

FIRST AMENDED AND RESTATED
LIQUIDATING TRUST AGREEMENT
FOR THE ATA PLAN TRUST

DATED: ~~March 27,~~ July, 2009

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FIRST AMENDED AND RESTATED
LIQUIDATING TRUST AGREEMENT
FOR THE ATA PLAN TRUST

THIS **FIRST AMENDED AND RESTATED** TRUST AGREEMENT (the "Plan Trust Agreement") is made as of this 27th day of ~~March~~July, 2009, by and between ATA AIRLINES, INC., a corporation organized under the laws of the State of Indiana ("Debtor" or "ATA") for the benefit of the Beneficiaries entitled to the Plan Trust Assets (as defined in the First Amended Chapter 11 Plan of the Debtor Dated February 3, 2009 (the "Plan")), and Steven S. Turoff as plan trustee (the "Plan Trustee").

RECITALS

WHEREAS on April 2, 2008, ATA filed with the Bankruptcy Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On February 3, 2009, ATA filed the Plan. This Plan Trust Agreement is executed to facilitate implementation of the Plan. Under the terms of the Plan, the Plan Trust Assets will be transferred to the Plan Trust created and evidenced hereby so that (1) the Plan Trust Assets can be held in trust for the benefit of the Beneficiaries entitled thereto for the objectives and purposes set forth herein and in the Plan, (2) the Claims can be resolved, (3) Distributions may be made in accordance with the Plan, (4) the Plan Trust Assets can be liquidated, and (5) administrative services relating to the activities of the Plan Trust and relating to the implementation of the Plan can be performed by the Plan Trustee. The Plan Trustee will make continuing efforts to dispose of the Plan Trust Assets, make timely distributions, and not unduly prolong the duration of the Plan Trust; **and**

WHEREAS, the Liquidating Trust Agreement for the ATA Plan Trust was originally executed on March 27, 2009 pursuant to the requirements of the Plan and the parties hereto desire to make certain amendments to provide for the designation of a new agent (such agent or any successor agent designated in accordance with Section 7.6 of this Plan Trust Agreement, the "Beneficial Agent") to hold the Beneficial Interests on behalf of the Beneficiaries hereunder.

DECLARATION OF TRUST

NOW, THEREFORE, to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan pursuant to the Bankruptcy Code and other good and valuable consideration, the receipt of which is hereby acknowledged, ATA and the Plan Trustee have executed this Plan Trust Agreement for the benefit of the Beneficiaries entitled to the Plan Trust Assets, and, at the direction of such Beneficiaries (because the transfer of title to undivided interests in each of the Plan Trust Assets to such Beneficiaries, and the transfer of such interests by such Beneficiaries to the Plan Trust, would be impractical), absolutely and irrevocably assign to the Plan Trustee and to its successors or assigns, all right, title, and interest of ATA in and to the Plan Trust Assets in the form and manner provided for in the Plan;

TO HAVE AND TO HOLD unto the Plan Trustee and its successors in trust and its successors and assigns;

IN TRUST NEVERTHELESS, under and subject to the terms and conditions of the Plan and this Plan Trust Agreement for the benefit of the Beneficiaries of the Plan Trust (as their respective interests may appear in accordance with the Plan and this Plan Trust Agreement);

PROVIDED, HOWEVER, that upon termination of the Plan Trust in accordance with Article 8 hereof, this Plan Trust Agreement shall cease, terminate, and be of no further force and effect.

IT IS HEREBY FURTHER COVENANTED AND DECLARED, that the Plan Trust Assets are to be held and applied by the Plan Trustee subject to the further covenants, conditions, and terms set forth below.

ARTICLE 1 **DEFINITIONS**

1.1 Terms Used in the Plan. If not defined in this Plan Trust Agreement, capitalized terms have the meanings assigned to them in the Plan.

1.2 General Construction. As used in this Plan Trust Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. "Includes" and "including" are not limiting, and "or" is not exclusive. References to "Articles," "Sections" and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections, and other subdivisions of this Plan Trust Agreement, and the words "herein," "hereafter," and words of similar import refer to this Plan Trust Agreement as a whole and not to any particular Article, Section, or subdivision of this Plan Trust Agreement.

ARTICLE 2 **THE TRUST**

2.1 Creation and Name. There is hereby created the Plan Trust, which shall be known as the "ATA Plan Trust."

2.2 Objectives, Purposes and Structure of the Plan Trust.

2.2.1 Objectives and Purposes. The purpose of the Plan Trust is to provide a mechanism for the liquidation of the Plan Trust Assets, and to distribute the proceeds of the liquidation, net of all claims, expenses, charges, liabilities, and obligations of the Plan Trust, to the holders of Beneficial Interests and certain Allowed Claims in accordance with the terms of the Plan. No business activities will be conducted by the Plan Trust other than those associated with or related to the liquidation of the Plan Trust Assets and such assets are being transferred to the Plan Trust with no objective to engage in such activities. In furtherance of this objective, the Plan Trustee shall make continuing best efforts to (1) dispose of the Plan Trust Assets, (2) make timely Distributions, and (3) not unduly prolong the duration of the Plan Trust, in accordance with this Plan Trust Agreement. The purposes of the Plan Trust include, but are not limited to the following:

(a) to marshal, liquidate, and distribute the Plan Trust Assets in an expeditious but orderly manner;

(b) to perform the functions and take the actions provided for or permitted by this Plan Trust Agreement and in any other agreement executed by the Plan Trustee for the Plan Trust pursuant to the Plan;

(c) to prosecute, settle, or abandon the Rights of Action (other than the Preference Actions) and any other causes of action transferred and assigned to the Plan Trust under the Plan as Plan Trust Assets and to distribute the proceeds of any recoveries thereon in accordance with the terms of the Plan and this Plan Trust Agreement;

(d) to reconcile, object to, prosecute, or settle all Claims against the Debtor (other

than General Unsecured Claims) for purposes of determining the appropriate amount of Distributions to be made hereunder to the Beneficiaries and payments to other claimants under the terms and conditions set forth in this Plan Trust Agreement; and

(e) to make Distributions to Beneficiaries of the Plan Trust in accordance with the Plan.

2.3 Acceptance. The Plan Trustee accepts the trust terms imposed under this Plan Trust Agreement and agrees to manage the Plan Trust in accordance with this Plan Trust Agreement and subject to the terms and conditions of the Plan.

2.4 Further Assurances. ATA (and any successors thereto) will, upon reasonable request of the Plan Trustee, execute, acknowledge, and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Plan Trustee any portion of the Plan Trust Assets intended to be conveyed hereby in the form and manner provided for in the Plan and to vest in the Plan Trustee the powers, instruments, or funds in trust hereunder.

2.5 Nature of Plan Trust Assets. The Plan Trust shall not receive transfers of any listed stock or securities or any readily marketable assets, any operating assets of a going business, or fifty percent (50%) or more of the stock of a corporation with operating assets. Furthermore, the Plan Trust shall not receive transfers of any unlisted stock of a single issuer that represents 80 percent or more of the stock of such issuer, and shall not receive transfers of any general or limited partnership interests.

2.6 Ownership by Plan Trustee. The Plan Trustee shall promptly record or register in its name, as Plan Trustee, or in the name or names of any nominee or Person in accordance with Section 4.1 hereof, ownership of and title to all Plan Trust Assets received by it as Plan Trustee and comply with all provisions of law that may bear on the evidencing of ownership of and title to any portion of the Plan Trust Assets as are necessary and appropriate and that the Plan Trustee determines are in the best interests of the Plan Trust.

2.7 Incidents of Ownership. The Beneficiaries shall be the sole beneficiaries of the Plan Trust and the Plan Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

2.8 Payment of Plan Trust Operating Expenses. To the extent the Plan Trustee deems reasonably appropriate and subject to the approval of ~~JPMorgan~~the Beneficial Agent, Plan Trust Operating Expenses shall be paid from the Plan Trust Operating Reserve.

ARTICLE 3 **THE PLAN TRUSTEE**

3.1 Number and Qualifications. Except as otherwise provided herein, there shall be one Plan Trustee of the Plan Trust, ~~who shall be the Person.~~ The Plan Trustee is Steven S. Turoff who was jointly nominated by the Debtor and JPMorgan Chase Bank, N.A. ("JPMorgan") and approved by the Bankruptcy Court as provided in the Plan. The Plan Trustee shall determine whether to give a bond or other surety in an amount to be approved by the Bankruptcy Court, as applicable amount. All costs and expenses of procuring any such bond shall be paid as a Plan Trust Operating Expense. The Plan Trustee shall be entitled to engage in such other activities as the Plan Trustee deems appropriate, so long as such activities are not in conflict with the interests of the Plan Trust and the Plan Trustee devotes such time as is necessary to fulfill all of the Plan Trustee's duties as Plan Trustee.

3.2 Action by Plan Trustee. The Plan Trust shall be managed by the Plan Trustee as set forth in this Plan Trust Agreement.

3.3 Binding Nature of Plan Trustee's Action. All actions taken and determinations made by the Plan Trustee in accordance with the provisions of the Plan or this Plan Trust Agreement shall be final and binding upon any and all Persons holding Beneficial Interests in the Plan Trust.

3.4 Term of Service. The Plan Trustee shall serve as the Plan Trustee for the duration of the Plan Trust, subject to earlier death, resignation, or removal.

3.5 Resignation. The Plan Trustee may resign as Plan Trustee of the Plan Trust by an instrument in writing delivered to ~~JPMorgan~~**the Beneficial Agent** at least 60 days before the proposed effective date of resignation. The Plan Trustee shall continue to serve as Plan Trustee after the delivery of the Plan Trustee's resignation until the proposed effective date of the Plan Trustee's resignation, unless the ~~JPMorgan~~**Beneficial Agent** consents to an earlier effective date of the Plan Trustee's resignation, which shall be the date of appointment of a successor Plan Trustee in accordance with Section 3.7 hereof becomes effective, but nothing in this Section 3.5 shall restrict the right to remove the Plan Trustee as provided in Section 3.6 hereof.

3.6 Removal. The Plan Trustee may be removed from office for (1) fraud or willful misconduct in connection with the affairs of the Plan Trust, (2) for such physical or mental disability as substantially prevents the Plan Trustee from performing the duties of Plan Trustee hereunder, or (3) for cause, which shall include a breach of fiduciary duty or an unresolved conflict of interest, in each case, upon a determination by the Bankruptcy Court. Alternatively, ~~JPMorgan~~**the Beneficial Agent** may remove the Plan Trustee without cause upon 30 days notice to the Plan Trustee. Any notice of termination shall be filed in the Bankruptcy Court at the time that it is delivered to the Plan Trustee.

3.7 Appointment of Successor Plan Trustee.

3.7.1 Appointment of Successor Plan Trustee. In the event of a vacancy by reason of the death or removal of the Plan Trustee or prospective vacancy by reason of resignation, a successor Plan Trustee shall be appointed by ~~JPMorgan~~**the Beneficial Agent**. ~~The Beneficial Agent~~ may appoint a successor Plan Trustee as soon as practicable, but in any event within 30 days after the occurrence of the vacancy or, in the case of resignation, at least 30 days before the proposed resignation.

3.7.2 Vesting of Rights in Successor Plan Trustee. Every successor Plan Trustee shall execute, acknowledge, and deliver to the Plan Trust, ~~JPMorgan~~**the Beneficial Agent**, and the retiring Plan Trustee, if any, an instrument accepting such appointment subject to the terms and provisions hereof. ~~The successor Plan Trustee shall provide a bond or surety as provided in Section 3.1.~~ The successor Plan Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Plan Trustee, except that the successor Plan Trustee shall not be liable for the acts or omissions of the retiring Plan Trustee.

3.8 Continuance of Plan Trust. The death, resignation, or removal of the Plan Trustee shall not operate to terminate the Plan Trust or to revoke any existing agency (other than any agency of the Plan Trustee as the Plan Trustee) created pursuant to the terms of this Plan Trust Agreement or invalidate any action taken by the Plan Trustee, and the Plan Trustee agrees that the provisions of this Plan Trust Agreement shall be binding upon and inure to the benefit of the Plan Trustee and the Plan Trustee's heirs, legal and personal representatives, successors or assigns, as the case may be. In the event of the resignation or removal of the Plan Trustee, the Plan Trustee shall promptly (1) execute and deliver by the effective date of resignation or removal such documents, instruments, and other writings as may be

reasonably requested by the successor Plan Trustee to effect the termination of the resigning or removed Plan Trustee's capacity under this Plan Trust Agreement and the conveyance of the Plan Trust Assets then held by the resigning or removed Plan Trustee to the successor Plan Trustee; (2) deliver to the successor Plan Trustee all documents, instruments, records, and other writings relating to the Plan Trust as may be in the possession or under the control of the resigning or removed Plan Trustee; and (3) otherwise assist and cooperate in effecting the assumption of the resigning or removed Plan Trustee's obligations and functions by the successor Plan Trustee. The resigning or removed Plan Trustee hereby irrevocably appoints the successor Plan Trustee as its attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such resigning or removed Plan Trustee is obligated to perform under this Section 3.8. Such appointment shall not be affected by the subsequent disability or incompetence of the Plan Trustee making such appointment.

3.9 Compensation. As compensation for services as Plan Trustee, and under any other agreements to which the Plan Trustee is a party as contemplated by the Plan, the Plan Trustee shall receive the compensation provided for in ~~athe~~ separate compensation arrangement previously approved by the Debtor ~~and, JPMorgan and the Bankruptcy Court-at the time of Plan confirmation.~~ Compensation of any successor Plan Trustee shall be negotiated between the successor Plan Trustee and ~~JPMorganthe~~ Beneficial Agent.

3.10 Standard of Care; Indemnification; Exculpation. The Plan Trustee, acting in the capacity as the Plan Trustee or in any other capacity contemplated by this Plan Trust Agreement or the Plan, shall not be personally liable in connection with the affairs of the Plan Trust to the Plan Trust or to any Person except for such of the Plan Trustee's acts or omissions that constitute fraud, willful misconduct, or gross negligence. The Plan Trustee shall not be personally liable to the Plan Trust or to any Person for the acts or omissions of any officer, employee, or agent of the Plan Trust unless the Plan Trustee acted with gross negligence or willful misconduct in the selection, retention, or supervision of such officer, employee, or agent of the Plan Trust. Except in those situations in which the Plan Trustee is not exonerated of personal liability in accordance with the foregoing, the Plan Trustee (including each former Plan Trustee) shall be indemnified by the Plan Trust against and held harmless by the Plan Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorney fees, disbursements, and related expenses) to which the Plan Trustee may become subject in connection with any action, suit, proceeding, or investigation brought or threatened against the Plan Trustee in the Plan Trustee's capacity as Plan Trustee, or in any other capacity contemplated by this Plan Trust Agreement or the Plan or in connection with any matter arising out of or related to the Plan, this Plan Trust Agreement, or the affairs of the Plan Trust. If the Plan Trustee becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Plan Trust Agreement or the affairs of the Plan Trust, the Plan Trust shall periodically advance or otherwise reimburse on demand the Plan Trustee's reasonable legal and other expenses (including, without limitation, attorney fees, disbursements, and related expenses) incurred in connection therewith, but the Plan Trustee shall be required to repay promptly to the Plan Trust the amount of any such advanced or reimbursed expenses paid to the Plan Trustee to the extent that it shall be ultimately determined by Final Order that the Plan Trustee engaged in fraud, willful misconduct, or gross negligence in connection with the affairs of the Plan Trust with respect to which such expenses were paid. The Plan Trust may indemnify and hold harmless the employees and agents of the Plan Trust to the same extent as provided in this Section 3.10 for the Plan Trustee. The provisions of this Section 3.10 shall remain available to and be binding on any former Plan Trustee or the estate of any decedent Plan Trustee.

3.11 Reliance by Plan Trustee. The Plan Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document that the Plan Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in

the case of facsimiles, to have been sent by the proper party or parties, and the Plan Trustee may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein, but the Plan Trustee shall be under a duty to have examined, or caused to be examined, the same to determine whether or not such writings conform to the requirements of this Plan Trust Agreement. The Plan Trustee may consult with counsel, and any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Plan Trustee in accordance therewith. The Plan Trustee shall have the right at any time to seek instructions from the Bankruptcy Court (or any other court of competent jurisdiction after the chapter 11 case is finally closed) concerning the Plan Trust Assets, this Plan Trust Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or suffered by the Plan Trustee in accordance therewith.

3.12 Reliance by Persons Dealing With the Plan Trust. In the absence of actual knowledge to the contrary, any person dealing with the Plan Trust shall be entitled to rely on the authority of the Plan Trustee to act in connection with the acquisition, management, or disposition of Plan Trust Assets and shall have no obligation to inquire into the existence of such authority. Upon the sale by the Plan Trustee of any portion of the Plan Trust Assets, such Plan Trust Assets shall be delivered to the purchaser thereof free and clear of any liens or other encumbrances, claims, or interests of the Plan Trustee or the Beneficiaries, except as may otherwise be agreed to by the purchaser.

3.13 Discharge of Plan Trustee.

3.13.1 Statement of Discharge. The Plan Trustee shall upon termination of the Plan Trust or upon the Plan Trustee's resignation, removal, or death (in which case the Plan Trustee's estate shall) render a statement of charge and discharge containing the following information: (1) all assets and funds of the Plan Trust originally charged under the Plan Trustee's control, (2) a summarized accounting, in sufficient detail, of all purchases, sales, gains, losses, and income in connection with the Plan Trust during the Plan Trustee's term of service, and (3) the ending balance of all assets and funds of the Plan Trust as of the date of discharge. At the discretion of the Plan Trustee, such statement may be audited by independent accountants in accordance with generally accepted auditing standards.

3.13.2 Approval of Statement of Discharge. The statement of charge and discharge required by Section 3.13.1 shall be presented to ~~JPMorgan~~the Beneficial Agent and the Unsecured Creditor Trustee and shall be filed with the Bankruptcy Court. Unless ~~JPMorgan~~the Beneficial Agent requests that such statement of charge and discharge not be approved within 30 days after the date on which such statement of charge and discharge was presented to ~~JPMorgan~~the Beneficial Agent, the withdrawing Plan Trustee shall be discharged from all liability to the Plan Trust or any Person who has had or may then or thereafter have an interest in the Plan Trust for acts or omissions in the Plan Trustee's capacity as the Plan Trustee or in any other capacity contemplated by this Plan Trust Agreement or the Plan.

3.13.3 Costs Relating to Statement of Discharge. The expenses of any accounting, including, but not limited to any statement of charge or discharge, shall be paid by the Plan Trust as a Plan Trust Operating Expense.

**ARTICLE 4
CONFIDENTIALITY**

4.1 Confidentiality of Information. Representatives of ~~JPMorgan~~the Beneficial Agent and any Beneficiary who will access information from the Plan Trustee shall execute and deliver to the Plan

Trustee a confidentiality agreement in substantially the form attached hereto as Exhibit A (the "Confidentiality Agreement").

ARTICLE 5 POWERS OF THE PLAN TRUSTEE

5.1 Title. Legal title to all Plan Trust Assets shall be vested in the Plan Trustee, except that the Plan Trustee, upon approval by ~~JPMorgan~~the Beneficial Agent, shall have the power to cause legal title (or evidence of title) to any of the Plan Trust Assets to be held by any nominee or Person, on such terms, in such manner, and with such powers as the Plan Trustee hereunder may determine.

5.2 Management Power. Except as otherwise expressly limited in this Plan Trust Agreement or the Plan, the Plan Trustee shall have control and authority over the Plan Trust Assets, including all Rights of Action (except the Preference Actions) and any other causes of action transferred and assigned to the Plan Trust under the Plan as Plan Trust Assets, over the management and disposition thereof (including any transfer of Plan Trust Assets that does not constitute a disposition) and over the management of the Plan Trust to the same extent as if the Plan Trustee were the sole owner thereof in its own right. Except as provided in the Plan, or otherwise specified in the Plan Trust Agreement, the Plan Trustee need not obtain the order or approval of any court in the exercise of any power or discretion conferred hereunder, or account to any court in the absence of a breach of trust. The Plan Trustee shall exercise its judgment for the benefit of the Beneficiaries in order to maximize the value of Distributions, giving due regard to the cost, risk, and delay of any course of action. In connection with the management and use of the Plan Trust Assets, the Plan Trustee's powers, except as otherwise expressly limited in this Plan Trust Agreement, or the Plan, shall include, but shall not be limited to, the following:

- (a) to accept the Plan Trust Assets, to pursue the liquidation and marshaling of the Plan Trust Assets, and to preserve and protect the Plan Trust Assets;
- (b) subject to Section 6.1.1 of this Plan Trust Agreement, and in accordance with Section 1123(b)(3)(B) of the Bankruptcy Code and the Plan, to engage in, intervene in, prosecute, join, defend, compound, settle, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, controversies, demands or other litigation relating to the Plan, the Plan Trust, the Plan Trust Assets or the Plan Trust's affairs, to enter into agreements relating to the foregoing, whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding arbitration, adjudication or settlement thereof, all in the name of the Plan Trust if necessary or appropriate, and institute or continue actions which were or otherwise could have been brought by the Debtor or the Reorganized Debtor, and prosecute or defend all litigation or appeals on behalf of the Debtor or the Reorganized Debtor and, when appropriate, settle such actions and claims;
- (c) subject to Section 6.1.1 of this Plan Trust Agreement, and in accordance with Section 1123(b)(3) of the Bankruptcy Code and the Plan, to own and retain, and prosecute, enforce, compromise, settle, release, or otherwise dispose of all Rights of Action (except the Preference Actions) and any and all other claims, defenses, counterclaims, setoffs, and recoupments transferred and assigned to the Plan Trust under the Plan as Plan Trust Assets, provided, however, that Rights of Action shall be prosecuted, settled or abandoned as directed by ~~JPMorgan~~the Beneficial Agent in its sole discretion;

- (d) to make or cause to be made Distributions of Available Cash to holders of Class 3.1 Beneficial Interests in accordance with the terms of this Plan Trust Agreement and the Plan;
- (e) to liquidate and distribute Plan Trust Assets or any part thereof or any interest therein, and to dispose of the Plan Trust Assets for Cash or upon such terms and for such consideration as the Plan Trustee deems proper;
- (f) to engage in all acts that would constitute ordinary performance of the obligations of a trustee under a liquidating trust, including the filing of all federal returns as a grantor trust;
- (g) to enforce the payment of notes or other obligations of any Person or to make contracts with respect thereto;
- (h) to purchase insurance with such coverage and limits as it deems desirable consistent with the budget referred to in Section 6.1.2, including, without limitation, insurance covering liabilities of the Plan Trustee or employees or agents of the Plan Trust incurred in connection with their services to the Plan Trust;
- (i) to appoint, engage, employ, supervise, and compensate officers, employees, and other Persons as may be necessary or desirable, including managers, consultants, accountants, technical, financial, real estate, or investment advisors or managers, attorneys, agents or brokers, corporate fiduciaries, or depositories and the Registrar;
- (j) subject to the limitations in Section 6.2, to the extent reasonably required to meet claims and contingent liabilities (including Disputed Claims) or to maintain the value of assets during liquidation, to invest and reinvest Cash available to the Plan Trust, pending distribution, and to liquidate such investments (however, during its existence, the Plan Trust shall not receive or retain cash or cash equivalents in excess of a reasonable amount necessary to meet claims and contingent liabilities (including Disputed Claims) or to maintain the value of its assets during liquidation);
- (k) to execute, deliver, and perform any closing agreement made with the IRS;
- (l) to determine the manner of ascertainment of income and principal, and the apportionment of income and principal, and the apportionment between income and principal of all receipts and disbursements, and to select an annual accounting period;
- (m) change the state of domicile of the Plan Trust;
- (n) establish such funds, reserves and accounts within the Plan Trust estate, as deemed by the Plan Trustee in its discretion to be useful in carrying out the purposes of the Plan Trust;
- (o) sue and be sued and participate, as a party or otherwise, in any judicial,

administrative, arbitral or other proceeding;

- (p) delegate any or all of the discretionary power and authority herein conferred at any time with respect to all or any portion of the Plan Trust estate to any one or more reputable individuals or recognized institutional advisers or investment managers without liability for any action taken or omission made because of any such delegation, except for such liability as is provided in Section 3.10;
- (q) undertake any duties or obligations and exercise any rights concerning the treatment of Claims or Equity Interests under the Plan;
- (r) to object to any Administrative Claims or other Claims (other than General Unsecured Claims), as appropriate;
- (s) execute, deliver and perform such other agreements and documents and to take or cause to be taken any and all such other actions as it may deem necessary or desirable to effectuate and carry out the purposes of this Plan Trust Agreement;
- (t) as soon as is practicable, request that the Bankruptcy Court enter a final decree fully and finally closing the Chapter 11 Case; and
- (u) undertake any action or perform any obligation provided for or required by the Plan.

5.3 Commingling of Plan Trust Assets. The Plan Trustee shall not commingle any of the Plan Trust Assets with its own property or the property of any other Person.

5.4 Employment and Compensation of Professionals. The Plan Trustee shall have the authority to employ and compensate attorneys, accountants, investment advisors and other professionals, including a Registrar and a disbursing agent to make Distributions (collectively, the “Plan Trustee Professionals”) as determined from time to time by the Plan Trustee, subject to the consent of JPMorganthe Beneficial Agent, which consent shall not be unreasonably withheld. The Plan Trustee may pay the reasonable fees and expenses of such professionals as a Plan Trust Expense without application to the Bankruptcy Court, subject to the ongoing approval of JPMorganthe Beneficial Agent, in its sole discretion. Upon request by JPMorganthe Beneficial Agent, the Plan Trustee will provide copies of any invoices or billing summaries relating to professional fees incurred by the Plan Trust.

5.5 Dispute Resolution. In the event of a dispute between the Plan Trustee and JPMorganthe Beneficial Agent, involving an allegation that either party has failed to act in a manner consistent with the Plan or the Plan Trust Agreement, or is in breach of any applicable fiduciary duty, the parties shall meet and confer and attempt to reach a consensual resolution of the dispute. Should a consensual resolution not be reached, the Plan Trustee or JPMorganthe Beneficial Agent may seek appropriate relief from the Bankruptcy Court, and the Bankruptcy Court shall retain jurisdiction to resolve such disputes.

ARTICLE 6 OBLIGATIONS OF THE PLAN TRUSTEE

6.1 Reports and Records.

6.1.1 Consultation. The Plan Trustee shall consult with ~~JPMorgan~~the Beneficial Agent in good faith regarding all material issues affecting the Plan Trust. In addition, the Plan Trustee shall seek the advice of ~~JPMorgan~~the Beneficial Agent regarding proposed budgets for the Plan Trust, setting forth expected receipts and disbursements for litigation, operations, and other purposes, and shall obtain prior approval of ~~JPMorgan~~the Beneficial Agent for all fees, costs and expenses incurred in managing and prosecuting the Rights of Action.

6.1.2 Budget. The Plan Trustee shall cause to be prepared within 30 days before the end of each fiscal year, budget and cash flow projections covering the next fiscal year and each succeeding fiscal year for which estimates are feasible. On or before 30 days after the Effective Date, the Plan Trustee shall prepare a budget and cash flow projection for the current fiscal year. Such budget and cash flow projections shall be prepared by the Plan Trustee in consultation with ~~JPMorgan~~the Beneficial Agent.

6.1.3 Quarterly and Annual Reports. Unless otherwise instructed by ~~JPMorgan~~(as the Beneficial Agent), the Plan Trustee shall cause to be prepared (a) within 45 days after the end of each of the first three quarters of a fiscal year (for such quarter) and (b) within 90 days after the end of each fiscal year (for such fiscal year), financial statements of the Plan Trust as of the end of and for such periods, prepared in accordance with GAAP, including (1) a balance sheet, (2) a statement of operations, (3) a statement of cash flows, (4) a schedule, summarizing by type of investment and asset, all acquisitions and dispositions, and (5) a summary listing of the status of the resolution of Claims by category and Claim, and (6) a summary of pending litigation. Unless otherwise instructed by ~~JPMorgan~~(as the Beneficial Agent), such financial statements shall contain the following supplementary information, (A) a statement of changes in the number and amount of Beneficial Interests and Claims outstanding, including Distributions and cancellations from whatever source, (B) a schedule of investments acquired directly by the Plan Trust after the Effective Date, including the number of shares or principal amount, the name, a description, the cost, the date disposed of, proceeds of disposition, and gain or loss, and (C) a schedule of expenses of the Plan Trust, including accrued and paid administrative expenses. The financial statements prepared as of the end of the fiscal year may be audited by independent public accountants in accordance with generally accepted auditing standards. The materiality and scope of audit determinations shall be established between the Plan Trustee and the appointed auditors with a view toward safeguarding the value of the Plan Trust Assets, but nothing relating to the mutually agreed-on scope of work shall result in any limitation of audit scope that would cause the auditors to qualify their opinion as to scope of work with respect to such financial statements.

6.1.4 Distribution of Reports. Within ten business days after the end of the relevant report preparation period, the Plan Trustee shall distribute the information listed in Section 6.1.3 above to ~~JPMorgan~~the Beneficial Agent and to the Office of the United States Trustee, and shall file the same with the Clerk of the Bankruptcy Court.

6.1.5 Records. The Plan Trustee shall maintain records and books of account relating to the Plan Trust Assets, the management thereof and all transactions undertaken by the Plan Trustee, which records and books of account shall be maintained in accordance with GAAP consistently applied, except to the extent that any change is approved by the Plan Trust's independent public accountants. The Plan Trustee shall also maintain records and books of account relating to all Distributions contemplated under the Plan.

6.2 Eligible Investments. Cash held pending distribution, including Cash held in Trust Reserves, shall, to the extent permitted by applicable law, be invested by the Plan Trustee in (1) direct obligations of, or obligations guaranteed by, or obligations secured by, the United States of America (including without limitation United States Treasury Bills); (2) obligations of any agency or corporation

that is or may hereafter be created by or pursuant to an Act of the Congress of the United States as an agency or instrumentality thereof, or (3) demand deposits or short-term certificates of deposit at any bank or trust company that has, at the time of the acquisition by the Plan Trustee of such investments, capital stock and surplus aggregating at least \$100 million and whose short-term debt obligations are rated by at least two nationally recognized statistical rating organizations in one of the two highest categories therefor; provided, however, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust, within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to any amendment or addition to the Internal Revenue Code of 1986, as amended (the "Code") or to the Treasury Regulations, or any modification in IRS guidelines whether set forth in IRS rulings, other IRS pronouncements, or otherwise. Such investments shall mature in such amounts and at such times as, in the judgment of the Plan Trustee at the times such investments are made, are necessary, or are desirable with a view to providing funds when needed to make payments from the Plan Trust Assets. Any investment purchased with the Plan Trust Assets shall be deemed a part of the Plan Trust Assets. All interest, distributions, dividends and proceeds received by the Plan Trustee in respect of such investments shall be a part of the Plan Trust Assets.

6.3 Access to Information by the Beneficial Agent and Beneficiaries. ~~Each~~**The Beneficial Agent and each** Beneficiary shall have access to the business records of the Plan Trust for the purpose of obtaining information relating to the management of Plan Trust Assets for any purpose reasonably related to the interests generally of the Beneficiaries, so long as access is reasonably exercised during normal business hours (after at least two business days' notice to the Plan Trustee), does not constitute an undue burden on the Plan Trustee, and is not detrimental to the Plan Trust. Nothing herein contained is intended to restrict **the Beneficial Agent or** any Beneficiary from access to the business records of the Plan Trustee, which the Plan Trustee, in its discretion elects to provide.

6.4 United States Trustee Fees and Reports. After the Effective Date and until the Bankruptcy Case is closed, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of disbursements made under the Plan ("US Trustee Fees") shall be paid as follows. Until the earlier of (a) the termination of the Plan Trust, or (b) the closure of the Bankruptcy Case, the Plan Trust shall pay as a Plan Trust Operating Expense all US Trustee Fees arising from disbursements made by the Plan Trust or by the Unsecured Creditor Trust. Upon request by the Plan Trustee, the Unsecured Creditor Trust will promptly deliver a statement reflecting all disbursements made during the course of a current or prior quarter. If applicable, the Unsecured Creditor Trust shall pay (as an Unsecured Creditor Trust Operating Expense) US Trustee Fees arising from disbursements that occur after the termination of the Plan Trust. Transfers from the Plan Trust to the Unsecured Creditor Trust shall not constitute "disbursements" triggering fees under 28 U.S.C. § 1930(a)(6). After the Effective Date and during the existence of the Plan Trust, the Plan Trust shall serve on the Office of the United States Trustee a quarterly financial report for each calendar quarter, or portion thereof, that the Bankruptcy Case open (the "Quarterly UST Reports"). The Quarterly UST Reports shall include a statement of all disbursements made during the course of the quarter, whether or not pursuant to the Plan. If applicable, the Unsecured Creditor Trust shall serve the Quarterly UST Reports after termination of the Plan Trust.

6.5 Distribution of Net FedEx Recoveries. Within 30 days of receipt of Cash derived from the FedEx Litigation (through settlement, judgment or otherwise), the Plan Trustee will determine whether Net FedEx Recoveries exist. Within 30 days of determining that Net FedEx Recoveries exist, the Plan Trustee shall distribute fifteen percent (15%) of such Net FedEx Recoveries to the Unsecured Creditor Trust, less an amount necessary to pay any US Trustee Fees that will be triggered by the distribution of Net FedEx Recoveries to Class 1.1 and Class 4 Beneficiaries of the Unsecured Creditor Trust.

6.6 Payment of Certain Employment-Related Taxes to Unsecured Creditor Trustee. Within ~~10~~ 10 Business Days after receipt of the written notification from the Unsecured Creditor Trustee of the employer's share of federal income taxes, social security and medicare taxes, federal unemployment taxes and state employment taxes relating to the initial Distribution of \$4.0 million to be made under section 8.3.1 of the Unsecured Creditor Trust, the Plan Trustee shall pay the amount of such taxes to the Unsecured Creditors Trustee from the Priority Claim Fund.

ARTICLE 7 BENEFICIAL INTERESTS

7.1 Allocation of Class 3.1 Beneficial Interests. The ~~Plan Trust shall allocate~~ the Class 3.1 Beneficial Interests shall be allocated to the Beneficial Agent as agent for the holders of the Class 3.1 Allowed Secured Claims under the Plan and such allocation shall be deemed effective ~~[as of the Effective Date]~~ [as of the Effective Date].

7.2 Register Entries Regarding Beneficial Interests. The Plan Trustee or the Registrar shall make a notation in the Plan Trust Register that reflects the Class 3.1 Beneficial Interest held by ~~JP Morgan, as Administrative Agent for JPMorgan and Jefferies~~ the Beneficial Agent as agent for the holders of Class 3.1 Allowed Secured Claims under the Plan.

7.3 Representation of Beneficial Interest. The Beneficial Interests shall be uncertificated. The Beneficial Interests shall be represented by appropriate book entries in the Trust Register.

7.4 Trust Register and Registrar.

7.4.1 Appointment of Registrar. The Plan Trustee shall appoint a Registrar for the purpose of registering Beneficial Interests as herein provided. The Registrar may be a duly qualified institution or the Plan Trustee. For its services hereunder, the Registrar, unless it is the Plan Trustee, shall be entitled to receive reasonable compensation from the Plan Trust as a Plan Trust Operating Expense.

7.4.2 Register of Beneficial Interests. The Plan Trustee shall cause the Trust Register to be kept at the office of the Registrar or at such other place or places that shall be designated by the Plan Trustee from time to time.

7.4.3 Access to Register by the Beneficial Agent and the Beneficiaries. The Beneficial Agent, the Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Registrar and the Plan Trustee, and in accordance with reasonable regulations prescribed by the Registrar and the Plan Trustee, to inspect and at the expense of the Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Beneficiary's Beneficial Interest in the Plan Trust.

7.4.4 Absolute Owners. The Plan Trustee may deem and treat the Beneficiary of record reflected in the Register and ~~as determined pursuant to Section 7.1 or Section 7.2 and 7.5~~ Sections 7.1, 7.2 and 7.5 of this Plan Trust Agreement as the absolute owner of such Beneficial Interests for the purpose of receiving Distributions and payment thereon or on account thereof and for all other purposes whatsoever.

7.5 Beneficial Interests Non-Transferable Beneficial Interests Transferable. ~~Beneficial Interests shall not be transferred other than by operation of law.~~ Beneficial Interests shall be freely transferable and any holder of a Class 3.1 Allowed Secured Claim and Beneficial Interest may assign to one or more assignees all or a portion of its rights and obligations under this

Plan Trust Agreement (including all or a portion of its Class 3.1 Allowed Secured Claim and Beneficial Interest). Upon its receipt of a duly completed assignment and assumption executed by an assigning holder of a Class 3.1 Allowed Secured Claim and its assignee, the Registrar shall accept such assignment and assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Plan Trust Agreement, including the right to receive Distributions hereunder, unless it has been recorded in the Register.

7.6 Beneficial Agent. The initial successor Beneficial Agent under this Plan Trust Agreement is Jefferies Finance LLC. The Plan Trustee shall be notified of any successor Beneficial Agent pursuant to a written notice delivered by the existing Beneficial Agent to the Plan Trustee at the address and in the manner provided in Section 10.1 of this Plan Trust Agreement. Such written notice shall specify an effective date for the designation of the successor Beneficial Agent and on and after that date, the successor Beneficial Agent shall hold the Beneficial Interest as agent for the holders of the Class 3.1 Allowed Secured Claims under the Plan and the Plan Trustee shall be entitled to rely upon such notice and treat the successor Beneficial Agent as the Beneficial Agent for all purposes under this Plan Trust Agreement.

ARTICLE 8 ADMINISTRATION OF THE TRUST ESTATE

8.1 Establishment of Available Cash. Prior to making any Distributions, the Plan Trustee shall determine the total amount of Available Cash, taking into account any Trust Reserves created pursuant to this Article 8.

8.2 Establishment of Trust Reserves and Related Matters.

8.2.1 Priority Claim Fund. Upon Closing, the Plan Trustee shall establish, fund and segregate the Priority Claim Fund in the amount of \$5 million to pay the Administrative Claims, Priority Unsecured Tax Claims, Class 1.2 Priority Unsecured Non-Tax Claims, Class 2 Secured Tax Claims and Class 3.3 Other Secured Claims, including any applicable interest accruing from the Effective Date to the Allowance Date. Any Distribution to holders of Administrative Claims, Priority Unsecured Tax Claims, Class 1.2 Priority Unsecured Non-Tax Claims, Class 2 Secured Tax Claims and Class 3.3 Other Secured Claims shall be fully and completely satisfied by the payment of Cash from the Priority Claim Fund in an amount equal to the Allowed amount of such claim in accordance with the Plan. To the extent any funds held in the Priority Claim Fund relate to an Administrative Claim, Priority Unsecured Tax Claim, Class 1.2 Priority Unsecured Non-Tax Claim, Class 2 Secured Tax Claim or Class 3.3 Other Secured Claims that has either been disallowed by the Bankruptcy Court or is no longer claimed as evidenced by a written release of such Claim, then such funds shall be distributed on the next Distribution Date to holders of Beneficial Interests as if such funds were Available Cash. The Priority Claim Fund shall be dissolved once all required payments have been made, and any unused balance of the Priority Claim Fund shall be included in Available Cash for distribution to Beneficiaries on the next Distribution Date. If any payment under this section is returned as undeliverable, any check evidencing payment of such Claim remains uncashed for sixty (60) days after the date upon which the check was issued, or if a claimant fails to provide a correct address to the Plan Trustee, then the underlying Claim shall be deemed to be waived, and such funds shall be distributed on the next Distribution Date to holders of Beneficial Interests as if such funds were Available Cash.

8.2.2 Plan Trust Operating Reserve. At Closing, the Plan Trustee shall establish, fund and segregate the Plan Trust Operating Reserve in the amount of \$4 million for the payment of Plan Trust Operating Expenses, including, but not limited to (1) the unpaid liabilities, debts or obligations of the Plan Trust; (2) the fees of the Plan Trustee; (3) all fees associated with the retention of professionals

by the Plan Trust; (4) the costs of pursuing, litigating, settling or abandoning any Rights of Action that constitute Plan Trust Assets (including the FedEx Litigation); and (5) any and all other costs associated with the liquidation or preservation of the Plan Trust Assets. The Plan Trust Operating Reserve may be funded from time to time with additional Trust Cash in an amount determined by the Plan Trustee, in consultation with ~~JPMorgan~~the Beneficial Agent, to be reasonably necessary to pay anticipated Plan Trust Operating Expenses, fund litigation, fund contingent liabilities, and otherwise conduct the affairs of the Plan Trust. Any unused balance of the Plan Trust Operating Reserve shall be included in Available Cash for distribution to Beneficiaries on the next Distribution Date.

8.2.3 Professional Compensation Claim Fund. At Closing, the Plan Trustee shall establish, fund and segregate the Professional Compensation Claim Fund in an amount sufficient to pay the claimed amount of all Professional Compensation Claims. Professional Compensation Claims shall be fully and completely satisfied in accordance with the Plan. After payment of all Professional Compensation Claims, any unused balance of the Professional Compensation Claim Fund shall be included in Available Cash for distribution to Beneficiaries on the next Distribution Date.

8.3 Distributions to Holders of Beneficial Interests.

8.3.1 Distributions Generally. The Plan Trustee shall only make Distributions from Available Cash, except as otherwise provided in Article 9 of this Plan Trust Agreement.

8.3.2 Distributions to Class 3.1 Beneficiaries. A Beneficiary who is the holder of a Class 3.1 Lender Claim shall periodically receive the Lender Distributions from Available Cash. The Plan Trustee shall make an initial Lender Distribution within ten (10) days of the Effective Date. Thereafter, the Plan Trustee shall make a Lender Distribution at least quarterly to the extent that Plan Trust Assets constituting Lender Recoveries become Available Cash.

8.3.3 Right to Setoff. The Plan Trustee may (but shall not be required to), pursuant to Bankruptcy Code sections 553 and 558 or applicable non-bankruptcy law, setoff against or recoup from any Distribution to a Beneficiary to be made under the Plan or this Plan Trust Agreement any claims or causes of action of any nature whatsoever the Plan Trustee may have against such Beneficiary; provided, however, that neither the failure to effect such offset or recoupment nor the allowance of any Claim shall constitute a waiver or release by the Plan Trustee of any setoff or recoupment the Plan Trustee may have against such Beneficiary, nor of any other claim or cause of action.

8.4 Place and Manner of Payments or Distributions. The Plan Trustee shall make Distributions to the Beneficiaries of record as of the Distribution Record Date by transmitting such Distribution to ~~JPMorgan~~the Beneficial Agent as agent for the Beneficiaries. The Plan Trustee shall distribute any Cash by wire, check, or such other method as the Plan Trustee deems appropriate under the circumstances. Prior to receiving any Distributions, all Beneficiaries, at the Plan Trustee's request, must provide to the Plan Trustee written notification of their respective Federal Tax Identification Numbers or Social Security Numbers.

8.5 Minimum Distributions. Notwithstanding any other provision of this Plan Trust Agreement or the Plan to the contrary, there will be no Distributions of Available Cash unless the aggregate amount to be distributed on such date is at least \$100,000.00 (other than in connection with a final Distribution and payments to be made relating to the Priority Claim Fund, the Plan Trust Operating Reserve, or the Professional Compensation Claim Fund).

8.6 Unclaimed or Undeliverable Distributions. In the event (1) a Beneficiary or other claimant entitled to payments from the Plan Trust under the Plan fails to provide to the Plan Trustee its

Federal Tax Identification Number within forty-five (45) days after the date of the Plan Trustee's written request, (2) a check issued to a Beneficiary or claimant remains uncashed for sixty (60) days after its issuance date, or (3) a Distribution or other payment is returned as undeliverable, then the Distribution or payment and any related Claim or obligation shall be deemed waived, such Beneficiary or claimant shall no longer be entitled to receive Distributions or payments, and such unclaimed or undeliverable Distribution or payment shall be distributed on the next Distribution Date to the holders of Beneficial Interests as if such Distribution were Available Cash.

8.7 Tax Matters.

8.7.1 Certain Income Tax Matters. The Plan Trust established pursuant to this Plan Trust Agreement is established for the purpose of satisfying claims by liquidating the Plan Trust Assets transferred to it and the Plan Trust shall have no objective of continuing or engaging in any trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Plan Trust. The purpose of the Plan Trust is to provide a mechanism for the liquidation of the Plan Trust Assets of the Debtor, and to distribute the proceeds of the liquidation, net of all claims, expenses, charges, liabilities, and obligations of the Plan Trust, to the Beneficiaries in accordance with the terms of the Plan. No business activities will be conducted by the Plan Trust other than those associated with or related to the liquidation of the Plan Trust Assets. It is intended that the Plan Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of section 301.7701-4(d) of the Treasury Regulations. All parties hereto shall treat the transfers in trust described herein as transfers to the Beneficiaries for all purposes of the Code (including, sections 61(a)(12), 483, 1001, 1012, and 1274). All the parties hereto shall treat the transfers in trust as if all the transferred assets, including all the Plan Trust Assets, had been first transferred to the Beneficiaries and then transferred by the Beneficiaries to the Plan Trust. The Beneficiaries shall be treated for all purposes of the Code as the grantors of the Plan Trust and the owners of the Plan Trust. The Plan Trustee shall file returns for the Plan Trust as a grantor trust pursuant to Treasury Regulations section 1.671-4(a) or (b). The income of the Plan Trust will be treated as subject to tax on a current basis, and the Beneficiaries (except to the extent a Beneficiary is the Internal Revenue Service) shall be responsible for payment of any taxes due with respect to the operations of the Plan Trust. During its existence, the Plan Trust shall not receive or retain cash or cash equivalents in excess of a reasonable amount necessary to meet claims and contingent liabilities (including Disputed Claims) or to maintain the value of its assets during liquidation. The Plan Trustee shall use its continuing best efforts to dispose of the Plan Trust Assets, make timely distributions, and shall not unduly prolong the duration of the Plan Trust. The Plan Trustee is authorized to take any action as may be necessary or appropriate to minimize any potential tax liability of the Plan Trust and, thereafter, the Beneficiaries arising out of the operations of the Plan Trust. The Plan Trustee is directed to allocate all costs, charges, expenses and deductions, or any of them in whole or in part, to income or principal at such time and in such a manner as the Plan Trustee shall determine will reduce or eliminate the Plan Trust's taxes, if any. The Plan Trust shall distribute, at least annually, all income and gain; Cash (whether or not allocable to income or principal, including all capital gains allocable to principal); any other property the Plan Trustee in its discretion determines is properly distributable (whether out of income or principal); and liquidation proceeds to the Beneficiaries, after payment of expenses and liabilities, less the reasonably necessary reserves for expenses and other Plan Trust Operating Expenses.

8.7.2 Consistent Valuation of Plan Trust Assets for Tax Purposes. The parties hereto, including the Plan Trustee and the Beneficiaries shall value the property transferred to the Plan Trust consistently and such valuations shall be used for all federal income tax purposes.

8.7.3 Withholding. The Plan Trustee may withhold from the amount distributable from the Plan Trust at any time to any Person (except with respect to the Internal Revenue Service) such sum or sums as may be sufficient to pay any tax or taxes or other charge or charges that have been or may

be imposed on such Person or upon the Plan Trust with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any Distribution provided for in this Article 8, whenever such withholding is determined by the Plan Trustee in its discretion to be required by any law, regulation, rule, ruling, directive or other governmental requirement, and the Plan Trustee, in the exercise of its discretion and judgment, may enter into agreements with taxing or other authorities for the payment of such amounts as may be withheld in accordance with the provisions of this Section 8.7.3. Notwithstanding the foregoing but without prejudice to the Plan Trustee's rights hereunder, such Person shall have the right with respect to the United States, or any state, or any political subdivision of either, to contest the imposition of any tax or other charge by reason of any Distribution hereunder.

8.7.4 Tax Reporting. To the extent that any Beneficiary may be able to use the installment method of reporting income with respect to any Distribution, the Plan Trustee will annually compile and disseminate to Beneficiaries who request such information all available tax return information with respect to interest (stated or unstated) and otherwise necessary or useful in reporting under the installment method.

8.7.5 Interest. In the Plan Trustee's discretion, interest received with respect to principal distributed pursuant to this Plan Trust Agreement shall be distributed along with the underlying principal.

8.7.6 Allocation of Income and Losses. Unless otherwise determined by the Plan Trustee in its reasonable discretion, allocations between Beneficiaries of taxable income of the Plan Trust for each of its tax years shall be determined by reference to the manner in which an amount of Cash in the Plan Trust equal to the amount of such taxable income of the Plan Trust would be distributed (without regard to any restrictions on Distributions described in the Plan) if, immediately before such deemed Distribution, the Plan Trust had distributed all its other assets in the Plan Trust (valued for this purpose at their tax book value) in respect of the Beneficial Interests, taking into account all prior and concurrent Distributions from the Plan Trust made in accordance with the Plan. Similarly, taxable loss generally will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating Distribution of the remaining assets of the Plan Trust. The tax book value of assets for purpose of this Plan Trust Agreement means their fair-market value on the Effective Date or, if later, the date on which such assets were acquired by the Plan Trust, adjusted in either case in accordance with applicable tax accounting principles. With regard to transfers of Beneficial Interests in accordance with Article 7 hereof the Plan Trustee shall promptly establish a standard convention for allocating and apportioning taxable income and loss between a transferor and its transferee and shall not be required to so allocate and apportion based on the actual Plan Trust activities prior and subsequent to the date of any transfer. The Plan Trustee shall notify the ~~Beneficiaries~~**Beneficial Agent** of the convention adopted promptly after such adoption. The Plan Trustee shall use its sole discretion to establish a fair and equitable convention to apply and may, but is not required to, adopt a monthly, quarterly, or similar Distribution Record Date convention.

ARTICLE 9

TERMINATION

The Plan Trust shall terminate upon the ~~earlier~~**earliest** of (1) the date which is 5 years ~~after the date this Plan Trust is created, from March 27, 2009,~~ (2) payment in full of all Class 3.1 Allowed Lender Secured Claims, or (3) the distribution of all Plan Trust Assets. Notwithstanding the foregoing, with Bankruptcy Court approval and the consent of ~~JPMorgan~~**the Beneficial Agent**, the Plan Trustee may extend the term of the Plan Trust for one or more finite terms based upon the particular facts and circumstances at that time, if it is in the best interest of the Beneficiaries and an extension is necessary to

the liquidating purpose of the Plan Trust. Each such extension, however, must be approved by the Bankruptcy Court within six (6) months of the beginning of any extended term. If permitted under applicable law and not contrary to the classification of the Plan Trust as a liquidating trust and a pass-through entity under applicable income tax law, and if in the best interests of the Beneficiaries, the Plan Trustee may distribute interests in the Plan Trust Assets or distribute the Plan Trust Assets to another Person and then distribute interests in such Person to the Beneficiaries. Plan Trust Assets to be distributed in kind shall be valued by the Plan Trustee in its reasonable discretion at their tax book value. After all liabilities of the Plan Trust have been satisfied or duly provided for, such remaining Plan Trust Assets shall be distributed to Beneficiaries as a final Distribution. The Plan Trust may not be terminated at any time by the Beneficiaries.

ARTICLE 10 **MISCELLANEOUS**

10.1 Notices. Any notice required to be given by this Plan Trust Agreement to all Beneficiaries shall be in writing and shall be sent by overnight delivery or by facsimile. All other notices, requests or other communications required or permitted to be made in accordance with this Plan Trust Agreement shall be in writing and shall be delivered by U.S. certified mail, return receipt requested, to:

- (a) If to the Plan Trustee:

The Renaissance Consulting Group, Inc.
8350 North Central Expressway
2100 Ross Avenue, Suite 870700
Dallas, ~~Texas 75201~~ **TX 75206**
Attention: Steven S. Turoff
Email: s.turoff@thercgroup.com

with a copy to:

Haynes and Boone, LLP
1221 McKinney, Suite 2100
Houston, Texas 77010
Attention: Kenric D. Kattner, Esq.
Email: Kenric.Kattner@haynesboone.com

- (b) if to any Beneficiary in such Beneficiary's capacity as a Beneficiary, at such Beneficiary's address as listed in the Plan Trust Register or as identified in a written request for notice delivered to the Plan Trustee.

- (c) If to ~~JPMorgan~~ **Beneficial Agent:**

Simpson Thacher & Bartlett, LLP
E. Joseph Hess
Managing Director
Jefferies Finance LLC
~~425 Lexington~~ **520 Madison** Avenue
New York, ~~NY 10022~~ **NY 10022**
Facsimile: (212) 284-3444
Email: jhess@jefferies.com

with a copy to:

Scott T. Peloso
Jefferies Finance LLC
520 Madison Avenue
New York 10117, NY 10022
Attn: Kathrine A. McLendon, Esq.
Facsimile: (212) 284-3444
Email: speloso@jefferies.com

(d) If to The Unsecured Creditor Trustee:

JLL Consultants, Inc.
31 Rose Lane
East Rockaway, New York 11518
Attention: William Kaye

with a copy to:

~~Ottobourg, Steindler, Houston & Rosen, P.C.~~
~~230 Park Avenue~~
~~New York, New York 10169~~
~~Attn: Steven B. Soll, Esq. and Jenette A. Barrow-Bosshart, Esq.~~
Jeffrey A. Hokanson
101 West Ohio Street, Suite 2100
Indianapolis, IN 46204
Facsimile: (317) 262-1010
Email: jeff.hokanson@hostetler-kowalik.com

Notice mailed shall be effective on the date mailed. All other notices shall be effective on the date of delivery. Any Person may change the address at which it is to receive notices under this Plan Trust Agreement by furnishing written notice pursuant to the provisions of this Section 10.1 to the entity to be charged with knowledge of such change.

10.2 Amendment. Material amendments to this Plan Trust Agreement require Bankruptcy Court approval after notice to the Beneficial Agent and the Beneficiaries. This Plan Trust Agreement may be amended by the Plan Trustee without Bankruptcy Court approval to correct typographical errors or if such amendment is not material and does not adversely affect the interests of any Beneficiary, but such amendment shall not be effective until 45 days after the Beneficial Agent and the Beneficiaries shall have been given notice of such amendment, provided however, such notice shall not be required if waived in writing by the Beneficial Agent and the Beneficiaries and such amendment shall be effective immediately upon delivery of such waiver to the Plan Trustee. The Plan Trustee shall consult with ~~JPMorgan~~ the Beneficial Agent before making any non-material amendment and before seeking Bankruptcy Court approval of any material amendment.

10.3 Counterparts. This Plan Trust Agreement may be executed in one or more Counterparts, all of which shall taken together to constitute one and the same instrument.

10.4 Governing Law; Severability. This Plan Trust Agreement shall be governed by construed under and interpreted in accordance with the laws of the State of New York. If a court of competent jurisdiction determines that any provision of this Plan Trust Agreement is invalid or unenforceable under such applicable law, such invalidity or unenforceability shall not invalidate the entire Plan Trust Agreement. In that case, this Plan Trust Agreement shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of applicable law, and, if such term or provision cannot be so limited, this Plan Trust Agreement shall be construed to omit such invalid or unenforceable provisions, provided that such construction, to the maximum extent possible, shall give effect to the purposes of the Plan.

10.5 Headings. Sections, subheadings and other headings used in this Plan Trust Agreement are for convenience only and shall not affect the construction of this Plan Trust Agreement.

10.6 Relationship to Plan. The Plan Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan and shall be bound by the terms of the Plan. In the event of a conflict between the Plan (excluding this Plan Trust Agreement) and this Plan Trust Agreement, the Plan shall govern.

10.7 Consent to Jurisdiction. Each of the parties hereto (and each Beneficiary by its acceptance of the benefits of the Plan Trust created hereunder) (1) consents and submits to the jurisdiction of the Courts of the State of Indiana and of the Courts of the United States for the District of Indiana for all purposes of this Plan Trust Agreement, including, without limitation, any action or proceeding instituted for the enforcement of any right, remedy, obligation, or liability arising under or by reason hereof, and (2) consents and submits to the venue of such action or proceeding in the City of Indianapolis (or such Judicial District of a Court of the United States as shall include the same).

10.8 Waiver of Jury Trial. ANY AND ALL RIGHT TO TRIAL BY JURY IS HEREBY WAIVED, AND THERE SHALL BE NO RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS TRUST AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

IN WITNESS WHEREOF, the parties hereto have executed this Plan Trust Agreement or have caused this Plan Trust Agreement to be duly executed by duly authorized officers as of the day and year first above written.

PLAN TRUSTEE

By: _____

Print : Steven S. Turoff

Title: Trustee

ATA AIRLINES, INC.

By: _____

Print: Steven S. Turoff

Title: ~~Chief Restructuring Officer~~ **President**