants' alleged misrepresentations.

Accordingly, because Plaintiffs have not identified material misrepresentations or omissions by Defendants, and they have not alleged justifiable reliance, their negligent misrepresentation claim is dismissed.

6. Negligence Against the Brokerage Defendants

Plaintiffs' negligence claim against the Brokerage Defendants "repeat[s] and reiterate[s]" all of the allegations that have been previously discussed herein (SAC ¶ 292), and alleges that the Brokerage Defendants "breached their duty of care" by, *inter alia,* "placing Plaintiffs' ... uninvested monies into bank sweep accounts at substantially below money market rates ..." (*id.* at 294). In opposition to Defendants' motions, Plaintiffs argue that the Brokerage Defendants breached a "duty of care" by "fail[ing] to evaluate *suitability to invest"* and by "placing their clients in low-interest-bearing bank accounts instead of high-yielding safe investments ...." (Pls.' Mem. at 50–51 (emphasis in original).)

However, as Defendants point out, Plaintiffs overstate the scope of the duty they were owed by the Brokerage Defendants, and they have failed to allege that Defendants breached their actual legal obligations. Accordingly, for the reasons stated below, Plaintiffs' negligence claim is dismissed.

a. Applicable Law

***35** "Under New York law, the elements of a negligence claim are: (i) a duty owed to the plaintiff by the defendant; (ii) breach of that duty; and (iii) injury substantially caused by that breach." *Lombard v. Booz–Allen & Hamilton, Inc.,* 280 F.3d 209, 215 (2d Cir.2002).

b. Analysis

Plaintiffs contend that the SAC contains allegations regarding "multiple layers of 'duties,' " including a fiduciary duty, a duty arising out of the NASD's suitability rules, "a duty arising from each of the Defendants' 'Codes of Ethics,' " and "a duty to implement matters entrusted to them ... in good faith and with reasonable care and not in a manner whereby Defendant acted contrary to their express representations ...." (Pls.' Mem. at 49–50.) However titled, the scope of the purported duty that Plaintiffs seek to enforce through their negligence claim is overly broad.

With respect to the first "layer" identified by Plaintiffs—a general fiduciary duty—the Court has already concluded that the SAC does not allege facts sufficient to give rise to such a relationship between Plaintiffs and the Brokerage Defendants. *See supra* Parts II.B.2.b, II.B.4.b. Second, alleged violations of self-regulatory organizations' ("SROs") promulgations, such as the NASD's suitability rule (*see* SAC ¶ 294) or the "best practices" identified in the NYSE Information Memo (*See id.* ¶¶ 75–78), did not alter the scope of the duties owed by the Brokerage Defendants to Plaintiffs. Such rules may not be enforced by private litigants through civil actions. *See, e.g., Brady v. Calyon Sec. (USA),* 406 F.Supp.2d 307, 312 (S.D.N.Y.2005). At most, alleged violations of these rules are relevant to the *breach* element of Plaintiffs' negligence claim. *See Kwiatkowski,* 306 F.3d at 1311 ("It may be that noncompliance with internal standards could be evidence of a failure to exercise due care, assuming however a duty as to which due care must be exercised .").

The mere existence of the NASD suitability rule, however, did not expand the duty that the Brokerage Defendants owed to their brokerage customers.

Nor did Defendants' Investor Rights Statements give rise to an ongoing duty to provide investment advice or maximize the income Plaintiffs earned from their uninvested free credit balances. *See Stewart,* 2004 WL 1823902, at *13 ("As for the argument that [a brokerage defendant] assumed extra-contractual duties by virtue of its promised relationship with plaintiff, again the theory is unsupported by ... the law."). Plaintiffs provide no authority for the assertion that promotional documents and advertisements should be deemed to give rise to a heightened duty of care, and, as has been discussed throughout this decision, the argument is unpersuasive. As in *Kwaitkowski,* the obligations that Plaintiffs would foist upon the Brokerage Defendants "presuppose[ ] an ongoing duty of reasonable care (*i.e.,* that the broker has obligations between transactions)." 306 F.3d at 1306. However, based on the allegations in the SAC, the Brokerage Defendants owed Plaintiffs no such duty.

***36** As stated in the analysis of Plaintiffs' breach of fiduciary duty claim, *see supra* Part II.B.4.b, the Brokerage Defendants did owe Plaintiffs a transaction-specific duty of care. *See Kwiatkowski,* 306 F.3d at 1305; *Bissell,* 937 F.Supp. at 246. Here as well, however, Plaintiffs have failed to attribute any conduct to the Brokerage Defendants that could plausibly be deemed a breach of that duty. "[I]n the ordinary nondiscretionary account"—and Plaintiffs have alleged no more—"the broker's failure to offer information and advice between transactions cannot constitute negligence." *Kwiatkowski,* 306 F.3d at 1306. Therefore, although the Brokerage Defendants owed Plaintiffs a duty of care with respect to both the transactions they executed on their behalf and any investment advice that they provided to them, Plaintiffs' allegations are insufficient as a matter of law to satisfy the "breach" element of their negligence claim. Accordingly, this claim is dismissed.

7. N.Y. General Business Law § 349

With respect to their claim under § 349, Plaintiffs argue that Defendants deceived consumers by issuing "false and misleading statements" that were "uniform and directed at all current and potential clients through the public media, including the Internet." (Pls.' Mem. at 64.) For the reasons set forth below, the Court finds these contentions unavailing. Accordingly, Plaintiffs' § 349 claim is dismissed.

a. Applicable Law

Section 349 prohibits "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state." N.Y. Gen. Bus. Law § 349. There are three elements to a private claim alleging deceptive practices under the statute: "(1) that the act, practice, or advertisement was consumer-oriented; (2) that the act, practice, or advertisement wasmisleading in a material respect; and (3) that the plaintiff was injured as a result of the deceptive act, practice, or advertisement ." *Pelman ex rel. Pelman v. McDonald's Corp.,* 396 F.Supp.2d 439, 444 (S.D.N.Y.2005); *see also Stutman v. Chem. Bank,* 95 N.Y.2d 24, 29, 709 N.Y.S.2d 892, 731 N.E.2d 608 (N.Y.2000). "An act is deceptive within the meaning of the New York statute only if it is likely to mislead a reasonable consumer." *Marcus v. AT & T,* 138 F.3d 46, 64 (2d Cir.1998).

b. Analysis

Plaintiffs' § 349 claim relies exclusively on their allegations regarding misrepresentations and omissions. (*See* SAC ¶ 257; Pls.' Mem. at 64.) Although proof of scienter is unnecessary under § 349, "[a] *prima facie* case requires ... a showing that defendant is engaging in an act or practice that is deceptive or misleading in a material way ...." *Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A.,* 85 N.Y.2d 20, 25, 623 N.Y.S.2d 529, 647 N.E.2d 741 (N.Y.1995). Thus, regardless of whether a claim under § 349 is predicated on a "representation or an omission, the deceptive practice must be likely to mislead a reasonable consumer acting reasonably under the circumstances." *Stutman,* 95 N.Y.2d 29 (internal quotation omitted)).

***37** Plaintiffs assert that Defendants' statements were

> designed to mislead consumers into believing that they had much more than an "[arms]-length" relationship with the Defendant Firms; to convince clients that the [Cash Sweep Programs] were beneficial to them; and to conceal that, in fact, the [Cash Sweep Programs] were designed to create windfall profits for Defendants at their clients' expense.

(Pls.' Mem. at 64–65.) However, Plaintiffs have failed to identify any materially misleading misstatements or

omissions by Defendants that support these contentions. *See supra* Part II.B.3.c. In the absence of such allegations, a cause of action under § 349 cannot be maintained. *See Shovak v. Long Island Commercial Bank,* 50 A.D.3d 1118, 858 N.Y.S.2d 660, 662–63 (2d Dep't 2008) (dismissing a § 349 claim because "there was no materially misleading statement, as the record indicated that the yield spread premium, which is not *per se* illegal, was fully disclosed to the plaintiff"). Accordingly, Plaintiffs' § 349 claim is dismissed.

8. Breach of Contract Against the Brokerage Defendants

In their breach of contract claim, Plaintiffs allege that the Brokerage Defendants breached the implied covenant of good faith and fair dealing. (*See* SAC ¶¶ 271, 273; Pls.' Mem. at 57.) Although Plaintiffs fail to identify the specific contracts to which they are referring, much less the provisions of the agreements on which they rely, Plaintiffs' theory of this claim appears to be that these unidentified contracts did "not authorize Defendants to reap windfall profits at their clients' expense" because they were "silent as to both the magnitude of Defendants' windfall profits and to how those profits were to be obtained ...." (Pls.' Mem. at 59.)

However, as discussed above, *see, e.g., supra* Part II.B.3.c. (2), Plaintiffs cannot prevail on a legal theory that is based on their alleged surprise that Defendants used freecredit balances to earn a profit. Plaintiffs have also failed to point to any provision of an agreement that could plausibly give rise to an expectation on their part that Defendants were somehow subject to a limitation on the amount of profits that they were allowed to make in connection with the Cash Sweep Programs. Similarly, Plaintiffs have not identified any agreement that could support a reasonable expectation that Defendants were obligated to maximize Plaintiffs' earnings on *uninvested* funds in their brokerage accounts. Therefore, Plaintiffs have failed to state a claim based on a theory of a breach of the implied covenant of good faith and fair dealing. Accordingly, this claim is dismissed.

a. Applicable Law

" '[U]nder New York law, a covenant of good faith and fair dealing is implicit in all contracts during the course of contract performance.' " *Janel World Trade, Ltd. v. World Logistics Servs ., Inc.,* No. 08 Civ. 1327(RJS), 2009 WL 735072, at *13 (S.D.N.Y. Mar.20, 2009) (quoting *Tractebel Energy Mktg., Inc. v. AEP Power Mktg., Inc.,* 487 F.3d 89, 98 (2d Cir.2007)). "In particular, the covenant includes a pledge that 'neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.' " *Payday Advance Plus, Inc. v. Findwhat.com, Inc.,* 478 F.Supp.2d 496, 503 (S.D.N.Y.2007) (quoting *Dalton v. Educ. Testing Serv.,* 87 N.Y.2d 384, 639 N.Y.S.2d 977, 979, 663 N.E.2d 289 (N.Y.1995)). Thus, "[t]o state a cause of action for breach of the implied covenant of good faith and fair dealing, 'the plaintiff must allege facts which tend to show that the defendant sought to prevent performance of the contract or to withhold its benefits from the plaintiff.' " *Dweck Law Firm, L.L .P. v. Mann,* 340 F.Supp.2d 353, 358 (S.D.N.Y.2004) (quoting *Aventine Inv. Mgmt., Inc. v. Canadian Imperial Bank of Commerce,* 265 A.D.2d 513, 697 N.Y.S.2d 128, 130 (2d Dep't 1999)).

b. Analysis

***38** Plaintiffs summarize the theory of their breach of contract claim as follows:

> Defendants' breach of the implied covenant of good faith is alleged as the basis for the breach of contract [claim] because no client would ever in good faith believe that it is justified for the Defendants to deploy the [Cash Sweep Programs] in such a manner that they would derive massive ill-gotten windfall profits at their clients' expense ....

(Pls.' Mem. at 58.) The "expense" to which Plaintiffs refer is apparently the difference between the interest that they actually earned, and the returns that they believe they would have been earned if they had chosen to invest their free credit balances in money market mutual funds or other investments. (*See id.*)

Plaintiffs' argument fails on its own terms. With respect to this claim, the issue is whether Defendants breached the obligation to act in good faith that is implied in every contract governed by New York law, not whether Plaintiffs "believe[d]" (Pls.' Mem. at 58)—in good faith or otherwise—that Defendants' profit-seeking behavior was inappropriate. *See Tractebel Energy Mktg.,* 487 F.3d at 98. Defendants did not violate the implied covenant of good faith and fair dealing "by acting in [their] own self-interest consistent with [their] rights under a contract." *Suthers v. Amgen Inc.,* 441 F.Supp.2d 478, 485 (S.D.N.Y.2006). As stated above, "the practice of a financial institution using money deposited with it to obtain earnings is neither unknown nor unexpected, much

less nefarious. That is precisely how banks make money." *Levitin,* 159 F.3d at 703. Therefore, the Brokerage Defendants did not breach the agreements governing Plaintiffs' accounts simply by seeking to maximize their profits.

Moreover, Plaintiffs have not identified a contractual provision that could be interpreted to give rise to a belief that the "fruits of the contract," *Dalton,* 639 N.Y.S.2d at 979, 663 N.E.2d 289, included a limitation on the profits that Defendants could earn through the use of Plaintiffs' free credit balances. *See Window Headquarters, Inc. v. MAI Basic Four, Inc.,* Nos. 91 Civ. 1816, 92 Civ. 5283(MBM), 1993 WL 312899, at *3 (S.D.N.Y. Aug. 12, 1993) ("[A] complaint in a breach of contract action must set forth the terms of the agreement upon which liability is predicated."); *see also Phoenix Four, Inc. v. Strategic Res. Corp.,* No. 05 Civ. 4837(HB), 2006 WL 399396, at *10–11 (S.D.N.Y. Feb.11, 2006). Nor does the SAC suggest that the Brokerage Defendants undertook any contractual obligation to maximize Plaintiffs' earnings on their uninvested free credit balances. *See, e.g., EBC I, Inc. v. Goldman Sachs & Co.,* 5 N.Y.3d 11, 22, 799 N.Y.S.2d 170, 832 N.E.2d 26 (N.Y.2005) (affirming the dismissal of a claim for breach of the implied covenant of good faith and fair dealing where "[t]he complaint does not adequately allege that [the defendant] injured [the plaintiff's] right to receive the benefits of their agreement"). Although Plaintiffs argue in their opposition papers that the Brokerage Defendants possessed discretion over the brokerage accounts that was to be exercised in Plaintiffs' best interest (*see, e.g.,* Pls.' Mem. at 58), the SAC contains nothing more than conclusory allegations to that effect. (*See* SAC ¶ 271 ("Among the Brokerage Defendants' obligations to their customers were to act in their interests in taking discretionary actions with their accounts ....").) Brokers, acting as such, owe no such duty to clients with nondiscretionary brokerage accounts. *See Kwiatkowski,* 306 F.3d at 1302 ("The broker's duties ordinarily end after each transaction is done, and thus do not include a duty to offer unsolicited information, advice, or warnings concerning the customer's investments.").[17] And, although Defendants may have made investment advisory services available to their customers, Plaintiffs have not alleged that they sought or received such services. *See supra* Part II.B.2. Simply put, in the absence of a contractual duty, Plaintiffs' allegations are insufficient to state a claim that a breach occurred.

***39** Finally, Plaintiffs argue that the "contracts were defective from the outset since they were implemented largely through negative consent, which was not meaningful consent at all." (Pls.' Mem. at 60.) However, Defendants disclosed to their customers that the Cash Sweep Programs' features could be modified unilaterally through advance written notice of the modifications that would become effective on a later date. (*See* Pls.' Merrill Lynch Decl. Ex. 8 at 5; Cantor Decl. Ex. C at 10, Ex. D at 24 (Morgan Stanley); Pls.' Citigroup Decl. Ex. 9 at 5; Pls.' Charles Schwab Decl. Ex. 14 at 5; Pls.' Wachovia Decl. Ex. 12 at 1, 7.) Moreover, the NYSE Information Memo upon which Plaintiffs rely as an "indicia" of a contract breach by Defendants expressly stated that "[w]ith regard to existing sweep programs, it is not intended that member organizations which secured prior consent and made effective subsequent disclosure secure affirmative consent for such programs." (N.Y.SE Info. Memo at 2 n. 2.)[18] Therefore, the use of negative consent to modify the Cash Sweep Programs did not, in and of itself, breach the contracts underlying Plaintiffs' brokerage accounts.

The implied covenant of good faith and fair dealing "does not 'add [ ] to the contract a substantive provision not included by the parties.' " *Broder v. Cablevision Sys. Corp.,* 418 F.3d 187, 198–99 (S.D.N.Y.2005) (quoting *Geren v. Quantum Chem. Corp.,* 832 F.Supp. 728, 732 (S.D.N.Y.1993)). Since Plaintiffs have not identified any contract-based expectation—implied or otherwise—that was harmed by the implementation of Defendants' Cash Sweep Programs or the profits allegedly earned by Defendants, Plaintiffs' breach of contract claim must be dismissed.

9. Unjust Enrichment

In their unjust enrichment claim, Plaintiffs allege that Defendants paid their customers lower rates of interest on free credit balances deposited at Sweep Banks, and enriched themselves by using those funds to generate profits. (*See* SAC ¶ 301.) For the reasons stated below, the Court concludes that this theory is insufficient to adequately plead a claim for unjust enrichment.

a. Applicable Law

An unjust enrichment claim "rests upon the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another." *IDT Corp. v. Morgan Stanley Dean Witter & Co.,* 12 N.Y.3d 132, 879 N.Y.S.2d 355, 907 N.E.2d 268, 2009 WL 774351, at *4 (N.Y. Mar. 26, 2009). Therefore, "[u]nder New York law, for a plaintiff to prevail

on a claim of unjust enrichment, he must establish (1) that the defendant was enriched; (2) that the enrichment was at the plaintiff's expense; and (3) that the circumstances are such that in equity and good conscience the defendant should return the money or property to the plaintiff." *Golden Pac. Bancorp v. FDIC,* 273 F.3d 509, 519 (2d Cir.2001).

"Courts have not allowed claims for unjust enrichment, however, where there is a valid and enforceable written contract governing the subject matter of the dispute." *Kottler,* 607 F.Supp.2d at 467. "On the other hand, where 'there is a *bona fide* dispute as tothe existence of a contract or where the contract does not cover the dispute in issue, [a party] may proceed upon a theory of quantum meruit and will not be required to elect his or her remedies.' " *CBS Broadcasting Inc. v. Jones,* 460 F.Supp.2d 500, 506 (S.D.N.Y.2006) (quoting *Leroy Callender, P.C. v. Fieldman,* 252 A.D.2d 468, 676 N.Y.S.2d 152, 153 (1st Dep't 1998)).

b. Analysis

***40** For the purpose of assessing Plaintiffs' unjust enrichment claim, the Court assumes, *arguendo,* that Plaintiffs have raised a sufficient challenge to the contractual agreements governing their retail brokerage accounts to permit them to plead an unjust enrichment claim in the alternative. *See, e.g., Fantozzi v. Axsys Techs., Inc.,* No. 07 Civ. 2667(LMM), 2008 WL 4866054, at *11 (S.D.N.Y. Nov.6, 2008). However, Plaintiffs have not presented sufficient allegations to support a claim for unjust enrichment.

Specifically, Plaintiffs provide no factual basis for their conclusory allegation that "Defendants have been unjustly enriched at the expense of and to the detriment of Plaintiffs ... by collecting money to which [Defendants] are not entitled." (SAC ¶ 301.) Instead, their unjust enrichment claim appears to be based on the *correlation* between (1) the reduced rates of interest they allegedly received in the Modified and Tiered Cash Sweep Programs, and (2) Defendants' increased profits as a result of the implementation of these Programs.

However, more of a nexus is required between a defendant's "enrichment" and a plaintiff's "expense" to plead a plausible claim to relief on a theory of unjust enrichment. *See Gurvey v. Cowan, Liebowitz & Latman, PC.,* No. 06 Civ. 1202(BSJ), 2009 WL 1117278, at *8 (S.D.N.Y. Apr.24, 2009) ("Plaintiff has provided only assertion and speculation as to the benefit that was taken from her by [the][d]efendants. Even under the low threshold that plaintiffs must meet under Rule 12(b)(6), the unjust enrichment claim must be dismissed ...."); *cf. Bridgeway Corp. v. Citibank, N.A.,* Nos. 97 Civ. 8884, 00 Civ. 3598(DC), 2003 WL 402790, at *4 (S.D.N.Y. Feb. 20, 2003) (finding implausible a theory of compensatory damages based on the argument that "a bank and a depositor would have contemplated ... that if there were a problem in the return of the funds, the depositor would be able to recover for profits it could have made if it had had the use of the funds"). Plaintiffs do not allege that Defendants' actions caused losses, in real terms, to the value of the principal amount of their free credit balances. Nor do Plaintiffs contend that Defendants induced them to deposit their free credit balances at affiliated Sweep Banks but then delayed or refused to return those funds upon request. Lastly, Plaintiffs acknowledge that they *did* receive at least some compensation for these uninvested funds, in the form of a positive rate of interest. (*See* SAC ¶¶ 30–36.) Therefore, Plaintiffs' factual allegations fail to support a plausible inference that Defendants' were enriched at Plaintiffs' expense.

Plaintiffs have also failed to offer any factual allegations to support an inference that "equity and good conscience" require that Defendants pay them a share of the profits that they earned from the use of free credit balances. *Golden Pac. Bancorp,* 273 F.3d at 519. Plaintiffs essentially argue that they did not earn as much of a return on their *uninvested funds* as they believe they that should have. Such an allegation is insufficient to demonstrate an equitable entitlement to a share of the profits earned by Defendants through disclosed uses of Plaintiffs' free credit balances. *See Smith v. Chase Manhattan Bank, USA, N.A.,* 293 A.D.2d 598, 741 N.Y.S.2d 100 (2d Dep't 2002) (dismissing unjust enrichment claim where "[t]here [was] no allegation that the benefits received were less than what [the plaintiffs] bargained for"). Plaintiffs have failed to sufficiently allege that Defendants' use of the Cash Sweep Programs was deceptive, and they have not identified any materially misleading statements or omissions by Defendants in connection with these Programs. Moreover, to repeat, "the practice of a financial institution using money deposited with it to obtain earnings is *neither unknown nor unexpected, much less nefarious." Levitin,* 159 F.3d at 703 (emphasis added). Therefore, the Court concludes that Plaintiffs have failed to plead a sufficient nexus between Defendants' profits and their alleged losses, and they have not identified circumstances suggesting that equitable considerations entitle them to a share of Defendants' profits. Accordingly, Plaintiffs' unjust enrichment claim is dismissed.

C. Leave to Amend

***41** The final footnote of Plaintiffs' 117–page brief in opposition to Defendants' motions states, in its entirety:

> In the event that the Court dismisses any of the claims in whole or in part, Plaintiffs respectfully request an opportunity to replead since this is the first pleading to be reviewed by the Court in this matter.

(Pls.' Mem. at 117 n. 112 (citing, *inter alia,* Fed.R.Civ.P. 15(a)).)

"While [Rule] 15(a) provides that leave to amend 'shall be freely given when justice so requires,' the Court has broad discretion in deciding whether or not to grant such a request." *Panther Partners, Inc. v. Ikanos commc'ns, Inc.,* No. 06 Civ. 12967(PAC), 2008 WL 2414047, at *2 (S.D.N.Y. June 12, 2008); *see also McCarthy v. Dun & Bradstreet Corp.,* 482 F.3d 184, 200 (2d Cir.2007). Factors that are relevant to the exercise of the Court' discretion include: (1) the presence of bad faith, dilatory motives, or undue delay on the part of the movant; (2) the potential for prejudice to an opposing party; and (3) whether the sought-after amendment would be futile. *See, e.g., In re PXRE Group, Ltd., Sec. Litig.,* 600 F.Supp.2d at 523–24. "An amendment to a pleading is futile if the proposed claim could not withstand a motion to dismiss pursuant to [Rule] 12(b)(6)." *Lucente v. Int'l Bus. Machines Corp.,* 310 F.3d 243, 258 (2d Cir.2002).

Some courts in this District have required that a plaintiff file a copy of the proposed amended pleading in order to demonstrate that Rule 15(a) relief is appropriate. *See, e.g., In re Crude Oil Commodity Litig.,* No. 06 Civ. 6677(NRB), 2007 WL 2589482, at *4 (S.D.N.Y. Sept.8, 2007) ("In the context of a motion to amend, Rule 7(b) ... requires the movant to supply a copy of the proposed amendment."); *Bankr.Trust of Gerald Sillam v. REFCO Group, LLC,* No. 05 Civ. 10072(GEL), 2006 WL 2129786, at *5 (S.D.N.Y. July 28, 2006); *Smith v. Planas,* 151 F.R.D. 547, 550 (S.D.N.Y.1993). At the very least, a party seeking leave to amend must provide some indication of the substance of the contemplated amendment in order to allow the Court to apply the standards governing Rule 15(a). *See, e.g., Horoshko v. Citibank, N.A.,* 373 F.3d 248, 249 (2d Cir.2004) ("Because an amendment is not warranted '[a]bsent some indication as to what [the plaintiffs] might add to their complaint in order to make it viable,' the District Court was under no obligation to provide the [plaintiffs] with leave to amend their complaint ...." (quoting *Nat'l Union of Hosp. & Health Care Emp., RWDSU, AFL–CIO v. Carey,* 557 F.2d 278, 282 (2d Cir.1977))); *Shields v. Citytrust Bancorp,* 25 F.3d 1124, 1132 (2d Cir.1994). In sum, "[i]n the absence of any identification of how a further amendment would improve upon the Complaint, leave to amend must be denied as futile." *In re WorldCom, Inc. Sec. Litig.,* 303 F.Supp.2d 385, 391 (S.D.N.Y.2004).

Plaintiffs' five-line footnote falls far short of these standards. Rule 15(a) is not a shield against dismissal to be invoked as either a makeweight or a fallback position in response to a dispositive motion. Plaintiffs have filed two amended pleadings in this matter, and they have not made any attempt to demonstrate that they are entitled to file a third. Therefore, the Court concludes that amending the SAC, as proposed, would be futile. Accordingly, Plaintiffs' request for leave to amend the SAC is denied.

III. Conclusion

***42** For the reasons stated above, Defendants' motions to dismiss are granted. The Clerk of the Court is respectfully directed to terminate the motions docketed as document numbers 48, 52, 56, 60 and 62, and to close this case.

SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2009 WL 2242605

Footnotes

1 In support of their separate motions to dismiss, Defendants submitted one joint memorandum of law, which the Court cites as "Defs.' Mem.," as well as individual memoranda for each group of Defendants, which the Court cites by specific reference to the relevant group of Defendants that submitted the brief. Plaintiffs submitted a single memorandum of law in opposition to Defendants' motions, which the Court cites as "Pls.' Mem."

No party has objected to the exhibits and attachments that were submitted to the Court for consideration in connection with Defendants' motions. Plaintiffs appended a substantial volume of such materials—including excerpts from

websites, account-opening agreements, brochures, and public filings—to the five declarations of Joel P. Laitman (the "Laitman Declarations"), and they relied in their opposition papers on the materials that were submitted by Defendants. The Court has reviewed all of these materials, and the documents cited in this decision have been deemed to be integral to the SAC. *See* *Global Network Commc'ns, Inc. v. City of New York,* 458 F.3d 150, 157 (2d Cir.2006) ("In most instances ..., [an integral document] is a contract or other legal document containing obligations upon which the plaintiff's complaint stands or falls ...."). These materials are therefore appropriately considered in connection with the resolution of Defendants' motions. *See, e.g., Faulkner v. Beer,* 463 F.3d 130, 134 (2d Cir.2006).

2 The Court adopts this convention based on Plaintiffs' classification of Defendants into "five separate groups." (Pls.' Mem. at 1 n. 2.) Plaintiffs' five Laitman Declarations are also arranged according to these groups. Thus, for example, the Court cites to the Laitman Declaration regarding the Merrill Lynch Defendants as "Pls.' Merrill Lynch Decl."

3 The regulations of the Securities and Exchange Commission ("SEC") define "free credit balances" as "liabilities of a broker or dealer to customers which are subject to immediate cash payment to customers on demand, whether resulting from sales of securities, dividends, interest, deposits or otherwise ...." 17 C.F.R. § 240.15c3–3(a)(8). In the SAC, Plaintiffs provide an appropriately simple alternative definition: "uninvested cash." (*See, e.g.,* SAC ¶ 1.)

4 An "expense ratio" is calculated by dividing the total value of the assets that a mutual fund holds under management by the fund's total annual operating costs and service charges. *See* *Hoffman v. UBS–AG,* 591 F.Supp.2d 522, 540–41 (S.D.N.Y.2008). The figure, expressed as a percentage, represents the proportional service fee that a mutual fund charges to an investor based on the amount of the investment in the fund.

5 Although the named Plaintiffs' accounts are discussed below, *see infra* Part I.B, no Plaintiff makes allegations regarding: (1) when his or her account was opened; (2) the value of the assets held in the account; (3) the history of the interest rates received through Defendants' various Cash Sweep Programs; or (4) whether he or she received or read the advertisements and disclosures described in the SAC.

6 In April 2007, an entity known as Morgan Stanley DW, Inc. merged into Morgan Stanley & Co., Inc. (*See* SAC ¶ 42.) Prior to the merger, Morgan Stanley DW, Inc. acted as the principal broker-dealer for Parent Defendant Morgan Stanley. (*Id.*) Following the merger, Morgan Stanley & Co., Inc. assumed that role. (*Id.*)

7 The Citigroup Defendants assert that, although Plaintiffs named "Citigroup Global Capital Markets, Inc." as a Defendant in the caption of the SAC, the name of Citigroup's principal broker-dealer is Citigroup Global Markets, Inc. (Citigroup Mem. at 1 n. 1.) The Citigroup Defendants further assert that "Smith Barney," which is referred to in the SAC as a separate entity (*see, e.g.,* SAC ¶ 45), is merely "a division and service mark of [Citigroup Global Markets, Inc.]." (Citigroup Mem. at 1 n. 1.) These distinctions appear to be immaterial to the resolution of the instant motions. Accordingly, the Court refers to this group of Defendants collectively as the Citigroup Defendants, and adopts Plaintiff's identification of Smith Barney as a separate broker-dealer entity affiliated with the Citigroup Defendants.

8 Defendant Wachovia Corp. is the successor entity arising out of the September 1, 2001 merger of First Union Corporation and the former Wachovia Corporation. (*See* SAC ¶ 50.) Defendant Wachovia Securities has an intermediate parent entity known as Wachovia Financial Holding, LLC, which is a joint venture between Wachovia Corp. and Prudential Financial Inc. (*See id.* ¶ 51.)

9 NYSE's Member Firm Regulation Division no longer exists as such. On July 26, 2007, the SEC approved the consolidation of the regulatory functions of the NYSE and the National Association of Securities Dealers ("NASD") into a single entity known as the Financial Industry Regulatory Authority ("FINRA"). *See* Press Release No.2007–151, SEC Gives Regulatory Approval for NASD and NYSE Consolidation (July 26, 2007).

10 Plaintiffs do not appear to allege that the Morgan Stanley Defendants took the intermediate step of using a Modified Cash Sweep Program prior to the November 2005 implementation of their Tiered Cash Sweep Program. (*See* SAC ¶ 162.)

11 Plaintiffs also allege that a "slightly different" version of the Wachovia Defendants' Disclosure Statement, which was available on a different website, contained "substantially the same language, except that it add[ed] ... language making it clear that only individual investors with a Command Asset brokerage account [could] have a money market sweep option ...." (SAC ¶ 232.)

12 In their opposition to Defendants' motions, Plaintiffs voluntarily withdrew their "tying" claim under the Sherman Antitrust Act. (Pls.' Mem. at 4. n. 6.) Accordingly, pursuant to Rule 41(a)(2), that claim is hereby dismissed.

13 As Plaintiffs point out, the Second Circuit has held that, as a categorical matter, claims under § 349 are only required to meet the requirements of Rule 8(a). *City of New York v. Sm okes-Spirits. Com, Inc.,* 541 F.3d 425, 455 (2d Cir.2008) (citing *Pelman ex rel. Pelman v. McDonald's Corp.,* 396 F.3d 508, 511 (2d Cir.2005)).

14 With the exception of the Wachovia Defendants, which argue that Virginia law applies, the parties agree that New York law governs Plaintiffs' state-law claims. (*See* Pls.' Mem. at 110.) Where "[t]he parties' briefs assume that New York law

controls, ... such 'implied consent ... is sufficient to establish choice of law.' " *Nat'l Utility Serv., Inc. v. Tiffany & Co.,* No. 07 Civ. 3345(RJS), 2009 WL 755292, at *6 n. 6 (S.D.N.Y. Mar.20, 2009) (quoting *Krumme v. WestPoint Stevens, Inc.,* 238 F.3d 133, 138 (2d Cir.2000)).

With respect to the Wachovia Defendants' arguments, the Court need not "embark on a choice-of-law analysis in the absence of an 'actual conflict' between the applicable rules of two relevant jurisdictions." *Fin. One Pub. Co. Ltd. v. Lehman Bros. Special Fin., Inc.,* 414 F.3d 325, 331 (2d Cir.2005). In this regard, the Wachovia Defendants have identified only two material differences between the relevant law of New York and Virginia—the availability of claims for violations of § 349 and negligent misrepresentation. However, in light of the Court's conclusion that Plaintiffs have failed to state a claim under New York law with respect to these causes of action, the Court does not reach the Wachovia Defendants' choice of law arguments.

15 Plaintiffs have also failed to specifically allege that they actually read and relied on Defendants' advertisements and Investor Rights Statements. Rather, they offer the conclusory assertion that "Plaintiffs and other Class members justifiably relied upon such misrepresentations, concealment and omissions to their damage and detriment." (SAC ¶ 266.) This failure is fatal to Plaintiffs' common-law fraud claim based on the first two categories of alleged misrepresentations by Defendants. *See Granite Partners, L.P. v. Bear, Stearns & Co.,* 58 F.Supp.2d 228, 258 (S.D.N.Y.1999) (finding that the plaintiffs had not adequately pleaded reliance because "[d]espite the [plaintiffs'] catch-all allegation that [they] relied upon [the defendant's] statements ..., the [plaintiffs] never venture[ ] to actually plead facts that underlie this reliance"); *see also Tuosto v. Philip Morris USA Inc.,* No. 05 Civ. 9384(PKL), 2007 WL 2398507, at *9 (S.D.N.Y. Aug.21, 2007) (finding that the plaintiff had not adequately pleaded reliance because the complaint did "not allege that [the plaintiff] saw ... any specific ... advertisement, [but] simply that [the defendant's] advertisements were widely circulated and intended to mislead"); *Bennett,* 2007 WL 1732427, at *9 ("In this case ..., [the] plaintiffs have not alleged that they read any of the financial statements at issue, much less that they actually relied on them."). Therefore, as to the first two categories of alleged misrepresentations by Defendants, Plaintiffs' fraud claim is dismissed for this reason as well.

16 More recently, in proposed amendments to the SEC regulations governing free credit balances, *see* 17 C.F.R. §§ 240.15c3–2, 15c3–3, the SEC offered a similar view: "[f]ree credit balances constitute money that a broker-dealer owes its customers." SEC, Amendments to Financial Responsibility Rules for Broker–Dealers, Exchange Act Release No. 34–55431 at 80 (Mar. 9, 2007) (emphasis added), *available at* htt p:// www.sec.gov/rules/proposed/2007/34–55431.pdf. In light of this authority, Plaintiffs' reliance on *United States v. Chestman,* 947 F.2d 551 (2d Cir.1991), is misplaced. Plaintiffs quote *Chestman* at length in their opposition papers (*see* Pls.' Mem. at 24), including the court's remark that "[a] fiduciary relationship involves *discretionary authority," Chestman,* 947 F.2d at 569 (emphasis added). Here, by contrast, the free credit balances at issue were swept from *nondiscretionary* brokerage accounts. In that context, the Brokerage Defendants acted as *debtors,* not fiduciaries.

17 Contrary to Plaintiffs' assertion, the Rules and Regulations promulgated by the NYSE and the NASD do not broaden the scope of the Brokerage Defendants' contractual duties, implied or otherwise. First, as Plaintiffs acknowledge, SROs' rules cannot serve as the basis for a private cause of action. *See, e.g., SSH Co., Ltd. v. Shearson Lehman Bros. Inc.,* 678 F.Supp. 1055, 1058 (S.D.N.Y.1987). Second, even "when those regulatory rules are incorporated into a customer agreement, they do not bring with them a right to sue for an infraction." *Gurfein v. Ameritrade, Inc.,* No. 04 Civ. 9526(LLS), 2007 WL 2049771, at *3 (S.D.N.Y. July 17, 2007), *aff'd* 2009 WL 485062 (2d Cir. Feb.27, 2009). Therefore the SRO pronouncements cited by Plaintiffs do not bolster their breach of contract claim.

18 The SEC's proposed changes to its regulations regarding the use of customers' free credit balances adopt the NYSE's view: "To minimize the burden on the broker-dealer, [the proposed Rule 15c3–3] would not require the broker-dealer to obtain [an existing] customer's previous agreement to permit the broker-dealer to switch the sweep option between money market fund products and bank deposit account products." *See* Amendments to Financial Responsibility Rules for Broker–Dealers, 72 Fed.Reg. 12,862, 12,867 (proposed Mar. 19, 2007).

End of Document

Tab 12

New York Official Reports

Unreported Disposition
72 Misc.3d 1213(A), 150 N.Y.S.3d 233 (Table), 2021 WL 3280577 (N.Y.Sup.), 2021 N.Y. Slip Op. 50738(U)

This opinion is uncorrected and will not be published in the printed Official Reports.

***1** Claudia C. Levy as Executrix Under the Last Will and Testament of Jacques M. Levy, a/k/a Jacques Levy, Deceased, and Jackelope Publishing Company, Inc., Plaintiffs,
v.
Robert Zimmerman, Also Known as Bob Dylan, and Doing Business as Ram's Horn Music, Special Rider Music and/or Bob Dylan Music Co., Universal Music Group, Inc. and Doing Business as Universal Music Group, Universal Music Publishing, Inc. and Doing Business as Universal Music Publishing Group, and John Does 1-10, Defendants.

Supreme Court, New York County
650402/2021
Decided on July 30, 2021

CITE TITLE AS: Levy v Zimmerman

ABSTRACT

Contracts
Construction
Decades-old agreement between musical artists unambiguously defined their rights and obligations related to their collaborative compositions, such that one artist was not entitled to portion of proceeds from other's sale of copyright to his entire catalog.

Levy v Zimmerman, 2021 NY Slip Op 50738(U). Contracts —Construction—Decades-old agreement between musical artists unambiguously defined their rights and obligations related to their collaborative compositions, such that one artist was not entitled to portion of proceeds from other's sale of copyright to his entire catalog. (Sup Ct, NY County, July 30, 2021, Ostrager, J.)

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OPINION OF THE COURT

Barry Ostrager, J.

Plaintiff Claudia C. Levy commenced this action as Executrix under the Last Will and Testament of her husband Jacques Levy, who passed away on September 30, 2004. The co- ***2** plaintiff Jackelope Publishing Company, Inc. ("Jackelope") is the music publishing company created by Mr. Levy. It is undisputed that Jacques Levy and defendant Bob Dylan[1] collaborated in the early 1970's to write ten songs, including the well-known song titled "Hurricane", seven of which were included on Dylan's bestselling record album "Desire" released in early 1976 ("the Compositions"). It is also undisputed that Dylan, through his company Ram's Horn Music, entered into a detailed six-page written agreement with Levy, dated as of July 28, 1975, that listed in Schedule A the ten Compositions and provided, among other things, for Levy's receipt of 35% of certain defined revenue received by Dylan in connection with the Compositions under certain specified circumstances discussed more fully below ("the 1975 Agreement", NYSCEF Doc. No. 15). It is further undisputed that Levy and/or his Estate and/or Jackelope have

consistently received revenue from the defendants over the years, and continuing through today, based on the 1975 Agreement in a total amount approximating $1,000,000.00.

Plaintiffs allege in the Complaint, and defendants do not dispute, that the Dylan Defendants sold their entire catalog of approximately 600 songs, including their complete copyrights, royalty rights, and any and all other rights, to the Universal Defendants for more than $300 million in a widely reported transaction in late 2020 ("the Catalog Sale") and that the ten Compositions were included in the Catalog Sale pursuant to a written agreement between the Dylan Defendants and the Universal Defendants ("the Universal Agreement") (Compl., NYSCEF Doc. No. 1, ¶28)[2]. Plaintiffs commenced this action soon thereafter, in January 2021, contending that the 1975 Agreement entitles plaintiffs to a portion of the proceeds from the Catalog Sale. In their Complaint, plaintiffs assert three causes of action: (1) breach of contract (i.e., the 1975 Agreement) against the Dylan Defendants, seeking at least $1,750,000.00 as plaintiffs' alleged portion of the revenue received by the Dylan Defendants from the Catalog Sale, plus punitive damages; (2) breach of contract against the Universal Defendants based on plaintiffs' alleged status as third-party beneficiaries of the Universal Agreement, seeking at least $1,750,000.00 as plaintiffs' alleged portion of the revenue received by the Dylan Defendants from the Catalog Sale; and (3) tortious interference with contract (i.e., the 1975 Agreement) ***3** against the Universal Defendants, seeking the same $1,750,000.00 in alleged damages.

Plaintiffs do not dispute that the Universal Defendants have continued to pay plaintiffs their proportionate share of royalties pursuant to the 1975 Agreement since the Catalog Sale, and the Universal Defendants have repeatedly acknowledged their ongoing obligation to pay plaintiffs those royalties going forward (see Transcript, "TR", pp 5-6, 16, 21, 23, 25, 28; see also Defendants' Memoranda of Law at NYSCEF Doc. Nos. 12 and 47). However, both the Dylan Defendants and the Universal Defendants vigorously assert that plaintiffs have no right to any portion of the proceeds of Dylan's complete sale of his own vested copyrights and other rights.

Before the Court at this time is a joint motion by the Dylan Defendants and the Universal Defendants for an order dismissing this action in its entirety pursuant to CPLR 3211(a)(1) and (7) based on documentary evidence (i.e., the 1975 Agreement) and failure to state a cause of action. Extended oral argument was held on the record via Microsoft Teams on July 19, 2021 (see Transcript at NYSCEF Doc. No. 56). In accordance with the proceedings on the record and this decision, the motion is granted and the action is dismissed.

The Standard of Review

The standard of review for determination of a pre-answer motion to dismiss pursuant to CPLR 3211(a)(1) and (7) is well-established based on *Leon v Martinez,* 84 NY2d 83 (1994) and its progeny. Whereas the pleadings shall be liberally construed and the allegations accepted as true when determining whether a cause of action has been stated pursuant to CPLR 3211(a)(7), "factual allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration " *Skillgames, LLC v Brody,* 1 AD3d 247, 250 (1st Dep't 2003) (citation omitted). Additionally, the Court may dismiss a claim pursuant to CPLR 3211(a)(1) where the "documentary evidence submitted establishes a defense to the asserted claims as a matter of law " *Leon,* 84 NY2d at 88; *see also 150 Broadway NY Assoc., L.P. v Bodner*, 14 AD3d 1, 5-6 (1st Dep't 2004) (dismissing action pursuant to CPLR 3211(a)(1) where the terms of the contract unambiguously contradicted the allegations supporting plaintiff's breach of contract claim, "regardless of any extrinsic evidence or self-serving allegations offered by the proponent of the claim").

Where, as here, the claims sound in breach of contract, the "[i]nterpretation of the contract is a legal matter for the court and its provisions establish the rights of the parties and prevail over conclusory allegations of the complaint " *805 Third Av. Co. v M.W. Realty Assoc.,* 58 NY2d 447, 452 (1983) (citations omitted). Further, where the Court finds that the contract is unambiguous on its face and that the intent of the parties can be discerned from the plain language within the four corners of the contract by applying the applicable canons of construction, the Court may not consider parol evidence. "It is well settled that 'extrinsic and parol evidence is not admissible to create an ambiguity in a written agreement which is complete and clear and unambiguous upon its face' " *W.W.W. Assoc. v Giancontieri,* 77 NY2d 157, 163 (1990) (citation omitted); *see also, Evans v Famous Music Corp.,* 1 NY3d 452,458 (2004) ("It is well settled that [the court's] role in interpreting a contract is to ascertain the intention of the parties at the time they entered into the contract. If that intent is discernible from the plain meaning of the language of the contract, there is no need to look further").

The First Cause of Action for Breach of the 1975 Agreement is Dismissed

Upon review of the 1975 Agreement and the competing arguments, the Court finds the Agreement is clear and unambiguous on its face when read as a whole. For the reasons explained ***4** here, the Court determines that the plain meaning of the 1975 Agreement is that the Dylan Defendants owned all copyrights to the Compositions, as well as the absolute right to sell the Compositions and all associated rights, subject only to plaintiffs' right to receive the compensation specified in the 1975 Agreement, which does not include any portion of the proceeds from Dylan's sale of his own rights to the Universal Defendants.

The analysis necessarily begins with a review of the terms of the 1975 Agreement, which the parties extensively negotiated with the assistance of counsel. The Agreement is "by and between RAM'S HORN MUSIC (hereinafter referred to as 'Publisher') and Jacques Levy (hereinafter referred to as 'Employee')."[3] The first paragraph explicitly defines the relationship between the parties as an employment relationship, stating that:

> Publisher [Dylan's company Ram's Horn Music] hereby employs Employee [Jacques Levy] as its employee-for-hire and Employee accepts such employment to write the lyrics of certain original musical compositions, which lyrics shall be co-written by and with Bob Dylan (hereinafter referred to as the "Compositions")

The Compositions are listed in Schedule A to the Agreement as the ten songs that Levy and Dylan had co-written shortly before the Agreement was signed. The Agreement refers to Levy as an "Employee" approximately 84 times.

The Agreement at ¶2 broadly grants Dylan complete ownership of the Compositions and all associated rights as owner and author, stating in relevant part (with emphasis added) that:

> It is understood and agreed that *the Compositions shall automatically be and become sole property of Publisher [Dylan], everywhere and forever, with all copyrights therein* and all renewals and extensions thereof, throughout the world. *Employee [Levy] hereby sells, assigns, transfers and sets over unto Publisher [Dylan] all Employee's right, title and interest in and to the Compositions (lyrics, music and titles)* and in and to each and every arrangement, version and adaptation thereof, together with the worldwide copyrights thereof, and renewal copyrights thereof, and the right to secure copyrights, extensions of copyrights, and renewals of copyrights, therein throughout the entire world, and *all Employee's [Levy's] rights of whatsoever nature, both legal and equitable therein, thereto and thereunder*, including but not limited to, the sole and exclusive world-wide publication, mechanical instrument, electrical transcription, and motion picture and television synchronization rights, grand rights and/or stage rights of every and any nature, and the right of public performance for profit by any and all means and through any and all media, *and all other rights now known or hereafter to become known. All Employee's rights in the Compositions shall vest in Publisher immediately upon their creation*. For the foregoing purposes, *Publisher shall be deemed the author thereof with respect to the material written by Employee hereunder, with Employee acting as Publisher's employee-for-hire hereunder*. Publisher shall determine in its sole discretion whether and in what manner to exploit the sales and uses of the Compositions or to refrain therefrom.

The Agreement at ¶9 reinforces Dylan's absolute "*right to assign, transfer, sell* or ***5** otherwise dispose of the Compositions and all copyrights *subject, however, to the payment of compensation to Employee as herein provided*" (emphasis added). Levy's compensation rights are defined and expressly limited by the terms of the Agreement, which states in ¶6 that "*Employee shall not be entitled to receive any compensation or remuneration other than as in this Agreement specifically provided*" (emphasis added). Levy's right to "compensation" related to the Compositions is described in ¶7, and ¶7(a) defines that compensation as consisting of:

> Thirty-five (35%) percent of any and all income earned by the Compositions and actually received by the Publisher from mechanical rights [to reproduce songs on CDs and digital formats], electrical transcriptions [for use of a song for public broadcast such as radio], reproducing rights [for use in consumer products such as ring tones and music boxes], motion picture synchronization and television rights, and all other rights therein, (expressly excluding any income or royalties earned in respect of printed editions of the Compositions) in the United States and Canada.*

Citing *In re Cellco Partnership,* 663 F. Supp. 2d 363 (S.D.NY 2009) and *Greenfield v Philles Records*, 98 NY2d 562 (2002), defendants assert that the income-generating rights defined in ¶7(a) are the primary types of music licensing rights, suggesting the parties' intent to limit Levy's compensation to 35% of royalties and similar monies received by Dylan for licensing, as opposed to the proceeds of Dylan's sale of his copyrights to the Universal Defendants. This interpretation is reinforced by additional language in ¶7(a) that authorizes the Publisher to "direct its licensee to pay the aforesaid income directly to Employee or his designee."

In sum, defendants compellingly argue based on the plain language in the 1975 Agreement that the Agreement unambiguously limits plaintiffs' compensation rights to 35% of monies received by Dylan for licensing rights granted to third-parties for the performance and use of the Compositions but not for any portion of the proceeds from Dylan's sale of his complete copyrights related to the Compositions that were explicitly vested in him alone pursuant to the express terms of the 1975 Agreement.

Plaintiffs have offered voluminous opposition papers to argue otherwise. First and foremost, plaintiffs urge the Court to reject the Agreement's "employee-for-hire" designation of Levy as "not dispositive" and to instead recognize Levy as a "joint author" of the Compositions entitled to a percentage of the proceeds of the Catalog Sale (see Memorandum in Opposition, NYSCEF Doc. No. 46, at p 2 ff). In support of their argument, plaintiffs offer three affidavits. The first is from Larry Jaffee, a New York based writer in the music business who wrote two articles in the early 1990's based on his interviews with Jacques Levy (NYSCEF Doc. No. 28). Jaffee cites portions of his articles which suggested that Levy and Dylan had begun their song-writing relationship rather spontaneously in or about May of 1975 as a casual "collaboration" and not as an employment relationship.

Next plaintiffs offer the affidavit of Claudia Levy, the spouse of Jacques Levy for 24 years and the Executrix of his Will (NYSCEF Doc. No. 31). Ms. Levy's recollection of events based on her interactions with Dylan and Levy is consistent with Jaffee's recitation of events. In her affidavit, Ms. Levy describes Mr. Levy as "an incredibly creative and educated person" with a PhD in psychology who practiced clinical psychology and taught English at Colgate University and who was an "extremely accomplished and renowned songwriter and avant-garde theater director" for various well-known artists when he began collaborating with Dylan.

But plaintiffs rely most heavily on the 35-page affidavit of Bob Kohn, who describes ***6** himself as "an expert on copyright law as it is applied to the music business," "a transactional attorney for music industry clients," "an expert witness on customs and practices in the music business," and the author of a treatise entitled *Kohn On Music Licensing* (NYSCEF Doc. No. 36). Based on his analysis of the Copyright Act of 1909 and "common law copyright" in effect when the Compositions were co-written in or about May of 1975, Kohn opines that the Compositions were "joint works" of Levy and Dylan with the evidence suggesting "joint authorship" and a shared "undivided interest" in the songs, rather than an "employee-for-hire" relationship as the 1975 Agreement and defendants purport to claim.[4]

In an exercise later criticized by defendants in their reply memorandum (at p 11) as "inadmissible and egregious," "incorrect and misguided," and "an improper attempt to circumvent this Court's word limits for legal briefs and usurp this Court's role of interpreting contract language," Kohn offers his own interpretation of the provisions in the 1975 Agreement. Beginning with the definition of Levy's compensation in ¶7(a) of the Agreement (quoted at p 6 above), Kohn argues that the reference to 35% of "any and all income" and the reference to "all other rights therein" requires the Court to include income related to authorship rights, including copyrights, and not merely to licensing. He further argues that the reference in the parenthetical to "income or royalties" suggests an intent to include income beyond licensing royalties.

Plaintiffs also attribute great significance to the handwritten interlineation tied to the asterisk in ¶7(a) quoted above. That provision states:

> Without limiting the generality of the foregoing, if rights to a Composition are acquired by a third party for use for the basis of a screenplay, teleplay or dramatic work, Employee shall be entitled to 35% of purchase price paid to Publisher for acquisition of such rights.

According to Kohn (at ¶33), the initial phrase "[w]ithout limiting the generality of the foregoing" refers "back to the kinds of 'income from rights' to which Levy is entitled to a payment of 35%." He further argues that the use of the words "rights" and "purchase price paid for acquisition" defeats defendants' claim that ¶7(a) provides for compensation

limited to licensing royalties and does not include sales proceeds. Lastly, Kohn provides a lengthy analysis for his opinion that the assignment clause at ¶9 discussed above cannot mean that Levy assigned his copyrights or other ownership or authorship rights to Dylan because Levy automatically assigned any such rights to his company Jackelope when the Compositions were written, which is purportedly confirmed by Jackelope's signature at the end of the Agreement.

As indicated above, the Court finds that the 1975 Agreement is unambiguous and that defendants correctly construe the plain language in the Agreement as precluding plaintiffs' claim to any portion of the proceeds of Dylan's sale of his complete copyrights and royalty rights. Consistent with the standard of review discussed above, the Court cannot consider plaintiffs' ***7** offer of extrinsic evidence to alter the meaning of the terms of the Agreement, particularly when the meaning urged by plaintiffs would grant them a windfall consisting of a portion of the proceeds of Dylan's sale of his own copyrights without any change whatsoever in plaintiffs' continued right to royalties under the Agreement. But even if the Court were to consider the evidence, the Court finds plaintiffs' arguments unavailing.

The comments offered by Ms. Levy and Jaffe about the relationship between Dylan and Levy and their song-writing collaboration are of no moment, as the two parties entered into a detailed agreement, with the assistance of counsel, after the Compositions were written that sets forth the rights and obligations of the parties as of July 28, 1975. And Bob Kohn improperly usurps the Court's function to interpret the Agreement by cherry-picking words and phrases and assigning them meanings that ignore the surrounding words and are inconsistent with the 1975 Agreement when read as a whole. As Chief Judge Judith Kaye eloquently explained in *Kass v Kass,* 91 NY2d 554, 566 (1998): "Particular words should be considered not as if isolated from the context but in the light of the obligation as a whole and the intention of the parties as manifested thereby."

For example, Kohn's reliance on the phrase "any and all income" earned, as set forth in the definition of compensation in ¶7(a), ignores the specific list of income categories that follows that phrase. The list includes typical licensing rights such as reproducing rights and televisions rights. "[U]nder the principle of *ejusdem generis*, when a general phrase [such as any and all] follows a list of specific terms, the general phrase must be interpreted to refer to items of the same ilk as those specifically listed." *Malmsteen v Universal Music Grp.,* 940 F. Supp. 2d 123, 133 (SDNY 2013). And the phrase "all other rights therein" at the conclusion of the list logically refers back to the list and implies no intent to expand it beyond royalty rights to include a right to sales proceeds.

The reference to "royalties" and "licensees" lends further support to defendants' assertion that the compensation in ¶7(a) is limited to income from licensing and not Dylan's copyright sale. A right as significant as the purported right to a percentage of the proceeds from Dylan's sale of his copyrights and royalty rights is a material term that the parties would have expressly stated in the Agreement had they intended to include it. *See Matter of Express Indus. & Term. Corp. v New York State Dept. of Transp.,* 93 NY2d 584, 589 (1999) (definite mutual assent is required for material terms of a contract). Contrary to plaintiffs' contention, the parenthetical phrase "expressly excluding any income or royalties earned in respect of printed editions of the Compositions" was intended as a broad exclusion of printed editions (i.e., sheet music) from compensation, not as a means to expand it by referring to "income or royalties" in the alternative.

Plaintiffs similarly assign a distorted meaning to the handwritten interlineation in ¶7(a). To the extent that provision references the "purchase price paid", it is limited to "rights to a Composition [that are] acquired by a third party for use for the basis for a screenplay, teleplay or dramatic work." The third party is obviously not purchasing all rights to the Composition but is purchasing a limited right to use the song for the specified purpose. Such a narrow expansion of the compensation rights specified in ¶7(a), all related to licenses, cannot reasonably be construed to grant plaintiffs the extremely valuable right to 35% of the proceeds of Dylan's copyright sale.

Wholly unreasonable and unpersuasive is plaintiffs' contention that Levy had no authority to agree in ¶2 that "the Compositions shall automatically be and become sole property of publisher [Dylan]" or to confirm in ¶9 that Dylan had the "right to assign, transfer, sell or ***8** otherwise dispose of the Compositions and all copyrights" because Levy's rights had been automatically assigned to his company Jackelope in the first instance. Such a contention is directly contradicted by ¶10, which confirms that:

> Employee has not heretofore sold, assigned, pledged, mortgaged, hypothecated or otherwise disposed of or encumbered any of the Compositions or the material written by Employee hereunder or any copyrights or

copyright renewals or extensions thereof, or any right, title or interest therein.

Contrary to Kohn's claim, Jackelope's signature at the conclusion of the Agreement expressly limits Jackelope's consent only "insofar as the terms and conditions of the foregoing employment agreement relate specifically to Jackelope " Jackelope is specifically mentioned in ¶8(d) as being a publisher affiliate of BMI and to entitle Jackelope to receive directly from BMI 35% of the publisher share of performance income. The signature cannot reasonably be used to expand the terms of Levy's compensation rights under the Agreement in the manner Kohn urges.

In sum, the "expert" affidavit offered by Bob Kohn purporting to interpret the 1975 Agreement is inadmissible to offer an opinion as to the legal rights and obligations of the parties under the unambiguous contract (*see, e.g., Colon v Rent-A-Center,* 276 AD2d 58, 61 (1st Dep't 2000). Kohn's opinion is, in any event, unpersuasive as it distorts the plain language in the Agreement. Defendants' limited citation in their moving papers to Kohn's treatise does not change that result, as the Court is not relying on any extrinsic evidence to interpret the Agreement.

The cases cited by plaintiffs do not mandate a contrary result. In *Leeds v Harry,* 2015 WL 609878 (Sup. Ct., NY Co. 2015), the trial court applied the same rules of contract interpretation espoused here to determine "the parties obligations and intentions as manifested in the entire agreement and afford the language an interpretation that is sensible, practical, fair, and reasonable" consistent with *Riverside S. Planning Corp. v CRP/Extell Riverside, L.P.,* 13 NY3d 398, 404 (2009) and the other cases cited therein. After so doing, the court found the contract ambiguous and denied summary judgment based on triable issues of fact. But because the provisions in the agreement related to defendant Harry (a/k/a Blondie) are not at all similar to those in the 1975 Agreement at issue here, the case provides no guidance beyond the rules of contract interpretation. Similarly, plaintiffs' reliance on *Evans v Famous Music Corp.,* 1 NY3d 452 (2004) is misplaced. Finding the music contract ambiguous, the court considered custom and practice to interpret the contract and grant defendants summary judgment dismissing the breach of contract cause of action. In contrast here, the Court has no need to resort to custom and practice because the 1975 Agreement, as plainly written, does not entitle plaintiffs to any portion of the proceeds of Dylan's sale of his copyrights and royalty rights.

Accordingly, the First Cause of Action against the Dylan Defendants for breach of the 1975 Agreement is dismissed based on the documentary evidence, which provides a complete defense as a matter of law that demonstrates that plaintiffs have not stated a viable cause of action. Any request by plaintiffs to replead is denied as futile. The Complaint specifically cites Sections 7 and 9 of the 1975 Agreement, and plaintiffs directly addressed those provisions and any other relevant provisions of the Agreement at length in their opposition papers and during oral argument. Further, as discussed above, any proposed copyright claim on behalf of Jacques Levy would be extinguished by the terms of the 1975 Agreement, particularly Section 10(d) wherein Levy explicitly confirmed his "full right, power and authority to grant to and vest in ***9** [the Dylan Defendants] all of [Levy's] rights in and to the Compositions and the copyrights and any extensions or renewals therein and thereto."[5]

The Second Cause of Action for Breach of the Universal Agreement is Dismissed

In the Second Cause of Action, plaintiffs assert a breach of contract claim against the Universal Defendants, seeking to recover their "prorated share of the income generated from the Catalog Sale" which they calculate to be at least $1,750,000.00 by applying to the proceeds of the Catalog Sale the 35% formula in the 1975 Agreement as applied to the ten Compositions (Comp. ¶¶ 50-55). While acknowledging they are not signatories to the Universal Agreement allegedly breached, plaintiffs contend they are "third-party beneficiaries" or, alternatively, "implied third-party beneficiaries" of the Catalog Sale between the Dylan and Universal Defendants and the related agreement executed by those parties (i.e., the Universal Agreement).

The cause of action must be dismissed because, as defendants correctly assert, plaintiffs do not qualify as third-party beneficiaries of the Universal Agreement. To maintain a claim as third-party beneficiaries, plaintiffs must establish: "(1) the existence of a valid and binding contract between other parties, (2) that the contract was intended for [plaintiffs'] benefit and (3) that the benefit to [plaintiffs] is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate [plaintiffs] if the benefit is lost." *Mendel v Henry Phipps Plaza W., Inc.,* 6 NY3d 783, 786 (2006), *quoting Burns Jackson Miller Summit & Spitzer v Lindner*, 59 NY2d 314, 336 (1983).

In a case relied upon by plaintiffs themselves in their opposition brief (at p 19), the Court of Appeals emphasized that it had "sanctioned a third party's right to enforce a contract in two situations: when the third party is the only one who could recover for the breach of contract or when it is otherwise clear from the language of the contract that there was 'an intent to permit enforcement by the third party'." *Dormitory Auth. of the State of NY v Samson Constr. Co.,* 30 NY3d 704, 710 (2018), *quoting Fourth Ocean Putnam Corp. v Interstate Wrecking Co.*, 66 NY2d 38, 45 (1985). There, the Court of Appeals modified the Appellate Division and found summary judgment should have been granted dismissing the City's third-party beneficiary claim under the architectural services contract between the NYS Dormitory Authority and Perkins Eastman Architects, P.C. related to the construction of a laboratory. The Court found that, while the City was an incidental beneficiary of the contract because the lab was being built for use by the City's Office of the Chief Medical Examiner, the City was not the only party who could recover for a breach of the contract between the State Authority and the architect. Nor did the architectural services contract expressly name the City as an intended third-party beneficiary or authorize the City to enforce any obligations under the contract. Thus, the City did not qualify as ***10** a third-party beneficiary entitled to enforce the contract made by and between the other parties.That reasoning applies here to mandate the dismissal of plaintiffs' third-party beneficiary claim. Plaintiffs do not, and cannot, claim they are the only party who could recover for breach of the Universal Agreement, as the Dylan Defendants undeniably could sue the Universal Defendants for any nonpayment of monies due or other breach of that Agreement. Plaintiffs instead rely on the second possible situation delineated by the *Dormitory Authority* court of an implied intent to permit enforcement of the contract by a third party.

For that claim plaintiffs cite ¶9 of the 1975 Agreement, which plaintiffs interpret to mean that "Dylan had the right to sell the copyrights, subject to 'the payment of compensation to Employee [Levy] as herein provided'." (Memorandum in Opposition at p 20). But that provision does nothing more than reinforce the provision that the 1975 Agreement is binding on Dylan's assigns. Indeed, ¶16 of the 1975 Agreement expressly provides that the Agreement is binding on Publisher's "designees, successors, assigns or its associated or affiliated companies." The provision does not alter or expand Levy's compensation rights.

The third-party beneficiary claim also fails because plaintiffs are not truly seeking to enforce the Universal Agreement. Rather, plaintiffs are seeking to enforce their compensation rights under the 1975 Agreement, which plaintiffs claim include the right to the sales proceeds. Defendants acknowledge in their Reply Memorandum (at p 12), as they previously acknowledged, that the Universal Defendants assumed Dylan's obligations under the 1975 Agreement. Plaintiffs do not claim that the Universal Agreement modified plaintiffs' rights under the 1975 Agreement or that the Universal Defendants have somehow disavowed their obligations under the 1975 Agreement.

The dispute between the parties is instead solely whether the 1975 Agreement, standing on its own, entitles plaintiffs to a share of the proceeds received by Dylan for the sale of his Song Catalog, including all of his copyrights and royalty right. Thus, as defendants correctly note, plaintiffs would enforce any breach of their compensation rights by suing under the 1975 Agreement, which the Universal Defendants assumed, not by suing under the Universal Agreement.[6] Thus, the Second Cause of Action premised on plaintiffs' alleged third-party status under the Universal Agreement must be dismissed.

The Third Cause of Action for Tortious Interference with Contract is Dismissed

In their Third Cause of Action, plaintiffs allege that the Universal Defendants tortiously induced the Dylan Defendants to breach the 1975 Agreement (Compl ¶¶56-61). Specifically, plaintiffs assert that the Universal Defendants "wrongfully, intentionally and without justification induced the Dylan Defendants to breach the Agreement with Plaintiffs by advising and/or instructing the Dylan Defendants not to render any revenue, income and/or payments to Plaintiffs in connection with the Catalog Sale." Plaintiffs further contend that Dylan would not ***11** have breached the Agreement "but for" the wrongful acts of the Universal Defendants, and they seek to recover the same damages of approximately$1,750,000.00 claimed in the other causes of action.

The cause of action is dismissed. "A claim of tortious interference requires proof of (1) the existence of a valid contract between plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional procuring of the breach, and (4) damages." *Foster v Churchill,* 87 NY2d 744, 749-50 (1996), *citing Israel v Wood Dolson Co.,* 1 NY2d 116, 120. Plaintiffs can of course satisfy the first

two elements, as the Universal Defendants were well aware of the contract between Levy and Dylan, but they cannot satisfy the remaining two elements.

The most obvious deficiency in plaintiffs' tortious interference claim is that there was no breach of the contract (i.e.., the 1975 Agreement) for the reasons previously stated. Another fatal flaw is plaintiffs' failure to plead any facts that would establish that the Universal Defendants caused the alleged breach of contract by the Dylan Defendants, resulting in damages, and that no breach would have occurred "but for" Universal's conduct. *See, Cantor Fitzgerald Assocs., L.P. v Tradition N. Am., Inc.,* 299 AD2d 204 (1st Dep't 2002) (affirming dismissal of plaintiff's tortious interference claim based on a failure to establish the "essential element" of "but for" causation). The Complaint here contains nothing more than the vague allegations noted above.

In opposition, plaintiffs seek to distinguish defendants' cases. More significantly, though, plaintiffs contend they should be permitted to conduct discovery to obtain facts to support their cause of action, which they believe has merit in light of other purported conduct by Dylan over the years that allegedly demonstrated Dylan's failure to give full credit to Levy for the Compositions in public performances. But discovery is not permissible as a 'fishing expedition" to ascertain whether a cause of action exists. *Cf., Bishop v Stevenson Commons Assoc., L.P.,* 74 AD3d 640, 641 (1st Dep't 2010) (Court has broad discretion to deny pre-action discovery when the pleadings fail to demonstrate the cause of action has some merit). As plaintiffs here have failed to offer a single, nonconclusory allegation to support their tortious interference claim, the claim should not be allowed to continue past the pleadings stage, especially since plaintiffs will be unable to demonstrate the key element of a breach of the 1975 Agreement.

In sum, the 1975 Agreement vested in Dylan complete ownership and control of the copyrights to the Compositions and limited Levy's rights to 35% of the specified compensation, which consisted primarily of licensing royalties and in no way can be construed to include a portion of Dylan's sale of his own copyrights and royalty rights. Accordingly, it is hereby

ORDERED that Defendants' motion to dismiss is granted in its entirety, and any and all claims and causes of action asserted in this action against any and all Defendants are dismissed with prejudice. The Clerk is directed to enter judgment accordingly.

Dated: July 30, 2021

Hon. Barry R. Ostrager, JSC

FOOTNOTES

Footnotes

1 Bob Dylan is the stage name used by defendant Robert Zimmerman. In addition to naming Dylan in this suit, plaintiffs have named Dylan's various companies Ram's Horn Music, Special Rider Music, and Bob Dylan Music Co., which together are referred to here as "the Dylan Defendants."

2 Plaintiffs in their opposition papers criticized defendants for having failed to attach the Universal Agreement to their moving papers (NYSCEF Doc. No. 46). In reply, defendants indicated they had offered to produce the Universal Agreement conditioned on plaintiffs' agreement to maintain confidentiality but that plaintiffs declined to agree (NYSCEF Doc. No. 47). Before oral argument, the Court urged counsel to agree to production on an "attorney's eyes only" basis, but plaintiffs again declined (NYSCEF Doc. Nos. 51-53). It was not until after oral argument that plaintiffs offered to agree to confidentiality and requested an opportunity to brief the related issues in the motion again, but the Court determined at that point to proceed on the record and avoid delay (NYSCEF Doc. Nos. 54-55). This decision accepts plaintiffs' undisputed allegations about the Universal Agreement as true.

3 The Court has omitted the addresses. The address for Levy is c/o his attorney. In discussing the Agreement in this decision, the Court may use "Dylan" in place of Ram's Horn or Publisher.

4 The analysis is based in part on Kohn's description of the Compositions as "unpublished works" when written, which were not published until the Fall or Winter of 1975-76 (*after* the Agreement was signed) when either a printed edition or the record album "Desire" was released with the Compositions (see ¶7). Kohn also relies on the current Copyright Act of 1976, but the 1976 Act is irrelevant as it did not take effect until January 1, 1978, according to Kohn (see ¶8).

5 Had the First Cause of Action survived, the Court would have dismissed the request for punitive damages. Punitive damages are only available when the conduct associated with the breach of contract is actionable as an independent tort and is sufficiently egregious that it demonstrates "such wanton dishonesty as to imply a criminal indifference to civil obligations" and is also "aimed at the public generally" such that the remedy vindicates public, and not just private, rights. *Walker v Sheldon,* 10 NY2d 401, 404--405 (1961*); see also, Rocanova v Equitable Life Assur. Soc. of U.S.,* 83 NY2d 603, 613 (1994). Plaintiffs' breach of contract claims do not meet that standard.

6 Because plaintiffs are relying in their Second Cause of Action on the 1975 Agreement and the undisputed assumption by the Universal Defendants of Levy's rights under the 1975 Agreement, the previously discussed dispute about the production of the Universal Agreement is irrelevant to the third-party beneficiary analysis. Plaintiffs' third-party beneficiary claim also fails because, for the reasons stated above, the 1975 Agreement has not been breached.

End of Document

Tab 13

2009 WL 2356131
Only the Westlaw citation is currently available.
United States District Court,
S.D. New York.

Joseph WELCH, On Behalf of Himself and All Others Similarly Situated, Plaintiff,
v.
TD AMERITRADE HOLDING CORPORATION, et al., Defendants.

No. 07 Civ. 6904(RJS).
|
July 27, 2009.

West KeySummary

1 **Brokers** Fraud of Broker or His Agent

An investor failed to state a claim for negligent misrepresentation against his broker. The investor failed to identify a materially misleading statement or omission by the broker. The investor's allegations also did not support an inference that he reasonably relied on any of the broker's alleged misrepresentations.

Attorneys and Law Firms

Jay Paul Saltzman, Frank Rocco Schirripa, and Samuel P. Sporn, Schoengold Sporn Laitman & Lometti, P.C., New York, NY, for Plaintiffs.

Christopher P. Hall, Brian A. Herman, Clare Marie Cusack, and Matthew Dean Stratton, Morgan, Lewis & Bockius LLP, New York, NY, Defendants.

memorandum and order

RICHARD J. SULLIVAN, District Judge.

***1** In this putative class action, Plaintiff Joseph Welch brings claims under federal and state law, on behalf of himself and all others similarly situated, alleging that Defendants engaged in a "deceptive and fraudulent common plan and scheme" relating to a "Cash Sweep Program" that was offered in connection with one of Plaintiff's brokerage accounts. The Consolidated Class Action Complaint (the "Complaint" or "Compl.") contains claims for violations of the Investment Advisers Act of 1940, 15 U.S.C. § 80b–1 *et seq.* (the "IAA"), New York General Business Law § 349 (" § 349"), and common-law claims for fraud, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, negligence, negligent misrepresentation, and unjust enrichment.

Before the Court is Defendants' motion to dismiss Plaintiff's claims pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons set forth below, Defendants' motion is granted.

I. Background

Plaintiff's allegations are substantially similar to the allegations in a related case captioned as *DeBlasio, et al. v. Merrill Lynch & Co., Inc., et al.,* No. 07 Civ. 318(RJS) (*"DeBlasio"* or the *"DeBlasio* action"), and Plaintiff's counsel also represents the *DeBlasio* plaintiff's. On July 27, 2009, the Court granted the *DeBlasio* defendants' motions to dismiss that action. A copy of that Opinion and Order is attached as Exhibit A and is hereby incorporated by reference into this Memorandum and Order.[1]

The following information regarding Plaintiff's claims is derived from the Complaint, the declarations submitted by the parties, and certain materials attached as exhibits thereto.[2] However, when reciting the facts and allegations that are relevant to the resolution of Defendants' motion, the Court presumes the parties' familiarity with the Second Amended Complaint in *DeBlasio,* the February 2005 NYSE Information Memorandum that has been relied on by the plaintiffs in both matters (*see* Compl. ¶¶ 41–45), and the Court's decision granting the *DeBlasio* defendants' motions to dismiss.

A. Facts

The allegations in this action relate to a service offered by Defendant TD Ameritrade, Inc. ("TD Ameritrade"), which is generally referred to in the retail brokerage industry as a

"Cash Sweep Program" or "Cash Sweep Option." (Compl.¶¶ 2, 27–28.) Through TD Ameritrade's Cash Sweep Program, Plaintiff was offered the opportunity to have the balance of uninvested funds in his brokerage account, known as a "free credit balance," placed in—or, "swept" into—other types of interest-bearing investment products. (*See id.* ¶ 27.) Plaintiff alleges that, beginning on or about January 24, 2006, Defendants engaged in a "deceptive and misleading plan and scheme," which included a series of "blatantly false" misrepresentations, in order to implement a new Cash Sweep Program that paid TD Ameritrade's customers lower rates of interest than were previously available in order to earn a "financial bonanza" of profits for Defendants. (*Id.* ¶¶ 4–5.)

1. The Parties

***2** Plaintiff is a resident of Washington who "maintains multiple brokerage accounts" with Defendant TD Ameritrade. (*Id.* ¶ 10.) Plaintiff alleges that, between January 24, 2006 and the present, his uninvested cash was "swept" in connection with TD Ameritrade's "Money Market Deposit Account sweep program." (*Id.*) Plaintiff further alleges that, as of May 31, 2007, he "was receiving only 0.4% interest on uninvested cash awaiting investment." (*Id.*)[3] Plaintiff seeks to act as the representative of a proposed class consisting of:

> [A]ll those who maintained and/or maintain a brokerage account from and through TD Ameritrade, where the clients' uninvested cash was automatically swept into Defendant-controlled and affiliated bank accounts at [Defendant] TD Bank [USA, N.A.], or into "TD Ameritrade Cash" or equivalent accounts, paying interest below prevailing money market yields, from and including January 24, 2006 through the present.
> (*Id.* ¶ 18.)

As in *DeBlasio,* Plaintiff has named as Defendants a related group of banking entities that includes one Parent Defendant, TD Ameritrade Holding Corporation ("TD Holding"); one Brokerage Defendant, TD Ameritrade; and two Sweep Bank Defendants, The Toronto Dominion Bank ("Toronto Dominion") and TD Bank USA, N.A. ("TD Bank").[4] *See DeBlasio* Part I.A.1 (describing the grouping of defendants).

Parent Defendant TD Holding is a Delaware corporation with its main offices in Nebraska. (Compl.¶ 12.) TD Holding's common stock is publicly traded on the NASDAQ. (*Id.*) Brokerage Defendant TD Ameritrade is an indirect subsidiary of TD Holding, and it is also a Delaware corporation with its main offices in Nebraska. (*Id.* ¶ 11–12.) It is a member of the National Association of Securities Dealers ("NASD") and the New York Stock Exchange ("NYSE"), a registered broker-dealer, and an "Investment Adviser" under the 1AA. (*Id.*)

Sweep Bank Defendant Toronto Dominion is a Canadian-chartered bank with its main office in Toronto and another office in Manhattan. (*Id.* ¶ 14.) Toronto Dominion's stock is traded on the Toronto Stock Exchange and the NYSE. (*Id.*) Sweep Bank Defendant TD Bank is a wholly owned subsidiary of Toronto Dominion. (*Id.* ¶ 13.) TD Bank maintains an executive office in Manhattan, but it does not maintain other branch offices and its services are provided largely through the internet, phone, and mail. (*Id.*)

2. The TD Waterhouse Acquisitions

Plaintiff alleges that, on January 24, 2006, a series of acquisitions occurred that led to Defendants' current organizational structure (the "TD Waterhouse Acquisitions"). (*See generally id* . ¶ 16 (describing the transactions).) As part of the transactions, the entity now known as TD Holding acquired two brokerage firms: TD Waterhouse Group, Inc. ("TD Waterhouse") and Ameritrade, Inc. ("Ameritrade"). (*See id.* ¶ 31; *see also id.* ¶ 11.)

***3** Following the TD Waterhouse Acquisitions, Brokerage Defendant TD Ameritrade—the affiliated broker-dealer of Defendant TD Holding—served the United States retail brokerage clients of both TD Waterhouse and Ameritrade. (*Id.* ¶ 11.) According to Plaintiff, as part of the TD Waterhouse Acquisitions, Defendants also entered into a "money market deposit account agreement," under which TD Ameritrade was "required to offer, as 'designated sweep vehicles,' bank sweep accounts through [Defendant] TD Bank" (the "MMDA Agreement"). (*Id.* ¶ 16.)

3. Predecessor Cash Sweep Programs

Although the proposed class period in this action is limited to the period after the close of the TD Waterhouse Acquisitions, Plaintiff makes a series of allegations regarding the Cash Sweep Programs that were previously offered to United States retail brokerage investors by non-parties TD Waterhouse and Ameritrade. Specifically, Plaintiff alleges that both brokerage firms "long offered" Cash Sweep Programs that

swept customers' free credit balances into "money market funds"—rather than deposit accounts—that provided interest rates between four and five percent (*id.* ¶¶ 4, 27–29). *See DeBlasio* Part I.A.2 (describing the plaintiffs' similar allegations regarding "Original" Cash Sweep Programs).

Plaintiff alleges that, in 2002, TD Waterhouse began to offer a modified version of its Cash Sweep Program in which it swept its customers' uninvested cash into standard bank deposit accounts that paid "paltry interest rates." (Compl.¶ 30.) At some point prior to August 2005, TD Waterhouse began to pay lower rates of interest on free credit balances to customers with fewer assets in their brokerage accounts. (*Id.*) Finally, "[b]y 2006," the "sole alternative to the default sweep into bank accounts" for TD Waterhouse customers was the "TD Waterhouse Cash" option (*id.*). *See DeBlasio* Part I.A.2.b, I.A.2.c (describing the evolution of the "Modified" and "Tiered" Cash Sweep Programs).

With respect to Ameritrade, Plaintiff alleges that, prior to the TD Waterhouse Acquisitions, Ameritrade provided its retail brokerage clients with "three taxable fund choices and thirteen tax-exempt money market funds that they could have their uninvested cash swept into." (Compl.¶ 31.) These Cash Sweep Options allegedly offered interest rates "ranging between 1.9% and 3.57%." (*Id.*)

4. TD Ameritrade's Cash Sweep Program

After the TD Waterhouse Acquisitions, Defendant TD Ameritrade obtained the United States brokerage customers of both TD Waterhouse and Ameritrade. (*Id.* ¶ 11.) Plaintiff alleges that, following this change, TD Ameritrade offered only two Cash Sweep Options to its customers: (1) the "Money Market Deposit Account," and (2) "TD Ameritrade Cash." (*See id* ¶ 52.)

The Money Market Deposit Account was TD Ameritrade's "default cash sweep vehicle." (*Id.* ¶ 52.) It was essentially a Tiered Cash Sweep Program as that term is used in the *DeBlasio* decision. *See DeBlasio* Part I.A.2.c. Specifically, customers' free credit balances were swept into standard deposit accounts at Defendant TD Bank, and TD Ameritrade's customers were paid interest at varying rates based on the amount of the assets in their TD Ameritrade brokerage account. (Compl.¶ 54.) In the TD Ameritrade Cash option, by contrast, free credit balances remained in customers' brokerage accounts, earning "simple interest" that also varied by the amount of assets in the account. (*See id.* ¶¶ 52, 54.)

***4** Plaintiff alleges that, as a result of the MMDA Agreement, approximately $6 billion of free credit balances from Ameritrade's former customers were transferred to TD Ameritrade and swept into deposit accounts maintained by the Sweep Bank Defendants. (*See id* . ¶¶ 33–35.) TD Ameritrade allegedly received $185 million in fees for causing this uninvested cash to be deposited at TD Bank. (*Id.* ¶ 34) TD Bank, in turn, "profit[ed] substantially by lending out or re-investing the monies at much higher interest rates ." (*Id.* ¶ 34; *see also id.* ¶ 36.)

B. Procedural History

Plaintiff commenced this action on August 1, 2007. (Doc. No. 1.) On December 11, 2007, the case was designated as being related to the *DeBiasio* action, and reassigned to the undersigned. (Doc. No. 8.) Defendants filed this motion on January 7, 2008 ("Defs.' Mem."), Plaintiff submitted his opposition brief on March 14, 2008 ("Pl.'s Mem."), and the motion was fully briefed as of April 7, 2008. (Doc. Nos.14–15, 18, 21.)

II. Discussion

Defendants move to dismiss Plaintiff's claims pursuant to Rules 9(b) and 12(b)(6). Due to the similarities between this action and *DeBiasio,* the parties have incorporated by reference the respective arguments made in connection with the *DeBiasio* defendants' motions to dismiss. (*See* Pl.'s Mem. at 2 n. 2; Defs.' Mem. at 1 & n. 1.) The Court likewise incorporates by reference the discussion of the legal standards and basic elements of Plaintiff's claims, all of which are set forth in the attached *DeBiasio* decision.

As relevant to the analysis of Defendants' motion, there are three primary differences between this matter and *DeBiasio.* First, unlike in *DeBiasio,* Plaintiff has not brought a claim for either breach of contract or a violation of the Sherman Antitrust Act, 15 U.S.C. § 1.[5] However, the remaining claims in this action are nearly verbatim copies of the corresponding claims contained in the Second Amended Complaint in *DeBiasio.*

Second, in *DeBiasio* the plaintiffs alleged that the challenged Cash Sweep Programs were implemented through a series of amendments to the plaintiffs' existing account agreements based on "negative consent." In this action, although the term "negative consent" appears in the Complaint (*see, e.g.,* Compl. ¶¶ 93, 107), Plaintiff makes no specific allegations regarding the manner in which TD Ameritrade implemented its Cash Sweep Options for either its existing customers or the former United States customers of Ameritrade and TD Waterhouse.

Third, although Plaintiff's allegations regarding specific misrepresentations and omissions by Defendants are similar to the allegations in *DeBiasio,* Plaintiff also argues that TD Ameritrade's use of the names "Money Market Deposit Account" and "Money Market Account" for one of its Cash Sweep Options was, in and of itself, materially misleading. (*Id.* ¶¶ 52–53, 61.)

***5** Despite these differences, the Court finds that: (1) the allegations in the Complaint fail to establish that Plaintiff has standing to bring some aspects of these claims, and (2) irrespective of Plaintiff's lack of standing, the claims in the Complaint are defective for largely the same reasons as those discussed in the attached *DeBiasio* decision. Accordingly, for the reasons set forth below, Plaintiff's claims are dismissed pursuant to Rules 9(b), 12(b)(1), and 12(b)(6).

A. Standing

"Article III standing is 'the threshold question in every federal case, determining the power of the court to entertain suit.' " *In re Currency Conversion Fee Antitrust Litig.,* No. 05 Civ. 7116(WHP), 2009 WL 151168, at *2 (S.D.N.Y. Jan.21, 2009) (quoting *Ross v. Bank of Am. N.A. (USA),* 524 F.3d 217, 222 (2d Cir.2008)). This principle applies with equal force "to a plaintiff who seeks to act as class representative." *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.,* 375 B.R. 719, 724–25 (S.D.N.Y.2007) (citing *Ramos v. Patrician Equities Corp.,* 765 F.Supp. 1196, 1199 (S.D.N.Y.1991)).

The allegations in the Complaint relate to two Cash Sweep Options offered by TD Ameritrade: (1) the Money Market Deposit Account, and (2) TD Ameritrade Cash. (*See, e.g.,* Compl. ¶¶ 18, 52, 54.) However, Plaintiff has only alleged that his free credit balances were "swept pursuant to TD Ameritrade's Money Market Deposit Account ...." (*Id.* ¶ 10.) Therefore, Plaintiff lacks standing to bring claims based on allegations relating to TD Ameritrade's second Cash Sweep Option, TD Ameritrade Cash. *See, e.g., Hoffman v. UBS–AG,* 591 F.Supp.2d 522, 530–31 (S.D.N.Y.2008) ("Plaintiffs lack standing for claims relating to funds in which they did not personally invest."); *In re Salomon Smith Barney Mut. Fund Fees Litig.,* 441 F.Supp.2d 579, 607 (S.D.N.Y.2006); *In re Merrill Lynch Inv. Mgmt. Funds Sec. Litig.,* 434 F.Supp.2d 233, 236 (S.D.N.Y.2006). Accordingly, pursuant to Rule 12(b)(1), Plaintiff's claims regarding the TD Ameritrade Cash option are dismissed.

B. Investment Advisers Act

Plaintiff's IAA claim is nearly identical to the IAA claim in *DeBlasio,* and it must be dismissed for similar reasons. Specifically, (1) Plaintiff has only alleged that he held one or more non-discretionary "brokerage" accounts with TD Ameritrade (Compl.¶ 10); (2) he has not alleged that he sought or received investment advisory services from TD Ameritrade; (3) the Complaint does not support an inference that there was an investment advisory contract between Plaintiff and TD Ameritrade; and (4) the relief sought by Plaintiff is unavailable in a private cause of action under the IAA. *See DeBlasio* Part II.B.2. Accordingly, based on the authority cited in *DeBlasio,* Plaintiff's IAA claim is dismissed.

C. Common–Law Fraud

Plaintiff's fraud allegations are similar in both structure and content to those in the Second Amended Complaint in *DeBlasio. See DeBlasio* Parts II.A.2, II.B.3 (discussing and analyzing the plaintiffs' allegations regarding fraudulent misrepresentations and omissions). For the reasons stated below, Plaintiff's fraud claim is dismissed pursuant to Rules 9(b) and 12(b)(6).

1. Rule 9(b)

***6** In *DeBlasio,* with the exception of the § 349 claim, the Court dismissed each of the plaintiffs' claims pursuant to Rule 9(b). *See DeBlasio* Part II.A.2. Here, by contrast, Defendants have argued that Rule 9(b) only requires dismissal of Plaintiff's fraud claim. (*See* Defs.' Mem. at 18.) Based on the authority cited in *DeBlasio,* and for the reasons set forth below, this aspect of Defendants' motion is granted.

First, as in *DeBlasio,* Plaintiff makes no direct allegations regarding misstatements or omissions by the Sweep Bank Defendants, Toronto Dominion and TD Bank. Second, the Complaint lacks specificity as to where and when the alleged misrepresentations were made to Plaintiff. Third, although nearly all of the alleged misrepresentations identified in the Complaint appear to arise out of statements by TD Ameritrade, Plaintiff improperly groups all Defendants together through the use of headings that label his allegations as misrepresentations by the "TD Ameritrade Defendants." (*See, e.g.,* Compl. at 26, 28–29.) Finally, Plaintiff offers little more than conclusory assertions regarding why the alleged misrepresentations were fraudulent, which are based largely on the faulty premises that Defendants were obligated to provide him with unsolicited investment advice and to disclose the specific amount of profits earned from TD Ameritrade's Cash Sweep Program. (*See, e.g., id.* ¶¶ 51, 53, 55, 60.) Accordingly, based on the authority provided in *DeBlasio, see DeBlasio* Part II.A, Plaintiff's fraud claim is dismissed pursuant to Rule 9(b).

2. Rule 12(b)(6)

In *DeBlasio,* the plaintiffs argued that there were several categories of alleged misrepresentations by each of the five groups of defendants. *See DeBlasio* Part II.B.3.b (discussing the plaintiffs' allegations). Plaintiff's allegations regarding misrepresentations by Defendants may be organized into similar categories: (1) Defendants' advertisements (Compl.¶¶ 47–51); (2) representations regarding customers' alternatives to TD Ameritrade's Cash Sweep Options (*id.* ¶¶ 57–58); and (3) representations regarding the benefits reaped by Defendants from TD Ameritrade's Cash Sweep Options (*id.* ¶¶ 59–60).[6] In addition to these alleged misrepresentations, and unlike in *DeBlasio,* Plaintiff also alleges that the names by which TD Ameritrade referred to its "Money Market Deposit Account" Cash Sweep Option were "materially false and misleading." (*Id.* ¶ 62.) For the reasons set forth below, as well as those discussed in *DeBlasio,* the Court concludes that each of the alleged misstatements and omissions identified by Plaintiff are not actionable as a matter of law.

Plaintiff's first category of alleged misrepresentations, which relates to Defendants' advertisements, fares no better than the similar category of allegations in *DeBlasio.* Specifically, TD Ameritrade's statements about its "outstanding personal service," "impartial guidance," and "great" Cash Sweep Options (*id.* ¶¶ 47–48, 50), constituted immaterial puffery. *See, e.g., In re Xinhua Fin. Media, Ltd. Sec. Litig.,* No, 07 Civ. 3994(LTS) (AJP), 2009 WL 464934, at *8 (S.D.N.Y. Feb. 25, 2009) ("[S]oft adjectives are nothing more than puffery ...."). Plaintiff also alleges that "TD Ameritrade has sought to cement its false image as a truthful and non-deceptive firm by relying almost exclusively in its recent television and print advertisements on an actor, Sam Waterston, who has become immediately identified as the highly ethical government prosecutor role in the 'Law & Order' television series." (Compl.¶ 48.) This allegation adds no legal merit to Plaintiff's assertion that Defendants' advertisements were materially false and misleading. *See DeBlasio* Part II.B.3.c. (1). Accordingly, the Court concludes that this category of representations is not actionable as a matter of law, and Plaintiff's fraud claim based on Defendants' advertisements is dismissed.

***7** Plaintiff's second category of alleged misrepresentations relates to Defendants' statements regarding customers' alternatives to TD Ameritrade's Cash Sweep Options. In this set of allegations, Plaintiff isolates—and characterizes as "materially false and misleading" (Compl.¶ 58)—TD Ameritrade's statement that "[a]dditional cash sweep options may be available based on cash balance amount and account type." (*Id.* ¶ 57; *see also Stratton* Decl. Ex. I ("Summary of Cash Balance Programs") at 1.)[7] Plaintiff asserts that this statement was misleading because "there were no viable 'alternative cash investments' offered to Plaintiff except to receive *less* interest through the TD Ameritrade Cash sweep option." (Compl. ¶ 58 (emphasis in original).)

These are little more than "unadorned, the-defendant-unlawfully-harmed-me accusation[s]." *Ashcroft v. Iqbal,* —— U.S. ——, ——, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009). The statement identified by Plaintiff guaranteed nothing—it simply indicated that alternatives to TD Ameritrade's Money Market Deposit Account "may" be available. Moreover, Plaintiff's contention regarding alternatives to the Cash Sweep Option ignores one of the most obvious options available to him and similarly situated retail brokerage customers with non-discretionary accounts at TD Ameritrade—investing or withdrawing their *uninvested* free credit balances. Specifically, there is no allegation in the Complaint suggesting that, in addition to the "two bad investment alternatives" identified by Plaintiff for customers' *uninvested* cash (Compl.¶ 58), TD Ameritrade's customers were in any way precluded from, *inter alia,* a third "viable" alternative: using their free credit balances to purchase mutual

funds, stocks, or other investments that would be riskier but potentially more profitable. Therefore, the Court finds facially implausible Plaintiff's allegation that Defendants' statement that "[a]dditional cash sweep options may be available based on cash balance amount and account type" was materially misleading. (*Id.* ¶ 57.) Accordingly, Plaintiff's fraud claim based on this statement is dismissed.

In the third category of alleged misrepresentations identified in the Complaint, Plaintiff alleges that Defendants "Falsely and Deceptively Understated [Their] Enormous Profits From 'Money Market' Accounts." (Compl. at 28; *see also id.* ¶¶ 59–60 (quoting TD Ameritrade's "Summary of Cash Balance Programs"); *see also* Stratton Decl. Ex. I.) In addition to this allegation, Plaintiff contends that Defendants "wrongfully and actively concealed from Plaintiff and other class members the true nature of their cash sweeping practices and tiered tactics." (Comp. ¶ 63; *see also* Pl.'s Mem. at 11.)

However, similar to the defendants' disclosures in *DeBlasio,* the document upon which Plaintiff relies discloses the manner in which Defendants sought to benefit from TD Ameritrade's Cash Sweep Program: " '[TD Bank] seeks to make a profit by achieving a positive spread between its cost of funds (e.g.deposits) and the return on its assets, net of expenses.' " (Compl. ¶ 59 (quoting the "Summary of Cash Balance Programs").) Additionally,

> ***8** "TD Ameritrade receives a fee from [TD Bank] for marketing and related services in connection with the MMDA.... The fee is derived using a formula which results in the fee varying from month to month depending on the interest rate environment and the profitability of [TD Bank] with respect to such deposits.... The rate of the fee that TD Ameritrade receives may exceed the interest rate or effective yield that you receive in your MMDA."

(*Id.* (quoting the "Summary of Cash Balance Programs").) Therefore, as in *DeBlasio,* not only did Defendants disclose that they sought to earn profits through the administration of TD Ameritrade's Cash Sweep Program, but they also informed their customers of the manner in which those profits would be earned.

Additionally, for the reasons stated in *DeBlasio,* and under *Levitin v. Painewebber, Inc.,* 159 F.3d 698 (2d Cir.1998), Plaintiff's allegations do not establish that Defendants were obligated to disclose the precise amount of profits earned through the Cash Sweep Options in the specific disclosure documents cited in the Complaint. *See DeBlasio* Part II.B.3.c.(2). This holding is fatal to Plaintiff's fraudulent concealment allegations as well. *See, e.g., E*TRADE Fin. Corp. v. Deutsche Bank AG,* —— F.Supp.2d ——, No. 05 Civ. 902(RWS), 2009 WL 1561610, at *76 (S.D.N.Y. June 1, 2009) (noting that a fraudulent concealment claim requires an allegation regarding "concealment of a material fact" that the defendant "was duty-bound to disclose"). Accordingly, Plaintiff's fraud claim based on Defendants' alleged failure to disclose the amount of profits earned from TD Ameritrade's Cash Sweep Program is dismissed.

Lastly, the Court finds unpersuasive Plaintiff's contention that the names used by TD Ameritrade for one of its Cash Sweep Options—"Money Market Deposit Account" and "Money Market Account"—were materially misleading. At bottom, Plaintiff appears to challenge Defendants' use of the term "Money Market" in connection with this Cash Sweep Option. (*See* Pl.'s Mem. at 11–12; Compl. ¶ 53.) Specifically, Plaintiff argues that "the deceptively titled Money Market Deposit Account ('MMDA')" was materially misleading because it "was not a *bona fide* money market fund ...." (Compl.¶ 53.) However, Plaintiff has not provided any factual basis supporting his implicit assumption that a brokerage service labeled as a "Money Market *Deposit Account"* could somehow be mistaken by a reasonable investor as an investment in a *mutual fund* "yielding 4%–5%" interest on *uninvested* cash (Compl.¶ 4).[8] "The role of the materiality requirement is not to 'attribute to investors a child-like simplicity ....' " *Basic Inc. v. Levinson,* 485 U.S. 224, 234, 108 S.Ct. 978, 99 L.Ed.2d 194 (1988) (quoting *Flamm v. Eberstadt,* 814 F.2d 1169, 1176–78 (7th Cir.1987)); *see also SEC v. Siebel Sys., Inc.,* 384 F.Supp.2d 694, 708 n. 13 (S.D.N.Y.2005) ("Information which is so basic that a reasonable investor could be expected to know it does not constitute material facts."). Accordingly, the Court concludes that the name of this Cash Sweep Option was not, by itself, materially misleading.

***9** Plaintiff's specific allegations regarding the disclosures in which TD Ameritrade used these terms eliminates any doubt about this conclusion. First, Plaintiff alleges that the term "Money Market Deposit Account" was materially misleading because Defendants "failed to disclose that clients were receiving the lowest rates on the smallest accounts and, furthermore, the fact that money market funds would have yielded a much higher rate." (Compl.¶ 55.) However, the preceding paragraph of the Complaint, which contains allegations regarding the same document, acknowledges that TD Ameritrade's "Summary of Cash Sweep Programs" "stated that interest rates paid on balances in the [Money

Market Deposit Account] and TD Ameritrade Cash *were based on tiers—with the smallest accounts earning little or no interest on their uninvested cash."* (*Id.* ¶ 54 (emphasis added).) Indeed, the Complaint contains the specific graphic from the "Summary of Cash Sweep Programs" that lists the tiered interest rates offered to clients based on the "Dollar Range" of assets in their brokerage accounts. (*See id.*) Given these clear disclosures, Plaintiff has not alleged sufficient facts to support an inference that the terms Defendants used to refer to this Cash Sweep Option in the "Summary of Cash Sweep Programs" document were materially misleading.

Next, taking a slightly different tack, Plaintiff alleges that "[i]n monthly account statements rendered to Plaintiff and the Class, TD Ameritrade falsely and deceptively identified sweep monies maintained at TD Bank as being in a 'Money Market Account.' " (*Id.* ¶ 61.) According to Plaintiff, this label was "materially false and misleading" because his free credit balances "were not maintained in a money market fund ... but in an account paying interest rates substantially below those offered in money market funds ...." (*Id.* ¶ 62.)

Defendants have provided several of the account statements that were mailed to Plaintiff. (*See* Stratton Decl. Ex. N.) Because these documents are exemplars of the account statements from which Plaintiff directly quotes in the Complaint (Compl.¶ 61), the Court may consider them in connection with Defendants' motion to dismiss. *See, e.g., Schnall v. Marine Midland Bank,* 225 F.3d 263, 266 (2d Cir.2000). Having done so, the Court concludes that Plaintiff's account statements clearly indicated: (1) that the mutual fund shares purchased by Plaintiff were separate from his deposits in TD Ameritrade's Money Market Account Cash Sweep Option, and (2) the different rates of return Plaintiff received on his free credit balance and his mutual fund holdings. Specifically, in the "Portfolio Value Summary" of each of Plaintiff's account statements, the first line stated "Money Market [Account]—FDIC" and listed the amount of assets in that account during both the period covered by the statement and the preceding period. (Stratton Decl. Ex. N at 1.)[9] Underneath the "Money Market Account" line item, the account statements stated that this Cash Sweep Option was "Not Covered By SIPC," *i.e.,* investment protection offered by the Securities Investor Protection Corporation. (*Id.*) The next line of these documents listed Plaintiff's investment in a "Money Market *Fund"* and indicated the amount of assets invested in that fund for the current and preceding periods. (*Id.* (emphasis added).) The following lines provided similar information regarding Plaintiff's holdings in "Stocks," "Fixed Income" investments, "Options," other "Mutual Funds," and "Unit Investment Trusts." (*Id.*)

***10** Moreover, the "Portfolio Positions Long" section of the account statements characterized Plaintiff's holdings in the "TD Waterhouse Bank Money Market Account" as "Cash & Cash Equivalent[ ]," and listed, *inter alia,* the interest rate, total value, and estimated annual income to be earned from this Cash Sweep Option. (*Id.*) Thus, the front page of the account statements upon which Plaintiff relies clearly distinguished between the assets in the Money Market Deposit Account Cash Sweep Option, the assets in TD Ameritrade's "Money Market Fund," and Plaintiff's ownership of additional mutual fund shares. In this context, no reasonable investor would be mislead about the interest rate being offered through TD Ameritrade's Money Market Deposit Account. Therefore, the Court concludes as a matter of law that neither the names used to refer to this Cash Sweep Option, nor the contexts in which those names were used by TD Ameritrade, were materially misleading.

* * *

In sum, the Court finds that Plaintiff has not pleaded his fraud claim with sufficient particularity, and that none of the alleged misrepresentations and omissions identified by Plaintiff in the Complaint were materially misleading. Accordingly, Plaintiff's fraud claim is dismissed pursuant to Rules 9(b) and 12(b)(6),

D. Breach of Fiduciary Duty and Aiding and Abetting Liability

Plaintiff's claims for breach of fiduciary duty and aiding and abetting a breach of fiduciary duty are similar in all material respects to the corresponding claims in *DeBlasio,* and Plaintiff offers no additional authority in support of these claims. As in *DeBlasio,* there are no allegations in the Complaint supporting an inference that a fiduciary relationship existed between Plaintiff and any Defendant. *See DeBlasio* Part II.B.4.b. Moreover, because Plaintiff's allegations are insufficient to support a claim for breach of fiduciary duty, he cannot maintain a claim for aiding and abetting such a breach. *See DeBlasio* Part II.B.4.c. Therefore, based on the authority cited in *DeBlasio,* Defendants' motion to dismiss these claims is granted. Accordingly, Plaintiff's claims for breach of fiduciary duty and aiding and abetting a breach of fiduciary duty are dismissed.

E. Negligent Misrepresentation and Negligence

Plaintiff also brings claims for negligent misrepresentation against all Defendants and negligence against TD Ameritrade. (Compl.¶¶ 105–110, 116–22.) In opposition to Defendants' motion to dismiss these claims, Plaintiff simply incorporates by reference the plaintiffs' arguments in *DeBlasio,* and acknowledges that both claims, as pleaded, "include requirements that [the] complaint contain specific allegations of material misrepresentations and omissions ...." (Pl.'s Mem. at 9.) Because the Court has already concluded that Plaintiff has failed to identity a materially misleading statement or omission by Defendants, this concession is fatal to these claims. *See supra* Part II.C.2.

***11** Additionally, with respect to the negligent misrepresentation claim, Plaintiff's allegations do not support an inference that he reasonably relied on any of Defendants' alleged misrepresentations. *See DeBlasio* Part II.B.5.b. As to the negligence claim, Plaintiff overstates the scope of the duty owed by TD Ameritrade, and fails to allege a breach of the duty that was actually owed. *See DeBlasio* Part II.B.6.b. Accordingly, Plaintiff's claims for negligent misrepresentation and negligence are dismissed.

F. N.Y. General Business Law § 349

Similar to the § 349 claim in *DeBlasio,* Plaintiff's § 349 claim is predicated on the allegation that Defendants "engaged in a plan and scheme to mislead and deceive" through "deceptive acts, practices, and ... false representations and omissions ...." (Compl. ¶ 76; *see also* Pl.'s Mem. at 16–17 & n. 2.) However, a required element of a § 349 claim is that the consumer practice at issue be "misleading in a material way ...." *Stutman v. Chem. Bank,* 95 N.Y.2d 24, 29, 709 N.Y.S.2d 892, 731 N.E.2d 608 (N.Y.2000); *see DeBlasio* Part II.B.7. In order to avoid "a tidal wave of litigation against businesses," the New York Court of Appeals has limited the breadth of the statute's prohibition to those practices that are "likely to mislead a reasonable consumer acting reasonably under the circumstances ...." *Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A.,* 85 N.Y.2d 20, 26, 623 N.Y.S.2d 529, 647 N.E.2d 741 (N.Y.1995). The Court has already determined that the alleged misrepresentations and omissions identified in the Complaint—including the names TD Ameritrade used to describe the Money Market Deposit Account Cash Sweep Option—were not materially misleading. *See supra* Part II .C.2. Accordingly, for the reasons stated herein, and based on the additional authority cited in *DeBlasio,* Plaintiff's § 349 claim is dismissed.

G. Unjust Enrichment

Plaintiff limits his opposition to Defendants' motion to dismiss his unjust enrichment claim to a single footnote of his brief. (Pl.'s Mem. at 15 n. 12.) The arguments in the footnote relate to the issue of whether Plaintiff may plead a claim for unjust enrichment despite the existence of a contract relating to Plaintiff's brokerage account with TD Ameritrade. (*See id.*) The Court assumes Plaintiff may do so. *See DeBiasio* Part II.B.9.b.

However, as in *DeBiasio,* Plaintiff has only offered the conclusory allegation that "Defendants have been unjustly enriched at the expense of and to the detriment of Plaintiff and each member of the Class by collecting money to which they are not entitled." (Compl.¶ 114.) For the reasons stated in *DeBiasio,* this allegation fails to establish a sufficient link between Plaintiff's alleged losses and Defendants' profits from the challenged Cash Sweep Program. *See DeBiasio* Part II.B.9.b. Accordingly, Plaintiff's unjust enrichment claim is dismissed.

H. Plaintiff's Request for Leave to Amend

Finally, using the identical language employed by the *DeBiasio* plaintiffs, Plaintiff requests leave to amend his Complaint in the last footnote of his opposition brief Although Plaintiff has not filed an amended pleading in this matter, the Complaint drafted by Plaintiff's counsel—also counsel to the *DeBiasio* plaintiffs—has plainly been informed by the evolution of the Second Amended Complaint in *DeBiasio.* Moreover, Plaintiff has not described his proposed amendment, and the Court is therefore unable to assess whether granting leave to amend pursuant to Rule 15(a) would be appropriate. *See DeBiasio* Part II.C. Accordingly, based on the authority cited in *DeBiasio,* Plaintiff's request for leave to file an amended pleading is denied as futile.

III. Conclusion

***12** For the foregoing reasons, Defendants' motion to dismiss Plaintiff's claims is granted. The Clerk of the Court is respectfully directed to terminate the motion docketed as document number 14, and to close this case.

SO ORDERED.

Exhibit A

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

No 07 Civ. 318(RJS)

Carlo DeBlasio, *et al,* on behalf of themselves and all others similarly situated, Plaintiffs,

versus

Merrill Lynch & Co., Inc., *et al,* Defendants.

opinion and order

July 27, 2009

Richard J. Sullivan, District Judge:
In this putative class action, seven individual Plaintiffs bring claims under federal and state law, on behalf of themselves and all others similarly situated, alleging that five groups of banking entities engaged in "deceptive and misleading" practices relating to a series of "Cash Sweep Programs" that were offered as part of Plaintiffs' brokerage accounts. Plaintiffs bring claims for violations of the Investment Advisers Act of 1940, 15 U.S.C. § 80b–1 *et seq.* ("IAA"), the Sherman Antitrust Act, 15 U.S.C. § 1, and New York General Business Law § 349 (" § 349"), as well as common-law claims for fraud, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, negligent misrepresentation, negligence, breach of contract, and unjust enrichment.

Before the Court are Defendants' five motions to dismiss Plaintiffs' claims pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons set forth below, Defendants' motions are granted.

I. Background

The following information is derived from the Second Amended Complaint ("SAC"), the declarations and affidavits submitted by the parties in connection with Defendants' motions, and the additional materials attached as exhibits thereto.[1] Plaintiffs' factual allegations are assumed to be true and all reasonable inferences are drawn in their favor. *See In re Ades & Berg Group Investors,* 550 F.3d 240, 243 n. 4 (2d Cir.2008).

A. Overview

This action relates to a brokerage account feature known as a "Cash Sweep Program," This feature is offered to retail investors by each of the five groups of Defendant banks, which the Court refers to as the Merrill Lynch Defendants, the Morgan Stanley Defendants, the Citigroup Defendants, the Charles Schwab Defendants, and the Wachovia Defendants.[2] Through these Programs, Plaintiffs were offered the option of having the balance of uninvested funds in their brokerage accounts, known as a "free credit balance," placed in—or, "swept" into—other types of investments. (*See* SAC ¶ 1.)[3] As a result of these "sweeps," Plaintiffs earned interest on the otherwise-uninvested funds in their brokerage accounts. (*Id.*)

Plaintiffs allege that, when Defendants initially implemented the Cash Sweep Programs, their free credit balances were swept into money market mutual funds that provided interest rates of approximately five percent. (*See id.* ¶ 6.) In these original Cash Sweep Programs, "the profits obtained by Defendants ... were limited in nature" and typically did not exceed an "expense ratio" of less than one percent of the principal. (*Id.* ¶ 65.)[4] Additionally, "since money market funds are maintained in a trust, those funds were unavailable for use by a brokerage firm to lend or invest in higher-yielding activities ...." (*Id.* ¶ 65 (emphasis omitted).)

***13** According to Plaintiffs, Defendants subsequently modified their respective Cash Sweep Programs in a deceptive manner in an attempt to capitalize on "an immense opportunity for their own profit ...." (*Id.* ¶ 7.) In these modified Cash Sweep Programs, Defendants limited certain customers' ability to have their free credit balances swept into money market mutual funds, often according to the amount of assets deposited in the customers' brokerage accounts. (*Id.*

¶ 12.) Instead of mutual funds, many customers' free credit balances were swept into standard deposit accounts. (*See id.* ¶ 6.)

Plaintiffs allege that these modified Cash Sweep Programs provided between one and two percent interest on free credit balances, as opposed to the four to five percent interest that they had previously earned when their uninvested funds were swept into money market mutual funds. (*Id.*) Plaintiffs further allege that, by sweeping their free credit balances into depository accounts at affiliated banks, Defendants were able to "use their clients' uninvested cash for their own investment or commercial lending." (*Id.* ¶ 7.) Finally, Plaintiffs assert that, although Defendants significantly increased their profits through this modification to the Cash Sweep Programs, they "dramatically reduced the yields paid to their clients on the clients' uninvested cash ...." (*Id.* ¶ 9 (emphasis omitted).)

Plaintiffs contend that, in order to maintain the "massive profits" that resulted from these activities, Defendants concealed the modifications to their Cash Sweep Programs through a series of misleading statements and omissions. (*Id.* ¶ 18.) Plaintiffs argue that, as a result of this alleged fraudulent scheme, they were induced to remain enrolled in modified Cash Sweep Programs, despite the fact that there were more lucrative investments available for their uninvested free credit balances. Based on these allegations, Plaintiffs seek an unspecified amount of "damages sustained as a result of Defendants' wrongdoing, in an amount to be determined at trial ...." (*Id.* ¶ 330(b).)

1. The Parties

Plaintiffs are seven retail investors who maintained brokerage accounts with one or more of Defendants at the time the SAC was filed; six hail from New York, and the seventh resides in North Carolina. (*Id.* ¶¶ 30–36.)[5] Plaintiffs bring claims on behalf of a putative class of "all those who maintained a brokerage account with one or more of the ... Defendants where the clients' uninvested cash was automatically swept into a Defendant controlled and affiliated bank account paying interest below prevailing money market yields." (*Id.* 154.)

Plaintiffs name as Defendants five groups of banks, each of which includes three types of entities: (1) a principal banking entity that functions as a parent firm (collectively, the "Parent Defendants"); (2) an affiliated broker-dealer subsidiary (collectively, the "Brokerage Defendants"); and (3) a series of affiliated subsidiaries that function as depository banks (collectively, the "affiliated Sweep Bank Defendants" or "affiliated Sweep Banks").

***14** Parent Defendant Merrill Lynch & Co., Inc. is the parent of three wholly owned subsidiaries named in this action: Brokerage Defendant Merrill Lynch, Pierce, Fenner & Smith Inc., and affiliated Sweep Bank Defendants Merrill Lynch Bank, USA and Merrill Lynch Bank & Trust Co., FSB (collectively, the "Merrill Lynch Defendants"). (*Id.* ¶¶ 38–40.)

Parent Defendant Morgan Stanley is the parent of three wholly owned subsidiaries named in this action: Brokerage Defendant Morgan Stanley & Co., Inc., and affiliated Sweep Bank Defendants Morgan Stanley Bank and Discover Bank (collectively, the "Morgan Stanley Defendants"). (*Id.* ¶¶ 41–43.)[6]

Parent Defendant Citigroup, Inc. is the parent to four wholly owned subsidiaries named in this action: Brokerage Defendant Citigroup Global Markets, Inc., and affiliated Sweep Bank Defendants Citibank N.A., Citicorp Trust Bank, FSB, and Citibank (South Dakota) N.A. (collectively, the "Citigroup Defendants"). (*Id.* ¶ 44–46.)[7]

Parent Defendant Charles Schwab Corp. is the parent to three wholly owned subsidiaries named in this action: Brokerage Defendant Charles Schwab & Co., Inc., and affiliated Sweep Bank Defendants Charles Schwab Bank, N.A., and U.S. Trust Company, N.A. (collectively, the "Charles Schwab Defendants"). (*Id.* ¶¶ 47–49.)

Parent Defendant Wachovia Corp. is the parent to three wholly owned subsidiaries named in this action: Brokerage Defendant Wachovia Securities, LLC, and affiliated Sweep Bank Defendants Wachovia Bank N.A. and Wachovia Bank of Delaware, N.A. (collectively, the "Wachovia Defendants"). (*Id.* ¶¶ 50–52.)[8]

2. The Evolution of the Cash Sweep Programs

Plaintiffs' allegations relate to the manner in which Defendants implemented three successive phases of their respective Cash Sweep Programs, which the Court refers to

as the "Original Cash Sweep Programs," the "Modified Cash Sweep Programs," and the "Tiered Cash Sweep Programs."

a. The Original Cash Sweep Programs

Beginning in 1977, Defendants began to offer retail investment accounts that included both brokerage services and "bank-like features." (*Id.* ¶ 64.) The Original Cash Sweep Programs were one of the defining features of these types of accounts. (*See id.*) Through these Programs, Defendants used customers' free credit balances to purchase shares of money market mutual funds for those customers on a periodic basis, but still allowed the customers to write checks drawing on the swept funds. (*Id.; see also id.* ¶ 7.)

Plaintiffs allege that, "[u]ntil the late 1990s," the Original Cash Sweep Programs allowed customers to "receive the benefit of money market rates while also maintaining the [free credit balances] in safe and highly liquid investments." (*Id.* ¶ 65.) However, the profits earned by Defendants in connection with the Original Cash Sweep Programs were "generally small" and limited to an " 'expense ratio' that [was] ... less than 1% of the principal." (*Id.*) Plaintiffs further allege that, because the money under the control of a money market mutual fund is held in trust for the benefit of the fund's shareholders, Defendants were not permitted to use their customers' swept funds to raise profits through their other commercial activities. (*See id.*)

b. The Modified Cash Sweep Programs

***15** Beginning in 1997, the Brokerage Defendants began to implement the Modified Cash Sweep Programs. (*Id.* ¶ 66.) In these Programs, the Brokerage Defendants offered customers an alternative to the Original Cash Sweep Programs in which they could have their free credit balances swept into FDIC-insured deposit accounts at affiliated Sweep Banks. (*Id.*) Plaintiffs allege that, although such deposit accounts traditionally pay lower interest rates than money market mutual funds, many of the Brokerage Defendants initially provided interest rates that were similar to the rates that customers had previously received in the Original Cash Sweep Programs. (*Id.*)

However, Plaintiffs assert that, at some point after implementing the Modified Cash Sweep Programs, "it became irresistible to the Defendants to pay [their customers] *substantially lower* rates" on funds deposited at affiliated Sweep Banks and "to *restrict* access to alternative money market sweep accounts .... " (*Id.* (emphases in original).) In response to this incentive, Defendants allegedly "dramatically reduced the yields paid to their clients on the clients' uninvested cash to well below money market yields—to even as low as less than 1%." (*Id.* ¶ 9 (emphasis omitted).)

Plaintiffs allege that, at the same time that Defendants began to pay their customers lower interest rates on their free credit balances, Defendants were seeking to enhance their own profits. (*See id.*) Specifically, as part of the Modified Cash Sweep Programs, when customers' funds were deposited at affiliated Sweep Banks, Defendants were able "to use their clients' uninvested cash for their own investment or commercial lending." (*Id.* ¶ 7.) These commercial endeavors allegedly resulted in substantially higher returns than Defendants received through the Original Cash Sweep Programs, and Plaintiffs assert that the net result of the transition to the Modified Cash Sweep Programs was that Defendants "reap[ed] massive profits at their clients' expense ...." (*Id* . ¶ 11.)

c. The Tiered Cash Sweep Programs

In approximately June 2001, Defendants began to introduce the Tiered Cash Sweep Programs. (*Id.* ¶ 67.) In the Tiered Cash Sweep Programs, Defendants classified their customers according to "tiers" based on the amount of assets held in their brokerage accounts, and offered progressively lower interest rates on free credit balances to customers in the tiers with fewer assets. (*See id.*)

Plaintiffs allege that Defendants subsequently made further changes to the structure of the Tiered Cash Sweep Programs so that customers in the bottom asset tiers were *precluded* from having their free credit balances swept into money market mutual funds. (*See id.*) In these versions of the Tiered Cash Sweep Programs, some customers were forced to choose between either depositing their free credit balances at affiliated Sweep Banks, or not earning a profit on the uninvested funds in their accounts. (*See id.*)

***16** The Tiered Cash Sweep Programs were allegedly designed to maximize Defendants' financial benefits by taking advantage of the retail brokerage customers who held the least amount of assets in their accounts. (*See id.* ¶ 12.) Plaintiffs allege that Defendants provided their "wealthiest

and presumably their most sophisticated clients—who had assets of at least $1 million—... [with] higher money market yields in their bank sweep programs" so that they would "not balk" at the Tiered Cash Sweep Programs. (*Id.*)

Relying on certain Defendants' public filings, Plaintiffs allege that the Tiered Cash Sweep Programs resulted in approximately $ 186 billion of customers' free credit balances being deposited at the Defendant Sweep Banks and becoming available for use in Defendants' other commercial activities. (*Id.* ¶ 70.) Plaintiffs contend that "Defendants' ability to generate massive profits arose both from the ability to lend and invest client cash at eight percent or higher and from the fact that they were essentially able to create multibillion dollar banks—filled with captive brokerage client depositors —*without* any of the costs normally associated with commercial banking." (*Id.* ¶ 69 (emphasis in original).)

Plaintiffs allege that, in an "attempt to camouflage" this "egregious ... 'client cash grab,' " Defendants implemented the Tiered Cash Sweep Programs through a deceptive scheme that was intended to defraud their customers. (*Id.* ¶ 10.) First, Plaintiffs allege that Defendants issued misleading statements in their advertisements and public websites that caused investors to believe that the Brokerage Defendants would "act not merely as 'stock brokers,' but rather as 'Financial Advisors' who [would] provide a special relationship of trust and confidence wherein the financial interests of the client come first." (*Id.* ¶ 2.) Second, Plaintiffs argue that, by modifying the existing Cash Sweep Program features in their customers' brokerage accounts through "negative consent," Defendants "purposely put[ ] the burden on the client to parse through the[ir] 'Disclosures,' and affirmatively object in order for the sweep programs *not* to go into effect ...." (*Id.* ¶ 14 (emphasis in original).) Finally, Plaintiffs identify a series of alleged misrepresentations in the documents relating to their brokerage accounts, as well as the supplemental disclosures later issued by Defendants regarding the benefits of and alternatives to the Tiered Cash Sweep Programs. (*See id.* ¶¶ 13, 15–17.)

Based on these contentions, Plaintiffs argue that

> no reader of any of these purported "Disclosures" ... could ever glean from the words used ... that Defendants were obtaining billions of additional dollars in profit by sweeping client cash into Defendant banks as opposed to investing the cash in safe and liquid money market funds; yet were paying their clients far below money market rates for Defendants' use of client cash.

***17** (*Id.* ¶ 14.)

3. The February 2005 NYSE Information Memo

On February 15, 2005, the Member Firm Regulation Division of the New York Stock Exchange ("NYSE") issued Information Memo 05–11 to its member firms. (SAC ¶ 75; *see also* Terry Deck Ex. B (the "NYSE Info. Mem." or the "Memo").)[9] In the Memo, NYSE expressed concern that changes to its members' Cash Sweep Programs "may be so significant and beyond the ... reasonable expectations of the customer at the time of the prior [brokerage account opening] agreement that without effective subsequent disclosure the use of prior or negative consent is not sufficient." (N.Y.SE Info. Mem. at 2.) The Memo described a series of "best practices"—based on NYSE Rules—that were "designed to safeguard investor interests for [cash sweep] programs currently in place." (*Id.* at 1.)

NYSE suggested that its member firms make a series of disclosures accompanied by a "concise document, preferably on one or two pages, written in plain English and referring customers to places where additional and more detailed disclosure is available." (*Id.* at 3.) NYSE also recommended that its members disclose the terms, conditions, risks, and features of the Cash Sweep Programs, including "conflicts of interest, current interest rates, the manner by which future interest rates will be determined, as well as the nature and extent of ... insurance available." (*Id.*)

However, the Memo stated that, "[w]ith regard to existing sweep programs, it is not intended that member organizations which secured prior consent and made effective subsequent disclosure secure affirmative consent for such programs." (*Id.* at 2 n. 2.) Rather, the Memo instructed that:

> Member organizations which have previously instituted or changed sweep arrangements without providing all of the appropriate disclosures discussed herein should effectively provide customers with those omitted disclosures promptly, but no later than three months after the date of this Information Memo. The utilization of the one or two page, plain English disclosure document discussed herein is required, and if so deemed by the member organization may be sufficient to satisfy these disclosure requirements.

(*Id.* at 5.)

B. Plaintiffs' Specific Allegations Regarding Defendants' Cash Sweep Programs

In this Part, the Court briefly describes Plaintiffs' allegations against each group of Defendants in order to provide a timeline of the events at issue. Defendants' alleged misrepresentations and omissions are discussed below in connection with the Court's analysis of Plaintiffs' common-law fraud claim. *See infra* Part II.B.3.b.

1. The Merrill Lynch Defendants

In approximately 1977, the Merrill Lynch Defendants became the first group of Defendants to make available an Original Cash Sweep Program, which was offered in connection with Merrill Lynch's "Cash Management Account," or "CMA." (SAC ¶ 64.) In March 2000, the Merrill Lynch Defendants began to provide their version of a Modified Cash Sweep Program, and, in June 2001, they introduced a Tiered Cash Sweep Program. (*Id.* ¶¶ 66, 67, 90.) The Merrill Lynch Defendants' Cash Sweep Program was described to customers in two undated documents cited and relied upon by Plaintiffs: the "Merrill Lynch Client Relationship Agreement," and the "Disclosures and Account Agreement" relating to, *inter alia,* the "CMA Financial Service Cash Management Account." (*See, e.g.,* SAC ¶¶ 107–09, 111–12; *see also* Pls.' Merrill Lynch Decl. Exs. 8, 9.)

***18** Additionally, an "Information Statement" issued in 2001 regarding the Merrill Lynch Defendants' Tiered Cash Sweep Program stated that, "[e]ffective June 6, 2001, the interest rates paid to clients with deposits held at the Merrill Lynch Banks" would be determined by Merrill Lynch "based on economic and business conditions, and interest rates will be tiered based upon your relationship with Merrill Lynch as determined by the value of assets in your account(s)." (SAC ¶ 101; *see also* Pls.' Merrill Lynch Decl. Ex. 7.)

Plaintiffs Ronald Kassover and Jerome Silverman allege that, at the time the SAC was filed, they maintained "brokerage account[s]" with the Merrill Lynch Defendants. (SAC ¶¶ 31–32.) Kassover opened a CMA account with the Merrill Lynch Defendants in July 1985, and alleges that, as of December 31, 2006, he was earning 3.20% on the "uninvested cash awaiting investment" in his account. (*Id.* ¶ 31; Musoff Decl. Ex. 3.) Silverman opened a CMA account with the Merrill Lynch Defendants in August 1999, and he alleges that, as of January 31, 2007, he was earning 1.45% interest on his free credit balances. (SAC ¶ 32; Musoff Decl. Ex. 4.)

2. The Morgan Stanley Defendants

The Morgan Stanley Defendants' Original Cash Sweep Program was offered as part of its "Active Assets Account," which was a brokerage account that provided "[p]ractical investment features," "essential cash management services," and "[u]nparalleled reporting" so that customers were "always in control of [their] money." (SAC ¶ 165; *see also* Pls.' Morgan Stanley Decl. Ex. 7.) The "practical investment features" associated with this account included an "[a]utomatic cash sweep," in which "[a]vailable cash balances [we]re automatically swept into bank deposit accounts ... or a money market fund ...." (Pls.' Morgan Stanley Decl. Ex. 8.)

Plaintiffs allege that, in "early September 2005," the Morgan Stanley Defendants provided notice to their customers that they would be implementing a Tiered Cash Sweep Program in November 2005. (*See* SAC ¶¶ 66, 162.) According to a media report regarding the revisions, the Morgan Stanley Defendants' Tiered Cash Sweep Program swept customers' free credit balances into affiliated Sweep Banks, and paid interest to those customers based on the value of the assets they had invested. (*See id.* ¶ 162 (quoting *Investment News*).)[10]

Plaintiffs further allege that, in March 2006, Morgan Stanley issued a "Bank Deposit Program Disclosure Statement." (*Id.* ¶ 168; *see also* Pls.' Morgan Stanley Decl. Ex. 9.) The Disclosure Statement stated that "[u]nder the Bank Deposit Program ..., free credit balances in your Morgan Stanley brokerage account ... will be automatically deposited into deposit accounts" at affiliated Sweep Banks. (*Id.* ¶ 169.) The Disclosure Statement further stated that "[t]he interest rates on the Deposit Accounts will be tiered based upon the value of the eligible assets in your Account ... and deposits, if any, that you have established directly in your name with a Sweep Bank ...." (Pls.' Morgan Stanley Decl. Ex. 9 at 2.)

***19** Plaintiffs Kassover and Arthur Kornblit allege that they maintained "brokerage account[s]" with the Morgan Stanley Defendants. (SAC ¶¶ 31, 35.) Kassover opened an Active Assets Account in October 1999, and alleges that, as of December 31, 2006, he was earning 3.20% on the free credit balance in his account. (*Id.* ¶ 31; Cantor Decl. Ex. B.) Kornblit

opened an Active Assets Account in July 2006, and alleges that, as of March 31, 2007, he was earning 1.25% interest. (SAC ¶ 35; Cantor Decl. Ex. C.)

3. The Citigroup Defendants

Defendant Smith Barney, which is now an affiliate of Citigroup, offered a "Financial Management Account" ("FMA") that included a "Daily Sweep" Program that it described as follows: "In an FMA account, your excess funds are never sitting idle. Cash balances of $1 or more are automatically invested into your choice of one or more FDIC-insured, interest-bearing accounts or tax-exempt money funds." (*Id.* ¶ 190.) Smith Barney began offering a Modified Cash Sweep Program in late 1997, and, after Citigroup merged with Salomon Smith Barney, Inc. in September 1998, the free credit balances of the Citigroup Defendants' retail brokerage clients were deposited at affiliated Sweep Banks. (*Id.* ¶ 185.)

The SAC references an undated document authored by the Citigroup Defendants and titled "Important New Account Information," which described "[a]ccount [o]pening [p]rocedures," indicated that a "Client Agreement" was enclosed, and provided information regarding "Sweep Features" associated with the account. (Pls.' Citigroup Decl. Ex. 10.) Additionally, by letter dated August 1, 2006, the Citigroup Defendants notified their customers that they would be implementing a Tiered Cash Sweep Program. (*See* SAC ¶ 192; Pls.' Citigroup Decl. Ex. 8.) The letter was accompanied by a sixteen-page brochure titled "Q & A: Important Information about changes to the [Bank Deposit Program] and to Sweep Options." (SAC ¶ 192; *see also* Pls.' Citigroup Decl. Ex. 8.)

Plaintiffs Carlo DeBlasio and Kassover allege that they maintained "brokerage account[s]" with the Citigroup Defendants. (SAC ¶¶ 30–31.) *DeBlasio* alleges that, as of March 31, 2007, he was earning 1.41% on his "uninvested cash awaiting investment," and Kassover alleges that, as of December 31, 2006, he was earning 3.24%. (*Id.* ¶¶ 30–31.)

4. The Charles Schwab Defendants

The Charles Schwab Defendants' Original Cash Sweep Program was known as "Schwab One Interest." (*See* SAC ¶ 131.) These Defendants implemented a Modified Cash Sweep Program on October 27, 2003, and they issued a "Disclosure Statement for Schwab Cash Features" at some point in 2004 explaining the changes to the Program. (*Id.; see also* Pls.' Charles Schwab Decl. Ex. 14.) The Disclosure Statement indicated that uninvested funds would be deposited at a Charles Schwab-affiliated Sweep Bank. (SAC ¶ 145.) The Disclosure Statement also indicated that, "[g]enerally, clients with greater Household Balances will receive a higher interest rate ...." (*Id.*)

***20** In "early 2005," the Charles Schwab Defendants implemented a Tiered Cash Sweep Program. (*Id.* ¶¶ 132–34.) During 2005, they notified their customers that " '[b]eginning [January 23, 2006], Schwab [would] stop putting uninvested cash in money market funds' even for its *current* customers whose 'household' balances were under $500,000." (*Id.* ¶ 134 (emphasis in original) (quoting the *San Francisco Chronicle*).) Finally, a document titled "Cash Features Disclosure for Individual Investors," which is dated March 2007 and referenced in the SAC, described the available cash management features for the Charles Schwab Defendants' brokerage customers. (*See* Pls.' Charles Schwab Decl. Ex. 16.)

Plaintiffs Deborah Torres and Michael R. Schirripa allege that they maintained "brokerage account[s]" with the Charles Schwab Defendants. (SAC ¶¶ 33–34.) Torres opened a "Schwab Rollover IRA" Account in November 2005, and alleges that, as of March 31, 2007, she was earning 2.55% on the free credit balance in her account. (*Id.* ¶ 33; *see also* Schachter Decl. Ex. C.) Schirripa opened a "Schwab Custodial" Account in February 1998, and a "Schwab One" Account in April 2004. (Schachter Decl. Exs. A, B.) He alleges that, as of March 31, 2007, he was earning 0.965%, and that on or about May 1, 2007 the Charles Schwab Defendants "phased out [their] Schwab One Interest feature .... " (SAC ¶ 34.)

5. The Wachovia Defendants

The Wachovia Defendants offered a "Command Asset Program," which they advertised as including a "[d]aily cash sweep with [a] competitive rate," (*Id.* ¶ 216.) During the fourth quarter of 2003, they instituted a Modified Cash Sweep Program, and on January 23, 2006, the Wachovia Defendants began to offer a Tiered Cash Sweep Program. (*Id.* ¶¶ 224, 227.) The Wachovia Defendants provided information regarding their Cash Sweep Program through an undated "Cash Sweep Program Disclosure Statement," which is

referenced in the SAC. (*Id.* ¶¶ 230–31; *see also* Pls.' Wachovia Decl. Exs. 12–13.)[11]

Plaintiff Carol Washburn alleges that she maintained a "brokerage account" with the Wachovia Defendants. (SAC ¶ 36.) The account was opened in August 2002, and, as of February 28, 2006, Washburn was earning 3.29% on her "uninvested cash awaiting investment." (SAC ¶ 36; *see also* Terry Decl. Ex. C.)

C. Procedural History

Plaintiffs commenced this putative class action by filing a complaint on January 12, 2007. (Doc. No. 1.) The case was originally assigned to the Honorable Victor M. Marrero, District Judge. (*Id.*) Plaintiffs filed an amended complaint on May 1, 2007 (Doc. No. 5), and the SAC was filed on June 11, 2007 (Doc. No. 8).

This matter was reassigned to the undersigned on October 1, 2007. (Doc. No. 30.) Defendants filed the instant motions on November 12, 2007, and briefing on the motions was completed on March 6, 2008. (Doc. Nos.78–85.)

II. Discussion

***21** Plaintiffs bring claims for violations of the IAA and § 349, as well as common-law claims for fraud, negligent misrepresentation, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, negligence, breach of contract, and unjust enrichment.[12]

For the reasons set forth below, the Court concludes that: (1) with the exception of the § 349 claim, Plaintiffs have not pleaded their claims with the particularity required by Rule 9(b), and (2) all of Plaintiffs' claims are subject to dismissal pursuant to Rule 12(b)(6). Accordingly, Defendants' motions are granted, and the SAC is dismissed.

A. Rule 9(b)

Reviewing the SAC in its entirety, the Court concludes that, with the exception of the § 349 claim, each of Plaintiffs' claims sounds in fraud and therefore is subject to a heightened pleading standard. *See* Fed.R.Civ.P. 9(b). However, Plaintiffs' allegations lack the particularity required by Rule 9(b). Therefore, the Court dismisses Plaintiffs' claims for violations of the IAA, common-law fraud, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, negligent misrepresentation, negligence, breach of contract, and unjust enrichment.

1. Applicable Law

"While the rules of pleading in federal court usually require only 'a short and plain statement' of the plaintiff's claim for relief, averments of fraud must be 'state[d] with particularity.' " *In re PXRE Group, Ltd., Sec. Litig.,* 600 F.Supp.2d 510, 524 (S.D.N.Y.2009) (quoting Fed.R.Civ.P. 8, 9(b)); *see also ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.,* 493 F.3d 87, 98–99 (2d Cir.2007). The language of Rule 9(b) "is cast in terms of the conduct alleged, and is not limited to allegations styled or denominated as fraud or expressed in terms of the constituent elements of a fraud cause of action." *Rombach v. Chang,* 355 F.3d 164, 171 (2d Cir.2004). "This pleading constraint serves to provide a defendant with fair notice of a plaintiffs claim, safeguard his reputation from improvident charges of wrongdoing, and protect him against strike suits." *ATSI Commc'ns,* 493 F.3d at 99 (citing *Rombach,* 355 F.3d at 171).

In order to satisfy Rule 9(b), the plaintiff must: " '(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent.' " *Rombach,* 355 F.3d at 170 (quoting *Mills v. Polar Molecular Corp.,* 12 F.3d 1170, 1175 (2d Cir.1993)); *see also ATSI Commc'ns,* 493 F.3d at 99. "Allegations that are conclusory or unsupported by factual assertions are insufficient." *ATSI Commc'ns,* 493 F.3d at 99. Moreover, "[w]here multiple defendants are asked to respond to allegations of fraud, the complaint should inform each defendant of the nature of his alleged participation in the fraud." *DiVittorio v. Equidyne Extractive Indus., Inc.,* 822 F.2d 1242, 1247 (2d Cir.1987); *see also Mills,* 12 F.3d at 1175 ("Rule 9(b) is not satisfied where the complaint vaguely attributes the alleged fraudulent statements to 'defendants.' ").

2. Analysis

***22** This case involves "classic fraud allegations, that is, allegations of misrepresentations and omissions made with

intent to defraud ....“ *In re Ultrafem Inc. Sec. Litig.,* 91 F.Supp.2d 678, 691 (S.D.N.Y.2000). The gravamen of the SAC is that

> Defendants engaged in *deceptive and misleading* “cash sweep” programs ... whereby Defendants, acting in the role and guise of Plaintiffs' “Financial Advisors” caused billions of their clients' uninvested cash to be automatically swept ... into Defendants' owned and controlled bank accounts, so that [D]efendants were able to use their clients' uninvested cash for *their own profit* ....

(SAC ¶ 1 (first emphasis added).) Specifically, Plaintiffs allege that

> [s]o egregious was Defendants' “client cash grab” that Defendants *well understood* that they needed to take a number of *well calculated steps*—including a mixture of *blatant misrepresentations* and obtuse and misleading disclosures—in order to attempt to camouflage or conceal the deceit and fraud from their own clients and the public.

(*Id.* ¶ 10 (emphasis added).) Elaborating on this theory, Plaintiffs further allege that “Defendants, by their *affirmative misrepresentations,* held themselves out as fiduciaries with their loyalties and trust to ... enhance their clients' assets and accounts, including their cash holdings.” (*Id.* ¶ 6 (emphasis added).)

As these quotations from the SAC make clear, this action is based on averments of fraud. In light of this general theory of the case, there is little question that four of Plaintiffs' claims are subject to the requirements of Rule 9(b): common-law fraud; violations of the IAA (*see* Pls.' Mem. at 36 (referring to Defendants' alleged “scheme to defraud clients” under the IAA)); breach of fiduciary duty (*see* SAC ¶¶ 278, 285 (alleging that “Defendants participated in a false and deceptive scheme” and that their “conduct was willful, wanton, and reckless”)); and aiding and abetting a breach of fiduciary duty (*see id.* ¶ 288 (alleging that the Parent and Sweep Bank Defendants “knowingly induced ... fiduciary breaches” by, *inter alia,* “approving or ratifying both the bank sweep programs ... and the disclosures” regarding the Programs)). *See, e.g., Frota v. Prudential–Bache Sec.,* 639 F.Supp. 1186, 1193 (S.D.N.Y.1986) (“Rule 9(b) extends to all averments of fraud or mistake, whatever may be the theory of legal duty—statutory, common law, tort, contractual, or fiduciary.”). Plaintiffs offer no argument to the contrary with respect to these claims, which therefore must be pleaded with particularity pursuant to Rule 9(b).

Superficially, Plaintiffs' claims for negligent misrepresentation, negligence, breach of contract, and unjust enrichment present closer questions. However, the Second Circuit has noted with approval the Ninth Circuit's rejection of a plaintiffs “effort to characterize claims by the label used in the pleading” because “ ‘[t]hese nominal efforts are unconvincing where the gravamen of the complaint is plainly fraud and no effort is made to show any other basis for the claims ....‘ “ *Rombach,* 355 F.3d at 172 (quoting *In re Stac Elecs. Sec. Litig.,* 89 F.3d 1399, 1405 n. 2 (9th Cir.1996)). Just so here. To the extent any of Plaintiffs' claims are “premised on fraudulent conduct, the facts alleging that conduct are subjected to the higher pleading standard of [Rule 9(b)].” *Sec. Investor Prot. Corp. v. Stratton Oakmont, Inc.,* 234 B.R. 293, 311 (Bankr.S.D.N.Y.1999); *see also Daly v. Castro Llanes,* 30 F.Supp.2d 407, 414 (S.D.N.Y.1998) (citing *O'Brien v. Nat'l Prop. Analysts Partners,* 936 F.2d 674, 676 (2d Cir.1991)). Consequently, “[t]he ultimate question is whether, at its core, the [SAC] is predicated on allegations of fraudulent conduct.” *Ladmen Partners, Inc. v. Globalstar, Inc.,* No. 07 Civ. 976(LAP), 2008 WL 4449280, at *11 (S.D.N.Y. Sept.30, 2008); *see also Rombach,* 355 F.3d at 171 (“[Rule 9(b)] is cast in terms of the conduct alleged, and is not limited to allegations styled or denominated as fraud or expressed in terms of the constituent elements of a fraud cause of action.”); *Matsumura v. Benihana Nat. Corp.,* 542 F.Supp.2d 245, 252 (S.D.N.Y.2008) (holding that Rule 9(b) applied to all claims in a pleading that contained a “quintessential averment of fraud” and that, “to the extent the plaintiffs have alleged a non-fraud predicate for any of their claims, they have made no effort to meaningfully distinguish the fraud allegations in the amended complaint ...”); *In re Rezulin Prods. Liab. Litig.,* 133 F.Supp.2d 272, 285 (S.D.N.Y.2001) (“[A]lthough plaintiffs have characterized their claims as being for negligence, in substance they charge fraud.”).

***23** Plaintiffs have made, at most, a half-hearted effort to articulate a non-fraudulent basis for their claims for negligent misrepresentation, negligence, breach of contract, and unjust enrichment. Each of Plaintiffs' claims incorporates by reference all of the allegations in the SAC and is predicated on their allegations of affirmative representations by Defendants regarding the nature of the Cash Sweep Programs. (SAC ¶¶ 247, 255, 261, 270, 277, 286, 292, 298, 303.) “[W]here the complaint incorporates by reference prior allegations of fraud into other claims traditionally not perceived to be grounded in fraud, those claims must then be pleaded according to [Rule 9(b)].” *Stratton Oakmont,* 234 B.R. at 311; *see also ICD Holdings S.A. v. Frankel,*

976 F.Supp. 234, 246 n. 53 (S.D.N.Y.1997); *cf. In re Alstom SA Sec. Litig.,* 406 F.Supp.2d 402, 410 (S.D.N.Y.2005) ("Plaintiffs cannot so facilely put the fraud genie back in the bottle."). Therefore, the Court looks to the gravamen of Plaintiffs' allegations, rather than the labels of their claims, to determine the applicability of Rule 9(1)).

With respect to Plaintiffs' claim for negligent misrepresentation, the Second Circuit has expressly left open the question of whether such a claim is subject to Rule 9(b)'s pleading requirements. *See Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y.,* 375 F.3d 168, 188 (2d Cir.2004). However, "[d]istrict court decisions in this Circuit have held that the Rule is applicable to such claims ...." *Id.* (citing *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y.,* No. 02 Civ. 1312(LMM), 2003 WL 21305355, at *4 (S.D.N.Y. June 5, 2003) (collecting cases)). Therefore, contrary to Plaintiffs' argument (Pls.' Mem. at 54), their negligent misrepresentation claim is not, as a matter of law, immune from Rule 9(b)'s particularity requirements. Moreover, this claim, as pleaded, is based on the "false and misleading" nature of Defendants' alleged "misrepresentations, concealment and omissions of material facts ...." (SAC ¶ 304.) In light of Plaintiffs' theory of this case and their contentions regarding the manner in which Defendants allegedly made misstatements and omissions, the Court concludes that the negligent misrepresentation claim must be pleaded with particularity.

This reasoning also applies to Plaintiffs' claims for negligence, breach of contract, and unjust enrichment. In their negligence claim, Plaintiffs allege that the Brokerage Defendants owed them a general duty of care as to the "deployment of 'sweep' monies," that the Brokerage Defendants violated these duties by, *inter alia,* "making the misrepresentations and omissions set forth" in the SAC, and that this conduct "was, at minimum, negligent." (*Id.* ¶¶ 293–95 (emphasis added).) Neither labeling the claim as one of negligence nor offering this "at minimum" caveat is sufficient to avoid the application of Rule 9(b).

***24** In their breach of contract claim, Plaintiffs allege that, "by making the misrepresentations and omissions set forth" in the SAC, the Brokerage Defendants breached the implied covenant of good faith and fair dealing. (*See id.* ¶ 273; *see also* Pls.' Mem. at 57–58.) Finally, Plaintiff's unjust enrichment claim is based on the same predicate allegations relating to a fraudulent scheme, which purportedly "yielded enormous ill-gotten profits." (SAC ¶ 301.) Therefore, because these claims are based on the same allegations of intentional misrepresentations and omissions by Defendants that are described throughout the SAC, they are subject to Rule 9(b).[13]

The SAC alleges that Defendants' conduct exceeded mere negligence, and rose to the level of "calculated" and intentional misdeeds. (*Id.* ¶ 10.) Rule 9(b) requires that where, as here, these types of allegations are levied, the defendants named in the plaintiff's claims be afforded notice of the bases for the plaintiff's contentions. Accordingly, with the exception of Plaintiffs' claim under § 349, Plaintiffs' claims must be pleaded with particularity under Rule 9(b).

Turning to the application of Rule 9(b), the structure of the SAC is crucial to the analysis. In the SAC, Plaintiffs define five short forms that include pairings of Parent Defendants and Brokerage Defendants: "Merrill Lynch" (SAC ¶¶ 38–39); "Morgan Stanley" (*id.* ¶¶ 41–42); "Smith Barney" (*id.* ¶¶ 44–45 (collectively referring to Defendants Citigroup, Inc. and Citigroup Global Capital Markets Inc.)); "Schwab" (*id.* ¶¶ 47–48); and "Wachovia" (*id.* ¶¶ 50–51). Plaintiffs' definitions of these short forms do not include the Sweep Bank Defendants. Instead, Plaintiffs identify in separate paragraphs the Sweep Bank Defendants that are affiliated with each of the five pairings of Parent and Brokerage Defendants. (*See id.* ¶¶ 40, 43, 46, 49, 52.) However, when presenting allegations regarding misstatements and other conduct by Defendants (*see* Pls.' Mem. at 39–40), Plaintiffs attribute all such acts to the respective pairings of Parent and Brokerage Defendants. (*See, e.g., id.* ¶¶ 81, 120, 154, 176,208.)

The SAC's presentation of allegations in this fashion is insufficient as a matter of law with respect to the claims to which Rule 9(b) is applicable. First, Plaintiffs have not adequately pleaded fraudulent misstatements or omissions by the Sweep Bank Defendants. Based on Plaintiffs' allegations, the Sweep Bank Defendants were little more than passive recipients of the free credit balances that were swept out of accounts maintained by the Brokerage Defendants. Indeed, not a single allegation in the 330–paragraph SAC directly identifies a statement or act by the Sweep Bank Defendants, and the vast majority of the references in the pleading to these Defendants appear in quotations that Plaintiffs attribute to other Defendants. (*See, e.g.,* SAC ¶¶ 99, 202.) Plaintiffs offer no explanation for this deficiency. Accordingly, with the exception of the § 349 claim, Plaintiffs' claims against the Sweep Bank Defendants are dismissed pursuant to Rule 9(b).

***25** Second, to the extent the SAC does contain allegations regarding fraudulent misstatements, omissions, and other misconduct by Defendants, Plaintiffs attribute such events to Parent–Brokerage Defendant pairings rather than to specific parties. Such allegations do not satisfy Rule 9(b). Plaintiffs " 'may not rely upon blanket references to acts or omissions by all of the defendants, for each defendant named in the complaint is entitled to be [apprised] of the circumstances surrounding the fraudulent conduct with which he individually stands charged.' " *Am. Fin. Int'l Group–Asia, L.L.C. v. Bennett,* No. 05 Civ. 8988(GEL), 2007 WL 1732427, at *7 (S.D.N.Y. June 14, 2007) (quoting *Red Ball Interior Demolition Corp. v. Palmadessa,* 874 F.Supp. 576, 584 (S.D.N.Y.1995)); *see also Mills,* 12 F.3d at 1175; *DiVittorio,* 822 F.2d at 1247; *Filler v. Hanvit Bank,* Nos. 01 Civ. 9510, 02 Civ. 8251(MGC), 2003 WL 22110773, at *3 (S.D.N.Y. Sept. 12, 2003) (finding that the plaintiffs had failed to meet the requirements of Rule 9(b) because they failed to "make allegations with respect to each defendant, but instead refer[red] only generally to the defendants as 'the Banks' or 'the Korean Banks' "); *Ellison v. Am. Image Motor Co., Inc.,* 36 F.Supp.2d 628, 640–41 (S.D.N.Y.1999); *Silva Run Worldwide Ltd. v. Gaming Lottery Corp.,* No. 96 Civ. 3231(RPP), 1998 WL 167330, at *11 (S.D.N.Y. Apr.8, 1998); *Primavera Familienstiftung v. Askin,* 173 F.R.D. 115, 126 (S.D.N.Y.1997); *Pallickal v. Tech. Int'l Ltd.,* No. 94 Civ, 5738(DC), 1996 WL 153699, at *1 (S.D.N.Y. Apr. 3, 1996); *Manela v. Gottlieb,* 784 F.Supp. 84, 87 (S.D.N.Y.1992).

Lastly, Plaintiffs make almost no effort to identify the place and time that these alleged misrepresentations were made to them, and Plaintiffs' allegations regarding why the statements were materially misleading are deficient. *See, e.g., Ben Hur Moving & Storage, Inc. v. Better Bus. Bureau,* No. 08 Civ. 6572(JGK), 2008 WL 4702458, at *4 (S.D.N.Y. Oct.3, 2008) ("The plaintiff's complaint fails [the Rule 9(b)] standard because the allegations in the complaint do not specify the time, place, [or] speaker ... of the misrepresentations that were allegedly made through the mails and over the Internet."). Specifically, the Court finds unavailing Plaintiffs' assertions that Defendants' statements were "materially false and misleading" because: (1) Defendants' retail brokerage customers were offered "no alternative vehicles for uninvested cash" (*see, e.g.,* SAC ¶ 104); (2) "no *bona fide* disinterested 'Financial Advisor' would ever recommend" enrolling in the Cash Sweep Programs (*see, e.g., id.* ¶ 118); and (3) Defendants failed to disclose the amount of their profits from these Programs (*see, e.g., id.* ¶ 115). Plaintiffs have not pleaded facts suggesting that Defendants were under an obligation to provide them with investment advice, *see infra* Part II.B.2.b (discussing Plaintiffs' IAA claim), and Defendants did not engage in a material omission by failing to disclose the precise amount of the profits they earned in connection with their respective Cash Sweep Programs, *see infra* Part II.B.3.c. (2) (concluding that this alleged omission was immaterial as a matter of law). Moreover, it is entirely unclear how these alleged omissions rendered fraudulent Defendants' disclosures regarding the mechanics of their respective Cash Sweep Programs, such as interest rates, the availability of FDIC insurance, and the manner in which Defendants earned money by providing these services. *See ATSI Commc'ns,* 493 F.3d at 99 (noting that "[a]llegations that are conclusory or unsupported by factual assertions are insufficient" to satisfy Rule 9(b)); *cf. Powe v. Cambium Learning Co.,* No. 08 Civ.1963(JGK), 2009 WL 2001440, at *7 (S.D.N.Y. June 9, 2009). Therefore, as to the Parent and Brokerage Defendants, Plaintiffs have failed to meet the requirements of Rule 9(b).

***26** In sum, both the SAC and Plaintiffs' arguments in opposition to Defendants' motions make clear that their claims sound in fraud. As such, Plaintiffs must plead with particularity their claims for violations of the IAA, common-law fraud, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, negligent misrepresentation, negligence, breach of contract, and unjust enrichment. For the reasons stated above, Plaintiffs have not done so. Accordingly, these claims are dismissed pursuant to Rule 9(b).

B. Rule 12(b)(6)

In addition to the SAC's lack of particularized allegations against each Defendant, Plaintiffs' allegations are also subject to three general deficiencies. First, Plaintiffs have failed to offer allegations capable of supporting a plausible inference that they had anything more than a nondiscretionary broker-client relationship with any Defendant. Second, although the Brokerage Defendants owed Plaintiffs a transaction-specific duty of care, Plaintiffs have not alleged that this duty was breached through Defendants' implementation of the Cash Sweep Programs. Third, Plaintiffs have not identified any materially misleading statements, or omissions by Defendants in contravention of an existing disclosure obligation. Therefore, as discussed in more detail below, these broad defects in the SAC prevent Plaintiffs from adequately pleading claims for the relief they seek. Accordingly,

Defendants' motions to dismiss all of Plaintiffs' claims pursuant to Rule 12(b)(6) are granted.

1. Legal Standard

On a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court must draw all reasonable inferences in Plaintiffs' favor. *ATSI Commc'ns,* 493 F.3d at 98; *Grandon v. Merrill Lynch & Co.,* 147 F.3d 184, 188 (2d Cir.1998). Nonetheless, "[f]actual allegations must be enough to raise a right of relief above the speculative level, on the assumption that all of the allegations in the complaint are true ...." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (citation and emphasis omitted). "Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Ashcroft v. Iqbal,* 129 S, Ct.1937, 1950 (2009). Therefore, this standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* at 1949.

Ultimately, Plaintiffs must allege "enough facts to state a claim to relief that is plausible on its face." *Twombly,* 550 U .S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal,* 129 S.Ct. at 1949. On the other hand, "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.' " *Id.* (quoting *Twombly,* 550 U.S. at 557) (internal citation omitted). Applying this standard, if Plaintiffs "have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." *Twombly,* 550 U.S. at 570.

2. Investment Advisers Act

***27** In their first cause of action, Plaintiffs assert that the Brokerage Defendants' alleged misrepresentations and omissions regarding the Modified and Tiered Cash Sweep Programs breached "fiduciary dut[ies]" owed to their customers under the IAA. (*See* SAC ¶¶ 247–251.) Plaintiffs assert that they are entitled to have their "bank sweep account agreements" voided pursuant to 15 U.S.C. § 80b–15(b), and they seek an accounting, restitution, and disgorgement of "all monies and fees wrongfully obtained by Defendants and their affiliates pursuant to the bank sweep account program ...." (SAC ¶¶ 252, 254.)

For the reasons set forth below, the Court concludes that Plaintiffs' allegations do not support the existence of an investment advisory relationship under the IAA as to any Defendant, and that the relief Plaintiffs seek is unavailable in a private lawsuit under the statute. Therefore, Plaintiffs have failed to state a claim for alleged violations of the IAA, and this cause of action is dismissed pursuant to Rule 12(b)(6).

a. Applicable Law

"[T]here exists a limited private remedy under the Investment Advisers Act of 1940 to void an investment advisers contract, but ... the Act confers no other private causes of action, legal or equitable." *Transamerica Mortgage Advisors, Inc. v. Lewis,* 444 U.S. 11, 24, 100 S.Ct. 242, 62 L.Ed.2d 146 (1979). Section 206 of the IAA states that:

> It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly ... to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

15 U.S.C. § 80b–6(2). This provision is given "teeth" by section 215 of the Act, which "provides that any investment adviser contracts whose formation or performance would violate the provisions of the IAA 'shall be void.' " *Norman v. Salomon Smith Barney, Inc.,* 350 F.Supp.2d 382, 388 (S.D.N.Y.2004) (quoting 15 U.S.C. § 80b–15).

In order to maintain a private action under section 215 of the IAA, a plaintiff must allege that he or she entered into a contract for investment advisory services with an investment adviser. *See Kassover v. UBS AG,* No. 08 Civ. 2753(LMM), 2008 WL 5331812, at *3 (S.D.N.Y. Dec.19, 2008); *Clark v. Nevis Capital Mgmt., LLC,* No. 04 Civ. 2702(RWS), 2005 WL 488641, at *13 (S.D.N.Y. Mar.2, 2005) ("Only parties to an investment advisory contract may sue for rescission under section 215."). Moreover, the only relief available to a private litigant under the IAA is rescission and "restitution of the consideration given under the contract." *Transamerica Mortgage Advisers,* 444 U.S. at 25 n. 14. Therefore, a plaintiff may not seek "compensation for any diminution in the value of the rescinding party's investment alleged to have resulted

from the adviser's action or inaction." *Id.; see also Kassover,* 2008 WL 5331812, at *5.

b. Analysis

***28** Plaintiffs' IAA claim is deficient in at least two respects: (1) Plaintiffs do not allege that they received investment advisory services from Defendants, and they have not identified investment advisory contracts to which they were parties; and (2) in the absence of a voidable investment advisory contract, the relief sought by Plaintiffs is unavailable in a private right of action under the IAA.

Both the named Plaintiffs and the members of the putative class held nondiscretionary *brokerage* accounts with Defendants. (*See* SAC ¶¶ 30–36, 54.) That reality notwithstanding, Plaintiffs attempt to plead the existence of an investment advisory relationship with Defendants through the allegation that they entered into "express, implied or assumed cash sweep contracts" with the Brokerage Defendants. (*Id.* ¶ 248.) However, "[p]laintiffs must establish by more than conclusory allegations that the defendant was an investment adviser." *Hall v. Paine, Webber, Jackson & Curtis, Inc.,* No. 82 Civ. 2840(DNE), 1984 WL 812, at *2 (S.D.N.Y. Aug.27, 1984). The opening of brokerage accounts does not automatically give rise to an investment advisory relationship under the IAA. *See Kassover,* 2008 WL 5331812, at *4 (dismissing IAA claim where "the contracts [p]laintiffs entered into and the only ones referred to in the Amended Complaint (and therefore properly considered in a motion to dismiss) are 'brokerage' agreements"). Thus, although there may have been agreements between Plaintiffs and the Brokerage Defendants regarding the Cash Sweep Programs, it does not necessarily follow that the agreements in question provided for investment advisory services covered by the IAA.

Indeed, the language of the documents provided to Plaintiffs in connection with their accounts indicates that no Defendant undertook to provide investment advisory services:

- The Merrill Lynch Defendants' "Disclosures and Account Agreement" regarding its CMA account disclaimed the existence of any right to unsolicited investment advisory services in relation to customers' free credit balances: "[N]either your Financial Advisor nor Merrill Lynch undertakes any obligation to ensure you receive any particular rate of interest or to advise you to invest your cash or bank deposit balances in higher yielding cash alternatives." (SAC ¶ 111.)

- The Morgan Stanley Defendants issued a March 2006 "Active Assets Account Client Agreement," which stated that "[t]his Account is a brokerage account and is not regulated by the Investment Advisors [sic] Act of 1940. The services and tools we offer in connection with this Account are brokerage tools." (Cantor Decl. Ex. D at 3.)

- The Citigroup Defendants' "Important New Account Information" document, which is relied on by Plaintiffs in the SAC (*see, e.g.,* SAC ¶ 202), stated that the "Smith Barney AssetOne account is a brokerage account and not an advisory account. Smith Barney's interests may not be the same as yours." (Pls.' Citigroup Decl. Ex. 10 at 71.) The document also warned customers that, "[i]f you decide to open an investment advisory account, we will provide you with more information regarding these services ...." (*Id.* at 3.)

***29** - The Charles Schwab Defendants' "Schwab One Brokerage Account Application" listed its Tiered Cash Sweep Program as a "Brokerage Feature [ ]," and specifically stated that: "You agree that you ... are solely responsible for investment decisions in your Account.... Unless Schwab otherwise agrees with you in writing, Schwab does not have any discretionary authority or obligation to review or make recommendations for the investment of securities or cash in your Account." (Pls.' Charles Schwab Decl. Ex. 17 at 3, 7.)

- The Wachovia Defendants' "MarketLink Investor's Account Opening Form," which was completed by Plaintiff Carol Washburn—the only named Plaintiff who alleges that she maintained an account at Wachovia—stated that "[a]ll transactions will be done only on my order or the order of my authorized delegate ...." (Terry Decl. Ex. D at 3.)

In their opposition to Defendants' motions, Plaintiffs argue that their Cash Sweep Program " 'contracts' consisted of disclosures approved—purportedly—by way of negative consent." (Pl.'s Mem. at 8 n. 7.) However, rather than providing investment advice regarding topics that would bring Defendants within the IAA's definition of "investment adviser"—such as, "the value of securities" or the "advisability of investing in ... securities," 15 U.S.C. § 80b–2(11)—the disclosure documents relating to

Defendants' Modified and Tiered Cash Sweep Programs amended the terms of the features described in Plaintiffs' account agreements. These disclosure documents did not provide investment advice that brought the agreements within the purview of the IAA. *See Kassover,* 2008 WL 5331812, at *4 (finding that the plaintiffs' allegation that the defendant "recommended [that the] [p]laintiffs invest in [auction rate securities] is insufficient to infer an investment advisory agreement in the context of a non-discretionary brokerage account"). In fact, Defendants warned Plaintiffs that they should do their own research and seek additional advice if necessary:

- Merrill Lynch Defendants: "You should review your account statement and speak to your Financial Advisor ... to determine current [interest] rates. You should also compare the interest rates, account charges and other features with other accounts, cash sweep programs, and alternative investments offered by Merrill Lynch or other institutions." (Pls.' Merrill Lynch Decl. Ex. 7 at 1.)

- Morgan Stanley Defendants: "You should compare the terms, interest rates, required minimum amounts, and other features of the Deposit Accounts with other deposit accounts and alternative cash investments. You may obtain information with respect to the current interest rates and interest rate tiers by contacting your Financial Advisor or accessing Morgan Stanley's public Web site ...." (Pls.' Morgan Stanley Decl. Ex. 9 at 3.)

- Citigroup Defendants: "You may obtain information about your Deposit Accounts, including balances, the current interest rate and the names and priority of the other Affiliated Program Banks at which Deposit Accounts are currently available by contacting your Financial Advisor." (Pls.' Citigroup Decl. Ex. 8 at 12.)

***30** • Charles Schwab Defendants: "You should compare the terms, interest rates, required minimum amounts, and other features of the Bank Deposit Feature with other accounts and alternative investments ." (Pls.' Charles Schwab Decl. Ex. 14 at 9.)

- Wachovia Defendants: "You must monitor and determine the best sweep option for you under this program.... Wachovia Securities does not have any duty to monitor the Cash Sweep Option for your account or make recommendations about, or changes to, the Sweep Program that might be beneficial to you." (SAC ¶ 237.)

Apart from the allegations relating to these disclosure documents, no Plaintiff alleges that any specific interaction with a Brokerage Defendant took place that rose to the level of advice regarding investment in securities.

In light of Plaintiffs' failure to identify an investment advisory contract or other investment advisory services that they received from Defendants, it is of no moment that, generally speaking, the Brokerage Defendants registered some of their "Financial Advisors" as "Investment Advisers" under the IAA. *See Norman,* 350 F.Supp.2d at 388 (noting that the IAA provides "no remedy for plaintiffs who are not investor-clients" or for "conduct that is not pursuant to an investor-adviser contract"); *Reserve Mgmt. Corp. v. Anchor Daily Income Fund, Inc.,* 459 F.Supp. 597, 608 (S.D.N.Y.1978) ("It is clear that an advisor/client relationship is essential to any action brought under Section 206."). Therefore, Plaintiffs cannot maintain a private cause of action under the IAA to void the agreements relating to the Cash Sweep Program features in their brokerage accounts because these contracts were not "investment advisory contracts" for purposes of the IAA.

In addition to the lack of allegations supporting an inference that an investment advisory relationship existed between Plaintiffs and Defendants, the relief Plaintiffs seek is unavailable in a private cause of action under the IAA. "The only remedy available under the Advisers Act is rescission of the investment advisory contract and restitution of consideration paid for investment advisory services." *Kassover,* 2008 WL 5331812, at *5. In their IAA claim, Plaintiffs seek: (1) "a declaratory judgment that the sweep account agreements with the Class are void"; (2) "an accounting and restitution on behalf of the Class of all monies and fees wrongfully obtained by Defendants and their affiliates pursuant to the bank sweep account program[s]"; and (3) "disgorgement of all profits made by the Brokerage Defendants ...." (SAC ¶ 254 .) Yet, because Plaintiffs have not identified an investment advisory contract in their allegations, there is no agreement to declare void or to rescind under the IAA. Moreover, as Plaintiffs have not alleged that they received investment advisory services, it is not surprising that the SAC lacks allegations regarding consideration paid *by Plaintiffs* for such services. Indeed, the only fees alleged to have been paid by Plaintiffs are the general fees associated with their brokerage accounts. (*See, e.g., id.* ¶ 249.) Such fees are not recoverable in a private cause of action under the IAA. *See Transamerica Mortgage Advisers,* 444 U .S. at 24 n. 14. Similarly, Plaintiffs cannot use a private cause of action under the IAA to obtain a share of Defendants' *profits* from the Cash Sweep Programs. Even if Plaintiffs had alleged

that they received investment advisory services, Defendants' profits did not constitute "consideration paid" by Plaintiffs for those services. *Kassover,* 2008 WL 5331812, at *5.

***31** Thus, Plaintiffs' allegations do not support a plausible inference that they were parties to investment advisory contracts, and the relief that they seek is unavailable under the IAA. Accordingly, Plaintiffs' claim for violations of the IAA is dismissed pursuant to Rule 12(b)(6).

3. Common-law Fraud[14]

Plaintiffs allege that Defendants committed common-law fraud by making a series of misrepresentations and omissions that "were false and misleading" because "customers' cash balances were being reinvested for [Defendants'] profits at the customers' expense." (SAC ¶ 263.) Specifically, Plaintiffs have identified five categories of alleged misrepresentations: two categories relate to Defendants' advertisements and public statements regarding the type of relationship Defendants aspired to develop with their clients, and the remaining three categories relate to the details of the Modified and Tiered Cash Sweep Programs. In addition to the alleged misrepresentations, Plaintiffs also contend that Defendants' failure to disclose the profits they earned from the Cash Sweep Programs was a material omission.

For the reasons stated below, the Court concludes that Plaintiffs have not adequately pleaded a plausible claim for common-law fraud based on the alleged misstatements and omissions identified in the SAC. First, Defendants' advertisements and other public statements regarding the nature and quality of their services constituted puffery. Second, reviewing as a whole the disclosure documents identified in the SAC, Plaintiffs have failed to identify any materially misleading statements by Defendants regarding the mechanics of the Cash Sweep Programs. Finally, with respect to Defendants' alleged failure to quantify their profits from the Cash Sweep Programs, the Court finds this omission to be immaterial as a matter of law. Accordingly, Plaintiffs' common-law fraud claim is dismissed.

a. Applicable Law

The elements of a fraud claim under New York law are: "1) a material false representation made by defendant; 2) defendant intended to defraud plaintiff thereby; 3) plaintiff's reasonable reliance; and 4) plaintiff's damages as a result of the reliance." *Randolph Equities, LLC v. Carbon Capital, Inc.,* No. 05 Civ. 10889(PAC), 2007 WL 914234, at *6 (S.D.N.Y. Mar.26, 2007) (citing *Keywell Corp. v. Weinstein,* 33 F.3d 159, 163–64 (2d Cir.1994)).

With respect to the requirement that the alleged misrepresentations and omissions be material, the Second Circuit has held that "certain information is 'so basic that any investor could be expected to know it.' " *Levitin v. Painewebber, Inc.,* 159 F.3d 698, 702 (2d Cir.1998) (quoting *Zerman v. Ball,* 735 F.2d 15, 21 (2d Cir.1984)). Specifically,

> the practice of a financial institution using money deposited with it to obtain earnings is neither unknown nor unexpected, much less nefarious. That is precisely how banks make money. Some bank accounts are not interest-bearing—*e.g.,* most checking accounts—even though the balances in such accounts are used by banks to earn money. Even interest-bearing bank accounts—and money market accounts with brokers for that matter—do not return to the investor the amount earned but rather pay a contractual rate. *None of these routine practices is regarded as deceptive or even unusual.*

***32** *Id.* at 703 (emphasis added).

b. Alleged Misrepresentations

In their opposition to Defendants' motions, Plaintiffs identify five categories of statements that they contend were misleading: (1) promises of a "Special Relationship with Clients"; (2) statements regarding customers' rights as investors and Defendants' codes of ethics (the "Investor Rights Statements"); (3) statements about the financial benefits that Defendants received from the Modified and Tiered Cash Sweep Programs; (4) statements regarding potential benefits to customers from these Programs; and (5) statements describing customers' alternatives to depositing free credit balances at affiliated Sweep Banks in the Cash Sweep Programs. (Pls .' Mem. at 39–40.) Although there is some overlap between these categories, below the Court provides examples of each type of alleged misrepresentation identified by Plaintiffs.

(1) Defendants' "Special Relationship with Clients"

Plaintiffs first allege that Defendants made a series of misrepresentations, which appeared for the most part on Defendants' websites and in their advertisements (*see, e.g.,* SAC ¶ 85), regarding the nature of the relationships that they sought to establish with clients and customers:

- "Merrill Lynch presented to its clients on its website a 'Client Commitment' statement which provide[d] in no uncertain terms that the client is Merrill Lynch's first priority ...." (*Id.* ¶ 81.)
- The Morgan Stanley Defendants' " 'Global Wealth Management' " website stated that " '[o]btaining your financial goals is number one ... on your Financial Advisor's list.' " (*Id.* ¶¶ 154–55 (quoting website).)
- The Citigroup Defendants maintained a "web page called 'Working with Your Financial Advisor,' " which "emphasize[d] the importance in confiding and relying on the personal relationship with the Smith Barney Financial Advisor ...." (*Id.* ¶ 176.)
- The Charles Schwab Defendants' website contained an "open Letter to Investors" from "its namesake and founder, Charles Schwab," which stated that " '[f]rom day one, I've made it our business to put the needs of the individual investors first.' " (*Id.* ¶ 120 (quoting website).)
- The Wachovia Defendants' website stated that " '[a]t Wachovia Securities, our Financial Advisors are committed to your financial welfare.' " (*Id.* ¶ 212 (quoting website).)

Plaintiffs allege that these statements were misleading because, rather than seeking to maximize their customers' earnings on free credit balances, Defendants were allegedly using their customers' uninvested funds to increase their own profits. (*See, e.g., id.* ¶¶ 86, 89, 144.) According to Plaintiffs, "the cash sweep program[s] ensured ... clients were put *'second'* after [Defendants'] profit ...." (*Id.* ¶ 86 (emphasis in original).)

(2) Defendants' Investor Rights Statements

Plaintiffs further allege that each group of Defendants issued a series of Investor Rights Statements regarding their commitments to customers. For example:

***33** • The Merrill Lynch Defendants' "Commitment to Clarity" brochure stated that "[w]e believe that the needs of the investor should always come first." (*Id.* ¶ 88.)

- The Morgan Stanley Defendants' "Code of Ethics" stated that "the firm's clients, shareholders, competitors and the public have come to expect more from us than simple obedience to the letter of the law. They expect the highest degree of ethics, honesty and fairness in all our dealings." (*Id.* ¶ 160.)
- The Citigroup Defendants' Investor Rights Statement, which was titled "Our Mutual Commitment," stated that customers have a right "[t]o be treated in a fair, ethical and respectful manner in all interactions ...." (*Id.* ¶ 183.)
- The Charles Schwab Defendants' "Code of Business Conduct and Ethics" document "state[d] that [Charles Schwab's] 'Vision' is to 'Provide clients with the most useful and ethical financial services in the world ....' " (*Id.* ¶ 129.)
- The Wachovia Defendants' website "include[d] a 'Client Commitment' web page which assure[d] clients that ... '[y]ou will be informed of any significant conflict of interest, and we will always act in your best interest.' " (*Id.* ¶ 217 (quoting website).)

Similar to the first category, Plaintiffs allege that this category of misstatements was "deceptively false and misleading" because, although these statements suggested that Defendants would seek to maximize their customers' earnings on free credit balances, Defendants used the Cash Sweep Programs to maximize their own profits and paid customers lower amounts of interest. (*See, e.g., id.* ¶¶ 184, 219.)

(3) Defendants' Benefits from the Cash Sweep Programs

In the third category of alleged misrepresentations, Plaintiffs allege that Defendants misstated the extent of the financial benefits that they derived from the Cash Sweep Programs. The alleged misstatements in this category are nearly identical as to each of the five groups of Defendants. (*See* SAC ¶ 114 (Merrill Lynch); *id.* ¶ 147 (Charles Schwab); *id.* ¶ 173 (Morgan Stanley); *id.* ¶ 197 (Citigroup); *id.* ¶ 242 (Wachovia).)

For example, Plaintiffs note that the Merrill Lynch Defendants disclosed to their customers that the

modifications to the Cash Sweep Programs would "be financially beneficial" to them in an amount determined by the "difference between the interest paid and other costs incurred ... on bank deposits, and the interest or other income earned on [the Merrill Lynch Defendants'] loans, investments and other assets." (*Id.* ¶ 114.) Plaintiffs allege that such statements were false and misleading because Defendants "failed to disclose the *amount* by which Merrill Lynch and its affiliates profited from bank account sweeps and that the sweep system was rigged to pay clients less interest than money market funds for the sole purpose of increasing Merrill Lynch profits at its clients['] expense." (*Id.* ¶ 115 (emphasis in original); *see also id.* ¶ 148 (Charles Schwab); *id.* ¶ 174 (Morgan Stanley); *id.* ¶ 198 (Citigroup); *id.* ¶ 243 (Wachovia).)

(4) Customers' Benefits from the Cash Sweep Programs

***34** Plaintiffs allege that, in order to entice customers to permit their free credit balances to be used in the Modified and Tiered Cash Sweep Programs, Defendants also made a series of misrepresentations regarding the benefits and advantages to customers of the Cash Sweep Programs. Like the alleged misstatements regarding the benefits Defendants derived from the Cash Sweep Programs, Plaintiffs' allegations regarding this category of misstatements are nearly identical as to each group of Defendants.

Examples of these alleged misstatements include promises that the Cash Sweep Programs would make customers' money "work harder" (*id.* ¶¶ 189–90), allow customers to "keep [their] money working" (*id.* ¶¶ 99, 165–66), and permit customers to "make the most of [their] cash" (*id.* ¶ 139). (*See id.* ¶ 97 (Merrill Lynch); *id.* ¶ 126 (Charles Schwab); *id.* ¶ 166 (Morgan Stanley); *id.* ¶ 189 (Citigroup).) Plaintiffs further allege that Defendants emphasized that participation in their respective Cash Sweep Programs was free, that deposits at affiliated Sweep Banks were insured by the FDIC, and that purchasing shares of money market mutual funds involved more risk because those investments were not FDIC-insured. (*See, e.g., id.* ¶¶ 15, 99, 126, 145, 191, 245.)

Plaintiffs allege that these statements were misleading because Defendants failed to disclose that customers' money would be "working *harder"* in money market mutual funds, as opposed to deposit accounts at affiliated Sweep Banks. (*See id.* ¶ 189 (emphasis added).) For example, Plaintiffs assert that the Merrill Lynch Defendants "did not maximize Plaintiffs' 'short term finances' or 'keep money working' effectively but rather ensured client cash was sweep [sic] into bank accounts where defendants could use the cash to truly 'maximize' Merrill Lynch's own profit." (*Id.* ¶ 98.) Similarly, Plaintiffs allege that the Morgan Stanley Defendants' statements in this category were misleading because

> they failed to disclose that there was no reason to pay clients the bank rate [at affiliated Sweep Banks] other than to additionally enhance Morgan Stanley profits from the use of its clients' uninvested cash and that no *bona fide* disinterested 'Financial Advisor' would ever recommend ... a scheme which would place uninvested cash in bank account[s] bearing interest of less than 1% over money market funds and that in all events such a scheme did not 'keep cash working' for Plaintiffs.

(*Id.* ¶ 167; *see also id.* ¶¶ 128, 144 (Charles Schwab); *id.* ¶ 196 (Citigroup); *id.* ¶ 246 (Wachovia).)

(5) Customer Alternatives to Depositing Their Free Credit Balances at Affiliated Sweep Banks

Lastly, Plaintiffs allege that Defendants made misrepresentations regarding customers' alternatives to having their free credit balances deposited at affiliated Sweep Banks. Here, Plaintiffs identify a series of substantially similar statements made by each group of Defendants that directed customers to compare interest rates, evaluate other banks' Cash Sweep Programs, and speak with their "Financial Advisors" regarding alternatives for their free credit balances. (*See id.* ¶¶ 103, 109, 111–12 (Merrill Lynch); *id.* ¶ 152 (Charles Schwab); *id.* ¶ 171 (Morgan Stanley); *id.* ¶ 195 (Citigroup); *id.* ¶ 231 (Wachovia).)

***35** For the most part, the SAC alleges that Defendants indicated to customers that money market mutual funds were the primary investment alternative to the Modified and Tiered Cash Sweep Programs. (*Id.* ¶ 99 (Merrill Lynch); *id.* ¶ 150–52 (Charles Schwab); *id.* ¶ 195 (Citigroup); *id.* ¶ 231 (Wachovia).) However, Plaintiffs contend that Defendants offered a misleading comparison between making deposits at Sweep Banks and owning shares of mutual funds. (*See, e.g., id.* ¶ 62.) Specifically, Plaintiffs allege that Defendants overemphasized the utility of the FDIC insurance accompanying deposits of free credit balances through the Modified and Tiered Cash Sweep Programs, and failed to disclose that shares of money market mutual funds are "universally accepted as highly safe investments ... because

of the quality and duration of the investments made ... with little risk of default ." (*Id.* ¶ 6.)

Plaintiffs allege that these statements, including the comparisons, were deceptive, false, and misleading because: (1) in reality, Defendants "provided no alternative vehicles for uninvested cash ... other than allowing [customers'] cash to sit idle earning no interest at all" (*id.* ¶ 104); (2) the Cash Sweep Programs were "rigged to ensure that uninvested cash went to [Defendants]" (*id.* ¶ 172); and (3) "no *bona fide* 'Financial Advisor' would recommend—much less implement—such an investment ... in place of money market funds" (*id.*).

c. Analysis

In addition to the above-described allegations regarding misrepresentations, *see supra* Part II.B.3.b, Plaintiffs also allege that Defendants' failure to disclose the amount of their profits from the Cash Sweep Programs was materially misleading. The Court first addresses Plaintiffs' five categories of misrepresentations, and then analyzes the alleged omission regarding Defendants' profits. For the reasons stated below, these allegations are insufficient to adequately plead a claim for common-law fraud.

(1) Defendants' Alleged Misrepresentations

Plaintiffs have failed to articulate a plausible theory under which the five categories of statements they have identified could be materially misleading to a reasonable investor. Plaintiffs' first two categories of alleged misrepresentations —those relating to Defendants' statements about their relationships with customers and Defendants' Investor Rights Statements—constituted nothing more than puffery. The remaining three categories, which relate to the benefits and alternatives for the Modified and Tiered Cash Sweep Programs, are not materially misleading.

As to the first category of alleged misrepresentations, Defendants' advertisements regarding their aspirations for customer relationships were immaterial puffery. *See, e.g., Hubbard v. Gen. Motors Corp.,* No. 95 Civ. 4362(AGS), 1996 WL 274018, at *6 (S.D.N.Y. May 22, 1996) (" 'Puffing' has been described as making generalized or exaggerated statements such that a reasonable consumer would not interpret the statement as a factual claim upon which he or she could rely." (internal quotation omitted)). "The allegation that the customer was told that the broker's primary purpose was to make profits for the customer is nothing more than the common puff of a salesman and must be looked at from the point of view of a reasonable person.... The law does not give premiums for naivete." *Bowman v. Hartig,* 334 F.Supp. 1323, 1328 (S.D.N.Y.1971); *see also The Sample Inc. v. Pendleton Woolen Mills, Inc.,* 704 F.Supp. 498, 505–06 & n. 10 (S.D.N.Y.1989) (dismissing fraud claim because manufacturer's advertisements about "relationships that last a lifetime" constituted "puffing"); *Frota,* 639 F.Supp. at 1190 (characterizing as puffery a series of alleged misrepresentations that the "plaintiffs' account would be 'properly and prudently managed,' ... [and] that [the defendant] was not only [the] plaintiffs' broker, but their 'friend, confidant and financial advisor' and a person whom [the] plaintiffs 'could trust to look after their interests' "); *cf. ECA, Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Co.,* 553 F.3d 187, 206 (2d Cir.2009) (characterizing as puffery the defendants' statements regarding "high standards of integrity and credit-risk management" because "[n]o investor would take such statements seriously in assessing a potential investment, for the simple fact that almost every investment bank makes these statements"). Therefore, this first category of alleged misrepresentations cannot serve as the basis for Plaintiffs' fraud claim.

***36** With respect to the second category of alleged misrepresentations, Plaintiffs appear to acknowledge in the SAC that Defendants' Investor Rights Statements either quote verbatim, or mimic, the 2004 "Best Practices" recommendations of the Securities Industry and Financial Markets Association regarding "Investor Rights." (*See* SAC ¶ 88 (alleging that the Merrill Lynch Defendants' statements regarding their "Commitment to Clarity" were "based on a Securities Industry Association 2004 statement"); *id.* ¶ 183 (alleging that Smith Barney's statement titled "Our Mutual Commitment" was "modeled from a 'Statement of Investor Rights and Responsibilities' adopted by the Board of the Securities Industry Association in 2004").) Therefore, Plaintiffs have not alleged that the Investor Rights Statements were anything more than an industry-wide set of maxims that were compiled by a trade group. *Cf. ECA,* 553 F.3d at 206. As with Defendants' advertisements, these statements did not contain facts or concrete promises of future performance that were specific to the relationship between the parties. *See Nasik Breeding & Research Farm Ltd. v. Merck & Co. .,* 165 F.Supp.2d 514, 530 (S.D.N.Y.2001) ("Terms [that] ... do not set forth a concrete representation as to the company's future

performance ... are in the nature of commercial puffery and cannot form the basis for a fraud claim ...."). The "vigorous promotion" of a commercial venture "without more, is not a misrepresentation." *Id.* Therefore, the Court concludes that Plaintiffs' second category of alleged misstatements is immaterial as a matter of law.[15]

With respect to Plaintiffs' remaining three categories of alleged misrepresentations, the Court concludes that Defendants' disclosures regarding the nature and mechanics of their Cash Sweep Programs were not materially misleading. As to the third category—Defendants' benefits from the Sweep Programs—Plaintiffs contend that these statements "failed to meaningfully disclose the true benefits" that Defendants derived from the Cash Sweep Programs. (SAC ¶ 243.) However, that assertion is belied by the text of the disclosures Plaintiffs have included in the SAC, which reveal that Defendants disclosed the precise manner in which they would profit from the Cash Sweep Programs. For example, the Wachovia Defendants disclosed that:

> Wachovia Bank earns net income from the difference between the interest it pays on deposit accounts, such as the Bank Deposit Sweep Option, and the income it earns on loans, investments and other assets.... As a result of the fees and benefits described above, the Bank Deposit Sweep Option may be significantly more profitable to us than other available Cash Sweep Options.

(*Id.* ¶ 242.) The remaining four groups of Defendants made substantially similar disclosures, which are also detailed in the SAC. (*See id.* ¶ 105 (Merrill Lynch); *id.* ¶ 147 (Charles Schwab); *id.* ¶ 173 (Morgan Stanley); *id.* ¶ 197 (Citigroup); *id.* ¶ 242 (Wachovia).) Each group of Defendants explicitly explained the manner in which they would profit from the Cash Sweep Programs. Therefore, the Court concludes that Defendants' statements regarding the benefits they derived from the Cash Sweep Programs were not materially misleading.

***37** Similarly, Defendants' disclosures regarding customers' potential benefits from, and alternatives to, the Cash Sweep Programs were not materially misleading. Plaintiffs do not allege that Defendants' disclosures regarding the FDIC insurance on customer deposits at affiliated Sweep Banks contained actual misrepresentations. (*See, e.g., id.* ¶ 99.) Rather, they contend that Defendants overemphasized the advantages of FDIC insurance. However, that contention is not supported by the documents upon which Plaintiffs rely. For example, in the SAC, under the heading "Merrill Lynch Deceptive Description Of Bank Deposit FDIC Insured Option," Plaintiffs identify as misleading the Merrill Lynch Defendants' disclosure that "money market funds are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency. Although the [money market] funds seek to preserve the value of your investment at $ 1 per share, it is possible to lose money by investing in the funds." (*Id.* ¶ 99 .) These disclosures were specifically called for by the NYSE (*see id.* ¶ 77; NYSE Info. Mem. at 3–4, 6), and Plaintiffs do not contest their veracity. Other than the bold typeface that Plaintiffs have used in the SAC, there is no basis for their conclusory allegation that Defendants "emphasiz[ed]" the availability of FDIC insurance to customers (*see, e.g.,* SAC ¶ 99), and there is nothing misleading about the statements themselves.

Morever, Plaintiffs' argument that "no *bona fide* disinterested 'Financial Advisor' would ever recommend" enrolling in the Modified or Tiered Cash Sweep Programs misstates the nature of the Brokerage Defendants' obligations to their customers. (*Id.* ¶ 144 (Charles Schwab); *see also id.* ¶ 100 (Merrill Lynch); *id.* ¶ 167 (Morgan Stanley); *id.* ¶ 196 (Citigroup); *id.* ¶ 246 (Wachovia).) Plaintiffs have not alleged that they sought, or that Defendants promised to provide, *"bona fide* investment advisory services." Although each set of Defendants recommended that their customers either contact a "Financial Advisor" regarding the Cash Sweep Programs or examine alternatives to the Programs on their own, no Plaintiff alleges that he or she did so. *See supra* Part II.B.2.b. Therefore, Plaintiffs' broad, categorical conjecture regarding the content of investment advice that they *might* have received from Defendants' Financial Advisors, *if* they had sought such advice, does not make these disclosures materially misleading.

There are also no factual allegations in the SAC that Defendants hindered Plaintiffs' investigation of suitable alternatives to the Cash Sweep Programs. Plaintiffs do allege that it would have been "pointless" to consult Defendants' "Financial Advisors" because they received commissions based on the amount of funds deposited at affiliated Sweep Banks. (SAC ¶ 104.) Although the fact that the Brokerage Defendants' employees received commissions in connection with the Cash Sweep Programs was likely material, *see, e.g., Press v. Quick & Reilly, Inc.,* 218 F.3d 121, 130 (2d Cir.2000), the SAC makes clear that Defendants disclosed the commissions structure. (*See* SAC ¶ 114 (Merrill Lynch); *id.* ¶ 149 (Charles Schwab); *id.* ¶ 173 (Morgan Stanley); *id.* ¶ 197 (Citigroup); *id.* ¶ 242 (Wachovia).) Accordingly, the Court

concludes that Defendants' disclosures about the alternatives and benefits available to customers from the Cash Sweep Programs were not materially misleading.

(2) Defendants' Alleged Failure to Disclose Profits

***38** Plaintiffs also allege that, notwithstanding Defendants' disclosures regarding the manner in which they profited from the Cash Sweep Programs, Defendants' failure to disclose the actual amount of their profits was misleading. (*See, e.g., id.* ¶ 243 .) The Court disagrees, and concludes that these alleged omissions were also immaterial as a matter of law.

Plaintiffs repeatedly allege, in substance, that Defendants "failed to even attempt to disclose the billions of dollars in ... profit from the use of clients' uninvested cash at their clients' expense ...." (SAC ¶ 106 (emphasis omitted).) However, because this broad contention sits in significant tension with Plaintiffs' other allegations in the SAC, the Court is not obligated to accept it as true. *See, e.g., Koulkina v. City of New York,* No. 06 Civ. 11357(SHS), 2009 WL 210727, at *6 (S.D.N.Y. Jan.29, 2009) ("[T]he 'Court [ ] is not obliged to reconcile plaintiffs' own pleadings that are contradicted by other matter asserted or relied upon or incorporated by reference by a plaintiff in drafting the complaint.' " (quoting *Fisk v. Letterman,* 401 F.Supp.2d 362, 368 (S.D.N.Y.2005)) (first alteration in original)). Specifically, Plaintiffs also allege that, rather than concealing the profits from the Cash Sweep Programs, Defendants touted these earnings to the public. According to Plaintiffs, Defendants did so in media releases and press conferences (*see, e.g.,* SAC ¶¶ 92, 225), as well as in contemporaneous SEC filings (*see, e.g.,* SAC ¶¶ 8, 68, 70). Plaintiffs further allege that Defendants' profits from the Cash Sweep Programs were the subject of both press coverage and publicly available industry analysis. (*See, e.g., id* . ¶¶ 71, 94.) Thus, in light of these allegations, Plaintiffs' argument must be construed as a challenge to Defendants' failure to specifically identify the extent of their profits in disclosures transmitted directly to their retail brokerage clients.

The Court concludes that this more narrow alleged omission is immaterial as a matter of law. In *Levitin v. Painewebber, Inc.,* the Second Circuit affirmed the dismissal of a putative class action brought by the holder of a brokerage account against a broker-dealer that had effected short-sale transactions on the plaintiff's behalf. *See* 159 F.3d at 700–01. The plaintiff alleged that the defendant had improperly used the collateral posted by customers in connection with short sales for its own financial benefit. *See id.* Specifically, the plaintiff alleged that " '[t]ypically,' " the defendant " 'will not inform its customers of ... the interest or profits ... [earned] from using the customer's property.' " *Id.* at 701 (quoting the complaint). Reviewing these allegations, the *Levitin* court held that "[a]n investor who is ignorant of the fact that free cash or securities may be used to earn interest or other kinds of financial returns is simply not reasonable by any measure." *Id.* at 702. The court further noted that the plaintiff "might as reasonably complain of [the defendant's] failure to disclose that the interest it pays to investors on money market accounts is less than that earned by [the defendant] on the amount in the account." *Id.*

***39** Plaintiffs seek greater disclosures than those sought by the plaintiffs in *Levitin.* There, the plaintiff argued that the defendant had failed to "disclose profits on the posted collateral." *Levitin,* 159 F.3d at 699. Here, as discussed above, *see supra* Part II.B.3.C, Defendants disclosed not only that they derived financial benefits from the Cash Sweep Programs, but also that the extent of their profits was governed by the difference between the interest rate paid to customers, and the rate of return Defendants earned by using their customers' free credit balances for other commercial purposes. (*See* SAC ¶¶ 105, 147, 173, 197, 242.) Plaintiffs argue that they were nevertheless entitled to additional disclosures regarding the precise amounts of profits that Defendants earned. Under *Levitin,* the failure to disclose such information in this context, absent a breach of some other duty to do so, is not actionable. Indeed, it would have been difficult, if not impossible, for Defendants to quantify in their disclosures to retail brokerage investors, *in advance,* the amount of profits they would earn through the Cash Sweep Programs. The law does not require such speculation. Therefore, in light of the disclosures made by Defendants, which Plaintiffs acknowledge, the Court concludes that the alleged omissions relating to the amount of Defendants' profits are immaterial as a matter of law.

In sum, the Court has carefully reviewed the disclosures by Defendants regarding the Cash Sweep Programs. This review has included both the specific statements identified by Plaintiffs, and, because the documents are integral to the pleading, the full-length disclosure documents referenced in the SAC. Having done so, the Court concludes that: (1) Plaintiffs have failed to identify a materially false or misleading statement regarding Defendants' Modified and Tiered Cash Sweep Programs; (2) Defendants' disclosures regarding their respective Cash Sweep Programs would

not have misled reasonable investors; and (3) the alleged omission of Defendants' exact amount of profits from these Programs was immaterial as a matter of law in light of the other disclosures. Accordingly, for these reasons, Plaintiffs' common-law fraud claim is dismissed pursuant to Rule 12(b)(6).

4. Breach of Fiduciary Duty and Aiding and Abetting a Breach of Fiduciary Duty

Plaintiffs bring a claim for breach of fiduciary duty against all Defendants (SAC ¶¶ 277–85), as well as a claim for aiding and abetting a breach of fiduciary duty against the Parent and Sweep Bank Defendants (*id.* ¶¶ 286–91). In support of these claims, Plaintiffs argue that the SAC "clearly pleads a breach of the duty of loyalty through the implementation of the" Modified and Tiered Cash Sweep Programs. (Pls.' Mem. at 26.)

However, Plaintiffs have offered no allegations that, if proven, would establish the existence of a fiduciary duty owed by the Parent and Sweep Bank Defendants to Plaintiffs. Moreover, as to the Brokerage Defendants, although the law recognizes a limited duty owed by brokers to the holders of brokerage accounts, that duty was not breached through the actions that these Defendants are alleged to have taken in connection with the Cash Sweep Programs. Thus, Plaintiffs have not stated a claim for a breach of fiduciary duty, and in the absence of sufficient allegations of a primary breach, the claim for aiding and abetting a breach of fiduciary duty must also fail. Accordingly, for the reasons stated below, Plaintiffs' claims for breach of fiduciary duty and aiding and abetting a breach of fiduciary duty are dismissed.

a. Applicable Law

***40** Under New York law, a claim for breach of fiduciary duty has three elements: " '(1) the existence of a duty on defendant's part as to plaintiff; (2) a breach of this duty; and (3) injury to the plaintiff as a result thereof.' " *Alfaro v. Wal–Mart Stores, Inc. .,* 210 F.3d 111, 114 (2d Cir.2000) (quoting *Akins v. Glens Falls City Sch. Dist.,* 53 N.Y.2d 325, 333, 441 N.Y.S.2d 644, 424 N.E.2d 531 (N.Y.1981)).

"A fiduciary relationship exists ... 'when one [person] is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation.' " *Flickinger v. Harold C. Brown & Co.,* 947 F.2d 595, 599 (2d Cir.1991) (quoting *Mandelblatt v. Devon Stores, Inc.,* 132 A.D.2d 162, 521 N.Y.S.2d 672, 676 (1st Dep't 1987)) (alteration in original). However, "when parties deal at arms length in a commercial transaction, no relation of confidence or trust sufficient to find the existence of a fiduciary relationship will arise absent extraordinary circumstances." *Pan Am. Corp. v. Delta Air Lines, Inc.,* 175 B.R. 438, 511 (S.D.N.Y.1994) (internal quotation omitted). In this case, the relationship between a brokerage customer and a broker as to free credit balances is that of a debtor and creditor. *See Bissell v. Merrill Lynch & Co.,* 937 F.Supp. 237, 246 (S.D.N.Y.1996). Such a relationship "is not by itself a fiduciary relationship although the addition of 'a relationship of confidence, trust, or superior knowledge or control' may indicate that such a relationship exists." *In re Mid–Island Hosp., Inc.,* 276 F.3d 123, 130 (2d Cir.2002) (quoting *Delta Air Lines,* 175 B.R. at 511).

b. Breach of Fiduciary Duty

With respect to the Parent and Sweep Bank Defendants, Plaintiffs have not sufficiently alleged the existence of a fiduciary duty. Instead, Plaintiffs offer only the conclusory assertion that the "Defendants," collectively, "through their agents and representatives, held themselves out as financial advisors to Plaintiffs and other Class members, and as such owed fiduciary duties to Plaintiffs and the other Class members." (SAC ¶ 278.) Similarly, in their opposition to Defendants' motions, Plaintiffs present no independent arguments in support of this claim against the Parent and Sweep Bank Defendants, and instead refer to "Defendants" *en masse.* (*See* Pls.' Mem. at 23–32.) However, Plaintiffs cannot maintain a claim for breach of fiduciary duty against these Defendants simply by levying a series of general allegations regarding their brokerage accounts.

"[A]bsent an allegation of a special relationship, mere assertions of 'trust and confidence' are insufficient to support a claim of a fiduciary relationship." *Abercrombie v. Andrew Coll.,* 438 F.Supp.2d 243, 274 (S.D.N.Y.2006). "Thus, for example, 'the fact that one party trusts the other is insufficient to create a fiduciary relationship.' " *Id.* (quoting *Cumis Ins. Soc'y, Inc. v. Peters,* 983 F.Supp. 787, 797 (N.D.Ill.1997)). Other than the fact that Plaintiffs' free credit balances were deposited *by the Brokerage Defendants* at affiliated Sweep Banks, there are no allegations in the SAC regarding interactions—indirect or otherwise—between Plaintiffs and either the Parent or Sweep Bank Defendants. Therefore,

Plaintiffs' breach of fiduciary claim as to these Defendants is dismissed.

***41** Nor are Plaintiffs' allegations sufficient to state a claim for breach of fiduciary duty against the Brokerage Defendants. As noted, under New York law, the " 'mere existence of a broker-customer relationship is not proof of its fiduciary character .' " *Bissell,* 937 F.Supp. at 246 (quoting *Rush v. Oppenheimer & Co.,* 681 F.Supp. 1045, 1055 (S.D.N.Y.1988)). As discussed in relation to Plaintiffs' IAA claims, *see supra* Part II.B.2.b, there are no allegations in the SAC, or in the documents that have been deemed integral to the pleading, tending to suggest that there was anything but a nondiscretionary brokerage relationship between Plaintiffs and the Brokerage Defendants. Indeed, each Plaintiff specifically alleges that he or she maintained one or more "brokerage" accounts (SAC ¶¶ 30–36), and Plaintiffs affirmatively argue in their opposition to Defendants' motions that "in fact, they had nothing more than an '[arms]-lenguY relationship—the same as with any commercial vendor." (Pls.' Mem. at 40.)

The Second Circuit has offered cogent guidance on the legal obligations that arise out of such a relationship:

> [A] broker ordinarily has no duty to monitor a nondiscretionary account, or to give advice to such a customer on an ongoing basis. The broker's duties ordinarily end after each transaction is done, and thus do not include a duty to offer unsolicited information, advice, or warnings concerning the customer's investments.... The client may enjoy the broker's advice and recommendations with respect to a given trade, but has no legal claim on the broker's ongoing attention.

de Kwiatkowski v. Bear, Stearns & Co., Inc., 306 F.3d 1293, 1302 (2d Cir.2002); *see also Press v. Chem. Inv. Servs. Corp.,* 166 F.3d 529, 536 (2d Cir.1999); *Indep. Order of Foresters v. Donald, Lufkin & Jenrette, Inc.,* 157 F.3d 933, 940–41 (2d Cir.1998); *In re Refco Capital Mkts., Ltd. Brokerage Customer Sec. Litig.,* 586 F.Supp.2d 172, 193 (S.D.N.Y.2008); *Crigger v. Fahnestock & Co., Inc.,* No. 01 Civ. 7819(JFK), 2003 WL 22170607, at *10 (S.D.N.Y. Sept.18, 2003) ("Where the broker is not recommending investments to the client, but rather acting primarily as a banker ..., a fiduciary duty is not created."); *Bissell,* 937 F.Supp. at 246 ("In the absence of discretionary trading authority delegated by the customer to the broker—and none is alleged in the case at bar—a broker does not owe a general fiduciary duty to his client.").

Thus, "absent an express advisory contract, there is no fiduciary duty on [the] part of [the] broker-dealer unless the customer is infirm or ignorant of business affairs." *Kwiatkowski,* 306 F.3d at 1308–09 (internal quotation omitted). A fiduciary duty owed by the Brokerage Defendants "could arise only if the law, under the circumstances of this case, imposes on [them] some special duty as a result of the relationship between the parties—that is, if [Plaintiffs'] account[s] deviated from the usual nondiscretionary account in a way that create[d] a special duty beyond that ordinary duty of reasonable care that applies to a broker's actions in nondiscretionary accounts." *Id.* at 1308. Such "transformative 'special circumstances' " include situations that "render the client dependent," such as "a client who has impaired faculties, or one who has a closer than arms-length relationship with the broker, or one who is so lacking in sophistication that *de facto* control of the account is deemed to rest in the broker." *Id.* The SAC lacks any such allegations.

***42** Notwithstanding this fact, Plaintiffs argue that the language of Defendants' advertisements was sufficient to create a fiduciary relationship as to *all* Defendants. (Pls.' Mem. at 28.) This argument is unavailing for a number of reasons. First, the advertisements quoted in the SAC promote the full range of services offered by Defendants, which included, but was not limited to, retail brokerage accounts. (*See* SAC ¶ 97 (Merrill Lynch); *id.* ¶ 123, 126–27 (Charles Schwab); *id.* ¶ 155 (Morgan Stanley); *id.* ¶ 178 (Citigroup); *id.* ¶ 214 (Wachovia).) The fact that Defendants made known to the public that they offered discretionary brokerage accounts and other types of investment advice is only relevant here to the extent that Plaintiffs enrolled in or otherwise sought those services. *See Brinsights, LLC v. Charming Shoppes of Delaware, Inc.,* No. 06 Civ. 1745(CM), 2008 WL 216969, at *8 (S.D.N.Y. Jan.16, 2008) ("Where the parties do not create their own relationship of higher trust, courts should not fashion the stricter duty for them."). No Plaintiff alleges that he or she sought such services.

Second, fiduciary relationships—like investment advisory relationships under the IAA—are personal and context-specific. *See, e.g., Abercrombie,* 438 F.Supp.2d at 274 ("[I]n order to survive a motion to dismiss a claim for breach of fiduciary duty, the plaintiff must set forth specific facts constituting the alleged relationship with sufficient particularity to enable the court to determine whether, if true, such facts could give rise to a fiduciary relationship." (internal quotation omitted)); *Europacific Asset Mgmt. Corp. v. Tradescape Corp.,* No. 03 Civ. 4556(PKL), 2005 WL 497787,

at *9 (S.D.N.Y. Mar.2, 2005) ("[F]inding a breach of fiduciary duty requires finding that a fiduciary relationship existed *between the parties."* (emphasis added)). However, no Plaintiff alleges that he or she read the advertisements and promotional materials cited in the SAC, and there are almost no specific allegations regarding any of Plaintiffs' relationships with the Brokerage Defendants.

Finally, "the fact that the broker ... represents, as part of his sales pitch, that he is particularly well qualified to [offer investment advice] does not alter the limited scope of the broker's legally enforceable obligations." *Stewart v. J.P. Morgan Chase & Co.,* No. 02 Civ.1936(MHD), 2004 WL 1823902, at *12 (S.D.N.Y. Aug.16, 2004); *see also Renner v. Chase Manhattan Bank,* No. 98 Civ. 926(CSH), 2000 WL 781081, at *20 (S.D.N.Y. June 16, 2000) ("That plaintiffs may have regarded defendants as their fiduciaries is not enough to establish a fiduciary duty when that duty otherwise would not exist." (internal quotation omitted)). As discussed in more detail in relation to Plaintiffs' common-law fraud claim, *see supra* Part II.B.3.c.(1), no reasonable investor would expect that these vague and general advertisements created any sort of extra-contractual relationship extending beyond the terms specified in Plaintiffs' account agreements.

***43** Plaintiffs' claim fares no better if the analysis is narrowed to focus on the Brokerage Defendants' use of their customers' free credit balances. "Federal regulation of ... broker utilization of customer funds is extensive." *Levitin,* 159 F.3d at 705. However, "[t]he SEC has ... recognized that the relationship of brokers to customers with respect to credit and debit balances in their accounts is that of debtor and creditor." *Bissell,* 937 F.Supp. at 246 (citing Adoption of Rule 15c3–2 under the Securities Exchange Act of 1934, Exchange Act Release No. 34–7325 (May 27, 1964)); *cf. Newbro v. Freed,* 409 F.Supp.2d 386, 396 (S.D.N.Y.2006) ("[A] claim against a broker for converting funds in a free credit balance fails for the same reason as a customer's claim against a bank—the funds at issue arise from a debtor-creditor relationship and are not segregated vis-a-vis other accounts at the brokerage firm.").[16] Plaintiffs have not alleged that this debtor-creditor relationship resulted from anything more than an arms-length transaction relating to the investments that they initiated.

By definition, free credit balances existed in Plaintiffs' brokerage accounts because Plaintiffs chose not to invest these funds and instead left them idle in their accounts. *See* 17 C.F.R. § 240.15c3–3(a)(8); *see also* Amendments to Financial Responsibility Rules for Broker–Dealers, 72 Fed.Reg. 12,862, 12,866 (proposed Mar. 19, 2007). Nevertheless, Plaintiffs acknowledge that they earned positive rates of interest on these funds. (*See* SAC ¶¶ 30–36.) However, Plaintiffs suggest that they were entitled to an additional service from the Brokerage Defendants—namely, ongoing advice regarding how to *maximize* returns on free credit balances. Plaintiffs present this argument notwithstanding the fact that the specific Cash Sweep Programs at issue were governed by the terms of their account agreements and the amendments thereto. No such service was included in Plaintiffs' brokerage accounts, and the Brokerage Defendants had no fiduciary obligation to provide it. *See, e.g., Kwiatkowski,* 306 F.3d at 1311 ("The general rule ... is that ... brokers do not owe nondiscretionary clients ongoing advisory or account-monitoring duties, such as the duty to warn of changes in market conditions or other information that can impact the client's investments."); *Hoffman v. UBS–AG,* 591 F.Supp.2d 522, 535 (S.D.N.Y.2008) ("[I]t is well-established Second Circuit law that the fiduciary duty in the broker/customer relationship is only to 'the narrow task of consummating the transaction requested.' " (quoting *Press,* 166 F.3d at 536)). Thus, the Brokerage Defendants were not required to notify Plaintiffs of opportunities to improve their earnings on uninvested funds.

Nevertheless, Plaintiffs are correct that they were owed—to some extent—a duty of reasonable care. *See Kwiatkowski,* 306 F.3d at 1305 ("[A] duty of reasonable care applies to the broker's performance of its obligations to customers with nondiscretionary accounts"). "[T]he scope of affairs entrusted to a broker is generally limited to the completion of a transaction." *Bissell,* 937 F.Supp. at 246 (internal quotation omitted). Specifically, "[o]n a transaction-by-transaction basis, the broker owes duties of diligence and competence in executing the client's trade orders, and is obliged to give honest and complete information when recommending a purchase or sale." *Kwiatkowski,* 306 F.3d at 1302. The SAC does not identify a breach of this trans action-specific duty. Although it is possible that the "failure to give information material to a particular transaction" may support a claim against a broker by a client with a nondiscretionary account, *id.* at 1306, the Court has already concluded that Plaintiffs have not identified a false or materially misleading statement or omission by any Defendant relating to enrollment in the Cash Sweep Programs. *See supra* Part II.B.3.C Moreover, Plaintiffs do not allege that any of the transactions that were conducted in connection with Defendants' Cash Sweep Programs were erroneously or

negligently executed. Nor do Plaintiffs contend that they either received unsound investment recommendations from the Brokerage Defendants, or sought the investment advice that was one of the available services offered by them.

***44** Therefore, although the Court agrees with Plaintiffs that cases such as *Kwiatkowski* do not demonstrate as a matter of law that every brokerage relationship lacks fiduciary characteristics, Plaintiffs have not alleged facts or circumstances that, if proven, would establish that the Brokerage Defendants breached the limited duties that they owed to Plaintiffs in regard to their brokerage accounts. Accordingly, Plaintiffs' claim for breach of fiduciary duty is dismissed.

c. Aiding and Abetting

"Under New York law, '[a] plaintiff seeking to establish a cause of action for aiding and abetting a breach of fiduciary duty must show ... the existence of a ... violation by the primary (as opposed to the aiding and abetting) party ....' " *Design Strategy, Inc. v. Davis,* 469 F.3d 284, 303 (2d Cir.2006) (quoting *Samuel M. Feinberg Testamentary Trust v. Carter,* 652 F.Supp. 1066, 1082 (S.D.N.Y.1987)); *see also Lerner v. Fleet Bank, N.A.,* 459 F.3d 273, 294 (2d Cir.2006) (" '[A] person knowingly participates in a breach of fiduciary duty only when he or she provides substantial assistance to the primary violator.' " (quoting *Kaufman v. Cohen,* 307 A.D.2d 113, 760 N.Y.S.2d 157, 165 (1st Dep't 2003)); *Kottler v. Deutsche Bank AG,* 607 F.Supp.2d 447, 466 (S.D.N.Y.2009). "Aiding and abetting liability arises only when [the] plaintiffs' injury was 'a direct or reasonably foreseeable result' of the complained-of conduct." *Kolbeck v. LIT Am., Inc.,* 939 F.Supp. 240, 249 (S.D.N.Y.1996) (quoting *Morin v. Trupin,* 711 F.Supp. 97, 112 (S.D.N.Y.1989)).

Plaintiffs have not identified a "primary violator" because they have not adequately pleaded a claim for breach of fiduciary duty. Such allegations are a predicate to their claims against the Parent and Sweep Bank Defendants for aiding and abetting a breach of fiduciary duty. *See Kottler,* 607 F.Supp.2d at 466. Accordingly, this claim is likewise dismissed.

5. Negligent Misrepresentation

Plaintiffs' negligent misrepresentation claim is nearly identical to their fraud claim. In addition to the Court's above-stated conclusions regarding the alleged misrepresentations and omissions identified in the SAC, Plaintiffs have not sufficiently alleged the "reasonable reliance" element of this claim. Accordingly, for the reasons set forth below, Plaintiffs' negligent misrepresentation claim is dismissed.

a. Applicable Law

"Negligent misrepresentation 'involves most of the same elements as fraud, with a negligence standard substituted for the scienter requirement.' " *Carroll v. Leboeuf, Lamb, Greene & MacRae, LLP,* —— F.Supp.2d ——, No. 05 Civ. 391(LAK), 2009 WL 1575213, at *3 (S.D.N.Y. June 5, 2009) (quoting *Mia Shoes, Inc. v. Republic Factors, Corp.,* No. 96 Civ. 7974(TPG), 1997 WL 525401, at *3 (S.D.N.Y. Aug.21, 1997)). Specifically, to state a claim for negligent misrepresentation under New York law, a plaintiff must adequately plead five elements:

> ***45** (1) the defendant had a duty, as a result of a special relationship, to give correct information; (2) the defendant made a false representation that he or she should have known was incorrect; (3) the information supplied in the representation was known by the defendant to be desired by the plaintiff for a serious purpose; (4) the plaintiff intended to rely and act upon it; and (5) the plaintiff reasonably relied on it to his or her detriment.

Hydro Investors, Inc. v. Trafalgar Power Inc., 227 F.3d 8, 20 (2d Cir.2000); *see also Eternity Global Master Fund,* 375 F.3d at 188; *Kimmell v. Schaeffer,* 89 N.Y.2d 257, 263–64, 652 N.Y.S.2d 715, 675 N.E.2d 450 (N.Y.1996)

b. Analysis

Plaintiffs have not adequately pleaded a claim for negligent misrepresentation. First, as discussed above in relation to their fraud claim, *see supra* Part II.B.3.C, the statements and omissions identified by Plaintiffs were neither false nor materially misleading. Absent such allegations, Plaintiffs cannot meet the elements of a negligent misrepresentation claim. *See Hampshire Equity Partners II, L.P. v. Teradyne, Inc.,* No. 04 Civ. 3318(LAP), 2005 WL 736217, at *6 (S.D.N.Y. Mar.30, 2005) (dismissing a fraud claim because the "[d]efendants' allegedly fraudulent statements [we]re not actionable" and dismissing an accompanying negligent misrepresentation claim because it "suffer[ed] from the same weakness"). Therefore, this pleading deficiency alone

requires dismissal of Plaintiffs' negligent misrepresentation claim.

Second, Plaintiffs' allegations are insufficient to support an inference of reasonable reliance. The New York Court of Appeals has held that three factors are relevant to this element of a negligent misrepresentation claim: (1) whether the defendant "held or appeared to hold unique or special expertise"; (2) whether there was "a special relationship of trust or confidence" between the parties; and (3) "whether the speaker was aware of the use to which the information would be put and supplied it for that purpose." *Kimmell,* 89 N.Y.2d at 264, 652 N.Y.S.2d 715, 675 N.E.2d 450. "[W]here ... a 'special relationship' is nowhere pled, and the allegations with respect to the other Kimmell factors are soft, a claim for negligent misrepresentation is dismissible under Rule 12(b)(6).' " Eternity Global Master Fund, 375 F.3d at 188.

While Plaintiffs have sufficiently alleged that the Brokerage Defendants possessed special expertise in the area of retail brokerage investment services, the latter two *Kimmell* factors are not adequately supported by the SAC. "Although a broker-client relationship can evolve into a special relationship, the mere fact that [the defendant] and the plaintiffs had a broker-client relationship does not in and of itself create a special or fiduciary relationship." *Crigger,* 2003 WL 22170607, at *10 (internal citation omitted). The Court has already discussed at length the SAC's allegations regarding the relationship between Plaintiffs and Defendants in regard to Plaintiffs' IAA and breach of fiduciary duty claims. *See supra* Parts II.B.2, II.B.4. As stated above, Plaintiffs' allegations do not support an inference that there existed anything more than a broker-client relationship. Thus, Plaintiffs have not alleged that they had a "special relationship" with the Brokerage Defendants that is sufficient to serve as the basis for a negligent misrepresentation claim.

***46** Moreover, Plaintiffs have not alleged that the Brokerage Defendants were aware of the uses to which their statements were allegedly being put. Plaintiffs' allegations do not support an inference that Defendants either intended—or could have reasonably anticipated—that their advertisements and Investor Rights Statements would be construed by reasonable investors as containing investment advice. *See Eternity Global Master Fund,* 375 F.3d at 187–88 ("As in the case of fraud, an alleged misrepresentation must be factual and not 'promissory or related to future events.' " (quoting *Hydro Investors,* 227 F.3d at 20)). Similarly flawed are Plaintiffs' allegations regarding the Brokerage Defendants' representations in their account agreements and the disclosure statements regarding the Cash Sweep Programs. As Plaintiffs acknowledge in the SAC, each Brokerage Defendant encouraged customers to investigate the Cash Sweep Programs and indicated that, if customers wished to seek advice regarding cash management strategies, their "Financial Advisors" were available to discuss additional options. (*See* Pls.' Merrill Lynch Decl. Ex. 7 at 1; Pls.' Morgan Stanley Decl. Ex. 9 at 3; Pls.' Citigroup Decl. Ex. 8 at 12; Pls.' Charles Schwab Decl. Ex. 14 at 9; SAC ¶ 237 (Wachovia).) Therefore, Plaintiffs have not alleged that the Brokerage Defendants were aware that these statements and disclosures would be relied on by brokerage customers as investment advice regarding the merits of the respective Cash Sweep Programs. In light of this conclusion, and because the allegations in the SAC do not support an inference that a "special relationship" existed between the Brokerage Defendants and Plaintiffs, Plaintiffs have not adequately pleaded justifiable reliance on Defendants' alleged misrepresentations.

Accordingly, because Plaintiffs have not identified material misrepresentations or omissions by Defendants, and they have not alleged justifiable reliance, their negligent misrepresentation claim is dismissed.

6. Negligence Against the Brokerage Defendants

Plaintiffs' negligence claim against the Brokerage Defendants "repeat[s] and reiterate[s]" all of the allegations that have been previously discussed herein (SAC ¶ 292), and alleges that the Brokerage Defendants "breached their duty of care" by, *inter alia,* "placing Plaintiffs' ... uninvested monies into bank sweep accounts at substantially below money market rates ..." (*id.* at 294). In opposition to Defendants' motions, Plaintiffs argue that the Brokerage Defendants breached a "duty of care" by "fail[ing] to evaluate *suitability to invest"* and by "placing their clients in low-interest-bearing bank accounts instead of high-yielding safe investments ...." (Pls.' Mem. at 50–51 (emphasis in original).)

However, as Defendants point out, Plaintiffs overstate the scope of the duty they were owed by the Brokerage Defendants, and they have failed to allege that Defendants breached their actual legal obligations. Accordingly, for the reasons stated below, Plaintiffs' negligence claim is dismissed.

a. Applicable Law

***47** "Under New York law, the elements of a negligence claim are: (i) a duty owed to the plaintiff by the defendant; (ii) breach of that duty; and (iii) injury substantially caused by that breach." *Lombard v. Booz–Allen & Hamilton, Inc.,* 280 F.3d 209, 215 (2d Cir.2002).

b. Analysis

Plaintiffs contend that the SAC contains allegations regarding "multiple layers of 'duties,' " including a fiduciary duty, a duty arising out of the NASD's suitability rules, "a duty arising from each of the Defendants' 'Codes of Ethics,' " and "a duty to implement matters entrusted to them ... in good faith and with reasonable care and not in a manner whereby Defendant acted contrary to their express representations ...." (Pls.' Mem. at 49–50.) However titled, the scope of the purported duty that Plaintiffs seek to enforce through their negligence claim is overly broad.

With respect to the first "layer" identified by Plaintiffs—a general fiduciary duty—the Court has already concluded that the SAC does not allege facts sufficient to give rise to such a relationship between Plaintiffs and the Brokerage Defendants. *See supra* Parts II.B.2.b, II.B.4.b. Second, alleged violations of self-regulatory organizations' ("SROs") promulgations, such as the NASD's suitability rule (*see* SAC ¶ 294) or the "best practices" identified in the NYSE Information Memo (*see id.* ¶¶ 75–78), did not alter the scope of the duties owed by the Brokerage Defendants to Plaintiffs. Such rules may not be enforced by private litigants through civil actions. *See, e.g., Brady v. Calyon Sec. (USA),* 406 F.Supp.2d 307, 312 (S.D.N.Y.2005). At most, alleged violations of these rules are relevant to the *breach* element of Plaintiffs' negligence claim. *See Kwiatkowski,* 306 F.3d at 1311 ("It may be that noncompliance with internal standards could be evidence of a failure to exercise due care, assuming however a duty as to which due care must be exercised ."). The mere existence of the NASD suitability rule, however, did not expand the duty that the Brokerage Defendants owed to their brokerage customers.

Nor did Defendants' Investor Rights Statements give rise to an ongoing duty to provide investment advice or maximize the income Plaintiffs earned from their uninvested free credit balances. *See Stewart,* 2004 WL 1823902, at *13 ("As for the argument that [a brokerage defendant] assumed extra-contractual duties by virtue of its promised relationship with plaintiff, again the theory is unsupported by ... the law."). Plaintiffs provide no authority for the assertion that promotional documents and advertisements should be deemed to give rise to a heightened duty of care, and, as has been discussed throughout this decision, the argument is unpersuasive. As in *Kwaitkowski,* the obligations that Plaintiffs would foist upon the Brokerage Defendants "presuppose[ ] an ongoing duty of reasonable care (*i.e.,* that the broker has obligations between transactions)." 306 F.3d at 1306. However, based on the allegations in the SAC, the Brokerage Defendants owed Plaintiffs no such duty.

***48** As stated in the analysis of Plaintiffs' breach of fiduciary duty claim, *see supra* Part II.B.4.b, the Brokerage Defendants did owe Plaintiffs a transaction-specific duty of care. *See Kwiatkowski,* 306 F.3d at 1305; *Bissell,* 937 F.Supp. at 246. Here as well, however, Plaintiffs have failed to attribute any conduct to the Brokerage Defendants that could plausibly be deemed a breach of that duty. "[I]n the ordinary nondiscretionary account"—and Plaintiffs have alleged no more—"the broker's failure to offer information and advice between transactions cannot constitute negligence." *Kwiatkowski,* 306 F.3d at 1306. Therefore, although the Brokerage Defendants owed Plaintiffs a duty of care with respect to both the transactions they executed on their behalf and any investment advice that they provided to them, Plaintiffs' allegations are insufficient as a matter of law to satisfy the "breach" element of their negligence claim. Accordingly, this claim is dismissed.

7. N.Y. General Business Law § 349

With respect to their claim under § 349, Plaintiffs argue that Defendants deceived consumers by issuing "false and misleading statements" that were "uniform and directed at all current and potential clients through the public media, including the Internet." (Pls.' Mem. at 64.) For the reasons set forth below, the Court finds these contentions unavailing. Accordingly, Plaintiffs' § 349 claim is dismissed.

a. Applicable Law

Section 349 prohibits "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state." N.Y. Gen. Bus.

Law § 349. There are three elements to a private claim alleging deceptive practices under the statute: "(1) that the act, practice, or advertisement was consumer-oriented; (2) that the act, practice, or advertisement was misleading in a material respect; and (3) that the plaintiff was injured as a result of the deceptive act, practice, or advertisement ." *Pelman ex rel. Pelman v. McDonald's Corp.,* 396 F.Supp.2d 439, 444 (S.D.N.Y.2005); *see also Stutman v. Chem., Bank,* 95 N.Y.2d 24, 29, 709 N.Y.S.2d 892, 731 N.E.2d 608 (N.Y.2000). "An act is deceptive within the meaning of the New York statute only if it is likely to mislead a reasonable consumer." *Marcus v. AT & T,* 138 F.3d 46, 64 (2d Cir.1998).

b. Analysis

Plaintiffs' § 349 claim relies exclusively on their allegations regarding misrepresentations and omissions. (*See* SAC ¶ 257; Pls.' Mem. at 64.) Although proof of scienter is unnecessary under § 349, "[a] prima facie case requires ... a showing that defendant is engaging in an act or practice that is deceptive or misleading in a material way ...." *Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A.,* 85 N.Y.2d 20, 25, 623 N.Y.S.2d 529, 647 N.E.2d 741 (N.Y.1995). Thus, regardless of whether a claim under § 349 is predicated on a "representation or an omission, the deceptive practice must be likely to mislead a reasonable consumer acting reasonably under the circumstances." *Stutman,* 95 N.Y.2d 29 (internal quotation omitted)).

***49** Plaintiffs assert that Defendants' statements were

> designed to mislead consumers into believing that they had much more than an "[arms]-length" relationship with the Defendant Firms; to convince clients that the [Cash Sweep Programs] were beneficial to them; and to conceal that, in fact, the [Cash Sweep Programs] were designed to create windfall profits for Defendants at their clients' expense.

(Pls.' Mem. at 64–65.) However, Plaintiffs have failed to identify any materially misleading misstatements or omissions by Defendants that support these contentions. *See supra* Part II.B.3.C. In the absence of such allegations, a cause of action under § 349 cannot be maintained. *See Shovak v. Long Island Commercial Bank,* 50 A.D.3d 1118, 858 N.Y.S.2d 660, 662–63 (2d Dep't 2008) (dismissing a § 349 claim because "there was no materially misleading statement, as the record indicated that the yield spread premium, which is not *per se* illegal, was fully disclosed to the plaintiff"). Accordingly, Plaintiffs' § 349 claim is dismissed.

8. Breach of Contract Against the Brokerage Defendants

In their breach of contract claim, Plaintiffs allege that the Brokerage Defendants breached the implied covenant of good faith and fair dealing. (*See* SAC ¶¶ 271, 273; Pls.' Mem. at 57.) Although Plaintiffs fail to identify the specific contracts to which they are referring, much less the provisions of the agreements on which they rely, Plaintiffs' theory of this claim appears to be that these unidentified contracts did "not authorize Defendants to reap windfall profits at their clients' expense" because they were "silent as to both the magnitude of Defendants' windfall profits and to how those profits were to be obtained ...." (Pls.' Mem. at 59.)

However, as discussed above, *see, e.g., supra* Part II.B.3.c. (2), Plaintiffs cannot prevail on a legal theory that is based on their alleged surprise that Defendants used free credit balances to earn a profit. Plaintiffs have also failed to point to any provision of an agreement that could plausibly give rise to an expectation on their part that Defendants were somehow subject to a limitation on the amount of profits that they were allowed to make in connection with the Cash Sweep Programs. Similarly, Plaintiffs have not identified any agreement that could support a reasonable expectation that Defendants were obligated to maximize Plaintiffs' earnings on *uninvested* funds in their brokerage accounts. Therefore, Plaintiffs have failed to state a claim based on a theory of a breach of the implied covenant of good faith and fair dealing. Accordingly, this claim is dismissed.

a. Applicable Law

" '[U]nder New York law, a covenant of good faith and fair dealing is implicit in all contracts during the course of contract performance.' " *Janel World Trade, Ltd. v. World Logistics Servs ., Inc.,* No. 08 Civ. 1327(RJS), 2009 WL 735072, at *13 (S.D.N.Y. Mar.20, 2009) (quoting *Tractebel Energy Mktg., Inc. v. AEP Power Mktg., Inc.,* 487 F.3d 89, 98 (2d Cir.2007)). "In particular, the covenant includes a pledge that 'neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.' " *Payday Advance Plus, Inc. v. Findwhat.com, Inc.,* 478 F.Supp.2d 496, 503 (S.D.N.Y.2007) (quoting *Dalton v. Educ. Testing Serv.,* 87 N.Y.2d 384, 639 N.Y.S.2d 977, 979, 663 N.E.2d 289 (N.Y.1995)). Thus, "[t]o state a cause of action for breach of the implied covenant of

good faith and fair dealing, 'the plaintiff must allege facts which tend to show that the defendant sought to prevent performance of the contract or to withhold its benefits from the plaintiff.' " *Dweck Law Firm, L.L .P. v. Mann,* 340 F.Supp.2d 353, 358 (S.D.N.Y.2004) (quoting *Aventine Inv. Mgmt., Inc. v. Canadian Imperial Bank of Commerce,* 265 A.D.2d 513, 697 N.Y.S.2d 128, 130 (2d Dep't 1999)).

b. Analysis

***50** Plaintiffs summarize the theory of their breach of contract claim as follows:

> Defendants' breach of the implied covenant of good faith is alleged as the basis for the breach of contract [claim] because no client would ever in good faith believe that it is justified for the Defendants to deploy the [Cash Sweep Programs] in such a manner that they would derive massive ill-gotten windfall profits at their clients' expense ....

(Pls.' Mem. at 58.) The "expense" to which Plaintiffs refer is apparently the difference between the interest that they actually earned, and the returns that they believe they would have been earned if they had chosen to invest their free credit balances in money market mutual funds or other investments. (*See id.*)

Plaintiffs' argument fails on its own terms. With respect to this claim, the issue is whether Defendants breached the obligation to act in good faith that is implied in every contract governed by New York law, not whether Plaintiffs "believe[d]" (Pls.' Mem. at 58)—in good faith or otherwise—that Defendants' profit-seeking behavior was inappropriate. *See Tractebel Energy Mktg.,* 487 F.3d at 98. Defendants did not violate the implied covenant of good faith and fair dealing "by acting in [their] own self-interest consistent with [their] rights under a contract." *Suthers v. Amgen Inc.,* 441 F.Supp.2d 478, 485 (S.D.N.Y.2006). As stated above, "the practice of a financial institution using money deposited with it to obtain earnings is neither unknown nor unexpected, much less nefarious. That is precisely how banks make money." *Levitin,* 159 F.3d at 703. Therefore, the Brokerage Defendants did not breach the agreements governing Plaintiffs' accounts simply by seeking to maximize their profits.

Moreover, Plaintiffs have not identified a contractual provision that could be interpreted to give rise to a belief that the "fruits of the contract," *Dalton,* 639 N.Y.S.2d at 979, 663 N.E.2d 289, included a limitation on the profits that Defendants could earn through the use of Plaintiffs' free credit balances. *See Window Headquarters, Inc. v. MAI Basic Four, Inc.,* Nos. 91 Civ. 1816, 92 Civ. 5283(MBM), 1993 WL 312899, at *3 (S.D.N.Y. Aug. 12, 1993) ("[A] complaint in a breach of contract action must set forth the terms of the agreement upon which liability is predicated."); *see also Phoenix Four, Inc. v. Strategic Res. Corp.,* No. 05 Civ. 4837(HB), 2006 WL 399396, at *10–11 (S.D.N.Y. Feb.11, 2006). Nor does the SAC suggest that the Brokerage Defendants undertook any contractual obligation to maximize Plaintiffs' earnings on their uninvested free credit balances. *See, e.g., EBC I, Inc. v. Goldman Sachs & Co.,* 5 N.Y.3d 11, 22, 799 N.Y.S.2d 170, 832 N.E.2d 26 (N.Y.2005) (affirming the dismissal of a claim for breach of the implied covenant of good faith and fair dealing where "[t]he complaint does not adequately allege that [the defendant] injured [the plaintiff's] right to receive the benefits of their agreement"). Although Plaintiffs argue in their opposition papers that the Brokerage Defendants possessed discretion over the brokerage accounts that was to be exercised in Plaintiffs' best interest (*see, e.g.,* Pls.' Mem. at 58), the SAC contains nothing more than conclusory allegations to that effect. (*See* SAC ¶ 271 ("Among the Brokerage Defendants' obligations to their customers were to act in their interests in taking discretionary actions with their accounts ....").) Brokers, acting as such, owe no such duty to clients with nondiscretionary brokerage accounts. *See Kwiatkowski,* 306 F.3d at 1302 ("The broker's duties ordinarily end after each transaction is done, and thus do not include a duty to offer unsolicited information, advice, or warnings concerning the customer's investments.").[17] And, although Defendants may have made investment advisory services available to their customers, Plaintiffs have not alleged that they sought or received such services. *See supra* Part II.B.2. Simply put, in the absence of a contractual duty, Plaintiffs' allegations are insufficient to state a claim that a breach occurred.

***51** Finally, Plaintiffs argue that the "contracts were defective from the outset since they were implemented largely through negative consent, which was not meaningful consent at all." (Pls.' Mem. at 60.) However, Defendants disclosed to their customers that the Cash Sweep Programs' features could be modified unilaterally through advance written notice of the modifications that would become effective on a later date. (*See* Pls.' Merrill Lynch Decl. Ex. 8 at 5; Cantor Decl. Ex. C at 10, Ex. D at 24 (Morgan Stanley); Pls.' Citigroup Decl. Ex. 9 at 5; Pls.' Charles Schwab Decl. Ex. 14 at 5; Pls,' Wachovia Decl. Ex. 12 at 1, 7.) Moreover, the NYSE Information Memo upon which Plaintiffs rely as an "indicia" of a contract

breach by Defendants expressly stated that "[w]ith regard to existing sweep programs, it is not intended that member organizations which secured prior consent and made effective subsequent disclosure secure affirmative consent for such programs." (N.Y.SE Info. Memo at 2 n. 2.)[18] Therefore, the use of negative consent to modify the Cash Sweep Programs did not, in and of itself, breach the contracts underlying Plaintiffs' brokerage accounts.

The implied covenant of good faith and fair dealing "does not 'add [ ] to the contract a substantive provision not included by the parties.' " *Broder v. Cablevision Sys. Corp.,* 418 F.3d 187, 198–99 (S.D.N.Y.2005) (quoting *Geren v. Quantum Chem. Corp.,* 832 F.Supp. 728, 732 (S.D.N.Y.1993)). Since Plaintiffs have not identified any contract-based expectation—implied or otherwise—that was harmed by the implementation of Defendants' Cash Sweep Programs or the profits allegedly earned by Defendants, Plaintiffs' breach of contract claim must be dismissed.

9. Unjust Enrichment

In their unjust enrichment claim, Plaintiffs allege that Defendants paid their customers lower rates of interest on free credit balances deposited at Sweep Banks, and enriched themselves by using those funds to generate profits. (*See* SAC ¶ 301.) For the reasons stated below, the Court concludes that this theory is insufficient to adequately plead a claim for unjust enrichment.

a. Applicable Law

An unjust enrichment claim "rests upon the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another." *IDT Corp. v. Morgan Stanley Dean Witter & Co.,* 12 N.Y.3d 132, 879 N.Y.S.2d 355, 907 N.E.2d 268, 2009 WL 774351, at *4 (N.Y. Mar. 26, 2009). Therefore, "[u]nder New York law, for a plaintiff to prevail on a claim of unjust enrichment, he must establish (1) that the defendant was enriched; (2) that the enrichment was at the plaintiff's expense; and (3) that the circumstances are such that in equity and good conscience the defendant should return the money or property to the plaintiff." *Golden Pac. Bancorp v. FDIC,* 273 F.3d 509, 519 (2d Cir.2001).

"Courts have not allowed claims for unjust enrichment, however, where there is a valid and enforceable written contract governing the subject matter of the dispute." *Kottler,* 607 F.Supp.2d at 467. "On the other hand, where 'there is a *bona fide* dispute as to the existence of a contract or where the contract does not cover the dispute in issue, [a party] may proceed upon a theory of quantum meruit and will not be required to elect his or her remedies.' " *CBS Broadcasting Inc. v. Jones,* 460 F.Supp.2d 500, 506 (S.D.N.Y.2006) (quoting *Leroy Callender, P.C. v. Fieldman,* 252 A.D.2d 468, 676 N.Y.S.2d 152, 153 (1st Dep't 1998)).

b. Analysis

***52** For the purpose of assessing Plaintiffs' unjust enrichment claim, the Court assumes, *arguendo,* that Plaintiffs have raised a sufficient challenge to the contractual agreements governing their retail brokerage accounts to permit them to plead an unjust enrichment claim in the alternative. *See, e.g., Fantozzi v. Axsys Techs., Inc.,* No. 07 Civ. 2667(LMM), 2008 WL 4866054, at *11 (S.D.N.Y. Nov.6, 2008). However, Plaintiffs have not presented sufficient allegations to support a claim for unjust enrichment.

Specifically, Plaintiffs provide no factual basis for their conclusory allegation that "Defendants have been unjustly enriched at the expense of and to the detriment of Plaintiffs ... by collecting money to which [Defendants] are not entitled." (SAC ¶ 301.) Instead, their unjust enrichment claim appears to be based on the *correlation* between (1) the reduced rates of interest they allegedly received in the Modified and Tiered Cash Sweep Programs, and (2) Defendants' increased profits as a result of the implementation of these Programs.

However, more of a nexus is required between a defendant's "enrichment" and a plaintiff's "expense" to plead a plausible claim to relief on a theory of unjust enrichment. *See Gurvey v. Cowan, Liebowitz & Latman, PC.,* No. 06 Civ. 1202(BSJ), 2009 WL 1117278, at *8 (S.D.N.Y. Apr.24, 2009) ("Plaintiff has provided only assertion and speculation as to the benefit that was taken from her by [the][d]efendants. Even under the low threshold that plaintiffs must meet under Rule 12(b)(6), the unjust enrichment claim must be dismissed ...."); *cf. Bridgeway Corp. v. Citibank, N.A.,* Nos. 97 Civ. 8884, 00 Civ. 3598(DC), 2003 WL 402790, at *4 (S.D.N.Y. Feb. 20, 2003) (finding implausible a theory of compensatory damages based on the argument that "a bank and a depositor would have contemplated ... that if there were a problem in the return of the funds, the depositor would be able to recover for profits

it could have made if it had had the use of the funds"). Plaintiffs do not allege that Defendants' actions caused losses, in real terms, to the value of the principal amount of their free credit balances. Nor do Plaintiffs contend that Defendants induced them to deposit their free credit balances at affiliated Sweep Banks but then delayed or refused to return those funds upon request. Lastly, Plaintiffs acknowledge that they *did* receive at least some compensation for these uninvested funds, in the form of a positive rate of interest. (*See* SAC ¶¶ 30–36.) Therefore, Plaintiffs' factual allegations fail to support a plausible inference that Defendants' were enriched at Plaintiffs' expense.

Plaintiffs have also failed to offer any factual allegations to support an inference that "equity and good conscience" require that Defendants pay them a share of the profits that they earned from the use of free credit balances. *Golden Pac. Bancorp,* 273 F.3d at 519. Plaintiffs essentially argue that they did not earn as much of a return on their *uninvested funds* as they believe they that should have. Such an allegation is insufficient to demonstrate an equitable entitlement to a share of the profits earned by Defendants through disclosed uses of Plaintiffs' free credit balances. *See Smith v. Chase Manhattan Bank, USA, N.A.,* 293 A.D.2d 598, 741 N.Y.S.2d 100 (2d Dep't 2002) (dismissing unjust enrichment claim where "[t]here [was] no allegation that the benefits received were less than what [the plaintiffs] bargained for"). Plaintiffs have failed to sufficiently allege that Defendants' use of the Cash Sweep Programs was deceptive, and they have not identified any materially misleading statements or omissions by Defendants in connection with these Programs. Moreover, to repeat, "the practice of a financial institution using money deposited with it to obtain earnings is *neither unknown nor unexpected, much less nefarious." Levitin,* 159 F.3d at 703 (emphasis added). Therefore, the Court concludes that Plaintiffs have failed to plead a sufficient nexus between Defendants' profits and their alleged losses, and they have not identified circumstances suggesting that equitable considerations entitle them to a share of Defendants' profits. Accordingly, Plaintiffs' unjust enrichment claim is dismissed.

C. Leave to Amend

***53** The final footnote of Plaintiffs' 117–page brief in opposition to Defendants' motions states, in its entirety:

> In the event that the Court dismisses any of the claims in whole or in part, Plaintiffs respectfully request an opportunity to replead since this is the first pleading to be reviewed by the Court in this matter.

(Pls.' Mem. at 117 n. 112 (citing, *inter alia,* Fed.R.Civ.P. 15(a)).)

"While [Rule] 15(a) provides that leave to amend 'shall be freely given when justice so requires,' the Court has broad discretion in deciding whether or not to grant such a request." *Panther Partners, Inc. v. Ikanos Commc'ns, Inc.,* No. 06 Civ. 12967(PAC), 2008 WL 2414047, at *2 (S.D.N.Y. June 12, 2008); *see also McCarthy v. Dun & Bradstreet Corp.,* 482 F.3d 184, 200 (2d Cir.2007). Factors that are relevant to the exercise of the Court's discretion include: (1) the presence of bad faith, dilatory motives, or undue delay on the part of the movant; (2) the potential for prejudice to an opposing party; and (3) whether the sought-after amendment would be futile. *See, e.g., In re PXRE Group, Ltd., Sec. Litig.,* 600 F.Supp.2d at 523–24. "An amendment to a pleading is futile if the proposed claim could not withstand a motion to dismiss pursuant to [Rule] 12(b)(6)." *Lucente v. Int'l Bus. Machines Corp.,* 310 F.3d 243, 258 (2d Cir.2002).

Some courts in this District have required that a plaintiff file a copy of the proposed amended pleading in order to demonstrate that Rule 15(a) relief is appropriate. *See, e.g., In re Crude Oil Commodity Litig.,* No. 06 Civ. 6677(NRB), 2007 WL 2589482, at *4 (S.D.N.Y. Sept.8, 2007) ("In the context of a motion to amend, Rule 7(b) ... requires the movant to supply a copy of the proposed amendment."); *Bankr.Trust of Gerard Sillam v. REFCO Group, LLC,* No. 05 Civ. 10072(GEL), 2006 WL 2129786, at *5 (S.D.N.Y. July 28, 2006); *Smith v. Planas,* 151 F.R.D. 547, 550 (S.D.N.Y.1993). At the very least, a party seeking leave to amend must provide some indication of the substance of the contemplated amendment in order to allow the Court to apply the standards governing Rule 15(a). *See, e.g., Horoshko v. Citibank, N.A.,* 373 F.3d 248, 249 (2d Cir.2004) ("Because an amendment is not warranted '[a]bsent some indication as to what [the plaintiffs] might add to their complaint in order to make it viable,' the District Court was under no obligation to provide the [plaintiffs] with leave to amend their complaint ...." (quoting *Nat'l Union of Hosp. & Health Care Emp., RWDSU, AFL–CIO v. Carey,* 557 F.2d 278, 282 (2d Cir.1977))); *Shields v. Citytrust Bancorp,* 25 F.3d 1124, 1132 (2d Cir.1994). In sum, "[i]n the absence of any identification of how a further amendment would improve upon the Complaint, leave to amend must be denied as futile." *In re WorldCom, Inc. Sec. Litig.,* 303 F.Supp.2d 385, 391 (S.D.N.Y.2004).

Plaintiffs' five-line footnote falls far short of these standards. Rule 15(a) is not a shield against dismissal to be invoked as either a makeweight or a fallback position in response to a dispositive motion. Plaintiffs have filed two amended pleadings in this matter, and they have not made any attempt to demonstrate that they are entitled to file a third. Therefore, the Court concludes that amending the SAC, as proposed, would be futile. Accordingly, Plaintiffs' request for leave to amend the SAC is denied.

III. Conclusion

***54** For the reasons stated above, Defendants' motions to dismiss are granted. The Clerk of the Court is respectfully directed to terminate the motions docketed as document numbers 48, 52, 56, 60 and 62, and to close this case.

SO ORDERED.

_____

RICHARD J. SULLIVAN

United States District Judge

Dated: July 27, 2009

New York, New York

Plaintiffs are represented by Joel Paul Laitman, Ashley H. Kim, Jay Paul Saltzman, Robert Chira, and Samuel P. Sporn, Schoengold Sporn Laitman & Lometti, P.C., 19 Fulton Street, New York, New York 10038. The Merrill Lynch Defendants are represented by Jay B. Kasner and Scott D. Musoff, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036. The Morgan Stanley Defendants are represented by Allen W. Burton, Bradley Jay Butwin, and Daniel Lucas Cantor, O'Melveny & Myers LLP, 7 Times Square, New York, New York 10036. The Citigroup Defendants are represented by Andrew W. Stern and Alfred Robert Pietrzak, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019. The Charles Schwab Defendants are represented by Kenneth Ian Schacter and Theo J. Robins, Bingham McCutchen LLP, 399 Park Avenue, New York, New York 10022. The Wachovia Defendants are represented by Michael Terrance Conway, Cameron S. Matheson, James A. Murphy, LeClair Ryan, P.C., 830 Third Avenue, Fifth Floor, New York, New York 10022.

All Citations

Not Reported in F.Supp.2d, 2009 WL 2356131

* * *

Footnotes

1 Throughout this Memorandum and Order, the Court cites to the attached *DeBlasio* decision in the following format: "*DeBlasio* Part ___."

2 In support of their motion to dismiss, Defendants submitted a declaration from Matthew D. Stratton (the "Stratton Decl."), and Plaintiff submitted a declaration from Joel P. Laitman (the "Laitman Decl."). The Court has reviewed these declarations and exhibits, and the documents cited in this decision have been deemed to be integral to the Complaint. *See, e.g., Faulkner v. Beer,* 463 F.3d 130, 134 (2d Cir.2006).

3 Like the named plaintiffs in *DeBlasio,* Plaintiff makes no allegations regarding: (1) when he opened the account upon which his allegations are based; (2) the value of the assets held in the account; (3) the history of the interest rates he received on his free credit balances; or (4) whether he received or read the advertisements and disclosures described in the Complaint.

4 Plaintiff alleges that, in addition to being the parent of Defendant TD Bank, Toronto Dominion also owns 39.8% of TD Holding and is a controlling shareholder of TD Ameritrade. (Compl.¶ 17.) Nevertheless, Plaintiff has characterized Toronto Dominion, along with TD Bank, as a Sweep Bank Defendant. (Pl.'s Mem. at 1 n. 1.)

5 In *DeBiasio,* the plaintiffs voluntarily withdrew their Sherman Act claim "in light of ... the Supreme Court's decision in *Bell Atlantic Corp. v. Twombly,* [550 U.S. 544 (2007)] ...." *See DeBiasio* Part II at n. 12.

6 In his opposition brief, Plaintiff alludes to an additional category of alleged misrepresentations regarding "benefits" available to TD Ameritrade's customers from the Cash Sweep Options, such as the availability of FDIC insurance coverage for swept funds. (Pl.'s Mem. at 14.) However, there are no allegations in the Complaint relating to these issues.

Moreover, even if Plaintiff had made such allegations, the Court would reject them for the same reasons set forth in the *DeBlasio* decision as to that category of alleged misrepresentations. *See DeBlasio* Part II.B.3.c.(1).

7 Plaintiff suggests in his opposition brief that this "Summary of Cash Balance Programs" document "do[es] not appear to have ever been distributed to clients." (Pl.'s Mem. at 12 n. 9.) Plaintiff's offers no basis for this assertion, and, in light of his reliance on the document in the Complaint (*see, e.g.,* Compl. ¶ 59), the Court rejects it.

8 Although not dispositive of the issue of whether a reasonable investor would find the term to be misleading, the Court notes that the term "Money Market Deposit Account" also appears in federal regulations. For example, the Federal Reserve characterizes a "money market deposit account" as a form of "savings deposit." 12 C.F.R. § 204.2(d)(2) ("The term 'savings deposit' also means: A deposit or account, such as an account commonly known as a passbook savings account, a statement savings account, or as a money market deposit account (MMDA) ...."). Similarly, a Department of Treasury regulation defines "Money Market Deposit Accounts (MMDAs) offered by Federal savings associations" as "savings accounts on which interest may be paid" if certain conditions are met. 12 C.F.R. § 561.28.

9 The figures listed on the account statements in the record, along with Plaintiff's other personal information, have been redacted in order to protect the parties' privacy interests.

1 In support of their separate motions to dismiss, Defendants submitted one joint memorandum of law, which the Court cites as "Defs.' Mem.," as well as individual memoranda for each group of Defendants, which the Court cites by specific reference to the relevant group of Defendants that submitted the brief. Plaintiffs submitted a single memorandum of law in opposition to Defendants' motions, which the Court cites as "Pls.' Mem."

No party has objected to the exhibits and attachments that were submitted to the Court for consideration in connection with Defendants' motions. Plaintiffs appended a substantial volume of such materials—including excerpts from websites, account-opening agreements, brochures, and public filings—to the five declarations of Joel P. Laitman (the "Laitman Declarations"), and they relied in their opposition papers on the materials that were submitted by Defendants. The Court has reviewed all of these materials, and the documents cited in this decision have been deemed to be integral to the SAC. *See Global Network Commc'ns, Inc. v. City of New York,* 458 F.3d 150, 157 (2d Cir.2006) ("In most instances ..., [an integral document] is a contract or other legal document containing obligations upon which the plaintiffs complaint stands or falls ...."). These materials are therefore appropriately considered in connection with the resolution of Defendants' motions. *See, e.g., Faulkner v. Beer,* 463 F.3d 130, 134 (2d Cir.2006).

2 The Court adopts this convention based on Plaintiffs' classification of Defendants into "five separate groups." (Pls.' Mem. at 1 n. 2.) Plaintiffs' five Laitman Declarations are also arranged according to these groups. Thus, for example, the Court cites to the Laitman Declaration regarding the Merrill Lynch Defendants as "Pls.' Merrill Lynch Decl."

3 The regulations of the Securities and Exchange Commission ("SEC") define "free credit balances" as "liabilities of a broker or dealer to customers which are subject to immediate cash payment to customers on demand, whether resulting from sales of securities, dividends, interest, deposits or otherwise ...." 17 C.F.R. § 240.15c3–3(a)(8). In the SAC, Plaintiffs provide an appropriately simple alternative definition; "uninvestedcash." (*See, e.g.,* SAC ¶ 1.)

4 An "expense ratio" is calculated by dividing the total value of the assets that a mutual fund holds under management by the fund's total annual operating costs and service charges. *See Hoffinan v. UBS–AG,* 591 F.Supp.2d 522, 540–41 (S.D.N.Y.2008). The figure, expressed as a percentage, represents the proportional service fee that a mutual fund charges to an investor based on the amount of the investment in the fund.

5 Although the named Plaintiffs' accounts are discussed below, *see infra* Part I.B, no Plaintiff makes allegations regarding: (1) when his or her account was opened; (2) the value of the assets held in the account; (3) the history of the interest rates received through Defendants' various Cash Sweep Programs; or (4) whether he or she received or read the advertisements and disclosures described in the SAC.

6 In April 2007, an entity known as Morgan Stanley DW, Inc. merged into Morgan Stanley & Co., Inc. (*See* SAC ¶ 42.) Prior to the merger, Morgan Stanley DW, Inc. acted as the principal broker-dealer for Parent Defendant Morgan Stanley. (*Id.*) Following the merger, Morgan Stanley & Co., Inc. assumed that role. (*Id.*)

7 The Citigroup Defendants assert that, although Plaintiffs named "Citigroup Global Capital Markets, Inc." as a Defendant in the caption of the SAC, the name of Citigroup's principal broker-dealer is Citigroup Global Markets, Inc. (Citigroup Mem. at 1 n. 1.) The Citigroup Defendants further assert that "Smith Barney," which is referred to in the SAC as a separate entity (*see, e.g.,* SAC ¶ 45), is merely "a division and service mark of [Citigroup Global Markets, Inc.]." (Citigroup Mem. at 1 n. 1.) These distinctions appear to be immaterial to the resolution of the instant motions. Accordingly, the Court refers to this group of Defendants collectively as the Citigroup Defendants, and adopts Plaintiff's identification of Smith Barney as a separate broker-dealer entity affiliated with the Citigroup Defendants.

8 Defendant Wachovia Corp. is the successor entity arising out of the September 1, 2001 merger of First Union Corporation and the former Wachovia Corporation. (*See* SAC ¶ 50.) Defendant Wachovia Securities has an intermediate parent entity known as Wachovia Financial Holding, LLC, which is a joint venture between Wachovia Corp. and Prudential Financial Inc. (*See id.* ¶ 51.)

9 NYSE's Member Firm Regulation Division no longer exists as such. On July 26, 2007, the SEC approved the consolidation of the regulatory functions of the NYSE and the National Association of Securities Dealers ("NASD") into a single entity known as the Financial Industry Regulatory Authority ("FINRA"). *See* Press Release No.2007–151, SEC Gives Regulatory Approval for NASD and NYSE Consolidation (July 26, 2007).

10 Plaintiffs do not appear to allege that the Morgan Stanley Defendants took the intermediate step of using a Modified Cash Sweep Program prior to the November 2005 implementation of their Tiered Cash Sweep Program. (*See* SAC ¶ 162.)

11 Plaintiffs also allege that a "slightly different" version of the Wachovia Defendants' Disclosure Statement, which was available on a different website, contained "substantially the same language, except that it add[ed] ... language making it clear that only individual investors with a Command Asset brokerage account [could] have a money market sweep option ...." (SAC ¶ 232.)

12 In their opposition to Defendants' motions, Plaintiffs voluntarily withdrew their "tying" claim under the Sherman Antitrust Act. (Pls.' Mem, at 4. n. 6.) Accordingly, pursuant to Rule 41(a)(2), that claim is hereby dismissed.

13 As Plaintiffs point out, the Second Circuit has held that, as a categorical matter, claims under § 349 are only required to meet the requirements of Rule 8(a). *City of New York v. Smokes–Spirits .Com, Inc.,* 541 F.3d 425, 455 (2d Cir.2008) (citing *Pelman ex rel. Pelman v. McDonald's Corp.,* 396 F.3d 508, 511 (2d Cir.2005)).

14 With the exception of the Wachovia Defendants, which argue that Virginia law applies, the parties agree that New York law governs Plaintiffs' state-law claims. (*See* Pls.' Mem. at 110.) Where "[t]he parties' briefs assume that New York law controls, ... such 'implied consent ... is sufficient to establish choice of law.' " *Nat'l Utility Serv., Inc. v. Tiffany & Co.,* No. 07 Civ. 3345(RJS), 2009 WL 755292, at *6 n. 6 (S.D.N.Y. Mar.20, 2009) (quoting *Krumme v. WestPoint Stevens, Inc.,* 238 F.3d 133, 138 (2d Cir.2000)).

With respect to the Wachovia Defendants' arguments, the Court need not "embark on a choice-of-law analysis in the absence of an 'actual conflict' between the applicable rules of two relevant jurisdictions." *Fin. One Pub. Co. Ltd. v. Lehman Bros. Special Fin., Inc.,* 414 F.3d 325, 331 (2d Cir.2005). In this regard, the Wachovia Defendants have identified only two material differences between the relevant law of New York and Virginia—the availability of claims for violations of § 349 and negligent misrepresentation. However, in light of the Court's conclusion that Plaintiffs have failed to state a claim under New York law with respect to these causes of action, the Court does not reach the Wachovia Defendants' choice of law arguments.

15 Plaintiffs have also failed to specifically allege that they actually read and relied on Defendants' advertisements and Investor Rights Statements. Rather, they offer the conclusory assertion that "Plaintiffs and other Class members justifiably relied upon such misrepresentations, concealment and omissions to their damage and detriment." (SAC ¶ 266.) This failure is fatal to Plaintiffs' common-law fraud claim based on the first two categories of alleged misrepresentations by Defendants. *See Granite Partners, L.P. v. Bear, Stearns & Co.,* 58 F.Supp.2d 228, 258 (S.D.N.Y.1999) (finding that the plaintiffs had not adequately pleaded reliance because "[d]espite the [plaintiffs'] catch-all allegation that [they] relied upon [the defendant's] statements ..., the [plaintiffs] never venture[ ] to actually plead facts that underlie this reliance"); *see also Tuosto v. Philip Morris USA Inc.,* No. 05 Civ. 9384(PKL), 2007 WL 2398507, at *9 (S.D.N.Y. Aug.21, 2007) (finding that the plaintiff had not adequately pleaded reliance because the complaint did "not allege that [the plaintiff] saw ... any specific ... advertisement, [but] simply that [the defendant's] advertisements were widely circulated and intended to mislead"); *Bennett,* 2007 WL 1732427, at *9 ("In this case ..., [the] plaintiffs have not alleged that they read any of the financial statements at issue, much less that they actually relied on them."). Therefore, as to the first two categories of alleged misrepresentations by Defendants, Plaintiffs' fraud claim is dismissed for this reason as well.

16 More recently, in proposed amendments to the SEC regulations governing free credit balances, *see* 17 C.F.R. §§ 240.15c3–2, 15c3–3, the SEC offered a similar view: "[f]ree credit balances constitute money that a broker-dealer owes its customers." SEC, Amendments to Financial Responsibility Rules for Broker–Dealers, Exchange Act Release No. 34–55431 at 80 (Mar. 9, 2007) (emphasis added), *available at* htt p:// www.sec.gov/rules/proposed/2007/34–55431.pdf. In light of this authority, Plaintiffs' reliance on *United States v. Chestman,* 947 F.2d 551 (2d Cir.1991), is misplaced. Plaintiffs quote *Chestman* at length in their opposition papers (*see* Pls.' Mem, at 24), including the court's remark that "[a] fiduciary relationship involves *discretionary authority," Chestman,* 947 F.2d at 569 (emphasis added). Here, by contrast, the free credit balances at issue were swept from *nondiscretionary* brokerage accounts. In that context, the Brokerage Defendants acted as *debtors,* not fiduciaries.

17 Contrary to Plaintiffs' assertion, the Rules and Regulations promulgated by the NYSE and the NASD do not broaden the scope of the Brokerage Defendants' contractual duties, implied or otherwise. First, as Plaintiffs acknowledge, SROs' rules cannot serve as the basis for a private cause of action. *See, e.g., SSH Co., Ltd. v. Shearson Lehman Bros. Inc.,* 678 F.Supp. 1055, 1058 (S.D.N.Y.1987). Second, even "when those regulatory rules are incorporated into a customer agreement, they do not bring with them a right to sue for an infraction." *Gurfein v. Ameritrade, Inc.,* No. 04 Civ. 9526(LLS), 2007 WL 2049771, at *3 (S.D.N.Y. July 17, 2007), *aff'd* 2009 WL 485062 (2d Cir. Feb.27, 2009). Therefore the SRO pronouncements cited by Plaintiffs do not bolster their breach of contract claim.

18 The SEC's proposed changes to its regulations regarding the use of customers' free credit balances adopt the NYSE's view: "To minimize the burden on the broker-dealer, [the proposed Rule 15c3–3] would not require the broker-dealer to obtain [an existing] customer's previous agreement to permit the broker-dealer to switch the sweep option between money market fund products and bank deposit account products." *See* Amendments to Financial Responsibility Rules for Broker–Dealers, 72 Fed. Reg, 12,862, 12,867 (proposed Mar. 19, 2007).

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