

# *The Cape Town Convention, One Year Later*

By Edward K. Gross

Since the Cape Town Convention (CTC) and related Aircraft Protocol (protocol) (together, the convention) took effect in the United States on March 1, 2006, the business aircraft financing market has been forced to react to the sometimes strange and often mystical words of the convention and the wacky irregularities of the related registry process. Among other things, the convention provides for international registration of certain conveyances, liens, and leasehold interests as well as other rights and interests that could determine the relative priority of the parties claiming an interest in an aircraft or an engine.

The convention's complicated laws, rules, and processes were intended to create a financing system that would allow these financing providers to extend financing to carriers in nations that, if they became signatories, would have laws and judicial procedures that would emulate U.S. commercial and bankruptcy law and procedure.

All of this sounds great. But after many years of sorting out the politics and practicalities, the drafters expanded the scope of the convention to many business aircraft, including helicopters and engines, and in doing so added burdens and risks to a market that otherwise had been performing quite well. Many equipment finance providers were caught off guard with the scope of the convention because they had assumed that it covered only the financing of large commercial airliners, a specialized capital markets asset. This surprising twist left middle-market business aircraft finance providers scrambling to adjust to the administrative, legal, and, ultimately, document changes necessary to reflect the imposition of the treaty provisions and processes.

More than a year has now passed since the convention became law. Most equipment finance providers have adjusted to it, knowing that failure to adequately respond meant risking delays

in the documentation and closing process, or worse, failure to achieve the priority interest necessary to employ a meaningful exit strategy upon a default. Unfortunately, very little clear guidance has been available to finance providers not involved in cross-border commercial air finance. Because the convention is new and has not been tested in court nor been susceptible to practical interpretation, practitioners have agonized with how much is enough.

Summarized below are some typical document modifications to "standard" business aircraft financing forms. Note that some of the changes may seem redundant with existing (i.e., pre-convention) provisions in lease and loan financing forms. Also, some of the more precise convention-related modifications are merely elements of other broader convention-related modifications. The value afforded by some of the precise (but redundant) provisions is that parties are more likely to focus on those issues and allocate and complete any related tasks. The reader will need to consider whether that value is greater than the desire of all parties for brief, market-friendly documents. Although this is not intended to be a lawyerly article, we have included citations to the related provisions of the Cape Town Convention and Aircraft Protocol as a reference.

## **TERM SHEETS AND PROPOSAL LETTERS**

There are relatively few convention-related changes to term sheets or proposal letters. Any convention-related changes are intended to make the customer aware of the International Registry (IR) of Mobile Assets process ([www.internationalregistry.aero](http://www.internationalregistry.aero)), including the requirement that the customer become a "transacting user entity" (TUE). Under the transaction costs section, the term sheet could discuss the various IR registration and search costs, including the costs to

The equipment finance industry reacted to the imposition in March 2006 of the Cape Town Convention and related Aircraft Protocol with alarm and some frenzied rewriting of aircraft finance closing procedures and documents. More than a year after the imposition of this treaty, the industry has settled into some common treaty-conforming practices, including modifications to "standard" business aircraft financing forms.

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become a TUE, which can add up quickly. This could be particularly useful for a first-time aircraft customer or a customer that is refinancing from a pre-convention deal. These documents could also be used to address whether a “prospective international interest” will be registered in anticipation of the related aircraft acquisition or financing, or whether such filings will be prohibited.

### CLOSING CONDITIONS

Closing conditions are included in almost every lease or loan agreement involving a sophisticated or expensive equipment financing, especially aircraft financings. Because this section is used as the “to do” list in anticipation of the closing, post-convention aircraft financing documents now include convention-related requirements.<sup>1</sup> Some of the typical convention-related closing terms include the following:

#### Transacting User Entities

The customer and certain third parties required to register interests (see Third-party Use below) are required to provide evidence that they have become “transacting user entities” (TUEs). This evidence may include confirmation by customer or its “professional user entity” (mentioned below) that the customer has become a TUE. Note that some financing parties merely search the IR to confirm that the customer appears as a TUE. Note, however, that there is often more than one limited liability company (LLC) or entity with the same name, so financing parties should seek additional confirmation if they choose to do their own search.

#### Professional User Entities

The customer and any third-party registrants may (1) designate a “professional user entity” (PUE) and (2) authorize the PUE to consent to the registration of the sale of the aircraft, the related “international interest” or “prospective international interest.” For a multi-aircraft transaction, a PUE designation will be required of each party for each aircraft object involved, and the appointment must describe the relevant airframes or engines by make, model, and serial

number. Any higher priority or subordinated interest holder may require a consent to the IR registration.

Some financing forms require that all parties designate the same PUE so as to significantly decrease the delay, coordination time, and other inefficiencies in the IR registration process. Various law firms in Oklahoma City, Oklahoma, recognized title companies, and other acceptable entities that are registered with the IR as PUEs are often designated as “mutual PUEs.” If the customer has already appointed a PUE in connection with the purchase of the aircraft, having a mutual PUE might not be practical.<sup>2</sup>

#### International Registry Forms

The PUE (either the mutual PUE, or the financing party’s PUE) is usually designated as the escrow holder of the documents for filings with the Federal Aviation Administration (FAA) and is responsible for preparing certain International Registry-related forms; searching and giving assurances regarding IR title and “lien” status; and making the IR registrations. The required FAA filing documents include the typical FAA forms as well as the transactional documents that must be filed with FAA. No change there. However, as a condition to making the IR registrations, the aviation counsel prepares an AC 8050-135 form (“Information to Aid in the Completion of the FAA Entry Point Filing Form for the International Registry”), which is required by the FAA. The form does not require a signature by any party, but it includes the parties’ names and addresses; descriptions of the type of interest being registered with the IR and the collateral; and the name of the submitter (again, usually the PUE). The documents must be filed with the FAA so that the airframe can be assigned its unique authorization code and so that any related interest can be registered with the IR.<sup>3</sup>

In addition, if customer is the registered owner at the FAA, the financing party may require an “Irrevocable De-registration and Export Request Authorization” (IDERA) form from the customer. (See the Remedies discussion below. A form of IDERA is included as Annex A to this article, on page 11.) An IDERA is often (but not

always) required by financing parties in business aircraft transactions, including financings of FAA-registered aircraft. By filing an IDERA with the aviation authority registry in which an aircraft is registered (but only if it is in a jurisdiction that has signed on to the convention), the financing party has the exclusive authority to de-register the related airframe from that nation's registry and export it for registration in another nation's registry. The value of having this remedy has been debated if the airframe is "N" (i.e., U.S. FAA) registered; financing parties may require one as a preventive measure or in case a junior lienholder decides to file one. Having this authority with respect to an airframe registered in another convention signatory country could have considerable value if the enforcement of other remedies and practicalities might otherwise make it difficult for the financing party to take control of this collateral.

**Search Certificates**

Financing parties usually require a priority search certificate prior to closing, to determine what if any registrations have been made with the IR against the airframe or engines being financed, especially any nondischarged interests. If the search reveals unpermitted interests, the financing party will require that these interests be discharged by appropriate registrations made by the party in whose favor such interest was registered.

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**POSTCLOSING CONDITIONS**

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After the imposition of the convention, many financing parties require a postclosing opinion from "aviation counsel." (Since they have IR responsibilities, they no longer are referred to as "FAA counsel.") This opinion is intended to confirm that the international interests, and any sale, relating to the financing have been properly registered, and that the contemplated title and lien status are appropriately reflected on the IR (e.g., reflecting both the sale to either customer, if a loan, or the financing party, if a lease, and financing party's international interest having first priority). Aviation counsel is almost always asked to provide a postclosing priority search certifi-

cate evidencing the same and that the interest is searchable on the IR.

Here is a sample postclosing excerpt:

On the Closing Date, Lender shall have received assurances from Aviation Counsel satisfactory to Lender, in form and substance satisfactory to Lender, that (i) the Aircraft (including the Airframe and Engines) is free and clear of all other [Liens] of record with the FAA and the International Registry, (ii) title to the Airframe is vested in Customer or that, upon filing of the FAA Aircraft Bill of Sale (AC Form 8050-2) and an applicable International Registry registration in the name of Customer, title to the Airframe will be vested in Customer, (iii) Lender, upon filing of the Aircraft Security Agreement with the FAA and the international interest with the International Registry, will have a valid and perfected security interest and international interest in the Aircraft (including the Airframe and the Engines), (iv) the filing of the Aircraft Security Agreement with the FAA has been effected, and (v) the registration of the international interest has been consented to by all parties.

Postclosing conditions might also be necessary to address any unresolved IR issues—for example, in transactions that have closed due to quarter-end or other urgencies despite the unavailability of the registry (i.e., technical difficulties), or if a necessary party has not yet become registered as a transacting user entity in time for closing. These postclosing registrations might also be necessary if, after closing, the customer enters into a lease or sublease, or replaces an engine. The interests created by any postclosing lease or sublease or engine swap would require filings with the FAA as well as IR registrations. The related security assignment by the customer to the financing party will also be filed with the FAA and registered with the International Registry. If any registration occurs postclosing, another priority search certificate might be required to confirm that the registrations were properly made and are searchable.

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**REPRESENTATIONS, WARRANTIES, AND COVENANTS**

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As previously mentioned, certain changes to the representations, warranties, and covenants in the financing documents might be made with

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great detail or in summary fashion (to avoid redundancies). Regardless of the approach the document drafter takes regarding these issues, customer's counsel might cause the financing party to justify or rethink the related document provisions during the course of negotiations. Thus it is important for the financing party to determine which of the various provisions it considers essential. Examples of convention-related representations, warranties, and covenants include the following:

#### IR Registration Issues

Although somewhat redundant with the closing conditions, post-convention documents often include a representation that, as of the closing date, the customer and certain third parties have satisfied all IR registration requirements. So, a borrower or lessee might be asked to represent that it is a TUE, identify its administrator and professional user entity, and make similar representations regarding any related third party. The customer might also be asked to promise that it, and each required third-party registrant, will consent to the required registrations at closing, and authorize its PUE to make this consent on its behalf.

This is a sample TUE excerpt:

- (a) Customer is a transacting user entity, has appointed an administrator and has designated Aviation Counsel as its professional user entity;
- (b) Customer has the power to grant the security assignment, international interest and other interests constituting Lender's Lien, each as contemplated by the Convention.

#### Applicability of Convention to Transaction

One of the alternative scope requirements for the Cape Town Convention is that the customer be "situated" in a "contracting state." (See CTC articles 3 and 4.) Some financing documents include a representation as to the customer's being so situated, even though it may be obvious based on the customer's standard organizational representation. (For example, the United States is a contracting state, and the customer is already representing that it is organized in Delaware.) An alternative to the "situated" scope requirement relating to airframes and helicopters is

that the airframe or helicopter is registered in a contracting state, and such registration was made pursuant to an agreement for registration. So, if the airframe or helicopter is N-registered, no further representations regarding the jurisdiction in which the customer is situated is necessary for convention purposes. (See Protocol Article IV(1).) With respect to the engines, however, a financing party may include such a representation as to where an engine is "situated" because the "where registered" scope is inapplicable.

In addition to the contracting state requirement of the convention scope provisions, the airframe, engine, or helicopter (as applicable, the "aircraft object") must meet certain use and size requirements. Representations and promises addressing these requirements are often included in the related financing documents. For example, the customer might promise that the aircraft object will not be "used in military, customs, or police services" (See Protocol Article I(2)(b), (e), and (l)). Note that the customer may still use the aircraft for "firefighter and medical services or to transport government officials." (See Protocol Article I, comment 4.)

To meet the size requirement, airframes must seat at least eight people (including crew) or be able to carry more than 2,750 kilograms in goods (Protocol Article I(2)(e)). Helicopters must seat at least five people (including crew) or be able to carry more than 450 kilograms in goods (Protocol Article I(2)(l)). Jet engines must have more than 1,750 pounds of thrust (Protocol Article I(2)(b)(i)); turbine or piston powered engines must have more than 550 rated takeoff shaft horsepower (Protocol Article I(2)(b)(ii)). Financing documents now sometimes include representations by the customer that the pertinent aircraft object has the referenced capacity or power, with specific references to these stated thresholds. This issue might be just as well covered by a general representation that the size, power, and use of the aircraft object meet these convention scope requirements.

#### Airframe and Engine Descriptions

Because the IR registrations are done by specific aircraft model and serial number, it is essential

that the description of the airframe and engines is accurate and contains the IR-friendly, “generic” manufacturer’s name, serial number, and model designation. (See Protocol Article VII.) Financing documents might include a representation that the confirmed IR-friendly description of the airframe and engines, or helicopter, in the attached descriptive schedule is accurate. The same purpose might be accomplished by having the customer confirm that the descriptions in the document are accurate and complete for IR registration purposes.

We have included an example of an IR-friendly, generic aircraft description as Annex B to this article (see page 11).

As noted, it is important to confirm that the aircraft object is correctly described. While the “drop down box” in the IR registration screen contains most of the airframe and engine model and serial numbers, users experienced problems in the early stages of the IR with incorrect descriptions or an incomplete list of serial numbers. Some financing parties address this concern by requiring a preclosing priority search certificate. This certificate reflects the description of the airframe and engines on the IR. Aviation counsel are often relied upon by financing parties to determine the correct aircraft object description and to handle any related documentation or closing issues, so as to avoid closing delays and assure that the registrations are properly made. Financing documentation sometimes includes alternative descriptions of the airframe or engines, including descriptions from both existing purchase or other documents, as well as the IR-friendly descriptions of those same aircraft objects. Aviation counsel will be careful to accurately reflect the aircraft object description in any closing opinion.

Following is a sample search certificate excerpt (from the closing conditions):

A Priority Search Certificate from the International Registry addressed to Lender indicating that the Aircraft is free and clear of Liens, and, on the Acceptance Date, confirmation from Aviation Counsel that a Priority Search Certificate from the International Registry indicates that the Aircraft is free and clear of Liens.

### Discharging IR Registrations

Pre-convention financing documents already prohibited the borrower or lessee from changing or terminating any lien or precautionary filings. Convention-related modifications sometimes include a customer’s covenant that it shall not suffer to exist any unpermitted registrations on the IR (but, likely already covered in the standard “no unpermitted liens” covenant). The definition of “permitted lien” in the financing documents is often expanded to encompass permitted IR registrations.

### THIRD-PARTY USE

Third-party use of the aircraft is more frequently an important flexibility requirement of the customer. Financing parties have become more comfortable with affording this flexibility, but often condition this right, both with the delivery or filing of various documents and the satisfaction of other conditions intended to assure the financing party of the first priority of its interest and unimpeded enforcement rights. These conditions have been expanded in many post-convention financing documents with respect to IR registrations relating to the various third-party documents, such as leases, subleases, and management agreements. We have included a sample excerpt from a form financing document addressing convention-related third-party use issues as Annex C to this article (see page 13).

A financing party that has been collaterally assigned a lease or sublease will likely require that the lease or sublease be filed with FAA and the related international interest registered with the IR, assuming that the convention applies to the lease or sublease, so that the collateral assignment can also be IR registered. The financing document will likely include both the grant of this “security assignment” (using the appropriate convention terminology) of the related international interest and “associated rights” to the financing party, as well as the FAA filing and IR registration requirements to perfect and give priority to this security assignment. (See CTC Article 31, comment 9; Article 35, comment 2.)

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The Cape Town Convention defines a leasing agreement as "any agreement by which one person grants to another a right to possession or control of an object in return for a rental or other payment, whether or not the transaction would be characterized by national law as a leasing agreement."

Here is a sample "granting clause" excerpt:

Customer hereby grants, pledges and assigns to Lender a first priority security interest, international interest, security assignment and Lien, in, against, under and with respect to all of Customer's right, title and interest in, to and under all of the following collateral (collectively, the "Collateral"): (i) the Aircraft, including the Airframe, each of the Engines, the Parts and the Records; (ii) any and all present and future Third Party Agreements; (iii) any and all other associated rights secured by or associated with the Airframe and/or the Engines, together with any related international interests; and (iv) all proceeds of the foregoing.

The financing document might also require that the assignment be made in a multiparty (i.e., financing party, customer, and third-party lessee or sublessee) affirmation of the security assignment to the financing party. This multiparty document could include, among other things, agreements by the customer and the third party that (a) such party will give all necessary cooperation to the financing party with respect to the filings and registrations of the interests and the security assignment, and (b) the lessee's or sublessee's interests will be subordinate (and such subordination will be registered on the IR). Whether made in the primary financing document or in this multiparty document, any assignment or subordination document must meet certain convention "formalities" requirements. (See CTC Article 32(1).) The obligations secured by the assignment must be determinable, but the actual sum need not be listed. The assignment also must sufficiently identify the assigned "associated rights" and the "contract" from which the rights arise. If a subordination is required, the related document must have a clear subordination clause.

The closing conditions in the related transaction documents are likely to be modified so as to require that aviation counsel receive consents and the necessary documents from the third party for FAA filing and that the parties will take all actions necessary to effect the IR registration. The documents are likely also to require third-party representations and covenants similar to those required of the customer with respect to

the IR-related issues (e.g., the third party is a transacting user entity, or TUE, and agrees to consent to registration and not to discharge the interest). Although most financing parties will have already included a very similar Uniform Commercial Code (UCC) Article 9 waiver of defenses, post-convention financing documents typically include the third party's waiver of any available defenses and set-offs with respect to the assigned associated rights. (See CTC Article 31(4).)<sup>4</sup>

Financing parties may more closely scrutinize post-convention management agreements that allow chartering. A management agreement that allows the manager to charter the aircraft for its own purposes and to share that chartering revenue with the customer could (arguably) be deemed a "leasing agreement" for convention purposes. The Cape Town Convention defines a leasing agreement as "any agreement by which one person grants to another a right to possession or control of an object in return for a rental or other payment, whether or not the transaction would be characterized by national law as a leasing agreement" (see CTC Article I, comment 18). The FAA, however, does not generally record "management" agreements that are not styled as "leases." Some financing parties request that the agreement be styled as a lease and that the customer's interest under it be registered with the IR and security assigned to the financing party, with all of the appropriate filings and registrations. Again, this would require the management company to be a TUE, designate a PUE, and follow some of the representations and covenants discussed above.

#### ASSIGNMENTS AND SYNDICATIONS

Many post-convention financing documents have been revised to reflect the coverage of syndication issues in the convention and any related IR procedures. These convention-related modifications are very similar to those made with respect to security assignments, as discussed above. For example, financing party assignment provisions in lease and loan documents now might include, among other things, the cus-

tomers (a) waiver of any available defenses and set-offs with respect to the assigned associated rights (CTC Article 31(4)); (b) consent to any assignment/syndication (Protocol Article XV); and (c) agreement to cooperate with the registration of the assignment with the IR (including renewing its TUE status if its IR registry subscription has expired (CTC Article 20(1)). These waivers, consents, and agreements were traditionally included in pre-convention financing documents, but they now are particularized using convention jargon and, in some cases, references to the pertinent CTC or protocol articles. An example of a revised assignment provision as particularized to address pertinent CTC issues is included as Annex D to this article (see page 14). Note that although a lease or secured transaction is freely assignable under the UCC, the protocol specifically requires the prior consent of the lessee or debtor (Protocol Article XV). Additionally, the transacting parties should consider a stipulated form of notice of assignment, which identifies the associated rights and contains an acknowledgment by the customer that it will make all future payments to the assignee. (See generally CTC Chapter IX.)

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**REMEDIES**

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Many financing parties have modified the remedies in their leases and loan documents, although it is likely that the pre-convention forms included many of the remedies provided under the convention. The convention, however, requires that the customer agree to the remedies: CTC Article 8(1) notes that the remedies are available “to the extent that the chargor has at any time so agreed.” Thus, to meet the “agreed” requirement in Article 8(1), the transaction documents must list convention remedies for those remedies to be available.

CTC Article 8 provides a list of secured creditor’s (“chargee’s”) remedies. Those remedies include taking possession or control of the “object charged to it”; selling or granting a lease of any such object; and collecting or receiving any income or profits arising from the management or use of any such object. Most financing documents have traditionally included essentially

similar remedies without regard to the convention. In addition, CTC Article 11 permits the parties to agree to what constitutes a default, which allows the parties to follow industry or commercial practices when enumerating the defaults. Again, the imposition of the convention has not changed document provisions regarding the typical default triggers. A sample remedies section incorporating CTC concerns is included as Annex E to this article (see page 15).

The CTC restricts remedies to those that are not “manifestly unreasonable” (Protocol Article IX(3)). So a financing party should consider whether the remedies are consistent with the convention requirements. Further, financing documents often now include an acknowledgment by the customer about the available remedies.

A sample acknowledgment excerpt follows:

Customer hereby acknowledges that none of the provisions of this Section \_\_\_\_, including any remedies set forth or referenced herein, is “manifestly unreasonable” for the purposes of the Cape Town Convention. Each may be used successively and cumulatively and in addition to any other right or remedy referred to above or otherwise available to Lender at law or in equity, including, such rights and/or remedies as are provided for in the UCC and/or the Cape Town Convention, but in no event shall Lender be entitled to recover any amount in excess of the maximum amount recoverable under applicable law with respect to any Event of Default.

Note that although certain of the customer’s rights may be derogated, parties cannot derogate most of the essential “debtor” protections (CTC Article 15; Protocol Article IX). For example, the notice period with respect to the disposition of the repossessed aircraft object may be no less than 10 working days under the convention (see Protocol Article IX(4) and Article IX, comment 5). This notice period is less generous than similar notice requirements in many pre-convention forms.

Article IX of the protocol adds an additional remedy: that a creditor may de-register and export the aircraft object from the territory in which it is situated. The financing party must first get consent from any higher priority interest holders, which is something that financing forms

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might now require the customer to obtain. As mentioned above, many financing parties require their customers who are registered owners to execute an IDERA form (“Irrevocable De-registration and Export Request Authorization”) (Protocol Article XIII).

The following is a sample IDERA and de-registration excerpt:

If an Event of Default occurs and is continuing, in addition to all other rights and remedies granted to it in this Aircraft Security Agreement and in the other Loan Documents, Lender may exercise all rights and remedies (including interim remedies) of a secured party under the UCC, a creditor under the Cape Town Convention or under any other Applicable Law. Without limiting the generality of the foregoing, Borrower agrees that upon the occurrence and continuance of an Event of Default, Lender, without demand or notice of any kind (except the notice specified in Section \_\_\_\_ and specified below of time and place of public or private sale) to or upon Borrower or any other Person (all and each of which demands and/or notices are hereby expressly waived), in its sole discretion, may exercise any one or more of the following remedies: procure the de-registration and/or export of the applicable Aircraft pursuant to the IDERA.

Again, an IDERA supports the interim remedies of de-registration and export and also protects the financing party from an inadvertent or intentional de-registration of the aircraft by the registered owner. A form of IDERA is attached as an annex to the Aircraft Protocol. IDERAs are not always required by financing parties in transactions involving U.S.-registered aircraft.

#### MISCELLANEOUS PROVISIONS

Other convention-related provisions frequently included in post-convention financing forms include:

(a) The “fees/expenses” section often covers costs for IR searches, registrations, discharges, and so on.

Here is a sample fees/expenses excerpt:

Such fees, costs and expenses shall include, without limitation, appraisal and inspection fees, the fees and expenses of Aviation Counsel and of Lender’s

counsel, consultants and brokers, UCC, FAA, International Registry and other applicable title, interest and Lien searches, and costs and expenses relating to recovery, repossession, storage, insurance, transportation, repair, refurbishment, advertising, sale and other dispositions of the Aircraft. Customer shall also pay all fees (including license, filing and registration fees), taxes, assessments and other charges of whatever kind or nature that may be payable or determined to be payable in connection with the execution, delivery, recording or performance of this Aircraft Security Agreement or any of the other Loan Documents or any modification thereof, or the making of any related registrations.

(b) The “granting clause” references “associated rights” (and the related international interest). The granting clause often clarifies that obligations secured by the agreement include all existing and future obligations as well as obligations outside of the agreement, in order for the international interest to secure all of the obligations.

This is a sample “granting clause” excerpt:

Customer hereby grants, pledges and assigns to Lender a first priority security and international interest, collateral and security assignment and Lien, in, against, under and with respect to all of Customer’s right, title and interest in, to and under all of the following collateral (collectively, the “Collateral”): (i) the Aircraft, including the Airframe, each of the Engines, the Parts and the Records; (ii) any and all present and future Third Party Agreements; (iii) any and all other associated rights secured by or associated with the Airframe and/or the Engines, together with any related international interests; and (iv) all proceeds of the foregoing.

(c) In addition to the U.S. forum, the “venue” section now typically allows the parties to bring an action in Ireland solely with respect to International Registry issues (e.g., to remove a filing or if the International Registrar’s certification of information proves to be false).

Following is a sample “venue” excerpt:

Notwithstanding anything in the foregoing to the contrary, Lender and Customer may bring a judicial proceeding against the Registrar of the International Registry in the Republic of Ireland, solely with respect to matters relating to the International Registry itself.

(d) The aircraft object description in any descriptive schedule now reflects protocol requirements. Note that the FAA modified 750 horsepower to 550 to comply with changes to the FAA regulations. (Propellers, which are not covered by the convention, remain at 750 horsepower.) The schedules also identify the customer's administrator and PUE.

Following is a sample aircraft object description excerpt:

Each of the Engines has [at least 1,750 pounds of thrust or its equivalent][use for jets] [550 rated takeoff shaft horsepower [use for turbine or piston powered engines (i.e., propeller driven aircraft or helicopters)] or the equivalent of such horsepower].

(e) The definitions in many post-convention financing documents include various convention terms, which definitions merely restate the related definition of such term in the CTC or protocol, as applicable. However, some forms provide summary definitions that refer back to the CTC and protocol for greater specificity.

Here is a sample convention terms and definitions excerpt:

Certain of the terms used in the Agreement ("CTC Terms") have the meaning set forth in and/or intended by the "Cape Town Convention", which term means, collectively, (i) the official English language text of the Convention on International Interests in Mobile Equipment, adopted on 16 November 2001 at a diplomatic conference held in Cape Town, South Africa, as the same may be amended or modified from time to time (the "Convention"), (ii) the official English language text of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, adopted on 16 November 2001 at a diplomatic conference held in Cape Town, South Africa, as the same may be amended or modified from time to time (the "Protocol"), and (iii) the related procedures and regulations for the International Registry of Mobile Assets located in Dublin, Ireland and established pursuant to the Cape Town Convention, along with any successor registry (the "International Registry"), issued by the applicable supervisory authority pursuant to the Convention and the Aircraft Protocol, as the same may be amended or modified from time to time. By way of example, but not limitation, these CTC

Terms include, "administrator", "associated rights," proceeds, "international interests", "security assignment", "transfer", "working days", "consent", "final consent", "priority search certificate", "professional user entity", "transacting user entity" and "contract"; except "proceeds" shall also have the meaning set forth below.

The definition of "proceeds" here would also be covered by a separate definition that would cover both UCC and convention concepts.

(f) Responsibility checklists post-convention should reflect the documentation and other Cape Town considerations discussed in this article. As previously noted, we have included as Annex F (page 16) and Annex G (page 17) to this article responsibility checklists for a business aircraft loan and aircraft lease, each of which incorporates convention considerations.

(g) Some financing parties have elected to preserve existing pre-convention forms by an amending rider. This is especially useful if the customer and financing party are amending a pre-convention deal in a manner that brings aspects of the deal within the scope of the convention but are choosing not to restate the documents. As a comprehensive means of incorporating necessary convention considerations into one's financing documents, a drafter may consider attaching a rider that addresses the documentation considerations discussed herein in one comprehensive document. A sample rider addressing convention concerns appears as Annex H to this article (see page 18).

As noted above, this article is not intended as an exhaustive listing of the various convention-related modifications required to cause pre-convention financing forms to be adequate for use in convention-governed aircraft financings. However, it does provide a sampling of typical convention-related provisions, intended to address the priority and procedural provisions of the convention. Some of these sample provisions may be redundant with pre-convention practices, or merely with other broader convention-related provisions. However, certain of the provisions and practices mentioned in this article are critical to an efficient closing process or are required

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to be included in the related financing forms to provide essential rights and remedies.

*Appendixes A through H of this article begin on page 11.*

### Endnotes

1. We have included, as annexes F and G, responsibility checklists outlining the documents and other closing activities to be accomplished on or prior to closing. The sample forms reflect (1) closing items for an uncomplicated business aircraft secured loan and (2) closing items for an uncomplicated business aircraft lease transaction.
2. See Item 18 on the Responsibility Checklist (Loan) and Item 16 on the Responsibility Checklist (Lease).
3. See Item 17 on the Responsibility Checklist (Loan) and Item 17 on the Responsibility Checklist (Lease).
4. See Item 14 on Annex F, Responsibility Checklist (Loan).

### ACKNOWLEDGMENTS

The author wishes to thank Nisha Saxena, a former senior associate in Vedder's Washington, D.C., office, and Erin S. Staton, an associate in Vedder's Washington office (currently licensed only in North Carolina).

The author also wishes to acknowledge Susan H. Haught of Daugherty Fowler Peregrin Haught & Jenson for assisting with this article.

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### Edward K. Gross

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Edward K. Gross is a shareholder in, and started the Washington, D.C., office of Vedder, Price, Kaufman & Kammholz, P.C. He represents bank-affiliated and large independent equipment financing companies in all aspects of equipment finance, especially business aircraft financings. This representation includes documenting, structuring, negotiating, syndicating, and enforcing equipment finance transactions for more than 20 years. In addition to contributing several articles to this journal and other leasing journals and to books published by the Practising Law Institute, Mr. Gross has lectured at numerous seminars for ELFA, American Bar Association, and the Federal Aviation Administration. He earned a BA at the University of Maryland, College Park, then a JD at the University of Baltimore. Mr. Gross has served on the board of directors and the Legal Committee of the Equipment Leasing and Finance Association and chairs two ELFA working groups pertaining to the air and rail protocol to the Cape Town Convention. In addition, he serves on this journal's editorial review board.

*This paper is for informational purposes only and is provided merely as a courtesy and a quick reference tool. It is not intended to, nor does it, provide formal legal advice. Customers should consult with their own counsel for a complete explanation of the Cape Town Convention and its requirements.*

*Notice Regarding Tax Advice: The IRS has issued regulations setting forth detailed require-*

*ments as to the scope and content of written advice that may be relied upon as a defense to the imposition of penalties that may be applicable under the Internal Revenue Code. This communication does not satisfy those requirements. Accordingly, the discussion of Federal tax consequences set forth herein is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed.*

**ANNEX A**  
**FORM OF IDERA**

**Form of Irrevocable De-registration and Export Request Authorization**

This IDERA is linked to and part of that certain grant of security set forth in the Loan and Aircraft Security Agreement (S/N \_\_\_\_\_ and S/N \_\_\_\_\_) dated \_\_\_\_\_, by and between \_\_\_\_\_ (together with its successors and assigns, if any, "Secured Party") and \_\_\_\_\_ (together with its successors and permitted assigns, if any, "Debtor"), which is being filed with the Federal Aviation Administration contemporaneously herewith.

[Insert Date]

To: Federal Aviation Administration, Civil Aircraft Registry

Re: Irrevocable De-Registration and Export Request Authorization

The undersigned is the registered owner of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturer's serial number [insert manufacturer's serial number] and registration number [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the "Aircraft").

This instrument is an irrevocable de-registration and export request authorization issued by the undersigned in favor of \_\_\_\_\_ ("the Authorized Party") under the authority of Article XIII of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

- (i) recognition that the authorized party or the person it certifies as its designee is the sole person entitled to:
  - (a) procure the de-registration of the Aircraft from the Civil Aircraft Registry maintained by the Federal Aviation Administration for the purposes of Chapter III of the *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944, and
  - (b) procure the export and physical transfer of the Aircraft from the United States of America; and
- (ii) confirmation that the Authorized Party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in the United States of America shall co-operate with the Authorized Party with a view to the speedy completion of such action.

The rights in favor of the Authorized Party established by this instrument may not be revoked by the undersigned without the written consent of the Authorized Party.

[SIGNATURE PAGE FOLLOWS]

**ANNEX B**  
**IR-FRIENDLY AIRCRAFT DESCRIPTION**

Make/Model aircraft which consists of the following components:

- (a) Airframe bearing United States Registration number N\_\_\_\_\_ and manufacturer's serial number\_\_\_\_\_.
- (b) Two (2) \_\_\_\_\_ engines bearing manufacturer's serial numbers \_\_\_\_\_ (l) and \_\_\_\_\_ (r) (each of which has 550 or more rated takeoff horsepower or the equivalent of such horsepower).
- (c) Standard avionics and equipment, optional equipment, and such other items fitted or installed on the Aircraft and as may be more particularly described hereinafter:

See Schedule A that is attached hereto and made a part hereof.

- (d) Those items of Lessee furnished equipment which are installed on the aircraft and are as described in a bill of sale or bills of sale therefor, delivered by Lessee to Lessor (copies of which may be appended hereto).
- (e) One (1) \_\_\_\_\_ auxiliary power unit bearing manufacturer's serial number P-814.

Manufacturer of Airframe: \_\_\_\_\_

Manufacturer of Engines: \_\_\_\_\_

Manufacturer of APU: \_\_\_\_\_

Supplier: \_\_\_\_\_

**SCHEDULE A**  
**Avionics and Equipment**

AIRFRAME:	Maintenance Program: Manufacturers Continued Airworthiness Program, GCMP, MSG3		
	Hours since new: _____	Cycles since new: _____	
<b>ENGINES:</b>	<b>Left Engine</b>	<b>Right Engine</b>	
	Serial number: _____	_____	_____
	Hours since new: _____	_____	_____
	Cycles since new: _____	_____	_____
	Engines maintained on a [manufacturer] approved task oriented maintenance program _____		
APU:	_____	Serial number _____	Hours since new: _____
<b>AVIONICS:</b>			
AVIONICS/ADDITIONAL EQUIPMENT:			

Together with all additions, accessions, modifications, improvements, replacements, substitutions, and accessories thereto and therefore, all avionics onboard equipment, loose equipment, manuals, documentation and technical publications, now owned or hereafter acquired, and all records and log books (in written form or as computer data, discs or tapes, whether now existing or hereafter acquired or created, and whether in the possession of customer or held on behalf of customer by others).

## ANNEX C

**THIRD PARTY USE**

**No Disposition of Collateral or Liens; Title and Security Interest.** Except as expressly provided below, Customer shall not sell, assign, enter into any Third Party Agreement, convey, mortgage, exchange or otherwise transfer or relinquish possession of or dispose of the Airframe, Engines (including all associated rights associated with or secured thereby and the related international interests), proceeds, any part thereof or any of the other Collateral or attempt or offer to do, or suffer or permit any of the foregoing. The foregoing shall not be deemed to prohibit the delivery of possession of the Aircraft, any Engine or Part to another Person for testing, service, repair, maintenance, overhaul or, to the extent permitted hereby, for alteration or modification. Customer will not create, assume or suffer to exist any Liens on or with respect to the Aircraft, any APU, Engine, Part or any of the other Collateral, or Customer's interest therein other than Permitted Liens. Customer will promptly take such action as directed by Lender to duly discharge any such Lien. Customer will warrant and defend its good and marketable title to the Aircraft, free and clear of Liens other than Permitted Liens, and the perfection and first priority of Lender's Lien in the Collateral, against all claims and demands whatsoever.

Notwithstanding the foregoing, provided that no Default or Event of Default has occurred and is continuing, Customer may contract with Manager to provide certain management services with respect to the Aircraft, and to charter the Aircraft to any customer of Manager from time to time pursuant to the Management Agreement, in each case, as specified in the Consent to Management Agreement, subject to the satisfaction of the following conditions: (i) Manager (A) is and remains a solvent, domestic company holding a current and valid Air Carrier Certificate issued by the FAA, (B) is a transacting user entity, (C) has appointed [a professional user entity satisfactory to Lender][Aviation Counsel as its professional user entity], and (D) identifies its administrator to Lender; and (ii) the Management Agreement and any such charter entered into pursuant thereto (A) do not convey any Lien or other interest in or against the Aircraft [(except for any international interest created thereunder, which shall, as of the date of the Management Agreement, be duly assigned to Lender and registered with the International Registry at the sole cost and expense of Customer; provided, however, that if such international interest is not capable of being registered with the International Registry as of the Acceptance Date, but subsequently becomes registrable, then said international interest shall be registered with the International Registry as of such later date)], and (B) expressly (1) remain, subject and subordinate to this Agreement and the rights of Lender hereunder and in and to the Aircraft, (2) do not permit any further disposition, (3) do not contain provisions that are inconsistent with the provisions of this Agreement or cause Customer to breach any of its representations, warranties or agreements under this Agreement, and (4) otherwise conform to the Consent to Management Agreement. Lender acknowledges that certain of the duties and obligations of Customer hereunder may be performed by Manager, however, this acknowledgment on the part of Lender does not constitute an acceptance by Lender of such performance by Manager of such duties and obligations unless the performance of such duties and obligations fully and completely satisfies the requirements of this Aircraft Security Agreement. The terms and conditions of the Consent to Management Agreement are hereby incorporated herein by their reference. No such arrangement by Customer will reduce any of the obligations of Customer hereunder or the rights of Lender hereunder, and all of the obligations of Customer hereunder shall be and remain primary and shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety.]

Notwithstanding the foregoing, provided that no Default or Event of Default has occurred and is continuing, Customer may lease the Aircraft to Lessee pursuant to the Lease specified in the Consent to Lease, subject to the satisfaction of the following conditions: (i) Lessee (A) is and remains a solvent, domestic company, (B) is a transacting user entity, (C) has appointed [a professional user entity satisfactory to Lender][Aviation Counsel as its professional user entity], and (D) identifies its administrator to Lender; and (ii) the Lease (A) is a true lease under the UCC and other applicable commercial law, and expressly, and at all times shall remain, subject and subordinate to this Aircraft Security Agreement and the rights of Lender hereunder and in and to the Aircraft, (B) does not permit any further leasing or other disposition, (C) does not permit any de-registration of the Aircraft from the FAA registry or registration of the Aircraft in the registry of the aviation authority or other governmental authority of any other nation, (D) does not contain provisions that are inconsistent with the provisions of this Aircraft Security Agreement or cause Customer to breach any of its representations, warranties or agreements under this Aircraft Security Agreement, and (E) otherwise conforms to the Consent to Lease. The terms and conditions of the Consent to Lease are hereby incorporated herein by their reference. No such leasing by Customer will reduce any of the obligations of Customer hereunder or the rights of Lender hereunder, and all of the obligations of Customer hereunder shall be and remain primary and shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety.

**ANNEX D**  
**CTC ASSIGNMENT**

**Lender's Assignment.** Lender, may at any time, with or without notice to Customer, grant a security interest in, sell, assign or otherwise transfer (an "Assignment") all or any part of its interest in this Aircraft Security Agreement and the other Loan Documents (including all associated rights associated with or secured thereby and the related international interests) or any amount due or to become due hereunder or thereunder, and Customer shall perform all of its obligations under the Loan Documents, to the extent so transferred, for the benefit of the beneficiary of such Assignment (such beneficiary, including any successors and assigns, an "Assignee"). Customer hereby waives any right to assert, and agrees not to assert, against any Assignee any abatement, reduction, defense, setoff, recoupment, claim or counterclaim that Customer may have against Lender. Upon the express assumption by such Assignee of Lender's obligations hereunder, Lender shall be relieved of any such assumed obligations. Customer hereby consents to any such assignment, grant, sale or transfer, including, without limitation, for purposes of the Cape Town Convention. If so directed in writing, Customer shall pay all amounts due or to become due under the Loan Documents and/or any related associated rights and international interests directly to the Assignee or any other party designated in writing by Lender. Customer acknowledges and agrees that Lender's right to enter into an Assignment is essential to Lender and, accordingly, waives any restrictions under Applicable Law with respect to an Assignment and any related remedies. Upon the request of Lender or any Assignee, Customer also agrees (a) to promptly execute and deliver to Lender or to such Assignee an acknowledgment of assignment in form and substance satisfactory to the requesting party, an insurance certificate naming Assignee as additional insured and loss payee and otherwise evidencing the insurance coverages required hereby, a consent to the Assignment for International Registry purposes, as well as renew any authorization required by the International Registry in connection with such consent, such as renewing its transacting user entity status and re-designating a professional user entity, if necessary in Lender's judgment), and such other documents and assurances reasonably requested by Lender or Assignee and make, or cause to be made, all registrations (including all assignments and subordinations) and all amendments, extensions and discharges with the International Registry reasonably requested by Lender or Assignee (and give or obtain any necessary consent thereto, as well as renew any authorization required by the International Registry in connection therewith, including renewing its transacting user entity status and re-designating a professional user entity, if necessary in Lender's judgment), and (b) to comply with the reasonable requirements of any such Assignee in order to perfect such Assignee's Lien in the Airframe, Engines (including all associated rights associated therewith or secured thereby and the related international interests), proceeds and other Collateral.

## ANNEX E

### CTC REMEDIES

**Additional Remedies.** If an Event of Default occurs, in addition to all other rights and remedies granted to it in this Agreement and in the other Loan Documents, Lender may exercise all rights and remedies of a secured party under the UCC or of a creditor, including a security assignee, under the Cape Town Convention (including without limitation, the remedies contemplated by Article 13 of the Convention and/or Article IX of the Aircraft Protocol) or under any other Applicable Law. Without limiting the generality of the foregoing, Customer agrees that upon the occurrence of an Event of Default, Lender, without demand or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon Customer or any other Person (all and each of which demands and/or notices are hereby expressly waived), in its sole discretion, may exercise any one or more of the following remedies: (i) proceed at law or in equity, to enforce specifically Customer's performance or to recover damages; (ii) terminate the right of any third party to use, possess or control the Aircraft; (iii) to the extent permitted by Applicable Law, enter the premises where the Aircraft is located and take immediate possession of and remove (or disable in place) the Aircraft (and/or the APU, any Engines and Parts then unattached to the Aircraft) by self-help, summary proceedings or otherwise without liability; (iv) use Customer's premises for storage without liability; (v) preserve the Airframe and Engines, and their respective value (but without any obligation to do so), immobilize or keep idle the Airframe or any Engine, manage, sell, lease, assign or otherwise dispose of the Airframe or any Engine or other property relating to the Aircraft or any of the other Collateral, whether or not in Lender's possession, in one or more parcels, at public or private sale or sales, with or without notice to Customer (except as required by Applicable Law, and in furtherance thereof, Lender agrees that it shall give Customer no less than ten (10) working days' prior notice of any proposed sale or lease of the Airframe or any Engine, which Customer acknowledges as constituting "reasonable prior notice" for the purposes of the Cape Town Convention) at such prices as Lender may deem best; (vi) apply any deposit, other cash collateral, or collect and apply proceeds to reduce any amounts due to Lender; (vii) terminate the [Management Agreement and any charter] [Lease], without regard as to the existence of any event of default thereunder and recover, or cause Customer and [Manager][Lessee] to relinquish possession and return the Aircraft, including the Engines and Parts, pursuant to this Section 7, and/or exercise any and all other remedies under the Consent to [Management Agreement][Lease], or in Customer's stead, to the extent provided for under, or otherwise available to Customer in connection with the [Management Agreement][Lease]; (viii) collect, receive, appropriate and realize upon the Collateral, or any part thereof; (ix) demand and obtain from any court speedy relief pending final determination available at law (including, without limitation, possession, control, custody or immobilization of the Aircraft or preservation of the Aircraft or its fair market value); (x) procure the deregistration and/or export and physical transfer of the Aircraft from the territory in which it is then situated (including pursuant to the IDERA); and (xi) exercise any and all other remedies under or with respect to the Collateral Assignment, [the Guaranty and] allowed by Applicable Law, including without limitation, the Cape Town Convention and the UCC. Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale, or sales to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Customer, which right or equity of redemption is hereby expressly released. Customer further agrees, at Lender's request, to assemble the Collateral, make it available to Lender at such places as Lender shall reasonably select, whether at Customer's premises or elsewhere. Lender shall apply the net proceeds of any such realization (after deducting all reasonable costs and expenses of every kind incurred in connection therewith) to the payment in whole or in part of the Obligations, in such order and manner as Lender may elect. To the extent permitted by applicable law, Customer waives all claims, damages and demands against Lender arising out of the repossession, retention, sale or other disposition of the Collateral. Customer agrees that Lender need not give more than ten (10) working days' notice (as contemplated under the Cape Town Convention) of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters. Customer shall be liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which Lender is entitled hereunder.

## ANNEX F

**RESPONSIBILITY CHECKLIST (LOAN)****Loan and Aircraft Security Agreement**

\_\_\_\_\_, S/N \_\_\_\_\_, FAA Registration # N\_\_\_\_\_

\_\_\_\_\_, as Lender

\_\_\_\_\_, as Customer

\_\_\_\_\_, as Guarantor

\_\_\_\_\_, as Lessee

	<b>Item</b>	<b>Responsible Party</b>	<b>Signature Pages</b>
1.	Aircraft purchase agreement	Customer	Seller/customer
2.	[Seller's lien holder issues: – UCC evidence of lien termination – FAA evidence of lien release(s) and discharge(s)]	Customer/seller	
3.	Lender's aviation counsel's preliminary FAA and IR title searches	Aviation counsel	
4.	FAA AC Form 8050-64 (Assignment of Special Registration Numbers)	Customer	
5.	Warranty bill of sale by seller in favor of customer	Seller	Seller
6.	FAA bill of sale by seller in favor of customer	Seller	Seller
7.	FAA Form AC 8050-1 (Aircraft Registration Application)	Customer	Customer
8.	Airworthiness certificate issued by the FAA	Customer	N/A (FAA)
9.	Loan and Aircraft Security Agreement Schedule and other attachments	Lender's counsel	Lender/customer
10.	Promissory note	Lender's counsel	Customer
11.	Guaranty	Lender's counsel	Guarantor
12.	[Aircraft lease	Customer's counsel	Customer/third party lessee]
13.	[Consent to aircraft lease	Lender's counsel	Lender/customer/third party lessee]
14.	UCC lien searches	Lender	N/A
15.	UCC financing statements	Lender	N/A
16.	Form AC-8050-135 (IR Filing) [sale/international interest/collateral assignment]	Aviation counsel	
17.	Customer is a TUE and has appointed a PUE	Customer	
18.	Opinion of counsel to customer [and lessee]	Customer's counsel	Customer's counsel
19.	Certificate of customer [and lessee] regarding charter, bylaws, incumbency, and resolutions	Customer	Customer [lessee]
20.	Certificate of good standing for customer	Customer	N/A
21.	Certificate of insurance with endorsements	Customer	Insurance broker
22.	Appraisal/inspection	Lender	
23.	IDERA	Lender's counsel	Customer
24.	Pay proceeds letter by customer to lender	Lender	Customer
25.	Opinion of aviation counsel, as to FAA filings and IR registrations, with priority search certificate (on closing date)	Aviation counsel	Aviation counsel

**ANNEX G**  
**RESPONSIBILITY CHECKLIST (LEASE)**  
**Aircraft Lease**

\_\_\_\_\_, S/N \_\_\_\_\_, FAA Registration # N \_\_\_\_\_

\_\_\_\_\_, as Lessor

\_\_\_\_\_, as Lessee

\_\_\_\_\_, as Guarantor

\_\_\_\_\_, as Seller

	<b>Item</b>	<b>Responsible Party</b>	<b>Signing Parties</b>	<b>Status</b>
1.	Aircraft purchase agreement	Lessee	Seller/buyer	
2.	Assignment of aircraft purchase agreement	Lessee	Seller/lessor/lessee	
3.	Assignment of warranties	Lessor	Seller/lessor/lessee	
4.	Warranty bill of sale	Seller	Seller	
5.	FAA AC Form 8050-2 (Aircraft Bill of Sale)	Lessee	Seller	
6.	FAA title search	Aviation counsel		
7.	FAA AC Form 8050-1 (Aircraft Registration Application)	Lessee	Lessee	
8.	FAA AC Form 8100-2 (Standard Airworthiness Certificate)	Lessee		
9.	Aircraft lease agreement	Lessor's counsel	Lessee/lessor	
10.	Lease supplement	Lessor's counsel	Lessee	
11.	Special tax indemnity rider	Lessor's counsel		
12.	Guaranty	Lessor's counsel	Guarantor	
13.	UCC lien searches	Lessor		
14.	UCC financing statement	Lessor		
15.	FAA AC Form 8050-135 (IR Filing)	Aviation counsel		
16.	Confirmation that lessee is TUE and has appointed a PUE	Lessee		
17.	Pay proceeds letter	Lessor	Lessee	
18.	Appraisal and inspection	Lessor		
19.	[LLC authorization statement	Lessee	Lessee]	
20.	Opinion of counsel to lessee and guarantor	Lessee's counsel	Lessee's counsel	
21.	Secretary's certificate of lessee re articles of incorporation, by-laws, resolutions, and incumbency	Lessee		
22.	Secretary's certificate of guarantor re: articles of incorporation, bylaws, resolutions, and incumbency	Lessee		
23.	Good standing certificate for lessee	Lessee		
24.	Good standing certificate for guarantor	Lessee		
25.	Certificate of insurance, with endorsements	Lessee		
26.	IR registrations with respect to a) sale of aircraft and (b) lease/international interest	Aviation counsel		
27.	Opinion of aviation counsel as to FAA filings and IR registrations, with priority search certificate (on closing date)	Aviation counsel	Aviation counsel	PC

## ANNEX H

### CTC RIDER

CAPE TOWN CONVENTION RIDER ("Rider") to Loan and Aircraft Security Agreement dated as of \_\_\_\_\_, 200\_\_ (the "Security Agreement"), by and between \_\_\_\_\_, a \_\_\_\_\_ ("Lender"), and \_\_\_\_\_, a \_\_\_\_\_ ("Customer").

All capitalized terms not defined in this Rider are defined in the Security Agreement. Execution of the Security Agreement by Customer and Lender shall be deemed to constitute execution and acceptance of the terms and conditions of this Rider, and it shall supplement and be a part of the Security Agreement.

This Rider will bring the Security Agreement in compliance with the provisions of the Cape Town Convention (as defined below).

1. **Representations.** In addition to the representations and warranties set forth in the Security Agreement, Customer hereby represents and warrants to Lender the following:
  - (a) Customer is "situated" in a country that has ratified or acceded to the Cape Town Convention within the meaning of Article 4 of the Convention; is a transacting user entity, has appointed an administrator; and has designated FAA Counsel (or another Person deemed acceptable by Lender) as its professional user entity;
  - (b) Customer has the power to grant the security assignment, security and international interests and other interests described in the Security Agreement, each within the meaning of Article 7(b) of the Convention;
  - (c) Customer acknowledges that all of the remedies provided herein, in the Security Agreement and in the other Loan Documents are, as stated herein and therein, "commercially reasonable" under all applicable laws (including all applicable commercial laws and the Cape Town Convention);
  - (d) (i) There are no other Registrable Interests registered with the International Registry with respect to any of the Collateral, except any Registrable Interests required or expressly permitted by the Security Agreement, including those in favor of Lender; (ii) Customer will neither suffer nor permit any Registrable Interests to be registered with the International Registry with respect to any of the Collateral, except any Registrable Interests required or expressly permitted by the Security Agreement; (iii) Customer has paid all required fees and taken all actions necessary to enable Lender to register any Registrable Interest with the International Registry with respect to Lender's Lien and the transactions contemplated hereby; and (iv) Customer has taken any and all actions necessary for Customer's representations and warranties in the Security Agreement to be and remain true and correct and to be and remain in compliance with all of the Obligations; and
  - (e) Lender's Lien, including Lender's security assignment of, and grant of security and international interests in, against and with respect to, the Airframe, Engines (including all associated rights associated with or secured thereby and the related international interests), proceeds and, as and to the extent applicable, all of the other Collateral, has been, and at all times hereafter will remain, validly registered with the International Registry and has, and at all times hereafter will have, first priority over any other Liens pursuant to all applicable laws.
2. **Further Assurances.** Customer agrees to promptly make, cause to be made and/or consent to all registrations with the International Registry and take such further action, as Lender may from time to time reasonably request in order to further carry out the intent and purpose of the Security Agreement and this Rider and to establish and protect the rights, interests and remedies created, or intended to be created, in favor of Lender thereunder. Customer further agrees (a) not to discharge or allow to be discharged any international interest or other Registrable Interest created in favor of Lender; and (b) to promptly cause any Registrable Interest that is registered with the International Registry with respect to the Airframe, Engines (including all associated rights associated with or secured thereby and the related international interests), proceeds or other Collateral to be discharged, unless required or otherwise expressly permitted by the Security Agreement.
3. **Consent.** Customer hereby (a) consents to the registration of any international interest, security assignment or other Registrable Interest arising in connection with the Security Agreement, any of the other Loan Documents, the Purchase Agreement and any subordination, amendment, discharge or undertaking permitted by the Cape Town Convention with respect thereto, and (b) authorizes its professional user entity to consent to the registration (including all final consents thereto), upon request therefor by Lender. At closing, Customer hereby agrees to further authorize its professional user entity to consent to any and all such registrations.
4. **Remedies.** In addition to all other rights and remedies granted to it in the Security Agreement, (a) Lender may exercise all rights and remedies of a creditor, including a security assignee, under the Cape Town Convention (including, without limitation, the remedies contemplated by Article 13 of the Convention and/or Article IX of the Aircraft Protocol); (b) demand and obtain from any court speedy relief pending final determination available at law (including, without limitation, possession,

control, custody or immobilization of the Aircraft or preservation of the Aircraft or its fair market value); and (c) procure the deregistration and/or export and physical transfer of the Aircraft from the territory in which it is then situated; all of which rights and remedies may be used successively and cumulatively and in addition to any other right or remedy referred to in the Security Rider or otherwise available to Lender at law or in equity. Customer hereby acknowledges that none of the provisions of this Rider or Section 5 of the Security Agreement, including any remedies set forth herein or therein, is “manifestly unreasonable” for the purposes of the Cape Town Convention.

5. **Judicial Proceedings.** Notwithstanding anything to the contrary contained in the Security Agreement, Lender and Customer may bring a judicial proceeding against the Registrar of the International Registry in the Republic of Ireland, solely with respect to matters relating to the International Registry itself.
6. **Assignment.** Lender, may at any time, with or without notice to Customer, grant a security interest in, sell, assign or otherwise transfer (an “Assignment”) all or any part of its interest in the Security Agreement and the other Loan Documents (including all associated rights associated with or secured thereby and the related international interests) or any amount due or to become due thereunder, and Customer shall perform all of its obligations under the Loan Documents, to the extent so transferred, for the benefit of the beneficiary of such Assignment (such beneficiary, including any successors and assigns, an “Assignee”). Customer hereby waives any right to assert, and agrees not to assert, against any Assignee any abatement, reduction, defense, setoff, recoupment, claim or counterclaim that Customer may have against Lender. Upon the express assumption by such Assignee of Lender’s obligations under the Loan Documents, Lender shall be relieved of any such assumed obligations. Customer hereby consents to any such assignment, grant, sale or transfer, including, without limitation, for purposes of the Cape Town Convention. If so directed in writing, Customer shall pay all amounts due or to become due under the Loan Documents and/or any related associated rights and international interests directly to the Assignee or any other party designated in writing by Lender. Customer acknowledges and agrees that Lender’s right to enter into an Assignment is essential to Lender and, accordingly, waives any restrictions under Applicable Law with respect to an Assignment and any related remedies. Upon the request of Lender or any Assignee, Customer also agrees (a) to promptly execute and deliver to Lender or to such Assignee an acknowledgment of assignment in form and substance satisfactory to the requesting party, an insurance certificate naming Assignee as additional insured and loss payee and otherwise evidencing the insurance coverages required hereby, a consent to the Assignment for International Registry purposes, as well as renew any authorization required by the International Registry in connection with such consent, such as renewing its transacting user entity status and re-designating a professional user entity, if necessary in Lender’s judgment, and such other documents and assurances reasonably requested by Lender or Assignee and make, or cause to be made, all registrations (including all assignments and subordinations) and all amendments, extensions and discharges with the International Registry reasonably requested by Lender or Assignee (and give or obtain any necessary consent thereto, as well as renew any authorization required by the International Registry in connection therewith, including renewing its transacting user entity status and re-designating a professional user entity, if necessary in Lender’s judgment), and (b) to comply with the reasonable requirements of any such Assignee in order to perfect such Assignee’s Lien in the Airframe, Engines (including all associated rights associated therewith or secured thereby and the related international interests), proceeds and other Collateral.
7. **Definitions.** For purposes of this Rider, the Security Agreement and the other Loan Documents, the following terms shall have the following meanings:

Certain of the terms used in this Rider and in the other Loan Documents (“**CTC Terms**”) have the meaning set forth in and/or intended by the “**Cape Town Convention**”, which term means, collectively, (i) the official English language text of the Convention on International Interests in Mobile Equipment, adopted on 16 November 2001 at a diplomatic conference held in Cape Town, South Africa, as the same may be amended or modified from time to time (the “**Convention**”), (ii) the official English language text of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, adopted on 16 November 2001 at a diplomatic conference held in Cape Town, South Africa, as the same may be amended or modified from time to time (the “**Protocol**”), and (iii) the related procedures and regulations for the International Registry of Mobile Assets located in Dublin, Ireland and established pursuant to the Cape Town Convention, along with any successor registry (the “**International Registry**”), issued by the applicable supervisory authority pursuant to the Convention and the Aircraft Protocol, as the same may be amended or modified from time to time. By way of example, but not limitation, these CTC Terms include, “administrator”, “associated rights”, “proceeds”, “international interests”, “security assignment”, “transfer”, “working days”, “consent”, “final consent”, “priority search certificate”, “professional user entity”, “transacting user entity” and “contract”; except “proceeds” shall also have the meaning set forth below.

“Proceeds” or “proceeds” shall have the meaning assigned to it in the UCC, and in any event, shall include, but not be limited to, all money and non-money proceeds of the Airframe and/or Engines, as applicable (as contemplated by the Cape Town Convention), goods, accounts, chattel paper, documents, instruments, general intangibles, investment property, deposit accounts,

letter of credit rights, investment property, deposit accounts and supporting obligations (to the extent any of the foregoing terms are defined in the UCC, any such foregoing terms shall have the meanings given to the same in the UCC), and all of Customer's rights in and to any of the foregoing, and any and all rents, payments, charter hire and other amounts of any kind whatsoever due or payable under or in connection with the Aircraft, including, without limitation, (A) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Customer from time to time with respect to the Aircraft, (B) any and all payments (in any form whatsoever) made or due and payable to Customer from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of the Aircraft by any governmental body, authority, bureau or agency or any other Person (whether or not acting under color of governmental authority), and (C) any and all other rents or profits or other amounts from time to time paid or payable under or in connection with the Aircraft.

"Registrable Interests" shall mean all existing and prospective international interests and other interests, rights and/or notices, sales and prospective sales, assignments, subordinations, in each case, susceptible to being registered at the International Registry pursuant to the Cape Town Convention.

Dated as of \_\_\_\_\_

LENDER: \_\_\_\_\_

CUSTOMER: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_